

## **Johnnie and Suzie, Don't Cry: Mommy and Daddy Aren't That Way**

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Hear the voices of the participants in child custody litigation. First, listen to the children:

"How come my mother and father used to fight at night when I went to sleep and they thought I couldn't hear them? I don't understand how come Daddy screams so much at Mommy; she always seems so nice to me."

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"But, Doctor, you know if he gets his hands on the child, he'll make her all over again into an impossible bitch, just like his mother! I don't understand why he has to see her at all."

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"How come the judge took me into that big room and asked me whether I wanted to live with Mommy or Daddy? That's awful to have to make a choice like that. I don't want to have to make a choice. I want them to get back together."

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"I was afraid that my parents would get divorced. I knew it was coming. Mother seemed so unhappy around the house all the time and it was just awful. All the kids at school who talk to me have mommies and daddies now, except Sarah and her parents just got divorced too and I spent a lot of time with her."

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"How come my Daddy always tells me how mean Mommy is, when I'm with him, and how she spoils me rotten? Won't he give me any ice cream after dinner like Mommy does?"

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"I don't understand how come Grandmother is bad. We used to visit her all the time. Now Mommy says that I can't visit Grandmother because she caused all the trouble between Daddy and Mommy in the first place and Mommy says she's gonna get even."

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"Mommy says that the reason we can't go to the movies anymore is because Daddy spends all the money on girlfriends and we don't have any money."

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"Daddy says that he'd see us more but that Mommy got a court order and that keeps him from seeing us because he's supposed to be mean and awful for us to see. What's a court order?"

\* \* \*

Listen to the others:

Attorney John Jones:

"I don't really understand, doctor, how you could possibly recommend taking these children away from their mother. I know that she's been hospitalized three times with a diagnosis of schizophrenia and that she used to beat them, but her psychiatrist says that she's fine now and that she really needs the children for her own health, and that she's

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liable to decompensate into schizophrenia again or become violent if she doesn't have the children around."

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Attorney Tim Smith:

"You know and I know, doctor, when you get right down to it that this guy really has no interest in doing anything other than stirring up the kids and avoiding paying child support. If he really gets the custody of those kids, they'll be neglected, and the only reason he really wants that custody is simply to get even with his wife and not give her any money. Take it from me, I've been in my law practice a long, long time and I can tell these things. I know that you may have seen the children and all the parties, but I think he pulled the wool over your eyes."

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Judge Francis K. Pompous:

"I don't care what the attorneys have stipulated and I don't care what the Probation Department has found and I certainly don't give a hang for any of this new-fangled psychiatry — certainly this child psychiatrist's report that I have here. In the old days, before we had all of this nonsense, we knew how to take care of children . . . 'Spare the rod and spoil the child!' Now, here's what's going to be done in this case."

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I entered the world of child custody litigation through the side door, as an alleged expert on the effects of absent fathers on children's behavior. I had become interested in the problem of paternal absence during the Viet Nam hostilities, while on active duty with the United States Navy. Then we were confronted with the deployment of large numbers of American men leaving behind their dependents. Their children were frightened that they might never see their fathers again. In the world of child custody, I found a bewildering array of personal pain, tragedy, ignorance, bias, conniving, manipulation, and, for me, a recognition of shocking neglect and ignorance of the welfare of children faced with this most poignant of stresses in the twentieth century. I have seen hundreds of faces of this nation's greatest resource, its children, twisted and convoluted with tears and pain, trying to comprehend the arena that is child custody litigation, trying to grasp what has happened to those loving parents they once had, trying to understand why Mommy and Daddy shriek at and about each other, trying to understand what words such as "court order" mean, and trying to explain the anguish of being thrust into a judge's chamber and given the executioner's choice of choosing whether they prefer to live with their mothers or with their fathers.

I have sat in courtrooms and watched judges expound on theories of child rearing, each often delivering more lectures than opinions. They sometimes manifested all the flexibility one might expect to find in a redneck Kleagle of the local Ku Klux Klan, explaining what is really best for the Blacks in the neighborhood. I have seen attorneys adroitly and cleverly maneuver their clients into unwanted adversary roles where they undergo bitter, prolonged and often repeated custody battles and hearings. This was most pointedly demonstrated by the attorney I saw quit in the middle of a case, almost at the moment at which the family resources for payment of his fee out of the tangible personal property had been exhausted. I have seen basically decent people resort to the lowest, most manipulative techniques in efforts to impose their wills in meaningless maneuvers related to visitation privileges or custody of their children.

I have had the unfortunate professional responsibility of sharing the pain and anguish reconstructed in adult patients whose emotional problems may be traced to their parents' own divorces and their own failures to resolve basic psychological, developmental steps in ways constructive to their own personal development and growth. I have served as the director of a large child guidance clinic which has attempted to effect some meaningful help for divorcing parents who lacked the economic resources for private care, and I have

watched an incredible number of sorties, *blitzkriegs* and disasters perpetuated upon their children through child custody litigations. And so, through my 1000-plus personal experiences in clinic and private practice, and through the thousands of children I have had an opportunity to serve, I have played the role of the child psychiatrist who attempts to understand and to help his patient, the child, understand the various stresses of the frustrating world that is childhood in the Twentieth Century. It is therefore with rare pleasure that I have an opportunity of speaking *for these children* today to a group of learned people who are really in a position of doing something better for the children of this country involved in child custody suits.

Speaking for those children, I can tell you that the issues surrounding divorce and the attendant problems of rearing children are sufficiently complex as to preclude even efforts toward succinct description in the time allotted to me today. Accordingly, I would like to draw your attention to the complexities surrounding this by asking some questions of you that children have asked of me.

How do you know what's best for a child?

How did you come to your knowledge of what a child is like?

What formal training have you had in the development emotionally, psychologically, and intellectually of a child?

What opportunities have you had to examine children at various phases of development, and what is your knowledge of their needs at those various stages?

How much of an opportunity have you had to study in real depth the personalities of adults whose basic divorce was predetermined by the unhappiness of their own early childhood?

How do you know what goes on in a child's mind, and how can you find out in the mind of a very young child what is going on?

How can you assess the probable impact of events on a child?

How can you assess the inter-forces of parents, particularly those forces not visible in their overt behavior or in their attorney's office or in a courtroom, or even during their marriage, as related to their abilities to handle the various aspects of child development in a nourishing fashion?

How come families fight about their children anyway?

How come the court treats children as property instead of individuals?

On what information do the courts base their current custody practices and visitation practices?

What information do the courts use to determine the amount of time and the frequency of visits that would be useful for the missing parents to spend with children?

What are the criteria that the courts use in determining the emotional needs that will foster development most effectively for children at various ages and phases of development, taking into account things such as sexual difference, prior development, and the inter-resiliency and personality of the individual child?

How can one tell whether two parents, adults acting in a parenting role, will cooperate or not in dealing with children?

How can you predict the future course of a parent's behavior in terms of stress as it relates to the development of the child?

How do you attempt to develop a cooperative spirit between parents and reduce an adversary position to constructive synergistic cooperation wherein the joint responsibility of raising their children remains?

How do you know that the child who apparently does not react to divorce today will not be in the psychiatrist's office twenty years from today as an unhappy adult whose psychological scars, secondary to divorce, now merge and come to attention? Can we accept even a 10 to 15 year follow-up of these children as indicative that they were not badly traumatized as a result of their experience surrounding the dissolution of the marriage?

Finally, what is the necessary minimum consideration to evaluate and appraise the situation truly and appropriately in terms of the child's rights in a dissolution for both custody and visitation? In the adversary position, that is, in a custody battle, who is it that will represent the child's rights and position?

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It is the conclusion of the Staff of the Child Guidance Clinic of San Diego that whoever represents the child's rights ought to be truly an expert in child development as well as adult pathology. At this point, I will not make any friends when I state unequivocally that those who have not been formally trained in the world of childhood and its development remind us who are trained in both fields of the adage about the Chinese businessman who, if he were half as good as he thought he was, would be twice as good as his competitors knew him to be. It is possible to answer the dilemmas in the questions as I posed them, and accordingly, we have developed a recommended format at the Child Guidance Clinic, as listed in Table 1.

TABLE I  
RECOMMENDED PROCEDURE IN CHILD CUSTODY LITIGATION  
Department of Psychiatry  
Children's Hospital and Health Center  
San Diego

Secure role as friend of the court if possible	Examination of the Children	Examination of Parents individually and conjointly	Examination of Child-Parent Interaction
Special examinations as indicated (e.g. psychological testing, home visits)	Where indicated, conjoint interview with parents in effort to secure cooperation by stipulation	Where indicated, presentation of medical findings and opinion in court	Securing of follow-up counseling and/or treatment where indicated for children and/or parents

A first and most important step in custody litigation is attempting to secure the child psychiatrist in the role of a Friend of the Court, if possible. Operationally, this means initially attempting to have the attorneys, by stipulation, designate the child psychiatrist as a Friend of the Court, and that failing, not consenting to the psychiatrist examining other than all parties. This usually means that one of the parties will bring action which will result in the child psychiatrist being given an opportunity of examining all the important principals. The examination should commence with an explanation to the responsible adults as to what is to be accomplished. The essential questions to be ascertained in the examination of the children and their family are spelled out in Table 2.

TABLE 2  
CHILD CUSTODY CASES  
Department of Psychiatry  
Children's Hospital and Health Center  
San Diego

Questions to be answered:

**EXAMINATION OF CHILD**

1. Basic mental health status?
2. Previous development course?
3. Methods of coping, with particular attention to restoring missing parent and coping with grief?
4. Degree of attachment to parents?
5. Phase of development with particular attention to type of parenting indicated from both mother and father?

TABLE 2 (Continued)

**EXAMINATION OF CHILD (Cont.)**

6. Degree and severity of any psychological impairment and treatment indicated, if any?
7. Ability to use substitute objects as resource in lieu of missing parent?

**EXAMINATION OF PARENTS INDIVIDUALLY**

1. Basic mental health status?
2. Personality functioning *vis-a-vis* ability to parent.
  - Are there liabilities secondary to
    - a) neurotic unconscious concerns about dependency, power anger, sexuality, defending against unhappiness using the child?
    - b) specifically malignant psychopathological states (e.g. the Johnson-Szerek phenomena in fostering delinquency)?
    - c) major pathology (psychoses, toxic substance abuse, character pathology)?
3. Past personal history with particular reference to their own childhoods?
4. Degree of flexibility in accepting feedback to their parenting responsibilities?
5. Probable method of restoring missing mate – cooperative or non-cooperative?
6. Ability to form treatment alliance where their children are concerned?

**EXAMINATION OF PARENTS CONJOINTLY**

1. How do personalities mesh in terms of filling out deficits for providing appropriate parenting as a dyadic unit?
2. How do personalities mesh in terms of being able to be minimally cooperative with their children?
3. How will future events effect them (e.g. remarriage of spouse)?

**EXAMINATION OF PARENT-CHILD INTERACTION**

1. What is spontaneous response of child to parent – is parent viewed as asset – and if not, how come?
2. How in tune with the child is the parent – is the parent “listening” or “telling”?
3. How psychologically nurturing is the parent?

The art of examining the child is particularly difficult to communicate in the legal situation. It is very hard for people not familiar with the practices and techniques of child psychiatry to understand that even a very young child can be effectively communicated with through the age-appropriate means of communication. For the younger child, that means projective play techniques.

The parents should be examined both individually and conjointly with particular attention to their backgrounds and to the availability they each have for effective parenting. Particularly critical is whether or not their unconscious concerns preclude the parents' functioning in a nourishing way with their children. In order to understand these difficulties, it is necessary to obtain considerable background information in depth about the 'parents' own childhoods. It is important to ascertain the degree of their ability and elasticity in accepting feedback about their parenting responsibilities. Parents should be examined conjointly to see how their personalities mesh for providing appropriate parenting as dyadic units, and in order to assess whether they will be at least minimally cooperative where the children are concerned. They are also examined with an eye toward estimating the effects future events may have upon their individual abilities to relate to their children (e.g., remarriage of a spouse).

It is important to see the spontaneous parent-child interaction outside of the examining room if possible, and here vignettes occurring on the way to and from the examining room are often as vital as what occurs in the examining room itself.

Does the child see the parent as an asset, and if not, why not?

How in tune is the child with the parent?

Is the parent listening or telling, and how psychologically nourishing is the parent?

After the examinations of the basic individuals have been completed, additional specialized procedures may be indicated. For example, it may be highly germane to get

baseline psychological test data on one or all of the children, or on one or both of the parents. This might provide documentation of what has been a high degree of clinical suspicion of, e.g., the not visibly pre-psychotic parent who is likely to explode in the future to the obvious detriment of the children. Another example is the child whose current level of superficial functioning may not seem to be as disturbed as it is in fact, and in whom it would be important to document that if custody is not changed, additional psychonoxious stress will be accomplished by unfavorable developmental inhibitions. Home visits may also be indicated in some cases in order to ascertain directly what the physical and social environment of the child will be.

Once all of this data has been assimilated, the child psychiatrist is then in a position to begin to look at each individual child and his family situation with an eye to how to bring disparate, adversary forces together as closely as possible in the given situation to foster the ongoing development and growth of a healthy child. It is this step which is the quintessential art of the entire proceeding. It is one that requires immense experience with custody cases and with children.

The task of building an alliance for the aid of the child is a complex one. There can be no established procedures, only principles. The first of these is attempting to build cohesiveness in the family, and sometimes this can be done by approaching the healthiest member and, through him or her, approaching the most disparate member. Surprisingly, often the healthiest and most accessible member is an articulate grade school child who, with the aid of a child psychiatrist, can tell it like it is. Often, the child's description of how bad he or she feels, when presented to both parents, may dislodge those parents from the adversary positions they have assumed around the child. Sometimes a healthier parent or step-parent or a relative may become the prime mover in the procedure of trying to obtain cohesion. Sometimes a conscientious attorney can persuade his client to heed medical advice for the benefit of the children involved. Sometimes we have an enlightened judge who can or will do this.

Whenever possible, it is most important to arrange a conjoint conference with both parents, and there to present the medical findings and the opinions that one is going to send to the Court or testify to in the Court. Obviously, for some parents, the joint examination or session is more destructive to the situation than useful or informative. In such cases, it is not particularly advantageous or desirable to report the findings to the parents prior to Court. It is, however, my practice to present summaries of the findings to each attorney when this is possible. It is appropriate for them to have some advance knowledge of the findings which will be presented.

In summary, the essential ingredient is securing the child psychiatrist in the role of Friend of the Court, as the real representative of the child in the dissolution or custody procedure. Only after an in-depth examination of *all* the individuals involved is it possible to render valid expert medical testimony regarding indications for the child's future welfare and emotional development.

I close with this challenge. The next time you have the direct responsibility of making a determination in a child custody case, consider what you might want done if the children that were involved were your own children. Ask yourself this question, "I think I may be right, but can I afford to be wrong where the child's future welfare is concerned? Particularly, can I afford not to consult with an advocate for the child?" The symbolic blindfold of justice reminds the child psychiatrist of the blindness to children's needs. As practiced today, custody litigation should comfort any adult psychiatrist by assuring him that his waiting room will be filled tomorrow. Too often I have seen the seeds for future, adult neurosis sown and a rendezvous with psychiatry twenty or thirty years hence guaranteed when the children become lost in the custody-suit warfare, and when they are treated as property or weapons in their parents' wars. It is a sad commentary that psychiatry is needed at all. I really wish we could all go out of business. Each child

custody litigation provides a fresh opportunity for preventive psychiatry. The proper settlement today is the soil in which to rear tomorrow's healthy adult. I leave you all with this thought.