

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 1

HON. BYRON F. LINDSLEY, JUDGE

MARY LOU VESCO,  
Petitioner

vs.

DONALD VESCO,  
Respondent

MOCK TRIAL

REPORTER'S TRANSCRIPT

January 17, 1976

APPEARANCES:

For the Petitioner:

GREENBERG & GLUSKER  
By: Dennis M. Wasser

For the Respondent:

PHILIP M. ROSTEN

Moderator:

DENNIS F. KOSON, M.D.

THE COURT: In the matter of custody of Robert Vesco.

MR. ROSTEN: Ready for the petitioner, your Honor. Philip Rosten appearing in behalf of Mary Lou Vesco.

MR. WASSER: Ready for the respondent, your Honor. Dennis Wasser appearing in behalf of Donald Vesco.

THE COURT: Very well.

MR. WASSER: *We are not going to give an opening statement today, but I'm going to give just an idea of what we are trying to demonstrate. I feel a little bit like I'm doing theater in the round, your Honor; pardon my side or back.*

JUDGE LINDSLEY: *Must be uncomfortable to turn his back on the judge.*

MR. WASSER: *It is, your Honor.*

*I'm primarily going to demonstrate today how to put on the direct testimony of an expert. I think the best way I can tell you what I'm going to do is to distinguish the direct examination from the cross examination. The way I look at it, there are three distinguishing factors. First of all, on the direct examination the expert witness, or my psychiatrist, will be the center of attention, and you should find that the people in the audience — we don't have one in a normal custody case — actually, the focus of the judge's and jury's attention would be on the witness, not on me. On cross examination, generally, the focus of attention will be on the attorney. The attorney is trying to draw the attention away from the witness to himself so he can score his points. Secondly, the direct examination should be slow. You put the question to your witness and then let him talk—let him respond; whereas, in cross examination the talk should be faster. You're trying to move around a lot more. The third point is on the direct examination. You should pick out the testimony in a chronological, organized manner so that everybody can follow the proceedings; whereas, on cross examination, your function as an attorney is to jump around — skip around — and attempt to move in different areas with your psychiatrist rather than doing it chronologically with him.*

*I am a little embarrassed about putting this presentation on after reading Judge Lindsley's fine article, which you have in your materials. He stressed, and I think it behooves all of us to stress, that these matters really should not be in the courts; rather, they should really be in another forum. With that, I'll call my witness, unless you have some remarks.*

MR. ROSTEN: *I think you might also comment about what you look for on direct examination—that aspect I do not think that was covered this morning.*

MR. WASSER: *What Mr. Rosten just asked me to talk about, I think is related to the extent that the child custody case becomes an adversary proceeding. If you can't avoid it, and you find yourself thrust into court either because the judge will not take it in chambers or not take it in the conference room and everybody insists that the matter be tried—then I think you have to regard it specifically as an adversary procedure. By that, I mean, you should meet with your psychiatrist. You should prepare him, etc. In this case, my psychiatrist is a court-appointed psychiatrist. Therefore, I probably would not have met with him, and I probably would not have rehearsed him to testify—just taken his report, asked him questions from the report, and kind of given him the lead on the report, which is what I'm basically going to do.*

MR. ROSTEN: *I have some brief comments, too. My position is somewhat more difficult. This is the only chance we have down here—keep it as brief as possible! Dennis is doing the direct. In a real case I might very well have just allowed the report to go in by itself and open it for me for cross examination. My position when I received the report was, obviously, bad. It was an adverse decision, and then my questions became, "What do I do?" Dr. Robey is an eminently qualified psychiatrist. I will touch upon this briefly when I discuss voir dire and examination of qualifications. I would, first of all, give an*

objective evaluation, and if I felt that the report was such that it could not be criticized and if the recommendation was probably just—I might do nothing and recommend to my client that on the basis of this report we not proceed further. Because, as I judge, Mr. Wasser also basically feels this is a psychiatric problem.

Here there were two distinguishing facts. First, there was a child and a child's preference; and second, because of the way we are structured in this situation, I thought that there were good avenues—good ways of attacking Dr. Robey. So, I hired Dr. Sadoff and used Dr. Sadoff both to prepare a report—an objective report — and then as an expert in preparing the cross examination and evaluating Dr. Robey's report. That is one area where a psychiatrist can be of tremendous assistance, as can any expert. I don't know that much about psychiatry, so Dr. Sadoff can give me a good many insights that I would not otherwise have. Any time you have an expert you should think of him not only as a witness, but as an advisor.

Those are my opening comments.

MR. WASSER: Your Honor, with that I could call Dr. Robey.

MR. ROSTEN: There is also one point I would like to call to your attention. At this time I am not going to raise any objections. We are going to just give flow as much as possible. There will be breaks for discussion on various points which we think we should highlight.

AMES ROBEY, M. D.

called as a witness by and on behalf of the Respondent, having been first duly sworn, testifies as follows:

**DIRECT EXAMINATION BY MR. WASSER:**

Q Would you state your name, please?

A Ames Robey.

Q And what is your address, Dr. Robey?

A Box X-607, Ann Arbor, Michigan.

Q And Dr. Robey, what is your business or profession?

A I am a duly licensed physician in the States of Michigan and Massachusetts, in full-time employment in the private practice of psychiatry—forensic psychiatry.

Q Dr. Robey, what college did you attend?

MR. ROSTEN: Excuse me, your Honor. I would be perfectly willing to stipulate to Dr. Robey's qualifications. I think that might expedite the matter considerably.

MR. WASSER: Thank you. Your Honor, I would not be willing to stipulate that. I would rather put on Dr. Robey's credentials, if the court please.

THE COURT: All right. You can go to the background. You do not need as intensive—but go ahead.

MR. WASSER: Thank you, your Honor.

THE WITNESS: I attended Harvard University and Boston University School of Medicine.

**BY MR. WASSER:**

Q And Dr. Robey, where did you attend medical school?

A At Boston University.

Q And are you board certified in the area of psychiatry?

A I am.

Q Do you see patients privately?

A I do.

Q And are you on the staff of any hospitals?

A At the present time, I am not.

Q Have you been in the past?

A In the past I have been on the staff of several hospitals.

Q Have you testified in other custody cases, Doctor?

A Yes, I have.

Q And could you tell us approximately how many?

A I believe there's been actual testimony in seven cases of custody of children.

Q Have you written any articles in the field of child custody, Doctor?

A Not directly, but certainly it was involved in the area of one study I did.

Q Dr. Robey, you were appointed by the court to make an analysis of this case, is that correct?

A That's correct.

Q And in connection with your appointment, did you meet with Mr. Vesco?

A I did.

Q And when was that, Doctor?

A I met with him on March 23, 1975.

Q And for how long?

A Well, I met with him and with Shirley Vesco, his present wife. The children then met with the two of them separately. I met with Robert separately. I spent on that occasion two and a half hours with the present Mrs. Vesco and the children.

Q How many hours total did you spend on this case in seeing people other than in writing your report?

A Well, in seeing the petitioner in the case, Mrs. Vesco, I spent 90 minutes interviewing her. I spent about an additional two hours reviewing materials and writing a report for this court.

Q So to summarize, Doctor, you met with the present Mr. Vesco, the present Mrs. Vesco, the ex-Mrs. Vesco, and all the members of the new family, is that correct?

A That's correct.

Q Did the subject of intoxication come up when you interviewed—I'll call her the mother for convenience — Mrs. Vesco?

A Yes, it did.

Q And in what context, Doctor?

A It came up in both—an admission on her part that she had had some difficulties drinking in the past, and of course, this led to a great deal of questioning in this entire area—how long it had been going on; how much of a problem; what difficulties there had been, and the like.

Q Did the mother or the petitioner ever have a physical problem because of her drinking, Doctor?

A Yes.

Q And could you tell the Court the circumstances of that?

A Well, I believe it was in August of 1974 that she had become sufficiently intoxicated to fall and suffer an injury for which she had to be hospitalized; and it happened to be just at that time that Mr. Vesco had come over to visit Robert, and had found that she was not there because she was at the hospital undergoing treatment.

Q Has the son, Robert, ever witnessed his mother's drinking problem?

A Unfortunately, yes.

Q And could you relate that circumstance or circumstances to us?

A Well, in my interview with Robert he spoke of being rather upset about her drinking, and being aware of it; that she had—could become rather vituperative—could get very angry at the present Mrs. Vesco and at her ex-husband, although she apparently was in no way directly violent or antagonistic toward Robert, but he had witnessed it upon a good many occasions while he was living with her.

Q What effect did this have on the boy?

A Well, he would get quite upset—withdraw some—try to be in a way protective of

her. I felt that a lot of the early problems I saw in him were in response to her drinking, and his somehow feeling that he was in some way responsible for this, and he would go overboard trying to be extra nice, extra polite — do things for her perhaps more spontaneously than we would ordinarily see in a boy of this age.

Q Doctor, in your opinion is there a good possibility that Mrs. Vesco may revert to drinking?

MR. ROSTEN: *Now, ordinarily, I would probably object to that on the basis of speculation and lack of foundation; but I'm not now because you will then find out—specifically the lawyers—what you can get into.*

THE WITNESS: I have an opinion on this, Mr. Wasser.

BY MR. WASSER:

Q What is the opinion, Doctor?

A It's my opinion that she's now in treatment again and on medication, and that if this continues, there is a possibility that she won't drink. But I feel from my evaluation of her that the potential is fairly high, and that particularly, as she gets closer to her goal of getting an accounting degree—becomes, perhaps, a little bit upset in her own role as a bread-winner—I think there is going to be an increased chance of her again beginning to drink.

Q And is it—would you agree with me, Doctor, that Mrs. Vesco, in effect, may have stopped drinking just to improve her chances in the custody of Robert?

A Again, there would be an opinion. Certainly there is a direct temporal relationship with her stopping drinking precipitously and going back into treatment at the time the court previously placed Robert with his father and stepmother.

Q Did the petitioner seem depressed when you interviewed her?

A Yes, she did.

Q And did she seem nervous?

A She was nervous and her hands shook a great deal, especially at first. She chain-smoked all the way through the interview, and her foot tended to move fairly continuously, and she could admit to being somewhat anxious. She indicated that she had been taking Valium and that this had been of some help in her anxiety.

Q Doctor, you mentioned in your report that the petitioner seemed to stress the importance of custody to herself. Could you comment on that?

A Well, Mr. Wasser, the relationship with Robert, I think, is very important to her. As you perhaps know, her father, to whom she was very attached, died in March of 1974, and I think this certainly made her drinking worse at that time; and, of course, her separation or divorce from her husband. For the past seven years she tends to have leaned very heavily on Robert to sort of be the man of the house, but at the same time keeps him very close. She doesn't like him out bicycling; she doesn't want him to go on picnics or scouting or things like that. She tends to keep him, in my opinion, fairly overprotected. So I think there is a very strong emotional demand on her part for a relationship from Robert that I feel may have its less than beneficial effect on Robert's future.

Q Does she restrict his activities in playing with other children in the neighborhood?

A Yes, she tends to want him in early. As I indicated, she is reluctant to have him go riding his bike, and generally she keeps him fairly close at home. Their activities outside the home are very largely restricted just to going to church on Sundays; and most of his outside activities, other than school, are when his father makes or made a visitation before he took custody.

Q Doctor, is the petitioner now employed?

A She is not employed at the present time. She was on welfare, and then last September started school to become an accountant and did fairly well; but continues on welfare, going to school, with her mother in the house taking care of things.

Q Would you comment about her job history in the last six or seven months?

A Well, she had, I believe, about three jobs. She had been a bank teller and she quit this fairly precipitously when her father died in March of 1974; and with her training she has also had two other jobs in the past. It's been a little inconsistent.

Q If she continues on with school, Doctor, it's true, isn't it, that she will have to devote a lot of time to her studies to the exclusion of Robert?

A Well, she has since September been devoting a great deal of time—the housework, laundry, and cleaning is all being done now by her mother.

Q And would you expect the time increments at school to increase and the pressures on her to increase as she gets closer to her degree?

A Well, Mr. Wasser, I don't know much about accounting school *per se*, but if it's like most schools, the latter years—the upperclass years—do tend to get more intense and harder in their demands than the beginning years.

Q In the petitioner's house would Robert have his own room to sleep in?

A Not unless they change the house. He has been sleeping all these years on a cot in the mother's room.

Q Does this have any psychological effect on most children?

A Well, I think once they get in, let's say, school age, it has some distant effect. I think with Robert now entering adolescence and a period of more overt sexual interest, I can see considerable problems developing if he continues to sleep in the same room with the mother.

Q Would he have the same room arrangement?

A He would, as it's the only room in their house.

Q Prior to the change in custody, Doctor, did the respondent visit with the child whenever he could?

A Yes, he had visitation rights one day a month and regularly came.

Q Does the respondent have any drinking problems?

A No, as a matter of fact—except for a rare social drink—he does not really have any. He is a police officer, and he feels fairly strongly about drinking.

Q Did he appear depressed in the interview?

A No, sir.

Q Did he appear self-confident?

A Yes, sir.

Q Did he appear well adjusted?

A Within reasonable limits, yes, sir.

Q Did you notice the same degree of overprotectiveness from the respondent that you've described about the petitioner?

A No, sir, quite the reverse.

Q And could you tell us how you mean that?

A Well, he was aware of Mrs. Vesco's tendency to keep him in, and he felt that he really was somewhat afraid of other children. He's enrolled him in Judo classes at the "Y" and gives him a great deal more time. He has his own room which Shirley Vesco—the new Mrs. Vesco—allows him to keep reasonably messy; and I feel that there is a greater loosening up and ability to let him be an adolescent boy.

Q Does the respondent let him ride his bike and play with the children in the neighborhood?

A Certainly.

Q Is the father involved in any PTA activities or school activities?

*THE COURT: May I pause for a moment. Why did you answer that "Certainly?" You said, "Certainly," as though counsel ought to know that he does. You're not an advocate, now, for the father, are you?*

*THE WITNESS: No, but I did express an opinion, and very often one puts in one's opinion in many minor ways by the use of certain words as you answer a question.*

*THE COURT: Okay. I don't know—the judge is interfering at this point. Maybe counsel was going to cross examine—maybe you were going to comment. I think though, that a psychiatrist testifying would not use absolute kind of terms in his testimony.*

*MR. ROSTEN: Your Honor, I might have some comments here, that since an attorney generally tries to—*

*THE COURT: I may have blown this whole thing!*

*MR. ROSTEN: At the last mock hearing of this case, both psychiatrists were well interviewed. An attorney must try to determine, objectively, as much as possible about his judge. Knowing you have arranged your argument, the way Dr. Robey has been proceeding at this point—*

*THE COURT: Fine, counsel. I didn't ask for a speech. (Laughter.) You may proceed.*

BY MR. WASSER:

Q Doctor Robey, has the respondent remarried?

A Mr. Vesco has remarried and did so in, I believe, September, 1968.

Q Does the new environment, and by that I mean the new Vesco family, attempt to be a stable environment for Robert?

A It would seem to be. He's been a little uncomfortable with Shirley Vesco, and she admits that she isn't really familiar with bringing up boys, but—

Q *I think the Judge scared you. Why are you hedging?*

A *Mr. Wasser, as you indicated that you don't like to turn your back on judges, you also listen to any clue from them.*

*MR. ROSTEN: I think Dr. Robey's comment is a very good comment which psychiatrists should take note of.*

*JUDGE LINDSLEY: Lawyers and good expert witnesses must listen for clues from the judge—the tryer of facts.*

BY MR. WASSER:

Q Dr. Robey, is there a male figure in the petitioner's—Mrs. Vesco's environment?

A Not particularly. There is a parish priest, although Robert's expressed to me that he really doesn't like this new one. The grandfather died, as I indicated before, a year ago, and Mary Lou Vesco had one boyfriend during 1971 and '72. He took them out for a picnic, but she's not really dated particularly; so that for the most part, there is not any male figure in the home. It's mostly the grandmother and the mother.

Q Would the new family—the idea that there are two daughters in the family—pose any problems for Robert in the new environment?

A No, I don't think so. In fact, I suspect that his learning to get along with the opposite sex at his own grade level in the class might be extremely beneficial. He's tended to avoid this somewhat.

Q Could you tell us for what period of time, now, the child has been living with his father?

A This being May, the court awarded custody to Mr. Vesco on, I believe, September 7, 1974, so it's about seven or eight months.

Q Would you agree, Doctor, that there would be some problems in uprooting the child—returning him back to his mother at the moment?

A I think there would be some major ones, but he still is going to the school—his father is driving him to the school over in the area where Mary Lou Vesco lives; and while he would lose some of the new friends he's formed, he is going to finish out the school year there. I think the major problems are that he has accumulated clothes and the like, and moving back into this small home would—back into the mother's room—provide some problems, but I don't see it as major.

Q Doctor, based on the interviews that you've had, are you able to formulate an opinion as to what award of custody would be in the best interests of this child?

A I feel I can form such an opinion.

Q And what is that opinion, Doctor?

A It's my opinion that after taking into consideration all of the factors—the lack of a male figure, the overprotectiveness of the mother, the living situation in the same bedroom with the mother, the relative lack of children of his own age—that I feel the best interests of the child, Robert, would be served by continuing to remain with the father as he has for the past eight months.

Q And would you recommend, Doctor, a reasonable visitation program for the petitioner so that Robert could see his mother?

A Oh, I would think that would be absolutely essential, of course.

MR. WASSER: I have nothing further, your Honor.

THE COURT: You may proceed, Mr. Rosten.

MR. ROSTEN: *Before going into it, let me tell you what my feelings are, and why I did some things. First of all, knowing Dr. Robey's qualifications, the last thing I want to do is to have him parade them out. So I made the offer of stipulation to his qualifications. Mr. Wasser is an expert attorney, and it's obvious that he knew where I was coming from, so he turned it down. Now, I had another option at that point. I might have tried to challenge him in voir dire testimony as an expert. With a less-qualified psychiatrist, especially one who is new, I might very well do that, as much to shake him up as anything else. I might feel from reviewing his records that he is qualified, but in a typical instance, because I know he is an expert psychiatrist, I wanted to try to get him a little bit on edge. After all, he prepared a report adverse to me!*

*I might also use objections as well. Here we didn't because of the flow. There is another reason I didn't make objections, which leads to the judge's comment. Know your judges; and lawyers should also make sure the psychiatrist knows the potential judges. In Los Angeles it's very difficult to know what department you're going to be assigned to; once you're there, it's different. Probably there is the same problem in San Diego, but you don't want to antagonize him. And again, any clues that the judge gives either a lawyer or psychiatrist—pick up on them!*

*Another thing you might have noticed is that Dr. Sadoff was rapidly writing down notes. In court, if I had the psychiatrist there, I would have him keep a sheet of paper and give me his thoughts or his determinations, and then take a break, possibly touching on how I was to go over these points again. He is also advisory as well as an expert. But I emphasize as an attorney, I would just describe my own approach and opinion.*

*So my current position is that I have a very damaging report, a very well-qualified witness—smooth. I know that he's been attacked by attorneys far more qualified than me. What do you do? What you do is what John Lightner told you this morning. We are going to show, I think, how you can make a great deal of headway out of something that may appear on the surface not to have any chance.*

#### **CROSS EXAMINATION BY MR. ROSTEN:**

Q Dr. Robey, I believe you testified earlier that you had testified in seven custody cases?

A That's correct.

Q How many times have you testified in court?

A I'm sorry?

Q How many times have you testified in court?

A Seven times on these cases.

Q On any subject as an expert.

A Oh, approximately 5,000 over the last 18 years.

Q And how many times—were most of these, I take it, in criminal matters?

A The vast majority of these were in my capacity with the State of Massachusetts or the State of Michigan in criminal trials, yes, sir.



Q And you've only testified in seven custodies?

A Only testified in seven, yes, sir.

Q How many of these times did you recommend that custody go to the wife?

A In two cases.

Q Thank you. Now, when you conducted your interviews, you saw the new Mrs. Vesco—Shirley Vesco—correct?

A That's correct.

Q And you saw Don—that is, Mr. Vesco?

A Correct.

Q And the two stepsiblings?

A That's correct.

Q And Robert Vesco, the boy?

A Yes, sir.

Q And Mary Lou Vesco, my client?

A Yes, sir.

A Those were all, I am sure, the figures that you felt were critical for your evaluation?

A I did.

Q There was one other important figure in Robert's life, wasn't there, Doctor, who is still living?

A Well, if you mean the grandmother, yes.

Q And I am certainly referring to the grandmother. I think this is also elicited by your report.

*MR. ROSTEN: I'm going to be referring to his report, and I'll identify it by the page number, if you want to go along.*

BY MR. ROSTEN:

Q For example, Doctor, you state—and I'm looking at your report at Page 2, the last paragraph—"The grandmother had a fairly active role in raising Robert ever since the divorce." Correct?

A Yes, sir.

Q And she was important since that time, correct?

A Yes, sir.

Q And the grandmother was also important in Mary Lou Vesco's life, was she not, Doctor? Directing your attention to Page 3 of your report, the third full paragraph, you relate, do you not, that the mother, Mary Lou, "appreciated her mother, with whom she had never gotten along in the past, for giving her the opportunity to start over again." Correct, Doctor?

A That's correct.

Q As a matter of fact, Doctor, let me direct your attention to Page 4, the fourth paragraph, where you are talking about Mrs. Vesco. Isn't it true that where she's speaking of Robert, when asked about his own wishes concerning custody, he indicated his preference to stay with his mother and grandmother? Isn't that correct, Doctor?

A That's correct.

Q Yet you didn't interview the grandmother, did you?

A I did not.

Q Or even try?

A No sir, I did not.

Q Let's look at Robert's preference. How old is Robert, Doctor?

A He's twelve years, nine months.

Q And, again, referring to your —

A Excuse me, now ten months.

Q All right. Would it be fair to say that he is almost 13?

A Yes.

Q Thank you, Doctor. Directing your attention to Page 4, the second full paragraph, you state that Robert has above average intelligence, am I right?

A I feel he does.

MR. WASSER: Your Honor, the report speaks for itself. Mr. Rosten can ask questions on cross examination, but simply to read the report to the Court I think is not proper.

THE COURT: I assume this is merely foundation to the questions he is going to ask of the doctor.

MR. ROSTEN: Yes, your honor.

THE COURT: Overruled.

MR. WASSER: *The reason I did that is that I wanted to break up the flow of this thing. I didn't like what was going on, so to stall for some time here, I just said whatever came to my mind just to give my witness a chance –*

MR. ROSTEN: *That's a very good tactic. He uses it an awful lot, and he has broken up the flow, and my little digression broke it up even more.*

BY MR. ROSTEN:

Q All right. Directing your attention, again, to Page 4, the second full paragraph, you say Robert was able to discuss this whole area of placement and his feelings about his mother and father, am I right?

A Yes, sir.

Q And that he is well aware of Mary Lou's situation and the problems involved?

A He appears to be quite well aware.

Q I take it you are familiar with California Civil Code Section 4600?

A I am.

Q And then I take it, Doctor, in view of your analysis of Robert that it would be your opinion – in the words of Section 4600 – that “Robert is a child of sufficient age and capacity to reason so as to form an intelligent preference as to custody”?

MR. WASSER: Excuse me, your Honor, objection. That section gives the province to the Court to decide whether or not Robert is old enough to formulate his opinion. It's certainly not within the province of the expert witness on the stand. It's a legal conclusion that Your Honor must make as to whether or not you allow the boy to testify, and certainly, improper for cross examination in this case.

THE COURT: I think the inquiry is appropriate in terms not of Robert's chronological age, but his mental capacity and also his emotional stability, whether or not he is intelligently able to form an opinion concerning his preference; and it's appropriate. Overruled.

MR. ROSTEN: Thank you, your Honor.

BY MR. ROSTEN:

Q Dr. Robey, do you have the question in mind?

A Would you repeat the question?

JUDGE LINDSLEY: *Ordinarily, what would happen here is that the reporter would read it back.*

DR. ROBEY: *Your Honor, this is one of the things I do intentionally because I play advisedly. I deliberately asked the lawyer to repeat it. Some lawyers – Lee Bailey is an excellent example, he is not going to let some young snip of a court reporter upstage him. So he'll ask the question. I have never once, even had him ask it the same way. So I can scratch my head and say, “Is that the same question?” Lee Bailey gets furious – most lawyers will. They strike both questions and start again. And it's often a very good technique. The good lawyer will, indeed, have the court reporter read it back.*

THE COURT: *Will the reporter please read back the question.*

(At this time the reporter read back the pending question.)

THE WITNESS: No.

BY MR. ROSTEN:

Q Doctor, you didn't indicate any such preference, did you, when you made the comment, "When asked about his preference concerning custody, I understand he would prefer to stay with his mother and grandmother"?

A That's correct.

Q Robert's been with his father and stepmother how long?

A Let me count it. About nine months, I believe, eight or nine months from September last year — September, October, November, December, January, February, March, April — it's now May.

Q About nine months?

A About.

Q And he's had a great deal of freedom with his father, I think you said?

A Yes, sir.

Q Fewer chores?

A He has some — less that he did at home, yes, sir.

Q He gets his own room?

A Yes.

Q And Judo?

A Judo classes — more freedom.

Q Now, these were items I just listed — that is, these were the advantages, I believe to use your own words, Robert listed when he spoke of the advantages of living with his father, am I correct?

A That's correct.

Q Were there any other advantages he didn't list?

A No. I'm sure there may be some — a good deal of them — but it wasn't for me to try and provide them in his mind.

*MR. ROSTEN: Okay. Now, let me stop. Now you can see Dr. Robey smiling. With a witness like Dr. Robey you try to close him off; you try to make your leading questions as succinct as possible because what I obviously wanted him to say was "No." So you rephrase the question in such a way not to give him an opening.*

*My next question is going to be as follows:*

BY MR. ROSTEN:

Q It's curious Doctor, that of the advantages you list in your report, none of them seem to involve emotions or inter-related feelings, do they?

MR. WASSER: Objection. Argumentative, your Honor.

THE COURT: Well, it's cross examination and he can challenge the witness in terms of bias and prejudice. Overruled.

THE WITNESS: Well, I think he gave considerable —

MR. ROSTEN: Your Honor, I would move to strike as being non-responsive. I believe it calls for a yes or no answer.

THE COURT: Well, I've already forgotten the question that I sustained or overruled. I think the reason I ruled this way is that in matters of this sort, a yes or no answer is never really appropriate. An expert witness should always have the right to explain his answer, even though yes or no is the primary answer.

BY MR. ROSTEN:

Q Doctor, let's turn to the new Mrs. Vesco — Shirley. Robert didn't manifest any very warm feelings toward her, did he?

A No. When I spoke to him at first during the interview, he appeared fairly comfortable with her, but he did feel that perhaps she was a little unused to bringing up boys.

Q Where did you indicate that in your report, Doctor?

A Oh, I believe — I believe it's in the second paragraph on Page 5.

Q You mean the second paragraph of the evaluation of Robert Vesco?

A That's correct.

Q Where you state that "the boy clearly indicated, although he was comfortable with Shirley," is that what you are referring to, Doctor?

A No, sir.

Q What are you referring to, Doctor?

A If you'll turn to Page 5 of my report, I indicate that in reference to his stepmother, he indicated that she is nice and pleasant but he implied there is nowhere near the closeness that he had with his natural mother; but then went on to indicate that she hadn't had many experiences with boys.

Q That's what Mrs. Vesco said as well, didn't she?

A Mrs. Vesco in essence said the same thing. She admitted that she was far more comfortable bringing up girls. She had two of her own — more used to it.

Q She went a little further, didn't she, that "she had no concept of how to begin raising boys" — I'm referring to your report on Page 7, the last paragraph — isn't that true, Doctor?

A Well, I don't remember that that's exactly what she said, but I think she felt uncomfortable with it; that perhaps; a little unfamiliar — if you wish, I believe the words I used —

Q Robert and Shirley don't really like each other, do they, Doctor?

A No, I don't think that seems to be true at all.

Q Do you have any indication of that lack of friendship in your report, Doctor?

A Well, I did see their relationship. I was trying to indicate to the court some of those aspects that I found negative; and really, about the only thing we saw was that she would get a little irritated at him if he didn't do some of the chores himself; but they seemed to get along pretty well and have a good relationship.

Q That wasn't my question, Doctor. Where did you refer to it in your report? I'll withdraw the question, your Honor. Now, Shirley is Catholic, is she not?

A She is.

Q When did she meet Donald Vesco?

A I'm sorry?

Q When did she meet Donald Vesco?

A She met him — I believe she was about 16 and married when she was 18, and he was —

Q No, I'm referring to Shirley, not Mary Lou. Mary is my client.

A Shirley is not Catholic.

Q She's not Catholic?

MR. ROSTEN: Excuse me. Another ground rule just changed.

BY MR. ROSTEN:

Q When did she meet Donald Vesco?

A She met him when he was investigating a—or in the course of an investigation.

MR. ROSTEN: Excuse me, your Honor. I know that Dr. Robey is an expert, but I don't believe it's necessary for him to explain the meeting.

THE COURT: When you say "when," what date? His answer was when, and was a little more descriptive. You want the day, you can ask it.

THE WITNESS: I believe it was in 1966.

BY MR. ROSTEN:

Q Don Vesco was married at the time, wasn't he?

A That's correct.

Q So they carried on an affair—

MR. WASSER: Excuse me, Counsel. I object to this line of questioning. I know the possibility of fault has some place in a legal custody battle; but, your Honor, to suggest that because these two people who are now married had an affair, and that should have any relevance at all to custody, is rather Victorian, your Honor; and I think that the Court is mindful of the situation, and we need not go into it in this proceeding.

THE COURT: In that sense, I agree with counsel. Of course, it may be a factor which helps us understand the demands of the individuals and how they respond to the situation; and I assume this is a fact which the psychiatrist might consider and, perhaps, count without passing judgment on it. So you may inquire.

MR. ROSTEN: Thank you, your Honor.

BY MR. ROSTEN:

Q And Don and Shirley married about one month after Don's divorce?

A The divorce took about a year, and this was right about a month after the divorce became final.

Q Which is one month after the final divorce, right?

A That's correct.

THE COURT: (To Witness) If you were asked what month you were born in, would you say nine months after conception? (Applause)

BY MR. ROSTEN:

Q Marriage was her idea, wasn't it?

A Yes, sir.

Q Dr. Robey, did you have any discussion with Mrs. Vesco—Shirley Vesco—about whether she had considered the impact this would have on Robert? That is, the impact of his father's marriage one month after the final divorce?

A No, at that time it had been complete for a good many years. The main point of the evaluation at this time was to see whether the custody should remain with the two of them or return to Mary Lou Vesco.

Q Again, your answer could simply be no.

MR. WASSER: Objection. The answer is what the answer is.

THE COURT: Sustained.

BY MR. ROSTEN:

Q Now, Doctor, it's not particularly in the best interests of any child, particularly any six-year-old child, when a father remarries but one month after his divorce, is it?

A I don't think it's certainly of any great help. I don't think the marriage breaking up is of very much help.

Q Now, you felt in regard to your recommendation, your overall recommendation—court custody—as you stressed the lack of a male identity figure; and again, referring to your report on Page 8—

A I do feel this is a major factor.

Q And this male identity figure would be the father, Donald, am I right?

A Yes, sir, although presumably when he shifts schools he will have more male teachers.

Q Do you think of anyone, at this time, other than Donald Vesco?

A Only when he switches schools, as his parents intend to do, at the end of the semester.

Q But at this time, Doctor?

A Other than right now, it's his father, of course.

Q Now, Donald Vesco is busy, is he not?

A He is.

Q And when he and Mary Lou separated, he obtained visitation, isn't that correct?

A He obtained visitation rights, yes, sir.

Q For how long or how often?

A It was one day a month.

Q Doctor, I'm sure you're familiar with the normal visitation pattern in these courts, are you not?

A No, sir.

Q You're not? Now, when Donald lived with Mary Lou, he was fairly busy, wasn't he?

A Yes, sir, he was.

Q And when he married Shirley, before Robert went to live with him, he was also very busy, wasn't he?

A That's correct.

Q And this upset Robert, didn't it?

A Yes, he did indicate that he would like to see more of his father.

Q Nothing much has changed, has it, in the last nine months? For example, Doctor, I refer you to your report, again to Page 4, where you state that in regard to Robert, "He's accepted the fact that his father was excessively busy and he had little free time." Correct?

A That's correct.

Q And that he hasn't—except for the past few months, has very little time with Robert except on weekends, correct?

A That's correct.

Q He works late at night?

A No, usually he gets home about 6:30 or 7, although he's scheduled home about five.

Q Robert wants male companionship, doesn't he?

A He does.

Q He stated that he misses a male companion, correct?

A That's correct.

Q You believe if he stays in the same family, it will provide him with the adequate male figure that Robert needs, correct?

A It's already provided a good deal more than he had when his parents were married. He'll be home a great deal more when he gets a desk job as a sergeant.

Q Donald admits that he's not home very much?

A He is home now. He wasn't almost all the time when they were first married—when he married to Mary Lou.

Q But he did state, didn't he—and again, I refer to your report—"That his job kept him away more than he would like"?

A I'm sure it keeps him away more than he would like, and he is hoping to be home more as soon as he get the promotion he's looking for.

Q And there were other activities as well, such as Kiwanis Club?

A I did not go into detail as to all of the activities, but there certainly have been—

Q In the interest of time, please limit your response to my question. There were other activities such as Kiwanis Club, correct?

A I don't know.

Q Well, you referred to Kiwanis Club in your report, did you not?

A I don't recall, Mr. Rosten.

MR. WASSER: I'll stipulate, your Honor, that my client is involved in the Kiwanis Club and the PTA.

BY MR. ROSTEN:

Q Then you are aware of that, aren't you?

A Yes.

MR. ROSTEN: *Mr. Wasser did that for a very good reason; he knows what's coming.*

BY MR. ROSTEN:

Q Mr. Vesco participated in the Kiwanis Club, correct?

MR. WASSER: That's been stipulated to, your Honor.

THE WITNESS: With the stipulation of counsel, I will agree.

BY MR. ROSTEN:

Q All right. Then he also indicated that he spent time with the PTA at the girls' school, am I right?

A This is correct.

Q Not Robert's school?

A No, sir. Not until he changes schools.

Q But not at this time at Robert's school?

A That's correct.

Q Even though he had Robert for nine months, correct?

A That's correct.

Q And he doesn't participate in Judo classes, does he?

A He takes him and brings him back.

Q Where is that indicated in your report?

A I did not include it in the report.

Q Didn't you feel that was significant—the person who drives him to Judo classes?

A No, I didn't feel—not for that reason.

Q What other activities does Donald Vesco participate in with Robert Vesco?

A Baseball on the weekends. They are together on the weekends.

Q Did you include that in your report, Doctor?

A No, sir. Judo classes are during the week.

Q Did you include any activities between the boy and the father?

A Specifically, no, sir.

Q Now, except for the last nine months, Robert has lived continually with his mother, has he not?

A That's correct.

Q Doctor, I believe you are aware of the concepts of continuity in psychological terms, are you not?

A Yes, sir.

Q And I imagine you've read one of the enlightening texts, *Beyond the Best Interests of the Child* by Freud and Solnit?

A I have looked at it; I have not read it cover to cover.

Q When did you read it, last night?

MR. ROSTEN: *That was another ground rule.*

BY MR. ROSTEN:

Q When Robert lived with his mother, he got good grades, is that correct?

A That's correct.

Q Went to church regularly?

A Without much vehemence, but he did go at his mother's demand.

Q Again, Doctor, could you please limit your answer to my question?

A Yes, he did go to church regularly.

Q No trouble with the law?

A No, sir.

Q Obedient to his mother?

A Yes, sir.

Q Robert was a nice kid, wasn't he?

A Yes, sir.

Q How long did you interview Mary Lou Vesco, Doctor?

A I believe it was 90 minutes – an hour and a half.

Q She appeared anxious?

A Oh, particularly at the beginning, yes, sir.

Q Did Donald Vesco appear anxious when you interviewed him?

A No, sir.

Q Did Shirley Vesco appear anxious when you interviewed her?

A No, sir. The only thing I particularly noticed was the oldest girl was sort of a little flirtatious, but they were all quite relaxed.

Q Doctor, isn't anxiety normal in a situation like this?

A Oh, a certain degree; and I think it's trying to quantify the amount or degree as to what one would expect in this kind of situation ordinarily.

Q Mary Lou cares deeply for Robert, doesn't she?

A Yes, sir.

Q She'll be upset and disturbed if she loses him?

A Yes, sir.

Q She rehabilitated her drinking?

A Yes.

Q You interviewed her about her drinking?

A Yes, sir.

Q She also stated she stopped drinking?

A That's correct.

Q She hasn't had a drink in four months, correct?

A That's correct. Since January, she hasn't gone anywhere near it.

Q And she stated she has no intention of drinking again, correct?

A She did so indicate.

Q Do you believe her on that point?

A I don't think it's a question of believing or not, Mr. Rosten. I just feel that the situation—pressures—may change and that she might not be able to stay fully rehabilitated.

Q Now, Mary Lou Vesco is in therapy?

A That's correct.

Q She is making — said she is making progress in therapy?

A She indicated she had gone back into therapy; although she hadn't made any progress, she was doing much better.

Q And I think, Doctor, she had returned to the same therapist, is that right?

A Yes, sir, this is my understanding.

Q It wasn't the same therapist.

A It was not?

Q You're not aware of that fact, Doctor?

A No, I wasn't.

Q Didn't you ask her the name of her therapist?

A No, sir.

Q Mrs. Vesco is now attending school, isn't that right?

A Accounting school, yes, sir.

Q Getting good grades?

A She got bad grades the first semester. She seems to be doing pretty well this semester.

Q And she's improving regularly?

A Yes, sir.

Q Even in your opinion, she's improved considerably from what she was, Doctor?

A I think her stability seems to have increased quite a bit.

Q And yet, Doctor, while she was in the depressed state you talked about before, she was a psychological parent, wasn't she?



MR. WASSER: I'm not sure what that means. Vague and ambiguous.

THE COURT: Without an explanation of the term, I'll sustain the objection.

MR. WASSER: Thank you, your Honor.

BY MR. ROSTEN:

Q Even at Mrs. Vesco's worst, she was the parent who had the most contact with Robert for all but nine months, am I right?

A Yes, she had custody of him.

Q And notwithstanding your negative opinion of her, at that time she was the person who has given Robert all of the advantages which you testified about before?

A No.

Q Robert now has trouble sleeping, correct?

A Yes, sir.

Q Didn't have trouble sleeping before, did he?

A No, sir.

Q His grades have dropped, haven't they?

A No, sir.

Q Did you check the school in regard to that, Doctor?

A I only talked to the mother and to him personally. His grades have been consistent.

Q Well, you never made any attempt to verify that?

A With the school, no, sir.

Q Would it surprise you if I told you his grades had dropped?

A No, sir.

Q He's now depressed, isn't he?

A Yes, sir.

Q But he wasn't depressed when he was with his mother, was he?

A I believe he did have a good deal of depression.

Q At the time his grandfather died?

A Yes, sir, and continuing on from there, this is perhaps the major source of his depression.

Q Is the death of his grandfather—

A I'm only talking about his grandfather. He really—I saw tears for the only time in the interview.

Q Now, how long did his grandfather live after Donald Vesco and Mary Lou Vesco separated?

A Oh, a good many years. They separated, I believe, in '67 and his grandfather died in '74; just a little over a year ago.

MR. ROSTEN: *Ordinarily, I would try to end my cross examination on something more of an up-note, but with these ground rules, let me end it at this point. No further questions.*

(At this point a ten-minute recess was taken, and the mock trial continued as follows.)

DR. KOSON: *At this point we are going to conclude the examination of the court-appointed psychiatrist. We will then hear from the next witness—and at the close of the expert testimony, Judge Lindsley will make some comments about the evidence he's heard. Following that, we will have conclusionary comments—very brief—by the attorneys involved here, and we will open the floor to discussion, with questions directed at the attorneys, the psychiatrists, and the judge.*

MR. WASSER: Your Honor, may I inquire?

THE COURT: Yes, you may inquire.

MR. WASSER: Thank you, your Honor.

## REDIRECT EXAMINATION BY MR. WASSER:

Q Dr. Robey, you were asked on cross examination about the amount of time that the respondent spent with the minor child. In your opinion, would he be able to spend more time if custody were awarded to him or more time with the boy if custody were awarded to the petitioner?

A I feel he could spend a good deal more time—unless, of course, the visitation rights were changed in the event it was awarded to the petitioner—but he does have his weekends now. He is making an effort to come home more, and he does seem to have indicated that his job will change within the year so that he'll have a great deal more time.

MR. WASSER: *I want everybody to remember that answer because I'm going to criticize it. We had rehearsed in the break, and we had criticized that answer because that answer could kill my case.*

## BY MR. WASSER:

Q Did you testify on cross examination, when pressed by Mr. Rosten, that the boy was a nice kid while living with his mother? Would that change your opinion as to where the best interests would lie regarding which parent should have physical custody of this child?

A No, sir.

Q And Doctor, despite the cross examination by Mr. Rosten, is your opinion still the same that there is a good possibility that the mother—the petitioner—will revert to drinking sometime in the future?

A I think this is a good possibility, yes, sir.

Q Doctor, you said that the boy was depressed at the present time, and he has trouble sleeping. Isn't a portion of the reason for that this court battle over custody that the petitioner has now brought?

A Certainly. He's caught in a dilemma where partly he's being asked to make a choice. He has more freedom but he feels his mother is suffering and feels guilty—feels he ought to go back to her.

MR. WASSER: Thank you. No further questions, your Honor.

MR. ROSTEN: I have no further questions.

(The witness is excused.)

MR. ROSTEN: *I might well have picked up on the visitation issue in terms of quality versus quantity of contact with the boy. If we had more time in direct examination, Dr. Sadoff is prepared to testify about that distinction. I also would pick up on the form of the question about the lack of sleep and sleeping problems, and would have treated it as not to appear important.*

*I also think Mr. Wasser and I both have some other comments here. My main comment would be that, partly because of the way we structured this and partly because of a difference of philosophy, Dr. Robey is much more of an advocate than I would necessarily recommend. I think that's his style. He has testified in many, many, many cases. As I indicated at the opening discussion on direct, when he tended to ramble I let him ramble to a certain degree because I didn't think that was a very effective way of testifying—specifically in terms of the respondent's nights out. Examination of the witness has to be rather concise as the question and answer set a mood—and when he tended to ramble and tended to interject, I think that was in some ways harmful. Also, when he started arguing with me—witnesses should not argue with attorneys. Let their attorneys do the arguing.*

MR. WASSER: *I want to apologize, Dr. Ames Robey, for criticizing anybody but I think it's part of an attorney's job to upgrade the testimony of witnesses.*

*In his last answer, I told you all to remember, I said to him, "Which would be better off," and I was hinting that his natural answer should have been "Much better off with the father because he would get to see his father a lot more" and slip in there more*

visitation—more liberal ones. The judge hears all that. The judge has to go into chambers with the boy who says, "I want to go with my mother." Judges agree; psychiatrists agree with extended visitation, everything will be fine. The judge will make an order of every other weekend from Friday to Sunday and solve everything. The proceedings will end and we can all go home.

The point is that if the adversary proceedings come to that, and can't be reached by a psychiatrist or by the judge reading the report, and you are advocating and your lawyer is advocating his position, then you have to hold your witness within certain bounds, and I don't think our witness, if we pursued this area, would have said what he said.

JUDGE LINDSLEY: Let me interject something here. Before this court-appointed witness had finished his testimony, I would have been in there asking those very questions. He'd have to answer it sooner or later; I would have asked them. I want to know, for instance, about visitation—if there is any significance in the fact that there had been no more visitation in the past. If male contact is important, might not just visitation—increased visitation—more liberal visitation with the father achieve this male identity that the boy needs?

I might ask him a couple of other questions, too. He talked concern about the mother's career in accounting, and I would want to know whether or not he felt, as a psychiatrist and expert, that her going into a career in accounting is inconsistent with the role of being a mother. Was it consistent for her to be working full-time and still be an effective mother? Was it inconsistent to do one and then the other? I wanted to ask him, too, about the boy's feelings about the mother drinking and what effect it might have on the boy, if indeed, there was a change in custody, and out of this the mother began to drink more. What effect would that have upon the boy?

Okay. I would have asked these and other kinds of questions myself. As a judge, I also ask questions of experts.

MR. WASSER: Well, I just wanted to distinguish one point that has been mentioned. Dr. Robey isn't really my witness. He is a psychiatrist appointed by the court and I would bring this out in my final argument, saying that he's objective. What I'm saying, though, is really contrary to that. I don't want him to be objective; I want him to be the way I want him to be. He's a court-appointed psychiatrist, and therefore, he's going to have the lead and say whatever he wants on the stand, more or less. If he were my witness, I would object strenuously with him to the gratuitous comments he made on direct. For example, he said that the mother's doing fairly well in school. As an objective court psychiatrist, fine. As my psychiatrist, I'm not too happy with favorable comments about the mother. I don't really want to be objective. I want to be biased, and that's one of the things wrong with an adversary system. He also volunteered that in the interview one of the daughters of the new Mrs. Vesco was flirtatious—which didn't have to come out. It was in the report. Maybe we could have just gone over that. "The stability of Mrs. Vesco has increased" was a gratuitous comment, and I didn't want to show her as stable right now. She is not a stable person, who drinks, etc., etc., etc.

JUDGE LINDSLEY: Thank you. All right, call your next witness.

MR. ROSTEN: Call Dr. Sadoff.

JUDGE LINDSLEY: Consider yourself sworn.

ROBERT L. SADOFF, M.D.,

called as a witness by and on behalf of the Petitioner, having been first duly sworn, testifies as follows:

**DIRECT EXAMINATION BY MR. ROSTEN:**

Q Would you please state your name for the record?

A Robert L. Sadoff, S-a-d-o-f-f.

MR. ROSTEN: All right. At this point I would take Dr. Sadoff through his qualifica-

tions, just as Mr. Wasser took Dr. Robey through his qualifications; but because of our time limitation, I will pass on that.

BY MR. ROSTEN:

Q Dr. Sadoff, how were you selected to examine Mrs. Vesco, Robert, and the grandmother in this case?

A You asked me to see them.

Q Now, have we had any cases in the past together?

A No, we have not.

Q And you have studied this case with me both before and after you wrote your report, correct?

A Yes, I did.

Q You are receiving a fee?

A Yes, I am.

Q For testifying here today?

A For the time that I spend, yes, I am.

Q And how much is that fee?

A My usual charge is \$75 per hour.

Q And you are receiving how much for your testimony today?

A I am receiving a fee for the time that I spend—from the time I left my office until the time I return. I won't know that until I return back.

*MR. ROSTEN: I would not have asked that type of question in front of this judge. I might have in front of other judges. The reason I did that at this point was to try to offset possible finance questions which Mr. Wasser might raise in cross.*

BY MR. ROSTEN:

Q Dr. Sadoff, in how many custody cases have you testified?

A Over the past 15 years about 100-150.

Q And in how many of those cases did you recommend custody for the wife?

A You mean for the mother? About half.

Q Now, who did you interview in preparing your report?

A I interviewed Mary Lou Vesco; I interviewed Robert Vesco; and I interviewed Gertrude Solomon, who is Mrs. Vesco's mother.

Q Did you have an opportunity of interviewing Donald Vesco?

A No, I didn't.

Q Or Shirley Vesco or any of the stepsiblings?

A No, I did not.

Q And what—did you make any attempt to interview them?

A Yes, I did.

Q Would you please describe those briefly?

MR. WASSER: Your Honor, I have an objection. Mr. Rosten has taken my client's cross examination over the last week, and really put a lot of holes in it by bringing his witness here in court.

THE COURT: I don't know what happened last week, but I will overrule the objection.

THE WITNESS: Yes, I had asked Mr. Wasser if I could examine his client, and I was not able to do so.

BY MR. ROSTEN:

Q Now, when you interviewed Mary Lou Vesco, did you find her cooperative?

A Yes, sir, I did.

Q Was she evasive in any way?

A Evasive? No, no.

Q I believe you stated in your report that she was anxious?

A Yes, she was.

Q Isn't it normal, Doctor, that people under this type of stress would manifest anxiety?

A Yes, I would think so.

Q You were here when you heard the testimony of Dr. Robey, were you not?

A Yes, I was.

Q Did you hear his statement in regard to Donald Vesco and his lack of anxiety?

A Yes, I did.

Q Did you hear this statement in regard to Shirley Vesco and her lack of anxiety?

A Yes, I did.

Q Did you feel that lack of anxiety was a normal and usual manifestation in a custody case such as this?

A That's a difficult question because it would depend upon observation of anxiety in certain individuals, and this is certainly suggestive interpretation by the examiner. I would think that anybody would have some degree of anxiety in this kind of a situation, but how it manifests itself or shows itself is variable.

Q How would you describe Mary Lou's attitude toward Robert?

A Mary Lou Vesco cares very much for Robert. She has become very close to him since they lived together without Donald Vesco for the past several years, and has taken care of him, and has felt at times that she has had to be both mother and father to him because of the absence of his natural father, Donald, from the home. Even when he was living at home — so it's been most of his life — she, indeed, felt she had to take care of him, perhaps, more than the average mother.

*MR. ROSTEN: I would probably carry through with this but it's a little unfair, looking at the time, to carry through with Robert and Mary Lou and the grandmother's attitudes. Also, one point I would try to make is to get the doctor to describe some general fears, so there are some general fears as opposed to what I'm to be challenged on. I think it's also much like using demonstrable evidence—that it gives a general clarity—and I think it really has a great deal of impact where general solidarity is concerned.*

BY MR. ROSTEN:

Q Now, Mary Lou Vesco talked immediately about her drinking, did she not?

A Yes, she did.

Q Did you have a chance to examine the hospital report which has been discussed previously?

A The report from September, 1974? Yes, I did.

Q And what did that hospital report reveal as to the cause of her hospitalization?

A It showed that she had taken a fall and had a slight concussion. It was the interpretation of the emergency room doctor that there was no fracture of her skull. She was also found to have pernicious anemia at the time.

*MR. ROSTEN: At this time I would carry through on pernicious anemia and indicate — try to bring out the fact that the hospitalization may well have come from pernicious anemia.*

BY MR. ROSTEN:

Q You also had an opportunity to interview Robert Vesco, did you not?

A Yes, I did.

Q And how would you describe his intelligence?

A Robert is above average intelligence; exceptional, in simple language.

Q Describe his maturity.

A His maturity is also in my opinion above average, but that could be deceiving because he is so intelligent and verbal that he may appear more mature than he actually

is. My conclusion is that he is above average in maturity.

Q In your opinion did he have a full understanding of his custody procedure?

A Yes. To the best of his knowledge, yes, I would say he did.

Q You are, are you not, Dr. Sadoff, familiar with Section 4600 of the California Civil Code?

A Yes, I am.

Q And in your opinion would Robert be a child of sufficient age and capacity as to form a preference as to custody?

MR. WASSER: May the record note my remarks I had made previously that this witness is not qualified to make that determination?

THE COURT: Well, the question of age is determined by statute, but the capacity is not. He may have sufficient capacity.

BY MR. ROSTEN:

Q That is the reason I did not ask the question.

A My opinion is that he is of sufficient age and maturity that he could.

Q And did he express a preference to you as to custody?

A At first he was reluctant to do so for fear of choosing sides because he has been disturbed by the separation of the family; but later he was able to say very clearly that he would prefer to go with his mother and grandmother.

MR. ROSTEN: At this point I'm not going to have any further questions.

THE COURT: You may examine.

**CROSS EXAMINATION BY MR. WASSER:**

Q Do you know Dr. Robey?

A Yes, I do.

Q In your opinion is he one of the outstanding psychiatrists in your field?

A Yes, he is.

Q And Dr. Robey got to meet with all the people in this case, didn't he?

A I'm sorry.

Q Dr. Robey got to meet with all the people in this case?

A He got to meet with all of them; he interviewed most of them.

Q And in your report, Doctor, you say, "I cannot say for certain that Robert would be in a better position to be with Mr. Vesco." I assume that you agree with me, Doctor, that Dr. Robey would be in a better position than you are in to come to that type of conclusion?

A He would be in a better position because he saw more people, yes.

Q Thank you, Doctor. Doctor, do you recall having a telephone conversation with me?

A Yes, I do.

Q And didn't I tell you that my client and his new wife were out of town and that was the reason they hadn't communicated with you?

A They communicated with me at that time, but we did not get to set up a certain time when they returned. I was waiting for your return call when they came back from vacation.

Q You agree, do you, Doctor, that Mrs. Vesco did have a drinking problem?

A Yes, she certainly did.

Q And isn't that one of the causes of pernicious anemia?

A One of the causes of it?

Q Possible cause?

A It's a factor in the development of it, yes.

Q You realize at one point in time Mrs. Vesco was not able to care for herself because of her drinking; correct, Doctor?

A I was not aware of that.

Q Well, you know she fell down and injured herself, don't you?

A She fell down and injured herself, but I'm not sure it was because of her drinking problem that that had happened.

Q You know she was hospitalized because of her drinking problem, don't you?

A No, she was hospitalized—the report indicates she had pernicious anemia and a bump on the head. It did not indicate she was hospitalized because of the alcohol problem.

Q Are you aware of her long history of depression, Doctor?

A No, I'm aware of her intermittent history of depression due to various problems in her life and stresses that she has—and this did begin a long time ago—but it has been a progressive thing due to various stresses in her life, beginning with the time that she learned that her husband left her for another woman.

Q She is on welfare at the present time, isn't she?

A Yes, she is.

Q And she's had a number of jobs in the last two years, hasn't she?

A That is not so. She has had two in the past 14 months, to be precise.

Q Doctor, wouldn't you agree with me that the child — when the child is in the mother's home, is being raised by the grandmother?

A I'm sorry? Repeat that please?

Q Wouldn't you agree with me that when the child is in the petitioner's home, he is in essence being raised by the grandmother, not the mother?

A No, I would not agree.

Q Who does the cooking and the cleaning in that home?

A Mostly Mrs. Vesco's mother.

Q And who is with the child during the day while Mrs. Vesco is at school, Doctor?

A The teachers at school are with him. (Laughter.)

MR. WASSER: *That's funny, but that's a no-no.*

THE WITNESS: *It's the answer. During the day, he's at school.*

BY MR. WASSER:

Q What happens when he comes home from school, and Mrs. Vesco's long classes that she takes from noon to nine o'clock at night, Doctor, who greets the child at the door?

A Mrs. Vesco has most of her classes during the time that her son is in school, except for one night a week she has to supplement, then go to nine o'clock. Most of the time she is home when Robert gets home from school.

Q Doctor, Mrs. Vesco won't let her son have a bicycle, will she?

A She said she was worried about his having one because of the things that might happen. He could fall off his bike and hurt himself.

Q I take it the answer is no, she will not let him have a bike, Doctor.

A She will not let him have one at this time.

Q Thank you. She won't let him stay overnight with his friends, either, will she?

A No, sir. She has increased that privilege, but she hasn't in the past.

Q And if the child's in the petitioner's home, the child wouldn't have his own room, would he?

A If they stayed where they were, he would not.

Q Is that an important consideration for your determination of custody that this child have his own room?

A Yes, it is.

Q She is not dating anyone now?

A Not to my knowledge, no.

MR. WASSER: I have nothing further, your Honor.

MR. ROSTEN: *In view of the time, I would have kept direct fairly short for Dr.*

*Sadoff, anyway, under these circumstances, and I might not have gone into some areas hoping to lay a trap for the opposing counsel. Because I think the way Dr. Sadoff testifies — he is frank, he is not evasive, and he can stand on his own two feet rather well — I think Mr. Wasser in a real situation might not have asked some questions, and I probably would not have asked some questions if I didn't know what the answers were. That's a cardinal rule of cross examination.*

*DR. SADOFF: May I say something? I tend to give the other side points. I don't try to be argumentative. That point about the daytime was due to the lateness of the hour. I would have probably said something more serene as, "I believe he's in school til 3 o'clock and his mother's home," but I don't like to get trapped to "Isn't that true, Doctor?" That's a tough question and you have to answer the question; but I give him points that he needs because if he didn't have his own room, you can say, "Yes, she's going to move as soon as she gets custody." I don't like to be argumentative, and it's really not very honest. I agree he should have his own room.*

*MR. ROSTEN: And he would end up later with things.*

\* \* \*

DR. KOSON: As midwife and comforter of this thing, the task falls to me to rehabilitate our expert testimony. I accept responsibility for the structure of the thing — that is, our experts came in and stuck out their necks and have altered their styles somewhat to be able to show different ways of testifying. That was important to do, and we deliberately set this up.

At this point, Judge Lindsley will make some comments about the expert testimony, and we will then open this up to conversation and discussion.

JUDGE LINDSLEY: You want me to tell what I would decide, is that it?

DR. KOSON: Yes.

MR. ROSTEN: Would you first see the boy?

JUDGE LINDSLEY: We'll assume that I have seen the boy. No, I would not tell you what he tells me in chambers. As a matter of fact, when I do see a child in chambers, I tell him that what he says to me is between the two of us; that he doesn't have to tell anyone; that I will tell nobody; and that if anybody asks him to tell them what I said, he can tell them the judge told me not to say, it's just between us. The child, then, we would hope, would feel free to be open in talking to the judge. I do not ask the child ordinarily to point blank state a preference like that. I don't ask, "What do you want to do?" Rather, I would say, "You understand what this procedure is all about. You understand, fortunately, that you have two parents, both of whom want you to live with them. So this proves that both parents love you and both want you. The decision ultimately has to be mine, and my decision will be based upon my own judgment. I'm not bound by anything that I've heard from the testimony nor bound by what you may tell me." He's free to talk any way he wants. He may tell me what he wants, and I may decide differently than he says he wants to do. Then I'll ask him, "Suppose I decide this case differently than you want? Suppose you say, 'I want to go with my mother,' and I say, 'I think you ought to be with your father.' How will you handle that?" I want to get him in the frame of mind where she or he will accept whatever decision the court makes, even though it's not his own expression. I try to get the child's mind off the hook in terms of decision.

A SPEAKER: Is there any certain age below which you will not invite the child into chambers?

JUDGE LINDSLEY: Oh, I don't deal in absolutes in any sense except that I don't deal in absolutes in any sense. I can't say I've had little children. Generally, the little tiny ones will come in with an older sibling. With a number of children I usually go into chambers and see them individually and collectively and I usually don't want the little ones — the younger ones — who are going to be affected by the older ones in at the



same time with me. For the first time I like to see the younger ones without the older ones. I may then, later, have them together to see how they interact. I just wing it — play it by ear. I don't have hard and fast rules for doing it. I don't have any set limits for what I should do and what I should not do. There was a time when I would refuse to take children into my chambers. I went through that period as a judge. I did that because I felt that somehow or other the child would feel the responsibility for whatever decision I made, and I didn't want him to feel that responsibility and feel guilty. I think I can handle it now so that they don't do that, and I'm in a better position to decide — just seeing how the children react; how they respond; what they say about their parents and the kind of life they live. You can tell by what they spew out what they've been given to spew out, or from their responses if they are responding basically out of fear, if you've done it enough. Psychiatrists have done it enough and judges do, too.

Okay, any more questions?

A SPEAKER: I have a question. If you have a domestic case where both parents are upstanding, and it's just a matter of which parent the child should be with, would you see the child in that case? There's really no indication of a lot of bad or good on each side; they are both really substantial.

JUDGE LINDSLEY: That's a good question because I don't get involved in cases of upstanding or substantial parents. I think in most instances those are as I indicated in my talk this noon. We hear things about parents, most of which are irrelevant to the decision the Court has to make. I think the decision, generally, does not hinge upon whether a parent is good or bad or whether they have done good or bad things. So I don't measure whether I see a child by whether they are both upstanding or not both upstanding. I don't have them in there to inquire about their parents to find out the validity of where the parents are — I find out where the child is.

A SPEAKER: If there's time after that, I wonder if the two psychiatrists in the case — based on what they know of the case — will discuss how they may have handled it differently if this had not been an adversary situation in that ideal world that you decide.

JUDGE LINDSLEY: Fine. Good observation, and I'm going to deal with that in what I do.

It's been a good presentation. The reports were very helpful. I read the doctors' reports in advance so I knew the positions they were going to take. I must frankly say that I thought Dr. Robey was more of an advocate than an expert ought to be. As a judge, I respond to that. I finally broke in at one point — there were other times in which I might have done that. There was a degree of advocacy involved that affects the Court's concept of objectivity, and I would wonder whether I'm trying to be convinced of something or if I'm being furnished information about which I can make an independent judgment. It was done deliberately so that you can see that it is something to be avoided as an expert — with me. It may not be true with every other judge; and that's the grab bag problem you have, of course, when you try these things in a courtroom. You also don't know what judge you're going to get.

We didn't really have as much of Dr. Sadoff's testimony as we probably should have had for me to pass judgment on it. There is more in his report than the testimony gives, but because of the factor of time, his testimony was designed to be more objective. It almost had to be more objective because it's coming from the advocacy point of view. He didn't dare be an advocate because the attorney tried to advocate his opinion more, and the more he can appear objective the better that comes off with the judge.

All right. What we have here, it seems to me, is a pretty good example of something I was talking about this noon. It really is, because I'm sitting here now being asked to make a decision based upon testimony which describes the conduct of the two parents. I'm asked to decide that the mother is not the best person to have custody of the child because she has a drinking problem. The drinking problem may or may not make her a bad mother. The drinking problem, as a psychiatrist would know, may indicate that you

have a really sensitive person who can relate that much better with a child. The mere fact that she may be driven to drink often – and I don't want to get into your field – may indicate a sensitive human being who may have weaknesses that are not necessarily untreatable. So you're dealing with something which is not an absolute. This is a woman who has a drinking problem but that is not an absolute problem. It's something that you hadn't dealt with. Except that she is now under treatment, nothing was said to indicate that one of the approaches that ought to be taken here to make her a better mother is that we ought to do something through our process to make sure she gets help for her drinking problem. We were alerted to the fact that under pressure – when she gets near the end of her accounting program – she may break under the stress and start drinking again. If we can anticipate that might happen, we can anticipate what we might do to prepare her; and it's really not a matter, necessarily, for decision.

We heard that the mother has rigidity – that she is concerned about the child, she won't allow him to ride the bicycle in the neighborhood, and so forth – which may or may not be good. If it's a rigidity, that doesn't mean that a decision has to be made because there's rigidity and the rigidity is left untouched. It may be better or more important in dealing with this mother and father situation with this child to do something about these rigidities. I think this is the approach we ought to take.

The fact that the child is sleeping on a cot in the mother's room – that's obviously bad – but it is certainly a modifiable thing that doesn't require a judicial decision in terms of custody. It's a rather minor factor that could be corrected by proper help, and it should not be so serious a consideration that a court would make a decision of custody based upon that. There ought to be an attempt to deal with the problem instead of just making a decision and letting the problem go unmodified.

The business of the boy not being able to stay with friends overnight – we'll assume that's another bad rigidity on the part of the mother. Again, it is not an unmodifiable rigidity. It could be dealt with with the proper counseling and help.

The matter of male companionship – what strikes me about the lack of male companionship in the case is the inordinately small number of visitations the father has had with this child. You may or may not remember what I said in my talk – the insistence that the doors and pathways should be open between father and mother. We shouldn't have the kind of order that limits visitation to a father for one day or one weekend a month. That's ridiculous. If this child needs male companionship, then we ought to work on a male companionship for the child no matter where he is – whether he's with his father or his mother – and so it shouldn't be necessary to change custody from the mother in order to achieve more male companionship on behalf of this child.

What always bothers me is that we so frequently approach custody matters by a double standard – one standard for the mother and another for the father. The mother goes to work and she's away from home, and therefore she's a bad mother because she's not always there. The father is away and he is at work, but we don't say that he's a bad father! (Applause.) And you can run that down the line on almost anything. We set two standards – we really do – because that's what our culture teaches; and the fact that we do it causes me sometimes to lean over backwards to do what maybe others won't do, and that is not to take custody of children away from mothers and give them to fathers. This is one of the areas – and think about it – where we can change our culture so that this is no longer a problem. Then we can talk more fairly about children being with one parent or the other and it makes no difference; but now it does make a difference. If you take a child from his mother and place that child in the custody of his father, the judgment of society is, "Something's wrong with that mother!" You're certainly not thinking, necessarily, about the child's best interests except you're saying that his best interest means to go to the father because the mother's bad, indicating something's wrong. The child knows this and suffers by it. If you place the custody of children with the mother, nobody ever says, "He must be a bad father." You never hear that. You

never hear anybody say that he's a bad father because the mother has custody.

So in this kind of situation, if this case were presented to me on this set of facts, I would have put the custody of this boy with the mother. I would have then tried to set up a ministry that would deal with these problems that gave rise to the question of whether custody should be changed or not, and try to deal with each thing to achieve a better relationship between father and mother, and a more free exchange between parents and child. You wouldn't have had to do it in the way we did this. (Applause.)

A SPEAKER: In granting custody to the mother, would you make it a condition of the custody that she seek further counseling and psychiatric care?

JUDGE LINDSLEY: The first thing I would have done, of course, would be to utilize the counselor concept course. I probably would not have heard this to begin with. This way, I would have had them in there to be counseled – to work with the counselor and, if necessary, to get psychiatric help. The individuals would then go through this process. If I could have structured it, I would have taken that a step further. I would have required – I frequently do when I make custody orders, and I have to do it still – I often require the parents to go to the counselors for counseling just to be able to handle whatever I've done, nothing else. They have to deal with where they are, and the fact that I made this order doesn't mean that I've done something that's going to be good. It's just the beginning – I made an order. They may need help dealing with the order, and I'll send them to the counselor or wherever there is professional help available just to be able to handle that. If, in dealing with the therapist or the counselor, they come up with some different arrangements that are suitable and fit them better, that's fine with me. I often tell them, "You're better off if you can work this out yourselves to meet your needs rather than have me impose upon you some decisions that neither of you are really comfortable with and which don't suit your purposes."

A SPEAKER: Question: How would the expert witnesses handle it differently if not as adversaries?

DR. ROBEY: Because I go into court in a relatively small percentage of cases, a lot of them are settled in chambers talking with the lawyers, and this is a non-advocacy position. Once you've got to court, you're already behind the scene a good deal.

In this kind of situation I think it would have come out, as it eventually does in questioning, that it's just unbalanced that I rendered an opinion for the father. Just as the judge said, I would bring out directly, "Look, the mother moves and gets another place; a little more increased visitation" – taking the exact position the judge would, and certainly not trying to re-establish the marriage, particularly in this case where there's a new one, anyhow. Taking it out of the adversary system can often achieve a great deal; but you've always got to remember when you do go to court that what you're seeing are people or their lawyers who have chosen to take these advocacy roles. If they have already chosen not to, fine. You may never be in it or, if you are in it, you are heard often in chambers with the lawyers or in their offices or something, and a great deal of this goes on that lots of people don't realize goes on. But we do get into these positions where there is a fight. Bob does a lot more custody work than I do. Maybe this is the difference in rules. I was practicing in Massachusetts before I moved to Michigan, and there the mother got custody, period – unless the mother was a psychotic, a prostitute or in jail.

JUDGE LINDSLEY: She may have been a prostitute and still a good mother – double standard there.

A SPEAKER: I am interested in the view of the court psychiatrist as to how this trial was set up. Was the court psychiatrist presenting more of an advocacy position rather than a more appropriate court psychiatrist position?

DR. ROBEY: Some of it was done to demonstrate more of an advocate position; and at the end I got Mr. Wasser a little mad by suddenly switching from that role and slipping in some stuff that, as a more neutral expert, I certainly thought the Court would like to hear, but he didn't want coming out. Certainly, if he were paying me and I started taking

this role of thinking, there'd be no fee, and it would be the last case I get from him, you know. So, I prefer to be in the position of a court appointed *amicus curiae*. As Mr. Wasser says, then I'm in a position to say what I think and I don't have to worry about one lawyer or the other. But there are a lot of other things that are controlling when you get into the system, and the psychiatrist who says, "No way do I want to be an advocate," is in a very tough spot because the situation substantially demands it.

DR. SADOFF: Let me respond to your question too; I have some ideas. It's a tough case — an actual case by the way, that we saw in our clinic, and most of the names and/or dates were changed to protect the innocent. I think that the court-appointed psychiatrist who can see everybody is in the best position to make recommendations before it ever gets to trial. People have accused me, saying that I never examine without treating, that I always give people advice even when I examine defendants. Psychiatrists and some of you lawyers might not like this, but if this person's injured, I tell the person what I think is wrong with them. "Something's wrong" — and I may be coming in for the other side — "You'd better get some treatment for this. You're hurting." And he says, "You're the first one that ever told me that."

We are in a better position to give advice and prevent it from going to court. You can place the person in your chair; you could bring the lawyers together and say, "Let's do something constructive rather than keep that in court."

With respect to this case — this was a tough case — there are no good answers either way. She was an alcoholic, and there's a good possibility that under stress, even with her therapist helping her, she might break down again because that's the pattern of an alcoholic. But the fact of the matter was that this man, whom this young boy needs so to give him his male identity, was not around, even when he was living at home. He's probably going to be around more if the judge says you can see him every weekend. He'll make the time to come over and do it. But when he takes it for granted, he's away all the time. He's married to another mother, he's not married to his wife.

A SPEAKER: I think the interesting thing is that the truth didn't really come out.

DR. SADOFF: The truth doesn't.

A SPEAKER: In all of what we saw, the truth didn't really come out.

JUDGE LINDSLEY: Excuse me. I gathered out of what I read in your reports, you didn't get everything that I had either.

DR. SADOFF: Well, as an expert, no matter who calls me, I don't take sides, exactly, but you have to a little bit because, otherwise, your lawyer's going to be very unhappy. I think the real role of the expert is as a teacher. We are only there by the privilege of having had the experience and the training that the average individual has not had, and we are there to share it with the court, if we can, to the best of our ability. Therefore, Mr. Wasser, if you ask me some questions that are going to hurt our case, that's too bad. You are the man who has to rehabilitate that, not me. I want to give the judge as much help as I can.

By the way, Your Honor, Pennsylvania would love to have you there. I would try a case in front of you any time.

DR. GOLDZBAND: I have a couple of things. I was initially struck by Dennis Wasser's comment that Dr. Robey is a court-appointed psychiatrist and, therefore, he did not confer with him prior to this trial. I would like to know why. Does the fact that he is a court-appointed psychiatrist preclude your seeing him? Do you or do you not believe that it is of the utmost importance for you and, if not your expert, the court expert or any expert whom you are going to be dealing with, to get together prior to the trial in order to communicate and to know how you do communicate; and basically to see what he's going to say and how he's going to say it?

MR. WASSER: In custody cases I have a working relationship with the judges in Los Angeles, and I ask them to appoint an objective, court-appointed psychiatrist, because I really deem myself not as an advocate for my client but rather as a partner and advocate

for the child. Believe it or not, there are several lawyers who have now taken on that feeling. My feeling is that I want to find out what's in the best interests of the child. If, in this case, the best interests of the child should be with the mother, then I'm going to figure out a way that the child goes to the mother with a lot of visitation rights from my client. If my client disagrees with me, then he can get himself another boy. So, I generally try not to talk to the court-appointed psychiatrist. I let him do the whole interview and not get in there, because the minute a lawyer comes on the scene, psychiatrists know that we are trying to advocate. Psychiatrists meet with the judges; psychiatrists in chambers discuss the reports; and you don't discuss the reports with the psychiatrist beforehand if the psychiatrist is appointed.

MR. ROSTEN: I agree with what Mr. Wasser has said.

MR. WASSER: It depends on the psychiatrist. If I know the other counsel, the other counsel and I will meet with the psychiatrist, and this often happens; but if we don't know each other — say I come to San Diego to try a case without being introduced to the psychiatrist — the other attorney is going to come in and make it an adversary type of procedure, which I don't want, unless I know he is of the same mind as I am.

DR. GOLDZBAND: It has not been my experience that that course of events occurs. It has been my experience, and I think the experience of many of my colleagues, that when there is not a pre-trial conference with the attorney who calls, there is likely disaster. If you are not calling this court-appointed man because Mr. Rosten is not calling him, you are not attempting to get as much information to the court that you would like to obtain, either as an advocate for a position which says your client ought to have this, or as the child's advocate which you said you were. It is mandatory, at least in my mind, that you work with the psychiatrist prior to that in an attempt to get as much information as possible. Suppose you can come to court armed just as well as the psychiatrist with that information that you know you have to get?

MR. WASSER: Only reason I dispute that, I don't really like to try a custody case like I did today — I don't like to advocate a position because it puts me, my client, and the psychiatrist in a position we shouldn't be in. If push comes to shove, and I have to do that, I might; but first, let the psychiatrist and the court meet with each other and do the work. I'll come in later trying to structure it legally.

A SPEAKER: What if the court-appointed psychiatrist gave you a call and said, "I want to meet with both you guys at noon in my office and at that time present my case"?

MR. ROSTEN: That's fine with some, but I know many attorneys who do not want to do that.

A SPEAKER: I don't see that happen often.

DR. ROBEY: Usually, I will call up the attorney if he has not called me, and some don't very generally. We call them up but we can't get them to call back. You know, I once dropped into a guy's office that I tried to get for three days. I knew the office next to it, so I walked in the office next to it, and after I knew he was in, I walked into his office and was told by his secretary that he wasn't going to be in for two more days, and he was really there all the time. So you do have problems with this.

I'd like to make one other comment, too. You probably noticed, and I hope it was no surprise to most of you, that there was practically nothing of psychiatry and psychiatrists' terminology in this. I've heard a group of psychiatrists where if the words ego, id, or something isn't used in every other sentence, they are somehow indicated. The court doesn't understand it and juries get confused, so you might just put in your report.

A SPEAKER: I have a question about the context of a lot of your testimony. It seems to me the facts in the case could have been better brought out by the petitioner. For example, how many bedrooms does his client have; where does the child go to school; who meets him when he comes home? It seems to me that the mother would have been called to answer a lot of these questions, and the father on the other side. Did you do

that to facilitate —

DR. ROBEY: It was already indicated but not said. This had been in —

DR. KOSON: You had to make a lot of assumptions, but a lot of the facts were in the reports. A lot of psychiatrists would, in order to formulate opinions about someone, go into their living quarters — their physical arrangements. Those are important.

A SPEAKER: Did they ask all those questions?

DR. ROBEY: Lawyers will ask the psychiatrist whether his opinion concluded this to be important. “If it didn’t, would you have changed your opinion, Doctor?” And if it does, then you take this up another time; and all you do is show bias, and throw the whole thing out. So you do have to get a lot more facts.

A SPEAKER: Dr. Koson, a question for you. It may seem to be a minute point, but I’m concerned how the mother is on welfare when she hasn’t had the child in her home for nine months. Based on the A.F.C.S., there has to be a minor child in the home unless there is total disability, and there was no indication in this trial of any physical disability. On what basis was she disabled?

DR. ROBEY: General relief.

DR. SADOFF: You don’t have to be disabled or a mother to get relief. You have to be poor and not working.

DR. ROBEY: Could I ask a question of either Dr. Sadoff or Mr. Wasser? Was this one day a month more typical of Pennsylvania?

DR. SADOFF: No, one day a month is very rare. One day a week is much more characteristic.

A SPEAKER: I have a question for the attorneys and the judge.

DR. KOSON: The attorneys are gone. They had to make a plane.

A SPEAKER: Let me ask it just generally, then. The absence of an additional evaluation, such as a psychological testing — using that for stability rather than a character interview — does that in any way indicate that it confuses the issue when it appears? If so, does the evaluation usually come into the court?

DR. SADOFF: Let me respond to that. I often use psychologists when I feel there is a specific area of mental application within the demeanor of psychology. If there is an organic brain problem, intelligence matters have to be clarified, and psychologists are much better at it than psychiatrists. Then I use a psychologist in a sense as a consultant to my report — to my evaluation. The problem results when he is on the stand and asked to explain the tests. Good cross examination confuses everybody on that. So he’s probably better off not in court, except, perhaps, on organic applications.

DR. KOSON: Psychologists with expertise in family systems or school systems or educational problems would be called by psychiatrists like ourselves for cases involving these kinds of areas, and in special areas where psychological testing is almost routine. In this case, there wasn’t a need to employ that kind of thing. Had there been, a psychologist would certainly be called in to testify or prepare some kind of mental health report.

A SPEAKER: I just have an observation for the judge. I was really quite pleased to hear you talk about giving the mother the opportunity to improve her situation so that custody could continue with her. I see a lot of cases — I work for legal aid — where the mother is probably in a much poorer situation than the father, and the father comes in and says, “Here I am. I’m working 14 years. I have this income, I can provide so much more for the child.” And the judges, because the law has changed now and says that there is no preference between the father and mother for children, often seem compulsive about giving the father a chance. So now I have seen cases where, two years later, the father comes back from the Army and the judge says, “It’s now his chance. You’re on welfare; let me give him a chance.”

JUDGE LINDSLEY: I think we’re riding some horses with lead shoes, you know. But let me tell you about a case I had recently in which the mother had custody — by

agreement at the time of the dissolution — of two or three children, I've forgotten how many. She was under a lot of pressure, as women frequently are, pressures of economics, pressures of the breaking up of a marriage; and she reached a point, after a year or so, where she felt she just was not at that time ready for marriage and she could not take of the children. So, she and her husband worked it out where he would take the children until she put herself together again. Then, she discovered he wasn't about to turn the children back to her. All right. As it was presented, it was argued that this must be a bad mother because she gave up her children by going to the father to seek help. It was argued — and many, many judges would agree — that because she gave up the children, she wasn't a good mother. No good mother could do that! She was a good mother in my eyes because she had the good sense and the concern of the children when she was in that condition to turn to the father, the natural person she should turn to, in seeking help. She should not be penalized for doing that. And if you're going to always penalize women for doing that, they are not going to do it. I think we ought to encourage them to seek help from each other when they have these periods of stress.

DR. GOLDZBAND: With my question we can still make the 5 o'clock deadline. I'd like to address both Dr. Sadoff and Judge Lindsley. — Before I do, I think I should point out that I think it's quite obvious why we have a Trial Judge of the Year, here. (APPLAUSE!)

JUDGE LINDSLEY: I didn't get it for this kind of thing. It had to do with an airplane crash.

DR. GOLDZBAND: The question I had is about the concepts of advocacy on the part of the psychiatrist. We heard a great deal of semantics about the degree of advocate posture Dr. Robey showed on the stand. What we didn't talk about is advocacy seen in a kind of offhand way. Dr. Sadoff's advocacy is much more subtle and does not only go on this stand. It wasn't only that the physical setup today caused him to sit next to "his" attorney. I think Bob was trying to show that he was functioning as an on-going advisor, as a co-counsel to Mr. Rosten. Now, that means he is an advocate, perhaps just as much if not more than Dr. Robey, albeit in a different way.

Dr. Sadoff, I would like to know what you think about being in that position of co-counsel. Do you think that agrees with all of the comments we heard earlier today on the idea that psychiatrists should not be advocates? I'd like to know your opinion of that, and also I'd like to know the judge's opinion regarding his impression of the psychiatrist who gets up from the counsel's table to go to the stand to give supposedly objective testimony.

DR. SADOFF: I'd like the judge to go first.

JUDGE LINDSLEY: I'd be glad to, except I really don't know many cases in which the psychiatrist sat at the counselor's table. I can't remember when I have faced that. He's answered it very nicely for himself by saying he's a teacher. So, he can say he's sitting there as a teacher, not advising, but teaching.

DR. SADOFF: Let me say what I have in mind. Dennis Koson and I did this back in the spring — contrary to my feelings — and got very much involved as experts in a case. I did not want to sit at the counsel table then and help out. Their expert was there for 12 days or so — I don't know what he did with his private practice — and he was helping to cross examine me. Dennis apparently was available and happy to do it, and he sat at the table but never got on the stand. I certainly learned from that that it's a bad position.

I have a general philosophy about that. That is, where a lawyer calls me as a consultant to help him, I will do the best I can; helping in any way — picking a jury, knocking holes in the other guy's testimony, helping him with cross examination, interviewing witnesses — whatever I have to do as a psychiatrist relevant to my area of expertise to help the attorney who needs the help that I can provide to him. When I get on that stand, then I'm the advocate of the judge or the court or justice or whatever. Although you can't always think it out, tell him this in advance. Put him on notice. Form concepts. In a sense, I tell

him I'm going to give a lot of points to the other side and predict what he'll do with this prospect if he has done his homework, knowing what I'm going to research. I tell the lawyer, "You have to bring your own expertise into that because I am not going to help structure this."

I also think this has been said many times: There is no psychiatrist's testimony that cannot be effectively attacked by a good cross examination. We should realize this and we can defend it. That's the way it is. It's not an exact science.

DR. GOLDZBAND: From your point of view, is that an ideal situation as you and Dr. Koson did it back in the East?

DR. SADOFF: Ideal.

DR. KOSON: Dr. Sadoff was stung to a little different effectiveness by Dennis Wasser, and it was a more subtle advocacy. But you're always at least advocating your own opinion, and that makes you adopt a posture where you are assuredly at least doing that as an expert.

(The mock trial ended at 5:00)