

Therapy in a Child Custody Case: A Psychologist's Survival Guide

Custody-disputing families are among the most difficult populations we encounter, but few populations have greater need for psychologists' services. Effective intervention with these families requires both current knowledge of effective treatment and an appreciation of the complex systemic factors that drive family conflict and child custody disputes. As most child psychologists know, early intervention with emotional and behavioral difficulties can promote resilience and successful adjustment in children. Nevertheless, many children at the center of conflict suffer long delays before receiving care. If maladaptive behaviors and dysfunctional family patterns become entrenched, children may face lifelong adjustment problems and emotional impairment (Drozd, Saini, & Vellucci-Cook, 2019; Fidler, Deutsch, & Polak, 2019; Greenberg, 2019; Greenberg & Lebow, 2016; Greenberg, Schnider, & Jackson, 2019; Johnston, Roseby, & Kuehnle, 2009).

These cases present complex ethical and clinical issues. There is an expanding professional literature and an emerging consensus on appropriate procedures and key clinical, ethical, and risk management issues to consider. Remaining mindful of these practices is likely to enhance the therapist's effectiveness, avoid iatrogenic effects, reduce professional risk, and represent the profession well when our work does come to the attention of fellow professionals (Bala & Slabach, 2019; Fidnick, Koch, Greenberg, & Sullivan, 2011; Fidnick & Deutsch, 2012; Greenberg, 2019).

Some key issues are introduced in this column, based on both the APA Ethical Code and relevant professional literature. The Association of Family and Conciliation Courts Guidelines for Court-Involved Therapy (here after AFCC Guidelines) provide more specific guidance. Our

recently published *Evidence-Informed Interventions for Court-Involved Children and Families* (Greenberg, Fidler, & Saini, 2019, which includes chapters by many leaders in the field, provides extensive discussion of current models and references in each topic area.

Establishing and Maintaining Competence. The requirement that psychologists maintain competence in their areas of practice (APA Ethical Standard 2.01) is well established. Psychologists working in the special education or health systems need to understand the language, rules, and relevant research for those systems. Similarly, psychologists working with court-involved families should be familiar with the special issues that can arise in these cases, particularly with high-conflict families, and adapt procedures accordingly. Court-involved families may present different issues than those seen in community settings, and the law or court orders may impact the options available to them. We need to understand that context to keep our therapy relevant, and to help children and families understand their situations and make healthier choices. Child and family psychologists bring competencies, and knowledge of literature, that forensic psychologists may not have; of course, the reverse is also true. Families involved in the legal system continue to be involved in a variety of other systems – educational, recreational, health care, etc. In fact, children exposed to prolonged parental conflict are more vulnerable to developing emotional, behavioral, academic and even medical problems.

Professional competence includes both knowledge of relevant literature, and the ability to select and apply the literature appropriate to the family. Relevant issues may include, but are not limited to, the dynamics of separated families and high conflict divorce, domestic violence, child abuse, children’s interviewing and suggestibility, child development, and the various domains of family psychology. Much in the family psychology literature is directly relevant or easily adaptable for custody-disputing families, but some approaches may be inappropriate or even

iatrogenic in high conflict cases. Some treatment models have been developed which attempt to integrate the relevant research to establish evidence-informed and effective interventions. A number of them are reviewed in our recent volume.

Consult both parents, be thorough with informed consent. A thorough consent process builds trust by establishing a reliable structure and clear ground rules, which are often lacking in these families. Psychologists are ethically required to obtain informed consent, but the elements of consent may be slightly different based on the circumstances of these cases. Both the Ethics Code and the AFCC Guidelines identify essential issues, with the AFCC Guidelines and other literature providing more detailed recommendations and sample procedures. Whereas the therapist may come under pressure to rush the consent process, engage in ad-hoc changes or accept a poorly crafted order or consent, it is unwise to do so. Issues not addressed in the consent process often arise to create problems later; many ethical dilemmas can be anticipated and avoided by disciplined, careful consent process.

One of the most common (and risky) mistakes in this type of case is for a therapist to treat a child with only one parent's knowledge and consent. Even if technically legal, a failure to consult both parents may violate the other parent's rights, collude with the violation of a court order, send unhealthy messages to the child, interfere with accurate assessment, and lead to disrupted or discredited therapy, lawsuits and licensing discipline. This is based on both legal requirements and the very real risk of bias or inaccurate assessment if only one parent's input is considered. It is wise to request a copy of any custody orders and contact the other parent yourself, as the presenting parent may misunderstand or misrepresent either the other parent's agreement or the allocation of parenting rights. If the parents are in conflict about consent issues, this should be identified early and referred to the court if necessary.

Informed consent should include a realistic discussion of privacy and confidentiality issues. The law in some jurisdictions, or the dynamics of custody evaluation, may limit patient privacy. It is important to understand the law in your jurisdiction to promote effective decision-making by your client. In situations with protracted conflict, some form of accountability, such as reporting of progress or parental cooperation, may be necessary in order for effective intervention to occur. A therapist who understands these issues can help to manage any sharing of information, promote realistic expectations and avoid therapeutic betrayal. This is particularly important for children, who may be empowered by a psychologist to express their desires about how information is shared. Children may also need to be assisted with skills for managing any parental reactions or other stressors that result from such disclosures. Sometimes, a sophisticated therapist can interface with parents and other professionals to provide a process that meets legal requirements while preserving treatment effectiveness and some level of privacy. If you are uncertain about the law regarding therapeutic privacy in your jurisdiction, it is wise to consult a family law practitioner, as well as a professional practice attorney, for assistance in developing appropriate practice policies and forms.

Professional Objectivity and Disciplined Procedures. These elements are critical in these cases and *protective* to psychologists who may be subjected to strong, emotionally appealing narratives from distressed children or their parents. Psychologists in child-centered roles (such as child therapist or conjoint/reunification therapist) should document their attempts to engage both parents, understand the variety of factors that may impact children's statements, and consider multiple hypotheses about the causes of children's behavior. These measures will help a psychologist develop a more accurate understanding of a situation, as both the narrative and the children's behavior may be sharply different when the other parent is consulted or brings

the child to therapy. When therapists form opinions based on one-sided information, they may unintentionally engage in inappropriate advocacy, violate role boundaries, or miss causes of a child's behavior that are unrelated to the parents' dispute. High-conflict parents often miss issues that reflect normal development or undiagnosed problems unrelated to the parental conflict; therapists must maintain sufficient objectivity to consider them.

Unconditional support of a client's expressed views is common in community psychotherapy but complicated in a child custody case. The court may make orders with which a parent or child disagrees. Both children and parents may need to learn new coping skills to adapt to their changed family situation and promote healthy development in the child. Some therapists have made the mistake of counseling parents to disobey court orders, which can create devastating results. The AFCC Guidelines and other specialized literature provide detailed guidance about a therapist's responsibilities if ordered by the court to provide services or express opinions that are inconsistent with the therapist's ethical obligations.

Child development knowledge is essential. For example, it is common for adolescents to express an emphatic but imprudent opinion based on their needs, stresses or feelings at the moment, and then contradict themselves when their mood or circumstances change. Children's behavior may be consistent with their statements or send a very different message. In the face of intense conflict dynamics, psychologists may forget to counsel the limit-setting and coping skills that they routinely teach in families who are not involved with the legal system. A psychologist who uncritically accepts a child or adolescent's stated wishes, without exploring various interpretations and developmental issues, risks missing important dynamics or causing serious iatrogenic harm.

Divorcing parents may also pull for advocacy from a therapist. Whereas a safe and child-

free place to “vent” may be helpful to parents, they may also need information about the risks to children from protracted conflict, how realistic their wishes are, and the steps they need to take to manage their emotions, support the other parent-child relationship, parent effectively and protect their children. Custody-disputing parents have high levels of distrust and may selectively attend to information or interpretations of events that indict the other parent. A therapist who maintains objectivity will be better able to help a client do so, which promotes both better emotional adjustment and better success in most court processes. These issues may arise in tension with the felt need of some parents to feel unquestioned advocacy from their therapists. Careful and disciplined clinical decision making, as well as consultation, is often required.

Allegations of abuse, endangerment, or the undermining of a parent-child relationship create powerful and complex issues. Constant and careful assessment for risk factors is essential, and reasonable suspicion of abuse should always be promptly reported. Safety precautions may be ordered by the court without implying a determination of guilt, and investigations may take time or yield uncertain results. It is critical to avoid procedures that could taint those investigations or compromise children’s abilities to identify and describe their *independent* feelings and experiences. Biased or inappropriate children’s therapy can seriously compromise investigations, leaving children exposed to greater risks and leading to disrupted families, discredited therapy, legal action, and licensing discipline. Greenberg, Doi Fick and Schnider (2012, 2016) and Greenberg, Schnider and Jackson (2019) have developed a protocol for addressing the many problems presented by these families while avoiding interference in external processes or investigations. There is much that therapists can do to promote healthy coping skills that will assist children in both resolving trauma and building or re-establishing healthy relationships. Olesen and Drozd (2012) offer helpful suggestions for assisting parents in

these cases.

Therapists must also use caution in expressing professional opinions, whether to the court or to vulnerable family members. Therapists who make parenting plan recommendations or express opinions without sufficient basis risk licensing discipline, as well as causing escalated conflict, disrupted treatment and serious harm to the child and family.

Beware of Polarization Contagion. Polarized views are common in custody-disputing families and, at times, can be reflected in the professional literature. While many authors carefully consider a variety of research and the complexity of family dynamics, the literature can also be rife with polarization, selective citation, agenda-driven definitions of terms, professional namecalling and other poor practices. The wise psychologist considers literature from a variety of perspectives, as well as their existing knowledge of children's developmental needs. Psychologists should view with caution publications that suggest simplistic views of complex behavioral problems or overly broad conclusions about relevant research. Simplistic views make appealing headlines but rarely reflect the complexity of families. The hazards of selective or agenda-driven use of the research are discussed further in a special issue of *Family Court Review* (volume 54, issue 2), and particular in an article by Sandler and colleagues (2016).

Realistic Expectations and Redefining Success. Separated families often arrive in crisis, and the highest-conflict parents may not have had healthy adjustment prior to the separation. Insight, *as traditionally conceived*, may not be achievable for these parents, particularly at the height of the conflict. Nevertheless, the key factors for promoting healthy outcomes for children may, at least in initial stages, be taught and supported in relatively specific and behavioral terms. Children who fare best after parental separation are those who are insulated from parental conflict, enjoy relatively healthy relationships with both parents,

experience authoritative parenting, and establish healthy coping and decision-making abilities and a belief in their own ability to resolve problems (Greenberg, 2019; Greenberg, Schnider, & Jackson, 2019; Pedro-Carrol, 2005) .

Initial steps may consist of establishing structures, skills, and decision-making processes that reduce the intensity of the conflict, make daily routines more manageable, and teach or enhance healthy coping abilities in both parents and children. These interventions may “create a space” within which the child can begin to resume normal activities and a healthier developmental path. Those successes can lead to parents’ recognition (insight?) that life is easier when conflict is reduced and rule-governed behavior becomes routine. Some may attain deeper understanding, but even those who do not have often given a huge gift - the chance at healthy adjustment - to the most vulnerable children that many of us will encounter.

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