

A Child's Perspective on the Role of Therapists in Custody Battles

Abstract

Children's therapists often avoid involvement in court at all cost, utilizing twists of logic and applying false dictums. Avoiding involvement not only violates the therapist's fiduciary responsibility to the child and fundamental moral principles, but almost inevitably leads to the collapse of the therapeutic relationship and any benefit coming from the therapy. Assertions that the therapist is avoiding involvement to protect the therapy are little more than rationalizations. Since judges rarely speak with the children and forensic evaluators often do biased or otherwise poor evaluations, it is vital for children's therapists to speak out about such issues as which parent is warmer, which parent spends time with the children, where the child feels safest, does one of the parents have anger issues, and is there a serious problem in one of the houses.

Keywords: Invalidation; Child custody; Mental health ethics; Responsibilities of child therapists

Case Report

Volume 6 Issue 4 - 2016

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Received: July 07, 2016 | **Published:** August 16, 2016

Significance: Child therapists frequently encounter situations in which their patients' parents are in a custody battle. How the therapist handles the situation has profound consequences for the child and the therapy. The common inclination to remain completely neutral and make no comments that could be seen as helping or hurting either parent is fraught with problems.

Therapists' Fears of Court

It is difficult to understand the level of fear that the word court evokes in most therapists. At almost all cost, most therapists will withdraw behind their office doors, pull down the curtains and turn off their cell phones if someone suggests they speak up in a custody battle. Granted, few therapists are trained to interact with lawyers and, heaven forbid, testify in court. Nevertheless, neither are their patients prepared to deal with the legal system. If an adult, with the advanced education required to become a therapist, cannot find the courage to contact the court, what do they think it is like for children to be at the beck and call of lawyers and forensic evaluators who are likely to challenge their statements and invalidate them? What do child therapists think it is like for a child to hear that the therapist will not put themselves through the discomfort of dealing with lawyers and the court, when we are being forced to do so? What do they think it is like for a child to hear an adult who he or she depends on say "Hey I'm not going to put myself through this, I can't stand dealing with legal things, good luck".

Therapists come up with poorly thought out rationalizations for avoiding involvement with the court. The classic one is that they want to protect the therapy. They argue that speaking up, taking sides between the parents, will somehow destroy the therapy, perhaps by turning the parent whose preferences they do not support against the therapy. The fear is seriously misplaced. If a therapist speaks up and points out problems in parent A's house, and parent A tries to have the therapist removed, the court is unlikely to be very receptive. Moreover, it will reflect very badly

on that parent. Alternatively, one could argue that the parent might try to undermine the therapist's relationship with the child by badmouthing the therapist. All but the youngest of children will see through this and feel a stronger tie to a therapist who was willing to stand up for them.

Therapists should be neutral about the feelings children express and about what path they child wishes to follow in life, as long as it is not self destructive. Therapists should not, however, be neutral about the child being treated poorly or suffering avoidable distress. Keeping a child away from the parent to whom the child has the strongest attachment can cause significant distress and emotional harm. A child is not automatically safe and secure by being with either of his or her two parents. The distress and harm resulting from being kept away for most of the week from the parent with whom the child has the stronger attachment is underestimated by the legal system; therapists need to educate the legal system.

The Risk to the Therapy from Not Speaking Up

The one party whose trust the therapist must maintain is the child's. Children are unlikely to understand the therapist's excuses, and are likely to see them as hollow. If the child feels the therapist does not care enough about her welfare to speak up, the child will withdraw and the therapy will end. Why would a child trust and want to speak with someone who cares so little, and is so cowardly, that he will sit by while a child is kept away for most of the week from the parent she feels most attached to, and/or kept in a home in which she is mistreated? The child may be forced to continue in therapy, but for all practical purposes the therapy is over; the therapeutic alliance has consistently been found to be a key factor in the success of therapy [1].

The damage to the child is not simply the loss of a needed and potentially useful therapy. The therapist has now become a negative role model, and shown the child a picture of the world in which people care more about their own immediate comfort

than the suffering of children. The child's level of security and comfort in the world, already damaged by the collapse of her family, undergoes further harm. The negative experience with the therapist will greatly undermine the child's ability to work with any therapist in the future.

Failure to speak up when a child asks for a therapist's help during a custody battle is experienced as betrayal and abandonment. Children normally turn to their parents for help if someone is mistreating them. Children have a right to adult assistance in such situations. When it is one of the parents who is mistreating the children, and no one will listen to the non mistreating parent out of concern it could be a false accusation to gain advantage in the custody battle, the child is left alone, abandoned by the adult world. In these situations the child's therapist takes on an unusual level of importance in the child's life. Being unwilling to step up to the plate and speak out for the child to the court constitutes a betrayal. This betrayal comes on top of the betrayal the child suffered by being mistreated by a parent who was supposed to protect the child.

In recent years research has shown that betrayal is a traumatic event and can cause the symptoms of PTSD, although it does not fulfill the current criteria for what constitutes a traumatic event sufficient to cause PTSD [2-4]. Betrayal can cause anxiety, depression, preoccupation with the betrayal, and dissociation. Moreover, betrayal has far reaching impacts on the individuals' ability to trust others and sense of self worth. It is a very powerful and destructive experience impairing the individual's ability to make good choices of friends and spouse. Some victims will become fearful of intimacy and be unable to trust. Others will trust indiscriminately or inappropriately and be revictimized. Although the therapist's betrayal is unlikely, by itself, to cause these symptoms, coming on top of the betrayal inherent in being mistreated by a parent, and on top of the collapse of the family, it can greatly exacerbate the harm.

Case study I: Two sisters had drastically different therapists, and as a result drastically different outcomes. They were preteen when their parents began a custody battle. Their father remarried a woman with strict, bizarre rules that so discomfited the children that they would hide themselves in their rooms at father's house. They were also emotionally abused by father and stepmother.

The older child's therapist believed her patient, and wrote to the forensic evaluator of the mistreatment her client suffered. In stark contrast, the younger daughter's therapist said her client was manipulative and invalidated her. As a result, the younger child's therapeutic relationship with her therapist collapsed, she repeatedly asked to stop seeing her therapist and compared her therapist to the reject therapists in Good Will Hunting. She talked a lot about not being believed and at times said she wanted to kill her therapist. She said that someday she would get revenge.

In time, the younger daughter began to accept the stepmother's strange rules as reasonable, although her friends avoided the house as a result of the stepmother's behavior. In other words, she began to identify with the aggressor. She became emotionally labile to the point of physically assaulting her older sister when in her father's house. When her mother asked for equal time, rather than her daughter being primarily with the stepmother, both

daughters were subject to guilt trips by father and stepmother. Under great pressure, the younger daughter began to believe her father's claims that she was being used as a pawn by her mother to hurt her father, and angrily confronted her mother. Her mother responded by asking her what she would think of a parent who sat by while her children reported very problematic treatment by the other parent, and did not even ask for 50-50 time. The point was so powerful that the younger daughter cried uncontrollably, and reconnected with her mother.

Meanwhile, her older sister, who faced external stresses the younger one did not, and far more intense guilt trips by father and stepmother, did much better. Supported, rather than invalidated, by her therapist, she was annoyed rather than guilt ridden in response to her father's claims of being victimized and sent into poverty by mother. Moreover, the older daughter was able to maintain an appropriate perspective and saw her stepmother's rules for what they were. As a result she did not experience the marked stress and confusion her younger sister did.

One could argue that the key difference was their age. This is not the case, however, since the younger child remained confused and torn at an age that her older sister was able to maintain a realistic perspective and rejected the guilty trips of her father's house. The older sister also faced far more anger and guilt inducing comments by her father and stepmother than the younger sister did. The older daughter's therapist believing her allowed her to tolerate a painful situation at her father's house, while the younger daughter's therapist invalidating her led her to suffer a great deal of emotional turmoil and anger, and to start to develop problematic personality traits including fear of even asking for things she wanted.

Case study II: Trent was popular with his peers, had close friends, and was an excellent student and athlete. Things could not have been going better. His father was the primary caretaker, had a flexible work schedule and they spent a lot of time together. When his parents divorced he preferred staying with his father. One day when Trent was around 9 he refused to go with his mother and she lost her temper. First she grabbed Trent, and then Trent's grandmother who tried to intervene. In the ensuing conflagration Trent was knocked backwards banging his head and getting a bump. His mother was arrested and Trent did not see her for a year. When the year was up Trent did not want to see his mother. He was put into therapy. During a meeting with his therapist and mother, she said she was sorry Trent had gotten hurt, but she never acknowledged any wrongdoing. Moreover, she persisted in saying that Trent lied about what happened and that it was grandmother's fault.

Trent initially liked going to therapy. His therapist was supportive and validating. In time, however, as Trent continued to be uncomfortable with his mother, and his law guardian argued that the father must be engaging in parental alienation, her statements became somewhat invalidating. With this the therapeutic relationship collapsed. He then saw two other therapists, who were blatantly invalidating.

When ordered to have overnights with his mother, Trent refused and ran away. The court responded by placing him primarily with his mother. When he continued to run away the court then responded by forbidding him access to his father. Since

he would not stay with his mother, and the court would not let him be with his father, he wound up in residential and then foster care. Fortunately he was treated well in both places.

Trent met with a 4th therapist, one who was open to believing him, but he was so disheartened by the repeated invalidations that he did not tell therapist #4 what had happened and how he was feeling. In time Trent gave in and stayed at his mother's house. She treated him better than previously, things went reasonably well, and he now said that although he still wanted to live with his father he wanted to see his mother often.

Trent was now seeing his father every other week for one hour with his therapist. The parents were in an intense custody battle and mother wanted him to remain at trivial levels of visitation. A custody evaluator was called in. He asked Trent about the conflagration. Trent fell into a flood of tears, pulled his hoodie over his head, put his head down and barely spoke for a long time. He therefore met the B criteria for PTSD through his having marked physiological reactivity after exposure to trauma-related stimuli. He met both C criteria. He avoided thinking and speaking about what had occurred and avoided reminders, i.e., the room in which it had occurred. Concerning the D criteria, his views of himself and the world suffered. He lost trust in others and in himself. His self esteem markedly diminished. It was hard for him to enjoy things. He ceased the sport in which he had been a star. He was distant from his peers. Concerning hyperarousal symptoms, his sleep and concentration markedly deteriorated. He would also startle/jump if his mother touched him.

After seeing Trent's reaction and hearing about his continued intense symptoms, his therapist told Trent that he had expertise in treating these problems, inherent in this was a message he believed Trent. The therapist then testified in court that it was critical Trent returned to his father's care in order to heal. The consultant testified that Trent's mother's behavior easily explained Trent's estrangement from his mother and that there was no reason to speculate that the father had ever engaged in alienation. With this testimony and fear that father could get custody as Trent's therapist advised, mother reluctantly agreed to 50-50 time.

Trent is doing better, he is more at peace and happier, but he is not the boy he once was. He continues to have sleep and concentration problems. His views of himself and the world are not what they were. He is uncomfortable with the police who would pick him up and promised to help him when he ran away, but did not help him. He does not want to get close to people, since he fears people will not trust him and that he will do something that will lead friends to reject him. His self esteem is not what it was.

Although the conflagration is adequate to fulfill the A criteria of PTSD, his level of symptoms is remarkable. Lots of kids get into fights and get their heads bumped. The very intense injury he suffered was betrayal. First, his mother, who is supposed to protect him, assaulted him and his grandmother. Then, she lied, blamed his grandmother for things she had herself done and called Trent a liar. Then she took him away from his father. His first therapist first validated him but then turned to invalidation. The next two therapists and his lawyer were very invalidating. Then, the police promised to help him and did not. Brant suffered

intense and repeated betrayals and the result was a severe case of PTSD.

Case study III: GS was a very senior psychologist who prided himself on his experience working with children in high conflict divorce cases. A six year old child told him about the differences between his mother, who was cold and had a temper, and her father, who was nicer. The child was shocked when the schedule went from 50-50 to she and her sisters being primarily with her mother, actually primarily with her mother's sitters. Upset about the change, upset about being with sitters who mistreated them, upset about not being able to see the parent they had a greater attachment to, the children acted up. Mother responded with rage. The oldest child told her therapist what was happening and begged him to help. He did nothing.

In time the child asked her therapist what therapists do when children are abused. He said he didn't know. After thinking about it she told him that since he did not know perhaps she needed a new therapist. He then claimed he had never made the comment. With this the child saw him as a liar.

Session after session she told him of how her sisters were being hurt and her fears that something irreparable would happen. He responded that divorce was difficult. The problem was not divorce. The problem was that no one gave a damn that she and her sisters were being abused.

One day when the therapist was speaking with her father on the phone she yelled out that talking to a stone wall would be better than speaking to the therapist. The therapist then said that he was going to become proactive in helping her. He told the father that the children were being brutalized. But he did nothing. When the child drew a picture of her sisters being abused and handed it to the therapist he grudgingly said he would put it in his file.

In time the child began to say she wanted a new therapist. First agreeing, GS then objected and insisted he wanted to continue so that he could help her. Increasingly desperate, she took his magazines and threw them around his office. He asked what she was doing. She replied that she did not understand why he cared more about having his magazines thrown around than my sisters.

When the child's father GS to get a consultation, he refused saying that he would need mother's permission for this. This was nonsense, doctors and therapists frequently consult with each other on cases, without identifying the patient, without asking patients for permission.

The child's younger sister saw a therapist named JF. When the younger child asked JF for help she replied that she does not get involved with the court. The child then stopped speaking about her feelings and basically used the time as a time to play games each week.

Father also asked JF to get a consultation with someone with whom he could also speak. She refused. In time she called and said she had gotten a consultation. She claimed she could not tell him who it was for confidentiality reasons. In time father discovered that JF and GS consulted with each other.

At one point GS tossed out the comment that during the 25 years of his career he never went to court and he would not start

now. Here was the driving motivation.

GS spoke with the forensic evaluator, but said nothing of substance, although he had told the father that mother was not a warm parent. When asked why he did not say this to the forensic evaluator, GS replied that he was not asked who the warmer parent was. When the forensic evaluator was asked why he did not ask more he indicated that he felt GS would volunteer important information if he had it.

In time the children spoke with a doctor who listened and wrote a blistering attack on the mother. A protective service was called. She and her sisters obtained a new lawyer and social worker who were very upset that no one had listened to them. Meanwhile she saw a new therapist who felt she was not safe in her mother's house but was safe in her father's house. He too, however, did not want to take a stand. He told her that if her father got custody all was fine. If her mother got custody, however, she would have to go to the hospital and then a Wilderness Program, rather than starting an elite high school. Finally, she and her sisters had their day in court. After she and her sisters spoke with the judge and read the reports of the lawyers, social work and ER doctor and therapist the judge said she and her sisters would go home with their father and that she would see her mother only when and if she wished to.

The most recent therapy was now dead, and the child had one more experience of betrayal. The most recent therapist insisted on remaining neutral allegedly to protect the therapy. He really wanted to protect himself. He risked the child being sent to a Wilderness Program, losing out on going to a prestigious high school and/or lose a year of school, so he could stay neutral. Fortunately the judge read between the lines of his report, saw it as absurd, and sent the children to live with their father.

The Need for Therapists to Speak Up

Therapists have the mistaken belief that somehow custody evaluators will figure out about what is going on and come to the correct decision without their input. They are mistaken. Mistreating parents often cry parental alienation and engage in a tactic known as DARVO. Deny the behavior, Attack the individual doing the confronting, and Reverse the roles of Victim and Offender. (Freyd 1997) Tragically, it is often successful. Interpretation/assessment of what is actually happening by forensic evaluators and law guardians is poorly done.

Therapists and courts generally see custody battles as struggles between two contentious parents who care more about hurting their former spouses than about the welfare of their children. In reality, custody battles are often battles with a poor parent on one side and the child and a better parent, who the child wants to be with, on the other. Rather than being caught between the parents, the children are being aided by the parent the child wants to be with, for good reason. Children may love their parents equally, but that does not mean that they do not care whether they are in a house with a warm, patient, supportive parent rather than in the home of an impatient, non supportive parent.

Children know better than anyone who is the better parent. Only children know which parent is patient and which has anger issues. Only the children know who helps them with homework.

Only the children know who actually spends time with them. Only the children know who badmouths the other parent. Courts like to say that children do not know what is good for us. Most children want a nice, warm, parent who helps us with our work, provides structure, listens to us, and keeps us out of trouble. Granted, there are some teenagers who will choose the overly permissive parent, but this is rarely the case, especially with younger children. Moreover, it is generally easy to find out if this is the motivation.

Since judges generally do not speak with the children, and forensic evaluators often fail to ask the basic questions just noted, the forensic evaluator and court are left with guessing who the better parent is, and often get it wrong. The knowledge the child's therapist has of how each parent treats the child is invaluable in these situations. It is not for the child's therapist to say who the better parent is and who the child should primarily live with, but it is crucial for the therapist to speak up concerning where the child is most comfortable, who the child has a greater attachment to, which parent is more patient, if the child is fearful or stressed in one of the houses, and if one of the parents is mistreating the child or creating a problematic environment. The level of mistreatment that ethically requires a therapist to speak up is much less than the level that would require a call to protective services. The voice of the child's therapist can be very powerful in these situations, and if one of the parents is treating the child in problematic ways, the therapist is ethically required to intervene.

Given that judges generally do not speak with children, and forensic evaluators often do a poor job or are swayed by whichever parent they feel a greater affinity for, it is crucial that children's therapists speak up both to the forensic evaluator and, if need be, the court. Courts and forensic evaluators will assume that a therapist will speak up if there is a problem. Failure to speak up will be seen as a statement that there is no problem in either household. Silence is, in itself, a powerful statement.

Silence Leads to Invalidation

Failing to speak up when a child patient is being mistreated creates cognitive dissonance in the therapist [5]. To resolve the dissonance the therapist is likely to minimize the mistreatment the child is facing and the distress the child is experiencing. The therapist's disbelief will almost inevitably be communicated to the child who will feel invalidated. This magnifies the invalidation by the parent who mistreats the child, but denies it. Research has shown that expressing disbelief, or lack of concern can do a mistreated child serious emotional harm [6].

The invalidation leads to the child to not trust her feelings, and to become angry at herself for feeling overly upset with the parent's behavior, at the same time that the child is angry about it. Linehan proposed that invalidation was a major factor in the development of borderline personality disorder. Invalidation of the child's experience and feelings interferes with the child's ability to learn to deal with disruptive feelings, leading the child to fluctuate between emotional inhibition and emotional lability [7]. Moreover, the child becomes vulnerable both to future abuse and to becoming an abuser, since it teaches the child this is what to expect from people and that it is OK to treat others this way. The child is also likely to suffer a degree of depression, feeling that if this is how people treat each other, perhaps life is not worth living.

Conclusion

From a practical perspective, the dictum that therapists should avoid court involvement collapses in the light of logic and experience. While it is true that speaking up about problems in one of a child's two houses is likely to upset the parent who gets the negative report, it is not likely that it will lead to the collapse of the therapy. Courts are not likely to allow a parent to stop a child's therapy in response to the therapist making negative comments about the parent. A far greater risk, is the child feeling betrayed or abandoned, emotionally withdrawing from the therapy and no longer speaking about things of significance with the therapist, in response to a therapist failing to support the child's expressed cries of mistreatment, or distress at being kept away from the parent with whom there is the strongest attachment. Mistreatment is not limited to physical abuse or insults. Limiting a child's contact with the parent with whom the child has a greater attachment is serious mistreatment.

The belief that one is avoiding involvement in the custody battle to protect the therapy is a rationalization driven by the therapist's desire to protect himself. Motivated bias, the tendency to believe that the course of action, which is in our own interests, is the best course of action for others, leads therapists to come to this conclusion. They so badly want to stay out of court entanglements that they cannot fairly assess the situation and what is right. It is as if a policeman decided to not interfere when he sees someone beating someone up because it might lead things to escalate and result in greater problems. This is a possibility, but it is not an excuse to sit by and do nothing.

Wanting to justify their silence therapists are highly motivated to downplay the seriousness of what the child is experiencing to themselves and their patients, and slide into making invalidating statements. Research has shown that negative responses such as disbelief and minimization can be very harmful to victims [8]. Invalidation damages self esteem and increases the risk of future symptomology.

Therapists may try to convince themselves that they are not doing harm by sitting by and staying out of the fray. They are wrong. Martin Luther King said "A time comes when silence is betrayal" [9]. John Stuart Mill wrote that "A person may cause evil to others not only by his actions but by his inaction, and in either

case he is justly accountable to them for the injury" [10,11]. There is another relevant quote often attributed to Dante, but actually of uncertain origin, the hottest places in hell are reserved for those who refuse to take a stand in times of crisis.

Future research on this topic might include a large scale survey of clinicians who work with children whose parents are divorcing, to assess the impact on the therapy and therapeutic alliance of therapists speaking up versus not speaking up in response to a request by a child patient for help in a custody situation.

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