

LETTERS

To the Editor

In Defense Of Expert Witness

I am a psychologist, the editor of the Journal of Mind and Behavior, the author of Madness, Harassment and the Rumor of Angels (Open Court, 1993) and co-director of the Family Therapy Institute of New York City.

Judge Mary E. Bednar's report of her decision to reverse joint custody (Sept. 11) in the matter of Anne R. v. Sidney R. is most revealing.

The refusal of Judge Bednar to give any weight to the testimony of my colleague Dr. Monty Weinstein, who appeared as an expert witness for Sidney R., effectively vitiated Dr. R.'s right to due process.

Judge Bednar attempts to rationalize her dismissal of Dr. Weinstein's testimony by professing to have a better understanding of procedures of professional evaluation than Dr. Weinstein does. Thus she claims that his opinion was arrived at "in a less than professional fashion." Why was he "unprofessional?"

Judge Bednar gives two reasons: Dr. Weinstein's evaluation was based on insufficient data since he did not meet with Anne R. Dr. Weinstein's conclusions were not based on scanty evidence. He had an intimate knowledge of Dr. R. since he met with him for 25 psychotherapy sessions. After 30 years of practicing psychotherapy there is no reason to doubt that this intensive interaction between Dr. Weinstein and Dr. R. provided Weinstein with a solid basis for evaluating Dr. R.'s devotion as a father and his capacity for sustaining healthy interpersonal relationships. Certainly, Dr. Weinstein's evaluation is of utmost relevance in determining whether J.'s reluctance to meet with his father was influenced by parties other than Dr. R. Yet Judge Bednar decided that she would give Dr. Weinstein's testimony

no weight. Secondly, Judge Bednar states that Dr. Weinstein's involvement in Father-Rights Metro indicated that he is "biased" and thus provided further grounds for discounting his testimony. Judge Bednar has no grounds for or inference. Father Rights Metro advocates for joint custody — not for giving preference to fathers over mothers. An examination of Weinstein's record reveals that he has defended in court on many occasions the right of mothers to have custody — visitation with their children.

Dr. Weinstein's conclusions that J.'s antagonism toward his father was influenced by others was not a product of Weinstein's bias against women (he has no such bias) but of his objective evaluation of the data he had access to. Dr. Bednar's allegation that Weinstein's prejudices influenced his evaluation is nothing less than slander.

In contrast to Bednar's readiness to discount Dr. R.'s expert witness is her credulousness regarding those who testified against Dr. R. Thus she assumes that various therapists who claimed to be working to reconcile J. and his father were dedicated to that goal despite the fact that the record shows no progress in that regard. She interprets Dr. R.'s own suspicions about J.'s therapists (chosen by Ma. R.) as evidence of Dr. R.'s uncooperative temperament and fails to even consider — despite Dr. R.'s own extensive experience as a psychologist — that there might be grounds for Dr. R.'s doubts. (As a family therapist I have found that individualistically-oriented therapists frequently fail to make the kind of interventions most likely to lead to conflict resolution; by bringing the conflicting parties together to negotiate.)

I conclude reluctantly that Judge Bednar's biases prevented her from carefully weighing the evidence in this case and consequently resulted in an abrogation of due process.

Seth Farber
New York, N.Y.