

Improving Representation of Divorcing Parents and Children

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“As lawyers, we cannot change what has happened to our clients in the past, but we can positively affect what will happen to our clients during the legal process and in the future.”¹

This statement states a fundamental truth to all family law disputes. Though the attorney cannot predict nor mold client behavior, he or she can help remove the barriers to a more compliant transition. The transitions of parent separation and divorce are compounded by emotional and financial changes including income and access to children. For most parents, quality of life is measured by these changes and a marked decrease in such quality of life results in anger, disappointment, frustration and rage. Unfortunately, there are statistics showing that increased client pain may lead to hazardous moral choices such as drinking, smoking and drug use. Incidents of child kidnapping, blackmail, threats, murder and suicide could further characterize extreme behavior choices.

It may be assumed that parent and child outcomes will depend upon client acceptance of their situation and client expectation in resolving their divorce or custody matter. Outcomes correlate to client beliefs of whether or not they deserve a child's love and whether the client believes the former partner is a vengeful one. Such perceptions may preclude non-payment of child support; they may also cause pre-emptive and violent behaviors by the threatened partner.

Child outcomes run the gambit of none to extreme. These behaviors are easily manifested but are not often given full consideration by the litigating parties. Most GALs have no training in child development or child psychology, or understand psychological nuance. Yet, they provide the judge or magistrate with recommendations that “they” deem in the child's best interests. Perhaps new pre-

scriptions for GAL qualifications and capacity can be provided by courts or in statutes. Still, this may be a long term solution and the goal is to examine how attorneys might provide protocols for improved Family Law practice and intervention.

The following questions might provide the family attorney with an appropriate context: a) must the attorney control a client's behavior options; b) to what degree might those options be addressed; and c) can a law practice provide client assistance on a cost effective basis? These questions might best be answered after reading more of their client's emotional labyrinth and their children's outcome potential.

CHILDREN AS VICTIMS

Children can become victims since they (1) are usually the least empowered in family change, (2) are easily manipulated by one or both parents, (3) lack the sophistication to understand their emotions and the complexities of divorce, (4) are unable to access the emotional language required to express themselves effectively and (5) are often forced to exercise painful loyalties by choosing one parent over the other.

The loss that children experience when a parent leaves the home and the degree to which a child responds to the loss depends upon how the child perceives the departure. The sudden departure, accompanied by yelling, even physical confrontations or violence might be one scenario. Or, children may experience one parent leaving the marital home

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after a careful and appropriate discussion with the children by both parents. The children may or may not experience reassurance of parental love and periodic return to the home. Or, in some cases, the child believes that he or she is the cause of a parent's departure, the cause of the parents' marriage failure. The parent may have simply vanished with a door slam, leaving behind sudden absence and the fear that the remaining parent might leave in similar style. What the child had witnessed can foretell much of the psychological intervention the child may require for continuing emotional growth.

Pediatrician, F. Terry Brazelton explained (in at a Conference hosted at Quinnipiac University in April, 2000) that families more resistant to change became dysfunctional. Family members begin to act "unusually given their family role and status." He said, too, that the younger the child, the more difficult it was to find the direct cause of the stress that child was responding to. Brazelton spoke of children's denial as a cover-up to family dysfunction. Oftentimes, he said, children mask their fears by misbehaving or joking or even demonstrating perfection through academic excellence. Different behaviors were actually masks to a child's perception of family dysfunction.

It is how stress is managed that contributes to one's satisfaction, wellbeing and productivity. "The criterion is not the good or bad stress, but rather our adaptation to it. The trick is to have stress and our response to it enhance both our performance and ourselves." (Wuelfing, 2002).²

The parents' coping mechanisms may be directly related to the legal matters at hand, including custody decision making. "Conflict between parents after divorce, manifested as verbal and physical aggression, overt hostility and distrust, and the custodial parent's emotional distress are jointly predictive of more problematic adjustment in the child." (Braver, 1996)³ A child's ability to realistically cope with his/her new realities regarding parental separation mitigates deleterious or long-term effects on their personality. Child outcomes, then, rest with custodial coping abilities and non-custodial parental involvement.

The tactical approach to helping these family members with positive outcomes during and post divorce should target meaningful family transitions where social pressures may be reduced or eliminated and family relationships stabilized through custody and child access agreements (parent agreements).

Children are unable to intellectualize the matter of custody assignment. They will emotionally respond with a parent's direction and influence, but

essentially, the child looks for some aid in identifying a liaison for physical and emotional protection.

Many children become victims when courtrooms proceed through a win-lose litigation approach to 'resolving' parental conflict over custody and visitation. Where there is mediation, there is negotiated agreement for these family issues. Mediated agreements have produced more satisfaction among participating parents. Studies prove these "participants are happier and more satisfied, agreements reached in mediation are better kept, and they return to court less often to further contest issues. More important, there is less enduring conflict between the parents." (Braver, 1996)⁴

SOME STATISTICS

Although two thirds of the states have joint custody laws, the legal benchmark aiding court decisions is that of "the children's best interests." According to 1997 data of divorced families, shared parenting (joint custody) awards are the least frequent throughout the US, just 22 percent. Single fathers are awarded sole custody in 15 percent of such awards with mothers awarded sole custody nearly eight times more often (US Census, 1997).⁵ The difficulty a parent has whether father or mother is in accepting a prescribed ration of time for being with their child.

The number of original nuclear families where the parents and children are biologically related has been rapidly decreasing. According to the federal Department of Health and Human Services, approximately 25 percent of all children under the age of 18 do not live with their father, up from 19 percent in 1981 (HHS, 1997).⁶ The greatest change among children's households is that of grandparents who are raising their grandchildren without any parent present, two percent of all children in 1997. This was nearly 50 percent more than the number of similar households in 1980. According to the data, the number of single parents moving in with their parents has been increasing. Single mothers reside with their parents in just under three percent of all households, nearly eight times more frequently than single fathers.

Identity can also be affected during divorce. One author has explained it this way: "One's identity is a symbol reflecting the gamut of life experiences from past, present and future orientations. For example, the internalization of a male's conception of a father begins within his family of origin and continues to be defined in social interaction with significant others and the culture at large. Further refinement of the

definition is made, in the attempt to preserve a specified image, of what significant others are perceived to expect or desire from a person. On occasion, individuals will struggle to maintain an acquired identity perceived as threatened. This is because people strive to maintain a sense of continuity of self. It is during a perceived threat to one's identity that the potential for interpersonal conflict, role distancing, and implosion are most likely to occur between people. Where the self is experiencing transition, as in the case during the divorce process, the potential for a perceived threat to identity and the potential for interpersonal conflict is particularly heightened." (Snow, 2002)⁷

ALIENATING BATTERER

Robert Snow's observations above show how one's low self-esteem can create an *alienating batterer*, in which the emotionally crippled threatened parent turns into an emotionally crippling controller. Why might this occur?

This early model of alienating behavior may help the reader. In 1956, Harry Stack Sullivan identified two basic drives or 'tendencies,' which explain one's perception of the world. As Snow cites, "satisfaction" and "security" are for Sullivan those underlying motivations governing our daily activities. If we visualize these tendencies of satisfaction and security as global and transforming, we find they can absorb and integrate or separate and restrict. For integration to occur, Snow tells us the parts must be complementary. Thus, individuals in a marriage or partnership are expected to be complementary.

When there is conflict present, when there is a threat to security, Sullivan postulated there was a 'dynamism' introduced to the system by the threatened component or individual. This dynamism would be introduced when situations are "perceived as extreme threats to one's definition of self. Failure to adequately deflect these threats weakens the integrity of the self-system and creates a condition for implosion." (Snow, 2002)⁸

Sullivan characterizes the occurring emotional spectrum to include fear, anger, rage, grief, guilt, pride, conceit, envy and jealousy. The alienating batterer is driven by these emotional safeguards of his/her identity when he/she perceives threats beyond his/her own control.

Role Expectations

Why more than 25 percent of parents demonstrate one or more of these alienating dynamisms is clear

when we consider other findings by Snow. He compared mothers' role expectations with fathers' role expectations in 30 interviews with divorced parents.

Mothers' Role Expectations. Mothers believed that they should continue to be most responsible for daily child care activities, the child should be in their custody for the vast majority of the time, and that they should have 'final say' about issues involving their children when she and the other parent disagreed. They indicated that the father should be involved with their children primarily as the financial provider, act as a 'mother's helper', and provide the children with discipline, strong guidance and play. A father's commitment to his children and parental role was judged to be successful by the mother when the father paid his child support on time, without resentment and in full, visited the child at all predetermined times, was willing to purchase other items outside of his support obligation or divorce decree, and if he strictly adhered to parenting agreements.

Fathers' Role Expectations. Fathers believed that they were at least as capable of parenting their children as their former spouses. They believed that both parents should share equally in the responsibility for all aspects of child rearing, including daily child care activities, discipline of the child, decision making, and the financial welfare of the children. They did not believe that mothers had a "special relationship" with their children, that they were more nurturing, or had a higher quality parent-child relationship than fathers. Only one father stated that infants should be with the mother. Fathers believed that mothers were equally important to their children as they were. Fathers measured mothers' commitments to parenting according to their willingness to allow the fathers equal access to the children, share in the decision-making authority, and their not ignoring or renegeing on mutually devise parenting agreements. (Snow, 2002)⁹

Is this a 'he said, she said' argument? Perhaps. But Snow has further identified how gender differences become even more dangerously pronounced

when parents divorce. The dangers in limited and lost contact between the non-residential parent and his children has been stated before, but cannot be understated. Professionals need to supply remedies for both parents in obtaining emotional support and not simply support from their families who easily take sides upon family disentanglement.

There must be social mechanisms which assure each parent of their honored parenting role, of their honored right to continue in the lives of their children and of serving their children's best interests with nurturing, love and acknowledgement.

Says Snow, "Conflict will arise when mothers or fathers have disparate definitions and expectations of how the other parent is to perform their role and if they perceive a threat to, or minimization of, their parental identity. Conflict escalates when parents view themselves as victims, powerless, and acting in the best interest of their child(ren). Conflict is maintained as parents appeal to a higher authority, albeit nature, morality, or the judicial system, and if they are supported within their social support system, i.e., family, friends, Internet, lawyers." (Snow, 2002)¹⁰

Children who are used by one parent as '*chat-tel weaponry*'¹¹ suffer egregious wrongs, according to parental alienation researchers Douglas Darnall, Ph.D. and the late Richard Gardner, M.D.

Gardner, recognized as the oft sensational, but truly most published, research pioneer in the field has identified parental alienation as a deadly process deserving of severe legal punishments of the perpetrator. Courts have been loath to threaten residential parents, notably the mother with house arrest or jail. Yet, argues Gardner, the long term is inherently more dangerous to children than the shorter term accountability threatened and imposed upon the alienating parent.

The Federal Department of Health and Human Services issued a memo in March, 1996 that children suffer when one parent, the father, is absent from their lives. Children most vulnerable suffer social ills including low self-esteem, alcohol, drug abuse, teen pregnancy, juvenile crime and suicide.

It follows, then, that family members and providers of family related services can pave the way for healthier emotional survival of these children when these authorities are vigilant and care about child outcomes. When parents choose not to live together, then these children, their parents, grandparents and extended family will benefit from communal and judicial support. Anyone can heal from injury or illness when support, guidance and treatment are available. When parents elect divorce, statistics

show that education and support is needed to resolve their inner conflicts and external pressures. Information will help achieve successful financial and economic adaptations.

Attorneys should be reminded that children's anger results from their fear of the parent's departure from their home. Children's fear of further abandonment fuels the resentments some may harbor through much of their life. Though these children do not represent the majority of the cases, many children either fault themselves for their parents' breakup or they fault the absent parent for their parents' marriage failure. They fear the failure of their own future relationships.

Jeff Opperman writes in *Counseling Today* that PAS (parental alienation syndrome) is often mistaken as a "typical" malady that accompanies highly conflicted divorces. "Unfortunately, most divorce cases include low, moderate or high levels of PAS activity." (Opperman, 2003)¹²

The significance of this course are the findings that PAS is not an unusual product of disengaging parents; that PAS is seldom dealt with by judges and that court orders for cessation of identified alienating behavior are not enforced. Indeed, Opperman quotes Brian Canfield, President of the International Association of Marriage and Family Counselors, as saying that though PAS is not yet incorporated as a diagnostic category in the DSM-IV, and that therapists must incorporate an awareness of PAS into their training programs." (Opperman, 2003)

WALLERSTEIN OBSERVATIONS

Opperman wrote this after my own discussion with Judith Wallerstein just two years earlier. Wallerstein explained how urgent it was for law students to learn the emotional problems accompanying the divorce process so they would offer effective interventions during heated custody litigation. Wallerstein said that she herself had taught three years at the Boalt Law School at UC Berkeley where she found that "to my dismay, not one had had a single course in psychology. Most had had no course in sociology and here they were going into a tangled web of troubled family relationships." (Wallerstein, 2001)¹³

Wallerstein expressed that a child's alienation was due more to the child's own growth stage, his/her measure of boredom rather than a gross dislike for a parent. Upon reviewing her work, however, I find that Wallerstein's focus was about understand-

ing the trauma experienced by children in their parents' divorce process and in seeking protocols to be implemented in helping reassure children of a comfortable future where both loving parents remain involved in raising the child. She did not focus on the emotional or physical reunification with the non-custodial parent. She faulted Richard Gardner for not making more scientific the study of PAS in order to incorporate it as a "condition" or "syndrome" into the DSM-IV. But she did say that courts kept almost no statistics on the divorce cases in their districts, making it difficult to determine the number and degree of children who might have expressed (through their attorneys) *why* they did not want to see their non-custodial parent. "I don't think the fight for children is always about anger. I think the fight for children is about the parents' *loneliness* and *need for the child or dependence* on the child. I think we've got it all *wrong* with our emphasis on conflict and anger as the governing effect." (Wallerstein, 2001)

Snow found that Wallerstein's perception of PAS was correct - twenty years before when Gardner had first written about it.¹⁴ Guardian Ad Litem (GAL's) today who are frequently charged with the role of recommending to the court what is in the children's best interests "typically represent one parent's wishes with whom they identify or believe they need to protect. Although they may have worked with numerous children, they are not experts in the understanding of child developmental needs." (Snow, 2004)

Snow represents the new school of thinking. Wallerstein was educated during the 1940's and 1950's when the intact family was the norm, when working dads and stay at home moms characterized most middle class, suburban and wealthier families. Current social convention includes two working parents as the norm. Snow attributes initial support of joint custody to the ERA (Equal Rights Amendment) activities and the women's liberation movement. . Yet, today, the National Organization for Women had been loathe to support joint custody.

I related several cases to Wallerstein, including my own case, where the children have stated unequivocally that they did not want to see their non-custodial parent at all. A quid pro quo. She believed that such hard felt convictions were difficult to trace and believed it important that children are told *why* parents have decided to divorce. Without an honest explanation, Wallerstein continued, when adults, these children of divorce will wonder when and why their own relationship may have ended. Their expectation would be that, very simply, the

union ended. The right thing to do is to provide the children a rational reason for the parents' breakup (or marriage breakdown).

Snow also believes that children should be told the parents' intentions, but "Parents should not inform their child(ren) of their intentions until they have a detailed and firm commitment to a parenting plan. That way, they present a united front and children are not hit with constant change and upset." (Snow, 2004)

Interesting Contrast

These two interviewees are interesting contrasts. Both believe in the damage that can occur to children. Both believe in the continuing responsibilities that parents have in raising their children, both emotionally and financially. But both approach the acknowledgement of and interventions for alienating behaviors quite differently. Wallerstein refuses to identify PAS as a culpable source of problems for children, whereas Snow diagnoses its presence and introduces protocols for preventing further erosion of child-parent relationships. It is significant to note that Snow finds PAS appears years before the parents' divorce.

Often times, children afflicted by stress exhibit ADHD (attention deficit hyperactivity disorder) symptoms and are diagnosed for this condition. They are then medicated with this condition. That ADHD is associated with stress means that children are inappropriately medicated. "In a difficult divorce, an ADHD diagnosis of a child or children should be closely examined. What may appear to be a contributing factor to the divorce may actually represent something else; behaviors that are the symptoms of the trauma of family conflicts." (Garber, 2001)¹⁵

A children's view of the world is shaped by interactions with their parents, siblings, extended family as well as the general character of their home life, their observations and interpretations or analysis of their experiences. Children can be manipulated, their thoughts molded and their feelings easily hurt. Children are frequently more vulnerable than adults because they don't easily understand their feelings, nor can they account for their reactions to changes in their lives and lifestyles.

COMMON THREADS

Much of the research share a common thread of predicting child behavior in responses to parents'

divorce and children's ages. Kelly and Wallerstein who have worked with children for more than fifty years combined examine this "thread." Young children "tended to show intense anger, which while it may have defended against great sadness or depression, served more to galvanize them into activities that appeared to ease the divorce distress." (Kelly and Wallerstein, 1977)¹⁶ Furthermore, they stated that the "intense alignment between some of the older children and one of their parents, combined with hostile, open exclusion of the other parent, seemed to be a coping strategy specific to some children of divorce." (Kelly and Wallerstein, 1977)

Research and parent education curricula stress that information shared with children be age appropriate. "When working with children of divorce, it is important to build their personal confidence, self-esteem, and coping strategies. Assisting children in establishing a consistent support system will also be essential to their adjustment." (Melnik and Alpert-Gillis, 1998)¹⁷

Upon the conclusion of my interview with her in 2001, Wallerstein said, "It's very sad, what is happening in America."

Says Snow, "Divorce is not traumatic. The sequelae can be." (Snow, 2001)

Perhaps Garber expresses the greatest considerations that need be recalled in any divorce litigation. "Don't believe those highly educated, socially sophisticated parents who tell you they've kept the kids out of it. They may, indeed, have saved their children from the pain of outright alienation, abandonment and violence, but the kids still feel it. Sometimes the silence is even louder than screaming." (Garber, 2001)

GENDER BIAS

Gender bias or perceived bias adds more fear to the litigant. A study by Braver shows that often the legal advice given by attorneys is indicative of their own expectations of gender bias in judicial decisions. "Attorneys' views of the bias in the system can become a self-fulfilling prophecy, even when results show that judges are not as biased as believed. Thus, a gender bias against males in custody cases may well be operating *de facto* in the law. This finding also can help explain the disparity between the views attributed to the various players. Judges (and to a slightly lesser extent custody evaluators and mediators) can continue to think the system is largely unbiased, because the cases that come before them are so filtered and strained that

they can maintain this view for the cases in which they are actually called upon to administer." (Braver, Cookston, and Cohen 2001)¹⁸

INTERVENTIONS

For most litigants in divorce and custody, their court experiences will be new and unsure. They haven't a roadmap to navigate the process, but instead put their trust in the hands of their appointed attorney. Regardless of education and/or income levels, these individuals are afraid. They are afraid of losing time with their children. They are afraid of a new living situation, perhaps characterized by a return to the homes of their own parents or a couch in a friend's home. They fear living on less income due to child support orders and no longer with reliance on a dual income household. Therefore, clients need to be educated as to the process and why their adult decision to break up the marital or love relationship invites intrusive court and psychological investigations. Among the questions the attorney should include are: are there other children outside this marriage or partnership? Was the client married before? How long? What is the relationship with the other children and ex? Answers to these questions may indicate continuing problems in maintaining relationships. Therefore, the client might benefit from psychotherapy to help make better decisions for themselves. Client intake can lead to appropriate professional referrals. Intake should ask about educational background as well as employment and earnings history. Questions about hobbies can even provide suggestions for potential income sources. Health and diet history might be indicators of current physical and emotional stress and the client's ability to cope. The client should also indicate current medical treatments for physical and emotional conditions.

The attorney might suggest that the client visit a physician for a complete physical which may identify physical and emotional reactions to their legal transitions. Perhaps the attorney might distribute a brochure of different health resources available in the community, both mental and physical, including preventative options. This brochure and a five minute discussion might be useful. There should also be a recommended listing of instructional videos and books available. Resources are not only available in traditional libraries and retail stores, but increasingly online resources provide more and more material as well as support for parents. Recommended resources should be available for clients, as well as

extended family members. For example, it is not only the parents and children who must adapt to divorce decisions, but grandparents who may feel equally as helpless as the children. They may feel as victimized as the children for they have no say or rights in most divorce or child access decisions. The national Children's Rights Council, www.crckids.org provides advocacy, referrals to state resources, web based links, published resources and direction to support groups.

Yet, the most important effort that family law practitioners can maintain is the constant awareness that their actions will always affect their clients and numerous others. Whatever they choose to do in or outside court on behalf of a client case may impact the choices that their clients and their client's children make in this transition process. Such choices may also impact related family members.

Local bar associations and family law sections should meet regularly to discuss how to improve resolving family issues. This may lead to better payments for service and compliance with child support payments. When litigants are happy, when parents continue to actively parent their children, they will pay their legal fees and their child support with more regularity, and with appreciation.

Attorneys individually or through association affiliations may want to support improvement of court waiting rooms. Instead of lengthy or wide open hallways with limited and uncomfortable seating, court houses may seek to change their austere interiors with a more welcoming environment. Seating offering public comfort and personal privacy will allow litigants energy and opportunity to relax and meet with their attorney. Rather than fostering an impersonal 'herdlike' atmosphere, more physical comfort may help instill more readied acceptance of the emotionally challenging and intrusive process ahead.

As important as the initial client intake is for the client-attorney relationship, so is regular – say, monthly – intake. Client feedback provides the attorney opportunity to further monitor the client's reaction to the legal process and the continuing personal changes brought by separation and child access. Sample questions might include:

- How many hours of sleep does the client average?
- Is the client frequently lost in thought while working?
- Can the client write out a menu of meals eaten in the last several days?

- What has been the frequency, length and type of contact with the children?
- What has been the frequency, length and type of contact with the former spouse, partner?
- What recreational activities is the client engaged in?
- Is the client looking for work?
- Is the client concerned about income now? Later?

Continuing dialogue between the client and the attorney is very important. This dialogue will assure the client of the attorney's genuine concern for their well-being in and out of court. It serves to empower the client with a respect that he or she has lost during and subsequent to the divorce proceedings. Such communication should contribute to the overall relationship. A Family Law practice should design a system that allows for client contact, either initiated by the client or the attorney. Such a system should be explained at the initial meeting with the client including when the attorney may be available for direct conversation or when the phone calls might be returned (i.e., within 24 hours). If faxes or emails are preferable, those facts should be explained. Importantly, a client needs to know how they can expect to be treated by the practice. The client will benefit knowing the communication options and thereby maintain a higher self-esteem. The practice will benefit since it has clarified its operational parameters and provided the client their role within these operations.

REFERENCES

Online resources and book list available from the author. Programs for court, school and community available from the author. "Preserving Family Ties When Parents Choose to Separate, A Guide for Family Healing" also available. Write Mark Roseman, Children's Rights Council, P.O. Box 63, Quaker Hill, CT 06375 or email crnat@aol.com.

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