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The Psychology Of Divorce

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by *Donald T. Saposnek, Ph.D. & Chip Rose, JD, CFLS*

March 2004

INTRODUCTION

In helping couples to successfully negotiate the ending of their marital relationship, it is vital for the divorce professional to understand the underlying dynamics of the family as a system and of the divorce process; the professional must grasp how the divorce crisis influences and is influenced by both family

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structure and family process. Viewing the family as a system allows one to conceptualize events that might seem irrational and disparate within a framework that gives meaning and sense to these events. Indeed, the family going through divorce does not break up, but rather is restructured and reorganized. As Ahrons and Rodgers (1987) point out "[W]hile marriages may be discontinued, families-especially those in which there are children -continue after marital disruption...They do so with the focus on the two ex-spouse parents now located in separate households-two nuclei to which children and parents alike, as well as others, must relate." Ahrons coined the term "binuclear family" to describe this modal form of postdivorce family structure.

FAMILY SYSTEMS THEORY

Early etiological theories of child and marital problems assumed unidirectional cause-effect relationships. That is, it was always presumed that dysfunctional marital relationships caused dysfunctional behavior patterns in children. Children with behavioral or emotional problems were viewed as innocent victims of a "bad" parent or of a "bad" relationship between the parents. Theory and therapy focused largely on identifying and treating the dysfunctional parent or parents, in order to relieve the child of the emotional distress. In the past 20 years, however, family systems theorists and therapists have demonstrated unmistakably the circular nature of causality in family interactions (Saposnek, 1983a). In this view, "the family is conceptualized as a cybernetic system in which the actions of each member influence the actions of each other member reciprocally (Saposnek, 1983b, p. xv.). So, the child can create marital dysfunction as easily and commonly as the parents create dysfunction within the child. Collusion between a child and a parent can create dysfunction within the other parent or within a sibling, or a dysfunctional relationship between two siblings can create dysfunction within a parent, which can subsequently create marital dysfunction, and so forth. For example, imagine a household in which a 10-year-old child, Bobby, gradually stops doing his school work (perhaps

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because of an overly critical teacher whose impact on Bobby is largely out of Bobby's conscious awareness). This gets Bobby's mother and father to argue over how to discipline him. Father wants to spank Bobby, and Mother wants to support and understand Bobby. Mother and Father's arguments begin to upset Bobby's 14-year-old brother, who, in response, begins to pick on their little sister, who cries and complains to Mother. Mother responds by coddling and comforting the sister, making Father angrier. In response, Father gets harsher and more punitive with Bobby, who, in turn, produces even less school work, and so forth. Indeed, all inter-active combinations within a family can create dysfunction within anyone else in the family system. Moreover, while the source of the original distress is frequently intra-familial, it can also be extra-familial, when, for example, a child is influenced by a neighbor child or a teacher, or when a parent is influenced by an employ or a relative.

This systems view has gradually replaced the traditional linear view of causality and it is particularly appropriate and useful in understanding the divorce process and the dynamics in child custody disputes, when escalation of the family system's dysfunction by the legal system's procedures is all too often the case the disputing families.

THE PROCESS OF DIVORCE

While a legal divorce is an event, occurring when a judge signs a marital dissolution decree, an emotional divorce is best viewed as a process that occurs minimally over several years and maximally over the course of a lifetime. Typically, the divorce process begins several years before the actual date of separation, when one of the spouses begins to experience a predictable set of feelings, which may include disillusionment, dissatisfaction, anxiety, and alienation. The divorce literature generally suggests that in 75 to 90 percent of all contemporary divorces, one spouse wants out of the marriage while the other does not (Ahrons, 1981; Kaslow & Schwartz, 1987; Kelly, 1982; Kressel,

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1985; Wallerstein & Kelly, 1980), with women more often initiating the divorce (Kelly, 1982). This nonmutuality of the decision to divorce has major implications for the process of divorce. Since the leaving spouse begins the emotional process several years before the left spouse, by the time there is a legal filing for divorce, one spouse is ready to proceed at a time when the other may have just found out that there is going to be a physical separation. Thus, the left spouse may only begin the emotional process of divorce on that day, creating a significant discrepancy in their respective stages of the emotional divorce by the time they reach the office of an attorney. This may partially explain the general finding that about 50 percent of persons who file for divorce wind up withdrawing their request and reconciling (Ahrons & Rodgers, 1987; Haynes, 1981). The implications of this discrepancy for both legal and mental health divorce professionals is most easily seen in the discrepancies between the emotional states expressed by each spouse and in the different tactics and strategies that each use in the negotiations leading to (or, as the case may be, not leading to) a marital settlement agreement. A consideration of the stages and emotions within each stage manifested by divorcing persons will help to put into context the nature of the divorce crisis.

Most divorce researchers conceptualize the divorce process as a series of developmental stages through which the divorcing families proceed (Ahrons & Rodgers, 1987; Bohannan, 1970; Federico, 1979; Kaslow, 1984; Kaslow & Schwartz, 1987; Kessler, 1975; Weiss, 1975). While the stages are generally considered linear, they are not invariant. That is, a couple can skip a stage and go through it at a later point. Or, a couple might maintain characteristic feelings and behaviors of two stages at the same time. Also, the intensity with which a given couple goes through these stages may vary and is primarily a function of the degree of ambivalence to divorce shared by the couple. These stages in these models have similar characteristic structure.

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During this stage, which takes place before separation is even contemplated, one of the spouses (more often, the wife) typically is experiencing feelings of dissatisfaction, alienation, loneliness, and despair. She engages in a long period (up to several years) of deliberation regarding how to resolve the uncomfortable feelings about her marital relationship. Typically, she attempts a variety of ways to cope with these feelings before the decision to separate and/or divorce is reached. These coping attempts may include getting angry at, confronting, and quarreling with her spouse in hopes of provoking him to change; sulking and crying; withdrawing from her spouse as a way to avoid experiencing the pain of noncommunication; escaping into work or into excessive time with friends; extra-marital affairs; drugs or alcohol; or, in extreme cases, physical abuse. If none of these tactics works and her husband will not go for counseling, or if counseling is ineffective for relieving these feelings of despair and she is unable or unwilling to accept the status quo within the marriage, she may decide to divorce. It is then that a point of inevitability is often reached, a point when the wife has emotionally removed herself from the marriage. Having no other alternatives, she announces that she wants a separation. This declaration triggers the first significant emotional reaction in her husband, who initially may respond with denial, but also may pull back emotionally for self-protection.

After denial fails to work as a way of coping with this announcement, the husband begins to experience feelings of anguish, shock, chaos, and disbelief. He may at first pretend that everything is okay even though he is rebuffed consistently by his wife. His denial may elicit angry outbursts, alternating with pleading, questioning, and confusion, as he tries to gain some sense of control over what is happening to him. During this period, he may begin to ask friends and family for advice on what to do to win her back. He also may call therapists and try to schedule appointments to have a professional convince her not to leave the marriage. Typically, he frames her actions as a temporary upset (or insanity), a mid-life crisis, or a giving up too easily, without allowing him a chance to prove himself. If these rationalizations do not work, he may try

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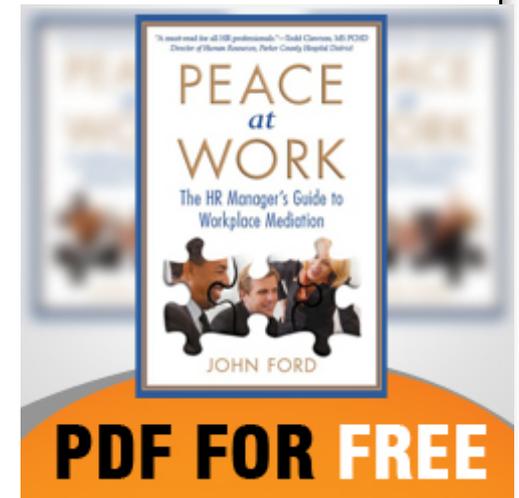
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admitting to all of his "failings" and agree to have extensive individual and couples counseling. He may agree to rehabilitate his ways, for as long as it takes to convince her that he wants her back. However, the wife typically says that it is already too late. With the husband not understanding that, emotionally, she had made her decision some time back, counseling efforts at this point are mostly ritual and face-saving ways for her to let him down easy. If the husband is having a particularly difficult time accepting the divorce decision, the wife often asks the therapist to treat him alone to help him with this crisis. The tactical nature of the husband's bid for therapy becomes most apparent when, after committing himself to extensive therapy, he drops out after a session or two, realizing that the ploy to change himself did not succeed in getting his wife back into the marriage.

Feeling hopeless and helpless, the husband may begin to make threats to keep the children from his wife, to give no financial support, and to keep the house, the business, and all his assets from her. He may further try to intimidate her with an admonishment that she will not be able to survive financially without him. When these threats do not work, his self-pity may lead him to the point that he threatens or attempts suicide. His attempt is usually done in a clearly manipulative manner, by arranging for someone (typically the wife) to be conveniently aware of his actions, so that he does not really risk harm to his life, but merely makes a strong and compelling statement of desperation. Although his panicky feelings may be genuinely strong, his survival instinct is stronger.

ANGER

It is important to note that anger, as manifested in threats of all kinds, is most often a secondary emotion. That is, it is a feeling that covers up more primary feelings of hurt, fear, humiliation, loss, abandonment, and powerlessness. Without knowing this fact, it is easy for professionals involved in divorce disputes to view the husband's threats as evidence of his violent tendencies,



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rather than as understandable reactions to a multitude of primary feelings that he may be experiencing. Moreover, anger can also serve a functional use of protecting the self from the severe psychological trauma of separation from a mate. (Divorce and marital separation are considered, respectively, to be the second and third major life stressors, following only the death of a spouse, on the list of 43 stressful life events included on the Social Readjustment Rating Scale (Holmes & Rahe, 1967). If a rejected spouse cannot re-establish the partner's love, at least he can cause that ex-partner enough pain so as not to be completely ignored or forgotten (Kessler, 1975).

LEGAL DIVORCE OR LITIGATION STAGE

When none of the above actions resolves his helplessness and confusion, the husband may consult an attorney. His decision to do so may be either in response to his wife's having filed for divorce, or it may be an offensive move with the intention to file before his wife does. It should be noted that the leaver of a marriage is not always the one who files for divorce. Often, the one who is left files in order to retain a sense of control over the emotional chaos experienced, or as a final attempt to force the other spouse to regain her senses by confronting her with the logical conclusion to the series of emotionally detaching behaviors, or, finally, as a retaliation move out of anger-- a version of, "You can't fire me because I quit!" It is at this point that the stage of litigation for a legal divorce begins. In this stage, the various divorce professionals first have contact with the divorcing couple. These professionals may include attorneys, accountants, real estate appraisers, therapists, mediators, evaluators, and judges.

During the period following physical separation and the filing for a legal divorce, the wife may experience a variety of feelings. These may include relief, confusion, loneliness, and sadness. Ambivalence about the separation may cause her to vacillate between these and other feelings. One feeling which

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arises from and creates even more ambivalence is guilt. This guilt usually is hooked up to the degree of hurt manifested or portrayed by the husband. Guilt in one partner and hurt in another function together as a yoked system. As one feeling increases, the other does as well. And, as one decreases, so does the other. Guilt in the wife may derive from her worry about breaking up the family, about leaving her husband in misery and depression, about his ability to survive emotionally without her, about damaging the children's psychological well-being, and so forth. This guilt will increase as her husband displays expressions of vulnerability, sadness, and daily dysfunction. She may seriously question her decision to leave and may even consider reuniting, just to ease his pain and her loneliness. During settlement negotiations, she may ask to waive her rights to a fair property division and support plan, and she may even give up custody of the children in her efforts to assuage her guilt. Guilt, being a very powerful motivator of human behavior, can lead to self-induced disempowerment, and it must be relieved, with the assistance of an appropriate mental health professional, if necessary, before negotiations should proceed. Otherwise, she will surely feel resentful and disenfranchised at some point later in the divorce process.

If, however, the husband's reaction to the separation consists of anger, bitterness, and vindictiveness, her guilt usually will be pushed aside by defensiveness, withdrawal, and detachment. Moreover, she may cast him as an aggressive and perhaps violent person, who is potentially dangerous to the children, and with whom she clearly will never reunite. Moreover, she may resist and retaliate against his angry escalations through her attorney. She may make unreasonable demands for support, for property division, and for sole custody of the children with restricted visitation with their father. When such unreasonable demands are made, the professional should take note and assist her in ways to understand what she may be reacting to so that productive negotiations will not break down.

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ECONOMIC CONCERNS

A central concern of both parties during the litigation stage is their economic survival. For most couples, the expense involved in dividing one household into two is considerable. At first, it may seem unfathomable to the parties that they will be able to survive while maintaining two households. This uncertainty may evoke strong feelings of ambivalence, confusion, self-doubt, resentment, and frustration within both parties. Then, when attorneys begin making offers back and forth (which typically are positioned strongly for tactical purposes), these feelings escalate to an even greater intensity. While many couples are able to proceed through these negotiations with relative equanimity, it is not uncommon for couples who have always been rather pleasant to each other to begin to act quite viciously toward each other. Partly, this behavior derives from the exaggerated positions taken by attorneys for bargaining leverage, and partly, it derives from the powerlessness and helplessness felt when negotiations are being conducted out of the control (and frequently out of the comprehension) of the parties. Mediation as an alternative settlement method has many advantages over litigious attorney negotiations, the least of which is to empower the parties to negotiate directly and constructively and to allow each party to experience a feeling of control over the legal process of the divorce.

CUSTODY CONCERNS

About 60 percent of divorcing couples have minor children (Ahrons & Rodgers, 1987). Of these, approximately 85 to 90 percent are able to work out their custody arrangements either between themselves or with the assistance of their attorneys. However, 10 to 15 percent of these couples are unable to agree on a custody plan. Following California's 1981 legislative mandate for mediation in child custody disputes, there is an increasing trend for states (or local jurisdictions within them) to offer mediation services to disputing couples. And,

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indeed, mediation is successful in well over 50 to 75 percent of these cases. However, in a minority of these cases, mediation is unsuccessful, and the couple proceeds to litigate its custody dispute. Such litigation has appropriately been called "the ugliest litigation" (Goldzband, 1985). It is filled with emotional rancor, allegations, distortions of personalities and of life events, and an intense bitterness which serves to enhance the acrimony between the parents and to create what current research demonstrates is the single most destructive influence on children of divorce--parental conflict. Since there is a winner and a loser, the loser typically retaliates by either sabotaging the court order or reopening the court case at the first appearance of another child-related dispute. Repeated litigation is the common course of such disputes. It is not uncommon for these parents to return to court anywhere from several to 25 times in a single year!

NEGATIVE RECONSTRUCTION OF SPOUSAL IDENTITY

There are two intriguing phenomena which, in varying degrees, may occur during the litigation stage of divorce. One has been termed the "negative reconstruction of spousal identity" (Johnston & Campbell, 1988). This phenomenon is characterized by the tendency of one spouse to cast the other in a vilified image, for example, "He's a weak, violent drunk," or, "She's a two-faced, selfish, pathological liar who can't ever be trusted." These intensely negative, polarized characterizations that high conflict divorcing couples make of each other become reified and immutable over time. The spouse, in essence, rewrites marital history and selectively perceives only the events over the years that fit with the present negative characterization. Hence, it is as if the spouse creates a profound insight (albeit twisted and distorted) which is then rationalized and supported as if it were true. In explaining the underlying dynamics, Johnston and Campbell (p. 62) write:

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"Our clinical experience leads us to conclude that the actual experience of separation for some couples was the crucible in which these negative views of each other are brewed and crystallized. Couples who experience particularly traumatic separations are prime candidates for generating negative images. Perceived experiences of being suddenly and unexpectedly left; abandoned after secret plotting and planning; left after a secret love affair with another person; left after uncharacteristic, explosive violence--all are separation modes that are typically traumatic and involve inordinate degrees of humiliation, anger, defeat, guilt, and fear, thus setting the stage for what is to come. A radical reconstruction of the identity of the ex-spouse can occur at the time of a traumatic separation. The desperate reactions and counter-reactions to the crisis are likely to crystallize new negative views of each other which subsequently become autonomous of these origins"

These negative images are frequently enhanced and supported by the helping professionals (therapists as well as attorneys) as they try to offer support to their distraught client, only to get inducted into the conflict. This leads to the second intriguing phenomenon, "tribal warfare."

UNHOLY ALLIANCES AND TRIBAL WARFARE.

In the process of developing a position during a conflictual divorce, a spouse typically is surrounded by an increasing cadre of supporters. These are friends, relatives, and professionals who, after hearing only one side of the dispute in vivid, distorted, and compelling detail, rally to that spouse's side. Viewing that spouse as victimized by the other spouse, they seek to right a wrong and protect the spouse from being further victimized. Johnston and Campbell (p. 25) elaborate on this dynamic:

"The total effect is that, in the absence of socially-agreed-upon customs and etiquette for organizing postdivorce relationships and dealing with conflicts of



interest, there is considerable ambiguity. Consequently, the social networks of the spouses are incorporated into the dispute and the dispute is solidified, maintained, and stabilized by the support of others. New partners, extended family and kin, mental health professionals, and lawyers fuel the fights and in some instances take on the dispute as their own. As the conflict escalates and spreads, the primary players may not be the two divorcing partners but all these others who are not party to the stipulations, court order, or legal sanctions."

This support by the associates of each of the spouses takes on the complexion of tribal warfare, with parallels to the ways that we stereotypically imagine primitive villagers dealing with their conflicts. The sides are drawn, the supporters are garnered, and war is declared. Unfortunately, the toll taken on the children in this insidiously dysfunctional social process is legend (Wallerstein & Kelly, 1980; Wallerstein & Blakeslee, 1989). Researchers and clinicians for years have interviewed and counseled countless adults who recall vivid childhood memories of their parents' conflictual divorce experience as a living hell of divided loyalties, forced court-ordered examinations, pressure to take sides, and the absence of any sense of security, safety, trust, or sanity.

TRANSITION STAGE

During this period, which overlaps with the litigation stage and typically ranges for about one to two years after the separation, the spouses experience feelings of chaos and irrationality. It has been described by one author as "crazy time" (Trafford, 1984), and by another as a time of "nuttiness" (Haynes, 1981). Spouses feel out of control of the many irrational behaviors in which they find themselves engaging; they do things that they have never done before and that they likely never will again; and their feelings swirl around as if on a roller coaster. They feel unusual pressure, insecurity, and mild to severe panic. These feelings derive from no longer having any sense of security that comes from

being part of a stable couple and family. Some feel panicky about being alone often for the very first time in their lives. They must find a way to accept their new identity as single persons and define themselves in relationship to the self rather than to a couple. Haynes (1981) aptly points out that during this stage, the helping professionals must repeat ideas frequently, since their clients' stress interferes with their ability to focus and grasp ideas the first time presented. While spouses may feel like they are going crazy, this feeling does pass as they progress through this stage. Reassurance of this fact by the professional is most helpful at this point in the process of divorce.

As the divorce becomes finalized and the chaos begins to settle down (unless no truce was called to the tribal warfare), the spouses enter the next stage in the divorce process, the postdivorce stage.

POSTDIVORCE STAGE

The stage following the divorce is one of exploration, redirection, and reequilibration. It is a time of making independent choices, based on a single life. If the divorce was settled successfully, feelings of optimism, self-confidence, independence, and acceptance may abound. A spouse may re-enter the world of work or perhaps take a new job and may begin reaching out to new friends, engage in new activities and interests, and begin to seek out a new love relationship. Helping the children to accept the divorce and to stabilize their relationship with both parents is an important task of this period. The spouse begins to master tasks which historically were left to the mate to do, which may include balancing the checkbook, changing light bulbs, washing the dishes, and vacuuming the carpets. He or she begins to feel more financially secure and starts to rearrange priorities to fit into the realities of postdivorce financial limitations. Sexual behavior becomes normalized, and the person no longer experiences the hypersexuality or hyposexuality that is characteristic of the transition stage. Moreover, fantasies about sex with the ex-partner are no

longer experienced on a regular basis. There are no longer overreactions to "trigger" items (i.e., articles of furniture, photographs, verbal expressions, memorable locations) that are reminders of the marriage. A new set of life experiences begins to accumulate that is unrelated to the ex-spouse and that provides independent pleasure and meaning.

Of course, the feelings during this stage are not always positive. Even if the divorce is successful, negative feelings may still surface from time to time. Feelings of self-doubt, of indecisiveness, of fear, and of loneliness still are present. Contact with the ex-spouse regarding sharing of the children may regularly bring up old bitter feelings, as, paradoxically, there is continued need for the parents to work together for the children even though they are apart as mates. If, for the most part, the divorce provides the intended relief, the spouses can move through the divorce process into a new stage in their lives with all the options open to them that their interests, skills, and opportunities provide.

GETTING STUCK

For some, the divorce does not solve the problem of unhappiness and dissatisfaction within the marriage. Leaving the marriage brings similar or increased frustration, pain, and unhappiness. These feelings may occur as the person, living as a single, experiences deep loneliness and despair, or, as a remarried person, finds that the next marriage or marriages simply recreate the problems in the original one, with all the frustration, alienation, and anguish still present.

Some spouses who are left after the mate chooses divorce never regain their composure. They sink into a chronic state of depression, laden with feelings of self-pity, worthlessness, and anxiety. They feel permanently burned or afflicted with a broken heart, and they withdraw from most social contacts. They may

become chronically physically ill, alcoholic, drug dependent, or suicidal. They may become chronically debilitated psychiatric patients. They may no longer have the capacity to function as adequate parent figures because of their depression. In some cases, unfortunately, they discontinue contact with their children because such contact all too painfully reminds them of the lost marriage. These persons have popularly and validly been labeled "divorce flame-outs," having indeed lost their spark for life.

Although the vast majority of divorcing couples somehow manages to get through these various stages, there is a small proportion that gets stuck in the process and fails to maneuver through the stages. Typically, these couples lodge in the transition stage and never get through it. These are the inveterate litigators. They will not detach from each other, but, as enemies, maintain "negative intimacy" (Ricci, 1980) and are the scourge of family courts everywhere.

PSYCHOLOGICAL INFLUENCES ON THE LEGAL DIVORCE PROCESS

Most of the interface between the divorcing couple and the helping professionals takes place during the legal divorce or litigation stage. It is during this period that the spouses contact attorneys and proceed, together, through the legal process. A number of psychological factors have major impact on the nature and quality of this process.

SPOUSAL DIFFERENCES IN RATE OF EMOTIONAL DIVORCE

One of the most important factors is the different rate at which each spouse moves through the stages of divorce. Typically, as discussed in earlier in this chapter, one spouse is much further along in the process. When this spouse retains an attorney, there is a hope that the attorney will be able to speedily move the case through the pragmatic issues which stand in the way of the future. In spite of the reality that the other spouse may need time to process

the emotional impact of the decision to divorce, the attorney typically responds to the demands of the client and turns up the procedural heat by filing pleadings, serving interrogatories, requesting production of documents, requesting the setting of trial dates, subpoenaing records, noticing depositions, and utilizing other procedural devices available to move the action toward judicial resolution. The responding spouse generally meets this pressure with resistance and, consciously or unconsciously, does everything possible to frustrate the process and delay the inevitable. The net result is a tremendous waste of time, resources, and emotions. Alternatively, with knowledge of the differential pace through the divorce process, the attorney can encourage the client to allow the responding party some time to come to terms with the emotional realities of the divorce. This simple action can often result in substantial progress being made, as the responding party begins to let go of the relationship and accept the necessity of obtaining information and making good decisions about the issues which need to be resolved. The suggested appeal for patience need not depend on the client's compassion for the emotional plight of the spouse. A stronger motivating factor may be the financial cost-effectiveness of moving ahead with genuine progress when the obstacles are withdrawn.

ANXIETY

Another factor which heavily contributes to the quality of the negotiations is the degree of anxiety and fear manifested by the parties. It is common for each spouse to have anxieties about the unknown throughout the complex and ambiguous process of divorce and to fear the partner. As discussed above, anger is most often a secondary emotion, covering up fears and insecurities. However, not knowing this fact, each spouse tends to perceive the other's anger as real threat, rather than as an expression of insecurity. They each subsequently believe that they need attorneys to protect them from the spouse. The irony is that each spouse is seeking protection from the other. Each side retreats from the other and develops a siege mentality. As they feel less and

less in control of the forces and issues in their lives, they move deeper and deeper into a legal process which, by its nature and design, moves them further away from that very control. The net result is increased anxiety in a self-perpetuating, destructive, and downward cycle.

SHIFTS IN ROLE EXPECTATIONS

Fair division of assets often requires spouses to radically shift their perceptions of marital roles and entitlements from those which feel familiar to those which feel foreign and unfair. For example, a husband who has been the breadwinner may become possessive about the assets which he has accumulated and now sees being divided in a manner that seems wholly inequitable. The wife, who has been fulfilling the role of homemaker and mother, may feel totally unprepared to make decisions regarding the division of basic assets of the marriage. The husband, after expressing a commitment to support his children, has his attorney describe to him his support obligations under the law. On hearing just what these are, he feels resentful about being shackled to an obligation to support a spouse who appears to him to be unwilling to contribute to the financial needs of the family in a meaningful way. The wife realizes that she can no longer count on the support of the breadwinning spouse and wrestles with the emotional paradox of needing support and resenting her dependency on it at the same time. Depending on her age and parenting status, she looks to an uncertain future which requires her to enter the job market and perhaps develop a career in order to enhance her future earning capabilities. This new responsibility may conflict with the commitment she has made to being home for her family as the children grow up. She sees her husband proceeding without interruption in his career development, a process which will continue to be financially rewarding for him. The husband, on the other hand, sees the majority of his net income being turned over to a family unit in which he no longer has the right to participate in any meaningful fashion, since he has been assigned the role of weekend parent. These dilemmas which confront

divorcing couples are among the most frustrating and painful in the divorce process.

THE LEAVER AND THE LEFT

The psychological mindset of the moving party to end the relationship can be profoundly different from that of the responding party, who does not want the relationship to end. Consider, for example, the following scenario: Two couples live on the same street in the same housing development. The husbands both work at the same company, and both their wives are mothers and homemakers caring for two children. With one couple, the husband has told his wife that he wants a divorce, and he reveals to her for the first time that he has another woman in his life. With the second couple, the husband is told by his wife that she is no longer happy in the marriage and that she wishes to get a divorce, go back to school, and start a new career. In a state with no-fault divorce, such as California, with all else being equal, both husbands will be ordered to pay the same amount of child and spousal support and, most likely, both husbands will leave the family residence and obtain new living quarters. With the first couple, this will be done by desire; with the second couple, this will be done by demand. Although the laws of support will be applied with blind equality to each of the husband breadwinners, the leaver will most likely experience the support obligation as a balm to his guilt at leaving the family, and the husband who is left will suffer that identical order as a monthly dose of salt in his gaping emotional wound.

TRUST

The breakdown of trust in a divorce starts as a small crack, expands as an ever-widening fissure on the marital landscape, and becomes a canyon of disbelief between the spouses which cannot be bridged. In this psychological state, the parties are expected to make monumental decisions affecting all that they hold

dear. And within this state of affairs, the professional practitioners representing these parties must have their trust in order to work most effectively with and on behalf of the client.

However, the traditional legal divorce proceedings themselves generate a climate of distrust. For example, it is commonplace in a divorce proceeding to avoid an actual trial by settling the case on the courthouse steps or in the courthouse coffee shop at the eleventh hour. In these circumstances, the client often feels as if he were in an emotional pressure cooker created by a number of converging forces. These may include the reality of the divorce date's arrival; the intimidation of the courtroom, the lawyers, and the judge; the feeling of powerlessness at the loss of control; and the feeling of panic at having to make agreements on major issues or else face the judge's decision at trial. At a time when the loss of trust between the parties reaches its nadir, they are made to confront each other and negotiate or to cast their fates to the judicial winds.

It is extremely important for the attorney to prevent a client from later feeling betrayed by his own ignorance of the issues being negotiated. By regularly assessing the client's mental and emotional state throughout the proceedings, the attorney can make certain that the client is capable of giving knowing consent to the issues and to the process. Because trust is so necessary for providing full service to a client, it is the obligation of the attorney to be more than an advocate for the client. Given the volatile emotional state of the client, it is the duty of the practitioner to go beyond the mere function of representation and to counsel, advise, support, comfort, chide, and encourage the client. Doing so early in the proceedings can ensure the attorney of the much needed trust.

SPECIFIC RAMIFICATIONS OF PSYCHOLOGICAL FACTORS CRITICAL DECISIONS TO MAKE

Throughout the divorce process, each and every step which the client takes will have a psychological source or consequence to it. Even the decision to seek the advice or representation of counsel involves more than simply locating a skilled attorney. Depending on need, the client may make a conscious decision to choose a male or female attorney, an aggressive attorney, a strong attorney, or a friendly attorney, on the assumptions that these are the most important qualities that are needed and that these qualities will make a difference. An appropriate function of the attorney at this stage of the proceeding is to suggest to the client those qualities which may serve her better; for example, thoroughness, competence, experience, and judgment.

Each spouse will both influence and be influenced by the many necessary and critical decisions of the other. Considerations such as "Should I file papers with the court?" and "Do I act unilaterally?" and "Should I begin to gather documents?" can have profound interactional implications. For example, an attorney may routinely suggest obtaining a restraining order to freeze cash assets in a bank account without giving proper consideration to the very real fear that might be experienced by the wife who has never gone against the wishes of her husband. Or, in another common scenario, a wife-client may be unaware that the boilerplate wording on the restraining order (frequently a preprinted form which serves to warn her husband that he is not to continue to contact her on the phone) will also order him not to molest, attack, batter, and/or sexually assault her. Should the attorney advise her to wait to file such an order until her husband has hired an attorney who can explain the standard use of these types of orders? Indeed, the husband may have a significant emotional reaction to the insinuation that he has manifested, or is likely to manifest, any of these behaviors.

After the initial stage of the legal process, the more significant substantive decisions must be reckoned with. Although the attorney organizes the issues which confront the client, the client may still see only chaos and disorder.

Because of the necessity for the client to become informed about the choices which must be made, the timing of this phase ideally should coincide with the individual's emotional progress. Good timing allows the development of the issues and information relating to those issues to meet an open and accepting mind which is ready to process the information into choices. If the parties are to avoid surrendering control of these issues in their lives, which is the inevitable product of resolution by court trial, then they will have to begin to negotiate with each other sooner or later. Again, depending on psychological needs, the client may be able to interact actively and directly with the spouse or may be able, psychologically, to allow the attorney to act as the authorized negotiator on his or her behalf.

ACTIVE OR PASSIVE CLIENTS

The degree to which clients are active or passive through the litigation process is largely dependent upon their psychological state as they enter this phase of the divorce. Active clients may relish the opportunity to take on responsibilities which might otherwise be handled by the attorney, such as obtaining advice from accountants, real estate agents, psychologists, appraisers, or financial planners. The financial impact of a passive willingness to leave these responsibilities to the attorney will result in a substantially different accumulation of fees and costs than might otherwise be the case.

The attorney must consider and respond to the different needs of different clients. For example, a husband who has controlled the family finances and has a good grasp of the issues of the divorce might welcome the opportunity to keep fees and costs down by becoming actively involved in the process: contacting an accountant to analyze the tax consequences of property division and support; arranging for appraisal of the family residence, the sole-proprietor- family business, and the pension benefits; organizing the documentation of postseparation payments of marital debts which will be

reimbursed upon the sale of the house. Or a wife who has devoted her time to domestic duties and has not had exposure to the overall finances of the marriage may still be able to participate actively with tasks such as reviewing the household checking account for the previous twelve months to determine the actual family expenses; preparing for managing her own postdivorce budget; interviewing real estate agents to explore options regarding selling or keeping the family residence; utilizing a vocational rehabilitation counselor to explore her skills job opportunities, or career options. These types of tasks can help clients move from a passive to an active role, providing them a sense of control and direction which not only helps them proceed through the process but prepares them for the future as well.

Clients may choose to be passive for a variety of reasons. Frequently, the pain of ending the relationship (particularly for the party being left) is so great that the client wants the attorney to shield him or her from having to deal directly with the other spouse. Or a spouse may simply lack the experience or education to deal with the many financial decisions that have to be made. However, the attorney's responsibility goes beyond helping the client through the divorce proceedings per se. The legal divorce process, with its inherent structure and support system, eventually will come to an end for the client. Anticipating this transition, the practitioner can play an extremely important role by helping to prepare the passive client for the inevitable time when he or she will have to deal directly with the other party over parenting issues and for the time when the client will have to handle the family budget and finances alone.

EMOTIONAL INVOLVEMENT OF ATTORNEY

Full and meaningful divorce resolution requires that the parties actively work on accepting the emotional divorce. The professional practitioner needs to be mindful of the possibility that a dependent spouse may smoothly and subtly transfer his or her dependence from the soon to be ex-marital partner to the

attorney. While this occurrence might allow the person to function with an appearance of normality during the prolonged strain of this life crisis, the client may remain ill-prepared for the dependency vacuum which often accompanies the termination of the attorney-client relationship when the legal divorce is complete. The attorney may, through the legal process, unwittingly become the new psychological partner. The pressure of advocacy can easily blind even a skilled professional to the validity of the opposing party's viewpoint, and it is not unusual for attorneys to become tenaciously attached to positions on issues which the individual clients may no longer deem important. Long after the client has relinquished a particular position, the attorney, serving as an ego extension of the client, may continue fighting a meaningless battle, becoming blindly embroiled in personality clashes with opposing counsel over issues that are once removed from the client's current needs or wishes.

CLIENT'S HOPE FOR JUSTICE

Another area of psychological impact on the legal proceedings is the client's perception of the legal system. During this time of crisis, the client may not willingly accept the fact that the objective justice of a judicial decision may bear no resemblance whatsoever to the subjective justice to which he or she clings with a desperate hope. From the area in which the parties feel most vulnerable and wounded there grows an uncompromising faith that the system (i.e., the courts, the judges, the law) will surely bestow its benediction of fairness upon them. The notion that our laws are fair and that, therefore, contact with the law will produce a fair result dies a hard death when such a result does not come to be. The husband who hears for the first time that his spouse, who was unemployed throughout the marriage, owns one-half of his pension as a matter-of-fact property right, and the wife who is told that her child support will terminate when her daughter turns eighteen, even though the daughter will continue to live with her at home while attending junior college, share a common outrage that the law can be so unfair. Can it really be true, in a no-fault

divorce state, that the judge will not make a different decision if he knows that John or Mary has been unfaithful in the marriage? And, surely the court will not let the children visit with their father when his new girlfriend is at his apartment! (Saposnek, 1985).

The reality is that the law is at best a canonization of public policy statements by the legislature or the appellate courts, made as generalizations which cannot anticipate the specific application to the unique circumstances of each individual's marriage. Compounding the problem is the reality that the ability of an attorney to predict the courts' application of the law to any given set of specific facts is made more remote by each additional issue which will be placed before the court. A delicate balancing of objective equities from the bench cannot realistically be anticipated given the complexity that comes with each additional layer of issues. A key to a client's willingness to enter into meaningful negotiations with a spouse is the ability of that client to let go of these myths regarding the legal system.

Motivated by emotional considerations, parties are quick to choose form over substance. The idea that the matter will be over with if simply placed before a judge for a decision has tremendous appeal when the psychological impact of the litigation process itself seems unendurable. Clients are generally far too close to the trees to see the forest. Only with the passage of time are they able to measure the real cost of the process in which they have participated and to evaluate the real gains which were made. That cost can be measured in dollars and other tangible assets, in relationships and other intangible assets, and in the quality of the communication patterns that have been established for carrying out the necessary ongoing support obligations and/or parenting relationships.

THE MEDIATION ALTERNATIVE

In contrast to litigation, the mediation format, which involves the hiring of a neutral third party whose function is to educate, empower, and enable the couple to negotiate their differences to a settled agreement, is one which is less likely to have a negative psychological impact on the divorcing couple (Folberg & Milne, 1988; Folberg & Taylor, 1984; Haynes, 1981; Lemmon, 1985; Moore, 1986). Unlike litigation, mediation creates a positive negotiation environment in which anxiety is significantly reduced and is replaced by a healthy concern for the issues which confront both parties and for the decisions which each must make. Moreover, legal fees and expenses are reduced as the parties cease to use procedures as weapons or defenses against one another. The sharing of information that comes from a common sense regarding the respective rights and obligations of the parties creates a uniform vocabulary which enhances the likelihood that future agreements will narrow the range of disagreements. The focus on substance over form puts the parties in touch with the real issues that will affect their future lives.

At the same time, allowing the clients to express their emotions while keeping those emotions separate from their rights at law keeps the focus on the business side of the marital issues. In this framework, a client can be helped to see how it is in his or her interest to make financial decisions while, as much as possible, remaining free from the influence of emotions. The opportunity for clients to express their feelings in a manner that provides acknowledgment of those feelings (if only from the mediator) without derailing substantive discussions can provide a certain therapeutic benefit not available in the litigation process. The willingness of the spouses to disclose the feelings that each experiences can create a limited but necessary reservoir of trust that allows them to communicate sufficiently to reach an agreement.

Having exchanged the destructive aspects of diffused and excessive anxiety for the focused concern of self-interest, the spouses are in a better position to absorb the necessary information about their respective rights and

responsibilities regarding general financial matters, property and debt division, parenting issues, and support obligations. In negotiating directly with each other, they can choose their own standards of fairness. Rights at law, which are the sole bases for justifying a position taken in the judicial format, may give way to consideration of moral rights, as the parties agree to adopt a different currency of exchange in their bargaining with each other.

The negotiation phase of the process begins only when the parties have been informed sufficiently and are rational and ready to discuss their matters of common concern. In general, the more information provided and shared with the clients, the more they will realize that there are no preprogrammed answers to their particular divorce issues. Notwithstanding the general rules which may be enforced in any given jurisdiction regarding custody, support, or property division, the issues in each particular marriage are as unique as the thumb prints of the parties. Reducing the likely results to the parties, if they litigated these matters, to a series of issues placed on the table, the mediator can help the parties to negotiate from self-interest--to trade assets and to balance issues with each other. By combining in one offer or proposal various issues which are of unequal weight or value but which are designed to appeal to the wants and needs of the other spouse, the parties produce productive negotiations that generate momentum. Among the many factors which the spouses share in common, the most significant and meaningful is the fact that each holds an interest in something the other wants. As long as each party feels that he or she is receiving consideration for whatever he or she is being asked to give up, the parties move closer to overall agreement.

The major psychological consequence of a mediated approach is the empowerment of the parties. Control which would ordinarily be surrendered in the litigation process is returned to the clients. The ability of the parties to respect each other for the manner in which they are negotiating can become significant cornerstone for their ongoing relationship. The establishment of a

successful communication model provides a more optimistic outlook for their future contact. The benefits to any children of the marriage when their parents choose this type of conflict resolution process can only be seen as a positive and hopeful event, during a period of time when little else seems positive.

CONCLUSION

Although divorce is an experience of growth, change, and positive individual development for some, it is a psychological and emotional death for others. For most, it certainly is a time of tremendous stress, disruption, chaos, uncertainty, and craziness. With appropriate help from understanding and knowledgeable professionals, the process of divorce can be navigated successfully. However, without an understanding of the powerful dynamics of divorce, the helping professional can become a misnomer, contributing unnecessarily to the escalation of negative emotions and negative interactions.

In choosing to respond to the client's stated needs (e.g., "I want an aggressive attorney who will protect my rights"), and neglecting the larger responsibility of protecting the client's long-range best interests, the practitioner renders service that is of questionable value. To allow for the ever-changing emotional and psychological state of the client (ranging from runaway guilt to abject despair), the professional must be more than just an advocate for the client. He must play also the role of devil's advocate, counselor, financial adviser, protector, motivator, and handholder. The generic requirements that define the role of a lawyer must give way to the unique demands of the lawyer's role in this very specific and special area of human relationships. In light of the critical significance of the many psychological factors involved in divorce settlements, it is of real concern that, along with their considerable training in substantive law and litigation, attorneys have so little preparation or training in psychology. Perhaps it is time to institute more rigorous psychological training for legal professionals involved in the very difficult area of divorce.

On the more optimistic side, the exposure that therapists and attorneys have had to each other, as a result of the merging of the disciplines in cases of court-ordered custody mediation, has created an interdisciplinary dialogue that has enhanced the knowledge and understanding of practitioners of both disciplines. The mental health professionals have brought a new understanding of the psychology of divorce to the legal professionals who practice in this area. At the same time, therapists have gained greater knowledge of the complex legal and practical problems which compound divorcing clients' psychological and emotional needs. This represents a most positive development in the evolution of these professional disciplines. The ripple effect that will inevitably result will reach other professional practitioners whose clients are in the process of separation and divorce, hopefully sensitizing them to the very influential and unavoidable psychological aspects of divorce.

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