

It Is Time to End the Alarm, Torments and Destruction

by Mark Springfield

It seems most everyone knows a family member, friend or co-worker who experienced a divorce that turned ugly - a divorce in which enemy encampments grew around the two spouses, with friends and family taking sides, and divorce lawyers serving as generals in the two warring armies.

How do two people, who once cared enough for each other to enter into the most intimate of relationships, become embittered enemies, unable to communicate except through lawyers and court documents? Certainly the pain of being “de-selected”, or the hurt of discovering a spouse’s infidelity, can lead the surprised spouse to want to strike back. Even so, how does one explain the divorce that takes two years, is financially ruinous, and leaves the former spouses unable to talk to each other even as they attempt to parent their children? Is it simply the nature of divorce, or is it something else?

After fifteen years of practicing law as a courtroom attorney in the adversarial legal system, and then five years of practicing exclusively collaborative law, in which the adversarial legal system is explicitly rejected as part of the process, it is clear to me that the adversarial system is a significant contributor to the bitter nature of divorce.

In the adversarial legal system, attorneys are expected to be exclusively concerned with their own client’s interests. This professional responsibility comes from principles rooted in the criminal justice system, in which the lawyer is viewed as the accused’s single line of defense against a mighty and over-powering state.

An eighteenth century lawyer put it this way: “[The lawyer] in the discharge of his duty knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and, amongst them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others.” In this context, it seems a heroic stance.

In the divorce context, however, it can be disastrous to have an attorney who is unconcerned with the “alarm, torments, and destruction” he may bring upon the other spouse. Nearly all divorcing couples, and particularly those with children, must find new, healthy ways to relate to one another after the marriage is dissolved. Yet, divorce attorneys in the adversarial system are acculturated to not consider the interests of the other spouse, and like generals on the battlefield, they are intent on victory regardless of the enemy’s losses. Instead of calming the anxiety around separation and divorce, and supporting the couple as they make important life decisions about caring for their children and meeting financial needs, divorce attorneys tend to ratchet up the pain and the strong emotions.

The good news is that collaborative attorneys have discovered that they can remove divorce from the traditional adversarial legal system. The attorneys sign a binding agreement that they are disqualified from appear-



ing in court on behalf of either spouse. The collaborative attorneys are then freed to have concern for the needs of their clients, and for the legitimate interests of the spouse whom they do not represent.

The spouses and their attorneys collaborate in a search for strategies that address both parties’ legitimate needs and interests. Spouses can be assured that their interests will be protected as they seek a workable and just divorce settlement – one that avoids creating enmity and life-long bitterness between them. The promise of a new, working relationship after divorce can be realized.

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