

WHEN ALL ELSE FAILS

Ronald M. Supancic
With Dennis L. Baker

Fleming H. Revell Company
Old Tappan, New Jersey

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Library of Congress Cataloging-in-Publication Date
Supancic, Ronald Melin.
When all else fails.

1. Divorce-United States. 2. Separation
(Psychology) 3. Divorce-Law and legislation-
United States. I. Baker, Dennis L. II. Title
HQ814.S85 1986 306.8'9 86-449
ISBN 0-8007-1474-1

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Old Tappan, New Jersey 07675
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THIS book is dedicated
to all
Children of Divorce

Contents

<i><u>Introduction by Dr. Thomas Needham</u></i>	<u>7</u>
<i><u>One</u></i> Does Divorce Help?	<u>12</u>
<i><u>Two</u></i> Can Counseling Help?	<u>23</u>
<i><u>Three</u></i> Children in Divorce	<u>34</u>
<i><u>Four</u></i> Do You Need a Lawyer?	<u>46</u>
<i><u>Five</u></i> Yours, Mine, Ours: Finding Out What There Is to Divide	<u>61</u>
<i><u>Six</u></i> Nonadversarial Alternatives	<u>70</u>
<i><u>Seven</u></i> Try to Stay Out of Court!	<u>80</u>
<i><u>Eight</u></i> The Pitfalls of Property	<u>93</u>
<i><u>Nine</u></i> Who Gets Custody?	<u>102</u>
<i><u>Ten</u></i> Who Pays for It All?	<u>111</u>
<i><u>Eleven</u></i> But We Just Can't Settle!	<u>116</u>
<i><u>Twelve</u></i> The Divorce After the Divorce	<u>122</u>

Contents

<i><u>Thirteen</u></i>	
Parenting After the Divorce	<u>136</u>
<i><u>Fourteen</u></i>	
Recognizing Your Relationship	<u>148</u>
<i><u>Fifteen</u></i>	
The Care and Feeding of the Children of Divorce	<u>155</u>
<i><u>Sixteen</u></i>	
Parting Advice	<u>162</u>
<i><u>Appendix</u></i>	
A Deposition Admonition	<u>165</u>
<i><u>Summary of Child Custody Laws</u></i>	<u>168</u>
<i><u>Glossary</u></i>	<u>170</u>

INTRODUCTION

But this is a people plundered and looted, all of them trapped in pits or hidden in prisons. They have become plunder, with no one to rescue them; they have been made loot, with no one to say, "Send them back." Which of you will listen to this or pay close attention in time to come?

Isaiah 42:22. 23 NIV

When All Else Fails is unique in its attentive approach to the complex legal-moral-psychological issues confronting divorcing couples.

As a marital and family therapist, and as the director of the graduate program in theological ethics and family therapy, I am particularly pleased to see Ron Supancic focus on five key issues.

In the first place, Ron has made his religious faith a major source of his professional identity and judgment. Therefore, when a troubled individual seeks his legal counsel, Ron helps him or her find the best possible solution. This often means turning away a potential source of income. Sometimes he says, "I would recommend marital therapy for you rather than a divorce." Other times he says, "Let's wait on the divorce while you sort out the best decision with your pastor or a therapist. Meanwhile, I'll help you take appropriate legal action to protect yourself." To me, as a colleague confronting divorce, he spoke out: "Thom, you're making the mistake of your life. Your wife is not your problem. You are your problem?" In like

manner, many who read this volume will be challenged to decide whether their potential divorce is really freedom or further bondage.

Second, Ron is prepared in both heart and mind. He strives for excellence in professional competence, having graduated from USC Law School a leader of his class. He has even gone the extra mile in additional schooling and licensing to become a certified specialist. However, as important as these achievements are, Ron also places an equal emphasis on matters of the heart. His heart was schooled as a child in a divorced home where he experienced the confusion, hurt, anger and loneliness of broken relationships. These kinds of difficult and lingering experiences were later combined with the painful experience of seeing hundreds of hurting individuals, marriages, and families. Sensitive professionals must respond to such a display of human need. Several years ago Ron expressed to me his desire to increase his supportiveness to divorcing, emotionally torn individuals and families. While he was already empathetic to individual needs, he was compelled to be of ever-increasing support. Now, this book is evidence of an important and concrete culmination of that desire.

Third, in his law practice, as well as in this book, Ron pays attention to the fact that divorce can become complicated, involving many professionals. In *When All Else Fails*, the reader catches a realistic glimpse of what really happens in child custody disputes. To have been forewarned by this glimpse is to have been forearmed, both psychologically and legally. The author shows the reader how such legal processes can involve interviews and reports from any varied combination of therapists, doctors, psychological evaluators, social workers, accountants, or family members. These sensitive and informative guidelines should prove quite helpful.

Fourth, an important set of issues to which Ron gives attention are the spiritual and emotional ones. Many clients want to proceed with divorce in a manner that could prove, in the long run, to be detrimental to their children. Some individuals, guilt-ridden, timid, or lacking assertiveness, are overly eager to make concessions on important issues such as child support. They want out of the marriage quickly and “peacefully.” Some individuals are in deep despair and fee; guilty and alienated by their churches and Christian friends because they were unable to have successful marriages. Whatever the conflict, it is at these crisis points that *When All Else Fails* can help divorcing couples see their need to clarify, and follow, what is often a very difficult but nonetheless necessary course of action.

Throughout the book, Ron suggests that religious counseling or marital and family therapy may be needed to assist one in following this chosen course.

Finally, I’d like to point out that Ronald Supancic has maintained a delicate balance between a sacred commitment to the bonds of marriage and

the practical necessity to help some people confront the tragic reality that their marriages cannot survive. He has done this through challenging some individuals to consider that divorce is not the right solution to their problems, while providing others with the necessary tools for a divorce – tools, I would hasten to say, that can minimize the extent of emotional and economic structure of the divorced family. I am pleased this book has been written and I believe it will be very helpful to people who find themselves or their loved ones caught in a divorce.

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WHEN ALL ELSE FAILS

ONE

Does Divorce Help?

I'm a lawyer who specializes in divorce. But I am also a lawyer who hates divorce!

In my business, I meet a lot of people who are not happy. They come to me because they believe divorce is the solution for their unhappiness. As I listen to them explain their situations and particular needs, I often wish I had more time to tell them some of the things I have seen over the years.

But usually that isn't very practical. So, I've decided to write this book. I hope, if you're reading this and you are on the verge of or in the midst of a divorce, this information will help you.

Two kinds of people get divorced: those who want to, and those who don't want to. It used to be that the wanters had it tougher than the nonwanters. In the old days, if Mary wanted to divorce Bill, she'd have to prove to a judge that Bill was a bad person, guilty of conduct which she considered "grounds: for divorce. But that was a long time ago and, even before the advent of "no fault: divorce laws, divorces were reasonably accessible to anybody who really wanted one.

If you want a divorce today and you live in a no-fault divorce state, you can get it pretty much for the asking. That, needless to say, can create problems. I remember the dismay I felt one day when, as a young lawyer, I was interviewing Bruce. Bruce was in his early fifties and wanted to divorce his third wife. As were completing his questionnaire, Bruce started reminiscing about his first wife, Betty.

"I left her after we'd been married eighteen years. Claire was my secretary. She was young and sexy. Betty was almost forty. The marriage to Claire lasted two years. She turned out to be a real nasty one. I was lucky to get rid of her before she hurt me any more than she did. Then came Charlotte. We've lasted five years but, as you can see, it's come to the same thing."

"Betty was the only good one among them," he sighed. "She's the best friend I have today! She's always been a fine mother to our children." He paused and chuckled quietly," Today I couldn't tell you why I left her – guess I was just bored and stupid. But I made a mistake by doing it."

I could hardly believe my ears. He was the first but no the last client I've had who has expressed this same sentiment. Since then I've met a lot of men like Bruce. They're pushing forty and have hit their stride professionally. That alone is pretty heady, but when success is accompanied by the admiration of women younger and shapelier than their wives, clear thought collapses altogether and gives way to pure fantasy. In every case I've encountered there was fun at first, followed by the inevitable decline, which brought them to my office.

One day I found myself in a small courtroom waiting, along with a number of other people, both lawyers and laymen, for the arrival of the judge. The other attorneys and I were standing about the clerk's desk. Two of the attorneys were engaged in a more-than-audible conversation. It amounted to little more than loudly patting themselves on the back for the benefit of the spectators. They joked about the important public service they were providing by helping people escape the intolerable chains of marriage. Soon I and all the other people in that courtroom were aware of their opinions and of the fact that they themselves were divorced.

In the midst of their dialogue, one of the lawyers turned to me and said, “Ron, don’t you agree? It’s really great to get people out of these terrible marriages and into the freedom and joy of the single life!”

I joined them center stage and said, just as loudly, “No, I haven’t found that to be the case at all. I’ve been with the same woman for nearly twenty-five years, and I find marriage the single most exciting opportunity for fulfillment, adventure, excitement, and joy that I know of.”

Of course, I had spoiled their fun and consequently suffered their instantaneous rejection in the form of their turned backs. Just as I was tempted to feel a little embarrassed for speaking out so boldly, another attorney, a woman, walked over to me. “Thanks for speaking up the way you did,” she said. I just went through a divorce myself. My ex-husband is a very successful physician and, I’m sad to say, we wound up getting a divorce because we thought it would be easier than facing our problems. We were wrong. Divorce doesn’t solve problems. It only creates new ones.”

A large percentage of people who seek divorces under today’s statutes could tell stories not unlike the one above-and they would probably express sentiments like those of the woman attorney. There are cases in which divorce can be an act of mature reflection that will lead to growth. But first I want to ask these questions of any person who is contemplating the possibility of divorce as a solution to his or her problems:

1. Why did you marry your spouse in the first place?
2. Does your spouse still have those same character qualities you found so attractive when you first met?
3. Is your spouse honest, trustworthy, faithful, loyal, supportive, and kind?
4. Is your spouse willing to change and grow to meet the dynamics of your relationship?
5. Will divorce have any harmful effect on your family?
6. How will divorce affect your children? Does that matter to you? How much?

If a person who is contemplating divorce answers most of the above questions affirmatively, he or she should take a good look at themselves. They need to recognize that the partner is not the problem.

They themselves are the problem. Divorce will solve nothing. It will only add to one’s problems, and if children are involved, it may do them irreparable harm. The damage divorce can do to children calls to mind the biblical adage found in Deuteronomy 5:9 about the sins of the parents being visited on their children to the third and fourth generations.

Divorce in one generation has a way of spilling over into subsequent generations, taking its unhappy toll in the ways even grandchildren and great-grandchildren relate to their marriage partners.

Suppose, on the other hand, that the answers to those questions are not so positive. Gale was the mother of one infant child. She and Jack had been married less than two years. In those two years he had gotten heavily into drugs. She still carried traces of her most recent black eye.

"I'm really involved in my faith and my church," she explained to me. "So, I'm not eager to be divorced. But my pastor told me I should come and talk to you. What can I do?"

The law can help a person like Gale get some leverage with her husband. A judge could, on proper request, make and order that would give her immediate, temporary relief by imposing emergency restraints on Jack. Jack would have to appear in court to explain his conduct. He would have to comply with the temporary restraining orders and he could be ordered to begin paying Gale support money. Those restraining orders would tell him he was not allowed to live or even come to the front door of her apartment. They would tell him he couldn't harass Gale in any way, in person or by phoning her.

I sat and explained all the above to Gale. Then I continued, "If he disobeys any of those temporary restraining orders, he faces the possibility of arrest and imprisonment for contempt of court. And he'll also have to show cause why he shouldn't have to pay for my services to you and the court's costs."

"No kidding?"

"Not one bit. Women across the country are faced with the same predicament you're in. And, if they've got the courage to stand up to their husband with some tough love, the courts are ready to stand with them"

I had known, almost the moment she walked into my office, that Gale was not a woman who enjoyed the role of the victim. She had not come to me looking for sympathy. Instead, her agenda was entirely straightforward: she wanted to stop getting beat up and she wanted to help her husband make a change if that were possible. And she had not sentimental notions that Jack was going to change because of his love for her.

Gale signed the requisite documents then and there. I took them to court the next morning and they were served on Jack that afternoon at his job. Gale had his bags packed and waiting for him that evening. A sheriff's deputy stood by while Jack picked them up. Then he was gone.

The next week I got a phone call from Jack. "Hey, what gives?" he asked. "How come I can't talk to Gale and I have to talk to you?"

“I think you know that better than I do,” I replied.

“Well, look, what is it going to take to get you and Gale to lay off?”

“I’m not ready to answer that question, Jack, because frankly, you don’t sound very serious.”

He didn’t say anything for a moment. I waited.

“Mr. Supancic?”

“Yes?”

“I’m serious. I love Gale and I want to save our marriage.”

“How serious?” I demanded.

“Dead serious!” he replied earnestly.

“Okay,” I said, “you have no options. Here is what you must do. Obey these restraining orders as if your life depended on it. Get yourself a place to live indefinitely and settle it in your mind that you’re not moving back in with Gale next week or even next month. And start sending her the support payments we called for in that Order to Show Cause. Are you willing to do that?”

“Yes.”

“Then there’s something more you can do.”

“What’s that?”

“Call the pastor at Gale’s church and tell him you’re ready to submit to his counsel, and that you’re willing to meet with him weekly or more often at his convenience.”

“Hey, I know where it’s at. I’m into Jesus, too. I can lay off the dope and just start going to church again.”

“Sorry.”

“Whattaya mean?”

“You said you wanted to save your marriage. Let me be straight with you. Gale’s convinced that nothing can change you or your behavior. The only chance you have or regaining her trust is to face yourself sternly and unflinchingly. Half measures will accomplish nothing.”

“Wait a minute. She knows I’m good at heart. I don’t have to prove anything.”

“Wrong. You’ve spent two years destroying whatever trust and admiration Gale once had for you. The burden of proof is squarely on you and it’s a big burden.”

Jack argued longer, but he never convinced me to cave in to his point of view. Eventually he came to terms and faced the truth. After about six months, Gale called to ask me to have the restraining orders lifted. I explained to her that that wasn’t necessary and it would be wiser to leave them in place. She could readmit Jack to her life without violating them, but if the experiment flopped, the orders would still be there to fall back on. You can imagine my joy when I saw them together in church about a year after

our conversations. Today Jack and Gale are back together and on a sound footing. They followed through, got professional help, and consequently, the divorce never happened.

Finally, there are people who are faced with getting a divorce against their wishes because their spouses want one. The majority of divorces I have seen involved this in some measure.

Bill and Mary had been married for twelve years when Mary first told him she had been thinking about a divorce. He was stunned. She had taken him totally by surprise. Bill and Mary had been through a lot together. And both of them shared a strong faith. Church attendance was an integral part of their lives. He had always thought that would insure them against this sort of thing. How could this be happening? When he asked her why, she was unable to be specific. It was, she said, a cumulative discontent and an unwillingness to carry on any longer.

Bill frantically suggested marriage counseling. Mary agreed to see a counselor they both knew through Bill's work. They attended several sessions together, but the results were negligible. The counselor urged Bill to make some decisions about his life, but Bill found himself unable to respond to the advice. He was unwilling to admit it even to himself, but he was afraid that if he took the advice, it would only anger Mary and drive her further away. Mary grew more frustrated. The couple grew more frustrated.

The couple had two children, a boy eleven and a girl seven. They were only vaguely aware of what was happening between their parents. Bill was so upset that he was able to give little thought to them. Mary, aware that her husband was stuck in indecisiveness, was thinking overtime about both herself and her children. She decided to get reinforcements. That meant a move to another state to be closer to family and one old friend in particular, a single man she had met when she was working to help Bill through school during the early years of their marriage.

Convincing Bill to move was not so difficult. His whole strategy was to do anything to placate Mary. Give her what she wants, he thought, and maybe she'll drop her demand for a divorce.

And so, against his better judgment, Bill agreed to move with Mary. Once they had relocated, the whole plan blew up in Bill's face. Mary made contact with her old friend, and announced to Bill that she still wanted a divorce. His desperation grew and his vision only got narrower. More than a year had passed since her first announcement. By now there seemed no choice but to acquiesce to her wishes. Besides, under law, she could have a divorce, whether he wanted one or not.

What followed was a trip by Bill and Mary to see a lawyer who helped them draw up a divorce settlement along the lines that Mary wanted.

The whole thing was accomplished for a few hundred dollars, and Bill moved out of the house to live with his parents.

In the months that followed, Bill's anger finally erupted. He secured a lawyer and pushed a long, bitter, and futile suit for custody of his children. In the end, he emerged with a considerable debt to his lawyer and nothing more to show for his trouble - except for one thing. The pain had taught him to see himself more clearly.

Bill began to recognize that Mary's discontent had rested on his steadfast unwillingness to take responsibility in their family life. Slowly, with the help of counseling he received through his church, he began to make some choices that said, "I am going to take responsibility for my life. I have tried to lay the blame for my failures at the feet of others. But I choose to do that no longer."

Bill's divorce, the thing he had feared the most, had been, in the end, the costly crisis that had broken him free from self-defeating behavior that had persisted unexamined throughout his married life. It took several years, but before it was over, he had taken custody of his children with the consent of their mother. Being a single parent gave him the opportunity he needed to put some muscle in his resolves to take responsibility for himself and those he had been given to care for. Before two more years had passed, he met a woman in his church that was willing to share his life. They were married and moved ahead into the unfamiliar waters of step parenting and rebuilding a full-fledged family. At this writing, they are moving on course, thanks largely, in my opinion, to Bill's willingness to break with his old patterns of indecisiveness.

One way Bill exhibited his unwillingness to take responsibility for himself and his marriage was the acquiescent way he tagged along to see the same lawyer his wife had selected. He would have been wiser to find a lawyer for himself, an advocate to represent his interests. Instead he followed a policy of appeasement. Not uncommonly I have observed a tendency among some men to confuse appeasement with willingness to change.

The reason Bill proceeded imprudently through his divorce was that he violated a cardinal rule it has taken me years to learn: *In order to derive any benefit from a divorce, you must separate the emotional divorce from the legal divorce.*

Making that separation is a big order, but it is vital. Gale - the young woman who was married to Jack the drug dealer - was able to do it. She used her head and took an important step to protect herself. Hers was a temporary divorce, if you will, that resulted not in the dissolution of her marriage but in the resolution of her problem.

The first thing Gale did was to settle it in her mind that her marriage was dead. She did not come to me hoping to find some way to manipulate or punish her husband's behavior. She had, as I said earlier, a straightforward agenda. Her cards were on the table with a minimum of rancor and bitterness. In fact, she had already forgiven Jack for his trespasses before she came to my office. True forgiveness does not void our responsibility to confront. Nor does it mean that we must acquiesce endlessly to physical and emotional violation. It is instead a surrendering of our right to punish. Knowing that is part of what it means to separate the legal divorce from the emotional divorce.

No other insight is more important to a person threatened by divorce than this one about separating emotions from legalities. A person involved in a divorce is compelled to make decisions that will affect both spouses for the remainder of their lives. Learning to make that vital separation allows the legal system to work more efficiently. Expensive divorces are almost inevitably the result of one or both spouses trying to wreak vengeance by punishing or cheating the other. I've never seen a divorce under those circumstances that has had healthy results. The divorce conducted in that way always worsens the problems it was supposed to resolve, and when children are involved, it invariably inflicts incalculable harm on them.

I once had as a client a woman who had been a war bride. Her soldier husband had brought her back home with him, fathered a daughter by her, and then deserted them to end his life in an alcoholic stupor. Later she met and married a very authoritative man who found her compliant ways attractive (especially in comparison to the opinionated and "liberated" American women he had been dating). I'll call them Charlie and My Ling Pang.

My Ling came to me to explain her need for a divorce. In the beginning, Charlie had expressed warmth toward My Ling's daughter by her previous marriage. But after only a few months of marriage, it had become evident to My Ling that, in fact, Charlie deeply resented his stepdaughter's existence. The problem was complicated by the fact that Charlie was unwilling to admit to his true feelings and deal with them.

After several years, My Ling's daughter, Anna, began to show signs of stress from living under these awkward circumstances. Finally, when My Ling discovered evidence of Anna's use of mind altering drugs, she took her to a mental health professional for counseling. The counseling involved both My Ling and Anna, but not Charlie. He saw no need for his involvement. This, in his opinion, was entirely the problem of his wife and her daughter.

The counseling went on for nearly two years, during which time the therapist became familiar with the personalities involved in the situation. Toward the end of the first year, the counselor began to express his opinion

that Anna had to get out from under Charlie's roof, where she was subject to so much unacknowledged hostility. It wasn't My Ling's habit to oppose Charlie openly. But over the second year, when suicidal tendencies emerged in Anna, My Ling became convinced that she had to take a stand for the sake of her daughter's mental health.

When she came to me, My Ling had already moved to separate quarters with Anna. Charlie was on a rampage that consisted of lambasting his wife among their friends and acquaintances in their church. He told anyone who would listen that she was an ungrateful and rebellious woman who had left him on the advice of some jerk with a diploma on his wall. Charlie's analysis made perfect sense to himself since he was still resolutely blind to the malice he bore toward Anna. But My Ling knew that going public in this way wouldn't be enough for Charlie. Already she had heard hints of more sinister things he had in store for her if she didn't quickly move back to her proper place.

As it turned out, Charlie was intractable. When he received notice of My Ling's petition for a divorce, his rage at being treated so "unfairly" only grew more intense. At no time did he seek counsel. He secured a lawyer solely for the purpose of trying to punish My Ling. To the end he refused to accept any responsibility for what had happened. I was convinced through the months I served My Ling that her decision to divorce was a sign of growth. Sadly, the pastor and congregation of Charlie and My Ling's church were so staunchly opposed to divorce that they sided with Charlie against My Ling, without asking any questions about why it was happening.

When divorcing people fail to sever their emotions from the legalities, they find themselves involved in the endless playing of games. Eric Berne brought this form of interaction squarely to our attention a few years ago in his best-selling book *Games People Play* (New York: Ballantine Books, 1978). I am not a spokesman for transactional analysis (Bernie's construct), but it seems to me he put his finger on something we've all observed: the tendency among people to play emotional games with each other wherein one person emerges a winner and the other a loser. Games happen instead of communication, and they prevent intimacy, leaving us isolated.

A review of some of the cases I mentioned earlier will show how this works. Remember Bill and Mary? He made the big move in hopes of placating her. They were playing a game of appeasement. In it Mary would tell Bill she wanted something, like the move to another state. She implied in subtle ways that if he gave her what she was asking for, she'd be sweet and friendly-his dutiful wife. He believed her and gave her what she asked for. But each time he did, she pulled a switch after she'd gotten what she wanted by refusing to behave in a sweet and wifely manner. Instead, she kept

upping the ante so that, at last, she convinced him to go along with the divorce. Bill lost the game and he lost Mary.

Jack and Gale had undoubtedly played games – alcoholism and drug abuse inevitably include games built on patterns of guilt and blame. For example, consider the drunk who calls his wife from jail, not to ask her straightforwardly to come and bail him out (such a request would be beneath him), but to depict his situation in such a way that she would feel guilty if she didn't go downtown and rescue him from his plight. That's called pushing her nurturing button.

But the day Gale came to see me she had already quit playing games with Jack. If she hadn't she would have come into my office either calling Jack names or portraying herself as a pitiful victim. By behaving as a responsible adult and taking immediate and affirmative legal action, the pattern was broken.

Most of the games we play focus on money, sex, and children. Charlie was playing a high stakes game with the ulterior motive of disposing of Anne and having My Ling all to himself. It nearly worked. That is why counseling with an objective experienced mental health professional is so important. Such a person is able to spot game playing that has built up over a long period of time and to which the players are oblivious. Unfortunately, counseling is a remedy only when both partners in a marriage are willing and able to recognized and accept their individual share of responsibility for the problems they are having.

One of the biggest dangers we face in divorce is responding to our desire to control the other person. Clients often come to me and ask me to control their erring spouses for them. "He [or she] will listen to you," they tell me. Charlie wanted desperately to control My Ling. That's why he went public, complaining about My Ling to all their friends.

Often spouses threatened by divorce enlist the help of in-laws and other significant people in their spouses' lives, with the hope that they will be able to bring pressure on them to give up their quest for a divorce. In most cases it ends in game playing and achieves nothing worthwhile, mostly because it is underhanded and deceitful.

The effect of this desire to control another person is to keep the spotlight off oneself. If a person devotes all his time and attention to get a spouse to behave, he has no time or energy to devote to self-examination. But the frustration he encounters in trying to control another teaches him an important lesson: We are not responsible for that over which we have no control. We can only control our own activities and attitudes.

Remembering the relationship between control and responsibility is not easy. One of the chief causes of divorce is the fact that one person wants to control the other in some way. We need help to learn to live together

without trying to control. Finding that help may preserve your marriage, even if it is in serious trouble.

Does divorce help? The answer to this question lies in another question that every person facing the threat of divorce should ask first.

In the next chapter I'll talk about that question, and about the professional most couples need to talk to before they call their attorneys. That professional is the qualified counselor.

TWO

Can Counseling Help?

Over the years I've observed the wreckage of hundreds of failed marriages. And I've discovered, through the many difficulties and challenges I have faced with my wife, that it has always come down to this: I've had to deal with my problem and she's had to deal with her problems. To do that we have, separately and together, had to seek outside help at various times. So, with help, we've seen the problems which have come between us fall into clearer perspective. And that clearer perspective has always compelled me to look inward and see the ways in which I contribute

to a problem and am part of its source. That, in turn, keeps me busy enough so that I don't have time to go looking for someone else to blame.

Almost always, a marriage ought not to be dissolved. Divorce creates more problems than it solves, if, indeed, it solves any. Marital disputes should be launching pads to heightened awareness and growth.

Therefore, when a marriage is in trouble, the first place to head for is not a lawyer's office. Between the nuptial bliss of the bedroom and the paneled chambers of the courthouse lies a wide-range of helpers who are too seldom sought out. Before we get into the heart of this book, I want to comment on this kind of help.

Finding Help

The kind of help you need will depend on the effectiveness of the coping mechanisms you possess at the outset of your trouble. If you don't know how effective they are, you'll find out soon after trouble starts. If you find yourself still able to function in the tasks of life at only a mildly diminished level, then you probably will find the help you need in informal ways. You may find friends who have experienced similar troubles and who are willing to listen to you and to offer you the encouragement of their own tales of survival. You might consult a marriage counselor who can help you get back on track.

If you have already passed the point of no return on your way to a divorce, a check of your local newspaper or telephone book will likely turn up some sort of association or meeting of separated and divorced people. Here you'll meet people who are eager to talk, exchange notes, and offer encouragement. You may find a support group in any of a number of settings. Churches and synagogues often sponsor such groups. If you're associated with Alcoholics Anonymous, Al-Anon, Tough Love, or some group of that sort, you may readily find what you need in that setting.

In recent years we've seen the advent of father's rights groups and other men's groups to supplement the more common support groups for women facing divorce and other kinds of stress. Some times your age will give you entrance to some group that will serve to support you and keep you from getting isolated by your problems.

Reading Matter

Then, too, you'll probably find help in books. A trip to your local library will surely turn up a wealth of self-help books. James Dobson is a psychologist in Southern California. His daily half-hour radio program "Focus on the Family" is broadcast on stations all across North America. He

has written a number of helpful books, among them *Love Must be Tough* (Waco, Texas: Word Books, 1983). Worthy of note, too, is *The God-Players* by Earl Jabay, former chaplain of the New Jersey Neuro-Psychiatric Institute in Princeton (Grand Rapids, Michigan: Zondervan, 1970).

Again, if you're closer to divorce and need something more specific in terms of reading matter, here are some titles: *Creative Divorce: A New Opportunity for Personal Growth*, by Mel Krantzler (New York: M. Evans and Company, 1974); *Growing Through Divorce* by Jim Smoke (Eugene, Oregon: Harvest House, 1976); *But I didn't Want a Divorce* by Andre Bustanoby (Grand Rapids, Michigan: Zondervan, 1978).

Professional Counselors

But suppose you find your ability to perform in daily life more seriously diminished. Perhaps you're spending a lot of time in bed, or your appetite for food has changed noticeably, or you're unable to concentrate on your work long enough to accomplish anything. You may need to get together with someone who is prepared to probe your life with you a bit more deeply to get at the source of the problem and to find some genuine avenues for change.

In the world of counseling, one encounters every level of professionalism and competence. Occasionally one discovers unprofessionalism and incompetence. Some counselors, for example, advise their clients to engage in affairs or otherwise indulge their sexual fantasies in bizarre ways. This kind of promiscuous or questionable behavior is offered as "a pathway to inner healing." I find it ridiculous. For me the finest source of wisdom for living can still be found in the Bible, and I advise my own clients to seek counselors whose value systems are consistent with the biblical witness.

You can often discover what kind of counselor you are interviewing by asking him or her directly about their beliefs. If they can't tell you what they believe, it is likely they have no belief system. If they have to weasel and dance around instead of answering the question directly and forthrightly, you have a problem. That problem should motivate you to shop elsewhere or to arrive at some clear understanding of the limitations of the person you are dealing with.

Having offered the above note of caution, we can now examine the range of counselors who are available. Their training and experience vary widely. To find the right counselor for you, ask for recommendations from a relative or trusted friend who has benefited from counseling, or from your church or synagogue, your family physician or attorney. The support groups discussed above also can often be helpful sources of recommendation.

Church and Community Services

Clergymen often possess a liberal arts degree as well as a professional theological degree. They will have had some training in pastoral counseling and perhaps some clinical training in dealing with troubled people as part of the work they did to get that professional degree. Some clergymen may have no formal training at all in counseling. Some have extensive training. But, even among those who have none, there are men and women with special aptitudes for counseling that have been honed by experience. In many cases their services are available without charge or for a modest fee.

Next on the list are various community counseling centers. These may be sponsored by the community or a group within the community that is interested in helping people. They usually arrange for a trained counselor to be available several days a week. The counselor may be licensed professional, a clergyman with extra training, or a person with nonreligious training in counseling. In this setting you will undoubtedly encounter a formal fee schedule, perhaps based on your ability to pay.

If you have children, community family service agencies offer similar counseling services for families in crisis, both in individual and group settings. Often your child's school counselor or teacher can provide an appropriate referral, recommendation, or information in confidence. Again, you may expect a fee for service based on ability to pay.

Professionals in Private Practice

Private counseling enterprises in your community may also be an important resource. Here you will find people with various academic and professional degrees. Your state or county may regulate them in some way, most often by licensing arrangements. Among these will be hospitals that offer counseling and referral services to members of the community. In some states, licensing procedures exist for "Marriage, Family, and Child Counselors" who commonly list their names in directories with the initials MFCC.

An MFCC has a least a two-year professional degree. He or she has the ability to work with families to help them improve communications and to work through the dynamics of family relationships. MFCCs can recognize and identify true personality disorders, but they are not required to have the skills to diagnose or treat them. When they see signs of genuine mental illness, they will sometimes refer a counselee to a psychologist or psychiatrist.

As the complexity of the treatment increases, so do the fees. In order to treat serious personality disorders you will seek clinically trained psychologists who specialize in psychotherapy. They are equipped to diagnose and treat all sorts of emotional and personality disorders. Psychiatrists are medical doctors with specialized training for the diagnosis and treatment of mental, emotional, and behavioral disorders. They engage in psychotherapy, but they are also authorized to prescribe and administer drugs (psychologists are not permitted to prescribe drugs).

Going to see a psychologist or a psychiatrist does not mean you are a severely disturbed person. It may merely reflect your desire to get to the root of some of your own self-defeating behavior with the most qualified help available. Some people are hesitant about consulting a trained psychotherapist because they object to Freudian theories of personality or the use of hypnosis (which some psychotherapists employ) or drugs. However, the range of practice among mental health professionals is wide enough to embrace the varying tastes and sensibilities of most people. Don't be afraid to call and ask questions. You're entitled to find out what you need to know before you commit yourself to the treatment and ministrations of any mental health professional.

Finding Counseling for Your Spouse - Can It Work?

Finding help for your marriage means finding help for yourself. Counseling entered into with the hope that it will compel a reluctant spouse to change behavior that displeases you is likely to fail. If your spouse drinks excessively or commits adultery or gambles away your money, attempts to curb or control him or her are usually frantic measures that will strike wide of the mark. However, legitimate intervention procedures do exist and can be employed with the help and advice of trained professionals.

Interestingly, Jesus outlined a course of intervention that bears the earmarks of down-to-earth wisdom. I'll paraphrase it for our purposes. "If your spouse sins against you," He said, "go to your spouse privately and tell him or her what the problem is. If he hears you, you've gained your spouse. If your spouse refuses to listen, go a second time with one or two others so that the matter can be confirmed by two or three witnesses. If, after that, your spouse still refuses to listen, tell it to the church. If he or she refuses to listen to the church, you may refuse to have anything more to do with him" (based on Matthew 18:15-17).

This speaks of intervention in measured degrees from privacy to publicity. Intervention in contemporary society is being practiced by the families of alcoholics and drug addicts. It involves an expanded form of the second stage of Jesus' scheme, wherein a larger group of concerned people -

relatives, friends, employer, and other associates - gather to confront the erring one and to stimulate him or her to change. Sometimes the interveners will confront the person with consequences - such as the loss of employment - if he or she refuses to check into a hospital for treatment or whatever it is they are being asked to do. The success of this procedure varies widely from case to case.

The excellence of Jesus' formula is that it involves simple confrontation and consequences by degree. Its tone bespeaks, however, the clear understanding that desirable behavior cannot, finally, be compelled. Every spouse in a troubled marriage must be prepared for this, and that is at the heart of my urging that you engage in counseling for your own sake - with no thought of controlling or manipulating your spouse's behavior or attitudes.

Do Mental Health Professionals Really Help?

Yes, they do. Even secular counselors who lack insight into the spiritual aspect of human behavior can be of tremendous assistance if they have learned how to focus clearly on and identify the emotional issues in marital conflict. I am familiar with a number of such counselors who are adept at helping couples deal with anger and animosity in their relationships. They find ways to defuse and deflate the hostility that so often gets in the way of marital harmony.

Sometimes, however, I run into therapists who do nothing to help couples resolve their problems. Once I represented a woman who had divorced her husband after tolerating years of physical abuse from him. Their child, Enoch, was eight years old at the time. Mother took Enoch with her when she left, and his father was furious about it.

Father's fury increased when his former spouse found and fell in love with a new man. This new man lived on the east coast, and Mother decided to marry the man and join him there. Enoch would go with her. That's when the father filed suit in court for a change of custody on the grounds that moving out of the state would be bad for Enoch, who had spent all of his life in Southern California.

An independent, court-appointed psychologist - a man with a Ph.D. - evaluated the situation and gave his opinion as to what would be in Enoch's best interests. The rule of law in such a case is that either parent is free to move about as they like, but that the court must determine independently what is in the best interests of the child.

In the meantime, the new man in the mother's life had moved to Southern California to be on hand until the matter could be resolved. That allowed the psychologist to evaluate the total situation by interviewing each

of the interested parties: Enoch, his father, his father's live-in girlfriend, his mother, and his new stepfather.

The psychologist told the court in his written evaluation that Enoch was being appropriately nurtured in the care of his mother and that, while Enoch had a close, loving, and warm relationship with his father, it would not be in the child's best interests to separate permanently from his mother to reside with his father. The ideal situation would be for Enoch to reside with his mother and spend equal amounts of time with his father. But, since a three-thousand-mile separation was imminent, he recommended that the removal to the east coast be delayed for six months. During the first four months of that period Enoch would reside with his mother, but spend equal amounts of time with his father (this was spelled out in the agreement as weekends and one other day in the middle of the week). However, for the last two months of the six-month period, Enoch would spend full time with his father. This was intended to give them a last real opportunity to bond the relationship between father and son. Then, at the end of the six months, Enoch would move to the east coast to live with his mother and new stepfather.

Enoch's father didn't like the psychologist's recommendation, so he hired a psychotherapist in another county. This psychotherapist interviewed Enoch and his father only. He did not talk to Enoch's mother or her new husband or to the father's live-in girlfriend. When he interviewed Enoch, he asked him two questions. The first question was, "If you had the opportunity to crawl into bed with your mother and dad, where would you choose to lie?" Enoch replied that he would lie down between them. This was proof, according to the psychotherapist, that Enoch was equally bonded to both his mother and father.

Next the therapist asked Enoch where he wanted to live, in California or on the east coast. Enoch said the east coast. When asked why, he replied, "Because where we're going there are rabbits and forests and trails and ponds and fishing holes and snow in the winter - it's a fun place to live!"

The evaluator then asked, "But what if none of these things were there?"

Enoch said, "Then, I guess I wouldn't want to go there."

On the basis of that, the evaluator concluded that Enoch was being manipulated by his mother and really preferred to live with his father, all other things being equal. He told the father that this was his conclusion and volunteered to appear as a witness in court for him.

I was appalled. It seemed to me that the man had prostituted himself. He was not behaving professionally, nor was he doing any service to the people involved. He could not possibly have rendered an impartial analysis without having interviewed all the concerned parties. He was simply selling

his services for whatever he could get, without regard for the effect of his pronouncements on Enoch or any of the other people involved.

Authentic Counseling

So, there are unscrupulous mental health professionals, just as there are in other fields, who will do anything for a dollar. That's why we need to be wary of any counselor who tells us exactly what we want to hear - namely that we are the victims while our opponents are the villains. They will testify in court, for a fee, to whatever it is you want. They will cavalierly exceed the boundaries of decency, professionalism, and even honesty, if the price is right.

This is not to say, of course, that you should seek out a counselor who is so objective and impartial that he or she remains cold and aloof from your plight. In every counseling situation, a bond needs to be built between the counselor and the counselee. This is usually an important part of therapy.

It does mean, however, that a counselor or therapist to whom you have become closely bonded is not qualified to serve as a mediator between you and your spouse. He or she cannot be sufficiently objective for that. This means it is entirely appropriate for both parties of a conflicted marriage to be seeing separate counselors to help them individually. But, if they need to do counseling together, they need to get a third counselor who is bonded to neither of them. A lot of marriage counseling fails for the simple reason that a counselor overestimated his or her ability to switch from counseling an individual to counseling a couple. The counselor may have done it for benign reasons - such as wanting to save the couple money - but it makes no difference. Violating this principle will result in costly consequences.

This situation has long been recognized in the legal profession. No attorney who has represented a person may ever represent another party in any action against that person. This is called *conflict of interest* and recognizes the bond that grows when a professional and a client work together for any length of time.

When Therapists Get in Over Their Heads

Therapists, like lawyers, fail to serve their client's best interests when they decide they are going to develop a little background and experience in a new field at the expense of their client. This happens when a person who is a competent therapist decides to move into the fields of mediation, child custody investigation, or psychological evaluation. Almost always, a person who does this without adequate training gets in over his or her head and finds himself in trouble. These alternatives are developed more fully in chapter 7, where we discuss ways of staying out of court.

I was representing a man who was a comptroller from a major corporation. He was unusually knowledgeable and I gave him extraordinary latitude when it came to consulting other professionals, much more than I would have given to a less-sophisticated client.

His wife was having an affair with the contractor who was remodeling their home. Their two children were caught in the midst of the resultant storm. For a while it looked as though the conflict might be resolved through counseling. He and his wife were going to a counselor primarily to help them deal more maturely and adequately with their sons. But they had each also acknowledged the possibility of moving further into counseling to deal with the difficulties that stood between them in their marriage.

As the counseling progressed, however, it became evident that reconciliation was not going to be possible. It was then that the mental health professional, who had been doing a commendable job of counseling them, recommended that they engage in a certain "mediator" to help them end their marriage amicably. The mediator was a licensed Marriage, Family and Child Counselor who had taken an eight-hour seminar in mediation. That was her total experience. But she sat down with my client and his spouse and began giving them legal direction. It became obvious to my client that this mediator was so biased against men that she distorted and misquoted the law in a substantial way that benefited the wife. My client came away from that session infuriated. He had no use, after that, for mediation, mediators, and mental health professionals in general.

That was the event that prompted me to explore mediation techniques in some detail. The person he and his wife had consulted was not adequately trained in mediation and did not deserve the title *mediator*. She outrageously overstepped her limits.

One-day seminars do not produce competent mediators any more than a few months in medical school can make surgeons. To be fully qualified as a mediator in family disputes requires training, internship, apprenticeship, observation, and experience. With time a person with the proper aptitudes can become competent. Unfortunately, there are still a lot of people who are not.

I don't often see examples of successful counseling because the people who come to see me are looking to divorce. When a client comes to me who is not in counseling, I refer him or her to one of several qualified professionals with whom I am familiar. If the counseling turns out to be successful in terms of preventing divorce, I seldom find out about it. On a

rare occasion, as in the case of Gale and Jack, whom I mentioned in the first chapter, I do find out.

But the one thing I have seen emerge as a certainty is this: *Without counseling it is only a matter of time until I see on or both members of a couple in y office again. It happens no matter how sincere their efforts to reconcile.*

Checklist for family counseling

1. Work on positives; eliminate negatives. Successful adults are people who grew up in homes that kept a positive focus.
2. "Act as if..." Decide that your day will be a good one and act accordingly. Act as if you want to get out of bed. Act as if things will go well. This exercise sometimes brings astounding results.
3. Live in the NOW. Focusing on the past or future is an unhealthy practice. Successful families live in the present.
4. Learn to process anger. When the feeling comes, say, "I feel furious! What you have done enrages me!" This is much more effective than calling the offender names and it still allows for the release of powerful emotions that must be expressed.
5. Make a list of at least eighteen things that especially please you. Spouses who make and share such lists with each other find real surprises - and new ways to enjoy each other.
6. Know where you are going. Families need to meet and talk together to establish agreed-upon goals for themselves.
7. Take the initiative. Make plans for the family. Think of things to do and places to go.
8. Practice good communication. Make plans as a family. Share the planning activities regularly. Sit down for full-fledged conversations. Practice writing out things you want to say to each other. Remember that listening is nine-tenths of good communication.
9. Avoid accusation, blaming, and name-calling. The hallmark of emotional maturity is the ability to accept responsibility for oneself, eliminating the need for a scapegoat.
10. Don't be afraid to seek help in formal or informal settings. In my own effort to grow as a person, I have found that professional help from time to time expedites the maturing process. I know I need help: from God, from trusted friends, and from competent therapists.

THREE

Children in Divorce

A Preliminary Note: If you are facing a divorce and children are not involved, you have something, at least, for which to be thankful. You can skip this chapter. But, if you do have children, this and the chapters near the end about parenting after a divorce are the most important in this book. I urge you to reread this chapter every week until its contents become part of the fabric of your life and thinking.

One day I decided to indulge myself in a personalized license plate frame for my car. A salesman explained to me how much room I could use for whatever sentiment I wanted to express to fellow drivers. So I said, “Okay, put down ‘Family Law Specialist.’”

When he finished, he said, “There’s room for a lot more than that. Do you want to say something else? No extra charge.”

How could I resist? I thought a moment, and then it came to me.

“Yes,” I said. “See if this fits: ‘Where the child comes first.’” It did fit, and I was glad because that phrase has, over the years of my practice, become my professional motto.

When couples start having trouble in their marriages, the emotional impact is so great that the children and their needs seem to go into eclipse. Sometimes, in fact, things are so disrupted for a season that children no older than nine or ten find themselves taking care of a distraught parent (something we will discuss at length later). That ought not to happen.

I learned about the problems of children in divorce gradually and haphazardly as my law practice grew. My perspective was limited until I attended a seminar conducted by Judith Wallerstein, who is a consultant to the California legislature as a result of her intensive studies of the effect of divorce on children.

The Los Angeles County Conciliation Court—an agency that for the last thirty years has led the nation in helping families through divorce – relies heavily on Wallerstein’s studies. The directors of this agency travel all over the United States training mediators and family counselors. They always include video recordings of Wallerstein as part of their training programs. Her studies are the only original research in this crucial area. Through her influence, I began to see the bigger picture of what actually happens in the homes of the people who are my clients. Her book *Surviving the Breakup: How Children and Parents Cope with Divorce* (New York: Basic Books, 1980), coauthored with Joan Berlin Kelly, is a landmark. I urge every person who has ever been concerned with children of divorce to read it.

What I’m going to discuss in this chapter will make any parent who is contemplating divorce think twice. This information can help prevent children from being permanently damaged by divorce. There is nothing a divorcing parent – or any parent, for that matter – can do to shield a child completely from pain or injury. But there’s a lot a parent can learn that will keep him or her from contributing to the child’s pain or injury. And every parent can learn to help a child deal with the pain appropriately and to grow through it to greater maturity.

So, if you’re on the verge of a divorce or in the midst of one, the things I’m going to talk about can help you see your children and their needs in clearer perspective and be able to do something about it. You’ll see why,

for example, it is essential that you make sure your minor children are taken to inspect your newly departed spouse's new quarters.

If you are the scorned wife of a man who has left you for another woman (or vice versa) this will be extraordinarily difficult. You are simultaneously furious at the betrayal and powerless to do anything about it. The children may be, in your tormented mind, the only vehicle at your disposal with which to punish him (or her). So, you are inclined to adduce more or less reasonable-sounding arguments to show why the children ought not to have anything to do with their other parent. And they certainly should never set foot in that den of iniquity he is living in now – right? Wrong! You'll see why shortly.

What Divorce Means to Children

The time factor. Divorce is not an isolated event. Dissolving a marriage is a lengthy process, not so much in terms of the law, but in terms of the emotional realities. Time is longer for children than for adults. If you're only six, for example, two years represents a third of your entire life. If you're thirty, it represents only a smaller fraction of your life. If you think divorce is a big event in your life, consider your children. The trauma they experience is magnified a hundred times.

You shouldn't be surprised, then, when your children oppose the divorce. With rare exceptions, they will. It doesn't matter whether or not your marriage is a bleak affair. Children do not want to lose a parent.

The first great conflict in every infant's life is the one between trust and mistrust. If a child is cared for and held and talked to, and if his cries receive a response, he will begin to achieve a sense of security that will undermine everything else that happens in his life thereafter. To be impaired at this level is to be virtually cut off from life.

Divorce and its attendant trauma shake a child's sense of trust and security as almost nothing else can. Parents need to be particularly sensitive to this critical element, and to do everything within their power to reassure their children and to assist them through the trauma of divorce.

In addition, children are readily bewildered because of their limited ability to conceptualize things. They think in concrete terms. It does little good, for example, to say that his or her grandparents live on a farm. A child has to be taken to a farm and shown, firsthand, what it is like.

In just the same way, children don't know what divorce means. They have to be shown everything. That's why they have to be taken to see the absent parent's new quarters. Only what they are already familiar with may be talked about. Everything else has to be shown.

Common Scenarios and How Children Cope

Children seem to cope better with the disruption of their lives to the extent that they can understand and make sense of the sequence of events that constitute that disruption. Thus, when they see a divorce as a rational solution to an intolerable situation – as in the case of an alcoholic parent who refuses to help himself or herself and is causing harm to the family – the children find it easiest to comprehend the decision to divorce.

Another sort of divorce is very hard for children to deal with. This is the sort that is brought on not by marital unhappiness but by external factors such as the unexpected death of a grandparent, the diagnosis of a fatal illness, or a crippling accident to a child. When a divorce is precipitated by something like one of these, children in the home experience the departure of a parent just when they feel an unusual need for stability and support. Further, they cannot readily understand why he or she has left, so pain is added to pain.

Sudden divorces often happen when one spouse discovers the infidelity of the other. The aggrieved spouse may hope that abrupt action will bring the errant partner home, but this strategy only works in a small percentage of cases. It often happens, in situations of this sort, that the children are enlisted on the side of the wounded parent. But these youngsters characteristically get little explanation of what is happening, so that they are afflicted by a lack of understanding and by the disorientating experience of becoming an ally, confidant, and rescuer of one of their parents.

In rare instances a divorce is prompted by the advice of someone such as a counselor-perhaps a therapist or a physician. When this happens, a parent readily assumes that if a divorce would benefit him or herself, it would also benefit the children. Most often, this does not prove to be the case.

The Impact of Divorce on Families

Divorces effect abrupt and significant changes in the lives of children and their parents. The foremost change is economic. The inevitable truth of divorce is that the resources which once supported one family unit now are divided between two units, and everybody experiences a decline in his or her standard of living. That is a depressing reality, no matter what economic level you're at.

The depression may be worsened by the awareness that one ex-spouse is faring better than the other. For example, in spit of community property laws which require an equal division of property laws which require

an equal division of property research clearly shows that women fare less well, economically speaking, than men in the aftermath of their divorces.

Making ends meet becomes a tiresome reality for almost everybody who goes through divorce, but to some it has actually meant a slide into poverty. Virtually every divorcing woman faces the stress of finding herself in a lower socioeconomic class. Very frequently this includes moving to less expensive housing in a less prestigious neighborhood. Formerly a husband's education, job, and income determined what circles one moved in – who one's friends were, where one shopped, etc. Divorce amounts to a serious identity crisis that can threaten the fiber of one's self-esteem. It can be devastating.

In most cases, children stay with their mothers, so they are directly affected by these changes, both in their standard of living and in the depth of their mothers' pain and anger. And, of course, the familiar need of the mother to go to work outside the home has immediate implications for the children. But even when a mother doesn't work and elects to stay home with her children, divorce still takes its toll. The strain of conflict and the disruption of the status quo reduce her capacity to care for her children. Not uncommonly women in this situation suffer from depression or other mental illness, become alcoholics, or suffer from recurring physical ailments that keep them in bed from time to time.

The children, consequently, find themselves being cared for by baby-sitters. It is a rare father who lets himself be considered a baby-sitting resource (this is often a result of his desire to punish the mother for having divorced him). Nor, in our modern mobile society, are grandparents or other family members always available to help. Thus the youngsters are confronted, in most cases, with the need to adjust to new people in their lives.

The Effects of Anger

The most significant disruption children have to face stem, however, from pervasive changes in their parents' moods, attitudes, and behavior. As the family crisis grows up to the point of separation, most children witness a removal of all the old restraints that once held their families together. Bitter and explosive confrontations between Mom and Dad are common.

In divorce, anger is expressed over many issues; almost invariably one of these is money. When, for example, a child needs medical attention, money quickly becomes an avenue for venting anger. Donna had a kidney infection. Donna's mother told the doctor to send the bill to Donna's father because, as she read their temporary agreement, he had agreed to pay for such things. But he refused to pay the bill. News of this never reached Donna's mother until a few months later when she had to take Donna back to

the doctor because the infection had recurred. In order to get treatment for her daughter, she had to start paying off the previous bill in regular installments. After that, she was not at liberty to take Donna to the doctor as often as she would have liked. This is the sort of scenario I see replayed again and again in the divorces I handle.

The bell seems to clang for the fighters to enter the ring almost as often when it comes to visiting arrangements. One mother hastily took her children to the movies one summer afternoon when Daddy didn't arrive on time to pick them up. He got there twenty minutes late to find the house empty. He protested, but Mother replied icily that she was not going to permit him to disappoint the children by arriving late. Traffic jams and the like were his tough luck. She was so intent on punishing the father that she overlooked the children's anxiety about their father not finding them at home. It astonishes me, when I get the phone call Monday morning after the regular weekend confrontation, which no one seems concerned about how the children are feeling!

The most common expression of anger comes in the form of bad-mouthing the absent parent to the children. When asked, children complain about his more than anything else. Children find it particularly distressing to hear their parents labeled with the most alarming obscenities imaginable. Often children are invited to join in this name-calling. Some will do so eagerly, others will feel anxious, and some will be disgusted. It's not uncommon for a judge in a custody suit to place restraining orders on both parties which forbid them to make any derogatory remarks about the other parent in the presence or hearing of the children. Often, when parents are helped to recognize that verbally assaulting the children's other parent is also an assault on the child's own self-esteem, they stop doing it.

However, some parents are so implacable that nothing, it seems, can dampen their rage. When this is the case, the children really feel it. Custody battles are commonplace, and child-napping is even attempted from time to time. Battles around visitation are almost incessant. Often, children are exposed to the unspoken threat that they will seriously jeopardize their relationship with one parent if they exhibit any loyalty toward the other.

I represented Lucy against Frank in a recent custody dispute involving their eleven- and thirteen-year-old daughters. Each parent testified that the girls had expressed a preference for them over the other parent. The judge ordered the courtroom cleared of all witnesses, including Frank and Lucy. He ordered the record sealed and admonished counsel not to disclose the testimony of the girls to their parents. I was astonished to hear both girls testify that they liked spending equal amounts of time with their mother and father. They simply couldn't bring themselves to tell the truth to either parent. The girls were not telling their parents the truth. They told them

what they wanted to hear, and only added fuel to the fire that was consuming the resources that could have meant college for them later on.

When anger seems pointless to a person, it degenerates into depression. And so, as already mentioned, children often find themselves faced with a depressed parent. A depressed parent is usually tired. The daily tasks of parenting - meal preparation, bathing, diaper changing, tying shoelaces, and the like - are unusually depleting. Consequently, they don't get done as often or as well as was once the case. This will leave a young child feeling abandoned and lonely. Older children will feel that nobody cares for their needs. If the parent's depression gets to the point that the child hears threats of suicide, then we can add terror to the list of emotions he is feeling.

For some parents, however, divorce becomes an occasion for the lifting of depression. Some, even among those who oppose their divorces, will see in their divorce a chance to get a fresh start in life. This happens most often among women who seek divorce as a rational solution to an intolerable marriage where there is no hope of improvement. Such women are likely to see their decision as bettering their own lot and that of their children.

Children Feel Anxious, Too

Children find the divorce of their parents to be the single most catastrophic thing that has ever happened to them. It is easy for us who are adults to forget that essential element of childhood: dependency. A child depends on grown-ups for food, clothing, housing, warmth - everything. He is at their mercy.

This truth came home startlingly to a father I know. Through an unbelievable maze of events, his ex-wife had disappeared and his children had gone off to live with a woman in Wyoming who was cohabiting with some college students. Alarmed about the welfare of his children, he stormed off to retrieve them. A local lawyer helped him get a court order to make his task easier. So, accompanied by two deputy sheriffs, he arrived at the door of the woman's home. She became violent and had to be restrained. The young children were so alarmed that they insisted they didn't want to leave. Two of them even locked themselves in a bathroom. However, a few minutes later, almost as soon as they were in the car and headed back home, the children apologized to their father for their behavior and expressed their pleasure at the thought of returning home and getting away from the woman. As they were doing this, he told me, it suddenly struck him that they were being as honest as they could and he ought not to blame them for their duplicity. He recognized their dependency, which made it necessary for

them to come to terms with whatever adult was closest at hand. To ask them to protest on the grounds of principle was absurd.

Children see their families, no matter what the problems of those families might be, as the source of the support and protection they need. From their point of view, the collapse of the family structure is a catastrophe for them in much the same way that a bankruptcy or an earthquake would be for an adult. It leaves children terrified, lonely, and anxious.

To add insult to injury, most children face this catastrophe with little help. Adults invariably become preoccupied with their own troubles that their parenting efforts all but cease. When they do get around to trying to help their children, many a depressed parent winds up breaking into sobs, as the anguish of it all overwhelms them. This often alarms a grieving child - more so if the sobs are accompanied by threats of suicide - with the result that the child will resolve to keep his sadness to himself and not seek solace from his parent in the future. Instead, he will valiantly set himself to assuage his parent's grief with his own presence and support.

Youngsters in divorce are doubly afflicted. In almost every other sort of trial, the comforting presence of a parent sustains and reassures a child. Not so in a divorce. It is the parent who introduces this trial and whose own inner turmoil often prevents him or her from being of help. In fact, since the child's most strongly felt need is to restore the missing parent, this may put him at logger heads with the remaining parent, who may see the departure of an unwanted spouse as a cause for relief and new hope for the future.

When parents are embroiled in battle - often with one threatening to take custody from the other - the children are sharply pained and become preoccupied with the details of their parents' intentions. They foresee keenly and sadly that their own relationships with one or both parents are going to be impaired by the adults' rage. This is the sort of stress that can slow a child's progress toward maturity or even stop it altogether.

Parents of very young children often neglect to offer any adequate explanation or assurance that they will continue to be cared for by at least one parent. In most cases young children simply awaken one morning to find Daddy gone. Sometimes parents are reluctant to talk with their young children about the problem because it involves intimate matters of infidelity, frigidity, or indifference to sex. Also they may be unwilling to face the pressure to reunite that they correctly anticipate from their children in the event they bring up the subject with them.

On their side, the children are reluctant to ask questions for fear of heightening a parent's distress. A weeping parent is very upsetting to a child, who is even more upset if he thinks he's managed to provoke the tears. Consequently, whatever announcement the children hear is usually painfully

brief and accompanied by no discussion of how they will be affected. For example, what arrangements will be made for them to see the departing parent? What is the divorce about? Where will the family live? Will Mary still have her own room? Will Daddy take the dog with him? And yet parents are astonished that these children do not greet with warm affirmation their vague assertions that things will get better as a result of the breakup. On the contrary, they frequently encounter loud protests and earnest expressions of grief and disapproval.

One of the most alarming discoveries I have made in my practice of family law is that parents consistently fail to provide their children with an adequate opportunity to ask questions and express their concerns. Nor do they manage to recognize that the divorce precipitates crisis for each member of the family, or to realistically reassure the children that, while things might be difficult at first, they will be okay in the long run. This parental paralysis at such a crucial time increases the children's anxiety and fears immeasurably. If it produces total separation from the parent, it can have a serious effect on healthy development.

Nor are those fears eased in the days and weeks following a typical separation. Children nine and older are often left to fend for themselves in many respects. And all children experience an increased parental absence. Gone are the days of returning from school in the afternoon to find a parent in the house and a snack in the refrigerator. The children of divorce often must eat by themselves, prepare their own meals and school lunches, spend long hours at home unsupervised, and put themselves to bed.

Themes of Experience

Nearly every child whose parents divorce experiences fear. The youngest children worry about who will take care of them. Many worry that their parents will abandon them. After all, if marriages can be dissolved, why not parent-child relationships? Fears like these lessen their trust in their parents and in human relationships in general.

A second theme of the divorce experience for the children is sadness and yearning. Sometimes the sadness is so deep that they experience sleeplessness, inability to concentrate, disinterest in play, deep sighing, compulsive overeating, and various aches and pains. They yearn for the absent parent. Five-year-olds will say, "We need a daddy. We don't have a daddy." It doesn't seem to matter at all how good a relationship with the children had with the absent father. They miss him and want him back because they need him and what he represents in their own minds and imaginations. And they want him back because that would heal the pain of

their sense of loss and rejection. Substitutions, no matter how well intended, will not fill the great emptiness they feel.

Divorce is also a time of worry for children. The often - boys and girls alike - fret about their absent father and the details of his life. But they also worry about their mothers - both in terms of her permanence for them and their needs, and in terms of their compassion for her own suffering. They also worry about money, about changing schools, about moving, and about their parents' new friends.

The youngsters take the departure of a parent personally. He or she is rejecting them. In addition, some children, especially boys, will identify with their departed father so that they personally feel any criticism leveled at Dad by Mom as if it had been meant for them.

Loneliness is another common theme. Children feel that both of their parents are slipping away from them - which is not unreasonable, since the remaining parent might be either off at work or hiding in the bedroom in a pit of depression. Adolescents are sometimes able to escape their torment if they are especially well adjusted so that they have an already-developed capacity to rely on their friends. But the reliance of teenagers on their equally immature friends can also lead to difficulties at home, at school, or even with the law.

In pitched battles between their parents, children feel pulled by love and loyalty toward both parties. And parents regularly compete for their loyalty. Consequently, a step in one direction means risking the displeasure of the other parent as well as a betrayal of one's inner loyalties. Some children bravely maintain their neutrality and suffer the sense of isolation from any source of parenting. Others find that so unbearable that they take sides, losing the affection of one parent for the sake of having at least the other.

Children of divorcing parents are also angry. Wallerstein and Kelly found that many children have temper tantrums and start hitting. Older children are more verbal about it. The anger is aimed at both parents. Its expression is given license by the shabby example of parents who exhibit loudly and clearly that direct expression of intense anger is no longer unacceptable in that family. And it is motivated by the children's perception that their parents' choice to divorce is a selfish act that failed to consider the children's needs or wishes.

All of these emotions considered, the greatest danger faced by a child during the divorce of his parents is not the unhappiness he feels or the measure in which he feels it. It is instead that the disruption of his family will inhibit his steady development in life toward becoming a whole and mature person. This may happen either as a result of slowing him down or of

speeding him up. It cannot be attributed directly to or equated with unhappiness, however.

Unhappiness is a normal response to divorce. It should make you want to comfort your child, but it shouldn't cause you alarm. True developmental impairment is reflected in depression and regressive behavior that endures over a significant span of time. Perhaps the children most vulnerable to impairment are those between the ages of three and six. That is because psychologists have learned that it is during that stage of life a person undergoes his or her most significant psychosexual development. The need for the nurturing presence of both parents for a child in that age bracket is so strong that the prolonged absence of either one of them can have devastating effects.

How to Help Your Child Survive the Divorce

A single factor seems to most determine whether or not a child does well or poorly in surviving a divorce. That factor is the extent to which his parents continue to fight with each other after the breakup. So, if a parent wants to do one thing that will ensure that the children do well after the divorce, it will be to *stop fighting*.

A second contributing factor to the successful survival of divorce by children is the amount of steady contact they have with the non-resident parent. In addition, youngsters are helped if they know and are assured by their parents that they thought through the decision to divorce thoroughly and at length. Parents need to be able to tell their children that the forthcoming divorce is not something entered upon impulsively.

Parents need to go to the children and tell them how bad they feel about the decision. They need to offer whatever explanation they believe they have for the decision without placing the blame on someone else. And they owe the children an apology for their failure to make the marriage work. This helps the children understand that the divorce is the parents' fault. It releases them from intolerable guilt and a false sense of responsibility. It also gives them a role model in the thoughtful, considerate parent who is willing to take responsibility honestly, without complaining.

Checklist for those who have children at the time of divorce or separation

1. Tell your children what is going to happen: where everyone will live, where they will go to school, how they will be cared for.
2. Assure them that they will have access to and time with each parent.
3. Tell them that the purpose of the divorce is to try to make things better.
4. Tell them, in general but clear terms, why the divorce is happening, without hurling accusations at anyone. Tell them it is not their fault.
5. Let them know of your sadness and regret at the break of the family.
6. Tell them that it is all right to love the other parent.
7. Stop fighting. If you can do nothing else for your children in the midst of your divorce, at least do this. A fight requires at least two people; you can stop a fight all by yourself.
8. Just as you may need to seek help for yourself, seeking help for your children is also appropriate. It is usually important to let their teachers know they are going through a stressful time; teachers can be of great help to your children and you.

FOUR

Do You Need a Lawyer?

At this point I am going to change gears. All that has gone before has been preliminary material. Some of it was meant to help you stop and think about options other than divorce that might be available to you. Some of it was intended to help you start to get a handle on a bewildering subject. But now we need to get down to the nitty-gritty of divorce itself.

A Lawyer Can Help!

You may not want a divorce. The idea may be totally abhorrent to you. That is how I personally feel about divorce. But what if your wife files anyway? Then, like it or not, you must try to find solutions to the immediate problems raised by divorce. Some of the things I'm going to tell you about

might help you save your marriage. That would be the best outcome in most cases. But the design of this book is primarily to help you through a divorce once it has become inescapable.

In trying to help show a pathway through the dissolution process, I'm going to talk about some things that will reduce the pain as much as possible. In fact, as I get to waxing on about all these wonderful procedures, you may actually get the impression that the whole thing can and perhaps will be a snap. If you've read the previous chapter, I doubt that you will fall into that trap. But you may have skipped that chapter because you don't have children or you don't like people with personalized license-plate frames. So, just in case, let me assert, here at the outset, that divorce has never been, is not now, nor will it ever be simple, easy, or painless. Back in 1966 a commission of churchmen appointed by the Archbishop of Canterbury issued a report entitled, "Putting Asunder," in which they said, "Divorce is a drastic piece of surgery, the unnatural severing of what should be one and indivisible. As such, it is bound to cause pain and loss and leave lasting scars. To demand that a divorce law shall let no one be hurt is therefore to ask the impossible." Amen.

If, for whatever reason, you're faced with the necessity of going through a divorce, you're going to need help. You'll need the help of friends and family, of your pastor, priest, rabbi, of counselors and advisers. You're going to want them to help you with your feelings, your finances, your thinking, your children, your time - the list could go on for some time.

But what about an attorney? Do you really need one? Most people don't know much about attorneys, and what they do know makes them inclined to not want to know more. For one thing, don't they charge a fee just to let you ring their telephones? And, when the case has finally wended its way to a conclusion, won't your lawyer take most of what you've own financially to pay for his fees?

People have told horror stories about lawyers for as long as anyone can remember. And the jokes are legion. Like the one about O'Houlihan, who was on his way home one evening. There he stumbled over an unfamiliar grave marker. In the moonlight he looked down to read the inscription. It read, "Here lies a good Christian man and a Lawyer."

"Faith!" exclaimed O'Houlihan. "They've buried two of 'em in the same grave!"

We never consult lawyers for the happy events of life. They are there instead to help us deal with charlatans, criminals, policeman, and judges. The least unpleasant things they do for us are to help us make out a will or adopt a child. In all, it's not surprising that we associate lawyers with the grim side of life.

When we go to court we're looking for justice. Some people are seeking vengeance. In that memorable movie *The Sting*, Robert Redford went to Paul Newman to get him to help take revenge on the villainous brute who had ordered the death of Redford's friend. Newman assured him that they would be able to sting the culprit and make him pay for his crime. "But," he added, "Just remember one thing, kid. No matter how much we get, it won't be enough."

And it never is. What's worse, courts give much less satisfying results than do sting operations. News reports invariably keep us up-to-date with the latest lawsuit. And, of course, the most sensational aspect of the case is often the amount of money being asked for by the plaintiff. Thus, some celebrity's suit against a person or corporation is usually identified as "X's hundred-million-dollar lawsuit" by newscasters. If you follow any of these suits to their conclusions, you discover that the courts regularly award damages at figures far beneath what the plaintiff was asking for. Since the process is adversarial in nature, it is rare for the parties to come away feeling satisfied.

Lawyers and other people who spend time in courtrooms are, of course, familiar with the universal propensity of judges to whittle things down to their own idea of what's fair. That's why figures named in these suits are often so astronomical. The participants want to give the judge plenty to whittle on so that, when he's done, there will be enough left over to have made it worthwhile.

The result of this is that clients often leave the courtroom feeling they have gone through a lot to get very little. In divorce actions, it is very often this way. I'll go into the whys and wherefores of that a little later in this book, but saying it now helps us to understand why so many people feel uneasy about going to see a lawyer. The whole legal process, particularly as it works in family law disputes, gives people pause. Their concern is well founded.

But, in fact, a lawyer may help you get through your divorce with the least expense. Bill, of the Bill and Mary in chapter 1, discovered that. He finally went to a lawyer for advice, counsel, and representation after an unsatisfactory but cheap divorce. The cost of doing it that way was much greater.

You'll need a lawyer unless you and your spouse have been married only briefly and there are no children or property to worry about. In some instances you may be able to use the help of a mediator to arrive at an equitable and mutually satisfactory settlement. Even if you do that, you will still need someone who can advise you as to your rights. So, you need to know how to go about finding a lawyer.

How to Find a Lawyer

The act of finding a lawyer is not difficult. The Chief Justice of the United States Supreme Court wondered out loud a few years ago if perhaps our nation didn't have more lawyers than it needed. The market is glutted. But that only worsens the problem of finding the right one for you.

People most often find a lawyer through their pastor or a friend. Sometimes these friends are the fellow members of a fellowship for divorced people, or perhaps the singles' group at your church. If you have a friend who is a CPA, he will probably know more than most people about the lawyer in your area. Your insurance agent or your physician might also be a source of helpful information. Women's rights groups are keyed into lawyers. So are father's rights groups. Another referral source is the local bar association. The Yellow Pages of your phone book usually lists lawyers under "Attorneys." Often the Yellow Pages offer a second listing of lawyers by specialty. Even the best lawyers can be proficient only in a few areas of the law. Their listing in the directory will tell you if, beyond their declaration or specialties, they hold particular qualifications or certifications that pertain to those specialties.

Various state bar associations have established criteria for certifying lawyers in some specialty of law. In some states, certification for family law means that an attorney has practiced law in his state for at least five years. It also means he has participated in a specified number of contested hearings and has negotiated and drafted another specified number of marital settlement agreements. Generally, her or she must also enroll in and attend continuing education courses.

You may be able to secure more information by telephone. You will certainly get some measure of how busy a person is by the amount of time it takes him to return your call, if he returns it at all. But, before you make that first call or walk into that office for the first time, divest yourself of that intimidated feeling. It's not a bad idea to stand in front of a mirror and remind yourself, "I am a person with rights and I deserve some respect. The lawyer I'm going to talk to puts his or her pants on one leg at a time, the same way I have to. This is a job interview in which I'm the one doing the hiring. I have a right to ask questions and get answers before I make up my mind."

An attorney named Barry M. Gallagher wrote a consumer guide to good counsel entitled *How to Hire a Lawyer*. In it he discusses finding the right lawyer, what you need to know about fees, how to prepare for that important first meeting, and your rights as a client, among other things. You can probably find a copy at your local library; if not, it's an inexpensive paperback.

Gallagher's lists of questions you should ask during that first meeting are especially important. They include questions about the attorney's background, education, professional qualifications, and experience. He also suggests questions you ought to ask about employment considerations, fees, and the lawyer's office procedures. Along with the list, Gallagher provides guidelines for evaluating the answers.

I would add only one thing to what Gallagher says, and it is not so much an addition as a summation. The most important thing to look at in your lawyer is *attitude*. Does he or she express the attitude of a lord or of a servant? What you want is a person who will serve you well, and he can't serve you well if he does not regard himself as your servant. At the outset of my law career, I was taught that it is a contest of the lawyers versus the clients and that all clients are nincompoops who simply need to turn everything over to their attorneys and not fret their heads about it any longer. The lawyer was a benevolent dictator who called all the shots and was only slightly answerable to his or her clients. In time, however, I discovered that this attitude was neither in my best interests nor in those of my clients.

You want a lawyer who will treat you as a senior partner who needs his expertise and help. He or she will keep you abreast of what is happening with your case by sending you copies of all correspondence and documents filed. He will be willing to discuss your case with other professionals, such as your pastor or psychiatrist. (This willingness indicates, by the way, that he approaches your problem as a member of a team which recognized you as a whole person: body, mind, and spirit.) Nor will he take offense by your coming to your first meeting with a list of questions and a notepad on which to record his answers. As Gallagher says, "...no competent lawyer will take exception to your caution and thoroughness. In fact, it should impress the lawyer with your sincerity to have your legal matter handled in the best possible fashion. A competent lawyer will know you are merely attempting to make the lawyer/client relationship better for both of you."

What Your Lawyer Should and Shouldn't Do for You

Divorces are extremely complex matters entailing emotional, financial, and legal issues. You should not expect your lawyer to handle it all for you. In fact, be a little suspicious of the attorney who presents himself as omniscient to handle you and your case. More than one distraught and vulnerable woman has found great comfort at the side a lawyer who has presented himself not only as a legal counselor but also as a confidant, supporter, protector, and source of consolation. Some of these same women have also found themselves emotionally involved with such a lawyer and have emerged feeling used and bitter. Seducing a client is grounds for

disbarment, the scenario I've just described will begin to be reversed as the number of female attorneys increases. Men become as emotionally vulnerable as women when in the midst of a divorce.

The things a lawyer should do for you come under the general heading of devising a strategy to gain the best possible results for you, either through negotiation or litigation. For example, your attorney should be given a free hand to decide about the scheduling of court appearances. He is generally the better judge of who should hear your case. If you are inclined to be passive in your dispute with your spouse or ex-spouse, you give to your spouse and his or her attorney the advantage that goes with deciding these matters of calendar and judge.

Of course this strategy can only be developed as a result of your explanation to your lawyer of all the facts of the case and the ends you seek to achieve. How you describe your problem and what your goals are will govern the sort of strategy he comes up with. I generally try to outline a strategy for a client as soon as possible, preferably during our first meeting. I describe what we're going to try to do, how we will go about it, and on what course that will likely lead us. Be sure you know and understand your lawyer's strategy at the outset of your relationship. And then keep abreast of any strategic changes that occur as the case progresses. As new information comes to light, all sorts of things that will affect strategy can and do change.

It makes sense to do what you can to discover how competent the attorney you are considering is as a trial lawyer. How familiar is he with the courts and judicial officers in your area? Some lawyers are superb counselors, but they may be easily intimidated by their own lack of experience in the courtroom. Divorce is still an adversarial process. You will need a strong advocate who will pursue your interests and protect your rights aggressively. I espouse settlement, but the best settlement is negotiated from a position of strength, not weakness.

You alone, however, must make the final decision about what you want to pursue in terms of the substance of your divorce settlement. That includes the matters of custody, visitation, property division, discovery proceedings, and the like. *Discovery* is a word with special meaning to lawyers. It refers to the preparation and presentation of the facts a lawyer needs to best represent his client before the court. In divorce this means finding out what there is, what it is worth, where it is, and who should get it. Chapter 5 is devoted to the tools of discovery.

Frequently the women I represent are more or less in the dark about their family finances. As a result they usually believe their husbands are hiding assets from them so that their share of the community property will be less than what it should be. While this does happen, it is not as common as clients think, or hope. I tell my clients that, and I explain how long it will

take and how much it will cost for us to find out for sure. That helps them to decide if it is going to be worth it.

A different situation serves to illustrate the limitations I and all attorneys are subject to. I represented a man who had taken custody of his three minor children in the original divorce settlement. But, about a year after the divorce, his ex-wife's circumstances changed unexpectedly and she launched a suit in court to get her children back. That's when he came to me. He was living as a single parent with his children. He worked a regular daytime shift and hired a neighborhood mother to watch his children after school in her home until he came home from work.

His ex-wife was living with a man who enjoyed a better income than did my client. My client felt resentment at the thought of his children moving into a situation he regarded as immoral. I told him I personally shared his sentiment about the morality of his ex-spouse's living arrangements, but I advised him that the courts would surely ignore the matter and refuse to consider it over other matters in deciding the case. In addition, I explained what was also true at that time (this case happened a number of years ago): the courts were strongly inclined to award custody to a mother who asked for it unless there were compelling reasons to do otherwise.

George, as I'll call my client, decided to authorize me to prepare the strongest case possible under the circumstances. As it turned out, the judge before whom we appeared was unusually sympathetic to my client's position (and this in spite of the fact that I had no say in determining who he would be, since we were the respondent and not the petitioning party in the dispute). Consequently, the case took more time than usual. After the first hearing, the judge ordered a child custody investigation to thoroughly examine the lifestyles of the respective parties and to issue a report. That took time. When the report came it favored the mother, but only slightly. For the report the mother and the father each had to pay about three hundred dollars. At this writing, the same procedure would cost nearly twice that much.

At that point, George could have dropped the case and surrendered custody. But as customarily happens, when cases are litigated this way the sense of struggle and competition grows. Since the report was inconclusive, the next step was to ask the court psychiatrist to examine George and his ex-wife to examine the psychological dynamics of the family and to say who he thought was more fit to care for the children. George and the children's mother each had to ante up the psychiatrist's fee for this service, which wound up costing even more than the investigation (the judge had ordered that each party would be responsible for his or her own attorney's fees and costs).

The psychiatrist had to meet with both parties separately, with and without the children, and then write up his report in the form required by the court. The psychiatrist thought the mother was a slightly better candidate for the job than was George. When we went back into court, there were two reports that favored the mother. We could have gone through a contested hearing but it was unlikely that the judge would rule in contradiction to the two expert reports he had ordered. I met with opposing counsel (the mother's attorney) out in the hall. We conveyed messages back and forth between the two parents and negotiated, on the spot, the terms of custody, support, visitation, and decided when the children would move from the father's home to the mother's. Then we went back into the courtroom and reported to the judge that we had arrived at an agreement. He reviewed its terms, approved them, affixed his signature, and commended the parties and their attorneys for resolving matters without a contested hearing.

It had been more than six months since George had first come to my office. He was not pleased with the outcome, but he was able to become somewhat philosophical about it. He went to a mental health professional for counseling to help him deal with the pain of the loss. He was given good advice and was able to lay the matter to rest and get on with his life.

Did George make the wrong decision? I tried to let him know the probable consequences of each decision along the way, but the further it went, the more unpredictable it grew. I also tried to remain detached, but I found myself increasingly aligned with George in his unshakable belief that it would truly be better for his children to be with him. I'm not sure George could have made any other decisions than the ones he did. His case points up clearly how complex family law cases can be. And it demonstrates the kind of circumstances in which an attorney must let his or her client make the decisions. No amount of competence or expertise would have qualified anyone to tell George what he should or should not have done.

If, during George's case, I had maintained the attitude of his lord rather than his servant, I know it would have been disastrous. George was my partner throughout the proceedings. I kept him fully informed, and he was free to challenge my opinions, ideas, and decisions throughout. The process of making those difficult decisions and seeing the case through to the end was, as George told me much later, an indispensable ingredient to his own personal growth. You will hear more about George in Chapter 9.

Interviewing a Prospective Attorney

The attorney you interview (a fee for this initial interview should be modest and sometimes there's no charge - find out before you go in) should tell you how much work your case is likely to entail and approximately how

much it will cost. If, for any reason, you decide you'd like to hear how another lawyer would evaluate and price your case - given the same set of facts - you should feel free to do it. And tell the attorney you are interviewing that is what you plan to do. An attorney who objects to your doing it, is probably not the one you want. I frequently give second opinions on cases. In the majority of these cases it happens that my evaluation confirms that of the first attorney. In any event, I seldom advise people to change lawyers if their cases are already in progress.

One of the worst things to have to do is fire your lawyer and find another in midstream. That's why careful work at the beginning of the relationship is so essential. Still, no screen can filter out every impurity. You have grounds for changing your counselor if you discover that he or she has withheld information from or lied to you. Likewise, if an attorney proves to be unreliable, inexperienced, or incompetent, make a change quickly.

Communicating With Your Lawyer

Before you set out to look for a lawyer, sit down and make a list of the documents and paperwork that might help him prepare your case. Do you know your children's birth dates and birthplaces? What about your wedding date and place? The two big issues of every divorce are children and property. Any documents you have that relate to either of these issues will probably be important to your case. If you need to get restraining orders to protect yourself from a violent spouse, you'll do well to have kept a diary or some other record. Keep records, diaries, journals, ledgers, and documents close at hand. And, for heaven's sake, take them all with you when you go to the lawyer's office. More often than not, clients show up for their first meeting empty-handed. Showing up with your hands full will save time and money.

And keep records throughout the course of your divorce or custody suit. Your attorney should have copies of everything for his or her files. But you should take the responsibility of maintaining the master file on your case. Remember, your lawyer has drawers full of files. You only have one. It may be smart for you to get a small metal filing case that will hold four or five inches of paperwork. Sometimes a cardboard box will do. Keep it in the trunk of your car. *Always* be sure you have it with you whenever you go to your lawyer's office or to court or to any other event pertaining to your case.

I make it a practice to send copies of all reports, evaluations, appraisals, and other pertinent paperwork to my clients. In the case of George and his custody suit, which I described earlier, it was I who received the psychiatric reports from the court. I had to meet with George to discuss these confidential evaluations. Different courts and states have different

rules in this regard. Find out what the rules are in the state where you reside and how the lawyer you plan to hire handles these matters.

A lawyer might be reluctant to send out a report. Some courts do not allow these reports to leave the attorney's office. That's because the information is confidential and privileged. There are different views as to how this information should be handled. If your lawyer does make this information available to you, sit down and read the report. Spend some time thinking about the contents. Try to decide what you like and what you dislike the most. Then see if you can reduce your thoughts to writing. I suggest you communicate your thoughts to your lawyer in a memo. That allows your lawyer an opportunity to review your file, your case, and give your questions, corrections, complaints, and/or comments the attention necessary at minimum expense to you.

Communicating in writing is a chore. But engaging in that chore will save you money. If your lawyer has to take your first impulsive and angry call, then he or she has to spend time helping you calm down and figure out what, exactly, is the problem. That's not what your lawyer can do best for you. You don't want to pay - and you can be sure the clock is running while you're on the phone together - to do that. Do it yourself. Commiserate with your confidant (a friend who has weathered a divorce can be helpful). But, by all means, sit down with a paper and pencil before you get in touch with your lawyer. If your handwriting is legible, send a handwritten memo. If not, type it.

Writing is a chore because it forces us to think. To whatever extent you can harness the emotional energy of your anger to motivate and sustain thought, to that extent you will be able to hasten and economize the settlement of your dispute.

Having said all that, I must add one thing: However you do it, keep in contact with your lawyer. Make sure your attorney's office knows how to get in touch with you day or night, seven days a week. If you have any question about your case or how your attorney is handling it, ask it! The only "dumb" question is the one you fail to ask. It is *your* case. And nobody knows the facts of your case better than you do. Your attorney knows the laws and the procedures. He or she is learning the facts of your case in order to present them to the court. But most lawyers do not have photographic memories. If he neglects to mention something, it may be that he's forgotten it. Remind him. Be available. Help your lawyer.

What About Fees?

Abraham Lincoln sagely observed that "all a lawyer has to sell is his times and his advice." That's why most lawyers charge either by the hour or

a flat fee for a specific service. Family law disputes are usually complicated. A routine divorce will involve real estate, employee benefits, insurance problems, tax considerations, support, custody, fees, and a host of other issues. Your lawyer must advance your interests across a sea made stormy by the attorney who represents your spouse and by the decisions and opinions of the judge assigned to your case. To predict a flat fee for a divorce ahead of time is hazardous for most lawyers in family law.

Rates among lawyers who practice family law vary widely. The spread depends on training, experience, and expertise. Expect to pay more for an experienced specialist in a metropolitan area, less for an inexperienced practitioner in a rural area.

But you can save money by going to a specialist. That's because he or she is likely to handle your case more efficiently. And it is also because, on a day when your case has to go to court, your specialist lawyer may have more than one case on the court's docket. That means that you and his other clients whose cases are before the judge that day will share the expense of the total charges for the day your attorney has to spend in court. A lawyer customarily charges from the time he leaves his office until the time of return. Legal shorthand refers to this as "portal to portal" charges. These expenses are shared among clients when the attorney has multiple appearances in the same courtroom on the same day. It also means that you won't have his or her undivided attention throughout the day. But clients familiar with the unimportant small talk exchanged with their lawyers while sitting in the back of the courtroom waiting for their cases to come up will tell you this constitutes no great loss to your case.

If your resources are slim and your spouse's resources are fat, the court may require your spouse to help pay your attorney's fees. But don't expect a free ride. Courts will take a close look at your resources and compel you to bear as much of the weight as you possibly can. Usually it will be more than you think is reasonable.

Fees are also incurred when your case requires the input of some kind of "expert" testimony. This may be a doctor, a psychiatrist, an appraiser, an actuary, or an accountant. I mentioned this sort of thing earlier in the story of George. Costs are frequently incurred for serving various papers (such as court documents or subpoenas) on various people (your spouse, a witness, an employer, or a banker). Taking depositions costs money. So does making copies of all the paperwork. But the greatest expenses you will incur will be your attorney's fees. So you must make every effort to cooperate with and assist your attorney in the preparation and presentation of your case.

How to Get the Best from Your Lawyer

Since we are on the subject of lawyer/client relationships, let me take a moment to let you know how it looks from the other side of the desk. Lawyers meet people when they're not looking and feeling their best, almost as much as do physicians. Times of trouble have a way of bringing out the best and the worst in people. I suppose another way of putting it is that affliction lets us see who we really are at heart.

As you can tell from some of the stories I've recounted, I've watched a lot of people do some remarkably fast growing. And I've had the privilege of representing a large number of clients who have been people of unusual grace and maturity. Their examples of patience and endurance have evoked my unequivocal admiration.

Like all lawyers, I meet some clients whose approach to life and attorneys makes it difficult for me to serve them as well as I would like. I have seen three basic types of people in this regard. Let me give you a brief illustration of what I mean.

The first is the CEO - Chief Executive Officer. Usually a man, but not always, this person comes to me not with questions but with commands. Because the CEO is so imperious and bossy, I often wonder why he's bothered to come to me, since he obviously regards his own understanding of the law as better than mine.

I remember Ed the DC-10 pilot. He treated me as if I were a rookie navigator on one of his flights. He decided when we would go to court, what issues would be disputed, and whether or not we needed witnesses to establish our case. It turned out badly. Ed was bitterly disappointed. And I learned never to allow that to happen again.

Another sort of person who makes life difficult for lawyers is the sort I call the Victim. The Victims among my clients are more often women than men. They are the helpless ones. They have no control over anything, least of all their own feelings. Their spouses have treated them badly. Their spouses are entirely to blame for the breakup of the marriage - or, if not the spouse, the other woman, the boss, his card-playing buddies, the librarian, somebody... They are entirely innocent and blameless themselves. Furthermore, they have no way to pay for a lawyer's services, and they prove to be incapable of supplying me with concrete information on which to build a case. Filling out the simplest questionnaire is too great a task for them. And, after their cases are concluded, the results are not to their liking. The fault for this, of course, they lay at the feet of their lawyers!

Early in my career I represented a Victim named Maureen. She attached a spiritual significance to everything. That was tiresome. But what was truly irksome was that she kept making deals with her estranged husband

behind my back. When I found out about one and protested, she told me it was none of my business. Later, however, when her deals began to backfire, I found myself being subjected to her vilifying attacks. "You were supposed to protect me!" she shouted. "You knew what I was doing was wrong. You should have made me stop. Now the mess is your fault!" I learned another important lesson.

Finally, there is the "LOLITS" - the Little Old Lady in Tennis Shoes. In spite of the name, this group of clients is more evenly divided between men and women. Their emotional distress exhibits itself in overattention to their cases. Letters and phone calls from them arrive almost daily. The slightest grammatical or spelling error in any correspondence or document is brought to my attention. They focus endlessly on details - probably because the big items are too unpleasant to contemplate. LOLITS usually have great difficulty making decisions. They complain that they don't have enough information. And, it seems, the court's calendar requirements never suit their schedules. Thus they cause their fees to escalate by delaying the prompt and efficient administration of their cases.

Norton was such a client. He called continually to correct a secretary or clerk about one minor matter after another. Although they had nothing to do with his case, he sent me all of his bills. Whenever Norton called, confusion reigned in the office for at least an hour. The final straw came the day he called me for a referral to some agency or business that would care for his pets when he was going to be out of town. Later, true to form, Norton complained bitterly about the excessive hours that were spent on his case and for which he was billed.

In each of these cases I recognize people trying to deal with pain and finding inappropriate ways of doing it - ways that express a denial of the problem and an unwillingness to wrestle with it. When I see that, I often try to suggest or encourage the client to find competent help from a psychotherapist or clergyman or some other trained counselor. I wish I could be all things to my clients, escorting them through the maze of the legal world, holding their hands, quieting their fears, soothing their anxieties - just being Mr. Wonderful. But I've found I'm generally more helpful to my clients when I maintain a realistic estimate of my abilities. A lawyer is just a lawyer - that's a big enough job.

Checklist of ways to help your lawyer help you

1. Don't be afraid to interview an attorney; ask him or her about experience and background.
2. Look for a lawyer who will serve you and partner with you to help you achieve your goal.
3. Bring any records, diaries, journals, ledgers, and documents to your meeting with your lawyer so he can review them; keep them near at hand throughout the course of your case.
4. Encourage and support your lawyer; express your pleasure when you observe his being efficient, thorough, or prompt; give him credit for successes and be kind about the setbacks.
5. Work with your lawyer's staff; they are trained to sift through your communications to bring to your lawyer's attention those matters that most vitally affect your case.
6. Keep in regular contact with your lawyer's office and always call prior to any appointments, whether they are at the office, the courthouse, or somewhere else; be sure your lawyer knows how to get in touch with you day or night, summer or winter.
7. Communicate with your lawyer in writing to keep him or her fully informed about your case, to raise questions about the fees being charged, and to discuss any other matters that concern you.
8. When you call, leave your complete message with his or her secretary; this gives your lawyer time to review your file and have the answers he feels he needs for you (don't try to make him look stupid - try to make him look smart.)

9. Expect your lawyer to want to know everything; expect him to respond only to those items that are important to your case's presentation.
10. Present yourself to your lawyer as someone who wants to work with him to solve your problem; work and behave in ways that don't create more problems.
11. Keep your account current; if that's not possible, make clear arrangements with your lawyer about payments.

FIVE

Yours, Mine, Ours: Finding Out What There is to Divide

After you have selected a lawyer and begun the legal process of dissolving your marriage, you need to consider whether or not "discovery" is going to be needed. That is a word that has been taken up by the legal profession and it is loaded with special meaning. Most of us think of discovery in terms of Christopher Columbus or Lewis and Clark. But in the law, it has a special meaning that preserves some of the archaic sense of

revealing or exposing something that was hidden. In general, it speaks of the formal process by which lawyers get information, usually from their client's opponents. This is usually information those adversaries would prefer to keep concealed if they could.

The sort of information being sought will depend on the issues of your case. That is, are you and your spouse fighting about money and property, or are you fighting about what will happen to the children? Or are you fighting about both? The tools of discovery will be employed in accordance with the answers to those questions. Your lawyer employs these tools with significant people in addition to your spouse whenever that is indicated. For example, if the issue is financial, your spouse's accountant may have pertinent information. If the issue is child custody, a family psychologist and various family members may be included. Friends, neighbors, and the children's teachers may also be sources of important information that needs to be investigated.

The chances are good that these same tools will be used by your spouse's attorney. When that happens, your lawyer will counsel you about what you need to do.

The Tools of Discovery

Often an attorney requests copies of tax returns from his client's divorcing spouse. This may happen when a wife has signed joint returns over the years but never paid much attention to them. Or it may happen in some kind of post divorce proceeding, such as a request for an increase in the amount of child support to be paid. Whether the person who is being asked to pay the support is bankrupt or a millionaire may often be learned by securing copies of tax returns. That will have a lot to do with whether or not you proceed any further with the suit.

Other sources of information include payroll stubs and bank statements. By summarizing the deposits and withdrawals over a period of time, one can get a fair idea of a person's cash flow.

Interrogatories

But suppose that your spouse or ex-spouse refuses to turn documents like these over for your lawyer to examine. What can you do to get the information you need? The first step is to serve standard "interrogatories." These are written questions which must be answered under penalty of perjury and in writing. One may not answer an interrogatory by saying, "I don't know" if, in fact, the information is available. A person who has been served with interrogatories is obliged to search his or her records, to look through

files, to go back and reconstruct information. Interrogatories typically ask about one's expenses, obligations, and about one's perception of one's assets. They may, in a divorce proceeding, ask about property that is being claimed as separate property and therefore outside the court's jurisdiction. If I were composing interrogatories on behalf of the husband of a wife who was asking for support, I would want to know about her needs and her ability and intentions to generate her own income. One question that frequently appears on an interrogatory is, "Are you willing to supply the following documents...?" This is followed by a list of various documents - tax returns, bank statements, annual statements of employee benefits, and so on. This question is followed by a second that asks, "If your answer to the above question was affirmative, please attach copies of the specified documents hereto." (If this fails to produce the necessary documents, and if they are still desired badly enough, then it might be worth the trouble and expense to subpoena them. A subpoena is a legal writ which requires the appearance of a person or thing. It is a Latin term which means "under penalty." To ignore or otherwise violate a subpoena makes a person subject to quasi-criminal prosecution.)

In most states, a person served with interrogatories has thirty days in which to answer them. By professional courtesy that time span can be extended if the list of questions is long, if the information being sought is difficult to obtain, or if the person is being served lives out of state.

Interrogatories serve two major purposes. First, they provide useful information and can serve as a kind of checklist of the pertinent issues that need to be resolved in a given case. Second, they preclude the introduction of surprise evidence at a later time. That's because you may ask your opponents to list all the issues they intend to raise and to give an indication of the evidence they intend to introduce at the trial. If they later try to produce evidence they neglected to mention in the interrogatories, or if they respond to your questions at the trial in a way that differs from what they said in the interrogatories, you may produce those interrogatories in court and ask the court to reject the introduction of the new evidence. In other words, they help to keep everybody honest.

If you serve your opponent with interrogatories, you can be almost certain that you will be served in return. Sometimes the list may contain a hundred or more questions. They may require six to eight hours to get through. So, answering interrogatories is hard work, and the questions often require information that you would prefer not to disclose. Consequently, I am faced with a number of clients who balk when presented with them. But I encourage them to roll up their sleeves and get to work. Interrogatories are to be taken seriously. They are a double-edged sword which, if handled

sloppily, can do injury. But, if they are handled with respect and hard work, they will save time and money - and grief.

Lawyers are sometimes accused of using interrogatories to harass their client's opponents. But that is usually not the case. Serving interrogatories is a way to make both sides sit down and do their homework. They help to define the case and its issues. In turn, they can help open the way to discussions and proposals that may lead to a settlement. A former presiding judge of the Los Angeles County Superior Court, the Honorable Christian Markey, once said at a seminar I attended, "In a substantial case it may be malpractice not to routinely serve boiler-plate interrogatories as a means of identifying all possible financial issues."

I also use interrogatories to get the attention of the other side. It helps to get them focused on the issues. It is a much needed cerebral discipline at a time when a person is sorely tempted to give full play to his or her emotions. And, when emotions have to take a backseat, we may actually find a way to engage in productive dialogue.

Requests for Admissions

These are like interrogatories. They are lists of questions that need *yes* or *no* answers. They can accompany interrogatories. There is also a time frame in which they must be answered. But the legal impact of the answers is a little stronger. The person responding is making specific "admissions" by his answers. That means they may be immediately entered as evidence in a court of law. For example, a request for admissions might ask, "Do you admit that you were married to Harry Allen on June 14, 1973?" Therefore, the only response required in this procedure is either "admit" or "deny." So, they are much more quickly answered than interrogatories. If you fail to respond in writing to any or all of the questions in a request for admissions, then they are deemed admitted (this is the old principle that silence is assent) and can be used against you in court.

Custodian of Records Depositions

Another means of discovery is to set a "deposition for a custodian of records." This will compel whoever has custody of desired documents or records to come into the office of your attorney with those records in hand. For instance, the custodian of records for an employer or a bank might be called in - depending on what sort of documents are being sought. Often a custodian can respond to this procedure simply by providing the records directly through the mail or by courier. But your lawyer may want to ask

questions in addition to seeing the documents. In this case the custodian must appear in person, be sworn in, and answer those questions.

One time I was representing a woman who was getting divorced from a man who was a security guard. He said in the documents he supplied to the court that he was earning about two thousand dollars a month. My client told me that she suspected he was lying. She thought he was earning more than that by working overtime. So, I subpoenaed this man's supervisor, the director of security guards. In the subpoena I specified that he was to bring along with him the complete employment records of my client's husband. By going through his schedule with him in my office, I discovered how many times the man had either declined or accepted the opportunity to work overtime. As a result of this procedure I was able to show that his income was much larger than he said it was. Instead of earning two thousand dollars a month, he was actually grossing about three thousand dollars a month. That is the sort of difference that can be substantial in computing support under the guidelines followed in most courts.

Deposition

This is the most effective tool of discovery. It is an oral examination taken under oath in front of a certified shorthand reporter (CSR). Here your attorney can interview your opponent or other relevant witnesses to secure the information he needs to pursue your case effectively. Taking a deposition is more effective than putting a person on the stand in a courtroom. This is because in a courtroom, every question you ask the witness can be challenged for its relevancy to the case or on other grounds. But in taking a deposition, your lawyer can cover a wide variety of subjects in an effort to secure the information he or she is looking for. In the Appendix to this book you will find a copy of the prefatory statement I read to anyone whose deposition I am going to take. If your deposition is going to be taken, it would be a good idea to read it now.

One imitation in connection with a deposition is that the person being deposed is not required to research his or her records in order to answer the questions. In answering interrogatories, you will recall, this was a requirement. But if a person being deposed does happen to bring along or admits during the deposition to having examined any records or documents in preparation for the examination, then, according to the law, those records are "discoverable." That means your lawyer has a right obtain copies of those documents and to use them in the case.

In addition to serving the notice of deposition, a lawyer can serve a "notice to produce." This notice will specify that certain records and documents must be brought along at the time of the deposition. So, a

deposition can give you almost everything you want when it is handled correctly.

A deposition also helps a lawyer prepare his case in other ways. He learns, for example, how reliable and helpful a person might prove to be if brought to the witness stand in court later on. One time I represented a woman whose husband owned a business. The husband intended to call his accountant to testify at trial to a low value for the business. In this way the husband hoped to keep his wife from getting her fair share of the community property. I called that accountant to a deposition early in the case and, during the questioning, he admitted to his lack of competence. On the basis of that I was able to exclude his testimony at the time of trial.

A deposition also ensures that potentially important testimony is not lost. Perhaps the witness being deposed is bedridden or does not reside within the court's jurisdiction, or for some other reason, may be unable to appear in court at the time of trial. In such cases there are provisions for admitting depositions as evidence at the time of trial.

Once trial has begun, depositions help to keep witnesses honest. If, for example, their testimony on the stand varies from what they said in their deposition, this can be brought to the court's attention. (Lawyers call this "impeachment.") And they will be asked, "Were you lying when you gave your deposition or are you lying now?" The whole premise of cross-examination is that a witness who is telling the truth will not vary from his or her story. But a false witness will forget some of the finer details of his lie if you keep questioning him or her about it from differing perspectives.

The chief value of the deposition, however, is the opportunity it provides to open the door for the negotiation of a settlement. This happens, for example, when my client's spouse shows up at my office in the company of his or her lawyer in response to my request for oral examination and inspection of documents. My client is customarily on hand for his event (more about this practice at the end of this chapter). So, the two parties to the dispute have been brought together in a controlled environment.

If it seems propitious at that time, I may suggest that the four of us sit down and discuss the documents they have brought with them off-the-record before we begin the formal procedure of taking the deposition. Then we start looking at the bank records. We find out what cash exists in the various accounts. We look over the stock portfolios. We examine records of earnings. In the process of doing all this, it might become evident that attitudes are softening. If I sense that is happening, I may insert some note of negotiation into our discussion. Often that allows us to change gears and proceed to a full-scale settlement of the disputed issues. When that happens, the other lawyer and I will either excuse the certified stenographer who had come to record the deposition, or we will put a brief stipulation on the

stenographer's record to note the agreements reached by the parties. Waiving a deposition like this requires good judgment. It may be wiser, depending on the circumstances to note on the record that you are merely deferring the deposition temporarily pending settlement. Courts favor settlement, and a good-faith effort to achieve settlement will not prejudice a case in the event the agreement doesn't hold and the parties actually go to trial.

What Are the Costs of Discovery?

All of the foregoing procedures cost money. I have reviewed them in ascending order from the simplest to the most complex. The expense of doing each one is in direct proportion to that ascending order. If you can hand your lawyer the information he needs in terms of records and the like, the costs will be much less. But, to the extent her or she has to employ the tools of discovery, you will pay his or her hourly rate for services. In the case of depositions, you will also be charged for the service of the certified stenographer who records the deposition. So, suppose that your lawyer deposes your spouse for three hours. If the lawyer's rate is \$150 per hour, that will cost \$450. In addition, the stenographer's fee may be about \$50 per hour, bringing the total to \$600 that you will have to pay for that deposition. I have been involved in depositions in complex cases that have lasted several days. And it is not unusual to take multiple depositions were the facts compel more extensive discovery.

The costs of employing these tools, then, are always a factor in determining to what extent they need to be employed. What is it worth to you to get what you are after? If it means \$100 per month more spousal support for you over the next five years, that represents a total of \$6000 at stake. Is it worth risking \$600 to try to get that? This is the sort of question one must weigh when it comes to incurring the costs of discovery.

It happens not infrequently that a little discovery makes it pretty clear there is no pot of gold at the end of the rainbow. Often a spouse who is in the dark about the family finances, typically the wife, has an inflated idea of what is available. After a deposition I may find myself helping my client come to terms with the fact that there is not much in the way of money or property to be had from the divorce. This may mean we need to reassess our strategy and move as quickly as possible to a settlement without running up any more expenses.

Some Questions

Clients frequently ask me if they should be present when I am taking the deposition of their spouses. I understand that being in the same room

with one's spouse in the midst of a divorce proceeding can be painful. Nevertheless, if it is at all possible, I want my client on hand whenever anything pertaining to his or her case is happening. When I'm deposing the spouse of my client, I want my client there to listen and watch. This pertains to the other witnesses who might give depositions as well. I am a stranger to most of these people, but my client, most often, is not. Giving a deposition in the hearing of someone who knows you and is familiar with the things you are talking about generally makes you less likely to lie. Furthermore, I want my client to assist me, to see that the questions her or she wants asked are asked. My client should be giving me information, input, and feedback while the deposition is in progress. There is, by the way, a right and a wrong way to do that. The wrong way is to start talking in your attorney's ear while the witness is answering a question. When you do that, your lawyer is not likely to give proper attention to either you or to the witness. The right way is to take copious notes during the questions and answers. Agree with your lawyer beforehand that he will pause from time to time during the questioning to examine your notes and to listen to your comments.

This is probably as good a place as any to address this matter of being on hand for the events of one's divorce. It may be true that your lawyer can handle it all for you and that, as far as the law is concerned, you need not be present. But it is you and not your lawyer who has to live with the terms and conditions of your divorce. It is important that you be present for everything.

From time to time, your lawyer may have to go to court on your behalf to "bring a motion" prior to the actual trial. He does this when he has some procedural question that the court must answer. For example, he may want the court to order the time span within which a deposition is to be taken to be shortened because of a hearing that is coming up soon. Or he may ask for an early trial because of an aged or infirm client. He may bring a motion to quash certain improper questions on an interrogatory that has been sent to you. Perhaps some of the questions pry into your personal life in a way that is irrelevant to the case. If you simply refused to answer those questions, you would be held in contempt of court. So, your lawyer has to go to court to get them quashed (legally deleted from the list). In none of these instances would you need to be on hand to testify, but it is still important that you be there to know what's going on and to give your lawyer your input if decisions have to be made on the spur of the moment. I always want my clients present. I would rather have that than to discover, too late, that I need them when they aren't there.

Another question I get from clients is, "May I be accompanied at the deposition by a friend or relative?" Personally, I have no objection to that. But friends and relatives have no right to be on hand. That means they can

be told to leave by opposing counsel or by your spouse if they object to their presence for any reason.

In terms of what to wear to a deposition, think in terms of remaining comfortable while sitting for perhaps three hours at a stretch.

Remember, the discovery process is essential to the proper preparation of your case. When you participate in it wholeheartedly, it will help to keep it brief. Even better, it often acts as a catalyst to precipitate a settlement. So, don't underestimate the significance of these seemingly tedious matters. Stay abreast of what your lawyer is doing in this area.

**Checklist of things to think about when it
comes to discovery**

1. Get your lawyer to explain his or her strategy for your case and argue if you don't like it.
2. Decide with your lawyer exactly what sort of information you need for your case, and the most cost-effective way to get that information.
3. Be prepared for the discovery of new information to alter the complexion of your case significantly.
4. Be prepared, in turn, to reorganize or plan new strategy with your lawyer.
5. Make arrangements to be present whenever your lawyer some activity on your behalf.
6. Always have your files and records with you whenever you meet with your lawyer, especially if you are going to court!

SIX

Nonadversarial Alternatives

The world of lawyers is fixed in an orbit around courtrooms and judges. In that setting there is a law at work of which most people are only dimly aware at most. It is the law of the adversarial system.

Back in the days when the Anglo-Saxons had England pretty much to themselves, they employed a form of litigation called "trial by battle." In it, if two men had a dispute, they were brought into the public square, given a sword and shield each, and told to go at it until one or the other emerged victorious. Whichever one either gave up or was killed was judged the guilty party. The other man had acquitted himself.

The ways things are done in a courtroom today have changed less since those barbaric days than we like to think. The whole idea is for the two

opposing parties to face off against each other while a judge and a jury watch and listen. Then the opponents go at each other tooth and nail until they're too exhausted to go on, or until the judge grows so bored or appalled that he calls a halt. After that, the opponents, bloody and beaten, sit down while the jury or the judge decides who is innocent and who is guilty.

This is the arrangement, regardless of the matter under discussion. It may be a murder trial or some other criminal matter. It may be a civil suit such as the one brought by the parents of comatose Karen Ann Quinlan in New Jersey. Or it may be you and your spouse (or ex-spouse) trying to decide which of you is going to get the stereo. No matter how grave or trivial, if you decide that your case can only be settled in court, then you must be ready for a bloody fight. The only difference is that you won't be permitted to have a jury.

Have you ever noticed how many and complex are the rules that govern a professional football game? The average football player must be a reasonably knowledgeable student of the rules if he wants to compete successfully on the gridiron. That is because football is a dangerous and brutal game in which you can get seriously hurt. For the same reason, the rules that govern courtrooms and trials are also many and complex.

The Right Frame of Mind

Why am I talking like this? Because there is another way to handle a divorce and the settlement that must accompany it, and I encourage you to use that alternative. Keep in mind that in the end, only a judge can grant you a divorce and make the provisions of your settlement an order of the court with the force of the law behind it. What I'm talking about is the method you use to arrive at that end. It doesn't have to and it almost never should require a trial in a courtroom.

First, what do you need in order to take advantage of this better way I'm going to tell you about? Foremost on the list is the right frame of mind. In an earlier chapter I discussed where and how to find help with your emotions, thinking, and decision-making faculties. If what I'm about to say seems far beyond your grasp, then you need to go back to that chapter. You need help that I am not qualified to give you.

Divorce almost inevitably pulls those who enter it into a game of "Victims and Villains." In fact, it is frequently played in many marriages. You may protest that your spouse has behaved villainously and that, short of shooting him or her, you have little recourse except to be a victim. But that's not what I'm talking about. The facts of your case may be grim indeed. Your spouse may be a drunk, an abuser, an adulterer, or a criminal. But you have a choice: you can decide how you're going to respond to him or her.

I have a friend who is married to an alcoholic. One of her biggest breakthroughs in life came when she learned how to respond properly to the way he pushed her buttons. In their game of Victims and Villains, he was the villain and she was the victim. When he got drunk and in trouble, he'd simply call her and describe his sorry plight. Then she would feel sorry for him and, to keep from feeling guilty, she'd drop what she was doing and go rescue him without his even having to ask. But one day she decided she'd had enough. She decided to try out some of the principles she'd been learning in Al-Anon. The next time he called her, it was to report that he'd been kicked out of the halfway house in which he'd been living for purposes of rehabilitation. In the course of the conversation, he pushed her button by saying, "I'll probably have to sleep on a park bench tonight."

Her normal response to that would have gone something like this: "Oh, no, dear. I wouldn't let that happen to you. I'll be down to pick you up in fifteen minutes." Instead, she responded with a simple and slightly detached, "Oh?"

For a moment her husband was stunned into silence. An old, reliable device had failed to work. He tried several more times to provoke some emotional response from her, but she held fast and kept responding as she had the first time. It worked, because shortly she began getting more information (on which she could base a sensible decision) and less propaganda.

She had a choice as to how she would respond. If she had chosen to respond in her customary way - as a victim - she would have gotten the things that are passed out to victims. But when she chose to respond as a whole person who refuses to think like a victim, she got much more gratifying results.

So, if you're ready to stop playing Victims and Villains, you're ready to begin following the course I'm going to outline in the following pages.

Nonadversarial Alternatives for Divorce

Divorce used to be a rare occurrence before the twentieth century. One of the most important reasons for that was that the family used to be the center of economic production. Food and clothing and most of the necessities of life were produced at home. So, keeping the family intact was essential for survival. The laws governing divorce reflected this reality.

Today many of the laws that govern divorce are from the nineteenth century. But the new "no fault" divorce laws are reflecting the realities of the twentieth century, wherein the family is no longer the unit of economic production it was a hundred years ago. In the face of that, religious prohibitions against divorce have not shown themselves effective. And the

effects of population mobility, increased affluence, and the idolization of sex and self have joined with other factors to help promote the enormous divorce rates so common today.

The impact of the skyrocketing divorce rates on the courts has been staggering. In 1969, the California legislature passed the first "no fault" divorce law in an effort to reduce the amount of litigation that accompanies divorce. Prior to that, divorce had been, in some measure, a kind of criminal proceeding in which the plaintiff asked the court to punish the defendant by granting a divorce and awarding a property settlement in accordance with the plaintiff's wishes. Even when both parties wanted out of their marriage and had no interest in punishing each other, this was still the course prescribed by law. Some vague charge, such as mental cruelty, had to be proved before a divorce could be granted. Sometimes the law required that a specific charge, usually adultery, had to be proved. Most lawmakers and other people who spent time thinking about this process regarded it as unrealistic, unfair, and unnecessary. Its worst feature was that it seemed to heighten the hostility between the divorcing couple and subject them to a costly and painful display of their private lives before a courtroom full of strangers.

Under the no-fault law, no charges have to be proved. Instead, either party to a marriage may testify to the court that they have "irreconcilable differences." The other spouse cannot contend that it is not so, since such a contention tends to prove that the differences do exist. Recent changes in California now permit this information to be submitted in a written affidavit so that it is no longer even necessary to appear in court.

At this writing, roughly three-fifths of the states have adopted some sort of no-fault divorce law. The consensus is that the old laws did little to prevent divorces from happening and served mostly to add bitterness and hostility to the proceedings. One may, of course, ask if the new laws have been responsible for an increase in the number of divorces. Apparently not, but there is no way to measure such a thing. I have seen some divorces happen under the new law that probably would not have happened under the old law, but I don't think the number of such divorces is statistically significant.

There have been some dramatic changes as a result to the enactment of no-fault divorce laws. One is that divorces between celebrities no longer provide nearly as much grist for gossip columnists as they once did. Another is that a number of couples have been allowed to part with a minimum of acrimony. The result that comes to my attention the most, however, is that any couples who are strongly motivated to punish each other in public ways have been compelled to find other areas in which to perpetrate their misdeeds. Now the favorite areas are child custody and the relative values of various items of property.

Whatever state you live in, however, and whatever laws govern the way in which your marriage can be dissolved, you can still find and take a nonadversarial pathway if you truly want to do so.

Negotiation

The best method for settling disputes of any kind is negotiation. Any two people can negotiate their differences if they both want to and have the right equipment. It is a question of give-and-take, and it requires that the two parties be on roughly equal footing. If either party has a preponderance of power and uses it to coerce or cheat the other person, true negotiation cannot take place. When, for example, one spouse simply throws up his or her hands and acquiesces to the wishes of the other, the courts will readily see what has happened and usually be unwilling to endorse it. The parties also must be committed to complete honesty, candor and full disclosure.

To be a successful negotiator requires maturity and poise. You can do it only to the extent that you are able to lay aside your desire to punish your spouse. If you can manage it, however, the rewards are great both in terms of money saved and privacy maintained. It is often possible to emerge from a negotiating session feeling reasonably well and happy, sometimes even satisfied. Unfortunately, divorcing people rarely leave a courtroom feeling that way.

The questions you have to negotiate and discuss begin with the preliminary ones: Should we separate? Can we reconcile? Will professional counseling help us? Then come the rest: Who will have custody of the children? What visitation arrangements do we want? How much money should be paid to the custodial parent by the noncustodial parent for child support? How much spousal support (alimony) is right for your case? What about the house and the furniture? What about the cars? How shall we discharge our debts? How shall insurance premiums be handled? Should we cancel any of our policies? What about the cost of sending the kids to college?

Good negotiators know how to bargain and compromise, and through such a process, a parting or troubled couple can come up with the most acceptable answers to these questions. Once the answers are hammered out, they should be written down to form the basis for their final agreement. What they are aiming for is a contract by which they can manage their family under two roofs for the foreseeable future.

Sometimes a divorce can be accomplished by negotiation with the help of a single lawyer, but not often. One scenario that happens along this line is when the husband has the lawyer he normally employs in his business matters draw up a divorce agreement according to his dictates. He then

presents it to his wife for her signature. This, of course, is not really negotiation. Later in this chapter, I will help you look a little more closely at deals that are too sweet to be true.

A more acceptable single-attorney situation happens when the wife is represented and the husband is not. Here the courts assume that the husband may be better able to protect his own interests. Usually any agreement that emerges from this sort of negotiation will have to include a disclaimer that explains to the judge that the unrepresented party was urged to seek legal counsel but freely declined to do so, knowingly and willingly waiving all rights of representation and appeal.

In the setting where the couple retains one attorney, he really represents neither one of them. Instead he represents the marriage and acts more as a clerk to help the couple frame their agreement so that it can be properly presented in court. This is a scenario fraught with dangers to everyone involved.

True negotiation should involve the couple, each represented by counsel. The four participants should sit down together in an office or living room. The lawyers will each help their clients to advance their arguments and to exercise whatever leverage is available. And they will help draw up the marital settlement agreement. After that, only one party of the marriage need appear in court. The one who files and his or her lawyer will appear before the judge and do what the law requires to secure dissolution of the marriage. They will then hand the judge the agreement, signed by both parties and their counsel. The judge will review the document and, if the lawyers have done their job, he will approve it and make it an order of the court. After that, there may be a waiting period before the divorce is final and the two former spouses are free in the eyes of the law to remarry. This waiting period varies from state to state and is often nonexistent.

Deals Too Sweet to Be True Usually Are

As I mentioned earlier, one divorcing partner may attempt to exploit the other by exhibiting friendly and placating behavior. For example, in the case of James and Cynthia, James said to her, "Look, we don't need separate attorneys. I'll just get the lawyer who handles our business and ask him to draw up the papers. The law says we're supposed to divide our property equally. He'll abide by that. You can see it all. I have nothing to hide. And we'll save money, so there'll be more left over to split. How about it?"

Sometimes a wife is fully aware of her husband's business dealings and affairs, and she can look at them laid out on paper and be reasonably satisfied that an honest accounting has been made whereby she'll get her fair share. However, our knowledge of human nature tells us that this is a rare

scenario. And, even if Cynthia were exceptionally well informed about her marital assets, James's lawyer should be aware of and thinking about the implications of a property division. They may not come to the surface for years, but they can make a sweet-looking deal suddenly turn very sour.

Suppose James and Cynthia bought their house for \$80,000 ten years before their divorce. During that time, its value grew to \$220,000. That represents a tidy profit of \$140,000 on their investment, nearly a threefold increase. Rejoice and be glad, right? Only partly. Watch how it can work.

James may generously offer Cynthia full ownership of their home and mortgage in exchange for her share of his business. He might even throw in some cash if his business is especially prosperous. But a few years later, when Cynthia decides it's time to sell the house, she gets the bad news: she'll have to pay capital gains taxes on the money she derives from the sale, unless she decides to sink the proceeds into another house. That leaves her not broke, but with considerably less money than she had anticipated she would have when she signed the divorce agreement.

Tax consequences are only one factor that can distort an otherwise equal division of property. There are many ways in which one party can have information of which the other party is unaware. Suppose James had agreed to buy out Cynthia's share of his incorporated business. His accountant would figure the value of the business on the basis of its assets and liabilities on the balance sheet. Such a sheet will usually fail to include any valuation for goodwill, that golden intangible that every businessman covets more than cash in his pocket. Accountants are not expected to calculate things of that sort. And James is not going to bring it up since he naturally wants to pay Cynthia bottom dollar for her share of the business. However, a court will put a specific dollar value on it, based on the longevity of the business and other relevant factors which depend on the sort of business being engaged in.

This is why you may take what appears to be a reasonable settlement to an attorney and find him or her raising objections to it. Suppose James's lawyer had framed an agreement in which James would buy Cynthia's share of their vacation home in the mountains. According to this agreement, he would pay her half of the estimated net amount, that is, half of how much money would be left over after the brokerage fees and other costs of a hypothetical sale had been paid. That sounds right and proper, right? Wrong, at least in those states where the law says it is inappropriate to subtract such hypothetical costs. For purposes of division, the value of a piece of property must be determined by subtracting the amount of any liens against it, such as a mortgage, from a fair estimate of its market value at the time of the division. No other factors are allowed to affect the way one arrives at a final figure.

So, if James and Cynthia's cabin were valued by an appraiser at \$50,000 and the only lien against the property was a mortgage balance of \$17,000, then James would owe Cynthia half of \$33,000, or \$16,500. If he had been able to subtract a hypothetical broker's fee of 10 percent and other costs of sale that amounted to another 2 percent from that, he would have had to pay her only \$13,500.

In one memorable case relating to this question, a court held that a husband who knew of an offer to purchase shares of his corporation by another company was not guilty of fraud when he withheld this information from the wife he was divorcing. The courts said that she had been represented by counsel and that it had been the counsel's responsibility to discover that information. That was because the information would have been readily discovered with a modest amount of effort on the lawyer's part.

This sort of thing spurs attorney's to be on their toes and to make adequate use of the tools of discovery. And it helps a client understand why his or her attorney may do things which heat up what otherwise would have been a relatively peaceful passage through a divorce. The question which must be asked is this: What price are you willing to pay for that peace? If you are committed to a posture of peace at any price - especially at the price of the truth - you are in serious need of counsel of a mental health professional. The Proverbs wisely tell us to buy truth and not to sell it.

So, as committed as I am to nondestructive divorce, as much as I promote the concept of amicable dissolution, one important fact remains: It is always a good idea to be sure, before you enter into any agreement, that your interests have been considered, your rights protected, and the facts scrutinized by a competent professional.

I once represented a businessman who had owned a string of fast-food restaurants. In the divorce his wife was represented by a family law attorney whose familiarity with corporate law and affairs left something to be desired. I say my client *had* owned a string of restaurants. That was because the string had expanded too rapidly and the business had gone bankrupt.

At the time of the signing of the property settlement there was little left to divide. However, my client perceived some intangible value in the empty shell of his bankrupt corporation. He foresaw the possibility of converting its failure into a personal bankruptcy. That would leave the corporation intact on paper, at least. Then what would he have? He would have a corporation which showed a significant loss on its books. This, he reasoned, would be an attractive commodity to some other corporation whose business success had given it too high a tax liability. Consequently, he asked me to seek ownership of the corporation for him in the property settlement. I did, and the other lawyer never even raised a suspicious eyebrow.

What recourse did my client's wife have when she discovered that her ex-husband had, quite legitimately, put one over on her? Due to the fact that she had employed an attorney, she did have one avenue left which she could pursue. She could sue her former attorney for his incompetence. The courts would probably award her a reasonable amount of compensation for the loss.

It is never a good idea to agree to anything of significance without independent representation, advice, and counsel. And, if for any reason you don't like the counsel you receive, get a second opinion. Even when everyone is trying to be fair, upright, and forthright, it is too easy for other factors to influence the outcome in a way that might be adverse to you.

All illustrations I have given here - and in the rest of the book, for that matter - are not meant to teach the law. Laws change almost constantly. That is part of the work of being an attorney, to keep abreast of the changes. Instead, the illustrations are meant to show the complexity of the things that need to be considered when, for example, you have to divide an estate that took ten or twenty years to accumulate. Whenever I hear someone say, "I don't need a lawyer," I always ask, "What lawyer told you that?" After reading these remarks on "friendly" divorces, I trust you know why I ask that.

In the following chapter, we will explore two more ways to keep a divorce out of the courtroom: mediation and arbitration. In the meantime, here is a checklist of things to remember about negotiation.

Checklist of things to remember in negotiation

1. Make a firm resolution not to try to use the legal system to punish your ex-mate for his or her misdeeds.
2. The requirements for successful negotiation are honesty, parity, and the ability and willingness to compromise.
3. Negotiation is more likely to succeed if you and the other party have had time to cool down.
4. Before you begin negotiating, write a list of every issue that is important to you: go over it with your attorney.
5. Make room on your list for compromise; write in enough that there will be some left over when the paring is finished.
6. Talk with your lawyer in advance about your bottom line - the point beyond which you cannot and will not compromise any further.
7. Use schedules, summaries, and lists; make sure you have enough copies for everyone, including the judge and the other attorney.
8. Ask your lawyer if an accountant, appraiser, or other expert might help your case.
9. Let your lawyer do the talking; if you need to disagree with him or discuss something with him, call for a recess so that you can do it privately.
10. Make certain you thoroughly understand any settlement. Go over it with your attorney; he or she should be willing to help you try to understand it.

SEVEN

Try to Stay Out of Court!

Divorces are so common that, in spite of simplified procedures, court calendars for family law matters are unbelievable crowded. To relieve the problem, judges have begun looking for alternate ways to settle disputes. Some of these judges have, as a consequence, begun to authorize the mediation of those cases that were, in the jargon of our profession, trailing on the calendar. That means that a case is fully ready to go, and the attorneys have appeared before the judge in a preliminary hearing and have given him their best estimate of the time the case will require to be heard. At that point, however, they have to take their place in line to wait for a courtroom and a judge to become available.

A former presiding judge of the Los Angeles County Superior Court, the Honorable Billy Mills, once opined that 90 percent of all divorce cases should be settled before they get to court. I agree. Most cases that go to trial shouldn't. Only a very few have an authentic legal issue, factual dispute, or something else that requires a judge to hear the case.

Two factors contribute to this: the first is the emotional heat of divorce, and the second is the complexity of some of the issues that need to be settled, especially in long-standing marriages or where significant amounts of money are involved. In addition to the sort of things I mentioned earlier, one can run into matters that are very difficult to judge. For example, what about money to pay for the re-education of a wife who has been out of the job market for twenty years, raising children and maintaining a home? If she can get a nursing degree, she'll be in a better position and feel more secure about her future. That means, in turn, that she'll be more likely to settle on other issues. Or, in a different vein, what about dividing certain kinds of property such as pensions, profit-sharing plans, stock options, paid vacations, and other deferred employment benefits? People sometimes don't realize how many different kinds of property they own. And, in certain cases, to sell and divide an asset may destroy much of its value.

But, these are still not the type of questions that require a judge and only a judge to settle. Yet they are the questions that often prove difficult to resolve in simple negotiation. That's where mediation can help.

How Mediation Works

Mediation is an emerging field of professional activity which is still inconsistently defined. It comes in a variety of shapes and sizes. Mediators are usually either mental health professionals or attorneys. Sometimes attorneys and mental health professionals work together as a team to mediate divorces.

My first experience with mediation came as a consequence of the congestion the courts in my area were experiencing. The local bar association responded by forming a committee that made experienced family law practitioners available on a regular basis to provide mediation service at the courthouse. After proving its worth locally, this concept spread to other parts of Los Angeles County.

At the courthouse nearest my office, after the calendar call, the judge announces that a voluntary mediator is available to meet with parties to help them resolve their disputes. This mediator has the advantage of knowing the judge, the law, and the procedures involved. So, he or she will be very helpful, first of all, to those people who come to the courthouse without an attorney to represent themselves (legal term: *in propria persona*, a Latin

phrase which lawyers customarily abbreviate "pro-per" in which the *o* is long and the *per* sounds like "purr"). They are often in the dark about the law and its procedures, so the mediator can fill them in, listen to them explain their case informally, and then tell them what the judge would probably do in such a case. In the same way, the mediator can be helpful to inexperienced attorneys.

But a mediator can also help when negotiations have broken down between two parties who are each represented by experienced and competent attorneys. Once when I was sitting as a mediator, two lawyers came in with a case. We greeted each other and sat down around a small table. The attorney for the wife spoke first. I listened attentively and took notes, but I made no comments and asked no questions. When he was done, I turned and nodded to the husband's attorney. He talked and, again, I listened with a serious expression on my face. When he finished, I turned to the first attorney. He immediately took my cue and began responding to what the husband's lawyer had said. This went on for some time - me turning to each of them in turn and hardly saying a word. But, as they kept talking in an orderly way, one concession after another came until they found they had reached agreement on every point that had brought them to the courthouse that morning. Their thanks to me was so profuse that I had to chuckle to myself. I had never once so much as made a suggestion to either of them. They had needed a sounding board, a slightly more formal arena in which to continue their negotiations in the presence of a third party - nothing more. I served as a kind of lightning rod for the emotional volatility of their case so that they could get down to business.

Once this mediation program got underway, the presiding judge at that courthouse began, as a matter of course, to sort out the "proprs," and the cases with long time estimates, and send them all down the hall to see the mediator. After a few years of this, we discovered that about 80 percent of the cases being heard by mediators were being settled without litigation. Downtown, where many of the heavier cases are taken in the first place because of the greater availability of courtrooms and judges, the percentage has been smaller, perhaps 50 percent, but that is still impressive. Mediation has proven its worth and should continue to spread in use throughout the country.

One note of caution about mediation in the courthouse: Set a clear understanding, before you enter into any discussions, about the relationship between the mediator and the judge. Make sure the arrangements are strictly confidential. Ask for and get a full explanation of the procedure in which you are going to be participating. It can sometimes happen that what you tell the mediator will in turn be told to the judge over lunch in the cafeteria. That

could prejudice your case in the courtroom in the event you have to go there to get something resolved.

Mediation's Chief Advantage

Perhaps the chief advantage of mediation over litigation is that it compels the parties to focus on restructuring the family and its resources, whereas litigation fosters polarization in which the parties each try to paint themselves as the more victimized and the other as the more villainous so that the judge will decide in their favor. What we have is competition instead of cooperation. I've often heard judges quip that they know they've probably ruled most fairly when both parties leave their courtroom equally unhappy.

This brings up one of the central facts that faces divorcing couples when it comes to the law. That is the fact of judicial discretion. Most courtroom proceedings, criminal or civil, are governed strictly by reasonably clear principles and rules. A criminal, for example, must be found guilty "beyond a reasonable doubt." In civil suits, the winning party must prevail by "a preponderance of the evidence." These rules don't turn judges into automatons, but they do limit their exercise of discretion measurably. Add to this the fact that there are no juries in family law, and you can see the problems inherent in the process. You have little influence, limited input, and you face the enormous individual discretion resident in the judicial officer. This makes a family law court an especially treacherous place into which to venture. Here what is considered just and fair is often not so much a matter of law as it is of the judge's personal and social circumstances, his background, and sometimes, even his mood.

One day I was walking out of a courthouse with a client after his case had been heard. It had been a long and hard piece of litigation that had left us both depleted. He turned to me as we walked down the sidewalk toward the parking lot. "I learned something today," he said.

"What's that?" I asked.

"When you go to court, you don't get justice – you get what the judge gives you," he replied with more insight than I realized at the time.

Mediation is quite a different process. It focuses the parties on the future and is unconcerned with the past. Mediators are little concerned with who did what to whom. They will not permit those whom they serve to accuse or condemn each other. Their focus is on the present and the future. They want to restructure the family's resources and relationships in a way that will allow all its members to survive and, it is hoped, prosper after the divorce. They are giving shape to what has become the rule in American life: the binuclear family. The traditional nuclear families, wherein Dad and Mom remain together until parted by death, now occupy fewer than half of

our nation's homes. The challenge today is to achieve happy, healthy post divorce families, where cooperation is learned and mutual respect is cultivated.

Obstacles to Successful Mediation

The chief problem with mediation is that half the applicants do not qualify. When I say this, I am speaking of mediation in a slightly broader sense than I was earlier when I was explaining what happens at the courthouse. Now we are looking at the whole scope of things available to the public through the courts and from private sources. The names and addresses of two groups that promote the work of mediators in family disputes are given at the end of this chapter.

There are several reasons only half the applicants for mediation qualify to receive it. First and most common is the fact that both parties to the marriage must be committed (or resigned) to the divorce before they can qualify. If either the husband or the wife is opposed to the divorce, they will not be helped by mediation. Mediation is not therapy or reconciliation or counseling. It works on the assumption that the marriage is over and that the time has come to start building new structures.

Of course, one of the most common scenarios in divorce is that of the rejector and the rejectee. The rejector has psychological closure and is probably looking toward, if he or she is not already in, a new relationship. The rejectee, meanwhile, is going crazy with jealousy, grief, and anger. This person is nowhere near closure. He or she will surely lag behind the rejector in this respect for a substantial period of time. Sometimes the rejectee never achieves closure.

I see this often. Many rejectees attempt to deal with their pain by creating the delusion that they still have a relationship with their former spouse. The substance of that relationship, however, is a hostility that eats them up and destroys their children. It persists because they remain steadfastly blind to its existence.

Failure to achieve closure accounts for the majority of courtroom proceedings that occur after the divorce presumably has been settled. Disputes about children and money have been known to continue for years. I was once acquainted with a woman who married in her early thirties, after she'd had time to launch her career. The man she married was at least fifteen years older than she, and he had two sons, both in their twenties, by a former marriage that had been dissolved for nearly twenty years. I'll call the woman with whom I was acquainted Audrey, and her husband Lawrence. It turned out that Lawrence's two sons were seriously disturbed young men who were chronically engaged in psychotherapy. Neither of them seemed able to succeed at anything, either socially or professionally. Their emotional and

developmental impairment was the result of the longstanding, divorce related feud between their father and their mother.

Audrey and Lawrence had a baby about a year after their marriage, but by the time that child had reached the age of five, Audrey could see that the war between Lawrence and his former wife was beginning to affect her son in much the same way it had affected Lawrence's two sons. In fact, the situation had grown so grave that Audrey eventually felt compelled to divorce Lawrence in order to minimize the damage to their child. Sadly, Lawrence had failed to process the hostility from his first marriage before entering his second. Even sadder, his story is not unusual. It is exactly the sort of scenario I often find behind failed mediation.

It is rare to find divorcing couples who are both experiencing emotional closure on roughly the same schedule. Often this makes it advisable to undergo a lengthy separation before filing for divorce. This allows time to work through the powerful emotions of divorce and to achieve closure. The most amicable divorces I have seen are between people who have lived apart for a couple of years. They are both working. They have new relationships. And then they come in for the divorce. A psychologist friend of mine tells me this coincides with the approximate length of time it takes an individual to emotionally process the trauma of divorce. At that point it becomes a mere formality, a bit of business that has to be taken care of. More often than not, the people who take the time and trouble to do it this way are better prepared to be kind and fair to each other than are most divorcing couples.

The second obstacle to successful mediation occurs when one party to the marriage possesses power that the other party lacks. Both participants in mediation must feel equally empowered. Where one person is terrified of or intimidated by the other, it is impossible to engage in honest compromise. Give-and-take is an essential ingredient in the process. One measure of the sense in which the parties to a mediation must come as equals is in the fact that each must pay for half the cost of the mediation.

Fraud and deception also can block the way to a successfully mediated divorce. Mediation means putting all your cards on the table in plain view for your former partner to see. But in divorce, it often happens that one or both of the marriage partners have – sometimes for a long time – been secreting money into a private cache for a rainy day or some other purpose. If either party has been stealing from the other, it is unlikely that they will suddenly come clean about it even when it may clearly be to their advantage. It would be too embarrassing. Pride will generally prevent prudence. More about this later.

Financial and Other Advantages of Mediation

Mediation offers real savings to those who qualify to participate in it. First, there is the matter of experts. An expert appraiser may be needed to place a value on the family home. Accountants, actuaries, brokers, psychologists, and vocational counselors are just some of the experts who are often needed to help a couple resolve their marital dissolution. Experts cost money. In litigation, each side to the dispute brings in its own team of experts, so that the family's resources have to pay for two such people in each matter of dispute, which calls for expert testimony – one for the wife and one for the husband.

Furthermore, when a lawyer looks for an expert for a trial, he is looking for someone who knows his or her subject, is able to write an impressive report, is articulate on the witness stand, cool under cross-examination, and, if possible, personable and good-looking. This epitome of perfection will charge a handsome fee for his services. In mediation, one homely but competent expert will serve nicely.

The process of mediation is straightforward. The first meeting or the first part of the meeting is used to explain the work and goal of mediation. The next step is to see if the couple is competent to participate in the process. Next is identification of the issues. This amounts to a kind of inventory taking. As the mediator goes down his list, he quickly discovers where agreement already exists. He identifies and lists those as undisputed issues. This helps the couple to enjoy some sense of accomplishment at the outset of the process. The contested issues are those matters about which the man and woman do not agree. For example, Tom and Janet may both agree that their home is worth \$150,000 and that the amount owing on the mortgage is \$30,000. But Janet wants to keep the house and live in it, while Tom would prefer to sell the house and split the proceeds. Items such as this provide the agenda for the mediation.

The next step in the process is to examine each contested issue to see how much it would cost to try the issue in court and to project what would be the likely outcome of a court hearing. For example, Janet says, "I don't want Tom to have his girlfriend in sight when the children visit him at his apartment. Our children have been raised with certain values, and I don't want them exposed to that chippie. Of course, I do want Tom to spend time with his children. They need their daddy. In fact, I'd like Tom to spend all his spare time with the children" (and unspoken, "and none of his time with that woman").

Suppose that Tom and Janet had agreed on every other issue except this one. In that event, the mediator turns to Tom's and Janet's respective

lawyers and says, “Can we decide what will be involved if we litigate that issue?”

And Tom’s lawyer replies, “I plan to bring in a therapist who will testify that the children are doing well and that visiting at my client’s apartment where he lives with his girlfriend has not adversely affected them. We’ll also call in teachers to testify that their grades and behavior are good.”

Janet’s attorney says, “I will have a therapist who will underline the conflict that this creates for the children and how the inevitable impact of that will be deleterious to the children’s healthy development. In addition, we’ll bring in two other child development experts who will testify how harmful this sort of thing has been in other situations like it.”

Then the mediator says, “All right, how much time and money is this going to require?”

Tom’s lawyer replies, “Our expert will probably take two hours. Then we’ll need another hour for my client to take the stand. That makes three hours, or roughly about as much as can be accomplished in a single day with all the interruptions and other things that happen in a courtroom.”

Janet’s lawyer says, “Our three experts, together with my client, the neighbor, and a teacher, should require at least another two days.”

“Okay,” says the mediator, “we’re looking at three to four days to try this issue. As I understand it, that will cost at least thirty-five hundred dollars for each attorney. And the experts should cost a total of two thousand dollars. Is an estimate of nine to ten thousand dollars to try this issue fair?”

The attorneys nod in agreement.

“Then,” the mediator continues, “How would you project the outcome of such a hearing?”

Tom’s lawyer opines, “I have no doubt that I’ll win. It’s a cinch. The facts are clear. Unless you can show actual immediate harm to the children – abuse or something akin to it – you lose. In our case there has been no observable harm to the children.”

The attorney for Janet concedes, “It is a difficult issue. I won’t concede that I’ll lose, but I will admit there’s a good probability of it. My colleague is correct about immediate actual harm, but I believe that our expert will help us to persuade the court with the kind of evidence of potential harm we need to present.”

In this way Janet can see that, for roughly ten thousand dollars, she can fight the issue and probably lose. Thus the mediation process can help to let the parties see things clearly – in this hypothetical but entirely typical situation, it helped Janet see what it would cost her to indulge herself. Janet concluded the price was too high. The issue was resolved when she consented to let the conventional visitation arrangements stand unmodified. The children would spend alternate weekends and holidays, and half of their

summer vacation with Tom. Tom's lawyers drew up an agreement. Janet's lawyer reviewed and okayed it. Then both Tom and Janet signed the document. After that, the lawyers drew up an order to reflect the terms of the agreement. After the judge read and approved the order, the divorce was granted and the terms of the agreement were ordered enforced by the court.

Suppose Janet had not proven so reasonable. Imagine her anger had been so great at Tom that she had insisted on trying the issue in court. The mediation process would still serve a beneficial purpose to the parties by reducing a myriad of contested issues to just one last dispute, thereby focusing and directing them in the only area where there was real disagreement.

If Tom and Janet had been unable or unwilling to reach agreement in this remaining area, they would at least have limited substantially the amount of time required for a trial before the judge. It would probably have come down to less than half a day. That would have meant an enormous saving of money to both parties.

Mediation is still in an embryonic stage at this writing and its form is not cast in concrete. In the case of Tom and Janet, I showed what I think is the optimal model: the couple, each represented by counsel, and a facilitator who is a mental health professional, able to extricate the emotional issues from the dispute and to focus the parties on the legal issues so negotiation can proceed. Other models, needless to say, have been suggested. Among them are models that try to give equal weight of representation to the sexes, as, for example, through the employment of attorneys and mental health professionals, one of which is a man, the other a woman.

The central fact of mediation is that there are plenty of well-qualified professionals who stand ready to help in this manner. But they are not employed as often as they should be because divorcing people are so often more bent on hurting each other than on negotiating with each other. To discover more about the availability of mediators in your area, you can first consult the Yellow Pages under headings such as "Divorce Assistance," "Mediation Services," and "Attorneys." I have included the addresses and phone numbers of two leading resource groups in this area with regard to this after the checklist at the end of this chapter.

Arbitration: The Last Ditch Before the Courtroom

Yet another avenue of resolution and settlement that can help us stay out of litigation is arbitration. We are familiar with this term through news reports of disputes between labor and management. An arbitrator or arbiter acts as a judge with the power to decide an issue. In the sense in which we use the term here, this power is given to the arbiter by the two parties.

The chief difference between arbitration and litigation is that arbitration can be conducted in a reasonably informal way. For example, in arbitration the rules of evidence that pertain in a courtroom are relaxed; evidence is presented in advance, in writing, without the usual formalities. Nor must a reporter be on hand to record everything that is said. Testimony is given under oath, however, and the rules of evidence do apply.

Arbitration can also help to relieve some of the problems raised by the heavy reliance on judicial discretion that applies in family law courts. (I referred to this earlier in this chapter.) I saw this happen when I was selected to serve on a panel that was to hear and decide a domestic-relations case. I sat with two other family law experts. One of them was a retired family law judge whom I respect as a scholar of the first order in his field. It struck me as inventive of the two attorneys to decide that they wanted their case heard in this way. They had gone to the American Arbitration Association and stipulated they wanted a panel of three: each advocate chose an arbitrator and the arbitrators, in turn, selected a third neutral arbitrator. It was a splendid way to avoid the pitfalls of judicial bias in handling a complex case with many unresolved issues.

In arbitration, an attorney can present his case entirely on paper - affidavits, declarations, depositions, and other documents. The arbitrator or arbitrators can, in turn, read each attorney's presentation at leisure. This cuts down the hearing time tremendously; I have seen what would have taken ten to fifteen days in a conventional courtroom handled in a matter of a few hours in arbitration.

The arbitrator can decide which witnesses are necessary and streamline the presentation of evidence with the assistance of the attorneys. This sort of thing, of course, reduces time and facilitates completion. For example, suppose Tom and Janet disagreed about the whereabouts of a sum of money - \$25,000. Janet says she spent it. Tom is sure she has hidden it somewhere. Missing sums of money are frequently at issue in divorce proceedings. It may already be evident, from the paperwork presented to the arbitrator by the attorneys, that establishing the facts from documents and other data is impossible. The only thing left is for the arbiter to look both Tom and Janet in the eye and listen to each of them talk, because he has the responsibility to decide who is lying and who is telling the truth in such cases.

Here's how that might work: Suppose the arbiter listens to the evidence and decides that Janet is lying. Then the arbitrator says, "I find that the twenty-five thousand dollars is indeed in Janet's possession." Does his saying it's so really make any difference? It surely does. In this procedure, when the time comes to make a list of who gets what, that amount of money is listed in Janet's column.

Suppose everything Tom and Janet had accumulated over the years of their marriage had been reduced to cash, and that cash amounted to \$100,000. But, in addition to that amount sitting in a trust account at the bank to await the outcome of this arbitration, the arbiter had "found" - decided as a legal point of fact - that Janet was lying and indeed had \$25,000 more in a Swiss bank account. That would mean that the total estate would be valued at \$125,000. That amount would be divided equally between Janet and Tom. Consequently, Tom would be authorized to go to the bank that had the \$100,000 held in trust, and, after the divorce, draw out his half of the estate: \$62,500. Janet would be entitled to only \$37,500 because the arbiter decided she had that other money hidden away. Such is the power of an arbitrator or a judge.

Arbitration can be either binding or nonbinding. It depends on what the parties agreed to before they went into it. If they agreed that the arbitration would be binding, they can take the decision to court and have it made into an order with the force of law. If not, then they are entitled to go to court and litigate in a formal trial. While this does occur sometimes, the arbitration still serves the important function of permitting steam to be let off in a more informal and less expensive setting. So, even with nonbinding arbitration (wherein Janet would not have to accept the arbiter's finding that she had a Swiss bank account), the parties are likely to find themselves emerging from the process wiser and better prepared to come to agreement.

You do need to remember that, when you agree to binding arbitration, you waive some significant rights you would otherwise have to appeal a decision. Be sure to get legal advice before making the decision to sign such a waiver. Every case is unique.

The Last Last Ditch

If, however, Tom and Janet have found their hostility has abated sufficiently to allow for some cooperation, there is still another alternative to the courtroom. I have in mind the "rent a judge" program that has come into existence in the Los Angeles County Superior Court. Where the docket was so full that as many as seventy cases were "trailing" at one time, some other option was needed. An attorney who reports to court on the morning appointed for his hearing and finds that it must be trailed until a judge and courtroom become available has two choices: first, he can sit and wait, and charge his client for the time thus consumed; or he can accept the clerk's offer of a beeper. By carrying the beeper on his person he can leave the courthouse to take care of other business. When the beeper sounds, he has ten minutes to call the courthouse and say, "Yes, I'm on my way." After that, he has an hour's time to reach the courtroom. There's a slight charge for this

beeper service, but it is a pittance next to what a client would have to pay for sitting and waiting and thumb-twiddling.

Under the "rent-a-judge" program, the presiding judge of the Family Law Department has indicated his willingness to make space available to counsel who are willing to provide their own judge. This means the two lawyers call a retired judge or an eminent family law attorney who is known to be competent in family law matters, and hire him to come into the courtroom to hear their case. The judge's fee, at this writing, is approximately \$150 per hour. So, for a five-hour case, the cost is \$750. In that way you can eliminate the waiting time altogether. The presiding judge provides the courtroom space and the personnel whose salaries are paid by the county. In many instances this represents a cost-effective way to proceed.

At this point we've examined divorce, its impact on children, various discovery tactics, what can happen in face-to-face negotiation, mediation, and arbitration. And we've passed, at least, into the courtroom itself - the place we would most like to avoid. In the following chapters we'll explore in more detail what it is like in there. This might be a good time for you stop and reread, if you must go through with a divorce, this chapter and the earlier chapters that suggest alternatives to the courtroom process.

Checklist for mediation and arbitration

1. The immediate goal of both mediation and arbitration is to bring you and the other party to agreement as to how you will care for your children and how you will divide your property.
2. Check into the qualifications of a mediator before you employ one.
3. Neither mediation nor arbitration is therapy, reconciliation, or counseling.
4. Both parties must possess parity and be committed to the divorce for mediation to work.
5. Arbitration by a panel of three is a splendid way to avoid the pitfalls of judicial bias.
6. Both mediation and arbitration can be ways to save money.

Postscript

The American Association for Mediated Divorce promotes and, to some extent, oversees the work of mediators in family disputes. For more information, write or phone:

The American Association for Mediated Divorce
5435 Balboa Boulevard
Encino, California 91316
818-986-6593

The Christian Legal Society, a nationwide organization of attorneys, offers conciliation services in most parts of the country. It is geared to the sentiments and perspective of Christians. For information about how to find such a service in your vicinity, write or phone:

The Christian Legal Society
P.O. Box 1492
Springfield, VA 22151
703-941-3192

EIGHT

The Pitfalls of Property

People who are divorcing must go before a judge only if they are unwilling or unable to achieve a marital settlement agreement. By going to court, they are asking the judge to make the decision for them. The judge will listen to the case according to the rules of law and then imposed an order on the couple. If either of them decides they don't like the terms of this order, he or she can appeal to a higher court.

I was once at a meeting of about three hundred lawyers who specialize in divorce. The speaker asked for a show of hands to indicate how many had been involved in a family law appeal. More than 90 percent of the group raised their hands. Then the speaker said, "Now I want you to raise your hands if your client's position was improved as a result of the appeal. I

don't want to know whether or not you won. Be honest. Was he or she better off after the appeal than before it?" Three of the attorneys raised their hands. This illustration dramatically points up the difficulty and relative futility of an appeal.

If the court's decision is left to stand unappealed, then the parties must abide by its terms. If either of them decides to violate any of its terms, they could be charged with a misdemeanor - contempt of court - and brought to trial. Contempt of court is punishable by fine, imprisonment, or, in some cases, both.

The same is true for the terms of an agreement you achieve through negotiation, and enter with the court. The terms of negotiated agreement, as I've mentioned before, are reviewed by the judge who, if he or she approves them, makes them an order of the court. At that point it is the same as if the judge had rendered judgment after a contested trial on all issues. Once an agreement becomes an order of the court, its violation is a breach of law.

And, in practical terms, that means a lot. Allen was party to a divorce settlement in which he was obligated to pay his ex-spouse \$4000 for her share of the proceeds from the sale of their house. However, Allen had entered into the agreement without benefit of counsel, and it was poorly worded. The upshot of this was that, when the real estate market became sluggish and the house didn't move, Allen's ex-spouse was able to present the court-ordered settlement to a marshal and to demand that the marshal go to Allen's bank and clean out his account up to the amount of \$4000, even though he had done everything possible to comply with the order.

Allen's account never had more than \$2000, but that was beside the point. You see, the real point was to harass Allen for his unwillingness to give up custody of the children. They had gone to him at the time of the divorce because his wife had run off with another man. So, the marshal's arrival was timed to coincide with one of Allen's bimonthly paydays. He unsuspectingly deposited his check and went home to write checks to pay his bills. His balance at the start was about \$1300. When he had finished paying his bills, about \$200 remained.

Two days later he got a call from his bank to tell him that the entire \$1300 had been scooped out of his account by the marshal in partial payment of the judgment against him. Happily, he had a friend who could loan him the money with which to open an account at a different bank. Then he had to scramble to keep the checks he had written from bouncing. And he had to call me (I was handling the custody suit for him). It took us several weeks and, unfortunately, additional legal expenses, to convince the court to let him have his money back.

So, it behooves us to look closely at what a judge is thinking about when he or she is getting ready to impose a divorce order on the two angry

people sitting before him in his courtroom. Three basic questions have to be answered: (1) What to do with the property? (2) What to do with the children? (3) How to pay for the children's support? In this chapter we will focus on the first question.

The Division of Property

In California, the judge has little discretion with regard to the property. The law says that all of it is to be considered community property (owned jointly and equally by both spouses) except for those items that one or the other party can show to be separate property.

Separate property is what was owned by either party prior to the marriage or acquired after the beginning of the physical separation. Gifts and inheritances which either party receives during the marriage are separate. So is whatever is acquired during the marriage that is directly traceable to separate property. For example, an item might be purchased from a separate property savings account. That makes the item separate property even though it was purchased during the time of the marriage.

But separate property can be "commingled" - that is, it can lose its status as separate property. This can happen when it is sold, or when the title to the property is legally changed.

Once all the separate property is clearly identified and listed in the court's documents, everything that remains on the inventory list is considered community property. Community property is to be divided equally between the two spouses. The court must not attempt to reward the "innocent" or punish the "guilty" by awarding anything that resembles a lopsided division of property.

One consequence of this, in some states, has been the expenditure of a great deal of time in determining what property there is and what portion of it is not community property. Needless to say, couples with long-standing marriages have a difficult time showing that any of their property is separate, but regardless of the nature of the marriage, this field of inquiry frequently provides fertile soil for disputes and disagreement.

Common Law or Community Property?

No matter where you live and what the background of your marriage, if you have to go through a divorce, you will have to divide your property with your spouse in accordance with local laws as the courts are interpreting them. Your lawyer will know what those laws are and what the judges are doing. In community-property states, everything either spouse earns or accumulates during the marriage is community property. In the states that

follow English common law, property is divided according to rules of equitable distribution. The result in both cases is designed to achieve equity between the parties.

The community-property states derived their laws from the French and Spanish systems of law, which recognize the concept that a housewife's contribution to the marriage entitles her to half the estate. In the common-law states, homemakers originally had little in the way of legal rights. This derived from medieval Anglo-Saxon attitudes which regarded women more as chattels than as life partners. Today, the similarities far and away exceed the differences between community-property rights and the doctrines of equitable distribution developed in the common-law states. Currently there is discussion of national uniform divorce legislation what would eliminate differences altogether, and I believe it is only a matter of time before that becomes a reality. It really doesn't make sense to have all the inconsistencies that presently exist in this country.

The main factors which will govern your property settlement are whether you live under common law or under community-property statutes, and the exact wording of the statutory and case law (the precedents set by judges' decisions) that deals with dividing property between divorcing partners where you live.

So, in the community-property states, a judge is responsible to see that a couple divides their entire estate with only the exception of those things each partner can prove to be separate property (as I described earlier). In the common-law states we find a wide variety of rules governing property division. Roughly thirty states (laws vary from time to time) give judges discretion to distribute property fairly and equitably, no matter how the title to it was held. But in more than a dozen states, a judge is allowed to divide only jointly held property. Variations on this theme exist from place to place. Some states accord limited discretion to judges to divide property as they deem fair. Other statutes allow for equitable distribution of all property except real estate. And a few states provide that, while separate property may not be divided, judges may order one spouse to convey an interest in such property to the other spouse in connection with an alimony award.

Judicial Discretion

Atop this incredible jumble sits judicial discretion, which tends to dilute all these fine differences and to make divorce settlements something more like a homogenous blur from the Atlantic to the Pacific. California and the other community-property states once had a reputation for favoring wives. Whether or not this was ever true is debatable, but it certainly can no longer be said of California. Once equal division of property (a provision of

family law in California that came into effect at the same time as "no fault" divorce, but which is not a necessary or essential part of it) became mandatory, judges lost the power to look at a situation and make what distribution he or she deemed fair. In the cases of marriages in middle- and low-income families, where estates were modest and where child support and spousal support (alimony) payments were chancy at best, this has often worked hardship on mothers or custodial fathers.

Under the old arrangement, a sympathetic judge could give a mother a greater portion of the property to compensate for low or nonexistent support payments. But no longer. Now the law requires equal division. The result, in a recent study, is that, one year after a divorce, the financial status of the average man in California has improved 42 percent, while that of the average woman has declined 73 percent. Lenore J. Weitzman, an associate professor of sociology at Stanford University, is the author of *The Divorce Revolution* (Free Press, 1984). In her revealing work, she concludes that the major result of so-called no-fault divorce is the systematic impoverishment of divorce women and their children.

No matter where you live, you should make the same effort to learn about the laws governing your property that you would make to learn about a disease with which you were afflicted. Sometimes university extension programs are offered on such topics. The YMCA often has information for women in this regard. And, of course, a trip to the public library and an interview with a helpful person at the reference desk may be the quickest and easiest way to become informed.

Concealed Assets

If your spouse has kept you uninformed about finances, you'll need your lawyer to make good use of the tools of discovery that he has available to him. Sometimes this need be no more complicated than a subpoena for W-2 forms, back tax returns, bank statements, and quarterly profit-and-loss statements. It can be as complicated as hiring a private investigator. You and your attorney must weigh your situation carefully to plan the most sensible course of action.

One time I was representing a woman in a divorce action. Her husband was the sole proprietor of his business. At some point in our preparation we discovered important information. During the previous ten years he had taken about \$400,000 out of the business which he had kept secret from his wife. As soon as this came to light we brought a motion (asked the court) to compel the husband to release the considerable funds necessary to subject his business to thoroughgoing professional audit. In this way we were able to verify and establish the fact of the husband's

misappropriation of community assets. And that, in turn, helped his wife get a more honest and fair share of their community property in the divorce settlement.

Joint Accounts and Credit Cards

This brings up the touchy matter of joint accounts and credit cards. What do you do about them? It often happens that the family finances are squarely in the hands of the husband. He's making the money, paying the bills, and running the show. This leaves the wife in a disadvantaged position at divorce time. Consequently, many lawyers advise their female clients to close down joint bank accounts, get the cash out of life insurance policies, and do anything else they can to garner some resources and give themselves a bargaining position.

In my opinion, this is the greatest injustice in family law. The party with control of the assets is able to gain an unfair advantage and the other person seldom receives adequate protection in the courts. A few innovative lending institutions in Southern California are beginning to develop legal fee financing for family law litigants that is somewhat similar to the long-established practice which has proven successful in England. Check with the family law specialists in your area to see if anything like this is available to you.

I generally advise my clients to close out joint accounts and safety-deposit boxes, and to establish separate accounts for safekeeping. Likewise I often urge them to close out any credit card accounts, particularly if one of the parties is inclined to be financially irresponsible. The law in California says that, after the parties to a divorce physically separate, each one is responsible for his or her own obligations and liabilities.

Confusion on this issue arises, then, when the parties continue to occupy the same house. A spouse who files for divorce may state that separation occurred on the date he or she signed the papers at the lawyer's office. But it often happens that they continue to live together after that date. Thus, things get blurry in the courtroom when it is time to assign the bills and debts. Closing down credit card accounts so that they can no longer be used is often the simplest way to guard against this sort of confusion.

What about stock options? They may be issued during the marriage, but exercised after the marriage. How will they be characterized, as community or separate property? Rather than leaving a question like that to the uncertainties of ever-changing case law, a client might be well advised to put off filing a petition for divorce until after those options are exercised if that time is close. I am presently involved in a case wherein the husband is arguing that certain stock issued during the marriage was issued in

expectation of future separate property. My client, the wife, contends that the stock is community property because it was issued in consideration for leaving his old job and accepting employment with a new firm. It is an important question. When the options were exercised, after the separation, an investment of about \$2500 netted something in excess of a million dollars because of multiple splits and rapid growth of the company whose stock it was.

Filing Jointly

Mention of all that money brings taxes to mind. Joint returns are in order as long as you and your spouse are living together. If you live separately but haven't been divorced, you are still entitled to file jointly. But you should probably see an accountant to determine whether joint or separate filing is the wiser course. Usually a joint return is advantageous, but sometimes it is not. If your spouse is playing around with his or her returns and cheating on the taxes, you may not want to file jointly with him or her. Better to pay slightly higher taxes than to risk exposure to an IRS audit and, perhaps, criminal indictment for tax evasion.

Hidden Assets

Your estate may well consist of more than is apparent - "hidden" assets. Beyond the silverware, the furniture, the car and the house are intangibles such as pension plans, patents, copyrights, life insurance policies with cash value, income tax refunds, and so on. If, for example, you are married to an insurance agent, you may be entitled to ongoing income from policies originally sold during the time of your marriage. Writers and actors may be getting residual payments for jobs performed during the marriage. Accounts receivable are monies owing to a person which he or she expects to receive in the course of time. What happens in the event that Jones pays your spouse back loaned money after your divorce is final?

Even less tangible is a merchant's or professional's asset known as goodwill. What is your share of that? Many companies and professional practices spend hundreds of thousands of dollars establishing goodwill in the communities they serve. This is a valuable asset that can be proved at the time of trial when presented with the proper expert testimony. This kind of intangible asset can sometimes have a value far in excess of the sum of all the other assets in the marriage.

Questions like these sometimes make not only a good attorney but also competent accountants and appraisers necessary. However, in the end, you alone are responsible protecting your interests. Never allow yourself to

be lulled by the thought of a team of professionals poring over your case. Anybody can make a mistake. It's your case, not theirs. You must continually inspect and consider all the data and conclusions. It is much the same as reconciling a bank statement or checking over a monthly credit card statement.

Estate Planning and Divorce

One other matter relates to the division of property. What happens to your property if the spouse you are divorcing dies? This is not as farfetched as it sounds. The trauma of divorce, coupled with its attendant afflictions (moving, loss or change of employment, troubles with children), can and occasionally do bring on heart attacks, strokes, drunken driving, and other potentially harmful conditions.

I once represented a healthy and vigorous thirty-five-year-old man. I'll call him Sam. He was a dental technician. The working out of the divorce settlement was unusually stressful. Sam's wife, Alice, was psychotic. Consequently, during the time of his marriage to her, the children from her prior marriage had become closely bonded to Sam. He wound up with custody of his stepchildren. That was what both she and the youngsters wanted.

We were in the process of drafting the agreements and judgments, ready to prepare the papers for transferring the titles of their real property, when Sam was killed in a motorcycle accident. That was when I learned he had written no will. Because he had held all the real property in joint tenancy with Alice, everything went to her. Joint tenancy is a unique kind of ownership in which the survivor takes all without having to go through probate. This can be an advantage in a happy relationship, but not in a case such as that of Sam and Alice.

Sam had not changed any of his insurance policies or his pension plan. Thus Alice was his only beneficiary. The kids received nothing. Instead, Alice left the state with her boyfriend, leaving her kids with relatives and little else. The very thing Sam feared most became a reality because of poor planning on his part.

Ever since that painful experience, I have urged my clients to think about this sort of thing. Rewriting or writing a will may be in order, in addition to making a change of beneficiary in one's insurance policies. Sam could have broken the joint tenancy with Alice even before the divorce settlement was completed. He could have changed it to tenants-in-common, which would have protected his interests in the event of his untimely death.

Title to property does not apply to real estate only. It can also apply to automobiles, bank accounts, insurance policies, safe deposit boxes, and

other items of property. A friend told me about a case in which a man's heirs were suing their father's lawyer for malpractice. Their father had died prior to the completion of his second divorce. His massive estate had passed to his second wife, to whom he had been married at the time of his death. The children of his first marriage were contending that the lawyer was guilty of malpractice for not having rewritten his client's will or advising him to break his joint tenancies.

Not all lawyers are going to bring up this sort of estate matter when handling a divorce. Nevertheless, it is something you need to consider. Do not hesitate, for any reason, to raise the question with your lawyer.

If you must go through a divorce, making a suitable property settlement is very important. Taking the time to do it right will save time, trouble, and money.

Checklist for property settlement

1. Make a list of everything you and/or your spouse owns or controls (make two lists, if necessary, one for separate property and another for joint property).
2. Make use of legal means of discovering information you don't know or are unclear about.
3. Get copies of all important documents, accounts, deeds, contracts, tax returns, financial statements, wills, trusts, investments, and other records that will be necessary to prove the extent of your estate.
4. Do what you need to do to verify your spouse's financial declaration by collecting all payroll records, W-2 Forms, joint income tax returns, and employment agreements.
5. Find out what property that you've discovered or identified is legally divisible by characterizing in advance how and when the property was acquired, where the resources originated, and what the intent was at the time of acquisition.
6. Decide whether or not you need your lawyer to ask for restraining orders to prevent your spouse from disposing of or wasting the assets of your marriage.
7. Appraise the value of your assets, with professional help when necessary.
8. Think together with your lawyer about estate planning: wills, tenancies, and trusts.

NINE

Who Gets Custody?

Where will the children go? What happens to the small victims of divorce? This is the burning question in every divorce where children are involved. Custody and visitation is an area of family law that has changed dramatically in recent years. It used to go almost without saying that the mother got custody and the father visited. In cases of older children, the father sometimes got custody because he was adjudged better able to provide for their higher educational expenses. In most cases, however, a mother had to be proven unfit due to alcoholism, drug addiction, or moral degeneracy before she was denied custody. This is still the same case in some states, but not in most. A summary of the child custody laws and states which have adopted joint custody statutes is included in the Appendix. Fortunately,

legislators have had considerable success introducing uniform legislation in this very important area affecting our children.

Today judges are awarding custody in a variety of forms, and, if the parents are able to agree on some novel arrangement that is not harmful to the children, judges are generally willing to approve. These new custody arrangements are largely a response to the widespread abandonment of traditional sex-related roles in our society. A woman is not a bad mother if she decides not to fight for custody of her children, and a man is not regarded as odd if he seeks custody. The result is a greater variety of options designed to suit individual needs, conditions, and preferences.

Types of Custody

The two basic categories of custody are the traditional sole custody and the more recent innovation, joint custody. Joint custody has a number of subcategories. First, however, we'll look at sole custody for one parent with rights of visitation reserved to the other parent. More and more fathers are seeking and getting sole custody of their children. Conversely, more and more mothers are granting custody to fathers without objections.

My wife and I have a standing agreement between us. Whichever one of us decides to leave must take all four of our children. That agreement has stood for a long time now. And beyond the joke is our basic recognition that, as parents, we are each responsible to keep the best interests of our children foremost in our consideration. That is the test to apply to your own situation.

The advantage of sole custody is the minimization of disruption to the children's lives. They stay put in their school and community, and they have one parent consistently available to them. That parent has the responsibility and the authority for caring for the children, a fact that helps to keep things clear and unambiguous. This tends to increase a child's sense of security and continuity.

Sometimes, when there is more than one child, the custody of the children may be divided between the parents so that, in the case of a family with four children, two of them might go with the mother and two with the father. This is an option fraught with danger to the children, who so commonly derive comfort and companionship from each other during the turbulent time of divorce. It may be advisable in a few situations where the children cannot get along together. This is a difficult area. Absolute certainty is elusive, and the help of a mental health professional is often needed.

A mother with sole custody of male children may find herself at a loss when her boys reach adolescence-likewise a father with exclusive

custody of girls. It is during the teen years that the same-sex-parent can provide important cues and support in a child's struggle for identity.

One of the worst features of sole-custody arrangements is the awkwardness of visits by the noncustodial parent. Without authority or responsibility, what role does this parent now play in his or her youngster's life? Custodial parents often complain that children return from visits in an agitated emotional state. They need to understand that this is normal separation anxiety. All children experience it in varying degrees. The best way to handle it is to patiently overlook it and seek to soothe and calm the child. More than anything, this will help the child grow out of it. Unfortunately, I see some custodial parents capitalize on this conduct to reinforce the warfare they insist on waging.

Visitation can be arranged for alternating weekends. This is often accompanied by special provisions for holidays and summer vacations (six to eight weeks with the noncustodial parent in the summer is frequently the case).

Both sole and joint custody arrangements are subject to court approval. And any significant change in life-styles or living conditions or location can be grounds for asking the court to change custody from one parent to the other. When several children are involved, individual alterations-as in one child going to live with the other parent while another stays behind with the original custodial parent-are sometimes in order.

In recognition of the seemingly endless complexity and variety of circumstances among families, the concept of joint custody has emerged to help establish more flexible custody order. Joint custody speaks to the need for both parents to continue to be parents in the fullest possible sense of the word. It attempts to approximate the parental condition that existed before the divorce. As such, it implies a degree of maturity in the former couple that will allow them to work together cordially as parents. That's a big order for a lot of people. In many divorce situations it is a downright impossibility.

The advent of stepparents may also sabotage previously workable joint-custody arrangements. I once had a case which involved a set of divorced parents. They were working together remarkably well at the job of parenting their children. They both exhibited cooperativeness and willingness to negotiate amicable compromises to solve various conflicts. When it came to their children, each stood admirably against the temptation to express any of the residual hostility they both felt as a result of their divorce.

Suddenly, however, for no apparent reason, everything changed. The father launched an attack on the mother that seemed to come out of the blue. He accused her of incompetence, negligence, lack of interest. The

mother was my client, and the only hint she could give me was that her children's father had gotten married not long before the attack.

So, we went into court against a barrage of things I would have to call silly. The petition complained that the kids showed up with patches on their clothing, that they had occasionally groused to their father and stepmother that, when they dined at their mother's house, they sometimes didn't get dessert with the meal. These were the sorts of things, I recognized, that kids would be inclined to say if they received the least bit of encouragement. But the father was asking the court to award him exclusive custody of the children and to restrict the mother's access to them on these grounds.

In court we asked the judge to order a child-custody evaluation by a team of professionals. The price tag for this mounted to well over a thousand dollars. And, when it came back, it explained the real reason for all this sound and fury. The new stepmother, it turned out, was a divorcee who had lost a prior custody suit for her own children. And, after her divorce, her gynecologist told her she would be unable to conceive more children.

So, it was an onslaught of maternal instinct by the new stepmother-and no fault in my client-that had created all the fireworks. Once the mystery was solved, we worked out a broader plan that allowed for an even greater degree of co-parenting. It gave father more access to the children as a kind of recognition of the stepmother's importance-and in recognition that a divorce between the father and his new wife would only worsen things for the children. The report also seemed to help the father see the larger picture more clearly. He had turned over many of the details of parenting his children to his new wife. So, it had been from her that he had begun to hear complaints about his former wife's parenting skills. Now he was able to rest easier.

Why Choose Joint Custody?

Joint custody comes in two categories: legal and physical. You may share one or both with your fellow parent. Legal custody pertains to the important decisions that have to be made for children. If Johnny needs an operation, both parents-in a joint-legal-custody situation-have equal authority to sign the consent form.

Sharing physical custody of children requires a very high level of maturity in the divorced parents. In it, a child, or the children, lives part-time with each parent. The parents in this situation will share legal responsibility for their offspring. Implied in this arrangement also, of course, is the assumption that the parents continue to live near each other. Optimally, a joint-physical-custody agreement would involve the two parents living in the

same community, and for those with young children, even in the same neighborhood.

Joint custody offers tremendous advantages. Neither parent carries the full burden of single parenthood. The children have ready and frequent access to both parents. It calls the parents to a new level of cooperation and mutual respect. It allows for a reduction of competition between the parents for the loyalty of the children. In the same manner, it allays the need of a child to have to express preference for one parent over the other as sometimes happens in courtroom custody battles. Finally, evidence shows that fathers involved in joint custody are more likely to feel cut off and no longer part of his family. Sometimes the custodial parent is able to block visitation altogether. That can heighten the isolated feelings of the non-custodial parent measurably. Only a highly principled person would continue to make payments under such circumstances. It is one of the most often-heard reasons for nonsupport.

What are the scenarios for joint physical custody? The most common is Mom with her place and Dad with his. The children travel back and forth between two. The frequency of this rotation can vary widely, from three to seven days on up to matters of weeks, months, quarters, and years. In rare instances of restricted financial resources, a divorced couple has maintained on home and one apartment between which they alternate for the sake of the children. More often than not, this is a temporary solution in the case of very young children.

A Key Word: Flexibility

No order was meant to stand for eternity. An order is a temporary arrangement for meeting the needs of the moment. As the needs change, the orders will have to change. Co-parenting is a process that will always require adjustment and fine-tuning by both parents as they seek to uphold the best interests of their children.

What all the foregoing points up is that you and your fellow parent are the best judges of how custody and visitation ought to be worked out for your children. The anger and pain of divorce often gets in the way of it, but if there is any possibility, work this out between the two of you. What you decide will not be challenged by the court unless it is outrageous.

Flexibility and creativity should be the benchmarks of your planning. Let options and alternatives characterize all your interactions. Avoid the self-indulgence of getting stuck on a fixed notion of how things ought to be. And, if you and your ex-spouse can't reach an agreement, bring in a neutral outside resource person to help.

When you do set to work on these issues, aim for clarity. Don't leave any shadowy areas. They will constitute points of disagreement later on. Stand hard against your own fuzzy thinking and also against the boiler-plate legal jargon for which lawyers are often to blame. Spell out the exact specifications you want in the agreement to your lawyer, and be sure that he or she includes them in your final documents.

If you and your spouse or ex-spouse are not on amicable terms and have tended to argue about the children or to get at each other through the children, then it is all the more important to nail this part of your agreement down. You may even need to specify exact times, places, dates and other details of visitation so as to expunge every drop of ambiguity. Make sure everything is worked out in detail will in advance. Don't leave room for surprises, and don't be intimidated if your ex-spouse or someone else raises his or her eyebrows disdainfully at your earnest endeavors. Ambiguity inevitably causes friction.

John and Linda have been divorced for four years after a nasty custody battle. Linda had custody of the two children, and John, it seemed to her, had used his visits with the children, especially in the early days after the divorce, to poison their relationship with their mother. Often, when they came back from visits, they would question why she did this or that, or why they weren't allowed to do one thing or another.

After a while, things had seemed to quiet down. The support checks came pretty regularly and the kids weren't always badgering her with questions about the way she did things. It was the beginning of the summer of that fifth year that Linda decided to let her guard down a little. She let John take the kids without nailing down specific details for their return. The next thing she knew, the usual time for the children to come home had passed. Linda called John. "Oh, yeah," he said. "You didn't say anything, so I figured it didn't make any difference. It's pretty late now. How about if I bring them back tomorrow?" But the next day, one of the kids had a cold. One excuse followed another, and it was four days before the children were back home. The whole experience left Linda feeling distraught and angry, but of course, John acted as if she must be paranoid. Eventually she had to go back to court to get assistance in nailing down the appropriate guidelines.

In an earlier chapter we observed how the stress of divorce regularly diminishes a parent's capacity to care for his or her children just at a time when those children need extra measures of love, caring, and honest reassurance. It is easy to forget the ways in which anger at a departing spouse can affect children. For example, one may regard sever limitations on the absent parent's visitation rights as a personal and moral victory. But, while there are times when a child needs to be protected from a parent's

psychologically destructive behavior, these times must be regarded as temporary except in the most unusual circumstances.

The Importance of Contact with Both Mom and Dad

Children have deep needs for both parents. Stories of children being separated from one parent by the other are plentiful. In many cases the children have listened to the custodial parent vilify the absent parent for years. And, in many instances, they have sided with the custodial parent. But in time, those children almost inevitably seek out the vilified parent and attempt to reestablish contact. In some cases, their efforts are thwarted for a variety of reasons. In many cases they succeed, and they often discover that the accusations of the custodial parent were mostly exaggerations, if not outright lies.

Efforts to "punish" a former partner in marriage are bound to backfire. When children fail to reestablish contact with their absent parent, the effect can be worse than if they had succeeded. Either they will begin to idealize that parent, often to fantasy proportions, or they will be unable to overcome feelings of rejection and worthlessness. An oft-repeated biblical adage tells us, "Vengeance is mine, says the Lord. I will repay."

This is a topic that demands our clearest thinking and our deepest reserves of calm. A custodial parent is not responsible for creating a good relationship between the children and their other parent. But he or she is responsible for allowing that relationship to develop and for doing nothing to prevent it. For example, a custodial parent should take pains to ensure that the children visit the other parent's new domicile. But custodial parents are under no obligation to defend or explain the noncustodial parent's words or actions. They must accept the existence of that other relationship and do as much as possible to not interfere with it.

Time Can Make the Difference

Remember George from chapter 4? He was the client who lost his protracted and costly custody suit. Shortly after the litigation I described, his ex-wife called him to say that each of the children wanted to speak to him. Then he listened as, one at a time, each of them told him they hated him and never wanted to see him again. With the help of counsel, he weathered the pain and was able to recognize that the children had not meant what they had said, but had only said it to please their custodial parent. After a season of intense grief, he resigned himself to the prospect that he might not see his children again until they were much older. He resolved to send the court-ordered support payments, and got on with his life as best as he could.

Two years after that, he got a call from the children's maternal grandmother. The children had come to live with her because their presence had put too much of a strain on their mother's new marriage. Would he, she asked, be willing to take responsibility for them and let them live with him? Two months later he and his children were ensconced in a rented home. His ex-partner readily consented to custody. An attorney drew up the modification orders and the procedure was approved by the court without comment. It was a case of patience - allowing time to pass, circumstances to change, and emotions to cool. What was so impossible to achieve shortly after the divorce, while the heat was high, became quite possible and easily accomplished later.

Finding the Best Solutions

Support for parents and children in the throes of divorce is more readily available than at any time in the past. These resources expedite and facilitate emotional healing. I've already described the evolution of the conciliation court in Los Angeles County into a support and counseling agency for helping families resolve questions of parenting after divorce. In addition to that are a multitude of single parents' self-help groups. Any of these can help parents think and work through the arrangements for their particular family, and they will also provide a general sort of emotional support during a difficult period.

Finally, let me repeat, no matter what experts are on hand to help, the responsibility to be parents rightly belongs to no one but the parents. They must try their utmost to find the best solution for their children, with a realistic understanding that ideal solutions are far removed from the realm of possibility.

Lee and Jane made a firm pact between themselves, prior to the divorce, which they would never use the children to get at each other. They obtained a vague but surprisingly typical court order for "reasonable rights of visitation" for Lee while Jane took custody. Then they agreed to work out plans for any trips or lengthy visits no less than a week in advance. They each sat down with the children and asked them - the boy was ten and the girl thirteen - to say what they would like. The idea was not to place the responsibility for decision making on the children but to allow them to have some say. The boy said he would like to be free to ride his bike over to see his dad during the week and maybe have supper with him once in a while in the evenings. The daughter was more interested in occasional trips.

As things worked out, contact between Lee and his kids was sporadic but frequent. Only about one weekend in five were the children away from

home on visits. And, more often than not, Lee spent time with one child at a time rather than trying to do things with both of them at once.

Both Lee and Jane made an exciting discovery as a result of their efforts at cooperative co-parenting: the problems their children had begun having in school completely disappeared.

Checklist for parents in divorce

1. If conflicts exist or are likely to exist, work overtime for clarity down to the last detail of all matters pertaining to custody and visitation.
2. Rely on your own judgment to help you as you listen to the suggestions and advise of your lawyer and other counselors.
3. Adamantly resist the temptation to use the child or children, or any issues pertaining to custody and visitation, as a weapon to inflict punishment on the other parent.
4. Be imaginative; explore and consider every conceivable arrangement for parenting, custody, and visitation. Don't be intimidated by custom, tradition, or attorneys.
5. Stop fighting and start talking. If that advice had any value in the area of property division, it has a hundred times more value here. It is the one chance your children have of getting through your divorce emotionally intact.

TEN

Who Pays for it All?

Who pays for it? You do! In the beginning, in the end, and throughout the process, it will be your responsibility. Your family's financial needs are, in one sense, the foremost concern of your divorce in the eyes of the state. Some states provide a printed financial questionnaire which enables you to present your needs to the court in an orderly fashion.

Deciding What You Need

The issue is how much money will be needed for child support and alimony? This is accomplished by listing all customary expenses: housing (rent or mortgage, taxes, and insurance); maintenance and utilities; food and other supplies; clothing, including laundry and cleaning; medical-dental

expenses, including insurance; education and child care; transportation (auto installments, insurance, gas, oil, repairs, etc.); other kinds of insurance (life accident); entertainment and travel; installment payments; and other incidentals or matters peculiar to your family. Try to think of things that happen only once a year or at odd intervals, such as summer camp, vacations, repairs, and replacements (how old is your refrigerator? How much wear is left in your other major appliances?). An emergency fund is a helpful thing when it can be maintained. This kind of budgetary thinking helps anyone who does it to see more clearly the nature of his or her own situation.

Next, take your list and work out an annual budget in monthly payments. The idea is to come up with some figures which you can later pare down in negotiations. Don't think, at this point, about what you can get by with. Think rather in terms of maintaining your customary standard of living. You can determine many of the figures you need from old records (telephone, electric, and gas bills; tax returns with itemized deductions listed on Schedule A; bank statements of the checking account). Especially for a woman returning to work, items will have to be estimated to reflect a new life-style—commuting to a new job; child-care and baby-sitting expenses; new clothes for a new job; and all other attendant costs associated with employment.

The other and shorter list you need to make is one of your income. If you have a job, what is your income after withholding? If you receive spousal support (alimony), how much of it will you have to set aside to pay the taxes due on it? This is the list you want to keep as lean as possible, both for your own sake and for the sake of negotiation.

The great majority of families in America live at or just beyond their means. In a divorce, resources have to be divided. What once barely sufficed for one household must now support two. That can be discouraging. A comparison of your two lists will quickly let you know where you stand in this regard.

In this time of assessment, try to think of and list other variables that should be considered. These include matters of health, age, training, and experience. Making realistic assessments of ourselves and our own situations can be very difficult. Sometimes a trusted friend can help us gain some of the objectivity and clarity needed to do it. You may want to consider consulting with a professional vocational adviser.

Here are some important facts to remember about child and spousal support.

1. Spousal support can be taxable to the recipient and deductible to the payer

2. Child support is not deductible to the payer, but creative drafting and planning can be employed to develop other advantages when you are willing to settle out of court.
3. Spousal support payments terminate whenever the recipient remarries or even, in most jurisdictions, cohabits with someone.
4. Child support payments terminate only when a child reaches majority, marries, or is emancipated or otherwise becomes self-supporting.
5. Child support payments, unlike alimony, continue to be paid, in many states, even after the death of a payer, from his or her own estate.

Payers of support, then, need to consider:

1. Will I enjoy tax advantages from making larger alimony payments? (The IRS has rules about how far you can go in this direction.)
2. Will I make the spousal support payments so high that my ex-spouse will love the check so much she (or, rarely, he) will fail to remarry?

In most cases, a certain lump sum for support is what is realistically available. How that sum is to be allotted-as between child and spousal support-may be governed, in part, by tax considerations. Or it may happen that more money can be made available if the tax advantages for the payer are properly developed.

Over and above the figures you arrive at in terms of monthly cash payments may be some other thing to think about. If your ex-spouse is employed, will his or her group insurance at work cover you or your children? Under most plans, children may be covered, but not ex-spouses (except in the waiting period before the divorce is final). And what about college for the children? Who will pay for that?

Here are some suggestions for preparing expense and income forms:

1. Prepare a detailed and thorough list of all expenses for purposes of negotiation and litigation.
2. Prepare a careful estimate of anticipated income, including things such as interest dividends and income tax refunds.
3. Be ready to go to work, tighten your belt, or both; to think seriously of ways to make adjustments, even to reduce your standard of living, with the least possible pain.
4. Don't forget the possibility of additional benefits from group insurance plans, and spousal willingness to cover extraordinary expenses for the health care, education, and other special needs of

the children, such as Little League uniforms, shoes, summer camp, Scout outings, and sports equipment.

Loose Ends

It may be advisable to consult an insurance agent to help you determine exactly what kinds and amounts of coverage you and your children enjoyed prior to the divorce, and what it will involve to continue or replace that same coverage. This sort of concern is entirely appropriate to any settlement or court order. What about the beneficiaries of life insurance policies? It is sometimes proper to stipulate in a divorce agreement that the children be named as the irrevocable beneficiaries of existing policies, at least while they remain minors.

As I mentioned before, spousal support will terminate with the death of the payer. If you are the recipient, is it advisable for you to take out a policy on the payer's life to guard against such a potential loss?

Settlement agreements may be used to provide for children in a manner not unlike that of a will. In law this is known as a third-party beneficiary contract. When properly drafted, the children can enforce its provisions even though they themselves were not signers of the contract.

A common general clause in marital settlement agreements states that the parties to the agreement disclaim and relinquish any further claim or interest in each others property or earnings; it is usually adjoined by a declaration that each one is hereafter solely responsible for his or her own debts.

A particularly important question that should be decided and spelled out in the agreement is the extent to which the parties agree it may be changed later on. Settlements commonly contain a clause that says any of the provisions may be modified by written agreement between the parties. If, at some future time, only one party wants a change, then he or she can go to court and ask the judge to make it, unless the settlement contains a statement to the effect that it cannot be changed. This is the time to consider whether or not you wish to limit future modifications to be by way of extrajudicial avenues for the resolution of disputes.

Divorce involves a small host of housekeeping matters in its wake - things like address changes, new bank accounts, changes in auto registration, and recording deeds and declarations of homestead. Most things of this sort are mere matters of paperwork to be filled out and filed. But some of them, such as deeds and car registrations, will require reconveyances or transfers from your spouse. If you were a housewife and married for more than ten years, you may qualify for social security benefits. Be careful not to

jeopardize these important rights. Be sure that your settlement agreement contains the necessary provisions for implementing such things. It can also provide for some appropriate person, like a deputy county clerk, to sign in your ex-spouse's stead in the event of default.

Loose ends are important. At the time, they seem like nagging details. But, left unattended, they can come back to haunt you. It pays to take care of them all as quickly as possible to prevent that.

As of this point, we have examined all the pertinent issues that need to be settled, whether by negotiation, mediation, arbitration, or litigation. The next chapter will explain what it is like when all else fails and you have to go before a judge in a courtroom to get matters settled. Once we have taken a look at the courtroom, we'll turn our attention to the aftermath of divorce.

Checklist of Loose Ends

1. Get an exact picture of your pre-divorce insurance coverage and the cost of duplicating it after the divorce.
2. Make certain your agreement clearly states whether or not it may be modified, particularly with regard to spousal support.
3. Review your agreement to be certain it contains an implementation clause and that all matters such as reconveyances, changes of ownership, quitclaim deeds, credit cards, and the like are taken into account and dealt with to your satisfaction.
4. Be careful not to terminate social security benefits prematurely (you can find out what you are entitled to by sending a postcard to your local Social Security office).
5. Make provision for any death benefits to which your heirs may be entitled through your employment.
6. Destroy any obsolete will which no longer reflects your wishes, and have a new one drawn up as soon as possible (some states permit you to draft your own holographic will which will serve in the interim until you can meet with an attorney).

ELEVEN

But We Just Can't Settle!

If, after your most earnest efforts, you and your spouse are unable or unwilling to agree about any one or more of the issues between you, then your case will have to go on the court calendar for a trial date. Once all the waiting and preliminaries are over, the judge will sit and listen to both sides as they present their evidence and argue their cases according to the many rules and formalities of the courtroom. This process is called *litigation*, a term taken directly from the Latin—a language which has served to create part of the mystique of the legal profession. In ancient Rome, the term meant “To drive a lawsuit.”

Some Facts about Litigation

Litigation brings out the best and the worst in people. We know, from watching the evening news on television that real trials get roughly the same coverage as prizefights, which they may closely resemble.

Conflict is the element that gets and holds people's attention. Every moviemaker knows that love scenes, per se (Latin, again, for "by themselves"), quickly bore audiences. Wells Root, an old time Hollywood scriptwriter, asks in his book *Writing the Script* that the reader considers two different scenarios. In the first, the curtain opens on a couch. A couple walks on stage, sits on the couch, a shady-looking character walks over to the couch with a time bomb in his hand. He places it under the couch and walks off stage. Then, when the couple takes their place to engage in precisely the same activity, they have the audience's undivided attention.

A divorce trial is like that. It's a gamble in which almost anything can happen. To go into one provokes an air of excitement and nervousness. Adrenaline surges through one's system, bringing a high measure of vitality. Everyone is keyed up for the big fight.

Many people enter the law profession because they love the drama and throb of litigation. Some of the same things that make men want to be marines or fighter pilots, beckon to a group more adept with their mouths than their muscles. The best among us even achieve a modicum of celebrity status. A name like Marvin Mitchelson, whom I've opposed, is roughly as familiar as Joe Namath. I would be lying if I said I felt no excitement when I go into a trial. This is what makes all the drudgery of the legal profession worthwhile, at least in our fantasies.

Like most things that dazzle us when we are young and starting out, the glitter of litigation is tarnished over time. I have spent most of my time up to this point talking about ways to avoid litigation because its results are almost inevitably disappointing. One of the biggest robbers of satisfaction is that the rules of a trial, especially when it comes to family law, forbid us to really fight about the things that we care about.

I have sat countless times in a custody suit and watched the dismay spread across a parent's face when he or she has begun to realize that the immoral behavior of the other parent doesn't seem to alarm or even interest the judge. I've seen them wanting, more than anything, to stand up and say to the judge, "But he's living with his girlfriend. That's wrong!" If they really did burst out with such a remark in the courtroom, of course, the judge would silence them on the spot or hold them in contempt.

If the judge condescended to reply, he might peer over his spectacles in mock patience and say, "It may be wrong, but in this courtroom, it is irrelevant." He would say that, even if he personally believed in God and

right and wrong, because he knows any decision he might base on personal moral or religious sentiments would be quickly appealed and overturned by a higher court. And nothing is more embarrassing or offensive to a judge than to be corrected by appellate judges in this manner.

The Courtroom Experience

As in warfare, so in litigation. Between brief episodes of flashing steel and rolling drums lie endless hours of tedium: preparation, recesses, adjournments ... waiting. It is always advisable to bring along your knitting or a good book. But there is a sense, during a trial, in which one must always be poised and ready to go. Pure relaxation is out of the question.

For the clients, the drama of a trial reaches its apex when they are sworn and take a seat in the witness chair. The joy of this experience comes from the heady sensation of being the center of everyone's attention. The price to pay for this—which, for many, is a once-in-a-lifetime experience—is the high degree of probability of being made to look like a fool during cross-examination by an opponent's attorney.

We may hear rumors of drama coaches who prepare inexperienced testimony-givers for this harrowing experience, but don't count on it. In all likelihood, you will take the witness stand with little more preparation than watching a "Perry Mason" rerun would give you. If your spouse's or ex-spouse's attorney knows his or her business, he or she will move you unerringly—and

With cunning and stealth—for your jugular vein. No hint of kindness or compassion will cloud his vision. His client is paying him to prove that you are a liar and a crook. Cross-examination is that long-awaited opportunity to get his hands on you and punish you for the audacity you displayed by dragging your ex-spouse into court this way—or for forcing him, by your recalcitrance, to drag you into court. It is as close as the law will ever allow you and your spouse to come to actually fulfilling that fantasy of strangling each other.

It's all downhill after that. Nothing can match the sensation of being on the witness stand. During the closing arguments, you'll probably sit and mull over the time you spent in the chair. You'll probably wish you could have another go at it because you just thought of a much better answer than the one you actually gave to the cross-examiner's most insulting question. On occasion, after all testimony and reports are in, the judge will look knowingly at two attorneys. By this time, it may be clear to the three of them what the outcome is going to be. The attorneys look at each other and then back at the judge. A recess is called and the parties gather in two clusters out in the hall.

One scenario goes like this: In one meeting Dick's attorney turns to him and says, "The weight of the evidence is on Jill's side. The psychiatrist's report cinched it for her. What do you want to do?"

"What can I do?"

"We can delay thing with some superfluous motions, but that will only make the judge angry at us. The time has come to turn the kids over to Jill and her boyfriend, and for you to start paying her support for the children."

"How much will I have to pay?"

"How about if I offer them three hundred dollars a month per child? I think the judge would okay that if she'll agree to it."

"Should we start lower to leave room for bargaining?"

"That's probably not necessary. It's been six months since we started this. They're as worn out as we are."

"Okay."

Dick's attorney signals Jill's attorney and they meet and whisper to each other in the middle of the hallway. Jill's attorney goes back and whispers with her and her boyfriend. After only a few moments, the two of them nod affirmatively. After a second whisper session between attorneys, Dick's lawyer comes back. "They'll accept. How soon can they have the kids?"

"How long can I keep them?"

"We won't be able to justify more than a week or ten days to get them ready. How about next Friday, a week from tomorrow, after they get home from school?"

"I want to have a little time with them. Can we set it at seven o'clock that evening?"

"Probably, I'll ask if they have any legitimate objections to that."

And so the details get ironed out. The two attorneys go back to the judge and describe the terms of the freshly negotiated agreement. The judge instructs Jill's attorney to draw up the order for his signature, and it's time to go home. In true Eliotian fashion, it has ended, not with a bang but a whimper. And that assumes (1) you get a courtroom and a judge, (2) everyone appears and is ready to proceed, and (3) for some other reason there is no continuance.

What Will It Cost?

Lawyers commonly charge a flat rate for a day in court. It may range from a thousand or fifteen hundred dollars a day to much higher amounts. Dick had been making payments to his attorney along the way according to what he could afford. When the trial was over, the final bill showed a balance

due of slightly over \$5,000. Computer-generated statements had kept Dick fully and woefully informed of how the costs were mounting and exactly why.

As part of the property settlement, the house had gone to Dick, who was to put it up for sale and pay half the proceeds to his ex-wife. His lawyer asked him to sign a note, backed by a second trust deed on the house, for the money he still owed. That way Dick could continue to make payments, and the sale of the house would take care of any remaining balance. As it happened, the real estate market went into a real slump about that time. The house remained on the market for two and a half years. Before the time was up, the lawyer had a cash slump and needed to call in his receivables. His bookkeeper called Dick and offered to split the difference with him. The balance stood in at \$1,800. The attorney would be willing to cancel the note and reconvey the second trust deed for \$900. Dick managed to scrape the money together with a little help from his friends.

Unfortunately, this scenario is not uncommon. It helps to explain the oft-heard lament of family law attorneys that they “work twelve hours, bill for eight, and collect on four.”

When All Else Fails

If I have made the courtroom experience sound impersonal, intimidating, and unpleasant for a party in a divorce action, it is because for the most part it is exactly that. And I want to emphasize, as I have in every preceding chapter, that litigation of divorce (rather than negotiation, mediation, or arbitration) is a last resort. Like divorce itself, litigation—going into the courtroom—should be undertaken only when all else fails.

Sometimes, however, settlement outside the courtroom is not possible. If you have to go into the courtroom, in the course of going through a divorce, you will be able to handle the experience most successfully if you have thoroughly explored every alternative to being there prior to actually walking into the courtroom. You will be better prepared for the experience; you will have the knowledge that can provide considerable support for you, that the trip is indeed necessary.

Checklist for pretrial matters

1. Call your lawyer to confirm the date on the afternoon before trial, since dates change for a variety of reasons, often at the last minute.
2. Make sure to bring with you all the paperwork that pertains to your case (records, pleadings, correspondence, and documents); you never know what you might need.
3. Dress is important; you have only one chance to make a good first impression on the judge; your clothes should be clean and neatly pressed; they should be the sort of clothes you would wear to a job interview.
4. Demeanor is important; if the judge asks you a question, turn to him, look him in the eye, and speak clearly, distinctly, and forthrightly; remain cool and composed in the face of hostile cross-examination by your spouse's attorney; if questions are improper, your lawyer may object, but if the judge denies the objection, you'll have to do the best you can (remember, your credibility is being tested—the judge wants to see what your made of).
5. Don't be offended or worried if the judge takes over the examination of you or some other witness; since family law matters do not involve juries, this sometimes happens.
6. As during a deposition, take notes, especially of errors, omissions, inconsistencies, and lies, and confer with your lawyer about them during the natural breaks and pauses of the trial.
7. As long as you tell the truth, you have nothing to fear. Remember: a trial is a quest for truth, not a contest of wits.

TWELVE

After the Divorce

Even after the trial is over, emotional issues still play a significant role. That is because two people who have been divorced can still get involved in post trial proceedings. That makes it critically important that you and your ex-spouse learn to treat each other with consideration and respect, just from the standpoint of not provoking post divorce visits to the courtroom. Either party can file a variety of motions, such as reconsideration, new trial, or clarification. Or, if they decide to, they can appeal.

In complex cases it is not uncommon for courts to issue a notice of intended judgment. This tells the two parties what the judge is thinking, without compelling the judge to bang the gavel with finality. The result is that the two lawyers and their clients have something more to haggle over.

So, be careful and discreet. If you feel the decision you have received from the court somehow vindicates you, don't gloat about it - especially in a way that your divorced spouse can find out about. And, if your attorney comments on the performance (or lack of it) by his opposition, have the good sense to keep it to yourself. Any number of indiscretions in these sorts of matters may lead to your being harassed with post dissolution proceedings.

In this respect, it is helpful to know that the court continues to hold jurisdiction over all matters pertaining to the dissolution of your marriage which potentially require future modification. In legal language this means there are two kinds of judgments made by the court with regard to your divorce. These two are *executory* and *executed* judgments. The court doesn't need to continue to reserve jurisdiction over its executed orders. For example, the court orders your house to be sold and the proceeds to be divided between you and your former spouse. When that order is executed—the house is sold and you have your money—it is all over. Once the furniture is split between you, that's it.

But other things continue to be of concern. Prominent among these are matters of child support, visitation, and custody. Any change in the circumstances can be used to argue before the judge that previous orders ought to be changed or modified.

I have a client named Jerry. Under the provisions of Jerry's divorce settlement, he is responsible for picking up and delivering his children when he visits them. But Jerry has been injured in a nasty accident, and he is no longer able to drive the distance—more than a hundred miles—between his home and the home of his children. Because of unresolved emotional issues, Jerry's ex-wife is being difficult about the problem. Consequently, Jerry may have to go back to court to get the order modified so his kids can ride the bus to a station near his house.

Denial of visitation frequently happens in the immediate aftermath of divorce. The mother refuses to allow the father to see the children until he pays whatever child support and alimony payments are due. Or she may refuse just out of spite. And he, in turn, may withhold payments to punish her for denying him his rights to visitation.

Any parent who allows the children to become part of the marital dispute in this way is wrong. Mother, you should allow your children to visit their father whether or not he pays. They need that and they want it, even if they tell you they don't want it. The main reason children turn against you is that they sense it will please the custodial parent, and thus help guarantee their survival. If you are not getting support payments, or you have some other complaint, get a lawyer. Don't use the children to voice that complaint or try to alter your ex-spouse's behavior. If you can't afford a lawyer, there

may be other avenues you can legitimately use. It is a crime for a person to disobey a court order or to neglect to support his children. So, you can go to the office of the district attorney and file a criminal complaint. If your former husband is in the armed services, you can write to his commanding officer about the failure of support payments. This often achieves the desired result.

Father, you must pay whether or not you are being denied visitation. To withhold child support is only to double the punishment at the expense of your children. Pay what you owe, regardless. I admit that your recourses are fewer. The district attorney will not help you enforce your visitation rights. You will need a lawyer in most cases, and eventually, you might see your ex-spouse spend a night in jail for contempt of court, though it is more likely that you will see your children. In some areas, you might be able to enlist the help of a conciliation court. At least the children's mother might be persuaded to come in and talk. And opening communication is critical.

Keep Thorough Records—It's Vital!

If, after your divorce, you find yourself faced with conflicts about the executory issues over which the court retain jurisdiction, you need to start keeping records. Those records, properly maintained and organized, will serve as evidence in the court. A diary or journal of all conversations and discussions with your former spouse about visitation is in order. If there are problems with visitation, that diary will be essential to reconstruct the difficulties you experience in this record.

Keep accurate records of support payments. Make up a ledger with five columns. In the first column note the date on which a payment is due. In the next column, note the amount that is due. The actual date of receipt goes in the third column. The fourth column is for the actual amount paid. And the fifth column is the running total of any amounts that are in arrears. If you go back into court to try to collect payments in arrears by any of the various enforcement methods available, you will need accurate records. Here is an example.

Date Ordered	Amount Ordered	Date Paid	Amount Paid	Balance Owed
11-1	\$250	11-3	\$250	0
11-15	\$250	11-20	\$250	0
12-1	\$250	12-1	\$200	\$50
12-15	\$250	12-17	\$100	\$200
1-1	\$250	----	----	\$450
1-15	\$250	1-10	\$200	\$500
2-1	\$250	----	----	\$750
2-15	\$250	2-15	\$200	\$800
3-1	\$250			
3-15	\$250			
4-1	\$250			
4-15	\$250			

Enforcing Support Payments

It is a crime not to support one's children. So, a custodial parent can file a complaint with the district attorney if support payments are not being made. Here is what you need to know about going down this particular avenue. First and best, it is carried out at no cost to you. The district attorney prosecutes the case at the taxpayer's expense. That is because you and your children may go on welfare in the absence of support payments from your ex-spouse. That would, presumably, cost the taxpayers more than it would cost to prosecute your ex-spouse for nonsupport.

The next thing you need to know is that your case will be handled by an overworked deputy district attorney. He or she will do their best with the time and resources they have available to them. They will help you file the necessary papers and see that your errant ex-spouse is served a subpoena to appear in court. Then they will present the evidence against your ex-spouse to a judge, who will hear what defense, if any, your ex-spouse makes to the charges. Most often, the judge will find him guilty and order him to make regular payments in a specified amount.

The judge determines this amount without reference to the amount of support that was ordered for the support of your children in the family law court where you got your divorce. It is inevitably smaller than what was originally ordered, but it is a lot better than nothing. And, if your ex-spouse fails to pay it, the alternative is jail. So, you have a better chance of collecting it than when only the civil (family law) courts are involved.

Finally, you need to know that accepting these smaller payments does not jeopardize your right to the larger payments ordered by the family law court. What your ex-spouse pays you as a result of the order of the criminal court will be subtracted from the amount owed you under the civil court order. But what is left over remains a balance due to you in the eyes of the law.

So, what can you do to collect that balance due? First, you need to hire a lawyer to represent you. Your lawyer, in turn, can do one of at least five things to put pressure on your ex-spouses through the civil court. They are:

1. attachment
2. contempt proceedings
3. wage assignment
4. motion for accounting
5. motion for sanctions

The first is the best. Your lawyer secures an order from the court to “attach” your ex-spouses wages, bank accounts, or any other assets that are readily accessible. If, for example, you know your ex-spouse’s bank account number or numbers, you present them to your lawyer. Once the court order is in place, a marshal will go to the bank, serve the order and draw out whatever money he finds there up to the amount specified in the order. Then you get that money. In the same way, the order can be served on your ex-spouse’s employer (if you can provide your lawyer with information about whom and where this employer is). The employer must then turn over your ex-spouse’s pay up to the amount specified in the order.

The second thing your lawyer can do is file a charge against your ex-spouse for contempt of court. This is a quasi-criminal charge that claims your ex-spouse is guilty of willfully and deliberately disobeying the court’s order. But civil courts often have a strong bias against finding a party to a family law dispute guilty of a crime.

One time I filed contempt charges against a father on behalf of my client, the mother. I proved that this man had put a ladder up to the second-story nursery and removed his two-year-old son in the middle of the night. Further, I showed that he had left no note or other indication that it had been he and not some stranger who had done this. Finally, I demonstrated that all this was done in direct violation of a court order that had been announced from the bench in this man’s hearing. But was the court convinced? Not at all! I was told that there still remained reasonable doubt in the court’s mind as to this man’s guilt.

That brings us to wage assignment. This differs from attachment in one important respect. When your ex-spouse's wages are assigned it means that his employer pays the amount specified in the court order directly to you. Sometimes, as in Los Angeles County, if you are on welfare, the employer sends the money to a court trustee, who turns it over to you in accordance with the terms of your welfare payments. To qualify for wage assignment, you need to be able to show the total court-ordered payments that are behind.

In complicated cases where support has not been paid for some time, your lawyer will probably have to file a motion for accounting. This is a costly (to you) and time-consuming procedure that serves to fix the exact amount of money that is overdue. The record keeping I mentioned just before this section becomes very important when you are faced with the need to file this motion. If you have kept such a journal, it will help you get through this with minimal time and expense. Then you can move quickly to more fruitful activities, such as attaching bank accounts.

The fifth remedy I listed above was a motion for sanctions. A sanction is a fine imposed on a person to compel that person to behave in a certain way, more to the liking of the court that imposed the sanction. In a matter of family law, if a party to a suit uses tactics that needlessly delay the proceedings, the court can impose sanctions in the form of penalties or fees and expenses. A motion for sanctions is a lawyer's way of asking the court to impose sanctions on his opponent for misdeeds. Unfortunately, in many cases this can be a waste of time. What you want is the support payment. Sanctions are only useful to the extent that they can be shown to promote the making of those payments.

Diminished Capacity

The trouble with much of the advice I've given up to this point is that it's extremely difficult for a divorcing or divorced person to follow. Divorce is a severe blow for both parties, but especially for the one who is on the receiving end of the other's rejection. People who have to undergo divorce often suffer from a diminished capacity to cope and deal with life for a season. Consequently, they may fail to close out accounts, rewrite their wills, enforce property awards or support orders, or otherwise protect their interests. For that reason, in the following pages I am going to briefly examine a subject to which entire books are devoted. That subject is emotional recovery from divorce.

Emotional Recovery

A divorce marks the death of a relationship. Harry was astonished to arrive at his apartment after work one evening, a few days after the trial was over, and find himself sobbing almost uncontrollably. He and Ruth had gotten married when they were both still young, and they had spent more than a dozen years together. He had been so angry and so preoccupied with the trial that the grief crept up on him and took him by surprise.

But there it was. That to which he had devoted much of his adult life—that which had shaped so much of his emerging identity as a husband and a father—was gone. He missed the kids, the house, the yard, and—yes—even Ruth. That really amazed him because he had discovered, just the day before, she had apparently emptied the gold coins they'd collected over the years from the safe-deposit box (which he, characteristically, had forgotten all about).

He had read the stress charts in the magazines which listed divorce as next to only the death of a loved one in terms of painfulness. To have such a mix of feelings was bewildering, but he discovered it was the necessary and normal course of grieving which he needed to pass through in order to emerge from this trauma to live constructively—and, perhaps, more wisely and with greater self-understanding—in the present.

Denial

The first stage of grief is denial—the familiar “Oh, no!” with which we automatically greet bad news. In divorce, the bad news is as bad as it can be. It leaves one stunned and feeling inhumane. Normal functioning ceases momentarily. We have to sit down. The normal vicissitudes of life—a broken plate, a backed-up toilet, a child with a cold, a leak in the roof—threaten to overwhelm us. The distinctions between various problems begin to blur. Everything looks bleak and life is rapidly moving downhill.

To take a pause—to sit out an inning—in order to catch ones breath is entirely in order. Life can slow down for a while. Most things can be set aside and allowed to wait. Harry found that he began to look forward to getting home from the office at the end of the day. Each evening for a week he walked in the door and went straight to that chair where he had first been overtaken by tears. After a good cry, he would just sit by himself and think, and let the feelings flood over him: nostalgia, resentment, fury, sadness, guilt, embarrassment, futility, loneliness. And he prayed. Talking to God seemed natural for a change. Mostly he found himself uncharacteristically content to sit quietly for much of the evening.

Nothing seemed to interest him. The evening news had lost its appeal. Food didn't taste good. The only thing that felt right was sitting there. But his job got him out of bed and into the bathroom every morning. Somehow, he began to notice, having shaved, showered, and brushed his teeth left him feeling a little less bleak. Gradually, in the evenings, he began to tidy up a bit. Then he began to prepare food for himself.

With each small achievement, he was regaining a sense of control. He was learning to do small things which prepared him, in turn, to tackle bigger things.

Agnes found a similar pattern in her life. After Richard had left her, she, too, had been stunned. Life came to a standstill. Her old friend Hester was divorced. Hester had never had any use for Richard. She would be glad to hear what had happened. Funny thing, though, Agnes didn't feel like calling her now that it had happened. She couldn't quite understand why. Hester would be supportive—and, if she didn't hear about it from Agnes, she would be hurt. Still, Agnes couldn't pick up the phone.

Predictably, about a week later, Hester called Agnes. She was hurt and bewildered to have found out about Richard's departure through another friend. Agnes apologized and tried to explain that she just hadn't been ready. But she and Hester hadn't been as close after that. Agnes had already experienced the avoidance of some old acquaintances. Now this matter with Hester worried her that she was in danger of becoming isolated from everyone.

In time, and with the help of, counseling, Agnes was able to recognize the truth. She had not been in danger of cutting herself off from the rest of the world. It had simply been a stage of denial. Intellectually, she knew that Richard was gone. But, it would take a while for her emotions to catch up with her brain in this acceptance. The failure to call Hester was an act of simple emotional self-preservation. Agnes was not ready for the hearty congratulations that would surely be forthcoming from Hester. She needed time to bury the dead with dignity.

An appropriate season of denial is marked by a kind of fantasy review of the relationship that has died. We retreat, through reverie, into a world where the death hasn't happened. It is a time of sealing a permanent image of the past in our memories. These fantasies will emphasize the positive side of the relationship, tending to idealize it. The fantasizing serves a wholesome purpose in permitting us time to regroup and prepare emotionally for the trek toward a new identity. On the other hand, it can be dangerous if we begin to accept our fantasies as the truth, or if we let them distort our understanding of the present. This happens when we begin to fantasize about the contrite return of the departed spouse: "She'll beg me to come back once she realizes what she's lost," or "He'll come home now that

he sees how much he needs me.” These feelings are setups for disappointment.

But when denial is serving its rightful purpose, it allows us to pick and choose among the various items that constitute our new reality. At first, we’ll pick the little ones that aren’t too threatening. That’s what Harry was doing when he started doing a little light housework and cooking. Each of us needs to set our own agenda and schedule for our reentry to the reality of being a single person. Typically, many of the items on that agenda are heavily symbolic, as in the day Agnes started cleaning out the garage—Richard’s old lair—to get it the way she wanted it. At the end of that first session in the garage, she sat down, had a good cry, and felt measurably better—not good, but better.

Anger and Resentment

One feeling that normally emerges after a separation is anger at the absent partner. This is understandable in the case of the rejected spouse who is furious at the rejecting spouse. But the feeling is universal and without reference to role or the cause of the separation. Thus a widow will feel anger toward a dead husband. And, in divorce, even the spouse who wanted the divorce and did the rejecting will feel angry toward their ex-partner for his or her absence.

Since we are likely to tell ourselves that such angry feelings, whether justified or not, ought not to be acknowledged or expressed, they are often repressed. But this does not make them disappear. Instead, they erupt at odd moments in response to very slight provocation. Often that eruption is characterized by a force and acidity that stuns and embarrasses us.

The right thing to do with such feeling is to acknowledge them as truly expressing a part of ourselves. It is a wholesome act whereby we gain a more realistic understanding of ourselves, but most of us commonly do. We like to think of ourselves as noble and imperturbable creatures, incapable of base thoughts and actions. However, embracing and accepting ourselves as capable of intense anger and resentment sets us free to express those feelings in more appropriate ways. That, in turn, permits the feelings to lose their power to control our thought and energies. They can even be useful to fuel our effort to get unhooked from the relationship that has died. They can serve, for example, to balance our tendency to idealize our late marriages so that the tendency doesn’t grow into a binding fantasy which inhibits our ability to live in the present and plan for the future.

The ability to recognize and embrace our feelings will require us to break through a lot of our cultural assumptions. In our culture, for example, women are supposed to be the weaker sex, gentle, compassionate, patient,

affectionate, and loving. They are the peacemakers who facilitate the warm flow of human relationships, always conciliating. Men, conversely, are supposed to be tireless bastions of strength. Women talk, men are silent. Men are aggressive and athletic and competitive.

Accepting these assumptions entraps us in a costly lie that robs us of the full range of inner resources with which we were created. A woman who can accept herself as capable of anger is free to employ that resource positively to assert herself as a single person. A man who can weep unashamedly will find himself moving through and beyond his grief, while a man who refuses to utilize this “feminine” resource may find himself stuck in grief, living in the past.

Don't play “Victims and Villains”

After divorce a person will naturally wish to find a reason for this disaster that has befallen him or her. “*What did I do wrong?* “ is a question that won't go away. Long hours are spent sifting through the data, looking for clues. *Was it all her fault, or mine?*

The problem with this lies in one's ability to be objective. In the throes of divorce objectivity is the rarest commodity imaginable. Consequently, what might serve as a source of genuine self-enlightenment usually degenerates into a litany of self-justification or self-accusation. The old game of “Victims and Villains” is replayed regularly during this process. When this happens, a divorcing person will surely run into a dead end. People get stuck fixing the blame instead of solving the problem. Fixing blame squarely on either spouse is never accurate and solves nothing. If it's entirely your fault, then you're stuck in a loser's pattern of behavior (which was probably well ingrained throughout the time of the marriage). If it's all the fault of the other person, then you can persist in your role of victim seeking retribution for the wrongs done to you.

Rob was able to break out of the trap through a healthy process of assessment. Marie left him and the kids for another man, and she had petitioned for the dissolution of the marriage. If he wanted to, he could have cast himself in the role of innocent victim quite convincingly. In fact, a lot of his friends supported him in that role. But in time it proved unsatisfactory. Rob recognized that it wasn't true, and he saw that, if he wanted to succeed in a second marriage—which he did—he would need to discover what kind of person he had become that had made his first marriage so unworkable. He began to ask himself questions. What real needs in Marie and in me did that marriage meet? Which of those needs represented unrealistic expectations of what marriage is supposed to provide? How can I learn to distinguish

between an authentic relationship and one in which the needs of one are met only at the expense of the other?

In Rob's assessment he found that he had wanted Marie to be like a mother who would take care of him. In looking back over the decade and a half of their marriage, he saw a consistent pattern wherein he had deferred decision making, always looking to Marie to make decisions for him. True, she had accepted the job readily enough. She had decided it was time to buy a house. If it had been up to him, they would have remained in an apartment forever. It had been a failure of initiative and leadership on his part that had contributed to the break up of their marriage. What had been Marie's part was less clear to him. It made little difference, since it was her problem, not his. The issue was complex, but Rob had found out what he needed to know.

Rob took about eighteen months from the time of the divorce to arrive at these conclusions. The answers to his questions had not come quickly or easily—nor did they all emerge from the history of his relationship with Marie. In his quest he even consulted a psychiatrist for a couple of months to help him understand his relationship with his parents more clearly. And, in his role as a single parent he began to practice the art of taking responsibility. As a result, his second marriage, five years after his divorce from Marie, was a good one.

Divorce is like an amputation: it is something to avoid at all costs, except the cost of the loss of life. And, just so, recovery from divorce is akin to recovery from an amputation. It is accomplished by deciding to live a new life with vigor and enthusiasm. Seeing oneself as maimed or disabled does not help at all.

Trying to Hide

In the first months after her divorce, Marilyn was so convinced of her own worthlessness and so frightened of facing the world without Larry that she just wanted to hide. The feeling was reinforced one day when in the supermarket she saw an old acquaintance—the mother of her son's best friend—at the end of an aisle. Their eyes met briefly and the woman registered recognition, but then she quickly disappeared around the corner. *There you go*, Marilyn told herself. *She's avoiding you. You're a pariah. This town only has room for couples, and you are no longer part of a couple.*

To make matters worse, Marilyn began to notice that her friendship with Adele, the next-door neighbor with whom she regularly shared a cup of coffee each morning after the kids had gotten off to school, seemed to be fading. It was hard to figure because Adele was not withdrawing from her. Instead, she had proven her desire to be helpful and supportive. It was Marilyn who felt like withdrawing in this case.

With regard to the woman at the supermarket, Marilyn was so wrapped up in the turmoil of her divorce that it was impossible for her to see beyond the perimeters of her own self-chastisement. In time, she was able to imagine what was more likely to have been going through the woman's mind: *What should I say? Will she think I'm cold and unfeeling if I fail to ask about her situation? But will she collapse in tears if I do?* Beneath that there may have been things in the woman's own life which were troubling her and which the sight of Marilyn as a separated woman brought to mind. Divorce in the lives of those whom we know always triggers reflection on the durability of our own marriages.

If that woman had engaged in any reverie about the joys of being single again, Marilyn might have also represented the playgirl she would like to be in her fantasies. Divorced women frequently run head-on into this sort of problem at social occasions where other women and their husbands are present. The problem is exacerbated by men who recognize the emotional vulnerability of separated and divorced women and seek to take advantage of it, and by divorced women who look for sexual solace in the arms of other women's husbands. But the large red *D* is sewn on the front of Marilyn's dress more as a result of the fantasies of the other women in the room than of anything else.

Marilyn's initial task in those first days after her divorce was not to psychoanalyze all her friends and acquaintances. Instead she needed to recognize that, as a divorced woman, she was getting changed responses that emerged from personal inner feelings and needs of these people. Those feelings were something over which she had no control; they were her friends' problems, not hers.

But what about Marilyn's withdrawal from her supportive and friendly next-door neighbor? The more she and the woman kept up their visits, the more depressed Marilyn had grown. She began to worry that being divorced had ruined her ability to maintain any kind of relationship. Later, however, she began to see that, in spite of her neighbor's friendliness, the two of them no longer had quite so much in common as they had when both of them had been married mothers. That early desire to withdraw from the relationship was actually a healthy sign that Marilyn was beginning to come to grips with herself as a single person moving toward a new life. In the months after the divorce, she found herself sorting out her friendships. Some of them were no longer mutually rewarding—they had only been functioning relationships of convenience. These people had watched each other's kids, played bridge together, and enjoyed each other as couples rather than persons. Once Marilyn's routine began to change, many of the friendships based on her old routine didn't last. After a while, she felt okay about the way she let these old friendships quietly die.

Of course, the majority of Marilyn's close friendships endured handsomely. And the divorce served as a catalyst for the formation of one particularly rewarding friendship with a woman at church whom she'd known only slightly before the divorce.

The Mourning Period

The shock of separation is severe. It sets in motion a troubling but healing process of mourning that begins with denial. In denial, nostalgia and fantasy play an important role. The process continues with anger and resentment at having been abandoned. Then comes the search for the guilty party; psychologists tell us this is guilt in either case—internalized or projected onto another. Part of this process is the withdrawal from the old and the emergence of a new life. The dead have been buried with dignity.

This has been a cursory glance at these dynamics. All the stages are present, in greater or lesser measure, throughout the process of mourning. Among different individuals the mixture and intensity of these factors can vary dramatically. Each person faces divorce with a unique combination of resources and impediments. But the process is there for everyone to achieve healing if they want it.

How long it takes to emerge from the process depends on a number of variables and the manner in which we define *emergence*. I think most people know when they begin to feel, deep inside, that they have survived and can make it on their own. Waves of nostalgia and anger may still roll over them from time to time, but no longer in a way that dominates the present.

Getting to that place usually requires at least six months. But getting over something as devastating as a divorce can take much longer. In some cases, it will appear to take much less. For example, some people have time to do their grieving well ahead of the event. We see this clearly in the spouses of cancer victims. Some marriages die slowly, like cancer victims, giving the parties plenty of time to absorb the shock. But whatever the schedule of this process, the important thing is to let it happen. Don't try to resist it. Make positive use of it to grow and discover more fully the reason for which you were created. Nothing is sadder than to meet people who have gotten stuck in the mourning process. I know a lady who was divorced twelve years ago. She always tells me she'd like to meet a man, fall in love, and get married again—but she's not ready yet. And there are those who are still feuding with their former spouses twenty years after the divorce.

People who are having difficulty achieving closure, for whatever reason, will do themselves a favor by going to see a qualified counselor. The goal is to start a new life free of the anger and pain of divorce.

**Checklist to see how you are progressing
In the aftermath**

1. Anger and resentment no longer obsess you throughout the day; now they come only in occasional flashes.
2. You spend more time trying to solve problems and less time complaining about them.
3. You don't feel ashamed all the time; you're calling old friends and making new ones.
4. You're indulging yourself now and again with a hobby, or by going to a show you want to see.
5. You no longer find it necessary to recite nasty generalizations about members of the opposite sex.
6. You begin to recognize yourself as part of a large group of people who have gone through divorce and survived.
7. You begin to feel content that your divorce probably had to happen, and that it was not your punishment for having failed.
8. You begin to forgive your former spouse for the things that led to your divorce, and you begin to forgive yourself as well.
9. You begin to regard your former spouse as a parent whose significance equals your own, and you seek opportunities to affirm his or her importance to your children (this is the essence of authentic co-parenting).

THIRTEEN

Parenting After the Divorce

My own parents were divorced when I was about ten years old. I was the oldest of the four children of that marriage. Mom packed us up for the trip to Seattle, where we were going to live with our grandparents. As we were about to leave, she took me aside. Once we were alone, she laid her hands on my shoulders and looked me squarely in the eye. “Now, Ronnie, you’re going to have to be my little man.”

Suddenly, I felt the whole burden of the responsibilities and problems of our family shift to my shoulders. I doubt that was what my mother intended, but that was what I felt. And, in response, I started biting

my nails. It's a habit I am struggling to overcome even to this day. Mother's mistake was honest and well-intentioned. She wanted to make me feel important, but she had no way to assess the effect her statement would have on me.

So, how can we do it better? What, specifically, can we do to act responsibly as parents and to ferry our children through the aftermath of divorce?

Parents and Children in the Aftermath

In the immediate aftermath of divorce, when one feels near to being overwhelmed by a sense of abandonment and loneliness, one's offspring often represent the only form of continuity that remains in life. In extreme cases, a parent will address a child, even a very young one, as if the child were an adult able to understand the adult's complex problems (and even more complex explanations of them). Sometimes children are even brought into the master bedroom after the separation to provide solace for the lonely parent. Confiding in the children about financial difficulties and worries is not uncommon.

When parents do this, they justify it to themselves and others by ascribing unusual powers of understanding and wise counsel to their children. Fantasies about the abilities of one's children happen in intact families, of course. They are projections of one's idealizations of oneself. But, in the rupture of divorce, the temptation and opportunity to indulge these fantasies are dramatically greater.

The feeling of needing one's children at the time of divorce is very strong. It may, in fact, be the chief impetus for litigation over custody—the sense that one won't be able to survive all this without the child or children. Separated parents use their children to bolster their self-esteem. Mothers may call upon their children to affirm their attractiveness and youthfulness. Sometimes a father may take his little girl to dinner at a fancy restaurant. Part of the motivation to do this, in view of the expressed preference of most children for fast-food eateries, may be to reaffirm his feeling that he is an attractive and desirable person. Many parents have admitted that the presence of their children wards off depression. And, of course, having the children may give the custodial parent a sense of having some purpose in life, or of being morally superior to the noncustodial parent.

Parent—and especially fathers—can take this strong motivation to be with their children in the aftermath of divorce and put it to good use. The thing to do with one's children is to be a parent to them. That may sound foolishly obvious. But it is not obvious in the aftermath of divorce. How does

one be a parent? I don't have the space or authority to answer that question here. But answers are more readily found than was once the case.

Our society no longer takes it for granted that parenting skills simply descended from heaven on every person who fathers or mothers a child. Classes on the subject are available through various community agencies. Books devoted to the subject are plentiful and helpful. I can recommend all the books of Dr. James Dobson. With specific reference to parenting, his *Dare to Discipline* (Wheaton, Illinois: Tyndale House, 1973) and *Preparing for Adolescence* (Ventura, California: Vision House, 1978) come to mind. Dr. Haim Ginott's books *Between Parent and Child* (New York: Avon, 1969) and *Between Parent and Teenager* (Avon, 1971) have long been sources of sage advice and warm humor. And Dr. Kevin Leman's book *How to Make Your Children Mind Without Losing Yours* (Old Tappan, New Jersey: Fleming H. Revell Company, 1984) is a valuable resource.

And here are a couple of books which focus more directly on parenting in the context of divorce: Bobbie Reed's *I Didn't Plan to Be a Single Parent!* (St. Louis, Missouri: Concordia, 1981) and *Helping Children of Divorce* by Judson Swihart and Steven Brigham (Downers Grove, Illinois: InterVarsity Press, 1982). A number of my clients have had problems with anger. For them I've recommended *Make Anger Your Ally* by Neil C. Warren (New York: Doubleday, 1983). I think it is unusually helpful.

Peculiar Parental Perceptions

Customarily, the parent who wanted the divorce perceives the children as faring well through the experience, while the parent who opposed it sees them as suffering from it. Such perceptions are seldom totally correct.

Sometimes a parent will see the other parent in one of the children, either in the way a child looks or behaves. In a normal family this might stand the child in good stead as a point of commendation. But in divorce, the child may find himself on the receiving end of hostility as the representative of "that creep who left us." He may also, even simultaneously, find himself extolled for somehow replacing or making up for the loss. In either case, the child is bound to feel bewildered. Worse, all the talk about resemblance to the absent spouse may create a self-fulfilling prophecy in the child who begins, unconsciously, to imitate the behavior of the vilified parent.

Occasionally, a parent will indulge in generalizations about the opposite sex within the hearing of his or her children. And it seems that many mothers tend to prefer their daughters, and fathers their sons, after divorce. The effect of this on the children is devastating. When fathers express sentiments about all women being bitches, they ought not to be surprised if their little girls cry all the way home.

When one child finds himself being preferred over a sibling it arouses guilt, not joy. Little Eddie got a Christmas card from his father which was signed, "With all my love." His younger sister's card contained no such inscription. When she read Eddie's card, she burst into tears. Eddie felt lousy the rest of that day.

Billy's dad came to visit his eight-year old son and told him about Donald, the eight year old child of Daddy's new girlfriend, Jean. "Donald's dog is named Dasher. He's a real beauty. Strong and lean. Not like that runty little mutt you've got. He's the stupidest looking dog I've ever seen." Astonishingly, Billy's dad seemed not to be troubled by the suffering he was causing his son with remarks like this.

The Smothers Brothers made a lot of money capitalizing on their running joke about which of the two of them had been preferred by their mother. But in real life, it's no laughing matter. I have four children of my own, and I find it difficult not to exhibit some preferences, especially when one is behaving like a monster and another an angel. Slowly I'm learning to develop the habit of praising and rewarding commendable behavior so as to reinforce it—and, at the same time, trying to ignore or be uninterested in unwanted behavior as a way of weakening the motivation for it.

I like the story told by the successful businessman who founded Peterson Baby Products. He and his four brothers were reunited at their mother's funeral. They were riding together in the limousine on the way home after the interment. He started the conversation by remarking that their mother had always loved him most because he had been the black sheep of the family. But the next brother insisted that he had been the favorite because of his model behavior. The oldest of the four of them then insisted that he knew he had always been the favorite as her firstborn. Finally, the youngest brother expressed his certainty that, as the baby of the family, he had been favored by their mother.

At the end of this exchange the four men were astonished to realize that their mother had apparently succeeded in making each of them feel special and the object of her favor. And she had managed to do it without inducing guilt about it in any of them. He told this story to illustrate the way in which God loves each one of us. And it does a beautiful job of that. But to me, it also stands as a marvelous testimony to what a parent can accomplish. Allow the shaking and rearranging that divorce is bringing to your life to make you that kind of parent.

The Custodial Parent

A custodial parent needs to take charge in no uncertain terms. Every substitute teacher knows that a firm hand is not employed immediately; the

children will immediately take over and create chaos. Many a single parent has felt fearful that if he or she took a firm hand, said no, and in general, ran a tight ship—which is essential for a safe passage through the turbulent seas of a post divorce family—the children would reject them in favor of the other parent. And, indeed, children sense it in a minute if a parent is at all uncertain or insecure. They will sight a parent’s vulnerability with perfect aim and fire away with everything they’ve got. “Mommy, we need two parents in this home! You should never have told Daddy to leave.”

Thus, the early days in the home after a divorce are often marked by angry yelling, pleading, nagging, and tears. Mothers are especially vulnerable to their children’s rebelliousness. When the family is intact, the father often maintains order and discipline. When he stands out of the way, the newly single mother needs to summon up reserves of fortitude she never knew she had. But custodial fathers will tell you that they, too, are subject to testing and challenge by the children.

One day, Mike had to spank one of his daughters for a serious infringement of family rules. The seven-year old announced, “Mommy told me to call the police if you ever did that!” Mike looked the child squarely in the eye and said, “Your mother’s not in charge here, I am. I’m taking good care of you. I spanked you because I love you and you needed it. I’m not going to permit you or anybody else to be in charge around here. So settle down.” The child lowered her head a moment, then looked up and said contritely, “I’m sorry, Daddy.”

I have often watched litigation escalate when a child has managed to whipsaw parents back and forth relative to the issues of their divorce. Children are natural survivors. They will do whatever they perceive to be necessary to secure their safety and well-being, even if it means keeping their parents off balance and in constant battle.

The chief example of how this can happen is in the area of child molestation. This is the nuclear bomb of custody proceedings. When, for whatever reason, one parent hurls allegations of child abuse at the other parent, skyrockets go off and everybody starts running around in the manner of the proverbial headless chicken. It’s a tough rap to beat. The accused is expected to deny the charges. And the child—especially a young one—is often confused and bewildered.

I read recently of a personal-injury case in which a father sued a collected million dollars from his former wife. His complaint was that she had defamed him by alleging that he had sexually molested their young daughter. The mother had done this during their custody dispute. He had been arrested, fingerprinted, and jailed before he had managed to prove the allegations false. He was finally exonerated. Then he filed the lawsuit against her.

This story demonstrates the way in which courts are ready to move in like tanks to protect the interests of a child, and how an angry parent can misuse this readiness. To help counter this vulnerability there is, at this writing, a growing feeling that, when child abuse is claimed, both parents, not simply the accused parent, should be subjected to polygraph (lie detector) testing. And, if the child is old enough, he or she should also be tested.

I was involved in a case in which I represented a father accused of molestation in a custody suit. He was a passive and immature man, an only child who had been raised in a protective setting. His parents always came to court with him. It was easy to see that his wife had left him for someone whom she saw as more manly and assertive. And, in leaving, she had taken their two young children, a daughter, ten, and a son, eight, with her.

We went to court to resolve their dispute. He wanted co-parenting and plentiful visitation. She wanted to prevent him from having any but the most minimal contact with the children. Right in the middle of the proceeding, we were blasted with an ex parte notice that he had sexually abused the daughter. The affidavit asserted that something had happened on his parents' boat.

My client was living with his parents, and he spent about half his time on their boat at the marina. And that boat was his favorite site for overnight visits with his kids. On the night of the supposed incident of molestation, the little boy was bunked down for the night in one cabin. My client and his daughter were in the next cabin. He was sitting beside her bed and they were talking. As they talked he stroked her thigh in a casual and affectionate way. In the affidavit the girl reported that she had felt uncomfortable about his touching her that way. She also complained that he had, on a couple of occasions, come into her cabin at night, awakened her, and crawled into bed with her.

That was the extent of the allegations. They sounded bad enough, however, that the judge didn't know what to do. So, we sent for a psychiatric report. When all the smoke had cleared, it turned out that, while my client may have behaved somewhat inappropriately, he certainly was not guilty of sexual molestation. He had not been sensitive to his daughter's self-consciousness over her early pubescence. He had explained that he had crawled into bed with her because she had been awakened by nightmares. It had proven a way to help her get back to sleep.

I suspect that, when the girl first reported this to her mother, it was not a particularly big deal. But, when she saw how incensed her mother became as she told her about it, she started elaborating. By the time she was done, it sounded worse than it had actually been.

Through all the litigation there was one investigation and report after another. Polygraph examinations for my client were ordered. Hard feeling

grew daily. Communications broke down. Visitation was denied altogether for a long time. After a while, monitored visitation was permitted. But in the end, it had proved to be much ado about very little. Visitation was ultimately restored, but not without much pain, expense, and sadness. The proceedings did incalculable harm to the relationship between a father and his children.

The story I have just recounted shows how misunderstanding, confusion, and immature attitudes and responses can magnify an insignificant event. In this instance—which was not as uncommon as we would wish—parents spent enough money battling each other in court to send their children through college.

In another instance, however, I represented a man who was subsequently convicted of child molestation and imprisoned. The issue did not come up until after the divorce case was well underway. Then it came out that my client had been having sexual intercourse with his daughter for the previous ten years. Why, we all wanted to know, had the mother not said anything before this?

She replied that she had been too embarrassed and afraid of causing difficulty for her child. The father denied the charges and I believed him. But in time, I was proven wrong. I felt bad afterward, that I had represented such a person. Situations like this are difficult to deal with. They show how easily deception can be perpetrated. Even experts can be fooled. And though I recognized and understood as well as or better than anyone his right to legal representation, it was very difficult for me.

Everybody has a right to representation. A distinction has to be drawn between representing someone's legal rights and aligning oneself with that person or approving of his behavior. Lawyers represent people who have legal rights, regardless of their moral behavior. They do it because they believe in our system of justice and that everyone is entitled to a fair hearing. My client was innocent until proven guilty.

One may ask how I can represent someone who is committing adultery, defrauding a spouse out of community property, or is otherwise engaged in immoral or illegal practices. I try not to make moral judgment about my clients. That is simply part of being a professional. If I represented a person, I do it honestly and forthrightly, with all of the energy and enthusiasm I can muster, because he is entitled to that. But, if he wants to engage me in his fraud or deceit, that's another matter altogether.

In fact, I seldom have that type of client. People tend to hire lawyers who reflect their own values and attitudes. A crook will find a crooked lawyer. (Unfortunately, they are out there. But they seldom stay in business long because, like the rest of us, you reap what you sow.) An eminent child-custody evaluator and psychologist once told me of a phone call he received

one day. The voice on the other end of the line said, "I am a local family law specialist. What do you charge to write a child-custody evaluation?"

My friend stated his fee.

The voice then asked, "Would you be willing to write a favorable evaluation for my client if we were to pay you three times that amount?"

My friend told me that part of him wanted to say yes so that he could show up in court and unmask this fraud. But another part of him recognized the possibility that, if he said yes, it might be a trap. The other end of the line would go dead, and later on, he would find his testimony in court being challenged on the grounds that he had once stated his willingness to accept a bribe.

Cooperative Co-parenting

When two divorced parents are ready to give priority to the welfare of their children, they may be able to cooperate so that the children know their parents still present a united front of care and supervision. If rebelliousness raises its head in the home, the children will quickly learn that it is quite as futile now as it was before Daddy moved out, because Daddy's authority still stands behind Mommy. And, if it came to a real showdown, Daddy would come over to back that up with his physical presence. I confess that I have been disappointed to discover relatively few divorced couples who are able to exhibit the kind of maturity necessary to achieve and maintain this sort of cooperative co-parenting with any consistency or longevity. But those I have found who were able to do this have benefited their children immeasurably. The sacrifice and extra effort required are well worth it.

It is that model toward which all divorced parents must look as they emerge from the throes of the dissolution of their marriages. That is because nothing is more harmful to a child than separation from a parent. It can do serious damage to a child in terms of his or her normal development toward adulthood.

It is a myth that a child will do better in a newly formed nuclear family. Many a custodial parent has emerged from a divorce or custody suit so angry at the other parent that his or her one consuming goal is to keep that other parent from ever seeing the children again. Often this passionate intensity gives birth to a vision of a new family with a new stepparent who will entirely supplant the absent biological parent. But, almost inevitably, it is a false vision born out of anger and resentment. A child needs a close, intimate relationship with each of his or her biological parents. Divorced parents need to recognize that and lay down their arms so that it can happen.

Another essential ingredient to success in cooperative co-parenting is a willingness to stop battling or competing with the other parent.

Adults can do their parenting in a way that flows with the child's school and play schedule, and not compete for the youngster's time.

Co-parenting is also strengthened when the two parents decide to focus, in their discussions, on *what* rather than *who* went wrong. This means cutting out questions (accusations) such as "Why did you do that?" and resolving instead to approach the other parent with something like "We have a problem. Such-and-such has happened, and I'm not sure how. Can we talk about it?" When two parents stop blaming each other and begin working together to discover solutions to problems, they'll be a long way down the road to successful co-parenting. How they feel about each other is immaterial. But they do need to work hard to learn how to respect each other as parents. The child needs to see his parents united when it comes to his or her best interests.

Parents who want to work together will quickly learn that no solution is a permanent one when it comes to raising children. The children are growing and that means things are necessarily in flux. What works this season may have to be adjusted next season. As a rule, things will be temporary. The problems are going to continue, but they will diminish, and eventually, they will end. Knowing this will make things easier.

Unexpected Changes in the Children

In their book *Surviving the Breakup*, Judith Wallerstein and Joan Kelly tell the story of Mrs. C. and her daughter Marian. After she filed for divorce, Mrs. C. was perplexed by the unexpected behavior of her ten-year-old daughter, Marian. The girl tyrannized the household, even to the extent of harassing her mother for her modest social life. Mrs. C. was often humiliated by Marian in front of her dates and was nearly ready to give up any attempts at socializing.

Marian gained her leverage over her mother by working on her guilt. Marian insisted that she and the other children needed a father to grow up properly. Mrs. C. was almost convinced to give up the divorce action on several occasions. But, each time she came near to withdrawing the divorce action, she let herself relive, for a few moments, the years of physical and verbal abuse she had just finished enduring, and the way in which Marian's father had compulsively gambled away their life savings.

Finally one day, Mrs. C. stood her ground and explained firmly to Marian that she would on no account, regardless of the child's remonstrations, return to the wretched marriage. Marian screamed wildly for an hour, threatening to run away to live with her father, and then suddenly

became very calm and began to cry softly and gently. “Mom,” she said through her sobs, “I’m so unhappy.” She confessed that she had felt honor bound to represent her absent father within the new family context.

A single parent has to play according to the same rules that apply to a partnered parent. To resign one’s past is just not acceptable. Eleanor Roosevelt once said, “One finds that what one has to do, one can do.” That’s the sort of pluck needed for the job.

Mrs. S., in the Wallerstein and Kelly study, had been married to a man who had taken full charge of making all the important decisions over the years of their marriage. His abrupt departure had left her high and dry. Cindy, their thirteen-year-old, had behaved rebelliously prior to the divorce. Afterward she changed unexpectedly, drew close to her mother, and entered into a new role as helper, adviser, and model for her younger siblings. When Mrs. S. had to go house hunting, she took Cindy along as a full partner in the process, which lasted over a year. Mother and daughter worked side by side in redecorating the place once it was purchased. Cindy seemed to thrive in her new role. She was very popular at school and her social life was anything but atrophied. But she was very careful about her dating patterns so as always to exhibit exemplary behavior to the younger children. When, after five years, it was time for Cindy to leave for College, she was concerned for her mother and expressed her hope that her mother would marry again so that she wouldn’t be lonely after all the children had gone.

In the Marin County study, most of the parental leaning on young children—which had, in many instances, brought to the surface admirable empathic capabilities in some of the children—was short lived and seldom extended longer than eighteen months. The whole idea of reversing roles between parents and children is fraught with peril. In the case of Cindy and her mother, we must conclude that the basic parent-child relationship was not violated but instead augmented in a way that helped both mother and daughter to gain strength and maturity.

Not all stories of a parent’s need for the help of a child are so happy. Steve was twelve when he decided to move in with his father and take care of him. Steve’s father had been devastated by his wife’s decision to divorce, and he had confided to the boy that he was contemplating suicide. Here there was no partnership as there had been between Cindy and her mother. The burden proved too great for Steve. Even though he was a gifted student, he dropped out of school and experienced a troubled and aimless adolescence. Evidently none of Steve’s needs for parenting had been met in this situation, and his meager resources had been quickly depleted by his efforts to parent his father.

Sex and Single Parenting

Nowhere does the need for a parent to take his or her responsibility seriously face a greater challenge than in the arena of sexual expression. About a third of the custodial mothers in the Marin County study become sexually active immediately after separation. Most of them went through a series of lovers.

Because of their limited money and space, a lot of women brought boyfriends home to spend the night. Many of them were still there in the morning when the family awakened. The children viewed these men as courteous for the most part. A few were not. In any event, the children quickly adapted to the idea and soon began to anticipate that a man who came to visit was likely to spend the night in Mommy's room. Experience shows that the lovers of previously married people with children are frequently resentful of the children, not only for the extent to which their presence crimps the adults' sexual style, but also because the children symbolize previous sexual activity of someone else. Many lovers do not like to be reminded of that. They may treat children courteously at first because of their desire to win favor with their parent, but in time, jealous feelings will emerge with sometimes cruel consequences for the children. If children fear being rejected or displaced by a new relationship, it may be because there is a real danger of it. Good single parenting calls for circumspect behavior with regard to the opposite sex.

In the next chapter, we will turn our attention to matters of primary concern to the visiting or noncustodial parent.

Checklist for parents in the aftermath of divorce

1. Your children may be a big help, but you need to be the parent. Always remember that your children are children, not little grown-ups.
2. Take definite measures to sharpen your parenting skills.
3. Keep a watchful eye lest your behavior toward your children be motivated by guilt or a desire to “make it up” to them.
4. Give priority to the best interests of your children.
5. Learn to recognize the importance of your children’s other parent.
6. Work toward the goal of cooperative co-parenting. The marriage is over—but parenting is more important than ever.

FOURTEEN

Reorganizing your Relationships

The laws of our state and good sense may urge us to consider the value of joint custody and cooperative co-parenting. The courts see joint custody as a way to give children permission to love both their parents and to continue, unobstructed, conflict-free access to each parent. But the reality of divorce makes it unlikely that the majority of post divorce families will move away from the pattern of a custodial parent and a visiting parent. Since the dominant pattern is still one of custodial mother and visiting fathers, I'll speak to this subject in terms of that pattern. But it should be understood that what I'm about to describe is the common pattern, whether it is the father or the mother who visits.

Some Facts about Visitation

Visitation changes relationships between parents and children. Often father who were once close to and actively involved with their children before a divorce seem to drift away from them afterward. On the other hand, previously remote fathers not uncommonly seem to have their parental interest spurred in the wake of the divorce.

What is a visiting parent? The two terms would seem, on the face of it, mutually exclusive. A parent is someone who takes care of a child. To do this, the parent needs to live with the child. Visiting and parenting don't appear to go together, but of course, they do.

The act of visiting recognizes the physical and emotional ties that exist between a parent and child. It is difficult to pin it down precisely. But the experience of mankind tells us that these ties are strong and capable of surviving great stress, and even periods of separation.

Divorce casts one parent—the visitor—into a role for which there is no script; nor have any rehearsals been conducted. That role is radically different from the one he (the majority of visiting parent are still fathers, so I'll use the male pronoun for ease of expression only) played before. When one lives with one's children, they are always there. Time is not a significant question. It is just a way of marking the muted rhythms of family living. Swim lessons are Saturday morning; Johnny has to get to the dentist Thursday after school. But in visitation, time is suddenly the central element on one's relation with one's child.

By court order, you may be with your children every other weekend. You're supposed to pick them up by seven o'clock on Friday evening and have them back by four o'clock on Sunday afternoon. Or maybe schedule requirements or confinements of space mean you can only be with them for a day or an afternoon. What if you have an unpleasant exchange with one or more of them during a visit? It used to be that time allowed tempers to cool around the house. Conflicts and frustrations could be channeled safely through the family's rituals of mealtimes, bedtime, and the like. But now those safeguards are gone. It's all or nothing in the time allotted.

By the way, the rule of thumb in some state courts regarding the frequency and timing of visitation is governed by the age of the children in question. With younger children, the courts tend to award more frequent visitation for relatively brief periods of time. Then, as the children get older, the visitation periods are extended and made less frequent. For example, an eighteen-month old child would see his or her visiting parent four times a week—perhaps for an hour on Tuesday and Thursday evenings, and for three hours on Saturday and Sunday, for a total of eight hours per week. And, in the case of such a young child, the courts encourage the parents to make

arrangements so that the visits can take place in the child's familiar surroundings. A twelve-year-olds pattern, on the other hand, might go more like this: alternate weekends (including the Mondays that happen to be holidays), six weeks in the summer, half of Easter, every other Thanksgiving, half of Christmas, Father's Day, and father's birthday. When a child enters the middle teenage years, it is left more or less up to the youngster in recognition of an adolescent's need for increasing autonomy.

The first barrier to be crossed is the doorstep of the house. How will that go? Will she be cordial? The old house will evoke all the memories and associations, good and bad. It's not likely to be pleasant. What about a boyfriend? Will he have moved in? What will that be like? Will you find the kids and the bags waiting on the porch? How will the kids behave?

These and dozens of other questions—depending on the particulars of your situation—will be raised by any normal person faced with the prospect of visiting with the kids. And, once you've got them in the car, where do you go and what do you do? A movie? But Pam is seven and Jamie is twelve. Can a movie be found that both of them—and you—will enjoy? Maybe a restaurant? What will you talk about? How do you talk to kids anyway? This will cost money. Can you afford it?

Even more puzzling, where do you fit? What is your job? Are you now simply an older friend or a favorite uncle? Are you supposed to make the kids mind? What say do you have about their behavior or their training? If you do try to exercise your parental authority, what good will it do? You have no way to monitor their performance after you drop them back at the house.

Then, too, there are the ambivalent feelings toward the other parent. If you buy Steven the BB gun he wants, how will his mother react? She may resent it as a token of your existence. If you buy it, will you be motivated chiefly by a desire to bless your son or to curse his mother? Do you want to do things for the kids that will be likely to please her, or at least get her off your back a little bit?

The children represent so many different things at divorce time. They are an emotional and fiscal burden easily resented. Their presence reassures you that you have a purpose and some worth at a time when you feel dangerously close to losing those feelings. They can be nonpareil friends and helpers in lonely times. They can be prizes won in a contest with a hated foe. They can be your only reliable ally against that foe. All of these are factors that threaten to undermine and destroy authentic parent-child relationships.

Another threat comes in the form of a new girl friend or boyfriend. One father maintained a small apartment for himself. The bedroom was furnished with a large water bed. However inappropriate, when his seven-year-old daughter visited, she slept with him. But when his girlfriend came to

visit, the seven-year-old was relegated to the couch in the living room. He found it difficult to understand why his child protested so bitterly when that happened. A parent with a small apartment needs to give some thought as to how to arrange for privacy in his limited space. He needs to give even more thought to how his actions will affect his children when they visit. And he should give appropriate consideration to their privacy as well.

It is never wise, in our society, for parents and children to sleep together or otherwise share a bed. I have heard many psychologists warn against it. The sex of the parent or child does not matter. I am not, of course, speaking about infants. But for toddlers and older children, it is harmful to their psychosexual growth.

Being alert to the children's needs and the demands that visiting places on them is essential. Torn between love for you and love for the other parent, your child leaves the house to join you for the weekend at great cost. He or she literally has to cross a no-man's land to get to you and leave Mother behind. Then, once in your company, your child is likely to be on his or her best behavior. That's because you are the parent he or she is less certain about. You've already left the home—the reason doesn't matter a whit to them—and you are, therefore, in greater danger of disappearing altogether.

Visiting you represents an emotional ordeal of the first order to the child. So, when he or she gets back home, cranky and disorderly behavior is almost guaranteed. The child feels he or she is freer to express a wider range of feelings around the custodial parent, who has already "proven" to be the most reliable parent by staying in the home. Not surprisingly, a mother who sees children coming home from a visit in bad mood and misbehaving could easily conclude that you're doing something to torpedo her mothering. If she's able to clear that barrier, she's still going to ask herself what good visitation is either to her or her children. At the least, she's likely to see you as having all the fun with the children while she does all the hard work of parenting.

It also commonly happens that children express strong desires to cling to whichever parent they are departing from, whether it is the custodial or the visiting parent. Parents almost inevitably misinterpret this behavior as meaning that the child hates the other parent. This, of course, accords with the desire of each parent to have the children as allies in the great battle. But it isn't so. Rare—dare I say nonexistent?—is the child who does not love both parents.

I've already described the danger that comes when a parent begins to play on a child's expressions of grief by sympathizing with the youngster. It leads to escalating hostilities and expensive court appearances. Instead, as I said before, each parent needs to treat this separation anxiety matter-of-

factly. Explain to the child that it is normal to feel this way and that, after a while, the bad feelings will go away because both Daddy and Mommy still love the child and are going to see that he or she is well cared for.

Barriers to Visitation

Fear that the children will reject you is one of the most common obstacles a visiting parent must overcome. Children generally express disapproval and anger at parents for divorcing. In the face of this you will be tempted to buy them off with gifts and other treats. Many visiting parents have discovered that playing Santa Clause helps assuage guilt feelings and does seem to win the child's approval and cooperation. But it also leaves the visiting parent poorer and subject to angry accusations by the custodial parent.

Depression is a frequent barrier to consistent visiting. A parent rejected and cast out of the home is going to contend with feelings of shame and grief. He will be tempted to feel bitterness and self-pity at being replaced by a new lover or stepfather. Visiting the children may force an intolerable return to a home he built, now headed by another. A father who was especially close to his children prior to divorce is likely to feel particularly frustrated and angry at being parted from them. Anger that has no adequate avenue for expression and no power to accomplish change turns quickly into a swamp of depression.

More than one man in this circumstance has found himself unable to visit his children with any constancy. The children inevitably interpret this as a reflection of a lack of interest and caring. They respond either by direct expressions of hostility or feigned indifference. In addition, a visiting father will often perceive his children—who, remember, are trying to be on their best behavior—as well and happy, and far from being overwhelmed by grief at his absence. Reaching the conclusion that he is expendable, easily replaced, and even unwanted, is difficult to avoid, especially if one does not understand and is not prepared for this phenomenon.

A father who initiated his divorce will have difficulty visiting his children. Guilt, whether he is aware of it or not, stands in the way. This is the case of a man who has grown tired of his marriage and left it for another woman. It is also the case of a man who has left behind a psychologically troubled wife (who might, for example, be an alcoholic, a drug addict, sexually promiscuous, or chronically and severely depressed). In this circumstance, it often happens that the father's relationship with his children was exceptionally close prior to the divorce, having served to compensate for the deprivations of the marital relationship.

A guilty father may visit his children often, almost frantically, at first. But later, especially if he fails to recognize his guilt, he will find

himself reluctant to visit. The deception, in turn, will cause him to reject children to whom he was formerly very close. Guilt-motivated rejection of this sort can usually be recognized because the pretexts cited for the rejection are difficult to take seriously, if not downright preposterous. Psychologists call this process *projection*—the attributing of one’s own unacknowledged and often negative feeling to another. Thus a father once rejected his five-year-old daughter, to whom he had formerly been very close, because of her “bourgeois values.” She, as inevitably happens in situations like this suffered horribly.

The annals of divorce are filled with stories of parental cruelty that has grown out of unacknowledged guilt feelings. Some children have tasted anguish and bitterness in boundless measure for years as a result of a guilty father who has withdrawn from them completely and taken up with a different family altogether. Characteristically, his second family will consist of children in roughly the same numbers and ages that he left behind.

A different scenario, but one with consequences just as cruel, emerges when a parent takes a sudden interest, after a divorce, in a child or children with whom he had only a limited relationship prior to the divorce. The motivation for this interest is usually a desire to harass the former spouse. It may also represent the behavior of an unusually impulsive person. Frequently, the visiting parent comes in and sweeps the children off their feet with charm and a good time. This goes on for a season, but with a painful suddenness, it stops. Many a child has been dropped and left to wonder for years what the brief period in the sun was all about.

The Mature Visiting Parent

Being the sort of parent children need summons us to grow up and act like mature adults. Given the average child’s strong yearning for his or her absent father, the main thing that stands in the way of successful visiting is the father himself. He needs to be flexible and ready to cope with the complex logistics of visiting. He needs a resilient self-assurance with which to counter the possible hostility of his former spouse and the capriciousness of his children. He needs a sprightly fortitude with which to cast asides the insidious temptations to indulge in self-pity, jealousy, guilt, anger, or depression. He needs the wisdom and agility to be in authority and, at the same time, to involve his children in planning how to use their time together. He needs to be able to adjust his schedule for his children, but not to demolish it. In short he needs to be a person at peace with God, himself, and all others—even the other parent.

And the call to maturity may ring as loud or more loudly for the custodial parent. Given the very real suffering that a visiting parent’s pain,

anger, immaturity, or cruelty may cause his or her children, a reaction of pain and anger on the part of the custodial parent is understandable. Even without the children's suffering, the custodial parent may feel hostility and envy when children return from a visit with tales of presents and adventures that are beyond the means of the custodial parent.

However difficult it is to remember at such moments, it is essential to give priority to the child's interests by answering the call to mature parenting. The child is the one who will suffer most if the custodial parent gives vent to those very understandable feelings. There is a right and wrong way to express those feelings; I will have more to say about this in the next chapter. But the point here is, if the child is hurting in such circumstances, it is difficult for the custodial parent to be the person she needs to be: a person at peace with God, herself, and all others—even the other parent.

While the last paragraphs serve as a checklist worth reviewing, here are some other points worth remembering:

Checklist for Visiting Parents

1. Be prepared to overcome feelings of awkwardness.
2. Plan your visitation carefully and gear it to the age and needs of your child.
3. Your kids need to be with *you* during the visitation time, not with relatives or a baby-sitter.
4. Consider the wisdom of visiting one child at a time on some occasions.
5. Be careful to avoid showing favoritism.
6. Look for ways to help your child deal with conflicting emotions.
7. Develop a personal relationship with your children by means of interaction, conversation and time spent together; no gift, no matter how expensive or well intended, can replace the relationship that both of you need.
8. I know I've said it before, but it bears repeating: Stop fighting with your former spouse. Work toward the goal of cooperative co-parenting. *The marriage is over—but parenting is more important than ever.*

FIFTEEN

The Care and Feeding Of the Children of Divorce

An agreement is no agreement unless all the concerned people are a party to it.” Those are the words of Hugh McIsaac, Director of the Conciliation Court of the Family Law Division of the Los Angeles County Superior Court. In recent years we’ve seen the rise of grandparents’ rights groups which loudly verify McIsaac’s observation. If you are a custodial parent, you will have to think, sooner or later, about your children’s “other” relatives.

Relationships with old in-laws vary from divorce to divorce. Familiar are the “ex”-parents-in-law of a divorced woman who affirm and support their former daughter-in-law, and who sometimes even side with her in some measure against their own offspring. In some families there are conflicting alliances and even more complex situations. Phil had custody of his three daughters, who seldom visited their mother because she detested having anything to do with Phil. The girls’ maternal grandmother, on the other hand, went out of her way to establish and maintain good relations with Phil so that she would not lose contact with her grandchildren. The girls’ maternal grandfather, who was divorced from the grandmother, actually tended to favor his ex-son-in-law and occasionally provided financial gifts in support of his granddaughters. He did not, however, express interest in direct contact with the girls.

More often, families tend to align themselves along traditional lines. Divorces may actually affirm long-held opinions by other family members, especially parents, that their son or daughter, sister or brother, had not married so wisely. But even when such sentiments are lacking, families tend to support kith and kin, right or wrong.

As a consequence, children may not see their relatives on the side of their noncustodial parent except on rare occasions. This may constitute a genuine form of deprivation for the children and is, therefore, a matter to which custodial parents should strive earnestly to give their attention. In many cases, an embarrassed silence reigns needlessly, sometimes for years, because “in-laws” are uncertain how they might be received. A custodial parent who has found the grace to bury the dead with dignity will find ways to foster his or her children’s relationships with their relatives. Birthday and holiday cards are one way to do this. Reminding the children of Grandma Jones’s birthday and taking them to the store to select the appropriate card will require some time and effort. But it could well open the door to the warm and supportive relationships everyone in a disrupted family needs.

Dealing With Your Ex-Spouse

Only a minority of people remain bitterly opposed to a divorce for more than a year after the final decree. In most cases, after the passage of a few years, the question of who wanted the divorce in the first place diminishes in importance to both former partners. Some men and women who vigorously opposed their divorce have discovered, with the passage of time and the re-stabilization of their own lives that the painful experience has, in the long run, been rewarding for them. The choice to adopt this attitude is available to everyone, and it is recommended because those who do adopt it are able to put their divorce behind them and get on with their

lives. Saint Paul, the early Christian missionary who spent a fair amount of time in jail, wrote, "...I have learned, in whatsoever state I am, therewith to be content" (Philippians 4:11).

Achieving this contentment marks the one who has it as a mature person. It doesn't necessarily imply friendliness, but it opens up the possibility for civil communications with an ex-spouse. This is vitally important when children are involved. Few things cause stress in children quite so much as the continued bickering of their divorced parents. Almost inevitably, this unresolved tension focuses around issues of visitation. When asked, children regularly express the desire to see their absent parent more often than they do. But they are often unwilling to explain this to the custodial parent for fear of arousing hostility. In fact, just the thought of initiating a phone conversation with the absent parent from the home of the custodial parent causes anxiety in a great number of children.

Marty frequently called his dad to try to set up a visit. Dad often made excuses, but finally the day came when Marty got a commitment from his father. He would arrive midmorning on Saturday. Since the time was so unspecific, Marty was down the block playing with a friend when at last his father arrived.

"What do you mean, he's down at Charlie's?" Marty's father demanded of his ex-wife. "You sent him down there to sabotage this get-together."

"That's a lie!" Marty's mother protested.

"Sure it is! You . . . you . . . you always..." With that, Marty's father wheeled around and stomped back to his car.

"Where are you going? Come back here! You can't leave like this. Marty will be right back." The car engine roared. "You beast!" she muttered through tears.

When Marty returned ten minutes later to hear the news from a distraught mother, he sobbed uncontrollably for fifteen minutes. His mother was so overcome with rage that she was unable to offer much comfort. The next time his father called, Marty wore a protective mask of indifference. He could not afford to endure that much pain a second time.

Often, in cases like his one, an almost standard legal scenario follows, especially in the immediate aftermath of a divorce. In that scenario, the angry father rushes home and calls his lawyer. He leaves a message on the machine. The attorney returns the call the next day and listens to the story. Then he tells the father, "We're not going to let her get away with that! Come on in and we'll draw up papers to drag her into court to show cause why she shouldn't be held in contempt of the court order granting you visitation rights."

When the mother is served with the papers, she calls her lawyer and tells him what happened from her point of view. Her lawyer says, “You’re not in contempt. He’s jumping the gun!”

Both parties end up in front of a judge who dismisses the charges. Each parent has paid their respective attorney about \$250 to prepare the papers. A half day in court costs another \$500. There went a total of \$1500 that could have been spent on Marty. But, as so often happens, two warring parents are so intent on hurting each other that they forget about the needs of their children.

Incidents such as this one point up the problems created by uncooperativeness between ex-spouses, but we should not underestimate the effects of long-term, low grade hostility in those relations. The instances in which ex-spouses are able to achieve genuine friendship are uncommon, and I am not really urging that as the appropriate goal in this regard. *Civility* was the word I used earlier. You can, without hypocrisy, bite your tongue whenever you are tempted to voice any negative sentiments about the children’s other parent in their hearing.

In most cases your children won’t need to be told, but if they do, you can let them know your silence does not imply a rekindling of romance. There is a right way and a wrong way to express negative feelings. Instead of hurling accusations and oaths at the offender, you can say things like, “I still feel very angry toward your father, and I don’t like to see or talk to him—you *should* see him, in fact. And I don’t want to stand in the way.”

The keynote of this method is that the speaker expresses his or her feeling forthrightly, even emotionally. But the way he or she expresses them is more honest because it isn’t couched in accusatory phrases. The essential difference-making phrases are: “I feel” instead of “you are” or “he is.” This defuses the anger bomb and opens the doors for genuine communication because it helps allay the children’s fears.

Avoiding the explosiveness of anger can make room for youngsters to express their feelings about a good many things. Sometimes their opinions and ideas can even help clear the air and make things easier all around. For example, more often than not, courts and parents impose visitation programs on the children without consulting them. The program backed by precedent provides that the children will spend alternative weekends with the custodial and noncustodial parent. Children who have been asked about this seldom express much happiness about it. For many it is painfully inadequate.

But letting the kids have a say in the visitation arrangements can work both ways. When David’s dad was fighting hard to arrange visitation with his children every weekend, somebody finally thought to ask David, as the oldest child (at ten), what he thought. “I don’t want it that

often,” he said. “We don’t get home from school until three-thirty. Then there’s homework. And I like to have some time to play with my friends. So, I only see Mom a few hours each day, and we never get to just have fun, like going on a picnic or out to a movie. It wouldn’t be fair for Dad to have all the weekends. But don’t tell him I said that, ’cause he’d really be mad. What we need is *flexibility*.”

Children who have lived close enough to their noncustodial parent to ride over on their bicycles often seem happiest about their situations. They enjoy an element of control over their visitation arrangement. And the visits can be more frequent and spontaneous—and arranged to fit the schedules of both parent and child.

Children, if asked, will generally opt for more frequent visits—perhaps a midweek afternoon or early evening in addition to alternating weekends. But, when circumstances don’t allow greater flexibility, they can usually cope with the deprivation pretty well. The thing that really distresses them is the fact that parental hostility, and not circumstances, stands in the way of easy and flexible visiting more than anything else. Parents who haven’t learned how to control and channel their angry feelings into nondestructive expressions make their children’s lives a nerve-racking hell.

Dating During Separation and After Divorce

Dating in the midst of a divorce proceeding is something I advise against, especially when my clients are people who have some interest in seeking reconciliation. Dating heightens the conflict. Not infrequently I am hired by women whose husbands are committing adultery. Often these women are so angry about this that they express an eagerness to date in order to give their wayward husband a taste of how it feels. Two wrongs don’t make a right.

Dating is also inadvisable because it inevitably clouds the legal proceedings and makes the achievement of a divorce settlement more difficult. So, my general advice is this: In social encounters, pay attention to all and have intentions toward none. If you must date, do it discreetly. And, *keep your kids and your dates separate*. They might feel upset and threatened by these strangers.

Legally, of course, there is no prohibition against dating. The courts have no interest in your personal life unless it can be shown that it bears on your competence as a custodial parent. It also comes into play in the courtroom when the subject of support money is brought up. If it can be shown that you are involved with someone who is supporting you in some measure that is relevant to the court’s determination about how much support you should be paid by your former spouse.

Dating and finding a new partner after a divorce is not a requirement, but those who refrain from doing it are few. There is a tendency in our society to question the motives of those who remain singles after divorce. Americans strongly favor marriage. It goes back at least to the days of Colonial New England. In Hartford, Connecticut, for example, in the seventeenth century bachelors were subject to a special tax.

It is distinctly possible that refraining from social contacts with the opposite sex after a painful divorce reflects a residual bitterness that has become generalized. If that persists unresolved for more than a year or two, it should be cause for concern. Other reasons exist, however, for remaining single after a divorce, and these do not necessarily reflect a pathological condition. Let it suffice to say that we ought to recognize our cultural prejudice in favor of marriage enough so that we don't instantly suspect the motives of those who remain single.

The majority of divorced people do date. At the far end of the scale are those who attempt to fulfill every libidinal fantasy they've ever had. At the other end are those who still regard sex apart from marriage as immoral. Within this group is an even smaller group of those who maintain—dare I use the word—chastity in conjunction with dating. My personal moral attitudes could be characterized as old-fashioned, but I recognize how much easier it is for me to maintain such attitudes in a happy marriage.

The presumption with regard to dating divorced people is that they will be more inclined than other singles to indulge in sex because they grew accustomed to it in marriage. There appears to be no fair basis for this presumption. Actually, it is the preferred excuse of those who may feel guilty about their exploits or otherwise have them called into question. Psychologists have long recognized that frantic sexual activity after a divorce can easily represent unresolved conflicts that may require psychotherapy. It certainly represents a failure to recognize that the loss of a marriage is not simply the loss of a sex partner.

For most divorced persons, there remains the odd feeling of being a grown-up suddenly faced anew with the stresses of adolescent behavior patterns. Some will take to it readily. Others will find it uncomfortable. Being a parent will usually increase the sense of awkwardness. Adolescent children of divorced parents have been known to express real misgivings about personal dating behavior—"Mom, you're acting like a teenager!"—largely, in most cases, out of an unspoken need to have an adult, not a teenager, for a parent and a fear that somehow the unfamiliar phenomenon of a parent dating will be inconsistent with their particularly strong need for the security a parent provides.

Beyond the awkwardness of being single again lies a more formidable obstacle to dating. This is the fact that dating, even when it

involves sex, does little or nothing to overcome feelings of loneliness. In fact, dating with superficial sex probably tends to aggravate such feelings. Divorces people are often heard to complain of weariness with the superficiality of the social scene and the succession of individuals passing through their lives.

This is not to say that divorced people should withdraw from a social life. Forming new relationships with friends of both sexes is important to growth and change after a divorce. Many churches have recognized this by providing fellowship opportunities for the newly single person. Support groups such as those mentioned in earlier chapter also provide opportunities for forming positive relationships.

Learning to grow through and as a consequence of one's divorce leaves one free to make healthy choices about the future. Taking a sober look backward at a failed relationship, and discovering what personal changes we need to make to improve the quality of our lives, opens the way for new and fresh possibilities. Here the choices of singleness or marriage can be approached with real optimism. The groundwork has been laid for success, whether in singleness or in marriage.

Checklist for post divorce relationships

1. Be sensitive to your children's larger family and their need to have contact with members of it.
2. Make peace with your former spouse, at least for the sake of your children.
3. Dating is a natural desire, but it is not a requirement; if you do it, do it discreetly so far as your children are concerned.
4. Children need help to keep things straight; introducing your date to them as their new mommy or daddy, or insisting that they call your new spouse mommy or daddy, does damage to everyone involved.
5. Talking about anyone behind his or her back is inappropriate, and it is a serious offence to talk about the absent parent in the presence of the children.
6. Do your best to speak well of your ex-spouse in the presence of the children; they need to honor both their parents and they need all the help they can get from you to do it.

SIXTEEN

Parting Advice

In the last twenty years I have heard considerable argument against the old-fashioned idea that parents should stay together for the sake of their children. This advice has been taken to heart across the face of our land. And, as a consequence, the interests of the children of divorced and other troubled families are more and more ignored except to the extent that the courts have intervened on their behalf.

An increasing number of professionals, I among them, share a growing concern about the predicament of the children of divorce. It may be time to come to grips with a spirit that seeks to rule our society. It is the spirit of self-indulgence.

We need to recognize and address this spirit if we see it trying to gain a foothold in our own lives. We need to embrace instead what will bring healing to our families—indeed, to our nation and world. That is the love Saint Paul discusses in the thirteenth chapter of his first letter to the Corinthians. It is that love which is patient, kind, without envy, free of stuffy pride—the love that is bestowed unconditionally, without demand for a return on the investment.

Embracing this sort of love calls for each of us to grow up. Those of us who are parents need to decide that we are going to shoulder our responsibility uncomplainingly with the assurance that God’s grace—when we ask for it—will guide and sustain us in our task.

He concluding verse of the Book of Malachi—the last book of the Old Testament—tells of the coming of the prophet Elijah prior to the arrival of the great and dreadful day of the Lord. Elijah’s task will be to turn the hearts of the parents to the children, and the hearts of the children to the parents, lest God come and smite the earth with a curse. That verse stands ominously before us to this day.

And notice that the first order of business is that the heart of the parents be turned toward the children. That is part of what it means for us to turn away from our self-indulgence and to embrace God’s rule in our lives. And, if God has given me any vision for this book, it is that it will stimulate the parents of our country to stand up and take their places as parents who will stand fast, even in the face of the destructive onslaught of divorce.

You may not have been able to take that stand within your marriage. One of the continuing themes of this book has been the recognition that in some circumstances, for a variety of reasons, persons must confront the tragic reality that their marriage cannot survive. But, whether as spouses in marriage, or as former spouses learning the responsibility for co-parenting their children, I believe we are all called to stand fast in the love that can heal us and our children alike, as children of a God who loves us and is not finished with us yet.

Parents who do take that stand will find the door opening for the second order of business in Malachi’s scheme. That is the way in which the hearts of the children are turned to the parents.

During a recent visit to England I had occasion to witness a display of falconry. From that experience I learned a valuable lesson. Children are a bit like falcons. In the practice of falconry the birds remain wild. They are not tamed or trained like domestic animals. They come to a falconer for only one reason: trust. The falconer builds that trust by patient kindness and consistent, positive reinforcement in terms of a tasty reward. Any falconer who tries to control a bird entirely will find the task impossible. He may

attempt to control with anger and force, but that only makes the falcon flee from him.

Just so, a parent cannot extract love, respect, and trust from a child by force. Force produces flight. A child may not flee physically, but he will withdraw mentally and emotionally.

If I want love, respect and trust from my children, I must first love, respect, and trust them. Then I will be a true role model, the sort of person who builds a relationship that helps them grow and mature.

Finally, I would like to leave you with a thought. I can't in good conscience fully endorse it, but within the idea is something worthy of your consideration. It comes from a friend of mine who is a CPA. He tells his clients: "It is as important to have a good divorce as it is to have a good marriage. You may have to live longer with the divorce than you did with the marriage."

Appendix

A Deposition Admonition

In the chapter on discovery, “Yours, Mine, Our: Finding Out What There is to Divide,” I mentioned the formal admonition that must be read to a person before his or her deposition is taken. What follows is the text I use in my office to serve as an example:

This proceeding is known as a deposition. The person who has placed you under oath and who will be transcribing the proceeding is a Certified Shorthand Reporter who is also a Notary Public.

During the course of the proceeding, I, and perhaps your own attorney, present here today, will ask you questions pertaining to this lawsuit.

Although this proceeding is being held in the informal atmosphere of my office, you have still been placed under oath. Your testimony here today has the same force and effect as would be the case were you sitting in a courtroom before a judge.

Among other things, that means you could be subject to penalties if you commit perjury. Perjury is a willful violation of your oath to tell the truth. It happens whenever you state something as a material fact which you know to be false. It also happens when you make an unqualified statement which you do not know to be true. An example of an unqualified statement would be, "John hit Jack." An example of a qualified statement would be, "I think John hit Jack because. . . ."

Perjury is a crime punishable by imprisonment in the state prison.

If, at any time during the deposition, a question strikes you as ambiguous, unintelligible, difficult to understand, or inaudible, please ask me to repeat or clarify it. Otherwise, I will assume that you have heard and correctly understood the inquiry. I will further assume that your answer is based upon your complete hearing and understanding.

Further, if you wish to confer with your attorney before answering any question that is posed to you, that is entirely in order.

The Reporter can transcribe only clear and audible responses. Therefore be careful to say yes and no plainly. Nods of the head, grunts, "uh-huhs," "uh-uhs," and the like don't qualify as legitimate answers.

Also, each of us needs to be careful to wait to take his or her turn in speaking. If one of us interrupts the other so that both are speaking at once, it will be difficult for the Reporter to make an accurate record of the words of either one of us.

At the conclusion of this deposition, the Reporter will transcribe his (or her) shorthand notes into a booklet. You, in turn, will have the opportunity to read that booklet and make any corrections or changes you deem necessary.

Understand, however, that I have the right to question whatever changes you make in the booklet. And I am entitled to bring those changes to the attention of the court and to comment about them during a trial of this action.

You can see, therefore, how important it is that you answer the question as fully, completely, and correctly as possible the first time. If I ask you about some past conversation in which you engaged and you are unable to recall exact words, then you may report the gist or substance to the best of your recollection. Likewise, if you recall only part of a conversation or an event, then report, as best you can, those parts you do recall.

If I ask you for information on a particular subject, please tell me clearly what information you have and how you gained it. Was it by means

of hearing others speak or by seeing some document or letter? Be specific about the information and its source.

Answer the questions freely. You do not need to worry about things like “hearsay” and other rules of evidence. Your attorney will do that for you. Our purpose in taking your deposition is not to trap or trick you. Instead we want to gather whatever information you may have about facts concerning this lawsuit.

At the conclusion of this deposition, the attorneys present may agree to stipulate that you be allowed to sign the booklet containing your testimony before any Notary Public or under penalty of perjury. In this way you would not have to wait for the Reporter here today to finish the transcription. However, such a stipulation would be made only on these conditions: First, that you promise to read and correct your deposition promptly and expeditiously after receiving it. Second, that you sign it before a Notary Public or under penalty of perjury and return it to the office from which it was sent to you with the same promptness and expedition.

Do you understand everything that I have read to you? Do you have any questions? Is there any reason we cannot proceed at this time?

The examiner at a deposition has the right to see any material you may have looked at to prepare yourself for the deposition. Therefore, be sure to discuss your preparation with your attorney well in advance of the deposition. You will want to assure that your testimony is not inconsistent with the manner in which he intends to present your case.

-----Summary of Child Custody Laws-----

State	Psychological Investigation May be Ordered by the court	Neither parent preferred because of that parent's sex	Joint Custody specifically allowed (if parents are suitable)	Access to child's records by non-custodial parent allowed	Similar Relevant Factors are used in Determining Custody	Parental Conduct Child Considered by Court	Grandparent not affecting relationship with the child	Visitation Rights Allowed, the Child will not be considered
Alabama ^b								X
Alaska		X	X					
Arizona	X	X			X	X		X
Arkansas		X						
California ^c		X	X	X		X		
Colorado ^d	X	X			X	X	X	
Connecticut			X			X		X ^e
Delaware	X	X			X	X	X	
Florida	X	X	X	X	X	X		X
Georgia	X					X ^f		X
Idaho		X	X	X	X			X
Hawaii	X		X			X		X ^e
Illinois ^g	X		X		X	X	X	X
Indiana	X	X	X		X	X		
Iowa			X			X		X
Kansas	X	X	X		X	X		X
Kentucky ^d	X	X	X		X	X	X	
Louisiana		X	X	X				X
Maine ^d	X		X			X		
Maryland								
Massachusetts		X		X				
Michigan			X			X		X
Minnesota	X	X	X		X	X	X	X
Mississippi						X ^g		
Missouri		X			X	X		X

Montana	X		X	X	X	X	
Nebraska		X					X
Nevada		X	X				X
New Hampshire		X	X				X
New Jersey		X				X	X
New Mexico			X		X	X ^f	
New York		X					X
North Carolina		X					X
North Dakota	X					X	X
Ohio	X		X		X	X ^g	
Oklahoma							
Oregon		X					X
Pennsylvania	X		X	X			X
Rhode Island							X
South Carolina							
South Dakota		X				X	X
Tennessee						X	X
Texas		X				X	
Utah	X					X	X ^c
Vermont	X	X			X	X	
Virginia		X					X ^c
Washington	X				X	X	X
West Virginia	X	X					X
Wisconsin	X	X	X		X	X	
Wyoming		X					

^a A number of other states may allow joint custody, but do not so specify in their law (e.g., Utah).

^b If the wife abandons the husband, he may receive custody of the children over age 7. Also, the court may order an injunction to protect the safety of the wife or children, if needed.

^c Stepparents, relatives, or other interested parties may petition for visitation privileges.

^d If a parent leaves home because of spouse abuse or threat of spouse abuse, the leaving will not be considered abandonment and will not be held against the absent parent.

^e Any person interested in a child's welfare may petition for visitation privileges.

^f Children over the age of 14 may choose which parent with whom to live.

^g Children over the age of 12 may choose which parent with whom to live.

Glossary

Affidavit A written declaration of facts about a particular circumstance or event, signed, dated, and with a notation of the city and state where the declaration was made by the cognizant person under penalty of perjury.

Appeal An optional legal process for bringing trial court orders up to a higher court for review.

Bifurcated Judgment A procedure which dissolves the marriage but postpones or reserves judgment on all other issues, such as property settlement and custody of children.

Child Support Money paid by one parent to the other to help cover the cost of raising the children.

Contempt of Court A quasi-criminal proceeding that follows the disobedience of a court order. Conviction can result in a fine, imprisonment, or both.

Custodial Parent The parent who has physical custody of the minor children of the marriage.

Custody The care and legal control of the minor children granted as part of a divorce proceeding to one or both parents.

Deposition A formal, oral interview under oath taken in an attorney's office and recorded by a certified court reporter. The reporter's transcript may be used as evidence at a judicial hearing.

Joint Tenancy The holding of an estate jointly, as by a husband and wife, whereby title passes to the survivor without a change in the title. In this case the survivor is not an heir, but the survivor of a joint tenancy.

Judge Pro Tem A judicial officer who lacks the rank of a full judge. He is often called a *commissioner*. In many metropolitan areas, family law matters are heard more often by commissioners than by regular judges.

Legal Separation A divorce without a dissolution of the marriage. All the issues—property and children—are decided exactly as if a divorce were taking place. But only a decree of separation is issued and the couple remains married in the eyes of the state.

Notice A court document which announces the time, place, and reason for court proceedings with regard to issues raised by those who receive the notice.

Orders Pendente Lite Temporary court orders which describe the rights and responsibilities of the parties of a dispute until the court issues permanent orders.

Order to Show Cause (OSC) The legal proceeding prior to trial in which either party may request the court to make temporary restraining orders and orders for custody, visitation, support, and fees.

Petitioner Sometimes called the *plaintiff*, this is the spouse who files for the divorce. His or her papers are served on the opposite spouse to advise them of the action.

Pleadings The legal documents filed with a court in a lawsuit.

Respondent Sometimes called the *defendant*, this is the spouse who responds to the papers filed by the spouse who petitions the court for a dissolution of the marriage.

Restraining Order An order of the court which requires the person to whom it is directed to either do or refrain from doing certain acts defined in the order. (See Contempt of Court)

Service of Process The actual delivery by a process server or sheriff of the court papers to the respondent. Having this done costs money. A respondent can avoid the cost by signing an acknowledgement of service.

Spousal Support Alimony. The money paid—by court order or by written agreement—by one spouse to another for her or his support. It is taxable income for the recipient, and a tax-deductible expense for the payer, if the specific requirements of the federal income tax code are satisfied.

Stipulation An agreement between the parties without the necessity of going through a court hearing. Such agreements are written out and presented to the court for approval and enforcement.

Vacate To have a previous order revoked. The lifting of a restraining order against an individual is an example.

Visitation An agreed-upon or court-ordered period of time during which the noncustodial parent will have the same right of access to the minor children as does the custodial parent.