

# Psychology and Family Law

## Domestic Violence as a Tragic Toll of Divorce

By Mark Baer, Esq.



I believe it is well recognized in psychological circles that the stress of divorce itself is monumental, often reaching 9 out of 10 magnitude on the SUDs scale. Stress is a pain and a pressure that seeks relief, and sometimes, tragically, release from the pressure is expressed in violence. The American Bar Association acknowledges, for example, that in child custody battles, reports of domestic violence are common, and by some estimates as many as 50% of child custody disputes involve domestic violence.

In one month alone, this past October, three tragic incidents made headlines:

In Dallas, after a court awarded a father sole custody of his 7 year old boy, the mother shot her son and herself, even as her estranged husband waited outside with police.

In New York state, a successful attorney who was reportedly distraught at the prospect of losing custody of his children in an up-coming trial, killed his wife and his children before turning his gun on himself.

In Seal Beach, California, Scott Dekraai--a despondent husband who had just faced a court imposed delay in his bid to obtain full custody of his son, blasted into the work place of his estranged wife, killing her and seven others.

While it is facile to argue that such instances can be attributed to the essentially unbalanced state of the individuals, this argument avoids dealing with the fact that the legal system aggravates the possibility that fragile people under enormous stress will lose control. For example, in the Seal Beach situation, Dekraai had just come from a hearing that would have forced him to wait an additional two months for a ruling. Continuances and other delays are typically considered "benign"--but are they, really? Forcing suffering people to endure frustrated expectations and prolonged ambiguity, as the family law system routinely does, is unquestionably--if passively--malignant, and can be a real trigger for violent behavior.

As a prominent family court judge has observed, "The court system was not built to house [violent] emotions, and attorneys are not trained to reduce this kind of suffering."

As I have opined before in this space, the American legal system unintentionally aggravates conflict in divorce situa-

tions, even though models that are designed to reduce conflict--such as mediation, and other collaborative approaches--are available as alternatives.

I recently took part in a discussion of family law on the LA County Bar Association's Listserv. After one lawyer pointed out that "the code of ethics requires attorneys to advise their clients about mediation possibilities," a number of others chimed in with reason after reason for opposing the use of mediation in family law cases. Eventually I spoke up. "Why is it that mediation and collaborative divorce is very successful in other countries (such as the UK), and in some states in the US, but the family law litigation community here seems to have a completely different impression? Is it that people in Los Angeles somehow differ from people everywhere else?" Disappointingly--but not surprisingly--no one even acknowledged my question.

Tobias Desjardins is an expert mediator and therapist who frequently is referred families in the process of protracted divorce and custody battles, often where a child has become disturbed or even suicidal. He states that by the time he gets such referrals, both parents have worked with a number of attorneys, and yet they have consistently told him that the very first time they learned about mediation or collaborative divorce was from him. In my opinion, this fact is not just unethical, it's just plain tragic.

According to the LA Times, "Californians will soon face longer lines in courthouses, delays in finalizing divorces, prolonged custody battles, and extended waits for lawsuits to go to trial as a result of deep budget cuts approved by state lawmakers." It is a grim reality that those who choose to use the traditional system of litigating divorce through family court will continue to face situations that exacerbate, rather than allay, the great pain and stress of splitting a couple or family. And some of them, tragically, will resort to violence.

There is a legal doctrine in tort law which asserts that a pre-existing vulnerability, which causes an individual to be more injured by an action than a less vulnerable individual would be, does not exonerate the wrongdoer from owing full damages for the full injury to the person. Thus, if it is axiomatic that divorcing individuals are psychologically more vulnerable than the average person, then in my opinion the US legal system should be held accountable for the destruction it causes them--or change.

*Mark Baer, Esq. can be reached at (626) 389-8929 or by email at [Mark@markbaeresq.com](mailto:Mark@markbaeresq.com).*