

•THE LAW•

BY MARK B. BAER

The Waiting Game

DELAYS IN CHILD-CUSTODY CASES LEAD TO VIOLENCE

The American Bar Association has long been aware of the connection between custody battles and an increase in domestic violence. In fact, as many as 50 percent of disputes relating to child custody involve domestic violence.

Three of the most recent incidents involving shooting deaths related to custody battles in the United States occurred in mid-October.

On Oct. 21, while a man waited with police outside his estranged wife's Dallas home to pick up his 7-year-old son after a court awarded him sole custody, the mother killed the child before killing herself.

A week before his divorce trial was to begin, on Oct. 18, Samuel Friedlander, a successful attorney in Westchester, NY, killed his wife and children before shooting himself. Mr. Friedlander's behavior had become increasingly volatile as the trial date approached. He was apparently depressed because he feared that his wife was going to take the kids away from him.

On Oct. 12, Scott Dekraai went on a shooting rampage that left eight people dead, including his ex-wife Michelle Fournier, in Seal Beach. The day before the shooting, a court hearing had taken place wherein Dekraai had refused to accept a court-ordered report which recommended that they basically have 50/50 custody. Dekraai had sought full custody of his son and insisted on a trial, which was set for December. Fournier's attorney described the Oct. 11 hearing as "benign." Dekraai had previously been diagnosed as bipolar and suffered from post-traumatic stress disorder.

What is "benign" about an additional two-month delay in the determination in a bitter custody battle? How can lawyers and judicial officers who work in the field of family law not realize that "the waiting game" itself is stressful? Continuances and delays are not "benign."

Whenever one such incident occurs, people seem to question what might have triggered such violence. Sometimes the right answer is the most obvious answer — the family law system, in which emotions play an integral role. As Judge Michele Lowrance, a domestic relations judge in Illinois, wrote in her book titled "The Good Karma Divorce," "The court system was not built to house these emotions, and attorneys are not trained to reduce this kind of suffering." Moreover, psychologists note that parents often believe that their parenting skills are under attack when they do not get their desired outcome. This may result in such extreme rage that parents forget what is best for their child(ren) while they get entrenched in a contentious custody battle.

The stress of a divorce comes second only to the death of a spouse. Moreover, certain aspects of loss become somewhat intensified as a result of the dynamics of divorce. Specifically, since people have the ability to mistreat the other person who had been involved in that relationship, the way in which people deal with the stress/loss resulting from a divorce is harmful to themselves and others.

On July 20, the *Los Angeles Times* reported that "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." In response, lawyers who are members of the family law section of the Los Angeles County Bar Association began commenting with each other on the family law listserv. One attorney pointed out that the "Code of ethics requires attorneys to advise their clients of ADR." Many attorneys then gave reason after reason why they opposed the use of mediation in family law cases.

While I was disappointed to read these remarks from fellow family law attorneys, I was not surprised. Shortly before these family law attorneys shared their views of mediation, I had the pleasure of hearing Tobias Desjardins speak at a meeting for the Collaborative Divorce Professionals of the Inland Empire.

Tobias is the director and founder of the International Center for Peaceful Shared Custody, as well as a director at Prevention Network, therapist, mediator and author.

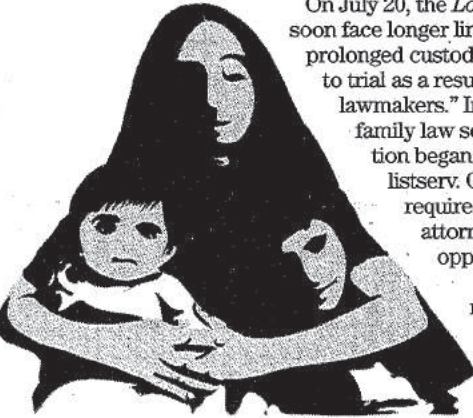
During his talk, he mentioned that families are frequently referred to him by judicial officers when a child becomes suicidal as a result of their parents' protracted custody battle. He told us that by the time he sees these families, both parents have worked with several different attorneys and that they have consistently told him that the first time they learned about mediation or collaborative divorce was through him. This reality is not only indicative of unethical conduct by family law attorneys, but it is just plain tragic.


The Eggshell Skull Rule is a "doctrine of American tort and personal injury law that a tortfeasor or wrongdoer takes his victim as he finds him. This means a tort victim's compensation or damages are not discounted because of any pre-existing vulnerability."

Everyone going through a divorce and/or a custody battle suffers from a great deal of stress and is therefore not thinking clearly. We know that the family law system in the United States is emotionally destructive. Yet, the legal system is unyielding to change even though less expensive, less complicated and less stressful alternatives exist.

It seems to me that those responsible for the family law system's resistance to change are ultimately responsible for the injuries and deaths that occur as a result of the violence that arises from custody battles in the United States. After all, isn't everyone going through a divorce or custody battle suffering from "temporary insanity," especially when the current system does nothing but exacerbate the emotions involved? ■


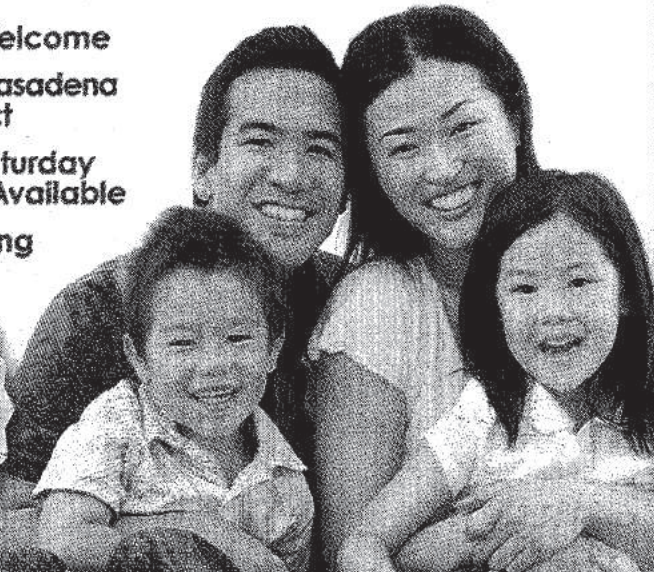
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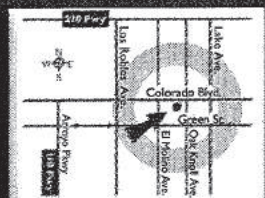



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