Professional Intervention in Divorce:
A Summary of the Views of Lawyers, Psychotherapists, and Clergy

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ABSTRACT. This report summarises and compares the views of expert groups of lawyers, psychotherapists, and clergy on the divorcing process and the role of the professional in assisting the divorcing. There was considerably greater difference of opinion on these issues among the lawyers than among either the therapists or clergy. Six distinctive lawyer orientations toward the lawyer-client relationship and the lawyer's role in divorce were identified. The existence of such a wide range of lawyer attitudes is attributed to the considerable role strain involved in matrimonial practice. The sources of this strain are delineated.

There was high agreement between the therapists and clergy on the psychology of the divorcing experience and the criteria of a constructive divorce. The psychological stress in divorce was attributed to three principal factors: (a) the major social and economic changes resulting from the divorce; (b) the fact that in many divorces only one of the spouses actively desires the divorce; and (c) distress associated with separation and the breakup of an important relationship. The coping response to these stresses is the process of psychic divorce, whose general characteristics and distinctive stages are described.

Four major strategies of intervention were discussed by all three groups of professionals: (a) establishing a working alliance; (b) diagnosis and information gathering; (c) improving the emotional climate; and (d) assisting in decision-making and planning. Obstacles to effective intervention occur in all of these areas, both as a function of the practical and emotional complexity of the issues and as a result of structural problems inherent in the third-party role.

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The views of the respondents are compared with those found in the literature; the implications of these views for the development of nonadversary methods of dispute resolution in divorce are considered.

In spite of the soaring divorce rate and the clinical and other empirical evidence that divorce can be a trying legal, economic, and emotional occurrence, the roles of the professions in assisting individuals in the process of divorce have been studied very little. To our knowledge only two studies of the role of the lawyer have been reported (Cavanagh & Rhode, 1976; O’Gorman, 1963). We are aware of no study that systematically describes the assistance of either psychotherapists or clergy. (Even clinical accounts of divorce counseling are relatively few. In a recent bibliography of the divorce literature covering the period 1970-1976, Sell, 1977, lists but 18 articles on divorce counseling, of which 4 deal primarily with post-divorce adjustment. This compares with the over 200 articles on marital and family therapy listed by Olson & Dahl, 1975, in the Inventory of Marriage and Family Literature for the period 1973-1974 alone.)

The present report summarizes a series of in-depth interviews on the nature of the divorcing experience and the role of the professional in assisting the divorcing. The respondents were 17 lawyers, 20 psychotherapists, and 21 clergymen, all of whom were well known in their professions as experts in divorce work. The interviews focused on the processes set in motion when a marriage is being terminated rather than on the causes of divorce or its prevention. Our aims were to identify the primary obstacles to a constructive divorcing process and to illuminate the psychological and interpersonal experience of those who divorce. We were particularly interested in the role of the professional in helping to produce a cooperative climate between divorcing spouses and an equitable and mutually acceptable separation or divorce agreement.

Separate accounts of each of the three professional groups with whom we spoke have been given elsewhere (Kressel & Deutsch, 1977; Weinglass, Kressel, & Deutsch, 1978; Lopez-Morillas, Note 1). (Details concerning the respondents and the nature of the interviews may be found in these studies.) In the present paper we wish to highlight themes common to all the studies and also to underscore certain issues unique to each group of respondents.

It may be helpful to begin with a brief description of the context in which professional intervention in divorce occurs. Although we are aware that terms such as “professional” and “client” are not totally appropriate in the case of the clergy, we have used them throughout this report as a matter of convenience, since no other vocabulary is shared as well by all three groups.

PSYCHOOTHERAPISTS AND CLERGY

There is much similarity in the roles that therapists and clergy assume in divorce. There are two primary issues that may be the focus of intervention: help with the difficult decision of whether or not to divorce and, less commonly, assistance with negotiating the terms of settlement.

The frequency with which psychotherapy is sought by divorcing individuals is largely undocumented, but appears to occur in perhaps 10% to 15% of all divorces, although the trend may be upward. An unknown but considerable percentage of this help is strictly pro forma, the result of either the need to assuage a guilty conscience on the part of one or both spouses or a state regulation for mandatory conciliation counseling. Family or conciliation courts, which probably account for the largest percentage of “therapeutic” contacts, have generally sought to reconcile marriages, rather than to provide assistance for those wishing to end them (Brown, 1978), although there is evidence that the trend is changing (Brown & Manela, 1977; Cantor & Ferguson, 1976).

We are aware of no reliable estimates on the percentages of divorcing individuals who receive psychotherapy during the divorcing process. Goode (1956) reports that 29% of his sample of 425 divorced women said yes to the question “Have you ever consulted a marriage counselor?” Goode notes, however, that the percentage receiving any real counseling is probably much smaller, since 14% of the total had their only counseling experience in connection with a domestic relations court requirement in a greatly understaffed facility. Hetherington, Cox, and Cox (1976) report comparable figures in a much more recent study. Roughly 15% of the divorced women and 8% of their husbands had received therapy. The highest estimates come from a national survey by Gurin, Veroff, and Feld (1960), who report that 40% of the separated or divorced women and 22% of the divorced men had received therapy at some time. It is not possible to tell from their figures what percentage of this help-seeking was precipitated by and addressed to the problems of marital dissolution.

Generally, serious counseling in divorce is arranged for and conducted privately. All of our therapists were engaged in private practice, of which divorce counseling was a part.

When people seek help with a marital problem they are more likely to consult a clergyman than a psychotherapist (Gurin et al., 1960). The clergyman’s work with the divorcing occurs in two primary contexts: as part of his congregational responsibilities or in connection with religious courts of divorce or annulment. Thirteen of our respon-
Lawyers

Of the three groups, lawyers are most frequently consulted by the divorcing since, whatever else it may be, divorce represents the end of a legal contract and the beginning of a new one. Every divorce action must be formally filed with and approved by an appropriate court. (Not everybody who divorces uses a lawyer, however. In a very small percentage of cases neither spouse retains counsel; they make the necessary arrangements and file the required forms by themselves. Although reliable data are hard to come by, it appears that in as many as 50% of uncontested divorces only one of the spouses retains a lawyer, even in cases involving minor children and material assets; see Cavanagh & Rhode, 1976.)

There are five major areas where the partners may need to reach agreement: custody, visitation, child support, alimony, and division of property. In most divorces, settlement on these issues is reached by mutual consent (although frequently with considerable conflict). In only a small percentage of cases is there a contested issue that requires a court action and judicial intervention for resolution.

Formally, at least, the legal role in divorce is far more well structured than that of either therapist or clergy. Allowing for individual differences in style and personality, we might therefore expect that the views of lawyers would show a far higher degree of consensus than would be true for the other two groups. In fact, just the opposite pattern was reflected in the interviews. Whereas therapists and clergy occasionally differed from their colleagues on important issues, differences among the lawyers were far more common. There were three key areas in which systematic differences of opinion among the lawyers were evident: (a) attitudes toward the client; (b) the objectives of legal intervention; and (c) the nature and role of collaboration with mental health professionals. A lawyer's views in one of these areas tended to be highly correlated with the views he held in the other two. On the basis of these differences it proved possible to outline a set of distinctive "stances"—role definitions—with which different groups of lawyers viewed their work.

The Stances

We have arranged the six distinctive stances that characterize the lawyers' views in ascending order from those that involve a more narrow, legalistic rationale for intervention to those that are broader and marked more by social or psychological, rather than legal, concerns. (Although the concept of stance is best thought of as a continuum, rather than as representing sharply defined categories, respondents fell rather clearly into one or two adjacent classifications.)

The Undertaker. The analogy (supplied, incidentally, by one of our respondents) rests on two points: (a) it is assumed that the job involved is essentially a thankless, messy business; and (b) it takes for granted that the clients are in a state of emotional "derangement." It is also a stance characterized by a general cynicism about human nature and pessimism that a good or constructive outcome is ever possible in divorce. It is the only lawyer stance and the only stance among all three groups in which, in its more extreme manifestations, a clear derogation of the client occurs. For example, one respondent stated:

I'm not interested in my client's personality; that's not my function. I knowingly represent psychotic people. All of my clients are neurotic, some of them actually psychotic. If mine aren't, the other side is.

The ideal client would not be in a lawyer's office. In other words, the ideal client is somebody well-adjusted, able to cope with reality, cope with their problems, who can enter a relationship with a lawyer where they could be helpful. They're not the kind of people who get involved in divorces.

Not surprisingly, lawyers with an Undertaker stance are not enthusiastic about the value of psychological counseling, even though they may refer clients to psychotherapists to satisfy the "technical" requirements of the job.

I put them [emotionally disturbed clients] into the hands of people who are equipped to help them—"equipped" in quotes. I mean psychiatrists, psychologists, certified social workers, all that garbage. What I try to do is shuffle them off to psychiatrists, psychologists, secure in the internal knowledge that it relieves me of a burden and, most important, a responsibility.

The Mechanic. This is a pragmatic, technically oriented stance which assumes that clients are basically capable of knowing what they
want. The lawyer's task primarily involves ascertaining the legal feasibility of doing what the client wants.

If a husband says he wants to give $25,000 a year to his wife, I don't think it's the duty of the lawyer to say to him, "You're out of your mind." I think that if a lawyer is asked, "What risk do I run in the courts?" then he has a professional responsibility to give his opinion as to what the risk is.

Like the Undertaker, the Mechanic tends not to call the existing legal system into question. Unlike the former, however, he is not actively disparaging of the client, and also accepts the notion that "good" outcomes are possible. A good outcome lies in producing "results" for the client: "When all is said and done, one of the most important things you do is what you do as a lawyer—not as a comforter, not as a surrogate father—it's what you do professionally to get the best results." Comments about other professionals centered around their usefulness in buttressing a case or corroborating evidence. Thus, if there are allegations that the client is alcoholic, the Mechanic might seek the testimony of a doctor or psychiatrist to disprove it.

The Mediator. This stance is oriented toward negotiated compromise and rational problem-solving, with an emphasis on cooperation with the other side and, in particular, the other attorney. Generally, there is an appeal to the client's "better nature" or a view that what the client wants should be tempered with a sense of "what's fair." There may also be a posture of emotional neutrality or noninvolvement in response to emotional or conflicted clients: "I may raise my voice, if yelling and screaming avoids me getting an ulcer. But I don't get emotionally involved. It's their life, not mine."

Unlike the Undertaker and the Mechanic, but like the three stances that follow, the Mediator tends to downplay (but not deny) the adversary aspect of his role. Only when provoked by the other side does the Mediator like to fight:

If the man [the client's spouse] cuts off the telephone, if he changes the lock on the door, I don't talk; I get into court and get that remedied immediately. That doesn't preclude negotiations at a future date, provided it is understood that we're not going to enter into an agreement because of economic pressure.

For the Mediator a good outcome is a "fair" negotiated settlement that both parties can "live with" (a frequently quoted phrase). A primary motive in maintaining contact with other professionals is in using them as resources for de-escalating conflict: "You can talk to the therapist and try to have the client understand that it's not necessary to proceed with the divorce on the grounds of adultery."

The Social Worker. This stance centers around a concern for the client's postdivorce adjustment and overall social welfare. In the case of women clients in particular, there may be an emphasis on the "marketability" of the client:

The main thing is to fully explore her ability to contribute to her own support. I have had agreements where I have been able to get money for college or a business course. Or a course, in one case, in cooking.

If the client is a woman, is she employable? Is she going to remarry? How is she going to live? How will this breakup of the marriage affect her future?

There may also be a tendency to maintain the entire family in view, even though the attorney represents only one of the parties:

I think the family unit should be treated as a unit that is having an illness or problem that can be solved by the separation of the spouses; and a whole solution be worked out that would be best for each of the family members, in a cooperative venture.

The lawyer with a Social Worker stance may also attend to long-range plans for the children (summer camp, higher education, and the like). The Social Worker stance is also frequently associated with the view that, contrary to the expectations of many clients, divorce is not usually an easy solution to marital unhappiness. The involvement of therapist or clergy is welcomed, either before entry of the lawyer (with a view to providing a troubled family with assistance) or after the divorce (to aid in postdivorce adjustment). As might be expected, a "good" outcome is perceived to be one in which the client achieves social reintegration.

The Therapist. This stance involves active acceptance of the fact that the client is in a state of emotional strain and turmoil. There is a concomitant assumption that the legal aspects of a divorce situation can be adequately dealt with only if the emotional aspects are engaged by the lawyer. Correspondingly, there is an orientation toward trying to understand the client's motivations:
I don't see that there's any difference in my work and the work of the psychiatrist or the psychologist. I have to understand the individual. When the individual comes in for an interview, I think the most important part of the case is right there in the first interview. If I know how to ferret out the motivations. If I know how to ferret out the interpersonal things that are happening.

This stance tends to be accompanied by a strongly expressed view that the legal system "isn't working" in terms of meeting people's real needs: "The matrimonial laws today do not work. They are not serving the needs of the people. They are hurting people." A good outcome is conceptualized more or less as it would be in a therapeutically oriented crisis intervention situation: personal reintegration of the client after a trying, stressful period. Predictably enough, this is also a stance that welcomes involvement of psychotherapists insofar as they can facilitate the legal aspects of the lawyer's role:

Like this young lady I'm representing right now, who's in the care of a psychiatrist. She's got a lot of hang-ups. It's useful for me to find out what her breaking point is. I delayed for over a year before I even brought the action, because I thought it might affect her so adversely. And the psychiatrist said, "It's OK now, she's strong enough to handle it."

The Moral Agent. In this final stance there is a more or less explicit rejection of neutrality; it is assumed that the lawyer should not hesitate to use his or her sense of "right" and "wrong":

Ok, that's my trouble. The criticism I get from judges, that I get emotionally involved. I don't get that emotionally involved as far as the litigation is concerned; I get emotionally involved as far as what's right or wrong.

This stance appears to be particularly salient when the divorcing couple have children, with the lawyer then being perceived as a kind of guardian and protector of their interests:

Where there are children I have a duty and an obligation as an attorney not to represent only my client but to represent the child, because that child at this stage of the game does not have a representative.

A "constructive" outcome is one in which the lawyer's sense of "what's right" is satisfied, both in relation to the client and to the children (if any).

One major aspect of the Moral Agent stance is the use of child psychiatrists and therapists to bolster the lawyer's concern with protecting the children's welfare.

I try, very desperately, to get the parents to put the children into professional hands, because I am thoroughly convinced that the average parent, because of the emotional reaction to the situation, doesn't even realize that they are using the children.

Given our small sample and the exploratory nature of the study, we are reluctant to claim for this typology anything more than suggestive value. However, its general validity is greatly bolstered by an earlier study of O'Gorman's (1965) which we became aware of only after an initial account of our results had been drafted. The main thrust of O'Gorman's study is remarkably similar to our own with regard to the range and nature of lawyer role definitions in divorce cases.

ROLE STRAIN

How are we to account for the marked and systematic differences in the lawyers' views? And why do they disagree more among themselves than do the therapists and clergy? We believe that an important part of the answer is to be found in the high degree of strain that characterizes the role of the matrimonial lawyer. (Komarovsky, 1976, has defined role strain as a "felt or latent [not fully recognized by the person] difficulty in role performance and perceived paucity of rewards for role conformity," and has given a brief but useful discussion of its relationship to the more widely used sociological concept of role conflict. See also, Goode, 1960, Sarbin & Allen, 1968, review the literature on the variety of coping mechanisms that can result from conflicting role demands.)

Much more frequently than the therapists and clergy, the lawyers described or alluded to crosscutting pressures that they experience in their work with the divorcing. Formal legal codes of conduct and training provide little relief from these pressures; indeed, they appear to contribute to them significantly. Each practitioner, therefore, is obliged to solve the professional dilemmas of matrimonial practice as best he can. The major solutions are embodied in the different stances we have been reviewing.

Let us spell out the major sources of role strain that are reflected in the lawyer interviews.

The adversary nature of the legal proceedings. Despite many changes in recent years, divorce remains largely an adversary process in the eyes of the law, with one spouse being the "aggrieved" or "injured"
The one-sidedness of the lawyer's view. The lawyer's ability to determine what is real in the marital situation is greatly limited by the professional injunction that the lawyer deal with only one of the marital partners. Our respondents referred frequently to the difficulty of ascertaining the true state of affairs from the perspective provided by their client. Hearing only one side, the lawyer is more easily led to overidentify with the client's point of view—and the client may have strong motives, conscious or unconscious, for wishing to use the adversary system as a vehicle for retribution.

The shortage of material resources. Since two households cannot be supported as cheaply as one, it is highly unlikely that the parties to a divorce are going to be happy with the economic terms of the settlement. The attorney, therefore, may find himself in the unflattering position of being the bearer of bad news:

[There are] the run of the mill cases where the man makes $15,000 a year and there are three or four children and a nonworking wife. There you have complete chaos. And anybody who tried to introduce so-called equity would be much better off introducing money, because it's the only thing that's going to solve this insoluble problem.

The position of either the therapist or clergymen is much more comfortable in this regard. Therapists can avoid the entire topic on the grounds that disputes over money are not a proper area of psychotherapeutic intervention (except insofar as unconscious, neurotic conflicts are concerned); clergy are more often willing to address financial matters, but their role is the positive one of trying to augment resources through congregational funds over which they have control or by making a referral to a charitable agency. It is only the lawyer who, in the course of professional duties, is obligated to confront the client with unpleasant financial realities.

We may also note that unlike the therapist or clergymen, much of the lawyer's time on a case consists of work done when the client is not present. Whatever dissatisfaction may exist on the client's part about the financial side of the settlement and the lawyer's fee may thus be further exacerbated.

The economics of the law office. One respondent stated: "There are some lawyers who want to litigate, litigate. They get better fees that way, if they can. The taxicab with the meter running." How widespread this phenomenon is, nobody knows for sure. It represents, nonetheless, a serious potential conflict of interest between lawyer and client.

Another potential source of conflict stems from the fact that it is generally the husband who pays the wife's legal costs. The lawyer who represents the wife, therefore, is in the anomalous position of having his fee paid by the opposing side. Unconscious pressures may thus be created for something less than totally effective representation of the wife's interests. The wife herself may have doubts about the degree of allegiance that she can expect from this type of arrangement.

The nonlegal nature of many of the issues and the training of lawyers. In major areas of their activity lawyers are operating largely outside the domain of law and legal training. Relatively few of the issues that arise are "issues at law" in the strict sense. Moreover, even many legal and financial issues engage psychological judgment and expertise, or personal values (e.g., custody or visitation arrangements that would best meet the emotional needs of both children and parents). Unfortunately, the training of lawyers poorly equips them to understand or handle the psychological and interpersonal issues in divorce, even though such issues may be crucial to the evolution of equitable and workable agreements.

The difficulties in the lawyer-client relationship. It was a virtually universal observation of the lawyers that one of the crucial determinants of outcome in divorce is the relationship between the two opposing attorneys.

Often it is the character of the lawyer you're working with which will set the stage for whether or not the issues can be resolved without too much bloodletting.

I think those of us in the matrimonial field recognize that when there is a certain lawyer that you have as an adversary there will be no settlement. There just will be none. You know it; you prepare, and you recognize that this must be a Donnybrook.

Indeed, for some respondents the notion of a constructive versus a destructive divorce was defined by the nature of the relationship between
the two lawyers. A constructive divorce is one in which the two attorneys "come to operate within each other's framework," as one respondent put it.

If you are lucky enough to have an adversary with whom you have had experience to know that the person has the same philosophy you have, then you have very few problems: You can work out something beautifully. You're lucky if you find one who is really in complete consonance and communication with you and understands the way you want to handle the divorce. That is very rare, I want to tell you.

Although the rarity of consonance between the two opposing lawyers may be due to numerous factors (for example, the pairing of a highly experienced specialist in divorce law with a neophyte), we would argue that a primary cause is the high probability that any two lawyers are likely to interpret their roles very differently. Given the other powerful factors prompting an escalation of conflict, one may well imagine the results should an Undertaker and a Moral Agent meet across the bargaining table. (Lack of congruence between the stances of the two lawyers is thus one effect of role strain and one of its principal causes as well: The crosspressures of professional practice produce alternative methods of professional coping in the form of differing stances; the differing stances further complicate the problems of professional practice by introducing a powerful new element of potential conflict and uncertainty.)

In summary, the role of the matrimonial lawyer is an unenviable one from many points of view: The lawyer cannot expect to find a great deal of satisfaction in the traditional role of advocate, but can expect strong pressures to assume the advocate stance; to produce a settlement that will be equitable and lasting, the lawyer needs to develop a clear picture of the state of the marriage, but can expect that the picture he comes to hold will be significantly distorted by virtue of the one-sided source of his information; the lawyer may strive to fathom the psychological motivation of the client and to predict how the dynamics of the marital relationship will affect the legal proceedings he is trying to orchestrate, but must contend with his lack of training in understanding such matters; the lawyer may have the normal professional expectation that his work will be greeted, if not with thanks, at least with the client's approval, but will more likely than not find that his efforts are regarded with disappointment and mistrust; the lawyer can hope for an opposing attorney who shares his views and with whom he can work easily, but can expect that this hope will be frustrated. The adoption of a stance provides the lawyer with a buffer against these contradictory terms of employment and a rationale and motivation for managing the client and the opposing attorney.

The Psychological Experience of Divorce

SOURCES OF STRESS

However stressful the position of the divorce lawyer, the stress is minor compared to that experienced by the divorce client. The sources of this stress are threefold: (a) the multiple, simultaneous, and major change in life circumstances that divorce entails; (b) the characteristically non mutual nature of the decision; and (c) the phenomenon of separation distress.

The nature of the client's experience seemed largely hidden from the lawyers, who, as a group, had little to say about the psychological nature of divorce. The details of the process came fully as much from the clergy men, only one of whom had any formal psychological training, as from the psychotherapists. The sophistication of the clergy men's account probably reflects the extended temporal perspective on the divorcing process which the clerical role affords. Clergymen often know those whom they counsel as newlyweds or happily married individuals, are present during the period of marital instability and separation, and are witness to the gradual process of postdivorce recovery.

Concrete changes in life circumstances. The concrete changes in life circumstances are the most obvious source of stress. For the husband, a divorce typically involves changing his residence and occasionally his job. The demands on his earning power are increased with the necessity of supporting two households. Most importantly, as the noncustodial parent he must adapt to seeing his children less often and on a fixed schedule. (Here, as in other areas of research on the family, studies on divorced husbands and fathers are woefully underrepresented. The research of Hetherington et al., 1976, is the only study of which we are aware that documents the adjustment problems of divorced men.)

For the wife the changes are usually more radical. As the custodial parent and the spouse with less earning power the financial pressure is likely to be particularly great on her. (The severe decline in economic fortunes that accompanies divorce for women has been well documented by Bane, 1976). Often she must adjust to the new responsibilities of working while simultaneously playing the role of both father and mother. Subtle and not so subtle social rejection may occur among her former circle of friends, many of whom may have originally been friends and business associates of her husband, and who now may also view her as a potential threat to their own marriages. The process of establishing a satisfying dating and sex life may be retarded by inexperience, uncertainty, as to the prevailing norms, and fear of being an inappropriate model of approved social behavior for her children. Unlike her ex-husband,
whose field of eligibles for remarriage can be nearly as wide as his taste and imagination dictate, the ex-wife often has a more narrow range of possibilities. Several of the clergy noted that although things may be changing, women are generally more invested than men in marriage and hence are more inclined than men to see divorce as a personal failure.

Nonmutuality of the decision to divorce. The interviews with all three groups strongly suggest that nonmutuality is more the rule than the exception in divorce. There is little empirical research on which to verify the impression of our respondents, but two studies are corroborative. In Goode's (1956) classic, although outdated investigation, only 13% of the ex-wives whom he interviewed reported that the initial decision to end the marriage was mutual. In a recent study of dating among college couples, Hill, Rubin, and Peplau (1976) reported that only 7% of the relationships that ended were based on a mutual decision to do so.

The precise effects of an unequal decision to divorce may be difficult to predict, but certain recurring patterns were noted, particularly by the therapists. Frequently, the partner who wishes to end the marriage feels guilty at abandoning the spouse. A frank discussion of the desire for divorce is therefore made more difficult. A series of escalating but misplaced marital conflicts may then occur. Once the initiator finally broaches the topic of divorce, continued guilt, combined with the equally strong desire to leave, may produce a virulent form of the "settlement at any cost" mentality. At the same time, the spouse who wishes to keep the marriage may escalate demands, motivated by feelings of humiliation and anger, combined with the prospect of a bleak and uncertain future. Unreasonable demands may also be a means to prolong the marriage and ultimately prevent the marital breakup.

An opposite pattern was also noted: Guilt in the initiator may be expressed as anger directed at the noninitiator, in whom diminished feelings of self-worth may inhibit the ability to bargain constructively, or worse, produce an abject acceptance of almost any terms dictated by the other. Under such circumstances, a settlement may be quickly arrived at. Its inequitable and unworkable nature, however, may not become apparent until several years and several court fights later.

Separation distress. The final, and in many ways the most profound source of psychological turmoil in divorce is what Weiss (1975) has aptly labeled "separation distress." Separation distress is that complex and painful amalgam of emotions precipitated when we try to break off a central relationship. Anxiety, irritability, anger, depression, and, above all, a heightened focusing in thought and deed on the soon-to-be divorced spouse are characteristic. These feelings are in addition to whatever other feelings are also occurring, although they may not be easily distinguishable from them. From the perspective of the emotions, separation distress adds insult to what may already be emotional injury.

"Persistence of attachment," as Weiss (1975) calls it, may take an infinite number of concrete forms, from sexual intercourse between the divorcing partners to the fiercest divorce and postdivorce legal combat. (As one therapist put it, "hate is a relationship.") According to several therapists, separation distress may also be implicated in cases in which the now divorced partners jointly seek help for an emotionally disturbed child. The implication is that the child's symptoms are a function of the unconscious wishes of the parents to maintain an intense involvement with each other.

Although the concept of separation distress is central to an understanding of the intensely irrational behavior that may at times characterize the behavior of the divorcing, it is a concept that is in considerable need of clarification. To our knowledge, no thorough discussion of its underlying causes has been reported. Weiss (1975), who so acutely describes the phenomenon, hints that it may have a biological basis (i.e., that distress reactions on separation from caretakers have survival value for the species) but does not directly make this claim, nor does he seriously evaluate alternative explanations (see especially chap. 3, pp. 56-46). The psychoanalytic concept of separation anxiety has obvious potential relevance to understanding adult separation reactions, but the precise relationship has not been delineated. (Bowlby, 1973, thoroughly reviews various analytic perspectives on separation anxiety, but only as these relate to childhood separation reactions.)

STAGES OF COPING: THE PROCESS OF PSYCHIC DIVORCE

Although every divorcing person's experience is unique, the interviews suggest that there does exist a general pattern of coping. We have referred to this pattern as the process of psychic divorce. The term is meant to suggest the gradual movement from psychological investment in the former marital relationship to psychological autonomy. The details of the process have been described, from somewhat different perspectives, in the earlier reports on therapists and the clergy (Kressel & Deutsch, 1977; Kressel, et al., 1978). We will summarize here only its most salient characteristics:

1. Within broad limits the process is unavoidable and unmodifiable (although self-awareness and/or professional intervention can mitigate its more extreme manifestations).
2. Throughout, decision making and rational planning are impaired, at certain points markedly so.
3. The process occurs in discriminable stages. These stages embody powerful swings in mood and in quality of marital interaction. On
balance, the more painful moods and types of relating predominate. There are four primary stages:

a) An initial period of denial during which the individual refuses to face the possibility that the marriage may be dying, or engages in behaviors that suggest a strong unconscious wish that the marriage still be intact.

b) A period of depression and disorientation involving withdrawal from social contacts and intense feelings of personal failure and confusion.

c) Feelings of betrayal leading to anger at the spouse and members of the opposite sex generally.

d) A gradual period of readjustment during which the person begins to behave rationally, starts planning realistically, and (ideally) gains psychological insight into him/herself. One clergyman described this phase as "a long process of being reborn."

4. The experience of the initiator, although basically similar to that of the noninitiator, is less difficult. The distinctiveness of the initiator's experience is related to the relatively earlier occurrence of some of the psychological stages and the relatively shorter time span of the entire process. Much of the difficulty in adjustment attributed to the noninitiator can be viewed as a consequence of a lack of psychological preparedness and intense feelings of diminished self-regard. Some respondents noted that the noninitiator could not be expected to recover for as long as 3 years or more.

5. Although the phenomenon of psychic divorce is inevitable, the successful completion of the process is not. Thus, legal divorce may, and frequently does, occur in the absence of psychic divorce. The worst examples of postdivorce legal battles, bitterness, and general mayhem may be most often ascribed to a failure of psychic divorce.

Implications. It would perhaps be convenient if the emotional distress of psychic divorce could be experienced in solitude, far from the pressures exerted by the realities of daily life. This is rarely the case. The period of psychic divorce coincides quite frequently with one of the more complex and demanding intellectual and emotional tasks of adult life: the need to negotiate a separation/divorce settlement, the terms of which will determine many important aspects of one's own future and that of one's children.

The implication of the psychic divorce process for the negotiation of such a settlement is that the potential for displaced and particularly intense conflict is high, and the prospects for enlightened and realistic negotiations (even in the absence of overt conflict) are low. The primary implication for the nonpsychological counselor—the lawyer, accountant, real-estate agent—whom divorcing individuals are likely to consult, is that normal assumptions about what can be expected from a client are likely to be disappointed. Assumptions that divorcing clients will be slow to act, unable to comprehend or retain information easily, and capricious and changeable in their decisions are more realistic.

It needs to be emphasized, however, that the process of psychic divorce represents a normal and temporary reaction to a stressful life experience. The divorcing individual may give a misleading appearance of serious psychopathology, particularly to individuals—lawyers, for example—who have contact with them only during the acute stages. Even trained psychological counselors need to be wary of diagnoses of the divorcing that suggest the need for long-term reconstructive treatment. Such diagnoses are likely to be unreliable for individuals in the acute stages of coping. Moreover, at least in our view, they are likely to detract from more immediate and useful interventions aimed at strengthening the client's temporarily impaired powers of judgment and planning, and assisting with regard to the complex substantive issues that require settlement. (Many of the therapists with whom we spoke would not agree with us on this last point. This important issue is discussed in more detail subsequently.)

How representative is the picture of psychic divorce? Is divorce really one of the great stresses of adult life, or is this true only for a relative handful of neurotics who are so troubled that they seek the help of clergyman or psychotherapist when divorce impedes? Even if divorce is stressful, are the emotional upheavals and inevitability of the process of psychic divorce as we have portrayed them?

A definitive answer to these questions is impossible. The number of systematic studies on the subject probably number less than half a dozen, and most of this research, while valuable, is based on nonrepresentative samples. (The study by Goode, 1956, although based on systematic sampling and data-gathering procedures, is now woefully out of date, besides reflecting a one-sided perspective—the wife's. Of the more recent research, that of Hetherington et al., 1976, while systematic and intensive in its mode of data collection, is not based on a representative sample; likewise, the studies of Wallerstein & Kelly, 1975, 1976, 1977, focus primarily on the adjustment problems of children from divorcing homes. We are aware of only two studies in which a representative sample of divorcing couples has provided the data, that of Kiston, Note 2, and Jones, Note 3. Both are in preliminary stages of reporting and promise to shed important light on the nature and extent of psychological disturbance in divorce.)

Second, it is quite clear that even to the extent that divorce is a stressful experience, the degree to which any given divorce will exhibit the Sturm und Drang described by our respondents will be a function of other fac-
tors. Most of our respondents, for example, indicated that divorces among childless couples married a relatively short time were far less likely to be difficult than divorces among couples in which there had once existed a deep emotional commitment and who had dependent children. Youth, education, work skills, and a stable, well-integrated personality appear to be assets in coping with divorce just as they are in other areas of life.

With these caveats in mind, we may note that there is considerable correlational evidence that divorce is associated with high levels of emotional as well as physical ill health. The inference is that the stresses of divorce have produced these conditions. (Goode, 1956, was able to classify 63% of his sample of divorced wives as having experienced medium to high trauma—as measured by such indices as sleeplessness, memory loss, and poor health—at some point during the divorcing process. Kitson, Note 2, more recently found that although reactions to divorce may be positive, over 40% of her respondents who had filed for but not yet received the divorce reported five or more symptoms of mental health disturbance. Gurin, et al., 1960, in a representative national sample, reported that divorced or separated women were more likely to admit to “worrying all the time” or of having fears of an impending nervous breakdown than any other group—male or female—in the population. For both sexes, the divorced or separated were much more likely than other individuals to have either sought psychotherapy or feel that they could have benefited from it. A study conducted by the National Center for Health Statistics, 1970, indicated that the divorced had more psychiatric symptoms and to a more severe degree than did persons of other marital status. Campbell, Converse, & Rodgers, 1976, in their national survey on the quality of American life, found that divorced and separated women scored highest of any group on questions dealing with the stressfulness of life. Laddbrook, 1976, cites data that indicate that in terms of overall mortality rate, as well as the rate of death due to motor vehicle and other accidents, suicide, and death from homicide, the rates are higher for the divorced of both sexes than for any other marital status.

Evidence on the precise nature with which the stresses of divorce are handled is not available, but there is reason to believe that, in its broad contours at least, our respondents’ description of the process of psychic divorce captures an underlying reality. The accounts of the process given to us by the clergy and therapists are in very close accord, although each works with a somewhat different population. The recent study by hettington et al. (1976) also corroborates some aspects of the process, particularly the difficulties of adjustment in the early phases of separation and the phenomena of separation distress and the persistence of attachment. The description of psychic divorce also fits well with accounts of general coping responses to a variety of life stresses as disparate as those caused by bereavement, loss of a body part, natural disasters, and the knowledge of one’s own impending death. (This literature has been succinctly reviewed by Falek & Britton, 1974.) This suggests that the process of psychic divorce is best viewed as part of a more general human adaptive mechanism, rather than a reaction of a neurotic few.

In summary, the best conclusions that can be drawn from the available evidence is that divorce is a stressful life event that can be expected to produce temporary and sometimes severe symptoms in otherwise normal people; that the present data, because they are based largely on self-selected, clinical samples, probably overestimate the degree of turmoil that is characteristic of the divorcing population at large; and that considerably more research on the entire process is needed. The direction and nature of the causal relationship between divorce and indices of stress and ill health can best be clarified if representative samples of couples are followed through the relationship life cycle beginning with courtship, and the characteristics and experiences of those who divorce and those who do not are systematically compared. (Such research would, of course, shed valuable light on a considerable number of important issues beyond those of divorce.)

Criteria of a Constructive Divorce

As we have already observed, the lawyers’ views on a constructive divorce are an important component of role definition, and ranged from denial that any such thing as a constructive outcome is possible to notions of psychological and social reintegration. The views of the therapists and clergy showed a much higher degree of consensus, with one notable exception. For the clergy, the best divorce is no divorce. This viewpoint is in keeping with the traditional religious orientation toward the sanctity of marriage and family life. The therapists held no such view. Apart from this difference, however, the views of therapists and clergy on the goals to be accomplished in the event of divorce—all the clergy allowed for the inevitability and even desirability of divorce under certain circumstances—may be summarized together.

The Self

The minimal goals are a gradual diminution in feelings of guilt and failure, an absence of regret that the marriage has been ended, and a balanced and charitable view of the ex-spouse. Although the respondents were not generally champions of the “divorce as liberation” school of thought—their remarks had more the flavor of making a virtue of neces-
sity—they did hold that, at its best, divorce could entail a valuable experience of personal growth.

Like any crisis, divorce can call forth new skills and unsuspected strengths, and compel a redefinition of values and goals. It should also produce a new level of self-understanding, particularly with regard to one’s role in the marital breakup. The therapists, in particular, were not at all inclined to the view that divorce was likely to be the fault of just one of the partners. To go through a divorce wedded to the view of oneself as innocent victim is thus to engage in a fundamental distortion, the consequence of which is a high probability that one will make an equally bad remarriage. (There was no consensus on remarriage itself as a criterion of successful divorce. Therapists tended to speak more of the ability to form new intimate attachments, with or without marriage. Jewish and Protestant clergy favored remarriage, whereas Catholics tended to view single life as a viable alternative to remarriage.)

Two areas where learning needs to occur concern insight into one’s own unconscious dynamics (e.g., what psychological needs led to such a poor marital choice in the first place, what unconscious conflicts from childhood were being projected onto the spouse) and an understanding of the dysfunctional patterns of marital interaction that characterized the marriage (e.g., what faulty modes of communication or conflict resolution were established). (The view that divorce is a product of mutual, if covert and unconscious, collaboration between the spouses, like so many other aspects of divorce, is an unstated clinical hypothesis. The notion that divorce can be a result of outside forces or events over which neither party has much control or awareness may seem naive, but this does not make it untrue. There is, in fact, statistical evidence indicating that the number of divorces in the United States increases with increases in the national rate of unemployment. Many of the clergy were comfortable with this concept of divorce, but the therapists generally were not.)

THE CHILDREN

Only rarely did a respondent speak of divorce as an opportunity for psychological growth in children. The consensus was that psychological distress was inevitable for youngsters when parents divorce. First, for optimal psychological development children need two parents to serve as models of sex-appropriate behavior. Second, because they are immature in their cognitive and emotional development, children are poorly equipped to handle any significant estrangement in their relationships with parents. (For the more psychodynamically inclined respondents, the gratification of strong Oedipal wishes brought about by parental separation was viewed as likely to engender considerable anxiety and guilt in children.)

Although parents should not necessarily stay together for the sake of the children, a central criterion of a constructive divorce is the degree to which negative consequences to children are minimized. A cooperative co-parenting relationship is the surest means by which this can occur. Specifically, children should not get the feeling from either parent that it is somehow disloyal to love and be with the other; they should not be cast in the role of informant on the other parent’s activities and love relationships; and they should not become bargaining ploys and emotional footballs (e.g., as in custody fits) in a continuing parental war.

THE NATURE OF THE DIVORCING PROCESS

The key words here are mutual, active, and gradual. Regardless of who initiated the idea, both partners should come to accept divorce as necessary and desirable; negotiation of terms should be conducted actively by both spouses, and in a self-interested but cooperative spirit. Failure of one or both partners to take an active negotiating stance suggests psychological nonacceptance of the divorce or guilt about it. The consequences of such passivity are that the final settlement, arranged by lawyers or the courts, will not be based on a sense of psychological ownership and may not adequately reflect realistic needs or wishes. The entire process should be marked by an absence of precipitate decisions on major issues such as remarriage, relocation, or job change, since the stresses of the divorcing experience strongly if temporarily impair decision-making ability.

Strategies of Intervention

Four major strategic goals are shared by therapists, clergymen, and lawyers in their work with the divorcing: (a) establishing a working alliance;
(b) diagnosis and information gathering; (c) improving the emotional climate; and (d) assisting in decision making and planning. In this section we have, for the most part, treated lawyers as a homogeneous group rather than describing the specific strategies and tactics associated with the different lawyer stances described earlier. There was not sufficient material in the interviews to make a such a consistent effort feasible. The relationship between lawyer role definition and the preferred (and actual) behaviors of lawyers is an important one for future research.

ESTABLISHING A WORKING ALLIANCE

Creating a relationship based on trust, confidence, and fellow-feeling was the primary goal described by therapists, clergy, and lawyers alike.

Among the tactics that respondents in all three groups mentioned in connection with establishing a working alliance, explicit reassurance of a favorable outcome, emotional support, empathic listening, and appropriate and judicious use of humor and self-disclosure were among the more prominent. Several of the lawyers referred to the value of tactful repetition of some expertise and long experience as means of inspiring confidence. The clergy benefit from certain unique normative components of the clerical role (even as they are handicapped by others). In particular, unlike lawyers or therapists, clergy may initiate contact with individuals who may need their assistance. More easily than lawyers or therapists, clergy can conduct counseling in an informal and relaxed setting (“Suppose I drop by for coffee?”), and adopt a warm, openly supportive manner. The traditional paternal aspect of the role may also enable them to give particularly effective help when the issues involve high levels of guilt and moral self-condemnation.

On balance, however, establishing a working alliance is a ticklish and delicate issue for all three professional groups, albeit for different reasons. We have previously reviewed, under the heading of role strain, the problems that the lawyer may encounter. In one important respect, however, the relationship between therapist or clergyman and client is more problematical than that between lawyer and client: Lawyers are more likely to be partisans in the marital conflict, whereas therapists and clergy are more likely to aspire to the role of mediator. In terms of establishing a working alliance the distinction is significant. The related issues of confidentiality and impartiality are illustrative.

Confidentiality. The traditional cornerstone of a trusting professional-client relationship is that of confidentiality; nothing said by the client will be disclosed to any outside party without the client’s express permission. Divorce lawyers can give this assurance unequivocally. Typically, the therapist or clergyman cannot. A central role of any mediator is opening lines of communication on sensitive topics and replacing secrecy with a degree of candor. The preferred format for so doing is often separate and joint meetings with the parties. From the perspective of the clients, however, what trust can be placed in a person who, in separate meetings with one’s spouse, may reveal one’s most secret plans and thoughts?

The general solution to this dilemma appears to be the invocation by therapists and clergy of what might be called conditional confidentiality, in which clients are told: (a) an important skill of the counselor is knowing what information needs to be relayed from one party to the other, and the best manner and timing by which such information can be transmitted; (b) the client must be willing to place a high degree of trust in the counselor’s judgment on such matters; and (c) the counselor will at all times be bound by the wishes of both parties to be silent on issues they do not want discussed with their spouse. However strategically correct conditional confidentiality may be, it is clearly a position that makes much higher demands on the tact and diplomatic skills of the counselor than the unequivocal assurance that lawyers can give.

Impartiality. The lawyer’s primary allegiance is to his client. For therapists and clergy, maintaining impartiality is the central task of establishing a working alliance. (Impartiality refers to a quality of even-handedness, not to an unwillingness to take a stand. There are occasions when it may be necessary for the counselor to disagree sharply with one or the other party. Such dissent is invariably provoked by a judgment that one of the parties is seriously distorting reality.) In this regard their views echo the concerns of labor mediators (Kressel, 1972) and for the same reasons: It is not possible to serve two parties in a conflict effectively and simultaneously if one believes the mediator is biased in favor of the other.

Impartiality is easier talked about than achieved. There are important aspects of the situation that mitigate against its attainment, including the emotional turmoil of the parties, the joint counseling format which may further heighten tensions, the strong countertransference reactions that marital conflicts may trigger, and the activist stance favored by all the respondents. For the clergy, and the Catholic priests especially, the task of impartiality is further complicated by their antidivorce sentiments.

Respondents described a variety of tactics by which they endeavor to maintain their impartiality. Among the more prominent of these we may note the following:

EXPLICIT STATEMENT OF IMPARTIALITY. The parties may be told early and repeatedly that the intervener is not a judge, lawyer, or decision
maker, but a guide and agent of the family. For the clergy, perhaps the most viable strategy for overcoming the strategic handicap of their preference for reconciliation is to de-emphasize it, while simultaneously introducing the religious dimension of divorce and the unique, but voluntary nature of the counseling relationship.

_I tell them that there is a religious dimension that will be of concern to them. I point out without thundering that I'll probably be the only one to talk about this and it's an area that really should be talked about, so let's talk about it. I also tell them it's their decision whether they want to deal with it or not; that I have absolutely no authority whatsoever. I can't force them in any way._

**SELF-KNOWLEDGE AND SELF-SCRUTINY.** To avoid the pitfall of unconscious side-taking, counselors must know themselves and constantly scan their counseling behavior for signs of bias. Personal therapy was considered an essential part of professional training by most of the therapists as a further safeguard against countertransference reactions. Clergy may invoke the notion of religious humility as a check against bias.

**INVITING FEEDBACK FROM THE CLIENTS.** One therapist stated:

_There is an occupational disease that we all suffer from. It's called omniscience. And another occupational disease is called omnipotence. And I state at the outset that the people sitting before me always have the right to challenge any statement that I make and ask me why I make it. If it's an error, as it sometimes is, they can correct it._

**STRUCTURAL MODIFICATIONS.** Impartiality may be protected not only by what is said during sessions but by the counselor's decisions about the counseling format. Thus, therapists may communicate their impartiality by refusing to be drawn into private telephone communications with one spouse, and they may guard against unconscious bias by working with a co-therapist. The co-therapists can serve to check each other's perceptions of the marital conflict.

**DIAGNOSIS/INFORMATION GATHERING AND THE PAUCITY OF CRITERIA FOR DIVORCE**

The diagnostic/information-gathering strategies of primary importance for all groups were: tactful and imaginative questioning; patient listening (with the "third ear," if possible); and consultation with friends, relatives, or other professionals with knowledge of the case. The conjoint counseling format preferred by therapists and clergy is an important potential source of information on how the couple interact. Clergy also benefit by what may be their long prior relationship with the couple and consequent knowledge of the marital history. (Obviously they may also be handicapped by their clerical status insofar as clients may be inhibited from speaking openly about matters for which they anticipate censure.)

There is one central diagnostic issue with which all three groups are equally concerned: Is this marriage truly headed for divorce? Answering this question is a task of the most uncertain kind. The primary difficulty is the psychology of the divorcing experience which makes divorcing individuals extremely unreliable sources as to the true state of the marital relationship and their own intentions toward it. Guilt may lead a woman to say she wants to save her marriage when she has secretly decided to end it; anger and humiliation may induce a man to declare for divorce when he privately—desperately—hopes that his wife will not leave him; separation distress may propel a couple back into the deepest—and most temporary—embrace.

Another complicating factor in diagnosis appears to be an absence of professional consensus on criteria for divorce. Few respondents in any of the groups had much to say on this issue, in spite of the fact that for many, and for lawyers in particular, it can be a vexing matter to be highly uncertain about the client's intentions toward the marriage. The criteria that were mentioned as signs that divorce is imminent included: high levels of physical and/or emotional abuse of the spouse or children; mutual and repeated collusion of the spouses in sabotaging efforts at reconciliation; denial by one or both spouses that there are serious marital difficulties in spite of obvious evidence to the contrary; a deeply neurotic, unrealistic basis for the initial marital attraction; and an unequivocal decision by one spouse to end the marriage (the diagnostic trick being in the determination of "unequivocal"). (We may also note that formal psychometric approaches to marital and family dynamics are not highly developed. The most reliable and valid tests are global measures of marital adjustment based on self-reports of marital satisfaction and level of agreement between spouses. With one exception, performance tests of divorce proneness are unknown to us. The exception is Ravich, 1972. His Train Game Test identifies a pattern of play characteristic of approximately 1% of couples, which, when it occurs, Ravich claims to be 100% predictive that the couple will eventually divorce, regardless of the overt state of the marriage at the time the test was taken.)

The failure of respondents to be more explicit about diagnostic criteria may be partly attributable to our own failure to probe on the subject. At the time the interview schedules were formulated we were unaware that the question is one of the central problems in working with
the divorcing. The paucity of criteria also seems to have its source in several other aspects of divorce work, however.

For therapists and clergymen the motivation to formulate such criteria appears low. Who should stay married and who should divorce is, after all, a highly complex and idiosyncratic issue. In any case, for practical, ethical, and psychological reasons the decision must be made by the client, with a minimal amount of intrusion. In addition, clergy are fundamentally conservative on the entire topic of divorce. They are ready to assist if divorce is inevitable, but their primary allegiance is to marital stability.

The lawyers' stance on the diagnostic question is another illustration of the role strain that characterizes their position generally. On the one hand, lawyers have a much higher stake in accurately determining whether the client is serious about divorce than do either therapists or clergymen. Legal services in divorce, apart from an initial consultation, are needed only if the client requires a separation agreement or divorce. Second, the lawyer may feel a strong obligation to refrain from initiating a divorce action if reconciliation is at all possible. Third, an ambivalent client is a poor risk to endure successfully the rigors of hard bargaining that may be necessary in the event of divorce.

On the other hand, lawyers are in a much poorer position than either therapists or clergy to take a high degree of interest in diagnosis or do a thorough job of it if they are interested. First, their view of the marital situation is foreshortened both in time and by virtue of having access to only one of the spouses. Second, psychological understanding is a time-consuming job for which there is no official role sanction and for which they are not being paid. Third, and most important, they are poorly equipped by training, and often by personal inclination, to engage in such diagnosis.

The net result of these crosscutting pressures is that different lawyers adopt very different views of their responsibilities toward assisting in diagnosing the fate of the marriage. The position taken is yet another facet of lawyer stance. None of these positions, however, appear to be based on any clearly articulated or sophisticated notions of what to look for in a marriage on the brink of termination.

Lawyers who gravitated toward the Undertaker, Mechanic, or Mediator stances generally indicated that they explored the possibilities for reconciliation in a rather perfunctory way, simply advising the client of the importance of being sure about wanting a divorce before starting proceedings. Some Mediators may advise speaking with a psychotherapist.

Attorneys with a Social Worker stance tend to initiate an exploration of reconciliation by injecting a note of caution that divorce is not a panacea for marital unhappiness.

For lawyers with a Therapist stance, involvement in reconciliation seemed to be an aspect of the overall orientation toward trying to understand the client's motivations.

You may get a person who says they want a divorce and many times they really don't—they still love their husband or their wife, as the case may be, and then it becomes a question of again going back to the rapport. If you have the rapport, ultimately you'll get out from them what's really on their minds.

One respondent who tended toward a Moral Agent stance offered the following observation:

You can often talk people out of divorces or separations. And while it doesn't work in every case, I think that at least the lawyer and the client will feel he or she has done everything humanly possible to try to save a marriage—particularly where there are children involved. I feel, while adults can do as they wish, they do have great obligations to their children.

**Improving the Emotional Climate**

The emotionally volatile atmosphere surrounding many divorces obviously represents a major obstacle to effective intervention. The task of the professional is to channel and contain this reactivity so that it does not disrupt the decision-making process or, indeed, the counseling relationship itself. Although guilt and depression can create problems, the respondents gave foremost attention to the need to contain excessive anger and revenge-seeking.

**Shared tactics.** Several tactics were common to therapists, clergy, and lawyers. Among the most important of these were: explicit statements of norms of equity and fair play; appeals to self-interest (e.g., "In the long run a court fight will cost you more than a negotiated compromise"); reiteration of the potential harm that can be inflicted on children by endless legal and psychological warfare; introduction of a future-oriented perspective and the temporary nature of present hurts; and the countering of the well-meaning but destructive influence of relatives, lovers, and friends.

**Lawyers' tactics.** Common tactics notwithstanding, the interviews with therapists and clergy reflect a different orientation to the goal of reducing tensions than was true for the lawyers, whose tactics in this regard appear more similar and to flow directly from their role as technical ex-
perts. Thus, for lawyers, preferred tactics for restraining angry clients include: reminders to the client that the job and training of the lawyer is to be objective and rational, not to deal with emotional problems (the "I'm not a psychiatrist" disclaimer); disabusing inflated clients of the notion that the law will permit them to punish their spouse for real or imagined hurts; and stern warnings about the legal repercussions of threats, emotional abuse, or physical attacks on the spouse. As a last resort the lawyer may simply threaten to withdraw from the case.

Therapists and clergy: Behavioral tactics. For therapists and clergy the distinction between behavioral and structural tactics is again pertinent, as it was for maintaining impartiality (which may itself be a powerful force for reducing hostilities). Behaviorally, the therapists and clergymen spoke of efforts to improve the climate by making suggestions to resolve seemingly superficial, but nonetheless irritating disagreements; applauding friendly gestures and intervening when such gestures are missed or misinterpreted; and shifting the focus from blaming the other to understanding the self. Indeed, perhaps nothing marks more distinctly the difference between lawyers, on the one hand, and therapists and clergy, on the other, than this commitment to self-understanding as an instrument of conflict resolution. For therapists in particular, anger was conceptualized as but a symptom of painful if unacknowledged feelings of loss, self-deprecation, and fear of the future. The most effective cure for such reactive anger is not exhortations to rationality and self-control, but the identification and examination of the underlying emotional issues.

Structural tactics. Numerous structural tactics were also described by therapists and, to a lesser degree, by clergy. Among the interventions mentioned were: creating "cooling-off" distances between the parties by arranging separate counseling sessions or suggesting changed living arrangements; using co-therapy to model effective male-female negotiating styles, or couples groups to socially inhibit the more extreme forms of spousal name-calling; and even insisting on payment in advance as a means of ensuring commitment to treatment.

The greater variety of tactics used by therapists and clergy, as contrasted with the lawyers, may stem in part from differences in the nature of professional training (particularly between lawyers and therapists). Another basic force producing more diversified strategies of intervention among the therapists and clergy appears to be the structural and psychological opportunities of the mediator role as opposed to that of the advocate. As mediators, therapists and clergymen are often at the center of the communications network connecting the spouses, and they are psychologically identified with serving both partners. The lawyer's role is structurally more peripheral—he has direct access to only one spouse—and his inclination to serve both sides represents a highly idiosyncratic and, in the eyes of the profession, ethically questionable choice.

ASSISTING IN DECISION MAKING AND PLANNING

Establishing a working alliance, diagnosis, and reducing emotional tensions are but a preamble to assistance in decision making and planning. It is in this area that the perspectives of therapists, clergy, and lawyers most clearly differed.

The therapists. As detailed by our respondents, therapeutic intervention has two distinct foci: (a) helping the clients make the difficult decision to divorce or stay married; and (b) smoothing the path of marital dissolution if the decision is to divorce.

Decision making interventions were described as essentially educative in nature. Education occurs in two areas: (a) promoting understanding about current dysfunctional patterns of marital interaction and each spouse's role in such exchanges; and (b) explicating the historical roots of the marital difficulties in terms of each spouse's own psychological development. By making these matters conscious the parties will be able to make an informed decision about the fate of the marriage. If they do decide to divorce, they will have learned lessons about themselves that will stand them in good stead after the divorce. In particular, they will be less vulnerable to the "same mistake twice" syndrome—another unhappy marriage.

ORCHESTRATING THE MOTIVATION TO DIVORCE. This strategy, which emerged as the most distinctive characteristic of therapeutic work with the divorcing, rests on the fundamental assumption that a constructive process of divorcing is unlikely if both partners are not in a more or less equal state of readiness to end their marriage. Thus, once it becomes apparent to the therapist that one partner wants out, the task becomes one of motivating the noninitiator to adopt a similar view and of shoring up this motivation whenever it begins to flag too markedly under the stresses of separating.

The tactics for orchestrating the motivation to divorce are many and complex. They may include: countering feelings of failure and self-disparagement; assisting in the development of work and/or social skills that will be needed in the postdivorce period; openly arguing for the advantages of the divorce as opposed to continuing marital unhappiness; enlisting family and friends as allies in providing emotional support; and suggesting "trial" physical separations to ease the transition into single life.

DOES THE THERAPIst HAVE A ROLE IN THE NEGOTIATION OF SEPARATION/DIVORCE AGREEMENTS? A critical area of disagreement among the thera-
pists was whether or not they should play any significant role in assisting the parties with the negotiation of separation agreements or divorces. Five of the respondents ruled out such a function. Once insights into the dynamics of the marital relationship had been achieved and emotional ambivalence about the fate of the marriage had been resolved, substantive differences between the spouses were viewed as solvable without further assistance, apart from the use of lawyers. (The notable exception is the matter of custody and the protection of the welfare of children generally. Here the respondents were unequivocal in their assumption of responsibilities for assisting the parties. Such assistance was often portrayed as more that of advocate for the children than mediator for the spouses, however.)

The 15 remaining respondents, while stressing the psychodynamic aspects of their role, acknowledged that there was a place for helping couples negotiate terms of separation. Only 3 of them, however, discussed the nature of such assistance in any detail or expressed any great enthusiasm for the role.

The types of negotiating assistance discussed include: reducing tensions to a level that will permit rational discussion; suggesting an agenda; making suggestions for compromise; and serving as a go-between in the client-lawyer relationship (e.g., by keeping the lawyer informed of the client's psychological conflicts and by building up the client's self-esteem so that they can better participate in negotiations).

Making the parties "face reality" was perhaps the most central of these substantive interventions. This tactic is central because of the emotional turmoil which temporarily distorts the clients' ability to perceive objectively, and also because the economic, psychological, and legal forces at play are of a complexity and novelty for which many divorcing couples are unprepared. As a corrective to wishful thinking the therapist may remind the client of "realities" of such diverse kinds as the net assets available for division, the motives and psychology of the spouse, and the future needs of self and children.

The reality-orienting function is also significant because it articulates with another primary therapeutic strategy—maintaining impartiality—in a peculiarly problematic fashion. When discussing the importance of maintaining impartiality the respondents frequently stressed that they are impartial as to substance as well as to person; that is, whatever arrangements the parties make for custody, child support, division of property, and so forth are none of the therapist's business as long as the agreement is truly mutual and without the least clear-cut inequities or dangers (particularly to children). However, pointing to the "reality" of the kind involved in a complex divorce settlement is not the same kind of gesture as pointing to the reality of a chair sitting in the middle of the room. It is apparent from the interviews that at times the definition of reality that the therapist chooses may represent an implicit but nonetheless firm value position. That therapists glossed over this is as ascertainable to the considerable tactical and subjective pressures to appear impartial, sketched earlier. Blindness to one's own agenda seems to be an occupational hazard.

The clergy. In many respects the interviews with the clergy reveal a pattern of activities in decision making and planning very similar to that described by the therapists. Three salient differences may be noted:

AN EMPHASIS ON THE CONCRETE AND PRACTICAL. Perhaps as a reflection of the traditional paternalistic aspect of the clerical role, two clergymen emphasized the importance of providing immediate concrete assistance in the form of financial help (either through church funds or referral to social welfare agencies), referral to lawyers or psychotherapists, and in a general effort to assist clients with the formulation of practical plans. For the most part the clergy did not view long-term help in dealing with underlying psychological conflicts as within the scope of their role.

ACCOMPLISHING THE RELIGIOUS DIVORCE OR ANNULMENT. Judaism and Roman Catholicism are the two religions represented in our sample that have highly formalized divorce/annulment procedures. For the Catholic priests and the rabbis, involvement in such procedures is the most distinctive aspect of their role in divorce and one that may be fraught with considerable complexity. The very nature of the religious-legal requirements and the absence of secularly enforceable sanctions for noncompliance in a society based on separation of church and state. In addition, the initiative for such religious procedure generally comes from only one spouse and usually follows the secular divorce, the emotional and substantive aspects of which may have generated a good deal of resentment and ill will. Finally, in religious proceedings the clergyman functions more as an advocate of one or the other spouse, and hence may have lost to a considerable extent whatever strategic leverage the mediator role affords. Worse still, (although none of the respondents said this directly), it is also apparent that like any advocate functioning in a relationship charged with tension and mistrust, the clergyman runs the risk not only of being ineffectual but of further damaging the climate between the parties. We have discussed elsewhere the somewhat different strategic problems facing the priests and rabbis (Weinglass et al., 1978).

A HEIGHTENED CONCERN WITH POSTDIVORCE ADJUSTMENT. Although the focus of our interviews was on the relationship of the partners during the divorcing process, it was much easier to restrict the attention of the therapists to this issue than that of the clergy. For the Catholic respondents, in particular, concern with postdivorce adjustment was so central an as-
pect of their activities and interest that it must be regarded as a distinctive function. The source of this heightened attention derives from the official antidivorce position of the Catholic church. The situation creates moral, religious, and psychological conflicts in parishioners and clergy alike.

The most organized efforts to cope with the postdivorce period were described by priests and lay respondents involved in centers for divorced Catholics. The services of such centers were viewed as a form of crisis intervention, similar to the model established by Alcoholics Anonymous. Parishioners undergoing a traumatic experience are provided with a reference group of others undergoing a similar experience, frequent social contacts, and a religious community that accepts them. The services provided by the center may include a limited amount of individual counseling, group discussions and activities for children, religious group rituals, and workshops on special problems (e.g., dating, sex, family relationships).

Because divorce is such a central experience an individual’s religious affiliations are more likely to be maintained and even strengthened when the experience is conceptualized within a religious framework. Thus, clergy may reassure clients regarding their standing in the religious community and encourage them to maintain religious ties. At a deeper level, clients may be encouraged to see their emotional suffering and personal doubts as a potential source of religious and moral renewal.

The lawyers. The study by Cavanagh & Rhode (1976) of the way attorneys view their role in divorce, and the writing of lawyers themselves, suggests that a major task of the matrimonial lawyer is advice about the negotiation of the substantive issues. Our respondents occasionally referred to such substantively oriented interventions as: educating the client to the law and the philosophy of the courts; assistance in framing and narrowing the issues; eliciting information about the marital relationship and the marital assets to be divided; and the importance of knowing the law thoroughly so that the most advantageous bargain may be struck. On the whole, however, information of this kind was poorly provided.

We have no simple explanation for this paucity of information. In large part it may be attributable to our own failure to probe in areas in which we were uninformed, combined with the respondents’ implicit assumption that the technical side of the law would be of little interest to psychologists. In part, it may also reflect the fact that the crucial strategic issue for the divorce lawyer is resolving the considerable role strain we have discussed earlier. Our questions may well have reanimated many of these conflicts for the respondents so that their energies during the interview were addressed to matters of general orientation and philosophy, rather than to detailing the specific and more mundane aspects of working out a settlement.

Some Comments on the Present and Future of Professional Assistance to the Divorcing

It is a common theme both within and outside the legal profession that in divorce the adversary system creates more problems than it solves. This was the position of nearly all the therapists and clergy with whom we spoke and several of the lawyers as well. Our analysis of role strain among the lawyers suggests, however, that the problem goes beyond the adversary system per se. For one thing, we have argued that one product of role strain is the development of a variety of lawyer coping styles or stances. Consequently, there is a high probability that in any given divorce the inherent defects of the adversary system will be further exacerbated by the pairing of two attorneys with very different conceptions of the objectives to be sought.

Furthermore, the lawyer’s role is beset with nearly as much potential for conflict between lawyer and client as between lawyer and the “opposing” side. The strains in the lawyer-client relationship derive from a variety of factors including the lawyer’s lack of psychological training and the absence of professional incentive for psychological understanding of the client, and the economic circumstances in which the lawyer-client relationship is typically embedded. Among the latter we may include the paradoxical situation of many middle-class couples that they both need and cannot afford sound technical advice on the financial aspects of their situation, and that the lawyer is the instrument by which the unhappy economic aspects of the divorce are borne home.

On the basis of facts such as these, a strong argument can be made that the present lawyer-run, adversary method of divorcing is not only inappropriate to the human and psychological aspects of divorce but so beset with internal problems that it is an improbable tool of constructive conflict resolution. As in so many other aspects of divorce the evidence in support of this proposition is primarily anecdotal. Although reliable data are hard to come by, the available evidence suggests that both the quality of divorce settlements and the degree to which the spouses keep their agreements are quite low. (For empirical data on the mediocre quality of the substance of divorce settlements, see Cavanagh & Rhode, 1976; for evidence on how poorly visitation agreements are kept, see Hetherington et al., 1976; for the extremely low compliance with child support agreements, see Goode, 1956, and Jones, Gordon, & Sawhill, 1976.)

Clearly, there are numerous possible explanations for this unhappy
state of affairs. Moreover, in spite of all the criticism of the adversary system, we have no controlled studies that compare it with any alternative. Nonetheless, the data are consistent with the hypothesis that a primary contributing factor to postdivorce difficulties is the poor conditions for dispute resolution under which divorce negotiations are conducted. In our view, the divorce lawyer appears as much a victim of these conditions as their cause.

But if the lawyer-run adversary system is not working, what is to replace it? Perhaps the most likely candidate is some form of mediation, akin to that employed in labor-management disputes, in which divorcing spouses would negotiate directly with one another with the assistance of a trained third party (or parties). To ensure full disclosure and openness of communication, nothing said during negotiations would be admissible in any subsequent litigation should the parties fail to reach agreement. The parties and the mediator might be assisted by a panel of experts to whom they could turn on an impartial basis for advice on financial, real estate, tax, life insurance, health care, or any other matters relevant to working out an agreement. Ideas of this type were suggested by three of our respondents, two of whom were lawyers. We believe that there is much merit in the approach. The opinion of many therapists notwithstanding, we do not find at all persuasive the view that serious conflicts over terms of settlement are entirely psychogenic in origin. Although we in no way wish to deny the psychodynamic aspects of conflict between divorcing spouses, it seems evident to us that many disagreements in divorce are as much products of reduced financial circumstances and the complexity of the very practical arrangements that need to be negotiated as they are of underlying psychological problems. We are increasingly led to believe that there is an important potential role for psychological counselors in providing such practical assistance. Models for just such a role are beginning to emerge (Coogler, 1977; Kressel, Deutsch, Jaffe, Tuchman, & Watson, 1977; Lightman & Irving, 1976).

It would be naive, however, to ignore the fact that there are problematic aspects to the mediator role just as there are to that of the advocate. We are not alluding here to the capacity for human error and misjudgment which mediators share with the rest of us, but to problems that are as structural in nature as those experienced by lawyers. Since nonadversary models are just developing, it is too early to speak with great clarity and detail on what these structural problems are likely to be, but the interviews with the therapists and clergy provide enough material to illustrate the general point.

We have noted, first of all, that establishing a working alliance—the central prerequisite for effective intervention—is at least as difficult for therapists or clergy as it is for lawyers. The principal strategic difficulties are in the area of confidentiality and impartiality, where, because of the conjoint format combined with the highly charged emotional atmosphere, the mediator may have difficulty establishing acceptability with both sides.

Second, there is a subtle but very distinct tension between the pressures to appear impartial and the desirability for the mediator to provide sound advice and guidance on substantive matters. Once a third party accepts a role in the negotiations it becomes very difficult, it would seem to us, to sidestep the question of whether some practical arrangements are not preferable to others, and to help the parties thrash out what these might be. In what does expertise consist if not in superior knowledge as to possible courses of action and their relative merits? Yet, as we have noted, even for therapists who accept the mediation of terms as an appropriate function, there is also a strong implicit aversion to such activities on the grounds that they involve serious threats to impartiality: If the mediator expresses an opinion on substantive issues, he risks losing his leverage and becomes just another combatant pushing a point of view. None of which is to say that advice is not given and opinions not expressed, but all this occurs by the back door, so to speak—under the nonpartisan “reality-orienting” function. The problem with this approach, however, is its very obliqueness: To an important degree the therapist’s own values and preferences remain partially hidden—from the therapist no less than the client—and ideas that are hidden, as the therapist well knows, are not likely to produce the most successful course of action.

Devising and evaluating alternatives to the adversary system in divorce is an important task, and probably a long overdue one. However, the search for viable alternatives must be based on the recognition that any mode of intervention, whether adversary or nonadversary, involves its own structurally imposed problems. Careful attention will need to be given to a variety of third-party approaches, of which the single-mediator model sketched above is only one. Whether the principal role in such alternatives is to be played by lawyers or psychological counselors, the active collaboration of both will be essential.

REFERENCE NOTES

REFERENCES


