A More Humane Vision of Family Law: Holistic Approach Needed to Shield Children from the Trauma of Breakups

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A more humane vision of family law

Holistic approach needed to shield children from the trauma of breakups

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Unfortunately for so many in our society, family breakup is a fact of life. When a family dissolves, there is much more than furniture, houses or cars at stake — the identity of that family, including its children, is in the mix. That's why the way we and our society respond to family dissolution needs to change.

While people read about the travails of celebrities who commit marital infidelity, perhaps we should be upset that the huge headlines are not about the everyday families — those who often are devastated by their trek through the adversarial legal process that constitutes much of family law. The parties may emerge having disposed of a marriage but also having traumatized loved ones, exhausted their resources and diminished the well-being and self-esteem of their children and of each other.

Such pain and suffering are all too common for the tens of thousands of children and families involved in justice systems throughout the United States — the institutions on which our society relies to resolve the full range of family matters, including divorce, custody, visitation, child support, alimony, property division, domestic violence, and child abuse and neglect. Family law courts are brought into marital disputes at the brink of dissolution, when emotions are most raw and the finality of marital failure is most certain. The process often is damaging because its inherently adversarial nature can intensify already frayed relations and can harm extended families, schools, religious institutions, businesses and communities of those involved.

The need for change is great, not only because lives are so profoundly affected, but also because these cases consume such a large share of court resources. Statistics offer a hint about how pervasive the issue is. According to the 2009 Annual Report of the Maryland Circuit Court, family law cases constitute more than 45 percent of that court's total trial court filings, exceeding the portion devoted to the totals for either criminal or tort cases. Clearly, we must do a better job of ensuring that the family justice system works to help children and families.

After two days of intense sessions, the clear consensus of the group is that the best outcomes for family law cases require more than lawyers. Mental health professionals, social scientists, mediators, judges, academics, policymakers and financial experts also need to be involved. Moreover, the resolution of these cases must not be "win or lose." Instead, a major shift in tone is needed. The reform work generated by the symposium intends to focus on ways to expand the assistance that family law can provide children and families and to include those professionals who too often must do damage control after the legal process has harmed vulnerable participants.

Specifically, we call for: the creation of unified family courts with a holistic and therapeutic focus; making a broad range of family and individual services available to separating families; greater use of alternative dispute resolution at the earliest stages of a case; and retraining law students, lawyers, judges, and court personnel toward a non-adversarial, therapeutic, holistic focus when dealing with family law matters. We hope that these steps can be implemented nationwide, so that children and their families can receive more of the help they need from the family law process.

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Families will continue to separate, but through the kind of collaboration in which we now are engaged, we can protect children and families and can minimize the suffering caused by broken relationships. It is up to us to see that tragic family law stories become the exception rather than the norm, and to demonstrate that the justice system cares about children and families.

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