

Turn Down the Volume When it Comes to Divorce

by Barbara Kahn Stark



In her most recent book, *The Argument Culture: Moving from Debate to Dialogue*, Deborah Tannen asserts that our entire society has evolved into a combative, argument culture that manifests itself in the hostility and violence that permeate our daily lives. Battlefield metaphors are used in business, politics, and social interaction. The divorce process, an experience faced by thousands of couples and their children, is a particularly revealing cultural phenomenon.

Families faced with this traumatic event turn to the legal system to resolve their problems and redirect their lives. But according to authors Drs. Marsha Kline Pruett and Kyle Pruett in their recent study "Divorce in Legal Context: Outcomes for Children," most parents interviewed wanted the divorce to be "cleaner and more predictable" with the direction of the process to remain, in some way, more in their control. The children studied by the Drs. Pruett consistently and poignantly spoke about how the court system made it impossible for their parents to "remain friends." Of particular concern is the finding that parents (and children) perceive the adversarial system as "an unpredictable, caustic parent, capable of great harm and embarrassment."

Involvement with the legal system seems inevitably to lead to escalating emotions and fears with the divorce becoming a war between the spouses. This culture of argument leaves the couples' sense of self worth, their financial stability, and their children among the victims of the conflict.

It doesn't have to be this way. There are other options for couples who share the goal of ending their marriage in a constructive way, minimizing hostility and damage to all family members. There are three paths to divorce: the conventional adversarial process, a mediated settlement, or a collaborative approach to the process. The conventional route is the one currently used by most couples. According to Tannen, divorce is perceived as a fight and emphasizes competition, winners and losers, while suppressing any cooperative impulses. Lawyers are seen as "jousting gladiators" rather than participants seeking a solution of the family's problems.

Mediation offers an alternative route to divorce. In mediation, a neutral party meets with the couple in a confidential setting. Mediation provides an environment where the spouses can discuss the issues to be resolved in order to begin their new lives as single people and co-parents. The mediator gives no legal advice, but is instrumental in sharing parenting and financial information to help the couple explore settlement options and reach agreement for themselves and their children.

For those couples who value and want to protect their emotional health as much as their financial state, divorce mediation offers many advantages over the adversarial process including: maintaining control over the process, cost savings, privacy, a base for client-generated solutions, and improved future communications and parenting. Mediation does not exclude legal advice, although lawyers are generally not present in the sessions. In fact, each spouse in the mediation process should consider obtaining the advice of an attorney before and during mediation sessions and before signing the final settlement agreement.

A third alternative is available for divorcing couples who want to settle their case cooperatively, but would prefer to have attorneys present while they meet to explore their options. "Collaborative law" is new to

many areas, but it has grown in popularity in California and is now in high demand. Collaborative law is a negotiation process where each party is represented by an attorney at a series of four-way meetings. At these meetings, with lawyers and clients present, all parties collaborate together to identify and agree on solutions. This process is different from settlement negotiations in that all four participants formally agree not to go to court or threaten litigation in the process. They jointly retain any expert needed such as psychologists or accountants. The parties share a commitment to the family and honest, respectful, and productive problem-solving. The lawyers remain advocates and legal counselors to their clients with the shared goal of settling the case out of court. This pledge of the attorneys is sealed by the commitment to withdraw from representing the clients in the event that either party resorts to the conventional divorce litigation process.

Mediation and collaboration, while not viable alternatives for every couple, offer the promise of ending the adversarial nature of divorce for families. No matter the road taken, people do have a choice about how to reduce hostility and the loss of control, and to eliminate the public expression of shame and blame that comes with a courtroom battle. It's time for spouses to challenge what Tannen calls "the pre-patterned, unthinking use of fighting to accomplish goals that do not necessarily require it." The welfare of our children and the long-term health of family members after divorce requires nothing less.

Biography

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