
4-1-2004

Collaborative Family Law - The Big Picture

Kim David Kurodason

Donna Beck Weaver

David Kuroda

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/drlj>



Part of the [Dispute Resolution and Arbitration Commons](#), and the [Family Law Commons](#)

Recommended Citation

Kim David Kurodason, Donna Beck Weaver, and David Kuroda, *Collaborative Family Law - The Big Picture*, 4 Pepp. Disp. Resol. L.J. Iss. 3 (2004)

Available at: <https://digitalcommons.pepperdine.edu/drlj/vol4/iss3/5>

This Symposium is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Dispute Resolution Law Journal by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

Collaborative Family Law – The Big Picture

Symposium

INTRODUCTION:

Collaborative family law is an innovative intervention designed to bring legal, psychological and financial expertise to assist couples who face divorce. It's non-adversarial and problem-solving setting facilitates the transition to a healthy, post-divorce life for the family. Not surprisingly, clients are very satisfied. How does this all work and should you consider collaborative family law in your practice? Following presentation was made on February 20, 2004 at the Association of Family and Conciliation Courts California Chapter Conference¹ and provides an introduction to the fundamentals of collaborative family law, the fastest growing practice area in family law.

PART ONE

KIM DAVID KURODASON²: Good morning and thank you all for attending, we're all excited about our workshop on Collaborative Family Law. I'd like to introduce the panel:

Donna Beck Weaver is a certified family law specialist and a member of the American Academy of Matrimonial Lawyers. Donna is a founding board member of the Los Angeles Collaborative Family Law Association and is a family law attorney at Trope and Trope in Los Angeles.

David Kuroda is a licensed clinical social worker and former division chief of the Los Angeles Superior Court Mediation Services. David Kuroda has a private practice in Torrance and West Los Angeles where he does child custody mediations, collaborative divorces and couples counseling.

My name is Kim David Kurodason, and I'm a family law attorney with a practice in the South Bay/Palos Verdes area and my practice is now limited to mediation and collaborative family law.

DONNA BECK WEAVER³: We're happy to talk to you today about what Collaborative Family Law is, and to give you an overview of the process

1. For more information visit: www.afcc-cal.org
2. Ms. Kordason is a family law attorney with a practice in the South Bay/Palos Verdes area.
3. Donna Beck Weaver has practiced law for 25 years and is a Certified Specialist in Family Law. She had her own law practice until 1992 when she joined Trope and Trope. Ms. Weaver's active interest in the field of family law has included activities such as teaching courses for attorneys

through the panel presentations. Throughout the day we'll give you an in depth look into the process.

KIM DAVID KURODASON: CFL is a non-adversarial process where the focus is to get people from dispute to resolution with a full complement of services: the legal, the financial and the mental health component- To keep people out of court and to help them get to a resolution the works for all of the parties. That is the basic collaborative model.

DONNA BECK WEAVER: There are some very central components that characterize CL, and that is (1.) full disclosure is required for all financial information, (2.) there can be no litigation during this process, (3.) the Collaborative professionals cannot serve as litigation support for any of the parties should the CL process not proceed. The clients themselves keep their right to access to the courts. The professionals are required to withdraw if there is not a successful conclusion in the CFL process. This is what protects the non-adversarial structure of the Collaborative circle.

KIM DAVID KURODASON: And speaking then of the complete service circle is that each spouse has their own attorney, so in this sense it looks like the traditional model. You have a coach, a trained mental health professional, who works with each of the parties. Ideally, these coaches are gender based. There is one neutral financial specialist, who would work with the parties on whatever financial issues they have, whether it was as basic as assisting them with incoming expense declarations, for their disclosures, or doing something more complicated such as a reimbursement issues or Moore-Marsden. If there are children you want to have a neutral child specialist who is really the voice of the child, and talks with the child and parents to let everyone on the rest of the team know what is going on with the child. This process is very focused on the family, and the child in particular, and trying to help them through this process so you come out of the process with the best possible result for the children.

DAVID KURODA⁴: I would first of all say, that CFL is one of the three most important changes in how family law has been conducted since "No Fault" di-

on "Negotiating and Drafting Marital Settlement Agreements and Pre-nuptial Agreements", "Ethics in Family Law", and "Recent Developments in Family Law". Ms. Weaver is a founder and President of the Los Angeles Collaborative Law Association. Ms. Weaver serves as Judge Pro Tem, and as mediator for family law courts in the Los Angeles Superior Court.

Ms. Weaver is past president of the County Bar Association of San Luis Obispo County. Ms. Weaver was co-founder of the Women Lawyers' Association of San Luis Obispo County.

4. Mr. Kuroda is the former Division Chief, Family Court Services, Superior Court of Los Angeles and directed the Mediation and Conciliation Service. In addition, he has personally provided mediation services to over 6,000 families. He also serves as an oral examiner for the licensing board for therapists, and has made presentations on mediation and divorce to numerous groups of attorneys and mental health professionals. He is a member of A Better Divorce and the LA Collaborative Family Law Association. He provides services in child custody mediation and counseling.

voiced in 1971. The second important change was mandatory mediation, which was implemented in 1981. The third biggest change, is of course, CFL. It involves not only the legal professionals, the financial profession, and the mental health profession, but it involves their working together in a very different way. Instead of, for example, a child specialist, or a child custody evaluator being placed on the stand and having an attorney try to discredit the evaluations he or she may not agree with, in CFL, the attorneys, the child specialists and the parents work together to arrive at solutions that are best for the children. It is not an adversarial relationship, it's a collaborative one, and you see there the three different areas that we look at and the professionals that represent those areas.

DONNA BECK WEAVER: I'd like to tell you something about the history of CFL, it's fairly new, it's about twelve years old, much newer in Los Angeles County, of course, and we are not on the cutting edge of this development and that's a comfort for us – a bit unusual in California, perhaps. We can draw lessons and learn a great deal from the experience of others around the country who have gone before us in developing the model. It did evolve, organically, from mediation. And in fact it arose in Minnesota, which I understand is the birthplace of mediation. It draws upon that mediation history by keeping its non-adversarial environment and then it adds components that we think really help it handle a greater amount of conflict than can sometimes be handled in mediation. That is: legal representation, mental health counseling for each of the participants, support for the children and the neutral financial specialist. And in that respect it speaks directly to each one of the areas of need of families going through divorce, and it does so in the non-adversarial mediation environment. Kim David Kurodason is going to tell us something about that theory.

KIM DAVID KURODASON: The theory behind CL, is that families know how to restructure themselves, and that a judicial officer, as much as all of our family law judicial officers try to do what is best, they have such a small amount of time and really don't know the parties or their children. The theory here is really that with informed choices, people are better at making those decisions. We are acknowledging in this process, that for many people, divorce is really a predictable life passage, with the divorce rate for 50% nationwide, and it's been that way for many years. This is something that many families will go through, and so as a way to normalize this process and give people the assistance they need in going through this with dignity and the ability to work with integrity. I hear that so often from clients and I'm sure all of you in the room have had that

same experience. Even when I was litigating people would come in and the first thing they'd say is "I really want to be fair, I want to do what's right, I want to take care of my family, I want to take care of my spouse, I don't hate them." Those would often be the first words I'd hear at the first interview and then somewhere along the way in the traditional process, the parties get polarized, and you would hear less and less of that. The goal, to sum it up, is to bring it back to focusing on what is really important and helping these people, with all the tools we have, the legal, the mental health and the financial, to keep them on track.

DONNA BECK WEAVER: So the collaborative law process really comes from the point of view that lawsuits are not necessarily the best format for restructuring a family. Lawsuits add their own levels of stress and distortion that do not provide very much assistance for the specific tasks involved in transitioning a family. Even normal concerns, fears, mistrust, inability to work with one another is made much worse in a litigation setting because of it's nature, which is adversarial of course. So that, in many ways makes a lawsuit particularly ill suited for supporting a family thought this process, particularly after No Fault. When we had fault as an element, you could arguably say that the truth seeking functions of a lawsuit made sense, but with that passage and with that gone, the last rationale disappeared. We want to mention that as part of the theory supporting CL, all of the bodies that pass on ethical practice for attorneys and for mental health professionals have approved this type of approach. Attorneys are charged with, as you know, zealous representation of their clients and there was, in the early days some discussion about whether this type of focus in a collaborative context would meet that attorney standard. In fact, it has been found over and over that collaborative representation is zealous advocacy. The type of advocacy is defined here, it is a specialized settlement focused advocacy and the main requirement is that it be very clear with the client in advance of embarking upon this process what it is that is the focus of that particular attorney-client relationship and the goal of that representation. Kim is going to tell you about the conventional approach to conflict.

KIM DAVID KURODASON: We're looking at a tangled knot in the middle, of issues, problems that go on in the dissolution of and relationship and you've got people on either side that become polarized. As they pull more on the pieces in the middle, and as they pull on the ends of the rope things just get worse and worse and that's what our traditional conflict system is: whoever can pull harder at some point maybe pulls the other one over like in a tug-of-war and they win, or there's a perceived win. That's our traditional approach to conflict, which I think most of us who have worked in this area for any length of time find that rarely ever gives anybody a satisfying result and so again CL is hoping to approach conflict in a different way.

SAFETY AND SUPPORT

DAVID KURODA: A number of years ago, I was hiking up the trail to go to Mt. Whitney and there's a trail that goes through the meadow and there's a meadow and there's a very narrow path and on both sides there's water. I had a forty-five pound backpack and as I walked on that narrow path I could barely keep my balance, trying to stay dry and stay on that path. A few months ago we had a retreat for our better divorce group up in the mountains at a retreat center and we had different exercises and one of the exercises showed the importance of safety and support. We had a simulated path that was a 4X4 on risers and there was grass on both sides but we were told that the task was for us to get from one side to the end, but we could get help from everybody on our team. There was a huge difference for me as I walked along the path because as I began to lose my balance I could reach out and one of my team members was there to hold my hand. I also heard the words of my teammates saying, David Kuroda you're almost there, you can do it, we're going to get there. And sure enough, after that exercise, all of us had crossed to the other side, but more important than that, we know that we knew that we had a team and we had a team and that there was safety in numbers and safety because there were others who were there to help us. In the divorcing process, it's an extremely lonely, scary time for most litigants. Some of you who have been through your own divorces know that. In the collaborative law process, there are coaches there are child specialists, each person has an attorney, there is a degree of safety that is different than from when one goes through a traditional litigated divorce and because of that safety and sense of support, the process is much better and in the long run, better for the families.

DONNA BECK WEAVER: What we're working to do by the setup and structure of the collaborative law process, is to help people move from the tug of war model, into being on both sides of the rope pulling in the same direction, toward a solution that works well for both of them. If you've ever been in a game where both sides are pulling in the same direction, as in a crew boat, it's incredible how much more powerful that structure is, how much further you can go, how much easier it is to accomplish something, if everyone is working to accomplish it. This not only helps in solving the problems that are presented by the restructuring family, but it also gives the people who are pulling on those ropes the opportunity to do something constructive together, maybe for the first time in months, or longer, that helps them to have a positive set of interactions with each other as they restructure the family. This is what we call the collaborative approach to conflict. Not only are the parties pulling in the same direc-

Pepperdine Dispute Resolution Law Journal, Vol. 4, Iss. 3 [2004], Art. 5
tion, but the professionals are both pulling in the same direction so it's an enhanced power going in the same direction.

HOW DOES THIS PROCESS ACTUALLY WORK?

KIM DAVID KURODASON: Typically, what will happen is as clients chose to enroll in the process, they will retain their own collaborative attorney. Once you have a collaborative attorney that has been retained for each party, the attorneys usually meet, either in person or definitely over the phone, before the first "Four Way" meeting, where you sign the actual documents, stipulation and the principles and guidelines. That is what the first four-way meeting is for, with the two attorneys and the parties. Usually about hour and a half meeting, to go over the principles and guidelines and to make sure that everyone is on board with the collaborative process, understands what they are signing up for, and in particular that they understand the disqualification piece, where if they are not able to resolve all the issues and one party feels like they need to drop out of the process then both attorneys must withdraw. We want to make it very clear that at this first meeting that everyone is on board and understands that, and that they also understand the benefits of the process. If there are any emergency issues, they may be dealt with, but we try not to deal with anything substantive at that first meeting. We also talk a lot, at the first meeting, about the benefits of the full team. We make referrals to coaches at that first attorney-client meeting if it has not already been done before. We then send the parties off to meet with their coaches, and the attorneys step into the background for a period of time, and we take our cue from the coaches as to when they feel the parties are ready to start on the legal part of working on their divorce. Typically, parties meet with the coaches two to three times and then they come back and meet with the attorneys and we'll have a series of four-way meetings. Before every four-way meeting with the attorneys (sometimes they can be six or seven-way meetings depending on whether the coaches or financial advisors are there) before each meeting it's important that there is a plan, there is an agenda that the attorneys will work on together, whether it's by email or telephone, before each meeting, and a debriefing after each meeting, to talk about what worked, what didn't work, what went well, what kind of assistance do we need? Do we need to give the coaches a call? Maybe next time we need to get financial person involved. You're pulling together, both attorneys are working together in orchestrating these 4, 5, 6, 7 way meetings, to make sure we have all the people we need at the meetings. That's basically how it goes. Another thing we've found is to at the end of a meeting is to always schedule one or two four way meetings in advance; it's amazing how difficult to try scheduling 4, 5, 6 people to meet at the same time. It's very important to have the next meeting or two scheduled.

DAVID KURODA: This presentation is really to provide an overview of the entire process, later on today you will hear from child specialist, coaches, financial professionals and attorneys about the specifics and details and the practical aspects of CFL.

We were at the first South Bay Bar Association's golf tournament and on that first hole at Palos Verdes Country Club, the green is sloped severely from back to front. And for those of you that know golf, nothing scarier than a downhill putt where the ball breaks. I was elected to putt first, a scary proposition, but we were not playing to see who would have the best score, but we were playing as a team, so that the four of us were going to have four chances to make that putt, and then whatever putt was the best, that would be the one that went on the score card. A scary putt for me was no longer a scary putt because I knew that I had three great golfers following me and I knew that if I missed, they would probably make it. It makes a very big difference when you're part of a team. As a child custody evaluator, sometimes the most difficult sessions are those with opposing attorneys or on the witness stand where at least one side is questioning what you are recommending. In one of my roles as a child specialist, we were trying to work out a parenting plan. We had both parents, and at their request, their coaches were there and I can't begin to tell you the difference for me as a child specialist and as a mediator to have the coaches there with the parents. It became like a mediation with three mediators. We were able to accomplish in two sessions which might have taken many more, and proceeded much more smoothly and ended up with a better result for the children, because the coaches worked with the clients and with me as a team. There are many examples of how this happens with attorneys as well as financial professionals, but this is just one example of how a team works, yet each person has his or her own retainer agreement, the billing is handled individually between the client and the professional, but together as a team we are able to accomplish a lot.

DONNA BECK WEAVER: And this is perhaps the unique thing for the professionals as well. Ordinarily for the attorneys, the other attorney is more like an enemy in terms of trying to get to the end goal in an adversarial system. It is very unusual to look at the other attorney in the case as a friend or in terms of having mutual goals of being able to assist the family to find mutually acceptable resolutions.

DAVID KURODA: The Full team, in CL includes (1.) Lawyers for each party, (2.) Coaches for each party, and our recommendation is that they be gender matched, so for example there is a female coach for the wife and a male coach for the husband. (3.) There is a financial specialist and sometimes there is a child specialist who is someone who represents the children's interests and

needs. We don't always have the full team. There are some groups that only use lawyers for their clients, but we believe that the more resources that can be provided for a family, the better the outcome. Ideally, the full team includes all the aforementioned professionals.

DONNA BECK WEAVER: The history of CL started with just the lawyer model, and that was revolutionary in itself. As the experience has unfolded and the interdisciplinary model developed, the findings are that cases are resolved more satisfactorily in about half the time and with less expense if the full team is used, for some very obvious reasons. This is causing many of the older groups to rework their models, so in Canada and the United States, those groups that began as attorney-centric are doing what we've started doing here in Los Angeles, working to become interdisciplinary. It has its own challenges, but the rewards for the family and, I think, also for the team, are very palpable.

KIM DAVID KURODASON: And I know I can speak from experience that often times its difficult when the public at large is not familiar with this model, to have people engage a coach, and they can see the dollar signs, thinking "This is going to be so expensive" and we talk about all the things that Donna just said about having a particular specialist, whether it's a financial or mental health specialist dealing with each of the components, and really in the long run it is much cheaper as opposed to just having two lawyers that are trying to wear all the different hats. In the cases that I have done, and some of my colleagues in the room who have had cases can attest to this, as you do this more and more, the cases that go smoother, where the parties and attorneys feel the best, are those where you have the full team, where you have the mental health professionals there coaching and giving their support. There really is a difference. The collaborative model, even with just attorneys, is much better than the usual way of doing it, but if you can have the full model, it just makes such a difference.

DONNA BECK WEAVER: It's a little bit like going into an operating room-would you just want the surgeon or would you want the full team including the anesthesiologist as well?

KIM DAVID KURODASON: And why do clients like it? I think one of the things is that when I explain how the model works, you can see them relax in their chair. As soon as I talk about coaches and somebody to help listen to the children and a financial person, immediately clients say "This sounds great." And I think the other aspect that's so appealing to them is that we all, in our society today, have heard horror stories. They exist- whether it's someone in your family, whether it's a divorce you have been involved in, whether it's your next door neighbor, where they have spent all of the assets they would have divided on attorneys, so I find that people and the public as a whole are leery of attorneys and they just expect that it's going to be this "War of the Roses."

When you talk to them about the CL process and staying out of court, they really like that; it appeals to them. The preliminary studies they've been doing have shown that, when people are given the choice of CFL, 50% will choose it. The challenge for all of us as professionals working in this field is that about 3% of the public knows about it, so the main hurdle is educating the public and letting them know that this is an option. That's one of the reasons the client likes it: it just feels better. They like the idea of the support, the team. Many people want to come through this process with dignity and integrity, and this is a way they see "Ok, this is a way we can work something out for both of us." So I think that's very appealing to most people in addition to "This is what's best for the children."

DONNA BECK WEAVER: There are other reasons, but most people are concerned with knowing what their legal rights are, and making sure the arrangements they make protect those rights or make sense given what the range of outcomes might be. They don't want to be taken advantage of in this process and particularly they don't want to be taken advantage of by their spouse. They are aware that things may be more difficult for them financially and in sharing children after the divorce and they want to make sure their interests are protected. The process allows them to have access to information that reduces their anxieties about that, without making them get into a war-like relationship with the other side. They can have the information without being turned into adversaries.

Another thing that the process does is help the parties develop a full range of options that would meet their interests and then look at the ramifications from all sides of those different options. So the outcomes are less of a surprise. The ramifications of the settlement do not unfold after the settlement has been inked. They're looked at before, so that people know what's behind door #3 before they choose it, and that reduces anxiety as well.

Lawyers like this process, firstly because clients like the process and another reason is that, as we've talked about already, is that the lawyers, from my perspective, it's nice to have someone dealing with the emotional piece of it, and I'm not as trained to deal with that, and for me to have the support of a team, financial, emotional, coaches, really makes my job easier and again, I feel like there is a better outcome. I think the parties are happier, my client in particular is happier, and I really feel like as an attorney I am helping this family restructure. Often times in traditional litigation, I would feel like many times I was making things worse, not intentionally, but just by the process. And so I think lawyers get more satisfaction out of this process. The rules of engagement are spelled out. We know what our role is. I tell clients, when I'm trying to describe it to them, and they've never heard about this process, I tell them "You're

hiring a settlement attorney, not litigators. If you need a litigator, you can hire one, but let's try a settlement attorney first." So my role is very well defined. I will never have to litigate this case, because if we can't settle it, someone else, one of my colleagues will take over the case and they will litigate it. And the rules are very well defined as to what my role is as a settlement attorney.

The other thing I think, having done both mediation and CL, you know as an attorney that both parties are getting solid legal advice. In mediation that isn't always the case- we refer them to consulting/advising attorneys, some parties chose to use their advising attorneys to a more or lesser degree. I think there's a concern sometimes when I'm the mediator that perhaps one party doesn't want to spend the money, they are just as up on it, and so it's a little more difficult.

In a collaborative case I know that both parties are fully informed, so whatever decisions are made, they're made with complete disclosure and they know what all the options are. There are still more reasons why lawyers like it. This gives lawyers the chance to participate in an ADR process in a way that just isn't available in any of the other models. Our legal skills are used constructively, perhaps for the first time for attorneys practicing family law. That is cited by so many of the lawyers doing this work, as a profound relief- an extremely rewarding way to use their skills. It generally produces settlements that people can feel proud of, that lawyers can feel proud of; that are as carefully thought through as a merger and acquisition or any other kind of transaction work where the settlement itself receives the appropriate amount of lawyer attention.

DAVID KURODA: May I just add that mental health professionals also like this process. There are many child custody evaluators in Los Angeles that are very successful. They have successful practices, they make lots of money, but the stress on them and their families is tremendous. When they view this process as a collaborative process, it's very different and almost enjoyable. If I get a few phone calls, one from an attorney I don't know and one from Wendy Jones, I will call Wendy Jones first, because I know that that interaction will be pleasant because we are working together. I no longer dread getting letters with attorneys return addresses because the attorneys we work with are working together and they're not out to get me. There are many benefits for mental health professionals too.

DONNA BECK WEAVER: One concern that people always mention when they're thinking about using the collaborative process is "What about discovery? Surely you have to go through the normal discovery process for this to work- aren't people still mad at each other so that it would never work?" In fact full discovery is not required as a component of this process. It's built into the principles and guidelines and we go over it very carefully with clients. Unless they are willing to participate in providing all the financial and other discovery that is

needed, they are not candidates for this process. The process is based on everyone having all of the information regarding the family's circumstances. This is not anything that hasn't been required by California law for over a decade, but in fact, in spite of the full disclosure statutes, we do notice that an enormous chunk of our cases that are litigated involves wresting by force, almost, the amount of information we need to be able to have done our due diligence, and to properly advise our clients on their options. We are always concerned that there's something we didn't find, and it seems to be more like an Easter egg hunt or a hide the ball kind of game. A lot of expense is involved in this, there are a lot of strategic considerations that are employed in the discovery phase in a litigated case.

All of that is out of the picture in a Collaborative case. That results in a reduction in anxiety for the people who are not seeing the other person as someone who is trying to hide things from them. It is a reduction in concern by the professionals who are able to get right to work in the analysis and reporting of the options for the family in their circumstances because they have the data immediately.

KIM DAVID KURODASON: The straight talk about money. As most of you know, in divorce money often presents itself, 99.9% of the time, as a major issue. There are often, obviously, emotional issues and many things tied up in that, but the fear, which is the reality for most people going through divorce unless you have a very high income couple, that everybody will have to do with a little less, and the fear of how much less and what will that mean to "me and to my children," from the get go can drive a wedge between the parties before anything even starts. So the financial specialist is a key in this process to be able to bring a financial specialist on board as the neutral fact finder, to help people look at what the financial picture is. What is the value of this? How much money do we have to work with? What is the pot comprised of? Once you've done the neutral fact-finding, then to sit down and work through as attorneys and with the financial specialist there, and the parties, to talk about the ways they can divide this up so each party gets as much as they want.

It makes such a difference as opposed to what we do in a more traditional setting in which each party hires their own forensic accountant, for example, and then you have the battle of the experts. They just go at it and maybe at some point you have a judicial officer that says "This is how it is." This way parties can work together with the assistance of the financial specialist from the very beginning and I have found that invaluable. Many times the financial specialist, I will often send the party sometimes to meet with the specialist alone just to do the fact finding. So they will have meetings and then maybe bring the team back together. Or maybe the financial specialist has done the piece we have

asked them to do and maybe they aren't needed in the process again and the parties just come back with the information and sit down with the attorneys. The financial specialist is a key member of the team.

DONNA BECK WEAVER: It requires the financial specialist to have some people skills and training in collaborative work and the financial specialists who work in this field do because both parties need to trust them. And using one person in that role, instead of a financial specialist or forensic for each person really has an added benefit, that the fear the other person's expert will be distorting the information that you've been forced to provide and using it against you is gone. It is more helpful to them and less fearful.

DAVID KURODA: Ron J. Anfuso has been involved in more collaborative family law cases than any financial specialist that I know. Two weeks ago we were at a settlement conference in which there were seven of us present. Father, Mother, Attorneys for both parents, coaches for both parents and Ron J. Anfuso (the financial advisor). What we were trying to do is resolve the divorce and we had gotten pretty far along in the process, and one of the big issues was the date of separation because the father had received a huge bonus after the date of separation, so he said, and the mother thought the date of separation was much later, so she felt she was entitled to half of that. The issue that triggered feelings came up when we were talking about the retirement, one of the retirement funds. The father said, "you know what, since I'm the only one working, what do you think about not necessarily dividing the retirement funds in half, what do you think about giving me a greater share, because, after all, you're not working." The mother's face got red and she said "Excuse me, what do you think it's worth for a mother who takes care of the children? Don't you think that's worth something?" And he shot back, and it happened so fast, I missed what I should have been doing and that was dealing with that particular response, "Look, I've been working all this time, I don't know what you're talking about. I think that it's wrong for you to ask me to give more than what I think I'm entitled to."

We realized that this was a very key point in this mediation, this settlement conference so we took a break. We went outside, the father's attorney and I went out to talk to him. He was shaking at this point, he had tears in his eyes, and I turned to him and I said "Bill, I know that for all those months when your wife was traveling up to San Francisco and commuting, you were there taking care of those children every single day. You were feeding them, you were taking them to school, you put them to bed, you told them stories, you did everything a parent could do for a child. I know that. I also know that during this time when you were doing this, she was having the affair with her boss. I know that. Are you ready to go back in?"

He said no.

The attorney was wonderful, she was there, she was supportive and she let me talk to him. We then said, "When you go back, we need to acknowledge what a mother is worth to her children."

I had asked him, "Do you want to say that or do you want me to say that?" He said, "You can say that."

So we go back in and I said, "You know I realize that we didn't respond to you in a way that could've been very helpful. Nobody can describe what a mother is worth. You can't place a value on that and what you are doing with your children and what you have been doing cannot be measured in dollars and cents. You have been a wonderful mother to these children."

The mother then was visibly relieved because she then had been recognized for what she was doing as a mother. She was valued as a person and as a mother. We were then able to move on to a discussion of how things could be worked out, but because of the way the coaches can help parents deal with those very strong and understandable feelings that case did not fall apart. Not so much diffusing or keeping emotions out of the sessions, as we do understanding dealing and then helping facilitate some resolution.

DONNA BECK WEAVER: When we defined CA divorce law under our No Fault statutes, we didn't take the emotions out of it. We tried to, but they are still there and unless they are dealt with in this way, it seems like they go underground and begin driving litigation in all different directions, in custody fights, property fights, but in this way we are able to surface those things and deal with them directly, with people who know how to do that and can do it with compassion.

DAVID KURODA: And coaches have a different role than therapists. Therapists can be very helpful to individuals, but sometimes during the process of divorce, therapists sometimes give clients wrong advice. The role of the coach is to help people move through the process of divorce in a very respectful way, therapists often are outside of the legal system and don't understand the problems sometimes when they give advice. When coaching, we try to teach people how to conduct themselves, for example, in meetings. There was a session when the father wanted joint physical custody and the mother wanted more time and for him to have less time. As the session progressed, and the other coach and I were both there, we were trying to help them work out a parenting plan, the father began to be critical of the mother, saying things like "You forget appointments, you sleep late, you're depressed, why don't you let me take care of the children more?"

He was thinking "If I criticize her, if I discredit her, if I show that I'm a better parent, maybe she'll agree to let me have the children more." She became

defensive, she said "I'm not that bad, I'm not late, I don't sleep that late..." and the session was not going very well, so we took a break. I said to the father, "What is it you really want for your children?" He said "I just want to be a father to them. I just want to be with them as much as I can. I don't want to take them away from her, I just want to be a father to them." I asked: "Is Mary a good mother?" He said "Yes." I said "What if you tell her that? Let's just try this: When we go back in there I'm going to say 'Joe has something to tell you....'" So now he knows what he should say, and he believed it. So we go back into the session and it's still kind of tense, and I said "Let's start this with something Joe told me he wanted to tell you." He looked right at her and said: "You know, you're a good mother. We have wonderful children today because of what you have given them, what you've taught them, you've loved them, you are a good mother."

It was only moments after that when she said "Ok, I'll agree to the joint custody." After she was affirmed as a mother, she was able to give more time. My role was not as a therapist, my role as a therapist would have been to say, "Gee, that must have been very hard for you, you obviously have very strong feelings about this. Where does this come from, what was your childhood like?" I could have done all that and maybe as a therapist I would have, but as a coach I was helping him arrive at a solution that was the best for his children and for his family, and that was eventually what happened.

DONNA BECK WEAVER: So, as you've seen, the coaches assist not only with helping the parties manage their interactions with each other in the process, they help the parents construct co-parenting plans, they help them with problems that arise in the co-parenting process they are working out. The coaches also help with communication skills that allow us to succeed in the collaborative process itself. What about help for kids during divorce?

DAVID KURODA: Often during divorce the children are the ones that are hurt the most. Judy Wallerstein used to say that parents are so caught up in what they're losing and their own feelings that there is a sense of diminished capacity to care for their children. It is the role of the child specialist and the coaches to remind the parents that their children really need something.

There was a recent example of parents arguing because the child was not picked up for a T-Ball game. The father had been out of the area and out of the country, and it was his day to take care of the child and he sends the mother an email saying "I won't be able to take Johnny to the game, could you do that?" The mother was away from her computer so she never got that message. Johnny didn't go to the game. His first T-Ball game: a huge event for those who understand baseball. When the father calls the mother, he says to the child, what happened, you didn't go to the game? He said, "No, nobody took me." The mom picks up the phone and says "Where were you? You were supposed to take him to that game!" And I heard that they both were arguing, and I asked "Did

Johnny hear this?" The father replied "Yes, he did." I said "You know you shouldn't do that in front of Johnny. All he knows is that Mom and Dad are angry because of him and his T-Ball game."

The role of the child specialist and the coach is to help parents understand what the children are experiencing and to help them behave in different ways and craft parenting plans that are good for children.

DONNA BECK WEAVER: Is that different from being a child custody evaluator?

DAVID KURODA: It is. The information is the same; the way it's conveyed is very different. In a child custody evaluation, in a deposition, somebody might, for example, if the recommendations support your client, you like that evaluation, you like that evaluator, even. But if the recommendation seems to go against your client, who is paying you, who is expecting you to win this case for him or her, you have to discredit that evaluation and sometimes that evaluator. Whatever it takes to win your case. So it's very different because the child specialist is not hear for one side or the other, but is there to help the parents work out a plan that is acceptable for everybody, but the child most of all.

DONNA BECK WEAVER: What we've found so far is that there's about a 90% success rate for collaborative cases to reach settlement. That people are happier, they feel they have a much better agreement. They say that this was so unlike any other divorce I've seen or heard about. I got a letter from one of the first collaborative cases that I've done where this particular family had some very serious religious divide. They had belonged to a church that was very fundamentalist, and there had been a rift. The mother had broken away, the children were older, they were teenagers and were fairly aligned. Some with one parent, some with another. It all came together and the parties were great at working it out. We used a child specialist who they worked with, and crafted something that no one would've imagined.

Dad stayed in the house, he became the primary parent. Mother went back to work, got an apartment down the street, they worked out enough money so that she would be able to survive with her job, he had enough money to stay in the house. The children went back and forth. The woman called me and said: "Thank you for not judging me, no one in the process judged me. I feel like this is the best result for my family, my husband and I..." Prior to this they could hardly talk, there was so much tension. It was a wonderful thing to see that.

Another thing we've found is that it costs about a third less than a case would usually cost if it went to litigation. We try not to tell people that this is an inexpensive process because it's all relative. Usually the cases finish faster, the timeline is usually 3 months, 6 months, 8 months, maybe a year. Again, it usu-

ally moves a lot quicker, and happy clients are paying clients. I think a lot of us who have done collaborative work find that there's no problem getting fees paid, that it's taken care of and you're not sitting there with huge receivables for months or years afterwards.

DAVID KURODA: The first group that formed in Los Angeles for Collaborative Law was in the Valley, headed by Ron Supancic, called the Coalition for Collaborative Divorce ("CCD") and it focuses primarily on members from the valley up through Ventura. The second group that formed was called A Better Divorce, that's a group in the South Bay-Torrance area. That's a group that has now been around for over two years. The third group and a very significant change in how Collaborative Family Law has spread through Los Angeles County, is called the Los Angeles Collaborative Family Law Association ("LACFLA"), spearheaded by Donna Beck Weaver. It's remarkable that someone from Trope & Trope says that, "I think there's a better way of doing this, we want to provide an additional choice for litigants." People take notice. People have come to our meetings that are very interested in what this new movement is. There are websites: LACFLA.com, ours is abetterdivorce.com, nocourtdivorce.com is CCD's and there are many other resources on the web.

DONNA BECK WEAVER: Collaborative law groups are springing up all over California, I think there were 6 groups in 1999, and in 2003 there were 26. There is a group forming Orange County, there are two in San Diego. There are interested lawyers and interdisciplinary collections of professionals creating groups in the state and all over the country. You might be interested to know that one of the most developed states in Collaborative Law terms is Texas. That's a little unusual because Texas has kind of a rough and ready legal culture and as a matter of fact still offers jury trials for divorce. They have the first Collaborative Statute in the country. Even some of the biggest litigators in Texas are part of the Collaborative groups there.

AUDIENCE QUESTIONS:

"What criteria do you have for screening out cases that are not appropriate for a collaborative approach?"

DAVID KURODA: One case that we would not include would be those that involve domestic violence. If there are serious concerns about the possibility of domestic violence, the constraint to not go to court would unfairly limit the remedies and protections that one person would have.

KIM DAVID KURODASON: Different collaborative professionals will view it differently. There are some that will say that if there is any domestic violence, I don't think you can do it collaboratively, but there are some that will say that it depends on the circumstances and the motivation of the parties. Again, certainly in cases such as that, you would want to have the full team - the child specialist

and the coaches in place. A lot of times that if parties were willing to sign up to that process and to start it and the team members are there to support it, to honor that process, if the support is in place, for some cases you could do that. I know that some collaborative attorneys have said that if there are problems with drug or alcohol abuse, that sometimes those are not appropriate and I think that there is still a continuum there as well.

END OF PART ONE

PART TWO

ALICE OKSMAN⁵: Our panel is called “The Child’s Voice: the Child’s Specialist.” We’re going to take just a moment to introduce ourselves. Ok, here we go, I’ll move forward. I’m Alice Oksman, a mental health person, and I began my work in divorce with the conciliation court in 1981. David Kuroda was there as a colleague at the time. Subsequently, each of us has left the court, I in 1991, and my practice is in West Los Angeles doing all divorce work, custody, mediation, evaluation, special master, anything else you can think of that deals with a divorcing family, including some treatment, as well. My colleague here on the panel today is Tony Aloia, and he will tell you a little bit about himself.

TONY ALOIA⁶: I have my clinical in forensic psychologist. I’ve been in practice, as of last August, for 30 years. I started evaluating custody disputes in 1975, and I have passed the 800 case mark in terms of completed Evidence Code 730 evaluations. I have devoted my career to advocating for children. Certainly, as a parent and a grandparent and as a therapist, a college professor, a custody evaluator, a mediator, all those roles of trying to assist children in working through some type of crisis or some type of trauma. Certainly, within my forensic specialty of divorce-related conflicts, moving into the area of collaborative divorce, where I function as both a coach and a child specialist in our group in Torrance, and I’ll say more about that in a few minutes after Alice Oksman makes some comments, this was a very easy transition, and I think it is a role that all of my mental health colleagues that are listening to us now. I think that can be extremely rewarding and extremely exciting to become involved, particularly if you become involved with a team.

5. Dr. Oksman practices in Los Angeles, California.
6. Dr. Aloia practices in Torrance, California.

ALICE OKSMAN: In dealing with collaborative divorce, as the panel mentioned this morning, there are two models: the model where there are the two attorneys and the two clients and instead of litigating they collaborate together. The other model is the “interdisciplinary team model,” and that’s what we’re going to focus on today. The team is, of course, the clients that are there, and the attorneys, the coaches, the child specialist, the financial counselors.

The child specialist and financial counselors are called neutrals, and it’s obviously so. They are not specifically aligned with one client over the other. And they are called in as needed, if there is a collaborative case where a child is not involved, there wouldn’t be a child specialist. But, in the team model, if there were children, there would be a child specialist unless the coaches were able to handle that pretty well with the clients. The training and expertise that are needed in this particular area for the child specialist is a knowledge of parenting plans, an understanding of conflict, child development information, knowledge of family law and the court system. It’s good to have good training in mediation skills and assessment skills. And it’s interesting, as David Kuroda was talking this morning and there was the talk of the legal, emotional and financial divorce, those of us who were at the conciliation court, or Jean working a long time ago in this field, we always can remember Humik Isaac talking about the legal, financial and emotional divorce. And in those days, the thought of that was as separate circles.

Well, we’ve come today in the collaborative model to put this all together, and to deal with it collaboratively and together to reach a resolution rather than in this piecemeal method. And it seems like it was just natural to come to that after hearing that all that time.

Collaborative work is interdisciplinary. Many of the couples haven’t physically separated when they begin this process. It fosters and generates the growth of a new family system. It encourages parents to own the process, and it hopefully is short term, or shorter term than the litigation process.

If a child specialist is part of the team, if children are involved, they are as I mentioned, neutrals. The following things that I’d like to bring to your attention come from a training I attended with Nancy Cameron who is an attorney. As a child specialist, you cannot be subpoenaed to court if the process breaks down. That’s a very important part for every spoke in this collaborative team. The team is built as the process gathers steam, depending on the needs of the clients. Each team person has a separate agreement that is signed by the clients for the child specialist because the child specialist has two clients: both the mom and the dad. In the stipulation, certain things are pointed out. And that is that unlike other mental health professionals where there is confidentiality, the parties waive the confidentiality and it allows the child specialist to talk freely amongst the other professionals and with the parents. So, there is no confidentiality. It’s a de-escalation of conflict, as opposed to a custody evaluation, which often gener-

ates a lot of anxiety and tension and the pointing to deficiencies rather than strengths.

The Team model also provides for an alliance and an accountability for each partner as well as the working team. In other words, parents can't just throw allegations like spaghetti against the wall and see what sticks and what doesn't. People have to be accountable for what they have to say. Also in the stipulation there would have to be a reference to the fact that during the process, unless this process breaks down, that the parties can't seek a custody evaluation.

The process is good in that it insulates children from the involvement in the disputes. It makes every effort to reach amicable solutions that promote the children's best interests. It promotes a caring, loving and involved relationship between the children and both parents. That's the goal: to have the parental relationship fully continue with the children. And, you retain the experts and consultants jointly, unless all parties and their attorneys agree otherwise. As happens in litigation, if you get a forensic accountant or a financial person, these people are engaged individually and you get into the war of the wars where here the neutrals are engaged conjointly. According to Peter Roussos, who is a collaborative mental health person in Del Mar, California, the collaborative divorce child specialist will work with the children and the parents to provide the children with an opportunity to voice their concerns regarding the divorce. Because so much is usually focused on the parents, the children get lost in the process. As opposed to an evaluation where an appraisal of the children is presented at the very end, this is presented to the parents as part of the process. The parents are then provided with information in guidance to help their children through the process, and information is given to the parties and the collaborative team that will help the parties in developing an effective co-parenting plan for the children. Now this doesn't necessarily mean a 50-50 plan. Co parenting is co-parenting. Every divorced parent co-parents, there is just a different time factor involved, or responsibility factor involved.

There are phases in the multi-disciplinary model. The first phase, and you saw that on the screen this morning, is an orientation phase both in terms for the clients with their own attorneys, the clients with their own coaches, the four way meetings, where are they headed and orient them to the process. The child specialist usually appears in phase two: in the information gathering and foundation building. The child specialist executes a collaborative statement of understanding. The child specialist meets with the children. The child specialist meets with the parents and coaches. And in phase three the child specialist is involved in negotiating to agreement. The input from the child specialist is helpful in presenting scenarios to the team as to what might be possible given these particular children and how they're doing. Then there's phase four, a transition to a

post divorce phase. Some child specialist I understand although I've not had experience myself, do some follow up at six months or a year, and also I think a helpful part of the child specialist is providing some possible community connections for perhaps some ongoing needs of the family. So the role of the child specialist is to help keep the needs of the children in focus, and to be a neutral profession advocating for the needs of the children. It's important for the emotional health of a post divorce family that the children can feel that they were not lost in the separation and the divorce process. It's important for the children to know that someone on the team is there for them. Often, the children will say to each parent what that child believes that parent wants to hear, so the child goes back and forth to each parent saying different things, and each parents says, "Johnny told me this and the other parent says Johnny told me that." They're both right, because a lot of times Johnny did tell each of them that, so it only adds to a lot of contentiousness in the litigated dispute because each parents is suspicious of the other in that arena.

In this arena, that element can be sort of drawn out by the child specialist and given some overview to the parents. And without that, the child is often felt very torn apart and very in the middle. The child specialist is a member of the team who can provide a safe place for the children to share their story and discuss their concern. And the child specialist can replay relevant information to the team. So it's important for the child specialist to have understanding of child development and family dynamics, to have experience in working with children both with therapeutic evaluation of psychological wellbeing and treatment, to feel comfortable working with adults and parents. It's advantageous for the child specialist to meet with the children and the family as soon as possible once the collaborative process has started. I mean, I think that's pretty self explanatory. The children are probably in pain and the child specialist can be very helpful. The child specialist might meet with all of the children together individually, whatever constellation seems necessary.

When the process is completed, it's recommended that the child specialist have an opportunity to meet with the children and parents together, or the children and each parent separately. The session would focus on the vision of the post divorce family, with the children's specific hopes and fears about their immediate circumstances and the future. I think this is such a critical part of the child development specialist because one of the things that I've put in my recommendation section is that the parents not discuss these recommendations with the children until there has either been an agreement by the parents as to what the custody arrangement will be or the court makes some orders. And I never get to see how this is operationalized. How the children are informed of what this next relationship and schedule is going to be. And I think here in the collaborative process and the child specialist role, that the child specialist at this very last part can work with the family, to tell the children to explain things to really have a much better send off. The child specialist role is to inform the

team and the parents of any concerns about the children and the needs that will have to be addressed. And to provide information to assist the coaches in developing the co-parenting plan with the parents.

So here's a team that is conveying information even when the parties aren't meeting. I don't know if you got that from seeing things this morning, but there are consultations going on among the team members. So in summary, I would just like to say to you that the child specialist provides the children with an opportunity to voice their concerns regarding the separation and divorce. And, to provide parents with information and guidance to help their children through the process; to give information to the coaching team that will help in developing an effective co-parenting plan, and it's an extension of all the skills we have as mental health people, especially the people who have been working in the field of divorce.

The knowledge of child development the child's emotional needs, to guide parents, and to keep the children as part of the focus. At one of the trainings that I went to, I was asked to role play a coach, I found it so very difficult to switch to being a coach. I wasn't asked to role play the child specialist, but even as a mental health person, this is a little aside, but as a coach if you're coming from the evaluative perspective or the mediation perspective you're so unused to being with one parents and feeding back what they've said to you and calming them down, and things like that, as an evaluator, as a mediator, you're looking at the global picture. So it does take some rethinking of the roles. But, I'm very much in favor of this model, and look forward to working as part of a team in the future.

Tony, who has had a lot of experience working both as a coach and as a child specialist, is going to talk to you about the nuts and bolts about what it's like to be out there, and some of the pitfalls, and some of the very special nature of the process.

TONY ALOIA: Let me make a couple of preliminary comments, piggybacking on what Alice said and also the panel this morning. My experience in the last thirty years of practice, has brought home to me and I'm sure everyone here that works in this field, that the whole issue of divorce is far too great for any one practitioner of any discipline. I know that when my primary role now in the family law area is as an impartial court appointed evaluator. Often I feel, even with the parents, that I'm evaluating as well as the children, and unfortunately some of their legal advocates, that I'm the only one trying to advocate for the children and looking at best interests. Because there are so many political issues, so many financial issues, child support being tied to the percentage of time that a child is under the care and control of one parent over the other. Issues that human beings cannot detach from. So any one practitioner that tries to deal with

this, whether they be an attorney or a mental health person in any role, simply can't do the job. Things are too complex.

That's what attracted me to this area of the collaborative divorce model. Particularly that as contrasted to the collaborative law model, which is primary attorney-centric or attorney-driven where you don't have in-place a team. I feel that again conceptually, what are we there for as a team of professionals whether we function as a coach, a child specialist, a financial specialist, or an attorney is that number one our job is to educate people. To educate them about what are the real facts, attorneys in regards to the law and what it really says. And what are the consequence of decisions, financial in terms of the mental health of the children and themselves. We are there as a group to model conflict resolution. We have a unique opportunity as collaborative professions to model for them, especially when you have a female coach and a male coach, modeling a male and a female collaborating, being able to disagree, being able to have contrasting views, and teaching their brothers and sisters, respectively, how to do that, because they were never able to do that as spouses. And we all know that a divorce, when you have children, does not mean the end of the relationship.

It means a change in the family system where you are still going to involved with that person probably for the rest of your life, unless you have the horrific experience of outliving your children. So we have this opportunity, whatever role we play, to model conflict resolution, problem solution and collaborations. Now, as a child specialist, especially again, if I may talk in terms of functioning as a child specialist in the collaborative law model, which I'm using that designation to talk about a situation where we have collaborative attorneys, but they are not parts of necessarily of a collaborative teams, like I function in our group in the South Bay, in the better divorce group. And, when we are part of a team, either way, I believe that you need to involve a child specialist, obviously when there are children, at the earliest possible time. This tells parents, communicates to them, that number one, whether it's attorneys or coaches, that we need more than one person to handle this problem, that there are resources, and that they don't need to assume too much responsibility early on in the process because we are meeting people in a crisis.

People in a crisis don't make good decisions, we all know that. It is our job as collaborative professionals, to shepherd them through this. And as one person said wisely in this process, you can only go as fast as the slowest person. So we need to make that assessment, especially if we're talking about the critical attachment that parents have with the children. It's the most precious thing they have, for most parents, although some have more attachment to their money or other kinds of things. But most parents that we meet have a very exquisite attachment to their children. It's possessive. They don't want to let go of that. If they feel like they're the person who did not want this divorce, they don't want to have another horrible loss. They can't afford that.

So our job no matter what our roles are, is to teach them about resolving the conflict, giving them support, and make them available to the attorneys who can then do what they need to do in terms of the legal framework and the laws that pertain to their divorce case. We also want to model for them a sense of respect. Because, clearly, every person that is going through a divorce has felt disrespected and has probably disrespected their former or almost former spouse.

So, if I am playing the role of a child specialist, I want to be involved so that I can introduce myself as the child's advocate, and let the parents know that there is someone who is going to stay focused just on that issue. Because we know that ever the best-intentioned parents are going to be more self centered at least at some point during this process because they are in crisis. Every person that is in crisis is going to look inward not outward. Our job is to help them understand that it's okay to be self centered because you've got to look and heal yourself, and coaches are there for you as emotional support as well as your legal advocates to educate you as to the law and hopefully to desensitize you that the other attorney is not your enemy and can call you by your first name, look you in the eye and treat you with respect, rather than serve you with an interrogatory.

And remember, everybody that I see you in divorces has heard the horror stories, either from the bartender, or the guy next door, or someone playing in their tennis group, or wherever, they hear how bad it is and how nothing works and how you're going to get screwed. Our job is re-educate these people. So if I introduce myself as a child specialist, this is the model that I would like to see, and this is how I would like to practice. I want to always have what I call a pre-conference before I meet anybody with the attorneys after they have met with the clients. And we always want to talk about what I call hot buttons. Where are the vulnerabilities with these parties? Where are the issues that are most raw to them that would pertain to an issue of a parenting plan? And, as I'm speaking, I'm trying to be self present to myself and not use terms like "custody," which is a political, power-based legal term. We want to talk about having the care of your children, we're going to talk about parenting plan. We're going to change the way we talk as collaborative professionals, which is one of the biggest leaps I have because I'm immersed in the litigative process and talk the talk that the litigative attorneys bring me with their 600 pages of documents I read in every case. So we want again to model, I can't say this too often, we model for parents how they can survive this and make it work down the line.

This is, in my opinion, as somebody who's conducted 40,000 hours of psychotherapy in his career, much more effective than psychotherapy in this type of a situation. So, I want to meet with the attorneys, I want to understand what those hot buttons are, or I meet with coaches. Not necessarily, especially if

there's a team, after they have met with their respective clients, and to understand what is really bothering them. Then I would propose a model where I meet with the coaches and the parties, again to introduce myself in the same way, and again in the collaborative team approach rather than the collaborative law approach, and with their coaches there I want to begin to make an assessment, not much different in information than I need to have as an evaluator, because I need to have them draw me a picture. I want to know what historically have been parenting roles. That I can begin to understand what the attachment is between the parent and the children without having asking direct questions or putting people on the defensive. I want to know what their routines are. I want to know who is responsible for what I call the planning, organization and administration of a child's life. I want to understand what the parents' current availability is, in terms of their work patterns, in terms of when they are available during the week, on weekends. I want to start getting an idea of what they see what their life space is like. And have them describe their children, their strengths and weaknesses. I also want to learn from them if their children have special needs.

The classic special needs of either ongoing emotional difficulties that have required professional intervention, learning disabilities, whether they are taking medication for either a psychiatric-related disorder or a health related disorder like, for example, epilepsy or diabetes. I want to get a sense of how the parents can talk about their children, in front of the other parent. I try to do things in the beginning with both parents there because we are teaching them collaboration. Because eventually we are all going to disappear from the lives of these families, and we want them to be able to fly from the nest. We want to teach them and give them the skills that they understand their children's needs, can focus on their needs and teach their children that they are bigger than their children's problems. That's my job as a child specialist. Then I want to meet with the children, and I want both parents to bring them in. This is a collaborative effort. I like to instruct parents how to orient the children for this meeting, and I like to have them explaining to children that they are going through a divorce, but that mommy and daddy have decided to do this so that they have a future as parents, and that they are not going to involve the children in a situation where they feel more and more tension. I have the kids come in, and the first thing I always ask is, "What do you know about being here?"

You get the full range from the child that is pseudo-intellectualized to a child that tells you that he's virtually been kidnapped by his parents, put in a bag and put in this strange man's office. But somewhere in between, when we start to talk about who I am, what I want to do is to understand what their experience is like. Now, as a child specialist, and in some of our collaborative cases, you're going to have some parties that are still living in the same home; they have not physically separated. They have either been advised by attorneys not to do that, or they don't have the financial resources, or for some reason, they are still liv-

ing in the same home and have made some formal or informal way of dividing up the caretaking responsibilities of the children. Or, you have the other situation where the parties are separated. And, it obviously makes a difference how long that has occurred. If the children have settled in, whether they have their own bedrooms, whether it's a temporary residence, or they're living with grandma for three months, or whatever it is, you have to play the ball where it lies.

After orienting them, I also explicitly discuss with everyone present that I want to speak with each child, if there's more than one, individually. Sometimes I will see the kids together depending on the circumstances, their age and sophistication. Certainly if we have children who are too young to interview, and I've had a number of cases, both as an evaluator and as a specialist, where we've got infants. So we can't really do the kind of interviewing we do with older children. But if they are of sufficient age and sophistication, then I want to have at least one individual interview with them, and I want to find out from them their routines. Talk about school, talk about their friends, talk about which parents from their perspective, what are the parenting roles. Who are the parents or what is the parents that does organize and plan their life? How does parents compliment each other, if at all? And also to understand their awareness and their ability to express their distress.

With regard to the matter. I am always taken aback when I hear a parent say, my kid is fine, the divorce is not affecting them. Either that parent is on another planet or in horrible denial, or so self centered and hurting that they can't focus on the children. I want to know that as a child specialist because I can try and help them, and I can feed this back to the coaches because the collaborative team is talking to one another before we have every meeting, so we have a game plan. We're not going into the super bowl without knowing the other team's tendencies and knowing what we're going to do. We script our plays because it gives the parties the experience that people can share information in a respectful way without breaking ones privacy. They can provide structure and anticipate problems rather than always having to dig out of a hole.

I understand all of this, then after meeting with the parents and the kids, understanding what the kids fears are, what they might have heard. Because we know sadly that parents say things sometimes because they're so angry, sometimes because they're mean spirited, human beings can be that, we know. But, most of the time they do it because they're hurting and they're frightened and they say things that they shouldn't say to kids and it scares kids. Like the story of the parent that is terrified that the almost former spouse is going to remarry, and starts to talk about how bad it would be to have a stepfather or a stepmother,

and the child responds by trying to extract from both parents a promise that they will never remarry, that kind of thing. We need to know these kinds of things.

Then I want to sit down, and feed this back to the attorneys, let them know where we are, and I want to try and assess, with the coaches, whether the parents are at this time, emotionally ready to talk about a parenting plan. Or, if we have one person who is lagging behind, he or she is not ready to sit down and begin to really discuss the nuts and bolts of a parenting plan. That they are either hurting too much, whether they are too possessive of their children, whether they have such disrespect and contempt with the other party, sometimes for good reason. But we have to be thoughtful and prudent in our timing when we begin to really talk about nuts and bolts of a parenting plan because not only we're talking about letting go of our children trusting someone that we don't trust enough to stay married to them, and also understanding that there may be a connection between how much time they spend in our care and what kind of a check I write at the end of the month or twice a month. So all of these things are very threatening.

Ok, if I sit down with the parents and the coaches and I feedback what the childrens' needs are, I feed back to them what I've learned about what seems to be important, and I ask the parents for a reality test. Does this make sense to you? Am I telling you anything that you're not aware of? Because many times parents, again, are so caught up with the process that they're unaware, and the light goes on for them. And if I hear one parents talking a holier than thou position and/or being denigrating, my response is always, you need that other parent to be as good a parent as you are, so that your children will survive this. Often, when I tell parents this, they start to listen.

I know insecure parents who have had maybe more childcare experience, are insecure that if they teach the other parent to be a better parent, then that child is not going to love them as much because they lose their leverage. But we need them to know that children need and deserve two healthy parents. Two experienced parents. Especially when we have very young children. I am always amazed at parents who don't want to share information about toilet training, for example. Of what works in my house, by I'm not going to tell you, you figure it out on your own. It's always a biggie for me. I don't know how you do that. That could cause all kinds of problems, but they do it.

At that point in time, if I've gone through this process as a child specialist, sometimes if the parties are ready, the coaches can then take the ball and I become a consultant. Sometimes they need me as a child specialist to stay involved in presenting parameters, presenting alternatives, trying to help the coaches as well as the parties, or the attorneys to talk about, based on the issues of attachment, availability, experience, roles, what kinds of things would make sense for kids.

ALICE OKSMAN: Tony, may I just ask you, when you present this information to the parents, are the coaches present?

TONY ALOIA: Yes, I always want to have the coaches there. Again, we are modeling collaboration. The coaches are the ones that have the adult relationship with them, and can then reinforce with each of their respective clients what the child specialist is talking about. For example, I think the example was given, I think David Kuroda is the one that raised it, someone that is adamant that they want an equally shared schedule of custody within a parenting plan. They have to have that. It's often the father that is making more money than the mother, and knows, because they've been given good, sound, competent legal advice, that child support is tied to percentage of time within ones care, in California. And there's a thing called the DissoMaster that sits on the judge's bench, and is referred to from time to time. And we have the other party who says, I've done everything and you've done nothing and you don't know anything about these kids, why should you do this. So seemingly we have a gap. And that's our job, to educate them to help them to work through and to come to something that makes sense for their children.

My experience has been that when parents begin to see that they may be able to talk about this with the other party, that there is support, and that there are sources of external control to contain the conflict without letting it go out of control because, clearly, if they'd been able to maintain their conflict resolve problems, they may not be getting a divorce in the first place. And we know that human beings unfortunately, almost by nature, are better at creating conflict than resolving it. We all have to learn about conflict resolution. We all seem to be experts from the womb of creating conflict. So, we get to that place. Again, sometimes the child specialist will then become a consultant. At other times they are the point person, to continue to be that neutral person to formulate a parenting plan with the parties.

Now, there are other circumstances that come up. For example, another role that I'm involved in right now, is that two of my legal colleagues in our group went through and successfully completed a settlement and finished a collaborative case. Approximately, or less than a month after the papers were signed and everything was done, the mother in this case, I believe had three children, announced that she's remarrying and that she's moving about 120 miles away. So I was contacted by one of the collaborative attorneys, in this case it was dad's attorney who said, are you available to be a child specialist? We have a new circumstance. The parties want to keep this within the collaborative effort. They are not retaining, at least at this time, litigative attorneys, but the issue on the table is a move away. Now the child specialist who has experience with the case moves away, or does not have a familiarity with family law in

terms of case law and the important rubrics of this particular special circumstance would not be the one that would handle this, but in my case I have had considerable experience, so I'm going to be meeting with them next week to see if we can revise the existing parenting plan, which has existed for I think 5 weeks, and now no longer is going to be applicable because of the impending marriage, remarriage and move. So there are circumstances that can come up after the whole process has entailed a successful conclusion.

Also I have been involved in circumstances, especially with young children, because obviously very young children are going to need revisions in parenting plans as they grow older because their needs and circumstances are going to change. I can see here that down the line there is going to be an ongoing need and role for child specialists in this area. Outside the collaborative experience, because I do mediate disputes and have for years and I'm a trained mediator, that over the years I have had a number of people referred to me by attorneys and other mental health people to either mediate or really be a child specialist in helping people in post divorce situations who went through a litigative process, or maybe were lucky and settled it without litigation, but not within the formal collaborative structure, where down the line they need to revisit parenting plans.

I find this often with teenagers. For example, certainly when a teenager reaches 16 or gets a boyfriend or girlfriend, they really don't like every other weekend. That really doesn't work for a lot of kids. Often when I see parents and one parents will say I'm not sure my kids love me anymore they don't want to come see me, they don't want to do this or they're rather be over at dad's house, and I say, well, they're growing up. Don't take it personally. They're going to leave you anyway. Let's see what we can do because, I tell parents at that point, there are far more years to be a parent after the age of 18 than before the age of 18, and there are going to be weddings, and sadly funerals, and graduations, so let's get on board with this. That usually gets people's attention.

I've also found, and I'm sure this is a technique that many people in this room have used, but when I get to a point anywhere along the line with parents or when I'm with coaches or attorneys and I can see the parents are more invested in themselves and fighting, I stop them and say, I'm pretending that your children are sitting right over here watching us. I'm pretending that they are watching me be their advocate, and I am pretending that they are hoping that I have listened to them and understand their pain. And I pretend that they are looking at you, mom and dad, the two people that they love more than anything else and depending on more than anything else in the world, and that you can be bigger than your problems and bigger than theirs because if you are lost, they are lost. So I want you to take a moment, take a deep breath, and imagine with me that your kids are sitting here watching us perform.

I look for who sheds the first tear, or who takes a deep breath and who backs off, or who just lets it go right over their head, gets back in the saddle and picks up the sword. You learn a lot from, again, the old saying is true, you learn

more about a person when things are going badly than when things are going well. So you create a crisis for them and you can learn from that. I've found that to be highly effective, even when I'm doing evaluations when, because I start almost all evaluations with both parties present, and some want to make points and how quick they can answer a question and how bright they are and how stupid the other person is, and I inform them that we don't give points for conflict in my office, and your kids are sitting there so let's behave.

Another circumstance I think that child specialists are important, especially since we have expertise in child development and other kinds of normal as well as abnormal states, is in the area of special needs children. The whole area of medication, for example, for attention deficit disorder, the whole area of wide use of medication prescribed, hopefully, by a child psychiatrist but often by general practitioners or pediatricians without psychiatric training for other kinds of psychiatric disorders is highly controversial. It also impacts sometimes people's religious beliefs, that child specialist can give accurate information, can sometimes even make referrals to people who can give them more information that will help them to decide on a more prudent parenting plan for their children. So we act as a resource also.

I have found, too, that the child specialist, I've had occasion where parents have said, "Why do we need a child specialist? My kids are already in therapy." "Why do we need someone else to talk to them when they're already talking to Dr. Jones." I say to them that Dr. Jones is doing one job and I'm doing a different kind of job. Also, when we talk about Dr. Jones, because I want to find out if Dr. Jones has also become a political football, whether one parent chose this doctor, or whether one parent doesn't think that Dr. Jones has the children's best interests at heart, or one parent thinks that Dr. Jones is biased against him or her. So we can provide a breath of fresh air.

We also, I have found, when mental health people have called me after receiving releases, and are trying to find out what my role is or what this collaborative thing is about, we have an opportunity to inform our colleagues, and also to understand what that influence might be in the family. Because, as David Kuroda said quite well, sometimes therapists who are treating people in high conflict divorce situations can be helpful, but often they are not helpful in this particular situation because either they become advocates for one party or they only have one side of the information, so they're not dealing with a full deck. And when you're not dealing with a full deck, you really don't make very good decisions or give very good advice. And unfortunately, and this is a topic of another workshop that I'm doing in June, is trying to train therapists who are seeing people children as well as adults, in divorce situations, because they are

often well intentioned but are not effective. So that's another area where we could help our mental health brethren.

So, I'm hoping that you're hearing that the role of the child specialist certainly has some fairly precise parameters, but that it is a very versatile kind of role, both as a direct practitioner as well as a consultant to other mental health people as well as attorneys. And I think that even in our own group as we are evolving as a group of collaborative professionals, I think that we need to involve child specialist at an earlier time, and give more support to attorneys and to the mental health people. So I'm hoping that you can, again, to end my little talk with what I started with, if we keep in mind that our task is to teach conflict resolution, to teach collaboration, to provide them with enough skills to fly out of the nest so that they don't wind up falling out of this process or down the line use litigation as their primary means of conflict resolution. That's our task. I can't do it alone as a coach or as a child specialist. The attorney cannot do it alone. Certainly an evaluator in a litigative case, nor can the judicial officer if it gets that far in a litigative case. We need every resource available to prevent chronic kinds of maladjustment and prevent the kind of recidivism we see in families that so much of the research that's been done in the last thirty five years of divorced families where we have family and generation after generation going through the same kinds of scenarios. We have a unique opportunity to stop this type of chronicity in my opinion. So that's our task. It's exciting. It's challenging, and it's fun having colleagues that will smile at you.

ALICE OKSMAN: I'd like to mention a case that I worked with as an evaluator where it could have been so well transposed into this collaborative model, and that was two parents who had some deficiencies in parenting. One of my recommendations at the end of the evaluation was that there be a child development specialist, which I'm using the term in a different way than in this model, come into the home, these parents couldn't afford that, and assist them in their parenting. Well, the parents were very much against this and tried to bargain out of it. And the attorneys came up with the proposal. How about since they're each in therapy, they each have their therapist come with them and go into their home and help them with their parenting while they're together. And I just saw this as making chaos more chaotic because what happens in the therapy situations is that each therapist aligns with their client. Whereas in the collaborative process the therapist each have a client, but the more full client is the collaboration. And my thoughts were how innovative this could have been to have the parents with their coaches and the child specialist actually be in the home and assist them with it.

In that way, the coaches, it seems when there are the therapist it's the conflict of the parents and then the conflict of the therapists, and we see this as evaluators when we interview therapists on the phone as collaterals, so that it would be chaos generating chaos, the clients would have had their conflicts, the therapists would have had their conflicts, and it would have only made matters

worse. Whereas here it's this global perspective, and the look to the system and the focus on the kids and working within the system to make that assistance.

CONFIDENTIALITY IN THE PROCESS

ALICE OKSMAN: Someone asked what happens if a parent or child says to you, "I'd like to tell you the following but only in confidence." Well the way that I deal with it in mediation, I use a general statement that Tony uses, and I would use it here as well, is that in this process it doesn't mean that everything you tell me I will disclose, but everything you tell me has the potential for being disclosed, so I can't give you this promise in advance of what you have to tell me that it won't be shared, because this is a non-confidential process.

TONY ALOIA: That is a wonderful thing to discuss. When somebody says to me, I have something to tell you but you can't say it to anybody else. Well, I want to know about that, and usually you find out that they are either testing you out, or they want to find out if you are different from anybody else who they're talking to. There's a process there. It's not just the content of what they may have to say. They may have nothing to say, or they may have something horrific to say. I don't know. But I'm going to work with that process.

There's where my experience as a therapist knowing interaction and something about transference and something about the interaction between a so-called doctor and patient is important, in addition to what I might have learned as a mediator and an evaluator. So we work with that.

Now there are some times when it gets down to if it's really something that I'm not going to be able to say, these are the parameters. If you tell me this the law says I have to do it. If someone tells me it's a crime against a child, or there's a child abuse kind of thing and so on and so forth, there are certain kinds of parameters that I can't offer somebody that, and I'll inform them, I'll give them informed consent. Most of the time you work it through when you work the process. Not always, but most.

END OF PART TWO

PART THREE

ROB RUTMAN⁷: I'm Rob Rutman. I'm a licensed clinical psychologist, have been in practice for about 29 years, one short of Tony's record, and I have been a member of a better divorce for about two years, a little bit less than that actually, and I came into the group at the recommendation of June and Mary Ellen, and am very happy to have been part of the group because it does represent a solution to the dissolution of marriage that makes sense, maybe the only one that really does make sense.

My practice is families and divorcing couples, so I've seen from the clinical end the devastation that can take place. This has been a very exciting time in my life professionally ever since I joined the group because, as someone said this morning, that it is fun, and that is very true. You see smiling faces across the table most of the time but also we are really saving families from disastrous outcomes and I think that's really what motivates me to be a part of the group, more than anything else.

SUSAN F. SCHWARTZ⁸: I'm Susan F. Schwartz Schwartz, and I am a licensed clinical social worker. I've been in practice in Torrance for the last 17 years. My practice is predominantly working with families and, as such, I'm seeing a lot of children of divorced family, and I too, like Rob, was very much touched how children get triangulated in rights and their parents may have been divorced for years, and yet the fight continues. I too was invited into this group and it's been a passion of mine since I've been in. It's wonderful and exciting, and it gives us an opportunity to really help families transition into two households from one, in a much better way. And I often get teased; I talk about it to everybody and everyone I can meet, usually, and I tell them the name of our group, "A Better Divorce," and they laugh. And yes, divorce is lousy no matter which way you look at it but we try to make it as family friendly as possible. And I think that at worst, we help the couple stay where they were at when they first decided to get a divorce, and at best, we really help them resolved the emotional issues that got them there, and leave the worst part of the marriage behind. Those who are parents focus on the best part of the marriage, the children, as they enter into the post-divorce era.

So divorce is an internal, emotional earthquake. The divorcing person's relationship to everyone and everybody changes as that person goes from being one of a couple to a single person. And no matter whether that person initiated the divorce or not, there is an onslaught of emotions including anxiety, fear,

7. Mr. Rutman is a licensed clinical psychologist with 29 years experience.

8. Ms. Schwartz is a licensed clinical social worker with 17 years of experience. Ms. Schwartz practices in Torrance, California.

sadness, anger, resentment, relief, sometimes happiness, usually a sense of failure that accompanies each person as she or he goes through divorce.

ROB RUTMAN: The emotions that Susan F. Schwartz has referred to, resentment fear anger hurt and probably many others are probably present to one degree or another in every divorce. So it's not the existence of these emotions that makes the difference, but rather the probability that these emotions will start to grow and become a roadblock as we move down the path of trying to resolve the divorce. And it's at that moment that these emotions move to the foreground that we hand the people over to an attorney who is not a mental health professional, and ask the attorney to resolve the practical issues of the divorce and at the same time dealing with a partner who is probably very emotionally upset.

I wanted to give you a verbal picture of some of the feelings that accompany divorce. I have some direct quotes. When I work with men in the format, I give them a marital history questionnaire, and in part of it I ask them some questions about their feelings. And as I go through this I'd like you to think about how these feelings as expressed by these men could generate enormous problems down the road as the attorney is attempting to resolve the issues of the divorce, and how they can get in the way if they become foreground rather than background.

The first quote is: "I feel betrayed. I can never trust her again." This is clearly fear, as well as perhaps some of the others.

"She is willing to destroy what it took a lifetime to put together."

"It sickens me to think of another man trying to get close to my sons."

These last two were spoken by a man whose wife had had an affair and had another relationship.

"After not too long, I became apathetic, and rather than arguing, I just decided to solve my own problems."

"We can't be married because she is incapable of cooperating."

"I'm living with someone who jilted me," another obviously hurtful situation.

"She doesn't ever listen to me."

"We never had time to be husband and wife before we had to be parents."

"After living one and a half years without intimacy, there is no basis for continuing our marriage."

"I was really hurt."

"I'm regressing back into my anger, and I buried myself in my work so as just not to confront her."

"She's calling all the shots; it really stinks."

These feelings don't occur overnight, they develop gradually, and by the time people come to the attorneys office or the therapist's office, they have been struggling with each other for certainly months, if not years and if not decades.

And if it all ended when the divorce was final, everything would be fine, or relatively so. People would get their divorce and then go their separate ways. However, the negative emotions that began a long time ago always get dragged from the pre-divorce into the divorce into the post divorce stage. And unfortunately this stage is the one that lasts much longer than the previous two stages. It is really the one that you could say exists until death do we part.

Because this is true, these emotions need to be controlled, because whether or not they are being expressed loudly and aggressively or passively, by such behaviors as stubbornness or sabotage or indifference or oppositional behavior, they threaten to derail the proceedings and throw the divorce into a knock down drag out affair that is financially costly, certainly, by more importantly emotionally costly, often times bankrupting the family at an emotional level

SUSAN F. SCHWARTZ: So we have all these emotions in the background, and in the foreground we have the tasks of daily living. The person still has to get up in the morning, shower, get dressed, go to work, or perhaps stay home and deal with children who are also going through internal, emotional earthquakes of their own in response to the divorce. So that's the foreground. The background is the emotions. Then they are asked to sit down in the attorney's office and make some very difficult decisions about how their life will change from one household into two. So they have to assess how their finances will change, how they parented their children and how that parenting relationship and plan is going to change. And that parenting plan also has a financial component, which I'm sure you're aware of, which also has implications on how they're going to do things in the future. Financial implications, but perhaps more importantly, parent and child implications. So the job of the coach is to help the client clarify and tease out these emotions and help contain them and channel them in such a way as to free the client up, so that she or he can analyze the problems that need to be resolved, the issues, analyze and brainstorm and evaluate and make some good decisions that will affect her life, his life and the life of the children in the post-divorce period.

ROB RUTMAN: Susan F. Schwartz talked about containing the divorce, the emotions of the divorce. By contrast, litigators don't attempt to contain the emotions. Instead they use these negative emotions to justify presenting a vigorous, or as Donna put it this morning, a zealous defense for his or her client, saying when the judge sees how much damage he has done, or when the judge sees how irresponsible she's been, I'm sure the judge will see it our way. This vigorous defense is demonstrated as the litigators use these emotions to create and "us and them" type of mentality. We need to make sure that all of these things that she did are made very clear and I'm sure that the judge will again see it our way. They don't have a strong case at all. It's this "us and them" mindset.

On the other hand, we are trying to achieve a condition of understanding and emotional acceptance between the parties that will make it less likely that these emotions will interrupt the business that needs to be transacted down the road by the attorneys. Again, by contrast, interruption is okay for the litigator. In fact, the angrier the client, the longer and the more costly the war is that's designed to punish the antagonist. We can't let him get away with it. Let me help right the wrong by making him pay for hurting you so badly. And finally, each attorney in a litigated divorce, uses this antagonistic position to his or her advantage. They capitalize on the emotionally vulnerable state of the partners because there are always arguments on either side where you can create an enemy and fight the war to destroy that enemy.

SUSAN F. SCHWARTZ: We finally come to the part where we get down to the nitty-gritty of what we do as coaches. Firstly, the referral is usually made, by the attorney, or often made by the attorney where the client has learned of the collaborative process either on the outside or through the attorney. The attorney educates the client and the client retains the attorney and the spouse, and they often times will have their first four-way meeting in which they read the rules and regulations about the collaborative process and they sign the stipulation to enter that. At that time, the attorneys usually make a referral to a gender-specific coach, and we'll get into the wise of that later on, then we as coaches usually have two individual meetings with the client in preparation with the first client-coach four-way.

ROB RUTMAN: The referral also can be made in the other direction. Sometimes Susan F. Schwartz or I will refer people that we've been working with, which I gave an example of this morning, we will refer someone that maybe we weren't successful with in marital counseling to an attorney, but then we can't be the coach. We are disqualified from being the coach. But we need a coach, because right at that moment the emotions are running high and the attorney is not a mental health professional, are you sensing the theme here, the emotions that are there can't be handled, as Tony mentioned this morning, by just one person. So the attorney refers someone to me, refers someone to Susan F. Schwartz, the person calls, my goals in the first meeting are to create a working relationship with the client or the partner, and to teach the partner how we're going to work together to navigate the maze of their divorce, and to teach them communication skills.

I start with the administrative tasks. I give them a no confidentiality agreement, which means, basically, that we can speak only with members of the team, we agree not to testify in any court proceedings, or speak to any evaluators about what we've talked about. And it is also possible for them to tell us that

there are some things that they don't want us to talk about and we certainly will honor that. And I have a standard retainer agreement which refers to the no-therapy part. This is not a therapeutic relationship; it's a coaching relationship, so the confidentiality rules do not apply. Basically it tells them what I'm going to do; I'm going to help them work through the process of the divorce. I also give them a marital history questionnaire, in which several personal questions are asked, including their concerns, and their wishes and their fears. Interesting, the top three fears of the men that I've worked with are: money, how am I going to be able to afford it, how much time am I going to be able to spend with my children, and, what surprised me was ranking the same as the other two is the feeling of being alone, being depressed and being isolated. I just was sort of surprised that ranked right up there with the other two as the biggest fear they have about going through the divorce.

What I do about 80% of the time is try to give the people support by listening to the story of their marriage. I try to highlight the hot spots of their marriage the issues that are going to be problematic, or at least potentially so down the road. What I'm looking for are the painful feelings from a historical perspective but also from the current prospective, because it's the current prospective that is causing the main difficulties or potential difficulties in the divorce.

I was trying to describe what I actually do, and I think the term "cautious empathy" is probably best descriptive of what I do. I act therapeutically but I do not do therapy. We're not trying to make the marriage better, we're trying to make the divorce better. So I stay very focused on the goal of preparing them for future meetings. I'm looking for statements that reflect the emotional state that we've been speaking about. I attempt to convey understanding and acceptance of their version of the marriage. Sometimes I don't need to say anything more than "I understand," and that bond and that connection is really made. I take lots of notes while listening to the story of their marriage. I encourage them to tell me the medium-length version of their marriage. I don't want a long, involved story nor do I want just the skeletal outline because I need to have some of the detail in order to understand some of the emotional milestones that they've been dealing with.

As we go through this process, usually about one or two hours, I'm listening and marking down issues that I think we need to return to at some point or another. If something comes up that looks like it might be interesting, or a focal point, I suggest stopping and actually start to do what we're going to be demonstrating, I start to work on the mats. The mats are actual cloth mats that we put on the floor, and it's from Miller and Miller, Sherad and Nancy Miller, in Colorado. We were introduced to these things at an early meeting by some of the people up north, Nancy Ross, who uses them extensively. And I usually do long-term therapy with people and I said I would never be caught dead using a mat for therapy, but in fact they are truly incredible tools that we use to keep the

emotions contained, and we're going to do an actual demonstration in a while so you'll see what that's about.

We usually end after about one and a half-hours, and we make a second appointment to continue the story and to really develop some strategies in order to deal with the upcoming 4-way meeting.

SUSAN F. SCHWARTZ: I will talk about the second meeting, but my first meeting with the wife is very similar to Rob's first meeting with the husband. So we're actually entering on some parallel processes that get joined together in the first four-way. The other thing I know he does and I do is we ask about current concerns as soon as we meet the client. Is there something that's relevant and pressing that needs to be dealt with now? So, when I meet with the wife again, I ask her has anything come up since our last session that needs to be dealt with, and if so, we deal with that. We continue the story of the marriage, and when that is done, we go back to concerns. Current concerns that are happening right now. Concerns for the divorcing process, and concerns for the post-divorce time.

Out of those concerns, she and I pick an issue that makes the most sense to deal with in the first four-way meeting with the coach. And this really varies from case to case. As was said this morning, there are still some couples living together under usually horrific conditions. They know that they're divorcing, they have children there, and the emotions are high. It's a cold war or a hot war or a combination, and they're supposed to deal with their kids and their daily life. So in some cases in the first four-way we dealt with very practical rules and regulations that they could agree upon to protect their children from being caught up in the crossfire of their relationship.

Another case involved a couple who actually had adult children. They were separated for three years but the wife still had no idea why her husband left, why he chose to get a divorce. And they had a very amicable relationship, but she was so hurt, she felt like she needed to deal with that in the first four-way meeting before she could actually continue with the rest of the dissolution. So that's what we dealt with.

There is a speaker and a listener, and it's an extremely structure process here, and I think it's the structuredness that actually helps the people talk about very very difficult emotions in a contained way. Usually we go straight to anger, and using this where we're actually having the person state the issue, and we have the speaker stay on this side of the clover as she's talking about the issue, and move from cloverleaf to cloverleaf dissecting and analyzing her speech with the aid of her coach. When she's talking about a thought, when she's talking about a feeling, when she's talking about sensory data. And I explain to her the reason we do that is to really break the old communication pat-

tern that the couple has had, and kind of begin anew to attempt to give them new tools and skills as they learn to be a couple in a different way. We actually role play, she has picked the issue and we role-play. Usually I play her, and I show her what I might say as I walk from clover to clover. So that's what she does. While her husband, and later she, because they switch places, the husband in the meantime, they are facing each other, husband is standing here on the attend piece of it, and his task is really to listen and to drop his issues, which is what we don't ever do when we listen to our spouses, drop our own issues and really listen to what she is saying. It's all about the speaker because he will get his change being a speaker too. He needs to listen and attend and really see what it's like from her point of view, from her shoes, as if he was going to play her, he's doing research, and he's going to play her on the big screen tomorrow, and he's doing research and development into what she's thinking and feeling. Then he's asked to reflect that. Then, if she feels heard after he reflects back, they switch. So that's kind of the logistics which you are going to see because we have two wonderful volunteers who came all the way up from the South bay to help up demonstrate this and we are totally grateful. So I teach her the mats, and by the end of the second session hopefully she and I have a good working relationship where she feels understood by me, I know her issues and concerns, she trusts me that I know those issues and concerns, we have picked as issue to work on in the forefront, and she knows that may not be the issue that we're going to work on because she knows that her husband has been going through a parallel process with Rob, or whoever the coach is, and they're going to pick their own issue. So she has to be prepared to either listen first or speak first and I let her know that after Rob and I confer, I will call her and let her know.

ROB RUTMAN: Susan F. Schwartz and I have what is probably just called a coaches conference, after our first two-way meetings in which we attempt to share information with each other about what we learned about each particular partner. We tell each other the psychological impressions that we have of the partner, we talk about the dynamics that might impede communication as we move forward, and we talk about hot spots that we need to be aware of.

Then there's some business things that we take care of. As Susan F. Schwartz said, we talk about the specific issue that we're going to talk about, we decide who is going to go first, we calendar our next appointment, then call the partners to give them some options as to when the first four-way meeting will be, and we also conference with the referring attorney. That is a very big part of what we do.

After Susan F. Schwartz and I are finished, we call, and I usually either call and or e-mail the attorney, to just let them know where things are, when the four-way meeting is going to happen, then we just move into the four-way. So that's what we're going to do.

What we're going to do here is that Jim is going to be the one that begins. He and I will have had our two-way meeting in which we have gone through all

the things that I talked about, and we decided that Jim had a particular issue that he wanted to talk about and we also decided or agreed upon the fact that Jim would begin the issue by being the speaker. Without further ado, if you would just go ahead and stand. Jim is going to stand on the speaker's mat, starting at the center, and he's going to sort of identify the issue. This is completely unrehearsed; you're going to see an unrehearsed demonstration here. So, let's go ahead and do that. Go ahead and stand on the issue center section there, and we'll show you what we do here.

This is exactly what it looks like. All of this talk and everything you're seeing here is exactly what a four-way looks like. It's not like a big rehearsed thing. Susan F. Schwartz will do this, and do you know what you're supposed to do and move people around, so you're getting the real thing here. Why don't you start out by just talking about what issue it was that we decided you were going to use.

JIM: Mary Ellen and I are married. We take care of children together, we work together, we live together, we are pretty much together all the time. Except, she's a workaholic. . .

SUSAN F. SCHWARTZ: You're going to talk to Mary Ellen

JIM: You're a workaholic.

ROB RUTMAN: This is by the way one of the things that's very difficult. Sometimes people start talking about something rather than to their partner, and Susan always bring them back.

JIM: And I think people think that's a good thing, and I think you think it's a good thing, and I don't think it's a good thing.

ROB RUTMAN: Now you're at a plot. You were just as sensory data, talking about what she does, and now you're over at a thought.

JIM: I thought I was stating the issue.

ROB RUTMAN: Yeah, but you were stating that she works too hard and that's sensory data. You might want to give her some information about what form that takes, but where you are is just fine. Continue on right where you were going, if you remember.

JIM: Ok, I don't think I said she works too hard, I think I said she's a workaholic, I think I said you're a workaholic.

ROB RUTMAN: You attorneys, have to have everything right.

JIM: You just told them I'm a lawyer. I'm on feelings? I'm on thoughts. People talk about it like it's a good thing, and it's true that you do an awful lot, and an awful lot gets done because of that. But the result of that is that we're never really together, you're just working all the time. It's really not that different from being married to a drunk except you're making me rich instead of making me poor. But the feeling of being alone a lot of the time is still there just as it would be with an other "holic." How did I do coach?

ROB RUTMAN: You did great. You were pretty explicit about the feeling; do you want to say anything more about that part, or do you want to keep it like you've set it up?

SUSAN F. SCHWARTZ: What the feeling is. You said "the feeling," but what are you feeling?

JIM: I don't know how to do that. I do a lot of things alone, so I guess that leaves me feeling alone. I go to parties alone, I go to events alone, I even go home alone. So those are the facts. The result of it is that I feel alone, and I also feel, you're giving me a hopeful look there like I'm going somewhere.

ROB RUTMAN: When you're alone, what does it feel like to be there alone?

JIM: I don't know. Can you help me do that.

ROB RUTMAN: Well I can tell you what it might feel like if I were there. I would start off with sad, but that might not be the feeling for you.

JIM: It's gotten to the point where when I'm alone, I'm so used to being alone, that when Mary Ellen comes home, when you come home, it's not like, oh thank god she's home, welcome home. I was trying to get to feelings.

ROB RUTMAN: It's important for her to be able to track where you are. So she doesn't start to get confused about whether you're talking about a feeling or a thought.

JIM: I mean I know that you come home and you'll say something like, "Well I don't want to bother you, I don't want to be in your way." I'm sure I put out a lot of like, oh god she's home, I have to stop what I'm doing, I'm used to being alone, I've kind of gotten used to it. So, leave me alone. So you're sort of like, he doesn't want me here, and I'm putting out a vibe that I probably don't want you there. But I do, but I'm not quite sure...

ROB RUTMAN: Talk about that feeling of wanting her there, because that's a...

JIM: The truth is that I would like to have you there, I'd like to have some just quiet time, not so productive all the time.

ROB RUTMAN: Go further with the feeling that's right behind, right behind what you're saying there. What would it feel like if that happened?

JIM: I'm terrible at this. I don't know how to do feelings. You know, I don't have a real consciousness of feeling sad. I feel angry, and annoyed and unsupported and abandoned. Is that a feeling? Kind of like feeling alone. But being male, I really feel anger more than anything probably.

ROB RUTMAN: All of the other emotions hide behind anger. Anger is never a primary emotion. That's why if we can pry loose the other emotions, it will help her better understand what's really going on with you better than if you just talk about the anger. It's hard. You were on the positive one; the one that talks about the connectedness that you want when you get home.

JIM: Yeah, maybe it's partly the unpredictability of it. I'm not knowing when you're going to be there and when you're not going to be there. From your point of view, you're always there working for us. That's the view you express all the time.

SUSAN F. SCHWARTZ: You were saying that it's the unpredictability of it. Does that illicit some sort of feeling in you about knowing, not knowing, knowing when she's going to be available to you?

JIM: Yeah, family issues growing up. I'm not sure how much of that I want to put on tape.

SUSAN F. SCHWARTZ: On a feeling level, is that...

JIM: It certainly resurrects or echoes childhood feelings of not quite knowing when people are going to be there for me, or whether they're for me there at all. I grew up in a really good middle class family with parents who worked really hard for us and sacrificed endlessly for us, and we didn't feel very supported by them somehow, so maybe I am...wish I could go further, but not on tape.

SUSAN F. SCHWARTZ: Is there anything else you would like Mary Ellen know before she begins reflecting back.

JIM: Oh no, I want to hear her reflect back. I feel very incomplete, but maybe if she reflects back it will bring some stuff up. I don't feel like I'm being very articulate about this.

ROB RUTMAN: This usually lasts about 2 hours, and we don't have enough time to do that. You've said a lot of stuff, and maybe it would be a good time, as long as you feel like the important things, knowing that there is stuff that still could be said, but that you've gotten what you need to say at least for the first

stage of this. You can clarify, ask questions, do anything that you want about what he said, something that you don't yet quite understand. Or are you ready to tell him back what you think he said?

MARY ELLEN: No I understood everything he said. Some of it was sort of a new take on old stuff.

SUSAN F. SCHWARTZ: What you need to do is reflect that to Jim, what you heard him say, then get feedback whether yes, that's accurate, that's what he wanted you to hear.

MARY ELLEN: Ok, so you think I'm a workaholic. I also got that you don't think I get a great deal done, but I spend a lot of time at it. And you are angry with me because I am not home or with you when you want me to be. Then when I get home, that's what I get is the anger.

SUSAN F. SCHWARTZ: But what did you hear, because he mentioned anger much later on, that was the last thing he said. I'm reminding you, because he did mention anger, that what he usually feels is anger, but he mentioned some other things . . . abandonment and loneliness.

MARY ELLEN: The abandonment. Ok, I accept that, but that's not the way it reads to me. It makes a great deal of sense.

SUSAN F. SCHWARTZ: While Jim was talking you mentioned to me that you were hearing a new take on things. Reflect back, and let's see if your new take is accurate on what he wants you to understand about his thoughts and feelings.

MARY ELLEN: The new take is that I just get the anger and the exclusion. Not that it's a result of something else, and that something else I didn't particularly recognize. That something else is feeling abandoned by me. So, next?

ROB RUTMAN: What you need to do is add, tell her what she missed, tell her if she got most of it right. In other words, fill in the spaces if you need to from what she said and what you said.

JIM: Well first the sensory data. This isn't a manufactured issue. You work 18 hours a day 6 or 7 days a week, and...you do...and I go a lot of places alone, that's the truth. Now, I am sorry that there's that much emphasis on anger, because that's not the primary feeling.

SUSAN F. SCHWARTZ: Feelings you can only talk about your own. Then you think what you think her feelings are, but the only feelings you know...

JIM: The feeling is abandonment, it's not anger. That's the correction I want to make. Anger might be a manifestation of it, but it's not it. I'm sorry it comes across as anger, I really am, it's the truth.

SUSAN F. SCHWARTZ: That's the levity that we bring to these sessions, which is important as we deal with extremely emotional, difficult, subject matter. Levity is important.

ROB RUTMAN: You'd be amazed at how people can be at the height of anger and because we're just sort of all standing here in this kind of frozen position, it just smoothes things right out.

SUSAN F. SCHWARTZ: You were reflecting back what you missed.

MARY ELLEN: I'm done reflecting, aren't I?

ROB RUTMAN: He made a correction for you.

MARY ELLEN: The key issue is abandonment.

ROB RUTMAN: So now do you feel that you've got most of what you were saying, and Mary Ellen has got it.

SUSAN F. SCHWARTZ: We're not going to let her off yet. She said it in such a dismissive way, it's not fair. We're catching her. What happens is, in this case, in the coaches conference, Rob and I conferred and agreed that we were going to go with, for whatever reason, Jim's issue. I have called up Mary Ellen and said, Mary Ellen, you're going to be the listener. So Mary Ellen came totally unprepared because she had her issue, which we didn't use, so now she needs...

ROB RUTMAN: And she didn't know what Jim's issue was, we don't tell the other person what the original issue is so that they don't make any of these elaborate preparations...

SUSAN F. SCHWARTZ: So they don't have a defense because the hardest part is really for the listener to listen and drop her issues and let it be all about Jim. Mary Ellen is saying I don't have an issue. Well, yes you do, because now you need to share with Jim your thoughts, and feelings and sensory data on his issue.

MARY ELLEN: What if I don't want to?

SUSAN F. SCHWARTZ: I'll be angry at you because we're here doing a demonstration and you signed up. Other than that there's no other consequence.

MARY ELLEN: I can live with that.

SUSAN F. SCHWARTZ: You're going to walk from these three clovers, and share your thoughts, feelings about that Jim thinks you work too much. You have your own thoughts about that. And that's what you need to let Jim know.

You heard his thoughts and how he feels about it. You need to share your thoughts and what you feel about the amount of time and energy you put into work.

ROB RUTMAN: And he is going to listen to you completely. He is not going to attempt to counter argue with you even in his own mind. He's going to listen to this as a real statement of how you feel about the issue that's very central to his thought process and his feeling process. So you have a chance to really know that we have him stuck here. He's really going to listen to you.

MARY ELLEN: I understand, but I just don't know that I want to get involved in this.

SUSAN F. SCHWARTZ: Given the circumstances, get involved as much as you'd like to, just stop short of where you need to. We appreciate your being here.

MARY ELLEN: I really don't want to.

SUSAN F. SCHWARTZ: Ok, so what would happen here is that the wife, we're thrilled you guys have been here and have gone this far, but you're not totally off the hook here because we're going to have you do another piece, but what typically would happen is the wife then would go through the thoughts and feelings and sensory data on this same issue, then the husband would reflect back. No doubt there would be disagreement on the thoughts. But what often happens is that there's an agreement in the feelings. Maybe Mary Ellen has sadness. Maybe Mary Ellen might have loneliness or a sense of abandonment. At least in divorcing couples the emotions are the same. The emotions are tied to different experiences, and they totally disagree on the fault level. These mats, which is why we keep moving them into this twister-like game, because they do disagree on thoughts. Most divorcing couples only speak on the level of thoughts. And here, I don't know if you notice, but Jim's voice dropped and changed pitch and tone when he started talking about his feelings. We start the four-way where everyone is loud and angry, and in a position, and we end on that very soft level. So what we end up doing is we connect. They connect on a feeling level even if they still disagree on the thoughts. After there is that, where Mary Ellen goes through her thoughts and feelings and Jim reflects back, we all sit down. But we're not going to sit just yet because you'll go back to your chairs in a minute. This piece of the clover says, "wants four." And we're all sitting down, everybody's thrilled that this piece is over with because they hated having to do it. But then we go for, and each one of them, so Jim would start probably and he would say what he wants for himself, what he wants for Mary Ellen, if they had children, that was be part of the issue of what he wants for the children, and what he wants for them. Now they're a married couple, but in the divorcing couple, there's always them in the post-divorce. He would just say what he wants, and Mary Ellen will say what she wants.

ROB RUTMAN: This may be a little easier for you to talk about because you might be able to talk about it in a more practical way, that is what your thoughts are about what you'd like to have as you look towards the future. And when we're doing this with couples, that's what we try to get them to do. Envision what it would be like in the future if you could have this...

SUSAN F. SCHWARTZ: Maybe what we should do is carry this through and have you guys sit down, because we can say typically what that is. So thank you very, very, very much. We're going to kind of adlib here. As the divorcing wife, what she often says is, I want to feel financially secure. I want to have a good relationship with my children. I was to be happy. I want to be able to move on in my life. So that would typically be what we hear.

ROB RUTMAN: The husband might say, just to use Jim's example, I want to feel like I'm more connected to you at home. I want to feel that our future together looks different than the way it looks now, because I enjoy doing things with you and I want to be able to be part of a relationship that is more complete for me.

SUSAN F. SCHWARTZ: Yeah, and then they would continue on what we want for the children. "I want the children to have a good parenting relationship with me and with you. I want them not to feel in the middle of our relationship. I want them to have the best of both of us. I want them to live long and prosperous lives."

ROB RUTMAN: This starts them thinking about this family unit as separate but yet together. You get them thinking about this unit that's going to be living in two different places, and you get them to try to think about it as one unit. That always results in them feeling more collaborative and cooperative as parents of these children.

SUSAN F. SCHWARTZ: The other piece that I forgot to say is we get each one, like I would say what I want for Rob. We ask them, "What do you want for your soon to be ex?" So we get them to come from a good, non-angry part of them. They just talked about what they want for themselves, what they want for their children. Well, their children can only be happy if they have happy parents. Usually they can acknowledge, "I want you to be happy. I want you to be able to move on with your life."

ROB RUTMAN: It is true that the people who opt for collaborative divorce are people who are sort of a sampling error here. They are people who are probably more congenial or cordial to one another to begin with. But I don't want to give you the wrong impression about that. We've got some people that we've

worked with that are really angry with each other, especially in some of the cases where there's been infidelity. It's really a difficult thing even in the first four-way meeting after we've worked with them individually for awhile. So the concept of getting them to this sort of brighter picture is our goal, and not always as easy with people that are less angry with each other.

SUSAN F. SCHWARTZ: So at the end of that first four-way, the tone of the session is very difficult. They are on the same page. Their wants are usually mimics of each other. The both want the other to be happy. They both want their children to be happy. They both want to be able to have a co-parenting relationship with each other so their children have the best of both of them. They are on the same page. The task is to keep them there, which is a really hard task. But at the end of that first four-way, he and I are so elated and jazzed and energized because magic happens in that room. We are challenged with keeping the magic there because when you start getting into the practical decisions where they are in positions already and we've tried to nudge them away using the magic that we had in that first four-way. You want to begin talking about why we think it works?

ROB RUTMAN: Susan F. Schwartz and I have done lots of cases together, so that's part of the reason that it works, because we work harmoniously with each other. We sort of stumbled upon that accidentally and it just turns out that was a very fortunate. We've done about 25 cases together and luckily most of them have turned out okay.

One of the reasons that it works, and this is a controversial issue within our group, is because of the gender balancing. The issue of gender balancing is based on our belief that men understand men's issues and women understand women's issues better than the opposite. That is that I can understand Jim's issues and Susan F. Schwartz can understand Mary Ellen's issues better than the reverse. This matching results in a maximum amount of understanding, which results in a maximum feeling of emotional acceptance, which leads to more open communication during the four-way meeting. If you have more open communication, you have a better outcome. Specifically, females understand the issues of dependency, nurturing and cooperating, and males understand the issues of independence, providing and competing better, again, that the opposite. I'm going to use an example, it's a rather extreme example, but I think it makes the point. One of the men that I was working with found out that his wife was having an affair with a close family friend. He was absolutely devastated, and he was also somewhat of a macho guy and didn't really like talking about these feelings, but as he started to talk about this issue, he started to get choked up. The short version of it is that I think he needed to tell a man the story of his hurt. I think that a woman could understand and be empathic with it up to a certain point, but that empathy gives way to biology. I believe that his ability to tell me

what happened as another man made a huge difference in his ability to feel connected with and understood.

If we change the format and substitute a female coach for me, then Jim has no one to watch as a model. If we substitute a male coach for Susan F. Schwartz, Mary Ellen has no one to watch. One of the worst parts if they don't have us to watch as a couple interacting with each other in an emotionally healthy way. You may not have seen a lot of it here today, but a great deal of what really happens when we have a balanced format is that Susan F. Schwartz and I interact with each other in a way that we hand the microphone back and forth, we don't get into hassles about territoriality. That modeling is of enormous value as this couple is attempting to work out territorial issues in their marriage.

Susan F. Schwartz and I certainly are trying to show empathy and concern for one another, and that is the basis on which the outcome is going to turn out the most positive.

SUSAN F. SCHWARTZ: We also think it works because of the powerfulness of the tool itself, which is that when we teach it, everyone is quite reluctant and feels awkward, but we have gotten everybody from every walk of life so far, has gotten up and tried it. I think it really works because what we relay to them is that you can disagree about thoughts, but no one can discount your feelings, and that is extremely powerful, and that's why we break it up into sensory data, and thoughts and feelings, and we really keep moving them to the thought each time they say, "I feel that you work too much." Well, that's not a feeling just because you said I feel instead of I think. But that's the way our language has come. So, we all think we're talking about feelings when we're actually talking about thoughts. That's why we use the mats because you're not talking about thoughts. It's easy to disagree, but you cannot minimize or discount each others feelings. And once we tease them out, you know we kept pushing Jim, no that's a thought, and pushing him, and you saw the tone in his voice when he started describing and getting in touch with his feelings. We had a father up there who was an engineer who really, "I want 50 percent," and the mom was the primary caretaker even though both of them worked full time she did everything with the child, and she just couldn't imagine why he would want 50 percent when he never did anything when they all lived in the household together. And it was her issue, and we got him to talk about it, and this huge man was in tears, I mean he didn't even know, we kept pushing him to talk about how he felt about the divorce and the affect of that on his four year old son, and he kept trying to talk in the thinking zone and we kept pushing him to the feeling zone. And all of a sudden he couldn't name the feeling but his voice, there was a catch in his throat, and I said, "There it is, I hear it, what is that in your throat?" The tears

447

started running down this grown man's face, and he said, "Sad. I feel really sad." And when the mother saw that, she, I mean, we just wrote up the plan, we didn't just write it up, it was written up a while ago, we're meeting with them next week, they did agree to 50-50 because it worked out in terms of their jobs and their ability and accessibility and the mother said, "Yes, I want our son to have a relationship with you and I understand now." So it is so powerful, and we get very jazzed by it.

ROB RUTMAN: Susan F. Schwartz's description is absolutely accurate. The part she's leaving out, which is really important, is that this guy was not only big he was scary. He really was scary. When we talked after the second two-way meeting, I said, "Oh brother; we're in for it." This guy wouldn't let you say anything that he disagreed with without just jumping on you. He's got this hugely loud, powerful voice. I was frightened, really, the first time I started talking with him.

SUSAN F. SCHWARTZ: As was the wife. We also look for power and balances in the couple's communication and when we can we have...the wife was totally intimidated by him and she had notes to bring in with her to work the mats. In this case, there was no way we were going to let him speak first because she needed to feel comfortable in presenting her issue and knowing she was heard. So Rob tells me, "God, I'm scared too." And I thought, "Oh god." It was amazing.

ROB RUTMAN: He finally felt understood by her, once he got to the part that had to do with feelings, and he probably never would have gotten there because he so used to dealing with her in an angry way and feeling so frustrated that she never understood. Well, it was clear that she wasn't willing to understand the anger because that's called fighting. But once he started to soften up it made an enormous amount of difference. And we find that the negotiations are a lot easier when people feel understood. That their feelings are important and that they've been considered by the other person. That's what we're trying to do is have you know that Mary Ellen considered how you felt in that situation. And when it works in both directions, it's just an incredible moment. If we can get people to actually experience moments like that in the four-way, that demonstrate this feeling in a tangible way, we have accomplished an enormously important goal.

Just one word about how we measure success. So far we haven't come up with any real scientific ways, but one of the ways is that we measure it is how easily the four-way attorney meeting goes. We can't do it scientifically because we can't use our clients as guinea pigs for an experiment, but if that four-way meeting with the attorney where you write up the judgment goes fairly well, and you compare that with what the first four-way meeting was when you guys signed your stipulation, and if there's a big difference, we've done our job.

AUDIENCE QUESTION: I am trying to see if I understood what you guys are trying to present. You are trying to deactivate the anger of the couple, make them understand each other, and make them accept that they are going to be separated and what's the best way for them to live later. Is that right?

SUSAN F. SCHWARTZ: Yes, that's correct. And it really piggybacks on what Rob said. Anger is the emotion that we all feel really comfortable in, but is usually a second emotion that covers up the sadness, the loneliness, the sense of betrayal, abandonment, rejection, whatever. All of those feelings that usually go into a failed marriage. So if they can understand, accept that and move beyond that, acknowledge that they both have those feelings and that's why they're getting a divorce.

ROB RUTMAN: This case that we're talking about, this man kept using, "I'm just angry, I'm just angry," over and over again. And as hard as I tried to get him to tell us what was behind the anger, until that moment that Susan F. Schwartz talked about he just wasn't able to do it. But when he finally let down, clearly the hurt and the pain, you know. He was crazy about his son, and he pictured himself not being able to have as much contact with his son as he would have wanted, and when he let himself really feel that, it was all out there for all of us to see.

SUSAN F. SCHWARTZ: But to get that relationship in that four-way and to transfer it into the attorney four-way and even our next four-way and we have to work hard to keep reminding them. We go back to the "wants for."

"You want a better relationship, you chose this process because you want the best for your children" and keep reminding them why they're here, and that they are on the same page and we try to really remind them that they have common goals, and we need to brainstorm and figure out a way to reach those common goals. And that is the challenging part. We are constantly being challenged by that.

END OF PART THREE

PART FOUR

BRUCE DERMAN⁹: Licensed Clinical Psychologist, one of the founding members of the Coalition for Collaborative Divorce. Divorce Coach and Mediator.

9. Bruce Derman is a licensed clinical psychologist who specializes in dealing with chaotic relationships, has been trained in divorce mediation and collaborative divorce, does divorce coach-

Written two books, one for couples: "We'd Have a Great Relationship if it Weren't for You" and for single people: "We Could've Had a Great Date if it Weren't for You." And the main theme in those books is that the main problem is hierarchical thinking, trying to prove that one is better and one is worse. There is no better area than divorce for the concept of hierarchical thinking, and that's why I've devoted part of my life to it.

RON J. ANFUSO¹⁰: CPA, certified divorce financial analyst. Also accredited in business evaluation. I work with couples handling the financial, accounting, and tax issues that arise in marriage dissolution cases, and have done so for the past 12 ½ years, primarily in litigation support services, I've served as an expert witness, and am qualified in Los Angeles and Orange and Santa Clara Counties, and for the last few years I've been involved in 15 CL cases. Everything from very limited involvement in some small issue of taxation to a full case, which I consider helping with the evaluation of businesses and support of issues.

RON SUPANCIC¹¹: Certified Family Law Specialist. Admitted to the bar in 1970, certified in 1980 and since that time have served as an arbitrator and a

ing, leads respectful parenting groups for divorcing couples, and has written a book called "We'd Have a Great Relationship if it Weren't for You".

10. Ron J. Anfusio, CPA/ABV is a Los Angeles area Forensic Accounting expert, which provides litigation support services including analysis of financial, accounting and tax aspects of marital dissolution matters, expert witness and business valuation.

11. Ronald M. Supancic has practiced Family Law exclusively since 1970. He was admitted to the Supreme Court of the United States on October 15, 1975. Ron has been certified by the California Bar Association Board of Legal Specialization as a Family Law Specialist since the inception of that certification program in 1980. He has handled hundreds of contested dissolutions, child custody cases, and disputed post-marital proceedings. Ron has served as a mediator and as a Judge Pro Tem with the Los Angeles County Superior Court since 1976. He holds an AV rating from the Martindale Hubble Law Register. The 'A' signifies the highest level of legal ability, while the 'V' denotes 'very high' adherence to the professional standards of conduct, ethics, reliability and diligence. Ron was voted as one of L.A.'s Super Lawyers by a jury of his peers, in the January issue of Los Angeles Magazine.

Ron served as a Lieutenant Commander in the U.S. Navy's Judge Advocate General's Corp. He received his Bachelor's Degree from UCLA, and his law degree from the University of Southern California. Ron is a member of the American Academy of Matrimonial Lawyers, one of only 38 Fellows in the Southern California area. He is a member of the National Network of Estate Planning Attorneys, the American Bar Association, the International Alliance of Collaborative Professionals, the Coalition for Collaborative Divorce, the Los Angeles Family Law Associates, and the Association of Certified Family Law Specialists. Ron is an arbitrator for the American Arbitration Association and the Los Angeles County Superior Court. As an Associate Professor and an adjunct professor of Law and Ethics, Ron has taught at colleges and universities statewide and abroad.

Ron Supancic is a frequent guest on radio and television, where he advocates Collaborative Divorce and Mediation, as well as other creative approaches to resolve family conflict. Author of three books, *When All Else Fails: The Real Cost of Ending a Marriage*, *Winning the Custody War Without Casualties*, and *California Family Law: A Layman's Guide*, Ron Supancic offers his clients the newest choices in family law. His commitment is to advocate for his client's rights in a climate of integrity, dignity and respect

mediator for the superior court. In 1997, I went to a conference in Santa Fe, New Mexico and met Stu Webb. That was a turning point in my career because I saw this model of collaborative law as the future of family law in America and every case I take is a collaborative case until someone else decides otherwise. I do collaborative cases, I “unbundle”, I am a consulting attorney, I mediate, I try to offer clients the services they’re looking for and I’ve learned from Dr. Derman to try to match energy with energy. It’s never too late to collaborate- it’s never too soon to start.

BRUCE DERMAN: We’re going to be sharing our experience in collaborative divorce with several different issues. Each of these issues will determine whether you go down the adversarial-litigation path, or whether you stay on the collaborative path. We’re going to be focusing on high conflict couples, imbalances in the relationship, distrust between the parties, difficulty in addressing discrepancies in party values, and difficulties in obtaining disclosure and information. Before we go into those five issues, I wanted to talk about the difference in values in litigation and collaboration. In litigation, the value is to win and present the best argument. In collaborative law, the emphasis is on coming to a mutual, respectful solution. It is vital that the professionals be able to hold to a core attitude, because in my experience so far in the past six or seven years that I’ve been involved with this, it’s one thing to say you do collaborative, it’s quite another to be collaborative.

RON SUPANCIC: When I was a kid there was a cartoon called “Pogo.” It used to be on the front page of the newspaper comics. It was a little possum from Louisiana and I learned from him that we have faced the enemy and he is US.

BRUCE DERMAN: In order to be a collaborative team in not just name only, you really have to be able to integrate these different values. Some of the values are to make real agreements. One of the biggest problems in life is that we make sloppy agreements. So, we really support making real agreements, and in order to make a real agreement, every interaction that the couple is going to agree to needs to be on four levels. Mental, emotional, physical and spiritual, or we do not consider it an agreement. Another thing is to accept your powerlessness. Every couple that comes in a divorce situation is struggling with their powerlessness, they can’t accept it and it’s just a matter of whether they’re going to act out or act in. We have found that when the personality hits with the word “collaborative,” many times the word collaborative goes out the window, and the personality takes over, because you’re working with professionals. Let’s say

the professional steps on your toes, and you start to go into your typical personality and then we have the professionals sounding just like the couple, so it's vital that you are able to attend to these things. In our group, and I think it's the only group that does this, we have a purpose committee. In the purpose committee, we attend to whether the members are following these values, or whether they're going off into their personalities.

RON SUPANCIC: Whenever we have a feedback session, and we always have feedback sessions after we complete a case, it's remarkable to me how often the feedback is the lawyers owning up to their own stumbling, fumbling difficulties.

I did a case with a colleague from Simi Valley. Fortunately, this process is so powerful that it will succeed if you stay with it and hang in there, but we had to admit that we would keep getting off track—fortunately when she was off track, I would remind her, she would get it, when I was off track, she would remind me, and I would get it. We had to keep pulling each other back on track. It was so easy to start falling back to the old styles, the old language, the old ways of doing adversarial law.

BRUCE DERMAN: Ron J. Anfuso, can you speak to whether these values affect your work?

RON J. ANFUSO: Yes, the language we have to watch from a financial standpoint, and I've heard attorney's fall into the trap as well, saying things like the "us" versus "them" words, and also talking about things from the litigation standpoint, as if in "If we were in court, this is what a judge would do." In the collaborative process we approach things outside the box. I'm not saying that we ignore what the law is from the standpoint of how the process moves forward, but the clients have to have those same values of honesty and be willing to buy into the process. Commenting on the post-case debriefings that Ron spoke about, it's not only negative debriefings, it is also positive debriefings, considering what worked well during the process.

RON SUPANCIC: Core attitude #2: willing to accept the dual nature of mankind rather than playing favorites; that seems like an easy proposition, I would never think that I would violate that. I was once in a collaborative case with a lawyer from Ventura County, and after the day's session she was almost white with rage. I asked her what was going on and she said, "Do you realize how disrespectful you were to my client?"

In that case I had the husband and she had the wife, the husband had come to me, we started the process. The wife was an alcoholic. The husband said "I love my wife, we've been married 25 years, but I can't stay married to an alcoholic, I have to get on with my life, but I don't want to hurt her, this is the best friend I've ever had in my life." And so he wanted to use the collaborative process. Without realizing it, in very subtle ways, I had been discounting the wife, I hadn't been treating her with respect and everything that lawyer brought

to my attention, fortunately she did by pointing out the specific incidents, she pointed out the behaviors, and I had to agree she was absolutely right. The next session we went in, I stopped, walked over to her client, and said "I want to apologize, I was very rude to you the last time we had a session together; I haven't been treating you with the respect and deference you deserve and I ask you to forgive me and accept my apology." That really opened her up, she let me have it: she said I was rude, I had been discourteous, I had cut her off when she had said things. I let her say it all, and again I apologized, and told her I wouldn't let it happen again and then I made it a point, which turned everything around.

This was my bungling, I was still manifesting old behaviors. This was one of my early cases and it was an invaluable lesson. It's important to not just learn the new vocabulary, we also have to learn new behavior.

EVALUATING THE TRUE COST OF DIVORCE

BRUCE DERMAN: From the collaborative point of view we pay a lot of attention to the True Cost of Divorce. Not just the moneys and the property and the child support, but also the other consequences. It's really an excellent thing to help your people see, if you're going to go down the divorce path, this is the total cost.

RON J. ANFUSO: Sometimes people refer to this as the "Intangible Marital Estate."

RON SUPANCIC: It's really important to use this tool when you're talking to your clients and they're saying, "Well how much is this going to cost?" When I first started using this process, I was very often guilty of giving into the client, cutting corners, not using coaches when I should have, trying to skinny down the process to fit their budget. Now, I think this is a very useful tool to say, "Well, what's the value of being able to celebrate your child's wedding together? How important is it to you to be able to co-parent, to raise your children healthy and free of all the problems that teenagers have?"

BRUCE DERMAN: And in doing this you raise the consciousness of what the people are doing. Most of that usually comes from an emotional decision, this helps to ground it. They have to consider that if they want to get a divorce, this is what they're going to be opening themselves up to.

HIGH CONFLICT COUPLES

The major characteristics of the high conflict couple. It's a couple where the intensity level is too hot for communication. If the intensity is at a 10, you can't communicate no matter what. A high conflict couple just has to see their partner walk in the room, their partner doesn't even have to say anything for them to have a negative association to them. And one of the difficulties in a divorce, you're dealing with extremely sensitive areas of life—you're dividing up homes, children, so this is of extreme sensitivity. This couple typically couldn't agree on toilet paper, and now they're being asked to agree on something that is extremely sensitive, so it's really beyond the capacity of the high conflict couple. It also has to be respected that a high conflict couple is tremendously powerful. They can create such chaos and in the chaos someone may say they're dysfunctional or weak, but they're really very powerful in that they can dominate the space. They cling to their desire to be right and protect their images. A book I recommend is "High Conflict Personalities," by William Eddy.¹² It's the only book I know that really addresses the high conflict couple. He lists twenty-five characteristics of high conflict couples and one of his main points is it is essential to realize that it's the personalities in these couples that drives the conflict, not the issues. In litigation, the characteristics of this kind of couple are used to power the other person and to control the situation, and they're exploited to help win the case. Many of these people select professionals to help them with the case that are the same as they are, and that makes the situation even more difficult.

RON J. ANFUSO: Just because the process is a collaborative law process doesn't mean that everything is going to be perfectly soft-spoken, calm and collected. This is the area where I'd like to comment about the importance of having coaches in the cases. I have had enough of the cases now where I can see the differences between cases where the clients are working with coaches and where they are not. By the time the people get to me, the ones that have coaches, they've already had a couple sessions with them, and they are much more focused on the issues I'm there to deal with, the financial, tax and accounting issues, and are not as distracted as the clients that are not working with coaches. The second thing is, in the meetings we talked about which are generally four-way, two-way, five-way or seven-way, and I've had more than one occasion where the coaches have stopped the process from blowing up in the

12. **HIGH CONFLICT PERSONALITIES** is a book for professionals, clients, and family members in legal disputes involving someone with a High Conflict Personality. This 295-page paperback book uses over two dozen hypothetical and real court case examples to describe the dynamics, strange logic, and identifiable patterns of 4 High Conflict Personalities, who often meet the criteria of Cluster B Personality Disorders as defined by the DSM-IV.

middle of a meeting when they have seven people that are there, taking their time, and there for the honest purpose of making progress, but because these issues are still emotional, those coaches have stopped the meeting, pulled the people out of the meeting, worked with them for a few minutes, and brought the process back on track so the meeting could continue forward.

BRUCE DERMAN: I'm curious, that if you find that some of your clients, they select accountants that match the high conflict.

RON J. ANFUSO: It's more in the area of attorneys, because an accountant, by definition, is supposed to be looking at facts. When you're dealing with an attorney, if the client is high conflict, they might want to get someone that is a "barracuda" or "shark" to go out there with the sword in front of him. By the time they get to an accountant, they're looking for someone to look at facts, and not really to align themselves as much with the parties.

RON SUPANCIC: A supervising judge of the LA County superior court some years ago made the comment that he made the observation over years of sitting on the bench that clients tend to choose lawyers that mirror their own personalities and their own particular preferences. This model is in its infancy, and you've had an unusual program today because you're hearing from a number of different practitioners from different practice groups. You will hear the distinction between "Big C" and "Little C." I said earlier that every case I take is collaborative until someone chooses otherwise. The Big C is where I can persuade the other attorney to sign a collaborative retainer agreement. Unfortunately, that hasn't happened very often in the past, it's now beginning to happen more often. But, in the past, I would get what I call "Little c" cases: I'd get a lawyer on the other side, I'd immediately call and make an appointment with that lawyer and go to their office. I'd sit down and explain the process and the approach and invite them to participate. I could usually get them to use the process even though they wouldn't sign the stipulated disqualification. The fact is that they could still litigate, they could still worm their way out of it, but at least they were, in principle, committed to trying to do the process. I think that is also a mistake if you concede too easily; you should try to get a "Big C" every time you possibly can. The other mistake is letting the client design the structure. The example I wanted to give was a collaborative case where the clients told us they didn't need coaches. We talked to the clients separately, and they both seemed very calm and cool, until we got them together. It was a whole other story, and I began to see what Bruce Derman was talking about in terms of the need to match energy with energy. We bungled the case for several meetings, managing to make some progress, but it was just awful; every time we'd be drained and exhausted. These people were overworking us and each other.

455

Finally, we came to an impasse, and the two attorneys talked to each other and we agreed that we couldn't help these people. We were at least able to get them to see one coach; we were unable to get them to see separate coaches. We were able to tell them "Look, either you see a coach or we are out of here."

As far as we were concerned, the case was over, and faced with that alternative, they went in to see the coach and it was very difficult for the coach and it did result in a final settlement, the impasse was broken through. That case would have been so much easier if we had told the clients at the outset that this is a high energy case. What we learned from that is the need for the initial marital assessment, and the process we're using that I'm much more comfortable with is the Comprehensive Model.

BRUCE DERMAN: There are four main personalities that go under the context of high conflict couples. One is borderlines: these are people that split constantly. By splitting I mean one minute they'll be loving you, one minute they'll hate you. One moment they'll think you're terrific, the next moment they'll put you in the ground.

The second personality is the narcissist: they believe in themselves, they only see themselves, they're in love with themselves and if you do anything that doesn't make them feel like they're important, they will feel tremendously wounded.

The third type is the Histrionic couple, and this is one that constantly needs attention, so the moment you do anything where they don't feel they're getting attention, they'll be activated.

The last type is the antisocial, and they're very manipulative, very conning, and they always need to be on top. There are more personalities, but these are the ones that do the blaming and they're the ones that create the difficulty, so some personalities won't create as much conflict as these four.

All of these have a bonding crisis and have had a lifelong difficulty in terms of bonding with others and having relationships with others because their trust level is very low, and they cannot deal with losses well. So when you're dealing with a borderline, they have tremendous fear of being abandoned and they will act that out in the process. The narcissist has a tremendous fear of being inferior. Any time you come near them and are confronting them, they will get wounded and feel inferior and they will then go into a narcissistic rage. The histrionic said they have to do with attention, they have a big fear of being ignored. Any time you have something in your own personal life and are not feeling totally present, they will feel ignored. The antisocial person has a big fear of being dominated. They need to be on top.

How you deal with these fears in each personality type is going to be the key to the process, much more important than how you perform in terms of certain results. A real key is how you deal with their particular reactions.

Some other characteristics of these personalities is that they believe their feelings are fact: If I say I'm hurt, that's a fact, there's no doubt about it. If I say you've been unfair, you're unfair. It's not up for a vote.

The second thing is they don't take any responsibility; all the responsibility is "out there."

A last characteristic I want to mention is that these personality types struggle with cognitive distortion (dissonance). This is the thinking in different ways that creates conflict, such as the "All or Nothing" mentality. You're either terrific or nothing. This always works, or never works. All their thinking is extreme. The divorce process has to go through a lot of gray areas. This conflicts with their extreme thinking. Another aspect of cognitive distortion is that they personalize everything. If you're not looking at me right now, it must be because you don't like me and there's something wrong with me. If you're not paying attention to me right now, you must want to hurt me and you're planning something against me. So they personalize everything, but the thing that really needs to be appreciated is that this isn't just something they do, they really believe their cognitive distortion; that's who they become, and that's who they are.

RON J. ANFUSO: The process requires being able to work with a broad range of different personalities, and I'm sure we've come into contact with Bruce Derman mentioned that weren't even on the list. I may not be qualified to diagnose, or figure out what those personalities mean, but I certainly have to work with them and be flexible enough to be empathic, to understand what they're going through. Everyone in the collaborative process has to acquire their own style of mediation-type skills and what happens is you learn along the way. As you go through the process you learn how to work with the different personality types, understand where they're coming from, keep it factual, keep it neutral from an accounting standpoint.

RON SUPANCIC: It is helpful for attorneys to learn from our mental health counterparts what these different personalities are. I fumbled along for years in family law thinking I was the problem, and it was a huge relief to find out that there are some people who are just pathologically dishonest, people who switch from being nice to being nasty just because of a personality disorder or because of a chemical imbalance. So, I don't try to identify what the personality disorder is, but at least I try to be sensitive to the fact that I may be dealing with someone that is not in the same cafeteria as I am, they may be coming from some different place.

This is where I need help, I'm out of my element and I believe one of the biggest challenges to family law lawyers that are now going to be entering into this collaborative law process is learning some of the tools, the technology, the

language and the communication concepts of the mental health professionals, so it's an exciting challenge and it's daunting to some. There are many lawyers that won't want to do this, but that's fine because they've spent a lot of time learning the skills they have already. I think those of us that really have the desire to make a career in this new area have a lot of work to do, there's a lot we have to learn. I'll tell you the three instances where I think people are not qualified for collaborative law, and I've debated this with people who know a lot more than I do, who are a lot better, who say that *everybody* is qualified, it's the same argument you'll hear in mediation, that you can mediate any kind of case if you're skillful enough, if you're a good enough mediator.

Some mediators say that no, some cases just aren't suitable for mediation. The three categories that I'm speaking about are (1) chronic domestic violence: we have to provide a safe environment- that's absolutely the first requirement for collaborative divorce, to provide a safe environment.

The second, where people lie when it's even in their best interest to tell the truth. You know the people: they just can't play with the cards face up. If clients are not willing to be truthful, those people are not candidates for collaborative divorce.

The third category is probably the borderline personalities. My wife who is an LMFT told me that you'll know when you're with a "borderline": they make *you think you're crazy*. When you get those kinds of clients, they have an unrealistic expectation. They're the client that says, "I want the kids because they're my kids because I'm the mother and I get the kids!" Or the man that says "I want the pension because *I* worked for it!" And there's no way you can move them off that position; they have to hear it from a judge. They will try to get everybody to fight with everybody, it's part of their whole scenario, and I bought into that for a long time. That's the advantage and the power of having coaches who can identify what's going on in the feedback sessions. I'd have to say the biggest weakness in my own personal practice is the difficulty of attaining a sufficient level of communication. I have not yet found that level that's satisfactory. For me, it's such an enormous additional burden to call the therapist, call the financial planner, call the coaches. I'm so used to running cases my own way, which is what we did for many years, we have to learn the value of and the need for complete, thorough, ongoing, continuous communication.

BRUCE DERMAN: I want to talk about the model I have created specifically for high conflict. When I was going through my own divorce, and I was working with a mediator who was working with both of us, I even told the mediator when we were starting out "You have to know about this animal you're dealing with, this relationship I'm in." I even laid out all the things that were going to be happening in this mediation and she said "Fine, no problem." Sure enough, all those things happened, but the structure in which she was trying to deal with it was not even close to the power of who we were, and we just blew her out of the water.

So there's the mutual divorce model, and the model is designed to create a structure so there can be real communication. This is designed to provide an adequate buffer for high conflict emotions. High conflict couples have tremendous power, and you need to have a structure that's going to match this power or they'll blow you away. The additional thing is creating a structure that increases in responsibility. The four interventions of the coaches in stage one increase in terms of responsibility, are very much factored in how much buffering of emotionality is needed, so in the first stage, where the coach and the client are together, couple are not even in the same room, so that's high in terms of buffering in terms of emotionality, high in terms of structure. In terms of responsibility, it's not asking the client to deal with anything more than you.

Then moving on to the second stage, this is where only the coaches talk, so my fellow coach and I will spend time with the client so we have a sense of where they're coming from, so we communicate the messages to the other coach. They get to watch us because in a highly reactive couple, they're not ready to be in there yet. I only want them watching, I only want them using their eyes so their feelings are not triggered as much. So they watch us communicate their needs and interests, their feelings and their pain and we provide a model for that.

In the third stage, we increase the responsibility, and now we bring the client in and the client gets to talk, but the client does not get to talk to the other client because that's beyond their capacity. They only get to talk to the coach. Now the coach is not going to respond to them in a defensive manner (as their spouse would) and they get to speak to the coach and represent their feelings and their thoughts without having to deal with the reactivity of their partner. Then it reverses and I would talk to make contact with the other person's client.

Their partner is not capable of holding on to their own center to be able to ground them that way, but the coaches can. In the last stage, assuming the fellow coach and I feel they are ready for an increased level of responsibility, and they seem to be able to contain themselves sufficiently, we will then let them talk to each other, but we are right by their side and we are talking to them, whispering to them and coaching them along the way so they're not just out there on their own. We're really shoulder to shoulder.

This is the fourth stage we use to work out the different issues. There was a couple we were dealing with, this was a couple where the woman was so emotional that it took any individual sessions before we could even have a four way session, because she was filled with animosity, she would get into things like, "You're not enough of a man for me, you're a little boy, you've ruined my life." And we had to work with her to even get to the point to even get to stage one, so she could even enter the room, and we were willing to stay with it until she

could do that. Then once entering the room, this couple was in no way ready to talk to each other, so we employed the high conflict model I spoke of. Each coach spoke on behalf of their respective clients and presented it in a way that was buffered and not just hitting the ceiling. Then we got to the third stage where the other coach talked to my client, the man, and I spoke to the wife. Again, with the same principal in mind, to try to ground the emotionality. We made a small error in this case in that we didn't ask for enough of a commitment up front. So the thing in this instance collapsed because the tension in the room was not enough from him, I needed to get more of a commitment from him. I needed to tell him that I understood the tension was difficult for him but that I needed to get a commitment from him for the next six or seven sessions. This was when I was first starting out.

RON SUPANCIC: I haven't had an opportunity to try this, but I did go to the IACP conference in Vancouver.¹³ We found out that in some parts of Canada, the lawyer his or her client actually switch roles with the lawyer and client on the other side at some point during the process, so the husband and wife can see things from the others' perspective. In some places they don't use coaches and just have attorneys, but the attorneys are really employing therapeutic exercises with the clients and there's nothing that says we can't be creative like this. I think that's one of the exciting opportunities we have in creating this new model is the ability to be imaginative. Another lawyer at the conference talked about a client that had come to him and when the wife went to the other lawyer she realized that this one lawyer had been doing this for all these years and the other one was a relatively new one, a novice, and the wife said she didn't want that lawyer, she wanted the big shot who had been doing this all those years, and this is collaborative it's not competitive. What she was missing is that through collaboration, everyone improves, and the lawyer said fine, they switched places and she got the old warrior who had been doing this for years and the husband got the new novice, but we lift each other up, we don't shoot each other down. What happens is that power increases collective power, collaboration adds to the expertise of both sides. The level of knowledge rises to match that of the most experienced person in the room.

BRUCE DERMAN: The next issue we will deal with is imbalances. There are many kinds of imbalances: you can have imbalance where one party has a lot of knowledge in a particular area such as finances and the other doesn't. You can have a situation where one party is extremely articulate, and the other has trouble putting a sentence together. You can have an imbalance where one feels very alienated, especially in a family situation, and the other is much more

13. International Academy of Collaborative Professionals (IACP) held its 4th International Conference in Vancouver, October 17 - 19, 2003.

aligned with the people. In litigation, every imbalance becomes an opportunity to increase the imbalances, while in collaboration, the focus is on balancing the imbalance. How do you address the imbalances in your work as a financial specialist?

RON J. ANFUSO: As Bruce Derman mentioned, often in families one of the parties is the primary person in charge of the finances- paying bills, making budgets and investment decisions. As the parties are now going through the dissolution of their marriage, these things can be frightening and induce a lot of fear in the spouse that feels as if the more knowledgeable person is leaning over them from a financial standpoint. The financial specialist comes in and helps compensate for that by educating the parties and their attorneys as to what areas need to be discovered by each party, and what party needs help with these various issues. The accountant will come in as a neutral and that is apparent to the client and they know that this person is working for both of them and that they are not there to take sides, and from a financial standpoint works directly with the clients in moving the process forward towards a settlement. All cases are different and customized to individual facts and circumstances of the clients. In many cases, the meetings start with the attorneys and the clients come to meet with the neutral accountant on their own without the attorneys even being there, the assignments have already been given by the attorneys so we know what's going to be done. I work directly with the clients and then when all the work is done we have a five-way meeting with the attorneys and the clients present where the process is then brought to their attention.

BRUCE DERMAN: What if the more knowledgeable client starts to dominate the meeting?

RON J. ANFUSO: That's when the neutral financial specialist steps in and elicits information from the less-knowledgeable client to make sure they understand what's happening. That's a very common thing in these cases. If they're not following, I've actually had a few cases where I've been asked by the attorneys to meet individually with the clients, and I do that upon request. I find that, in a collaborative case, it works better with both clients, because in certain issues, the standard of care I would use for testifying as a witness in court would be a much different. I turn to the more knowledgeable client and say, "Do you remember that his or her mother gave you the \$25,000 that they are saying went towards the down payment of the house?" for example, and the less knowledgeable party says they remember that gift and then we can move past that.

In a litigated case, that issue would become an entire discovery issue. Financial analysts and accountants (1) assist with completion of some of the court's required forms (2) work with the clients where there are issues of unre-

ported or underreported income. Believe it or not this does happen in collaborative cases and there are ways of working with that (3) I talk with them about perks, some of which are fine with regard to tax reporting purposes, but add value to a company that's owned by one of the parties or is an additional cash flow available for support of the family (4) we still pay a lot of attention to the tax ramifications of the division of property. A very important issue.

You don't know how many times I see parties that are coming into a case that say the wife's going to keep the house and the husband is going to keep the retirement plan and the equity in the house is roughly equivalent to the fair market value of the retirement plan. For those of you that have been practicing for a while, that isn't really a fair division because the retirement plan and assets haven't been taxed yet, so we work with the clients in situations like that. There are separate property issues that still come up in a collaborative case, such as an inheritance. We still have to look at those, but the difference in a collaborative case is the standard of care that we utilize to get to the answer versus the admissible evidence from the standpoint of the litigated case. It is much less taxing and expensive. We actually value businesses, there are clients that own businesses or professional practices that have to be valued for purposes of their divorce. I've only done one "marital standard of living" the whole time I've been doing collaborative divorce cases because in most cases we look at the budgetary concerns rather than setting some kind of ceiling or trying to meet this standard of living. Spousal support is based on what the spouse's income is and what are his or her expenses. When everything is done, I produce a schedule in the form of a notebook. It contains all of the assets, the accounting is done, there are apportionment schedules to back up those particular figures.

RON SUPANCIC: Long before you added collaborative law to your practice, you handled many contested forensic family law cases. Give an illustration of how that case might look if you had been handling it as a forensic in a traditional litigated case.

RON J. ANFUSO: Each party would have hired their own forensic analyst, so right from the beginning the fees are doubled. Each party's attorney would ask the analyst to prepare the analysis under whichever model favors their client. (There are two distinct calculation models, the Nelson and Harrison Model, which favors the Separatizer and the Hugg Model which favors the community.) The results can differ by hundreds of thousands of dollars. The attorneys would introduce these plans to the court and make legal arguments as to what the interpretation of what those plans mean, so it can easily get very contentious. The plans are very vague and each attorney will try to figure out what the numbers mean, why certain funds should go to a particular party and why they received them.

RON SUPANCIC: On the CCD homepage, there is a pre-divorce survey. Bruce Derman, Peter Weir and I have created a fifty question tool which is used

to gauge the emotional thermometer of the parties. We want to know where they are to find out what the emotional imbalances are. The parties each take it separately. I direct them to the website and where I see high levels of emotion, these parties will start out with a case manager and mental health professionals who will do the marital assessment. One thing that we're finding out is that a lot of people think they have to get a divorce because they think their marriage is hopeless. People don't know what they don't know. Maybe they have some relationship deficits, maybe they just need some new tools or insights. What we're finding is that about one in five don't come back. They go off and start working on communication skills, co-parenting strategies, a closure on the emotional agendas and they start working on the problem. This process is hard on problems, soft on people, the opposite of traditional litigation. The other thing is the financial imbalances; in some cases, the parties are okay, the emotional thermometer is not high, but there are huge financial issues. This is where the divorce financial analyst becomes a treasure trove of opportunity to get them started and I have cases where I actually send them to the CDFA first. I do this because the first issue is: "How are they going to pay for the divorce?" You have to ask them what their litigation budget is and how much money they are willing to spend on this process. I want to know up front what they are planning to spend and that makes a huge difference. The accountant can put the funds together, designate a pot. The Canadian government has funded a three-year study and we got a preview of it in Vancouver last year, and what they've found out is that the divorces in Canada (collaborative law is being practiced in all provinces, in some places they don't do anything else) using the collaborative model cost 2/3 less than a traditional case and take 2/3 less time. I'm finding in some cases it's even less than that. Using the CDFA is absolutely critical to the process.

I had a divorce come to me last year. The husband and wife had been married twelve years, they had a seven-year-old child and a thirteen million-dollar estate, the husband made \$650,000 a year. He wanted the child, the stock and he wanted the house. He was a CPA himself and there was a huge imbalance of financial knowledge. He had also seen Stu Webb interviewed on the news, he had heard the term "collaborative divorce," did an internet search and my name popped up. I helped his wife find a collaborative attorney, and we started with a case manager. It turned out that she wanted to move to New York and take the child with her. So this was a relocation issue, so we started them with the case manager who worked with them for about two and a half months, everybody else stayed out of the picture while they worked on what to do with the child.

To the credit of the parents, they both came into this stating that the most important thing to them was this child, and wanted to do what was best for the

child even if that meant compromising their individual desires. They worked for about two and a half months and came up with 50-50. Dad bought mom a house a few blocks from him. I should mention that before coming to me, they had both been to Beverly Hills lawyers who had each told them that it would cost \$1.5 million a piece, take about two and a half years, they probably wouldn't be speaking to each other at the end of it, and they both promised custody of the child. When they looked at spending \$3 million or more on a divorce, they saw the Stu Webb interview and decided to try collaborative law. They knew they had the option to litigate if they wanted to but they wanted to give this a try. So dad bought mom a house down the street from him so she could spend a week in New York and a week in Los Angeles; she became bicoastal. They now have a 50-50 arrangement with the child. He goes to the same school he's always gone to, he has the same home he grew up in half the time, the other half he is within walking distance and he's with mom.

So once they worked that out, the emotional thermometer dropped and we brought in the CDFA and it got very complex. We worked out a deal: the husband got the stock and the wife got just about everything else as far as liquid assets. We came up with a program that was designed to give the wife \$4,000,000 right now, \$8,000,000 within a few years and \$12,000,000 shortly after that-by the time she was sixty-five (she was forty-two at the time), she would have \$24,000,000. That took a lot of planning to give her that money. We did one other thing that was unusual. The fact of the matter was, the lifestyle was \$20,000/month, and they were investing the rest. He paid her \$20,000 a month for life whether she works, marries, leaves or stays and the husband pays all of the child's costs. So she will have an estate worth \$24,000,000 and she will never have to touch principal. This took another six and a half months on top of the two and a half, altogether it took between eight and ten months before the whole thing was completed. The bottom line: we had therapists, coaches, case managers, parenting coordinator, CDFA, it took eight and a half months, and cost *under \$100,000* for the whole thing. The non-collaborative estimates had been three years-three million dollars.

BRUCE DERMAN: I'd like to tell you about a case I had that dealt with imbalance: this was a family of four and the two daughters, aged fifteen and twelve, were estranged from the mother and when they first came in, I was working with my coach and we were blown away because the two daughters and the father come in holding hands and were affectionate and the mother came in by herself. It stayed that way through the whole time. Having the coach working with the mother give me the opportunity to be with the mother and gave me the freedom to address the emotionality, because she comes in and says "He's brainwashing them, we have to confront them and tell them they're being brainwashed." And she sent me a pile of stuff on parent alienation syndrome to prove her case.

I told her that I got all this material and I understand that you feel that they're brainwashed, and asked her to tell me how exactly that's going to help

you reconnect with your daughters. By me continuing to support her, to calm her down and decrease her emotionality and her reactivity and to be there with her to support her, knowing that the father was being taken care of, that I could devote my efforts to the mother, she became less reactive and less defensive, and within three sessions, the daughters and mother were hugging and saying “I love you” during the sessions.

The next area I want to get into is distrust. Distrust is at the core of all divorces, which you can ignore, magnify or address directly by learning to respect the integrity of the distrust and not moving ahead of it. To most of us in our biased culture, distrust is a negative and you’ll constantly want to move people towards trust, the more favored quality. To me, that’s a mistake. In this one case that came in where the two people were extremely distrustful, we spent the entire two hour session doing nothing but connecting with their distrust. We didn’t make any attempt to get them to be trusting, just really connected them with their distrust. At one point I said “How would you rate your level of distrust?” They said the extent they trust the other is zero. They gave a number to their level of trust. That was our guide and our starting point. From there we moved to, “I want to hear about your distrust, help me understand it. If your distrust could speak, what would it say?” So we personalized and honored the integrity of the distrust. By the end of the session, by accepting the distrust and honoring it, when we asked them what their rating was, one said it was a ten, one said it was an eight.

RON J. ANFUSO: There are several cases I’ve had where one party came to me and there were some issues regarding some funds that both of them had inherited during the time they were married. In this case, the wife was actually the stronger financial person, she managed the funds and kept track of all the bills and finances. The less knowledgeable husband felt that she was skewing the numbers because she said she inherited more of the money that went into the house than he did. And of course the records were hard to find. I had the clients work together about these dollar amounts because the facts that these people live through are not numbers that I can find on a piece of paper, and what they ended up deciding to do was split the equity of the house as if it was 100% community property.

Handling a collaborative case from a financial standpoint is different from litigation in that we don’t have to prepare under the same standard we would have to abide by if we were going into court to testify. The clients can agree on issues. Courts typically cannot look at taxes with respect to division of property, but they can be considered in a collaborative case. We start from following the models and formulas that the appellate panels have given us to work with, then we think outside the box and move to the next level. We encourage the clients

to develop their own formulas, to customize according to the facts and circumstances of their own cases.

Doing this minimizes the trust issues. If the trust is completely gone, there's a good possibility that those clients won't be in the collaborative process unless they got coaches right away. As far as increasing the level of trust and working together knowing there's going to be a third party neutral looking over everything and encouraging them to communicate, produce the records, and if the records support what the other party has been saying, the level of trust will increase throughout the process and will facilitate a peaceful resolution to the rest of the financial matters.

RON SUPANCIC: The distrust between the parties is a given. I don't think there's a case where that isn't a factor. What's going to surprise you is the fact that you're going to feel the distrust among your colleagues and your team members. It's human, it's normal.

In the particular case I referred to a few minutes ago, my client and I showed up at the first meeting and the CPA was there who had been meeting with the wife and her collaborative counsel. I felt completely ambushed because I hadn't told my client the accountant was going to be there. I didn't know schedules had been prepared. It was very embarrassing and awkward, and my client is looking at me asking where the collaboration is and why I don't know what's going on. He wanted to talk to another collaborative CPA, so he got another one and got a second opinion, so now we had a CPA on the other side doing stock options scenarios and it turns out that the wife never really gave up the Beverly Hills lawyer, she had him in the background advising her to litigate. So, she had counsel on the side, and we got to a point where things started to lock up.

Fortunately we had a case manager who I called and told, "I don't know where this case is going, but it's not going in the right direction." The case manager called a meeting with the accountant and the attorneys and the four of us sat down and hammered it all out, decided what is was we were all doing wrong, apologized and forgave each other. Then we got on with the process.

That will happen, mistakes will be made. The beauty and power of the process is that the neutral case manager and the coaches can be brought in to help solve those problems. Stu Webb talks about "learning to live in the question." Bruce Derman talks about "learning to live with the opposites, learning to hold the opposites." Hearing everything, believing nothing. Being open and receptive and accepting, but non-judgmental. This is hard for lawyers, this is something we are not trained to do in law school. If you're serious about doing this kind of work, it is a new skill you will have to master.

BRUCE DERMAN: No matter what task you're dealing with as part of the divorce process, from my viewpoint, the task is only 20% and the agendas represent 80%. One of those agendas is the belief that "I have the biggest hurt." If

you do not know what the underlying agenda of the couple you're working with is, you're working in the dark. You are clueless. It is vital to be able to connect and know what the underlying agenda is of each person. Then you must make a connection with the underlying agenda. If the person's agenda is "the biggest hurt," and that you're dealing with something like property, or any particular material thing, if you don't know that the person's agenda is "I have the biggest hurt, and I'm going to keep asking for any number of things because I have to take care of this hurt," then you don't know what you're dealing with. As I said, you have to make contact with this agenda and ask the party what will really satisfy them in light of having "the biggest hurt." Rather than telling them not to be hurt or to get over it, you have to ask what will satisfy them. You need to know "what the pass is." Most people with underlying agendas don't have a pass but act as if they do. Their partner thinks they do and their partner is chasing after them offering them "\$3,000 a month, \$4,000 a month, \$5,000 a month." Eventually the person gets frustrated and reactive. If you ask the question in response to the biggest hurt, "What will actually pass?" If the person gives you something concrete, it becomes a workable thing, but it can also be very beneficial if they admit to themselves "It doesn't matter what he does. There's nothing he's going to be able to give me, there's nothing he's going to be able to do to satisfy this hurt. All this is just a test for him to flunk; I don't want him to pass. Well that changes the dialogue in the relationship. So it's very vital to realize what the underlying agendas are.

RON SUPANCIC: I close with this. About a year ago I went to a seminar put on by Chip Rose, and he said something that struck me.¹⁴ He said "I've done

14. Chip Rose is Director of The Mediation Center in Santa Cruz, CA and a certified as a Specialist in Family Law by the State Bar of California Board of Legal Specialization. Chip maintains private practices in mediation and Collaborative Family Law in Santa Cruz, California. Chip is recognized internationally as an innovator and expert in the field of mediation and collaborative dispute resolution. He is currently on the Board of the International Association of Collaborative Professionals (IACP), and a former Board Member of the Academy of Family Mediators (AFM), which subsequently merged with other dispute resolution organizations to become the Association for Conflict Resolution (ACR). As an adjunct faculty member at the Straus Institute for Dispute Resolution at the Pepperdine University School of Law, he teaches workshops in basic and advanced mediation, as well as Collaborative Law. Chip is the author of *Collaborative Family Law Practice* and is a regular columnist in both *The Collaborative Review*, the Quarterly publication of IACP, and *Mediation News*, the quarterly publication of the Family Section of ACR. Since 1994, Chip has also been providing training throughout the United States and Canada in the rapidly emerging movement of Collaborative Law.

Pepperdine Dispute Resolution Law Journal, Vol. 4, Iss. 3 [2004], Art. 5
over three thousand cases, I've been doing collaborative cases for over thirty
years. I just called them 'mediations.'"

And I think that's a very helpful way to look at it. Collaboration is an advanced and sophisticated form of mediation, but there are two important distinctions that I find really exciting and challenging and that is: addressing in every situation the emotional agendas. We have created a vehicle that addresses, acknowledges, processes and resolves emotional agendas every time in every case. The way we do that is by staying in the collaborative box. As an organization and as a group, the most valuable thing we've learned as a practice group is how important it is for the team to communicate with one another, to stay with each other and to maintain and manage those core values.

RON J. ANFUSO: I'd like to close by saying that the process is much less invasive to the parties' community property. Most people know that that estate stops growing at the time the parties effectuate a date of separation and I'm still involved in litigated cases so I'm seeing collaborative cases as well as litigated cases, and my experience has been that the cost is much less, even with the added professionals in the collaborative team. It's less expensive, it's easier emotionally, it's customized and benefits the family as a whole far more than the adversarial litigated case.