
Psychology and Family Law

By Mark Baer, Esq.



I intended my last column to be my swan song column. In writing that column, it occurred to me that the first article I ever wrote was published in the September/October 2008 edition of the newsletter. That

was over nine years ago. Now, having published a total of forty-five columns—almost all of which have been aimed at explaining to you as mental health professionals, the importance of using *mediation* rather than *litigation*, in family law proceedings—I had a conversation with Editor Suzanne Lake. I told her that I had come to feel frustration, disrespect, sadness, unsupported, and unheard in my columns. While I appreciate the platform to speak to SGVPA members, I thought that I could frankly think of far better things to do with my time and effort.

I'm not suggesting that my feelings are steeped in reality; however, I am stating that almost a decade is a long time. In all those years, I've received very little feedback of any type from the membership. Please don't think that I just require validation and am seeking it from the membership.

Having received such little feedback from members over all these years has led me to doubt whether I've made any impact at all—thus, my discouragement concerning my SGVPA column. In that time, I've been passionate about educating mental health professionals about the value of mediation, inasmuch as I see them as holding a key role in the decisions divorcing couples may make. Yet I've neither seen nor heard any evidence that my readers take this to heart.

Over the years, when SGVPA members have occasionally mentioned to me about making recommendations to their divorcing clients, it's typically been to family law *litigators* with reputations for being very aggressive. I've rarely been told a psychologist has made a referral to a divorce *mediator*, or non-aggressive yet assertive family law attorney.

Meanwhile, I've attempted to inform and otherwise educate my fellow SGVPA members by publishing articles here that were based in fact and empirical research. I've also been very authentic and vulnerable in sharing personal information about myself in many of my columns —

not because I suffer from PTSD or otherwise wanted to “overshare,” but because I know that a personal story can resonate like no amount of data can.

I'm also well aware that due to the positions I take, I'm not winning any popularity contests with my family law colleagues and the litigation community in general. I'm a very visible and outspoken critic of our mainstream legal system, particularly when family relationships and children are involved. Yet lawyers don't like change, or losing business.

So I fully intended for my last column to be my *last* column. In it, I had inferred that “psychologists and other licensed mental health care professionals who disregard the social science research pertaining to the manner in which divorce and other family law related matters are handled” are *unethical* for not helping their clients to make better informed choices. That was perhaps harsh, but I believe it to be true.

As Vincent Cardi explains, litigation is a form of violence. In fact, the Wake Forest Law Review published his article in 2014, titled, *The Law As Violence: Essay: Litigation As Violence*. In that article, Cardi sets forth definitions of violence which involve nonphysical actions. He lists synonyms for “violence,” such as “coercion, compulsion, constraint, duress, pressure”—terms that can characterize the litigation process—as well as words of violence used by practicing lawyers to describe their work. He then examines the effects of “physical assault on people who have clearly suffered physical violence and comparing these effects with the effects experienced by those involved in civil litigation.” He establishes that “litigants commonly suffer emotional damage similar in kind and intensity to the emotional damage suffered by victims of physical violence.”

Now I would like to ask: Has any of the information I've written about resonate with anyone out there? I would greatly appreciate the feedback (both positive and negative) from SGVPA members, so that I don't feel as though my efforts are falling upon deaf ears.

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