
Psychology and Family Law

A Comparison Between Actual War and Family Law

By Mark Baer, Esq.



The power of words has long been recognized in adages such as, “the pen is mightier than the sword.” Whether spoken or written, language is tremendously forceful, whether for upbuilding or tearing down.

In the course of any divorce litigation, words are employed to craft correspondence, declarations and pleadings, designed to coerce a settlement, or otherwise persuade a judge to the client’s favor. The goal is to “win” against the other party’s case. This may be why litigation is often compared to war wherein the lawyers are the warriors. Since they are retained to win the war, they operate on a “take no prisoners” philosophy--ruthless, pitiless, and at any cost. Attorneys will thus do anything in their power to help their clients prevail, including promoting facts they know to be manufactured or embellished, and making efforts to legally exclude evidence that would otherwise weaken or destroy their client’s case. After all, the point is to *win*, not to reasonably decide in the best interests of all the parties--including whatever children may be involved.

It should be noted that in actual war, the warriors themselves may or may not support the underlying basis for the war itself, and are certainly not the ones making the policy decisions (“policy holders”). However, a “take no prisoners” philosophy in war does apply to the actual warriors. In divorce litigation, that same philosophy actually applies to the “policy holders, the parties themselves, who will have to live with the consequences of the “war.” And yet, despite the ruthlessness and bloodshed, we expect those same parties to harmoniously and effectively cooperate in parenting throughout the litigation and thereafter.

Preventing future violence following military intervention is always a concern because violence begets violence. After a war, the underlying conflict is not so much resolved as brushed aside by force, which may leave seething turmoil below the surface. The potential for future violence still exists because the underlying conflict was never actually resolved. By rights and reason, the ultimate goal should be to somehow break the cycle of violence.

In the legal wars conducted in family court, what, if anything, is done to break the cycle of conflict? As with military actions, handling the conflict through coercion does not resolve the underlying conflict. When families are involved, doesn’t it make more sense to try and minimize the conflict than attempt to break the cycle of conflict that was exacerbated by litigation? Remember, after figuratively “killing” the other party, both are expected to play nice. But if warriors who were literally killed as a result of a «take no prisoners» philosophy somehow returned from the dead, does anyone believe they would let bygones be bygones?

Thus, couples don’t get along well after having litigated against each other. Nonetheless, we subject parents to the litigation process and somehow expect that they will react differently because they happen to have children together. How can we really expect that families won’t be permanently damaged by litigation? We have come to expect such damage as an almost inevitable consequence of divorce, but it may be time to realize that alternatives exist that can circumvent such devastation .

As an aside, it should be noted that family relationships are formed between stepchildren and stepparents as well as blood relatives. A number of years ago, I heard from a woman who had divorced her husband of 27 years, after raising her daughter and his daughter (each from prior relationships) together as siblings. She reported that in two years since the divorce, her own grown daughter had “never gotten over losing a ‘father’ and a ‘sister.’” She had never foreseen this, and urged me to speak out more about the issue, that most people never consider.

By the same token, we should recognize the fact that even parents of adult children are still parents, and part of a real family that persists after any divorce, and until the death of the older generation. Therefore, parents are in essence bound together for life by their children. We must not ignore this reality just because the court does not have jurisdiction over such issues. Things that parents do to each other during a divorce-- either on their own or with the assistance of their attorneys--have consequences to families that last forever. It’s worth considering this when a marriage dissolves. As the Bible says, “Reckless words pierce like a sword, but the tongue of the wise brings healing.”

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