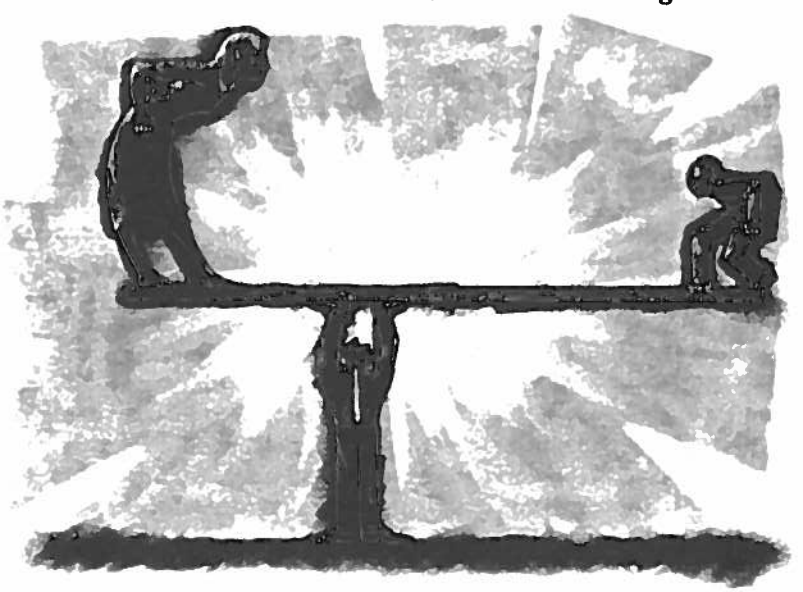
BY JEROME PRICE

# Custody Wars

## *Strategies for handling postdivorce conflict*

As courts increasingly recognize the limitations of the legal system in resolving high-conflict custody battles, more therapists are becoming involved to offer alternative ways of approaching these difficult cases. Often such cases remain in the courts for years, exhausting judges and lawyers alike, as legal solutions to coparenting and financial struggles fall apart. More and more, courts are turning to mental health professionals for intervention and recommendations.



While such cases may initially seem unresolvable, with a clear understanding of the dynamics underlying high-conflict divorce, it's possible to help the embattled parties stop eviscerating each other and come to agreements that benefit everyone involved, particularly the children. The key lies in understanding how power is balanced in high-conflict couples.

Years ago, family therapist Cloe Madanes proposed that, in marriage or divorce, the partner who has the least power is typically the one who displays symptoms in an attempt to equalize power, albeit in a dysfunctional manner. This may be manifested in a number of ways—psychiatric symptoms, overaggressive behavior, or problems holding down a job. The more extreme the behavior of one of the partners, the less power that person has. In any case, that's a useful clinical hypothesis to make if one wishes to avoid the immediate pull of taking sides with the most attractive and pleasant person in these intense struggles.

It follows that the person in a divorce whose behavior is most out of control may be the person who most needs our help. While his or her aggressive behavior incites the ex-spouse and the court to restrict visits with the children, impose financial sanctions, and inflict jail time for contempt of court, the therapeutic task is, when possible, to find a way to empower this person to become a competent parent. The challenge is to help such parents focus on the welfare of their children and change their behavior, so that they can convince the court—as well as their ex-spouses—that they're no longer are a threat.

One such challenging case was referred to our institute by the courts not long ago. Susan and James were both in their mid-thirties, had been married for six years, and had a 3-year-old daughter, Sabrina. Their marriage had been turbulent from the beginning, with constant arguing. James's temper, which had been a problem during his teens, had gotten worse after the baby was born. The police had been called more than once when he began his screaming tirades at home and in public. He was arrogant, loud, and generally unlikable.

Susan finally divorced James, citing his explosive temper as the reason, and was awarded child custody. James was restricted by the court to supervised visits with his daughter at a domestic violence program. He was allowed to see her for only an hour at a time, three times a week. He visited regularly, but during one of those visits he swore and screamed at the supervising social worker, resulting in the program's refusal to deal with him further.

Both Susan and James had secured aggressive attorneys with their parents' money and filed motion after motion. Susan was clearly the more reasonable and sympathetic figure of the two. She was a good mother and had also been very disciplined ►

in organizing the police, community, and school personnel to document James' loud, aggressive acts. Meanwhile, the struggles over visitation time, supervision of visits, and child support payments went on and on, with court hearings every two or three months. Finally, the judge decided that this couple must learn to deal properly with each other and that the court wasn't the place to accomplish that. The judge referred them to our program for us to supervise parenting time between James and his daughter and to see if we could settle the daily disputes between Susan and James. Both came reluctantly to our offices, determined to convince yet another arbiter to take his or her side.

While James came to the first meeting merely intent on expressing his self-righteous anger, the ever-organized Susan arrived with a folder of letters and documents to prove how dangerous James was. Susan was honestly frightened of James and had a personal protection order in place. As we reviewed James's actual behavior, however, it became apparent that, while he'd been loud, inflammatory, defiant, even threatening at times, he had never done any physical harm. Nevertheless, his outbursts, and his defiance of a court order when he took his daughter where he wished for as long as he wished while on a visitation supervised by his family, had convinced the court that he was a dangerous man.

As we typically do in these cases, we began with the assumption that it was in the long-term interest of Sabrina that her father, however questionable his current behavior might be, rise to the challenge of becoming a more responsible parent, if at all possible. We were equally concerned that both Sabrina and Susan remained safe as we worked to see if he could increase his presence in his daughter's life. So we began the six-step process that we've used successfully with many families caught up in bitter, post-divorce struggles.

**Step One—Joining with Both Parents**

The first and most difficult step in our intervention procedure is convincing both parties that we're neutral. We begin by assuring safety during sessions and in our waiting room to reduce everyone's anxiety about meeting together at our offices. In some cases, we have spouses leave 10 minutes apart to reduce the possibility of conflict.

We first meet individually with each parent for 90 minutes. I listened attentively to both of their descriptions of the struggle without necessarily agreeing with their conclusions. As with most high-conflict postdivorce cases, Susan and James were both determined to prove to me that the other was a demon. When asked if the other had any redeeming value, both Susan and James refused to consider that the other might have any reasons for their positions. This intractability is perhaps the most common feature of a high-conflict divorce.

**Step Two—Assessing Dangerousnes**

We had to assess whether James was a direct physical threat to his ex-wife or daughter. If the disempowered parent does appear to be dangerous, the therapist must support the court's restrictions, and still help that parent to make the changes necessary to move beyond that dangerousness. In high-conflict cases, however, extravagant accusations are often made by both parties against each other. In trying to do a risk assessment, we look for the following characteristics, typical of a disenfranchised parent who isn't dangerous:

- Has no documented record of causing physical harm. (Reports from the ex-spouse alone don't suffice to confirm violence. Even videotapes and photos must be considered carefully because of the common use of contrived evidence taken out of context.)
- Is committed to his or her child and desires a good relationship
- Appears more self-righteous than malicious
- Has credible acquaintances and family members willing to be character witnesses

We believed that James's level of self-control and behavior with his daughter would provide more accurate information on his dangerousness than the complaints about him

from other adults. So we moved James and Sabrina's supervised visitation to our offices, where we could observe and intervene immediately if problems arose.

During sessions with Sabrina, we concluded that the main skill James lacked was knowing when to keep his mouth shut. Again and again, he made two errors during his time with his daughter. First, he complained about Susan and the courts to Sabrina. He clearly believed he was explaining what she should know, but to everyone else, he appeared to be acting out of his own needs. Second, he was focused on getting attention and love from Sabrina. During each play session, he inundated her with requests for hugs and questions about whether she knew how much he loved her. While such communications were unhealthy, they weren't dangerous. We spent time before and after each session discussing child development with James to help him understand how to behave and communicate more appropriately with his 3-year-old daughter. Gradually, he began to let in some of our input and modify his behavior with Sabrina and his ex-wife. For instance, he was finally persuaded to say only good things to Sabrina about Susan, and to answer difficult questions with comments such as, "Honey, that's something the grownups will take care of."

If he were to be given more responsibility with his daughter, we also had to assess whether James could be trusted to make a deal and stick to it. If the court granted him one hour alone with his daughter, would he be able to honor the understanding and keep visits to an hour and no more, or would he take Sabrina out of state for a week or even kidnap her? If we were correct, our gradual empowerment of James should result in his sticking to agreements more consistently rather than acting out defiantly. I tested his ability to put aside his impulsiveness by insisting that he perform tasks that required him to put aside his personal feelings in his daughter's interest. For instance, during one of our meetings, I asked him to make a gift, with Sabrina, for Mother's Day and to gather the materials needed for it on his own time. With some coaching, he was able to follow through. All in all we were able to conclude by our own clinical experience as well as his history that James wasn't dangerous to his child. It's always scary to draw such a conclusion because many therapists have been sued when they were wrong. Unavoidably, the therapist in these cases must be ready to take some risk based on clinical judgment and experience.

**Step Three—Advocating for the Disempowered Parent**

A major step in gaining trust from the disempowered parent involves advocating for something he or she finds important. I advocated for James in small areas, such as gaining more time for him to speak with Sabrina on the phone. In his supervised visitation with me, I tried to give him the opportunity to prove he could assume more responsibility. Could he take Sabrina to the restroom by himself? Could they run in the hall for a few minutes without being restricted to my offices? Could James's mother and sister come to a supervised visit in the office? All of these were reasonable requests that I decided to grant despite enraged responses from Susan, her mother, and her attorney. All were examples of small steps that can mean a lot to a disengaged parent who's been seen as too out of control to be given any responsibility with a child.

Having shown belief in the disempowered parent, the therapist earns the right to hold that parent to a higher standard of behavior than anyone previously has. The increases in access to a person's child must be matched by the therapist's increased demands for mature behavior and self-control. Then, as the parent's self-control improves, the therapist can advocate for greater increases in parenting time or reduced levels of supervision, while the disempowered parent is regaining the trust that has been lost.

**Step Four—Taking a Larger Step Forward**

There were many months of improvement as well as several setbacks before the situation with James had ►

become stable enough to get the court to consider new visiting arrangements. By being supportive and clear about limits, we helped the turbulent James become more patient, cooperative, and controlled.

The next step was for the court to allow James to enroll Sabrina in a kid's gym class and participate with her in a more open setting than the one supervised play session a week at our office. This involved a major shift in James's role. I had to testify in court in favor of expanding James's parental rights in this way and underwent strenuous cross-examination by Susan's attorney before the court decided to proceed with my recommendation. My assessment of his dangerousness was particularly persuasive in convincing the judge to take a risk.

**Step Five—Helping Soothe the Anxiety of the Custodial Parent**

It was necessary to put Susan's mind at ease as she faced greater separation from Sabrina. We had to help her see James's relationship with Sabrina in the more positive light in which we were seeing it. To that end, we got James to agree to have Susan come randomly to observe him play with Sabrina from behind the one-way mirror, so she could see that he could be appropriate with her. In addition, we coached James heavily on being verbally courteous to her. We rehearsed interactions with her that he might find provocative and repeatedly went over how he'd respond. At one point, he was having enough trouble responding calmly that he agreed to try using antidepressant medication to ease his anxiety and calm his reactions.

**Step Six—Using the Court to Create a More Balanced Perspective**

In high-conflict cases, a series of court hearings late in the case may be necessary, as the custodial parent becomes frightened of the other parent's increasing involvement. The therapist can ask the court to clearly distinguish between legal issues arising from violations of the court's wishes, which will be punished by the court, and interpersonal problems, which must be worked out with the therapist.

For instance, as James gained a few hours a week of unsupervised time with Sabrina, he did make mistakes that most parents do at some time or other. Once, he left Sabrina sleeping in her car seat while he briefly went into a small shop. Even though James could still see his daughter from the shop's window, Susan's private investigator documented this event as evidence of his irresponsibility, and she went to court to reduce James's parenting time. I used the court's trust in me to dispute what I thought were exaggerated claims of danger and parental irresponsibility. Meanwhile, I coached James that he was pressing his luck by risking any situation that could be seen as negligence. It took several such incidents before Susan and her attorney concluded that the court would follow my lead in any situation that wasn't blatantly dangerous. Eventually, Susan began coming to me to discuss her concerns so that I could help her address them with James. I worked on helping James learn to listen to Susan and even ask her advice at times. Over time, Susan began seeing that Sabrina's safety and welfare could be addressed without using the court as a hammer. Both James and Susan were able to learn when it was appropriate to use the court to solve problems and when to use each other.

As with any fear, avoidance increases the anxiety. We insisted Susan and James interact in the waiting room with each other and with Sabrina. We held joint sessions during which we worked on their communicating politely and staying off the subject of their divorce. Most important, we used the court when appropriate to support our overall goal of helping these parents resolve their conflict to the point that they could coparent without sabotaging each other and making their daughter pay a grave psychological price for their continuing struggle.

James continued to obtain increased unsupervised parenting time with Sabrina. Today, he sees her on a fairly traditional time schedule of every other weekend and one

evening a week. He still sticks his foot in his mouth occasionally, but Susan doesn't run immediately to the court. She's learned to tell him when his handling of something frightens her, and he's learning to listen to her concerns and modify his behavior. James continues seeing a therapist individually, who helps him maintain his emotional balance. Meanwhile, his increased importance in Sabrina's life has helped reduce his anger reactivity dramatically.

This kind of work isn't for the faint-hearted. To deal with people at this level of combativeness, it's crucial that therapist have a clear framework and a sense of larger purpose. My own guiding conviction is that children of divorce need both their parents to be active in their lives if at all possible, and that damage from a less-than-perfect parent is often less than the damage from not having a parent. This belief helps me see beyond the hopelessness, frustrations, setbacks, and uncomfortable emotional intensity that are unavoidable in this work. The therapist involved with clients in the wake of a high-conflict divorce shouldn't expect to create an ideal family constellation. And certainly you can expect few thanks from anyone involved. But this is work that can make a huge difference in the lives of families torn apart by antagonism. For me, the knowledge that I've made a big difference in the life of a child, however desperate and frightening the situation may seem during the process, is enough to keep me going.

## CASE COMMENTARY

BY DAVID TREADWAY

I commend Jerome Price for his courage and commitment. Truly, these post-divorce custody battles are shark-infested waters; using the judicial system to manage them is the equivalent of throwing more chum into an already dangerous feeding frenzy.

I agree that these cases belong in the hands of clinicians more often than the courts, and I concur that the disempowered parent is more likely to fare badly in the court system and become potentially even more destructive.

While I applaud Jerome Price's efforts, I was concerned about three elements of his treatment model and case presentation: (1) the assessment of risk, (2) the limitations of the therapeutic interventions with James, and (3) the assumption that Sabrina and all children are best served by being parented by both parents.

*1. The risk assessment.* I was concerned that James's clearly out-of-control verbal outbursts were minimized because "he had no record of causing physical harm." For a 3-year-old, a raging, verbally violent, parent is emotionally harmful and traumatizing. Since James was verbally violent since his adolescence and had so little self-control that he couldn't contain himself in front of the court representatives, I'd think a much more in-depth assessment would be called for, including psychological testing, assessment for substance abuse problems, and psychiatric evaluation. I'd present the evaluation process to James as a way of clearing himself and demonstrating to the courts and his wife his willingness to take responsibility for his behavior.

*2. The limitations of the therapeutic interventions with James.* The treatment of James seemed primarily behavioral, which creates the potential of his learning how to impress the coaches so that they might advocate for him, which clearly would serve his agenda without addressing his underlying issues. I wasn't convinced that James had been confronted with the dangerous consequences of his temper and his apparent emotional dependency on his 3-year-old. Although there was a brief reference to his temporarily being willing to try medications and some individual sessions, there was no mention of the use of an anger management group, or family work with his parents and siblings to help James learn, as they say in A.A., how to walk the walk instead of just talking the talk.

*3. The assumption that Sabrina and all children should be coparented.* I strongly believe that children need safety more than two parents. In some very difficult case experiences, I've regretted the consequences of my commitment to the coparenting ideal. Sabrina's ►

situation was very emotionally stressful and unsafe. I wasn't convinced that her best interests were being served in this case. I support fully the author's commitment to helping James become an effective, safe, and nurturing parent, and it seems that tremendous progress was made. Yet, given the couple's long adversarial history, I was very concerned that those conflicts would continue to manifest themselves in an enormous competition for this little girl's heart. It was also unclear in this case presentation how Sabrina's emotional needs were being addressed and whether anyone was clearly and solely advocating for her throughout this process.

By starting with an assumption that coparenting is always the preferred outcome, the therapeutic interventions were aligned to meeting James's agenda more than Susan's. I think our job as therapists in the system is to be aware of how our biases affect the case negatively or positively. I wonder how cooperative Susan might have felt had she known that someone so influential with the court was actively advocating for James. Although James's behavior had changed by the end of this case, I missed any direct acknowledgment from him indicating that he truly understood and took responsibility for his threatening and abusive behavior. I'd have liked Susan's legitimate concerns about her daughter's welfare to have been addressed.

These concerns are in the spirit of "Yes, and," because I believe Price is doing important, courageous work that should be applauded and challenged.

## AUTHOR'S RESPONSE

David Treadway raises valid clinical points and in doing so opens a crucial dialogue in the field of court-based psychotherapy. Like most therapists looking at court cases, he's using clinical guidelines to determine if we have a right to stop parents from being with their children because they're troubled and may cause emotional damage. I was taught, and continue to believe, that therapists must be willing

to work from a perspective that's concerned as much with social justice as it is with clinical rigor. In this sense, I definitely agree that I'm not unbiased. Therapists must stand for something.

In my early career, I was a child protective services worker. The law laid out guidelines that dictated under what circumstances the authorities could limit or remove a parent's right to be with and raise his or her child. In divorce cases, ex-spouses and the court can restrict parents and remove children for parental behaviors that wouldn't qualify for such restrictions under the child-protection laws. Even if a parent has poor parenting skills, should a divorce and a critical ex-spouse change the laws that dictate when a child can be removed?

I have three children and am as concerned as anyone about parents who harm their children emotionally. But parental rights matter. Otherwise, we set a precedent that allows courts to move into a family's home, assess their satisfaction with someone's parenting, and remove the children for actions and parenting methods that don't meet the legal standard for dangerousness. Under such broad clinical guidelines, many of us would have been at risk to lose our children at one time or another, and a high percentage of families would be split up and children removed. I'd rather help parents who have emotional limitations to improve than set up a new set of clinical guidelines that will countermand the law and violate parental rights. ■

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