

## Emphasize Moving on, Not Holding on, in Divorces

By Fred Silberberg

There is an aspect to family law proceedings that prove the age-old saying that "the law is an idiot." There is also an adage coined by President Harry Truman that says, "The buck stops here." If that latter pearl of wisdom were applied to family law proceedings, the law would not be as stupid.

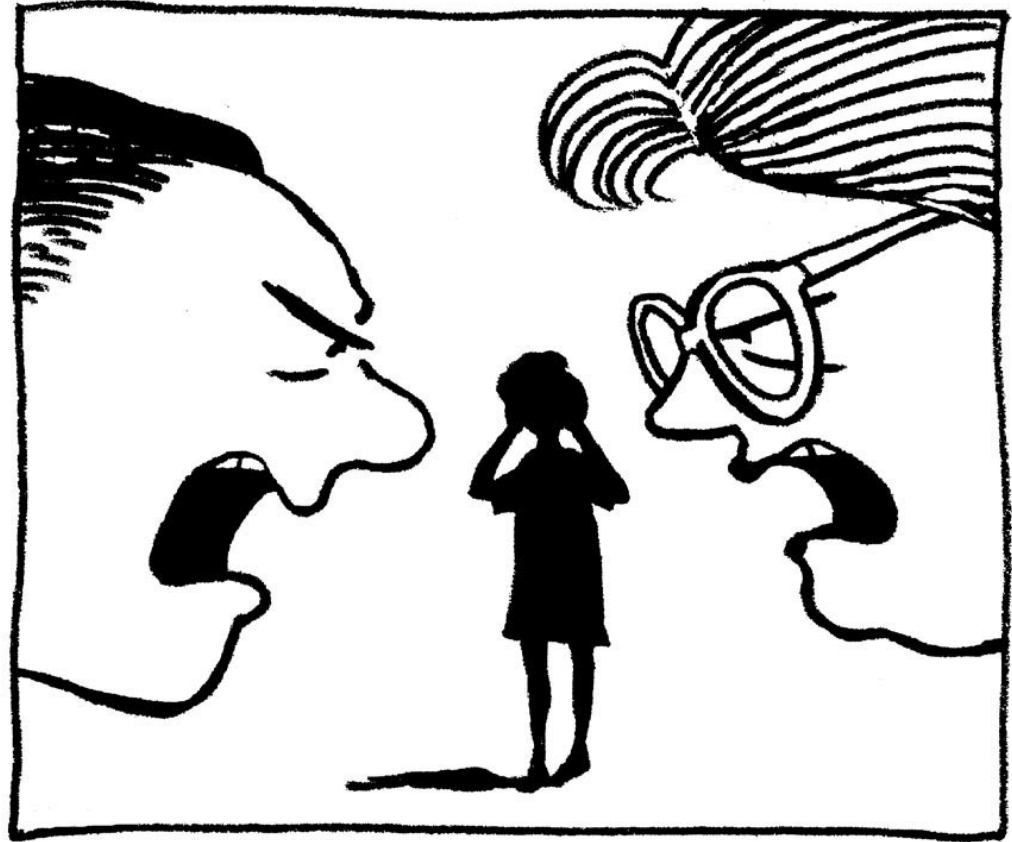
The idiocy is what many family law attorneys refer to in their arguments as status quo. This is often argued in dissolution of marriage proceedings as a basis to enable one party to keep his or her former life intact at the expense of the other party. The status quo is also argued as a way for one party to keep control over the children.

It is these arguments, and the inconsistent case law on the issue, that fosters expansive family law litigation, creates unnecessary hardships and prevents people from moving on with their lives. Surely if a higher authority, such as our appellate courts or the Legislature, would make it clear that the buck stops here, we would see a reduction in the amount of family law litigation.

Most people would call some things truisms if they were not caught up in their own marriage dissolution proceedings. One is that two can live cheaper than one. No one disputes that when a divorce occurs and there are two households to maintain it is going to be more expensive. Yet, every single day in our family law courts time is taken up with arguments on whether the supported spouse should be able to keep his or her lifestyle because that is what he or she is accustomed to.

While it is true that in some cases there may be enough money to enable such a lifestyle, in the vast majority of cases there is not. Yet attorneys spend significant time, expense, energy and fees arguing that the supported spouse should have enough support to maintain his or her lifestyle, which is often at the expense of the supporting spouse. During those arguments we hear such talismanic phrases as "she is entitled to it", or "that is the style to which he has become accustomed."

The same thing happens with custody. One of the parties moves out of the house, or less frequently, both parties move out. One party may have been a stay-at-home parent while the other one worked. Both may have worked, but one had more of the child-care respon-



sibilities and the other more of the household or financial responsibilities. In either event, it is time to reorganize and come up with a shared parenting arrangement.

Under law, the new framework is supposed to be in keeping with the never-quite-defined "best interests of the children" standard. The statutory policy in California per statute is to "insure frequent and continuing contact with both parents," but more often than not one parent comes to court and says

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"make me the primary custodial parent because that is the status quo." When that happens the doors of litigation fly open and the family is caught up in a determination of what is really in the children's best interests.

The argument would not have occurred in the first place had one party not been able to argue over the status quo. It is not uncommon for that claim to result in protracted litigation and examination by experts, which includes the direct involvement of the children.

The law's idiocy promulgates

litigation. If the policy of the law were that the buck stops here, that would stop a quickly speeding train. From a public policy standpoint, one would think that this is a train we'd like to see stop running.

In California, people's differences are surmountable less than half of the time, and marriages work out. The rest of the time they don't. When things don't work out it is time to move on, which the law

doesn't encourage couples to do. Instead, it urges them to try and hold on to something that they need to let go. Holding on often means litigation, an undue and unnecessary amount of personal stress, putting one's children into an avoidable bad situation and taking revenge on the other party. We are supposed to have no-fault divorce.

Robert Burns said, "The best laid plans of mice and men often go awry." The policy of the law should be to encourage people to embrace change in a way that

facilitates moving forward. This means striving toward restructuring everyone's lives with the least amount of trauma, not being tied up in court trying to preserve something that once was. The arguments should not be about maintaining the status quo, but about embracing the future.

There is no status quo once a couple, particularly parents, break up. If the law discouraged arguments over the status quo and entitlement, and encouraged people to address matters with a view toward the future, people would spend less time in court, children would not get caught up in battles over the old order, and the divorce process would be streamlined.

If the law recognized that which is logical, it would be less of an idiot. To accomplish that, the law must say the buck stops here.

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