

The Early Years of Formation and Growth of the American Academy of Matrimonial Lawyers

by
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The quest by Henry VIII for a divorce, and the historical fallout of that act of self-indulgence, managed to poison the well for the field of divorce for several centuries into the early twentieth century! Not only was divorce generally regarded with disdain, often requiring personal subjugation to slander and ego-destroying criticism, but those lawyers who aided the divorce process were likewise subject to much the same treatment as their clients.

The passage of legislation in many states as early as the nineteenth century making divorce and legal separation an acceptable fact of legal life changed public perception about divorce very little. “Divorce lawyers” were at the lowest rung of professional prestige—along with criminal lawyers—into and for years following World War II.

In virtually every state, the attitude and public aversion to divorce and divorce lawyers was the norm. Curiously enough, the public reaction to “divorce lawyers” was akin to the perception that divorce lawyers were the cause of divorce. They were perceived as complicit in encouraging the malady, and therefore not to be respected as were doctors, for their curative aid. As a consequence, legal practice in this area of the law was shunned by all “blue stocking” firms which otherwise handled corporate, business, taxation and trust and estates as their major areas of expertise and firm income. Divorce, if it reared its ugly head by an otherwise “good” client of the firm, was referred to a small number of seasoned lawyers who unabashedly concentrated their practice in these matters. These lawyers were to be contrasted with the very large number of lawyers who practiced divorce

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matters as a small part of a larger general practice. Many of these general practitioners were untrained and ill-suited to perform this function and many horrific reports of shabbily treated clients represented by these lawyers helped to give all “divorce lawyers” a bad name.

In short, divorce lawyers were considered much like the proctologists in the medical field. One thought little to nothing of them until they were *really* needed, and then the most one could hope for is that they were competent.

Who were these men—and they *were* all men! Where did they come from? Why did they elect to become the “chimney sweeps” of the organized bar?

Racial, ethnic and religious prejudice substantially ruled U.S. society before, during, and after World War II, and law graduates with strange sounding ethnic names—as well as Jews, often rejected by established firms, were left to fill whatever gaps such exalted firms avoided.

In the late 50s and early 60s, in Chicago and elsewhere, most prominent and experienced divorce lawyers were drawn from Jewish and other ethnic backgrounds, with a small number of mavericks such as the first President of the American Academy of Matrimonial Lawyers (“AAML”), William Boyden.

Chicago in the 1950s was a brawny town renowned for manufacturing, gigantic stockyards, and meat packing plants. Politically and numerically it was the “second city” in the United States, with a diverse population more heterogeneous than any found elsewhere. Even today, the politics of the city remain 100% Democratic. The major ethnic population then and now included large numbers of Italians, Irish, Poles and Hispanics, primarily Catholic, and almost all strongly opposed divorce. It is from these groups that most judges of Chicago’s courts were drawn and like many judges elsewhere, brought with them dislikes, prejudices, and religious scruples which formed the earlier part of their lives.

Experienced Chicago divorce lawyers of the 50s and 60s had entered the law in the 20s and early 30s, suffering many of the indignities of being caught in the vise of the Great Depression and having little prospect for more acceptable legal employment. To put it mildly, they were a tough bunch of guys who needed to and did work within a legal system that required that one of the

parties be found at “fault” before a divorce could be granted. Grounds for divorce varied widely from state to state at the time, but generally included objectionable conduct, such as cruel and inhuman treatment, alcoholism, adultery, use of drugs, infection with some sexually transmitted disease, conviction of a felony, attempted murder, and similar grounds which made it apparent that defendants in such cases were less than ideal citizens.

Sworn allegations of these grounds by pleadings or affidavit was not sufficient proof of existing grounds; litigants and lawyers were required to put witnesses on the stand in support of the alleged transgressions which formed the legal basis of divorce. Quite obviously, the least offensive grounds (in Illinois at least) got the big play: physical or mental cruelty, followed by a much lesser degree with charges of alcoholism. Thus, in physical cruelty cases it was essential to have two witnesses and the plaintiff testify in court in support of the allegations of at least two physical acts of abuse inflicted by the defendant upon the plaintiff.

In the mix of how and under what circumstances divorce could be obtained, there quite obviously was much collusion in the stretching of the fabric of fact at or near the point of perjury! At best the whole scenario was a distasteful, but necessary, predicate to obtainment of a divorce. In New York, for example, the only ground for divorce was proof of adultery, which necessitated a “dog and pony show.” This involved (1) the prospective defendant in the divorce action; (2) a private detective; (3) a photographer; and (4) a woman willing to be photographed in a hotel bed (clothed or not) with the designated defendant of the day!

In New York and elsewhere the obtainment of a divorce was such a distasteful legal exercise such that it led to the growth of “divorce industries” in Nevada and New Mexico. These jurisdictions offered an escape valve by making divorces easy but expensive and imposing little by way of residency requirements in order to qualify for divorce purposes. Many couples, bound together in an unhappy marriage relationship, sought to uncouple without the real or implied personal disgrace that accompanied divorce in their home states. One need only to look at the New York law reports for the 50s and 60s to find numerous examples of legal questions reviewed with respect to validity of foreign divorces, predicated upon many legal arguments, including evasion of local law, the need to give full faith and credit to the judgment

of a foreign country, and the lack of in personem jurisdiction over the defendant.

Prior to World War II, divorce was a rarity not merely because of the impregnable wall presented by fault grounds, but because of the necessary high costs one must confront in putting together a sustainable case. Few people, other than the upper middle class and wealthy members of society, would adjust their lives in many non-conventional ways rather than seek a divorce. Separation and reformation of families without the benefit of divorce was quite common in the first half of the twentieth century, and earlier, and to some degree previewed a rather indifferent attitude about marriage as an institution which seemingly prevails today.

Chicago divorce lawyers of the 50s and early 60s were tough-minded, salty dogs, who spoke their minds and flexed their muscles and pushed themselves to the limit of acceptable professional conduct to achieve the ends sought by their clients. Curiously, however, interviewed individually, these men had a remarkable similarity in attitude towards their clients and the world at large. They wanted very much to be helpful and to aid their clients in making a new life for themselves. Indeed, many of them, had they not become divorce lawyers, would have done very well as Dr. Spock, Ann Landers, priests, ministers, rabbis and friendly neighborhood bartenders. This excludes those few found in every occupation or specialty who are "in it" simply to exploit the client and charge whatever the market will bear. We still have them with us, but, thanks to the AAML and its high admission standards, these legal piranhas are usually singled out and disciplined by court agencies charged with maintenance of professional standards. Additionally, the close professional relationships that inevitably grow among those belonging to an organization such as the AAML, dedicated to enhancement of professional standards, help identify these transgressors and make it more difficult for them to succeed.

It is a social phenomenon of substantial import that a great wave of divorce ensued in this country following the end of World War II, and the dramatic changes in public opinion and perception which accompanied the return of 15 million young men and women of the WWII generation who had left the farms and cities to participate in the military forces of the United

States. Many of these men and women had undergone significant personal and emotional changes as a result of their wartime experiences. The old verities no longer served as a brake on the conduct of those who desired more and set about to get it. The G.I. Bill, enacted by a grateful nation to reward those who had served their country, sent millions of these young people to colleges and universities throughout the country and in doing so created a much different social climate respecting the moral codes and restrictions of an earlier age.

In Cook County (Chicago), in the 1950s the increased wave of those desiring divorce (averaging between 20,000 to 30,000 couples a year) was met with painful and shabby responses by the existing judiciary. I remember as a young lawyer hearing a Chief Judge of the entire Cook County—Chicago court system disrespect a small group of divorce lawyers in public by asserting that all divorce lawyers cared about was their fees! Fifty-five years later this remark still sears my soul and I am reminded that “the younger the age, the deeper the burn.” It was insulting to a fine group of lawyers, but truly represented the prejudices of both the bench and the bar surrounding divorce and divorce practice.

Judges in Cook County—then and now—are elected and supported in elections by the predominant political party in power, historically the Democrats. Most elected judges come from backgrounds that have prior political service as the central core of their values, and many lack experience of any significant nature in the realities of the actual private practice of law. Indeed, most have come from one branch or another of the attorney general, the state’s attorney office, or, the administrative bureaus of the cities, and the law departments of various municipalities.

Once elected for a term of years, judges were legally authorized to hear any and all justicable matters and few—with the exception of probate and chancery—had any experience or interest in dealing with family law issues. Divorces, like personal injury or contract actions, were assigned out to judges by lot, and, for the most part, judges were disdainful of the need to hear divorces and often would make their displeasure known to litigants by way of disparagement of their mission as well as their lawyers. Again, from early experience, waiting for a hearing on one of my

divorces, the sitting judge, after finishing another civil case before him, announced to the courtroom that he would proceed thereafter to hear divorces and would search for the “preponderance of the perjury” which would carry the day.

That attitude permeated the entire divorce bar, not only in Illinois but throughout the country. Judges—sworn to hear all matters properly before them—would sometimes refuse to hear divorces based upon personal or religious viewpoints and would often malign attorneys who sought a minimal showing of respect for themselves as officers of the court as well as for the clients, citizens in dire need of even-handed and informed justice.

Occasionally, a judge would seriously overstep his bounds and invite some response from someone in a higher judicial position. My partner, Charles J. Fleck, Jr., formerly Chief Judge of the Domestic Relations Division of the Circuit Court of Cook County, relayed to me an episode during which he sought to curb a judge from failure to keep court hours as well as his disrespectful attitude towards divorce lawyers and litigants. The judge’s reply—which was typical of the times—was “if you don’t like what and how I am doing, don’t vote for me next time!” The reality behind the disrespectful reply was clear; once a judge supported by the Democratic Party was elected to the bench, it was a rarity, sometimes an impossibility, to remove him or her, short of a criminal indictment.

Even if one were to discount significantly the appalling picture I have painted, the net consequences for divorce litigants of the early post World War II era was distressingly unpredictable. The amounts allocated for child support could vary enormously from judge to judge and alimony—often referred to as the “high cost of leaving”—was also set at widely disparate amounts and under many curious conditions such that the predictability of a result upon trial was virtually zero.

When any tribunal possesses such inconsistencies as to make an approach for assistance dangerous and foolhardy, the professionals develop alternatives. Negotiation and settlement by way of “property settlement agreement” (MSA) became vital to the client’s best interests and/or his or her pocketbook. Indeed, it was common knowledge and accepted that use of the courts was much akin to rolling the dice in Las Vegas! Some lawyers—in-

cluding me—jokingly suggested that we abolish the entire system and return to “trial by combat.”

It is against this overpowering disrespectful background that a group of divorce lawyers decided to make a stand. These lawyers of long experience had individually and collectively gathered a tremendous amount of “Chicago” clout, which included within their kit bag a good deal of inside information about very prominent political, business, and legal figures in Chicagoland.

It is an axiom that “in unity there is strength.” These gentlemen decided that it would be helpful and prudent to join together as a legal group to assert their position, to be able to speak with a unified, much louder, voice than any single member standing alone. The foregoing led to formation of the American Academy of Matrimonial Lawyers in 1961. The group proceeded to act as an informal group for some before seeking issuance of a charter of incorporation as a not for profit organization. The charter was issued by the Illinois Secretary of State on January 21, 1963. In total, then, there were approximately 35 to 40 divorce lawyers of varying years of experiences who sought to speak out as a group and ultimately began to do so.

The AAML corporate purpose as a charitable corporation was succinctly stated in its charter as follows:

To encourage the study, improve the practice, elevate the standards and advance the cause of matrimonial law, to the end that the welfare of the family and society be preserved.

Over the fifty years of life—commencing before its articles of incorporation—the AAML endeavored to maintain and advance its stated purpose and has done so with much panache!

The first order of business of this group was to gain the ear of the Chief Judge and this was done in unique Chicago style by hiring a public relations person who had materially assisted the Chief Judge at a time when political and other circumstances had placed him in a most disadvantageous position before the public. With the help of the PR person chosen by the AAML, the Chief Judge not only retained his political position but effectively became much more potent in his office and obviously was deeply indebted to our PR maven for the assistance given to him during this critical period.

The backing of our PR man and the conduct of widespread discussion groups, intermixed with direct discussion with judges

facing election, soon brought an improving attitude from the bench towards divorce lawyers and the further need to provide more respectable treatment for divorce litigants and their counsel.

These lawyers, angry and figuratively armed to the teeth, demanded, persistently and loudly, that the divorce area receive the same respect and dignity accorded to other legal issues presented to the court. After a time and some torrid publicity, success was achieved by way of the establishment of a separate domestic relations group consisting of four judges who would be committed during their tenure to hear nothing but divorce matters and, hopefully, would become knowledgeable enough to do more good than harm. Additionally, these judges would be required to request the assignment and commit themselves to remain for a period of time so that they and the divorce bar could become comfortable with each other. Rather surprisingly, there were a number of judges who expressed their willingness to initially accept such an assignment, perhaps the most notable of these still carried in the memory of many of our older Chicago members was Judge Heiman Feldman, and judicial brothers named Herschensohn.

While seemingly a small concession, these events comprised the turning point in the legal community and in the minds of the public with respect to the importance of sound judgment and intelligence being lavished on an event which changes the lives and outlook of millions of people and children caught up in the divorce process each and every year.

No gift to the matrimonial bar comes wrapped in gift boxes with ribbons. The four courtrooms assigned were outside of the existing majestic court building, and were located in a shabby office building, the court rooms being often of postage stamp size. Nonetheless it was indeed a start and a most welcome one, given what had previously prevailed.

As a new organization the AAML was making history as it moved from day to day. The group established itself in a most positive way by holding board meetings at least monthly, often over lunch at the Chicago Bar Association. Further, meetings were scheduled after business hours at the offices of one or another of the board members and, occasionally, on Saturdays.

The constant theme of these meetings, and the combined action of its members, was to enhance public awareness of our existence and promotion of the emerging idea that the practice of divorce and family law was a noble and worthy effort by its practitioners to help relieve much pain and dislocation of lives which surrounded the whole phenomenon of divorce. The AAML created committees devoted to various phases of the divorce process which needed intensive attention. These included legislation, child custody and visitation, child support enforcement of support orders, and, continuing to be most important, a liaison with the Chief Judge of the court system. In many ways, the activities of these committees, and the changes that they brought about, managed to enhance our respect by the judiciary and made many who were hostile to us rethink and revise their attitudes.

Prior to establishment of the AAML, the American Bar Association had become sensitive to the need for establishment of a "Family Law" section to its roster of special interest sections. This development helped lend legitimacy to the efforts of the Chicago group of the AAML. The Family Law Section of the ABA provided structured, numerous educational programs which featured accomplished members of the AAML. To this day, there is an alliance between the organizations, with the leadership of the Family Law Section having thereafter gone on to become members of and Presidents of the AAML.

Education of our members and providing a vehicle for exchange of ideas and approaches also became and continued to overlay much of the effort of the early group. The older, more experienced lawyers would hold informal discussion groups and/or programs, not unlike the early "inns of court," and thus pass on to the younger members of the bar the basic standards and ethical precepts that had been devised and put into place by these much more experienced and capable lawyers.

Following its initial informal organization in 1961, the Academy concentrated its efforts soliciting and inviting the best representatives of family law and divorce practice. As our numbers grew, so did our activities, including the installation of annual meetings during which officers were elected, always accompanied by educational programs of special interests to divorce practitioners.

It has often been said that “success has many parents, but failure is an orphan.” The evident success of the AAML, an Illinois based association, soon was recognized by practitioners from other major states who, like their Illinois brethren, suffered many of the same indignities that were the catalyst for creation of the AAML.

By the mid-60s and early 70s the AAML had seeded organized groups in New York, Massachusetts, Connecticut, Maryland, Florida, Texas and California. In each of these instances, a lead was taken by a distinguished family law-divorce practitioner within the community, such as Philip Solomon in New York, Judge Haskell C. Freedman in Massachusetts, Jim Greenfield in Connecticut, Jim O’Flaherty in Florida, Louise Raggio and Donn Fullenweider in Texas, Beverly Groner in Maryland and Stuart Walzer in California. These ladies and gentlemen led the way for the formation of AAML chapters within their home states, serving the identical function and purpose of that of their Chicago mother chapter.

For many years the AAML existed with Chicago as effectively the parent chapter through which all corporate and business matters relating to its constituent units functioned. As the number and size of the state chapters continued to increase, it became clear that substantial organizational changes would be necessary.

In the early 70s each state group received a charter and organized their individual chapters as not for profit corporations. Dues structures within all chapters provided for continued support of the state chapter offices and the Executive Director’s functions in Chicago, having a free-standing executive office, independent of Chicago’s control.

In keeping with its educational objective in the early 70s, the AAML together with Chicago’s Loyola University School of Law (with big thanks to Professor James Forkins, a Loyola Professor and one of the founders of the Academy) presented a 13-week program conducted by the writer entitled “Tax, Financial and Estate Planning of Marital Settlement Agreements.” Classes were held on Saturday mornings from 9:30 a.m. to 11:30 a.m. and the classes consisted of some 18 practicing lawyers and 6 judges of the Circuit Court who volunteered to learn more about the incredible intricacies divorce had induced into the legal system.

The class was a marvelous success and the attendance rate was unbelievably high. Many of the lawyers who attended this program went on to become precisely the kind of well-rounded and highly informed business-financial counselor so necessary for many clients who lacked such training and experience. Judicial members and graduates of this group became vocal emissaries for the divorce bar among their judicial colleagues and supporters of the mission of the AAML. As a matter of importance, the foregoing graduate program for specialized practicing lawyers represented the first of its kind ever to be offered within the U.S. bar.

Local CLE programs and meetings were supplemented in the early years of the Academy by offshore educational and business meetings at some of the most lovely and salubrious resort areas in the Western hemisphere. These meetings, usually of nearly a week duration, brought together members of the Academy from all of our chapters together accompanied by their family members. These meetings proved most helpful in weaving a web of relationships and friendships among its members which have prevailed and grown over the years. It is possible for seasoned members of the Academy to reach out to other Academy members throughout the nation for assistance when required. This “long arm” reach has made membership participation in the AAML a most rewarding professional relationship.

The educational function of the AAML has always dominated over every other concern. From its earliest founding to the present day the AAML has taken a leadership role in encouraging and enhancing the study of matrimonial and family law throughout the country. As early as 1962 the AAML made a connection with the Judges Advocates Corps of the United States Army in the form of a new academy member, Colonel Carl Winkler, whose primary job was provision of legal services to the troops. Colonel Winkler impressed upon members of the group that the military forces were overwhelmed by a plethora of family law issues which constantly presented themselves for legal attention. Married troops were being constantly bedeviled by separation, child and spousal support issues, adoption, spousal abuse and so on. As a consequence of Colonel Winkler’s plea, the Academy members helped prepare a JAG Handbook on

family law issues which was widely distributed within the military services, giving marvelous exposure to the AAML.

Over the years, the AAML as well as the ABA Section of Family Law have become acclimated to the presence of many junior and senior military lawyers who attend educational programs praising the assistance given them in performance of their function as attorneys for members of the military and their families.

As our educational programs proliferated, during my presidency in 1978-1979, the Academy established an Institute of Matrimonial Law as a not-for-profit corporation affiliated with the AAML. The general purposes of the institute were succinctly stated as follows:

- (1) To provide educational opportunities for attorneys in the field of matrimonial law.
- (2) To encourage continuing legal education in the field of matrimonial law.
- (3) To encourage the highest level of performance from attorneys practicing in the fields of matrimonial law.

In retrospect, the lofty purposes of the institute have been more than fulfilled bringing forth over the years a range of publications (the *Journal of the American Academy of Matrimonial Lawyers*) as well as the numerous state and educational programs in which members of the AAML lead presentations.

Parallel to all of the foregoing grew the notion that the AAML should organize and control its own foundation and, in 1990, the AAML Foundation became a reality, with Margaret Travers of Boston as an original organizer.

Since its founding, the foundation has received donations and grants totaling several million dollars and has channeled these funds to individuals and organizations which have joined our efforts to elevate the standards and educational level of the Academy and its members.

Conclusion

The early years of the Academy were a challenging and exciting time. I am personally and professionally proud to have been an early member and supporter of this organization and to have witnessed the tremendously positive impact the organization has had upon the practice of matrimonial law throughout the

United States. Over the half-century since the founding of the Academy, it has, by adherence to its founding principle, carved out a niche in the legal systems of many nations and has positioned itself as the premier group of practicing lawyers devoted to divorce and family law and the only certifying group of its character in the world.

None of this was accomplished by any one individual but, rather through the joined wisdom and efforts of many fine men and women. Most of the old guard have passed on to be replaced by those now highly active, carrying on the early traditions and purposes of the founding fathers. The current and future members of the Academy owe our gratitude to these original founders who correctly assessed and acted upon their dissatisfaction, giving living proof to the proposition that in union there are strengths.

