



**national  
healthy marriage  
resource center**

## **September 2010 Webinar Frequently Asked Questions**

**State Legislative Efforts to  
Combat Divorce**

1. *What does J&D refer to?*

**Bruce Peterson:** J&D refers to judgment and decree, that's the final judgment in our court that we issue that finalizes a divorce. And it addresses all the issues in the divorce - the children, the finances, the property, and so forth.

2. *How successful are these efforts for someone who has severe mental illness, for example, Obsessive Compulsive Disorder or Borderline Personality Disorder?*

**Bill Doherty:** The question always for me is whether the person, regardless of their problems, is willing to take responsibility to work on this. One of our cases where they started on the reconciliation journey and then it just fell apart quickly was one in which I believe the wife has Borderline Personality Disorder and was not willing or interested in looking at her own contributions. So this is certainly no magic solution and there are people who just bring a lot of problems to their marriages.

3. *Who actually does the discernment counseling – a lawyer, social worker, or counselor?*

**Bill Doherty:** Right now my colleagues and I are doing it, which requires therapy training.

4. *Has there been any pushback around this initiative from groups such as the ACLU or others that are against the State getting involved in marriage? And if so, how have you countered that sentiment, and how would you encourage practitioners to think about that conversation?*

**Bill Doherty:** I'll do the broader question and then maybe Bruce can talk about the divorce lawyers' opinions about it. It really helps to have data; it helps undercut the ideological aspects of this. When 30% of people in the local county are saying that they would be interested in services that could help them explore whether their marriages could be restored to health and that there's not much out there for them, then it's not just me getting in there and saying, "I believe in marriage and family and blah, blah, blah." So having data, local data particularly, is just really, really helpful. And so we just framed it that way.

Also to have a judge right at the beginning saying, "Okay this is what I see every day in my court." I could also talk about what I see in my practice as a therapist. We've got data on this. So people are interested, and this is a feasible way to meet a need that people are saying they have. That's how we try to get around the broader ideological issues about marriage and divorce. And Bruce, the divorce lawyers?

**Bruce Peterson:** One point about this is to take a public health view of it. The data is so compelling that divorce in many cases can be difficult for children and increase their risk factors. The State shouldn't be involved in forcing people to wear seatbelts, yet we have a very strict seatbelt law in Minnesota. And we've banned smoking in all public buildings and now restaurants and bars in Minnesota. So the broader public health perspective combined with the data Bill's talking about ought to cut through a lot of the ideological baggage surrounding these questions.

I frankly was amazed at the committee hearings on the Couples on the Brink project in a time of difficult fiscal circumstances here in Minnesota. We did not have a dissenting vote from Republicans and

Democrats because the case was so compelling. So that particular project hasn't been a problem.

But the divorce education requirement (required skills training before filing for divorce) has engendered a lot of opposition from divorce lawyers who have a lot of influence. We did initially have these two pieces of legislation combined in one bill last spring, but we pulled the divorce education part of it out because it was clearly more controversial. It would slow up the passage of the other one.

It's not so much that states shouldn't be involved in these issues. It's that people have a right to get divorced and how can you put obstacles in their path? Well, the fact of the matter is we have a divorce education requirement now, but people comply with it too late to be of use and there's a lot of merit to doing it sooner. But the answer is yes, it's an ideological issue and we have to do the best we can to separate the ideology from the facts.

5. How have domestic violence advocates interacted with this program?

**Bill Doherty:** Well, we assured the legislators that we do careful screening for domestic violence. And in fact, the protocol that we use was developed with a local domestic violence program. That seemed to be sufficient. For the online requirement we're assuring people as we have throughout the alliance program statements that we are concerned about domestic violence, and that the threat is no reason to think of trying to save your marriage. And so we'll see how that goes, but we have done our homework and tried to be responsive and careful upfront. And so far we've done okay.

**Bruce Peterson:** I should add that we have a very well-developed and active domestic violence advocacy community in this area. And so far that hasn't been a political issue.

6. *You discussed some specific involvement attorneys could have in promoting reconciliation. I have a network of 800 pro-family lawyers that would like to get involved in something like this and wonder if you have any suggestions.*

**Bill Doherty:** Well it's been really a very interesting thing for me to work with this group of collaborative lawyers and understand what goes on in their world and their offices. And so yes, there are ways to get involved. This group is now forming a name for itself and a mission statement and really wants to change the practice of family law. And so they're really quite gung-ho about it. And I can tell you the kind of initial axiom of their work is that reconciliation is on the continuum of dispute resolution in family law. Let me say it again: marital reconciliation is on the continuum of dispute resolution in family law. And I don't think many family lawyers will disagree with that. That's why they ask the "Are you sure you want to do this" question. But the skills for that have not been developed. And that's what this group wants to develop.

**Bruce Peterson:** It sounds like there may be a lawyer out there who is interested in pursuing this. And what I've seen Bill do with this group of lawyers that's been working on this is to role-play and work on specific language that can be used with clients as they come in, being respectful of what is usually their initial desire to just get a divorce but also, as Bill says, opening up this other option. So one of the ideas is of having a center now, with State funds at the University of Minnesota, to develop practices that can

be disseminated to lawyers who want assistance in developing their skills to better serve their clients in this way.

7. *That presentation you mentioned some materials, forms, questionnaires, assessments. Are any of those documents available at this point?*

**Bill Doherty:** If people want to email me for those, I'm happy to correspond with you. My information is on the slides. For this project we'll eventually have a web site. So for example, we have a one-page intake and assessment form that the divorce lawyers use that really opens up the conversation beautifully. Also, if people want to use these things, I'd want to know how they work for them.

8. *How does this work fit into a covenant marriage option? Is there any data that can come out of this project that could perhaps help justify a covenant marriage option?*

**Bill Doherty:** The covenant marriage option is really I think at the other end of the continuum. It's what you do when you get married. And so, I think it would be helpful only indirectly. I think that covenant marriage has not been a particularly successful experiment so far. Very few couples do it. And so what we're doing may be helpful but I'm not sure of that.

9. *Are there other programs similar to this Minnesota program across the country that you're aware of?*

**Bill Doherty:** I think we're the only one that has this sort of a full-out developed program at this point. I know California and the Healthy Marriage initiative have been planning some innovations around contacting people who are in the divorce process through public records and inviting them into educational and other experiences. I don't know if they started that but I know that they're planning to. But that's all I know. Some States have contacted me. I believe Georgia is interested. And I'm happy to help anybody do this.

But I want to emphasize that some of the credibility factor is out of having a state university involved, having a judge involved. If we were just working in a nonprofit, just trying to do good but without much of a profile, or if we were part of an advocacy group, we may have not have gotten this far. So if you're in a nonprofit or an advocacy group, reach out to people at the university, reach out to people in the court, really build alliances so that this is not seen as some sort of fringe thing.

10. *Where did the assessment or the study come from that found about 30% of the local population wanting marriage support? Was it only couples entering into divorce or was it the public at large? Is that a study that's published?*

**Bill Doherty:** I'll make a note to myself to get that study up on the drbilldoherty.org Web site. But it's a study impressed in the Family Court Review. These were people who had filed for divorce, were in the divorce process in Hennepin County, Minnesota, which is Minneapolis and environ. So these were actual people in the divorce process.

11. *Does this process seem to be as effective for couples without children as it is for those with children?*

**Bill Doherty:** There's nothing inherently in the process we've set up where we work only with couples with children. We've had some couples referred to us with kids over age 18. We had one couple who found if they don't have kids the process is really quite similar. In terms of legislation however, the main public policy lever in this is children. So that's why there's a focus in the online program bill, for instance, on couples with minor children. But this process could work with any couple, I think.

12. *Have you done anything to address law enforcement marriages and their spouses as in police or border patrol and particular problems that they experienced in adultery in their marriages?*

**Bill Doherty:** No.

13. *You talked about specific counseling for the hopeful partner to help them come to terms with going through a divorce that they don't want. Are there programs for the partner who is pushing for the divorce that would show them that there are options other than divorce?*

**Bill Doherty:** We call it discernment counseling. So that's really what we do in the discernment process. Also there are a number of people would have been to programs like the Retrouvaille weekend, which comes out of the Catholic tradition. They went on that weekend just like people come to the discernment counseling, just so they'll be a good citizen and so nobody could say they didn't give it one last shot. And then they come to see that they were part of the problem in the marriage. And they develop some hope. So some of what we do in discernment counseling is to help people understand that divorce narrative in a more complex way than they are often seeing it.

If they believe that all their problems in the marriage come from the person they married and they don't see any of their own contributions -- and we're not talking about abuse cases here -- then there's nothing for them to work on. You know, there's only a wishful thought that their spouse would change. So a lot of the work we do in the discernment process is around the narratives of the person who is leaning out of the marriage.

This is a good time to add that sometimes people are leaving for excellent reasons and that we're not suggesting that they give up those reasons or that they go rushing back to their spouse's arms because they say, "Well I promise to taper off my affair," or maybe, "I'll take my alcoholism seriously." I mean we sometimes urge people to sit down and to be cautious and to be skeptical as well. That's why it's discernment; it's not just "save your marriage."

14. *Is there any training available for those who want to establish aspects of this program in their own state?*

**Bill Doherty:** We're in the process now. Our funding is just starting to come in. And we're going to be developing local training. And then we will look to do some training for other people as well. We do not want to keep this only in Minnesota but we want to figure out how to do it well here and then help to disseminate it.

15. *Is this program exclusive to opposite sex couples? Is this something that is exclusively an opposite sex couple program intervention?*

**Bill Doherty:** Not if you are going to do it on the ground. The legislation is written with the word marriage in it. In Minnesota the only people who can legally marry are heterosexual people. But, just as in my own practice, I do not screen out people who are in gay and lesbian relationships; we will not turn people away, either. And I want to say that a lot of the issues of breakups and divorce, are quite similar for both kinds of couples. So, on the ground we're going to work with whoever wants to work with us.

*16. Are there any assessments of the children's difficulties during the couples' divorcing or reconciliation process or resources that you use specifically with the children?*

**Bill Doherty:** Well, as issues come up we don't see the children. And as the parents express concern about the children, the children can be on the docket for referral options and other considerations.