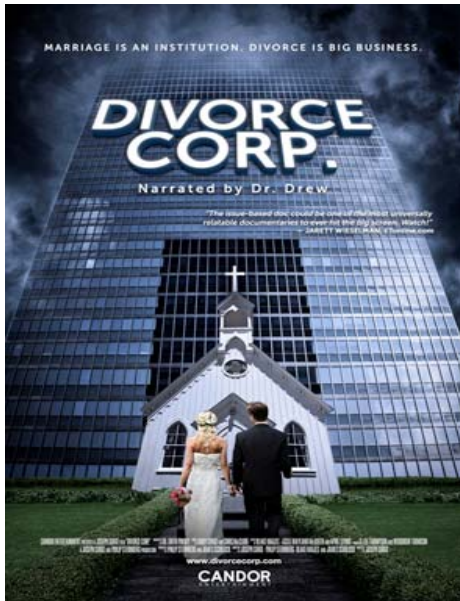


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## “Divorce Corp” Documentary Takes Unfair Aim at Family Court Judges and Lawyers

By David A. Hoffman

“Divorce Corp,” a feature-length documentary that excoriates divorce lawyers and Family Court judges, is slated for national release in January 2014. Having played a tiny role in the film, I was shocked when I saw the finished product – but more on that point later.



My primary concern is the film’s misguided message, which boils down to this: divorce lawyers and Family Court judges are in cahoots – engaged in a sinister enterprise designed to fleece divorcing couples. Parents in the movie provide harrowing accounts of courtroom battles in which they lost access to their children and spent their last nickel on lawyers and court costs.

The film may have been intended to improve the way our society handles divorce, which can be a horrible, messy process under the best of circumstances. The expense, animosity and delays associated with a litigated divorce can be maddening for the divorcing spouses – and, at times, for the professionals. A legal system that cannot provide a more civilized way to end a marriage needs repair.

However, by lambasting Family Court judges and matrimonial lawyers as the villains primarily responsible for the problems, the film paints a misleading and potentially dangerous portrait of what is actually going on in Family Courts.

The danger in “Divorce Corp” is three-fold. First, the film’s director, Joe Sorge, takes the worst cases of injustice and overreaching and generalizes them into a blanket indictment of Family Courts that the film calls a “wild west” in which constitutional rights do not apply. The reality, of course, is that – even though the rights to a lawyer and a jury trial are constitutionally guaranteed only in criminal cases – Family Court proceedings are, in every respect, governed by statutory and constitutional strictures. The film’s narrator also states that “lawyers have been granted complete immunity in court” – a proposition that would be laughable to attorneys who have paid fines or even spent time in a lock-up because of a courtroom infraction.

Second, by claiming that greedy lawyers and corrupt, power-hungry judges are responsible for bad outcomes in litigated divorces, Sorge feeds that dangerous strain in our political culture that undermines respect for our legal institutions. Family Court judges – like the rest of the judiciary in the United States – consist for the most part of lawyers who have taken a steep pay cut in order to perform a critical and underappreciated service on the bench. And while there may be *some* matrimonial lawyers who seek to extract the maximum revenue from

each case, the market rewards lawyers known for putting their clients first, and corrupt lawyers are a primary focus for the bar's disciplinary boards.

Finally, the film ignores the alternatives to courtroom battle – such as mediation, family law arbitration, and collaborative law – that are burgeoning throughout the United States with encouragement from the courts. Such processes dramatically reduce the animosity, cost, and delay caused by courtroom battles. The film's only comment on this subject is: "Methods outside the courtroom like mediation, have been tried, but they've never caught on because the financial incentive to fight is just too powerful."

To his credit, Sorge recognizes the systemic nature of the problems that our Family Courts – and therefore divorcing couples – face. An adversarial system is better suited for determining guilt or innocence in criminal matters than for solving complicated family problems such as custody and parenting schedules. But the film suggests that the problem is *overfunding* the courts ("The more funding the courts get from the state, the larger they get, the more business they can handle from the law firms") – when it is really the opposite.

Our courts are woefully *underfunded*. Even the briefest visit to a Family Court session shows that we expect the judges there to handle an enormous docket with inadequate resources. Fifty percent of marriages end in divorce, and the Family Courts handle myriad forms of dysfunction – domestic violence, addiction, mental illness, teenage pregnancy, child abuse, and parental abandonment, to name just a few.

Family Court judges are operating with minimal support staff, outdated computer systems, and no funding relief in sight. Court clinics – utilizing social workers and other mental health professionals – exist in only a few of our courts. Parent education programs for divorcing spouses need to be expanded – particularly in high conflict cases. Legal services for the poor are badly underfunded, as is mediation.

"Divorce Corp" may serve a useful function in sounding the alarm that Family Courts need help, but a more balanced and discerning approach to the problems will be required if we are to avoid making the treatment worse than the disease.

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#### *A Cautionary Tale*

On a personal note, I am embarrassed about my appearance in the film. My involvement was brief. More than three years ago, filmmaker James Scurlock was travelling around the U.S. and Scandinavia, interviewing people for a documentary that he was making about divorce. He talked with divorcing spouses, mediators, judges, lawyers, and law professors, and I was asked to talk with him.

Wondering whether it was wise to participate, my wife and I watched one of his films, "Maxed Out: Hard Times, Easy Credit and the Era of Predatory Lending," a critically acclaimed 2006 documentary about abuses in the credit card and mortgage industries. Scurlock brought a fresh, populist perspective to his subject (including extensive footage of Elizabeth Warren,

whose passion and perceptiveness on the subject steal the show), and so I agreed to talk with him.

On a gorgeous summer day, Scurlock's crew set up their equipment on the back deck of my house, and we talked about divorce – primarily about mediation and Collaborative Law, which I described as vital remedies for the cost, acrimony, and delay associated with litigated divorces. (A representative sample of Scurlock's interview with me can be found at <http://tinyurl.com/divorce-corp-mediation>.) Scurlock interviewed at least five other people in Massachusetts.



Then we interviewees heard nothing for three years. In late October 2013, the “Divorce Corp” staff sent me a password-protected Internet link, so that I could get an advance look at the 90-minute film, and I noticed in the credits that James Scurlock was no longer the director – he was replaced by one of the producers, Joe Sorge, who has never directed a film before.

To say that I was angered and appalled by what I saw is an understatement. If you want a taste, check out the trailer, which can be found at <http://tinyurl.com/divorce-corp-trailer>. The rising crescendo of disturbing music in the trailer matches the hysterical tone of the narration.

On a more personal level, I saw that *nothing* that I said about mediation or Collaborative Law was included in the film.

On the other hand, Sorge did post at [www.YouTube.com](http://www.YouTube.com) some outtakes from the film in which mediation and Collaborative Law are discussed – a link to one example is cited above. When Sorge sent me that link, I wrote to him, expressing my disappointment about “Divorce Corp” and asking why mediation is mentioned only once in the 90-minute film and without much enthusiasm. Sorge responded: “I fully agree with you that mediation and collaborative divorce are vastly preferred options for the resolution of divorce and custody matters. . . . I wish we could have made a 3-hour movie, covering many more topics. But the reality of the format is that you only get so much time.”

My brief experience of participating in this worrisome film may provide a cautionary tale to those who are asked to participate in such ventures. Agreeing to be interviewed means accepting the risk of being selectively quoted, or quoted out of context. One needs to trust the filmmakers or journalists, who, to some small degree, hold your reputation in their hands.

More importantly, I worry about how the sensationalistic tone of what Sorge chose to include in this film is likely to distort the public's view of our Family Courts and complicate the task of improving them. How many young lawyers will choose to practice family law if their motives for doing such difficult and important work will be questioned? How many experienced family law attorneys will choose to go on the bench if they know that their work there will subject them to such unwarranted contempt?

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My own experience in the Probate and Family Court persuades me that Massachusetts has been fortunate in attracting excellent judges, who skillfully and conscientiously handle some of the most difficult cases facing the judiciary. Although I spend more of my time as a mediator, courts and mediators have a closely inter-dependent relationship. (See David Hoffman, “Courts and ADR: A Symbiotic Relationship,” *ABA Dispute Resolution Magazine*, Spring 2005 (<http://tinyurl.com/symbiotic-relationship>)). Mediators often talk about the parties “bargaining in the shadow of the law” (a phrase coined by Bob Mnookin and Lewis Kornhauser – or, to use John Fiske’s insightful and optimistic restatement of that phrase, “bargaining in the *light* of the law”). We need good judges to fairly interpret and apply those laws and thus establish precedents that will guide the rest of us in negotiation and mediation.

Although I am chagrined about my role in “Divorce Corp,” I hope that whatever notoriety the film attains will contribute to genuine debate about what our Family Courts need and, at the same time, encourage divorcing couples to consider mediation, Collaborative Law, and other alternatives to courtroom battle.

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