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## Divorce — Is There A Better Way To Go?

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Divorce — American style — is insanity, attorney J. Michael Kelly contends, and he is fiercely determined to change the system.

Likening himself to Columbus setting out to prove the world isn't flat, Kelly insists that any divorce can be handled amicably, fairly and "with the same dignity with which the marriage was entered into."

Kelly even has a trademarked name for his approach — "Positive Divorce." And he makes those wishing to hire him first agree in writing with his philosophy or he invites them take a hike.

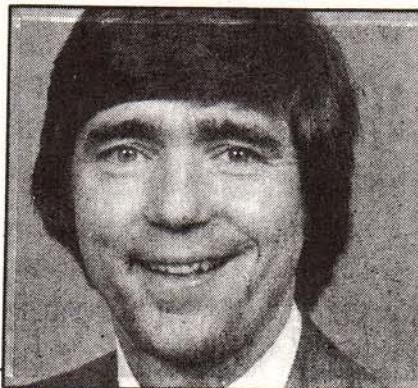
"Simply stated, Positive Divorce is the you and me approach as opposed to the you or me approach," the Los Angeles attorney said here yesterday.

The self-styled evangelist of Positive Divorce has traveled the state and the country spreading his gospel of change to bar associations and lay groups. (He is in San Diego to address 3,000 participants in the national convention of Parents Without Partners at the Town and Country Hotel tonight. The lecture is closed to the public.) In his lectures, Kelly insists a system whose byproduct is usually bitterness — and where only attorneys win, in the form of higher fees for drawn-out cases — must be changed.

"The general attitude about divorce seems to be: 'It was horrible; the lawyer did it to me; I hate my spouse; I will never get married again.' That's the fallout, the wreckage of the process the way it's done now," said Kelly.

Too often, divorce procedures begin with a marshal showing up at the office to serve papers and notify a father that he can't see his kids but twice a month and can't go near the house, Kelly said. "Now, how do you think things are going to go from there? The idea that you're going to be tough just generates a lot of legal fees."

The Positive Divorce approach is a step-by-



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— J. Michael Kelly

step process.

It begins with an agreement on the ground rules, which the client must sign, and follows with a series of letters to the spouse and his attorney declaring that Kelly's intention is to be friendly, to smooth out differences of opinion, minimize emotional stress and grief and to work out a fair settlement and allow both parties to get on with their lives.

If the opposing attorney is unwilling to cooperate, Kelly said, he has an array of legal means by which to shift fees to the other side by documenting to the court that he made an effort to minimize cost by avoiding needless motions and delays.

Before he is through working a case, Kelly said, he also contacts family ministers, psychiatrists (especially in child-custody cases), tax accountants, appraisers, vocational counselors, medical doctors and other attorneys. That can often mean additional fees, he says, but can mean big savings in the long run since money will be spent on advice about job training or economic decisions to protect community property rather than on battling attorneys.

"Somewhere in our judicial history, divorce slipped into the litigation system," Kelly contends, "a system that was not designed to handle it. These aren't two arm's-length people deciding to break up a business partnership; it's lovers, perhaps people who have produced children together.

"And when you put this delicate relationship into a cold, impartial litigation process that best serves IBM vs. General Telephone, it's insanity."

When two lawyers argue, the community property suffers at the rate of \$300 per hour, Kelly said. "When lawyers litigate, good ones charge about \$1,000 a day in court, so that's \$2,000 a day in court. If custody is involved, add

the cost of two psychiatrists — that's \$4,000 a day in court. It doesn't end there.

"So you're burning up \$4,000 a day or more where if a compromise could have been reached, none of that would have had to have been spent. People don't realize that when they're grappling with their rage."

Kelly, a former U.S. Marine who has been an attorney for 16 years and does divorce cases almost exclusively, said he had his first divorce case in 1970.

"It was a 2½-year custody battle that had dragged through courts in three states. What I saw was that there was not much left of the child at the end. What was left was a human being whose idea of marriage and love was litigation and lawyers. I saw then that things had to change."

Kelly, who handles about 20 divorces each month, said the divorce rate in California is about 60 percent. "We are a throwaway society, we throw away razors and go through cars in two years and we throw away marriages.

"I'm not promoting divorce; the first thing I urge clients to do is see a counselor before making up their minds to divorce. We get a lot of reconciliations. But I want to promote a solution to an individual's problem. And if divorce is the solution, then why not have it be a positive thing, even a growth experience?"

Custody battles and long arguments can quickly knock \$20,000 or \$30,000 out of the community property, Kelly said, and that's money that could have been spent for kids' tuition or job-training or better housing.

"Now that's something worth trying to figure out how to preserve. If the public does not know there is an alternative, they will think divorce has to be that way. I'd like to give people a chance to do something positive rather than promote meanness and smallness and revenge."