Talking About Love with Lawyers
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Reflections on the Fetzer Symposium, "What's Love Got to Do With It," Minneapolis, MN, March 2014

A belief of mine that was confirmed at the “What’s Love Got to Do With It?” symposium is that the words “love,” “forgiveness,” and “compassion” are a foreign language for many lawyers—even the best of us. The lawyers at the symposium were outliers, leaders in innovative, client-centered modes of family law practice. And yet, committed as we all were to the creative mandate of the gathering, I don’t recall hearing any lawyer in any of the working sessions I attended actually utter the word “love” (other than about the food). Nor were compassion or forgiveness (close cousins to love that were also key symposium topics) mentioned by the lawyers I worked with, even as they worked on projects that might enhance those qualities in the courts. Why is that so? Exclusion of the emotional realm from law school classrooms and the bar against expressing feelings in the courts are familiar truths about how we are socialized into the profession, but I left the symposium wondering why so many of us so readily accept these limitations on our fundamental humanity as the price for becoming a lawyer. I fear that model programs and other systems-level innovations in and near the courts will inevitably remain marginal until we come to grips with who we are as a profession, which I see as the huge elephant barring the doorway to meaningful change in how family law is practiced.

Of the three important domains in effective legal conflict resolution (what we know, what we do, and who we are), legal education attends almost exclusively to the first. We learn to vastly overestimate the importance of reason and logic – to see them as both the primary motivator of our behavior and the primary tool to change the thinking and behavior of others. This is a dreadful way to relate to a client who has just learned – for instance – that her deepest adult attachment relationship is over, her longtime spouse in love with someone else. American Bar Association research shows that the more a person has had direct personal contact with lawyers, the lower is the person’s opinion of the profession. Nearly half of the survey respondents felt that the terms “caring” and “compassionate” are flat-out inappropriate to apply to lawyers. That research concluded that our profession is regarded by the public as, at worst contemptuous and at best, indifferent to those we serve. For the more caring outliers among us who do feel their clients’ pain, the ABA has more bad news: lawyers who work with extremely distressed clients (and what family lawyer doesn’t?) and who respond empathetically run a real risk of coming down with “compassion fatigue.”

Lacking self-care and self-reflective skills, we risk harm from the cumulative physical, emotional and psychological effects of sustained exposure to traumatic stories or events. The symptoms of compassion fatigue directly parallel the indicia of psychological distress that mark the malaise infecting the legal profession in the big world outside Collaborative Practice: perceiving the resources and support available for work as chronically outweighed by the demands; having client/work demands regularly encroach on personal time; feeling overwhelmed and physically and emotionally exhausted; having disturbing images from cases intrude into thoughts and dreams; becoming pessimistic, cynical, irritable, and prone to anger; viewing the world as inherently dangerous, and becoming increasingly vigilant about personal and family safety; becoming emotionally detached and numb in professional and personal life; experiencing increased problems in personal relationships; withdrawing socially and becoming emotionally disconnected from others; becoming demoralized and questioning one’s professional competence and effectiveness; secretive self-medication/addiction (alcohol, drugs, work, sex, food, gambling, etc.); becoming less productive and effective professionally.

We lawyers suffer greatly elevated rates of emotional distress and substance abuse. Overwhelming empirical evidence shows that lawyers arrive in law school with personality characteristics markedly different from the general population – notably, a discomfort with emotion and a temperament favoring thought over feeling – and
that the law school experience worsens those qualities in ways that diminish our capacity to bring our full humanity into our work. While pre-law students show only slightly higher levels of significant depression than the general population (10% as compared to 3-9% in the general population), by late spring of their first year in law school 32% report significantly elevated depression levels, rising to a “stunning” level of 40% by late spring of the third year. These levels never fall to pre-law school levels. No matter how long they have been in practice, a steady 17-18% of lawyers suffer from clinically significant depression. Study after study shows that most lawyers would not choose law if they had to do again, nor would they want their children to be lawyers. The rate at which we experience depression, anxiety, alcoholism, and other psychological problems is about twice the rate found in the general population, and one in five lawyers suffers from psychological problems severe enough to warrant clinical intervention.

What happens to us in law school and on the job that wrecks such harm to our mental health? How is it that becoming a lawyer divorces so many of us from our own deepest moral and spiritual “selves to the point that we don’t see our clients’ yearning for love, compassion and forgiveness, much less practice in ways that might incorporate attention to those needs?

Adversarial law practice requires lawyers to focus clients resolutely on past injuries and pain rather than on recovery and possibilities for a better future; add to that a distressed lawyer and we have a recipe for keeping clients mired in pain and suffering. The growing body of psycho-biological research into the neuroscience of entrainment, limbic resonance, and emotional contagion teaches us that working with depressed, angry, cynical, irritable, detached and numb lawyers is likely to impair clients’ emotional resiliency and capacity for thoughtful decision making. Positive psychology research confirms that emotional states are communicated to others remarkably easily and that the direction of contagion in a relationship is from the more powerful to the less.\textsuperscript{vii} Depressed, suicidal, angry lawyers — which too many of us seem to be — present a danger to health and wellbeing, not only for ourselves but for our clients, the others on the case, the family, and even the community.

A consensus is growing among critics of legal education that empathy, compassion, self-care skills, and self-reflective practice (as well as communication and listening skills and other interactive social skills) must become part of the core competencies of lawyers. But many wonder whether empathy and compassion can be taught to a population uncomfortable by nature with emotion and about to enter a profession that devalues it. The answer offered by their research and classroom experimentation seems to be “maybe, a little.” Not surprisingly, you can’t make much impact by just exhorting lawyers to pay more attention to love, empathy and compassion. That message, like a dog whistle, isn’t heard because it’s couched in language that makes many lawyers squirm or even sneer with discomfort at being asked to deviate so far from the hardnosed rationalist comfort zone surrounding their professional identities. And given the breadth and tenacity of the problem and the comforting blindness induced by habit and cognitive biases, it is probably wasting resources to offer “empathy lite” mini-courses that focus on behavioral skills without getting close to core personal and professional aspirations, beliefs, values and identity. To make a real difference in our own health and in the experiences of those we serve, we lawyers need encouragement to integrate a private inner spiritual life with an outer life of values-driven professional service if we are to reclaim a sense of purpose and professional identity that matches the human needs of clients and of the communities we all inhabit. This change, more than any other I can envision, would transform how family law is practiced by infusing lawyers and eventually judges, too, with the human compassion that invites clients’ stories to be heard and their pain to be seen. Without such deep personal change in those who must embrace it, broad scale innovation too often fails to thrive or is relegated to the level of lip service.

Law school curriculum change is in the air, but the pace is glacial. We can’t afford the human and social costs of graduating even one more class of lawyers who have been taught to devalue their own spiritual and emotional intelligence — and yet hundreds of thousands more lawyers will be socialized in that way before widespread humanistic legal education becomes a reality. That’s why the integrative law workshop sequence I teach aims for practicing lawyers who would never attend a symposium about love, or even a Collaborative divorce training. We begin by addressing the personal, professional, and social costs of practicing law in a manner that ignores the human needs of our clients and that
is divorced from our own deepest humanity. The gateway that can lead such lawyers toward integration and transformation turns out to be hard evidence from psychological, sociological, and neuroscience studies that illuminates the human damage caused by ways of practicing law that run contrary to our biological nature and that disregard our evolutionary endowment as human primates: compassion, trust, forgiveness, generosity. Although brief or superficial exposure to emerging knowledge from the realm of evolutionary neuroscience, positive psychology, and neuro-decision science isn’t enough, lawyers can be touched deeply by a more sustained engagement with the startling research that overturns lawyers’ rationalist beliefs about how humans experience and resolve conflict, accompanied by exercises immersing lawyers in direct experience of the power of narrative, empathy, generosity, trust, cooperation, and the other prosocial emotions that support health. Once the doors of receptivity are opened by these experiences, it’s easy to introduce body-mind awareness practices, self-reflective practice, attention to the neuro-architecture of the spaces we work in, a systems approach to conflict resolution, and much more, so long as these new tools and perspectives are grounded in research and introduced in language that speaks to lawyers’ strong suit: their cognition.

I’ve said little about forgiveness. We might think it is only clients who need help with forgiveness—who can benefit from enlightened lawyers offering the possibility of apologizing or forgiving those who have wronged them. They do benefit, but that’s just part of the story. When the intellect of adversarial lawyers is engaged by compelling information about the astonishing irrationality of human behavior in conflict resolution, an opening can occur for experiential exercises to trigger epiphanies, large and small, about the high toll our training as lawyers has taken on us and on our clients too, even those we achieved great trial victories for. As this transformative journey deepens, we may remember with pain how we treated others in a normal day’s work. We may recall, for instance, humiliating the opposing party to tears during that deposition in the moveaway case, or relishing demolition of a percipient witness during a custody trial, because our ability to see the human being sitting opposite us had been deadened by a belief that our own human feelings had no place in our work and that take-no-prisoners assault tactics are the professional responsibility of a competent lawyer. I believe work that divorces us, in the name of professionalism, from our own ability to feel empathy or compassion is work that is immoral. When we start to see this, shame may be what we feel. It is often the case that the first person needing forgiveness is ourself. And that’s an act of love.

Notes


2 http://www.americanbar.org/groups/lawyer_assistance/resources/compassion_fatigue.html, last consulted 9/28/14.

3 Id.

I am indebted to Susan Daicoff for her decades of research into the psycho-social characteristics of law students and lawyers, upon which the following generalizations and statistics about lawyer temperament, personality, and distress in this paragraph are based. She has no responsibility for any misstatements. For more, see Lawyer Know Thyself (2004).

4 For instance, Daicoff reports, 23.4% of Washington state lawyers reported depression levels more than two standard deviations above the mean, when general population data would predict only 2.27% should score that high. A similar study found 19% of Washington and Arizona lawyers to be clinically depressed, most of whom admitted they were contemplating suicide. 11% of North Carolina lawyers polled in 1991 admitted they considered killing themselves once a month. According to a Johns Hopkins University study, the incidence of depression among lawyers is up to four times that of other professionals. Daicoff, Lawyer Know Thyself, p. 8.

5 I do not mean anything relating to religion when I use the term “spiritual.” In the words of neuroscientist/philosopher Sam Harris, “Twenty percent of Americans describe themselves as ‘spiritual but not religious.’ Although the claim seems to annoy believers and atheists equally, separating spirituality from religion is a perfectly reasonable thing to do. It is to assert two important truths simultaneously: Our world is dangerously riven by religious doctrines that all educated people should condemn, and yet there is more to understanding the human condition than science and secular culture generally admit.” Waking Up: A Guide to Spirituality Without Religion, Kindle Locations 100-103 (Simon & Schuster, 2014) Kindle Edition.