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Divorce: What's Love Got to Do With It?

Love, Forgiveness and Compassion in Family Law

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Putting a Heart into the Body of Law

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The Fetzer goals of incorporating love and forgiveness into family law and Collaborative Practice did not stop at the courthouse steps. One of the Fetzer objectives called for us to design new court-assisted dispute resolution models based on love and forgiveness. Impossible? Not at all.

After eighteen years on the family court bench I am sensitive to the needs of the thousands who still show up there due to lack of funds or awareness of other options. Having Collaborative practitioners and others from diverse disciplines working side-by-side with those of us from the courts was, in my opinion, a monumental advancement.

The symposium encouraged me to write about what family courts of the future could provide families in conflict, and the abundant opportunities for Collaborative practitioners and others who are interested in continuing the collaboration with those of us from the courts.

Aligning Head and Heart

The law is well-known for being logical and dispassionate. Courts are where intellect and linear, analytic thinking prevails. In the admirable pursuit of truth and justice, the courts can inadvertently deny the humanity of the people it is supposed to serve and even of the judges and staff who work there.

Human beings are obviously not abstract legal concepts. In family court, it is as much a matter of the heart as the head, though this is not acknowledged.

Research shows that when our head and heart are in conflict, stress and suffering follows. Our deepest core values, like empathy, care and compassion are considered irrelevant in law practice and court cases. This is why many people, including judges and lawyers, find the legal profession unsatisfying, ineffective and potentially harmful, especially in the realm of family conflict.

When families are in conflict or in crisis, logic is insufficient to heal their pain and trauma. Family courts,

as traditionally designed, actually created more harm. I saw this clearly in my time as a family court judicial officer in Minneapolis, Minnesota from 1994-2012. I also experienced harmful effects directly, as a child of bitter and contested divorce. It never really occurred to me growing up that the divorce court was the cause of their fighting. I saw my parents act out their hurt and anger in all venues. I did wish that someone could have made them stop. I know now that there was little or no awareness, guidance or intervention back then that might have led them to a better result. When I chose family law as my profession and then entered the family court system as a judicial officer, it was my sole intention to help families in conflict. It turns out it didn't take changing the system or the laws to make a difference.

When we apply a collaborative perspective, as we did in the Fetzer Symposium, we create the possibility that the people who work in and experience family courts can bring heads and hearts into collaboration, instead of conflict. When our head and heart are working collaboratively, we experience a state of vitality and well-being. We are able to be authentic, fully present, and freely express our deepest heart values such as care, compassion and connection. We are able to take wise action with our values in the forefront.

Bringing that kind of coherence to my life, family and work, became my commitment and practice.

Bringing Collaborative Coherence to Family Court

In 1990, Stu Webb had enough of this incongruence and began Collaborative Law with the goal of keeping families and lawyers out of court and safe from the damage family court could inflict.

I share Webb's vision and commitment to protect families from the courts that fail to serve them. My experience showed me, however, that family court would likely be where most low and moderate income families in conflict would end up for years to come and they deserved and needed the best practices, too. I saw a different path. I took

my peacemaking training and meditation practices deep into the family court. I was optimistic that I could improve the system for the thousands every year who either did not know of other options or had no other recourse.

My goal was to bring the institution into closer alignment with its mission to serve the needs of the public. I also was committed to doing this with kindness. I was not alone. When I was a new judicial officer in 1994, a colleague sent me the "10 Commandments for a New Judge" written by Judge Edward Devitt, a highly respected federal judge who served close to 40 years on the federal bench. The First Commandment was "Be Kind."

Devitt's words supported me through difficult years as an innovator in a legal system that was resistant to any change or fresh ideas and highly critical of any suggestion that bringing our hearts into the workplace would benefit everyone.

I knew right away that the battlefield known as the "temporary hearings" had to stop. People's pain and anxiety increased with each bureaucratic hoop they had to jump through. That anxiety made it increasingly less likely that the family members could listen to each other with the respect they deserved much less collaborate to find a mutually satisfying resolution.

A simple solution appeared when I viewed the experience from the eyes of the family in court. The moment their case was filed, I sent the parties a personal letter, inviting them into my chambers to go over the potential harm they and their children would encounter if they followed the typical route through the court. I used a statute that required the court to provide education and information on alternative dispute resolution (ADR) but it was not being used in any meaningful way.

We met as equals. No black robe, no elevated bench, no armed deputy looming over us. Parents saw me as a regular person with my children's photos and drawings all around me in my chambers, not a frightening and all-powerful Wizard of Oz. I talked with them as I would a beloved friend or family member, with the added bonus that the conversation was backed by my abundant experience of the inner workings of the court and contested divorces.

My goal was simple – to empower them to create their own solutions in a collaborative way. I wanted them to see what I saw – that I wasn't really needed, and in fact, I was the most

distant and absurd person to order them what to do, since I would never meet their children and never could know enough about their family to decide what was best for them, even if their trial lasted weeks.

I offered them the alternative to meet right then and there with a Collaborative practitioner or mediator. I offered a conference room right next door to my chambers, which I set up in a comfortable way with lamps and furnishings, art on the walls and a bowl of chocolates, to welcome them and reduce their fears. When they heard about their options that wouldn't involve fighting in the courts, 98 percent opted out of further court hearings.

Creating a New Body of Law—One with Heart

Although changes in the justice system are currently being studied, proposed and created, and recommendations for designing a system that obviates the need for family court altogether are considered, family court is, and will be for years to come, a first destination for families in conflict with little or moderate income.

I am inspired by this guiding principle when trying to work with or change systems:

The Fourteenth Dalai Lama's invocation:

Be kind whenever possible.

It is always possible.

I must add here that we can also open institutions up to fresh ideas from other disciplines, those from design and architecture, practitioners with understanding of the needs of families in conflict, people with their core values in plain sight. Just like we did at the Fetzer Symposium.

The Courts have made huge strides in criminal courts by creating problem-solving courts: DWI court, drug court, mental health court, veteran's court, homeless court, juvenile court and more. There are even some emerging in family courts, such as Co-Parent Court, geared to providing services to unmarried parents instead of litigation. These specialized calendars acknowledge the limitations of the traditional courts and bring in a holistic collaboration of services that respond swiftly and effectively to the complex needs of the individuals. They work at a deep and comprehensive level, getting at and solving the root reasons the person is in the court system. We have barely scratched

the surface of what we can do in family courts if we open up to innovation and collaboration from all angles.

We can also look to leading-edge changes in the medical model for inspiration. The Mayo Clinic has never strayed from the vision of its founders that the needs of the patient come first. This simple, single principle continues to drive Mayo Clinic in a never-ending search for innovation, not just in medicine but in collaborating with other professions like art and design to help them care for their patients. Mayo Clinic is rated number one in the nation for quality medical care. Proof that putting service and care first can result in a win-win: great success for the institution and excellent care for those it was built to serve.

Imagine if courts did the same.

To put a “heart into the body of law” known as family court, I recommend we begin with five changes:

1. Put People First

Families in crisis need a place that welcomes them, all aspects of them, including their irrational emotions. They need and deserve to be respected, heard and included. Creating a system committed to meeting their needs above all other agendas is first.

2. Treat People with Kindness and Compassion

I learned most clearly during my time on the bench that ultimately it was my listening skills that were most needed. People need to have their story be heard, all of it. To me, that was the essence of a “court hearing.”

They needed to be accepted, with dignity, even with their mistakes, their anger, their stress and their pain. This allowed people to choose a path congruent with their deepest values.

Not once did they need to be judged.

3. Allow People their Voice

To me, at the most basic level, access to justice means allowing people to have their voice.

Family courts should not judge the families who come for help. Instead, courts should empower people to solve their own problems with respect and care. If people received this from the moment they walked in, judges would rarely be needed.

4. Design for People

The physical space of family court should be redesigned

focused on the needs of those who use it. As an example, the cost of incorporating art and design that calms people and heals trauma will be more than offset by the benefits received by families in pain and those who work there every day.

5. Shift Resources

Less than 5% of all family court cases go to trial. So why do courts insist that everyone must file papers, be assigned a case number, pay hundreds of dollars for a filing fee, get a court date to see a judge, and then wait? Why are the 95% of those who will settle without a trial penalized unnecessarily?

Courts no longer need a full complement of trial judges and staff “at the top” when only 5% of families go to trial. Significant resources should be shifted to the point of first contact for families who arrive there, with or without lawyers. Collaborations with professionals at the entry level could provide helpful and responsive service immediately, cutting through all those untimely and unnecessary bureaucratic steps to get right to the heart of their problem.

Judges’ skills in trial mode have become far less relevant as case management and settlement models emerge, and as holistic problem-solving courts and a new and better understanding of how best to serve people in conflict has developed. With choice and education right up front, untold numbers of people will choose to be equal partners in the creation of solutions for their families.

Holding Out Hope – It’s Never Too Late to Collaborate

I learned that 98% of the families I met with personally during my early intervention pilot project did not know alternative options or the harm that could follow by engaging in the court system.

One hundred percent shared the core value of not harming their children. Many cried while telling me of the pain they suffered during their own parents’ divorce and custody litigation, and of their desire to avoid that at all costs. It was not too late for them to collaborate.

For a model of integrating the “old and the new,” we can look to The Penny George Institute for Health and Healing in Minneapolis, which was started by one woman, Penny George. She was disillusioned with the limitations of standard medical care. She studied all the best practices of alternative care and built a beautiful building across from a traditional hospital which collaborates with the hospital by providing integrative care to inpatients and more. Penny George Institute

Putting a Heart into the Body of Law (continued)

is now the number one integrative care center in the country that is imbedded in a hospital system. Their mission is to offer innovative, proactive models of care that embrace the strengths of the whole person.

As we saw in the symposium, some lawyers, judges and court administrators are highly receptive to new models. A partnership between even one enlightened family court and

a group of practitioners who understand these concepts can forge a new collaborative model without turning away from or tearing down the old.

Abundant opportunities and gratifying work that fulfills a sense of purpose awaits those Collaborative practitioners courageous enough to reach back and uplift the courts while furthering their vision and their private practice.