

I Can Relate!

From Louise Phipps Senft

Did you see the ABA's recent report from the Task Force on Lawyer Well-Being (LWB)? Sobering. The Report says we have a lot of unhappy lawyers in our profession. It also reports that lawyer unhappiness is resulting in staggering rates of depression, alcoholism, suicide and other mental and emotional ailments. Serious stuff.

I recall testifying in our Maryland state legislature back in the late 1980's on the issue of child support collection, making a case for why recalcitrant and delinquent payors, mainly fathers, should have their driver's licenses as well as professional licenses suspended until they were caught up in child support payments or had worked out arrearages payment plans. In many cases, child support had not been paid for years. I remember being shocked, almost a feeling of vicarious shame, when I learned through my own research that one of the largest groups of non-payors, given the pejorative label of "dead beat dads", were lawyers. It was like I had been gut punched. I remember it clearly. My own profession.

It all came flooding back to me recently when I read the report of the LWB. And it all makes sense now. It's sobering and heartbreaking. All those deadbeat lawyer dads were the canaries in the mine. And we didn't pay attention.

But we are now.

Ironically, however, the recent interest in lawyer well-being is due to the causal connection to protecting clients. As it turns out, there is a hand and glove relationship between lawyer well-being and fitness to practice law. And the report is not just talking about professionalism; it's linking lawyer well-being to lawyer competence. The report spells out in stark terms that lawyers whose well-being is in jeopardy are likely to make more mistakes and errors in legal judgment, compromising professional competence. This can and does harm clients. And ultimately, this harms society.

But what about the well-being of the lawyers themselves? What about the causal effect on the system: the suffering of family members of those lawyers whose eroded well-being is showing up in depression, suicide attempts, lack of personal financial accountability, alcoholism and other addictions to name a few? What about the causal effect on the system: the suffering of lawyers in their interactions with other lawyers. If we looked inward as reflective practitioners, we might find that this is not just a professional crisis, but a crisis for each individual professional within the profession itself.

Over the years, young lawyers have asked for and bar associations have found it necessary to write codes of civility for the courtroom; most local bar associations have instituted attorney hotlines for lawyers and lawyer assistance programs. These are all good. And yet, the profession finds itself in precarious mental health. I believe there is a deeper more philosophical divide that is worth exploring related to the erosion of lawyer well-being.

I call it the crisis of The Adversarial Ethic. I think it's worth exploring as a root cause. It seems that few would argue to the contrary that The Adversarial Ethic is what has chipped away at the quality of many lawyers' practices over the years. It has also chipped away at their well-being. It's The Adversarial Ethic that prompts lawyers to view every accident, every gone wrong interaction, every job hire, every termination, every partnership created, every marriage, every matrimonial dispute as one where someone could sue someone else. It's The Adversarial Ethic that causes lawyers to view their clients as legal issues rather than human beings, no longer taking into the account the enormous wear and tear the adversarial ethic has on people's lives. It's The Adversarial Ethic greed that has pitted law partners in firms against each other. It's The Adversarial Ethic narrow mindedness that causes lawyers to see negotiations as just about the money. It's the Adversarial Ethic ego that reduces many if not most interactions of lawyers, especially litigators, on behalf of their clients with other lawyers on behalf of their clients as mere transactions, who can one-up, who can outwit, who can get most. And these are just a few examples. Over the decades, the Adversarial Ethic has wormed its way into the psyche of the legal profession and has caused great damage to the people, and to the lawyers. Afterall, it's very difficult for any person to be one way professionally and another way personally for very long. At some point the suffering and energy The Adversarial Ethic takes to carry on takes too much, and the poison turns inward.

But this doesn't have to be the final prognosis for our profession. A growing number of competent, effective, successful legal practitioners have made a choice to not be driven by The Adversarial Ethic. They have chosen to be guided by a Relational approach, whether intentional or as a by product of an alternative change in practice. A relational approach is the opposite of a transactional or adversarial approach. It is perhaps a softer approach, not because it is soft. Being Relational is not soft. But it does produce greater ease in interactions and greater well-being in outcomes. It is strong enough to stand up and to sit down. It is strong enough to be vulnerable, to be introspective, to be other oriented, to be open, to be engaging and curious. A more relational practice involves awareness of one's responsibility to self and to other, mindful of the impact within a larger system. A relational practice takes an optimistic view of people, problems and what is possible. Relational Practices can change every interaction. They can also change an entire way to practice. And that is just a sample! The time has come. The time is now to look harder at The Adversarial Ethic and consider another approach, a stronger approach.

As any schooled dispute resolution practitioner knows, crisis and opportunity are two sides of the same coin. While the LWB painted for us a bleak landscape, the ABA commissioned another group to be responsive: The Task Force on Relational Practices. Members of this task force, joined by a growing number of other like-minded legal practitioners, believe in exploring that deeper more philosophical divide that has caused the erosion of well-being in the legal profession, waking up to that canary and mining the Relational option.

What do you think about The Adversarial Ethic? Have you been a victim of the erosion of well-being yourself? Have you been a witness of the erosion or do you know others who are casualties of The Adversarial Ethic? What do you think about a Relational Approach? If you have any reactions or stories you'd like to share re this blog, please send them to Louise@BaltimoreMediation.com. Your views and stories are welcomed.

Louise Phipps Senft is a Chair of the Relational Practices Task Force and author of the best-seller, *Being Relational: The Seven Ways to Quality Interaction and Lasting Change* (HCI 2015). She is the founder of *Baltimore Mediation* (1993) and has a practice in catastrophic injury and complex divorce, business and estate conflict. She is a nationally recognized trainer in relational theory and practice and transformative mediation.