

Holistic Lawyering in the Mainstream

By Ed Shapiro

We've all heard of holistic lawyering in the fields of family law, personal injury law, estate planning, i.e., those practices that inherently involve the lives of individual human beings. Can holistic law be applied in a traditional mainstream corporate practice? Absolutely. As we all know, corporate parties involved in transactions or conflict are comprised of individual human beings. These human beings, be they members of the board of directors, senior management, or employees, experience the same pain, anxiety, and desire for respect and resolution as individuals involved in a divorce, custody battle or personal injury case. Moreover, the core principles of a holistic practice - - compassion, respect, forgiveness, responsibility and healing - - empower mainstream clients to make healthier business decisions and live healthier work and personal lives.

Is it possible to discuss forgiveness, responsibility, and healing with the general counsel of a Fortune 500 company? You would be surprised. In the litigation context, those discussions typically arise out of a desire by most mainstream corporate clients to reduce litigation costs and to resolve conflict as quickly and efficiently as practicable. In order to do that, one must be willing to analyze a conflict beyond the traditional "facts and law" approach. That approach is predominantly focused on determining what claims, defenses, or counterclaims apply to a particular conflict. Indeed, the principal decision-makers who enter both sides of the transaction need to discuss what they hope to achieve, both in the short and long term. The required discussion can serve as a reality testing process whereby a determination can be made as to what responsibility, if any, your client has for contributing to the conflict. Often, this type of discussion leads to an understanding by your client that the company's position is neither 100% right nor 100% wrong. It is through these types of discussions that there is the possibility for compassion and understanding of the "whole" conflict. This process, as well as a full understanding of each party's responsibility in the conflict, gives rise to the possibility of accepting the past, learning from it, and counseling clients to transform their future business practices.

It is also possible to assist corporate clients in transforming their corporate culture. Application of basic holistic principles can influence not only how corporations deal with customers, vendors, providers and other contractual partners, but also the way labor and management interact with each other. None of this can be achieved without all parties buying in to the importance of respecting one another, even when holding divergent views.

One type of holistic legal practice, collaborative law, is ripe for a mainstream corporate application. In general, collaborative lawyers and their clients sign a pledge at the beginning of a dispute that they will not go to court. If the parties cannot resolve the dispute, then the attorneys agree that they will withdraw their representation and refer the clients to other attorneys.

When collaborative law began, its most successful application was in the family law context. However, given the increasing desire to resolve conflict quickly, efficiently, and economically, and given the fact that almost 95% of mainstream commercial litigation cases settle at some point in the litigation process, mainstream lawyers and their clients will gravitate toward collaborative law. It will become as commonplace as the pledge that many large mainstream law firms and Fortune 500 companies sign to attempt to resolve conflicts through alternative dispute resolution measures such as mediation and arbitration.

All this being said, it should be noted that transforming mainstream legal culture is no easy task. It requires the courage to speak from the heart and the willingness to risk, knowing that certain mainstream clients may not be interested in this approach. The initial "selling point" will be the positive impact that a holistic view of legal conflict will have--and its likely consequence of creative, non-litigious resolutions. Once this occurs, mainstream corporate clients will begin to demand this approach. The other, perhaps more important benefits, include healthier management, healthier labor, and increased productivity and profits.

Healthier people = healthier business. There are no empirical studies supporting this last statement. However, one possible predictor of this positive result could be the recent growing acceptance, after many years of opposition, of the alternative/holistic medicine movement.

Initially, many practitioners were deemed "quacks," among other things. Now, it is not unusual for a traditionally trained mainstream physician to have knowledge of alternative remedies and, in some cases, to support the use of those remedies. As with alternative/holistic medicine, the point of treatment is not to judge either the traditional or alternative/holistic approach as better or worse. Instead, the focus must be on how to expand the information and options to practitioners and clients such that they can be empowered to resolve conflict in healthier ways.