

FORGIVENESS AND THE PRACTICE OF LAW

“Forgiveness” is often thought to be an alien notion in the law, where “justice” rises as a paramount value. After all, people don’t hire lawyers so they can get an apology. In fact, it’s often been said that “If (s)he’d apologized, I wouldn’t have hired a lawyer.” I’m still awaiting WSTLA’s statewide CLE program on how we get a percentage of an apology as a fee under the new medical negligence law (not a bad idea if we could save up a load of apologies in some karmic bank account).

Forgiveness has been a ripe subject for religious, as well as psychological and even legal exploration. Since we lawyers live in a professional world filled with interpersonal transgressions which we attempt to rectify, our attitudes towards forgiveness, and those of our clients, bear some consideration. There have been a number of studies in the psychological literature which give us a growing insight. We are more likely to forgive as we age, with young children being least willing to forgive and older adults the most. As noted by psychologist Ben Dean, “the relationship between forgiveness and justice is complex. Traditionally, researchers have suggested that a strong belief in justice can be a barrier to forgiveness...researchers hypothesize that whereas a “retributive” (eye-for-an-eye) sense of justice may be a barrier to forgiveness, a broader more “pro-social” sense of justice may promote forgiveness.” Dean also notes, perhaps self-evidently, that apologies help. “We are more likely to forgive if we receive an apology from the transgressor.”

The subject of this column, however, is whether we can forgive *without* the apology. That’s what Janis Abrahms Spring came to Seattle to talk about recently. Dr. Spring is a nationally recognized authority on issues of infidelity and forgiveness. Her all-day presentation at the annual Washington Association of Marriage and Family Therapists Conference contained universally applicable insights.

Think not only of the spouse who cheats, but consider: the senior partner who is emotionally abusive and unrepentant; the client who runs up a huge receivable and then sues for malpractice when you press him for payment; the spouse or lover who retaliates with anger and pettiness for your prolonged absences due to work; the parent who rejected you after you came out, or the myriad of other slaps or stabs suffered at the hands of thoughtless or venal fellow travelers along life’s path.

You can’t engage this discussion, however, until you have first decided what it means to forgive. We are saddled with our cultural rules best reflected in Alexander Pope’s saw, “To err is human; to forgive divine.” As Dr. Spring observed, many of us may believe that forgiveness is a spiritual directive. So we forgive - yet too hastily, without working through the meaning of the transgression for our own lives and the relationship which was compromised. She calls this “cheap forgiveness.” It tends to be premature and superficial - an unconditional, unilateral and often compulsive attempt at peacekeeping. The problem with this cheap forgiveness is that in efforts to preserve the relationship or to engage in an outward act which is inimical to one’s inner experience (no matter how much they are *supposed* to be resolved) is that any chance of

real resolution between the parties is short-circuited and the injured party is more likely to internalize the anger, to their physical and emotional harm.

Spring likens cheap forgiveness to the outright refusal to forgive as two paths to a similar irresolution. She suggests two alternate and healthier approaches, which are *Acceptance* and *Genuine Forgiveness*. The first occurs when the transgressor is unable or unwilling to acknowledge their action and its injury. The second occurs within a *relational* context in which genuine forgiveness is sought *and* appropriate amends are made. Thus, while forgiveness must always be understood (as Martin Seligman and Christopher Peterson note) within an *interpersonal* context, the resolution may be either interpersonal or *intrapersonal*.

If we resolve to ourselves that we will forgive regardless of the behavior of the transgressor, we are choosing to rid ourselves of the burden of resentment. Studies have repeatedly shown that a tendency to ruminate interferes with the ability to forgive. Many of us may become so invested in the anger that it actually becomes part of our personal identity. We may hold onto our anger and resentment with a death-grip, fearing that letting go of this fixation on our violation will wrench away one pillar of our sense of self. We may also react with anger at the suggestion of forgiveness, because it suggests that what the transgressor did was okay. While compassion for ourselves is vital, it's a mistake to equate inability to let go of a wrong done to us with self-acceptance.

By contrast, the ability to empathize with the transgressor enhances the ability to reach an *inner* resolution, so that resentment can be released. Acceptance, as discussed by Spring and others, may be closer to our idea of forgiveness as we seek internal resolution of our anger and resentment, without the need to feel that we must experience reconciliation in order to fully forgive. Many writers dealing in the area of forgiveness today emphasize that the ability to understand the pain and fear of the transgressor that often leads to the violation allows us to separate the act from the actor - which eases the challenge of forgiveness according to other studies. Reconciliation is almost always seen as optional. It depends entirely on the heartfelt, deep expression of remorse by transgressor and a willingness to make amends - acts which is rare and which we should not expect in the normal course of things.

Ben Dean suggests the following nine steps toward forgiveness: (1) Acknowledge your emotions. Whether you are angry, hurt, ashamed or embarrassed, become aware of and accept your emotional reaction to the wrongdoing. This is in line with the notion of self-compassion mentioned above; (2) Go beyond identifying the person who hurt you and articulate the specific behaviors that upset or hurt you; (3) Make the choice to forgive. (Realizing the personal damage which can result from unyielding resentment); (4) Explain to yourself why you made the decision to forgive, thus reinforcing your decision and reinforcing the understanding that you are acting for your own well being; (5) Attempt to "walk in the shoes" of the other person. Consider that person's vulnerabilities; (6) Make a commitment to not pass along the pain you have endured, as this locks you into a cycle of pain and retribution from which the decision to forgive is made to release you; (7) Decide instead to offer the world mercy and good will. You may even choose to reconcile with the transgressor but by no means is this necessary (and as Spring notes, it is impossible without appropriate action by him/her). Again, even one loving act directed to a close person you care for will allow the cycle to be effectively broken and begin to

replace a sense of injury with one of good will; (8) Reflect on how it feels to let go of a grudge. Find meaning in the suffering you experienced and overcame. (9) Discover the paradox of forgiveness. As you give the gift of forgiveness to others, you receive the gift of peace.

I might add that you consider the circumstances that led to the transgression. What can you learn about yourself, here. This is where the adage “Forgive but don’t forget” arises. You may let go of the resentment, but choose never to trust the transgressor again (often a wise choice).

As lawyers, we may often be asked to be the instrument of “justice” or retribution so that an individual or institution which inflicted pain may experience a little of their own grief. We may wish to consider whether we want to be used in this manner and what may dwell inside of us that makes such a role attractive to us.