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A Lawyer Looks At Treatment Strategies For Troubled LDS Marriages

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If Dr. Reusch tends to see marriages in trouble very easily, I tend to see them very late—sometimes too late. There is a certain amount of anomaly involved in even asking a lawyer to come and talk to you, especially about the treatment of marriages in trouble. By definition, lawyers don't treat. Not only don't they treat, but they don't know how to treat. You've given me a soap box today and I'm going to take advantage of it.

For those of you who are involved in counseling LDS marriages in trouble, I think it's a very good thing for you to have some perspective on the skills and abilities of the other professionals who tend to get involved in marriages in trouble, including the family practitioner, the physician, the lawyer, and others. Lawyers are trained and taught, and presumably qualified, to do the following kinds of things. To gather information and analyze facts; to apply substantive legal doctrines to those facts; to research the law when they don't know what it is; to represent their client. The "Hired gun syndrome" is still very much alive and well in the legal profession in the processes of negotiation, litigation, the adversary context of going to court, and in the settlement and compromise process.

I probably don't need to say too much more about the adversary system except to recall for you that the whole context of a lawyer's training and approach to a problem is the adversary context. The lawyer is taught that aside from his generalized ethical duties as an officer of the court and a

citizen of society, that his primary loyalty runs to his client. Well, there's no way you can have a marriage for a client, just as in a piece of litigation there's no way you can represent both parties. You have to have a single individual or single entity. Sometimes you can represent a corporation, but you represent a corporation with its conflicts or disputes with another entity. In a marriage there is no such clear-cut distinction between the client. In many cases, the real client, the real entity in need of treatment and help and representation is the marriage itself, especially when there are children involved, but lawyers aren't taught to think that way and they are certainly not trained to deal with that dichotomy.

What about some of the things that they are expected to do that people come to them hoping that they will do and can do, and which, sometimes, wisely, foolishly, brilliantly, or miserably, they actually do? To gather information about highly subjective, emotionally charged human relationships and feelings; to analyze and assess the relative value, worth, stability, and viability of those relationships; to provide moral and psychological counsel and support to persons who are frequently in the midst of emotional crisis; to assist in some cases those persons in radically altering their life styles, or I think we could say learning to live their religion in many cases; or in some cases, and lawyers do this, to convince people not to radically alter their lifestyles. In some cases they are expected and asked to help people put the pieces back together in order to cope with the demands of daily living. The hand-holding phenomenon, as any lawyer with any experience in domestic work will tell you, is not at all an uncommon expectation of a lawyer working with a troubled marriage.

I hope the contrast between that second list and the first list is as startling to you as it is troubling to lawyers. The expectations that a lawyer may encounter in counseling a client with marital difficulties may give you a sense of empathy. I certainly hope, if nothing else, I can accomplish that this morning. Like Dr. Reusch, I find myself almost always reluctant and very frequently rebellious when I am asked to undertake these roles. I am not prepared by my training, and I'm not sure by my inclination, to do a good job. By the way, I forgot to have my most important qualifications for this speech mentioned this morning and that's being the veteran of a ten year—what I see as one of the more successful marriages I've ever encountered and four children which has been the biggest stress on that marriage that I've ever encountered!

The lawyer, like the family practitioner, is often a first line of contact outside the marriage itself for the couple having trouble. This tends, in my experience, to be less true, however, for the LDS marriage. The LDS couple frequently has more lines of assistance available to them. They will very frequently seek the assistance of a physician, especially if he or she happens to be a close family friend, or particularly where there is priesthood leadership available at the ward or

stake level that also provides some kind of empathetic listening. How bishops and stake presidents and counselors and elder's quorums and Relief Society presidents manage to survive the burdens that they are frequently asked to bear for their parishioners is beyond me many times, but it is true and it is perhaps a good thing towards training and preparing our Church leaders to handle some of the problems that they see whether they will or not want to on a daily basis, to teach, to give them more skills to make their handling of those problems more adequate. Nevertheless, the fact that this does occur, whether it's done well or not in the LDS context, means that lawyers tend, I think, to see LDS marriages that are really in trouble because they tend to be more of a last line of resort.

When a lawyer is the first contact, however, he runs into the same problems that have already been alluded to this morning. He's expected, notwithstanding the fact that nothing in his training has prepared him to do this, to perform what the doctors call a triage function; that is, to make some assessment, some screening assessment, about what needs to be done in a particular situation. He or she is faced with the kind of earth shaking decisions if she or he is willing to make them about, for example, who needs a divorce, who needs professional help and what kind, and who's best suited in the community or the Church Social Service structure to give it. Who needs to be ignored long enough to work through this particular phase and put the pieces back together themselves? The presenting problems are numerous and may frequently be in the nature of a red flag. I really like what Dr. Reusch had to say about listening to what's inside the marriage and trying to share what's really being said rather than what may be being verbally expressed. Many times a young wife, for example, will come to me and say, "I want a divorce," and after twenty minutes of conversation, it's perfectly obvious to me that she doesn't really want a divorce but she wants her husband. She wants to scare the pants off her husband—she wants to say to him, "Something is drastically, radically, horribly wrong with this marriage. Do something about it. We've got to do something about it." Frequently that will have occurred after months of pleading and working on the part of one or the other members of the marriage to do something about it. I can think of very few disturbed marriages that I've encountered in my law practice, that have not involved one spouse who has been sending up flares and waving red flags for months, sometimes even years, saying, "Let's travel together once in a while. Let's get away from the kids once in a while. Let's go to a communication seminar, let's see a marriage counselor, let's talk to the bishop about our problems." And the other spouse, many times, out of insecurity which masquerades as pride and self-complacency, will say, "We don't need that. I don't need some half-cocked counselor telling me how to run my marriage."

This is a real problem. I think one of the ways to approach that problem as experts in the field is for you as counselors

and professionals to do a little bit better job of educating among LDS, especially young people, about the benefits your profession has to offer, about the ways in which you can assist people over troubled times and help people in working out very real problems. Most of us, if a pipe breaks in our basement, are perfectly willing to call a plumber, but if a line of communication is shut off in a marriage, few are very willing to seek the help of a therapist.

There are some other things that also handicap the lawyer when he or she attempts to treat a marriage. By virtue of our training, we are taught to be non-judgmental and a lot of people see this as a callousness. But if you believe as I do, in our system of law and justice, then you have to believe that everyone's point of view deserves a fair and adequate hearing before a duly constituted authority whose role it is to determine the worth and value of that point of view. In other words, I can't, as a lawyer, say, "I can say what you want to do is legal or it's not legal, but I don't really have the right as a lawyer to tell you whether it's right or wrong". Now there are clearly limits to that philosophy and I do feel very strongly that there are limits, but in general, it's my duty to represent the point of view of my client to a tribunal, maybe an administrative body or in the case of divorce, a court and a judge. Because of that approach to the problem, it becomes very difficult for me to say, for example, when a client says, "I want divorce," "No, you really don't want a divorce. Divorce is a bad thing. Divorce is the wrong thing, an immoral thing." Sometimes I feel that very strongly, particularly when children are involved. I also feel very strongly that one of the greatest existing gaps in the lawyer's approach to troubled marriages now-a-days and to all of our approaches to troubled marriages is the lack of representation of the interest of the children. The fact that very rarely do children have standing to oppose the divorce proceeding in court, and yet who more than anyone else stand to suffer damage and sometimes destruction in the process of divorce than the children? So I do think that notwithstanding our non-judgemental training and of the injunctions we've received all of our professional lives not to judge our clients, we lawyers do have a responsibility at least to try to raise the consciousnesses of our clients about the wider implications of troubled marriages and about the damage that may be done to the social system of the family and home, and to the individuals involved, and to the children.

Again, frequently, we lawyers see things too late for that kind of consciousness raising to do any good. People are very frequently so desperate and so determined by the time they get to us there is little that we can do. Some lawyers, however, especially those many who specialize in domestic practice and divorce work, will refuse to represent a client in a divorce action until the client has sought some form of counseling outside the lawyer's purview—a professional counselor, a psychotherapist, a psychiatrist, a psychiatric social worker, a marriage counselor—someone who is

specifically trained to analyze the marital situation. I think that's a very good idea and it behooves your profession to make yourselves available and to encourage the development in your communities of low cost, easy access, analytical treatment of this kind.

In trying to isolate out of my experience those things which make LDS marriage different from other marriages, it's been a somewhat interesting experience. I notice that Dr. Reusch's comments isolated factors which by and large are applicable to LDS or non-LDS marriages—alcohol, in-law problems, lack of communication—all of those things occur across the board. I tried to isolate some factors which I saw as being of particular significance in LDS marriages. One thing that I am aware of is that frequently there are fewer stresses on the non-LDS marriage which is having problems. The kind of stresses I am talking about that apply, I think, more particularly to LDS marriages are those from peer group pressure. For example, one of the reasons that one member of a couple will refuse to seek counseling is that that spouse will see counseling as an acknowledgment of failure and defeat, and will assume that you acknowledge that a marriage in trouble will result in an automatic label that he is not living his religion.

Now, my attitude to that is that it is living your religion to solve problems in the most constructive and effective way available, but a lot of the subtle pressures that people in the Church feel don't give them that message. The message is, if you are living the gospel, you don't have problems; not, if you are living the gospel you seek to work out your problems in a sensible and intelligent way.

In the LDS marriages that I have observed there's a strong reliance on denial as a mechanism for treating marital problems. I am sure all of you as professionals know just how effective that is. There is a tendency to ignore the problem in the hope that it will go away. Again, the results from the stigma that many people assume, rightly or wrongly, is placed upon people whose marriages are having difficulty.

Also, I think that a marriage crisis may precipitate an overall identity crisis and a religious crisis because people feel that when their marriages are in trouble, they are not living their religion. In the sense that Dr. Reusch talked about, that's true, but it is also true that to live your religion is to seek to make your marriage work in every available fashion, one of which includes counseling. Sometimes radical therapy may be necessary to put a marriage back together.

We get a lot of subtle messages when we grow and are raised in the Church and are faithful and active members of the Church. Some of those messages I think are double messages and cause LDS couples a great deal of difficulty. The first and foremost of those is "get married; married; marriage." I saw a very painful situation a couple of years ago where a young, intelligent, well educated woman in her early thirties had literally been pressured by her bishop, her

parents, her home teachers, and other priesthood leaders and her friends into marrying a young man about whom she had real reservations. Now these people were so desperate that she should get married they didn't listen to what she was saying about what she needed in a marriage. Her reservations, unfortunately, proved to be very true. The man was unfit for a Latter-Day Saint marriage and the whole situation hurt a great many people, herself included. Now she was wrong in that. She didn't listen to what her own instincts told her, she didn't listen to what her own prayers told her in that case, but I think that there were others who overstepped the bounds of their authority to counsel her in a priesthood context. Marriage alone in and of itself is not always the answer.

Members of the Church are also encouraged to marry young, to marry quickly as soon as economically feasible and sometimes before, to have many children quickly. Now I'm not talking about these messages over the pulpit or something that a bishop or bishop's handbook may tell him to preach. These are subtle messages that occur in Mutual classes and in conversations and in the neighborhood contact. Never turn down a Church call, be successful in your career, make money, achieve recognition, be a super mom, convert your neighbors, do good in the community, you know, we are bombarded constantly by these subtle messages to achieve, to improve ourselves, and sometimes we don't recognize the stress or the burden of trying to do all of that simultaneously will put on our marriages.

One thing that ties in again with what I have been trying to say about the stresses that LDS marriages may feel peculiarly and in distinction or counter-distinction to non-LDS marriages is the feeling that faithfulness in the gospel immunizes your marriage from difficulty and from the tragedy of disintegration. I think we need to be more careful, and as a Church, as professionals, as teachers, and in every capacity that we fulfill in our Church activity and in our communities to teach our young people that there's no free lunch, that you don't live happily ever after by luck. We need to better prepare our young single people and our young married people and a lot of our older married people for the struggles, the sacrifice, and the process that is marriage. Too many young people, even now, even in the 1970's believe that if they only get married, and especially in our culture—if they only get married in the temple, that they've got a free ticket to ride. It just ain't so! You and I know it isn't so, and we need to be more honest I think when we have an opportunity to teach.

We need to be more honest with our young people, that there's a lot of hard work involved and that's where living your religion comes in. Living your religion isn't a free lunch either, and many of us raised in the Church tend to think that if we attain the ordinances, if we follow the rules, if we can answer all of the temple recommend questions straightforwardly, then we're home free, and when we think about it, we've got to realize that that is only the beginning, that is only a base at which we all begin to progress. We can't begin

progressing until we've achieved that base, but after that, all of the work is left to be done in terms of growth and development, and eventually exaltation.

I'd like to steal something from the doctors for my parting shot which I think applies to lawyers as well as the counselors of all types including Church counselors, bishops, elders quorum presidents, Relief Society presidents, all of us who are called upon for help and assistance. It's the injunction to the physician as part of the oath which is frequently administered after the medical degree is conferred and it says, "Above all do no harm." Now for many lawyers that will frequently mean doing nothing for we are not trained, are not qualified to counsel. My experience is leading me to believe more and more that the ability to counsel wisely is as much a gift and a matter of fortune and prayer, I should put prayer first, than a matter of training. I have seen individuals with very little or no formal training who have the gift of discernment and who can hear and understand and guide people in trouble. There are others of us who could train until we were blue in the face and might still not achieve that gift of discernment. It may also be something you can learn and so I suspect it's something that must be learned on one's knees and not in the library.

Thank you for the soap box. I leave these things with you in the name of Jesus Christ. Amen.