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# Psychology and Family Law

## Empathy Is Incompatible With Shame and Judgment

By Mark Baer, Esq.



In my last column (Jan/Feb 2015), I wrote about the significance and power of empathy, in particular among judges, politicians, legislators and others who would shape public policy. I would like to share the back story that led to my researching the issue of empathy.

It began with my confusion at the hostile reaction of many people—particularly members of online discussion groups—to the Supreme Courts striking down the portion of the Defense of Marriage Act (DOMA) that denied federal benefits to legally married same-sex couples. Many of these discussants were members of the legal profession, mental health professions, and professional mediators. I had hoped that well-educated and well-meaning people would be reasonably empathic, and I needed to understand how it was possible for an empathic person to make hateful statements.

I had been thinking about empathy in terms of my work as a mediator, and author Martin Golder's statement that, "in conflict resolution, empathy is a central tool and way of being." I was also intrigued by psychotherapist Brené Brown's position that, "empathy and shame are on opposite ends of a continuum. In fact, [empathy] is the most powerful antidote to shame."

The facts of the case that led to the Supreme Court's decision on DOMA involved a situation in which a person incurred \$363,053 in estate taxes that would not have been incurred, had the federal government recognized her same-sex marriage. The following is one of many critical comments posted in the Mediators and Peacemakers LinkedIn Group, in response to the discussion on DOMA being found unconstitutional:

"Know that there are many, indeed a large majority of Americans, who say government shouldn't legislate morality—until it is they who wish to legislate their personal agenda. Then it's apparently okay! Same with judges these days—most of whom are not fit to wear a judicial robe. Whatever suits the result they want to see *personally* dictates how they rule!"

The mediator who made this statement is shaming members of the homosexual community by inferring they are immoral, and completely ignoring the reasoning behind the Court's decision. His comment here actually led me to

leave that discussion group.

Around the same time, I shared online my article titled, The Same-Sex Marriage "Debate" Is Based Upon Ignorance and Inaccurate Information, in various mediation-related LinkedIn groups, and again received a great many hateful comments. The following is one such comment from a mediator:

"A unique meaning [of the term marriage] has now been taken away from a great many people. Society didn't take into account the convictions of a large group of folks when it eliminated that distinctive description. Now... what is being offered in its place? I wouldn't deny anyone their dignity—even though you deny me mine [i.e., with the striking down of DOMA], and offer nothing to replace it. What we had has been destroyed and deprived of meaning, which was what was intended, no doubt. Envy is a sad and destructive thing... There have been many happy companionships of brother and sister and friends, close friends [without cultural institutions changing]. Life went on. Now there is a triumphant minority riding roughshod over a community cowed into submission by political activism: Anyone who opposes that activism earns accusations of "homophobe," regardless of truth. I'm not lacking empathy, I hope—but am despised by an intolerant part of the LGBT community. This debate, has the disingenuous agenda of minority power, not equality."

The mediator who made this comment was also directing shame at the homosexual community. He claims "not to deny anyone their dignity," but states that by giving the members of the homosexual community *their* dignity, his dignity was taken away. He attempts to shame homosexuals by disregarding their unequal treatment under the law, and reducing it to nothing more than envy of heterosexuals' right to marriage. He also devalues their sexual orientation, by comparing their relationships to platonic companionship. Yet believes he is an empathic person.

I'm guessing it's possible for someone to be an empathic person, yet still limited in applying it, and unable to really understand some folks' subjectivity. However, a genuinely empathic person would convey respect, rather than expressing judgmental and hateful opinions. If they disagree with someone, they would instead express their disagreement in a non-shaming manner. Empathy is essential to conflict resolution and one cannot be a mediator or peacemaker in the true sense of the word, unless one is broadly empathic.

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