



**Office of Children
and Family Services**

Crying in the Courtroom

Why 'Toughness' Isn't Enough

January 8, 2024

Why “Toughness” Isn’t Enough



Presenters

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Photo credit: Nick Ut / AP, <https://www.nbcnews.com/news/world/tears-court-former-football-stars-kidnap-rape-conviction-dismissed-flna795181>

Agenda

- I. Introduction - Continuing the Conversation
- II. The Fiction of “Toughness” in the Legal Profession
- III. Toxic Stress and the Impact of Adverse Experiences
- IV. How Allowing Space for Emotions in the Legal Field Supports Diversity, Equity, Inclusion and Accessibility Initiatives
- V. What Can We Do?
- VI. Breakout Session

I. Introduction - Continuing the Conversation

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- Last year's NYPWA presentation - "DEIA and Organizational Change - What Does It Really Take?"
- History of white supremacy and patriarchy in the legal system
- Effect of greed capitalism and colonization on the practice of law

White Supremacy

- As defined by legal scholar Professor Frances Lee Ansley:
A political, economic and cultural system in which whites overwhelmingly control power and material resources and in which white dominance and non-white subordination exists across a broad array of institutions and social settings.

Who ...

- Established the way of governance?
- Created the system of law-making and then used the system to enact the first laws?
- Wrote the dominant narrative and explanations of land and places, people and cultures, nature and the environment?
- Established standards of
 - Professional norms?
 - Etiquette and societal expectations?
 - Acceptable and proper behavior?
 - Beauty and aesthetic?

What ...

- Does it mean to be the dominant culture?
- Is actually overturned when a decision is overturned?

II. The Fiction of “Toughness” in the Legal Profession

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- The image of the “Pit Bull” attorney
- How many of us were told to become a lawyer because we were good at debating or arguing?
- What does it mean to be a zealous advocate?



II. The Fiction of ‘Toughness’ in the Legal Profession

- What are the pitfalls of becoming jaded and developing a “thick skin”?
- The removal of humanity from clients and cases due to:
 - Billable hours and accounting for time
 - Overwhelming caseloads
- What mechanisms (healthy or unhealthy) have you used to emotionally adapt to your work?

II. The Fiction of ‘Toughness’ in the Legal Profession

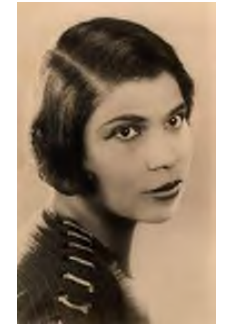
- Women’s struggle to practice law in the United States
 - Bradwell v. The State, 83 U.S. 130 (1872)
 - “As a married woman would be bound neither by her express contracts nor by those implied contracts which it is the policy of the law to create between attorney and client.”
 - “Man is, or should be, woman’s protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.”
 - “The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother.”



Myra Bradwell

II. The Fiction of “Toughness” in the Legal Profession

- Women’s struggle to practice law in the United States
 - Arabella Mansfield - America’s first female attorney (1869)
 - Ada Kepley - first woman to graduate law school (1870)
 - Charlotte Ray - first African American woman lawyer (1872)
 - Clara Foltz - California’s first woman lawyer (1878)



Clockwise from L to R:
Arabella Mansfield, Ada
Kepley, Charlotte Ray,
Clara Foltz

II. The Fiction of “Toughness” in the Legal Profession

- Women’s struggle to practice law in the United States
 - Belva Lockwood - first woman to argue a case before the U.S. Supreme Court (1880)
 - Kaiser v. Stickney, 102 U.S. 176 (1880)
 - United States v. Cherokee Nation, 202 U.S. 101 (1906)
 - First woman to appear on official presidential ballots (1884 and 1888 nominee for Equal Rights Party)



Belva Lockwood

II. The Fiction of “Toughness” in the Legal Profession

- Women’s struggle to practice law in the U.S.
 - Christine la Barraque - first blind female lawyer in the U.S. (1906)
 - Lyda Conley - first Native American woman lawyer in the U.S. and first to argue a case before the U.S. Supreme Court (1909)
 - Elizabeth K. Ohi - first Asian American female attorney in the U.S. (1937)
 - Jane Bolin - first African American female to graduate Yale Law School (1931), join the NYC Bar Association (1932), and serve as judge in the U.S. (1939).



Clockwise from L to R: article from Corryong Courier, 1906; Lyda Conley; Elizabeth K. Ohi; Jane Bolin

II. The Fiction of “Toughness” in the Legal Profession

- Women’s struggle to practice law in the U.S.
 - Lorna E. Lockwood - first woman appointed Chief Justice of a state Supreme Court (Arizona, 1965)
 - Mary C. Morgan - first openly LGBT attorney to become a judge in the U.S. (1981)
 - Sandra Day O’Connor - first female U.S. Supreme Court Justice (1981)
 - Janet Reno - first woman lawyer to become U.S. Attorney General (1993)



Clockwise from L to R: Lorna E. Lockwood, Mary C. Morgan, Sandra Day O’Connor, Janet Reno

Let's take a moment to breathe



III. Toxic Stress and the Genuine Impact of Adverse Experiences

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<https://www.youtube.com/watch?v=RiOXpzKnfhE>

Video courtesy of: First 5 California

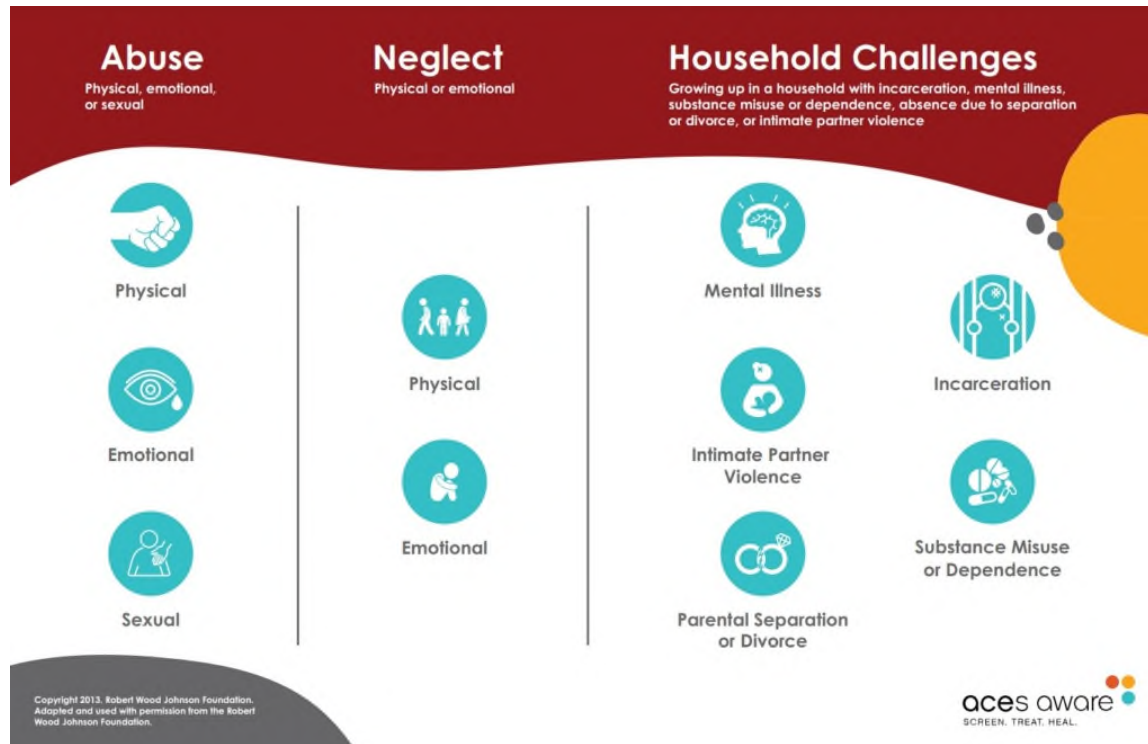
III. Toxic Stress and the Genuine Impact of Adverse Experiences

What is Toxic Stress?

Toxic stress occurs when the fight or flight response is activated too often or too long by persistent threats, problems, or demands. While the response happens naturally, toxic stress causes persistent and severe consequences. Considerable research confirms links, often leading to chronic illness, infections, injuries, mental illnesses, and addictive disorders.



III. Toxic Stress and the Genuine Impact of Adverse Experiences



III. Toxic Stress and the Genuine Impact of Adverse Experiences

- Who are the people we serve and what are some examples of their life experiences? Can you imagine their life experiences?
- How can we empathize with people who have experienced/are experiencing toxic stress and adverse life experiences?
- How can we be cognizant of and self-regulate our own toxic stressors and the effect of adverse life experiences?
- How can we maintain healthy boundaries while still being a zealous advocate for our clients and the public?

Let's take a moment to breathe



IV. How Allowing Space for Emotions in the Legal Field Supports DEIA Initiatives

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<https://www.youtube.com/watch?v=CsJRnTQYyhE>

Video courtesy of: USA Today

IV. How Allowing Space for Emotions in the Legal Field Supports DEIA Initiatives



https://www.youtube.com/watch?v=ILWz8_x9SN4

Video courtesy of: Inside Edition

IV. How Allowing Space for Emotions in the Legal Field Supports DEIA Initiatives

- Did the judges' display of emotions in those two video clips diminish their credibility or appearance of competence?
- What are our fears with regard to exhibiting emotions in the courtroom?
- What can we gain from allowing space for legitimate emotions in the courtroom and denying stigma or shame?
- How does humanizing ourselves and others support DEIA initiatives?

IV. How Allowing Space for Emotions in the Legal Field Supports DEIA Initiatives

- Racist, sexist and misogynistic foundations of the American legal system
- The antidote to structural inequities involves embracing the differences that make us human, i.e., emotion, softness, empathy, compassion

Let's take a moment to breathe

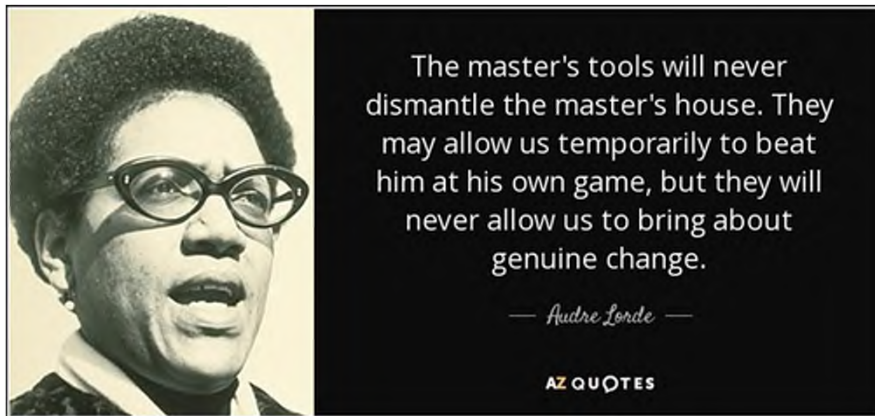


V. What Can We Do?

- Embrace our humanity. Be cognizant of when we are repressing legitimate emotions or forcing others to repress them.
- Find positive alternative outlets for emotions when the display of those emotions would be detrimental. Learn more about healthy self-regulation techniques.
- Be an effective advocate by explaining the cause for emotions. If needed, ask for a short recess to allow expression of those emotions in a safe space.
- Be aware of when the system is hindering our ability to provide effective counsel and be proactive in putting safety mechanisms in place to prevent it.
- Don't be afraid to ask for help or support when needed.

V. What Can We Do?

- "Difference must be not merely tolerated but seen as a fund of necessary polarities between which our creativity can spark like a dialectic. Only then does the necessity for interdependency become unthreatening. Only within that interdependency of different strengths, acknowledged and equal, can the power to seek new ways of being in the world generate, as well as the courage and sustenance to act where there are no charters ...
- It is learning how to take our difference and make them strengths. For ... "



VI. Breakout Session

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1. Have you ever been affected by the fiction of toughness at work? Can you give an example of the circumstances? How did it feel? What were the outcomes? How was it received?
2. Have you ever witnessed someone else affected by the fiction of toughness at work? Can you give an example of the circumstances? How did it feel? What were the outcomes? How was it received?
3. In your work, have you ever allowed (or were given) space for emotions? Can you give an example of the circumstances? How did it feel? What were the outcomes? How was it received?
4. What can you do in your field to allow space for emotion? Would it be beneficial?

Return From Breakout Session

Thank you for participating in today's presentation.

If you would like to discuss any of these issues further, please feel free to contact the Office of Diversity, Equity, Inclusion and Accessibility at ocfs.sm.hr.DEIA@ocfs.ny.gov.