

A job of flight, fight and the fear factor by JOHN STURROCK

THE magazine of the American Bar Association, the ABA Journal, is robust and well written, carrying mainstream features of interest and benefit to practitioners, as one would expect of the leading bar association for US attorneys.

Tucked away at the back is a regular column by one Steven Keeva, entitled Keeva on Life and Practice. It is a fascinating read. Here is one lawyer in touch with the emotional side of legal practice. A recent article highlighted the topic of fear, an emotion that Keeva said stood alone in the practice of law, in both its impact and frequency. For the court lawyer, there is the fear you are insufficiently prepared, you are not quite up to the job you have taken on, or you haven't quite anticipated all you should have in the other side's arguments. For some lawyers, there is the fear of negotiating with an opponent whose reputation precedes her, or of not being thought of by your peers as successful, or of not becoming a partner. And, as Keeva puts it, there is the "endemic fear of failure".

He describes some law firms as "fear-based", with the result that growth is inhibited and the organisation gets stuck and unable to deal with change. Perhaps one person or a small group dominate decisions on how the firm is run, with others unable to have their say. But the pressure to bill more hours and the frantic pace of modern practice leaves little room for introspection, far less for doing anything about it.

Keeva points out our brains are hard-wired to behave this way. Fight or flight. The reptilian brain still operates as it did thousands of years ago. Lawyers' reptilian brains seem to work close to full time, he suggests. Why? Well, in what other profession are other (skilful, intelligent, well-motivated) people working their hardest to show you are wrong? No wonder, he argues, lawyers can appear defensive and unwilling to lay their cards on the table.

Keeva describes the significant developments in the past decade in what is known as emotional intelligence. Many lawyers are now much more skilled at recognising when the fear factor may take over and at modifying their behaviour accordingly. And, he tells us, your EQ is a better predictor of success than IQ, subject matter knowledge or job experience.

Now, some of us may be thinking this is so much American nonsense - or it's all pretty much common sense. Maybe so. But reflect on some of the stories and news items that fill these pages. How many of them arise because people are frightened to talk about what really happened, or fear the consequences of an inquiry that they anticipate will seek to pass judgment, allocate blame or find fault, or know vilification will follow any openness or attempt at transparency?

So, when people clam up and refuse to respond to questions about events in the past, or prefer to do so behind closed doors, perhaps Keeva helps us to understand why. That stubbornness or closing of ranks or unwillingness to let a third party investigate may be born of fear. That does not necessarily justify the response, of course, but it may explain it. And that fear may mean our ability to really learn from what happened, why it happened and how it might be avoided in the future, can be greatly reduced - and any constructive outcomes may be incidental and grudgingly secured. Is that sensible?