



# **Put Into Practice:** Wrestling With Ethical Dilemmas - We Have Met The Enemy ...

SEPTEMBER 13, 2012 - ASHEVILLE

SEPTEMBER 14, 2012 - CONCORD/CHARLOTTE

NOVEMBER 2, 2012 - GREENSBORO

JANUARY 10, 2013 - GREENVILLE

JANUARY 11, 2013 - NEW BERN

FEBRUARY 7, 2013 - CARY (AM & PM SESSIONS)

FEBRUARY 15, 2013 - WRIGHTSVILLE BEACH



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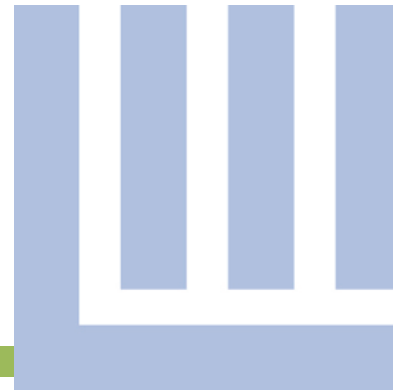


**Wrestling With Ethical Dilemmas:**  
**We Have Met the Enemy...**

**3.0 Hour Agenda**

- 9:00 Introductions, Format, and Ground Rules
- 9:05 **Professional Wrestling is Real:** Juggling the Manifold Demands on Your Time & Energy
- *Win Win*, Scene 1: “Hey, you okay?”
- 9:35 **Knowing When You’re Outmatched:** The Interplay of Stress, Mental Health, and Ethical Dilemmas
- *Win Win*, Scene 2: “What are you so stressed about?”
- 10:00 *Break*
- 10:15 **Strengthening Your Core:** The Importance of Working Out Your Core Values
- *Win Win*, Scene 3: “Did we win?”
- 10:45 **When to “Tap Out,” and “When to Go to the Mat”:** The Cumulative Effect of Everyday Choices
- *Win Win*, Scene 4, “What’s your play?”
- 11:15 *Break*
- 11:30 **Tag Team Wrestling:** Leveraging Your Available Resources
- *Win Win*, Scene 5: “Really?”
- 12:00 **We Have Met the Enemy, and He is Us:** Practical Steps to Maintaining Your Ethics *Before* You Go Down for the Count
- 12:30 Adjourn





## Discussion Questions





## *Win Win*, Scene 2—“What are you so stressed about?”

### Discussion Questions

1. What does Mike say triggered his panic attack? What are some of the other underlying factors that may have led to his panic attack?
2. What do you think about his choice to withhold his concerns from his wife? Why did he make that choice?
3. What good choices has he made so far? What are some things he could have done differently?
4. Discuss his reaction to the idea of supplementing his income. In what ways, if any, can you relate to his sentiments? How could his beliefs about himself and his legal practice be impacting his thought process on this subject?

***For Further Reflection:*** Can you relate to the stressors that Mike describes in this scene? What sources of stress do you frequently encounter?

*What do you do to relax, in general, or in times of higher stress? Is it effective?*



## *Win Win, Scene 3—“Did we win?”*

### Discussion Questions

1. The beginning of this scene shows Mike trying to address his slowdown in work. How does he feel once his colleague calls him back and tells him he has no overflow work? Where does his mind go from there?
2. What thoughts are going through Mike’s mind as he appears in court?
3. What choices does Mike make in his interactions with (a) the judge, (b) opposing counsel, and (c) his client, Leo Poplar? How are they problematic, ethically?
4. How do you think Mike rationalizes his conduct? How do you think he feels about it?
5. From all that you have seen, what things in Mike’s life do you think are most important to him? How are his values now in conflict?

***For Further Reflection:*** *What drew you to the practice of law in the first place?*

*What are your “core values”? What do you feel like you need or must have to be happy? What things in your life are too important to lose?*





## *Win Win*, Scene 4—“**What’s your play?**”

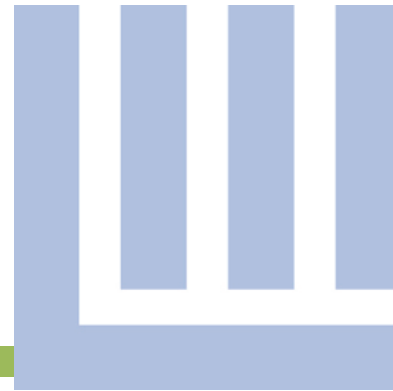
### Discussion Questions

1. Mike says he is in a “tough position” during the initial meeting with Cindy and her lawyer. What might be going through his mind now?
2. What alternatives does he have now? What kinds of consequences or implications might follow from each of them?
3. What factors are influencing Mike’s decision-making process at this point?
4. Mike’s friend refers to him as a “pillar of the community.” How might this role be affecting his decision-making?
5. What do you think about Mike’s “play,” telling Cindy that she has been disinherited? Why did he take this approach? How do you think her initial response could impact his future choices?

### ***For Further Reflection:***

*Think of a time when you were on the horns of an ethical dilemma. How did you respond? What did you do that was helpful? What do you now, in hindsight, wish you could have done differently?*





## Summary Handout





## **Going to the Mat:** Practical Steps to Maintaining Your Ethical Commitments--*Before* You Go Down for the Count

- **Strive for Self-Awareness.** It is beneficial—in fact necessary—for attorneys to pay attention to the sources of stress, fear, pressure, or compulsions that affect our decision-making. Consider:
  - What are the warning signs that I am under stress, pressure, anxiety or fear? What do I do with these emotions or sensations when I realize that they are at work? Is there anyone helpful I can talk to about it?
  - Which sources of stress are legitimate, and to be expected in my practice? Which ones can I do something about, and how?
  - How do I maintain my sense of ethics, integrity, and presence of mind, in the face of ordinary stress? What about in the face of *extraordinary* stress?
- **Recognize the cumulative impact of everyday choices:** Unethical behavior does not usually “appear” out of the blue. Mike Flaherty made a number of bad decisions, any one of which could have been made differently with less disastrous consequences. The road to unethical and/or unprofessional conduct is made up of many small, incremental decisions over time, rather than one or two monumental choices.
  - Be rigorously ethical with the “small things,” even when you are tempted to think “no one will know,” or “no harm, no foul.”
  - A good rule of thumb is to “DO WHAT’S HARDER WHEN IT’S EASIER”- Untangling one lie or mistake is ultimately simpler than building a house of cards--only to see it fall.



- **Don't try to fly solo:** Isolation can increase stress, and robs us of valuable resources that may be available to deal with it well. Mike Flaherty did well to consult his doctor, and he did at least speak with Terry about his situation with Leo, Cindy, and Kyle. But when he was considering the course of action he took, he did not appear to consult with another attorney regarding his available options or the potential consequences of his actions.
  - Find a colleague or mentor that you can trust and ask for feedback on your situation. What are you doing, if anything, that might be making things worse? What could you be doing differently? What are you doing well?
  - If you are in a small firm or solo practice, form connections with other similarly situated practitioners, perhaps through a Bar committee or practice Section.
  - Leverage the resources available from your local or state bar.
  - It may also be helpful to talk about your practice with someone outside the legal world as well. A friend, spouse, mentor, spiritual advisor, or counselor may see relational dynamics at work that we lawyers assume are just to be expected, but in fact may be part of the problem.
- **Maintain a healthy perspective:** What we desire (or expect, or demand) from the practice of law, or from our lives, will have a big impact on how we act, and the kind of person each of us becomes. It takes some reflection to discern what one is really aiming for in a given situation. It may be beneficial to ask yourself the following questions:
  - What am I living for? Why do I get up every morning and do what I do? Why am I in the practice of law in the first place? What is my definition of “happiness?”
  - What are my real “core values”? What principle, or object, or goal, is so important in my life that, when I fear losing it, I am more liable to lose my ethical moorings? (What do I spend extra time or money on, when I have it?)



Or, when I find myself getting angry, what is it that I am wanting but not getting, or what is it that I am afraid of losing?)

- What do I truly need to be happy, fulfilled, or OK with myself? What overall goal or purpose is informing--or even dictating--my choices? Is it money, status, comfort, a sense of control, approval in relationships, or something more?
- **Find, or help create, a healthy work culture:** Mistakes will happen in the practice of law, as in life. The culture of a law office is determined in part by the reactions to those mistakes. You can't address what you don't know, and you won't know what folks are afraid to tell you, often until it is too late. Which of the following sounds more like your workplace? Which would you prefer? What can you do to bring about that climate?
  - Are errors viewed as monumental, frequently blown out of proportion, or otherwise handled in a way that is undignifying? Are those who fail shamed, privately or publicly? Do folks know that they'd better "toe the line," and fear the repercussions when they don't?
  - Or are mistakes accepted and understood as a challenge that can be met? Are they given support, constructive feedback, and opportunities for improvement?



**Wrestling With Ethical Dilemmas:**  
**We Have Met the Enemy...**

**Getting Into Shape**

1. When I feel stress, I can tell because:

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2. The situations/tasks/people that are most likely to cause me stress include:

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3. The three things most important to me in life are:

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How does my current allocation of time, money, and energy match up to these most important parts of my life?

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4. Given my personality, current employment, and type of practice, I am most vulnerable to compromising my ethical principles for the sake of:

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5. In a typical week, how often do I take time to care for my mental well being (e.g., exercise, reading for pleasure, socializing, arts & entertainment, spiritual/religious activities, hobbies)? Is this enough?

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6. One thing I may need to change about my life or my practice based on what we have discussed today is:

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## Written Materials

IDENTIFYING AND MANAGING STRESS:  
TOWARDS GREATER SELF-AWARENESS AND  
MORE EFFECTIVE SELF CARE

THE CUMULATIVE IMPACT OF  
EVERYDAY CHOICES

MAINTAINING PERSPECTIVE AND  
CORE VALUES



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### FOR FURTHER READING . . .

Bachman, Walt, *Law v. Life: What Lawyers Are Afraid to Say About the Legal Profession* (1995)

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Kaufman, George W., *The Lawyer's Guide to Balancing Life and Work: Taking the Stress Out of Success* (1999)

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Schultz, Patrick J., *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 Vand. L. Rev. 871, 891 (May 1999)

Stracher, Cameron, *Double Billing: A Young Lawyer's Tale of Greed, Sex, Lies, and the Pursuit of a Swivel Chair* (1998)

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REVISED EDITION

Best Seller with Over 175,000 Sold

*Richard A. Swenson*

# MARGIN

*Restoring Emotional, Physical, Financial,  
and Time Reserves to Overloaded Lives*

RICHARD A. SWENSON, M.D.

*Chris  
Toward the things that  
matter most...*

NAVPRESS 



## THE PAIN OF STRESS

MANY OF THE annoyances of modernity do not yield to quick analysis. We wouldn't exactly label them evils—more like frustrations or nuisances. They are more like heartburn than homicide. You can't pick out a villain, yet you have a headache anyway. Sometimes you suspect there must be a computer virus hiding deep inside the center of the earth, clogging its gears. Maybe that's why so many things continue to backfire after all these years. Why can't the person using the sophisticated computer seem to clear up my magazine subscription? Why doesn't the IRS know the answers to its own questions? Whatever happened to friendly clerks? Why is it we don't feel confident that when the world awakens tomorrow, we will all be one day closer to victory?

## YET ANOTHER POLLUTANT

High levels of stress follow as naturally after progress as does exhaust after traffic. It is a byproduct of our age, yet another societal pollutant. Pick up any periodical at the public library and see if it doesn't contain an article mentioning the subject. Four out of five Americans report a need to reduce stress in their lives, often resorting to tranquilizers. Why, in such a prosperous age, is it necessary to sedate so many? The negative aspects of stress disable the workplace as well, resulting in the loss of 225 million



work days annually in the United States, nearly one million people for every working day.

## OUR RESPONSE TO CHANGE

Dr. Hans Selye, the late Canadian endocrinologist and "father" of stress research, defines stress as "the nonspecific response of the body to any demand made upon it."<sup>1</sup> This definition is contrary to the popular thinking that defines stress as an unpleasant circumstance, such as tax time or a screaming baby. Stress is not the *circumstance*, it is our *response* to the circumstance.

It makes little difference if the situation we react to is positive or negative—both trigger the adaptational mechanism. Although the ultimate consequences of *frustrating stress* can be very different from those of *rewarding stress*, nevertheless, the initial adaptive response mechanism is similar in both cases. Merely encountering the word stress should not connote a positive or a negative feeling. The word only describes an entirely normal physiological process without which we would die.

Our bodies are constantly adapting to the environment. This adaptation is a marvelous process, more intricate than we imagine. A sophisticated organic communication network functions continuously at a low level. It is on perpetual alert, monitoring for changes in the environment. At times of increased need the system surges, preparing us for any necessary response.

This stress system is important and, in fact, vital. When overactive, however, damage can result. While stress itself need not be destructive, the overstimulation of an uncontrolled stress response may be both painful and destructive.

## EUSTRESS, DISTRESS, HYPERSTRESS

Many of us, often without realizing it, use stress to our advantage. This *eustress*, or positive stress, energizes us. It is what football players call

"psyching up" before a game. Eustress is what makes us especially creative before a deadline. It is what sleeping mothers use when they hear an infant gagging in the next room and they have to be instantly awake. This is what employers consciously induce in a work environment to make employees productive—a kind of creative tension. Some people love this feeling, thrive on it, and almost become addicted to it.

When the stress response becomes negative or destructive, it is called *distress*. This is what most of us mean when we use the word stress. We are really referring to the negative aspects of stress, or distress.

An excessive volume of stress is called *hyperstress*. The volume is important because how we deal with stress depends on how much of it we are confronted with. If the amounts are manageable, we can learn to avoid distress and possibly turn it into eustress. If, however, the amounts are at hyperstress levels, then stress reduction is more important than stress management.

If the stress reaction is resolved successfully, no apparent damage is noticed. If, however, the result is failure or frustration, multiple pathologies may ensue: tissue aging occurs at the cellular level; the immune system may malfunction; cardiovascular catastrophes, such as stroke or heart attack, may occur.

## IS IT WORSE TODAY?

Stress has been called a national epidemic. Is it a modern disease? Haven't people always had stresses? The answer to both questions is yes. Humankind has always had problems, and many of them were caused by stress. Yet our current stress plague differs dramatically from the experience of our ancestors. Conditions of modern living overstimulate our stress-response more than in previous times, and many of the issues are too complex for successful resolution.

"But look at the statistics," you protest. "Infant mortality is down and life expectancy is up. We have one of the highest standards of living in the world. The elderly have Social Security and Medicare, while the poor

have food stamps and Medicaid." Yes, and we all have stress. It is woven as tightly into the fabric of modern life as is television.

No one in the history of humankind has ever had to live with the number and intensity of stressors we have acting upon us today. They are unprecedented. The human spirit is called upon to withstand rapid changes and pressures never before encountered.

## PHYSICAL STRESS, MENTAL STRESS

Our stress problem is further clarified by examining the difference between physical and mental pressures. Biochemical stress parameters are more affected by psychological stressors than by physical stressors. Physical hard work, for example, is not really a stressor at all, as long as one has some control over it. A person can work twelve hours a day, six days a week for an entire life at physical labor and suffer no ill effects—as long as that person has decision-control over the work schedule. Actually, such hard physical labor would usually have salutary health benefits. But if the strain is mental and a person is constantly being frustrated, the negative health effects can be catastrophic.

In one study, a patient was first given a cardiac treadmill exam. Despite vigorous physical exercise, the patient's cardiovascular status remained normal throughout. He then was asked to subtract seven from 777 serially for three-and-one-half minutes. His blood pressure went up forty points. Similar results have been achieved in other studies. Certain biochemical stress parameters are more affected by psychological stressors than by physical stressors. Chronic uncertainty, sustained levels of increased vigilance, or struggling with a mental task are more stressful than chopping wood.

"The widespread substitution of mental strain for physical strain is no advantage from our point of view," maintained E. F. Schumacher. "Proper physical work, even if strenuous, does not absorb a great deal of the power of attention, but mental work does; so that there is no attention left over for the spiritual things that really matter. It is obviously much easier for



a hard-working peasant to keep his mind attuned to the divine than for a strained office worker."<sup>2</sup>

## SPICE OF LIFE, KISS OF DEATH

Individuals differ significantly regarding how much stress is desirable or what types of events are distressing. What strains some does not bother others. I, for example, do not mind waiting in lines but don't enjoy going to formal parties. Another person might react the opposite—despising lines but loving parties. A stressor that for one might be pleasure, for another might be pain. For one, the spice of life; for another, the kiss of death.

Some people desire a low level of stress to feel comfortable. Our modern pace was not particularly designed with them in mind. Others seek a high, almost frenzied level of stress and seem to thrive on it. Different stressors, different personalities, different results. Let's look at some of these categories.

**Type A**—The type A personality is commonly characterized as "driven." Type As have a drive to control others, an aggressiveness and competitiveness characterized by a need to win. They think multiple thoughts and do multiple actions at the same time. Margin is not a priority to preserve but a gap to be filled.

These hardworking, time-pressured individuals are more prone to cardiovascular disease. Their carburetors are set on high, and they surge into overdrive at the slightest provocation. Most people find a vacation relaxing, but type As often do not. Relaxing is one of the most stressful things on their agenda, which is why they seldom do it. Progress and type As feed on each other. They are very productive people and usually the leaders of companies or institutions. But they live on a high level of stress and have significant health problems because of it.

**The Extrovert or Introvert**—The introvert is a personality type vulnerable to the stresses of the crowd. Introverts like to be alone. They appreciate quiet, solitude, and time to think and feel in their own internal world. They generally do not like having a large number of social

interactions or going to parties.

The majority of Americans, however, are extroverts, and extroverts are energized by such social exchange. Extroverts usually don't understand introverts and try to push them into situations where they simply don't wish to be.

**The Depressed or Anxious**—Another group of people in a special stress category are those who have generalized depression or anxiety. *Depression* is the feeling that life is painful and hopeless. *Anxiety* is the looming belief that circumstances will *imminently become* painful and hopeless. Whether depressed, anxious, or both, these people feel pressure from stressors that are inflated or perhaps not even there at all.

Some, for example, are always stressed when they ride in a car. They have never been in an accident but are fearful that today will be the day. Every car they pass along the route, therefore, becomes a stressor. These anxious and/or depressed people will be burdened much of their lives simply because they perceive stressors as more of a threat than they really are. One important lesson emerges from such an illustration: Often our perception of the stressor damages us more than the stressor itself.

**The Elderly**—Evidence indicates that mental stressors induce more tension in the elderly than in the young. Performing serial seven subtraction is only mildly stressful for those in their twenties. Many elderly, however, are hyper responsive to such stimuli and become agitated in performing the task.

**Children**—Pediatricians, child psychologists, and developmental experts all believe that our current age is more stressful for children. Social change is too rapid, competition is too stiff, and expectations have risen too high. *Time* magazine ran an article titled "Burning Out at Nine?"<sup>3</sup> followed a few years later by *Newsweek's* contribution titled "The Overscheduled Baby."<sup>4</sup> Added to the host of already oppressive burdens are children's insecurities about family stability. Children have a great stake in whether their parents stay together or not, but little control over the matter.



## CONTEMPORARY STRESSORS

Avoiding all stress is as impossible as it is undesirable. It is *impossible* because modern living challenges us continuously with adaptational demands. It is *undesirable* because a stress-free life—no change, no challenge, no novelty—is literally fatal. Even a low-stress life, that often sounds so attractive, is consistently described as “boring.” But neither do we want *hyperstress*.

Where does this leave us? Human performance does best, and even thrives, if we can keep the amount of change and stress in our lives within an acceptable range of tolerances. Unfortunately, for many of us, we exceed this range routinely and chronic hyperstress has become the new normal.

Our stress diet selects from a diverse menu. The following are some of the most prominent items.

**Change**—Do not underestimate it. We pay a price for each change we must adapt to. The Life Change Index is one scale that quantifies change and assigns a corresponding health risk: The greater the change, the higher the risk.

**Mobility**—Mobility is a subset of change. People move, for the most part, because of perceived advantages. Each move, however, entails an adaptation to the new environment (which is stressful) plus a severing of old ties (also stressful).

**Expectations**—Modernity has increased our expectations but has not always permitted a commensurate ability to meet them. Frustration results.

**Time pressure**—The clock dominates our schedule as never before. We have more activities to arrive at and more deadlines to meet. Most of us are all too familiar with the feeling of panic as an appointed hour nears with work yet undone. We are ruled not by the week or day but by the minute.

**Work**—For many, distress and work are the same word. There is, for example, the Boston obstetrician who left his practice and opened a laundromat. Or the commercial airline pilot who, after waiting to take off, taxied back to the terminal, walked off the plane, and quit. We change jobs

more frequently, and we rotate more shifts. We have many more deadlines yet less control.

**Control**—Stress can be successfully managed if we have control over what is happening. If the situation is beyond our influence, however, frustration leads to mental or physical damage.

**Fear**—Some researchers believe fear to be the root cause of all stress reaction. We have many reasons for our insecurities: pressured deadlines, fragile job futures, economic vulnerability, loss of control, conditional relationships, overloaded lives.

**Relationships**—The intact, supportive relationships we all require for healthy living have dissipated under the tutelage of progress. The family has been systematically dismantled, and at the same time, long-term friendships are increasingly rare.

**Competition**—Modern life has become essentially a comparative—and even hypercompetitive—experience. The winners excel while the multitude of losers try to deal with the stress of not measuring up.

**Frustration, anger**—Perhaps the greatest emotional stressors are frustration and anger. These block our ability to use stress in a positive manner and virtually assure destructive results at some level.

It is important to understand the effect of combined stressors, for the whole is greater than the sum of the parts. We might be able to adapt successfully to one or two assaults on our internal response mechanism, but when six or eight major stressors compound the challenge, our chances of success are diminished.

## BROKENNESS AND BURNOUT

The effects of stress disorders are noticed in three spheres: psychological, physical, and behavioral. Burnout is a pervasive disturbance in all three areas.

**Psychological Symptoms**—Most people are aware of the link between stress and our psychological well-being. The psyche, it seems, is the most common point of entry for the stress virus, with symptoms including:



depression, withdrawal, apathy, mental fatigue, anxiety, feeling that things are slipping out of control, negative thinking, difficulty making decisions, exaggerated worrying, anger and hostility, impatience, forgetfulness, and confusion.

**Physical Symptoms**—Our response to stressors takes place not only at the thought level but also at the organ and even the cellular level. Such physical symptoms include: rapid pulse, palpitations, increased blood pressure, hyperacidity, ulcers, irritable bowel, tightening of the muscles, headaches, weight changes, compromised immune system, unexplained fatigue, rashes, itching, insomnia, and shortness of breath.

**Behavioral Symptoms**—What our mind and body experience, our behaviors often express. If, for example, we are psychologically depressed and physically exhausted, we will begin to act in a manner consistent with these symptoms. These behaviors include: irritation with friends and colleagues, bossiness, outbursts of temper, withdrawal and detachment, sudden tears, changes in eating or sleeping patterns or in the sexual drive, accident proneness, reckless driving, inappropriate laughter, compulsive shopping, increased use of tranquilizers, alcohol, or cigarettes.

**Burnout**—If you bend a small tree and then release it, the sapling will return to its former shape. This is analogous to stress—we bend and then recover. However, if you bend the sapling until it snaps, it stays broken. This is analogous to burnout. Something inside breaks. Common burnout phrases include: "I dread going to work," "I can't stand this any more," "I'd rather be alone," "I don't care," "I hate it!" "I want out of here!" Of course, there can be and usually is, healing following burnout. A return to passion, enthusiasm, and full productivity often occurs. But the healing takes a long time and is mostly by scar formation, while the co-morbidity is very high.

## A DOSE OF MARGIN

Some in our midst quickly grow impatient with all this stress talk and would instead challenge the weak to quit all the whining and get with



the program. They love stress and seem to thrive on marginless living. The driven live on the edge and wouldn't have it any other way. They eat, breathe, and sleep adrenaline. Productivity is the goal, not living. Margin is a hole to be plugged as quickly as possible.

Yet even these racehorses have their limits, as they will eventually learn. And when they do, I hope they will not underestimate the stress-reducing value of taking a dose of margin against the pain.



# A LAWYER'S GUIDE TO HEALING

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*Solutions for  
Addiction and Depression*



DON CARROLL, J.D.

"Don Carroll, a national leader in the lawyer assistance community and a prolific writer, has clearly outdone himself in *A Lawyer's Guide to Healing*. Drawing on his rich professional and personal experience, Don manages to combine the latest data on addiction, depression, and other problems besetting altogether too many lawyers with stories of overcomers and practical words of encouragement which are nothing short of inspiring. Any lawyer or judge struggling with these issues—or assisting those who are—must read this wise and instructive book."

—JUDGE CARL HORN III

*author of Fourth Circuit Criminal Handbook and  
LawyerLife: Finding a Life and a Higher Calling in the Practice of Law*

"This is a book about healing for lawyers who may not know they need help or healing. As a lawyer speaking to other lawyers, Don Carroll provides a simple, straightforward, and very wise primer about addiction. He offers a handbook of philosophy, science, and psychology, along with plenty of direct advice to help his colleagues recognize their self-deception and face themselves. Best of all, he offers these radical suggestions for change with an attitude of great hope."

—STEPHANIE BROWN, PH.D.

*author of A Place Called Self: Women, Sobriety, and Radical Transformation  
and director of the Addictions Institute, Menlo Park, California*

"Don speaks with the voice of one who knows the processes which lead to the 'dark night of the soul,' as well as the pathways out of that dark night to transformation, recovery, and healing. This book is a gift of guidance and inspiration to lawyers seeking healing from addiction and depression and to those offering help."

—AL J. MOONEY, M.D.

*coauthor of The Recovery Book*

"This book represents a unique resource for attorneys struggling with alcoholism and substance abuse, as well as the medical professionals and lawyer assistance volunteers and personnel who work with them. Don Carroll provides a wealth of information regarding impairment and recovery, while never losing sight of the human side of the equation. The book presents the pain of addiction and the joy of recovery, together with the information needed to assist suffering legal professionals."

—MICHAEL COHEN

*executive director of Florida Lawyers Assistance, Inc., and member of the  
Florida Bar Standing Committee on Professionalism*

# **A LAWYER'S GUIDE TO HEALING**

*Solutions for Addiction  
and Depression*

**Don Carroll, J.D.**

**HAZELDEN**



## CHAPTER TWELVE

### Stress

#### *Understanding the Link between Stress and Health*

MANY OF US UNDERSTAND that extreme emotional disturbances can adversely affect our health. This recognition that stress can make us sick is not new. Centuries ago doctors recognized that two individuals could get the same disease yet the courses of their illness could be quite different in ways that reflected the personal characteristics of the individuals. Today, science is beginning to understand why this is so, and we are beginning to understand the inquiries we can make about any disease state, such as: Why is stress seemingly something that causes high achievement in some and disease in others? How does stress interact with personality differences? Does stress cause depression? What does stress have to do with how fast we age and how well our memories work?

Like a gazelle being chased by a lion, the human body is brilliantly designed to deal with acute physical stress. In the stress response, energy is mobilized and delivered to large muscle tissues that need it to either flee or fight, long-term body repairs are put on hold, the immune system lets down, pain is blunted, and cognition is sharpened. We all understand the logic of the body's fight or flight response to acute physical stress. In addition, the body even does a pretty good job of dealing with chronic physical stressors such as being caught in a famine that lasts six months.

But most stress doesn't come from lions or famine. It arises inside the mind. Gazelles don't worry if their retirement income will last. But humans generate all sorts of stressful events purely from imagining or anticipating them.

The problem is, when an individual sits around worrying about stressful things, he or she is turning on the same physiological response

storage of energy and begins to liquidate energy already stored. The body does this through the release of the stress hormones glucocorticoid, epinephrine, and norepinephrine, which cause free fatty acids and glycerol to pour into the circulatory system. On the most basic level, this is inefficient. If an individual activates the stress response too often, he or she will expend so much energy that tiredness and fatigue are inevitable. With enough stress, diabetes can result.

As I have already mentioned, digestion is quickly shut down during the stress response. This occurs in the stomach and small intestine. The opposite occurs in the large intestine where the body's objective, as with the bladder, is to eliminate excess baggage as quickly as possible. The result is diarrhea. The connection between stress, colitis, and irritable bowel syndrome is more complex. Stress appears to worsen both conditions, but exactly how it does so is still unclear. These conditions may result in part from a diet lacking in fiber. While a lawyer's stress response may routinely eliminate waste from the colon, at the same time the digestive process is stalled in the stomach and small intestine, causing the entire digestive tract to be put under strain, much like pressing the brake and the accelerator at the same time.

One thing that is so disturbing about the stress response is its pervasive effect on almost all of the body's systems. Almost no physical system is exempt from the effects of the stress response, including sex and reproduction. With the onset of stress, the entire sexual hormone secretion system is inhibited. Erections become more difficult for men, and women may find their menstrual cycles become irregular.

One of the newer areas of stress research focuses on how stress affects memory. Memory is not monolithic. There are several different types of memory, most notably short-term, long-term, and remote memory. Just as there are different types of memory, different parts of the brain are involved in memory storage and retrieval. Memory is not stored in specific neurons, but in the patterns of excitation of vast arrays of neurons.

We know that initially stress heightens mental acuity as well as energy. More oxygen is delivered to the brain (as well as the muscles to be used in fight or flight). The difficulty is in the extended stress response. New evidence suggests that continued exposure to stress could compromise the ability of neurons to survive neurological disease.



The same research that suggests that the stress response can damage our memories also suggests that it may affect aging by accelerating aging of the brain. In addition, the older we get, the longer it takes our body to reestablish its normal equilibriums. As we get older we become less flexible, physiologically as well as psychologically. The cardiac muscle gets stiffer. Aged organisms not only have trouble turning off the stress response after the stressor is removed or has ended, but they also secrete more stress-related hormones even in their normal, non-stressed state.

Some lawyers are good at modulating the effects of stress and others are not. The repeated stress of complex trial work may make one person a great lawyer, while in another attorney it may create the conditions for illness. One of the hugely variable factors is personality. The level of stress we are under and the nature of our personalities affect the context in which disease arises at the cellular level. Those who handle stress well do so because of natural tendencies in their personality to exercise or use other outlets to decrease the effects of the stress response. Creating good habits, such as physical exercise and recreation, can help reduce the impact of stress on the body.

Social support is another proven way to reduce the impact of stress. Social support comes when we are in relation with other people—those with whom we can discuss exactly what is going on and be heard without judgment. This can occur in both structured and unstructured settings. Studies have also shown that individuals who are socially isolated have overly active sympathetic nervous systems. This leads to the likelihood of higher blood pressure and increased risk of heart disease to go with the risk from the stress response.

A third factor is how we deal with unpredictability. Those who need greater predictability are less able to moderate the effects of the stress response. If our control needs are high over areas of our lives where we have little control, then the stress response will often remain stuck in the ON position. Twelve Step programs offer a way to moderate control needs, to adjust to the ultimate reality that everything always changes.

Conversely, the ability to have control over certain things, to have a passion in life, and to have a purpose are all important psychological factors in alleviating the stress response. Somehow the stressful things



in life take less of a toll when there is a course set, especially a flexible one, for an individual's life direction.

The good news, then, is that there are psychological ways of living that we can have by natural predisposition, or that we can develop, that lessen the impact of the stress response. These include an inclination toward exercise, a tendency to avoid isolation, and a positive attitude toward the unpredictable nature of life. The bad news is that these internal psychological factors are so powerful that they can trigger a stress response on their own, or make another stressor much more stressful.

The first step toward increased health is to be aware of these stressors and how they affect us. Professionals seeking to help lawyers deal with stress might ask, "What are this individual lawyer's strengths and weaknesses for coping with common stressors?" Each individual lawyer needs to develop proactive strategies so that the effects of the stress response don't dominate his or her life.

## CHAPTER THIRTEEN

# Reducing Stress with Alcohol

## *The Connections between Stress and Alcohol Use*

*Speak no more of her. Give me a bowl of wine.*

*In this I bury all unkindness . . .*

—William Shakespeare, *Julius Caesar*

WHILE SPEAKING TO GROUPS OF LAWYERS, I often ask the question, “Why do we drink?” The answer is always, “We drink because it works.” What works is the relationship between alcohol and the emotional experience of stress. For hundreds of years, as the Shakespeare quote at the beginning of this chapter suggests, people have observed a relationship between alcohol consumption and stress. Our common cultural belief is that both social drinkers and problem drinkers can reduce stress by drinking. We see it in the movies all the time—to reduce stress, just pour yourself a strong drink.

Researchers believe that alcohol’s anticipated stress-relieving effect is a primary motivation for many people’s consumption of alcohol, despite the potentially harmful consequences of drinking. Our own experience and our cultural messages tell us the same thing—that drinking will alter our mood in a way that will make our mood less stressed and more pleasurable.

The question then is this: If this is what we believe happens, does it in fact happen? The answer is not as simple as we would like it to be. First, there is substantial evidence to support our personal experience and the cultural message that alcohol consumption *can* reduce the magnitude of an individual’s response to stress. But research published by the National Institutes of Health (NIH) in 1999 has shown, to the

surprise of many investigators, that the relationship between alcohol and stress reduction is inconsistent.

There are complex variables that condition the effect of alcohol on stress among lawyers. A key factor that applies to lawyers, and everyone else, is family history. We know that children of alcoholics are at heightened risk of becoming problem drinkers compared with children of nonalcoholics. Some research suggests that alcohol consumption may produce an enhanced stress-response dampening among individuals who are at greater risk for alcoholism. In other words, individuals who are more predisposed to alcoholism may, because of the way their brain handles alcohol, get a greater stress-dampening response than individuals who are less predisposed to alcoholism.

Although the research on those persons who have enhanced stress-response dampening from drinking is far from clear, it suggests that, if drinking seems to bring a certain lawyer greater stress reduction than it offers other lawyers under similar stress, this might be a clue that alcoholism could be a potential problem for that lawyer. After a lawyer becomes an alcoholic, the lawyer gradually loses the emotional lift from drinking, and is eventually drinking to try to feel normal again.

Another theory that affects lawyers particularly, and which has been the subject of research, is the idea that people who are highly self-conscious are most likely to experience alcohol's stress-response dampening and to get a subtle reinforcing message to drink because of the extent of that dampening. According to this theory, people who are self-aware often internally evaluate their own performance and may experience stress if the result of that self-evaluation is negative. Alcohol consumption impairs the drinker's ability to process information from the environment with respect to himself or herself. Thus the use of alcohol by the self-aware person has a stress-response dampening effect, whether or not there is stress coming from the outside environment. For lawyers who go around with a self-critical voice in their head, the use of alcohol may be the easiest and most effective way to quiet that voice. This stress reduction has a reinforcing effect, thereby increasing the probability of increased drinking.

Another factor affecting whether or not alcohol consumption reduces stress is where the drinking occurs. If a lawyer goes out after work and drinks with people who talk about sports and not about law prac-



tice, there is a greater likelihood he or she will experience positive stress reduction. If a lawyer goes home and drinks alone, a stress-dampening response from drinking is unlikely and stress may even increase because the drinker's attention may remain focused on the then salient stressor. Of course, if the lawyer has developed dependency on alcohol, then the repetitious drinking is going to occur whether or not it produces a reduction in the emotional experience of stress.

So what are the red flags that are raised by the relationship between alcohol use and stress dampening? First, if a lawyer is alcohol dependent, the ability of alcohol to reduce the stress has already begun to fade and will continue to fade over time. Second, if a lawyer is not alcohol dependent but feels that alcohol relieves the stress in him or her more than in "normal" drinkers, this lawyer may have a problem that results in alcoholism. Third, alcohol is perhaps at its best as a stress reducer when used as a part of other pleasurable activities, such as watching or talking about sports. If, however, the use of alcohol becomes the principal reason for engaging in certain activities or sports, then the use of alcohol has already become problematic. Fourth, if a lawyer usually drinks in isolation (or drinks with the same person and complains about the same problems), chances are that alcohol will not reduce his or her stress level, but will actually make it worse, which in turn becomes a good motivation to drink more. Fifth, if a lawyer generates some of his or her own stress internally—by engaging in perfectionist behaviors—then it is possible that he or she will be more likely to drink in a manner that reinforces the use of alcohol and leads to alcoholism.



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# LawyerLife

**Finding a Life and a Higher Calling  
in the Practice of Law**

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## LAWYERLIFE

The bottom line: Those who learn to delegate effectively will free up many of their own hours and see their productivity significantly rise. Who, exercising reasonable judgment, would decline that kind of bargain?

It is hoped that even this cursory discussion of these five areas—planning, interruptions (by telephone and otherwise), meetings, managing paper, and delegating—will whet the reader's appetite for more in-depth information. There is much that is promising and hopeful in what has come to be called "time management," and there are an increasing number of experts available to help. But whether the individual lawyer relies on expert advice or goes it alone, arranging our limited time for maximum productivity is an important step toward fulfillment in the contemporary practice.

### Step 4. Implement healthy lifestyle practices

In considering how to broach this subject I find myself feeling like a scolding parent. "Eat your peas," I hear my father saying sternly, or "Go outside and play." And, as best I can recall almost a half-century later, that approach did not work particularly well when I was on the receiving end.

I believe it was the North Carolina Bar Association's report of a 1989 study that first used the phrase "healthy lifestyle practices." Reporting in 1991 on a statewide survey distributed by its Quality of Life Task Force two years earlier, the authors noted a positive correlation between lawyers who self-reported a sense of "subjective well-being" and those who engaged in certain habits or practices the reporters deemed "healthy."

The reader will probably not be surprised that "regular exercise" was the first healthy practice noted (based on the highest correlation with those reporting "subjective well-being"), but may find the somewhat eclectic list that followed more noteworthy. According to the North Carolina Bar Association report, the other regular practices that were predictors of contentment or "well-being" (in order of importance) were: attending religious services, personal prayer, having hobbies, engaging in outdoor recreation, pleasure reading, and taking *weeks* of vacation. In a word, the lawyers with other serious interests—those who successfully resisted the "all work and no play" syndrome—also considered themselves the happiest.

Of course, exercise is a "no-brainer." We all know we need it, and every medical report on exercise extols its positive effects on health and

longevity. And yet, what scant data there is suggests that about "[h]alf of lawyers do *not* exercise regularly."<sup>45</sup>

Margaret S. Spencer, the lawyer-turned-time-management expert cited in the previous "step," regards exercise as "a necessary time commitment" on a par with the many office-bound tasks we have to juggle.<sup>46</sup> Indeed, as Spencer observed, the more demands and pressure we face, the greater need we have for the stress-relieving effects of a good workout:

Being in good physical shape can make it much easier to handle these periods of extreme stress and can also make you feel better and more energetic during periods of normal stress. You can *always* make time to exercise once you realize that a moderate amount . . . of vigorous, aerobic exercise gives you so much energy that it more than compensates for the time you spend exercising.<sup>47</sup>

Lawyers who already exercise will affirm its paradoxical time-expanding qualities, partly due to the calming effect of the endorphins it dispatches to our tired and overworked brains. But even if this were not the case, there is simply no excuse for anyone who cares about their health not to *make time* for regular exercise.

As to the beneficial effects of religious or spiritual practices, the reader will find further support for this observation in the fine work of Steven Keeva, Assistant Managing Editor of the *ABA Journal*. Beginning with a series of articles, a number of which are available on his web site (<http://www.transformingpractices.com>), Keeva explores this idea more systematically in his 1999 book, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*.<sup>48</sup> Defining "spiritual practices" very broadly, Keeva believes they will "bring out the best in you and help you to know parts of yourself that have been overlooked or pushed aside in response to the demands of a frantic professional life. It will move you toward wholeness, toward accepting yourself for all that you are, so that you can bring your heart and soul to work, find the joy in it, and have more to give to others."<sup>49</sup>

If that sounds appealing, you may want to consider implementing some or all of Keeva's recommended steps "toward balance in your life":

- Spend some time thinking about what parts of yourself you're neglecting. Your body? Your spiritual side? Your need for friendship, love, or intimacy? Your need for connection with your past and your life story?



- Take ten minutes each morning to think about the big picture. Readings from books on spirituality can be helpful.
- Take some time to become aware of your concept of the divine and its place in your life.
- Map out a balanced day, with time allotted for your financial, physical, emotional, and spiritual needs.
- Allow yourself to do nothing for five minutes at least once a day.
- Ask yourself a simple question: How could I spend my days in a way that would make me feel excited about waking up in the morning? The answer may help lead you toward more balance in your life.
- Try this balancing exercise: For the next seven days, keep a diary of your personal and professional time. Notice how much time you devote to each aspect of your life. Then ask yourself if you'd find any adjustments to your time allocation advisable. Are you investing your time in those people, places, and things that you treasure most deeply?
- Don't wait for a huge chunk of free time to materialize before you try these suggestions; find the time where you are now, in the present.<sup>50</sup>

Or, better still, buy the book and absorb dozens of similarly pithy insights.

Like the exhortation to exercise regularly, the value of the other "healthy lifestyle practices" are not the stuff of which controversy is made. They are common sense. Don't work yourself to death. Get a life. Develop hobbies or other serious, nonwork-related interests. Lose yourself in a good book. Keep in touch with your family and friends. Take enough vacation to recharge your batteries. Simple ideas all, but essential if we are to achieve the kind of balanced fulfillment for which many lawyers are properly striving.

And come to think of it, my father was right. You should eat your peas, and go outside—regularly—"to play."

### **Step 5. Live beneath your means**

Points have been made in previous chapters and steps with a common assumption: The individual lawyer has choices to make, and the consequences of those choices can be widely divergent. Will we subscribe to values and priorities—and rigorously apply them—to prevent being

must each decide how much of us is "for sale." And then if our clients, employers, or partners do not like it, tough luck.

Once we get up the courage to draw the line—and it will take courage—two basic things can happen. Those who have been applying this kind of pervasive pressure might realize we can perform adequately without being at their beck and call 100 percent of the time. In that event we will have successfully adjusted their unreasonable expectations and gotten back that part of our personal lives we never should have given up. The other thing that can happen, of course, is that we might lose clients or even lose our jobs. Although this would no doubt be a temporary hardship, things will eventually fall into place—and be far better, overall, when they do. Remember, we are not advocating being lazy or shirking duty here. We are talking about working long and hard, but at some point realizing that we share every human being's need for private space.

How we do that precisely is something each individual must work out. Some get up early and work, either at home or in their offices, so they can have dinner with their families most evenings. Others decline to carry cell phones or beepers, or check e-mail or voice mail, much of the time they are away from the office. The author knows a family that takes the phone off the hook for a brief time in the evenings to allow the family some uninterrupted time together. But whatever our particular strategy, the core objective is the same: to establish boundaries that prevent technology from controlling our lives, take Step 6 toward fulfillment in the contemporary practice of law.

### **Step 7. Care about character—and conduct yourself accordingly**

"Let me tell you how you will start acting unethically,"<sup>65</sup> Professor Schiltz addresses law students. "It will begin with your time sheets."<sup>66</sup> Schiltz's prediction of what might follow is eerily prescient:

One day, not too long after you start practicing law, you will sit down at the end of a long, tiring day, and you just won't have much to show for your efforts in terms of billable hours. It will be near the end of the month. You will know that all of the partners will be looking at your monthly time report in a few days, so what you'll do is pad your time sheet just a bit. Maybe you will bill a client for 90 minutes for a task that really took you only 60 minutes to perform. However, you will promise yourself that you will repay the client at the first opportunity by doing



thirty minutes of work for the client for "free." In this way, you will be "borrowing," not "stealing."

And then what will happen is that it will become easier and easier to take these little loans against future work. And then, after a while, you will stop paying back these little loans. You will convince yourself that, although you billed for 90 minutes and spent only 60 minutes on the project, you did such good work that your client should pay a bit more for it. After all, your billing rate is awfully low, and your client is awfully rich.

And then you will pad more and more—every two-minute telephone conversation will go down on the sheet as ten minutes, every three-hour research project will go down with an extra quarter hour or so. You will continue to rationalize your dishonesty to yourself in various ways until one day you stop doing even that. And, before long—it won't take you much more than three or four years—you will be stealing from your clients almost every day, and you won't even notice it.<sup>67</sup>

Or, to put it in philosophical jargon, once we start down the slippery slope of ethical compromise—lying, cheating, or stealing just a little, perhaps—it is awfully difficult to prevent a full slide into shameless dishonesty.

If our aim is fulfillment in the practice of law, or in life generally, we must not let that happen. If we steal from our clients, a little or a lot, it will become increasingly difficult to feel good about who we are and what we do for a living, to "look ourselves in the mirror," or to sleep well at night. We will become more cynical about the whole idea of right and wrong, condemning at least in our minds "moral absolutists" who might take issue with our real-world pragmatism. And an overall sense of fulfillment, difficult to achieve at best, will become more elusive still.

Professor Schiltz also warns the law student looking ahead at his or her career about "becom[ing] a liar."<sup>68</sup> Here is his similar take on the contours of that slippery slope:

A deadline will come up one day, and, for reasons that are not entirely your fault, you will not be able to meet it. So you will call your senior partner . . . your client and make up a white lie for why you missed the deadline. And then you will get busy and a partner will ask whether you proofread a lengthy prospectus and you will say yes, even though you didn't. And then you will be drafting a brief and you will quote language from a Supreme Court opinion even though you will know that, when

read in context, the language does not remotely suggest what you are implying it suggests. And then, in preparing a client for a deposition, you will help the client to formulate an answer to a difficult question that will likely be asked—an answer that will be “legally accurate” but that will mislead your opponent. And then you will be reading through a big box of your client’s documents—a box that has not been opened in twenty years—and you will find a document that would hurt your client’s case, but that no one except you knows exists, and you will simply “forget” to produce it in response to your opponent’s discovery requests.<sup>69</sup>

“Do you see what will happen?” the professor rhetorically intones. “After a couple of years of this, you won’t even notice that you are lying and cheating and stealing every day that you practice law.”<sup>70</sup> A little padding of the time sheet here, a half-truth or “little white lie to cover a missed deadline there” will have fundamentally changed “your entire frame of [moral] reference.”<sup>71</sup> Sadly, lawyers who slide all the way into this amoral abyss will have adopted “a set of values that embodies not what is right or wrong, but what is profitable, what [they] can get away with.”<sup>72</sup>

Do not let it happen to you, and if compromised ethics have already infected “the hundreds of mundane things that [we lawyers] do almost unthinkingly every day,”<sup>73</sup> vow and strive to return to a more solid ethical and moral foundation. However much pressure is being applied, “[d]o not pad your time sheets—even once. And do not tell lies to partners or clients or opposing counsel. And do not misrepresent legal authority to judges. And do not break your promises. And do not do anything else that is contrary to the values you now hold.”<sup>74</sup> Or, if you have already gone a way down the slippery slope and reform is necessary, return and “hold on for dear life” to the values you were taught and never should have compromised.

Of course, there is more to having good character than not lying, cheating, or stealing. Presumably a lawyer with good character, whether or not a religious person, will apply what has come to be known as the Golden Rule (“Do unto others as you would have them do unto you”—not the cynic’s version, “*before* they do unto you.”).

If more lawyers would accept and apply this simple precept—treating others as they would wish to be treated—many of the ills inherent in contemporary practice would be addressed ipso facto. Certainly, the return to collegiality and civility, a core concern of the professionalism movement, would be. Ditto for the prompt return of phone calls and re-



sponse to correspondence, full cooperation during discovery, and the general need to reduce aggression and stress, which is over the top for altogether too many practitioners.

The ABA Pulse Study noted as "Pressure Point #6" what it called "an erosion of professional courtesy and sense of community" in the contemporary practice.<sup>75</sup> Professor Roger E. Schechter called it "the civility crises" in his 1997 article, "Changing Law Schools to Make Less Nasty Lawyers."<sup>76</sup> Professor Schechter describes the perceived problem as lawyers who are "increasingly prone to behave as combatants, refusing to extend common courtesies to one another. Sometimes called the 'Rambo' style of litigation, it includes such practices as refusing to return phone calls, grant routine extensions of deadlines, or even shake hands in court, along with more abrasive and hostile behaviors such as vulgarity and name-calling, shouting, temper tantrums, or even occasional fisticuffs during depositions."<sup>77</sup>

Not the kind of behavior, in a word, one would expect from a lawyer of good character, and certainly not from a lawyer who is striving to practice in accordance with the Golden Rule. And yet it is behavior that is sufficiently pervasive that in one survey "half the lawyers responding characterized their professional colleagues as 'obnoxious,'"<sup>78</sup> and for a trial judge to report that "a persistent complaint of jurors concerns the unpleasant atmosphere of the courtroom, caused by lawyers snarling at each other, making absurd objections, and badgering witnesses."<sup>79</sup>

The ABA's Pulse Study notes less-dramatic lapses in civility, but points to essentially the same phenomenon. Noting the "erosion of . . . common courtesy," which has led to a "less pleasant and more stressed work environment" for many lawyers, the 2000 report explains:

- In the past, lawyers from various professional backgrounds would get together in more relaxed settings—bar meetings, the lawyer's room at the courthouse, etc.—where they could get to know one another on a more personal basis. It was in this setting that codes of behavior were established and conveyed to younger lawyers.
- While a sense of community still exists, it now occurs at a specialty level.
- Lawyers today think of themselves as "trial lawyers," "patent specialists," or "defense lawyers," beholden only to the rules of their specific community.

- Younger lawyers, who have never been taught by mentors or the community at large about the professional codes of behavior, may confuse advocacy with aggression.<sup>80</sup>

The result of this "erosion in professional courtesy" is more than just the absence of the camaraderie enjoyed in years past. It has also given rise to a pervasive distrust *by lawyers* of other lawyers. As a Birmingham, Alabama lawyer told one of the ABA focus groups, for example, "I've gotten to the point where I almost can't trust anybody on the other side of the case."<sup>81</sup> Or, as a California lawyer more bluntly put it in another focus group, some lawyers now confuse "advocacy" with "asshole."<sup>82</sup>

Of course, some rough-and-tumble is to be expected in the relations of those who essentially argue and fight for a living. And as we have seen in an earlier chapter, lawyer conduct in prior generations was far from perfect. Professor Glendon relates, for example, an exchange one of her colleagues overheard in a Chicago courtroom in the early 1960s between a judge and a lawyer suspected of being under the influence:

"Counsel, the court believes it smells alcohol on counsel's breath."

"Is that so, Your Honor?" came the quick reply. "Well, counsel believes he smells garlic on the court's breath."<sup>83</sup>

But conceding imperfections of the past, can contemporary lawyers do better on the character/professional relations front? Of course we can—much better, in fact. We can vow to do what most of us already know is right: We can strive to conduct ourselves honorably, which means refusing to lie, cheat, or steal—however much pressure we are under, or however "profitable" the wrong choice may appear to be at that moment.

We can adopt the simple but profound teaching of the Golden Rule: that we should treat others, including opposing counsel, as we ourselves would like to be treated. If we do that—refusing to start down the slippery slope of compromised ethics, and treating others with civility and respect—we will like what we see when we look in the mirror. If we care about our character and conduct ourselves accordingly, we will be able to sleep well at night. And we will have taken one more important step toward finding satisfaction and fulfillment in the practice of law.

### Step 8. "Just say no" to some clients

It is difficult to say whether changes in lawyering, including the dishonest billing practices (by some) described by Professor Schiltz,<sup>84</sup>



## CHAPTER FORTY-ONE

### Living on Purpose

#### *Creating a Value-Driven Life*

HOW MANY OF US conduct our day-to-day activities in a way that reflects and reinforces our values? If I ask a group of lawyers to describe the things most important to them, many would perhaps say, "My family, my health, my relationship with God, and my creativity as a lawyer." If I ask them to describe what they do in a typical day, they might paint a picture of working long hours, overeating, neglecting regular exercise, and not spending enough quality time with their spouse and children.

When thinking about how we can keep our daily lives congruent with our values, I often think of the field of sports medicine. Tony Schwartz is a tennis player, a former *New York Times* reporter, and a writer who in the mid-1980s failed to live in accordance with what he valued most. Schwartz was offered the chance to cowrite a book with Donald Trump called *Trump: The Art of the Deal*, which became a best seller. After the book became a best seller, Schwartz felt empty despite success. He began meditating and studying psychics, philosophers, and healers. The result was a book published in 1995 called *What Really Matters: Searching for Wisdom in America*.

Schwartz interviewed a former tennis coach named Jim Loehr. Loehr had attended religious schools and then worked as a clinical psychologist. Next, Loehr became director of a community mental health agency where he lost faith in therapy as a sufficient force to catalyze the kind of change people need, just as he had previously lost faith in religion as a means to help people deal with difficult life situations.

Eventually, Loehr became a sports psychologist. He found that conventional psychology's focus on emotional well-being did not focus enough attention toward physiological and spiritual well-being. In his

practice, Loehr first addressed the issue of bodily energy—the need to throw out junk food and begin more healthy eating habits. Next, he began to listen to the kids at his tennis camps in order to discover how becoming a good tennis player could serve deeper values such as sportsmanship and courage, rather than serve a parent's ambitions, or one-upmanship, or fame.

In 1987, after studying hundreds of hours of videotape of professional tennis matches, Loehr made an interesting discovery. He found that during the fifteen- to twenty-second pauses between points, the less successful players dragged their rackets, muttered under their breath, and seemed distracted, looking around at the crowd. On the other hand, champions such as Chris Evert kept their heads high, even when they lost a point, and would concentrate their gazes on their racket or touch the strings with their fingers—in effect focusing and avoiding distraction.

Loehr had discovered the same process by which seventeenth-century monks achieved serenity in their daily lives. That is, automatic rituals keep people focused. After this discovery, Loehr went on to have an extremely successful career as a coach. He helped athletes develop rituals that addressed their individual weaknesses. Loehr's students eventually included Andre Agassi, Monica Seles, and Jim Courier, but by the early 1990s, Loehr began to lose interest in his current job. Part of the difficulty was that the tennis players he worked with seemed to operate in a social vacuum populated mainly by their own entourages, which were not accountable to any larger community. Loehr began to wonder how his method of coaching individual players could have a greater community impact—something greater than individuals pursuing their own self-interest.

At this time, Loehr ran into Schwartz, and they started work on a book that eventually was titled *The Power of Full Engagement*. This book used the wisdom Loehr gleaned from successful tennis players to help corporate workers maximize their energy under tight time demands. The case studies of the corporate men and women in the book could apply to the lives of many lawyers. Many of the participants had high blood pressure, were slightly overweight, worked long hours, and were too exhausted to exercise. After a distracted supper, they might spend another hour answering e-mails. Few practiced any “habits of the



heart" to counterbalance the demands of their job. They were on task twenty-four hours a day, seven days a week. They didn't take the focused ritual breaks that Loehr had observed in successful tennis players. Instead, these men and women lived on blueberry muffins, candy bars, and sandwiches eaten at their desks. They worked too much, ate too much, and often drank too much. Running on empty, many lost touch with what they truly valued in their lives.

Loehr helped these individuals develop rituals that promoted their core values and, in the process, helped them pursue living with passion and enjoyment. He did this by designing rituals to help them create daily rhythms and rebuild physical energy. These rituals might include a walk in the park at lunch, a midmorning yoga break, a day a week working from home, a workout or snack in the afternoon. Then participants moved on to address emotional and ethical changes by performing writing exercises that asked questions such as, "What would you like written on your tombstone?"

A review of *The Power of Full Engagement* notes that Schwartz and Loehr's approach echoes the commonsense wisdom found in Twelve Step recovery programs—if you want to change the inside, change patterns of behavior on the outside. There is an echo of Aristotle in Loehr saying, "We are what we repeatedly do. Excellence isn't an act, but a habit."

The work of Schwartz and Loehr suggests that real change often comes from an understanding of and commitment to address bodily needs and spiritual needs as well as emotional needs. Repeating positive thoughts and patterns in our lives can leave positive patterns in our brain structure, just as repeated self-destructive thoughts and patterns leave us with negative patterns. We are physical animals as well as social beings, psychological beings, spiritual beings, and ritual beings. Therapeutic strategies have a greater chance of success when all these systems are mobilized in a systematic manner.

The work of Schwartz and Loehr reinforces what we know from practical experience—faced with destructive patterns in our lives, free will (or the neocortex) is of limited value. That is so because our destructive patterns operate out of the old reptilian brain—unaffected by thought strategies. What Loehr and Schwartz do is utilize the benefits of repetitive patterning on the reptilian brain to modify old behavior and

encourage positive change. Rituals that encourage an early bedtime, daily exercise, a diet low in sugar, morning meditation, a ritual walk in the park, and reading inspirational literature can bring the kind of positive change that can make our way of life more congruent with our values.

Of course, it is hard to adopt new positive patterns. Here again, Schwartz and Loehr recognize the importance of group affiliation and effort. It is much easier to run if we have a running buddy. It is easier to achieve accountability for recovery if we attend a Twelve Step fellowship. What Schwartz and Loehr emphasize is that in order to impact the quality of our emotional life—that is, the emotional experience of how our life is lived—we need to greatly expand our understanding of the factors that go into creating that life. Growth begins with awareness—acknowledging that we don't control these factors directly. In fact, we control almost nothing directly, but we can help shape what shapes us. We can influence our life, even if we don't have direct control.

If we want to be effective and happy, we need to include on our list of values not just those things that we think about as being products of the will such as excellence and effort, but also self-acceptance, gratitude, and forgiveness. We need to practice daily rituals that allow us to have experiences of all these values and, most powerful of all, to act with other people on the values that serve causes greater than ourselves.

## CHAPTER FORTY-THREE

### Finding Happiness

#### *The Paradox of How to Be Happy*

*Happiness cannot be pursued; it must ensue as  
the unintended side-effect of one's personal dedication  
to a course greater than oneself.*

—Viktor E. Frankl

THE NEW YORK TIMES ran an article on September 7, 2003, that quoted Professor Daniel Gilbert's studies on happiness in humans. If Gilbert is right, then we are wrong to believe that a new car will make us as happy as we think it will. In the same way, we are also wrong to believe that winning that big case will make us as happy for as long as we might imagine. On the other hand, if Gilbert is right, you are also wrong to think that you will be more unhappy with a single setback, such as a broken wrist or broken heart, than with a lesser but more chronic problem such as a trick knee or a tense marriage. You are wrong to expect that the untimely death of someone in your family will leave you bereft for year after year.

The bottom line is that we are often not accurate in our predictions of how we will feel in the future, according to studies on happiness by Harvard Psychology Professor Daniel Gilbert, University of Virginia Psychologist Tim Wilson, Carnegie-Mellon Economist George Loewenstein, and Princeton Psychologist and Nobel Laureate in Economics Daniel Kahneman.

These four scholars have conducted a series of experiments about the decision-making process that shapes our sense of well-being. In their view, one of the critical steps in assessing well-being lies in under-



standing our emotional expectations about whether something will make us happy or unhappy.

According to their research, most of the actions we take—even big decisions such as to buy a house, have children, or work eighty hours a week for a fatter paycheck—are based on our internal and usually unconscious predictions of the emotional consequences of these events. What these social researchers have discovered is that while we get the big picture right—we know we will enjoy going to the theater more than going to the dentist—we tend to overestimate the emotional payoff in both the intensity and duration of future events. In other words, we might believe that making partner, getting married, or buying a new house will make life nearly perfect, but, almost certainly, the emotional satisfaction derived from these experiences will be less intense and of shorter duration than our emotional anticipation of the experience has predicted.

Similarly, Gilbert and his colleagues found that the impact of a negative life experience will also be less intense and more transient than test participants predicted. Gilbert sums this up by recasting the Rolling Stones' expression "You can't always get what you want" as "You can't always know what you want." In Loewenstein's view of their research, "Happiness is a signal that our brains use to motivate us to do certain things. And in the same way that our eye adapts to different levels of illumination, we're designed to kind of go back to the happiness set point. Our brains are not trying to be happy. Our brains are trying to regulate us." These researchers believe the tendency toward adaptation explains the gap between what we predict and what we ultimately experience.

This research is significant for lawyers because as a group we tend to be goal-oriented. We invest enormous amounts of energy in serving our clients. This research on happiness suggests that because of the adaptation process, happiness is not nearly as dependent on our goals as on the manner in which we work toward them.

Here is another way to look at the puzzle of happiness. Make a list of all the things that are most important to your happiness. Your list might include your children, spouse, faith in God, physical health, intelligence, and at least a certain amount of economic security. If you study your list for a while, it may become apparent how little control you have over the



things you define as being important to your happiness. You may love your spouse and children but you have no control over whether that love will be returned or whether their health will endure. You may also discern that while you can enjoy habits that are good for your physical and mental health, you have no way to control the occurrence of cancer, heart attack, or disability from an accident.

Happiness seems to be more a product of our attitude: whether we see the objects of happiness as things we should *have* (entitlements) or as *gifts*. Ultimately, an attitude of gratitude for what is present, rather than feelings of deprivation for what is absent, seems to be the key to enjoying life.

Fundamental to gratitude is a kind of humility that encourages acceptance of our own fundamental limitations. The legal culture often does not encourage this. Rather it teaches that our value as human beings depends on what we can do, what we possess, whom we know, or how we look. These underlying cultural messages contribute to an attitude of selfishness and self-inflation that undercuts acceptance and gratitude.

While we all want to be happy, most strategies to compensate for the need to be happy usually mask feelings of inner fear and shame or of not living up to an invented image we have created. These strategies include absorbing ourselves in TV, junk food, gambling, alcohol, drugs, relationships, or sex. The more we use these strategies to try to feel good (or later to avoid feeling emotional pain) the more of a barrier they will be to the experience of happiness.

We use these strategies as devices to avoid experiences of challenging emotions, especially when these experiences are different from the way we *think* they should be. Gilbert and colleagues found that the gap between what we expect and our actual experience reinforces what we intuitively know—that all our efforts to obtain happiness through achievements and addictions will be short-lived at best. We may intuitively grasp the idea that genuine solutions can only come from acceptance and gratitude for the many things that give life meaning—most of which we cannot control. However, without something else to replace this old way of being, the old emotional controlling strategies will carry the day.

Much disease comes from trying to control our own happiness rather than being in a process of happiness. Fundamental to the process of happiness (as opposed to the goal of happiness) is acceptance of the current reality of our lives. The hardest part of acceptance is acknowledging that some troubling aspect of our life cannot be changed. For example, if I have a seemingly incurable health problem, live with a depressed family member, or have a child with a serious alcohol problem, such a circumstance is going to be difficult to bear. But if, in addition, I am also bitter, resentful, and angry about the problem, I have added another, perhaps worse, problem—a negative, judgmental attitude that will aggravate the issue and add fuel to the fire of resentment. The paradox for us as lawyers is to be able to fight passionately against injustice and unfairness, but at the same time accept that there is unfairness and injustice in the world that is beyond our control.

With emotional acceptance of this paradox comes gratitude. A profound sense of gratitude comes in appreciation of the things that bring happiness when we realize—not just intellectually, but on a deep emotional level—that one really has no control over the things that bring happiness.

Happiness comes when we let go of all the things we think we need to become satisfied. If we get these things, after some momentary exhilaration at having them, they will often no longer make us happy anyway. When we let go of both the things we think we need to be happy, and the negative coping strategies we have developed as a result of not having these things, then we can really be present to enjoy and appreciate what is occurring in our lives. We become happy by the manner in which we engage in life, not because of what we expect life to bring.



## CHAPTER THIRTY-EIGHT

### Beethoven's Counterpoint

#### *How to Thrive under Difficult Circumstances*

A LITTLE OVER TWO HUNDRED YEARS AGO, in 1801, Ludwig van Beethoven was thirty-one years old. He was living in poverty, losing his hearing, wallowing in the depths of despair and hopelessness, and contemplating suicide. Twenty-three years later, utterly deaf, no longer suicidal, and infinitely creative, Beethoven composed the life-affirming, lyrical chords of his Ninth Symphony. What are the factors that allowed Beethoven's life to turn around, and could these factors help stressed-out lawyers struggling with addiction, depression, or other chronic illness? If we look backward in time, we can find some answers.

Beethoven did not suddenly switch from a life of helpless despair to a life of creative energy and joy. Beethoven was not what we would today call a paragon of good mental health. He never had the courage to tell others of his deafness. He remained an ordinary man with ordinary vulnerabilities and vanities. He visited a number of individuals who claimed they could cure deafness, but they offered no remedy. Despite these adversities, somehow Beethoven managed to thrive—to perceive his world with joy and gratefulness.

Psychologists, including Paul Pearsall, author of *The Beethoven Factor: The New Positive Psychology of Hardiness, Happiness, Healing, and Hope*, have looked at Beethoven's life and tried to identify the characteristics that allowed him, and others like him, whom they call "thrivers," to persevere, endure, and ultimately feel happy, despite physical ailments or other adversities.

Thrivers were found to have these three common characteristics:

1. Emotional openness: Thrivers embrace their emotions without resistance and let them flow naturally. Thrivers realize that challenging emotions such as fear, anger, and anxiety are not negative forces in their lives. These emotions only become negative forces when people allow themselves to become *stuck* in these ways of being in the world. Despite the challenging feelings of frustration and despair Beethoven experienced, he did not stay stuck. He experienced life deeply but was not attached to the feelings that came with the experiences.
2. Emotional detachment and curiosity: Thrivers are able to succeed because they seem to understand that challenging circumstances and the feelings that go with them are temporary. No emotion—happiness or grief—lasts forever. Thrivers seem to have an intuitive sense that life is made to experience. They don't focus on the pain of grief or anger, and they don't obsess about holding onto feelings of happiness and joy. They live by embracing all life's experiences and by avoiding becoming stuck on the emotional state related to the experience.
3. Ability to learn from misfortune: Thrivers seem to realize that suffering can be a transformative experience that makes them stronger. They know that experiencing the full range of human emotions is essential to living a truly authentic life.

One way thrivers adapt is through a sort of "psychological immunization." Emotional trauma, while devastating, can make us stronger. By going through difficult life experiences, we can experience a sort of emotional vaccination that can help us through future challenges. The key is to deal with the original trauma in a straightforward and forthright manner. Beethoven did this with his hearing disability. He tried to find a cure for his deafness, but when he couldn't find a cure, he didn't try to avoid his feelings of disappointment by taking pills or using alcohol or engaging in a destructive or obsessive behavior. Ultimately, going through the storm is what builds emotional resilience.

A second way thrivers adapt is by lowering their expectations. This



has been a surprising find by those who have studied people who seem to thrive well. These thrivers don't develop emotional toughness or ways to rebound faster from a crisis, but they do develop ways to thrive by lowering expectations of both themselves and life. Thrivers do not have to be on a high of one success after another to feel good about life. They tend to have lower thresholds to experience joy and happiness in life and, in the process, are able to forgive themselves for their shortcomings and not take personally the random harshness that they may encounter in the world.

In recovery terms, this is referred to as "accepting life on life's terms." It means maturing sufficiently to give up the feeling of entitlement that all children have. This is often difficult. We live in a modern world that encourages high expectations.

In a culture that often encourages us to say yes to more projects and ambitions, thrivers seem to be able to have less, do less, and say no when their happiness and health depends on it. The bottom line is that people do not thrive because they finally accomplished the impossible or overcame tremendous obstacles. They thrive because they remain engaged with their life and problems long enough to find meaning in them. People thrive because they look for and find wonder in the common everyday aspects of life.

A common characteristic of thrivers is their ability to mentally readjust their life to suit their current reality. Beethoven had to deal with the harsh reality of his deafness. He came to terms with this disability in a way that allowed him to achieve creative genius. The key to this is the conscious act of accommodating one's view of what he or she thinks life *should* be like to match the reality of current life at any given time. Thrivers seem to know when to create a consciousness of lowered expectations, if they must, and higher hopes when they realistically can.

When a crisis comes along, thrivers seem to know that their view of themselves and the world may be inadequate to address their current crisis. They are able to find a new consciousness of expectations that allows them to go forward. Thrivers like Beethoven know how to re-create their own view of themselves and the world, even when forces outside their control keep tearing their ideas down. This allows them to

create their own place in the world. Ultimately their greatest creativity is their awareness of and ability to change their own consciousness.

Lawyers, as a group, often face the enduring strain of very high self-expectation in life and career that can cause high levels of stress which, in turn, challenges and tests their ability to thrive in adverse situations. A recent doctoral dissertation studied the relationship between stress, depression, work addiction, and attributional style among lawyers in North Carolina.<sup>1</sup> The study found that 27 percent of the lawyers surveyed were at risk for depression, 53 percent had pessimistic attributional styles, nearly 26 percent were work addicted, and 51 percent had elevated levels of perceived stress.

Through the years I've advised many stressed-out lawyers. Many of these lawyers share the same complaints. Peter, a thirty-one-year-old lawyer who works for a prestigious law firm, is married, has two children, and makes more than a \$100,000 a year. He works sixty hours a week and tries to bill at least two thousand hours a year. He spends his precious free time thinking about things he has to do at the office and often wakes up early in the morning, unable to go back to sleep. By the time the weekend rolls around, he is too tired to engage in family activities. Peter is aware that his kids are growing up rapidly, but he feels hopeless about his ability to more actively participate in their lives. This lawyer excelled as a student, developed high expectations for himself, and was subject to high expectations from family members and others. How can lawyers like Peter learn to thrive despite these challenges? Amiram Elwork, in his book *Stress Management for Lawyers: How to Increase Personal and Professional Satisfaction in the Law*, offers three characteristics common in lawyers who thrive under stress:

1. **Commitment.** Lawyers with commitment have a personal sense of the value and meaning of their personal and professional lives.
2. **Competency.** Lawyers who believe they are competent are able to respond to issues in their life from a perspective that allows them to create positive change.
3. **Goodwill.** Lawyers of goodwill have a generally positive outlook and treat others with professional courtesy and respect.



Elwork's characteristics seem to be markers for good mental health during basically good times. During challenging times, stress is not always predictable, and as the recent survey cited on page 150 showed, the attributional style of most lawyers is not a positive one, but rather pessimistic. When external circumstances change in unpredictable ways, those who are able to thrive tend to be those who have the characteristics of a Beethoven. They are the individuals who are able to readjust their expectations and attitude so that they can thrive in the difficult reality in which they find themselves. Underlying the attitude of the thriver is an attitude of humility and gratitude for what he or she has (despite the difficulties reality may offer) and a willingness and desire to act on this awareness in a creative way in the world.

greedy, dishonest lawyers. But wherever relative fault lies, we can increase the inherent satisfaction in the lawyer-client relationship by keeping in mind a few key principles.

First, we must be scrupulously honest with our clients, including but not limited to the work we choose to do and how it is billed. Second, we need to be exceedingly careful not to cross ethical lines and to keep a measure of professional distance, particularly where an objective third party might see our client's conduct as "deceptive." Third, we should strive to provide wise counsel, which often requires more of a "big-picture" approach to problem solving and conflict resolution. And finally, perhaps applying Brother Bachman's brilliant AA, we will simply have to "just say no" to some clients.

### Step 9. Stay emotionally healthy

How we spend the hours of our lives is not the only balance we must strike. Finding balance between the rational/cognitive/left-brain elements of human experience—where many lawyers are at their best—and the "softer" right-brain counterbalances, including feelings, emotion, "heart," and imagination, is just as important. In a word, it is crucial that we stay emotionally healthy.

Lawyers who achieve professional success, but who are *not* emotionally balanced and healthy, will frequently realize that "something is missing." Some seek professional help, particularly if the result is clinical depression, a failed marriage, or some other personal crisis. Others may muddle along in what Benjamin Sells calls a "state of mild torpor"<sup>116</sup> for years.

As Dr. Sells analyzes the problem, by prolonged overemphasis on the rational and the argumentative, many "lawyers have become abstracted from the world of actual experience. . . . Whether in terms of feeling like a fungible component in a big law firm machine, or a sideline spectator of one's own family life, or like an amoral technician servicing the bottom line . . . lawyers feel dissociated from daily life—including themselves."<sup>117</sup> At its worst, this can leave even highly successful lawyers feeling "lonely . . . exiled, rejected by their fellow citizens."<sup>118</sup>

But whether or not it devolves to that point, many lawyers need "[t]o reestablish contact with the ground of actual experience, [to] break through the abstractions that separate them from air below the clouds. They must come back to earth, where the air is thicker and more life-sustaining."<sup>119</sup> According to Sells, "this means that lawyers

need to educate their passions and invigorate their imaginations with the same dedication they apply to sharpening their analytic skills."<sup>120</sup>

As Professor Walter Bennett sees it, the goal is no less than "wholeness as a human being," which may require "a reorientation of the soul . . . , a reopening of the intellectual and emotional gates that so many people begin to shut in law school."<sup>121</sup> George W. Kaufman, whose workshops for unhappy or stressed-out lawyers were noted in chapter 2,<sup>122</sup> would agree. Noting the importance of "intimacy" to happiness, and the need to be in touch with feelings and emotions to achieve it, Kaufman traces the imbalance he has observed in many lawyers back to his years at Yale Law School—from 1959 to 1962! "Only once in my three years at law school," he writes, "did I witness a professor blush because he had revealed a deeply personal side of himself, and I never observed any teachers or students express feelings with the same fervor they expounded facts."<sup>123</sup>

As it turns out, a hyper-rationalist approach to education and life distorts more than the individual personality. It also limits our ability to grasp the real meaning of many human experiences. "Feelings and emotions are part of our human makeup [that] give us information in a way that is different from the way we gather information through our intellect," Kaufman notes.<sup>124</sup> Imbalance occurs in the lives and personalities of many lawyers, beginning in law school, because "[o]ur training honors our cognitive skills and dismisses information gathered through other channels. As such, we tend to exploit our rational capacities and ignore other parts of ourselves that offer different ways of learning."<sup>125</sup>

In an article titled "A Symphony of Silence,"<sup>126</sup> Steven Keeva likens lawyers with undeveloped or atrophied inner lives to music that is off-key and lacking rhythm. "Nearly all that is audible," he concludes, (comparing the profession at large to a symphony orchestra) "is shrill, frenetic, and in the upper registers. The bass line seems to be missing. . . . There's something wrong with the rhythm, too. There are too few rests. Music without silence grows tedious and exhausting; it gives the imagination no room to breathe."<sup>127</sup>

Keeva's prescription for lawyers who have focused excessively "on striving and achieving," who find themselves mired in "tedious and exhausting" pursuit of "airtight, left-brain solutions at the expense of feeling and intuition," is what he broadly calls "inner work."<sup>128</sup> Acknowledging that ours is "a culture that rewards workaholism and downplays the value of stillness and reflection," Keeva urges lawyers



who hope for happiness to reconnect with these kinder, gentler elements of the human experience.<sup>129</sup>

In *The Lawyer's Guide to Balancing Life and Work: Taking the Stress Out of Success*, George Kaufman recognizes that some lawyers feel "happy" when levels of professional success, such as making partner, are reached. For these, "there has been a joining of success and happiness. For others, the gulf between success and happiness is deep."<sup>130</sup> Kaufman's response, like Steven Keeva's exhortation to engage in "inner work," is not rocket science. "When I began my career," Kaufman writes, "I assumed that success would yield happiness. It doesn't. If happiness is to be a career goal, it must be separately addressed."<sup>131</sup>

In his 35 years in practice, George Kaufman certainly knew lawyers who "owned" their values and had well-integrated personalities, that is, lawyers who were emotionally healthy. But he also encountered those who were professionally successful, yet "enjoy[ed] no sense of well-being," who felt "trapped by the work they [did]," and many others whose "work life ha[d] invaded their privacy."<sup>132</sup> He writes, for example, about a lawyer acquaintance "who, when admitted to partnership in a prestigious law firm, was overwhelmed with sadness and dread. Eight years of toil had produced membership in an exclusive club. But the work he endured to achieve that membership was work he would need to endure forever to keep that membership in good standing."<sup>133</sup>

In his writing and in the seminars he conducts, Kaufman promotes emotional health through a series of simple exercises. In one, he invites participants to consider the opportunity costs (which he calls "losses") of a demanding professional life. "Those losses started with compromises we made as we attempted to juggle work, play, family, and self. If the term 'loss' seems too stark to describe your process, consider what you may have compromised or surrendered to succeed at work."<sup>134</sup>

Kaufman makes an interesting observation about a preliminary hurdle in getting lawyers to describe their feelings. "Losses are connected to our feelings," he explains. "But when I ask lawyers to describe those feelings, most deny their existence. In fact, whenever I ask lawyers to tell me their feelings, they respond by telling me their thoughts."<sup>135</sup> But although they may be deeply buried, getting back in touch with feelings about these "losses" or opportunity costs—from harm to an intimate relationship, to an inability to pursue a hobby or do volunteer work, to missing a child's birthday—is a necessary ingredient of emotional health.

In another exercise, Kaufman encourages lawyers to reflect on their ten most-important values. To set the reflection in motion—and, hopefully, to engage the right-brain imagination—Kaufman offers a nonexclusive list of values we may want to consider:<sup>136</sup>

Love	Freedom	Security	Play
Power	Comfort	Competence	Exercise
Growth	Joy	Creativity	Vegging Out
Acceptance	Support	Warmth	Pride
Gratefulness	Honesty	Balance	Romance
Justice	Serenity	Humility	Frivolity
Trust	Fulfillment	Success	Spontaneity
Intimacy	Adventure	Passion	Perfection
Health	Service	Achievement	Appreciation
Humor	Harmony	Winning	Conscientiousness
Focus	Kindness	Appreciation	Wealth
Integrity	Desire	Presence	Aggressiveness
Honor	Family	Change	Tenacity
Beauty	Truthfulness	Understanding	Practicality
Expediency	Inquiry	Compassion	Loyalty

Of course, while some values are certainly more commendable than others, the purpose of this exercise is not to tell us what our values should be. Rather, the purpose here is to cause us to reflect on what our foundational values *are*—and then to be honest with ourselves about whether and how well we are putting them into practice.

However clear our “values” or pure our priorities, the high stress level at which many lawyers operate week after week will make emotional health and balance difficult to achieve. Fortunately, there is help available here, too, but as in the related issues we have already addressed—like establishing clear priorities, developing and practicing good time management, implementing healthy lifestyle practices, living beneath our means, not letting technology control our lives, and just saying “no” to some clients—the stress problem will not resolve on its own. Like the other issues, reducing excessive stress is an ongoing struggle in which we must actively engage.

Peter N. Kutulakis, Professor of Law and Vice Dean at the Dickenson School of Law in Carlisle, Pennsylvania, is one of a growing number of experts in “stress management” specifically for lawyers. In his contribution to the ABA’s 1997 book, *Living with the Law: Strategies to Avoid Burnout and Create Balance*, Professor Kutulakis (who holds law



and counseling degrees) suggests that we think of four key areas in which lawyers need to practice effective stress management: (1) Managing Your Body; (2) Managing Your Personal and Emotional Life; (3) Managing Relations With Your Clients; and (4) Managing Relations With Your Coworkers.<sup>137</sup> As in Dr. Amiram Elwork's helpful book, *Stress Management for Lawyers: How to Increase Personal and Professional Satisfaction in the Law*,<sup>138</sup> Kutulakis's recommendations range from reorienting fundamental priorities and values to simple but effective relaxation techniques.

To reduce stress, Professor Kutulakis recommends several strategies that by now should be familiar: balancing work and personal life, regular exercise, saying "no" to the demands of some clients, and effective time management.<sup>139</sup> But both he and Dr. Elwork bring their treatment/therapy training to the conversation, also recommending conscious relaxation, deep breathing, visualization, biofeedback, and what Kutulakis calls "thought stopping."<sup>140</sup> Lawyers suffering from high stress should consider these recommendations, as well as the very similar "Stress-Reducing Suggestions" in George Kaufman's materials.<sup>141</sup>

Whether we use Kaufman's, Kutulakis's, or Elwork's exercises, follow Keeva's advice concerning "inner work," or take alternative routes, if we are to find fulfillment in law or life, we must take Step 9. We must seek a healthy balance between our rational, cognitive sides, on the one hand, and our feelings, emotions, hearts, and imaginations on the other. We must pursue balance not only in how we spend the limited hours of our lives but also between our outer and inner selves. In a word, we must strive to stay emotionally healthy.

### Step 10. Embrace law as a "high calling"

As we saw in chapter 1, even those who agree with Yale Law School Dean Anthony Kronman that the legal profession is "in danger of losing its soul"<sup>142</sup> presume that it once had one. Indeed, the very title of Dean Kronman's provocative 1993 book, *The Lost Lawyer: Failing Ideals of the Legal Profession*, implies that the profession was once *not* lost, that its failing ideals were once healthy and widely held.

This is certainly Dean Kronman's view. "The [spiritual] crisis has been brought about," he writes, "by the demise of an older set of values that until quite recently played a vital role in defining the aspirations of American lawyers."<sup>143</sup> And at the heart of this "older set of values" was an *assumption* that the best lawyer was "not simply an accomplished

technician but a person of prudence or practical wisdom as well . . . a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess."<sup>144</sup>

It is not our purpose here to rehash this historical or philosophical point, but to suggest its connection with professional satisfaction and fulfillment—a connection Dean Kronman also clearly sees. "To those who shared this view it seemed obvious that a lawyer's life could be deeply fulfilling. For the character-virtue of practical wisdom is a central human excellence that has an intrinsic value of its own. So long as the cultivation of this virtue remained an important professional ideal, lawyers could therefore be confident that their work had intrinsic value, too."<sup>145</sup>

Lovely old words: wisdom, virtue, character. Hardly ones that come immediately to mind when the contemporary lawyer is considered, but words or ideals from which much else good in the practice of law once flowed. Among them: the ideal of the seasoned lawyer as a wise counselor, or even per Abraham Lincoln's good counsel, a "peacemaker"; lawyers, in Professor Deborah Rhode's words, who have been "architects of a governmental structure that is a model for much of the world" and "leaders in virtually all major movements for social justice in the nation's history";<sup>146</sup> and countless lawyers in cities and towns across America, like those chronicled by Professor Walter Bennett and his students in their "oral histories," who "were living lives dedicated to a higher purpose, who loved what they were doing, and who found intellectual richness and creativity in lawyers' work."<sup>147</sup>

Having absorbed so much bad news about unhappy lawyers, so many lawyer jokes, so much "bitching and moaning," Professor Bennett reports "experienc[ing] something close to euphoria" when he discovered, *inter alia*, that there were still "lawyers and judges who were proud of being members of the profession, who felt that being a lawyer involved a deep moral commitment, that it was a position not only of prestige, but of honor."<sup>148</sup> In other words, Professor Bennett and his students discovered lawyers and judges who, consciously or unconsciously, had embraced law as a high calling.

Of course, if we take this higher road—if we embrace law as a calling "that involve[s] a deep moral commitment"<sup>149</sup>—there are a number of things we will instinctively understand we must *not* do. We will not, for example, lie or even make misleading representations to courts. We will not treat opposing counsel in a manner in which we would not want ourselves to be treated. We will not cheat or steal from our



clients by doing unnecessary work or padding our billing records. And we will not take on work that we find morally offensive just because "everyone deserves a lawyer"—or, for that matter, because we could use the extra money.

Sadly, this has not been the direction of what we euphemistically (if not cynically) still call "legal ethics" in more recent decades. As Professor Glendon points out, we have come philosophical light years from the 1950s when corporate lawyers at least "sometimes [served as] 'conscience' to big business."<sup>150</sup> Putting the professionwide fear of making value judgments, God forbid, in historical perspective, Glendon observes:

The first ABA Canons (adopted in 1908) held up a robust model of a lawyer who was no mere tool of the client: a lawyer "advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law." In the 1960s, old-fashioned terms like "honor" and "principles of moral law" vanished, but the role of adviser and co-deliberator was still promoted: "A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this process if the client does not do so. Advice of a lawyer need not be confined to purely legal considerations. . . . In assisting his clients to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible." In 1983, however, that mild encouragement to moral deliberation with clients was scrapped in favor of a provision that merely permits lawyers to refer to "relevant" factors: "In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation." Like Betty Crocker, the wise counselor has gotten slimmer over the years.<sup>151</sup>

In fact, as Professor Glendon later notes, "[t]he most hotly debated issue in connection with the 1983 Rules . . . was whether a lawyer should be required, rather than merely permitted, to disclose information he has reason to believe is necessary to prevent a client from causing *death or serious bodily harm* to another person."<sup>152</sup> Those advocating a morally based "do-the-right-thing" requirement soundly lost to what Professor Glendon describes as "the advocates of ironclad client confidentiality."<sup>153</sup>

With all due respect to the good men and women involved in the 1983 debate, that this was even a close call—death or serious bodily harm versus client confidentiality—is itself astounding. Can there be any question, when lawyer thinking strays that far from the “common good,” why public opinion of lawyers has continued to plummet? Where are the ideals, or even what Dean Kronman calls “practical wisdom,” in this bloodless, value-free calculus?

Dean Kronman is correct in connecting the collapse of historical ideals to the loss of “the professional self-confidence [they] once sustained.”<sup>154</sup> It follows, if we are to have realistic hopes for regaining “professional self-confidence,” that we must reaffirm ideals that transcend self-interest—including our individual and professionwide commitment to the “common good.” We must not allow the legal profession to become an amoral, dollar-driven business; indeed, we should not be afraid to make value-based decisions or give advice grounded in moral conviction. In short, if we are to find fulfillment in the practice of law, we must take Step 10: We must embrace law as a high calling.

### **Step 11. Be generous with your time and money**

G. K. Chesterton, the prolific British writer and polemicist, had a keen eye for the paradox. And no paradox lurking in life's lessons caught his eye more frequently than the inverse relationship between selfish materialism and happiness.

Most of us realize, at least in our better moments, that money and material acquisitions will not give us lasting satisfaction—but many, present company included, give it a good-faith effort! The lucky ones, like Bruce Warnock,<sup>155</sup> ultimately realize that happiness lies elsewhere and, in fact, that devoting too much of our time and energy to acquiring will yield the opposite result.

We know, too, that the simple pronouncement of St. Paul that “it is more blessed to give than to receive”<sup>156</sup> is profoundly true, and that there is no “blessedness” (translated elsewhere as “happiness”) in being a miser. Indeed, it is no coincidence that “miser” and “miserable” come from the same Latin root word.

Legal writing that attempts to make this point—that lawyers should be more generous with their time and money—tends to remain more narrowly focused on *pro bono* work. This is good counsel, as far as it goes, and more of us should strive to meet or exceed the ABA's suggested goal (at least 50 hours of *pro bono* work per year). As Professor



Rhode notes, "Few lawyers come close," and "[o]nly about a third of the nation's 500 largest firms have agreed to participate in the ABA Pro Bono Challenge, which requires a minimum annual contribution of three percent of the firm's total billable hours."<sup>157</sup> In his article "A Lawyer's Duty to Serve the Public Good," U.S. Circuit Judge Harry T. Edwards properly laments not only the reduction in pro bono practice, but also the declining number of law school graduates choosing public-service careers.<sup>158</sup>

But the declining commitment to pro bono work and public service is more derivative than central to the point we are trying to make here. In some ways—Chesterton would have loved this—our primary point here is more selfish, namely, that being generous with our time and money will make us feel better about our profession and our lives generally. In a word, giving generously will make us happier.

More central to our intended point is Steven Keeva's encouragement to develop a "helping heart."<sup>159</sup> He explains:

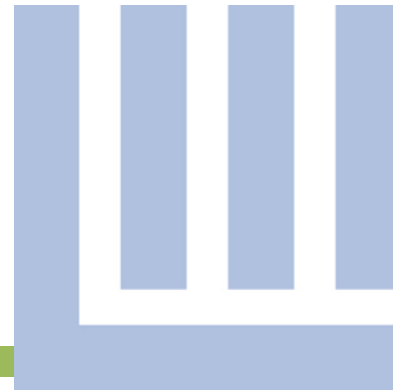
In every tradition that emphasizes the importance of the inner life, compassion and service are held up as preeminent virtues. Those who, through the ages, have been revered for their wisdom and empathy—the Gandhis and the Martin Luther Kings of this world, to name but two recent examples—have often been people who believed that the very purpose of life is to be of service to others.

Today's lawyers, being overwhelmingly inclined to minimize the importance of their inner experience, are more apt to see personal enrichment as their purpose, at least in their professional lives.<sup>160</sup>

To avoid suffering the misery of the miser, Keeva recommends a very simple exercise he calls "At Your Service":

Freely giving your time and energy to others will repay you tenfold. You might consider looking for opportunities each week (or even every day) to perform random, anonymous acts of kindness. It's the holding of doors for others, picking up what someone else dropped, helping an elderly person across the street, or simply offering an encouraging smile that eventually help us to dissolve the boundaries that keep us feeling separate from one another. It will make you feel better and may come to have an impact on the way your practice law.<sup>161</sup>

Of course, the specific charity or "act of kindness" in which we engage is less important than developing an unselfish attitude. The essential



## Speaker Biographies

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**Chris Osborn** is a co-founder of **ReelTime CLE** ([www.reeltimecle.com](http://www.reeltimecle.com)), which provides CLE seminars on ethics, professional responsibility, and mental health/substance abuse awareness and prevention. As of July 2012, ReelTime CLE Seminars have been accredited and presented in North Carolina, South Carolina, Virginia, Georgia, and New Mexico.

In July 2012, Chris left full time private practice to join the faculty of the Charlotte School of Law ([www.charlottelaw.edu](http://www.charlottelaw.edu)) as an Assistant Professor. In addition to teaching first year courses, Chris plans to pursue further scholarship in the areas of ethics and professional responsibility, and particularly the interrelationship of both with mental health and substance abuse issues. Chris' full bio is available at <http://www.charlottelaw.edu>.

Chris practiced as a litigation attorney in Charlotte, North Carolina for over 15 years, and as a law clerk to former U.S. Magistrate Judge Carl Horn III of the Western District of North Carolina. During his 11 years as an associate and then a shareholder with Horack Talley Pharr & Lowndes, PA, Chris primarily practiced construction and real estate litigation, business litigation, and employment law.

As the former chair of the Mecklenburg County Bar "Professionalism, LawyerLife, and Culture" Committee, Chris helped lead the Bar's efforts to support its members in times of personal or professional crisis, and its proactive promotion of good mental health practices and substance abuse awareness.

**Michael Kahn** holds a J.D. from the Dickinson School of Law, and practiced law with the Attorney General's Office for the State of New Jersey for 6 years. Although he left the practice of law in 1991, his work thereafter has kept him involved in the lives of attorneys in various capacities. Following his stint as a career counselor with the Tulane University School of Law, Michael obtained his M. Ed. in Counseling from UNC-Greensboro in 1994, and shortly thereafter became a Licensed Professional Counselor in the State of North Carolina. Michael has served as an active member of the Mecklenburg County Bar's Professionalism, Lawyer Life, and Culture Committee.

Michael's areas of focus in his psychotherapy practice include anxiety, depression, grief/loss, career satisfaction, and men's issues. In addition to his work with adolescents and adults in individual and group therapy settings, Michael has previously led grief support groups for Kindermourn in Charlotte, as well as film-based personal growth and development groups (see [www.reeltoreal.biz](http://www.reeltoreal.biz)). He also presents ethics and other workshops and training seminars for mental health professionals elsewhere in the U.S. and abroad, including for the U.S. Army. He is also a member of the National Board for Certified Counselors.





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**Mark Scruggs** joined Lawyers Mutual in March 2001 as a claims attorney. Formerly a partner with Spear, Barnes, Baker, Wainio & Scruggs, LLP in Durham, Mark has over 14 years' experience as a trial attorney concentrating in insurance defense litigation. For the last 10 years, Mark has worked with Lawyers Mutual primarily in the area of litigation-related claims, as well as workers compensation and family law matters. He is a 1986 cum laude graduate of Campbell University School of Law. Mark is a past chair of the Law Practice Management section of the North Carolina Bar Association.

**Warren Savage** joined the Lawyers Mutual as claim counsel in 2005. He focuses on litigation, appellate advocacy, criminal matters and professional responsibility in his work with Lawyers Mutual. A former partner with the law firm of Bailey & Dixon, Warren graduated from the University of Virginia and earned a Master of Arts in Teaching at the University of North Carolina at Chapel Hill before graduating magna cum laude from Campbell University School of Law. He spent several years as a high school English teacher and junior varsity basketball coach before entering the legal profession.