

STRESS MANAGEMENT

In April 1991, the ABA issued a report entitled *At the Breaking Point*. The report concluded that “there is a growing trend in the legal profession which, left unchecked, threatens the well-being of all lawyers and firms in every part of the country.”

The report found the following are connected:

- 1) The pressures of a deteriorating work environment
- 2) Increased levels of distress (e.g., depression, anxiety, stress-induced illness, interpersonal problems, alcohol/drug abuse, and obsessive-compulsive behavior)
- 3) Decreased ability to cope (e.g., social support, relaxation, exercise, expression of humor, etc.)

Statistics of Stress in the Legal Profession:

- 20-25% of lawyers suffer from stress so severe that it impairs their practices.
- Studies show that 51% of lawyers experience stress at higher levels than the “normal” population.
- Over 1/3 of attorneys say they are dissatisfied and would choose another profession if they could.

Why is the Legal Profession so Stressful?:

- Environmental Stressors:
 - o Generic stressors (e.g., time pressures, work overload, competition, difficult people)
 - o Stressors Specific to Law (e.g., adversary system, legal role conflicts, area of practice)
- Some individual characteristics can also make some lawyers more predisposed to experience chronic stress (e.g., perfectionism, values, emotional unawareness)
- The single most frequent complaint about the practice of law is the “hours.”

Some Effects of Chronic Stress:

- Headaches
- Cardiovascular diseases
- Illnesses caused by immune system malfunctions
- Deterioration of close personal relationships

Statistics of Depression:

- While 3 to 9 % of the U.S. population at any given time may experience depression, a quality-of-life survey conducted by the North Carolina Bar Association in 1991 reported that almost 26% of the bar's members exhibited symptoms of clinical depression.
- Almost 12% of them said they contemplated suicide at least once each month.
- Suicide among lawyers occurs two to six times more than among the general population.
- Attorneys have the highest rates of depression and suicide of any profession.

Statistics of Alcoholism:

- 13% of lawyers surveyed by the ABA drink more than 6 alcoholic beverages per day.

- While approximately 10% of the U.S. population suffers from alcoholism, the number jumps to almost 20% in the legal profession, or one in five lawyers.

Effects of Stress and Ethical Violations

Chronic stress not only damages lawyers and their families and friends, but chronic stress can also impact lawyers' abilities to effectively serve clients and meet all requirements under the Code of Professional Responsibility.

Consider the following:

- 40 to 75% of the disciplinary actions taken against lawyers involve practitioners who are chemically dependent or mentally ill.
- In a survey of over 600 partners at large law firms, 40% reported making avoidable mistakes because of the pressure they are under to work fast.

Despite being stressed or overworked, lawyers must ALWAYS comply with the Rules of Professional Conduct. Consider the rules below and how your ability to fulfill them is compromised by stress:

✓ Preamble:

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

✓ RULE 1.1 Competence:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

✓ RULE 1.3 Diligence:

A lawyer shall act with reasonable diligence and promptness in representing a client.

✓ RULE 1.4 Communication:

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

✓ RULE 1.16 Declining Or Terminating Representation:

Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- a) The representation will result in violation of the Rules of Professional Conduct or other law;

- b) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

✓ RULE 8.4 Misconduct:

It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

In addition to ensuring that you continue to meet all professional responsibilities, you should also ask yourself the following:

- Does my work require me to do too much in too little time?
- Do I have enough time to spend with my family & friends?
- Do I feel I am making a positive contribution to society or to other people's lives?
- Do I often feel anger, irritation, rage, guilty, regret, shame, fear, or anxiety?
- Do I think about quitting at least once a month?

If the answer to any of the above questions is yes, and/or stress is compromising your ability to comply with any of the Rules of Professional Conduct, you should seek help for stress management and time management. It is a violation of the Rules of Professional Conduct to take on a client you cannot represent competently.

Also keep in mind that you can always contact the Lawyers Helping Lawyers Program, organized in 1985 to provide confidential, non-disciplinary assistance to members of the legal profession in Virginia who experience professional impairment as a result of substance abuse or mental health problems. Lawyers may call (toll free and anonymously) (877) 545-4682 or e-mail info@valhl.org.

For more information about stress management for lawyers, you may want to look at the following book:

Amiram Elwork, Ph.D., *Stress Management for Lawyers, How to Increase Personal & Professional Satisfaction in the Law*. Third Edition. Vorkell Group, North Wales, Pennsylvania, 2007.

Questions for Panelists:

- 1) Given the enormous toll that stress takes on many people in the legal profession, what is your best advice for relieving stress and what are some of the techniques that help you manage the stress?
- 2) Certain stress is good, because it represents a desire to do well and to succeed. But good stress turns into *distress* when we are overcome with feelings of anxiety, fear, and guilt. How do you maintain a balance between striving to do well, and realizing that everyone makes mistakes and that sometimes you have to compromise something?

- 3) Unsupportive work environments can increase our stress loads. How do you try to maintain a positive working environment for those around you?

TIME MANAGEMENT¹

“Time is what we want most, but what we use worst.”

William Penn

Dr. Amiram Elwork advises that becoming an effective time manager requires you to understand, evaluate, and improve the thoughts, emotions, and values that cause you to mismanage your time in the first place. Dr. Elwork advises the following:

I. Do the Most Important Things First

Most people get into the office and deal with less important things first, such as clearing off their desks or finishing less important loose ends. They think, “When my desk is clear, I’ll be able to concentrate on the important things.” Unfortunately, unanticipated projects arise, tasks take more time than expected, and before you know it, the day is done yet you still haven’t focused on the important things! There is a realization that important matters must wait until the next day.

Dr. Elwork warns that this is a stressful style of working. He advises the following:

- Categorize all activities by importance and urgency.
- Fill your days with activities that are *important but not urgent*.
- Don’t be too busy to figure out what is important.
- Don’t be afraid to focus on what is most important in your life.

It is necessary to clarify what is most important, such as what you value most. Do as many important things as are possible every single day. You will feel an immediate sense of satisfaction and you will accomplish the things that matter.

II. Distinguish Between Urgency and Time-Wasters

Dr. Elwork states that too often, lawyers days are absorbed by activities that are urgent. Although some urgent activities are inevitable, many of them are caused by an assortment of time-wasters. Dr. Elwork identifies the twenty biggest time wasters as follows:

1. Management by Crisis
2. Telephone Interruptions
3. Inadequate Planning
4. Attempting Too Much
5. Drop-in Visitors

¹ All information regarding time management is from AMIRAM ELWORK, PH.D, STRESS MANAGEMENT FOR LAWYERS: HOW TO INCREASE PERSONAL & PROFESSIONAL SATISFACTION IN THE LAW 193-205 (3d ed. 2007).

6. Ineffective Delegation
7. Personal Disorganization
8. Lack of Self-Discipline
9. Inability to Say “No”
10. Procrastination
11. Meetings
12. Paper Work
13. Unfinished Tasks
14. Inadequate Staff
15. Socializing
16. Confused Authority
17. Poor Communication
18. Inadequate Controls
19. Incomplete Information
20. Travel

Dr. Elwork recommends identifying your primary time-wasting habits in order to boost your efficiency. You must ask yourself, “Where does my time go?” He recommends keeping a two-week time log, in which you record everything you do. Briefly describe each activity, when it started, the total time it took, and whether it was important and/or urgent.

Choose one or two of your time-wasting habits that you think would be easiest to break. Try changing your behaviors and keep score of how well you do. If you find it difficult to break your bad habits, delve into the thoughts, emotions, and values that drive your behaviors.

III. Three Prevalent Time-Wasters

A. Interruptions

Scenario: A co-worker pops into your office and asks, “Got a minute?” Next thing you know, the minute has turned into an hour and your important work has not been completed. Further, it is difficult to regain your previous level of concentration.

Dr. Elwork’s advice: do not allow important work to be interrupted. This is difficult, as many of us are afraid of being perceived to be offensive or unhelpful. If we don’t embrace others, they may reject us in turn. Further, curiosity often gets the best of us. Other times, we welcome the distraction as interruptions make some of us feel important and help to justify another time-waster, procrastination.

Dr. Elwork’s solution: ask yourself, “Is it really true that if I don’t respond to every interruption immediately, people will reject me?” This is an illogical thought.

- i. In the case of telephone interruptions, if you have a secretarial assistant, he/she should tell the caller, “I’m very sorry, but Ms. Smith is not available right now. However, may I make a telephone appointment at a time that she can

call you back?” This allows the attorney immediate control over the timing of the telephone conversation.

- ii. In the case of drop in visitors, you can say, “I really do want to talk to you about this and I think that I can be of help. However, right now I must finish this work. Can we make an appointment at a time when I can give you my full attention?” Then when you make an appointment, schedule it at a time that meets your needs.

Dr. Elwork is not suggesting that you be unresponsive to your clients and colleagues. Rather, you should get greater control of when you attend to phone calls and visitors.

B. Procrastination

Many of us justify our procrastination because we say we work better under pressure. It would be more accurate to say: “I work more efficiently when time runs out, and I have no choice but to stop procrastinating. I wish I could stop procrastinating before I find myself under pressure.” Time pressure does not improve your performance; it simply forces you to stop procrastinating. Your peak performance is actually more likely to occur when you do not procrastinate and when you are not under time pressure. This is preferable for health reasons and is more likely to prevent mental errors and increase creativity.

Dr. Elwork states that many of us avoid something that we think will lead to emotional pain. Procrastination avoids the fear of failure. Also, procrastination allows us to avoid boring work. We reduce our own emotional pain by avoiding the boring task.

Dr. Elwork’s advice: break down projects into smaller and smaller units until each unit is doable and painless. Take each step in turn, spreading out each step as much as necessary.

C. Ineffective Delegation

Ineffective delegation does not allow you to maximize your achievement through the efforts of others, which means you limit the extent to which you can leverage your talents. Why does this happen? People are perfectionists, have an excessive feeling of responsibility for everything, a lack of confidence in others, a need for control, a fear of being controlled, and a fear of competition from employees.

Dr. Elwork’s advice—learn to live by a different rule: anything that can be done by others should be done by others. In turn, you must hire the right people, be clear in your instructions, and create a supportive psychological environment.

To be an effective manager, you must accept the fact that everyone is imperfect and capable of making mistakes. Anticipate errors and build them into your scheduling. Staff should grow and learn from their mistakes. Provide moral support, coach, and teach your staff but do not do their work for them.

Practical Types:

SmallLaw: Three Time Hacks That Will Add Four Hours to Your Day²

By [Jennifer Moheyer](#) | Tuesday, March 1, 2011

Originally published on February 1, 2010 in our [free SmallLaw newsletter](#).

As a sole practitioner, heavy traveler, and parent, my feet hit the floor at 6 am. I inevitably juggle my toddler, pets, three phones, two faxes, multiple emails, "urgent" client demands, and the numerous household distractions — sorry, "responsibilities" — that come from being a full-time wife and mom. Over the years, as everyone's expectations kept increasing, my time became tapped-out.

Fortunately, amid the daily barrage of "can you/will you/did you," I struck a work-life balance and salvaged about four "extra" hours a day. By leveraging available technology, you too can create a productivity work-around (a.k.a "time hack") and streamline your professional and personal life. Just follow the three steps below.

Time Tracking (Estimated Time Saved: 0.5 Hrs Per Day)

First, to recapture time you have to know where you spend it. Try tracking your activity with [Chrometa](#), a downloadable program that produces a graph summarizing your entire day. Chrometa saves you the hassle of having to take notes, and offers the added bonus of assigning your activities to individual clients for billing purposes.

According to Chrometa, my average work day used to be 12 hours long — 50% spent on the computer (i.e. building and marketing my three businesses, legal researching, drafting, blogging, emailing, surfing, etc.), 25% on the phone (i.e. answering calls, client reminders, teleconferences, etc.), and 25% on miscellaneous activities. At the end of the day, that realistically left only three non-work hours to divide between my family and myself — unacceptable!

Time Blocking (Estimated Time Saved: 2.0 Hrs Per Day)

Start slashing distractions! Recent studies show that it takes 15 minutes to return to "serious mental tasks" after an interruption, so ditch distractions and begin working in uninterrupted "blocks" of time.

- Take your business or other project(s), and set aside specific days to work ON them (managing, developing, growing) and specific days to work IN them (providing services and deliverables). If

² Written by Jennifer J. Moheyer of [Confessions of a MOMtrepreneur](#).

you're a sole practitioner or small firm partner, you know the value of this distinction so don't fail to apply it.

- Commit to check your email only at set times. I check mine briefly at 8:30 am to scan for changes/cancellations, at length around lunch (11:30 am), and once again before close of business (4:30 pm). The key is deactivating the #1 distraction — the New Mail pop-up window — and instead activating the auto-responder. Mine says: "Thank you. I received your email, and will reply before day end. I appreciate your patience while I devote my attention to one client at a time."
- Organize your email program with folders. Create one for each project or client, so that your inbox grows emptier as you answer email messages and file them. I also suggest folders for "Short-Term" (within 1-14 days) and "Long-Term" (within 15-30 days) action items. Once categorized, they're out of your inbox and easier to handle. Stop fighting with your email, and make it work for you!
- Eliminate distractions with email filters. For example, create filters to automatically place email from groups/listservers in their own folder for later reading. Filters clear out the inbox, and help to avoid tempting email distractions until you have time for them.

Delegating (Estimated Time Saved 1.5 Hrs Per Day)

Those of us who travel regularly know the importance of delegating. It used to be a costly concept involving on-site staff and added overhead. But time-hackers today can take advantage of outsourcing, shifting simple yet essential tasks off-site.

- Time-block your phone calls by delegating the answering and routing to a Virtual Receptionist. I currently use [My1Voice](#) (about \$10 /month), to answer phones with an auto-attendant, and route callers between office extensions or my voicemail (which says "I have received your message, and will return all calls at 3:30 pm"). What is indispensable for me is that My1Voice sends me an instant text message with the transcript of each voicemail so I can screen for emergencies. It's been so indispensable in cutting down unnecessary "chatting" that I've implemented this system for my personal calls too.
- Next, delegate routine administrative tasks to a Virtual Assistant. I outsource my travel and appointment making, faxing/follow-up, and client reminder calls to [AskSunday](#) (monthly plans around \$14/hour). It is such a relief to know that a competent professional is on the call, and because I'm not on the phone I don't get stuck fielding questions or chatting with clients. It's addicting. I've now delegated preschool planning, playdate scheduling, and online shopping to them too.

Conclusion

Although simple, these three low-cost time hacks have streamlined my life. I've reclaimed my 8-hour work day, (now consisting of 50% computer, 20% phone, and 30% miscellaneous), and best of all have seven non-work hours each day to split between my family and myself. Those four

"extra" hours each day equate to 20 "extra" hours per work week, which can really change your work-life balance! What you do with your 20 extra hours is up to you, but now there's no excuse for leaving those Christmas lights up past Valentine's Day.

Questions for Panelists:

- 1) It is reasonable to adopt the approach that you won't respond to e-mails/phone calls from clients, co-workers, etc. after a certain time, or should a lawyer be on call 24/7?

1a.) With the advent of Blackberries and mobile devices, it seems a lawyer can never leave his workload at the office. Have you found that the Blackberry limits the amount of time you spend together at home and do you set any ground rules (i.e., no blackberries in bed)?

- 2) What do you think about billable hours? Do they create more stress than is necessary? Do you see another framework for providing legal services?

FAMILY/WORK LIFE BALANCE³

"Most people work long, hard hours at jobs they hate that enable them to buy things they don't need to impress people they don't like."

-Nigel Marsh

I. The Statistics and Initial Problems

Dr. Elwork notes from the start that staying happily married to anyone takes effort, but having a lawyer as a spouse presents some special problems. Lawyers tend to work very long hours within an adversarial atmosphere that breeds hostility, cynicism, and paranoia. They tend to be perfectionists and critical. In addition, lawyers are professional debaters who are trained to present one-sided arguments and always prevail. If this is not a formula for marital challenges, then there is none.

Dr. Elwork reports that research on the topic is scant, but the available data support the idea that the practice of law is tough on family life. For example, one survey of close to 2600 lawyers in North Carolina revealed that among those who had been divorced or separated 36% said that the "stresses of professional life were major causes of their marriage failing. Of attorneys not married, 46% reported that the pressures of professional life had been a major deterrent to getting married. In a national survey of about 2200 lawyers, 31% of the men and 37% of the women who were married but had no children reported that the demands of their work were behind their decision to be childless.

II. How Work Can Invade Your Personal Life⁴

³ AMIRAM ELWORK, PH.D, STRESS MANAGEMENT FOR LAWYERS: HOW TO INCREASE PERSONAL & PROFESSIONAL SATISFACTION IN THE LAW (3d ed. 2007).

Prototypical employees show up for work Monday through Friday and work eight- to nine-hour days. The boundaries between work and home are fairly clear in this scenario. But the world has changed and, unfortunately, the boundaries have blurred for many workers, including attorneys. Here's why:

- Global economy: As more skilled attorneys enter the global labor market and companies outsource or move more jobs to reduce labor costs, people feel pressured to work longer and produce more just to protect their jobs.
- International business: Work continues around the world 24 hours a day for some attorneys. Attorneys find themselves on call around the clock for various tasks and responsibilities.
- Advanced communication technology: Many attorneys now have the ability to work anywhere — from their home, from their car and even on vacation. And some employers expect this.
- Longer hours: Firms and organizations commonly ask attorneys to work longer hours than initially planned. Often, overtime is mandatory. If you hope to move up the career ladder, you may find yourself regularly working more the prerequisite number of hours per week to achieve and exceed expectations.
- Changes in family roles: Today's married worker is typically part of a dual-career couple, which makes it difficult to find time to meet commitments to family, friends and community.

III. Married to Work Instead of Your Spouse?

If you are spending most of your time at work, your home life will likely pay the price. Consider the pros and cons of working extra hours on your work-life balance:

- Fatigue: Your ability to think and your eye-hand coordination decrease when you're tired. This means you're less productive and may make more mistakes. These mistakes can lead to injury or rework and negatively impact your professional reputation.
- Family: You may miss out on important events, such as your child's first bike ride, your father's 60th birthday or your high-school reunion. Missing out on important milestones may harm relationships with your loved ones.
- Friends: Trusted friends are a key part of your support system. But if you're spending time at the office instead of with them, you'll find it difficult to nurture those friendships.
- Expectations: If you regularly work extra hours, you may be given more responsibility. This could create a never-ending and increasing cycle, causing more concerns and challenges.

Sometimes working overtime is important. If you work for a firm or organization that requires mandatory overtime, you won't be able to avoid it, but you can learn to manage it. Most importantly, say no when you're too tired, when it's affecting your health or when you have crucial family obligations.

⁴ Adapted from various occupational consulting from the Mayo Clinic's online Health Information – <http://www.mayoclinic.com>

IV. Striking the Best Work-life Balance

For most people, juggling the demands of career and personal life is an ongoing challenge. With so many demands on your time — from overtime to family obligations — it can feel difficult to strike this balance. The goal is to make time for the activities that are the most important to you.

There are many possible ways to strike the right balance between work and family life:

- **Keep a log:** Track everything you do for one week. Include work-related and non-work-related activities. Decide what's necessary and what satisfies you the most. Cut or delegate activities you don't enjoy and don't have time for. If you don't have the authority to make certain decisions, talk to your supervisor.
- **Take advantage of your options:** Find out if your employer offers flex hours, a compressed workweek, job-sharing or telecommuting for your role. The flexibility may alleviate some of your stress and free up some time.
- **Learn to say no:** Whether it's a co-worker asking you to spearhead an extra project or your child's teacher asking you to manage the class play, remember that it's OK to respectfully say no. When you quit doing the things you only do out of guilt or a false sense of obligation, you'll make more room in your life for the activities that are meaningful to you and bring you joy.
- **Leave work at work:** With today's global business mentality and the technology to connect to anyone at any time from virtually anywhere, there's no boundary between work and home — unless you create it. Make a conscious decision to separate work time from personal time. When with your family, for instance, turn off your cell phone and put away your laptop computer.
- **Manage your time:** Organize household tasks efficiently. Doing one or two loads of laundry every day, rather than saving it all for your day off, and running errands in batches are good places to begin. A weekly family calendar of important dates and a daily list of to-dos will help you avoid deadline panic. If your employer offers a course in time management, sign up for it.
- **Rethink your cleaning standards:** An unmade bed or sink of dirty dishes won't impact the quality of your life. Do what needs to be done and let the rest go. If you can afford it, pay someone else to clean your house.
- **Communicate clearly:** Limit time-consuming misunderstandings by communicating clearly and listening carefully. Take notes if necessary.
- **Fight the guilt:** Remember, having a family and a job is OK — for both men and women.
- **Nurture yourself:** Set aside time each day for an activity that you enjoy, such as walking, working out or listening to music. Unwind after a hectic workday by reading, practicing yoga, or taking a bath or shower.
- **Set aside one night each week for recreation:** Take the phone off the hook, power down the computer and turn off the TV. Discover activities you can do with your partner, family or friends, such as playing golf, fishing or canoeing. Making time for activities you enjoy will rejuvenate you.
- **Protect your day off:** Try to schedule some of your routine chores on workdays so that your days off are more relaxing.

- Get enough sleep: There's nothing as stressful and potentially dangerous as working when you're sleep-deprived. Not only is your productivity affected, but also you can make costly mistakes. You may then have to work even more hours to make up for these mistakes.
- Bolster your support system: Give yourself the gift of a trusted friend or co-worker to talk with during times of stress or hardship. Ensure you have trusted friends and relatives who can assist you when you need to work overtime or travel for your job.
- Seek professional help: Everyone needs help from time to time. If your life feels too chaotic to manage and you're spinning your wheels worrying about it, talk with a professional, such as your doctor, a psychologist or a counselor recommended by your employee assistance program (EAP).

Remember, striking a work-life balance isn't a one-shot deal. Creating balance in your life is a continuous process. Demands on your time change as family, interests, and work life change. Assess your situation every few months to make sure you're keeping on track. Balance doesn't mean doing everything. Examine your priorities and set boundaries. Be firm in what you can and cannot do. Only you can restore harmony to your lifestyle.

Some additional ideas from Dr. Elwork:⁵

What steps can lawyers take to ensure that they are good spouses and parents as well as good lawyers?

The first thing to do is to assess your values and goals and become honestly convinced that family life is important to you. There is no crime in coming to the conclusion that family isn't as important as work, as long as you are honest about it with yourself and others.

If you want to have a more fulfilling family life, you have to not mind giving up something for it. It is a matter of finding the right balance for you.

Once you have made the decision to have more of a family life, the rest of the formula is obvious: If you want to spend more time with your family, you have to spend less time at work. . . . In short, you have to get into the habit of cheerfully saying “no” to others, without fearing the rejections that may result and the sense of betrayal you may feel.

Some lawyers think that a few lessons in time management will do the trick. I am all for learning time-management techniques, but generally they only make you more efficient and seldom result in your working fewer hours. If you are a workaholic, becoming more efficient will only make you capable of handling more work than before.

It has taken me many years to come to a simple but profound conclusion: The remedy for too much work is less work. There is no other solution. To work less, you have to delve deeply into your values and goals and make some difficult decisions as to what is important to you.

⁵ Lawyers and Stress: Seeking A Balance, Trial, FEBRUARY 2000, at 70, 72-74

Some lawyers think that the answer to the problem is not more time, but more quality time with their families. Again, I am all for creating quality time, but truly meaningful moments with family are difficult to schedule. Ultimately, it comes down to more quantity, not just quality. It is that simple.

Is your suggestion realistic? What about the clients' needs and the demands of the law firm?

Obviously, what I am suggesting is easier said than done, and I wish there were some magical solution to the life-balance problem, but there isn't one. On the other hand, I find that some lawyers quickly come to the erroneous conclusion that it is impossible to have a personal life and practice law successfully. They are convinced that horrible things will occur if they even attempt to work a few hours less each week. In most cases, these conclusions are simply wrong.

Yes, it is true that some clients will leave unless you are available to them 24 hours a day and on demand. But so what? So, you lose a few clients. In reality, most clients will actually respect the fact that you value your family life. For example, refusing to meet with clients at odd hours because you believe in eating dinner at home could lead to more loyalty on the part of clients, not less.

With regard to the demands of law firms, the best thing to do is to first try to work out a suitable arrangement within your firm. For example, concede to a salary adjustment in return for working fewer hours. If that doesn't work, you may need to find the courage to leave the firm for another one or to start your own. This is not easy. However, if you truly value family life, you will have to pay a price for it.

When a lawyer is involved in a long trial, his or her personal life is often put on the back burner. How is it possible for trial lawyers to live the life you are proposing?

“The solution to that problem is not perfect, but it is simple. Trial lawyers need to get into the habit of taking extended time off on a regular basis in order to recharge their batteries and make up for the time they are absent from family life. This is what pilots, actors, and others who don't have nine-to-five jobs do.”

“Taking a vacation once or twice a year is not enough. Most trial lawyers I know are overextended to begin with, even when they are not at trial. After a long trial, rather than taking time off, they are often overwhelmed by cases they neglected while in court. To do what I am suggesting would require a smaller caseload, and that usually means giving up some income. Again, it all comes down to deciding what is important to you.”

The following comes from Patrick J. Schiltz, On Being A Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession, 52 Vand. L. Rev. 871, 888-95 (1999) (internal citations omitted):

Without question, “the single biggest complaint among attorneys is increasingly long workdays with decreasing time for personal and family life.” Lawyers are complaining

with increasing vehemence about “living to work, rather than working to live” --about being “asked not to dedicate, but to sacrifice their lives to the firm.”

To cite just a few examples: A national survey of lawyers by the National Law Journal reported that “most attorneys in the survey believed their careers were putting too much of a burden on their personal lives. When asked what they especially disliked about practicing law, more than half (54 percent) mentioned too many hours/not enough time for a personal life.” The 1990 ABA study, after describing increasing job dissatisfaction among attorneys, said that “(t)his increased dissatisfaction is directly caused by a deterioration of the lawyer workplace In particular, the amount of time lawyers have for themselves and their families, has become an issue of major concern for many lawyers.” The North Carolina study identified as “a major factor” in attorney dissatisfaction the “(l)ack of enough time to balance work with time for self, family, the community, pro bono, etc.” Respondents to the Michigan Law School survey reported themselves far less satisfied with “(t)he balance of their family and professional lives” than with “(t)heir career as a whole” or any of four other measures of “(l)ife (s)atisfaction.” And the report of a national conference convened by the ABA to address “the emerging crisis in the quality of lawyers’ health and lives” singled out as a “significant” cause of this crisis the fact that lawyers “do not have enough time for themselves and their families--what many have come to call ‘the time famine.’”

...

Generally speaking, lawyers in private practice work longer hours than those who work for corporations or for the government. In the 1990 ABA survey, for example, only 56% of those in private practice agreed that they had enough time to spend with their families, compared to 74% of corporate lawyers and 79% of government lawyers. Similarly, only 46% of private practitioners said that they had enough time for themselves, compared to 53% of corporate lawyers and 66% of government lawyers. In the words of the study, “(t)ime for family and self is a real problem for lawyers in private practice. Far fewer lawyers in corporate counsel and government settings have insufficient time.” The findings of the Michigan Law School survey were similar: Only 20% of the respondents working in private practice were “quite satisfied” with “(t)he balance of their family and professional life,” as compared to 35% of those working in corporations, 45% of those working for the government, and 50% of those doing public interest work.

In a TED Talk entitled “How to make work-life balance work,” Nigel Marsh offers four observations:⁶

1. If society is to make progress, we need an honest debate. The core issue is that certain job and career choices are fundamentally incompatible with being engaged with a young family. Casual Fridays don’t get to the nub of the issue.

⁶ Available at

http://www.ted.com/talks/lang/eng/nigel_marsh_how_to_make_work_life_balance_work.html

2. Governments and corporations will not fix this issue for us. We need to take personal responsibility. Responsible for setting and enforcing boundaries in your life.
3. Be careful with the timeframe you choose to judge your balance against. Must be realistic. Middle way between a day and retirement. You can't expect every day to be a perfect day and you can't expect to live the life you dream of when you retire.
4. Approach balance in a balanced way. Small things matter. Small investments in the right places can transform your life.

Questions for Panelists:

- 1) What is your biggest barrier to spending more time with your family, and what are some strategies that you use overcome that barrier, and maximize time with your family, spouse, or significant other?
- 2) What are some particular family activities that you will do regardless of the amount of work that you have to do?
- 3) Are you able to keep the argument techniques that you have learned or used in the practice of law from pervading your disagreements with family members? how? do you think it is important to keep them separate?
- 4) Obviously there are some ethical considerations for what you can share about work with family members. What do you share, if anything, and do you find that it is a good thing to share the challenges you are having with specific projects at work?

HEALTH/PHYSICAL FITNESS⁷

I. Nutrition

The benefits of proper nutrition extend well beyond the preservation of a healthy body. Most critically for lawyers, optimal nutrition contributes to greater positivity, increased mental endurance, heightened focus, and reduced stress levels.

Like anything else, in the realm of health and physical fitness the relationship between knowledge and success is a positive one. Dr. Elwork cites a concise list of nutrition tips from Walter Willett, M.D., chairman of the Department of Nutrition at Harvard's School of Public Health's "Eat, Drink, And Be Healthy":

⁷ All information regarding health and physical fitness is from AMIRAM ELWORK, PH.D, STRESS MANAGEMENT FOR LAWYERS: HOW TO INCREASE PERSONAL & PROFESSIONAL SATISFACTION IN THE LAW 75-93 (3d ed. 2007).

- Eat whole grain foods, vegetables, fruits, nuts, beans, fish, poultry, eggs, and plant oils.
- Avoid or eat less red meats, butter and margarine, white rice, white bread, potatoes, pasta, sweets and anything that is considered “junk” food (e.g., potato chips).
- Take a daily multi-vitamin supplement and possibly a calcium supplement, just for insurance.
- If you drink alcohol, do so in moderation.

Protein should be an important component of your diet, however, studies show that there are health benefits to scrutinizing the *type* of protein you consume. In short, from a health perspective, fish is superior to poultry and eggs, which are superior to red meat. Vegetables are also a valuable source of protein, however the lack of amino acid diversity in vegetables arguably makes them less optimal sources of protein than animal sources.

II. Weight Control

As with nutrition, the benefits of weight control extend well beyond weight management itself. Excessive weight is positively related to cardiovascular disease, diabetes, cancer, arthritis, infertility, gallstones, asthma, sleep apnea, and mental health problems.

The most important lesson to be learned from Dr. Elwork is that there is no “short cut” to weight loss, and that the approach to weight loss must be holistic and pragmatic. Dr. Elwork makes three critical suggestions for reducing weight in a healthy, sustainable manner:

- Successful dieters develop a lifetime habit of eating the right foods...
- Successful dieters control their intake of calories without feeling hungry. They understand that we are hard-wired to be intolerant of hunger, and that any diet that creates hunger is guaranteed to fail. Thus, most of them eat whenever it is necessary to reduce their hunger, but control their portions- some become nibblers.
- Most successful dieters learn that they simply cannot maintain a healthy weight without doing fairly rigorous exercise on a regular basis...

Lawyers, with their long hours and stressful lifestyles are particularly vulnerable to weight gain. The availability of unhealthy eating options and the *unavailability* of healthy eating options compound the challenges facing lawyers in this regard. Thus, it is that much more important that lawyers adopt an attitude toward weight management that is durable and practical.

III. Exercise

The benefits of exercise are practically innumerable. Physiologically, exercise reduces the risks of heart disease, high blood pressure, diabetes, and colon cancer, and it contributes to

the preservation of healthy bones, muscles, and joints. Psychologically, exercise leads to reduced stress, depression, and anxiety.

Dr. Elwork emphasizes that, in this area, the first step for lawyers is to change the nature of their daily activities, and to increase their level of physical activity when they are *outside* the gym. Skip the elevator; take the stairs. Carry your own luggage. What Dr. Elwork describes is really a mental adjustment, in which we forsake convenience for health, and seek physical challenge where it has been masked by services.

As for “formal” exercise, whether aerobic or anaerobic, Dr. Elwork cites evidence indicating that, “moderately exercising” for one hour, six to seven times a week is suggested. However, this can fluctuate if one adopts a “cumulative” perspective, allowing an individual to exercise more or less frequently, depending on the duration and intensity of the workout.

IV. The Pleasure-Pain Principle

Dr. Elwork emphasizes that understanding the “pleasure-pain principle” is a key ingredient in developing a healthy lifestyle. The principle posits that humans have a predisposition to retreat from pain and embrace pleasure. However, rather than seeking to change this essentially unalterable characteristic, Dr. Elwork encourages readers to accept it and tailor their fitness and nutritional plans accordingly. In regards to our diets, we should select food regimens that are enjoyable, rather than purely ascetic in nature. Similarly, in creating a fitness routine, we should participate in those physical activities that are most pleasurable. In addition, Elwork suggests taking whatever measures are necessary to make chosen physical activities more enjoyable, such as working out with a partner. Ultimately, a strategy that is based on pleasure has much greater durational value than one based on pain and suffering.

Questions for Panelists

- 1) Do you think that the legal profession presents unique challenges to maintaining a healthy lifestyle?
- 2) On a scale of 1 to 5, to what extent do you prioritize physical fitness? If higher than 3, how have you managed to do so despite the rigors of a legal career? If less than 4, to what do you attribute that result?
- 3) What steps do you take, as a legal practitioner, to preserve your health and fitness? How do you maintain this balance?
- 4) Please describe a time/times in your life when you had to choose between your health and your career? How did you make this choice? What considerations guided your decision?

- 5) What health advice would you offer to young attorneys that still have the option of making their career decisions based partly on their health and fitness requirements?

STOP, LOOK, AND LISTEN

REGAIN YOUR FOCUS THROUGH MINDFULNESS

By Scott Rogers

If you've been practicing law for a while or are job searching, you know how easily your mind can dwell in the past and worry about the future. This natural tendency can interfere with your ability to maintain focus, perform at the top of your game, and experience general well-being.

One way of counteracting this tendency that is receiving a lot of press and making its way into law schools, law firms, and the judiciary is "mindfulness." Mindfulness is an area of contemplative and scientific exploration that offers insights and tools to reclaim focus in the midst of challenging situations. It involves paying attention to what is actually taking place in the present moment instead of becoming distracted or trying to avoid—well, reality.

William James, the great psychologist and philosopher, wrote that "the faculty of voluntarily bringing back a wandering attention, over and over again, is the very root of judgment, character, and will." Mindfulness is a practice of catching the mind as it begins to wander. Agitated feelings like frustration, worry, doubt, and anger are signs of a wandering mind. Being mindful helps reclaim focus and exercises the muscle of attention, which helps us to become more expert at paying attention.

One of the most common and powerful tools in contemplative practices such as mindfulness is bringing awareness to the breath and holding awareness on it. Research suggests that this concentration exercise offers important benefits to cognitive functioning, health, and well-being.

Mindfulness also involves paying attention to what arises within our field of awareness, including thoughts, feelings, and body sensations. When we experience something unpleasant, we may have an impulse to distract ourselves from it. To be mindful means not avoiding, but rather noticing what arises such that we

experience life more directly and free ourselves to master the next moment. Doing so, we experience the moment as it just "is." This is one of the insights I teach to lawyers and law students in the mindfulness program *Jurisight*, where we split the term "Justice" into "Just Is" and practice the "Just Is" Holmes exercise.

This exercise draws on Justice Holmes' rule for what to do upon approaching railroad tracks: "Stop, Look, and Listen." While it can be helpful to find a comfortable place to sit as you practice the exercise, it is one that can also be practiced in the midst of challenge.

Stop: When you realize that your mind has wandered, pause, close your eyes, and take a few breaths. Bring awareness to your belly, noticing how it rises and falls with each breath.

Look: Turn inward and pay attention to the thoughts arising in your mind and the sensations arising in your body. Notice what *Just Is*.

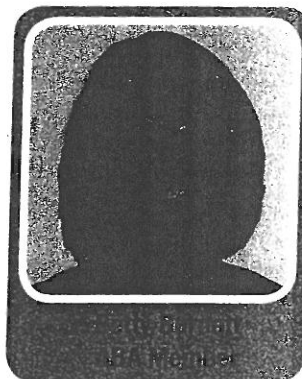
Listen: As you breathe, expand your awareness outward and listen to sound. Pay attention with ears that are open to the mystery of the sound that *Just Is*—noticing what arises, changes, and passes away.

After a few minutes, open your eyes and return to what you were doing before you become distracted or agitated.

By practicing mindfulness, you will become a more effective attorney able to better cope with stress, listen more deeply to clients, and obtain greater perspective on your work and the challenges presented in daily life.

Scott Rogers is a lecturer in law at the University of Miami School of Law, director of the Institute for Mindfulness Studies, and author of *The Six Minute Solution: A Mindfulness Primer for Lawyers*. He can be reached at scott@imslaw.com. Learn more about mindfulness and the law at <http://themindfullawyer.com>.

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Today's Pro Bono Menu

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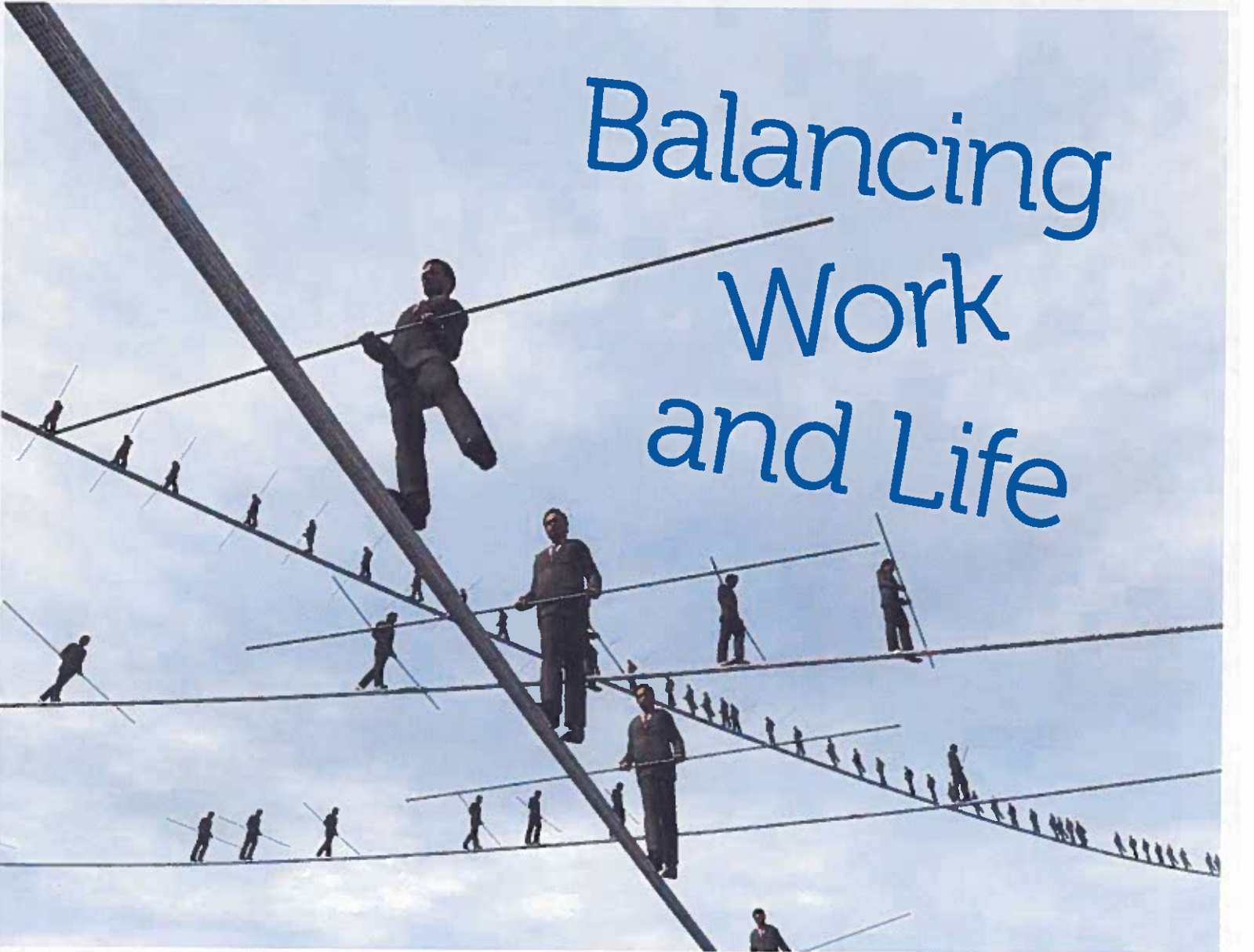
Program of the Bar Association of San Francisco Community Organization Representation Project (CORG). Volunteers assist nonprofit community-based organizations in a range of transactional business law matters, including employment, real estate, intellectual

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The Bench

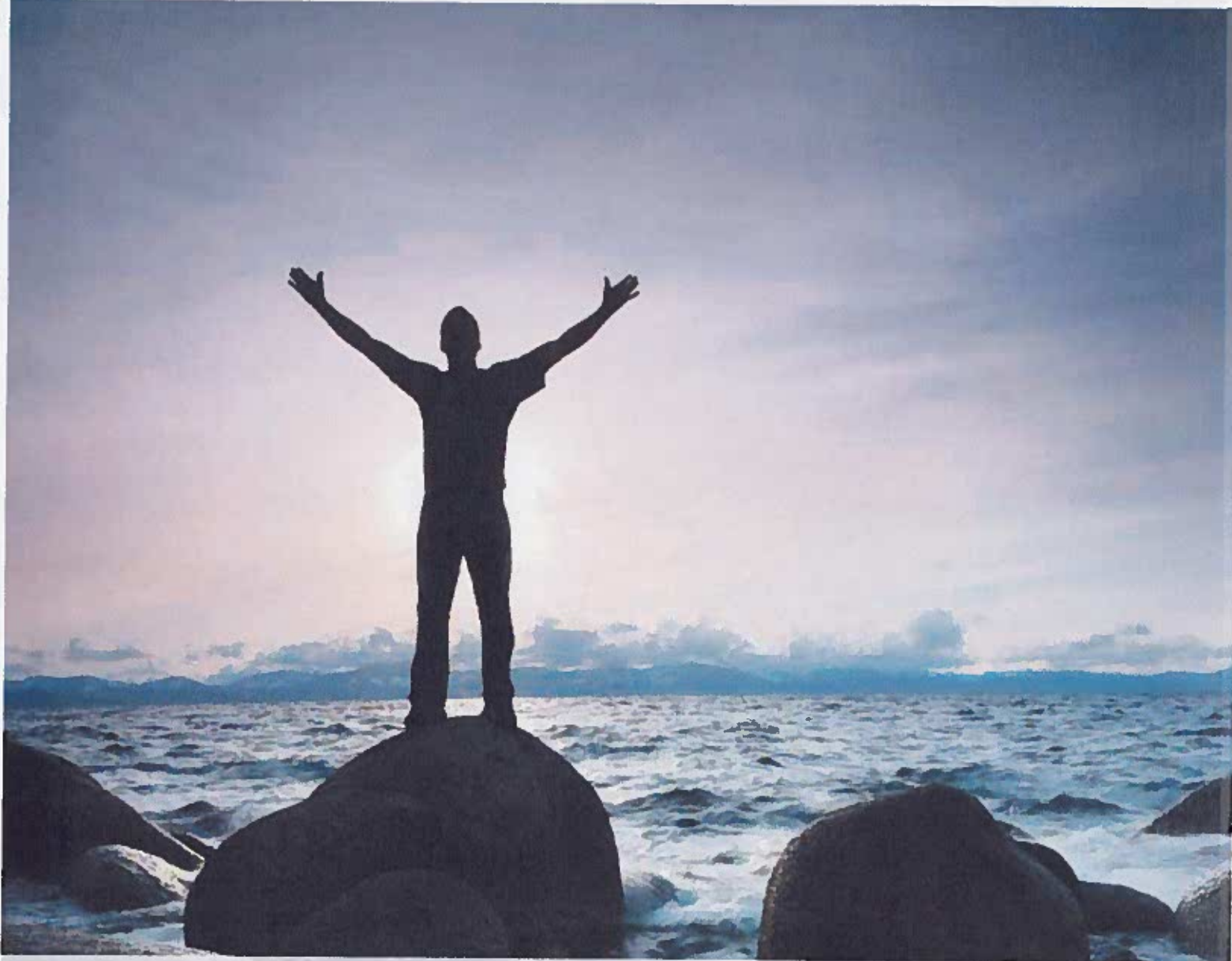
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BALANCING WORK AND LIFE AFTER TWO TYPES OF CANCER

By Matthew W. Argue



I had worked for thirteen years at my law firm to become partner and head of the construction litigation group. During that time, I worked 60-70 hours per week. Although I enjoyed my work, it left little time for personal and family life. I remember trying to slow down while I was at the law firm. I looked forward to a time in my career when I could enjoy the fruits of my prior labor and not work so many hours. Somehow it never worked out. Instead, I worked the same, or more, hours each year. The cases kept getting bigger and there were more cases to work on each year. I told myself that when I finished a big case that would be the time to take a break. That never happened. However, cancer changed how I was thinking about my career and the future. I felt that the stress of being a trial attorney was not conducive to healing cancer. When I discussed leaving the law firm because of the possible adverse impacts of stress on my health my wife was supportive. She wanted me alive instead of focusing on financial security. Thus, began our journey to build a more balanced life style.

My battle with cancer began on January 14, 2000. Although I did not know it at the time, this one day changed the course of my life forever. I was on my way to work when I felt a sharp pain that would not go away. I called my office to cancel my appointments for the day and went straight to the doctor's office. I was referred to the urologist who told me

nodes between the kidneys. This time the tumor was inoperable. My only options were radiation or chemotherapy. I had gone from Stage I to Stage II testicular cancer. There are only IV stages. It took this second occurrence before I was forced to reevaluate my future in light of cancer.

I first took a leave of absence from the law firm. I needed time to clear my head, to visit various doctors about treatment options, and to consider what life might be like if I no longer worked at a large law firm. I did not know what I would do, but the priority now was healing and developing a more balanced lifestyle. This meant being more available to my family instead of coming home every night from work physically and emotionally exhausted. I realized I was giving too much time to work, and there was little time left over for my friends and family after work. Also, I was looking at the possibility of having children; something my wife and I had dreamed about together, but now the diagnosis of testicular cancer plus chemotherapy meant that I might not be able to have children. For this reason, we tried several alternative cancer therapies with the hope that it would heal the cancer without toxic side effects. During the next two years, we were blessed with two perfectly healthy boys! Although the alternative cancer therapies did not "cure" the cancer, it strengthened my immune system and when I opted to treat the



Matthew W. Argue, Esq.

I remember trying to slow down while I was at the law firm. I looked forward to a time in my career when I could enjoy the fruits of my prior labor and not work so many hours.

he needed to run some tests but that he suspected I had testicular cancer. The next week, I had surgery to remove a cancerous tumor. The week after that, I returned to the office a little sore from surgery but hoping the "cancer speed bump" was a thing of the past. It never occurred to me that the cancer might return. My attitude was "business as usual" and I wanted to get back to work immediately. I had no more regard for the fact I was diagnosed with cancer than a common cold or flu. A year later, after an annual follow-up exam with the oncologist, I found out I had a new tumor in the lymph

testicular cancer with chemotherapy I responded well to the treatments. I eventually found myself energized by the change in life style, and I loved spending more time at home with my family. In short, we were growing and prospering even in the face of a serious health challenge.

The next step was to find some type of work that required fewer hours and was less stressful. My former law firm played a key role in encouraging me to resume my legal career as a professional mediator.

Continued on the next page.

At first the idea of becoming a mediator seemed impossible. I thought only retired judges or senior attorneys with lots of name recognition could be successful mediators. What drew me to the idea of mediation is that it is a "cooperative" as opposed to an "adversarial" process. I thought my personality would be more suited to the mediation process instead of being a litigator. I also thought that I would have more control over when and how I worked.

The decision to become a mediator was not just about lowering stress at work. It was also based on doing what I wanted to do as opposed to what I thought I could or should do with my life after cancer. I knew it would not be easy to start a new career, but after surviving cancer some of the fear of failure was gone. Also, I was excited about a new challenge and looking forward to once again working in the legal profession. The deciding vote was cast by my wife who is a great encourager and not afraid to take a risk when she believes it is good for our family.

Getting to work as a mediator was a slow process. I had to train and develop skills to be a mediator. I took a number of well respected mediator training courses and enrolled in a mediator credentialing program that resulted in over 100 hours of live training. I was fortunate that a retired Federal District Court judge, who was a full-time mediator, offered me the opportunity to do a mediation externship with him. I spent the next eight months observing him and many other mediators. I volunteered to do pro bono mediations to gain experience. Ultimately, I began to have opportu-

settle I do not agonize about such a result. I now have time to be with my family, to be home for dinner most nights, to enjoy golfing with my boys and take time off for vacations every year.

Our family thought that cancer was a thing of the past, but we were wrong. In October 2009, I was diagnosed with a second type of cancer known as Acute Lymphoid Leukemia (ALL). ALL is rarely seen in adults, but the doctors believe it is a "secondary cancer" side effect caused by the chemotherapy drugs I received to treat testicular cancer. Our initial reaction was one of disbelief. It did not seem possible that we would have to do the cancer treatments all over again. Earlier in April 2009, I had passed the 5-year mark with no sign of reoccurrence of testicular cancer and thought I was "cured" for good.

I have been asked if dealing with cancer a third time is easier or more difficult than the first or second time. For us it was more difficult. Our family had already been through the trauma of cancer and chemotherapy. We knew all too well the devastating emotional, physical and financial impacts of an extended illness and inability to work or earn a living. We were told by the doctors that the typical treatment time frame for ALL is one to two years. We had no idea how we could make it financially for the next two years without income. The treatment regime involves chemotherapy, radiation and ultimately a need for a bone marrow transplant for survival. In some cases, the side effects of a bone marrow transplant can be rejection of the transplant resulting in death or life long debilitating conditions. Having a sibling as

Only by going through a life threatening event did I realize that tomorrow is not promised to anyone. We're all terminal. Each day is a gift. And, it is up to us to make the most of it.

nities to work as a private mediator; mediating construction defect cases in the area of law I formerly practiced.

Being a private mediator has been a great experience. I enjoy interacting with lawyers and judges on a daily basis. I work in a positive environment to help solve problems and settle cases. I am not subject to the same stress as I was as a lawyer who is concerned about the opponent, the legal arguments, the court's rulings and the outcome of the trial. As a mediator, I work hard to settle every case, but if the parties decide they do not want to

the donor results in the best outcomes. I have one sibling, a sister, and the likelihood of her being my donor was less than 25%. Incredibly, my sister was not just a match but a "perfect match" meaning she and I matched on all eight criteria for her to be my donor. Accordingly, I was able to do the bone marrow transplant without delay, which also increases the chance for a good outcome.

The treatment was hard but definitely doable. I had to be in the hospital for several months. I spent nearly a month in isolation and was not able to see my children. I have never felt so tired

In my life. During the most difficult times, I found that gentle kindnesses of the doctors, nurses and other patients made a big difference. The key to my survival has been the support of family, friends, co-workers and other mediators. (Just as during my other bouts with cancer, the upside is more quality time with my wife and two boys who are 9 and 7 years old. These are the times I will never regret spending as I get older.) I am truly amazed how many people stopped their busy lives to help us. I had the overwhelming feeling that I was not alone and that more people cared about me than I ever could have imagined. I have so many reasons to make a full recovery.

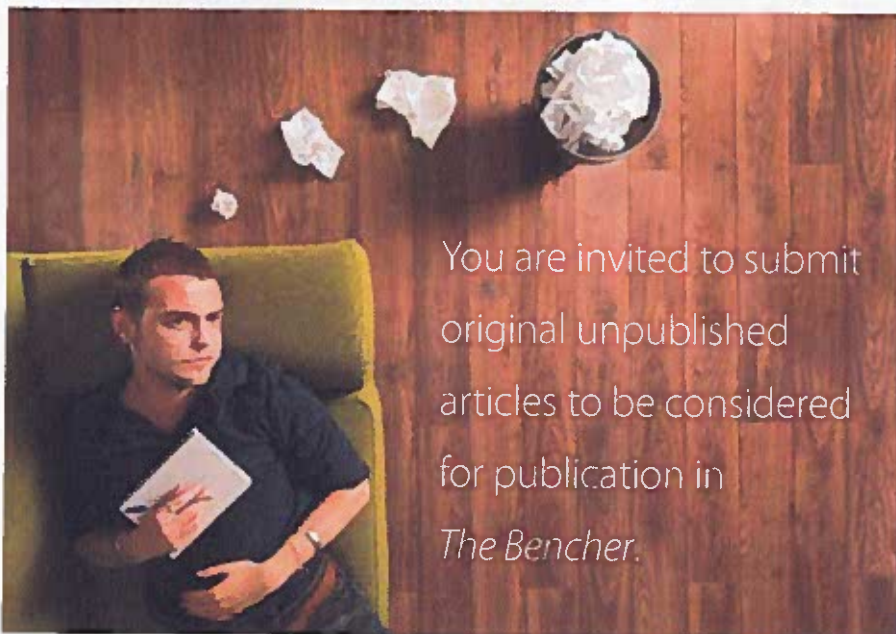
I have been blessed with an opportunity to learn an important lesson about myself and life. The thing that matters most in life are other people: first, my wife, my boys, my sister, my dad, my in-laws; second, my friends and other people I see every day at work, church, around town; and third, people I have not yet met but which may become terrific friends sometime in the future. I have learned that a friend is forever, especially during the times you need them most. Everything else in life (careers, houses, cars, vacations, etc.) is nice but has little lasting value. So, why do I, and so many others, spend the vast majority of time chasing after the things that have no real lasting value?

My answer is the mistaken belief that tomorrow is guaranteed. If I have one day left to live, then I know exactly what is important. But, if I think I have 10-20-30 years to do all the things that are important, then I will forget about how I can help those around me and instead focus on how I can make my life easier or more comfortable.

Only by going through a life threatening event did I realize that tomorrow is not promised to anyone. We're all terminal. Each day is a gift. And, it is up to us to make the most of it. By a miracle, I have been given another chance to enjoy life and the blessing of a new day. So, in my new life, I hope to enjoy each moment, to laugh a lot more, to take time for a long walk, to be my wife's best friend and my children's greatest fan, and to be known more for being a person of character than being a captain of industry. These are the things I have learned from my three bouts with cancer. I hope my story will encourage others to evaluate what is important to them in life, pursue meaningful relationships and make lifestyle changes without the hardship of dealing with cancer. ♦

Matthew Argue, Esq. is a full-time mediator with the Arbitration, Mediation, Conciliation Center ("AMCC") and a Master in the William L. Todd AIC in San Diego, CA. He welcomes your feedback and can be reached by email at mattargue@onemediator.net.

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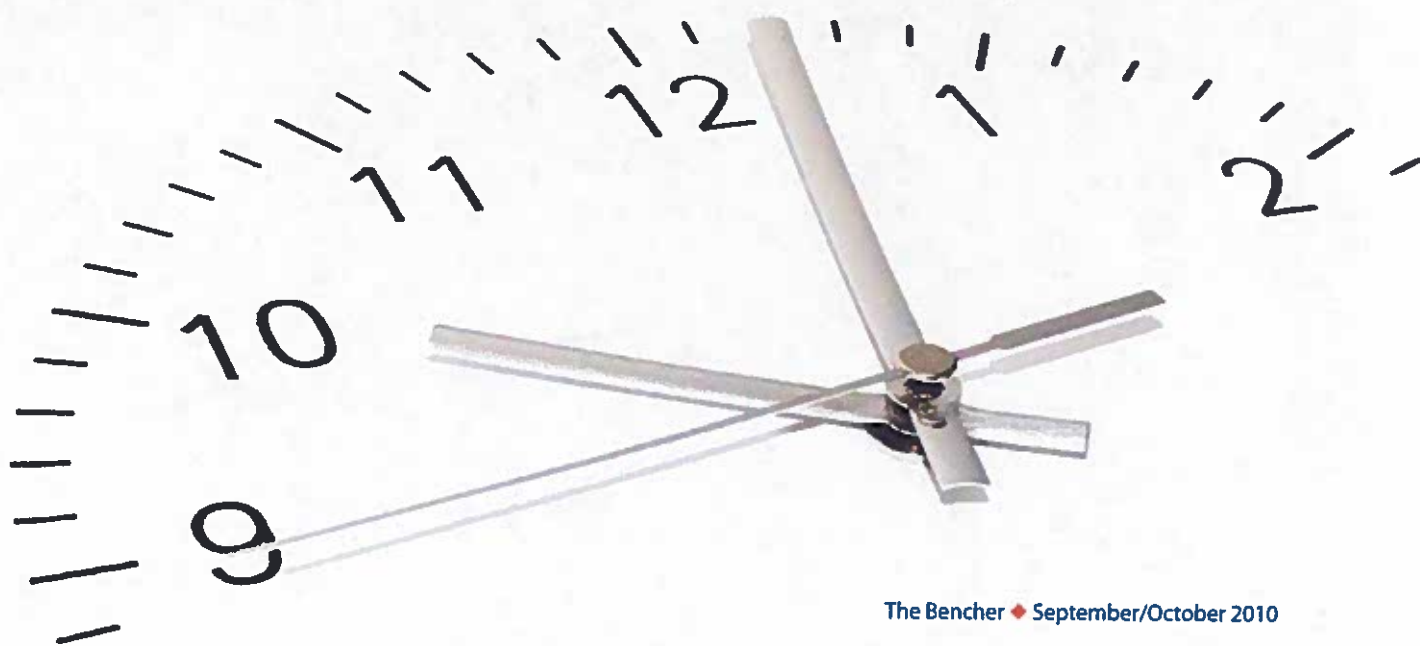
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TIME TIME TIME

By Raymond T. (Tom) Elligett and Wendy L. Patrick



So begins the Simon & Garfunkel song, "Hazy Shade Of Winter". It continues: see what's become of me, while I looked around for my possibilities. Wendy Patrick, in San Diego and Tom Elligett, in Tampa—two of our *Bench* editorial board members—share some thoughts on how to deal with the demands of our profession, and still have "play" time for other things in life—like family, friends, leisure...

TOM ELLIGETT: Wendy, you write a daily column, numerous other articles, and frequently lecture, while working full time as a San Diego deputy district attorney in the sex crimes and stalking division. How do you find the time?

WENDY PATRICK: As the saying goes, it is always easy to find the time to do things we enjoy! I very much enjoy my job as well as my writing and speaking, so with a little strategic time management here and there, my schedule is fairly easy. I am used to the question: "Do you ever sleep?" Here is my big secret: I usually sleep eight hours a night. Well rested each day, the most daunting schedule is easily doable!

TOM: Yes, and writing and other activities that are related to the profession are a bit of a break from the job, per se. How do you "manage" your time? Do you keep a list of things you want to accomplish on a daily, weekly, or long term basis?

WENDY: I have a pocket size non-electronic calendar (believe it or not) that I carry with me constantly that contains my entire schedule. With this constant access to my daily life as well as the rest of the year, I have never missed anything yet! How do you stay on top of your calendar?

TOM: I'm more old school—my younger partners would probably say just old. I keep a month-at-a-glance calendar at my desk, which I like for seeing what's coming and visualizing how much time I have before something is due. I also keep a list of all pending cases, tracking what's coming and when. My legal assistant maintains a computer calendar in the office and my wife keeps a personal calendar at home, so I have help.

TOM: You must see some emotionally draining cases in your field. What do you do to redirect your focus from "bad facts," and restore your quality of life?

WENDY: I have spent a significant amount of my career working with victims of domestic violence, child molestation, and sex crimes. Seeking justice for the victims is an incredibly rewarding pursuit that easily overcomes the "bad facts" of the cases. But yes, I am a big fan of being well rounded and enjoy a life outside of work. This includes playing in the first violin section of the La Jolla Symphony and playing the electric violin with a rock band.

TOM: I can see where that would get your mind off work. I agree it is important to have interests outside the practice of law—hobbies, sports, etc. Do you try to schedule some vacation time from work on an annual or regular basis?

WENDY: I live for my vacations. My family and I try to schedule exotic vacations at least once a year. Our travels have taken us all over Europe, South America, and Asia—and from Antarctica to a recent summer vacation at the North Pole!

TOM: I can't get anyone interested in Antarctica, but we have tried to take family trips each year, and my wife and I have visited national parks in 49 states. Now that we have grandchildren it is more challenging, but all nine of us went to Yellowstone last summer and 10—new granddaughter—are going to northern California this year.

TOM: It sounds like you have good organizational skills, so you don't get bogged down by routine tasks. Any suggestions for lawyers who are not well-organized?

WENDY: Take some time every day to look at the week/month ahead. Looking at the bigger picture saves tons of heartache in the long run! There is time to complete everything on your agenda if you budget wisely—namely, turn off the TV!

TOM: It took me a while to realize that sometimes we have to say "no" to requests to undertake things that we do not have the time to do properly, or are really not interested in?



The Elligett family on vacation in 2009.



Wendy L. Patrick

Continued on the next page.

WENDY: My New Years Resolution each year is to learn how to say "no." Any suggestions?

TOM: Like a lot of things we do in our practice, how we say it can be important. For example, let the person know that you appreciate his or her dedication to the project or cause, but due to other commitments you just do not have the time. Now, if it's the boss making the request...that leads to a possibly related area of tension. There are sometimes differences in expectations between the more senior managers and the younger lawyers in how many hours they should work. It's most likely a good conversation to have during the hiring process.

WENDY: Some lawyers love to work and thrive on accomplishment. Others are applying for different

reasons, from money, to family-friendly law firm policies, to location. Sometimes we can learn the reasons from applicants simply by asking them why they would like to work here!

TOM: And—as in other areas—it is best for both prospective employer and employee to be honest. If they hope to have an amicable long-term relationship. ♦

Raymond T. (Tom) Elligett, Jr. is a partner in Buell & Elligett, P.A. in Tampa, Florida. He is a past president of the Hon. J. Clifford Cheatwood AIC.

Wendy L. Patrick is a San Diego County Deputy District Attorney in the Sex Crimes and Stalking Division and a Master in the Louis M. Welsh Inn of Court. She has her own ethics column in the San Diego Daily Transcript and writes and lectures on ethics nationally and internationally.

Three Keys to Selling and Achieving Work/Life Balance in Today's Legal Market

By Deborah Epstein Henry

Most lawyers fear that employers will look askance if they raise work/life balance needs in today's legal market. Lawyers worry that work/life balance is now seen as a luxury—they should feel lucky to have a job. Here are three tips to maximize the likelihood of your work/life needs being met, especially in today's challenging economic climate.

First, use flexibility as an asset to meet the business demands of your employer. Many employers are uncertain of their staffing needs and don't want to pay for lawyers' time if

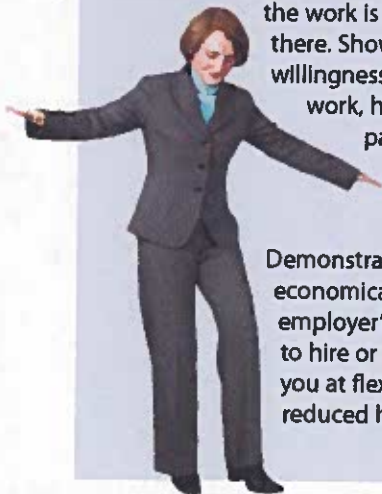
the work is no longer there. Show your willingness to flex your work, hours and pay with the demands of the practice. Demonstrate how it is economically in your employer's interest to hire or retain you at flexible or reduced hours.

Second, take gender out of the discussion. Work/life arrangements are often seen as a "mommy" issue. However, increasingly men and women are expressing work/life needs for different reasons at all stages of their career. When you propose a work/life arrangement, the basis for your request should be irrelevant. Do not approach the request as an accommodation. Instead, explain how you will meet the demands of practice on flexible or reduced hours while not negatively impacting colleagues or clients.

Third, be indispensable, responsive and accessible. The greater your employer perceives your value and importance, the more negotiating power you will have. If your work quality is top notch, an employer will be more receptive to developing a creative solution to recruit or retain you at flexible or reduced hours. Also, be responsive and accessible when you are out of the office to meet the needs of clients and colleagues. In turn, if you set your expectations for flexibility rather than predictability,

you will be more satisfied with your arrangement while meeting the demands of a thriving legal practice.

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Litigating and Parenting Go Hand in Hand

By Kathryn Gardner

Most of us can easily think of ways in which being a parent complicates being a lawyer. Both roles prove to be extremely demanding, highly stressful, full-time jobs that require all the knowledge, effort, and grit we can summon. Because working parents are now commonplace, we have probably all witnessed meltdown moments when life would be simpler if only one role or the other were at play. For example, when an attorney who is expected to take the deposition of a crucial witness stays home with her ill child, the firm suffers because it must either send a less-prepared attorney or delay the event, and the parent suffers from guilt. When that attorney leaves her ill child with a sitter because she simply must take that deposition, the child becomes upset, the illness may spread to others, and the guilt-ridden parent is understandably distracted at work. Neither option is good.

Nonetheless, these problematic moments of direct conflict occur rarely in the grand scope of life and law. Most of the time, the roles of parenting and litigat-

ing quietly coexist. Because fewer cases are actually being tried, litigators are spending more time outside the courtroom. This facilitates instant access to one's children or caregivers and makes parenting while litigating more feasible than it may have been 20 years ago. But merely tolerating or overlooking an attorney's parenthood is not the healthiest posture either for the firm or for the parents. A firm that fails to embrace parents as partners may be missing out on home-brewed talent.

Is it possible that being a parent can actually complement being a lawyer? I have not found any scientific research on the topic, but speak purely from my own experience in proposing that many of the skills good parents learn unconsciously and practice repeatedly, are the same skills that are consciously cultivated in good litigators. Because those skills are directly transferrable from the world of parenting to the world of litigating, parenting can actually assist in, instead of detract from, one's quest to be an excellent litigator. This paper addresses only a few of these shared skills.

Take, for example, the skill of communicating. Litigators need excellent oral and written communication skills for interviewing potential clients, composing discovery, taking depositions, drafting pleadings or motion papers, examining witnesses, and making oral arguments. Litigators know that speaking or writing in long, abstract sentences or lapsing into legalese reduces their chances of clear communication and success. Parents are often forced to get the point across clearly and swiftly to our children, so we use short, concrete, familiar words. If a parent told a child, "Sarah, would you sweetly cease shearing the shining locks off your sibling, Susie?", Susie would be bald. Instead, we simply say, "Stop cutting Susie's hair!" Importantly, parents have the added advantage of being constantly reminded by our children when our language is "boring." How many of your colleagues would do you the favor of giving you such frequent, unsolicited, and honest critique?

Occasionally, lawyers fail to meet the goal of clarity, as evidenced by this caption: "Plaintiffs' Reply to Defendants' Reply to Plaintiffs' Response to Defendants' Motion to Strike Exhibits F,G and H to Plaintiffs' Response to Defendants' Reply In Opposition to Plaintiffs' Motion for Summary Judgment and Those Portions of Said Response Which Rely on Said Exhibits." *In re Paul Seymour, Jr.*, No. 90-42543-11 (Kan. Bankr.) Parents, however, know exactly what to do with this kind of *gobbledygook*. In dealing with children we are daily forced to glean meaning from the broader context, to extract substantive content from meaningless dribble, and to understand the unintelligible. We become excellent interpreters. When one's toddler merely says "Oh," the parent immediately knows whether the child is delighted, frightened, disappointed, disinterested, or questioning his or her authority. So when an attorney-parent receives a suppression motion alleging, "Officer Miller found some glass pipes used to ingest drugs and jewelry," the attorney knows the author doesn't really mean that glass pipes are used to ingest jewelry. Jewelry is ingested by sticking it directly up one's nose. The parent knows this because she has seen her child do it. Therefore, the parent accurately presumes the author merely neglected to put the essential comma after "drugs."

Good litigators need the courage to deliver difficult messages to their clients. They must tell clients the truth about the risks of the case, the unfavorable facts, the demands on one's time, the strain on one's emotions, the chances of failure, and the potential costs of success. Litigators have to make difficult decisions that may significantly impact their client's business, personal life, or well-being,

and cannot take the easy way out. Parents are used to delivering hard messages. We do it every day to our spouses ("Yes, I know it's 3:30 a.m., but it's *your* turn to change her diaper"), and to our children ("No, you can't go to the party until you clean your room because if a burglar breaks in, falls over your stuff, breaks his leg, and sues us, you will be personally liable!"). Parents do not lose sleep if our messages are not well received. If my teenager is giving me the evil eye because the poor thing doesn't have a cell phone while everyone else in the entire universe does, *so what?* Parents know that this teen-telephone tension, although temporarily uncomfortable, is necessary for the greater good. Parenting, like litigating, gives a person the opportunity to make frequent and difficult decisions in crucial areas that can greatly impact the lives of others.

Parenting also teaches a person to develop good teaching and story-telling skills, which are found in every good litigator's arsenal. Parents know how to use different methods in different situations or for different listeners. What works in reaching one child will probably not work for the other two, since the first is a visual learner, the second is an auditory learner, and the third is a tactile learner. So parents become accustomed to reading aloud, telling short stories, acting out events, using examples, drawing pictures, and doing whatever else works to get their point across, always under the watchful eyes of a captive audience. Instead of just telling our children that Goldilocks was a naughty trespasser, we give them details and use special effects to make the story come alive. Mastery of the skills that make bed-time stories more enjoyable, can also make closing arguments more effective. The use of analogies to simplify matters, demonstrative exhibits to create visual images, and whiteboards to highlight the main points are examples of the variety of methods used by good litigators to increase their chances of connecting with and persuading all the jurors.

Good litigators are well-organized and well-prepared. They likely use a reliable calendaring system, a detailed chronology, stock and specialized interrogatories, trial notebooks, separate witness files, and outlines for opening statements and closing arguments. Good litigators rarely "just wing it." Similarly, parents must master the skills of organizing, managing time, and prioritizing, just to survive.

Parenting, like litigating, gives a person the opportunity to make frequent and difficult decisions in crucial areas that can greatly impact the lives of others.

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Parents of infants, for example, usually engage in a daily routine something like this before the work day even begins: find the baby bag; pack the pacifier, diapers, change of clothes, bottles, formula, burp cloth, blanket, toys or books in the baby bag; find the baby; dress the baby in diapers, booties, undershirt, shirt, and pants; feed and burp the baby, (neither of which can be rushed—believe me, I've tried); change the baby's diapers (again); put on the baby's jacket and hat; open, close, and lock the house door without dropping the baby; secure the baby in the car seat; drive carefully to the sitter's house; get the baby out of the car seat; and, make the transition from parent to caregiver without seeming rushed or rude. This process, which takes time and careful planning, is complicated by the addition of a second child. By that time, the first child is often a toddler who is demanding the parent's attention, pulling on her skirt, and protesting loudly at getting her hair combed, while the parent tries to get both the baby and the toddler packed up. When the third child arrives and the little angels are six-months, three-years, and five-years old, and the youngest spits purple goo all over the parent's wool suit the very minute they are all packed up and walking out the door to the sitter's, the parent does not give in to the natural impulse to sit down and cry. Instead, she just hurries to change suits, corrals the kids again, and carries on. (No wonder I had so many bad hair days!) After typical mornings like that, it is pure relief to get into trial where everything is orderly and people rarely yell at you or tug on your clothes.

Client service is another litigation skill that comes naturally to parents. Children are among the most demanding clients a person could ever have, and they underpay nearly every time. (Unfortunately, they are judgment proof.) Parents live a life of sacrifice and service to others. Even their "leisure time" is not their own. Within two minutes after a parent sits down to read the paper, some little person will inevitably come up and say that she needs a Renaissance costume, treats for 32 children, and a completed science fair project for school tomorrow. At home, the laborious routine of daily life is one of perpetual parental service—you cook, they eat; you clean it, they dirty it; you buy clothes, they outgrow them. Then you do it again, forever. (That's one reason parents enjoy going to the office—no one there seems intent on undoing whatever we just did.) This life of forced sacrifice at home helps parent-litigators put the client first, even when doing so is not convenient or easy.

Teamwork and delegation are other vital litigation skills developed through parenting. Meeting the multifaceted needs of children is, without exception,

so demanding that no parent can do it alone. Parents know we need help and we aren't afraid to ask for it. We highly value our assistants, trust them with lots of responsibility, and learn how to delegate to them so we can best work together toward a common goal. Good litigators do the same. When an experienced attorney works with a well-prepared paralegal and a skilled legal secretary, the other side had better watch out. A happy litigation team makes a formidable opponent.

Being a good judge of credibility is an essential skill for litigators. Litigators do not take statements at their face value, but instead examine the context in which the statements were made, the statement's consistency with other known facts, the witness's demeanor, and other indices of credulity, knowing that the ability to determine the falsity of a witness's statements can make or break a case. Unfortunately, parents inherently have repeated occasions in which to develop and practice this skill, and are repeatedly confronted at home with the "soddi defense" (some other dude did it). Parents learn to recognize their children's changes in voice inflection, their speech errors or idiosyncracies, their inflated denials, their use of modifiers or qualifiers, and their unusual body language. Parents can smell when something's fishy in the tank.

Great cross-examinations follow. When a child answers a question by stuttering and stammering, averting his eyes, using words he can't spell, crossing his arms, and sighing a lot, the parent's cross-examination skills kick into high gear. Experience teaches parents how to reject excuses, recognize evasive action, field elusive answers, reformulate questions, and persist in getting to the truth. Good parents make those little squirmers squarely answer the questions. (Where else but from one's children can a person get such depth and breadth of experience in this field?) Developing these truth-finding skills at home increases the parent's ability to judge credibility at work. ("Hey, cross-examining that conniver was nothing—I've had harder days just trying to talk to my seventh grader!")

Fighting fairly is necessary for good litigators. They follow the written rules of professional conduct, civil or criminal procedure, evidence, and the local rules that apply in a given case, all of which tend to support procedural fairness. Good litigators follow the unwritten rules of ethics and etiquette as well. Their word is trustworthy. They do not say one thing and do another. They decline opportunities to cheat or to take undue advantage. Good litigators are courteous to opposing counsel and others, even when others are rude to them. They attack the

opponent's position, rather than the opponent's person, and refrain from name-calling even though a real zinger ("You lumpish, lily-livered lout!") is right on the tip of their tongues. Good litigators exercise self-control and do not whine when others around them do. These are some of the same traits that parents consistently strive to instill in children. Whining, cheating, name-calling, rudeness, and lying are among the subjects of seemingly endless attempts at character development. Parents that try to teach these values must model these values. Little eyes are always watching their role models, and children are quick to catch and to complain about any inconsistency they witness. Rebukes such as, "That's not fair," "You promised!" or "You forgot to say 'please,'" hit home, so parents learn to practice what they preach. Following the rules of ethics and etiquette at work becomes second nature to parents that must model good character, or suffer swift rebuke, at home.

Good litigators, like good parents, understand that there are no guarantees. An attorney may be highly skilled and do everything right, but still lose the case. Similarly, parents, despite their best efforts, may have a child who becomes a career criminal. Both litigators and parents improve their chances of obtaining a successful result by focusing on their goals and cultivating their skills within their respective spheres, but both know that the ultimate outcome is not completely within their control. Litigators and parents both understand that serious consequences may flow from their failures, but they are still willing to take that risk, repeatedly.

Good litigators are not grandstanders or egomaniacs, understanding that the case is not about them. Instead, they are modest and unpretentious, whether in the office or in trial. Children are very good at teaching parents to be modest. Just try to impress your daughter by telling her that the federal judge who presided over your last jury trial said you gave the best closing argument he had ever heard. (Thanks to your excellent story-telling skills, of course.) Her reaction will doubtless be to ask, "So what?" Having children puts life and law in perspective, and pokes holes in our otherwise inflated egos. Parenting is usually not comprised of remarkable accomplishments or extraordinary events that would tend to puff up one's ego, but of thousands of little, routine acts that usually go unnoticed. So litigators that are parents do not expect heaps of praise and accolades. Instead, they concur with Teilhard de Chardin who humbly noted: "[t]he value

and interest of life is not so much to do conspicuous things...as to do ordinary things with the perception of their enormous value."

Excellent litigators can, of course, be found that are not parents, and the skills noted in this paper can be developed without raising a child. Firms traditionally try to develop litigation skills by having partners mentor young attorneys, by sending associates to litigation training camps or seminars, or by having associates second-chair larger trials or first-chair smaller ones. These methods are all valid, but they are not without their drawbacks. Mentorships sound good in theory, but, when done right, are time-consuming for both the partner and the associate. The effectiveness of a mentorship varies widely depending on the complexity of the cases handled, the diligence of the mentor, and the personality of the protégé. Sending an associate to litigation training camp may teach an attorney certain methods not endorsed by the firm and can be expensive when of the costs of the camp itself are compounded by the loss of the associate's billable time. Assisting at or handling a trial is excellent experience, but this opportunity is quite rare, as less than two percent of cases actually go to trial and more clients are reluctant to pay for two attorneys.

Having a child provides an unexpected, rewarding, and cost-efficient source of professional development. Skills that are necessarily cultivated and routinely exercised in the world of parenting not only complement, but directly transfer to the world of litigation. Parents practice these transferrable skills every day, without taking any billable time or effort from a partner or other mentor, and at no additional expense to the client or to the firm. If it were possible to accurately compare the detriments to an employer by virtue of its attorneys' parenting (including time missed from work) to the benefits to the employer by virtue of its attorneys' parenting (including the development of litigation skills), I suspect the latter would prevail. Would I recommend having children because parenting can assist an attorney professionally? Of course not. I would recommend having children because the challenges and rewards inherent in parenting far outweigh those that flow from any professional endeavor. Attorneys that have children, and the firms that employ them, have good reason to view the choice to be a parent as a career-enhancing move, and to recognize the professional value that good parenting skills can bring to a partnership, particularly for litigators. ♦

Kathryn Gardner litigated for 12 years in federal court while raising three young daughters, giving her the insight for this article. She is a Master and an officer in the Sam A. Crow American Inn of Court in Topeka, Kansas.

Rethinking Balance, Reinventing Yourself

By Julie A. Fleming

Is it really possible to strike an ideal work/life balance? Instead of trying to balance your personal and work lives, integrate them to shape a life that reflects the person you want to be.

When attorneys call me to seek coaching on their “work/life balance,” my initial response usually stuns them: Work/life balance is a myth. The phrase suggests that there’s some ideal, static point at which a lawyer’s professional and personal sides perfectly balance one another. Imagining that there is a single point of balance for all lawyers to achieve creates unhealthy competition.

For example, if you perceive that your colleague’s point of balance includes more personal time and less professional time than yours does, you may think that living your life with less personal time and more professional time makes you *more*—more dedicated, more successful, more professional. But worst of all, the use of the phrase work/life balance suggests that lawyers are either “in balance” or “out of balance,” the former being good and the latter being damaging.

Instead of encouraging a work/life balance, I help lawyers create successful, satisfying, and sustainable practices, according to what works best for each lawyer at any given time. The attorneys who take this approach build an integrated “life at the bar.” Such an integrated life is based on the concept that to be effective advocates and counselors, lawyers must be alive—fully present, focused, and all systems go—in their practices.

While there’s certainly a separation between professional and personal life, there’s work in life and life in work. Your work should be endowed with passion, purpose, emotion, logic, humor, relationships, and all the other things that make life lively and satisfying.

Most important, when work and life are integrated, you don’t have to spend hours slogging away at the office, waiting for 5 p.m. or 7 p.m. (or later) to begin living again during your precious few non-work hours. And you don’t have to put on an ill-fitting mask to survive at work.

When your work and life are integrated, you’re authentically who you are, whether at home or at

work, and rewards flow in both places. Of course, there will be times when you’re eager to leave the professional focus at work and to turn to the personal focus at home, or vice versa, but there’s *life* in both places.

So, how can you begin building an integrated life? By taking two simple—but not necessarily easy—steps. First, discover how to create maximum energy that feeds both your practice and your personal life. Second, create habits and structures that support a high level of personal and professional energy. These steps will be different for each person, because the starting point lies in what matters most to the individual, recognizing that top priorities will shift from time to time.

Create maximum energy

Successfully integrating your work and life begins with a focus on energy. Energy is the currency for all activity and is essential for productive output. Jim Loehr and Tony Schwartz, authors of *The Power of Full Engagement*, describe four sources of energy that must be present for one’s optimum performance: physical, emotional, mental, and purposeful.¹ Building up stores of each of these sources requires identifying what fuels energy and what drains it in each domain.

Physical energy. What fuels you physically? Some fuels are universal: sufficient rest, good nutrition, adequate activity, and plentiful hydration. Even within those universal fuels, though, individual differences exist.

Perhaps you need seven hours of sleep a night, while your spouse or partner needs only five. Maybe you’ve noticed that eating “white” carbohydrates like non-whole-grain pasta, bread, and rice leave you dragging and that eating meat makes you feel heavy, while you feel energetic and satisfied when you eat whole grains, fresh vegetables, and fish. Find your own unique daily requirements.

Ironically, some of the substances we rely on to give us energy, such as caffeine and sugar, actually drain us physiologically. Another factor is adrenaline, which pumps you up in the short-term but typically leaves you exhausted long before your work is done. And although many people choose to flop on the sofa and watch TV when they are tired, rather than take a walk or go for a swim, physical activity typically generates physical energy.

Each person has to make an individual decision about what's most effective and acceptable for him or her. Detective work and experimentation are key to finding your balance.

An example: Bob, who hired me to help him with business development, complained of being too tired to attend networking functions or to write a client newsletter. As is almost always the case, he didn't hire me to discuss his energy level.

I discovered that Bob had cut back on his sleep (to as few as five hours a night, even though he actually needed closer to nine) and on exercise and nutrition (as he got busier, he eliminated his lunchtime run and turkey sandwich and started eating junk food at his desk). He was operating largely on coffee and adrenaline. After experimenting, he found that sleeping seven hours at night and taking 45 minutes for a quick run and healthy lunch each day actually made him more productive in fewer working hours because he had more energy.

Emotional energy. Emotional energy is necessary to handle the frustrations and disappointments that occur throughout the day. Being short on emotional energy leads to negative outbursts (perhaps blasting an assistant for an error and later regretting it, chalking your behavior up to stress) and limits your ability to meet emotional needs. Emotional energy is particularly important for plaintiff attorneys, because without this energy, it may be easy either to be rigid and inattentive to your client's emotional needs or to be crushed by the enormity of your client's situation.

An activity that brings you back to "center" will increase your emotional energy. Consider meditation or moving meditation (such as tai chi), visualization, listening to music that reaches your emotions, or sharing strong relationships in which you can express your emotions.

One trial lawyer makes a habit of viewing art on a regular basis to get in touch with his creative, emotive side. When headed into trial, for example, he finds sustenance in battle scenes, and when preparing for a meeting with an emotional client, he finds classical depictions of family helpful in allowing him to empathize with the client's family

and to keep his focus on the case rather than succumbing to their grief.

Mental energy. Mental energy is necessary to sustain focus and concentration; it fuels the mental flexibility required to identify and examine a variety of points of view. The primary way to enhance mental energy is to expend it—and then to renew it.

The use of mental energy is evident in the concentration that athletes harness during competition. When Tiger Woods is about to take a swing, he almost visibly draws his energy tight, focusing exclusively on the task at hand. He may be making multiple observations and assessments—the direction and speed of the wind, the slope of the land, and so on—but his attention is focused only on making the best shot. After he swings and sees the result, he relaxes and allows that focused energy to dissipate to some degree.

Remember also that the limit on focused concentration is 60 to 90 minutes for most people. Sara's story should speak to lawyers. Sara complained that she was ineffective in the afternoons at work. I asked about her work patterns and learned that she'd blocked out four hours each afternoon to focus on a large project. Halfway through the afternoon, though, she'd get tired and easily distracted, and her work product suffered.

By dividing her afternoon into three 70-minute blocks, with 10-minute breaks for walking around, stretching, and listening to music that made her feel good, Sara became more effective even though she was actually devoting slightly less time to her work. The difference? Increased mental energy.

Other methods to increase mental energy include, again, meditation and visualization. Both of these activities draw on the power of the mind to focus and train for concentration.

Mental energy may also be enhanced by creative work, such as painting, music, or dance. Creativity may improve your mental flexibility by helping you get in touch with the analytical and intuitive aspects of your work.

Purposeful energy. Purposeful energy reflects values. A lawyer's purposeful energy is maximized when she knows what compelled her to go to law school and to practice law and when she finds a way to connect that vision with her day-to-day practice.

The work that trial lawyers undertake on a daily basis is simply too demanding to maintain without

Creativity may improve your mental flexibility by helping you get in touch with the analytical and intuitive aspects of your work.

Continued on the next page.

some purpose. Very often, lawyers who experience a crisis in practice have lost the connection between their values and the way their career is playing out.

Maximizing purposeful energy, then, calls for self-reflection. What matters most to you? What is your top priority today, this week, or this year? What values are important to you? How can you express those values in the way you live and work?

Many trial lawyers find that their values include justice, independence, and truth, which correlate well with a plaintiff practice; others hold values that can be incorporated into such a practice, perhaps teaching and humor.

While knowing your values is critical, it's actually incorporating them into your life and living from them that maximizes energy. Attorneys often benefit from writing their top values or priorities onto several small cards or sticky notes and placing those notes near their computers, telephones, and calendars—anywhere that they're likely to look when making a decision about how to use their time. Acting in accord with your values and priorities increases purposeful energy; acting in dissonance with them decreases that energy.

Adopt healthy habits

Once you've learned how to maximize the four sources of energy, it's important to create habits and structures that support the changes you've decided to implement. Anyone who has ever made a New Year's resolution or gone on a diet knows how easy it is for good intentions to fail, especially in the face of stress. Entrenched habits become default behavior. If you want to create change, you must create a new default.

Intentionally designed habits carry many benefits. Most notably, self-discipline becomes largely irrelevant, because a well-planned habit operates even when self-discipline might falter. For example, most people have a nighttime routine that might include brushing their teeth, washing their faces, perhaps removing and cleaning their contact lenses. Because this ritual behavior requires little or no conscious thought, it will happen every night, except in truly extraordinary circumstances. Your task, then, is to create energy-maximizing rituals that operate automatically and from purpose.

When designing your energy-enhancing rituals, consider the following suggestions.

Ensure that your basic ritual creates periods of engagement and selective disengagement. The engagement builds and expends physical, emotional, mental, and purposeful energy, while the disengagement allows renewal of that energy.

By defining periods of *selective* disengagement, you'll reenergize at a time of your choosing, rather than becoming exhausted and disengaging from your professional or personal responsibilities simply because you have no more energy to give.

For example, Randy wanted to break his habit of running through his day at a breakneck pace, which left him feeling tired and irritable by mid-afternoon. He created a ritual of beginning work at 7:30 a.m., working until 10 a.m. (engagement with his work), and then pausing for a healthy snack while listening to music (selective disengagement). He'd work again from 10:15 until 11:45, at which point he'd disengage from his work, exercise for an hour, and eat a quick, nutritious lunch. His day would continue with similar periods of concentrated work alternating with short periods of disengagement from work. After living with this schedule for a short time, Randy discovered that, although he was working fewer hours, his work was substantially more effective and his energy carried him easily through the day.

Focus on setting specific intentions. When you're moving substantially outside of your comfort zone, it is especially important to state your plans in specific, concrete terms. This will help ensure that you put those plans into action. For example, rather than simply deciding to begin meditating, you might decide to meditate between 6:00 and 6:10 each morning.

Create incremental change. If you decide to increase your physical energy by getting more sleep, exercising more frequently, drinking water instead of caffeinated beverages, reducing your intake of fat, and increasing your intake of fruits and vegetables—and you decide to do all of these at once—your chance of success is not great. Taking on too much change at one time is simply overwhelming.

Rather, choose one change that is both challenging and attainable. When you've mastered your new ritual, then it's time to add another and build on your success.

Create affirmative rituals. Don't think of a pink elephant! A directive that tells you what not to do brings into your mind the very behavior you're trying to change. The same holds true for decisions not to drink coffee, not to lose your temper, or not to interrupt someone who's speaking. Instead, phrase your intention in the positive: choose to drink water or other decaffeinated beverages, to take a few deep breaths when you feel your temper rising, or to wait for a speaker to finish his or her thought before you begin to talk.

Devise four-way wins

In the typical framework of work/life balance, devoting more time or energy to work necessarily

means devoting less to life, and vice versa. A better approach is to find the points of intersection between work and life and to look for win-win solutions.

Stewart Friedman, author of *Total Leadership: Be a Better Leader, Have a Richer Life*, urges leaders to seek “four-way wins,” meaning high performance in the four domains of life: work, home, community, and self (mind, body, and spirit).² Achieving these wins creates “total leadership,” which in turn creates sustainable change that increases success and satisfaction in each domain. Friedman recommends creating experiments to test incremental change that typically has a direct impact on one domain and an indirect impact on the others.

For example, a commitment to exercising three mornings a week directly benefits the leader’s self domain with better health and reduced stress. And it indirectly benefits the work and home domains, as the leader focuses more effectively on matters at hand, has greater emotional stability, and is a better “partner,” whether to colleagues or family members.

Friedman, like authors Loehr and Schwartz, recommends adopting only a small number of experiments at any given time—no more than three. He suggests keeping careful notes about the results of each experiment, to facilitate a rational decision about its impact and whether to continue it. As a starting point, Friedman recommends eight categories of experiments that may create four-way wins:³

- tracking an activity and reflecting on progress toward a goal: increasing self-awareness
- planning and organizing: finding ways to use time more effectively and plan for the future
- appreciating and caring: building relationships
- focusing and concentrating: being fully present to clients, colleagues, staff, and others
- revealing and engaging: enhancing communication and building relationships
- time shifting and “re-placing”: changing when and where work is done
- delegating and developing: passing appropriate tasks to subordinates and assistants
- exploring and venturing: taking steps to align the four domains of life with the person’s core values and aspirations

Notably, each category lends itself well to creating a structure that will enhance one or more sources of energy. Here’s an example: Jennifer, a sole practitioner, decided to experiment with the “delegating and developing” category. After evaluating how her practice operated, she decided to hire a law

school student as an intern, and she delegated routine drafting (such as simple complaints and discovery requests) to the student. Jennifer realized an immediate benefit because she was no longer starting each document from scratch. Instead, she had a draft document that sometimes incorporated ideas that she would not have considered—creating a win in the work domain.

Jennifer also introduced the student to her practice and to some colleagues, and she served as his mentor—creating a win in the domain of community. In doing so, she reconnected with her enjoyment of teaching—a win in the spiritual domain—and even found that she gained enough time to incorporate a weekly pottery class—a win in the personal domain. Jennifer created a four-way win simply by delegating work to an intern and putting time in to assist in his professional development.

Rather than searching for that mystical, mythical point of work/life balance, seek to increase your energy to fuel peak performance in all areas of your life.

Your priority may be focused at times on work and at other times on your personal life. You will be able to adapt to the shifts by building rituals and habits that enhance your energy and make you strongly effective in each domain of your life. Through these steps, you will build a successful, satisfying, and sustainable practice that is a robust part of your life at the bar. ♦

Notes:

- 1 Jim Loehr & Tony Schwartz, *The Power of Full Engagement: Managing Energy, Not Time, Is the Key to High Performance and Personal Renewal* 9-11 (Free Press 2003). The authors use the phrase “spiritual energy” rather than “purposeful energy.”
- 2 Stewart D. Friedman, *Total Leadership: Be a Better Leader, Have a Richer Life* 2 (Harv. Bus. Press 2008). A central thesis of leading a successful, satisfying, and sustainable life at the bar is that every lawyer is a leader in some capacity: serving as lead counsel on a case, being a leader in client representations and relationships, leading a part of a client project, volunteering as a leader within a bar association, and so on. This thesis, while outside the scope of this article, is integrally related because a key leadership competency is synthesizing all aspects of life so that a leader is more or less the same person at work, at home, in the community, and when alone.
- 3 *Id.* at 123-27.

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Oral Advocacy: The Good, The Bad and the Ugly

Program Number: P11808

Presented By: The Hon. William A. Ingram AIC, San Jose, CA

Presented On: 11/17/2009

Available Materials: Script, Articles, Handouts, DVD

Summary:

The focus of this program was the improvement of oral advocacy in the trial and appellate courts. The pupillage team created eight short skits based on real life oral advocacy challenges. Some of the challenges the team addressed were stage fright during a court appearance, violation of an In Limine order during closing argument, and critiquing the trial court during oral argument in an appellate court.

Roles:

Moderator	Master
Attorney (4)	Any Level
CEO	Barrister
Client (4)	Barrister (2), Pupil (2)
Appellate Court Justice (2)	Master



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