LawyerLife

A Handbook on the Contemporary Practice of Law

By Carl Horn, III

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CHAPTER 4

TWELVE STEPS TOWARD FULFILLMENT IN THE PRACTICE OF LAW

Remedies for the profession-wide ills identified in Part I fall in two broad categories: (1) those based on individual choices, and (2) systemic initiatives and reforms. This chapter focuses on the former, that is, on life and career decisions the individual lawyer can make to enhance professional fulfillment. Chapter 5 will address systemic initiatives and reforms in legal education, law firms, the organized bar, and the courts.

This chapter is organized, only partly with tongue in cheek, as the world's first 12-Step Program For Lawyers.[1] Although there is nothing magic about the delineation or order of the recommended "steps," there has been an intentional blending of the professional and the personal. Keeping that in mind, the twelve steps toward greater fulfillment in the practice of law — and, of course, in life generally — are:

- Step 1. Face the facts
- Step 2. Establish clear priorities
- Step 3. Develop and practice good time management
- Step 4. Implement healthy lifestyle practices
- Step 5. Live *under* your means
- Step 6. Don't let technology control your life
- Step 7. Care about character — and conduct yourself accordingly
- Step 8. "Just say no" to some clients
- Step 9. Stay emotionally healthy
- Step 10. Embrace law as a "high calling"
- Step 11. Be generous with your time and

money

- Step 12. Pace yourself for a marathon

Whether the reader is a law student making initial career decisions, an associate or partner in mid-career, or a senior practitioner, these twelve steps will help you avoid — and, if need be, reverse — the troubling trends discussed in preceding chapters. Law professors, judges, and others in close working or personal relationships with lawyers may also find these recommendations useful.

Several assumptions underlie the recommended steps. First, there has been an attempt, as noted, to harmonize the strictly *professional* with more *personal* goals and values. Although properly kept separate and distinct in other contexts, when work takes as much of our life energies as does the contemporary practice of law, the professional and personal dimensions of our lives are in unavoidable tension. Facing this tension head on, the intent has been to develop "steps" that will enhance our fulfillment not only professionally but also on a deeper personal level.

The second assumption has been the preferability of the simple and straightforward to the more complex, where that is possible. On one level, of course, the problems facing the legal profession are mindbendingly complex, as indeed are the problems facing contemporary society generally. Some effort has been made to acknowledge relevant complexities, nuances, and caveats in preceding chapters. On the other hand, as theologian Richard John Neuhaus has reminded us, we on occasion find "simplicity on the other side of complexity." Many of the readers will have enjoyed introductory courses taught by brilliant professors who know more about their subjects than most would ever care to hear, but could nevertheless communicate broad concepts in a lucid, simple, and compelling manner. This is the simplicity on the other side of complexity for which we strive.

The third assumption or organizing principle has been the need to balance objective data and recommendations on the one hand, with more subjective "steps," on the other. The observation that honestly billing more than 1800 or 1900 hours per year will seriously impinge on one's ability to be a sufficiently present parent or an available friend or a volunteer in the community or even a happy person — whether you agree with it or not — is more-or-less an objective one. The same is true of specific time management and minimal exercise recommendations, as well as cautions about intrusive technology which never allows the relief from work everyone needs. On the other hand, exhortations to make significant relationships a priority, to care about character, to embrace law as a "high calling," and to pay attention to emotional health all tend toward the attitudinal and subjective. Although some hyper-rational lawyers may have difficulty with the latter

recommendations, dismissing them as too "touchy feely," this does not make the subjective any less important. This is true, as University of Chicago Professor [of English] Richard M. Weaver urged in his book of the same title, because "ideas have consequences."[2]

As we have seen, the concept of law as a public service "calling" led prior generations of lawyers to volunteer countless hours to their communities, to worthy organizations and causes, and to clients unable to pay their fees. Not surprisingly, public respect for lawyers and professional "fulfillment" followed what began essentially as an idea, or a series of ideas, about what it meant to be a lawyer. Conversely, as cynicism about the higher purposes of law — and *the idea* in some quarters that making money is sufficient *raison d'etre* for the profession — have taken hold, public approval and lawyer happiness appear to have fallen. As you reflect on the following "12-Step Program For Lawyers," keep in mind that subjective attitudes and abstract ideas often precede objective changes in conduct. That is why, to successfully counter contemporary problems and trends, we must address both.

Step 1. Face the facts

Every 12-step program begins with an exhortation to those in the targeted group to acknowledge their need. "My name is John, and I am an alcoholic." Or, I am addicted to sex or food or some other habit or compulsion. Or in current context, perhaps, I am a lawyer who went to law school (or began practice) with high ideals, intentions to live a balanced life, etc., but now....

Part I (Chapters 1 through 3) addressed survey data, anecdotal evidence, and expert opinion which collectively suggest troubling trends in the legal profession. Some commentators, particularly those writing from the academy, see the profession as dying, as "on the edge of chaos,"[3] or otherwise as being *in extremis*. Others, particularly older practitioners, lament that the profession they have proudly served has become an increasingly unprincipled, dollar-driven business,[4] express concern over decreases in collegiality, civility and "professionalism," worry about the precipitous decline in public respect, and/or simply note that they are working more but enjoying it less.

These are the profession-wide "facts," but they are *not* primarily the facts we are being invited to face in Step 1. Here we are being asked to make a more personal assessment. How am I doing in light of my own values, standards, and priorities? Have they changed? Am I pleased with the balance in my professional and personal life? Are my priorities, as evidenced by how I spend my time week in and week out, consistent with any principles, dreams or ideals I once brought to the table? Am I a professional who

treats colleagues — and opponents — with civility and respect? Or we might ask, if I were on trial for being a nice person, or a successful parent, or a good citizen, or [you fill in what quality or virtue *you* hope to reflect], would there be enough evidence to convict me?

The surveys and studies reported in Chapter 2 clearly indicate less satisfaction and more dysfunction in the practicing bar. A sizeable minority describes itself as dissatisfied to the point that they do not plan to practice law until retirement. In several surveys a majority would recommend against one of their own children following in their professional footsteps. And a not insignificant minority is so "miserable" they are currently being treated for clinical depression or have even been contemplating suicide.

Hopefully these more distressing reports will not describe a large percentage of the readers of this book, but be honest. If you were to give yourself a "happiness check," on a one-to-ten scale, where are you? How does that compare to three years ago or five years ago? Or, for that matter, to when you were in college or law school or got married or had your first child? Are you emotionally healthy? Are you satisfied with the key relationships in your life? When you look back on these years, will you be pleased with your priorities — as evidenced by how you *actually* spent your time — or will you regret not having spent more time with your family and close friends? In short, do you feel good about where you are professionally and personally and where your life appears to be going? Again, be honest.

These are the facts we each must face, and not just once but on a regular basis, if our lives are to remain balanced and on course. Lawyers who do not ask these kinds of questions, who fail to engage in periodic introspection, are more likely to experience what Dr. Benjamin Sells has described as "the lingering feeling of emptiness despite material success."[5] Others will realize at some point that the stress in their life has grown intolerable, that in Judge Silberman's words they "hate what the practice of law has become,"[6] or that their use of alcohol or even illegal drugs has moved to the danger zone.

It would be naive, of course, to suggest that all trouble can be avoided, or happiness assured, by any simple exercise. However, by honestly and openly asking the right questions, we increase our chances — that is, we take the first step — toward a balanced, fulfilling professional life.

Step 2. Establish clear priorities

Let's be realistic and honest. In the very best of times practicing law has been a challenging, time-consuming, and often difficult undertaking. The origins of the maxim about the law as a "jealous mistress" are lost in history, but it goes back at least to the 1950s when a majority of lawyers were solo practitioners or

had one or two partners. And it certainly predates the era of billable hour requirements, the geometric increase in large firm practice, young lawyers who require six-figure incomes to pay off five or even six-figure educational debts, and other stressors of more recent origin.

Although lawyers in prior generations worked hard, and on occasion were consumed by their work, broad dissatisfaction with the profession was simply not an issue on the table. Law has never been a nine-to-five job, but Jonathan Foreman's description of associates in his large New York firm as "wage slaves"[7] would have almost certainly fallen on deaf ears even as recently as the 1970s. And somehow the lawyers in these earlier generations still found time to serve their communities, mentor younger colleagues, be sociable with one another, and do an impressive amount of pro bono work.

What has changed? Why does it seem so excruciatingly difficult today to engage in all these laudable professional and civic activities — not to mention to find time and emotional energy for family and friends, for exercise and other "healthy lifestyle practices," or every now and then, just to "chill out"?

One major reason for the change, seldom mentioned in the laments on lost balance, is the larger-than-law demographic shift, beginning in earnest in the 1960s, from one to two wage-earner families. We must not forget that the jealous *mistress* metaphor fit, in part, because most of the lawyers were men. And, more pertinent to the point at hand, most with families to "balance": (a) had a more limited concept of their parental role as primarily "to put food on the table," and (b) enjoyed the free services of a stay-at-home mom who took care of responsibilities most contemporary couples now share. Indeed, this fundamental demographic shift is so significant and pervasive that we are almost "comparing apples to oranges" when we look to earlier generations of lawyers for inspiration or guidance.

Whether single or married and, if married with children, whether one or two of the parents work outside the home, there is a widespread sense today that there is never enough time. And that is precisely why it is crucial to establish clear priorities. As someone once quipped, "If you don't know where you're going, any road will take you there." We must know at least where we *want* to go with our professional and personal lives — and prioritize our time accordingly.

Bruce Warnock, an Arizona lawyer and real estate developer, learned this lesson in what my country-bred grandfather would have called "the hard way." Giving what is essentially a personal testimonial, Warnock began his contribution to the ABA's 1993 publication, *Breaking Traditions: Work Alternatives For Lawyers*, with an evocative question. "What do you do when you wake up one day," he asks, "and realize that your priorities have been distorted for more than twenty years?"[8]

Warnock's story, an increasingly familiar one, might on one

level be described as "too much of a good thing." Raised by "Depression-era parents" who instilled in him the kind of work ethic which often leads to material success, but can also lead to unhealthy workaholism, Warnock's wake-up call came in the form of "three cataclysmic events" in a single year: his partner in the development company had a nervous breakdown, his wife of sixteen years and the mother of his two children was diagnosed with cancer, and the real estate market in which he was heavily invested began what was to become "its tremendous plummet."[9]

Reminiscent of Aleksandr Solzenitsyn's "bless the prison" comment in *The Gulag Archipelago*, Warnock elected to learn and grow from these life-shaking events. Beginning with "a concerted program to get [his] priorities in order," he quickly realized that while he was working twelve-plus hours a day, six or seven days a week, his daughters and wife had been growing and developing largely without him. "I felt a little like Rip Van Winkle," Warnock reports. "Where had the years gone since I rocked them to sleep?"[10]

Brian Warnock is one of the lucky ones. He "woke up" after only twenty years, before it was too late to rekindle relationships with the family he always considered, at least in the abstract, to be the primary reason he was working so long and so hard. Others are less lucky because, as San Francisco lawyer Michael Traynor reflected toward the end of his career, the child-raising years slip away in a blur if we are not careful. Writing in the *Vanderbilt Law Review* in 1999 (when he was in his late 60s), Traynor gave some retrospective advice every parent should heed:

> I will emphasize that the years with your children fly by in an instant, that they and time with them are precious, and that I wish I had spent more. Whenever you can, tell the god of money and the god of ambition, who is no less voracious, that you and your kids are going to fly a kite or build a snowman.[11]

The bottom line: to avoid later life regrets, realize *now* that the time you spend with your children will be remembered as "precious" — and as far more valuable than more money or any temporary career achievement you may have to forego. Make spending time with your children a top priority, and be sure your daily and weekly schedules reflect it.

This does not mean that lawyers, with or without children, should not be prepared to work very hard. It simply means that, if we aim to live balanced lives, lines must be drawn beyond which we are not willing to go, at least not on a regular basis. In other words, living a balanced life — in which quality time is regularly saved for our families and other close relationships — should itself become one of our top priorities. And when people or pressures repeatedly push us in a contrary direction, we must learn to say politely but firmly, "Sorry, that part of me is not for sale." Or words to that effect.

Again, let's be realistic and honest: having enough money is important, and as a repairman once responded when I questioned his bill, "Life ain't cheap." In fact, let's go a step further and agree that making enough money should be one of our "clearly established priorities." But, of course, the proper priority in a balanced life which should be given to making *enough* money must not become a license for workaholism or what one commentator called a "money-centered world view." Money is a means to an end. If balance and happiness are among our life goals, we must be vigilant not to allow it to become an end in itself.[12]

Ronald H. Kessel, then Managing Partner of Palmer & Dodge in Boston, made this point at the previously noted meeting of the Womens' Bar Association of Massachusetts where "The Misery Factor" was the appointed topic for discussion. Illustrating perhaps the wisdom in Voltaire's quip that "common sense is not so common," Kessel counseled those present "to be prepared to make less. It's not the end of the world. You don't have to make more and more money at the price of being miserable."[13]

Harvard Law Professor Alan Dershowitz makes related points in *Letters To A Young Lawyer*,[14] a quick but engaging read for lawyers of any age. In a three-page reflection titled "Don't Limit Your Options By Making A Lot Of Money," Professor Dershowitz recounts friends and former students who have turned down jobs they had always wanted because they "can't afford" the reduced income.[15] Dershowitz points to "the irony ... that [those] who turned down judgeships or other dream jobs were richer when they had less money and poorer when they had more."[16]

"Money matters, and there's nothing wrong with wanting to live a comfortable, even financially independent life," Professor Dershowitz concedes.[17] But, like the wealthiest people at his family's preferred vacation spot who "tend to have the shortest vacations, because every day away from *their* work costs them more money than the rest of us," Dershowitz is absolutely correct that "too many rich people ... end up living financially *dependent* lives."[17] And he is also correct that "[w]hen money enslaves rather than liberates, something is wrong."[18] Badly wrong.

Law students looking at career options should be especially careful, as Professor Patrick J. Schiltz put it, not to permit themselves "to be purchased at auction like a prize hog at the county fair. Do not choose one law firm over another because of a $3,000 difference in starting salaries."[19] Rather, "make it clear to prospective employers that salary is only one of many factors you will consider in choosing a law firm."[20] Of course, you should expect to work very hard, and sometimes this will require "long hours at the office (and terrifically long hours when you have a case about to try or a deal about to close)."[21] But "[t]hat said, you should at least signal a prospective employer that, while you intend to work hard and be successful, you also intend to do more with your life than rack up billable hours. You can and should let prospective employers know you do not intend to permit work to

consume your life and that you are willing to sacrifice some money in order to have a life outside the office."[22]

Bruce Warnock, Michael Traynor, and Ronald Kessel are three successful lawyers who would certainly agree; each has learned the importance of what we are here calling "Step 2." They learned that, if we are to realize professional fulfillment, we must establish — and unequivocally live by — clear priorities. They learned, in other words, the importance of what some of our mothers and fathers correctly described as "putting first things first." They learned, to go right to the bottom line, that if we hope to be happy establishing clear priorities is a must.

Step 3. Develop and practice good time management

Turning our attention from somewhat subjective values and priorities, the more pragmatically inclined will be pleased to note that our next step — developing and practicing good time management — is about as practical as it gets. Here, we simply agree that *whatever* time we spend on our work should be arranged for maximum productivity.

In the "olden days," this was simply referred to as being efficient or "well organized." Somewhere along the way, as in so many areas, experts emerged in what came to be called "time management." Like experts in organizing closets or garages, personal trainers, etc., some experts in time management can be quite helpful, even if they essentially offer common sense solutions that many of our predecessors discovered instinctively or by trial and error.

I thought recently of this phenomenon — the appearance of "experts" in areas formerly left to individual initiative — when a close friend, who is married to a successful doctor, retained a personal finances expert. After paying him thousands of dollars, Dr. So-And-So delivered two stunningly insightful recommendations: (1) when borrowing to purchase a new car or boat or whatever, at some point plan to pay more than just the interest on the loan; and (2) try to keep spending, including repayment of accumulated debt, somewhere below all available income. ("That will be $5,000, please.")

This example is not offered to broadly disparage time management experts. Some are very good and, in fact, several of their books and articles will be heartily recommended. However, keep in mind that there are certain basic organizational insights and habits, formerly thought to be within lay expertise, that you can begin to apply immediately.

That said, one book which is full of practical insights on how to use time more efficiently is Alec Mackenzie's *The Time Trap*.[23] First published in 1990 by the American Management Association, its widespread appeal is evidenced by the thousands of copies that continue to be sold each year. Lawyers will find Mackenzie's discussion of the top twenty "time wasters" particularly pertinent

and helpful. According to the author, the key impediments to our efficiency at work are:[24]

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

Of course, certain points in any general discussion of time management will be more applicable to law practice than others, but Mackenzie's recommendations are a must read for any lawyer — from the "organizational challenged" to those, like your author, for whom efficiency and organization come more naturally.

In addition to insights gleaned from time management experts, whether by reading their books and articles or retaining one, there are at least five areas in which many lawyers could begin to make significant progress simply by paying closer attention. They are: (1) better planning; (2) minimizing interruptions (by phone or in person); (3) more careful scheduling/planning of meetings; (4) mastering the paper flow; and (5) more thoughtful and efficient delegation. Although not intended as a substitute for more in-depth analysis by the experts, it is hoped that even cursory discussion of these "time wasters" will convince the reader of the efficacy and potential of what we are here calling "Step 3."

In her contribution to the ABA's 1997 publication *Living With The Law: Strategies To Avoid Burnout And Create Balance*, time management expert Margaret S. Spencer emphasizes the central importance of better planning. Spencer graduated from Princeton University and Stanford Law School, completed a federal appellate clerkship, and practiced for six years in the litigation and energy groups of a major D.C. law firm before turning her considerable intelligence and talents to helping lawyers get better organized. At the heart of the advice she gives, as President of Spencer Consulting, is a foundational recommendation that lawyers spend more time in daily planning.

"Preparing and following a daily, written, prioritized 'to-do' list is the single most powerful time management technique," Spencer has concluded.[25] Otherwise, "you end up working on whatever project pops into your mind first, or whatever project is most noticeable on your desk, rather than a project you have consciously decided is the most important."[26] Taking a step back from what has been called "the tyranny of the urgent" to plan how our limited time *should* be spent is also "the best way to minimize the possibility a task will be overlooked. In other words, a good to-do

list helps you see the forest *and* the trees."[27]

Spencer suggests six steps toward creation and maintenance of an effective to-do list. Although there is nothing sacrosanct about the individual steps, and some may find them too detailed or cumbersome, there is also much substance in her detailed recommendations, and those with busy practices may want to appropriate most or all of them.

"First," Spencer counsels every busy lawyer, "make a written list of all the projects and tasks that you 'must' do, in the order that they come to mind, leaving a wide margin on the left-hand side of the paper.... List each project in discrete sections that can be completed in an hour or less. For example, instead of listing 'prepare memorandum of points and authorities,' write something like 'legal research for memo — bias issue' ..., 'draft first section of memo,' and so on. Cutting each project into bite-size chunks gives a clearer picture of the work to be done, helps you schedule your work realistically ... [and] makes it a less likely target for procrastination."[28]

"Second, go through this general list, assigning each project a priority level of A, B, C, or D, and writing the letter *in pencil* in the left-hand margin.[29] Spencer explains:

> A-level tasks are those that are both urgent and important (i.e., tasks that must be completed within the next few days to avoid serious negative consequences), such as drafting direct examination questions for a trial set for next week. B-level tasks are important but not urgent (i.e,, tasks that must be completed at some point beyond the next few days to avoid serious negative consequences), such as planning a general litigation strategy for a new case. C-level tasks are those minor matters that are urgent but not particularly important (i.e., tasks that, if not completed at some point in the very near future, would yield minor negative consequences), such as responding to an invitation to a function in which you are not particularly interested. D-level tasks are neither urgent nor important (i.e,, tasks that can be left undone indefinitely with only minor negative consequences), such as going through your address files to delete the names of people with whom you are no longer in contact.[30]

Author's note: whether one utilizes these precise categories (or even, for that matter, these six steps) is less important than that written, prioritized planning become an essential part of the daily work routine.

"Third," Spencer continues, "within each priority category, number each task (again, in the left margin and in pencil) according to its relative importance and the order in which logic requires the task to be done."[31] Spencer notes that this will help you focus, for example, on the need to delegate a portion of a project which may be a lower priority for you, but which needs prompt attention by someone in order for the overall project to be completed on time. In any event, at the conclusion of this step, "each item on your list will have a unique letter and number combination, such as A1, B1, and so forth."[32]

"Fourth, from this general list, prepare a separate, shorter written list, which will constitute your daily to-do list. Include only those tasks that you realistically think you can complete that day, keeping in mind other commitments such as appointments and meetings."[33]

"The fifth step is to start with project A1, and — as far as possible given the nature of your practice — *stay with it until it is finished.* Continue with A2, A3, and so on, checking off each task as you complete it, until you finish all the A-level tasks."[34] Next we proceed with "the B-level tasks, again *sticking with each task until it is done*. C-level projects, which are usually such tasks as dictating a letter, returning a phone call, or paying a bill, can be done during the transition time between the important projects, or during those times (such as just after lunch) when you know you are at your least productive."[35]

Spencer is a realist, recognizing that to-do lists will frequently have to be amended as "new tasks" or even "emergencies" come up. Rather than becoming unfocused and sidetracked by the unexpected, however, she counsels lawyers to plug the unplanned for work in *according to the priority it objectively deserves*. That which is really an emergency, for example, would likely be given an A1 priority. On the other hand, unexpected work which would have been given a lower priority had you known about it in advance should not be elevated to a higher priority simply because it caught you by surprise.

Finally, "[a]s the sixth and last step, at the end of the day (or whenever you make your next to-do list), go back to your general list, cross off all the tasks you completed that day, add whatever new tasks arose that day, reprioritize tasks as necessary, and make a new daily to-do list according to the steps previously described."[36]

Your author has been using a streamlined version of Margaret Spencer's prioritized to-do list for many years, and highly recommends it. As has been noted, it is not the precise way it is created or used that makes having a "daily plan" such a valuable time management tool. Rather, it is the fact that we are able, daily, to step back from the deluge of demands and pressures and decide which work deserves our limited time and energy.

My own daily and weekly planning includes elements and nuances some readers may find useful. First, I have daily plans (on 8-1/2"

x 11" lined paper) for two to three weeks ahead at any given time. Of course, they are skeletal two to three weeks out and must be amended as new appointments or work arise. Every Thursday or Friday, usually at the end of the day once it quiets down, I go through the week-at-a-glance calendar West Publishing provides, and create another week (the third week out) of daily plans. One of the benefits of looking several weeks ahead is that it frequently points to preparatory work (or errands or calls) that need to be noted for action a week or two earlier.

Centered at the top of each daily plan I write and underline the day and date. On the left side I record, in red ink, any appointment, engagement, or event — basically anytime I am expected to be somewhere, including in chambers, at a particular time. Below that I record, in blue ink, the files, projects, "action items," etc., on which I plan to work that day. About half-way down the sheet I write and underline "Calls," and then record them in pencil (with numbers, an added efficiency you will learn to appreciate). Finally, on the right side of the sheet I record any errands I hope to run or things I need to remember to do when I get home. (I also keep a 3 x 5 card in my shirt pocket for errands and at-home entries. As long as I write it down on my daily plan or the 3 x 5 card, I can relax and usually avoid unwelcome "surprises.")

One feature of my approach on which Ms. Spencer is silent, but which I strongly recommend, is the inclusion of personal and work-related to-do items on a single daily plan. For example, if one of my children has an athletic or other event, it goes in red. If I have agreed to write a letter of recommendation for a family friend, it goes in blue. Likewise, personal phone calls and errands are entered on a single daily plan. There is just one of each of us, with limited hours and energy to give, and I find that this kind of integration of professional life and equally important personal obligations is essential to a sense of being "successful" at either.

Several other brief suggestions regarding planning, in no particular order: (1) Keep a master annual calendar of key birthdays of family and friends, and enter them in your new calendar each year — both on the day of and sufficiently ahead to send a gift or card. (2) Always carry a 3 x 5 card and a pen, even on weekends, so you can make a note of things that come to mind (and then forget them), note errands and be more efficient in running them, etc. (3) Keep a separate list of the work you have assigned to others (their abbreviated "to-do list"), and mark items off as they are completed. (This has the double benefit of taking those items off *your* list and making you a more efficient supervisor.) At the end of each day, transfer any remaining items to tomorrow's daily plan. (5) And then go home, feel satisfied about a good day's work, and resist any nagging thought that you should have done more. If you have planned well and worked efficiently for the appointed time, there is little constructive

about these worrisome thoughts. You have worked enough.

Making progress on the second and third time wasters — interruptions and meetings — also requires a clear, prioritized plan for our work. Only then can a reasoned decision be made about whether to take the phone call, agree to meet, delegate to a secretary or associate, etc. In other words, without a daily plan we have no way of evaluating whether the unexpected claim on our time advances the "big picture" ball, or is a digression to be postponed or avoided altogether. Although this is a simple concept with which it is hard to disagree, it is frequently neglected in actual practice.

As every time management expert will confirm, how we handle telephone calls is of tremendous importance. This includes whether and when to accept calls, how best to screen calls, by whom and when calls are returned, and how much time we spend on a particular call. And while answers to these questions are to some degree a matter of personal style and preference, there are inherent efficiencies to keep clearly in mind as we determine what works best for us.

The principal efficiency enhancer in regard to telephone calls is simple: to the extent possible, avoid interruptions while working on priority projects during the most productive period of your day. This will require a good call screening system, preferably by a person rather than a machine, and a healthy measure of diplomacy. Some calls have to be taken, of course, but you may be surprised how few that turns out to be. And for those clients or others who are unreasonably offended by your eminently reasonable efforts to use time more wisely, perhaps you should skip directly to Step 8 ("Just say no" to some clients)!

The importance of having a good secretary, someone who projects warmth and competence *and* can efficiently handle what would otherwise become interruptions, cannot be overemphasized. If you have this kind of working relationship already, be thankful. And be sure to show it financially and by regular, thoughtful expressions of personal gratitude. If not, you should make finding and training a good secretary one of your "A1" priorities.

Once it is determined which interruptions should be blocked, whether they present by phone or in person, as many as possible should be handled by your secretary or an associate. ("Ms. Lawyer is not available right now. Could I help you?") Others, like the talkative coworker or friend, can be dealt with during what you decide is properly "down time." Some calls will have to be returned personally, but if you know the subject of the inquiry in advance — something a well-trained secretary will find out and can give you, frequently with a proposed response — you can also significantly reduce the time you spend on the *necessary* calls. And you can save all this time and prevent many concentration-breaking interruptions without offending or appearing to be less "available," at least to those callers or erstwhile visitors who are themselves reasonable.

Like all "best laid plans," even the most efficient approach to telephone calls will not prevent a certain amount of time and energy loss playing "phone tag." However, as Margaret Spencer observes, several small steps will go a long way toward reducing this residual annoyance. First, return calls as promptly as you can, consistent with the previously recommended approach — not days later, for example. Second, if you know what the call was about and can leave a message with the likely answer, there may be no need for a follow-up call. Third, if you jot down or otherwise have a written response in hand, you will probably convey it more efficiently, whether you are speaking to a person or a machine. And fourth, if you must leave a message requesting a return call, "include the specific time or times you are most likely to be available [to receive it]."[37]

As with interruptions generally, we can only determine whether it is advisable to set up or attend a meeting if we first have a clear, prioritized plan for our daily work. The plan is the big picture; meetings are details that only make good sense from a time management perspective if they fit into it.

Many meetings are scheduled unnecessarily, that is, the perceived need for the meeting could be satisfied, for example, by letter or a 20-minute conference call. Some meetings are planned prematurely, before the issues at hand are sufficiently ripe to allow for their efficient resolution. And even those meetings which are properly scheduled often lack a clearly defined agenda, which almost always results in more time being spent on nonessential tangents than is justified or reasonable.

A word to the wise: before you set up or agree to attend a meeting, decide that its purpose is consistent with your own work plan. Assuming you answer this question in the affirmative, ask yourself whether a meeting is really necessary, who should attend, and whether the timing is right. And finally, if preliminary analysis yields a green light, either prepare a clearly defined agenda for the meeting, or insist that someone else prepares one — and then stick to it.

A fourth area in which many lawyers could save considerable time is in the handling and processing of "the plethora of paper that continually crosses [our] desks."[38] The key principles here are: (1) touch the paper the minimum number of times (where possible, just once); read and deal with "the plethora of paper" in a time and manner consistent with your written daily plan, not allowing paper itself to become an inefficient interruption; and (3) whatever you do, don't get buried in it.

The first step toward time efficiency in handling paper is deciding how to sort it, and a close second step is determining when to review and deal with it. Obviously if you are working on a motion and a relevant pleading comes in, the answer to the latter question is right now. On the other hand, you should not allow yourself to be drawn into a memorandum in a B or C priority project during a time you have set aside for more pressing work. Again,

this is not rocket science, but it is astounding how often simple insights like this are overlooked in actual practice.

Margaret Spencer suggests sorting papers initially into three categories: "(1) to file, (2) to read, and (3) administrative."[39] There may be different or additional categories that work better for you, of course. But whatever categories you choose for initial sorting, efficiency lies in selecting the right time or times to attack the paper monster and then spending the least possible time on each item.

Spencer encourages lawyers to "[r]esist the temptation to spend more than a few seconds with any item until you have gone through the entire pile."[40] Like many rules there are exceptions to this one, but it is generally good advice. In any event, the idea is to go through "the daily deluge"[41] quickly, throwing away (or preferably, putting in a recycling bin) what we do not need to keep, and sorting the rest according to time sensitivity and our own pre-existing priorities.

We have all seen lawyers' desks covered with clutter, and indeed there will be readers of this book, some of whom are very fine lawyers, who fall in that category. Perhaps it is the author's Germanic brain (that craves order and cannot work well amongst clutter), but I will offer this advice to all: you will save time and *feel* more caught up and organized, if you avoid even *the appearance* of being buried in paper work.

A fifth time waster afflicting many lawyers is insufficient attention given to how and when to delegate. The value of a good secretary, who becomes in highest form almost an alter ego, has been extolled. This point cannot be emphasized enough. Similar praise and commendation can be given, from a time management perspective alone, to well-trained paralegals and administrative assistants.

For those with the luxury of associates (or partners) to whom work can be delegated, the same principles apply. Conversely, if "you live by the rule that the way to get things done right is to do them yourself," as Dr. Amiram Elwork put it in *Stress Management For Lawyers: How To Increase Personal & Professional Satisfaction In The Law*,[42] get over it. The time and energy you alone have to give can and will soon run out. What you can accomplish by the thoughtful and efficient delegation to others is significantly less limited.

Dr. Elwork is absolutely correct that an inability to delegate efficiently "can be a most debilitating and time wasting habit."[43] He is also correct that if we "hire the right people, [are] clear in [our] instructions, and create a supportive psychological environment" we are far better off "liv[ing] by a different rule: anything that can be done by others should be done by them."[44]

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

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

Step 4. Implement healthy lifestyle practices

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

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

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

Of course, exercise is a "no brainer." We all know we need it, and every medical report on exercise extols its positive effects on health and longevity. And yet, what scant data there is suggests that about "[h]alf of lawyers do *not* exercise regularly."[45]

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

> Being in good physical shape can make it much easier to handle these periods of extreme stress and can also make you feel better and more energetic during periods of

> normal stress. You can *always* make time to exercise once you realize that a moderate amount ... of vigorous, aerobic exercise gives you so much energy that it more than compensates for the time you spend exercising.[47]

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

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

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

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

- Take ten minutes each morning to think about the big picture. Readings from books on spirituality can be helpful.

- Take some time to become aware of your concept of the divine and its place in your life.

- Map out a balanced day, with time allotted for your financial, physical, emotional, and spiritual needs.

- Allow yourself to do nothing for five minutes at least once a day.

- Ask yourself a simple question: How could I spend my days in a way that would make me feel excited about waking up in the morning? The answer may help lead you toward more balance in your life.

- Try this balancing exercise: For the next seven days, keep a diary of your personal and professional time. Notice how much time you devote to each aspect of your life. Then ask yourself if you'd find any adjustments to your time allocation advisable. Are you investing your time in those people, places, and things that you treasure most deeply?

- Don't wait for a huge chunk of free time to materialize before you try these suggestions; find the time where you are now, in the present.[50]

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

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

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

Step 5. Live under your means

Points have been made in previous chapters and steps with a common assumption: the individual lawyer has choices to make, and the consequences of those choices can be widely divergent. Will we subscribe to values and priorities — and rigorously apply them — to prevent being swallowed by our work? Will we choose to be a present parent or an available friend over spending another evening or weekend in the office? And, understanding that our profession is more than a dollar-driven business, will we strive not only to become skilled technicians, but also wise counselors, loyal partners, mentors to younger lawyers, or even one of society's "blessed" peacemakers?

The next step is like these previously made points — it implicates priorities and calls on the individual lawyer to make choices — but it may also be more difficult to put into practice. This is particularly true for those who graduate from law school

with large educational debts (an irreversible fact). It is also true for those who have made the dubious (but potentially reversible) decision to buy into lifestyles they cannot afford without becoming what Jonathan Foreman calls "wage slaves."[51]

It is doubtful that many who borrow substantial sums to attend college or law school realize how graduating with a large debt can limit choices, but that is precisely what it does. Unlike the decision whether to buy a more prestigious address or a more expensive car, borrowing for educational purposes is often seen as a "necessity." And for some it truly may be.

The fact that borrowing may be (or has been) necessary does not prevent the cycle identified by the ABA's 2000 Pulse Study — the debt-driven need for a high salary leading to unreasonable work demands leading to discontent or worse — from occurring. As the Pulse Study described it, "[y]oung attorneys are often attracted to these positions because the high salaries allow them to more quickly pay off debt owed for law school.... Yet these same attorneys, many of whom were the best and the brightest in their respective law school classes, find practicing law [in firms paying the highest salaries] anything but stimulating."[52] In fact, many become positively miserable.

Those who make the unwise, although thoroughly understandable decision to move too quickly from the genteel poverty of the student life into a lifestyle they cannot yet afford are buying a lot more than they realize. They are buying into another cycle, as Stanford Law Professor Deborah L. Rhode put it, in which "desires, once satisfied, beget more desires" and yet "often do not yield enduring satisfactions."[53] And, more pertinent to the matter at hand, they are also — usually without realizing it — dramatically limiting their own options.

In Step 5 we seek to head this cycle off before it begins, and if it has begun, to do whatever we can to reverse it. If you or one of your children are considering how much to borrow for college or law school, do not make the decision lightly. Ask whether attending the much more expensive private school is really worth being saddled with the extra debt *for years* following graduation (and it may, in fact, be worth it — the point here is not to make the decision without carefully considering the real-life consequences). And if you are about to graduate from law school, and think whatever starting salary will make your heart's desires immediately affordable, run for cover!

The core insight here is that living *under* your means is the path to financial freedom, the path of maximum options — including the option of telling "Caligula" to go to hell, if necessary — and paradoxically perhaps, even the way to maximize our material pleasures. By controlling our expenses and saving a substantial part of what we make, when we *are* able to afford the nicer car or go on a great vacation (which we will have paid for in advance) — or, for that matter, when we make a generous contribution to a worthy cause — the pleasure will not be compromised by the stress

inherent in being overextended financially.

Reflect again on Professor Dershowitz' insight into the irony of friends and former students whose expensive lifestyles lead them to conclude, almost tragically, that they can no longer "afford" to accept what they had long considered "dream jobs."[54] Or the wealthy people who take the shortest vacations because each day away from the office costs them more than the rest of us.[55] This is not what most of us desire when we are thinking clearly, but it will be where many of those who prematurely buy into lifestyles they cannot afford will find themselves somewhere down the road. And again, Professor Dershowitz is hitting this nail right on the head when he warns that "[w]hen money enslaves rather than liberates, something is wrong."[56]

Johnny Cash grew up poor and, of course, became a highly paid entertainer. But he never forgot how it felt to be poor or lost the common touch. I recall reading years ago that Johnny Cash always carried thousands of dollars in his wallet. Having lived without, he enjoyed the freedom inherent in having extra money on hand. Although his means were higher than most of ours, he had discovered the value of spending less than he made.

Realistically, even absent large educational debts or the manic pursuit of material acquisitions, as the repairman once told the author, "life ain't cheap." Just as work expands to fill the time, so our financial "needs" have a tendency to expand and consume all we make — and sometimes a good portion of what we hope to make in the future. Cars now cost more than houses did when the author graduated from law school (in 1976), for goodness sake. The upshot is that, unless we actively struggle against it, we will find ourselves engaging in consumer spending that severely limits our ability to choose a healthier, more balanced life. How, after all, can we say "No" to more fee-generating work when we have all those bills to pay?

But if we are to live a balanced life we must learn to say "No" not only to more work, but also to the consumer spending that seems to make imbalance a necessity. By controlling our spending, we can significantly reduce the financial pressures that stress us out and push an increasing number over the edge. We can take "Step 5" toward fulfillment in the contemporary practice of law. We can live under our means.

Step 6. Don't let technology control your life

Some years ago a speaker held forth on how three technological innovations, also known as "modern conveniences," had actually robbed us of a great deal of our free time. The three culprits were the telephone, air conditioning, and what was then called "the Xerox machine."

It was one of those talks that made you smile and think, "I never thought of it that way." Although it is a good bet that few, if any, in the audience used these conveniences less following the presentation, it certainly made you think. Unlike more predictable

personal visits, the telephone had rendered us "on call" at almost any time (although I do remember being taught as a child never to call anyone at home after 9:00 p.m., and as a young lawyer not to call anyone at the office before 9:00 a.m.). Air conditioning, especially in the South, extended our nine-to-ten-month work year — court shut down, and many lawyers went to the beach, lake, or mountains during the hottest part of the summer — to twelve. And the transition from carbon paper to copier greatly expanded our concept of who "needs to know" about various documents, with all that entails. One does not have to be a Luddite[57] to get the point: technology is, as the ABA Pulse Study described it in 2000, a "double-edged sword."[58]

And, of course, the technological innovations have continued unabated. As will be the case with many readers, our children were more adept with the computer before they got out of grade school than we parents will probably ever be. But even for us relative Neanderthals, the computer is an omnipresent part of our daily lives. Virtually all lawyers (and judges and law professors) now do legal research online or on a CD, not with books or in a library. E-mail is the preferred way to communicate with many clients and lawyers, and indeed, some clients require it. And the internet is a must-use resource from the various research sites to information on expert witnesses to the ability to retrieve or file documents. And even as this is being written, as Bob Dylan sang to us boomers, "These times they are [still] a changin."

So what is wrong with all that? Nothing really wrong; and even if there were some preferable features of the earlier approach — having days instead of minutes to respond to communications, for example — we will never put the technological Genie back in the bottle. Time and technology will continue to move rapidly along, with or without us, as it did after Ned Ludd and those named for him took to destroying "laborsaving" machinery in 18th and 19th Century England.[59]

We can, however, note the additional pressure proximately caused by technology, and seek to humanize it a bit. And we can take Step 6, that is, we can refuse to let technology invade and control every inch of our lives.

Here is how the ABA Pulse Study described pressures caused by the "growing dependence on technology":

- Lawyers feel compelled to stay up on technology, yet they don't know where to turn.

- Attorneys are also finding it increasingly difficult to mentally disengage or escape from work when at home or on vacation.

- Less personalized communication both diminishes attorneys' ability to develop relationships with clients and can lead to miscommunication.

- Work itself has become more rushed and less considered.

- Instantaneous access to information pushes performance standards higher:

  — Clients expect fast turnaround on research and the remittance of documents.

  — Courts and clients expect legal work to reflect the most up-to-date decisions posted on the internet.[60]

The Pulse Study also noted the negative impact technology-related pressures were having on professional satisfaction:

- Practicing law is less personal and more mechanized.

- Younger attorneys often spend the bulk of their time in front of a computer screen, which is less stimulating and intrinsically satisfying.

- Attorneys find it increasingly difficult to put their stamp of professionalism on their work.[61]

Or, as one lawyer in a focus group — described as a "Firm Decision-maker" in Sacramento, California — put it, the problem is *too much* information. This lawyer reports, for example, receiving about 150 e-mails a day, on which he must spend up to "an hour every day just going through them. That type of information is an information glut.... I don't seem to ever get away from it."[62]

Think about it. If this lawyer left his computer at the office and took a two-week vacation, as he or she certainly should from time to time, upon returning to the office there would be over 3,000 e-mails, which would take about a day-and-a-half simply to go through and read. Is it technologically backwards to say this is "just nuts?"

The Pulse Study also elaborated on the effect the many hours spent glued to the computer is having on professional satisfaction, and not surprisingly, the news is not good:

> Except for attorneys who are involved in trial work, most attorneys spend the bulk of their first years sitting, day after day, in front of a computer terminal conducting somewhat tedious tasks — creating/filling out forms, researching issues, reviewing documents, etc. There is little opportunity to interact with — and thus learn from — other attorneys. Because these mundane tasks are the very source of billable hours, young attorneys also feel

> guilty about spending any time away from their desks. And, in law firms where new attorneys are paid high salaries, how much time one spends away from the computer "not working" is carefully scrutinized.[63]

This lack of collegiality, not to mention human contact with actual clients, catches many newly admitted lawyers by surprise. "One thing ... I was not prepared for," one "New Bar Admittee" in Chicago told an ABA focus group, was "sitting in your office by yourself, alone, all day long, with a max of five minutes of human contact. I didn't think it would be like that. I wasn't prepared mentally and emotionally for that."[64]

Nor is the daily dose of technology necessarily over when it is finally time to go home. There is always the home computer, or a laptop or notebook computer to be taken home to "finish up." Many lawyers are expected to go nowhere without a cell phone, beeper, or both, in case someone needs to reach them. And others are expected to check voice mail and e-mail regularly, even if further work has to wait until "first thing in the morning." (Dare you be so lax?)

Again, the Pulse Study — rightly calling technology "both a blessing and a curse" — draws an accurate picture of the dilemma faced by the contemporary lawyer who hopes to excel professionally, but also wants to have "a life":

> On the one hand, laptops, beepers, cell phones and other technological gadgetry allow these responsibility-laden attorneys to take work home with them so they won't miss their daughter's soccer game or their son's Boy Scout meeting. Technology also allows them to operate more efficiently which, at least in theory, frees up time they can spend with their families or on personal pursuits. The downside, of course, is that these very advancements have blurred the lines between office and home. Now it is impossible to escape the demands of the office. Many attorneys feel enslaved to check voice mail and e-mail regularly. Even those who have established boundaries realize these tenets may or may not be respected by clients or colleagues.[65]

Technology *is* both a blessing and a curse. Some clients and partners expect to be given home phone numbers, cell phone numbers, and beepers — and proceed to use them liberally. Expectations that associates and even partners will be in regular touch with the office electronically, wherever they are and whatever they are doing, are clearly communicated. Can any professional advancement, any interim material acquisition, really be worth this kind of omnipresent invasion of our privacy and personal space?

The answer, class, is "Of course not!" Or, if you wish, stronger language to that effect.

So how do we counter the technology-driven pressure to be, in effect, on duty or on call "24/7"? Although it is no easy project,

and to the extent we are attempting to roll back our current over-availability it may be even more difficult, it starts with drawing a line. As in the decision about how many hours to spend at the office generally, we must each decide how much of us is "for sale." And then if our clients, employers, or partners do not like it, tough luck.

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

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

Step 7. Care about character — and conduct yourself accordingly

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

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

not "stealing."

> And then what will happen is that it will become easier and easier to take these little loans against future work. And then, after a while, you will stop paying back these little loans. You will convince yourself that, although you billed for ninety minutes and spent only sixty minutes on the project, you did such good work that your client should pay a bit more for it. After all, your billing rate is awfully low, and your client is awfully rich.
>
> And then you will pad more and more — every two minute telephone conversation will go down on the sheet as ten minutes, every three hour research project will go down with an extra quarter hour or so. You will continue to rationalize your dishonesty to yourself in various ways until one day you stop doing even that. And, before long — it won't take you much more than three or four years — you will be stealing from your clients almost every day, and you won't even notice it.[67]

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

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

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

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

> preparing a client for a deposition, you will help the client to formulate an answer to a difficult question that will likely be asked — an anwer that will be "legally accurate" but that will mislead your opponent. And then you will be reading through a big box of your client's documents — a box that has not been opened in twenty years — and you will find a document that would hurt your client's case, but that no one except you knows exists, and you will simply "forget" to produce it in response to your opponent's discovery requests.[69]

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

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

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

If more lawyers would accept and apply this simple precept — treating others as they would wish to be treated — many of the ills inherent in contemporary practice would be addressed *ipso facto*. Certainly, the return to collegiality and civility, a core concern of the "professionalism movement," would be. Ditto for the prompt return of phone calls and response to correspondence, full cooperation during discovery, and the general need to reduce aggression and stress, which is "over the top" for altogether too many practitioners.

The ABA Pulse Study noted as "Pressure Point #6" what it called "an erosion of professional courtesy and sense of community" in the contemporary practice.[75] Professor Roger E. Schechter called

it "the civility crises" in his 1997 article, "Changing Law Schools To Make Less Nasty Lawyers."[76] Professor Schechter describes the perceived problem as lawyers who are "increasingly prone to behave as combatants, refusing to extend common courtesies to one another. Sometimes called the 'Rambo' style of litigation, it includes such practices as refusing to return phone calls, grant routine extensions of deadlines, or even shake hands in court, along with more abrasive and hostile behaviors such as vulgarity and name calling, shouting, temper tantrums, or even occasional fisticuffs during depositions."[77]

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

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

- In the past, attorneys from various professional backgrounds would get together in more relaxed settings — bar meetings, the lawyer's room at the courthouse, etc. — where they could get to know one another on a more personal basis. It was in this setting that codes of behavior were established and conveyed to younger attorneys.

- While a sense of community still exists, it now occurs at a specialty level.

- Lawyers today think of themselves as "trial lawyers," "patent specialists," or "defense attorneys," beholden only to the rules of their specific community.

- Younger attorneys, who have never been taught by mentors or the community at large about the professional codes of behavior, may confuse advocacy with aggression.[80]

The result of this "erosion in professional courtesy" is more than just the absence of the camaraderie enjoyed in years past. It has also given rise to a pervasive distrust *by lawyers* of other lawyers. As a Birmingham, Alabama lawyer told one of the ABA focus

groups, for example, "I've gotten to the point where I almost can't trust anybody on the other side of the case."[81] Or, as a California lawyer more bluntly put it in another focus group, some attorneys now confuse "advocacy" with "asshole."[82]

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

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

"Is that so, your honor?" came the quick reply. "Well counsel believes he smells garlic on the court's breath."[83]

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

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

Step 8. "Just say no" to some clients

It is difficult to say whether changes in lawyering, including the dishonest billing practices (by some) described by Professor Schiltz,[84] preceded the more recently noted changes in clients, but there is no doubt attorney-client relations have changed significantly. And like those in lawyering generally, the changes in clients and client relations have not generally been for the better.

The parallel changes in lawyering and clients make it difficult to discuss one without continual reference to the other, almost like hearing "both sides" following an argument between two children. "Ok, you did this, and you did that. I don't care if A or B. From now on X, Y, and Z." In other words, before stones are thrown at the unreasonable or unethical demands of some clients, lawyers must be sure their own glass house is in order.

Traditional exhortations to lawyers, like those of Ambassador Sol M. Linowitz "not [to] undertake the representation of someone he does not trust and whose story he does not believe,"[85] almost strike the contemporary ear as naive and quaint. But Ambassador Linowitz is onto something that is still relevant to the topic at hand. There remains a kernel of truth in the conclusion of Roy Grutman, a senior partner in a New York megafirm, that "accepting a client is ultimately a moral decision."[86]

According to this traditional view, "[p]rofessionalism requires a lawyer to tell any client that he will not introduce evidence he believes to be false or seek to discredit by trickery testimony he believes to be true, and if the client wants other services, the lawyer should urge him to seek representation from a lawyer who considers him truthful."[87] (I can almost hear Professor Dershowitz tearing this appealing, if somewhat absolutist statement apart in a Socratic dialogue.) Contrast this more traditional, morally-based approach to client selection, to the description of the "ideal client" by Walt Bachman's former partner as a "wholly unreasonable rich man."[88] Bachman's partner simply followed the assumption that law is a dollar-driven business to its logical conclusion, reasoning that the client's "unreasonableness creates the demand for lawyers, and he must be rich to pay their fees."[89]

One factor overlooked by this more cynical approach to client selection is the lack of satisfaction a lawyer with decent values will likely experience in advocating his various unreasonable causes and positions — unless, of course, the lawyer is as big an asshole as the "ideal client." But alas, we are getting ahead of ourselves.

Pleading for a return to value-based client selection, Ambassador Linowitz urges that "[g]ood lawyers don't have to take bad clients."[90] He relates a conversation with Edward Bennett Williams in which the famous trial lawyer was asked about his representation of certain sordid characters. "Everyone is entitled to a lawyer," Williams defended himself (with some justification). "Yes," came the more traditional response, "but they are not entitled to *you*."[91]

Fast-forwarding two or three decades, Linowitz points to the savings-and-loan scandal as being "laced with stories about the participation of reputable law firms that knew their clients were doing improper things but tried to squeeze their actions into the framework of permissive government regulations so they could be, with luck, legally defensible."[92] Exercising 20-20 hindsight, he notes that regulators subsequently decided both "that the dishonesty [of the savings-and-loan employees] was punishable" and "that the lawyers bear some responsibility for abetting it."[93] Having just heard the President denounce trial lawyers in his State of the Union message, for which he received a bipartisan standing ovation, one has to wonder how long aggressive prosecutors will give lawyers the traditional benefit of the doubt in deciding who to charge as a "co-conspirator" in more politically-driven

initiatives.

Again, Ambassador Linowitz expresses the traditional view, which will not comfort lawyers tempted to walk close to the frequently fuzzy line between zealous advocacy and abetting a fraud:

> [I]n the end professionals have to stand responsible for their own actions, and the cry "My client made me do it" must fall on deaf ears. Harris Weinstein, who as general counsel for the Office of Thrift Supervision brought most of the cases against the law firms that represented the S&Ls, found himself "hard pressed ... to understand how we can claim that a lawyer is free to deceive a third party when the client could not. If that were the rule, if a lawyer were permitted to do that, what would be left of the liability risked by the client's deception? Any client could overcome that liability simply by hiring a lawyer to do the dirty work for him."[94]

This is not to suggest that lawyers should shy away from politically unpopular causes or clients, or even be less zealous in their advocacy, but fundamental self-interest requires some very clear ethical thinking as we step closer to this line. The limited point here is that lawyers who fail to maintain high ethical standards and appropriate professional distance from what a politically motivated prosecutor might regard as "deception" could find *themselves* in need of counsel. Right or wrong, that is particularly true in today's anti-lawyer political environment.

While most lawyers will not get close enough to this line to have a reasonable fear of criminal prosecution, many more describe the attorney-client relationship as increasingly stressful and problematic. Walt Bachman summarily calls it "the most stressful aspect of lawyering."[95] The ABA Pulse Study, following all the focus groups conducted around the country, concluded that "increasingly demanding clients" was "Pressure Point #2" in contemporary practice.[96] And according to Steven Keeva, Assistant Managing Editor of the *ABA Journal*, a certain number of lawyers have realized this and are now choosing their clients more carefully.[97]

The ABA Pulse Study describes how increased client influence over "how legal projects are priced and executed" has become a major "pressure point":

- Clients tend to be project, not relationship-focused.

- Projects are often bid out to multiple firms rather than turning to one trusted counselor.

- There is an increasing desire for project fees which can be budgeted versus billable hours, with

law firms assuming the risk if projects require more effort than anticipated.

- Clients also demand fast turnaround and 24/7 access to attorneys, at least via e-mail.

- Many want to be directly involved in the process.

- Billing is carefully scrutinized.

- Larger clients may require firms to follow formal billing procedures specific to their organization's requirements.

- Lack of uniformity in billing procedures means firms often have to utilize multiple billing approaches.[98]

Whether "increasingly demanding clients" were caused in whole or in part by increasingly greedy, dishonest lawyers is beside the point here. The impact on professional satisfaction, like the proverbial rain in the *Bible*, has fallen "on the just and the unjust."[99] According to the Pulse Study, this means:

- More time/resources spent on administrative tasks and relationship management

- Less control over the pace of work

- Less ability to escape the pressures of the job

- Ambiguity as to what and how to bill

- Lower profits/job, requiring attorneys to take on more work

- Feeling more like a "hired gun" versus a respected counselor[100]

Or, as a California lawyer told one of the ABA focus groups, "it strikes me that the clients are shopping on eBay for their next lawyer."[101]

Steven Keeva introduces us to two New York litigators who ultimately decided it was in their best interest, as they tell school kids in regard to sex and drugs, to "just say no" to some clients. Sheldon ("Shelly") Tashman, who once took any case that walked through the door, has since become a personal injuries lawyer who "will not take a case he doesn't believe in."[102]

"The law has many temptations that lack integrity," Tashman

concluded. "There's a temptation to make a case out of nothing, to make a living out of situations that aren't real, to not be ethical."[103] Admitting "certain things [which] weren't really right" in his past, he cites "trouble sleeping" and the spectre of his son seeing an unfavorable newspaper story as the dual motivation for changes in his professional course.[104] Tashman quickly discovered that the peace of mind attending higher ethics and more careful client selection were well worth what they cost him in lost fees.

Stephen Chakwin, who met Tashman when they were on opposite sides of a case, was sufficiently inspired by Tashman's good example that he decided to make significant changes in his own practice. Sharing the desire for work in which he really believed, Chakwin gave up his partnership in a medium-size New York firm. He now practices with one other lawyer and spends a portion of his time "coaching unhappy lawyers toward finding a more satisfying path."[105]

Perhaps the most colorful approach to client relations was taken by Walt Bachman in *Law v. Life: What Lawyers Are Afraid To Say About The Legal Profession*. In a chapter titled "The APC Factor: The Truth About Clients," Bachman recollects how he came out of law school hoping for "sweet ladies like Ms. Palsgraf" (of the famous *Palsgraf* case fame) as clients.[106] It did not take him long to realize, however, that "very few billable hours are racked up in pursuit of vindication for such totally faultless clients."[107]

Instead of finding himself representing the rare Ms. Palgrafs of the client world, Walt Bachman discovered that "in many cases neither side is pleasant to represent" and, in fact, that in a significant percentage of cases, his firm's clients were "assholes."[108]

Which brings us back to the chapter title. The APC Factor, as it turns out, stands for "Assholes Per Capita."[109] Engaging in highly sophisticated social science, Bachman (no doubt utilizing intellectual and academic skills sharpened during his years at Oxford on a Rhodes Scholarship) proposes a formula. "Stated generally, the formula to determine the APC Factor in a given situation is:

$$\frac{\text{Assholes}}{\text{Total Population}} = \text{The APC Factor}$$[110]

Tongue now firmly in cheek, Bachman proceeds to apply what we might call AA (Asshole Analysis), to the world of law:

> In the instance of American litigation clients, this formula would be more specifically stated as:
>
> $$\frac{\text{Asshole Litigation Clients}}{\text{Total Litigation Clients}} = \text{Litigation Client APC Factor}$$
>
> For example, if we take the total number of new litigation clients in America last year (say, 2,000,000) and determine the number of those litigants independently

> and objectively determined to be assholes (say approximately 800,000), the APC Factor is derived as follows:
>
> $$\frac{\text{800,000 Asshole Clients}}{\text{2,000,000 Total Clients}} = .40 \text{ APC Factor}$$[111]

Conceding the need for further research, Bachman draws on his own experience and that of his lawyer friends to suggest an APC Factor for litigation clients "in the vicinity of .40 and rising."[112] Estimating the APC Factor for society at large as "closer to .10," Bachman reaches the compelling conclusion that "the APC Factor for [ligitation] clients is four times that of the overall populace."[113] Of course, it remains with each individual lawyer to decide how this seminal research should be applied to his or her practice.

On a bit more serious note, to increase satisfaction in attorney-client relations Steven Keeva suggests a broader and deeper look at the client's motivation, expectations, and best interest (broadly defined). Among other questions, Keeva suggests that lawyers consider at the outset:

> Why has the client come? Is he driven by
> — anger?
> — a sense of having been victimized?
> — a desire to heal?
>
> What role does he want me to take?
>
> Am I seeing the whole person, or focusing narrowly on the possible legal issues?
>
> Are my words consistent with my values?
>
> Have I made clear what I see both his and my own role(s) to be in this relationship?
>
> Have I made clear where my loyalties lie — to him, yes, but perhaps also to minimizing conflict, to the other side, or to the community?
>
> Have I been clear about the range of options, both legal and nonlegal, that may be available?[114]

As the representation continues, Keeva encourages lawyers who hope for improved relationships with their clients to ask, *inter alia*:

> Have I been clear so far about what I see as the merits and deficiencies in the case the client thinks he has?
>
> Does the client seem open to striving for a win/win solution?
> — What might such a solution look like in this case?

(Even better, ask the client this.)

Is he willing to take any responsibility for the problem? If he is willing to forgo the role of victim, what opportunities does that open up?

— Can he admit that there were things he could have done that might have prevented the current problem? If so, can he take an active role in resolving it?

Does the client appear to need permission to let go of his anger, and would he accept that permission from me?

Is the client deluding himself about any aspect of the case?

What ways of looking at this case might locate deeper meanings and broader implications? For example, are there family implications that may at first not be apparent?

Community issues? Spiritual issues for the client? How might these implications matter?[115]

While some will understandably balk at these wide-ranging questions, others will be pleasantly surprised at how much certain clients appreciate having a lawyer who can think outside the technical box. This is not to suggest, of course, that the lawyer become a scold, telling every client how to get back on the straight and narrow path. Rather, these questions are intended to help *the client* decide what "best interest" might mean in a particular case.

To summarize the ground covered under what we are calling "Step 8," we have seen that there is more stress than there once was in attorney-client relations. Part of this is the fault of lawyers, particularly greedy, dishonest lawyers. But wherever relative fault lies, we can increase the inherent satisfaction in the attorney-client relationship by keeping in mind a few key principles.

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

Step 9. Stay emotionally healthy

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

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

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

But whether or not it devolves to that point, many lawyers need "[t]o re-establish contact with the ground of actual experience, [to] break through the abstractions that separate them from air below the clouds. They must come back to earth, where the air is thicker and more life-sustaining."[119] According to Sells, "this means that lawyers need to educate their passions and invigorate their imaginations with the same dedication they apply to sharpening their analytic skills."[120]

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

As it turns out, a hyper-rationalist approach to education and life distorts more than the individual personality. It also limits our ability to grasp the real meaning of many human experiences. "Feelings and emotions are part of our human makeup [which] give us information in a way that is different from the way we gather

information through our intellect," Kaufman notes."[124] Imbalance occurs in the lives and personalities of many lawyers, beginning in law school, because "[o]ur training honors our cognitive skills and dismisses information gathered through other channels. As such, we tend to exploit our rational capacities and ignore other parts of ourselves that offer different ways of learning."[125]

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

Keeva's prescription for lawyers who have focused excessively "on striving and achieving," who find themselves mired in "tedious and exhausting" pursuit of "airtight, left brain solutions at the expense of feeling and intuition," is what he broadly calls "inner work."[128] Acknowledging that ours is "a culture that rewards workoholism and downplays the value of stillness and reflection," Keeva urges lawyers who hope for happiness to reconnect with these kinder, gentler elements of the human experience.[129]

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

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

In his writing and in the seminars he conducts, Kaufman promotes emotional health through a series of simple exercises. In one, he invites participants to consider the opportunity costs (which he calls "losses") of a demanding professional life. "Those losses started with compromises we made as we attempted to juggle

work, play, family, and self. If the term 'loss' seems too stark to describe your process, consider what you may have compromised or surrendered to succeed at work."[134]

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

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

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

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

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

Peter N. Kutulakis, Professor of Law and Vice Dean at the Dickenson School of Law in Carlisle, Pennsylvania, is one of a growing number of experts in "stress management" specifically for lawyers. In his contribution to the ABA's 1997 book, *Living With The Law: Strategies To Avoid Burnout And Create Balance*, Professor Kutulakis (who holds law and counseling degrees) suggests that we think of four key areas in which lawyers need to practice effective stress management: (1) Managing Your Body; (2) Managing Your Personal and Emotional Life: (3) Managing Relations with Your Clients; and (4) Managing Relations with Your Coworkers.[137] As in Dr. Amiram Elwork's helpful book, *Stress Management For Lawyers: How To Increase Personal & Professional Satisfaction In The Law*,[138] Kutulakis' recommendations range from reorienting fundamental priorities and values to simple but effective relaxation techniques.

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

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

Step 10. Embrace law as a "high calling"

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

This is certainly Dean Kronman's view. "The [spiritual] crisis has been brought about," he writes, "by the demise of an older set of values that until quite recently played a vital role in defining the aspirations of American lawyers."[143] And at the heart of this "older set of values" was an *assumption* that the best

lawyer was "not simply an accomplished technician but a person of prudence or practical wisdom as well ... a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess."[144]

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

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

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

Of course, if we take this higher road — if we embrace law as a calling "that involve[s] a deep moral commitment"[149] — there are a number of things we will instinctively understand we must *not* do. We will not, for example, lie or even make misleading representations to courts. We will not treat opposing counsel in a manner which we would not want ourselves to be treated. We will not cheat or steal from our clients by doing unnecessary work or padding our billing records. And we will not take on work that we find morally offensive just because "everyone deserves a lawyer" — or, for that matter, because we could use the extra money.

Sadly, this has not been the direction of what we euphemistically (if not cynically) still call "legal ethics" in

more recent decades. As Professor Glendon points out, we have come philosophical light years from the 1950s when corporate lawyers at least "sometimes ... [served as] 'conscience' to big business."[150] Putting the profession-wide fear of making value-judgments, God forbid, in historical perspective, Glendon observes:

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

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

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

Dean Kronman is correct in connecting the collapse of historical ideals to the loss of "the professional self-confidence

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

Step 11. Be generous with your time and money

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

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

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

Legal writing that attempts to make this point — that lawyers should be more generous with their time and money — tends to remain more narrowly focused on *pro bono* work. This is good counsel, as far as it goes, and more of us should strive to meet or exceed the ABA's suggested goal (at least fifty hours of *pro bono* work per year). As Professor Rhode notes, "[f]ew lawyers come close," and "[o]nly about a third of the nation's five hundred largest firms have agreed to participate in the ABA Pro Bono Challenge, which requires a minimum annual contribution of three percent of the firm's total billable hours."[157] In his article, "A Lawyer's Duty to Serve the Public Good," U.S. Circuit Judge Harry T. Edwards properly laments not only the reduction in *pro bono* practice, but also the declining number of law school graduates choosing public service careers.[158]

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

More central to our intended point is Steven Keeva's encouragement to develop a "helping heart."[159] He explains:

> In every tradition that emphasizes the importance of the inner life, compassion and service are held up as preeminent virtues. Those who, through the ages, have been revered for their wisdom and empathy — the Gandhis and the Martin Luther Kings of this world, to name but two recent examples — have often been people who believed that the very purpose of life is to be of service to others.
>
> Today's lawyers, being overwhelmingly inclined to minimize the importance of their inner experience, are more apt to see personal enrichment as their purpose, at least in their professional lives.[160]

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

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

Of course, the specific charity or "acts of kindness" in which we engage is less important than developing an unselfish attitude. The essential point is, if fulfillment is one of our goals, after we provide for ourselves and our families, we will get more satisfaction out of generously giving than we will from hoarding.

Steven Keeva points to Mahatma Gandhi and Martin Luther King. The one who comes to my mind is Mother Theresa, the diminutive Yugoslavian peasant who moved to Calcutta to serve the poorest of the poor. Although most of us are not saints, we can all learn from those who are. And who could look at Mother Theresa — who died owning little more than her familiar blue and white sari and her Rosary beads — and doubt that she had discovered a joy in life that eludes most contemporary Americans?

What Mother Theresa and others devoted to a charitable way of life discover is that it is indeed more blessed — happier — to give than to receive. Lawyers who are fortunate enough to make more money than they need should apply this important life lesson by taking Step 11, that is, by looking for opportunities to share their time, talents, and resources with others.

Step 12. Pace yourself for a marathon

If you have taken Steps 1 through 11, you are already well on

your way to Step 12: pacing yourself "for a marathon." Clear priorities that balance work and personal lives, effective time management, healthy lifestyle habits and practices, resisting the most intrusive technology, dealing with excessive stress, and being more selective about clients and cases are each important steps toward our last goal: a sustainable pace.

Conversely, if you are working so many hours that you consistently come home exhausted (or so distracted you cannot enjoy family or friends outside of work), if you have not established clear priorities, if you are a poor time manager, if you seldom get a good aerobic workout, if your consumer spending is out-of-control, if you can never get away from the beeper, cell phone and computer for "down time," if stress is eating you up, or if the APC (Assholes Per Capita)[162] of your client base is too high, you should probably deal with these issues first. Any one of these, left unattended for too long, is inconsistent with our ultimate goal, which is a healthy, well-balanced life.

As we consider Step 12 — pacing yourself for a marathon — some of the previously made points warrant re-mention. Professor Schiltz' advice not to let yourself "be purchased at auction like a prize hog" or to "choose one law firm over another because of a $3,000 difference in starting salary"[163] is sound. Rather, make it clear from the outset — in your own mind first, and then with any prospective employer or partner — that only so much of you is "for sale." Make it clear that quality of life matters to you, that you intend to work hard and "pursue excellence" professionally, but not to sacrifice important relationships and other essential elements of a healthy, balanced life.

Speaking of pursuing excellence, there is a balance point here too. As noted by both Professor Dershowitz in *Letters To A Young Lawyer*,[164] and by Dr. Elwork in his book on stress management for lawyers,[165] striving for professional excellence is a good and worthy goal. In sharp and important contrast, trying to achieve perfection is not. Dershowitz offers a brief, two-page reflection he titles "The Perfect Is the Enemy of the Excellent" in which he observes that "[e]very book, painting, symphony or speech could be improved. The search for perfection is illusory and has no end."[166] He is absolutely correct, as is Dr. Elwork in concluding that "[s]ince perfection does not exist, perfectionists are doomed to be perpetually frustrated."[167]

In a word, pursuing excellence is consistent with a sustainable pace while the futile attempt to achieve perfection is not. "Given these distinctions, choosing to strive for excellence rather than perfection has important implications for how much job satisfaction you derive and how successful you become."[168] Strive for professional excellence, but be wary of any tendency you may have toward perfectionism.

Emotional health and balance is another important element of a sustainable pace. And because many of us depend upon warm relationships with children, and later grandchildren, for emotional

strength, we should keep in mind San Francisco lawyer Michael Traynor's previously noted late-life observation "that the years with your children fly by in an instant."[169] Many will also want to take to heart Traynor's wise counsel, "[w]henever you can, [to] tell the god of money and the god of ambition, who is no less voracious, that you and your kids are going to fly a kite or build a snowman."[170]

The simple but important point here is that we are more likely to be emotionally balanced and healthy if we enjoy warm, loving relationships with those closest to us. This may not be spouses, children, or grandchildren in a particular case, of course, although for many it will be. But whoever they are, if those closest to us are having to remind us to "stop talking like a damn lawyer" too often, this may well be an area of our lives that needs attention.

Professor Dershowitz' previously noted observation that the wealthiest people tend to take the shortest vacations[171] brings us to another important point, if a sustainable pace is the goal. The point here is about as straightforward as it gets: take it. All of it. You need it. The office and the practice will survive. And you will return refreshed, batteries recharged, with more enthusiasm and energy for your work. In fact, taking regular vacations will not only give you a sustainable pace, they will make you a better lawyer.

Finally, since we are using an athletic metaphor for what we are calling "Step 12," we will end with another exhortation to exercise regularly. It was no fluke that the North Carolina Bar Association's Quality of Life Task Force discovered, out of all the "lifestyle practices" examined, the highest correlation between lawyers who got "regular exercise" and those who self-reported a sense of "subjective well-being."[172]

David B. Myers reviewed a number of psychological studies related to what made people "happy" in preparing to write his 1992 book, *The Pursuit of Happiness: Who Is Happy And Why*.[173] As summarized by Dr. Elwork, the number one factor noted as contributing to "happiness" was "physical health and fitness."[174] The bottom line: lawyers who exercise regularly enjoy its stress-relieving effects, and are generally able to keep work pressures and demands in better perspective. If you have not done so already, make a commitment now to join them.

As we close this chapter, it is necessary to state what will be obvious to many readers, namely, that this first-ever "12-Step Program For Lawyers" is a career-long project. Except for the extraordinarily well-disciplined, and perhaps the most saintly, these are challenges and issues with which we can expect to struggle for the rest of our lives. But, thankfully, they are not impossible struggles, and if we diligently take these "steps," we can realistically expect to move closer to our goal: finding balanced success — and fulfillment — in the practice of law.