

## THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW

Selected Excerpts

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### FOREWORD

We live in a nation founded by lawyers. Thirty-four of the fifty-five men who gathered in Philadelphia in 1787 to draft our Constitution were lawyers, including the document's principal architect, James Madison. Lawyer Thomas Jefferson authored The Declaration of Independence (with the help of John Adams, another lawyer).

Among the inalienable rights Jefferson listed in his famous document of 1776, along with the rights to life and to liberty, was the right "to the pursuit of happiness." "Happiness" is not a word you expect to find in a formal document drafted and debated by sober eighteenth-century politicians. But there it is on parchment, one of the three most important rights of a free people.

Of course, Jefferson couldn't promise we would find happiness, only that we had a right to pursue it. And pursue it we have, and still do—with ever more intensity—today. A quick Google search or perusal of the self-help section at your local bookstore will reveal the depth of our current interest in happiness. A whole movement in modern psychology called "positive psychology" has sprung up to help improve our odds of finding a greater measure of happiness.

For all our efforts, Americans are no happier today than they were a half century ago—and, by most measures, we're less happy. We're richer than ever before, have more leisure time, and we're awash in happiness literature, but still we cannot seem to get more satisfaction.

For lawyers, the picture is even bleaker. Many lawyers, perhaps as many as 70 percent in one poll, say they would not choose a legal career if they had to do it all over again. Half of all lawyers would discourage their kids from becoming lawyers. Applications to law schools are dropping. Over one-third of big firm associates leave their firms within three years of being hired. Students at Stanford, dissatisfied with the nature of large firm practice, have launched a movement to change the way law is practiced.

It is an exaggeration, however, to describe law as a profession in crisis. We do not see headlines announcing: "Lawyers Leaving Profession in Droves." Despite the odd story of a

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lawyer leaving practice to start a vineyard or become a hot air balloonist, most in the practice say they intend to stick it out. Moreover, many say they are at least reasonably happy, even while admitting they'd like to be more so.

The story of the emotional state of American lawyers today is complicated and nuanced. Lawyers are smart people; they expect complications and appreciate nuance. They didn't become lawyers because they woke up one day and said, "By God, I love the law!" Many became lawyers because as college seniors they simply wanted to keep their options open and law school seemed a better place to do that than, say, dental school. Moreover, it might well be that the sort of person best suited to the practice of law is more likely to have a personality type somewhat prone to unhappiness. In law, unlike many jobs, it often helps to be the anxious, pessimistic person who worries about all the things that can go wrong if a contract isn't written just so. If lawyers are slightly unhappier than the typical American, it may be because unhappy people are more likely to become lawyers rather than that the practice of law has made them unhappy.

Sorting out this complex story is one of the goals of this book. But we don't intend to stop there. Fully recognizing the limits of self-help, we will nonetheless offer "a happiness toolbox" that we believe will lead to at least a modest happiness boost for lawyers that follow our suggestions. There are multiple paths to happiness, and a tool that works well for you might not for the lawyer in the next-door office. We also will offer tips for law firms and law schools that wish to improve levels of satisfaction in the practice. Along the way, we'll share stories of both unhappy lawyers and happy lawyers, learning what we can from the insights they've garnered along their diverse professional trails.

In addition to the explosion of new research on happiness, the practice of law has changed in a way that makes the career satisfaction much more relevant both to law schools and law firms than used to be the case. Law schools that previously told entering students, "Look to your left and look to your right; one of the three of you won't be here at the end of the year" now have a stake in convincing prospective students that they can best help them achieve that satisfying law career they're looking for—and this generation of students, more than any previous generation, ranks life satisfaction highest among their goals. Law firms also have a growing interest in making associates happy. The old system that welcomed many to the firm and retained few (the "up or out" system) has given way to a process that places a premium on careful selection and retention. Firms have come to recognize the high costs of associate attrition. They see that demoralization among associates affects the quality of their work product and their bottom line.

Of course, as wise people have told us, happiness isn't everything. It's a very important thing, but so are some other values. There is even something to be said for melancholy—and we will say it. Without unhappiness from time to time, would happiness lose its meaning? Would

society lose an important source of creative inspiration and would we lose a springboard to personal growth? We'll explore those questions.

Mainly, though, this is a book about happiness. We cannot offer any promises—lawyers, of all people, should understand that—but it is our hope that the words that follow will help make your life as a lawyer at least a little bit better.

## **CHAPTER 1. ARE LAWYERS HAPPY?**

At the Hogwarts of J. K. Rowling's imagination, the Sorting Hat magically assesses the character and talents of first-year students and assigns them to the house—Hufflepuff, Ravenclaw, Slytherin, or Gryffindor—that best matches their individual strengths. Every student ends up where he or she belongs and stands the best chance of thriving.

In the muggle world—our world—there is no Sorting Hat. Choosing a career path requires doing our own assessments of our abilities, interests, and desires. Every year some 48,000 Americans perform that assessment, however imperfectly, and set down a path that they hope will lead to a satisfying career of practicing law. The fact that so many of them, perhaps 20,000 or so, will end up disappointed has many, varied causes. Some of the disappointed were never meant to be lawyers, their talents and passions pointing elsewhere— perhaps in the direction of winemaking, printmaking, or teaching.

Other unsatisfied lawyers embarked on their careers with unrealistic expectations about law practice. They considered themselves the best and the brightest, excelling in college and graduating from top law schools, and they believed their hard work entitled them to fulfilling and happy careers. High expectations and feelings of entitlement to great jobs might account for the higher levels of dissatisfaction among graduates of the nation's highest-ranked schools compared to those lower on the pecking order. People who go into sanitation work do not expect to be made deliriously happy by their jobs. . . .When reality fails to match high expectations, however, as it probably does for many lawyers, the result can be a gnawing sense that a better career choice could have been made.

Finally, one other point should be made about the surveys that place lawyers somewhere in the middle of the career satisfaction continuum. What it means to be, say, "fairly satisfied" with a job might mean very different things to different types of lawyers. For the trial lawyer, whose career is marked with the emotional peaks and valleys that result from our adversarial process, "fairly satisfied" might in fact reflect a perceived ratio of quite high highs and quite low lows. Trial work is a "high amplitude" career. On the other hand, a "fairly satisfied" transactional lawyer might be one who finds modest pleasures in the daily practice of law but keeps wishing for a bit more of an emotional charge. One person's "fairly happy" is not the same as another person's "fairly happy." . . .

## CHAPTER 2. HAPPINESS: A PRIMER

### *Circumstances: The 10 Percent Determinant of Happiness Levels*

When asked to imagine a happy person, most people immediately put that person in fortunate circumstances. They imagine a person cruising around the Mediterranean on a yacht with her lover. They picture a fabulously wealthy person with power and fame to spare. Always, the persons imagined are healthy, good-looking, and well-short of old age. The reality of happy people is much different. . . .

What is most surprising, however, is how little circumstances affect happiness at all. Millionaires are not much happier than middle-income folks. People in their twenties are no happier than people in their sixties. Men are about as happy as women, although women have a wider emotional range. Achieving fame barely moves the happiness register. In general, circumstances as a whole account for only about 10 percent of the difference in happiness levels. Nor is well-being significantly affected by where you live in the United States. When the Centers for Disease Control (CDC) asked 1.3 million Americans between 2005 and 2008, “In general, how satisfied are you with your life?,” it turned out that residents in the happiest and least happy states differed by only one-tenth of a point on a 4-point happiness scale. Nonetheless, the CDC study provided plenty of fodder for researchers who offered their interpretations of the tiny differences. While the data suggested that residents of western states are, on the whole, slightly happier than residents of other states (the merriest five, in order, were Utah, Hawaii, Wyoming, Colorado, and Minnesota), when two researchers controlled for factors such as income, marital status, and age, they found that residents of southern states came out on top. In their study reported in the December 2009 issue of *Science* online, economists Andrew J. Oswald of the University of Warwick and Stephen Wu of Hamilton College in New York concluded that the states that made people happiest were actually (generally poorer) southern states, with Louisiana, Hawaii, Florida, Tennessee, and Arizona ranking best using their methodology. . . . Typically, the media overplays rankings of these sorts and readers are rarely informed as to how very modest the state-by-state differences actually are.

Nonetheless, there are a few circumstances that account for significant differences in reported levels of happiness. One of these is belonging to a church. People who describe themselves as “very religious” or “religious” are happier than those who don’t. Why religious people are happier than their more secular brethren is somewhat of an open question. . . . Interestingly, Ruut Veenhoven, director of the World Database of Happiness, reports that hedonists appear to be somewhat happier than nonhedonists. What this says about the higher levels of happiness reported by churchgoers is not clear. At the very least Veenhoven’s finding suggests abstinence is not the answer to everything.

Enjoying a number of close relationships also makes people happier. This is one of those happiness determinants with both a circumstantial and intentional aspect to it, so it's hard to know exactly how to categorize it. We are social animals and interaction with others usually (we all have personal knowledge of many exceptions) makes us happy. Measured on a 5-point scale, with 5 being ecstatically happy, people report average happiness levels of 3.7 when they are interacting with friends, 3.3 to 3.4 when they are interacting with spouses or children, and 2.8 at times when they are interacting with clients or co-workers. By comparison, hanging out alone produces an average happiness rating of 2.7, although that's still better than time with the boss, which comes in at only 2.4. . . .

Wealth is the most overrated of all factors in people's guesses as to what will improve their happiness. Asked what single thing would be most likely to make them happier, a majority of Americans answer "more money." Almost three-quarters of college freshmen in a recent survey said it was important to be "very well off financially." Harvard University psychology professor Daniel Gilbert sums up the situation this way: "[W]e think money will bring lots of happiness for a long time, and it actually brings a little happiness for a short time." . . .

### **CHAPTER 3. WHAT MAKES LAWYERS HAPPY AND UNHAPPY**

Jobs that align with values and involve helping others are those that rated at the very top of the NORC study. Following right behind the clergy in job satisfaction were physical therapists, firefighters, and education administrators (deans, principals, and school superintendents). Teachers came in sixth on the list, in-between two jobs offering bushel baskets of opportunities for creativity and personal control, artists and authors. On the other hand, at the bottom of the list, just above roofers in reporting low levels of job satisfaction, were waiters, bartenders, packagers, and stock handlers. None of these jobs, with the possible exception of bartending, provides creative challenges or offers workers an opportunity to express their personal values through their work.

Given what the survey suggests about the most and least satisfying jobs, it should come as no surprise that lawyers rank slightly above the middle of the pack in terms of job satisfaction. Lawyers, with 52.4 percent reporting themselves "very satisfied," are below doctors (57.9 percent satisfied) and in-between occupations such as editors (52.9 percent satisfied) and accountants (49.7 percent satisfied). The jobs that fall between the extremes of satisfaction and dissatisfaction, including the practice of law, are those that score well on some characteristics of satisfying jobs (say, providing challenge), not so well on others (say, allowing control), and in-between on still others (say, opportunities for interaction or alignment of work with values).

Lawyers report so-so satisfaction with their careers despite the fact that law is a high paying and prestigious job. Those qualities don't matter very much in terms of job satisfaction. It

is also a helping profession, and that is generally a positive indicator of happiness, except that, unlike clergy, lawyers don't see clients at their happiest moments. An American Bar Association (ABA) study of how the practice of law matched the expectations that lawyers had when they entered the field is revealing. The study showed that the "intellectual challenge" of law practice was by far the aspect of practice that most closely matched expectations. . . . Compare that to what seems to be the great disappointment of lawyers, the failure of their job to contribute as much to the public good as they expected.

Depending on an attorney's specific job—small firm practitioner in a cultivated niche, in-house counsel with a template of corporate rules, or large firm associate—the attorney will have more or less control. But there are many things lawyers can't control, chief among them other lawyers, deadlines, and billing. According to a 2007 ABA study, 69 percent of lawyer respondents saw "declining civility" in their profession, and 90 percent of lawyers in the largest firms found "competition between firms" increasing, possibly forcing firms to abandon more traditional professional models in favor of more efficient models (i.e., more emphasis on billable hours and client development). Especially telling is the fact that one-half of all lawyers now say that pressure to increase billable hours is a "very" or "somewhat" important reason that would make them consider leaving a firm. A desire to have more time to spend with friends and family ranks well above the concern to earn more money or to advance within the firm's hierarchy. . . .

#### **CHAPTER 4. THE HAPPINESS TOOLBOX**

. . . Studies with subjects ranging from college students to British civil servants to elderly nursing home residents consistently show that control is closely related to happiness.

When, for example, nursing home residents were put in control of watering and tending a plants, they reported higher levels of happiness (and, remarkably, *half* the death rate) compared to residents in a low-control group who were told that a staff person would take care of the plants. In another study, happiness levels among British civil servants turned out not to depend on their salary levels but on the degree to which the various jobs allowed them to exercise control. . . .

It is a fact of life that most lawyers do not have the same degree of control in their jobs as do people in many other occupations. A shop owner controls when the shop opens, what products are sold and for how much, how the products will be displayed, and who will do the selling. A football coach has control over what plays will be run, how long practice will be, and who will start at quarterback. An artist wakes up each morning free to create anything within his imagination. But a lawyer? As a lawyer, you pretty much do the work a client needs done, whether it's your idea of an interesting project or not. True, you might have control over what

arguments are made on a client's behalf or the exact form a contract will take—but compared to some other occupations, that control might not seem like much. This lack of control might well account for the fact that lawyers had the highest rates of major depressive orders among surveyed occupations. Researchers suggest that lack of control is linked to depression and noted that lawyers and secretaries (two of the three highest risk groups) had relatively little autonomy.

To understand what might be done to better our lives, given that control is not one of our occupation's selling points, it is helpful to recognize what brings on a feeling of control. The feeling comes only when a number of things combine in a job. Control, it turns out, has several aspects. . . .

## **CHAPTER 5. PREPARING FOR A HAPPY CAREER: THE LAW SCHOOL YEARS**

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## **CHAPTER 6: MAKING A HAPPIER LAW FIRM**

. . . . Richard Thaler and Cass Sunstein, in their important bestseller *Nudge: Improving Decisions About Health, Wealth, and Happiness*, demonstrate how the architecture of choice shapes public and private decision-making. Their insights could be used by a firm seeking to maximize lawyer choice while moving towards a better work-life balance and overall level of happiness within a firm. Thaler and Sunstein note, for example, that people derive roughly twice as much unhappiness from losing a certain amount of money than they derive happiness from winning the same amount. A \$50 loss causes the same value of negative feelings as a \$100 win causes positive feelings. Most people, in other words, are “loss averse.” When people think about what they have lost, or what they didn't get that most people got, they are not happy campers. This would explain why most lawyers who are told “You can give up 20 percent of your pay in return for working proportionally fewer hours” might be unlikely to accept the offer. Instead, they will continue to grind away their unhappiness-producing 2,000 billable hours. However, if new hires are told, “We expect you to put in 1600 billable hours for \$X (an amount equal to, say, 20 percent less than what is paid those who produce 2,000), but you have the option of working 2,000 hours and receiving a *bonus* (an amount that would bring pay up to the level currently paid for meeting the 2,000-hour expectation),” a much higher number of recruits might opt for the reduced pay and reduced hours, thus improving the overall psychological health of the firm. Why? Because the reduced hours for reduced pay, having become the default option, no longer is associated in the new lawyer's mind with “a loss.” . . .

## CHAPTER 7: LAWYER'S STORIES

The best way to predict what experiences will make us happy, or unhappy, is to look at how other people have reacted to those experiences. We think we are unique—and, yes, we are—but people are far more alike than they are different, and the reactions of others who have gone before us turn out to be the very best guide to our own possible futures. When we let our own imaginations, rather than the reports of others, predict our reactions to future experiences, we tend to miss the mark rather badly. There are many reasons why our imaginations fail us but chief among them are that we let our present attitudes and interests overly color our imagined futures, and we fail to appreciate how rapidly we adapt to both good and bad events. . . .

If some of lawyers' darkest moments come when their work is either unvalued or undermines their own sense of justice, it is also true that some of their brightest days come when they believe that their work made a positive difference in their clients' lives. Attorney Jim Husen, a family law lawyer in South Carolina, observes that "people come to us when they are caught up in the vortexes of institutional power or face insurmountable obstacles or feel like they have been wronged." He says that to help clients, lawyers must "draw on everything in our lives." In identifying so deeply with the causes of his clients, Husen finds satisfaction: "I can think of almost no other job where that kind of commitment is called for." Time and time again, when asked to relate their peak experiences as lawyers, respondents in our survey point to cases in which they contributed to just outcomes that affected individual lives. . . .

## CHAPTER 8. SEEKING HAPPIER GROUND

*How we spend our days is, of course, how we spend our lives.*

—Annie Dillard, *The Writing Life*

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