AUTHENTIC HAPPINESS & MEANING AT LAW FIRMS

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INTRODUCTION*

We advocate that law firms can and should foster authentic happiness and meaning in the professional lives of their associates. Based upon empirical and experimental research in behavioral economics and positive psychology, we consider here how law firms can implement policies to promote authentic happiness and meaning in their associates’ professional lives. We also believe that law schools can and should help to reduce the anxiety, stress, and unhappiness that individuals often feel as law students and help them to develop abilities to achieve meaningful careers as law firm associates.

A significant number of lawyers are unhappy. According to several recent news stories, the prevalence of depression and alcoholism among attorneys is far higher than the population at large.1 Whether correlative or

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causal, this is striking news. But, of course, it is not new news. In 1999, Patrick Schiltz synthesized a number of studies about the legal market and concluded that, compared to other workers, lawyers were more depressed; more likely to commit suicide; had higher rates of anxiety, hostility, and paranoia; abused alcohol and drugs at “prodigious” rates; suffered a greater number of divorces; and were in generally poorer health. In short, concluded Schiltz, lawyers were unhappy, and further, the root of that unhappiness was dissatisfaction with the profession. We believe changes in law school teaching and law firm practice can help alleviate the negative affect often associated with lawyering and legal education, as well as increase authentic happiness and meaning. We focus exclusively on law firms because the majority of law school graduates end up in private practice. In addition, there is evidence that most law professors, government attorneys, and public interest lawyers are happier than their private practice counterparts, if not just downright happy.

Law firms have several reasons to care about lawyer unhappiness. Unhappy lawyers may loaf at work or otherwise be unproductive and may quit. Attrition of associates is costly to law firms, in terms of money, morale, reputation, and time. In other words, “Unhappy associates fail to achieve their full potential at a cost to them, their firms, their clients, and even their families. Invariably many lawyers leave a law firm, and some the practice of law, prematurely, resulting in undesirable turnover, and a loss of talent to the profession.”

3. Id. at 881-85; accord MARTIN E. P. SELIGMAN, AUTHENTIC HAPPINESS 177 (2002) (stating that “52 percent of practicing lawyers describe themselves as dissatisfied” and that lawyers are in “poor mental health” relative to the rest of the population). But see Kathleen E. Hull, Cross-Examining the Myth of Lawyers’ Misery, 52 VAND. L. REV 971, 971, 983 (1999) (stating that the most well-designed studies do not support the image of the unhappy lawyer); Mary A. McAulhlin, Beyond the Caricature: The Benefits and Challenges of Large-Firm Practice, 52 VAND. L. REV 1003, 1003-04 (1999) (stating that Schiltz overstated the problems with big firm life).
8. Martin E. P. Seligman et al., Why Lawyers Are Unhappy, 23 CARDOZO L. REV. 33,
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For non-law domains, empirical and experimental studies have found a strong association between happy employees and various objective and subjective measures of productivity, including creativity, decision-making effectiveness, interpersonal performance, leadership, and managerial potential ratings, income and negotiating ability, sales performance, and supervisory evaluations. We believe that law firms and their associates can benefit from understanding better not just lawyer happiness or unhappiness, but also, more generally, all types of lawyer affect. This is not to say that unbounded happiness is a desirable goal for law firms or society. Rather an increase in authentic happiness may have a positive impact on lawyers, law firms, and the profession as a whole. One way to understand this association is by means of the well-documented mechanism of emotional contagion, that is, the notion that positive or negative affect can spread throughout the organization.

But the classic law firm response to unhappy workers has not been to understand the affect of its workers. Rather most law firms follow the neoclassical economic labor model and assume that everyone experiences disutility from their work and thus, must be induced by higher salaries to supply more of their labor. Put differently, law firms, like neoclassical

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economists, assume that people choose how much labor to supply by solving an optimization problem of how to allocate the fixed twenty-four hours in a day between labor and leisure to maximize their utilities that depend positively on leisure and negatively on labor. Following this, law firms have offered the standard economic solutions to issues of retention and shirking. They have provided additional financial incentives, such as higher bonuses, overtime pay, salary increases, and stock options. But this approach focuses too sharply on financial incentives and the quantity of work people do, ignoring both non-financial incentives and the quality or nature of work that people do. Law firms would do well to consider people’s intrinsic, non-financial motivations for work, such as engagement, identity, meaning, self-signaling, and self-validation.

Law schools should also care about making happier lawyers. Despite the well-known and well-publicized lawyer dissatisfaction statistics, students are entering law schools at prodigious rates. Nonetheless, law schools may have both selfish and altruistic reasons for trying to make happier lawyers. Happier lawyers will likely be more productive and stay

(2003) (documenting origins and evolution of the notion in economics that people suffer disutility from work).


26. In the academic year 2006-2007, 48,937 students entered law schools as 1Ls. Law School Admission Council and Am. Bar Ass’n, Official Guide to ABA-Approved Law Schools, 2008 Edition 856 (2007). This is a record number of new students, even though total applications were down almost twelve percent from their high in 2004-2005. Id. One might assume that students either have not heard of these data or do not believe that these data are relevant to them.
in their profession longer, making for better alumni and better lawyers. Further, law schools are engaged in the business of producing lawyers and should have some obligation to give aspiring lawyers all of the tools they need to be successful in their chosen profession. Beyond learning to think and write like a lawyer, law schools and law firms can give their students and associates the information they need to make themselves happier. With this knowledge students might last longer as lawyers. Finally, policy makers and society at large should care about lawyer unhappiness because unhappy lawyers implicate at least a temporary misallocation of human capital and scarce legal education resources.

I. AUTHENTIC HAPPINESS

Creating authentic happiness and meaning for lawyers in law firm settings may be a way to stem the tide of increased dissatisfaction and negative affect within the legal profession. “Authentic happiness comes from identifying your most fundamental strengths and using them every day in work, love, play, and parenting.”27 The authentic part of authentic happiness occurs because, “[w]hen well-being comes from engaging our strengths and virtues, our lives are imbued with authenticity.”28 Authentic happiness is thus about more than just hedonically experiencing a string of moments that feel good. Authentic happiness entails a form of happiness as self-validation,29 with its roots in Aristotle’s notion of eudaimonia.30 An example of authentic happiness is being engaged in some activity that is valued, regardless of the presence or absence of positive subjective feelings.31 “Feelings are states, momentary occurrences that need not be recurring features of personality. . . . [S]trengths and virtues are the positive characteristics that bring about good feeling and gratification.”32 As opposed to a pleasure, a gratification requires utilizing one’s “strengths to rise to an occasion and meet a challenge.”33 Consistent with this distinction, “flow” is defined as “the state of gratification that we enter when we feel completely engaged in what we are doing.”34 People who

27. SELIGMAN, supra note 3, at xiii.
28. Id. at 9.
29. WARR, supra note 25, at 10.
32. SELIGMAN, supra note 3, at 9.
33. Id.
34. Id. at 113 (citing MIHALY CSIKSZENTMIHALYI, FLOW: THE PSYCHOLOGY OF OPTIMAL
experience flow often report that it felt like time had slowed down, if not stopped entirely, for them.35

Affect is an important part of human experience, and anticipated affect effectively and efficiently motivates much of human behavior. As behavioral economist, George Loewenstein, eloquently observed recently, “[P]art of the purpose of being alive is to be alive, which means having a range of emotions.”36 But life is more than merely experiencing positive affect and avoiding negative affect. Human beings also have a deep-rooted and fundamental desire for meaning in terms of making sense of their lives.37 As George Loewenstein also noted, “[H]umans are, in effect, meaning-making machines. Even when we are asleep, our brains are busy constructing a narrative that makes sense of the random firings of our neurons… People are often willing to sacrifice other goals, such as wealth and time, for meaning.”38

In 2001, Martin Seligman, the founder of positive psychology39 and the author of Authentic Happiness; Paul R. Verkuil, a former dean of Cardozo Law School; and another co-author, applied positive psychology research to identify three main causes of lawyer unhappiness: lawyer pessimism, low decision latitude of large law firm junior associates, and the zero-sum nature of the adversarial system.40 They proposed corresponding remedies: developing flexible optimism, by cultivating learned optimism41; helping associates to identify their signature strengths and exercise them in

EXPERIENCE (1991)).

35. Id. at 116.
38. LOEWENSTEIN, supra note 36, at 34-35.
39. While President of the American Psychological Association in 1998, Martin Seligman suggested that it was time for science to analyze positive emotions and introduced the phrase “positive psychology,” which “is the scientific study of the strengths and virtues that enable individuals and communities to thrive.” Positive Psychology Center, http://www.ppc.sas.upenn.edu/ (last visited Feb. 13, 2008). For more on positive psychology, see generally Shelly L. Gable & Jonathan Haidt, What (and Why) is Positive Psychology?, 9 REV. GEN. PSYCHOL. 103 (2005); Martin E. P. Seligman & Mihaly Csikszentmihalyi, Positive Psychology: An Introduction, 55 AM. PSYCHOLOGIST 5 (2000); Martin E. P. Seligman et al., A Balanced Psychology and A Full Life, 359 PHIL. TRANSACTIONS OF THE ROYAL SOC’Y OF LONDON B 1379 (2004).
40. Seligman et al., supra note 8, at 34.
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their daily practice; and mitigating the adversarial nature of litigation by "cooperative" litigation. They also noted that legal education is another cause of, and therefore should be part of a remedy for, lawyer unhappiness. Of course some of these remedies do not apply to all areas of legal practice. For instance, the zero-sum nature of litigation does not explain unhappy transactional attorneys who put deals together as opposed to litigate or unhappy litigators achieving positive-sum settlements. And some associates may find it difficult to exercise their signature strengths in meaningful ways if they end up in the wrong practice area.

Other legal academics have also analyzed the unhappiness of law students, and lawyers. Legal scholars have also examined what could improve the subjective well-being of law students, and make lawyers


44. Seligman et al., supra note 8, at 51-52.


47. See, e.g., LAWRENCE S. KRIEGER, THE HIDDEN SOURCES OF LAW SCHOOL STRESS 16-
affirmatively happy. Since the publication of the seminal article by Seligman, Verkuil, and Kang, there have also been a number of recent, related developments. Neuroscience research provided evidence of the benefits from optimism for all but legal careers, and of a neurobiological basis of optimism. There is also psychological research across many domains finding that more choices may lead to less happiness. Lastly, a number of legal scholars have recently advocated the practice of law as a healing profession, including becoming more aware and mindful, and developing emotional competence.


54. Marjorie A. Silver, Emotional Competence and the Lawyer's Journey, in The Affective Assistance of Counsel supra note 52, at 5, 5-16.
II. CREATING AUTHENTIC HAPPINESS & MEANING

An important domain of people’s lives is their work life. Most people spend a third of their lives and half of their waking hours at work. Non-summer junior associates likely spend even higher fractions of both their lives and waking hours at law firms to meet or exceed their law firm’s billable hour expectations and organizational norms. Given the amount of time spent at work, law schools and law firms must find a way to make this profession more meaningful and more resonant with associates to increase lawyer authentic happiness.

The common response from law firms to associate dissatisfaction has been simply to increase law firm salaries and bonuses. This, however, is unlikely to increase authentic happiness or meaning. Being a junior associate at a large metropolitan law firm has always been and continues to be very lucrative. But, as the famous Supreme Court Justice Oliver Wendell Holmes, Jr., once stated near the conclusion of an influential and seminal essay: “[W]e all want happiness. And happiness, I am sure from having known many successful men, cannot be won simply by being counsel for great corporations and having an income of fifty thousand dollars. An intellect great enough to win the prize needs other food besides success.”\textsuperscript{55} In other words, law firms must create ways to make this profession more than a way to earn a paycheck, they must make it personally meaningful and fulfilling.

Professor Amy Wrzesniewski, who is a well-known management and organizational behavior researcher, discussed a trichotomy of terms for how people can experience their work: as a job, career, or calling.\textsuperscript{56} If a law firm associate experiences her work as a job, then she is motivated by a paycheck, sees that job to be a chore or necessity, expects very little from her job, and looks forward to holidays, vacations, and weekends.\textsuperscript{57} If a law firm associate experiences her work to be a career, then she is motivated by advancement, sees that career to be a contest, expects power and prestige from her career, and looks forward to future upward mobility.\textsuperscript{58} If a law firm associate experiences her work to be a calling, then she is motivated by that calling itself, sees that calling to be a mission, passion, and/or privilege, expects a better world and fulfillment from her calling, and looks

\textsuperscript{55} Oliver Wendell Holmes, Jr., \textit{The Path of the Law}, 10 HARV. L. REV. 457, 478 (1897).
\textsuperscript{56} Amy Wrzesniewski et al., \textit{Jobs, Careers, and Callings: People’s Relations to Their Work}, 31 J. RES. PERSONALITY 21, 21-22 (1997).
\textsuperscript{57} See id. at 22, 24 tbl.1.
\textsuperscript{58} See id.
Identifying and learning signature strengths can help law students find law school courses and law firm associates find practice areas that are personally fulfilling and meaningful, and can help law firms and associates craft their work to become more personally fulfilling and meaningful. Seligman and psychologist Christopher Peterson spearheaded a team of prominent psychologists, psychiatrists, and youth development practitioners and identified six core virtues: wisdom and knowledge, courage, humanity, justice, temperance, and transcendence. Each core virtue can be divided further into a number of strengths, resulting in twenty-four human character strengths, which all meet a set of criteria, including these: each strength is malleable, valued for its own sake, and valued by almost every culture. The virtue of wisdom and knowledge is divisible into the cognitive strengths of creativity, curiosity, open-mindedness, love of learning, and perspective. Courage consists of the emotional strengths of bravery, persistence, integrity, and vitality. Humanity is made up of the interpersonal strengths of love, kindness, and social intelligence. Justice is comprised of the civic strengths of citizenship, fairness, and leadership. Temperance contains the strengths of forgiveness and mercy, humility/modesty, prudence, and self-regulation. Finally, transcendence involves the strengths of awe, gratitude, optimism, playfulness, and spirituality.

The above classification system “is intended to be the opposite of the DSM (the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, which serves as a classification scheme of mental illness).” The Values In Action (VIA) Inventory of Strengths is a self-report questionnaire of two hundred forty items that measures the extent to which adult respondents possess each of these above twenty-four character strengths. Completing this on-line survey requires

59. See id.
61. See id.
63. PETERSON & SELIGMAN, supra note 42, at 29.
64. Id.
65. Id.
66. Id. at 30.
67. Id.
68. PETERSON & SELIGMAN, supra note 42, at 30.
69. SELIGMAN, supra note 3, at 11.
70. VIA Inventory of Signature Strengths, http://www.viasurvey.org/ (last visited Feb.
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approximately thirty minutes and generates a report of an individual’s top five strengths, comparing one’s scores to the hundreds of thousands of people who have also taken the survey on-line.\textsuperscript{71}

So, what is the point of learning one’s signature strengths? Martin Seligman eloquently states a reason: “I do not believe that you should devote overly much effort to correcting your weaknesses. Rather, I believe that the highest success in living and the deepest emotional satisfaction comes from building and using your signature strengths.”\textsuperscript{72} Seligman’s belief is related to a similar human resources and personnel management philosophy of developing people’s strengths as opposed to working on their weaknesses.\textsuperscript{73} A specific example of such empirical self-knowledge of strengths is law professor Susan Daicoff’s analysis of research about lawyer psychology, which concludes that there is a distinctive lawyer personality type.\textsuperscript{74}

Both law schools and law firms can and should let people know about how to identify their signature strengths.\textsuperscript{75} Law students can then choose to enroll in elective courses that allow them to develop and exercise their signature strengths. Law school career planning and placement services can offer counseling and guidance about positive psychology and signature strengths. Law students can be advised to consider and explore practice areas besides those that are available and commonplace in popular culture,\textsuperscript{76} and not just to prepare for certain practice areas simply by default, because they are fashionable, or without reflective deliberation.

The profession of law provides a vast arena for practice, and each of the jobs within the profession requires different skill sets and a different

\begin{footnotes}
\footnote{13, 2008).}
\footnote{71. \textit{Id.}}
\footnote{72. \textit{Seligman, supra note 3, at 13.}}
\footnote{73. \textit{See generally Marcus Buckingham, Go Put Your Strengths to Work: 6 Powerful Steps to Achieve Outstanding Performance} (2007); \textit{Marcus Buckingham \& Donald O. Clifton, Now, Discover Your Strengths} (2001).}}
\footnote{76. \textit{See generally David Ray Papke et al., Law \& Popular Culture} (2007).}
psychological makeup. Law school graduates can enter private practice and work in large, medium, or small law firms; serve underserved populations as a public interest lawyer for community-based or national organizations; prosecute and defend alleged criminals; or work in-house at a corporation serving any number of functions. Even within large law firms, with multiple practice areas, lawyers can find different ways of working that might better suit their particular signature strengths. A tax attorney’s daily routine will most likely be quite different from that of a trust and estate lawyer, a litigator, or a corporate lawyer. Law professors and law school student services can help law students align their course selections and clinical experience with their passions and signature strengths. Law firms can return to an era of rotating associates through various practice areas akin to hospital rotations for interns and residents among medical specialties.77

Law professors can also teach more practice-like skills in law school, in addition to traditional courses in trial advocacy and litigation clinics, such as drafting articles of incorporation, business and non-business contracts, corporate by-laws, deal documents, merger agreements, securities prospectuses, and registration statements. Law schools can also help law students form realistic expectations about law firm practice by focusing on marketing, conveying accurately the realities of law firm life, and offering courses not only in trial skills, but also in discovery and briefing for litigation, as well as alternative dispute resolution and transactional practices.

Law schools can also offer elective courses about law practice and meaning, such as the seminar, entitled Legal Careers and Life Satisfaction, that Professor John Monahan and Jody Kraus teach at the University of Virginia.78 More generally, schools can offer courses about law and happiness or positive psychology,79 such as Professor Christine Jolls’ seminar entitled Happiness and Morality offered at Yale Law School.

77. These skill-based or experience-based learning opportunities already have deep roots in our cultural and educational systems. Other examples of learning via experimentation include the Amish tradition of runspringa, junior year abroad program for college students, pass/fail or no credit options for elective undergraduate courses, and the seventh grade course that one of us took, entitled General Language, that provided an introduction to Latin, French, Spanish, German, Russian, and Esperanto before one had to choose which foreign language to study in eighth grade and thereafter.

78. A course description is available at his website: http://www.law.virginia.edu/lawweb/course.nsf/PrCHPbS/102r7 (last visited Feb. 26, 2008).

during the fall of 2007, and the seminar entitled Law, Happiness, & Subjective Well-Being on which we collaborated in the fall of 2007 at Temple University’s James Beasley Law School. There are currently a number of excellent undergraduate level textbooks about positive psychology that are also appropriate as textbooks for law school courses.

Academic research about happiness is a recent growth industry amongst economists, historians, legal academics, philosophers, and


A veritable plethora of trade books provide summaries of this already sizeable but still rapidly growing literature.

Other more speculative possibilities with which law schools and law firms can experiment in order to improve authentic happiness include offering instruction about, providing exercises in, and opportunities for happiness interventions that involve such intentional activities as these: meditation; expressing gratitude; and visualizing one’s best possible self. Naturally, law firms can demonstrate their commitment to associates’ pro bono work. Finally, law firms should recognize that sometimes law firm market forces will result in associates leaving law firms earlier than expected and create soft landings for such transitions.


86. See generally JOHN F. SCHUMAKER, IN SEARCH OF HAPINESS: UNDERSTANDING AN ENDANGERED STATE OF MIND (2007).


III. CONCLUDING THOUGHTS

Certainly today’s legal market does not always make it easy for law firms to invest in their associates’ happiness. Workers today are more likely to change jobs a number of times throughout their working life. This is evident in every sector of the economy, including law. As lawyers change jobs more frequently the relationships between lawyers and law firms have necessarily changed. Whereas in years past, law firms had reason to invest time and money in developing skilled and happy lawyers, today, law firms may feel that they must extract as much as they can from their associates before those associates move to another firm. Likewise, associates may be somewhat Machiavellian about their approach to work at law firms. They may feel that they must try to gain as much specialized work experience as possible to make themselves as marketable as possible for their next position.

Nonetheless, some law firms have started to offer perks that may increase authentic happiness. On top of $160,000 starting salaries and year end bonuses of up to $35,000, on-the-job perks at many law firms now “go beyond the laptops and BlackBerrys, late-night rides home, Friday beer-and-pretzel fests and sports tickets that are standard fare at many large and midsize law firms” to include concierge services, emergency nanny services, nap rooms, on-site children day care, on-site massages, personal issues coaches, pet insurance, psychotherapists, and yoga classes. Law firms have decided to surprise their lawyers, paralegals, and legal assistants with random acts of kindness, including surprise treats like candied apples and milkshakes. One law firm has started a “happiness committee” and another law firm a policy of “uttering . . . ‘thank you’ and ‘good work’ to harried [associates].” Of course, many investment banks, management consulting firms, and corporations in general also provide such lavish perks, and have formed happiness committees.

While some of these perks may simply leave associates on the

92. DINOVITZER ET AL., supra note 4, at 53 (“There is no question that mobility in legal careers has increased in recent decades, particularly in private practice.”).
94. Id.
95. Alex Williams, The Falling Down Professions, N.Y. TIMES, Jan. 6, 2008, § 9, at 91.
hedonic treadmill, others are better designed to create authentic happiness and meaning. Creating a culture of gratitude and mindfulness through yoga, psychotherapy, and personal issue coaches can be small ways to increase and sustain authentic happiness among associates. Different organizational cultures can create, cultivate, and reinforce different expectations and norms about what are considered to be acceptable behaviors. An organizational culture of gratitude and mindfulness may create a happier work environment and an expectation of respect throughout an organization. Although leaving surprises for workers may simply increase positive affect, these treats coupled with other substantive and procedural organizational changes discussed earlier may help create a happier work environment. This may mean that associates—as well as partners and staff—enjoy work more, thus making it easier to recruit and retain workers.

In conclusion, we have offered a guide to how law firms and law schools can design policies and procedures to nudge people towards achieving more authentic happiness and meaning in their professional (and personal) lives, if they so desire.

