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# Practice Matters

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## ADVOCACY

# How to Cross-Train for Peak Lawyering

Let's mend our profession by exploring the mental and the physical

BY HEIDI K. BROWN

Growing up, I never thought of myself as an athlete. I dreaded gym class. I still have nightmares about the Presidential Physical Fitness Test: those sit-ups, that flexed arm hang, the 600-yard dash. During my undergraduate and law school years, I reluctantly played intramural softball, cajoled onto the field by enthusiastic classmates. Skittish after taking a foul ball to the chin, I flinched every time anyone hurled the ball toward me. Nonetheless, I always rather envied the students known as scholar-athletes—those who excelled in class *and* on the field.

Sports and fitness seeped into my life slowly. At my first law firm, partners and associates often jogged outdoors together during lunch. I remember gasping for air running up a hill while updating a partner on the status of our latest discovery requests. We worked hard, billed copious hours and clocked many miles. Over the last decade, I edged into the New York City spinning craze and now train twice a week with a boxing coach.

As I wrap my hands and slide on my gloves, I finally feel like a “real” athlete. I feel strong, motivated, formidable and healthy(ier)—mentally, phys-

ically and emotionally. And it's gotten me thinking.

What if I had treated myself like a “real” scholar-athlete when I was a stressed-out, anxious and fearful junior associate?

Our profession is making great strides to commit to lawyer well-being initiatives. Yet some law office managers and junior attorneys wonder how to realistically approach matters of mental, physical and emotional health while balancing real expectations about productivity, 24/7 accessibility, substantive rigor, perfectionism and high-stakes results. In constructing well-being initiatives that improve lives *and* are good for business, what if we started to think of ourselves as scholar-athletes or scholar-performers?

Athletes and performers do not just focus on the talent or skill that draws glory on the field or the stage, such as the ability to throw, catch, hit or kick a ball; the facility to execute a triple flip off a balance beam or on the ice;

or the capacity to generate that perfect reverberating guitar echo or hold that powerfully endless note of a song. Real athletes and performers—and their employers and coaches—attend to numerous other facets affecting individual performance. These drivers include emotions such as fear, anxiety and self-doubt; challenges like ego or temper; the realistic need for rest and recovery; the ability to process feedback and critique; and the capacity to rebound from losses and mistakes.

### Meeting all of your needs

The 2017 *National Task Force on Lawyer Well-Being* report and the *Well-Being Toolkit for Lawyers and Legal Employers* created by Anne M. Brafford identify six dimensions of lawyer well-being: occupational, emotional, physical, intellectual, spiritual and social.

When I reflect on my experiences at three law firms over two decades in law practice, I recall attending to my occupational and intellectual growth. On the occupational side, I loved the legal research and writing aspects of my job and developing as a writer and problem-solver. I loved poring over factual documents, analyzing statutory rules, finding case law and crafting persuasive arguments to resolve our clients' conflicts. I enjoyed pushing myself to grow as an effective networker and business developer, albeit an introverted one.

On the intellectual side, I thrived while seeking to develop a deeper understanding of the nuances of the law in my area of practice: construction law. Every case required us to learn something new about complex contractual relationships, engineering and architectural designs, even the effects of different soils beneath building foundations.

Reflecting on moments when I felt happy as a lawyer, I now understand what psychologist Mihaly Csikszentmihalyi in his book, *Flow: The Psychology of Optimal Experience*, calls being “in flow.” He says, “The best moments usually occur when a person's body or mind is stretched to its limits in a vol-

untary effort to accomplish something difficult and worthwhile.”

I realize, however, that I routinely neglected the physical, emotional, spiritual and social aspects of myself. Notwithstanding the lunchtime 5Ks at my first firm, my brain, body, mind and spirit fell into seriously bad shape.

What if we could up our collective game, improve our output, exceed our benchmarks and *enjoy* multidecade legal careers by treating ourselves like scholar-athletes or scholar-performers? What if we made a conscious effort as individuals and as a legal community to tend to more personal dimensions than just our occupational and intellectual selves?

### Do what the pros do

My dad was an avid Chicago Bulls fan when Phil Jackson was the coach. I remember hearing about how Jackson integrated mental, emotional and spiritual dimensions into his coaching to get the best out of his team—as individuals and as a cohesive unit. Pro golfers such as Tiger Woods have worked with mental coaches, as have Olympic gymnasts, including Simone Biles. Adam Clayton, bass player for the band U2, has shared in interviews that his preperformance routine involves exercise and clearing his head. He is known to visit art galleries in cities where the band is playing—nurturing his cultural and artistic dimensions. We don't seem to stigmatize athletes and performers for attending to their mental, physical, emotional, artistic, creative or spiritual health. But we often do stigmatize law students and lawyers who need or ask for help in some of these dimensions.

As lawyers, we are performers, and frankly, we are athletes in a sense. We all perform difficult and complex tasks, activities, maneuvers and interpersonal dances every day.

Our jobs can be cognitively, mentally, physically, emotionally and spiritually taxing. Instead of regarding a desire to tend to these layers of ourselves as a “weakness,” let's consider what intellectual and occupational powerhouses we all could be if we cultivated our

emotional, physical, cognitive, spiritual and social health.

Business as usual in our profession isn't working—from a health and well-being perspective at least. Let's shake things up. Let's add new dimensions to our training, coaching, development and growth. Let's try business as *unusual*. Let's experiment with perceived contrasts and juxtapositions. NFL athletes Steve McLendon and Lynn Swann took ballet lessons to become better football players. Boxer Vasyl Lomachenko credits dance lessons for his fierce footwork. Yesterday, my boxing trainer used salsa music to teach me how to find a cadence in my punches. He urged, “Slow down, be patient, listen, feel and trust your own rhythm.” I applied that same advice in a negotiation this week and was wildly surprised by the result.

Let's break the stereotype model of what “success” looks like in our profession. Let's acknowledge the strengths that every employee brings to our profession and brainstorm imaginative solutions to help individuals work through personal challenges. Do pro golfers' managers yell, “Just fix it!” when they suddenly develop the “yips” in their putting? No, they get a putting coach and work on mechanics, routine, breathing, focus and trust. Instead of telling anxious or fearful junior lawyers to “just get confident!” or chiding struggling legal writers to “just do it better!” let's contemplate nontraditional resources to draw out untapped strengths in these dimensions. What if we encouraged individuals grappling with public speaking, writing or networking challenges to experiment with

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an improv seminar, a stand-up comedy workshop, practicums in acting or creative writing, or a martial arts class?

We can challenge and inspire each other to attend to multiple well-being dimensions on a daily, or at least weekly basis. We can carve five minutes, 15 minutes, maybe even 30 minutes out of our billable calendars each week to:

- Acknowledge a work task we find satisfying and enjoyable.
- Give thought to one financial goal.
- Check in with our emotions.
- Think about moving our physical bodies in a different way or at a different time.
- Try one healthy(ier) food or drink option.
- Learn one new thing.
- Ponder our purpose.
- Connect with someone familiar or new.
- Check out something cultural.
- Do something artistic.
- Rest and recover like athletes and performers do.

Let's notice the effects that our investment in these dimensional strata have in lawyering performance moments—in negotiations, depositions, presentations, oral arguments, conflicts, collaborations, missteps and triumphs.

This endeavor does not have to be expensive or time-consuming. It *does* have to be deliberate, intentional and inclusive. We don't need to be elite athletes, famous rock stars or CEOs to treat ourselves and our colleagues like scholar-performers. By collectively insisting on a more dimensional approach to performance and development, we can mend our profession together. ■

*Heidi K. Brown is an associate professor of law and director of legal writing at Brooklyn Law School. She is the author of The Introverted Lawyer: A Seven-Step Journey Toward Authentically Empowered Advocacy (ABA 2017) and Untangling Fear in Lawyering: A Four-Step Journey Toward Powerful Advocacy (ABA 2019).*

## WORDS

# Prizing Piquancy

If you're a lawyer who's not writing and editing like a pro, get to work

BY BRYAN A. GARNER

Not long ago, I wrote an appellate brief in a case involving statutory construction. After I finished two complete drafts, the brief went through my usual protocol for editing, involving four lawyer-colleagues and one paralegal. Each did two rounds of tightening, sharpening and brightening—and, of course, fact-checking. In my office, colleagues are evaluated on the worth of their edits: Everyone is expected to make the types of edits that professionals at the copy desks of major magazines would make. The idea is that the final product should sing. It should be a marriage of first-rate ideas with first-rate expression. It should be the kind of prose people would pay to read. Really.

Mind you, I'm not claiming to reach that goal every time. But that's definitely the goal. As you'll probably infer, I'm quite open to receiving edits: In fact, I insist on a minimum of two edits per page from each of my colleagues. I often get 10 or more. Of my colleagues' copious edits, I ordinarily accept about 90%. Good edits make you sound smarter and more skillful than you actually are.

But back to my appellate brief. I must be careful here to anonymize the case and the parties: I work on a dozen or so briefs each year, and the event I'm describing here occurred sometime in the last decade ("not long ago," in my book). I'm fictionalizing the subjects involved in the legal dispute. If you've been my co-counsel in recent years, please assume that I'm not describing you here.

Anyway, I sent the thoroughly polished brief off to co-counsel, who in due course returned it with praise (much appreciated) and moderate redlining.

Most of the edits involved either adding pet phrases to all kinds of sentences or replacing all pronouns with proper nouns. The pet phrases were inserted again and again with the notation that the purpose was either "to track the language of the statute" or "to align our brief more closely with the phrases used by allied parties in the same appeal."

But the inserted language was ungainly and sometimes ungrammatical. It flattened the prose, bogged down paragraphs and generally served to do little but anesthetize readers.

That meant, of course, that the brief wouldn't do its job well. As Justice Wiley B. Rutledge observed in 1942 (while still on the D.C. Circuit), although a dull brief may be good law, only "an interesting one will make the judge aware of this."

Here's a fictionalized passage I'd written:

When moving for summary judgment, Summerland apparently abandoned a series of defenses it had energetically pursued up to that point. These defenses had figured prominently in Summerland's earlier motion to dismiss. When denying that motion last January, Judge Positano reserved ruling on Summerland's duty to indemnify until the parties conducted further discovery.

With one punch of a button, I could accept all my co-counsel's suggested edits. We'd have ended up with this:

When moving for summary judgment pursuant to Fed. R. Civ. P. 56, Summerland Mutual Inc. ("Summerland Mutual") [they wanted the longer name]