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Authentic Happiness & Meaning at Law Firms

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AUTHENTIC HAPPINESS & MEANING AT LAW FIRMS

Peter H. Huang[†] & Rick Swedloff[‡]

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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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* We thank Professor Richard Delgado for bringing this Symposium to our attention and suggesting this contribution.

1. Sue Shellenbarger, *Even Lawyers Get the Blues: Opening Up About Depression*, WALL ST. J., Dec. 13, 2007, at D1 ("Some 19% of lawyers suffer depression at any given time, compared with 6.7% of the population as a whole, says the University of Arizona's Connie Beck, a leading researcher on the subject; one in five lawyers is a problem drinker, twice the national rate."); Debra Cassens Weiss, *Lawyer Depression Comes Out of the Closet*, A.B.A. J., Dec. 13, 2007, http://www.abajournal.com/weekly/lawyer_depression_comes_out_of_the_closet.

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.² In short, concluded Schiltz, lawyers were unhappy, and further, the root of that unhappiness was dissatisfaction with the profession.³ 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.⁴ In addition, there is evidence that most law professors,⁵ government attorneys,⁶ and public interest lawyers⁷ 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.”⁸

2. Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 874-81 (1999).

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. McLaughlin, *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).

4. Close to 70% of all new lawyers end up in private practice. *See* RONIT DINOVTZER ET AL., NALP FOUND. FOR LAW CAREER RESEARCH AND EDUC. & AM. BAR FOUND., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 25 (2004) available at <http://www.abf-sociolegal.org/ajd.pdf>.

5. *See* Posting of Ilya Somin to Volokh Conspiracy, <http://volokh.com/posts/1199044995.shtml> (Dec. 30, 2007, 3:03PM).

6. *See, e.g.*, ZAHIE EL KOURI ET AL., VAULT GUIDE TO CORPORATE LAW CAREERS 117 (2003).

7. *See, e.g.*, Alexa Shabecoff, *Finding Your Own Career Path*, THE RECORD, Sept. 13, 2007, <http://media.www.hlrecord.org/media/storage/paper609/news/2007/09/13/CareerGuide/Finding.Your.Own.Career.Path-2967490.shtml>.

8. Martin E. P. Seligman et al., *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33,

For non-law domains, empirical and experimental studies have found a strong association between happy employees and various objective and subjective measures of productivity,⁹ including creativity,¹⁰ decision-making effectiveness, interpersonal performance, leadership, and managerial potential ratings,¹¹ income and negotiating ability,¹² sales performance,¹³ and supervisory evaluations.¹⁴ 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.¹⁵ This is not to say that unbounded happiness is a desirable goal for law firms or society.¹⁶ 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.¹⁷

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.¹⁸ Put differently, law firms, like neoclassical

33 (2001).

9. See Russell Cropanzano & Thomas A. Wright, *When A "Happy" Worker Is Really a "Productive" Worker: A Review and Further Refinement of the Happy-Productive Worker Thesis*, 53 CONSULTING PSYCHOL. J.: PRAC. & RES. 182, 182-83 (2001).

10. See Keith James et al., *Workplace Affect and Workplace Creativity: A Review and Preliminary Model*, 17 HUM. PERFORMANCE 169 *passim* (2004).

11. See Barry M. Staw & Sigal G. Barsade, *Affect and Managerial Performance: A Test of the Sadder-but-Wiser vs. Happier-and-Smarter Hypotheses*, 38 ADMIN. SCI. Q. 304, 306-10 (1993).

12. See Sonja Lyubomirsky et al., *The Benefits of Frequent Positive Affect: Does Happiness Lead to Success?*, 131 PSYCHOL. BULL. 803, 803-04 (2005).

13. See Arun Sharma & Michael Levy, *Salespeople's Affect Toward Customers: Why Should It Be Important for Retailers?*, 56 J. BUS. RES. 523, 523 (2003).

14. Barry M. Staw et al., *Employee Positive Emotion and Favorable Outcomes at the Workplace*, 5 ORG. SCI. 51, 61 (1994).

15. See, e.g., Sigal G. Barsade & Donald E. Gibson, *Why Does Affect Matter in Organizations?*, ACAD. MGMT. PERSPECTIVES, Feb. 2007, at 36, 36.

16. See Shigehiro Oishi et al., *The Optimum Level of Well-Being: Can People Be Too Happy?*, 2 PERSPECTIVES PSYCHOL. SCI. 346, 347-49 (2007); Sharon Begley, *Happiness: Enough Already*, NEWSWEEK, Feb. 11, 2008, at 18, available at <http://www.newsweek.com/id/107569>; see also Jason M. Satterfield et al., *Law School Performance Predicted by Explanatory Style*, 15 BEHAV. SCI. & L. 95, 98 (1997) (finding empirically that pessimistic law students had higher grade point averages and greater executive board membership on law reviews than optimists)

17. See generally ELAINE HATFIELD ET AL., EMOTIONAL CONTAGION (1994).

18. David A. Spencer, *Love's Labor's Lost? The Disutility of Work and Work Avoidance in the Economic Analysis of Labor Supply*, 61 REV. SOC. ECON. 235, 235-36

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.¹⁹ 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,²⁰ such as engagement,²¹ identity,²² meaning,²³ self-signaling,²⁴ and self-validation.²⁵

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.²⁶ 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).

19. See generally PIERRE CAHUC & ANDRÉ ZYLBERBERG, LABOR ECONOMICS 5-9 (2004). Contemporary research in labor economics and the new personnel economics both acknowledge principal-agency relationship problems, but still fail to analyze non-financial motivations of work. See generally PIETRO GARIBALDI, PERSONNEL ECONOMICS IN IMPERFECT LABOUR MARKETS 82-106 (2006); EDWARD P. LAZEAR, PERSONNEL ECONOMICS FOR MANAGERS 97-125 (1998).

20. See David M. Kreps, *Intrinsic Motivation and Extrinsic Incentives*, 87 AM. ECON. REV. 359, 360-61 (1997).

21. See generally MIHALY CSIKSZENTMIHALYI, FINDING FLOW: THE PSYCHOLOGY OF ENGAGEMENT WITH EVERYDAY LIFE 2-3, 13, 147 (1997).

22. See generally George A. Akerlof & Rachel E. Kranton, *Economics and Identity*, 115 Q.J. ECON. 715 *passim* (2000); Claire A. Hill, *The Law and Economics of Identity*, 32 QUEEN'S L.J. 389 *passim* (2007) (Can.).

23. See generally Niklas Karlsson, *The Economics of Meaning*, 30 NORDIC J. POL. ECON. 61 (2004).

24. See generally Ronit Bodner & Drazen Prelec, *Self-Signaling and Diagnostic Utility in Everyday Decision Making*, in THE PSYCHOLOGY OF ECONOMIC DECISIONS 105 (Isabelle Brocas & Juan D. Carrillo eds., 2003); Drazen Prelec & Ronit Bodner, *Self-Signaling and Self-Control*, in TIME AND DECISION: ECONOMIC AND PSYCHOLOGICAL PERSPECTIVES ON INTERTEMPORAL CHOICE 277 (George Loewenstein et al. eds., 2003).

25. See generally PETER WARR, WORK, HAPPINESS, AND UNHAPPINESS 19-60 (2007).

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.

30. See SELIGMAN, *supra* note 3, at 112; see also Richard M. Ryan & Edward L. Deci, *On Happiness and Human Potentials: A Review of Research on Hedonic and Eudaimonic Well-Being*, 52 ANN. REV. PSYCHOL. 141, 145-46 (2001).

31. See Christopher Peterson et al., *Orientations to Happiness and Life Satisfaction: The Full Life Versus the Empty Life*, 6 J. HAPPINESS STUD. 25, 27 (2005).

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. . . . [P]eople 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.

36. GEORGE LOEWENSTEIN, EXOTIC PREFERENCES: BEHAVIORAL ECONOMICS AND HUMAN MOTIVATION 34 (2007).

37. See, e.g., Karlsson, *supra* note 23, at 67-70; George Loewenstein, *Because It Is There: The Challenge of Mountaineering . . . for Utility Theory*, 52 KYKLOS 315, 331 (1999).

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.

41. *Id.* at 43. See generally MARTIN E. P. SELIGMAN, LEARNED OPTIMISM (1990); Catherine Gage O’Grady, *Cognitive Optimism and Professional Pessimism in the Large-Firm Practice of Law: The Optimistic Associate*, 30 L. & PSYCHOL. REV. 23, 34-35 (2006) (describing the theory and process of learned optimism).

their daily practice⁴²; and mitigating the adversarial nature of litigation by “cooperative” litigation.⁴³ They also noted that legal education is another cause of, and therefore should be part of a remedy for, lawyer unhappiness.⁴⁴ 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,⁴⁵ and lawyers.⁴⁶ Legal scholars have also examined what could improve the subjective well-being of law students,⁴⁷ and make lawyers

42. Seligman et al., *supra* note 8, at 45. See generally CHRISTOPHER PETERSON & MARTIN E. P. SELIGMAN, *CHARACTER STRENGTHS AND VIRTUES: A HANDBOOK AND CLASSIFICATION* (2004).

43. Seligman et al., *supra* note 8, at 50. See generally Rachel Croson & Robert H. Mnookin, *Does Disputing Through Agents Enhance Cooperation? Experimental Evidence*, 26 J. LEGAL STUD. 331, 331-35 (1997); Ronald J. Gilson & Robert H. Mnookin, *Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation*, 94 COLUM. L. REV. 509, 560-64 (1994).

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

45. See generally JEAN STEFANCIC & RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY* 62-64, 66-68 (2005); Kenneth G. Dau-Schmidt et al., *The “Pride of Indiana”: An Empirical Study of the Law School Experience and Careers of Indiana University School of Law-Bloomington Alumni*, 81 IND. L.J. 1427, 1427-38 (2006); Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 *passim* (2002); Lawrence S. Krieger, *Psychological Insights: Why Our Students and Graduates Suffer, and What We Might Do About It*, 1 J. ASS’N LEGAL WRITING DIRECTORS 259 *passim* (2002); Lawrence S. Krieger, *What We’re Not Telling Law Students—and Lawyers—that They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 J.L. & HEALTH 1, 8-17 (1998); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004); Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 894-95 (2007).

46. See generally DINOVTZER ET AL., *supra* note 4, at 45-48; STEFANCIC & DELGADO, *supra* note 45, *passim*; Kenneth G. Dau-Schmidt & Kaushik Mukhopadhyaya, *The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession*, 49 J. LEGAL EDUC. 342, 365-66 (1999); John Hagan & Fiona Kay, *Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice*, 41 L. & SOC’Y REV. 51 (2007); John P. Heinz et al., *Lawyers and Their Discontents: Findings from a Survey of the Chicago Bar*, 74 IND. L.J. 735 (1999); William D. Henderson & David Zaring, *Young Associates in Trouble*, 105 MICH. L. REV. 1087 (2007) (reviewing NICK LAIRD, *UTTERLY MONKEY* (2005) and KERMIT ROOSEVELT, *IN THE SHADOW OF THE LAW* (2005)); Schlitz, *supra* note 2, at 874-81.

47. See, e.g., LAWRENCE S. KRIEGER, *THE HIDDEN SOURCES OF LAW SCHOOL STRESS* 16-

affirmatively happy.⁴⁸ 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,⁴⁹ and of a neurobiological basis of optimism.⁵⁰ There is also psychological research across many domains finding that more choices may lead to less happiness.⁵¹ Lastly, a number of legal scholars have recently advocated the practice of law as a healing profession,⁵² including becoming more aware and mindful,⁵³ and developing emotional competence.⁵⁴

17 (2006), <http://mailer.fsu.edu/~lkrieger/images/lawschoolstress.pdf>; LAWRENCE S. KRIEGER, A DEEPER UNDERSTANDING OF YOUR CAREER CHOICES 13-16 (2006), <http://mailer.fsu.edu/~lkrieger/images/careerchoices.pdf>; Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction*, 11 CLINICAL L. REV. 425, 438 (2005); Humanizing Law School, http://www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool.html (last visited Feb. 13, 2008); Humanizing Legal Education Symposium (Oct. 19-20, 2007), http://washburnlaw.edu/humanizinglegal_education/ (last visited Feb. 11, 2008).

48. AMIRAM ELWORK, *STRESS MANAGEMENT FOR LAWYERS passim* (3d ed. 2007); GEORGE W. KAUFMAN, *THE LAWYER'S GUIDE TO BALANCING LIFE AND WORK* 141-240 (2d ed. 2006); STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE passim* (1999); Howard Lesnick, *Personal Fulfillment in the Changing World of Law Practice: Opportunities and Obstacles*, 72 TEMP. L. REV. 1011, 1015-17 (1999); MICHAEL F. MELCHER, *THE CREATIVE LAWYER: A PRACTICAL GUIDE TO AUTHENTIC PROFESSIONAL SATISFACTION passim* (2007); Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 L. & SOC'Y REV. 1, 42-43 (2007); Kathleen E. Hull, *The Paradox of the Contented Female Lawyer*, 33 L. & SOC'Y REV. 687, 697-98 (1999); Symposium, *Perspectives on Lawyer Happiness*, 58 SYRACUSE L. REV. 217 (2008).

49. Robert Lee Hotz, *Except in One Career, Our Brains Seem Built for Optimism*, WALL ST. J., Nov. 9, 2007, at B1 (reporting on research about the effects of optimism on human behavior).

50. Tali Sharot et al., *Neural Mechanisms Mediating Optimism Bias*, 450 NATURE 102, 102-04 (2007).

51. Barry Schwartz et al., *Maximizing Versus Satisficing: Happiness is a Matter of Choice*, 83 J. PERSONALITY & SOC. PSYCHOL. 1178, 1178-79 (2002). See generally BARRY SCHWARTZ, *THE PARADOX OF CHOICE: WHY MORE IS LESS* (2004).

52. Paula A. Franzese, *The Good Lawyer: Choosing to Believe in the Promise of Our Craft*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* 513 *passim* (Marjorie A. Silver ed., 2007). See generally *THE AFFECTIVE ASSISTANCE OF COUNSEL, supra*.

53. Leonard L. Riskin, *Awareness in Lawyering*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL, supra* note 52, at 447, 447-48; Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1, 23-45 (2002); Leonard L. Riskin, *Knowing Yourself: Mindfulness*, in *THE NEGOTIATOR'S FIELDBOOK* 239, 239-40 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006); LEONARD L. RISKIN, *CONTEMPLATIVE PRACTICES IN LAW SCHOOLS*, (Jan. 4, 2005), http://www.tailofthetiger.org/documents/riskin_outline.pdf.

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."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.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.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.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

55. Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 478 (1897).

56. Amy Wrzesniewski et al., *Jobs, Careers, and Callings: People's Relations to Their Work*, 31 J. RES. PERSONALITY 21, 21-22 (1997).

57. See *id.* at 22, 24 tbl.1.

58. See *id.*

forward to more work.⁵⁹

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.⁶⁰ Each core virtue can be divided further into a number of strengths, resulting in twenty-four human character strengths,⁶¹ which all meet a set of criteria, including these: each strength is malleable, valued for its own sake, and valued by almost every culture.⁶² The virtue of wisdom and knowledge is divisible into the cognitive strengths of creativity, curiosity, open-mindedness, love of learning, and perspective.⁶³ Courage consists of the emotional strengths of bravery, persistence, integrity, and vitality.⁶⁴ Humanity is made up of the interpersonal strengths of love, kindness, and social intelligence.⁶⁵ Justice is comprised of the civic strengths of citizenship, fairness, and leadership.⁶⁶ Temperance contains the strengths of forgiveness and mercy, humility/modesty, prudence, and self-regulation.⁶⁷ Finally, transcendence involves the strengths of awe, gratitude, optimism, playfulness, and spirituality.⁶⁸

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).”⁶⁹ 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.⁷⁰ Completing this on-line survey requires

59. *See id.*

60. *See* About VIA, <http://www.viastrengths.org/AboutVIA/tabid/59/Default.aspx> (last visited Feb. 13, 2008).

61. *See id.*

62. *See* SELIGMAN, *supra* note 3, at 11; *see also* PETERSON & SELIGMAN, *supra* note 42, at 16-28.

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.

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.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."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.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.⁷⁴

Both law schools and law firms can and should let people know about how to identify their signature strengths.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,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

13, 2008).

71. *Id.*

72. SELIGMAN, *supra* note 3, at 13.

73. *See generally* MARCUS BUCKINGHAM, GO PUT YOUR STRENGTHS TO WORK: 6 POWERFUL STEPS TO ACHIEVE OUTSTANDING PERFORMANCE (2007); MARCUS BUCKINGHAM & DONALD O. CLIFTON, NOW, DISCOVER YOUR STRENGTHS (2001).

74. SUSAN DAICOFF, LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES 25-51 (2004); Susan Daicoff, *Lawyer Personality Traits and Their Relationship to Various Approaches to Lawyering*, in THE AFFECTIVE ASSISTANCE OF COUNSEL, *supra* note 52, at 79, 95-101; Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1348-1410 (1997).

75. Similarly, elementary and secondary schools and government agencies can help people identify signature strengths and understand positive psychology. *See generally* Peter H. Huang, *Authentic Happiness, Self-Knowledge, & Legal Policy*, 9 MN. J.L. SCI. & TECH. (forthcoming 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1084043.

76. *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 rumspringa, 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/102t7> (last visited Feb. 26, 2008).

79. See Jeremy Blumenthal, *Too Much Happiness?*, CONCURRING OPINIONS, Dec. 28, 2007, http://www.concurringopinions.com/archives/2007/12/too_much_happin.html.

during the fall of 2007,⁸⁰ 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.⁸¹ Academic research about happiness is a recent growth industry amongst economists,⁸² historians,⁸³ legal academics,⁸⁴ philosophers,⁸⁵ and

80. An on-line copy of her syllabus is available at her website: http://www.law.yale.edu/documents/pdf/Faculty/Happiness_and_Morality_Fall_2007_Syllabus1.pdf (last visited Feb. 26, 2008).

81. See generally MARTIN BOLT, *PURSUING HUMAN STRENGTHS: A POSITIVE PSYCHOLOGY GUIDE* (2004); ILONA BONIWELL, *POSITIVE PSYCHOLOGY IN A NUTSHELL* (2006); ALAN CARR, *POSITIVE PSYCHOLOGY: THE SCIENCE OF HAPPINESS AND HUMAN STRENGTHS* (2004); WILLIAM C. COMPTON, *INTRODUCTION TO POSITIVE PSYCHOLOGY* (2005); CHRISTOPHER PETERSON, *A PRIMER IN POSITIVE PSYCHOLOGY* (2006); C. R. SYNDER & SHANE J. LOPEZ, *POSITIVE PSYCHOLOGY: THE SCIENTIFIC AND PRACTICAL EXPLORATIONS OF HUMAN STRENGTHS* (2007).

82. See generally JOHN MALCOLM DOWLING & YAP CHI-FANG, *MODERN DEVELOPMENTS IN BEHAVIORAL ECONOMICS* 181-250 (2007); ROBERT H. FRANK, *FALLING BEHIND: HOW RISING INEQUALITY HARMS THE MIDDLE CLASS* (2007); ROBERT H. FRANK, *LUXURY FEVER: WHEN MONEY FAILS TO SATISFY IN AN ERA OF EXCESS* (1999); BRUNO S. FREY & ALOIS STUTZER, *HAPPINESS AND ECONOMICS* (2002); *ECONOMICS & HAPPINESS* (Luigino Bruni & Pier Luigi Porta eds., 2005); *HANDBOOK ON THE ECONOMICS OF HAPPINESS* (Luigino Bruni, & Pier Luigi Porta eds., 2007); *HAPPINESS IN ECONOMICS* (Richard A. Easterlin ed., 2002); Bruno S. Frey & Alois Stutzer, *What Can Economists Learn from Happiness Research?*, 40 J. ECON. LITERATURE 402 (2002).

83. See generally JENNIFER MICHAEL HECHT, *THE HAPPINESS MYTH: WHY WHAT WE THINK IS RIGHT IS WRONG* (2007); DARRIN M. MCMAHON, *HAPPINESS: A HISTORY* (2006).

84. See generally JAMES MCCONVILL, *THE FALSE PROMISE OF PAY FOR PERFORMANCE: EMBRACING A POSITIVE MODEL OF THE COMPANY EXECUTIVE* (2005); JAMES MCCONVILL, *SHAREHOLDER PARTICIPATION AND THE CORPORATION: A FRESH INTER-DISCIPLINARY APPROACH IN HAPPINESS* (2006); Mirko Bagaric & James McConvill, *Goodbye Justice, Hello Happiness: Welcoming Positive Psychology to the Law*, 10 DEAKIN L. REV. 1 (2005); Mirko Bagaric & James McConvill, *Stop Taxing Happiness: A New Perspective on Progressive Taxation*, 2 PITT. TAX REV. 65 (2005); Thomas D. Griffith, *Progressive Taxation and Happiness*, 45 B.C. L. REV. 1363 (2004); Peter H. Huang & Jeremy A. Blumenthal, *Positive Institutions, Law, and Policy*, in *HANDBOOK OF POSITIVE PSYCHOLOGY* (Shane J. Lopez ed., 2d ed. forthcoming 2008); Peter H. Huang & Jeremy A. Blumenthal, *Positive Law and Policy*, in *ENCYCLOPEDIA OF POSITIVE PSYCHOLOGY* (Shane J. Lopez ed., forthcoming 2008); Marjorie E. Kornhauser, *Educating Ourselves Towards a Progressive (and Happier) Tax*, 45 B.C. L. REV. 1399 (2004); James McConvill, *Executive Compensation and Corporate Governance*, 43 AM. BUS. L.J. 413, 431-37 (2006); James McConvill, *Piercing the "Decision-Making Sphere": Happiness as the Key to "Real" Shareholder Participation*, 16 EUR. BUS. L. REV. 831 (2005) (U.K.); James McConvill, *Shareholder Empowerment as an End in Itself*, 33 OHIO N.U. L. REV. 1013, 1039-62 (2007); James A. McConvill, *Positive Corporate Governance*, 6 J. BUS. & SEC. L. 51 (2006); James A. McConvill, *The Separation of Ownership and Control Under A Happiness-Based Theory of the Corporation*, *COMPANY LAW.*, 2005, 26(2) 35-53 (U.K.); Diane M. Ring, *Why Happiness?*, 45 B.C. L. REV. 1413 (2004).

psychologists.⁸⁶ A veritable plethora of trade books provide summaries of this already sizeable but still rapidly growing literature.⁸⁷

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 these⁸⁸: meditation⁸⁹; expressing gratitude⁹⁰; and visualizing one's best possible self.⁹¹ 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.

85. See generally ROBERT ALMEDER, *HUMAN HAPPINESS AND MORALITY: A BRIEF INTRODUCTION TO ETHICS* (2000); RICHARD KRAUT, *WHAT IS GOOD AND WHY: THE ETHICS OF WELL-BEING* (2007); STEPHEN LUPER, *INVULNERABILITY: ON SECURING HAPPINESS* (1996); L.W. SUMNER, *WELFARE, HAPPINESS, AND ETHICS* (1996).

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

87. See generally DAN BAKER ET AL., *WHAT HAPPY COMPANIES KNOW: HOW THE NEW SCIENCE OF HAPPINESS CAN CHANGE YOUR COMPANY FOR THE BETTER* (2006); TAL BEN-SHAHAR, *THE QUESTION OF HAPPINESS: ON FINDING MEANING, PLEASURE, AND THE ULTIMATE CURRENCY* (2002); GREGORY BERNS, *SATISFACTION: THE SCIENCE OF FINDING TRUE FULFILLMENT* (2005); DANIEL GILBERT, *STUMBLING ON HAPPINESS* (2006); JONATHAN HAIDT, *THE HAPPINESS HYPOTHESIS* (2006); DANIEL NETTLE, *HAPPINESS: THE SCIENCE BEHIND YOUR SMILE* (2005); MATTHIEU RICARD, *HAPPINESS* (2006); *THE SCIENCE OF WELL-BEING* (Felicia Huppert et al. eds., 2005); MICHAEL SHERMER, *THE MIND OF THE MARKET: COMPASSIONATE APES, COMPETITIVE HUMANS, AND OTHER TALES FROM EVOLUTIONARY ECONOMICS* 139-66 (2007); MARCI SHIMOFF & CAROL KLINE, *HAPPY FOR NO REASON: 7 STEPS TO BEING HAPPY FROM THE INSIDE OUT* (2008); BERNARD VAN PRAAG & ADA FERRERI-CARBONELL, *HAPPINESS QUANTIFIED: A SATISFACTION CALCULUS APPROACH* (2d rev'd ed. 2008); Carol Memmott, *Grump Journeys to Find World's Happiest Places*, USA TODAY, Jan. 7, 2008, at D1 (describing ERIC WEINER, *THE GEOGRAPHY OF BLISS: ONE GRUMP'S SEARCH FOR THE HAPPIEST PLACES IN THE WORLD* (2007) and other recently published trade books about happiness).

88. See generally SONJA LYUBOMIRSKY, *THE HOW OF HAPPINESS: A SCIENTIFIC APPROACH TO GETTING THE LIFE YOU WANT* (2007); Kennon M. Sheldon & Sonja Lyubomirsky, *Is It Possible to Become Happier? (And If So, How?)*, 1 SOC. & PERSONALITY PSYCHOL. COMPASS 129, 141 (2007).

89. See VISIONS OF COMPASSION: WESTERN SCIENTISTS AND TIBETAN BUDDHISTS EXAMINE HUMAN NATURE (Richard J. Davidson & Anne Harrington eds., 2002); Shauna L. Shapiro et al., *Meditation and Positive Psychology*, in HANDBOOK OF POSITIVE PSYCHOLOGY 632 (C. R. Snyder & Shane J. Lopez eds., 2005).

90. See, e.g., ROBERT A. EMMONS, *THANKS: HOW THE NEW SCIENCE OF GRATITUDE CAN MAKE YOU HAPPIER* (2007); Robert A. Emmons & Michael E. McCullough, *Counting Blessings Versus Burdens: An Experimental Investigation of Gratitude and Subjective Well-Being in Daily Life*, 84 J. PERSONALITY & SOC. PSYCHOL. 377 (2003).

91. Kennon M. Sheldon & Sonja Lyubomirsky, *How to Increase and Sustain Positive Emotion: The Effects of Expressing Gratitude and Visualizing Best Possible Selves*, 1 J. POSITIVE PSYCHOL. 73 (2006).

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.⁹² 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.⁹³ 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.⁹⁴ One law firm has started a "happiness committee" and another law firm a policy of "uttering . . . 'thank you' and 'good work' to harried [associates]."⁹⁵ Of course, many investment banks, management consulting firms, and corporations in general also provide such lavish perks,⁹⁶ and have formed happiness committees.⁹⁷

While some of these perks may simply leave associates on the

92. DINOVIETZ 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.")

93. Lynnley Browning, *For Lawyers, Perks to Fit a Lifestyle*, N.Y. TIMES, Nov. 22, 2007, at C1.

94. *Id.*

95. Alex Williams, *The Falling Down Professions*, N.Y. TIMES, Jan. 6, 2008, § 9, at 91.

96. Tara Weiss, *The Ultimate Summer Internships*, FORBES, June 13, 2006, available at http://www.forbes.com/work/2006/06/13/perks-summer-interns-cx_tw_0613ultimateinternships.html.

97. Shannon Costello & Bill Weir, "20/20" *Friday: What Makes People Happy?*, 20/20, Jan. 8, 2007, <http://abcnews.go.com/2020/story?id=4087250&page=1>.

hedonic treadmill,⁹⁸ 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.⁹⁹ 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.¹⁰⁰

98. See Ed Diener et al., *Beyond the Hedonic Treadmill: Revising the Adaptation Theory of Well-Being*, 61 AM. PSYCHOL. 305 *passim* (2006) (reviewing theory about hedonic treadmill hypothesis); Stephen Wu, *Adapting to Heart Conditions: A Test of the Hedonic Treadmill*, 20 J. HEALTH ECON. 495 *passim* (2001) (providing empirical testing of the hedonic treadmill hypothesis).

99. See David M. Kreps, *Corporate Culture and Economic Theory*, in PERSPECTIVES ON POSITIVE POLITICAL ECONOMY 90, 92-93 (James E. Alt & Kenneth A. Shepsle eds., 1990).

100. See Elizabeth Kolbert, *What Was I Thinking?: The Latest Reasoning About Our Irrational Ways*, THE NEW YORKER, Feb. 25, 2008, at 77, available at http://www.newyorker.com/arts/critics/books/2008/02/25/080225crbo_books_kolbert (reviewing Dan Ariely, *Predictably Irrational* (2008)). See generally RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2008) (discussing how governments and the private sector may nudge people into making better decisions).