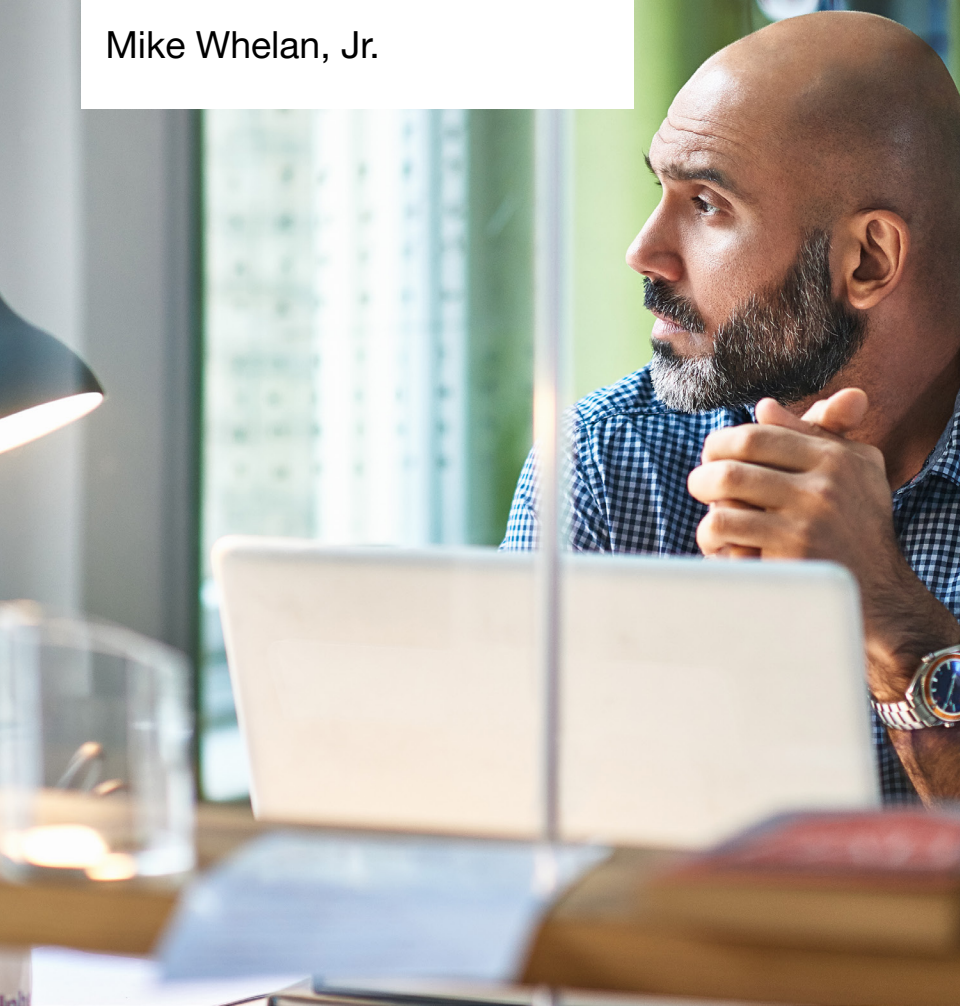


Overwhelm

Mike Whelan, Jr.



Bookkeeping Connect

A PwC Product

Foreword

We need to talk about overwhelm.

Specifically we need to talk about overwhelm among attorneys. Things have gotten worse as we've tried to make things better and it's time to rethink our approach.

According to data we'll sort through later, overwhelm and related emotional harms are reaching epidemic levels in the industry. It's impacting lawyers and it's hurting clients. Worse than that, we're using all the wrong techniques to deal with it. So, please, let's talk about overwhelm.

Before we get into the specifics of defeating overwhelm, I wanted to tell you a bit about me and why you should care what I have to say on this subject.

My name is Mike Whelan. I wrote a book called *Lawyer Forward: Finding Your Place in the Future of Law*. It details my view for connected teams of specialist lawyers who'll deliver better for clients. I argue for systematizing self-acceptance and finding ways to turn your unique abilities into a workable business model.

My friends at PwC read *Lawyer Forward* and wondered how my proposed model might impact overwhelm. After launching Bookkeeping Connect—an outsourced bookkeeping and financial data resource—the folks at PwC have heard from countless lawyers that they're stretched too thin. The attorneys begged for guidance and relief.

And I've been there. After leaving the University of Texas School of Law in 2011 with a couple of barely livable offers on the table, I decided to go solo. I practiced in suburban Austin in the aftermath of the financial crisis. As one of just a handful of local attorneys, I served clients who had more problems than money.

Following the advice of practice gurus and legal futurists, I focused on the “latent legal market.” It's that middle income segment that makes too much money to qualify for legal aid but too little to afford a traditional attorney. Given my pre-law career in logistics, I knew I could streamline processes to deliver efficiently and at a savings.

In a very real sense it worked. I was able to take on a larger number of clients than my peers and deliver good results. But I was so, so tired. The overwhelm began to impact my business and my marriage.

After moving to a rural area in Texas, moneyed clients became even harder to find but the need for affordable legal services grew. I focused again on maximizing my time, taking more clients at smaller fees.

Despite my knowledge of efficient operations, the grind wore me down.

Eventually, as I describe in my book *Lawyer Forward*, I'd had enough. I decided to break out of my overwhelming practice—a cashflow-obsessed model I call “The Churn”—to find a better way. Through years of study and experimentation, I've come to focus more on assets built on my uniqueness than on the frantic pace of an “efficient” practice.

I put the word efficient in scare quotes there because I actually *love* efficiency. I worked in logistics for nearly a decade before law school. I have an actual kanban board in my office and have known about lean manufacturing's application to services for almost twenty years.

I'm a big fan of cutting out the waste in your practice, but I worry that we're ignoring some key data about that shift. When we think of time as the only resource to manage in a practice, we underestimate the impact of our work on human resources. As an attorney, “human resources” means *you*.

Driven by this question I asked the Bookkeeping Connect team to become my patrons. They supported me as I dug into the issue of overwhelm. Although the company sponsored my work, they did not direct it. Rather than sponsored content, then, think of this piece as similar to my other work. There was more story to tell around my mission of helping lawyers and I'm grateful to PwC for making this exploration possible.

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In *Overwhelm* we'll explore data and ideas around the human costs of efficiency and productivity. What trade-offs do we commit when we push lawyers to do infinitely more? If we understood those trade-offs, would we still make them?

To start the conversation, I'll share the story of a friend of mine. She lost everything when she pushed efficiency past its usefulness. She paid an enormous human cost.

The good news (spoiler alert) is that she eventually came back from the edge, but not without first making significant changes. By building on her uniqueness rather than prescribed models of doing more, she found her way. Her struggle is instructive and I hope it's helpful.

To focus on the overwhelm issue, here's the flawed principle upon which my friend and I built our practices: focusing on what we *could* do.

And here's the hopeful solution we both found to cope with overwhelm: building on what we *should* do.

That seems like a trite distinction fit for motivational cat posters, I know, but there's a lot of meat to put on that bone. The difference between "can" and "should" nearly ended my friend's career; understanding it gave her the tools to defeat her debilitating overwhelm.

I've anonymized my friend's name and experience a bit to protect her anonymity, but I'd bet her story will resonate if you also find yourself in the Churn.

To show you what harm overwhelm can do, let me tell you about when Trish was disbarred...

1

Overwhelmed

On the day her disbarment notice arrived, Trish's phone rang and rang.

She never answered that day.

She rarely answered any day.

Following the advice of mentors, Trish hired staff as her client list grew longer. The team offered a relief valve for those days when Trish just couldn't handle the work. As client demands piled up, so did the days of overwhelm. Trish's staff grew increasingly concerned.

Clients called to check up; staff called to check in; and Trish curled into bed, too ashamed to face the revealing glow of sunlight. Under her covers, her shame was her own. Leave and someone else might see it.

But the state bar answered its phone when a series of Trish's clients called with complaints. She was non-responsive,

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underwater in so many ways. The bar demanded an explanation.

Trish, however, couldn't muster one. *Of course* it washer. *Of course* she screwed up. What would she tell them? *She's sorry?!*

No. Better to let her staff answer. Let the letter drop. Let it all come crashing down. From the confines of her bed and blankets, Trish felt none of it. Yet she felt all of it as the costs piled higher.

She pulled the duvet up a little higher as the postman left a green slip on her door. He'd be back and he'd want a signature. Return receipt requested. Being disbarred can't happen without procedure.

“...the Evidentiary Panel finds that proper discipline of the Respondent for each act of Professional Misconduct is DISBARMENT.”

As she read the default judgment that ruined her life, Trish noticed the ALL CAPS font. She'd used the same font in hundreds of documents over her twenty years of practice, usually spelling out the names of clients she'd helped. Now, the CAPS tried to sweep all of her work away.

What was she without her law license? Her entire adult life had been governed by trial dates and discovery deadlines.

She didn't just do the work of a lawyer, she'd become one, complete and whole.

When people asked "What do you do?" Trish never answered with a task or a department; she answered with a "to be" verb.

I *am* a lawyer.

With that identity on the line, Trish couldn't fathom the piddly accusations that led to her disbarment. *Did I really lose who I am over \$2,500?*

Of course, Trish knew it wasn't about the \$2,500 that her former client wanted back. When you practice family law, complaints over relatively small amounts of money are common. This complainant demanded more than money. The former client felt genuinely harmed and wanted her pound of flesh.

Financial perspective probably doomed the attorney-client relationship from day one. Trish tried to serve the middle class market by taking more and more clients at relatively low fees. But the \$2,500 that barely put a dent in Trish's bills represented a fortune to her beleaguered client, who put a big bet on a responsive attorney. It just wasn't enough to keep her attorney above water.

In \$2,500 chunks, Trish rode the roller coaster of law firm financials. She'd sign a client, get the momentary euphoria of a check, consider how few bills the check would cover and how many hours it would require, then feel the drop again. Clients thought they'd paid for their wise guide; Trish felt they'd paid for a dizzying mess.

The downward slopes of the coaster added up over the years. Trish distracted herself with administrative work, and phone calls, and meetings and lunches and school conferences and shoes. She just couldn't escape the descent.

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After years and several complaints about insufficient- but- important checks, the bar kicked Trish out. They took her *to be* away.

If you're like a few lawyers I know, you'll judge Trish harshly for her inability to keep it all together. If you're like most lawyers I know, you'll see yourself in her.

Maybe you know what it is to feel that fear, frustration, and shame. Maybe as you read Trish's story about overwhelm you counted your own days under the covers, phones ringing in the next room. You're not alone.

There's certainly more to Trish's story, and to yours. Trish would be the first to tell you that having too many tasks and too little time was only part of the problem. She's since had to learn a lot about herself through qualified help and deliberate action. Reducing her harm to an unfinished to do list would be insulting and unhelpful.

But we all come to the practice with burdens. What's unique about overwhelm is its amplifying effects and our tendency to dismiss them. People who spend long periods in "fight-or-flight mode" lose the coping mechanisms needed to deal with other wellness issues. You see this in soldiers and emergency room staff. The constant grind adds up to PTSD symptoms, often ignored because sufferers can't point to one supremely traumatic event.

Responding rapid-fire to a long list of demanding tasks robs us of the ability to address our other struggles. It exhausts our mental resources. In that sense, overwhelm is like salt: it enhances the flavor of all the other bad things in your head.

I've ridden the taxing roller coaster that bucked Trish after 20 years of service in the justice system. Like you, I know the

bliss of a check quickly squashed by the realities of math and operational pressures. And, like you, I added tools and people who were supposed to fix the overwhelm that pulled me back to my bed.

Why didn't the tools and systems end the overwhelm? Sci-fi movies and tech company commercials promised balanced productivity. Instead, as we're able to do more, we seem less capable of managing the load.

In this piece I'd like to find out why the promise hasn't delivered. We'll uncover the cognitive and emotional limits that hold you back even as your time capacity increases. I'll also introduce you to the people, ideas, and choices that helped me escape the debilitating grind.

We'll address questions you've probably been asking yourself, including:

- Why does getting a new client only give short term relief to my anxiety?
- When I have few billable hours, why do I still feel so ground down?
- What is unique about lawyers' sense of overwhelm, and what isn't?
- How do my choices impact my sense of overwhelm?
- Can I restrict my work to what matters to me and still survive?

As we answer these questions, I want to give you hope. I'll show you how my friend Trish escaped her roller coaster practice and how you can as well. What disbarment took away, Trish took back. You can learn from her process. Maybe you

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won't need such dramatic consequences to take action, but you will need to rethink some of your assumptions about work.

To get started, let's explore the Efficiency Trap...

2

The Efficiency Trap

To get you thinking about the costs of owning too many tasks, I'd like to perform an experiment. I'm going to give you a couple of simple actions to perform. Think about how you might handle them.

Imagine two buckets filled with golf balls. I'll take one and put it about 5 feet away from you, then I'll set the other one another 10 feet away.

The buckets are fairly heavy but light enough for you to carry. Now I want you to bring them both to me in the easiest way possible. How would you do that?

Here are a few options:

1. You could grab the closest first, bring it back, then run back for the more distant bucket;
2. You could do the opposite, grabbing the distant bucket in one trip and then the closer bucket in a second trip;

3. Maybe you could run out to the distant bucket and then grab the closer bucket on the way back;
4. Or, you could choose the more laborious version of option 3, grabbing the closer bucket first, carrying it to the distant bucket, and then bringing both back together.

Which option did you choose?

Would you believe that the vast majority of test subjects facing this question picked option 4?¹

That's right. Most of us, when given a task we can handle quickly, will favor that task even if it creates more work overall. When we have multiple tasks, we like to do the thing in front of us. And when you add more cognitive tasks (in this experiment, memorizing a series of numbers), you're even more likely to choose the most laborious option.

Researchers call this tendency "pre-crastination." In contrast to procrastination, which is putting off a task, precrastination involves prioritizing a task without considering its importance because it is easily visible (your email inbox is a fine example). For people with long to-do lists, *precrastination* may be a bigger threat than *procrastination*.²

What does this experiment have to do with overwhelm? It reveals a theme that you'll see throughout this piece: even when we *can* do more, we're not very good at picking what we *should* do. And, as our to-do list grows, we become even less rational. Our "lizard brain" kicks in and we create more work for ourselves. That's overwhelm.

To give you another example that'll get you thinking, why do stores stock candy bars near the registers? Who actually buys them?

Grocery stores tempt you with low-cost, easy-to-grab junk near the front of the store. We've seen that for years. More interesting is who tends to give in to the temptation of these money-wasters and calorie-busters: the poor.

Studies show that poor people are more likely to eat out, overeat, and purchase impulse items near the end of a shopping trip than wealthier people.³ Why? Do they really have the money for that? Are they actually hungry? Although bias and cliché might lead you to an “underserving poor” explanation, research shows that poor people make more complex decisions during their shopping trips than do wealthier people. When those complex choices add up, poor shoppers are more likely to give in to irrational temptations.

With each item pulled from the shelf, shoppers of limited means make trade-offs. They do math in their heads and deliberately think through the stock they already have in their pantries. They balance budgets, consider schedules, and prioritize extracurriculars, all while debating the purchase of staples like rice and beans. These complex mental tasks take a toll, leading poorer shoppers to act impulsively rather than rationally. They're operating in a fight-or-flight state of mind.

Law firms are similarly bombarded with fight- or-flight tasks. The work we take on is often emotionally charged and cognitively draining with short and sometimes unpredictable timeframes. We implement time- managing “hacks” in an effort to do more with less.

As an attorney I dealt with things like business design and implementation, marketing, human relations, case strategy, scheduling, client interaction, management, finances, continuing education, and more.

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Associates and staff also have their fair share of high- paced demands. Even as a law clerk in a small firm my plate was full. My bosses focused on utilization rate rather than specialization, making sure every hour was filled with billable work.

I remember one phone call that opened my eyes to this frantic reality. It came into the firm where I clerked during law school. The firm focused on administrative cases but this prospect called to ask if we dealt with school bullying law. “Of course we do,” my boss answered, then told me to quickly research what the heck bullying law was. I had 30 minutes to research before the prospect came in for her free consult.

My experience is not unusual. Even in firms that don’t take everything that walks in the door (and we’ve all been tempted), trade-offs and complexity are inherent to legal work. And we want more of it. We’re convinced that squeezing more complexity into our days will solve the financial ups and downs, never considering that we have limits beyond just the use of time. Addition after addition, we feel overwhelmed.

We see ourselves as heroes of rationalism so we assume a little time management will get our ever-multiplying boxes checked. We read time management handbooks like David Allen’s *Getting Things Done* or Stephen Covey’s *The 7 Habits of Highly Effective People* (or at least we buy them, given that pleasure reading is another task to stress over). We hire consultants whose ideas require too much time and training, and we clumsily implement software tools.

In the end, we accept that our employees may never pick up on the changes and even let ourselves off the hook. But the failure stings and we become even more overwhelmed.

These unmeasured costs put your business and your and your staff’s well-being at risk. They are the human costs rarely

publicized by efficiency-focused software companies and consultants. If you want to get beyond what you *can* do, the burden is on you to consider what you *should* do.

First, please don't read this work as some kind of manifesto against efficiency or technology. I'm not quite old enough to be a curmudgeon yet, so let's get beyond the self-help clichés and ask hard questions about the nature of work in our ever-evolving knowledge economy. With stakes this high, we have no time for clichés.

Rather than a curmudgeonly manifesto, think of this as a research field piece. I grew up professionally in an industry obsessed with efficiency—the just-in-time hustle of the modern supply chain—but have seen those principles poorly applied to the human-intensive work of the legal industry. I wanted to understand why. What are the limits of efficiency in the context of human capital? Do technology companies consider those limits when pushing us to be constantly “on” as workers?⁴

What should knowledge workers do to manage their overwhelm? Hyper-schedule or hyper-ignore? Do we finally implement *Getting Things Done*⁵ or join a hermetic monastery? Should we abandon time management principles and just pursue our art?

I won't push you that far from your lawyerly path. My argument is not that time doesn't matter, but that it's not your practice's (or your) most significant limit. In fact, you're probably ignoring the maximums that matter

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most. Understanding this will help you build a practice on effectiveness first, then efficiency.

To avoid turning this important insight into a corporate-speak Dilbert cartoon, allow me to back it up with research and counsel. Here's how your *Overwhelm* field piece will unfold:

In the next chapter we'll talk about what author Edward Tenner calls "*The Efficiency Paradox*."⁶ It's the phenomenon of increased productivity that has not led to increased well-being. We'll then dig into data for explanations of the paradox.⁷

In chapter 4 we'll revisit studies about lawyers' satisfaction and well-being, looking for a common thread between general worker malaise and the trends we see in the legal economy.

In chapters 5 through 7 we'll address the limits that outweigh time management's impact on lawyers' well-being: cognition and emotion.

Finally, in chapter 8, I'll share solutions that are rooted in data and experience, before ending with the rest of my friend Trish's story in chapter 9. You'll see how her path supports the data-driven conclusions in this book. You'll also find hope in her redemption.

Overwhelm is an epidemic in the knowledge economy and it's having particularly harmful impacts in the legal industry. If you've ever felt the pressures of limited time and an ever-expanding task list, look for principles you can implement as you read this piece.

As you'll see, the solution to your overwhelm may be in taking the exact opposite approach to the one you've taken so far.

3

Positive Productivity

“Let us, for the sake of argument, suppose that a hundred years hence we are all of us, on average, eight times better off in the economic sense than we are today...”

John Maynard Keynes presented this hypothetical future in a 1930 talk titled “Economic Possibilities for our Grandchildren.”¹ On the doorstep of the Depression, Keynes tried to rally some optimism. His vision about future prosperity was confidently stated—“Assuredly there need be nothing here to surprise us,” he said—and he was not wrong. We’ve made incredible gains in material production.

But the end of his prophecy was not abundance so much as freedom. Getting more done with less would, he believed, give us the freedom to be *better* people. With gains in technology-enabled productivity, Keynes imagined a new moral age.

We would, he said, “return to some of the most sure and certain principles of religion and traditional virtue.” We’d

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realize that “avarice is a vice, that the exaction of usury is a misdemeanour, and the love of money is detestable...”

With a long list of anticipated moral victories, Keynes encouraged hope in the face of his era’s despair. One day the growth in our output would enable a utopia focused on human wellness.

Judging from the title of his talk, Keynes expected this utopia to come in the age of his grandchildren. We’ve long since passed that timeframe, so what do you think? Ninety years after his prediction, do you feel like we’re close to Keynes’s hope? Have we neared the “age of leisure and abundance” that he expected?

In this chapter we’ll talk about the promises of productivity and whether they’ve actually delivered. You’ll see that, rather than bringing about an age of rest and enlightenment, our obsession with productivity has led to many dark and unexpected consequences.



What is the purpose of productivity? To answer, consider this quote from Adam Smith: “Consumption is the sole end and purpose of all production.”

Work, Smith proposed, is not its own good. It is done to benefit people who want better stuff. Smith said that “the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer.”

In Smith’s mind, for you and me to talk about your personal well-being, we should probably start with your role as a

consumer rather than as laborer. Being the producer, he'd say, is simply the toll spent for the contentment of consumption. We do our jobs to have better food, a better house, and a more reliable and shinier car—not for personal wellness.

We work to live (borrowing from too many cross-stitched pillows), we don't live to work.

Given our ostensibly Puritanical roots, that fixation on the material may seem crude. Still, economists use the produce-and-consume cycle as a proxy for well-being. Our ability to consume more per amount of time spent working—our productivity—is one of the most significant economic success measures.

“Over the long run,” the Bureau of Labor Statistics says, “productivity growth is the economic factor that has the potential to lead to improved living standards for the participants of an economy—in the form of higher consumption of goods and services.”²

The BLS cares about the “quantity of goods and services” that can be consumed “for the same amount of work.” As productivity increases, we get more output with less work, and then we can buy more stuff; the stuff then contributes to an increase in quality of life.

Any fair-minded economist would attach a list of caveats to Smith's simple formulation—greater purchasing power obviously doesn't fill every emotional bucket—but we'd expect to see a fairly direct correlation between productivity and wellness. Meaning, as productivity goes up, so should quality of life.

What you'll see in the data is that Smith was right, but only to a point.

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Let's start with some baseline data. Has productivity gone up since John Maynard Keynes predicted it would in 1930?

The short answer is a resounding *yes*.

“In fact,” the BLS reports, “U.S. business sector output has increased more than nine-fold since 1947 while the hours worked to produce that output have not quite doubled.”

Keynes' hypothetical assumed an eight-fold increase in productivity and living standards by 2030, so we're on pace. Productivity has definitely improved in the wake of technological advances.

But what have we done with those gains? Data shows that American work weeks haven't decreased along with our jumps in productivity.³ Rather than doing more in less time, we are simply doing more. We have a “bias to action” that makes us fill unnecessary hours. Clients and employers are happy to encourage the behavior, even when doing so negatively impacts the quality of our work.⁴

Not only do we fail to adjust our hours to compensate for productivity gains, we have a hard time seeing the benefits in our own lives because of the boom-and-bust cycles of the modern economy. The BLS historical productivity data shows that growth has not been linear. We've seen periods of great productivity growth and other periods of massive slowdown. This creates waves in the economy that leave people anxious even as overall productivity trends upward. These microeconomic shifts take time to level out.

We see what Keynes called “technological unemployment” which is our inability to create new jobs at the same pace at which we lose the old ones. In 1930, Keynes struggled to

answer the same question we might ask today: “If things are so good, why do I feel so bad?”

The economy may be doing better, but that doesn’t mean you are. As you’ll see, public sentiment reflects that paradox.

Given the productivity jumps we’ve seen, should we expect a direct correlation with greater well-being?

Well, it’s complicated.

According to measures gathered by Oxford University’s “Our World in Data” website, Earth’s diverse citizenry is in many ways thriving.⁵ The percentage of global population living in extreme poverty was at 66.1% in 1929, but that number was down to 9.98% in 2015; world literacy in 1930 was at just 32.53%, and now it’s over 86%; and infant mortality dropped in that period from nearly 30% of children dying within their first five years to under 4%.

In short, we seem to be doing really well. But, according to Our World in Data, we don’t all know it. “More than 9 out of 10 people do not think that the world is getting better,” the organization reports. That lack of awareness undermines Keynes’ hope for optimism in the face of downturns.

In fact, rather than sentiment positively tracking our improved productivity and living quality, the world is “getting more miserable.” Gallup’s annual Global State of Emotions report showed that “4 in 10 people said they experienced a lot of worry,” while “a third said they were stressed... A quarter experienced sadness, and 22% were angry.”⁶

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Our sense of wellness is getting worse as our outcomes get objectively better. For policymakers, this mismatch is infuriating. How can we feel more miserable while productivity and consumption measures improve?

It's possible that this is simply a perception problem—Steven Pinker's crusade against media negativity in his book *Enlightenment Now* makes this argument—but it could also signal that productivity creates new stresses that we have yet to understand. Where on the productivity/consumption curve do we lose track of the good and start seeing the bad?

In a now-famous survey, economist Angus Deaton and psychologist Daniel Kahneman found that the money-for-happiness relationship caps out at about \$75,000. Beyond that level of income and consumption, modernity requires some stress-inducing trade-offs that offset gains in material wealth.⁷

You may find that shift in the relationship between productivity and wellness unsurprising. Logically, happiness factors change as we climb up Maslow's Hierarchy of Needs. For people struggling to eat, purchasing power is an obviously pressing concern; beyond \$75,000 (the average number at which survey respondents imagined they'd feel comfortable), happiness requirements become more esoteric. People seek self-fulfillment, empowerment, and favorable status comparisons with friends and neighbors.

America is a wealthy nation. So, while time-strapped Americans rank poorly in measures of worry, sadness, and stress, we also self-report as generally satisfied. Because of our relative material comfort, we've apparently traded up for "first world problems."

Some number of lawyers are truly broke, struggling in the lowest tiers of Maslow's pyramid. That's likely not you. You

may feel tempted, then, to dismiss your anxieties. You might tell yourself that you have no right to complain.

Although perspective helps with regulating expectations, ignoring the overwhelm of your relatively affluent life is still dangerous. Harm, as an anthropology professor once explained to me, is a breach of expectations; it doesn't matter whether those expectations are realistic (or, in this case, "first world"). Your suffering is as valid as anyone else's.

Ultimately the data shows a disconnect between Keynes' vision and reality. Past a certain point, increased productivity does not lead inevitably to a sense of well-being, much less a moral utopia. Indeed, modern comforts seem to bring with them new anxieties that we haven't accounted for in our push to do more with less. There's a people strain in the knowledge economy.

How does that strain translate to the legal industry? Are lawyers inclined to the same anxieties and ambivalence seen in other knowledge workers? And if so, how is a focus on time management likely to impact those feelings?

As you've probably experienced, we have not escaped the modern problem of overwhelm.

The Costs Of Efficiency

That disconnect between Americans' self-reported satisfaction levels and rising levels of sadness and anxiety? We see the same dynamic in law.

Milan Markovic and Gabriele Plickert asked Texas' bar membership how they felt about their careers. Despite narratives declaring lawyers generally unhappy (which we'll dig into shortly), Markovic and Plickert concluded that "law is not an unhappy profession."

In fact, on a five-point scale, the lawyers surveyed reported a mean satisfaction rate of 3.76. That struck the authors as quite high. As the article underlines, only 8.7% of Texas lawyers felt dissatisfied and 4.8% felt very dissatisfied. 13.5% of lawyers surveyed (and just 11.5% of full-time attorneys) apparently regret becoming lawyers. That ratio looks pretty good, especially after the 2008 recession.¹

And yet, despite this seeming positivity, lawyers are rated as the loneliest professionals,² our levels of depression and

substance abuse will make you shudder,³ and our likelihood of suicide is absurdly high.⁴ Like the general sense of misery in the world while things actually get better, this data looks off.

We could qualify the study's findings—questioning “satisfaction” isn't the same as dismissing pervasive anxiety and overwhelm; maybe asking lawyers to self-report their lack of career success is an emotional bridge too far; and maybe we should include the lawyers who feel “neutral” (another 22% of respondents) to get a better picture of our ambivalence. In any case, it's fair to say that lawyers may suffer without feeling motivated to leave the profession.

Where would you land on this satisfaction scale? Maybe you would tell a pollster that you feel “satisfied” even while struggling with constant overwhelm. Or maybe you identify more with the 35% of lawyers who feel neutral or worse about their careers. Perhaps you worry about the overwhelm of your team.

While recognizing that many lawyers feel satisfied with their life choices (and congratulations if you're one of them), the data consistently shows that we suffer for our profession. What I wonder is whether we're making unnecessary trade-offs. If so, strategies for defeating overwhelm will raise the tide for all boats—even the satisfied ones.

In this chapter, we'll talk openly about wellness in the legal industry. We'll try to define which of our anxieties can be overcome through our actions and which require professional help. One of the downsides of the modern “*Happiness Industry*” is that we tend to ignore systems-level causes of harm in favor of “pull yourself up by the bootstrap” solutions.⁵ Of course, ultimately, only you can decide which bucket your personal struggles fit in.

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Consistent with the theme of this piece, I want to focus on how our work impacts our well-being. Specifically, how has increased focus on doing more work in less time impacted lawyer wellness? Are we better off as we've improved our productivity?

However we might define "satisfied," several sources of data suggest that we're not a particularly happy bunch.

In 2019 the American Bar Association released its Profile of the Legal Profession.⁶ It paints a pretty unflattering picture of how the industry deals with important matters like diversity and women's issues, as well as education and technology competence.

Relevant to our discussion, the Report also aggregated some data about attorneys' well-being. According to the ABA's report:

- 21% of lawyers qualify as problem drinkers, compared to 6% of the general population and 12% for other kinds of highly-educated professionals.
- 28% of lawyers deal with major depression symptoms.
- 19% deal with chronic anxiety.
- Upwards of 30% of lawyers dealing with disciplinary charges also suffer from chronic mental health issues.

We've seen similar data reported for years. Check out this report from 1995,⁷ or this one from 1990,⁸ or this from 2016⁹. A study from Johns Hopkins found that law is one of only three

professions among 104 studied that increase the occurrence of major depressive disorder, with lawyers 3.6 times as likely to suffer.¹⁰ Law took the lead in the unhappiest profession race three decades ago and has not relented since.

It's a bit exhausting to rifle through all the data about lawyers' emotional struggles. Let's jump from the macro issue to the micro. While we should all be mindful of the most at-risk members of our unusually at-risk profession, I want you to focus on making appropriate space for you and your team to deal with the overwhelm in your firm.

Begin with the realization that ignoring the normal pressures of knowledge work will do your firm no good. That kind of detachment fosters a work environment that one paper calls the "Zombie Lawyer Apocalypse."¹¹ It's an environment filled with emotional dissonance and misery. Better to address this issue head on.

To do this, I'm going to ask you to think a bit like I do, in terms of systems. Lawyers are taught to think in very linear cause-and-effect chains through the case method.

Reductivism is an important heuristic and the basis of modern science—I'm not knocking it—but for this kind of problem, I want you to become an amateur systems thinker. That'll help you see the bigger picture.



For this conversation, I want you to consider one foundational concept from systems thinking: the bathtub analogy. When you map out the relationships and causal links in a complex system, you learn to see stocks and flows. The stocks are

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resources that are replenished and depleted based on forces in and around the system. They're like bathtubs, with a faucet bringing water in and a drain letting water out. If you want your bathtub to be full, you have to pay attention to both flows.

A law practice is a complex system with lots of bathtubs. We've all experienced the pain of ignoring new client inflow too long, for example, only to see current clients flow out with no new work to take its place. That's one bathtub. For the purpose of this conversation about overwhelm, I want you to think about the flows in and out of three particular limited-resource bathtubs: your time, your cognitive capacity, and your emotional reserve.

In the next few chapters, I'll show you how focusing too much on time has left your cognitive and emotional bathtubs drained.

5

Choice Overwhelm

I want to contextualize your bathtubs by talking about the decisions you make. Specifically, let's talk about how having too many decisions can hurt you and your clients.

We'll start with big box retail clubs. Have you ever gone to one of these giant warehouses in order to eat free samples?

I'm not asking whether you've grabbed samples during a shopping spree, but have you gone to do nothing more than seek free food and look around? It's actually a glorious outing, as we often learned while attending law school with four kids in tow. For parents who are broke and bored, a freesamplethon is actually quite fun.

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Studies consistently show that free samples increase sales. Whether stimulated by feelings of reciprocity or dopamine, warehouse club members buy more when samples are available.¹

But there's a magic to free samples that gets to our question of lawyer overwhelm. It has to do with the number of choices samplers are asked to make.

Researchers Sheena Iyengar and Mark Leper wanted to test how the number of samples influences buyers' behavior.² They set up a table at their local grocer in Menlo Park, CA.

Students dressed as clerks and offered a coupon in exchange for taking samples of jarred jams. If you taste-tested, you'd get a dollar off of any eventual purchase. This allowed researchers to track who tested the samples and then bought something. They laid out two different sets of sample jams, giving one group 6 options while another group faced 24 possible jams.

You might expect that the larger table of sample options attracted more eager testers, and it did. However, of the larger number of people who chose from among the 24 options, fewer actually bought something. In fact, when there were more options, the portion who used the coupon to purchase jams was just 3%; when the clerks offered 6 samples, 30% of the testers bought jam. Fewer options actually led more people to make the desired decision to buy something.

What does this have to do with your sense of overwhelm? Well, if you've added many tasks, you may be too overwhelmed to even decide what to work on first. Even when you push through, you're likely doing lower quality work.

In this chapter we'll talk about the phenomenon of decision fatigue, and how it is hurting both you and the clients you serve.

Decision fatigue is the result of spending too much brain energy on decisions. As you saw from the precrastination examples in Chapter 2, we make irrational decisions when we've worn out our mental reserve. And, as Trish's story at the beginning of this piece shows, we often refuse to make any decision at all.

Sheena Iyengar, who co-created the jam sample study, dug into this issue in the context of employee retirement accounts.³ Faced with too many choices, many employees simply opted out of the program. Her research showed that for every 10 fund options a 401k administrator added, participation went down 2%. These people often left matching employer money on the table because they didn't want to make a decision.

Attempting to tie a thread between Iyengar's two studies and other research on decision fatigue, psychologist Barry Schwartz wrote about *The Paradox of Choice*.⁴ Schwartz's argument, in brief, was that adding decisions does not always equal increased satisfaction.

Psychologists had assumed that increased freedom generally leads to emotional well-being—there was a lot of data to back that up—but Iyengar's research identified a limit. At some point, choices actually harm us emotionally.

In his book, Schwartz laid out a history of the explosion in choices offered by productivity and prosperity. For example, while his childhood supermarket only offered a handful of cookie options, he described a recent trip to the store where he counted 285 possible cookie boxes. Improvements in supply chains make that eruption of options possible.

Schwartz broke down why this flood of choices leaves you feeling overwhelmed, including the feeling of missed opportunities for the options you didn't choose. He explained

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why people who always expect the best (he calls them “Maximizers”) are set up for constant disappointment.

You could fairly argue that lawyers are ethically required to be Maximizers. In many ways, “good enough” is not part of our function. I may not buy that argument as universally true, but if you believe that about your work, know that you pay a toll every time you try to make the “best” choice for your clients and your schedule.

As it turns out, rendering every decision complex is exhausting. Schwartz’s book explains how that impacts the well-being of the decider (you), but let’s talk about how decision fatigue impacts subjects of the justice system. There, deciders risk harming more than just their own wellness.



Judges make a number of complex choices that impact others. If they face decision fatigue in their roles, they could undermine the administration of justice. And that’s exactly what we see.

Jonathan Levav of Stanford and Shai Danziger of Ben-Gurion University set out to measure the impact of decision fatigue on judges’ parole decisions. In a 2011 paper titled “Extraneous Factors in Judicial Decisions,” Levav and Danziger found that when decision-makers eat has an enormous impact on judicial decision-making.⁵ Let me share the data with you, then I’ll explain what eating has to do with decision fatigue.

Levav and Danziger tabulated parole decisions made by judges in an Israeli court. They tracked the judges’ two daily food breaks and the three decision-making sessions that occur

around them. They measured the frequency of judges granting parole relative to the decision's relationship with the judges' meal times.

In each of the three decision-making sessions, parole decisions near the beginning of each session favored the defendant at a nearly 65% rate; if you appeared before the judge near the end of his decision-making session (meaning furthest from a meal), the likelihood of parole consistently dropped to near 0%.

The disturbing conclusion echoes many cynical lawyers' worst fears: judges' decisions may sometimes have less to do with justice than with what they had for breakfast (or at least when they had breakfast).

What does meal time have to do with decision-making? Well, if decision-making is a mentally taxing activity, you'd expect a brain experiencing decision fatigue to need more fuel. That is, just before meal time, the judges' minds will have made the most expenditure without refueling. Just after a meal, the judges' brains have more glucose to fuel complex decision-making. This study shows that a tired brain makes fundamentally different choices than a fresh one, and that difference has an impact on justice.

When you make complex choices about an ever-expanding to do list, you risk a similar fatigue. The lesson is probably not that you should push candy bars into an IV to keep you going all day, but that the number of decisions you make comes with a cost. Your ability to make thoughtful choices is not infinite.

If you want to defeat overwhelm, you might want to start by making fewer choices. We'll talk about other brain limits in the next couple of chapters, but recognize that time is not your only bathtub to consider. Efficiency tools and techniques may make it easier for you to do it all, but that doesn't mean that you should.

6

Cognitive Overwhelm

Let's generalize from decision fatigue to address one of the bathtubs you're probably mismanaging in your firm: your cognitive capacity.

We'll illustrate by thinking of cognitive limits in the classroom and the techniques teachers use to help us learn.

In the 2002 film *The Time Machine*, H.G. Wells's great-grandson Simon made his live action directorial debut. His protagonist, played by Guy Pearce, jumps forward in time and lands in the middle of a New York City library. Simon Wells imagined what a near-future classroom driven by technology tools might look like.

In a hallway full of screens, a teacher leads her class on to the next display. “Please make sure that your micro scans are charged for download,” she says.

Noticing a couple of laggards, she turns to a particularly rambunctious child and says, “Tom! If you do that again I will resequence your DNA, so help me. Now march!”

Our hero steps into the strange scene. Orlando Jones, playing Vox NY-114, appears as a hologram on a nearby screen and asks how he can help. As the two characters interact, Vox explains that he has information from every database on the planet and makes it all available to elementary school kids as they pass.

Vox is a store of nearly infinite information; our Victorian-era hero asks him how a person can change the past. With snark that only Vox can muster, he points our hero to science fiction. Even with every bit of human knowledge he couldn’t help the hero with his issue.

This gets to a limit all teachers (and lawyers) face. With a nearly infinite amount of information instantly available, how do we filter down to the knowledge that helps with real, human problems?

Access to information is no longer the issue in our knowledge economy. Instead, you’ll need to consider the limits on your human-centered tool for judgement: your brain. To think through those limits, let’s talk about presentation tools in law school classrooms.

Contrary to what you may believe, law professors do try to stay up-to-date with educational software (or at least up-to-the-latest-decade). In the case of presentation tools, legal writing professor Rachel Stabler believes that law schools have fallen too far behind.

“The problem is that we are not using [slides] well,” Stabler tells her fellow professors in a recent paper.¹ “We have fallen into a common [slideshow] trap: the dull, bullet-point-laden, text-heavy presentation style that is the subject of comics, mockery, and derision.”

Stabler encourages her peers to update their use of presentation slides according to the science of “cognitive load theory.” From her description, it’s easy to see how cognitive capacity can impact your law practice.

Cognitive science generally deals with our mental processes; cognitive load theory focuses on the mental resources required to learn. Some things we learn are considered “biologically primary knowledge,” or learning that happens almost automatically. “Biologically secondary knowledge,” however, requires more mental resources.

As Stabler describes, “When contemplating any mental task, the brain must both store and manipulate information.” These activities ask for the “front of your mind,” or what researchers call your “working memory.” The problem with working memory is that it is incredibly limited.

Incorporating new information comes with an intrinsic load (the difficulty of the new information) and an extrinsic load (the difficulty of the way the information is presented). As you might imagine, Stabler’s study encourages law professors to use slides in a way that focuses on intrinsic load without

creating extrinsic burden, or confusing students with sounds and images that don't help.

Similarly, you have a limited working memory for the complex tasks you perform as an attorney. The more low value pressure you put on the front of your mind each day (like slides with swoosh sounds and bouncy graphics in the classroom), the less able you are to use that limited store for higher value tasks (like slides with substantive content that you thoughtfully consider).

This all makes sense. Practice management advisors smartly suggest that you to eliminate low value tasks so you can use your mental resources for better work. I completely agree. Still, if you think of your daily tasks as slides, you can't simply replace the swoosh-and-bounce slides with an equal number of substantive slides. You have to consider what to do with your newfound brain savings. Just because your cognitive bathtub is no longer drained in spoonfuls doesn't mean you should drain it in pitchers. If you become efficient but double your workload, you may still be straining your brain beyond its capacity.

Your best work requires a lot of mental energy. By all means, get someone else to take out the trash and shred your documents, but your work is not yet done. Now you need to smartly add back good work that uses your limited cognition well.

So what should you add back? What kind of work is best for your limited cognitive resources, particularly if you want to deliver for clients? To answer that, consider what it means to "think like a lawyer."



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One of my favorite pieces on law practice is Anne-Marie Slaughter's letter "On Thinking Like a Lawyer." If you haven't read it, I'd highly recommend a look.² In the letter, Slaughter does her best to explain the nebulous guarantee of a legal education.

"Thinking like a lawyer means," Slaughter says, "... thinking with care and precision, reading and speaking with attention to nuance and detail."

She then applies this precision to decision-making: "Learning to think like a lawyer means learning to accept some arguments and to reject others, and to know and be able to articulate why."

This brain-intensive view of lawyering plays out even as we do more to involve clients in decision-making. In a TED talk, Barry Schwartz pointed to a similar change in medicine toward patient autonomy, or "informed consent." Schwartz described the modern doctor's appointment not as an expert telling a patient what to do, but a service agent listing benefits and risks before shifting the decision-making burden to patients.³

Similarly, in law, we've made a turn toward "client-centered" counseling, but I'm not sure that lessens our cognitive burden. More likely, we multiply and spread it around. We still evaluate client options and define paths for accomplishing their goals.⁴ Meaning, even as we push clients to adopt a heavier decision-making burden, we still do similar cognitive work in order to advise them.

Good lawyers often urge clients toward right courses of action. As Elihu Root concisely put it, "About half the practice of a decent lawyer consists in telling would-be clients that they

are damned fools and should stop.” These activities expend cognitive resources.

“Thinking like a lawyer” involves complex mental tasks. It is therefore important to be mindful of our maximum ability. Obsessing over efficiency and productivity will not increase your cognitive cap. In fact, if you push yourself to add more complex tasks in the name of time management, you will likely drain the bathtub of your cognition too quickly.

We’ll talk later about how to manage your workload with these cognitive limits in mind. In the next chapter, though, we’ll dig into another important maximum that efficiency tools can’t manage: emotional labor.

7

Emotional Overwhelm

In this chapter we'll talk about the emotional burden lawyers take on and why you should be more mindful of it. To illustrate the basic concept, let me tell you about a bad day my daughter recently had at school.

When my daughter came home from a busy day, she was visibly upset. She told me she'd done well in class but had a practice for the school play scheduled that afternoon. That's when things apparently went sideways.

As with all middle schoolers, my daughter's social obstacle course would make for a tough sociology exam. It's not just the Jets and the Sharks anymore: she deals with Populars and

Jocks, Brains and Normals, Emo/Goths and the Manga crowd. She struggles to fit into any of them.

My daughter has severe dyslexia. Every day she does her best to get by but the anxiety adds up. She's often tempted to show her emotions, a risky bet in the cutthroat culture of middle school.

On this particular day she ran into some of that emotional burden. The school was performing a series of one-act plays, written and directed by the students themselves. My daughter, given her lower social status and difficulty reading, was cast in a small speaking role. She was excited and did her best to memorize her handful of lines.

In fact, she memorized everyone's lines. All of them.

As she explained to me after her difficult day, memorizing all of the lines helped her avoid the confusion and anxiety that comes with her reading disability. As long as everyone kept to the script, she felt confident. But that didn't happen.

As the performance drew close the actors did extended walk-throughs, but not everyone had their lines down yet. The cast was told to improvise in order to complete the walk-through. My daughter couldn't keep up.

At some point in the practice, another cast member improvised and then looked to her as a signal that she should continue. She was beyond confused at this point, unable to plug her lines into the flow of the practice. One of the student directors stopped the practice and yelled at her, "If you can't keep the play moving along, maybe you shouldn't be in the play at all."

As she shared the story with me, I could see that she harbored a bundle of feelings in her chest. I asked her, "Did you cry?"

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“No,” she said. “I kept it in.”

As our most emotive child, I knew she must have struggled to keep it all inside. After she told me about her tough day, she finally hugged me and cried, releasing the emotions she’d held in during practice.

It’s hard not to feel sympathy for my daughter and every child that navigates the emotional waters of middle school by holding it all in. Still, we fail to appreciate how often we do that as adults. Researchers call this masking of feelings in professional environments “emotional labor.”

As with decision fatigue, we each have a cap on the emotional labor we can perform. Attorneys deal with unique emotional labors that strain our maximum, and in this chapter we’ll discuss how that strain impacts our sense of overwhelm.

My wife often tells me that being a solo attorney is like being a stay-at-home mom. When she sent me an article titled “Women Aren’t Nags—We’re Just Fed Up,” I finally understood her meaning.

My wife explained that the “house manager” mom keeps a lot on her mind. The projects, tasks, and memories that she’d like to store in the back of her mind often spill into her working memory. This is the cognitive load issue we discussed earlier.

But the article also introduced the idea of emotional labor. It's the exhaustion of emotional resources for the purpose of filling a role. My wife, a stay-at-home mom, has to keep her cool when I come home grouchy, or a teacher fails to notify her of a due date, or a teenager slams her door and says she hates us. Transactions like these take a toll, both in the home and at work.

Sociologist Arlie Hochschild did early work on the question of emotional labor in work environments. In her book, *The Managed Heart: Commercialization of Human Feeling*, she gave the example of flight attendants masking their emotions for the benefit of passengers.¹ When turbulence makes customers anxious, flight attendants hide their own anxiety in order to improve the passengers' experience.

On the other side of the service coin, Hochschild shared that employees of debt collectors are trained to be aggressive and skeptical. Trainers even push collectors to imagine debtors as lazy and dishonest. This manipulation of feelings benefits the employer but it's a poorly-compensated emotional cost for the employee.

Every job environment requires some amount of emotional management (just like every middle school). Hochschild's work focused more specifically on service employees. Their emotional labor goes beyond maintaining professionalism and becomes a prescribed and managed activity for the benefit of the company. That is, these people get fired for not being nice.

We could all point to opposing counsels who did a poor job of managing emotions. However, as service providers, lawyers must carry an emotional burden in order to satisfy clients.² We do it when we engage with angry clients, difficult opposing attorneys, judges whose rulings strain reason, and clerks who

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refuse to file that one important document. Our labor may not be the same as an online customer service agent's, but we definitely sell our ability to stay calm when the world around us is on fire.

Be mindful of this effort. The stock in your emotional bathtub flows in and out even when you brilliantly manage your time. Smart, efficiency-focused methods may allow you to add more tasks to your to do list, but you can't ignore the emotional costs of those tasks.

In fact, lawyers' emotional burden is unusually high—our role as “zealous advocate” requires it.

Sofia Yakren wrote a detailed study of lawyers' unique emotional labor.³ She began her paper with this quote from William H. Simon: “No social role encourages such ambitious moral aspirations as the lawyer's, and no social role so consistently disappoints the aspirations it encourages.”

As you can imagine from her use of Simon's quote, Yakren did not tiptoe around the emotional costs of lawyering. However, unlike other studies that point to the general discomfort of the adversarial system, Yakren evaluated the unique pain of fighting in our clients' interests.

Typically, attorneys adopt our client's aims and values as our own. Although we may not agree with everything our clients do, we are expected to subdue our own wishes to theirs. “This expectation enables clients to exercise their autonomy through the legal process,” Yakren noted, “but it may also come at great psychological cost to lawyers.”

We see this cost play out in the public sphere. Every election cycle, one major lawyer-candidate's list of clients becomes public. After pushback, the candidate is forced to explain why they represented someone whose beliefs contradicted her own. The candidate (and every lawyer on social media) extols the value of the adversarial system and explains that it doesn't work if we're picky about clients.

We certainly won't love all of our clients. We won't agree on everything. That's part of the gig, but we pay a unique emotional cost every time we tell ourselves that story. Yakren called this the "detachment strategy"—the emotional cost of separating our private identity from our professional role—and it can leave a lawyer feeling a tad schizophrenic.

Yakren described some of the emotional management tactics available to lawyers. In the case of "deep acting," she explained that lawyers might consciously modify their internal feelings to align with their client's interests. Meaning, you can self-talk until you sympathize with and even support your client's worldview.

Of course, this conscious effort will quickly drain your emotional bathtub. Still, data shows that this is less taxing than "surface acting," which is basically faking it. That effort wears on lawyers who become emotionally exhausted and cynical.

Given this measurable emotional burden, Yakren suggested that we might want to recruit law students based on their ability to endure trauma and ignore their own sense of justice. Still, as she pointed out, this preference for "moral flexibility" comes with other problems. We may not want to chase out everyone who'd raise a red flag rather than compromise their standards.

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Finally, if we want to avoid these emotional burdens on lawyers, Yakren suggested we might change the advocacy rules to eliminate the required flexibility. If the lawyer could make decisions that promote “justice” rather than a client’s interests, she may avoid the harmful dissonance. But this enormous departure would require a completely different foundation for our justice system.

All that is to say that, as a society, we know lawyers pay a cost for their work; we want them to do it anyway. If you ignore that emotional bathtub and focus on filling your time with more emotionally burdensome tasks, you will find it empty.

As with your limited cognitive capacity, your emotional capacity deserves consideration. Just because you can add more of these “high-level” emotional tasks doesn’t mean you always should. Instead, see your emotional capacity as a stock to manage. It is not infinite and is much harder to manage than time.

In the next chapter, we’ll talk about how you can manage these more difficult caps.

8

Managing The Overwhelm

To help identify some principles for managing emotional and cognitive overwhelm, I want you to imagine an unusual Saturday afternoon infomercial...

Are you a young Japanese man? Have you chosen withdrawal as a coping strategy for overwhelm? If so, for weekly payments of just \$999, you can Rent-a-Sister today!!!

But wait, THERE'S MORE!!!...

Of all the oddities the late Billy Mays pressed on us during weekend sports events and late night TV binges, he never had to sell something so odd as a sympathetic sibling. But the ad practically writes itself:

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Are you alone all day? Does the world outside overwhelm you with options that you'd rather not face?

At this point, Billy walks in from stage left with his thumb in the air...

Call now and we'll send you a sister for under \$1,000 a week!

Unusual as it sounds, sister-renting is a boom industry in Japan. In a report for the BBC, journalist Amelia Martyn-Hemphill interviewed these sisters-for-rent to discover why Japanese parents sought their company for their sons.¹ She found that their very presence was the service, a salve for the troubled minds of Japan's infamous "*Hikikomori*."

If you are not familiar with the term *Hikikomori*, it generally refers to young men in Japan who have withdrawn from daily life. They spend most of their time on video games and other distractions, failing to build the kinds of relationships that lead to jobs, marriage, and flourishing communities. The trend has troubled Japanese authorities for more than two decades.

In 1998, psychiatrist Saitō Tamaki published the first robust profile of these young men.² Taking its title from the Japanese word for "pulling inward" or "being confined," Tamaki's *Hikikomori* laid bare the hermetic lifestyle of youth unwilling to engage.

As you might expect, Tamaki's work prompted visceral reactions from critics and allies. It offered hope to frustrated parents unable to identify the problem, but *Hikikomori* also

embarrassed Japanese authorities and educators who'd built a reputation for perfect pupils.

Almost on queue, American journalist Michael Zielenziger called the phenomenon uniquely Japanese in his book *Shutting Out the Sun*.³ He blamed the country's "monoculture" and the use of shame as a social stick. The kind of deep social withdrawal that typified *Hakikomori* youth was considered the exclusive consequence of a Japanese dynamic.

Tamaki, however, warned of a global problem. He pointed to reports of increased loneliness and chronic homelessness in America, as well as the "NEETs" (Not in Education, Employment, or Training) in Great Britain, as examples of withdrawal in other modern cultures.

In each of these countries we see shame used as a weapon to push those who've withdrawn "off the dole" and back to work. As in Japan, we treat the *Hikikomori* in our countries like they've pulled inward out of laziness or defiance. Tamaki argued otherwise: "In reality, they are spending their days assaulted by feelings of impatience and despair over their inability to participate in society."⁴

If this sounds like the story I shared of my friend Trish at the beginning of this piece, it should. Withdrawal is one of several unhealthy tactics lawyers use to respond to overwhelm. Alcoholism and suicide are others that we've discussed already.

Maybe you've used the withdrawal tactic. You've woken up, plugged your aspirations into a time management app, and

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quickly filled your day with TV or unnecessary tasks. That tendency to unplug can become the chronic impulse that typifies *Hikikomori* youth.

As author Josh Cohen described it, the *Hikikomori* “are perpetually resolving to start again as soon as possible. Barely has this resolution been made, however, than it confronts the sufferer with his failure to carry it out. The impulse toward a new beginning ‘just transforms into irritation and despair.’”⁵

Sound familiar?

In this chapter, we’ll uncover the reasons you feel like shutting down, as well as better strategies for defeating overwhelm. As you’ll see, it all comes down to managing your cognitive and emotional stocks.

Josh Cohen wrote about the *Hikikomori* phenomenon in his book *Not Working: Why We Have to Stop*.⁶ For him, the withdrawal that typifies *Hikikomori* is a reasonable escape from what social theorist Franco Berardi calls “a cognitive space overloaded with nervous incentives to act.”

This withdrawal, according to Cohen’s taxonomy, is the tactic of “The Burnout.”

Cohen is a psychotherapist who speaks every day with professionals struggling with overwhelm. Using terms like “overwhelm” and “burnout,” he says, allows sufferers to “[locate] their malaise in the external pressures of working life rather than in the turbulences of the inner world, thus circumventing the stigma of depression.”⁷

But he makes clear that what we call “burnout” has different roots from the depression that springs from chemistry and trauma. It is the unrest that comes from our “desire for non-desire,” to borrow a concept from Daoism. It’s the wish to end the very busy-ness that we seek. Cohen traces it all to how we see our relationship with work, including the fraught word “calling” which “transforms work from a pragmatic means to a sacred end in itself.”

It’s impossible, Cohen notes, to separate this sense of calling from the management of time. They have the same Protestant roots: “Keep up a high esteem of Time,” Puritan minister Richard Baxter said, “and be every day more careful that you lose none of your Time...”

Baxter encouraged maximizing time as more valuable than gold or silver. Thus we “spend” time in the same way as we would capital, and we must spend it with our constant movement. Or, as Max Weber summarized, “According to God’s unambiguously revealed will, it is *only* action, not idleness and indulgence, that serves to increase his glory.”

We’ve sacralized our work as measured in time and time management has therefore become the path to the Divine. How many of us could better restate prophets like Stephen Covey and David Allen than those from classical religious texts? But when an economy shifts from valuing our defined hours to demanding the nebulous edges of our minds, time management loses its saving power.

Melissa Gregg tackled the futility of too much time management in her book *Counterproductive*.⁸ She focused on the knowledge economy, explaining why we obsess over time to mask the insecurities that come from having a work day that never really ends.

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“In the current context,” Gregg said, “productivity is an accommodating signifier that fills the spiritual void of profit-driven corporate culture, generating a self-affirming logic.” Meaning, we don’t turn a wheel until 5 o’clock anymore. The beginning and end of the day no longer defines our worth. We’re seeking something else, struggling to fill the square hole of our self-acceptance with the round peg of time expenditures.

In other words, focusing on how you spend time isn’t filling your well-being bucket because nobody cares about time anymore. Because we often bill in time, we use it as a proxy for value. It’s just no good for that purpose.

I don’t want to get into a debate about hourly billing. Frankly, even if you don’t bill hourly (most of the world doesn’t), you can still over-prioritize time. But I can see how overwhelm has become so pervasive in our industry.

If you feel overwhelmed—like managing time hasn’t brought you a sense of peace—you may be looking to the wrong optimizations. The draining aspirations of the *Hikikomori* illustrate that we should look to other sources of well-being, even healthy relationships with siblings.

Concerned with where we might look for better sources of wellness, professors Lawrence Krieger and Kenos Sheldon asked a fundamental question: “What Makes Lawyers Happy?”⁹ Using students’, lawyers’, and judges’ emotional well-being as the input, they came to “A Data-Driven Prescription to Redefine Professional Success.”

Their findings might make you say, “Oh, that’s obvious,” but that often indicates you should pay closer attention.

Krieger and Sheldon used measures unique to lawyers (school ranking, firm size, hours billed, etc.) as well several that are more universal (healthy relationships, values, etc.). Their study scores the relative impact of these different factors and makes recommendations for educators and employers. They offer useful guidance to you as someone trying to defeat overwhelm.

Here’s how the possible factors ranked in terms of impact on well-being:

1. The most impactful tier had to do with lawyers’ feelings of autonomy and sufficient competence, as well as internal motivation;
2. The second tier had to do with autonomy- supportive supervision (meaning respect as opposed to control) and consistency with intrinsic values;
3. The third tier had to do with personal life matters, like being in a committed relationship and exercising;
4. The fourth tier included factors generally associated with attorney success, like income, class rank, number of billable hours, and partnership in a firm; and
5. The least impactful tier on attorney well- being related to age and other demographics.

There’s a lot to unpack in the study, but I’d call attention to the fact that the most impactful factors had almost nothing to do with time management principles and much more to do with managing emotional and cognitive stocks.

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In this, the study reveals that lawyers are a bit like everyone else. However, the study shows that law students' priorities move away from the most impactful tiers and toward the least impactful during school. They somehow get the message that what will make them happy has to do with time and prestige, but continued career data reveals the opposite.

“In order to thrive,” the authors conclude, “we need the same authenticity, autonomy, close relationships, supportive teaching and supervision, altruistic values, and focus on self-understanding and growth that promotes thriving in others.”

In other words, we find well-being when we manage our stocks of emotion and cognition.

The study goes on to show how focusing on the wrong sources of well-being impacts the productivity, ethics, and professionalism of attorneys. This helps firm owners see both a carrot (a clear line to more revenue) and stick (ethical blow ups) to motivate prioritizing well-being.

Hopefully this study helps me convince you that, while time is an important stock to manage, you should also consider cognitive and emotional overwhelm. In order to shift that awareness into action, let me tell you about the fishbowl.

Do you remember Barry Schwartz, author of *The Paradox of Choice*? During the TED talk in which he summarized his book, Schwartz displayed a cartoon. In it, a large (presumably parent) fish speaks to a tiny fish child about her limitless opportunities.

“You can be anything you want to be,” the parent fish says. “No limits.”

Of course, the joke is that both fish are stuck inside a fishbowl. The small fish’s expansive opportunities butt up against the glass barriers of the bowl.

But, Schwartz debated, what would happen if you shattered that fishbowl? You wouldn’t end up with freedom and satisfaction, he said; you’d have paralysis. “Maybe the fish is on to something,” Schwartz joked.

Schwartz advocated for finding a sweet spot for your choice freedom. He said that your boundaries of choice should be larger than a fishbowl, but that infinite satisfaction isn’t a result of infinite freedom. In fact, satisfaction goes down at some point, as we discussed earlier, and Schwartz argued that most of us in an abundant economy have long since passed that point.

Similarly, I want to underline the main point of this piece: while modern tools allow you to handle a dizzying number of tasks of all kinds, you need to define some limits. In fact, no one else will do that for you, but they’ll hold you accountable for taking on more than you should. Cognitive and emotional limits are there whether you recognize them or not. Maintaining the illusion of “outside the fishbowl” freedom only results in crippling overwhelm.

So, in the last couple of chapters, I want to help you define your fishbowl. If you have extra time because you’ve built in efficiencies, what should you do now?

Even if you aren’t great at freeing up time but still want to improve your well-being, how will you define healthy limits?

We’ll cover a few principles and make important recommendations.

9

Defining Your Fishbowl

Throughout *Overwhelm* I've argued that time is not your only constraint, that you should manage your emotional and cognitive burden as well. In the last chapter I introduced the idea of defining your own boundaries (the fishbowl). Now I want to help you do that.

To get started, let me quote from Ursula Le Guin's piece, *Clinging Desperately to a Metaphor*: "In taking uncontrolled, unlimited, unceasing growth as the only recipe for economic health, we've dismissed the ideas of optimum size and keeping the organism in balance."¹

As Le Guin explained, you want a baby to grow, but not indefinitely. I've purposely not written a piece that promises

explosive fame and fortune. There's already a lot of that out there and growth is not the career factor most likely to make you happy. You'll need to sort out how you can right-size your business.²

Still, I know the economic pressures that motivate you to do more. Poverty makes you panic. As the data we explored earlier shows, when you're struggling financially, your anxieties are of a different nature. I'm sympathetic to that.

Depending on your situation, telling you to define your fishbowl is scary. Stick with me for a minute anyway. I want to help you build on some value other than time.

Relatedly, if you are an associate reading this, you may feel like you don't have control over the basis of your value. I get that as well. But I don't agree. You may have to bring your bosses along, but they'll want you to build value in some way other than time as well. If they don't, you're in the wrong environment.



So let's define your fishbowl. What will you focus on rather than time? How can you build your value while maintaining healthy cognitive and emotional workloads?

You begin with constraints.

Seth Godin shared a thought experiment in which he imagined a sushi restaurant. Sushi restaurants in New York City are largely interchangeable and replaceable, he noted. "But," Godin asked, "what if you were required to have a sushi place that could pay the rent only being open 12 hours a week?"

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The constraint, Godin argued, forces you to create a new business model in order to survive.³ Rather than limiting you it creates an opportunity.

So how can you define constraints that create new opportunities? First, notice that Godin's example limited time expenditures, one of the three stocks we've discussed. His theory is that doing so will make you focus on one of the other stocks, either your cognitive or emotional capacity. Your sushi restaurant will need to build on expertise or high service in order to balance the reduction in time.

Let me see if I can clarify that a bit. We've identified three primary stocks to manage: time, cognition, and emotion. Each of those stocks corresponds to a value for the customer. Selling your time means increasing accessibility; selling cognition means developing expertise; and selling emotional capacity means designing service-driven solutions. Each of these are valuable foundations for a business.

An argument I've often heard made to law firms of all sizes is that clients value lawyers who are constantly available. I don't doubt that this is true, but I do wonder how person-intensive businesses deliver that kind of accessibility. It's harmful when taken too far and not the only plausible source of value. What if, realizing it's not very healthy, you stopped chasing the fiction of being constantly on?

What if, rather than just managing your cognitive and emotional capacities, you actually built on one of them? What if expertise or service-driven solutions were your product? That is the argument I make in *Lawyer Forward* and one I think is relevant here.

Without rehashing the model I proposed in *Lawyer Forward*, let me propose some boundaries that will put you in a good position to build on either expertise or solutions design.

My proposal starts with three lists...

Chris Ducker defined his “Three Lists to Freedom” as a way to help executives sort out what to outsource.⁴ Although his formulation focuses on time management, it’s still a helpful activity.

Here are the three lists Ducker says you should put to paper. Considering all the tasks you are responsible for, write down:

1. The things you can’t do;
2. The things you shouldn’t do; and
3. The things you don’t want to do.

As Ducker instructs, once you’ve sorted out these lists, identify how to get rid of them.

Follow these steps to offload your lowest value work:

1. Eliminate the task. It’s very likely that you are doing things that have no value at all. Evaluate whether you’re doing these things because of perfectionism or because it actually means something to the client. Obsessing over email typos will neither bring you happiness nor mean anything to otherwise satisfied clients.
2. Give the task to technology. Some of your lowest value tasks can be automated away. Once you’ve focused on

either expertise or high service, you'll find supportive technologies. Can you set up a news alert or a content curator app to help you organize expertise-driven content? Or can automated text tools help you deliver high service to clients without taking your input?

3. Hire for tasks. As Ducker advises, hire for a task rather than a role. Meaning, don't just hire an "assistant," be clear about what tasks can be bundled and handed off. You may start with a virtual assistant (and, crazy as it sounds, you may want to hire a virtual personal assistant even if you're an employee).
4. Find hybrid services to handle annoying-but- important tasks. Hiring a virtual assistant to handle high-level tasks is not a good plan. Instead, look for hybrid services, meaning companies that have highly-trained humans but use technology to keep prices manageable. PwC's Bookkeeping Connect is a good example of this for bookkeeping. There are others that handle things like phones (Smith.ai) and research and writing (LawClerk.legal).

You'll want to play with solutions for offloading tasks. Again, the core principle is that this is not simply based on time management. You have limited stocks for your emotional and cognitive capacities. Take activities off your plate that deplete these stocks.

Adding to Ducker's task-focused prescriptions to manage your cognitive and emotional maximums, I want to leave you with

a few pieces of advice. Let me aggregate a few ideas from the research cited elsewhere in *Overwhelm*:

- **Bundle your decisions.** Barry Schwartz recommended that you make decisions that make other downstream decisions. That is, once you decide to focus on expertise, for example, you know what work to avoid. In that model, clients that demand high service or whose issues take you outside your specialization undermine decisions you've already made.
- **Become satisfied with imperfect work.** Schwartz also encouraged you to stop being a Maximizer. Not everything you do has to be perfect. Understand your clients' priorities by surveying them often. When you identify efforts that take a lot of your energy but don't mean anything to clients, loosen your standards. You don't have to do everything right.
- **Make more time for relationships.** Data shows that relationships and experiences provide more satisfaction than professional rewards. Remember that overwhelm is not just a time issue. If you aren't filling your emotional bathtub, you will feel overwhelmed. And taking your kids to 100 different extracurricular activities doesn't count here. Make time for unstructured time.
- **Read more.** Relatedly, you need to fill your cognitive bathtub. Reading widely and actively will help you maintain perspective. Read fiction and non-fiction, not just business books. Your career will manage itself if you create the right environment. If the only reading you do is work reading, you will find that cognitive bathtub drained.

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These tips are just tips. I wanted to leave you with some actionable ideas, but I also recognize that I don't know your particular struggles. My argument in this piece is less that you need a specific tactic to manage your overlooked cognitive and emotional stocks, and more that I want you to consider them.

Overwhelm is probably not a result of misused time. You're probably doing a great job taking care of others, but it's time to care for yourself.

In this last section, let me tell you how my friend Trish did just that...

When Trish (whose disbarment I told you about in the beginning of the book) spoke about defeating overwhelm at a legal conference I attended, she credited Facebook for her recovery.

That's right. Faced with professional ruin and personal shame, she found refuge in social media. She used Facebook to change her life for the better.

In the midst of hopelessness, Trish began posting transparent updates about her life and struggles. She balanced empowering updates about knocking through difficulties with humbling posts about life as a mother and lawyer. And when she'd finally dealt emotionally with her disbarment, she posted about that.

For years Trish subsumed her own identity in the prescriptive idea of a lawyer. She became conflict- oriented, task-driven, and always on. It wasn't her at all.

Using her social platform, Trish projected a stronger version of herself. She rose to meet that image and accepted herself along the way. And she created a community that empowers and supports other female attorneys.

While interacting in ways she could, Trish also got help. She took control of her body and mind. She no longer saw herself as an overwhelmed, outcast lawyer. She saw herself as someone who deserved to achieve wellness. She made it happen.

You probably won't find life balance in social media streams. In fact, Trish has worked hard to turn virtual interactions into in-person experiences. She niched down in her practice, doing only the work that she can manage. She's cut out the harmful tasks and has thus systematized self-acceptance. She decided to be herself loudly. She managed her cognitive and emotional stocks. She rejected the idea that she must keep running, no matter the costs. And she's found more financial and relationship success because of it.



As you grapple with your own overwhelm, I hope you'll find ways to systematize self-acceptance. The counsel in **Overwhelm** is not very prescriptive and that's on purpose. Your own path will not look like anyone else's.

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1. But the principles are right:
2. Make space to care for yourself;
3. Manage your time, but build on your cognitive or emotional labor;
4. Cultivate successful environments rather than stressful career plans;
5. Outsource the work that is not your best work; and
6. Connect with others.

These are the principles I touched on in *Lawyer Forward* applied to the important issue of lawyer overwhelm. I hope they are useful to you.

Again, I appreciate the PwC Bookkeeping Connect team for making this exploration possible. Please, if you want to get bookkeeping off your plate so you can focus your best work, follow up with them.

Step by step, I hope you'll come to self-acceptance.

And I hope that it brings you peace.

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