

# Deakin Law School Alumni Lecture 20 July 2016

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## *Health and Wellbeing in the Legal Profession*

### Introduction

1. Good evening. I would like to begin by acknowledging the traditional custodians of the land on which we meet today. I offer my respects to their elders, past and present, and extend respect to those with Aboriginal and Torres Strait Island heritage here today.
2. Professor Gopalan, Dr Lambropoulos, Deakin University staff, members of the profession, law students and other supporters, I am honoured to speak at the Deakin Law School Alumni Lecture tonight. Thank you to Deakin University for giving me this opportunity.
3. Tonight we are truly dealing with a life and death issue. Suicide is the leading cause of death for males aged 25 years to 44 years, and females aged 25 to 34 years in Australia.<sup>1</sup>
4. Many of us have been personally affected by the suicide of a family member or work colleague. I recently met Elizabeth Rusiti, whose husband, Matthew Stutsel, took his own life in April 2015. Elizabeth wrote about the impact in an article published by the Law Society Journal in December 2015. As she wrote, ‘...Suicide is never the solution, help is always available and your family will not be better off without you.’<sup>2</sup>
5. Tonight I want to focus on wellbeing in the legal profession. Martin Seligman is a Professor of Psychology at the University of Pennsylvania, and is an

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<sup>1</sup> Australian Bureau of Statistics (2013) *Causes of Death, Australia 2001*. Canberra: ABS cited in ‘Work and Suicide Prevention Position Statement’ (Suicide Prevention Australia, February 2014), 1.

<sup>2</sup> Elizabeth Rusiti, ‘The True Cost of Suicide, a Very Personal Story’ (2015) 36 *Law Society Journal* 38.

expert in the area of positive psychology. In his book, *Flourish*, he identifies five pillars of wellbeing.<sup>3</sup> They are: positive emotion, engagement, relationships, meaning and achievement. Tonight I will share some observations about two of these pillars, namely meaning and achievement. I will also focus on work in the legal profession. Although I will be concentrating on two pillars tonight, it is important to remember that in order to flourish, all five pillars need to be present. As Professor Seligman writes:

well-being is a combination of feeling good as well as actually having meaning, good relationships, and accomplishment. The way we choose our course in life is to maximize all five of these elements.<sup>4</sup>

## Meaning

6. A meaningful life is belonging to and serving something that you believe is bigger than the self.<sup>5</sup> Another way of putting this is to identify life's purpose. We can ask ourselves: what is my purpose for working in the legal profession? What is my purpose for working in this particular job?

*for individuals*

7. I want to begin at the individual level of how a lawyer or law student might consider identifying what is meaningful work for them on a personal level. Positive wellbeing is associated with identifying meaning with intrinsic rather than extrinsic goals. Lawrence Krieger has conducted research in the area of wellbeing and the values and motivations of lawyers and law students. He is the Clinical Professor and Co-Director of Clinical Externships Programs at the College of Law, Florida State University. Professor Krieger's findings lead us to the conclusion that a focus on intrinsic goals is better for wellbeing than a focus on extrinsic goals.

People who primarily seek extrinsic goals, which include financial affluence, luxury, power or image, consistently experience decreased satisfaction and well-being compared to other groups, while those whose primary goals or values include intrinsic factors, such as self-improvement, close relationships, or social

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<sup>3</sup> Martin Seligman, *Flourish* (Atria Paperback, 1<sup>st</sup> ed, 2013).

<sup>4</sup> Ibid, 25.

<sup>5</sup> Ibid, 12, 17.

betterment, experience greater satisfaction and well-being than others. [citation omitted]<sup>6</sup>

8. Professor Krieger notes that the heavy workload of law students and lawyers can result in a focus away from intrinsic goals to extrinsic ones. He observes that this 'is truly unfortunate, since none of the external markers of achievement – class standing, financial success, image, or status – has been shown to correlate with a good life.'<sup>7</sup> In comparison, 'when one experiences a sense of self-esteem, elatedness, authenticity, or competence, she experiences increased satisfaction, wellbeing, and vitality, while a lack of such experiences will produce loss of vitality, depressed mood, and decreased wellbeing.'<sup>8</sup>

9. Susan Daicoff is a Professor of Law at Arizona Summit Law School. She has conducted research into areas such as lawyer distress and dissatisfaction, and the psychology of lawyers. Professor Daicoff refers to viewing legal work through the lens of intrinsic ruled orientation.

...if one views legal work through the lens of an intrinsic reward orientation, one might find the following goals intrinsically rewarding: giving the client "voice", asserting constitutional or legal rights, providing the best possible representation of the client's position, solving the client's problem, or assisting the client to resolve the dispute in the most efficient manner. In this cognitive framework, settlement or litigation of a lawsuit may be very fulfilling, as it may easily accomplish these intrinsically satisfying goals. Legal work itself might become rewarding, the attorney might have a sense of accomplishment and fulfillment, and might experience a sense of professional and general wellbeing as a result.<sup>9</sup>

10. Lawyers and law students can make choices that are positive for their wellbeing, and aligned with professional goals.<sup>10</sup> Lawyers and law students need to be able to paint their own personal picture of how success looks to

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<sup>6</sup> Lawrence Krieger, 'Psychological Insights: Why our Students and Graduates Suffer, and What We Might Do About It' (2002) 258 *Journal of the Association of Legal Writing Directors*, 260.

<sup>7</sup> Krieger, above n 6, 260.

<sup>8</sup> *Ibid* 260-261.

<sup>9</sup> Susan Daicoff, 'Lawyer, Be Thyself: an Empirical Investigation of the Relationship Between the Ethic of Care, the Feeling Decision-Making Preference, and Lawyer Wellbeing' (2008) 16 *Virginia Journal of Social Policy and the Law*, 133.

<sup>10</sup> Professor Krieger notes that 'the characteristics of professionalism are considered to include broad vision, integrity, commitment to values, leadership, respect for others and commitment to service', Lawrence Krieger, 'What We're Not Telling Law Students – and Lawyers – But They Really Need to Know: Some Thoughts – in-Action Toward Revitalising the Profession from its Roots' (1998-1999) 13 *Journal of Law and Health*, 35.

them.<sup>11</sup> It will be a picture that includes their personal purpose for working in the profession.

11. Personal reflection is imperative in the development of one's own values and purpose. It can be important for the development of ethical integrity. Aristotle believed the right character is a personal virtue.<sup>12</sup> Christine Parker and Adrian Evans, who are Professors in the Faculty of Law at Monash University, refer to this under the umbrella of 'virtue ethics'. Virtue ethics invites us to consider our 'identity, character and motivations at a profoundly personal level'.<sup>13</sup> Professors Parker and Evans identify the different ethical perspectives lawyers may take, which are not necessarily mutually exclusive. Another ethical perspective relevant to the issue of wellbeing is the ethics of care. It 'focuses attention on people's responsibilities to maintain relationships and communities, and to show caring responsiveness to others in specific situations'.<sup>14</sup> It includes the responsibility to take care of oneself. Professors Parker and Evans ask, at the conclusion of their book on legal ethics, whether the reader has 'developed any better ideas as to what might be important to you if you work as a lawyer'.<sup>15</sup> Identifying what is important to you, what is meaningful to you, overlaps with your ethics as a lawyer. Professors Parker and Evans state:

...who we happen to be in a character sense and who we are trying to be are nevertheless live issues as we struggle to reconcile, for example, why we might help a tobacco company to sell its toxic product while advocating for better lung cancer care through sitting on the board of a cancer hospital.

Knowing what makes your life worth living and, for example, whether a particular virtue is most important to you are powerful tools in the self-understanding required to practice law in a fulfilling and therefore successful manner. We all implicitly act on intuitions and personal philosophies of life and

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<sup>11</sup> Krieger, above n 10, 15.

<sup>12</sup> Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge University Press, 2<sup>nd</sup> ed, 2014) 9.

<sup>13</sup> *Ibid*, 9.

<sup>14</sup> *Ibid*, 9.

<sup>15</sup> *Ibid*, 379.

lawyering. The challenge is to turn our implicit understandings into explicit self-knowledge by one means or another.<sup>16</sup>

12. So each of us has to identify our purpose for working in the legal profession. Dr Robert Fisher, Head of the Department of Psychiatry and Psychological Services at St Vincent's Clinic and Private Hospital, puts it succinctly: 'Know yourself, know what you're getting into, and run your own race.'<sup>17</sup>
13. Young lawyer, Jerome Doraisamy, from whose book Dr Fisher's quote is drawn, is an example of someone who has gone through the process of identifying his purpose for being in the legal profession. He did so after experiencing a breakdown and depression while he was a law student. I can recommend his insightful and practical book, *The Wellness Doctrines for Law Students and Young Lawyers* (2015). Mr Doraisamy identifies service as an important value for him. His most emotionally and professionally rewarding experiences stem from tasks that help others in the community in general.<sup>18</sup> He draws inspiration from Sir Gerard Brennan, former High Court judge, and quotes Sir Brennan.

Communities will be better and stronger because of the contributions lawyers make to them. Moreover, a long and satisfying life in the law is not merely assured by the success that flows from professional expertise, or the financial rewards associated with this career. It is, however, assured by the service that lawyers provide to others.<sup>19</sup>

14. Before I move from the individual level to the organisational one, I note that one study suggests that there is an added benefit to identifying your life's purpose. You will live longer! A study of the five areas of the world with the highest number of centenarians found that the lifestyles of their residents shared nine specific characteristics.<sup>20</sup> One of the characteristics is purpose

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<sup>16</sup> Parker and Adams, above n 12, 50.

<sup>17</sup> Jerome Doraisamy, *The Wellness Doctrines for Law Students and Young Lawyers* (Xoum Publishing, 1<sup>st</sup> ed, 2015) 47.

<sup>18</sup> *Ibid*, 212-13.

<sup>19</sup> Sir Gerard Brennan, 'Keynote Address' (Speech delivered at UTS Brennan Justice and Leadership Program Awards Night 2013, University of Technology, Sydney, 26 September 2013, cited in Doraisamy, *ibid*, 207.

<sup>20</sup> Dan Buettner and Sam Skemp, 'Blue Zones: Lessons from the World's Longest Lived' (2016) *American Journal of Lifestyle Medicine*, 1.

– ‘why I wake up in the morning’. The researchers say it is worth up to 7 years of extra life expectancy!<sup>21</sup>

*for organisations*

15. To foster wellbeing, organisations need to provide meaningful work. This is not inconsistent with running a profitable practice. Indeed, a recent research report by Deloitte indicated that meaningful work is an important factor of employee engagement.<sup>22</sup> Engaged employees are more productive employees.<sup>23</sup>
16. The Tristan Jepson Memorial Foundation Best Practice Guidelines for the Legal Profession on Psychological Wellbeing (‘the TJMF Guidelines’) also link engagement and purpose<sup>24</sup>. They suggest that organisations can develop a vision and purpose and educate people about how their role contributes to their organisation’s vision and purpose. Again, this is not inconsistent with running a profitable practice; indeed it could be advantageous through, for instance, providing competitive differentiation.<sup>25</sup> The TJMF Guidelines also suggest that organisations can determine the factors that contribute to staff engagement and motivation (for example autonomy, mastery, purpose). They recommend that organisations provide opportunities to be involved in the wider community, for instance through volunteer programs.
17. One example of how the legal profession can promote wellbeing through meaningful work is participation in pro bono legal work. Many law firms, for example, are members of the Public Interest Law Clearing House. When I was a solicitor, and the pro bono coordinator of a national law firm, I both observed and experienced first-hand the high level of satisfaction that solicitors, barristers and law students derived from an opportunity to

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<sup>21</sup> Buettner and Skemp, above n 20, 2.

<sup>22</sup> Josh Bersin, ‘Becoming Irresistible: a New Model for Employee Engagement’, Deloitte University Press, 26 January 2015.

<sup>23</sup> John Baldoni, ‘Employee Engagement Does More than Boost Productivity’, *Harvard Business Review* (online), 4 July 2013 <<https://hbr.org/2013/07/employee-engagement-does-more/>>.

<sup>24</sup> TJMF Psychological Wellbeing: Best Practice Guidelines for The Legal Profession, (online) <[http://www.tjmf.org.au/wp-content/uploads/2013/02/TJMFmentalHealthGuidelines\\_A4\\_140426.pdf](http://www.tjmf.org.au/wp-content/uploads/2013/02/TJMFmentalHealthGuidelines_A4_140426.pdf)>

<sup>25</sup> See Professor Rosabeth Moss Kanter’s list of the advantages for companies through their strategic use of values and principles, Rosabeth Moss Kanter, *Supercorp, How Vanguard Companies Create Innovation, Profits, Growth and Social Good* (Crown Business, 2009) 58.

participate in work that was meaningful to them, that is, consistent with furthering their life's purpose. These observations are consistent with academic research. It demonstrates that 'regular volunteers experience increased life satisfaction, happiness, self-esteem, and psychological wellbeing, and fewer depressive symptoms a few years later, compared to those who do not volunteer'.<sup>26</sup>

18. For those of you who are managers, you may be managing teams of lawyers in a large due diligence or litigation. They may feel that they are a small cog in the wheel and unable to see how their work is meaningful. As you may know, one of the most valuable things you can do is to explain to team members how their work contributes to the overall project, so they understand the importance of their work.

19. In your role as manager, you can have an important impact on wellbeing.

Good leadership and appropriate management styles have been recognized as one of the most critical factors in promoting a good working environment [citation omitted] and employees with a good manager take on average 3.34 fewer days of absence in a year as reported by the OECD...

Of all the working conditions examined by the OECD, the manager's attitude towards the employee was the single most important factor impacting on employees' mental health regardless of occupation.<sup>27</sup>

### *for the profession*

The legal profession provides many opportunities for its members to band together, identify common values and do meaningful work. There are now many groups of legal professionals in which members gather under commonly identified values to give meaning to their working lives. These organisations give their members the opportunity to participate in work outside their practices

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<sup>26</sup> Cooper, Cary L. and Huppert, Felicia A. *Interventions and Policies to Enhance Wellbeing: A Complete Reference Guide*, (Wiley, 2014, ProQuest Ebook Central.Web. 17 July 2016) Chapter 11, Volume VI, Sara Konrath, 'The Power of Philanthropy and Volunteering', 391.

<sup>27</sup> Cooper and Huppert, above n 25, Chapter 10, Volume VI, Catherine Kilfedder and Paul Litchfield, 'Wellbeing as a Business Priority', 367.

that is consistent with their personal values and the values of the organisation. For example, the Asian Australian Lawyers Association aims to:

- bring together members of the legal profession of Asian heritage and cultural background and others with an interest in Asia;
- provide a cohesive professional network to advocate for, and provide support to, our members and to benefit from shared learning and experience;
- improve the capability and reputation of the members in the legal profession through raising public awareness and providing education;
- promote and facilitate Asian cultural diversity in the senior ranks of the legal profession; and
- promote a mutual understanding of Australian and Asian legal systems<sup>28</sup>.

When I was a solicitor I attended several events organised by the Asian Australian Lawyers Association. I found the events educative and enjoyed discussions with other practitioners about diversity in the legal profession.

## **Achievement**

20. Achievement is the other pillar of wellbeing that I wish to address tonight. Achievement can also be referred to as accomplishment. Professor Seligman has referred to it as “what human beings, when free of coercion, choose to do for their own sake.” That is, accomplishment for the sake of accomplishment, in its extended form.<sup>29</sup> One needs to have both meaning and achievement in order to flourish. For instance, doing work that is consistent with your values is living both a meaningful life and an achieving life. It is important to note that achievement is not measured by extrinsic factors. As discussed previously, it is intrinsic factors that are consistent with wellbeing. One question which researchers ask to determine whether people are flourishing or not is whether they agree with the following

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<sup>28</sup> Asian Australian Lawyers Association Inc., *About AALA* <<http://aala.org.au/about-aala>>.

<sup>29</sup> Seligman, above n 3, 19-20.

statement: 'I generally feel that what I do in my life is valuable and worthwhile.'<sup>30</sup>

21. On an individual level, we must choose our work wisely. We need to consider carefully whether the work we are doing is consistent with our intrinsic goals, that is, our values. For legal professionals who work within an organisation, one needs to ask whether the organisation for which we work espouses values that are congruent with our own and implements them.
22. For myself, I studied law for a reason that is not uncommon, namely, to make the world a better place. Service to the community is an important value for me. I commenced articles 20 years ago in a commercial law firm. My work was meaningful to me, partly because I had the opportunity to learn from experienced practitioners and to develop the skills that could assist me to grow as a lawyer. In addition, I participated in the firm's pro bono program which was also congruent with my values.
23. Some of you, particularly those of you who are law students in a tough job market, may wonder how you have any autonomy at all to choose your employment circumstances. I would invite you to take small steps. Where you start is not necessarily where you will end up. If circumstances are not encouraging, move on. Focus on developing your skills to do the work that is meaningful to you and forming positive relationships with others. Try not to compare yourself to others. How you measure success should be on your own terms, and not reliant on extrinsic factors. If you cannot attain work in the legal profession, consider work in the many workplaces that operate in the shadow of the law. One of my mentees, for example, currently works as a mediator. She is developing excellent and worthwhile skills that will stand her in good stead when she becomes a lawyer. There is also the opportunity to do volunteer work with not-for-profit organisations that align with your values. Another friend of mine could not get work when he finished his degree and volunteered at a human rights advocacy group of lawyers. It aligned with his values and enabled him to develop skills as he participated in writing submissions and meeting with others in the

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<sup>30</sup> Seligman, above n 3, referring to the work of Professor Felicia Huppert, 27.

profession. He eventually obtained permanent work in a community legal centre in which he had previously volunteered.

24. I have observed that people who enjoy doing what they do, often end up working in an area that combines one of their passions with their professional work. Let me provide you with additional examples. Firstly, a dancer who did articles in a commercial law firm working in intellectual property. She eventually worked as in-house lawyer for an entertainment group. She now owns a film production company where she is the company's secretary and legal counsel. Secondly, an arts student who studied indigenous linguistics. She later studied law and eventually began working as a solicitor specialising in native title. Perhaps we may think of these examples as synchronicity but I think they can also be characterised as examples of lawyers who have identified their values and the activities that they enjoy and aligned them, whether consciously or not. Wellbeing is connected with work satisfaction.<sup>31</sup>
25. There is much that organisations in the legal profession can do to enable lawyers to achieve. The Tristan Jepson Memorial Foundation Guidelines provide examples. For instance, there is a guideline on growth and development. It suggests that there are a number of ways to implement a work environment where employees receive encouragement and support in the development of their interpersonal, emotional and job skills. These include, for example, establishing a work environment in which people have opportunities to advance. There are also other practical suggestions in the TJMF Guidelines, including establishing mentoring programs, providing access to coaching and developing a culture of coaching to support and drive performance.
26. In the Deloitte study to which I referred earlier, there were some pithy observations about the need to develop people.

*...It is important for companies to remember that management's job is not to manage work but rather to develop, coach, and help people. Rewarding managers only for making their numbers, incentivizes what we call "talent hoarding": attracting the best people and holding on to them for years. To help people get the coaching and support they need to grow, forward-thinking*

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<sup>31</sup> Daicoff above n 9, 135.

*companies reward managers for what we call “talent production”: developing people who lead their teams. This culture of continuous development is a management culture widely used in high-engagement companies.<sup>32</sup>*

27. Organisations can provide pathways for students to transition from law school into the profession. For instance, many community legal centres have volunteer coordinators who supervise and provide feedback to volunteers, enabling both the volunteers to develop in the role and also, importantly, maintaining a level of excellence in the legal advice they provide.
28. Organisations may also need to consider how we can enable achievement for lawyers who are transitioning towards retirement. Legal practitioners may wish to totally retire or they may wish to continue working in a more flexible capacity. We need to consider how to enable such people to achieve their goals. For example, through the participation in mentoring schemes as senior mentors, and liaising with the broader community as to how they may use their skills. Legal professional bodies may wish to consider developing best practice guidelines on transition to retirement schemes.

## **Conclusion**

29. For any of you who are feeling unwell, know that help exists. If you are a law student, approach your university’s counselling service. If you are a barrister, approach the Victorian Bar Counselling Service. If you are a Law Institute Member, approach the Vic Lawyers Health Service. If you don’t have access to these services, other options include contacting your GP or Lifeline.
30. There is also the peer support group for lawyers living with mental health challenges called Pleading Insanity. For more information, email [pleadinsanityvictoria@gmail.com](mailto:pleadinsanityvictoria@gmail.com).
31. Tonight I have focused on two of the pillars of wellbeing theory. It was my privilege last year to give the inaugural Tristan Jepson Memorial Foundation

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<sup>32</sup> Bersin, above n 22.

lecture in Melbourne. During that lecture I spoke about another vital pillar of wellbeing, being 'positive relationships'. I shared my thoughts on sustainable lawyering and the importance of creating mentally healthy workplaces. Whilst we, as individuals have responsibilities for our own wellbeing and for those around us, organisations have a crucial role to play in the creation of mentally healthy workplaces. If you are interested, the written version of the speech is on the Supreme Court of Victoria website, <https://www.supremecourt.vic.gov.au/contact-us/speeches/annual-tristan-jepson-memorial-foundation-lecture>

32. I want to thank all of you for coming out on this cold wintery night. I am heartened to see so many of you. I invite the legal profession to take an ethical approach to the issue of wellbeing, and to provide leadership. I encourage you all to continue the discussion and the implementation of practical initiatives to foster wellbeing for yourself, your clients, colleagues, and the community as a whole.
  
33. Thank you.