



Lessons for Litigators from the Science of Well Being

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I. Introduction

The objective of today's presentation is to help lawyers apply cognitive science to improve their well-being. We will begin with a brief overview of a problem endemic in the legal profession: lawyers continue to struggle with depression, anxiety, suicide, and substance abuse at alarming levels. For example, in a widely cited 2016 study, more than one in four lawyers reported depression within the past year, and nearly one in five reported anxiety. *See* Krill PR et al., The prevalence of substance use and other mental health concerns among American Attorneys, *J Addict Med* 2016;10:46-52. Between 21 and 31 percent of self-reporting lawyers, and up to 40 percent of law students, drink at a level consistent with an alcohol problem. Organ JM et al., Suffering in silence: the survey of law student well-being and the reluctance of law students to seek help for substance use and mental health concerns, *J Legal Educ* 2016;66:116-156; Krill 2016, *supra*.

For many, the events of 2020 and 2021 have compounded that reality, with the COVID-19 pandemic and continued nationwide reckoning with systemic racism further challenging our individual and collective well-being. *See* World Health Organization, The impact of COVID-19 on mental, neurological and substance use services: results of a rapid assessment (October 5, 2020), *available at* <https://www.who.int/publications/i/item/978924012455> (accessed June 3, 2021); Carter RT, Racism and psychological and emotional injury: recognizing and assessing race-based traumatic stress, *The Counseling Psychologist* 2007;35:13-105; James C & Petersen A, A growing push to treat racism's impact on mental health, *Wall Street J* (July 20, 2020).

Addressing this issue requires both individual and institutional action. Today's presentation will focus on the practical steps that we can take as individuals to improve well-being, drawing on recent research from cognitive science and beginning with the preface that happiness can be learned and applied. Specifically, we will provide an evidence-based arsenal of practical tools that litigators can apply in their own lives to improve their well-being. This CLE draws heavily upon a publicly available course taught by Yale professor Dr. Laurie Santos on the Science of Well Being (<https://www.coursera.org/learn/the-science-of-well-being>).

II. Misconceptions About Well Being

What would make you happy? If you are like most people, one or more of the following might come to mind when we ask that question: more money, better material possessions, the right partner, or a perfect body. A large body of research suggests that those things don't correlate with happiness—or at least, not nearly as well as we would like them to. For example, contrary to our predictions that more money will mean more happiness, while emotional well-being does rise with income, there is surprisingly little correlation between income and well-being

above an income of approximately \$75,000 per year. Khaneman D & Deaton A, High income improves evaluation of life but not emotional well-being, PNAS 2010;107(38):16489-493. While we predict that finding a partner will make us happy, on average people are no happier after 15 years of marriage than they were prior to marriage. Lucas RE et al., Reexamining adaptation and the set point model of happiness: reactions to changes in marital status, J Pers Soc Psychol 2003;84(3):527-539. And while many of us believe we would be happier if we had the body of our dreams, research shows little to no long-term psychological benefit of weight loss. *See* Jackson SE et al., Psychological changes following weight loss in overweight and obese adults: a prospective cohort study, PLoS One 2014;9(8):e104552.

Research suggests that we are just as poor at predicting what will make us unhappy. More specifically, we consistently overestimate the duration and severity of our reaction to negative experiences. Gilbert DT et al., Immune neglect: a source of durability bias in affective forecasting, J Pers Soc Psychol 1998;75:617-638; Sieff EM et al., Anticipated versus actual reaction to HIV test results, Am J Psychol 1999;112(2):297-311.

III. Why We Have Misconceptions

Several cognitive biases help explain why we are such poor predictors of what will make us happy (or unhappy).

a. Wrong Intuition

First, our minds' strongest intuitions are often simply incorrect. Much has been written on this topic, including a fantastic book by Nobel prize-winning economist Daniel Khaneman. For further exploration of this topic, we highly recommend the scholarship of Dr. Khaneman and Harvard professor Daniel Gilbert. *See, e.g.,* Khaneman D, Thinking, Fast & Slow, Farrar Straus & Giroux (Eds) 2013; Gilbert DT, Stumbling on happiness, Vintage (Eds) 2007.

b. Relative Reference Points

A second reason we are poor at predicting our own happiness is that we compare ourselves to others—and frequently choose our reference points poorly. A fascinating study on this concept found that bronze medal Olympians were consistently happier with their performance than silver medalists. The authors posit that this is because silver medalists compare their performance to the gold medalist whereas bronze medalists compare themselves to the person in fourth place who didn't make the podium. Medvec VH et al., When less is more: counterfactual thinking and satisfaction among Olympic medalists, J Pers Soc Psychol 1995;69(4):603-

610. Relative reference points also impact our evaluation of how well we are doing financially (*e.g.*, Solnick SJ & Hemenway D, Is more always better: a survey on positional concerns, *J Econ Behav Organization* 1998;37:373-383) and in terms of physical attractiveness (*e.g.*, Kenrick DT et al., Effects of physical attractiveness on affect and perceptual judgments: when social comparison overrides social reinforcement, *Pers Soc Psychol Bulletin* 1993;19(2):195-199).

c. Adaptation

Adaptation, or the ability to adapt to changing surroundings, is evolutionarily hard-wired into the human experience. Adaptation means that we are able to accept and cope with a wide range of changes to our environment. One result of this is that negative events tend to impact our well-being less dramatically, and for less time, than we predict. Conversely, adaptation means that the impact of positive changes in our environment is often transitory. Gilbert DT et al., Immune neglect: a source of durability bias in affective forecasting, *J Pers Soc Psychol* 1998;75:617-638.

IV. What to Do Instead

The science discussed above provides insight into why, as lawyers and as human beings, we may be unhappy. Perhaps more importantly, cognitive science provides practical insights to offer us on what to do about it. Below are some suggestions for you to apply in your own life, along with the research that supports them. Try a few and see if you notice a difference over time.

a. Counteract Wrong Intuition

Savor positive experiences. Fight back against adaptation by not taking the good things in your life for granted. For example, you might think in detail about a positive experience you've had and replay it in your mind, down to the sights, smells, and tastes associated with it. Lyubomirsky S et al., The costs and benefits of writing, talking, and thinking about life's triumphs and defeats, *J Pers Soc Psychol* 2006;90(4):692-708.

Take an awe walk. Go outside for 15 minutes and really focus on what you see, feel, hear, and smell. Doing so is a quick, easy way to increase joy. Sturm VE et al., Big smile, small self: awe walks promote prosocial positive emotions in older adults, *Emotion* 2020 (ePub ahead of print).

Practice negative visualization. While it may sound counterintuitive, research shows that happiness can be boosted by writing about how a positive event in your life might not have come to pass. Koo M et al., It's a wonderful life: mentally subtracting positive events improves people's

affective states, contrary to their affective forecasts, *J Pers Soc Psychol* 2008;95(5):1217-1224. For example: how easily might it have been for you to never have met your partner, adopted your favorite pet, or found a job or a hobby you love?

b. Pursue the Same (Or Slightly Different) Things Better

Invest in experiences instead of material things. We are consistently happier after experiences than we are after making a material purchase, even though we think a material purchase will make us happier. Pchelin P & Howell RT, The hidden cost of value-seeking: people do not accurately forecast the economic benefits of experiential purchases, *J Pos Psychol* 2014;1-13. Experiences are central to our identity. They also foster social relationships when we share them with other people. Van Boven L & Gilovich T, To do or to have: that is the question, *J Person Soc Psychol* 2003;85(6):1193-1202. So, consider choosing a vacation, concert, or even simply walk with friends over a new purchase.

Change your mindset. Pursuing and achieving goals can increase happiness, but this tends to work best when we set goals centered around personal growth and not external validation. *See* Grant H & Dweck CS, Clarifying achievement goals and their impact, *J Person Soc Psychol* 2003;85(3):541-553; Blackwell LS et al., Implicit theories of intelligence predict achievement across an adolescent transition: a longitudinal study and an intervention, *Child Devel* 2007;78:246-263. Moreover, our mindset around our own abilities influences how we ultimately perform, and especially how much we are able to improve. Mangels JA et al., Why do beliefs about intelligence influence learning success: a social cognitive neuroscience model, *SCAN* 2006;1:75-86. To increase your well-being, choose growth goals over “gold stars,” and practice believing that your ability to be good at something (whether it’s patent law or a new language) is not “fixed” at your entry point.

Improve your career fulfillment. Find out what your “signature strengths” are (consider a test like this one: VIA Character Strengths Survey: *available at* <https://www.viacharacter.org/survey/account/register>) and look for ways to apply them in your work and daily life. Doing so improves well-being. *See* Lavy S & Littman-Ovadia H, My better self: using strengths at work and work productivity, organizational citizenship behavior, and satisfaction, *J Career Devel* 2016;1-15; Seligman MEP et al., Positive psychology progress: empirical validation of interventions, *American Psychol* 2005;60(5):410-421.

c. Pursue Different Things

We can also apply the tools of cognitive neuroscience to pursue new things that will actually make us happier. Each of the examples below has been extensively researched. Building one or two of them into your routine can make a difference in happiness over time.

Engage in kindness towards others. For example, one research team found that engaging in five acts of kindness per week for six weeks substantially increased happiness. Lyubomirsky S et al., Pursuing happiness: the architecture of sustainable change, *Rev Gen Psychol* 2005;9(2):111-131. These can be small, and needn't cost anything at all. Give up a parking space to someone else. Send someone flowers or a card for no reason. Donate money to a cause you care about. Spend a few hours volunteering somewhere. Varying the "kindness" activity has been shown to further increase happiness, so try more than one thing. Lyubomirsky S & Della Porta MD, Boosting happiness, buttressing resilience: results from cognitive and behavioral interventions (2010).

Seek out social connection. Many of us mistakenly seek solitude when connection (even with total strangers!) would make us happier. *See* Epley N & Schroeder J, Mistakenly seeking solitude, *J Exper Psychol* 2014;14(5):1980-1999.

Prioritize time over money. While many of us find it challenging to do make this choice, choosing leisure time over money correlates with subjective well-being. Willhans AV et al., Valuing time over money is associated with greater happiness, *Soc Psychol Pers Sci* 2016;7(3):213-222.

Meditate. Cultivating a regular meditation practice can greatly increase well-being. Holzel BK, Mindfulness practice leads to increases in regional brain gray matter density, *Psych Res Neuroimaging* 2011;191:36-43. One reason for this is that meditation cultivates focus, and we are happier when our minds are not wandering. Killingsworth MA & Gilbert DT, A wandering mind is an unhappy mind, *Science* 2010;330:932.

Exercise. Regular exercise pays huge dividends for well-being. Exercise leads to improved learning, memory, and cognitive function. Lista I & Sorrentino G, Biological mechanisms of physical activity in preventing cognitive decline, *Cell Mol Neurobiol* 2010;30:493-503; Colcombe SJ et al., Neurocognitive aging and cardiovascular fitness: recent findings and future directions, *J Mol Neurosci* 2004;24(1):9-14; Cotman CW & Engesser-Cesar C, Exercise enhances and protects brain function. *Exercise Sport Sci Rev* 2002;30(2):75-79. Exercise also has proven benefits in anxiety and depression. *See* Babyak M et al., Exercise treatment for major depression: maintenance of therapeutic benefit over 10 months, *Psychosom Med* 2000;62:633-638; Rethorst CD & Trivedi MH, Evidence-based

recommendations for the prescription of exercise for major depressive disorder, *J Psych Pract* 2013;19(3):204-212; Rethorst CD et al., The antidepressive effects of exercise: a meta-analysis of randomized trials, *Sports Med* 2009;39(6):491-511; Schuch FB et al., Physical activity protects from incident anxiety: a meta-analysis of prospective cohort studies, *Depression & Anxiety* 2019;36(9):846-858. For added benefit, find a way to exercise outdoors—just two hours per week of time outside can have an impact. White MP et al., Spending at least 120 minutes a week in nature is associated with good health and wellbeing, *Scientific Reports* 2019;9:77730(e1-11).

Sleep. Adequate sleep increases insight and performance. *See* Wagner U et al., Sleep inspires insight, *Nature* 2004;427(22):352-355. Conversely, inadequate sleep has serious short and long-term deleterious effects. *See, e.g.,* Walker MP et al., Practice with sleep makes perfect: sleep-dependent motor skill learning, *Neuron* 2002;35:205-211; Schocker L, Here's a horrifying picture of what sleep loss will do to you, *HuffPost* (Jan 8, 2014).

V. Conclusion

This CLE is, of course, not a substitute for medical or psychiatric care, should such care be indicated. Seek help if you are suffering. Nor is it a replacement for systemic changes that we can and should undertake as a profession to better support and promote well-being among litigators. But it is, we hope, a practical toolkit for some steps that you can take to improve your well-being. We have applied many of them ourselves, and strive to continue to do so as part of a daily practice. We have noticed a difference, and hope that you might, too.

VI. References & Resources

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General Resources

1. For many more resources (and hands-on opportunities to apply these teachings), check out Dr. Laurie Santos' free course on this topic: <https://www.coursera.org/learn/the-science-of-well-being>
2. Dr. Santos also hosts a podcast on this topic, the Happiness Lab: <https://www.happinesslab.fm>
3. Meditation resources include the following:
 - a. Headspace: <https://www.headspace.com>
 - b. Ten Percent Happier: <https://www.tenpercent.com>
4. Northwestern Medicine has also released a free mobile app that has been shown to significantly reduce mental health symptoms. More information available here: <https://news.northwestern.edu/stories/2020/05/app-helps-covid-anxiety-depression/>
5. VIA Character Strengths Survey: *available at* <https://www.viacharacter.org/survey/account/register> (accessed October 21, 2020).