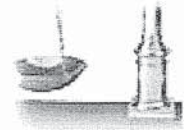




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## Money and Ethics: The Young Lawyer's Conundrum

by Patrick J. Schiltz

Courses on legal ethics are among the least popular courses in the law school curriculum, even less popular than courses on taxation. Nothing makes a law student's eyes glaze over as quickly as the phrase "legal ethics." There are many reasons for this, but the most important is probably that law students do not think they will become unethical lawyers. Students think of unethical lawyers as the sleazeballs who chase ambulances (think Danny DeVito in *The Rainmaker*), run insurance scams (think Bill Murray in *Wild Things*), or destroy evidence (think Al Pacino's crew in *The Devil's Advocate*). Students have a hard time identifying with these lawyers. When students think of life after graduation, they see themselves sitting on the 27th floor of some skyscraper in a freshly pressed dark suit doing sophisticated legal work for sophisticated clients. Students imagine that such lawyers do not have to worry about ethics.

In fact, as I tell the students I teach, they will probably begin to practice law unethically in at least some respect within their first year or two in practice. This happens to most young lawyers. It happened to me, and it will happen to my students, unless they do something about it.

**Let's first be clear** on what I mean by practicing law unethically. I mean three things. First, a lawyer has to comply with the formal disciplinary rules — in most states, the Model Rules of Professional Conduct. This is necessary, but far from sufficient. Complying with the formal rules will not make an attorney an ethical lawyer, any more than complying with criminal law will make him an ethical person.

Second, a lawyer must act ethically in his work, even when he isn't required to do so by any rule. To a substantial extent, formal disciplinary rules have lost touch with ordinary moral institutions. To practice law ethically, an attorney must practice law consistently with those institutions. For the most part, this is not complicated. Treat others as you wish to be treated. Be honest and fair. Show respect and compassion. Keep promises. Being an ethical lawyer is not much different from being an ethical doctor or mail carrier or gas station attendant.

Third, a lawyer must live an ethical life outside of work. Many successful lawyers ignore this point. So do many law professors who, when writing about legal ethics, tend to focus solely on the lawyer at work. But being admitted to the bar does not absolve a lawyer of his responsibilities outside of work — to his family, friends, community and, if he is a person of faith, to his god. To practice law ethically, he must meet those responsibilities, which means he must live a balanced life.

**It is hard to practice law ethically.** Complying with the formal rules is the easy part. The rules are not very specific and they don't demand very much. Acting as an ethical lawyer in the broader, non-formalistic sense is far more difficult. Most of a lawyer's working life is filled with the mundane. It is unlikely that one of his clients will drop a smoking gun on his desk, or ask him to deliver a briefcase full of unmarked bills, or invite him to have wild, passionate sex. These things happen to lawyers only in John Grisham novels. The typical lawyer's life is filled with the kind of things that drove John Grisham to write novels: dictating letters, talking on the phone, drafting memoranda, performing "due diligence," proofreading contracts, negotiating settlements and filling out timesheets. Because a lawyer's life is filled with the mundane, whether he practices law ethically depends not upon how he resolves the one or two ethical dilemmas he will confront during his entire career, but upon the hundreds of little things he does. When a lawyer is on the phone negotiating a deal, or when he is at his computer drafting a brief, or when he is filling out his timesheet at the end of the day, he is not going to have time to reflect on each of his actions. He is going to have to act almost instinctively.

What this means is that an attorney will not and cannot practice law ethically unless acting ethically is habitual for him. He has to be in the habit of being honest. He has to be in the habit of being fair. He has to be in the habit of being compassionate. These qualities have to be deeply ingrained in him, so that he can't turn them on and off. Acting honorably is not something he has to *decide* to do, so that when he is at work he will automatically apply the same values in the workplace that he applies outside of work.

Here's the problem, though: A young person who begins practicing law today will find himself immersed in a culture that is hostile to the values with which he was raised (unless he was raised to be rapaciously greedy), for the defining feature of the legal profession today is obsession with money. Now, almost all lawyers work for money. But there seems to be widespread agreement that something has changed in the past decade or two.

Many commentators have lamented the increasing commercialization of the legal profession, but few have captured the extent of this affliction. Perhaps that is because it almost defies description. How can one explain why so many attorneys lead absolutely miserable lives so that they can earn very, very large salaries instead of just very large salaries? Young lawyers find themselves under tremendous pressure to act in ways that make money for their firms, their clients and themselves.

The pressure is usually not direct. No one takes a young lawyer aside and says, "Jane, we here at Smith & Jones are obsessed with money. From this point forward the most important thing in your life has to be billing hours and generating business. Family and friends and honesty and fairness are okay in moderation, but don't let them interfere with making money." No one tells a young attorney, as one lawyer told another in a Charles Addams cartoon, *"I admire your honesty and integrity, Wilson, but I have no room for them in my firm."* Instead, the culture pressures young lawyers in more subtle ways to replace their values with the system's values.

**Here is an example of what I mean:** During his first month working at a law firm, a young associate will be invited by some senior partner to a barbecue at his home. This "barbecue" will bear absolutely no relationship to what the associate's father used to do on a Weber grill in their driveway. The associate will drive up to the senior partner's home in his rusted Escort and park at the end of a long line of Mercedes Benzs, BMWs and sport utility vehicles. The house will be enormous. The lawn will look like a putting green, and be bordered by perfectly manicured trees and flowers. He will walk through the rooms, each of which will be decorated with expensive carpet and expensive wallpaper and expensive antiques. As he enters the partner's immaculately landscaped backyard, he will be offered pâté or miniature quiche or shrimp and be given a drink of the most expensive brand of whatever liquor he likes. In the corner of the yard, a caterer will be grilling swordfish. In another corner will stand the senior partner, sipping a glass of white wine, holding court with a worshipful group of junior partners and senior associates. After a couple of hours, the associate will walk out the front door, slightly tipsy from the free liquor, and say to himself, *"This is the life."*

In this and a thousand other ways, young lawyers absorb law firm culture — a culture of long hours of toil inside the office and short hours of conspicuous consumption outside the office. They work among lawyers who talk about money constantly and who are intensely curious about how much money other lawyers are making. Any lawyer who wants to get some sense of this should leave his tax return on the photocopier glass sometime. (At least one hapless lawyer seems to do this every spring at most firms.) Every lawyer in the firm will know how much money the lawyer made last year in about 15 minutes, and every lawyer who joins the firm during the next quarter-century will hear the story of the lawyer's tax return.

Twenty years ago, talking about income and clients and fees just wasn't done, even within the huge Wall Street law firms. Today, it sometimes seems that lawyers talk of little else. Just about every issue of the *National Law Journal* or *The American Lawyer* includes at least one article about how much money some lawyer somewhere is making. A couple of times a year, these journals publish extensive surveys of lawyers' incomes, focusing in particular on the incomes of associates and partners in big firms. These surveys are pored over by lawyers with the intensity of kids poring over the statistics of their favorite baseball players.

Law firm culture also reflects the many ways in which lawyers

who are winning the game broadcast their success. A first-year male associate will buy his suits off the rack at a department store. A couple of years later, he'll be at Brooks Brothers. A few years after that, a salesperson will come to his office with tape measures and fabric swatches in hand. Similar ostentatious progress will be demonstrated with regard to everything from watches to cell phones to running shoes to child-care arrangements to private social clubs. When lawyers speak with envy or admiration about other lawyers, they do not mention a lawyer's devotion to family or public service, or a lawyer's innate sense of fairness, or even a lawyer's skill at trying cases or closing deals, nearly as much as they mention a lawyer's billable hours, stable of clients or annual income.

It is very difficult for a young lawyer immersed in this culture day after day to maintain the values he had as a law student. Slowly, almost imperceptibly, young lawyers change. They begin to admire things they did not admire before, be ashamed of things they were not ashamed of before, find it impossible to live without things they lived without before. Somewhere, somehow, a lawyer changes from a person who gets intense pleasure from being able to buy his first car stereo to a person disappointed with a \$100,000 bonus.

As the values of an attorney change, so too does his ability to practice law ethically. The process I have described will obviously push a lawyer away from practicing law ethically in the broadest sense — that is, in the sense of leading a balanced life and meeting non-work-related responsibilities. When work becomes all-consuming, it consumes all. If a lawyer is working all the time, he cannot meet other responsibilities that require any appreciable commitment of time or energy. This much is obvious. Absorbing the values of law firm culture, however, will also push a lawyer away from practicing law ethically in the narrower sense of being honest, fair and compassionate. In the highly competitive, money-obsessed world of law firm practice, most of the incentives push lawyers to stretch ethical concerns to the limit.

**Of course, unethical lawyers do not start out being unethical.** They start out just as my students do, as perfectly decent young men or women who have every intention of practicing law ethically. And unethical lawyers do not become unethical overnight, but a little bit at a time. They do not become unethical by shredding incriminating documents or bribing jurors. They become unethical just as my students are likely to — by cutting a corner here, by stretching the truth a bit there.

For the typical young attorney, acting unethically starts with his timesheets. One day, not too long after he starts practicing law, he will sit down at the end of a long, tiring day and he just won't have much to show for his efforts in terms of billable hours. It will be near the end of the month. He will know that all of the partners will be looking at his monthly time report in a few days, so what he'll do is pad his timesheet just a bit. Maybe he'll bill a client for 90 minutes for a task that really took him only 60 minutes to perform. He will, however, repeatedly promise himself that he will repay the client at the first opportunity by doing 30 minutes of work for the client for "free." In this way, he'll be "borrowing," not "stealing."

Then what will happen is that it will become easier for the young lawyer to take these little loans against future work. And after a while, he will stop paying back these little loans. He will convince himself that, although he billed for 90 minutes and spent only 60 minutes on the project, he did such good work that his client should pay a bit more for it. After all, his billing rate is awfully low, and his client is awfully rich.

And then he will pad more and more. Every two-minute telephone conversation will go down on his timesheet as 10 minutes, every three-hour research project will go down with an extra quarter-hour or so. He will continue to rationalize his dishonesty to himself in various ways until one day he stops doing even that. And, before long — it won't take him much more than three or four years — he will be stealing from his clients almost every day, and he won't even notice it.

And just as easily, the young lawyer will also become a liar. A deadline will come up one day, and for reasons that are entirely his fault, he won't be able to meet it. So he will call his senior partner or his client and make up a white lie about why he missed the deadline. And then he will get busy, and a partner will ask whether he proofread a lengthy prospectus and he will say yes, even though he didn't. And then he will be drafting a brief and he will quote language from a Supreme Court opinion even though he will know that, when read in context, the language does not remotely suggest what he is implying it suggests. And then, in preparing a client to answer a difficult question that will likely be asked, he will create an answer that will be "legally accurate" but that will mislead his opponent. And then he will be reading through a big box of his client's documents, a box that has not been opened in 20 years, and he will find a document that would hurt his client's case. Because no one knows it exists, he will simply "forget" to produce it to his opponent.

After a couple of years of this, the young lawyer won't even notice that he is lying and cheating and stealing every day that he practices law. None of these things will seem like a big deal individually — an extra 15 minutes added to a timesheet here, a little white lie to cover a missed deadline there. But after a while, the young lawyer's entire frame of reference will change. She will still be making dozens of quick, instinctive decisions every day. But those decisions, instead of reflecting the notions of right and wrong by which she conducts her personal life, will instead reflect the set of values by which she will conduct her professional life, a set of values that embodies not what's right or wrong, but what is profitable, and what she can get away with. The system will have succeeded in replacing her values with the system's values, and the system will be profiting as a result.

**How can a young lawyer avoid this fate?** The most important thing, I tell my students, is to avoid getting sucked into the game. Don't let money become the most important thing in your life. Don't fall into the trap of measuring your worth as an attorney, or as a human being, by how much money you make. If a lawyer lets his law firm or clients define success for him, they will define it in a way that is in their interests, not his. It is important for them that his primary motivation be making money and that no matter how much

money he makes, his primary motivation continues to be making money. If he ends up as an unhappy or unethical attorney, money will most likely be at the root of his problem.

Young lawyers need to understand that they cannot win the game. If a young lawyer falls into the trap of measuring his worth by money, he will always feel inadequate. There will always be a firm paying more to its associates than his firm. There will always be a firm with higher per-partner profits than his firm. There will always be a lawyer at his firm making more money than he does. No matter how hard he works, he will never be able to win the game. He will run faster, but there will always be a runner ahead of him, and the finish line will never quite come into view. That is why the game will make his clients and partners so rich, and make him so unhappy.

When we were children, most of us were told by our parents and grandparents that money does not buy happiness. They were right. Even scientists now say they were right. In part, they were right because much of what determines whether we will be happy is outside our control. We cannot control our genetic makeup, upon which happiness seems in part to depend (according to recent studies). Nor can we control many of the events in life that, for better or for worse, will affect our subjective well-being. For example, we can't control whether we will be permanently injured in a car accident or whether our spouses will perish at a young age. But the main reason our parents or grandparents were right about money not buying happiness is because it's true.

Research has shown that with the exception of those living in poverty, people are almost always wrong in thinking that more money will make them happier. Once people are able to afford the necessities of life, material wealth matters surprisingly little. When people experience a rise in income, they quickly adjust their desires and expectations accordingly, and conclude, once again, that more money will bring them happiness. Thus, when more money means more work, money not only fails to buy happiness, but it actually buys unhappiness.

Law students and young lawyers, particularly those who have enjoyed academic success at the best schools, have to get their priorities straight. It saddens me that the objects of envy and admiration of so many of my students today are not lawyers like Thurgood Marshall or Charles Hamilton Houston — lawyers who sacrificed much personal gain to do much public good — but rather the nameless, faceless attorneys who populate giant law firms, grinding out thousands upon thousands of billable hours, often toward no end other than getting rich and determining whether one huge corporation will have to write out a check to another huge corporation.

Law students and young lawyers have to stop seeing workaholicism as a badge of honor. They have to stop talking with admiration about lawyers who bill 2,500 hours per year. Attorneys whose lives are consumed with work, who devote endless hours to making themselves and their clients wealthy at the expense of just about everything else in their lives, are not heroes. And that is true whether the lawyers are workaholic because they truly enjoy their work, because they crave

wealth, or because they are terribly insecure. At best, these attorneys are people with questionable priorities. At worst, they are immoral. There are certainly better lawyers after which to pattern one's professional life.

Law students and young lawyers must consider the costs, as well as the benefits, of private practice. The benefits of big-firm life — the high salaries, the plush offices, the conspicuous consumption — are paraded before young lawyers and are easy to understand. Any law student can divide \$90,000 by 12, subtract 40 percent for federal and state taxes, and fantasize about how he will spend \$4,500 a month. By contrast, the *costs* of big-firm life are not paraded before young lawyers and are not fully appreciated until a lawyer actually works at a large firm. But the costs are just as real as the benefits.

I tell my students that when they are at that barbeque at the senior partner's house, instead of wistfully telling themselves, "This is the life," they should ask the senior partner some questions. (I'm speaking figuratively here. My students probably shouldn't actually ask these questions aloud.) Ask that senior partner how often he sees the gigantic house in which he lives, how often he's actually sat on that antique settee in that expensively decorated living room. Then ask him when was the last time he read a good book, or watched television, or took a walk, or sat on his porch, or cooked a meal, or went fishing, or did volunteer work, or went to church, or did anything that was not in some way related to work.

That is the best advice I can give my students. Right now, while they are still in law school, they need to make the commitment not just in their heads, but in their hearts, that although they are willing to work hard and they would like to make a comfortable living, they are not going to let money dominate their lives to the exclusion of all else. And they must not simply structure their lives around this negative; they should embrace a positive. They must believe in something, *care* about something, so that when the culture of greed presses in on them from all sides, there will be something inside of them pushing back. They must make the decision now that they will be the ones who define success for themselves — not their classmates, not law firms, not clients of law firms, not the *National Law Journal*. They will be happier, healthier and more ethical attorneys as a result.

**I know of what I speak.** I had my pick of high-paying, big-city, big-firm jobs in 1987 as I was completing a clerkship with Supreme Court Justice Antonin Scalia. In fact, many big firms were supplementing their usual astronomical salaries with special bonuses for Supreme Court clerks. I decided to turn down the big money and return home to Minnesota, where I joined a large firm with a reputation for treating people well. Within a couple of years, I was married and our first child was on the way.

I had every intention of leading a balanced life. And by New York or Washington standards, I suppose I did. By anyone else's standards, I did not. I worked three or four nights and one or two weekend days every week. When I was preparing for a trial or arbitration or appellate argument, I worked almost around the clock. I put hundreds of hours into business

development, and, within three years or so, had created a self-sustaining practice. I traveled constantly. What I remember most about the times my children first talked or walked or went to the potty was the hotel room in which I was sitting when my wife *told* me about the event over the phone. I was in Seattle when my grandmother died. I was in Pittsburgh when the worst snowstorm of the century trapped my family in our house for two days. I was in Williamsburg when my wife learned that our third child, with whom she was four months pregnant, had Down Syndrome. I failed miserably in my resolve to lead a balanced life, and neither my family nor I will ever be able to get back what we lost as a result.

My students may be able to do better than I did, but I wouldn't count on it. No matter how pure a young lawyer's intentions, no matter how firm his resolve, when he goes to work at a firm, the culture will seep in. I grew up in a lower-middle-class neighborhood. I literally never met anyone who could be characterized as wealthy. I almost never talked about money or thought about money. That all changed when I started practicing law, despite my best intentions. Slowly, imperceptibly, the things I cared about and the way I thought about others and the way I thought about myself changed. I got sucked into playing the game, and even today, four years after leaving the big firm, I still find myself playing the game at times.

Fortunately, though, I have learned that it is never too late to change, even when you've failed as much as I have. In 1994, my firm won a judgment for more than five billion dollars. We partners all knew that, if and when we collected that judgment, even the smallest partner's share would be a few hundred thousand dollars. Most of the partners would become millionaires. Because my wife and I would both be partners, we would enjoy two slices of this enormous pie. At about the same time of the verdict, my wife and I were beginning to feel that somewhere along the line we had lost our way. We were constantly feeling guilty about the hardships we were imposing on each other and on our children. The life we were leading was not the life we had envisioned. We had strayed from the values with which we were raised. In 1995, we decided to leave the firm and the money behind, so that we could accept appointments to the Notre Dame faculty. We decided to give up a ton of money in return for work that was more enjoyable and less stressful, and for more time with each other and our children. We decided all of this was more important than money, even lots of money.

I don't claim that we made an enormous sacrifice. We did give up a lot of money, but we still get paid well, and we have great jobs. Nor do I claim that we have stopped playing the game — that we have no regrets, that we never look back, that we don't care about money any more. None of that would be true. Living a balanced life and defining success for yourself are lifelong struggles, and they don't end once you leave a big law firm. The one thing I can promise my students is that as we rediscover every day, they are struggles well worth undertaking.

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