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The Business of Being a Lawyer
Introduction

Pamela Bucy Pierson

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THE BUSINESS OF BEING A LAWYER

By Pamela Bucy Pierson

INTRODUCTION

Each of us, as a lawyer, is a business, our own business. Whether we are self-employed or work for a private firm, public interest, government office, or in a legal or non-legal position, we need to understand our own balance sheets: What are our assets and liabilities? What are our short-term and long-term business plans? How do we implement those business plans? For which contingencies do we prepare? What are our accounts receivables? What investments have we made and need to make in our business?

This book began in two places – in my office at The University of Alabama School of Law, and in a parking garage in Birmingham, Alabama. A few years ago, I realized that the conversations I was having with students who came by my office had changed. From the mid-1980's and until about five years ago, students, even 1Ls, had several choices of summer jobs and 3Ls had several offers of post-graduate jobs. Students and I would brainstorm about which job they should take or how to sequence their options.

Today, fewer 1Ls have paying job offers for the summer. They are looking for advice on how to get an externship or volunteer position. One issue that dominates these discussions is cost -- whether school loans will cover summer externship tuition or how they will pay living expenses if they volunteer. The 3L students who don't have a job lined up by graduation are seeking advice on how to find a job and how to navigate the gap until they do. Understandably, many students today are discouraged about the challenges they face in the legal job market.

What is interesting to me is that not more students are discouraged. Some students, even though they face the same, or more difficult, challenges than others, remain enthusiastic and they consistently fare better in the job market than others, regardless of seemingly important criteria such as grades. I begin to wonder, what is it that makes these students remain upbeat and others not? Why do they have better luck in their job quests? What are they doing differently?

During this same general time period, I spent a lot of time in a parking garage in downtown Birmingham. During 2008-2009, while on sabbatical, I served Of Counsel to a law firm located in a thirty-two story office building. The office building sat on a multi-floor underground parking garage. It took twenty minutes, on a fast day, to get through the parking garage and up all of the elevators to my law firm office. Many law firms and a lot of lawyers are located in this office building and as I discovered, many of these lawyers were my former students. Every day as I made the trek through the parking garage, I saw former students. My twenty-minute trips from car to office often turned into an hour or more as we visited and caught up.

Many of these former students I had not seen in years. I could not help but observe how well, or poorly, a number of them had aged. After a while, I began to see a pattern. Typically, those who had aged well were excited, enthusiastic and happy as they told me about their jobs, the obvious topic we discussed. Those who had not aged well seemed weary as they told me about their professional lives. Again, I wondered, what causes the difference in attitude? I knew that many of my former students had faced personal difficulties: health issues, divorce, even the loss of loved ones. Yet, this did not seem to separate those who were upbeat from those who were not. I wondered if the difference was in the type of practice, but this did not seem to be determinative either. Many of those who seemed happy were in high-stress and difficult practices; many of those who seemed despondent were in positions of wealth and prestige and experiencing what most people would consider to be dream careers.

From these interactions with students and former students, I wondered what makes some law students maintain resilience in the face of professional challenges, and what makes some lawyers enjoy what they do. I have been fortunate to be able to devote time to studying these two questions. Few working adults have the luxury of shifting professional gears. I am profoundly grateful that academic freedom has allowed me to do so. For almost forty years, I have practiced, taught and published in the field of white collar crime. I have loved it, but it has been a treat to be able to pursue something new.

As I embarked on this endeavor, the first thing I discovered is that there is impressive scholarship on the future of the legal profession. Richard Susskind and William D. Henderson are trailblazers and there is exciting work done by a number of academics and practicing lawyers. I also found that my years of practice and involvement in various professional activities have been an invaluable guide in this project. I was fortunate to begin my career with a judicial clerkship followed by a brief stint at a large law firm before serving as an Assistant United States Attorney (EDMO) for seven years. As an academic I have stayed connected to the practicing bar by serving Of Counsel to a large law firm and as an expert witness in several white collar cases. My affiliations with the excellent attorneys at the law firms of Maynard Cooper & Gale, PC (Birmingham, Alabama), Ropes & Gray LLP (New York, New York office), Meckler, Bulger, Tilson, Marick & Pearson LLP (Chicago, Illinois office), and Ross, Dixon & Masback LLP, now Troutman Sanders LLP (Washington DC) have given me invaluable insight into today's practice of law.

I enjoy spending time with practicing attorneys and have been able to do so while in academia through the American Bar Association, the Alabama State Bar Association, and the Birmingham and Tuscaloosa Associations. I am honored to have been elected or appointed to serve the Alabama State Bar as a Bar Commissioner, Vice President, and twice, member of the Executive Committee. One of my greatest joys as a lawyer has been serving in various capacities with the Alabama State Bar's Volunteer Lawyers Program, through which lawyers volunteer their time to assist underprivileged individuals with civil legal needs. With support from The University of Alabama School of Law and the practicing bar of Alabama, I have enjoyed establishing a variety of programs that integrate the practice of law and law school curricula. In one of the great life lessons that you never know where things will lead, I undertook all of these bar activities simply because they were fun. I never dreamed I would learn so much from them, in many respects more than I have learned anywhere else.

My forays into the practice of law and my friendships with practicing lawyers have provided me what academia cannot: insight into the day-to-day life of lawyers; the sense of accomplishment one feels when doing a good job for a client; the pressures, stresses and rewards of practicing law; the unique camaraderie lawyers share; and how networking within the legal profession works. These insights have enriched my life, and this book.

Until I started this book and the various programs related to it, I had forgotten how hard it is to start something new. Over the past year, I often wondered why in the world I would leave an area of law I knew well and venture into something unknown. However, I have seen that a fresh perspective has advantages. From my agenda-less vantage point, I have seen things I did not expect. The first is that the answer to both questions: why some law students are resilient in the face of professional challenges, and why some lawyers enjoy what they do, lies in the field of psychology, not law.

For this reason, Chapter One begins with a discussion of emotional intelligence (EQ). It is surprising that law schools do not regularly address EQ issues. Graduate business schools have done so for years, developing rigorous, systematic courses that build EQ skills. Certainly, if there is any profession that should address EQ, it is law, and certainly the time is now, as the legal profession undergoes dramatic changes. I hope that this book helps open the door for law schools to begin addressing the important issues of EQ.

The discussion of EQ in this book is based on three assumptions: first, that life always presents challenges; second, the practice of law presents unique but predictable challenges; and third, it is possible to develop and improve one's skills for successful coping with life and professional challenges. Chapter One discusses specific, measurable EQ strategies lawyers can use to increase their productivity and happiness, relieve stress, achieve balance in life, and maintain resilience in the face of hardship.

Chapter Two addresses personal financial planning basics, covering topics such as establishing and living on a budget; educational loans and repayment facts and strategies; financial planning for the future; financial implications of different employment models; the financial calculus of working part time; costs of establishing one's own practice; and saving for a home purchase, children's education, and retirement.

Chapter Two arose because of another unanticipated discovery I made in this project. Life for most law students and many lawyers is fundamentally different than it was for me and most lawyers who have been practicing for a while because of educational debt. At an average debt of \$125,000 (for 2012 law graduates from private law schools) and \$75,000 (for 2012 graduates from public law schools),¹ the educational debt most law students and new lawyers carry is a game changer. I put myself through college and law school with loans and grants and spent many years repaying these loans, but my financial burdens and those of my peers I feel certain, paled in comparison to the debt current law students carry. Today's educational costs eclipse educational costs of years past with the result that educational debt drives the career and life choices for many law students and lawyers.

Chapter Three discusses the facts and figures of the current and evolving legal market. Chapter Three is influenced by a consistent theme I saw when studying EQ issues: a key component of good EQ is a sense of control over one's life. No lawyer can maintain a sense of control without an understanding of the realities of the legal market. The legal profession has undergone major structural changes in the past few decades; the changes have accelerated in the past few years; and there are more ahead. Those who fail to understand and embrace these facts will struggle; those who do, will thrive. Chapter Three discusses trends in the legal profession, evolving business models of law firms, and the impact of these changes on lawyers' lives.

Chapter Four addresses specific steps law students and lawyers can take to navigate their careers successfully. Today the average lawyer changes jobs seven times and this average is likely to increase as the future legal market becomes more fluid. Chapter Four discusses opportunities in non-traditional practices of law; evolving employment patterns; increasing opportunities in law-related careers; and the cost-benefit analysis of working in a government or public interest office compared to private employment.

When I began my study of the legal profession my goal was to create something that would be of help to law students. I resolved to tell the truth. Not to sensationalize, and not to sugar coat. It would be tempting to do both. So, without sensationalizing and without sugar coating, here is what I have learned. First, the way we have practiced law for the past forty to fifty years is over. Anyone who fails to recognize this will not survive. Second, this is an exciting, fun and fulfilling time for lawyers who embrace the changes in our profession. There are now unparalleled opportunities to practice law in a personally and professionally rewarding way which have not been available.

The story of David and Goliath, as interpreted by Malcolm Gladwell in his book, *David and Goliath*, is a perfect analogy for the opportunities ahead for new lawyers. By all expectations, David, a young shepherd with no military training, was no match for Goliath, the huge, experienced warrior with a bronze helmet, full body armor, a javelin, a spear, and a sword.² Yet, David prevailed because, as Gladwell states, "being an underdog can change people in ways that we often fail to appreciate: it can open doors and create opportunities and educate and enlighten and make possible what might otherwise have seemed unthinkable."³ Freed from experience, nimble thinking is a tremendous asset.

It remains true that new, inexperienced lawyers enter the legal profession in a "weaker" position than experienced attorneys. Experience matters in life, especially in something as complex and subtle as practicing law. Experience is important in any situation undergoing dramatic upheaval, which law is. But, because new lawyers are able to navigate technology well, and because they are unencumbered by the tunnel vision of experience, new lawyers (or those who can adapt as if they were new) will prevail and thrive in the legal profession of the future.

In the chapters that follow, there are stories about four-year olds and marshmallows, grownups who eat radishes and chocolate chip cookies, hospital custodians, starfish, pyramids, diamonds, American POWs in Chinese prisons, rats, dogs and people who are electrically shocked, colonoscopy patients, monkeys with hands stuck in coconuts, Scottish orthopedic

patients, and Mick Jagger. These stories provide guidance for navigating the legal profession of the future. Enjoy.

¹ ABA Journal,
http://www.abajournal.com/news/article/average_debt_load_of_private_law_graduates (Posted March 28, 2012) (last viewed on Feb. 9, 2014).

² MALCOM GLADWELL, *DAVID AND GOLIATH* 4 (Little, Brown and Company 2013).

³ *Id.*