

Justice Frankfurter and the Laws of Stress and Performance

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Stress is an inherent and inescapable part of practicing law. Attorneys face a type of stress that is intense and unrelenting: Unforgiving statutes of limitations. Accelerated trial programs. Increased competition for a decreasing number of available cases. The constant demand for billable hours. The growing use of hardball tactics and uncivil behavior in the profession.

This type of stress is not, unfortunately, the “productive” stress that mobilizes our resources and enhances our performance. It is, instead, destructive. It overloads our mental and physical resources. It interferes with the effective use of our skills. It becomes a disruptive factor in our relationships, our outlook and our well-being. Nearly all of us know of cases where stress has taken a punishing toll on a friend, a colleague – or ourselves.

Recent state and national surveys of attorneys reveal a profession that is suffering from cumulative and sustained stress. Career dissatisfaction is at an all-time high. A record number of attorneys are seeking alternative careers. Only half those practicing law today, these surveys say, would choose to be attorneys if they had to do it over again – and would not advise their children to enter the profession.

Justice Felix Frankfurter was fond of saying that “In the last analysis, the law is what the lawyers are.” What he meant, is that our attitude toward what we do for a living affects how we practice. And how we practice determines the quality of justice achieved and the public’s impression of both the law and the profession. If Justice Frankfurter was right – and I’m sure he was – both the profession and its members are in trouble.

Performance and Stress

There are four basic laws which describe the relationship between stress and performance and the way these two factors manifest in our lives.

1. Cumulative, unmanaged stress deforms our bodies and changes our personalities.
2. Stress can be transformed into enhanced performance and a more satisfying life.

3. This transformation is based on a shift in how we relate to and experience our practices and our lives right now, in this moment.

4. Making this happen requires a daily strategy designed to develop and maintain a relaxed body and a calm, focused and alert mind.

Over the last 25 years of practice, I’ve been fascinated in exploring how these laws lead to widely varying levels and quality of performance in our profession. What allows one attorney to remain cool and perform at near peak capacity in the face of the pressure of trial work or the onslaught of demands of a busy transactional practice while another suffers from ongoing anxiety, diminished performance and exhaustion? Why will one attorney operate effectively and with a sense of ease while another will be inefficient and seem to be driven by external demands that override common sense?

Justice Frankfurter hinted at the answer: It’s our attitude toward what we do and how we do it. It’s our perspective – how we see and experience the challenges and difficulties in our lives. Our attitude establishes an invisible environment that influences how we relate to all our experience.

A poster advertising a meditation class I saw a number of years ago illustrates this point. The poster depicted a famous Indian meditation teacher in a complex yoga posture, balanced on one leg, standing on a surfboard – on the crest of a large ocean wave. Underneath, the inscription read: “You can’t stop the waves, but you can learn how to surf.” Stress emerges from believing you can control or stop the waves. Performance is about learning how to ride them.

Those in our profession who have learned how to transform stress into enhanced performance understand the foundational principle that what’s important is not what’s happening, but how we’re relating to it. We are frequently unable to control the way our cases develop or their outcomes. But we always have the ability to choose how we respond to these developments, rather than merely reacting automatically and unconsciously. If we can make conscious and skillful judgments and choices, rather than mechanically responding from habit

and emotion, the results will naturally take care of themselves.

Finding Balance

A spacious, non-reactive attitude is what separates those lawyers who can remain cool and perform near peak capacity and those who don't. And this attitude arises from the type of relationship they have developed with their experience. They are able to enter into a balanced relationship with whatever arises in their practices and their lives. When we're in balance, our concentration is stronger, our work more effective, and our perspective more positive. When we're out of balance, our ability to focus tends to be unstable, our work product more erratic, and our perspective susceptible to negativity. If we hurriedly perform a task full of tension and anxiety, it's unlikely to be our best work. Equally important, the end result will probably feel inadequate. If we bring a calm, balanced state of mind to a task, the end result is likely to be of a higher quality – and feel that way.

This inner balance, at its core, is based on the skill of listening deeply and with care and attention to ourselves – something that many of us have lost touch with, forgotten or never learned in the first place. It involves tuning in to how we're feeling right now, in this moment, and adjusting our attitude or work rate, rather than ignoring our needs and upping our stress level. It involves taking a few moments out of our normal work day to look at what needs to be done, in what sequence and by what date, rather than rushing blindly forward and overlooking or missing some critical aspect of strategy or a time deadline.

Attorneys frequently find themselves in difficult legal situations because they have failed to pay care and attention – to simply be conscious and aware of what they are feeling and doing. Their focus of attention is divided between a current project, some other pressing matter, anticipation of difficulty with yet another case and worrying about something that happened the day before. As a result, they are not fully present for and focused on the work underway and errors and misjudgment occur. Malpractice, from this viewpoint, is more about the state of mind we bring to our work than the actual acts or omissions that become the subsequent focus of litigation. The acts and omissions are merely a symptom of divided concentration and a lack of inner balance.

Many lawyers have become so accustomed to being tense, stressed out and distracted that they don't know

how it feels to let down, relax and be present. They've lost the ability to detect stress buildup and to do something about it. They become stressed out not only by experiencing an unpleasant event, but by merely thinking about or anticipating such an event. Counter-productive stress and its associated unhealthy states of mind have become an accepted way of life. They think this is the way that life is supposed to be. They are stressed out all day at work and find themselves taking it home at night. And the worst part – most of this stress is self-induced, an habitual and ineffective way of responding to challenges and an inability to relax. Once the wheel of stress starts to turn, it is difficult to get off. Many lawyers stay on it for the rest of their lives.

Any efficient, modern law practice must include elements such as sound time management techniques, strategic planning, computerization, fiscal controls, and human resource development. None of these, however, will result in a quality professional work environment unless the attorney using them is in a balanced, focused and relaxed state of mind.

Creating the Right Environment

So how can we create an **inner environment** which allows us to effectively deal with the enormous stresses of practice, perform at or near our real capacities and live lives that are meaningful, pleasurable and support what's really important to us?

Over the years I've developed a particular interest in and explored various meditation practices that favorably influence how we handle stress and enhance our ability to engage in high level performance. These processes relax the body and calm and focus the mind. This, in turn, allows us to more effectively mobilize our energy and experience insight into our conduct and actions. Author and meditation teacher Eknath Easwaran explains it this way: "When the mind is excited, we jump into a situation and do whatever comes automatically which often only makes things worse. If the mind is calm, we see clearly and don't get emotionally entangled in the events around us, leaving us free to respond with compassion and help."

All of these techniques start with developing strong and precise concentration in the present moment: the ability to put our attention on a single project or object and keep it there. We tend to associate "concentration" with trying harder, with using lots of energy, with seriousness and heaviness. But the type of concentration called for to relax and enhance performance is of a different kind. It is highly focused and stable, yet relaxed. It is a

commitment to maintain attention on one thing at a time and what's happening right now, in this moment, unhindered by projecting out into the future or re-creating the past. It is about clearly seeing our current state of mind and situation, then making thoughtful choices.

Those who say they don't have the time to stop several times a day to listen to themselves and to what's really important miss the whole point – we can't afford not to do this. When we don't take this time over weeks, or months, or years of practice, we become disconnected from what we need to do to take care of ourselves and our clients. Finding and visiting a quiet place deep inside of us, every day, is a necessity, not a luxury.

THE TEN BREATHS PRACTICE

Sit comfortably erect with your feet flat on the ground. The feet are about 10 to 12 inches apart. Fold your hands softly in your lap with the palms up or place them palms down on your knees. Find a position where your back and neck are aligned and comfortably straight. This position will feel stable and balanced. Slowly close your eyes. Allow your jaws to relax and your mouth to open slightly.

Once you have fully settled into this position, take several deep, comfortable, rhythmic breaths. Inhale and exhale through both the nose and mouth. Bring your attention into this present moment and your body.

Slowly scan your body and feel any areas—jaws, neck, shoulders, stomach, back—where tension, stress or stiffness is present. Allow each area to relax and let go of any sense of stress with each breath.

Now focus your attention in a relaxed but concentrated way on your breath. Observe and feel each in-breath. Observe and feel each out-breath. If your attention shifts to a sound, bodily sensation or state of mind, notice the shift and how it feels without resistance, struggle, or judgment. Then gently return your attention to the breath. Repeat this process ten times.

When you're done, gently open your eyes. Notice how you're feeling right now, in this moment. Take a few moments to assess what needs to be attended to, if anything, to maintain or restore your inner balance and engage the rest of your day.

Developing a Daily Strategy

Transforming stress into enhanced performance is about direct experience. You have to take action, do it – not just think, plan, or talk about it. And you need to do it now, in this moment, not tomorrow, next week or next year. By integrating a number of basic practices into our work schedule and using them every day, we can set a process of change in motion that builds on itself. Inner balance is a dynamic, on-going process, not a static thing that we achieve and put on the shelf.

There follows a description of four practices I've found to be helpful over the years as a starting place on this road. Don't let the simplicity fool you. If done on a consistent, daily basis, they can help change your perspective, self-awareness, productivity, and level of work and life satisfaction. Each emphasizes looking inside, rather than outside, ourselves in the quiet of the present moment for inner guidance and direction.

I encourage you to do an experiment. Try these practices. Set up some method to remind you to do them. If you don't, I assure you the combination of ingrained habits, resistance to change, and the press of your practice will guarantee that you forget. Give the experiment an honest effort. The most recent research tells us that it takes at least 21 consecutive days of new behavior to establish a new habit or overcome an old one. Here are the practices:

1. **Make A Choice.** The state of mind we set for dealing with stress and performance is a question of choice. We have the choice to face and deal with stress in our lives or drift unfocused, anxious and off-balance. Dealing with stress can be framed as a problem or as embracing an opportunity. Making this choice – over and over again, every day – is the first and most important step in starting a new relationship with stress and performance.

One way to do this is to create a phrase or sentence which embodies our intention and place it on that day's action list or on a card you can set on your desk as a reminder. The phrase or sentence should be simple, direct, positive and unequivocal. An example would be: "Today I will make the time to relax my body and quiet my mind so I can make conscious and skillful choices rather than mechanically responding from emotion and habit."

2. **Take "Ten Breaths" Breaks.** Stress hits the breath and posture first. We tend to hold our breath in stressful situations. Almost simultaneously, the posture begins to contract forward and down, causing a rounding

of the shoulders and a concave chest. The mind, likewise, becomes tense and restricted.

The single most effective technique for getting in touch with these early warning signs of stress and for changing our attitude is to re-establish a comfortably erect posture and to breathe fully. Try doing the simple, short but powerful “Ten Breaths Practice” on a regular basis during the day. (See insert.) For example, set an alarm to remind you to practice at 9:30 a.m., 11:30 a.m., 2:30 p.m. and 4:30 p.m. Try the exercise when you begin feeling disconnected from your work, when your mind is constantly wandering, or when you realize that you’re becoming stressed out. This exercise allows us to catch our breath, calm our minds and start over again – refreshed.

3. **Focus Your Attention.** Stress robs us of our ability to fully focus and concentrate on what we are doing in the present moment. This particular state of mind – one of divided attention and concentration – exhausts both the body and the mind and diminishes our productivity.

Meditation practitioner and author Daizui MacPhillamy recommends a method for helping us maintain our concentration he labels “Working Meditation.” Here are the steps:

- (1) Do one thing at a time.
- (2) Pay attention to what you are doing.
- (3) When your mind wanders to something else, gently bring it back.
- (4) Repeat step number three a few hundred thousand times.
- (5) But, if your mind keeps wandering to the same thing over and over, stop for a minute. Maybe it is trying to tell you something important.

MacPhillamy comments: “That is all there is to it. It is incredibly simple and requires nothing more than the willingness to do it with some persistence...bring your mind back gently each time it wanders, but don’t be so strict on yourself that you find the practice unpalatable. Done properly, the exercise is refreshing, liberating and energizing.”

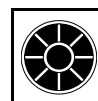
4. **Consider Exploring Meditation.** Meditation is a more sustained way of replenishing our depleted inner resources, developing insight and re-connecting with our true selves. A starting place is to do the Ten Breaths

Practice for 15 or 20 minutes each morning before work, during the lunch hour, or when you arrive home before dinner. Find a quiet, undisturbed place, set a noiseless timer, and just settle in to the exercise. You might also take a look at [Wherever You Go, There You Are](#) by Dr. Jon Kabat-Zinn of the University of Massachusetts Medical Center's Stress Reduction Clinic.

Conclusion

One of the most difficult aspects of stress is its ability to make us feel overwhelmed, inadequate and victimized. Once we identify with these states of mind, we become trapped. We need to remember that we always have a choice of how to relate to any situation. The real problem isn’t the external factors that we usually perceive as the causes of our difficulties, it’s how we’re responding to them.

Making a commitment to explore our reactions to the stressful circumstances of our lives and to enhance our performance is really a commitment to explore a fuller, more complete and rewarding way of practicing law and living. If we can regularly take time to develop and maintain our inner balance during the day, we begin a process of touching a place deep inside of us that is already calm and whole. Once we start this process, we begin to work with the potential to quiet our minds, relax our bodies and open our hearts to the possibilities of a more trusting way of living and relating to the world around us.



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Biographical Note

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