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## RELATIONSHIPS ARE KING

*Arnie Herz*<sup>\*</sup>

### INTRODUCTION

Why did you go to law school? To save the world? To be of service to people? Every lawyer, judge, and law student was inspired to go to law school by a number of experiences and desires. Did you beat a traffic ticket? Maybe you wanted to make a career out of proving people liars on the witness stand, or maybe you simply wanted to avoid going into the Army.

I asked this at a program I recently gave to the graduating class of Harvard Law School. I was invited to give a presentation because the school recognized many of their alumni were no longer practicing law, and many of their recent alumni were having a difficult time transitioning into the “real world”—into the practice of law.<sup>1</sup> There were extremely intelligent people not using their law degree in the way the school had hoped they would. This is a problem

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<sup>1</sup> See Arnie Herz, *Critical Relationship Building Skills for Associates*, COMPLETE LAWYER, <http://www.thecompletelawyer.com/volume3/issue5/article.php?ppaid=4416> (last visited Feb. 15, 2008) [hereinafter Herz, *Skills For Associates*].

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throughout the country, not just at Harvard.<sup>2</sup>

There I was, in one of these great halls of Harvard. I could not get there through my LSAT score, but I finally got through the door, and it cost me nothing. I said to the students, “To get to where you are, you must be extremely intelligent. You have to take a lot of information, memorize it, digest it, and regurgitate it, all in a very short time frame, and in a very controlled environment.”

The ability to do that very well through high school got them into a very good college. Then, during college, the ability to achieve in this way let them reach the top levels of academia and helped them get into Harvard Law School. And now, they were about to enter into the work force.

“What all this means,” I said, “is that your entire life, intelligence has been king. That has been the essence of everything you have worked for. You say to yourself, ‘if I am very intelligent, I will be very successful.’ ” I told the students about an ability I developed during the time I spent in India. “I have become psychic,” I told them, “and this psychic ability allows me to look into the future. What I see is that ten years down the road, some of you are hugely successful and satisfied, and many of you are not.”

Intelligence is not the distinguishing characteristic between those law students who are hugely successful and those who are not. “Each of you is fairly equally intelligent, and each will be matriculating into law firms or clerkships with people who are also extremely intelligent.” So what is the distinguishing characteristic? What is the

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<sup>2</sup> See, e.g., Alex Williams, *The Falling-Down Professions*, N.Y. TIMES, Jan. 6, 2008, at ST8 (discussing widespread job dissatisfaction among lawyers).

change that takes place?

In my experience, the change is a paradigm shift between the backpack and the briefcase. Most students do not make the shift and most practicing lawyers have still yet to make the shift, which accounts for the huge levels of malaise and dissatisfaction that plagues the legal profession. The paradigm shift is that intelligence is no longer king, relationships are.<sup>3</sup>

Most law students and practitioners were probably not inspired to go to law school to deal with difficult people in crisis, and others who are impossible to please. Even if you are completely successful in helping them, those same people often are not pleased about paying you. Another reality of modern day law firms is that the partnership is no longer sacred. The old paradigm of doing great work and securing partnership for life no longer exists. If you fail to maintain that book of business, you become de-equitized as a partner or booted out.<sup>4</sup> You must be able to continually generate business to maintain a high standing in the firm.

I have yet to come across someone who said they went to law school because they wanted to be in sales. In fact, the exact opposite is true. Many go to law school (and medical school) because they do not like the thought of having to “sell themselves.” Yet, lawyers today are salespeople. To succeed, you have to be good at sales and collections and human resources. You need all of these skills. What

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<sup>3</sup> Arnie Herz, *For Associates, Relationship Building Skills are Essential*, COMPLETE LAWYER, <http://www.thecompletelawyer.com/volume3/issue6/article.php?ppaid=5052> (last visited Feb. 15, 2008) [hereinafter Herz, *Relationship Building Skills are Essential*].

<sup>4</sup> See Nathan Koppel, *Partnership Is No Longer a Tenured Position*, WALL ST. J., July 6, 2007, at B6.

you really deal with on a daily basis is people.<sup>5</sup>

An attorney can master a particular area of law and know it inside-out, but practicing lawyers are continually dealing with people. On a daily basis, attorneys must deal with clients, paralegals, co-workers, support staff, adversaries, civil servants, judges, business development sources, family, and friends. With rare exception, the ability to manage those personal relationships determines how successful and satisfied an attorney will be.<sup>6</sup> The other hugely important person we deal with, on a daily basis, is ourselves.

### I. RELATIONSHIPS ARE ESSENTIAL

There are three core principles that support the paradigm shift from intellect as king to relationships as king. The first of these three core principles is that relationships are essential.<sup>7</sup> It seems like a basic proposition that relationships are essential, but many of us do not live with that awareness.<sup>8</sup>

The mindset behind this core principle is that we spend too much time with too many people who make too little difference in our lives, and too little time with too few people who do.<sup>9</sup> With relationships, we really must identify who is essential for our success and why, and then align our priorities in accordance with that determina-

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<sup>5</sup> See Herz, *Relationship Building Skills are Essential*, *supra* note 3.

<sup>6</sup> See Herz, *Skills for Associates*, *supra* note 1.

<sup>7</sup> See Herz, *Relationship Building Skills are Essential*, *supra* note 3.

<sup>8</sup> See, e.g., Jane Easter Bahls, *Humanizing Law School*, STUDENT LAWYER, Nov. 2002, at 18 (“[T]he primary thrust of legal education—teaching students how to think like a lawyer—is so pervasive that students and lawyers alike find themselves analyzing everything in their lives, at the expense of relationships, values, and spirituality.”).

<sup>9</sup> See, e.g., ABA YOUNG LAWYERS DIVISION SURVEY: CAREER SATISFACTION 27-28 tbl. 20, 21 (2000), available at [http://www.abanet.org/yld/satisfaction\\_800.doc](http://www.abanet.org/yld/satisfaction_800.doc). Nearly half of attorneys surveyed agreed they did not allocate enough time to their personal lives. *Id.*

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tion. Who are the five people who are most essential for a person's success and to what extent do these people add or detract from their success?

How we define success is also an interesting question. What are we looking for? Success may be in the context of one's personal or professional lives; different people may be essential. I purposely define success broadly, keeping it vague.

People often do not think of who is essential for their success. One may actually discover that a person in the top five may be adding much stress into your relationship. When we really take a look at who is essential for our success and why, oftentimes we begin to see we are not aligning our priorities optimally and/or not managing these relationships well.

## II. RELATIONSHIPS MUST BE ENERGIZING

The next key component, a core principle, is that relationships must be energizing.<sup>10</sup> In every single interaction we have, there is an exchange of energy. You walk away from the interaction feeling either energized or depleted. Sometimes the feeling is very subtle.

Take, for example, a group of uninspired students. They chat online during class, write emails, and surf the internet. These students are probably not being energized by what they hear. They are being depleted, so their minds end up rushing somewhere else. The professor simply stands at the front of the room not getting any attention; it is very draining for everyone.

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<sup>10</sup> See Herz, *Relationship Building Skills*, *supra* note 3.

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In every interaction, there is an exchange of energy. For example, look at the interaction between the typical lawyer and the typical client. Is that an energizing or depleting relationship? Of course, there will be energizing times with the client, but too often, the typical interaction between the lawyer and client is depleting—depleting for both the lawyer and the client.

Consider the typical interaction between a lawyer and their coworker. Overall, would a person in their typical work environment at a big law firm, for example, find their interactions with their coworkers energizing or depleting? Again, too often depleting, which causes so much attrition in law firms.<sup>11</sup> They are not particularly energized by their relationships.

It is different for each person, but I find that when you speak to a lawyer, they more often feel that clients and coworkers are draining them. Their partners are fighting about who will get what compensation, who will be in charge of what, and what the direction the firm should take. They complain they cannot get associates to do any work because they are not as inspired and motivated as they once were, and, on top of that, they cannot stand their secretary.

People often share how much more difficult it is competing against adversaries. Most lawyers cannot deal with business development. They do not like it. This is why a small percentage of lawyers generate most of the business.

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<sup>11</sup> Of the twenty-five law firms on the American Lawyers top 200 firms list with the most lateral partner hires, ten have lost at least eighteen percent of their new partners from fall 1999 to fall 2003. Nathan Koppel, *Hello, I Must Be Going*, AMERICAN LAWYER, Mar. 2005, at 106, 108. Other law firms have suffered an even greater employee loss. For example, Schnader Harrison Segal & Lewis lost an incredible sixty-eight percent of its partners hired during the same period. *Id.*

It is well-chronicled how many lawyers do not have the best relationships or connection with their family.<sup>12</sup> They often feel depleted in that context. Divorce rates for lawyers are higher than the norm.<sup>13</sup>

Most lawyers do not have a great relationship with themselves. A typical lawyer is at his or her desk at nine o'clock in the morning, and sits there all day long, talking on the phone. Perhaps they will spend one hundred calories throughout the whole day. Finally, at eight o'clock at night, the attorney goes home totally wiped out. Why? They have been depleted the entire day—day after day.

Take that same lawyer and put him or her on the golf course. Eighteen holes later, he or she is water skiing, going for a hike, swimming in the pool, playing tennis. Ten o'clock at night that lawyer wants to go out partying. He or she has not been depleted but has spent a lot more calories, expended a lot more energy, and is in a different state of mind.

Ask yourself the degree to which you are energizing other people in each interaction. When you interact with someone, become aware of the energetic exchange that is taking place. After each interaction, notice whether you feel more energized or more depleted.

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<sup>12</sup> This failure in close family relationships stems partly from the stress and demand placed upon attorneys from their practice of law. See Joseph E. La Rue, *Redeeming the Lawyer's Time: A Proposal for a Shift in How Attorneys Think About—and Utilize—Time*, 20 NOTRE DAME J. L. ETHICS & PUB. POL'Y 473, 490 (2006).

<sup>13</sup> The divorce rate among lawyers has been found to be even greater than other high-stress professions such as doctors and professors at post-secondary institutions. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 878-79 (1999). This statistically high divorce rate for lawyers is even more alarming for female lawyers. More than twenty-four percent of female lawyers between ages fifty to sixty-four are divorced, compared to only about fifteen percent of female doctors in the same age group. *Id.* at 879.

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Does the other person feel more energized or depleted? As you become more aware, you will begin to realize how important it is for you to be energized, or for the people you are dealing with to be energized. You will find yourself thinking about how to create mutually-energizing interactions.

The mindset behind relationships that are mutually energizing stems from the ability to manage the energetic dynamic that takes place in each interaction and each moment. There is an exercise I use in my programs where I have participants recall a recent interaction they had that was depleting. It could have been an argument with a spouse or an adversary, or a time where they were just listening to someone drone on about something boring. Then, I ask them to take about ten seconds to think about it, turn to their neighbor, and share what that depleting interaction was. The other person listens without making any comment, and then shares their experience.

The first thing that people realize from this exercise is that the energy level in the room rises. Just listening to a person talk gets boring after awhile, but when you share and interact with someone else, you use your own energy and raise the overall energy level. A person may be the best speaker in the world, but when the audience members interact with each other the overall energy level is raised. If students in the classroom do these exercises, it raises the energy level and gets them off the computer monitor much quicker. The room becomes more energized.

Depleting interactions have a significant impact on your physical, emotional, and psychological system. People become unfo-



cused and their physical posture deflates. For example, a lawyer can feel energetically drained because of something that happened; perhaps a depleting interaction with a spouse or an adversary. How will that lawyer's state affect his ability to get results when a new client walks in the door? If you are depleted, you will deplete the client. It is a domino effect. What if you are feeling depleted, and your adversary calls you on a very difficult case and is in an edgy mood? What are the chances of you coming to a compromise? Not very good.

In another exercise I use to demonstrate my point, I ask the participants to think of a positive interaction and to share it for fifteen seconds with the person seated next to them. I ask them not to concentrate so much on the interactions, but how the memory makes you feel. When they are asked how it made them feel, they respond by saying they became happy, and more flexible due to their positive mood. This is how you will find it far easier to reach a compromise.

### III. THE XE FACTOR

The core concept of what I have been talking about here is called the "XE factor."<sup>14</sup> I coined the term "XE factor" for interactions where there is an exchange of energy. "X" is the exchange and "E" is energy. This is the general program: XE Factor Relationships for Business Success. When we look at an attorney-client relationship, there exists the XE factor—lawyers want to optimize the attor-

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<sup>14</sup> See generally ARNIE HERZ, LEGAL SANITY LEARNING PROGRAMS, XE FACTOR: RELATIONSHIPS FOR BUSINESS SUCCESS 3 (2006), available at <http://www.legalsanity.com/xe%20factor%20business%20full%20br%202006-10-26.pdf>. The XE Factor is defined as "the degree to which business leaders and employees are able to generate positive energy and avoid depletion while interacting with others." *Id.*

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ney-client relationship. When a relationship exists where clients are happy with their attorney, not only do clients pay the bill, but they tell other people, all of whom are potential new clients, how fantastic their attorney is. This is the exact standard a practicing lawyer needs.

Lawyers are now a commodity. If clients are merely satisfied with you, then you have to distinguish yourself. This is a big topic throughout the legal world, and is something I focus on often in my blog, Legal Sanity. You must distinguish yourself. You need to make the clients thrilled.

How do you engage people so they are optimistic, happy, positive, creative, and flexible? How do you bring the best out of them? I address this question in an XE factor program dealing with advanced conflict resolution. This is necessary in mediation because a large part of the training is about focusing on the issues. Get the parties away from their positions and focus on what the real issues are.

A first step is to be aware of the energy of the room. If the parties are inflexible, angry, and uptight, then talking about issues all day long will not resolve the dispute. You have to be able to shift that energy. A good mediator will listen to a person's frustration and allow that person to vent the anger. That turns the person's energy from negative to positive.

What tactics can you employ to move someone, or yourself, from a place of being depleted or imbued with negative energy to a place of positive energy? What tactics or practices are the best for changing an energetic dynamic? To succeed, figure out what is ap-

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propriate for the particular situation. Certain tactics may be well-suited for raising energy in certain situations, but would obviously not be appropriate in others. The tactics for a customary contract dispute may not be optimal in the midst of a heated divorce, where the parties are screaming and crying. To change the energy in a complex situation, like a contested divorce, listen to the parties involved and make them feel understood.

Taking a break is another possibility. There are a couple of things about breaks; there are good breaks and great breaks. For me, a great break is letting the parties go out for a walk, get some air, get some space, get some food, or get some water. It is a break where you are physically moving. Your body is a repository for energy, so if you energize your body, you energize your entire self. A break offers an escape from a depleting situation, and allows you to reenergize yourself.

Another tactic is to change the focus of the topic. Focus on something there may be agreement on. I mediated one of the World Trade Center cleanup cases.<sup>15</sup> It was a bitterly contested dispute. The judge ordered the parties to participate, and the parties came to the room convinced it was a waste of time. From the beginning, the other attorneys made me acutely aware that they had tons of experience. The general counsel made sure I knew he went to Yale and had forty-one years of experience. Another attorney had twenty-five years of experience and so forth. There were seven people in the room, and they were certain that there was no way this case would

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<sup>15</sup> See Arnie Herz, *Harnessing the Power of Mediation to Resolve Your Business Disputes*, N.Y. REAL EST. J., Dec. 14-20, 2004, at 7D.

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settle because the parties did not agree on anything. So, I pointed out they already had two agreements—they completely agreed this case was never going to settle, and they completely agreed that I did not have the skills to resolve it

“Let me make sure I understand this,” I said. “You have 133 years of legal experience, five JDs, two MBAs, seventy years of business experience, and you don’t think you have enough intelligence, enough fire power to get the case resolved?” I asked, “Do you need some overworked, disinterested judge to tell you what to do? This is like running to mommy and daddy. Are all of you really that pathetic? If that is the case, maybe you are right and we can’t settle it.”

Six hours later they had a signed settlement agreement.<sup>16</sup> I used a combination of humor, confrontation, and insults—but insults in a way that confronted them and got them to understand. Lawyers are competitive, so if the focus of the game is to see how much one can posture, bluster, and delay as much as possible, then they will play the game aggressively. If you change the focus of the game so that having to resort to the judge makes you look weak, then all of a sudden they want to prove to this judge that they can resolve the case.

These are different tactics that can be employed to move from feeling a sense of depletion to a sense of being energized. It is crucial. This is why, as lawyers, contemplative practices—anything we do that diffuses our stress, energizes us, gives us a perspective, be it exercise, vacations, time with or away from our family—are so im-

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<sup>16</sup> *Id.*

portant.

If I was not in a fairly relaxed state of mind when I was meditating the World Trade Center matter, it would have been over before it even started. I was not stressed and I did not take it personally. If it failed, it failed. I was able to relax with it, which made a big difference. Now, if it happened to be a day when I did not meditate felt a little stressed, then it may not have settled.

#### IV. RELATIONSHIPS MUST ACCOMMODATE FEELINGS

The third core principle is that relationships must accommodate feelings and meet needs.<sup>17</sup> To create a mutually energizing interaction, you have to be aware of what the other person is feeling. Sometimes the feeling may be hopelessness, that there is no way the case can settle. Identify the feeling, and search for the need beneath the feeling.

For example, I gave a program via videolink. On the phone was a patent litigator from Chicago with thirty-five years of experience—a top patent litigator. He said, “Arnie, what you are talking about is fantastic if you are a matrimonial attorney. If are you a patent litigator for Fortune 50 companies, this is just so much malarkey. This does not work.”

I said, “Thank you very much for sharing. Why are you bringing this up?” He told me about a fax he just received from the general counsel of his client saying they were being sued for patent infringement and there was a hearing for a temporary restraining or-

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<sup>17</sup> See Herz, *Relationship Building Skill*, *supra* note 3.

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der in forty-eight hours. He was about to respond back with an e-mail, saying, "Got your fax. Got the associate working on it. Will be ready for the four o'clock call that you want."

Is that a great response? Yes, because it shows you are attentive, responsive, and honest, but that is just the starting point. Then I asked him, "How sure are you that this guy will be your client five years from now?" He replied, "That is my weak spot." I asked, "Is it your weak spot because you are just another one of those neurotic lawyers, or is it really founded?" He said, "There is so much competition. There are so many firms trying to get business from this company. It used to be that a Chicago law firm would only have to worry about Chicago clients. Now there are firms all over the place trying to compete for this business."

I told him he was right to be concerned, because he thought of his representation as a commodity. When you make yourself into a commodity, you are open prey for any other law firm that comes along with a better price and slightly better service.

Then I asked, "How long have you been representing this client? How well do you know him?" He told me he had been representing this client for ten years. He goes to his house every Fourth of July for a barbecue. His client has three teenage boys and was supposed to be going on a vacation the next week, and has cancelled his past four vacations. He has a very difficult board and very vocal shareholders. He is in a very difficult spot and under enormous amounts of pressure. I said, "Fantastic. That is great information that you are sharing."

With this information, I suggest that instead of the email, he give his client a response that accommodated the client's feelings and addressed his needs. I recommended he leave the client a voicemail saying:

Jim, I got your fax. I am so sorry. I know this is probably the last thing you need to deal with today. I know you have your vacation coming up next week. We will do our best to try to get you to go on your vacation next week. We have the associates working on it here. I am here, call me any time you need me. If not, I will speak to you at four o'clock.

He followed my advice and left a message along these lines. Later, I asked him how that felt. He felt great. I asked him, "How do you think the client is going to feel when he gets that message?" He replied, "I think he is going to feel fantastic." Why? Because they were connecting as human beings. He was acknowledging that his client had feelings and needed someone to care about him.

What are the chances of him losing that client after the voicemail? Will they go up or down? The chance of him losing that client goes down, and the chance of keeping him goes up because he has now distinguished himself from his competition.

So to wrap it up, there are three core principles—relationships are essential; relationships must be mutually energizing; and relationships must accommodate feelings and meet needs. By becoming relationship saavy, you will gain a most valuable tool that will help you achieve the success and satisfaction you want and deserve in your career.