

Body Works

By Timothy Tosta

Following my dermatologist's prognosis that the latent discovery of a deeply embedded melanoma likely would prove fatal, I became angry. Here I was 41, married to a wonderful wife, father of three beautiful kids, a career taking off like a rocket and I might not live two more years? No way!

At times of anger, we often are quick to look for someone or something to blame. Certainly I didn't do this to myself! I found my target and, although this may seem to be a cognitive slight of hand, it is common to cancer patients. I blamed my body. It had let me down. It had allowed the cancer to imbed itself. It had failed to defend me. It didn't eradicate the tumor.

So, after more than four decades of functioning under the notion of my "self" as a composite of mind and body, I created a division. At that moment, I was not my body. It was "something else."

Philosopher and author Ken Wilber described my mental slight of hand perfectly in his 1979 book "No Boundary." According to Wilber, something very simple happens in answering the question "Who are you?" In responding, you unconsciously draw a mental line across your field of experience and everything on the inside of that boundary is "you," while everything outside that boundary is not. "Your self identity, in other words, depends entirely upon where you draw that boundary line." Prior to the cancer diagnosis, I adhered to the most common human boundary — the skin surrounding my organism. The cancer led me to adjust the line. I determined that the lethal presence of the melanoma was outside of me.

According to Wilber, drawing a boundary manufactures opposites. And to create opposites is to create conflict. Every boundary line in effect is a battle line. "The firmer one's boundaries, the more entrenched are one's battles." For purposes of my healing, I had created a particularly dysfunctional boundary. A great part of wellness is focused awareness on your well-being, a conscious monitoring of

what you are doing and feeling to direct yourself on a healthy course. This becomes more difficult if you consider your body as something "alien," or even worse as the "enemy." It took me years to overcome the negative consequences of my decision to draw that particular boundary.

Increased somatic awareness has made me a better person, a better husband, a better parent, a better friend and a better lawyer.

So what does all this have to do with you? First, as I made my recovery, and more recently as I trained as a coach, I became painfully aware of how many of us, particularly lawyers, live alienated from our bodies. We may attempt to keep our bodies "in shape," but that is not the same thing as being "integrated" with them. Most of what constitutes our lives is transmitted through our bodies — our moods, our feelings, our emotions, our habits and our actions. Even that part of life that resides solely in the mind, nonetheless, is held in the body's container. The state of the body inevitably effects the mind's well-being. The only way the mind is made real is through the actions of the body in which it is imbedded. How well we are attuned to our bodies also shapes our view of the world. Our bodies communicate the world to us. But, as life progresses and unpleasant circumstances occur in our lives, we create filters in our bodies to keep out memory of past trauma and to hold future injury at bay. As these filters become embedded, we close off our sensations, denying ourselves experience of life as it is and creating a distorted world view.

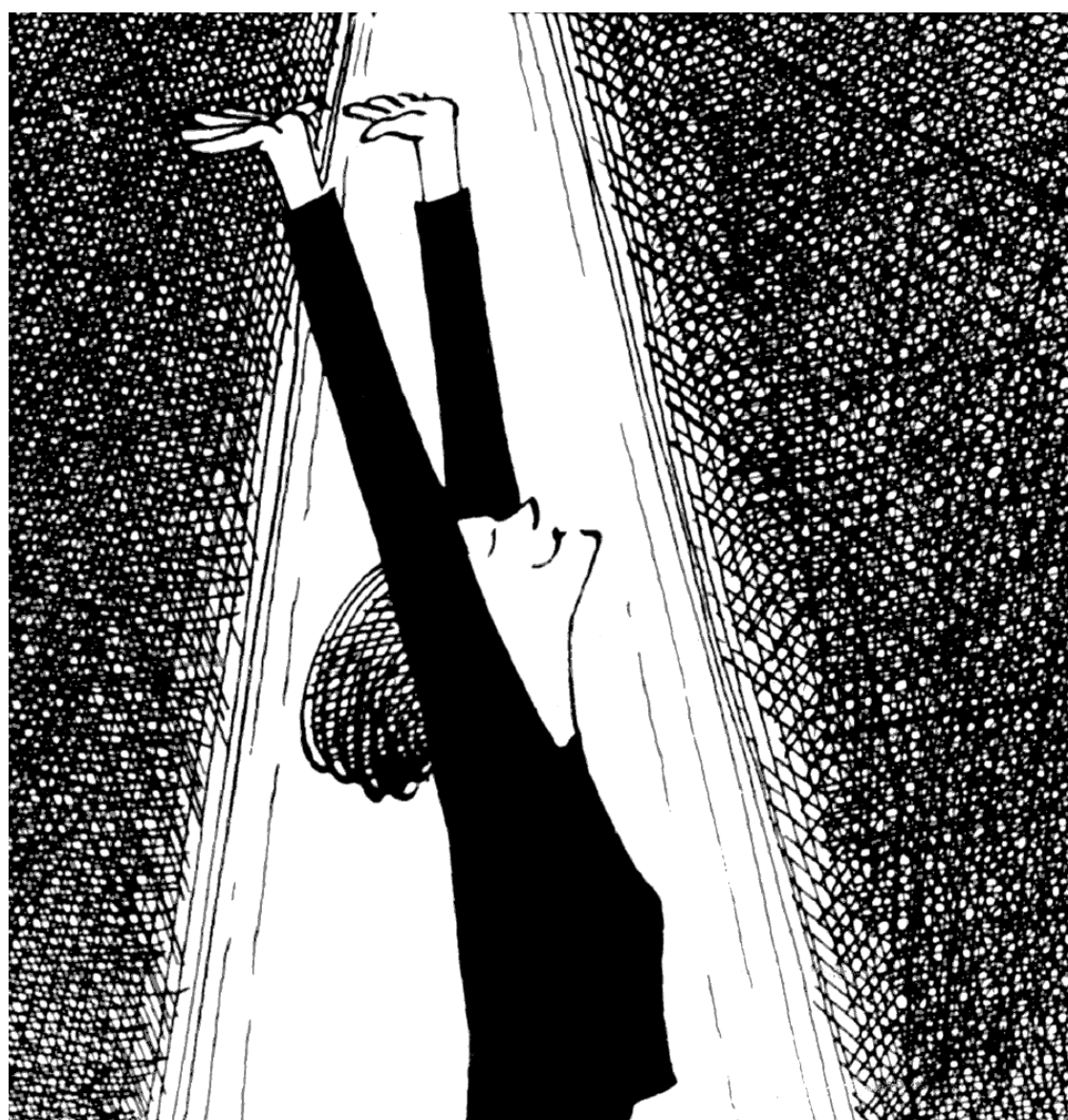
This alienation creates risks to

our health and well-being. It potentially creates risks to our careers and our clients if allowed to sufficiently devolve. A routine practice of mine these days consists of doing a quick personal "body scan" to confirm my status before engaging in a hearing or a major meeting. Likewise, as soon as I enter the room, I begin to scan other participants to ascertain what I can about their status. How they are holding their neck, shoulders and arms? How are they seated on their chairs? Are their legs or arms crossed? If standing, how is their weight distributed? How rapidly are they speaking? How tight are their voices?

Kristine Caldwell, a body-centered psychotherapist, believes that sensation, breath and movement are the body's forms of speech. She suggests that if we listen to this speech, we can release stored trauma and relearn to completely engage in the world. In her book "Getting Our Bodies Back," Caldwell describes how events that occur to us, whether physical, emotional, cognitive or spiritual, impact our whole being. She believes that our responses to events change our bodies' physical structure, as well as our emotions and thoughts. When we experience something intolerable that we cannot control, we withdraw self awareness from our bodies. We avoid thinking how we feel. We avoid feelings and body sensations that may prolong the upset. Cognitively, we deny. Somatically, we "numb out."

The problem is this: Even when we become cognitively aware that we need to change, to get "unstuck" from one of life's predicaments, we generally choose only to engage our minds, failing to understand our body's addictions to the same phenomena. Unless we create a bodily awareness to match the cognitive awareness, we remain stuck. Our body will snap up back into habitual behavior, despite our cognitive desire to change.

Let's take a simple example: anger management. How would you expect to control your anger without becoming fully aware of the physical cues, emotional triggers and somatic experiences that accompany it? Emotions are physical, not cognitive. Reading books



and attending lectures can help, but only so much.

Training to manage anger is physical training. Can you become aware of the physical cues that let you know anger is mounting? Can you learn to experience the emotion without acting on it? Can you find a more positive way to discharge anger's energy? Or simply witness that the more you experience anger without action, the less energy it carries?

Caldwell considers dysfunctional physical habits as "addictions." She describes a recovery program based on developing bodily awareness and in taking full responsibility for your bodily reactions. The goal is to unconditionally accept our experience as it is.

Why recover? Somatic coach Suzanne Zeman writes in "Listening to Bodies," "By increasing our awareness ... we become more effective, grounded, nurtured and nurturing." Zeman believes that through increased somatic awareness, we learn to shift behaviors that we wish to change. Finally, she adds, "A rediscovery of life through

our senses leads to greater satisfaction and a renewed joy in living." Increased somatic awareness has made me a better person, a better husband, a better parent, a better friend and a better lawyer. I am much more aware of sensations and changes in my physical and emotional structures in response to what is going on around me. Consequently, I am able to respond more appropriately and effectively. I also have learned to become inordinately aware of the states of others with whom I am dealing so that I may assist them in responding more appropriately to the situation, irrespective of "which side of the table they sit." This desire to help others, whether demarcated friend or foe, has had an extraordinarily positive impact on the outcomes generated from my work. Communications improve. Engagements move from combative to collaborative to creative. Outcomes arise sooner and, in most respects, are better tailored to the circumstance. More often than not, relationships are enhanced.

So, how do you know where you

stand in relation to your body? Consider the following: Do you have the ability to observe what is happening in your body from moment to moment? Do you know whether you are energized or tired? Do you know what emotional state you are in? Are you able to stay present in the midst of turmoil, whether yours or that of others? Are you aware of the impact of your body on the state of your mind?

If you are uncertain in your responses, consider taking up a body practice. Yoga and Qigong bring incredible focus to your body and its well-being. Even simple breathing exercises and meditation help you learn to find your body and its states. And, remember that every moment that you draw breath is an opportunity to be bodily aware. This awareness will benefit not just your career, but your life.

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Firms That Value Associates Over Income Partners Do So at Their Peril

By Edwin B. Reeser

Previously, we have reviewed the significant efficiencies to the economic contribution of income partners to their firms. There are other elements to the contribution of the income partner to the firm that merit careful consideration when comparing their billable hours to other classes of time keepers, and the investment that they make in the law firm, and the law firm should be making in them. The income partner position is one that allows the firm to flex with people of talent who have issues in "life" that you want to accommodate.

A disabled partner who can only work 1,200 hours a year, or perhaps a partner who wants to dial down the hourly demand, and take reduced income while she raises three young kids would be only two of dozens of examples of ways that the firm may "park" a valued talent who is not in a position to churn and burn like an equity partner must.

It is also an "incubator" position where young associates the firm has picked out as the "best of our best" are first promoted to this second "tier" of partner, or are laterally hired in for a term of two or three years to prove themselves before eligibility for promotion to equity partner. The ambition is to get his or her performance up to equity partner eligibility standards, because by definition that is where the real economic benefits to the firm happen. Obviously, not all of them will make it. Not uncommonly, there will be some in this class who are an "investment" and will be expected to direct their efforts to generate more business, with a few less hours (say 1,750 billable hours instead of 1,950, but with a slug of development hours and activities in accord with a formal business plan). Thus the lower "productivity" is not altogether an unwanted outcome.

Another group is professionals with recognized technical prowess

but who are not able to generate their own substantial business book, or who labor for a major equity partner to support his or her business. These are more likely to be "lifers" who have an entrenched and valued contribution and status, but are not expected to be on the track to the first tier of equity partner status. These are different than the "unproductive" income partner who is blocking the way for advancement of more talented and long-term promising senior associates, who need to be addressed if the talent for the future is to be retained and promoted.

There is often a debate over whether an entrenched income partner is diverting important work away from younger attorneys.

Partner culture notwithstanding, the income partner is a class that is essentially made up of "at will" employees. There may be procedures and niceties associated with underperforming income partners who have to be complied with, and they may receive better treatment and handling if they do not perform according to expectations when compared with associates, but if you don't meet articulated standards, they are counseled out. There are no illusions today in any BigLaw firm about this.

At the equity partner level in most partnerships, the protections and practices of the past often

make the process constitutionally and procedurally much more difficult and painful when they have to be implemented. But there can be some stability and comfort in that too.

What of the potential conflict between the resident income partner and the up-and-coming associate in the same department? There is often a debate over whether an entrenched income partner is diverting important work away from younger attorneys who may have the potential to surpass him or her and even become a valued equity stakeholder in the firm, thus frustrating them and causing them to leave the firm or be terminated. This is not a problem in a well-managed firm that is looking to identify, train, retain and promote talent. The service partner serves an important and profitable role. Otherwise he or she should not be there. Are there some who create a block to younger talent advancing? Sure. But there are also many who make good use of associates in getting the work done efficiently and in a timely manner.

Certain types of commoditized work may be valuable to train associates on — to a point. But some may be better done by a reliable, go-to income partner year after year, case after case. There is a balance and a place for that partner, and in fact the issue of a one-tier or two-tier partnership structure is probably irrelevant in considering it. There are likely to be just as many potential "problem" partners of this type in a one-tier firm as a two-tier firm; some just have capital accounts.

There is much more to the dynamic of the income partner rank, but I respectfully suggest that this income or service partner quadrant of the law firm is not a wasteland collection of unproductive losers in a major law firm whose existence is the byproduct of an inattentive management. Yes, there are some who need to be looked after and in some



cases counseled out. Numbers of income partners who have little to no book of business, who have been dedicated to working for select partners in practice areas where their source of work has evaporated will definitely be at risk of being terminated. And as that will happen in tough economic times, we will also see it happen in the equity partner ranks where former darlings in no long chic practices will be de-equitized or even asked to leave.

But otherwise, the fact is most of them are already profitable and contributing in myriad ways that associates cannot and do not. And

their compensation can be adjusted to reflect a fair compensation for a fair contribution to profit of the firm.

This performance-based compensation is something that has yet to happen to the associate ranks, but is more likely to evolve in the future. (Current pay cuts and freezes are not true performance based associate compensation programs). And that is but one reason why as the firm looks inward to decide where and how to cut costs and improve efficiencies that it will not fall on the income partner ranks as heavily as many suggest it will. Because profit

from efficiency and contribution to the enterprise will demonstrate that it should not. For the firm to do otherwise is to behave self-destructively in squandering one of its most precious and important resources.

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