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Deep Ethics:
How I Learned to Stop Worrying and Love the Internet

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Away from the law office, Kendall is a Level 1 CrossFit coach, a runner, and a four-time Ironman triathlon finisher.

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I. INTRODUCTION

“But lo! Men have become the tools of their tools.”¹

Imagine how the practice of law would change if we discovered that something seemingly benign and ubiquitous in the workplace was harming us and degrading the quality of our work.

For example, what if you were confronted with evidence indicating that yellow legal pads and fluorescent lighting caused structural changes in the brain that were associated with depression, anxiety, and the inability to concentrate deeply? How strong would the connection need to be before you switched to white legal pads and LED lighting? What would the ethical risks be if you insisted upon doing things the way you had always done them? Would you be fulfilling your duties of competent and diligent representation if you insisted on methods that ensured you were working at a lower quality and billing for a longer period of time?

Our value as knowledge workers resides in our ability to think in a unique way with advanced information. Each of us has spent tens of thousands of dollars and hundreds upon hundreds of hours learning to “think like a lawyer.” We sell that ability for real money, and (in a pure market) the better we can think, the more we can charge. Yet, the default method for using our work tools (including the tool I am typing on right now) is fundamentally changing how our brains are wired.

Our networked tools are intentionally designed to facilitate multitasking in an ecosystem of distraction. Even more than that, they are programmed to notify us and interrupt us with distractions and novel stimuli that our

¹ HENRY DAVID THOREAU, WALDEN AND OTHER WRITINGS 30 (Barnes & Noble 1993).

brains crave, promising addictive releases of endorphins. Using these tools in this fashion erodes our ability to do deep, linear, creative thinking. To be sure, we are getting better at surfing and scanning, visual acuity and rapid judgment, but distracted multitasking has been linked to the kinds of things we would ordinarily avoid—depression, anxiety, and the inability to concentrate.

There is a strong case to be made that deep, linear, and creative thought is how we create real value for our clients. If so, we should be trying to maximize that quality. How should we adjust our work practices to promote good mental hygiene and high productivity? Our ethical standards are not much help in answering such questions because they are more focused on defining the limits of bad lawyering rather than setting best-practices for good lawyering.

Still, positive values such as competent and diligent representation, are strengthened and served by making some changes in how you and your networked tools interact. By adopting some of the work rules that follow, and by developing some of your own, you too can stop worrying and learn to love the internet.

II. THE DAWNING OF AGE OF DISTRACTION

The mid-1970s saw a change in technology that would profoundly impact not only the way we work but the physical structure of brains in the First World. At the time, no one could have imagined it.

Xerox held a meeting at its Palo Alto Research Center (PARC) to demonstrate a new operating system that allowed users to “multitask” by dividing the screen into “windows.”² To demonstrate the *advantages* of the new system, the

² The tale of Xerox’s watershed moment is recounted in NICHOLAS CARR, *THE SHALLOWS: WHAT THE INTERNET IS DOING TO OUR BRAINS* 113 (W.W. Norton & Co. 2011); see also DAVID LEVY, *SCROLLING FORWARD: MAKING SENSE OF DOCUMENTS IN THE DIGITAL AGE* Ch. 6 (Arcade 2001).

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