

The Beatles Said it Best: "Help." Why Don't Judges and Lawyers Get It???

By Briggs Cheney

The lyrics from the Beatles' song "Help!" from their 1965 album of the same name say it all and are worth a read or a **listen**. *Why* is it so hard for our profession to ask for help?

The problem — I know from my own personal story that asking for help was not going to happen until being a drunk brought me to my knees. A different story, but not really. The focus of this article is not about *what* a person's specific struggle is, but rather about *the act* of asking for help. For me, it was more *surrender* than asking for *help*. It didn't have to be that way. I just could not ask for *help*.

In years of representing lawyers, I have seen it repeated countless times in other lawyers' lives — not being able to "let go" and ask for *help*. We have gotten better at walking down the hall or calling a colleague and saying, "Can I run this by you?" But often, just that simple act of reaching out is so difficult. I don't want to be "Briggsy downer," but those simple acts are huge and deserve kudos and high-fives. But that is the problem I am addressing — *why* is it so hard for lawyers to reach out for *help*? Is asking for *help* inconsistent with who we think we're supposed to be, or who we wish we were, or who we wish we could be?

The possible Why's — There is a long list of overlapping *Why's*. The "helper paradox" is often labeled a syndrome. Lawyers spend their days solving (judges, deciding) other people's problems, which creates the implicit belief that because we are problem-solvers (or deciders), it would be a weakness if we cannot solve our own problems: if I am an expert who fixes things, how can I simultaneously be someone who needs fixing?

There is the "ego" *why,* but that is too obvious, and it is more interesting to look at some of the *why's* behind our lawyer egos. The Socratic method at the heart of law school legal culture — answering one question with another question — teaches students, and later lawyers, to never show uncertainty. There are, of course, billable hours, grinding it out, partnership-track competition where perceived weakness is a liability, or the fear that transparency or vulnerability to opposing counsel might harm a client or be taboo in the eyes of a client, which consciously or subconsciously hypnotizes us to don a façade or persona of a superhero. Admittedly, lawyers and judges deal with high-stakes and important situations, and it is just assumed we are equipped to handle anything, and we are expected to be the steady hand in crisis. The *Preamble* to our Rules of Professional Conduct reminds us, "a lawyer can be a *zealous advocate* on behalf of a client and at the same time assume that justice is being done." That sounds pretty "superhero-ish," but we all dress up in our lawyer costumes and try to convince our clients, opposing parties, counsel, juries and judges that we are. We even try to fool ourselves into believing it.

Asking for *help* is too often associated with taking time out, taking a break in the action, engaging in some self-care and such ideas provide another *why*. The resistance to well-being activities is frequently rooted in economics. Taking the *foot off the pedal* is viewed as lost revenue, and taking some time for a lawyer's well-being is considered a luxury.

Interestingly, in the last number of years, firms have seen the wisdom in the firm's lawyers engaging in self-care and have promoted such activities without the lawyer having to ask for *help*. A tip of the hat to those firms. The clichés are many: "firms that penalize self-care are quietly cannibalizing their own talent"; "What looks like lost revenue on Tuesday becomes malpractice, turnover, or collapse on Friday"; and "The firm that begrudges a lawyer's recovery is borrowing against a loan it cannot repay."

The solo or small firm practitioner is a harder case than the firm. Lost revenue means not paying rent, not making payroll, not paying themselves or their line of credit. That is fear, which is immediate and visceral. But the solo who side-steps self-care in the name of generating income is making a short-term judgment with long-term consequences.

The last *why*, and it probably does not matter if you are a big firm lawyer or a solo, is what I call the "A student syndrome." I cannot claim this as my discovery, but I have promoted it for years. I was not an "A student," and I

hope it is not sour grapes on my part, but our profession attracts those who derive self-worth from their report card and it can start as early as elementary school, carry on through college and law school, and into the practice of law where productivity (hours billed) and achievement become their report card. Self-care — often viewed as "doing nothing" — does not get high grades.

Do the Why's have it? Do they win? The practice of law is a special profession. It is very hard to define — kind of like describing in words the taste of chocolate. The *why's* offer a start at explaining the profession — why it is a special profession. People bring their problems to lawyers to be solved. Some problems cannot be solved no matter how hard the lawyer tries, even when the client is deserving. Some clients do not deserve to have their problems solved, but the lawyer is duty-bound to do their best to try. Some clients are afraid and want a lawyer who is not. I could go on, but it is not my intention to make the why's the problem — the *why's* are who we are and what we signed up to be. But the *why's* can get in the way of being the lawyer we want to be.

Two ideas — The State Bar's director of Legal Well-Being, Pam Moore, is fond of reminding us that our mission is to improve the culture of our profession. "Improve" means change, change is hard and scary, but nothing changes if nothing changes. But where do you start? The best way is to start small. Something easy. Something that works. Here are two ideas, admittedly unconventional, that can provide a lawyer some *help.* I personally guarantee them. When they work, my hope is you will let yourself seek other *help.*

Help without even having to ask. Have you ever actively stopped thinking about a case, only to have the answer appear when you are doing something totally unrelated? We all have. It seems mystical. It is not, but it does require trusting that the answer will come when we give ourselves a break. It requires putting faith in process over control.

Elite athletes talk about "trusting their training" and getting out of their own way. "All plans disappear with the enemy's first shot" is part of military strategists' reality and the importance of comfortable uncertainty. In the world of business, tolerance for ambiguity in complex decision-making, also framed as strategically letting go of the illusion of control in order to access better outcomes — tactical surrender — is well known.

Brain science shows that *insight* — those occasions when you let go and the answer to your case mystically pops into your mind — is not magic but rather the result of releasing executive control and creating space in your brain for non-conscious processing.

I am personally fond of Gilda Radner's "Delicious Ambiguity" (Google it), but that is not asking a lawyer to abandon reason. It is asking them to recognize perfect information and total control are fantasies, and the pursuit of the fantasy of control is making them miserable and less effective.

As they say in the recovery world, "let go, or be dragged." All a lawyer must do is trust and have faith that taking care of themselves pays off. You don't have to ask for *help* — you just let go.

Help that can be your secret — We are a helping profession, and clients come to us not just for answers and guidance. Often they are scared and frightened and they want someone to stand up for them and get them through the chaos in their lives. As hard as we try or make ourselves believe we control outcomes, we know better. The complex systems at play (including the human mind) produce outcomes that are not linearly predictable from the inputs. How does a lawyer deal with that reality?

I have heard it said, "There are no atheists in a foxhole." I am not selling anything, but this lawyer has learned that sometimes I have to stop, close my eyes and say, "I am scared, help." No one hears me say it.

There is a Lakota Prayer attributed to Chief Yellow Lark (1887) that says in part, "I seek strength, not to be superior to my brother, but to fight my greatest enemy — myself."

- Briggs Cheney

Not by design but happenstance, Briggs' career in the law has been that of being a lawyer's lawyer. Following graduation from law school at UNM and for the better part of his 54 years of practice, Briggs has had the honor of helping lawyers throughout New Mexico - defending them in the civil arena and guiding them through the disciplinary process. Briggs has been recognized for his legal skills in representing lawyers and he has been a leader in local, state and national bars. He has tirelessly helped the struggling and suffering lawyer as others helped him.