

Vanderbilt Law Review

Volume 52

Issue 4 *Issue 4 - Symposium: Attorney Well-Being in Large Firms: Choices Facing Young Lawyers*

Article 2

5-1999

On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession

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On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession

Patrick J. Schiltz*

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Dear Law Student:

I have good news and bad news. The bad news is that the profession that you are about to enter is one of the most unhappy and unhealthy on the face of the earth—and, in the view of many, one of the most unethical. The good news is that you can join this profession and still be happy, healthy, and ethical. I am writing to tell you how.

I. THE WELL-BEING OF LAWYERS

Lawyers play an enormously important role in our society.¹ "It is the lawyers who run our civilization for us—our governments, our business, our private lives."² Thus you might expect that a lot of people would be concerned about the physical and mental health of law-

1. See MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 1 (1991); MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY 283-84 (1994); GARY A. MUNNEKE, CAREERS IN LAW 5-7 (1997); A. Leon Higginbotham, Jr., *The Life of the Law: Values, Commitment, and Craftsmanship*, 100 HARV. L. REV. 795, 803-04 (1987).

2. FRED RODELL, WOE UNTO YOU, LAWYERS!, at 7 (1957).

yers. You would be wrong.³ Contrary to the old joke,⁴ scientists have not replaced laboratory rats with lawyers, and medical literature has little to say about the well-being of attorneys. At the same time, many law professors—at least those teaching at the fifty or so schools that consider themselves to be in the “Top Twenty”—do not care much about lawyers. Increasingly, faculties of elite schools and aspiring elite schools consist of professors who have not practiced law,⁵ who have little interest in teaching students to practice law,⁶ and who pay scant attention to the work of practicing lawyers.⁷ Even law professors like me—law professors who practiced law for several years, who love teaching, and who are intensely interested in the work of lawyers—often do not have the training or resources to conduct empirical research about the legal profession.⁸ As a result, legal scholarship also has little to say about the well-being of attorneys.⁹

If one looks hard enough, though, one can scratch up some information about the health and happiness of attorneys. And this information—although rather sparse and, in some cases, of limited value—strongly suggests that lawyers are in remarkably poor health and quite unhappy.

3. See Amiram Elwork & G. Andrew H. Benjamin, *Lawyers in Distress*, 23 J. PSYCHIATRY & L. 205, 206 (1995) (asserting that the health of lawyers has received “scant attention from scholars in either the legal or the mental health communities”).

4. Why are scientists replacing laboratory rats with lawyers? There are more lawyers than rats. Scientists can become emotionally attached to rats. And there are some things that rats will not do.

5. See Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 220 (1991); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 756-62 (1998).

6. See Talbot D'Alemberte, *Keynote Address*, in THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM 4, 12 (Joan S. Howland & William H. Lindberg eds., 1994); Schiltz, *supra* note 5, at 754-56; Barbara Bennett Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 MICH. L. REV. 1977, 1993 (1993).

7. See MICHAEL J. KELLY, LIVES OF LAWYERS: JOURNEYS IN THE ORGANIZATIONS OF PRACTICE 19 (1994); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35 (1992); Schiltz, *supra* note 5, at 762-71; Laurence H. Silberman, *Will Lawyering Strangle Democratic Capitalism?: A Retrospective*, 21 HARV. J.L. & PUB. POL'Y 607, 616 (1998).

8. See Michael A. Livingston, *Reinventing Tax Scholarship: Lawyers, Economists, and the Role of the Legal Academy*, 83 CORNELL L. REV. 365, 400 (1998); Craig Allen Nard, *Empirical Legal Scholarship: Reestablishing a Dialogue Between the Academy and Profession*, 30 WAKE FOREST L. REV. 347, 368 (1995).

9. See James J. Alfani & Joseph N. Van Vooren, *Is There a Solution to the Problem of Lawyer Stress? The Law School Perspective*, 10 J.L. & HEALTH 61, 66 (1995-1996) (“[I]t may seem surprising that the legal academy has given so little attention to such an enormous problem in the legal profession. It becomes less surprising, however, when one considers how little attention law schools give to the current structure and operating realities of the legal profession itself.”).

A. Lawyers' Poor Health

1. Depression

Lawyers seem to be among the most depressed people in America. In 1990, researchers affiliated with Johns Hopkins University studied the prevalence of major depressive disorder ("MDD") across 104 occupations.¹⁰ They discovered that, although only about 3% to 5% of the general population suffers from MDD,¹¹ the prevalence of MDD exceeds 10% in five occupations: data-entry keyers, computer equipment operators, typists, pre-kindergarten and special education teachers, and lawyers.¹² When the results were adjusted for age, gender, education, and race/ethnic background to determine to what extent those in each occupation were more depressed than others who shared their most important sociodemographic traits,¹³ only three occupations were discovered to have statistically significant elevations of MDD: lawyers, pre-kindergarten and special education teachers, and secretaries. Lawyers topped the list, suffering from MDD at a rate 3.6 times higher than non-lawyers who shared their key sociodemographic traits.¹⁴ The researchers did not know whether lawyers were depressed because "persons at high risk for major depressive disorder" are attracted to the legal profession or because practicing law "causes or precipitates depression."¹⁵ They just knew that, whatever the reason, lawyers were depressed.¹⁶

Other studies have produced similar results. A study of Washington lawyers found that "[c]ompared with the 3 to 9 percent of individuals in Western industrialized countries who suffer from depression, 19 percent of . . . Washington lawyers suffered from statisti-

10. See William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079 (1990).

11. See *id.* at 1081.

12. See *id.*

13. See *id.* at 1081-83.

14. See *id.* at 1083. Pre-kindergarten and special education teachers suffer from MDD at a rate 2.8 times higher than expected, while secretaries suffer from MDD at a rate 1.9 times higher than expected. See *id.* Thus, an attorney who drops off his child at pre-school on the way to work and greets his secretary as he arrives at the office can hit the "Depression Trifecta" before 9:00 a.m.

15. *Id.* at 1085.

16. See *id.*; see also AMIRAM ELWORK, *STRESS MANAGEMENT FOR LAWYERS* 15 (2d ed. 1997); SOL M. LINOWITZ, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* 242 (1994); BENJAMIN SELLS, *THE SOUL OF THE LAW* 99 (1994); Elwork & Benjamin, *supra* note 3, at 215.

cally significant elevated levels of depression."¹⁷ A study of law students and practicing lawyers in Arizona discovered that when students enter law school, they suffer from depression at approximately the same rate as the general population.¹⁸ However, by the spring of the first year of law school, 32% of law students suffer from depression, and by the spring of the third year of law school, the figure escalates to an astonishing 40%.¹⁹ Two years after graduation, the rate of depression falls, but only to 17%, or roughly double the level of the general population.²⁰

Another study, making use of the data generated by the Washington and Arizona studies, reported that while "the base rate of any affective disorder (which includes depression) is 8.5% for males and 14.1% for females, . . . the percentage of male lawyers . . . scoring above the clinical cutoff on the measure of depression is nearly 21% and for female lawyers 16%."²¹ And finally, a study of North Carolina lawyers found that almost 37% reported being depressed and 42% lonely during the previous few weeks,²² and that 24% reported suffering symptoms of depression (such as appetite loss, insomnia, suicidal ideation, and extreme lethargy) at least three times per month during the previous year.²³

17. G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J.L. & PSYCHIATRY 233, 240 (1990) (footnote omitted). By "statistically significant elevated levels of depression," the researchers are referring to elevated scores on a self-report instrument known as the Brief Symptom Inventory ("BSI"). *Id.* at 237. According to the researchers, "[a] significant elevation of the BSI depression symptom (a score that exceeds two standard deviations above the normal population mean) is strongly correlated with clinical impairment, and suggests the need for specific treatment." *Id.*

18. *See id.* at 234 (citing G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 246 [hereinafter *Psychological Distress*]).

19. *See id.* The Arizona study measured depression through use of the BSI, as well as three other standardized self-report instruments (the Beck Depression Inventory, Multiple Affect Adjective Checklist, and Hassles Scale). *See Psychological Distress*, *supra* note 18, at 228-31.

20. *See Benjamin et al.*, *supra* note 17, at 234.

21. Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1, 50 (1995-1996) (footnote omitted). A subject was considered to be above the "clinical cutoff" if he or she scored more than two standard deviations above the mean of a normal population on the instruments used by those who conducted the Washington and Arizona studies. *See id.* at 3. At this point, the subject is "considered clinically distressed and needing treatment." *Id.* at 3-4. This "is not synonymous with a full-blown psychiatric diagnosis." *Id.* at 49 n.200.

22. *See ELWORK*, *supra* note 16, at 14.

23. *See NORTH CAROLINA BAR ASS'N, REPORT OF THE QUALITY OF LIFE TASK FORCE AND RECOMMENDATIONS 4* (1991).

2. Anxiety and Other Mental Illness

Depression is not the only emotional impairment that seems to be more prevalent among lawyers than among the general population. The Arizona study also found elevated rates of anxiety, hostility, and paranoia among law students and lawyers.²⁴ Over 25% of North Carolina lawyers reported that they had experienced physical symptoms of extreme anxiety (including trembling hands, racing hearts, clammy hands, and faintness) at least three times per month during the past year.²⁵ And the Washington study found indicia of anxiety, social alienation and isolation, obsessive-compulsiveness, paranoid ideation, interpersonal sensitivity, phobic anxiety, and hostility in "alarming" rates among lawyers—rates many times the national norms.²⁶ For example:

[T]he base rate [in the general population] for obsessive-compulsiveness is 1.4-2%, yet nearly 21% of the male lawyers and 15% of the female lawyers in the study score above the clinical cutoff on the measure of obsessive-compulsiveness. The same pattern exists in regard to generalized anxiety disorder where the base rate is 4%, while 30% of the male lawyers and nearly 20% of the female lawyers in the study report scores above the clinical cutoff on the measure of anxiety.²⁷

Needless to say, these studies "give[] substantial indication of a profession operating at extremely high levels of psychological distress."²⁸

3. Alcoholism and Drug Abuse

Lawyers appear to be prodigious drinkers. The North Carolina study reported that almost 17% of lawyers admitted to drinking three to five alcoholic beverages every day.²⁹ One researcher conservatively estimated that 15% of lawyers are alcoholics.³⁰ The study of Washington lawyers found that 18% were "problem drinkers," a percentage "almost twice the approximately 10 percent alcohol abuse and/or dependency prevalence rates estimated for adults in the United States."³¹ Moreover, the Washington study "reveal[ed] an as-

24. See ELWORK, *supra* note 16, at 14-15.

25. See NORTH CAROLINA BAR ASS'N, *supra* note 23, at 4.

26. Beck et al., *supra* note 21, at 23.

27. *Id.* at 50 (footnotes omitted).

28. *Id.* at 49.

29. See NORTH CAROLINA BAR ASS'N, *supra* note 23, at 4.

30. See Eric Drogin, *Alcoholism in the Legal Profession: Psychological and Legal Perspectives and Interventions*, 15 LAW & PSYCHOL. REV. 117, 127 (1991).

31. Benjamin et al., *supra* note 17, at 241.

tounding number of lawyers with a high likelihood of developing alcohol related problems."³²

Little is known about the frequency with which lawyers use illegal drugs, but the little that is known is not encouraging. The Washington study found that 26% of lawyers had used cocaine at least once, a rate over twice that of the general population.³³ True, the Washington study found that only 1% of lawyers had "abused" cocaine, as compared to 3% of adults generally.³⁴ But that is hardly cause for celebration. According to the Washington study, *one third* of lawyers in Washington suffer from depression, problem drinking, or cocaine abuse.³⁵ There is no reason to believe that Washington is anomalous.³⁶

4. Divorce

Marriage is good for people. "[T]he research on marriage is striking. For decades, studies have shown that the married live longer and have a lower risk of a variety of physical and psychological illnesses than the unmarried."³⁷ Also, those who are married report higher levels of career satisfaction than those who are single.³⁸ The North Carolina study confirmed that what is true for people generally is also true for lawyers specifically: Among lawyers, "changing from single to married status directly increases happiness and satisfaction with life. Marriage also leads to greater job and career satisfaction . . . and improves health."³⁹ The North Carolina study identified unmarried lawyers as one of three categories of lawyers least satisfied with their lives.⁴⁰

32. Beck et al., *supra* note 21, at 50-51.

33. See Benjamin et al., *supra* note 17, at 241.

34. See *id.*

35. See *id.* at 242.

36. See ELWORK, *supra* note 16, at 15; Benjamin et al., *supra* note 17, at 242.

37. DAVID B. LARSON ET AL., THE COSTLY CONSEQUENCES OF DIVORCE: ASSESSING THE CLINICAL, ECONOMIC, AND PUBLIC HEALTH IMPACT OF MARITAL DISRUPTION IN THE UNITED STATES 1 (1995); see also *id.* at 41-88; Beck et al., *supra* note 21, at 7; Lee A. Lillard & Linda J. Waite, *Til Death Do Us Part: Marital Disruption and Mortality*, 100 AM. J. SOC. 1131 (1995); David G. Myers & Ed Diener, *Who Is Happy?*, 6 PSYCHOL. SCI. 10, 15 (1995); Hara Estroff Marano, *Debunking the Marriage Myth: It Works for Women, Too*, N.Y. TIMES, Aug. 4, 1998, at F7; Jennifer Steinhauer, *Studies Find Big Benefits in Marriage*, N.Y. TIMES, Apr. 10, 1995, at A10.

38. See David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 J.L. & SOC. INQUIRY 251, 255, 274 (1989).

39. NORTH CAROLINA BAR ASS'N, *supra* note 23, at 7.

40. See *id.* at 4. Lawyers working more than 250 hours per month and associates working at law firms were the other two categories. See *id.*

Likewise, divorce is bad for people, both physically and psychologically (and, for women, economically).⁴¹ Those who divorce die younger than either those who never marry or those who stay married.⁴² Indeed, the impact of getting divorced on life expectancy is "only slightly less harmful . . . than smoking a pack or more of cigarettes per day."⁴³ Divorced people suffer from cancer, cardiovascular disease, infectious diseases, respiratory illnesses, digestive system illnesses, and other acute conditions more frequently than do single, married, or widowed people.⁴⁴ Divorced people are far more likely to abuse alcohol or become alcoholic than those who have never been divorced.⁴⁵ Psychologically, divorce is devastating: "Of all the social variables relating to the incidence of psychiatric disorders, or psychopathology, in the population, none appears to be more crucial than marital status."⁴⁶ The separated and divorced suffer from psychiatric illness (such as depression and schizophrenia) far more than do the single, married, and widowed.⁴⁷ For example, men who are divorced or separated are admitted to hospitals for treatment of psychiatric disorders twenty-one times more frequently than married men.⁴⁸ And, not surprising, the suicide rate of those who are divorced is almost triple the rate of those who are married, and significantly higher than the rates of those who have never married or been widowed.⁴⁹

Although empirical research is sparse, there is some indication that the divorce rate among lawyers is higher than the divorce rate among other professionals.⁵⁰ Felicia Baker LeClere of Notre Dame's Center for the Study of Contemporary Society compared the incidence of divorce among lawyers to the incidence of divorce among doctors, using data from the 1990 census. LeClere found that the percentage of lawyers who are divorced is higher than the percentage of doctors who are divorced and that the difference is particularly pronounced

41. See generally LARSON ET AL., *supra* note 37, at 41-88; JUDITH S. WALLERSTEIN & SANDRA BLAKESLEE, *SECOND CHANCES: MEN, WOMEN, AND CHILDREN A DECADE AFTER DIVORCE* (1989); JUDITH S. WALLERSTEIN & JOAN BERLIN KELLY, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* (1980).

42. See LARSON ET AL., *supra* note 37, at 44-58 (collecting and describing studies).

43. *Id.* at 1.

44. See *id.* at 46-47, 58-61 (collecting and describing studies).

45. See *id.* at 61-62 (collecting and describing studies).

46. *Id.* at 63.

47. See *id.* at 62-70 (collecting and describing studies).

48. See *id.* at 64.

49. See *id.* at 50-57.

50. See ELWORK, *supra* note 16, at 16; Micheal [sic] Hall, *Pressure Blamed for Lawyers' Divorce Rate*, L.A. DAILY J., Jan. 20, 1988, at 5; Richard J. King, Jr., *How Lawyers Can Cope With Stress*, PA. LAW., Oct. 1995, at 8, 8 (book review).

among women.⁵¹ For example, over 16% of female attorneys between the ages of thirty-five and forty-nine are divorced, as compared to 11% of female doctors in the same age range. Similarly, among ages fifty to sixty-four, over 24% of female lawyers are divorced, as compared to about 15% of female doctors.

LeClere's findings are consistent with an earlier study of divorce rates among female attorneys. That study found that women who have completed six or more years of post-secondary education—a category that obviously includes lawyers—have a substantially higher divorce rate than women generally.⁵² The study also found that, among well educated women, the divorce rate for female lawyers was substantially higher than the divorce rates for female physicians and female professors. Specifically, the divorce rate for female lawyers was twice the divorce rate for female doctors and 25% to 40% higher than the divorce rate for women teaching in post-secondary institutions.⁵³ The study also found that, after their first marriages end, female attorneys are significantly less likely to remarry than female physicians and professors.⁵⁴

5. Suicide

Lawyers reportedly think about committing suicide and commit suicide far more often than do non-lawyers.⁵⁵ A review of the

51. LeClere's findings, broken down by age, were as follows:

<i>Male Lawyers/Male Doctors</i>				
Age	20-34	35-49	50-64	> 64
Never Married	41.7%/29.1%	9.3%/6.7%	3.0%/2.2%	2.9%/2.1%
Currently Married	54.6%/67.4%	81.1%/86.5%	85.3%/88.7%	83.7%/87.4%
Currently Divorced	2.9%/2.5%	7.7%/5.1%	8.5%/6.6%	3.9%/3.5%
Currently Separated	.8%/1.9%	1.8%/1.4%	1.6%/1.3%	.8%/.6%
Currently Widowed	.0%/1%	.2%/1.2%	1.6%/1.2%	8.6%/6.4%

<i>Female Lawyers/Female Doctors</i>				
Age	20-34	35-49	50-64	> 64
Never Married	48.6%/35.0%	18.8%/13.0%	8.4%/10.3%	11.7%/11.5%
Currently Married	45.6%/59.9%	61.6%/73.2%	56.8%/65.7%	44.6%/41.2%
Currently Divorced	4.9%/4.0%	16.2%/11.0%	24.3%/15.3%	14.3%/11.3%
Currently Separated	.8%/1.1%	2.2%/1.6%	1.8%/1.8%	.4%/1.8%
Currently Widowed	.1%/0%	1.1%/1.1%	8.6%/7.8%	29.0%/35.2%

1990 Decennial Census Public Use Microdata Samples (5% Persons Sample).

52. See Teresa M. Cooney & Peter Uhlenberg, *Family-Building Patterns of Professional Women: A Comparison of Lawyers, Physicians, and Postsecondary Teachers*, 51 J. MARRIAGE & FAM. 749, 751 (1989).

53. See *id.*

54. See *id.* at 752.

55. See Deborah K. Holmes, *Learning from Corporate America: Addressing Dysfunction in the Large Law Firm*, 31 GONZ. L. REV. 373, 377 (1995-1996); Laura Gatland, *Dangerous Dedication: Studies Suggest Long Hours, Productivity Pressures Can Cause Serious Health*

death certificates of over 26,000 white male suicide victims by the National Institute for Occupational Safety and Health suggested that the suicide rate for white male lawyers may be over twice that of other white males, although problems with the data made a firm conclusion impossible.⁵⁶ The Washington study reported that lawyers are more likely than the general population to experience suicidal ideation and are "at much greater risk of not only acting upon their suicidal ideation but of also being lethal during an attempt."⁵⁷ And the North Carolina study found that 11% of lawyers had experienced suicidal ideation at least once a month for the past year.⁵⁸

6. Physical Health

The extremely limited information that is available indicates that the physical health of lawyers may not be much better than their emotional health. As noted, substantial numbers of lawyers report suffering physical symptoms of depression and anxiety, such as appetite loss, trembling hands, racing hearts, and the like.⁵⁹ But lawyers also seem not to exercise much⁶⁰ and to suffer from ulcers, coronary artery disease, and hypertension in substantial numbers.⁶¹ One troubling study of female attorneys who had graduated from the University of California at Davis School of Law between 1969 and 1985 found that those who worked more than forty-five hours per week while pregnant suffered three times more miscarriages than those who worked less than thirty-five hours per week.⁶² As I describe below,⁶³ working forty-five hour weeks is not only common in the legal profession, but in some sectors—particularly big firms—it is almost considered part-time.⁶⁴

Problems and a Higher Suicide Rate for Attorneys, A.B.A. J., Dec. 1997, at 28, 28; Doretta Zemp, *Turned-Off Lawyers*, STUDENT LAW., Nov. 1981, at 23, 37.

56. See Carol A. Burnett et al., *Suicide and Occupation: Is There a Relationship?*, at 2 (Nov. 19-22, 1992) (unpublished paper, presented at the American Psychological Association—National Institute for Occupational Safety and Health Conference on Workplace Stress in the 90's, on file with author).

57. Benjamin et al., *supra* note 17, at 241.

58. See ELWORK, *supra* note 16, at 14.

59. See *supra* notes 23-25 and accompanying text.

60. Half of lawyers do not exercise regularly. See NORTH CAROLINA BAR ASS'N, *supra* note 23, at 4; YOUNG LAWYERS DIV., AMERICAN BAR ASS'N, THE STATE OF THE LEGAL PROFESSION 1990, at 51 (1991).

61. See NORTH CAROLINA BAR ASS'N, *supra* note 23, at 4.

62. See Marc B. Schenker et al., *Self-Reported Stress and Reproductive Health of Female Lawyers*, 39 J. OCCUPATIONAL & ENVTL. MED. 556, 557 (1997).

63. See *infra* Part II.A.

64. See Sheila Nielsen, *The Balancing Act: Practical Suggestions for Part-Time Attorneys*, 35 N.Y.L. SCH. L. REV. 369, 370 (1990) ("In many large firms and other prestigious workplaces

In sum, attorneys seem to be an unhealthy lot. Researchers do not know whether lawyers are unhealthy because unhealthy people are attracted to the legal profession or because something about the practice of law turns healthy people into unhealthy people.⁶⁵ But the few researchers who have studied the legal profession are unanimous that lawyers are, as a group, in remarkably poor health.

B. Lawyers' Unhappiness

People who are this unhealthy—people who suffer from depression, anxiety, alcoholism, drug abuse, divorce, and suicide to this extent—are almost by definition unhappy. It should not be surprising, then, that lawyers are indeed unhappy, nor should it be surprising that the source of their unhappiness seems to be the one thing that they have in common: their work as lawyers. “Work satisfaction affects life satisfaction.”⁶⁶ Almost a century ago, Russian playwright Maxim Gorky wrote: “When work is a pleasure, life is a joy! When work is a duty, life is slavery.”⁶⁷ If Gorky was right, then life for many lawyers is “slavery,” as “job dissatisfaction among lawyers is widespread, profound and growing worse.”⁶⁸

A study of California lawyers by the RAND Institute for Civil Justice found that “only half say if they had to do it over, they would become lawyers.”⁶⁹ On the whole, California lawyers were reported to be “‘profoundly pessimistic’ about the state of the legal profession and its future.”⁷⁰ A survey of the North Carolina bar produced similar re-

nine-to-five is considered part-time.”); Jennifer A. Kingson, *Women in the Law Say Their Paths are Limited by the “Mommy Track,”* N.Y. TIMES, Aug. 8, 1988, at A1 (“[The] legal profession has its own definition of ‘part-time’ work. At some of the largest and most competitive firms . . . ‘part-time’ hours are 9 to 5, five days a week.”).

65. See Benjamin et al., *supra* note 17, at 245; Eaton et al., *supra* note 10, at 1085.

66. Myers & Diener, *supra* note 37, at 15 (citation omitted).

67. MAXIM GORKY, *THE LOWER DEPTHS* act I, in *FOUR MODERN PLAYS* 289 (Henry Popkin ed., Alexander Bakshy trans., Holt, Rinehart & Winston 1961) (1902).

68. David Margolick, *More Lawyers Are Less Happy at their Work, a Survey Finds*, N.Y. TIMES, Aug. 17, 1990, at B5; see also Carl T. Bogus, *The Death of an Honorable Profession*, 71 IND. L.J. 911, 940 (1996); Holmes, *supra* note 55, at 375-76.

69. Nancy McCarthy, *Pessimism for the Future: Given a Second Chance, Half of the State's Attorneys Would Not Become Lawyers*, CAL. ST. B.J., Nov. 1994, at 1, 1.

70. *Id.* In an unscientific survey of the California bar (the survey reflected the views of only those who chose to fax in a response to questions published in *California Lawyer* magazine), only 40% of attorneys reported being even “[r]easonably” satisfied with their careers; 36% reported being “[s]o unhappy I’d change careers,” 16% “[u]nhappy but inert,” and 8% “[i]ndifferent.” See *It’s Become a Miserable Profession*, CAL. LAW., Mar. 1992, at 96, 96. Almost three-quarters of the California lawyers responding to the survey agreed that they “enjoyed practicing law less now than [they] did when [they] first began,” and a similar

sults. Almost a quarter of North Carolina lawyers said that, if given the choice, they would not become attorneys again; almost half said that they hope to leave the practice of law before the end of their careers; and over 40% said that they would not encourage their children or other qualified persons to enter the legal profession.⁷¹ Along the same lines, a nationwide poll of attorneys conducted by the *National Law Journal* found that less than a third of those surveyed were "very satisfied" with their careers.⁷²

For almost thirty years, the University of Michigan Law School has been surveying its former students five years after they graduate.⁷³ The last survey for which results have been reported was conducted in 1996.⁷⁴ Given the stellar reputation of their alma mater, Michigan graduates would presumably have more employment options available than graduates of most other law schools and thus would presumably be among the most satisfied practitioners in America. Yet the annual surveys have discovered surprisingly low levels of career satisfaction in general and a marked decline in career satisfaction over time, at least for lawyers in private practice.

For example, the percentage of graduates working as solo practitioners or in firms of fifty or fewer lawyers who were "quite satisfied" with their careers⁷⁵ five years after graduation fell from 45% for members of the classes of 1976 and 1977 (and from a high of 52% for members of the classes of 1980 and 1981) to 37% for members of the classes of 1990 and 1991.⁷⁶ The percentage of graduates working in firms of fifty-one or more lawyers who were "quite satisfied" with their careers fell from 53% for members of the classes of 1976 and 1977 (and from a high of 54% for the classes of 1978 and 1979) to 30% for members of the classes of 1990 and 1991.⁷⁷ In the rather understated words of the Michigan Law School survey, "this picture is gloomy."⁷⁸

percentage said that they would not advise their children to become attorneys. *Id.* The respondents were almost certainly not representative of the entire California bar.

71. See NORTH CAROLINA BAR ASS'N, *supra* note 23, at 4.

72. Margaret Cronin Fisk, *Lawyers Give Thumbs Up*, NAT'L L.J., May 28, 1990, at S2, S2.

73. See, e.g., The University of Michigan Law School, The University of Michigan Law School: A Report on the Class of 1991 Five Years After Graduation 1 (1996) (unpublished report, on file with author). I am grateful to David L. Chambers for making the Michigan reports available to me.

74. See *id.*

75. Defined as those "[i]ndicating a 1 or 2 on a 7-point scale." *Id.* at 15.

76. See *id.*

77. See *id.*

78. *Id.* at 16. The survey also found that, among the members of the class of 1991, those who were not practicing law five years after graduating were "substantially more satisfied [with their careers] than their classmates practicing in firms." *Id.* at 7.

The most comprehensive data on career satisfaction of lawyers were produced by three national surveys conducted under the auspices of the Young Lawyers Division of the American Bar Association ("ABA"). The first survey, conducted in 1984, asked 3000 lawyers of all ages—some of whom were ABA members and some of whom were not—about job satisfaction and many other matters.⁷⁹ It was, according to the ABA, "the first in-depth survey of the legal profession in order to accurately study the state of the profession and determine the extent of career dissatisfaction."⁸⁰ The second survey, conducted in 1990, resurveyed those who had responded to the 1984 survey, and also questioned just over 1000 lawyers who had been admitted to the bar after the 1984 survey had been concluded.⁸¹ The third survey, conducted in 1995, was more limited. Only "young lawyers" who belonged to the ABA were questioned—"young lawyers" being defined as those who were under the age of thirty-six or who had been admitted to practice for less than three years.⁸² Moreover, the focus of the 1995 survey was narrower than the focus of the 1984 and 1990 surveys.⁸³

Taken together, the surveys show a substantial decline in the job satisfaction of attorneys. In 1984, 41% of lawyers said that they were "very satisfied" with their jobs; in 1990, only 33% of all lawyers surveyed were "very satisfied,"⁸⁴ a decline of one-fifth in just six years. At the same time, the number of lawyers who were "very dissatisfied" with their jobs rose from 3% in 1984 to 5% in 1990.⁸⁵ The dissatisfaction was widespread. In the words of the 1990 study:

In the past six years, the extent of lawyer dissatisfaction has increased throughout the profession. It is now reported in significant numbers by lawyers in all positions—partners as well as junior associates. It is now present in

79. See YOUNG LAWYERS DIV., *supra* note 60, at 1.

80. *Id.*

81. See *id.* at 2-3.

82. YOUNG LAWYERS DIV., AMERICAN BAR ASS'N, CAREER SATISFACTION 1995, at n.1 (1995).

83. Those questioned in 1984 "were sent a lengthy survey covering many aspects of their work environment, job history, educational background, health and psychological profile, and basic demographics." YOUNG LAWYERS DIV., *supra* note 60, at 1. Those questioned in 1990 were sent an almost identical survey, with a few questions added "primarily . . . to gather detailed empirical data on the issue of gender bias and sexual harassment." *Id.* at 3. The 1995 survey, by contrast, was focused much more narrowly on the career satisfaction of young lawyers. See YOUNG LAWYERS DIV., *supra* note 82.

84. See YOUNG LAWYERS DIV., *supra* note 60, at 52 tbl.66.

85. See *id.* The number who were "somewhat satisfied" rose from 40% to 43%, "neutral" from 4% to 5%, and "somewhat dissatisfied" from 12% to 14%. See *id.*

significant numbers in firms of all sizes, not just the largest and the smallest firms.⁸⁶

The decrease in job satisfaction was even more dramatic among those lawyers who were surveyed in both 1984 and 1990. As noted, 40% of them had been "very satisfied" and 3% "very dissatisfied" in 1984. Just six years later, only 29% of these same lawyers (that is, the lawyers who were questioned in *both* 1984 and 1990) were "very satisfied," and the number who were "very dissatisfied" had risen to 8%.⁸⁷ As the study recognized, the sharp rise in job dissatisfaction among the lawyers who were surveyed in both 1984 and 1990 was particularly disturbing, given that these lawyers were "further along in their careers[,] . . . better placed, and earning more money in 1990 than they were in 1984."⁸⁸

Because the 1995 survey asked fewer and different questions and surveyed only young members of the ABA, it is difficult to compare its results with the results of the previous two surveys. But the 1995 results were troubling enough on their own. Even though the attorneys surveyed in 1995 had just started their legal careers, over 27% were already "somewhat" or "very" dissatisfied with the practice of law; only about one in five was "very" satisfied.⁸⁹ Almost one third of the young lawyers said that they would "strongly" consider leaving their current position in the next two years, and almost another third said that they "might" consider doing so.⁹⁰

I should note two things about these statistics on career satisfaction. First, although most surveys suggest that career satisfaction is relatively⁹¹ low among attorneys and has been declining, there are studies to the contrary.⁹² Prominent among them is a recent

86. *Id.* at 81.

87. *Id.* at 53 tbl.68.

88. *Id.* at 53.

89. See YOUNG LAWYERS DIV., *supra* note 82, at 13 tbl.13.

90. See *id.* at 9.

91. It is important to bear in mind, when reviewing data regarding the career satisfaction of attorneys, "[t]hat research indicates that most employed persons, in all professions and in all types of positions, are satisfied with their careers." John P. Heinz et al., *Lawyers and Their Discontents: Findings from a Survey of the Chicago Bar*, 74 *IND. L.J.* 735, 736 (1999); see also Chambers, *supra* note 38, at 259, 274. Roughly 85% of American workers are at least "moderately" satisfied with their careers. Heinz et al., *supra*, at 736. Thus, lawyers could be relatively dissatisfied with their work, even if a majority (or even a substantial majority) were satisfied.

92. A 1991 survey of attorneys practicing in Toronto, a 1987 study of graduates of the Minnesota Law School, and a 1994 survey of members of the New York bar found generally high levels of career satisfaction among lawyers. See generally JOHN HAGAN & FIONA KAY, *GENDER IN PRACTICE: A STUDY OF LAWYERS' LIVES* (1995) (Toronto); Paul W. Mattossich & Cheryl W. Heilman, *The Career Paths of Minnesota Law School Graduates: Does Gender Make a*

study of the Chicago bar by John Heinz, Kathleen Hull, and Ava Harter.⁹³ The Chicago study was not a career satisfaction study as such; rather, attorneys were subject to lengthy personal interviews and, in the course of being interviewed about numerous subjects, were asked a few questions about career satisfaction. Chicago lawyers reported levels of job satisfaction that were similar to those reported by Americans in other lines of work.⁹⁴ Eighty-four percent of Chicago lawyers were "very satisfied" or "satisfied," about 10% were "neutral," 5% were "dissatisfied," and less than 2% were "very dissatisfied."⁹⁵

The authors of the Chicago study acknowledged that their findings were "at variance with much of the common prattle and with some of the academic speculation (insofar as one can distinguish those)."⁹⁶ However, the authors did not attempt to explain the variance, other than to speculate that "[l]aw professors may find comfort in believing that practicing lawyers are unhappy" because law professors may "feel better about their perceived (if not real) financial sacrifice," and that "the general public might find it congenial to believe that lawyers are unhappy because it would serve notions of [just] desert."⁹⁷ Of course, the problem with this explanation is that it is not law professors and the general public who have been reporting declining career satisfaction among lawyers, but lawyers themselves—in response to surveys conducted by such lawyer-friendly groups as the ABA.⁹⁸

Difference?, 9 LAW & INEQ. J. 59 (1990) (Minnesota); Edward A. Adams, *Legal Career Exacts Steep Personal Price, 'Law Journal' Poll: Attorneys Accept Long Hours, Absence from Families*, N.Y.L.J., Feb. 7, 1994, at 1, 1 (New York).

93. See Heinz et al., *supra* note 91.

94. See *supra* note 91.

95. See Heinz et al., *supra* note 91, at 736.

96. *Id.* at 757. Of course, the authors of the Chicago study did not have the opportunity to read this Article, whose prattle, I'd like to think, is far from "common."

97. *Id.*

98. Some possible explanations for the differences between the Chicago survey and most (but not all, see *supra* note 92) surveys of lawyer satisfaction include the following:

First, all of the data on career satisfaction are derived through surveys that ask lawyers to characterize their own happiness; survey data are less reliable than that produced by more rigorous (but far more difficult and expensive) behavioral studies. See Chambers, *supra* note 38, at 254-55. All surveys run a strong risk of response bias, although, with respect to career satisfaction surveys, it is difficult to know how that bias would cut. Perhaps those who are least satisfied with their careers would be more likely to respond to a survey, as they would feel the need to let off steam. Or perhaps those least likely to respond to such a survey would be "those who feel so beleaguered by their work and other responsibilities that they do not have time to respond." *Id.* at 261 n.47. It is also possible that survey responses "are biased toward the positive side of the scale by the respondents' desire to present themselves as successful persons." Heinz et al., *supra* note 91, at 750. Presumably, this problem, if it exists, would be exaggerated in those studies that involve face-to-face interviews (such as the Chicago study) as opposed to anonymous questionnaires.

The second thing to note about the data described above is that all of these statistics relate to the overall level of career dissatisfaction among lawyers. It is important to understand, though, that career dissatisfaction is not distributed equally throughout the profession. Lawyers in some practice settings are happier than lawyers in others.⁹⁹ And "[l]awyers in large law firms are often among the least happy."¹⁰⁰ This appears to be true for both associates and partners.

A 1997 study of lawyers practicing in the Boston area found that associates in big firms were the least happy of the eight categories of lawyers studied.¹⁰¹ The Chicago study, which found generally high levels of career satisfaction among attorneys, nevertheless found that "[t]he percentage of 'very satisfied' respondents is ten points lower in the large firm category than in any of the other practice settings."¹⁰² For the last several years, Michigan Law School has found the career satisfaction of its recent graduates who work in big firms to

Second, the surveys ask different questions. Some ask about satisfaction with "the law," some about "life," some about "careers," some about "current jobs," and some about particular aspects of "the law," "life," "careers," or "current jobs." Some use four-point scales, some five, some seven, and some don't use scales at all. Some ask whether lawyers would become lawyers again (a question that the authors of the Chicago study characterize as "an invitation to dream," *id.*), some ask whether lawyers want their children to become lawyers, and some ask whether lawyers plan to remain lawyers through the end of their careers.

Third, the surveys focus on different populations. Some study the lawyers of a single city or state, some study the graduates of a single law school, and some study lawyers at a single point in their careers.

Fourth, the surveys are billed differently. Some are expressly presented as studies of career satisfaction, while others bury questions about career satisfaction in a long series of questions on other topics. Surveys that are expressly billed as focusing on career satisfaction may, on the one hand, attract a disproportionate share of responses from the dissatisfied, or may, on the other hand, cause respondents to think more carefully about various aspects of their working lives before answering (or may do both).

Fifth, those who conduct these surveys find significance in different things. Some authors focus on the number of lawyers who report being "very satisfied" and "very dissatisfied," while others focus on the number of lawyers who report being either "very satisfied" or "satisfied," on the one hand, or either "dissatisfied" or "very dissatisfied," on the other hand.

Finally, some of these studies are undoubtedly better than others; they are better designed, they attract higher response rates, they analyze the data more carefully. I am grateful to John Heinz for suggesting some of these explanations to me.

99. For example, according to the Michigan Law School survey, only 32% of the members of the classes of 1990 and 1991 who were in private practice were "quite satisfied" with their careers five years after graduation, as compared to 48% of corporate counsel, 67% of government attorneys, and 78% of public interest lawyers. See University of Michigan Law School, *supra* note 73, at 9 tbl.3.

100. Fisk, *supra* note 72, at S2.

101. See TASK FORCE ON PROFESSIONAL FULFILLMENT, BOSTON BAR ASS'N, EXPECTATIONS, REALITY AND RECOMMENDATIONS FOR CHANGE 2 (1997); see also Gatland, *supra* note 55, at 29. The eight categories were Large Law Firms (Partners), Large Law Firms (Associates), Sole Practitioners and Small Firms, In-House Counsel, Public Service and Academia, Senior Lawyers, Law Students and Recent Graduates, and Women Attorneys and Attorneys of Color.

102. Heinz et al., *supra* note 91, at 745. At the same time, big firm lawyers were less likely to report themselves as "dissatisfied" or "very dissatisfied." See *id.* at 743-45.

be declining and, on the whole, to be "lower than [that of] any other work-setting group we study."¹⁰³ Hildebrandt, one of the largest and most respected consultants to big firms, reported in 1998 that "[e]ven as associates are being paid record-setting salaries, their overall morale has reached new lows."¹⁰⁴ The *Wall Street Journal* recently reported on the efforts of large firms to stem the "exodus of young lawyers" who are so "turned off by the grind of big-time practice" that they are leaving their six-figure salaries behind.¹⁰⁵ The ABA's 1995 survey of young lawyers found that although over 24% of lawyers working in firms of one to two lawyers and almost 14% of lawyers working in firms of seven to twenty-five lawyers would "definitely not" consider changing jobs in the next two years, only about 1% of lawyers working in firms of over 150 lawyers were similarly committed to their jobs.¹⁰⁶ And while 26% of lawyers in the seven to twenty-five lawyer firms and about 30% of lawyers in the one to two lawyer firms would "strongly" consider changing jobs in the next two years, over 37% of lawyers in the largest firms were similarly anxious to move.¹⁰⁷ In short, among young associates at big firms, only about 1% were strongly committed to remaining at their firms for at least two more years, while almost 40% had a strong interest in working elsewhere.

It is also telling that lawyers who leave big firms rarely go to other big firms. One study reported that when attorneys who were interested in changing jobs were "asked to indicate the type of firm or other job they were going to look at, only a small percentage of those currently in large firms indicated they were going to look at another large firm."¹⁰⁸ At the same time, "almost no one from a medium or small firm was interested in looking at a large firm."¹⁰⁹ Another study found that only 5% of lawyers who left large Chicago firms went to other large Chicago firms; most went to small firms or in-house.¹¹⁰

103. University of Michigan Law School, *supra* note 73, at 15 tbl.8.

104. HILDEBRANDT, CLIENT ADVISORY 1998, at 7 (1998).

105. Richard B. Schmitt, *From Cash to Travel, New Lures for Burned-Out Lawyers*, WALL ST. J., Feb. 2, 1999, at B1.

106. See YOUNG LAWYERS DIV., *supra* note 82, at 9 tbl.9.

107. *See id.*

108. AMERICAN BAR ASS'N, THE REPORT OF AT THE BREAKING POINT: A NATIONAL CONFERENCE ON THE EMERGING CRISIS IN THE QUALITY OF LAWYERS' HEALTH AND LIVES—ITS IMPACT ON LAW FIRMS AND CLIENT SERVICES 11 (1991).

109. *Id.*

110. See ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 142 (1988).

Many big firm partners are also dissatisfied. Indeed, “[h]appy law partners are a small minority these days.”¹¹¹ A 1997 survey of partners in the 125 largest American law firms found that one third of those partners—lawyers who, in the eyes of many, have reached the pinnacle of their profession—would choose a different career if they could do it over again.¹¹² Almost one third of them thought that they would probably or definitely not remain at their firms until retirement,¹¹³ and over 80% said that the nature of private practice in big firms had changed for the worse.¹¹⁴ Hildebrandt reports that despite the fact that 1997 was “the best year ever” for many firms “due to record demand for legal services in almost all practice areas,”¹¹⁵ big firm partners are unhappy: “Mo[st] disturbing is the low morale (and almost a disdain for their own profession) we see in partners who wonder whether continuing to practice is worth the effort.”¹¹⁶

II. EXPLAINING THE POOR HEALTH AND UNHAPPINESS OF LAWYERS

A. *The Hours*

Why are lawyers so unhealthy and unhappy? Why do so many lawyers, in the words of Judge Laurence Silberman, “hate what the practice of law has become”?¹¹⁷ Lawyers give many reasons. They complain about the commercialization of the legal profession—about the fact that practicing law has become less of a profession and more of a business.¹¹⁸ They complain about the increased pressure to at-

111. *Is It Possible to Put Passion Back into the Practice of Law?*, PARTNER'S REP., Nov. 1994, at 1, 1 [hereinafter *Is It Possible?*].

112. See Chris Klein, *Big-Firm Partners: Profession Sinking*, NAT'L L.J., May 26, 1997, at A1, A24. Of course, even among partners who say that they would become lawyers again, “many admit[] that they would [do so] only for financial reasons, or because, as one partner said, ‘I don’t know what else to do with myself.’” *Is It Possible?*, *supra* note 111, at 2.

113. See Klein, *supra* note 112, at A24.

114. See *id.* at A1; see also NORTH CAROLINA BAR ASS'N, *supra* note 23, at 5 (finding that attorneys working in rural and suburban areas were more satisfied with their careers than attorneys working in urban areas); Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1231 (1991) (reporting that, among the author's former students, the larger the law firm for which the student works, the less satisfied the student seems to be).

115. HILDEBRANDT, *supra* note 104, at 1.

116. *Id.* at 7.

117. Silberman, *supra* note 7, at 615.

118. See COMMISSION ON PROFESSIONALISM, AMERICAN BAR ASS'N, “. . . IN THE SPIRIT OF PUBLIC SERVICE:” A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986), reprinted in 112 F.R.D. 243, 259-61 (1986); ELWORK, *supra* note 16, at 22; NORTH CAROLINA BAR ASS'N, *supra* note 23, at 12; TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101, at vii;

tract and retain clients¹¹⁹ in a ferociously competitive marketplace.¹²⁰ They complain about having to work in an adversarial environment "in which aggression, selfishness, hostility, suspiciousness, and cynicism are widespread."¹²¹ They complain about not having control over their lives and about being at the mercy of judges and clients.¹²² They complain about a lack of civility among lawyers.¹²³ They complain about a lack of collegiality¹²⁴ and loyalty¹²⁵ among their partners. And they complain about their poor public image.¹²⁶ Mostly, though, they complain about the hours.

In every study of the career satisfaction of lawyers of which I am aware, in every book or article about the woes of the legal profession that I have read, and in every conversation about life as a practicing lawyer that I have heard, lawyers complain about the long hours they have to work.¹²⁷ Without question, "the single biggest

David A. Kessler, *Professional Asphyxiation: Why the Legal Profession is Gasping for Breath*, 10 GEO. J. LEGAL ETHICS 455, 457-64 (1997); Carla Messikomer, *Ambivalence, Contradiction, and Ambiguity: The Everyday Ethics of Defense Litigators*, 67 FORDHAM L. REV. 739, 758-59 (1998); Robert L. Nelson, *The Discovery Process as a Circle of Blame: Institutional, Professional, and Socio-Economic Factors that Contribute to Unreasonable, Inefficient, and Amoral Behavior in Corporate Litigation*, 67 FORDHAM L. REV. 773, 778 (1998); Schiltz, *supra* note 5, at 729-30 & n.76; Fisk, *supra* note 72, at S2; Klein, *supra* note 112, at A1.

119. See NORTH CAROLINA BAR ASS'N, *supra* note 23, at 12; Schiltz, *supra* note 5, at 741 & n.110; *Is It Possible?*, *supra* note 111, at 3; Klein, *supra* note 112, at A1, A24-A25.

120. See ELWORK, *supra* note 16, at 19; GALANTER & PALAY, *supra* note 1, at 52; Douglas N. Frenkel et al., *Introduction: Bringing Legal Realism to the Study of Ethics and Professionalism*, 67 FORDHAM L. REV. 697, 704 (1998); Schiltz, *supra* note 5, at 741 & n.113; Klein, *supra* note 112, at A24-A25.

121. ELWORK, *supra* note 16, at 20; see also Fisk, *supra* note 72, at S11.

122. See NORTH CAROLINA BAR ASS'N, *supra* note 23, at 11, 12.

123. See ELWORK, *supra* note 16, at 20; NORTH CAROLINA BAR ASS'N, *supra* note 23, at 12; TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101, at vii; Austin Sarat, *Enactments of Professionalism: A Study of Judges' and Lawyers' Accounts of Ethics and Civility in Litigation*, 67 FORDHAM L. REV. 809, 834 (1998); Schiltz, *supra* note 5, at 726 n.63; Fisk, *supra* note 72, at S11.

124. See *Is It Possible?*, *supra* note 111, at 3; Klein, *supra* note 112, at A25.

125. See NORTH CAROLINA BAR ASS'N, *supra* note 23, at 12; Frenkel et al., *supra* note 120, at 704; Robert W. Gordon, *The Ethical Worlds of Large-Firm Litigators: Preliminary Observations*, 67 FORDHAM L. REV. 709, 717 (1998); Nelson, *supra* note 118, at 786; Schiltz, *supra* note 5, at 744.

126. See ELWORK, *supra* note 16, at 20; NORTH CAROLINA BAR ASS'N, *supra* note 23, at 13; TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101, at vii.

127. See, e.g., AMERICAN BAR ASS'N, *supra* note 108, at 3-4, 9; WALT BACHMAN, *LAW V. LIFE: WHAT LAWYERS ARE AFRAID TO SAY ABOUT THE LEGAL PROFESSION* 103 (1995); ELWORK, *supra* note 16, at 4, 19; ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 301-03 (1993); LINOWITZ, *supra* note 16, at 107-08; NALP FOUND. FOR RESEARCH & EDUC., *KEEPING THE KEEPERS: STRATEGIES FOR ASSOCIATE RETENTION IN TIMES OF ATTRITION* 106 (1998); NORTH CAROLINA BAR ASS'N, *supra* note 23, at 4, 10, 11; YOUNG LAWYERS DIV., *supra* note 82, at 15-16; YOUNG LAWYERS DIV., *supra* note 60, at 17, 81; Chambers, *supra* note 38, at 287; Deberah K. Holmes, *Structural Causes of Dissatisfaction Among Large-Firm Attorneys: A Feminist Perspective*, 12 WOMEN'S RTS. L. REP. 9, 13-14 (1990); Kessler, *supra* note 118, at 465;

complaint among attorneys is increasingly long workdays with decreasing time for personal and family life."¹²⁸ Lawyers are complaining with increasing vehemence about "living to work, rather than working to live"¹²⁹—about being "‘asked not to *dedicate*, but to *sacrifice* their lives to the firm.’"¹³⁰

To cite just a few examples: A national survey of lawyers by the *National Law Journal* reported that "most attorneys in the survey believed their careers were putting too much of a burden on their personal lives. When asked what they especially disliked about practicing law, more than half (54 percent) mentioned too many hours/not enough time for a personal life."¹³¹ The 1990 ABA study, after describing increasing job dissatisfaction among attorneys, said that "[t]his increased dissatisfaction is directly caused by a deterioration of the lawyer workplace In particular, the amount of time lawyers have for themselves and their families has become an issue of major concern for many lawyers."¹³² The North Carolina study identified as "a major factor" in attorney dissatisfaction the "[l]ack of enough time to balance work with time for self, family, the community, *pro bono*, etc."¹³³ Respondents to the Michigan Law School survey reported themselves far less satisfied with "[t]he balance of their family and professional lives" than with "[t]heir career as a whole" or any of four other measures of "[l]ife [s]atisfaction."¹³⁴ And the report of a national conference convened by the ABA to address "the emerging crisis in the quality of lawyers' health and lives" singled out as a "significant" cause of this crisis the fact that lawyers "do not have enough time for themselves and their families—what many have come to call 'the time famine.'"¹³⁵

Nelson, *supra* note 118, at 783; Note, *Why Law Firms Cannot Afford to Maintain the Mommy Track*, 109 HARV. L. REV. 1375, 1378 (1996); Fisk, *supra* note 72, at S12; Gatland, *supra* note 55, at 28, 29; Stephanie B. Goldberg, *Bridging the Gap: Can Educators and Practitioners Agree on the Role of Law Schools in Shaping Professionals? Yes and No*, A.B.A. J., Sept. 1990, at 44, 44; Nancy D. Holt, *Are Longer Hours Here to Stay? Quality Time Losing Out*, A.B.A. J., Feb. 1993, at 62, 62; Klein, *supra* note 112, at A1, A24.

128. Alfini & Van Vooren, *supra* note 9, at 63; see also ELWORK, *supra* note 16, at 25 ("The single most frequent complaint about the practice of law is the 'hours.'").

129. Kessler, *supra* note 118, at 466.

130. AMERICAN BAR ASS'N, *supra* note 108, at 3 (emphasis added) (quoting an unnamed participant in the conference).

131. Fisk, *supra* note 72, at S12.

132. YOUNG LAWYERS DIV., *supra* note 60, at 81.

133. NORTH CAROLINA BAR ASS'N, *supra* note 23, at 11.

134. University of Michigan Law School, *supra* note 73, at 3 tbl.1. The other four measures were "[t]heir legal education at Michigan," "[t]heir current family life," "[t]he intellectual challenge of their work," and "[t]heir income." *Id.*

135. AMERICAN BAR ASS'N, *supra* note 108, at 3.

Lawyers often suffer from a nostalgic longing for a past that never really existed.¹³⁶ But when it comes to their brutal work schedules, lawyers have reason to complain, and they have reason to believe that the problem has grown worse. "Conventional wisdom just a few decades ago was that lawyers could not reasonably expect to charge for more than 1200 to 1500 hours per year."¹³⁷ Thirty years ago, most partners billed between 1200 and 1400 hours per year and most associates between 1400 and 1600 hours.¹³⁸ As late as the mid-1980s, even associates in large New York firms were often not expected to bill more than 1800 hours annually.¹³⁹ Today, many firms would consider these ranges acceptable only for partners or associates who had died midway through the year.

A study conducted by William Ross in 1991 discovered that almost half of the associates in private practice billed at least 2000 hours during both 1989 and 1990, and a fifth billed at least 2400 hours in 1990.¹⁴⁰ Another study conducted by Ross three years later discovered that 51% of associates and 23% of partners billed at least 2000 hours in 1993.¹⁴¹ Seventy percent of those responding to the Michigan Law School survey worked an average of fifty or more hours per week; over a quarter of the respondents worked more than sixty hours per week.¹⁴² The ABA's 1990 study found that 45% of attorneys in private practice billed at least 1920 hours per year, and 16% billed 2400 or more hours.¹⁴³ The same study also found that, although 70% of attorneys are permitted to take more than two weeks of vacation every year, only 48% actually do so.¹⁴⁴ Finally, an extensive survey by Altman Weil Pensa, a prominent legal consulting firm, found that the

136. Several authors have discussed this phenomenon. See, e.g., Harry T. Edwards, *A New Vision for the Legal Profession*, 72 N.Y.U. L. REV. 567, 571-72 (1997); Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 DICK. L. REV. 549 (1996); Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 FORDHAM L. REV. 111, 115 (1988); Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283, 303-07 (1998).

137. Deborah L. Rhode, *Institutionalizing Ethics*, 44 CASE W. RES. L. REV. 665, 711 (1994).

138. See WILLIAM G. ROSS, *THE HONEST HOUR: THE ETHICS OF TIME-BASED BILLING BY ATTORNEYS* 2-3 (1996); see also BACHMAN, *supra* note 127, at 103 (noting that "[t]wenty years ago . . . [l]awyers with average billings of 1,500 hours per year often became partners"); Bogus, *supra* note 68, at 924 (stating that "in the 1960's the median number of billable hours was about 1500 per year for partners and associates alike").

139. See ROSS, *supra* note 138, at 20.

140. See *id.* at 27.

141. See *id.*

142. See University of Michigan Law School, *supra* note 73, at 3 tbl.1.

143. See YOUNG LAWYERS DIV., *supra* note 60, at 22 tbl.19.

144. See *id.* at 23. The North Carolina study found that 17.3% of lawyers did not take more than one week of vacation in 1989. See NORTH CAROLINA BAR ASS'N, *supra* note 23, at 4.

median number of billable hours for associates in firms of all sizes in 1995 was 1823; 25% of associates billed 1999 hours or more, and 10% billed at least 2166 hours.¹⁴⁵ Not long ago, billable hours at these levels "would have [been] thought unbearable."¹⁴⁶

Workloads, like the job dissatisfaction to which they so closely relate, are not distributed equally throughout the profession. Generally speaking, lawyers in private practice work longer hours than those who work for corporations or for the government.¹⁴⁷ In the 1990 ABA survey, for example, only 56% of those in private practice agreed that they had enough time to spend with their families, compared to 74% of corporate lawyers and 79% of government lawyers.¹⁴⁸ Similarly, only 46% of private practitioners said that they had enough time for themselves, compared to 53% of corporate lawyers and 66% of government lawyers.¹⁴⁹ In the words of the study, "[t]ime for family and self is a real problem for lawyers in private practice. Far fewer lawyers in corporate counsel and government settings have insufficient time."¹⁵⁰ The findings of the Michigan Law School survey were similar: Only 20% of the respondents working in private practice were "quite satisfied" with "[t]he balance of their family and professional life," as compared to 35% of those working in corporations, 45% of those working for the government, and 50% of those doing public interest work.¹⁵¹

Within private practice, the general rule of thumb is the bigger the firm, the longer the hours.¹⁵² For example, a recent study found that over 41% of associates in firms of under 101 lawyers billed fewer than 1800 hours, as compared to about 16% of associates in firms of over 250 lawyers.¹⁵³ At the same time, almost 27% of associates in the smaller firms billed over 1900 hours, as compared to approximately

145. See ALTMAN WEIL PENZA, INC., THE 1996 SURVEY OF LAW FIRM ECONOMICS, at III-3 (1996).

146. Silberman, *supra* note 7, at 615.

147. See ELWORK, *supra* note 16, at 30.

148. See YOUNG LAWYERS DIV., *supra* note 60, at 17.

149. See *id.*

150. *Id.*

151. See University of Michigan Law School, *supra* note 73, at 9 tbl.3.

152. See ALTMAN WEIL PENZA, *supra* note 145, at III-2, III-6; TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101, at 9; Holmes, *supra* note 127, at 14; Rhode, *supra* note 136, at 300; David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1602 (1998); Frank J. Roan, *Large Firm vs. Small Firm Practice*, FLA. B.J., Jan. 1994, at 28, 28.

153. See NATIONAL ASS'N FOR LAW PLACEMENT, EMPLOYING ASSOCIATES IN 1997: PATTERNS & PRACTICES 11, 15 (1997).

36% of associates in the larger firms.¹⁵⁴ At the biggest firms in the biggest cities, associates commonly bill 2000 to 2500 hours per year.¹⁵⁵ Big firm partners do not have it much better. Junior partners at the nation's 125 largest law firms average 1955.5 billable hours per year,¹⁵⁶ almost 300 hours per year more than partners in small firms.¹⁵⁷ At some big firms, the average number of hours billed by partners and associates alike is 2000.¹⁵⁸

The long hours that big firm lawyers must work is a particular source of dissatisfaction for them. While roughly half of all attorneys in private practice complain about not having enough time for themselves and their families,¹⁵⁹ in big firms the proportion of similarly disaffected lawyers is about three quarters.¹⁶⁰ The ABA's survey of young lawyers in 1995 found that 62% of those working in firms of at least 150 lawyers were dissatisfied with the amount of time they had to work, while only 28% of those working in firms of fewer than seven lawyers had the same complaint.¹⁶¹ Among respondents to the Michigan Law School survey, 37% of those working as solo practitioners or in firms of ten or fewer lawyers were quite satisfied with "[t]he balance of family and professional lives," while only 14% of those working in firms of 150 or more lawyers were similarly satisfied.¹⁶² Finally, young attorneys in large firms who are interested in finding a new job are more likely than similarly situated associates in small firms to be motivated by "a desire for more personal time."¹⁶³

The unhappiness of lawyers may puzzle you. At first blush, these billable hour requirements may not seem particularly daunting. You may think, "Geez, to bill 2000 hours, I need to bill only forty hours per week for fifty weeks. If I take an hour for lunch, that's 8:00 a.m. to 5:00 p.m., five days per week. No sweat." Your reaction is common among law students¹⁶⁴—particularly among law students who are in the process of talking themselves into accepting jobs at big firms. Your reaction is also naïve.

154. *See id.*

155. *See* Holmes, *supra* note 127, at 14; Nielsen, *supra* note 64, at 370; Rhode, *supra* note 137, at 710; Benjamin L. Sells, *Workaholism*, A.B.A. J., Dec. 1993, at 70, 70.

156. *See* Klein, *supra* note 112, at A25.

157. *See* ALTMAN WEIL PENZA, *supra* note 145, at III-6.

158. *See* John E. Morris, *Too Good to Be True?*, AM. LAW., July/Aug. 1998, at 5, 5.

159. *See* NORTH CAROLINA BAR ASS'N, *supra* note 23, at 4; YOUNG LAWYERS DIV., *supra* note 60, at 17.

160. *See* Fisk, *supra* note 72, at S12; Klein, *supra* note 112, at A24.

161. *See* YOUNG LAWYERS DIV., *supra* note 82, at 15.

162. University of Michigan Law School, *supra* note 73, at 12 tbl.7.

163. YOUNG LAWYERS DIV., *supra* note 82, at 10.

164. *See, e.g.*, NALP FOUND. FOR RESEARCH & EDUC., *supra* note 127, at 23.

There is a big difference—a painfully big difference—between the hours that you will *bill* and the hours that you will *spend at work*. If you're honest, you will be able to bill only the time that you spend working directly on matters for clients. Obviously, you will not be able to bill the time that you spend on vacation, or in bed with the flu, or at home waiting for the plumber.¹⁶⁵ But you will also not be able to bill for much of what you will do at the office or during the workday—going to lunch, chatting with your co-workers about the latest office romance, visiting your favorite websites, going down the hall to get a cup of coffee, reading your mail, going to the bathroom, attending the weekly meeting of your practice group, filling out your time sheet, talking with your spouse on the phone, sending e-mail to friends, preparing a “pitch” for a prospective client, getting your hair cut, attending a funeral, photocopying your tax returns, interviewing a recruit, playing Solitaire on your computer, doing pro bono work, reading advance sheets, taking a summer associate to a baseball game, attending CLE seminars, writing a letter about a mistake in your credit card bill, going to the dentist, dropping off your dry cleaning, daydreaming, and so on.

Because none of this is billable—and because the average lawyer does a lot of this every day—you will end up billing only about two hours for every three hours that you spend at “work.”¹⁶⁶ And thus, to bill 2000 hours per year, you will have to spend about sixty hours per week at the office, and take no more than two weeks of vacation/sick time/personal leave. If it takes you, say, forty-five minutes to get to work, and another forty-five minutes to get home, billing 2000 hours per year will mean leaving home at 7:45 a.m., working at the office from 8:30 a.m. until 6:30 p.m., and then arriving home at 7:15 p.m.—and doing this *six days per week*, every week. That makes for long days, and for long weeks. And you will have to work these hours

165. Unless, like so many attorneys, you work while you are on vacation, or in bed with the flu, or at home waiting for the plumber. One of my lawyer friends was relieved to find that he could receive faxes and Federal Express deliveries at Disney World, as it helped him to work through his honeymoon. (Perhaps not surprisingly, he got divorced just eight months later.) Another acquaintance was back at the office, billing time, less than 24 hours after giving birth; her newborn child, suffering from low birth weight and other problems, remained hospitalized in the intensive care unit. And one of the lawyers with whom I worked as a summer associate explained to me how, by disciplining himself to think about client matters while showering every morning, he was able to bill an extra hour per week.

166. For similar approximations, see BACHMAN, *supra* note 127, at 108; ELWORK, *supra* note 16, at 19; LINOWITZ, *supra* note 16, at 107; ROSS, *supra* note 138, at 27; Bogus, *supra* note 68, at 925; Robert W. McMnaman, *Lawyers at Bay*, 31 LAW OFFICE ECON. & MGMT. 370, 373 (1991); Manuel R. Ramos, *Legal Malpractice: The Profession's Dirty Little Secret*, 47 VAND. L. REV. 1657, 1685 (1994).

not just for a month or two, but year after year after year. That makes for a long life.

Now do you understand why so many attorneys are unhappy? And why, generally speaking, the more lawyers work, the less happy they are? What makes people happy is the *nature* of the work they do and the quantity and quality of their lives outside of work.¹⁶⁷ Long hours at the office have no relationship to the former and take away from the latter. Every hour that lawyers spend at their desks is an hour that they do not spend doing many of the things that give their lives joy and meaning: being with their spouses, playing with their children, relaxing with their friends, visiting their parents, going to movies, reading books, volunteering at the homeless shelter, playing softball, collecting stamps, traveling the world, getting involved in a political campaign, going to church, working out at a health club. There's no mystery about why lawyers are so unhappy: They work too much.

B. The Money

Why do lawyers work too much? At this point, I'm afraid that we have to leave the realm of fact and enter the realm of opinion. No one knows for certain why so many lawyers work so hard, although many people have opinions. I have one, too—at least about the lawyers who work in big firms (who, as noted, are also the lawyers who work the longest hours¹⁶⁸ and are the least happy with the imbalance between their personal and professional lives¹⁶⁹). Admittedly, my opinion is just an opinion, but it is based on a lot of experience. I practiced law for eight years in a big firm—six as an associate, two as a partner—and spent much of that time working with and against other big firm lawyers. Most of my law school classmates went on to practice at big firms, as did most of those with whom I clerked. And even today, many of my friends and acquaintances are lawyers who have practiced or are practicing in big firms.

Because my experience is in big firms, and because so many law students want to work in big firms,¹⁷⁰ big firms will be the focus of the remainder of this Article. I recognize, of course, that working for

167. See NORTH CAROLINA BAR ASS'N, *supra* note 23, at 5, 6, 10; Beck et al., *supra* note 21, at 7; Myers & Diener, *supra* note 37, at 15-17; Rhode, *supra* note 136, at 310-11; Robert E. Lane, *Does Money Buy Happiness?*, PUB. INTEREST, Fall 1993, at 56, 56.

168. See *supra* notes 152-58 and accompanying text.

169. See *supra* notes 159-63 and accompanying text.

170. See *infra* notes 175-77 and accompanying text.

a big firm may not be an option for you. You should nevertheless read the remainder of this Article. First, if you are a typical student who does not have the option of working at a big firm, you probably regret that fact and you may even spend a substantial amount of time envying others who can go to big firms. Second, just because you cannot work at a big firm now does not mean that you will not be able to work at a big firm in the future. If you assemble a large stable of clients or if your college roommate is elected governor or if you establish a reputation as a top trial lawyer, the doors of big firms will open to you. Third, even if you never have the chance to work at a big firm, you almost surely will have the chance to work at a firm that *acts* like a big firm. Small firms, corporate legal departments, government offices, and even public interest firms “have borrowed many features of large-firm practice.”¹⁷¹ Finally, even if working at a big firm—or at a small or medium firm that acts like a big firm—holds absolutely no appeal for you, big firms exercise a disproportionate influence on the profession you are about to enter,¹⁷² and you need to understand the nature of that influence.

In one sense, the answer to the question of why so many lawyers work so much is easy: It’s the money, stupid. It begins with law students, who, like most Americans, seem to be more materialistic than they were twenty-five or thirty years ago. In 1970, 39% of students entering college said that “being very well off financially” was either an “essential” or a “very important” life goal; in 1993, the figure had almost doubled to 75%.¹⁷³ Of nineteen possible life goals suggested to incoming college students, getting rich was selected most often—even more often than “raising a family.”¹⁷⁴ Not surprisingly, then, “the most coveted jobs amongst [law students] are high-paying large law firm jobs.”¹⁷⁵ The vast majority of law students—at least the vast majority of those attending the more prestigious schools (or get-

171. GALANTER & PALAY, *supra* note 1, at 18.

172. See CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 176 (2d ed. 1993); KRONMAN, *supra* note 127, at 273; NELSON, *supra* note 110, at xi; Bryant G. Garth, *Legal Education and Large Law Firms: Delivering Legality or Solving Problems*, 64 *IND. L.J.* 433, 433 (1989); Kaye, *supra* note 136, at 113; Graham C. Lilly, *Law Schools Without Lawyers? Winds of Change in Legal Education*, 81 *VA. L. REV.* 1421, 1449 (1995); Mark C. Suchman, *Working Without a Net: The Sociology of Legal Ethics in Corporate Litigation*, 67 *FORDHAM L. REV.* 837, 837 n.1 (1998).

173. Myers & Diener, *supra* note 37, at 12.

174. *See id.*

175. Roger E. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 *GEO. J. LEGAL ETHICS* 367, 386 (1996); see also *Pay for Class of '97 Is \$63K, But Money Isn't the Only Issue*, *LAW OFFICE MGMT. & ADMIN. REP.*, Feb. 1998, at 2, 2 [hereinafter *Pay for Class of '97*] (asserting that receiving an offer from a large law firm is “the feather that most [students] want to add to their caps”).

ting good grades at the less prestigious schools)—want to work in big firms.¹⁷⁶ And the reason they want to work in big firms is that big firms pay the most.¹⁷⁷

Of course, students deny this. Students—many of whom came to law school intending to do public interest work¹⁷⁸—don't like to admit that they've "sold out," so they come up with "rationalizations, justifications, accounts, and disclaimers" for seeking big firm jobs.¹⁷⁹ They insist that the real reason they want to go to a big firm is the training, or the interesting and challenging work, or the chance to work with exceptionally talented colleagues, or the desire to "keep my doors open." They imply that the huge salaries are just an afterthought—mere icing on the cake. Or they reluctantly admit that, yes,

176. Eighty-one percent of Michigan Law School's class of 1991 took an initial job in private practice; 46% of the class took an initial job in a firm with more than 50 lawyers. See University of Michigan Law School, *supra* note 73, at 6. Harvard's statistics are similar. See Schiltz, *supra* note 5, at 760 n.219.

177. This point was drily made by a big firm associate writing under the *nom de plume* "The Rodent" in *Explaining the Inexplicable: The Rodent's Guide to Lawyers*:

A law degree offers many diverse career options such as teaching, working as in-house counsel for a company, representing a public interest or nonprofit organization, working for the government, forming a small firm with other lawyers, or opening up your own law office. If all else was equal, law students would set their sights on any of these various types of legal service.

All else is not equal because The Firm pays the highest salaries to new lawyers. Thus, instead of considering what type of legal career would be most suitable for them, most law students maneuver for a job with The Firm.

THE RODENT, EXPLAINING THE INEXPLICABLE: THE RODENT'S GUIDE TO LAWYERS 33-34 (1995); see also Wilkins & Gulati, *supra* note 152, at 1637 (noting that "many students state that the high salaries paid by corporate firms are the primary reason why they choose jobs in this sector over what they consider to be more rewarding work in government or in public interest practice").

The universal perception that big firms pay better than other legal employers is accurate. In 1997, the median salary offered to first year associates by firms of 251 or more lawyers was \$71,502. See Margaret Cronin Fisk, *Stratospheric Salary Gap Reflects National Trend*, NAT'L L.J., June 1, 1998, at B8, B11; Mark Hansen, *Big Pay Day for New Associates*, A.B.A. J., Mar. 1998, at 25, 25; *Pay for Class of '97*, *supra* note 175, at 2. At the same time, the median salary offered to first year associates by firms of 10 or fewer lawyers was \$40,000, and starting salaries for entry level jobs with corporations, the government, legal services organizations, and public interest organizations generally ranged from \$25,000 to \$60,000. See Fisk, *supra*, at B8, B11-B15.

178. According to the Michigan Law School survey:

About a quarter of the class started law school without a plan for what to do with their law degree. Of those who did have a plan, about half expected to enter private practice and most of the rest hoped to work in government, politics or legal services . . . (Eight years later, five years after graduation, the great majority of those who planned to work in private practice are working there, but so also are the great majority of those who had no plans and a near majority of those who planned to work in government or public interest work.)

University of Michigan Law School, *supra* note 73, at 5.

179. ROBERT GRANFIELD, MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND 149 (1992).

they really are after the money, but they have no choice: Because of student loan debt, they *must* take a job that pays \$80,000 per year. \$60,000 per year just won't cut it.

Most of this is hogwash. As I will explain below,¹⁸⁰ almost all of the purported non-monetary advantages of big firms either do not exist or are vastly overstated. Moreover, there are few lawyers who could not live comfortably on what most corporations or government agencies pay, whatever their student loan debt.¹⁸¹ Students are after the money, pure and simple.¹⁸² The hiring partner of any major firm will tell you that if his firm offers first year associates a salary of \$69,000, and a competitor down the street offers them \$72,000, those who have the choice will flock to the competitor—even if the competitor will require them to bill 200 hours more each year.¹⁸³

I realize that I am not exactly flattering law students. But if this were not true, would big firms get into bidding wars for the services of the best law school graduates? Of course not. But big firms do get into bidding wars—all the time—and, as a result, the salaries of first year associates get pushed to extraordinary levels.¹⁸⁴ In 1997, the median starting salary for first year associates in firms of over 250 lawyers was \$71,502.¹⁸⁵ First year associates in some California firms now earn \$95,000 per year.¹⁸⁶ And in 1997 some New York firms broke the magic \$100,000 barrier and began paying six figure salaries to first year associates—many of whom, of course, had not yet even passed the bar exam.¹⁸⁷

As the salaries of first year associates go up, the salaries of senior associates must rise to keep pace.¹⁸⁸ After all, no sixth year associate wants to be paid less than a first year associate. And as the

180. See *infra* notes 295-312 and accompanying text.

181. See *infra* notes 329-37 and accompanying text.

182. See NALP FOUND. FOR RESEARCH & EDUC., *supra* note 127, at 13; Edward A. Adams & Bruce Balestier, *As Associates' Pay Increases, 'Going Rate' Becomes History*, N.Y.L.J., Aug. 19, 1996, at 1.

183. See BACHMAN, *supra* note 127, at 106.

184. See GALANTER & PALAY, *supra* note 1, at 56-57 (describing bidding wars among New York firms).

185. See Fisk, *supra* note 177, at B8.

186. See *id.* at B11.

187. See *id.*

188. See GALANTER & PALAY, *supra* note 1, at 56 (describing how changes in starting salaries for first year associates in New York City resulted in salary increases for more senior lawyers in New York City and for attorneys in firms outside of New York City); NORTH CAROLINA BAR ASS'N, *supra* note 23, at 12 ("Firms strap themselves (and the people being recruited) with high time demands from the overhead stemming from high starting salaries and the spiral effect on other associate salaries."); Rhode, *supra* note 136, at 308-10 (describing how increases in starting salaries for first year associates lead to increases in the salaries and workloads of all lawyers).

salaries of senior associates go up, the salaries of junior partners must rise to keep pace. After all, no junior partner wants to be paid less than a senior associate. And, of course, as the salaries of junior partners go up, so must the salaries of senior partners.

How do firms pay for this ever-spiraling increase in salaries? In theory, they have two options:¹⁸⁹ First, they can raise billing rates. Instead of charging, say, \$100 per hour for the time of first year associates, they can charge \$115, and instead of charging, say, \$225 per hour for the time of junior partners, they can charge \$250. Second, they can bill more hours. Instead of demanding 2000 billable hours per year from first year associates, they can demand 2100, and instead of demanding 1900 billable hours per year from junior partners, they can demand 1950.

In reality, though, firms have only one option: They have to bill more hours. The market for lawyers' services has become intensely competitive.¹⁹⁰ As the number of lawyers has soared,¹⁹¹

189. I am putting aside the option of cutting overhead by, for example, switching to a cheaper brand of stationery or a cheaper supplier of health insurance, as savings produced by such measures are relatively minor. Moreover, I am putting aside the option of implementing "value billing," "alternative billing," or other schemes that promise to help lawyers enjoy increased compensation without having to work harder. Although such schemes are talked about a lot, see, e.g., AMERICAN BAR ASS'N, *supra* note 108, at 15-18; BEYOND THE BILLABLE HOUR: AN ANTHOLOGY OF ALTERNATIVE BILLING METHODS (Richard C. Reed ed., 1989); Barbara Franklin, *Alternative Billing: Flat Fees, "Value" Bills Favored over Hourly Rates*, N.Y.L.J., Aug. 13, 1992, at 5, 5; *Law Firm Billing: Clock's Running on Billable Hours*, NAT'L L.J., Dec. 19, 1994, at C1, C1; they remain largely untried, and their success remains largely unproven, see HILDEBRANDT, *supra* note 104, at 7 (noting that "[d]espite all the talk of alternative billing arrangements, 75-80% of all law firm revenues continue to be based on hourly billing"); Franklin, *supra*, at 5 (concluding that "[l]awyers who are experimenting now with alternative fee arrangements say it is either too soon to draw any conclusions or concede their profit margins have shrunk"); Randall Samborn, *Vanguard of a Fee Revolt: Fred Bartlit's New Litigation Boutique Is Betting the House on How It Charges for Its Work*, NAT'L L.J., Apr. 4, 1994, at A1, A1 (finding that "[a]lthough alternative billing practices are in vogue at many firms today, the experiments are, in most cases, loss-leaders for lawyers willing to cut their fees without changing their hourly ways"); Dale H. Seamans, *Is Time Running Out for the Hourly Rate?*, MASS. LAW. WKLY., Nov. 11, 1996, at B3, B3 ("[A]lternative billing . . . has been cast about in most law firms and corporate board rooms, but some observers say the concept is slow to become a practice. In spite of a grimly competitive marketplace, the hourly rate is hanging on."). Billing by the hour "remains the bread-and-butter of the legal profession." *Id.*; see also RICHARD C. REED, BILLING INNOVATIONS: NEW WIN-WIN WAYS TO END HOURLY BILLING 99 (1996) (noting that "hourly charges remain the dominant billing system at large U.S. law firms (77% of billings)").

190. See Schiltz, *supra* note 5, at 741.

191. According to the American Bar Association, the number of attorneys in the United States grew from 221,605 in 1951 (one for every 695 Americans) to 805,872 in 1991 (one for every 313 Americans), and is expected to grow to 1,005,842 by 2000 (one for every 267 Americans). See BARBARA A. CURRAN, AMERICAN BAR ASS'N, WOMEN IN THE LAW: A LOOK AT THE NUMBERS 7 (1995); SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 15 (1992). The Bureau of Labor Statistics reports similar increases in the absolute number of

competition for clients has become ferocious. Clients insist on getting good work at low hourly rates.¹⁹² They also insist that lawyers minimize the amount of time that they devote to each file to hold down costs. If clients do not get what they want, they will move their business to one of the thousands of other lawyers who are chomping at the bit to get it.¹⁹³ Raising billing rates to pay for spiraling salaries is simply not much of an option for most firms. As a result, firms get the extra money to pay for the spiraling salaries in the only way they can: They bill more hours. Everyone has to work harder to pay for the higher salaries. And when salaries go up again, everyone has to work still harder. Associate compensation has increased 1000% in the past thirty years, while billing rates have increased only 400%.¹⁹⁴ Obviously, "law firms have paid for the higher salaries by increasing billable hours rather than charging higher rates."¹⁹⁵

I am leaving out one wrinkle—an important wrinkle that you should know about if you are contemplating joining a large law firm (or a firm that acts like a large law firm). The partners of a big firm have a third option for making more money. This option involves what big firm partners euphemistically refer to as "leverage."¹⁹⁶ I like to call it "the skim." Richard Abel calls it "exploitation."¹⁹⁷ The person being exploited is you.

It is common for the top partners in the biggest firms to earn upwards of \$2 million per year.¹⁹⁸ At some firms, profits per partner approach or exceed \$2 million per year,¹⁹⁹ meaning that some partners are paid more than \$2 million (because profits are not divided equally among partners). Not one of these highly paid partners could personally generate the billings necessary to produce such an income. Even

lawyers and in the percentage of lawyers in the general population. See Silberman, *supra* note 7, at 610-11.

192. See Sarat, *supra* note 123, at 829.

193. See GALANTER & PALAY, *supra* note 1, at 50; KRONMAN, *supra* note 127, at 276-77; SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 191, at 78-79; Frenkel et al., *supra* note 120, at 704; Gordon, *supra* note 125, at 717; Holmes, *supra* note 55, at 380.

194. See ROSS, *supra* note 138, at 2.

195. *Id.*; see also NORTH CAROLINA BAR ASS'N, *supra* note 23, at 12.

196. See Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567, 584 (1989); Peter D. Sherer, *Leveraging Human Assets in Law Firms: Human Capital Structures and Organizational Capabilities*, 48 INDUS. & LAB. REL. REV. 671, 672 (1995).

197. RICHARD L. ABEL, AMERICAN LAWYERS 193 (1989).

198. See, e.g., John E. Morris, *What It Means to Have a Good Year at Skadden, Arps, AM. LAW.*, July/Aug. 1997, at 13, 13 (listing 16 partners at Skadden, Arps, Slate, Meagher & Flom who made at least \$1.5 million in 1996).

199. See Anna Snider, *Survey Shows Wachtell with Highest Profits*, N.Y.L.J., July 1, 1998, at 1, 1 (reporting that profits per partner exceeded \$1 million at nine New York firms and \$2 million at one New York firm in 1997).

a partner billing 2000 hours per year at \$500 per hour, "both of which figures lie at the outer limits of physical and economic possibility," would generate only \$1 million in revenue, "a good proportion of which would be consumed by overhead."²⁰⁰ So how can big firm partners take home double or triple or quadruple the revenue they generate? They can do so because partner compensation reflects not only the revenue that partners themselves generate, but also "the surplus value law firms extract from associates."²⁰¹ Alex Johnson puts the point more dramatically: "[T]he blood and sweat of new associates line[] the pockets of the senior members of the firm."²⁰²

Basically, what happens is that big firms "buy associates' time 'wholesale and sell it retail.'"²⁰³ Here is how it works:²⁰⁴ As a new associate in a large firm, you will be paid about one-third of what you bring into the firm.²⁰⁵ If you bill, say, 2000 hours at \$100 per hour, you will generate \$200,000 in revenue for your firm. About a third of that—\$70,000 or so—will be paid to you. Another third will go toward paying the expenses of the firm. And the final third will go into the pockets of the firm's partners. Firms make money off associates. That is why it's in the interests of big firms to hire lots of associates and to make very few of them partners. The more associates there are, the more profits for the partners to split,²⁰⁶ and the fewer partners there are, the bigger each partner's share.

After you make partner (*if* you make partner—your chances will likely be about one in ten²⁰⁷), you will still be exploited, although somewhat less. You may take home 40% or so of what you bring into the firm as a junior partner. Your take will gradually increase with your seniority. At some point, you will reach equilibrium—that is, you will take home roughly what you bring into the firm, minus your share of the firm's overhead. And, if you stick with it long enough, some day you will reach Big Firm Nirvana: You will take home more than you bring into the firm (minus your share of overhead). You will become the exploiter instead of the exploited.

It should not surprise you that, generally speaking, the bigger the firm, the more the leverage.²⁰⁸ The median ratio of associates to

200. ABEL, *supra* note 197, at 191.

201. *Id.* at 192; see also D'Alemberte, *supra* note 6, at 10.

202. Johnson, *supra* note 114, at 1250-51.

203. NELSON, *supra* note 110, at 77.

204. See ABEL, *supra* note 197, at 192; NELSON, *supra* note 110, at 77.

205. See ABEL, *supra* note 197, at 192.

206. See Gilson & Mnookin, *supra* note 196, at 585.

207. See Wilkins & Gulati, *supra* note 152, at 1603.

208. See ABEL, *supra* note 197, at 191.

partners ranges dramatically, from .33 in firms of eight or fewer attorneys in the northeastern United States, to 1.50 in firms of seventy-five or more attorneys in the same region.²⁰⁹ In general, though, the ratio increases with the size of the firm.²¹⁰ Nationally, the median ratio is .51 in firms of eight or fewer attorneys, .66 in firms of nine to twenty attorneys, .64 in firms of twenty-one to forty attorneys, .75 in firms of forty-one to seventy-four attorneys, and .93 in firms of seventy-five or more attorneys.²¹¹ As a result of the disparity in leverage between big and small firms, partners in big firms make dramatically more money than partners in small firms. In 1995, the median income of partners in firms of seventy-five or more attorneys was \$190,408—almost 42% higher than the median income of partners in firms of eight or fewer lawyers.²¹² (By contrast, the median income of *associates* in firms of seventy-five or more attorneys was \$76,263, just 12% higher than the median income of associates in firms of eight or fewer lawyers.²¹³) The stark relationship between firm size and partnership compensation cannot be explained by differences in hourly rates, hours billed, or quality of legal services.²¹⁴ Rather, it results from the skim.

This, then, is life in the big firm: It is in the interests of clients that senior partners work inhuman hours, year after year, and constantly be anxious about retaining their business. And it is in the interests of senior partners that junior partners work inhuman hours, year after year, and constantly be anxious about retaining old clients and attracting new clients. And it is in the interests of junior partners that senior associates work inhuman hours, year after year, and constantly be anxious about retaining old clients and attracting new clients and making partner. And most of all, it is in everyone's interests that the newest members of the profession—the junior associates—be willing to work inhuman hours, year after year, and constantly be anxious about *everything*—about retaining old clients and attracting new clients and making partner and keeping up their bil-

209. See *ALTMAN WEIL PENZA*, *supra* note 145, at V-3.

210. See *ABEL*, *supra* note 197, at 191.

211. See *ALTMAN WEIL PENZA*, *supra* note 145, at V-3. According to Marc Galanter and Thomas Palay, large firms have become more highly leveraged over time. See *GALANTER & PALAY*, *supra* note 1, at 59.

212. See *ALTMAN WEIL PENZA*, *supra* note 145, at IV-6.

213. See *id.*

214. See *ABEL*, *supra* note 197, at 193-94.

lable hours.²¹⁵ The result? Long hours, large salaries, and one of the unhealthiest and unhappiest professions on earth.

C. The "Game"

But something is wrong here. Something doesn't make sense.

As I have tried to convey, the profession that you are about to enter is absolutely obsessed with money. "[M]oney is not just incidental to the practice, but at its core."²¹⁶ Money is at the root of virtually everything that lawyers don't like about their profession: the long hours, the commercialization, the tremendous pressure to attract and retain clients, the fiercely competitive marketplace, the lack of collegiality and loyalty among partners, the poor public image of the profession, and even the lack of civility. Almost every one of these problems would be eliminated or at least substantially reduced if lawyers were simply willing to make less money. The North Carolina Bar Association had it exactly right: "[T]he misguided view of money as the sole goal of practice, sole measure of success and sole measure of self-worth is directly and indirectly responsible for many of the problems in practice today."²¹⁷

The notion that lawyers could get by with less money is not exactly absurd. In 1994, the median income for American men employed full-time during the entire year was \$31,612; for women, the comparable figure was \$23,265.²¹⁸ In 1995, the median income for partners in firms of all sizes was \$168,751;²¹⁹ one of every four partners made over \$230,133.²²⁰ In the largest firms (those of seventy-five or more lawyers), partners' median income was \$190,408, and a quarter of big firm partners made over \$261,425.²²¹ Even in the smallest firms (firms of eight or fewer lawyers), the median income for partners was \$134,294, and a quarter made over \$216,399.²²² These figures are from 1995; although similar figures are not available from later years, we know that the incomes of law firm partners rose dra-

215. See Frenkel et al., *supra* note 120, at 704 (describing how, in large firms facing increasingly competitive markets, "[f]irm-wide insecurity trickles down").

216. AMERICAN BAR ASS'N, *supra* note 108, at 12.

217. NORTH CAROLINA BAR ASS'N, *supra* note 23, at 9.

218. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1996, at 469 tbl.725 (116th ed. 1996).

219. See ALTMAN WEIL PENSA, *supra* note 145, at IV-3.

220. See *id.*

221. See *id.* at IV-6.

222. See *id.*

matically in 1996 and 1997.²²³ At those firms qualifying for the "Am Law 100,"²²⁴ the average profits per partner rose to \$587,000 in 1997.²²⁵ It's not as if lawyers are just scraping by.

At the same time that lawyers are enjoying these fantastic incomes, many are dissatisfied with their professional lives,²²⁶ and their single biggest complaint is the long hours they have to work.²²⁷ Lawyers could enjoy a lot more life outside of work if they were willing to accept relatively modest reductions in their incomes. Take, for example, a partner who is billing 2000 hours and being paid \$200,000. If we assume that a 20% reduction in billable hours will translate into a 20% reduction in pay (an assumption that is unlikely to be exactly true, but that is close enough for our purposes), this lawyer could trade \$40,000 in income for 600 more hours of life outside work (assuming that three hours at work translates into two hours billed²²⁸).

Our hypothetical partner has a choice, then: He can make \$200,000 per year and work many nights and most weekends—routinely getting up early, before his children are awake, driving to the office, eating lunch at his desk, leaving the office late, picking up dinner at the Taco Bell drive-through window, and then arriving home to kiss the cheeks of his sleeping children. Or he can make \$160,000 per year and work few nights and weekends. He can spend time with his spouse, be a parent to his children, enjoy the company of his friends, pursue a hobby, do volunteer work, exercise regularly, and generally lead a well balanced life—*while still making \$160,000 per year*. If all such lawyers making \$160,000 per year sat down and asked themselves, "What will make me a happier and healthier person: another \$40,000 in income (which, after taxes, will mean another \$25,000 or so in the bank) or 600 hours to do whatever I enjoy most?," it is hard to believe that many of them would take the money.

But many of them do take the money. Thousands of lawyers choose to give up a healthy, happy, well-balanced life for a less healthy, less happy life dominated by work. And they do so merely to be able to make seven or eight times the national median income in-

223. See Fisk, *supra* note 177, at B8.

224. Every year, in its July/August issue, the *American Lawyer* provides highly detailed financial information on the 100 largest American law firms—the "Am Law 100."

225. See Morris, *supra* note 158, at 5.

226. See *supra* Part I.B.

227. See *supra* Part II.A.

228. See *supra* note 166 and accompanying text.

stead of five or six times the national median income. Why? Are lawyers just greedy?

Well, some are, but it is more complicated than that. For one thing, lawyers don't think in these terms. They don't see their lives as crazy. Lawyers don't see any of this. Lawyers don't sit down and think logically about why they are leading the lives they are leading any more than buffalo sit down and think logically about why they are stampeding. That is the primary reason I am writing this Article: I hope that you *will* sit down and think about the life that you want to lead before you get caught up in the stampede.

More importantly, though, the flaw in my analysis is that it assumes that the reason lawyers push themselves to make so much money is the money itself. In other words, my analysis assumes that the reason lawyers want to earn more money is that they want to spend more money and enjoy the things that money will buy. When put in those terms, giving up 600 hours of life for another \$40,000 on top of a \$160,000 salary makes no sense for most lawyers. What you need to understand, though, is that very few lawyers are working extraordinarily long hours because they need the money. They are doing it for a different reason.

Big firm lawyers are, on the whole, a remarkably insecure and competitive group of people. Many of them have spent almost their entire lives competing to win games that other people have set up for them. First they competed to get into a prestigious college. Then they competed for college grades. Then they competed for LSAT scores. Then they competed to get into a prestigious law school. Then they competed for law school grades. Then they competed to make the law review. Then they competed for clerkships.²²⁹ Then they competed to get hired by a big law firm.²³⁰

Now that they're in a big law firm, what's going to happen? Are they going to stop competing? Are they going to stop comparing themselves to others? Of course not. They're going to keep competing—competing to bill more hours, to attract more clients, to win more cases, to do more deals. They're playing a game. And money is how the score is kept in that game.

229. See generally Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027 (1998).

230. See D'Alemberte, *supra* note 6, at 13 ("To students, usually possessed of extremely talented minds and competitive personalities, law schools send a message about values. That message is that the path to success—the way to 'win'—is to get a job with a large law firm.").

Why do you suppose sixty year old lawyers with millions of dollars in the bank still bill 2200 hours per year? Why do you suppose lawyers whose children have everything money can buy but who need the time and attention of their parents continue to spend most nights and weekends at the office—while continuing to write out checks to the best child psychologists in town? Why do you suppose one big firm partner I know flew into a rage after learning that his year-end bonus would be only—only—\$400,000, while the bonus of one of his rivals in the firm would be \$425,000? Why do you suppose that another lawyer I know (a lawyer making \$1 million a year) came within a whisker of quitting his firm after losing a bitter dispute with one of his partners (a lawyer making over \$2 million a year) over a \$10,000 payment?

It is not because these lawyers *need the money*. Any of these lawyers could lose every penny of his savings and see his annual income reduced by two-thirds and still live much more comfortably than the vast majority of Americans. What's driving these lawyers is the desire to *win the game*. These lawyers have spent their entire lives competing against others and measuring their worth by how well they do in the competitions. And now that they are working in a law firm, money is the way they keep score. Money is what tells them if they're more successful than the lawyer in the next office—or in the next office building—or in the next town. If a lawyer's life is dominated by the game—and if his success in the game is measured by money—then his *life* is dominated by money. For many, many lawyers, it's that simple.

III. THE ETHICS OF LAWYERS

At this point, I should say a few words about ethics. I hesitate to do so. I know that courses on legal ethics (or “professional responsibility”) are among the least popular courses in the law school curriculum²³¹—even less popular than courses on taxation. I realize that, by raising the topic of ethics, I risk making your eyes glaze over. At

231. See Roger C. Cramton & Susan P. Koniak, *Rule, Story, and Commitment in the Teaching of Legal Ethics*, 38 WM. & MARY L. REV. 145, 146-47 (1996) (“[L]egal ethics remains an unloved orphan of legal education Many law school faculties remain convinced that the subject is unteachable or believe that it is not worth teaching.”); David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31, 37-38 (1995) (“[T]he legal ethics course is—not to put too fine a point on it—the dog of the curriculum, despised by students, taught by overworked deans or underpaid adjuncts and generally disregarded by the faculty at large.”) (footnote omitted).

the same time, the legal profession is widely perceived—even by lawyers²³²—as being unethical.²³³ Only one American in five considers lawyers to be “honest and ethical,”²³⁴ and “the more a person knows about the legal profession and the more he or she is in direct personal contact with lawyers, the lower [his or her] opinion of them.”²³⁵ This should concern you.²³⁶

There are many reasons why ethics courses are so unpopular, but the most important is probably that law students do not think that they will become unethical lawyers. Students think of unethical lawyers as the sleazeballs who chase ambulances (think Danny DeVito in *The Rainmaker*) or run insurance scams (think Bill Murray in *Wild Things*) or destroy evidence (think Al Pacino’s crew in *The Devil’s Advocate*). Students have a hard time identifying with these lawyers. When students think of life after graduation, they see themselves sitting on the 27th floor of some skyscraper in a freshly pressed dark suit (blue, black, or gray) with a starched blouse or shirt (white or light blue) doing sophisticated legal work for sophisticated clients. Students imagine—wrongly²³⁷—that such lawyers do not have to

232. See generally COMMISSION ON PROFESSIONALISM, *supra* note 118; SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AMERICAN BAR ASS’N, TEACHING AND LEARNING PROFESSIONALISM 2-5 (1996); YOUNG LAWYERS DIV., *supra* note 60, at 33-34; Lawrence J. Fox et al., Report, *Ethics: Beyond the Rules, Historical Preface*, 67 FORDHAM L. REV. 691, 691 (1998); Gordon, *supra* note 125, at 719, 736; McCarthy, *supra* note 69, at 1.

233. See Gary A. Hengstler, *Vox Populi: The Public Perception of Lawyers: ABA Poll*, A.B.A. J., Sept. 1993, at 60, 60-65 (ABA poll); Chris Klein, *Poll: Lawyers Not Liked*, NAT’L L.J., Aug. 25, 1997, at A6, A6 (Harris poll); Leslie McAneny & Lydia Saad, *Honesty & Ethics Poll: Pharmacists Strengthen Their Position as the Most Highly Rated Occupation*, GALLUP POLL MONTHLY, Dec. 1997, at 21, 21 (Gallup poll); Randall Samborn, *Anti-Lawyer Attitude Up*, NAT’L L.J., Aug. 9, 1993, at A1, A1 (*National Law Journal*/West Publishing Co. poll).

234. Hengstler, *supra* note 233, at 62.

235. *Id.*

236. Judge Laurence Silberman argues that it is the public’s low regard for lawyers that has led law firms to become obsessed with money. He cites the work of anthropologist Rebert Ardrey, whose “thesis was that humans, like all mammals, have two drives (other than the basic ones): to acquire property and status. If you depress the opportunity to acquire one, the second becomes much more important.” Silberman, *supra* note 7, at 615. In Judge Silberman’s view, “[a]s lawyers’ place in society . . . ha[s] dropped, they have been driven to acquire more property.” *Id.*

237. It was precisely because so many blatant ethical violations were being committed by so many “talented partners at major establishment law firms” that the American Bar Association’s Section of Litigation convened a task force of legal scholars and social scientists—known as the *Ethics: Beyond the Rules* task force—to study the ethics of big firm litigators. Fox et al., *supra* note 232, at 691-92; see also Sarat, *supra* note 123, at 813-14. The members of the task force used “a series of focus groups, open-ended conversations, and semi-structured interviews” to collect empirical evidence about the attitudes and behavior of partners and associates litigating in the nation’s largest law firms. Suchman, *supra* note 172, at 838. Each member of the task force presented his or her tentative conclusions in a paper, and the papers were published by the *Fordham Law Review*. See generally Report, *Ethics: Beyond the Rules*, 67 FORDHAM L. REV. 691 (1998).

worry much about ethics, except, perhaps, when the occasional conflict of interest question arises.

If you think this—if you think that you will not have any trouble practicing law ethically—you are wrong. Dead wrong. In fact, particularly if you go to work for a big firm, you will probably begin to practice law unethically in at least some respects within your first year or two in practice. This happens to most young lawyers in big firms. It happened to me, and it will happen to you, unless you do something about it.

A. *Practicing Law Ethically*

Let's first be clear on what I mean by practicing law ethically. I mean three things.

First, you generally have to comply with the formal disciplinary rules—either the Model Rules of Professional Conduct,²³⁸ the Model Code of Professional Responsibility,²³⁹ or some state variant of one or the other.²⁴⁰ As a law student, and then as a young lawyer, you will often be encouraged to distinguish ethical from unethical conduct solely by reference to the formal rules. Most likely, you will devote the majority of the time in your professional responsibility class to studying the rules, and you will, of course, learn the rules cold so that you can pass the Multi-State Professional Responsibility Exam ("MPRE"). In many other ways, subtle and blatant, you will be encouraged to think that conduct that does not violate the rules is "ethical," while conduct that does violate the rules is "unethical."²⁴¹

It is in the interests of your professors, the organized bar, and other lawyers to get you to think about ethics in this way. It is a lot easier for a professor to teach students what rules say than it is to explore with students what it means to behave ethically. (Fortunately, many professors resist the temptation to teach only the rules, but many others do not.²⁴²) Defining ethics with reference to rules puts tremendous power in the hands of the organized bar that

238. MODEL RULES OF PROFESSIONAL CONDUCT (1983).

239. MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1969).

240. The Model Rules have been adopted in about four-fifths of the states (often with modifications), while the Model Code is still in force in about one-fifth of the states (again, often with modifications). See *Laws. Man. on Prof. Conduct (ABA/BNA)*, at 01:101, 01:301 (1997).

241. See Frenkel et al., *supra* note 120, at 705-06.

242. If the casebooks and articles that they author are any indication, most of the academy's leading ethicists do not succumb to the pressure to teach only the rules. But at many law schools, professional responsibility courses are not taught by leading ethicists—or, for that matter, even by non-leading ethicists—but rather "by overworked deans or underpaid adjuncts." Luban & Millemann, *supra* note 231, at 37-38.

writes those rules.²⁴³ And many lawyers want “the absence of disciplinary measures and adherence to the profession’s own Model Rules of Professional Conduct”²⁴⁴ to be sufficient to qualify a lawyer as “ethical,” simply because it is easy to avoid disciplinary measures and to adhere to at least the letter of the formal rules.²⁴⁵

I don’t have anything against the formal rules. Often, they are all that stands between an unethical lawyer and a vulnerable client. You should learn them and follow them. But you should also understand that the formal rules represent nothing more than “the lowest common denominator of conduct that a highly self-interested group will tolerate.”²⁴⁶ For many lawyers, “[e]thics is a matter of steering, if necessary, just clear of the few unambiguous prohibitions found in rules governing lawyers.”²⁴⁷ But complying with the formal rules will not make you an ethical lawyer, any more than complying with the criminal law will make you an ethical person. Many of the sleaziest lawyers you will encounter will be absolutely scrupulous in their compliance with the formal rules. In fact, they will be only too happy to tell you just that. Complying with the rules is usually a necessary, but never a sufficient, part of being an ethical lawyer.

The second thing you must do to be an ethical lawyer is to act ethically in your work, even when you aren’t required to do so by any rule. To a substantial extent, “bar ethical rules have lost touch with ordinary moral intuitions.”²⁴⁸ To practice law ethically you must practice law consistently with those intuitions. For the most part, this is not complicated. Being an ethical lawyer is not much different from being an ethical doctor or mail carrier or gas station attendant. Indeed, long before you applied to law school, your parents had probably taught you all that you need to know to practice law ethically.

243. “Unlike governance structures in other nations and professions, regulation of the American bar has remained under almost exclusive control of the group to be regulated The Committee that drafted the Code of Professional Responsibility included no lay members; the 13-member Model Rules Commission had only one.” Rhode, *supra* note 137, at 687.

244. Hengstler, *supra* note 233, at 62.

245. See *infra* notes 251-52 and accompanying text. I agree with Deborah Rhode that: [m]ost attorneys want a process that is sufficiently responsive to clear abuses to protect clients and the profession’s public image, as well as forestall more intrusive state regulation. But few lawyers have supported a system that would require major increases in their own bar dues, that would significantly expand oversight of their own conduct, or that would impose substantial risks of serious sanctions.

Rhode, *supra* note 137, at 694.

246. Rhode, *supra* note 137, at 730.

247. Frenkel et al., *supra* note 120, at 703; see also Gordon, *supra* note 125, at 710, 732; Messikomer, *supra* note 118, at 743.

248. Rhode, *supra* note 137, at 675.

You should treat others as you want them to treat you. Be honest and fair. Show respect and compassion. Keep your promises. Here is a good rule of thumb: If you would be ashamed if your parents or spouse or children knew what you were doing, then you should not do it.

The third thing you must do to be an ethical lawyer is to live an ethical life. Many big firm lawyers—who can be remarkably “smug[] about the superiority of the ethical standards of large firms”²⁴⁹—ignore this point. So do many law professors who, when writing about legal ethics, tend to focus solely on the lawyer at work. But being admitted to the bar does not absolve you of your responsibilities outside of work—to your family, to your friends, to your community, and, if you’re a person of faith, to your God. To practice law ethically, you must meet those responsibilities, which means that you must live a balanced life. If you become a workaholic lawyer, you will be unhealthy, probably unhappy, and, I would argue, unethical.

Now I recognize that we live in an age of moral relativism—an age in which “behavior is neither right nor wrong but a matter of personal choice.”²⁵⁰ Your reaction to my claim that an unbalanced life is an unethical life may very well be, “That’s just your opinion.” It is my opinion, but it is surely not *just* my opinion. I would be surprised if the belief system to which you subscribe—whether it be religiously or secularly based—regards a life dominated by the pursuit of wealth to the exclusion of all else as an ethical life, or an attorney who meets only his responsibilities to his clients and law partners as an ethical person.

B. Big Firm Culture

It is hard to practice law ethically. Complying with the formal rules is the easy part.²⁵¹ The rules are not very specific, and they don’t demand very much.²⁵² You may, on rare occasions, confront an extremely difficult conflict of interest problem that will require you to parse the rules carefully. You may even confront a situation in which some ethical or moral imperative compels you to violate the rules. But by and large, you will have no trouble complying with the rules; indeed, you are unlikely to give the rules much thought.

249. Messikomer, *supra* note 118, at 760.

250. Margaret Steinfeld, *The Catholic Intellectual Tradition*, 25 ORIGINS 169, 173 (1995).

251. See Gordon, *supra* note 125, at 711.

252. See Cramton & Koniak, *supra* note 231, at 172.

Acting as an ethical lawyer in the broader, non-formalistic sense is far more difficult. I have already given you some idea of why it is hard to practice law in a big firm (or any firm that emulates a big firm) and live a balanced life; I will return to that point in a moment. But even practicing law ethically in the sense of being honest and fair and compassionate is difficult. To understand why, you need to understand what it is that you will do every day as a lawyer.

Most of a lawyer's working life is filled with the mundane. It is unlikely that one of your clients will drop a smoking gun on your desk or ask you to deliver a briefcase full of unmarked bills or invite you to have wild, passionate sex (or even un-wild, un-passionate sex). These things happen to lawyers only in John Grisham novels. Your life as a lawyer will be filled with the kind of things that drove John Grisham to write novels: dictating letters and talking on the phone and drafting memoranda and performing "due diligence" and proof-reading contracts and negotiating settlements and filling out time sheets. And because your life as a lawyer will be filled with the mundane, whether you practice law ethically will depend not upon how you resolve the one or two dramatic ethical dilemmas that you will confront during your entire career, but upon the hundreds of little things that you will do, almost unthinkingly, each and every day.

Because practicing law ethically will depend primarily upon the hundreds of little things that you will do almost unthinkingly every day, it will not depend much upon your thinking. You are going to be busy. The days will fly by. When you are on the phone negotiating a deal or when you are at your computer drafting a brief or when you are filling out your time sheet at the end of the day, you are not going to have time to reflect on each of your actions.²⁵³ You are going to have to act almost instinctively.

What this means, then, is that you will not practice law ethically—you *cannot* practice law ethically—unless acting ethically is *habitual* for you. You have to be in the habit of being honest. You have to be in the habit of being fair. You have to be in the habit of being compassionate. These qualities have to be deeply ingrained in you, so that you can't turn them on and off—so that acting honorably

253. See Frenkel et al., *supra* note 120, at 706 ("[T]he conditions under which lawyers... make daily judgments are increasingly inhospitable to calm and reasoned analysis."); Gordon, *supra* note 125, at 717 ("Everyone in the [big] firm feels the pressures of overburdened time and the need to make snap decisions on insufficient sleep and reflection: 'There's too much to do and no time to think.'" (citation omitted)); Nelson, *supra* note 118, at 783 ("The lawyers agreed that many litigators were under tremendous time pressures in their practice and, thus, often did not have very much time to reflect on what they were doing.").

is not something you have to *decide* to do—so that when you are at work, making the thousands of phone calls you will make and writing the thousands of letters you will write and dealing with the thousands of people with whom you will deal, you will *automatically* apply the same values in the workplace that you apply outside of work, when you are with family and friends.²⁵⁴

Here is the problem, though: After you start practicing law, nothing is likely to influence you more than “the culture or house norms of the agency, department, or firm” in which you work.²⁵⁵ If you are going into private practice—particularly private practice in a big firm—you are going to be immersed in a culture that is hostile to the values you now have. The system does not *want* you to apply the same values in the workplace that you do outside of work (unless you’re rapaciously greedy outside of work); it wants you to replace those values with the system’s values. The system is obsessed with money, and it wants you to be, too. The system wants you—it *needs* you—to play the game.

Now, no one is going to say this to you. No one is going to take you aside and say, “Jane, we here at Smith & Jones are obsessed with money. From this point forward the most important thing in your life has to be billing hours and generating business. Family and friends and honesty and fairness are okay in moderation, but don’t let them interfere with making money.” No one will tell you, as one lawyer told another in a Charles Addams cartoon, “I admire your honesty and integrity, Wilson, but I have no room for them in my firm.”²⁵⁶ Instead, the culture will pressure you in more subtle ways to replace your values with the system’s.

Here is an example of what I mean: During your first month working at the big firm, some senior partner will invite you and the other new associates to a barbeque at his home. This “barbeque” will bear absolutely no relationship to what your father used to do on a Weber grill in your driveway. You will drive up to the senior part-

254. I have provided a lengthier defense of this proposition in Schiltz, *supra* note 5, at 713-20.

255. KELLY, *supra* note 7, at 18 (“[T]he culture or house norms of the agency, department, or firm play a dominant role in the way a lawyer practices. The organization profoundly affects the lives of lawyers.”); see also Frenkel et al., *supra* note 120, at 698 (discussing research showing that “the settings in which lawyers work are among the most powerful, contextual factors shaping enactments of professionalism”).

256. Actually, someone might tell you this. See Gordon, *supra* note 125, at 718:

An associate who raises an ethical objection, or even just a question, about what a partner or client wants is taking a risk of being perceived as a difficult or obstructive person An associate whose ethical fastidiousness poses the risk of displeasing or even losing a client will not last long.

ner's home in your rusted Escort and park at the end of a long line of Mercedeses and BMWs and sports utility vehicles. You will walk up to the front door of the house. The house will be enormous. The lawn will look like a putting green; it will be bordered by perfectly manicured trees and flowers. Somebody wearing a white shirt and black bow tie will answer the door and direct you to the backyard. You will walk through one room after another, each of which will be decorated with expensive carpeting and expensive wallpaper and expensive antiques. Scattered throughout the home will be large professional photographs of beautiful children with tousled, sun-bleached hair.

As you enter the partner's immaculately landscaped backyard, someone wearing a white shirt and black bow tie carrying a silver platter will approach you and offer you an appetizer. Don't look for cocktail weenies in barbeque sauce; you will more likely be offered pâté or miniature quiches or shrimp. A bar will be set up near the house; the bartender (who will be wearing a white shirt and black bow tie, of course) will pour you a drink of the most expensive brand of whatever liquor you like. In the corner of the yard, a caterer will be grilling swordfish. In another corner will stand the senior partner, sipping a glass of white wine, holding court with a worshipful group of junior partners and senior associates.

The senior partner will be wearing designer sunglasses and designer clothes; the logo on his shirt will signal its exorbitant cost; his shorts will be pressed. He will have a tan—albeit a slightly orange, tanning salon enhanced tan—and the nicest haircut you've ever seen. Eventually, the partner will introduce you to his wife. She will be beautiful, very thin, and a lot younger than her husband. She, too, will have a great tan, and not nearly as orange as her husband's. You and the other lawyers will talk about golf. Or about tennis. After a couple hours, you will walk out the front door, slightly tipsy from the free liquor, and say to yourself, "This is the life."

In this and a thousand other ways, you will absorb big firm culture²⁵⁷—a culture of long hours of toil inside the office and short hours of conspicuous consumption outside the office. You will work among lawyers who will talk about money constantly and who will be intensely curious about how much money other lawyers are making. If you want to get some sense of this, leave your tax return on the photocopier glass sometime. (At least one hapless lawyer seems to do

257. See Messikomer, *supra* note 118, at 759 (describing how big firm associates absorb "knowledge, techniques, norms, rules, and behavioral patterns" through "a process of 'osmosis'" (citation omitted)).

this every spring at most firms.) Every lawyer in the firm will know how much money you made last year in about fifteen minutes, and every lawyer who joins the firm during the next quarter century will hear the story of your tax return.

The lawyers in your firm are not unique. Thirty or forty years ago, talking about income and clients and fees "just [wa]sn't done," even among Wall Street lawyers.²⁵⁸ Today, "[t]he legal profession . . . has become extraordinarily self-conscious about making money," and "the new legal journalism [has] hone[d] this self-consciousness to a sharp comparative and competitive edge."²⁵⁹ Just about every issue of the *National Law Journal* or the *American Lawyer* seems to include at least one article about how much money some lawyer somewhere is making.²⁶⁰ A couple times a year, these journals publish extensive surveys of lawyers' incomes—focusing in particular on the incomes of associates and partners in big firms.²⁶¹ These surveys are pored over by lawyers with the intensity that small children bring to poring over the statistics of their favorite baseball players. Want to know what a first year associate at Irell & Manella in Los Angeles makes? \$88,000.²⁶² How about a sixth year associate at Dewey Ballantine in New York? \$166,500, plus a \$26,500 bonus.²⁶³ Profits per partner at McDermott, Will & Emery in Chicago? \$700,000.²⁶⁴ Reading about the incomes of your rivals will bring on either intense envy or smug Schadenfreude.

Big firm culture also reflects the many ways in which lawyers who are winning the game broadcast their success. A first year male associate will buy his suits off the rack at a department store; a couple years later, he will be at Brooks Brothers; a few years after that, a

258. GALANTER & PALAY, *supra* note 1, at 69 (quoting PAUL HOFFMAN, *LIONS IN THE STREET: THE INSIDE STORY OF THE GREAT WALL STREET FIRMS* 71 (1973)).

259. KELLY, *supra* note 7, at 170.

260. See, e.g., Edward A. Adams, *Have Go-Go '80s Returned?*, NAT'L L.J., Sept. 1, 1997, at A4, A4; Harvey Berkman, *Starr Keeps Going and Going*, NAT'L L.J., Sept. 29, 1997, at A4, A4; Lisa Brennan, *N.Y. Firms Grab Jersey Lawyers*, NAT'L L.J., June 22, 1998, at A6, A6; Cynthia Cotts, *How Firms Keep Their Associates on the Job*, NAT'L L.J., June 8, 1998, at A1, A1; Eric Herman, *The Stealth Firm*, AM. LAW., Sept. 1997, at 59, 59; Morris, *supra* note 198, at 13; Amy Schroeder, *For Top GCs, 1996 Was a Lucrative Year*, AM. LAW., July/Aug. 1997, at 36, 36; Amy Singer, *The Next Face of Cravath?*, AM. LAW., May 1997, at 45, 45; Darryl Van Duch, *Merrill Deal Paves Way for New ADR*, NAT'L L.J., May 18, 1998, at B1, B1; Bob Van Voris, *Secondhand Smoke Deal Draws Fire*, NAT'L L.J., Oct. 27, 1997, at A7, A7; Nicholas Varchaver, *What Have You Done for Me Laterally?*, AM. LAW., June 1996, at 74, 74.

261. See, e.g., Fisk, *supra* note 177, at B11; *The Am Law 100*, AM. LAW., July/Aug. 1998 (insert); *The NLJ 250: 20th Annual Survey*, NAT'L L.J., Nov. 10, 1997, at C5.

262. See Fisk, *supra* note 177, at B11.

263. See *id.*

264. See *id.* at B10.

salesperson will come to his office, with tape measures and fabric swatches in hand. Similar ostentatious progress will be demonstrated with regard to everything from watches to cell phones to running shoes to child care arrangements to private social clubs. When lawyers speak with envy or admiration about other lawyers, they do not mention a lawyer's devotion to family or public service, or a lawyer's innate sense of fairness, or even a lawyer's skill at trying cases or closing deals, nearly as much as they mention a lawyer's billable hours, or stable of clients, or annual income.

It is very difficult for a young lawyer immersed in this culture day after day to maintain the values she had as a law student.²⁶⁵ Slowly, almost imperceptibly, young lawyers change. They begin to admire things they did not admire before, be ashamed of things they were not ashamed of before, find it impossible to live without things they lived without before. Somewhere, somehow, a lawyer changes from a person who gets intense pleasure from being able to buy her first car stereo to a person enraged over a \$400,000 bonus.

C. *Becoming Unethical*

As the values of an attorney change, so, too, does her ability to practice law ethically. The process that I have described will obviously push a lawyer away from practicing law ethically in the broadest sense—that is, in the sense of leading a balanced life and meeting non-work-related responsibilities. When work becomes all-consuming, it consumes all. To succeed in today's big firm, a lawyer must live without a single "compelling, time consuming, and deeply valued interest outside the practice of law."²⁶⁶ If you are working all the time, you will not—you cannot—meet any other responsibilities that require any appreciable commitment of time or energy.²⁶⁷ This much is

265. Several researchers involved in the *Ethics: Beyond the Rules* project, see *supra* note 237, noted the "lack of connection" between the daily work of big firm litigators and "the lawyer's moral sense." Frenkel et al., *supra* note 120, at 706. In other words, the researchers found that the ordinary "moral sense" that lawyers use to guide their personal lives has little impact on their professional lives, and—consistent with my observation that big firm culture works on young lawyers over time to replace their values with the system's—the researchers also found that "moral sensitivity beyond [complying with] the rules . . . is more apparent in associates than partners." *Id.*

266. Nielsen, *supra* note 64, at 371.

267. You should also bear in mind that the pressure to work constantly is strongest on associates, who are generally in their late twenties and early thirties, and on junior partners, who are generally in their middle to late thirties. This is, of course, precisely the time when many people seek to marry and begin a family. It is, in a sense, the "formative years" for the rest of a lawyer's life. It is a particularly bad time to be ignoring personal life.

obvious. However, absorbing the values of big firm culture will also push a lawyer away from practicing law ethically in the narrower sense of being honest and fair and compassionate.²⁶⁸ In the highly competitive, money-obsessed world of big firm practice, “[m]ost of the new incentives for lawyers, such as attracting and retaining clients, push toward stretching ethical concerns to the limit.”²⁶⁹

Unethical lawyers do not start out being unethical; they start out just like you—as perfectly decent young men or women who have every intention of practicing law ethically. They do not become unethical overnight; they become unethical just as you will (if you become unethical)—a little bit at a time. And they do not become un-

I should note one other fact: This time period is pretty much the only time that female attorneys can bear children. Although male attorneys can raise children as well as female attorneys, “[c]hildrearing continues to be viewed primarily as ‘mother’s work’ even if ‘mother’ happens to be a lawyer.” Rebecca Korzec, *Working on the “Mommy-Track”: Motherhood and Women Lawyers*, 8 HASTINGS WOMEN’S L.J. 117, 117 (1997); see also Robert L. Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 CASE W. RES. L. REV. 345, 380 (1994) (“Numerous studies report that female attorneys who are married and have children bear primary responsibility for childcare.”). As a result, big firm life forces upon female lawyers a choice that it does not force upon men: They can keep chugging along on the partnership track or they can raise children, but they can’t do both. See University of Michigan Law School, *supra* note 73, at 13 (reporting that, five years after graduation, nearly half of the female graduates of the Michigan Law School who had children were employed part-time or not employed at all, whereas “not one man with children . . . reported working part-time or not working at a job in order to take care of children”). In this and many other ways, the terrible toll that big firm life exacts from all young attorneys is magnified many times over for female attorneys. See generally EPSTEIN, *supra* note 172; MONA HARRINGTON, *WOMEN LAWYERS: REWRITING THE RULES* (1994); Leslie Bender, *Sex Discrimination or Gender Inequality?*, 57 FORDHAM L. REV. 941 (1989); Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291 (1995); S. Elizabeth Foster, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA L. REV. 1631 (1995); Kaye, *supra* note 136; Note, *supra* note 127.

268. To the extent that big firm culture contributes to the poor physical and emotional health of lawyers, it also makes it more likely that lawyers will practice unethically in the most narrow sense of all—failing to comply with the formal rules of professional responsibility. The substantial majority of all disciplinary and malpractice actions against attorneys are associated with alcoholism, drug abuse, or mental illness. See Michael A. Bloom & Carol Lynn Wallinger, *Lawyers and Alcoholism: Is It Time for a New Approach?*, 61 TEMP. L. REV. 1409, 1413 (1988) (estimating that 50-70% of disciplinary cases against lawyers relate to alcoholism); John Mixon & Robert P. Schuwerk, *The Personal Dimension of Professional Responsibility*, 58 LAW & CONTEMP. PROBS. 87, 96 (1995) (estimating that 60-80% of all disciplinary and malpractice actions against lawyers nationwide are associated with substance abuse or mental illness); Patricia Sue Heil, Comment, *Tending the Bar in Texas: Alcoholism as a Mitigating Factor in Attorney Discipline*, 24 ST. MARY’S L.J. 1263, 1265 & n.6 (1993) (reporting that, according to various state bar studies, a majority of attorney discipline cases arise from alcoholism or chemical dependency).

269. Gordon, *supra* note 125, at 735; see also Suchman, *supra* note 172, at 860 (reporting that, in the opinion of big firm litigators, many features of the incentive system within big firms—such as “billing pressures[,] . . . competitive compensation, emphasis on rainmaking, and the favorable treatment of aggressiveness in evaluation”—are “designed to reward behavior that [is] at best unrelated to ethicality, and at worst destructive of it”).

ethical by shredding incriminating documents or bribing jurors; they become unethical just as you are likely to—by cutting a corner here, by stretching the truth a bit there.

Let me tell you how you will start acting unethically: It will start with your time sheets. One day, not too long after you start practicing law, you will sit down at the end of a long, tiring day, and you just won't have much to show for your efforts in terms of billable hours. It will be near the end of the month. You will know that all of the partners will be looking at your monthly time report in a few days, so what you'll do is pad your time sheet just a bit. Maybe you will bill a client for ninety minutes for a task that really took you only sixty minutes to perform. However, you will promise yourself that you will repay the client at the first opportunity by doing thirty minutes of work for the client for "free." In this way, you will be "borrowing," not "stealing."

And then what will happen is that it will become easier and easier to take these little loans against future work. And then, after a while, you will stop paying back these little loans. You will convince yourself that, although you billed for ninety minutes and spent only sixty minutes on the project, you did such good work that your client should pay a bit more for it. After all, your billing rate is awfully low, and your client is awfully rich.

And then you will pad more and more—every two minute telephone conversation will go down on the sheet as ten minutes, every three hour research project will go down with an extra quarter hour or so. You will continue to rationalize your dishonesty to yourself in various ways until one day you stop doing even that. And, before long—it won't take you much more than three or four years—you will be stealing from your clients almost every day, and you won't even notice it.

You know what? You will also likely become a liar. A deadline will come up one day, and, for reasons that are entirely your fault, you will not be able to meet it. So you will call your senior partner or your client and make up a white lie for why you missed the deadline. And then you will get busy and a partner will ask whether you proofread a lengthy prospectus and you will say yes, even though you didn't. And then you will be drafting a brief and you will quote language from a Supreme Court opinion even though you will know that, when read in context, the language does not remotely suggest what you are implying it suggests. And then, in preparing a client for a deposition, you will help the client to formulate an answer to a difficult question that

will likely be asked—an answer that will be “legally accurate” but that will mislead your opponent. And then you will be reading through a big box of your client’s documents—a box that has not been opened in twenty years—and you will find a document that would hurt your client’s case, but that no one except you knows exists, and you will simply “forget” to produce it in response to your opponent’s discovery requests.

Do you see what will happen? After a couple years of this, you won’t even notice that you are lying and cheating and stealing every day that you practice law. None of these things will seem like a big deal in itself—an extra fifteen minutes added to a time sheet here, a little white lie to cover a missed deadline there. But, after a while, your entire frame of reference will change. You will still be making dozens of quick, instinctive decisions every day, but those decisions, instead of reflecting the notions of right and wrong by which you conduct your personal life, will instead reflect the set of values by which you will conduct your professional life—a set of values that embodies not what is right or wrong, but what is profitable, and what you can get away with. The system will have succeeded in replacing your values with the system’s values, and the system will be profiting as a result.

Does this happen to every big firm lawyer? Of course not. It’s all a matter of degree. The culture in some big firms is better than in others. Every year I steer students who are intent on big firm practice toward some firms and away from others, precisely because some large firms are better places to work than others. I could tell you many stories about big firms going out of their way to show compassion to a partner with a drinking problem or a loyal client who could not pay its bills or a rival attorney who is over the hill and on the verge of embarrassing himself. The big firm at which I practiced was as decent and humane as a big firm can be. Similarly, some big firm lawyers have better values than others. I owe a lot to a partner who sacrificed hundreds of hours of his time and tens of thousands of dollars of income to act as a mentor to me and to many other young lawyers like me.

At the same time, you should not underestimate the likelihood that you will practice law unethically. It is true, for example, that not every lawyer knowingly and blatantly lies on his time sheets. But there is a reason why padding time sheets has been called “a silent epidemic.”²⁷⁰ Lots of lawyers pad time sheets in ways that are less

270. Bogus, *supra* note 68, at 922.

obviously dishonest and more socially accepted.²⁷¹ For example, a lawyer who needs to fly from Los Angeles to New York for one client may do the work of another client during the five hour flight, and bill both clients five hours—the first for five hours of travel, the second for five hours of work. Another common practice is for lawyers not to fill out their time sheets until the end of the day—or end of the week—or even end of the month. When a lawyer sits down on July 31 and tries to remember how much time she devoted to a client's work on July 9,²⁷² it is only natural that she will underestimate the amount of time wasted on coffee breaks and personal phone calls and overestimate the amount of time devoted to the client's work.

Another widely accepted way of padding time sheets is to bill in minimum increments of, say, .25 hours or .30 hours. This permits the enterprising lawyer to engage in four two-minute phone calls and bill one hour. I cannot tell you how many times I have seen a lawyer bill a client fifteen minutes for the ninety seconds it took him to leave a voice mail message or to read a one paragraph deposition notice. I recall one occasion on which I sent a letter to an attorney who was representing my client in connection with a lawsuit filed in a distant state. I included in the same envelope copies of two other letters about the lawsuit that I had mailed to other people. I later learned that this lawyer had billed my client .90 hours for reading three letters that I had billed my client .50 hours for writing. How? He billed in .30 minimums and billed separately for each of the three letters he read, while I billed only for the time that I actually devoted to writing the letters. Many lawyers would admire this as clever and creative (if perhaps a bit aggressive) billing.

Likewise, not every big firm lawyer is a workaholic. This, too, is a matter of degree. I know big firm lawyers who make a good living and still eat dinner with their families most nights and spend most weekends away from the office. Unfortunately, though, these lawyers are almost invariably regarded by their partners as "deadwood" or as "semi-retired." If you think I am exaggerating, I challenge you to find *one* big firm partner who lives a balanced life—that is, who does not

271. See Rhode, *supra* note 137, at 679 (noting that "some qualitative research suggests that lawyers' 'creative billing' practices are often fraudulent or on the fringes of fraud: inflating hours, charging two clients for the same work or the same travel time, failing to describe the basis of bills, and so forth"). For a "funny-because-it's-so-true" account of the "creative" ways in which lawyers inflate their bills, see THE RODENT, *supra* note 177, at 89-115. For less funny, but equally true accounts, see generally Symposium, *Unethical Billing Practices*, 50 RUTGERS LAW REV. 2151 (1998).

272. See Lisa G. Lerman, *Lying to Clients*, 138 U. PA. L. REV. 659, 706-07, 710, 716-17 (1990).

work regularly on nights or weekends (at home or at the office)—and yet is well respected and considered successful by his peers. And I challenge you to find *one* big firm lawyer who lived anything like a balanced life as an associate and still made partner. I do not know of such a lawyer. Not one. In the last couple years, I have given speeches to various groups of lawyers and judges, and I have challenged my audiences to identify one such big firm lawyer for me. I have yet to be given a name. At best, such partners are rare. They may be nonexistent.

As I say, neither big firms nor big firm lawyers are all alike. But what you need to understand is that they are *becoming* more alike. One of the most consistent findings of the social scientists involved in a recent ABA study of the ethics of big firm litigators²⁷³ was that the cultures of individual firms are weakening, leaving a “void of guidance to junior lawyers.”²⁷⁴ This void, in turn, is being “filled by other powerful systemic or environmental influences,” especially influences from outside the firm.²⁷⁵ In other words, the distinctive cultures of individual big firms are influencing young lawyers less and less, while a generic big firm culture is influencing young lawyers more and more.²⁷⁶ That is why, no matter which big firm you join, there is a good chance that working at the firm will make you unhealthy, an even better chance that it will make you unhappy, and an almost 100% chance that it will make you unethical—at least if you accept that practicing law ethically includes practicing law in a manner that permits you to meet your responsibilities to someone besides your firm and clients.

IV. ON BEING A HAPPY, HEALTHY, AND ETHICAL LAWYER

I now want to give you some advice—advice about how you can be a happy, healthy, and ethical member of an unhappy, unhealthy, and unethical profession. I want to give you both “big picture” advice and “little picture” advice.

273. See *supra* note 237.

274. Frenkel et al., *supra* note 120, at 705; see also Gordon, *supra* note 125, at 717; Nelson, *supra* note 118, at 792; Sarat, *supra* note 123, at 824-25, 827-28; Suchman, *supra* note 172, at 857, 864.

275. Frenkel et al., *supra* note 120, at 705.

276. See *id.*; Douglas N. Frenkel, *Ethics: Beyond the Rules—Questions and Possible Responses*, 67 *FORDHAM L. REV.* 875, 880 (1998); Suchman, *supra* note 172, at 868.

A. "Big Picture" Advice

My "big picture" advice is simple: Don't get sucked into the game. Don't let money become the most important thing in your life. Don't fall into the trap of measuring your worth as an attorney—or as a human being—by how much money you make.

If you let your law firm or clients define success for you, they will define it in a way that is in their interest, not yours. It is important for them that your primary motivation be making money and that, no matter how much money you make, your primary motivation continue to be making money. If you end up as an unhappy or unethical attorney, money will most likely be at the root of your problem.

You cannot win the game. If you fall into the trap of measuring your worth by money, you will always feel inadequate. There will always be a firm paying more to its associates than yours. There will always be a firm with higher per-partner profits than yours. There will always be a lawyer at your firm making more money than you. No matter how hard you work, you will never be able to win the game. You will run faster and faster and faster, but there will always be a runner ahead of you, and the finish line will never quite come into view. That is why the game will make your clients and partners so rich and you so unhappy.

Most likely, when you were a child, your parents or grandparents told you that money does not buy happiness. They were right. Even scientists now say they were right.²⁷⁷ In part, they were right because much of what determines whether you will be happy is outside your control. You cannot control your genetic makeup—upon which happiness seems in part to depend (according to recent studies²⁷⁸)—nor can you control many of the events in life that, for better or worse, will affect your subjective well-being (for example, you cannot control whether you will be permanently injured in a car accident or whether your spouse will perish at a young age). But the main reason your parents or grandparents were right about money not

277. See generally, e.g., JONATHAN L. FREEDMAN, *HAPPY PEOPLE: WHAT HAPPINESS IS, WHO HAS IT, AND WHY* 133-51 (1978); DAVID G. MYERS, *THE PURSUIT OF HAPPINESS* (1992); David Lykken & Auke Tellegen, *Happiness is a Stochastic Phenomenon*, 7 *PSYCHOL. SCI.* 186 (1996); Myers & Diener, *supra* note 37; Rhode, *supra* note 136, at 310-11; Daniel Goleman, *Forget Money; Nothing Can Buy Happiness, Some Researchers Say*, *N.Y. TIMES*, July 16, 1996, at C1; Lane, *supra* note 167; Dan Seligman, *Why More Money Won't Buy You Happiness*, *MED. ECON.*, Sept. 8, 1997, at 207, 207.

278. See generally Lykken & Tellegen, *supra* note 277; Goleman, *supra* note 277; Lane, *supra* note 167, at 58-59; Seligman, *supra* note 277, at 214.

buying happiness is because—well, because money does not buy happiness.

Research has shown that, with the exception of those living in poverty, people are almost always wrong in thinking that more money will make them happier. “[O]nce people are able to afford life’s necessities, increasing levels of affluence matter surprisingly little.”²⁷⁹ When people experience a rise in income, they quickly adjust their desires and expectations accordingly—and conclude, once again, that more money will bring them more happiness.²⁸⁰ (Psychologists Philip Brickman and Donald Campbell aptly refer to this process as the “hedonic treadmill.”²⁸¹) Thus, when, as is true in law firms, more money almost always means more work, money not only fails to buy happiness, but it actually buys *unhappiness*.²⁸² As one study of lawyers found, “after a certain time commitment (for most people, working more than 225 hours per month), even substantial income cannot negate the reduced quality of life. Because of this . . . the net impact of income on career satisfaction is negative.”²⁸³ Note that the reference is to *working* 225 hours per month, and not to *billing* 225 hours per month.²⁸⁴

Law students and young lawyers—particularly those who have enjoyed academic success at the best schools—have to get their priorities straight. It saddens me that the objects of envy and admiration of many of my students today are not lawyers like Thurgood Marshall or Charles Hamilton Houston—lawyers who sacrificed much personal gain to do much public good—but rather the nameless, faceless attorneys who populate giant law firms, grinding out thousands upon thousands of billable hours, often toward no end other than getting rich and determining whether one huge corporation will have to write out a check to another huge corporation.

279. Myers & Diener, *supra* note 37, at 13.

280. See *id.*; Rhode, *supra* note 136, at 310-11; Lane, *supra* note 167, at 61; Seligman, *supra* note 277, at 207-08.

281. Philip Brickman & Donald T. Campbell, *Hedonic Relativism and Planning the Good Society*, in ADAPTATION-LEVEL THEORY: A SYMPOSIUM 287, 289 (M.H. Appley ed., 1971).

282. See TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101, at 2-3:

One of the most interesting and ironic findings of the Task Force was a reiteration of the theme that money does not buy happiness. Of the Task Force’s eight subcommittees, associates in large firms expressed the most dissatisfaction . . . Ironically, by contrast to the unhappiness of highly compensated large law firm associates, small firm and solo practitioners were among the most professionally fulfilled even though they often face serious financial struggles in the practice of law.

283. NORTH CAROLINA BAR ASS’N, *supra* note 23, at 11.

284. A lawyer working 225 hours per month is likely billing about 150 hours per month, or 1800 hours per year. See *supra* note 166 and accompanying text.

Law students and young lawyers have to stop seeing workaholism as “a badge of honor.”²⁸⁵ They have to stop talking with admiration about lawyers who bill 2500 hours per year. Attorneys whose lives are consumed with work—who devote endless hours to making themselves and their clients wealthy, at the expense of just about everything else in their lives—are not heroes. And that is true whether the lawyers are workaholic because they truly enjoy their work or because they crave wealth or because they are terribly insecure. At best, these attorneys are people with questionable priorities. At worst, they are immoral. There are certainly better lawyers after which to pattern your professional life.

Law students and young lawyers must consider the costs, as well as the benefits, of private practice—and particularly of private practice in a large firm. The benefits of big firm life—the high salaries, the plush offices, the conspicuous consumption—are paraded before young lawyers and are easy to understand. Any law student can divide \$90,000 by twelve, subtract 40% for federal and state taxes, and fantasize about how she will spend \$4,500 a month. By contrast, the costs of big firm life are not paraded before young lawyers and are not fully appreciated until a lawyer actually works at a large firm. But the costs are just as real as the benefits.

When you are at that barbeque at the senior partner’s house, instead of wistfully telling yourself, “This is the life,” ask the senior partner some questions. (I’m speaking figuratively here; you probably don’t want to actually ask these questions aloud.) Ask him how often he sees the gigantic house in which he lives. If he’s honest, you will find out that he hasn’t seen his home during daylight for almost four weeks, and that the only reason he came home at a decent hour tonight is to host the barbeque. Or ask him how often he’s actually sat on that antique settee in that expensively decorated living room. You will find out that the room is only used for entertaining guests. Or ask him about his beautiful wife. You will find out that she is the third Mrs. Partner and that the lawyers for the first two Mrs. Partners are driving him crazy. Or ask him about those beautiful children whose photographs are everywhere. You will find out that they live with their mothers, not with him; that he never sees one of them because she hates his guts; and that he sees the other two only on holidays—that is, when he is not working on the holidays, which isn’t often. And then ask him when is the last time he read a good

285. Nielsen, *supra* note 64, at 369.

book. Or watched television. Or took a walk. Or sat on his porch. Or cooked a meal. Or went fishing. Or did volunteer work. Or went to church. Or did anything that was not in some way related to work.

This is the best advice I can give you: Right now, while you are still in law school, make the commitment—not just in your head, but in your heart—that, although you are willing to work hard and you would like to make a comfortable living, you are not going to let money dominate your life to the exclusion of all else. And don't just structure your life around this negative; embrace a positive. *Believe* in something—*care* about something—so that when the culture of greed presses in on you from all sides, there will be something inside of you pushing back. Make the decision now that *you* will be the one who defines success for you—not your classmates, not big law firms, not clients of big law firms, not the *National Law Journal*. You will be a happier, healthier, and more ethical attorney as a result.²⁸⁶

B. "Little Picture" Advice

I have four pieces of "little picture" advice for you.

1. Avoid Working in Large Law Firms—or in Firms That Act Like Large Law Firms

Three years ago, I was a partner in a big firm. Most of my friends and acquaintances were lawyers in big firms, and most of them were unhappy. I had countless conversations with these friends in which we lamented our crushing workloads, the unrelenting pressure to bring in business, the lack of control over our lives, and the tedium of much of our work. When I gave up my partnership in order to teach, dozens of lawyer friends told me how much they envied me, and how much they, too, would like to escape big firm practice.

Then a curious thing happened. I arrived at Notre Dame and found that the substantial majority of my students wanted nothing so much as to join the very same big firms that my lawyer friends wanted so badly to leave. Before I had even taught my first class, students literally lined up outside my door to talk with me about getting big firm jobs. It called to mind the gridlock that often develops outside of open elevator doors: Inside the elevator were my lawyer

286. See Brickman & Campbell, *supra* note 281, at 300 ("[T]here may be no way to permanently increase the total of one's pleasure except by getting off the hedonic treadmill entirely. This is of course the historic teaching of the Stoic and Epicurean philosophers, Buddha, Jesus, Thoreau, and other men of wisdom from all ages.").

friends, trying to push their way out, while outside the elevator were my students, trying to push their way in.

You should think very long and very hard before you try to push your way into that elevator—or before you waste a moment of your life regretting that you will not be able to get into that elevator. I fully understand how much pressure law students experience to go to big firms in big cities. At many law schools—particularly the more prestigious schools—going to work at a big firm is considered “the thing to do.”²⁸⁷ Conventional wisdom at the best law schools is that “everyone comes in saying they’re interested in public interest and everyone leaves doing large firm corporate work.”²⁸⁸ It is big firms who come to campus to interview, big firms who invite students to fly out for splashy recruiting visits, big firms who get talked about in the student lounge, big firms who get written up in the *American Lawyer*.²⁸⁹ “The subliminal message of [law school] training is clear to most students: ‘Real’ lawyers work in large firms representing corporate and affluent clients.”²⁹⁰

I also understand how easy it is to accept an offer from a big firm. I well remember graduating from law school being burdened by heavy student loan debt and being sick of living in “genteel poverty.”²⁹¹ I recall how much I looked forward to making real money for the first time in my life—to buying furniture that was not constructed of particle board, to buying bestsellers before they came out in paperback, to buying clothing made of natural fibers. Moreover, like the majority of law school graduates, I had no family commitments, lots of energy, and absolutely no idea of what billing 2000 hours entailed.²⁹² It was hard *not* to go to a big firm.

Although I understand the pressures and temptations to join a big firm, I nevertheless encourage you to resist them. If you have

287. NALP FOUND. FOR RESEARCH & EDUC., *supra* note 127, at 21-22.

288. GRANFIELD, *supra* note 179, at 147; see also RICHARD D. KAHLBERG, BROKEN CONTRACT: A MEMOIR OF HARVARD LAW SCHOOL 118 (1992) (“Everyone was going to firms, even the most vocal radicals. And if everyone did it, it had to be right. Right?”).

289. See GRANFIELD, *supra* note 179, at 141-42, 143-67; KAHLBERG, *supra* note 288, at 93-118; NORTH CAROLINA BAR ASS’N, *supra* note 23, at 23; D’Alemberte, *supra* note 6, at 4, 7, 11, 13; Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 601-02 (1982); Frank J. Macchiarola & Joseph Scanlon, *Lawyers in the Public Service and the Role of Law Schools*, 19 FORDHAM URB. L.J. 695, 701-03 (1992); Schechter, *supra* note 175, at 385-86; James M. Wakefield, Note, *Attitudes, Ideals, and the Practice of Environmental Law*, 10 UCLA J. ENVTL. L. & POL’Y 169, 187-88 (1991); Note, *supra* note 229, at 2032-33, 2034-35.

290. Henry Rose, *Law Schools are Failing to Teach Students to Do Good*, CHI. TRIB., July 11, 1990, at 17.

291. Rhode, *supra* note 136, at 309.

292. See *id.*

already accepted an offer from a big firm, I encourage you not to go to another big firm when you change jobs—which is likely to be sooner rather than later.²⁹³ As you look for a job (or as you look for a second job), weigh carefully the benefits and costs of practicing law in a big firm. I have already discussed the costs at length. Allow me now to say a few words about the benefits. Everyone agrees that the main benefit of big firm practice is the money. But big firms always express the “hope[] that new associates [will] choose to join a [big] firm for reasons other than money.”²⁹⁴ What reasons, exactly? Among those that are routinely given are the following:

a. Training

Many students claim that they will receive better training at big firms than they will at medium or small firms, corporations, or government agencies.²⁹⁵ Big firms agree.²⁹⁶ Big firms explain that working for them gives young attorneys the opportunity to learn to do things right. An associate at a small firm or a government agency who is told to draft interrogatories for the first time will likely have to complete the assignment quickly and with minimal supervision; she will learn on the fly. At the big firm, by contrast, an associate can take her time, either because the firm’s well-heeled clients will not

293. A study by the National Association for Law Placement of over 10,000 associates who had been hired by over 150 law firms of all sizes between 1988 and 1996 reported that:

nearly 1 in 11 (9.2%) left their firms within a year of being hired. The attrition rate was nearly double that over each of the next two years, so that 43% of new associates had departed within three years About two-thirds of new associates departed within five years, and three-quarters did so within seven years.

NALP FOUND. FOR RESEARCH & EDUC., *supra* note 127, at 53. A study of large law firms in Chicago produced even more dramatic results: 18% of big firm associates were gone within a year, 30% within two years, and over 50% within four years. *See* NELSON, *supra* note 110, at 137. The Michigan Law School survey found that, by 1996, only 38% of the members of the class of 1991 remained in the first job they took after graduation (or after clerking, if they clerked). At the same time, 30% of the class had already held *three or more jobs* in the five years after graduating. *See* University of Michigan Law School, *supra* note 73, at 6. The legal profession as a whole is experiencing increasing lateral movement, *see* GALANTER & PALAY, *supra* note 1, at 54-55; KRONMAN, *supra* note 127, at 277-78; Holmes, *supra* note 127, at 23; Chris Klein, *Associate Job 1: Land Clients*, NAT’L L.J., Mar. 31, 1997, at A1, A25, and the turnover rate of associates—especially associates in big firms—is particularly high, *see* GALANTER & PALAY, *supra* note 1, at 54-55; NELSON, *supra* note 110, at 139; Holmes, *supra* note 127, at 23.

294. Hansen, *supra* note 177, at 25.

295. *See, e.g.*, GRANFIELD, *supra* note 179, at 160-61.

296. *See* Wilkins & Gulati, *supra* note 152, at 1642 (“[I]t is now common for many law firm interviewers to state expressly that young lawyers should join their firm ‘for the training’ even if they only intend to stay for a few years.”).

object to paying the extra cost, or because the well-heeled firm can afford to "write off" some of the associate's time.

There is something to this, but not much. Big firms do indeed get a lot of big cases in which tens or hundreds of millions of dollars are at stake, clients want to pull out all the stops, and associate training costs can easily be tucked away into huge legal bills. But these cases are the exceptions, and as the legal market gets increasingly competitive, these cases are getting increasingly exceptional.²⁹⁷

More importantly, the boast of big firms misses a couple of points. First, the breadth of training is as important as its depth. True, it is nice if associates can take the time to learn to draft interrogatories the right way. But it is also nice if associates can get to do something other than draft interrogatories. The life of an associate in a big firm litigation group is dominated by library research, writing briefs, drafting discovery requests, and responding to discovery requests. A typical junior associate will have little client contact, take few depositions, do little negotiating with opposing counsel, argue almost no motions or appeals, and try not a single case.²⁹⁸ The fact that big firms work on so many big cases in which so much is at stake—the very reason that associates can take the time to do things right—is also the reason associates do not get the chance to do things that matter. AT&T is not going to pay a law firm tens of millions of dollars to fend off a billion dollar antitrust suit, only to see a third year associate show up to take an important deposition or argue a critical summary judgment motion.

Second, the most valuable training that any young lawyer receives comes from observing and being observed by more experienced attorneys. Lawyers can learn only so much from books, in-house training sessions, or continuing legal education seminars. A lawyer learns how to nail down a slippery witness at a deposition or negotiate a deal with an unrealistic lawyer or calm a client who is upset about the size of a bill by watching more experienced lawyers do it, or by doing it and having more experienced lawyers give them feedback. This type of one-on-one mentoring is disappearing in big firms for a number of reasons, including the pressure to bill hours, the pressure to attract and retain clients, the pressure to minimize legal costs, the

297. See Gordon, *supra* note 125, at 726; Nelson, *supra* note 118, at 802.

298. See Messikomer, *supra* note 118, at 765.

increasing size of law firms, and the increasing mobility of lawyers.²⁹⁹ Today "training" by big firms too often means providing brown bag seminars or reimbursing tuition for continuing legal education; the kind of one-on-one training that is most effective is actually less available in big firms than in small firms and other settings. Indeed, one of the most common complaints of big firm associates is the *lack* of training and feedback they receive.³⁰⁰

b. Interesting or Challenging Work

Working in a big firm will unquestionably give you the opportunity to do some interesting work that is not available elsewhere. Large firms work on a lot of big deals and complex cases; AT&T is not going to hire a four lawyer firm in Boise to defend that billion dollar antitrust case. When I was in practice, I worked on the National Football League antitrust case and, very briefly, on the Exxon Valdez oil spill litigation. I litigated several fascinating First Amendment issues for newspapers and religious organizations. I appeared on national television and on radio call-in shows. Working at a big firm made all of this possible. That said, it is nevertheless easy to overstate the degree to which the work that is available at big firms is more interesting or challenging than the work that is available elsewhere.

First, most big firm lawyers—especially big firm associates—spend the bulk of their professional lives working on run-of-the-mill matters.³⁰¹ At the same time, many lawyers who do not work in big firms do fascinating work. When Michigan Law School surveyed members of its classes of 1990 and 1991 five years after graduation, it found that only 42% of those in private practice were "quite satisfied"

299. See Schiltz, *supra* note 5, at 739-46; see also Frenkel, *supra* note 276, at 878, 881; Messikomer, *supra* note 118, at 752; Nelson, *supra* note 118, at 784; Sarat, *supra* note 123, at 824-25; Suchman, *supra* note 172, at 864.

300. See NALP FOUND. FOR RESEARCH & EDUC., *supra* note 127, at 105-06; TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101, at 9-10; Holmes, *supra* note 127, at 16; Suchman, *supra* note 172, at 862; Ruth Hochberger, *Money Can't Buy Job Satisfaction*, NAT'L L.J., Sept. 1, 1986, at 13, 13.

301. David Wilkins and Mitu Gulati have described how large law firms make two kinds of work available to associates: "training work" (that is, work that is interesting, that develops the skills and judgment of young lawyers, and that helps young lawyers develop strong relationships with their senior colleagues) and "paperwork" (that is, work that is boring, that does little to develop the skills and judgment of young lawyers, and that provides little opportunity for contact with partners). See Wilkins & Gulati, *supra* note 152, at 1608-10. Wilkins and Gulati also describe how, in most big firms, the (abundant) paperwork is shared among the (many) associates who are not destined for partnership, while the (scarce) training work is channeled to the (few) associates who have a chance of making partner. See *id.* at 1610-13.

with the intellectual challenge of their work, as compared to 55% of corporate counsel, 68% of government attorneys, and 72% of public interest lawyers.³⁰² This should not be surprising. After all, who would you rather shadow for a day: a partner at Baker & McKenzie, an Assistant United States Attorney for the Northern District of Illinois, an in-house lawyer at Time-Warner, an attorney for the Sierra Club, or a successful solo practitioner specializing in employment law? The big firm partner would be fifth on my list.

Second, what is "interesting" or "challenging" is in the eye of the beholder. If your idea of challenging work is having the time to research a complicated issue of securities law, then you will find more interesting work in a big firm. But if your idea of challenging work is helping a client get divorced without losing her children or putting a diabolically clever criminal behind bars or helping a client realize her dream of opening a small business, then you are likely to be bored in a big firm. What many lawyers find most gratifying about practicing law is having ordinary people show up at their offices with problems, and then seeing the lives of those people improved in tangible ways as a direct result of their lawyer's efforts. Such lawyers will not find working in big firms to be either very interesting or very challenging.

Finally, whether you are likely to find big firm practice interesting will depend in part upon whether you are the type of person who likes to learn a little about a lot or a lot about a little. Big firm work is highly specialized and becoming more so,³⁰³ "specialization is the name of the game today."³⁰⁴ As in-house legal departments grow and take on more and more of the "routine" work of corporations, the work assigned to big firms is becoming "more task-specific and ad hoc."³⁰⁵ Michael Kelly explains "[t]his narrowing of focus, this confining of lawyers to the technicalities of law" as follows:

As in-house corporate law departments become more professional, that is, more capable and highly respected by management, they do something much more significant than take routine business away from the large corporate law firm. They capture much of the judgment business, the general advising, the work of helping the client to determine the client's real interests, and they

302. See University of Michigan Law School, *supra* note 73, at 9 tbl.3.

303. See KRONMAN, *supra* note 127, at 275-76; SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 191, at 40-46; YOUNG LAWYERS DIV., *supra* note 60, at 14; Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. L. REV. 531, 608 (1994) (noting that "[i]ndividual lawyers know more and more about less and less"); Rhode, *supra* note 137, at 680 (describing "an era of increasing specialization where lawyers know more and more about less and less").

304. HILDEBRANDT, *supra* note 104, at 5.

305. GALANTER & PALAY, *supra* note 1, at 50.

limit the role of outside counsel to highly specialized arenas . . . in which the in-house group has limited technical expertise.³⁰⁶

If you go to a big firm, you will have to find a niche, and the bigger your firm, the smaller your niche is likely to be. If you become an expert in chartering banks, you will charter banks, day in and day out. If you are assigned to defend that billion dollar antitrust action against AT&T, you might spend six or seven years of your life working on that one case—and doing so as the fifth lawyer on a five lawyer team. Some lawyers like to be able to specialize; others do not. It depends on the lawyer. I developed a national reputation for defending religious organizations in clergy sexual misconduct cases. I worked on hundreds of those cases, sending out pretty much the same interrogatories, getting back pretty much the same answers, reading pretty much the same medical records, asking pretty much the same questions at depositions, filing pretty much the same summary judgment motions. I found the work interesting, but the fiftieth case was not as interesting as the first, and the hundredth case was not as interesting as the fiftieth.

In short, some people would undoubtedly find the work done by big firms interesting and challenging. But many other people would find the work far less interesting and far less challenging than work available elsewhere. Big firm work is not inherently superior to other work.

c. Collegiality

Some students want to go to big firms because they want to be surrounded by extremely smart and able lawyers. They see big firms as the place where a young lawyer can be part of an outstanding team, helping and being helped by the best and brightest in the profession. One student told me that he wanted to work at a big firm instead of a small firm for the same reason that any baseball player would rather play for the New York Yankees than the Montreal Expos.

Again, there is something to this. At a big firm you will be surrounded by attorneys who got good grades at good schools. Most of them will even be good lawyers. And it is indeed nice to walk down

306. KELLY, *supra* note 7, at 175. According to Kelly, this "is part of the reason that in-house counsel jobs have become so much more attractive [as compared to large firm jobs]: because they offer the pleasures of collaboration with a client, rather than episodic fire fighting or technical servicing." *Id.* at 177.

the hall and talk to the leading tax lawyer in town or to walk farther down the hall and give an assignment to a young associate fresh off a Second Circuit clerkship. I am as critical of big firms as anyone, but I don't think it can be denied that, *on average*, big firm lawyers are more talented and do better work than lawyers in other practice settings. There are, of course, tens of thousands of exceptions—lawyers who do not practice in big firms who are superb, or lawyers who do practice in big firms who are incompetent. But if I had to choose between two law firms to represent me in an important matter, and I knew nothing about the two law firms except that one had 250 lawyers and the other had five, I would hire the big firm in a second. So would most other lawyers.

Again, though, there is another side to this story, one that substantially undercuts this advantage. For one thing, as I just said, outstanding lawyers work in every part of the legal profession. No matter what you do—no matter the setting in which you work—you will meet terrific attorneys. They will help you, and you will help them, and they will refer work to you, and you will refer work to them. Even if you become a solo practitioner, you will, over time, form your own “big firm” of friends and colleagues in the legal profession.

In addition, being part of a law firm with outstanding lawyers does not mean much if those lawyers don't know you or are indifferent to you. Many big firm partners don't even know their partners,³⁰⁷ much less the dozens of “here today, gone tomorrow” associates. It is even worse if your colleagues are affirmatively seeking to undercut you. Partners at large firms responding to a recent survey reported that just over 58% of their partners were “supportive,” while roughly 33% were “competitive” and 10% “undermining.”³⁰⁸ The *National Law Journal*, which conducted the survey, reported that the pressure to attract business was “caus[ing] partners to root for their comrades to stumble.”³⁰⁹ Things aren't much better at the associate level. “The practice of ‘leveraging’ associates creates competition, stress and a loss of institutional loyalty and sense of belonging. Colleagues are viewed as competitors for partnership.”³¹⁰ The notion that big firms have an advantage when it comes to “collegiality” is an illusion.

307. See Suchman, *supra* note 172, at 868 (reporting that “a recurrent theme” among big firm litigators was reflected in the statement of a big firm partner that he knew “very little about my partners, except what I hear from other firms”).

308. Klein, *supra* note 112, at A24.

309. *Id.* at A25.

310. NORTH CAROLINA BAR ASS'N, *supra* note 23, at 19.

Indeed, one researcher taking part in the ABA's recent study of big firm litigators³¹¹ remarked that "[a]ssociates, in particular, conveyed a profound sense of isolation."³¹²

d. Keeping Doors Open

Sometimes students, when resisting entreaties to consider alternatives to big firms, say that they are not sure what they want to do, but figure that if they go to a big firm, they will be keeping their doors open, whereas if they go elsewhere, big firms and other elite employers will lose interest in them. I do not know whether this reasoning is sound, but I suspect that it is not.

Without question, lawyers leaving big firms generally have more options available to them—including the possibility of going to other big firms—than lawyers leaving small firms or other employers. But remember that lawyers leaving big firms generally had more options available to them in the first place. Lawyers hired by big firms tend to have better paper credentials than lawyers hired by small firms, so of course they are going to be more mobile when they look for a second job. That doesn't mean that the lawyers are more mobile *because* they worked in a big firm.

Suppose that two editors of the *Stanford Law Review* graduate the same year and then clerk on the Ninth Circuit. Suppose that, after clerking, one of them joins a big firm in San Francisco, while the other joins a small firm in San José. Suppose further that, three years later, both lawyers decide to look for another job. It is unlikely that the small firm lawyer in San José is going to have much more difficulty finding a job than the big firm lawyer in San Francisco. In fact, depending upon what the lawyers did during their three years in practice, the San José lawyer might actually have an advantage over the San Francisco lawyer.

This raises an important point: Although those leaving big firms always seem to get new jobs, they may have less mobility than is widely assumed. My firm in Minneapolis got hundreds of resumés from attorneys who had spent a few years in big firms in big cities. We rarely interviewed them and almost never hired them. These people generally had not learned anything that would help our firm much. They had often spent several years in the library or reviewing documents or working on one gigantic lawsuit. At the same time,

311. See *supra* note 237.

312. Suchman, *supra* note 172, at 863.

these people generally brought a lot of baggage. They were accustomed to making more money than we could pay. They were accustomed to approaching work in a way that most of our clients would not accept. And they were accustomed to a culture that was inimical to ours. On balance, we almost always preferred hiring lawyers out of law school to hiring associates laterally from other big firms.

When it comes right down to it, then, there is one and only one clear advantage to working at a big firm: money. This was driven home to me recently when I read the final report of the Boston Bar Association's Task Force on Professional Fulfillment.³¹³ The Task Force was appointed in response to the "growing evidence that a significant cross-section of lawyers are dissatisfied with the quality of their professional lives."³¹⁴ The Task Force was asked "to identify the root causes of dissatisfaction in [the legal] profession and to propose ways in which lawyers can reduce or mitigate challenges to their professional fulfillment."³¹⁵ The Task Force formed several subcommittees, each of which was charged with studying one discrete part of the profession. Each subcommittee made extensive use of focus groups and individual interviews. The reports of the subcommittees are fascinating, although perhaps in ways not intended by the subcommittees.

For example, the Large Law Firm Partners Subcommittee identified three of the most "fulfilling aspects of the profession for partners [in large law firms]" as "the intellectual stimulation and challenging nature of the work, the opportunities for community involvement and the far greater economic rewards in comparison to the vast majority of society."³¹⁶ As I just explained, the first of these is not an advantage of big firm practice; although big firm partners undoubtedly do interesting and challenging work, there is no reason to believe that the work they do is, on balance, more interesting and challenging than the work done by lawyers in other settings. The second of these is ridiculous; if there is one characteristic that defines the lives of big firm partners, it is having to work so many hours that they cannot get involved in the community or anything else outside of work (unless writing the occasional check or attending the occasional benefit is considered "involvement"). Only the third of these has merit; in

313. See TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101.

314. *Id.* at iii.

315. *Id.*

316. *Id.* at 5.

other words, the only benefit of big firm practice that big firm partners themselves could plausibly identify was money.

Even more interesting was what the big firm *partners* identified as the benefits that big firm *associates* get from big firm practice. The partners first warned that no one should come to a large law firm expecting to make partner,³¹⁷ as making partners of most associates would destroy the leverage that makes big firm partners wealthy.³¹⁸ However, according to the big firm partners: "Large law firm practice . . . can provide new associates with (1) the opportunity to achieve their full potential as lawyers through training and development while associates; (2) candid assessments of their prospects for partnership; and (3) assistance in finding satisfying alternative career paths if partnership is not available."³¹⁹

This is almost laughable. The "training and development" promised by big firms is, as I have explained, largely illusory, which means that the only advantages of big firm practice that big firm partners themselves could plausibly identify were "candid" assessments of whether you are one of the roughly 10% of associates who will make partner,³²⁰ and help in finding a new job if you are not. What's worse, one of these two benefits is as illusory as training and development: The number of big firm associates who receive truly candid assessments of their progress is about as small as the number of big firm associates who live balanced lives.³²¹

But don't take my word for it. The Large Law Firm *Associates* Subcommittee of the same Task Force identified as two major complaints of big firm associates the fact that firms do not provide associates with an "honest assessment of one's chances for partnership" and that "firms do not care about associates' professional development."³²² In other words, the things that the associates complained about *not* receiving from big firms were precisely the things that the partners said associates *get* from big firms. (In this and many other ways, big firm associates view big firm practice much differently than big firm partners do.³²³) At the end of the day, about

317. *See id.* at 6.

318. *See* Holmes, *supra* note 127, at 15.

319. TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101, at 6.

320. *See* Wilkins & Gulati, *supra* note 152, at 1603.

321. *See id.* at 1592 ("[A]ssociate evaluation at [large] firms tends to be both infrequent and, when done, cursory."); *id.* at 1666 ("[M]ost [young] lawyers have relatively little information about their partnership chances.")

322. TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101, at 8-9.

323. Every one of the researchers involved in the ABA's *Ethics: Beyond the Rules* project remarked on "the widely divergent perceptions of senior and junior lawyers about the climate in

the only thing that the big firm partners and big firm associates could agree upon is that big firms pay a lot of money.

And that is my point: When it comes right down to it, there is one and only one reason to go to a big firm: money.³²⁴ “[T]he old law firm—one characterized by collegiality, intellectual challenge and institutional clients—is dead and gone.”³²⁵ What’s left? “Money, Money, Money.”³²⁶ Mark Byers, the Director of Harvard Law School’s Office of Student Life Counseling, put it well: Big firms “‘traditionally held out the ideas of independence, intellectual satisfaction and an affluent lifestyle Now not much is left but the affluence.’”³²⁷ “Thus, if seeking wealth is . . . the sole driving force in [your] life, and working 60 to 70 hours a week is . . . [your] perception of the good life,”³²⁸ then by all means go to work for a big firm. But do not go to work for a big firm because of the “benefits,” such as the training, challenging work, collegiality, or increased mobility. Those benefits do not exist.

Also, do not go to a big firm for some of the other reasons given by students. For example, students often say that they must go to a big firm because their student loan debt leaves them no choice.³²⁹ This may be true for some. I have had students with four or five children, an unemployed spouse, and \$60,000 or more in debts. For these students, big firm salaries may indeed be necessary. But the number

their firms and the prescription for addressing problems.” Frenkel et al., *supra* note 120, at 705; see also Messikomer, *supra* note 118, at 747-48; Nelson, *supra* note 118, at 794; Sarat, *supra* note 123, at 826; Suchman, *supra* note 172, at 844-45.

324. The Michigan Law School survey reported the following:

For those working in firms, and particularly those in large firms, satisfaction with income has not declined over time. It has in fact remained high while overall satisfaction has declined. (Money, once again, does not buy happiness.) On the other hand, there has over this period been a precipitous decline among the five-year graduates in firms in their satisfaction with the intellectual challenge of their work, with the balance of their family and professional lives, and with their perception of the value of their work to society. There has also been a precipitous decline in the proportion who expect to be working at the same firm in fi[v]e years.

University of Michigan Law School, *supra* note 73, at 16.

325. Klein, *supra* note 112, at A24.

326. *Id.*

327. *Id.*

328. Roan, *supra* note 152, at 30.

329. See, e.g., GRANFIELD, *supra* note 179, at 151-53; David L. Chambers, *The Burdens of Educational Loans: The Impacts of Debt on Job Choice and Standards of Living for Students at Nine American Law Schools*, 42 J. LEGAL EDUC. 187, 193 (1992); Robert Granfield, *Constructing Professional Boundaries in Law School: Reactions of Students and Implications for Teachers*, 4 S. CAL. REV. L. & WOMEN’S STUD. 53, 74 (1994); Lewis A. Kornhauser & Richard L. Rovesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829, 832 (1995); Giovanni Anzalone, Note, *AIDS and Mandatory Pro Bono: A Step Toward the Equal Administration of Justice*, 8 GEO. J. LEGAL ETHICS 691, 718 (1995).

of students whose economic circumstances compel them to take big firm jobs is still substantially smaller than the number of students who *claim* that their economic circumstances compel them to take big firm jobs.³³⁰

Roughly one in three law students graduates with no student loan debt.³³¹ Of the remaining two-thirds, the average loan debt upon graduation is \$40,000.³³² So let us take a typical student who fears starvation if he does not get a big firm job—say, an unmarried student who graduates with \$50,000 in student loan debt. If we assume that this student is being charged 8% interest (compounded annually) and that he must repay his loans within fifteen years (putting aside the fact that he can probably extend payment on his loans for up to thirty years³³³), that student must make about \$5,840 in loan payments each year, or about \$487 per month.³³⁴ At present, there are thousands of entry-level positions with corporations, as well as with federal, state, and local governments, that pay \$40,000 to \$60,000 per year.³³⁵ A single lawyer making \$50,000 per year would take home (after taxes) roughly \$36,000—or about \$3,000 per month.³³⁶ After making his loan payment of \$487, the lawyer would be left with about \$2,500 on which to live for a month. Even if this lawyer goes fifteen years without a raise and never refinances his loan, the amount that he would be able to spend each month after making his loan payment would still almost equal the median gross income for American men and substantially exceed the median gross income for American women.³³⁷ A lawyer who is *spending* more money than most Americans are *earning* will not have to live in poverty.

I have already alluded to a second justification given by students for going to big firms. Many students insist that they really

330. See GRANFIELD, *supra* note 179, at 152-53.

331. See Cynthia Cotts, *Largest Provider of Loans to Law Students Pushes New Frugality*, NAT'L L.J., Jan. 12, 1998, at A14, A14.

332. See *id.*

333. See *id.*

334. See JACK C. ESTES, HANDBOOK OF INTEREST AND ANNUITY TABLES 450 tbl.6 (1976).

335. See Fisk, *supra* note 177, at B8, B13-B15.

336. Using 1998 rates, a single lawyer with no dependents grossing \$50,000 per year would have \$43,050 in taxable income (after taking the personal exemption (\$2,700) and the standard deduction (\$4,250)) and would be required to pay \$8,758.50 in federal income taxes and \$3,825 in Social Security taxes. See Rev. Proc. 97-57, §§ 3.01 tbl.3, 3.04(1), 3.08(1), 1997-52 I.R.B. 20, 21-23; 1998 U.S. Master Tax Guide (CCH) ¶ 49 (1997). State and local income tax rates and income tax thresholds vary widely from state to state, see RESEARCH INSTITUTE OF AMERICA, ALL STATES TAX GUIDE 114-20 (1998), but a state and local income tax bill of about \$1,800 would be typical, leaving the lawyer with almost \$36,000 in disposal income.

337. See *supra* note 218 and accompanying text.

want to practice law in Seattle or Phoenix or Miami—or really want to be a prosecutor or public interest lawyer—but first are going to a big New York or Washington firm to get training or to make enough money to pay off some loans. Then, they say, after three or four years of big firm practice, they will move to the city in which they really want to practice and take the job that they really want to take.³³⁸

This is self-delusion. First, as I have explained,³³⁹ the vaunted training of big firms does not exist. Second, it is not nearly as easy to walk away from a big firm as these students suppose. Inertia is a powerful force, and lawyers quickly get accustomed to big firm salaries. Young lawyers in big firms are more likely to be pushed out than to walk out. And third, when it is time for big firm associates to leave, it is not nearly as easy to find satisfactory work as students seem to think. True, big firm associates almost always find a new job somewhere, but I doubt that my firm was the only employer that perceived former big firm associates as offering little helpful experience and much unhelpful baggage.

One final thing that students going to big firms sometimes say is that, although they are going to a big firm, they firmly intend to resist big firm culture. In fact, they intend to work to change their big firms from within, and to live balanced lives, no matter what their firms say. All of this is well and good, and if you end up at a large law firm someday, you should indeed advocate reform. But it is a lot harder to resist big firm culture than students think. My own life provides a good illustration.

I could have had my pick of big city, big firm jobs in 1987, as I was completing a Supreme Court clerkship. In fact, many big firms were supplementing their usual astronomical salaries with bonuses for Supreme Court clerks. I decided to turn down the big money and return home to Minnesota, where I joined a large firm with a reputation for treating people well. Within a couple of years, I was married, and our first child was on the way.

I had every intention of leading a balanced life. And, by New York or Washington standards, I suppose I did. By anyone else's standards, I did not. I worked three or four nights and one or two weekend days every week. When I was preparing for a trial or arbi-

338. See Wilkins & Gulati, *supra* note 152, at 1606 ("It is impossible to spend time talking to law students about their career goals without coming to the conclusion that many of the young women and men who join large law firms have no intention of staying long enough to become partners.").

339. See *supra* notes 295-300 and accompanying text.

tration or appellate argument, I worked almost around the clock. I put hundreds of hours into business development, and, within three years or so, had created a self-sustaining practice. I traveled constantly. What I remember about the times my children first talked or walked or went to the potty was the hotel room in which I was sitting when my wife told me about the event over the phone. I was in Seattle when my grandmother died. I was in Pittsburgh when the worst snowstorm of the century trapped my family in our house for two days. I was in Williamsburg when my wife learned that our third child, with whom she was four months pregnant, had Down Syndrome. I failed miserably in my resolve to lead a balanced life, and neither my family nor I will ever be able to get back what we lost as a result.

You may do better than I did, but don't count on it. No matter how pure your intentions—no matter how firm your resolve—when you go to work at a big firm, the culture will seep in. I grew up in a lower middle class neighborhood. I literally never met anyone who could be characterized as wealthy. I almost never talked about money or thought about money. That all changed when I started practicing law, despite my best intentions. Slowly, imperceptibly, the things that I cared about and the way that I thought about others and the way that I thought about myself changed. I got sucked into playing the game, and even today, three years after leaving the big firm, I still find myself playing the game at times. If you go to a big firm intending to stay for only a couple years, the *job* you choose may be temporary, but the way it *affects* you may not.

2. Seek Alternatives to Private Practice—and Especially to Big Firm Practice

As you look for your first job, do not restrict yourself to private practice. There are tens of thousands of jobs for attorneys in the government, in corporations, and in the not-for-profit sector. A lot of these jobs provide fascinating work, minimal stress, predictable hours, and decent salaries—albeit not the huge salaries paid by big firms. Most importantly, many of these jobs permit you to have a life outside of work. “Time for family and self is a real problem for lawyers in private practice. Far fewer lawyers in corporate counsel and government settings have insufficient time.”³⁴⁰

340. YOUNG LAWYERS DIV., *supra* note 60, at 17; *see also* ELWORK, *supra* note 16, at 20.

Consider the results of the Michigan Law School survey. Members of the classes of 1990 and 1991 were asked about their satisfaction with several aspects of their lives five years after graduation. The classes were divided into four groups—government attorneys, attorneys working for legal services organizations or other public interest employers, private practitioners, and attorneys in corporate legal departments—and the satisfaction levels of each group were reported as follows:³⁴¹

Proportion of group who are "quite satisfied" with:	Employment Sector			
	Government	Legal Services	Private Practice	Corporate Counsel
The balance of their family and professional lives	45%	50%	20%	35%
The intellectual challenge of their work	68%	72%	42%	55%
Their current income	21%	11%	55%	31%
The value of their work to society	66%	89%	14%	22%
Their careers overall	67%	78%	32%	48%

The results are telling: Attorneys working in private practice were dead last in career satisfaction, dead last in being satisfied with the intellectual challenge of their work, dead last in being satisfied with the balance of work and family, and dead last in regarding their work as valuable to society. Private practitioners came in first only in being satisfied with their incomes—but, even with respect to income, only slightly more than half of those in private practice were "quite satisfied." Over the past sixteen years, Michigan Law School has found that the career satisfaction of its graduates in private practice has dropped sharply, while the career satisfaction of its graduates

341. See University of Michigan Law School, *supra* note 73, at 9 tbl.3. A respondent was considered "quite satisfied" if he or she circled one or two on a seven-point scale. See *id.*

working for the government or for public interest organizations has risen sharply.³⁴²

If you want to practice law in the private sector—as opposed to the government, public interest, or corporate sectors—I recommend that you look at small firms. Not all small firms are alike, of course.³⁴³ Some small firms are structured like big firms; associates are worked to death so partners can profit handsomely.³⁴⁴ Even small firms that do not act like big firms have their own problems.³⁴⁵ However, small firms tend to have several advantages over big firms.

First, small firms are small, so you will be closer to your colleagues.³⁴⁶ You will have a better chance of getting the kind of one-on-one training that is disappearing in big firms. Second, small firms “leverage” associates less,³⁴⁷ meaning less competition among associates and a greater chance of making partner. Third, small firms are less rigidly structured. They can permit lawyers to work more flexible schedules, or to take longer than seven or eight years to make partner, or to choose not to make partner at all. Fourth, the attrition rate of associates in small firms is smaller than the attrition rate of associates in large firms; young lawyers stick around longer at small firms.³⁴⁸ Fifth, small firms have more freedom to choose their clients and their cases. If a small firm wishes to do so, it can agree to write a will for a farmer in exchange for a supply of fresh vegetables or to incorporate a gas station in return for free car repairs. Sixth, young lawyers at small firms get more responsibility and get it quicker. Seventh, beginning with the first day of work, small firm lawyers have extensive contact with clients. Eighth, small firms demand fewer billable hours; as a result, lawyers in small firms live more balanced lives.³⁴⁹ And ninth, and not surprisingly, lawyers at small firms tend to be happier with their careers.³⁵⁰

342. *See id.* at 15 tbl.8.

343. *See GALANTER & PALAY, supra* note 1, at 108-10; *KELLY, supra* note 7, at 17.

344. Generally speaking, the bigger the city in which a small firm is located, the more likely it is that the small firm acts like a big firm.

345. For example, small firms are often less stable than big firms; if half of the business of a six-person firm is generated by one partner, the firm is unlikely to survive if that partner gets hit by a truck. Also, personality conflicts are more of a problem in small firms than in big firms. If you don't get along with a partner at a six-person firm, you're unlikely to last long. If you don't get along with at least one partner at a 600 person firm, something is wrong with you.

346. *See GALANTER & PALAY, supra* note 1, at 126.

347. *See ABEL, supra* note 197, at 191; *ALTMAN WEIL PENZA, supra* note 145, at V-3.

348. *See NALP FOUND. FOR RESEARCH & EDUC., supra* note 127, at 53 & 54 tbl.1.

349. *See YOUNG LAWYERS DIV., supra* note 82, at 15-16; University of Michigan Law School, *supra* note 73, at 12 tbl.7.

350. *See TASK FORCE ON PROFESSIONAL FULFILLMENT, supra* note 101, at 3; University of Michigan Law School, *supra* note 73, at 12 tbl.7, 15 tbl.8.

Without question, the attorneys I knew who seemed to be the happiest, who seemed to have the most balanced lives, and who seemed to have the most interesting, satisfying practices were those practicing in small towns (in either small firms or—another option for you—as solo practitioners). But even if you are intent on working in a major city, make an effort to check out small firms. There are many three- to ten-person firms in big cities founded by people who left the rat race—who decided that they were willing to give up some money in order to get some control over their lives. And consider working for the government or for public interest groups. The passion of government and public interest attorneys for their work is unmatched, and the “baptism by fire” that many of these attorneys experience provides better training than brown bag sessions in big firm conference rooms.

Identifying job opportunities with small firms, the government, and public interest groups is difficult, as they do not interview on law school campuses or advertise in major trade journals. Also, unlike big firms, they usually cannot hire a year in advance. It takes a lot of guts to hold out for a small firm, government, or public interest job during the third year of law school, as one of your friends after another signs up with a big firm. But the rewards are worth the effort.

3. If You Go to a Big Firm, Make a Smart Choice

As I have said,³⁵¹ big firms are not alike. Some are better than others. If, despite my advice, you decide to go to a big firm, then at least be smart in choosing among big firms. In that way, you will help yourself and you will help the profession.

a. Helping the Profession

As strange as it might sound, you and other future law school graduates have a great deal of influence over the legal profession. Law firms cannot survive without a constant influx of new talent,³⁵² and they are exquisitely sensitive to the whims and desires of promising young lawyers. The market works. In the recent past, as law students have chosen firms based upon small differences in salaries—and given little heed to substantial differences in workloads—firms have responded by driving both salaries and billable

351. See *supra* text preceding note 270.

352. See D'Alemberte, *supra* note 6, at 10.

hour expectations through the roof. If law students change what they demand, law firms will change what they offer.

Do not permit yourself to be purchased at auction like a prize hog at the county fair. Do not choose one law firm over another because of a \$3,000 difference in starting salaries. Instead, make it clear to prospective employers that salary is only one of many factors that you will consider in choosing a law firm. And then back up your words with your actions. If the past twenty years had seen one law school graduate intent on living a balanced life for every law school graduate intent on chasing the highest salary, big firms would be very different places today.³⁵³

Any law firm—or any other employer—has the right to expect you to work hard. No matter what kind of law you practice, you will not succeed without putting in long hours at the office (and terrifically long hours when you have a case about to try or a deal about to close). Few legal employers—and even fewer law firms—can guarantee you a nine-to-five, five-day-per-week work schedule. For you to insist on such a schedule would be unreasonable.

That said, you should at least signal to a prospective employer that, while you intend to work hard and be successful, you also intend to do more with your life than rack up billable hours. You can and should let prospective employers know that you do not intend to permit work to consume your life and that you are willing to sacrifice some money in order to have a life outside the office. Sending this message is dangerous; if you are not careful, even a good employer may perceive you as lazy. But if enough students give law firms this message—and back up the message with their actions—it will someday be possible for young lawyers to practice in big firms without giving up their happiness, their health, or their ethics.

b. Helping Yourself

Shortly before the end of each school year, I give a presentation to the third year Legal Ethics classes at Notre Dame. In that presentation, I try to communicate the realities of big firm practice in much the same way as I've tried to do in this Article. Invariably, a student will come up to me after class and say, "The big firm at which I'm going to work is not like the ones you describe." When I reply, "How do you know?," the student cites the firm's recruiting materials or her

353. See Rhode, *supra* note 137, at 711 ("If more talented applicants and associates voted with their feet, more firms would likely respond.").

interviews with the firm or her three months experience at the firm as a summer associate.

Understand this: *Firms lie*. They lie in their brochures. They lie during interviews.³⁵⁴ They lie to their summer associates. To be sure, there are lies and then there are lies. Telling a law student that the firm expects associates to bill 1800 hours per year when, in fact, the firm fires associates who do not bill 2200 hours is a direct, no-doubt-about-it lie. Giving summer associates light workloads, channeling the most interesting projects to them, assigning them to work for the most likeable partners, and smothering them with free meals and social outings is an indirect lie.³⁵⁵ Either way, though, the firm is holding itself out to be something that it is not.

Law firms have to sell themselves to bright law students, and, like any seller of a product, they work hard to make themselves look good—sometimes at the expense of the truth. Much of what a law firm says “are empty words with no relation to what actually happens at the firm.”³⁵⁶ Yet “law students and associates have often been surprisingly unwilling to look behind the big salaries and empty promises that law firm recruiters . . . have thrown at them with increasing vigor.”³⁵⁷ You should shop for a law firm in the same way that you should shop for an apartment or a car or a major appliance. You should first research the product, and then you should ask hard questions of the person trying to sell the product to you.

Before you accept an offer from a firm—indeed, before you even interview at a firm—research the firm thoroughly. Use the *American Lawyer* or the *National Law Journal* to discover the profits per partner at the firm. Roughly speaking, the lower the profits per partner, the better the working conditions. In some ways, the optimal big firm is a firm with high prestige and low profits per partner. At such a firm, big firm benefits will likely be accompanied by a minimum of big firm exploitation. You will find that these optimal big

354. See THE RODENT, *supra* note 177, at 64 (“[M]ost of those things typically said about The Firm when associates are interviewing for jobs are just big Law Fibs.”).

355. Working as a summer associate at a firm is unlikely to give you a good understanding of what it will be like to work as a permanent associate at the same firm. See Amy M. Colton, *Eyes to the Future, Yet Remembering the Past: Reconciling Tradition with the Future of Legal Education*, 27 U. MICH. J.L. REFORM 963, 983 (1994); Talbot D'Alemberte, *Teaching About Justice and Social Contributions*, 40 CLEV. ST. L. REV. 363, 372-73 (1992); Johnson, *supra* note 114, at 1254-55 & n.99; Sukhjit Purewal, *Ain't No Time for the Summertime Blues*, AM. LAW., June 1998, at 16, 16.

356. AMERICAN BAR ASS'N, *supra* note 108, at 15; see also NALP FOUND. FOR RESEARCH & EDUC., *supra* note 127, at 14.

357. Wilkins & Gulati, *supra* note 152, at 1673.

firms tend to be located in cities like Portland and Denver and Milwaukee, rather than New York and Washington and Chicago.

You can look up biographies of a firm's lawyers in the *Martindale-Hubbell Law Directory*,³⁵⁸ the *West Legal Directory*,³⁵⁹ *The Best Lawyers in America*,³⁶⁰ and *The American Bar*.³⁶¹ You can look up the firm in such books as *The Insider's Guide to Law Firms*³⁶² and the *National Directory of Legal Employers*³⁶³ or visit the firm's website.³⁶⁴ You can use Westlaw or LEXIS to search for references to the firm in judicial opinions, in legal publications such as the *National Law Journal* and the *American Lawyer*, and in general publications such as the *Wall Street Journal* and *New York Times*.³⁶⁵ You can search the Internet for references to the firm, using search engines such as AltaVista³⁶⁶ or MetaCrawler.³⁶⁷ But by far the best information that you will get about the firm will come from lawyers who practice in the same city but do not work at the firm.

If you are interested in a big firm in, say, St. Louis, then you should talk with several lawyers in St. Louis. Talk not only with lawyers working in other big St. Louis firms, but also with lawyers in small firms, in corporations, and in government. Almost every lawyer to whom you will speak will either know someone at the firm or know someone who knows someone at the firm. A particularly good source of information will be lawyers who recently left the firm. These lawyers are easily identified through *Martindale-Hubbell*—or, for that matter, by simply asking around. Obviously, an attorney whom you call out of the blue is less likely to be candid with you than an attorney to whom you have been introduced, so “network.” Call an attorney you know, and ask her if she would be willing to introduce you to two other attorneys. Then make the same request of those two attor-

358. MARTINDALE-HUBBELL LAW DIRECTORY (131st ed. 1999). *Martindale-Hubbell* biographies are also available on LEXIS (MARHUB Library) and on the Internet (<<http://www.martindale.com>>).

359. The *West Legal Directory* is available on Westlaw (WLD database).

360. STEVEN NAIFEH & GREGORY WHITE SMITH, *THE BEST LAWYERS IN AMERICA* (1997).

361. *THE AMERICAN BAR* (Diane R. Irvine ed., 80th ed. 1998).

362. *THE INSIDER'S GUIDE TO LAW FIRMS* (Francis Walsh & Sheila V. Malkani eds., 4th ed. 1998).

363. NATIONAL ASS'N FOR LAW PLACEMENT, *NATIONAL DIRECTORY OF LEGAL EMPLOYERS* (1998).

364. Links to law firm websites can be found at <<http://www.findlaw.com>>.

365. The *National Law Journal* also has an Internet site (<<http://www.ljx.com/nlj>>). Some local legal journals, such as the *New York Law Journal*, have their own websites (<<http://www.nylj.com>>).

366. See <<http://www.altavista.com>>.

367. See <<http://www.go2net.com/search.html>>.

neys, and of the attorneys to whom they introduce you. Before long, you will have a pretty good picture of the firm.

Of course, you need to be careful to take what you are told about the firm with a grain of salt. What you are told may reflect some envy of the firm, or an attempt to recruit you away from the firm, or resentment at not being hired by or at being forced out of the firm. The more specific you can make people be, the better able you will be to judge their opinions. A lawyer who tells you only that he has heard that "people are unhappy" at the firm has not told you nearly as much as a lawyer who says, "The husband of one of our legal assistants works there. She told me that she has had dinner with her husband only twice in the past month. She said that he billed 2500 hours last year and is on pace to bill 3000 this year."

When you interview with the firm, do not passively accept platitudes. Every big firm claims that it is different. Every big firm denies that it is a sweatshop. Every big firm insists that, although its attorneys work hard, they lead balanced lives.³⁶⁸ This is almost always false. It *has* to be. There is no free lunch. Someone has to pay for your \$80,000 starting salary. And someone has to pay for that office space in the city's most prestigious skyscraper. And someone has to pay for the oak paneling that lines the conference rooms. You cannot get big firm benefits without paying the big firm price. A firm that tells you otherwise is lying.

For a big firm to be truly different, its partners would have to be willing to take less money, and this is something that big firm partners have proven singularly unwilling to do. Marc Galanter and Thomas Palay have described why, in a sense, big firms *cannot* value anything except money: "Money is not all that partners want," Galanter and Palay write.

But as firms get bigger, securing and monitoring agreement about the priority ordering, the value, and the mix of "goods" they want as their return from practice becomes ever more complex. Since "money" is high (even if not first) on everyone's scale, it is almost always possible to get agreement on more money over any other competing good. As firms get larger, agreement becomes more difficult. This is especially so when firms at the same time become more diverse in terms of gender, ethnicity, class origin, and educational background.³⁶⁹

368. See AMERICAN BAR ASS'N, *supra* note 108, at 5; NALP FOUND. FOR RESEARCH & EDUC., *supra* note 127, at 14; Johnson, *supra* note 114, at 1252-53; *Pay for Class of '97*, *supra* note 175, at 3.

369. GALANTER & PALAY, *supra* note 1, at 128.

As a result of this phenomenon, "big-firm lawyers insist on taking the gains of firm growth in the form of more money income rather than as sabbaticals, time for child-care, political involvement, greater work satisfaction, or whatever."³⁷⁰ Presumably, as the culture that most influences a young lawyer shifts from the distinctive culture of her individual law firm (which is created by a couple hundred attorneys) to a generic "big firm" culture (which is created by many thousands of attorneys),³⁷¹ the trend toward valuing nothing but material wealth will only accelerate.³⁷²

Even those within the legal profession who are most concerned about the well-being of lawyers seem incapable of suggesting to their fellow attorneys that maybe, just maybe, a big part of the solution to the profession's problems lies in being satisfied with more modest incomes. Here are a couple examples of what I mean:

In 1991, in response to growing evidence of the unhappiness and unhealthiness of the legal profession, the ABA convened an urgent conference of leading lawyers from across the United States. The conference was dramatically (if long-windedly) titled, *At the Breaking Point: A National Conference on the Emerging Crisis in the Quality of Lawyers' Health and Lives—Its Impact on Law Firms and Client Services*. The lawyers attending the conference were concerned and knowledgeable about the well-being of lawyers, and yet even they could not quite come to grips with the fact that lawyers are unhappy and unhealthy in large part because they have unreasonable expectations about money. To the contrary, much of the conference's report argued (unconvincingly, in my view) that lawyers could use "sound management" and "value billing and value compensation" to make more money without working longer hours.³⁷³ ("Sound management" is to a law firm consultant what getting rid of "waste, fraud, and abuse" is to a politician.)

370. *Id.*; see also Sarat, *supra* note 123, at 826 ("The only common value among a firm of 300 lawyers is money. There will be no other common values." (citation omitted)). For an illustration of Galanter and Palay's observation in action, compare Michael Kelly's case study of the money-oriented, quite diverse large firm of "McKinnon, Moreland, and Fox", with his case study of the other-than-money-oriented, less diverse small firm of "Mahoney, Bourne, and Thiemes." See KELLY, *supra* note 7, at 25-52 (McKinnon), 53-83 (Mahoney).

371. See *supra* notes 273-76 and accompanying text.

372. I have heard many lawyers speculate that another reason why no big law firm has made a serious and sustained attempt to reward its attorneys with better lives instead of more money is because such a firm would lose clients. According to this theory, clients respect a firm made up of lawyers who work constantly; clients know that such lawyers will put everything aside to do their clients' work, 24 hours a day, 7 days a week. Thus, a firm made up of lawyers who bill 1800 hours per year will lose business to a firm made up of lawyers who bill 2200 hours per year. I am not aware of any evidence suggesting that this theory is actually true.

373. See AMERICAN BAR ASS'N, *supra* note 108, at 14-18.

The more recent Boston Bar Association Task Force on Professional Fulfillment was similarly reluctant to acknowledge reality. The Large Law Firms Partners Subcommittee, after listing three “fulfilling aspects” of big firm practice,³⁷⁴ identified ten “obstacles to professional fulfillment”³⁷⁵—most of which could be eliminated or reduced if big firm partners were willing to make less money. And yet the closest the Task Force came to acknowledging that fact was its hesitant suggestion in the sixth of its six recommendations that the income of big firm partners may have to *grow* more slowly: “The Task Force recommends that . . . large law firms encourage partners to manage their expectations and to recognize that the annual percentage increases in compensation witnessed in the past few years will inevitably moderate and that monetary rewards alone are not what is meant by professional fulfillment.”³⁷⁶ The other recommendations were mostly vague and hortatory, such as the recommendation that “large law firms . . . confront the tension which exists for both firms and partners between increasing revenues and ‘having a life’ . . . [by making] the issue of professional fulfillment a key topic at a retreat.”³⁷⁷ And, like the *At the Breaking Point* report, the report of the Boston Bar Association Task Force even hinted that the problem was not that lawyers had come to feel entitled to large annual increases in their already large incomes, but rather that lawyers had not tried hard enough to find ways of making more money without doing more work.³⁷⁸

Against this background, you should be skeptical of any claim by any big firm that it is “different.” Ask tough questions of the lawyers you meet. When you are at a recruiting dinner with a couple of lawyers from the firm, don’t just ask them, “So, do you folks have any kind of life outside of work?” They will chuckle, say “sure,” and ask if

374. See TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101, at 5. As I explained, see *supra* text accompanying note 316, only one of these—the “great[] economic rewards”—was convincing.

375. TASK FORCE ON PROFESSIONAL FULFILLMENT, *supra* note 101, at 5-6.

376. *Id.* at 6-7.

377. *Id.* at 6.

378. For example, first on the list of obstacles to professional fulfillment identified by big firm partners was “the increased pressure on productivity created by the ascendancy of the billable hour as the primary source of a firm’s revenue,” *id.* at 5, while one of the recommendations of the Task Force was that “large law firms consider accelerating their efforts to shift revenue production away from a dependency on the billable hour,” *id.* at 6-7. This tendency to blame the billable hour for the unhappiness of big firm lawyers is a bit odd. The main source of “the increased pressure on productivity” is presumably the expectations of partners to enjoy high and perpetually increasing incomes. Admittedly, the billable hour is a poor vehicle for meeting that expectation, but to blame the vehicle, while ignoring the expectation, seems short-sighted.

you want more wine. Instead, ask them how many times last week they had dinner with their families. And then ask them what time dinner was served. And then ask them whether they worked after dinner. Ask them what their favorite television show is or what is the last good movie they saw. If they respond, respectively, *Welcome Back Kotter* and *Saturday Night Fever*, you will know something's wrong. Ask them about their last vacation. Where did they go? How long did they stay? How many faxes did they send or receive while on vacation? Get some sense of what their lives are like.

Similarly, when you are interviewing at the firm, ask tough questions of the lawyers you meet. When a lawyer tells you that she has a lot of client contact, ask her what that means. There is a big difference between sending an occasional letter to the assistant general counsel and flying to client headquarters to engage in all day strategy sessions with the officers. When a lawyer tells you that he gets a lot of interesting assignments, ask for examples. You may be surprised at what passes for "interesting" at the firm. And when a lawyer tells you that associates are happy at the firm, ask for specifics. How many associates were hired five years ago? How many of those associates remain at the firm? Who were the last three associates to leave the firm? What are they doing now? How can you contact them?

Try to get as much information as possible about billable hour requirements. Many firms will tell you that they do not have a target or goal for billable hours. Those firms are probably lying. Almost every firm has a number. In some firms, the number is formal and has "bite"; if you fall below it, you will be fired. In other firms, the number is an unwritten understanding and is used mainly to measure the progress of associates toward partnership; if you fall below it, you won't be fired, but you will draw the concerned attention of partners. Try to discover the firm's number and what the number means. Evasiveness on this score is almost always a bad sign. Also, find out what counts toward the number. Some firms count all the billable hours that a lawyer records, as well as non-billable time that is considered especially valuable, such as time devoted to business development or recruitment or even, in rare firms, pro bono work. Other firms count only hours that can be billed to a paying client. Still other firms count only billable hours that are "realized",³⁷⁹ if a partner de-

379. An hour that is recorded by a lawyer as billable, billed to a client, and paid for by the client is known as "realized." An hour that is recorded by a lawyer as billable, but that is not billed to the client (but instead "written off") or that is billed but not paid for by the client, is known as "unrealized." The "realization rate" of a lawyer reflects the portion of the time re-

cides to bill a client for only six of the ten hours that you devoted to a project (because you were inefficient or because the client has been grumbling about its bills) you will get credit for only six hours. In short, there can be huge differences among firms with the same nominal goal of 2000 billable hours.

You have to be careful in cross-examining prospective employers in the way I suggest—and the weaker your academic record, the more careful you have to be. You do not want prospective employers to think that you are lazy. Questions about workloads and billable hours and recently departed associates should be mixed in with many other questions about other aspects of firm life. Be polite, not accusatory. Use humor—unless you don't have a good sense of humor, in which case you should go back to being polite, not accusatory. Save the toughest questions for after you get an offer. But ask the questions sometime, in some way, of someone.

By being a smart consumer, you have a chance of distinguishing the good big firms from the bad big firms. Do not expect too much, though. As I have explained at length, big firms just are not set up to give their lawyers a chance to live full lives. The only people who can make big firm money without working big firm hours are the most senior partners who are living off the skim. In the end, big firm life comes down to spending eight years or so being exploited a lot so that you can spend another eight years or so being exploited a little so that you can spend another eight years or so not being exploited so that you can finish your career exploiting others.

4. Develop the Habit of Acting Ethically

As I have explained,³⁸⁰ whether you practice law ethically will depend primarily upon the hundreds of mundane things that you will do almost unthinkingly every day. To behave ethically, day in and day out, you need to be in the *habit* of doing so. Developing the habit of acting ethically is no different from developing the habit of putting on your seatbelt or cracking your knuckles: You have to do it a lot. If you are going to practice law ethically, you need to decide now, while you are still in law school, what kind of lawyer you want to be, and then act as that kind of lawyer would act. Always. Everywhere. In big things and small. Do not take that first step toward being an un-

corded by the lawyer as billable that is eventually paid for by a client. Firm managers use realization rates as a measure of a lawyer's efficiency and profitability to the firm.

380. See *supra* text preceding note 253.

ethical lawyer. I'm telling you—I'm *promising* you—that sometime during your first couple years of practice, you will be sitting at your desk late at night with your pen poised over your time sheet, and you will be tempted to pad your hours.³⁸¹ Padding time sheets is “the perfect crime”;³⁸² it is profitable for you and it is profitable for the firm and there is virtually no chance that you will get caught.³⁸³ The only thing that will stop you from padding your time sheets is your own integrity.³⁸⁴

Do not pad your time sheets—even once. And do not tell lies to partners or clients or opposing counsel. And do not misrepresent legal authority to judges. And do not break your promises. And do not do anything else that is contrary to the values you now hold. And finally, when you screw up—as I did, as every lawyer does—pick yourself up, dust yourself off, and try that much harder to develop the habit of acting ethically.

V. SOME PARTING WORDS

To an unfortunate extent, this Article has been an exercise in “do what I say, not what I do.” As I said, I joined a big law firm after I finished clerking, and, despite the best of intentions, I quickly got sucked into the game. It is very, very hard to avoid the pressures and temptations pushing you toward the big firm, very, very hard to avoid playing the game once you arrive at the big firm, and very, very hard to stop playing the game once you have left the big firm. I failed on the first two counts and continue to fail from time to time on the third. But I want to leave you with the following, by way of illustrating that it is never too late to change—even when you've failed as much as I have.

My firm was lead counsel for the plaintiffs in the Exxon Valdez oil spill litigation. In 1994, while I was still a partner, we won a judgment of over \$5 billion.³⁸⁵ We partners all knew that, if and when

381. “[T]he notion of padding . . . crosses the mind of almost anyone who has kept a time sheet.” Stephanie B. Goldberg, *The Ethics of Billing: A Roundtable*, A.B.A. J., Mar. 1991, at 56, 57 (quoting Geoffrey C. Hazard, Jr.).

382. ROSS, *supra* note 138, at 23.

383. See Wilkins & Gulati, *supra* note 152, at 1594.

384. See Gordon, *supra* note 125, at 716 (describing how the big firm litigators questioned by the ABA's Special Task Force on *Ethics: Beyond the Rules* consistently reported that “there were few positive incentives, other than self-respect and the good opinion of judges and of lawyers from other firms[,] to practice ethically”).

385. See DAVID LEBEDOFF, CLEANING UP: THE STORY BEHIND THE BIGGEST LEGAL BONANZA OF OUR TIME 291-93 (1997).

we collected that judgment, even the smallest partner's share would be a few hundred thousand dollars. Most of the partners would become millionaires.³⁸⁶ Because my wife and I would both be partners, we would enjoy two slices of this enormous pie.

At about the time of the Exxon Valdez verdict, my wife and I were beginning to feel that, somewhere along the line, we had lost our way. We were working constantly. We were under constant pressure. We were constantly feeling guilty about the hardships we were imposing on each other and on our children. The life we were leading was not the life we had envisioned. We had strayed from the values with which we were raised.

In early 1995, we decided to leave big firm practice, and to leave the Exxon money behind.³⁸⁷ We decided to give up a ton of money in return for work that was more enjoyable and less stressful, and for more time with each other and our children.³⁸⁸ All of this, we decided, was more important than money—even lots and lots of money.

I don't claim that we made an enormous sacrifice. We did give up a lot of money, but we still get paid well, and we have great jobs. Nor do I claim that we have stopped playing the game—that we have no regrets, that we never look back, that we don't care about money any more. None of that would be true. Living a balanced life and defining success for yourself are lifelong struggles, and they do not end once you leave a big law firm. The one thing I can promise you is that, as we rediscover every day, they are struggles well worth undertaking.

386. *See id.* at 314-15.

387. Our firm had adopted a policy that lawyers who left the firm voluntarily would not share at all in the Exxon Valdez recovery. I should note that, as of this writing (four years after entry of the verdict), the Exxon Valdez case is still on appeal and the \$5 billion judgment remains unpaid. *See* David Phelps, *Big Payoff Comes with Even Bigger Wait for the Check*, STAR TRIB. (Minneapolis), Mar. 16, 1999, at D1.

388. My wife received a part-time, tenure-track appointment to the Notre Dame Law School faculty, which has permitted her to spend more time with our children and to become active in advocating for the rights of the disabled.

