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The Pursuit of Happiness

Michael Traynor*

Ills that beset our profession are addressed by Professor Patrick Schiltz in the alert he sounds in his lead article, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*,¹ and his earlier article, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Foundation of the Novice Attorney*.² His articles call for attention and introspection by law students and others in the profession.

The editors invited me to comment because of the transitions I have experienced since graduating from law school in 1960. I agreed, not realizing the extent to which the exercise would require me to face my ambivalence about law practice today.

My first law job, as a deputy attorney general of California, involved tax, administrative, and criminal cases, as well as assignments in government law and legislation. I thoroughly enjoyed it. In 1963, I became an associate in my current law firm, and, in 1969, partner. I have been with the firm for 36 years, including a year's leave of absence while I served as president of a public interest law firm, the Sierra Club Legal Defense Fund³ and a three-month sabbatical as a research fellow with RAND's Institute for Civil Justice. In three decades, our firm has grown to over 400 lawyers in multiple offices. It now hires many more lawyers each year than the entire firm had when I joined it.

Before becoming an associate, I talked with each partner about my belief that, together with client service, a lawyer should serve the profession and the public. Their responses encouraged me, and I joined the firm sharing their wish to build a collegial organization based on integrity and effective, intelligent service. I plunged into the

* Partner, Cooley Godward LLP, San Francisco, California. I acknowledge with appreciation the friendly suggestions of my colleagues.

1. Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999).

2. Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Foundation of the Novice Attorney*, 82 MINN. L. REV. 705 (1998).

3. Now named EarthJustice Legal Defense Fund.

work, billing initially at \$15 per hour, and soon undertook an indigent criminal appeal that led to an appearance in the Supreme Court.⁴

Money was never a driving force. Being a lawyer, I felt, involved responsibilities and attendant satisfactions that transcended money. I feel quite lucky today, especially in light of Professor Schiltz's writings, that neither I nor many of my contemporaries viewed law practice as a way to get rich. We did expect to earn a reasonable income and perhaps someday a moderate degree of financial independence.

In this Comment, I will address the three main subjects of Professor Schiltz's article, starting briefly with ethics and health, then concentrating on the most difficult of all: happiness.

Professor Schiltz's ethical advice is sound. Although it is addressed "Dear Law Student," it should as well be addressed "Dear Managing Partner" or "Dear Lawyer." The essential point is simple: follow high standards and do not let your values be corroded under pressure.⁵ When ethical practice becomes a habit, it gets easy.⁶ Having a reputation for integrity will also help you and your clients. Having a reputation for practicing close to or over the line, for getting chalk on your shoes, will hurt you and ill-serve your clients.⁷

Another welcome benefit may also emerge from the simple maintenance of good ethics. Ethical practice reduces stress. Worrying about or concealing mistakes or dealing with uninformed clients or disgruntled team members, for example, seems far more stressful than following ethical guidelines to prevent such problems.

Of course, not all ethical issues are easy ones. The much-discussed current problems of imputation of knowledge or "positional conflicts," for example, are not necessarily resolved by an acute ethical sense. They involve legitimate competing interests and require analysis and judgment. In general, however, it is relatively easy to be

4. See *Cooper v. California*, 386 U.S. 58 (1967) (author arguing for petitioner).

5. For illustrations of the problems that befall lawyers who succumb to pressure, see JOSEPH W. COTCHETT, *THE ETHICS GAP* 81-95 (1991).

6. Some examples: Always be accurate with the court. If you (or your client) make a mistake, correct it openly and immediately. Return privileged documents that opposing counsel inadvertently produces. Don't pad your time, even if you think your particular service is extraordinarily valuable. Keep your clients informed and engaged. Encourage teamwork by sharing credit for success and assuming responsibility for failure.

7. One of our country's great judges, United States District Judge Thelton Henderson, made the point when he guest-lectured at the Remedies class I taught at Boalt Hall. The topic of temporary restraining orders and preliminary injunctions led to a discussion of the obligations of a lawyer to be particularly careful in making representations to the court when crucial facts are incomplete and often fast-developing. In considering the substantive and ethical issues and lawyers who either exaggerate or belittle emergency, Judge Henderson also commented, "Besides, we talk about you in the lunch room."

an ethical lawyer as long as you never abdicate moral judgment to others.⁸

The single-minded pursuit of money finds its most pernicious expression in the excessive time that many lawyers work and bill. Billable time, when not managed responsibly and ethically, can have a terrible impact on sleep patterns, mental health, and one's ability to maintain perspective under pressure.

In the words of a colleague, our "work culture has resulted in a serious social problem: *karoshi* or death by overwork."⁹ Lawyers and everyone else should nurture their health and not work themselves to death or to a zombie-like exhaustion. A key part of a lawyer's service is judgment. If a lawyer does not have sensible judgment about health or ethics, what sort of judgment will she provide to clients?

The pressure to bill hours and collect bills is unrelenting and increasing. There will be times when you are in the office at night or on a Sunday afternoon, alone or among a few others, marveling at the hours your fellow lawyers in firms across the country are racking up in trials or transactions or on their home computers. It is difficult to attain 1700-1800 actual billable hours a year, let alone 2000, or 2400 or more, and have reasonable time for family, relationships, and other pursuits.¹⁰

For perspective, consider a twenty-five year-old lawyer who bills 2400 hours a year for 20 years, a total of 48,000 hours at an average billable rate over that span of \$300 per hour. At age forty-five, that lawyer may inventory his life: gross billings, \$14.4 million; at or near the top of the pyramid structure that supports what Professor Schiltz describes as the "skim"; divorced; estranged from children; hypertense; depressed; a reputation as a hardball player; transitory transactional relationships; a luxurious home and car plus a sport utility vehicle; an ample taste for fine wines and cigars; and a question: What have I done with my life?

Professor Paul Freund, a great teacher, told me early in my career, "You make a life." Simple words, yet deep ones. It is best to

8. See David Stout, *John D. Erlichman, Nixon Aide Jailed for Watergate, Dies at 73*, N.Y. TIMES, Feb. 16, 1999, at A2, C13 (quoting John Erlichman: "never, ever defer your moral judgments to anybody").

9. Mara Eleina Conway, *KAROSHI: Is It Sweeping America?*, 15 UCLA PAC. BASIN L.J. 352, 352 (1997).

10. Working long hours does not necessarily indicate an undue commitment to money. There are many lawyers, not just in big firms, but in government, public interest law firms, small firms, corporations, and elsewhere who work long hours. Before the emergence of high incomes in some firms, people dedicated to excellence worked hard and derived well-earned satisfaction beyond measurement in mere monetary terms.

start early if you can, but even if you resemble my hypothetical forty-five year-old, it is never too late to begin. One place to start is by taking a new look at happiness.

The signers of the Declaration of Independence held it to be a self-evident truth that an "unalienable right" was the "Pursuit of Happiness."¹¹ They wisely described happiness as a pursuit, not an entitled state of being. The pursuit of happiness is a highly individualized undertaking, not one that lends itself to generalization or simplification. The central difference I have with Professor Schiltz's article, although I agree with much of it, is that he seems simplistic about happiness, as if it were something you either have or do not have.

For a lawyer, there may be contentment, pleasure, and satisfaction when a case or transaction goes well, when a young associate does a superb job, when a satisfied client calls with additional business, when a legal problem presents a new intellectual challenge, when professional and public service is rendered and recognized, when family ties are close, and when daily greetings in the office are friendly. These attributes of happiness may be accompanied by dismay at the increasing greed, incivility, and cynicism in our profession; frustration with the hard hours; discouragement at the lumps one takes from opposing counsel, courts, or others; and sadness at the time spent away from family, friends, and other enjoyable pursuits.

I wonder whether young people's unhappiness in the law is different substantially from young people's unhappiness in other professions where one starts out young and with no prior work experience. So many lawyers have never done anything else in their lives. They have been high educational achievers but may not have explored who they are or what makes them happy. Family pressure or perhaps the promise of a good salary or uncertainty about other careers becomes the primary reason for going to law school. For some, that move turns out to be the right one, and they continue to enjoy the challenges of being a lawyer, recognizing that an exciting practice, prestige, and generous compensation demand commitment, hard work, and sacrifice. For others, it may be drudgery, but the social or financial pressure they feel to stay is greater than their desire to follow their hearts, and that is a shame.

My principal suggestion in response to Professor Schiltz's article is this: law students and others would do well to recognize the tensions that attend the practice of law. It is healthy to acknowledge those tensions, even to allow for some ambivalence about your chosen

11. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

profession. Most of all, it is essential to strive for a balance—for oneself and, if possible, for others.

Duality is natural. An infant may cling to yet push away a parent. A public may disapprove a president's behavior yet wish to retain him in office. A terminally ill person may love life yet want to die. Balance is essential.

Self-awareness is a first step on the path to happiness. The pursuit of happiness will also be facilitated by keeping money in perspective, and maintaining the ability to make choices about one's life.

Law practice is essentially a service, not a risk capital enterprise, with occasional exceptions, for example, in the class action context. Financial rewards are and should be commensurate with service. A fundamental problem with the profession and with big firms afflicted with the NIPP (Net Income Per Partner) Syndrome is that people at the top of the pyramid often demand capitalistic profits while taking little or no capitalistic risk.¹² Those profits are not going to come from rewards for taking risk but from already high and increasing fees to clients and especially from other people's labor, primarily associates, paralegals, and staff.

In areas of vital concern to me as a citizen and lawyer—the environment, the First Amendment, and privacy—we are witnessing constant erosion. An old form of erosion is now appearing in new venues, the overwork of people, whether they are associates in a law firm or others, all for the transitory goal of more money for a few. To invoke an environmental analogy, this is strip-mining of human beings. If Professor Schiltz's writings result in renewed attention to such erosion, they will have performed a great service. The lesson for law students and associates is, don't let erosion happen to you. The lesson for managing and senior partners is, don't be greedy. Wouldn't you rather be appreciated for mentoring, sharing the wealth, and building a great firm than as someone who inspired the comment recently posted on the "Greedy Associates" website that "today's partners are tomorrow's stiff's at the morgue—somebody's gotta replace 'em. May as well be us."¹³

Although money should be kept in perspective, it would be a mistake to hearken back to some supposed golden age when law was a profession and not a business. Keeping the doors open, let alone

12. There also are unique individuals who make extraordinary, lasting, and singularly effective contributions, sometimes at substantial sacrifice. By widespread appreciation and consensus, they deserve extraordinary compensation.

13. *Re "Making Partner," GREEDY ASSOCIATES* (visited Feb. 20, 1999) <<http://clubs.yahoo.com/clubs/greedyassociates?s>>.

making a good living, requires hard work and good business sense. The recasting of law as primarily a business brought marketplace economic efficiency values to law firms that had held residual non-business values and guild-like notions, and consequently brought discomfort to many who had grown accustomed to old ways. Perhaps, however (although the evidence is not conclusive), it may have also contributed to improving service to clients. Certainly, socio-professional changes have helped to open up the club to talent previously excluded, namely, women and minorities. Some of the shakeout has been healthy.

Law firms that facilitate choices for their lawyers will also facilitate individual pursuits of happiness and consequently should enjoy more productivity and less attrition. In the end, it comes down to the values that individuals bring to their jobs. The extent to which a law firm makes it comfortable or uncomfortable for the lawyers in the firm to act on those values will have a direct bearing on happiness and thus as well on health and ethics. A law firm can and should expect some significant threshold of work from each lawyer to enable it to thrive and thereby to enable such choices. However, once that threshold is reached, the more it insists on the money choice and the less it allows other choices, the less happy a place it will be to practice.

Money is increasingly a common denominator of law firm values. By no means is it the only value, however. It can facilitate or foreclose the development of other values, as the firm chooses. The great firms, the ones that attract the ablest lawyers and give top service and incisive judgment to clients, the public, and the profession, may be, with luck and intelligence, the ones that make and enable more balanced choices.

Law students and young lawyers occasionally talk with me about career choices. I am rarely approached by those who just want to make a lot of money, probably because I do not convey any enthusiasm for that goal. For those with dollar signs in their sights, the choice seems easy: pick a place where the dominant focus is money, work hard, seize opportunities, and strive to get rich. For the others who are oriented to different values, who still have a high measure of idealism, the choice is more difficult. I will commend this Symposium and the statement of skills and values in the MacCrate report.¹⁴ I will

14. See AMERICAN BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, 135-221 (1992). The Task Force was chaired by Robert MacCrate, a former president of the American Bar Association and a retired partner of Sullivan & Cromwell.

emphasize that the years with your children fly by in an instant, that they and time with them are precious, and that I wish I had spent more. Whenever you can, tell the god of money and the god of ambition, who is no less voracious, that you and your kids are going to fly a kite or build a snowman. I may also identify lawyers who have made extraordinary contributions to their firms and to the public and profession while living healthy and satisfying lives. If individuals are interested in a big firm, among varied attractive alternatives, I will urge them to heed Professor Schiltz's advice that "If you go to a big firm, make a smart choice."¹⁵

Smart choices are still possible, if you analyze the circumstances carefully. Do not view big firms through rosy-colored glasses, and be wary of mixed messages and any lack of forthrightness. Ask questions that are important to you.¹⁶ If you do join a big firm, seek out responsibility and the satisfaction that responsibility can bring, and work with your colleagues to make the firm what you want it to be. Big firms want not just your hours but your dedicated minds and loyalty, both to minimize attrition and to rank high on published lists of associate satisfaction. Do not underestimate the ability and authority you and like-minded colleagues have to keep the firm on the right track. You have the right and power to shape your future and not let that future be robbed by the greedy.

Law is a demanding profession. It provides lifelong challenges. There is never an opportunity to coast. It demands stamina, and occasions stress. It affords the opportunity to give back to the profession and the community through pro bono work and to help build and maintain the system of justice that is a vital element of a free country. Of course, there will be competing demands and priorities. People who are uncomfortable with the challenges, the responsibilities, and the sacrifices that must be made, should not enter this profession. They will not be happy. Those who willingly and with balance and enthusiasm cross what Lon Fuller described as "the line where the pressure of duty leaves off and the challenge of excellence begins"¹⁷ should enjoy the happiness that attends such a pursuit.

15. Schiltz, *supra* note 1, at 941.

16. For example, do women in the firm have a realistic opportunity to both have children and become partners? Does the firm have an effective mentoring program? Does the firm genuinely encourage pro bono work and credit it for review, promotion, and compensation purposes as billable time? Does it foster diversity? What is its attrition rate?

17. LON L. FULLER, *THE MORALITY OF LAW* 170 (1964).

