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REPLY

Provoking Introspection: A Reply to Galanter & Palay, Hull, Kelly, Lesnick, McLaughlin, Pepper, and Traynor

*Patrick J. Schiltz**

I have benefitted enormously from reading the Responses, and I am grateful to all of the commentators for entering into this conversation with me. There is much in each of the seven Responses to which I would like to reply—sometimes to agree, sometimes to disagree, sometimes to elaborate, sometimes just to express puzzlement. Unfortunately, though, my time and space are extremely limited. Given those limitations, I will first reply generally to Marc Galanter and Thomas Palay, Michael Kelly, Howard Lesnick, Stephen Pepper, and Michael Traynor, all of whom seem to be at least somewhat sympathetic to the underlying theme of my Article. I will then reply to Mary McLaughlin, the only commentator who is broadly unsympathetic to my underlying theme and who disagrees with me on a wide range of issues. Finally, I will reply to Kathleen Hull, who strongly disputes the evidence upon which I have relied in arguing that lawyers are unhappy.

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I.

Much traditional scholarship on legal ethics aims to inform rather than to inspire. Typically, it dissects a problem of professional responsibility—broad or narrow—and then proposes a solution of some kind. If the book or article is successful, it may result in the legal profession being regulated differently, but it is unlikely to inspire any attorney to behave differently.

I respect this scholarship. Protecting vulnerable clients from unscrupulous lawyers by improving regulation is unquestionably a worthy goal. But it is not the goal of my Article. In my view, whether law is practiced ethically depends not primarily on how well lawyers are regulated, but on the millions of actions taken by lawyers that fall far below the radar of the profession's regulators. This conduct cannot be changed by tinkering with rules, but only by influencing the moral compass or professional self-conception that guides individual attorneys. In writing my Article, I have tried to inspire at least a few lawyers—particularly those who are at the outset of their careers—to ask hard questions of themselves: Why do I want to be a lawyer? What do I want to spend the next forty years *doing*? What will “success” mean for me? What will be the costs of such “success”—not only for me, but for those I care about? When my days draw to a close, and I look back on my life, what will I see?

As Lesnick has captured so beautifully, lawyers, like all human beings, are extraordinarily reluctant to engage in this type of introspection.¹ There is much that “render[s] such a self-examination problematic.”² Most fundamentally, to confront these questions is to confront the question, “Who am I?”—a question aptly characterized by Kelly as “large, ancient, profound, and unnerving.”³ To confront these questions is to stare, uncomfortably, into what Lesnick calls “the existential abyss.”⁴

I knew that if my Article was to have any chance of pushing law students and lawyers toward this type of introspection I would have to engage both their intellects and their emotions. Much of my Article consists of a description of empirical evidence about the legal profession, and I have tried, in those sections, to be thorough and fair

1. See Howard Lesnick, *Speaking Truth to Powerlessness*, 52 VAND. L. REV. 995, 997 (1999).

2. *Id.*

3. Michael J. Kelly, *Thinking About the Business of Practicing Law*, 52 VAND. L. REV. 985, 992 (1999).

4. Lesnick, *supra* note 1, at 996.

so as to make a compelling empirical case that something is amiss. Assessing *what* is amiss—and why it is amiss—and what can be done to fix it—are necessarily more speculative endeavors, as I conceded.⁵ I have tried, in the normative parts of my Article, not only to convince the reader of the merit of my viewpoint, but to provoke in the reader a *reaction*. Without such a reaction, there is little chance the reader will undertake the introspection I hope to inspire.

In order to engage the reader's attention and emotions—in order to, in Kelly's words, "*demand*[] a response"⁶—I have occasionally used sarcasm and slang and humor and personal experience and, yes, hyperbole. Sometimes a story about a barbeque can convey a point more effectively than abstract and bloodless academic discourse—and the story has a much greater chance of "sticking" long after the reader has forgotten its author. Of course, the approach that I have taken in the normative sections of my Article is not without risk. Kelly is exactly right: The same things that give my Article whatever "power" and "passion" it has may also, at times, create misunderstanding or drive away a hostile reader.⁷

I am therefore grateful that the commentators have helped me by reining in a rhetorical flourish here or providing more balance there. I agree with much of what the commentators say, and I hope that their remarks will prevent a reader from thinking that I am asserting something that I am not. To cite a few examples: Galanter and Palay are obviously correct that big firms have helped society by delivering "comprehensive, continuous, high-quality legal services, especially to businesses."⁸ Kelly is correct that "[c]orporate clients are not abstractions" but rather "people within an organization" who are "sometimes in as much distress as an 'ordinary' person."⁹ Traynor is correct that happiness is not "something you either have or do not have."¹⁰ And Pepper is correct that my tripartite definition of ethical practice—complying with the formal rules, acting honestly and com-

5. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 888-89, 895 (1999).

6. Kelly, *supra* note 3, at 985.

7. See *id.*

8. Marc S. Galanter & Thomas M. Palay, *Large Law Firm Misery: It's the Tournament, Not the Money*, 52 VAND. L. REV. 953, 956 (1999).

9. Kelly, *supra* note 3, at 989 n.12. That said, I think Kelly is unfair in labeling as "preposterous" my comparison of the type of work that big firms do with the type of work that small firms do. True, in the course of making that comparison, I inadvertently implied that people working in big corporations who hire large law firms are not "ordinary." See Schiltz, *supra* note 5, at 929. But my central point remains true: Small firm lawyers do much different work—and for much different clients—than big firm lawyers.

10. Michael Traynor, *The Pursuit of Happiness*, 52 VAND. L. REV. 1025, 1028 (1999).

passionately even when the rules do not require it, and meeting one's obligations to family, friends, community, and God—ignores the *client* and, in particular, the hard questions that are raised when the client's morals and interests are inconsistent with the attorney's.¹¹ All of these cautions—and several more provided by the commentators—are entirely appropriate, and I am grateful to the commentators for providing them.

Mostly, though, I am grateful to the commentators for helping advance the central goal of my Article. That goal is assuredly not to “influence law students not to go to a big firm,”¹² although I know that it seems that way at times. Rather, that goal is to inspire students to define success for themselves and to have the courage to act on that definition, even if it leads them away from the big firms to which so many of their classmates are headed. I have admittedly emphasized the negative in describing big firm life, but I have done so in the hope of providing some balance to the enormous pressures—monetary, institutional, social, and otherwise—that propel the best and the brightest of law students toward those firms. At the end of the day, though, I do not care whether a particular student goes to a big firm or not. I care that, whatever she chooses to do with her legal education, she does it because she wants to, and not because others want or expect her to.

All of the Responses will make it more likely that at least a few students and young lawyers will take up this challenge. By approaching the issues I raised from such different perspectives, by drawing upon such different sources, and by sharing such different personal experiences, the commentators may reach law students and young lawyers who remain unmoved by my Article. Many of those law students and young lawyers may then go on to make choices that I would not make, but at least they will be *making* choices, and the choices that they will make will be *theirs*. They will “‘make a life.’”¹³

11. See Stephen L. Pepper, *Resisting the Current*, 52 VAND. L. REV. 1015, 1019, 1021 (1999). The questions that Pepper raises are extremely difficult and challenge even those who have been thinking and writing about legal ethics much longer than I. I do not agree with some of what Pepper says, either generally about the obligations of lawyers or specifically about the case involving my former partner, but I recognize that the questions are hard ones. I should say, in defense of my former partner, that I do not know whether he consulted with his client before returning the purloined memo (but I doubt it).

12. Mary A. McLaughlin, *Beyond the Caricature: The Benefits and Challenges of Large-Firm Practice*, 52 VAND. L. REV. 1003, 1003 (1999).

13. Traynor, *supra* note 10, at 1027 (quoting Paul Freund).

II.

McLaughlin's Response¹⁴ is different from those of the other commentators in that it disagrees with me about a wide range of matters. McLaughlin is a big firm hiring partner, and she makes the case for big firm practice with obvious skill and sincerity. The thrust of her Response is that big law firms are great places for young lawyers to apprentice before they leave or are asked to leave their firms (as will happen to most of them within three or four years¹⁵). McLaughlin argues that the typical young associate at a big firm has the opportunity to do "sophisticated, cutting-edge, intellectually challenging work"¹⁶ and to receive "one-on-one mentoring"¹⁷ from "excellent lawyers."¹⁸ This, in turn, helps the young associate when she moves on to a smaller firm, government agency, or corporate legal department—or even to another big firm.¹⁹

If McLaughlin were right, big firms would indeed be great places to apprentice. But, with all respect, I do not think McLaughlin is right, either about the mentoring or about the work. I have described—both in my Article²⁰ and (at much greater length) in an earlier article²¹—how mentoring is disappearing in big firms for a number of reasons: the number of lawyers is growing,²² firms are getting much bigger,²³ the lateral movement of lawyers is increasing,²⁴ partners are under growing pressure to bill hours and bring in business,²⁵ and clients are less willing to subsidize the training costs of young lawyers.²⁶ Numerous authors—including many members of the practicing bar—have remarked upon the decline of mentoring.²⁷ With one exception, I literally do not know of an attorney who denies that big firm practice has changed substantially in the past twenty years or

14. See McLaughlin, *supra* note 12.

15. See Schiltz, *supra* note 5, at 926 n.293.

16. McLaughlin, *supra* note 12, at 1004.

17. *Id.* at 1010.

18. *Id.* at 1009.

19. See *id.* at 1010.

20. See Schiltz, *supra* note 5, at 927-28.

21. See 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, 739-46 (1998).

22. See Schiltz, *supra* note 5, at 899 n.191.

23. See Schiltz, *supra* note 21, at 724 n.52.

24. See Schiltz, *supra* note 5, at 926 n.293; Schiltz, *supra* note 21, at 744.

25. See Schiltz, *supra* note 21, at 740-41.

26. See *id.* at 742-43.

27. See *id.* at 744 n.138 (collecting sources). Pepper begins his Response by recounting a faculty lunch at which three members of the local bar "each made it clear that law practice had changed, and that there was no longer time for mentoring." Pepper, *supra* note 11, at 1015.

that these changes have made it more difficult for senior lawyers to mentor junior lawyers.

McLaughlin is the exception. As far as I can tell, she does not disagree with any of my premises; for example, she does not dispute that firms have grown larger, that the lateral movement of lawyers has increased, or that clients have become less willing to pay for the training of young lawyers. But McLaughlin denies that any of this has affected mentoring. Instead, McLaughlin claims that my belief that one-on-one mentoring is disappearing in big firms indicates that I "may be a couple of years behind on this issue."²⁸ Her proof? Two years ago, her firm, Dechert Price & Rhoads, conducted a retreat "dealing with the question of associate retention and morale."²⁹ Prior to the retreat, Dechert apparently hired a consultant—one of "many . . . [who] specialize in advising law firms on how to retain associates"³⁰—who confidentially surveyed the associates at the firm and reported his or her findings to the firm's partners. As a result, Dechert "started an associates' committee and a more intense one-on-one mentoring program."³¹ Other firms, McLaughlin says, have acted similarly.³²

Putting aside for a moment whether this effectively rebuts my claim about mentoring, consider the broader implications of the experience that McLaughlin relates. Firm retreats are extraordinarily expensive; they cost firms tens of thousands of dollars in lost billable time alone. I presume that Dechert decided to incur this expense and hold a retreat on "associate retention and morale" because associate retention and morale were *poor*, or at least because the firm feared that they would *become* poor if the firm did not act. I presume that Dechert hired a consultant to conduct a confidential survey of its associates because it thought those associates might have some complaints. And I presume that the reason that there are so many consultants who are making a living advising big firms on how to improve associate retention and morale is because there are lots of firms that are having problems with unhappy associates. All of this seems inconsistent with McLaughlin's portrayal of life as a big firm associate. Associates who are paid huge salaries to do only 1800 hours per year of cutting-edge work under the one-on-one tutelage of excellent attorneys are most unlikely to have poor morale or to be running for

28. McLaughlin, *supra* note 12, at 1010.

29. *Id.*

30. *Id.*

31. *Id.*

32. *See id.*

the exits. The fact that associate morale at big firms is poor—and that even the big firms who are reputed to treat associates the best³³ are having a terrible time retaining associates³⁴—indicates that my description of big firm life may be more accurate than McLaughlin's.

In any event, what McLaughlin has said does not rebut my assertion about the decline in mentoring. For McLaughlin to argue, on the basis of her firm's experience, that my information is "a couple of years behind" is like me arguing that researchers who claim that Americans are overweight are "a couple of years behind" because I recently went on a diet. McLaughlin would be correct about mentoring only if Dechert were the last firm in the country to address the problem and if the program that Dechert instituted worked. I am skeptical that the program will work; law firm mentoring programs come and go, in part because it is difficult to create true mentoring relationships by assignment, and in part because even firm-sanctioned mentoring programs must buck the strong institutional pressures that I have described. But even if Dechert's program succeeds, I am confident that there are other firms who have not yet successfully addressed the mentoring problem. Thousands of associates remain unmentored, and those consultants to whom McLaughlin refers have a lot more work to do.

I also disagree with McLaughlin's description of the kind of work available to young associates during their apprenticeship. I freely concede—and conceded in my Article³⁵—that cutting-edge work is available at big firms. A few big firm partners do a lot of it. But the young associates on their teams do not. Instead, they spend a good part of their nights and weekends in libraries researching obscure points of antitrust law or in conference rooms reading through hundreds of thousands of pages of documents produced by tobacco companies. As David Wilkins and Mitu Gulati have described, large law firms have far more "paperwork" available to assign to young associates than they have "training work."³⁶

33. Just a few months ago, the hiring partner at my former law firm—recently rated by the *American Lawyer* as the third best law firm in the United States for summer associates, the fourth best for mid-level associates, and the second best overall, see *By the Numbers: The Associate Survey at a Glance*, AM. LAW., Oct. 1998, at 39, 39—lamented to me the difficulty the firm is having in retaining new associates for more than a couple of years.

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

35. See Schiltz, *supra* note 5, at 928.

36. 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, 1608-13 (1998).

Even those associates who make partner are not likely to find their days filled with cutting-edge work. As I said in my Article,³⁷ big firm work is highly specialized and becoming more so; lawyers do many of the same things over and over again. Yet McLaughlin treats this widely acknowledged fact as though it were a personal case of sour grapes. She is "sorry" that I got "pigeonholed" at my own big firm, and she thinks that my work defending religious organizations in tort litigation "sounds pretty boring and not challenging."³⁸ But, she assures the reader, he or she need not suffer a similar fate. The reader can go to a big firm and have a diverse practice.

I was not "pigeonholed" nearly to the extent that McLaughlin assumes. Indeed, the work I did during my eight years of practice was probably more diverse than the work of most big firm lawyers. All that I said in my Article was that I developed a specialty defending religious organizations in clergy sexual misconduct litigation, and that working on the hundredth such case was not as interesting as working on the first.³⁹ Clergy sexual misconduct litigation was not all that I did. But, like most big firm lawyers, I developed a couple areas of expertise; the fact that I had that expertise helped to attract clients; and working for those clients helped me to develop my expertise further. If this does *not* happen to an attorney after eight years at a big firm, he or she is doing something wrong.

Moreover, the clergy sexual misconduct work that I did was not "boring."⁴⁰ But whether it was or not, the point remains that even the most exciting cases bring with them many, many hours of drudgery. Such drudgery simply cannot be avoided; even at Disney World, someone has to clean the toilets.

Finally, and most importantly, I am far from alone in asserting that the work of big firm partners has become more specialized. Numerous practitioners, professors, and law firm consultants have described how the legal profession generally—and big firms specifically—are becoming more specialized.⁴¹ McLaughlin ignores the fact

37. See Schiltz, *supra* note 5, at 929.

38. McLaughlin, *supra* note 12, at 1008.

39. See Schiltz, *supra* note 5, at 930.

40. Virtually every one of my cases involved wrenching human drama and cutting-edge legal issues about the extent to which society can and should use the tort system to regulate the conduct of religious organizations. See generally Patrick J. Schiltz & Douglas Laycock, *Employment*, in *THE STRUCTURES OF AMERICAN CHURCHES* (forthcoming 1999). I was interviewed about my work by the *New York Times*, the *Washington Post*, the *Wall Street Journal*, and many other leading newspapers, by three of the four major television networks, by *Time*, *Newsweek*, and several other news magazines, and by numerous local television and radio stations.

41. See Schiltz, *supra* note 21, at 726.

that those lawyers at her firm who are working “nonstop for several months” on a single case⁴² are devoting a good chunk of their life to a *single case*. Practicing law does not get any more specialized than that. I also suspect that when McLaughlin and her partners “pitch” a prospective client, or when she and her partners need to justify their high billing rates to an existing client, or when she and her partners are writing their firm biographies, what they are most likely to stress is the very fact that they *are* specialists.

McLaughlin and I disagree on a wide range of other matters. Time and space permit me to mention only a few:

A. *Ethics*. McLaughlin writes that “the most unfair and inaccurate assertion [that I make] is that big-firm lawyers regularly act unethically.”⁴³ Let’s be clear on what I said: First, I do not think big firm lawyers regularly violate the formal rules of professional conduct. Those rules require so little that I doubt that many lawyers violate them “regularly.”⁴⁴ Second, I do not think big firm lawyers regularly pad their time sheets in the way McLaughlin uses the term “pad”—that is, by blatantly lying. I do think big firm lawyers regularly pad their time sheets in the more socially acceptable ways that I described, such as by billing in quarter-hour increments.⁴⁵ I also think that big firm lawyers—particularly young associates—are regularly tempted to pad their time sheets in more dishonest ways, and that those temptations will grow as firms drive salaries and thus the demand for billable hours even higher.⁴⁶ Finally, I do think big firm lawyers act unethically in permitting work to consume their lives, and in failing to meet their responsibilities to their families, friends, communities, and others. Nothing McLaughlin says persuades me that I am wrong.

B. *Leveraging*. McLaughlin states that I act as if I have found “some deep dark secret” in my discussion of leveraging.⁴⁷ I do not know what gave her that impression, although I should note that, to law students and novice lawyers, leveraging *is* somewhat of a secret. McLaughlin then goes on to defend the practice, arguing, in essence, that everyone does it.⁴⁸ She also points out that big firm practice is not a one-way street—that, just as associates work hard to make

42. McLaughlin, *supra* note 12, at 1012.

43. *Id.* at 1005.

44. See Schiltz, *supra* note 5, at 909.

45. See *id.* at 919.

46. See *id.* at 898-900.

47. McLaughlin, *supra* note 12, at 1006.

48. See *id.*

partners rich, partners work hard to train and supervise those associates and keep them busy with lucrative work.⁴⁹ Kelly agrees with her; his "reading of the situation is much more in terms of mutual exploitation."⁵⁰

What is lost in McLaughlin's and Kelly's discussions is that leveraging is a matter of degree. Of course big firms are not alone in leveraging associates; I refer repeatedly in my Article to small firms that act like big firms.⁵¹ And of course big firms give *something* back to associates. But partners can and do make choices about leveraging—about the degree to which they will engage in what Traynor poignantly refers to as the "strip-mining of human beings."⁵² In Kelly's book, *Lives of Lawyers*, the partners at "McKinnon, Moreland, and Fox" made a much different choice about how to treat associates than the partners at "Mahoney, Bourne, and Thiemes."⁵³ A group of partners who pressure their associates to bill 2200 hours per year and who make partners of only ten percent of them so that profits-per-partner do not dip below \$500,000 make a different choice than a group of partners who require only 1800 hours per year of associates, make half of them partners, and find a way to scrape by on \$250,000. It just won't do to say that "everyone does it" or to say that twenty-five year old associates fresh out of law school "exploit" fifty year old partners making \$500,000 per year.

C. *Hours.* McLaughlin tries to suggest that big firm lawyers do not work as hard as I claim—that the 2000 billable hour year is pretty much a New York phenomenon—and that, in any event, lawyers in other settings work just as hard.⁵⁴ This is just not true, as the empirical evidence cited in my Article demonstrates.⁵⁵ Many lawyers in the government or in small firms do indeed work long hours,⁵⁶ and all lawyers have to put in long hours when they have a case about to try or a deal about to close.⁵⁷ But the fact remains that, on average, big firm lawyers work longer hours than lawyers in other settings.⁵⁸ There is no free lunch. With big firm salaries comes what big firm

49. *See id.* at 1006.

50. Kelly, *supra* note 3, at 989.

51. *See, e.g.*, Schiltz, *supra* note 5, at 896, 940.

52. Traynor, *supra* note 10, at 1029.

53. *See* MICHAEL J. KELLY, *LIVES OF LAWYERS: JOURNEYS IN THE ORGANIZATIONS OF PRACTICE 25-83* (1994).

54. *See* McLaughlin, *supra* note 12, at 1005 & n.2.

55. *See* Schiltz, *supra* note 5, at 891-93.

56. *See* Traynor, *supra* note 10, at 1027 n.10.

57. *See* Schiltz, *supra* note 5, at 942.

58. *See id.* at 892-93.

partner Traynor accurately characterizes as the “unrelenting and increasing” pressure to bill more hours.⁵⁹

D. Greed. McLaughlin thinks that I am off-base in characterizing big firm lawyers as being obsessed with money. She says that she laughed at my story of the barbeque, because it was so far removed from her experience.⁶⁰ Once again, McLaughlin suggests that my three years away from big firm practice have put me “a little behind the times.”⁶¹ (I seem to be aging even more quickly than I thought.)

It is interesting that McLaughlin should mention the story of the barbeque. My Article has developed a small underground following, as professors and students have passed on drafts of the Article to students and to associates at big law firms. I have had a few dozen law students and young lawyers talk with me about the Article, and almost invariably they say something like, “You had the barbeque all wrong; they served salmon, not swordfish,” or, “I didn’t see you at that barbeque; you should have introduced yourself.” In other words, the barbeque story seems to “hit home” for many young lawyers.

McLaughlin labels the story a “caricature.”⁶² (So does Kelly.⁶³) I prefer to call it a “composite.” But regardless of how we label it, the important question is whether it conveys truth. An editorial cartoon, though a caricature, can often communicate truth more effectively than a 10,000 word essay. I doubt that the story of the barbeque would “hit home” for young lawyers—lawyers who are presumably not “a little behind the times”—if there were not a lot of truth in it. I cannot help but suspect that, like so many big firm partners,⁶⁴ McLaughlin might perceive big firm life differently from those who are less acclimated to it.

McLaughlin also argues that she and her partners do not work “nonstop” for “months” because of greed; they do it because they have no choice. Although it “pains” her to see her team so often having to work nights and weekends, there really is nothing she can do about it.

59. Traynor, *supra* note 10, at 1027.

60. See McLaughlin, *supra* note 12, at 1007. Apparently, although the partners at McLaughlin’s firm earn an average of almost a half million dollars per year, see *The Am Law 100*, AM. LAW., July/Aug. 1998 (insert), at 37, 43, none of them is buying expensive homes, decorating them expensively, or hosting catered parties.

61. McLaughlin, *supra* note 12, at 1007.

62. *Id.*

63. See Kelly, *supra* note 3, at 986.

64. See Schiltz, *supra* note 5, at 934 n.323.

In some lines of legal work (such as corporate takeovers), working nonstop for months is unavoidable.⁶⁵

McLaughlin is right: No lawyer can do high-level corporate takeover work without working nights and weekends for months on end. However, every lawyer can choose not to do corporate takeover work—or to do any other kind of work that requires her to sacrifice her life to her law firm and clients to this extent. There are tens of thousands of jobs that offer work every bit as interesting as corporate takeover work, and yet permit a lawyer to enjoy a balanced life. I have explained why I think so many lawyers choose not to take these jobs. McLaughlin disagrees with my assessment, but, unfortunately, she offers nothing in its place.

The Response of Galanter and Palay⁶⁶ similarly ignores the role of individual choice. In their telling of the story of the growth of big firms, Galanter and Palay consistently downplay or ignore the fact that *choices* are being made at every step along the way, beginning with that attorney with a surplus of human capital who cannot personally do all the work that her reputation and expertise have attracted.⁶⁷ Nothing forces that attorney to profit from her surplus capital; nothing prevents her from saying “no” to some prospective clients; nothing makes it impossible for her to be satisfied with a comfortable but relatively stable income. She makes a *choice* to hire others to work with her capital, and that choice is presumably motivated by her desire to make more money. Likewise, at each step along the path that Galanter and Palay chart, lawyers are making choices, and usually those lawyers are being motivated by the desire to increase their already substantial incomes. It appears to me that “an insatiable appetite for the material things in life”⁶⁸ may play a bigger role in Galanter and Palay’s story than they are willing to acknowledge.

In any event, Galanter and Palay are writing about a different question than I am. Galanter and Palay ask why big firms have grown so big, and argue that this growth does not result from “inherent avarice, at least not an avarice unique to lawyers.”⁶⁹ By contrast, I am not concerned about why big firms *exist*; I am concerned about why young lawyers *join* them. What do young lawyers get in return for the tremendous costs that big firms impose on them? The answer is lots and lots of money. And why do lawyers continue to

65. See McLaughlin, *supra* note 12, at 1012.

66. See Galanter & Palay, *supra* note 8.

67. See *id.* at 958-59.

68. *Id.* at 961.

69. *Id.* at 963.

suffer the costs that big firms impose on them long after they begin making more money than they need or even can realistically enjoy? The answer is greed—not greed for money per se, but greed for points in the game that big firm lawyers play. (Whether this greed is “unique to lawyers” I cannot say.)

Galantor and Palay respond by asking a perfectly fair question: If, as I claim, “greed accounts for the misery [of big firm lawyers], what accounts for the greed?”⁷⁰ They further note that “Professor Schiltz makes little attempt to explain or account for this proclivity.”⁷¹ On the latter point, I plead guilty, but also plead, in my own defense, that I can only write one article at a time. On the former point, the (very) short answer is that, in my view, recent changes in the legal profession (combined with recent changes in the legal academy) have resulted in the breakdown of the distinctive “local” cultures that, in the past, profoundly influenced the character of young lawyers and provided alternative sources of meaning for them. Particularly for those novice lawyers who work at big law firms, distinctive school-specific, mentor-specific, practice-group-specific, firm-specific, and even city-specific cultures are gradually breaking down and giving way to a national, “big firm” culture—one that emphasizes “neutral partisanship” as the guiding principle for lawyer-client relationships⁷² and money as the primary or even sole measure of a lawyer’s success.

III.

Hull’s Response⁷³ is devoted entirely to disputing my assertion that a relatively high number of lawyers are unhappy and that the situation has grown worse. She states that, as far as she can tell, lawyers are not particularly dissatisfied with their work,⁷⁴ that the satisfaction of lawyers has not declined over time,⁷⁵ and that big firm

70. *Id.* at 955.

71. *Id.*

72. The term “neutral partisanship” was introduced several years ago by David Luban as a less tendentious substitute for the phrase “standard conception of the lawyer’s role.” See DEBORAH L. RHODE & DAVID LUBAN, *LEGAL ETHICS* 132 (1st ed. 1991).

73. See Kathleen E. Hull, *Cross-Examining the Myth of Lawyers’ Misery*, 52 *VAND. L. REV.* 971, 971 (1999).

74. *See id.*

75. *See id.* at 977.

lawyers are not, on balance, either more or less satisfied than lawyers who work in other settings.⁷⁶

I do not have the time or space needed to respond to Hull on a study-by-study basis. As I made clear in my Article,⁷⁷ I agree with her that there are problems with the empirical evidence regarding lawyer satisfaction. However, I think that she substantially overstates those problems, and that the evidence is far more probative than she believes.

The most serious problem with the empirical evidence is its paucity. Little evidence exists about the satisfaction of lawyers or about how that satisfaction has changed over time. Moreover, as Galanter and Palay point out,⁷⁸ very little of the evidence that does exist breaks out big firm lawyers from lawyers practicing in other settings, and, as Kelly points out,⁷⁹ no empirical research has been done that directly compares the satisfaction of lawyers to that of other workers. Even if one accepted Hull's contention that "most valid, well-designed research has produced little if any support for the notion that lawyers are unhappy in their work"⁸⁰—and I do not—the problem remains that very little such research exists.

I do not believe that the studies that have been done are as flawed as Hull suggests. Hull makes a couple of rather broad statements about my relying on studies of "dubious data quality,"⁸¹ but, on close inspection, there is far less to her complaint than may appear at first glance. Hull raises serious methodological concerns about only three of the many studies upon which I rely. She begins her Response by pointing out that the *California Lawyer* fax poll⁸² is of dubious validity.⁸³ I agree completely, which is why I mentioned the poll only once, briefly, in a footnote.⁸⁴ She also criticizes the two *National Law Journal* polls⁸⁵ for having low response rates. Again, I agree with Hull, which is why I barely mentioned them in my section on lawyer happiness.⁸⁶

76. See *id.* at 977-78.

77. See, e.g., Schiltz, *supra* note 5, at 881 n.70, 885 n.98.

78. See Galanter & Palay, *supra* note 8, at 954.

79. See Kelly, *supra* note 3, at 986.

80. Hull, *supra* note 73, at 971.

81. *Id.* at 974.

82. See "It's Become a Miserable Profession," CAL. LAW., Mar. 1992, at 96.

83. See Hull, *supra* note 73, at 971.

84. See Schiltz, *supra* note 5, at 881 n.70.

85. See Margaret Cronin Fisk, *Lawyers Give Thumbs Up*, NAT'L L.J., May 28, 1990, at S2; Chris Klein, *Big-Firm Partners: Profession Sinking*, NAT'L L.J., May 26, 1997, at A1.

86. See Schiltz, *supra* note 5, at text accompanying notes 72, 100, 112-14.

What I *did* rely upon in asserting that lawyers are unhappy were the data produced by the three American Bar Association ("ABA") studies⁸⁷ and by the annual Michigan Law School surveys.⁸⁸ These studies are far from perfect, but they are, as best as I can tell, the most reliable evidence available. Both sets of surveys were conducted nationally, all of the surveys had high response rates, and both sets of surveys produced data over a period of several years. Hull says virtually nothing to suggest that these data—the data upon which I relied heavily, as opposed to the data I barely mentioned—are of "dubious . . . quality."⁸⁹

If this evidence is reliable, then why does Hull remain unpersuaded? There are two reasons:

First, Hull and I find significance in different things. For example, like the ABA, I find it significant that the number of lawyers who said that they were "very satisfied" with their careers fell by one-fifth between 1984 and 1990, and I find it significant that the decline was even more dramatic among those lawyers who were surveyed in *both* 1984 and 1990.⁹⁰ Hull concedes that "[t]hese figures are interesting,"⁹¹ but stresses that "not all of the decline in the 'very satisfied' category translated into increases in the proportion of 'dissatisfied' or 'very dissatisfied' lawyers."⁹² Similarly, like the authors of the Michigan Law School study, I find significance in the fact that job satisfaction among Michigan graduates has declined substantially in recent years.⁹³ Hull stresses that, notwithstanding this decline, "still . . . only 2% report[] being 'very dissatisfied' with their careers five years after law school graduation."⁹⁴ Hull and I obviously have a difference of opinion about what weight should be given to what findings, but none of this suggests that the evidence upon which I relied was unreliable or that the evidence does not support my hypothesis.

Second, Hull sometimes provides explanations for the data. For example, she argues that the decline in job satisfaction evidenced

87. See YOUNG LAWYERS DIV., AMERICAN BAR ASS'N, CAREER SATISFACTION 1995 (1995) [hereinafter CAREER SATISFACTION]; YOUNG LAWYERS DIV., AMERICAN BAR ASS'N, THE STATE OF THE LEGAL PROFESSION 1990 (1991) [hereinafter STATE OF THE LEGAL PROFESSION].

88. 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 (1996) (unpublished report, on file with the author).

89. Hull, *supra* note 73, at 974.

90. See STATE OF THE LEGAL PROFESSION, *supra* note 87, at 52 tbl.66, 53 tbl.68.

91. Hull, *supra* note 73, at 975.

92. *Id.* I pointed out the same thing in my Article. See Schiltz, *supra* note 5, at 883 n.85.

93. See University of Michigan Law School, *supra* note 88, at 15.

94. Hull, *supra* note 73, at 973.

in the ABA's 1984 and 1990 polls might reflect the fact that growth in the market for legal services slowed considerably in the late 1980s and early 1990s, after booming in the early to mid 1980s (and before booming again in the mid to late 1990s).⁹⁵ She says that the "same general point applies to the Michigan data,"⁹⁶ although that is not true. For example, the Michigan graduates in private practice who were surveyed in 1989 and 1990—when the legal market was poor—were *more* satisfied with their careers than the Michigan graduates in private practice who were surveyed in 1995 and 1996—when the legal market was much better.⁹⁷ In any event, once again the important point is that nothing that Hull says indicates that the data upon which I relied were unreliable or that the data do not provide support for my assertions about the decline in lawyer satisfaction. She and I merely disagree about the reason for the decline.

Hull is absolutely right that some of the other evidence of lawyer dissatisfaction that I cite is "indirect."⁹⁸ In light of the paucity of data on lawyer satisfaction, I decided to collect and present all the evidence I could find, both direct and indirect. I agree with Hull that each of the indirect measures of lawyer dissatisfaction that I have cited—evidence that many lawyers would choose not to become lawyers again, would not advise their children or others to become lawyers, hope to leave the practice of law before the end of their working careers, and so on—can be explained away.⁹⁹ But the more times such an explanation is necessary—the more times someone in Hull's position has to say, "yes, but"—the more likely it is that there is a great deal of unhappiness in the legal profession.

I included a lengthy footnote in my Article that describes several more problems with the empirical evidence on lawyer satisfaction—problems that are not mentioned by Hull, but that plague both the evidence that seems to demonstrate that lawyers are unhappy and the evidence that seems to demonstrate that they are not.¹⁰⁰ I agree completely with Galanter and Palay that the evidence on lawyer dissatisfaction is "far from conclusive,"¹⁰¹ one way or the other. But Hull surely overstates the matter when she writes that "there is vir-

95. *See id.* at 975-76.

96. *Id.* at 976.

97. *See* University of Michigan Law School, *supra* note 88, at 15 tbl.8.

98. Hull, *supra* note 73, at 974.

99. *See id.*

100. *See* Schiltz, *supra* note 5, at 885 n.98.

101. Galanter & Palay, *supra* note 8, at 954.

tually no solid evidence produced by methodologically sound research to support the claim that lawyers are deeply unhappy in their work or that they are growing more unhappy over time.¹⁰² The existing empirical evidence, though relatively scant and flawed in some respects, nonetheless gives substantial reason to believe that lawyers are unhappy and growing unhappier.

Before leaving Hull, I think it important to step back and make three points that I hope will put her claims into perspective:

First, if Hull is right—if lawyers are not particularly dissatisfied, and if lawyers have not grown less satisfied over time—then an astonishing number of thoughtful observers of the legal profession are wrong. Law professors from Mary Ann Glendon¹⁰³ to Anthony Kronman¹⁰⁴ are wrong. Practitioners from Walt Bachman¹⁰⁵ to Sol Linowitz¹⁰⁶ are wrong. Judges from Richard Posner¹⁰⁷ to Laurence Silberman¹⁰⁸ are wrong. The ABA—and the leading lawyers who attended the *At the Breaking Point* conference—are wrong.¹⁰⁹ The Young Lawyers Division of the ABA is wrong.¹¹⁰ Several state and local bar associations are wrong.¹¹¹ Michigan Law School is wrong.¹¹² Hildebrandt, arguably the leading law firm consultant in America, is wrong.¹¹³ And all of those researchers who have reported that lawyers suffer high levels of depression, alcoholism, and an assortment of other maladies are almost surely wrong.¹¹⁴

102. Hull, *supra* note 73, at 983.

103. See generally MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994).

104. See generally ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993).

105. See generally WALT BACHMAN, *LAW V. LIFE: WHAT LAWYERS ARE AFRAID TO SAY ABOUT THE LEGAL PROFESSION* (1995).

106. See generally SOL M. LINOWITZ, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994).

107. See generally Richard A. Posner, *The Material Basis of Jurisprudence*, 69 *IND. L.J.* 1 (1993).

108. See generally Laurence H. Silberman, *Will Lawyering Strangle Democratic Capitalism?: A Retrospective*, 21 *HARV. J.L. & PUB. POL'Y* 607 (1998).

109. See generally 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* (1991).

110. See generally CAREER SATISFACTION, *supra* note 87; STATE OF THE LEGAL PROFESSION, *supra* note 87.

111. See generally, e.g., NORTH CAROLINA BAR ASS'N, *REPORT OF THE QUALITY OF LIFE TASK FORCE AND RECOMMENDATIONS* (1991); TASK FORCE ON PROFESSIONAL FULFILLMENT, BOSTON BAR ASS'N, *EXPECTATIONS, REALITY AND RECOMMENDATIONS FOR CHANGE* (1997).

112. See generally University of Michigan Law School, *supra* note 88.

113. See generally HILDEBRANDT, *CLIENT ADVISORY 1998* (1998).

114. See Schiltz, *supra* note 5, at Part I.A.

All of these observers—and many, many others—have, in one way or another, remarked upon the fact that lawyers are unhappy and growing unhappier. Obviously, this does not prove Hull wrong; most human beings were once certain that the sun revolved around the earth. Perhaps Hull is right. Perhaps I and all of these academics and practitioners and judges and organizations have been taken in by what Hull calls a “myth.”¹¹⁵ But I doubt it.

Second, no one denies that the legal profession has changed profoundly in recent years. There are far more lawyers, and the ratio of lawyers to the general population (that is, to prospective clients) has risen.¹¹⁶ Lawyers practice in far larger settings.¹¹⁷ Lawyers change jobs far more often.¹¹⁸ Competition for business is far more intense.¹¹⁹ Lawyers work much longer hours.¹²⁰ Lawyers are far less civil to each other.¹²¹ And, as Hull herself points out,¹²² lawyers are much less respected by the general public.¹²³

If Hull is correct that lawyers have not become less satisfied over time, then *none* of these profound changes in the legal profession has had any impact whatsoever on the career satisfaction of attorneys. It has made no difference to lawyers that they have to compete harder for clients. It has made no difference to lawyers that they have to work longer hours. It has made no difference to lawyers that they are treated worse by other lawyers and respected less by the general public. According to Hull, none of this has had any impact on the career satisfaction of lawyers. Again, Hull could be right, but I doubt it.

Finally, when all is said and done, it doesn't really matter much to me if lawyers are as dissatisfied as I think or as satisfied as Hull thinks. If I am right—if the profession is relatively unhappy—then there is cause for concern. If Hull is right—if the profession is relatively happy notwithstanding all of these recent trends and notwithstanding all of the evidence about the poor health of lawyers—then things are even worse than I imagined.

115. Hull, *supra* note 73, at 971.

116. See Schiltz, *supra* note 5, at 899 n.191.

117. See Schiltz, *supra* note 21, at 724 n.52.

118. See Schiltz, *supra* note 5, at 926 n.293; Schiltz, *supra* note 21, at 744.

119. See Schiltz, *supra* note 21, at 741-42.

120. See Schiltz, *supra* note 5, at 891.

121. See Schiltz, *supra* note 21, at 726-27 & n.63; see also McLaughlin, *supra* note 12, at 1013.

122. See Hull, *supra* note 73, at 983.

123. See Schiltz, *supra* note 5, at 907 n.233.