BALANCED LIVES IN A STRESSFUL PROFESSION: AN IMPOSSIBLE DREAM?

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The legal profession must recognize that job-related stress impairs both the quality of practice and life for many practitioners. Regardless of the practice context, lawyers experience high levels of stress which may undercut their effectiveness, shorten their legal careers or their lives. Long hours and economic competition pressure those who work in large firms. Lawyers who practice in small offices encounter high stress from struggling to make ends meet, and from having too much or too little work.

Earlier today we heard that some critical issues for the legal profession result not from an overabundance of lawyers, but from poor distribution. Lawyers are more heavily concentrated in large private firms, and in lucrative practice areas such as personal injury. By contrast, too few lawyers are willing to represent clients with low or moderate incomes on routine legal matters or those lacking high earning potential. Quintin Johnstone depicted the movement authorizing limited legal services by lay technicians as a consumer-oriented response to the legal profession's failure to provide routine services at reasonable costs.¹

At the risk of appearing radical, I offer some proposals which might improve upon the quality of and access to representation, and also provide a healthier legal workplace, allowing lawyers more opportunity to live balanced lives. My proposals are aimed primarily at private firms, although the recommendations on improved personnel policies apply to any practice context. Other suggestions urge the organized bar to take a leadership role in improving the quality of life in practice, and in setting normative ethical standards.

We have heard much hue and cry about the demise of professionalism. The American Bar Association appointed the

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Commission on Professionalism, which sought to rekindle professional virtue. The Commission issued its report, "Common Calling in Pursuit of Public Service" in 1986. Since then, most discussions of professionalism focus on excessive adversary zeal, advertising, and solicitation as offensive forms of marketing legal services. While I share some of these concerns, I think the focus is too narrow and misguided.

Instead, I propose a major overhaul in the legal profession’s conception of what constitutes effective representation, expectations of financial rewards, and the personal sacrifices one is expected to make as the price of success. We should replace the current view which typically measures success by income, itself a product of often grueling work schedules. Instead we should adopt a vision of lawyers as a collective body of trained professionals dedicated to providing competent legal services at affordable cost to clients. This view recognizes that lawyers provide services as a means of earning a living. Accordingly, we should receive fair, but not excessive compensation for professional services rendered. We should embrace the idea of maintaining a healthy balance in our personal and professional lives. Our professional lives should be intellectually challenging and socially productive. In our personal lives, we should allow sufficient time for the enjoyment of family and friends, and to cultivate community and personal relationships outside the legal profession. Lawyers who are healthy, balanced human beings are better equipped to address the needs of clients as real persons or entities. Their lawyering skills extend beyond the functional and task-oriented, to include interpersonal communication skills and the vast non-legal considerations relevant to real persons or entities, with emotions, value systems and pragmatic concerns. As redefined, the successful lawyer is one who competently represents clients for reasonable fees, derives personal satisfaction from intellectually-stimulating and socially productive work, and enjoys a rewarding, balanced personal life.

Many lawyers today function like machines. They hear a problem and immediately begin identifying an appropriate course of action. They frequently insulate themselves from emotional matters

2. ABA COMM’N ON PROFESSIONALISM, IN THE SPIRIT OF PUB. SERVICE: "A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM"11-12 (1986) [hereinafter ABA COMM’N ON PROFESSIONALISM].

with clients, associates, and family. Safely sheltered in their legal cocoons, they have little comprehension of their client's ultimate concerns with the legal problem at hand. Such lawyers are not bad people; they do not consciously ignore clients' expressed wishes. Rather, they have so insulated themselves from the concerns of ordinary laypersons that they simply do not detect when a client may have objectives beyond the standardized outcome the lawyer imputes to the client. They seldom grasp the trauma and personal effects of their clients' legal problems. What causes this gap in understanding? I suggest that excessive work demands, with inordinate focus on the rational, task-oriented nature of most lawyering skills, distort lawyers' perceptions of reality, and what is important to the clients they serve. I submit that lawyers who are whole persons with balanced lives can better provide competent services appropriate for their clients' needs and concerns.

The public's widespread displeasure with the legal profession is evident. One need only scan the local press or watch electoral politics to see venting of anger towards the profession. Losing defendants and politicians are not the only ones unhappy with the current state of the legal profession. Clients are unhappy. Those who can afford to hire a lawyer often complain about the amount charged. They feel gouged when the lawyer engages in excessive discovery and other make-work activities designed to accumulate billable time which the client pays for regardless of value obtained. Clients who pay advance retainers often complain their lawyers do little for them after the initial meeting. One-half of all disciplinary complaints charge neglect. It often appears the lawyer accepted a retainer, and after an initial outburst of energy, left the file to gather dust until some crisis demanded attention. Lawyers who depend on high volume for routine matters frequently run all cases through the same mill, providing minimal genuine representation. Many persons so fear the cost of legal services that they do not seek a lawyer's help even when they recognize one might be helpful. Finally, the legal system literally disenfranchises the poor and working poor, who must stand in line for limited patchwork representation by overworked legal services lawyers or public defenders.


5. See generally ABA STANDING COMM. ON LAWYER'S PROFESSIONAL LIABILITY, CHARACTERISTICS OF LEGAL MALPRACTICE: REPORT OF THE NATIONAL LEGAL MALPRACTICE DATA CENTER 6-7 (1989).

Meanwhile, many lawyers are also dissatisfied. Their long work hours leave them exhausted and without sufficient time for personal lives. Over time, the unfavorable work conditions produce stress, burnout, substance abuse, and other disorders. These job-related hazards exact a heavy toll on lawyers' personal and professional lives.\textsuperscript{7} While the first negative impact may be on the personal side, if unresolved, it will eventually spill over to impair the lawyer's capacity to function effectively. Moreover, a positive correlation appears between executive tolerance of unethical behavior in the workplace and stress and hostility.\textsuperscript{8} Bar disciplinary data suggests a strong correlation between stress-related disorders (especially substance abuse) and lawyer misconduct.\textsuperscript{9}

How can the organized bar rekindle professional virtue? Let us first consider the traditional attributes of a profession and an underlying justification for some of its privileges. According to the sociological definition, a professional is one who is highly educated in complicated principles, uses a specialized language and has a technical mastery of complex procedures.\textsuperscript{10} Because of those attributes, people turn to professionals to provide those services needed to handle problems beyond the capabilities of the ordinary lay person.

Altruism is the underlying premise justifying the extraordinary prerogatives granted to professions. Because the profession and its practitioners are engaged in public service, motivated by unselfish concerns for the welfare of others, they can be trusted to exercise their


\textsuperscript{8} Unethical Behavior, Stress Appear Linked, WALL ST. J., Apr. 11, 1991, at B1 (reporting on study of top-level business executives conducted by London House Inc.). Psychiatrists found that the "[e]thical executives were happier, more responsible and had less stress than those who were willing to tolerate unethical behavior. They also were less likely to feel hostility, anxiety or fear." Chi. TRIB., May 20, 1991, at C2. This study offers an intriguing area for future research of the legal profession.


\textsuperscript{10} ABA COMM'N ON PROFESSIONALISM, supra note 2, at 11-12; TALCOTT PARSONS, ESSAYS IN SOCIOLOGICAL THEORY 34, 370 (rev. ed. 1954); Howard P. Becker, The Nature of a Profession, in EDUCATION FOR THE PROFESSIONS 27-46 (1962).
powers responsibly, consistent with the interests of those they serve.\textsuperscript{11} Because clients often cannot understand complex technical issues, they are expected to trust lawyers' professional judgment in two important respects. First, clients should trust their lawyers' judgment on the proper course of action to resolve their legal problems. It is thought the technical complexities render lay clients incapable of providing informed guidance on what they might reasonably achieve in the representation. Second, clients should trust their lawyers' determination on the appropriate fee to be charged. Traditionally, unilateral fee determination is a professional prerogative because laypersons cannot adequately assess the value of the services.

Atticus Finch\textsuperscript{12} is the prototype for the altruist American lawyer. He is absolutely devoted to public service and truth. He would not consider taking advantage of a client. As a single parent, he successfully fulfills responsibilities at home and office. Fortunately, he has a full-time housekeeper to care for the home and prepare meals. With dependable and caring domestic support services, Atticus is able to come home for lunch with his children. Each evening he guides their social and academic development with patience and wisdom. Atticus exemplifies the professionalism ideal by consistently giving priority to others' interests ahead of his own. His family and clients come first. Interests of the legal system, the public and affected third parties come next. Finally, he considers his own interests.

Reality about the typical manner of practice contrasts sharply with this idealized concept of professionalism. In private, many lawyers would candidly acknowledge that their (or their firm's) economic self-interest greatly affects professional judgment calls. Clients' interests may be given high priority—but only if they are willing and able to pay full freight. Lawyers' families and friends rarely receive the care and attention bestowed by Atticus. Despite

\textsuperscript{11} ABA COMM'N ON PROFESSIONALISM, supra note 2, at 11-12. See also Webster's New World Dictionary (2d. College ed. 1980), which defines altruism as follows: "1. unselfish concern for the welfare of others; selflessness 2. Ethics: the doctrine that the general welfare of society is the proper goal of an individual's actions: opposed to egotism."

lawyers' good intentions, they often lack sufficient time for truly nurturing personal relationships.

It appears the nation is undergoing a shift in values. During the 1980s, success was defined by money and conspicuous consumption. Leveraged buyouts (LBOs), yuppies (young urban professionals) and "dinks" (dual income, no kids) symbolized the excesses. LBOs, with the aid of highly paid transactional specialists and investment bankers, seemed to grow money on trees. Selling shareholders and the deal-makers received huge sums, made possible by borrowing against the assets of the sold company. The buyers acquired the target company with little of their own money at risk. Short-term, the deals pleased all who were immediately involved. Long-term considerations often received short shrift. Now we see the costs of such short-sightedness. Several companies have collapsed from the weight of their debt load and sought bankruptcy protection. Employee retirement accounts raided to finance the purchase may be seriously underfunded. Cutbacks in workforces, or plant shutdowns harmed the communities where jobs were lost.13

In its heyday, the Drexel Burnham firm, which developed the LBO concept, personified the era. The transactional specialists worked manic hours for which they were richly rewarded. The decade closed, however, and in January of 1990, Drexel filed for bankruptcy protection. Drexel's new year collapse symbolized the end of an era of decadence. In its place, we see a national trend toward asceticism, with a focus on healthy living, home cooking and entertainment, and a return to family values.

The legal profession should embrace this new era. Many lawyers have artificially-inflated income expectations. Satisfying these expectations frequently demands endless working hours for themselves and their employees, and dubious billing practices. Now, while the economy reduces client demands for legal services, law firms should seize the opportunity to reduce earning expectations, with clients billed for value received, and lawyers allowed more time for personal life. Granted, such actions run counter to the usual pressure for more business and billings. Such far-sighted planning will reward those with the courage to embrace the fundamental values embodied in the traditional precept of professionalism. Firms which can make billings subordinate to service, and partnership draws subordinate to the quality of life in and out of the workplace, will

likely have more rewarding, harmonious and lasting professional associations.

Reduced earning expectations is the key. Firms that choose this courageous course must convince partners and associates that they will, in the end, gain more in personal satisfaction than they will lose in annual income. Across the board salary reductions must be accompanied by reduced expectations for billable time so the lawyers have more personal time. Any excess workload could then be distributed to additional lawyers hired at the lower salary levels. Client billings no longer would have to support inflated salaries. Clients would likely receive reasonable value for the fees paid.

Money mania was not confined to the LBO specialists in the 1980s. News reports, especially about large New York firms, showed intense inter-firm competition about which partners and associates made the most money. Partners anxiously glanced sideways to compare their annual partnership draw with that of partners in other firms. The National Law Journal reports that in 1988, seven firms had per partner profits in excess of one half million dollars a year. Two New York firms reported per partner annual profits exceeding one million dollars. It now appears that profits are somewhat lower. In the 1992 report, only three firms in the country indicated per partner profits exceeding a half million dollars.

Is one person's time really worth that much money? What did it take to support those very high economic expectations? Firms took on a pyramid structure. Each partner needed six associates working long hours to support everyone's inflated income demands. Of course, it did not stop with the partners, because firms also aggressively hired entry-level associates. Legal journals recounted tales of competition to hire the best and the brightest with escalating salaries and signing bonuses. New associates might start work earning seventy-five thousand dollars a year. The highest entry level salary reported in the National Law Journal study was eighty-three thousand dollars a year, plus bonuses. Firms could streamline procedures for routine matters, with the increased efficiency better serving the legal needs of persons of moderate income. Firms set high billing rates and billable hour expectations to pay associates' salaries and high partnership draws.

14. See Nancy D. Holt, Are Longer Hours Here to Stay?, A.B.A. J., Feb. 1993, at 62, 65 (The only hope for reducing time pressures is that enough lawyers will measure success in nonmonetary terms, and accept lower income in exchange for more free time.).


16. Id.
I have taught at several fine law schools around the country, and recall few students who graduated with the skills warranting that kind of salary. Traditionally, new graduates received substantial on-the-job training. Mentors would train on both technical skills, and inculcate the new lawyer with the firm's outlook on professional values. Unfortunately, today many private firms shirk these traditional training responsibilities. Instead, firms expect law schools to produce new graduates with sufficient practice skills that they can perform at profitable levels from the outset. Law schools are not equipped to provide students with realistic practical skills training for the wide range of complex legal matters they may encounter in practice. Although law schools can and should place greater emphasis on professionalism throughout the curriculum, this can only be done by sacrificing coverage of other matters.

Initially new associates are impressed with the high salaries they command. Soon they understand the tradeoff: the salary compensates for grueling work hours, leaving little time to enjoy the pleasures money can buy. Anecdotal reports of New York City practice vividly portray the work-dominated lifestyle. I heard of a young man who accepted a position with a prestigious firm. He was thrilled at the pay and the posh side benefits that accompanied the job. When lawyers worked late nights, they dined at fancy restaurants and were driven home in limousines. Yet, the big city life affords few recreational opportunities for associates who regularly work late, grab a bite at a deli near their apartment, and prepare to resume work early the next morning. Lacking sufficient time to re-energize, few persons can continue working at peak efficiency and skill level for prolonged times.

This undue focus on maximizing the financial rewards of practice is a phenomena which developed over time, with pressures mounting over the last twenty years. Critics complain that modern practice is now more like a business enterprise than a profession. Some critics blame lawyer advertising for the demise of professional values. True, advertising made explicit the market nature of legal services, and revealed pricing information that previously was secret. Yet such marketing activity only reflects a change in values, and opens the market for new entrants without established client bases. It did not cause the demise of altruism. Many firms which most aggressively pursue economic wealth have never advertised. Rather, their marketing efforts have traditionally been protected under the guise of client outreach activities to develop high visibility among potential corporate clients.

We also now observe changed expectations concerning the duration of professional relationships. As recently as twenty years ago, associations were expected to endure. Associates were hired with
the expectation of permanency: firms invested in their training and acculturation in the firm's image. Screening for partnership suitability was done at the time of initial hire, with a high probability that diligent and competent work would earn partnership. Lawyers were partners for life, barring some traumatic event that forced a firm breakup.

By contrast, today's professional relationships are more like romantic affairs, lasting only so long as they are mutually profitable, or until a better offer comes along. Associates are not hired with a presumption of partnership after six years. Instead, the prevailing expectation at many firms is that associates will work long hours for several years, and leave before achieving partnership. The parties' social contract exchanges high salary, prestige and experience, for exhausting work at the peak of early adulthood. The associate is not groomed for partnership, but to be turned out to pasture at the end of the partnership track. Partnership decisions are made less on merit than on economics. Despite an associate's competence and dedication, the partnership can support only so many at the existing compensation level. One departing senior associate is replaced by a lower-priced, entry-level associate. This "chew 'em up and spit 'em out" treatment of associates may satisfy partners' unrealistic financial expectations. Nevertheless, it is unfair to the associates, disrupts stable client relations, and diserves the long-term interests of professionalism.

Who pays for these inflated financial expectations? The clients, of course. When I was in practice, two thousand billable hours was considered quite high. Now, that is the norm; some firms expect as much as twenty-five hundred billable hours a year. It is difficult to imagine people working such long hours at maximum efficiency.

A partner in a large New York law firm recently confirmed my suspicions that high billable hour expectations virtually assure that some clients will be over-billed. If there is not enough work, the lawyer must nevertheless find a way to justify one's existence in the firm. This encourages double-billing, so that while traveling by plane for one client, the lawyer works on other clients' files, effectively billing two full hours for each hour of real time. The pressures also encourage inflated time records; a six minute call is billed for the minimum quarter hour; fifteen minutes' work is recorded at a half hour. Too often, such cheating on time records is accepted as common-place. It is not explicitly discussed as a part of

firm culture, but it is a recognized way for lawyers to meet the pressure for billable hours and survive.

Clients do not receive increased value for the increased fees they pay. I suggest that, given the high turnover among lawyers at the associate level, the clients receive much less value for their fees. Why? If one lawyer intimately familiar with a client's business knows the client's posture towards a dispute or negotiation, the lawyer can reach decisions with the client more efficiently, and these decisions will be more consistent with the client's long-term objectives. However, when there is frequent turnover of associates working on a matter, each associate requires start-up time to become sufficiently familiar with the case to be productive. Although the cause of extra hours is extrinsic to the client, the firm does not absorb the new associates' start-up costs. The client is billed a second time for essentially the same work. Thus, as a class, clients pay dearly for lawyers' financial expectations.

During the 1980s, money came before other values. This maxim operated both in business and the legal profession. In many quarters, one's professional success is gauged by one's earnings. Consider the discouraging picture of how lawyers respond to the pressure of practice. The current ABA Young Lawyers' Division (YLD) report clearly states that work pressures have taken a toll on lawyers' personal lives. Lawyers are worn out, stressed out and burned out. They lack sufficient time for self and family. Law school placement directors around the country report their graduates' common refrain, "Personal life? What personal life?"

A popular bumper sticker among law students asks, "Is there life after law school?" Sadly, at least on the new associate level when talking about a high pressure practice, the answer is "No." With disturbing frequency we see that, after ten or fifteen years of practice, many lawyers become disillusioned and leave practice entirely.\textsuperscript{19} The American Bar Association Journal sometimes reports of lawyers who leave legal practice to have more fun and less stress in their lives. One sold cookies. Another quit practice to become a vaudeville performer.\textsuperscript{20} Others turned to theatrical ventures. For all, these non-legal pursuits were a welcome respite from the drudgery of law practice.

\textsuperscript{19} See, e.g., Mary A. Altman, Life After Law, Second Careers for Lawyers (1991), providing case histories and practical information for lawyers contemplating a career change.

As the cost of legal education rises, so do students' investment of time and money. Legal education should yield satisfying, long-term careers. However, the YLD study reports that in private practice, twenty-eight percent of the men and forty-one percent of the women said they were dissatisfied. Women lawyers were more dissatisfied than men at every level of employment, from partners down to junior associates. The study suggests a slightly more optimistic outlook on corporate practice. Only thirty-six percent of these lawyers were dissatisfied. It seems as though government practice has been a safer haven, which I suggest is rooted in government personnel policies and mechanisms to accommodate some balance between work and personal life.

Consider the time pressures of a lawyer expected to bill clients for two thousand to twenty-five hundred hours each year. The YLD study reports that thirteen percent of the respondents work more than two hundred hours a month, or fifty hours a week. Thirty-seven percent reported working more than two hundred forty hours a month, or sixty hours a week. One hears many anecdotal reports of lawyers working seventy hours or more a week on a regular basis. Most law professors would probably acknowledge that one reason they left successful private practices was that they had no time for a quality personal life. Does one live to practice law, or practice law as part of a complete, rewarding life with both personal and professional components?

Lawyers are worn-out. They go home at the end of the day too tired to enjoy life. The YLD study reports seventy-one percent of the men and eighty-four percent of the women were too tired to do anything after work. A former student recently told me, "By the time I get home, I eat dinner and collapse."

Vacations are not the pause that refreshes. The National Association of Law Placement Directory indicates firms routinely allow two to four weeks vacation. However, in actual practice, lawyers seldom take their allotted vacations. They dare not. They cannot possibly meet their billable hour expectations with that much time off. Fifty percent of lawyers took less than a two week vacation. When we do take vacations, we are not fully vacating our minds of

22. Id. at 54.
23. Id.
24. Id.
25. Id. at 24.
27. The State of the Legal Profession, supra note 21, at 23.
work pressures or replenishing our souls. Instead, as good type A personalities, we bring along advance sheets or other work. I remember being in a lovely ski spot in Utah doing deposition summaries in the evening. Now, with express mail and fax machines, the possibilities of working compulsively while on vacation are subject only to the limits of our imagination.

A major complaint voiced by those in private practice is that firms do not adequately accommodate family demands. The successful private lawyer prototype is based on a model created at the turn of the century. Who were the lawyers at the turn of the century? They were white men, usually married with "stay at home" wives to tend hearth, home and children. With that division of labor, in the economically efficient traditional family, the committed, successful lawyer could "have it all". He could come home at night and have at least a distant relationship with his family. Home life provided a refreshing change to divert his mind from work.

The traditional model of the successful lawyer in private practice is a gendered and outmoded concept. Demographics have dramatically changed the world of practice. As translated into practice models for today, the prototype inappropriately deprives women and men of their opportunity to be successful in both the work place and at home. Over the last thirty years, society has undergone major social transformations. Economics, family instability, and desire for personal achievement pushed women from the home and into the work force in greater proportions than ever before. Women pursue advanced degrees expecting to practice in the professional work force for a substantial amount of time. At least among couples where both partners are highly educated, they are more likely to embrace a partnership model where domestic responsibility is shared. More than ever before, both men and women are actively involved in child rearing and other domestic responsibilities. Forty-three percent of law students today are women. Women lawyers today have an untenable choice between personal and professional success, as measured by traditional standards.

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29. For example, the Young Lawyers Division study indicates that when firms have an established policy allowing paternity leave, 20% of males surveyed took advantage of the leave opportunity. The State of the Legal Profession, supra note 21, at 29.
"Having it all" has become "the impossible dream". It can also put male lawyers to an untenable choice: work long hours and achieve success in the professional area only at the cost of being a stranger to your children, uninvolved in the community and distant to your spouse.

Recent studies depict the personal lives of successful men and women lawyers in private practice. The men's lives track the traditional model. They are married, with children and a wife who tends to home, children, and professional social demands. Although a wife may have begun a professional career, children and the husband's partnership diverted her to domestic activities so the family unit could manage all the conflicting demands.

The data on women lawyers stands in sharp contrast. One study reported that one-third of all successful professional women are not married or involved in an intimate relationship. If married, they probably do not have children. It appears that those who did not marry

30. Speaking during her Noreen E. McNamara Memorial Lecture, N.Y. Ct. App. Justice, Judge Judith Kaye noted that many women have found the varied and demanding responsibilities of family, law firm practice and community "physically impossible". Leslie Bender, Sex Discrimination or Gender Inequality?, 57 FORDHAM L. REVIEW 941, 942 (1989). One commentator noted that statistics indicate that "women have gained the privilege of joining the labor force only by working two shifts, one at the office, and another at home." Joan C. Williams, Sameness, Feminism and the Work/Family Conflict, 35 N.Y.L. SCH. L. REV. 347, 353 (1990).

31. To learn first hand about law students' stress and anxieties about practice, I gathered a group of students from Willamette Law School. The participants discussed the problems confronted by young attorneys juggling home and family needs and legal practice. One woman commented that a number of her female friends had dropped out of law practice because they simply could not handle the physical and emotional stresses associated with the heavy demands of job and family. Another reported searching for a successful woman partner who was happily married with children to serve as a role model. At last, she identified one who seemed to fit the bill. When asked how she managed to juggle her diverse responsibilities, the woman partner indicated that her husband gave up his career to assume primary responsibility for domestic issues. Transcript of discussion, May 30, 1991, at 22.

32. The State of the Legal Profession, supra note 21, at 48. See also ABA Comm'n on Women in the Profession Report to the House of Delegates (approved Aug. 10, 1988) (data showed significantly more men lawyers than women lawyers are married with children) (copy on file with author); Balanced Lives, supra note 28, at pt. I, Parental Leave Policies, at 1 n.1 (summarizing local studies that show dramatic disparity in parental status for men and women lawyers).
or form other intimate personal relationships lacked the time to establish such relationships.

In terms of work environment, most respondents to the YLD study reported the work was intellectually challenging and that their superiors respected and treated them as colleagues.33 A large majority considered the atmosphere warm and personal.34 Yet, approximately ten percent (10%) observed the presence of racial bias. Given that only 6.8% of associates and 2.4% of partners in private firms are non-white,35 this response suggests that discrimination is widespread. Only one-half of Black American lawyers accept employment in private firms, as compared with the overall national rate of 62.4%.36 Political intrigue and backbiting are common in the legal workplace.37 Homophobia is as deep-seated in the legal profession as it is in the community at large.38 Gay and lesbian lawyers are in an especially difficult bind: "You are encouraged . . . to be open, to socialize with people, to be friendly. But when you get to be too honest and too open and start talking about your sexual orientation, people get very uncomfortable. . . you're . . . stuck in a bind as to how much to reveal about yourself."39 One partnership criteria includes "the person's ability to get along with other people. If you have to hide a big part of yourself through that process, then you are at a terrible disadvantage."40 These lawyers experience additional stress from subtle hostility towards homosexuals, and the psychic toll when they cannot be open about their personal lives and domestic partner.41

33. THE STATE OF THE LEGAL PROFESSION, supra note 21, at 17-18.
34. Id. at 18. Of those responding, 88% in private firms, 77% in corporate settings and 84% in government practice described the legal workplace atmosphere as warm and personal.
37. THE STATE OF THE LEGAL PROFESSION, supra note 21, at 18.
38. David Margolis, At the Bar; When a California Legal Magazine portrays Gay Lawyers, the Response is X-rated, N.Y. TIMES, Oct. 9, 1992, at B10 (describing virulent response in letters to editor following California Lawyer article on gay and lesbian lawyers).
40. Id. at 34.
Lawyers ought not be forced to sacrifice their personal lives at the cost of their professional careers. Lawyers who are whole and balanced persons bring more to their professional lives and to their representation of clients. Conversely, lawyers whose work forces denial of their personal selves are ill-equipped to represent their clients as whole persons.

Pervasive sexual harassment of women lawyers contributes to a negative work environment. The YLD study reported that eighty percent of women had experienced or observed some form of sexual harassment. For junior associates, the figure was one hundred percent. These figures do not simply reflect over-reaction by hypersensitive women. Seventy-eight percent of the male lawyers also observed the sexual harassment. Sexual harassment taints the work place, resulting in lower productivity. When women experience these problems on the job, they do not file complaints. Instead, they quietly seek to remove themselves from the situation. Firms that fail to recognize and effectively address the problem lose their investment in these trained, talented lawyers.

Disturbing anecdotal reports from lawyers of color indicate an especially negative work environment. They perceive that their competence is always subject to challenge and held to closer scrutiny. Some perceive that they are hired as window dressing and deprived of meaningful work assignments. When the time comes to be

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42. The State of the Legal Profession, supra note 21, at 67.
43. Id. at 68. Experience with sexual harassment varies little with law firm seniority. Senior female attorneys were just as likely to experience harassment as their junior counterparts. Id.
44. Id. The YLD study did not address whether male lawyers also experienced sexual harassment.
45. The Commission on Women in the Profession report indicates that approximately 40% of the women who are sexually harassed in the workplace will either use leave time, or resign in order to avoid the situation. Fifty percent of women attempt to ignore the problem, but are demonstrated to be 10% less productive at work as a result of the harassment. Balanced Lives, supra note 28, at Part III-4. See also In re Peters, 428 N.W. 2d 375 (Minn. 1988) (law school dean publicly reprimanded for sexual harassment of female students and staff; women testified they long avoided reporting offensive incidents because they feared professional suicide from openly confronting a powerful lawyer).
47. Jacob Herring, Derailed Over Diversity, The Recorder, Nov. 6, 1992, at 7 (detailing examples of skewed perceptions based on race and frequent occurrences that undermine chances for grounds and advancement for people (continued)
evaluated for potential partnership, they are told that they have not achieved the same level of expertise as their classmates. They were never given a fair opportunity. Fortunately, there is evidence that some law firms are changing by recognizing the need for increased attention to hiring and retention of minority lawyers. Those who do become partners face the daunting challenge of generating new, profitable clients when they lack the social connections and comfort level that their white colleagues have with executives of white business America.

Over time, the pressure of long hours with no reasonable opportunity for a balanced personal life results in various stress-related disorders. Increasingly, we see evidence of stress-related disorders in disciplinary cases. In Oregon, for example, the Supreme Court considered a case involving an otherwise successful lawyer in practice for twenty years. He ran out of energy. The Oregon Supreme Court noted the lawyer had succumbed to the stress, evidenced by a long-standing pattern of neglect and culminating in lying to the client about the delay. Because the misconduct resulted from the lawyer's emotional difficulties, the court suspended discipline conditioned on his receiving treatment for the stress-related disorder. One justice suggested requiring all lawyers read the opinion to warn them of burnout. In burnout syndrome the professional feels obliged to help each person that seeks his or her assistance. No one else can handle this case. Therefore, the lawyer assumes more work than can be handled competently, including that which the lawyer finds unpleasant. Upon encountering an intractable problem, the troublesome file goes to the back of the drawer. Conveniently out of sight, the lawyer avoids working on the matter until some crisis forces attention to it.

of color). See also Caroline V. Clark, The Diversity Dilemma, THE AM. LAW., Oct. 1992, at 29 (addressing subtleties, ambiguities and intangibles that give persons of color the perception of discrimination. Inadequate mentorship is the most common concern reported by minority lawyers interviewed.).


50. See In re Conduct of Loew, 642 P.2d 1171 (Or. 1982). The lawyer's psychiatrist testified that the lawyer was suffering from "burn out syndrome." The court found the lawyer's misconduct "serious enough to warrant suspension." Id. at 1174.

51. Id.

52. Id. at 1174 (Peterson, J., concurring).

53. Id. at 1173.
In many discipline cases I see evidence of burnout resulting in neglect. Statistically, lawyers charged with disciplinary violations are more likely to have been in practice for ten to fifteen years. Two thirds of malpractice claims against insured lawyers involve those who have been in practice more than ten years. They tolerate the pressure for sustained periods until they can no longer cope.

Substance abuse is recognized as directly related to disciplinary complaints. The National Bar Council believes it can prove that at least fifty to sixty percent of all client complaints are directly related to alcohol or substance abuse. In fact, they suspect that the true estimate approaches eighty percent. While ten percent of the general population has an alcohol or substance abuse problem, they suspect


57. See Donna L.Splis, ABA Comm’n on Impaired Attorneys, Overview of Assistance Programs 2 (1991) which states that studies in California and Oregon indicate that 60% of attorneys involved in disciplinary actions were chemically dependent. See generally Roseanne Theis, ABA Comm’n on Impaired Attorneys, An Overview of Lawyer Assistance Programs in the United States (June 1989) (copy on file with author); D. Splis, ABA Comm’n on Impaired Attorneys, Lawyer Substance Abuse (July 1990) (copy on file with author).
that the rate among lawyers is higher.\textsuperscript{68} For example, Arizona and Washington report that thirteen to eighteen percent of lawyers have alcohol or drug abuse problems.

Lawyers who are exhausted or impaired by stress cannot serve their clients at optimal levels of performance. Stress undoubtedly affects the quality of work. Empirical studies on hospital interns and residents during their intensive practical training are instructive. Data shows a higher frequency of judgment errors when they were working seventy to eighty hours a week. Fatigue impairs response time and the capacity to make clear, sound professional judgments.\textsuperscript{69}

I suggest this data also is relevant to the practice of law. Lawyers who work in excess of sixty hours a week on a long-term basis may be physically present, but their minds cannot operate at peak efficiency. They cannot produce good value for each hour of billable time. Fatigue impairs one's capacity to make fully reasoned and sound professional judgments. By contrast, imagine the full range of legal, economic, social and moral considerations which a refreshed, balanced and happy lawyer might consider in counseling a client.

Lawyers who are involved in the lay community and have satisfying personal relationships with non-lawyers can better understand their clients' concerns. Law students need training on how to identify clients' desired objectives—what they want to accomplish in the legal representation. To date, the increased focus on client-centered representation resides mostly with scholars and clinical legal educators.

Lawyers are bound to pursue their clients' lawful objectives.\textsuperscript{60} Too often a lawyer will encounter a common problem and assume that the client wants the optimal return, viewed from the lawyer's perspective.\textsuperscript{61} Attorneys tend to impute to their clients the technical legal ends that lawyers think their clients should want,\textsuperscript{62} ignoring the clients' personal goals and concerns.


\textsuperscript{60} \textit{Model Rules of Professional Conduct} Rule 1.2 (1992).


Some of the moral and philosophical discussions about the
client/lawyer relationship encourage lawyers to engage in more open
discourse with their clients. Where a client conveys feelings of
discomfort, a lawyer who is insensitive to such feelings or unable see
the client as a whole person will simply ignore those signals and
pursue the legal ends imputed to the client. By contrast, lawyers who
are skilled in interpersonal relations will watch for signals and
listen to the client. The client-centered lawyer discovers the client's
broad range of objectives and how they stand in relative priority. For
example, a litigation client may want to pursue a matter "no holds
barred" or be willing to compromise to avoid the prolonged anxiety of
litigation.

To the extent legal practice provides structural mechanisms for
lawyers to have balanced personal lives, lawyers can represent their
clients more efficiently and effectively. Consequently, the fees paid
will reflect real value to the client.

I would like to make some recommendations. Some of them, I
concede, may at first blush seem impractical for the legal profession.
That, as Professor Johnstone said, is the privilege that comes with
tenure. Job security is not jeopardized by scholarship that raises
critical but unpopular ideas.

This is a time of national transition. The excesses of the 1980s
should be relegated to the past and replaced with moderation. The
legal profession should seize this opportunity to abandon compulsive
work schedules. Perhaps laypersons could relate better to lawyers
who "took time to smell the roses".

First, we need to do some old fashioned belt tightening. Perhaps
our inflated financial expectations served as justification for the fact
that we lacked the time to realize the life-style benefits associated with
high earnings. We sought quick and extravagant pleasure. Instead,
if lawyers can reduce financial expectations at every level from
senior partners to junior associates, there will be less need for high
billable hours. While law firms may not hear it directly from job
applicants, most would probably accept less in salary in exchange for
more personal time. They would give up the excess income for lower
salaries sufficient to support a reasonable standard of living and
repayment of student loans.

Partners should seriously consider reducing economic
expectations across the board. Revamp the pyramid structure that
demands six associates work 2,500 hours a year to support each

63. See, e.g., Thomas Shaffer, The Practice of Law as Moral Discourse, 55
Notre Dame L.Rev. 231 (1979); Warren Lehman, The Pursuit of a Client's
partner. Firms cannot afford to hire new graduates at existing competitive salaries. Many able new lawyers cannot find satisfying legal employment. Overall reduction of everyone's financial expectations would enable firms to hire more of these lawyers. Modifying the social contract between firms and their staff will allow attorneys to live balanced personal lives and to enhance the quality of services provided to clients.

Law firms often lack good personnel policies and practices. Firms may knowledgeably advise corporate clients on sound personnel systems to prevent legal difficulties, but they seldom incorporate those systems into their own practices. Law firms should create effective feedback systems for associates, providing semi-annual, formal performance evaluations that advise associates of what they are doing well and where their work needs improvement. Evaluations should be regarded as part of the employer's investment in a productive working relationship expected to endure over time. Firms should reject the crass view that associates are expendable workers. Long-term employment relationships also benefit clients. Without frequent disruptions associated with personnel changes, the client-lawyer relationship can evolve over time. The lawyer then has the opportunity to achieve a broader understanding of the client's concerns. Continuity further enhances the value that clients receive for fees paid. Rather than subsidizing each new lawyer's start-up activities, the ongoing representation efficiently builds upon prior work done for the client.

During their early careers, lawyers experience a direct conflict between the high intensity work and family demands. The legal workplace must acknowledge that lawyers deserve a full life outside of the office.64

The ABA Commission on Women in the Profession offered impressive proposed policies to facilitate balanced lives for lawyers. Firms should be receptive to the idea of alternative work schedules for a wide range of purposes: not just childbirth and early child care, but time also for personal growth and further education.65 If firms expect long-term commitments from their lawyers, they should allow room for diversions in careers, so attorneys can periodically move out of the full time practice to pursue other interests, including bar activities. Firms should actively encourage recreation. They should require that lawyers take regular vacations.

64. BALANCED LIVES, supra note 28, at pt. II, Alternative Work Schedules, at 1-3.
The legal profession should develop, within law firms and with the strong encouragement of the state bar, written parental leave policies. Leave must be available for all lawyers, not just women lawyers who become pregnant. If a lawyer bears or adopts a child, the firm should permit the lawyer to work fewer hours that count pro rata towards eventual partnership. Firms should reject the so called "mommy track" where women who choose to have children and assume significant parental responsibilities are removed from the partnership track and put on a second class level. Likewise, firms should accommodate men who seek to assume substantial parental responsibilities. National data reflects that many corporate parental leave policies will, by their terms, allow men to request leave. Nevertheless, men rarely ask, rightly fearing that it will be perceived that they lack professional commitment.

Firms need written and effective policies prohibiting sexual harassment. These policies must be effectively communicated and enforced at all levels of employment. The policies should be proactive, in which administrators are educated to look for signals of sexual harassment. Administrators should watch for sudden changes in an employee's performance evaluations given by a supervisor. Such sudden changes are a signal that something may be amiss. Perhaps the downturn reflects the aftermath of sexual harassment and retaliation for spurned advances. Even if the changed performance assessment results from another problem, the firm should treat it as a signal indicating the need for corrective action.

Law firms should re-embrace the tradition of mentoring by senior lawyers who help socialize junior lawyers into the profession and

66. An excellent example of such a policy can be found in Balanced Lives, supra note 28.
68. Balanced Lives, supra note 28, at pt. I, Parental Leave, at 7 (firm policy should reassure lawyers who take parental leave that they will not be held back in their progression towards partnership).
71. State of the Legal Profession, supra note 21, at 28-29.
72. Id. at pt. III, at 16.
teach them what constitutes competent ethical practice. Rather than leaving the mentoring match to chance, which often leaves untended women and minorities, firms should institutionalize mentor programs with deliberate attention to the values, work habits and skills that are taught.

The bar can also make some significant efforts to correct patterns of the negative work environment. First, the organized bar should include anti-discrimination provisions in state ethical codes. State bars should follow the example of such states as New York, Vermont, and New Jersey.\textsuperscript{74} Second, the Code of Judicial Conduct should include effective prohibitions against sexual harassment.\textsuperscript{75} Third, bar associations should organize programs to help bring lawyers of color into the full practice of law, providing employment opportunities, mentoring systems, and making sure that the legal community fairly represents the community that is being served.\textsuperscript{76} Finally, the bar should actively develop substance abuse and stress-related disorder programs. Most state bar associations now have some programs dealing with substance abuse.\textsuperscript{77} Other states have

\textsuperscript{74} See, e.g., Model Rule 8.4 as adopted in New Jersey, defining professional misconduct as

\begin{quote}
(g) engaging, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, marital status, socioeconomic status, or handicap, where the conduct is intended or likely to cause harm.
\end{quote}


\textit{See also} Colorado's version of Model Rule 1.2, which adds a section prohibiting a lawyer from conduct that exhibits or is intended to appeal to or engender bias against a person on account of race, gender, national origin, disability, age, sexual orientation or socio-economic status. (effective Jan. 1, 1993). The provision is directed to cover lawyers' conduct with other lawyers, court personnel, witnesses, parties, judges, judicial officers, or anyone else involved in the legal process. 8 Laws. Man. on Prof. Conduct (ABA/BNA) 166-67 (June 17, 1992).


\textsuperscript{76} See, e.g., Grey, supra note 48, regarding efforts of some Cincinnati, New York and San Francisco law firms to improve hiring and retention of minority lawyers.

\textsuperscript{77} See ABA COMM'N ON IMPAIRED ATTORNEYS, 1991 DIRECTORY STATE AND LOCAL LAWYER ASSISTANCE PROGRAMS.
more progressive programs to address the bigger issues of stress and provide on-going professional guidance to lawyers suffering stress-related problems. The bar should expand those efforts, and provide some program assistance for lawyers in transition—those who have had enough and choose to leave the profession.

Lawyers are worn out, stressed out, burned out, and sometimes drugged out. The legal profession must begin actively creating and implementing solutions so that lawyers in practice can work effectively and live full, rewarding lives. By doing so, they can capably represent their clients for reasonable fees. Living a life that is personally and professionally rewarding should not be an impossible dream. My hope for all humanity, lawyers or not, is that in our old age, we can reflect on our lives with satisfaction, that we lived good and rewarding lives. If the legal profession refuses to address these issues, it cannot rekindle the spirit of professionalism.