

The Lawyer Track: The Case for Humanizing the Career Within a Large Law Firm

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I. INTRODUCTION

Lawyers of this decade face challenges unknown to lawyers of previous generations—both within their chosen fields and outside the law firm environment. Much has been written and discussed about the changes taking place in the legal profession, such as the glut of lawyers, the economic pressures facing firms, the decline of professionalism, the growing number of women lawyers, and the growing complexity of legal issues. The list expands daily. At the same time that these changes are occurring and affecting our professional lives, profound changes are taking place in society that are affecting our personal lives.

Today, the American family only slightly resembles the typical family of two decades ago. High divorce rates have led to many single-parent and stepfamily households. Women have entered the labor market in droves, and society as a whole is facing a series of crises ranging from drug wars and AIDS to child abuse and child neglect.

At a time when our children face the greatest obstacles in growing up and necessarily need the most guidance, parents are unavailable for large parts of the day as economic pressures force them into the workplace. Add to this mix the growing number of elderly parents requiring care from their grown offspring, and it is easy to understand why terms such as “quality time,” “balanced lives,” “mommy track,” “granny track,” and “family leave policies” are the hot topics of discussion in many sectors.

Just as the labor force in general is struggling with the growing demands of balancing a career and a family, members of the legal profession face these same issues, which are often magnified due to the intense time pressures inherent in the profession. This Note focuses on the problem of the competing demands of a career in a large law firm with the demands of care-giver roles at home. The focal point of this discussion is the large law firm for two reasons: (1) large law firms are well-known for their substantial billable hour requirements and the pressures they put on lawyers to work long hours, and (2) large law firms, in general, have greater resources to implement change and to serve as a model for the rest of the legal community

Progressive organizations in other sectors of the work force already have begun to search for solutions to this balancing act facing their workers. It is imperative that the legal profession become a leader in this endeavor and that

law firms research and adopt workable solutions to this dilemma—the cost of lagging behind is too great.

In this Note, I will first provide a brief overview of the American family today and the care-giver demands facing many of these families. Next, I will look at the current status of the legal profession and some of the developments that have led to the huge time demands on lawyers. Most important, I will discuss the harm inherent in the present state of the profession—the harm in the demands of our chosen careers. I will explore the harm to the individual attorney, the harm to families and clients, the harm to the law firms, and, last, the harm to the profession as a whole. Finally, I will consider some solutions, both good and bad, that have been attempted, propose some alternate solutions, and discuss the benefits of implementing solutions to this dilemma.

With law firms facing growing demands and economic pressures, many changes in the legal market already have taken place and many more will be forced by the marketplace. This Note will show that, with all of the other changes taking place in our profession and in society as a whole, the time is optimal for implementing new solutions to the family/work dilemma, for the good of the lawyers, the law firms, and the legal profession.

II. THE CHANGING AMERICAN FAMILY

The family unit today is no longer easily defined. The typical family unit once brought to mind images of the traditional father who worked and supported the family and the traditional mother who stayed at home and tended the house and children. Any variation from this pattern used to be the exception. The American household has undergone dramatic changes and is now far more diverse than in previous generations.¹ Variation is now the norm. Those who live in American households live in less stable and more heterogeneous families than before.²

Divorce is one of the factors contributing to these changing statistics. Today, one in two marriages end in divorce,³ and almost half of all marriages are remarriages for at least one of the partners.⁴ Another factor is the recent rise in the number of never-married women with children.⁵ Out-of-wedlock

¹ *The Changing American Household*, AM. DEMOGRAPHICS DESK REFERENCE, July 1992, at 2, 2.

² James R. Wetzel, *American Families: 75 Years of Change*, MONTHLY LAB. REV., Mar. 1990, at 4, 4.

³ *Id.* at 6.

⁴ *The Changing American Household*, *supra* note 1, at 7 (citing The National Center for Health Statistics).

⁵ Wetzel, *supra* note 2, at 5.

births are responsible for twenty-six percent of single-parent households.⁶ As a result, the number of children living with one parent has nearly doubled since 1970; sixteen million children lived with only one parent in 1990.⁷ At this rate, it is projected that sixty-one percent of American children will spend some time in a single-parent household before their eighteenth birthday.⁸ Along these same lines, the number of single-father households almost doubled between 1980 and 1990.⁹

Although these statistics are of no surprise to most of us, their effect on the labor market has been profound. Today, fifty-three million working-age women hold jobs—that equates to forty-five percent of the labor force.¹⁰ Additionally, two-thirds of all new recruits to the work force are women,¹¹ millions of whom have children. Today, only one of every three mothers stays at home and provides full-time care for her children.¹²

Dual income families are another trend among American households, most likely due to economic necessity. For instance,

[b]etween 1970 and 1989, the labor force participation rate of married women with children under age 6 increased from 30 percent to 58 percent. The rate for married women with children aged 6 to 17 increased from 49 percent to 73 percent. As a result, the number of dual-earner married couples with children increased from 12.7 million in 1970 to 17.7 million in 1990.¹³

A more novel trend among married households is the growing number of fathers who stay at home while the mothers work. Even though stay-at-home fathers comprise only 2 percent of married parents of children under 18, the numbers amount to about 257,000 men who stay at home while their spouses work.¹⁴

Clearly, the makeup of the American family has undergone a drastic transformation. High divorce rates, single parents, step-families, dual income

⁶ *Single Parents*, AM. DEMOGRAPHICS DESK REFERENCE, July 1992, at 14, 15.

⁷ *Id.* at 14.

⁸ *Id.*

⁹ *Id.* at 24.

¹⁰ Joseph P. Shapiro, *When Workers Choose Between Careers and Taking Care of Aged Parents*, WASH. POST, Mar. 20, 1990, at 12.

¹¹ *Id.*

¹² Peter Cattani, *Childcare Problems: An Obstacle to Work*, MONTHLY LAB. REV., Oct. 1991, at 3, 3.

¹³ *Married with Children*, AM. DEMOGRAPHICS DESK REFERENCE, July 1992, at 6, 8.

¹⁴ Barbara Goldberg, *When Every Day is Dad's Day*, NEWS J. (Wilmington, Del.), June 16, 1991, at J1, reprinted in 4 FAMILY (Social Issues Resources Series, Inc.), art. no. 72, at 72-4 (1991).

families, stay-at-home fathers, and a labor market, half of which composed of women, may be recent developments, but the changes are here to stay. Relevant to the topic of this Note are the growing demands on people in the labor force as a result of these recent developments and trends in family life.¹⁵ Because the focus here is on lawyers with care-giver demands, it will next be necessary to take a look at what these care-giver demands entail.

III. EXPLORATION OF THE CARE-GIVER DEMANDS

As discussed above, women have entered the work force in increasing numbers in recent years, and many of these women are mothers. Because of this development, we can no longer assume that a worker has full-time support (like a partner or a spouse) at home caring for the children. Although people are having fewer children per family today than in the 1950s,¹⁶ the number of overall births is up.¹⁷

These figures translate into a growing need for childcare by parents who work. As illustrated by the number of dual income and single-parent households, raising children can no longer be viewed as a woman's full-time job. "The mass surrender of child-rearing responsibilities to non-relatives and state-regulated institutions marks a profound change in human history. It represents the final victory of the Industrial Revolution: the industrialization of the family."¹⁸ For good or bad, these statistics will touch the majority of American workers in some way.

Childcare during working hours, however, is just one aspect of child-rearing. Care-giver demands include the nurturing and quality time aspects as well as the physical care of children. Raising children is extremely stressful, and families "must virtually reorganize in order to provide the necessary energy to meet the demands"¹⁹ of each stage of a child's development. For

¹⁵ It is likely that these time constraints and competing demands would apply equally to same-sex couples, and same-sex couples who are raising children.

¹⁶ "In 1990, families average about two children per couple, compared with about three children during the mid-1950's." *Married With Children*, *supra* note 13, at 7.

¹⁷ "Births topped 4 million in 1989, 1990, and 1991, reaching levels not seen since the baby boom." *Id.* at 8.

¹⁸ Karl Zinsmeister, *The Industrialization of Childcare*, HARTFORD COURANT, Oct. 2, 1988, at C1, *reprinted in* 4 FAMILY (Social Issues Resources Series, Inc.), art. no. 15, at 15-1 (1988).

¹⁹ T. Berry Brazelton, *Nurturing the Nurturers*, THE CHRISTIAN SCIENCE MONITOR MONTHLY, (World Monitor) Mar. 1989, at 14, *reprinted in* 4 FAMILY (Social Issues Resources Series, Inc.), art. no. 24, at 24-1 (1989).

working parents, this nurturing must literally be compacted into the few hours before and after work that a child is awake.

Traditionally, this dilemma has been considered a woman's issue. Women are taking on more roles than ever before as they add work and professional roles to home and child-rearing roles. However, women are not the only ones taking on greater responsibility. Men, are adding more roles to their traditional provider duties and, in some cases, are shunning the traditional role altogether. Involved fathering is becoming commonplace as increasing numbers of men are taking an active part in child-rearing.²⁰ Men are also juggling the demands of work and family, and many are becoming stressed and having problems coping in the process.²¹

T. Berry Brazelton, pediatrician and educator, notes that the pressures on young parents are often out of proportion with their ability to cope. "As women and men begin to face squarely the unforeseen anxieties of dividing the self into two important roles—one geared toward the family, the other geared toward the working world—the pressures are enormous and largely uncharted by past generations."²²

As if the magnitude of child-rearing care-giver demands is not enough, many workers are now facing a new care-giver role—that of caring for aging parents. A 1987 report by the Select Committee on Aging of the House of Representatives concluded that the average woman today can expect to spend seventeen years taking care of parents.²³ Labeled the "granny track," taking care of aging parents can be every bit as demanding to working as child-rearing, and, in addition, finding day care options may be even more difficult. Furthermore, some families may find themselves facing the daunting task of raising children and caring for aging parents simultaneously.²⁴

It is a naive and uneducated assumption that care-giver issues do not touch most employees today. Whether a worker is male or female, whether it is children or aging parents who require the care, there can be no doubt that these demands are very real to the vast majority of employees. It is a potentially dangerous error on the part of an employer to assume that employees' lives at home are easily separated from their working or professional lives. Against

²⁰ Jay Stuller, "Superdad Syndrome," *KIWANIS MAG.*, May 1991, at 34, reprinted in 4 *FAMILY* (Social Issues Resources Series, Inc.), art. no. 72, at 72-1 (1991).

²¹ *Id.* (discussing the new "superdad syndrome" among men who are trying to do it all).

²² Brazelton, *supra* note 19 at 24-2.

²³ Shapiro, *supra* note 10, at 12. See also Sue Shellenbarger, *Geriatric Cases: The Aging of America Is Making 'Elder Care' a Big Working Issue*, *WALL ST. J.*, Feb. 16, 1994, at A1.

²⁴ *Id.* Such care-givers are often labeled members of the "sandwich generation."

such a backdrop, this Note will explore the legal profession today, particularly within a large law firm.

IV. THE PRESENT STATE OF THE PROFESSION

"Some twenty years ago the legal profession was remarkably stable, having changed little in the preceding 100 years."²⁵ One of the most visible changes in the past 20 years is that the number of lawyers has soared; in the United States during the last decade alone there has been approximately a 44 percent increase in lawyers, from 540,000 to 780,000.²⁶ Additionally, there are between 35,000 and 40,000 new law school graduates every year.²⁷ The bar is no longer comprised mostly of men either. Women now make up twenty percent of licensed lawyers, and that number will continue to grow. Over forty percent of law students are women.²⁸

The increasing numbers and new demographics are not the only adjustments. The complexity of legal matters is increasing as the complexity of the world and its transactions increase. Where the lawyer's role used to be clearly defined, today it is likely to cross the boundaries of many disciplines, and this crossover, in turn, has led to greater specialization among lawyers.²⁹

Lawyer mobility is yet another development. Once, lawyers used to build their careers within one law firm, striving for partnership. Today, moving from firm to firm is commonplace. Headhunters are increasing in numbers as firm hopping becomes the norm.³⁰ This increase in lateral hiring translates into a decrease in firm loyalty.³¹

Not only are the lawyers moving and changing; so also are the clients. The growth of consumer consciousness and the number of consumers exercising their rights to make informed decisions about goods and services has impacted the legal profession.³² Client sophistication has grown, too. With the advent of

²⁵ James W. Jones, *The Challenge of Change: The Practice of Law in the Year 2000*, 41 VAND. L. REV. 683, 683 (1988).

²⁶ *Win-Win Billing Strategies That Satisfy You and Your Client*, 1992 A.B.A. Sec. of Law Prac. Mgmt. 6, 6 (Richard C. Reed ed., 1992) [hereinafter *Win-Win Billing Strategies*].

²⁷ *Id.*

²⁸ *Id.*

²⁹ Jones, *supra* note 25, at 684-85.

³⁰ See Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 FORDHAM L. REV. 111, 114 (1988).

³¹ Jones, *supra* note 25, at 687-88.

³² *Id.* at 686.

in-house corporate legal departments, the client is often a lawyer rather than a layperson.³³ These factors have led to increasing client mobility.

Many critics note a negative change in lawyering, the "decline of professionalism."³⁴ The practice of law has become largely a business as firms struggle to make a profit, and many perceive this focus on law as a business as the erosion of law as a profession.

Other changes in the legal profession include the advent of lawyer advertising,³⁵ the use of office automation and computer systems, and the increasing use of paralegals and nonlawyers.³⁶ Lawyers are now more productive, and the time required for producing legal services has dropped due to the advances in technology.

All of these factors have combined to produce some startling developments within law firms. The supply of lawyers has led to a maturation of the legal market.³⁷ Customers of law firms have greater buying power; competition for clients, and, thus, price competition, has grown.³⁸ Lawyers have been under-used and there has been a decline of overall profitability.³⁹

The traditional law firm structure, the "Cravath System," which entails hiring only from law schools into an up or out structure of associates and partners, is dissolving.⁴⁰ This pyramid structure is not as useful or profitable. Under the pyramid, as an associate was promoted to the partnership, several more productive associates had to be added to keep the existing profit ratio. Within this system, firms grew at geometric proportions. This may have been relatively harmless in a legal market in which the demand for lawyers exceeded the supply.⁴¹

³³ *Win-Win Billing Strategies*, *supra* note 26, at 10.

³⁴ Robert MacCrate, *What Women Are Teaching a Male-Dominated Profession*, 57 *FORDHAM L. REV.* 989, 991 (1989). For an economic analysis of the decline of professionalism, see Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 *MD. L. REV.* 869 (1990). See also Timothy P. Terrell & James H. Wildman, *Rethinking "Professionalism"*, 41 *EMORY L.J.* 403 (1992); *Burger Laments the Shysters of the Bar*, *LEGAL TIMES*, May 3, 1993, at 10 (excerpting Chief Justice Warren Burger's first Robert Taylor Memorial Lecture at the University of Tennessee on Apr. 13, 1993).

³⁵ See *Bates v. State Bar*, 433 U.S. 350 (1977).

³⁶ *Win-Win Billing Strategies*, *supra* note 26, at 5.

³⁷ *Id.* at 8.

³⁸ *Id.* at 9.

³⁹ Ward Bower, *Rethinking Law Firm Organization—The New Pyramid*, A.B.A. J., Apr. 1989, at 90, 90.

⁴⁰ Fern S. Sussman, *The Large Law Firm Structure—An Historic Opportunity*, 57 *FORDHAM L. REV.* 969, 969–70 (1989).

⁴¹ Bower, *supra* note 39, at 90.

Now, however, as the supply of lawyers approaches demand, we have seen a collapse of law firms unable to compete in the new market. In the 1980s, many law firms dissolved.⁴² Mergers were the way to survival for some firms. While others added positions such as staff attorneys, permanent associates, and nonequity partners.⁴³

From the changing demographics and the greater specialization to the crumbling of traditional law firm structures, the synergistic effect of all of these changes within the profession has meant a minor overhaul in the career description of a lawyer. Among many, two factors stand out: increasing salaries and increasing billable hour requirements. First, huge increases in salaries have occurred across the board. In the last ten years, average starting salaries for new associates increased one hundred twenty percent, average associate compensation increased one hundred ten percent, and average partner compensation increased ninety percent.⁴⁴ Keen competition exists among firms to "hook" the top graduates from the best law schools. It is very relevant that firms are investing more and more money into new associates, and income generated by new associates does not begin to cover this outlay for several years.⁴⁵

Second, the growing billable hour requirement has placed increasing demands on lawyers. Between 1984 and 1989, the median billable hours recorded by all associates rose from 1738 to 1820 and by partners from 1571 to 1706.⁴⁶ Among large law firms, the billable hour requirement for associates is much higher, often above 2000 hours.⁴⁷

The present state of the profession, therefore, is a rapidly changing environment complete with the crumbling of traditional law firm structures. Firms invest large sums of money in new associates who are not anticipated to pay their way for several years, but are expected to meet a daunting billable hour requirement.

Robert MacCrate, in praising the new perspectives that women have brought to the legal profession in recent years, described law in the 1950s: "Young lawyers entering the profession" clearly felt that their primary commitment was to their careers in law. Other responsibilities just were not permitted to interfere; the law was truly a jealous mistress and one whose

⁴² *Win-Win Billing Strategies*, *supra* note 26, at 10.

⁴³ S.S. Samuelson, *The Organizational Structure of Law Firms: Lessons from Management Theory*, 51 OHIO ST. L.J. 645, 656 (1990).

⁴⁴ *Win-Win Billing Strategies*, *supra* note 26, at 7.

⁴⁵ *Id.* at 12.

⁴⁶ THE LAWYER'S ALMANAC 218 (Prentice Hall Law & Business 1991).

⁴⁷ Sussman, *supra* note 40, at 971.

demands were designed for men only."⁴⁸ Today, the law is still a "jealous mistress" within large law firms (and many other legal careers), to men and women *both*, and this system is harming both lawyers and nonlawyers, the law firms, and the entire legal profession.

V. THE INHERENT HARM IN THE PRESENT SYSTEM

A. Harm to the Lawyers

The current structure within large law firms entails a system in which lawyers are judged by their billable hour output. This quantity system is very harmful to the individual lawyer, particularly one with care-giver demands at home. Lawyers who are forced to spend such huge amounts of time past the normal workday to earn their keep necessarily spend less time at home with their families and on activities for their own enjoyment. This lack of time is a large factor in increased lawyer dissatisfaction.⁴⁹ Such career dissatisfaction often leads to increased social dysfunction and destructive behavior.⁵⁰

Continual clashes between work and family amount to the lawyer living in a constant state of conflict. There can be no doubt that the system is geared toward lawyers with little or no family responsibilities.⁵¹ As shown earlier, this perception of the worker is untrue of the vast majority of lawyers today. The professional demands are greatest and the stakes are highest at the earlier stages of a professional career such as lawyering. Unfortunately, the earlier stage of a career is also the time when the psychological and economic demands of the family are also the greatest.⁵² The constant struggle to balance work and family is stressful and unhealthy, physically and emotionally, for the attorney

Many lawyers decide that the struggle just is not worth the dubious rewards, and they limit the hours of their jobs. In a legal career, however, this normally means sacrificing a lot—it can have a negative effect on both promotion and the opportunity to work on the prestigious and challenging

⁴⁸ MacCrate, *supra* note 34, at 991–92.

⁴⁹ *Alternative Work Schedules and Leave Policies Make Sense*, MD. B.J., July/Aug. 1992, at 17, 17 (citing A.B.A. Young Lawyers Division).

⁵⁰ *Id.* See also Leslie Bender, *Sex Discrimination or Gender Inequality?*, 57 *FORDHAM L. REV.* 941, 952 n.42 (1989).

⁵¹ Summary of Hearings Presented by the A.B.A. Commission on Women in the Profession at the A.B.A. Midyear Meeting in Philadelphia, Pa. 6 (Feb. 6–7, 1988) (on file with the *Ohio State Law Journal*).

⁵² Nancy E. Dowd, *Work and Family: The Gender Paradox and the Limitations of Discrimination Analysis in Restructuring the Workplace*, 24 *HARV. C.R.-C.L. L. REV.* 79, 87 (1989).

assignments.⁵³ In a large law firm, damage to a lawyer's reputation by a reduced workload will significantly diminish the worth of the attorney in the eyes of the firm.

Other problems exist among those lawyers who do carry a full load at work despite their care-giver demands. Many lawyers are becoming dehumanized as they are forced to put their careers above all else, at the expense of their families. Dehumanization may, in turn, lead to communication problems as lawyers become unable to relate to clients and family members.⁵⁴

Not surprisingly, substance abuse and depression are on the rise within the legal profession. Studies show that approximately twenty percent of attorneys suffer from depression, compared to three to nine percent of the general population of western industrialized countries.⁵⁵ Eighteen percent of lawyers who practice two to twenty years develop alcoholism, compared to ten percent of all adults across the country.⁵⁶ Many states now have comprehensive lawyers' assistance programs to help counter the high incidence of substance abuse.⁵⁷ The *American Bar Association Journal* reports that about half of all lawyer discipline complaints and malpractice actions result from substance abuse problems.⁵⁸

The problems resulting from the pressures on lawyers are serious and prevalent. Unfortunately, the attorney is not the only party harmed.

⁵³ See Mary Joe Frug, *Securing Job Equality for Women: Labor Market Hostility to Working Mothers*, 59 B.U. L. REV. 55, 60 (1979); see also Emily Couric, *Women in the Large Firms: A High Price of Admission?*, NAT'L L.J., Dec. 11, 1989, at S2 ("Generally, the women responding to the survey said they were frustrated by the profession's rigidity in its attitudes and traditions. The lack of creativity was most apparent, they said, in the firms' inability to endorse anything other than an 'all or nothing' approach to practice."); Ann J. Gellis, *Great Expectations: Women in the Legal Profession, A Commentary on State Studies*, 66 IND. L.J. 941, 957 (1991).

⁵⁴ Rand Jack & Dana Crowley Jack, *Women Lawyers: Archetype and Alternatives*, 57 FORDHAM L. REV. 933, 936 (quoting A.B.A. Commission on Women in the Profession).

⁵⁵ See G. Andrew H. Benjamin et al., *Comprehensive Lawyer Assistance Programs: Justification and Model*, LAW & PSYCH. REV. 113, 114 (1992); see also PERSPECTIVES (A.B.A. Commission on Women in the Profession, Chicago, Ill.), at 5, (Fall 1992).

⁵⁶ Benjamin, *supra* note 55, at 115.

⁵⁷ See, e.g., Warren D. Wolfson, *Hope for Broken Lives and Careers—The Lawyers' Assistance Program*, ILL. B.J., Sept. 1984, at 20. Although other factors, in addition to time demands, contribute to the high incidence of substance abuse and depression, and the lawyer population may have always had a higher incidence of such problems, the fact remains that these statistics are very troubling and they are indicative of serious problems within the profession.

⁵⁸ *Substance Abuse*, A.B.A. J., Oct. 1988, at 144 (quoting Anthony Sestric, executive counsel for The National Conference of Bar Presidents).

B. Harm to the Nonlawyers

1. Family

Just as lawyers are deprived of spending significant quality time with their families, the family members are also deprived of quality time with their spouse and/or parent. The lawyers who are trained to develop a one track perspective, with law as their overriding concern, deprive their families of a well-rounded individual. The decline of lasting marriages and the growing instability of the family unit is of growing concern. Such trends seem to suggest that those with careers and families need to spend more time with their families, not less. Yet, a career in a large law firm all but guarantees a neglect of the family unit, or, at the least, a surrendering of family obligations to others.

Care-giver roles within our society are vitally important. Raising children is a monumental task, and one of the most significant events in the lives of many people. Yet, many dual income or single-parent families must place their children in day care for large parts of the day. Fifty percent of parents in the United States do not have adequate day care available to them.⁵⁹ Many are worried about the effect such separations will have on children who are not with their parents for large parts of the day.⁶⁰ Although it is beyond the scope of this Note to debate the harm or good inherent in the use of day care for young children,⁶¹ it is relevant to the point that many obstacles exist for lawyers working in a big firm who decide that day care is not a healthy option for them. The barriers are high for lawyers who want to stay at home or work fewer hours until their children are of school age. To children of these lawyers, day care becomes a necessity, not an option.

The effects on aging parents can be equally devastating. Many elderly parents feel useless and unwanted, without the additional concern of being a burden to their children. At a time when most Americans should be respected and rewarded for a long and useful life, many feel hopeless and helpless for the additional burdens they are placing on their adult children's already overloaded

⁵⁹ Brazelton, *supra* note 19, at 24-2. Although lawyers, in general, may have more money to spend on day care, this does not guarantee an adequate and healthy environment for their children.

⁶⁰ *Id.* See also Janice Castro, *Watching a Generation Waste Away*, TIME, Aug. 26, 1991, at 10; Zinsmeister, *supra* note 18, at 15-1.

⁶¹ See, e.g., Susan Caminiti, *Who's Minding America's Kids?*, FORTUNE, Aug. 10, 1992, at 50; Cattan, *supra* note 12; Zinsmeister, *supra* note 18; see also Brazelton, *supra* note 19; Castro, *supra* note 60.

lives. Day care for the elderly can be particularly hard to locate, and, in many cases, is less than optimal. Thus, the elderly family members are also deprived of the necessary nurturing when their grown children are lawyers within a large law firm.

2. *Clients*

Clients are paying for high quality, state of the art legal services, and, in most cases, that is what they receive. At the same time, however, clients are human beings, not computers, and they, too, suffer from the growing dissatisfaction among lawyers. Often, lawyers do a competent job for their clients, but they are unable to relate to clients in a personalized, humane way. The lack of social and communication skills among lawyers, whose entire focus in life is the law, is a detriment to clients.⁶²

Furthermore, lawyers who work extremely long days have a decrease in productivity as the day wears on. Common sense tells us that lawyers are necessarily less productive in their thirteenth hour than in their sixth hour. In an hourly billing system, it is the client who bears the cost of this decreased productivity. Additionally, the client bears the cost of poor lawyering, which is often due to the time pressures and conflicts the lawyers face and can be due to substance abuse problems,⁶³ which may also stem from the pressures and conflicts.

When the individual lawyers, their families, and the clients are harmed, as a matter of course, the law firm is also harmed.

C. *Harm to the Law Firms*

By far, the most significant harm to the large law firm is the loss from its ranks of dedicated, intelligent, and highly productive human beings. Many lawyers decide that the demands and conflicts are just not worth the costs and they leave the firm for a less demanding job. This loss of resources is a great casualty, particularly when large starting salaries and huge recruiting expenses are taken into account. Many associates with big firms may leave their firms or even the practice of law within the first several years of practice.⁶⁴ Add to that

⁶² See A.B.A. COMMISSION ON WOMEN IN THE PROFESSION REPORT TO THE HOUSE OF DELEGATES (approved on June 8, 1988) (on file with the *Ohio State Law Journal*).

⁶³ See *supra* notes 55-58.

⁶⁴ See Nancy D. Holt, *Are Longer Hours Here to Stay?*, A.B.A. J., Feb. 1993, at 62.

A 1990 survey of New Jersey lawyers revealed that 23 percent plan to leave the practice before they retire; in Maryland, nearly one-third of lawyers surveyed by the

figure the fact that, depending on the firm, it takes a new associate two to four years to pay his or her way,⁶⁵ and an amazing deficit has occurred. By not responding to the needs of their attorneys, large law firms are losing the very people they are working so hard and on whom they are spending so much money to recruit.⁶⁶

Law firms must also bear the cost of dissatisfied attorneys, attorneys who do not give their best efforts, and the decline of productivity. Malpractice insurance rates will go up as firms are reprimanded for their lawyers' mistakes due to time constraints, pressures, conflicts or substance abuse.

Law firms are hurt in other ways as well. Their very reputations are threatened as dissatisfaction of attorneys in their ranks becomes known in the legal community. Costly mistakes can also cost clients. Increasingly, recruiting efforts are hampered as the negative reputation of the firm is spread across law school campuses. Many law students now have concerns about juggling career and family, before they are even an official part of the profession.

Last, law firms are harmed in that their culture becomes largely homogeneous and dehumanized. Many of the attorneys who stay with the law firm either live with a growing dissatisfaction, which becomes apparent in their dealings with clients and their peers, or submerge their personal lives in favor of the law. Such single-minded devotion to their career may render them unable to effectively communicate with their peers on anything but a work-

state bar association in 1988 said they were not sure whether they wanted to continue practicing law, and 23 percent of North Carolina lawyers responding to a 1990 survey told their bar association they would not become attorneys again.

Id. See also *Different voices, Different Choices? The Impact of More Women Lawyers and Judges on the Justice System*, JUDICATURE, Oct./Nov. 1990, at 138, 145 (quoting the Honorable Fern Smith); Mark Walsh, *Wilson Hikes Associate Salaries; Palo Alto Firm Responds to Grumblings with 5% Across the Board Increase*, THE RECORDER, Apr. 23, 1993, at 1.

⁶⁵ See *Win-Win Billing Strategies*, *supra* note 26, at 12; see also Memorandum from Committee on Equality, Subcommittee on Women, to the Bar Association of San Francisco Board of Directors 5 n.10 (Sept. 26, 1990) (on file with the *Ohio State Law Journal*).

⁶⁶ See Eleanor M. Fox, *Being a Woman, Being a Lawyer and Being a Human Being—Women and Change*, 57 FORDHAM L. REV. 955, 962 (1989) (discussing “the what” Professor Fox’s students want out of the profession); A.B.A. COMMISSION ON WOMEN IN THE PROFESSION REPORT TO THE HOUSE OF DELEGATES, *supra* note 62, at 15 (“Members of the profession should recognize that men or women who seek to balance family responsibilities with work demands are demonstrating the depth of their career commitment because they are trying to find a way to remain actively engaged in their career while still meeting family demands.”).

related level. As many of the attorneys forego well-rounded lives, the diversity of the law firm is sacrificed.

D. *Harm to the Profession*

By now, the harm to the legal profession as a whole should be readily apparent. Public perception of the profession is on the decline.⁶⁷ Many issues of professional responsibility beyond the scope of this Note have undoubtedly contributed to this decline. However, the single-minded devotion to the law that is part of a career in a large law firm has also contributed to negative public perception. When lawyers stop becoming human beings, are unable to meet the needs of others, and are forced to forego nurturing relationships with their spouses, children, and parents to achieve career success, the practice of law and the profession as a whole loses a vital, integral part of what it means to be a lawyer.

Lawyers hold a unique position of trust in our society. They are called upon to resolve the most delicate of problems, and in the course of acquitting their responsibilities are provided access to the most private of information about their clients' personal and professional lives. From a consumer's point of view, it is reasonable to ask whether all, or at least most, lawyers can be entrusted with this charge.⁶⁸

Although the above quotation is excerpted from an article concerning the need for comprehensive lawyers' assistance programs, it aptly applies to the need for a redefinition of the lawyer's role within a large law firm and other legal careers. The reputation of the profession is suffering from the role conflicts between lawyer and care-giver.

Society has an interest in promoting healthy family life and adequate nurturing for our children and parents. The time demands and balancing of work and family roles is not a unique problem within the legal profession; the problem is a societal problem affecting most careers across the spectrum.⁶⁹ However, the legal community holds a position of power, prestige, and tradition within our society. The legal community is often on the forefront of advance and change. Lawyers have a duty to better society and to give to society. By not addressing such a critical societal problem as the work/care-

⁶⁷ See *supra* note 34 and accompanying text.

⁶⁸ Benjamin, *supra* note 55, at 113.

⁶⁹ "Among employed Americans between the ages of 30 and 49, 87% feel at least some conflict between work and family, according to Gallup." Patricia Braus, *What Workers Want*, AM. DEMOGRAPHICS, Aug. 1992, at 30, 36.

giver dilemma, lawyers will lose further credibility, and confidence in the profession will continue to erode. The profession as a whole will pay dearly for not addressing this situation.

VI. ATTEMPTED SOLUTIONS

To be fair, many law firms are recognizing and attempting to address the work and care-giver role conflicts. The American Bar Association and state bar associations have been conducting studies and advocating change for several years.⁷⁰ These studies are vital, and the suggestions put forth are excellent. The first steps to solving any problem are recognizing that the problem exists, making more people aware of the problem, and discussing the problem.

However, most of the attempted solutions so far are treating the symptoms, rather than the underlying problem. Although the steps being taken are excellent interim measures, and should be implemented in all firms, the underlying problem will never be resolved until the time demands and work hours expected from those in the legal profession are significantly reduced.

One of these so-called solutions that most firms have already implemented is paid maternity leave. Often maternity leave can be combined with unpaid leave of varying time durations. Maternity leave is, without a doubt, a necessary and valuable benefit. However, it goes little distance toward actually solving the long-term dilemma that faces both parents. Paid maternity leave rarely extends long enough to enable parents to fully equip themselves to balance work and care-giver roles, and, in any case, is often not available to new fathers. Maternity and paternity leave should be offered, and the time period extended in all firms.

Family leave, a newer concept, is now required in many workplaces with the recent passage of the Family Leave Act.⁷¹ Family leave benefits generally allow parents short-term or long-term unpaid leave to enable them to deal with

⁷⁰ See generally A.B.A. COMMISSION ON WOMEN IN THE PROFESSION, LAWYERS AND BALANCED LIVES (1st ed. 1990); Gellis, *supra* note 53; see also Philadelphia Bar Association, *Philadelphia Bar Association Model Employer Policies*, in COMMERCIAL LAW AND PRACTICE COURSE HANDBOOK SERIES, LAW OFFICE MANAGEMENT (1990); Minnesota Women Lawyers Issues Model Part Time and Child Care Leave Policies, Press Release (Aug. 30, 1990) (on file with the *Ohio State Law Journal*).

⁷¹ 29 U.S.C. § 2612.

problems or crises within the family such as a sick child, spouse, or parent.⁷² Such leave policies are beneficial to employees and employers alike.⁷³

Both maternity leave and family leave policies envision quick and easy solutions to a chronic balancing problem. As valuable as these types of benefits are, however, they do little to aid the conflicts between home and work when the leave is over. Many firms have begun to offer part-time options in an effort to allow women with children to respond to their parenting roles without sacrificing their careers. Part-time work is another helpful beginning. All lawyers, both men and women, should have part-time options available to them on a temporary or permanent basis.

Unfortunately, part-time options continue to damage the user's career track, sometimes irreparably. Other problems occur as well. Firms that do not have a solid policy in place often encounter expectation problems on one or the other side of the arrangement, such as when a lawyer is expecting a twenty-five hour schedule, and the firm is actually expecting forty hours a week. Additionally, part-time work options often entail the normal full-time work hours of other careers. It is a sad commentary on our profession when part-time brings images of a nine to five workday with no evenings or weekends.⁷⁴

The discouraging part about firms not greeting part-time work options enthusiastically nor openly encouraging them, is that part-time work can be every bit as beneficial to the firm as it is to the lawyer. Part-time attorneys can often incur lower overhead expenses through greater use of support staff and office space, which economically benefits the firm.⁷⁵ Furthermore, if the part-time attorney has previously worked full-time, no training costs will be associated with the arrangement.⁷⁶ In the tight legal market that now exists, firms can cut costs with part-time attorneys and actually come out ahead.

⁷² See Philadelphia Bar Association, *supra* note 70; Minnesota Women Lawyers Issues Model Part Time and Child Care Leave Policies, *supra* note 70.

⁷³ See, e.g., Charles Dervarics, *Family Leave: Is it Good Business?*, STATE LEGISLATURES, Aug. 1991, at 30, reprinted in 4 FAMILY (Social Issues Resources Series, Inc.), art. no. 76; at 76-1 (1991) A.B.A. COMMISSION ON WOMEN IN THE PROFESSION REPORT TO THE HOUSE OF DELEGATES, *supra* note 62, at 15 ("Witnesses pointed out that it should also be universally recognized that having children is personally and societally important and warrants flexible work arrangements just like other responsibilities the profession has always accommodated, such as political involvement, military reserve duty and government service.").

⁷⁴ See Deborah Graham, *It's Getting Better, Slowly*, A.B.A. J., Dec. 1, 1986, at 54; Janice Handler, *Diapers and Depositions*, A.B.A. J., Apr. 1985, at 66.

⁷⁵ See Bower, *supra* note 39, at 92; Holly Felder Etilin, *Economic Analysis of Profit Contribution by Part-Time Associates* (unpublished manuscript, on file with the *Ohio State Law Journal*).

⁷⁶ Bower, *supra* note 39, at 92.

Yet another attempt by law firms is the work at home option. Work at home options may ease the day care burden, but do little to give the attorney more time for the nurturing aspects of care-giving. Additionally, since firms seem somewhat distrustful of work at home arrangements, few attorneys have such an option available.

Working at home is a very viable solution—its scope and use should be greatly expanded—but only in conjunction with lowering the overall time expectations. Not all areas of practice, however, are as easily adaptable to working at home, where extensive resources are not available. Newer attorneys who still require more training and supervision will need to spend greater amounts of time at the office. There are, however, always projects that can be taken home, and fax and computer hookups ease such arrangements even more.

VII. COMPREHENSIVE SOLUTIONS

All of the solutions previously discussed should be implemented in each and every firm; yet, they are not enough. A comprehensive overhaul in conjunction with the above solutions is necessary if lawyers are to be able to nurture and care for their families, and maintain quality personal and work lives. Such changes can most easily be implemented in the near future, while the environment is so flexible due to the other changes facing the legal profession. Change is occurring regardless; firms will be further ahead if they take advantage of this flexibility to implement changes that will help them retain workers, develop a better work environment, and become more cost effective.

The first step for many firms should be to perform intense and exacting studies of the entire policies, structures, lawyers, and lawyers' needs within the firm. Although time demands are relatively constant among firms, work distribution patterns, communication channels, and firm cultures vary significantly. Thus, the same solutions will not work the same way for every firm. Only by thorough research of every aspect of the dilemma and the firm, itself, will firms be able to thoughtfully and effectively meet the demands of the future.

Of vital importance within the new framework is the stabilization of salaries in the firm. Starting salaries for law school graduates are enormous, seeming largely out of proportion to the contribution that associates will make for their first several years. These "training costs" must be lowered as, many times, associates leave within the first several years, and the firm never sees a return on its huge investment. Firms have been concerned with the market and, in order to compete for top graduates of top law schools, have matched their starting salaries to the going rate. As will be discussed, changing the recruiting

process and maintaining or lowering salaries can eliminate this need to keep up with the largest firms.

Law firms also need to reconsider their structure. Although the traditional pyramid structure may no longer be viable, law firms should not haphazardly lapse into other structures or forms. The contingency factors associated with each firm (size, age, technology, and environment) will best determine the optimal structure,⁷⁷ and no one form will be best for all firms.⁷⁸

Another important consideration is the hourly billing structure. For the good of the lawyers and the firms, the value, worth, and contributions of individual attorneys should no longer be determined by an hourly measure of their output. By using automation systems, firms are increasing their costs and lowering the time required to do a job. It hardly makes sense to increase costs and lower the time required for a service and then bill the client on an hourly basis.⁷⁹ Many alternatives to billable hours exist⁸⁰ and should be researched and implemented. Alternatives can be as diverse and creative as the firm is willing to experiment, but the basic alternatives include flat rates, flat rates for specific stages, value billing (usually bonuses or discounts within an hourly structure), contingent fees, or any combination of these variations.⁸¹ An added bonus of moving away from hourly billing will be an avoidance of the public perception of lawyers dragging their heels on a project in order to bill more time. Discarding the billable hour system in part or in whole will move attorneys away from the entire time mentality. By judging lawyers on the quality of their work and the satisfaction of the clients, firms will be free to ease the pressures on their attorneys, and attorneys will be free to work less hours, spending these working hours in more productive pursuits.

Along with structure and billing changes, law firms need to revamp their entire recruiting process. Most importantly, law firms need to break out of the "top of the class" mentality that characterizes recruiting efforts. Differences between students in the top twenty-five percent of their class and students in the top fifty percent of their class may amount to as little as tenths of percentage points or just several percentage points. There are currently four applicants for every seat in law school,⁸² which means that an intense screening process

⁷⁷ See Samuelson, *supra* note 43, at 656-61.

⁷⁸ *Id.* (discussing structure alternatives within the complicated hierarchy of the matrix system).

⁷⁹ *Win-Win Billing Strategies*, *supra* note 26, at 13.

⁸⁰ See *id.*, see also Steven Brill, *Billing Babble*, AM. LAW., Oct. 1992, at 5; *Beyond the Billable Hour: An Anthology of Alternative Billing Methods*, 1989 A.B.A. SEC. OF ECON. OF LAW PRAC. (Richard C. Reed ed., 1989).

⁸¹ Brill, *supra* note 80, at 74.

⁸² *Win-Win Billing Strategies*, *supra* note 26, at 6.

already has occurred. Most students have a lot to offer large law firms, regardless of their place in the class. Furthermore, although employers often say that grades are the best predictor of future success, grades are, at best, predictors of only a few skills of the many that lawyers will need to cultivate. Reliance on grades may make employers feel safer, but when the associate turnover rate is so high, grades clearly are not predicting longevity with a particular firm.

Concentrating solely on the top ten percent or so of law school classes for employees translates into firms letting many valuable future lawyers slip away. Grades do not take into account any external factors that students are juggling. Some students already are balancing school with family and care-giver roles. An employer has no indication of how students in the top five percent of their class with absolutely no family responsibilities will perform when faced with competing roles. On the other hand, a student with such responsibilities who is lower in the class, even out of a particular employer's "zone of employability," already may be a more reliable candidate.

Breaking out of the top of the class mentality, and hiring a variety of students will enable firms to lower starting salaries, lower the output necessary from each lawyer thus lowering the time demands, and develop a more heterogeneous firm culture. These factors should contribute to higher job satisfaction, longevity of employees, and increased overall profitability.

The solutions proposed in this Note are not original in that a number of people have been calling for similar reforms for quite some time. To many, especially large law firms, they may seem idealistic and unworkable. The fact remains that the present state of affairs is less than desirable. Large law firms are coveted places to work. They provide excellent training, an opportunity to be on the cutting edge of complex and sophisticated legal issues, and above average compensation. But when so many people are disillusioned, dissatisfied, and leaving the ranks for greener pastures, it is time to examine the present system carefully. Many of the solutions proposed have been put forth for different reasons by others, but now they have the added bonus of aiding the work/care-giver role dilemma. As Joan C. Williams said of the feminist goal to redesign wage labor to take account of reproduction, "Such a goal today seems utopian—but then the eight-hour workday seemed utopian in the mid-nineteenth century."⁸³ Here, too, the goal may seem utopian, but eventually the marketplace will force such changes as the vast majority of employees in all sectors are juggling roles. Both men and women will demand solutions to the dilemma. By acting now, law firms can avoid forced changes, and the benefits will far outweigh the costs.

⁸³ Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 836 (1989).

Benefits to such responsive actions by large law firms are really the converse of the harms discussed earlier. Lawyer career satisfaction will increase as the tension and conflicts ease. Productivity will increase as employees are healthier and happier. The families of lawyers will benefit, as will the clients. The end result for the law firm will be increased productivity, increased lawyer and client satisfaction, client and lawyer retention, and a positive firm culture. This will translate into a solid firm reputation among the legal community and law school campuses. Recruiting efforts will be greatly enhanced, and law firms will have their pick of the brightest and most well-rounded individuals. The profession, although not problem free, will be much more humane as lawyers are allowed to be human beings, in addition to being lawyers. There can be no doubt that we must effectively tackle and solve our own problems within the profession if we are to be entrusted with the problems of others. Society faces a crisis here; the very nature of our profession requires us to act and to act swiftly.