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Lisa G. Lerman

The Catholic University of America, Columbus School of Law

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THE SLIPPERY SLOPE FROM AMBITION TO GREED TO DISHONESTY: LAWYERS, MONEY, AND PROFESSIONAL INTEGRITY

*Lisa G. Lerman**

I. INTRODUCTION

In 1979, one percent of the population in the United States owned twenty-three percent of the wealth.¹ By 1992, the concentration of wealth had nearly doubled: one percent of the population in the United States owned forty-two percent of the wealth in our country.² Since then, the figures have remained fairly stable.³ Rich people are getting richer. According to Shapiro and Wolff:

[The 1990s] witnessed a near explosion in the number of very rich households. . . . the number of millionaires climbed by 59 percent between 1989 and 1998, the number of “pentamillionaires” (\$5 million or more in assets) more than doubled, and the number of “decamillionaires” (\$10 million or more) almost quadrupled.⁴

* Professor of Law and Director, Law and Public Policy Program, The Columbus School of Law, The Catholic University of America; B.A., 1976, Barnard College, Columbia University; J.D., 1979, New York University School of Law; LL.M., 1984, Georgetown University Law Center. I am grateful to Jessica Kendall for her excellent work as a research assistant and to the law schools of Catholic University and Hofstra University for their support for this work.

1. See Edward N. Wolff, *How the Pie is Sliced: America's Growing Concentration of Wealth*, AM. PROSPECT (June 23, 1995), at <http://www.americanprospect.com/print/V6/22/wolff-e.html> (last visited Mar. 19, 2002).

2. See *id.* If one measures increasing concentration of wealth by financial wealth rather than by marketable wealth (the latter presumably including non-money assets), the wealthiest 1% of Americans owns 47% of the wealth, and the wealthiest 20% of the population owns 91%. See ASSETS FOR THE POOR: THE BENEFITS OF SPREADING ASSET OWNERSHIP 39 (Thomas M. Shapiro & Edward N. Wolff eds., 2001) [hereinafter ASSETS FOR THE POOR].

3. See James R. Repetti, *Democracy, Taxes, and Wealth*, 76 N.Y.U. L. REV. 825, 825-26 (2001) (citing EDWARD N. WOLFF, *TOP HEAVY* app. at 62-63 tbl.A-1 (1995) and Edward N. Wolff, *Recent Trends in the Size Distribution of Household Wealth*, J. ECON. PERSP., Summer 1998, at 131, 135).

4. ASSETS FOR THE POOR, *supra* note 2, at 39.

While much new wealth has been generated in the last twenty years, the vast majority of it has gone to people who are already very wealthy.⁵ This growing concentration of wealth raises ethical questions for the wealthy. If some people are buying Jaguars and mansions while fewer Americans have private pensions, own their own homes, are able to save money, or send their kids to college,⁶ something is wrong. Those at the higher end of the economic ladder have a moral responsibility to consider whether they should share their wealth with those who are less fortunate.

Lots of lawyers are among the wealthiest people in the country.⁷ And the wealthiest lawyers have gotten wealthier in the last ten years. Lawyers in many large and small law firms have worked very hard to improve their leverage ratios, ratchet up the number of billable hours they require of associates, and pursue every other legal strategy that they can employ to increase the amount of revenue that is distributed to partners and associates every year.⁸ Some of those lawyers have stepped over the lines of legality and embarked on illegal schemes of income expansion.

I want to explore the relationships among ambition, greed, and integrity in the legal profession. Many lawyers are preoccupied with gaining power within their law firms and with expanding their own incomes. For some lawyers, income is the clearest measure of their status. Preoccupation with money tends to have a corrosive effect on integrity. For some people, the desire for wealth leads to dishonesty

5. See WOLFF, *supra* note 3, at 1.

6. See Wolff, *supra* note 1.

7. See *infra* text accompanying notes 27-38 for a discussion of lawyers' increasing wealth.

8. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 900-01 (1999). In one insurance defense firm, management sent several memos to the associates to encourage them to increase the number of hours they were billing. Here's an excerpt from one:

This is a terrific place to work. However, as we have made abundantly clear to each of you in the past, there is a business element to our practice. The same rules apply to everyone. If you do not respect your obligation to comply with your billing obligations, it strikes us that you also do not respect the firm or the good people who work here and work hard. Although this may strike you as harsh, non-compliance with billing requirements can no longer be tolerated. You must understand that if these unacceptable billing practices continue, then we have no choice but to terminate the offenders. That is the only fair remedy to those who work hard and endeavor to comply with the very minimal burdens placed upon all of us as employees at this firm. If you have any questions or if this message is in any way unclear, please see me personally. Thanks.

Memorandum from Partners to Associates at Unnamed Insurance Defense Firm (Aug. 21, 2001) (confidential source on file with Author).

because it's easier to expand your income more quickly if you don't bother about legal niceties.

Perhaps some members of our profession have always been money hungry. Perhaps they have become more so in recent years.⁹ Or maybe in recent decades, lawyers have simply gotten better at generating wealth. I'm not sure it matters very much whether the greed trend is constant or upward. If many people in our profession have an incessant desire to generate more income, and if that desire leads many lawyers down a slippery slope of dishonesty, we have a problem. This phenomenon threatens serious harm to the ethical culture of our profession and to its reputation.

Those possessed by greed tend to be preoccupied with self-interest and tend to disregard the interests of others. Lawyers have fiduciary responsibilities to their clients, including an obligation not to exploit their client's resources for personal gain.¹⁰ A lawyer who is in the grip of a desire to expand his income may be more likely to trample on his client's financial interests, either legally or illegally, honestly or dishonestly.

II. GREED AND DISHONESTY

Greed is not a very nice word. *Webster's* defines it as "excessive or reprehensible acquisitiveness."¹¹ The dictionary lists "avarice," meaning "insatiable desire for wealth or gain" as a synonym.¹² Avarice lists as a synonym "cupidity," which means "inordinate desire for wealth."¹³

9. Patrick Schiltz believes that our profession is awash in greed, and that this is a primary cause of enormous unhappiness in the profession. *See* Schiltz, *supra* note 8, at 896. Marc Galanter and Thomas Palay, on the other hand, assert that competition within law firms is the product of the "promotion-to-partner tournament," which has caused enormous expansion in size and revenues of law firms. *See* Marc S. Galanter & Thomas M. Palay, *Large Law Firm Misery: It's the Tournament, Not the Money*, 52 VAND. L. REV. 953, 960 (1999). They seem to believe that addressing the problems of growth is more important than considering the problem of moral rot. *See id.* at 963. I would urge that greed feeds competition, and competitive urges feed greed, and that both create risks that the lawyers aspiring to wealth and power will be drawn into dishonest behavior as a means of achieving those goals.

10. *See* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 16(3) (2000) (explaining that "a lawyer must . . . deal honestly with the client, and not employ advantages arising from the client-lawyer relationship in a manner adverse to the client"); *see also id.* § 49 (explaining that breach of the fiduciary duty articulated in section 16(3) would render a lawyer civilly liable to a client if the breach causes injury to the client). Similarly, a lawyer may be liable to a client for conversion (theft) or misrepresentation under the same liability rules that apply to non-lawyers. *See id.* § 56 cmts. e-f.

11. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 535 (1987).

12. *Id.* at 119, 535.

13. *Id.* at 119, 315.

There is lots of evidence that lawyers' incomes have risen very dramatically in recent decades, and that law firms have been reorganized in ways that are designed to produce even higher incomes.¹⁴ Does increasing wealth amount evidence greed? Perhaps that depends on whether a particular person's increasing wealth is excessive, reprehensible, insatiable, or inordinate. The data on increasing concentration of wealth cited above raises a question: if the rich are getting richer and the poor are getting poorer, isn't the quest for increased wealth by the wealthy reprehensible?¹⁵

There is substantial evidence that lawyer dishonesty is on the rise.¹⁶ Query whether the quest for increased wealth tempts some lawyers to obtain that wealth by dishonest means. Even if some readers might disagree as to what level of wealth is reprehensible, most of us would agree that wealth obtained dishonestly is reprehensible. If more lawyers have become greedy, and some of those have become dishonest, and if a motive for the dishonesty is greed, then we have a problem.

Here are some data, first on the increasing wealth of lawyers, and toward the end of the list, some data that suggests a rise in dishonesty:

A. *Law Firm Offices*

In Washington, D.C. twenty years ago, many large law firms were located in fairly modest offices.¹⁷ Over the last couple of decades, many large firms have moved to opulent buildings, full of marble and brass—some with addresses on Pennsylvania Avenue.¹⁸

14. See *infra* notes 21-47 and accompanying text.

15. For a rich discussion of this question, see generally Thomas L. Shaffer, *Jews, Christians, Lawyers, and Money*, 25 VT. L. REV. 451 (2001). Professor Shaffer notes that "American lawyers make, on the average, fifty percent more than average Americans do," and asserts that "[h]igh earnings are in themselves a moral problem because they corrupt." *Id.* at 451-52. He then discusses a variety of religious and secular commentaries that urge upon us a moral duty to share our wealth with those in need. For example, Shaffer quotes St. John Chrysostom, who asked, "[H]ow can anyone who has wealth be good? It is simply not possible. He is good when he distributes his wealth. So, when he no longer has it, he is good . . ." *Id.* at 461-62 (alteration and omission in original) (quoting FROM IRENAEUS TO GROTIUS: A SOURCEBOOK IN CHRISTIAN POLITICAL THOUGHT 103 (Oliver O'Donovan & Joan Lockwood O'Donovan eds., 1999)).

16. See *infra* notes 52-66 and accompanying text.

17. See Nancy L. Ross, "D.C. Law"—*Sharpening Up the Office Image*, WASH. POST, Mar. 17, 1988, at T22.

18. See *id.*

B. Billing Rates

Billing rates have gone up. In 1987, the average hourly billing rate for partners with twenty-five to thirty years of experience was \$142.¹⁹ In 1996, the average hourly rate for a partner with the same experience was \$200.²⁰

C. Associate Starting Salaries

In 1977 dollars, the median base starting salary of new law school graduates was \$18,000.²¹ In 1996, the median base starting salary of a new law school graduate was \$52,000.²²

Associates' starting salaries have grown very dramatically just in the last few years. The median base salaries of first year associates in firms of all sizes was \$65,000 in 1998.²³ By 2000, the figure had grown to \$85,000.²⁴ In firms of over 250 lawyers, the median first-year starting salary was \$75,000 in 1998.²⁵ In 2000, the median had risen above \$100,000 for firms with over 250 lawyers.²⁶

D. Partners' Draws

Earnings of partners in law firms have increased dramatically in the last twenty-five years. In 1977, partners with twenty-five to twenty-nine years of practice experience earned an average of \$88,449 per year.²⁷ By 1996, the partners at this level earned \$208,064 per year.²⁸ In large firms, the increase in partners' income is even more dramatic. Of the top-earning hundred law firms in the United States, the average profits per

19. Hope Viner Samborn, *Business is Booming*, A.B.A. J., Oct. 1997, at 34, 34 (citing *Altman Weil Pensa 1997 Survey of Law Firm Economics*).

20. *Id.*

21. Margaret Cronin Fisk, *Stratospheric Salary Gap Reflects National Trend*, NAT'L L.J., June 1, 1998, at B8.

22. *Id.*

23. See Nat'l Ass'n for Law Placement, 1998 Associate Salary Survey, National Summary Chart, at <http://nalp.org/nalpresearch/sumch98.htm> (last visited Feb. 18, 2002) [hereinafter 1998 Associate Survey].

24. See Nat'l Ass'n for Law Placement, 2000 Associate Salary Survey, National Summary Chart, at <http://nalp.org/nalpresearch/sumch00.htm> (last visited Feb. 21, 2002) [hereinafter 2000 Associate Survey].

25. See 1998 Associate Survey, *supra* note 23.

26. See 2000 Associate Survey, *supra* note 24.

27. See Fisk, *supra* note 21.

28. See *id.*

partner in 1990 were \$565,000.²⁹ In 1999, the average profits per partner were \$755,000.³⁰

Thus, over the last ten years, the average annual profits per partner rose by thirty-four percent (adjusted for inflation).³¹ As of 1999, fifteen firms were generating over \$1 million in average annual profits per partner (including equity and non-equity partners).³² These firms employ over 1750 partners.³³ As of 1999, fifty-six law firms were generating average annual profits per partner exceeding \$500,000.³⁴ Also in 1999, two firms proudly announced that their average annual profits per equity partner exceeded \$3 million.³⁵ In the same vein, in 1999, over 100 law firms reported annual gross revenue of over \$100 million.³⁶ And from 1999 to 2000, the top 100 firms' gross revenue rose an average of 17.5%.³⁷ By 2001, the average annual increase in gross revenue was up to 19.5% per firm per year.³⁸ Some are predicting a negative slide in the near future.³⁹ The growth of gross revenue and lawyer incomes is partly the result of a booming economy,⁴⁰ but each firm works hard to take full advantage of the growing economy and to get for its lawyers as large a slice of the growing pie as it can.

29. See Am. Law. 100, 1990-1999 The Way We Were, at http://www.law.com/special/professionals/amlaw/amlaw100/amlaw100_the_way.html (last visited Feb. 19, 2002) [hereinafter *The Way We Were*].

30. See *id.* (figures adjusted for inflation).

31. See Aric Press, *Eight Minutes*, AM. LAW., July, 2000, at 13, 13.

32. See Am. Law. 100, Compensation—All Partners, at http://www.law.com/special/professionals/amlaw/amlaw100/amlaw100_partner.html (last visited Feb. 18, 2002).

33. See *id.*

34. See *id.*

35. See Am. Law. 100, America's Highest-Grossing Law Firms in 1999, at http://www.law.com/special/professionals/amlaw/amlaw100/amlaw100_highgross.html (last visited Feb. 19, 2002). The two firms are Wachtell, Lipton, Rosen & Katz in New York and Robins, Kaplan, Miller & Ciresi in Minneapolis. See *id.*

36. See Am. Law. 100, Now They Need a New Record to Break: Gross Revenue, at http://www.law.com/special/professionals/amlaw/amlaw100/amlaw100_record.html (last visited Feb. 18, 2002).

37. In the previous year (1998-99) the average annual increase in gross revenue was 14.6%. See Amy Singer, *Hitting the Wall*, AM. LAW., July 2000, at 101, 101.

38. See Douglas McCollam, *Life on the Bubble*, AM. LAW., July 2001, at 131, 132.

39. One indicator of this trend is that during 2000, several of the largest firms reduced the number of equity partners by 4% to 25% even though their gross revenues were going up. See Am. Law. 100, Up and Out, at http://www.law.com/special/professionals/amlaw/amlaw100/july01/bubble_life.html (last visited Feb. 23, 2002).

40. See Andre Gharakhanian & Yvonne Krywyj, *The Gunderson Effect and Billable Mania: Trends in Overbilling and the Effect of New Wages*, 14 GEO. J. LEGAL ETHICS 1001, 1012 (2001).

E. *Declining Pro Bono Work*

It is clear that at least the firms at the top of our profession are generating rapidly increasing amounts of wealth.⁴¹ But perhaps this does not reflect greed—with such riches, these firms should be freer than ever to commit substantial resources to the representation of persons who cannot afford to pay. But they are not doing it. In the top-earning 100 law firms, annual average pro bono hours declined from an average of 56.3 hours per year in 1992 to 36.3 hours per year in 1999, a drop of thirty-five percent.⁴² So if incomes are going up and pro bono hours are going down, there is at least a loose correlation between greater wealth and lesser altruism.

F. *Number of Hours Billed*

Another thermometer of aspiration to wealth in the legal profession is the number of hours per year that lawyers bill. In 1965, an ABA study found that associates billed 1400 to 1600 hours per year, and that partners billed 1200 to 1400 hours per year.⁴³ In recent years many large firms ask associates to bill 2300 or 2400 hours per year,⁴⁴ and many condition eligibility for bonuses on reaching the targets.⁴⁵ I recently read a dialogue on a website called “greedyassociates.com” in which several associates were having an argument about whether it was possible to bill 2300 hours per year without (1) committing fraud and (2) giving up all nonwork activities. One of the disputes was whether it is proper to bill for time spent in the bathroom. One associate said, “[w]hen I go to the bathroom I take a deposition transcript or answers to rogs with me so I can bill while I take a . . . shit.”⁴⁶

41. See *supra* notes 27-40 and accompanying text.

42. See *The Way We Were*, *supra* note 29.

43. See WILLIAM G. ROSS, *THE HONEST HOUR: THE ETHICS OF TIME-BASED BILLING BY ATTORNEYS* 20 (1996) (citing Eugene C. Gerhart, *The Art of Billing Clients*, 1 *LAW OFF. ECON. & MGMT.* 29, 34).

44. See Nat'l Ass'n for Law Placement, *The Salary Wars and Their Aftermath* (Aug. 2000), at <http://www.nalp.org/refdesk/salwars.html> (last visited Jan. 31, 2002) (discussing the impact of the recent associate pay hikes on associates, mentioning 2300 hours as a standard target, and reporting that some people say that one must work 3200 hours to bill 2300).

45. See *id.*

46. Posting #5146 of roveresq, to greedyassociates.com (Apr. 28, 2001), at http://www.greedyassociates.com/messageboard/showthreaded.php?Cat=&Board=lawyer&Number=5146&Search=true&Forum=All_Forums&Words=roveresq&Match=Entire%20Phrase&Searchpage=2&Limit=25&Old=allposts&Main=5146 (last visited Feb. 23, 2002).

G. *Increased Firm Size*

Another phenomenon that is abundantly evident is that big firms are getting bigger. Among the 100 largest firms, the number of lawyers in the firms has increased an average of about ten percent a year from 1998 to 2001.⁴⁷ Why all this growth? Because of the relationship between firm size and profits. The firms adjust their size, upward or downward, in an effort to generate even more money.

H. *Rising Law School Tuition*

Greed and aspiration to wealth also is evident in the legal academy. In 1974-75, private law school tuition averaged \$2305.⁴⁸ As of 1999, the average tuition at private law schools was nearly \$21,000, and the cost of attendance, including living expenses, was \$32,763.⁴⁹ And law student debt has risen astronomically. Many law students now graduate owing over \$100,000.⁵⁰ Meanwhile, many law schools, mine among them, like the law firms, have moved from relatively modest buildings to elegant, spacious, expensive, well-designed structures.⁵¹ The rising cost of attending law school means that many new lawyers need to choose positions that pay large salaries to repay their student loans.

I. *Increased Claims on Client Security Funds*

Client security funds pay out an ever-expanding stream of claims from clients whose lawyers have stolen their money. Between 1996 and 1998, the funds paid out an average collective total of \$26 million per

47. See McCollam, *supra* note 38, at 132.

48. See Philip G. Schrag, *The Federal Income-Contingent Repayment Option for Law Student Loans*, 29 HOFSTRA L. REV. 733, 740 (2001) (citing John R. Kramer, *Will Legal Education Remain Affordable, By Whom, and How?*, 1987 DUKE L. J. 240, 242-43).

49. See *id.* at 741-42. These figures overstate the increase in law school tuition because they are not adjusted for inflation, but even so, the increase is dramatic.

50. See *id.* at 747 (citing Tom Stabile, *Lawopoly: Borrowed Time*, NAT'L JURIST, Apr. 1999, at 14, 14 pt. 2). The average debtload of students graduating from private law schools in 1999 was \$56,324. See *id.* at 745.

51. See Catholic University of America, Columbus School of Law, About CUA Law, at <http://www.law.edu/aboutcualaw.shtml> (last visited Feb. 18, 2002) (noting that the Catholic University of America's law school occupies a "state-of-the-art facility" that was completed in 1994); see also Georgetown University Law Center, A Little History, at <http://www.law.georgetown.edu/tour/index.html> (last visited Feb. 18, 2002) (noting that the Georgetown University Law Center moved from its home of eighty years on E Street to its current location at 600 New Jersey Avenue, where the school added a student center which contains a residential area, fitness facilities, and a child care center).

year.⁵² In the states with the better funded and administered client security funds, the average *annual* payouts are far higher than the other states: New York, \$7.9 million; California, \$4.8 million; New Jersey, \$3.5 million; Pennsylvania, \$2.5 million; and Massachusetts \$1.7 million.⁵³ The \$26 million figure grossly understates the amount of unreimbursed theft by lawyers each year. Some of the states do not reimburse any claims.⁵⁴ Others pay a tiny percentage of even the claims judged to be valid.⁵⁵ Some states refuse to pay claims until after lawyers have been disbarred and clients have exhausted all other avenues of reimbursement.⁵⁶ And some impose statutes of limitations that result in most claims being uncollectable.⁵⁷ So we know that a small number of American lawyers are stealing at least \$26 million per year, but that large figure probably represents only a fraction of the actual problem.⁵⁸

J. Increasing Number of Lawyers Going to Jail for Stealing

In 1999, I published a comparative study of the cases of sixteen lawyers who had been disbarred and/or gone to prison for stealing over \$100,000 apiece from their partners and their clients through billing or expense fraud.⁵⁹ I selected these sixteen cases from a total of thirty-six similar cases that I identified.⁶⁰ Those thirty-six cases from a seven-year⁶¹ period represent *at least*⁶² \$115 million stolen by lawyers engaging in

52. See *Client Security Funds State by State: Annual Averages, 1996-1998*, NAT'L L.J., Aug. 28, 2000, at A9.

53. See *id.*

54. See *id.*

55. See Elizabeth Amon, *An Empty Promise: How Client Protection Funds Betray Those They Were Designed to Protect*, NAT'L L.J., Aug. 28, 2000, at A1.

56. See *id.*

57. See *id.*

58. For a critical assessment of the shortcomings of the client security funds, and for details on their limitations, see Amon, *supra* note 55. See also Editorial, *Full Coverage from Client Security Fund?*, N.J. LAW., Sept. 18, 2000, at 6 (commenting on the Amon article: "Data collected by the American Bar Association's Committee on Client Protection . . . paints a grim picture of the efforts of the bar around the country to compensate clients who have been the victims of theft by their lawyers. . . . For many, making a claim is an exercise in frustration and delay."). This article states that in New Jersey, reimbursements for fraud in 1999 were \$1.5 million while it was expected that payments for 2000 would be about \$2.2 million—a marked increase. See *id.*

59. See generally Lisa G. Lerman, *Blue-Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers*, 12 GEO. J. LEGAL ETHICS 205 (1999).

60. See *id.* at 210.

61. These cases came to light between 1989 and 1996. See *id.* at 210 n.7.

62. The amounts alleged to have been stolen by these lawyers are sometimes unknown and often grossly understate the actual amounts. In some cases the amount known to have been stolen represents the amount that the lawyer admitted having stolen or that a prosecutor was able to prove.

billing or expense fraud.⁶³ If I had included other more common methods of stealing, such as trust account embezzlement, the number of cases and the total amount stolen would have been far larger.⁶⁴ At least as to the billing and expense fraud cases, we saw during the 1990s the emergence of a new type of case: massive theft by highly successful partners at elite law firms.⁶⁵ In searching for these cases, I found *none* before 1989.⁶⁶ While this change could reflect a change in disciplinary and prosecutorial policy and resources, it shows that at least in recent years, some very respectable lawyers have become very serious thieves.

III. WHY ARE WE GREEDY?

Some of these indicators of increasing lawyer greed and dishonesty are ambiguous. Nevertheless, taken together, they make it pretty obvious that successful lawyers have gotten very interested in income expansion, and they show that some lawyers steal from clients or partners to increase their incomes. The question is why? Perhaps we are in the grip of a culture that values money above all else, and though we are adults, we are no better able to withstand the cultural pressure to value what others value than are ten-year-old boys who play shoot-em-up computer games all day long. Perhaps we are in the grip of a materialism that rivals the conspicuous consumption of the 1890s.⁶⁷ I have observed an astonishing number of friends and acquaintances buying or building mega-houses with swimming pools, saunas, and other amenities. They buy minivans with TV-VCRs and microwaves, SUVs, Lexuses, and Jaguars. They become preoccupied with their investments. They have bar and bat mitzvahs for their children that cost tens of thousands of dollars. In many of these families, the women have given up legal careers, because the pressure in law firms to work so hard is inconsistent with any version of responsible parenting. The men, meanwhile, tend to disappear into an endless stream of work, leaving their wives to take the

63. See Lerman, *supra* note 59, at 210, app. A at 300-05.

64. While doing this research, I stumbled onto several other cases involving extensive trust account fraud by lawyers. Those eight cases represent another \$23 million having been stolen. See *id.* app. A at 306.

65. See *id.* at 209-10.

66. See *id.*

67. See generally ARNOLD LEWIS ET AL., *OPULENT INTERIORS OF THE GILDED AGE* (1999); ALAN TRACHTENBERG, *THE INCORPORATION OF AMERICA: CULTURE AND SOCIETY IN THE GILDED AGE* (1982) (describing American society and culture during the 1890s).

kids on vacation while they, as one commentator put it “stay in their office, to hug their billing hours.”⁶⁸

Cultural materialism is part of the picture of what is happening to the legal profession, but it is far from inevitable that just because a person wants to buy a Lexus, he will become a thief. Many lawyers buy fancy cars, but only a small number do it with stolen funds. What happens to turn a professional into a criminal? Successful lawyers have invested huge amounts of time and money building their professional skills and their reputations. Why would some of them risk professional suicide just to get more money? To understand how to control this problem, we need to understand what causes it.

There appear to be some specific “greed triggers” for lawyers. One is the competitiveness of law firms. Many law firms are like dysfunctional families in which the children get different amounts of allowance depending on how many chores they do. Partners in some law firms spend quite a lot of time thinking about money, envying other partners who are getting more money than they are and feeling aggrieved about how they are underpaid compared to their more aggressive colleagues.⁶⁹ Similarly, many lawyers represent people who are making even more money than they are, so some lawyers are jealous of their clients. They are working just as hard, so why should they not be paid more?

This competitiveness is somewhat built into the profession: the legal profession attracts some people who are very competitive and quite aggressive, and then trains them to be more so. In law school we dump them into huge classes, give them numerical ranks, post their grades on the wall, and shower privileges on those who do best. Should we be surprised that some of those high achievers feel entitled to lavish lifestyles?

Along with jealousy of partners and clients, there is the problem that lawyers work terribly hard, often to the point of damaging their health and their relationships.⁷⁰ One way to compensate for the absence of normal life is to amass large amounts of money and then to flaunt it.

68. Posting #3968 of DrFreedom, to [greedyassociates.com](http://www.greedyassociates.com) (Nov. 1, 2000), at <http://www.greedyassociates.com/messageboard/showthreaded.php?Cat=&Board=Lawyer&Number=3968&Page=&view=&sb=> (last visited May 20, 2002) (reporting DrFreedom’s impression of the quality of life of attorneys based on fifteen years of working with various lawyers).

69. See Schiltz, *supra* note 8, at 903-06. Schiltz offers an example of “one big firm partner I know [who] flew into a rage after learning that his year-end bonus would be only—only—\$400,000, while the bonus of one of his rivals in the firm would be \$425,000.” *Id.* at 906.

70. See *id.* at 874-81 (summarizing research showing that lawyers suffer from elevated levels of anxiety, depression, alcoholism, drug abuse, divorce, suicide, heart disease, and miscarriage).

The ABA caters to this idea, advertising a home financing program with a large post card distributed nationally depicting a pretty woman lawyer on the telephone and a photo of what we presume is her lovely suburban home, with the caption “[b]ecause you have only so many non-billable hours in your life.”⁷¹ The statement tacitly assumes that the main part of life is those billable hours, so therefore one must get extra enjoyment out of the remaining hours.

To explore the causes of the slide down the integrity slope, I’d like to examine more closely two of the cases I looked at in my 1999 study, those of Maureen and Gary Fairchild. They present two quite different but extreme examples of lawyers who destroyed their own careers by lying and stealing. They might be viewed as inevitable products of our hard-driving, profit-hungry, materialistic profession. While cases like those of the Fairchilds are rare, even a small number of such cases is damaging to our profession.

IV. THE FAIRCHILD SAGA

Gary Fairchild was the managing partner at Winston & Strawn in Chicago from 1987 until 1993, and then remained a partner until his resignation in 1994.⁷² He was accused of having stolen \$784,000 over a six-year period.⁷³ Maureen Fairchild was an income partner at Chapman & Cutler in Chicago until 1994, when she was voted out of the firm.⁷⁴ She was accused of having stolen \$1.48 million over a three-year period.⁷⁵ By the time they resigned from their firms, Gary and Maureen had a combined *legal* income of \$800,000.⁷⁶ What motivated them to steal even more? The Fairchilds are good examples of the range of personalities, values, backgrounds and behavior that I found among the lawyer thieves that I studied. Also, they were married and in cahoots with one another.

71. Advertisement, The Home Financing Program for ABA Members, A.B.A. J., Jan. 2000, at 75.

72. See Milo Geyelin, *Attorney Pleads Guilty to Bilking Firm*, WALL ST. J., Dec. 20, 1994, at B4.

73. See *id.*

74. See Stephanie B. Goldberg, *Overbilling Alleged: Couple Face Disciplinary Charges*, A.B.A. J., Dec. 1994, at 39, 39.

75. See Lerman, *supra* note 59, at 212 tbl.1.

76. See Karen Dillon, *Death of a Career*, AM. LAW., June 1994, at 5, 71 (providing a conservative estimate that Gary and Maureen Fairchild earned a combined income of \$800,000 a year).

A. Maureen Fairchild

Maureen went to good schools—Notre Dame for college and to Northwestern for law school.⁷⁷ After she graduated from law school, Maureen spent a few years as an associate at Sidley & Austin.⁷⁸ After six more years as an associate at Chapman & Cutler, Maureen became a junior partner.⁷⁹ Three years later she was turned down for an equity partnership.⁸⁰ A superficial view shows Maureen Fairchild to have been a well-educated and moderately successful lawyer from a wealthy family.

Maureen's life and career show some evidence of unusual materialism and an otherwise wobbly moral compass from years before her fall. Maureen's personal life may have led her to place an unusually high value on material things. Maureen's prosperous father was "a dean of the Nebraska trial bar."⁸¹ After his death, Maureen's mother married a multimillionaire who moved Maureen and her family into his fifty-two-room mansion that had a bowling alley, a movie theater, and two swimming pools.⁸² Maureen was a defendant in several lawsuits long before the accusations of billing fraud. One landlord sued to get her to vacate an apartment after her lease expired.⁸³ A few years later, another landlord sued her for \$3000 of unpaid rent.⁸⁴ In 1986, a construction company sued Gary for \$4655.25 for home improvement work⁸⁵ that had been done on the Fairchilds' condo, estimated in 1994 to be worth about \$2 million.⁸⁶ Around the time the billing fraud scandal broke, Maureen, and in some cases Gary, also was sued for unpaid bills.⁸⁷ The Harris Trust and Savings Bank (one of Maureen's clients) sued them in May 1994 for defaulting on a \$150,000 line of credit.⁸⁸ The next day, Polo, the clothing store, sued Maureen for \$10,423.19 for items purchased but not paid for.⁸⁹ Another shop had already sued her for \$700.⁹⁰

77. See Lerman, *supra* note 59, app. B at 309.

78. See *id.*

79. See *id.*

80. See *id.*

81. Stephanie B. Goldberg, *Partnership of Trouble*, CHICAGO, Dec. 1994, at 84, 105.

82. See *id.*

83. See Laura Duncan & Jill Chanen, *Tax and Debt Problems Preceded a Couple's Tumble from the Rare Air of City's Legal Strata*, CHI. DAILY L. BULL., June 7, 1994, at 1.

84. See *id.*

85. See *id.*

86. See *id.* Most of these suits eventually were settled.

87. See *id.*

88. See *id.*

89. See *id.*

90. See *id.*

So Maureen and her husband had a history of high spending, laissez-faire financial behavior. She was angered by being turned down for equity partnership. This may have triggered an apparent sense of entitlement to attain greater success in her firm by lying. She was reportedly upset by the way she was treated by James Spiotto, a managing partner of her firm.⁹¹ She was one of five lawyers considered for equity partnership in 1993, and the only one who was not invited to be an equity partner.⁹² There were unconfirmed allegations that she was the source of the leakage of information about Spiotto's astronomical annual billings.⁹³ The investigation of Maureen's billings, in turn, may have been a response to her conduct toward Spiotto or other lawyers in the firm.⁹⁴

B. Gary Fairchild

Except for the stories of problems with debt and the IRS, Gary's life history doesn't mesh at all with his moral collapse. In fact it presents profound cognitive dissonance. He grew up in an observant Presbyterian middle-class family in Johnstown, Pennsylvania, attended Wheaton College, went to law school at Northwestern, served in Vietnam,⁹⁵ and headed the Chicago Boy Scouts Chapter.⁹⁶ After three years of military service and government work, he went to Winston & Strawn, where he became the managing partner in 1987.⁹⁷

Gary Fairchild had a sterling reputation until word got out that he was a thief. *American Lawyer* reported that "[f]or seven years, Gary Fairchild enjoyed unparalleled trust and respect as one of the country's most well-known firm leaders."⁹⁸ After Fairchild was fired by Winston & Strawn, Kelly A. Fox, the managing editor of *Illinois Legal Times* said, "[i]f someone asked me two weeks ago, 'Who are the most

91. See Karen Dillon, *6022 Hours*, AM. LAW., July-Aug. 1994, at 57, 57-58.

92. See Laura Duncan & Jill Chanen, *Chapman Opens Books on Billable Hours*, CHI. DAILY L. BULL., July 1, 1994, at 1.

93. See *id.*; see also Dillon, *supra* note 91, at 58. James Spiotto reportedly billed 6022 hours one year, and well over 5000 during some other years. See *id.*

94. See, e.g., On-Line Roundtable, *Devotion to Client Welfare*, AM. LAW., July-Aug. 1994, at 61, 61 (commenting on Maureen Fairchild, William Goren, a solo practitioner participant in the On-Line Roundtable discussion, speculated that Spiotto retaliated against Fairchild for reporting Spiotto's earlier activities).

95. See Goldberg, *supra* note 81, at 104.

96. See David Margolick, *A Theft Scandal Ravages a Career at a Leading American Law Firm*, N.Y. TIMES, May 13, 1994, at B18.

97. See Goldberg, *supra* note 81, at 104.

98. Dillon, *supra* note 76, at 5.

impressive lawyers in Chicago?" his name would have come up."⁹⁹ One of Fairchild's partners said, "[i]f you told me there was only one honest lawyer out of 476 lawyers here, I would tell you it was Gary Fairchild' . . . 'He seemed to be perfectly open and aboveboard. It's like when the kid next door turns out to be an ax murderer.'"¹⁰⁰ A *Wall Street Journal* article stated that "[s]everal partners report that over the years, Mr. Fairchild occasionally second-guessed their expense accounts and appeared ethically fastidious."¹⁰¹ Another bizarre irony of the story of Gary Fairchild is that Gary, before he was exposed as a chronic embezzler, was reported to have "earned a national reputation as an expert in managing the modern law firm, lecturing at seminars and participating in roundtables that appeared in *American Lawyer* magazine."¹⁰² Gary adapted the "Total Quality Management" idea then fashionable in corporate America to the law firm environment, calling his concept "ACE, for Above Client Expectations."¹⁰³

C. *How They Stole the Money*

Gary was the managing partner at the Chicago office of Winston & Strawn. He had no one looking over his shoulder and lots of authority to make decisions for the firm. The disciplinary complaint charged that he turned in receipts for at least \$547,977 of personal expenses to the firm between 1986 and 1994.¹⁰⁴ He reimbursed himself for tickets to sports events and other entertainment, for club memberships, and for insurance premiums.¹⁰⁵ The indictment alleged that he used law firm funds to pay for his children's dental bills, federal tax bills, furniture, and home repair bills.¹⁰⁶ Also, the disciplinary agency charged that he stole \$124,322 from his firm, claiming that the funds were to be used to pay expenses of Medline Industries, then a client of the firm.¹⁰⁷ (Gary now works for

99. Margolick, *supra* note 96 (quoting Kelly A. Fox).

100. *Id.* (quoting an unnamed Winston & Strawn partner).

101. Amy Stevens, *Accusations Involving Attorney in Chicago Include Wife's Billings*, WALL ST. J., May 13, 1994, at B3.

102. Goldberg, *supra* note 81, at 85.

103. *Id.* at 107.

104. See John Flynn Rooney, *Former Winston Managing Partner Admits Fraud, Heads to Jail*, CHI. DAILY L. BULL., Dec. 19, 1994, at 1 [hereinafter Rooney, *Admits Fraud*]. In addition, he was alleged to have "wrongly received another \$236,241 from about five clients from 1985 through 1992." *Id.*

105. See John Flynn Rooney, *ARDC Accuses Former Winston & Strawn Partner with Embezzlement, Billing Fraud*, CHI. DAILY L. BULL., Sept. 7, 1994, at 1 [hereinafter Rooney, *ARDC Accuses*].

106. See Rooney, *Admits Fraud*, *supra* note 104.

107. See Rooney, *ARDC Accuses*, *supra* note 105.

Medline Industries.¹⁰⁸) Also he wrote personal checks for fictitious business expenses, photocopied the checks, and submitted the photocopies for reimbursement.¹⁰⁹ Then instead of sending out the checks, he destroyed them.¹¹⁰ By mid-1993, he was claiming about \$8000 per month in improper requests for reimbursement.¹¹¹ The indictment alleged also that Fairchild set up a phony client account at the firm and charged some of his personal expenses as if they had been expenditures for that client.¹¹²

Then there was Gary and Maureen's collaborative scheme to defraud both their firms. Gary hired Maureen to handle some collection matters for Winston & Strawn. He authorized payment of \$248,000 to Chapman & Cutler, mostly for work which was not done.¹¹³ The collection matters involved a Winston client called Windsor Holding Company.¹¹⁴ The total amount sought to be collected was about \$200,000.¹¹⁵ James Conway, the Assistant U.S. Attorney who prosecuted the case, explained it this way:

Winston & Strawn was owed approximately \$200,000 by a client. Instead of having one of their 500 attorneys over there work the matter, [Gary] referred the matter to Ms. Fairchild over at Chapman. Maureen proceeded to overbill that matter by \$200,000, which is the same amount that Winston was trying to collect on it.¹¹⁶

The Windsor arrangement apparently was designed to create the appearance that Maureen was very productive, thereby increasing her chances of becoming an equity partner in the firm.¹¹⁷ Maureen did some initial legitimate work on the matter, but then continued billing large amounts for the Windsor matters long after she stopped doing any

108. See Steven R. Strahler, *After Sin and Penance, Will Redemption Follow?*, CRAIN'S CHI. BUS., Dec. 13, 1999, at 1 (stating that, as of December 13, 1999, Gary Fairchild was an executive with Medline Industries).

109. See Dillon, *supra* note 76, at 70.

110. See *id.*

111. See Lerman, *supra* note 59, at 242 tbl.3.

112. See Rooney, *Admits Fraud*, *supra* note 104.

113. See Lerman, *supra* note 59, at 242 tbl.3.

114. See Rooney, *ARDC Accuses*, *supra* note 105.

115. See *id.*; see also Dillon, *supra* note 76, at 5. The fact that the amount paid in fees for a collection matter exceeds the amount sought to be collected raises the question of how these payments could have gone unnoticed at Winston. Did the firm have no review of expenditures on outside counsel by its accounting staff?

116. Transcript of Proceedings before the Hon. Charles Ronald Norgle, Sr., at 30-31, *United States v. Fairchild* (N.D. Ill. Apr. 1, 1997) (96-CR-718) [hereinafter Transcript].

117. See Michael Gillis, *Lawyer is Accused of \$ 900,000 Swindle*, CHI. SUN-TIMES, Nov. 15, 1996, at 12.

work.¹¹⁸ Maureen was able to send bills to Winston without those bills being reviewed by any other lawyer.¹¹⁹ Gary was likewise able to authorize payment without review.¹²⁰

In addition to billing Winston for work that had not been done, Maureen fraudulently credited the Winston payments to other client accounts.¹²¹ Maureen sometimes directed that portions of Winston funds be applied to amounts owed to Chapman to other clients of hers.¹²² These were other matters unrelated to the work being done for Winston, and for which Winston had not agreed to pay the fees.¹²³ The point? At Chapman, if a client bill was not paid within a certain amount of time, the firm would initiate an inquiry of the billing partner.¹²⁴ By showing payments received on those files, Maureen created the appearance that the bills were being paid.¹²⁵

Why did Maureen need to cover up for deadbeat clients? Well, some of them were not actually clients, but phony files Maureen had set up to allow her to bill more fictitious hours and to appear productive.¹²⁶ One of these fictitious clients was "Life Consultants." This was the name of a real business that belonged to Maureen's friend Julie Sherritts, but the business never was a client of Maureen's or of Chapman & Cutler.¹²⁷ Julie was getting a divorce and needed Maureen as a character witness. Maureen opened a file, and billed time and expenses to that file,

118. See Dillon, *supra* note 76, at 5.

119. See Goldberg, *supra* note 81, at 109-10; see also Geyelin, *supra* note 72.

120. See Geyelin, *supra* note 72. In responding to allegations that she overbilled Winston, Maureen pointed out that "[r]espondent, at the time of that billing, was a fraction of one per cent of Chapman, and her husband was a significant partner of Winston. The payment of unearned money from Winston to Chapman was harmful, not beneficial, to the Fairchild family." Answer to Complaint at 8, *In re Walsh*, (Ill. Att'y Registration & Disciplinary Comm'n Hr'g Bd. Jan. 13, 1995) (Comm'n No. 94-CH-653) [hereinafter Answer to Complaint]. This remark is fascinating, because Maureen's assumption appears to be that no one would engage in misconduct that was not in her own financial self-interest.

121. See Dillon, *supra* note 76, at 5.

122. See *id.*

123. See Petition Pursuant to Ill. Sup. Ct. R. 761 at 2, *In re Walsh* (Ill. n.d.) (Comm'n No. 94-CH-653) [hereinafter Petition].

124. See Transcript, *supra* note 116, at 31.

125. See *id.* Maureen responded to this allegation of misconduct by urging that lawyers were allowed to credit payments by one client to another client, and that this was not harmful to Winston, because all bills sent were for services rendered, and that there was no "adverse effect to the remitting client" if the payment was attributed to another client. Answer to Complaint, *supra* note 120, at 13.

126. See, e.g., Transcript, *supra* note 116, at 11 ("Maureen was consumed with a desire to become managing partner. . . [and] needed to make herself look productive . . .").

127. See *id.* at 31-32.

including time spent going to Omaha to be a witness for Julie.¹²⁸ She also billed the firm and some clients for time and expenses for a vacation that Maureen took with Julie in August 1993, and for baseball games and other such vacation expenses.¹²⁹

Another phony client was called "209 Lake Shore Drive," the address of Maureen's co-op.¹³⁰ Maureen opened this file in 1993 when she became president of the co-op.¹³¹ She billed expenses to this account, some related to the co-op, such as to have a court reporter present at co-op meetings, and some unrelated expenses.¹³² One unrelated expense charged to this file was \$5600 paid to a public relations firm that Maureen had hired to generate positive publicity in connection with Gary's resignation from Winston & Strawn.¹³³

What might Maureen have been thinking when she set up these phony files? Maybe she was really desperate to become an equity partner but she didn't know how to or could not bring in real business. Maybe she thought all of law practice was smoke and mirrors. Perhaps she perceived that other lawyers in her firm were billing for work they didn't do or that they were being reimbursed for personal expenses. Maybe some of them were doing these things. One of the more striking qualities of Maureen's case is the ineptitude of her fraud. Much of her misfeasance was by billing fraudulent hours, which produced no direct financial benefit to her. Why would she risk going to prison for a better prospect of a promotion or a bigger income?

Maureen's largest fraud involved extensive overbilling to one client, Harris Bank. Her fraudulent billing of the bank was estimated at \$1.1 million,¹³⁴ over 1500 hours,¹³⁵ between 1986 and May 1994. She filled out time sheets for massive numbers of hours during which she was not doing work for Harris or the clients of Harris, who were billed

128. *See id.* at 32.

129. *See id.* at 31-32. In response to the allegation that she had improperly claimed reimbursement for going to a baseball game with a friend, Maureen said that "there was a person taken to the game with whom Respondent intended to have some business relating to a matter which she was handling." Answer to Complaint, *supra* note 120, at 42.

130. *See* Transcript, *supra* note 116, at 32-33.

131. *See id.*

132. *See id.* at 33.

133. *See id.*; *see also* Patricia Manson, *Panel Urges 5-Year Suspension for Ex-Partner at Chapman*, CHI. DAILY L. BULL., Feb. 3, 2000, at 1.

134. *See* Complaint at 17, *In re Walsh* (Ill. Att'y Registration & Disciplinary Comm'n H'rg Bd. Oct. 13, 1994) (Comm'n No. 94-CH-653) [hereinafter Complaint].

135. *See* Amy Stevens, *Chicago Sees New Accusation of Overbilling*, WALL ST. J., Oct. 14, 1994, at B3.

for the time.¹³⁶ She billed for a great deal of time when she was on vacation and not working at all.¹³⁷ Like her husband, she also billed the law firm and various clients for many personal expenses.¹³⁸ Maureen Fairchild billed for many blocks of time when she was on vacation with Timothy McKee, her ski instructor boyfriend.¹³⁹ Maureen Fairchild billed to her firm a birthday party for a friend at the Four Seasons hotel that included makeup, manicures, massages, and lunch.¹⁴⁰ She represented this event to the firm as a labor relations seminar.¹⁴¹ In the request for reimbursement, Maureen described the party this way: “Developing business re: employment/seminar and luncheon w/4 minority owned business and 1 representative from State of Illinois” and claimed that she “[r]ented Suite—hosted luncheon and presented short seminar on basic employer-employee matters.”¹⁴²

Assistant U.S. Attorney Conway described another social junket represented to be a business expense:

Maureen Fairchild arranged for a high school reunion for three of her girlfriends from the Duchane Academy in Omaha, Nebraska. . . . the girls and Mr. McKee, who went as tour guide, met in New York City. They spent a night at a hotel, they had a limo, they had dinner at the 21 Club. . . . the limo, the dinner, the hotel rooms were all paid for by Chapman and its clients because Maureen misrepresented to the law firm that in fact she was working on matters at that time.

The party went from New York to the Caribbean island of St. Lucia, where they spent approximately a week doing snorkeling and scuba diving. [The prosecutor obtained photos from the week at the beach from one of the girlfriends].

. . . .

During that time period Maureen Fairchild also billed \$11,000 to clients of Chapman.¹⁴³

136. *See id.*

137. *See supra* note 129 and accompanying text.

138. *See* Goldberg, *supra* note 74, at 39.

139. *See* Stephen Buttry, *Jury Indicts Mrs. Fairchild On 23 Counts: Lawyer Accused of Billing Trips to Clients, Firm*, OMAHA WORLD-HERALD, Nov. 15, 1996, at 17SF.

140. *See* Transcript, *supra* note 116, at 28.

141. *See id.* at 29.

142. Indictment at 13, *United States v. Fairchild* (N.D. Ill. Nov. 14, 1996) (96-CR-0718).

143. Transcript, *supra* note 116, at 26-27.

During another week when she was hospitalized as a result of an asthma attack, she billed clients about \$14,000 for work that she did not do.¹⁴⁴

Maureen's billing scheme was audacious. She spent an enormous amount of time on vacation, visiting her boyfriend, and billing large amounts of hours and expenses as if she were doing legal work during that time. Here are some examples, from the disciplinary pleadings.

MAUREEN'S "WORKING TRAVEL," MARCH 1992 TO JANUARY 1994¹⁴⁵

1	March 18 to April 4, 1992	Vacation in Sun Valley, Idaho	\$13,160 for claimed legal services
2	April 20, 1992	To visit Timothy McKee ¹⁴⁶ in San Francisco	\$12,300 for claimed legal services and \$4457 for expenses.
3	August 4, 1994	To visit McKee in Seattle to celebrate his birthday	\$14,600 for claimed legal services and \$4457 for expenses.
4	November 1992	Vacation in New York and St. Lucia with McKee and high school friends	\$11,700 for claimed legal services, \$603 for limousines, \$250 for dinner, \$1083 for hotel bills, \$568 for travel costs.
5	December 28, 1992 to January 10, 1993	Vacation in Sun Valley, Idaho	\$15,360 for claimed legal services.
6	March 15-19, 1993	Vacation in Sun Valley, Idaho	\$10,000 for claimed legal services.
7	June 28-30, 1993	Trip to Omaha, Nebraska to visit her friend Julie Sherritts.	\$1492 between both trips for personal expenses.
8	July 14-16, 1993	Trip to Omaha, Nebraska to testify in Julie Sherritts's divorce hearing.	

144. *See id.* at 27.

145. *See* Petition, *supra* note 123, at 2-7.

146. McKee was Maureen's boyfriend. He was a ski instructor and a float plane operator, and lived in Idaho and Seattle. *See* Transcript, *supra* note 116, at 14.

9	August 1-14, 1993	Vacation in Lake Geneva, Wisconsin with her friend.	\$19,200 for claimed legal services, and \$1188 for tickets and travel expenses for Cubs and White Sox games.
10	September 12-18, 1993	Vacation at the Golden Door Spa near San Diego.	\$9600 for claimed legal services, \$551 for airfare.
11	October 14-16, 1993	Vancouver, Canada.	\$4000 for claimed legal services, \$3300 in travel costs.
12	October 20, 1993	Bette Midler concert in New York.	\$6000 in claimed legal services, \$760 for travel expenses and concert tickets.
13	December 7-23, 1993	Skiing in Boulder Creek, Colorado.	\$10,575 for claimed legal services.
14	December 13-15, 1993 (perhaps traveled from Colorado to New York?)	Visiting New York.	\$6375 for claimed legal services, \$3000 for hotel and personal expenses, and \$740 for Broadway shows.
15	December 20, 1993 to January 7, 1994	Vacation in Sun Valley, Idaho.	\$28,700 for claimed legal services, \$2555 for personal expenses including Christmas dinner.
			TOTAL FEES: \$161,570 ¹⁴⁷
			TOTAL EXPENSES: \$25,004

147. These figures represent the totals of the legal fees and expenses charged to clients and to the firm during the fifteen listed recreational trips from March 1992 to January 1994.

This is just a sample of Maureen's billing and expense fraud scheme—the table only shows the allegations in which she represented personal travel to be work time and business expenses.

D. *Did All This Really Happen?*

Some of the information about Maureen's practices comes from allegations by the disciplinary authorities, some from allegations made by the U.S. Attorney. Maureen entered an *Alford*¹⁴⁸ plea to the twenty-three criminal counts, claiming innocence but admitting that the charges against her could be proven.¹⁴⁹ In explaining this to the judge at the hearing at which she entered her plea, Daniel Reidy, Maureen's lawyer, explained that she would assert that during the period in question, her mental capacity was diminished because of medication that had been prescribed to treat "some underlying psychological disorders."¹⁵⁰ He also said that "Mr. Conway describes a time period . . . when in fact the wheels did come off Ms. Fairchild's legal practice, and she did in fact go to billing things that were not times when she was working."¹⁵¹ So she did not admit all of the allegations, but acknowledged that some of the things alleged actually took place.

Another datum attesting to the reality of at least a substantial portion of the allegations is that Chapman & Cutler apparently repaid the Harris Trust and Savings Bank \$1,127,849.99, the amount alleged to have been overbilled by Maureen.¹⁵² The repayment was with interest.¹⁵³ The Harris Bank then reimbursed all of its customers who had been overbilled.¹⁵⁴

E. *Crime and Punishment*

Gary voluntarily surrendered his license to practice law in 1994, and by December of that year, had repaid Winston & Strawn about

148. North Carolina v. Alford, 400 U.S. 25 (1970).

149. See Manson, *supra* note 133; see also Alford, 400 U.S. at 37-38.

150. Transcript, *supra* note 116, at 41.

151. *Id.*

152. See Complaint, *supra* note 134, at 17; Answer to Complaint, *supra* note 120, at 44. Maureen claimed, in answering the disciplinary complaint, that the refunds "were made to make amends to a client offended by the public notice taken of the difficulties in which the Fairchild family found itself, and not because Chapman believed that it had treated a client dishonestly." Answer to Complaint, *supra* note 120, at 44.

153. See Complaint, *supra* note 134, at 17.

154. See *id.*

\$700,000.¹⁵⁵ Gary pleaded guilty to one count of mail fraud and one count of tax evasion in December 1994.¹⁵⁶ He was sentenced to two years in prison, the minimum available under the federal sentencing guidelines.¹⁵⁷ He was fined \$36,000 and ordered to perform five hours a week of community service after his release.¹⁵⁸ The judge who sentenced Gary graduated from Northwestern University Law School one year before Gary did.¹⁵⁹ Gary's sentence was said to reflect his "contrition, remorse, and his restitution to the firm and all clients."¹⁶⁰

Maureen was sentenced to one year and one day in prison, three years of supervised release, and \$50,000 restitution.¹⁶¹ The judge recommended that the Bureau of Prisons place her at an institution that would allow her reasonable visitation with her children.¹⁶² She was disbarred in 2000.¹⁶³ The decision of the disciplinary panel noted that "[e]ven though apparently free of Prednisone¹⁶⁴ [the medication that had been urged to alter her mental capacity] for several years, [Fairchild] made no effort to apologize or explain her actions to either her former law firm or the victimized clients."¹⁶⁵ The panel also noted that she had paid only \$500 of the \$50,000 restitution to Chapman, and that that portion had been paid involuntarily.¹⁶⁶ As of 1999, Maureen was living in Ketchum, Idaho, and working at an architectural firm as an office assistant.¹⁶⁷ In the fall of 1999, Maureen filed suit in Idaho against her former partners and the law firm, alleging violations by them of the

155. See Laura Duncan & David Heckelman, *Justices Disbar Gary Fairchild*, CHI. DAILY L. BULL., Dec. 1, 1994, at 1.

156. See Lerman, *supra* note 59, at 266 tbl.5.

157. See *id.*

158. See *id.*

159. See *id.*

160. *Fairchild is Sentenced*, WALL ST. J., Mar. 22, 1995, at B6 (quoting Gary Fairchild's attorney's assessment of the reasoning behind the judge's sentencing decision); see also Matt O'Connor, *Ex-Top Lawyer Gets 2 Years for Stealing from Firm, Clients*, CHI. TRIB., Mar. 22, 1995, at 9. At last report Gary was working in the special projects department of Medline Industries, Inc., a manufacturer of health care supplies in Mundelein, Illinois. See Strahler, *supra* note 108.

161. See Patricia Manson, *Split Disciplinary Panel Urges Ex-Partner Fairchild's Disbarment*, CHI. DAILY L. BULL., Apr. 28, 1999, at 3.

162. See Judgment at 4, *United States v. Fairchild*, (N.D. Ill. July 22, 1997) (96-CR-718-1).

163. See *State High Court Disbars Lawyer Guilty of Fraud*, CHI. TRIB., July 4, 2000, at 3.

164. Prednisone is a steroid that is used to reduce swelling, treat endocrine disorders, arthritis, lupus, psoriasis, asthma, Crohn's disease, and other maladies. See, e.g., Drugs.com, Drug Information Center, Prednisone, at <http://prednisone.drugs.com> (last visited Feb. 19, 2002).

165. Manson, *supra* note 161 (second alteration in original) (quoting disciplinary opinion of Attorney Registration and Disciplinary Committee).

166. See *id.*

167. See *id.*

Americans with Disabilities Act and the Illinois Uniform Partnership Act.¹⁶⁸

F. Why Did the Fairchilds Become Thieves?

What you can see in this story is two people engaged in a really extensive scheme of calculated, large-scale income expansion. Why? Perhaps they felt a need to have a more lavish lifestyle than they could support on a mere \$800,000.

In Maureen's case, there is a clear preoccupation with racking up the maximum number of hours that she thought she could get away with. Since billing hours would not result in any direct financial benefit for Maureen, one might wonder what was her motive. There were two tiers of partners at Chapman: "income partners" and "managing partners."¹⁶⁹ In 1990 Maureen became an income partner.¹⁷⁰ In September 1993 she was passed over for managing partner.¹⁷¹ She seems to have been preoccupied with increasing her billables to make herself appear productive. This was partly an effort to achieve managing partner status.¹⁷² She told her secretary that she needed to bill lots of hours to become a managing partner.¹⁷³

A clear factor in both cases is the opportunity to commit fraud and get away with it. The prosecutor reported that "[s]he started cheating small amounts of hours, saw she could get away with it, [and] continued to increase the amount of phony hours."¹⁷⁴ The criminal investigation went back only to 1991 because of the time and resources required to investigate this complex case.¹⁷⁵ Also the prosecutor mentioned that Maureen didn't have billing authority until she became an income partner in 1990, so she would have had less opportunity to commit billing fraud, at least on the scale she achieved, before that.¹⁷⁶ And Gary, as managing partner of his firm, had even more authority and less oversight.

168. See Elizabeth Amon, *A Former Chapman Partner Strikes Back*, NAT'L L.J., Oct. 4, 1999, at A16.

169. See Briggs Adams, *Keeping Track*, CHI. LAW., Feb. 1996, at 7. I believe that at Chapman & Cutler, "managing partner" means an equity partner. See *id.*

170. See *supra* note 79 and accompanying text.

171. See Transcript, *supra* note 116, at 9.

172. See *id.* at 11-12.

173. See *id.* at 16.

174. *Id.*

175. See *id.*

176. See *id.*

G. How Anomalous are the Fairchilds?

The Fairchild saga is one of those “truth is stranger than fiction” stories. How strange are they? Obviously most practicing lawyers do not bill thousands of fictitious hours or ask their firms or their clients to pay for their spa visits or their vacation charter planes. Only a small number of lawyers steal hundreds of thousands of dollars. But how do the Fairchilds compare with other lawyer thieves? If they are *sui generis*, we might draw wrong lessons from their stories.

My comparative study of these and fourteen other cases of elite lawyers committing large-scale billing and expense fraud showed both divergence and commonality among the cases. Like Gary Fairchild, six of the fifteen other lawyers were managing partners of their firms or of the offices in which they worked.¹⁷⁷ They may have had better-than-average opportunities to steal. Like both Gary and Maureen, the other lawyers’ fraud continued before detection for an average of five years.¹⁷⁸ This means that a significant number of firms may not have good systems to monitor or detect such fraud. Like Gary and Maureen, the other lawyers used a wide range of dishonest behaviors, some designed to increase their billable hours and their firms’ incomes, others designed to secure payments directly to themselves, such as by seeking reimbursement for personal expenses.¹⁷⁹ Like Gary and Maureen, most of the other lawyers were well-educated and moderately to extremely successful.¹⁸⁰ Some of the other lawyers, like Gary, were regarded as paragons of integrity. One sat on the ABA Commission on Professionalism.¹⁸¹ Another had earned a Ph.D. in Philosophy from the University of Cambridge.¹⁸² One had risen to become Associate Attorney General of the United States.¹⁸³ Another had been a law professor.¹⁸⁴

While some appeared morally pristine, others among the sixteen lawyers were regarded by other lawyers as greedy and opportunistic.¹⁸⁵ Many of the lawyers were rainmakers and high billers, some of them billing above 3000 hours per year.¹⁸⁶ Like the Fairchilds, most of the lawyers had expensive houses, took expensive vacations, and enjoyed

177. See Lerman, *supra* note 59, app. B at 307-12.

178. See *id.* at 210.

179. See *id.* at 238-245 tbl.3.

180. See *id.* at 229-30.

181. See *id.* at 230.

182. See *id.* at 230-31.

183. See *id.* at 230.

184. See *id.* at 230-31.

185. See *id.* app. J at 339-43.

186. See *id.* at 231.

luxury goods.¹⁸⁷ Many of these lawyers spent loads of money on parties and lavish vacations. Perhaps the most striking anomaly in the Fairchilds' case is that Maureen is the only woman, not only among the sixteen cases I studied in depth, but the only woman of the thirty-six cases I identified. A knee-jerk reaction to this information might be to wonder if she was drawn into a life of crime by her husband. My reaction: I don't think so.

On the other hand, one has to wonder about the Fairchilds' private conversations. They had one cooperative scheme of theft, and both were systematically charging their firms for large amounts of personal expenses.¹⁸⁸ Whose ideas were these? Did they discuss techniques for more effective deceit? Both Gary and Maureen categorically denied having any knowledge of the wrongdoing by the other.¹⁸⁹ But it seems much more plausible to me that they not only knew about one another's shenanigans, but also that they helped each other plan their nefarious activities. I imagine them, sitting on the balcony of their luxury condo on Lake Shore Drive after work over a glass of wine in the evening:

Maureen (hypothetically): "Guess what I got away with today? Before I'd only submitted my own travel expenses, but today I got reimbursed for Julie's too. You know, 'business development.' Seems like the sky's the limit, huh?"

Gary (hypothetically): "You know, last month I realized that I can write a check, photocopy it, turn it in for reimbursement, and then destroy it. Cool, huh? You might try it. Another thing—if you set up a phony client file, you can charge the firm for nearly anything by just describing it as an expenditure for that client."

187. Several of them enjoyed collections of vehicles and residences. For example:

—Wilkes "Skip" Morgan, a former partner at Bronson, Bronson & McKinnon, who stole \$2.3 million, had two WWII airplanes, six cars, including 2 BMWs and a Mercedes, and a 22-foot boat. *See id.* at 248 tbl.4.

—H. Lawrence Fox, a former partner at Winston & Strawn, who stole \$1.6 million, had three Jaguars and two houses. *See id.* at 249 tbl.4.

—Bill Duker, who stole \$1.4 million, had a luxury vacation home in Miami and a yacht in Newport, Rhode Island. *See id.*

—Ed Digges, who stole \$3.1 million, spent over a million to renovate a pre-Revolutionary War estate he had bought. *See id.* at 248 tbl.4.

—Harvey Meyerson, who stole \$2.5 million, bought a \$1.75 million oceanfront house in Key West after he got out of prison, taking advantage of Florida's Constitution which protects one's home from the reach of most creditors. *See id.* app. K at 344; FLA. CONST. art. X, § 4, cl. (a)(2) (providing a homestead exemption for homesteads up to 160 acres outside a municipality or one-half acre within a municipality, from all but tax creditors).

188. *See supra* notes 104-12, 129 and accompanying text.

189. *See Stevens, supra* note 135.

Maureen (hypothetically): “Yeah but if it’s a phony file, the phony client will never pay any fees. Hmm . . . maybe I could just credit some of Winston’s payments on Windsor Holding to those clients, and then it would make them look like active files.”

Gary (hypothetically): “Just make sure you cover your tracks.”

Perhaps the conversations were not so lighthearted. Perhaps the Fairchilds were up to their eyeballs in debt, and despite their estimated combined income of \$800,000 per year,¹⁹⁰ having trouble making ends meet. Perhaps there was marital strife over debts, and the conversations ran something like:

Gary (hypothetically): “Well, it was *your* idea to buy this overpriced condo. Why don’t *you* figure out how we’re going to pay for it?”

Maureen (hypothetically): “OK, it was my idea but you live here too. And I’m just a lousy income partner—you control the purse strings of your firm, so you can do whatever you want and no one would ever know or care!”

Perhaps they each independently decided to get reimbursed for personal expenses, recreational travel expenses and entertainment, and never discussed it. Maybe each did not know what the other was doing. Possibly Gary, who picked over the details of other people’s expense vouchers, did not notice that his firm had paid Maureen’s firm over \$275,000 in fees for a collection matter worth \$200,000.¹⁹¹ Again, I don’t think so.

Is it a coincidence that the nation’s leading poster child of massive hourly billing is none other than James Spiotto, who was Maureen Fairchild’s boss? After the press learned that Mr. Spiotto had billed nearly 6000 hours per year for four years running,¹⁹² he received phone calls from a few reporters. He called a press conference to explain himself, and methodically itemized the hours he billed in 1993, which was his top-billing year (the same year that Maureen was cordially uninvited to be an equity partner.) He explained that of the 6022 hours:

190. See Dillon, *supra* note 76.

191. See Goldberg, *supra* note 81, at 85. The Illinois disciplinary agency charged that Gary, “[a]t the time [he] received Mrs. Fairchild’s request for payment, [he] knew or should have known that at least some portion of the requests for payment had been fraudulently inflated.” Rooney, *ARDC Accuses*, *supra* note 105.

192. See Dillon, *supra* note 91, at 57.

—550 represented a contingent fee from the previous year.¹⁹³

—rounding up to the tenths of hours in which he billed could translate into 500 or 600 hours.¹⁹⁴ Later in the discussion he changed his mind about that.¹⁹⁵

—1113 hours included 52 days when he said he worked all night.¹⁹⁶

—He claimed he took off not one day in 1993, and usually came to work at 5 or 6 in the morning, and stayed until 11 or 12 at night.¹⁹⁷

Although it is undisputed that Spiotto worked very hard, none of the three dozen lawyers interviewed by *American Lawyer* believed that he could have really billed over 6000 hours.¹⁹⁸

Perhaps coincidentally, Maureen Fairchild had complained beginning in the mid-1980s that Spiotto was stealing her hours, in other words billing her time as if he had done the work. And when her billing fraud was discovered, Spiotto was one of the two lawyers who went over to Winston to break the bad news to Gary's firm.¹⁹⁹

A significant difference between Gary and Maureen is evident in some of their responses to the accusations of misconduct. Gary was able to admit wrongdoing, while Maureen resisted taking responsibility.²⁰⁰ In this way the Fairchilds' behavior is consistent with that of other lawyer thieves whom I have studied. Some of the lawyers appear to be able to grasp the magnitude of their wrongdoing and really try to make amends. Others are relentlessly defensive.

When confronted with accusations of overbilling, Maureen reacted one of two ways, according to the prosecutor:

“The first was to go on the offense and accuse the accuser of being wrong or just stupid. . . .

The other thing that Maureen would do is she would become manipulative and try to have other people feel sorry for her and say things . . . like she has cancer, which was false, just to get them off the main issue.”²⁰¹

193. *See id.* at 58.

194. *See id.*

195. *See id.*

196. *See id.*

197. *See id.*

198. *See id.*

199. *See id.*

200. *See supra* notes 164-68 and accompanying text.

201. Transcript, *supra* note 116, at 19-20.

This last comment is a reference to a fee dispute with a client called Cologne, a customer of the Harris bank, which ended up in litigation.²⁰² Maureen met with an attorney for Cologne, burst into tears, told him that she had cancer, and explained that because of the cancer she really wanted to settle the matter.²⁰³ She did not have cancer.²⁰⁴

When responding to disciplinary and criminal charges, Maureen's defense included many excuses for her billing fraud, including a claim that firm policy was to make adjustments in recorded time to reflect the value of the work, and that she did not always record her time accurately.²⁰⁵ While the U.S. Attorney who prosecuted Maureen said that premiums seldom were charged by Chapman & Cutler, and were charged only when clients agreed to pay them, George Collins, one of Maureen's attorneys, contends that this is not so.²⁰⁶ He stated in an interview that the firm's computer billing system was set up so that a lawyer could easily add a ten percent premium to a client's bills without the client's knowledge.²⁰⁷ Maureen's answer to the disciplinary complaint also mentioned that there was a computer program used for "variance" or "premium" billing, and that Maureen was "not even in the top ten of variance billers, and her variance billing was less than one third of one percent of the firm's premium billing in 1993."²⁰⁸ It is not clear whether or to what extent other Chapman lawyers were fabricating hours or engaging in other billing fraud. What is clear is that Maureen resisted admitting that her conduct was wrongful or that she was responsible for her own conduct.

Maureen defended her practice of crediting payments from one client to the account of another client. She said in answering the disciplinary complaint that:

Variance billings are allowed, in that time bills do not necessarily reflect the full value of services. An attorney is permitted to designate his/her variance to another item that either has not been paid or as to which a credit should be allowed. The transfer does *not* indicate an

202. *See id.* at 19-23.

203. *See id.* at 23.

204. *See id.* at 20.

205. *See* Answer to Complaint, *supra* note 120, at 3.

206. *See* Telephone Interview by Theresa Fuentes (Research Assistant to Lisa Lerman) with George Collins, Partner, Collins & Bargione (Sept. 18, 1997).

207. *See id.*

208. Answer to Complaint, *supra* note 120, at 43.

overcharge to the paying client, but is an internal accounting procedure²⁰⁹

Maureen claimed that her dishonesty was the product of diminished mental capacity, relating to asthma, anxiety medications, and mental disorders, including bipolar illness, mania, and depression.²¹⁰ The prosecutor said he thought her billing fraud was caused by ambition and greed.²¹¹ He explained to the judge that “[w]e don’t believe that any of the medications contributed at all to her crimes.”²¹² In entering her *Alford* plea (acknowledging that the government could prove the charges without admitting guilt) to twenty-three counts of mail, wire and bank fraud, Maureen said, “‘I now understand my mental capacity was diminished during this period,’ ‘I buckled under the pressure . . . I flunked the character test’ ‘I regret my actions and the harm they caused my clients.’”²¹³

Gary was much quicker to acknowledge wrongdoing, and was at least outwardly more contrite—less inclined to make excuses. Upon resignation from Winston, Gary gave up his \$200,000 equity share, and repaid the firm the other \$500,000.²¹⁴ Maureen fought disbarment; Gary sought voluntary disbarment.²¹⁵ Maureen sought to postpone her prison sentence as long as possible;²¹⁶ Gary wanted to serve his time immediately.²¹⁷ When he pled guilty to criminal charges, Gary said, “[w]hat I did was wrong, terribly wrong[.]’ . . . ‘I’ve disgraced my profession, betrayed my former law firm, irreparably harmed my family and destroyed my life.’”²¹⁸ One partner said, “[s]omehow, along the way, he lost the ability to distinguish between his personal assets and the assets of the firm.”²¹⁹

209. *Id.* at 32.

210. See Eric Herman, *Maureen Fairchild Throws in the Towel*, AM. LAW., May 1997, at 15, 15.

211. See Gillis, *supra* note 117.

212. Michael Gillis, *Lawyer Blames Fraud on Prescription Drugs*, CHI. SUN-TIMES, Apr. 2, 1997, at 20 (quoting Assistant U.S. Attorney James Conway).

213. Brendan Stephens, *Fairchild Pleads Guilty to \$900,000 Fraud, Denies Responsibility*, CHI. DAILY L. BULL., Apr. 1, 1997, at 1 (quoting Maureen Fairchild’s statement in her *Alford* plea) (second omission in original).

214. See Goldberg, *supra* note 81, at 86.

215. See Rooney, *ARDC Accuses*, *supra* note 105.

216. See Stephen Buttry, *Ex-Attorney Gets Prison in Chicago Fraud Case*, OMAHA WORLD-HERALD, July 23, 1997, at 1.

217. See Geyelin, *supra* note 72.

218. O’Connor, *supra* note 160 (quoting Gary Fairchild’s statement at his sentencing).

219. Dillon, *supra* note 76, at 70 (quoting an unnamed Winston & Strawn partner).

V. THE SLIPPERY SLOPE

The Fairchilds' story provides good food for thought about the slippery slope from greed to dishonesty. I have not met either of the Fairchilds—all of my information about them comes from other sources.²²⁰ But since that information is fairly abundant, let me make a few conjectures about what was going on. Gary, having come from a family with modest resources, was ambitious. Maureen was a wealthy, good-looking princess, a big spender. Perhaps Maureen's family wealth was part of Gary's attraction to Maureen. But Gary appears to have been an old-fashioned, follow-the-rules, Boy Scout, Marine Corps kind of a guy. He was, after all, the same managing partner who led the investigation of H. Lawrence Fox's billing fraud.²²¹

A. *Risk Factors for the Slide from Ambition to Greed to Dishonesty*

What causes some lawyers to lose their sense of boundaries about what belongs to them, to their firms, to their clients? One can understand such a moral lapse in a person who never had any ethical standards, but what about the lawyers like Gary Fairchild?

1. Desire for Money

One ingredient in the slide down this slippery slope is the aspiration to expand income, discussed above. Part of it is the economic pressure of maintaining an affluent lifestyle. For some it is their own materialism, for others it might be the materialism of a spouse.

2. Competition, Desire for Status

One factor that may tilt some lawyers toward stealing funds from their firms is a competitive desire to keep up with partners, a sense of deserving to be paid more. Gary Fairchild was perhaps "king of the hill" at Winston until former Illinois Governor Tommy Thompson became a

220. I wrote to both Gary and Maureen while researching my 1998 study to offer them the opportunity to comment, but neither did so. I contacted Gary again to ask for comment while writing this Article (I obtained his e-mail address from Medline Industries, his employer), but received no response.

221. H. Lawrence Fox was the managing partner of the Washington, D.C. office of Winston & Strawn until his billing and expense fraud, estimated at \$1.62 million, was discovered in 1991. *See Lerman, supra* note 59, at 239 tbl.3. One of his methods was to represent some amounts that should have been billed as legal fees to be business expenses. *See id.* These amounts were then directly "reimbursed" to him rather than paid to the firm. *See id.* Since they were "reimbursements" they were not taxable income. Fox was sentenced to fifty-five months in prison without parole and was disbarred in 1992 and 1993. *See id.* at 212 tbl.1, 265 tbl.5.

partner.²²² Gary was reportedly offended by Thompson's extravagance.²²³ The new partner earned about \$750,000 a year, had a double corner office, two assistants, a chauffeured limousine, and frequently traveled on the Concorde.²²⁴ He arrived in 1991, and there were reports of rivalry between Fairchild and Thompson.²²⁵ In late-1993, Gary stepped down as managing partner.²²⁶ While Gary's theft appears to have begun well before Thompson arrived, the amounts of personal expenses he charged to the firm increased to about \$8000 per month by mid-1993.²²⁷ One might speculate that if Thompson was living high and the firm was paying for his lavish lifestyle, might not Gary have felt entitled to claim similar privileges?

3. Declining Loyalty

Most lawyers would never steal money that belonged to their firms. One factor that makes such conduct unlikely in law firms is that the lawyers are partners. Often they have close friends and strong collaborative relationships with some of their partners. The loyalty of friendship and collaboration would deter most lawyers from taking firm funds, even if they needed the money and could take it without getting caught. But the glue of partner loyalty may be weaker than it used to be. Thirty years ago, most lawyers who became partners in law firms spent their whole careers in one firm.²²⁸ Likewise, many a corporate client used a single firm for all its legal needs; the bonds among the lawyers and between lawyer and client were very stable. In the 1980s, lawyer mobility among firms began to escalate.²²⁹ The odds of an associate becoming a partner declined dramatically.²³⁰ Lawyers moved from one firm to another, singly and in groups, and firms began much more frequently to merge with other firms.²³¹ A major motive for all this

222. See Margolick, *supra* note 96.

223. See Goldberg, *supra* note 81, at 108.

224. See *id.* at 107-08.

225. See *id.* at 108.

226. See *id.*

227. See Lerman, *supra* note 59, at 242 tbl.3.

228. See Chief Justice William H. Rehnquist, Remarks Made at Temple University School of Law Centennial and Convocation (Apr. 2, 1996), in 69 TEMP. L. REV. 645, 646, 651 (1996).

229. See David B. Wilkins, *On Being Good and Black*, 112 HARV. L. REV. 1924, 1945 (1999) (book review).

230. See Edward A. Adams, *Becoming Partner: The Impossible Dream*, NAT'L L.J., June 22, 1992, at 2 (describing the odds of becoming a partner in New York City as so poor, that an associate stands "a five times greater chance of surviving a jet crash than of making partner").

231. For a discussion of increased mobility among firms, see David Tobin & Eric Sivin, *Sivin Tobin Associates, LLC*, in *The Lateral Partner Market: Views from Four Placement Firms*, N.Y. L.J., Jan. 31, 2000, at S11.

movement was to increase income.²³² But with the movement there also came a decline in stability and perhaps in institutional loyalty. Winston & Strawn may have been a typical example of this kind of development, a kind of “ruthless,” aggressive firm. One former partner said, “[i]t’s a law firm of the eighties and nineties, where you have a bunch of people tied together by money, and that’s it.”²³³

While this lesser degree of relational glue may not lead lawyers to steal from their firms or their clients, there might be in such circumstances a lesser deterrent or disincentive to steal. Most of the sixteen lawyer thieves in my 1999 study had switched firms at least once. Seven of them worked at two or three firms, and two of them worked at four or five firms.²³⁴ Some of the moves seem to have been motivated by a desire to increase income.²³⁵

4. Opportunity

Another factor in the slide from ambition to greed to dishonesty is opportunity and lack of oversight. Of the sixteen lawyer thieves in my 1999 study,²³⁶ seven were managing partners.²³⁷ They were at the top of the heap. No one was looking over their shoulders. They had the authority to write the checks, and the credibility of being above suspicion.²³⁸

5. Firm Culture

Theft of the magnitude accomplished by the Fairchilds would be possible at some firms and not at others. Some firms impose enormous pressure on all the lawyers to bill huge numbers of hours, and have a number of rainmakers among the partners who rack up gargantuan annual totals.

232. See Lerman, *supra* note 59, at 255.

233. Emily Barker, *Winston & Strawn Gets Ruthless*, AM. LAW., June 1993, at 70, 70 (quoting an unnamed former partner of Winston & Strawn).

234. See Lerman, *supra* note 59, app. B at 307-14.

235. See *id.* at 296. Tim Flato, for example, reportedly left Orrick, Herrington & Sutcliffe in 1991 to become a partner at Latham & Watkins at least partly to increase his earnings. See David Newdorf, *Top Orrick Rainmaker Defects to L.A.’s Latham*, RECORDER, Feb. 20, 1991, at 1.

236. See *supra* note 59 and accompanying text.

237. See *supra* note 177 and accompanying text.

238. See Lerman, *supra* note 59, app. L at 347-49 (giving examples of the absence of any monitoring systems that would have detected billing fraud by partners).

6. Lawyers Rationalize

We are trained to rationalize. In law school one is asked to argue that one case is similar to or different from another. One is expected to be able to argue every side of any issue. We are trained to draw lines from any point *A* to any point *B*. This is what made it so disturbingly unsurprising to find our last lawyer-President arguing that really he did not lie, he was just defining “sexual relations” to exclude everything but intercourse.²³⁹

Rationalization is a key ingredient in the slide down the slippery slope. If you pad your hours a little, the next month, you might pad them a little more. Once you get used to padding your hours, you might bill as your own hours those that had been worked by a secretary or a paralegal. Once you get used to doing that, you might turn in a receipt for a meal with a friend, representing it to be a business meal. And so on. Rationalizing dishonesty takes practice. It gets easier over time.

We might turn this into a formula:

desire for higher income + economic pressure + competition with partners + sense of entitlement + declining loyalty to partners or clients + perceived opportunity to steal undetected + profit-oriented firm culture + ability to rationalize = risk of temptation to dishonesty.

If a lawyer has an alcohol or drug abuse problem, the risk is probably greater. And some forms of mental illness may also increase the risk that the lawyer may become a thief.²⁴⁰

B. What Should We Do About Lawyer Greed?

The first thing to do is to notice the problem, to watch, to listen, to observe ourselves and the other lawyers around us. Most lawyers continue to assume that the lawyers most likely to engage in misconduct are alcoholic or drug-addicted solo practitioners, or other marginal failing lawyers who nearly flunked out of fourth-rate law schools and who should never have been admitted to practice in the first place. Most lawyers continue to assume that nearly all of us are models of honesty,

239. See *Jones v. Clinton*, 36 F. Supp. 2d 1118, 1130-31 (E.D. Ark. 1999) (holding former President Clinton in contempt of court in part because of his intentionally false statements about the nature of his physical contact with Monica Lewinsky; he had contended that “sexual relations” as defined by himself and “most ordinary Americans” means, for the most part, only intercourse”).

240. One example is William Appler, who suffered from bipolar illness, which was believed to have caused his alcoholism and narcissistic personality disorder. See Lerman, *supra* note 59, app. E at 323. Appler unsuccessfully argued that the Americans with Disabilities Act was violated when he was disbarred for stealing \$1.1 million. See *id.*

integrity, devotion to impeccable client service (Above Client Expectations!),²⁴¹ and that those who engage in misconduct are just a few bad apples down there at the bottom of the barrel.

Most lawyers subjected to discipline are in law firms of five or fewer lawyers and a high percentage of those lawyers have addiction problems.²⁴² But who gets disciplined depends on (1) which clients learn about misconduct and (2) complain about it to disciplinary agencies, and on (3) which misconduct the disciplinary agencies see fit to investigate or prosecute (usually not including matters involving fees) and on (4) whether the disciplinary agency has the resources to investigate misconduct where the perpetrator is a large firm lawyer. There are whole categories of misconduct that drop out of the picture based on one or more of these variables.

Recent research shows that lawyer misconduct occurs in large firms as well as small firms,²⁴³ among government lawyers as well as lawyers in private practice,²⁴⁴ that a large percentage of lawyer misconduct occurs behind closed doors and is never brought to light,²⁴⁵ and that corporate clients, even when they learn about lawyer misconduct, are less likely to complain to disciplinary agencies than individual clients.²⁴⁶ So one cannot judge the prevalence of misconduct from the imposition of lawyer discipline.

Other recent research indicates that most lawyers engage in some billing fraud.²⁴⁷ This means that some level of lawyer dishonesty is very

241. See *supra* note 103 and accompanying text.

242. See Leslie C. Levin, *Preliminary Reflections on the Professional Development of Solo and Small Law Firm Practitioners*, 70 *FORDHAM L. REV.* 847, 851 & n.20 (2001).

243. See Lerman, *supra* note 59, at 208, 295.

244. See Fred C. Zacharias, *The Professional Discipline of Prosecutors*, 79 *N.C. L. REV.* 721, 744 (2001) (noting that there have been over 100 cases in which prosecutors have been disciplined).

245. For some examples of misconduct that has never come to light, see generally Lisa G. Lerman, *Lying to Clients*, 138 *U. PA. L. REV.* 659 (1990), which provides examples of attorney misconduct via confidential interviews with those attorneys, as well as Lisa G. Lerman, *Gross Profits? Questions About Lawyer Billing Practices*, 22 *HOFSTRA L. REV.* 645 (1994), and Lisa G. Lerman, *Scenes from a Law Firm*, 50 *RUTGERS L. REV.* 2153 (1998).

246. For example, Colette Bohatch, a former partner at Butler & Binion, observed what she believed to be major billing fraud by one of her partners. See *Bohatch v. Butler & Binion*, 977 *S.W.2d* 543, 544 (Tex. 1998). She observed that he worked only three or four hours per day, but he was billing his client, Pennzoil, for eight to twelve hours of work each day. See *id.* at 558 (Spector, J., dissenting). After termination of her partnership, Bohatch sued the firm and got a damage award from a jury exceeding \$4 million, which was later reduced by the trial court. See *id.* at 545. The Texas Supreme Court ultimately rejected her claim for wrongful discharge, in part because Pennzoil had concluded after investigation that the fees were reasonable. See *id.* at 546-47.

247. See ROSS, *supra* note 43, at 269 (finding for example, that among corporate counsel surveyed in 1994-95, 45% believed that at least ten percent of the time billed by lawyers "consist of

common. The growing body of cases of massive theft and fraud by elite lawyers suggests that we are not dealing with a few bad apples, but with a problem that is at least somewhat pervasive.

For some of us, reflection and reference to conscience may be a good antidote to the temptation to translate greed into thievery. (more on this below). But consider Maureen Fairchild. Given the really stunning display of disregard for any moral standards, we might assume that she and some others are immune to pleas to attend to the moral implications of their behavior. One strategy to deal with her sort of greed is to reorganize law firms so that the Maureen Fairchilds of our profession will know to a certainty that they can not get away with this sort of chicanery.

Consider that Maureen was engaged in massive fraud for at least two and a half years without interference by her firm or her clients.²⁴⁸ Her secretary told the prosecutor that Maureen only came into the office two or three days a week for a few hours a day.²⁴⁹ She submitted receipts to the firm for reimbursement for expenses incurred in several different resorts,²⁵⁰ unlikely locations for legal work for anyone but a personal injury lawyer specializing in ski and scuba accidents. Did no one notice? Why did the firm continue to reimburse her for these trips? How could she have falsely billed thousands of hours of time without detection? Similarly, how could Gary have gotten away with getting reimbursed for \$8000 per month in personal expenses unnoticed? Where were the accountants? Why did they not notice that he hired his wife to handle a collection matter that could have been handled in-house and then paid her firm more than was sought to be collected?²⁵¹

More important, how many law firms are there where a cunning lawyer could get away with this sort of behavior? An increasing number of firms are designating ethics counsels or ethics committees, but as yet a large percentage of the work of ethics counsels seems to be devoted to detection and evaluation of conflicts of interest.²⁵² At other firms, the

'padding' for work not actually performed," and 15% believed that at least 25% of the time billed was for work not performed).

248. See Lerman, *supra* note 59, at 212 tbl.1.

249. See Transcript, *supra* note 116, at 12.

250. See Lerman, *supra* note 59, at 249 tbl.4.

251. No one at Winston did notice the Chapman gambit. Winston & Strawn learned of it from lawyers at Chapman & Cutler. See Ray Gibson & Hanke Gratteau, *Partner in Winston & Strawn is Ousted*, CHI. TRIB., May 5, 1994, at 1.

252. This emphasis on conflicts of interest over attention to other ethical problems seemed fairly pervasive among a group of ethics counsels who attended a focus group to discuss their roles and responsibilities. The focus group was hosted by the Program on the Legal Profession of Harvard Law School in June of 2001. I was an invited participant.

ethics counsel's role includes policy development, training, and other monitoring/oversight functions. Some of the firms at which the ethics counsel function has developed have had a Fairchild-like disaster. One leader among ethics counsels is William Wernz, a partner at Dorsey & Whitney in Minneapolis.²⁵³ One of Bill's former partners is James O'Hagan, who was "the number one or number two producer for the Dorsey firm, with annual billings in excess of \$2 million"²⁵⁴ until it turned out that he was engaged in massive settlement and securities fraud. One of O'Hagan's schemes involved settling lawsuits against his clients, one of which was the Mayo Clinic, and then reporting to the clients a larger settlement amount.²⁵⁵ The client would then issue a check for the larger amount, from which O'Hagan would take what would have been his legal fee, and then he would also appropriate the difference between the actual settlement and the amount of the check.²⁵⁶ The alleged fraud amounted to about \$3 million.²⁵⁷ O'Hagan was disbarred²⁵⁸ and sentenced to thirty months in prison.²⁵⁹

Another seasoned and respected ethics counselor is Deborah Shortridge, who assumed this role at Weinberg & Green, and continues post-merger at Saul Ewing.²⁶⁰ One of her former partners is Stanford Hess, who was suspended for three years after he directed staff to set up a computer program to automatically inflate his bills to his principal client by fifteen percent.²⁶¹

Perhaps there is no neat correlation between the occurrence of a firm-wrenching disaster and the establishment of a better internal regulatory infrastructure, but if a firm expels a partner for massive fraud and then fails to reevaluate its every-man-for-himself regulatory structure, there's something wrong.

And it is not necessary for a firm to wait until the building burns down to realize that it needs sprinklers, fire insurance, and a smoking policy. The Fairchilds are two of dozens of recent cautionary tales, in

253. See Dorsey & Whitney LLP, Attorney Biography, William J. Wernz, at <http://www.dorseylaw.com/attys/bios/Wernz.William.html> (last visited Mar. 2, 2002).

254. *State v. O'Hagan*, 474 N.W.2d 613, 615 (Minn. Ct. App. 1991).

255. See *id.* at 616-18.

256. See *id.* at 615-18.

257. See *In re O'Hagan*, 450 N.W.2d 571, 571 (Minn. 1990).

258. See *id.*

259. See *O'Hagan*, 474 N.W.2d at 623.

260. See Saul Ewing LLP, Attorneys, Deborah Green Shortridge, at <http://www.saul.com/lawyer/dshortridge.htm> (last visited Mar. 3, 2002).

261. See *Attorney Grievance Comm'n v. Hess*, 722 A.2d 905, 908-09, 913 (Md. 1999).

which the boy next door has turned out to be a thief and the firm gets snookered because it trusted his professional integrity.

C. What Firms Can Do to Prevent Fraud

1. Change the Compensation System to Avoid Creating Incentives to Commit Billing Fraud

According to one survey, almost ninety percent of legal fees are generated by hourly billing.²⁶² Over half of lawyers surveyed admit that they have engaged in some padding of their own hours²⁶³ and report that other lawyers engage in more billing fraud than they themselves do.²⁶⁴ They inflate their hours because they need to bill a certain number of hours to be retained, promoted, or to get bonuses. Rewarding people for billing huge numbers of hours, or for bringing in work that leads others to bill huge numbers of hours, is tacit institutional encouragement to write down phony hours. Firms that do not want their associates to pad their hours should not direct them to bill a certain number of hours and should not reward those who bill more hours or penalize those who bill fewer hours.

Many firms are concerned about high associate attrition and are examining changes that would improve the quality of life for their lawyers. And some firms do not instruct their lawyers as to the minimum number of hours they must bill or reward those who rack up the highest numbers. One example is Fried, Frank, Harris, Shriver & Jacobson, which imposes no target or minimum for associates or partners, and which does not make bonuses contingent on meeting or exceeding a target.²⁶⁵ Everyone in each "class" is paid the same bonus each year.²⁶⁶

262. See Mark Schuarte, *The Billable Hour Remains King as Rates for Some Partners Top \$600*, CHI. LAW., June 2001, at 8, 8.

263. See William G. Ross, *The Ethics of Hourly Billing by Attorneys*, 44 RUTGERS L. REV. 1 app. A at 92 (1991) (showing that 50.2% of attorneys surveyed have admitted to either rarely, occasionally, or frequently double billing clients).

264. See *id.* app. A at 92-93 (stating that of the lawyers surveyed, ninety-two percent felt that other lawyers either rarely, occasionally, or frequently padded their hours).

265. Telephone Interview with Leslie Rubinfeld, Esq., Director of Recruiting, Fried, Frank, Harris, Shriver & Jacobson (Aug. 2001).

266. See *id.* Fried, Frank's Washington, D.C. office recently instituted a policy requiring the lawyers to report annually whether and how they had met or exceeded a fifty hour annual pro bono aspiration. Those lawyers who record fewer than fifty hours of pro bono work during a year must explain why they failed to meet that target. See *id.*

2. Reward People for the Quality of Their Work, Not for Quantity

If compensation depends on quality, then someone has to review the quality of the work being done. If someone looks behind the numbers at the work product, discrepancies are much more likely to be noticed. Of course if all the lawyers are under pressure to bill 2300 hours, who has time to conduct that sort of evaluation? Unless a client was willing to pay for the time, of course.

3. Hire Non-Lawyer Firm Management Personnel and Auditors Who Have Less Stake in Expanding Firm Profits and Some Protection from Retaliation if They Institute Policies that are Inconvenient for Cowboys

We who go to law school do not study management. We do not learn how to run organizations. Most of us get little or no training in financial matters. Should we be surprised that so many law firms are only minimally managed?²⁶⁷ Law firms need managers who know how to manage, and need to have trained staff routinely conduct internal audits of time records and bills. Some firms are taking these initiatives. After the Fairchild debacle, Winston & Strawn engaged an independent auditor who reviews the bills every quarter.²⁶⁸ And Proskauer Rose has a full-time auditor who reports to the firm's executive director.²⁶⁹ This kind of restructuring would provide an impetus for all of the lawyers to be more careful, and would help to protect those who might be tempted toward fraud from indulging the impulse.

267. An example of minimal management may be the process for preparing bills at Chapman & Cutler. The Assistant U.S. Attorney who prosecuted Maureen reported that each partner who has billing responsibility for a particular matter reviews the time sheets of others who have billed time on the matter and then has a secretary enter the information on a computer. *See* Transcript, *supra* note 116, at 9. The resulting document is then sent to the accounting department with instructions from the billing partner. *See id.* They send the information back to the billing partner, who prepares a bill. *See id.* So at the time of Maureen's scam, she was able to send out bills based on time sheets that had not been reviewed by anyone familiar with the merits of the matter.

268. *See* Erin White, *More Law Firms Are Auditing Themselves to Catch Billing Errors*, WALL ST. J., July 14, 1998, at B8.

269. *See id.* The auditors generally report problems only within the firm, and not to clients. *See id.*

4. Set Policy that Makes Clear that Fraud is Not Permitted, and Offer Training to Lawyers and to Non-Lawyer Staff in the Implementation of those Policies

Maureen Fairchild claimed that her billing policies were based on the multifactor analysis²⁷⁰ required by Rule 1.5,²⁷¹ and that her practices of writing down hours that had not been worked were consistent with common practice in the firm of charging premiums based on results achieved.²⁷² One presumes that her practices were unusual within her firm,²⁷³ but consider that James Spiotto, one of her partners, claimed one year to have honestly billed 6022 hours.²⁷⁴ Most lawyers consider it really difficult to bill 2400 hours honestly,²⁷⁵ and some say 3000 is impossible.²⁷⁶

Any firm that does not want lawyers to fabricate hours needs to tell them so, and to tell them not to bill two clients for one hour, and to tell them 100 other things about what is or is not billable. Do you bill for travel time at the usual rate? Do you bill for hours spent at dinner with the client, or only for the time spent doing business, or only for the food, or does it depend on the client? Do you bill for time spent preparing bills? If you bill in quarter hours, does a three-minute phone call count as a quarter hour? And so on.

It is important also to train secretaries and paralegals in all of these policies, even the staff who are not billing their own hours. Maureen's secretary typed up all the editorial changes that she made on her own timesheets and those of associates and paralegals.²⁷⁷ Maureen ordered the associates and a paralegal to rewrite their own time sheets, sometimes

270. See Susan Saab Fortney, *Soul For Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239, 252-53 (2000).

271. See Lerman, *supra* note 59, at 261.

272. See *id.*

273. The U.S. Attorney reported that Chapman & Cutler attorneys occasionally made fee agreements with clients that allowed billing of "premiums" above the amount calculated by multiplying hourly rates times number of hours worked, but he reported none of Maureen's clients had an agreement that allowed charging of premiums. See Transcript, *supra* note 116, at 10.

274. See Dillon, *supra* note 91, at 58.

275. See Posting #5104 of eyestrain, to [greedyassociates.com](http://www.greedyassociates.com) (Apr. 20, 2001), at <http://www.greedyassociates.com/messageboard/showthreaded.php?Cat=&Board=lawyer&Number=5104&page=&view=&sb> (last visited Mar. 3, 2002).

276. See Posting #5109 of eyestrain, to [greedyassociates.com](http://www.greedyassociates.com) (Apr. 22, 2001), at <http://www.greedyassociates.com/messageboard/showthreaded.php?Cat=&Board=lawyer&Number=5109&page=&view=&sb> (commenting that 3000 billables "is not hard to do if you live in the office") (last visited Mar. 3, 2002).

277. See Transcript, *supra* note 116, at 9 (discussing Chapman & Cutler's billing procedure).

shifting her hours to theirs.²⁷⁸ If they had had clear instructions from firm management that such “adjustments” constitute fraud, and that anyone caught engaging in fraud would be fired and might be disbarred or jailed, I do not think they would have followed Maureen’s instructions. Or at least they would have tried to find the managers who set the policy to complain about those instructions.²⁷⁹

5. Find Ethics Counsels Who Care More About Integrity than They Do About Money

While firms need non-lawyer managers, they also need lawyers who understand the ethical rules, and who understand legal culture. They can work with the corporate manager types to establish and implement structures to encourage ethical conduct. Since ethics counsels usually are partners,²⁸⁰ some of them might be tempted to look the other way if another lawyer is doing something that is not entirely proper but is very profitable. So a criterion for appointment as ethics counsel should be disinterest in wealth.

6. Create a Structure in Which All Employees—Lawyers and Non-Lawyers—Have the Opportunity to Discuss Ethical Questions

At a meeting of ethics counsels, most reported that they primarily answer questions posed by lawyers, not non-lawyers.²⁸¹ Also most said that they hear fairly regularly from a fraction of the lawyers of the firm, and are never contacted by a large percentage of the lawyers in the firm.²⁸² Ethical dilemmas are very much in the eye of the beholder.

278. On the Cologne matter, Maureen ordered a paralegal and two associates to rewrite timesheets to shift her phony time to other lawyers to avoid detection of her overbilling but to justify the amount that had been billed. *See id.* at 21-22. One paralegal would have testified in the criminal case that he did over twenty redrafts of phony time sheets. *See id.* at 21. Maureen reportedly ordered one associate to write timesheets reflecting hours when he wasn’t yet at the firm, and then made him put his name on a brief he hadn’t written to justify the phony hours. *See id.* at 22.

279. In fact there were suspicions at Chapman in 1993 because of Maureen’s long absences from the office, especially after one associate reported to other lawyers in the firm that Maureen had commanded him to falsify his time sheets. *See Goldberg, supra* note 81, at 108. But Maureen claimed that she had not done that, and that the associate was simply disgruntled because he had received a poor review. *See id.*

280. *See, e.g.,* Elizabeth Chambliss & David B. Wilkins, *Promoting Effective Ethical Infrastructure in Large Law Firms: A Call for Research and Reporting*, 30 HOFSTRA L. REV. 691, 706-07 (2002).

281. *See* The Program on the Legal Profession, Focus Group of Ethics Counsels, Harvard Law School, May 2001 (attended by the Author).

282. *See id.*

Maureen did not see any particular ethical problem in applying payments from one client to a debt owed by another. The ethics counsels need to find ways to learn about the dilemmas or misconduct about which no one consults them. It is possible that the best source of information about these problems is the secretaries, the paralegals, and the associates. The people at the bottom end of the ladder have a lower financial stake in protecting others engaged in misconduct. They are more likely to be working very closely with partners than partners are with other partners, so they have better information. They are less likely to have become cynical and able to rationalize anything. In my study of the sixteen cases of elite lawyer thieves, at least four cases came to light because of a question raised or a report made by an associate.²⁸³ Two were brought to the firms' attention by secretaries, and two others by internal accounting staff.²⁸⁴

D. *Cleaning Our Own Houses*

Another idea about how to combat greed is that each of us should rethink our own income aspirations, clean our own houses first. How many of us charge enormously high hourly rates for consulting work, whatever the market will bear? Why? Aren't we each supposed to amass as much wealth as possible? After all, there are all those college tuitions to pay. But, as Tom Morgan has pointed out to us so eloquently, we are all role models.²⁸⁵ Many of our students take their cues from us. There are law professors who make approving jokes in class that acknowledge that we all know that the main reason they all are in law school is so they can earn buckets of money. We all know law professors who are spending far more than twenty percent of their work time (the upper limit imposed by the accreditation standards) generating income for themselves.²⁸⁶ The ethics consulting business has become very profitable. How much should we charge per hour? We have no overhead. But most professor-practitioners I know charge the same hourly rates as partners in large firms. The primary guideline in setting rates is "how much can you get?" Are we headed down the slippery slope? Professor Andrew

283. See Lerman, *supra* note 59, app. H at 332-35.

284. See *id.*

285. See Thomas D. Morgan, *Law Faculty as Role Models*, 1997 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR 37, 38.

286. An example was offered by Professor Monroe Freedman in *Crusading For Legal Ethics*, LEGAL TIMES, July 10, 1995, at 25 ("Expert witnesses on lawyers' and judges' ethics charge as much as \$500 an hour for their time, and some law professors double and triple their academic salaries by consulting and testifying about ethics.").

Kaufman commented during one discussion of ethics consulting, that he simply did not do consulting for money.²⁸⁷ I think he was suggesting that: (1) a law professor's salary is enough to live on and (2) if you get paid for your ideas, there is a risk that your thoughts will tilt in a more lucrative direction. This could happen in very subtle ways. For example, how many ethics consultants have begun to focus their work more on conflicts of interest, class actions, or other issues that arise in high stakes litigation in which expert testimony may be required? How many legal ethics experts concern themselves primarily with the ethical obligations of lawyers toward the poor?²⁸⁸

But forget consulting. Most private law schools charge such high tuitions that we force our students so deep into debt that once they graduate, they are forced to consider salary as a central factor in choice of career path. Once they get the fat salary in the firm whose garage is full of Lexuses, they're on their way.

VI. CONCLUSION

I think we need to pull back from our own professional culture and take a hard look at where we are going. While we are at it, we should think about that "macro" ethical question about whether it is fair for one percent of the population to own thirty-nine percent of the wealth. If not, we need to try to inculcate professional values that will help our students to make socially responsible choices. Some of those choices may protect them from the slippery slope.

287. Professor Andrew Kaufman, Comments at the Annual Meeting of the Association of American Law Schools Section on Professional Responsibility (Jan. 1999).

288. I won't use Monroe Freedman, Howard Lichtenstein Distinguished Professor of Legal Ethics, Hofstra University School of Law, as an example of virtue here, because if I did, the reader might wonder if I was flattering him because I am to be paid an honorarium for writing this Article.
