Fordham Law Review

Volume 69 | Issue 6 Article 12

2001

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HOW ABOUT A FIRM WHERE PEOPLE ACTUALLY WANT TO WORK?: A "PROFESSIONAL" LAW FIRM FOR THE TWENTY-FIRST CENTURY

*James Regan**

*I don't like work—no man does—but I like what is in work—the chance to find yourself. Your own reality—for yourself, not for others—what no other man can ever know.***

—Joseph Conrad

INTRODUCTION

I came to law school interested in pursuing a career in public interest law—helping the poor, championing the causes of the voiceless and leveling the playing field. For me, like many students, law school has put this goal in doubt.[1] The reasons articulated by most law students are money and debt—they need a good amount of the former to cope with the latter.[2] In some circumstances, however, this may just be a rationalization.[3] For many, it is the enculturation of

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* I would like to give special thanks and praise to Margaret Regan, for her advice and guidance as Global Practice Leader for Human Capital Management at Towers Perrin, as well as for her support and encouragement as a mom. I also want to acknowledge my father and best friend, Bill Prensky, for getting me through life; Prof. Russ Pearce, whose class inspired this note; and Tamara Ling, just because.

** Joseph Conrad, Heart of Darkness 29 (Robert Kimbrough ed., W.W. Norton & Co. 1971) (1902).

1. Marc Galanter, *"Old and in the Way": The Coming Demographic Transformation of the Legal Profession and its Implications for the Provision of Legal Services*, 1999 Wis. L. Rev. 1081, 1104-05 ("Several studies describe the decline of student commitment to this kind of legal career over the course of law school."); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 Vand. L. Rev. 871, 925 (1999) ("Conventional wisdom at the best law schools is that everyone comes in saying they're interested in public interest and everyone leaves doing large firm corporate work." (quotations omitted)).

2. *See* S. Elizabeth Wilborn & Ronald J. Krotoszynski, Jr., *Views from the Front: A Dialog About the Corporate Law Firm*, 1996 Utah L. Rev. 1293, 1303 (noting that college and law school debt can total $100,000 and a large salary is necessary "just to service this debt"); Bruce Balestier, *Public Lawyers Feel Salary Strain: Retaining Mid-Level Attorneys Gets Harder*, N.Y. L.J., Apr. 21, 2000, at 24 (citing a survey of assistant district attorneys in Manhattan which "showed that the median indebtedness of first year attorneys . . . was $80,000").

3. Schiltz, *supra* note 1, at 935-36 ("[T]he number of students whose economic

law school that sways them toward a corporate law job.[4] This shift occurs despite the fact that law school arguably increases one's awareness of, and sympathy for, social issues.[5] Even for those who remain un-phased by the six-digit bills from Sallie Mae and the cynicism of their classmates, public interest jobs are few and far between.[6] Whatever an individual's reasons, many students who entered law school interested in doing socially beneficial work find themselves in big corporate law firms after graduation without really wanting to be there.[7]

In law school, students are introduced to the idea of the law as a "profession," one in which the lawyer's "duties extend beyond his or her client to the justice system and the public interest."[8] Much has been written recently about the endangered state of this profession,[9] especially in large law firms.[10] In short, the critics have decried the transformation of the law into a business[11] where profit is the only

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circumstances compel them to take big firm jobs is still substantially smaller than the number of students who *claim* that their economic circumstances compel them to take big firm jobs.").

4. *See* Ralph Nader & Wesley J. Smith, No Contest: Corporate Lawyers and the Perversion of Justice in America 334 (1996).

> A lot of people who go into law school have a strong sense of right and wrong and a belief in moral truths. Those values are destroyed in law school, where students are taught that there is no right and no wrong and where such idealistic, big-picture concepts get usurped. The way the majority of students deal with this is to become cynical.

Id. (citations omitted); *see also* Robert Granfield, Making Elite Lawyers 7 (1992) ("It has been fairly well established that law students are channeled away from public interest careers [and] . . . legal education produces a 'mythology' of legal practice that favors commercial forms of practice over public ones.").

5. *See* Granfield, *supra* note 4, at 44 (noting that 51% of Harvard students sampled became more interested in restructuring society while in law school and 49% became more interested in resolving social problems).

6. Galanter, *supra* note 1, at 1105 ("Although law school tends to reduce the commitment to [public interest careers], at the end of law school there are still far more students inclined to do such work than the job market can absorb."); Rachel Chazin, *Let's Keep Pay Raises in Perspective*, N.Y. L.J., Mar. 8, 2000, at 2 ("In short, a law student who wants to help the homeless or defend indigents generally faces a much tougher job search than one who wants to work at a firm in New York City.").

7. *See* Granfield, *supra* note 4, at 164 (quoting a third year student at Harvard Law who laments "[m]ost people have doubts about what they are doing. I'm not really happy about going to a firm. I make a lot of apologies to other students . . . . [I]t's not clear as to what the social utility of what I will be doing will be.").

8. Nader & Smith, *supra* note 4, at xvi.

9. *See* Deborah L. Rhode, *The Professionalism Problem*, 39 Wm. & Mary L. Rev. 283, 284 (1998) ("Recent commentary consistently presents the profession as 'lost,' 'betrayed,' in 'crisis,' and in 'decline.'").

10. *See* Nader & Smith, *supra* note 4, at 329 (quoting a corporate lawyer who laments "[w]hatever happened to the belief that being a lawyer was a public service? On some days, I wonder why I went to law school. Many of us who have gone through the big firm experience are sick of the hypocrisy, the overbilling, and the ethical violations.").

11. *See* Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U.

bottom line.[12] A young lawyer committed to the duties of the profession is not likely to find satisfying work in such a profit-maximizing atmosphere. A 1995 American Bar Association ("ABA") study of career satisfaction found that less than one-fifth of the attorneys surveyed felt the legal profession had "very well" met their expectations in contributing to the social welfare.[13] It is not surprising that Anthony Kronman, dean of Yale Law School, "counsels idealistic young lawyers to stay clear of large firms, whose 'harshly economizing spirit' and 'increasingly commercial culture' is inimical to the commitment to public service that is the hallmark of professional identity."[14]

Traditionally, pro bono work has been the means by which lawyers in the private bar fulfill their commitment to the justice system and the public interest. Currently, however, pro bono efforts by all the large firms "represent the ripples of a drop in the bucket."[15] In fact, most of the country's largest and most profitable firms have drastically cut back on pro bono work, failing to meet the minimum standards of professional guidelines.[16]

Currently, approximately eighty percent of the civil needs of the poor are unmet.[17] As Associate Supreme Court Justice Sandra Day O'Connor stated, "there has probably never been a wider gulf between the need for legal services and the availability of legal services."[18] The combined efforts of full-time legal aid, legal services, public interest organizations, and small private sector public interest firms cannot begin to meet this need.[19] The profession needs a means of allowing those private practitioners inclined to do public service work the opportunity to do substantial and meaningful amounts of such work.

L. Rev. 1229, 1230-32 (1995).

12. *See* Lisa G. Lerman, *Blue-Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers*, 12 Geo. J. Legal Ethics 205, 219 (1999) (discussing the profession's "[p]reoccupation with profit" and the "rising dominance of income generation").

13. Rhode, *supra* note 9, at 302.

14. Marc Galanter & Thomas Palay, *Public Service Implications of Evolving Law Firm Size and Structure*, *in* The Law Firm and The Public Good 19, 40 (Robert A. Katzman ed., 1995).

15. Nader & Smith, *supra* note 4, at 342.

16. Greg Winter, *Legal Firms Cutting Back on Free Services for the Poor*, N.Y. Times, Aug. 17, 2000, at A1. The ABA suggests lawyers do a minimum of fifty hours of pro bono per year. *See infra* note 145 and accompanying text.

17. Robert A. Katzmann, *Themes in Context*, *in* The Law Firm and The Public Good, *supra* note 14, at 1, 2.

18. *Id.*

19. *See* Galanter, *supra* note 1, at 1103 ("[T]he entire legal services for the poor/public interest law sector is vanishingly small. It is estimated to comprise about 6,000 full-time equivalent lawyers—about seven-tenths of 1% of the whole body of American lawyers."); *see also* Nader & Smith, *supra* note 4, at 369 ("One large private law firm employs more lawyers than all of the full-time private sector public interest law firms in the country put together.").

This Note argues that instead of condemning the increasingly business-like nature of law practice, lawyers should look to the business world for creative solutions.[20] As one commentator writes, "[o]nce one escapes from the clutches of thinking of 'profession' and 'business' as dichotomies, and comes to terms with the fact that, whether we like it or not, they are joined at the hip in private practice, a refreshing set of possibilities reveals itself."[21] Trend-setting companies in corporate America have recognized that financial success is strongly related to employee fulfillment.[22] Studies show that more successful companies "build a core mission and ideology that transcends financial performance."[23] Robert Haas, the CEO of Levi Strauss, has stated that "[i]n the next century, a company will stand or fall on its values."[24]

By elaborating on a value-driven model of business, this Note articulates the possibility and feasibility of a law firm driven by the core values of professionalism. While there are certainly numerous ways of addressing the problems facing the profession,[25] this Note focuses on creating a viable option for lawyers particularly committed to serving the public interest while remaining in private practice. The model proposed is based on a simple premise—creating a private firm that commits fifty percent of its time to pro bono work.

A "50/50" firm will certainly not have the first year associate salaries of a Sullivan & Cromwell[26] or the partner profits of a Wachtell, Lipton,[27] but it would be able to provide its lawyers with a salary that would permit a comfortable living, and bridge the

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20. *See* Phyllis Weiss Haserot, *Rules for a New Economy in the Millennium*, N.Y. L.J. June 22, 1999, at 5 ("Law firms planning to thrive in the new millennium need to look outside the borders of their profession for ideas and operating models.").

21. Michael J. Kelly, *Thinking About the Business of Practicing Law*, 52 Vand. L. Rev. 985, 993 (1999).

22. *See* Richard Barrett, Liberating the Corporate Soul: Building a Visionary Organization 43 (1998) (citing study involving fourteen organizations and 25,000 employees which found that "39 percent of variability in corporate performance was attributed to the personal satisfaction of the employees based on a range of indicators that were a proxy for personal fulfillment").

23. Kelly, *supra* note 21, at 993.

24. Barret, *supra* note 22, at 2.

25. Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes*, 11 Geo. J. Legal Ethics 547, 566 (1998) ("So many commentators have suggested solutions to the problems facing the legal profession that one author states 'everyone is looking for a solution . . . including lawyers, professors, sociologists, and students.'").

26. *See* Bruce Balestier, *Sullivan & Cromwell Leads the Bonus Parade*, N.Y. L.J., Oct. 27, 2000, at 1 ("On top of Sullivan's first-year annual salary of $125,000, the bonus, which is not tied to any specific billable hour requirement, will boost the guaranteed compensation for first-year lawyers at the firm to $160,000.").

27. *See The AmLaw 100: Joining the Million Dollar Club*, Am. Law., July 2000, at 137 (citing profits per partner at Wachtell, Lipton, Rosen & Katz, the highest among the AmLaw 100, at $3,385,000).

compensation gap between today's large firms and public interest positions.[28] This Note argues that such a firm could attract both the best and brightest lawyers and top-notch corporate clients, a combination that would ensure its economic viability.

Part I discusses the core values of professionalism that should guide this new firm model. It examines the current culture of large law firms and highlights the tension between this culture and professionalism values. Finally, it considers the importance of pro bono work—as an obligation of lawyers committed to the values of professionalism, as a means of infusing the practice of law with meaning and satisfaction, and as a prerequisite to becoming a great lawyer.

Part II illustrates how many of the problems corporate law firms face are the same problems the corporate workplace faces. This part will consider how changing generational and demographic patterns are forcing companies to reevaluate how they operate. It will then focus on forward-looking companies that have recognized the necessity of responding to the needs of this changing workforce, and have recognized that the key to success is aligning the company's goals and values with those of its employees.

Part III proposes a model law firm driven by the core values of professionalism, with the purpose of serving the corporate and public interests equally. It will sketch the structure and policies of this proposed 50/50 firm. It advances why this firm will attract both good lawyers and good clients, and how this in turn will ensure its economic viability.

This Note concludes by emphasizing that lawyers must "seize the day" if they want a profession that lets them be happy in their work. The state of the profession, the state of the workplace and the state of the economy all indicate that today represents an extraordinary opportunity to transform the world of the private practitioner.

I. PROFESSIONALISM, BIG FIRMS, AND PRO BONO

Creating a firm grounded in professional values requires a clear understanding of those values. Suggesting treatments for the current malaise in big firms requires an accurate diagnosis of the symptoms and an understanding of the proposed cure.[29] This part outlines the values of professionalism,[30] diagnoses the current state of affairs in

28. *See* Chazin, *supra* note 6, at 2 (reporting that first year attorneys at the Legal Aid Society in New York, after a $500 raise, will make $33,500 and after ten years the salary reaches $51,500).

29. *See* Daicoff, *supra* note 25, at 566 (framing the issues in medical terminology).

30. *See infra* Part I.A.

large firms,[31] and concludes by considering the merits of increased pro bono as one possible cure for the dissatisfied private attorney.[32]

A. *Professionalism and the Lawyer's Role*

Traditionally, being a lawyer was not viewed as a job but as a profession. Admission to the bar was a privilege that carried with it certain obligations to society.[33] Accordingly, making money was subordinate to helping others.[34] The ABA Professionalism Committee has put forth Dean Roscoe Pound's interpretation as best capturing the essence of what professionalism means: "pursuing a learned art as a common calling in the spirit of public service."[35] The ABA Report goes on to assert that "justice and the public good" is "both the object of that public service and the ideal to which lawyers ought therefore be dedicated."[36]

There appears to be consensus on the ideals to which the "profession" should be dedicated. At the ABA conference on Teaching and Learning Professionalism, all present "wanted to encourage 'ethical conduct' and 'dedication to justice and the public good.'"[37] Views abound, however, on the correct role of the lawyer in pursuing these ends.[38] For example, Dean Anthony Kronman advocates a return to the early nineteenth century ideal of the "lawyer-statesman."[39] This conception of the lawyer's role emphasizes the importance of "prudence or practical wisdom," which enables the lawyer to best advise his or her clients[40] and effectively serve the public interest.[41] This practical wisdom, described as a

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31. *See infra* Part I.B.

32. *See infra* Part I.C.

33. Pearce, *supra* note 11, at 1231 ("[T]he Professionalism Paradigm rests on a purported bargain between the profession and society in which the profession agreed to act for the good of clients and society in exchange for autonomy.").

34. *Id.* ("[I]n contrast to businesspersons, who maximize financial self-interest, lawyers altruistically place the good of their clients and the good of society above their own self-interest.").

35. ABA (Section of Legal Education and Admissions to the Bar), Report of the Professionalism Committee, Teaching and Learning Professionalism 5 (1996) [hereinafter "ABA Report"].

36. *Id.* at 6.

37. Rhode, *supra* note 9, at 315.

38. *See id.* (noting that the conference participants "shared no view about what that would involve in circumstances of any moral complexity").

39. *See generally* Anthony T. Kronman, The Lost Lawyer (1993).

40. *Id.* at 2 ("[E]arlier generations of American lawyers conceived their highest goal to be the attainment of a wisdom that lies beyond technique—a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess.").

41. *Id.* at 14 (arguing that the cultivation of practical wisdom helps develop a "special talent for discovering where the public good lies and for fashioning those arrangements needed to secure it").

balance of "sympathy and detachment,"[42] makes the lawyer uniquely qualified to determine what is in the best interest of his or her clients, whether they like it or not. As another chronicler of this nostalgic ideal[43] described it, part of the lawyer's role should be to "tell clients (especially new clients) that they are damned fools and they should stop."[44] Equally important, the statesman understands what is in the best interest of society.[45]

Modern conceptions of the lawyer's role as a professional reject much that is central to Kronman's portrait, which can be seen as both elitist[46] and overly paternalistic.[47] In response to the valid concern that lawyers often do not know what is in the best interests of their clients,[48] many in the legal ethics community argue that the lawyer's role should be more what Deborah Rhode has described as "neutral partisanship."[49] In everyday parlance, this approach is thought of simply as zealous advocacy.[50] But just as the "lawyer-statesman" ideal can easily devolve into paternalism, critics have warned that zealous advocacy can lead to a hired gun mentality[51] where the lawyer's devotion to clients ignores their duties to society. As Louis Brandeis warned in 1905,

> [i]nstead of holding a position of independence, between the wealth and the people, prepared to curb the excesses of either, able lawyers have, to a great extent, allowed themselves to become adjuncts to

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42. *Id.* at 66-74.

43. *See* Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 Dick. L. Rev. 549 (1996) (describing how the past functions as a mythical ideal in lawyer-statesman type conceptions of the professional role).

44. Sol M. Linowitz with Martin Mayer, The Betrayed Profession 4 (1994).

45. *See* Kronman, *supra* note 39, at 54 ("[A] statesman aims at the good of the community to which he or she belongs and . . . the statesman's special virtue consists in an extraordinary devotion to this good and a superior capacity for discerning where it lies.").

46. *See* David B. Wilkins, *Practical Wisdom for Practicing Lawyers: Separating Ideals from Ideology in Legal Ethics*, 108 Harv. L. Rev. 458, 464 (1994) (book review) (noting that many commentators have documented how so-called lawyer-statesmen "routinely deployed arguments about the importance of maintaining professional ideals as a means of excluding women and minorities, erecting protectionist barriers to competition from laymen, and shielding incompetent colleagues from public sanction").

47. *Id.* at 465 (noting the "profession's well-documented tendency to act paternalistically toward clients").

48. *Id.* at 470 ("Like other self-interested actors, lawyers frequently overestimate their own abilities and privilege their own interests.").

49. Deborah L. Rhode, *Institutionalizing Ethics*, 44 Case W. Res. L. Rev. 665, 667-73 (1994).

50. *See* Nader & Smith, *supra* note 4, at xviii ("This is taken to mean that for the system to work according to its ideals, attorneys for each side of a controversy or legal transaction should unhesitatingly advocate their client's position with competence, integrity, and unflagging zeal.").

51. *See* Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 Tex. L. Rev. 259, 304 (1995) (noting that the neutral partisan type lawyer is "also known, with more partisanship than neutrality, as the hired gun or 'Rambo'").

> great corporations and have neglected their obligation to use their powers for the protection of the people.[52]

Whether a lawyer tends toward a more paternalistic approach or a neutral advocate approach, the central question is always how to best balance the often conflicting duties to one's client and to society.[53] Any discussion of the correct role of the lawyer is ultimately about how to best deal with this tension. Of course, no one mode of lawyering is the right way for everybody to meet the ends of serving the justice system and the public good.[54]

B. *Life in the Big Firms*

Many authorities in the legal field have lamented the decline of professionalism, particularly in large law firms.[55] Other scholars and practitioners have refused to "wav[e] the Atticus Finch flag,"[56] acknowledging that "[a] significant gap has always existed between professional ideals and professional practice, and in many respects, the present is not demonstrably worse than the past."[57] Whatever one's position on the extent of the crisis compared to times past, there is a growing consensus that the business of law in large firms is in real tension with the calling of law as a profession devoted to the justice system and the public good.[58] Judge Harry T. Edwards of the U.S. Court of Appeals for the D.C. Circuit stated that the "structure of the work in large law firms places large firms on an institutional collision

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52. Louis D. Brandeis, *The Opportunity in the Law*, *in* Business—A Profession 313, 321 (1914).

53. *See* Rhode, *supra* note 9, at 311 (noting that "[p]rofessionalism rhetoric tends to paper over" the conflict between moral independence and client fidelity); Wilkins, *supra* note 46, at 475 (acknowledging what "has always been the central, if submerged, question of professional morality: how to balance the demands of advocacy with a system that is committed to just outcomes").

54. *See* Atkinson, *supra* note 51, at 303 ("The major problem with the [professionalism] crusade's new approach is what I call the fallacy of the one true way, the implicit—and demonstrably erroneous—premise that conscientious lawyers agree on the way to be a good person and a good lawyer, or that a single kind of lawyering is right.").

55. *See, e.g.*, Mary Ann Glendon, A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society (1994); Kronman, *supra* note 39; Linowitz, *supra* note 44; Warren E. Burger, *The Decline of Professionalism*, 61 Tenn. L. Rev. 1 (1993); Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 St. John's L. Rev. 85 (1994).

56. Jeffrey W. Stempel, *Embracing Descent: The Bankruptcy of a Business Paradigm for Conceptualizing and Regulating the Legal Profession*, 27 Fla. St. U. L. Rev. 25, 118 (1999).

57. Rhode, *supra* note 9, at 307.

58. *See* Nader & Smith, *supra* note 4, at xxi (quoting the former head of litigation at Cadwalader, Wickersham & Taft as stating that "[i]t is not the salient purpose of the law profession to focus so specially, so exclusively on *profits* and on *efficiency* . . . to do so is directly counter to the essence of what the profession is about").

course with many humanistic values, such as truthfulness and altruism."[59]

Whether or not lawyers are themselves less "professional" than they used to be, the practice of law has certainly changed a great deal in recent years.[60] The culture in most firms is that of a commercial business,[61] concerned only with profits.[62] This is especially so in large firms.[63] The focus on profits has had a number of effects on the nature of law practice in large firms.

Today, corporate lawyers are under tremendous pressure to bill a stupendous number of hours.[64] Every year it seems more is required. As one commentator, tongue-in-cheek, put it, "[a]s late as the mid-1980s, even associates in large New York firms were often not expected to bill more that[sic] 1800 hours annually. Today, many firms would consider these ranges acceptable only for partners or associates who had died midway through the year."[65]

What is fueling these increasing demands? Some critics argue it is just simple greed.[66] But who is guilty of greed depends on one's perspective.[67] The underlying problem, as Deborah Rhode frames it, is a system that does not make sense:

> The irrationality of current compensation structures began, rationally enough, when competition for the ablest new associates pushed starting salaries well above what hourly billing rates justified. Because firms have been under other competitive pressures not to raise those rates, the choice has been either to decrease partner profits or to raise associates' work load. Predictably, most partners have opted for the latter choice. But they have blamed the resulting Dickensonian schedules on associates who seem to prefer high

59. Katzman, *supra* note 17, at 4.

60. Wilkins, *supra* note 46, at 472.

61. *See* Stempel, *supra* note 56, at 31-32.

62. *See id.* at 31 (commenting on the legal press' promotion of "the lionization of profitability").

63. *See* Lerman, *supra* note 12, at 219 ("Preoccupation with profit is most intense in some of the most respected law firms in the United States.").

64. *See* Esther F. Lardent, *Structuring Law Firm Pro Bono Programs: A Community Service Typology*, *in* The Law Firm and the Public Good, *supra* note 14, at 59, 72 ("Regional and interfirm differences notwithstanding, most firms have substantially increased their billable hour targets or expectations during the past decade."); Lerman, *supra* note 12, at 220-21 ("Twenty years ago most firms expected lawyers to bill 1300 to 1500 hours per year. By 1990 many firms had increased the annual target for both associates and partners to 2,000 hours per year, and the most demanding firms expected 2,500.").

65. Schiltz, *supra* note 1, at 891.

66. *See* Lerman, *supra* note 12, at 225 (discussing the culture of greed); Rhode, *supra* note 9, at 308 (noting that money is at the root of the problems of the profession and that "[a]lthough lawyers often acknowledge that greed is part of the problem, they generally manage to place responsibility anywhere and everywhere else").

67. *See* Rhode, *supra* note 9, at 308 ("Partners blame mercenary and unrealistic associates, while associates blame mercenary and unfeeling partners.").

> salaries to a decent quality of life.... [w]hen [a] firm attempted to freeze both hours and starting salaries, applicants flocked to other firms.... From the associates' perspective ... the way for employers to avoid unmanageable workloads is to reduce income at the top.... The difficulty, of course, is that firms that allow incomes to fall below market rates run the same risks of defection at the upper levels that they do at the entry levels.[68]

In order to be marketable to desirable associates, firms cannot opt out of the salary wars.[69] To keep clients, firms cannot raise their hourly rates.[70] To retain partners, firms must keep profits high by "leveraging" associates,[71] a practice by which partners charge clients more for associates' work than they pay the associate, and then pocket the surplus. The result is that "[e]veryone has to work harder to pay for the higher salaries. And when salaries go up again, everyone has to work still harder."[72]

One particularly "unprofessional" consequence of increased billing pressure is overbilling,[73] a phenomenon many have called the "silent epidemic."[74] Overbilling or billing fraud includes everything from sloppiness to systematically padding to creating entirely fictitious time sheets, as well as billing attorney rates for work done by support staff.[75] There is also expense fraud, which involves representing personal expenses as business expenses or doctoring legitimate

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68. *Id.* at 308-09.

69. See Schiltz, *supra* note 1, at 898, commenting on the pressures to keep salaries competitive:

> The hiring partner of any major firm will tell you that if his firm offers first year associates a salary of $69,000, and a competitor down the street offers them $72,000, those who have the choice will flock to the competitor—even if the competitor will require them to bill 200 hours more each year.

70. *See* Galanter, *supra* note 1, at 1100 ("In an increasingly competitive market, an increase in billing rates is difficult to achieve.").

71. *See* Linowitz, *supra* note 44, at 106 (explaining the concept of leveraging in Marxist terms, where the "'surplus value' generated by the workers over and above what they were paid ... allowed the capitalists to live atop the hill while their employees were down in the mud"); Schiltz, *supra* note 1, at 901 ("So how can big firm partners take home double or triple or quadruple the revenue they generate? They can do so because partner compensation reflects not only the revenue that partners themselves generate, but also 'the surplus value law firms extract from associates.'"). *But cf.* Kelly, *supra* note 21, at 989 (noting that criticism of "leveraging" ignores "the responsible arguments that can be made for such a system in terms of the historic contribution of the senior people to the reputation, the client base, and the structure of human capital of the practice").

72. Schiltz, *supra* note 1, at 900.

73. *See* Lerman, *supra* note 12, at 225 (describing billing and expense fraud as a "product of the billing mania that has taken over the culture in so many large firms"); Re, *supra* note 55, at 97 (arguing "[i]t can hardly be disputed" that a billing requirement of 2000 hours "serves as a temptation for associates to exaggerate the number of billable hours ethically and honestly chargeable to clients").

74. Schiltz, *supra* note 1, at 918; *see also* Lerman, *supra* note 12, at 228.

75. *See* Lerman, *supra* note 12, at 208.

expenses.[76] Interestingly, Lisa Lerman, who did a study in 1999 of reported cases of "billing or expense fraud involving prominent lawyers and large amounts of money," found virtually no such cases before 1989 and thirty-six since then.[77] Of those, she studied sixteen in depth, whose "collective total proven or admitted theft is about $16 million."[78] These publicized cases only represent those attorneys who went too far. The majority of overbilling, like the devil, is in the details. One lawyer commented that many of his colleagues "decide ahead of time how much they want to bill and they fill in the time sheets to get to that spot."[79] Another reported, "[w]e charged for everything. If we offered a client a doughnut, we would charge it to the bill."[80] This phenomenon has not gone unnoticed by corporate clients[81] or the courts.[82] Most significantly, it has spawned a "cottage industry of legal auditors."[83]

Another consequence of the increased pressure of big firm practice is that the once collegial environment within firms is now frighteningly competitive. Traditionally, making partner in a firm implied tenure.[84] Partners would gradually reduce their billable hours and could "expect to stay on at the same firm until a dignified, often gradual and partial retirement."[85] Today, "[p]artners are under mounting pressure to maintain a high level of performance."[86] More and more,

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76. *Id.*

77. *Id.* at 209-10.

78. *Id.* at 210. All of these cases involved well-educated and successful lawyers "at the pinnacle of the profession." *Id.* And in many of the cases, it was "clear that their partners knew about and/or participated in the billing fraud." *Id.* at 211. One particularly egregious case involved Edward S. Digges, Jr., who billed 5800 hours in one year (you do the math!), and once spent a weekend with his partners and their wives "fabricating time sheets to put to rest a client's suspicions of billing fraud." *Id.* at 238, 245-46, 314. Another egregious violator, Stanford Hess, "directed that a computer program be set up to inflate fees systematically." *Id.* at 246.

79. Nader & Smith, *supra* note 4, at 234 (quoting an anonymous "disgruntled power lawyer").

80. *Id.*

81. *See* Margaret A. Jacobs, *Problem of Overbilling by Many Large Firms is Confirmed in Surveys*, Wall St. J., Sept. 18, 1995, at B8 (citing surveys which found that 75% of in-house counsels know of "less-than-scrupulous time-keeping by law firms" and "61% of corporate clients said they renegotiate their legal bills at least some of the time"); Roger Parloff, *Overbilled by $57 Million?!*, Am. Law., May 1994, at 65 (discussing a memo from Citicorp to its outside counsel, Shearman & Sterling, which suggested that the firm "had 'overbilled' the bank by $57 million from 1989 to 1991").

82. *See Everybody's Doing It*, Am. Law., Sept. 1991, at 94 (discussing a bankruptcy case where the judge slashed the fee requests of Cravath, Swaine & Moore to 12% of what was originally requested, stating that many of the cost items were "neither proper nor allowable").

83. Lerman, *supra* note 12, at 222.

84. *See* Galanter, *supra* note 1, at 1094.

85. *Id.*

86. *Id.*

"[u]nproductive partners are squeezed out."[87] At the end of 1999, amidst a booming economy and being ranked 35th on the AmLaw 100 with a revenue per lawyer of $540,000,[88] Sidley & Austin demoted thirty-five partners, the majority of whom were over fifty years-old.[89] As one of the demoted partners remarked, "It's sort of extraordinary that a firm should announce that suddenly nobody's got tenure .... It's a milestone in the conversion of the practice of law from a profession to a business."[90]

Competition is also fierce amongst firms. Frequently published statistics on firm salaries and profitability,[91] a recent phenomenon,[92] "has intensified financial rivalries and lateral defections."[93] Interrelated, and perhaps partly responsible for the competition among firms, is the changing nature of client-firm relations.[94] The shift has been from "comprehensive and enduring retainer relationships toward less exclusive and more task-specific ad hoc engagements."[95] This shift is partly attributable to the growth in size and depth of responsibility of in-house lawyers.[96] These in-house lawyers "have become more-discriminating consumers of outside legal services—more inclined to shop around."[97] Discriminating buyers require the firms to become more aggressive sellers.[98] It also means "[t]he partners who attract clients are at the top of the food chain. Lawyers with different priorities—craft, mentoring, public service—lack comparable leverage."[99]

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87. Rhode, *supra* note 9, at 299; *see also* Michael McDonald, *Older Lawyers Put Out to Pasture*, Crain's N.Y. Bus., Dec. 4, 2000, at 28.

88. The AmLaw 100, *How High Can they Go?*, Am. Law., July, 2000, at 127.

89. Amanda Ripley, *A Shock to the System*, Legal Times, June 26, 2000, at 45. Immediately after the demotions were announced, a "40-something partner ran into a partner in his fifties in the elevator and marveled aloud at how the firm was finally getting rid of the 'deadwood.' The older partner turned and introduced himself: 'Hi, I'm part of the deadwood.'" *Id.*

90. *Id.*

91. *See* Schiltz, *supra* note 1, at 914 ("Just about every issue of the *National Law Journal* or the *American Lawyer* seems to include at least one article about how much money some lawyer somewhere is making.").

92. *See* Kronman, *supra* note 39, at 294 (noting that a generation ago, "[i]n the culture of the large firm, money matters of all sorts were traditionally shrouded in a kind of genteel obscurity").

93. Rhode, *supra* note 9, at 299.

94. *See* Galanter, *supra* note 1, at 1094 ("Throughout the industry relations are more fluid: The mobility of clients is matched by the mergers and breakups of firms and by the increased mobility of individual lawyers.").

95. Kronman, *supra* note 39, at 277 (quotations omitted).

96. *Id.* at 276.

97. *Id.*

98. *See id.* at 280 (noting that prior to 1980 the position of marketing director was virtually unheard of, and "[o]nly nine years later, nearly two hundred law firms had marketing directors of their own").

99. Rhode, *supra* note 9, at 299.

Competition for clients and corporations' increased reliance on in-house counsel is shifting the substantive nature of law practice in large firms.[100] The market compels firms to focus on those areas of law that corporate clients are not likely to tackle on their own.[101] The result is increased emphasis on specialization.[102] For many lawyers, this increased focus on complex and unusual legal problems is actually a plus.[103] The trade off is that "it limits the relationship between each client and the firm to a relatively brief episode whose extraordinary nature must often make it difficult to draw, from that encounter alone, a full and balanced picture of the client's needs and aspirations . . . ."[104]

What does all this mean for the lives of lawyers in large firms? To begin with, it makes having a life outside of work very difficult. If you are billing 2000 hours in a year, you are likely at work for at least 3000 hours per year.[105] That is sixty hours per week at the office with two weeks vacation. Working so hard is certainly laudable[106] and carries many benefits,[107] but some commentators argue it makes it impossible to be either a well-rounded person or lawyer.[108]

A competitive, profit-maximizing atmosphere inside firms also devalues mentoring.[109] As noted above, "the greatest rewards go to the organizations' 'finders,' not its 'minders' . . . ."[110] The high attrition rates remove the incentive for many senior attorneys to

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100. Kronman, *supra* note 39, at 276.

101. *Id.*

102. *See* Schiltz, *supra* note 1, at 929 ("Big firm work is highly specialized and becoming more so . . . .").

103. *See* Kronman, *supra* note 39, at 285 ("Exceptional problems are generally more exciting and intellectually challenging than routine ones . . . .").

104. *Id.* at 286.

105. *See* Schiltz, *supra* note 1, at 894 (noting that a lawyer usually ends up "billing only about two hours for every three hours . . . at 'work'").

106. *See* Thomas Alva Edison, Life (1932) *in* Bartlett's Familiar Quotations 661 (Emily Morison Beck ed., 15th ed. 1980) ("There is no substitute for hard work.").

107. *See* Voltaire, Candide (1759) *in* Bartlett's Familiar Quotations, *supra* note 106, at 343 ("Work keeps us from three great evils, boredom, vice and need.").

108. *See* Linowitz, *supra* note 44, at 107-08, describing the life-limiting nature of big firm practice:

> The associates in the large firms cannot play the piano or paint a picture or act in a church play because they simply don't have the time. The tragedy is that, in the end, the single-minded drive toward winning the competitions at the firm will make these young lawyers . . . less useful citizens, less interesting human beings, and less successful parents . . . .

109. Re, *supra* note 55, at 95 ("[M]entoring and personalized training of new lawyers and associates has almost vanished."); Gail E. Cutter, *Back to the Future: Mentoring Still Key*, N.Y. L.J., Apr. 10, 2000, at S7 ("There is no substitute for the hours invested in . . . a fledgling lawyer, and this actuality stands in direct opposition to the realties[sic] of law firm economics.").

110. Rhode, *supra* note 9, at 299; *see also* Cutter, *supra* note 109 ("[T]hose lawyers who are primarily motivated to practice law by their desire to educate will not achieve positions of power and prominence in most modern law firms.").

invest in mentoring young associates.[111] Paradoxically, it is this very lack of mentoring that associates often cite as a reason for leaving the firm.[112]

The combination of these factors results in increasing numbers of unhappy and dissatisfied lawyers in large firms.[113] In addition to the forces discussed, "[n]ew entrants to the profession reflect increasing diversity across race, gender, class, and national origin, but many members of traditionally underrepresented groups do not find a supportive workplace."[114] The number of female lawyers is increasing at an exponential rate: in 1960, 3% of lawyers were women;[115] today, the figure is about 25%;[116] by 2050, it should be up to 50%.[117] This creates an increasingly serious problem, since dissatisfaction is particularly acute among women.[118] The same is true for minorities. As of 1996, blacks represented just 2.4% of the lawyers in corporate firms, and just over 1% of the partners.[119] This level of representation remains consistent despite substantial increases in the numbers of blacks attending law school.[120] A central reason the few blacks already in practice leave is because they cannot find "supportive relationships" in the law firm environment.[121]

For each lawyer, a different combination of factors may cause dissatisfaction.[122] However, "an overwhelming theme among unhappy

111. Wilborn & Krotoszynski, *supra* note 2, at 1303 ("Partners know that eight of ten new associates will be gone within the next seven years. No real incentive exists to train or even to learn anything about the associate . . . ."(footnote omitted)).

112. *See* Cutter, *supra* note 109.

113. *See* Galanter, *supra* note 1, at 1108 ("Curiously, those lawyers with the highest incomes and in specialties that enjoy the greatest prestige are on the whole least satisfied with their lives as lawyers."); Wilborn & Krotoszynski, *supra* note 2, at 1294 ("[B]oth associates *and* partners report growing levels of dissatisfaction with the quality of life in some of the finest firms in the land."); Wilkins, *supra* note 46, at 475 (noting the "consistently high level of dissatisfaction reported by even the most well-paid associates").

114. Rhode, *supra* note 9, at 300; *see also* Daicoff, *supra* note 25, at 553-54 ("The polls consistently indicate that lawyer dissatisfaction is high (nineteen percent), has been increasing in the past few years, and is highest among new attorneys, and minority and women attorneys.").

115. Galanter, *supra* note 1, at 1084.

116. *Id.*

117. *Id.*

118. *See* Galanter & Palay, *supra* note 14, at 34 ("Women are less satisfied than their male counterparts with practice in large firms, and with law practice in general."); Charles Keenan, *Firms Find Few Female Attorneys are Law-abiding*, Crain's N.Y. Bus., Oct. 30, 2000, at 4.

119. David B. Wilkins and G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 Cal. L. Rev. 496, 502 (1996).

120. *Id.* at 496.

121. *Id.* at 568.

122. *See* Nader & Smith, *supra* note 4, at 332 (noting associates "like the money, but they hate the long hours, the pressure to overbill, the legal gamesmanship and getting sucked into the big firm culture"); Kelly, *supra* note 21, at 988 (arguing it is "less about excessive hours than about ugly internal politics, the unpleasantness of the

lawyers is that they are not benefiting anyone of significance."[123] This takes us back to one of the basic tenets of professionalism—the public good. This disconnection between law firm work and the public good results in many unfulfilled lawyers.[124] As Anthony Kronman tells it,

> whatever external goals they aim to achieve through the practice of law, most lawyers also hope that their work will be a source of satisfaction in itself. Indeed, many hope that the intrinsic satisfactions it affords will be important enough to play a significant role in their fulfillment as human beings.[125]

Nothing illustrates the unfulfilling nature of big firm practice for many lawyers better than the "sky-high" attrition rates.[126] At large firms, "44 percent of new associates leave within three years and 73 percent within six."[127] The pyramid structure of large law firms requires significant attrition, for "if a firm hires 100 first-year associates, but only makes 10 equity partners, and puts another 10 or so into non-equity partner or lifetime counsel slots, any associate who does the math will figure out that the odds are against a long-term career with the firm."[128] Despite this, today's attrition rates are higher than what the pyramid requires or what the firms prefer.[129] Even if firms accept the numbers, they do not like having no control over whom they keep and whom they lose.[130] Ever-increasing salaries seem unable to stem the tide.[131] A few lawyers switch from one big firm to another,[132] but today most either leave for dot-com start-ups and in-

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places, or the unfulfilling nature of the work"); Karen Hall, *Midlevels Sound Off About Their Firms*, N.Y. L.J., Oct. 6, 2000, at 24 (citing a recent midlevel associate survey conducted by *The American Lawyer* showing that "more than 87% of midlevels said they factor the interest level of what they do daily into their decisions to stay or flee," 83% cited the way they were treated by partners and 72% considered the competitiveness of their salaries).

123. Donald Patrick Harris, *Let's Make Lawyers Happy: Advocating Mandatory Pro Bono*, 19 N. Ill. U. L. Rev. 287, 308 (1999).

124. *See* Nader & Smith, *supra* note 4, at xxvii.

125. Kronman, *supra* note 39, at 2.

126. *See* Wendy Davis, *Associate Flight Leads to New Look at Pyramid*, N.Y. L.J., May 22, 2000, at 1; *see also* Cutter, *supra* note 109 ("Law firms across the country are abuzz: associates are running for the exits, and no amount of coddling or perks or 'boom-year bonuses' can keep them on the job.").

127. Julie Flaherty, *14-Hour Days? Some Lawyers Say 'No'*, N.Y. Times Oct. 6, 1999, at G1.

128. Davis, *supra* note 126.

129. Richard B. Schmitt, *From Cash to Travel, New Lures for Burned-Out Lawyers*, Wall St. J., Feb. 2, 1999, at B1 (noting that "firms are finding that too many [lawyers] are leaving too soon").

130. *See* Davis, *supra* note 126 (quoting Shearman & Sterling's partner in charge of personnel, who laments "I don't know how you target the people you really want to stay").

131. *See* Hall, *supra* note 122 (noting that "salary hikes on their own appear to have been an ineffective tool for keeping associates at their desks").

132. *See* Schiltz, *supra* note 1, at 887 (citing an ABA study which found that "only a small percentage of those currently in large firms indicated that they were going to

house counsel positions,[133] or they leave the profession altogether.[134] The attrition is not limited to associates either. A 1997 survey of partners in the 125 largest firms found that "[a]lmost one third of them thought that they would probably or definitely not remain at their firms until retirement."[135]

C. *Pro Bono*

Proponents of increased pro bono practice argue that the practice of law is a "lucrative monopoly" granted to lawyers by the state and the community.[136] This is particularly so in the United States, where "attorneys have a much more extensive and exclusive right to provide legal assistance than attorneys in other countries."[137] As Robert Katzmann notes, "the very reason the state conferred such a monopoly was so that justice could best be served."[138] When a large portion of the public cannot access the system,[139] there is no equality before the law. Without equality, the lawyer's monopoly actually disserves justice.[140]

Former President Jimmy Carter lamented that "ninety percent of our lawyers serve 10% of our people."[141] The power wielded by large firms on behalf of corporations and wealthy individuals tips the scales of justice heavily against the poor as well as middle class individuals.[142] Pro bono work is a means by which private practitioners can help balance the scales and meet their duties to the profession. The problem is that not enough private practitioners perform such work,[143] and those who do are not doing substantial amounts of it.[144] ABA

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look at another large firm").

133. *See* Cutter, *supra* note 109.

134. *See* Harris, *supra* note 123, at 307 (noting that "many attorneys look to other fields after only a few years in the legal profession").

135. *See* Schiltz, *supra* note 1, at 888.

136. David Luban, Lawyers and Justice: An Ethical Study 286 (1988).

137. Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 Fordham L. Rev. 2415, 2419 (1999).

138. *See* Katzmann, *supra* note 17, at 7.

139. *See id.* at 2 ("[I]t is no exaggeration to say that, unless strong and comprehensive measures are implemented, the American system of justice will soon become essentially dysfunctional to the majority of our people." (quoting James W. Jones in 1990, then chair of the Advisory Committee of the Pro Bono Challenge)).

140. *See* Rhode, *supra* note 137, at 2418.

141. Granfield, *supra* note 4, at 4.

142. *See* Galanter & Palay, *supra* note 14, at 40 ("By efficiently assembling great concentrations of talent and resources and placing them at the service of powerful economic actors (and occasionally rich individuals) who can afford their fees, large firms accentuate this disparity in the public's ability to use the legal system.").

143. *See* Lardent, *supra* note 64, at 77 (citing an ABA report indicating that "only 16.9% of the bar participates in organized pro bono programs, a number that has remained relatively static for several years").

144. *See* Rhode, *supra* note 137, at 2415 (noting that the average time spent per week on pro bono across the profession is less than half an hour).

Model Rule 6.1 suggests all lawyers do at least fifty hours of pro bono work a year.[145] This requirement translates to an average of one hour a week, yet it is a commitment few lawyers satisfy.[146] The increased pressures to bill hours for paying client work translates into decreased hours to devote to pro bono.[147] This decrease comes at a time when drastic cuts in federal legal service funding[148] necessitates invigorating private bar pro bono. The efforts of many big firms should not be ignored—"the top 500 firms still set aside about two million pro bono hours each year [and] ... some firms are donating more money than ever to legal services organizations"[149]—but it must be acknowledged that these efforts do not begin to meet the need.[150]

Interestingly, while the reality of life in big firms undercuts the ability of their attorneys to do significant amounts of pro bono, the firms make concerted marketing efforts to tout the benefits of such work.[151] Pro bono work makes better lawyers.[152] As Supreme Court Justice Louis Brandeis declared, "no hermit can be a great lawyer."[153] The insulation of big firm practice often means that lawyers "don't see the human aspect of the major business deals their clients face."[154] Federal judge Richard Matsch explains:

> Anything that humanizes lawyers improves their performance ... Too many people in large mills see problems legally in the abstract, not recognizing the human dimension which has a lot to do with finding the best course of action .... Keep in mind also that judges

145. Model Rules of Prof'l Conduct R. 6.1. (1993).

146. *See* Winter, *supra* note 16 ("[A] committee of the District of Columbia circuit court conducted a survey of 142 private law firms in Washington, a center of pro bono activity. Less than 25% of their lawyers spent 50 hours or more representing clients who could not pay ....").

147. *Id.* ("We're under pressure to work hard to pay for these rising salaries .... I don't think it's going to wipe out the tradition of pro bono, but it's clearly going to have some impact." (quoting John Payton, a partner at Wilmer, Cutler & Pickering)).

148. *See* Steven Epstein et. al., *The Future of Legal Services: Legal and Ethical Implications of the LSC Restrictions*, 25 Fordham Urb. L. J. 279, 279-80 (1998) (citing a 1995 Legal Service Corporation cut which reduced the budget by 30%, from $400 million to $278 million).

149. Winter, *supra* note 16.

150. *See supra* note 17 and accompanying text.

151. Typical of the recruiting materials given to prospectives during the law school interview process is a handout from Mayer, Brown & Platt, which includes a quote from Debora de Hoyos, Managing Partner: "Pro bono work at Mayer, Brown & Platt not only helps others, it makes us better lawyers. Through pro bono work, young associates gain valuable trial and appellate experience." *Choosing a Law Firm: What's Your Pro Bono Work Like?* (on file with author).

152. *See* Rhode, *supra* note 137, at 2420 ("Particularly for young attorneys, such work can provide valuable training, trial experience, and professional contacts.").

153. *See* Donald W. Hoagland, *Community Service Makes Better Lawyers*, *in* The Law Firm and the Public Good, *supra* note 14, at 104, 109.

154. *Id.* at 107 (quoting Jim Puga, a young associate in a community legal services program).

> are human too. Lawyers should recognize the human level at which they address decision-making.[155]

In addition to creating better lawyers, pro bono work impresses both judges[156] and corporate clients.[157]

Equally important to the external professional benefits is the personal and professional fulfillment generated by pro bono work. Pro bono work offers "a lawyer another point of reference for valuing and validating his or her professional and personal worth."[158] It is not surprising that "[p]ublic interest work seems to promote the most intense feelings of satisfaction among its practitioners and private practice, especially in large firms, the least."[159] At the heart of this increased satisfaction is the simple truth that public service work allows a lawyer to function "as a human being connected with significant numbers of other human beings."[160]

Certain ethical issues must be addressed when private practitioners engage in pro bono work. One issue is positional conflicts, which become more problematic the more a firm is involved in pro bono work. Positional conflicts "may occur when a lawyer or law firm's presentation of a legal argument on behalf of one client is directly contrary to, or has a detrimental impact on, the position advanced on behalf of a second client in a different case or matter."[161] Corporate clients often have interests in opposition to middle or lower class individuals. For example, in representing corporations, a firm might often take positions advocating narrow readings of Title VII employment discrimination provisions. If that firm were to represent a pro bono client pursuing a Title VII claim against an employer, it may then have to argue a broad reading of perhaps the same provision. Fearful of upsetting paying clients, firms often avoid pro bono work that even potentially creates a conflict.[162]

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155. *Id.* at 111.

156. *See* William C. Kelly, Jr., *Reflections on Lawyer Morale and Public Service in an Age of Diminishing Expectations*, *in* The Law Firm & The Public Good, *supra* note 14, at 90, 99 ("[J]udges regularly go out of their way to commend pro bono counsel for undertaking the work.").

157. Lardent, *supra* note 64, at 86 ("[M]any corporate CEOs and general counsel are supportive of firm pro bono efforts, seeing them as analogous to the tradition of charitable giving and community service among many major corporations.").

158. Kelly, *supra* note 156, at 101.

159. Galanter, *supra* note 1, at 1108.

160. Hoagland, *supra* note 153, at 110 (quoting A. Edgar Benton, a leading corporate lawyer in Denver).

161. Esther F. Lardent, *Positional Conflicts in the Pro Bono Context: Ethical Considerations and Market Forces*, 67 Fordham L. Rev. 2279, 2279 (1999).

162. *Id.* at 2289 ("As a result of the lack of legal guidance or analysis, firms often overbroadly define positional conflicts in a manner that requires them to turn down proposed pro bono engagements.").

True positional conflicts are much less common than law firms fear. They are only a factor in simultaneous representation situations.[163] Even then, Comment 9 to Model Rule 1.7 prevents a lawyer from representing "parties having antagonistic positions" only when representation of either client would be adversely affected.[164] Practically speaking, this means that the cases would have to be pending in the same jurisdiction and that "advocacy on behalf of one client will create a legal precedent which is likely to materially undercut the legal position being urged on behalf of the other client."[165] It is worth noting that such conflict is only likely to be an issue in law reform litigation—it is very unlikely that such a conflict will arise in transactional matters.[166] Moreover, the potential positional conflicts a law firm faces when handling pro bono cases is nothing compared to the current restrictions placed on legal service providers by the Legal Services Corporation, which proscribe federally funded programs from engaging in, among other things, welfare reform lobbying, class action suits, representation of immigrants, prisoners and public housing residents facing drug charges.[167]

Competence is the other issue facing lawyers taking on pro bono work. Model Rule 1.1 requires that a lawyer "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[168] Some lawyers use this rule to avoid taking on certain pro bono matters.[169] They argue that they simply do not have enough experience in areas such as asylum law, tenants rights or disability benefits. Of course, lawyers often "stretch themselves to handle new subject matter for existing [paying] clients."[170] While a firm lawyer may not have the experience of a Legal Aid attorney, he or she has resources and support staff at his or her disposal that the latter does not. The Internet is also becoming an ever-powerful tool for providing the necessary background to ensure competence.[171] Ideally such self-help should be complemented—"private firms should take steps to ensure that they have the knowledge necessary to take on a given pro bono case, and . . . legal

163. *Id.* at 2286.
164. Model Rules of Prof'l. Conduct R. 1.7 cmt. 9 (1993).
165. Lardent, *supra* note 161, at 2284 (quoting ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 93-377 (1993)).
166. *Id.* at 2291.
167. *See* Epstein, *supra* note 148, at 280.
168. Model Rules of Prof'l. Conduct R. 1.1 (1993).
169. Hoagland, *supra* note 153, at 119.
170. *Id.* at 120.
171. One example is www.probononet.com, where associates can communicate with other attorneys involved in a particular practice area and can view a calendar of training seminars.

services organizations should make enough support and training available to provide that knowledge."[172]

Apart from substantive knowledge of certain areas of the law, private bar pro bono raises issues of whether these lawyers have the necessary "skill," broadly defined, to competently serve the poor. A corporate lawyer practices in a very different world than a legal services lawyer. As Bruce Green explains, "lawyering for low-income clients is different, because, as academics and practitioners increasingly acknowledge, when it comes to questions of professional conduct, 'context counts.'"[173] Will a lawyer who primarily deals with business executives and other lawyers be able to effectively communicate and adequately address the needs of a low-income client? Lawyers cannot deal with many low-income individuals who experience feelings of "subordination" in the same way as one would deal with a corporate client.[174] Proponents of an "access to justice" view of legal services would argue that the way to eliminate "subordination" is to assimilate the poor and powerless into the system by treating rich and poor alike in terms of legal representation.[175] However, as Lucie White questions:

> Is endorsing the principle of *equal* (i.e., elite) legal services for all people the best means of promoting social equality across those divisions? Or rather, in the context of the present levels of wealth inequality, are we better off endorsing the idea that the social needs of disfranchised groups should be addressed *sui generis*, in ways that reflect *their own* experiences . . . ?[176]

The above questions notwithstanding, the vast unmet needs of the poor and the professional obligations of lawyers compel increased private bar pro bono work. Of central concern to this Note, increased private bar pro bono is essential for the great many dissatisfied lawyers currently practicing, because for many, it adds a humanizing warmth to the cold world of corporate practice. Simply increasing pro

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172. *Report of the Working Group on Representation by Private Lawyers*, 67 Fordham L. Rev. 1853, 1860 (1999) [hereinafter "Working Group Report"].

173. Bruce A. Green, *Foreword: Rationing Lawyers: Ethical and Professional Issues in the Delivery of Legal Services to Low-Income Clients*, 67 Fordham L. Rev. 1713, 1719 (1999).

174. *See* Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 Wisc. L. Rev. 699, 760 (describing members of subordinated groups as "people who feel cheated but have no clear sense of who is responsible . . . or people who distrust the 'system' and the remedial processes that it offers. Such people will not give the right answers when the well-meaning lawyer innocently asks, 'What's wrong?'").

175. *See* Derek Denckla & Matthew Diller, Community Lawyering: Theory & Practice 9 (2000).

176. Lucie E. White, *Specially Tailored Legal Services for Low-income Persons in the Age of Wealth Inequality: Pragmatism or Capitulation?*, 67 Fordham L. Rev. 2573, 2578 (1999) (emphasis in original).

bono work, however, is no panacea.[177] As this part details, the causes of dissatisfaction among lawyers are numerous and interrelated.[178] Remedying the dissatisfaction requires a global approach, one that takes into account the many variables affecting the day-to-day work world of the private practitioner and then considers the fundamental structural and theoretical changes necessary to redress their grievances.

The next part looks to the business world, which has already begun this task. As the purpose of this Note is to advocate a new model law firm, it is particularly useful to consider how change is taking place inside the corporations that firms service, and to understand the new blueprints for corporate success underlying these changes.

II. EMBRACING THE "BUSINESS" OF LAW

In a vacuum, the plight of corporate lawyers looks bleak. When compared with other occupations, the forecast improves. In fact, "reliable research suggests that overall, lawyers are about as satisfied as any occupational group."[179] Employers in other occupational groups, however, have come to recognize the importance of keeping their employees satisfied in order to be successful. Companies understand that the composition of the workforce, the competitiveness of the job market, and the changing nature of work makes keeping talented people their top priority. This part of the Note addresses the demographic and generational shifts compelling change,[180] then considers the competitiveness of the marketplace, the resulting "talent war," and the factors which determine who wins this war.[181] It considers how truly successful companies are driven not by profit, but by a core ideology, and how success results from aligning the values of the company with the values of talented employees.[182]

A. *Good-bye to the Era of the White Male Baby-boomer*

In the last ten years, those entering the workforce have been members of Generation X.[183] In the United States, Generation X is

177. *See* Kelly, *supra* note 156, at 96 ("An approach to increased job satisfaction relying exclusively on pro bono work or other public service will, for most lawyers, fall short of the mark.").

178. *See supra* Part I.B.

179. Galanter, *supra* note 1, at 1108; Kathleen E. Hull, *Cross-Examining the Myth of Lawyers' Misery*, 52 Vand. L. Rev. 971 (1999) (challenging the popular portrayal of lawyers as a miserable lot).

180. *See infra* Part II.A.

181. *See infra* Part II.B.

182. *See infra* Part II.C.

183. While the exact contours of any generation are always debated, Generation X is generally considered to consist of those born between 1960 and 1980. *See* Bob Filipczak et al., Generations at Work: Managing the Clash of Veterans, Boomers, Xers, and Nexters in Your Workplace 93 (2000).

fifty-one million strong.[184] The Baby Boomers,[185] however, number seventy-six million.[186] The result is "[t]he country is only now realizing these lower birth rates translate into significantly fewer workers for the current, robust job market, and many employers are panicking."[187]

Several interesting characteristics differentiate this cohort from the Baby Boomers who have dominated the work force for the past twenty years. Xers are self-reliant. This is the generation of latch-key kids, who grew up accustomed to both parents working and having to fend for themselves.[188] Xers did not like the fact that their parents were never around and as a result, a priority for them is balance in their lives and a return to family and child-centeredness.[189] Finally, Xers appear to have a strong "anti-institutional bias"—they are skeptical of the way corporations treat people.[190]

Following the Xers into the workplace will be the Nexters or Millennial Generation.[191] What is particularly interesting about this generation is that they appear to have a strong sense of civic duty—"[t]hey possess an earnestness and willingness to grapple with questions of ethics and morality that link them to the idealism once harbored by their Baby Boomer parents."[192] Research indicates that "they hope to work side by side with other idealistic, committed coworkers. Only one-third say salary is important, and only a quarter rate job prestige as important."[193] While this generation is still young, "generational markers" remain very consistent over time.[194]

As the generational make-up of the workforce changes, its complexion will change as well. In 1995, 73.6% of the population was non-Hispanic whites.[195] By 2050, the Census Bureau projects that

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184. *Id.* at 94.

185. Baby Boomers are those born between 1943 and 1960. *See id.* at 63.

186. *Id.* at 94.

187. *Id.*

188. William Strauss & Neil Howe, Generations: The History of America's Future 1584 to 2069, at 364 (1991).

189. Business Bulletin, Wall St. J., May 11, 2000, at A1 ("82% of men between the ages of 20 and 39 say a 'family-friendly' schedule is their most important job criterion.").

190. *See* Filipczak, *supra* note 183, at 100-01; *see also* Paula A. Patton, *Retention Tied to More Than Compensation*, N.Y. L.J., Apr. 10, 2000, at S4 ("Associates between the ages of 25 and 35, a segment . . . of the so-called 'Xers,' have adopted the cynical adage that 'you can't trust an institution to take care of your career.'").

191. The millennial generation encompasses those born between 1980 and 2000. *See* Filipczak, supra note 183, at 127.

192. *Id.* at 134; *see also* Nelson Mui, *Here Come the Kids: Gen Y Invades the Workplace*, N.Y. Times, Feb. 4, 2001, at S9, at 1 (quoting Neil Howe saying that Gen Y is "collectively optimistic about the future—they think they have a destiny as a generation and they think they will play a role in shaping the future").

193. Filipczak, supra note 183, at 143.

194. *See* Strauss & Howe, *supra* note 188, at 320.

195. *See* Peter Coy, *The Creative Economy*, Bus. Wk., Aug. 21, 2000, at 79.

percentage will be down to 52.8%.[196] Hispanics will constitute approximately a quarter of the population,[197] and white males will be a minority in the workforce. Commentators agree, "corporations that thrive will be the ones that embrace the new demographic trends instead of fighting them."[198]

B. *The Talent Wars*

The current seller's market[199] has created a "war for talent."[200] Whether corporations like it or not, "[e]mployees are in control now—especially . . . young employees."[201] Robert Reich, the former Secretary of Labor, noted that the biggest challenge facing corporations in the twenty-first century will be "finding, attracting, and keeping talented people."[202] Smart companies realize that in our increasingly knowledge-based and information-driven economy, where competitors can copy every successful practice you initiate or product you offer, "all that separates you from your competitors are the skills, knowledge, commitment, and abilities of the people who work for you."[203]

Winning the talent war requires understanding and implementing the practices and policies, what Robert Reich calls the "social glues,"[204] that attract and retain the best and the brightest. However, as will be evident, the practices, policies and corresponding philosophies of business outlined below have value in themselves, not just as social glues.

1. Money

Of course, one of the most important glues will always be money. To keep talent, you have to pay for it.[205] Beyond a large salary, stock options are becoming an increasingly important employee priority.[206]

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196. *See id.*
197. *See id.*
198. *Id.* at 80.
199. *See* Robert B. Reich, *The Company of the Future*, Fast Company, Nov. 1998, at 124, 127.
200. Coy, *supra* note 195, at 80 (quoting Ted Childs, head of IBM's global diversity program).
201. Nina Munk, *The New Organization Man*, Fortune, Mar. 16, 1998, at 62, 64.
202. Reich, *supra* note 199, at 128; *see also* John A. Byrne, *Management by Web*, Bus. Wk., Aug. 21, 2000, at 84, 96 (noting that talented people will be a corporation's most precious commodity and "[a]ttracting, cultivating, and retaining them will be the indispensable ingredient that will drive the ideas, products and growth of all companies like never before").
203. Alan M. Webber, *Danger: Toxic Company*, Fast Company, Nov. 1998, at 152, 154 (quoting Professor Jeffrey Pfeffer of Stanford Graduate School of Business).
204. Reich, *supra* note 199, at 128.
205. *Id.*
206. Shelly Branch, *The 100 Best Companies to Work for in America*, Fortune, Jan. 11, 1999, at 118, 118 (noting that companies "definitely win points for doling out stock

Companies realize that "if you want talent to work for your organization with the enthusiasm that comes with ownership, then you have to trade equity for it."[207] Of course, some critics argue that the lottery ticket mentality created by stock options creates a "toxic workplace."[208] It is not in a company's best interest to build "an organization in which your motivation for coming to work is to make a lot of money—so that you can get the hell out of the organization."[209]

2. Learning

Money alone, no matter how much, does not make a company attractive to talented employees.[210] Today's employees want to learn.[211] "Talented people like being explorers on the frontiers of the knowledge economy."[212] Companies on the fringe are not the only ones who recognize the importance of challenging and growing their employees at all levels. Ford Motor Company has implemented a "massive and many-pronged" grassroots leadership-training program that involves all 100,000 salaried employees.[213] A core principle of the program is "leader as teacher."[214] The program teaches employees how to stretch themselves and how to help others stretch themselves. Nancy Gioia of Ford asks the employees she trains to "[p]ick one or two challenging things that you want to learn, because those things will usually prove to be the most rewarding experiences. Keep pushing yourself. Start to explore areas outside of your silo."[215] What Ford has recognized is that stretching employees at all levels not only empowers employees, but also makes for a "nimbler business."[216]

3. Free-Agency and "Web" Management

Business success means creating a work place that fits with what the younger generations want.[217] Companies that manage young workers

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options like raffle tickets").

207. Reich, *supra* note 199, at 132.

208. Webber, *supra* note 203, at 154.

209. *Id.* at 156 (quoting David Russo, head of human resources for SAS Institute).

210. Shelly Branch, *You Hired 'Em. But Can You Keep 'Em?*, Fortune, Nov. 9, 1998, at 247, 248 ("Money may be the reason people give when they resign, but it's like white noise. They're conscious of it for a while, but if they're bored on the job, money alone isn't going to keep them there." (quoting Maury Hanigan, founder of Hanigan Consulting Group)).

211. Branch, supra note 206, at 119 ("At many companies, the best employees are clamoring for education and training. . . .").

212. Reich, *supra* note 199, at 138.

213. Keith H. Hammonds, *Grassroots Leadership: Ford Motor Co.*, Fast Company, Apr. 2000, at 138, 140.

214. *Id.* at 150.

215. *Id.* at 143.

216. *Id.*

217. *See* Munk, *supra* note 201, at 66 (noting that "[c]ompanies are now scrambling

like "serfs" are not going to keep those workers.[218] What today's coveted employees want are "guidance, respect, and a chance to add value to the organization—or they head for the door."[219] The self-reliant and corporate-adverse Gen Xers require a different work-world than their predecessors. For example, a recruiting manager at J.C. Penney explained, "[i]t occurred to us that Gen Xers will work 90 hours a week if they have their own business. So we decided we needed to make them *think* they are entrepreneurs."[220]

Much ink has been spilt on pointing out how this entrepreneurial spirit is turning the workplace into a "free-agent nation."[221] The choice and variety available to employees has led to what many consider "the demise of loyalty"[222] and a workplace where "free agents zoom around . . . selling their knowledge-worker services hyperefficiently."[223] Many employers are concerned that this trend will make it impossible to keep employees no matter what they do. The evolution of the workplace into a free-agent nation, however, may be overstated.[224] As Reich points out, "[f]riendship and camaraderie are basic adhesives of the human spirit."[225] The CEO of Intel, Andrew Grove, acknowledges, "[p]eople have a need to work in teams. There is a desire to work with others and enjoy the benefits of your work and your successes together with people who enjoy the same benefits."[226]

The mindset fueling the free-agency craze is the desire for variety, learning, and opportunity. It is creating a shift in the way workers are managed. Companies are shifting from a pyramid to a web structure.[227] In contrast to the traditional hierarchy, companies will begin to look more and more like a "flat, intricately woven form" that links different players on different projects.[228] They will offer their employees a career not as a static job, "but as a series of projects."[229] Such a structure acknowledges and efficiently utilizes the skills and

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to adjust to the Xers").

218. Diane Brady, *Wanted: Eclectic Visionary with a Sense of Humor*, Bus. Wk., Aug. 21, 2000, at 143, 144.

219. *Id.*

220. *See* Munk, *supra* note 201, at 74 (quoting Debbie Herd, J.C. Penney's college relations manager).

221. Kim Clark, *The Myth of the 'Free-Agent Nation'*, Fortune, June 8, 1998, at 40, 40.

222. Reich, *supra* note 199, at 150.

223. Geoffrey Colvin, *Managing in the Info Era*, Fortune, Mar. 6, 2000, at F-6.

224. *See* Clark, *supra* note 221, at 40-41 ("[S]even out of ten Americans have dreamed of starting a business, but only about one in ten is a true entrepreneur."); Reich, *supra* note 199, at 150 ("The basic facts of work life are the same as they've always been: everybody works for somebody or something.").

225. Reich, *supra* note 199, at 140.

226. John A. Byrne, *Visionary vs. Visionary*, Bus. Wk., Aug. 21, 2000, at 210, 214.

227. *See* Byrne, *supra* note 202, at 87.

228. *Id.*

229. Michelle Conlin, *Free Agents*, Bus. Wk., Aug. 21, 2000, at 169, 170.

interests of every individual, thus keeping them engaged. As one commentator describes it, "[e]very player on this team will be evaluated—pass by pass, at-bat by at-bat—for the quality and uniqueness and timeliness and passion of her or his contribution."[230]

4. Diversity

The war for talent means "diversity must be considered a bottom-line issue."[231] Beyond the fact that increased numbers of minorities in the work force necessitates that companies attract these groups,[232] empirical evidence demonstrates that "minority-friendly companies tend to be superior performers."[233] Rich McGinn, the CEO of Lucent Technologies, notes that "[d]iversity is a competitive advantage. Different people approach similar problems in different ways."[234] A recent study, which surveyed more than 1000 managers and executives, "found that a mixture of genders, ethnic backgrounds and ages in senior management consistently correlates to superior corporate performance."[235]

5. Balance

Too much of any work, no matter how challenging and well-tailored to individual talents and interests, is not good if it consumes your whole life. Consequently, perhaps the most important "adhesive" companies are relying on to retain talent is balance.[236] The real "hot button" that companies are grappling with right now is how to offer employees the balanced lives they want.[237] For example, Ken Slavin is a part-time lounge singer who works for the Atkins Agency in San Antonio, Texas.[238] To keep him from defecting, his boss encourages him to "accommodate his job to his lounge singing."[239] While Slavin still works a full work week,[240] he does so with a flexibility supported by a company that allows him to balance the things that are important to him.

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230. Tom Peters, *The New Wired World of Work*, Bus. Wk., Aug. 21, 2000, at 172.
231. *Diversity: The Bottom Line*, Forbes, May 3, 1999, at 1, 2 (special advertising section) [hereinafter "*Diversity*"].
232. *See* Geoffrey Colvin, *The 50 Best Companies for Asians, Blacks and Hispanics*, Fortune, July 19, 1999, at 53, 56 ("If about 25% of the work force—the total for Asians, blacks, and Hispanics nationwide—suspect they won't be welcome at your company, you're headed for trouble." (quoting Solomon Trujillo, CEO of US West)).
233. *Id.* at 53.
234. *Id.* at 54.
235. *Diversity*, *supra* note 231, at 31.
236. *See* Reich, *supra* note 199, at 148.
237. *See How Much is Enough?*, Fast Company, July-Aug. 1999, at 108, 110 [hereinafter *How Much is Enough?*].
238. Munk, *supra* note 201, at 66.
239. *Id.* at 68.
240. *Id.*

Balance, however, is not merely "a matter of shifting a few hours each week from one activity to another."[241] For every individual, "[b]alance is a *design* problem—a matter of coming to terms with your values and priorities, of reckoning with the trade-offs that they require."[242] For Slavin, the design problem was easy to solve, but every individual has different values and priorities.[243] While the outside world, particularly employers, make it difficult to find balance between work and life,[244] most people understand that balance is ultimately a matter of personal choice.[245] It is usually individuals who prevent themselves from finding balance in their lives, not employers. As Freud stated, "[i]t is impossible to escape the impression that people commonly use false standards of measurement—that they seek power, success and wealth for themselves and admire them in others, and that they underestimate what is of true value in life."[246] Nevertheless, as individuals struggle with the problem of balance, they certainly want a company that supports that struggle, both expressly in terms of programs and policies,[247] and implicitly in terms of corporate mentality.[248]

C. Value Driven Business and Similarly Valued Employees

A sense that one's work has a greater meaning is for many the most important "social glue" of all.[249] John Chambers, the CEO of Cisco Systems, recognizes that a key reason people stay at a company is whether they are "working for a higher purpose."[250] Such work can also feed into the elusive balance discussed above. Marguerite Sallee, CEO of Frontline Group, notes that "it's a powerful thing to organize a business around a clear sense of mission and values. Businesses that

241. Chuck Salter, *Enough is Enough*, Fast Company, July-Aug. 1999, at 120, 130.

242. *Id.*

243. Eric Ransdell, *The Consultant*, Fast Company, July-Aug. 1999, at 152, 154 ("What we are really talking about is solving an equation with lots of variables. There is no one-size-fits-all solution. Different people have different life equations.").

244. *See How Much is Enough?*, *supra* note 237, at 112.

245. *Id.* (noting a survey in which 87% of respondents said that "people who want to achieve balance in their lives can do so—if they're willing to make certain trade-offs").

246. *Id.* at 110.

247. *See* Branch, *supra* note 206, at 134 (describing Synovus Financial, one of the 100 best companies to work for, where benefits include "20 hours that employees are paid to spend in class with their kids or grandkids").

248. *See* Reich, *supra* note 199, at 148 (describing "balance" not merely as a set of programs, but as "a way of doing business," something that is "deeply embedded in the company's core—a compelling part of its corporate DNA").

249. Amy Borrus, *Commerce Reweaves the Social Fabric*, Bus. Wk., Aug. 21, 2000, at 187, 189 (noting that in the tight labor market, a company's willingness to attack societal concerns is important for employees who "crave a more meaningful on-the-job experience").

250. *See* Byrne, *supra* note 226, at 212.

provide opportunities for employees to give back create balance—for the company and for its employees."[251]

In 1994, James Collins and Jerry Porras published the highly influential and widely read,[252] *Built to Last: Successful Habits of Visionary Companies*, which studied eighteen premier, respected, and highly successful companies in a variety of industries.[253] These visionary companies were not primarily driven by profits. Instead, they had "a sense of purpose beyond just making money."[254] Yet all of these companies were more successful than competitors who were "purely profit driven."[255] This is a bottom-line truth to which companies are paying attention.[256]

What Collins' and Porras' visionary companies had in common was a "core ideology," which they defined as "a set of basic precepts that plant a fixed stake in the ground."[257] This core ideology was comprised of core values—"the organization's essential and enduring tenets"[258]—and a purpose—"[t]he organization's fundamental reasons for existence beyond just making money."[259] Articulating the former, Thomas J. Watson, Jr., a one-time CEO of IBM, commented, "I firmly believe that any organization, in order to survive and achieve success, must have a sound set of beliefs on which it premises all its policies and actions."[260] On the latter, Dave Packard of Hewlett-Packard stated that "a group of people get together and exist as an institution that we call a company so they are able to accomplish something collectively that they could not accomplish separately—they make a contribution to society, a phrase which sounds trite but is fundamental."[261]

A core ideology does not come from simply writing out a company mission statement, it comes from an organization comprised of true

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251. *What's the Best Way to Do Good?*, Fast Company, Dec. 2000, at 105, 112 [hereinafter *Best Way*].

252. Jim Collins, *Built to Flip*, Fast Company, Mar. 2000, at 130, 135 (noting that "the book hit a chord, generating more than 70 printings, translations into 17 languages, and best-seller status (including 55 months on the *Business Week* best-seller list)").

253. James C. Collins & Jerry I. Porras, Built to Last: Successful Habits of Visionary Companies 2-3 (1994) (studying such companies as American Express, Ford, GE, Citicorp, Merck, IBM, Sony, and Wal-Mart).

254. *See id.* at 8.

255. *Id.*

256. *See* Ronald B. Lieber, *The 100 Best Companies to Work for in America: Why Employees Love These Companies*, Fortune, Jan. 12, 1998, at 72, 73 (noting that a sense of "deep, rewarding purpose" is one of the three recurring traits among the 100 Best Companies to work for).

257. *See* Collins & Porras, *supra* note 253, at 54.

258. *Id.* at 73.

259. *Id.*

260. *Id.* at 73-74.

261. *Id.* at 56.

believers.[262] Visionary companies do not have to question what they should value. They ask "what do we actually value deep down to our toes?"[263] This means that the people who work for these visionary companies have to believe deeply in the ideology of the company. As Collins and Porras stated, "if you don't fit, you better not join. If you're willing to really buy in and dedicate yourself to what the company stands for, then you'll be very satisfied and productive—probably couldn't be happier."[264]

Whatever a company's core ideology, be it making profits or saving the world, the values of the company's employees must align with the values of the organization.[265] Richard Barret outlines "seven levels of employee consciousness" and a corresponding "seven levels of corporate consciousness."[266] The first level is characterized by mere financial survival and the satisfaction of physical needs.[267] As consciousness increases, it addresses emotional, then mental, and finally spiritual needs.[268] Any successful company must keep its level of consciousness aligned with that of its employees, because "lots of people with aligned values constitute an awesome power."[269] Smart executives understand this, and thus stand behind the importance of "put[ting] the right people on the bus."[270] These executives "have always focused first on getting people who share their values and standards."[271] As well as filling the bus with like-minded people, the corporation must live up to the ideals of the people on board. Drug giant Merck & Co., for example, gave the drug Mectizan, which cures River Blindness, to over one million people in the third world who could not afford it. In explaining why, CEO P. Roy Vagelos explained that not doing so would have demoralized the many Merck scientists who thought of themselves as working for a company "in the business of preserving and improving human life."[272]

One criticism of a value-driven business model is that high-minded values are a luxury of extremely successful companies like Merck, who can afford to be charitable.[273] The majority of businesses exist on

262. *Id.* at 71.
263. *Id.* at 8.
264. *Id.* at 122.
265. *See* Colvin, *supra* note 223, at 6 ("[I]n this emerging new era when so many people can work for whomever... they like, coalescing around shared values becomes a logical, effective organizing principle for a business enterprise.").
266. Richard Barrett, Liberating the Corporate Soul: Building a Visionary Organization 61-71 (1998).
267. *Id.* at 67-68.
268. *Id.* at 68-70.
269. Colvin, *supra* note 223, at 6.
270. James Collins, *Don't Rewrite the Rules of the Road*, Bus. Wk., Aug. 21 2000, at 206, 206.
271. *Id.*
272. Collins & Porras, *supra* note 253, at 47.
273. *Id.* at 49.

Barrett's lower levels of consciousness, where survival is the central concern. However, Masaru Ibuka, the founder of Sony, when just starting out and long before making any profit, committed himself to establishing a place "where engineers can feel the joy of technological innovation, be aware of their mission to society, and work to their heart's content."[274] This is the necessary first step to becoming a company with a real sense of purpose.[275]

The theme underlying the shift in the way businesses are thinking about themselves is the recognition that employees are individuals and fellow humans, not just workers.[276] This recognition results in employers paying attention to who their employees are as people, from their age, race and gender, to their goals, ambitions and personal priorities. Consequently, they are finding "competitive advantage by tapping [the] employees' most essential humanity."[277] The wisdom of this basic premise seems to have eluded the giants of the law world.

The next part of this Note argues that by focusing on lawyers' humanity and by putting each one's individual priorities center stage, a world of possibilities open up for the profession. It looks at one possibility in detail: a law firm driven by professional values and expressing its commitment to those values by devoting fifty percent of its lawyers' time to pro bono work.

III. THE 50/50 LAW FIRM

Momentum logically leads toward a solution that takes the lessons from one setting and applies them to the setting at hand: the law firm. First, this part will articulate the values of the "50/50" law firm[278] using the framework outlined above.[279] It will then sketch a picture of how this firm would be organized and operated, and consider how it would attract and keep lawyers as well as corporate clients.[280] Finally, it will consider the firm's economic viability.[281]

A. *Values—Why 50/50?*

As discussed above, the first step to becoming a successful value-driven company is having a core ideology that is clearly defined and

274. *Id.* at 50.

275. *See Best Way*, *supra* note 251, at 138 ("The first step is to establish what you care about. As with anything else, you'll be most successful in giving back when you let your values drive you." (quoting Peter Karoff, founder and president of The Philanthropic Initiative Inc.)).

276. *See* Colvin, *supra* note 223, at 8 ("It's been a remarkable journey, painfully slow, from the days in which companies succeeded—and for a time they succeeded stupendously—by denying employees' humanity.").

277. *Id.*

278. *See infra* Part III.A.

279. *See supra* Part II.C.

280. *See infra* Part III.B.

281. *See infra* Part III.B.4.

deeply felt.[282] Professionalism, which values commitment to justice and the public good, provides the first ingredient necessary to this core ideology. Pro bono work provides a means of putting these values into action, giving the lawyer a higher sense of purpose in his or her work. Requiring a firm with this core ideology to devote its time equally between corporate clients and pro bono clients is necessary to give these ideals a tangible form, and help turn the ideal into a reality. A bold mission, what Collins and Porras call "Big Hairy Audacious Goals," is a "particularly powerful mechanism to stimulate progress."[283] As one visionary business leader points out, "[t]he grander and more noble the mission . . . the more room you have to grow and the more support you'll have along the way."[284] The 50/50 concept is not just a "neat" idea useful for discussion; it is a springboard that engages and motivates, it is a mountain to climb.[285]

Fifty percent is not an arbitrary figure; it is a percentage that emphasizes a particular view of professionalism and an *equal* "access to justice" view of the lawyer's role.[286] One means of counteracting the "accelerating imbalance between individuals and corporations"[287] is working within a model that consciously balances these competing interests. As already noted, such a view is not without its critics, who argue that it ignores the fundamentally different needs of the disenfranchised.[288] Nevertheless, this Note contends that it is the best approach for those working within the private bar, where emphasizing equality is the best means of allowing practitioners to serve both public and corporate interests as a professional.[289]

Disparities between rich and poor are reinforced when the rich go to a Wall Street firm and the poor must wait on an intake line at an overcrowded legal services office.[290] This disparity emphasizes subordination, a subordination that the presence of the token pro bono client in a big firm conference room does not counteract. But

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282. *See supra* notes 257-275 and accompanying text.

283. Collins & Porras, *supra* note 253, at 93.

284. Chuck Salter, *People and Technology: Microstrategy Inc.*, Fast Company, Apr. 2000, at 190, 195 (quoting Microstrategy's CEO).

285. *See* Collins & Porras, *supra* note 253, at 95.

286. Equal access to justice is a "common value" central to many states' legal service delivery systems, and the Legal Services Corporation identifies it as its main goal. *See* Hulett H. Askew, *State Planning: A Catalyst for Change*, Mgmt. Info. Exchange J., Fall 2000, at 37, 38.

287. Nader & Smith, *supra* note 4, at xvii.

288. *See supra* note 176 and accompanying text.

289. *See* Jack B. Weinstein, *Adjudicative Justice in a Diverse Mass Society*, 8 J.L. & Pol'y 385, 388 (2000) ("Delivering equal adjudicative justice is our *sine qua non*—the legal profession's reason for being.").

290. *Cf.* Andrea J. Saltzman, *Private Bar Delivery of Civil Legal Services to the Poor: A Design for a Combined Private Attorney and Staffed Office Delivery System*, 34 Hastings L.J. 1165, 1174 (1983) (noting that representation by private attorneys "minimizes the stigmatization of the poor," for they are not sent to "'separate but equal' law offices or subjected to a different brand of justice than the rich").

when the poor are represented on equal terms and in equal numbers, representation becomes more than a gesture—it becomes an articulation of a commitment to equality, a principle central to any concept of our justice system and the public good.[291]

This commitment to equality, in turn, informs representation of corporate clients. Whether before a judge and jury,[292] or negotiating between parties,[293] a lawyer who is as aware of the public's concerns as their client's, is a better counselor. A "better" counselor is one who does not simply advocate their corporate client's interest zealously, but one who recognizes when that corporate interest is in tension with the public interest, and can advise accordingly. A "better" counselor is able and willing to point out that the client's true best interest is not necessarily their immediate self-interest.[294] As Deborah Rhode frames it, "one of a lawyer's most socially valued functions is to counsel clients about the full range of ethical considerations that bear on particular decisions and to withhold assistance in matters that run counter to the lawyer's own sense of social responsibility."[295]

B. *Making the Vision a Reality*

With clear values and a noble mission as guides, the difficult part of this task is giving form and substance to the vision. Doing so requires recognizing that the traditional structure and norms of law firms disable true transformation.[296] But as Part II evidences, transformation does not require making up new rules, but simply adapting to the changing rules of business.[297] In fact, with an understanding of how business is changing, it is sound planning for a law firm to radically alter the way it operates. As one future-focused commentator stated, "[l]etting go of the old model and striking out for the new is the only answer in which the legal profession retains its integrity and viability."[298]

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291. *See* Rhode, *supra* note 137, at 2418 ("[I]n a democratic social order, equality before the law is central to the rule of law and to the legitimacy of the state.").

292. *See* Kronman, *supra* note 39, at 150 ("Plato says that an orator who speaks before public assemblies needs a democratic soul, one that shares the interests and ambitions of its audience.").

293. *Id.* at 152-53.

294. *Id.* at 288 ("The most demanding and also most rewarding function that lawyers perform is to help their clients decide what it is they really want, to help them make up their minds as to what their ends should be . . . .").

295. Rhode, *supra* note 9, at 321.

296. *See* Byrne, *supra* note 202, at 88 (noting that "things like deeply held beliefs, rituals. and traditions . . . often smother radical thinking").

297. *See supra* Part II.B.

298. Dan Johnson, *Lawyers Face Future Shock*, The Futurist, Mar.-Apr. 2000, at 10, 10 (quoting Peter Bishop, author of Seize the Future).

1. Organization and Policies

The Internet has completely changed the nature of business and companies must alter their structure in recognition of this—they must become "open, democratic, tightly networked, nonhierarchical, experimental, endlessly adaptable, and utterly restless."[299] Lawyers have always been "gold-collar knowledge workers."[300] As such, the most efficient way for a law firm to operate is by "sharing information to create knowledge."[301] For a law firm, first and foremost, this requires stepping away from the pyramid structure.[302] Legal work in general, and a 50/50 law firm in particular, is well suited for a web structure,[303] one where groups can easily dissolve and reform "in response to the organization's internal needs and external pressures."[304] The 50/50 firm requires a more "horizontal" organization.[305] Under such a structure, each case is its own project, and each lawyer brings his or her own set of skills and interests.

In traditional and increasingly specialized law firms, senior attorneys know everything and do all the real lawyering, while juniors just grunt and prepare documents.[306] The traditional hierarchy treats knowledge as an asset controlled by partners. Removing the hierarchy removes the barriers. Case teams "will provide the foundation of organizational design."[307] These teams will be collaborative. In a firm that takes a global approach to counseling corporate clients and undertakes a wide variety of pro bono matters, where there are abundant opportunities for attorneys of all levels to take on a variety of roles, true collaboration is a necessity.

While a traditional corporate client may require a seasoned attorney as its lead representative, extensive pro bono work may result in young lawyers quickly becoming experts in certain types of cases and taking the lead, with more experienced attorneys supporting and sometimes even learning from their junior colleagues. Moreover, legal experience is not always commensurate with practical experience. A beginning attorney might have a background that gives her particular skills in working with the poor. She could be paired with a veteran corporate attorney, one who may lack the skill set necessary to adeptly interact with a poor tenant in need of

299. Gary Hamel, *Take It Higher*, Fortune, Feb. 5, 2001, at 169, 170.
300. Lynda Snyder & Helen E. Moss, *Leveraging the Firm's Knowledge*, N.Y. L.J., Apr. 19, 1999, at T5.
301. *Id.*
302. *See supra* note 128 and accompanying text.
303. *See supra* notes 228-230 and accompanying text.
304. *See* Snyder & Moss, *supra* note 300.
305. *See* Rahul Jacob, *The Struggle to Create an Organization for the 21st Century*, Fortune, Apr. 3, 1995, at 90, 91.
306. *See* Schiltz, *supra* note 1, at 927.
307. Jacob, *supra* note 305, at 91.

representation in a housing dispute, but whose years of experience make the veteran attorney "no stranger to dealing with foolish and difficult people,"[308] such as unreasonable landlords. This collaborative structure results in an environment where lawyers, young and old, are constantly challenged and continually stretched, an environment that ultimately creates better lawyers.

Of course, "[o]ne of the beauties of the vertical, functional organization is that who you report to and who's the boss is very, very clear."[309] Take away the hierarchy and you necessarily create ambiguity.[310] But you also create increased opportunities for creativity and efficiency.[311] The 50/50 firm would emphasize the latter, and consequently there would be no place for the traditional partnership model. Moreover, the leveraging on which such a model relies is incompatible with the firm's values.[312] Treating different "types" of clients equally requires treating different "types" of lawyers equally. As the firm's goal is not to fatten lawyer's wallets, this traditional operating structure does not best serve the firm's ends. With the understanding that the firm's success mirrors the success of each individual lawyer comprising it, a sense of ownership is fostered in all.

Emphasizing a horizontal structure and eliminating partnership does not mean that the firm will be completely devoid of any vertical decision-making. As a McKinsey Consultant who works with companies on restructuring acknowledges, "companies need vertical-integrating processes like strategy and finance. The right question is, 'where do we want to be horizontal and where do we want to be vertical?'"[313] Answering this question requires recognizing where the emphasis needs to be on "function" and where it needs to be on "process." Recruitment, human resources, and finance are all functions that arguably require top-down accountability. The substantive legal work, however, is more of a process, one where flat, networked teams bring many benefits. These teams will each have a project manager who is responsible for reporting to the client, but because of the number of pro bono projects and the emphasis on enduring client relationships, a majority of the firm's lawyers will have the opportunity to manage. The result will be a disintegration of the lines between the decision-makers and non-decision-makers. Instead of an elite group of partners dictating policy and practice, all of the firm's lawyers, comfortable with accountability in their day-to-day

308. *See* Galanter, *supra* note 1, at 1107.
309. Jacob, *supra* note 305, at 92.
310. *Id.*
311. *See* Byrne, *supra* note 202, at 87-88.
312. *See supra* notes 67-72 and accompanying text.
313. Jacob, *supra* note 305, at 96 (quoting McKinsey Consultant Frank Ostroff).

work, will expect the various functional decision-makers to be accountable to them.

Of course, equality among the lawyers does not prohibit recognizing differences. Twenty years of experience makes one's services more valuable, and compensation should reflect that. Compensation should also reflect how each individual lawyer wants his or her job to fit into the design of their life, and every employment offer should be tailored to the priorities of that lawyer. The Corporate Leadership Council recently conducted an in-depth study of over 10,000 employees in nineteen major companies in which they considered thirty factors (including factors focusing on compensation and benefits, work environment, work-life balance, and organizational environment) relevant to crafting a "compelling offer" for their "high valued" employees.[314] The better the fit between factors important to that employee and the employment offer, the more compelling the offer.[315] While a perfect fit is often impractical, the goal is to respond to the factors of highest importance to each employee, and to the extent possible, tailor their employment offer to satisfy those priorities.[316]

Again, how the firm treats its lawyers should comport with how it treats its paying clients; big firm billing practices must be questioned as well.[317] Taking its cue from the business world, the firm can work together with the client to create a system of billing that works best for both.[318] Some clients may prefer capitated billing in the form of a flat-fee.[319] Others may be wary that flat-fees will get them HMO-type service, where the temptation for the lawyer is "to do less work rather than more."[320] Clients might prefer "value billing," a system designed to "reduce [legal] fees while rewarding quality legal work," such that a lawyer may get a "lower hourly rate with a bonus earned for obtaining a good result or the right to bill at a higher rate for each successful legal maneuver."[321] Of course, some clients may be most comfortable

314. Corporate Leadership Council, Workforce Commitment Series, Vol. 3, The Compelling Offer: A Quantitative Analysis of the Career Preferences and Decisions of High Value Employees v, 50-51, (1999) [hereinafter *The Compelling Offer*].

315. *Id.* at 66.

316. *Id.* at 124.

317. *See* Haserot, *supra* note 20 (noting that it will be necessary to "let go of the billable hour compensation system" to succeed in the new millennium).

318. *See* Bryne, *supra* note 202, at 87 ("The company of the future will tailor its products to each individual by turning customers into partners."); Johnson, *supra* note 298, at 10 (noting that one of the benchmark trends redefining the future is that "[c]lients are controlling the marketplace" and have become "more-sophisticated consumers").

319. *See* Nader & Smith, *supra* note 4, at 252 (noting that flat-fee billing is growing in popularity and that "[a] number of major corporations, including Chrysler Corporation and (ALCOA), have begun to hire firms" on this basis).

320. *Id.* at 253.

321. *Id.*

with traditional hourly billing, confident that the firm's integrity makes overbilling a non-issue.

Corporations have begun shifting their emphasis "from delivering a product to serving the customer."[322] Interestingly, it seems corporate law firms have been shifting their emphasis the other way—increased specialization resulting in less flexibility to adapt to the "evolving needs of the marketplace."[323] In contrast, custom-made teams for each client return the emphasis to where it should be, responding to client needs. This strategy ensures a competitive advantage; "[i]n an era of unprecedented choice . . . companies will have to offer a lot more than bargain prices."[324] Firms will have to be flexible enough to respond to the individual needs of each client. Through structural and organizational practices that treat all lawyers and all clients as valuable individuals of equal importance, the firm lives and breathes the values it speaks. In so doing, it also increases its likelihood of success in a changing world.

2. Attracting Lawyers

If success requires a mountain to climb, it also requires people particularly eager to climb that mountain. It is important not to paper over what may be the biggest hurdle to making this model of firm a reality—its lawyers must be willing to make less money. As discussed below,[325] this firm will generate enough revenue to bridge the gap between public interest salaries and the exorbitant salaries of AmLaw 100 firms, but each lawyer's income will not sustain the affluence many have come to expect as a right of entering private practice.

Reduced salary presents a problem because the hard truth is that, for most people, "money matters most."[326] The Corporate Leadership Council study found that compensation is most important in terms of the employee's perception of "external equity,"[327] that is, in terms of how his compensation compares to the market rate. For lawyers in particular, this is a major preoccupation.[328] The problem becomes,

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322. Byrne, *supra* note 202, at 90.

323. Johnson, *supra* note 298, at 10.

324. Byrne, supra note 202, at 90.

325. *See infra* notes 385-399 and accompanying text.

326. *See How Much is Enough?*, *supra* note 237, at 114 (discussing the results of a survey of over 1,000 college educated, employed adults which found that for the majority of them, money was "the most powerful factor in their success, in their satisfaction, and in their ability to determine the structure and substance of their lives.").

327. *See The Compelling Offer*, *supra* note 314, at 128.

328. *See* Rhode, *supra* note 9, at 310 (noting that in the world of high profile law firms, "wealth becomes critical to self-esteem, and relative salaries become ways of 'keeping score'"); Schiltz, *supra* note 1, at 906 ("Money is what tells them if they're more successful than the lawyer in the next office—or in the next office building—or in the next town.").

"[i]f lawyers' need for achievement is primarily measured or expressed through how much money they make, it will be very difficult to convince attorneys to make less money."[329]

Despite this problem, there is hope. First, lawyers are becoming increasingly aware of the downside of enormous salaries.[330] Others are catching on to the simple truth that "[a]bove the poverty line, the cliché is correct; money doesn't buy happiness."[331] While a great number of lawyers are actually not unhappy,[332] the current attrition rates indicate that a significant number are, and they are leaving their jobs despite the money.[333] Even if you accept conservative estimates placing dissatisfaction rates at an average of fifteen percent, "[o]n a national level, that would mean more than 100,000 highly trained complainers."[334] The 50/50 firm can attract these lawyers by branding itself as a place that does not offer "external equity" in terms of pay, but compensates by offering satisfying employment for those who realize the importance of other factors.[335] It differentiates itself from "talent competitors by strengthening [its] employment offer in areas most in line with company culture and strategy."[336] Many lawyers unhappy with their big firm jobs are simply "on the wrong bus;" the 50/50 will attract them by branding itself as the right bus.

Lawyers who do not find the specialization of big firm work interesting or challenging are people who will likely find value alignment, and consequently satisfaction, at a 50/50 firm. As Patrick Schiltz describes:

> If your idea of challenging work is having the time to research a complicated issue of securities law, then you will find more interesting work in a big firm. But if your idea of challenging work is helping a client get divorced without losing her children or putting a diabolically clever criminal behind bars or helping a client realize

329. Daicoff, *supra* note 25, at 567-68.

330. *See* Hall, *supra* note 122 (reporting on a survey of mid-level associates found that "[o]verall, associates would have preferred their salaries not to have increased so dramatically this year"); Work & Family Newsbrief, *Law Firm Employees Less Satisfied Than Others with Work-life Balance*, Oct. 2000, at 3 ("Twice as many legal employees as others (38% vs. 19%) said they'd rather have a 10% reduction in work hours than a 10% raise in pay.").

331. Rhode, *supra* note 9, at 310.

332. *See* Michael D. Goldhaber, *Is the Promised Land Heav'n or Hell?*, Nat'l L.J., July 5, 1999, at A17.

333. *See supra* notes 126-135 and accompanying text.

334. Goldhaber, *supra* note 332.

335. *See The Compelling Offer*, *supra* note 314, at 123 ("We are one of the lower-paying companies in our industry. We know it, our employees know it, everyone knows it. People work here because it's a fun environment—that's our brand." (quoting the Sr. V.P., Human Resources, Redwood Falls Company)).

336. *Id.* at 128.

> her dream of opening a small business, then you are likely to be bored in a big firm.[337]

The 50/50 firm, however, is not simply a public interest firm begrudgingly doing some corporate work to pay the bills. A practice balancing the two is for the type of lawyer whose preferences and strengths favor breadth over depth.[338]

While the nature of the work is an important draw, the organization and policies of the firm will address many of the other grievances the unhappy lawyer voices. Absent the tournament for partnership and the pressures to overbill, the profession's traditional commitment to mentoring, respect, and collegiality will be able to again flourish. Young attorneys are eager for mentors, for "a seasoned lawyer to take an interest in their work and lives."[339] At the other end of the spectrum, veteran attorneys should not have to maintain high productivity to keep their heads held high.[340]

In attracting lawyers with similar values and refusing to pit them against one another, a firm can reap the benefits of people coming together in a supportive environment. A 50/50 firm is a place where political fraternity can flourish. Kronman describes the political fraternity of an organization as analogous to the personal integrity of an individual.[341] The latter holds the soul together, through difficulties and conflicts; similarly, political fraternity, "[b]y establishing bonds of fellow-feeling among its members—bonds based upon their willingness to sympathize with each other's interests and concerns," can hold an organization together.[342] Collegiality and mentoring are the natural results of coming together in such a fashion. The problem is that in today's large firms, absent the "spirit of sympathetic fellow-feeling," you are left with a "regime of toleration . . . sustained only by self-interest, by the belief that tolerance of others serves one's own advantage."[343] Cultivating this political fraternity also benefits clients, for it results in the socialization of professionalism values within the firm—values that emphasize the best interest of the client.[344]

Fostering cohesion comports with a commitment to flexible work arrangements, which would be a central policy of the firm. Today, "[l]aw firms are increasingly under pressure to find better ways to support their attorneys' need for balance."[345] By respecting the priorities of every individual, the firm strengthens the ties binding

337. Schiltz, *supra* note 1, at 929.
338. *Id.* at 929-30.
339. Cutter, *supra* note 109; *see also supra* notes 111-112.
340. *See supra* notes 84-90 and accompanying text.
341. Kronman, *supra* note 39, at 95.
342. *Id.* at 96.
343. *Id.*
344. *See* Stempel, *supra* note 56, at 76 (noting that "prevalence of pro-client values in a group probably gives rise to norms protecting the interests of clients").
345. Susan G. Manch, *The Quest for Balance*, Legal Times, Feb. 19, 2001, at 38.

each lawyer to it.[346] A firm's openness to flex-time,[347] part-time and job sharing[348] is an important factor in evaluating whether that firm is a place to stay. However, simply offering these options is not enough. Currently, 93% of law firms offer part-time employment options, but only 2.6% of attorneys take advantage of this option[349] because lawyers are expected to work so many hours that even part-time requires at least a forty hour work week.[350] Again, law firms could learn a thing or two from other professions. Ernst & Young, the accounting firm giant, attacked the problem of attrition and dissatisfaction with "a multifaceted work-family initiative that included compressed workweeks, reduced workweeks or workloads, periodic schedule reductions.... They have also experimented with innovative case-staffing strategies and made significant use of telecommuting."[351] By "[r]estructuring staffing patterns, adjusting attitudes, and creating new paths to professional growth,"[352] the 50/50 firm will be an ally to the many lawyers struggling to find that ever elusive balance that is the key to personal and professional fulfillment.

This firm will succeed by staffing itself with talented, committed lawyers of all ages. It will attract young lawyers—the Xers and Nexters to follow—with challenging work, responsibility and its commitment to a higher purpose. It will attract "mid-career" lawyers—male[353] and female[354]—who want a job that allows them to have a family and a life. Older lawyers, many perhaps former big firm partners, would be attracted to the opportunity to give back—both to younger lawyers and the public.[355] They would be an extremely important resource, particularly while the firm is getting started. As Marc Galanter points out, the demise of tenure has resulted in an "abundance of experienced but underemployed older lawyers."[356] Most of these lawyers have already achieved their financial goals and are now at a point where meaning and purpose are prime concerns.[357]

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346. *See* The Compelling Offer, *supra* note 314, at 128.

347. Flex-time is where "[a]n attorney is able to choose the hours during which he or she satisfies a full-time workload." Caroline V. Clarke, *Getting Flexible About Work Schedules*, Am. Law., Apr. 1991, at 34, 34.

348. Job sharing is where "[t]wo part-time attorneys share one full-time position." *Id.*

349. Manch, *supra* note 345.

350. *Id.* (noting "that a part-time schedule would be 40 to 48 hours each week").

351. *Id.*

352. *Id.*

353. *See supra* note 189.

354. *See* Keenan, *supra* note 118 (noting that a "common thread" in women's decisions to leave a firm is quality of life, "whether they want to find the time to become a mother, seek a mate or open a business").

355. *See* Nader & Smith, *supra* note 4, at xxvii (quoting a partner at O'Melveny & Myers who stated that a lot of "veteran corporate attorneys are looking back on their careers and experiencing 'a feeling of emptiness'").

356. Galanter, *supra* note 1, at 1104.

357. *Id.* at 1107-08.

Racial, as well as generational, diversity is important.[358] This firm would attract sought after minorities. By respecting individuals and their priorities, it is a place that will support, and consequently, attract a diverse workforce. This, in turn, becomes a "self-reinforcing cycle, in which good minority job candidates join the company because they see minority workers doing well there."[359]

Of course, the condition precedent to attracting lawyers is getting their attention. How can this firm compete against the aggressive and lavish recruitment of big firms? The key is to "follow the lead of today's smartest growing companies: skip the hype and behave in ways that let your convictions do the talking."[360] Fancy lunches, receptions, CD-Roms, and tote bags are no match for the "brand equity"[361] that comes from strong shared values. As this firm is already geared to those lawyers looking for an alternative, grabbing the attention of lawyers requires following the practices of companies like Apple Computer, Starbucks Coffee, and Ben & Jerry's; these companies "don't have to rely on expensive self-praise to position their image. They *express their character*, and, in so doing, find that others are praising them."[362] Like many law students, I had to choose from a long list of law firms, the select few I wanted to request interviews with during my school's on-campus interview process. Like many, I had no idea how to distinguish one from the other. My only real aid, other then word of mouth, was NALP's National Directory of Legal Employers,[363] and the only information I really paid attention to was the average annual associate hours worked and the firm's pro bono policy. Through reasonable hours and a unparalleled pro bono commitment, the 50/50 firm expresses its character, and its character will attract praise.

The best young lawyers are, in large part, attracted to big firms because of prestige. In order to attract the best to the 50/50 firm, it is essential for this alternative firm to maintain prestige while distancing itself from money. As Patrick Schiltz argues, "the optimal big firm is a firm with high prestige and low profits per partner."[364] Of course, prestige is earned, not created. The best way to earn it is to build the brand equity discussed above—to let the firm's convictions do the talking. Prestige, however, will not be cultivated towards the end of allowing the firm to draw all its lawyers from Harvard and Yale. Bringing on the right people means developing the right "talent

358. *See supra* Part II.B.4.
359. Colvin, *supra* note 232, at 56.
360. Peter Laundy, *Image Trouble*, Inc., Sept. 1993, at 80, 80.
361. *See* Haserot, *supra* note 20.
362. Laundy, *supra* note 360.
363. National Association for Law Placement, National Directory of Legal Employers (2000).
364. *See* Schiltz, *supra* note 1, at 943.

profiles" for the organization.[365] These talent profiles will reflect the fact that "there are many successful lawyers who may not have attended the top schools, but who possess the ability to manage people and clients well."[366]

3. Attracting Clients

Establishing brand equity is as important in attracting clients as it is lawyers. The firm's commitment to the public good is essential to that equity. Jonathan Tisch, CEO of Loews Hotels, points out that social responsibility is good for business because "you'll differentiate yourself from the competition: A client might choose you over the company down the road, because she appreciates the fact that you are a good neighbor."[367] Give Something Back, a privately held company that sells office supplies, competes with companies such as Office Depot even though it donates almost 40% of its pre-tax profits to charity each year.[368] Its charitable efforts attract clients.[369] Despite such giving, the company's revenue grew by 26% in 1999.[370] Corporate CEOs recognize the importance of social responsibility and many are committed to living up to that responsibility.[371] Choosing similarly minded counsel is a powerful way to affirm such a commitment.

Ultimately, however, a company seeking representation needs to be confident that it is getting the best representation possible. The 50/50 firm's "enlightened" billing practices[372] will give many chief operating officers confidence that they are not being needlessly overcharged. True diversity will also help attract clients. One CEO, who met with managers from one of his company's five largest customers, found that there was not "a single white male on the other side of the table," and that "[i]t was enormously helpful . . . to carry his company's minority-friendly record into that room."[373]

The biggest hurdle for the firm, however, concerns positioning itself in the current legal market. Many corporations are looking for a firm

365. Maryann G. Hedaa & Charles G. Douglas, *Finding Right Talent for Firm Takes Strategy*, N.Y. L.J., Apr. 10, 2000, at S5 (describing talent profiles as the "essential intellectual responsibilities" and "interpersonal skills necessary for success").

366. *Id.*

367. *Best Way*, *supra* note 251, at 116.

368. Nathan Vardi, *The Profit Givers*, Forbes, Nov. 13, 2000, at 133, 133.

369. *Id.* (noting that "[i]t's not the price or selection that tips [the] buying decision—they're about the same—but the chance to do good").

370. *Id.*

371. *See* Barret, *supra* note 266, at 30 (noting that 82% of 316 Fortune 500 CEO's serve on nonprofit boards, and that the majority stated they did this work "because of their belief in the mission of the nonprofit and their sense of responsibility to the community").

372. *See supra* notes 317-321 and accompanying text.

373. *See* Colvin, *supra* note 232, at 56.

to solve highly specialized and discrete problems. How can a firm emphasizing breadth over depth compete? When Microsoft needs a firm to defend it in antitrust litigation, it is not going to look to the type of firm envisioned here; it is going to look to the Davis Polk's of the world, and rightfully so. However, much of the legal guidance that many firms need is not best served by specialists. Arguably, Anthony Kronman is right in pointing out that "what most clients, including corporate clients, want from their lawyers is not just a string of discrete judgments about various aspects of their problem, but deliberative advice as to what they should do, all things considered."[374] Many business leaders already acknowledge that substantial involvement in public service results in lawyers better able to give such deliberative advice.[375] Especially considering that the "boundaries of what we traditionally viewed as the corporate and social domains are blurring,"[376] many corporations will be in serious need of counseling on how to manage that interaction. A firm that is itself consciously blurring those domains will be an invaluable asset.

Building a new client base in a competitive market is not an easy task[377] and ultimately there is no substitute for the importance of personal relationships in bringing clients on board. Thus, the senior lawyers who have left, or are disgruntled with their big firms,[378] would be essential to bringing in those first clients.

4. Making Money

A detailed business plan is beyond the scope of this Note. The intention here is to outline the basic principles that will enable this firm to pay its lawyers the money they need to live comfortably. What figure allows for a "comfortable" lifestyle differs from individual to individual, and community to community. As described previously, each individual's monetary compensation is somewhat variable depending on their experience and status (i.e. full-time, flextime, etc.).[379] However, as one primary purpose is to bridge the gap between public interest and large firm compensation, base salaries for beginning, full-time attorneys in a high-cost-of-living area like New York City should begin at about $65,000; this figure is a little bit less than double what a starting attorney would currently make at legal aid,[380] and a bit more than half what they would currently make at a

374. Kronman, *supra* note 39, at 289.
375. *See* Hoagland, *supra* note 153, at 116-119.
376. Borrus, *supra* note 249, at 187.
377. *See* Steven A. Meyerowitz, *Keeping Clients by Keeping Them Happy*, N.Y. L.J., June 24, 1997, at 5 ("[I]t is much easier to sell to existing clients than to develop new clients.").
378. *See supra* notes 355-357 and accompanying text.
379. *See supra* notes 314-316 and accompanying text.
380. *See supra* note 28.

top-notch firm.[381] In big cities like New York, $65,000 is still not a lot of money. As Dinesh D'Souza points out, "[s]ome might say that by today's standards [even] $75,000 is not much. But that's only because our standards have become so extravagant."[382] Individuals who have perspective and are willing to keep their affluence in check can live quite comfortably at this compensation level.[383] At the high end, base salaries should be capped at around $150,000 for the firm's most committed and most experienced lawyers; this figure puts a lawyer in the top five percent of wage earners in the country.[384] Interestingly, one study determined that satisfaction with salary level stalls at about $77,000, after which point increasing salary "does little to *increase* satisfaction with external equity."[385]

Each lawyer will have an individualized compensation agreement. In addition to the base salary, there would be individual bonuses for those lawyers who exceeded their individual goals for the year. Goals would not be based simply on hours billed, but would target the expected hours to be worked and the expected revenue to be generated by each lawyer. Those who failed to meet their goals would not be entitled to a bonus, thus ensuring accountability. As well as individualized bonuses, there will also be profit sharing. If the firm is running well, all the lawyers would ideally share equally in a percentage of the firm's profits. Of course, the firm is based on the premise that profits remain minimal. In a firm without leveraging and with goals other than money, which spreads any monetary awards amongst all the lawyers, and which slashes revenue in half, no one is taking home exorbitant sums.

To put this discussion in more concrete terms, consider Jim Fifty-Fifty, a hypothetical third-year lawyer at this new model firm, who is being paid $65,000. He bills out at $150 per hour.[386] Based on a goal of a 1800 billable hour year, half of those hours are fee-earning. So Jim is generating approximately $135,000 in revenue for the firm (900 hours x $150 = $135,000). Similarly, Jane Veteran, a seasoned lawyer with fifteen years experience, is being paid $150,000 and billing at

381. *See supra* note 26.

382. Dinesh D'Souza, *A Century of Wealth*, Fortune, Oct. 11, 1999, at 50, 58.

383. Perspective simply means recognizing that "Americans now enjoy a standard of affluence that, in the words of novelist Tom Wolfe, would 'make the Sun King blink.'" *Id.* at 52.

384. *Id.* at 55 ("In big cities, full of high-earning peers... your earnings should place you in the top 5% of the general population to be eligible for upper-middle class status. That would mean you'd have to make at least $150,000 to qualify.").

385. The Compelling Offer, *supra* note 314, at 85.

386. *See The 2000 Survey of Law Firm Economics Executive Summary: Standard Hourly Billing Rates*, Altman Weil, Inc., *available at* http://www.altmanweil.com (indicating $150 as the national hourly median rate for an associate lawyer). While stepping back from a billable hour model is central to this firm, this model is still useful as a gage of money generated from hours worked.

$335;[387] she is generating approximately $300,000 for the 50/50 firm (900 hours x $335= $301,500). Both are earning for the firm a little over double what they are making for themselves. According to the "rule of thirds" which is a guideline for associate production in big firms, "associate[] billing should be equal to or greater than three times his or her total compensation."[388] One third goes to paying the associate's salary, one third goes to the overhead necessary to keep the business running, and the final third represents profits.[389] Obviously, in order to remain viable working under a "rule of halves," the key is to reduce overhead expenses and, as mentioned above, learn to work with lower profits.

The bedrock principle is that this firm will need to attract the highly talented lawyers necessary to justify charging its corporate clients competitive rates.[390] Having already discussed how the 50/50 firm will attract talent,[391] another consideration is how to make the income, which would be primarily generated from the corporate side of the firm's work,[392] support all of the firm's endeavors.

The 50/50 firm addresses and alleviates the numerous causes of high attrition. The firm's existence is premised on the fact that this firm is a place where its employees will want to stay. Consequently, the firm will save the tremendous amounts of money, estimated at around $200,000 per lost lawyer, that other firms spend on recruiting and training.[393] Jeffery Pfeffer incisively exposes the economically absurd approach taken by most firms to the problem of attrition. Commenting on the typical law firm response of increased recruiting to deal with attrition rates reaching thirty percent, he asks, "[w]hat kind of doctor would you be if your patient was bleeding faster and

387. *See id.* (listing $335 as the national hourly median billing rate for an equity partner/shareholder in the ninth decile).

388. Joel A. Rose, *How to Identify Barriers to Profitability*, N.Y. L.J., Feb. 2, 1999, at 5.

389. *Id.*

390. *See* Jonathan D. Glater, *Higher Pay Found to Erode Law Firms' Profit Growth*, N.Y. Times, Dec. 12, 2000, at C4 ("Top-tier firms do not want to lose the critical, talented people they need to keep billing clients hundreds of dollars an hour for legal services.").

391. *See supra* Part III.B.2.

392. It is important to note that not all pro bono work is done for free. Model Rule 6.1 defines pro bono as "delivery of legal services at no fee or substantially reduced fee." Model Rules of Prof'l Conduct R. 6.1 (1993). Also, under various fee-shifting statutes, pro bono attorneys can occasionally recover substantial fees. *See* Heather MacDonald, *What Good is Pro Bono?*, City J., Oct. 10, 2000, *available at* http://www.city-journal.org (noting that firms doing pro bono "sometimes rake in thousands, even millions, of dollars in fees, usually from the government").

393. Davis, *supra* note 126; *see also* Branch, *supra* note 210, at 247 (estimating that "when all factors are considered—not only the headhunter's fee but also the defector's lost leads and contacts, the new employee's depressed productivity while he's learning, and the time co-workers spend guiding him—replacement costs can be as much as 150% of the departing person's salary"); Cutter, *supra* note 109 (estimating the loss at "twice the departing associate's annual salary").

faster, and your only response was to increase the speed of the transfusion?"[394] A firm that actually stops the bleeding will save a great deal of money, and will also operate much more efficiently.

Another practical way to reduce costs is substantially smaller office space.[395] Through proper utilization of technology[396] and telecommuting, a law firm can maintain the office as an important place "to exchange ideas and information—to connect in person,"[397] while radically changing its physical dimensions in recognition of the fact that today's lawyers "conduct much of their work, both within and outside their offices, by telephone and e-mail."[398] A structure where different projects have different teams is a structure in which employees need to be able to easily come together and at the same time work independently. Intelligent designs (that are much more space-efficient than the corner office set-ups of most firms) have been developed which "create boundaries without building walls."[399] The result is a nimbler organization saving a lot of money on space.

Of course, one way to stay nimble is to stay small. The model discussed here, however, cannot be a "boutique" firm. To reinvigorate the professional obligations of lawyers, it is necessary to find a way to meet those obligations in a large firm setting. Today, "[t]he big law firms provide the litmus test for the legal community."[400] Moreover, "[t]he largest corporate law firms have a depth of resources that perhaps only government can match. This permits [them] to accomplish what small firms or individual lawyers could never hope to."[401] To take on the ambitious task of serving both corporate and pro bono clients competently, a depth of resources is essential.

America is a nation of tremendous resources and we live in an era of unprecedented affluence. The legal profession is responsible for ensuring the public's access to resources and does not exist to increase its own affluence. A central purpose of the legal profession, a purpose

394. Webber, *supra* note 203, at 161.

395. John Maher, *Real Estate Update*, N.Y. L.J., Mar. 7, 2000, at 5 ("Law firm profits are highly correlated to rents, primarily because law firms use a high per square foot per employee ratio.").

396. Technology is more than just information management. Most firms have technology relating to the latter. The next step is knowledge management, which is more than "[s]imply throwing money at technology in order to deliver information in greater quantities, or in different formats and faster ways." *See* Snyder & Moss, *supra* note 300. Successful knowledge management through technology allows "[k]nowledge and learning [to] flow in a continuous loop to and from a variety of sources in order to deliver value to lawyers and their clients." *Id.*

397. Chuck Salter, *Designed to Work*, Fast Company, Apr. 2000, at 255, 260.

398. Nicole Belson Goluboff, *Telecommuting: An Alternative Work Arrangement That Really Works*, Compleat Law., Spring 1996, Vol. 13, No. 2.

399. *See* Salter, *supra* note 397, at 260 (describing innovative designs that give individuals a space of their own without cordoning them off in offices).

400. *See* Winter, *supra* note 16.

401. *See* Nader & Smith, *supra* note 4, at 330.

which motivated many to become lawyers, is promoting the public good through equality before the law; law firms should therefore exist which are committed to this end. In this Section I have argued that such a firm can exist. It can only exist, however, if enough lawyers recognize that their own quest for affluence can undermine efforts to create equality before the law. The gap between rich and poor is ever widening.[402] Working towards the end of becoming a million dollar partner at a firm adds to the "effect of driving a wedge between the interests of politically and economically powerful elites and the disfranchised groups at the bottom of the wealth/income scale."[403] By de-prioritizing (without completely abandoning) their own quest for wealth, a lawyer truly works "in the spirit of public service."[404]

CONCLUSION—THE TIME IS NOW

Necessity is the mother of invention. The profession's failure to present viable alternatives to lawyers for whom the public good is a priority necessitates a new model. There is no question that many lawyers are looking for such a model.[405] If lawyers, particularly young lawyers, demand it, firms will have to listen.[406] This Note presents one option, but true transformation of the profession and its continued viability in the future requires many options for private practitioners. Making these options a reality is not an impossible task. The following commentary on the current world of work emphasizes the opportunities before us:

> I love to read *Dilbert* and usually choke with laughter. But I have a problem with the subtext: My company stinks, my boss stinks, my job stinks. If that's your take—at this moment of monumental change and gargantuan opportunity—then I can only feel sad for you. We get to reinvent the world.[407]

These opportunities are not just luxuries of a boom economy. While recessions are inevitable, the shift to a knowledge-based economy is permanent, and the importance of talent is enduring.

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402. *See* White, *supra* note 176, at 2574.

403. *Id.*

404. *See supra* note 35 and accompanying text.

405. *See* Chazin, *supra* note 6 ("I think many people, including prospective private firm lawyers, would be thrilled to see one large firm be courageous and decide not to follow the herd.").

406. *See* Wilkins, *supra* note 46, at 474 ("New entrants to the profession can shape professional practices by voting with their feet when deciding where to work and, even more importantly, when to leave.").

407. Peters, *supra* note 230, at 174. *See also* Mui, supra note 192 ("Despite a drop in general consumer confidence, unemployment remains at a three-decade low, and last week the Congressional Budget Office predicted 10 more years of economic growth.").

The ever-increasing restrictions on, and ever decreasing funding of legal services also compels such a model.[408] Privately funded public services are a powerful,[409] and increasingly essential, resource.

While central to the argument of this Note is a call for a return to professional values that require a subordination of self-interest, I conclude in the same way I began, by emphasizing my own self-interest in creating a satisfactory option for law students who are disheartened by the current choices in employment the legal profession offers. I am eager to reinvent and I am confident that many lawyers' self-interest in creating "the possibility of a legal profession that is once again independent, willing to sacrifice money for pride, eager to reassert its role as the guarantor of rights,"[410] makes the model outlined here achievable.

408. *Cf.* Borrus, *supra* note 249, at 187, 189 (noting that in the business world, the public is looking to corporations to pick up the slack resulting from government downsizing and budget cuts).

409. *See* Cheryl Dahle, *Social Justice: Pioneer Human Services*, Fast Company, Apr. 2000, at 172, 177 (quoting the CEO of Pioneer, a "profitable" non-profit that gets jobs for ex-convicts, who states: "Our programs are funded by our own resources, which gives us the freedom to base those programs on our clients' needs, not on the availability of funds").

410. Linowitz, *supra* note 44, at 245.