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IS THERE A SOLUTION TO THE PROBLEM OF LAWYER STRESS? THE LAW SCHOOL PERSPECTIVE

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Terry J. Coogan, a former partner at a large law firm in Chicago where he averaged eighty hours a week, said he felt like Sisyphus.³ "There wasn't enough I could do to stay in place," Coogan said.⁴ "I was looking for an opportunity to get out. I got pushed out, but it turned out to be a good thing," Coogan recalls.⁵ Presently, as in-house counsel for a small, closely held company, Coogan averages just forty-five hours a week and says "a prayer of thanksgiving every day that I don't have to deal with that pressure."⁶

The stress and pressure that Mr. Coogan felt apparently are not unusual. In their article, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, Connie J.A. Beck, Bruce D. Sales, and G. Andrew H. Benjamin conclude that "an alarming percentage of newly practicing lawyers are reporting a variety of significant psychological distress symptoms well beyond that expected in a normal population."⁷ In layman's terms, an ever-increasing number of attorneys are experiencing symptoms of lawyer burnout due to too much stress. The article also indicates that for many lawyers these psychological distress levels remain high throughout their careers.⁸ Noting that at least one researcher found lawyers to regularly use alcohol as a coping mechanism to reduce stress,⁹ the authors also looked at the lifetime likelihood of alcohol problems in their own sample study. They found

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³Nancy D. Holt, *Are Longer Hours Here to Stay? Quality Time Losing Out*, 79 A.B.A.J. 62, 64 (1993). Sisyphus, a mythological King of Corinth, was condemned in Hades to roll a stone up a steep hill only to have it roll back down every time he stopped to rest.

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 45 (1996).

⁸*Id.* at 46-47.

⁹*Id.* at 45, (citing Dennis W. Kozich, *Stress is Taking its Toll on Wisconsin Attorneys*, WISCONSIN LAWYER, Apr. 1989, at 12).

that approximately seventy percent of the lawyers sampled were likely to develop alcohol problems over their lifetime.¹⁰

The purpose of this commentary on the Beck, Sales, and Benjamin study is to focus on a significant subset of the legal community—the private law firm practitioners—and offer a few observations and suggestions. While stress is certainly a pervasive problem within the legal profession, it may be most acute in the law firm setting because of the emphasis on maximizing billable hours or increasing cash flow and file closings in firms that depend largely on contingency fees. Although a multi-pronged approach to dealing with this problem is suggested, our attention is devoted ultimately to the legal academy, where one author presently resides as a faculty member/administrator and from which the other graduated shortly after completing work on this article.

The Beck, Sales, and Benjamin article and its findings, while certainly alarming, may not be surprising to many lawyers. In 1991, for example, the Young Lawyers Division of the American Bar Association released the results of a study regarding job satisfaction in the legal profession.¹¹ The report found that since 1984 there has been a significant increase in the extent of dissatisfaction felt by lawyers at all levels and in all types of practice. The report also noted significant increases in stress-related personal and professional dysfunction among lawyers.

In recent years, the commentary on lawyer stress has increased considerably. A consistent theme, particularly well articulated in an ABA conference report, is that more and more law firms are encouraging lawyers to sacrifice, rather than dedicate, themselves to their firm by working ever-increasing billable hours.¹² One commentator has noted that almost 75% of all attorneys log at least 1,800 billable hours a year, with the norm quickly approaching 2,000 hours.¹³ In some firms the quota has even reached the level of 2,200 billable hours a year. That is seven hours a day, six days a week, fifty-two weeks a year.¹⁴ However, as one associate of a Tampa law firm explained, "[y]ou can't bill 7.5 hours on a regular day."¹⁵ "You have to take into account taking a break, eating lunch and talking to the person down the hall, taking care of personal business

¹⁰*Id.* at 51.

¹¹AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION, *THE STATE OF THE LEGAL PROFESSION* (1990). An earlier version of the study was published in August, 1990. See AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION, *THE STATE OF THE LEGAL PROFESSION: A DISCUSSION OF THE EXTENT, CAUSES AND IMPACT OF LAWYER DISSATISFACTION* (1990).

¹²See generally American Bar Association, *The Report of at The Breaking Point, A National Conference on the Emerging Crisis in the Quality of Lawyers' Health and Lives—Its Impact on Law Firms and Client Services* (A.B.A. 1991), at 3-4 [hereinafter *Breaking Point*].

¹³James E. Brill, *The Secret of Success: Need Balanced Lives Not Necessarily More Billable Hours*, 78 A.B.A.J. 100 (1992).

¹⁴*Id.*

¹⁵Holt, *supra* note 3, at 64.

at the firm, running errands, [attending] firm meetings and explaining something to your secretary."¹⁶

Moreover, meeting the minimum number of billable hours may not always be enough. According to partner Hilarie Bass of a large Miami law firm, "[a]s advancement toward partnership becomes more competitive, people feel that doing the bare minimum is not sufficient to continued success. And the reality is, that's true."¹⁷

While available data indicates the single biggest complaint among attorneys is increasingly long workdays with decreasing time for personal and family life¹⁸—apparently the result of the increasing emphasis on billable hours—other pressures also contribute to increased lawyer dissatisfaction and stress. In 1991 the ABA published a report that identified a number of factors which lie at the root of quality of life issues in the legal profession. These factors include (1) encouraging lawyers to sacrifice rather than dedicate themselves to their firm by working ever-increasing billable hours; (2) failure to share information regarding firm management with all lawyers; (3) failure to communicate to all lawyers practice and time expectations and to measure performance against those expectations; (4) failure to provide adequate training, mentoring, and feedback; (5) compensating lawyers solely on the basis of hours worked rather than on the value of service to clients and contribution to the firm; (6) failure to provide equal opportunities for women and minorities and to provide an environment free of actions that demean, embarrass, or harass them; (7) failure to delegate client work properly; and (8) failure to encourage lawyers to communicate openly their professional as well as personal needs and problems, and to develop collegiality, mutual support, and institutional loyalty.¹⁹

What is the result of all this stress? As previously noted in the Beck, Sales, and Benjamin study, more and more attorneys are turning to alcohol as a "stress reliever."²⁰ Also, a higher percentage of lawyers are dissatisfied with their personal relationships than the "normal population."²¹ A poll conducted for

¹⁶*Id.*

¹⁷*Id.* at 65.

¹⁸*Breaking Point*, *supra* note 12.

¹⁹*Id.* at 3-8 and the following discussion. While actions such as improving communication within law firms and providing better training for firm's younger attorneys may help reduce lawyer stress, at least one commentator has explained that this alone is not enough. "You can't really address the issue of quality of life [or lawyer stress] without addressing the issue of hours," said Ronald L. Hirsch, a law management consultant in Chicago who until recently served as a director of the ABA's Young Lawyers Division. Holt, *supra* note 3, at 64. "You can make the firm a better place to work. But once you go beyond a certain number of hours, over a period of years, with no time for yourself or your family, your quality of life is still bad." *Id.*

²⁰Beck, *supra* note 7, at 44-45.

²¹*Id.* at 48.

the New York Law Journal by a Manhattan polling firm found that of the lawyers polled who had been divorced, fifty-six percent asserted that their careers in the law had contributed to the breakup of their marriages.²² Of great concern is the fact that an increasing number of attorneys are contemplating leaving the profession to escape the stress and overall dissatisfaction that they are experiencing.

A 1990 New Jersey survey of attorneys revealed that twenty-three percent plan to leave their practice behind before they retire. In Maryland, nearly one-third of the lawyers surveyed by their state bar association said they were not sure whether they wanted to continue practicing law; and in North Carolina twenty-three percent of the lawyers who responded to a 1990 survey told their bar association they would not become lawyers again.²³

What then can be done to combat the high stress levels which are so prevalent among many of today's lawyers? Many commentators, M.D.s, psychotherapists and the like, have suggested such things as relaxation exercises, taking ten minutes a day to walk outside and breathe fresh air, scheduling lunch with a friend once every other week, cutting down on caffeine and/or tobacco consumption and making physical exercise part of the weekly regime. Although all of these suggestions can help relieve stress levels to a degree, there is only so much that can be done absent a conscious effort on the part of those who can make a difference—the law firm partners themselves. Until those persons who are in a position to institute change do so, it does not appear that much can be done to alleviate this situation.

If we are to relieve some of the stress in law firm attorneys' lives, there needs to be a basic change in their work environment. Such a change would require a pledge by law firms to put as much emphasis on ensuring that their lawyers are able to lead balanced lives as they have in maximizing billable hours and cash flow. This pledge, however, cannot be an empty vow. It would require that law firms take concrete steps to encourage their attorneys to have full and rich personal lives and to take time away from the office.

Of course, a natural consequence of relaxing the emphasis on billable hours would be a reduction in income of both law firm associates and partners and a recognition that at some point quality of life needs to be of equal or greater concern than the desire to make more money. For this reason, change is not likely to come easy if at all.²⁴

²²Edward A. Adams, *Legal Career Exacts Steep Personal Price; 'Law Journal' Poll: Attorney Accept Long Hours, Absence from Families*, N.Y.L.J., Feb. 7, 1994, at 1, 5.

²³Holt, *supra* note 3, at 62; *But see* Adams, *supra* note 22, at 1, reporting that [a]lthough the lawyers questioned reported working huge numbers of hours, attributed their divorces to their careers, and recognized their families' annoyance with their consuming work lives, almost two-thirds said they would become a lawyer again if given the choice. Further, eighty-two percent reported they were "very" or "somewhat" satisfied with their professional lives

²⁴Holt, *supra* note 3, at 66, provides insight to this reality by quoting Donald Daughton, a partner at a small Phoenix law firm: "I'm not sure how many law firms

The largest obstacle to change lies in the culture of many firms which encourage and reward long hours by granting partnership to those who "sell their soul" to the firm. In the process these same firms weed out the weak who, while performing quality work and generally pleasing clients, are not able or willing to sacrifice themselves on the altar of "success." The result is a firm top-heavy with workaholics. Having been thus trained, these lawyers will likely "perpetuate the system as they inflict [their culture] on yet another generation of new lawyers."²⁵

An overabundance of stress can manifest itself physically in problems such as heart disease, migraines, and colitis.²⁶ If lawyers are made aware of the inevitable harmful effects of too much stress perhaps they will be more receptive to slowing down, even if this means making less money. Unfortunately, as one prominent Philadelphia cardiologist has said, "I know these workaholic types. The only thing to get them to slow down is something that scares the hell out of them. If they cough blood, or get chest pains, they'll take care of themselves."²⁷

If the cardiologist is right, and workaholic lawyers in prominent law firm positions generally refuse to ease up to protect their own health and that of their associates, perhaps these same persons would be willing to ease up for the health of their firms. Law firms do not want to lose people they value.²⁸ Moreover, firms do not like spending large sums of money on summer recruiting efforts, entry-level associate salaries and the years of training necessary to cultivate quality practitioners, only to have these same people leave before they begin to pull their economic weight.²⁹ Stress and discontent breed personal problems and can foster organizational problems.³⁰ When individuals are unhappy, and the morale in the office as a whole is low, effectiveness on all levels is impaired. "The causal link between high levels of stress and lowered performance is well documented," states Dr. Isaiah Zimmerman, a Washington D.C. psychologist who specializes in counseling lawyers and judges.³¹

are going to be willing to have reduced incomes so they can provide a place for young lawyers to practice and have a better quality of life."

²⁵Brill, *supra* note 13, at 100.

²⁶Joan Myerson Shrager, *The Bottom Line on Lawyer Stress*, 13 LEGAL ECON. 22 (1987).

²⁷*Id.*

²⁸Marjorie M. Shultz, *Young Lawyers' Dissatisfaction Contains a Lesson for Law Firms*, N.Y.L.J., Nov. 19, 1990, at 47.

²⁹*Id.*

³⁰*Id.*

³¹Christopher T. Borgeson & Elizabeth M. Link, *Stress Management: Minimizing the Risk of Malpractice—Is Stress Affecting Your Competency?*, 2(3) LEGAL MALPRAC. REP. 11, 12 (1991).

What may be most disturbing to the law firm elite is the possible relationship between high levels of stress and an increased risk of legal malpractice. While many modern law firms spend large sums of money on continuing legal education to maintain the highest caliber of legal representation, these same firms may be creating an atmosphere which actually increases the likelihood of professional negligence.³² It is reasonably safe to conclude that lawyers who have a poor response to stress, who fail to address the cause of their stress, will lower their level of performance and thus greatly increase the risk of committing error," argues Dr. Zimmerman.³³

What, if anything, can be done to change this aspect of the law firm culture? The enormity of this problem will require a multi-pronged approach to finding its solution. As various commentators have explained, little will be accomplished if it is left to the law firms. Other entities that should be concerned about the welfare of individual lawyers need to take affirmative steps that would have a positive impact on the law firm culture. In particular, those who are responsible for the education of lawyers and those responsible for the regulation of their behavior once admitted to practice are well-positioned to attempt to effect change.

The latter group, which includes state high courts, bar associations, and lawyer disciplinary authorities, could do much more to educate lawyers about the problem and offer proposed solutions. For example, in those states with mandatory continuing legal education, the supreme court (or bar association) could require that a certain number of hours be offered in courses relating to stress, stress related problems, and recommended solutions.

While the law schools may be in the best position to influence needed change, it may seem surprising that the legal academy has given so little attention to such an enormous problem in the legal profession. It becomes less surprising, however, when one considers how little attention law schools give to the current structure and operating realities of the legal profession itself.³⁴ As Professor Alex Johnson has stated: "Professors have failed to recognize that the profession with which we are associated has become less like a profession and more like a business . . . in which money is the only measure of success, and justice, fairness, and order rarely count."³⁵ In an insightful article focussing on the increasing dissatisfaction of recent law school graduates with the legal profession, Johnson argues for greater attention to the current operating realities of the legal profession in the law school curriculum: "By informing

³²*Id.*

³³*Id.*

³⁴See, e.g., Robert W. Gordon, *Introduction to Symposium on the Corporate Law Firm*, 37 STAN. L. REV. 271 (1985).

³⁵Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1240 (1991).

and educating students about the legal profession, law schools will produce not only better lawyers but a better, healthier profession."³⁶

Although some might argue that this is a significant leap of faith, Professor Johnson strikes a raw nerve in the legal academy when he exposes our lack of knowledge and attention to the legal profession. Law professors regularly hear from their law school classmates how much the profession has changed (for the worse), and from recent law school graduates how much they dislike the bottom-line orientation of their law firms. However, we tend to simply shrug our shoulders and go about our business of educating the next crop of law firm associates. The changes in the legal profession merely make us more content in the knowledge that our decision to forego the monetary benefits of legal practice and enter the more comfortable and satisfying world of teaching the law has been confirmed.

If the publication of the results of the Beck, Sales, and Benjamin study does little else, it should awaken the legal academy to its duty to better inform its students about the profession they are about to enter. Legal scholars recently have been producing excellent, insightful, and thoughtful studies of the legal profession and the changes it is undergoing.³⁷ Unfortunately, this scholarship and the more popular treatments of related problems such as lawyer stress (particularly those cited in this article) have not found their way into the classroom.

The legal academy must make a commitment to deal with this problem. Law professors need to design courses that deal with the current realities of legal practice. Law schools need to offer more mechanisms such as career day panels and CLE workshops that would not only expose law students to these problems but eventually turn the profession away from the destructive results of this new business ethos. Law schools must lead the way to recognition that the law is a profession, if not a calling, that requires attention to more than just the bottom line.

³⁶*Id.* at 1259.

³⁷See, e.g., MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991); MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994); JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1982); ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993); FRANCES K. ZEMANS & VICTOR G. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* (1981).

