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LAW: A PROFESSION, NOT A LIFE

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I recently walked past a student bulletin board at my law faculty and saw an Association of Trial Lawyers of America Law Student Membership Program poster with the following headline: "Trial lawyers don't just practice law. They live it."¹ The association — self-described as "the world's largest trial bar"² — elsewhere states that: "The art of advocacy demands your *total involvement and dedication*."³

Similar statements about law's all-encompassing demands surround us in law school and at the bar. A number of years ago, I was at a meeting of associates at a law firm in Toronto. Two senior lawyers called the meeting with a view to discussing career strategies and life at the bar. It was a brief, collegial meeting. A number of issues were discussed. However, the comment that stuck in my mind was the suggestion that life in the law becomes a lot easier if you allow the line between your professional and personal lives to fade away. There were a number of justifications for this advice given at the meeting. First, there simply will be less conflict in your personal life. Everyone at home will know what to expect if you

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1. ATLA, *Law Student Membership Program* (poster and brochure holder, undated).
2. ATLA, *Your Guide to ATLA, Organization, Member Services, and Programs: Background*, online at <<http://www.atla.org/info/guide.htm#Back>> (accessed August 8, 2002).
3. ATLA, *Invest in Your Future as a Trial Lawyer, Law Student Membership Program*, online at <<http://www.atla.org/members/lawstud/studbro.htm>> (accessed August 1, 2002) (emphasis added).

stop trying to keep some separation between the office and home. Second, clients will have a much easier time finding you if they have your home number or your number at the cottage or the hotel where you are staying on vacation. This, in turn, will lead to improved all-important client satisfaction results. Third, your commitment in terms of being a member of a firm appears stronger and more reliable, making you even more attractive as “partner material”. And finally (although this is not said out loud), you will as a result spend more time on the clock — and therefore on the docket — resulting in more money coming into your firm.

That law is a demanding and potentially all-consuming profession is not a new idea. It is, however, becoming an increasingly troubling idea. My reason for raising this issue is not to denigrate or trivialize law or the legal profession. Just because there might be a way to balance a career in law with a satisfying personal life does not need to imply such a trivialization or denigration. That perception is part of the problem. I have spent my adult life in law, first as a litigator in a large international commercial law firm and subsequently as a legal academic. In my experience, law provides wonderful opportunities to pursue professional aspirations in many directions and for many purposes. However, as advertisements and statements made by leading trial associations and senior lawyers suggest, a career in law currently requires lawyers to background (or eliminate) all aspects of their personal life in favor of a foregrounding of their professional responsibilities. In essence, a career in law has largely become a life in law.

Richard Wasserstrom, in his timeless article entitled “Lawyers as Professionals: Some Moral Issues”, identified the onerous demands of the legal profession, including ongoing tensions between lawyers’ professional and personal personas:⁴

[T]o become and to be a professional, such as a lawyer, is to incorporate within oneself ways of behaving and ways of thinking that shape the whole person. It is especially hard, if not impossible, because of the nature of the professions, for one’s professional way of thinking not to dominate one’s entire adult life . . . The nature of the professions — the lengthy educational preparation, the prestige and economic rewards, and the concomitant enhanced sense of self — makes the role of professional a difficult one to shed even in those obvious situations in which that role is neither required nor appropriate. In important

4. Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues* (1975), 5 *Human Rights* 1 at p. 15, reprinted in Andrew L. Kaufman, *Problems in Professional Responsibility*, 3rd ed. (Boston: Little, Brown, 1989), p. 2 at p. 14.

respects, one's professional role becomes and is one's dominant role, so that for many persons at least they become their professional being. This is at a minimum a heavy price to pay for the professions as we know them in our culture, and especially so for lawyers. Whether it is an inevitable price is, I think, an open question, largely because the problem has not begun to be fully perceived as such by the professionals in general, the legal profession in particular, or by the educational institutions that train professionals.

Clearly, it is time for this "problem" — our refusal to separate adequately our legal professional and personal selves, and lives — to be "fully perceived" and remedied by law schools, bar associations and the profession.

If you speak to the spouses of lawyers in their 60s, they invariably talk of their spouses' careers in terms of "we", that family holidays are typically planned around bar conferences, and that dinner plans are made and broken subject to client demands. But these ideas are not the monopoly of the older generation. Talk to most young lawyers and law students and more often than not you hear the same type of comments: "I'm studying hard so that I can get the grades to be at a good firm this summer"; "I can't plan anything this spring because I'll be studying like crazy for the bar exams"; "It's only a couple of more years until I'm up for partnership; after that, things will be less crazy. I promise."

The profile of law as all-consuming is troubling in itself. However, more sinister is the continuing effect that such a required profile has on demographics in the profession. For young, single people, living the law may be a viable choice. For others — married, coupled, two-income families, people with children, or others simply interested in a more balanced life — this may not be a choice or an option.

First, there is the issue of lifestyle. Almost all lawyers, whether or not they like their job, say that they would like their job better if they had a little more time out of the office. There is no doubt that almost all lawyers — and particularly young lawyers — are constantly facing the question of how to balance work with "life". As Phil Shuey has identified, "Many of the dissatisfaction problems associated with the practice of law can be attributed to a lack of consideration of quality of life issues."⁵

But the issue of law's all-consuming nature runs deeper than

5. Phil J. Shuey, "Finding a Life While Practicing Law", *A.B.A. General Practice, Solo & Small Firm Sec., Magazine* (1999), online at <<http://www.abanet.org/general-practice/lawyer/complete/may99shuey.html>> (accessed August 1, 2002).

lifestyle sacrifices. A second major concern is the career choice that is faced by large numbers of young lawyers. Personal choices, obligations and needs in our society — involving the family, close relationships and marriage — are changing. More single parents are bringing up kids and practicing law. Both partners in a relationship are more often than not spending much if not all of their time at the office rather than home. Men are now interested in participating in a more meaningful way at home and in the upbringing of their children. Requiring lawyers to “live” their profession in terms of requiring “total involvement and dedication” is simply myopic and destructive to a more fulsome meaning of living in modern political communities that includes both the personal and the professional. The result is stress, burnout, relationship and family break-up, and, ultimately, talented young lawyers leaving the profession. As the Canadian Bar Association has recognized:⁶

Once you've heard the term “work-life conflict” or “work-life balance”, you can't help noticing that the issue seems to crop up everywhere. The CBA repeatedly hears from members who report that one of the top challenges facing lawyers today is trying to find a way to earn a living and maintain a reasonable personal and family life.

Third, and this is a related point, law's demands have a disparately negative impact on certain groups.⁷ For example, the traditional, and still very relevant, justification for the disparate treatment of men and women in the profession is that men are simply available for longer periods of time, both during the day and during their career. As John Hagan has pointed out:⁸

6. Canadian Bar Association, “Work-Life Conflict — Achieving Balance is a Challenge for Lawyers”, *The Emerging Professional Issues Initiative Newsletter* (January 2002), online at <<http://www.cba.org/CBA/EPIIgram/january2002/>> (accessed August 8, 2002).
7. Even when the discussion is limited to questions of income, it is clear that women are still vastly discriminated against in the legal profession, particularly at more senior levels. As one recent analysis shows: “women may start off making slightly more than men, but their incomes do not rise appreciably, whereas the incomes of men lawyers increase sharply as they become more experienced . . . It may be that, in the legal profession at least, women may not only run into a glass ceiling, but in fact they start out very close to it.” Joan Brockman, *Gender in the Legal Profession: Fitting or Breaking the Mould* (Vancouver: UBC Press, 2001), p. 216.
8. John Hagan, “Transitions in the Legal Profession” (1993), 27 *Law Soc. Gaz.* 90. Janice Mučalov also recently stated that: “For many years now, women lawyers have been leaving the private practice of law in greater numbers than men. Billable hour targets, maternity leave policies, work schedules and networking

Women begin working as hard or harder than men, in terms of the early entry years into the profession. However, during years of child-bearing and early child care, many women are forced to either leave the profession or seek modifications in their work arrangements. Gender roles in parenting may be changing, but not fast enough to alter these realities.

In a profession in which everything runs according to six-minute increments, time is one of the most important assets of the practicing lawyer. To the extent that personal commitments impinge on a lawyer's available time, that lawyer, according to today's professional model, is simply less valuable to his or her firm.

Part of this gender bias forms part of a larger societal problem. But part of it is also a problem for law. Changing our perception of and approach to the legal profession in terms of its "necessary" demands would have a dramatically positive impact in this regard. Making meaningful accommodations in the profession for women, who are now forming at least half of most first-year law school classes, does not seem like a controversial idea. But to date, there is still significant room for change. Men will also benefit from these changes. If you talk to most departmental coordinators in large commercial law firms, they will tell you that few if any of their male associates or partners have taken a parental leave. And given their scarcer resources and lower staff flexibility, the situation at smaller firms is at best no better.

Notwithstanding our good intentions, some may argue that we have no choice when it comes to law's demands. Voices in this camp often point to the ever-increasing demands of clients. These needs, magnified by technological capabilities to get work done faster and more efficiently, result in a "24-7" mentality of lawyer availability and work ethic. In addition to this "it's what our clients demand" argument, there is still the further argument, internal to the profession, that "if our firm can't be perpetually available, then our clients will simply take their work next door". There is some surface appeal to this justification. However, much of this is a matter of perception. Most clients want to know how much a piece of legal work will cost and how long it will take. There are very few cases that actually need the speed of overnight turnaround, so why set ourselves — and our juniors — up for perpetual "emergency" speed

models are just part of the larger problem — a law firm culture that has no place for women. Change is coming, but there's still a very long way to go." Janice Mucalov, "Woman in Law" (2002), 11 *National* 12 at p. 12.

when not all, or even most, files need that kind of speed? And if they do, then fair arrangements can be made. Finally, there is the age-old view that working hard is the only way to get the experience needed to be a first-rate attorney. And besides, "I did it, so why can't you?" According to a report in the *New York Lawyer*, one member of the bar recently raised the following comments and questions:⁹

I hate to sound like an old fogey, but these Gen-X and Gen-Y kids who are working as lawyers seem like they can't stand the idea of good old-fashioned hard work. Recently when I asked a 26-year-old new hire to help with an emergency motion over the weekend, he looked me right in the eye and said he had plans he couldn't break (didn't say what they were) and couldn't do it. I have to say I was so stunned that I just left his office without saying anything and found someone else willing to help.

I know people want to "have a life" — so do I — but we're paying these young lawyers big bucks and they need to pull their weight. I had to do it at their age and they need to step up to the plate now. What's going on with these people?

This is a typical perspective in today's legal profession. It is also one that is not limited to senior members of the bar. Young partners, recently through the associate "tournament",¹⁰ are keen to make a good impression on their senior colleagues and to make sure that younger lawyers jump through the same hoops that they did. Certainly there is merit in the view that experience brings knowledge and expertise. But the need to gain experience does not lead to the conclusion that lawyers need to give up their personal lives in order to learn how to become an effective lawyer. There is clearly room for both. Further, just because someone before us followed a certain professional path does not mean that everyone following that person must do the same. The logic of this approach defies all notions of progress.

Thankfully, there have been some significant efforts in this area. For example, several reports and studies in both the United States¹¹

9. Holly English, "Work/Life Wisdom", *New York Lawyer* (July 19, 2001), online at <<http://www.nylawyer.com/wisdom/01/071901.html>> (accessed August 8, 2002).

10. I have borrowed this term from Marc Galanter and Thomas Palay: *Tournament of Lawyers: The Transformation of the Big Law Firm* (Chicago: University of Chicago Press, 1991). See also David B. Wilkins and G. Mitu Gulati, "Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms" (1998), 84 *Va. L. Rev.* 158f.

11. See, e.g., Women's Bar Association of Massachusetts, Employment Issues Committee, "More Than Part-Time: The Effect of Reduced-Hours Arrangements

and Canada¹² specifically address demands placed by current approaches to law on individuals and their personal lives. These initiatives consistently raise the continuing theme of work-life balance. They also raise a number of important and viable reforms and options. For example, firms need to be more diligent about part-time arrangements, and in welcoming “part-timers” into their partnership ranks. Men as well as women need to feel free to take parental leave, again without fear of promotion reprisals. Salary levels need to be addressed to facilitate gender equality on the balance sheet. Home time needs to become a valued commodity, not something that is tolerated at the end of a long trial. Why bother spending thousands of hours and dollars on reports and reform proposals if we do not ultimately take their findings seriously?

Realistically, these changes will not start with senior partners. They need to start at the beginning: at the student and associate levels. Setting examples and expectations, both at home and at the office, is difficult. But it is necessary if we are consistently going to make changes in these important directions. Regardless of the 26-year-old lawyer’s motives in the *New York Lawyer* anecdote,¹³ there is no reason why people, including young people, should not make and keep important personal plans on any given weekend. There may be occasions when work will have to take priority. But there will equally be times when personal lives take priority. This balance and give-and-take needs to be recognized and encouraged at all levels of the profession.

While bar association and other reports are getting more attention, we are currently still faced with the continued message and

on the Retention, Recruitment, and Success of Women Attorneys in Law Firms” (2000), online at <<http://www.womensbar.org/WBA/partTimeReport.htm>> (accessed August 8, 2002); Boston Bar Association Task Force on Professional Challenges and Family Needs, “Facing the Grail: Confronting the Cost of Work-Family Imbalance”, online at <<http://www.bostonbar.org/workfamilychallenges.htm>> (accessed August 8, 2002); The Project for Attorney Retention, “Work-Life Resources”, online at <http://www.pardc.org/work-life_resources.htm> (accessed August 8, 2002).

12. See, e.g., CBA, “Work-Life Conflict — Achieving Balance is a Challenge for Lawyers”, *The Emerging Professional Issues Initiative Newsletter* (January 2002), online at <<http://www.cba.org/CBA/EPIIgram/january2002/>> (accessed August 8, 2002); Linda Duxbury *et al.*, “An Examination of the Implications and Costs of Work-Life Conflict in Canada” (June 1999), online at <http://www.hc-sc.gc.ca/hppb/childhood-youth/spsc/research/e_research09.html> (accessed August 8, 2002).
13. *Supra*, footnote 9.

bias that working in the law is about living in it, and that to succeed, one's personal life needs to take a back seat. What are we so afraid of? Why do we still advertise on the basis that in order to become a good "trial lawyer", we "don't just practice law", we "live it"? These views and biases are simply no longer viable options for members of the legal profession. Maintaining twentieth century perceptions of the professional in a twenty-first century world is unnecessary, misguided and ultimately detrimental to lawyers and the profession itself. It's time to take seriously the reform work that is being done and move toward a kinder, gentler, more inclusive and ultimately more satisfying and effective profession. If the legal profession is truly one of the great callings — which I believe it is — then it can and must make room for these vital qualities, and it must do so now.