

# THE EVILS OF “ELASTICITY”: REFLECTIONS ON THE RHETORIC OF PROFESSIONALISM AND THE PART-TIME PARADOX IN LARGE FIRM PRACTICE

*Amelia J. Uelmen\**

## INTRODUCTION

“Don’t do it.”

This was the wise advice of the senior associate I had adopted as my older brother and protector to guide me through the labyrinth of large firm life and politics. I had moseyed into his office, shut the door, and asked the question: “What do you think would happen if I asked about the possibility of going part-time?” A grave look came over his face, his eyes darted about the room, and he lowered his voice to a whisper: “It’s professional suicide—don’t even ask.”

After three years of working as a full-time litigator, I was tired. At that point, the expected minimum for a full-time associate litigator in New York was at 2000 billable hours. Allotting four weeks total time off for vacation and all holidays, plus a couple of “sick days,” that put the weekly target at about forty-two billable hours, or 8.5 per day. Adding in time for administrative work such as timekeeping, the training courses required for junior litigators, continuing legal education, helping with interviews, firm entertaining, a lunch break, and some time to be sociable with colleagues, it

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\* Director, Fordham University School of Law Institute on Religion, Law & Lawyer’s Work; Adjunct Professor of Legal Ethics; J.D. Georgetown University Law Center (1993). I worked as a litigation associate in the New York branch office of a large law firm from the beginning of 1996 through the end of 2000. This essay is dedicated to my friends in my Focolare community house who put up with me while I was working as a full-time litigator, and who sustained me in the effort to forge a different path. Special thanks to the faithful core of the Fordham University C.S. Lewis reading group, Fr. Damian O’Connell, S.J., Maria Marcus, Rick Carnell and Astrid O’Brien, in gratitude for our in-depth conversations about a variety of C.S. Lewis texts. Thanks also to the participants in the Villanova University School of Law Faculty Workshop on the Legal Profession, and to Christine Cavallomagno, Tim Floyd, Caroline Gentile, Bruce Green, Howard Lesnick, Sam Levine, Elizabeth McManus, Russ Pearce, William Poorten, Michael Scaperlanda, Elizabeth Schiltz, Tom Shaffer, Rob Vischer, Brad Wendel and Benjamin Zipursky for helpful conversations and comments on the drafts.

always worked out to be at least a ten or eleven hour workday.<sup>1</sup> Every day. And this did not count the effort to emerge from a catatonic state after particularly intense weekends or late-night work running up to a deadline.

In fact, even though I was for the most part working on appellate briefs for pretty slow-moving litigation, the work was increasingly bleeding into weekends and late evenings, so it was becoming difficult to juggle other commitments in my life. I wanted to find a way to protect my evenings and weekends so I could calmly clean the house, cook dinner, attend church, read non-law books, work in the yard, and keep up with friends and community activities outside the law firm. When I would get home at 8:30 or so in the evening, my friends with whom I shared a house had already finished dinner. It was difficult to wind down, and so I frequently had trouble sleeping and was increasingly edgy.

On the other hand, I really enjoyed the cases I was working on. I especially liked being, as one partner described it, a “sticky issues analyst,” and was cultivating a sense of “craft” in drafting arguments and briefs. I wanted to stay, but was hoping to essentially “buy” from the firm a clear understanding which would give more security for my evenings and weekends. I calculated that a target of thirty billable hours per week, or six hours per day, with an additional eight to ten hours per week allotted for other tasks, would bring me to a forty hour work week. And when I looked in the policy manual, there it was—a part-time policy—with exactly my calculations. It sounded great!

The whole idea started to seem very reasonable. Granted, my request would be a little unusual. The only other associates who had asked for similar arrangements were mothers with infants. But why should that make a difference? It was not as if I were asking

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1. According to some studies, which estimate closer to twelve hours per day, my calculation was slightly on the conservative side. See Niki Kuckes, *The Short, Unhappy History of How Lawyers Bill Their Clients*, LEGAL AFFAIRS, Sept.-Oct. 2002, at 40, 42 (“[S]tudies consistently show that a lawyer must spend three hours in the office for every two hours of billable work. . . . [To] make the 2000-hours target, a lawyer must spend the equivalent of 12 hours in the office for each working day.”); see also Deborah L. Rhode, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 171 (2000) (“To generate two thousand billable hours, attorneys typically need to work ten hours a day, six days a week.”); Dennis Curtis & Judith Resnik, *Teaching Billing: Metrics of Value in Law Firms and Law Schools*, 54 STAN. L. REV. 1409, 1412 (2002) (reviewing DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION (2000)) (“Honest counting of billable hours requires substantial time at the office, because not every minute is chargeable to clients. Eating, firm administration, schmoozing, and non-business phone calls and emails all take up workday hours.”).

for particular generosity, for I was ready to take a proportional cut in pay, and to forego any bonuses.

After listening to my colleague's wise advice, I decided that even if it was professional suicide, I would go ahead and at least ask the question. I figured that if the answer to my request was no, then that would be a sign that it was time to start looking for a different kind of job.<sup>2</sup>

Almost immediately after I sent my one-line email to the New York branch office managing partner—"With whom should I speak about the possibility of going part-time?"—I discovered that my colleague was right. Even though I had extensive expertise in both the law and the facts after working for three years on a particular set of cases, I was simply dropped from all of my work, with no questions or discussion. The partners avoided meeting my eyes in the elevator and the halls. It was as if I had fallen off the planet.

I had not anticipated such a drastic response and so I was not quite ready to find a new job. Panicked, I went to the assignment partner to beg for any work. I was put on an enormous document review with the assignment of combing through several hundred boxes, looking for particular account numbers. This lasted for several months. Ultimately, I attached myself to an "of counsel" who had been recently hired as a lateral and who had not yet built up a pool of loyal litigation associate help. Because he had not spent his career in large firm practice, the part-time arrangement did not strike him as especially unreasonable. And because he was at that point happy to have thirty hours a week from anyone, the arrangement worked well for both of us. I stayed at the firm an additional year and a half and learned a great deal.

My colleague was right: even to utter the word "part-time"—especially off the somewhat beaten path of motherhood—was pro-

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2. As for many "Gen-Xers" (roughly defined as the generation born between 1964 and 1979), my day-to-day work schedule was more important to me than my long-term prospects for advancement with the firm. Within about a year, I had come to a pretty clear sense that my long-term professional goal was not to become a partner at a large firm. Because concerns about long-term advancement were off my radar screen, I am sure that I discounted how asking the part-time question could jeopardize my prospects for advancement within the firm. For a rough sense of the extent to which current mid-level associates are focused on their prospects for partnership, see *Associates Survey: The Middlelevels Speak*, AM. LAW., Oct. 2004, at 131 [hereinafter *The Middlelevels Speak*]. In response to the statement, "Alternatives to the partner track are important to me," twenty-eight percent of third and fourth year associates polled strongly agreed and thirty percent agreed; on the flip side, seventeen percent strongly agreed and twenty-four percent agreed with the statement, "Becoming a partner is important to me." *Id.*

fessional suicide.<sup>3</sup> How could the firm not see what I saw—that many elements of large firm practice actually lend themselves to more flexible work schedules? And why was the reaction so strong that there was no room for reasoned conversation?

This essay is neither a report nor a detailed sociological study about part-time arrangements at large law firms, for this ground has been thoroughly and thoughtfully covered.<sup>4</sup> Much of that work defines the “part-time paradox” as the struggle to build a career and a family at the same time.<sup>5</sup> In particular, many of the studies analyze the problem through the lens of gender, discussing the tensions which arise when young women associates become mothers,

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3. Part-time may be professional suicide even on the beaten path of motherhood. See JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* 94 (2000) [hereinafter WILLIAMS, *UNBENDING GENDER*] (“NEWSWEEK observed that ‘a company may pay lip service to offering alternatives for working mothers, but asking for them can be the kiss of death.’”).

4. See generally CYNTHIA FUCHS EPSTEIN ET AL., *THE PART-TIME PARADOX: TIME NORMS, PROFESSIONAL LIVES, FAMILY, AND GENDER* (1999) [hereinafter EPSTEIN ET AL., *PARADOX*]; JOAN WILLIAMS & CYNTHIA THOMAS CALVERT, PROJECT FOR ATTORNEY RETENTION, *BALANCED HOURS: EFFECTIVE PART-TIME POLICIES FOR WASHINGTON LAW FIRMS* (2d ed. 2001), reprinted in 8 WM. & MARY J. WOMEN & L. 357 (2002), available at <http://www.pardc.org/Publications/BalancedHours2nd.pdf> [hereinafter WILLIAMS & CALVERT, *BALANCED HOURS*]; JOAN C. WILLIAMS & CYNTHIA THOMAS CALVERT, *SOLVING THE PART-TIME PUZZLE: THE LAW FIRM’S GUIDE TO BALANCED HOURS* (2004); WILLIAMS, *UNBENDING GENDER*, *supra* note 3. Bar association reports include A.B.A. COMM’N ON WOMEN IN THE PROFESSION, *BALANCED LIVES: CHANGING THE CULTURE OF LEGAL PRACTICE* (2001), available at <http://womenlaw.stanford.edu/balanced.lives.pdf> [hereinafter A.B.A., *BALANCED LIVES*]; EMPLOYMENT ISSUES COMM., WOMEN’S BAR ASS’N OF MASS., *MORE THAN PART-TIME: THE EFFECT OF REDUCED-HOURS ARRANGEMENTS ON THE RETENTION, RECRUITMENT, AND SUCCESS OF WOMEN ATTORNEYS IN LAW FIRMS* (2000), available at <http://womenlaw.stanford.edu/mass.rpt.html>; TASK FORCE ON LAWYER’S QUALITY OF LIFE, ASS’N OF THE BAR OF THE CITY OF N.Y. REPORT (2001), available at [http://www.abcnyc.org/publications/reports/show\\_html.php?rid=23](http://www.abcnyc.org/publications/reports/show_html.php?rid=23); TASK FORCE ON PROF’L CHALLENGES & FAMILY NEEDS, BOSTON BAR ASS’N, *FACING THE GRAIL: CONFRONTING THE COST OF WORK-FAMILY IMBALANCE* (1999), available at <http://www.bostonbar.org/prs/workfamilychallenges.htm>. See also Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291 (1995) [hereinafter Epstein et al., *Glass Ceilings*] (Report to the Committee on Women in the Profession, The Association of the Bar of the City of New York). For a report focused specifically on work in corporate law departments, see CORPORATE COUNSEL PROJECT, PROJECT FOR ATTORNEY RETENTION, *BETTER ON BALANCE? THE CORPORATE COUNSEL WORK/LIFE REPORT* (2003), available at <http://www.pardc.org/Publications/BetterOnBalance.pdf> [hereinafter CORPORATE COUNSEL PROJECT, *WORK/LIFE REPORT*]. For other helpful scholarly analysis, see Marjorie B. Schaafsma, *Women Lawyers’ Resistance to Work Overload: Making Time for Families*, 45 BERKELEY J. SOC. 136 (2001).

5. See generally EPSTEIN ET AL., *PARADOX*, *supra* note 4 (examining the conflicts between developing one’s career and raising a family and exploring potential solutions).

and their subsequent efforts to juggle the responsibilities of parenting with the demands of a large firm schedule.<sup>6</sup>

I would like to add another tile to the mosaic of reflection by focusing on how a large law firm articulates its reaction to a request for a part-time schedule. In my own efforts to work out a part-time arrangement at a large law firm, what struck me was how hard it was even to begin a conversation about an alternative schedule. In what little I could extract, I detected extremely deep and sincerely held beliefs that a part-time schedule was simply incompatible with the realities of large firm practice. Yet the explanations propounded did not coincide with my own experience of large firm work, which in many ways seemed to lend itself to more flexible arrangements. This, I believe, is the real “paradox” in large firm culture.

The difficulty in getting a conversation going led me to reflect on language—how we talk about professional life and identity in a large firm context—and on the disconnect between that language and the reality of the work itself. This essay sets forth the theory that a twisted use of the rhetoric of professionalism both masks the realities of large firm practice and reinforces some of its most unhealthy and imbalanced tendencies. In an effort to create space for a conversation about whether part-time arrangements are compatible with large firm practice, the essay attempts to peel back some of the layers of rhetoric, and also to confront some of the deeply-entrenched cultural obstacles. Ultimately, it hopes to show that part-time arrangements cannot only serve as an alternative voice in large firm culture, but may even contribute to a “renaissance” of some of the legal profession’s most dearly held values.<sup>7</sup>

Part I describes the salient aspects of the professionalism rhetoric used to diagnose and describe the maladies which plague large firm practice. According to this rhetoric, “crass commercialism” is perhaps the root of all evils. While the legal profession was once a service to the public, distinguishable from mere trade or business for personal gain, now lawyers unabashedly stoop to the standards of the market. Sadly, many conclude, the “tyranny of the billable hour” has such a chokehold on large firm practice that there is lit-

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6. In addition to the studies, analyses, and reports identified in notes 4-5, see also JOAN BROCKMAN, GENDER IN THE LEGAL PROFESSION: FITTING OR BREAKING THE MOULD 180-95 (2001); CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW 315-26 (1981); PHYLLIS HORN EPSTEIN, WOMEN-AT-LAW: LESSONS LEARNED ALONG THE PATHWAYS TO SUCCESS 186-203, 221-47 (2004) [hereinafter EPSTEIN, WOMEN-AT-LAW].

7. See *infra* note 35 and accompanying text.

tle hope for change. The rhetoric, however, finds some hope for redemption in an unflagging commitment to service: excellent service to clients and service to the public good.

Part II parses two aspects of the rhetoric: the “tyranny of the billable hour” and the dedication to “client service.” Breaking up the elements in each of these issues reveals how the rhetoric bundles together different and distinct problems. Some of the problems are probably intractably difficult to resolve, but others can and should be managed and controlled, just as the work and staffing of any large business must be managed and controlled. Through this lens, to recognize the business dimensions of large firm practice is not necessarily a bane; it may even be a helpful aid in carving out a niche for those who prefer to work fewer hours for less money.

Part III recognizes that even if large firms were to accept such analyses, deep seated cultural tensions would still obstruct open, creative, and productive conversations about the work-life balance. Aided by a text from *THAT HIDEOUS STRENGTH*,<sup>8</sup> the third book in the C.S. Lewis science fiction trilogy, the essay submits that lurking beneath some of the resistance to descriptions of law as a business, and some of the rhetoric of loyal dedication to client service, is what C.S. Lewis might describe as the evil of “elasticity,” in which the all-consuming demands of the workplace gradually corrode hope for a more harmonious and balanced life. Based on that text, the essay then flags the dark side of seemingly positive and constructive concepts in professionalism rhetoric such as “calling” or “vocation,” “commitment,” and “service.”

The essay concludes where it began—with a reflection on language. Using A. O. Hirschman’s scheme of “exit, voice and loyalty,” it proposes that the request for a part-time schedule should be interpreted neither as exit, nor as an act of disloyalty to the firm or the profession, but rather as a “voice” of sanity, creativity, and hope for a balanced life. Large firms that welcome the “voice” of attorneys with part-time arrangements may be surprised to find that they may offer not only loyal client service, but also valuable contributions to the recovery of positive professional values in large firm practice.

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8. C.S. LEWIS, *THAT HIDEOUS STRENGTH: A MODERN FAIRY-TALE FOR GROWN-UPS* (1946). The first two books in the series are *OUT OF THE SILENT PLANET* (1938) and *PERELANDRA* (1943).

## I. THE "CRISIS" OF PROFESSIONALISM IN LARGE FIRM PRACTICE

"Legend tends to seem clearer than reality," the American Bar Association ("ABA") Commission on Professionalism admitted in its 1986 report.<sup>9</sup> Perhaps one of the most legendary statements of the attempts to define the profession is Roscoe Pound's distinction between the legal profession and a business or skilled trade. The "primary purpose" of a profession, he extolled, is "pursuing a learned art as a common calling in the spirit of public service." Gaining a livelihood is only "incidental" to a profession, "whereas in a business or trade it is the entire purpose."<sup>10</sup> Or as the former Chief Justice of the Delaware Supreme Court more recently put it, "It is a truism that the practice of law is the practice of a profession, not the conduct of a business in the rough and tumble of the marketplace."<sup>11</sup>

According to professionalism rhetoric, loss of this central insight is certainly one of the primary maladies of large firm legal practice. If we are honest, we must admit that at this point in time, law offices do conduct the practice of law much like any other business, in the "rough and tumble" of the marketplace.<sup>12</sup> As the former dean of Yale Law School, Anthony Kronman, mourned: "[t]he law has become a business like any other."<sup>13</sup> Or as another analyst surmised, there is "general agreement" about the core of the professionalism crisis: "the practice of law is suffering from increased commercialization."<sup>14</sup>

9. A.B.A. COMM'N ON PROFESSIONALISM, ". . . IN THE SPIRIT OF PUBLIC SERVICE": A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986), reprinted in 112 F.R.D. 243, 304 (1986) [hereinafter A.B.A., BLUEPRINT].

10. ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953).

11. E. Norman Veasey, *Professionalism and Pragmatism—The Future: A Message from the Chief Justice of Delaware*, DEL. LAW., Winter 1993, at 13; see also *Shapiro v. Ky. Bar Ass'n*, 486 U.S. 466, 488-89 (1988) (O'Connor, J., dissenting) ("One distinguishing feature of any profession . . . is that membership entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market.").

12. *Bates v. State Bar of Ariz.*, 433 U.S. 350, 368 n.19 (1977) ("We all know that law offices are big businesses, that they may have billion-dollar or million-dollar clients, they're run with computers, and all the rest . . . [T]he argument may [thus] be made that to term them noncommercial is sanctimonious humbug." (quoting Transcript of Oral Argument at 64)).

13. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 370 (1993).

14. Carl T. Bogus, *The Death of an Honorable Profession*, 71 IND. L.J. 911, 913 (1996); see also A.B.A., BLUEPRINT, *supra* note 9, at 251 ("But today is not yesterday, and today it may be asked: Has our profession abandoned principle for profit, profes-

According to many, the main villain in the legal profession's crisis of commercialism is the introduction of the billable hour. As the Chief Justice of Virginia complained: "The use of billable hours is the most serious manifestation of commercialism in the legal profession today."<sup>15</sup> Through about the 1950s, billing was a "fine art" in which fee schedules, what Professor Geoffrey Hazard calls the "eyeball procedure," and the core question, "What have we accomplished for the client?" all helped to determine the fee.<sup>16</sup> But as law firms continued to grow in size, complexity, and levels of bureaucracy, they began to rely increasingly on computerized time-keeping.<sup>17</sup>

For a number of reasons, most agree that there is no turning back. Large firms are getting larger, and trends indicate that they will continue on this trajectory.<sup>18</sup> In this context, the billable hours

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sionalism for commercialism?"); A.B.A., BLUEPRINT, *supra* note 9, at 300 ("The Commission believes that many of the problems outlined in the Report could begin to be addressed by subordinating a lawyer's drive to make money as [the] primary goal of law practice . . . . [T]he pursuit, by any lawyer, of making money as the governing principle in a law practice is a point of departure for many problems."); Milton C. Regan, *Law Firms, Competition Penalties, and the Values of Professionalism*, 13 GEO. J. LEGAL ETHICS 1, 6 nn.12-15 (1999) (noting various reactions to the increasingly commercial nature of law practice).

15. Veasey, *supra* note 11, at 14 (quoting Hon. Harry L. Carrico, Chief Justice of the Supreme Court of Va., Address to the North Carolina Bar Association (1992)).

16. WILLIAM G. ROSS, THE HONEST HOUR: THE ETHICS OF TIME-BASED BILLING BY ATTORNEYS 16 (1996).

17. See A.B.A. COMM'N ON BILLABLE HOURS, REPORT 3-4 (2002), available at <http://www.abanet.org/careercounsel/billable/toolkit/bhcomplete.pdf> [hereinafter A.B.A., REPORT]; Bogus, *supra* note 14, at 924 ("[In contrast to the days when billing was a subjective art], lawyers came to live under the tyranny of the time sheet. Bills were now governed by arithmetic rather than judgment, and over time this affected how lawyers viewed the value of their own work. Lawyers reflected less on what they produced for the client or how efficiently they produced it; indeed, an incentive emerged to be inefficient and run up billable hours . . . . Clients and work were fungible. Clients requested legal services; attorneys provided the services; clients paid for the services by the hour. The lawyer-statesman metamorphosed into technician, the professional into provider."); Kuckes, *supra* note 1, at 40 ("As law firms expand or merge, they must search for measures to predict income, expenses, and budget. Billable hours present a ready standard because they can easily be measured, compared, and reduced to 'realization rates' (which compare hours worked with the fees collected on those hours). They can be translated into precise expectations that can be used to guide lawyers' performance."); *id.* at 40-41 (tracing how the history of fee regulation and the increasing complexity of law practice led to the prominence of billable hours "as a more transparent way to value legal services").

18. See 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, 1093-94 ("The large-firm sector seems likely to grow with the continuing increase in the volume of legal services purchased by businesses. The increase in the size of individual firms suggests that many of the existing large firms will



system poses a number of advantages. As Professors Curtis and Resnick summarize: “[H]ourly billing survives and pervades because of its simplicity, its potential reviewability, its familiarity, its administrability, its perceived safety” and “because it provides a surrogate for value when value is hard to calculate.”<sup>19</sup> Further, because the billable hour fee structure has worked its way into fee doctrine, becoming the “lodestar” to determine a reasonable attorney’s fee,<sup>20</sup> and because significant legal ethics questions permeate some other approaches to billing,<sup>21</sup> it would seem that firms now have no choice but to follow this method.

According to William Ross, “The increasing emphasis on billable hours naturally assured a steady increase in the number of hours that attorneys bill.”<sup>22</sup> By the 1970s, “time records became a fetish” in many law firms.<sup>23</sup> Gradually, firms began adopting policies requiring attorneys to bill increasingly higher number of hours each year. As one author recounts, “It seemed like a harmless enough step—until the number of those hours began to rise steadily beginning in the ‘80s.”<sup>24</sup> In late 1999, many firms raised their minimum quotas in order to pay for dramatic salary hikes fueled by fears of losing young lawyers to the dot-com boom.<sup>25</sup> Currently, the minimum “target” in large firms in many metropolitan areas is at about 2000 hours per year.<sup>26</sup>

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continue to grow.”); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 724-25 & nn.52-54 (1998) (noting the dramatic rise of law firm size).

19. Curtis & Resnick, *supra* note 1, at 1412; see also A.B.A., REPORT, *supra* note 17, at 7-11; Ross, *supra* note 16, at 18-19 (noting that hourly billing appealed to clients because it was “based on something tangible”); Douglas R. Richmond, *The New Law Firm Economy, Billable Hours, and Professional Responsibility*, 29 HOFSTRA L. REV. 207, 210 (2000) (“When it comes to litigation, there is no consistently reasonable substitute for the billable hour.”).

20. See Bogus, *supra* note 14, at 923 (discussing adoption of “lodestar” method); Curtis & Resnick, *supra* note 1, at 1410 (same).

21. For discussion of some of the ethical implications of alternative fee arrangements, see Ronald D. Rotunda, *Innovative Legal Billing, Alternatives to Billable Hours and Ethical Hurdles*, 2 J. INST. STUDY LEGAL ETHICS 221 (1999); Ronald D. Rotunda, *Moving from Billable Hours to Fixed Fees: Task-Based Fees and Legal Ethics*, 47 U. KAN. L. REV. 819 (1999).

22. Ross, *supra* note 16, at 19.

23. *Id.* at 21.

24. Kuckes, *supra* note 1, at 41.

25. See *infra* note 50.

26. See JUDITH N. COLLINS, NAT’L ASS’N FOR LAW PLACEMENT, BILLABLE HOURS: WHAT DO FIRMS REALLY REQUIRE? 1 (2005), available at [http://www.nalp.org/assets/library/84\\_0505research.pdf](http://www.nalp.org/assets/library/84_0505research.pdf). For example, the percentages of offices requiring 2000 minimum billable hours are: twenty-four percent in New York; thirty-eight percent in Chicago; fifty-seven percent in Miami; twenty-six percent in Houston.

By the early 1990s, bar commissions and committees were dedicating reports which dissected the problem of billable hours and expressed their dismay.<sup>27</sup> As one judge vented: "I am immeasurably disgusted when I hear a lawyer say, 'all we have to sell or give is time.' Nonsense! Lawyers give integrity, loyalty, advocacy, knowledge, and those intangibles that make ours a profession. Lawyers who think that all they have to sell is time ought to become watchmakers."<sup>28</sup>

More recently, in 2001, then-president of the American Bar Association Robert E. Hirshorn launched an ABA Commission on Billable Hours to take an in-depth look at the problem. Introducing the final report, he noted: "It has become increasingly clear to me that many of the legal profession's contemporary woes intersect at the billable hour."<sup>29</sup> Specifically, he lamented: "The billable hour is fundamentally about quantity over quality, repetition over creativity. With no gauge for intangibles such as productivity, creativity, knowledge or technological advancements, the billable hours model is a counter-intuitive measure of value."<sup>30</sup> Yet, the report admitted, at least for the foreseeable future, "elimination of time billing is not a likely proposition."<sup>31</sup>

While we may not turn back the clock on the billable hour model, what we can do—the story goes—is recommit ourselves to ideals of professionalism, especially as embodied in dedication to excellent service to clients. As two commentators put it, "[p]erhaps the most central of all to professionalism is a dedication to excellence in the services rendered to a client."<sup>32</sup> The 1993 Chair of the ABA Standing Committee on Professionalism, Seth Rosner, struck the balance in this way: "[T]he defining tension in law practice today is between professionalism and money. But . . . it is foolish to say that we must be a profession and not a business,

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*Id.* at 2. Nationwide, the most frequently reported figure for firms with more than 500 lawyers was 1950 billable hours. *Id.* See also Kuckes, *supra* note 1, at 40 ("[T]he current range at most large firms is between 1800 and 2000 a year.").

27. See, e.g., GA. CHIEF JUSTICE'S COMM'N ON PROFESSIONALISM, HISTORY, MANDATE, STRUCTURE 42 (1990) (expressing concern that lawyers were increasingly sacrificing "the internal rewards of service, craft, and character" for the "external reward of financial gain").

28. See Veasey, *supra* note 11, at 14 (quoting Hon. Robert Merhige, U.S. Dist. Court, E. Dist. Va.).

29. A.B.A., REPORT, *supra* note 17, at ix.

30. *Id.*

31. *Id.*

32. Timothy P. Terrell & James H. Wildman, *Rethinking "Professionalism,"* 41 EMORY L.J. 403, 424 (1992).

for the practice of law has always had a business side to it.”<sup>33</sup> The business side, however, could certainly be kept in check. Rosner continued:

[W]e do not have to choose between professionalism and money. Indeed, we do not even have that choice. What we do have to do is decide simply which one comes first. If our first priority is the highest level of service to clients of which we are capable, coupled with our obligations to the legal system and to our society, then everything else falls into place. Virtually all, if not all, of the professionalism issues which we currently debate are resolved.<sup>34</sup>

## II. PARSING THE RHETORIC OF PROFESSIONALISM

So what is wrong with a little idealism? Efforts to reduce “crass commercialism” and stronger commitments to the lofty and noble goals of excellent service to clients and attentive care to the public good would all seem to be very good news for the legal profession. My concern is not, of course, with the profession’s effort to foster these positive and constructive commitments. In fact, there is much that I find inspiring in the efforts of the current president of the American Bar Association, Michael Greco, to articulate a “renaissance of idealism” in the legal profession.<sup>35</sup> I agree wholeheartedly with his recent challenge to a group of first year law students to reject a “me” culture in order to care about their fellow human beings and to “contribute to society’s development for the common good.”<sup>36</sup> I am also in accord with his assessment that “the lawyer who contributes to the public good is a fulfilled, complete lawyer, and the one who is truly a ‘professional.’”<sup>37</sup> The rhetoric of professionalism is many-layered, and efforts to reinforce commitments to the public good are to be commended.

But I am concerned about what happens when some aspects of the professionalism rhetoric are applied in the large firm context. I believe the rhetoric itself often distorts a clear understanding of the realities of large firm practice, and as a consequence, blocks us from articulating plausible cures for some of its maladies.

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33. Seth Rosner, *Professionalism and Money: A Matter of Priorities*, PROF. LAW., May 1993, at 9.

34. *Id.*

35. Michael S. Greco, President-Elect for 2005, A.B.A., Remarks to the Boston College Law School Entering Class (Aug. 31, 2004), <http://www.bc.edu/schools/law/alumni/75celebration/features/fall04/greco>.

36. *Id.*

37. *Id.*

The broadest distortion is fostered by what Professor Russell Pearce has described as the “Business-Profession dichotomy.”<sup>38</sup> Under this paradigm, lawyers altruistically place the good of their clients and the good of society above their own self-interest, in contrast to businesspersons, who simply seek to maximize their own financial self-interest.<sup>39</sup> In recent decades, much of the organized bar’s energy has been focused on preservation of this dichotomy.<sup>40</sup>

But it would be impossible to fully wrap one’s head around the specific dilemmas of large firm practice without acknowledging its significant and often overwhelming business dimensions.<sup>41</sup> In at-

38. Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229, 1230 (1995).

39. *Id.* at 1231. See Rob Atkinson, *Connecting Business and Legal Ethics for the Common Good: Come, Let Us Reason Together*, 29 J. CORP. L. 469, 471-72 (2004) [hereinafter Atkinson, *Let Us Reason Together*] (“The official organs of the bar, even the courts, continue to insist that law itself is a profession, concerned mainly with public service, not a (mere) business, directed primarily to personal gain. . . . Lawyers, in the way they structure their own practice and market their services, are not to stoop to the standards of the market.”). This dichotomy has been consistently invoked in professionalism rhetoric. See, e.g., *Bradshaw v. U.S. Dist. Court*, 742 F.2d 515, 518 (9th Cir. 1984) (quoting *In re Jacobson*, 126 S.E.2d 346, 353 (S.C. 1962)) (“[T]he practice of law is a profession—not a business or a skilled trade. . . . [T]he difference between [the two] is essentially that while the chief end of a trade or business is personal gain, the chief end of a profession is public service.”); A.B.A., BLUEPRINT, *supra* note 9, at 262 n.65 (“A profession is not a business. It is distinguished by the requirement of extensive formal training and learning, admission to practice by qualifying licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the marketplace . . . .”) (quoting *In re Freeman*, 311 N.E.2d 480, 483 (N.Y. 1974)).

40. Pearce, *supra* note 38, at 1255-60.

41. Take, for example, the A.B.A. BLUEPRINT quote of Dr. James Laney’s description of a lawyer’s fee:

A fee should of course be adequate; it can even be generous. But a professional possessing moral authority is never simply hired. I think we can see this point reflected in the gratitude that so often accompanies professional services. Such gratitude is a manifestation of a relationship built on more than contractual compensation. . . . It acknowledges that what has transpired between client and professional is of such value and importance, and meets such a need, that the client feels served in the highest way. Clearly, such an orientation to one’s work differs markedly from entrepreneurship, which emphasizes risk-taking, big operations, seizing every opportunity, exploiting the moment. Those are not the virtues that we usually associate with a professional. . . . I do not suggest that professionals must expunge self interest. I submit that being a professional means that self-interest is directed and disciplined and, at best, sublimated toward a loftier idea of interest. A professional is one who identifies with a larger public beyond his or her own good.

A.B.A., BLUEPRINT, *supra* note 9, at 300. While such descriptions may illuminate aspects of the relationships that some sole practitioners and smaller firms have with their clients, most large firm lawyers would be hard pressed to deny that “entrepreneurship” and “seizing every opportunity” are the current staples of “big operation”

tempting to preserve the Business-Profession dichotomy, some aspects of the professionalism rhetoric not only distort the reality of the practice, but also block the exploration and application of some of the management solutions that business experience could offer.

The next sections discuss two examples of how the rhetoric of professionalism, and in particular, the attempt to maintain the Business-Profession dichotomy, tends to block some creative solutions to the work-life balance. They attempt to parse the “tyranny of the billable hour,” and the mantra of “client service” to explore how in each case, professionalism rhetoric bundles together issues which should be placed in context and analyzed separately.<sup>42</sup> Once we pull apart the strands, we can identify a few problems which may be quite manageable—so long as we take the leap to admit that the staff and the workload of a large law firm, like any large business entity, can and should be carefully managed.

### A. The “Tyranny of the Billable Hour”

On one hand, the “billable hour model”<sup>43</sup> generates disgust, and symbolizes all that many find so disappointing in legal practice. On the other hand, the size and complexity of current practice does seem to dictate that there is no other way to keep track of work

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practice. See Roger C. Cramton, *On Giving Meaning to “Professionalism,”* in TEACHING AND LEARNING PROFESSIONALISM: SYMPOSIUM PROCEEDINGS 7, 16 (1997) (“The practice of law in this country has always been entrepreneurial in character. . . . The corporate law firm, the contingent fee, and the group services plan are all illustrative of this energy and initiative.”); see also Regan, *supra* note 14, at 3 (discussing competition penalties as an example of how a rigid distinction between business and the legal profession “impedes our understanding of the dynamics of contemporary law practice”). If one still doubts the entrepreneurial “seize every opportunity” character of current large firm practice, see generally AM. LAW., July 2005 (presenting the “AmLaw 100” rankings for 2005, with emphases on revenue, revenue per lawyer, and profits per partner).

42. As discussed above, recovering “obligations to the legal system and our society” is also at the top of the list of proposals to recover a sense of professionalism. See *supra* note 34 and accompanying text. Many frame the “public service” dimensions of the legal profession in terms of *pro bono* projects that are extrinsic to their “regular” billable work. See generally, Russell Pearce, *How Law Firms Can Do Good While Doing Well (And the Answer is Not Pro Bono)*, 33 FORDHAM URB. L.J. 211 (2005). The large firm tendency to describe the “public service” dimension of the profession as an additional time commitment obviously connects well into a discussion about quality of life and part-time schedules, but here I will simply flag this as a topic that deserves extensive treatment in a separate full-length essay.

43. A.B.A., REPORT, *supra* note 17, at ix.

and bill clients transparently.<sup>44</sup> “Tyranny” seems to be intrinsic to the “billable hours model” itself.

But the analysis changes slightly when the “tyranny of the billable hour” is parsed as two distinct problems. Looking at the “billable hour” part, the problem of the commodification of time is a philosophical puzzle that will not be resolved next month, next year, or the year after that. Yet most would agree that philosophically the value of work is not just time, and time is not just money.<sup>45</sup> Just as the problem of “incommensurable values”—the process of placing numbers and dollar amounts on values that cannot and should not be reduced to numbers—weaves its way through so many aspects of our society and our legal system,<sup>46</sup> we will always have the nagging sense that commodified time fails to capture and even distorts the deeper meaning of our work and our lives.<sup>47</sup> This is a difficult and probably irresolvable dilemma.

But the “tyranny” part has a distinct root. Excessively high *quotas* for billable hours are not the necessary consequence of the commodification of time. Quotas are set by law firm partners who calculate how much profit they will derive from the timekeepers who generate billable hours. The root of the “tyranny”—the sense that billable hours have seized control of law firm life—does not inevitably flow from the fact that time is commodified. The “tyranny” flows from a sense that timekeepers must work excessive

44. Susan Saab Fortney, *I Don't Have Time to be Ethical: Addressing the Effects of Billable Hour Pressure*, 39 IDAHO L. REV. 305, 314 (2003) [hereinafter, Fortney, *I Don't Have Time*] (quoting Jeffrey F. Liss, Co-Chair, A.B.A. Billable Hours Comm'n, as saying “[T]here is ‘no silver bullet that will allow every firm to scrap hourly billing.’”); see also M. Cathleen Kaveny, *Billable Hours in Ordinary Time: A Theological Critique of the Instrumentalization of Time in Professional Life*, 33 LOY. U. CHI. L.J. 173, 176 (2001) (“I am not optimistic about supplanting the billable hours approach in the foreseeable future.”); Jenny B. Davis, *Quality-of-Life Issues: Hirshon Cites Progress on Presidential Goals*, A.B.A. J., Oct. 2002, at 65.

45. See Kaveny, *supra* note 44, for a thoughtful theological critique of the billable hour.

46. See, e.g., Amelia J. Uelmen, *Toward a Trinitarian Theory of Products Liability* 1 J. CATHOLIC SOC. THOUGHT 603, 626-31 (2004) (struggling with the conundrum of incommensurable values in products theory).

47. Kaveny, *supra* note 44, at 175 (“The regime of the billable hour presupposes a distorted and harmful account of the meaning and purpose of a lawyer’s time, and therefore, the meaning and purpose of a lawyer’s life, which, after all, is lived in and through time. The account, which ultimately reduces the value of time to money, is deeply inimical to human flourishing. Because large firm life can press many lawyers to internalize this commodified account of their time, they may find themselves increasingly alienated from events in their lives that draw upon a different and non-commodified understanding of time, such as family birthdays, holidays, and volunteer work.”).

numbers of billable hours in order to generate the profits that sustain high salaries for both partners and associates.<sup>48</sup>

To be fair, the recent reports do discuss at great length strategies for limiting billable hour quotas.<sup>49</sup> But when the distinct roots of these two problems are not put into relief, it exacerbates a sense that the “tyranny” is just as inevitable and unmanageable as the “billable hour” itself. If the strands are pulled apart, it is easy to see that the second problem, billable hour quotas, can and should be controlled and managed. We do not have to get to the bottom of the philosophical conundrum of the commodification of time in order to work on creative solutions to excessive billable hour quotas.

Of course, the “tyranny” part of the problem is not easy either. As the 1999-2000 “salary wars” revealed, the “lock-step” nature of the large law firm salary market is an extremely difficult nut to crack.<sup>50</sup> The race to meet quotas is also tightly linked with the endurance tests which seem to be required to prove oneself worthy of leadership within the firm.<sup>51</sup> For both of these reasons, there has not yet been a mass uprising of associates demanding flexible scheduling options. Associates—perhaps quite reasonably—fear that firms will not respect their attempts to reduce their hours, or that they will be punished with blocks on their advancement if they attempt to assert the terms of a limited hours arrangement. Instead, once resigned to a sweatshop, associates want only to make

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48. *The American Lawyer's* July 2005 “AmLaw 100” survey reported that in thirty-seven of nation’s highest grossing firms, the current “tyranny” is to the tune \$1 million in profits per partner per year; eight of those had profits per partner above \$2 million. *The Profits Picture Remains Rosy*, AM. LAW., July 2005, at 141; see also *Figuratively Speaking*, AM. LAW., July 2005, at 107 (“Revenue per lawyer grew more quickly than head count last year, suggesting that firms increased rates and lawyers worked longer hours.”).

49. See A.B.A., REPORT, *supra* note 17, at 43-48.

50. See Andre Gharakhanian & Yvonne Krywyj, Current Development, *The Gunderson Effect and Billable Mania: Trends in Overbilling and the Effect of New Wages*, 14 GEO. J. LEGAL ETHICS 1001, 1012 (2001) (discussing the domino effect of a Silicon Valley law firm’s late 1999 salary hikes in response to dot-com competition); see also Fortney, *I Don't Have Time*, *supra* note 44, at 305-06 (same) (citing NAT’L ASS’N FOR LAW PLACEMENT, *Epilogue: The Salary Wars and Their Aftermath*).

51. See Marc S. Galanter & Thomas M. Palay, *Large Law Firm Misery: It's the Tournament, Not the Money*, 52 VAND. L. REV. 953, 961 (1999). In the partnership tournament, “it is in the firm’s own interest to award the prize of partnership to those who have produced the largest combined bundle of output, quality and capital. To award the prize on other grounds would saddle the firm with less productive attorneys at no savings in prize money.” *Id.*

sure that they are being paid at the same rate as the sweatshop down the street.<sup>52</sup>

Neither problem is easy. But the problem of excessive quotas can be managed—and for this, the billable hour may even be part of the *solution*. In fact, billable hours are already being used as a management tool. As Professors Curtis and Resnick explain:

Billable hours do not serve only as a means by which law firms charge their clients. Firms use the number of hours billed as a measure of the utility of the worker and of the success of the firm itself. Hours are a factor in deciding salary levels, raises, bonuses, and promotions. Firms may also use hourly records to equalize work among associates, to calculate “utilization” of associates (how associates are measuring up to the firm’s hourly requirements), and to calculate a “realization” figure (how much the firm has actually collected for an associate’s work).<sup>53</sup>

If we reconcile ourselves to the core principle of the billable hour—time is money, and more time is more money for both firm profits and for associate bonuses—why could we not also admit as a corollary management tool: less time is less money? Granted, in many large firms full-time salaries run lock-step according to class year. But why should that block the development of an option for that portion of the market of attorneys who want to step off the “more money” track?<sup>54</sup>

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52. See discussion *infra* note 118 and accompanying text.

53. Curtis & Resnik, *supra* note 1, at 1412. See also A.B.A., REPORT, *supra* note 17, at 9-10 (“Tracking and billing time by hours aids lawyers in running their businesses.”).

54. Surveys indicate that there is a market for this option. See *The Midlevels Speak*, *supra* note 2, at 131 (An *AmLaw* midlevel associate survey reported that in response to the question, “If I could cut my billable hours requirement by 25%, I would happily give up 25% of my salary,” on a scale of one-to-five, thirty percent marked five (strongly agree) and fifteen percent marked four); see also A.B.A., BALANCED LIVES, *supra* note 4, at 15 (citing studies which report that most men as well as women indicate a willingness to take lower salaries in exchange for more time with their families); A.B.A., REPORT, *supra* note 17, at ix n.iii (“Half of the respondents to a 2001 *American Lawyer* survey indicated they would take a large pay cut in order to reduce billable hours.”); NAT’L ASS’N FOR LAW PLACEMENT, FOUNDATION FOR RESEARCH AND EDUCATION, KEEPING THE KEEPERS II: MOBILITY & MANAGEMENT OF ASSOCIATES 15-16 (2003) (“[A]ssociates refer to their six-figure salaries as a curse rather than a cure. Their disaffection evolves from higher billable expectations . . . . Associates indicated that they would be willing to accept less pay for lower billable expectations . . . . [A]ssociates were unanimous in noting that balance is essential to their professional lives. Many associates indicated that they are willing to change employers again and again or leave the profession entirely to achieve this goal . . . .”); Elizabeth Chambliss, *Organizational Determinants of Law Firm Integration*, 46 AM. U. L. REV. 669, 741-42 (1997) (reporting on large firm surveys conducted between 1989 and 1992); Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate*



A part-time schedule and salary should simply reflect a reasonable and practical economic calculation: after overhead and benefits, calculate out how much profit the firm needs to make off of an employee's work, and lower the salary accordingly.<sup>55</sup> Similarly, if we simply admit the truth that in most large firms billable hours are in the driver's seat and the primary factor in determining the bonus portion of associate compensation,<sup>56</sup> this could also open up

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*Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239, 261-262 (2000) [hereinafter Fortney, *Soul for Sale*] (discussing studies which indicate a large percentage of associates who would prefer to work less hours for less money). Some surveys indicate that associates would exchange lower compensation for fewer hours even if it affected their advancement. See Fortney, *Soul for Sale*, *supra* at 262 (discussing survey in which eighteen percent of all respondents reported that they would exchange lower compensation for fewer hours, provided that it would not affect their treatment, even if it affected their advancement; twenty-three percent of the associates not on the partnership track indicated that they were interested in a reduced work arrangement, regardless of the impact on treatment or advancement). Analysis of the market for this option should be especially sensitive to generational differences because aspirations to the "brass ring" of partnership have changed dramatically in recent years, and—not unrelated—because "Gen Xers" may be more demanding of work-life balance. See, e.g., Fortney, *I Don't Have Time*, *supra* note 44, at 309 ("Many associates now do not even aspire to climb the ladder to partnership. In the study only 8% identified full partner participation as the professional goal they were most interested in attaining."); Fortney, *Soul for Sale*, *supra* at 242 & n.16 (discussing how the "goals and aspirations" of Generation X associates in terms of professional life are distinct from those of previous generations); Fortney, *Soul for Sale*, *supra* at 260 ("Generation Xers who observed layoffs may have little confidence that employers will 'take care of them.' If associates do not feel committed to their employers, they may resent working long hours for the elusive promise of partnership."); Deborah L. Rhode, *Profits and Professionalism*, 33 FORDHAM URB. L.J. 49, nn. 99-102 (discussing the younger generation's increasing demand for work-life balance); see also M. DIANE VOGT & LORI-ANN RICKARD, KEEPING GOOD LAWYERS: BEST PRACTICES TO CREATE CAREER SATISFACTION 83-86 (2000) (discussing the particular challenges of managing Generation X). To quote one "Gen-X" second year associate: "Being a lawyer is a big part of my life. But it's not everything." WILLIAMS & CALVERT, BALANCED HOURS, *supra* note 4, at 10.

55. WILLIAMS, UNBENDING GENDER, *supra* note 3, at 99 ("The principle for restructuring work should be that part-time workers should receive proportional rates of pay, benefits, and advancement."); see also WILLIAMS & CALVERT, BALANCED HOURS, *supra* note 4, at 7 (recommending that firms account for the cost of attrition in determining the economic feasibility of part-time arrangements); Joan C. Williams, *Canaries in the Mine: Work/Family Conflict and the Law*, 70 FORDHAM L. REV. 2221, 2227 (2002) [hereinafter Williams, *Canaries in the Mine*] (dispelling the myth that part-timers cost the firm money).

56. While firms do mention other factors, hours billed is the most common and the most heavily weighted criteria. See Jeff Blumenthal, *Bonus Bonanza: The Numbers are Growing as the Economy Improves*, LEGAL INTELLIGENCER, Apr. 11, 2005, at 1 (describing Philadelphia firms' bonus criteria); *Incentives*, PARTNER'S REP. FOR L. FIRM OWNERS, July 1, 2005, at 3 ("[B]illables (as always) tops the list of criteria when it comes time to split the pie . . ."). Perhaps the reason that hours dominate bonus criteria is similar to why they dominate client billing: the impression of a somewhat

a more rational response to the argument that part-time arrangements are “unfair” to those who are working full time.<sup>57</sup>

If we realize that we do not need to resolve the deep philosophical conundrum of commodified time in order to manage the amount of time demanded, and recognize the business dimensions of law firm profits and salaries, all of this is not such an extraordinary leap. So why is it so difficult to open a conversation about the “less time for less money” option?

### B. Commitment to “Client Service”

A primary reason why firms are not lining up to discuss a “less time for less money” option is tied to another application of professionalism rhetoric in the large firm context. In large firms, “excellence in service” generally includes both hard work, and being “on call” for immediate response to specific questions and requests.<sup>58</sup>

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“objective” measure which spares managers from making potentially painful and divisive value judgments and comparisons. See Blumenthal, *supra* at 1 (“‘Hours are the most heavily weighted [because] it is an objective measure. If you bill 300 hours more than someone else, then you are working harder than that person.’”) (quoting a legal recruiter).

57. See Rhode, *Profits and Professionalism*, *supra* note 54, at n.109 (discussing resentment that part-time schedules may generate in other lawyers); see also Jean Ohman Back, *Being There, Revisited: Part-Time Policies for Lawyers*, 59 OR. ST. B. BULL. 33, 33 (Oct. 1998) (“[F]irm economics was not the main objection of . . . managing partners; rather, the main objection appears to be that many partners do not think that it is ‘fair’ for one attorney, ostensibly part of a team, to work fewer hours than his or her counterparts.”).

58. EPSTEIN ET AL., PARADOX, *supra* note 4, at 20 (“Because of the ‘service ideal,’ professionals are responsible to clients for both economic reasons *and* because they feel obligated to be attentive; they are always on call.”). The authors also quote a woman associate at a large New York firm who reported that there would always be “‘a fundamental conflict between a law firm that puts its clients first and having a life.’” *Id.* at 14; see also Epstein et al., *Glass Ceilings*, *supra* note 4, at 383 (“In many instances, the long hours and often unpredictable schedules of those who work in this environment are conceived of as the logical outgrowth of the nature of the firms’ business—providing high-quality legal services to corporations and other clients in exchange for high fees. Here, in the words of one lawyer interviewed for this study, is how this relationship is conceived: ‘All of our clients have sizable in-house legal departments that do their more routine transactions, as well as have people available working for them that will do them. When they come to us it’s a big high-profile deal that the very top, the general counsel of the company, is working on. It needs to be done well and to be done fast.’”); *id.* at 384 (“Clients are often identified as the source of scheduling difficulties.”); *id.* at 385 (“In this profession it’s really a twenty-four hour a day, seven days a week, 365 days a year job, and clients—some clients more than others—demand that sort of availability and that sort of response from us anytime. Anytime they have a crisis, you are ready and have to have an immediate response.”). Consequently, advancement to leadership within the firm also requires this kind of availability. *Id.* at 380 (“There is near consensus that obtaining what a number of lawyers refer to as the “brass ring” of partnership hinges upon the demonstra-

In this context, part-timers are seen as “less dedicated and thus less professional.”<sup>59</sup>

But as with the “tyranny of the billable hour,” here too, the problem is that the concept of “client service” is painted in overly broad brush strokes. Certainly there are kinds of large firm practice—or more precisely, certain roles within certain times of certain kinds of large firm practice—which require attorneys to be “on call.” For example, if I am the lead negotiator in the heat of a highly volatile merger, it would be unrealistic to expect the client to be pleased when I say that my thirty hours are up for the week. Similarly, if we have forty-eight hours to file a motion for a preliminary injunction, and my assignment is to research the key issues and draft the argument, I should expect that the week will include dinner at my desk and some evening work. And if the brief is due on Monday, I should expect that it will require my attention over the weekend.

On the other hand, it is simply not true that all of large firm practice functions as a constant twenty-four hour emergency. To the extent that it does, it is a sign not of dedication to “client service,” but of poor management in staffing or in how the work is organized.<sup>60</sup> If we reconcile ourselves to the business dimensions of large firm practice which dictate that large numbers of projects and large numbers of people can and must be managed in an efficient way, one can see the extent to which case staffing and time allocations are all elements which can and should be controlled.<sup>61</sup>

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tion of commitment to the firms’ traditional standards of constant availability and unflagging dedication to professional life.”).

59. EPSTEIN ET AL., PARADOX, *supra* note 4, at 7. Gender may be a significant factor in definitions of “commitment.” See, e.g., WILLIAMS & CALVERT, BALANCED HOURS, *supra* note 4, at 38. The authors describe a workshop at an accounting firm in which “[m]en and women were asked to define who was a committed professional. The men tended to equate commitment with long hours, and to assume that people working in flexible work arrangements were less committed.” *Id.* The women, on the other hand, “tended to assume that given the difficulties faced both at home and at work . . . those in flexible work arrangements were more committed: otherwise, they would simply have quit.” *Id.*

60. Kaveny, *supra* note 44, at 219 (“What about emergencies? Obviously, they must be accommodated; that is a fact of professional life. But what counts as a true emergency? It is my suspicion that lawyers frequently do not work late and on weekends because of sudden crises, but rather because they have developed the habit of ‘catching up’ during that time. Moreover, weeks and months of crushing amounts of work do not constitute a succession of ‘emergencies,’ they are a sign that more lawyers must be hired to do what needs to be done.”).

61. In arguing that to recognize the “business dimensions” of law practice could lead toward more creative management solutions, I do not mean to imply that the business world is necessarily more open to part-time arrangements. Contexts and

Most broadly, any attorney with more than one active matter is in some sense working “part-time,” at least as far as that particular client is concerned. As Professor Joan Williams has observed, “[M]ost lawyers work on a variety of matters at once, giving part-time attention to each. The only question is how many matters they will work on at once.”<sup>62</sup> Or as one law firm partner put it, “[V]irtually every associate who works with me works on other cases for other partners, and is therefore, a part-time lawyer as far as my cases are concerned.”<sup>63</sup>

More specifically, many areas of large firm practice are fairly predictable and therefore staffing and workloads may be easier to manage. For example, many aspects of trusts and estates, tax and regulatory work are highly predictable.<sup>64</sup> But neither litigation nor transactional work should be written off as impossible to manage. As Professor Willams reports, “every time someone asserted that a given area—mergers and acquisitions, for example, or litigation—was not suitable for part-time work, we soon found someone successfully working a part-time schedule in precisely that practice

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results will vary, depending on the company. Compare WILLIAMS, *UNBENDING GENDER*, *supra* note 3, at 72-73 (discussing recent studies that show that nursing was “virtually the only profession in which part-time work did not hurt women’s careers” and a study of a large corporation in which any worker “who so much as expressed an interest in part-time was immediately and permanently barred from advancement”) with *id.* at 87 (discussing a study of ten large Chicago-based companies, nine of which had successful sharing arrangements, and half of those involved significant travel, client contact and supervisory authority). See generally CORPORATE COUNSEL PROJECT, *WORK/LIFE REPORT*, *supra* note 4 (comparing the work-life balance for corporate lawyers at firms with those who are in-house). My point is modestly interdisciplinary: the tools for management and economic analyses which are somewhat more developed in the business world may help law firms to face the realities of large firm practice and to open themselves to more creative solutions. See Thomas L. Shaffer, *Lawyer Professionalism as Moral Argument*, 26 GONZ. L. REV. 393, 404 (1990-1991) (recognizing that the extent to which business dimensions have pervaded the legal profession’s history could lead to more useful reflection on “the professionalism that is in commerce and the commerce that is in professionalism” and “how to fit the altruism of pure service to the commercialism that supports living well”). See generally Atkinson, *Let Us Reason Together*, *supra* note 39 (identifying parallels between business ethics and legal ethics).

62. See Williams, *Canaries in the Mine*, *supra* note 55, at 2225; see also WILLIAMS & CALVERT, *BALANCED HOURS*, *supra* note 4, at 45 (noting that neither are “standard hours” attorneys always available for their clients because they also balance the multiple demands on their time posed by other clients).

63. WILLIAMS, *UNBENDING GENDER*, *supra* note 3, at 84-85.

64. Epstein et al., *Glass Ceilings*, *supra* note 4, at 401 (“It may be easier to adopt such an arrangement in specialties like Trusts and Estates, Tax, and Regulatory law, which are less likely to require rapid solutions to clients’ problems and therefore allow attorneys to work more predictable hours.”).

area.”<sup>65</sup> Large swaths of litigation practice—and not only document review, but appellate work as well—are predictable and therefore manageable both in terms of anticipated deadlines and the number of lawyers required to complete any given task within a reasonable amount of time.<sup>66</sup> In some of these areas, especially those requiring the sophisticated and cutting-edge analytical work of big firm fame, clients may be better served by lawyers who are fresh and awake rather than those who are “committed” to hammering away at the problem late into the night.<sup>67</sup>

In large firms, the type of work and the tendency toward specialization often lends itself to organizing projects by teams where associates often have enough information about a case to help and to cover for one another.<sup>68</sup> Large corporate clients generally do not

65. Williams, *Canaries in the Mine*, *supra* note 55, at 2226; *see also* A.B.A., *BALANCED LIVES*, *supra* note 4, at 14 (“[Unpredictable] cases are not the mainstay of legal practice. Nor are all problems of oppressive schedules an inevitable byproduct of effective client representation.”); WILLIAMS & CALVERT, *BALANCED HOURS*, *supra* note 4, at 43-45 (dispelling the myth that certain practice areas are not amenable to a balanced hours schedule).

66. Some of the discussions about the difficulties of meshing part-time schedules with litigation are obviously based on solo-practitioner or small-firm models, and do not consider that many large firm litigators never (or almost never) see the inside of a courtroom, and perform most (if not all) of their work in front of a computer. Unfortunately, overly broad brush strokes impute the difficulties of a limited context to vastly differentiated types of practice. *See, e.g.*, EPSTEIN, *WOMEN-AT-LAW*, *supra* note 6, at 198 (“Part-time work is not always offered or possible in some fields. A woman working in litigation—in a law firm or for the district attorney—cannot take her work home in the evening to complete by computer. Court work can never be made homework, nor can a lawyer leave court in the middle of the day for a class play . . . . If part-time work is something you would consider for even a few years . . . [I]tigation is probably not for you.”).

67. Deborah L. Rhode, *Balanced Lives for Lawyers*, 70 *FORDHAM L. REV.* 2207, 2217 (2002) (“A wide array of research indicates that part-time employees are more efficient than their full-time counterparts, particularly bleary-eyed, burned-out practitioners with oppressive schedules.”); *see also* Fortney, *I Don’t Have Time*, *supra* note 44, at 305-06 (discussing study in which sixty-four percent of respondents agreed with the statement, “Working long hours adversely affects my ability to think critically and creatively”); Fortney, *Soul for Sale*, *supra* note 54, at 274 (“[L]ong work hours may undermine an attorney’s ability to provide the quality of service that clients deserve.”); Geoffrey C. Hazard, *Ethics*, *NAT’L L.J.*, Feb. 17, 1992, at 19 (“No group can get serious mental work out of its members at a rate of more than 2,000 [hours] per year across the board.”); Judith L. Maute, *Balanced Lives in a Stressful Profession: An Impossible Dream?*, 21 *CAP. U. L. REV.* 797, 814 (1992) (“Fatigue impairs one’s capacity to make fully reasoned and sound professional judgments.”); *see also* William G. Ross, *The Ethics of Hourly Billing by Attorneys*, 44 *RUTGERS L. REV.* 1, 80 (1991) (arguing that excessive emphasis in generating hours discourages “the creativity and imagination which enable attorneys to transcend plodding mediocrity and which furnish the well-springs of legal development”).

68. *See generally* Shawn W. Cutler & David A. Daigle, *Using Business Methods in the Law: The Value of Teamwork Among Lawyers*, 25 *T. JEFFERSON L. REV.* 195

call young associates directly—their work is managed and parceled out by partners and senior associates. Emergency requests do come up—but real emergencies do not come up all the time. For the most part, the reason that young associates are at their desks late into the night is not because clients are constantly calling them directly to fulfill their emergency requests. The rhetoric of “client service” is at least sometimes a euphemism that both partners and associates use to foster the illusion for themselves and for others that they are indispensable, and that all of their work is urgently important all of the time.<sup>69</sup> Partners and associates who are honest with themselves know that this is not and cannot be true. As one partner commented on his experience working with a part-time associate: “most of the time it was only in someone’s mind that [a task] had to be done that minute.”<sup>70</sup>

In fact, large firms are especially well-equipped to handle real emergencies without completely sacrificing the work-life balance. While developments in communications technology have the potential to maintain a twenty-four hour tether on associates, it is not hard to see how they could also work in favor of more flexible work arrangements.<sup>71</sup> Remote computerized access to files and legal databases, email, voicemail, cell phones, and Blackberries make it possible to work anywhere. If harnessed and well-managed, this kind of technology could help to eliminate the phenomenon of “face time” for which associates wander the halls at late hours simply to make the point that they are working hard. At the same time, it also insures that attorneys are easily reachable—outside

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(2002) (exploring the benefits of utilizing teamwork approaches in the legal profession).

69. See VOGT & RICKARD, *supra* note 54, at 57. The authors describe an extreme example of how believing oneself to be indispensable can be carried even to one’s deathbed: A lawyer “recently diagnosed with a life-threatening illness but still working seven and a half hours a day between chemotherapy, blood transfusions, and hospitalizations said: ‘I don’t want to let the client down. He’s been so good to us. And no one else can do what I do. I’m the only one who knows it.’” *Id.*; see also *id.* at 66 (“I love what I do. My clients are my friends . . . They need me. They wouldn’t know what to do if I wasn’t there for them.”); Cynthia Fuchs Epstein & Carroll Seron, *The Symbolic Meanings of Professional Time*, in LEGAL PROFESSIONAL: WORK, STRUCTURE AND ORGANIZATION 79, 83 (Jeffrey Van Hoy ed., 2001) (“[L]ogging ‘excessive’ hours is not merely an expression of diligent attention to the client, but also a sign of machismo, a heroic activity. In law, as in other professions, where work may be both subjectively and objectively evaluated, hours worked serve as a proxy for dedication and excellence.”).

70. EPSTEIN ET AL., *PARADOX*, *supra* note 4, at 41.

71. *Id.* at 124 (“The new technologies both ease and undermine the juggling act required of part-time arrangements . . .”).

the office—in case of genuine emergencies which require immediate attention.

None of this analysis is extremely difficult. Much of it seems to be common sense. But even if attorneys at large firms were to recognize these two analytical flaws in large firm management, why do I suspect that they would continue to work late into the night and continue to resist arguments that such patterns are not necessary to large firm client service? Why is it so hard to peel back the layer of professionalism rhetoric to appreciate how much room there would be for creative alternatives?

### III. THE EVILS OF “ELASTICITY”

The deepest obstacles to finding a harmonious work-life balance are not practical but cultural. A text from C.S. Lewis’s *THAT HIDEOUS STRENGTH* helps to reveal some of the most deeply ingrained imbalances within professional culture.

#### A. “There Are No Water-Tight Compartments”

*THAT HIDEOUS STRENGTH* is set in Edgestowe, a small English college town. One of the principal characters is Mark Studdock, an eager young sociologist who was “beginning to find his feet”<sup>72</sup> in the academic circles of Bracton College. Studdock was just recently elected to a fellowship, and the taste of becoming part of the “inner circle” was still “sweet in the mouth.”<sup>73</sup> In the opening chapter, Studdock joins the College Meeting to discuss the sale of a portion of the College property to the National Institute of Coordinated Experiments (N.I.C.E.), which was to be “free from almost

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72. LEWIS, *supra* note 8, at 17.

73. *Id.* Attraction to the “inner circle” is a running theme in this novel and in C.S. Lewis’s work generally. See *id.* at 72 (describing Studdock’s initial awkwardness on the N.I.C.E. premises: “He felt a hesitation about going back into the house. It might mean further talk with interesting and influential people; but it might also mean feeling once more like an outsider, hanging about and watching conversations which he could not join.”); see also C. S. LEWIS, *The Inner Ring*, in *THE WEIGHT OF GLORY AND OTHER ADDRESSES* 93, 95 (Walter Hooper ed., 1949) (“You are never formally and explicitly admitted by anyone. You discover gradually, in almost indefinable ways, that it exists and that you are outside it, and then later, perhaps, that you are inside it. There are what correspond to passwords, but they too are spontaneous and informal. A particular slang, the use of particular nicknames, an allusive manner of conversation are the marks. But it is not constant. It is not easy, even at a given moment, to say who is inside and who is outside. Some people are obviously in and some are obviously out, but there are always several on the border line.”). In their casebook, Deborah Rhode and David Luban have thoughtfully used *The Inner Ring* text to illustrate how social pressure can ease the slide into unethical behavior. See DEBORAH L. RHODE & DAVID LUBAN, *LEGAL ETHICS* 447 (4th ed. 2004).

all the tiresome restraints—‘red tape’ was the word its supporters used—which have hitherto hampered research” in England.<sup>74</sup> As the story unfolds, it reveals that the sale of the property was simply the first step in the N.I.C.E.’s plan to take over the entire village, the universities in England, the media and the police, with the ultimate agenda of submitting the whole world to a totalitarian regime. The fantasy culminates with a depiction of an epic struggle between good and evil.

Studdock’s gradual incorporation into the N.I.C.E. is one of the most interesting and terrifying aspects of the story. Upon his first meeting with John Wither, the Deputy Director of the N.I.C.E., Studdock attempts several queries to clarify “the exact nature of the work . . . and of my qualifications for it.”<sup>75</sup> Playing on his insecurities, Wither evades the question:

You need not have the slightest uneasiness in that direction. As I said before, you will find us a very happy family, and may feel perfectly satisfied that no questions as to your entire suitability have been agitating anyone’s mind in the least. . . . You are—you are among friends here, Mr. Studdock.<sup>76</sup>

At the initial meeting, Studdock did not push for clarity regarding his job description,

partly because he began to be afraid that he was supposed to know this already, and partly because a perfectly direct question would have sounded a crudity in that room—a crudity which might suddenly exclude him from the warm and almost drugged atmosphere of vague, yet heavily important confidence, in which he was gradually being enfolded.<sup>77</sup>

Wither went on to explain:

We do not really think, among ourselves, in terms of strictly demarcated functions, of course. I take it that men like you and me are—well, to put it frankly, hardly in the habit of using concepts of that type. Everyone in the Institute feels that his own work is not so much a departmental contribution to an end already defined as a moment or grade in progressive self-definition of an organic whole.<sup>78</sup>

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74. LEWIS, *supra* note 8, at 23.

75. *Id.* at 53.

76. *Id.* at 53-54.

77. *Id.* at 54.

78. *Id.*



Here Lewis interjects a preface: “God forgive him, for he was young and shy and vain and timid, all in one.”<sup>79</sup> And Studdock responds to Wither: “I do think that is so important. The elasticity of your organisation is one of the things that attracts me.”<sup>80</sup> He found himself paying the £200 entrance fee for admittance to the “club” and was soon accruing fees for meals and lodging.

When clarity about his position was still not forthcoming after a few days and some initial work, Studdock returned to Wither to press him for details on his salary and to whom he would report. “The Deputy Director’s expression became more and more courtly and confidential as Studdock stammered, so that when he finally blurted out, ‘I suppose there’d be a contract or something of the kind,’ he felt he had committed an unutterable vulgarity.”<sup>81</sup>

In the meantime, the N.I.C.E. colleague who had initially introduced him to Wither informed the College of Studdock’s intention to resign from his fellowship. Worn down by fear and insecurity, in his final “interview” with Wither he ultimately accepted a probationary appointment at less than half of the initial salary discussed. In response to his final question on from whom he was to take orders, Wither replied:

I think, Mr. Studdock, we have already mentioned elasticity as the keynote of the Institute. Unless you are prepared to treat membership as—er—a vocation rather than a mere appointment, I could not conscientiously advise you to come to us. There are no water-tight compartments. I fear I could not persuade the Committee to invent for your benefit some cut and dried position in which you would discharge artificially limited duties and, apart from those, regard your time as your own. Pray allow me to finish, Mr. Studdock. We are, as I have said before, more like a family, or even, perhaps, like a single personality. There must be no question of “taking your orders,” as you (rather unfortunately) suggest, from some specified official and considering yourself free to adopt an intransigent attitude to your other colleagues. (I must ask you not to interrupt me, please.) That is not the spirit in which I would wish you to approach your duties. You must make yourself useful, Mr. Studdock—generally useful. I do not think the Institute could allow anyone to remain in it who showed a disposition to stand on his rights—who grudged this or that piece of service because it fell

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79. *Id.*

80. *Id.* at 54-55.

81. *Id.* at 104.

outside some function which he had chosen to circumscribe by a rigid definition.<sup>82</sup>

Wither then went on to define the other side of the teetering balance:

On the other hand, it would be quite equally disastrous—I mean for yourself, Mr. Studdock: I am thinking throughout of your own interests—quite equally disastrous if you allowed yourself ever to be distracted from your real work by unauthorized collaboration—or, worse still, interference—with the work of other members. Do not let casual suggestions distract you or dissipate your energies. Concentration, Mr. Studdock, concentration. And the free spirit of give and take.<sup>83</sup>

Studdock then slid into the N.I.C.E., still without a clear sense of “what I’m supposed to be doing.”<sup>84</sup> He rationalized his failure to confront Wither as a necessary sacrifice to meet his wife’s needs. He “reimbursed himself,” Lewis concluded,

for the humiliation of this interview by reflecting that if he were not a married man he would not have borne it for a moment. This seemed to him (though he did not put it into words) to throw the burden upon Jane. It also set him free to think of all the things he would have said to Wither if he hadn’t had Jane to bother about—and would still say if ever he got a chance.<sup>85</sup>

### B. “All the Things He Would Have Said”

Especially for those familiar with the drama of Lewis’s narrative, I do not want to overstretch the analogy or overstate my case. In particular, I do not mean to imply that large law firms are comparable to Lewis’s cosmically evil N.I.C.E.<sup>86</sup> But I do think the text

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82. *Id.* at 119-20.

83. *Id.* at 120.

84. *Id.* at 121.

85. *Id.* at 120.

86. I am on the record with a critique of the tendency to describe large law firms that serve corporate clients as “bad” or inherently unethical. See, e.g., Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?*, 81 U. DET. MERCY L. REV. 921, 922 (2004) [hereinafter Uelmen, *Why Rock the Boat?*] (lamenting the tendency of law students to “perceive the universe of legal jobs as divided into distinct ‘all or nothing’ camps: on the ‘good’ side, public interest lawyers crusade for any number of causes which further social justice and equality; on the ‘bad’—or at least ‘not good’—side, big firm lawyers pursue the generally greedy profit-seeking agenda of Corporate America”); Amelia J. Uelmen, *One Case at a Time: On Being a Catholic Lawyer*, in PROFESSIONS OF FAITH: LIVING AND WORKING AS A CATHOLIC 55, 56-63 (James Martin, S.J. & Jeremy Langford eds., 2002) (noting that many aspects of large firm practice are morally neutral); *id.* at 63 (“[B]y far the biggest challenge in legal practice at a large firm is not the lack

illuminates something about the subtle—or not so subtle—dynamic between large firms and young associates as they begin to navigate the role of work in their lives and their sense of what it means to be part of a “profession.” In fact, one of the beauties of the text is that responsibility for the slide into a horrific job is placed not only on the manipulative techniques of the large organization and its leadership, but also on the “young and shy and vain and timid”<sup>87</sup> professional.

The next sections flag three of the more subtle dangers of professionalism rhetoric that emerge from Lewis’s text. In particular, they highlight terms which in and of themselves might sound positive and constructive, but which become particularly problematic in an anchorless world where one is easily swallowed up into cross currents of greed and vanity.

1. “*You must be prepared to treat membership as a vocation rather than a mere appointment.*”

The American Bar Association notes the loss of an understanding of the practice of law as a “calling” as a primary cause in the decline of professionalism.<sup>88</sup> In and of itself, the concept of law as a “calling” or “vocation” sounds constructive and even noble. In fact, “vocation” is a powerful concept which can offer lawyers a larger point of reference and a perspective within which they may find meaning in their work and in lives.<sup>89</sup> But looking at the large firm context against the backdrop of the C.S. Lewis text, one can

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of openness to conversations about social responsibility. It is insisting on the necessity of maintaining [a] balanced life . . .”). See generally Amelia J. Uelmen, *Can a Religious Person Be a Big Firm Litigator?*, 26 FORDHAM URB. L.J. 1069 (1999) (discussing the ways in which a very junior attorney at a large law firm may integrate principles of Catholic Social Thought into various challenges encountered in the course of day-to-day large firm litigation practice).

87. LEWIS, *supra* note 8, at 54.

88. *Teaching and Learning Professionalism: Report of the Professionalism Committee*, 1996 A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR 3 [hereinafter A.B.A., *Teaching and Learning Professionalism*].

89. See, e.g., JOSEPH G. ALLEGRETTI, THE LAWYER’S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE 24-36 (1996) [hereinafter ALLEGRETTI, LAWYER’S CALLING]; Timothy W. Floyd, *The Practice of Law as a Vocation or Calling*, 66 FORDHAM L. REV. 1405 (1998); Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation*, 55 CASE W. RES. L. REV. 127, 151 (2004); see also H. Thomas Wells, *A Lawyer’s Letter to His Daughter*, LITIG., Winter 2000, at 1 (“You are not merely undertaking a trade or business where there are no ethical restraints; you are entering into a profession, a calling—indeed, a ministry.”). The 2004 Inaugural Conference of Pepperdine’s Institute on Law, Religion & Ethics was dedicated to this topic. See Symposium, *Can the Ordinary Practice of Law Be a Religious Calling?*, 32 PEPP. L. REV. 373 (2005).

also see a dark and even sinister side to some descriptions of the legal profession as a “vocation.”

In some of the professionalism rhetoric, law as a “vocation” means that the profession has a total—and totalizing—claim over one’s life. As one lawyer who left practice put it, “I was a good lawyer. I liked the work. But it wasn’t my calling. It wasn’t everything to me.”<sup>90</sup> Similarly, in a book published by the ABA Law Practice Management Section, the authors introduced their chapter, “Law is a Vocation,” in this way:

Lawyers are high achievers who have worked hard to get where they are, out of desire that is more than just an interest in money, power, or position. . . . Often, they practice at great personal sacrifice. Many have been divorced several times, have serious and debilitating illnesses, put off life events such as having children or visiting elderly parents, and still persevere in the practice. In short, lawyers believe that they have been called to the profession—that it is their one true purpose in life.<sup>91</sup>

The text reveals no apparent irony—these sacrifices seem to be a given assumption.<sup>92</sup> As Professors Epstein and Seron summarize,

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90. VOGT & RICKARD, *supra* note 54, at 9.

91. *Id.* at 7; see also EPSTEIN ET AL., PARADOX, *supra* note 4, at 19 (“[F]or the physician, lawyer, soldier, or minister, there has long been an expectation that they will not be clock watchers and will not allow competing demands from other spheres of life to undermine their professional work. Members of professions, ideally, develop a ‘deep, lifelong commitment to and identification with their work: it becomes a ‘central life interest.’”) (quoting Eliot Freidson, *Professionalism as Model and Ideology*, in LAWYERS’ IDEALS/LAWYERS’ PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 221 (Robert Nelson et al. eds., 1992)); Epstein & Seron, *supra* note 69, at 86 (describing an episode in which a partner in the elevator gratuitously told an associate on the partnership track “that she couldn’t be serious about her work because she worked part-time. I am serious about my work. But not in the way that he meant, which is totally single-minded with nothing else mattering.”); Epstein & Seron, *supra* note 70, at 82 (noting the coining of the term “greedy institutions” to describe the norms that govern work priorities expected of professionals).

92. See Gary W. Loveman, *The Case of the Part-Time Partner*, HARV. BUS. REV., Sept.-Oct. 1990, at 12, 20 (including analysis of Marsha E. Simms, partner at Weil, Gotshal & Manges of whether a part-time associate should be promoted to partner: “Most women who have attained a level of professional success have done so by consciously sacrificing other aspects of their lives—whether it be marriage, children, or community involvement . . . . Creating a new set of partnership criteria for part-time associates, most of whom will be women, risks alienating women who have earned their status in the traditional way and have made the sacrifices [a part-time associate] was unwilling to make.”). The partner then went on to draw a connection between the readiness to sacrifice all other dimensions of one’s life and one’s competency to practice law, arguing that promotion of a part-time associate to partner “might also imply that women should be judged by a different, less demanding set of criteria, which brings into question the competency and commitment of all professional women.” *Id.*

“A core value of professionalism is the claim that work should embody the primary commitment and identity of the incumbent.”<sup>93</sup> Obviously, part-time arrangements fly in the face of this definition of law as a “vocation.” Epstein and Seron note, “At the root of professional work is the often unexamined premise that ‘real’ professionals work full-time, that is, they work *all* the time.”<sup>94</sup>

Of course, the concept of a professional “vocation” or “calling” need not necessarily lead to work’s total claim over one’s life. The ABA’s definition of professionalism notes that the “common calling” is for a broader purpose, “to promote justice and public good.”<sup>95</sup> For those who work within a religious perspective, the concept of vocation can even serve as something of a corrective to the all-consuming claims of work, because the anchor of this vision is generally found outside of the legal profession.<sup>96</sup> This concept of vocation evokes a “total” response—not to the task itself, but to God. As Professor Timothy Floyd put it:

We are *all* called to serve God and neighbor with everything that we are and everything that we have and everything that we do. That includes our work lives as well as our spiritual lives or religious lives. Any occupation, then, can and should be a calling, because any job can be an instrument of service to God and neighbor.<sup>97</sup>

As Walter Brueggeman put it, “Vocation . . . is finding ‘purpose for being in the world which is related to the purposes of God.’”<sup>98</sup> Through this lens, *God*—not work—has a “totalizing” claim: “God

93. Epstein & Seron, *supra* note 69, at 79.

94. *Id.* at 91.

95. A.B.A., *Teaching and Learning Professionalism*, *supra* note 88, at 6.

96. See, e.g., THOMAS L. SHAFFER & MARY M. SHAFFER, *The Community of the Faithful*, in AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION 198 (1991) (“[T]he lawyer stands in the community of the faithful and looks from there at the law.”); see also Schiltz, *supra* note 18, at 734-36 (discussing sources and benefits of “anchoring”); Amelia J. Uelmen, *A View of the Legal Profession from a Mid-Twelfth-Century Monastery*, 71 FORDHAM L. REV. 1517, 1532 (2003) (discussing how Bernard of Clairvaux’s medieval religious texts bolster a vision of lawyers as public servants).

97. Floyd, *supra* note 89, at 1407; see also ALLEGRETTI, *LAWYER’S CALLING*, *supra* note 89, at 24-36; JAMES W. FOWLER, *BECOMING ADULT, BECOMING CHRISTIAN: ADULT DEVELOPMENT AND CHRISTIAN FAITH* 95 (1984) (“Vocation is the response a person makes with his or her total self to the address of God and to the calling to partnership.”); John L. Cromartie, *Reflections on Vocation, Calling, Spirituality and Justice*, 27 TEX. TECH L. REV. 1061, 1066-68 (1996) (discussing Christian sources defining vocation).

98. Walter Brueggeman, *Covenanting as Human Vocation*, 33 INTERPRETATION 115, 126 (1979).

demands all of who we are, not just a part.”<sup>99</sup> It is the “totalizing” nature of vocation to serve God in all aspects of their lives that actually helps lawyers to break through the tendency to compartmentalize religious meaning to the “private” sphere, and thus find deeper meaning in their professional lives.<sup>100</sup>

Here I emphasize religious frameworks for understanding the concept of “vocation” because I personally gravitate toward these definitions and because these are the texts with which I am most familiar.<sup>101</sup> But there would be numerous paths—both theistic and not—to insure that one’s sense of “vocation” is grounded in a broader framework.<sup>102</sup> Within these contexts, the “vocation” is not really to law in and of itself—or for itself—but to the ways in which the knowledge of the law and legal practice may become vehicles for a larger vision of service to the common good and to neighbors in need.<sup>103</sup>

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99. Floyd, *supra* note 89, at 1408. In the context of a discussion about the lawyer’s profession and vocation, a lawyer who became an Episcopal Bishop, James Pike, drew God’s total claim from the *Shema Yisrael*: “Hear O Israel, the Lord thy God is One. And thou shalt love the Lord thy God with thy whole heart, thy whole mind and thy whole strength.” He explains: “Here we see the ultimate connection between religion and ethics. That is why ‘whole’ is used as the adjective. There is only One of Him; hence he is entitled to all—all of each of us.” JAMES A. PIKE, *BEYOND THE LAW* 22-23 (1963).

100. ALLEGRETTI, *LAWYER’S CALLING*, *supra* note 89, at 126 (demonstrating how the important distinction between a “lawyer who is a Christian” and a “Christian who is a lawyer” opens the door to reflection on what it means to live out a Christian calling within one’s role as a lawyer); see also Robert K. Vischer, *Heretics in the Temple of Law: The Promise and Peril of the Religious Lawyering Movement*, 19 J.L. & RELIGION 427, 429 (2004) (“For many religious lawyers grappling with the all-encompassing reach and explanatory power of faith, the presumption that they can or should bracket the dictates of their devotion when they are operating within the temple of law is a non-starter.”).

101. See, e.g., Pearce & Uelmen, *supra* note 89, at 136-37 (describing my own efforts to integrate religious values into large firm practice); *id.* at 131-35, 139-42 (describing the history and development of the “religious lawyering movement” and the work of Fordham Law School’s Institute on Religion, Law & Lawyer’s Work); see also Jerry Organ, *From Those to Whom Much Has Been Given, Much Is Expected: Vocation, Catholic Social Teaching, and the Culture of a Catholic Law School*, 1 J. CATH. SOC. THOUGHT 361, 366-71 (2004) (discussing how the principles of Catholic Social Thought can inform one’s understanding of how to live out “multiple vocations”).

102. See, e.g., Greco, *supra* note 35 (“[B]eing a lawyer is . . . a noble calling . . . . To know the law is to understand how to make our communities, our country and our world better through its proper application. To practice law properly is to engage in public service of the highest order.”); Howard Lesnick, *The Religious Lawyer in a Pluralist Society*, 66 FORDHAM L. REV. 1469, 1499-1502 (1998) (describing secular thinking which “partakes substantially” of the qualities of a religious outlook, namely, “obligation, integration, and transcendence”).

103. See Greco, *supra* note 35.

But when the rhetoric of “calling” or “vocation” is placed against the backdrop of the realities of large firm practice, it has the potential to be especially problematic. Given the demands on their time, large firm attorneys are more likely to live in a shrinking world in which they more easily lose contact with the broader horizons that can anchor and frame their sense of vocation. In this context, the rhetoric of vocation has the potential to become a further vehicle for the totalizing claims not of the public good, but of *work itself*. It becomes the *firm* that requires complete and total dedication, to the exclusion of any other interests, or even any other personal attachments. If, as James Fowler put it, “vocation” is about “[t]he centers of value and power that have god value for us . . . that confer meaning and worth on us and promise to sustain us,”<sup>104</sup> then in an anchorless world, “law as a vocation” has the potential to become a form of idolatry.<sup>105</sup>

A second problem with the “vocation” metaphor in a large firm context is that it can feed into a deeply individualistic strain in the professionalism rhetoric. Here too, the notion of vocation is not necessarily individualistic. In fact, some of the most thoughtful commentators on the subject have tied it to the deepest of communal realities.<sup>106</sup> But again, in the shrinking worlds of large firm at-

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104. JAMES W. FOWLER, *STAGES OF FAITH: THE PSYCHOLOGY OF HUMAN DEVELOPMENT AND THE QUEST FOR MEANING* 18 (1981).

105. See Joseph G. Allegretti, *Neither Curse Nor Idol: Towards a Spirituality of Work for Lawyers*, 27 TEX. TECH L. REV. 963 (1996) (outlining dangers of work as an “idol”); Floyd, *supra* note 89, at 1412 (“[B]eing a lawyer tends to take over our lives. Indeed, our work as lawyers is such an important and overwhelming part of who we are that there is often not much left when we get down to the ‘nonlawyer’ parts of ourselves.”); see also PIKE, *supra* note 99, at 27 (“The double problem of the loss of a will to work . . . and of a work fanaticism comes from the same source—the loss of the eternal meaning of our lives.”) (quoting Bishop Richard S. M. Emrich); Rob Atkinson, *A Dissenter’s Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 269 (1995) (analyzing how religious metaphors in professional rhetoric express fundamental commitments). Max Weber’s description of Luther’s notion of a “calling” can also be given a “totalizing” interpretation: a calling “is something which man has to accept as a divine ordinance, to which he must adapt himself.” See MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 85 (Talcott Parsons trans., Charles Scribner’s Sons 1958).

106. See, e.g., Floyd, *supra* note 89, at 1406 (“I . . . do not mean to imply that discerning God’s call in our lives is an individual matter, to be discerned alone, in isolation. Although God’s call is always in one sense personal and unique, Christians are necessarily a part of the body of Christ. One cannot follow Christ without being a part of the church. It is one of the responsibilities we share as members of that body to help each other hear the voice of God in our lives, and to help each other find or discover our calling.”); Thomas L. Shaffer, *The Tension Between Law in America and the Religious Tradition*, in *LAW AND THE ORDERING OF OUR LIFE TOGETHER* 28, 45 (Richard John Neuhaus ed., 1989) (describing a professional as a person “called out of

torneys it is easy to lose contact with these claims and these communities.

Because the concept of “vocation” seems to appeal to the realm of one’s inner voice and conscience,<sup>107</sup> it follows—at least in some applications of the rhetoric—that it is up to lawyers as individuals to work out their own response to their professional calling. As one manual described, “Responsibility for designing a successful legal career is the lawyer’s alone.”<sup>108</sup> And if they do not work it out, it is their own individual fault.<sup>109</sup> Even words such as “nurture,” which would seem to evoke the watchful care of at least one other person, are reduced to Lone Ranger rhetoric: “Nurturing the lawyer and developing his talent are ultimately the individual lawyer’s responsibility.”<sup>110</sup> Perhaps most problematic, this aspect of the rhetoric masks the deep structural and communal imbalances that would be impossible to correct on an individual level.

## 2. “You must make yourself useful—generally useful.”

Related to the legal profession’s “totalizing” claims over one’s entire life is the notion that it is somehow unprofessionally rigid to attempt to draw limits or lines of clarity around one’s own tasks within the profession. Anthony Kronman is an eloquent champion of law as “a generalist’s craft,” in which lawyers move “with relative ease from one field to another, from criminal law to bankruptcy to civil rights and back again, with only modest readjustments.”<sup>111</sup> This analysis may be contrasted with “pinmaking”—Adam Smith’s paradigm for modern economic life—which is characterized “by the division of labor into ever finer parts, each

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the church, sent out from [a] particular people to do something that is religiously important”). For a thoughtful discussion of this line of analysis in Shaffer’s writing, see Howard Lesnick, *No Other Gods: Answering the Call of Faith in the Practice of Law*, 18 J.L. & RELIGION 459 (2002-2003).

107. See Floyd, *supra* note 89, at 1405 (“[C]alling is a peculiarly personal issue.”).

108. VOGT & RICKARD, *supra* note 54, at 63. See *id.* at 65 (“Best [l]awyers and their organizations are lucky, if that means the lawyers made their own luck by taking control of their professional development, designing their own careers, and being prepared to take advantage of the opportunities presented to them.”).

109. Veasey, *supra* note 11, at 16 (“[T]he answer lies in the attitude by which each lawyer approaches the practice of law.”); Wells, *supra* note 89, at 1 (“[W]e alone may not be able to chance the future, but our individual choices as professionals can affect it.”).

110. VOGT & RICKARD, *supra* note 54, at 8.

111. Anthony T. Kronman, *Professionalism*, 2 J. INST. FOR STUDY LEGAL ETHICS 89, 91 (1999). For a thoughtful critique of Kronman’s promotion of the Business-Profession dichotomy, see Samuel J. Levine, *Faith in Legal Professionalism: Believers and Heretics*, 61 MD. L. REV. 217 (2002).



the province of a specialist with a tremendously developed but excruciatingly narrow expertise.”<sup>112</sup> According to Kronman, lawyers “perform a range of different tasks, counseling clients, drafting documents for them, negotiating and litigating on their behalf, touching in the process on a dozen different substantive areas of law, and they move about among these tasks with a flexibility unthinkable in Adam Smith’s pinmaking factory.”<sup>113</sup>

Kronman may have hit the mark in describing some aspects of small-firm practice, or the roles of some large firm partners some of the time, but for most large firm associates, the last time they moved easily between criminal law, bankruptcy, and civil rights was in their third year of law school. Sadly for Kronman, Adam Smith’s description of the pinmaking factory is much closer to the reality of large firm practice: to a large extent, the success of a large law firm—especially in the cultivation of its pool of associate labor—depends upon “the division of labor and the cultivation of a deep but narrow expertise.”<sup>114</sup>

In large firm practice, the rhetoric of being “generally useful” leads to several problems. On the most basic level, it can block open discussions about how to efficiently organize and manage large numbers of people working for large numbers of clients. When this is combined with a broad notion of “commitment” to client service, it can conveniently slide into whatever approach will take the most time, and therefore generate the highest number of billable hours.<sup>115</sup> “Generally useful” service is a potentially constructive ideal. But in large firms a rhetoric of being “generally useful” may foster greed rather than dedication to what the client actually needs.

More specifically, the exhortation to be “generally useful” blocks creative discussions about the types of time commitments which

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112. Kronman, *supra* note 111, at 91-92.

113. *Id.* at 92.

114. *Id.* Kronman at least acknowledges increasing specialization as a growing trend. *See id.* at 97-98 (recognizing the increased demand for specialized legal advice, especially in large law firms).

115. *See, e.g.,* Ross, *supra* note 16, at 113 (“One of the most egregious forms of overbilling in many law firms is the almost infinite amount of time that is expended upon research into even the most minute legal issues. As with other forms of overbilling, excessive research probably arises most often out of a genuine belief that the work serves the client’s best interests, even if that belief is part of a subconscious rationalization of the desire to inflate the client’s bill.”); Amy R. Mashburn, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U. L. REV. 657, 689 (1994) (“[The client service ideal “has real value because large firms use imagery to convince their clients that they are the repository of high quality legal services that are worth the high prices charged and unattainable elsewhere.”]).

are actually required to serve the client well. As discussed above, the particular demands of service will vary not only with the kind of practice, but also with the type of project and the role one plays within that particular project. Concrete and context-specific analyses of varying circumstances could lead to clarity about the ways in which work may be circumscribed to mesh with more flexible schedules, with fewer hours each day, fewer hours each week, and fewer hours each year.<sup>116</sup>

A rhetoric which describes professionals as being “generally useful” runs the risk of caricaturing efforts to achieve clarity as inappropriate attempts, in the words of Deputy Director Wither, to invent some “cut and dried position” in which to discharge “artificially limited duties.” A rhetoric which insists that large firm practice demands that one is “generally useful” not only is a disservice to clients, but also obscures the reality that the specialized nature of large firm practice could in many circumstances allow for flexible work schedules.

“Elasticity” could imply positive qualities such as flexibility and ease in adapting to varying circumstances. But in the context of large firm practice, “generally useful” tasks and roles are “elastic” in the sense that they wrap themselves around, constrict, and ultimately consume other aspects of life which should bring to human experience not only balance, but meaning and joy.

### 3. *“I do think that is so important.”*

Finally, the C.S. Lewis text brings into relief how the rhetoric of professionalism is encouraged by the “young and shy and vain and timid” professional. The accumulation of debt and family responsibilities, the “golden handcuffs” of comfortable wealth, and the acquired taste for being a part of the “inner circle” all feed into a culture in which the evils of “elasticity” are simply swallowed whole.

ABA President Michael Greco framed the problem by quoting a recent law graduate:

“In law school, we learn that in order to be worthwhile, we have to try to make it into the biggest, highest paying, and most ‘prestigious’ firm that will take us. To do anything else is to fail. We buy into this myth and structure our lives around it. In doing this, we perpetuate the public image of lawyers as money-hungry slobs. We fail to serve those who need our bright minds.

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116. WILLIAMS & CALVERT, *BALANCED HOURS*, *supra* note 4, at 28.

Most importantly we betray ourselves, our true dreams, talents, and interests.”<sup>117</sup>

That many associates in large law firms have “bought into the myth” is clear from their reticence to push large law firms to craft alternative structures. Fear, risk aversion, or simple greed often seems to block their willingness or capacity to take even small steps off the beaten path.<sup>118</sup> But the C.S. Lewis text illuminates another potential explanation. Perhaps one reason why “young and shy and vain and timid” lawyers search for a sense of “vocation” in the profession as defined by a large law firm’s “totalizing” claim over their lives, why they accept vague exhortations to make themselves “generally useful,” and why they say, “I do think that is so important” in response to otherwise meaningless rhetoric is that they lack other anchors of meaning and identity in their lives.

If this is the case, the heart of the paradox in large firm practice is not only the struggle to “balance” the competing demands of career, family, and the broader community.<sup>119</sup> It is also the more existential question: From where do I draw my source of identity?<sup>120</sup> If this is the case, then the challenge for the legal profession is not only to peel away the layers of rhetoric which mask the realities of practice and block creative solutions. The challenge is also to recognize that the real lodestar—in both legal education and in legal practice—is to help lawyers, young and not so young,

117. Greco, *supra* note 35.

118. For example, in February 2000, in the wake of the “Gunderson effect” in which many large firms hiked first year associate salaries to \$125,000, I sparked a lively firm-wide email exchange among the associates to see if we could bring to the table the possibility of salary structures which would include a “less money for fewer hours” option. One of the saddest days of my large firm career was realizing that only about 10% of the associates would have stuck out their necks to put forward such a proposal. Most, I think, simply did not trust the firm to live up to its end of such a bargain or were unwilling to risk the potentially adverse impact on their advancement within the firm. At least a few thought the proposal would distract from what they considered the primary goal: more money.

119. Justice Stephen Breyer, *Foreword to A.B.A., REPORT*, *supra* note 17, at vii (noting the A.B.A. Commission’s task “concerns how to create a life within the firm that permits lawyers, particularly younger lawyers, to lead lives in which there is time for family, for career, and for the community”).

120. See Howard Lesnick, *Speaking Truth to Powerlessness*, 52 VAND. L. REV. 995, 996 (1999) (noting that one must face questions of identity in order to reflect on the criteria by which to judge success); see also *id.* (“My intention is . . . to use [a] Professional Responsibility [course] to evoke in students their own responses to some fundamental questions about themselves as emergent lawyers, to teach students to ask themselves: Who am I? In my work as a lawyer, what will I be doing in the world? What do I want to be doing in the world?”).

to tap into and even develop alternative points of reference which can then guide them in their professional lives.<sup>121</sup>

### CONCLUSION: PART-TIME AS VOICE

In his seminal analysis, *Exit, Voice and Loyalty*, Albert O. Hirschman set out a framework to explain the range of responses available to people who are caught in declining firms and organizations: they may “exit” to look for better alternatives or they may “voice” their dissatisfaction and agitate for improvement.<sup>122</sup> But as Hirschman observed, “In the case of normally competitive business firms . . . exit is clearly the dominant reaction to deterioration.”<sup>123</sup> The likelihood of voice, however, increases with the degree of loyalty, to the point that loyalty “holds exit at bay and activates voice.”<sup>124</sup>

According to recent profits-per-partner studies in the *American Lawyer*, in one sense large law firms can hardly be described as “deteriorating.”<sup>125</sup> And in a certain sense, “exit” is an inherent

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121. While certainly not the only source for framing alternative visions of professional life, religion can be a robust resource for many. See *id.* at 998 (“For those who live, or at one time lived, within a religious tradition, it can be a salient source of . . . identity . . . . Religion most centrally reminds us to ask the questions: Who am I? What do I want to be doing in the world? It can supply a deeply rooted ‘personal’ code, by which the code of our profession may be judged.”); see also Robert F. Cochran, *Professionalism in the Postmodern Age: Its Death, Attempts at Resuscitation, and Alternative Sources of Virtue*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 305, 318 (2000) (“Lawyers and law students need to be challenged to think about the implications of their own moral traditions on their lives as lawyers. Morality is more likely to take hold and to affect one’s life when it is drawn not from the ethical considerations of the profession, but from the deepest source of values of the person. Traditions need to struggle with the implications of their teachings for the practice of law; the bar and law schools need to encourage and enable them to do so.”); Kaveny, *supra* note 44, at 177 (“[L]awyers will need to draw upon a countervailing culture of time that also encompasses both theory and practice and that offers them some type of communal support in their endeavors of resistance. A religious tradition—and the community structured around it—may provide the necessary culture of resistance.”); Uelmen, *Why Rock the Boat?*, *supra* note 86, at 928-30 (noting one of the reasons to foster an explicit connection in faith and justice in Catholic legal education is to help young attorneys draw out the intellectual framework in which their notions of justice may be informed by values other than those of the market); Robert K. Vischer, *Catholic Social Thought and the Ethical Formation of Lawyers: A Call for Community*, 1 J. CATH. SOC. THOUGHT 417, 460 (2004) (discussing the “community of faith” as the “center of the conversation” on the contours of professional life).

122. ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES* 4 (1970). I am indebted to Brad Wendel for pointing me in the direction of this text.

123. *Id.* at 33.

124. *Id.* at 78.

125. See *supra* note 48.

feature of the partnership “tournament.”<sup>126</sup> These factors make it difficult to push for creative change. Further, as Hirschman describes, to exit is often easier than to exercise one’s voice: Exit “requires nothing but a clear-cut either-or decision,” while “voice is essentially an art.”<sup>127</sup> The availability of the easier exit alternative tends to “atrophy the development of the art of voice.”<sup>128</sup> Much indicates that in current large firm culture “voice is a badly underdeveloped mechanism [but] it is difficult to conceive of a situation in which there would be too much of it.”<sup>129</sup> Against these odds, how can we begin to articulate alternatives?

Through some angles of the professionalism rhetoric, when a large firm attorney requests a part-time schedule, it is interpreted as the ultimate act of disloyalty: the lack of a total commitment to “client service” will make it impossible to be a fully committed professional. Accordingly, because part-time attorneys are perceived as disloyal to the large firm endeavor, they are often considered and treated as having one foot out the door. In the words of my colleague, “don’t do it, it’s professional suicide”—it is the ultimate exit.

But what would happen if the request for a part-time schedule were perceived not as exit, but as voice? On the most basic economic level, removing the layers of suspicion of disloyalty is likely to increase retention and result in a more efficient use of part-time lawyers’ abilities and commitments.<sup>130</sup>

On a deeper, cultural level, the “voice” of lawyers with part-time arrangements can serve as a valuable and constructive corrective. Especially for large firm attorneys who have trouble imagining alternatives, large firm practice can benefit from the sanity, balance, and even creative energy of attorneys for whom work is neither the exclusive focus of their lives nor their ultimate source of identity.

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126. See Galanter & Palay, *supra* note 51, at 960-61 (explaining the workings of the “promotion-to-partner tournament” where the “losers are told that they can remain employees but will never become partners; or they may be given consolation prizes, such as severance pay or help finding another job; or they may be unceremoniously dumped”).

127. HIRSCHMAN, *supra* note 122, at 43.

128. *Id.*

129. *Id.* at 33.

130. See Deborah Rhode, *Profits and Professionalism*, *supra* note 54, at nn.93-98 (cataloguing economic costs of attrition). The current market might provide a good window of opportunity to float alternatives, as at least a few large firms are short-staffed. See Alison Frankel, *The Case of the Missing Associate*, *AM. LAW.*, July 2005, at 96 (detailing the difficulties of the largest New York firms in hiring lateral associates).

Seeing in their own work environment people who are happy working fewer hours for lower salaries might help to explode the “myth” that one’s sense of worth and success is determined by salary or other external factors.<sup>131</sup>

And—who knows? If large law firms can let go of the Business-Profession dichotomy rhetoric enough to openly acknowledge the business dimensions of large firm practice and to understand the extent to which these can be managed and controlled, they may even discover a shortcut to some of the professional values that the “renaissance of idealism” hopes to resuscitate.<sup>132</sup>

In fact, lawyers who step off the “more money for more hours” treadmill might be exactly those who have the energy and creativity to pursue the practice of law as a “learned art.” Their refusal to be obsessed with the billable hours derby may actually help them to evaluate objectively what clients truly need—and do not need—in order to resolve their legal problems. By grounding their ultimate source of identity in a horizon beyond the law firm and beyond work—whether expressed in commitments to their families or to the broader community—they may provide a hopeful example of the “spirit of public service” which should characterize the legal profession.

If Roscoe Pound is for us, who can be against us?<sup>133</sup>

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131. See *supra* note 117 and accompanying text.

132. See *supra* text accompanying notes 35-37.

133. See POUND, *supra* note 10, at 5 (The “primary purpose” of the profession is “pursuing a learned art as a common calling in the spirit of public service.”); cf. ROMANS 8:31 (“If God is for us, who can be against us?”).