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### Can Lawyers Find Happiness Symposium: Perspectives on Lawyer Happiness

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# CAN LAWYERS FIND HAPPINESS?

By Richard Delgado<sup>†</sup> and Jean Stefancic<sup>‡</sup>

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## INTRODUCTION

Human motivation is rarely simple. The central figure of the Rustad-Koenig article, for example, Suffolk University Law School, began as a training ground for working class students and minorities.<sup>1</sup> In its early years, it challenged orthodoxy, developed a new, simplified pedagogy, and fought for a place in a system of legal education dominated by well-heeled private schools like Harvard, Yale, and Boston University.<sup>2</sup>

Yet, soon after Suffolk won these struggles, it began a search for status and rankings. It jostled for a respectable place in *U.S. News & World Report*, raised tuition levels close to those of its elite rivals, and used some of its newfound wealth to build a state-of-the-art law building and finance

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1. Michael L. Rustad & Thomas H. Koenig, *A Hard Day's Night: Hierarchy, History & Happiness in Legal Education*, 58 SYRACUSE L. REV. 261, 275 (2008).

2. *Id.* at 275-305.

at least one educational program that compares favorably to its counterpart at Harvard.<sup>3</sup>

These are not unreasonable aspirations. Yet, we could not help noting a reverse parallel between Suffolk Law School and our own central character, Archibald MacLeish. Our book on unhappy lawyers begins by recounting how this privileged son of an aristocratic family began as an unhappy Harvard-trained lawyer with a yearning for something better.<sup>4</sup> Grippled by a powerful longing for literature, MacLeish fixated on Ezra Pound, with whom he was to carry on a forty-year long correspondence.<sup>5</sup> Their relationship was an unlikely one. In stark contrast to the repressed MacLeish, Pound was a free spirit, a womanizer and bohemian who leached off others but wrote strikingly original poetry while helping younger writers develop their craft.<sup>6</sup> Our book traces this improbable relationship over several decades during which Pound's life spiraled out of control and MacLeish struggled to integrate the many sides of his personality.<sup>7</sup>

After abandoning a promising legal career for a stay in the bohemian community of American expatriates in Paris, MacLeish developed into a stalwart of the Eastern liberal establishment, rising to the position of Assistant Secretary of State under Roosevelt.<sup>8</sup> Between terms in high office, he became a powerful progressive voice, including enjoying a stint as a staff writer for *Fortune* magazine where he wrote a series of articles about poverty and social injustice.<sup>9</sup>

So, life is unpredictable: A law school that began fired with reformist zeal can later succumb to the very hierarchical struggle to which it offered an alternative. A self-preoccupied young aristocrat may develop a social conscience, emerging from adolescent angst into a powerful force for change.<sup>10</sup>

But our point is not to redeem MacLeish or criticize any particular social institution. It is, instead, to return to our earlier theme—unhappy lawyers—and add a small footnote to the literature on lawyers' lives. In

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3. *Id.* at 308-09.

4. JEAN STEFANCIC & RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS* xii (2005).

5. *See generally id.* at 5-30.

6. *Id.* at xii.

7. *See generally id.* at 5-85.

8. *Id.* at xii, 15, 27.

9. STEFANCIC & DELGADO, *supra* note 4, at 18.

10. Unhappiness, in short, is a great motivator.

*How Lawyers Lose Their Way: A Profession Fails Its Creative Minds*, we considered the source and nature of many lawyers' unhappiness with their work.<sup>11</sup> In Part I of this essay, we summarize and update our earlier findings, concluding that the same force that troubled the young MacLeish—suffocating formalism—is rampant today.

We turn, in Part II, to a discussion of the opposite side of the coin, happiness. We know what makes lawyers unhappy. But what makes them (some of them, at any rate) affirmatively happy in their work? Reducing the excessive formalism that robs law of opportunities for creativity is just the first step. A further, positive step, we argue, is providing opportunities for contact with and service to the public. Helping other people, it turns out, for many lawyers, is one of life's most satisfying experiences. A profession that deprives many of its members of these opportunities will render some of them discontent and unsatisfied.

Part III suggests ways to restructure legal practice to increase lawyers' opportunities to meet with clients and other attorneys face-to-face and see the connection between their work and service to others.

## I. UNHAPPY LAWYERS

### A. *Ezra Pound and Archibald MacLeish*

*How Lawyers Lose Their Way* traces the relationship between a high-born but unhappy lawyer, Archibald MacLeish, and Ezra Pound, a prodigiously talented poet, fascist sympathizer, and undisciplined human being whose mind, when not engaged in writing world-class poetry, veered from one crackpot social theory to another.<sup>12</sup>

Both men were born in the late nineteenth century, Pound a few years before MacLeish.<sup>13</sup> Although MacLeish's family was wealthier than Pound's and better connected, each received an education in literature and the classics: Pound at Penn, MacLeish at Yale.<sup>14</sup> Pound, however, taught

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11. See STEFANCIC & DELGADO, *supra* note 4, at 5-85.

12. *Id.* at 9.

13. Specifically, Pound was born in 1885; MacLeish, in 1892. *Id.* at 5, 12.

14. *Id.* at 5, 12.

[MacLeish's] father, a Scottish émigré, managed a successful retail store and was a founder and trustee of the University of Chicago. His mother, Martha Hilliard, a Mayflower descendent and welfare reformer, [directed] a seminary for women. MacLeish enjoyed a comfortable and secure childhood, enriched by his mother's readings from children's books, the Bible, [and the classics]. He attended the Hotchkiss School in Connecticut and later Yale[, by which point] he "was . . . writing perfectly dreadful verses, but . . . a great many of them."

himself eight languages by the time he received his master's degree while MacLeish enjoyed the clubby environs of Yale.<sup>15</sup>

After a short-lived teaching career at Wabash College, where Pound scandalized his midwestern colleagues by his adventurousness and sexual escapades, he quickly departed for the continent in 1908, where he made his way into the literary life of London, befriending and mentoring T.S. Eliot, W.B. Yeats, and Robert Frost.<sup>16</sup> Already attracting attention with his flaming unruly hair, he adopted a bohemian persona, wearing capes and eating the flowers from centerpieces at dinner parties.<sup>17</sup> After the war, he left England to enjoy and, indeed, create the literary ferment that was Paris in the 1920s.<sup>18</sup>

MacLeish, meanwhile, set off for Harvard Law School with the understanding that his father would foot the bill so that he could marry his sweetheart Ada Hitchcock.<sup>19</sup> Like many young people today, he had little idea of what he wanted to do with his life.<sup>20</sup> Writing appealed to him, but he hesitated to make the sacrifices that that form of life might require; so as a compromise, he settled on law school.<sup>21</sup> At first he found his studies engrossing.<sup>22</sup> A little later, he changed his mind, however; still, he finished the first year with grades at the A level.<sup>23</sup>

*Id.* at 12 (footnotes omitted).

15. *Id.* at 6, 12. Pound entered the University of Pennsylvania at the age of fifteen, already determined to be a poet. *Id.* at 5. Unfortunately, he adopted many of the affectations of a poet, prompting his classmates to throw him into a campus pond. *Id.* at 5-6. Disappointed at his social "reception, Pound transferred to Hamilton College . . . graduated in 1905, and returned to Penn for his master's degree." *Id.* at 6. By then, in addition to acquiring several foreign languages, he had met William Carlos Williams and Hilda Doolittle (H.D.), both of whom went on to become major American poets in their own right. *Id.* at 6.

16. STEFANCIC & DELGADO, *supra* note 4, at 6.

17. *Id.* at 6-7.

18. *Id.* at 8.

19. *Id.* at 13.

20. *Id.* at 12-13.

21. STEFANCIC & DELGADO, *supra* note 4, at 13.

22. *Id.* (quoting a letter from MacLeish in which he observed: "The law school was an extraordinary intellectual experience and I discovered early that I was quite good at it . . . [it] was a means to livelihood, but what I hadn't counted on was that it was a very exciting intellectual discipline." (internal quotation marks omitted)).

23. *Id.* at 13. In another letter, MacLeish wrote:

[I] am completely swallowed by law. . . . It is a perfect jungle—the farther in you go the deeper the tangle gets and the more lies out behind you to be kept in mind. I won't say that it has not its fascination, for it has, but it also fills me with a very real rebellion.

*Id.* (internal quotation marks omitted).

After serving in an ambulance unit, and later the Yale artillery unit, during World War I, he returned to law school, graduated with honors, and passed the bar in 1919.<sup>24</sup> While at the front he had published a small collection of poetry.<sup>25</sup> After a year of teaching government at Harvard (today we would call it “exploring his options”), MacLeish accepted a position with the Boston law firm of Choate, Hall & Stewart.<sup>26</sup> “During the . . . years that followed, his life displayed many outward signs of success: a fine house in Cambridge, a happy marriage, . . . an opportunity to teach law part[-]time, . . . competence in trial practice, and the prospect of a partnership.”<sup>27</sup> Yet MacLeish was miserable.<sup>28</sup>

Writing was still his passion, yet he hesitated to throw himself into it unreservedly.<sup>29</sup> Work in the firm consumed all of his time and energy. Although he excelled at it, he despised it, thinking it both grubby and dull.<sup>30</sup>

MacLeish left law practice in February 1923 on the same day that the firm had voted him a partner.<sup>31</sup> The news did little to change MacLeish’s mind. After selling their house and arranging their affairs, he, his wife and

24. *Id.*

25. *Id.* at 14.

26. STEFANCIC & DELGADO, *supra* note 4, at 13-14.

27. *Id.* at 14.

28. *Id.* at 14-15. In a letter, MacLeish observed:

The law is crowded—interesting—and full of despair. It offers its own rewards but none other. Nothing that I would gladly be or have promises through its development. As a game there is nothing to match it. Even living is a poor second. But as a philosophy, as a training for such eternity as the next hour offers, it is nowhere—a mockery of human ambitions.

*Id.* at 15 (internal quotation marks omitted).

29. *Id.* at 14.

30. *Id.* at 14-15. During this period MacLeish struggled with what he wanted to do in life. *Id.* at 15. Law was remunerative, and he had a growing family to support. *See id.* at 14-15. As he wrote to a friend during this period:

I took out my three pitiful shadows of careers—teaching, practice, journalism—and examined them individually and serially and in patterns till I was dizzy. . . . I discovered that my ambition to date has not been to do a certain work in the world but to be a certain person. And: No sooner than I determine upon one course, than the other beckons. . . . The result is that I have lost belief in myself and interest in my destiny. . . . A man’s other career will live to haunt him.

*Id.* at 14 (internal quotation marks and footnotes omitted). To a childhood friend, he wrote:

I am now in the throes of deciding whether to stay on in the practice of law. . . . My ancient and misplaced ambition to write lies dreadfully at the bottom of it, for the whole purpose of the change would be more time for the concoction of words into verses. I wonder why I cling to that ambition so tenaciously.

*Id.* at 15 (internal quotation marks and footnote omitted).

31. STEFANCIC & DELGADO, *supra* note 4, at 15.

their two young children sailed on September 1, 1923 for France on the S.S. *Lafayette*, bent on finding a place in the same community of émigré bohemian writers that Pound had joined a few years earlier.<sup>32</sup>

MacLeish's hope that his sojourn in Paris would earn him fame proved disappointing. He began publishing in respectable venues, but never enjoyed full entry into the inner circle of literary figures whose praise he curried.<sup>33</sup>

Pound and others criticized MacLeish mercilessly.<sup>34</sup> In letters that began a lifelong correspondence, Pound told him his work was second-rate and that he would never succeed until he learned to write simply and without affectation.<sup>35</sup> The collective dismissal at the hands of the émigré writers stung MacLeish, and he returned to the United States in 1928, settling with his family on a farm in Massachusetts.<sup>36</sup> After exploring his options some more, he accepted a position at *Fortune* magazine, writing essays about finance and politics, while composing poetry and essays in his spare time.<sup>37</sup> One good solid job followed another as he moved right up in journalism and later into New Deal politics, eventually holding high offices in the Roosevelt administration.<sup>38</sup>

Pound's life took a radically different turn. After cementing his reputation as a world-class poet and mentor to younger writers in England and Paris, he moved to Italy.<sup>39</sup> Having fallen under the influence of Clifford Douglas, an eccentric English engineer-economist with socialist ideas, his undisciplined mind—in some ways the opposite of MacLeish's—ran away with itself.<sup>40</sup> Prejudiced against Jews and immigrants since childhood and prone to reading prodigiously in a thousand different fields with little framework, Pound became entranced with Mussolini's agenda for transforming Italy.<sup>41</sup> He went so far as to make 125 radio broadcasts praising Mussolini and his fascist programs and condemning Roosevelt and his administration, including MacLeish's part in it.<sup>42</sup> Since this was war time, his rants came to the attention of the American authorities, and when

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32. *Id.* at 15.

33. *Id.* at 16.

34. *Id.* at 17.

35. *Id.*

36. STEFANCIC & DELGADO, *supra* note 4, at 17.

37. *Id.* at 18.

38. *Id.* at 20-23.

39. *Id.* at 8-9.

40. *Id.* at 9.

41. STEFANCIC & DELGADO, *supra* note 4, at 9.

42. *Id.* at 10.

Italy fell, he was quickly indicted for treason.<sup>43</sup>

Once back in the U.S., he thought MacLeish could help him with his legal predicament.<sup>44</sup> But the patriotic blueblood was scandalized by what Pound had been doing in Italy and did nothing to help him.<sup>45</sup> American authorities predictably and quickly committed Pound to St. Elisabeth's Hospital for the Criminally Insane, in lieu of being tried for treason, where he languished for ten years until MacLeish's conscience got the better of him.<sup>46</sup>

Pound was aging and ill.<sup>47</sup> MacLeish was concerned that, were he to die imprisoned, it would reflect badly on America—her greatest living poet dying behind bars.<sup>48</sup> After what must have been a tense and emotional visit to St. Elisabeth's in 1955, MacLeish worked effectively and diligently behind the scenes, marshalling his rusty legal skills and calling in a great deal of political capital to achieve Pound's release in 1958.<sup>49</sup> In the end, a profession that he had abandoned thirty years before as unsatisfying enabled him achieve something that he considered quite important.

### B. Contemporary Lawyers' Lives

Since published studies of lawyers' job satisfaction are rare before 1970, we had to rest content with a thickly detailed description of a single, representative figure—MacLeish—from this period. The second half of our book, however, looks systematically at contemporary lawyers.<sup>50</sup> In particular, we examined every major study of lawyers' job satisfaction appearing in social science journals, law reviews, and bar journals. What emerged was not a pretty picture—what we termed “high paid misery.”<sup>51</sup>

We described lawyers who drink too much and take drugs to cope with the pressures of their work.<sup>52</sup> We described others who dream of leaving their jobs or actually do.<sup>53</sup> We reviewed statistics on lawyers who divorce, suffer nervous breakdowns, or advise their children against a legal

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43. *Id.* at 11.

44. *Id.*

45. *See id.*

46. STEFANCIC & DELGADO, *supra* note 4, at 11, 25.

47. *Id.* at 28.

48. *Id.*

49. *Id.* at 25-28.

50. *Id.* at 31-71, 77-85 (Part II, Discontents).

51. STEFANCIC & DELGADO, *supra* note 4, at 77.

52. *Id.* at 66-67.

53. *Id.* at 51, 69-71.



career.<sup>54</sup> We described lawyers who live for the short weekend and, by Sunday mid-afternoon, are in dread of the trip to the office the next morning.<sup>55</sup>

Years ago, lawyers by and large were not radically discontent with their work. What accounts for their current malaise? As with the dissatisfied Archibald MacLeish a century ago, we believe that underlying much of the current discontent with the practice of law is formalism—an approach to legal reasoning and adjudication that emphasizes precedent to the exclusion of other factors.<sup>56</sup> Formalism limits the range of material that a lawyer may marshal in solving a legal problem, squeezing his or her work into pre-existing molds.<sup>57</sup> It limits the ability of lawyers to bring to bear history, literature, religion, morality, and other humanistic bodies of knowledge on legal problems.<sup>58</sup> It is intrinsically less interesting, less rich than a form of law practice that takes these other realms into account. Our book shows that the force of formalism waxes and wanes.<sup>59</sup> MacLeish attended Harvard Law School during one of its heydays.<sup>60</sup> Today, we are well into a second period of resurgent formalism.<sup>61</sup>

Formalism is not merely an unattractive, desiccated approach to legal method. It also makes it easy for legal workplaces to take on a highly regimented structure, with billable hours, a high degree of specialization, and competition among lawyers to see who can get the most work done.<sup>62</sup> The combination of formalistic, routine work and workplace regimentation, we argued, renders law an unappealing profession for many idealistic, high-minded young humanist-generalists.

What, aside from reducing the amount of regimentation and formulaic reasoning, would make them happier?

## II. A THEORY OF LAWYERLY UNHAPPINESS

Can one be a lawyer and a happy human being at the same time?

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54. *Id.* at 64-71.

55. *Id.* at 64-65.

56. See STEFANCIC & DELGADO, *supra* note 4, at xi-xiv, 33-46.

57. See *id.* at xi-xii, 33-51 (defining and illustrating formalism and showing its connection with lawyerly unhappiness).

58. See *id.* at 34-35, 48-51.

59. See *id.* at 37-46 (tracing the career of formalism as legal method).

60. *Id.* at 78-79.

61. Federalism, strict construction, originalism, and law and economics are all manifestations of this trend. On the role of formalism in legal thought today, see generally STEFANCIC & DELGADO, *supra* note 4, at 44-46.

62. *Id.* at 77-80.

During previous periods, law was a reasonably satisfying profession, in part because lawyers' work was broader than it is now. Lawyers crafted new legal theories, such as implied warranty of habitability, contracts of adhesion, no-fault divorce, and other social innovations.<sup>63</sup> Even lawyers whose work did not place them on the cutting edge of civil rights, consumer protection, and women's issues could look forward to a workweek that might include client counseling, pro bono work, and meeting with other attorneys to discuss the firm's caseload and how it fit into the big picture of national or regional legal developments.<sup>64</sup> Time pressure was not great. Law was a learned profession, and a helping one. The emphasis, at least in part, was on serving the public and doing good.<sup>65</sup>

These lawyers were happier than their contemporary counterparts.<sup>66</sup> What makes a person happy? Philosophers have put forward various theories of human happiness, ranging from Aristotle's eudemonia<sup>67</sup> to Socrates' life of self-examination<sup>68</sup> and Freud's famous dictum about work and love.<sup>69</sup> Other philosophers note that one is happy only in retrospect.<sup>70</sup> One looks back at a period when one was actively engaged with life and one's work and realizes that he or she was happy.<sup>71</sup> One cannot say this with certainty at the time, but only afterwards.<sup>72</sup>

Contemporary psychologists have weighed in with a slightly different set of suggestions for a happy life, ranging from absorption ("finding the flow") in work or hobbies,<sup>73</sup> to engagement in some valued activity,<sup>74</sup> to

63. *Id.* at 80.

64. Before the advent of extreme specialization, that is, these might have been among the tasks on the agenda of a mid-career associate or partner in a medium-sized law firm engaged in civil litigation.

65. *Id.*

66. See STEFANCIC & DELGADO, *supra* note 4, at 52.

67. 5 OXFORD ENGLISH DICTIONARY 432-33 (2d ed. 1989) (defining "eudemonism").

68. See Plato, *The Apology of Socrates*, in 17 THE WORLD'S GREAT CLASSICS 11, 32 (Julian Hawthorne ed., 1900). Socrates made this famous remark during his trial for treason against the Athenian state.

69. See Erik H. Erikson, *Growth and Crises of the Healthy Personality*, in 1 PSYCHOL. ISSUES 50, 96 (1959) (attributing the dictum to Sigmund Freud).

70. Likewise attributed to Aristotle, other philosophers have made similar observations. See e.g., 1 SOREN KIERKEGAARD'S JOURNALS AND PAPERS 450 (Howard V. Hong & Edna H. Hong eds., 1967) (noting that we are doomed to lead life forward but only to understand it in reverse, i.e., in hindsight).

71. *See id.*

72. *Id.* See also Plato, *supra* note 68, at 32 (noting the role of self-examination in reaching fulfillment).

73. See MIHALY CSIKSZENTMIHALYI, *FLOW: THE PSYCHOLOGY OF OPTIMAL EXPERIENCE* 5-7 (1991). Thanks to Peter Huang for bringing this line of research to our attention.

74. Christopher Peterson et al., *Orientations to Happiness and Life Satisfaction: The*

finding meaning in life, self-determination, and building on one's strengths.<sup>75</sup> Many cite the need for nurturing social relationships or civic participation.<sup>76</sup> A recent study of lawyers mentioned that lawyers are happiest when they enjoy high decision making latitude and can avoid excessively adversarial settings.<sup>77</sup>

We offer no general theory of human happiness, but merely observe that, for most professionals, it includes applying one's talents for the betterment of others and of society. For many physicians, lawyers, educators, and clinical psychologists, this is the reason they entered their chosen field.<sup>78</sup> To fulfill this aspiration requires, at a minimum, human contact, feedback, and, with lawyers, a constant interplay between the professional who applies the law and the client, whom the professional hopes to help.<sup>79</sup> Most law students begin with this hope in mind; their law school admissions essays teem with descriptions of their hopes to use their legal talents to help people and work for a better, more just society.<sup>80</sup>

So, the opportunity to work with other people and help them solve their problems plays a large part in a lawyer's list of things that make for career satisfaction. We wish to avoid overgeneralization. We realize what we say may not hold true for all. Some lawyers may be introverts, happy to work in a back room or process patent applications all day long with little contact with others. Every rule has its exceptions, so that work conditions which make one lawyer happy and energized may make another weary and irritable.

Still, evidence shows that the happiest professions are ones that allow

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*Full Life Versus the Empty Life*, 6 J. HAPPINESS STUD. 25, 27 (2005).

75. See MARTIN E. P. SELIGMAN, AUTHENTIC HAPPINESS: USING THE NEW POSITIVE PSYCHOLOGY TO REALIZE YOUR POTENTIAL FOR LASTING FULFILLMENT 13-14 (paperback ed. 2004); see also Peter Huang, *Authentic Happiness, Self-Knowledge, and Legal Policy*, 58 SYRACUSE L. REV. 335, 339 (2008); Nancy Levit & Douglas O. Linder, *Happy Law Students, Happy Lawyers*, 58 SYRACUSE L. REV. 351, 356 (2008).

76. See, e.g., ROBERT N. BELLAH ET AL., HABITS OF THE HEART 167-213 (1985) (emphasizing the role of civic participation); Peter H. Huang & Jeremy A. Blumenthal, *Positive Law and Policy*, in ENCYCLOPEDIA OF POSITIVE PSYCHOLOGY (Shane J. Lopez ed., forthcoming 2008).

77. See Martin E.P. Seligman et al., *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33 *passim* (2001).

78. E.g., STEFANCIC & DELGADO, *supra* note 4, at 72-76.

79. See *supra* notes 63-66 and *infra* notes 81-102 and accompanying text; see also Bob Cindrich, *Work, Love, Play and the Quality of Life*, LAW. J., Mar. 21, 2003, at 6-7 (emphasizing how lawyers can find satisfaction through helping others).

80. On the changes in law students' career aspirations as they proceed through law school, see, e.g., Howard S. Erlanger et al., *Law Student Idealism and Job Choice: Some New Data on an Old Question*, 30 LAW & SOC'Y REV. 851, 851-52 (1996).

for a substantial measure of human interaction and service. For example, librarians are relatively happy, even though much of their work is highly formalized and routine.<sup>81</sup> Much of it, however, consists of helping the public. Even when a specific job, such as cataloguing, does not bring them into contact with users, librarians are still in the business of helping users find information. They bring knowledge to the public; everything they do serves this end.<sup>82</sup>

The same holds true with other professions. Physicians report that among the most satisfying aspects of their work is the opportunity to help their patients remain well and recover from debilitating diseases or conditions.<sup>83</sup> Increasing oversight by insurance agencies and HMOs has reduced physician autonomy and the amount of time they can spend with individual patients.<sup>84</sup> As a result, physicians today are less happy with their work than they were in previous years.<sup>85</sup> Fewer of them report that they plan long careers in medicine or intend to encourage their children to enter the same field.<sup>86</sup>

Teachers report much the same phenomenon.<sup>87</sup> Before the onset of the current regime of accountability and frequent high stakes testing, teaching was a humanistic, enjoyable profession. Novels and movies such as *Goodbye, Mr. Chips* or *Dead Poets Society* celebrated the caring teacher who made a real difference in the lives of his or her students.<sup>88</sup> Today, teachers have fewer opportunities to deviate from the lesson plan or take a class discussion in an unexpected direction. Textbooks and curricula are

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81. See Leonard Kniffel, Editorial, *Survey Says Librarians Rank Low in Stress. Hello?*, AM. LIBR., May 1, 1999, at 38 (discussing LES KRANTZ, JOBS RATED ALMANAC (1999), which ranked librarianship a desirable profession because of low levels of stress and high degree of reported satisfaction).

82. Our experience has been that jobs as reference and faculty liaison librarian are among the most sought after in the field of law librarianship.

83. See STEFANCIC & DELGADO, *supra* note 4, at 72-76 (describing how recent changes in the structure of medicine, especially managed care and HMO cost-containment measures, have reduced physician autonomy and the opportunity to care for patients according to their best judgment, and rendered many physicians unhappy and discontent).

84. *Id.* at 72-73.

85. *Id.* at 72, 76.

86. *Id.* at 75-76.

87. See *id.* at 72 (describing accountability movement for college professors). With high school teachers, periodic high-stakes tests have pressured teachers to "teach to the test" and reduced the opportunities for spontaneity and following up promising leads, for example during a classroom discussion of a teen-age problem. See also discussion *infra* notes 89-90 and accompanying text.

88. JAMES HILTON, *GOODBYE, MR. CHIPS* (illustrated ed., 1939); *DEAD POETS SOCIETY* (Touchstone Pictures 1989).

prescribed, and if students do not meet expectations on the next standardized test, the teacher and school will suffer repercussions.<sup>89</sup> As a result, teachers report much less job satisfaction than they did in previous years. They may have the same amount of contact with students (indeed, may teach even more hours and larger classes), but the contact is prescribed, predictable, and the spontaneous, personal dimension reduced.<sup>90</sup>

With lawyers, we found much the same. Since our book appeared, two large-scale surveys give further evidence of a profession in distress. A University of Chicago study entitled “Job Satisfaction in the United States” found that lawyers were not in the top twelve professions in either happiness or satisfaction, even though their occupation ranked second only to doctors in prestige.<sup>91</sup> Prestige and happiness are otherwise highly correlated.<sup>92</sup>

A second survey, reported recently in the *American Bar Association Journal*, entitled “Pulse of the Legal Profession,” studied eight hundred lawyers to learn what they think about their lives, their careers, and the state of the profession.<sup>93</sup> The lawyers reported high levels of incivility.<sup>94</sup> A bare fifty-five percent reported themselves satisfied with their choice of work<sup>95</sup>—much lower than the average level for all American workers.<sup>96</sup> Only forty-four percent would recommend a legal career to a young person.<sup>97</sup>

The ABA study showed that public sector lawyers were more apt to report that they were satisfied with their work than their private, especially big-firm, counterparts, even though the prestige and salaries of the latter are considerably higher.<sup>98</sup> Our previous study showed a slight difference along

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89. E.g., Pam Ehly, Guest Opinion, *Kozol Speaks to School Concerns*, IOWA CITY PRESS-CITIZEN, Oct. 23, 2007, at 9A; Editorial, *Minority Learning Lag Persists*, DESERET MORN. NEWS, Sept. 26, 2007, at A12.

90. See Ehly, *supra* note 89.

91. T.W. SMITH, NORC/UNIVERSITY OF CHICAGO, JOB SATISFACTION IN THE UNITED STATES 3, Apr. 17, 2007, <http://www-news.uchicago.edu/releases/07/pdf/070417.jobs.pdf>; Alan B. Krueger, *Job Satisfaction Is Not Just a Matter of Dollars*, N.Y. TIMES, Dec. 8, 2005, at C3 (laying blame on stress as a source of widespread worker dissatisfaction).

92. See SMITH, *supra* note 91, at 1.

93. See Stephanie Francis Ward, *Pulse of the Legal Profession: 800 Lawyers Reveal What They Think About Their Lives, Their Careers and the State of the Profession*, A.B.A. J., Oct. 2007, at 30.

94. *Id.* at 31.

95. *Id.* at 32.

96. See David Brooks, *The Happiness Gap*, N.Y. TIMES, Oct. 30, 2007, at A25.

97. Ward, *supra* note 93, at 32.

98. *Id.* at 34.

these lines, as well. Although small-firm and public interest lawyers reported themselves slightly happier than their big-firm counterparts, the difference was not great—both groups were unhappy.<sup>99</sup>

Lawyers turn out to be unhappy, not just in absolute but comparative terms. The General Social Survey recently showed that eighty-six percent of Americans are content with their jobs.<sup>100</sup> Interestingly, law professors, who have a great deal of interaction with people, including students and colleagues, report that they are much happier than those who practice what the professors teach.<sup>101</sup> Professors generally are happy. A recent report by pension giant TIAA-CREF, which manages retirement incomes for millions of teachers, reported that full-time faculty members at four-year colleges, of all subjects, are happier with their jobs than are most U.S. workers.<sup>102</sup>

Vicarious experience supports what the surveys show. The public goes to movies and buys books about lawyers in great numbers, but most popular movies and books feature trial lawyers who argue cases before juries and win victories for their clients through clever strategy and argument.<sup>103</sup> No novel, movie, or other fictional account, to our knowledge, features a lawyer doing what big-firm lawyers do most of their day: reviewing and drafting documents under pressure in solitary settings. Fictional lawyers come across as happy, engaged, and heroic when they interview and defend other people, often in collaboration with colleagues, other times in front of a jury. This personal side of law is the gist of fiction and drama; document review is not. The average reader enjoys identifying with lawyers who interact with people, not with paper or ideas.

To generalize, formalism as a legal methodology continues to play a part in producing an unhappy profession.<sup>104</sup> Obsession with precedent and finding the right authority is less sustaining, less satisfying than a broader-

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99. STEFANCIC & DELGADO, *supra* note 4, at 71.

100. See Brooks, *supra* note 96 (describing the survey and its results).

101. See STEFANCIC & DELGADO, *supra* note 4, at 61.

102. See Paula Wasley, *Professors' Job Satisfaction Is Higher Than Other Workers'*, CHRON. HIGHER EDUC., Nov. 16, 2007, at 10 (“[Fifty-three] percent of [professors] said they were very satisfied with their [work]. . . . By comparison, . . . 42 percent [of workers generally] were very satisfied with their job and 38 percent somewhat satisfied.”).

103. We are thinking of books such as JONATHAN HARR, *A CIVIL ACTION* (1995); BARRY REED, *VERDICT* (1980); and HARPER LEE, *TO KILL A MOCKINGBIRD* (1960), and their movie counterparts, *A CIVIL ACTION* (Touchstone Pictures 1999); *THE VERDICT* (Twentieth Century-Fox Film Corp. 1982); and *TO KILL A MOCKINGBIRD* (Brentwood Productions 1962).

104. See generally STEFANCIC & DELGADO, *supra* note 4 (elaborating on this thesis).

based approach to legal reasoning that considers economics, social policy, and social science.<sup>105</sup> These latter approaches take the lawyer to realms beyond sterile precedent and strings of cases. They take that person to history, politics, or literature—to broader reaches that can guide intelligent, goal-directed choices among legal alternatives. Law's indeterminacy, of course, means that lawyers even in routine cases will, of necessity, need to refer to non-legal sources, if only to a platitude dressed up as "social policy," in order to choose among different lines of authority, each of which might plausibly control a client's situation. Non-formal legal reasoning, now in eclipse, gives the lawyer permission to do that.

A more context-sensitive approach authorizes the lawyer to do this, to do it intelligently, and in a manner that elevates the craft of lawyering beyond a mere clash of syllogisms, with the attorney on one side insisting on his or her favorite major premise, and the other attorney proclaiming that his or her version controls.

This more humanistic approach to law is not only more true to what happens, it is more enjoyable for the practitioner. And the more thoughtful, richer vista of lawyering that it opens up can present to the public a more favorable side of lawyering than the current one in which lawyers are driven, time-conscious "hired guns" capable of handling either side of a case with equal facility.<sup>106</sup> It also increases the chance that the lawyer will emerge from the law library and interact with another human being.

Formalism also tends to accompany workplace regimentation. As we put it earlier, if you think like a machine, someone is likely to come along and make you work like one.<sup>107</sup> An approach to adjudication that values precedent primarily will encourage formalistic brief-writing, with a high emphasis on piling up citation upon citation. Once legal work takes on this character, it is easy to regiment and parcel it out to teams, each with a special function. And the best team will be the one that finds the most citations, writes the longest brief with the largest number of footnotes in the shortest possible time.

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105. *See id.* at 77-78.

106. On the public's negative perception of lawyers, see, e.g., *id.* at 60.

107. *Id.* at 77-78. This may be particularly so in large firms, where autonomy is neither expected nor appreciated. When new attorneys do more than research for their higher-ups, the firm may expect them to follow familiar paths, not craft new legal theories or blaze new trails. *But see* David Gialanella, *Taming the Billable Beast*, A.B.A. J., Feb. 2008, at 30 (reporting signs of change).

### III. RESTRUCTURING THE LEGAL PROFESSION TO AFFORD GREATER HAPPINESS AND JOB SATISFACTION

If a principal barrier to lawyers' happiness is lack of opportunity to interact with and serve other people, combined with a narrow, formalistic methodology and intense workplace regimentation, one should ask what the profession can do to mitigate these barriers to happiness.<sup>108</sup> We believe that the answer lies not so much in exhorting large law firms to mend their ways,<sup>109</sup> allowing time for yoga exercises, or even providing different career tracks for women and men desiring to experience parenthood.<sup>110</sup>

Formalism as a legal method and workplace regimentation serve specific material interests, some mentioned above, and are unlikely to give way unless challenged on that level.<sup>111</sup> One such level is, simply, the pressure of educational debt that renders law graduates and young associates powerless to do anything about their situation.

#### A. Educational Debt

One reason why many such graduates seek work at large and medium-size law firms, where the pressure to generate billable hours is high and the competition for partnership keen, is heavy educational debt.<sup>112</sup>

In previous times, parents would pay for their children's college education. Parents who grew up during the Depression and World War II learned the value of saving. Thus, when their children enrolled in college in the 1950s and 60s, many of these parents looked to their own savings to help Junior along. Moreover, tuition was more affordable than it is today.

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108. See *supra* notes 50-77 and 91-109 and accompanying text. The United States Constitution, of course, guarantees the *pursuit* of happiness.

109. See, e.g., Sara Suleiman, *Considering a Law Career with Less Hours, Less Money*, CHI. LAW., Sept. 2007, at 18; see also G.M. Filisko, *Students Aim for BigLaw [sic] Change*, A.B.A. J., Dec. 2007, at 28; Adam Liptak, *In Students' Eyes, Look-Alike Lawyers Don't Make the Grade*, N.Y. TIMES, Oct. 29, 2007, at A10 (describing how Stanford law students have begun grading law firms based on their diversity).

110. See, e.g., STEFANCIC & DELGADO, *supra* note 4, at 77 (describing yoga, mentoring, different career tracks, and other such stopgap measures aimed at mitigating the harshness of current law practice).

111. Formalism enables law firms to organize the workplace efficiently and bill at inordinately high rates for routine, densely footnoted work. It also encourages competition. See *id.* at 39, 46. For additional analysis, in material determinist terms, of recent educational trends including high tuition costs, see *infra* notes 113-17 and accompanying text.

112. See, e.g., Philip G. Schrag, *The Federal Income-Contingent Repayment Option for Law Student Loans*, 29 HOFSTRA L. REV. 733, 736 (2001).



The corporatization of the university, during the last decades of the twentieth century, has driven tuition up to unheard of levels, far beyond the ability of most families to pay.<sup>113</sup>

Student loans have leaped into the breach. By insisting that Junior finance his or her own education, sometimes entirely, the baby boom generation succeeded in doing what the previous (Depression-era) cohort did not—shift the cost of their children's education onto the children themselves. And the high tuition levels these students confronted made sure that their indebtedness was backbreakingly high.

The generation that arrived at adulthood in the fifties and sixties, by contrast, did not confront a similar set of forces. Consequently, when they graduated from college or law school, many of them found it possible to enter lines of work such as social worker, inner-city schoolteacher, Peace Corp volunteer, or legal services lawyer, which the next generation could not, simply because they owed too much money.<sup>114</sup>

We cannot believe that this squeeze, which set in just as the civil rights and anti-war movements gained force, is entirely accidental. It resulted from (i) a lackadaisical generation (the baby boomers) many of whom were more interested in their own pleasures and retirement opportunities than saving for their children's college educations;<sup>115</sup> (ii) the advent of college loans, which benefited both the banking industry and higher education;<sup>116</sup> (iii) social and political movements, including supply-side economics that devalued social work, so that resistance to the abovementioned forces seemed quaint;<sup>117</sup> and (iv) a society that increasingly devalued higher education and distrusted "tenured radicals."<sup>118</sup>

How to counter it? Changing social attitudes will take a long time. In

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113. On the rapid increase in tuition levels over the last few decades, see, e.g., Larry Abramson, *Congress Targets Rising Cost of College*, NAT'L PUB. RADIO (July 12, 2007), available at <http://www.npr.org/templates/story/story.php?storyId=14359108>.

114. On the spirit of the sixties and the social commitments of the young activists who gave it its signature orientation, see, e.g., TODD GITLIN, *THE SIXTIES: YEARS OF HOPE, DAYS OF RAGE* (1987) (giving a personal account of the decade).

115. Others of the "sandwich generation" found themselves responsible for paying for health and end stage care of their long-lived parents. See, e.g., *Aging: "Will You Still Love Me, Will You Still Need Me, When I'm 84?"*, NURSING HOME & ELDER BUS. WEEK, Nov. 11, 2007, at 10 (describing plight of these "graying baby boomers").

116. See, e.g., Schrag, *supra* note 112, 742-44.

117. On the law and economics movement, which values efficiency and the maximization of preferences, see, e.g., RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* 11-16, 519 (4th ed. 1992).

118. See, e.g., ROGER KIMBALL, *TENURED RADICALS*, at x, 5 (Elephant Paperback 1998).

the meantime, more modest measures might be in order. Loan forgiveness funds, sponsored by alumni donations and student pledges, are one possibility.<sup>119</sup> Legislative relief in the form of subsidized loan forgiveness for law graduates who perform public service law work is another.<sup>120</sup> Universities and law schools could resist the increasing corporatization of the university and ever-higher tuition and fees.

### *B. Measures Large Firms Could Take*

Measures such as these could increase the number of jobs, and students able and willing to fill them, in the public interest sector. A different set of measures would be necessary to counter the high-pressure, high-demand atmosphere found in many large corporate law firms. To mitigate some of these pressures, corporate law firms could outsource much of their routine work such as document drafting and preparation of routine briefs and memos to paralegal firms in India, as many have begun doing.<sup>121</sup> They could reduce salaries for entering lawyers and, most importantly, lower the number of expected billable hours accordingly.<sup>122</sup> They could rotate assignments so that lawyers in their early years received more opportunities to interact with clients and increase the number of pro bono hours for associates.<sup>123</sup>

Will firms incorporate changes such as these? Some are relatively costless. Others would require a major reorientation and are unlikely to come about unless their clients, the public, or lawyers themselves assert pressure. The recent letter from Stanford and other elite law school students to the nation's largest law firms demanding changes could easily

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119. Cf. Schrag, *supra* note 112, at 767 (discussing federal loan forgiveness programs); Gene Nichol, *Remember Why You Went to Law School?: Dean Eloquently Examines Equal Justice*, ALASKA BAR RAG, Sept./Oct. 2002, at 12 (discussing loan forgiveness as a way to enable equal justice); Kelly Field, *Forgiving Loans of Those in Public Service Grows Popular, but Programs Are Unproven*, CHRON. HIGHER EDUC., Nov. 16, 2007, at A20 (same).

120. Compare Abbe Smith, *For Tom Joad and Tom Robinson: The Moral Obligation to Defend the Poor*, 1997 ANN. SURV. AM. L. 869, 881-82 (calling for debt relief for law students) with Timothy Stoltzfus Jost & Sandra J. Tanenbaum, *Selling Cost Containment*, 19 AM. J. L. & MED. 95, 112 (1993) (suggesting a similar program for medical students).

121. See, e.g., Arin Greenwood, *Manhattan Work at Mumbai Prices: Inside India's Hottest Legal Outsourcing Team*, A.B.A. J., Oct. 2007, at 36, available at [http://www.abajournal.com/magazine/manhattan\\_work\\_at\\_mumbai\\_prices/](http://www.abajournal.com/magazine/manhattan_work_at_mumbai_prices/).

122. See Suleiman, *supra* note 109.

123. See STEFANCIC & DELGADO, *supra* note 4, at 56, 81 (pointing out how excessive specialization can contribute to unhappiness and proposing a similar solution for factory workers).

spark a trend.<sup>124</sup> If enough top students refused to work in dehumanizing settings, firms could change their ways. Of course, this change would only take hold on workplace practices; if legal methodology remained mired in formalism, sensitive souls such as MacLeish would still find the practice of law arid and dull.<sup>125</sup>

*C. Fitting Personalities and Jobs—“That job just isn’t you”*

Law schools and career counselors could encourage students and new lawyers to reflect carefully on the kind of person they want to be, so as to make sure that their career choice meshes with their basic make-up and aspirations in life. Professors often experience a favorite student telling us about his or her new job. If the new job is with a corporate law firm, the student, who may have declared earlier that she wanted to work in the public interest sector, often will tell about her new job a little tentatively. Usually, most of us would just shrug as the student mutters something about needing the high salary to pay off their educational loans, and the encounter ends.<sup>126</sup>

Possibly, we should be more honest. If we were, we would, in some cases, tell the student who is perhaps a little aggressive and competitive, “You’re going to love that job.” Other times the student is a sensitive soul, someone who loves writing, literature, nature, and working for the betterment of society. The truthful answer to such a student would be, “I’m sorry, Mary, but that job just isn’t you. Are you sure you are going to be happy? I could see you practicing family law, poverty law, or clerking for a judge. But for that mega-firm? I don’t see you happy there.”<sup>127</sup>

We don’t give that answer very often. Maybe we should more. The student will find out anyway, bailing out, as many do, after a year or two. Should we save them that experience by being frank and honest? Should law school career counselors do so as well?

#### CONCLUSION

In this Article, we first reviewed literature on lawyers’ unhappiness, before turning to the question of what could make them affirmatively

124. See Suleiman, *supra* note 109 (describing the letter).

125. See STEFANCIC & DELGADO, *supra* note 4, at 13-26 (describing broadly MacLeish’s discontent with the law and formalistic legal education).

126. See *supra* notes 112-19 and accompanying text (discussing the role of student loans in channeling students into high-paying careers).

127. See Neil E. Olson, *Leaving the Law*, 29 SAN FRAN. ATT’Y 25, 27 (2003) (highlighting the need to remember who one is and one’s basic values).

happy. After noting that happiness is highly individual and subjective, so that a set of conditions that makes one person happy can make another irritable and unsatisfied, we posited that for many lawyers the ability to interact with and help others is central to job satisfaction. Autonomy in one's work and choice of assignments, as well as the opportunity, from time to time, to break loose from the bonds of formulaic, cookie-cutter legal reasoning, also play important roles.

We made a number of suggestions on how to restructure legal education and practice and decrease the pressure of student loans. We encourage other legal writers to address this subject. Currently, most law reviews and bar journals devote most of their pages to developments in case law and legal theory. The relatively small number of pieces that address practice issues focus on bureaucratic and logistical issues such as office management and technology. Yet, what is the point of a profession that operates smoothly and predictably, but whose practitioners are bored, overstressed, dissatisfied, and unhappy?

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