The Report of the Boston Bar Association Task Force on Professional Fulfillment

Expectations, Reality and Recommendations for Change
Boston Bar Association members - no charge
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TABLE OF CONTENTS

Foreword of Joel M. Reck, President, Boston Bar Association iii

Preface of John J. Curtin, Jr., Chair, Task Force on Professional Fulfillment v

Executive Summary vii

Introduction 1

Reports of the Subcommittees 5

1. Large Law Firms - Partners 5
2. Large Law Firms - Associates 7
3. Sole Practitioners and Small Firms 11
4. In-House Counsel 13
5. Public Service and Academia 15
6. Senior Lawyers 19
7. Law Students and Recent Graduates 20
8. Women Attorneys and Attorneys of Color 22
As lawyers we are in many ways a privileged group. We are well-educated, our work is intellectually challenging, we have the opportunity to help people solve problems which are important to them and to our society, and we earn or have the potential to earn comfortable incomes. Nonetheless, there is growing evidence that a significant cross-section of lawyers are dissatisfied with the quality of their professional lives. Even among those lawyers who feel the greatest sense of professional fulfillment, I have not encountered anyone who is not concerned about some of the alarming trends in our profession. To my mind, this issue of professional fulfillment is the most serious problem facing our profession today, and a legitimate topic for dialogue among lawyers in every possible context.

A primary objective of the Boston Bar Association is to make the legal profession the very best that it can be and to help each of us individually be the best and most professionally fulfilled lawyers that we can be. The critically important role that lawyers play in our society demands that we meet problems facing the legal profession head on; to ignore such problems, to pretend that they do not exist, or to say that the problems defy solution is to shirk our responsibility to ourselves, to our profession and to our society.

It was with a positive and optimistic spirit that I convened a Task Force on Professional Fulfillment last September. Buttressing my optimism was the knowledge that we as lawyers are trained problem-solvers capable of applying our skills for the betterment of our profession, and that one of the country’s most capable and caring lawyers, Jack Curtin, agreed to chair the Task Force.

The Task Force included lawyers in private practice, government service, legal services, academia, in-house counsel, an attorney who left the practice of law and a law firm management consultant. My charge to the Task Force was to identify the root causes of dissatisfaction in our profession and to propose ways in which lawyers can reduce or mitigate challenges to their professional fulfillment. The Task Force was also asked to be especially sensitive to issues affecting women attorneys and attorneys of color.

Having participated in the work of the Task Force, and having read its findings and recommendations, I am pleased to report that my initial optimism was well-founded. The members of the Task Force expended countless hours in conceptualizing an approach, in arranging and conducting focus group sessions, in analyzing, debating and determining common themes and in writing the Task Force Report. The unstinting and enthusiastic participation of literally every member of the Task Force was an inspiration to me as we worked together in an effort to achieve an in-depth understanding of the problems affecting our profession and its subparts. The members of the Task Force demonstrated their extraordinary insight, experience, and creativity in crafting constructive solutions and mitigation suggestions.

The work product reflected in this report goes beyond the work of the Task Force members. It reflects the time generously donated by over one hundred volunteers who participated in the focus groups which formed a key ingredient of

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the research effort. Throughout the year, the Task Force relied heavily on and benefitted enormously from the expertise of its reporter, Frania Monarski. Frania not only helped organize and conduct most of the focus groups, but she was also the primary organizer and writer of this Report of the Task Force. All of us enormously appreciate and value her contribution. A special thanks to David Hall, Dean of Northeastern University School of Law, and the faculty and students of the Law, Culture and Differences class for their assistance with research for the Task Force, their participation in the focus groups and their report on Lawyer Civility and Fulfillment. Finally, the always valuable advice and participation of the BBA's Executive Director, Frank Moran, the important staff role of Rob Vitale, the editing assistance of our Director of Communications, Bonnie Sashin and the graphic designing of Judi Bogart were all indispensable.

A truly worthwhile project is typically more than just the sum of its parts. Throughout the months that the Task Force was completing its work, lawyers here in Boston and in other parts of the United States expressed their appreciation and even relief that a bar association could deal actively and openly with such complex and sensitive issues. To have made it respectable to talk publicly about the often sensitive issue of how lawyers can improve the quality of their professional lives underscores the importance of what the Task Force has accomplished.

I would urge you to read this Report carefully, share it with your colleagues, and use it as a catalyst to facilitate meaningful discussion on how to best achieve positive change. Do not fall into the trap of dismissing certain of the findings and recommendations without engaging in a dialogue with relevant others. Clearly, however, not all of the findings and recommendations will fit every situation. This Report will be helpful to the extent that you use it as a guide and challenge for exploring what you might do to improve your own sense of professional fulfillment and that of other lawyers with whom you relate. Most importantly, it is essential that you view this report as a beginning and not as a completed project. The impact of this Report will be determined in largest part by the communication and actions that follow.

Joel M. Reck
President, Boston Bar Association
August 1997
Institutions have been defined as the lengthened shadow of a single individual. This Task Force Report began as the project of Joel Reck, the President of the Boston Bar Association. He believes that the issue of professional fulfillment is the most serious problem facing our profession today. He decided to make issues of professional fulfillment a principal focus of his Presidency.

The resources of the Boston Bar Association became available for the project. Frank Moran, Executive Director of the Association, became a member of the Task Force and added his advice and perspective to our deliberations. He assigned Robert Vitale to assist the Task Force.

A crucial addition to the Task Force was our reporter, Franja Monarski. She helped organize many of the focus groups and worked diligently to memorialize the changing nature of our work in progress. Without her drafting assistance, many of the subcommittee reports, and the Task Force Report could not have been completed in a timely fashion. From time to time other BBA personnel helped.

Many Boston lawyers gave generously and enthusiastically of their time. The 17 members of the Task Force are listed herein. They included partners and associates in large firms, small and medium sized firms, legal services lawyers, those in-house and in academia. Other Boston lawyers participated by interview or in focus groups.

The principal initial problem was to organize ourselves effectively to obtain meaningful but not exhaustive data.

The subcommittees were divided according to common interests in private, public and academic sectors. As a result, they were able to obtain meaningful data in a reasonable period of time.

The subcommittees made extensive use of focus groups, as well as individual interviews to obtain representative data. Reports of the results of subcommittee investigations were circulated to the full Task Force and were comprehensively discussed. Detailed minutes have been maintained. Suggestions for further research were often made.

The Task Force had discussed at the outset whether a separate subcommittee dealing with issues of women attorneys and attorneys of color would be necessary. After considerable debate, a tentative decision was made that those issues would be considered by all of the subcommittees. As our investigations progressed, however, it became clear that the issues of women attorneys and attorneys of color required a separate subcommittee. That subcommittee was created and its findings are part of the report of the Task Force.

The Task Force decided that it would not simply be a fact-finding body. Each subcommittee was asked to make specific recommendations as to possible actions to address causes of dissatisfaction. They have done so. The reports of the subcommittees will be of particular interest to those similarly situated, but every report is of significance to those who are concerned about the general health of the bar.

A few preliminary observations may be helpful to understanding the report.

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There was a general recognition of the dramatic changes in our profession in recent years. Part of our task was to investigate the consequences of those changes. Despite change and its consequence, the Task Force concluded that professional fulfillment remains first and foremost the responsibility of each individual attorney.

Considerable data demonstrated that recent realities of the practice of law differed substantially from initial expectations upon entry to the practice. The report recommends a closing of that gap.

A major correlation with professional satisfaction was the lawyers' perceived ability to control their own time. Interestingly enough, perhaps for this reason, solo and small firm practitioners seem professionally satisfied, with certain exceptions set forth in the subcommittee report.

A fairly common theme was a concern at the growing lack of civility and professionalism at the bar. The concern mirrors a national theme.

This report does not elaborate at length on such issues and possible recommendations.

One of the more interesting findings of the subcommittees was that younger lawyers were interested in more mentoring and senior lawyers were interested in providing mentoring. We recommend combining those interests.

These observations are merely intended to whet the appetite of the reader for the full report.

The details of the findings and recommendations need to be carefully examined. They are not offered as the definitive solutions to the problem. They are offered as a basis for serious dialogue, in the hope that some progress might be made towards greater professional satisfaction. The problem is real. Ignoring this report will allow the problem to fester. Let's talk.

I thank all involved for the extraordinary dedication they have shown to this project. The bar owes them a great debt.

John J. Curtin, Jr.
Chair
August 1997
EXECUTIVE SUMMARY

The following is (1) a listing of the most common areas of concern which emerged from Task Force discussions, and (2) summaries of the recommendations found in each of the Subcommittee reports in this Task Force Report, which are summarized here for ease of reference. The reader is encouraged to refer to the Introduction and the specific recommendations and analysis for the most accurate description of the issues.

BARRIERS TO PROFESSIONAL FULFILLMENT

- The difficult balance among home life, work life, and community service.

- The increasing measurement of and pressures for greater productivity.

- The increasing commercialization and commoditization of the practice of law.

- The increasing trend towards clients retaining, and lawyers functioning as, mere technicians rather than counselors providing advice, guidance and counsel.

- The increasing incivility among attorneys, especially litigators.

- A growing sense of isolation and alienation expressed by many attorneys, regardless of the nature of the workplace.

- The lack of effective training and mentoring for attorneys.

- The debt burden incurred by law students, which limits career choices and the pool of applicants who can afford law school. This burden has a disproportionately heightened effect on economically disadvantaged students.

- The financial and technical difficulties to access the tools of the legal trade felt mostly by sole practitioners, public service attorneys and solo in-house counsel who generally earn less income.

- The lack of training for all lawyers on how to manage the practice of law in both the public and private sectors.

- The increasingly negative image of attorneys expressed by the public and exacerbated by the media and partisan interests.
RECOMMENDATIONS

Large Law Firm - Partners

- Law schools, law firms and the BBA should provide more “real life” training to prospective practitioners to improve their understanding of realistic career choices, to help make the transition to practicing law, and to encourage greater opportunities for collegiality.

- Bar associations, the judiciary, and law firms should be more active in encouraging civility and professionalism among attorneys.

- Large law firms should confront the tension between increasing revenues and attorneys “having a life”, and attempt to encourage partners to manage expectations.

- Large law firms should consider accelerating efforts to shift revenue production away from a dependency on the billable hour.

- Large law firms should encourage shared responsibility not only for maintaining revenue production but also for community service thereby giving more partners opportunities to re-energize themselves.

Large Law Firm - Associates

- Law firms should attempt to provide associates an honest assessment of partnership potential at each annual evaluation and be pro-active in helping the associate address weaknesses.

- Law firms should consider examining the traditional firm partnership structure to determine its efficacy in today’s economy.

- Law firms should consider providing associates on-the-job training in business development and marketing, hiring a marketing director and providing a modest expense account to help further these skills.

- Law firms should consider encouraging partners to train junior associates in business generation, to give compensation credit to partners for this service, and to actively involve associates in marketing efforts, while giving them appropriate credit toward billable hour standards.

- Law firms should consider whether they are adequately recognizing excellent client service skills in addition to business generation skills when evaluating an associate’s prospect for partnership.

- Law firms should consider permitting associates (particularly working parents) to work on a part-time basis without being taken “off-track”, and instead adjust compensation and extend pro-rata the length of time to become a partner.

- Law firms should attempt to insure that associates have appropriate work experience to gain the spectrum of skills appropriate to their level of experience and to provide consistent feedback.

- Law firms should attempt to enhance the management skills of partners as well as those of associates and consider an upward-evaluation in which associates evaluate partners’ management skills.
• Law firms should consider establishing meaningful associate liaison groups to include senior firm decision-makers.

**Sole Practitioners and Small Firms**

• Sole practitioners, with the support of the BBA, are encouraged to overcome isolation and to increase or share their knowledge by participating in the BBA's mentoring program and by establishing informal networking groups for advice, support and guidance, including online discussions through the BBA Website.

• The judiciary is encouraged to take an active role in the management of litigation and to establish an appropriate relationship between the magnitude of the dispute and the cost to resolve it.

• The BBA should encourage open discussion on the growing costs and affordability of legal services.

• The BBA is encouraged to examine its dues structure for affordability for attorneys whose years of practice are not reflective of their incomes, to study the malpractice insurance rate structure, and to seek new ways to publicize services, products and discounts.

• The BBA is encouraged to communicate to the public the utility and value of lawyers and their relationship to the legal system and important societal values.

**In-House Counsel**

• Corporate management is encouraged to recognize the importance of professional development of legal staff, to encourage participation in bar associations and participation in pro bono activities.

• The BBA should modify its programs to be more accessible and meaningful to in-house counsel, such as pro bono programs, and provide resources for brief summaries of specific areas of Massachusetts law.

• The BBA should facilitate small roundtable discussions among in-house counsel having similar interests and challenges.

**Public Service**

• Public employers are encouraged to budget for minimum law practice facilities, support staff, supplies and research capability such as those available to private sector attorneys.

• Public employers should recognize public sector lawyers' participation and representation within professional associations as an important and necessary role to counsel the public client.

• The BBA should take an active role to bolster recognition of public sector attorneys, involve them in CLE programs, and produce CLE topics on managing the public law office.
Academia

- Law schools should consider implementing loan forgiveness and loan protection plans to help students manage law school debt burden.

- Concerning faculty, law schools are encouraged to clearly articulate tenure requirements, support candid communication among tenured and non-tenured members, support adjunct and contract faculty members through job security and fair salary, and hire more women and attorneys of color.

- Law schools are encouraged to examine curriculum to meet the challenges of teaching in a rapidly changing profession, and teach professionalism and civility in all classes.

Senior Lawyers

- Law firms should evaluate retirement plans, or institute one if non-existent, to ensure they serve both the needs of firms and address concerns of senior lawyers.

- Attorneys should begin to focus on career planning and retirement issues when they reach age 50, and that bar associations facilitate career planning programs.

Law Students and Recent Graduates

- The BBA should encourage a national organization, such as the American Bar Association, to conduct a comprehensive study of the student debt issue. (This is a joint recommendation with the Public Service and Academia Subcommittee.)

- Law firms, corporate legal departments and public sector entities should examine and assess their training and mentoring opportunities for law students and new lawyers.

- The BBA is encouraged to revitalize its mentoring program to address needs of law students, new lawyers and solo and small firm practitioners and to explore methods of using senior attorneys. (This is a joint recommendation with the Senior Lawyers and Solo and Small Firm Practitioners Subcommittees.)

Women Attorneys and Attorneys of Color

- Attorneys individually are encouraged to examine their own treatment of colleagues, especially those of a different gender or racial or ethnic group, and the subcommittee recommends that overall efforts continue in order to effect meaningful changes to eliminate racism and sexism in the profession.

- The BBA is encouraged to continue reaching out to minority and women bar associations to obtain diversity in bar leadership positions and activities, and to continue to educate and sensitize the legal community to be more receptive to attorneys of different racial and ethnic backgrounds.
INTRODUCTION

At the request of its President, Joel M. Reck, the Boston Bar Association ("BBA") formed a Task Force to examine the issue of professional fulfillment in the legal profession here in Boston. John J. Curtin, Jr., of Bingham, Dana & Gould LLP, chaired the Task Force on Professional Fulfillment ("Task Force") which included attorneys from both the public and private sectors. These attorneys represented law firms, academia, government, corporations and solo practice.

In recent years, there have been many articles and surveys indicating a growing dissatisfaction with the legal profession. The Young Lawyers Division of the American Bar Association conducted extensive surveys in 1984 and 1990, and a more limited survey in 1995, on career satisfaction. The ABA concluded that although the 1984 and 1990 surveys "found that the majority of both male and female attorneys are satisfied overall with their jobs[,]" there has been a deterioration in the legal workplace environment and a resulting increase in dissatisfaction throughout the profession. See American Bar Association, "The Report Of At The Breaking Point, A National Conference On The Emerging Crisis In The Quality Of Lawyers' Health And Lives -- Its Impact On Law Firms And Client Services" (1991) at 1. The ABA’s 1995 survey reflected that about one third of the respondents would "strongly" consider leaving their current position within the next two years, while another 31% “might” consider doing so. See American Bar Association, "Young Lawyers Division Survey -- Career Satisfaction 1995" at 1 and 9.

This BBA Task Force addressed the following three major questions:

1. What are the causes of lawyer satisfaction and dissatisfaction with the profession?

2. What institutional changes are possible to address dissatisfaction and enhance satisfaction?

3. What are the appropriate coping mechanisms for dealing with the root causes of dissatisfaction which are not likely to change?

The seventeen member Task Force divided into the following eight subcommittees: (1) Large Law Firms - Partners; (2) Large Law Firms - Associates; (3) Sole Practitioners and Small Firms; (4) In-House Counsel; (5) Public Service and Academia; (6) Senior Lawyers; (7) Law Students and Recent Graduates; and (8) Women Attorneys and Attorneys of Color. This Report includes separate reports and recommendations for each of these subcommittees. Through representative focus groups and individual interviews, the Task Force members examined the causes of satisfaction and dissatisfaction for each of the above identified groups and proposed recommendations and solutions for dealing with the lack of professional fulfillment. The Task Force did not attempt a formal survey or an exhaustive study of these causes but tried to achieve a representative sampling. As more fully addressed below some barriers to professional fulfillment pervaded all types of legal practice, while other barriers appeared to be unique to particular groups of attorneys.

The Task Force believes that the greatest strength of this report is the report of each of the subcommittees. To fully understand the relevance of this report, you must read the reports of those subcommittees that are applicable and/or of interest to you. Anyone interested in the health of the profession should read the entire report. Each of the subcommittee reports contains both findings and recommendations for the most important issues raised in the respective focus groups. The
Task Force members acknowledge that the recommendations of the various subcommittees may represent only one perspective and that not everyone will agree with all the recommendations. However, it is necessary (1) to recognize that these recommendations represent the honest feelings of a distinct group of lawyers, and (2) to create a sincere dialogue to open the lines of communication on these sensitive and important issues.

The nature of the experience of practicing law has not only changed dramatically in recent years, but the rate of such change appears to be accelerating. Some of the changes are quite positive, such as the use of technology to reduce research and document preparation time, the increase of women and people of color in the profession, the emergence of new and exciting specialties, the use of alternative dispute resolution, and generally the increase in lawyers’ incomes. Other changes, however, are not as positive, such as the increased pressures for more personal productivity and for much faster response times, the commercialization and commoditization of the practice of law, the loss of collegiality and the breakdown in civility among lawyers as part of a growing feeling of isolation and alienation, the loss of de facto tenure for partners and the decreasing likelihood of associates, particularly in large firms, becoming partners. It is important that we recognize that many of the changes that have taken place are permanent changes, which need to be better understood and managed by each of us. An increased sense of professional fulfillment, however, is not predicated on returning to the status quo ante. Instead we need to be realistic in setting goals and expectations, which will not only deal in the most constructive possible manner with these dramatic changes, but which will anticipate future changes in the legal profession. Lawyers, as trained problem solvers, are especially capable of facing these challenges in positive and creative ways.

Task Force note that professional fulfillment is first and foremost the responsibility of each individual attorney. Each attorney must identify and examine his or her own interests, priorities and expectations in pursuing a legal career. Attorneys cannot and should not rely solely on institutions, whether they be law firms, corporations or government agencies, to make them feel professionally fulfilled. A crucial element of professional fulfillment is whether the individual attorney’s expectations of the practice of law are consistent with the realities of the practice. In addition, there appears to be a correlation between the attorney’s satisfaction and the attorney’s ability to control his or her professional life.

Over the past twenty years, the market place has increasingly required law firms and other employers of lawyers to adopt more efficient and business-like approaches. These financially motivated practices not only cause lawyers to feel greater stress, but also feed the notion of many lawyers that the practice of law has become a business as distinguished from a noble profession. Sound business management practices per se should not be antithetical to practicing law as a noble profession. In fact, such sound business practices should, in many cases, enhance one’s sense of professional satisfaction. Too narrow a focus on profitability and increased compensation, however, especially if carried to an extreme over many years, has potentially serious consequences. To the extent that financial “bottom line” considerations continue to gain greater relative weight in law firms as distinguished from the many other objectives and interests of lawyers, then we need to understand the implications of the trade-offs that are being made.

One of the most interesting and ironic findings of the Task Force was a reiteration of the theme that money does not buy happiness. Of the Task Force’s eight subcommittees, associates in large firms expressed the most dissatisfaction. Notwithstanding the continuing significant increase in first year associate compensation in the last two years, these associates, as a
group, feel quite discontent. Lest any large law firm dismiss these concerns as inapplicable to it, it is striking that there was virtual unanimity among these associates who came from approximately twelve different law firms. The intensity and nature of their concerns need to be not only noted, but, more importantly, dealt with in constructive ways.

Ironically, by contrast to the unhappiness of highly compensated large law firm associates, small firm and solo practitioners were among the most professionally fulfilled even though they often face serious financial struggles in the practice of law. Not surprisingly, the sense of control over one’s professional life, which is maximized in the solo and small firm setting, was an important ingredient in achieving a comfortable level of professional fulfillment. Moreover, attorneys in the public sector, in corporate legal departments and in academia, many of whom had left private practice, commented that they generally were satisfied with their career choices even though they do not earn the income of practitioners in law firms.

Large firm associates, however, experience not only very limited control in their professional lives, but often bear the brunt of inadequate instructions and/or unnecessarily harsh deadlines as the result of case mismanagement by some partners. This experience is exacerbated by the increasingly high minimum billable hour requirements, whether required formally or by the culture of the firm, as well as by debt burdens that on average are approaching $100,000 per new lawyer. Furthermore, the probability of a young lawyer becoming a partner has also dramatically changed during the last decade. No longer can a young associate count on becoming a partner simply by working hard and by doing excellent legal work. Under these circumstances, it should not be surprising that large firm associates have consistently expressed their lack of professional fulfillment.

Large law firms are increasingly recognizing the need for better management of the outplacement process once partnership decisions have been made, but many associates are leaving firms sooner to avoid being branded by a negative decision. Large law firms are thus increasingly caught between the enormous direct and indirect costs of hiring and training associates, while being able to recover less and less of associates’ training time in fees. With associate attrition occurring earlier, there is great pressure on the management of law firms to improve the management of associates, for both financial and non-financial reasons. To the extent that associates are happier, not necessarily because they are working fewer hours, but because they are managed better and treated better, then both partners and associates are winners.

In the past, Boston had a small legal community where attorneys knew one another and were more collegial. Today there are approximately 18,000 attorneys practicing in the Greater Boston area. Accordingly, lawyers report that with this ongoing growth in the legal profession, they are less likely to meet the same attorneys throughout their careers. Attorneys today do not have the opportunities to build personal relationships with other attorneys. As one author has noted, “[p]racticing attorneys have commented that it is much easier to act abusively toward opposing counsel when one does not know them and will probably never see them again.” Kathleen P. Browe, A Critique Of The Civility Movement: Why Rambo Will Not Go Away, 77 Marq.L. Rev. 751, 758 (1994). This behavior, however, mirrors the growing incivility in society as a whole. Another author describes “drive-by encounters of rudeness in which one can ‘get in a quick cheap shot and move on. If you never expect to see them again, it is the perfect opportunity — and what is the consequence?’” Laura Pappano, The Crusade For Civility, The Boston Globe Magazine (May 4, 1997) at 39.

Men and women attorneys, more experienced and junior attorneys alike, commented on the decline of professionalism. There have been numerous articles written on the lack of professionalism among attorneys. See American Bar Association Report, "Teaching and Learning Profession-
8. the debt burden incurred by law students, which not only limits the career choices of recent law school graduates, but also limits the pool of applicants who can afford law school. This burden has a disproportionately heightened effect on economically disadvantaged students;

9. the financial and technical difficulties to access the tools of the legal trade, which are felt most strongly by sole practitioners, public service attorneys, and solo in-house counsel who generally earn less income;

10. the lack of training for all lawyers on how to manage the practice of law in both the public and private sectors; and

11. the increasingly negative image of attorneys expressed by the public and exacerbated by the media and partisan interests.

With regard to all the barriers to professional fulfillment identified and addressed by the eight Task Force subcommittees and all the recommendations made by those subcommittees, the Task Force hopes that these issues will provide a basis for ongoing discussion and action, where appropriate, in the legal workplace.
LARGE LAW FIRMS - PARTNERS

The members of the Large Law Firm Partners Subcommittee, John D. Hamilton, Jr., Chair, Paula Alvary, Antoinette D. Hubbard and Joel M. Reck, examined the issues of professional fulfillment for partners in large law firms. Through individual interviews and a discussion group with partners, the members of the subcommittee concluded that a sense of professional fulfillment has deteriorated for many large law firm partners over the past quarter century.

A recent National Law Journal survey of the 125 largest law firms reveals that "[p]artners, by and large, like being lawyers. It's the perils of big law firm practice they're not thrilled about." Chris Klein, Big-Firm Partners: Profession Sinking, National Law Journal (May 26, 1997) at A1. The author of the article noted that "[p]rivate practice has turned sour, partners say, because the law has become a fiercely dollar-driven business. To keep the money flowing, attorneys at all levels are spending substantial amounts of time trying to coax new clients to the firm, at the expense of time spent on legal substance -- their main source of professional satisfaction." Id.

A 1994 partner satisfaction survey found that "[m]ost [partners responding to the survey] professed a pervasive discontent -- if not a profound displeasure -- with their careers." Is It Possible To Put Passion Back Into The Practice Of Law?, Partner's Report (November 1994) at 1. The survey concluded that the primary causes of the partners' dissatisfaction with their careers were "a failure of expectations and a lack of control." Id. at 8. As noted earlier in this report, these themes of expectations and control have emerged in the various subcommittee reports of the Task Force.

The members of the Large Law Firm Partners Subcommittee found that some fulfilling aspects of the profession for partners include the intellectual stimulation and challenging nature of the work, the opportunities for community involvement and the far greater economic rewards in comparison to the vast majority of society. Through their interviews and the discussion group, however, the subcommittee members identified the following obstacles to professional fulfillment for partners here in Boston:

1. the increased pressure on productivity created by the ascendancy of the billable hour as the primary source of a firm's revenue and a significant measure of the partner's contribution to the firm;
2. a significant shift in the compact between partners and associates;
3. the elimination of tenure and the introduction of mandatory retirement as attributes of partnership in large firms;
4. the increased mobility of partners and of clients resulting in a lack of stability in those relationships and a heightened competition;
5. the diminished societal respect for attorneys, with a concomitant lessening of a sense of self-worth;
6. the technological advances which have quickened the pace of the practice, assuring clients of 24-hour access and leaving partners with little time to reflect on answers to the clients' needs;
7. the dramatic increase in the use and the stature of in-house counsel;
8. the increased lack of civility in both transactional and litigation practices;
9. the increased competition for the best and the brightest associates, many of whom are laden with debt forcing the increases in starting compensation and attracting many who might rather have pursued alternative careers in public interest or public sector practices or academia; and
10. The increased legislative and regulatory law requiring increasingly narrow specialization in areas of practice which may prove to be highly transitory.

The partners recognized and acknowledged that the resulting transformation of large law firm practice is a natural and inevitable evolution in response to the growing societal and economic pressures. Moreover, with regard to professional fulfillment, the partners focused on their expectations of large firm practice. Generally, the partners noted that when their expectations of practice are consistent with the realities of their practice, they feel more satisfied with their careers. The partners cautioned, however, that if every graduating law student who joins a large private law firm expects to become a partner, eighty to ninety percent will not achieve professional fulfillment. Large law firm practice, however, can provide new associates with (1) the opportunity to achieve their full potential as lawyers through training and development while associates; (2) candid assessments of their prospects for partnership; and (3) assistance in finding satisfying alternative career paths if partnership is not available.

For partners, large law firm practice does not provide perfect balance among family, professional and community life. Moreover, partnership is no longer synonymous with lifelong employment. The National Law Journal noted that “[a] partner’s rewards are greater if he makes a lot of rain, but the penalties can be severe if one isn’t successful. Job security, partners across the country complain, has become an oxymoron.” National Law Journal at A25.

The subcommittee recommends that law schools, law firms and bar associations provide information to law students and new lawyers about large firm practice so that they clearly understand the trade-offs related to this type of practice and make informed choices about their careers. If individuals are more fully and fairly informed of the trade-offs which inevitably must be made as a private practitioner, they can better assess their own priorities and determine whether the benefits of large law firm practice outweigh its obvious burdens. Only then can expectations be managed by each individual and by firms so that reasonable goals will be achieved, resulting in a renewed sense of professional fulfillment.

RECOMMENDATIONS

The Task Force recommends that:

1. candid communication be encouraged in law schools, law firms and bar associations. Law schools should provide more “real life” training so that prospective practitioners will have a realistic understanding of what to look for and what to expect when choosing a large law firm. Law firms should provide more practical orientation programs and constructive feedback to assist associates in making the transition from law school to practicing law and to enhance their chances of successful careers either as partners or in satisfying alternative roles. The bar associations should sponsor more continuing legal education programs relevant to the issue of professional fulfillment and should encourage greater participation in bar activities and community service as opportunities for interaction with other attorneys on a non-adversarial and non-competitive basis so that the pursuit of fulfillment may be shared openly.

2. bar associations and the judiciary be more active in encouraging civility and professionalism among attorneys.

3. large law firms, in whatever way fits their particular culture, confront the tension which exists for both firms and partners between increasing revenues and “having a life.” Perhaps some firms will make the issue of professional fulfillment a key topic at a retreat or will establish a task force to examine the issue. The format is less important than a broad involvement across the partnership which will permit addressing the trade-offs and possible mitigation measures with a level of candor.

4. large law firms consider accelerating their efforts to shift revenue produc-
tion away from a dependency on the billable hour.

5. Large law firms consider developing a more systematic rotation within the partnership of the responsibility for maintaining the firm’s revenue production and its responsibility for community service, thereby giving more partners the opportunity to re-energize themselves by confronting new and different challenges.

6. Large law firms encourage partners to manage their expectations and to recognize that the annual percentage increases in compensation witnessed in the past few years will inevitably moderate and that monetary rewards alone are not what is meant by professional fulfillment.

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**LARGE LAW FIRMS - ASSOCIATES**

The Large Law Firm Associates Committee, chaired by Mary C. Mazzio, and consisting of Kevin M. McGinty and Maura E. Murphy, convened two focus groups of mid-level and senior associates from approximately twelve large law firms in Boston. The members of this subcommittee identified the following issues and concerns of associates in large firms: (1) diminished opportunities for partnership; (2) issues with respect to unclear partnership criteria; (3) billable hour requirements and off-track positions; (4) training and management; and (5) retention.

The common theme uniting the issues outlined above is that associates believe that the opportunity to grow and develop professionally with a firm has become diminished. Decreased opportunity for partnership admission, more stringent partnership admission criteria, deficiencies in training and mentoring, and high levels of attrition all send the message to associates that they are fungible providers of legal services and not valued members of a professional team. The associates recognize that economic pressures may prevent any meaningful expansion of partnership opportunities and are honest enough to admit that part of the allure and value of partnership is its exclusivity. The associates nonetheless advance recommendations which are intended to help law firm management assist associates in the pursuit of professional advancement through improved training and mentoring and greater integration of associates into the practice. Ideally, in exchange for associates’ dedicated service to firms and their clients, firms will (a) facilitate associates’ pursuit of advancement within the firm and in the profession, (b) provide honest and early appraisals of prospects for advancement within the firm, and (c) allow firms and associates to optimize their time together.

**1. Diminished Opportunities for Partnership**

Although associates believe that partnership is no longer synonymous with tenure or job security, partnership remains a very important goal for associates. Partnership admission represents a public validation of being a competent and respected lawyer. Associates, however, are concerned that their prospects for partnership are becoming increasingly dim. Existing partnerships are swelling with non-business generating partners who were admitted based on their perceived client service skills (as opposed to business generation skills). As a result, firms are admitting fewer associates into the partnership. Furthermore, because the client service roles are filled with existing partners, those associates who are chosen for partnership tend to have strong business generation skills.

Although the group briefly discussed various ways to increase partnership opportunities for associates (e.g. eliminating the distinction between non-equity and equity partnership), associates were not optimistic that firms would be willing to make dramatic changes to the current partnership structure. Indeed, associates found that some partnership models, which would increase opportunities for admission
RECOMMENDATIONS

The Task Force recommends that:

1. law firms consider examining the traditional law firm partnership structure to determine whether such a structure continues to make sense in today's economy.

2. law firms attempt to provide each associate with an honest assessment of one's chances for partnership at each annual evaluation taking into account the associate's abilities and the needs of the firm's practice.

3. law firms consider becoming more pro-active in helping an associate overcome weaknesses or problems raised in an evaluation. If a firm identifies an area in which an associate needs to improve, it is incumbent on the firm to provide the associate with work assignments aimed at addressing that deficiency.

2. Partnership Criteria and Business Generation

As noted above, because existing partnerships are top-heavy, firms are imposing increasingly stringent criteria in order to admit fewer partners. Insofar as partnerships are loaded with attorneys who do not originate business, partnerships tend to favor those associates who demonstrate business generation skills. As business generation becomes an increasingly important factor in determining who will and will not make partner, associates feel pressure to project the image of someone likely to be able to produce business. Associates, by and large, however, are not trained how to generate business. The fact that the time spent for client development training is not credited towards one's billable hours creates a disincentive for partners in many firms to provide such training.

Some associates do have opportunities to begin producing business, but require the assistance of partners to close the deal. However, associates report that some firms have compensation policies which reward business production on an "eat what you kill" model (providing 100% of the business production credit to the attorney who introduced the client to the firm) and which provide no incentive for a partner to assist an associate (or, for that matter, other partners) in "closing the deal" to bring in new clients.

RECOMMENDATIONS

The Task Force recommends that:

1. law firms consider providing more on-the-job training to associates to help them to develop their business development skills because the ability to generate business is such an important partnership criterion. Specifically, the Large Law Firm Associates Subcommittee recommends that older and more senior lawyers consider spending time teaching junior associates how to deal with clients effectively and how to originate business.

2. law firms consider examining their existing billing and compensation systems in order to provide credit to partners for the care and nurturing of junior associates' professional and business development skills. Some firms already have implemented such programs and have successfully used "team production" approaches in which partners assist associates in producing new business while obtaining a portion of the business production credit.

3. partners in law firms try to involve junior associates in marketing efforts. If a response to a request for a proposal lists an associate among the personnel who will staff a matter, the associate should be brought along for the pitch meeting. Bringing the associate to the meeting allows him or her to observe the business development process firsthand, helps bond the associate to the client, and provides a form of on-the-job business development training.

4. law firms consider instituting comprehensive marketing training early in an associate's career. The first two years of an
associate's career development should continue to be focused on acquisition of substantive legal skills. Beginning in the third year, however, associates should be trained in client service and client relations skills and be included in client-acquisition efforts. Further and more advanced training should be offered as the associate advances in seniority.

5. law firms, not associates, attempt to resolve the contradiction between the requirement to develop business and the expectation that associates will bill large numbers of hours doing legal work to the exclusion of all else, including business development efforts. This contradiction reinforces the associates' perception that firms do not care about associates' professional development and only view them as engines for economic gain. One way to resolve this issue is to credit time spent developing clients as "billable," or otherwise recognize efforts aimed at business production. If a firm discourages associates from doing anything but maximizing billable hours, the firm should not then make partnership or advancement decisions based on potential for business production.

6. law firms consider providing modest expense accounts to permit associates to take clients to lunch and to engage in other marketing efforts.

7. law firms consider employing marketing directors to make sure that associates are involved in marketing efforts, especially women attorneys and attorneys of color.

8. law firms consider whether they are adequately recognizing and valuing client service skills, in addition to business generation skills, when evaluating an associate's prospects for partnership. "Client binding" skills which grow new business from existing clients are the most important source of business production. Attorneys with such skills should be held in higher regard.

3. Billable Hour Requirements and Off-Track Positions

Most associates are overwhelmed by the tension between the typical large firm's billable hourly requirements and the need to devote additional time to develop one's practice, generate business, attend seminars, and participate in firm administrative matters. One associate stated that large firm expectations of an associate favored the profile of a single wage earner, which is no longer the traditional profile of an attorney. With respect to hours, the associates discussed, with much controversy, the billable hours expectation and the solutions which might be available for working parents who, for a short time in their careers, might not be able to meet the current stringent requirements to become a partner (e.g., generate business, participate in firm management, and bill 2000 hours per year).

The associates discussed the possibility of "off-track" positions for those attorneys who wished to work fewer hours. The subcommittee learned, however, that the associates were concerned that "off-track" or "staff attorneys" would (i) be viewed as second class citizens, (ii) receive less sophisticated work, and (iii) reduce the amount of work appropriate for senior and midlevel associates. Interestingly, most of the associates present, when asked if they would accept such an off-track position, responded that they would not be interested in such a position given the above-referenced concerns.

Many firms in the city require a part-time associate to work full time for at least a period of one or two years before evaluation for partnership. At least two firms in the city now evaluate part-time associates for partnership.

RECOMMENDATIONS

The Task Force recommends that:

1. law firms consider permitting associates to work on a part-time basis without being taken "off-track," and simply (a) adjust the particular associate's compensation, and (b) extend on a pro-rata basis, the length of time to become a partner.

2. law firms attempt to recognize the dedication and concerns of working parents who may work part-time by evaluating part-time associates for partnership (rather than requiring such parents to return full-time).
4. Training and Management

Although most firms offer fairly comprehensive formal in-house training programs and/or access to continuing legal education programs, associates uniformly believe that the most valuable and effective training is on-the-job training. Firms' approaches to such training tend to be inconsistent. Assignments often are given in haste on short deadlines set by disorganized managers. (For example, one associate bemoaned the common plight of the "5:00 p.m." assignment -- where the partner calls the associate at 5:00 p.m. with an assignment that is due the next day, then heads out the door without telling the associate how to complete the task. The associate then spends the night in the library re-inventing the wheel.) Even if managers are well-organized and give assignments with reasonable deadlines, the amount of time which can be spent on instruction is limited by client-billing concerns and the absence of any other means by which the partner or associate can be credited or paid for such training time.

Associates often find themselves at sea with regard to their professional development. Most have no idea whether the skill set that they have acquired is appropriate to their level of seniority. Many feel that they are left to their own devices in seeking and obtaining assignments aimed at rounding out their experience. Few firms track their associates' professional advancement to ensure that they have achieved the appropriate developmental benchmarks.

In addition, management skills of partners continue to impede associates' professional fulfillment. While some partners are good and fair managers, the associates believe that most partners lack necessary management skills. The roots of bad management are many and varied. Some bad managers have hearts of gold and abysmal time-management skills. Others are victims of a "cycle of abuse" in which partners who were ill-treated as associates repeat the same pathology in their treatment of associates. Whatever the cause, poor management skills usually are evident at the associate level, but firms take no pains to train associates in management skills and rarely make management ability a partnership admissions criterion or a factor in compensation.

Associates believe that firms are not willing to protect associates from mismanagement unless the issue causes a client relations problem. Associates believe that firms will tolerate a substantial amount of abuse of associates by a partner who is perceived to be economically valuable to the firm. Even firms with feedback mechanisms nominally intended to address associates' concerns regarding management will shy away from disciplining the abusive rainmaking partner.

RECOMMENDATIONS

The Task Force recommends that:

1. law firms attempt to ensure that associates have appropriate work experience with assignments which expose them to the spectrum of skills appropriate to their level. Assignments should be given to associates with an eye toward advancing their professional development. Firms should consider developing benchmarks in their practice groups which can be used to track associates' advancement and which can guide training efforts which are focused on the needs of particular associates.

2. law firms attempt to provide more consistent feedback. Associates should know before their formal evaluations whether there are issues with particular assignments. Early identification of problems provides the best means for correction.

3. law firms consider encouraging on-the-job training by giving partners credit towards their billable hours for training time in order to avoid pressures put on the training process by client billing constraints. Likewise, the Large Law Firm Associates Subcommittee recommends that law firms consider permitting partners more latitude in writing off an associate's time. Again, if such "training time" could be "creditable," then partners and more senior associates would have more incentive to properly teach junior associates.
4. law firms attempt to enhance the management skills of partners by (i) instituting management training at the mid-associate level (to prevent the “cycle of abuse” from continuing), (ii) making management skills a criterion for partnership admission, and (iii) linking management skills with compensation.

5. law firms consider instituting an upward-evaluation program in which associates evaluate partners’ management skills. Some firms recently have implemented such programs, and have made the results of the evaluations a partnership and a compensation criterion.

6. law firms consider training associates how to manage their secretaries as well as their time, (e.g. time management courses to help an attorney be more organized and productive).

5. Retention

Many large firms have difficulty retaining talented associates. Issues which contribute to this phenomenon are (i) perceived lack of opportunity, (ii) isolation, (iii) workload perceived to be out of proportion to the professional rewards which are available to the associate, (iv) lack of professional development, and (v) lack of involvement in the firm and its client service mission.

RECOMMENDATIONS

The Task Force recommends that:

1. law firms consider establishing meaningful associate liaison groups which include senior decision-makers in the firm.

SOLE PRACTITIONERS AND SMALL FIRMS

The Subcommittee On Sole Practitioners And Small Firms, with Virgen M. Palermo, as Chair, and Katherine S. McHugh, met with a group of sole practitioners, seasoned veterans, most of whom began their careers in another type of practice and sought out solo practice by choice. For many of these attorneys, lifestyle and professional fulfillment figured into their choice to pursue a solo practice. Personal freedoms to define their practices and to control their calendars contribute to their satisfaction with the practice of law. Apart from concern about their incomes and the isolation of solo practice, their frustrations derive largely from external realities that impact sole practitioners disproportionately.

External realities that negatively impact sole practitioners’ sense of fulfillment grow out of an income level that is marginal, itself based on charges that represent what they feel their clients can afford rather than the “value” of their services or the cost of doing business. Some of the financial burdens of law practice are not limited to sole practitioners but are felt more acutely by them because lawyers in solo practice worry about money on a day-to-day basis in a way that lawyers in other types of practices do not. Moreover, sole practitioners tend to be closer to the needs and resources of their individual paying clients, the backbone of their practices.

Through this group, the subcommittee identified the following barriers to professional fulfillment for sole practitioners and attorneys practicing in small firms: (1) a sense of isolation from the rest of the profession; (2) the difficulty in determining the value of the legal services provided to individual clients; (3) the inability to access the tools of the trade because of limited financial resources; and (4) the negative public image of attorneys.

1. Isolation

Many attorneys in the discussion group remarked that by practicing on their own, they often feel isolated from the rest of the legal profession. In order to overcome this isolation, the sole practitioners have developed informal networking groups of colleagues to whom they can turn for discussion, advice, or support. The Subcommittee On Sole Practitioners And Small Firms
recommends that the BBA and other bar associations attempt to address this sense of isolation either through bar-sponsored mentoring programs or through informal networking opportunities by the BBA's Solo and Small Firm Practice Section. The lawyers in the focus group expressed that they valued these informal relationships with other attorneys because they enhance the quality of their practice and add to their professional fulfillment.

2. Value

Sole practitioners generally represent individuals paying for legal services out of their own pockets. Given the complexity of many legal issues and transactions, the subcommittee learned that sole practitioners face a sometimes acute conflict between zealous representation of clients and representing clients within their pocketbooks. These attorneys sometimes decline cases because they do not feel that they can offer good value to individuals, given the complexity of their needs and the time obligations involved for which they are not likely to be compensated. Such decisions, to the extent that they are on the increase, can be seen as a contributing factor in the growing burden of pro se cases in the court system. In addition, middle class clients who give up legitimate cases and forego litigation because of the high cost feel angry because they have been denied access to the judicial system.

The attorneys suggested that a possible solution would be to encourage courts to be more active managers of cases, to curb litigation excesses and to bring the cost of litigation more in line with the value of the conflict. In other areas of practice, the solutions are more elusive, but threaten both the perception and the reality of the value added by the legal system to the solution of everyday problems. Part of this value issue includes the negative effect of the pressure to drive down costs on an attorney's sense of the craft of lawyering. Sole practitioners explained that fierce price competition encourages attorneys to "make do" with an acceptable solution without the opportunity to explore a problem and design a creative solution specific to the client's needs. The growth of pro se litigants and the proliferation of pre-packaged legal forms and software programs are symptoms of a wider problem, which is now felt most seriously by sole practitioners.

3. Access To The Tools Of The Trade

Access to the tools of the trade is more important to lawyers practicing alone or in small groups than to other lawyers, and these practitioners find many of those tools beyond their means. Many sole practitioners report that their incomes do not regularly reach the salaries of entry-level associates at large law firms. Accordingly, these attorneys explain that they cannot afford to pay dues to join bar associations and the Social Law library or to pay subscription fees for Massachusetts Lawyers Weekly or other legal periodicals. Similarly, they report that they cannot afford malpractice, health, disability and life insurance.

At present, the fee structure of bar associations, including the BBA, is based on years in practice. Through the discussion group, the subcommittee discovered that the income for sole practitioners does not necessarily increase with each year in practice. Because many of the attorneys in the group had practiced in another area of the law before choosing to practice on their own, the bar dues are beyond their means because these dues are based on their years in practice rather than their income. Moreover, these attorneys report that the additional costs of training, either through bar-sponsored or other continuing legal education programs, are also prohibitive to them. The sole practitioners did not feel that an income-based dues option would be insulting or demeaning to them. On the contrary, they indicated that they would welcome the opportunity to participate in bar activities at a cost that they can afford. The subcommittee notes that the attorneys in the discussion group were generally unaware of existing BBA membership discounts.

The structure of malpractice insurance makes it difficult for sole practitioners to
afford. Rate structures require the identification of specialties, some of which carry higher premiums than others. Malpractice insurers strongly discourage efforts to collect fees from clients because of their fear that clients will counterclaim for malpractice. In addition, insurers give no credit for a positive or flawless claims history and charge higher rates the longer an attorney has been practicing, regardless of claims history or any inquiry into the range of amounts in controversy represented within the lawyer's range of practice.

4. The Negative Public Image Of Attorneys

Many of the sole practitioners felt that they were affected by the prevailing negative public image of attorneys as "sharks" or "fat cats." Their clients sometimes begin the lawyer-client relationship with the view that the lawyer is rich and uninterested in the problems of ordinary people. These attorneys suggested that most people have no clue what lawyers do and why lawyers are important to society. They urged the bar association to promote a realistic view of lawyers, based on what the bulk of lawyers do and earn here in Boston and to publicize their importance to the functioning of a just society.

RECOMMENDATIONS

The Task Force recommends that:

1. sole practitioners be encouraged to establish informal networking groups of colleagues for advice, support, and guidance.

2. the BBA revitalize its mentoring program to include law students, new lawyers, sole practitioners and senior lawyers.

3. the BBA's Solo and Small Firm Practice Section continue to encourage informal networking opportunities, including on-line discussion groups, that may be broader than one-on-one mentoring relationships.

4. the judiciary be encouraged to take an active role in the management of litigation and to establish an appropriate relationship between the magnitude of the dispute and the cost to resolve it.

5. the BBA, through sponsorship of a participatory symposium and discussion series, initiate an open discussion within the legal profession about the growing cost of legal services related to the nature of the problem at issue and to what clients can reasonably afford to spend to solve that problem.

6. the BBA examine its current dues structure to seek to make membership financially feasible for those attorneys whose years in practice are not reflective of their incomes.

7. the BBA conduct a study of the malpractice rate structure and its relationship relative to the quality of legal practice.

8. the BBA develop new and ongoing ways to reach out to solo and small firm practitioners to let them know of services, products and discounts available through the BBA that are specifically responsive to their needs.

9. the BBA launch a public education campaign that highlights (a) the contributions that individual attorneys make to the community and (b) the relationship of attorneys and the legal system to important societal values.

IN-HOUSE COUNSEL

The In-House Counsel Subcommittee, consisting of Donald G. Leka, Chair, John D. Hamilton, Jr. and Joel M. Reck, conducted focus group meetings with lawyers from large legal departments, mid-size legal departments and in-house solos. The subcommittee concluded that as a group, the in-house counsel attorneys were satisfied with their career choices to practice in an in-house counsel office and generally felt professionally fulfilled with the practice of law. Most in-house counsel attorneys had practiced law in another setting, primarily in law firms, before joining a corporate law office. Generally, in-house attorneys expressed that their expectations of in-house
practice coincided with the realities of that practice. Moreover, in-house lawyers reported that although they continued to work long hours, they were better able to control their workloads and did not feel constrained by billable hours.

While generally satisfied with the profession, in-house counsel staff reported to the subcommittee the following obstacles to professional fulfillment: (1) the benefits and burdens of being a generalist; (2) isolation in the in-house counsel practice; (3) being staff in a corporation; (4) second class status as an attorney who does not practice in a law firm; and (5) inability to develop one's own practice.

1. Being A “Generalist”

Through these focus groups, the In-House Counsel Subcommittee examined the different dynamics operating in an in-house counsel setting versus a law firm. Because the meter is running when clients contact attorneys in firms, clients often strictly tailor their questions to elicit precise, narrow “technical” responses. In an in-house counsel setting, the client approaches a fellow employee, who is the attorney, often seeking advice and counsel on a wide range of issues. This provides in-house attorneys with an opportunity to be an adviser to the client as well as an advocate on the client’s behalf.

The in-house counsel noted, however, that being a generalist also has its burdens. In-house attorneys need to learn entirely new fields of law under time pressures. The subcommittee concluded that primers or tutorials on a wide range of topics would be a useful resource to in-house staff.

2. Isolation

The subcommittee discovered that many in-house lawyers reported that they feel segregated from the rest of the legal profession. This sense of isolation was particularly acute among in-house attorneys from small departments or solo in-house practices. The in-house attorneys explained that they do not have opportunities to network and brainstorm with other attorneys. They further commented, however, that although they have frequent contacts with their outside counsel, their outside counsel cannot meet these networking needs because of the in-house attorneys’ competition with outside counsel and the pressure on outside counsel to bill their time. Accordingly, the subcommittee concluded that bar associations and similar professional organizations can play a role in promoting networking opportunities for in-house counsel attorneys.

3. Being Staff In A Corporation

In-house counsel attorneys commented that their success and professional development depend on the evaluation of business people who can judge lawyers by little more than their bedside manner. In the corporate environment, attorneys are unlikely to play a central role in the organization’s mission. Therefore, in-house counsel offices are often viewed as cost centers to the corporation, rather than as “players” that directly produce results for the corporation. To overcome this obstacle to professional fulfillment, many attorneys move from the general counsel’s office into management of the business aspects of the corporation.

4. Second Class Status

Although there is a perception that “real law” is practiced in law firms, generally, the in-house counsel attorneys do not feel that they are second class attorneys or that they are viewed as second class attorneys by their colleagues or the public. The subcommittee ascertained that many corporations now are using their in-house staff to perform more substantive work rather than hiring outside counsel. Moreover, in-house counsel report that they appreciate and enjoy their roles as clients to outside counsel. Although many recalled the fee pressure from outside counsel when they were in private practice, as in-house counsel, they report that they are rigorous in reviewing and commenting on the bills received from their outside counsel.

5. Inability To Develop One’s Own Practice

In-house attorneys report that generally there is a collegial relationship between
the corporate client and the in-house counsel attorney. They cautioned, however, that in-house counsel are in arranged marriages with their corporate clients. Accordingly, they generally do not have the freedom to select the work that they do. Moreover, although in-house attorneys never develop a portable source of revenue, they do have the opportunity to develop relationships with their corporate clients.

RECOMMENDATIONS

The Task Force recommends that:

1. corporate management be encouraged to recognize the importance of professional development to their in-house counsel staff and to encourage their attorneys to participate in professional organizations such as bar associations.

2. corporate management be encouraged to support their attorneys' participation in pro bono activities that appropriately use their existing skills.

3. the BBA modify its pro bono programs so that they are accessible and meaningful to in-house counsel by using the skills unique to them.

4. the BBA facilitate small roundtable discussions among in-house counsel having similar interests and challenges.

5. the BBA use its Web site to provide brief introductory summaries for specific areas of Massachusetts law. This feature would allow attorneys, including in-house counsel, to obtain some immediate proficiency in an unfamiliar field and could provide additional resources for further assistance.

PUBLIC SERVICE AND ACADEMIA

The Public Service and Academia Subcommittee which included Merita A. Hopkins, as Chair, Daniel R. Coquille, Jessica A. Ladd and Francis S. Moran, Jr., conducted separate focus groups of attorneys from the public sector and attorneys from the teaching field. Attorneys from both the public sector and the academic profession commented that generally they are professionally fulfilled in the practice area that they have chosen. As with in-house counsel, many of these lawyers had practiced law in another setting, primarily in law firms, before entering the public sector or academic world. Accordingly, the attorneys commented that their expectations about the legal career path they had chosen conformed to the realities of the practice. Moreover, both groups commented that they had better control over how they spent their time.

A. Public Service

The Public Service and Academia Subcommittee convened a focus group of attorneys who practice in various federal and state agencies. Through this discussion group, the members of the Public Service and Academia Subcommittee determined that in general there was a high level of fulfillment within the public sector practice of law. The attorneys in the group expressed that they are satisfied with their careers because they are doing work that they believe in and generally have a higher level of responsibility and decision-making authority in handling their cases. Additional reasons for career satisfaction described by public sector attorneys include strong attorney/client relationships; greater opportunities to identify with the goals of their public client beyond legal considerations; diversity of subject matter; diversity of tasks; and management of their workloads without consideration to billable hours.

Members of the subcommittee further discovered that several public sector attorneys viewed their practice as a lifestyle choice. Most notably, a lawyer may be more readily able to select a particular area of practice or concentration within the law due to the public client's particularized needs. Moreover, in some instances, there may be a more adaptable work schedule to accommodate an attorney who has vari-
ous commitments at work and at home.

The subcommittee also learned from this focus group that there appears to be a higher degree of civility among public sector attorneys both within the same agency and among various agencies. Moreover, the public sector attorneys described more mentoring opportunities in their offices, than in the private sector. They speculated that both the civility and mentoring circumstances may be attributable to the lack of billable hour requirements in the public sector. In addition, the public sector attorneys appreciated the diversity in their organizations. Along with the diversity of people, they also recognized that they are exposed to a variety of ideas and viewpoints and they have benefitted from a sharing of those various views on legal issues.

For public sector attorneys barriers to professional fulfillment include: (1) the lack of financial support in the public sector for legal resources that are considered necessities within the private sector; (2) the lack of training to manage a public law office; and (3) the view of government attorneys as “second class” attorneys.

1. Lack Of Financial Support By The Public Employer

The Public Service and Academia Subcommittee ascertained that the lack of financial support by the public employer for legal resources can create a professional handicap for public sector attorneys and prevent these attorneys from matching the resources of their colleagues in the private sector. This lack of financial support from the public sector organizations can lead to a less than professional image in the attorneys’ workplace. Some public sector attorneys described offices that are overcrowded, are not properly cleaned and whose decor does not project professional standards. In addition, conference room space is generally minimal and not sufficient to meet the needs of the attorneys. While the public sector attorneys agreed that there is a distinction between a conscientious professional environment funded with public money versus a law office created to attract a profitable clientele, they further recognized that their professional image has a direct impact on how they are viewed by their colleagues and the public in general.

In addition, this lack of financial support from the public employer for legal resources also prevents attorneys from participating in professional associations and activities. Although the public sector attorneys suggested that participation in the profession outside the public workplace benefits both the public client and the attorneys, they acknowledged that the public sector employers do not recognize the “value added” to the services received from supporting their attorneys in bar activities and outside continuing legal education programs. Public sector attorneys expressed, however, that participating in professional associations and continuing legal education efforts would ensure their professional growth and would assist them in better serving the needs of the public client. The members of the Public Service and Academia Subcommittee encourage public sector attorneys not to be deterred from participating in these types of professional activities based on the perception that these activities are not within the realm of justified business for government attorneys.

2. Lack Of Training To Manage A Public Law Office

Several public sector attorneys commented that they are called upon to manage the workplace but rarely receive any formal management training. They have traditional management issues and problems to address, including unproductive employees. Accordingly, these public sector lawyers described this lack of management training as an obstacle to their professional fulfillment.

3. Government Attorneys As “Second Class” Attorneys

There is a general perception within the public legal community that their practice is considered less professional than in the private sector in terms of work demands, quality of work product and abil-
ity to be measured in a competitive environment with clients. In general, public sector attorneys are not recognized for their problem solving abilities, hard work or accomplishments by their public employer, the general public or their private sector colleagues. The Public Service and Academia Subcommittee suggests that the bar associations profile public sector attorneys as role models for other lawyers and publicize their work, thereby helping to reform the image of public sector attorneys.

RECOMMENDATIONS

The Task Force recommends that:

1. Public employers be encouraged to budget for minimum law practice necessities, i.e. facilities, support staff, supplies, and research capabilities, that are available to private sector attorneys. Books, physical space and computer resources are essential tools for the practice of law and should be considered a cost of doing business for the public employers.

2. Public employers be encouraged to recognize the participation and representation of public sector attorneys within professional associations as an important and necessary role to counsel the public client. The public employers need to be informed that their attorneys are an essential element for a balanced view in the professional legal organizations.

3. The BBA take an active role in bolstering the recognition of public sector attorneys through an active public campaign advocating financial support and acknowledgment of the public environment as a respected career choice.

4. The BBA encourage involvement by public sector attorneys in continuing legal education programs as both speakers and participants. The Public Service and Academia Subcommittee further recommends that the BBA consider a fee adjustment for continuing legal education programs to allow public sector attorneys to participate.

5. The BBA offer a continuing legal education program devoted to managing a public law office.

6. The BBA promote the public image of public sector attorneys by profiling them and publicizing their achievements.

B. Academia

The Public Service and Academia Subcommittee convened a focus group of both tenured and non-tenured faculty members from Boston area law schools. Despite receiving a substantially lower income than they could make in private practice, the law professors commented that, in general, they enjoy teaching as a career choice. They appreciate working with the students and value the freedom to do research and to choose the focus of their academic interests. The academics noted, however, that they cannot divorce themselves from the overall problems in the profession. According to the professors focused on the following obstacles to professional fulfillment: (1) debt burden; (2) tenure and job security; (3) faculty politics; (4) non-tenure track faculty; (5) law school curriculum and (6) diversity in the legal teaching profession.

I. Debt Burden

The subcommittee learned that escalating student debt loads, stress about finding jobs, and uncertainty about the quality of professional life in the practice of law all effect law school professors because they have an impact on their past, present and future students. Professors have always been informal career consultants, counselors and mentors to their students. The professors are concerned that the high cost of a legal education and the significant debt incurred by graduating students are limiting the career choices of new lawyers. Law school debt is driving the need for students to find high paying jobs.

Although they acknowledge this concern, most academics have little control over the administrative choices of law schools and do not foresee the cost of a legal education decreasing. The professors informed the subcommittee, however, that many schools are considering, or have already implemented, loan protection or loan forgiveness plans for their students.
2. Tenure and Job Security

Law school faculty, particularly untenured professors, expressed concerns about tenure decisions and job security. Tenure requirements and promotion standards in law schools are becoming more stringent just as more women attorneys and attorneys of color are entering the teaching profession. Moreover, untenured professors remarked that while the tenure criteria are more rigorous, they also appear to be unclear and subjective.

With regard to communicating the standards for tenure, the focus group highlighted Northeastern University Law School because each untenured faculty member has a “plan” for tenure that is discussed and approved by the entire faculty. Other law schools do not have an “early warning” system for their untenured faculty.

3. Faculty Politics

The subcommittee determined that faculty of all ranks are concerned about communication and faculty politics. While faculty meetings are usually civil, many professors are reluctant to be open and candid with their colleagues. Many decisions are made “in the corridors” which can be particularly frustrating to junior faculty members. Sometimes faculties can be divided on political grounds between small groups of like-minded faculty. Both tenured and non-tenured professors are concerned about improving internal communications within law school faculties.

4. Non-Tenure Track Faculty

Because of the competing pressures on law schools to reduce costs while improving faculty-student ratios and having more “personal” instruction, many law schools have begun to hire adjunct and “contract” faculty. In some law schools, these adjunct and contract professors provide most of the research and writing instruction and the clinical teaching. While many of these professors have long term contracts that are the equivalent of tenure, others are far less secure and are grossly underpaid. In addition, adjunct and contract faculty rarely have the research and writing opportunities of “tenure-track” faculty and can be treated as “second class” citizens in making faculty decisions.

5. Law School Curriculum

The law school faculty members expressed their concerns to the subcommittee about whether the law school curriculum adequately prepares law students for the growing challenges of practice. In addition, the professors noted research interests in law schools today are too divorced from the problems of practice. Many law schools are hiring professors to write about esoteric topics. Moreover, the professors observed that the modes of instruction devised to produce new lawyers with sharp research, writing and practical skills are labor intensive and expensive and add to the escalating cost of law school.

On the issues of professionalism and civility in law schools, the faculty agreed that instruction on civility begins by example. Most professors felt, however, that generally law students are civil towards their colleagues and that lack of civility begins after graduation. Nevertheless, faculty agreed that they should do more to teach and instill professionalism in law students.

6. Diversity in the Legal Teaching Profession

The subcommittee ascertained that law students are far more diverse today with a growing number of women and people of color entering law school. The increasing debt burden incurred by law students, however, will influence the pool of applicants in the future who can either afford law school or who will be willing to take on substantial debt. Moreover, new women attorneys and attorneys of color report back to their former professors about some of the challenges and obstacles that they are facing as practicing attorneys. Many professors question whether law schools can take a leadership role on diversity issues in the legal profession and better assist students in meeting the challenges of practice.

The professors further noted that while faculty appointments are also more diverse, few women or attorneys of color have
reached the senior levels in law school faculties. As previously discussed, the criteria for tenure and promotion have become more stringent just as more women attorneys and attorneys of color are entering the law teaching profession. Moreover, law schools are relying more on adjunct and contract faculty. Accordingly, the subcommittee cautions that law schools must be careful not to fill these positions only with women and people of color.

RECOMMENDATIONS

The Task Force recommends that:

1. the BBA encourage a national organization, such as the American Bar Association, to conduct a comprehensive study of the student debt issue.

2. the law schools be encouraged to consider implementing loan forgiveness and loan protection programs to help their students manage their law school debt burden.

3. the law schools be encouraged to examine their tenure requirements and to clearly articulate those standards to non-tenured faculty.

4. the law schools be encouraged to support candid communication among their tenured and non-tenured faculty members.

5. the law schools be encouraged to support their adjunct and contract faculty members through job security and a fair salary.

6. the law schools be encouraged to examine their curriculum to meet the challenges of teaching law in a rapidly changing profession.

7. the law schools be encouraged to hire more women attorneys and attorneys of color to faculty positions.

8. law professors teach professionalism and civility to their students in all their classes.

SENIOR LAWYERS

Meeting with senior lawyers from a wide variety of firms and areas of practice, the Senior Lawyers Subcommittee, chaired by William F. Looney, Jr. and including John J. Curtin, Jr. and Donald G. Leka, focused primarily on retirement issues and the increasing lack of collegiality and civility among attorneys that they have witnessed over their careers.

1. Retirement Issues

The senior lawyers reported that a major area of concern is the lack of structure or plan in place for senior lawyers to be compensated when they leave their firms. Although this appears to be less of a problem in large firms where there is generally some type of retirement compensation plan, lawyers in small firms report that their practices are being taken over by younger attorneys without any particular plan of compensation for the senior lawyers. In some instances, these lawyers feel that they are being squeezed out of their practices.

The subcommittee discovered that there are many different types of retirement policies among firms and that there are widely differing financial situations among senior lawyers. Some organizations allow older attorneys to continue to practice, while other organizations insist on a rigid retirement age. The group felt that senior lawyers should be allowed to continue to practice as long as they continue to be productive. The senior lawyers concluded that it is important for attorneys to address these retirement issues long before they reach the age of retirement.

2. Civility/Mentoring

The senior lawyers also expressed concern that their experience and expertise are not being sought by young lawyers. In addition, the senior lawyers feel that younger lawyers do not deal with one another (or with senior lawyers) with the same collegiality of a generation ago. The group suggested that the expanded discovery process and the fact that discovery generally is con-
ducted without court supervision has contributed to the decline in lawyers’ relationships. The subcommittee concluded that senior lawyers with their knowledge, experience and expertise could be a valuable asset to the more junior attorneys and law students who are seeking mentors.

RECOMMENDATIONS

The Task Force recommends that:

1. attorneys begin to focus on career planning issues and retirement issues when they reach the age of 50.

2. law firms evaluate their retirement plans to ensure that they both serve the needs of the firms and address the concerns of the senior lawyers.

3. law firms, that do not have set plans in place, consider implementing retirement systems that both serve the needs of the firms and address the concerns of the senior lawyers.

4. the BBA, through career planning programs, encourage lawyers when they reach the age of 50 to begin to consider other financial and career options available to them.

5. the BBA revitalize its mentoring program to include law students, junior attorneys, sole practitioners and senior lawyers. This program would provide senior attorneys with an opportunity to stay active in the profession and to offer their help, advice and guidance to younger attorneys.

LAW STUDENTS AND RECENT GRADUATES

The Subcommittee On Law Students And Recent Graduates, chaired by Maura E. Murphy and including Daniel R. Coquillette and William F. Looney, Jr., considered barriers to professional fulfillment unique to law students and lawyers who have been in practice for fewer than three years. Convening separate focus groups of law students and recent law school graduates, the subcommittee learned that the primary concerns expressed by both groups were the limitations placed on their career choices by their law school debt burdens and the lack of mentoring opportunities. Both groups also remarked that their expectations about law school and the legal profession were not consistent with the realities of law school and the practice of law from what they had witnessed in their short careers.

A. Law Students

1. Debt Burden

The subcommittee gathered a group of second and third year law students from three area law schools. All the students had assumed debt to finance their education. Neither attending school part-time nor participating in a cooperative program alleviated the need to finance all or most of their legal education. Because of this substantial debt burden, law students feel that their career options are severely limited. While many students entered law school because of their interest in public service, after financing their education, most students pursue employment in the private sector, particularly large law firms, in order to begin to repay their debt. Because they feel forced into taking jobs at large firms, some view these jobs as “indentured servitude.” Some students even speculated that firms exploit the fact that associates are trapped by debt in order to squeeze long hours out of them.

Many of the students questioned the cost of a legal education and felt that law school was not worth its high price. The students suggested some less expensive alternatives to the three-year legal education including a two-year academic program followed by an apprenticeship.

2. Mentoring

The subcommittee determined that a significant obstacle to professional fulfillment for law students is the divergence between their expectations upon entering law school and the reality that they face at graduation. Law students would welcome
mentoring opportunities from attorneys that would enlighten them about the practice of law. In part, this mentoring issue is related to the debt issue because individuals deciding to attend law school often do not understand the magnitude of their financial investment or have reasonable expectations regarding their return on that investment. In addition, law students would appreciate practical advice from mentors on pursuing legal employment after law school.

B. Recent Graduates

In addition to the law school focus group, this subcommittee convened a group of attorneys all of whom had graduated within the past three years and are now working in large, mid-size and small firms or are practicing on their own. The recent graduates primarily focused on the following three issues: (1) debt burden; (2) training and mentoring; and (3) billable hours.

1. Debt Burden

Like the law students, the recent graduates remarked that the debt burden incurred through financing their legal education has restricted their career choices. They indicated that the need to service their debt forecloses them from taking positions in the public sector, such as an assistant district attorney position, that they might find more professionally fulfilling. The new lawyers also echoed the law students in questioning whether law schools could justify such high tuition and whether their legal education was worth the price.

2. Training and Mentoring

Through the focus group, the subcommittee learned that many new lawyers feel that they struggle in their careers with little direction or guidance from their firms. They indicate that they often work in a vacuum with no explanation of the strategy behind a particular approach. Although they do not believe that their supervisors are deliberately inaccessible to them, they attribute their lack of training to the pressure of billable hours: because partners and senior associates have pressure to bill their time, new attorneys are reluctant to approach them with questions or concerns.

3. Billable Hours

Although they worry about the number of hours that they are expected to bill and about balancing their work and family life, the new attorneys are primarily concerned with the pressures that the billable hour system places on the practice of law. They explained to the subcommittee that they are frustrated by the pressure not to overbill which limits the amount of time that they can spend on a matter and requires them to do “just enough,” rather than everything they can for their client. The new attorneys also regret that they are forced into a mindset of evaluating a matter based on how much they can bill, rather than on how important the matter is to the client or what they might learn from the matter.

RECOMMENDATIONS

The Task Force recommends that:

1. the BBA encourage a national organization, such as the American Bar Association, to conduct a comprehensive study of the student debt issue.

2. attorneys in law firms, in corporate legal departments and in public sector organizations assess, and if appropriate, expand their training and mentoring opportunities for law students and new lawyers.

3. the BBA revitalize its mentoring program to address the needs expressed by the law students and new lawyers. For example, the law students need access to practicing attorneys who can advise them as to what to expect in the practice of law, while new lawyers need more substantive advice on how to handle various legal matters. The subcommittee further recommends that the BBA extensively publicize this mentoring program, address malpractice concerns resulting from this program and provide this mentoring program free of charge or at a reduced rate to those with lower incomes so that law students and recent graduates can participate in the program. Finally, the subcommittee recommends that the BBA actively recruit women and attorneys of color to participate in the mentoring program as both mentors and mentees.
WOMEN ATTORNEYS AND ATTORNEYS OF COLOR

In its study of potential obstacles to professional fulfillment, the Task Force decided to create a subcommittee to determine if attorneys of color and/or women attorneys, as two of the largest demographic groups which traditionally have been severely underrepresented among the ranks of the legal profession and its leadership, face unique obstacles in their quest for professional fulfillment. In so doing, however, the Task Force acknowledges that there are qualitative and quantitative differences in many respects between the experiences of and problems faced by women attorneys and attorneys of color without regard to gender.

The Task Force further recognizes and directs the readers to the following two reports previously published by the BBA: "Report of the Task Force on Part-Time Lawyering" (1995) published in conjunction with the Women’s Bar Association of Massachusetts; and "Parenting and the Legal Profession - A Model for the Nineties" (1991).

The members of the Subcommittee on Women Attorneys and Attorneys of Color, which included Antoinette D. Hubbard, as Chair, Mary C. Mazzio, Maura E. Murphy, Virgen M. Palermo and Joel M. Reck, convened two focus group discussions. The attendees at the first focus group included attorneys from both the public and private sectors. Those who attended the second focus group discussion were chiefly from middle to large size firms, and the discussion focused on gender issues, in particular the struggle to strike a balance between office demands and familial responsibilities.

A. General Findings

Throughout the focus group discussions, the attorneys present noted that they, as women attorneys and/or attorneys of color, faced challenges in attaining full acceptance, recognition and basic respect as members of the legal profession because they are not immune from the problems of racism and sexism in the society at large. The following were obstacles which both groups identified as major impediments to their professional fulfillment: (1) lack of full recognition as a professional; (2) institutional bias; (3) isolation; and (4) limited mentoring opportunities.

1. Recognition As A Professional

Despite certain barriers to professional fulfillment, all the attorneys expressed that they are happy to be lawyers and proud of their accomplishments in their careers. The primary theme discussed by the attorneys in both focus groups was the ever present challenge to gain respect as a member of the legal profession from their colleagues, court personnel and other individuals in the legal community.

Several lawyers in the discussion groups noted that general societal problems relating to race and gender issues influence the legal profession. Many attorneys felt that their participation in office discussions is marginalized because of their gender and/or race. One attorney noted that those in decision making positions in law firms and government agencies often undervalue the contributions that women attorneys and attorneys of color can make in these organizations.

Several women at the second focus group echoed the concern that recommendations made by a woman in a public forum or meeting were not recognized or acknowledged until the ideas or suggestions were raised by a man. Given the universality of this observation, the subcommittee urges that managers be especially cognizant of this phenomenon and give proper recognition to ideas expressed by women lawyers and/or attorneys of color.

As one focus group attendee stated, the emphasis in legal organizations should be on how individuals treat each other as human beings, and each attorney must individually examine his/her own conduct regarding how he or she deals with other attorneys, especially those who are different because of gen-
nder, culture, or race. With particular regard to attorneys of color, this attorney suggested that because the Boston metropolitan area has a white majority, a dialogue and self-examination must take place among white attorneys to determine if they are giving attorneys of color the same level of credibility as they afford to their white counterparts. Similarly, as women are underrepresented in the corridors of power, male managers should be vigilant in making sure that women attorneys' voices, ideas, and contributions are recognized.

Another significant impediment to career development and thus individual professional fulfillment are discriminatory practices, whether unintentional or intentional, in making work assignments. It was noted that because of human nature, generally attorneys in positions of power who distribute work often give better assignments to people who are like them. It follows that because so few women attorneys or attorneys of color have reached a level of seniority or power in the profession, this practice can be a significant barrier to professional fulfillment. For example, one woman litigator indicated that unlike her white male counterparts, she is not automatically considered for exciting and challenging assignments, and she attributes such differential treatment to her status as a minority female attorney. She also remarked that she senses that males in her office presume that because she is a female, she is not as serious or dedicated to her profession as her male counterparts. As a result, it is presumed that she is not interested in handling more challenging matters.

Differential practices not only limit the opportunities for attorneys to excel, but they also impose tremendous pressure on attorneys who are not in the majority group to prove themselves, thereby creating obstacles to achieving happiness in one's career. An attorney who is the only African-American attorney at his firm remarked that he feels that he has to do twice as good a job as his colleagues and agonizes over each brief and memorandum to be sure that it is well done. He further stated that he feels that he has to be the first attorney in the office every morning. He acknowledged that nobody in the firm has imposed such requirements on him, but given his unique status as a racial minority within the firm he feels that he must continue to work harder in order to achieve success in his firm.

Several women attorneys of color discussed their dual challenge of being a woman attorney and an attorney of color. A number opined that their greater obstacles to professional fulfillment revolve around issues of race rather than gender. One woman attorney of color stated that although she is professionally fulfilled in her career today, it has taken her a lot longer to achieve success than her white male and white female colleagues, given the few women attorneys of color in her agency. Moreover, because there are so few people like her in her office, sometimes she feels isolated because she does not have someone with whom to share her experiences. As a woman attorney, she recognizes that it will be difficult to achieve the highest status in her office because most of the people in power are white male attorneys. Although she feels that she has to work harder and longer to attain success, she is nonetheless proud of her accomplishments and has experienced a great measure of professional fulfillment because she focuses on her individual accomplishments despite the obstacles.

Several attorneys in the group discussed how they use humor as a coping mechanism to shield themselves from the hurtful ways in which they are sometimes treated. Some attorneys stated that they do not focus on the negative aspects of the profession or the obstacles they face as women attorneys and attorneys of color because to do so would be paralyzing to them. Instead, these attorneys said that they focus on their positive accomplishments and on what is necessary to continue to overcome the additional obstacles in their career paths.

Nonetheless, it is incumbent that each lawyer as a member of the bar make an effort to eradicate discrimination that exists so that women attorneys and attorneys
of color do not have to continue to face additional barriers to fulfilling their aspirations and professional goals.

2. Institutional Bias

In September of 1994, a Commission, established by the Supreme Judicial Court, to study racial and ethnic bias in the courts issued its final report concluding that “considerable racial and ethnic bias, both direct and subtle, exists in the Massachusetts court system.” Supreme Judicial Court Commission To Study Racial And Ethnic Bias In The Courts, Final Report, “Equal Justice -- Eliminating The Barriers” (1994) at 4 (hereinafter “Final Report On Racial And Ethnic Bias In The Courts”). The Commission found “that discriminatory behavior, based on racial bias or stereotype, exists throughout the courts.” Id. at 5.

Several participants in the first discussion group confirmed the findings of the Commission when they gave examples of how such racial bias exists in the courtrooms in Massachusetts. One attorney stated that a significant barrier to his professional fulfillment is the lack of diversity in jury pools. The attorney explained his concern by noting that he had recently tried a federal case involving claims of a violation of the Eighth Amendment because his client was beaten up in jail. The jury which heard the case was an all white jury, and although it found excessive force was used on his client, it failed to find that the beating was done with malicious intent. Accordingly, a verdict adverse to this attorney’s client was entered. This attorney expressed his frustration with rarely having a person of color serve on a jury in either state or federal court in Massachusetts. He felt that in this particular case, if he had a few people of color on this jury, there may have been different deliberations and a different outcome. He believed that the jurors on this case, because of their background, could not and did not relate to his client’s circumstances. This attorney indicated that he would be more professionally fulfilled if he tried his cases before more racially mixed juries because he believed he would have fairer case results. However, the SJC Commission found that in Massachusetts, “minorities are under represented on juries even when the Office of the Jury commissioner selects the jury pools from communities with large numbers of racial and ethnic minorities.” “Final Report On Racial And Ethnic Bias In The Courts” at 20.

Not only do attorneys of color face additional obstacles in having their case fairly heard if their client is a person of color, but attorneys of color also face different treatment as members of the bar. The SJC Commission concluded, “race and ethnicity are determining factors in how judges, colleagues, other courthouse personnel and jurors perceive minority attorneys.” Id. at 25. Echoing the findings of the SJC Commission, several attorneys in the discussion group described how they have been negatively treated in the courtroom. One woman attorney of color remarked that as an African-American attorney, she has to convince the judge and jury to look beyond her face. She stated that sometimes she has to ignore being insulted by white male judges who sometimes treat her “almost like [she is] invisible” and court personnel who mistake her for the defendant or the court reporter. She further noted that she has to be overly aware of how she is presenting herself and her case to the judge and the jury. In addition, she indicated that there is a general perception that a “real” litigator is a man. Therefore, as a female litigator she has to make more of an effort to demonstrate that she is serious about her career. Similarly, another woman attorney of color added that this biased perception has forced her to be perhaps overly aggressive in pursuing her cases.

White women attorneys echoed some of the same concerns with regard to bias in the courtroom as those described above by the attorneys of color. A litigator, who is female, concurred with her colleagues by stating that when she enters a new courtroom she feels that there is an unwritten probationary period imposed by the judge and court personnel. She senses that she, unlike male attorneys, needs to prove herself before she can gain their basic respect. She suggested that there seems to be a
presumption that a woman is in the courtroom to assist the “real” attorney. In addition, some women stated that despite their years of experience, professional achievements and/or titles, they are often referred to by their first names while their male colleagues or subordinates are addressed as “Attorney” or “Mr.”

Other attorneys discussed that this bias extends beyond the courtrooms and the litigation context to transactional work as well. One woman attorney of color described a real estate closing where the bank attorney did not recognize or acknowledge her as an attorney. This disrespectful treatment persisted even after this attorney clearly identified herself as counsel for the borrowers.

3. Isolation

Many attorneys of the focus groups expressed that they sometimes feel isolated from the other members of the profession. They postulated that this sense of isolation resulted from cultural and physical differences from other members of the profession. The attorneys of color also expressed that it is difficult to find attorneys to mentor them, adding to their feelings of isolation.

As to attorneys of color, the feelings of isolation generally can be attributed to two factors: (1) there are very few attorneys of color in Massachusetts and (2) the discriminatory treatment suffered by attorneys of color as noted above. With respect to isolation, according to data compiled by The National Association for Law Placement (“NALP”) regarding lawyers in private firms, among the firms surveyed in Boston, only 1.82% of partners were attorneys of color and only 6.68% of associates were attorneys of color.

4. Mentoring Opportunities

With regard to mentoring, those present at the first focus group discussion remarked that there appear to be more opportunities generally for women attorneys than for attorneys of color, especially African-American male attorneys. The African-American male attorneys opined that they generally have to make more of an effort to find mentors or other colleagues to whom they can turn to for support and guidance.

However, as noted above, women attorneys also experience difficulty in finding persons in power to fully recognize their abilities and to mentor them. Members of the first discussion group felt that women attorneys in recognition of the special obstacles that they face, and the need for a support network, are more likely to reach out to colleagues for help, advice and guidance. One woman noted that, as a new attorney, she served in the Roxbury Public Defenders Office which was headed by an African-American woman and where her immediate supervisor was a Latina woman. This woman recognized that these women served as supportive mentors for her early in her career and she was fortunate to have such support available.

B. Subreport Regarding Women in Private Practice

Given that a majority of women law school graduates enter private practice and the vast majority of the attendees of the second group discussion were in private practice, the subcommittee studied the general issue of the experience of women attorneys in private practice. While the following analysis focuses on women in private practice, it provides useful information to examine the circumstances that may impede the achievement of professional fulfillment for all women attorneys.

1. Women In The Legal Community

The discussion group agreed generally that women find it difficult to balance a demanding legal career with a family, and as such, large numbers of women are leaving private practice. However, before concluding that the exodus of women from private practice constitutes a crisis, the discussion group requested that the Task Force obtain statistics with respect to: (a) the number of women entering the profession and elected to partnership; (b) the number of women leaving private practice to go to other sectors of the legal
community; (c) the effect of a family on one's career; and (d) compensation disparity.

a. **Women Entering The Profession, Women Partners.**

According to a report published in the *New York Law Journal* on March 1, 1989, the ABA Commission On Women In The Profession found that 42% of all law school graduates are women. According to a spokesperson at the ABA, that statistic has remained fairly constant since 1989.


Although as of 1995, women constituted 23% of all lawyers, NALP has concluded that as of 1996, women account for only 14.9% of partners in the nation's major law firms. "Women In The Law" at 8 (Source: Barbara A. Curran & Clara N. Carson, "The Lawyer Statistical Report: The U.S. Legal Profession in the 1990's" (Chicago: American Bar Foundation, 1994)). Although the number of women becoming partner appears to be increasing each year, women continue to be seriously underrepresented statistically among law firm partners as shown on the chart set forth below. "Women In The Law" at 26. (Actual percent shown for each age group is the percent of partners in that age group who were women. Expected percent shown for each age group is the percent that would apply if women were fully represented among partners in that age group). (Source: Barbara A. Curran & Clara N. Carson, "The

![Graph: Partners in Law Firms: Actual & Expected Percentage Female in Each Age Group (1991)](image)

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Lawyer Statistical Report: The U.S. Legal Profession in the 1990’s” (Chicago: American Bar Foundation, 1994)).

In fact, a 1995 study of large law firms in New York found that 15% of male associates hired after 1981 advanced to partnership while the ratio for female associates was only 5%. “Women in the Law” at 27 (Source: Cynthia Fuchs Epstein, Robert Sauté, Bonnie Oglesky and Martha Gever, “Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession” (New York: Association of the Bar of the City of New York, 1995)). Interestingly, the rate of women hired prior to 1981 had a better rate of advancement, being 15%.

b. Women Leaving Private Practice

The precipitous drop in advancement of women to partnership appears to be due, in part, to women leaving law firms because of the increased demands of private practice, coupled with the difficult balance of family demands.

Women leaving private practice appear to join other sectors of the legal community rather than leave the profession entirely. Interestingly, women are significantly less likely to opt for private practice after leaving their first jobs. A study of Michigan Law School graduates found that only 37% of women who left law firms moved to other firms as compared to 73% of men who moved to other firms. American Bar Association Commission on Women in the Profession, “Options and Obstacles, A Survey Of The Studies Of The Careers Of Women Lawyers” (July 1994) at 23-25. In fact, another study of Minnesota Law School graduates found that men were more likely to leave their first jobs because of the attractiveness of a new job, while women were more likely to leave because of dissatisfaction with their old job. “Women in Law” at 48 (Source: Mattessich and Heilman, The Career Paths of Minnesota Law School Graduates: Does Gender Make a Difference? , 9 LAW & INEQ. 84, 84 (Nov. 1990)).

c. Effect of Family Upon One’s Career

The participants discussed dissatisfaction generally, concluding that the most important factors were (a) stress and long hours, and (b) balancing personal and professional life. In fact, a recent UC Davis School of Medicine study linked stress levels to reproductive health of female lawyers. Eaton, Muzza Ph.D.; Green, Rochelle MS; Samuels, Steven Ph.D.; Schenker, Marc B, MD, Self-Reported Stress and Reproductive Health of Female Lawyers, Journal of Occupational and Environmental Medicine, June 1997.

The most startling statistic reported by the UC Davis study was that female lawyers who work more than 45 hours per week are three times more likely to have a miscarriage than female lawyers who work less than 35 hours per week, even after taking into account other factors such as age, smoking, alcohol intake and previous miscarriage. The study concluded that high stress level was the main factor causing these miscarriages.

d. Compensation Disparity

Several studies have demonstrated that the average income of male lawyers exceeds that of women with the same years of experience. “Women in the Law” at 50 (Source: “1993 Economic Survey Report”, Colorado Women’s Bar Association and the Colorado Bar Association (1994) at 9). In fact, a 1992 survey of lawyers in 500 corporate law departments reported that in the case of corporate counsel, men had an average salary of $205,000, while women’s average salary was $152,000. “Women in the Law” at 50 (Source: The Survey was sponsored by the Bar Association of the City of New York and the American Corporate Counsel Association. It covered 3,600 lawyers working for 500 corporate law departments. Wallace, Shelley, Has the Glass Ceiling Been Replaced by the Sticky Floor?, The American Lawyer’s Corporate Counsel Magazine (Feb. 1995), at 85).

A number of women at the discussion groups noted that this disparity in compensation may be evidence of the discriminatory practice of compensating women at a lower level based on the presumption that males are the breadwinners of families and, therefore, men must be compen-
ated more than women.

The subcommittee notes the above-referenced statistics only to highlight the fact that women are leaving private practice in large numbers. Law firms, investing thousands of dollars in salary training and overhead for its associates, have a serious financial stake in retaining talented men and women.

2. Impediments to Success

In the interest of retaining women within the profession, the discussion group sought to identify specific factors which hinder a woman’s ability to succeed within the legal profession (e.g. “glass ceiling” problems) and propose suggested solutions.

a. Perceptions of Lack of Confidence

The focus group agreed that women do not generally share their accomplishments with others and do not tend to promote themselves according to the prevailing male standard. Recognizing that these general traits may impede a woman’s success, the group focused on the following specific steps that legal employers could take in order to help women to more effectively promote themselves and their accomplishments:

(i) Male managers should be sensitive to the fact that women are often reticent about their own accomplishments. Accordingly, male managers should consider providing women with an opportunity to (a) make presentations, (b) publicize their accomplishments, and (c) promote themselves.

(ii) Male managers should insure that women are given sophisticated assignments and marketing opportunities, which, as noted above, by the discussion groups, are often reserved for male lawyers.

(iii) Women should be encouraged to create a niche for themselves to become recognized and valued as an expert in a particular area of the law.

(iv) Some members of the focus group also suggested that women should be proactive in overcoming impediments to success. For example, women who have achieved partnership or management positions should mentor younger women; younger women should seek out male mentors if, as is often the case, female mentors are unavailable, and women should combat stereotypical assumptions by making it known that they are as concerned about advancement as their male colleagues.

b. Seen But Not Heard

As noted above, several women at the second focus group echoed the concern that points raised in a public forum or meeting by a woman went unheard until the very same idea or suggestion was raised several minutes later by a man. Given the universality of this observation, the subcommittee requests that male managers be especially cognizant of comments made by women and recognize the women for their ideas.

c. Primary Breadwinner

In discussing obstacles to women’s advancement, there was a sense that men were still considered the “primary breadwinners” and that it was more important for the male lawyer to receive promotions, bonuses and opportunities. However, the group concluded that once male lawyers were systematically exposed to issues facing their working wives and working daughters, such bias and perception would lessen over time.

3. Part-Time Lawyers

The group discussed problems facing a lawyer who elects to reduce his or her full-time schedule. In many instances, if the lawyer is an associate in a law firm, (a) partnership is delayed, (b) the associate receives less sophisticated work, and (c) the associate is perceived as less committed.

For those part-time associates who remain on a partnership track (or for part-time partners), the billable hour requirements (albeit reduced) coupled with the intense demands of clients as well as the continued expectation to generate business, attend seminars, and participate in firm administrative matters, is overwhelming.
The focus group discussed, with some controversy, proposed solutions for working parents who might not be able to meet such stringent requirements at a time when children might be young (e.g. an “off-track” position with predictable hours and reduced expectations).

However, for the reasons outlined in the BBA Task Force Report with respect to Associates from Large Firms, women were concerned that an “off-track” position would be a position which would invite less sophisticated work and less respect. See Report of the Subcommittee on Large Law Firms - Associates. In addition, the group discussed concerns that becoming an “off-track” lawyer might impede one’s marketability.

Rather than propose specific solutions, the group collectively indicated a desire for employers to create a parent-friendly workplace. The group noted that although the profile of a successful woman has typically been a woman without children, women coming up through the ranks are increasingly unwilling to sacrifice a family for their careers. (In fact, several reports have documented the fact that female lawyers are less likely to have children).

The group also noted that some employers, fearful of overburdening a part-time lawyer, do not present such lawyer with marketing and other opportunities. The group’s consensus was that any woman with a reduced schedule continue to be offered these opportunities (and permit her the choice of declining same).

4. What is Part Time

There was consensus among the group that women working four-fifths time tended to be more efficient than their full-time colleagues and often worked more hours than some of their “full-time” colleagues. However, these lawyers often suffered cuts in both compensation and benefits. The focus group acknowledged that most law firms have a wide disparity in terms of billable hours and commitment of lawyers in general (e.g. the “golfing partner” or partner that works less than the required billable hour is not subject to pro-rated benefits and pro-rated compensation).

However, instead of recommending a specific solution, the subcommittee requests that firms and legal employers closely evaluate their current “part-time” policies to insure that the same are fair and equitable not only from the employer’s perspective but from the employee’s perspective. The participants of the focus group also wish to emphasize that the choice of committing to a family and committing to a career is a “Hobson’s choice” (e.g. no choice at all). As such, if an attorney desires to reduce his or her workload, such attorney should not have to sacrifice his or her career in a significant way.

5. Employer’s Support

Rather than subscribe to an arbitrary standard of minimum hours for a part-time lawyer, each firm should individually evaluate an employee’s desire to reduce her workload. In addition, many participants noted that good employers (a) provide or subscribe to back-up daycare, (b) facilitate the selection of daycare and/or nannies, (c) provide flex-time, and (d) permit telecommuting.

6. Benefits

According to a report published by the ABA Commission On Women In The Profession in October of 1990, the ABA study recommended 16 weeks of paid leave for maternity plus an additional unpaid period. In addition, the same ABA report recommends that (a) lawyers who take parental leave not be held back in their progression towards partnership; and (b) legal employers consider allowing employees coming back from leave to phase back into the workplace, gradually reintroducing themselves. Although the subcommittee does not wish to recommend specific policies with respect to benefits, the subcommittee requests that legal employers review their policies with an eye towards creating a “family friendly” atmosphere in order to retain its talented women.
RECOMMENDATIONS

The Task Force recommends that:

1. attorneys individually be encouraged to examine their own conduct regarding how they treat their colleagues, especially those who may be a different gender or come from a different racial or ethnic group.

2. the BBA continue its efforts to reach out to the minority and women bar associations and to involve a diverse group of people in bar leadership positions and bar activities.

3. the BBA continue its efforts to educate and sensitize its members and the entire legal community to be more receptive to attorneys with different racial and ethnic backgrounds.

4. the BBA continue to use informal discussion groups as a forum for the exchange of ideas on diversity issues.

5. efforts continue to effect meaningful and real changes to eliminate racism and sexism in the legal profession as documented in prior studies.
The Boston Bar Association is grateful to West Group for donating its resources to print this report as a service to the legal profession.