

# THE UNHAPPY LAWYERS

WILL HARDY

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# I INTRODUCTION

Soldiers and Lawyers have a lot in common. Both lead physically tough lifestyles; long hours, separated from family life and both are sent to fight other people's conflicts, no questions asked. Their tasks often involve attacking other people directly, complete strangers for reasons good or bad, and their personal moral opinions must be absolutely repressed. Many studies have been done on depression resulting from the moral conflicts in battle, but few studies have looked at the moral conflicts lawyers face, despite law being one of the most unhappy professions there is.

The willingness of lawyers to become these adversarial advocates stems from commercial pressures and an systematic emphasis on extrinsic values. This is especially true for corporate lawyers in big law firms. A corporate lawyer is required to completely ignore their own moral opinions for the sake of the client, to stop doing this would without doubt jeopardise their career.<sup>1</sup> But moral and ethical behaviour includes considering the needs of the lawyer themselves, their families and their relationships.<sup>2</sup> By requiring lawyers to treat the client as if they were God,<sup>3</sup> big law firms set the scene for clear neglect of the lawyer's personal needs.

The now commercialised profession morally justifies itself using adversarial advocate arguments. Regardless of whether or not the lawyers are actually driven to participate by their moral belief in the principles behind the adversarial advocate, adversarial advocacy permits and encourages the system to operate in the commercial way that it does.

The first part of this essay will look at the nature of unhappiness and ill-health in the legal community. The second part will look at the role of commercial pressures and the large law firm environment.

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<sup>1</sup>See Christine Parker and Adrian Evans, *Inside Lawyers Ethics* (2007), 212.

<sup>2</sup>Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871, 910.

<sup>3</sup>Christine Parker and Adrian Evans, *Inside Lawyers Ethics* (2007), 212.

## II THE UNHAPPY LAWYERS

Over the last 2 years, a great deal of discussion has broken out in Australia about the prevalence of depression in the legal industry.<sup>4</sup> The discussion was further fueled by the suicide of a Melbourne lawyer suffering depression in May 2007<sup>5</sup> and the results of a study by Beaton Consulting in 2006,<sup>6</sup> and its follow up in 2007,<sup>7</sup> both reporting a higher rate of depression among lawyers than any other profession. This sequence of events mirrors the developments in the United States in the 1990s, following a study by John Hopkins University<sup>8</sup>, which also found that lawyers are more likely to develop depression

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<sup>4</sup>See Steve Mark, 'Impaired practitioners; substance abuse and mental illness in the legal profession' (2007) *Without prejudice*; Harriet Morley, 'Depression figures prominently in the law' (2007) 81(9) *Law Institute Journal* 24; Julie Lewis, 'Parents speak out about the law and depression' (2007) 45(7) *Law Institute Journal* 24; Kate Gibbs, 'Profession depression' (2006) 309 *Lawyers Weekly* 28; Karin Derkley, 'Putting the stress on dealing with depression' (2006) 80(3) *Law Institute Journal* 26; Kate Gibbs, 'Depression widespread, firms admit' (2005) (261) *Lawyers Weekly* 1; Michael Young, 'Breaking the cycle of silence' (2007) 81(6) *Law Institute Journal* 6; Kelly Esakoff, 'Forecast: deep depression lightens' (2006) 80(11) *Law Institute Journal* 83; Karin Derkley, 'Putting the stress on dealing with depression' (2006) 80(3) *Law Institute Journal* 26; Law Institute, 'Survey reveals depth of depression problem' (2007) 816 *Law Institute Journal* 22; Simone Jacobson, 'Be happy' (2006) 80(9) *Law Institute Journal* 83.

<sup>5</sup>Steve Mark, 'Impaired practitioners; substance abuse and mental illness in the legal profession' (2007) *Without prejudice*.

<sup>6</sup>Beaton Consulting, *Annual Professions Survey* (2006).

<sup>7</sup>Beaton Consulting, *Annual Professions Survey* (2007).

<sup>8</sup>Elaine Darling Andrew Benjamin and Bruce Sales, 'The Prevalence of Depression, Alcohol Abuse and Cocaine Abuse Among United States Lawyers' (1990) 13 *International Journal of Law and Psychiatry* 233; See Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871; Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004); Susan Daicoff, 'Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism' (1997) 46 *American University Law Review* 1337; Heather Green and Linda Haller, 'Mental Health of Lawyers: Treat or Protect?' (2003) *International Congress on Law and Mental Health*; Paul Verkuil Martin Seligman and Terry Kang, 'Why Lawyers are Unhappy' (2005) 1 *Deakin Law Review* 4; Kathleen Hull, 'Cross Examining the Myth of Lawyers' Misery' (1999) 52 *Vanderbilt Law Review* 971; James Alfini and Joseph Van Vooren, 'Is There a Solution to the Problem of Lawyer Stress? The Law School Perspective' (1995) 10 *Journal of Law and Health* 61; Michael Rustad and Thomas Koenig, 'Review Essay Competing Visions of Angst Among Elite Lawyers' (2006) 2 *University of Illinois Law Review* 475; Connie Beck, Bruce Sales, and Andrew Benjamin, 'Lawyer Distress: Alcohol Related Concerns Among a Sample of Practicing Lawyers' (1995) 10 *Journal of Law and Health* 1; Rick Allen, 'Lawyers: Are We A Profession In Distress?' (1998) *The Nebraska Lawyer* 22; Michael Sweeney, 'The devastation of depression: Lawyers are at greater risk—

than other professions. A number of smaller studies have been done in the US, mostly reiterating the notion that lawyers are dissatisfied, depressed or otherwise mentally unhealthy.<sup>9</sup>

But reducing the complex system of human interactions, feelings and emotions into a pair of numbers may not make the issue any clearer. For example, are we interested in finding out how many lawyers are clinically depressed? Suicidal? Mildly discontent? Or why not simply 'not as happy as they could be'? What about lawyers, who are essentially happy, but live a stressful life? What about lawyers who are simply overworked, but are thoroughly content with their life and see meaning in their work and role? And what about the distribution? Do a handful of extremely happy lawyers make up for an entire body of distressed, superficial, vulnerable or confused lawyers?

Obviously, there can be no single study that completely describes the state of mental well-being of Australian lawyers. There is then quite obviously a clear lack of information on the issue, especially in Australia, with which appropriate changes and responses could be designed. The only surveys done on the issue tend to barely address the causes and only focus on depression. Yes, this is not a bad starting point, but any approach to this pervasive issue, based solely on a study on depression, will only try to prevent or soften the impact of the worst-case scenarios, and will not begin to fundamentally address the issues that affect the group as a whole.

It's also easy to forget that there are still many lawyers, who are perfectly content. Only very few studies have been done in this light, and most have been done in the US and the approaches in these studies have been criticised<sup>10</sup> A well executed study in Chicago in 1994 and 1995 found that the vast majority of lawyers there to be happy and content. These findings

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It's an impairment to take seriously' (1998) 2211 *Bar Leader Magazine*; Christine Parker and Adrian Evans, *Inside Lawyers Ethics* (2007); Thomas Adcock, 'Combating Private Demons' (2008) *New York Law Journal*; Nicholas Murfett, 'The Case for a Paradigm Shift in Civil and Commercial Dispute Moving from Fear to Love: A Solicitor's Perspective' (Paper presented at the 3rd International Conference on Therapeutic Jurisprudence, Perth, 7 June 2006).

<sup>9</sup>Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871, Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004).

<sup>10</sup>Kathleen Hull, 'Cross Examining the Myth of Lawyers' Misery' (1999) 52 *Vanderbilt Law Review* 971.

demonstrate the need for careful analysis of empirical evidence, and cast doubt on the few other studies available. Be that as it may, the conclusions drawn from the mainstream depression studies are never really disputed,<sup>11</sup> and there is no question that there are many depressed, distressed, unhappy and unhealthy lawyers in the profession, regardless of whether this is more or less than the general population. I will continue this essay on this basis, and look to identify the nature of the depression and unattained happiness of the no-doubt many lawyer who are affected.

### A *Explaining depression*

Many articles have been written during this time, seeking to explain how lawyers are so different to other professions. According to the American National Institute of Mental Health, there is no single known cause of depression, but it can probably be traced to a combination of genetic, biochemical, environmental and psychological factors.<sup>12</sup> Indeed, there are a great number of suggested factors relevant to lawyers, these I have categorised as psychological and environmental. Such a categorisation is always artificial, as many behavioural factors are aggravated or encouraged in the legal environment. Each of these factors may also be relevant to other professions, but their combination appears to be unique to lawyers.

### B *Psychological factors*

Lawyers as a group can tend to exhibit certain personality trends, because of either the type of personalities it attracts, shapes, or the types of personalities that allow someone to break into the controlled profession. Many of these traits are difficult to empirically prove, and may not be indicative of all or even most lawyers. They are, however, generally accepted by the academic community, and few counter examples have been put forward. It is important to keep in mind, that the actual distribution of these traits is unknown, and care should be taken to avoid imposing stereotypes on the community as a whole.

Some identified traits, relevant to depression are:

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<sup>11</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004), 8.

<sup>12</sup>American National Institute of Mental Health website <<http://www.nimh.nih.gov/>>.

- highly intelligent and educated
- priority confusion (work-health-life balance)
- hyper-diligent (zero tolerance for mistakes)
- perfectionist<sup>13</sup>, detail-oriented
- Need for approval (status-conscious)
- pessimistic<sup>14</sup>
- Competitive, aggressive, argumentative<sup>15</sup>, apparently also elevated testosterone levels<sup>16</sup>
- Insecure<sup>17</sup>
- Achievement-oriented, hard working<sup>18</sup>
- lack of interpersonal skills<sup>19</sup>, prefer to be introverted<sup>20</sup>
- Materialistic, focus on extrinsic values<sup>21</sup>

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<sup>13</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004); State Bar of Texas' Special Task Force on Lawyer Mental Health Issues, *Lawyer Mental Health: Acknowledging the Challenges, Raising Awareness and Providing Solutions* (2007); Steve Mark, 'Impaired practitioners; substance abuse and mental illness in the legal profession' (2007) *Without prejudice*.

<sup>14</sup>Paul Verkuil Martin Seligman and Terry Kang, 'Why Lawyers are Unhappy' (2005) 1 *Deakin Law Review* 4; Thomas Adcock, 'Combating Private Demons' (2008) *New York Law Journal*.

<sup>15</sup>Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871; Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004), 26.

<sup>16</sup>*Ibid.*, 26.

<sup>17</sup>Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871, 905.

<sup>18</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004), 27.

<sup>19</sup>*Ibid.*

<sup>20</sup>*Ibid.*, 34.

<sup>21</sup>*Ibid.*; Tim Kasser, *The High Price of Materialism* (2002); Debra Weiss, 'Emphasis on Money Can Be Source of Depression in Law School' *American Bar Association Journal Daily News*, 13 March 2008; Lawrence Krieger, *Humanizing law school* (2005).

- Non-reflective<sup>22</sup>
- Lack of fantasy, creativity, emotion (too sober)<sup>23</sup>

Three traits that have special influence in the legal world are pessimism, perfectionism and the focus on extrinsic values. These values may already be present in people before they enter the legal world, but they are certainly encouraged during law school and in practice.

According to Seligman, the legal profession is the only profession which rewards pessimism.<sup>24</sup> Pessimism involves identifying and focussing only on minor negative details and ignoring any positive aspects or outcomes of a problem. This sort of thinking is known to contribute to depression.<sup>25</sup> Pessimism in the form of prudence can be beneficial, but a lawyer needs to be able to “switch-off” pessimistic thinking when they leave the office, as it is less helpful in the non-legal world.<sup>26</sup>

Perfectionism is common to many professions and in the academic world, but it is also encouraged and rewarded in the legal world. It is relevant because it can also be particularly conducive to depression.<sup>27</sup> The negative effects of perfectionism are two-fold. Firstly, it leads directly to overworking, an unwillingness to leave work in an imperfect state. Working longer hours cuts into sleep, socialising, relaxation and can confuse priorities. A lack of sleep is one biological cause of depression<sup>28</sup> and increased isolation is

<sup>22</sup>Steven Keeva, ‘Practicing from the Inside Out’ (2002) 7 *Harvard Negotiation Law Review* 97, 100; Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004), 14; Patrick Schiltz, ‘Provoking Introspection: A Reply to Galanter & Palay, Hull, Kelly, Lesnick, McLaughlin, Pepper, and Traynor’ (1999) 52 *Vanderbilt Law Review* 1033, 1034.

<sup>23</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004), 31.

<sup>24</sup>Paul Verkuil Martin Seligman and Terry Kang, ‘Why Lawyers are Unhappy’ (2005) 1 *Deakin Law Review* 4.

<sup>25</sup>Ibid.; Thomas Adcock, ‘Combating Private Demons’ (2008) *New York Law Journal*.

<sup>26</sup>Paul Verkuil Martin Seligman and Terry Kang, ‘Why Lawyers are Unhappy’ (2005) 1 *Deakin Law Review* 4.

<sup>27</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004); State Bar of Texas’ Special Task Force on Lawyer Mental Health Issues, *Lawyer Mental Health: Acknowledging the Challenges, Raising Awareness and Providing Solutions* (2007); Steve Mark, ‘Impaired practitioners; substance abuse and mental illness in the legal profession’ (2007) *Without prejudice*.

<sup>28</sup>Jerome Siegel ‘Why We Sleep’, (2003) *Scientific American*.

commonly linked to depression.<sup>29</sup> But perfections also suffer when a task becomes impossible to complete the way the perfectionist wants to. Fear of failure takes over and the quality of work sinks with disenchantment.

Daicoff sees a lack of intrinsic values as being a major stimulant for depression in lawyers.<sup>30</sup> This is said to also be encouraged in the law school, with a student's initial aspirations for studying law being replaced by the thirst for extrinsic values such as grades, class rank, summer clerkships and articles at a top-tier firm.<sup>31</sup> Happiness may be temporarily postponed en route to these extrinsic and materialistic goals, but even if these goals are achieved, happiness does not automatically follow.<sup>32</sup> Happiness depends on an entirely independent set of needs, which some of these materialistic goals might partially provide, but other more important needs are sacrificed along the way.

Many have tried to identify and define these fundamental needs for happiness. A different approach to this issue would be to see where lawyer's fail to completely satisfy one or more of these fundamental needs. Krieger noticed that the lack of intrinsic values, personality, spontaneity and creativity in lawyers, prevented them from attaining the higher levels of Maslow's hierarchy of needs.<sup>33</sup> These higher levels would otherwise provide self-actualisation and authentic happiness. Kasser puts autonomy and authenticity as one of his four essential sets of needs in order to be happy,<sup>34</sup> connectedness being another. Levit and Linder find lawyers failing all four of their core needs for happiness: control and a sense of 'mattering', social connecting, creative challenge and perspective ('comparing downward').<sup>35</sup>

<sup>29</sup>Tim Kasser, *The High Price of Materialism* (2002).

<sup>30</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004).

<sup>31</sup>Ibid.; Debra Weiss, 'Emphasis on Money Can Be Source of Depression in Law School' *American Bar Association Journal Daily News* 13 March 2008, Nancy Levit and Douglas Linder, 'Happy Law Students, Happy Lawyers' (2008) 58 *Syracuse Law Review*.

<sup>32</sup>Tim Kasser, *The High Price of Materialism* (2002), 98.

<sup>33</sup>Lawrence Krieger, 'What we're not telling law students — and lawyers — that they really need to know: some thoughts-in-action toward revitalizing the profession from its roots' (1998) 13 *Journal of Law and Health*, citing Abraham Maslov, 'A Theory of Human Motivation' (1943) 50 *Psychological Review* 370.

<sup>34</sup>Tim Kasser, *The High Price of Materialism* (2002).

<sup>35</sup>Nancy Levit and Douglas Linder, 'Happy Law Students, Happy Lawyers' (2008) 58 *Syracuse Law Review*.

## C *Environmental factors*

Environmental factors, in addition to those that encourage the psychological traits listed above, contribute greatly to depression in lawyers. These include:

- lack of sleep, poor eating habits, poor fitness
- stress (time deadlines, high stakes, responsibility)
- commercial pressures, constant internal assessment (formal and informal), highly hierarchical
- perpetual public dislike of profession<sup>36</sup>
- very competitive environment<sup>37</sup>, zero sum game<sup>38</sup>
- (highs) victories worked for are short lived, there is always a new case to work on, lows are longer lasting
- demanding, dissatisfied, and unappreciative clients
- lack of control
- potential for difficult, inescapable, protracted matters
- mental illness stigma<sup>39</sup> and an environment with a lack of open discussion,<sup>40</sup> which allows cases of depression to develop
- (for women) highly male environment, in subordinate positions<sup>41</sup>

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<sup>36</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004).

<sup>37</sup>Joellen Riley, 'Mental Health and Employment: Issues for Lawyers' (2007) 1 *University of New South Wales Faculty of Law Research Series* 38.

<sup>38</sup>Paul Verkuil Martin Seligman and Terry Kang, 'Why Lawyers are Unhappy' (2005) 1 *Deakin Law Review* 4, Steven Keeva, 'Practicing from the Inside Out' (2002) 7 *Harvard Negotiation Law Review* 97.

<sup>39</sup>Adcock08

<sup>40</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004).

<sup>41</sup>See John Hagan and Fiona Kay, 'Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice' (2007) 41 *Law and Society Review* 51, 68, David Elloy and Catherine Smith, 'Patterns of Stress, Work-Family Conflict, Role Conflict, Role Ambiguity and Overload Among Dual-Career and Single-Career Couples: An Australian Study' (2003) 101 *Cross Cultural Management* 55 and Kathleen Hull, 'The Paradox of the Contented Female Lawyer' (1999) 33 *Law and Society Review* 687.

Two principal environmental factors for the higher risk of unhappiness in the legal profession are the "zero sum game" inherent in our adversarial legal system<sup>42</sup>, and commercial pressures, which emphasise the extrinsic thinking mentioned above.

As mentioned earlier, self-determination and control are important needs in pursuit of happiness. But lawyers often tend to feel a lack of control<sup>43</sup> this trend is more pronounced in the corporate environment, where policy, project size and politics reduce a lawyer's autonomy. An emphasis on adversarial advocacy can further reduce control, as a lawyer must support the client's autonomy, sometimes at the expense of their own.

An interesting point made by Levit and Linder,<sup>44</sup> is the notion of upwards comparison. The legal world has a habit of comparing upwards, that is, assessing their own state by comparing themselves to people above them.<sup>45</sup> So despite lawyers being one of the wealthiest and powerful professions, lawyers are encouraged by their environment to seek more. Levit and Linder suggest more pro-bono work, especially in law schools, to help increase exposure to a more diverse demographic, and eventually allow the lawyers to assess their own state by 'comparing downwards'.<sup>46</sup> They argue, this will make lawyers more content and happy, and indeed studies show that there is a correlation between pro-bono work and happiness.<sup>47</sup>

## D Conclusions

There are in fact a great number of varied factors exposing lawyers to depression, or preventing lawyers from obtaining authentic happiness. Determining the proportional influence of each of these factors, or even understanding the intricate interaction between each of them is an extremely difficult task. At

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<sup>42</sup>Paul Verkuil Martin Seligman and Terry Kang, 'Why Lawyers are Unhappy' (2005) 1 *Deakin Law Review* 4.

<sup>43</sup>Steven Keeva, *Transforming practices : finding joy and satisfaction in the legal life* (1999), 196, Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871, 889.

<sup>44</sup>Nancy Levit and Douglas Linder, 'Happy Law Students, Happy Lawyers' (2008) 58 *Syracuse Law Review*.

<sup>45</sup>Ibid., 22, Citing Daniel Nettle, *Happiness: The Science Behind Your Smile* (2006) 38.

<sup>46</sup>Nancy Levit and Douglas Linder, 'Happy Law Students, Happy Lawyers' (2008) 58 *Syracuse Law Review*.

<sup>47</sup>Ibid., 20.

least, by understanding the context, individual problems can be meaningfully targeted and their negative effects reduced.

Thinking about these depressed, alcoholic, drug-abusing lawyers conjures up an image that does not accurately describe the vast majority of practising lawyers. Care must be taken to properly understand the results of research, and not to make conclusions based on sensationalist claims about happiness, which may be influenced by our own understanding of happiness.<sup>48</sup>

### III A COMMERCIAL PROFESSION

Companies in Australia owe their employees a duty of care to take reasonable care to avoid exposing them to unnecessary risks of mental injury.<sup>49</sup> Well, that *should* fix everything. But it doesn't. Perhaps it is the presence of terms like 'reasonable' and 'unnecessary' that dampen its effect, but it is quite clear that the corporate world, as it exists in Australia in 2008, is quite unfriendly when it comes to mental well-being.

I will now look at what I see as a problem in the commercial legal world, that of big firms and big clients. This is relevant because most lawyers end up in the commercial environment.

#### A *What's the problem?*

As mentioned earlier, people need to fulfil certain needs in order to achieve happiness. There is something about the corporate legal world that prevents all of these needs from being satisfied, but what is it?

Schiltz identifies one problem being the number of hours a lawyer is required to work,<sup>50</sup> and few will disagree that this is true. Over the last couple of decades, law firms have been increasing the number of billable hours they

<sup>48</sup>Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871, 919; Marc Galanter and Thomas Palay, 'Large Law Firm Misery: It's the Tournament, Not the Money' (1999) 52 *Vanderbilt Law Review* 953, 954.

<sup>49</sup>Joellen Riley, 'Mental Health and Employment: Issues for Lawyers' (2007) 1 *University of New South Wales Faculty of Law Research Series* 38, citing *Crimmins v Stevedoring Industry Finance Committee* (1999) 74 ALJR 1, [276] (Hayne J).

<sup>50</sup>Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871.

require from their lawyer. This requirement can be explicit, a contractual requirement, but it can also be implicit, and failure to satisfy will prevent promotion and may even result in the lawyer leaving the firm.

Although it is certainly technically possible for lawyers to work part-time, the system strongly discourages this behaviour. The result of the number of hours that are required is obviously an unbalanced life. Families of lawyers suffer too, the mental health of the husbands, wives and children of lawyers is not an irrelevant issue.

Another source of unhappiness in the commercial legal industry is the unfriendly, detached environment. Large law firms reduce contact with clients, and perform much more communication through impersonal means, such as email or telephone.

As mentioned before, policies, politics and the size of the projects decreases a lawyer's control. This also has an effect on the hours worked as the social pressure of an entire team working late is difficult to overcome. Leaving the office on time is much more difficult when this means your colleagues will stay later to make up for your 'lack of commitment'.

## B *Why is this happening?*

Schiltz describes the corporate law firm as being all about the hours, the money and 'the game'.<sup>51</sup> Daicoff identifies a culture with an over-emphasis on extrinsic values.<sup>52</sup> Huang and Swedloff see an industry that weighs only financial incentives against quantity of work.<sup>53</sup> Krieger sees the primary focus on unfulfilling goals such as affluence, fame and power as the deciding factor for happiness.<sup>54</sup> They are all talking about exactly the same thing. The modern corporate law firm has set up an environment, a system which encourages certain ways of thinking, that are in fact setting their lawyers on the road to unhappiness. This environment encourages materialism and promotes the idea that money can adequately compensate anything.

<sup>51</sup>Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871.

<sup>52</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004).

<sup>53</sup>Peter Huang and Rick Swedloff, 'Authentic Happiness and Meaning at Law Firms' (2008) 58 *Syracuse Law Review*.

<sup>54</sup>Lawrence Krieger, *Humanizing lawschool* (2005).

So how did this happen? Has it always been like this? No, it hasn't. Recent decades have seen a commercialisation,<sup>55</sup> or deprofessionalism<sup>56</sup> of the legal profession. Lawyers are taught to concentrate on hours and money,<sup>57</sup> and the system promotes an unachievable and false goal defined by extrinsic values, which lawyers trade in their lives to attain. A successful life, according to the lawyers and students in this system, is making partner, not to live a balanced, enjoyable life. Few realise however, that what they really want is to be happy<sup>58</sup> and that once you earn enough to keep yourself out of poverty, their money focused has very little correlation with happiness.<sup>59</sup>

This atmosphere feeds on the very attributes that make lawyers susceptible to depression: competitive, achievement-oriented, non-reflective, status conscious and insecure. But it's not just the big law firms. They operate in the adversarial legal environment, full of 'zero-sum games',<sup>60</sup> aggression, selfishness, hostility, suspiciousness and cynicism.<sup>61</sup> It is the dreadful combination of a exploitative business enterprise and an adversarial legal system that cripples the lawyers who are caught in the middle.

## 1 *Competition*

Law firms alike are heavily involved in competition. Recruitment and promotions in law firms are uninterested in a qualitative judgement of who is able to satisfy the needs position, but rather by using quotas and looking for the 'best' possible candidate. The adversarial system prevents lawyers from a broad assessment of how well they are helping their client achieve their goals, but rather an often meaningless binary win-loss result.

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<sup>55</sup>Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871, 888.

<sup>56</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004), 5.

<sup>57</sup>Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871, 896.

<sup>58</sup>Mirko Bagaric and James McConvill, 'Goodbye Justice, Hello Happiness: Welcoming Positive Psychology to the Law' (2005) 10 *Deakin Law Review* 1.

<sup>59</sup>Nancy Levit and Douglas Linder, 'Happy Law Students, Happy Lawyers' (2008) 58 *Syracuse Law Review*, 4.

<sup>60</sup>Paul Verkuil Martin Seligman and Terry Kang, 'Why Lawyers are Unhappy' (2005) 1 *Deakin Law Review* 4.

<sup>61</sup>Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) 52 *Vanderbilt Law Review* 871, 889.

Competition promotes ‘zero-sum’ games: Where there is a winner, there is a loser.<sup>62</sup> Competition and the threat of loss adds to stress.<sup>63</sup> A sensible alternative to competition is obviously cooperation,<sup>64</sup> cooperation effectively eliminating the fear of ‘losing’ and promoting behaviour that is on the whole more beneficial to everyone.

## 2 *Achievement*

Lawyer’s lives are riddled with an emphasis on achievement, starting in early childhood.<sup>65</sup> Only those who excel at achievement are allowed into a law school, and once again, it is only those who excel at excelling at achievement that make it into the big law firms.

The problem with achievement is also its advantage: The benefits are delayed, that is, work now, achieve later. It is the constant delay of gratification that allows lawyers to work long hours and to neglect other aspects of their life. If the final achievement is worth it, all is well and good. But if the achievement is never realised, or if it is not what it was envisioned to be, then the lawyer contributes to the widespread disenchantment in the legal community.<sup>66</sup>

## 3 *Non-Reflection*

One of the biggest problems in the profession, according to Daicoff, is that lawyers are generally non-reflective and they do not take the time to identify their true values and ambitions.<sup>67</sup> Some law firms do encourage young

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<sup>62</sup>Paul Verkuil Martin Seligman and Terry Kang, ‘Why Lawyers are Unhappy’ (2005) 1 *Deakin Law Review* 4.

<sup>63</sup>Rick Allen, ‘Lawyers: Are We A Profession In Distress?’ (1998) *The Nebraska Lawyer* 22, 22.

<sup>64</sup>Paul Verkuil Martin Seligman and Terry Kang, ‘Why Lawyers are Unhappy’ (2005) 1 *Deakin Law Review* 4.

<sup>65</sup>Susan Daicoff, ‘Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism’ (1997) 46 *American University Law Review* 1337.

<sup>66</sup>Paul Verkuil Martin Seligman and Terry Kang, ‘Why Lawyers are Unhappy’ (2005) 1 *Deakin Law Review* 4.

<sup>67</sup>Susan Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (2004); Susan Daicoff, ‘Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism’ (1997) 46 *American University Law Review* 1337.

lawyers to move around the firm, tasting the various flavours of their employment. But there is little genuine attempt to allow and encourage lawyers to identify their inherent needs. Indeed, the busy, dynamic environment is by no means conducive to self-reflection.

#### 4 *Insecurity*

Insecurity is not as influential directly as it is indirectly. It accentuates the effect of status, non-reflection, competition, and achievement.

#### 5 *Status*

Status seems to play a key role in big law firm culture. Lawyers judge and are judged by the position they hold, the money they earn, the clients they serve, the number of billable hours they charge, the friends they have, the clothes they wear and so on. But little credit is given to lawyers who have a balanced life, who work less hours, spend more time with their family and friends, work on matters that are meaningful to them, or who are generally happy.

The role of status serves to distract lawyers from beneficial introspection and ultimately seeking happiness.

### C *The Law School*

This behaviour begins in the law school. Competition, achievement and status, are practised and encouraged in the law school environment. Essays and exams are given strict deadlines, which serves to promote stress and unhealthy work hours. Given that, achievement is not necessarily measured using academic understanding and dialogue, but according to other factors, such as organisation, exam technique, practical writing skills and prioritisation. These skills are of course relatively important, but their overemphasis is to the detriment of a truer understanding of the concepts that students are there to learn. A contrast to this can be seen in some European countries, where students do not sit exams during their course, but instead submit smaller papers (without strict deadlines) each semester and choose when they feel are ready to sit their final exams and submit their final papers.<sup>68</sup>

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<sup>68</sup>This is unfortunately being phased out for economic reasons.

Overall, dealing with the stressful and unbalanced environment is another 'skill' that helps law students accept the corporate environment they will eventually encounter.

Big law firms are also keen to advertise directly to students, a result of this is the increased awareness and perceived relevance of big law firms within the student body. Offers for seasonal or articulated clerkships are seen as important for status, and many students are less inclined to seek employment in other areas, which may be more suitable for their happiness needs.

## IV CONCLUSION

As many writers have suggested, a principle cause of the unattained happiness and even the depression in the legal industry is a failure to identify and seek to fulfil the set human needs that are relevant to happiness. Quite often, there are a number of misconceptions about what these needs are, and the dominant culture in big Australian law firms encourages behaviour that is inconsistent with the actual needs of our lawyers and their families. These false values can be characterised as materialistic or extrinsic, and one solution may be for lawyers to identify what they feel as being their intrinsic values and to pursue them. But that is not a complete solution. The dominant culture actively encourages and rewards conformity, and little can be achieved unless that is changed.

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