Greed among American Lawyers

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GREED AMONG AMERICAN LAWYERS

Lisa G. Lerman*

"I'm entitled to spend any of my money for whatever I want to spend it on."

Harvey Myerson

"If the government can get [a good] result from people who don't work all night and who stay in inexpensive hotels, that's what the government ought to do. [It is a judgment call whether the government should hire] lawyers who are more expensive not only to pay, but to care for."

David Boies

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I presented this paper at a symposium on "The Future of the Legal Profession" held at Oklahoma City University School of Law on September 23, 2005. I appreciate the support provided for this work by Oklahoma City University School of Law, OKCU Dean Lawrence Hellman, and The Catholic University of America, Columbus School of Law (CUA). I am grateful for the research assistance of Stephen Young, a CUA reference librarian, and Katherine Connolly, CUA class of 2006.

1. Lisa G. Lerman, Blue-Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers, 12 GEO. J. LEGAL ETHICS 205, 248 tbl.4 (1999) (citing Patricia Hurtado, Just Like 'L.A. Law,' NEWSDAY, Apr. 23, 1992, at 120). This statement was made by Myerson during his summation after he was tried on fifteen counts of racketeering, fraud, conspiracy and obstruction of justice, including charges of $2.5 million in fraudulent billing and $1 million in theft from his partners. Id. at 264 tbl.5. See Milo Geyelin, Myerson, Highflying New York Lawyer, Charged by U.S. with Bilking Clients, WALL ST. J., Mar. 8, 1991, at B10 (discussing charges against Harvey Myerson).

2. David Boies made these comments in response to queries about whether his firm was justified in billing the government $40 million for its work on a case against Drexel Burnham and Michael Milken. He was billing the government at a rate of $600 per hour in 1992 when the government's usual top rate for outside counsel was $200 per hour. Boies and his colleagues billed for rooms in the Helmsley Palace Hotel, for chauffeurs, and for the time of lawyers who were on vacation or were sick. Susan Schmidt, RTC
"Enough is as good as a feast."

Mary Poppins

In the spring of 2005 I gave a talk at a workshop for journalists who cover "law and the courts" for newspapers all over the United States. I described the recent spate of cases in which lawyers with enormously high incomes have gone to prison for stealing from their clients and their partners. I argued that these cases are a symptom of the workaholic, money-hungry culture that has taken over so many large law firms, eroding the integrity of many lawyers and ruining the lives of some.

A reporter from the Los Angeles Times asked something like "what's the solution? Is there any way to address these problems other than for high-earning lawyers to scale back their income expectations? And how would one persuade them to earn less?"

I found myself momentarily speechless. In three sentences, this reporter had described the problem, the solution, and the problem with the solution. I did not have an answer; I just knew this was an important question.

During September of 2005, I watched thousands impoverished residents of New Orleans struggle to survive in the face of unspeakable neglect by federal, state, and local government officials. Many senior government officials who should have exercised leadership are people preoccupied with personal wealth acquisition rather than with social policy or public service. They actually forgot about the poor people who did not have cars and had no way to get out of town. No one organized the buses. The President simply told everyone to leave.

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3. MARY POPPINS (Walt Disney Pictures 1964).

4. I have come to rely on legal journalists for information and insight about problems in the legal profession. Lawyers often talk about bill-padding and competitive pressure, but one seldom hears a conversation among lawyers about whether lawyers are making too much money. One exception, admittedly written by a law professor, is Neil Hamilton, Commentary: What Constitutes a 'Satisfactory Living' for a Lawyer?, MINN. LAW., Apr. 21, 2003.

5. On Sunday, August 28, 2005, the day before the storm made landfall, George W. Bush said "I urge all citizens to put their own safety and the safety of their families first by moving to safe ground." Associated Press, Bush Urges Residents to Flee, FOXNEWS.COM, Aug. 28, 2005, http://www.foxnews.com/printer_friendly_story/0,3566,167263,00.html (last visited Sept. 11, 2006). After thousands had been abandoned for days without food, water, or transportation in New Orleans, after hundreds of deaths and untold suffering, some of the displaced persons were finally taken to
How could this happen in America? Perhaps part of the "system failure" is related to the increasing isolation of wealthy Americans. Many affluent people have little or no contact with poor people. They tend not to use public transportation or to wander around in blighted inner city neighborhoods. Many wealthy people socialize at country clubs, visit exclusive golf resorts, and fly on corporate jets. Perhaps this isolation helps to explain why some government officials "forgot" that so many residents of New Orleans could not simply fill their gas tanks and drive to higher ground.

In the wake of the massive humanitarian disaster that resulted from this failure to perceive those most urgently in need, we have received a national wake-up call: poverty is thriving in America. Just as we need to work on how to combat terrorism, we urgently need to figure out how to narrow the rapidly increasing gap between wealth and poverty. One shelters.

Other members of the first family also made comments that revealed profound failure to comprehend the impact of Katrina on poor people. On September 5, when Barbara Bush, the President's mother, visited the Houston Astrodome, she looked around at the thousands of displaced persons, and said, "[A]nd so many of the people in the arena here, you know, were underprivileged anyway, so this - this is working very well for them." Nicholas D. Kristog, A Health Care Disaster, N.Y. TIMES, Sept. 25, 2005, at 4-11. On September 16, 2005, almost three weeks post-Katrina, Laura Bush visited the National Center for Missing and Exploited Children to thank the volunteers who were trying to reconnect displaced children with their parents. In an attempt to empathize, she said, "Each of us who have children know what it is like to lose your child for a minute in a department store, so we can imagine what these families are feeling and what they are thinking if they've been separated from their children for a week or so." Video: Helping Katrina's Children (CNN television broadcast Sept. 16, 2005), available at http://www.cnn.com/2005/US/09/16/katrina.missingchildren/ (last visited Sept. 20, 2005).

6. See William Underhill, In Search of Privacy, NEWSWEEK, May 9, 2005, at 36 (discussing the increasing market for private jets, private resorts, etc. for wealthy travelers, stating, for example, that:

Today's millionaire in need of a break isn't limited to heading for a busy Caribbean beach. And he may not want to rub sunscreened elbows with his fellow swells or wait in line at a hotel desk, no matter how opulent the environment. For these days, luxury is a given. What moneymed travelers crave is privacy--and they're willing to pay for it.

Id.) Some wealthy people, including lawyers, even get private banking services. Ellen Kelleher, Professionals Feel the Benefit of a Personal Approach to Banking, FIN. TIMES USA, Aug. 30, 2005, at 8 (reporting that wealthy lawyers and entrepreneurs are the "top target" of private banks).

7. Associated Press, Gap Between Haves, Have-Not Gets Wider, MSNBC, Aug. 16,
engine that drives this machine is the greed of those who already live in luxury.

In this paper I will explore the causes and consequences of excessive materialism in American society, and in particular, among American lawyers. I also will examine whether successful lawyers need to scale back their income expectations, and if so, how one might persuade them to do that. As community and government leaders, lawyers offer a model (or an anti-model) for the rest of society. While greed among lawyers is but a subpart of a larger problem of greed in corporate America, the greed of lawyers may be an important piece in the puzzle.

I. MATERIALISM VERSUS GREED

One might argue that the desire to acquire money and possessions is not intrinsically a good thing or a bad thing. Certainly each of us needs some money and some possessions, and most of us would like to have more of each than we already have. If a successful person wants to buy a

2004, http://www.msnbc.msn.com/id/5726153/ (last visited Sept. 11, 2006) ("Over two decades, the income gap has steadily increased between the richest Americans, who own homes and stocks and got big tax breaks, and those at the middle and bottom of the pay scale, whose paychecks buy less."). The article notes that “[t]he income gap is showing up in booming sales of luxury items. Porsche Cars North America Inc. says sales are up 17 percent for the year. Strong sales at Neiman Marcus, Nordstrom and Saks Fifth Avenue overshadow lackluster sales at stores such as Wal-Mart, Sears and Payless Shoes." Id.

8. Many articles have chronicled and commented on the recent spate of corporate fraud cases, but not everyone agrees that there is a problem. An article in the Georgetown Law Journal describes “the pay practices at firms [i.e. companies] as dominated by greedy, self-interested, rent-seeking managers.” M. Todd Henderson & James C. Spindler, Corporate Heroin: A Defense of Perks, Executive Loans, and Conspicuous Consumption, 93 Geo. L.J. 1835, 1838 n.4 (2005). The authors argue that the standard description of corporate greed may in fact “be evidence of optimal incentivization, where principal and agent have contracted (explicitly or implicitly) for just the amount and type of remuneration that maximizes their joint welfare.” Id. at 1841. Henderson and Spindler, who are visiting assistant professors at the University of Chicago Law School, urge that “there does seem to be an extent to which the desire . . . of some individuals to accumulate wealth in order to enjoy prodigious amounts of consumption is socially beneficial.” Id. at 1839. Henderson and Spindler take issue with the large number of articles which argue that “[t]he grotesquely inflated appetite of high-powered individuals for extravagant consumption . . . [crosses] the line from legitimate self-interest into myopic greed.” Id. at 1845-46 (citing Eric Posner, The Jurisprudence of Greed, 151 U. Pa. L. Rev. 1097, 1099-1100 (2003)).
few Jaguars, an expensive vacation home, a yacht, and a couple of airplanes, so what?\textsuperscript{9}

Up to a point, pursuit of wealth and belongings is normal, healthy behavior. People who live in economically developed nations are, as a group, happier than people who live in poor countries.\textsuperscript{10} Some degree of materialism is necessary to generate economic growth that promotes freedom and human rights and reduces widespread suffering from poverty.\textsuperscript{11}

People manifest materialism in differing degrees. Some people value creature comforts in ways that are personally satisfying and not socially harmful, but others manifest a degree of materialism that is toxic and socially destructive. Lawyers fall at every point along this spectrum. Most lawyers do not suffer from extreme materialism, but among elite lawyers, there are more than a few greedy lawyers whose materialism is a dominant factor in the structure and operation of their law firms and who set a negative example for countless other lawyers.

Psychologist Harvey A. Kaplan defined greed as "the selfish desire to acquire for the sake of acquisition without regard for others."\textsuperscript{12} Professor David Farragia explains that "an implicit assumption of the greedy personality is that protection and happiness emanate from acquisition . . . . As selfishness and greed become a quality of personal experience, the greedy person has a strong sense of justification and entitlement . . . . Greed may then be transformed into a sense of envy, jealousy and avarice."\textsuperscript{13} Professor David Levine notes that greed is characterized by "exclusiveness and withholding from others, and it involves a rupture between attaining or consuming an object and gaining satisfaction."\textsuperscript{14} In other words, a person suffering from greed is not satisfied by acquisition; he always wants more.

\begin{itemize}
  \item[9.] See infra examples accompanying notes 34-46.
  \item[10.] Emily G. Solberg et al., \textit{Why Are Materialists Less Satisfied?}, in \textit{Psychol. & Consumer Culture} 46 (Tim Kasser & Allen D. Kanner eds., 2004).
  \item[11.] \textit{Id.} "[T]here is an unresolved paradox involving economic growth and happiness: Whereas national wealth predicts positive SWB [subjective well-being], relatively materialistic people within any given culture tend to be less happy. It may be that economic success cannot simply be equated with materialistic values." \textit{Id.}
  \item[13.] \textit{Id.} at 119 (citing Kaplan, supra note 12).
II. THE GROWTH OF GREED AMONG AMERICANS, INCLUDING LAWYERS

Many wealthy Americans, including quite a few wealthy lawyers, are suffering from a plague of greed. One need only glance at the compensation packages of corporate CEOs or review the recent disasters at Enron, WorldCom, and other companies to notice that lawyers may be the small fry at the greed party. As Max Weber and others have explained, a free-market economy tends to cultivate and reinforce impulses toward greed.15

American families own twice as many cars per person as we did in 1957.16 We eat in restaurants twice as often as we did in 1957.17 We possess a menagerie of things that did not even exist in the middle of the twentieth century: computers, blackberries, sport utility vehicles, plasma TVs, iPods, global positioning systems, home theaters and gyms, TiVos, and more.18

The growing collective addiction to conspicuous consumption is manifested most visibly in demand for larger and larger homes. The median size of new single-family homes in the United States has grown from 1,385 square feet in 1970, to 2,140 square feet in 2004.19 Some Americans aspire to own the “New American Dream Home,” a 9,506 square foot home which was the showpiece of the 2005 National Home Builders’ Conference.20 This “ideal” dwelling features a “guest wing, five fireplaces, three laundries, a hobby room, an elevator, a spa, a home theater, [and] a summer kitchen.”21 These ever-larger trophy homes allow the owners to flaunt their rising incomes.

RELATIONS IN PSYCHOANALYTIC THEORY 128-29 (1983)).
15. Id. at 139.
17. Id.
18. Id.
21. Id.
A. An Emerging Disorder

The growing problem of greed in our society is so apparent that some mental health professionals have proposed a new diagnostic category created to describe those who are in the grip of greed. In 1992, psychologist Arthur Nikelly posited that some people suffer from a disorder he calls "pleonexic personality." He noted that:

According to a number of therapists, an alarming phenomenon can be observed in the business world – a calculated greed with far-reaching consequences on emotional and physical well-being. These therapists contend that in some individuals closely identified with the economic system, a cluster of behaviors develops and [causes personal distress for those individuals. Also,] these people create psychological stress and emotionally unhealthy living conditions for others.

Nikelly lists proposed criteria for the pleonexic personality disorder, including:

Lack of a sense of boundaries . . . . Increasing wealth becomes a race without a finish . . . . a morbid quest for money that defies the rules of reason . . . . Disregard of how financial transactions affect others . . . . lacks an understanding of what is more essential in life. Judges self by possessions, not by accomplishments. Emotionally detached . . . . Inane competition to surpass adversaries . . . .

23. Id. at 253 (internal citations omitted). Other authors have described a similar phenomenon as a disorder they label as "AD" or "acquisitive desire." This manifests in behavior "such as compulsive shopping, hoarding, greed, purchasing or collecting objects, and the neurotic pursuit of possessions." Jeffrey Kottler et al., Acquisitive Desire: Assessment and Treatment, in PSYCHOL. & CONSUMER CULTURE, supra note 10, at 151.
Nikelly urges that not all wealthy people suffer from this disorder, but only "those whose pleonexic behavior is alarming to society and causes them emotional distress."\textsuperscript{25} It is difficult to read this description without being reminded of some members of the legal profession.

Nikelly urges that many psychological disorders are more common in industrialized societies than in agrarian societies\textsuperscript{26} and discusses the possible reasons why some people develop a maladaptive preoccupation with acquisition of wealth. Nikelly references Max Weber's description of the Protestant ethic as "characterized by individualism, thrift, self-control, hard work, suppression of feelings, and amassing wealth for its own sake."\textsuperscript{27} John Wesley, who founded the Methodist church, "admonished his faithful to 'grow rich' and 'gain all you can.'"\textsuperscript{28} Nikelly concurs with Alfred Adler's observation that a "getting" person may be "substituting material possessions for what is really wanted, i.e., food, love, succorance,"\textsuperscript{29} and with Erich Fromm, who urged "that competitive marketing for profit, expansion, and hoarding has a negative effect on character and causes a heavy toll on others who are affected by such behavior."\textsuperscript{30}

Nikelly referenced studies by several other psychologists who studied people afflicted by excessive greed and materialism.\textsuperscript{31} Douglas LaBier, for example, collected data on over 200 "'money-loving' corporate executives and entrepreneurs and found them to exhibit a 'surface sanity' that concealed their inner turmoil, isolation and emptiness . . . . For them, possessions, including money, served as an energizing elixir, even when they risked corrupt practices to support their psychic elation."\textsuperscript{32} Similarly, Nikelly reports that:

Rohrlich . . . who treats members of the Wall Street community, views their greed as a "disease" because their cravings for wealth make them dangerous to

\begin{itemize}
  \item \textsuperscript{25} \textit{Id.} at 259.
  \item \textit{Id.}
  \item \textsuperscript{27} \textit{Id.} at 254 (citing MAX WEBER, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM 171 (Scribner's 1958) (1904-05)).
  \item \textsuperscript{28} \textit{Id.} at 255 (quoting WEBER, supra note 27, at 175).
  \item \textsuperscript{29} \textit{Id.} (citing Harold H. Mosak, The Getting Type: A Parsimonious Social Interpretation of the Oral Character, 15 J. INDIVIDUAL PSYCHOL. 193-98 (1959)).
  \item \textsuperscript{30} \textit{Id.} (citing ERICH FROMM, MAN FOR HIMSELF (1961)).
  \item \textsuperscript{31} \textit{Id.} at 256.
  \item \textsuperscript{32} \textit{Id.} (citing DOUGLAS LABIER, MODERN MADNESS: THE EMOTIONAL FALLOUT OF SUCCESS (1986)).
\end{itemize}
themselves and to society, since they may even dare to engage in illegal self-destructive transactions to increase their wealth. He considers their acquisitive behavior similar to an addiction . . .

B. Greed Among Lawyers

Some lawyers are among those wealthy people who are consumed by the desire to consume. Harvey Myerson, for example, was a senior partner at Finley, Kumble and then at Myerson & Kuhn. Eventually he went to prison for stealing $2.5 million through billing and expense fraud. He had some expensive habits. He once called an employee of his law firm to ask that the employee bring him a firm check to purchase an $89,000 ring at Cartier's. Myerson, who was married, intended to use firm funds to purchase this ring for his mistress. Other personal expenses improperly charged to the firm or to clients included "Concorde tickets, chartered helicopter rides, lawn furniture, Cuban cigars, Hermes scarves, dresses at Giorgio of Beverly Hills, visits to the spa at Baden-Baden, Germany, [and] a $20,000 weekend at the Kentucky Derby."

H. Lawrence Fox, a former partner at Winston & Strawn in D.C., bought three Jaguars, among other things, before he was sent to prison for fifty-five months for stealing $1.62 million through billing and expense fraud. William F. Duker was an expert in professional liability litigation. He had clerked for Judge Patricia Wald and had worked at Cravath, Swaine & Moore before setting up his own firm. Duker went to prison for thirty-three months for stealing $1.4 million from the federal banking agencies through billing fraud. Before he got caught, he bought a "luxurious vacation home in Miami and kept a yacht in Newport, R.I."
Wilkes "Skip" Morgan who had been the managing partner of a branch office of Bronson, Bronson & McKinnon, went to prison in 1994 for twenty-four months after stealing $2.3 million through billing fraud. It was reported that he had "stole[n] funds to support a lavish lifestyle that include[d] restoring World War II aircraft, owning six cars, including two BMWs and a Mercedes, and cruising on a 22-foot boat." Maureen Fairchild was a partner at Chapman & Cutler in Chicago, and was married to Gary Fairchild, the managing partner at Winston & Strawn. During a two year period, Maureen took sixteen trips with her ski instructor boyfriend and falsely billed clients over $161,000 for her time and over $25,000 for expenses for these trips. Her theft for these and other activities totaled $1.48 million. She was sentenced to serve twelve months in prison.

The lives and careers of these and numerous other respected and successful lawyers have been ruined by extreme materialism. In their wake is a trail of clients, co-workers, and others who were variously deceived, manipulated, betrayed, or robbed by these lawyers.

Greed manifests in several different sectors of the legal profession. Among the most visible "greedy lawyers" are certain personal injury lawyers like Joe Jamail, who earn vast contingent fees for their advocacy. Some class action lawyers also earn enormous contingent fees. Some greedy lawyers seem to have an inflated idea of the value of their own work. For example, Eugene Crew, one of the lawyers who helped settle a class action suit against Microsoft Corporation, asked for a fee that would translate to payment of $3,000 per hour for each of over

41. Id. at 307 app. B.
42. Id. at 264 tbl.5.
45. Id. at 897.
46. Id. at 890, 901.
6,000 billable hours.49 "Extraordinary deeds warrant appropriate recompense," he argued.50

The largest concentrations of high-earning lawyers are in large corporate law firms.51 The incomes of lawyers in large law firms have risen astronomically over the last couple of decades.52 At the American Lawyer's 100 top-grossing law firms in the United States, 2,405 equity partners earned over $1.5 million each in 2004.53 Eight hundred and forty-five equity partners earned over $2 million.54 At the very top of the greed ladder among large firm lawyers are the eighty equity partners at Wachtell, Lipton, Rosen & Katz, who earned $3.5 million each during 2004.55

Even though some small-firm personal injury and class action lawyers earn gargantuan amounts of money, the average incomes of small-firm lawyers have gone down as the high-end lawyers have become increasingly wealthy.56 There appears to be a widening gap between rich lawyers and poor lawyers that parallels the widening gap between the rich and the poor in America. If corporate lawyers thrive while small-firm lawyers struggle to survive, lawyers who provide essential legal services to non-wealthy individual clients may become an endangered species, like family farms and corner drug stores.

III. WHY IS GREED ON THE RISE?

Why are we getting greedier? We are bombarded by advertising and are collectively drowning in consumer goods. Some people respond to

50. Id. The judge decided that a fee award of $112 million was justified. Brenda Sandburg, Fee Slashed in Microsoft Class Action; A Fee Request of $270M Is Cut to $112M; Judge Cites Low Level of Risk, NAT'L L.J., Sept. 20, 2004, at 10.
52. See generally Lerman, supra note 44 (documenting lawyer income growth).
53. The AmLaw 100, AM. LAW., July 2005, at 141. This survey of the 100 highest-grossing firms in America reveals that during 2004, thirty-seven firms paid equity partners an average of over $1 million; sixteen firms paid equity partners an average of over $1.5 million; and eight firms paid an average of over $2 million. Id.
54. Id.
55. Id.
these circumstances by becoming modestly more materialistic, while others become obsessed with wealth and possessions. Why? An exploration of the triggers of personal greed may assist in thinking about how law firms and lawyer regulators might protect the legal profession from the corrosive impact of extreme materialism.

A. Insecurity and Modeling of Materialism

Several studies indicate that people who are emotionally and/or financially insecure may turn to acquisition as a putative solution to their insecurities. 57 They may develop a "materialistic value orientation," 58 or an MVO. Psychologist Tim Kasser explains that "when people grow up in unfortunate social situations — where they're not treated very nicely by their parents or when they experience poverty or even the threat of death, they become more materialistic as a way to adapt." 59 Materialism also can be caused by exposure to people and cultures that over-value acquisition of material things. 60

To a non-psychologist, it may sound silly to say that an unhappy childhood may produce a materialistic adult. Nevertheless, many studies have found evidence for this. One study found that teenagers who were focused on financial success were more likely than other teens to have had mothers who were less warm, more controlling, more critical, and less supportive. 61 Another study found that children who had less interaction with their parents were more materialistic than others. 62

As children learn values from parents and peers, those who associate with materialistic people may become more materialistic. 63 Kids whose mothers emphasize the value of economic success are likely to share this value. 64 Children who watch more television than others tend to be more materialistic. 65 Perhaps television teaches materialism, or perhaps

57. See Tim Kasser et al., Materialistic Values: Their Causes and Consequences, in PSYCHOL. & CONSUMER CULTURE, supra note 10.
58. Id. at 14.
59. Id.
60. Id. at 16.
61. Id. at 14.
62. Id.
63. Id.
64. Id.
65. Id.
materialistic children are drawn to television and movies that feature wealthy people.\textsuperscript{66}

\textit{B. Mental Disturbance}

At least some materialistic people suffer from mental disorders that may contribute to their preoccupation with acquisition.\textsuperscript{67} Adolescents who rate high on scales of materialism are found to have higher than normal rates of depression and anxiety, conduct disorders, narcissism, drug use, and personality disorders.\textsuperscript{68} They also have more difficulty with both friendships and intimate relationships and tend not to value personal connection as much as others.\textsuperscript{69} Materialistic people are less empathetic than others, tend more often to "use their friends to get ahead," and tend to compete rather than to cooperate with others.\textsuperscript{70} They also tend to be insecure and to want to prove to others that they are successful by acquiring material possessions.\textsuperscript{71}

This research is helpful in understanding the high percentage of lawyers who are unhappy, unsatisfied with their work, and who turn to alcohol or drug abuse in reaction to their distress.\textsuperscript{72} Some cases of apparent lawyer greed are also stories about the ravages of mental illness. Consider the case of William Appler, who was a partner at McDermott, Will & Emery.\textsuperscript{73} Appler was disbarred for stealing $1.1 million, which he accomplished through a scheme in which he billed certain clients directly, rather than through the law firm.\textsuperscript{74} Appler was suffering from bi-polar disorder,\textsuperscript{75} which may partly explain why he kept a collection of 900 bottles of wine at the office, or why he went on shopping sprees, once buying $40,000 worth of ceramics during a single expedition.\textsuperscript{76}

\begin{itemize}
\item \textsuperscript{66} Id. at 16-17.
\item \textsuperscript{67} Id.
\item \textsuperscript{68} Id. at 19-20.
\item \textsuperscript{69} Id.
\item \textsuperscript{70} Id. at 20-21.
\item \textsuperscript{71} Id.
\item \textsuperscript{72} For examples of stories about alcoholic lawyers, see Thomas Adcock, \textit{Alcoholic Lawyers Tell Sobering Tales}, N.Y.L.J., Mar. 12, 2001, at 1.
\item \textsuperscript{73} Lerman, \textit{supra} note 1, at 211 tbl.1.
\item \textsuperscript{74} Id. at 237 tbl.3, (citing John Murawski, \textit{Should William Appler Be Disbarred: Ex-McDermott, Will Partner Claims Mental Illness Drove Him to Embezzle $1 Million from Firm}, LEGAL TIMES, Jan. 3, 1994, at 1).
\item \textsuperscript{75} Murawski, \textit{supra} note 74.
\item \textsuperscript{76} See Lerman, \textit{supra} note 1, at 249 (citing Murawski, \textit{supra} note 74).
\end{itemize}
C. Fear of Death

Another cause of materialism is fear of death. Some research posits that "conspicuous consumption is a direct result of the uniquely human awareness of mortality and the pursuit of self-worth and death transcendence that this awareness engenders."\(^7\) Since we are smart enough to know that we are alive and that we all will die, we all scramble around in various ways to reassure ourselves that we can postpone death, at least longer than most people. We aspire to achieve some variety of survival beyond our own deaths — for example, by acquiring substantial wealth and property.\(^8\) Materialism may be in part a universal response to the inevitability of death, but it seems that people fear death in differing degrees. Those who are more fearful manifest "enhanced feelings of greed, or the desire to acquire more than other people."\(^7\)

D. Fear of Loss

Related to fear of death is fear of loss. Another trigger of greedy behavior is the fear of losing whatever one has acquired.\(^8\) If a person is secure about the possession of that which he values, he may be less inclined to obsessively acquire more as a hedge against loss. Professor David Levine explains that "greed expresses the fear of loss, and the effort to defend against it. The greedy person is constantly aware of the threat of loss, and because of this is driven to attempt to take from others lest they take from him first."\(^8\)

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77. Sheldon Solomon et al., Lethal Consumption: Death-Defying Materialism, in PSYCHOL. & CONSUMER CULTURE, supra note 10, at 128. "[T]he notion that the urge to splurge is fundamentally defensive death denial above and beyond the quite legitimate pursuit of material comfort and aesthetic pleasure is supported by both the historical record and contemporary empirical research." Id. at 134. This analysis builds on the work of Ernest Becker, author of The Denial of Death, among others.
78. A partner in a law firm where I was once an associate captured this idea in his frequent reminders to his co-workers that "whoever has the most toys when he dies wins."
79. Solomon et al., supra note 77, at 138.
80. Id.; Levine, supra note 14, at 132.
81. Levine, supra note 14, at 132.
E. Changes in the Legal Profession That Cause or Are Caused by Growing Materialism

The structure of law firms has shifted in recent decades in ways that might make any sensible lawyer feel financially insecure. Fifty years ago, partnership in a law firm was akin to tenure in a university (back when tenure meant lifetime job security). A lawyer was likely to spend his whole career in a single firm unless he left to become a judge, a politician, or to go into government service. These days, individual lawyers and groups of lawyers change firms regularly, sometimes in pursuit of increased income. Large firms take over smaller firms and merge with other large firms. All this movement makes it less likely that a lawyer will have long-term collegial relationships with the same lawyers in the same institutions. These days, it is not uncommon for a partner to be asked to leave a firm where he has spent decades if his partners conclude that he is not generating enough income. This trend in private law practice rewards entrepreneurs and hard workers, but punishes those who are more interested in service than fees. As a result of the greater fluidity and lesser stability in law firms, some lawyers are anxious about losing their positions in their firms and their incomes. Some lawyers may react to such situations by becoming more materialistic.

The increased mobility of lawyers in private practice may be motivated in part by a desire for higher income, but the mobility itself may cause lawyers to become more selfish and greedy. Psychologists have noted that “an individual’s identification with a group significantly influence[s] selfish or unselfish behavior.” One study demonstrated that when members of a group anticipated a continuing association among them, “there was a greater degree of fairness in allocation

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84. Cf. Leigh Jones, Pitfalls of Law Firm Retirement; Mandatory Rules Could Spark Suits, NAT’L L.J., May 23, 2005, at 1 (noting that many law firms have set mandatory retirement ages for partners and that some partners are filing suits against their firms challenging these rules).
decisions.\textsuperscript{86} The presence of stable, long-term relationships appeared to cause members of the group to be more altruistic.\textsuperscript{87}

There are other developments in the legal profession that may be both consequence and cause of greater materialism. Some lawyers who see the rising incomes of corporate executives and investment bankers want to keep up with their clients. As property values and school tuitions rise, many wealthy people, including many lawyers, feel strapped for resources. However, the most important causes of increased materialism among lawyers are the same social forces which have precipitated an upswing in materialism all across American society.\textsuperscript{88}

IV. HARMS CAUSED BY GREED

In addition to understanding the causes of greed, it is useful to explore the negative social and individual consequences of extreme materialism. Nikelly urges that those who suffer from excessive materialism are harmful to society and that they "create environments that are not conducive to the well-being of others."\textsuperscript{89} He urges that this disorder must be recognized and those suffering from it must be treated.\textsuperscript{90} Among the negative consequences of the pleonexic personality, Nikelly notes these: "[d]estroy the limits to materialism set forth by the moral principles of religion, education, and culture . . . [and d]evelops an inequality that misdirects production toward private luxuries instead of meeting more urgent needs."\textsuperscript{91}

A. Dishonesty and Corruption

Some extreme materialists become so consumed by their desire to acquire more material things that they may descend into criminal

\textsuperscript{86} Id. (citing Jay R. Greenberg, Effects of Reward Value and Retaliative Power on Allocation Decisions: Justice, Generosity or Greed?, 36 J. OF PERSONALITY & SOCIAL PSYCHOL. 367-79 (1978)).
\textsuperscript{87} Id.
\textsuperscript{88} For example, I recently noticed a small ad in the Wall Street Journal that read "If you are Wealthy or Aspire to be, Subscribe to: The Wealth Report," which was described as providing "very timely information on recent developments and trends of topics affecting the high net worth market." WALL ST. J., Sept. 15, 2005, at A6.
\textsuperscript{89} Nikelly, supra note 22, at 255.
\textsuperscript{90} Id. at 255-56.
\textsuperscript{91} Id. at 256.
misconduct to acquire more money to buy more things.\textsuperscript{92} Some of them, like Harvey Myerson\textsuperscript{93} and Lynn Boyd Stites,\textsuperscript{94} draw numerous other lawyers into their criminal activities, damaging the integrity and often destroying the careers of other lawyers.\textsuperscript{95} Some of them become managing partners or attain other positions of leadership in their law firms and harness whole organizations in the service of their acquisitive addictions.\textsuperscript{96}

For lawyers in particular, it is not so difficult to increase one’s income through dishonest billing practices. An associate who knows that she will get a good bonus if she bills 2,000 hours, but a much better one if she bills 2,400 hours, might achieve the desired income goal through slavish devotion to her work. Alternatively, she might turn to a more approximate method of recording her time to produce the desired number of billable hours. Once this lawyer learns that she can get away with padding time records, it is only a short distance to backdating memos, forging signatures, presenting false testimony, or hiding documents.

Law firms that demand high production of billable hours without providing training and oversight to ensure honest billing practices are tacitly fostering a decline in lawyer integrity. Such demands harm clients who may be overbilled and sometimes underserved, cause financial and reputational harm to the law firm, and cause immeasurable harm to the legal profession. Most profound is the harm to society, which needs a reliably honest legal profession to preserve the rule of law and to guarantee access to justice.

\textsuperscript{92} See Lerman, supra note 1.

\textsuperscript{93} Harvey Myerson was one of the greediest lawyers of them all, flaunting his extravagant lifestyle and bullying other lawyers into falsely billing more time to increase the fees charged to his clients. In 1992, he was sentenced to seventy months in prison. He was disbarred in 1998. See Lerman, supra note 1, at 211 tbl.1.

\textsuperscript{94} Id. at 300 app. A.

\textsuperscript{95} Stites was a solo practitioner in Los Angeles who eventually was sentenced to over twelve years in prison for a billing fraud scheme through which he stole between $50 and $200 million and in which twenty-five other lawyers participated. Id. Harvey Myerson similarly directed other lawyers in his firm to engage in falsely billing more time to increase the fees charged to his clients. Id. at 349 app. M. Myerson is reported to have said to one of his partners “if you can’t get the bills where I tell you to [i.e., up to the right total amount], I’ll find people who can.” Id. at 237 tbl.3 (citing Patricia Hurtado, \textit{I Was Possessed}, NEWSDAY, July 28, 1992, at 75). The Myerson affair led to disciplinary action against five other lawyers who practiced with Harvey Myerson. Id. at 349 app. M.

\textsuperscript{96} Of the sixteen crooked lawyers whose cases I examined in Lerman, supra note 1, five were the managing partners of their firms. Two others were managing partners of branch offices of their firms. Three others were heads of departments or practice groups in their firms. Id. at 215.
B. Unhappiness

Social scientists have found that the least materialistic people tend to be the most satisfied with their lives, and more materialistic people tend to be less satisfied. Materialistic people report satisfaction with their lives if their acquisition of wealth does not displace other satisfying interests and activities. A materialistic person can be happy if he is satisfied with whatever material possessions he has. "The problem with materialism," psychologist Emily Solberg and her colleagues urge, "may be that this is rarely the case." "It is always possible to have newer, better and more goods, rendering material pursuits ultimately unsatisfying." Another barrier to being a "happy materialist" is "that working toward material goals is less rewarding in the moment than working toward other goals."

While some materialistic people may be happy people, those who become obsessional workaholics are likely to be unsatisfied. Money and things are not intrinsically as satisfying as love, friendship, good food, travel, literature, art, theater, and so on. Psychologist Tim Kasser urges that people whose lives focus centrally on external goals (such as acquiring things, impressing people, earning awards, etc.) report less satisfaction with relationships and more psychological difficulties than do other people.

When the partners at a firm become afflicted by a passion to increase their incomes, they and everyone else at the firm suffer. The lawyers are expected to bill more hours, which means working even longer hours, having even less time for friends, family, exercise, health care, and other things. Young lawyers at firms with high annual targets become workaholic zombies. They forget that they used to be interested in other things besides working. Their personalities flatten out. They are less likely to have time for close relationships.

97. See id. at 225-29.
98. DeAngelis, supra note 16, at 52 (citing David G. Myers, The American Paradox: Spiritual Hunger in an Age of Plenty (2000)).
100. Id.
101. Id.
102. Id. at 45.
103. Id. (citing Professor Edward Diener, who reports that research shows that "'getting and spending' – can promote unhappiness because it takes time away from the things that can nurture happiness, including relationships with family and friends.").
104. Id. (discussing Tim Kasser, The High Price of Materialism (2002)).
C. Widening the Gap Between the “Haves” and the “Have-Not”s

Perhaps the most disturbing harm caused by greed is that the wealthy who pursue ever greater income grab resources that should be distributed across society and escalate the ever-increasing discrepancy between the “haves” and the “have-nots.” Wealth grows increasingly concentrated in the hands of a tiny percentage of the population, while billions live in poverty. One study on materialism points out that:

The richest 200 people in the world have a combined income equivalent to 41% of the world’s population. According to the UN, an annual contribution of 1% of the wealth of these 200 people would be enough to give free access to primary education to every child on the planet.

Even leaving aside the super-rich, “the average American uses 115 times more paper and 227 times as much gasoline as the average citizen of India. This level of consumption is beyond the carrying capacity of the earth and threatens the integrity of [all natural resources.]”

There is no defined, finite pool of resources to be divided up, nor is there a causal link between the construction of a 9,000 square foot mansion by one law firm partner and the descent into homelessness of another family in that community. Still, there is something wrong with a society in which the rich (including a large group of lawyers) keep getting richer, and the poor keep getting poorer. Given this trend, those who are more affluent should take some responsibility for equitable redistribution of wealth.
Franklin Roosevelt said in his second inaugural address that "[t]he measure of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little." These days, society is moving rapidly in the wrong direction. Many of the most powerful members of the legal profession, who should be setting an example as leaders of their communities, are themselves in the grip of a collective materialism that is damaging the legal profession and the society it supposedly serves.

If lawyers aspire not just to the narrow, role-bound ethics embodied in the ethics codes, but to living lives of integrity and service to others, we should consider whether it is wrong for some people to be so wealthy when so many are utterly destitute. Some lawyers try "to be of use" by representing clients pro bono, by doing bar association work, or by volunteering at their children's schools. Although the gap between rich and poor is not the exclusive responsibility of lawyers, it is arguably hypocritical for lawyers to do a modest amount of pro bono work while simultaneously striving to move their six-figure incomes to seven figures.

D. Inflation of the Cost of Legal Services

Most legal services in America are no longer delivered to individual citizens; the primary clients of the legal profession are corporate entities. Many different market factors have drawn the legal profession away from service to individuals and toward service to institutions. As of 1998, the average hourly rate for lawyers was $180, and the average hourly rate of a partner in a large law firm was $250. Lawyers billed an average of over seven hours a day. At these rates, a relatively minor legal project could generate tens of...

whose website explains that “Responsible Wealth is a national network of businesspeople, investors and affluent Americans who are concerned about deepening economic inequality and are working for widespread prosperity. Our three primary areas of work are tax fairness, corporate responsibility and living wages.” See Responsible Wealth: A Project of United for a Fair Economy, http://www.responsiblewealth.org/ (last visited Sept. 23, 2005).

111. Id.
112. Id. at 957.
113. Id.
thousands of dollars in billable hours.\textsuperscript{114} In the 1990s, the hourly rates of large firms increased between 3.6\% and 7.3\% per year.\textsuperscript{115}

One obvious factor in the steady increase of the price of legal services is the aspiration of partners in law firms to increase their incomes. One consequence of this development is that fewer and fewer individuals can afford to obtain legal advice and legal services, even when they most need legal assistance.

\textbf{E. Greedy Lawyers Have Greedy, Needy Children}

Consider the children of greedy lawyers. Assume that both mom and dad are partners in large firms who each bill in excess of 2,000 hours per year. These parents have no choice but to “outsource”\textsuperscript{116} much of the work and play of childrearing to others. Their children grow up with the knowledge - tacit or otherwise - that they are less important to their parents than their parents’ work, or their parents’ wealth acquisition. If the parents work in firms that - like so many - do not welcome children at the office and are institutionally unfriendly to disruption of work for any reason, the parents may be unable to break loose to do a little quality parenting, even when it is most needed. Those children will be psychologically harmed by their parents and their parents’ law firms, and may pass on the same parental vacuum to their own children. Some of those children may try to fill the emotional void by acquiring a collection of Kate Spade handbags, a series of ever more elaborate gaming systems, or some other expensive things,\textsuperscript{117} but objects cannot substitute for parents.

\textbf{F. Erosion of Professionalism}

One casualty of the increasing materialism among lawyers is the professionalism and institutional ties of at least one generation of lawyers

\textsuperscript{114} Id. at 957.
\textsuperscript{115} Id. at 958.
\textsuperscript{116} Tori DeAngelis uses this term to show how the consumer culture infects people’s private lives in this way. DeAngelis, supra note 16.
\textsuperscript{117} See Kasser et al., supra note 57, at 18. They emphasize this point, asserting that “market capitalism strikes at the heart of family structure, decreasing resources that provide for quality caretaking and breaking apart a sense of relatedness with one’s . . . family and community . . . . [I]ess attention and nurturance provided to children produces greater insecurity, which in turn increases the likelihood that they will develop an MVO.” Id.
coming into the profession. Associates in large firms either accept their fate to be billing machines, give up their lives and interests, and devote themselves to income generation, or they leave the firms that hired them, looking for more humane places to practice law. Along the way, these associates fail to establish long-term mentoring relationships or to get the training and supervision they need to become seasoned practitioners.\textsuperscript{118}

Greed has dragged some lawyers and law firms further and further from the ideals of service to others, delivery of justice, and adherence to the highest standards of integrity. Some firms are unsupportive of lawyers who want to do more than a token amount of pro bono work because any public service activity competes for time with the omnipotent billable hour.

V. WHAT CAN THE LEGAL PROFESSION DO TO STEM THE TIDE?

To reduce the incidence of extreme materialism among lawyers, law schools, legal regulatory institutions, and law firms should foster ideals of professionalism, service, and work-life balance and should alter policies that propel law students and lawyers to treat wealth acquisition as the primary and paramount goal.

A. Law Schools

Law schools are the gateway to the legal profession. They introduce students to the values of the profession. Law professors can either foster or discourage materialism in their students. A professor whose hypotheticals feature lawyers for whom all strategic decisions in representing clients are informed by whether it will increase or decrease their fees is telegraphing to his students that money is of paramount value.\textsuperscript{119} By placing the acquisition of money at the center of legal decision-making, these professors convey to law students that making money is the only measure of success among attorneys.

\begin{footnotesize}
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\item \textsuperscript{119} Lisa G. Lerman, \textit{First Do No Harm: Law Professor Misconduct Toward Law Students}, 56 J. Legal Educ. 86, 92-93 (2006).
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Institutions that participate in regulation of lawyers should assist in reducing the growth of extreme materialism among lawyers. Lawyers caught stealing from their clients and their partners should be disbarred and criminally prosecuted.\textsuperscript{120} Clients should continue to monitor the billing practices of the firms that provide legal services. Malpractice insurers should continue to educate practicing lawyers about the liability risks of protecting rainmakers who generate millions through dishonest record-keeping. Bar counsels should become more engaged in the regulation of elite lawyers. They should acquire the funding and expertise needed to prosecute disciplinary cases against lawyers in large law firms. They should insist on compliance with the requirement to report misconduct of other lawyers and should seek sanctions against senior lawyers who fail to supervise the ethical behavior of subordinate lawyers.\textsuperscript{121} Bar regulators should consider giving more substance to the requirement that fees for legal services be “reasonable.” All these and other such changes would help to support a climate in which wealth acquisition is not the primary goal. But so long as large law firms keep working to generate millions per partner per year, the rising tide of lawyer materialism will continue to swell.

C. Law Firms

Law firms are perhaps the primary contributor to the growth of lawyer materialism, so changes in firm culture are of critical importance. Firms should abandon billing targets, reward public service work, support lawyers who seek leave or part-time work to fulfill family obligations, and re-institute mentoring. Firms should train lawyers to bill their time honestly even if the total number of hours billed is 1,500 instead of 2,000. They should look after partners whose income generation is reduced by advancing age or extensive public service activity.

The bottom line is that lawyers need to pull back from wealth acquisition as a primary goal. As Sheldon Solomon and his colleagues

\textsuperscript{120} Criminologists tell us that while law enforcement may have limited impact on destitute people, middle and upper-class people are often deterred from wrongdoing by seeing others punished for similar wrongdoing.

\textsuperscript{121} In jurisdictions with rules formatted as the Model Rules of Professional Conduct, this would mean enforcing Rules 8.3 and 5.2.
put it, "[w]hen our desire for money is for the sake of money, we become slaves to the market to the detriment of our psychological well-being."\textsuperscript{122}

John Maynard Keynes envisioned this possibility for society in 1932:

The love of money as a possession - as distinguished from the love of money as a means to the enjoyments and realities of life - will be recognized for what it is, a somewhat disgusting morbidity, one of the semi-criminal, semi-pathological propensities which one hands over with a shudder to the specialists in mental disease.\textsuperscript{123}

Solomon urges that "societies must develop economic institutions, even a culture, that cultivate and facilitate the expression of both the basic tendency for humans to pursue their own self-interest . . . and the concurrent desire to be a member of a community."\textsuperscript{124} He points out that "the United States is perhaps the most imbalanced of all societies because it is so focused on the mythic value of individualism . . . . Americans may be the only people who widely embrace a 'dog eat dog' attitude regarding their own ingroup."\textsuperscript{125} One manifestation of this peculiarly American selfishness is the prevalence in large law firms of an income division policy described as "eat what you kill."\textsuperscript{126}

Experts on materialism urge psychologists to help others to recover from materialism by understanding the genesis of their own materialism and by participating in educating others about the lack of correlation between wealth and happiness and the risks to a person's well-being posed by adopting materialistic values.\textsuperscript{127} So, too, members of the legal profession need to step back from the relentless quest to expand the bottom line and to help others in the profession to find their way back to more balanced and more satisfying lives.

\textsuperscript{122} Solomon et al., \textit{supra} note 77, at 141.
\textsuperscript{123} Id. at 142 (citing \textsc{John Maynard Keynes}, \textit{Essays in Persuasion} 369 (1932)).
\textsuperscript{124} Id. (noting that this idea was propounded in 1776 by Adam Smith in \textit{An Inquiry Into the Nature and Causes of the Wealth of Nations}).
\textsuperscript{125} Id. at 143.
\textsuperscript{126} This common moniker used to describe a jungle-quality policy on division of profits among law partners became the title of a fascinating case study. \textit{See} \textsc{Milton Regan}, \textit{Eat What You Kill} (2004).
\textsuperscript{127} Kasser et al., \textit{supra} note 57, at 24.
Many bar leaders and other authorities talk about the urgent need to scale back the number of hours that lawyers in private practice are expected to bill because high billing targets tacitly encourage dishonesty and ruin the lives of thousands of lawyers and their families. Much less often does anyone urge lawyers to decide to earn less money. In a recent bar journal column, however, Steve Briggs, President of the Colorado Bar Association, opined that “reduced earning expectations” is the key to solving the many pernicious problems caused by unrealistically high billable-hour demands. He observed:

Firms that choose this courageous course must convince partners and associates that they will, in the end, gain more in personal satisfaction than they will lose in annual income. Across the board salary reductions must be accompanied by reduced expectations for billable time so the lawyers will have more personal time.¹²⁸

Briggs noted that this proposal might not be “realistic,” but he urged that the widespread unhappiness of lawyers in private practice and the high rate of alcohol and drug abuse may have reached a level at which lawyers are “ready to face the real culprit in our current legal and life malaise: unrealistic billable hour expectations.”¹²⁹

David Levine posits that to reduce the rising tide of greed, institutions should encourage expression of self-interest (in other words, income-generating behavior), but should protect employees against profound loss to reduce the employees’ preoccupation with fear of loss.¹³⁰ This suggests that law firms, rather than asking less “productive” partners to leave the firm, might retain those partners but at a reduced level of compensation. Better yet would be to establish a compensation system that rewards mentoring, ethics advice, pro bono work and community service along with income-generating work. This would reduce the firm’s “profits per partner,” but would reduce “fear of loss.” This would encourage professionalism and public service and might interrupt the escalation of lawyer materialism.

¹²⁹. Id.
¹³⁰. Levine, supra note 14, at 139.
Another question is about how firms measure "productivity.” If the yardstick is exclusively or predominantly one of income generation, then all behavior that increases the number of hours billed is rewarded, and all other activity is punished. Some lawyers who do extensive amounts of public service work do not generate as much income for their firms as others. Some law firms have moved toward “counting” some number of pro bono hours as if they were billable hours. This is a positive step, but more dramatic changes are needed to restore and nurture a culture of professionalism. Firm managers must eschew excessive materialism and scale back their collective income aspirations.

The societal problem of widespread greed may have to be solved one person at a time, one organization at a time, one profession at a time. Despite the low esteem in which lawyers are held, people still look to lawyers as role models. If some members of the legal profession are able to curtail their own income expectations and persuade others to do so, they will set an example, for young lawyers and for others in their communities.