THE CITY UPON THE HILL

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> " . . . . a cruel and shallow money trench, a long plastic hallway where thieves and pimps run free, and good men die like dogs. There's also a negative side."

Dr. Hunter S. Thompson wrote those words about "the music business." Many people think they apply as well to the practice of law.

You, reading this essay, may be pleased with your work-life in the legal profession, or if you are not yet a lawyer, with the prospect that lies ahead. You may be satisfied with what you understand to be the state of your profession. If so, perhaps you will not want to read on, although I hope you will. I have some ideas to share with you.

I am speaking to you: the associate who feels alienated, unfulfilled, anonymous; the partner who wonders what has become of her image of how law could be practiced at this time in her professional career; the law student who mournfully surveys the career services postings and wonders how he will pay the law school debts and still make the difference that he came to law school to make. I am even speaking, perhaps in a more challenging way, to those who assume that the legal profession as a whole is irreversibly committed to law as a business, directed by those seeking financial rewards and on behalf of those who already have achieved them.

The book of which this essay is a part is built, to some extent, upon assumptions that I do not share. I understand that in the age of mega-firms, and the decline of personal relations in the practice of law, alienation and anonymity are inevitable. What sense of literary style, or self-expression, can one detect in a set of 100 interrogatories, ground out by an associate who must bill at least 2500 hours per year in order to have any chance of making partner?

I reject the assumption that once upon a time there were lawyers who were public citizens as much as they were advocates and scriveners, but that today this public function is eclipsed by the way that law is now practiced. I reject the idea that "boutique" law firms are "outliers" in the profession. I remember and reiterate the story of James Otis, with whom John Adams and others litigated the illegality of British searches and seizures in 1761. Of Otis's advocacy, John Adams wrote "then and there was the child independence born." I remember Andrew Hamilton's defense of the colonial newspaper editor John Peter Zenger, whose acquittal "was the morning star of that liberty which subsequently revolutionized America," according to Governeur Morris who signed the Declaration of Independence. Right now, the same rights of privacy and free expression are under attack, and lawyers are called upon.

I accept the reality around us. Funding for legal services programs is unforgivably low. Public defender and appointed counsel systems are under financial and time pressures that make representation of the accused a cruel joke in many parts of the country. Congress has legislated limits on legal services offices that restrict the kinds

of services that those lawyers can offer. Law firms are studying "business models" and "best practices" that tend to crowd out professional ideals such as pro bono service. Law graduates who can find jobs in the legal services sector will face more difficulty than their private practice peers in repaying law school debt, unless they are lucky enough to graduate from a law school that has a debt-forgiveness program.

Numbers tell a part of the story. Median law student educational debt increased by 59 per cent between 1997 and 2000. In 2000, median law school debt was $84,400. In a survey of over 1000 law school graduates, 50 per cent reported graduating from law school with $75,000 in debt while 20 per cent carried debts of over $105,000. More than half of the survey participants had additional debt from their undergraduate education.

Among those respondents entering government work, 58 per cent carried debts between $55,000 and $105,000. Lawyers entering public service positions were even more likely to carry high debt burdens: 64 per cent of entering legal service attorneys; 61% of future public defenders, and 67 per cent of future state or district attorneys completed law school with debts between $55,000 and $105,000. With a median debt amount of $84,400 for law school, the typical young attorney will spend approximately $950 per month to repay loans. A lawyer graduating with more than $100,000 in debt will make monthly payments of more than $1000 per month. High debt loads compared to low salaries prevent many young attorneys from entering public service. Sixty-six per cent of survey participants stated that law school debt kept them from considering a job in the public or government sector.

The median salary for first-year associates working in private practice ranged from $67,500 in firms of 2-25 attorneys to $125,000 in firms of more than 500 attorneys. The median first-year salary for survey participants was $100,000. In large urban areas, the median starting salary for first-year associates in large firms (over 251 attorneys) was $125,000.

In sharp contrast, the median starting salary in 2001 for attorneys entering public interest jobs was $35,000. Attorneys entering federal government jobs made a median salary of $45,000 while those working in state or local government earned a median income of $41,000.

I do not know of any study that has sought to correlate high debt rates, low public interest salaries, and access to legal representation for low-income populations. As a law teacher who also carries a heavy docket of pro bono cases, and as a participant in bar activities related to pro bono representation, I have plenty of anecdotal evidence. One can reasonably conclude that high law school debt combined with lower starting salaries prevent many young attorneys from entering public interest jobs. In turn, there are fewer qualified attorneys to serve low-income clients. According to a study conducted by the Legal Services Corporation, for every client who requested help from a legal services-grantee, one potential client was turned away due to lack of resources.

The number of attorneys providing legal services to low-income individuals is significantly lower than the number of attorneys for the general population. There is one legal aid attorney for every 6,861 low-income people while in the general population, the ratio of attorneys is approximately one for every 525 people. The general population has 13 times more attorneys providing it with civil legal services than the low-income population, and this figure does not take account of the skewing effect of private attorney service for wealthier individuals and entities versus that for middle income people.

Some people look at these numbers and events and describe them in the passive voice, as though impersonal forces have wrought inevitable changes in the way we must live our professional lives. I regard this way of seeing things as disempowering, in any context.

Ascribing to "the bar" or "the profession" a personality portrays events that happen to people "naturally-occurring," rather than the predictable, controllable results of individual and group action. The focus on "the bar" helps to generate a feeling of powerlessness among those not in positions of power. A commentator in the French newspaper Liberation, speaking of a scandalous recent case, notes that the wrongful detention and conviction of defendants is characterized by the government and media as a "judicial catastrophe" as though it were an act of god or a natural disaster, without intentionality. From there comes a fatalistic attitude preached by the powerful in the form "hey, that's the way it is, you better get used to it," and by the powerless as "well I guess I better go along in order to get along."

Look around you. The ABA Litigation Section conducted two informal polls in 2005. In one survey, 48% of lawyers reported that, in their firms, they are encouraged to take on pro bono work and given credit for it. 12% say they are encouraged to do pro bono work but not given credit for it. 40% say they are neither encouraged nor given credit. In another survey, 79% said that their current practice did not match the expectations they had in law school, while 21% said that it did. Apparently, most of the 79% felt tyrannized by the billable hour and chagrined that the ideals that led them to enter the profession had escaped them.

I pause here to note one comment from the pro bono survey, "Pro bono is worthless and a waste of time. It is also economically inefficient." That view has been expressed by those who say that the poor's legal problems are best handled by lawyers who only make $40,000 a year, and that wealthier, higher-paid lawyers who want to help should send money to legal services programs. I don't expect to convince anybody who shares that view. If you think poor people's problems are less important because their lawyers don't get paid as much, or that private lawyers helping poor people wastes time, then your view of the profession seems wedded to a financial calculus. Or maybe you are locked into a certain way of practicing law and are happy where you are. A little later, I will analyze this view that poor people's problems are fundamentally different from those that rich people have.

Several years ago, I was appointed by the court to represent a criminal defendant in a complex case that promised to present challenging issues and to require a significant time commitment. I asked a partner in a major law firm to join me in the case. This lawyer declined, saying that the firm could not accept this lawyer's participation because the Criminal Justice Act fee of $90 per hour (actually $60 per hour on a current basis and then $30 per hour additional when the case is over), was simply not enough compensation. That is, the firm and this lawyer would not accept the overall diminution of firm revenues involved in becoming counsel in such a case. Yet, this was the sort of case that would and should call out the very best legal thinking and legal work of which the profession is capable.

Of course, for every such tale there are stories of lawyers in private practice accepting major challenges in pro bono and appointed cases. However, you and I know that there are considerable financial and career disincentives to that kind of practice.

I speak now of what you have seen with your eyes and experienced in your work. Law firm partners are merging, forming multi-city and multi-country entities that defy any effort to create meaningful personal relations among those who work for the same entity. With impersonality come partner decisions to focus on profitability and productivity. Young lawyers report billable hour expectations of 2000, 2500, even 3000 hours if one expects to "make partner." Given such expectations, the lawyers in the 12% who can do pro bono but don't get credit for it are under imposed pressure little different from that experienced by the 40% who are neither encouraged nor given credit.

I don't think you can have what one may properly call a "life" in an environment that imposes workloads such as those experienced by young lawyers today. And to the extent that the partners – driven by the desire for financial reward, by peer pressure or whatever – work in that mode, the same observation goes as well. I repeat, if this is your schedule and you are happy with it, fine. But the Litigation Section informal survey suggests you are in the minority. So if you share with me, at the least, a sense of unease at the way things are for you and your profession, what shall we do about it?

First, we must have confidence in our own sense of what justice is about. At a minimum, justice requires that access to the forums where rights and obligations are determined be open to all on some reasonable basis. This thought is captured, to a great extent, by the mission statement of Washington College of Law, where I teach: "Engaging the Community, the Nation and the World through Legal Education. This mission is grounded in three main ideas: law should be based on values of human dignity and respect; law represents an interaction between people and their environments; and law schools have a critical role to play in teaching students to shape their world."

The values of human dignity and respect cannot exist in conditions of gross inequality. They cannot exist when powerful leaders feel free to deny that fundamental norms prohibiting aggressive war, torture and accountability do not apply to them. They cannot exist when the working conditions of a profession assertedly based on justice actively discourage concern with whether and how justice is achieved.

You may not share all of my views. You may define and express your sense of unease differently. No matter. Indeed, the search for meaning, though it inevitably takes place in a social context, is always personal. Ten years ago, I wrote:

> I will try to derive truths from the past and present, and from a sense of responsibility to those who will come after, but I am making decisions for myself and not as an apostle of others or with a claim to lead. If the ideas appeal to you, there is plenty of work to do and all are welcome.
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> The sense of hesitation, and of personal quest, is also evoked by [the late Jacques] Derrida in his lectures. He begins [in *Spectres de Marx*] with a translated passage from the first act of Hamlet. Hamlet sees the spirit of his father, and learns how and why his father was murdered. "The time is out of joint," Hamlet says, "O curs'ed spite, That ever I was born to set it right!"
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> Derrida conjures with the spirit, and with various translations, of this passage to show us that thinking of justice drops us into the stream of history, the flow from past to future. In the past are the events that put time "off its hinges," or that "turn the world upside down." But to say that things are "wrong" implies that from that same past there is some idea of how things are "right-side up," or "on their hinges." This past-given sense, which is encompassed in an ideology

that we can study and know, is not simply about carpentry or gravity. It is about subjective but verifiable principles of human flourishing.

And then in the present is our action, which tends into the future, towards the "set it right." To make a personal commitment to that path is not to pretend to be Prince of Denmark. It is simply to have understood the text in a certain way, and to have drawn from it certain lessons -- as well as certain warnings about excessive or obsessive commitment.

This last observation is important. If the time is out of joint, the remedy is surely not to swing off one's own hinges, to become "unhinged." "And what if excessive love bewildered them till they died," Yeats wrote of the Easter martyrs, and again warned us that "Too long a sacrifice can make a stone of the heart." But the dangers are not, for me, a reason not to step into the stream.

These thoughts lead to the second point. As your sense of unease, of the time being out of joint, is personal to you, so must be your response to it. That response must not only address the conditions you find troubling, but your role in working to change those conditions. There is always an integral relationship between the task and the doer, and doing changes the doer as well as the object or event on which work is being done. This is but an instance of Heisenberg's principle that the act of observing or measuring changes the object being measured, for the process is interactive.

And so, the Prince of Denmark and Yeats's heroes ought better to have said, as in the phrase Derrida attributes to his anonymous questioner, "*Je voudrais apprendre à vivre enfin.*" Finally, I want to learn how to live. In typical Derrida fashion, he has chosen a verb – *apprendre* -- that can mean to learn, or to teach, thus acknowledging that the public side of our "living" provides an example to those who hear of or see us. When you are seen to take action, you begin to build your own "city upon a hill." That image comes from George Winthrop's eponymous book, written in 1630, setting out his hopes for the New World.

It is of course possible to seek and to influence change at the cost of one's own sanity and stability. Hamlet certainly found that to be so. Struggles against injustice sometimes, perhaps too often, consume the strugglers, who do not survive to see any meaningful change. We can try to avoid any such extreme personal outcome. To begin, let us see if we can learn how to live, in the fullest meaning of that verb. In this essay, I describe two paths to your own "city upon a hill."

Learning to live must begin with candid appreciation of one's current situation. If you are an associate in a mega-firm with mega-billables demanded of you, you are in fact a wage worker whose asserted professional status is being used chimerically. The firm's business model is in fact little different from what you would find in a profit-centered entity that markets petroleum products or makes automobiles. The analogy has some painful parallels – the corporations engaged in those activities are notoriously unsettling their workers' lives in order to maximize profit.

Your personal response can take many forms, depending on where you live, the kind of law you practice and your tolerance for risk. Look outside. There are jobs in legal services and public defender offices. There are jobs that are nominally "non-lawyer" but for which you are well-suited. For example, in many communities there are substantial numbers of immigrants from Latin America. In response to the legal, family, political and social problems that these immigrants face, there are now nonprofit social

service agencies. In Chatham County, North Carolina, just south of Raleigh-Durham-Chapel Hill, the Vinculo Hispanico has an executive director who is paid $45,000 per year. That position is, at this writing, vacant, as are similar positions in other counties. If you worked at that job for three years, you would develop a network of relationships that would permit you to set up your own law practice or join a small law office.

There are other avenues out of your law firm. Every month, the District of Columbia bar counselor talks to five or six people about setting up in solo practice. Twenty years ago, solo practice involved higher overheads than it does today. You needed square feet for a library; today we go on-line more often. Today, there is word processing and other software that lets you do more of your own work. You can make a contract with an office-sharing company. In sum, you keep a higher percentage of what you take in. You might, in short, do the arithmetic and decide you will join the large plurality of American lawyers who are in solo and small firm practice. In 2000, 74% of the approximately 900,000 attorneys in the United States were working in private practice. Of those in private practice, 48% were solo practitioners; 15% worked in firms of 2-5 attorneys; 7% in firms of 6-10 attorneys; 6% in firms of 11-20 attorneys; 6% in firms of 21 to 50 attorneys; 4% in firms of 50 to 100 attorneys; and 14% in firms of 101 or more attorneys. These numbers give you an idea of the possibilities.

These examples are ways of changing your life by getting up and going someplace else. Of course, you are never locked in to an option you have chosen. I know one lawyer who started out in a large firm, decided that the culture there was not for him, and went to the public defender. He had fun there, trying cases and learning the litigator's craft. A partner at a small litigation firm saw him working, and so hired this young lawyer. The young lawyer became a partner in the litigation firm, but after a few years yearned for a life with more public service and fewer long trips to distant trials. So he became a judge. The point here is not that everyone can become a judge, but that there are so many paths open in this profession of ours. Realizing that there are one, two, many paths open to you is the first step in your personal liberation.

Let us visit another possible path. You may decide not to leave your law firm. You may be a partner there, or on your way to becoming one. Influencing the culture of a law firm is a worthy challenge. The process is, I think, more difficult in this time of the mega-firm, and even more so if a firm has become "national." The Los Angeles office of a multi-city firm is but one outpost, and decisions about firm culture are more difficult to influence. Nonetheless, there are success stories out there. A vocal group of young partners and associates can make themselves heard.

You can begin right now to organize your workplace, with two interconnected goals in mind. One goal is to make working conditions better. The related goal is to rededicate the law firm to the important goals of our profession.

Who are your allies in this endeavor? You can seek support among young partners and associates. You can use your membership in bar groups to spread your message, seeking like-minded people in other law firms and in other parts of the profession. Look around for senior people who may share your values and goals. For example, many large firms have been hiring big litigation names as lateral entry partners or "of counsel" lawyers. These lawyers include those who have made a name in public service or in law teaching. They add luster to a firm's reputation, and help it to attract business. They may be willing to add their clout to your efforts.

Before taking your organizing too far down the road, you should define your goals. If you don't know where you are going, it is hard to know when you have arrived. What is it about the practice of this profession that drew you to it, and that you feel is now missing. What does professional satisfaction look like, for you?

Your list might include some or all of the following. First, you want to litigate, not just sit in the office and push litigation paper. You are, in some measure, a warrior. You also want time to reflect on what you are doing, where you have been and where you are going. Billable hour expectations of more than, say, 1800 per year, make that goal impossible. Long work days that stretch into the night corrode your relationships with family and friends. You have seen your colleagues cope with such pressures in harmful ways that may include substance abuse. After all, the adrenalin rush that fuels the litigator's spirit can also lead him or her to compulsive, addictive and ultimately destructive behaviors.

You may want your professional life to be about justice. If you are in private practice, you must pay the bills or contribute to doing so. I have been a partner in two law firms at different times, and have maintained a private practice of law in one form or another for forty years. It costs a certain fixed amount to put the key in the office door every day, to see that everybody inside is paid, and to pay all the vendors who are providing you goods and services. In the nature of law practice, the best-paying clients are in the private sector. Court-appointed work can pay your overhead in a small or solo practice, but few if any larger firms subsist by that means alone.

Inevitably, therefore, you will represent clients with whose social agenda you may disagree. As in any litigation practice, if you cannot find a level of generality with which to accept and defend your clients' goals, you have to move on to some other setting. This issue is by no means unique to large firm practice. If you are a public defender, you probably do not support murder, or theft, or drug dealing. Rather, you justify your noble role in the practice of law because you are defending the most important line the law can draw – between human freedom and the state-sponsored violence of incarceration and even death. That line involves defense of the idea of reasonable doubt and the obligation of government to respect fundamental procedural rights.

Your private sector clients are also seeking to vindicate their claims for justice through procedural and substantive rules of law. You must, in order to stay sane, be able to accept the range of results for which your clients are contending. It may be that you will tell the leaders of your law firm that there are certain kinds of cases on which you will prefer not to work. That is a permissible position, for nobody is entitled to your legal services except the client to whose case you are appointed by a court.

But let us assume that you have made peace with your firm's client base. You still want a significant role in seeking justice and professional fulfillment, as well as a workplace that respects your need to have a life – to learn how to live. I believe that you can and should have all that, and that it is in your law firm's and their clients' best interest to join you and your colleagues in that quest.

Yes, your law firm's best interest. In a labor dispute, which is what we are talking about here, it is often wise to tell management how the workers' proposals can help the company achieve sensible goals. A blunt formulation, of course, is "either you agree to some of this or we shut this place down." Gentler ways of seeing change are also possible.

Some years ago, I represented flight attendant labor organizations. Airline travel is a service industry in which customers have choices. Good labor relations translate into good attitudes towards work and towards customers. It is in management's interest to agree to flight attendant demands for good working conditions.

Can this sort of analysis work in the law firm setting? I think so. This book of essays is by and for litigators, so let's talk about some ways that litigation law firms, or even litigation "departments," might respond to the issues we are discussing. From discussing ways of seeing our work, we can consider ways of changing how we are being told to do it.

First, litigation costs too damn much because many law firms do it grossly inefficiently. Many of these inefficiencies arise from and are abetted by discovery abuse, loose pleading, and the problems of an underfunded system for administering what is called justice. Litigation done sloppily costs too much in part because clients will pay for it and there is little incentive to achieve maximum efficiency. I have done side-by-side comparisons that make this point. Consider a major white-collar crime investigation in which one or more defendants or targets are represented by a large law firm and others by boutique firms or even solo practitioners. All the lawyers do their job in their usual ways, and large law firm operates at a much higher cost than the other firms in the case. One should also observe the distressing number of instances in which large law firms encourage their lawyers to "churn" hours, and are caught inflating their bills.

I have been appointed counsel in huge criminal cases involving thousands of potential witnesses and millions of pages of discovery. I have made budgets and hired staff. From this experience, I have achieved my point of view, which you may call my prejudices if you like.

In our white collar case example, the small firm lawyers take home more money than the large firm lawyers because they have a smaller staff. In the appointed case example, we all get paid less than in a retained case.

So the first lesson of firm organization is either to have fewer people doing the work or to pay them less. I am not in favor of layoffs, and you needn't be either. So we need to face a major cause and consequence of litigation costing too much. The partners are making way too much money, and in many firms so are the associates. That's right, too much. The disparity between public sector/public interest employment and private practice compensation has widened considerably in the past thirty years. While it is true that young lawyers today have amounts of law school debt that are greater than ever, this mound of debt cannot alone justify the starting salaries that have for some time been standard in large firm hiring.

I know, this thought of less compensation may be galling to you. I tell you, however, that "learning how to live, finally" will probably involve asking first about maximizing your sense of personal accomplishment in your profession and only then considering how to maximize your income. Money is deceptive. It is a universal commodity. Subject only to a few legal limits, you can set a price on anything. In law school courses, we are taught about the cost-benefit calculation. How much should "the system" spend to guarantee a certain level of reliability. Remember the due process cases about pre-judgment seizure of household goods? Mrs. Fuentes' stove may not be worth much, certainly not as much as it costs to get a judicial order before seizing it, but without her stove she cannot cook dinner for her family.

And even those attachment/garnishment cases deceive us, because they deal with commodities that do have a monetary value. Have you ever been to a family court, where decisions about the well-being of children are made every day? There are many able, caring family court judges, but they almost all share one problem: They and their court staffs are overburdened and underfunded, as they struggle with a docket on which three-quarters of the litigants are without counsel. You could help cure those problems with money, but money would never be the measure of success. That is the nature of our profession, and I mean by the part of our profession that represents people in disputes and seeks to get justice for them.

The first step in your campaign is to recognize that meaningful change may require that everybody take home a little less money, or more broadly that money cannot be the measure of professional satisfaction. A law firm that seeks to maximize "profitability" and "productivity" as its principal goals will inevitably be a bad place to work, unsuited to developing a sense of professionalism. You will not, in such a place, learn how to live.

Thinking of "best practices" in terms other than per-partner compensation leads to better law practice and better client service, in addition to serving the workers' professional and personal goals. If your goals are to learn your profession and feel good about what you accomplish, you can find ways to do these things. If you are a young lawyer, you cannot expect to have a major responsibility in a mega-case. The skills to run such a case, and to do the "stand up" work, come with experience. If you do not have that experience, you probably want to acquire it. So one issue for your firm is organizing cases to see that young lawyers – and paralegals and others involved in the work – are meaningful participants who have a view of the entire case. Too many large litigation firms compartmentalize work and responsibility, and deprive young lawyers of the opportunity to participate in decisions in ways that help them learn. Even in the biggest case, young lawyers can learn their craft by taking depositions and performing other litigation-related tasks.

I have been lead counsel in complex civil and criminal litigation. A team, or holistic, approach that involves younger lawyers and paraprofessionals in the entire process gives better and more efficient client service. Such an approach contributes to professional development of all the participants. Therefore, your organizing effort in your firm can focus on "best practices" that are not profitability markers but rather enhance the quality of your work-life.

I understand that even relatively experienced lawyers in large firm practice may not have the opportunity to gain trial skills. The ABA Section of Litigation has sponsored valuable research into why the civil jury trial has been vanishing, and what must be done to make it less of an endangered species. On the criminal side, a congeries of problems make it hard for a defendant to get a fair trial. The system is organized around plea bargains made by often inadequate counsel.

These broader problems are a part of the malaise that affects your own situation. Unless you and others address them, they will become increasingly obdurate structural barriers to professional satisfaction. The profession as a whole, and you with it, is devalued by institutional pressures that deprive people of the chance to have their cases tried.

You can address the "vanishing trial" issue in a personal or firm setting, as part of your campaign to change the way you practice law. A client is a client. That is, listening to somebody's story and seeing how it can be a "story" in the sense of which trial lawyers speak when talking about the theory of a case, is at the heart of good lawyering. Learning to listen, and to translate a personal history into "law's story," requires practice as well as education and compassion.

A motion is a motion. Legal analysis is legal analysis. Some arrogant people say that the legal problems of the poor are so different from the high-flying kind of law they practice that poor people are best consigned to legal services lawyers. It is true that each field of law has principles and procedures unique to it, and that the adequate lawyer must take care to know those. However, in every case I begin by going back to what I learned in the first year of law school. That first year curriculum is designed to teach you two sets of skills. The first is to ground you in the basic substantive elements of our legal system – contracts, torts, property, procedure, criminal law, and perhaps a couple of others. The second is to instill a way of seeing, which is best termed deconstruction. In every case that has ever come my way, I have reverted to the basic substantive elements that lurk in its legal structure, and to this deconstructive way of seeing.

A trial is a trial. We argue the legal issues, we present and cross-examine the witnesses. We argue to the deciders, judge or jury.

In sum, it is wrong and silly to imagine that poor people have special types of poor people problems that are not worth the time of big-time lawyers. Beyond this, such a view rests on the demonstrably false assumption, discussed above, that justice can be understood solely or mainly as a cost-benefit calculus of dollars.

If you agree with what I am saying, then you and your firm need to talk about getting you and your colleagues into court. You gain invaluable experience. You may work with legal services or public interest lawyers who have insights to share. You learn how your decisions work out in the contest of litigation. Your firm gains prestige from the public perception that it cares about justice. Your firm gains because you are happier worker. You are also a more productive worker because you are learning your craft in ways that being sixth chair in a complex civil case cannot ever teach you.

And what about this "vanishing trial" issue? One way to stop trials from vanishing is to see that people are not priced out of the trial market. Shouldering the litigation load for legal services, civil rights, pro bono, public defender and other such programs is the most direct and effective way to revive the endangered trial species.

You and your firm, if you prefer, can also find complex pro bono litigation. Under federal law, legal services offices are precluded from bringing class actions and other types of impact litigation. This prohibition sweeps broadly across federally-funded programs. Even offices that do not labor under a formal prohibition may not have the resources to do big cases. The ABA Litigation Assistance Partnership Project matches law firms with the skills to take on complex cases with pro bono projects that need those resources. Major law firms have taken on post-conviction representation of death row inmates, and have even sent their lawyers to work with capital case trial defense teams. They have become involved in representing detainees and torture victims.

If you want to make specific proposals about how your firm can put its lawyers into pro bono service, you must do research. It is not difficult to find community organizations that are sources of good cases. Some of these organizations are designed

around litigation: defender services and the ACLU are examples. Others of them serve client communities that inevitably present legal problems.

As you think about pro bono and public service activity, you will quickly see that taking on a "small" criminal case and taking it to trial or settlement may require you to spend dozens of hours. A 75 hour per lawyer per year pro bono commitment is, realistically, meaningless if your objective is to have lawyers do the work in a way that serves the client and the lawyers' own professional advancement.

If this part of the analysis makes sense, you can now see a set of interrelated demands around which to organize. The firm should revise its compensation goals downward, to allow for significant pro bono involvement by partners and associates, who will use firm resources. The firm should recognize that its lawyers' professional development is well-served by significant pro bono involvement. The firm should recognize that excessive billable hour expectations may erode the quality of work, and certainly erode the quality of life of all concerned. The firm should adopt a team approach to litigation. All of these approaches are today being taken by law firms. In legal newspapers and magazines, you can find out which firms are using which strategies. You can join bar groups and committees and get their newsletters. You can see which firms and which lawyers receive public recognition for public service, and point to them as examples of good publicity for your firm.

In this brief essay, I have sketched just two paths you might take. As I was finishing writing, I read of Betty Friedan's death. She wrote "The Feminine Mystique" in 1963. Her book, and her championing women's rights, helped to start a movement that changed the face of many American institutions, including the legal profession. I graduated law school in 1966, and in our class of 313 were six women. Today half the law students, and 30.2% of practicing lawyers, are women. As I read the obituary articles, I was reminded of the opening words of Betty Friedan's book. She said in her preface:

> Gradually, without seeing it clearly for quite a while, I came to realize that something is very wrong with the way American women are trying to live their lives today.

I think that the same thing can be said, and is being felt, about what has happened to a great deal of law practice. I take the 79% figure in the Litigation Section informal poll as some proof of this assertion. But as we look back these more than forty years at what movements for change have done, there is reason not to despair.

Learn to live, first by understanding, then by expressing, and at last – *enfin* – by joining with others to redeem the promise that this justice-seeking profession is supposed to keep. And in that process, keep your own promises, to yourself and those close to you.