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# Building the Positive Law Firm: The Legal Profession at Its Best

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# Building the Positive Law Firm: The Legal Profession at Its Best

## **Abstract**

The 2008 financial collapse catalyzed sweeping changes in the legal profession that resulted in dwindling work for law firms and client demands for deep price discounts. But most law firms are proceeding as if it were business-as-usual despite significant evidence that their lawyers—plagued by mental health problems and job dissatisfaction—are not ready for the challenges of the future. Positive psychology and positive organizational scholarship—the science of how people and organizations thrive—can help guide law firm leaders to build thriving, positive law firms with engaged lawyers that are primed for the future. There is growing evidence that organizations that adopt a positive approach to business perform better on a broad array of measures, including profitability. This paper aims to outline a framework for building the positive law firm by 1) presenting evidence that the legal profession is not thriving, 2) outlining the evidence-based features that will characterize positive law firms, 3) discussing the substantial evidence suggesting that positive organizations perform better than their less vital counterparts, including on financial measures, 4) discussing the potential for positive law firms to become recruiting magnets for the Millennial generation, and (5) discussing future plans for continuing to build a positive legal profession, including the creation of a law firm well-being index. The future vision is of firms where lawyers feel purpose-driven, full of life, and fulfilled; clients feel well cared-for and valued; and communities are elevated by firms' contributions.

## **Keywords**

Lawyer, law firm, well-being, wellness, depression, resilience, positive psychology

## **Disciplines**

Business | Human Resources Management | Law | Social and Behavioral Sciences

Building the Positive Law Firm: The Legal Profession at its Best

Anne M. Brafford, J.D.

University of Pennsylvania

A Capstone Project Submitted

In Partial Fulfillment of the Requirements for the Degree of

Master of Applied Positive Psychology

Advisor: James O. Pawelski, Ph.D.

August 1, 2014

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The 2008 financial collapse catalyzed sweeping changes in the legal profession that resulted in dwindling work for law firms and client demands for deep price discounts. But most law firms are proceeding as if it were business-as-usual despite significant evidence that their lawyers—plagued by mental health problems and job dissatisfaction—are not ready for the challenges of the future. Positive psychology and positive organizational scholarship—the science of how people and organizations thrive—can help guide law firm leaders to build thriving, positive law firms with engaged lawyers that are primed for the future. There is growing evidence that organizations that adopt a positive approach to business perform better on a broad array of measures, including profitability. This paper aims to outline a framework for building the positive law firm by 1) presenting evidence that the legal profession is not thriving, 2) outlining the evidence-based features that will characterize positive law firms, 3) discussing the substantial evidence suggesting that positive organizations perform better than their less vital counterparts, including on financial measures, 4) discussing the potential for positive law firms to become recruiting magnets for the Millennial generation, and (5) discussing future plans for continuing to build a positive legal profession, including the creation of a law firm well-being index. The future vision is of firms where lawyers feel purpose-driven, full of life, and fulfilled; clients feel well cared-for and valued; and communities are elevated by firms' contributions.

### Dedication

I dedicate my Capstone to my husband, Daniel Sasse, who vowed with me 14 years ago to live a life striving toward *arête* and living up to our best selves. His unwavering support and relentless cheerleading gave me the courage to start a new chapter in my life, the first stepping-stone of which is this Capstone. We share the same vision of what the legal profession could be at its best and his experience, insights, and creativity helped shaped the direction of this paper.

Daniel shares the dedication with my parents and brothers who taught me the meaning of “life-giving.” They have cheered me on through every step of my life with high expectations, unconditional love, and lots of joy and laughter.

Finally, I also dedicate this work to a very special Millennial lawyer, Michelle Stocker. Young, dedicated professionals like Michelle drive my sense of urgency about reshaping the profession so that the next generation has greater opportunities to craft thriving lives as lawyers.

## **Building the Positive Law Firm: The Legal Profession at its Best**

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## Building the Positive Law Firm: The Legal Profession at its Best

**Introduction: A Positive Vision for Law Firms**

The “My-Life-Sucks-More-Than-Yours-A-Thon” (“MLSMTYA”) that plays out daily among lawyers provides a peek into current law firm values. The game is similar to a Your-Mama-Thon (in which comics trade barbs about their moms’ ugliness or heft) but much less funny. It is a competitive race to the bottom in which lawyers trade ever-worsening tales of sleep deprivation, mounting deadlines, and missed family vacations. At the same time, they watch as their talented colleagues flock to the exits after the MLSMTYA loses its luster. Given the sweeping changes overtaking the legal industry, perhaps it is finally time for lawyers to remodel the ideal by which they measure themselves.

The 2008 financial collapse catalyzed radical changes in the legal industry—especially for large law firms. The demand for sophisticated legal work is shrinking, corporate clients are demanding deep price discounts, unprecedented layoffs have occurred, and multiple firms with over 1,000 lawyers have folded. Commentators have gone so far as to predict the demise of all large law firms. In this new era, firms will need teams of highly engaged, energetic lawyers to compete successfully for the shrinking volume of work. The end of the era of huge salaries fueled by continual growth will mean that non-monetary incentives to anchor lawyers to firms will become increasingly important. In light of these realities, clinging to the practices that bred the MLSMTYA does not appear to be a wise strategy. Yet law firms appear to be doing just that.

In this paper, my aim is not to join the throng of critics bashing law firms for their pasts. My aim is to lure firms into the future with a better vision of themselves. I invite firms to realize their own capacities for growing into thriving organizations where lawyers feel purpose-driven, full of life, and fulfilled; clients feel well cared-for and valued; and communities are elevated by

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firms' contributions. My goal includes showing firms that they can relinquish their singular focus on short-term profits without becoming unprofitable. My central aim is for firms to feel the irresistible draw of the Positive, which is "what individuals and organizations aspire to be at their very best" (Cameron, Dutton, Quinn, & Wrzesniewski, 2003, p. 362).

To try to achieve that ambitious goal, I first briefly describe my 18-years of experience practicing law and the basics of law firm structure. I then outline the evidence showing that the legal profession is not currently thriving. Next, I set forth a blueprint for building a positive law firm, including features that will characterize aspiring positive law firms. Following that, I present evidence showing that positive law firms need not forego profitability. In fact, substantial evidence suggests that thriving organizations are more successful than their less vital counterparts, including on financial measures. I also discuss the potential for positive law firms to become recruiting magnets for the Millennial generation. Finally, I discuss some of my future plans for continuing the effort to build a positive legal profession.

Because my work experience is primarily with large law firms, they are my primary target audience for this paper. But the overarching message that organizations have the capacity to reshape themselves into places where people craft fulfilling, thriving lives in service to a purpose other than profit is fitting for any sized firm and any type of business organization.

### **A Profile of Practicing Law in Private Law Firms**

I was not among the many college graduates who found themselves in law school only because they could not figure out what else to do next. I wanted to be a lawyer since I was 12 years old. The day I received my law school acceptance letter in 1993 and the day that I walked across the stage in 1996 to accept my Juris Doctor diploma were two of the happiest days of my life. My vision was to make the world a better place. Because I did not think a job with a big

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corporate law firm fit this vision, I was resolute that I would *never* work for one. But things change. In 1999, my “BigLaw” journey began.

### **Personal Background in BigLaw**

“BigLaw” is legal slang referring to the largest 200 firms in the U.S. ranked by gross revenue in *The American Lawyer*, a popular legal trade publication. The top 100 firms often are referred to as the “Am Law 100” and the top 50 are the “Am Law 50.” The firm I joined in 1999 ranked in the upper echelon of those lists.

Over 15 years, I rose through the ranks as an employment litigator from associate, to non-equity partner, to equity partner, which I remained for the past seven years. An “equity” partner is a firm owner whose compensation is tied to firm profits. It represents the Holy Grail of law firm achievement. During my tenure, the firm grew to over 1,300 lawyers in 25 offices worldwide. For 2013, the firm ranked 12th in the Am Law 100 with gross revenue of about \$1.3 billion and average profits per partner of about \$1.6 million.

I worked very hard to earn those outward marks of success. But in April 2014, I walked away. I decided to pursue a Ph.D. in positive organizational psychology to become an advocate for the legal profession, whose biggest enemy appears to be itself. I continue to view law as a noble profession where people can use their talents and unique education to help others and to build a better world. Law firms are potential engines for personal and professional growth, where people can experience “flow” and a sense of belonging and mastery. They are places where people can connect with the higher purpose of helping to build thriving communities. This is what law firms can be at their best. But they generally have declined to accept the challenge.

### **Composition of Law Firms in Private Practice**

My 15 year career with BigLaw admittedly is not the typical legal career. Of the 1.2

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million licensed lawyers in the U.S., about 75% are in private practice (American Bar Association, 2013a; American Bar Association, 2013b). The majority of lawyers in private practice (63%) work for firms with five or fewer lawyers—nearly 50% are solo practitioners (American Bar Association, 2013b). By contrast, the Am Law 100 firms each employs between 400 and 3,700 lawyers (Internet Legal Research Group, 2011). Only 1% of the nation's 48,000 law firms employs over 100 lawyers, and those firms employ only about 16% of the lawyers in private practice (American Bar Association, 2013b).

Even though BigLaw employs less than 16% of private practitioners, those firms exert outsized influence over the legal profession and society as a whole (Harper, 2013; Kronman, 1993). Because my experience is largely in BigLaw and it powerfully influences the profession, my descriptions and recommendations below are tailored primarily for that audience.

### **Law Firm Structure**

A basic understanding of how law firms in private civil practice function will be helpful for understanding the recommendations for transformation into positive law firms. BigLaw lawyers, who primarily represent large corporations, are divided into two generic camps, either as litigators (involved in court conflicts) or transactional lawyers (involved in business deals). They primarily practice civil law, though some are involved in significant “white collar” criminal cases involving corporate wrong-doing. Large firms' strengths are in delivering high-quality legal services in sophisticated matters and providing training opportunities with experienced, world-class partners. Law firms' strengths reside in their people—but not in their people-management skills.

Big law firms' business strategy has three prongs: leverage, hourly rates, and billable hours (Harper, 2013). Leverage is calculated as the ratio of all lawyers compared to equity

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partners. The higher the leverage, the more money equity partners make. Firms create leverage by hiring more lawyers than they intend to promote to equity partner (Harper, 2013).

Firms' compensation systems are essentially pyramid schemes, which work like this: Lawyers bill for their services by the hour and so each lawyer is assigned an hourly rate, which may increase each year. Firms set annual billable hour targets for most lawyers of 1,900 to 2,000 hours. Associates' base salary typically is lock-step—which means that all associates in the same class (based on law school graduation date) are paid the same. Many also are paid merit bonuses based on performance and billable hours. So, for example, mid-level associates whose hourly rate is \$420 and who bill 2,000 hours in a year will generate \$840,000 in revenue for the firm while their salary may be \$180,000 with a \$20,000 bonus. That is a profitable mark-up.

Non-equity partners (sometimes called income partners) are “partners” in name but often do not have the same level of prestige as equity partners and may have different voting rights in the firm. They are paid a fixed salary and merit bonuses like associates and, for leverage calculations, are treated like associates. Non-equity partners' salary and bonuses typically are not lock-step and are set by a compensation committee.

The common thread in the calculation of equity partners' compensation is that they share in firm profits, but the actual mechanisms for deciding pay-outs vary among firms. They all fall somewhere on a continuum between “eat-what-you-kill” and communitarian sharing. An equity partner's compensation typically is tied in some manner to the amount of revenue attributed to him or her. Often, some system of “points” or “shares” are used that bears some relationship to the amount of revenue that the partner generates for the firm. A compensation committee decides the allocation of points or shares.

In deciding how much revenue is attributable to a partner, firms typically differentiate

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between originating credit and service credit for client billings. A partner who is responsible for initially bringing the client to the firm receives originating credit for all work performed for that client—no matter who performs the work. A partner who performs work for someone else's client receives a less-valued service credit. Partners with the largest “books of business”—which are valued based on originating credit—have the greatest number of points or shares as well as power and influence. At the end of the year, firm profits are calculated, and a value is given to each share or point. For example, if, based on profits, the individual point value is fixed at \$3,000, then a partner who has been allocated 250 points will earn \$750,000. Because originating credit is closely tied to compensation, partners often hog credit for client relationships and new business. This system creates a caste system among partners based on equity/non-equity status and on originating credit levels that fosters territory battles and hinders collegiality.

Turning to the billable hour requirement, doing the math shows that an annual requirement of 2,000 hours breaks down to less than 40-hours per week. This apparently reasonable work schedule is misleading. Only time that lawyers spend performing billable work for clients counts toward the hours target. This means, for example, that a lawyer can be working for 12 hours but bill only six hours due to the substantial amount of non-billable responsibilities (e.g., office meetings, business development, keeping apprised of legal developments, mentoring, etc.). Further, this billable target has escalated over the last several decades—from about 1,300 to 2,000, with many BigLaw associates (and often partners) billing well over 2,000 hours (Schiltz, 1999). The effect of firms' reliance on the leverage-rates-billable hour business model is a continual push to drive up lawyer rates and billable hour requirements to produce more wealth for the equity partners—with little regard for the impact on the firms' culture and people (Harper, 2013).

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The emphasis on increasing equity partner profits in the short-term has incentivized greed and concentrated wealth at the top (Harper, 2013). Over time, firms gradually have reduced the number of non-equity and equity partners, which has further enhanced wealth at the top. This model has created large pay gaps between equity and non-equity partners and even among equity partners (MacEwen, 2013). Because of the reduced prospects of promotion to partner, the model also has caused the deterioration of associates' motivation and firm loyalty.

Further, as law firms have grown both geographically and in number of lawyers, it has become harder to sustain a cohesive, collegial culture. There is little mentoring, training, or firm citizenship behaviors because most lawyers are anxious about meeting their billable-hour target and/or they feel overwhelmed with client work. Also, there is no firm-backed incentive to engage in these activities (Harper, 2013). They are not billable or even acknowledged during performance discussions and when compensation decisions are made. While activities aimed at developing other lawyers would be an investment that could result in a future pay-off, "most partners regard the long run as someone else's problem" (Harper, 2013, p. 104).

Steven Harper (2013), a retired BigLaw partner-turned-critic, opines that the Baby Boomers who are leading the firms have "made a mess of the legal profession. Time and time again, the focus on shortsighted metrics has sacrificed long-term vision" (p. 208). Another critic agrees, summing up in one word the reason that the law-firm ecosystem has changed so dramatically in a single generation: "greed" (Scheiber, 2013). Yet I share Harper's (2013) optimism that nothing that has occurred is inevitable or permanent. New choices can be made. Firms can choose a new path toward thriving—to live up to what they can be at their best.

**PART I: THE OPPORTUNITY****The Legal Profession is not Thriving**

A scholarly knowledge of psychology is not needed to understand the basic concept of “thriving.” The simple dictionary definition will do for now: It means to “prosper,” “flourish,” “make steady progress,” or “grow vigorously” (*American Heritage Dictionary*, 2000, p. 1802). Given the evidence below, even the best advocate would fall flat trying to make out a case that lawyers and their profession are thriving.

**Law Firms are in Distress in the Aftermath of the 2008 Economic Collapse**

There has never been a shortage of critics of lawyers, claiming the profession to be “lost,” “in crisis,” or in “decline” (e.g., Harper, 2013; Moliterno, 2013; Trotter, 2012; Fleming, 1997; Glennin, 1994; Kronman, 1993). Currently, the entire system is under fire. Recent books warn that compensation at big firms is too high, clients are increasingly unhappy, and law schools are charging too much and cranking out too many lawyers for too few jobs (Harper, 2013; MacEwen, 2013). True, disparaging the legal profession is an ancient and honored sport (Rhode, 1998). But even if some criticisms seem exaggerated, many are not. The characterization of law firms as “in crisis” may actually be true this time.

The wallop that BigLaw took from the 2008 economic collapse has left it dazed. Shock waves have reverberated through the industry due to the folding of large, prominent law firms, such as Howrey LLP, Dewey & LeBoeuf LLP, Heller Ehrman LLP, and Thelen LLP (Harper, 2013). Former firm leaders from Dewey who currently are embroiled in fraud criminal charges claim that the “voracious greed” of firm partners caused the firm to crumple (Simmons, 2014). Corporate clients are not only refusing rate-hikes, they are demanding deep discounts (MacEwen, 2013). They have pulled more work in-house and have been experimenting with

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lower-cost firms, contract or temp lawyers, and outsourcing overseas. They also have begun refusing to pay for junior associates' work altogether and comb bills for inefficiency or excess. While pricing pressures have continued to rise, revenue, demand, and realization (how much firms collect of what they bill) all have fallen (MacEwen, 2103). Legal industry experts such as firm management consultant Bruce MacEwan (2013) predict that the BigLaw business environment has so fundamentally changed since 2008 that law firms must adapt or fold.

But many law firms are not willing or able to adapt. They have excess capacity at all levels, yet lawyers' compensation expectations remain high. These high expectations are rooted in the rapid growth that BigLaw has experienced for the past 25 years. The average profits per partner for BigLaw went from \$324,000 in 1985 to \$1.6 million in 2011 (Harper, 2013). This remarkable growth has created ever-rising expectations. A 2012 survey reflected that 58% of all BigLaw partners said they should be better paid (MacEwen, 2013). But the market that shaped those expectations has radically changed. In fact, MacEwen (2013) dramatically proclaims that "Growth is Dead" (p. 7). He clarifies that, while some big firms will continue to experience growth, many will not, and survival will depend in large part on responding effectively to market changes with creative innovations and a willingness to evolve.

Traditionally, however, law firms, have not been engines of innovation. Innovation requires experimentation, which requires a tolerance for failure—which law firms do not have (MacEwen, 2013). Lawyers are "built to critique, to second-guess, to demand accountability and assign culpability" (MacEwen, 2013, p. 41). MacEwen (2013) opines that lawyers' "rigid intolerance for failure is so extreme and ultimately perverse that it disables [them] from being capable of sound decision-making" (p. 43). His view is shaped in part by personality research (discussed more below) reflecting that lawyers score very high on traits of skepticism, abstract

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reasoning, autonomy, and urgency and low on resilience and sociability. MacEwen (2013) sums up the typical lawyer as a pessimist who is suspicious of change and resists being led.

In MacEwen's (2013) view, big firms are at a crossroads and no one can predict their future: They will need to invent it. Surviving and thriving will depend on a vibrant firm culture that incubates innovation, is resilient to setbacks, and is propelled by engaged lawyers who are committed to a shared vision of the future.

### **Lawyers are not Psychologically or Physically Thriving**

Far from teeming with thriving lawyers motivated to invent a new future, the legal profession is plagued by poor mental health and lifestyles that threaten their physical health. As discussed below, common lifestyle and personality traits among lawyers may contribute to mental health issues and job dissatisfaction. Firms that continue to ignore these issues may find it increasingly difficult to compete in the future.

**Depression.** A 1990 study found that the legal profession had the highest rate of depression of all occupations studied (Eaton, Anthony, Mandel, & Garrison, 1990). Depression is about twice as prevalent among lawyers as the general adult population (Daicoff, 2004). Will Meyerhofer, a lawyer-turned-psychotherapist who now treats lawyers, blames law firm culture: "If I were to design an environment specifically to create depression, I would design a law firm" (Lukasik, 2012, para. 16). In his view, lawyers tend to be pleasers and achievers. This results in self-destructive patterns when lawyers enter the competitive environments of law firms. Once there, everyone tries to please, managers throw everyone under the bus, and no one feels adequate (Lukasik, 2012). There is little positive to offset the negative:

There should be about 90% praise, and the constructive suggestions should be just that—constructive and suggestions. You don't get anything remotely resembling that in a law

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firm because everyone is busy instinctively competing with each other like little baby animals trying to kill off the other baby animals as though they might die if someone else succeeds. Management technique, at a big law firm, amounts to throwing someone else under a bus, and thinking you feel better afterwards—like, somehow you're now in a safer position. It's madness. (Lukasik, 2012, para. 20)

Meyerhofer's darkly comical depiction of law firm culture, in my experience, is sadly spot-on.

**Other mental health issues.** Lawyers also experience higher than average levels of alcoholism, anxiety, social alienation and isolation, insecurity, paranoia, hostility, stress, anger, and marital dissatisfaction (Daicoff, 2004; Mauney, n.d; Peterson & Peterson, 2009). About 20% of lawyers suffer from a clinically significant psychological problem that is sufficiently severe to warrant intervention (Daicoff, 2004). A study of practicing lawyers found that 70% were likely to develop alcohol-related problems over the course of their lifetime, compared to only 13.7% of the general population (Beck, Sales, & Benjamin, 1995).

**Work addiction.** Harmful work addiction also is prevalent. Work addiction is excessive work performed to the exclusion of meaningful relationships or neglect of physical and emotional reactions to stress (Howerton, 2004). It is associated with numerous health and relationship problems, including depression, anger, anxiety, sleep problems, weight gain, high blood pressure, low self-esteem, low life satisfaction, work burnout, and family conflict (Howerton, 2004; Sussman, 2012). Studies have found the prevalence of workaholism among lawyers to be 23-26% (Doerfler & Kramer, 1986; Howerton, 2004). This is more than double that of the 10% rate estimated for U.S. adults generally (Sussman, Lisha, & Griffiths, 2011).

**Suicide.** Suicide ranks among the leading causes of premature death among lawyers (Mauney, n.d.). As recent as January 2014, news media reported that Kentucky has had 15

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known lawyer suicides since 2010; Oklahoma had one a month in 2004; and South Carolina lost six lawyers within 18 months before July 2008 (Flores & Arce, 2014).

**Sleep-deprivation.** Sleep-deprivation may contribute to lawyers' diminished health. A 2012 study based on survey results for the National Center for Health Statistics ranked lawyers as the second most sleep-deprived occupation in the U.S.—behind only home health-aids (Weiss, 2012). Sleep deprivation has been linked to a multitude of health problems that decay the mind and body, including depression, cognitive impairment, decreased concentration, hypertension, diabetes, impaired immune system, weight gain, burnout, and early death (Maxon, 2013; Ferrie, Shipley, Akbaraly, Marmot, Kivmaki, & Singh-Manoux, 2011; Soderstrom, Jeding, Ekstedt, Perski, & Akerstedt, 2012). Given lawyers' high risk for depression, it is worth noting evidence that sleep problems have the highest predictive value for who will develop clinical depression (Franzen & Buysse, 2008). Sleep-loss also ruins productivity (Kessler et al., 2011; Rosekind, Gregory, Mallis, Brandt, Seal, & Lerner, 2010). A 2011 Harvard Medical School study found that insomnia significantly affects worker productivity and estimated that the U.S. economy lost about \$63 billion due to sleep loss (Kessler et al., 2011).

**Pessimism and depression.** A “pessimistic explanatory style” might also contribute to lawyers' mental health problems (Seligman, 2002). “Explanatory style” refers to “the manner in which you habitually explain to yourself why events happen” (Seligman, 1990, p. 15). Those with an optimistic explanatory style tend to believe that negative events are temporary and not pervasive in their lives (Forgeard & Seligman, 2012). People with a pessimistic explanatory style tend to view negative events as permanent and pervading their lives with global consequences (Seligman, Verkuil, & Kang, 2001). Pessimism has been linked with depression, stress, and anxiety (Kamen & Seligman, 1987), while optimism buffers against depression and other

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medical problems (Forgeard & Seligman, 2012).

In a study at University of Virginia Law School, Satterfield, Monahan, and Seligman (1997) found that law students with pessimistic and mid-range explanatory styles outperformed optimistic students in grade point average (“GPA”) and selection for the law review executive board. From this study, Seligman drew the conclusion that, unlike most jobs in which optimists excel, pessimists may have an advantage in law in which the skill of anticipating problems helps lawyers advise clients about future possible risks (Seligman, 1990; Seligman et al., 2001). The validity of the inference is questionable since it is derived from only one study and law school exams (on which GPAs are based) have little in common with skills needed to practice law effectively. But another study provides some support for the theory. A 2004 study of 292 members of the North Carolina bar found that over 27% were at risk for depression, 53% had pessimistic attributional styles (with males and associate-level lawyers being the most pessimistic), and 51% had elevated levels of perceived stress (Howerton, 2004). Perceived stress was the highest predictor of depression, followed by attributional style and work addiction (Howerton, 2004). Thus, pessimism may be another factor contributing to the high rate of depression in the profession. Seligman (2002) suggests teaching lawyers flexible optimism so that they retain the benefits of pessimism when needed on the job but are able to toggle to a more optimistic approach in other domains.

**Lack of autonomy and depression.** As another possible contributor to lawyer depression and other ill health effects, Seligman (2002) points out that many lawyers, especially junior associates, find themselves in demanding, stressful jobs with a low level of autonomy or decision-making latitude. Decision latitude refers to the range of choices that people perceive that they have on the job (Seligman, 2002). People in jobs with these characteristics have higher

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rates of depression and coronary disease. Crafting jobs so that lawyers perceive more involvement and autonomy could help address this issue (Seligman, 2002).

### **Job Dissatisfaction and Attrition**

Job dissatisfaction is another affliction of the legal profession. According to one legal commentator, the prevailing big firm model bears much of the blame for increasing dissatisfaction among attorneys (Harper, 2013). “Too often, the model deprives lawyers of autonomy, creates an environment that rewards selfish behavior, and does little to promote collegiality” (Harper, 2013, p. 59). As recently as March 2013, a national survey named associate attorney as the unhappiest job in America (Smith, 2013). In three surveys of job satisfaction conducted by the American Bar Association (“ABA”) in 1984, 1990, and 1995, about 20% of lawyers reported job dissatisfaction (Daicoff, 2004). A poll of Michigan lawyers reflected that three out of five lawyers who responded said they would not choose to become a lawyer again if they had a chance to start their careers over (Daicoff, 2004).

Notably, though, at least the latter two polls did not use random sampling—they both relied on voluntary participation (Levit & Linder, 2010). Selection bias may have skewed the results. Further, other surveys reflect only moderate levels of dissatisfaction in the legal profession (Daicoff, 2004; Monahan & Swanson, 2009). A notable positive outlier is a survey reported by *The American Lawyer* in August 2013—which was published only five months after the national survey referenced above that found that associates had the unhappiest job in America. *The American Lawyer* survey reflected that “it’s all lollipops and double rainbows” for mid-level associates who apparently had “taken happy pills” before completing the surveys (Zaretsky, 2013, para. 1). Associates (at least the men) reported very high levels of satisfaction (Zaretsky, 2013). Perhaps the troubled economy aroused a sense of gratitude for their well-

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paying jobs. It is more likely that scores were inflated by law firms' recent practice (in which I participated) of "coaching" their associates on how to respond to such surveys.

The above reflects inconsistency in the evidence related to lawyer dissatisfaction.

Whatever the precise dimensions of the problem, there is little question that many law careers could be significantly better. Further, the mixed results could suggest that dissatisfaction is not universal but is concentrated in certain pockets—such as large law firms. In a longitudinal study of 270 individuals from the University of Virginia Law School class of 1990 conducted in 2007, many graduates reported moderate to high levels of satisfaction with their jobs and lives (Monahan & Swanson, 2009). Over half of the graduates (57%) were hired by large law firms (defined as over 100 lawyers) upon graduation; but, by the time of the survey, the rate had dropped to 27.6%. Those who remained in large firms had the lowest life satisfaction and work-life balance—even though their mean salary was a healthy \$523,000 (Monahan & Swanson, 2009). Another survey reflected that only about 1% of lawyers working in large firms (defined as over 150 lawyers) were not considering a job change in the next few years (Schiltz, 1999). A survey of partners in the 125 largest American law firms found that one-third would choose a different career if they could do it over again (Schiltz, 1999). Only 44% of lawyers in large law firms report that they are satisfied with their jobs compared to 68% of lawyers who work in the lower-paid public sector jobs (Levit & Linder, 2010).

High attrition rates also serve as evidence of job dissatisfaction. A study of big law firms (defined as over 500 lawyers) reflected that 37% of associates quit their firms by the end of their third year of practice (Levit & Linder, 2010). A study just prior to the 2008 economic crisis reported that the five-year rate of associate attrition exceeded 80% (Harper, 2013). This means that, after five years, a typical class of fifty would be down to just ten.

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### The “Diversity Crisis”

*The American Lawyer* recently grabbed attention with this story headline: “The Diversity Crisis: Time to Call it Racism?” (Chen, 2014). The article was one in a series spotlighting the “diversity crisis” in large U.S. law firms (*The American Lawyer*, 2014). The question of why gender and race disparities are so entrenched is a complex one. But few will deny that their persistence poses an obstacle for firms trying to cultivate trust and confidence about fairness.

As noted above, firm attrition rates are high, but women are leaving at twice the rate of men (Levit & Linder, 2010). Evidence reflects that a primary reason women leave is difficulty integrating work and personal life (Levit & Linder, 2010). I am suspicious, though, that some women lawyers use this rationale as a socially-acceptable escape-hatch. If they felt supported, appreciated, and fulfilled at work, would they be better able to strike the right balance?

A 2014 study conducted by the National Association of Women Lawyers (“NAWL”) found that, in the largest 200 law firms in 2013, the majority of partners continue to be white men: 82% of equity partners and 71% of non-equity partners are men (Scharfl, Liebenberg, & Amalfe, 2014). Of the equity partners, 4-6% are minority men and 2% are minority women.

In studies comparing the likelihood of making partner by gender, men’s rate ranges from two to five times greater than women’s (Rhode, 2011). Substantial disparities persist even when controlling for other factors including law school grades and time out of the work force or part-time schedules (Rhode, 2011). Women are concentrated in the lower ranks of law firms: 47% of associates and 67% of staff attorneys are women (Scharfl et al., 2014). “Staff attorneys” are defined as those lawyers who are not on a partner track (Scharfl et al., 2014).

The gender imbalance raises eye-brows because law firms no longer can point to a pipeline deficit: Since the mid-1980’s, more than 40% of law school graduates have been women

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(Scharfl et al., 2014). Firms now point to the higher attrition rate among women and less business generation. In the NAWL survey, only 4% of firms reported that they did not perceive any obstacles to promoting women to equity partner (Scharfl et al., 2014).

In short, the higher up the pyramid you look in the 200 largest firms, the fewer women and minorities you will find. As for compensation, there continues to be an unexplained pay gap between men and women lawyers (Scharfl et al., 2014; Rikleem, 2013). For example, one study found that gender is a major factor in lawyer compensation (Rikleem, 2013). It found that male equity partners receive a higher mean and median compensation than female equity partners even when origination, billable hours, partner tenure, and size of firm are controlled (Rikleem, 2013). The disparities were largest in the largest firms (Rikleem, 2013). A 2012 compensation study of all BigLaw partners (equity and non-equity) found that men made 47% more than women lawyers—\$734,000 vs. \$497,000 (MacEwean, 2013).

### **Decline of Civility and Professionalism**

Much has been written denouncing the dwindling civility and professionalism in the legal profession (e.g., Rhode, 1998; Daicoff, 2004; Campbell, 2012). It is true that complaints about lawyer incivility are not a recent phenomenon (Rhode, 1998; Campbell, 2012). The frequency and intensity of disrespectful behavior, however, may be on the rise—and it comes from all sides, including opposing lawyers, clients, judges, and colleagues.

Hard empirical data to investigate complaints of declining civility is difficult to find (Daicoff, 2004). The little data that exists supports lawyers' general perceptions of declining civility. In a 1992 study, 42% of lawyers and 45% of judges believed that civility and professionalism among bar members were significant problems (Daicoff, 2004). In a 2007 survey of Illinois lawyers, 72% of respondents categorized incivility as a serious or moderately

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serious problem in the profession (Campbell, 2012). A study of over 6,000 lawyers conducted in 2014 found that lawyers did not have a positive view of attorney or judge professionalism (Krieger & Sheldon, 2014).

Legal-industry commentators offer a host of hypotheses to explain the decline in civility. Some point to the break-down of inter-personal relationships caused by huge increases in the number and diverse backgrounds of lawyers (Rhode, 1998; Kronman, 1993; Campbell, 2012). Others blame the rise of email and decline of face-to-face interactions among lawyers (Smith, 2013). Heavy workloads and time pressures also can chip away at collegiality and respect in the workplace (Walsh, Magley, Reeves, Davies-Schrils, Marmet, & Gallus, 2012).

Broader cultural forces also appear to be contributing to incivility. Public polls suggest that workplace incivility and bullying are on the rise everywhere—not just in the legal profession (Pearson & Porath, 2005; Kaspercevic, 2014). In a 2002 study of over 2,000 respondents, nearly four out of five reported that lack of respect and courtesy at work is a serious problem; three of five believed it is getting worse (Pearson & Porath, 2005). Another survey reflected that 20% of respondents were targets of incivility at least weekly (Pearson & Porath, 2005).

### **The Centrality of Profit-Generation**

What is the core purpose of lawyers and law firms? Assuming people talk most frequently about what they care most about, then the inevitable conclusion is that law firms' core purpose is to maximize profits for current equity partners. It is a recurrent theme from law firm leaders and the media. For example, perhaps the most closely watched metrics in the legal industry are the law firm financial performance results published annually by *The American Lawyer*. Primary attention is given to the profits-per-partner (“PPP”) metric, which the magazine began publishing in 1985 (Kleman, 2014; Harper, 2013). This metric reports the average income

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of a law firm's equity partners. In 2013, the top ten firms in PPP ranged from \$2.9 to \$4.7 million PPP (Lat, 2014). Critics have complained about PPP as misleading as a financial performance metric and also as driving selfish, irrational, and destructive behavior (Furlong, 2013; Kleman, 2014; Harper, 2013). Indeed, the focus on short-term profits has become so intense that it is eclipsing alternative values (Furlong, 2013; Harper, 2013).

The publication of PPP rankings allowed lawyers for the first time to compare their compensation with lawyers in other firms, and "a new era in law practice" began (Harper, 2013, p. 72). The public PPP rankings fueled the new free-agency system that has resulted in a surge of lateral moves by partners hunting for more money elsewhere (Harper, 2013). Law firm leaders became "hell-bent" (p. 73) on doing anything to improve their ranking on the PPP list (Harper, 2013). Many even fudged the numbers: One report reflected that 22% of the top 50 firms overstated their profits in 2010 to inflate their PPP ranking (Harper, 2013). Notably, the period in which PPP began its popularity often is associated with the start of a decline in professionalism (Furlong, 2013). Despite the criticisms of the PPP metric, it remains popular and entrenched.

Given this background, it may not be surprising that commentators criticize the legal profession as having lost its soul (e.g., Kronman, 1993). The profession has largely disintegrated, they say, into a collection of producers of billable hours with no sense of duty to a higher cause (e.g., Kronman, 1993; Schwartz & Sharpe, 2011). They contend that the demoralization of the legal profession and loss of purpose beyond making money explains, in part, why so many lawyers are dissatisfied with their work (Schwartz & Sharpe, 2011; Harper, 2013). Judge Patrick Schlitz (1999) (former big firm partner turned judge) published a scathing article that identifies big law firms' focus on maximizing profits as a significant contributor to lawyer dissatisfaction. Schwartz and Sharpe (2011) suggest that lawyers may improve their well-being and the integrity

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of the profession by re-aiming their focus on the intrinsic values of the profession—such as providing wise counsel to their clients and protecting the norms of justice, fairness, and integrity on which the legal system is based.

### **Negative Public Perception**

What do you call 100 lawyers at the bottom of the ocean? A good start. I have been hearing morbid jokes like these since the day I was accepted into law school over twenty years ago. The ubiquity of lawyer jokes is one indicator of the profession's bad public reputation. Of the many things that the public does not like about lawyers, greed tops the list (Rhode, 1998). The public's other principal complaint is that lawyers lack honesty and integrity. In one study, close to one-third of Americans believed that lawyers are less honest than most people. Common complaints about lawyers include arrogance, incivility, and inattention to client concerns (Rhode, 1998). In one survey, less than one-fifth of Americans thought that the terms "caring" and "compassionate" described lawyers (Rhode, 1998).

Lawyers' response to popular criticism typically has been to play the childish game of "no, you are." In a study of 2,800 lawyers, over half blamed the profession's negative reputation on public ignorance (Rhode, 1998). It surely is true that some portion of the public's negative perception comes from not fully understanding the realities of the American legal system (Rhode, 1998). But lawyers share culpability, as they have become increasingly focused on short-term profitability to the exclusion of social responsibility (Rhode, 1998).

## **PART II: THE TOOLBOX**

### **Resources for Aspiring Positive Law Firms: Positive Psychology and Stakeholder Theory**

Many lawyers would like positive changes, but the obstacles seem too great. Positive psychology and positive business management models can provide guidance on how to begin.

**Tool No. 1: Positive Psychology**

The relatively new field known as “positive psychology” burst onto the scene in the late 1990s. Positive psychology is the science of positive subjective experience, positive individual traits, and positive institutions (Seligman & Csikszentmihalyi, 2000). It seeks to investigate and cultivate human well-being (Seligman, 2011). Before the emergence of positive psychology, and since World War II, psychology focused primarily on defining, detecting, and treating mental illnesses (Seligman, 1999). This began to change when, in 1999, newly-elected President of the American Psychological Association, Dr. Martin Seligman, announced his vision for a new “positive psychology” (Seligman, 1999). His aim was to inspire a change in the focus of psychology from a preoccupation only with repairing the worst things in life to also building positive qualities (Seligman & Csikszentmihalyi, 2000). Seligman (1999) called psychologists to use the scientific method to “show the world what actions lead to well-being, to positive individuals, to flourishing communities, and to a just society” (p. 560). Seligman’s vision struck a chord, and the new field of positive psychology took off.

While positive psychology scholars generally agree that well-being is their target, there is no consensus on the definition of that term. A number of theories are percolating as scholars continue to identify elements or develop constructs to define individual well-being. The newest theory comes from the founder of positive psychology himself, Dr. Seligman. According to Seligman (2011), the central topic of positive psychology is well-being, which is measured by the extent to which people are flourishing. Under this framework, positive psychology’s goal is to measure and increase flourishing, which is defined by five elements: positive emotions, engagement, meaning, positive relationships, and accomplishment (“PERMA”).

Long before Seligman’s PERMA construct, Diener (1984) began extensively exploring

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subjective wellbeing (“SWB”). SWB generally is defined to include a high level of positive affect, a low level of negative affect, and a high degree of life satisfaction (Diener, Lucas, & Oishi, 2005). Ryff and Singer (2002) formulated the psychological well-being construct, which includes self-acceptance, positive relations with others, autonomy, environmental mastery, purpose in life, and personal growth. Self-Determination Theory offered by Ryan and Deci (2000) holds that any theory of well-being should encompass the essential human needs of competence, autonomy, and relatedness. They contend that satisfaction of these needs yields enhanced self-motivation and mental health and that thwarting these needs leads to diminished motivation and well-being. Csikszentmihalyi (1990) proposes that definitions of well-being also should include the concept of “flow,” which is the smooth, self-conscious-less state we achieve when our skills just match the challenge in an activity we enjoy.

A few common themes emerge from these constructs, including good-quality relationships; a sense of control over one’s environment, including growing competence leading to mastery and accomplishment of goals; meaning or purpose; and positive emotions. This synthesis should dispel any misconception that positive psychology primarily is about *feeling happy*—like the perky yellow smiley faces pasted on so many happiness-related books. The various theories of well-being reflect general agreement with Aristotle that there is an important difference between “eudaimonia” (a meaningful life) and “hedonia” (a state of pleasure) (Peterson, 2006). Positive psychology scholars recognize the important role of pleasure (hedonia) in human life but recognize that it will not bring lasting happiness (Peterson, 2006). Well-being is not just about subjective pleasure but also encompasses the process toward developing what is best within ourselves and using it for the greater good (Peterson, 2006).

**Tool No. 2: Positive Organizational Scholarship**

Given that most people spend many waking hours at work, it is not surprising that this positive surge in psychology has reached the organizational sciences. Positive psychology-inspired research and scholarship applied to work settings generally falls into three camps: positive organizational psychology (“POP”), positive organizational behavior (“POB”), and positive organizational scholarship (“POS”) (Donaldson & Ko, 2010). Scholars sometimes use these terms interchangeably and sometimes make distinctions among them (Donaldson & Ko, 2010). For this paper, I use “POS” as an umbrella term.

POS describes a variety of approaches within organizational studies that place an emphasis on the “positive” (Cameron & Spreitzer, 2012). POS is not value neutral in that it advocates in favor of practices that are life-giving to people. It incorporates the concept of “heliotropism,” which is the tendency in all living systems toward positive energy that is life-giving and away from negative energy that is life-depleting (Cameron & Spreitzer, 2012).

**What is “positive” organizational psychology?** POS scholars have not reached a consensus on the definition of “positive” or the precise parameters of POS (Cameron & Spreitzer, 2012; Caza & Cameron, 2008). But four common “positive” themes have emerged in the literature: (1) adopting a positive lens to reinterpret obstacles as strength-building experiences; (2) investigating extraordinarily positive performance or “positive deviance”; (3) emphasizing positive emotions and other positive phenomena rather than problems and threats; (4) examining the best of the human condition for its own sake (Cameron & Spreitzer, 2012). This list is not exclusive but it does identify themes that POS scholars currently are exploring (Cameron & Spreitzer, 2012).

**What is a “positive” business?** Similarly, there is no consensus about how to define or

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measure organizational well-being (Cameron & Spreitzer, 2012). But there is general agreement that a thriving organization's purpose will be broader than profit-generation (Park & Peterson, 2003). One prominent POS leader, David Cooperrider (2014), defines positive organizations as those that maximize the total value created; enhance the overall health and wellbeing of society; bring joy, fulfillment, and a sense of meaning to all stakeholders; and enrich the world. Park and Peterson (2003) identify positive organizations by whether they have widely-valued positive characteristics or "virtues" that contribute to employees' fulfillment, such as purpose, safety, fairness, humanity, and dignity. Cameron (2003) defines positive organizations by three attributes: human impact, moral goodness, and social betterment.

**Defining and measuring employee well-being.** There also is no agreed-upon definition or measure of employee well-being (Salanova, Del Líbano, Llorens, & Schaufeli, 2014). Positive employee states, job attitudes, and attitude-behavior relationships have been studied under a variety of constructs:

- ***Job satisfaction*** is a positive emotional state stemming from employees' appraisal of their job or the perception that the job can fulfill their needs and values (Steele, Rupayana, Mills, Smith, Wefald, & Downey, 2012).
- ***Engagement*** occurs when people are able to express their preferred selves at work and feel connected to their work and others; are fully present (physically, cognitively, and emotionally); and are actively and fully performing their jobs (Kahn, 1990; Rich, Lepine, & Crawford, 2010). When engaged, people feel absorbed and enthusiastic, including a sense of energy, vigor, dedication, and motivation to act (Dalal, Baysinger, Brummel, & LeBreton, 2012; Macey & Schneider, 2008).
- ***Organizational commitment*** describes employees' attitudes about their relationships with

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their employers that has implications for their intent to stay (Dalal et al., 2012).

- **Organizational citizenship behaviors (“OCBs”)** may be considered as part of employees’ job performance involving tasks that fall outside the core tasks of their jobs. OCBs encompass behaviors that are at least somewhat volitional and improve the functioning of the organization (Dalal et al., 2012). OCBs include responding with enthusiasm and extra effort if needed to complete tasks successfully, helping others, supporting the organization, and volunteering for additional work and responsibility (Borman, Penner, Allen, & Motowildo, 2001).
- **Job involvement** is the degree to which employees are cognitively involved with their jobs and also encompasses the degree to which their performance affects their self-esteem (Dalal et al., 2012; Steele et al., 2012).
- **Job embeddedness** is the combination of organizational and community forces that keep employees from leaving their jobs (Halbesleben & Wheeler, 2008). It includes employees’ links to other people, their perceptions of fit with organizational values, and sacrifices involved in leaving (Halbesleben & Wheeler, 2008).
- **Perceived organizational support (“pos”)** refers to employees’ perceptions about the degree to which their employers meet their social and emotional needs, provide needed benefits, value their contributions, and care about their well-being (Steele et al., 2012; Dalal et al., 2012; Rich et al., 2010).
- **Vigor** describes employees’ feelings of physical strength, emotional energy, and cognitive liveliness in response to their job and work environment (Steele et al., 2012).
- **Thriving** employees experience vitality and a sense that they are making progress in their self-development at work (Spreitzer, Sutcliffe, Dutton, Sonenshein, & Grant, 2005).

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Not surprisingly, the common themes that run through the individual well-being constructs discussed above also appear in this collection of employee well-being constructs. They encompass notions of good relationships, growing mastery and competency, meaning, and positive states such as flow, enthusiasm, and vigor—themes that aspiring positive law firms will incorporate into their practices.

Further, all of the positive employee states and constructs listed above are measurable and have been tested in organizations. From those studies (discussed in detail in Part IV, below), much evidence has been gathered that supports the conclusion that positive workforces perform better and have a material impact on business outcomes, including profitability. Evidence suggests that positive workforces may perform better in a variety of ways due, for example, to frequent positive emotions, good health, their ability to mobilize individual and organizational resources to enhance performance (e.g., optimism, self-efficacy, social support from good relationships, feedback, etc.), and the spread of positive emotional states to work teams through emotional contagion (Bakker & Demerouti, 2008). All of these possible pathways for elevating workforces are incorporated into the positive law firm blueprint discussed below.

### **Tool No. 3: The Business Management Theory of Managing for Stakeholders**

Advocates for positive changes in business organizations are not limited to those with psychology degrees. They also are business leaders and business management scholars who advocate for positive reforms in how businesses run and how capitalism is practiced.

Currently, capitalism has a bad reputation. It does not conjure mental images of companies trying to add vitality to life or make their communities better off. Rather, the prevailing view is that capitalism is driven by “a bunch of greedy little bastards trying to do each other in” (Freeman, Harrison, & Wicks, 2007, p. 14). But efforts to reorient capitalism toward

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the positive are underway. For example, John Mackey (co-founder of Whole Foods) and Rajendra Sisodia (2014) have launched the “Conscious Capitalism” movement. According to Sisodia, Wolfe, and Sheth (2014), “an historic *social transformation of capitalism* is underway” (p. xxii). They believe that Americans’ growing need for meaning and humanism is driving the transformation. They predict that “[c]ompanies without a soul face a doubtful future” (Sisodia et al., 2014, p. 4). The Conscious Capitalism movement urges businesses to become forces for good that enhance the health and well-being of society (Mackey & Sisodia, 2014). Its leaders imagine businesses built on love and care rather than stress and fear and whose employees are passionate about their work (Mackey & Sisodia, 2014).

While the Conscious Capitalism movement is new, efforts to expand companies’ values beyond profit are not. As early as 1973, French and Bell (1973) asserted this “profound idea”:

[I]t is possible for the people within an organization collaboratively to manage the culture of the organization in such a way that the goals and purposes of the organization are attained at the same time that *human values* of individuals within the organization are furthered. (p. xiii)

A decade later, R. Edward Freeman’s (1984) managing for stakeholders’ theory (“MFS”) began making a mark. MFS is an alternative approach to the traditional view that business success is entirely about the bottom-line (Sisodia et al., 2014). Under the old view, executives pay attention almost exclusively to the financial interests of the people who supply the capital to fund the business (Freeman et al., 2007). Money remains important under MFS, but it is not the sole measure of value (Freeman et al., 2007; Mackey & Sisodia, 2014). Also important is the non-monetary value created for all stakeholders (Freeman et al., 2007). Stakeholders are defined to include any group that can affect or be affected by the firm’s core purpose—primarily customers,

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employees, suppliers, stockholders and other financiers, managers, and the local community (Freeman et al., 2007). The overarching goal of MFS is to balance the interests of all stakeholder groups over time to bring them into alignment (Freeman et al., 2007; Sisodia et al., 2014). No stakeholder group benefits at the expense of another and each prospers as the others do.

Under MFS strategy, business leaders create a purpose-driven business, acknowledge responsibility for societal expectations, and engage in ethical leadership (Freeman et al., 2007). Specifically as to purpose-creation, MFS businesses articulate and live a purpose that goes beyond making money (Freeman et al., 2007; Sisodia et al., 2014). Among other benefits, an organization's vision and purpose play a significant role in employee motivation. Existing business models are based on an outdated carrot-stick motivational model of human behavior (Freeman et al., 2007). But if people are not simply stubborn animals that need to be coaxed or compelled into action, and instead have complex psychologies made up of emotional, moral, and spiritual ingredients, then the prevailing carrot-stick model actually can be damaging—and may encourage people to act like stubborn animals. The MFS view is that people are complex. They cannot be reduced to labels like “consumer” or “human resources” (Freeman et al., 2007). People are, in fact, driven by their values, principles, ideas, and relationships. The carrot and stick still play a role but the firm's purpose, values, and principles loom larger (Freeman et al., 2007). Accordingly, MFS businesses seek to create multiple kinds of value and well-being for their group of complex stakeholders—including financial, intellectual, physical, ecological, social, cultural, emotional, ethical, and even spiritual (Mackey & Sisodia, 2014).

The above departs from the historical view entrenched in free market capitalism that the only legitimate purpose of a business is to maximize shareholder value (Freeman et al., 2007). Businesses are beginning to recognize that the old view is outdated. The core aim of capitalism

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really is to generate the greatest good for society—of which making money is only a part (Freeman et al., 2007). Indeed, after extensive research, the authors of the best-selling books *Built to Last* (Collins & Porras, 1994) and *Good to Great* (Collins, 2001) concluded that a key feature of financially successful, enduring companies was that they pay attention to vision, values, and core purpose that goes beyond profit (Freeman et al., 2007).

Notably, under the MFS model, profitability remains important. I highlight this point particularly for equity partners who contribute capital to the firms and for law firm managers who are responsible for leading firms into an uncertain future. It is important for law firms to be profitable to attract and retain significant “rainmakers” who may be responsible for large percentages of a firm’s revenue—and who may jump ship to take a better compensation offer. Consequently, I underscore that nothing here suggests that law firms should ignore profitability.

The good news is that adopting an MFS approach that places greater value on the well-being of lawyers and staff should not reduce profitability—in fact, it may increase profitability. Sisodia et al. (2014) conducted a study of a group of public companies that had adopted the MFS approach and found that **they returned 1,026% for investors** over the ten year period ending June 30, 2006 compared to 122% for the S&P 500. Additionally, they compared the financial performance of the MFS companies to that of the “great” companies identified by Collins (2011) in *Good to Great* (“GTG”). The GTG companies were identified as “great” based exclusively on their stock performance. Collins debated whether to “use additional criteria...such as impact on society and employee welfare,” but ultimately decided not to do so because of perceived measurement obstacles (Collins, 2001, p. 6). Sisodia et al. (2014) found that the MFS companies performed better financially: Over a ten-year period, the MFS companies outperformed the GTG companies 1,026% to 331%.

**PART III: THE BLUEPRINT****Blueprint for Building the Positive Law Firm**

Most law firms have not yet embraced the concepts above. Firms have not been known for their “virtue” or for trying to contribute to their lawyers’ fulfillment. But, as reflected above, the tide in American business culture is changing to encompass a wider set of values and to adopt an ethic of care for employees and other stakeholders. To thrive in the 21st Century, positive law firms will expand their values as well.

To get started, aspiring positive law firms will commit to the MFS approach. They will articulate and strive to live a purpose that goes beyond making money, acknowledge responsibility to society, and engage in ethical leadership as they seek to optimize value for clients, owners, employees, firm managers, the communities in which they practice, and society as a whole. Under the MFS approach, firm clients and staff are chief stakeholders and their needs, hopes, and dreams will play a significant role in the positive law firms’ strategy. My focus here, though, is on firm’s lawyers. For firms adopting an MFS strategy, their mission will include creating an environment in which lawyers can become flourishing, self-actualized human beings and all stakeholders will benefit at the same time (Mackey & Sisodia, 2014).

Below is a blueprint to start building the positive law firm. The concept still is a sketch—it is in the preliminary “Dream” stage of the Appreciative Inquiry model (Cooperrider & Godwin, 2011). Part V of the paper discusses future plans for developing the dream into reality.

**Positive Law Firms Will be Purpose-Driven and Will Foster Meaning**

A core strategy of MFS is articulating and striving to live a purpose that goes beyond making money. POS scholars also consider purpose and meaning to be key features of thriving organizations (e.g., Park & Peterson, 2003; Cameron, et al., 2003; Pratt & Ashforth, 2003).

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People want to perceive their work as purposeful and significant—either due to the intrinsic value of the work, the purpose the work serves, or the organizational community (Pratt & Ashforth, 2003). Purpose and meaning are key components of thriving firms because they influence attitudes, motivation, and performance (*e.g.*, Pratt & Ashforth, 2003). Similarly, MacEwan (2013) argues that firms’ historical failure to create any vision beyond profit-maximization has fueled the lateral partner market—partners are continuously up for sale to the highest bidder because nothing anchors them.

Despite this consensus, short-term profitability remains the primary focus of most law firms (MacEwan, 2013). This is not to say that firm managers do not emphasize “client service.” They do. But, in my experience, such discussions are closely tied to themes of profitability and competitiveness—not of any higher purpose to which lawyers may be called. I also do not mean to suggest that law firms are crawling with greedy materialists. But I do suggest that many lawyers—who tend to be achievement-oriented—become captured by their competitive cultures where money is virtually the only symbol of success. Also, some appear stuck on the “hedonic treadmill” in which they adapt to good things and cease to notice and appreciate them, and on the “satisfaction treadmill” in which improving life circumstances raise expectations causing people to devalue the positive aspects of their lives (Sheldon et al., 2010).

A narrow, materialistic focus can be damaging to firms and their lawyers. Indeed, Schwartz and Sharpe (2011) (and many others) argue that the legal profession is languishing due to the over-emphasis on profits. To remedy this, they argue that lawyers should pursue the intrinsic goal of the profession—which they describe as “justice” in a moral sense (Schwartz & Sharpe, 2011). But many lawyers would disagree that lawyers’ core purpose is to pursue justice, believing instead that their role *should be* an amoral application of law. This view is rooted in the

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fundamental notion that the United States government “has been emphatically termed a government of laws, and not of men” (Marbury v. Madison, 1803, p. 163). For many lawyers, this means that, as officers of the court, they try to follow the rule of law, not their personal beliefs. Further, it would be hard to judge whether lawyers’ personal beliefs accurately led them toward greater justice. Cases seldom are clear-cut. It rarely is obvious from the imperfect factual evidence and the indeterminate laws what the *legally* correct outcome should be—let alone what the *morally* just outcome should be. This is no more true than in big business litigation where the evidence is vast and competing business interests have less of a moral texture than, say, criminal cases. As a result, many lawyers see the American legal system as providing an opportunity for procedural fairness under which judges and juries weigh evidence, apply law, and make decisions—which might or might not comport with moral justice. If lawyers start deciding for themselves, irrespective of their clients’ interests, what the morally just outcome should be, their clients will quickly replace them with (righteously, in their view) amoral lawyers.

**The intrinsic purpose of private practice: Care and community-building.** A resolution of whether moral justice is or should be the true aim of the American legal profession will not come anytime soon. This does not mean that lawyers who represent private interests are foreclosed from seeing a higher purpose in their work. Fundamentally, business and other private lawyers help societies grow and thrive. They help to maintain a well-ordered society in which individuals are able to pursue their private interests, goals, and dreams—which often serve the public good (Silver & Cross, 2000). People use private law to take charge of their lives and build the world they want to live in (Silver & Cross, 2000). Ideally, lawyers are like “architects, engineers, or builders” who “design and create structures” that are “as real and as important as buildings, bridges, and roads” through “which human beings live, interact, and prosper” (Silver

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& Cross, 2000, p. 1459).

This inspired view of lawyers as society-builders, not only problem-solvers of specific legal issues, is a higher purpose that befits an aspiring positive law firm. The positive law firm's mission statement also would recognize the interdependence of the firm's lawyers, staff, clients, and communities. The mission would include caring about the lives and livelihoods of their lawyers, the success and well-being of their paying and indigent clients, and the communities in which they practice. Caring for the community could encompass pro bono legal work, non-legal assistance in the community, charitable work, and respect for the environment.

In the event of skepticism that any law firm ever would embrace such a mission, attached as Appendix 1 is a copy of "Statement of Firm Principles" adopted by Paul, Weiss, Rifkind, Wharton, & Garrison LLP (Rifkind, 1963). Its themes include interdependence, excellence, close relationships and friendships, democratic values, community involvement, preserving a healthy life, innovation, imagination, wholehearted dedication to the best interests of clients, work performed with care and craftsmanship, integrity, readiness to always help when needed, and building a law firm in which all associated with it take pride (Rifkind, 1963).

Law firm leaders initially may face backlash trying to craft such a mission statement. A mission statement like this calls for radically different thinking than in the past—which is not a strength of many lawyers (MacEwen, 2013). A few years ago, I sat in a firm partnership meeting for over an hour while many colleagues scoffed at the very idea of a mission statement while the rest shredded its (uncontroversial) substance in painstaking detail. It never was adopted. MacEwen (2013) tells of a 90-minute skirmish among law firm leaders on whether to change the font size on the firm's letterhead. As a group, lawyers are skeptical, do not like to be led, and think they know best (MacEwen, 2013). The result is a lack of innovation and progress

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(MacEwen, 2013). Perhaps industry warnings that firms must evolve into the 21st Century or perish will help temper this skepticism and finally allow progress. The warnings at least should motivate law firm leaders to try. As discussed below in Part IV, the influx of Millennials may provide a more open-minded audience for purpose-driven messages.

**Firm participation in positive meaning-making.** Articulating a statement of purpose is only the first step. Positive law firms must walk the talk by living their purpose and cultivating meaning. They can start to do so by creating work cultures that influence lawyers to construct positive identities through their work and membership in the firm (Roberts, 2014).

Meaning is created (or not) by the process people go through to construct their own identities and make sense out of their environment (Pratt & Ashforth, 2003; Roberts & Creary, 2012). People construct their identities by continually trying to answer the questions “Who am I?” and “Why am I here?” (Pratt & Ashforth, 2003). Social structures like work cultures affect how people answer those questions—they affect people’s identities or the “self.” People have preferred ways of viewing themselves and want to connect their work with their preferred selves. Meaning in work develops when people feel a good fit between the values held by their preferred selves and the work that they do—called job-person fit or organization-person fit. Creating meaningfulness in working involves crafting work tasks to be intrinsically motivating and purposeful, which connects people to their preferred identities (Pratt & Ashforth, 2003).

How people construct their identities, in turn, affects their behavior (Roberts & Creary, 2012). For example, social experiences can shape a person’s positive view of herself as a mentor, which then increases her attention to performing acts consistent with that identity (Roberts & Creary, 2012). Systems thinking then comes into play, which recognizes the highly-interactive, complex nature of most systems—like work environments (Goh, Brown, & Spickett, 2010). In

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the work context, systems thinking teaches that behavior loops back to shape culture. Putting this all together, culture shapes the self, which shapes behavior, which shapes culture. Thus, through social interactions, people can re-shape a culture and create and validate new meanings that, in turn, influence behavior (Pratt & Ashford, 2003; Roberts & Creary, 2012).

The practical impact of all of this is that positive law firms can cultivate meaning and influence lawyers' motivation and behavior by taking steps to mindfully build cultures and develop socialization practices that shape lawyers' positive identities. Currently, a partner's most celebrated role is fee-generator. Aspiring positive law firms will take a eudaimonic turn and start framing lawyers' roles as not only generating revenue but also as truly caring for clients, each other, and the community—which are intrinsically meaningful values.

Some examples of practices that can help foster meaningfulness include the following (Pratt & Ashforth, 2003):

- Emphasize a mission focused on goals and values beyond making a profit.
- Articulate how lawyers' and staff's work serves an intrinsically valued purpose.
- Use recruitment and selection processes to find people who have a good fit with the values the firm espouses.
- Establish structured orientation programs that socialize newcomers into the firm's values and foster a sense of belongingness and pride in firm membership.
- Establish mentoring programs to teach and reinforce firm values over time.

Some may object to the idea of law firm management trying to help mold lawyers' positive identities as some kind of intrusive social engineering concocted by liberal Nanny State advocates. But the fact is that identity-shaping happens even under the current regime—intentionally or not. As discussed above, people's identities are significantly shaped by their

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social environments, including workplaces. The suggestion here is only for firms to be more intentional about creating a social environment that will help shape more positive identities of lawyers-as-builders (rather than lawyers-as-profit-generators), which may contribute to lawyer well-being. Further, for such practices to be effective, law firms cannot be focused solely on their own betterment. Lawyers must trust that firm managers adopted such practices, not only for organizational growth, but also for individual development (Pratt & Ashforth, 2003).

**Intervention to cultivate meaning: Connecting with beneficiaries.** A core purpose of positive law firms is to help clients and lawyers achieve their goals. To help cultivate meaning around that purpose, firms will find ways to reinforce to lawyers the value of their work to clients. Psychologist Adam Grant and his colleagues proposed that one way to cultivate meaning from client service is to structure jobs to more closely connect employees with the beneficiaries of their work (Grant, Campbell, Chen, Cottone, Lapedis, & Lee, 2007; Grant & Berg, 2012). They propose that doing so will result in higher levels of prosocial motivation, which will encourage employees to invest more time and energy in the tasks that help those beneficiaries (Grant et al., 2007). “Prosocial motivation” in this context simply means to care about making a positive difference in the lives of others (Grant & Berg, 2012). Research suggests that prosocial motivation can substantially influence employees’ work behaviors and performance. It can drive employees to take initiative, help others, persist in meaningful tasks, and accept negative feedback (Grant & Berg, 2012).

To test the hypothesis about connecting workers and beneficiaries, Grant et al. (2007) invited college scholarship recipients to speak about the value of their scholarships to students who worked for the college soliciting donations to fund those scholarships. The researchers found that meeting a single scholarship recipient motivated an average caller to spend 142%

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more time weekly on the phone, resulting in an average increase of 171% in revenue raised. The average caller's weekly donations increased from \$185.94 to \$503.22 (Grant et al., 2007).

Two lab experiments similarly showed that contact with beneficiaries can significantly impact motivation (Grant et al., 2007). Participants who were asked to edit a student's job application letter spent more time editing letters of students with whom they had a brief conversation (Grant et al., 2007). The contact increased participants' desire to be helpful (Grant et al., 2007). Further, participants reviewed the letter more diligently when they learned that the student really needed a job (Grant et al., 2007).

In another study, experienced lifeguards told stories of rescues that they had performed to lifeguards who had not performed a rescue (Grant, 2008). The study found that the stories motivated the rescue-less lifeguards to spend more time working the next month. They also felt more valued by guests, which motivated them to invest more time engaging in helping and safety behaviors to benefit guests (Grant, 2008). There were no similar effects for lifeguards who only read other lifeguards' stories about how the job had personally benefitted them (Grant, 2008).

Law firms could apply these findings in a number of ways. The goal is to devise ways for lawyers to personally connect with the beneficiaries of their work either through personal contact or vicariously through stories of others. A few ideas follow:

- Arrange client panels to convey stories about how firm lawyers helped them professionally or personally. Throughout my legal career, I have sat in the audience on many occasions listening to client panels talk primarily about mistake-avoidance and how lawyers have irritated them. I have never witnessed an event designed for clients to discuss how their lawyers helped them and their business. By comparison, Medtronic (a medical device company focused on pain-alleviation) invites patients to speak at the

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company's annual holiday party about how the company's devices have changed their lives (Mackey & Sisodia, 2014).

- Partners are internal “clients” and beneficiaries of associates’ work but often neglect to convey the import of that work. In a survey of big firm associates, 77% said “no” to the question “Are you being shown appreciation for your work?” (Forstenlechner & Lettice, 2008, p. 647). To remedy this, partners could, for example, arrange monthly calls with associates who work together to convey the details of how their work has helped the partners and clients. More simply, partners could be mindful about conveying such feedback to associates in the regular course of business.
- In giving assignments to associates, partners could explain why the work is meaningful to the project and, if it is truly urgent, explain why to increase the associates’ beliefs that additional effort would benefit the clients and partners.
- As to partners, law firm leaders and other partners could find more opportunities to convey how much their colleagues’ contributions have benefitted them personally or the firm as a whole, including client and pro bono legal work, mentoring, community involvement, and firm citizenship activities.
- The primary beneficiaries of the law firm staff’s work are the lawyers whom they support. Lawyers could, for example, arrange quarterly lunches or breakfasts where they tell specific stories about how the staff have helped them. This also could be done in the form of an “awards” ceremony for the “all-star” of the month.

For all the reasons above, aspiring positive law firms will implement practices like these to cultivate purpose and meaning beyond profit-generation.

**Positive Law Firms Will Integrate Self-Determination Theory into Their Practices**

While many critics talk about the ill-effects of practicing law, empirical research exploring the subject is limited. One exception is a recent study by Krieger and Sheldon (2014) of a large sample of lawyers and law students focused on what drives (or undermines) well-being. The study showed that factors with the lowest correlation with well-being include some that the legal profession venerates—income (.19), law school class rank (.12), and law school rank (.05). What they found to have the highest correlation with subjective well-being (as high as .66) was need-satisfaction under Self-Determination Theory (“SDT”) (Deci & Ryan, 2000). These findings were consistent with prior research showing that workplaces high in self-determination (“SD”) have more psychological health; less psychological distress; and greater work satisfaction, engagement, performance, acceptance of organizational change, and trust toward the organization (Hardré & Reeve, 2009). The above provides convincing evidence that adapting workplaces to be more SD-supportive could improve lawyer well-being and performance.

SDT is a motivational theory that studies how social conditions facilitate or undermine people’s motivation, functioning, and well-being (Hardré & Reeve, 2009). SDT postulates that psychological health and optimal functioning depend on the satisfaction of three basic needs: autonomy (to be self-regulating and the maker of one’s choices), competence (to be effective in what one does and master new skills), and relatedness (to feel closely connected with at least some others) (Sheldon, Turban, Brown, Barrick, & Judge, 2003; Deci & Ryan, 2000; Moreau & Mageau, 2012). Krieger and Sheldon (2014) found that autonomy (.66), relatedness (.65), and competence (.63) all were highly correlated with lawyer well-being.

Social conditions like workplace climate and a supervisor’s management style can

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facilitate or harm motivation and functioning based on the extent to which they support or threaten workers' SDT needs (Hardré & Reeve, 2009). Consistent with this, Krieger and Sheldon (2014) found that competency- and autonomy-satisfaction and intrinsic motivation among lawyers varied by work setting. "Intrinsic motivation" refers to behaviors that are inherently interesting and enjoyable (Deci & Ryan, 2000). It is sustained by satisfaction of the needs for both autonomy and competence (Niemiec & Ryan, 2009; Deci & Ryan, 2000). By contrast, "extrinsic motivation" refers to behaviors performed to obtain some outcome separable from the activity itself—such as earning money (Deci & Ryan, 2000). Many studies have shown that when tangible extrinsic rewards motivate people, their autonomous motivation often is undermined (Moller, Ryan, & Deci, 2006). Research also has shown that intrinsic motivation and values are more predictive of well-being than their extrinsic counterparts (Krieger & Sheldon, 2014). People who focus primarily on extrinsic life goals are less happy and more depressed than those who focus more on intrinsic goals (Moller et al., 2006).

**Big firm lawyers rate low on SD-satisfaction.** Returning to the specific differences among lawyer work settings, Krieger and Sheldon (2014) found that well-paid lawyers in big firms (defined as over 100 lawyers) reported less autonomy-satisfaction than lawyers in other contexts. Also, as the number of billable hours increased for private sector lawyers, intrinsic motivation declined, as did satisfaction of the needs for autonomy and relatedness. Big firm lawyers also reported the lowest level of intrinsic values and motivation of all lawyers studied.

Krieger and Sheldon (2014) further found that big firm lawyers had significantly lower satisfaction of the competence need than public service lawyers (e.g., prosecutors, public defenders, Legal Aid) who had the lowest pay and law school grades. The proposed explanation offered by Krieger and Sheldon for this difference was that big firm lawyers feel less competent

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despite their better law school grades and higher salaries because they are less competent. They speculated that big firm lawyers' lesser competence could be the result of law schools failing to teach practical lawyering skills and the fact that public service lawyers often have case responsibility sooner than big firm jobs (Krieger & Sheldon, 2014). But the big firm lawyer sample was not primarily beginners: The average age was 46. It would be surprising for law school education or early work experiences to significantly impact feelings of competence by veteran lawyers. I have an alternative theory. Competence metrics measure a *feeling* of competence or *perceived* competence rather than an objective measure of ability (Painter, 2012). A more plausible explanation is that big firm lawyers work in less supportive environments with very high expectations and continual insinuations that they are not living up to their paychecks and hourly rates. For example, at a recent orientation for junior lawyers at my former firm, a firm leader warned them that "Your best isn't good enough." It is not surprising that smart, competent lawyers would report low perceived competence in law firm cultures that are SD-destructive.

Studies have shown that training can improve SD-supportive skills even for people who have used different styles for years (e.g., Hardré & Reeve, 2009). Such training could be useful in law firms. Krieger and Sheldon (2014) found that autonomy-supportive supervision was highly correlated (.44) with lawyer well-being. They also found that autonomy-support increased satisfaction of all three basic needs, which increased lawyers' internal motivation for their work. Accordingly, positive law firms wanting to develop more engaged, healthy workplaces should consider training supervising lawyers on SD-supportive behaviors.

**Autonomy-support training.** Training already has been tested that teaches managers how to develop an autonomy-supportive motivational style and how that differs from a controlling style (Hardré & Reeve, 2009; Reeve, 1998; Reeve, Jang, Carrell, Jeon, & Barch,

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2004). Autonomy-supportive managers, for example, identify, cultivate, and integrate employees' inner resources, such as on-the-job interest, perceived competence, and sense of valuing the work they are doing (Hardré & Reeve, 2009). The opposite of an autonomy-supporting style is a controlling one. Controlling managers neglect or frustrate employees' inner motivation and pressure them to behave in specific ways (Hardré & Reeve, 2009). They rely on external contingencies to motivate employees, such as incentives, directives, assignments, deadlines, and compliance requests (Hardré & Reeve, 2009). Specific behaviors that managers can develop to be more autonomy-supportive include, for example, showing responsiveness to peoples' perspectives or feelings, using non-controlling language, giving a meaningful rationale for requests, offering opportunities for choice, and maximizing people's sense of self-initiation (Reeve, 1998; Moreau & Mageau, 2012; Moller et al., 2006). Although lawyers may not have a choice about whether or not to do a project, managers typically can allow some choice about how, when, or where to do it (Sheldon et al., 2003).

Since lawyers often work in teams, it is important to note that autonomy-satisfaction does not depend on being left alone. Autonomy does not refer to performing a task without assistance or to being detached or independent from others (Deci & Ryan, 2000). It refers to the subjective experience of psychological freedom and choice during activities (Van den Broeck, Vansteenkiste, De Witte, Soenens, & Lens, 2010; Deci & Ryan, 2000). People can experience autonomy when they depend on others and even when they comply with requests. For example, an associate might question the tight deadline given for a project but nonetheless act willingly because the partner provided a meaningful rationale for it (Van den Broeck et al., 2010).

**Relatedness-satisfaction training.** Managers also can take action to enhance lawyers' relatedness-satisfaction. Psychology researchers have amassed substantial evidence showing that

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people have a need to belong (Carmeli, 2009). This need motivates people to build relationships that are meaningful and to be accepted by others (Carmeli, 2009). Actions that managers can take to support this need include, for example, holding regular meetings to ensure accessibility; setting reward structures that support cooperation and do not encourage competition; not speaking negatively about people not present; sharing information whenever feasible and showing trust that employees will keep certain matters confidential; and conducting team-building activities (even modest ones can be effective) (Baard, 2002). The discussion below of High Quality Connections provides more information for forming quality social bonds.

**Competency-support training.** Managers also can take a variety of actions to improve competency-support: Prepare and support employees to help them succeed; remove barriers to effective work performance; jointly agree on achievable goals; create feasible challenges by delegating interesting assignments that develop new skills; provide feedback regularly to allow for timely corrections; allow employees to keep critical comments in perspective by not offering too much negative feedback all at once; and allow employees time to address errors on their own whenever possible (Baard, 2002).

**SD-support for clients.** Although my focus here is on firms' SD-support of lawyers, SD training also could be client-focused. There does not appear to be any research yet exploring whether supporting clients' self-determination has positive business outcomes. But, given the broad applicability of STD, presumably, supporting clients' needs for autonomy, competence, and relatedness would improve client satisfaction, if not decision-making. Research in the somewhat analogous doctor-patient context supports this conclusion. Studies have evaluated patient outcomes where physicians apply SDT by taking full account of patient's perspectives, not interrupting, affording choice, offering information respectfully, providing a rationale for

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recommendations, sharing treatment-relevant power with patients, and accepting patients' decisions (Williams, Frankel, Campbell, & Deci, 2000). Findings reflect a host of positive outcomes in such "patient-centered" relationships, including better healthcare outcomes, patient satisfaction, and diminished risk of malpractice lawsuits (Williams et al., 2000).

Law firms likely would derive similar positive effects from SD-support of their clients. A 2006 study of in-house General Counsels found that 70% were dissatisfied with their outside counsel from big firms (Cunningham, 2013). Neither the outcome of the legal matter nor cost of services was the most frequently mentioned cause of dissatisfaction. Rather, more than half of the General Counsels cited lawyers' communication and behavioral issues, including failure to keep the client informed, failure to listen, non-responsiveness, and making decisions without the client's authorization or awareness (Cunningham, 2013). A client satisfaction study conducted by the ABA drew similar conclusions. Among the top five client complaints were failure to keep the client informed and not understanding the client's needs—which encompassed not listening and communicating in a terse, impatient, condescending, and disrespectful manner (Miller & Kohn, 2008). A study commissioned by a large insurer for lawyers found that the most significant causes of legal malpractice claims were failure to listen to the client, to ask appropriate questions, and to explain relevant aspects of the matter (Cunningham, 2013). In short, it appears that lawyers have room to improve in showing respect for their clients' needs for autonomy, competence, and relatedness.

For all the reasons above, training law firm lawyers on SD-support could contribute to enhanced well-being, performance, and client satisfaction. But SDT's teachings should not be confined to training programs. Firm performance and lawyer well-being likely will be maximized when every practice is crafted to contribute to internalized work-motivation and

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need-satisfaction (Sheldon et al., 2003).

### **Positive Law Firms Will Adopt a Strengths-Oriented Approach in Managing People**

An overarching institutional practice that will foster lawyers' sense of competence, autonomy, and relatedness is to provide feedback that focuses on their strengths. We all are expert fault-spotters when it comes to other people (Clifton & Harter, 2003). Job-related "professional development" typically consists of identifying others' faults and ways to fix them. This deficit-focused orientation may be particularly prevalent among lawyers. Dr. Larry Richard (2002), a consultant with an expertise in lawyer personality, has profiled over 1,000 lawyers. He found that, in large firms, the trait of "skepticism" is consistently the highest scoring trait among lawyers. They average around the 90th percentile compared to the general public's average at the 50th percentile. Those with high skepticism scores tend to be cynical, judgmental, questioning, argumentative, and somewhat self-protective (Richard, 2002). Curtailing this natural skepticism and, instead, emphasizing colleagues' strengths can lead to more engaged, energetic workplaces.

Strengths research supports that people gain more when they build on their natural talents than when making comparable efforts to improve their weaknesses (Clifton & Harter, 2003). This does not mean organizations should ignore weaknesses; the question is where to invest the most effort. Strengths-oriented organizations concentrate on building talents while understanding and managing weaknesses either by developing weaknesses to an acceptable level or allocating responsibilities according to strengths (Clifton & Harter, 2003; Bouskila-Yam & Kluger, 2011).

A "strength" is the ability to provide consistent, outstanding performance in a given activity (Clifton & Harter, 2003). Strengths-development starts with identifying talents, which is a natural way of thinking, feeling, and behaving (Asplund & Blacksmith, 2012). Individuals vary widely in their interests and talents, many of which may be genetically-based and, thus, fairly

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stable or unchangeable (Clifton & Harter, 2003; Asplund & Blacksmith, 2012). This suggests that growth and development will occur most efficiently for people tapping into their in-born talents (Clifton & Harter, 2003). Once dominant talents are identified, an individual can hone them with knowledge and skills until they become strengths (Clifton & Harter, 2003).

**A strengths-orientation enhances employee engagement and performance.** Gallup, which has studied human strengths for over 30 years, has contributed significantly to understanding how a strengths-orientation shapes workplaces (Clifton & Harter, 2003). For example, in a study of more than 2,000 managers, Gallup researchers asked open-ended questions about managing talent versus weaknesses (Clifton & Harter, 2003). Manager performance also was evaluated on such items as productivity, profitability, employee retention, customer loyalty, and safety. The study found that the probability of success (defined as performance above the mean) was 86% greater for managers with a strengths versus non-strengths approach (Clifton & Harter, 2003). This success was due in part to an increase in employee engagement brought on by the strengths-orientation, which positively impacted business performance (Clifton & Harter, 2003). “Engagement” was defined in Part I. Essentially, it is a measure of employees’ involvement in and enthusiasm for their jobs and it is linked to numerous positive business outcomes (Asplund & Blacksmith, 2012). To maintain engagement, employees must always be learning and growing, which is fundamental to the strengths approach (Asplund & Blacksmith, 2012).

To test the effectiveness of a strengths-based intervention, Gallup partnered with several large organizations to investigate whether engagement could be enhanced through a strength-based approach to talent identification, feedback, and development activities (Clifton & Harter, 2003). The study group members took Gallup’s “Strengths-Finder” assessment after which they

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were given feedback and developmental activities based on their dominant talents. In all studies, employee engagement and productivity substantially increased compared to the control groups. Based on an analysis of the aggregated data from all of the studies, Gallup estimated that the dollar value of increased productivity was \$1,000 per person. Since the average size of the companies involved was 5,400 employees, this meant that the total dollar value added from the strengths-based intervention was \$5.4 million (Clifton & Harter, 2003).

Gallup also has found that direct supervisors' strengths-orientation is particularly important for employee engagement. In a study of U.S. employees, Gallup found that, when managers focus on strengths, 61% of employees are engaged and only 1% are actively disengaged (Sorenson, 2014). When managers focus primarily on weaknesses, 22% are disengaged. When managers do not focus on either strengths or weaknesses, 40% are disengaged (Sorenson, 2014). In other words, focusing on weaknesses is detrimental but entirely ignoring people produces the worst outcomes.

**Strengths-oriented performance reviews.** All of the above suggests that a strengths-orientation is the best way to develop an optimally-performing organization. This conclusion is further confirmed by research indicating that the traditional deficit-oriented annual performance review process used by most organizations is not only ineffective at improving performance, it often is destructive (Bouskila-Yam & Kluger, 2011; Aguinis, Gottfredson, & Joo, 2012). For example, a meta-analysis of 131 studies found that, in one-third of the cases, performance feedback resulted in decreased performance (Kluger & DeNisi, 1996). These poor outcomes are largely attributable to managers' lack of skill in providing feedback and an excessive focus on weaknesses (Aguinis et al., 2012). Educating managers to engage their teams through a strengths-based approach can avoid the negative effects of deficit-focused feedback and

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contribute to better performance (Asplund & Blacksmith, 2012).

To get started on incorporating a strengths-orientation into perform review processes, aspiring positive law firms could start small by just tweaking their current process. Managers could start a review meeting by asking lawyers to share stories about when they performed optimally. They then could explore what circumstances were involved that might be replicated in the future (Bouskila-Yam & Kluger, 2011). Managers also could offer their own examples of when the lawyers excelled. They then could discuss the strengths involved and how they might be leveraged for future success. Managers could consider organizing a social get-together to share and celebrate some of the positive stories shared during the review meeting (Bouskila-Yam & Kluger, 2011). Discussing strengths also could be incorporated into regular business routines. For example, when creating a new team for a client matter, partners could take the time during an introductory meeting to talk about each person's strengths. The same tactic could be used in client-facing meetings, including during client pitches or introductory calls for new matters.

**Strengths-based leadership.** Gallup's strengths research reflects that people who try to be good at everything are unlikely to be great at anything (Rath & Conchie, 2008). The most cohesive and successful business teams are composed of members with unique skills that complement each other. Accordingly, effective leaders, rather than expecting themselves and everyone else to be good at everything, build well-balanced teams based on complementary strengths (Rath & Conchie, 2008).

From decades of research, Gallup identified four distinct domains of leadership strengths: Executing (those who implement), Influencing (those who sell ideas), Relationship Building (those who glue people together), and Strategic Thinking (those who continually analyze and stretch thinking to the future) (Rath & Conchie, 2008). Effective teams have a representation of

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strengths in each of the four domains. Typically, team members have strengths in more than one domain but not in all (Rath & Conchie, 2008). To sustain growth, effective leaders continually invest in members' strengths and in building relationships among them (Rath & Conchie, 2008).

**Identifying and investing in strengths.** The findings that successful teams are built by valuing members' complementary strengths and that strengths-based management leads to higher engagement suggest ways for firms to enhance lawyer performance. Firms could start by asking all lawyers to take the StrengthsFinder assessment (which has been taken by over 4 million people) or other strengths assessment as a basis for feedback and development plans (Asplund & Blacksmith, 2012; Clifton & Harter, 2003). People who are aware of their strengths are more likely to use them to achieve higher success than those who do not know their strengths or who focus on improving areas in which they have less aptitude (Asplund & Blacksmith, 2012).

Associates are the most obvious group with whom to implement strengths-development activities, which easily could be incorporated into existing performance review processes. But partners also could significantly benefit from such activities. In many law firms, once lawyers are elevated to partner, feedback dwindles. The prevailing assumption among law firm managers appears to be that little feedback or guidance should be necessary for partners, who are themselves owners of the firm. If feedback is given, it typically focuses on revenue-generation shortfalls and other deficits. The Gallup research referenced above suggests that neither a deficit-based nor a laissez-faire approach is ideal. Firms could potentially enhance partner engagement and performance significantly by adopting an actively strengths-oriented approach rather than maintaining a hands-off or deficit-oriented approach.

Further, research suggests that, to build the most effective teams, law firm leaders should focus on developing teams with complementary strengths rather than expecting everyone to

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excel at everything. BigLaw partners earn high salaries and, in exchange, law firm managers place high expectations on them to excel in a multitude of areas—including, for example, business generation, client relationship development, business management, legal acumen, and people management. As the Gallup research would predict, individual partners excel in some areas but not typically in all. For example, “rainmakers” excel at new business generation. “Service partners” excel at building existing client relationships (sometimes referred to as “institutional clients”) and, typically, legal acumen. Often, service partners are criticized, if not belittled, for not generating significant business from new clients. During my years of practice, I heard law firm leaders repeatedly refer to service partners metaphorically as if they were farm pigs “feeding from the institutional trough.”

MacEwen (2013) questions the rationality of firms’ “feverish” focus on new client origination and disregard for contributions of partners who build solid, profitable, long-term relationships with existing clients. According to MacEwen (2013), the prevailing mindset about service partners is short-sighted in light of the data on the value of existing client relationships:

[T]he data is utterly consistent that existing clients are more profitable than new clients, and that a stable roster of clients can lead to greater continuity internally in the firm in terms of professional development, “handoffs” from one generation to the next, and control over your own destiny. (p. 83)

Further, according to Gallup’s research, continually demeaning service partners for their perceived weaknesses and devaluing their strengths is not likely to lead to optimal results. This type of behavior undermines engagement and, in any event, is not likely to lead to major changes in new business origination. This is so because a number of strengths that contribute to rainmakers’ success arise from personality traits, which are not highly malleable or teachable.

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For example, Dr. Larry Richard (2002) found that law firm rainmakers differ from service partners in their scores on ego drive (the desire to persuade for its own sake), ego strength (the ability to bounce back from rejection), empathy (an interest in shifting to another's perspective), assertiveness, sociability (a desire to interact with people and comfort with initiating new, intimate connections), risk-taking, and confidence. On sociability, for example, rainmakers scored nearly three and a half times higher than service partners. Further, compared to service partners, rainmakers scored as less cautious, less perfectionistic, less skeptical, and more trusting. Richard (2002) advises that partners who do not have a "rainmaker personality" still can originate business, but they will be less comfortable doing so and will find it harder and less rewarding than for the classic rainmaker. That being so, Richard questions whether requiring every partner to become a rainmaker is the best business development strategy for law firms.

Given the above, positive law firms will consider alternative approaches to partnership management. They will consider focusing on partners' complementary strengths and eliminating a demeaning caste system. They might identify partners with rainmaker personality traits and provide development activities to refine their rainmaking skills. As for those with service partner personality traits, firm managers might provide development activities to build acceptable levels of new business generation but focus on leveraging their strengths to develop more business from their existing client relationships. I am not suggesting that firms stop encouraging all partners to develop new business. But, according to Gallup research, firms trying to optimize partner performance will underscore strengths and manage weaknesses without allowing the latter to eclipse the former.

**Limitations of strengths-oriented management.** While positive psychology encourages managers to focus primarily on building strengths, addressing weaknesses cannot be ignored in

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business contexts where a full portfolio of skills are expected. Litigators, for example, must be skillful writers, analytical thinkers, and oral advocates. Law firms cannot assign all writing tasks to one group of lawyers and oral advocacy to another group of lawyers based on their strengths. Each case requires strengths in all of those areas and many more. No amount of job crafting or task reassignment can accommodate for weaknesses in any key area. Further, the strengths-oriented literature appears to implicitly assume that everyone has the capacity to meet expectations with the right encouragement. To be sure, managers' high expectations of employees' abilities may contribute to higher performance through the "Pygmalion effect," which is the label for the empirically proven phenomenon of self-fulfilling prophecies (Kierein & Gould, 2000). But it is not realistic to believe that everyone will satisfy expectations with enough positive reinforcement. Not every lawyer will have the talent or skill level to survive in a particular law firm setting. It would be irresponsible for firms to continue to focus primarily on strengths even as they are deciding to terminate a lawyer's employment for poor performance. Lawyers need sufficient notice to prepare and look for other jobs. Poor performance must be documented in the event of lawsuits and to provide a satisfactory rationale to the terminated lawyer. Given this reality, positive psychology also should teach when to shift from a strengths-oriented approach to a more deficit-focused approach and techniques for showing respect and care during the entire process.

### **Positive Law Firms Will Foster Physical and Emotional Wellness**

Part I inventoried health issues pervading the legal profession. Although these problems have existed for decades, law firms have not taken any action—suggesting a belief that lawyers' health is their own personal business. Positive law firms will realize that lawyers' physical and psychological wellness is an integral part of the agenda to build a thriving firm.

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A view that lawyer health falls outside firm management's concern overlooks that organizational wellness is interdependent with the wellness of the organization's members (Prilleltensky, 2012). When lawyers are healthy, they will have more energy to invest in the business and treat clients well (Mackey & Sisodia, 2014). Consequently, firms should gladly accept lawyer well-being as a shared responsibility (Prilleltensky, 2012). As a point of clarification, I am not suggesting that law firms are responsible for ensuring that all lawyers are happy and healthy. Even in high quality work environments, some people will fail to thrive for a variety of reasons. My main point here is that law firms should share responsibility for creating a work environment that enables and encourages thriving.

Below is a discussion of work environment factors and lawyer work habits that are leading candidates for health-related interventions to enhance lawyer wellness. As the discussion reflects, the positive law firm's goal should not be just to contain health care costs but also should include the development of a wellness culture that finds ways to nudge lawyers to lead healthy, vibrant, fulfilling lives (Mackey & Sisodia, 2014). In addition to benefitting from having a healthier workforce, law firms may reap benefits in recruiting. Firms who fully commit to building a wellness culture may be able to capitalize on the results by sharing information with new prospects about the firm's better overall health, lower cancer rates, lower cholesterol, etc.

**Respectful bosses develop healthy employees.** The quality of the workplace can significantly impact people's physical and psychological wellness. For example, evidence is accumulating that managers' leadership style predicts employee health (Nyberg, Alfredsson, Theorell, Westerlund, Vahtera, & Kivimaki, 2009). Studies have linked leaders' considerate behavior toward employees to good health and productivity. Evidence also reflects that a bad boss literally could kill you. A 2008 Swedish study found that workers' risks for angina, heart

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attack, and death rose along with the reported incompetence of their bosses (Nyberg et al., 2009). Manager competence was judged by employees' answers to questionnaires. Questions that had a significant association with heart disease included those inquiring whether managers provided needed information, explained goals, showed that they cared, provided sufficient power to carry out job duties, became involved in professional development, and praised employees for good work (Nyberg et al., 2009).

A similar study showed that, on days that employees were supervised by bad bosses, their blood pressure was much higher (Wager, Fieldman, & Hussey, 2003). There, employees' responses to questionnaires about their supervisors showed that blood pressure was most strongly associated with items pertaining to interpersonal fairness such as praise for a good job, demonstration of trust and respect, and non-partiality in treatment of employees.

These findings suggest that training partners and others in supervisory roles to foster a workplace characterized by fairness, empowerment, and consideration for others may positively impact health (Nyberg et al., 2009; Wager et al., 2003).

**Advantages of an active lifestyle and work day.** Lawyers' sedentary lifestyle also is a significant health risk. Physical exercise frequently is among the first casualties of lawyers' busy schedules. Given the substantial evidence that exercise enhances physical and mental health, positive firms will try to counteract this pattern through information and other nudging.

As to physical health, physical activity is associated with reduced rates of cardiovascular disease, colon and breast cancer, and obesity (Hillman, Erickson, & Kramer, 2008). As to mental health, aerobic exercise can be as effective at improving symptoms of depression as antidepressant medication and psychotherapy (Chu, Buckworth, Kirby, & Emery, 2009). Exercise may even act as a buffer against the onset of depression (Hillman et al., 2008). Physical

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exercise also is associated with reduced symptoms of anxiety, irritability, low vigor, and pain (Herring, Jacob, Suveg, & O'Connor, 2011).

A growing body of research shows that physical exercise also improves brain functioning and cognition (Hillman et al., 2008). Physical activity, which stimulates new cell growth in the brain, can offset the negative effects of stress, which causes brain atrophy (Duman, 2005). Greater amounts of physical activity (particularly aerobic) have been associated with improvements in memory, attention, verbal learning, and speed of cognitive processing (Hillman et al., 2008). Fit people actually have bigger brains than unfit people (Hillman et al., 2008).

An even bigger obstacle to good health than squeezing in regular work-outs is that most lawyers sit virtually all day. Studies have linked too much sitting to, for example, obesity, diabetes, blood pressure problems, cardiovascular disease, and colon cancer (Owen, Healy, Matthews, & Dunstan, 2010; Boyle, Fritschi, Heyworth, & Bull, 2011; Hellmich, 2012). Tom Rath (2013) has warned that “[s]itting is the most underrated health threat of modern times” (p. 21). Dr. James Levine, a researcher at the Mayo Clinic in Minnesota, agrees, saying that “[e]xcessive sitting is a lethal activity” (Vlahos, 2011, p. 1).

Too much sitting is distinct from too little exercise (Owen et al., 2010). For example, people can be “active couch potatoes”—which are those who meet public health guidelines for physical activity but still have elevated cardio-metabolic health risks due to prolonged sitting (Owen et al., 2010, p. 2). One study found that, even among those who exercised regularly (e.g., seven hours per week), those who spent the most time sitting had a greater risk of all-cause mortality. A study of TV-time watching (a sedentary activity) found that, compared to people who watched less than two hours per day, people who watched four or more hours of TV had a 46% greater risk of all-cause mortality and 80% greater risk of dying from cardiovascular disease

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(Owen et al., 2010). Research suggests that reducing sitting time to three hours daily could add two years to the average U.S. life expectancy (Hellmich, 2012). Reducing overall sedentary time is key, but just taking breaks from sitting also is beneficial. This can include transitioning from sitting to standing up and from standing to walking (Owen et al., 2010).

Firms could encourage lawyers to increase activity during the workday by, for example, pacing while on the phone, climbing stairs, standing while talking to colleagues, having walking meetings, and standing during meetings rather than sitting at conference tables (Hellmich, 2012). Partners could organize daily “energy” breaks or flash mobs in their office conference rooms to get people together and moving. Technology also offers options. Law firms could consider offering treadmill desks in offices or conference rooms. Firms could offer adjustable desks that allow transitions from sitting to standing. Mini step machines are available that fit under desks that can be used during calls (Hellmich, 2012). Firms could consider covering all or part of the cost of such health-enhancing technology and offering the technology as prizes for social activities or achievement of performance goals.

**Well-rested lawyers: The new role-models.** Sleep-deprivation poses another significant risk to lawyers’ health. Yet law firm cultures continue to glorify sleeplessness. In a study of associates in a large, world-wide firm, a common complaint related to high hours and little sleep, including “a quite childish competition... on who could do with less sleep than the others” (Forstenlechner & Lettice, 2008, p. 648). As with many corporate cultures (Fryer, 2006), firms use sleep deprivation as a proxy for high performance. Dr. Charles Czeisler, one of the world’s leading sleep experts, says that “encouraging a culture of sleepless machoism is worse than nonsensical; it is downright dangerous, and the antithesis of intelligent management” (Fryer, 2006, p. 1). The negative impact of sleep deprivation is far-reaching. As noted in Part I, sleep

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deprivation has been linked to a variety of physical and mental health diseases including depression, cognitive impairment, decreased concentration, hypertension, diabetes, impaired immune system, weight gain, burnout, and early death.

While lawyers and firms should be troubled by all of these negative health effects, cognitive functioning is a capacity particularly important for lawyers. Cognitive impairment associated with sleep-deprivation can be profound (Fryer, 2006; Ferrie et al., 2011). A study of over 5,000 people showed that too little sleep was associated with a decline over a five year-period in cognitive functioning, including reasoning, vocabulary, and global cognitive status (Ferrie et al., 2011). Sleep deprivation also has significant short-term effects. People who average four hours of sleep per night for four or five days develop the same cognitive impairment as if they had been awake for 24 hours—which is the equivalent of being legally drunk (Fryer, 2006).

The analogy between sleep deprivation and drunkenness is apt not only due to the equivalent levels of impairment but also because, like drunks, people who are sleep deprived do not believe they are impaired (Fryer, 2006). For example, in a two-week sleep study, participants were assigned to sleep groups of four, six, or eight hours (Jones, 2011). Each day, they participated in a battery of tests of their cognitive functioning via computer. The four- and six-hour groups declined dramatically over the test period, and many were falling asleep at their computers by the sixth day. Yet, while acknowledging that they felt a little sleepy, they insisted that the sleepiness was not affecting them (Jones, 2011).

Given the above, lawyers who say that they are among the select few who can function optimally without much sleep (and the managers who believe them) are almost certainly wrong. It is true that client demands and deadlines sometimes require lawyers to sacrifice sleep. But, for

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positive law firms, this should become the uncelebrated exception.

**Importance of recovery periods.** Law firms' 24-hour/7-day work week paired with high job demands can drain lawyers' health and well-being if they do not have adequate recovery periods (Soderstrom et al., 2012; Rothbard & Patil, 2012; Fritz, Ellis, Demsky, Lin, & Guros, 2013). "Recovery" in psychological terms refers to regeneration processes that enhance positive states (e.g., vitality, positive affect) and reduce negative states (e.g., fatigue, anger) that build up from effort and stress at work (Sonnentag, Niessen, & Neff, 2012). Sustained engagement with work—i.e., always being "on"—can lead to exhaustion and burnout (Rothbard & Patil, 2012; Soderstrom et al., 2012). People who do not fully recover are at an increased risk over time for depressive symptoms, fatigue, energy loss, and cardiovascular disease (Fritz et al., 2013). By contrast, people who feel recovered report greater work engagement, job performance, willingness to help others at work, and ability to handle job demands (Fritz et al., 2013; Rothbard & Patil, 2012; Sonnentag et al., 2012).

Recovery can occur during breaks during the workday, evenings, weekends, vacations, and even microbreaks when transitioning between projects (Sonnentag et al., 2012). The quality of employees' recovery influences their affect, motivation, and job performance (Sonnentag et al., 2012). Quality sleep is important but is only one factor contributing to adequate recovery (Rook & Zijlstra, 2006). Freely chosen activities and experiences (rather than obligatory chores) hold potential for recovery, including socializing with friends, playing with one's children, relaxing (e.g., reading), activities that facilitate psychological detachment from the job, and mastery experiences (Sonnentag et al., 2012). Physical activity (exercise and sports) holds the greatest potential for recovery (Sonnentag et al., 2012). This is especially true for people performing mentally demanding work, for whom low-effort activities (e.g., watching TV) may

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actually increase subjective feelings of fatigue (Rook & Zijlstra, 2006).

Thinking about work during a recovery period can be beneficial or detrimental—depending on what one thinks about and for how long. Thinking about work can be beneficial for recovery if it involves positive thoughts and sharing stories of positive work events with family members and others (Sonnentag et al., 2013; Fritz et al., 2013; Culbertson, Mills, & Fullagar, 2012). But recovery can be hindered where employees think about negative events at work and continue to worry and ruminate (Sonnentag et al., 2012; Fritz et al., 2013). Periods of not thinking about work at all also can be highly beneficial. A moderate level of psychological detachment is linked to positive affect, engagement, job performance, well-being, fewer health complaints, and lower burnout (Sonnentag et al., 2012; Fritz et al., 2013).

Given the foregoing, positive law firms will support recovery time for lawyers. They could facilitate psychological detachment by limiting work-related calls or emails during evenings, weekends, and on vacation. For example, Hewlett-Packard (“HP”) shuts down annually over the winter holiday and asks outside lawyers not to contact HP personnel unless it is an emergency. McDonald’s and Volkswagen—along with one in four U.S. companies—have agreed to stop sending emails to employees after hours (Fritz et al., 2013). Even in the high-demanding world of BigLaw, positive law firms that are serious about health could establish new norms for lawyers that limit after-hours emails and calls to emergencies—especially to associates who have less work-related autonomy and, thus, are at a higher risk for fatigue and burnout.

Under existing cultural norms in law firms, there are no work-life boundaries to allow for recovery time. Similar to sleeplessness, sacrificing weekends and vacations and responding to emails at 3:00 a.m. often earn a badge of honor that is culturally reinforced. For example, the Chairman of my former firm recently told a group of new lawyers during their orientation that

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they would not excel simply by doing great work; they would stand out only if, for example, they sacrificed their family vacations for their jobs. While client demands inevitably will intrude on lawyers' personal plans, the well-being of lawyers would be better served by creating a culture that tries to minimize those intrusions rather than celebrating them as the only way to excel.

### **Positive Law Firms Will Strive for an Optimal Level of Positive Emotions**

In a dry understatement of the obvious, Forstenlechner and Lettice (2008) found “a degree of consensus” in the research literature “that large law firms have a reputation for being tough places to work” (p. 643). They found that the larger and more prestigious the firm is, the worse the working conditions become. In my experience, this is true but not inevitable.

No doubt, there are built-in aspects of a lawyer's job that make it inevitably tough. Because salaries are high, so too are expectations. Legal issues are complex, clients are demanding, opposing lawyers are a continual source of aggravation, judges can be disengaged and unpleasant, motions are lost, corporate deals fall apart, and on, and on. The negative emotions stemming from these inevitable challenges are part of the job. What is not inevitable—despite its prevalence—is a law firm culture that stokes the negativity oven. Positive law firms will strive to counterbalance the inevitable negativity in lawyers' working lives by refraining from contributing more negativity and by injecting more positive emotions.

The value of positive emotions (e.g., joy, gratitude, love, interest, pride) in workplaces often is misjudged. It's not just that it's nice to have happy employees. Positive emotions help produce successful individual and organizational outcomes. According to Barbara Fredrickson's (1998, 2001) “broaden-and-build” theory, positive emotions broaden people's attention, thinking, and action and build their physical, intellectual, and social resources. These resources can fuel workplace success.

**Positive emotions contribute to individual success.** On an individual level, evidence reflects that people who frequently experience positive emotions are more successful than their more negative counterparts (Lyubomirsky, King, & Diener, 2005). According to the evidence, it is not just that success makes us happy. Rather, feeling happy makes us more successful (Lyubomirsky et al., 2005). For example, a meta-analysis of studies examining the effects of positive affect found that the frequent experience of positive emotions is associated with better supervisory evaluations and job performance, higher annual salaries, client service, job satisfaction, organizational citizenship behavior, retention, less conflict, less absenteeism, job autonomy and meaning, reduced symptoms of anxiety and depression, sociability, resiliency, cooperation, lower ego defensiveness, and accuracy of judgments (Lyubomirsky et al., 2005; see also Sekerka, Vacharkulksemsuk, & Fredrickson, 2012).

One point of concern particularly applicable to lawyers arises from laboratory evidence suggesting that positive mood can disrupt analytical thinking by making it more likely for people to use heuristic shortcuts based on past learning (Lyubomirsky et al., 2005). When there are cues that the situation is important and care is required, however, individuals in a pleasant mood perform well on analytical tasks (Lyubomirsky et al., 2005). It seems unlikely that positive mood will diminish lawyers' performance given that all on-the-job analytical tasks have such cues.

**Positive emotions enhance group performance.** Positive emotions also are associated with enhanced group performance (Sekerka et al., 2012). Compared to low-performing groups, high-performing teams have high positivity/negativity ratios and a higher degree of connectivity, which is linked to greater productivity (Luoma, Hämäläinen, & Saarinen, 2008; Sekerka et al., 2012). Groups with higher positivity ratios also show broader thinking patterns. Low performing teams have lower levels of connectivity and lower positive-to-negative ratios. This combination

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makes teams more likely to get stuck in situations due to their narrower mindsets and weaker interpersonal connections (Sekerka et al., 2012; Luoma et al., 2008). Positive emotions also play a role in effective leadership. Employees perceive leaders who express positive emotions as more effective and more desirable to work with (Sekerka et al., 2012).

**Emotional contagion.** The emotional tone that leaders and colleagues convey in the workplace is important because it is transmittable. An organization can be infected with negativity or elevated by positivity through “emotional contagion,” which is a type of social influence in which a person or group influences the emotions (positive or negative) of another (Barsade, 2002). Shared positive affect in an organization can trigger a beneficial upward spiral of positive emotions, inspiring increased cognitive flexibility and higher connectivity, which is linked to better business outcomes like productivity (Sekerka et al., 2012; Amabile, Barsade, Mueller, & Staw, 2005). Emotions also travel to customers, meaning positive emotions can contribute to good client relationships (Stephens, Heaphy, & Dutton, 2012).

**Positive emotions enhance organizational effectiveness.** From an organizational perspective, a positive emotional climate fosters employee growth and can produce optimal organizational functioning over time (Fredrickson, 2003). Research shows that people simply perform better when they experience more positive emotions during their workday (Sekerka et al., 2012). The broadening effect of positive emotions broadens the scope of peoples’ self-perception, which blurs the distinction between self and others (Sekerka et al., 2012). This can result in people feeling greater responsibility toward the organization and others and actually being more helpful to others. People who feel appreciated and grateful like working together more and are better able to stimulate ideas and achieve shared goals (Sekerka et al., 2012).

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Positive emotions also encourage trust, which is linked to greater contributions to the organization. The result can be that, over time, an organization can move from a competitive, self-interested orientation to a more generative, interdependent-orientation. This can result in enhanced collaboration and understanding and, ultimately, thriving (Sekerka et al., 2012).

**Outnumbering the bad with extra good.** Unfortunately, negativity permeates lawyers' daily work lives and they too often contaminate their work environments through emotional contagion, which disrupts the optimal functioning of their teams. The psychological impact on lawyers and their teams of the continual negativity is compounded by the “negativity bias,” which is an adaptive predisposition to attend to bad things (Baumeister, Bratslavsky, Finkenauer, & Vohs, 2001). To survive, it was critical for early humans to notice and react quickly to bad things—like poisonous snakes. The effect of negative emotions is to narrow people's focus and attention, which aided quick, appropriate action to adverse circumstances (Fredrickson, 1998, 2003). By contrast, a failure to respond appropriately to positive life opportunities was not likely to result in dire consequences (Fredrickson, 1998). The result is that we now are hardwired to react more strongly to the bad. Bad events produce stronger emotions and have longer-lasting effects on our emotions and behaviors than good events (Baumeister et al., 2001).

Although bad events are more powerful, subjective well-being still can prevail if positive emotions outnumber the bad (Baumeister et al., 2001; Fredrickson, 2013). A variety of workplace studies indicate that the minimum “positivity ratio” in the workplace for high-quality performance is about 3:1 (Fredrickson, 2013). This means that, for people to feel psychologically well and perform well at work, three positive emotions are necessary to counteract one bad one. Notably, the precise ratio of 3 to 1 has come under fire due to weaknesses in the mathematical modelling that was used as one basis for deriving the ratio (Brown, Sokal, & Friedman, 2013).

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Putting the mathematics aside, experimental and field studies also support the 3:1 ratio in workplaces (Fredrickson, 2013). Dr. John Gottman's studies of marital relationships also supports the general proposition that good can only prevail where it significantly outnumbers the bad (Gottman & Silver, 2000). Gottman's work shows that marriages are in danger of ending in divorce when the ratio of positive to negative interactions dips below five to one. Based in part on this ratio, he is able to predict whether a marriage will end in divorce with 94% accuracy (Gottman & Silver, 2000). Whatever the precise ratio might be for the workplace, the main point is that positive emotions should outnumber negative emotions by some material amount to ensure a well-functioning team. While there might be some upper limit at which too much positive emotion becomes dysfunctional, research indicates that, generally, the more positive emotions, the better (Fredrickson, 2013).

What this means for aspiring positive law firms is that they will cultivate higher-performing teams by enhancing the positivity ratio. Positive law firm leaders can choose from a variety of ways to incorporate more positive emotions into the workplace and to encourage others to do so. Efforts to cultivate meaning, to support self-determination, and to focus on strengths—which are discussed above—all cultivate positive emotions (Fredrickson, 2003). Positive meaning can be drawn from experiences of competence, achievement, significance of their work, and social connection (Fredrickson, 2003). Firm leaders and partners can try to inject more positivity into routine daily events by, for example, frequently communicating gratitude, starting meetings with recent success stories, socializing at office lunches, establishing regular gratitude award ceremonies for the office, organizing after-work sports activities, etc. Perhaps the most significant contributor to positive emotions at work is experiencing high quality connections with colleagues, which is discussed next.

**Positive Law Firms Will Be Energized by High Quality Connections**

The central role that interpersonal relationships play in organizational effectiveness often is ignored, preventing organizations from living up to their full potential. For example, Forstenlechner and Lettice (2008) asked BigLaw associates how their working conditions could improve. The top responses included that partners lacked collegiality, did not express appreciation, and treated them as if they were fungible. The 2008 financial crisis exacerbated matters. Those who still have jobs often are reminded of their luck and expendability (Scheiber, 2013). Similar themes surely would emerge in surveys of law firm partners.

**Growing problem of toxic workplaces.** The associates' reports of lack of respect and courteousness comport with nation-wide surveys, noted in Part I, showing that workplace incivility is on the rise (Pearson & Porath, 2005). Incivility is defined as low-intensity behavior that violates workplace norms of mutual respect (Pearson & Porath, 2005). It includes, for example, rudeness, threats, sarcasm, embarrassing or belittling others, speaking in a condescending tone, treating others like they are invisible, taking others for granted, and the like—whether or not the conduct is intentionally malicious (Pearson & Porath, 2005). Similar to emotional contagion discussed above, incivility can infect a workplace—especially when leaders model uncivil behavior (Pearson & Porath, 2005).

Jane Dutton (2003b) warns of the corrosive effect of such disrespectful engagement and non-engagement, which depletes employees' energy and motivation and increases burnout. Low-quality, toxic connections inflict emotional and physiological damage (Dutton & Heaphy, 2003). They diminish productivity, performance, motivation, creativity, and helping behaviors for those who experience incivility and for those who see or hear about it (Pearson & Porath, 2005; Walsh et al., 2012; Carmeli, 2009). On the other hand, high quality connections with colleagues bring

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vitality to the work place and produce a host of individual and organizational benefits (Stephens, Heaphy, & Dutton, 2012; Carmeli, 2009). Aspiring positive law firms will take this issue of incivility and quality connections seriously out of respect for their lawyers and staff and concern for organizational effectiveness.

**HQCs as the antidote to incivility.** In a nutshell, the theory of high quality connections is this: All of the big and little bits of interactions that occur minute-to-minute in organizations profoundly impact people (positively or negatively), and those people determine how well organizations function. The higher the quality of connections, the better individuals and organizations function.

Specifically, high quality connections (“HQCs”) are defined as short-term, positive interactions with another person (Stephens et al., 2012). What distinguishes HQCs from other interactions is their special texture—they are energizing, uplifting, and each participant has a sense that the other is fully engaged and genuinely cares. HQCs can occur in long-term relationships or between new acquaintances. They can occur during lengthy interactions or the many micro-contacts that occur daily (Stephens et al., 2012). HQCs also can occur at an organizational level, such that employees feel that the organization cares about them and values their contributions, which creates a sense of self-worth and deep feeling of connection to the organization (Carmeli, 2009).

HQCs have special qualities. The higher the quality of the connection, the greater emotional-carrying capacity it has—i.e., the freer people feel to express emotion, whether positive or negative (Stephens et al., 2012). Higher quality connections also have greater “tensility,” which is a capacity to bend and withstand strain and function in wide variety of circumstances. They also have a greater level of “connectivity” or openness to new ideas and

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influences (Stephens et al., 2012).

**Benefits of HQCs at work.** HQCs matter in work organizations for numerous reasons, including that they can support employees' basic needs for relatedness and competence (elements of SDT, discussed above) and because an organization's work gets done (or not) through social processes (Stephens et al., 2012; Dutton, 2003b). Research reflects that HQCs have positive effects on individuals, including improving cognitive performance; facilitating the creation of positive meaning in work and learning; enhancing the cardiovascular, neuroendocrine, and immune systems; and facilitating recovery from losses (Stephens et al., 2012). HQCs also contribute to organizational effectiveness by fostering trust and psychological safety and improving organizational processes such as coordination, collaboration, and error detection (Stephens et al., 2012; Dutton & Heaphy, 2003).

**HQC pathways.** Pathways to develop HCS include emotions, cognitions, and behaviors (Stephens et al., 2012). The role that positive emotions play in developing quality relationships was discussed above and so I move directly to a discussion of the cognition pathway.

*The cognition pathway.* Individuals' cognitions are key building blocks for HQCs. This is so because how people process information shapes how and whether they connect with others. For example, a key cognitive mechanism for establishing connections is other-awareness (Stephens et al., 2012). This means that we are aware of another's presence and behaviors and recognize that the other person is a significant part of our work environment. A simple example is being aware of what others on your team are doing. Connections needed for such awareness enhance existing connections, which improves coordination of behavior (Stephens et al., 2012).

*The behavior pathway.* Behaviors that build HQCs include task enabling, trust, play, and respectful engagement (Dutton, 2003a; Stephens et al., 2012). "Task enabling" encompasses

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strategies that people use to facilitate the success of others (Dutton, 2003a). When someone provides resources to another in the form of, for example, information or emotional support, this cultivates perspective-taking and gratitude, which, in turn, improves the quality of the connection (Stephens et al., 2012). It also triggers a sense of reciprocity such that the person who received assistance feels grateful and encouraged to return the favor (Stephens et al., 2012).

The HQC-building behavior of acting with trust means acting in ways that convey a belief in others' integrity, dependability, and benevolence (Dutton, 2003a). We convey trust when we allow people to see that we are at risk in some way and expose our vulnerability and interdependence (Dutton, 2003a). Trust can be shown by words, sharing valuable information, self-disclosure, using inclusive language (e.g., "we"), and refraining from demeaning others or accusing them of bad intent. Trust also is conveyed through autonomy-supporting behaviors such as sharing control over decisions and tasks, avoiding check-up behaviors, and not punishing people for errors (Dutton, 2003a).

Trusting behaviors can be challenging for law firm partners, who are ultimately responsible to clients for ensuring that their matters are handled with a high level of excellence. But, according to Dutton (2003a), trust will only increase with use. Partners who show trust to associates may trigger a self-fulfilling cycle in which those who have been shown trust feel motivated to act trustworthy (Dutton, 2003a).

Play also helps build HQCs. Play can reduce stress and also enables people to learn more and different things about each other than is likely to occur during a work or non-play mode (Stephens et al., 2012). Playfulness can break down hierarchy and a sense of bureaucracy and can help build rapport among colleagues and with clients (Stephens et al., 2012).

The final behavior, engaging respectfully, includes conveying presence, being genuine,

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and communicating affirmation (Dutton, 2003a). Respectful behaviors show esteem, dignity, and care (Stephens et al., 2012). Research on civility, dignity, and respect reflect that everyday behaviors—even micro-behaviors—communicate how one person values another (Stephens et al., 2012). This includes non-verbal behaviors. More than 50% of the impact of a message is conveyed from body movement and 38% derives from tone of voice; only 7% of the message is delivered through words (Dutton, 2003a). People make rapid judgments about the meaning of non-verbal behaviors and whether to try to connect or withdraw (Stephens et al., 2012).

*Focusing lawyers on respectful engagement.* Respectful engagement may be the HQC pathway about which lawyers must be particularly vigilant. As noted above, lawyers as a group are highly skeptical, which means that they tend to be judgmental and argumentative (Richard, 2002). Further, the lawyers that Richard (2002) studied had an average “sociability” score of 12.8% (compared to the public’s average score of 50%). Sociability is defined as a desire to interact with people, especially a comfort level in initiating new, intimate connections. Low scorers are less inclined to enjoy interacting with others and may prefer to spend more time dealing with information and the intellect (Richard, 2002).

In Richard’s (2002) study, lawyers also scored high (71st percentile) in “urgency,” which is characterized by impatience, a need to get things done, and a sense of immediacy. Related to urgency is research showing that time-pressures undermine the critical relationship skill of empathy—even for naturally empathetic individuals (Schwartz & Sharpe, 2011). For example, one study showed that only 10% of seminarians asked to rush to their next meeting stopped to help a man slumped over in an alley on their route (Schwartz & Sharpe, 2011). If seminarians tend to lose their empathy under time-pressures, lawyers surely do.

On the trait of “autonomy,” lawyers scored in the 89th percentile compared to the general

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public's average score in the 50th percentile (Richard, 2002). Based on the survey's definition, this means that lawyers tend to resist being managed, dislike being told what to do, and value their independence (Richard, 2002).

The profile that the research paints of a skeptical, impatient, unsociable person who does not want to be bossed suggests that HQCs are a big challenge in law firms. Lawyers wanting to cultivate HQCs may need to be especially mindful about taking time to make affirmative efforts to interact with office-mates and do so respectfully and empathetically. Face-to-face interactions are the best way to nurture connections (Medland, 2008). But, of course, the interaction must convey respect. Something as seemingly so simple as conveying presence by looking up from the computer, ceasing to read emails or type, and greeting colleagues with a smile when they walk into one's office can be rare in busy law firms.

The extensive use of email also is an obstacle to HQCs in law firms. As an initial matter, email often substitutes for in-person conversations, resulting in declining quality and quantity of those higher-quality interactions (Medland, 2008). Additionally, email often is the hotbed of toxic interactions in law firms. This likely is due in part to a diminished awareness of the person on the other end of the email. Social presence theory focuses on how a communication medium facilitates the level of awareness of the other person during an interaction, which impacts levels of warmth and sensitivity that are conveyed (Medland, 2008). Research shows that email depersonalizes human interactions, making sarcasm, name-calling, and sniping more likely (Medland, 2008). Although the medium is less personal, email still can significantly influence the quality of relationships (Medland, 2008).

The above suggests that due, for example, to certain common personality traits and high-pressure work environments, committing to HQCs at work may be particularly challenging for

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lawyers. But, given their importance to individual and organizational wellness, positive law firms will make HQCs a priority. Positive law firms will set expectations for following the rules of respectful engagement in all interactions (even in email).

**Limits of HQCs' power to reshape a workplace.** HQC advocates appear to assume that, if we all just try hard enough to be respectful and caring at work, all of our coworkers and supervisors will reciprocate and the result will be an energized, thriving workplace. Positive psychology's focus on the best in people is commendable, but it does not eliminate the reality of abusive or dysfunctional personalities that will try to take advantage of others. Books like *The 48 Laws of Power* (Greene, 1998) (modeled after Niccolo Machiavelli's book *The Prince*) and *The 33 Strategies of War* (Greene, 2007) (modeled after Sun Tzu's *The Art of War*) remain popular sources of business strategy that continue to shape workplace cultures. Employees should not automatically assume that their efforts to build HQCs will be authentically reciprocated.

Further, poor quality relationships in the workplace may not be the result of a simple lack of training that can be rectified by a first-rate HQC intervention. Personality traits and disorders such as narcissism contribute to workplace aggression and incivility (e.g., Burton & Hoobler, 2011; Bushman & Baumeister, 1998). Personality traits are highly stable, and personality disorders are difficult to change even with long-term therapy (Zeichner, 2013). Thus, it is not realistic to expect HQC interventions to entirely rid workplaces of poor quality connections.

Moreover, given such personality traits and disorders, employees and supervisors who try unreservedly to create HQCs with everyone in the workplace may stumble into dangerous territory. For example, people with personality disorders can be manipulative, unethical, dishonest, and willing to damage coworkers to achieve their own goals (Carver, n.d.). Cluster B Personality Disorders are a category of related, overlapping disorders that include borderline,

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narcissism, histrionic, and antisocial (Zeichner, 2013). Cluster B disorders affect 9% of the adult population (Carver, n.d.). Narcissism may be even more prevalent among lawyers (Sweeney, Myers, & Molea, 2004). Generally, narcissism is on the rise and non-clinical levels are prevalent in the Millennial generation (Westerman, Bergman, Bergman, & Daly, 2012).

While all healthy adults have some level of narcissism, at high levels, narcissism can become a Destructive Narcissistic Pattern (“DNP”) and a clinically-diagnosed personality disorder (Brown, 1996). A narcissistic person views everyone and everything as an extension of the self, as under control of the self, and as existing to serve the self (Brown, 1996). The most destructive traits include a grandiose sense of self-importance, requirements for constant attention and admiration, extreme sensitivity to criticism, and indifference (Brown, 1996). Narcissists expect others to fulfill their needs, have little or no empathy or concern for others, and do not listen to—and frequently distort—what others say (Brown, 1996). When any event occurs that is inconsistent with their self-perception, narcissists can react in a fit of rage (Brown, 1996). The danger of trying to build HQCs with narcissistic personalities is not just the high likelihood of failure. It could be damaging. For example, using empathetic responses with narcissistic people is ineffective and may result in the empathizer being drawn into a destructive emotional relationship (Brown, 1996). The better approach is to protect oneself against narcissistic projections and set clear and rigid boundaries (Brown, 1996). Strategies for developing a constructive work relationship with a destructive narcissist include a combination of mostly non-HQC behaviors, including withdrawal, attacking, smoothing, compromising, and confronting (Brown, 1996).

Borderline personality (“BP”) is characterized by, among other things, a fear of abandonment, mood instability, unstable relationships, and an inability to control anger

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(Zeichner, 2013). The fear of abandonment creates a need to feel secure in all social relationships. Any act (real or imaginary) that is perceived as inattention will trigger frantic efforts to avoid abandonment, including abuse and false accusations. The instability in BPs' relationships results in part from the cycle of idealization/devaluation that is common in this disorder. Initially, BPs lavish praise on their targets to create a close bond with the expectation of special attention and accommodations. When BPs' unattainable expectations cannot be met, they vilify and attack their targets (Zeichner, 2013). Far from attempting to establish HQCs with BPs, supervisors should avoid getting too close, resist emotional involvement, set firm boundaries, establish clear authority roles, and avoid being swayed by BPs' flattery (Zeichner, 2013).

Finally, as discussed above, HQCs are characterized by both parties subjectively feeling respected and able to share highly emotional information. But it may be difficult to know how another party truly feels, and some people are not skilled at detecting emotional states in others. This concern is particularly relevant in relationships where there is a power imbalance. In such situations, subordinates may feel apprehensive about voicing concerns that supervisors have overstepped boundaries of privacy or personal comfort because of a fear of negative consequences and the importance of maintaining the relationship. Supervisors may overlook such cues and barrel ahead, believing they are cultivating HQCs.

None of the above is intended to detract from holding up HQCs as the preferred model of interactions in the workplace. The point is only that HQCs are not currently the cultural norm in workplaces, may not be universally recommended in all circumstances, and pose some risk of transgressing privacy boundaries.

### **Positive Law Firms will Cultivate Psychological Safety**

Law firms are in a period of dramatic change in which high employee engagement and

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innovation are necessary to survive and thrive in the future (MacEwen, 2013). Worker engagement and innovation flourish in workplaces characterized by psychological safety, a tolerance for mistakes, and an ethic of care (Nembhard & Edmondson, 2012; Rothbard & Patil, 2012; Lee, Caza, Edmondson, & Thomke, 2003; Caza & Cameron, 2008). As noted above, MacEwen (2013) expresses reservations about many large firms' ability to innovate and, thus, survive in the future, because of their intolerance for mistakes and intense skepticism (MacEwen, 2013). Positive law firms will rise to the challenge.

“Psychological safety” describes the degree to which individuals perceive interpersonal threat when they take risks at work including, for example asking questions, seeking feedback, making and reporting mistakes, or proposing new ideas (Nembhard & Edmondson, 2012). Psychological safety is a key factor for increasing work engagement (Rothbard & Patil, 2012). When employees perceive psychological safety, they are less likely to be distracted by thoughts of needing to manage supervisors' perceptions and can immerse themselves in their work (Rothbard & Patil, 2012).

Psychological safety also is a key factor for organizational learning behaviors that lead to new knowledge creation and innovation (Nembhard & Edmondson, 2012; Lee et al., 2003). Organizational learning refers to the process of improving an organization by integrating new knowledge. Learning occurs through iterative cycles of idea-generation, planning to execute ideas, taking action to test ideas, and reflection to examine results (Nembhard & Edmondson, 2012; Lee et al., 2003). The “broaden-and-build” function of positive emotions helps power this cycle (Lee et al., 2003). Evidence suggests that organizational learning contributes to high performance in changing work environments and to more satisfying work experiences (Nembhard & Edmondson, 2012).

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Behaviors that generate organizational learning include speaking up, collaboration, and experimentation. “Speaking up” includes making suggestions, discussing errors, raising concerns, and asking for help or feedback (Nembhard & Edmondson, 2012). Collaboration refers to cooperation among people who are trying to achieve a common goal. Experimentation is the trial-and-error process involved in new knowledge-creation (Nembhard & Edmondson, 2012).

While learning behaviors have a significant potential to benefit employees and organizations, they all carry the risk of criticism. People are opened up to the judgment of others as being ignorant, incompetent, negative, or disruptive (Nembhard & Edmondson, 2012). These risks are too much for many people to bear. In one study of managers and staff, over 85% reported that they had not spoken up about a concern (Nembhard & Edmondson, 2012).

Developing a psychologically safe culture may be the antidote to relieve the fear of taking risks that ultimately may benefit everyone. Research has shown that people who feel psychologically safe perceive lower risks of engaging in learning behaviors (Nembhard & Edmondson, 2012).

There are a number of ways that organizations can enhance psychological safety. One way is to provide supportive responses to employees’ questions and concerns rather than being defensive, critical, or punitive (Rothbard & Patil, 2012). HQCs, discussed above, also are highly relevant here. In a work environment that is characterized by respectful engagement and connectivity, psychological safety likely will follow (Nembhard & Edmondson, 2012).

Further, an environment that emphasizes learning over perfect performance incubates new knowledge creation (Lee et al., 2003). Those who are focused on learning rather than displaying competence are more likely to try new and challenging tasks, persevere in spite of hardships (including negative feedback), and take advantage of opportunities to learn new skills (Lee et al., 2003). Organizational messages that may thwart new knowledge creation include

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those that convey “zero tolerance for mistakes”; that nothing short of perfect competence is acceptable; and that independence, self-reliance, and individual achievement give power and are valued and rewarded over interdependence (Lee et al., 2003). Research also shows that, in organizations that highly value independence and displays of competence, people rarely seek needed help because of a concern about looking weak (Lee et al., 2003).

Organizational hierarchy also impacts psychological safety and organizational learning. For low status employees, hierarchy undermines psychological safety because they tend to feel less certain of their value, less able to bring up problems, and more afraid that mistakes will be held against them (Nembhard & Edmondson, 2012). Hierarchy also impacts high status employees. Particularly relevant to law firm partners is research suggesting that, the higher a person’s status, the less likely they are to ask for needed help—especially men who are socialized to prize independence (Lee et al., 2003). Organizations that want to thrive will establish the value of both competence and failure and also of interdependence (Lee et al., 2003).

Psychological safety is not among BigLaw’s strengths. In fact, the typical big firm culture has many attributes that squelch psychological safety: firms are hierarchical, individual achievement is venerated, interdependent behaviors are less rewarded if not disparaged, competence is king, learning time is considered expensive and inefficient, and perfection is expected. In part, the dread of imperfection that often pervades firms stems from real concerns that errors could lead at least to dissatisfied or lost clients and, at worst, to malpractice claims and lost bar licenses. But research suggests that errors will be caught more frequently in psychologically safe environments where people feel comfortable raising concerns and reporting errors rather than trying to cover them up (Nembhard & Edmondson, 2012; Leroy et al., 2012). Thus, this very legitimate goal militates in favor of *more* psychological safety, not less. Still,

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lawyers truly need to be obsessive about certain aspects of their jobs—especially tracking deadlines. Some deadlines are “jurisdictional,” which means that, if they are missed, the case is over. No excuses or second chances are allowed. If individual lawyers repeatedly make such errors without any consequences, the law firm can be held legally liable for negligent supervision. This means that law firms cannot create an entirely psychologically safe environment for lawyers. Certain repeated errors will get lawyers fired.

But the goal of eliminating serious legal errors does not validate spreading fear and intolerance for imperfection to all aspects of the job. For example, on an individual level, new associates just starting the practice of law need room to learn without fear that any mistake or help-seeking will crush their reputations or get them fired. Morrison (1993) showed that newcomers that asked for help and sought socially-valuable information performed better and stayed longer in the organization.

Partner behavior also can be significantly influenced by psychological safety. For example, partners will be less likely to collaborate on client issues if they are fearful that any difference in knowledge will be viewed as a reputation-ruining weakness. Further, fear of criticism may deter efforts to innovate even where progress would significantly benefit the firm. For example, an area in which innovation seriously is needed is in creating alternatives to the hourly-rate structure of billing clients. Virtually every legal critic places this innovation as a top priority for law firms’ future success (e.g., MacEwen, 2013; Harper, 2013). In an effort to be innovative, multiple former colleagues have made efforts to manage portfolios of legal matters for a fixed fee and have been continually criticized for any sign of diminished profitability. The aggravation from such experiences does not leave partners energized to continue trying to innovate—in fact, it prompted frequent thoughts of quitting.

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An intolerance for failure will not serve firms well in the future. Positive law firms will realize that failures provide important learning experiences. In fact, research shows that failures have a higher learning value than success (Nembhard & Edmondson, 2012; Lee et al., 2003). Organizations that learn through experimentation are more likely to be successful in the long term than those that do not. Accordingly, with the caveat noted above, positive law firms will foster psychological safety for its lawyers to contribute to higher job satisfaction, better performance, and innovation.

### **Positive Law Firms Will Build Resilience**

To thrive, lawyers must be resilient. “Resilience” is “the ability to persist in the face of challenges and to bounce back from adversity” (Reivich, Seligman, & McBride, 2011, p. 25). Competencies that contribute to resilience include optimism, emotional awareness and self-regulation, flexible and accurate thinking, avoiding thinking traps, impulse control, problem solving, self-efficacy, empathy, strong relationships, and spirituality (Reivich et al., 2011).

Lawyers may have natural tendencies that impede resilience. As discussed above, evidence suggests that lawyers tend to be pessimists (Howerton, 2004; Satterfield, et al., 1997). Pessimism weakens resilience (Satterfield et al., 1997; Seligman et al., 2001; Seligman, 2002). Personality assessments also reflect that lawyers score low on resilience—averaging in the 30th percentile compared to the general public’s average score in the 50th percentile (MacEwen, 2013). Therefore, lawyers may benefit from resilience training designed to teach flexible optimism and other resiliency competencies. This is just what the U.S. Army’s Master Resilience Training (“MRT”) was designed to do to try to bolster soldier well-being and performance and curb the growing epidemic of mental illness (Reivich et al., 2011).

The MRT is an intervention based on cognitive-behavioral therapy (“CBT”) techniques

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to enhance psychological fitness (Harms, Herian, Krasikova, Vanhove, & Lester, 2013). Results of the MRT have been promising, providing evidence that training helps reduce soldiers' odds of developing mental health issues (Harms et al., 2013). Also notable is a meta-analysis of various interventions in work organizations to reduce burnout, which found that CBT-based interventions were the most effective (Awa, Plaumann, & Walter, 2010).

The MRT has four modules that cover topics including, for example, optimism, self-regulation and awareness, mental agility, identifying character strengths, CBT-based techniques to dispute self-defeating and sabotaging thoughts, managing physical energy, cultivating gratitude, and building and strengthening relationships (Reivich et al., 2011). The relationship-building aspects of the training cover, for example, positive communication skills, active-constructive responding, praise, empathy, offering help, and asking for help (Reivich et al., 2011). Resilience training modeled after the MRT could benefit all lawyers—partners and associates. Partners likely face more adversity on a daily basis than do associates, though partners' higher levels of autonomy may buffer some of the ill effects of stress. Communication skills training for partners could enhance the entire work environment since partners are primarily responsible for creating the work climate in which associates and staff work.

All of the positive law firm features discussed above—including meaning, SDT-support, strengths-orientation, physical and emotional wellness, positive emotions, HQCs and psychological safety—could be encompassed in one comprehensive resilience training program for lawyers. The training modules could be tailored differently for associates and partners to fit their different roles and responsibilities. Aspiring positive law firms seeking to cultivate an environment where the people and organization can thrive will create such a program.

**Positive Law Firms Will Satisfy or Exceed Standards of Organizational Justice**

Positive law firms will strive toward organizational justice in all practices and will pay particular attention to compensation and partnership decisions, which play a significant role in a firm's organizational climate and lawyers' well-being. I cannot overstate the significant role that compensation and promotion decisions play in law firm dynamics. This is an important topic that deserves a deep exploration. But, here, I offer only a few observations for future development.

“Organizational justice” defines people's perceptions of fairness within organizations (Greenberg, 2007). Organizational justice plays a critical role in well-being. Prilleltensky (2012) argues that justice is a prerequisite to thriving and that higher levels of fairness produce higher levels of wellness. From an organizational perspective, he underscores that experiences of intrapersonal, interpersonal, and organizational injustice can lead to harmful physical and emotional effects to the individual and organization. His view is that organizations that respect distributive (fair allocation), procedural (fair, transparent, respectful decision-making processes), relational (treating others with dignity and respect), and informational (transparency of decision-making and flow of communication) justice will achieve higher levels of well-being for their employees and higher performance (Prilleltensky, 2012).

For any workplace, ensuring organizational justice is particularly important in compensation practices, career advancement, and supervision because concerns for fair and equitable treatment are most pronounced in these areas (Masson, McMullen, & Royal, 2009). As to compensation decisions, whether people perceive distributive justice (fair allocation) is largely driven by social comparison rather than judgments about absolute pay (Diener & Seligman, 2004). This means that lawyers' satisfaction with their pay will be strongly influenced by the pay of others who are viewed as similarly-situated (Diener & Seligman, 2004). Therefore, it is not

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that surprising (as ridiculous as it sounds) that 58% of BigLaw lawyers who earn an average annual income of \$1.6 million believe that they should be better paid (MacEwen, 2013). Due to the instinctive impulse to be deeply affected by social comparisons, equal treatment to similarly-situated people and transparency are critically important to perceptions of organizational justice. Being transparent about, for example, who a lawyer's comparison group is and why during compensation decisions may increase a sense of distributive justice.

Procedural and informational justice also are critically important in compensation and advancement decisions. The more a company "bends over backwards" to be open, the more positive the perceptions of justice are likely to be (Greenberg, 2007). Lawyers who feel frustrated in their efforts to get concrete guidance on the expectations for advancing to non-equity or equity partner will feel treated unfairly. Similarly, lawyers who question what information was used to make advancement or compensation decisions and whether the decision-makers were biased or uninformed will not perceive the system as fair.

To reduce one element of perceived bias and improve perceptions of procedural justice in pay decisions, firms should ensure diversity on compensation committees. Such diversity may also improve distributive justice. The 2014 NAWL study found that, when two or more women sat on a firm's compensation committee, the pay gap between men and women was nearly eliminated (Scharfl et al., 2014). Where there was no female on the committee, women equity partners earned between 85-89% of male equity partners' compensation (Scharfl et al., 2014). Notably, the pay gap found in the NAWL study may be an underestimate of the true gap because many firms refused to provide compensation data after a 2012 compensation study found significant gender gaps (Scharfl et al., 2014). The bottom line, though, is that taking all aspects of organizational justice very seriously can support firms' diversity efforts.

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There also are organizational justice implications regarding the growing compensation chasm between equity and non-equity partners, and even within the equity partners ranks based on who are rainmakers vs. service partners (MacEwan, 2013). By raising the issue of fairness here, I am not implying that firms should pay all partners the same. Specifically, I do not suggest that service partners should be paid the same as rainmakers if their services, fairly appraised, are less valuable to the firm. MacEwan (2013) recommends that firms' evaluation of compensation should fairly account for the value that service partners create by maintaining profitable, long-term relationships. The evaluation criteria also should account for the reality that rainmakers benefit tremendously from belonging to a reputable firm—a reputation attributable to the firm's entire team (MacEwan, 2013). Additionally, firms should be mindful that extreme pay gaps among partners can create a toxic culture where perceptions of unfairness run rampant and trust is ruined (Ordóñez, Schweitzer, Galinsky, & Bazerman, 2009).

Whole Foods is an example of a company that has paid close attention to aligning the compensation system with company values. Because of a concern that big pay differentials within the workforce harm company culture, Whole Foods implemented a rule 25 years ago that caps total cash compensation paid to any employee, including the executive team (Mackey & Sisodia, 2014). The current cap is nineteen times the average pay of all employees (Mackey & Sisodia, 2014). Whole Foods co-founder John Mackey says that, despite the cap, inadequate compensation has never caused the company to lose a senior executive that it wanted to retain (Mackey & Sisodia, 2014, p. 94). In his view, the cap “walks the talk” of the company's values and helps maintain focus on the company's purpose. His view is that Whole Foods executives could earn more money elsewhere but they are well compensated, feel that internal equity standards are upheld, and stay because they believe in the company's purpose and values

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(Mackey & Sisodia, 2014). Mackey believes that the cap attracts people with higher “emotional and spiritual intelligence” who have the maturity to say “I have enough” (Mackey & Sisodia, 2014, p. 94). Law firms could learn from Whole Foods and consider capping pay differentials at least among all partners at, for example, 20:1 or less.

### **Positive Law Firms Will Have Ethical, Values-Based Leadership**

Successfully building positive law firms will depend on there being effective leaders who are committed to the MFS strategy and the vision of what firms can be at their best. At present, many firm leaders continue on their current course believing that the partnership backs them because they surround themselves with like-thinking people and no one else speaks up to say otherwise. This is what Freeman et al. (2007) call the “problem of authority” (p. 138). Social science research has found that our default switch as humans is to obey authority, even when there is no consequence for disobeying (Freeman et al., 2007). For example, in a study conducted by Milgram (1965), over 60% of participants fully complied with requests to deliver increasing levels of painful electric shocks to innocent persons where the situation was driven by an authority figure.

Not realizing the power of authority, most leaders believe that people do what is asked of them because of the leader’s skill, brilliance, or values (Freeman, 1984). In fact, typically, people simply do what they are told if they perceive the leader as cloaked in legitimate authority (Freeman et al., 2007). This creates enormous responsibility for leaders to figure out how to put ethics and values at the center of their leadership. Leaders also need to sufficiently understand human behavior to set up situations that allow people to genuinely make choices about whether to follow (Freeman et al., 2007).

Understanding the problem of authority, positive law firm leaders will be guided by

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Freeman et al.'s (2007) ethical leadership model as well as authentic, transformational leadership models (*e.g.*, Bass & Steidlmeier, 1999; Wang, Oh, Courtright, & Colbert, 2011). Ethical firm leaders will have, at a minimum, the following objectives: (1) releasing human potential of constituents, (2) balancing the needs of individuals, the firm, and the community, (3) defending the firm's fundamental values, and (4) instilling in individuals a sense of initiative and responsibility (Freeman, et al., 2007).

### **Positive Law Firms' Measures of Success Will be Broader than Profitability**

A theme running throughout this paper is that, currently, law firm success is judged almost exclusively by financial measures. Positive law firms will create additional metrics to measure firm success, such as lawyer well-being. To advance this goal, I propose to create a law firm well-being index, which is discussed below in Part V.

## **PART IV: THE BUSINESS CASE**

### **Positive Law Firms' Competitive Advantages**

Aspiring positive law firms need not be motivated solely by an altruistic desire to provide fulfilling work lives for their lawyers—that goal is only one of MFS's animating features. Especially in the current competitive environment, law firms are rightly concerned about financial viability. The discussion above of the positive law firm blueprint referenced research that links positive business practices to many desirable business outcomes such as, for example, job performance, client service, and retention. Below, I discuss those in more detail as well as other competitive advantages from which positive law firms may benefit: (1) increased profitability, (2) a variety of desirable business outcomes other than financial returns, and (3) successful recruiting and retention of the Millennial generation of lawyers, who are critical to firms' future success.

**Positive Workforces Make Cents: Enhanced Profitability**

Law firms are highly protective of their lawyers' time—each hour not billed to a client represents dollars not earned for the firm. Before launching any new effort that will cost money and distract lawyers from client business, firms will ask for evidence that positive business practices enhance profitability. I already provided some such evidence above, which showed that MFS firms significantly outperformed GTG firms on financial measures (Sisodia et al., 2014). Below, I discuss more of the growing evidence that positive business practices contribute to financial performance.

**Cost of disengaged workforces.** Before reaching the evidence linking positive workforces to financial results, it is important to note the devastating financial impact of negative or disinterested workforces. A Gallup report of employee engagement found that, by the end of 2012, only 30% of American workers were engaged in their workplace (Sorenson & Garman, 2014). The Gallup results mean that 70% of workers are basically going through the motions at work and are not performing their best (Sorenson & Garman, 2014). The Gallup report also showed that, of the 70% who were not engaged, 18% were *actively disengaged*—which means that they were actively destructive toward the company. Gallup estimated that actively disengaged employees cost the U.S. \$450 billion to \$550 billion in lost productivity each year (Sorenson & Garman, 2014).

Further, the Corporate Leadership Council (2004) found that employees with lower engagement are four times more likely to leave their jobs than those who are highly engaged. Turnover—including the costs of separation, vacancy, replacement, and training—can range from 30% to 200% of the lost employee's salary (Wollard, 2011).

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**Advantages of engaged workforces.** On the other hand, a growing body of evidence shows that workforces with positive job attitudes and behaviors (e.g., job satisfaction, employee engagement) make more money for their employers. For example, Harter, Schmidt, and Hayes (2002) conducted a meta-analysis that involved a total of 7,939 business units in 36 companies and found that employee satisfaction and engagement have a positive association with increased business unit outcomes, including profit. They studied the correlation between employee satisfaction and engagement with five business unit performance measures. Of those five measures, employee satisfaction and engagement correlated most highly with customer satisfaction and loyalty (.32 and .33, respectively) and employee turnover (-.36 and -.30), followed by safety (-.20 and -.32), productivity (.20 and .25), and profitability (.15 and .17) (Harter et al., 2002).

Another meta-analysis reflected a positive relationship with employee engagement and revenue (correlation of .24) (Harter, et. al, 2004). The relationship was even stronger for business units high in both employee and customer engagement (correlation of .32) (Harter, et. al, 2004).

Koys (2001) conducted a two-year longitudinal study of 28 stores in a restaurant chain to evaluate whether human resource (“HR”) outcomes influenced organizational effectiveness. The HR outcomes studied were employee satisfaction, OCBs, and turn-over. The organizational effectiveness factors were customer satisfaction and profitability. The most significant correlations were found between employee satisfaction and customer satisfaction the following year (.62) and with organizational citizenship and store profitability (.41) the following year. There also was a positive correlation between a composite score for HR outcomes and organizational effectiveness (.35). The longitudinal design and data support that HR outcomes influence organizational effectiveness (and not the other way around) (Koys, 2001).

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Another study analyzed 17 European-based manufacturing units of a global company to investigate the potential impact of business-unit employee engagement on organizational profitability (Walton, 2009). The study found a statistically significant positive relationship between business unit employee engagement and business unit organizational profit for each measurement year. (The correlation coefficients for 2005, 2006, and 2007 were, respectively, .491, .659, and .526.) The difference in organizational profitability based on higher and lower business unit employee engagement in the years 2005-2007 was between \$3 million and \$5.3 million. This reflected a difference of 4.92% to 10.43% return-on-sales, in favor of business units with higher levels of employee engagement.

A study conducted by Xanthopoulou, Bakker, Demerouti, and Schaufeli (2009) focused on the impact of day-level fluctuations in engagement. They conducted a study of 42 employees working in three branches of a fast food company to examine how daily fluctuations in their work environment impacted work engagement and financial returns. The study linked day-level supervisory coaching to work engagement, which, in turn, was related to day-level financial returns (Xanthopoulou et al., 2009).

Schneider, Macey, Barbera, and Martin (2009) administered employee engagement measures to employees of 65 companies in manufacturing and service industries. They also obtained financial data, including profits as a percent of revenues. They found a statistically significant correlation (.35) between employee work engagement and profits.

Gallup data also supports the conclusion that positive workforces are more profitable. Gallup has reported that companies with 9.3 engaged employees for every actively disengaged employee in 2010-2011 experienced 147% higher earnings per share (“EPS”) on average in 2011-2012 compared with their competition (Sorenson & Garman, 2014). Companies with a

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lower average of 2.6 engaged employees for every actively disengaged employee experienced 2% lower EPS compared with their competition during the same time period. Other data reflects that company revenues in organizations with high levels of engagement can be as much as 40% higher than those with low levels, and revenue per employee is significantly higher in companies with employees who have high levels of pride in their company (Wollard, 2011).

Watson Wyatt (2002) reached a similar conclusion. It examined company stock performance over time and the company's use of various human capital (engagement-enhancing) practices at 51 companies in the U.S. and Canada. The results showed that a "Human Capital Index" score from 1999 was significantly correlated with future financial performance two years later in 2001 and that this effect was four times stronger than the correlation of company financial performance from 1999 (Watson Wyatt, 2002; Attridge, 2009). Thus, future business fiscal success was predicted relatively better by how the company treated its people than by its own past financial performance (Attridge, 2009).

Hewitt Associates (2004) published a study that showed a correlation of .54 between employee engagement scores and a company's five-year average total shareholder return. It found a .46 correlation between employee engagement and revenue growth, indicating that organizations with higher levels of employee engagement have higher levels of sales growth compared to their industry peer groups (Hewitt Associates, 2004).

Towers Perrin (2007) investigated employee engagement and financial figures of 50 global companies across a variety of industries over one-year and three-year time periods. Over a one-year time period, companies with higher levels of employee engagement experienced a 19% increase in operating income (Towers Perrin, 2007; Walton, 2009). Companies with low levels of employee engagement decreased operating income by 32%. Similarly, companies with high

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levels of employee engagement achieved close to a 28% increase in earnings per share. On the other hand, companies with low levels of employee engagement experienced an 11% decrease in earnings per share (Towers Perrin, 2007; Walton, 2009).

Towers Perrin (2007) also studied the long-term, sustainable impact of employee engagement on key financials. The study included over 40 companies spanning a variety of industries and countries. The study found that, over a three-year period, companies with high levels of employee engagement achieved a 5% higher operating margin than companies with low levels of employee engagement (Towers Perrin, 2007; Walton, 2009). The study also found that companies with high levels of employee engagement received 3% more in net profit than companies with low levels of employee engagement (Towers Perrin, 2007; Walton, 2009).

Other studies have found that the results for shareholders of the “100 Best Companies to Work for” have exceeded the indices of the major stocks (Casalengo & Pellicelli, 2008). One study found that companies on the list outperformed the S&P 500 in total shareholder value return over a ten-year period (18.9% to 8.4%) as well as over a five-period (15.7% to 6.2 %) and a three-year period (18.1 % to 10.5 %). Another study compared the financial results of the “100 Best Companies to Work for” with both the S&P 500 index and the Russell 3000 index, with the former always showing better results over the long term (Casalengo & Pellicelli, 2008).

**Limitations of the evidence.** The evidence above is not without its limitations. First, many of the studies are cross-sectional, which limits any inferences about causation. However, work by Gallup and others support that the causal arrow runs from job attitudes to performance and business outcomes, not vice versa (Harter et al., 2004; Dalal et al., 2012; Koy, 2001).

Additionally, the small to moderate correlations reflected above between positive workforces and financial results may not seem remarkable. But numerically small or moderate

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effects such as these can translate into large practical effects—such as large dollars impacted or productive changes in performance (Harter et al., 2002; Steele et al., 2012). For example, in the study by Harter et al. (2002) discussed above, business units in the top quartile on employee engagement had, on average, from \$80,000 to \$120,000 higher monthly revenue or sales. Assuming even an \$80,000 monthly difference per business unit, that translates into \$960,000 per year (Harter et al., 2002). The study by Walton (2009) noted above found a \$3 – \$5.3 million difference for business units with higher work engagement. Similarly, Best Buy reported that stores in which employee engagement increased by even one tenth of a point (on a 5-point rating scale) had a sales increase of more than \$100,000 for the year (BlessingsWhite, 2008). JCPenny reported that stores in the top quartile of employee engagement scores generate about 10% higher sales volume compared to similar-sized stores in the bottom quartile of engagement (BlessingsWhite, 2008). Rucci, Kim, and Quinn (1998) found that, at Sears, a 5-point higher level of employee attitudes translated to a 1.3-point improvement in customer satisfaction and 0.5% increase in revenue growth.

Finally, a significant number of the studies linking positive employee attitudes to financial results have been conducted by consulting groups, such as Gallup, Watson Wyatt, Hewitt Associates, and Towers Perrin. The reliability of such studies could be criticized as lacking the rigor of academic scrutiny. Nonetheless, many U.S. companies have found the evidence convincing: 80% of senior leaders believe employee engagement is critical to achieving their business objectives, and 92% of companies conduct an employee engagement survey (Johnson, 2013).

Based on the above, the weight of the current evidence appears to favor a conclusion that positive workforces are more profitable than those that are disengaged or disinterested.

**Positive Workforces also Perform Better on Other Indicators of Business Success**

In addition to being more profitable, positive workforces perform better on other indicators of business effectiveness. Gallup (2013) has conducted extensive studies to evaluate whether employee engagement is linked to a variety of business outcomes. It has found that, compared with business units that score in the bottom quartile of employee engagement, top-quartile units have the following: 37% lower absenteeism, 25% lower turnover (in high-turnover organizations), 65% lower turnover (in low-turnover organizations), 10% higher customer metrics, 21% higher productivity, and 22% higher profitability. The business units that scored in the top half of their organization in engagement had nearly double the odds of success on business outcomes when compared with those in the bottom half (Gallup, 2013).

A study by Steele et al. (2012) of 724 workers in 56 U.S. restaurants showed that positive work engagement, and vigor were statistically significant predictors of job performance, job satisfaction, customer service, and turnover intentions. Numerous other studies also show a positive relationship between job satisfaction or engagement on the one hand, and, on the other, job performance, client satisfaction, and organizational citizenship behaviors. E.g., Bakker, Demerouti, & Verbeke (2004) (in a study of 146 employees in different sectors and jobs, finding that engaged employees received higher ratings from their colleagues on extra-role organizational citizenship behaviors); Bakker & Demerouti (2008) (reviewing studies showing positive link between engagement and job performance); Bateman & Organ (1983) (in a study of 77 university employees, finding positive relationship between job satisfaction and organizational citizenship); Halbesleben & Wheeler (2008) (discussing studies linking job embeddedness and engagement to enhanced job performance and reduced turnover intention and conducting longitudinal study of 573 employees in a variety of jobs and industries that showed a

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correlation of .32 with employee engagement and supervisor-rated performance); Harter et al. (2002) (showing positive correlation between employee engagement-satisfaction and customer loyalty); Judge, Thoresen, Bono, & Patton (2001) (conducting a meta-analysis of 254 studies that encompassed 54,417 subjects and finding a correlation between overall job satisfaction and overall performance of .30; citing other research in which correlation between job satisfaction and citizenship behaviors was .28); Rich, Lepine, & Crawford (2010) (in study of 245 firefighters, linking employee engagement to enhanced task performance and organizational citizenship as rated by supervisors); Salanova, Agut, & Peiro (2005) (in a study of restaurant workers and hotel receptionists, finding that employee engagement and organizational resources predicted service climate which, in turn, predicted employee performance and customer loyalty).

Studies also reflect that positive affect (typically measured as positive mood or frequent positive emotions) plays a role in success at work. For example, the study by Lyubomirsky et al. (2005) was referenced above in the discussion of positive emotions. This was a meta-analysis involving 225 studies and 275,000 participants. Lyubomirsky et al. (2005) found positive relationships between positive affect and a variety of positive work-life outcomes, including organizational citizenship behavior, job performance, and customer service. The studies also reflected negative relationships between positive affect and counterproductive work behavior, job withdrawal, turnover intentions, and absenteeism.

Other studies have made similar findings. E.g., Lee & Allen (2002) (in a study of 149 nurses, finding that employee's work-related positive affect and cognitions about employer fairness positively correlated with colleague's ratings of employee's help provided to others and with citizenship directed at the organization); Borman, Penner, Allen, & Motowidlo (2001) (reviewing studies that show positive links between positive affect (mood) and citizenship

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behaviors and negative correlations between negative affect and citizenship behaviors); Deluga & Masson (2000) (reviewing studies showing positive relationship between positive affect and helping behaviors and finding, based on a study of 99 college Resident Assistants (“RAs”), a positive association between positive affect and student-ratings of RA performance).

Conversely, other evidence reflects that negative affect predicts poor job task performance and counterproductive work behavior—and it does so far better than either low job satisfaction, engagement, or positive affect (Dalal et al., 2012). Similarly, in a study of 300 sales persons of a department store, George (1990) found that the negative affective tone of work groups was significantly and negatively associated with prosocial behavior. But positive affective tone was significantly and negatively correlated with absences (George, 1990).

In sum, the growing evidence that positive workforces perform better and make companies more profitable provides a compelling reason for law firms to aspire to implement the positive law firm blueprint.

### **Positive Law Firms Will be Recruiting Magnets for Millennials**

As noted in Part I, at least one critic blames Baby Boomers for making a mess of the legal profession by their devotion to short-term profits (Harper, 2013). While there surely is blame to go around, Baby Boomers are part of the story. Historically, Boomers have been characterized as being hypercompetitive, working long hours, and scoffing at work-life balance (Rikleen, 2014; Retzloff, 2010). Studies find them to be materialistic and focused on external rewards (Retzloff, 2010). The generational dynamics that shaped current law firm culture are likely to generate increasing tension as Millennials—the 86 million Americans born from 1980 to 2000—continue to inundate firms and question prevailing values (Rikleen, 2014). The positive law firm blueprint better aligns with Millennial values and may provide a recruiting advantage to

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aspiring positive law firms.

The American population of Baby Boomers (born 1943 to 1960) is huge (numbering 80 million), giving them power to shape culture by sheer numbers (Rikleem, 2014). The smaller generation sandwiched between Boomers and Millennials is Generation X, encompassing 38 million Americans born between 1960 and 1980 (Rikleem, 2014). Generation X is depicted as less materialistic than Boomers and committed to work-life balance (Rikleem, 2014; Retzloff, 2010). The Xers originally were expected to make significant changes in the workplace by challenging the Boomers' workaholic tendencies (Rikleem, 2014). But, due to the much larger size of the Boomer population, Generation X was compelled to adapt (Rikleem, 2014; Espinoza, 2012). The same will not be true for the large and opinionated Millennial generation.

The first Millennial college graduates entered the workforce in 2004 and will continue do so until around 2022 (Hershatter & Epstein, 2010). The Boomers are reaching retirement age. The oldest turned age 62 in 2008, and the youngest will turn 62 in 2026 (McKnickle, 2010). Specifically as to law firms, some estimate that nearly 65% of equity partners will retire over the next decade (Shannon, 2011). Generation X, due to its small size, cannot fill all the gaps left by retiring Boomers (McKnickle, 2010). A massive workforce shortage is predicted until the Millennials grow into the jobs left by so many Boomers (McKnickle, 2010). As a result, businesses increasingly are encouraging Boomers to delay retirement (McKnickle, 2010). The combination of all of the above means that three generations will be teamed up for the foreseeable future and must work together cohesively to plan for the Boomer-less years ahead.

Much work has been done to study the three generation's values and beliefs (e.g., Retzloff, 2010; Espinoza, 2010). Three main differences among the generations can be categorized as perceptions of work ethic, work-life balance, and teamwork (Retzloff, 2010).

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Research reflects that Boomers are optimistic, team-oriented, and hypercompetitive (Retzloff, 2010). Their value system includes productivity, pursuing goals, loyalty to the organization, and ruling the workforce (Retzloff, 2010). They are aggressive in seeking to get ahead and expect rewards such as advanced titles, more money, special parking spaces, and large private offices (Retzloff, 2010). Boomers routinely have foregone family obligations in favor of their commitment to organizational goals and pursuing materialistic rewards (Retzloff, 2010).

Generation X and the Millennials inherited Boomers' workaholic, materialistic work culture, which creates tension with their own values (Retzloff, 2010). Generation X cares less about materialistic rewards and values autonomy and independence, individual achievement, work-life balance, and a sense of purpose through opportunities for personal and professional growth (Retzloff, 2010). They measure personal success through intellectual challenge, success in the organization, and continued growth (Retzloff, 2010).

Millennials want jobs that mean something to the good of society (Retzloff, 2010; Rikleem, 2014). They seek meaning, purpose, and shared commitment (Rikleem, 2014; Ng, Schweitzer, & Lyons, 2010; Hershatter & Epstein, 2010). Similar to Generation X, they are committed to work-life balance (Espinoza, 2012). They do not believe in trading off a good living for a good life. They also want supportive, nurturing, fun work environments (Hershatter & Epstein, 2010; Sujansky & Ferri-Reed, 2009; Ng et al., 2010).

The Millennials want to advance quickly and so are eager to understand their career path and advancement potential (Sujansky & Ferri-Reed, 2009; Espinoza, 2012; Ng et al., 2010). Lots of real-time feedback—mostly positive—also is important (Sujansky & Ferri-Reed, 2009; Rikleem, 2014; Espinoza, 2012). The use of positive reinforcement to shape behavior will need to become standard practice, because Millennials are unlikely to respond well to negative

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reinforcement or reprimands (Sujansky & Ferri-Reed, 2009; Espinoza, 2012). The most effective communications will be those that are positive and designed to set a tone of focus, enthusiasm, success, and fulfillment (Sujansky & Ferri-Reed, 2009; Espinoza, 2012). Millennials like to feel appreciated, valued, respected, and that they are making a real contribution (Sujansky & Ferri-Reed, 2009). The common theme to the Millennial profile is that they respond best to employers that convey “you matter to us”; your well-being and enthusiasm are important to our success (Sujansky & Ferri-Reed, 2009; Espinoza, 2012).

Given the varying value sets of the three generations that will team up to determine law firms’ future success, firms will be best served by expanding their value system as outlined in the positive law firm blueprint. Positive law firm culture will be more positive, affirming, and connected to a higher purpose—a culture that will be particularly attractive and motivating for Generation X and Millennials. It also may be that Boomers, as they approach retirement, are ready to embrace expanded values. Psychologists focusing on adult life stages note that extrinsic motivation for money and rewards levels off in mid-life, as a greater interest in self-identity and creating a legacy emerges (Retzloff, 2010). For all these reasons, now appears to be an ideal time for law firms to turn toward the positive.

## V. THE FUTURE

### **Future Directions: Giving Life to the Positive Law Firm Blueprint**

The positive law firm blueprint is not simply a final project done to fulfill the requirement of a Master’s degree; it is the blueprint for my new vocation. I resigned from my BigLaw job so that I could focus on trying to make a difference in the quality of lawyers’ lives. My future work will focus on using the positive law firm blueprint, which consists mostly of theory, and devising ways to apply positive psychology concepts to elevate the legal profession.

**Investigate Effective Organizational Change Practices**

Significant organizational learning will need to occur for traditional law firms to transform themselves into positive, thriving organizations. My future work will include exploring methods and interventions that facilitate culture change to help firms progress toward a positive vision. A few examples of areas for exploration include the following:

**Resilience and other training.** Providing training to firm managers, partners, and associates on the concepts discussed in the positive law firm blueprint is one important way for organizational learning to occur. My future work will include developing materials for training modules that will include concrete examples that lawyers will recognize and relate to. I also would like to create a program for law students to cultivate resilience to help them through law school and on into their professional careers.

**Revamping the performance review process.** Lawyer performance reviews are largely deficit-based. My goal is to propose a new process that is strengths-based and incorporates feedback opportunities year-round. I would like to create and test this new process to evaluate whether it is linked to increased well-being and productivity.

**Investigating the compensation process.** Compensation practices significantly affect a firm's climate. My goal is to explore various systems that currently are in use, test which are linked to well-being and fairness, and prepare recommendations for law firms.

**Positive diversity practices.** Diversity continues to be a significant challenge for law firms. My future work will include exploring how positive psychology can be applied to make progress. I am particularly interested in identifying innovative ways to try to curb female flight and in equalizing advancement and compensation. For example, one notable difference between men and women lawyers is that 77% of female lawyers have a spouse who works full-time

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outside the home while the same is true for only 24% of male lawyers (Levit & Linder, 2010). Add to this statistic the fact that women typically have greater home responsibilities than men, and the result is that a large majority of women lawyers have more strain than male lawyers caused by fewer personal resources at home. Firms might look for guidance to the U.S. Army, which has recognized that soldiers' home lives have an enormous impact on their work performance. As part of the MRT, discussed above, the Army has begun providing relationship skills training that includes spouses (Tan, 2013). Further, research indicates that spouses who capitalize on good events at work by sharing them at home have greater work satisfaction (Culbertson et al., 2012). These concepts could be incorporated into an innovative training program for lawyers and their spouses in an effort to improve retention of all lawyers, and especially women. Training also could be offered to enhance skills to overcome women's greater reluctance to negotiate higher compensation (Bowles, 2014).

**Creating a civility metric.** Civility is a growing concern in the legal profession. Although lawyers have complained for decades that they believe civility is getting worse, there are no metrics to test whether that is true and, if so, why. My future work will include developing a civility measure for individual organizations and the profession as a whole.

**Research lawyer explanatory styles.** Although there appears to be some consensus that lawyers are more likely to have a pessimistic explanatory style than the rest of the population and that this tendency provides a partial explanation for lawyer depression rates, there is little evidence to support this. I would like to investigate this question further.

**Test the client beneficiary intervention.** Above, I propose interventions based on Adam Grant's work to link workers to the beneficiaries of their work. For example, I proposed to have clients speak to lawyers about how their work has been beneficial. I would like to test this

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intervention to see if it enhances well-being and productivity.

**Positive retirement planning.** Large numbers of Baby Boomers who devoted their entire working lives to their law firms and whose identity is wrapped up in their jobs will be retiring soon. Because many large firms have a mandatory retirement age, some are being forced out before they would like to go. I would like to develop a plan for treating this group of lawyers respectfully during their transition and assist them in identifying new ways to find post-law firm fulfillment.

My future plans also include creating a firm well-being index, which is discussed next.

### **Creation of Law Firm Well-Being Index**

As discussed above, the legal industry is preoccupied with *The American Lawyer's* PPP metric. To supplement this financial measure, my goal is to create a law firm well-being index that will include metrics to evaluate how successful law firms are at creating value for all stakeholders. This will align aspiring positive law firms with the Conscious Capitalism movement and can be used to measure their success on implementing an MFS strategy.

**World-wide move toward well-being measures.** A signal of the sea-change away from measuring success only by profitability is that economists and world leaders are embracing well-being indexes that include more than financial metrics to evaluate societal success.

Traditionally, economists have taken the view that the purpose of wealth is simply to generate more wealth, and that the success of any economic policy should be measured by the amount of wealth generated (Seligman, 2011). Consistent with this view, many economists have championed Gross Domestic Product (“GDP”) as the chief measure of a nation’s wellness (Seligman, 2011). GDP, which has been used since 1934, measures the volume of goods and services that are produced and consumed (Seligman, 2011; Costanza, Hart, Posner, & Talberth,

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2009). Under this framework, economic growth was assumed to equate with greater happiness.

After the financial collapse in 2008, people became critical of using GDP as the chief measure of a nation's wellness (Fasolo, Galetto, & Turina, 2013). There now is a rising worldwide demand that policy be more closely aligned with what really matters to people as they themselves define it—i.e., a demand for a measure of Gross National Happiness (“GNH”) (Helliwell, Layard, & Sachs, 2013). World leaders increasingly are talking about the importance of new measures of well-being to guide policy (Helliwell et al., 2013). For example, renowned British economist Richard Layard (2005) argues that we should make happiness, not economic growth, the object of our economic policies. British Prime Minister David Cameron has set up a system requiring the Office for National Statistics to measure well-being regularly (O'Donnell, 2013). These events reflect a growing consensus that measures of subjective well-being have an important role to play in defining success (O'Donnell, 2013).

The trend toward incorporating well-being metrics to help formulate better policies and to measure their success also is supported by empirical evidence showing that greater economic growth does not necessarily result in greater well-being. For example, one study reflected that *Forbe's* magazines richest Americans rated their life satisfaction the same as Amish adults in Pennsylvania and Inuit people in Greenland (Seligman, 2011). Studies also show that life satisfaction in the U.S. has been flat for 50 years even though GDP has tripled (Seligman, 2011). Further, certain measures of ill-being have gotten worse as GDP has increased. In the U.S., depression rates have increased ten-fold over the past 50 years, rates of anxiety have risen, and social connectedness has dropped (Seligman, 2011). A consistent global trend suggests that, as material wealth increases, psychological health often declines as evidenced by rising rates of alcoholism, suicide, depression, poor health, crime, divorce, and other social pathologies

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(Costanza et al., 2009).

But money certainly has a role to play in happiness. Life satisfaction is higher in countries with higher GDP (Seligman, 2011). Making more money, however, rapidly reaches the point of diminishing returns (Seligman, 2011). Below a certain threshold of wealth needed to satisfy basic needs, increases in money and in life satisfaction are closely related. But above that threshold, it takes more and more money to produce an incremental increase in happiness (Seligman, 2011). Therefore, if you already are above the safety-net threshold level of wealth, there likely are better ways to maximize your happiness than devoting most of your scarce time on this earth to trying to increase your earnings (Seligman, 2011).

All of the above seriously undermines the implicit assumption apparently held by most law firm managers that the narrow quest to maximize profits is laudable because more money equals more happiness for its lawyers and staff.

**Law firm well-being index.** In keeping with this world-wide trend toward measuring success by broader metrics, my future plan is to create a well-being index for law firms that will include metrics related to employees (lawyers and staff), clients, the firm, and the community. My key objective is to create a positive image of a fully thriving law firm that will inspire firms to expand their values beyond profitability. Creating metrics related to the well-being of all stakeholders will encourage law firms to attend to—and grow toward—increasing their performance on all metrics and, thus, optimizing the well-being of all stakeholders. My hope is that, once the index is created, a publication such as *The American Lawyer* will participate in collecting and publishing data to start creating a counter-balance to the PPP metric that has driven the profession further and further away from its core values.

The first step will be to create the index. My research did not uncover any similar index

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that measures the well-being of a company or industry that I could use as a model. To investigate what criteria should be used in the index and what information is available to measure it, my plan is to request meetings with the chairpersons (or other top leaders) of the top 50 firms. I would like to interview them on this topic and discuss their vision of what law firms can be at their best.

**Conclusion**

In 1945, John Williams Davis, an American politician and lawyer, said this: “True, we [lawyers] build no bridges. We raise no towers. We construct no engines...[But] we take up other men’s burdens and by our efforts we make possible the peaceful life of men in a peaceful state” (Davis, 1946). As lawyer-bashing has progressively become a societal sport, this view of law as a noble profession largely has been lost—not only by society but also by lawyers themselves. It is time for lawyers to stop laughing at the jokes that demonize them and stop turning a blind eye to the stark statistics about the profession’s poor well-being. There is hope for lawyers who want to start re-fashioning the profession, reclaim its dignity, and rebuild its reputation as a calling in which individuals can flourish. Now is the time to start building a thriving legal profession and for lawyers to discover who they can be at their best.

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