

SAN FRANCISCO
Daily Journal

June 22, 2012

Extraordinary compensation, declining prospects

By Michael H. Trotter

Chapter Three

Why Working Conditions Have Declined

As the major business practice firms became more profitable to their lawyers, working conditions for the lawyers declined. In May of 2005 I participated in the first session of the Raise the Bar colloquium on working conditions in the legal profession sponsored by the Litigation Section of the American Bar Association. The subtitle of the colloquium was A Project of the ABA Section of Litigation to Reclaim the Soul and Redefine the Bottom Line of the Legal Profession.

BOOK EXCERPT

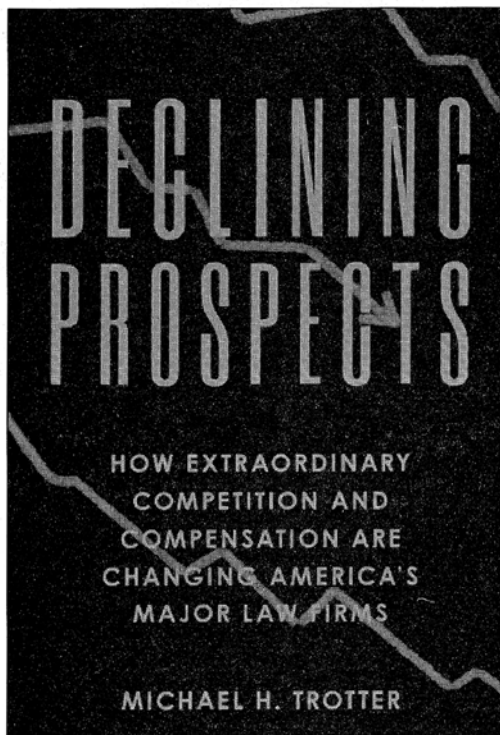
The colloquium had been assembled because the leadership of the Litigation Section thought that the lawyer morale problem had become serious and deserved thoughtful consideration at the top level of the profession. Brad Brian, a Munger Tolles partner and Chair-Elect of the Section, was determined to make the Raise the Bar project the signature initiative of his year as Chair. The program was co-chaired by Yuri Mikulka, a Howrey partner from Irvine, and Lawrence Fox, a Drinker, Biddle & Reath partner from Philadelphia and an Adjunct Professor at Yale University Law School. Mr. Fox had served as chair of the ABA Standing Committee on Ethics and Professional Responsibility and was the 2007 recipient of the Michael Franck Professional Responsibility Award of the Association. The initial 75 participants were a diverse group of private practice lawyers, corporate counsel, corporate executives, academics, and consultants. A few associates of private practice firms were included.

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The project evolved into a year-long examination of working conditions in U.S. law firms with a view toward finding ways to improve them. The Raise the Bar colloquium discovered during the year following the initial meeting that:

First, lawyers at every level complained ... about the transformation of the legal practice from a profession to a business. While per partner profit statistics indicated that lawyers have reaped large financial rewards from this transformation, those rewards have come at a price: more hours, less loyalty, increased tension among colleagues, reduced time for pro bono work and public service, and greater disruption of family and personal lives.

Second, lawyers across the spectrum complained about the reduction in hands-on experiences. Increasing complexity of cases and transactions



mean that more lawyers spend more time as parts of teams gathering and sorting information and less time with clients or in court, arguing motions or trying cases...

Whatever the cause, lawyers are leaving the profession in droves. Others remain in the profession, but are unhappy with their careers and in some cases their lives. (1)

What is to be made of this undercurrent of deep and abiding dissatisfaction among lawyers with the practice of law? I believe that the growth in size of the major law firms in the United States and their increased utilization of leverage are two of the most significant changes that have negatively affected working conditions in the private practice bar. As a result of huge increases in size and leverage the working environment and relationships in most major firms changed significantly, and over time the personal dynamics of these

firms bore less and less resemblance to what they had been when many lawyers currently in practice began their careers. I believe that these changes have reduced the quality and increased the cost of legal services to clients.

Other factors contributing to the law practice malaise include increased competition for legal work (and the insecurity that results from such competition), outside counsel's loss of control over the legal work performed for corporate counsel, increasing demands for systematic and standardized solutions to legal problems, increased specialization, and the burden of 24/7 commitments to the practice of law as a result of the communication-technology revolution. The body of the law has grown to such an extent that it is no longer possible for even the brightest and hardest working lawyer to keep current with more than a small part of it.

Most of these contributing factors are outside the control of private practice law firms. However decisions about size and leverage are largely within their control. The decision by many major firms to become very large and highly leveraged has had a profoundly negative effect on the firms and on the personal experiences of their lawyers.

Not so long ago throughout the United States most of the largest business practice law firms were very small in comparison to today's firms, and most had fewer associates than partners. Indeed, the largest firm in 1960 was smaller than the smallest firm on the 2009 Am Law 200. (2) The small and amiable professional partnerships of mid-20th century America have become very large and generally impersonal business organizations in the early years of the 21st century.

(1) Brad D. Brian, Foreword, RAISE THE BAR: REAL WORLD SOLUTIONS FOR A TROUBLED PROFESSION, at vii-viii (ABA 2007).

(2) In 1960 the largest law firm in America was Shearman, Sterling, & Wright which had 125 lawyers. The smallest law firm on the Am Law 200 in 2009 was Morris, Manning and Martin which had 137 lawyers and \$83 million in gross revenue. Gross Revenue Takes A Fall: 2009 Gross Revenue, AM. LAW., June 2010, at 95-100; MICHAEL H. TROTTER, PROFIT AND THE PRACTICE OF LAW: WHAT'S HAPPENED TO THE LEGAL PROFESSION 1 (1997).

Excerpt from "Declining Prospects: How Extraordinary Competition and Compensation are Changing America's Major Law Firms," by Michael H. Trotter. Reprinted with permission.



Michael H. Trotter has served as the primary securities lawyer for more than 15 public companies, devoted a significant portion of his practice to closely-held and family businesses, and taught courses at Emory University Law School. The 1997 precursor to his latest book was titled, "Profit and the Practice of Law — What's Happened to the Legal Profession." Trotter can be found online at the law firm of www.taylorengish.com.