

Transportation Attorneys Speak Out on the Practice of Law

BRADLEY J. SLEEPER*
JAMES C. JOHNSON**
KENNETH C. SCHNEIDER***

TABLE OF CONTENTS

INTRODUCTION	13
I. RESEARCH BACKDROP	14
II. RESEARCH METHODOLOGY	15
III. SURVEY RESULTS	17
A. <i>OBJECTIVE RESPONSES</i>	17
B. <i>RESPONDENTS' BACKGROUND</i>	19
C. <i>ATTORNEYS SPEAK OUT</i>	20
"MOST ENJOYABLE" <i>RESPONSES</i>	21
"MOST FRUSTRATING" <i>RESPONSES</i>	22
IV. RESULTS IN CONTEXT	24
CONCLUSION	26

INTRODUCTION

One need only observe the frequency and hostility of the latest round

* Bradley J. Sleeper is Assistant Professor of Business Law at St. Cloud State University.

** James C. Johnson is Professor of Marketing and Transportation at St. Cloud State University.

*** Kenneth C. Schneider is Professor of Marketing and Marketing Research at St. Cloud State University.

of lawyer jokes to recognize the depths to which societal attitudes toward the legal profession have descended. While some attorneys may brush off this cynical humor as merely resentment born of envy, research indicates a recognition and concern by lawyers that they are in the midst of a crisis that jeopardizes our very system of conflict resolution.

We surveyed 167 transportation attorneys nationwide in an effort to discover whether they share this general pessimism about their profession. We also hoped to gain a unique insight into the hands-on dynamics of their practices and the inner workings of transportation administration. Does their specialty insulate them from the turmoil in the profession generally? Is federal deregulation of the transportation industry still a factor?

What follows in Part I is a brief background of studies documenting the distress suffered by lawyers and their clients. In Part II we summarize our research methodology and in Part III explain our objective and subjective survey results. In Part IV we place our findings in context with other studies and suggest perspectives from which the profession may seek relief for itself and the society it serves.

I. RESEARCH BACKDROP

As long ago as 1985 an American Bar Association national survey of 3,018 attorneys found that 16% were dissatisfied and another 8% planned to leave the practice of law.¹ A more recent study indicated that as many as 41% of lawyers would have chosen another profession had they known what it would be like.² A reported 40,000 lawyers are leaving law practice annually.³

Many of the lawyers who remain in practice endure severe consequences. A 1987 survey of over 800 lawyers in Washington state uncovered alarming levels of personal distress symptoms.⁴ A surprisingly high 19% suffered from clinical depression, 23% from social alienation and isolation, 12% from paranoia, and 10% from marital discord. Alcohol abuse (at 18%) was nearly double that of national average. Furthermore, these results were consistent with an earlier study of Arizona lawyers.

While the disposition of attorneys may not engender outpourings of concern, its negative impact on legal services is a critical issue for everyone. The Maryland State Bar Association interviewed over 200 private

1. Joel S. Bainbridge, Jr., *Dissatisfaction? MSBA Survey*, 22 MD. BAR J., Mar./Apr., 1989, at 28-31.

2. Craig Schreiner, *You're Not Alone: Profession Responds to Lawyers' Stress and Job Dissatisfaction*, 63 WIS. LAWYER 17, 55 (Mar. 1990).

3. See generally DEBORAH ARRON, *RUNNING FROM THE LAW: WHY GOOD LAWYERS ARE GETTING OUT OF THE LEGAL PROFESSION* (1989).

4. WSBA Lawyers' Assistance Program Staff, *Are Lawyers Distressed? . . . And How?!* 42 WASH. STATE BAR NEWS 11-18 (Fall, 1988).

practitioners from firms of all sizes. Not only had more than one-third decided to leave the profession or had doubts about remaining lawyers, but only one-half were satisfied with the quality of service given clients and less than one-third were satisfied that the clients received fair value for the fees paid.⁵

Our conclusion from these studies is that attorneys generally agree with their critics - something is terribly wrong in the legal profession.

II. RESEARCH METHODOLOGY

Our sampling frame consisted of all attorneys listed in the membership rosters of the Transportation Lawyers Association and the Association of Transportation Practitioners. The two lists were combined in such a way as to eliminate from the sampling frame all members who are not attorneys as well as all duplicate names. Thus, the final sampling frame consisted of a reasonable cross-section of specialists in the field of transportation law.

An initial sample of 500 attorneys was then selected. Each was sent a one-page questionnaire along with a cover letter requesting the attorney's participation. To help enhance the response rate, a preliminary letter was sent to each attorney approximately one week prior notifying him/her of the pending survey. A total of 167 attorneys responded to the survey, representing a response rate of 33%. This response rate is considered to be quite high, especially considering the professional status of the target sample.⁶

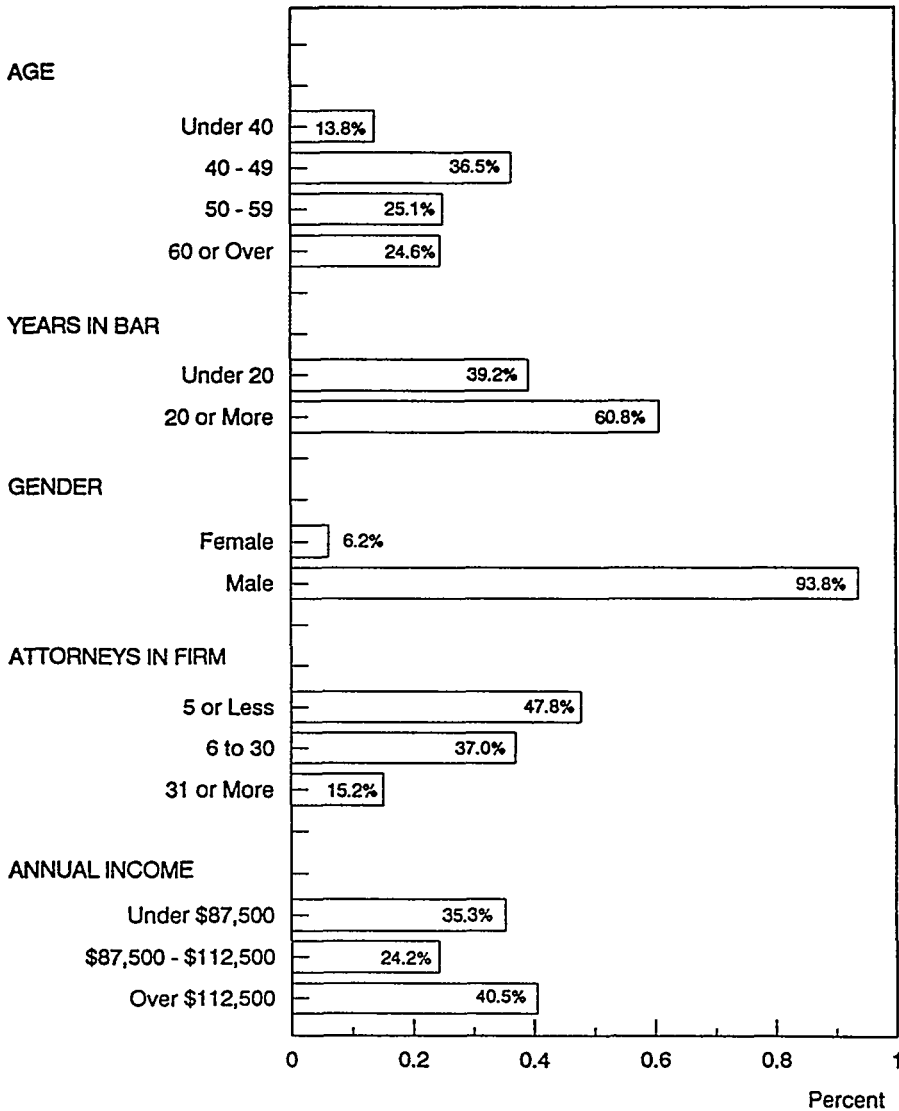
A brief demographic profile of the sample is presented in Exhibit 1. A broad age spectrum is represented, with about one-half the sample (49.7%) over fifty years old. About forty percent (39.2%) of those surveyed were admitted to the bar within the past twenty years, while the remaining sixty percent have been members of the bar over 20 years. It is apparent from these statistics that the survey was successful in reaching attorneys who have had extensive experience with transportation law, both before and after deregulation of the trucking industry.

Considerable diversity was found in the number of attorneys employed in the respondent's offices. While nearly one-half the sample (47.8%) were employed in smaller firms (five or fewer attorneys), another

5. See Bainbridge, *supra* note 1.

6. All comparisons of results of the survey across sample subgroups in the discussion to follow were conducted with standard chi-square tests of independence. The reported "p-values" signify the proportion of time such test period will erroneously lead to concluding that some result is significantly different across subgroups. Following accepted convention, sample differences are considered significant only if the "p-value" is less than .10. When multiple responses were given to the subjective questions, we categorized the responses by the clearest or first given.

EXHIBIT 1
DESCRIPTION OF SAMPLE OF TRANSPORTATION ATTORNEYS



15.2% were employed in larger firms (more than thirty attorneys). Exhibit 1 also delineates the sample by annual income, which was originally measured by having each attorney check whichever multiple of \$25,000 came closest to his/her annual income, and by gender.

III. SURVEY RESULTS

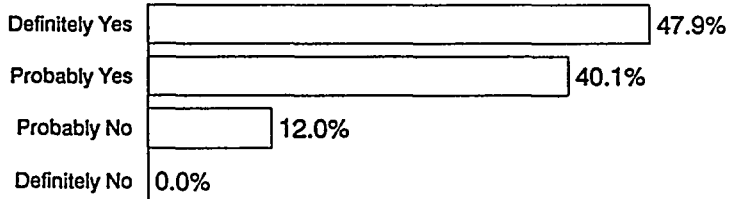
A. OBJECTIVE RESPONSES

Our survey initially asked the transportation attorneys to objectively measure three primary aspects of job satisfaction. Would they practice law again if given another career choice? Would they still specialize in transportation law? How does their income compare to their expectations?

EXHIBIT 2

**TRANSPORTATION ATTORNEYS' REACTIONS
TO PRACTICING LAW**

If you could start your career over, would
you still choose to practice law?



And, would you still choose to specialize
in transportation law?

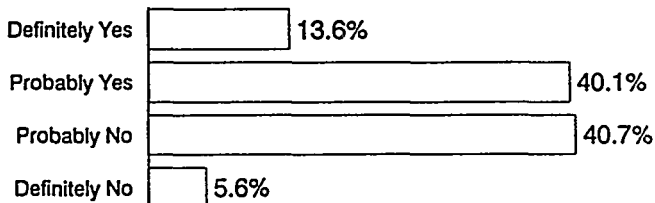
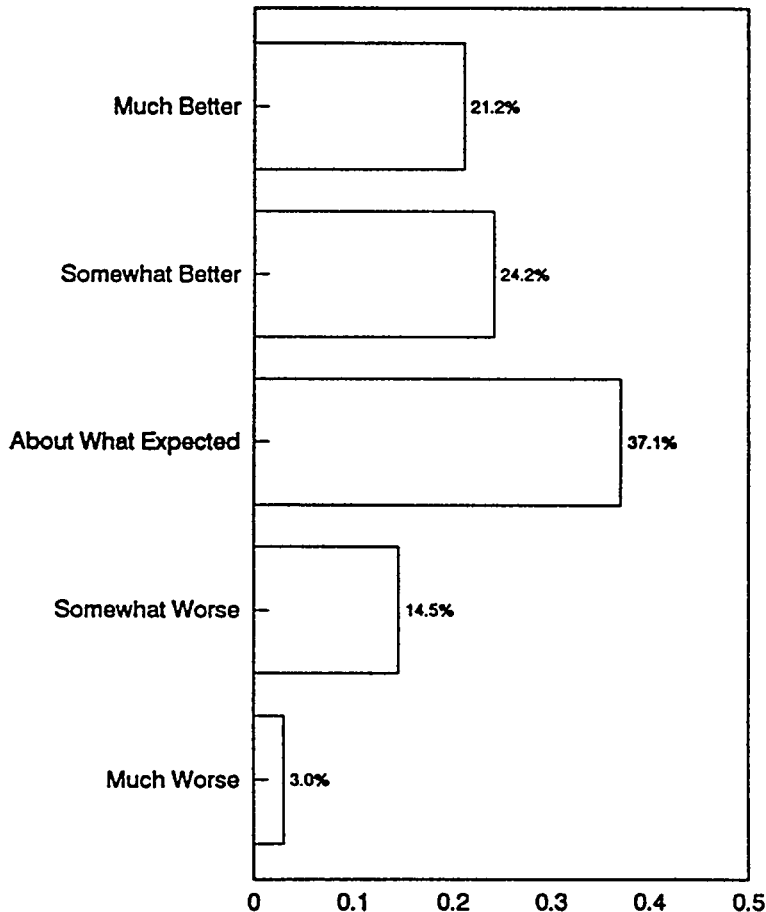


Exhibit 2 displays the undifferentiated responses from the total group of 167 attorneys. One immediately apparent fact is that while an overwhelming majority (88%) would still choose to practice law, nearly half (46.3%) have negative attitudes ("Probably No/Definitely No") toward doing so as transportation specialists. A large number of respondents clearly affirmed their career choice (47.9% "Definitely Yes"), yet only 13.6% felt that strongly about their niche as transportation lawyers.

The responses summarized in Exhibit 3 reveal a broad measure of

EXHIBIT 3

TRANSPORTATION ATTORNEYS' FEELINGS ABOUT INCOME (HOW HAS YOUR ANNUAL INCOME COMPARED TO WHAT YOU EXPECTED IT WOULD BE?)



satisfaction with income. Fully 82.5% felt their income has been as much or better than expected. This finding will become important as we ana-

lyze the backgrounds of our sample population (Part B) and their open-ended responses (Part C).

B. RESPONDENTS' BACKGROUND

To better evaluate these findings, we sought significant relationships between the backgrounds of the respondents and their responses. By applying our statistical methodology, we found that the factors of age, gender, and length of experience bore no significant correlation to any of the three objective questions. However, the size of the respondents' firm was a significant factor in their responses to both transportation specialization and income expectations (Exhibit 4). Moreover, annual income was sig-

EXHIBIT 4
TRANSPORTATION ATTORNEYS' RESPONSES BY SIZE OF FIRM

	Number of Attorneys in Office		
	5 or Less	6 to 30	31 or More
Still Choose to Practice Law (p = n.s.):			
Definitely Yes	49.4%	41.0%	60.0%
Probably Yes	40.5%	44.2%	28.0%
Probably/Definitely No	10.1%	14.8%	12.0%
Total	100.0%	100.0%	100.0%
Still Choose to Specialize in Transportation Law (p = .077):			
Definitely Yes	11.7%	10.0%	30.4%
Probably Yes	45.4%	35.0%	34.8%
Probably/Definitely No	42.9%	55.0%	34.8%
Total	100.0%	100.0%	100.0%
Income Compared to Expectations (p = .024):			
Better Than Expected	35.9%	45.9%	72.0%
About What Expected	46.2%	32.8%	20.0%
Worse Than Expected	17.9%	21.3%	8.0%
Total	100.0%	100.0%	100.0%

nificantly related to satisfaction with their legal careers and income expectations (Exhibit 5).

One clear relationship revealed by Exhibit 5 is that the predominant acceptance by the respondents of their career in law grew as income increased. The number of attorneys making under \$87,500 who would definitely or probably again choose to practice law was 77.8%, compared to 89.2% for those earning between \$87,500 and \$112,500 and 93.5% for those earning over \$112,500.

In addition, the strong level of discontent among the lawyers with their specialization in transportation law cut across all income and firm size categories. Nearly half of the highest-income lawyers (43.6% - see Exhibit 5) and a sizeable minority of lawyers in the largest firms (34.8% -

EXHIBIT 5
TRANSPORTATION ATTORNEYS' RESPONSES BY ANNUAL INCOME

	Under \$87,500	\$87,500 to \$112,500	Over \$112,500
Still Choose to Practice Law (p = .018):			
Definitely Yes	35.2%	40.5%	61.2%
Probably Yes	42.6%	48.7%	32.3%
Probably/Definitely No	22.2%	10.8%	6.5%
Total	100.0%	100.0%	100.0%
Still Choose to Specialize in Transportation Law (p = n.s.):			
Definitely Yes	13.2%	11.8%	14.5%
Probably Yes	37.7%	50.0%	41.9%
Probably/Definitely No	49.1%	38.2%	43.6%
Total	100.0%	100.0%	100.0%
Income Compared to Expectations (p = .001):			
Better Than Expected	16.7%	50.0%	67.8%
About What Expected	50.0%	33.3%	27.4%
Worse Than Expected	33.3%	16.7%	4.8%
Total	100.0%	100.0%	100.0%

see Exhibit 4) renounced their specialty, which challenges our expectation they would be largely content groups.

As for the responses to income satisfaction, it is evident, and perhaps tautological, that the highest-paid attorneys and those who are members of the largest firms are not among the few respondents experiencing less than expected income. Only 4.8% of the former group (Exhibit 5) and only 8% of the latter group (Exhibit 4) were disappointed financially. Exhibit 5 bears out the anticipated direct relationship between income satisfaction and compensation received. Two-thirds of the lawyers in the lowest income category felt they were paid as much or more than they expected, compared to 83.3% and 95.2% in the higher income categories. The survey indicates that the public perception of lawyers being well-paid is mirrored by the fulfilled expectations of the lawyers themselves.

C. ATTORNEYS SPEAK OUT

The most revealing result of the survey was the variety and insight of the attorneys' subjective thoughts and feelings on what most frustrates and pleases them about their profession. They reacted with compelling candor and vigor to the following invitations: "Please tell us the ONE thing you enjoy most about being an attorney" and "Please tell us the ONE thing you find most frustrating about being an attorney." We believe what follows is an accurate and telling compendium of attitudes shared by attorneys across the country.

"MOST ENJOYABLE" RESPONSES

The largest group (53 - nearly 35%) among the 154 attorneys describing the most enjoyable aspect of their law practices articulated a deep sense of service to their clients and society. Respondents extolled the joy of identifying and solving client problems and professional pride in improving society by affecting and shaping the law. The respondents declared:

Assisting all levels of clients in cutting through the bureaucratic ways and in providing a sounding board for business judgments which they seem to want.

The understanding of how the legal system is supposed to work and the satisfaction of resolving a dispute within the system to a fair end.

The ability to respond to new clients (strangers) who have come to the door at the suggestion of other clients - the ultimate compliment - and being a force for what is "right" about me, the law and legal system.

Being able to help people in immediate trouble and plan and establish goals for those clients looking to the future.

Arguing issues of significance to an entire industry; having an effect upon how that industry operates.

The occasional feeling that I have helped sort out a problem in a way that benefits society as a whole helps me to justify my existence.

Nearly as popular (45 attorneys - 29%) was the group praising the intellectual rewards of the job. These lawyers enjoyed the stimulation of adversarial competition and strategy, the variety of cases and legal issues, and the challenges of learning and applying the law. Ironically, many of these same characteristics of legal practice were mentioned by many respondents as factors in their most severe frustrations, such as the tremendous time burden of keeping up with ever-changing laws and ethical violations committed in the heat of competition. Representative comments included:

Channeling aggression in a socially acceptable manner.

Intellectual stimulation and involvement with an industry that fascinates me.

Taking a group of building blocks (laws, witnesses, known data) and attempting to fit them together into a cohesive package that will result in success.

The variety of problems and challenges keeps it from becoming a bore.

The practice of law is essentially a search for truth. It is wonderful to participate in transportation regulations which is a challenge to all parties involved.

The third and final major category of attitudes reflected an appreciation for autonomy. Twenty-eight lawyers (18%) expressed this benefit variously as independence, freedom, control, authority, responsibility, and self-reliance. Again, we will find in the negative responses that what is a

key motivation for some attorneys is a source of dismay to others in the form of administrative headaches and the intrusion of business problems. Most statements in this regard were brief and specific, such as:

The ability to choose my own destiny.

The feeling of being my own business.

Less often mentioned but no less interesting were four secondary factors chosen as highlights of practice by a few attorneys. Eleven (7%) spoke well of their relationships with other attorneys (a minority view, as we shall see!) and with clients. Seven (5%) zoned in on the singular satisfaction of winning their cases. Four (3%) admitted an attraction to the ego gratification of public esteem and status.

What very much surprised the authors was the near absence of compensation and financial security as a source of satisfaction. Only three lawyers (2%) directly mentioned financial rewards and one of them cited autonomy as well. Either money is not important to these lawyers, or more likely they take it for granted, as supported by our finding that over 82% viewed their income as equal to or better than expected. This assumption is validated by the respondents remaining in practice despite their severely critical condemnations of its faults described below.

We note that among the three miscellaneous responses was one lawyer who enjoyed nothing. He made this sobering comment:

Nothing now. I lost my major transportation practice when I was too old to obtain another specialty. Therefore, I am engaged in a general litigation practice with some transportation work.

"MOST FRUSTRATING" RESPONSES

The 148 lawyers who told us the one most frustrating aspect of their practices did so without reservation. Many of their comments were graphic, intense, profane and supportive of the recent research and literature on distress in the legal profession.

The target of the greatest criticism (36 respondents or 24%) was the bureaucracy of the legal system. Specifically, this group decried (1) the inefficiencies, delays and paper requirements of court and agency administration, (2) the incompetence of judges and agency decision-makers in their application of statutes and regulations, and (3) the political process that produces bad laws. Consider the following illustrative comments for each subgroup:

(1) The paper shuffling and the adherence to rules that make absolutely no sense.

The bureaucratic nonsense at every level of government administering to the needs of the motor carrier industry.

The court systems, both federal and state - if they were corporations they would be bankrupt.

I am often astonished at how wasteful the processes of the law can be - it makes me feel that I am a part of a problem, rather than a part of its solution when I see waste occurring.

(2) Intelligence level and interest level of some deciders of fact and law.

Stupid judges!! Instead of the cream of the crop you get the bottom of the barrel.

Refusal of ICC and other agencies and Supreme Court to apply plain language of statutes rather than legislating their philosophies into law.

(3) Bad law, bad legislation, bad legislators.

In the next largest category, we find the effects of lawyer bashing. Twenty-six respondents (18%) were most frustrated with either the low public opinion of lawyers or the high demands of clients based on their perception that lawyers can solve all their problems even when a case is legally weak. From their vantage point, this is the worst of professional service worlds - abuse from clients after a loss, lack of cooperation and appreciation before and after an expected victory, and social ridicule all the time. The following observations accurately display the seriousness with which this problem was taken:

The image of attorneys as money grubbers.

The current public perception of attorneys is very negative, generally speaking, and that disturbs me.

Being asked to put out a fire immediately after it has been burning for a week.

Attorney jokes which speak volumes about what is happening to our profession which has deteriorated due to less control over character and integrity requirements.

Many attorneys shared the opinion that lawyers themselves are responsible for many of their problems. Twenty-four responses (16%) ranged from merely critical to blatantly hostile in attacking the ethics, irrationality, abuses of legal system, office politics, and even personalities of their peers, including these highlights:

Other attorneys' abuse of process, especially in discovery, which the agency cannot or will not control. We need reform in this area.

Frustration over the time and energy it often takes to resolve an issue that is common sense but being fought out for purposes of delay or getting even.

The law practice has degenerated from an honorable profession to a dog eat dog rat race with the primary focus on money.

Dealing with office politics and dealing with other lawyers. As a general rule, lawyers are arrogant, stuffy, petty, amoral, dishonest, venal, narrow, shallow and dull. Other than that, they're great guys.

Time pressures and the business aspects of law practice were only slightly less often mentioned irritations, each chosen by 21 lawyers (14%). The former group described the press of long hours, workload, and deadlines ("too much work and not enough time, even at 60

hours/week'') and the latter bemoaned office management, marketing responsibility, accounting for billable hours, and bill collecting ("the perception that all attorneys are rolling in money and clients need not pay bills regularly - cash flow is a mounting problem"). Apparently the attorneys who loved their independence were not the ones involved in the business management of their firms.

The final significant category of frustration perhaps contributes strongly to the problems of time management and fee collection. Fifteen lawyers (10%) identified the rapid evolution and complexity of the law as their primary grievance. They wrote not only of the demands of the law upon them, but of the effects of higher fees and costs on clients, to the extent of rendering justice unaffordable. For example:

The need to balance service against the client's means.

Inability to devote large amounts of time to legal issues that are real and important from the client's standpoint but limited by the clients ability to pay for major dispute resolutions.

The enormous expense of litigation and the overwhelming creation of new regulations.

Not knowing enough law.

It was surprising, in light of the strongly negative reaction by the sample to their choice of transportation law as a career, that only two lawyers found deregulation to be a prime source of frustration. We can only speculate that since the 1980 Act the attorneys had adapted and integrated their knowledge into other aspects of transportation law.

IV. RESULTS IN CONTEXT

It is clear from relevant research that the frustrations of transportation lawyers are shared to an even greater extent by non-specialists. Here is a sampling:

The three most common reasons given by successful lawyers for leaving practice were that they:⁷

- (1) didn't like the adversary system and were tired of fighting;
- (2) wanted more time for personal interests and a more relaxed lifestyle; and
- (3) their duties were not as enjoyable as other things they could be doing.

Formal discipline against attorney misconduct is rising dramatically in many jurisdictions. Minnesota reports 61 cases of misconduct in 1990 receiving various sanctions, almost one-third more than in any prior year.⁸

In a 1989 survey of 1100 Maine attorneys, 60% stated they had all the work they could handle and one-third were overburdened.⁹

7. ARRON, *supra* note 3.

8. Minnesota Office of Lawyers Professional Responsibility.

9. Mark Horton, *The Maine Attorney Survey*, 4 Me. Bar J. 68-69 (Mar., 1989).

Fully 94% of the lawyers in the Maryland study (cited in Section I above) believed their occupation had become more a business than a profession due to a preoccupation with money: 84% felt that public perception of lawyers was declining, with more than 75% of those perceiving damage to the profession from this negativism; about half felt that the relationships among lawyers was increasingly adversarial; and more than 75% worked more than 50 hours a week.¹⁰

Interviews with several Wisconsin attorneys who had left private practice repeated our survey themes of time demands, irrational and unhappy clients (services too expensive, unnecessary, or both) and guilt over the costs of the system to its users.¹¹

The range and power of the frustrations expressed by our sizeable nationwide sample of transportation attorneys and the great extent to which their criticisms mirror these other studies leads us to conclude that the system of delivering legal services is overloaded. One critical factor functioning below the surface of the problems is the overwhelming number of lawyers in this country.

In 1920 there were under 123,000 attorneys or one for every 860 people. By 1989 there were over 725,000 or one for every 415 people.¹² A more recent estimate puts the number at nearly 800,000 or one for 300 people.¹³ The trend is not diminishing. Nationally 95,000 people applied for admission to 175 accredited law schools in 1991, up 7.8% from 1990. That was the fourth consecutive annual increase in applications.¹⁴

As a result of its burgeoning size, the profession has evolved from a small, collegial, cohesive group to an anonymous, diverse and specialized collage of competitors.¹⁵ Though our study and related research deny that overpopulation has produced a work shortage, it appears to be an indirect cause of much distress.

With more competition for cases and fees, many lawyers may accept more cases for less money while facing increasing client expectations, an exploding body of laws, administrative requirements and delays in a system overburdened with frivolous claims and the business demands of a practice that must market and serve more clients. Lawyers attempt to do all this while maintaining a standard of living comparable to the days when law was relatively simple and clients were abundant.

Lawyers who are unable or unwilling to specialize so as to define and

10. See BAINBRIDGE, *supra* note 1.

11. Annie Walljasper, *I Quit!*, 63 WIS. LAWYER 13-16 (Mar., 1990).

12. W. F. Newton, *Crisis in the Legal Profession*, 21 TEX. TECH L. REV. 897-904 (1990).

13. Julie Johnson & Ratu Kamlani, *Do We Have Too Many Lawyers?*, TIME, Aug. 26, 1990, at 54-55.

14. Jonathan Kalstrom, *Law School Applicants Increase in Number . . . Again*, MINN. LAWYER, May, 1991, at 27.

15. See Newton, *supra* note 12, at 899.

limit their expertise and control their market of clients may be forced to examine their income expectations in light of their frustrations and personal values. The strong statement made by 88% of our transportation lawyers that they would again practice law may indicate that their specialty has spared them from the full economic effect of the frustrations they share with lawyers generally. While nearly half of them may regret their choice of transportation law, their overall contentment level reflects relatively good fortune as compared to their non-specialized colleagues.

And since the critical remarks of our respondents are reflected at crisis levels among their fellow attorneys, their reported self-satisfaction centered on generous compensation may be temporary and illusory. A majority of the Maryland attorneys who were interviewed, both partners and junior associates, felt they were overpaid. The researcher observed that their salaries were the result of and contributed to the economic pressures felt by most lawyers. It stated:

"Attorneys at all levels and in all size firms feel that they are reacting to an ever increasingly chaotic environment and do not see much hope for stemming the tide."¹⁶

Several solutions have been considered and adopted by lawyer organizations. One is to limit law school admissions and communicate realistic expectations to law school students. Another is to reform the legal system from conflict to mediation, from justice by combat to problem solving.¹⁷ Sanctions against attorney misconduct and system abuse should be clarified and rigorously enforced. Clients should be educated by the profession and individual attorneys should focus on resolution not revenge.

A few professional organizations have started educating and assisting their members to help them deal with the pressures of practice, but their funds and empirical data are limited. State associations have dealt with incivility through voluntary role-modeling programs and codes and creeds of civility.¹⁸

Whatever the method, it appears certain that its effectiveness will depend upon the concern and cooperation among lawyers who have been trained and forced by economic expectations to compete with each other. Our society's ability to resolve conflict depends upon it.

CONCLUSION

Our survey indicates that transportation lawyers are basically satis-

16. See Bainbridge, *supra* note 1, at 31.

17. See ARRON, *supra* note 3.

18. Roger S. Haydock, *Civility In Practice: Attorney, Heal Thyself*, 16 WM. MITCHELL L. REV. 1239-52 (1990).

fied with their careers. They are happy being lawyers and they are being compensated as well or better than they expected, though roughly half of them would want to change their area of specialization.

When asked to specify what they enjoyed most about their jobs, the 154 responding lawyers specified the rewards of service to clients and society (34%), intellectual stimulation (29%), autonomy (18%), personal relationships (7%), winning cases (5%), prestige (3%), compensation (2%), and others (2%).

The 148 lawyers who shared their greatest frustration were dismayed and in some cases shocked by the legal bureaucracy (24%), lawyers' public image (18%), the lax standards of their colleagues (16%), time pressures (14%), the business aspects of practicing law (14%), the complexity of laws (10%) and others (4%).

We speculate that while these specialists may pledge contentment, the severity and breadth of their frustrations, combined with indications from other research of a great emerging distress among general practitioners, foretell a crisis in the profession - a crisis for clients who cannot afford to pay for justice and for lawyers who cannot afford the personal cost of providing it. We urge the profession to act.

.