

2000

# Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements

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## Recommended Citation

Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. Rev. 239 (2000)

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**SOUL FOR SALE:  
AN EMPIRICAL STUDY OF ASSOCIATE  
SATISFACTION, LAW FIRM CULTURE, AND THE  
EFFECTS OF BILLABLE HOUR REQUIREMENTS**

Susan Saab Fortney\*

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*Even those [associates] who seem to succeed often confess they have been lured into a Faustian bargain and that for all their material success, they have lost their souls.<sup>1</sup>*

This quotation on lawyers selling their souls evokes the memory of an old friend. After a full day of depositions in New York City, I looked forward to seeing Joan, a rising star at a prestigious law firm. Joan suggested that we meet at her office. At about 10:00 p.m., I arrived at an office teaming with associates and support staff. When I asked Joan if the attorneys were trying to meet impending deadlines, she responded in the negative, explaining that the associates were on the "partnership track treadmill."

Joan then showed me the brief that she was writing. With cursory review I was shocked to read poorly constructed arguments. What happened to the talented English major who worked as a professional writer before attending law school? When I looked at her I knew the answer. She was exhausted.

Joan, like many other associates, had gotten swept into producing hours in an hours derby. Chief Justice William Rehnquist captured how billable hour requirements effectively quantify associate contributions. He noted that by requiring 2000 billable hours, a firm is "treating the associate very much as a manufacturer would treat a purchaser of one hundred tons of scrap metal."<sup>2</sup> A fiction writer made a similar observation, comparing associates to pieceworkers in a sweatshop.<sup>3</sup>

Over the last fifteen years, academics and practitioners alike have tackled the abuses of hourly billing, a previously taboo subject.<sup>4</sup> Starting with Professor

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\* Professor, Texas Tech University School of Law. The State Bar of Texas Department of Research and Analysis provided support and assistance for this project. In particular, the author thanks Don Jones, division director for the State Bar of Texas, and Dr. Cynthia Spanhel, director of the Department of Research and Analysis. The author also appreciates the thoughtful comments of professors Timothy Floyd, Lisa G. Lerman, William G. Ross, and the attorneys who participated in the survey and the pre-test.

<sup>1</sup> BEYOND THE BREAKING POINT TASK FORCE, ABA LAW PRACTICE MANAGEMENT SECTION, BEYOND THE BREAKING POINT: A REPORT AND PLAN FOR ACTION (Dec. 28, 1992) [hereinafter BEYOND THE BREAKING POINT REPORT]. Expressing the same sentiment, in a chapter called "The Almighty Billable Hour," a respected practitioner offers the following warning: "Lesson Seven: 10% of a lawyer's soul dies for every 100 billable hours worked in excess of 1,500 per year." WALT BACHMAN, *LAW V. LIFE: WHAT LAWYERS ARE AFRAID TO SAY ABOUT THE LEGAL PROFESSION* 107 (1995).

<sup>2</sup> William H. Rehnquist, *The Legal Profession: Dedicatory Address*, 62 *IND. L.J.* 151, 151 (1987).

<sup>3</sup> CAMERON STRACHER, *DOUBLE BILLING: A YOUNG LAWYER'S TALE OF GREED, SEX, LIES, AND THE PURSUIT OF A SWIVEL CHAIR* 9 (1998). "My grandmother toiled in a sweatshop, but she was paid by the piece. . . ."

<sup>4</sup> "Unethical billing by attorneys was once a taboo subject. It no longer is." William G. Ross, *Formulating Standards for Ethical Billing*, 35 *LAW OFFICE ECON. & MGMT.* 301 (1994). See also William Ross, *Kicking the Unethical Billing Habit*, 50 *RUTGERS L. REV.* 2199, 2199 n.2 (1998) (citing the "multitude of articles and commentaries about unethical and illegal billing practices"). For a listing of the scholarship and commentaries on over billing and other billing abuses, see James P. Schratz, *I Told You to Fire Nicholas Farber - A Psychological and Sociological Analysis of Why Attorneys Overbill*, 50 *RUTGERS L. REV.* 2211, 2214 nn.5-9 (1991).

Lisa G. Lerman's provocative article on lying to clients<sup>5</sup> and Professor William Ross's fascinating studies of billing practices,<sup>6</sup> various commentators have analyzed the dark side of hourly billing practices.<sup>7</sup>

During the same period of time, commentaries and study reports have identified billing pressure as the key culprit responsible for attorney dissatisfaction.<sup>8</sup> The data from the National Survey of Career Satisfaction/Dissatisfaction conducted by the American Bar Association Young Lawyers Division in 1984 and 1990 demonstrate that increases in hours worked and the resulting decrease in personal time have become "major problems" attributing to serious levels of attorney dissatisfaction.<sup>9</sup> As the number of hours billed and worked has skyrocketed, attorneys experience a "time famine" in that they are "working harder to do more in less time."<sup>10</sup> This has led commentators to identify the hours as the "single biggest complaint among attorneys" about the practice of law.<sup>11</sup>

Although billable hour pressure has taken a toll on partners as well as associates,<sup>12</sup> associates appear to be the most disenchanting casualties of the billable hour derby.<sup>13</sup> In discussing attorney dissatisfaction, some authors have relied on

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<sup>5</sup> Lisa G. Lerman, *Lying to Clients*, 138 U. PA. L. REV. 659 (1990).

<sup>6</sup> WILLIAM G. ROSS, *THE HONEST HOUR: THE ETHICS OF THE TIME-BASED BILLING BY ATTORNEYS* (1996) (reporting on the results of surveys conducted in 1991 and 1994-95).

<sup>7</sup> E.g., Duncan A. Macdonald, *Gross Profits: A Client's Perspective*, 22 HOFSTRA L. REV. 655 (1994) (discussing, from a general counsel's perspective, how hourly billing creates hostility and cynicism); Stephen W. Jones & Melissa Beard Glover, *The Attack on Traditional Billing Practices*, 20 U. ARK. LITTLE ROCK L.J. 293 (1998) (practitioners noting that the "traditional hourly billing method is under attack from market forces, technological advances, and most importantly, clients").

<sup>8</sup> See, e.g., Chuck Coulter, *Chair's Letter from Chuck Coulter, Muscatine, Iowa*, 18 NO. 2 LAW PRAC. MGMT. 17, 17 (Mar. 1992) (noting that "[t]he billable hour has been identified as a primary villain that requires lawyers to sacrifice themselves to their firms by working longer and longer hours"); BOSTON BAR ASSOCIATION TASK FORCE ON PROFESSIONAL CHALLENGES AND FAMILY NEEDS, *FACING THE GRAIL: CONFRONTING THE COST OF WORK-FAMILY IMBALANCE* 13 (June 1999) (stating that "the increased revenue that is necessary for high associate salaries and partnership expansion leads to a demand for high billable hours, the narrowing of advancement opportunities, increased professional stress, and unprecedented financial conflict between associates and partners").

<sup>9</sup> ABA YOUNG LAWYERS DIV., *THE STATE OF THE LEGAL PROFESSION 1990 - EXECUTIVE SUMMARY* 2 (1991) [hereinafter *STATE OF THE LEGAL PROFESSION EXECUTIVE SUMMARY*].

<sup>10</sup> Tina Gutierrez, *"No Clean Socks": The Crisis of Lawyer Dissatisfaction*, 13 NO. 2 LAW HIRING & TRAINING REP. 2, 3 (Feb. 1993). The studies conducted by the ABA Young Lawyers Division clearly showed that the average hours worked in 1990 was more than the average reported in 1984. *STATE OF THE LEGAL PROFESSION EXECUTIVE SUMMARY*, *supra* note 9, at 6-7.

<sup>11</sup> James J. Alfini & Joseph N. Van Vooren, *Is There a Solution to the Problem of Lawyer Stress? The Law School Perspective*, 10 J.L. & HEALTH 61, 63 (1995-96).

<sup>12</sup> In a 1997 National Law Journal sample survey of 3,400 partners in 125 of the largest law firms in the nation, 72.9% of the respondents reported that "their workload prevents them from spending enough time with family and friends." Chris Klein, *Big-Firm Partners: Profession Sinking*, NAT'L L.J., May 26, 1997, at A1, A24. In the same survey, 42.6% of the respondents "reported that their job had hurt their relationship with a significant other." *Id.*

<sup>13</sup> Postings on popular associate web site reflect disillusionment. See, e.g., Richard Zitrin & Carol M. Langford, *Associated Stress Disorder: Stop Them Before They Bill Again*, TEX. LAW., Oct. 4, 1999, at 16 (quoting one associate who compared billable hour work to a high school swimming competition she used to hate: "see who can hold their breath and stay under water the longest").

the results of studies of law students and attorneys, noting that there is a limited amount of empirical data on the state of the profession.<sup>14</sup> In an attempt to help fill the gap, I conducted an empirical study to gauge the effects of billable hour pressure and practices on the current crop of associates.

The information obtained in my study provides guidance in both analyzing problems and formulating workable solutions. For example, one expert asserts that attorneys generally will not accept lower compensation to work less because lawyers tend to be competitive and driven.<sup>15</sup> Another perspective is that Generation-X associates appear to be a different breed of attorney desiring a balance in their work and personal lives.<sup>16</sup> Associates' opinions enable academics, law firm managers and bar leaders to intelligently evaluate current concerns and shepherd the future of the legal profession.

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Even the names of web site contributors suggest that many associates are cynical about billable hour practices and pressures. Member names on the RealGAs web site include "Billable Horrors," "Body Count Rising," "Golden Cuffs," "Legal Pimp," "Liabil," "Looking for Billables," and "The Firm Owes Me." *RealGAs, Member List*, at <http://clubs.yahoo.com/clubs.realgas?m> (visited Dec. 1, 2000).

<sup>14</sup> See, e.g., Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 873 (1999) (explaining that even law professors "who are intensely interested in the work of lawyers – often do not have the training or resources to conduct empirical research about the legal profession"). The lead article in a symposium issue of the *Journal of Law and Health* analyzed data on types of distress experienced by attorneys. See Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1 (1995-96). Various nonprofit groups have also conducted surveys gathering information related to associate satisfaction and attrition. For example, the National Association of Law Placement sponsored a comprehensive study on associate attrition. See NALP FOUNDATION FOR RESEARCH AND EDUCATION: KEEPING THE KEEPERS: STRATEGIES FOR ASSOCIATE RETENTION IN TIMES OF ATTRITION (Jan. 1998) [hereinafter KEEPING THE KEEPERS REPORT].

<sup>15</sup> Susan Daicoff, a law professor with a master's degree in clinical psychology, thinks that external cures to professional dissatisfaction involving, among other things, lawyers working less, being less money oriented, being less competitive, and mentoring other lawyers may be unworkable because lawyers' personality characteristics include the need for achievement. Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes*, 11 GEO. J. LEGAL ETHICS 547 (1998). Although Daicoff refers to various studies on the psychological characteristics of attorneys, she acknowledges that no empirical data has been collected regarding the efficacy or feasibility of any of the proposed solutions. *Id.* See also Susan Daicoff, *Articles Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U.L. REV. 1337 (1997).

<sup>16</sup> Speaking of associate attrition, Joel Rose, a legal consultant, referred to the "Generation-X factor" in stating that "law students coming out of college today possess different goals and aspirations from those of many partners." Debra Baker, *Cash-And-Carry Associates*, A.B.A. J., May 1999, at 40, 42. Mary Rose Alexander, a partner in the Chicago office of Latham & Watkins and that firm's national chair of firm recruiting, expressed a similar perspective. "Associates today are a lot more concerned about other things, not just the practice of law. Putting in all these hours is not what many of them intended to do. They may do it for a certain period of time, but the question is, do they want to do it for a career?" *Id.* Attorney and legal consultant Austin Anderson chimed in, recognizing that the 27- to 40-year-old group "is more committed to their personal lives" than the 50- to 65-year-old group. *Id.*

Part I briefly describes the survey design and the general profile of the survey respondents. Part II discusses current billing practices and pressures analyzing the study results related to billing expectations and guidance as well as firm culture and work alternatives. Using findings from the study, Part III considers the detrimental micro and macro effects of increasing billable hour expectations. Finally, Part IV proposes various steps and measures that can be taken to address the negative consequences of emphasizing billable hour production.

## I. STUDY DESIGN AND GENERAL PROFILE OF RESPONDENTS

### A. Methodology

The empirical study of the effects of billable hour practices on associates used a mail survey. Cynthia Spanhel, director of the Department of Research with the State Bar of Texas, assisted in preparing the survey instrument, in conducting the survey, and in analyzing the results. The survey instrument was sent to a sample of 1000 associates. The original sample for the survey consisted of 1000 randomly selected Texas attorneys (1) who had been licensed for ten or fewer years as of June 1999,<sup>17</sup> and (2) who were identified on the State Bar of Texas membership file as working in private law firms with more than ten attorneys.<sup>18</sup>

The questionnaire was designed to obtain objective data on billing practices, the effects of hourly billing pressure, and firm culture.<sup>19</sup> The questionnaire included a section for additional comments. The letter transmitting the questionnaire assured the recipients that the responses would be anonymous.<sup>20</sup> The instructions asked all recipients to separately mail an enclosed postcard.<sup>21</sup>

Additional copies of the questionnaire were sent to those persons who had not responded. After the final follow-up mailing, the total number of persons in

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<sup>17</sup> Restricting the sample to attorneys licensed for 10 or fewer years helped filter out attorneys who were "permanent associates" and attorneys who had attained partnership or equity status.

<sup>18</sup> Limiting the sample to attorneys who work in firms with more than 10 attorneys eliminated solo practitioners as well as many small firms that did not use hourly billing as the principal method for billing clients.

<sup>19</sup> Before finalizing the questionnaire, a number of associates, practitioners and scholars critiqued the questions in an informal pretest. Despite the efforts to eliminate all ambiguous questions, a few respondents believed certain questions to be unclear. The comment section provided respondents an opportunity to identify unclear questions and to provide explanations of their answers. A copy of the questionnaire is reproduced in the Appendix to this article.

<sup>20</sup> The transmittal letter also asked recipients not to complete the survey if they were not associates currently using hourly billing. Rather, these recipients were asked to check the appropriate response on the postcard.

<sup>21</sup> The postcard permitted attorneys to indicate that they had returned their questionnaires or to indicate that they were not returning their questionnaires because they were not associates using hourly billing. Prior to the third and final follow-up mailing of the questionnaire non-respondents, attorneys who indicated that they were not associates using hourly billing were replaced in the sample by randomly selecting other attorneys from the original pool from which the sample was drawn. Attorneys with incorrect addresses, attorneys who were deceased, and attorneys who declined participation in the survey also were replaced in this manner.

the sample was 883. Of that number, 487 recipients returned the completed questionnaire. This means that the overall response rate amounted to 55.2%, which is higher than response rates reported in similar mail surveys of attorneys.<sup>22</sup>

### B. Sampling and Non-Response Errors

The survey results do not indicate a non-response or sampling error. A possible non-response error relates to the fact that associates who are working the hardest may not take the time to complete the survey form. However, this does not appear to be the case for a couple of reasons. First, a large number of the associates who responded were working long hours. Although associates in larger firms reportedly work longer hours, 50% of the respondents were associates in the largest firm category, firms with more than 100 attorneys. Second, I have observed that associates who are working hard think about their situation a great deal and want the opportunity to vent, especially if providing information may help in improving the situation for associates.<sup>23</sup>

The mail survey does not appear to suffer from sampling errors. In a number of respects the state-wide sample drawn from Texas state bar membership records represents different sectors of private law practice. First, Texas is a diverse state, including rural areas, small towns and large cities. This survey also obtained information from associates in both small and medium size firms, unlike some other surveys that were limited to large firms.<sup>24</sup> This survey also provided information on a diverse population<sup>25</sup> with different educational backgrounds.<sup>26</sup>

### C. Survey Timing and Bias

At the time that the mail survey was conducted, law firms were generally benefiting from the healthy economy.<sup>27</sup> While some firms, such as insurance

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<sup>22</sup> For example, in 1999, the *Texas Lawyer*, a legal newspaper, sent a salary and billing survey to 189 firms with 10 or more lawyers reported a 16.9% response rate. See Angela Ward, *Firms Raise the Roof: More Hours and Higher Rates Mean More Money for Texas Lawyers; Survey Methodology*, TEX. LAW., Mar. 29, 1999, at 21.

<sup>23</sup> In the comment section of the survey, a few respondents indicated that they looked forward to seeing the results.

<sup>24</sup> For example, the *Texas Lawyer* has surveyed associates in the 100 largest firms in Texas. See Angela Ward, *Associate Quality of Life: Not So Low After All*, TEX. LAW., Dec. 1, 1997, at 16. Commentators have also focused on life in large firms. See, e.g., Kent D. Syverud, *Symposium: Attorney Well-Being in Large Firms, Choices Facing Young Lawyers – Introduction*, 52 VAND. L. REV. 869 (1999). The extensive, nationwide survey on associate attrition conducted by the NALP Foundation for Research and Education was sent to “nearly 4000 law firms with 25 or more attorneys.” KEEPING THE KEEPERS REPORT, *supra* note 14, at 11.

<sup>25</sup> The sample included a gender, racial and ethnic mix.

<sup>26</sup> Some other surveys have been limited to graduates of particular schools. See, e.g., Kenneth G. Dau-Schmidt and Kaushik Mukhopadhyaya, *The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession*, 49 J. LEGAL EDUC. 342 (1999) (discussing a sample drawn from the University of Michigan alumni data).

<sup>27</sup> The first mailing made in August 1999 asked that completed questionnaires be returned by October 15, 1999. The last follow-up mailing asked that responses be returned by April 14, 2000.

defense firms, were dealing with cost containment measures imposed by clients, many firms grew in terms of numbers and revenues. On a weekly basis, popular legal newspapers bombarded readers with news of unprecedented firm revenues and rising associate salaries. The unprecedented high salaries paid to associates in the largest firms may result in those associates reporting higher levels of satisfaction than they might if their salary increases had not been so dramatic.<sup>28</sup> Survey results should be read appreciating the level of affluence enjoyed by associates in large firms. From an income standpoint, times are good for associates in large firms. Presumably, an economic slowdown or recession will negatively impact satisfaction if associates must compete for both jobs and work.

In preparing the survey instrument, I reviewed boxes of scholarship, studies, surveys and commentaries on the effects of hourly work, law firm economics, attorney satisfaction, and associate hiring, retention and attrition. Admittedly, this review, coupled with my own experience in private law practice and reports of others in private practice, left me with the opinion that many practitioners were frustrated with billable hour practice and pressure. One purpose of the study was to obtain data from a large random sample to test that opinion. For comparison purposes, many questions were based on questions asked in other surveys. Some of these questions, such as those related to satisfaction, may appear to have a bias in tone. I attempted to eliminate bias in the wording and presentation of questions.<sup>29</sup> One preconceived notion I acknowledge is that the environment and economics of law firms should foster ethical law practice.

#### D. Respondents' General Profile

The vast majority of respondents (92%) indicated that they were associates on the partnership track. This compares to 3% who indicated that they were staff attorneys not on the partnership track. One percent of the respondents work part time, and another 1% work as contract attorneys. The remaining 3% checked the "other" category.<sup>30</sup>

The respondents' tenure with their firms ranged from 11% who had been with the firm for less than one year to 4% who had been with the firm for more than seven years. The median tenure was thirty-two months, and the median age of the respondents was thirty-two years old.<sup>31</sup> Approximately seventy percent of

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<sup>28</sup> Referring to the "associate salary issues going on right now and for the past 4 months," one respondent noted that the timing would skew the survey.

<sup>29</sup> Two respondents indicated that the survey reflected a bias. A third respondent commented on the "leading nature of some questions." Another respondent stated that the survey "is likely to be skewed because of value judgments implicit in many of the multiple choice answers." In survey drafting, multiple choice questions which simplify the reporting of the results can actually eliminate some researcher bias resulting from characterization of open ended questions.

<sup>30</sup> Those respondents who check "other" described their position. These descriptions included a range of positions such as "employee, but paid by the billable hour" and "associate, but no defined partnership track."

<sup>31</sup> The following is an age breakdown by category: 34% were under 30 years old; 51% were 30-35 years old; 9% were between 36-40 years old; 4% were 41-45 years old; and 2% were over 46 years old.



the respondents were married.<sup>32</sup> Five percent noted that they were divorced or separated, and 24% were single or widowed.<sup>33</sup>

The respondents worked in firms of varying sizes located throughout Texas. The respondents' locations resemble the general lawyer population concentration in those metropolitan areas that include the largest Texas cities.<sup>34</sup>

Exactly half of the respondents worked in firms with more than 100 attorneys ("Large Firms"), 27% indicated that they worked in firms with 25-100 attorneys ("Medium Firms"), and 21% worked in firms with 11-24 attorneys ("Small Firms").<sup>35</sup> The median income of respondents was \$82,418.

## II. BILLING PRACTICES AND FIRM CULTURE

### A. Current Hourly Billing Practices and Pressure

Attorneys may be surprised to learn that hourly billing first became common between the 1950s and 1970s.<sup>36</sup> In the 1960s, commentators, management consultants<sup>37</sup> and studies<sup>38</sup> suggested that those attorneys who used hourly billing in determining their fees made more than those who used other methods.<sup>39</sup> Since that time, hourly billing evolved into the most popular method that law firms use to bill clients and evaluate the contributions of attorneys. Now technology, such as computer software programs, enables firm managers to track the amount of

<sup>32</sup> Of the total number of respondents, 32% indicated "married, no children," and 38% indicated "married with children."

<sup>33</sup> One respondent commented that "single without children" was a missing category.

<sup>34</sup> Thirty-one percent work in the Houston/Galveston/Brazoria Metropolitan Statistical Area ("MSA"), 43% work in the Dallas/Fort Worth MSA, 16% work in the Austin/San Marcos/San Antonio MSA, and the balance work in other areas in the state.

<sup>35</sup> Although the sample was limited to associates working in firms with more than 10 attorneys, approximately 2% indicated they worked in firms with less than 10 attorneys. Evidently, these respondents firms lost attorneys after information was reported to the State Bar of Texas.

<sup>36</sup> ROSS, *THE HONEST HOUR*, *supra* note 6, at 17, 9-22 (providing an historical perspective on attorneys fees and hourly billing).

<sup>37</sup> *Id.* at 17-19 (referring to commentators' and consultants' recommendations that attorneys use timekeeping as a law office management tool).

<sup>38</sup> For example, *The 1958 Lawyer and His 1938 Dollar*, an American Bar Association study, asserted that attorneys who use time records to formulate their attorneys fees made more money than those attorneys who did not. William Kummel, Note, *A Market Approach to Law Firm Economics: A New Model for Pricing, Billing, Compensation and Ownership in Corporate Legal Services*, 1996 COLUM. BUS. L. REV. 379, 385 n.16 (1996).

<sup>39</sup> Jones & Glover, *supra* note 7, at 294 (explaining why the transition from a fixed rate to hourly billing was "relatively easy"). Based on attorneys' motivation, Professor Lisa G. Lerman characterizes the choice of billing methods as being "driven by concerns about the lawyer's pocketbook, not the client's." Lisa G. Lerman, *Scenes from a Law Firm*, 50 RUTGERS L. REV. 2153, 2187 (1998). Reportedly, corporate managers and members of the business community welcomed hourly billing because it enables them to "correlate the 'product' that they were buying to the products that they themselves produced and sold." William G. Ross, *The Ethics of Hourly Billing by Attorneys*, 44 RUTGERS L. REV. 1, 11 n.64 (1991) (citing Mary Ann Altman, *A Perspective - From Value Billing to Time Billing and Back to Value Billing*, in *BEYOND THE BILLABLE HOUR: AN ANTHOLOGY OF ALTERNATIVE BILLING METHODS* 11 (Richard C. Reed ed., 1989)).

time firm attorneys bill and collect.<sup>40</sup> Firm leaders use the billing information to set billing targets or billing requirements for firm associates.<sup>41</sup> Firm managers may share this information with associates, circulating monthly sheets showing associates "where they stand in the race to outbill their colleagues."<sup>42</sup> This information creates a kind of "peer pressure" on the "underachievers."<sup>43</sup>

Over the last thirty years, the billable hours have dramatically increased. In the 1960s the median number of billable hours was approximately 1500 per year for partners and associates.<sup>44</sup> By the 1970s, the target for most firms was between 1600 and 1800 hours.<sup>45</sup> During the 1980s and 1990s the number of hours associates were expected to bill continued to increase.<sup>46</sup> The 1990 study conducted by the A.B.A. Young Lawyers Division revealed that 45% of attorneys in private practice billed at least 1920 hours per year, and 16% billed 2400 or more hours per year.<sup>47</sup> Since that time, the number of billable hours has steadily increased.<sup>48</sup>

Firm managers communicate their billing expectations in different ways. Some openly acknowledge the "minimum" number of hours that associates should bill.<sup>49</sup> Other firm managers deny that they have a minimum or quota, preferring to call the number of hours a "target." Even when firms deny the exist-

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<sup>40</sup> See, e.g., Angela Ward, *Firms Shell Out for New Time and Billing Software*, TEX. LAW., Apr. 20, 1998, at 4 (describing a new generation of billing software that includes data on profitability of matters).

<sup>41</sup> "The ever watchful, reporting computers push firm members to compete on hours and fees to the detriment of service and responsibility." Louise A. LaMothe, *Where Are We Going Anyway?*, 19 NO. 19 LITIG. 1, 2 (1992) (citing an attorney surveyed in connection with the Seventh Circuit's Committee on Civility).

<sup>42</sup> David Segal, *In the Business of Billing? Lawyers Say a Rush for Money Is Shaking Profession's Standards*, WASH. POST, Mar. 22, 1998, at H1, H4 (noting that most large corporate firms now require that employees bill a minimum number of hours per year).

<sup>43</sup> See Francis H. Musselman, *Abandon the Billable Hour!*, N.Y. ST. B.J., July/Aug. 1995, at 28 (noting that most firms publish internally the number of hours reported by timekeepers).

<sup>44</sup> Carl T. Bogus, *The Death of an Honorable Profession*, 71 IND. L.J. 911, 925 n.113 (citing RICHARD L. ABEL, *AMERICAN LAWYERS* 192 (1989)).

<sup>45</sup> Ross, *Kicking the Unethical Billing Habit*, *supra* note 4, at 2203. "Not until the 1980's were associates at major firms in New York and elsewhere normally expected to bill more than 1800 hours per year." ROSS, *THE HONEST HOUR*, *supra* note 6, at 20.

<sup>46</sup> "Between 1984 and 1989, the median billable hours recorded by all associates rose from 1738 to 1820." Ammee McKim, Comment, *The Lawyer Track: The Case for Humanizing the Career Within a Large Law Firm*, 55 OHIO ST. L.J. 167, 174 (1994) (citing *THE LAWYER'S ALMANAC* 218 (1991)).

<sup>47</sup> Schiltz, *supra* note 14, at 891 (citing ABA YOUNG LAWYERS DIVISION, *THE STATE OF THE LEGAL PROFESSION*, *infra* note 144).

<sup>48</sup> See ROSS, *THE HONEST HOUR*, *supra* note 6, at 2-3 (describing the trend using a 1995 consulting firm survey which showed that average associates hours ranged from 1649 in Boston to 1907 in Atlanta).

<sup>49</sup> As part of the law school hiring process, firms typically complete a National Association for Law Placement (NALP) Law Firm Questionnaire. In completing this form, hiring firms must provide information on their firms, including the average annual associate billable hours and minimum associate billable hours. Prospective employees can obtain the information in electronic and print versions of the Directory of Legal Employers.

tence of a minimum or quota, associates learn about the firm's expectations or norms.<sup>50</sup>

To satisfy billing minimums, quotas or targets, some attorneys operate as "billing machines,"<sup>51</sup> billing all or most of the time they are at work.<sup>52</sup> Most attorneys do not function that way but devote a percentage of their time to non-billable matters such as personnel issues, continuing legal education and client development. Although the actual time devoted to non-billable hours will vary from attorney to attorney and from week to week, as a general rule, experts explain that approximately one third of all work time is non-billable.<sup>53</sup> Using this formula, an attorney must actually work 2400 hours in order to bill 1600 hours.<sup>54</sup>

The number of hours an associate must work continues to increase as associate salaries increase.<sup>55</sup> During the last two years, hardly a month has gone by without an announcement that larger firms were hiking associate salaries.<sup>56</sup> Recently, the Silicon Valley firm of Gunderson Dettmer Stough Villeneuve

<sup>50</sup> "Most law firms I know have quotas. Many firms deny they have such things, but everyone on the inside knows they do. If associates are spoken to about their billings in any systematic way, there is always a quota or a minimum of some sort. This may be true even when there is no official policy – and even if there is an official denial of its existence." Michael Sean Quinn, *Attorneys' Fees and Lawyers' Billings: A Tale of Emperors' Old Clothes*, ENVTL. CLAIMS J., Autumn 1997, at 131, 135 (reviewing WILLIAM G. ROSS, *THE HONEST HOUR* (1996)).

<sup>51</sup> In a 1997 Associate Quality of Life survey of associates in Texas firms, one respondent stated that he wished management would "treat mid-level associates as people who could 'grow' into partners rather than billing machines." Ward, *Associate Quality of Life*, *supra* note 24, at 20.

<sup>52</sup> As described in one commentary, "attorneys are now taught to live and die by the billable hour, thereby taking billing to its outer limits." Elizabeth A. Kovachevich & Geri L. Waksler, *The Legal Profession: Edging Closer to Death with Each Passing Hour*, 20 STETSON L. REV. 419, 426 (1991) (citing Chambers, *Untangling an Unholy Alliance*, NAT'L L.J., Apr. 30, 1990, at 13).

<sup>53</sup> Ross, *The Ethics of Hourly Billing*, *supra* note 39, at 14. As explained by one expert, "the reason for the ratio is that clients are only billed for time actually spent on their matter" and not billed for "down time" spent in other ways, such as keeping current in one's practice area and attending firm meetings. Elena S. Boisvert, *Is the Legal Profession Violating State and Federal Consumer Protection Laws?*, PROF. LAW., Nov. 1997, at 1, 4.

<sup>54</sup> Cf. William Kummel, *Deconstructing Law Firm Economics*, 11 NO. 1 ACCT. FOR L. FIRMS 5, 5 n.1 (1998). "To produce 1,700 net billing hours per year requires an average of 37 hours per week for 46 weeks per year, assuming six unproductive weeks per year (three weeks vacation as well as one week each for holidays, illness and pro-bono work)."

<sup>55</sup> "As associate salaries escalated, so did hourly quotas and hourly rates." James E. Brill, *The Law of Unintended Consequences*, TEX. B. J., July 1999, at 679, 680. After years of "relative stability," associate starting salaries began to increase in 1996. Mark Hansen, *Big Pay Day for New Associates*, A.B.A. J., Mar. 1998, at 25 (describing a legal consulting firm's survey which revealed that "the median starting salary for new graduates rose to \$52,000 in 1996 for the first time since 1989, when it stood at \$50,000"). In Texas, the recent wave of salary increases started in 1998 when Houston-based Vinson & Elkins raised its associate salaries 20% across the board. Brenda Sapino Jeffreys, *V&E Boldly Blasts Associate Salaries by 20 Percent*, TEX. LAW., July 27, 1998, at 1. Other large firms followed by announcing matching salaries for starting associates. Brenda Sapino Jeffreys, *Firms Contemplate Move to Match V&E's Associate Salary Hike*, TEX. LAW., Aug. 10, 1998, at 2.

<sup>56</sup> For example, for three weeks in a row, the *Texas Lawyer* reported on the associate salary hikes. *Inadmissible – Show Me the Money*, TEX. LAW., Feb. 21, 2000, at 3; Brenda Sapino Jeffreys, *Let the Games Begin: Andrews & Kurth Strikes First with 20 Percent Associate Salary Hike*, TEX. LAW., Feb. 28, 2000, at 6; *Inadmissible – A Higher Power*, TEX. LAW., Mar. 6, 2000, at 3.

Franklin & Hachigian hiked the starting associate's salary to \$145,000, sending a "ripple through the legal industry."<sup>57</sup> As explained by a prominent legal recruiter, as salaries continue to increase, firms face increased pressure to justify these higher expenses.<sup>58</sup> "Subsequently, annual billable hours requirements have risen, with those attorneys falling below the norm coming under closer scrutiny; some are even subject to termination at one firm."<sup>59</sup> Presumably, associates understand a firm's billing expectations and possible consequences of salary raises.

Some firms' managers have openly communicated that the salary increases require that associates bill more hours.<sup>60</sup> Others speak more guardedly, indicating that increased salaries require attorneys to become "more productive" and charge higher billing rates.<sup>61</sup> Given that many clients are resisting billing rate hikes,<sup>62</sup> salary raises are most likely to be covered by attorneys working longer hours.

### B. Study Results on Billing Pressure

Understanding the amount of time that it takes to fulfill hourly billing requirements and targets prepares the reader for the analysis of the hourly billing requirements and practices reported by survey respondents. Eighty-four percent of the respondents reported that their firms have annual billable expectations for associates. Of that number, the mean annual billable expectation for associates was 1961 hours and the median was 1980 hours.<sup>63</sup>

As expected, the survey results indicated that the average minimum billing expectation generally increased with firm size. At the same time, Table 1 shows that a smaller percentage of Large Firms required over 2100 hours as compared to Medium Firms represented by the survey respondents.<sup>64</sup>

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<sup>57</sup> Debra Baker, *Go West, Young Lawyer*, A.B.A. J., May 2000, at 34.

<sup>58</sup> Lauren Eaton Prescott, *The Verdict Is In on the Great Pay Hike*, TEX. LAW., Oct. 4, 1999, at S19.

<sup>59</sup> *Id.*

<sup>60</sup> For example the Texas-based firm of Akin, Gump, Strauss, Hauer & Feld increased salaries for those associates who bill 2000 hours. *Inadmissible - The Big Leagues*, TEX. LAW., Mar. 27, 2000, at 3.

<sup>61</sup> As stated by Jack Kinzie, the partner in charge of Houston-based Baker Botts, "I think the increased salary is going to have to be absorbed in part by higher billing rates and in part by lawyers becoming more productive." Lisa M. Whitley, *Will Bigger Salaries Lead to Bigger Billing Rates?*, TEX. LAW., May 29, 2000, at 37.

<sup>62</sup> Michael D. Goldhaber, *Are Salary Hikes Bad for Associates?*, NAT'L L.J., Feb. 28, 2000, at A20 (predicting that increased hours is the most likely way that firms will pay for increases when the economy slows).

<sup>63</sup> This median and mean excludes part-time attorneys and one respondent who reported that the annual minimum expectation was 4000. This outlier was not included in the calculations because the number is unbelievable.

<sup>64</sup> A Salary and Billing Survey conducted by the *Texas Lawyer* also found that the associates in mid size firms billed on the average more than associates in the larger firms represented in the survey. The mean hours billed by associates in firms with 30-49 attorneys was 40 hours a week compared to 37 hours a week for associates in firms with 50-99 attorneys. Lisa M. Whitley, *Legal Employment and Recruiting in Texas: Salary and Billing Survey: Will Bigger Salaries Lead to Bigger Billing Rates?*, TEX. LAW., May 29, 2000, at 40. In the *Texas Lawyer* survey, only 29 firms responded for a 15.3% response rate. *Id.* at 38.

The data also revealed an interesting relationship between the billing expectation and the number of years that respondents had been licensed. The mean billing expectation for the more recently licensed attorneys was actually higher than the mean reported for attorneys practicing more than four years.<sup>65</sup>

On the other hand, a cross tabulation between income reported and the annual billable expectation suggested that the mean billable hour expectation increased as attorneys' incomes increased. For example, the mean annual billable expectation for attorneys whose annual pre-tax income was between \$50,000 and \$84,999 per year is 1939 hours, as compared to 1980 hours for attorneys whose pre-tax income was between \$85,000 and \$124,999.<sup>66</sup>

**Table 1**  
**Firm Size and Annual Minimum Billing Expectations<sup>67</sup>**

	<b>Small Firms</b> (11-24 attorneys)	<b>Medium Firms</b> (25-100 attorneys)	<b>Large Firms</b> (over 100 attorneys)
Below 1800 hours	15%	4%	---
1800-1999 hours	46%	48%	49%
2000-2099 hours	22%	30%	47%
2100-2399 hours	10%	12%	4%
2400 hours and above	7%	6%	---

The majority of respondents (57%) noted that the number of billable hours expected was the same as what they learned during the hiring process. Another 40% may have been surprised when they started working at their current firm and learned that the number of billable hours expected to advance was more compared to what they learned during the hiring process.<sup>68</sup> This illustrates a kind of recruiting ritual in which firms communicate lower billing requirements than the

<sup>65</sup> The mean for attorneys licensed less than three years was 1967 hours per year, the mean for attorneys licensed four to six years was 1962 hours per year, and the mean for those licensed more than six years was 1944 hours per year.

<sup>66</sup> The mean billable hour expectation continued to increase in the higher income categories, which included fewer respondents. The mean annual billable expectation for attorneys making \$125,000 to \$159,999 per year was 2041 hours and the mean annual billable expectation for attorneys making over \$160,000 per year was 2075.

<sup>67</sup> The table percentages exclude part-time employees and one respondent who noted that the firm's annual billable expectation was 4000 hours a year. See *supra* note 63 (explaining the justification for eliminating the 4000-hour outlier).

<sup>68</sup> As explained by professors Richard Zitrin and Carol M. Langford, firms often "soft pedal" their billable hour requirements when recruiting new associates, and some claim to have no "formal minimums, but they strongly enforce billing quota once lawyers join their ranks." RICHARD ZITRIN & CAROL M. LANGFORD, *MORAL COMPASS* 87 (1999).

number actually needed for advancement.<sup>69</sup> Unfortunately, this can give rise to associates feeling frustrated and possibly misled.<sup>70</sup>

As indicated by the number of hours that respondents reported billing, associates tend to actually bill more than the minimum billing expectation. The average number of hours respondents reported billing during the first half of 1999 was 1030 (2060 hours if calculated on an annual basis).<sup>71</sup>

The income of respondents appears to be related to the number of hours billed. The mean number of hours reported billed increases as income increases.<sup>72</sup> This suggests that pre-tax income, including bonuses, relates to the number of hours billed by associates.

The study results do not support the commonly held belief that attorneys in the largest firms are the ones who bill the most hours. A cross tabulation between the number of hours that respondents reported billing and the size of the respondents' law firms revealed that average annual hours billed by those respondents in Medium Firms was 2120, compared to 2079 hours reported by respondents in Large Firms.<sup>73</sup> Fifty-four percent of the respondents in Medium Firms billed more than 2100 hours per year; by contrast, only 48% of the respondents in Large Firms billed more than 2100 hours annually.<sup>74</sup> The next section addresses the guidance that associates receive in billing time.

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<sup>69</sup> Anecdotal reports attributed some of upward adjustment of billable hour requirements to the salary raises made by the largest Texas firms in 1999. At some firms starting associates learned that they would be making more, but working more because the billable hour expectation was increased. See *supra* note 60 (describing how associates in one large Texas firm only qualified for the salary increases if they billed more than 2000 hours a year).

<sup>70</sup> The NALP report on associate attrition and retention revealed how associates felt "misled" by descriptions offered during the recruiting period, which "proved inaccurate." KEEPING THE KEEPERS REPORT, *supra* note 14, at 14, 15, 34 (describing how associates felt misled by inaccuracies in areas including "unrealistically low assurances (during recruiting) of billable and write-off expectations and . . . promises of opportunities to engage in pro bono work that will be valued by the firm").

<sup>71</sup> The median number of hours respondents billed for the first six months of 1999 was 1025 or 2050 hours if projected for a year. These figures only reflect the number reported by respondents who work full time and derive 100% of their fees from billable-hour work. The calculations of the mean and median excluded one respondent who reported billing 30 hours for the first half of 1999, and one respondent who reported 4000 hours.

<sup>72</sup> The following lists the mean number of hours billed by respondents for the first six months of 1999: 903 hours for respondents earning less than \$50,000; 1022 hours for respondents earning \$50,000 to \$84,999; 1058 hours for respondents earning \$85,000-\$124,999; and 1090 for respondents earning \$125,000-\$159,999. Only two respondents who made over \$160,000 reported their hours billed.

<sup>73</sup> These figures reflect an annual amount based on the six-month amount reported by respondents. The mean for number of hours billed by respondents in firms with 11-24 attorneys was 1014 for six months, or 2028 hours per year.

<sup>74</sup> Cf. Joel M. Reck, *Identifying Obstacles to Professional Fulfillment and Working Toward Solutions*, BOSTON B.J., Nov./Dec. 1996, at 2, 27 (reporting that most of the associates who attended a Boston Bar Association retreat reported that "formal standards or firm culture" required at least 2000 billable hours, with some associates billing 2400 hours and more).

### C. The Need for Guidance on Billing

Neophyte attorneys forge into private practice with little or no experience in billing their time. Often associates start work with a "lecture" from a senior attorney who advises associates to "[b]ill every minute . . . we'll adjust the bill on the back end."<sup>75</sup> This approach to billing does not recognize the traps involved in billing another attorney's time. First, it assumes that the supervisor possesses enough information on the client's legal matter to evaluate intelligently the amount of time expended. Second, the approach assumes that the supervisor can ably sift through associate time sheets, which may be "propaganda piece[s]."<sup>76</sup> Finally, if the firm compensates a billing partner for the amount collected from billed clients, the billing partner may be reluctant to write off associate time.<sup>77</sup>

Some senior attorneys may provide additional guidance on billing in instructing associates to "write down your time the same day, be honest, use good judgment, and don't double bill."<sup>78</sup> This general advice gives associates unfettered discretion because the rules on billing practices remain unclear. Even when firm managers implement general billing guidelines, attorneys still have a great deal of latitude in the way that they apply the guidelines. This was illustrated by a management consultant who found a great deal of disparity in what firm partners would bill for travel, even though the firm implemented a policy to bill for travel time.<sup>79</sup> Rather than leaving attorneys in a quandary on billing practices,<sup>80</sup> firm managers can clarify how and what attorneys should bill. This guidance can

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<sup>75</sup> Compare Joseph Calve, *A Lawyer's Worth*, TEX. LAW., Mar. 23, 1998, at 3 (referring to the "stock lecture" that a senior litigation partner gave when the author started working as an associate at a Wall Street firm), with Lerman, *Lying to Clients*, *supra* note 5, at 716 (describing the experience of a billing paralegal who reported that "partners told new lawyers and paralegals to keep complete records of their hours and assured them that if, in reviewing the bills, the partners thought the time was excessive they would cut the bills"). With the exception of one partner who carefully checked each of the bills, the paralegal stated that partners "never cut time. . . . [U]sually they didn't even look at the daily time sheets, but just made sure that the narrative was correct." *Id.*

<sup>76</sup> Sara J. Berman-Barrett, *Integrating Beginning Lawyers Into the Business of Law*, 19 NO. 5 LAW PRAC. MGMT. 22, 26 (1993) (explaining that "an associate's timesheet is likely the major (and sometime the only) tool a partner – the associate's boss – will ultimately use to evaluate, promote and give raises or bonuses to the associate").

<sup>77</sup> A billing partner would prefer not to write down time if the collections from the section or from certain clients directly affects the partner's own compensation. On a firm-wide basis, a partner's participation in firm profits creates an incentive to inflate or pad hours. Douglas R. Richmond, *Professional Responsibility and the Bottom Line: The Ethics of Billing*, 20 S. ILL. U. L.J. 261, 262 (1996). Presumably, partners' desire to serve and satisfy clients will cause partners to scrutinize all time included in final bills.

<sup>78</sup> John E. Morris, *Writing Their Own Rules*, AM. LAW., June 1995, at 5, 5 (reporting that a quiz of 29 associates from 22 large firms in nine cities revealed that firms have "precious few hard rules" for billing).

<sup>79</sup> *Id.* When a consultant put a complex but realistic billing hypothetical to partners at one firm, the charges for one day's activity ranged from 1.5 to 7.8 hours.

<sup>80</sup> "If partners in the firm are divided on [a double billing travel] issue, associates are placed in a quandary. As employees, which boss should they follow? As professionals, what do they feel is right? And if they do not double bill, how will they compete with other associates who do?" Berman-Barrett, *supra* note 76, at 27.

include written guidelines, training programs and formalized channels within the firm for open communication.

#### **D. Study Results Relating to Billing Guidance and Ethics Systems**

In the 1999-2000 Associate Survey only 40% of the respondents indicated that their firms had written billing guidelines other than those imposed by clients. Thirty-six percent of the respondents reported that their firms had no such guidelines. This 36% can be coupled with the 24% who checked "I don't know." Associates who don't know about guidelines or systems essentially operate in a firm in which guidelines or systems provide no assistance. The fact that one quarter of the respondents do not know about guidelines suggests a lack of communication within firms, a problem identified in other studies.<sup>81</sup>

The percentage of firms with written guidelines increases with firm size.<sup>82</sup> On the other hand, the percentage of firms using written billing guidelines decreased as the billing expectation increased. Among those firms with a minimum billing expectation of 2400 hours a year, only 8% used written guidelines.<sup>83</sup> Undeniably, associates in those firms faced a great deal of pressure to bill without the benefit of written guidance on billing.<sup>84</sup> Such an environment can lead to questionable billing practices by some associates, putting more "conservative" associates at a competitive disadvantage in billing.

The majority of the respondents (56%) agreed that "clear billing guidelines would help eliminate questionable billing practices."<sup>85</sup> Seventy-one percent

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<sup>81</sup> E.g., KEEPING THE KEEPERS REPORT, *supra* note 14, at 106 (noting the majority of the associates in the focus group "feel communications from firm management or supervising partners could be improved"). As stated in the Report of the National Conference on the Emerging Crisis in the Quality of Lawyers' Health and Lives – Its Impact on Law Firms and Client Services:

One of the most common problems cited by participants from all but the smallest firms was the breakdown of communication within the office. This was true in several critical areas: Associates have little information about what is happening in the firm. Despite the fact that they sacrifice their lives for the chance of financial and professional security with the firm, they are kept in the dark regarding important administrative matters and their input is not sought.

AMERICAN BAR ASSOCIATION, THE REPORT OF AT THE BREAKING POINT: A NATIONAL CONFERENCE ON THE EMERGING CRISIS IN THE QUALITY OF LAWYERS' HEALTH AND LIVES – ITS IMPACT ON LAW FIRMS AND CLIENT SERVICES, Apr. 5-6, 1991, at 4 [hereinafter BREAKING POINT CONFERENCE REPORT].

<sup>82</sup> Forty-nine percent of the Large Firms used written guidelines, compared to 34% for Medium Firms and 26% for Small Firms represented by the respondents.

<sup>83</sup> At the other end of the scale, 67% of the respondents with a billing expectation of below 1800 hours work in firms with written guidelines. The percentage of firms with written guidelines ranged from 37% to 43% for firms with annual billing expectations in categories from 1800 to 2399 hours.

<sup>84</sup> Conceivably, written guidelines may hamper an associate's ability to meet high billable hour requirements.

<sup>85</sup> This 56% breaks down to roughly 18% who "strongly agree" and 38% who "somewhat agree."



agreed with the following statement: "Clear billing guidelines would help attorneys who want to practice ethically."<sup>86</sup>

Training on billing can also help attorneys who want to practice ethically. The survey results revealed that only a small percentage of respondents received more than two hours of law school or firm training on billing.<sup>87</sup> Surprisingly, 35% indicated that the firm provided less than one hour of training or instruction on billing and 26% of the respondents noted that the firm provided no training or instruction on billing.<sup>88</sup>

Firm managers who do not provide training or written guidelines to associates may not affirmatively communicate firm norms to new associates, leaving them to learn the institutional norms by observing the behavior of others.<sup>89</sup> As suggested by Professor Lerman, "many associates anxious to assimilate themselves into an institution and to be successful within it, will watch the more experienced lawyers to see what the real standards of conduct are."<sup>90</sup> "If the senior lawyers are not precise in their billing practices, the junior lawyers will not be."<sup>91</sup> Rather than leaving associates to discern standards and acceptable conduct, firms should implement guidelines and training programs to encourage ethical behavior and discourage abuses.<sup>92</sup> These measures serve as part of the firm's ethical infrastructure.<sup>93</sup>

Another important aspect of the firm's ethical infrastructure is a system or policy for dealing with ethical concerns of attorneys.<sup>94</sup> While a majority of respondents (54%) indicated that their firms had such a system or policy, 22% said that their firms had no such system or policy, and 24% checked the "I don't know" box.<sup>95</sup> Again, the number of associates who did not have knowledge of a

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<sup>86</sup> This 71% reflects 30% who "strongly agree" and 41% who "somewhat agree."

<sup>87</sup> Fourteen percent of the respondents noted that the firm provided more than two hours of training on billing, and 16% indicated that more than two hours of law school class time was devoted to discussing the ethics of hourly billing.

<sup>88</sup> This compares to 42% of the respondents who noted that no amount of law school class time was devoted to discussing the ethics of hourly billing.

<sup>89</sup> Lerman, *Lying to Clients*, *supra* note 5, at 681 (explaining that new associates may learn standards of conduct by watching the more experienced lawyers). Junior lawyers who are "anxious to assimilate themselves into an institution and to be successful within it" will not be precise in their billing practices if senior lawyers are not. *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Austin Sarat, *Enactments of Professionalism: A Study of Judges' and Lawyers' Accounts of Ethics and Civility in Litigation*, 67 *FORDHAM L. REV.* 809, 824 (1998) (noting that attorneys' views on whether firms have such distinctive cultures vary depending on the positions of attorneys within firms).

<sup>93</sup> See Ted Schneyer, *Professional Discipline for Law Firms?*, 77 *CORNELL L. REV.* 1, 10 (1991) (using the term "ethical infrastructure" to refer to firm policies, procedures, and systems that control attorney conduct).

<sup>94</sup> Eighty-three percent of firms that use written guidelines also have an ethics system or policy for dealing with the ethical concerns of attorneys. This might suggest that firms that are conscientious about billing matters also appreciate the importance of a general system or policy regarding ethics.

<sup>95</sup> In a 1995 survey of all managing partners of all Texas firms with 10 or more attorneys, 73% of the respondents indicated that their firms had an appointed a principal or committee to handle ethics or malpractice problems. Susan Saab Fortney, *Are Law Firm Partners Islands Unto Them-*

firm system suggests a lack of communication within firms.<sup>96</sup> Given the “natural reluctance of attorneys to report misconduct by their peers,” firm managers should adopt some type of internal reporting policy or system as well as communicate to its associates the importance of reporting concerns.<sup>97</sup> By doing so, firm leadership signals a commitment to ethical practice.<sup>98</sup>

Table 2 illustrates the types of ethics policies or systems that the respondents’ firms have implemented.

**Table 2**  
**Firm Size and Ethics Measures or Systems<sup>99</sup>**

	<b>Small Firms</b> (11-24 attorneys)	<b>Medium Firms</b> (25-100 attorneys)	<b>Large Firms</b> (over 100 attorneys)
Designated ethics counsel	15%	35%	56%
Ethics committee	8%	24%	63%
Written policy encouraging the reporting of misconduct	12%	24%	33%
Scheduled in-firm meetings	42%	16%	18%
Scheduled ethics training	31%	42%	51%
Other means/measures	35%	24%	9%

*elves? An Empirical Study of Law Firm Peer Review and Culture*, 10 GEO. J. LEGAL ETHICS 271, 289 (1997). The difference between this 73% of firm managers responding to the 1995 survey and the 54% of associates responding to the 1999-2000 survey may relate to a number of factors including the lapse in time, the lack of communication with associates in firms, and the possibility that some firm managers “overstated” the existence of a system. Compare Stephen R. Volk et al., *Law Firm Policies and Procedures in an Era of Increasing Responsibilities: Analysis of a Survey of Law Firms*, 48 BUS. LAW. 1567, 1578 (1993) (reporting on a 1992 study of 50 law firms nationwide, which found that 25% of the respondents had a policy and system for dealing with ethical concerns of lawyers).

<sup>96</sup> See *supra* note 81 and accompanying text.

<sup>97</sup> ROSS, *THE HONEST HOUR*, *supra* note 6, at 202-16 (discussing the value of internal reporting mechanisms in helping overcome attorney reluctance to report others’ misconduct). In particular, junior attorneys who fear retaliation appear to be particularly reluctant to report violations. *Id.* at 209.

<sup>98</sup> Legal experts recognize the role of firm managers in cultivating a moral climate within a firm. As stated by Professor Lerman, “standards of ethical conduct can be raised successfully only by the leadership of the firm because higher ethical standards may reduce profits, and junior lawyers are under intense pressure to contribute to the firm’s profit margin.” Lerman, *Lying to Clients*, *supra* note 5, at 681.

<sup>99</sup> Respondents checked all measures and systems used by their firms.

With the exception of in-firm meetings, which are commonly conducted in smaller firms, these percentages show a relationship between firm size and implementation of formal ethics systems or policies. Larger percentages of respondents from Small and Medium Firms (35% and 24%, respectively) checked "other," possibly reflecting the tendency of smaller firms to rely on informal monitoring.<sup>100</sup>

Associates may consult the firm's ethics system or policy when they encounter questionable billing practices by other firm attorneys. The majority of the respondents (52%) noted that they have had concerns about the billing practices of other firm attorneys.<sup>101</sup> When asked about how they handled the concerns, the largest percentage (61%) noted that they "discussed the matter with another associate"; only 25% indicated that they "discussed the matter with a supervisor or managing attorney." The associates' peers, unlike the associates' superiors, probably possess limited experience and power to address the perceived problem. Under these circumstances, consultation with other associates appears to be more cathartic than corrective.<sup>102</sup> Given the apparent reluctance of many associates to consult their superiors and the large number of associates (27%) who "did nothing" when they had concerns about the billing practices of others, firm managers should not rely solely on associate feedback. Rather, supervising and billing attorneys should diligently monitor billing practices and records.

Survey results suggest that many supervising attorneys may not be questioning billing entries. Sixty-six percent of the respondents indicated that during the last year their supervising attorneys never "questioned"<sup>103</sup> their billing entries.<sup>104</sup> Among Large Firm associates, the percentage reporting that their billings had not been questioned went up to 71%.<sup>105</sup> Especially in firms where asso-

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<sup>100</sup> See John S. Dzienkowski, *Legal Malpractice and the Multistate Law Firm: Supervision of Multistate Offices; Firms as Limited Liability Partnerships; and Predispute Agreements to Arbitrate Client Malpractice Claims*, 36 S. TEX. L. REV. 967, 976-78 (1995) (describing the differences between monitoring mechanisms in large and small firms).

<sup>101</sup> In his 1991 and 1994-95 surveys, Professor Ross found "distressing indications of the extent to which attorneys perceive that other attorneys abuse hourly billing." ROSS, *THE HONEST HOUR*, *supra* note 6, at 29. Ross' 1994-95 study revealed that approximately "one-sixth of both the inside and outside counsel said that they believe that more than a quarter of all billable time is padded." *Id.*

<sup>102</sup> In private practice as an associate and partner, I observed the associate subculture.

<sup>103</sup> One respondent commented that the term "questioned" was ambiguous. This term was used to encompass all possible scrutiny from an outright challenge of a billing entry to a simple inquiry.

<sup>104</sup> Another 32% noted that their supervising attorneys had "occasionally" questioned their billing entries during the last year. Only 2% of the respondents indicated that their supervising attorneys had "frequently" questioned their billing entries.

<sup>105</sup> In all categories the results reveal a relationship between firm size and supervisors questioning billing, with more scrutiny occurring in the smaller firms. For example, 56% of the Small Firm respondents and 65% of the Medium Firm respondents reported that their supervisor had "never" questioned their billings during the last year. The percentage of respondents who noted that their supervisors had "frequently" questioned their billings was 6% in the Small Firms, 2% in the Medium Firms and less than 1% in the Large Firms. This may indicate supervisors in smaller firms

ciates face a great deal of pressure to bill, this lack of scrutiny may allow billing abuses and questionable billing practices to go undetected.

### E. Billing Practices Addressed in ABA Ethics Opinion 93-379

ABA Formal Ethics Opinion 93-379 tackled a number of questionable practices<sup>106</sup> related to the ethics of hourly billing.<sup>107</sup> After explaining that an attorney “who has agreed to bill on the basis of hours expended does not fulfill her ethical duty if she bills the client for more time than she actually spends on the client’s behalf,” the opinion condemns particular billing practices including “double-billing” and “re-cycling” work.<sup>108</sup> In this context, Professor Ross defines “double-billing” as billing two clients for work performed at the same time.<sup>109</sup> “Re-cycled work” refers to billing “clients by the hour for work that was created at another time for another client.”<sup>110</sup> In his 1991 and 1994-95 surveys Professor Ross asked inside and outside counsel about both double billing and billing for recycled work.

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who work closely with their associates are in a better position to evaluate and question billing entries.

<sup>106</sup> ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93-379 (1993) (referring to “problematic billing practices” that are “the subject of frequent inquiry, with the goal of helping the profession adhere to its ethical obligations to its clients despite economic pressures”) [hereinafter *ABA Opinion 93-379*]. Some commentators characterize certain practices in the ABA Opinion as “questionable” because of the differences of opinion on the ethics of the practices. *E.g.*, Adam C. Altman, *To Bill, or Not to Bill?: Lawyers Who Wear Watches Almost Always Do, Although Ethical Lawyers Actually Think About It First*, 11 *GEO. J. LEGAL ETHICS* 203, 214 n.81 (1998) (referring to those who view double billing as “questionable behavior” unlike “outright fraud,” which is clearly unethical). For arguments justifying double billing under certain circumstances, see ROSS, *THE HONEST HOUR*, *supra* note 6, at 80-83 (introducing the discussion by noting that the ethics of double billing “are more complex than the ABA’s opinion suggests”). Compare Roy Simon, *Gross Profits? An Introduction to a Program on Legal Fees*, 22 *HOFSTRA L. REV.* 625, 633 (1994) (referring to a “fairly sarcastic op-ed column from sociologist Amitai Etzioni asking why lawyers needed to be told these things at all”).

<sup>107</sup> The opinion divides the practices into two sets. The first set involves “billing more than one client for the same hours spent,” and the second relates to billing for expenses and disbursements. *ABA Opinion 93-379*, *supra* note 106.

<sup>108</sup> According to the opinion, a lawyer “who has agreed to bill solely on the basis of time spent is obliged to pass the benefits of (the) economies on to the client.” *Id.* Therefore, an attorney who “flies for six hours for one client, while working for five hours on behalf of another, has not earned eleven billable hours.” *Id.* “A lawyer who is able to reuse old work product has not re-earned the hours previously billed and compensated when the work product was first generated.” In short, the lawyer who is billing by the hour is never permitted “to charge the client for more hours than were actually expended on the client matter.” *Id.*

<sup>109</sup> ROSS, *THE HONEST HOUR*, *supra* note 6, at 79. For a discussion of the ethical problems with double billing, see Sonia S. Chan, Note, *ABA Formal Opinion 93-379: Double Billing, Padding and Other Forms of Overbilling*, 9 *GEO. J. LEGAL ETHICS* 611, 617-25 (1996).

<sup>110</sup> *Id.* While Professor Ross offers justifications for double billing, he emphatically states that hourly billing for recycled work is “clearly unethical.” *Id.* at 82-83. *Cf.* Kevin Hopkins, *Law Firms, Technology, and the Double-Billing Dilemma*, 12 *GEO. J. LEGAL ETHICS* 95, 99 (1998) (stating that the ethics rules do not provide guidance for determining an appropriate fee when a lawyer uses recycled work).

In comparing the results of the 1994-95 survey to the results of the 1991 survey, Ross noted that attitudes of outside counsel “changed markedly during recent years.”<sup>111</sup> He found that the number of respondents who said that they had never engaged in double billing increased from one half in 1991 to three quarters in 1994-95.<sup>112</sup> Ross found a similar pattern in the responses to the questions related to the ethics of billing for recycled work. On the 1991 survey, 12.4% of respondents believed that it was never “ethical for an attorney to bill a client for work (e.g., research or drafting) that originally was undertaken for another client and has been ‘re-cycled’ for the second client.”<sup>113</sup> In the 1994-95 study, that percentage increased to 65%.<sup>114</sup> Ross suggests that the changes in attitudes reflect a “growing awareness of the ethical impropriety of billing for recycled work.” This trend continues as indicated by the survey results discussed in the next section.

#### F. Survey Results Related to Double Billing and Recycled Work

The questionnaire used in the 1999-2000 Associate Survey included some questions similar to those used in the Ross surveys. The double billing question asked: “During the last year, have you ever billed two clients for work performed at the same time (e.g. billing one client for reviewing a deposition while billing another client for travel time)?” In response to this question, 86% of the respondents answered “no.” On the recycled work question, 83% of the respondents noted that they did not bill more than the revision time when revising and recycling a document originally prepared for another client.

Interestingly, the percentage of the respondents who engage in the double billing and recycled work practices goes down as firm size increases.<sup>115</sup> While only 10% of the respondents in Large Firms admitted double billing, 14% in Medium Firms and 24% in Small Firms admitted double billing during the last year.<sup>116</sup> A similar pattern occurred on the responses to the recycled work question. A shocking 30% of the associates in Small Firms indicated that during the

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<sup>111</sup> *Id.* at 83.

<sup>112</sup> *Id.* The comparison also reveals that the number of respondents who believed that double billing is never ethical increased from one-fifth in 1991 to two-thirds in 1994-95. *Id.* Professor Ross attributes the change to “the widespread discussion of the ethics of double billing, which produced a consensus that [the practice] is unethical.” *Id.*

<sup>113</sup> Ross, *The Ethics of Hourly Billing*, *supra* note 39, at 93 app. A. Twenty percent of the respondents believed that the practice was ethical “even if the second client is billed on the basis of time and is not informed that the work was ‘re-cycled.’” *Id.* Ross described this result as perhaps “the most showing revelation of my 1991 survey.” *Id.*

<sup>114</sup> ROSS, *THE HONEST HOUR*, *supra* note 6, at 267.

<sup>115</sup> These results appear to refute the perception that the pressure on big firm attorneys to bill leads to questionable billing practices. See *ABA Opinion 93-379*, *supra* note 106 (referring to the “common perception that pressure on lawyers to bill a minimum number of hours and on law firms to maintain or improve profits may have led lawyers to engage in problematic billing practices”).

<sup>116</sup> A cross tabulation between the responses to the double billing question and the billable hours requirements revealed no significant relationship. Similarly, the results indicated no significant relationship between the responses on number of hours billed and the responses on the double-billing questions.

last year they had recycled work and charged the hourly client more than the revision time. In Medium Firm and Large Firms, the percentage went down to 19% and 9%, respectively. These differences in percentages may relate to the possibility that some associates in Small and Medium Firms may not have enough work to fulfill their annual billable requirements.<sup>117</sup>

Contrary to what might be expected, the results revealed that a larger percentage of associates in the lower income categories double bill compared to associates in the higher income categories. While 20% of those associates who earned \$50,000 to \$84,999 indicated that they double billed within the last year, only 9% of the associates who earned more than \$125,000 admitted doing so.<sup>118</sup> Similarly, the largest percentage of associates who charged for more than revision time occurred in the income category of between \$50,000 and \$84,999.<sup>119</sup> These associates in the lower income category may actually feel more pressure to produce than those whose income is higher.

More attention to the ethics of double billing and billing for recycled work might reduce the number of attorneys who engage in those practices. Fifty-seven percent of the respondents indicated that their supervising attorneys and firms had not provided any guidance on the two practices. Slightly over half of the respondents (51%) noted that they had not even heard of ABA Opinion 93-379.<sup>120</sup> Of those who had read or heard about the opinion, a smaller percentage of them engaged in double billing, as compared to those respondents who had not heard of the opinion.<sup>121</sup>

Finally, the responses related to double billing and recycled work may be the ones in the questionnaire that were the most susceptible to self-reporting errors and impression management.<sup>122</sup> Respondents who deny questionable practices may be engaged in "enhancement (the claiming of positive attributes), de-

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<sup>117</sup> The responses revealed no significant relationship between the responses to the question on recycled work and to the question on the number of billable hours required.

<sup>118</sup> Ten percent of the associates whose income was between \$85,000 and \$124,999 admitted that they double billed during the last year.

<sup>119</sup> Among those associates whose income was \$50,000 to \$84,999, 22% reported that they billed for more than revision time, while 14% of those who made between \$125,000 and \$159,999 did so.

<sup>120</sup> When Professor Ross asked the same question in 1994-95, 57% of the respondents indicated that they had not heard about the then-year-old ABA Opinion 93-379. ROSS, *THE HONEST HOUR*, *supra* note 6, at 267. By the 1999-2000 survey, the number of associates who at least had heard about the opinion should have been greater if more law school professional responsibility classes and continuing legal education programs included a discussion of the ethics of hourly billing.

<sup>121</sup> Among the respondents who admitted double billing, 7% had read ABA Opinion 93-379. The percentage goes up to 28% for those who had heard about the opinion but had not read it. The largest percentage of those who double billed were those who had not even heard of the opinion. This suggests that the reading and knowledge of ABA Opinion 93-379 influenced a number of respondents. On the other hand, a cross tabulation of the respondents who had read the ABA opinion and those who billed for recycled work revealed no significant relationship.

<sup>122</sup> The term "impression management" describes "the behavior of attempting to manipulate others' impressions through 'the selective exposure of some information (it may be false information) . . . coupled with suppression of [other] information.'" RONALD JAY COHEN & MARK E. SWERLIK, *PSYCHOLOGICAL TESTING AND ASSESSMENT: AN INTRODUCTION TO TESTS AND ASSESSMENT* 389 (4th ed. 1999).

nial (the repudiation of negative attributes), or self-deception (the tendency to give favorably biased but honestly held self-descriptions).<sup>123</sup> The anonymous nature of respondents' answers was intended to counter the desire of some respondents to lie in order to provide socially acceptable answers.<sup>124</sup>

### G. Work Alternatives

During the last forty years, the demographics of law practice have changed dramatically. In stark contrast to the past, the legal profession now includes larger numbers of minority groups and women.<sup>125</sup> Practicing lawyers also now represent three different generations: Veterans (born from 1922 to 1943); Boomers (born from 1943 to 1960)<sup>126</sup>; and Xers (born from 1960 to 1980).<sup>127</sup> Generational differences as well as gender and racial/ethnic differences may impact attorneys' values, motivation, and goals.

Current associates had been influenced by pivotal events including corporate "down sizing."<sup>128</sup> Generation Xers who observed layoffs may have little confidence that employers will "take care of them."<sup>129</sup> If associates do not feel committed to their employers, they may resent working long hours for the elusive promise of partnership. These associates may be more concerned about non-work priorities, preferring to work less, even if a reduced hour arrangement means less compensation.

Some academics, commentators and legal recruiters have urged firms to offer reduced compensation arrangements.<sup>130</sup> Associates, as well as partners, have

<sup>123</sup> *Id.*

<sup>124</sup> See Beck et al., *supra* note 14, at 12-13 (comparing the relative advantages and disadvantages of self-reporting questionnaires).

<sup>125</sup> See Marc Galanter, "Old and in the Way": *The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 WIS. L. REV. 1081, 1084 (1999) (referring to the change in gender composition as the "most visible" change in the legal profession).

<sup>126</sup> Compare, e.g., Marcia Pennington Shannon, *Rethinking Partnership: A Generation X-er Perspective*, LAW PRAC. MGMT., Apr. 2000, at 35 (describing the factors that influence the career decisions of Generation X-ers as "belonging, learning, entrepreneurship and security").

<sup>127</sup> See Hazel L. Johnson, *Bookmarks*, LAW PRAC. MGMT., May-June 2000, at 61 (reviewing RON ZEMKE ET AL., *GENERATIONS AT WORK: MANAGING THE CLASH OF VETERANS, BOOMERS, XERS, AND NEXTERS IN YOUR WORKPLACE* (2000)). Unlike their parents, who devoted their lives to "the religion of work," Generation X-ers are "committed to more balance in their lives." RON ZEMKE ET AL., *GENERATIONS AT WORK: MANAGING THE CLASH OF VETERANS, BOOMERS, XERS, AND NEXTERS IN YOUR WORKPLACE* 99 (2000).

<sup>128</sup> See Johnson, *Bookmarks*, *supra* note 127 (explaining that pivotal events shape each generation's reaction to the workplace).

<sup>129</sup> One commentator described this perspective as follows: "Many of the new generation watched their parents fall victim to corporate downsizing, re-engineering and recession. The companies and firms that were supposed to provide lifetime security did not. This generation holds no illusions that they [sic] will be taken care of by their employers through good times and bad." John Lipsey, *The Lure of the Startup Forces Firms to Compete*, NAT'L L.J., Apr. 17, 2000, at B12.

<sup>130</sup> E.g., Judith L. Maute, *Balanced Lives in a Stressful Profession: An Impossible Dream?*, 21 CAP. U. L. REV. 797, 802 (1992) (referring to reduced earning expectations as the "key" to restoring professionalism and quality to the practice of law); Lauren Eaton Prescott, *The Verdict Is in on the Great Pay Hike*, TEX. LAW., Oct. 4, 1999, at 19 (reporting that legal recruiters "have seen no

echoed the sentiment in study reports. As stated by one partner in an "elite firm," "[i]f you talk to young associates it is really extraordinary the number of them who say. . . 'Please God let them pay me \$25,000 a year less and let me work that much less, too.'"<sup>131</sup> According to the *Keeping the Keepers Report*, "Numerous associates reported that they had taken substantial pay cuts in order to achieve a more balanced lifestyle, and even those who had not yet made such a dramatic move indicated their willingness to earn less for a chance at having a life outside the office."<sup>132</sup> Even *The Rodent*, a satire on associate life, reflects the view that "free time" may be the job benefit that is "most appreciated" by associates.<sup>133</sup>

In an effort to evaluate actual interest in reduced work arrangements, the 1999-2000 questionnaire asked about respondents' willingness to make less to work less. As revealed in Table 3, the respondents are evenly split between those respondents who indicated some level of interest in reduced work/compensation arrangements and those who indicated no such interest.

**Table 3**  
**Willingness to Make Less to Work Less**

	Male respondents	Female respondents	All respondents
Yes, regardless of its impact on my treatment or advancement at the firm	4%	12%	7%
Yes, provided that it would not adversely effect my treatment or advancement at the firm	28%	20%	25%
Yes, provided that it would not affect my treatment, even if it affects my advancement at the firm	6%	38%	18%
No, because I'm interested in maximizing my income	33%	16%	27%
No, because inevitably such an arrangement will affect my treatment and advancement at the firm	29%	14%	23%

decrease in the number of overworked associates who are eager to leave their law firm practices in search of precious time"). *But cf.* ROSS, *THE HONEST HOUR*, *supra* note 6, at 259-60 (expressing views that pay cuts would neither be acceptable to attorneys nor effective in lowering the work load).

<sup>131</sup> Elizabeth Chambliss, *Organizational Determinants of Law Firm Integration*, 46 AM. U. L. REV. 669, 741-42 (1997) (reporting on interviews with "elite firm lawyers" conducted between 1989 and 1992).

<sup>132</sup> KEEPING THE KEEPERS REPORT, *supra* note 14, at 14.

<sup>133</sup> *The Rodent, Perks for the Overworked Attorney: Firms Give Lawyers Everything, Except Time Away from Work*, TEX. LAW., May 29, 2000, at 61.



Possibly the most noteworthy percentage in Table 3 is the 18% of all respondents who reported that they would exchange lower compensation for fewer hours, provided that it would not affect their treatment, even if it affected their advancement. Although these associates report that they would be comfortable with the future "advancement" consequences of reduced work arrangements, they did not want to be treated like second-class lawyers. These associates may have observed differential treatment of part-time attorneys and other associates not on the partnership track.

Those respondents who are not on the partnership track appear to be more interested in reduced work arrangements than those on the partnership track. Twenty-three percent of the associates not on the partnership track indicated that they were interested in a reduced work arrangement, regardless of the impact on treatment or advancement. Presumably, these associates, like part-time attorneys, have already made a decision to work less, understanding the consequences.<sup>134</sup>

In focusing on the number of years associates worked in their position, those who appeared to be most interested in maximizing income were the respondents employed less than twelve months. Similarly, in focusing on the number of years licensed, the respondents licensed less than three years were the most interested in maximizing income. While many of these new attorneys may be motivated to maximize income, their perspective may change with time and experience. As stated in the *Keeping the Keepers Report*, "[a]s these associates began to experience the reality of the world of law firm work, their decision to join private practice because of salary, status or serendipity quickly evolved into a search for personal and professional satisfaction elsewhere."<sup>135</sup>

Table 3 shows that a large percentage of female respondents (38%) were interested in reduced work arrangements, provided it did not affect their treatment.<sup>136</sup> As indicated, 12% of the female respondents, compared to 4% of the male respondents, were willing to take a pay cut to work less, regardless of the impact on their treatment or advancement.

In the highest income category of associates making more than \$160,000 annually, 20% of the respondents indicated that they were interested in working less, to make less, "regardless of its impact on my treatment or advancement at the firm." These associates fit the description of high-paid associates who now value more time above more money. As stated by a respected legal recruiter, "[t]he firm that realizes that what associates want is not more disposable income

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<sup>134</sup> Fifty-eight percent of the part-time attorneys reported that they would take a pay cut to work less.

<sup>135</sup> KEEPING THE KEEPERS REPORT, *supra* note 14, at 22.

<sup>136</sup> Only 6% of the male respondents reported that they would be willing to take a pay decrease provided that it would not affect their treatment, even if it affected their advancement.

– but more time to spend and enjoy the income they already have – is the firm that will retain its associates today and in the future.”<sup>137</sup>

Firms that seek to recruit and retain associates should also offer associates alternative work schedules. Among the survey respondents, 55% indicated that their firms did allow alternative work arrangements, and 25% reported that their firms did not.<sup>138</sup> Alternative arrangements, such as flex-time and part-time schedules, help associates accommodate their family and other non-work commitments.

For many of the respondents, non-work priorities have influenced their choice of employment. Thirty-eight percent of the respondents indicated that non-work priorities had “a great deal” of influence on their choice of employment. Another 42% reported that non-work priorities “somewhat” influenced their choice of employment. Associates whose non-work priorities have influenced their employment choice may feel some of the damaging effects of the hours derby more than other associates.

### III. EFFECTS OF BILLABLE HOUR EXPECTATIONS

Commentators and practitioners both rail at the steady escalation in billable hour requirements.<sup>139</sup> While hourly billing should not be considered “the root of all evil,”<sup>140</sup> the serious consequences of an hours derby demand examination. Some of the effects of firms increasing billable hour requirements, such as the time famine, are obvious. Others are more insidious in damaging individual attorneys, as well as their clients, firms, the legal profession and the general public.

#### A. Time Famine and Partnership Aspirations

From an associate’s perspective, increasing hourly requirements can create an oppressive work environment. As described by one associate who was pushing to exceed a billable hours requirement of 1800, “I felt like Pigpen,” referring to the Peanuts cartoon character that continuously had a cloud of dirt over his head.<sup>141</sup> “But my cloud was billable hours. No matter what I did, I felt like I should be in the office doing work, not doing specific client work but racking up hours.”<sup>142</sup>

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<sup>137</sup> Larry Prescott, *Time May Be Money, But Money Is Not Time*, TEX. LAW., Oct. 19, 1998, at 22. Furthermore, those “firms that seriously put a premium on the value of life outside the firm will not only retain their associates, but will be able to recruit associates from other firms as well.” *Id.*

<sup>138</sup> The remaining 20% noted that they “did not know” about alternative work arrangements. This might mean that no alternatives are currently available or that a lack of communication exists within the firm.

<sup>139</sup> “Most law firm managers contacted agreed that increasing hours and the resulting time pressures posed a serious problem to the profession but considered their own expectations to be reasonable ones.” Nancy D. Holt, *Are Longer Hours Here to Stay?*, A.B.A. J., Feb. 1993, at 62, 65.

<sup>140</sup> Lawrence J. Fox, *Money Didn’t Buy Happiness*, 100 DICK. L. REV. 531, 532 (1996) (referring to the complexity of the problems facing the legal profession).

<sup>141</sup> Holt, *Are Longer Hours Here to Stay?*, *supra* note 139, at 62.

<sup>142</sup> *Id.*

During the last twenty years, the pressure to work longer hours created a kind of "time famine" for attorneys in that they do not have enough time for themselves and their families.<sup>143</sup> The ABA Young Lawyers study revealed that the number of attorneys who experienced a time famine increased by 33% between 1984 and 1990.<sup>144</sup> The time famine problem and other problems identified in the Young Lawyers study were discussed at an ABA Conference on the subject.<sup>145</sup> One participant stated: "They have to turn their lives over to the firm."<sup>146</sup> Another participant captured the time commitment by stating that lawyers "are asked not to dedicate but to sacrifice their life to the firm."<sup>147</sup> Because of the time commitment and other work pressures, many attorneys find it difficult to achieve a healthy balance between their work and personal lives. As explained by Professor Schiltz, working sixty, seventy, or even eighty hours a week to produce 2000 hours per year "leaves room for little else in the attorney's life."<sup>148</sup> As a result, those things that give most people "joy and meaning – family, friends, hobbies, the arts, recreations, exercise – are absent from [the attorney's] life."<sup>149</sup> While the general labor population also struggles with the growing demands to balance work and personal life, the intense time pressures inherent to the legal profession magnify the problem for many attorneys.<sup>150</sup>

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<sup>143</sup> In the 1990's, American Bar Association reports began using the term "time famine." See, e.g., STATE OF THE LEGAL PROFESSION EXECUTIVE SUMMARY, *supra* note 9, at 6, and BREAKING POINT CONFERENCE REPORT, *supra* note 81, at 3 (considering the factors that have contributed to the "deterioration in the lawyer workplace").

<sup>144</sup> ABA YOUNG LAWYERS DIVISION, THE STATE OF THE LEGAL PROFESSION 23 (1990) [hereinafter STATE OF THE LEGAL PROFESSION REPORT] (noting that this increase closely corresponded to the 43% increase in the number of lawyers in the 1990 survey who reported working 200 or more hours a month). This study also will also be referred to as the 1990 YLD study.

<sup>145</sup> BREAKING POINT CONFERENCE REPORT, *supra* note 81, at 2. Conference participants who were primarily managing or upper management partners from firms of all sizes discussed the demands on lawyers' time.

<sup>146</sup> *Id.* at 3.

<sup>147</sup> *Id.* A respondent in a Seventh Circuit survey expressed similar frustration in stating, "In my firm . . . the emphasis on billable hours and bottom line leaves little time or inclination for passing on a sense of proportion of balance in life of law." LaMothe, *supra* note 41, at 2.

<sup>148</sup> Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 725-26 (1998).

<sup>149</sup> *Id.* at 726. "You can't really address the issue of quality of life without addressing the issue of hours." Holt, *Are Longer Hours Here to Stay?*, *supra* note 139, at 64 (quoting Ronald L. Hirsch, a director of the ABA Young Lawyers Division). "You can make the firm a better place to work. But once you go beyond a certain number of hours, over a period of years, with no time for yourself or your family, your quality of life is still bad." *Id.*

<sup>150</sup> McKim, *supra* note 46, at 167. "Continual clashes between work and family amount to the lawyer living in a constant state of conflict." *Id.* at 175. Even when attorneys are not working, they may feel pressured to attend firm social activities and to informally socialize with co-workers. See Hope Viner Samborn, *Plays Well With Others*, A.B.A. J., Apr. 1999, at 78 (emphasizing the importance of attorneys maintaining balance when faced with work and "homefront" commitments). The publication and popularity of the following recent books suggests that many attorneys are seeking "balance": GEORGE W. KAUFMAN, *THE LAWYER'S GUIDE TO BALANCING LIFE AND WORK* (1999); STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1999).

The experience of Alice Hector, a Miami litigator, dramatically illustrates the personal price of working long hours. In 1998, a Florida state appeals court denied Hector primary custody of her children because of her workload.<sup>151</sup> Ironically, the child custody battle led Hector to leave her position at an elite law firm to open her own "family-friendly firm."<sup>152</sup>

Although no respondent indicated that they lost a custody fight because of long hours, the majority of respondents (66%) reported that billable hour pressure had "taken a toll" on their personal lives. The percentages reporting that billable hour pressure had taken a toll also increased as billable hour requirements increased.<sup>153</sup> Predictably, a cross tabulation showed a relationship between the number of hours worked and the percentage of respondents who indicated that billable hours pressure had taken such a toll. The percentage answering in the affirmative increased as the number of hours worked increased.<sup>154</sup>

Similarly, the results revealed that the percentage of those reporting that billable hour pressure had taken a toll increases with firm size.<sup>155</sup> Among respondents in the Large Firms, 74% indicated that billable hours pressure had indeed taken a toll on their personal life.<sup>156</sup>

In focusing on marital status, the largest percentage was reported by the single/widowed respondents.<sup>157</sup> Evidently, many single/widowed respondents without a "marriage family" may be working longer hours, finding it difficult to maintain a balance between their work and personal lives.<sup>158</sup>

When asked to describe how billable hours pressure had taken a toll on the respondent's personal life, 95% of those responding checked the box that stated: "I have less time for my friends and family."<sup>159</sup> Twenty-five percent checked the

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<sup>151</sup> Jim Oliphant & Anna Snider, *This Time, Hard Work Hurt*, NAT'L L.J., July 20, 1998, at A4.

<sup>152</sup> Ritchenya A. Shepherd, *Alice Hector's Family-Friendly Firm*, NAT'L L.J., Sept. 20, 1999, at A14.

<sup>153</sup> Of the 11 respondents whose billable hour expectation was 2400 hours or more a year, 83% reported that billable hour pressure had taken a toll on their personal lives.

<sup>154</sup> Seventy-three percent of those working 2880 hours a year answered "yes," compared to 63% of those working 1920-2399 hours a year.

<sup>155</sup> Considering the respondents' income, the largest percentage of respondents who indicated that billable hours had taken a toll were respondents making more than \$160,000 a year. Of the six respondents who reported making more than \$160,000, 83% indicated that billable hour pressure had taken a toll on their personal lives. At the opposite end of the continuum, the smaller percentage of respondents who reported that billable hour pressure had taken a toll were respondents making less than \$50,000 a year. A statistical analysis of these responses found that the relationship was not statistically significant.

<sup>156</sup> Of those respondents working in Medium Firms, 59% reported that billable hour pressure had taken a toll on their personal lives. That percentage went down to 56% in Small Firms.

<sup>157</sup> Among the single/widowed respondents, 79% reported that billable hours pressure had taken a toll on their personal lives. Interesting, only 46% of the divorced/separated respondents admitted to such a toll.

<sup>158</sup> In response to the question that asked respondents to indicate how billable hour pressure had taken a toll, one respondent checked, "other" and stated "never have married; have no children."

<sup>159</sup> In answering to the question, "Which of the following describes how billable hours pressure has taken a toll on your life?" the respondents were asked to check all that applied. Because respondents could check more than one box, the percentages exceed 100%.

box that stated: "I have more trouble sustaining an intimate relationship than I used to."<sup>160</sup> Another 20% checked "other," describing the way in which billable hours pressure had taken a toll on their personal lives.

When it comes to firm efforts to assist associates in balancing their work and personal lives, the study results present a good news-bad news picture. The good news is that some firms have made efforts to assist attorneys in attaining balance. Eight percent of the respondents rated their firms' efforts as "excellent," and another 33% rated the efforts as "good." The bad news is that 16% of the respondents rated their firms' efforts as "poor," and 11% indicated that their firms' efforts were "nonexistent."

The majority of the respondents appear to believe that the price for attaining partnership status may be fulfillment outside of work. Seventy-one percent of the respondents indicated that they agreed with the statement: "I must sacrifice fulfillment outside of work in order to attain partnership status."<sup>161</sup>

These results suggest that a large percentage of respondents recognize that making partner requires more of a time commitment than is necessary for associates.<sup>162</sup> One participant in the *Keeping the Keepers* study described the dilemma: "It's like a pie-eating contest where the first prize is all the pie you can eat."<sup>163</sup> Believing that law practice only gets harder in terms of commitment, hours and pressure,<sup>164</sup> some associates may not even aspire to win the partnership trophy.<sup>165</sup> Among the survey respondents, only 8% identified "full partner participation" as the professional goal they were most interested in attaining.<sup>166</sup> One survey respondent expressed disillusionment in becoming a partner: "I do not see myself as a partner, and sincerely hope to be out of the profession before I am considered for partner." Those associates who do not aspire to be members of the part-

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<sup>160</sup> Cf. Klein, *supra* note 12, at A1 (stating that 42.6% of the partners responding to a *National Law Journal* survey reported that their jobs had hurt their relationships with significant others).

<sup>161</sup> Thirty-three percent indicated that they "strongly agree" with the statement, and 37% noted that they "somewhat agree." Another 13% reported that they "somewhat disagree" with the statement. Only 6% "strongly disagree" with the statement.

<sup>162</sup> A primer on becoming a partner described the pressure as follows: "This new job will push you and pull you like never before. You will be stretched thin at times between clients and between billable and nonbillable tasks." Van Beckwith, *Welcome to Partner-Dome – Now Get to Work*, TEX. LAW., Jan. 31, 2000, at 42.

<sup>163</sup> KEEPING THE KEEPERS REPORT, *supra* note 14, at 106.

<sup>164</sup> *Id.* (discussing the anecdotal information and feedback obtained from focus group participants from four major metropolitan centers).

<sup>165</sup> As stated in the *Keeping the Keepers Report*, "the traditional private practice incentive of deferred responsibility and ultimately partnership no longer operate to keep [associates] striving for what the future holds." *Id.* at 38. For a critique of the promotion-to-partnership tournament theory, see David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998). In describing the differences between the economic tournament model and the actual practices of elite law firms, Wilkins and Gulati note that many associates do not compete in the tournament, and "firms do not give every associate an equal chance of winning." *Id.* at 1586-87.

<sup>166</sup> The largest percentage of respondents (35%) described "rewarding work" as the goal they were most interested in attaining.

nership club may feel particularly dissatisfied about paying dues and making personal sacrifices.<sup>167</sup>

## B. Dissatisfaction

The ABA Young Lawyers Division (YLD) study identified increases in hours worked and the resulting decrease in personal time as a major cause of attorney dissatisfaction.<sup>168</sup> Comparing the data from 1984 and 1990, the YLD study found that the time for self and family became an important factor affecting overall job satisfaction.<sup>169</sup> Although the majority of the respondents in the YLD surveys reported that they were satisfied, by 1990 the number of lawyers who indicated that they were satisfied had decreased, accompanied by an increase in dissatisfaction.<sup>170</sup>

Ten years later, the levels of satisfaction found in my 1999-2000 Associate Survey are very similar to those reported in the 1990 study.<sup>171</sup> In the Associate Survey, 32% of the respondents reported that they were "very satisfied," and 47% noted that they were "somewhat satisfied."<sup>172</sup> When asked to describe the morale among associates at their firms, 10% of the respondents indicated that morale was "excellent," and 43% indicated that morale was "good."<sup>173</sup>

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<sup>167</sup> One respondent expressed the opposite view, explaining that his/her dissatisfaction related to the "firm's lack of a partnership track or even an incentive-based compensation system."

<sup>168</sup> Deborah K. Holmes, *Learning from Corporate America: Addressing Dysfunction in the Large Law Firm*, 31 GONZ. L. REV. 373, 398 (1995-96). "The increased pressure to work and decreased time for personal life reported by many lawyers mirrors a far-reaching change in American life."

<sup>169</sup> STATE OF THE LEGAL PROFESSION REPORT, *supra* note 144, at 58. In both the 1984 and 1990 surveys, the largest number of respondents identified "intellectual challenge" as the most important factor in determining job satisfaction. By 1990, "time for self/family" became the second most important factor behind intellectual challenge. Holmes, *supra* note 168, at 398. As revealed in the 1999-2000 survey, family and non-work priorities continue to play an important role in associates' employment decisions. In response to the question, "How much have family and/or non-work priorities influenced your choice of employment?," thirty-eight percent of the respondents checked "a great deal," 42% checked "somewhat" and 21% checked "none or very little."

<sup>170</sup> STATE OF THE LEGAL PROFESSION REPORT, *supra* note 144, at 52 (reporting a 20% reduction in the number of lawyers indicating that they were very satisfied).

<sup>171</sup> In the 1990 YLD survey, 33% of the respondents indicated that they were "very satisfied," and 43% indicated that they were "somewhat satisfied." STATE OF THE LEGAL PROFESSION REPORT, *supra* note 144, at 52. Compare Lori Cook & Cynthia L. Spanhel, *Job Satisfaction in the Texas Legal Profession*, TEX. B.J., June 1991, at 592 (reporting that 76% of the lawyers responding in a 1990 survey were "satisfied with their current jobs").

<sup>172</sup> In response the question, "Overall, how satisfied are you with your current job?," 16% indicated "somewhat dissatisfied," and 5% marked "very dissatisfied."

<sup>173</sup> Thirty-three percent of the respondents noted that morale among the associates at their firms was "average," 13% rated morale as "poor," and 1% rated morale as "very poor." Commentators attribute low morale to a number of causes including lack of understanding of the demands of law practice. See, e.g., Chic Born, *The Last Word: A Declaration on Morale*, RES GESTAE, Jan. 1996, at 50 (referring to morale problems related to lawyers not knowing "what they had gotten into when they went to law school," not realizing the time demands and pressure of law practice, not understanding that the time demands would affect their personal relationships, and not comprehending that "politics" played an important role in practice development).

These results appear to conflict with the continuing widespread reports and anecdotal information on widespread associate dissatisfaction and low morale.<sup>174</sup> From a psychological standpoint, individual respondents may be engaging in a form of denial if they are indeed dissatisfied with their work but refuse to admit it to themselves or others.<sup>175</sup> In that event, the survey responses may not accurately reflect those satisfaction levels. Another possibility is that reports of associate dissatisfaction are exaggerated. As illustrated by the popularity of the various "Greedy Associates" web sites,<sup>176</sup> many associates relish the opportunity to complain about their work conditions. Still, the most obvious explanation for the reported high levels of satisfaction relates to the high salaries that large firm associates are currently receiving. A commentary on a 1999 Associate Quality of Life survey captured this impact of recent salary increases in stating that the "overall exuberance of the associates . . . shows how far a few thousand dollars goes."<sup>177</sup> In the 1999-2000 Associate Survey, no respondent making \$125,000 or more checked that he or she was "very dissatisfied."

While high salaries may improve reported satisfaction levels of those attorneys who receive high salaries,<sup>178</sup> the reports of high salaries may actually deepen the frustration of other associates who are earning lower salaries. In the Associate Survey, the largest percentage of associates who reported that they were "very dissatisfied" were those respondents making less than \$50,000.<sup>179</sup>

In analyzing the validity of the satisfaction/dissatisfaction responses, responses to other questions should be considered. Specifically, questions asking about interest in changing jobs and careers shed light on the relative satisfaction of the respondents. In response to the question, "Are you interested in changing employers during the next two years?", 39% of the respondents checked "yes." Of those respondents who answered "yes," 22% indicated that they were interested in a "non-legal job." Similarly, 26% of the respondents note that they "strongly agree" or "somewhat agree" with the statement, "I wish that I had selected a profession other than the law."<sup>180</sup> These results suggest that a percentage

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<sup>174</sup> The results also do not show a statistically significant relationship between hours billed and job satisfaction or between hours worked and job satisfaction.

<sup>175</sup> See *supra* notes 122-24 and accompanying text.

<sup>176</sup> "Greedy Associates" is a popular web site where attorneys post information related to compensation, firm politics and other matters affecting the life and work of associates. For a commentary on the explosion of this site, see Michael D. Goldhaber, *Greedy Movement Comes of Age*, NAT'L L.J., May 10, 1999, at A20. Traffic on the web site suggests that associates appreciate the opportunity to complain.

<sup>177</sup> Angela Ward, *The Money Talks, Large Quantities of Cash Improve Associates Quality of Life*, TEX. LAW., Oct. 4, 1999, at 3 (comparing the 1997 Quality of Life Survey results to the 1999 Quality of Life Survey results).

<sup>178</sup> *Id.*

<sup>179</sup> Although the percentage of respondents who indicated that they were "very dissatisfied" increased as income decreased, the relationship between income and satisfaction was not statistically significant.

<sup>180</sup> This percentage breaks down to 8% who "strongly agree" with the statement and 18% who "somewhat agree" with the statement. In a study conducted by the North Carolina Bar Association Quality of Life Task Force, 23% of the respondents indicated that they would not become attorneys

of those respondents reporting some level of satisfaction with their current firm would nonetheless like to change positions, or even careers.<sup>181</sup>

### C. Stress and Distress

The mere mention of billable hours to a firm associate might cause the attorney's blood pressure to rise. This image helps capture how billing pressure causes stress for many attorneys. In this context, "stress" refers to "the experience in which physical or psychological demands trigger bodily or mental tension or reactions that disrupt a person's psychological or physiological equilibrium."<sup>182</sup> Lawyers, like the general population, must cope with common environmental stressors including financial concerns, work overload and competition.<sup>183</sup> In addition to common environmental stressors, which may be intensified for attorneys, some stressors relate more specifically to private practice.<sup>184</sup> "While stress is certainly a pervasive problem within the legal profession, it may be the most acute in the law firm setting because of the emphasis on maximizing billable hours" in those firms that use hourly billings.<sup>185</sup> Constantly working at a killing pace has a cumulative effect.<sup>186</sup> As described in the 1990 YLD study, "[p]eople can handle time deprivation for a year or two, but as the years go on and there is no relief, the impact on an individual's psyche increases."<sup>187</sup> The failure of attorneys to take vacations only serves to compound the problem, espe-

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if they could make the decision again. NORTH CAROLINA BAR ASS'N, REPORT OF THE QUALITY OF LIFE TASK FORCE AND RECOMMENDATIONS 4 (1991) [hereinafter *North Carolina Task Force Report*].

<sup>181</sup> See *supra* notes 282-83 and accompanying text.

<sup>182</sup> Leslie I. Messelman, *Maintaining Balance: Stress Management for Lawyers*, COLO. LAW., Feb. 1996, at 13. "Few lawyers today would deny experiencing some level of stress." *Id.*

<sup>183</sup> *Id.* at 14. "Lawyers, like everyone else, need the love and support of family and friends, time for recreation and relaxation, spiritual comfort and the other elements of health and happy life. To the extent the forces of modern life have undermined these elements – serving up instead family break-down, excruciating time and financial pressures, and other toxins to happiness – lawyers have suffered their ill effects along with everyone else." Carl Horn, *Restoring the Foundations: 12 Steps Toward Personal Fulfillment in the Practice of Law*, S.C. LAW., Sept.-Oct. 1998, at 32, 35. *But see* Geoffrey C. Hazard, Jr., *Commentary: Policy Implications*, 10 J.L. & HEALTH 79, 80 (1995-96) (expressing reservations about findings of a study on lawyer stress which compares attorneys to the general population).

<sup>184</sup> For example, the adversary nature of the legal system and the conflict between the role as zealous advocate and officer of the court are unique to law practice. Messelman, *supra* note 182, at 14 (listing environmental stressors related more specifically to law practice).

<sup>185</sup> Alfini & Van Vooren, *supra* note 11, at 62 (noting that increasing cash flow and closing files created stress in firms that depend on contingency fees).

<sup>186</sup> A managing partner of Bracewell & Patterson described the cumulative effect: "I think that the two, three, and four and five-year constancy of 2,500, 2,600 hours is a killer for individuals and also for their families." *Money Talks: In Order to Compete for Associates, Texas Firms Can't Be Cheap*, TEX. LAW., Apr. 3, 2000, at 15, 20.

<sup>187</sup> STATE OF THE LEGAL PROFESSION REPORT, *supra* note 144, at 23-24 (noting that various factors including technology and incivility have "changed the nature of hours worked," making law practice far more stressful than in the 1960s).



cially when considering the level of pressure and stress that lawyers are under and their need for time off from work.<sup>188</sup>

Unrelieved stress causes various physical and mental health problems. Generally speaking, stress weakens the immune system, making a person more susceptible to illness.<sup>189</sup> Stress contributes to heart disease, migraine headaches and colitis.<sup>190</sup> More common physical symptoms of unrelieved stress include nervousness, chest pains, diarrhea and fatigue.<sup>191</sup> From the standpoint of mental health, unrelieved stress can cause anxiety, inability to concentrate, shortened attention span, difficulty focusing on tasks, avoidance and “burnout.”<sup>192</sup> More serious effects include depression, anger, exhaustion and chronic fatigue.<sup>193</sup>

Various studies have focused on the effects of stress on attorneys. A University of California at Davis School of Medicine study of female law graduates found that those who worked more than forty-five hours a week were three times more likely to have a miscarriage than those who worked less than thirty-five hours.<sup>194</sup> Studies also suggest that attorneys may be at a greater risk for suicide when compared to the general population.<sup>195</sup> In studying psychological distress

<sup>188</sup> *Id.* (referring to the “small amount of vacation time actually taken by lawyers”).

<sup>189</sup> Arline Kaplan, *Implications of Stress, Psychosocial Factors on the Immune System*, PSYCHIATRIC TIMES, Oct. 1999, at <http://www.mhsourc.com/pt/p991059.html> (visited Nov. 21, 2000) (reporting on studies dealing with the interactions between the nervous and immune systems).

<sup>190</sup> Alfini & Van Vooren, *supra* note 11, at 65 (quoting Joan Myerson Shrager, *The Bottom Line on Lawyer Stress*, 13 LEGAL ECON. 22 (1987)). Stress also is linked to chronic hypertension, cancer, stroke, diabetes, multiple sclerosis, tuberculosis, influenza, and pneumonia. Beck et al., *supra* note 14, at 9 n.5 (citing Stephen R. Dager et al., *Stress, Anxiety and the Cardiovascular System*, in 2 HANDBOOK OF ANXIETY: CLASSIFICATION, ETIOLOGICAL FACTORS AND ASSOCIATED DISTURBANCE 399 (R. Noyes, Jr. et al. eds., 1988)).

<sup>191</sup> Christopher T. Borgeson & Elizabeth M. Link, *Stress Management: Minimizing the Risk of Malpractice – Is Stress Affecting Your Competency?*, 2 NO. 3 LEGAL MALPRACTICE REP. 11, 12 (1991).

<sup>192</sup> *Id.* at 12. Following a study conducted by the North Carolina Bar Association Quality of Life Task Force, *supra* note 180, the president of the North Carolina Bar noted that “lawyer burnout” continues to be “a pervasive malady afflicting our profession.” Horn, *supra* note 183, at 32 (quoting the president of the North Carolina Bar). One health professional that works with law firms explains that “burnout” results from unrelieved stress that leads to the death of the human spirit. Borgeson & Link, *supra* note 191, at 12 (quoting Regina Phelps of Health Plus, an organization that provides professional health and safety training).

<sup>193</sup> Messelman, *supra* note 182, at 14 (referring to signs or symptoms of stress). Some commentators use the term “distress” to refer to some unhealthy types of stress characterized by “negative emotions” and “physical symptoms of fatigue, headaches, upset stomachs, sleep problems, and racing heart.” *Lawyers and Stress: Seeking a Balance*, TRIAL, Feb. 2000, at 70.

<sup>194</sup> Laura Gatland, *Dangerous Dedication*, A.B.A. J., Dec. 1997, at 28. “Nearly half of the women lawyers surveyed said they feel high stress. Of the women who worked 45 hours or more a week, 63 percent indicated they were tense much, most or all of the time.” *Id.*

<sup>195</sup> A 1992 study conducted by the National Institute for Occupational Safety and Health found that occupations carrying a in increased suicide risk included lawyer, health care worker, psychologist, police officer and farmer. *Id.* at 28-29. The study also suggested “that the suicide rate for white male lawyers may be over twice that of other white males, although problems with the data made a firm conclusion impossible.” Schiltz, *supra* note 14, at 880 (citing the unpublished paper presented at the American Psychological Association – National Institute for Occupations Safety and Health Conference on Workplace Stress in the 90’s). The suicide of a second-year associate at the Wall

and alcohol problems among members of the legal profession, researchers analyzed variables such as perceived stress.<sup>196</sup> Based on their findings, the researchers reached the following conclusion:

Lawyers are working more, reducing vacation time, spending less time with family members, are prone to alcohol abuse, and face high levels of psychological distress. The combination of elements suggests an impending crisis for lawyers' family lives. Although the data are not sufficient to suggest that psychological distress has detrimentally affected the lawyers' ability to practice competently, the warning signs are present. Further empirical study may well reveal that lawyer distress is having an adverse effect on the ability to practice competently and ethically.<sup>197</sup>

Data obtained in the 1999-2000 Associate Survey indicate that unrelieved stress associated with working long hours has negatively impacted the mental and physical well being of many survey respondents. As stated above, 66% of the respondents reported that billable hour pressure had taken a toll on their personal lives. When asked to describe how billable hours pressure had taken "a toll on your personal life," 18% of the respondents checked, "I get sick more often than before I worked for the firm," and another 20% checked "other" with many describing the way in which billable hours had taken a toll.

Many of the descriptions generally portray associates whose lives are consumed with work and who worry about billable work.<sup>198</sup> The largest number of the descriptions related to the lack of balance in the respondent's life such as no time for exercise, vacations, hobbies, personal interests or their non-work en-

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Street firm of Cleary, Gottlieb, Steen & Hamilton led to a wrongful death suit against the firm. In the lawsuit, which was eventually dismissed, the associate's father alleged that the firm "gave his son too much work, set unrealistic deadlines and assigned the son tasks beyond his capabilities." Mark Hansen, *Suicide Suit Dismissed*, A.B.A. J., July 1994, at 25. The court dismissed the claim because the allegations did not describe conduct that was "sufficiently outrageous" to support a claim of emotional distress in the workplace. *Id.*

<sup>196</sup> Beck et al., *supra* note 14, at 1, 3 (utilizing data generated from a 1990 survey of practicing attorneys in Washington state and a study of law students and practicing attorneys in Arizona).

<sup>197</sup> *Id.* at 1. For a summary of the study's key findings on personality disorders and excessive alcohol use among lawyers, see Hazard, *supra* note 183, at 79-80. In another commentary on the study, commentator Peter G. Glenn cautioned readers about the limitations of relying on self-reported data, "especially . . . when the subjects making the reports are lawyers and law students who have been told repeatedly that they ought to be distressed, and for whom a part of their occupational culture is the idea that one cannot be much of a law student or lawyer unless one is working very hard, under considerable time pressure, and in circumstances in which the risk of failure if reasonably high." Peter G. Glenn, *Some Thoughts About Developing Constructive Approaches to Lawyer and Law Student Distress*, 10 J.L. & HEALTH 69 (1995-96).

<sup>198</sup> E.g., "I have little to no time to pursue community, intellectual, social or other interests - I just bill." "The pressure to bill is always on my mind, even on weekends and other days off." "Billable hours are a constant source of preoccupation and concern - you're stressed when you're billing too much and you're stressed when you're not billing enough." "After I get home, there's only enough time to eat and go to bed. It's depressing and unhealthy."

deavors.<sup>199</sup> As tersely stated by one respondent, "I don't have time to take care of myself (go to the gym, sleep, eat healthy, etc)." The second largest number of descriptions referred to feelings of stress, anxiety and unhappiness. The following respondent's description illustrates the connection between psychological and physical distress: "Much more stress and anxiety in trying to handle all responsibilities, guilt when I feel I'm not doing it all well, more migraine headaches." Nine respondents commented on worries associated with billable hour pressure.<sup>200</sup> Beyond anxiety and stress, five respondents referred to depression.<sup>201</sup>

Only one respondent referred to alcohol consumption in describing the way in which billable hours pressure had taken a toll on his/her personal life.<sup>202</sup> Although respondents may be reluctant to admit substance abuse problems,<sup>203</sup> answers to the question on alcohol consumption indicate a lower level of drinking than reported in other studies.<sup>204</sup> In the 1999-2000 Associate Survey, 2% of the respondents noted that they consume three to five drinks a day, and 6% reported that they consume one to two drinks a day.<sup>205</sup> The recent efforts of lawyer assistance programs to educate law students and practicing lawyers,<sup>206</sup> as well as re-

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<sup>199</sup> As described by one respondent, "I have much less time to pursue non-work endeavors, and I always have the pressure of billing hours, even on the weekends and during holidays and vacations."

<sup>200</sup> E.g., "I constantly worry about attaining my hours." "I constantly think about billable hours and talk about it with my wife, causing great stress and hurting our relationship." The lack of work to satisfy the billable hour requirements also creates stress. One respondent referred to such stress in stating that he or she was constantly "worrying about attaining the required amount of hours and having the workload to accomplish it."

<sup>201</sup> Three respondents simply noted "depression" in response to the question, which asked for a description of how billable hours pressure had taken a toll on their personal lives. A more lengthy description was "depression, anger, frustration with job and co-workers that influences my attitude often outside of work."

<sup>202</sup> One respondent stated, "I am tired and distracted. I exercise less. I probably drink more."

<sup>203</sup> As explained in the 1990 YLD study, "problem drinking (as well as other compulsive or addictive and socially unaccepted behavior) is traditionally seriously under reported in surveys." STATE OF THE LEGAL PROFESSION REPORT, *supra* note 144, at 50.

<sup>204</sup> For a summary of study findings on lawyer alcohol consumption, see Schiltz, *supra* note 14, at 876-77. "One researcher conservatively estimated that 15% of lawyers are alcoholics." *Id.* at 876 (citing Eric Drogan, *Alcoholism in the Legal Profession: Psychological and Legal Perspectives and Interventions*, 15 LAW & PSYCH. REV. 117, 127 (1991)).

<sup>205</sup> In the 1990 YLD study, 6% indicated that they consumed three to five drinks a day, and 16% indicated that the consumed one to two drinks a day. STATE OF THE LEGAL PROFESSION REPORT, *supra* note 144, at 50.

<sup>206</sup> For example, representatives from the Kansas Lawyers Assistance Program speak to law school classes once a year. Grace Wilson, *Confidentiality Key to LAPC Mission*, J. KAN. B. ASS'N, Nov. 1998, at 4, 6. For years, attorneys with the Texas Lawyers Assistance Program (TLAP) have made presentations at law schools and bar meetings. According to Ann Foster, Director of TLAP, law students and new lawyers appear to be particularly interested in discussing substance abuse issues and understanding the connection between stress and alcohol consumption. Interview with Ann Foster, Director of the Texas Lawyers Assistance Program (Aug. 15, 2000).

gional differences,<sup>207</sup> may account for the lower levels of alcohol consumption revealed in the 1999-2000 Associate Survey.

Fifteen percent of the respondents strongly agreed with the statement, "I feel stressed and fatigued most of the time." Another 36% noted that they "somewhat agree" with the statement.<sup>208</sup> For the reasons discussed on the following section, this alarming rate of stress and fatigue can negatively affect the quality of work performed by the associates working long hours.

#### D. Impact on the Quality of Work

In addition to taking a toll on associates' quality of life and health, working long hours can also hurt the quality of work performed.<sup>209</sup> The quality of legal service suffers when stress results "in an inability to concentrate, shortened attention span, difficulty in focusing on tasks [at hand] and avoidance."<sup>210</sup> According to Isaiah Zimmerman, a Washington D.C. psychologist who specializes in counseling lawyers and judges, the "causal link between high levels of stress and lowered performance is well documented. . . ."<sup>211</sup> "It is reasonably safe to conclude that lawyers who have a poor response to stress, who fail to address the cause of their stress, will lower their level of performance and thus greatly increase the risk of committing error."<sup>212</sup> Thus, long work hours and stress increase the likelihood of professional malpractice and discipline,<sup>213</sup> especially in

<sup>207</sup> In the 1999-2000 Associate Survey, 14% of the respondents indicated that they did not drink alcohol, compared to 13% in the 1990 YLD study. STATE OF THE LEGAL PROFESSION REPORT, *supra* note 144, at 50. The percentage of nondrinkers might have been larger if religious attitudes in Texas accounted for the differences in alcohol consumption.

<sup>208</sup> This majority of respondents, who appeared to be suffering from unrelieved stress and fatigue, fit the image that Professor Thomas Shaffer's described when he stated: "I have never met [a young lawyer in a big firm] who did not seem tired." Schiltz, *supra* note 14, at 728.

<sup>209</sup> See Maute, *supra* note 130, at 800. "While the first negative impact [of long work hours] may be on the personal side, if unresolved, it will eventually spill over to impair the lawyer's capacity to function effectively."

<sup>210</sup> Borgeson & Link, *supra* note 191, at 12.

<sup>211</sup> *Id.* Data from empirical studies of hospital interns and residents during their training revealed a higher frequency of judgment errors when they worked 70 to 80 hours a week. Maute, *supra* note 130, at 814. "Fatigue impaired response time and the capacity to make clear, sound professional judgments." *Id.* See also BREAKING POINT CONFERENCE REPORT, *supra* note 81, at 10 (referring to "ample evidence from qualitative studies of business executives, as well as quantitative studies in industrial environments, that [job] distress does cause performance problems").

<sup>212</sup> Borgeson & Link, *supra* note 190, at 12. "While many modern law firms spend large sums of money on continuing legal education to maintain the highest caliber of legal representation, these same firms may be creating an atmosphere which actually increases the likelihood of professional negligence." Alfini & Van Vooren, *supra* note 11, at 66.

<sup>213</sup> In one such disciplinary case, the Supreme Court of Oregon attributed the respondent-attorney's misconduct to "emotional difficulties." In re Conduct of Loew, 642 P.2d 1171, 1173-74 n.2 (Or. 1982). The respondent's psychiatrist testified that the respondent suffered from "burnt out syndrome," explaining the condition as follows:

A number of things occur when somebody has reached this so call burn out point. They feel fatigue all the time, they have difficulty sleeping, they feel drained, may have an array of physical ailments which occur which are quite real, maybe hospitalized as you were, have memory lapses, impaired concen-

work environments in which junior attorneys' work is not properly supervised because senior attorneys are scrambling to clock their own billable hours.<sup>214</sup>

Short of professional misconduct, long work hours may undermine an attorney's ability to provide the quality of service that clients deserve.<sup>215</sup> As stated by Professor Judith L. Maute, "lawyers who work in excess of sixty hours a week on a long-term basis may be physically present, but their minds cannot operate at peak efficiency. They cannot produce good value for each hour of billable time."<sup>216</sup> Because effective lawyering requires mental sharpness, critical thinking and possibly creativity, long work hours can prevent clients from getting high quality legal service.<sup>217</sup>

The majority of the respondents in the Associate Survey recognize that long work hours hurt critical and creative thinking. Twenty-two percent of the respondents noted that they "strongly agree" with the statement, "Working long hours adversely affects my ability to think critically and creatively."<sup>218</sup> Another 42% indicated that they "somewhat agree" with the statement.<sup>219</sup> Those associates who take pride in doing quality work may feel particularly frustrated if they

tration, frequently miss deadlines, backlog of work, financial problems, begin to view patients or clients or whatever people you're working with, or you begin to view your work as the enemy and "Oh, my God, here comes another patient, another client," and so on. Rather than someone who is a team member, it's an opponent.

*Id.*

<sup>214</sup> For a discussion of how billable hours pressure leads to the decline of mentoring and supervision, see *supra* notes 253-71, and accompanying text.

<sup>215</sup> As explained by commentator Michael H. Trotter:

The pressure to record billable hours reduces the value received by clients for their money. More time is billed for less value added by padding (whether intended or not), or by overworking files, or by tired legal minds struggling to turn out one more memo long after they should have called it a day.

Michael H. Trotter, *Law Practice Satisfaction: A Modest Proposal*, 2 GA. J. S. LEGAL HIST. 253, 259 (1993).

<sup>216</sup> Maute, *supra* note 130, at 814 (explaining that "fatigue impairs one's capacity to make fully reasoned and sound professional judgments"). In reviewing attorneys' fees, "courts have refused to believe that an attorney could perform legitimately billable tasks for periods of time that would seem to require nearly preternatural powers of concentration and stamina." Ross, *The Ethics of Hourly Billing*, *supra* note 39, at 13 (referring to federal cases in which the courts expressed disbelief that attorneys have actually expended the "doughty" numbers of hours recorded).

<sup>217</sup> Professor Geoffrey C. Hazard recognized the detrimental effect of long hours when he stated that "[n]o group can get serious mental work out of its members at a rate of more than 2,000 [hours] per year across the board." Geoffrey C. Hazard, *Ethics*, NAT'L L.J., Feb. 17, 1992, at 19-20. Compare Maute, *supra* note 130, at 814 (stating that "fatigue impairs one's capacity to make fully reasoned and sound professional judgments").

<sup>218</sup> William G. Ross asserts that excessive emphasis in generating hours discourages "the creativity and imagination which enable attorneys to transcend plodding mediocrity and which furnish the well-springs of legal development." Ross, *The Ethics of Hourly Billing*, *supra* note 39, at 80.

<sup>219</sup> Of the remaining respondents, 12% indicated that they "neither agree nor disagree," 17% indicated that they "somewhat disagree," and 6% "strongly disagree."

know that they must work long hours to succeed at the firm, and that those long hours negatively affect their ability to think critically and creatively.<sup>220</sup>

Associates who believe that quality should be recognized become disillusioned when firm managers dwell on hours billed with little or no attention to the quality of work. As stated by one survey respondent, "When I started with the firm I was told hours weren't that important. Since I started, the only thing I ever hear about is how associates need to bill 2000 a year. No one has ever said 'we want quality.'" The following section considers the quantification of private law practice as a negative consequence of emphasizing billable hour production.

### E. The Quantification of Private Law Practice, Personnel Claims, Inefficiency and Overbilling

Commentators and associates alike have bemoaned the trend in firms that emphasize the quantity of billable hours over the quality of work performed.<sup>221</sup> Walt Bachman, in a chapter called, "The Almighty Billable Hour," captured the "ascendant importance of billable hours" by describing billable hours as "the litmus test of the worth and financial success of a lawyer or law firm."<sup>222</sup> In *The Rodent*, an underground newsletter for associates, one anonymous writer explained how his firm used billable hour production as a measuring stick for success. Reportedly, firm partners chided the associate for not billing enough hours but praised the associate when he racked up a large number of hours.<sup>223</sup> In those firms that emphasize quantity of hours over quality of work, associates largely compete by racking up hours.<sup>224</sup> As described by Dean Anthony T. Kronman:

The increased emphasis on hours billed as a criterion for measuring associate performance – which reflects in part the cultural devaluation of other attributes less directly connected to the external good of money-making and in part the administrative need for a uniform quantitative standard of evaluation in firms whose size makes more-qualitative criteria unworkable – has in turn propelled the competition of associates more and more in this direction. Increasingly, associates at large firms

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<sup>220</sup> When dissatisfied associates leave a firm, their loss also affects client service because of the learning curve caused by attorney attrition. See *infra* notes 272-99 and accompanying text for a discussion of how attrition affects firms and clients.

<sup>221</sup> Professor Carrie Menkel-Meadow asserts that using billable hours to make more quantitative than qualitative decisions creates instability in firms by reducing "bonding" between senior attorneys and associates and by creating a "time famine." Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification and Organization of Lawyering*, 44 CASE W. RES L. REV. 621, 632 (1994).

<sup>222</sup> BACHMAN, *supra* note 1, at 102. "A lawyer who allows his or her annual billable hours to slip too low . . . risks more than a decrease in income. Survival, of the lawyer within the firm . . . is at stake." *Id.*

<sup>223</sup> Paul Reidinger, *Confessions of the Rodent*, A.B.A. J., Aug. 1995, at 82-83.

<sup>224</sup> Compare Quinn, *supra* note 50, at 133 (referring to the "time card mentality"), with Cornelia Wallis, *The Honest Hour: The Ethics of Time Based Billings by Attorneys*, PROF. LAW., Aug. 1996, at 14 (stating that a "lawyer's worth, his or her value to a law firm, is measured today by the numbers of hours billed").

themselves equate success – promotion and prestige – with hours billed.<sup>225</sup>

In a work culture with minimum hour expectations, associates quickly learn that falling below the minimum risks job loss and exceeding the minimum is generously rewarded through bonuses,<sup>226</sup> promotion to partner and an increased profit share percentage.<sup>227</sup> One legal auditor asserts that this type of “incentive compensation” system is “virtually identical to the system condemned by consumer protection enforcement officials in the automobile repair industry.”<sup>228</sup> Query whether associates who are promoted and compensated largely on the basis of hours billed and collected are much different than automobile service personnel who are compensated for repair sales generated.<sup>229</sup>

One byproduct of quantifying law practice may be an increase in personnel claims brought by disgruntled associates.<sup>230</sup> Some claims may be based on a firm’s refusal to invite an associate into the partnership ranks. With quantitative evaluations of productivity and value, associates who have “numbers” comparable to promoted associates may allege discrimination. For example, a female associate in the Dallas based firm of Hughes & Luce filed a discrimination complaint with the Texas Commission on Human Rights after the firm did not promote her to partner.<sup>231</sup> The associate claims that she met the firm’s objective criteria for partnership – the clients, the hours and the years.<sup>232</sup> By emphasizing and rewarding objective accomplishments such as hour production, firms make themselves vulnerable to such complaints.

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<sup>225</sup> ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 302 (1993).

<sup>226</sup> Following the recent wave of salary increases some firms acknowledged that they based bonuses on hours billed. *See, e.g., Salary Watch*, TEX. LAW., Mar. 20, 2000, at 3 (describing how one Texas firm’s bonuses were based on the number of hours billed).

<sup>227</sup> Boisvert, *supra* note 53, at 4.

<sup>228</sup> *Id.* at 4 (explaining that regulators concluded that the “incentive compensation” system of rewarding sales personnel for the number of repairs sold “created an atmosphere that encouraged the sale of unnecessary repairs”).

<sup>229</sup> *See id.* at 4 (insisting that law firm compensation systems based on hourly billings are no better than the “incentive compensation” system attacked by the automobile repair regulators because law firms “first impose what may be excessive hourly requirements,” and then seek to reward those who can actually exceed the minimum).

<sup>230</sup> Associates who feel used or even abused may be more inclined to sue their employers. *See* Andrea M. Alonso & Kevin G. Faley, *The Law Firm Culture of Abuse*, A.B.A. J., Nov. 1998, at 116 (describing verbal abuse and intimidation of associates). Firms that formally seek associate feedback can deal with abuse and possibly improve associate morale. For example, the Denver-based firm of Holland & Hart asks associates if they would want to work for particular partners again. Jonathan Foreman, *Poor People Skills Can Collapse Firms*, NAT’L L.J., Jan. 29, 1996, at A1. The information obtained impacts partner compensation. *Id.* For a discussion of the mechanics of associate review of partners, see Susan Saab Fortney, *Am I My Partner’s Keeper? Peer Review in Law Firms*, 66 U. COLO. L. REV. 329, 367 (1995).

<sup>231</sup> Angela Ward, *A Court-Ordered Partner?*, *Hughes & Luce Associate Seeks Unusual Ruling*, TEX. LAW., Aug. 2, 1999, at 1 (noting that the associate is awaiting a Texas Commission on Human Rights decision before she files a discrimination suit in state court).

<sup>232</sup> *Id.*

The results from the 1999-2000 Associate Survey revealed that many firms do reward hours production, employing an incentive compensation that focuses associate evaluations on hours billed and collected. Thirty-two percent of the respondents noted that they “strongly agree” with the statement, “My income and advancement within the firm are principally based on the number of hours that I bill and collect.” Another 44% indicated that they “somewhat agree” with the statement. Comments also reflected the emphasis placed on hours billed. When asked about their firms’ annual billing requirements, four respondents volunteered that their firms’ based bonuses on billable hours recorded or collected. In the general comment section one respondent flatly stated, “[t]he firm has one goal – maximize billing at any cost.” One respondent referred to the “disturbing trend” of firms to “reduce annual income in favor of a bonus system that is almost exclusively tied to billable hours.” As the respondent explained, “Given that the more lucrative bonuses kick in at 2300 plus, it is easy to see the allure of ‘padding’ the time sheet.” Similarly, another respondent noted that “basing bonuses 100% on billable hours . . . encourages people to ‘pad’ their time.”

Interestingly, professors David B. Wilkins and G. Mitu Gulati described this exact consequence in discussing the partners’ ability to monitor shirking by associates. They suggest that using hours to measure associates’ work creates an incentive for associates to inflate their hours, “to the extent that associates believe that partners view hours as a surrogate for quality. . . .”<sup>233</sup> Moreover, “partners will generally find it difficult to detect” when associates pad their hours because of the difficulty in correlating the quality and quantity of work produced.<sup>234</sup>

Padding may occur when attorneys overstate the amount of work actually performed, overwork files, or fail to complete work in the most efficient manner.<sup>235</sup> In all these situations, inefficiency and even billing fraud may be

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<sup>233</sup> Wilkins & Gulati, *supra* note 165, at 1594.

<sup>234</sup> *Id.* at 1594-96 (illustrating the “limited usefulness of using hours as a measure of associate effort”). The following illustrates how billable hours do not reflect quality or output:

The number of billable hours worked by Lawyer A in any particular time period measures the amount of time required to do the work he or she did during that period. The number of billable hours tells us nothing about the quality of, or the quantity of, Lawyer A’s work product. Lawyer B might have accomplished as much in half the time. . . Lawyer B who takes half the time might be said to be twice as productive as Lawyer A. . . If one only considers the raw number of hours each worked, B would be the least productive. . . .

Musselman, *supra* note 43, at 28-29.

<sup>235</sup> The *Beyond the Breaking Point Report* noted that lawyers “are being pushed to the edge by myriad pressures” including “incentives that fail to reward efficiency and effectiveness,” and “increasing temptations to keep hours or income up by overworking files, taking shortcuts, and performing lower level routine work.” BEYOND THE BREAKING POINT REPORT, *supra* note 1, at 2. One author theorizes that attorneys who increase the number of hours spent on matters “tend, on average, to overstate legal risks” in an effort to justify time spent on a matter. Donald C. Langevoort & Robert K. Rasmussen, *Skewing the Results: The Role of Lawyers in Transmitting Legal Rules*, 5 S. CAL. INTERDISC. L.J. 375, 392 (1997).



rewarded when attorneys' worth is based on billables.<sup>236</sup> Simply stated, hourly billing creates an incentive to overwork files and misrepresent time because the more hours an associate works, the more fees are generated.<sup>237</sup> As observed by one survey respondent, "The biggest problem I saw [at two medium sized firms] was attorneys who billed for time they didn't work."<sup>238</sup>

Attorneys may be tempted to overwork files and to bill for work they did not actually do when they do not have enough work to meet the firm's billing requirements. Professor Lerman explains that associates who do not have enough work to legitimately bill the required number of hours must choose: "(1) to do unnecessary work; (2) to lie about the number of hours worked; or (3) to fail to meet the firm minimum and reduce her chances of become a partner,"<sup>239</sup> or even keeping her job. On the other hand, associates who have enough work to fulfill the billing requirements,<sup>240</sup> and associates who have client contact,<sup>241</sup> may be less inclined to overwork files and to engage in other questionable billing practices.<sup>242</sup>

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<sup>236</sup> Ironically, hourly billing, which was "[o]riginally hailed for its objectivity and efficiency . . . increasingly has been assailed for encouraging inefficiency, excessive litigation, and fraud." Ross, *supra* note 53, at 2. Because of the incentives created, one commentator has characterized hourly billing as a "devilish creature that rewards inefficiency and penalizes productivity." Elizabeth A. Kovachevich & Geri L. Waksler, *The Legal Profession: Edging Closer to Death with Each Passing Hour*, 20 STETSON L. REV. 419, 426 (1991) (quoting a National Law Journal commentator). Compare David J. Waxse, *Ethical Implications of Hourly Billing*, J. KAN. B. ASS'N., Dec. 1998, at 2 (noting that hourly billing "creates disincentives for competent and prompt resolution in representations . . . [b]ecause the lawyer is paid for time, not value. . .").

<sup>237</sup> See Jones & Glover, *supra* note 7, at 295 (noting that clients are now rebelling and demanding more efficiency).

<sup>238</sup> The respondent stated that the "other big problem is attorneys that do not create timely time sheets. Attorneys that try to recreate a month's worth of billing at the end of the month always end up billing more time than they actually worked."

<sup>239</sup> Lerman, *Lying to Clients*, *supra* note 5, at 674. One associate quoted by Lerman described the "no win" situation as follows: "The problem is that they want these many hours, and you're looking for work to do, and there is no work to do. You have to fudge." *Id.* at 714.

<sup>240</sup> One respondent recognized that questionable billing practices may be less likely to occur when attorneys have an adequate amount of work to handle. As that respondent stated, "Billable hours have never been an issue as there is more legitimate work than we can handle. If we can keep our clients happy – billable hours take care of themselves. I have only seen one or two instances of 'questionable' billing practices."

<sup>241</sup> Distinguishing attorneys who have client contact from those who do not, one respondent suggested that attorneys with client contact have a disincentive to over bill or overwork a file.

<sup>242</sup> Depending on attorney intent and circumstances, over billing and other questionable billing practices can expose attorneys to civil and criminal liability. Although former clients commonly sue for breach of duty, breach of contract and misrepresentation, they can also cooperate with prosecutors in bringing criminal charges. Darlene Ricker, *Greed, Ignorance and Overbilling*, A.B.A. J., Aug. 1994, at 62, 66. For an excellent analysis of billing and expense fraud cases, see Lisa G. Lerman, *Blue-Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers*, 12 GEO. J. LEGAL ETHICS 205 (1999).

## F. Billing Pressure and the Exodus of Ethical Associates

Another unintended consequence of quantifying law practice is that ethical attorneys who do not pad or do not work long hours may be placed at a competitive disadvantage come evaluation time. A couple of respondents referred to this problem. One respondent who described his or her diligence in using an electronic timer program to bill by the minute, expressed frustration over colleagues who estimate their time. The respondent stated, "I can't compete with estimators, but I'm not willing to compromise my strict billing practice either." In noting that the billable hours system "encourages lying," another respondent explained, "If you don't lie, you are perceived to be a slacker, even though, in reality, you may work far more than others." "Slacker" associates may feel pressure to change their practices or find other employment. Ethical associates who refuse to compromise their standards may become increasingly disillusioned in having to compete with other associates who use questionable billing practices to record hours. These ethical associates may voluntarily leave private practice.

Results from the 1999-2000 Associate Survey reveal that a large number of respondents see the connection between pressure and ethical attorneys abandoning private law practice. The questionnaire asked the respondents to indicate their agreement or disagreement with the following statement: "Billing pressure causes ethical and competent attorneys to leave private law practice." The largest percentage of the respondents (31%) neither agreed nor disagreed with the statement. Forty-six percent noted some level of agreement with the statement.<sup>243</sup> Personally, I think that this is the most disturbing survey result because it suggests that billing pressure may be causing firms to lose ethical associates and future leaders who uphold high ethical standards.

## G. Rationalization and Degradation of Ethical Standards

For those attorneys who stay in private practice, another deleterious effect of billing pressure is self-deception. Rather than admitting to themselves or to others that they are engaging in questionable billing practices, some associates may rationalize their conduct or delude themselves about client needs. Self-delusion occurs when attorneys' self-interest in billing<sup>244</sup> controls and attorneys convince themselves that more work is necessarily better for the client. In his

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<sup>243</sup> Sixteen percent noted that they strongly agreed with the statement, and 30% indicated that they somewhat agree with the statement that billing pressure causes ethical and competent attorneys to leave private law practice. Thirteen percent indicated that they "somewhat disagree" with the statement, and another 10% noted that they "strongly disagree."

<sup>244</sup> See ROSS, *THE HONEST HOUR*, *supra* note 6, at 6 (describing the inherent conflict of interest between the client's need for expeditious work and the attorney's desire to bill time). For an interesting examination of the psychology of self-deception and rationalization of unethical billing practices, see ROSS, *Kicking the Unethical Billing Habit*, *supra* note 4. See also SCHRATZ, *supra* note 4 (using psychological and socio-economic perspectives to analyze over billing). Even the terminology used reveals some degree of denial. For example, attorneys use the term "padding" rather than stealing or fraud. See Frederick Miller, *If You Can't Trust Your Lawyer . . . ?*, 138 U. PA. L. REV. 785 (1990) (asserting that polite euphemisms reflect a kind of tolerance of deception).

book based on two billing studies, Professor Ross contends that most over billing is the result of self-deception rather than conscious fraud.<sup>245</sup> Ross concludes: "Perhaps the greatest danger is that some attorneys have become so accustomed to rationalizing their liberal time recordation techniques or their decisions to perform endless services for their clients regardless of cost that they may not even recognize that their actions are ethically questionable."<sup>246</sup> This kind of rationalization ultimately erodes ethical standards, harming clients,<sup>247</sup> individual practitioners<sup>248</sup> and the legal profession.

The majority of respondents in the billing survey recognize the risk of attorneys rationalizing questionable conduct. When asked to note their agreement or disagreement with the statement, "Attorneys tend to rationalize and justify questionable billing practices," 64% indicated that they agreed.<sup>249</sup> Only 10% disagreed with the statement.<sup>250</sup> Again, this reflects a skeptical perspective in which individual attorneys tolerate, and even justify, unethical conduct.

Professor Mary Ann Glendon refers to attorney acquiescence in describing the rules of the current legal culture: "Keep your head down, don't ask questions and bill as much as you can."<sup>251</sup> The failure to challenge unethical practices by others leads to the degradation of ethical standards. According to Glendon, what is "most eye opening about the legal profession these days . . . [is the way] in which the ethical line has moved."<sup>252</sup> This lowering of the ethical bar hurts indi-

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<sup>245</sup> ROSS, *THE HONEST HOUR*, *supra* note 6, at 63.

<sup>246</sup> *Id.* at 261 (referring to one 1991 survey respondent "who stated that he and most other attorneys who regularly bill more than 3600 hours per year do not perform unnecessary work or exaggerate their hours").

<sup>247</sup> As noted by Professor Lerman, "[c]lients and lawyers are harmed by dishonesty of lawyers who lose track of the difference between truthfulness and rationalizing." Lisa G. Lerman, *Gross Profits? Questions About Lawyer Billing Practices*, 22 HOFSTRA L. REV. 645, 651-52 (1994). In describing the "erosion of his own integrity," one attorney Lerman interviewed said "he could not really think of anything anymore that he would not be able to justify doing." *Id.* at 652.

<sup>248</sup> One commentator described the toll on attorneys' psyches as follows: "Most lawyers would like to think of themselves as honest people – principled, conscientious and perhaps even caring. This is an impossible hypocrisy if lawyers regularly bill their clients on some basis other than truth." Quinn, *supra* note 50, at 137.

<sup>249</sup> The 64% includes 41% who "somewhat agree" and 23% who "strongly agree" with the statement.

<sup>250</sup> Another 26% indicated that they neither agreed nor disagreed with the statement. Of those disagreeing, 4% checked "strongly disagree," and 6% checked "somewhat disagree."

<sup>251</sup> Segal, *supra* note 42, at H1. "Most lawyers these days are perfectly decent people who feel like they're trapped in a system that they don't really like, but a system that they don't feel safe trying to buck."

<sup>252</sup> *Id.* at H1. In an audience discussion at the 1994 Hofstra Conference on Gross Profits, Professor Mary C. Daly explained how law students who condemn billing fraud in law school become socialized once in the legal profession:

You have two groups of students, one group will go out into the profession and they will be discouraged, disgusted by what they see and they will leave those firms. The other group will not. They will accept the values of the partners and they will adopt them as their own.

vidual practitioners and their firms, as well as the legal profession and the public they serve. As discussed in the next section, the same groups are all affected adversely when billable hour pressure undermines meaningful mentoring in firms.

## H. Decline of Mentoring

Within law firms, the pressure to bill time and generate business creates a competitive environment in which attorneys protect their turf, billings and clients.<sup>253</sup> As stated in one ABA report, “The pressure to produce hours and the shrinking bottom line have weakened firm loyalty and taught lawyers to protect their turf.”<sup>254</sup> The movement away from lock-step compensation systems to “eat what you kill” objective systems results in partners focusing on billing, collecting and generating business.<sup>255</sup> Objective compensation systems that do not recognize and reward other contributions, such as management and supervision time, discourage partners from devoting time to such activities.<sup>256</sup> Attorneys functioning in such a system face tremendous pressure to bill hours and generate business, making it difficult for them to devote time to “non revenue” producing endeavors, such as training and supervision.<sup>257</sup> As described by Professor Patrick

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Charles Silver, *Conference on Gross Profits, Audience Discussion*, 22 HOFSTRA L. REV. 661, 663 (1994) (quoting Mary C. Daly, a law professor at Fordham University). This sentiment was echoed by a managing partner of a San Francisco firm, who noted:

In every law firm, a moral tone is set at the top. If there is an element of greed and overreaching, that is passed on below. The sad part is that too few lawyers have decided to set their own moral compass. They have followed the partner over the cliff.

Ricker, *supra* note 242, at 66.

<sup>253</sup> See Marilyn Astin Tarlton & Simon Chester, *It's Broken But We Can Fix It: Developing a Plan to Move the Profession Beyond the Breaking Point*, 22 NO. 2 LAW PRAC. MGMT. 24 (1996) (describing “[c]ompetition both within and outside the law firm” and “[w]ork cultures that reduce professional contribution to a simple ‘hours derby’” in the list of the pressures pushing lawyers “to the edge”).

<sup>254</sup> BEYOND THE BREAKING POINT REPORT, *supra* note 1, at 3.

<sup>255</sup> For a discussion in the shift in emphasis in firm compensation systems, see MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 67-68 (1991). “Partners are under mounting pressure to maintain a high level of performance – and performance that fits the business strategy of the firm.” *Id.* at 67.

<sup>256</sup> See Schiltz, *supra* note 148, at 739-46 (describing how the “bottom line” pressure has affected mentoring). In urging firms to compensate managers, the executive director of Arter and Hadden, LLP., warned, “If managers believe they are primarily paid to practice law under the firm’s normal compensation system, they will only perform management tasks to the extent that they do not interfere with their practice activities.” H. Edward Wesemann, *Valuing Managers: Does Your Reward System Send the Right Message to Practice Group Leaders?*, LAW PRAC. MGMT., May/June 2000, at 39, 41. The same principle applies to partners’ willingness to serve as supervisors and mentors.

<sup>257</sup> Training and supervision become non-revenue producing activities when clients refuse to pay for time devoted to those activities. See Schiltz, *supra* note 148, at 743. When clients refuse to pay for attorneys talking with one another, “every hour that a senior lawyer spends mentoring a junior lawyer costs the law firm whatever one or both of the attorneys would have billed had they not been talking with each other.” *Id.*

Schiltz, the “pressure to bill hours – pressure to ‘bill or be banished’ – is necessarily pressure not to mentor.”<sup>258</sup> Similarly, the emphasis on business generation can undermine meaningful supervision because an “hour devoted to bringing in business is valued much more today than an hour devoted to mentoring a junior colleague.”<sup>259</sup>

Although firms may pronounce a commitment to training and supervision, few firms relieve partners of the billable hour constraints.<sup>260</sup> According to David Maister, a former Harvard Business School professor, law firms continue to value the billable hour production over training, despite the recognition that training would improve the entire firm’s productivity.<sup>261</sup> Law firm managers attending management conferences report that the internal tension that inhibits adequate mentoring, supervision, and communication comes primarily from two sources: “constant demands on partners’ time for myriad responsibilities (such as client relationships, marketing, billing, and firm management), and the existence of few, if any, tangible rewards for time spent on mentoring, supervision and communication.”<sup>262</sup> In short, immediate “bottom-line” incentives in firms contribute to the decline of mentoring, adversely affecting junior attorneys, their firms and clients.<sup>263</sup>

The lack of meaningful monitoring and training stifles associates’ professional and personal growth.<sup>264</sup> Without mentoring, associates struggle to learn

<sup>258</sup> *Id.* at 740 (asserting that the “extraordinary pressure to bill hours is almost single-handedly responsible for the death of mentoring”). Compare LaMothe, *supra* note 41, at 2 (reporting on a Seventh Circuit study that indicated that billable hour pressure leaves “no time for informal training and communications of ideals and values to young attorneys”).

<sup>259</sup> Schiltz, *supra* note 148, at 741. Professor Schiltz explains that attorneys who do not have their own book of business “find it increasingly difficult to prosper, no matter how valuable their other contributions.” *Id.* “In virtually every firm, rainmakers are the highest paid partners.” Todd S. Lundy, *Partner Compensation, An Ongoing Challenge*, 14 No. 1 LEGAL MGMT. 18 (1995).

<sup>260</sup> Baker, *supra* note 16, at 43 (quoting Maister, author of the book *MANAGING THE PROFESSIONAL SERVICE FIRM*, who noted that some firms “officially” require partners take part in coaching and mentoring of associates).

<sup>261</sup> *Id.* (stating that the “billable hour is the only thing of value in the law firm”).

<sup>262</sup> Christine White, *Improving Associate Retention Through Professional Development*, 5 NO. 1 LAW FIRM PARTNERSHIP & BEN. REP. 1 (1999).

<sup>263</sup> “The lack of training (in substantive matters and professionalism) results in lower competence of the bar in general, which may contribute to the negative public perception of lawyers.” Cindy Ching, *Focus on Member Service*, HAW. B.J., Jan. 1999, at 4. As explained by William R. Ross, “the tendency of senior attorneys to discourage junior attorneys from seeking out their advice often leads to wasted time and excessive billing.” Ross, *Kicking the Unethical Billing Habit*, *supra* note 4, at 2205.

<sup>264</sup> The report on the 1991 national conference summarized the problem and consequences as follows: “Many partners are so busy billing hours that they either do not have the time, or have lost interest in making time, to provide associates or junior partners with the substantive and career feedback and mentoring that is vital to both the development of young careers and the future health of the law firm.” BREAKING POINT CONFERENCE REPORT, *supra* note 81, at 5-6. According to the report, conference participants repeatedly raised the lack of training and mentoring in firms. *Id.* at 5.

how to practice law competently and ethically.<sup>265</sup> Without committed mentors, associates may not bond with partners or feel committed to the firm.<sup>266</sup> This increases the likelihood of associate attrition, which hurts both the firm and the quality of work performed.<sup>267</sup> In turn, this attrition may cause firm partners to minimize time devoted to supervising and training associates.<sup>268</sup> Partners may be reluctant to jeopardize their own billings and collections in order to invest in associates who may be gone next week or next year.<sup>269</sup>

The 1999-2000 Associate Survey sought opinions on whether billing and business generation pressure on partners affected their willingness to serve as mentors and supervisors. The specific inquiry asked respondents to indicate their agreement or disagreement with the following statement: "Because of the pressure on partners to bill and generate business, partners in my firm do not provide the mentoring and training that I need and want." The percentages of respondents who agreed or disagreed with the statement were approximately the same, with 43% indicating that they agreed and 42% indicating that they disagreed.<sup>270</sup> For the reasons discussed in the next section, firms that train and treat associates as human investments are more likely to retain associates than firms that treat associates as expendable commodities.<sup>271</sup>

### I. Billable Hour Pressure and Attrition

Over the last five years, associate attrition has become a major concern of firm managers who are losing associates in droves.<sup>272</sup> These managers under-

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<sup>265</sup> See Schiltz, *supra* note 148, at 721-22 (asserting that teaching young attorneys to practice law ethically is far more important than teaching them to "practice law well").

<sup>266</sup> Menkel-Meadow, *Culture Clash*, *supra* note 221, at 632.

<sup>267</sup> As explained by Professor Ross, "a firm that fails to nurture the professional skills of its junior attorneys is sowing the seeds of incompetence in its senior ranks." ROSS, *THE HONEST HOUR*, *supra* note 6, at 231.

<sup>268</sup> See S. Elizabeth Wilborn & Ronald J. Krotoszynski, Jr., *Views from the Front: A Dialog About the Corporate Law Firm*, 1996 UTAH L. REV. 1293, 1303 (1996) (comparing getting to know an associate to adopting a Thanksgiving turkey as a pet).

<sup>269</sup> Sally Schmidt, a legal market researcher who interviewed dozens of associates in the NALP *Keeping the Keepers* study, made a similar observation in explaining that firm partners find it difficult to invest the time in training associates when three years from now the associates will be with your competitor. Baker, *supra* note 16, at 43.

<sup>270</sup> These percentages break down to 18% who "strongly agree," 25% who "somewhat agree," 24% who "somewhat disagree," 18% who "strongly disagree" and 15% who "neither agree nor disagree."

<sup>271</sup> Peter J. Kalis, the chair of the management committee at Pittsburgh's Kirkpatrick & Lockhart L.L.P., described the shift in attitude as follows: "For a long time, when it was a buyer's market, law firms treated associates as commodities. . . . Now it's a seller's market. It's come full circle, and young lawyers are treating law firms as commodities. We're getting what we deserve." Cynthia Cotts, *How Firms Keep Their Associates on the Job: Innovative Programs Slow Pace of Lawyer Attrition*, NAT'L L.J., June 8, 1998, at A1, A18.

<sup>272</sup> See White, *supra* note 262, at 1 (indicating that associate attrition has been a significant issue in law firm management circles since 1995). A number of ABA groups have examined associate attrition and retention. For example, in 1999, the ABA's Business Law Section sponsored a session called, "You Can't Just Throw Money at Them," and an issue of the Law Practice Management

stand the enormous tangible and intangible costs of attrition.<sup>273</sup> The tangible or direct costs that can be quantified include compensation and benefits, agency fees, recruiting expenses and signing bonuses.<sup>274</sup> With attorney turnover, the firm also loses revenue if one or more lawyers write off the time needed to get the replacement up to speed on matters that the departed attorney handled.<sup>275</sup> Intangible or indirect costs include damaged client relations, bruised firm morale, time devoted to filling vacant positions and the loss of talented attorneys.<sup>276</sup> While intangible costs are difficult to quantify, studies have revealed that each incidence of attrition can cost up to \$200,000 (depending on geographic region, lawyer seniority, and other factors).<sup>277</sup> Because of the staggering costs associated with attorney attrition, many firms are examining the reasons associates give for leaving firms.<sup>278</sup>

Firm managers interested in learning more about the causes of and solutions for attrition should consult the *Keeping the Keepers Report* based on the comprehensive NALP study on attrition.<sup>279</sup> According to the report, the "decision to stay or leave either a particular firm or practice was relatively easy for the associates."<sup>280</sup> The NALP study found that the decision of associates to leave a firm is most frequently affected by factors, which include the availability of mentoring and the "unspoken firm policy on the balance of law practice and life."<sup>281</sup> As discussed above, the hours derby undermines both mentoring and the ability of firm attorneys to balance their personal and professional lives.<sup>282</sup>

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Section magazine included five articles on "human capital" and turnover. See LAW PRAC. MGMT., May/June 1999, at 49.

<sup>273</sup> See, e.g., Michael D. Goldhaber, *Waging a War of Attrition*, NAT'L L.J., Dec. 13, 1999, at A1 (quoting the manager of Akin, Gump, Strauss, Hauer & Feld L.L.P., who said, "[h]igh attrition is the single biggest-cost factor that can be averted").

<sup>274</sup> Gerald L. Holt, *How to Keep Talent from Walking*, N.Y. L.J., Jan. 12, 1999, at 5.

<sup>275</sup> William G. Johnson, *Seeing Red? Managing the Cost of Associate Attrition*, LAW PRAC. MGMT., May/June 1999, at 45.

<sup>276</sup> In identifying intangible costs, one commentator noted that "clients repeatedly list associate turnover as a major concern." Holt, *How to Keep Talent from Walking*, *supra* note 274, at 5.

<sup>277</sup> Johnson, *Bookmarks*, *supra* note 127, at 45. Compare Goldhaber, *Are Salary Hikes Bad for Associates?*, *supra* note 62, at A15 (citing a legal consultant who estimates that the hard cost of losing a mid-level associate is \$200,000 to \$250,000 and possibly more in New York).

<sup>278</sup> Some firms use exit interviews to learn why associates leave. For a description of one firm's experience in using exit interviews in developing a retention policy, see David R. Snodgrass, *One Firm's Push to Retain Associates*, TEX. LAW., Oct. 19, 1998, at 24.

<sup>279</sup> KEEPING THE KEEPERS REPORT, *supra* note 14. The study obtained quantitative data on the retention status of more than 10,000 new associates hired between 1988 and 1996. *Id.* at 11. Phase II of the study obtained qualitative information from 13 focus groups involving more than 30 associates who had practiced three to five years. *Id.* at 12. The study found that 26.5% of new associates left their first law firm jobs within two years, and 64.6% quit within five years. *Id.* at 54.

<sup>280</sup> *Id.* at 14.

<sup>281</sup> *Id.* Other factors identified in the "Overview of Findings" were the amount of feedback, the quality of attorney management and the amount of communication with the partnership. *Id.*

<sup>282</sup> Attorney search consultants also identify hours pressure and the lack of mentoring as reasons why associates change jobs. Martha Fay Africa, *Why Associates Leave*, LAW PRAC. MGMT., May/June 1999, at 49 (describing the top 10 reasons that associates report to headhunters). Understanding the connection between hours, mentoring and associate retention, some large firms have

The results of the 1999-2000 Associate Survey also revealed that hourly pressure plays a prominent role in pushing associates toward the exit door. Overall, 39% of respondents reported that they were “[I]nterested in changing employers during the next two years.” Considering variables such as years licensed, tenure with the firm<sup>283</sup> and status, the group of respondents not on the partnership track had a keen interest in changing positions. Of this group, 57% indicated that they were interested in changing jobs. Of those respondents whose income was less than \$50,000, the majority (54%) indicated that they would be interested in changing jobs in two years.<sup>284</sup> Media reports of skyrocketing associate salaries may lead associates in the lowest incomes category to look for greener grass. As shown in Table 4 below, a large percentage of the respondents (24%) list “increased compensation” as the most influential factor in causing respondents to change jobs.<sup>285</sup>

**Table 4**  
**Factors Most Influential in Causing Respondents to Change Jobs**

Reduction of work hours	28%
Increased compensation	24%
More interesting work	18%
Enhanced training and supervision	8%
More respectful treatment	7%
Meaningful expectation of partnership	3%
Other <sup>286</sup>	12%

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lowered attrition. For example, Fulbright & Jawoski, L.L.P. credits its 7% attrition rate to a mentoring program that requires mentors to certify that associates have hit certain “milestones.” The partner with the Detroit-based firm of Plundett & Cooney, P.C. attributes the firm’s low attrition rate to “decent hours and avid mentoring.” Goldhaber, *Are Salary Hikes Bad for Associates?*, *supra* note 62, at A14, A15.

<sup>283</sup> In considering the number of years in a position, 46% of associates who had been with their firms from 12 to 36 months indicated that they were interested in changing jobs during the next two years.

<sup>284</sup> In contrast, of those respondents making \$125,000 to \$159,999 a year, only 25% reported that they were interested in changing jobs.

<sup>285</sup> In the NALP study, “[a]n overwhelming number of associates agreed that compensation was one of the top factors in the decision to begin their legal career in private practice.” KEEPING THE KEEPERS REPORT, *supra* note 14, at 13. The study also found that compensation was a factor influencing associates’ choice of a particular firm. *Id.* at 28. “Participants in the focus groups indicated that money diminished in importance once they began their first job.” *Id.* at 30.

<sup>286</sup> Those respondents who checked “other” provided an assortment of professional and personal reasons such as “changing cities” and “changing specialty.” Of the 52 descriptions, eight involved a reduction in hours.



The largest percentage of respondents (28%) who are most interested in changing jobs for a reduction in hours mirrors the responses of the NALP focus group participants who described the "firms unspoken policy on balance of law practice and life" as one of the major reasons associates change jobs. In contrast to the NALP focus group participants who described "mentoring" among the factors that frequently played a role in decision to leave, only 8% of the respondents in the 1999-2000 Associate Survey checked "enhanced training and supervision" as the most influential factor in causing them to change jobs.

One explanation for the difference between the NALP study and the 1999-2000 Associate Survey relates to the methodology of the studies. The NALP findings came from focus group discussions. By contrast, the 1999-2000 Associate Survey used a mail questionnaire, providing anonymity to the respondents. With anonymity, respondents tend to be more candid than focus group participants. In a focus group setting, associates may be less inclined to admit that they are interested in more compensation or want a reduction in hours. Focus group participants who do not want to appear to be "materialistic" or "lazy" may prefer to say that they are changing jobs for more training and mentoring, believing that such a response is socially and professionally acceptable.<sup>287</sup>

The results of the 1999-2000 Associate Survey also revealed a relationship between respondents' identification of the most important job goal and the factor that was most influential in causing respondents to change jobs. For example, of the respondents who identified "enhanced training and supervision" as the most important factor in causing them to change jobs, 64% identified "training and experience" as the one goal that they were "most interested" in attaining in their work. In response to the general question that asked respondents to identify the most important goal in their work, the largest percentage (35%) checked "rewarding work,"<sup>288</sup> followed by 20% who checked "training and experience," and 19% who checked "financial rewards."<sup>289</sup> Forty-three percent of the female respondents reported "rewarding work" as the goal they were most interested in attaining, compared to 30% of the male respondents.<sup>290</sup>

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<sup>287</sup> In a presentation on associate attrition, Abbie F. Willard, associate dean for Career Services at Georgetown University Law Center, suggested that male associates in exit interviews might be reluctant to admit that they were changing jobs for a reduction in hours. Willard made this observation in response to an audience member who suggested that more female associates than male associates left the firm because they wanted more of a balance between their personal and professional lives. Abbie F. Willard, Address at the ABA Section of Business Law, Committee on Law Firms session, *Throwing Money (at Them) Is Not Enough: New Strategies for Associate Retention* (Aug. 7, 1999).

<sup>288</sup> The percentage of respondents listing "rewarding work" increased with age, number of years licensed and number of years at the firm.

<sup>289</sup> These results are similar to reports provided by NALP focus group participants who described the factors affecting their initial job choice. Compensation, along with sophistication of work, training opportunities, prestige and enhancing future options were the most important factors described in the NALP Keeping the Keepers Report, *supra* note 14, at 21-22.

<sup>290</sup> The percentage of respondents that checked "financial rewards" as their most important goal also revealed a gender difference. While 14% of the female respondents checked "financial rewards," 23% of the male respondents did so. Although the categories used in a St. Louis Bar Asso-

Despite the commonly held belief that student debt pushes many new attorneys to seek high paying positions,<sup>291</sup> only 7% of the respondents indicated that "paying off student loans" was the most important job goal.<sup>292</sup> This result supports the view advanced by Professor Schiltz that the "number of students whose economic circumstances compel them to take big firm jobs is still substantially smaller than the number of students who *claim* that their economic circumstances compel them to take big firm jobs."<sup>293</sup>

Among the survey respondents who indicated that they were interested in changing employers, the largest percentage (37%) checked "corporate counsel position" as the type of job they would prefer.<sup>294</sup> Firm managers who understand the lure of corporate counsel positions are employing various "silver seatbelt" measures to retain attorneys.<sup>295</sup> When the "silver seatbelt" measures do not prevent an attorney from going in-house, the firm must then attempt to woo business from its former attorney. Ironically, the former attorney's experiences at the firm will inform their decision on retaining outside counsel.<sup>296</sup>

In addition to the 37% of the respondents in the 1999-2000 Associate Survey who indicated that they were interested in a corporate counsel position, 22% of the respondents indicated that they were interested in a "non-legal job." Taken

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ciation survey were different, in that survey only 7% of the respondents indicated that making a "substantial income" was the most important work goal. *Striving for Happiness*, A.B.A. J., July 1995, at 41.

<sup>291</sup> See KEEPING THE KEEPERS REPORT, *supra* note 14, at 29. "Associates report that the burden of high educational debt has added new importance to an entry level salary that is consistent with the market rate."

<sup>292</sup> For a discussion of the repayment burden on graduates and the consequences for graduate education, see Michael A. Olivas, *Paying for a Law Degree: Trends in Student Borrowing and the Ability to Repay Debt*, 49 J. LEGAL EDUC. 333 (Sept. 1999). A graduate who repays a \$60,000 loan over ten years at 8% must make a monthly payment of \$730. The monthly payment goes down to \$451 if the term of the loan is extended to 30 years at an interest rate of 8.25%. *Id.* at 335.

<sup>293</sup> Schiltz, *supra* note 14, at 935-36 (citing ROBERT GRANFIELD, MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND 152-53 (1992)).

<sup>294</sup> Associates, like partners, appear to be attracted to corporate counsel positions. According to a 1999 American Lawyers survey of partners at large firms, more than one third of the respondents ages 41 and under indicated that they expect to leave their firms for a general counsel position. Peter D. Zeughauser, *Time to Buckle Up?*, AM. LAW., Sept. 1999, at 51.

<sup>295</sup> In addition to cash bonuses, firms are using other financial incentives and rewards. *Id.* Recently, the San Francisco-based firm of Brobeck, Phleger & Harrison took a novel step in attempting to stem the departure for general counsel positions. See Lisa Fipps & Brenda Sandburg, *Brobeck Clients Must Pay Percentage If They Hire Firm's Lawyers*, TEX. LAW., May 22, 2000, at 19 (explaining that the Brobeck firm is the first in the country to use the approach). At Brobeck all firm engagement agreements with clients now include a provision in which the client agrees "to pay 25% of the first-year salaries of attorneys lured from the firm." See also Jill Schachner Chanan, *Pay to Hire Away*, A.B.A. J., Aug. 2000, at 20 (describing the firm's efforts to recoup costs associated with recruiting and training attorneys). Evidently, the firm's managers have opted to create an obstacle for departing attorneys in lieu of attempting to address the factors that lead attorneys to seek corporate counsel positions.

<sup>296</sup> Increasingly, corporate counsel are questioning high associate salaries and billables. See *Lawyers Respond to Slam on Associate Salaries*, TEX. LAW., Apr. 24, 2000, at 62 (providing attorneys' reactions to an in-house attorney's complaints that firms charge "outrageous fees to your clients (me) in order to pay completely inexperienced lawyers more than I make").

together, these results reveal that a majority of the respondents are considering leaving private law practice.

A number of respondents also expressed some reservations about their selection of law as a profession. The questionnaire asked respondents to indicate whether they agreed or disagreed with the following statement: "I wish that I had selected a profession other than the law." Eight percent of the respondents checked that they "strongly agree," 18% of respondents noted that they "somewhat agree," 20% of the respondents indicated that they "somewhat disagree," and the largest percentage (36%) reported that they "strongly disagree."<sup>297</sup> These findings suggest that the majority of respondents appear to be at least comfortable, if not pleased, with their decision to practice law.<sup>298</sup> Reading these findings with the results on the number of respondents who expressed interest in a corporate counsel position, it appears as if a large number of respondents want to leave private practice, not the legal profession itself. This exodus should concern firm managers and the legal profession, especially if unhealthy work environments lead to a departure of the "best and brightest."<sup>299</sup>

### J. Billable Hour Pressure Affecting Educational Programs, Ethics Training and Pro Bono Service

Law firms, the legal profession and clients will also be adversely affected if billable hour pressure contributes to a decline in time devoted to training and education programs. Undeniably, quality representation requires diligence in staying abreast of recent developments.<sup>300</sup> Given the ethical traps and the com-

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<sup>297</sup> Eighteen percent reported that they "neither agree nor disagree" with the statement.

<sup>298</sup> Other surveys have asked similar questions probing into respondents' satisfaction with law as a career. Twenty-three percent of the respondents in the 1991 North Carolina Survey indicated that they would not become attorneys again, and only 54% indicated that they wanted to remain in law practice for the remainder of their careers. *North Carolina Task Force Report*, *supra* note 180, at 4. By comparison, 23% of the respondents in a 1990 New Jersey survey revealed that they "plan to leave law practice before they retire." Holt, *Are Longer Hours Here to Stay?*, *supra* note 139, at 62. In a 1988 Maryland Bar Association survey, nearly one third of the respondents reported that "they were not sure whether they wanted to continue practicing law." *Id.* at 62.

<sup>299</sup> Timothy Harper, *The Best and Brightest, Bored and Burned Out*, A.B.A. J., May 15, 1987, at 28. Those who remain in stressful work situations may be those without job options and those who commit themselves to private law practice, possibly at the expense of their personal lives. See also BREAKING POINT CONFERENCE REPORT, *supra* note 81, at 30 (noting that unsound management practices that "contribute to lawyer departures or to decreased levels of performance" directly "impact a law firm's long-term economic strength and cohesion"). For an "anthology of insights and history" of attorneys who have left law practice, see DEBORAH L. ARRON, *RUNNING FROM THE LAW* xiv (1989).

<sup>300</sup> Understanding the connection between competency and education, "[a]pproximately 37 states now require that lawyers participate in continuing education programs as a condition of licensure." Mary C. Daly, *The Dichotomy Between Standards and Rules: A New Way of Understanding the Differences in Perceptions of Lawyer Codes of Conduct by U.S. and Foreign Lawyers*, 32 VAND. J. TRANSNAT'L L. 1117, 1141 (1999).

plex nature of law practice, attorneys must also devote time to ethics training.<sup>301</sup> When attorneys minimize the time devoted to training and educational programs the lawyer and work product both suffer.

The 1999-2000 Associate Survey revealed that billable hour pressure is causing a number of respondents to minimize the time they devote to these programs. The survey asked respondents to note their opinion on the following statement: "Because of billable hour pressure, I minimize my participation in continuing legal education programs and ethics training." Forty percent indicated some level of disagreement with the statement, compared to 42% of the respondents who indicated some level of agreement.<sup>302</sup> Associates facing high billable hour requirements may only complete the minimum number of CLE hours required by bar regulators. In those situations, associates continue to learn, provided the time is on some client's clock.

Similarly, the emphasis on billable hours may result in pro bono and community service representing a smaller slice of the workday.<sup>303</sup> Recently, commentators have warned that rising salaries, coupled with the corresponding increases in hourly expectations, will devastate pro bono.<sup>304</sup> In referring to increases in salaries and billing requirement, Lynne Liberato, the 2000 president of the State Bar of Texas, said, "It seems logical that this would have a negative effect because there's only so many hours in the day. . . . If you have to devote more of those hours to client services, you have less time for other things."<sup>305</sup>

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<sup>301</sup> At least 20 states, including Texas, require more than one hour of continuing legal education (CLE) annually be devoted to ethics and/or professionalism. Frank X. Neuner, Jr., *Mandatory Professionalism: A Cure for an Infectious Disease*, LA. B.J., (June 1997), at 18, 20.

<sup>302</sup> The agreement/disagreement percentages break down as follows: 16% checked "strongly agree"; 26% checked "some what agree"; 23% checked "somewhat disagree"; and 17% checked "strongly disagree." Eighteen percent checked "neither agree nor disagree."

<sup>303</sup> Describing the changes in law practice at the National Conference on the Emerging Crisis in the Quality of Lawyer's Health and Lives – Its Impact on Law Firms and Client Services, one respondent noted:

You still have the same 24 hours a day. . . . But the slices of the 24-hour day are somewhat different. When I started, work was always the largest, but it wasn't the only slice . . . [now] Leisure time, *pro bono*, bar work, work in your church, work in your town – these slices are, unfortunately, in danger of becoming extinct.

BREAKING POINT CONFERENCE REPORT, *supra* note 81, at 3.

<sup>304</sup> According to Michael D. Goldhaber, a journalist who writes a column called, "Associates," the "typical new pay scale starts, implicitly or explicitly, at 1,950, with hefty bonus benchmarks at 2,100, 2,250, and 2,400" hours. Michael D. Goldhaber, *A Look Back on the Great Raise of '00*, NAT'L L.J., Mar. 27, 2000, at A27. Goldhaber predicts that the "new pay scale will hasten the death of lockstep, the death of pro bono, the death of honest billing and the death of leisure." *Id.* David Stern, director of the National Association for Public Interest Law, shared this view on pro bono in stating, "One way or the other . . . this is going to have a devastating effect on pro bono." *Id.*

<sup>305</sup> Lisa M. Whitley, *Time Well Spent? Rising Salaries and the Effect on Pro Bono*, TEX. LAW., June 26, 2000, at S62. Liberato questioned the amount of effect and stated: "Logic tells me there will be an impact, but experience tells me there won't be as much of an impact as one might think."

In an individual law firm, the effect on pro bono and community service will depend largely on the firm policy on credit for pro bono hours.<sup>306</sup> If the firm gives pro bono hours the same weight as billable hours, an increase in the firm's billable hour requirement should have little immediate effect on an attorney's willingness to spend time on pro bono or community service.<sup>307</sup> Firms who change their policy to give credit for pro bono report an actual increase in the amount of pro bono work performed.<sup>308</sup> On the other hand, raising the annual billing requirement can undermine an attorney's willingness and even ability to handle pro bono matters if the firm limits the number of pro bono hours that "count" toward the billing requirement.<sup>309</sup>

Among the firms represented in the 1999-2000 Associate Survey, the majority (65%) do not accord the same weight to pro bono hours as billable hours. Eighteen percent of the respondents indicated that their firms did accord the same weight to pro bono hours. Those firms that do give the same weight to pro bono hours create incentives for those associates who want to provide pro bono service. One survey respondent described the dilemma faced by those attorneys who desire to do pro bono work: "I am fairly active doing pro bono work, but I do it at my own detriment."

As revealed in the survey, the majority of the associates appear to recognize that pro bono service is a casualty of the hours derby.<sup>310</sup> Twenty-seven percent of the associates noted that they "strongly agree" with the statement, "Because of billable hour pressure, I don't have time to participate in pro bono and public service activities," and 35% checked that they "somewhat agree" with the statement.<sup>311</sup> These results suggest that both the legal services community and the community at large lose participation of many overworked attorneys who believe

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*Id.* Reportedly, some "firms are telling their people to do less pro bono." *Id.* (quoting Kelly Frels, managing partner of Houston-based Bracewell & Patterson).

<sup>306</sup> Firms may give no credit, partial credit, full credit or a combination of these approaches. For example, a firm may give full credit for pro bono work up to a certain limit. One survey respondent indicated that his or her firm generally gave half credit for pro bono work.

<sup>307</sup> "Counting pro bono" sends a powerful message on management support of pro bono service. As explained by Larry Fox, a partner at the Philadelphia firm of Drinker, Biddle & Reath and chair of the ABA's Special Committee on Death Penalty Representation, "firms that are serious about their commitment to pro bono should count a certain percentage of associates' pro bono hours toward their billable hour benchmarks. . . ." Mark Hansen, *Trickle-Away Economies? Cost of High First-Year Salaries May Be Borne by Pro Bono Recipients*, A.B.A. J., July 2000, at 20. Fox also thinks that the latest round of pay hikes may give firms "wanting to duck pro bono another excuse for avoiding it." *Id.*

<sup>308</sup> See Whitley, *Time Well Spent?*, supra note 305 (describing a 25% increase in pro bono after Houston-based Vinson & Elkins changed the firm policy to give full billable credit for all pro bono work).

<sup>309</sup> Recently, the firm of Pillsbury Madison & Sutro L.L.P. "largely stopped counting pro bono hours toward its hourly minimum billables requirement." Goldhaber, *A Look Back on the Great Raise of '00*, supra note 304, at A27.

<sup>310</sup> See generally ROSS, *THE HONEST HOUR*, supra note 6, at 229-36 (discussing the effects of time-based billing on public responsibilities and professional growth).

<sup>311</sup> Another 15% indicated that they "somewhat disagree," and 8% noted that they "strongly disagree." Fifteen percent indicated that they "neither agree nor disagree."

that they do not have time to participate in pro bono and public service activities.<sup>312</sup>

### K. The Effect on the Attorney-Client Relationship and Public Image of Attorneys

Billable hours pressure can also hurt attorneys' relationships with their clients and the public image of attorneys. In describing the harmful effect that billing pressure has on attorney-client relationships, one in-house counsel suggests that "a work environment in which billable hours are king" breeds "a perverse lack of respect for the client."<sup>313</sup> In such an environment, "[t]he client is seen as a necessary inconvenience with deep pockets, a cash cow for whom service is defined by what will keep the dollars coming in, and not necessarily what the best service is for the client's needs."<sup>314</sup> This kind of skepticism and concern over attorney billing practices has helped spawn legal bill auditing as a cottage industry.<sup>315</sup> Despite attorney resistance, high billing quotas may lead to the expansion of auditing and other types of scrutiny of legal bills and practice.<sup>316</sup>

Inevitably, the hours derby will adversely affect the public image of attorneys.<sup>317</sup> Public opinion polls,<sup>318</sup> as well as popular jokes, reveal that billing and fees are at the heart of much of the criticism. Imposing high billable hour requirements on attorneys validates the view of skeptics who insist that attorneys

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<sup>312</sup> Cf. ROSS, *THE HONEST HOUR*, *supra* note 6, at 235-36 (reporting that in both his 1991 and 1994-95 surveys, the majority of the respondents indicated that replacement of hourly billing with other forms of billing would have no substantial effect on pro bono work and other community service activities by attorneys).

<sup>313</sup> Daniel S. Hapke, Jr., *Professionalism, Quality, and Hourly Billing . . . Are They Compatible?*, 11 No. 3 ACCA DOCKET 30, 34 (1993).

<sup>314</sup> *Id.*

<sup>315</sup> James P. Schratz, *Cross-Examining a Legal Auditor*, 18 T. JEFFERSON L. REV. 41, 42 (1996). For a discussion of the reasons for the growth of legal audits, see Claire Hamner Maturro, *Auditing Attorneys' Bills: Legal and Ethical Pitfalls of a Growing Trend*, FLA. B.J., May 1999, at 14.

<sup>316</sup> See generally Larry Smith, *Legal Auditors Expand Their Practice Amid Growing Criticism*, 7 NO. 10 INSIDE LITIG. 24 (1993). Some sophisticated clients are now questioning billing quotas, and some are refusing to pay for new attorneys "learning on the client's clock." In a presentation at the AALS Mini-Workshop on Major Issues of the 21st Century - Radical Change and Radical Stasis: Lawyers, Law School, and Changing Conceptions of Work in the Next Century, Jan. 6, 2000, James J. Sandman, a partner at Arnold & Porter, explained that clients are increasingly unwilling to invest in training of associates and to pay the increases in hourly rates.

<sup>317</sup> See *ABA Opinion 93-379*, *supra* note 106, at 1 (noting that billing practices of some attorneys are "a major contributing factor to the discouraging public opinion of the legal profession").

<sup>318</sup> See, e.g., Randall Samborn, *Anti-Lawyer Attitude Up*, NAT'L L.J., Aug. 9, 1993, at 1 (reporting on "a National Law Journal/West Publishing Company poll of the public attitudes toward lawyers and the role of law in society"). See also Editorial, *Challenge for Lawyers*, CHRISTIAN SCI. MONITOR, Aug. 17, 1993, at 18 (noting that "[p]olls indicate [lawyers'] approval ratings dropping as legal fees rise"); Schratz, *supra* note 4, at 2214 (stating that "[a] recent survey of 3000 CEO's, CFO's and General Counsels by the Chicago based accounting firm . . . found that almost half of those surveyed believed their attorneys were over billing").

are driven by the “the buck.”<sup>319</sup> This undermines public trust and confidence in the legal profession.

#### **IV. POSSIBLE CHANGES TO ADDRESS THE DELETERIOUS EFFECTS OF INCREASED BILLABLE HOUR EXPECTATIONS**

The discussion of the effects of increased billable hours expectations and related study findings reveal how the hours derby has transformed law firm culture and economics, adversely impacting individual attorneys, firms, the legal profession and the consuming public. Given the multifaceted and complex nature of the problems facing individual lawyers and their firms,<sup>320</sup> some attorneys and firm managers may be resigned to working in a “broken” profession.<sup>321</sup> Rather than assuming that little can be done, creative and dedicated attorneys should explore changes within firms and within the regulatory and competitive environments in which firms operate.

##### **A. Law Firms Should Reengineer Firm Economics and Culture**

As discussed above, current compensation systems in firms have contributed, if not caused, various problems related to emphasizing billable hours and business generation. To address these problems firm managers must rethink compensation systems for partners, as well as for associates. The review of firm compensation systems should focus on identifying the conduct that the system rewards.<sup>322</sup> Specifically, the firm’s compensation system – as well as its policies, procedures and structures – should encourage ethical practice and motivate associates and partners alike to behave in ways that are beneficial to the firm and its clients.

##### **1. Emphasize quality and ethical behavior over quantity.**

In examining associate compensation systems, firms should not award bonuses based on numerical billing benchmarks. In lieu of rewarding “heavy handed” billers, firm managers and supervisors should scrutinize the work of associates who regularly bill an extraordinary number of hours. Depending on the circumstances, firms could audit the bills of attorneys who bill over a certain

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<sup>319</sup> In a 1998 telephone survey of Texans regarding trust and confidence in the courts and the legal profession, 35% of the survey respondents who had a negative opinion of the lawyers indicated that their opinion was based on the feeling that “lawyers are driven by money.” TEXAS SUPREME COURT ET AL., PUBLIC TRUST AND CONFIDENCE IN THE COURTS AND THE LEGAL PROFESSION IN TEXAS 31 (1998).

<sup>320</sup> See Alfini & Van Vooren, *supra* note 11, at 66 (asserting that the enormity of the lawyer stress problem requires a multi-pronged approach to finding its solution).

<sup>321</sup> At a program sponsored by the ABA Law Practice Management Section’s Beyond the Breaking Point Task Force, Michael Beatty, former general counsel of Coastal Corporation, compared the legal profession to a failing airline. Mark Hansen, *Lawyer Analysis: How to Find Happiness in Competition*, A.B.A. J., Apr. 1994, at 116. Beatty suggested that the ABA “adopt as its theme song ‘Call Me Cleopatra ‘Cause I’m the Queen of Denial.’” *Id.*

<sup>322</sup> KEEPING THE KEEPERS REPORT, *supra* note 14, at 47.

level, such as 2100 hours a year.<sup>323</sup> When possible, firms should recognize and reward ethical conduct. For example, firms could expressly include ethical conduct as a criterion in evaluating and compensating associates.<sup>324</sup> Such moves would send a strong message to firm attorneys and clients that the firm values quality over quantity.<sup>325</sup>

Adopting clear billing guidelines and providing training on billing also communicates the firm's commitment to ethical practice. Firm managers take a head-in-the-sand approach when they require associates produce a high number of billable hours without giving associates specific guidelines on how to bill ethically. Firm partners may financially benefit from questionable billing practices by taking the position that "If I don't see it, it's not happening." The survey results suggest that the failure to implement and enforce clear billing guidelines hurt ethical associates who refuse to engage in questionable practices.<sup>326</sup> As discussed above, approximately half of the respondents indicated that they "agree" or "somewhat agree" with the following statement: "Billing pressure causes ethical and competent attorneys to leave private law practice." Furthermore, those attorneys who stay in private practice may rationalize questionable practices.<sup>327</sup> Firm managers can counter these serious effects of billing hour pressure by implementing and monitoring clear billing guidelines.<sup>328</sup>

An in-house ethics counsel or committee could take responsibility for providing training and monitoring billing practices. Designation of an ethics counsel or committee provides a channel through which ethical attorneys can proffer questions and concerns related to billing and ethical problems. Firm attorneys will be less reluctant to report billing problems if the ethics counsel or committee ensures that employees who report misconduct are protected from retaliation.<sup>329</sup>

## 2. Create incentives for mentors and supervisors.

The quality of associate work and retention of associates will also be improved if firms compensate partners for time devoted to mentoring, supervision and training. Partner compensation systems that do not reward supervision time

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<sup>323</sup> Firms concerned about being burned by billing errors, are increasing auditing themselves. Erin White, *More Law Firms Are Auditing Themselves to Catch Billing Errors*, WALL ST. J., July 14, 1998, at B8. Professor Lerman recommends "systematic audits" of the billing practices of lawyers who bill 2000 hours per year or more. Lerman, *Blue-Chip Bilking*, *supra* note 242, at 298.

<sup>324</sup> See Sarat, *supra* note 92, at 827 (quoting an associate who said that partners treat ethics "as a matter of sanctioning people for bad behavior rather than rewarding good behavior").

<sup>325</sup> For recommendations on how firms can emphasize quality, over quantity, see generally Ronald M. Martin, *The Empowered Law Firm - Driving Empowerment: Reengineering Our Context*, 20 NO. 7 LAW PRAC. MGMT. 34 (1994).

<sup>326</sup> Close to three quarters of the respondents (71%) indicated that they agreed or somewhat agreed with the following statement: "Clear billing guidelines would help attorneys who want to practice ethically." See *supra* notes 85-93 and accompanying text.

<sup>327</sup> See *supra* notes 243-52 and accompanying text.

<sup>328</sup> See Lerman, *Gross Profits?*, *supra* note 247, at 652. "Lawyers in private practice need to explore how time is recorded by other lawyers in their own law firms, and to establish policies and systems to monitor billing practices and identify false records."

<sup>329</sup> Lerman, *Blue-Chip Bilking*, *supra* note 242, at 298.



on an equal basis with other time punish supervisors in different ways. First, supervisory attorneys do not receive the short-term monetary rewards from billing and generating business. Second, supervision time may actually hurt the supervisors' mobility if time devoted to supervision competes with the time that supervisors spend building their own portable client base.<sup>330</sup> A compensation system should not punish supervisors and mentors but instead should adequately compensate them for their contributions to the firm.<sup>331</sup>

### 3. Provide alternative partnership track and other work options.

The study results that should most capture the attention of firm managers are those related to the interest in reduced-hour arrangements and those related to the view that billing pressure causes ethical attorneys to leave private practice. These survey findings reflect the widely reported claim that many associates are willing to make less money in order to work less. As revealed, many respondents are interested in reduced-hour arrangements, even if the reduction affects their treatment and advancement. Many others indicated interest in such arrangements, provided that it did not affect their treatment, even if it affects their advancement. Evidently, these attorneys are concerned about the stigma and differential treatment of associates in alternative positions.

Although many firms are now offering alternative positions such as part-time and staff attorney positions, attorneys in such positions appear to have less status and job security than full-time attorneys who are on the partnership track. Rather than forcing attorneys who are willing to make less to work less into a category of permanent associates, firms should explore alternatives to the all-or-nothing promotion to partnership model in which the tournament "winners" become partners and the tournament "losers" remain as employees, but never become partners.<sup>332</sup> For example, some New York firms have implemented "regu-

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<sup>330</sup> "Top lawyers may also be unwilling to devote considerable time to management, recognizing that they stand to benefit more from portable assets like client relationships and substantive legal skills than from firm-based assets like efficient management structures and sound financial practices." Holmes, *supra* note 168, at 404.

<sup>331</sup> If a firm's partners are concerned that partners might fudge on supervision time recorded, the firm could set annual maximums for supervision time that will be calculated into the objective portion of the compensation system. The annual maximum could vary depending on the position that the supervisor held. For example, a member of a firm's ethics committee may have a higher annual maximum than a member of the firm's recruitment committee. Another way of monitoring supervision time is to implement some form of peer review in which information is sought from associates and partners. For a review of the models of peer review, see Fortney, *Am I My Partner's Keeper?*, *supra* note 230, at 363-70.

<sup>332</sup> See Marc S. Galanter & Thomas M. Palay, *Large Law Firm Misery: It's the Tournament, Not the Money*, 52 VAND. L. REV. 953, 960 (1999) (describing the "rules" of the tournament model). For a discussion of the negative consequences of working in permanent associate and staff attorney positions, see Note, *Why Law Firms Cannot Afford to Maintain the Mommy Track*, 109 HARV. L. REV. 1375, 1376-77 (1996). Disadvantages of working part time center on treatment and perception. As explained by one New Jersey associate, senior attorneys may believe that part-time associates are not serious about their work; thus, they treat part-timers more like law clerks than experienced associates. Janice A. Schindler, *Breaking New Ground*, N.J. LAW., May/June 1991, at 21, 22.

lated hours positions" which allow associates to work normal business hours (say 9 a.m. to 6 p.m.) and be paid 75% of the salary set for "unregulated class."<sup>333</sup> The challenge is to offer options to those attorneys who want to eventually participate as partners on some basis, without requiring that they sacrifice their personal lives to become a partner in the traditional sense.<sup>334</sup>

In exploring alternatives, firm managers should use mixed compensation systems offering compensation packages that consist partially of money and partially of time and non-monetary rewards.<sup>335</sup> Attorney satisfaction can only be improved if firms offer attorneys a cafeteria approach to advancement and compensation. Those firms that refuse to offer options will continue to face high levels of attrition.

Finally, firm attorneys must reconsider the meaning of full-time work. As noted by Professor Martha West, "only in the law do we define full-time work as 60 to 70 hours a week."<sup>336</sup> Instead of thinking of a person who works less than sixty to seventy hours a week as having a reduced load, maybe working more than sixty hours a week should be treated as an excessive load.

#### 4. Emphasize human resources management.

These changes to firm compensation systems and employment structures will directly impact firm culture. In addition, firm managers can take other steps to change firm culture to one in which associates are treated as valuable human resources, not commodities.<sup>337</sup> Firms that devote resources to personnel management and communication will be in the best position to address attorney dissatisfaction and other harmful effects of billable hour practices.

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<sup>333</sup> Cotts, *supra* note 271, at A18. The "regulated associates" are taken off the partnership track with an option to return. *Id.* Small-firm practitioners also are beginning to offer flexible incentive and compensation packages to their associates. See Jill Schachner Chanen, *It Pays to Be Creative*, A.B.A. J., Sept. 2000, at 70 (referring to a Dallas firm's hybrid package of salary and incentives "intended to reward associates for working hard but also structured to fit with the firm philosophy of having a life outside practice").

<sup>334</sup> For a number of recommendations for improving work environments and organizations, see Menkel-Meadow, *Culture Clash*, *supra* note 221, at 656-62. Menkel-Meadow concludes by warning that the legal profession's ability "to offer work satisfaction, service goals and professional pride beyond the earning of high salaries and the peculiar 'high' status . . . will depend on its willingness to change some of its entrenched belief systems and perhaps outmoded forms of practice." *Id.* at 663.

<sup>335</sup> Galanter and Palay define "mixed-compensation" firms as those "in which there is a commitment to reduce the traditional big firm's heavy dependence on monetary compensation and instead to facilitate a mixture of pecuniary and 'life-style' rewards, such as child-rearing leaves, flextime, part-time work, sabbaticals, time for political or pro-bono work." GALANTER & PALAY, *TOURNAMENT OF LAWYERS*, *supra* note 255, at 127.

<sup>336</sup> Gatland, *supra* note 194, at 29.

<sup>337</sup> Unfortunately, "some partners now view associates as mere labor assets, dispensable workers instead of colleagues and future partners." Louise A. LaMothe, *Where Have All the Mentors Gone?*, *LITIG.*, Winter 1993, at 1, 2. "Lawyers should be treated as the investments in long-term (not short-term) human capital that they are." Menkel-Meadow, *Culture Clash*, *supra* note 221, at 658.

Effective personnel management requires a commitment of time and resources. As part of effective personnel management, firms should adopt personnel policies<sup>338</sup> and establish quality of life and associate retention committees. Firms should also continuously consider measures to improve personnel management.<sup>339</sup> In addition to providing training in supervision and personnel management to all supervisory attorneys, firms can change their criteria for admission to partnership to include demonstration of supervision and management skills.<sup>340</sup> Efforts to improve personnel management will pay off in human as well as in financial terms.<sup>341</sup> As stated by a career services expert, "firms must take a top-to-bottom look at how they do business and recognize the dollar value of providing a healthy, sane environment for their most valuable resource – the attorneys."<sup>342</sup> By doing so, firms can curb associate attrition and alienation.

### B. Law Firms Should Change Billing Practices

Firms can avoid some of the traps of billable hour practice by using alternative billing methods.<sup>343</sup> For example, forms of value billing can address concerns about inefficiency associated with billable hour practice. Firms and clients alike are beginning to see mutual benefit in using alternative methods.

More controversial changes involve eliminating high minimum billing requirements or even limiting the number of hours that attorneys work. Although it may be difficult for regulators to impose limits on the number of hours billed,<sup>344</sup>

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<sup>338</sup> For an overview of the matters that should be covered in a law firm personnel policy, see Michael P. Maslanka, *Lawyers as Employers: A Few Tips*, TEX. LAW., Oct. 19, 1998, at 28.

<sup>339</sup> For example, the NALP Keeping the Keepers Report recommends that firms formalize the associate review process "to ensure that it occurs on a regular basis." This measure is designed to address the common complaint of associates that they receive too little feedback on individual assignments and too infrequent or irregular summary evaluations. KEEPING THE KEEPERS REPORT, *supra* note 14, at 41.

<sup>340</sup> *Id.* at 87.

<sup>341</sup> As described by one author, "[t]he end result for the law firm will be increased productivity, increased lawyer and client satisfaction, client and lawyer retention, and a positive firm culture." McKim, *supra* note 46, at 186.

<sup>342</sup> Gutierrez, *supra* note 10, at 3. Gutierrez served as director of Law Career Services at the Santa Clara University School of Law. For a description of firms that have successfully implemented human resources management, merging "big profits" and "a life outside the office," see Janet L. Conley, *A Great Balance*, NAT'L L.J., Aug. 21, 2000, at A1, A11.

<sup>343</sup> For a comprehensive report on the ethics of alternative fee arrangements, see the Committee on Lawyer Business Ethics, *Business and Ethics Implications of Alternative Billing Practice: Report on Alternative Billing Arrangements*, 54 BUS. LAW. 175 (1998). Some large firms are using alternative fee arrangements, understanding that "the future is not in time sheets." See Peter D. Zeughauser, *The New New Math*, AM. LAW., Mar. 2000, at 17 (describing firm experiments).

<sup>344</sup> See Menkel-Meadow, *Culture Clash*, *supra* note 221, at 658 n.171 (suggesting that it might be difficult to regulate the number of hours that attorneys work). Protecting the public health and safety is a legitimate interest served in limiting the number of hours worked by other service providers, including physicians, truck drivers and pilots. For a discussion of the regulation of hours worked by medical residents, see *id.* Following the death of 18-year-old Libby Zion from an apparent drug interaction, the grand jury criticized the medical profession for requiring interns and residents to work excessively long hours. Thereafter, New York accepted the recommendation of the State Department of Health Advisory Committee, adopting regulations that limited hours work

nothing prevents firms from taking such steps on their own. By voluntarily limiting the number of hours billed, firm managers would communicate that the firm values quality over quantity and revenue. In the long run, such a move could impress new clients and solidify relationships with existing clients.<sup>345</sup> Short of limiting hours, firms could at least abandon high annual billing requirements and rewarding "high billables" with bonuses.<sup>346</sup> Another modest step would be for firms to give full credit for pro bono work up to a certain annual limit. Such initiatives would positively change firm culture and directly address attorney dissatisfaction<sup>347</sup> and other problems created by the hours derby.<sup>348</sup>

### C. Attorneys Should Change the Regulatory Environment

Various regulatory steps can be taken to address abuses and problems related to hourly billing practices. Changes can be made to the rules themselves and to the mechanisms for enforcing the rules. Clarification of rules on billing can help eliminate questionable practices and eliminate the ability of attorneys to take advantage of the current lack of clarity in disciplinary rules.

Understanding the role that firm compensation, organization and culture plays in leading to over billing and other questionable practices, states should follow the lead of New York in imposing discipline on firms.<sup>349</sup> As Professor

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by residents. Joseph Conigliaro et al., *Internal Medicine Housestaff and Attending Physician Perceptions of the Impact of the New York State Section 405 Regulations on Working Conditions and Supervision of Residents in Two Training Programs*, J. GEN. INTERNAL MEDICINE, Sept. 1993, at 502, 503. For a review of the benefits and harms of limiting hours, see Michael Green, *What (If Anything) Is Wrong with Residency Overwork?*, ANNALS OF INTERNAL MEDICINE, Oct. 1995, at 512 (urging that the strongest argument for reducing hours is ethical in nature – "that overwork interferes with the development of professional values and attitudes that are an essential part of the moral curriculum of residency").

<sup>345</sup> W. Edwards Deming, the founder of the total quality management (TQM) movement, insists that numerical quotas be eliminated and quality service emphasized. Samuel Wilder, *Deming's Management Methods: A Compass for Legal Administrators?*, 13 NO. 5 LEGAL MGMT. 45, 49 (1994). For law firms that means de-emphasizing billable hours, expanding alternative billing arrangements and rewarding client service. *Id.*

<sup>346</sup> Cf. Lerman, *Blue-Chip Bilking*, *supra* note 242, at 298 (recommending that firms abandon the use of all targets or minimums because "setting incentives to bill more hours than a piece of work requires should be recognized as unethical"). At the 24th National Conference on Professional Responsibility in Montreal, Quebec, May 28-30, 1998, Lerman recommended a rule making it unethical to set billing targets and minimums. ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT, June 8, 1998, at 271, 272.

<sup>347</sup> Not surprisingly, the two firms that were anointed as the nation's happiest in a 1998 mid-level associate survey were firms that have no billable-hours quota. Michael D. Goldhaber, *The Max and Izzie Awards, 1998*, NAT'L L.J., Mar. 29, 1999, at A15 (reporting on the results of a survey conducted by *American Lawyer* magazine). The winning firms, Boston's Goulston & Storr and Minnesota's Faegre & Benson, also frown on "eat what you kill" compensation and reward pro bono. *Id.*

<sup>348</sup> For a commentary on how emphasizing quality can transform a firm's culture and improve the quality of life of attorneys, see Jay D. Strother, "*Q*" is for *Quality: ALA Partnership Reveal Facets of Quality*, 13 NO. 1 ALA NEWS 6 (1994).

<sup>349</sup> The dynamics of modern-day law practice, in which two-thirds of attorneys work in firms and other organizations, requires the recognition of collective responsibility for some ethical violations.

Lerman has recommended, the authority to discipline law firms should “include (at minimum) the authority to impose discipline for failure to institute proper training, supervision and monitoring of lawyers and other staff, to ensure compliance with ethical rules, and to impose discipline for failure to report serious misconduct within the law firm.”<sup>350</sup>

Because billing abuses may be difficult for regulators and clients to detect, the regulators must enforce the state rule equivalent of Model Rule of Professional Conduct 8.3.<sup>351</sup> To protect those attorneys who act properly, courts, as regulators of the legal profession, should fashion more protection for whistle blowers.<sup>352</sup> Without such protection for whistle blowers, associates as well as partners feel as if they are committing professional suicide to report misconduct by superiors.<sup>353</sup>

Firm partners may be more likely to improve their internal reporting, training, and monitoring systems if regulators enforce the state version of Model Rule 5.1(a). Under this rule, a firm partner can be disciplined for failing to “make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.”<sup>354</sup> By enforcing Rule 5.1(a), bar regulators signal to firm partners that they may be disciplined if they close their eyes and do nothing to address and avoid billing abuses.<sup>355</sup>

Recognizing the position of attorneys as service providers, regulators should apply consumer protection statutes to attorneys. If firm compensation systems include incentive bonuses based on production, legal employers like

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For example, a firm that imposes an extraordinarily high billable hour quota should be subject to discipline. As explained by one billing expert, “when you set the bar too high, you are just motivating people to cheat.” ZITRIN & LANGFORD, MORAL COMPASS, *supra* note 68, at 86.

<sup>350</sup> Lerman, *Blue-Chip Billing*, *supra* note 242, at 299.

<sup>351</sup> MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.3 (1999) (requiring that attorneys inform “the appropriate professional authority” when a lawyer has knowledge “that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects”). Lerman suggests that regulators impose discipline on firm managers who fail or delay in reporting misconduct by a firm attorney. Lerman, *Blue-Chip Billing*, *supra* note 242, at 299.

<sup>352</sup> See Altman, *supra* note 106, at 209 (describing the precarious position of whistle blowers).

<sup>353</sup> In using the term “professional suicide,” Lerman notes that the disciplinary “rules provide no protection to those who comply with the reporting requirement.” Mark Hansen, *Tender Traps*, A.B.A. J., Dec. 1998, at 56, 59.

<sup>354</sup> MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.1(a) (2000). This rule effectively makes all firm partners “supervisory” lawyers per se, and accordingly, all partners are responsible for making reasonable efforts to ensure compliance by firm attorneys. GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT 5:2:101 (Supp. 1999).

<sup>355</sup> Enforcement of state ethics rules based on Model Rules 5.1 and 8.3 may help counter what Lerman calls “collective denial and minimization of unethical billing practices.” Lerman, *Blue-Chip Billing*, *supra* note 242, at 226 (suggesting that firm attorneys might turn a “blind eye” to misconduct if they share the resulting income).

other employers should be held accountable under applicable consumer protection laws.<sup>356</sup>

## V. CONCLUSION

Although some changes mentioned may appear to be radical, they do not call for the restructuring of the way private firms deliver legal services. Rather, the recommendations urge lawyers to modify organizational assumptions and regulatory mechanisms, while reaffirming attorneys' commitment to quality and service. Firm managers who take bold steps may counter the trend to measure professional success in quantitative and monetary terms.<sup>357</sup> Bar and firm leaders who address the deleterious effects of high billable hour expectations will improve both the quality of work for clients and the quality of life for firm attorneys. With effort, new work and partnership structures can be devised to offer options so that attorneys need not sell their souls in order to attain professional success.

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<sup>356</sup> See Carrie Menkel-Meadow, *Lying to Clients for Economic Gain or Paternalistic Judgment: A Proposal for a Golden Rule of Candor*, 138 U. PA. L. REV. 761, 766 (1990) (urging that "[l]awyers, in their economic capacities, should be treated no differently than other producers of products or providers of services"). Menkel-Meadow asks, "[w]hat distinguishes a lawyer lie from any other kind of service provider lie?" *Id.* at 775. The answer may be that the lawyer lie is more serious when it is in the context of a fiduciary relationship.

<sup>357</sup> As urged by one commentator:

[L]awyers must move beyond the present mindset in which everything they do and everyone they encounter are judged in quantitative terms – billable hours, profits-per-partner, portable client base, annual billings, and so on. This mindset must be replaced or supplemented with an attention to qualitative factors – service to clients, maintaining a reasonable lifestyle, and furthering social justice.

Douglas E. Litowitz, *Young Lawyers and Alienation: A Look at Legal Proletariat*, 84 ILL. B.J., Mar. 1996, at 144, 149.

## APPENDIX

### 1999 ASSOCIATE BILLING AND SATISFACTION SURVEY\*

*INSTRUCTIONS: Most of these questions can be completed either by checking a response or by filling in a blank. If a question seems inappropriately or incompletely stated for your situation, please feel free to write an explanation in the margin or in the comment section at the end of the questionnaire. IF YOU ARE NOT CURRENTLY AN ASSOCIATE USING HOURLY BILLING, PLEASE SIMPLY RETURN THE ENCLOSED POSTCARD.*

**1a. Does your firm have a minimum annual billable hours expectation of associates?**

<sub>1</sub> Yes (*Answer question 1b.*)

<sub>2</sub> No (*Skip to question 2a.*)

**1b. What is your firm's annual billable hours expectation of associates?**

<sub>1</sub> A specific number of hours is required or recommended

\_\_\_\_\_ (*Please specify number of required hours.*)

<sub>2</sub> Other (*Please describe.*)

**2a. Before you started work at your current job, what did you learn about the firm's annual billable hours expectation?**

<sub>1</sub> I learned that the firm expected at least the following number of hours per year: \_\_\_\_\_ hours (*Answer question 2b.*)

<sub>2</sub> I learned that the firm did not have any specific annual billable hours requirement (*Skip to question 3.*)

<sub>3</sub> I was not told anything about the firm's billable hours expectations (*Skip to question 3.*)

<sub>4</sub> Other (*Please describe.*)

**2b. Once you began working at your current firm, how did the actual annual billable hours expectation compare to what you learned during the hiring process?**

<sub>1</sub> More billable hours are expected to advance

<sub>2</sub> About the same number of hours are expected

<sub>3</sub> Fewer hours are expected to advance

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\* To accommodate publication needs the format has been varied slightly from the original. The original format version is available from the State Bar of Texas, Department of Research and Analysis. The complete address appears at the end of the Survey.

3. For the first six months of 1999, approximately how many billable hours did you record? \_\_\_\_\_ Hours
- Check here if you did not work full-time for all of the first six months of 1999, or you were working full-time but did not bill any hours.
4. For the first six months of 1999, approximately how many total hours did you devote to law firm work including billable and non-billable time (such as recruiting and preparing CLE papers)? \_\_\_\_\_ Hours
- Check here if you did not work full-time for all of the first six months of 1999, or you were working full-time but did not bill any hours.
5. Does your firm accord the same weight to pro bono hours as billable hours?
- <sub>1</sub> Yes
- <sub>2</sub> No
- <sub>3</sub> I don't know
6. Excluding billing guidelines imposed by clients, does your firm have written guidelines dealing with billing practices?
- <sub>1</sub> Yes
- <sub>2</sub> No
- <sub>3</sub> I don't know
- 7a. Does your firm have a policy or system for dealing with the ethical concerns of attorneys?
- <sub>1</sub> Yes (*Answer question 7b.*)
- <sub>2</sub> No (*Skip to question 8.*)
- <sub>3</sub> I don't know (*Skip to question 8.*)
- 7b. Which of the following does your firm use to address ethical concerns of attorneys? (Check all that apply.)
- <sub>1</sub> Designated ethics counsel
- <sub>2</sub> Ethics committee
- <sub>3</sub> Written policy encouraging reporting of misconduct
- <sub>4</sub> Scheduled in-firm meetings
- <sub>5</sub> Scheduled training on ethics issues
- <sub>6</sub> Other (*Please describe.*)
-



8. **Approximately how much training or instruction has your firm provided you on billing practices?**
- <sub>1</sub> None
  - <sub>2</sub> Less than one hour
  - <sub>3</sub> One to two hours
  - <sub>4</sub> More than two hours
9. **In law school, approximately how much class time was devoted to discussing the ethics of attorneys billing by the hour?**
- <sub>1</sub> None
  - <sub>2</sub> Less than one hour
  - <sub>3</sub> One to two hours
  - <sub>4</sub> More than two hours
10. **During the last year, have you ever billed two clients for work performed at the same time (e.g., billing one client for reviewing a deposition while billing another client for travel time)?**
- <sub>1</sub> Yes
  - <sub>2</sub> No
11. **When you are revising and recycling a document prepared for another client, do you bill the current client for more than the revision time?** *(When answering this question, assume that you are billing the current client on an hourly basis.)*
- <sub>1</sub> Yes
  - <sub>2</sub> No
12. **Has your firm or supervising attorney given you guidance on the practices described in the previous two questions?**
- <sub>1</sub> Yes
  - <sub>2</sub> No
13. **During the last year, how often has your supervising attorney questioned your billing entries?**
- <sub>1</sub> Never
  - <sub>2</sub> Occasionally
  - <sub>3</sub> Frequently
14. **Do you know about ABA Formal Ethics Opinion 93-379, dealing with the ethics of Billing for Professional Fees, Disbursements, and Other Expenses? Among other things, this opinion addresses "double billing."**
- <sub>1</sub> I have read it.
  - <sub>2</sub> I have heard about it, but have not read it.
  - <sub>3</sub> I have not heard about it.

**15a. Have you ever had concerns about the billing practices of other attorneys in your firm?**

- <sub>1</sub> Yes (*Answer question 15b.*)
- <sub>2</sub> No (*Skip to question 16a.*)

**15b. How did you handle your concerns about other attorneys' billing practices? (Check all that apply.)**

- <sub>1</sub> I did nothing
  - <sub>2</sub> I discussed the matter with a supervisor or managing attorney
  - <sub>3</sub> I discussed the matter with another associate
  - <sub>4</sub> I discussed the matter with the attorney whose practices I questioned
  - <sub>5</sub> Other (*Please describe.*)
- 

**16a. Does your firm allow associates to arrange alternative work schedules?**

- <sub>1</sub> Yes (*Answer question 16b.*)
- <sub>2</sub> No (*Skip to question 17.*)
- <sub>3</sub> I don't know (*Skip to question 17.*)

**16b. If your firm allows associates to arrange alternative work schedules, which of the following arrangements does the firm allow? (Check all that apply.)**

- <sub>1</sub> Flextime
  - <sub>2</sub> Part-time
  - <sub>3</sub> Work-at-home/telecommuting
  - <sub>4</sub> Other (*Please describe.*)
- 

**17. In your work, which ONE of the following are you most interested in attaining? (Please check only one response.)**

- <sub>1</sub> Paying off student loans
- <sub>2</sub> Rewarding work
- <sub>3</sub> Status and prestige
- <sub>4</sub> Financial rewards
- <sub>5</sub> Intellectual challenges
- <sub>6</sub> Full partner participation
- <sub>7</sub> Training and experience

18. **Would you be interested in working fewer hours in exchange for lower compensation?**
- <sub>1</sub> Yes, regardless of its impact on my treatment or advancement at the firm
  - <sub>2</sub> Yes, provided that it would not adversely affect my treatment or advancement at the firm
  - <sub>3</sub> Yes, provided that it would not affect my treatment, even if it affects my advancement at the firm
  - <sub>4</sub> No, because I'm interested in maximizing my income
  - <sub>5</sub> No, because inevitably such an arrangement will affect my treatment and advancement at the firm
- 19a. **Are you interested in changing employers during the next two years?**
- <sub>1</sub> Yes (*Answer question 19b.*)
  - <sub>2</sub> No (*Skip to question 20.*)
- 19b. **If you are interested in changing employers, what type of job would you prefer above others? (Please check only one response.)**
- <sub>1</sub> Government job
  - <sub>2</sub> Private practice with a smaller firm
  - <sub>3</sub> Private practice with a larger firm
  - <sub>4</sub> Corporate counsel position
  - <sub>5</sub> Non-legal job
  - <sub>6</sub> Public interest job
  - <sub>7</sub> Other (*Please describe.*)
- 
20. **Which ONE of the following factors would be MOST INFLUENTIAL in causing you to change jobs? (Please check only one response.)**
- <sub>1</sub> More respectful treatment
  - <sub>2</sub> More interesting work
  - <sub>3</sub> Reduction of work hours
  - <sub>4</sub> Enhanced training and supervision
  - <sub>5</sub> Increased compensation
  - <sub>6</sub> Meaningful expectation of partnership
  - <sub>7</sub> Other (*Please specify.*)
- 
21. **How much have family and/or non-work priorities influenced your choice of employment?**
- <sub>1</sub> A great deal
  - <sub>2</sub> Somewhat
  - <sub>3</sub> None or very little



29. Please indicate the extent to which you agree with each of the following statements. (Pick a number from the following scale and write it in the space beside each statement.)

- | <i>Strongly<br/>Disagree</i> | <i>Somewhat<br/>Disagree</i> | <i>Neither Agree<br/>Nor Disagree</i> | <i>Somewhat<br/>Agree</i> | <i>Strongly<br/>Agree</i> |
|------------------------------|------------------------------|---------------------------------------|---------------------------|---------------------------|
|                              |                              |                                       |                           |                           |
| 1                            | 2                            | 3                                     | 4                         | 5                         |
- 
- \_\_\_ Clear billing guidelines would help eliminate questionable billing practices.<sub>1</sub>
- \_\_\_ Clear billing guidelines would help attorneys who want to practice ethically.<sub>2</sub>
- \_\_\_ I must sacrifice fulfillment outside of work in order to attain partnership status.<sub>3</sub>
- \_\_\_ Attorneys tend to rationalize and justify questionable billing practices.<sub>4</sub>
- \_\_\_ Working long hours adversely affects my ability to think critically and creatively.<sub>5</sub>
- \_\_\_ My income and advancement within the firm are principally based on the number of hours that I bill and collect.<sub>6</sub>
- \_\_\_ Because of billable hour pressure, I don't have time to participate in pro bono and public service activities.<sub>7</sub>
- \_\_\_ Because of billable hour pressure, I minimize my participation in continuing legal education programs and ethics training.<sub>8</sub>
- \_\_\_ Because of the pressure on partners to bill and generate business, partners in my firm do not provide the mentoring and training that I need and want.<sub>9</sub>
- \_\_\_ I feel stressed and fatigued most of the time.<sub>10</sub>
- \_\_\_ Most of the feedback I get from my supervisors relates to billable hours.<sub>11</sub>
- \_\_\_ Reduced-hour arrangements communicate that an attorney can't compete and hurt the attorney's chances for long term success at the firm.<sub>12</sub>
- \_\_\_ Billing pressure causes ethical and competent attorneys to leave private law practice.<sub>13</sub>
- \_\_\_ I wish that I had selected a profession other than the law.<sub>14</sub>
-

**Background Information**

- 30a. Is hourly billing the principal method of billing used by your firm?**  
<sub>1</sub> Yes (*Skip to question 31.*)                      <sub>2</sub> No (*Answer question 30b.*)
- 30b. If hourly billing is not the principal method of billing used by your firm, what is the principal billing method used?**  
<sub>1</sub> Contingent fee              <sub>2</sub> Flat fee              <sub>3</sub> Other(*Please describe.*)
- 
- 31. Of the fees you charge clients, approximately what percentage derives from billable hour work?**  
<sub>1</sub> Less than 50%              <sub>2</sub> 50 to 74%              <sub>3</sub> 75 to 99%              <sub>4</sub> 100%
- 32. What is the size of your law firm including all branch offices?**  
<sub>1</sub> 2-5 attorneys    <sub>4</sub> 25-60 attorneys  
<sub>2</sub> 6-10 attorneys    <sub>5</sub> 61-100 attorneys  
<sub>3</sub> 11-24 attorneys    <sub>6</sub> More than 100 attorneys
- 33. What is your current position in the firm?**  
<sub>1</sub> Associate on a partnership track  
<sub>2</sub> Staff attorney not on the partner track  
<sub>3</sub> Contract attorney  
<sub>4</sub> Part-time attorney  
<sub>5</sub> Other (*Please describe.*)
- 
- 34. How long have you worked in your current firm?**  
<sub>1</sub> Less than 12 months    <sub>4</sub> 61-84 months  
<sub>2</sub> 12-36 months    <sub>5</sub> More than 84 months  
<sub>3</sub> 37-60 months
- 35. What is your age?**  
<sub>1</sub> Under 30    <sub>4</sub> 41-45  
<sub>2</sub> 30-35    <sub>5</sub> Over 46  
<sub>3</sub> 36-40
- 36. In what year were you first licensed to practice law? \_\_\_\_\_**
- 37. In what Texas county is your firm located? \_\_\_\_\_**

**38. What is your gender?**

- <sub>1</sub> Male                      <sub>2</sub> Female

**39. What is your race/ethnicity?**

- <sub>1</sub> Caucasian/Anglo  
<sub>2</sub> African American/Black  
<sub>3</sub> Hispanic/Latino  
<sub>4</sub> Asian/Pacific Islander  
<sub>5</sub> Native American Indian  
<sub>6</sub> Other (*Please specify.*)

**40. What is your marital status?**

- <sub>1</sub> Married, no children                      <sub>3</sub> Divorced or separated  
<sub>2</sub> Married with children                      <sub>4</sub> Single or widowed

**41. Are you currently working:**

- <sub>1</sub> Full-time?                      <sub>2</sub> Part-time?

**42. On average, how many hours per week do you devote to the practice of law? (*Please include billable and non-billable time.*)**

- <sub>1</sub> Fewer than 20                      <sub>5</sub> 50-55  
<sub>2</sub> 20-29                      <sub>6</sub> 56-60  
<sub>3</sub> 30-39                      <sub>7</sub> More than 60  
<sub>4</sub> 40-49

**43. In 1998, what was your pre-tax income (including bonus) from your law firm employment?**

- <sub>1</sub> Less than \$50,000  
<sub>2</sub> \$50,000 – \$84,999  
<sub>3</sub> \$85,000 – \$124,999  
<sub>4</sub> \$125,000 – \$159,999  
<sub>5</sub> Over \$160,000

**Please use the space below for any comments you have on any of the issues covered on this survey. Attach additional pages if desired.**

***Thank you for taking the time to respond to this questionnaire. Please return your questionnaire in the enclosed postage-paid return envelope or mail to: State Bar of Texas, Department of Research and Analysis, P.O. Box 12487, Austin, TX 78711-2487 or FAX it to 512/463-1475. We would appreciate receiving your completed questionnaire no later than April 14, 2000. The enclosed postcard should be mailed separately. This will let us know that you have responded but will assure the anonymity of your answers.***



