

2005

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## Recommended Citation

Susan Saab Fortney, *The Billable Hours Derby: Empirical Data on the Problems and Pressure Points*, 33 Fordham Urb. L.J. 171 (2005)  
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## THE BILLABLE HOURS DERBY: EMPIRICAL DATA ON THE PROBLEMS AND PRESSURE POINTS

*Susan Saab Fortney\**

If you ask law firm attorneys to identify their biggest complaint related to private law practice, most will probably respond with one word: billing.<sup>1</sup> At the same time, clients are likely to identify billing as their most serious concern associated with obtaining legal services.<sup>2</sup> The irony in clients and attorneys sharing frustration over hourly billing relates to the fact that the initial interest in hourly billing stemmed from attorneys' desire to be efficient and to maximize their earnings and clients' preference for only paying for the actual time expended on their behalf.<sup>3</sup> Since the 1960s, hourly

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\* I thank Professor Bruce Green, Professor Russell Pearce, and the members of the FORDHAM URBAN LAW JOURNAL for the opportunity to participate in this worthwhile symposium on professional challenges facing large law firms. I also appreciate the support of the NALP foundation and the assistance of its president, Paula Patton. Finally, I recognize the contributions of the many lawyers who participated in the NALP Foundation Work-Life Study.

1. As explained by President of the American Bar Association, Robert E. Hirshon, in his Preface to the A.B.A. Commission on Billable Hours Report, "It has become increasingly clear that many of the legal profession's contemporary woes intersect at the billable hour." A.B.A. COMMISSION ON BILLABLE HOURS REPORT 2001-2002, available at <http://www.abanet.org/careercounsel/billable.toolkit/bhcomplete.pdf> at ix [hereinafter A.B.A. BILLABLE HOURS COMMISSION REPORT].

2. A recent American Bar Association Section of Litigation study on public perceptions of attorneys found attorneys fees to be at the heart of many consumers' negative experiences with attorneys. According to the study report: "Of all the criticism that consumers raise about their personal experiences with lawyers, the greatest number of complaints arise around lawyers' fees. Consumers say that lawyers charge too much for their services, are often not up front about their fees, and are unwilling to account for their charges or hours." Leo J. Shapiro & Associates, *Public Perceptions of Lawyers—Consumer Research Findings*, 2002 A.B.A. SEC. LITIG. 14, available at <http://www.abanet.org/litigation/lawyers/publicperceptions.pdf>.

3. In the 1960s, management consultants suggested that attorneys who used hourly billing to determine their fees made more than those who used other methods. Stephen W. Jones & Melissa Bear Glover, *The Attack on Traditional Billing Practices*, 20 U. ARK. LITTLE ROCK L. REV. 293, 294 (1998). At the same time, corporate managers and members of the business community reportedly welcomed hourly billing because it enabled clients to "correlate the 'product' that they are buying to the products 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)).

billing has evolved as the dominant billing method used by non-contingency fee attorneys.<sup>4</sup> When hourly billing became widespread, the number of billable hours expected of firm attorneys dramatically increased as billable hours clocked and business generated assumed greater importance in evaluating attorney contributions and compensation.<sup>5</sup> As explained by one commentator, “[h]ourly billing, which started as a tool for law office management, turned into a requirement for all timekeepers to bill a large minimum number of hours per year. Salary, bonus and growth within the firm began to be largely based on the number of hours billed.”<sup>6</sup>

Over the last decade the number of hours expected of associates increased along with hikes in associate salaries.<sup>7</sup> Pointing to the spiral of increases in associate salaries followed by increases in billable hours requirements, firm managers may engage in an exercise of blaming the “greedy associates.” Another reaction involves blaming the “greedy partners” who seek to preserve or even increase partner revenues, while using higher salaries to recruit associates.

Insiders and outsiders alike have speculated on the short and long-term effects of these increases in billable hours expectations.<sup>8</sup> To gauge the effects of these increases, I conducted a 1999-2000 empirical study of associate satisfaction, law firm culture, and billing practices. This study used a mail questionnaire to survey 1000

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4. See Robert E. Hirshon, *Law and the Billable Hour, A Standard Developed in the 1960s May Be Damaging Our Profession*, A.B.A. J., Feb. 2002, at 10 (noting that hourly billing became the norm in the 1960s with the elimination of bar fee-schedules and a cost-conscious revolt against the one-line fee letters). While clients “enjoy the detail [of hourly billing], firms enjoy the limited risk and the ease of valuing associates and partners.” *Id.*

5. For the history of hourly billing that traces the shift from “billable hours goals” to “billable hour commitments,” see A.B.A. COMMISSION ON BILLABLE HOURS REPORT, *supra* note 1, at 3 (observing that “billable hour commitments reached unreasonably high levels in many firms” during the 1990s).

6. Gerald F. Phillips, *The Rules of Professional Conduct Should Provide Guidance to Attorneys with Respect to Billing Clients*, PROF. LAW., Spring 2004, at 2.

7. For a discussion of the connection between increases in associate salaries and billable hour requirements, see Susan Saab Fortney, *I Don't Have Time To Be Ethical: Addressing the Effects of Billable Hour Pressure*, 38 IDAHO L. REV. 305, 305-06 (2003) (referring to one analysis that estimated that associates would be working an extra 300 hours a year to fund some salary increases).

8. See, e.g., A.B.A. BILLABLE HOURS COMMISSION REPORT, *supra* note 1, at 5-11 (reviewing the “unintended consequences” and “corrosive impact of emphasis on billable hours”); WILLIAM G. ROSS, *THE HONEST HOUR: THE ETHICS OF THE TIME-BASED BILLING BY ATTORNEY* (1996) (analyzing the results of two surveys on billable hours practices).

associates practicing in Texas firms with more than ten attorneys.<sup>9</sup> Five years later, in 2005, I conducted another empirical study on attorney work-life issues and employer efforts to assist attorneys in dealing with work-life conflicts. The 2005 study, funded by The NALP Foundation, was a cross-profession national study of supervised and managing attorneys in law firms, government offices, and in-house counsel departments. Although the NALP Foundation study, called *In Pursuit of Attorney Work-Life Balance: Best Practices in Management* (“2005 NALP Foundation Work-Life Study”), focused on work-life issues, billable hours pressure emerged as a concern shared by numerous firm attorneys.<sup>10</sup> In discussing the time famine and other work-life conflicts encountered by practitioners, numerous study participants commented on the tyranny of the billable hour.<sup>11</sup>

In an effort to formulate possible solutions to problems identified by practitioners, this article uses information obtained in both studies to discuss firm culture, compensation systems, attorney perceptions, and conduct. For background and context, Part I describes the 2005 NALP Foundation Work-Life Study rationale and methodology. Part II summarizes select study findings related to billable hours requirements and pressure. The text of this article discusses select findings from the 2005 NALP Foundation Work-Life Study relating to billable hours requirements; the footnotes compare those findings to the results of the 1999-2000 Associate Study. Part III concludes by considering what forces and players will change the current course of conduct in which law firm leaders treat increases in billable hours expectations as a necessary evil.

## PART I: STUDY RATIONALE AND METHODOLOGY

In 2005, The NALP Foundation conducted a national study of attorneys’ work-life balance issues to help attorneys and their employers better understand and evaluate work-life conflicts and approaches for addressing conflicts. Unlike other studies that focused on attorneys in one state or practice setting, the study

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9. For a discussion of the study methodology, results, and recommendations, see 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, 243-99 (2000) [hereinafter *1999-2000 Associate Survey*].

10. For the complete study report, see SUSAN SAAB FORTNEY, IN PURSUIT OF ATTORNEY WORK-LIFE BALANCE: BEST PRACTICES IN MANAGEMENT (Paula Patton ed., 2005) [hereinafter 2005 NALP FOUNDATION WORK-LIFE STUDY].

11. See *infra* Part II.

sought information from a national sample of managing and supervised attorneys in different practice settings.

The national study involved two phases, one designed to yield quantitative information and one designed to provide qualitative information. In Phase One of the study, survey information was obtained using two questionnaires, one for managing attorneys ("Managing Attorney Work-Life Survey") and one for supervised attorneys ("Attorney Work-Life Survey"). In February 2005, these questionnaires were mailed to a random sample of attorneys in law firms, corporations, and government agencies.<sup>12</sup>

The study design called for 250 questionnaires to be sent to managing attorneys in each of the following groups: government offices, corporate legal departments, and law firms of varying sizes.<sup>13</sup> In addition, four supervised attorneys in each of these segments were randomly selected to receive the Attorney Work-Life Survey. After sampling and dropping names for reasons such as address problems, the final sample consisted of 1,138 managing attorneys and 4,649 supervised attorneys in all segments.<sup>14</sup>

The mailing of the Attorney Work-Life Survey and Managing Attorney Work-Life Survey yielded 679 responses for a response rate of 12.3 percent for supervised attorneys and 9.4 percent for managing attorneys. The responses from managing and supervised attorneys were spread among each practice segment.<sup>15</sup>

After survey responses were received, nine focus group sessions were conducted to provide a mix of perspectives from attorneys in different practice areas, positions, and regions.<sup>16</sup> In these focus groups, managing and supervised attorneys candidly and confidentially discussed work-life issues.<sup>17</sup> The focus group discussions provided opportunities to explore specific issues identified in Phase

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12. For information on the number of respondents in each category, see 2005 NALP FOUNDATION WORK-LIFE STUDY, *supra* note 10, at app. A, 84-85.

13. The law firm study population targeted attorneys in Large Firms, defined as firms with more than 150 attorneys in all offices, Mid-Sized Firms defined as firms with 50 to 150 attorneys in all offices, and Small Firms, defined to be firms with 10 to 49 attorneys in all offices. *Id.* at 84.

14. *See id.* at 83-86 (providing additional information on the survey methodology).

15. *Id.* at 84-85 (providing detailed information on the response rates of each practice sector).

16. *Id.* at 85-86. A focus group coordinator used a variety of means to invite attorneys to participate in focus groups in their area, including email invitations sent by law schools and bar associations, as well as individual invitations sent to a random sample of attorneys in the select cities). *Id.*

17. *Id.* at 86. Focus groups met in Chicago, Houston, Los Angeles, New York City, and Washington, D.C. Firm associates and partners met in separate focus groups. *Id.*

One of the study.<sup>18</sup> Focus group participants also provided insights and anecdotal information related to their experiences and perspectives on work-life issues, employer programs, employer policies, and best practices related to attorneys balancing their work and personal lives.<sup>19</sup>

## **PART II: GENERAL PROFILE OF RESPONDENTS AND SURVEY FINDINGS RELATED TO BILLING AND BILLABLE HOURS EXPECTATIONS**

The survey generated responses from managing and employed attorneys working in government offices, in-house legal departments, and firms with ten or more attorneys in all branches or offices worldwide. The discussion below focuses on information provided by law firm respondents.

The majority of firm respondents (81.9 percent) were associates on the partnership track, eight percent were law firm attorneys not on the partnership track, and 0.5 percent were contract attorneys. Most of these respondents (93.2 percent) worked on a full-time basis and 6.8 percent worked on a part-time basis.<sup>20</sup>

Both survey instruments asked respondents to provide information related to hours billed and billable hours expectations, if any. Survey data reflects the trend among law firms to adopt minimum billing expectations or requirements.<sup>21</sup> When asked to indicate whether the respondent's organization has a minimum billable hours expectation or requirement for associates, 82.8 percent of firm managing attorneys checked "yes" and 85.6 percent of firm supervised attorneys checked "yes." The questionnaires then asked respondents to note the annual billing expectation or requirement. The mean number of hours for the billable hours re-

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18. *Id.* at 86. An experienced focus group facilitator used a query script to guide the discussion. The query script covered the following areas: (1) work-life conflicts and work demands; (2) organizational policies, practices and work-life strategies; (3) organizational culture and attitudes related to work-life issues; and (4) professional expectations and attorney retention. *Id.*

19. See 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, at 85-115 (providing additional information on the focus groups).

20. *Id.* at 9. Among all respondents from the three practice sectors, 5.9 percent indicated that they worked part-time. *Id.*

21. See Molly George, *Do You Get What You Pay For? Measure Your Associates' ROI*, LEGAL MGMT., May-June 2003, at 58, 62 (noting that most firms require between 1,700 and 2,300 billable hours from their associates). Across the Atlantic, "col-legal" British firms have joined the movement to set and increase billable hours targets. Gail Diane Cox, *A Hop Across the Pond Fills New York Firms' Pockets*, THE RECORDER, Sept. 11, 2003, at 2.

quirement or expectation was 1,861 hours per year based on managing attorney responses and 1,887 hours per year based on supervised attorney responses.

Table One below sets forth the mean calculations by firm size based on supervised attorney responses on billable hours requirements and hours actually billed.

**TABLE ONE<sup>22</sup>**  
**FIRM SIZE AND ANNUAL MINIMUM BILLING REQUIREMENT AND**  
**HOURS BILLED IN 2004 AS REPORTED BY SUPERVISED**  
**FIRM ATTORNEYS**

Firm Size	Mean Hours Required	Mean Hours Billed in 2004
Small Firms (10-49 attorneys)	1867	1886
Mid-size Firms (50-150 attorneys)	1895	1953
Large Firms (151-300 attorneys)	1919	1971
Very Large Firms (over 300 attorneys)	1930	2059

The mean calculations in Table One reflect that the mean for hours required, as well as hours actually billed in 2004, increased with firm size. In firms of all sizes, the mean number for hours billed exceeds the minimum billable expectation, anywhere from nineteen hours for Small Firms to 129 hours for Very Large Firms. Associates whose billable hours production exceeds the minimum requirement may expect favorable treatment when considered for bonuses and promotion.<sup>23</sup>

Survey responses also reflect the movement among firms to use billable hours production to determine bonuses.<sup>24</sup> In the survey, the majority of managers and supervising attorneys reported that associate bonuses are largely based on billable hours production. While eighty-three percent of supervised attorneys indicated that

22. 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, at 10.

23. These associates may understand that, "most law firms tie associate performance assessments to billable hours . . ." *Billable Hours: An On-Going Threat to Associate Retention*, COMPENSATION & BENEFITS FOR L. OFF., Sept. 2002, at 11.

24. See *AMLAW 100 Revenues Climb, But not Profits*, N.Y.L.J., July 2, 2001, at 1 (referring to the trend to link bonuses to billable hours). Questioning the wisdom of hours-driven incentives, one large Texas firm has recently moved from an "hours-driven bonus system" to a discretionary one. Brenda Sapino Jeffreys, *Thompson & Knight Raises Associates' Base Salaries*, TEX. LAW. Aug. 9, 2004, at 1. In explaining the shift in approach, the managing partner of Thompson & Knight explained, "We had an hours-driven bonus system, and we decided that was not the best system for associate development, or for client service . . . If it's hours driven, people do what you measure." *Id.*

bonuses were largely based on billable hours production, only 67.2 percent of firm managing attorneys answered in the affirmative. This difference in percentages could reflect the fact that different law firms may be represented by the respondents in the two surveys. Another possibility is that a large percentage of associates may perceive billable hours production as “driving the bonus train,” although managing attorneys may not share that perception. A third possibility is that some managing attorneys either genuinely believe that they base bonuses on a variety of factors or decline to acknowledge the significant role that hours play in bonus determinations.<sup>25</sup>

Other survey responses provide supervised attorneys’ perspectives on the firm incentives to clock hours. The majority of firm supervised attorneys (fifty-two percent) agreed with the following statement, “My career advancement is principally based on the number of hours that I work.”<sup>26</sup> Only twenty-two percent disagreed with the statement.<sup>27</sup>

Overall, a commonly expressed complaint related to “quantifying” worth and contributions based on billable hours production. One supervised firm attorney simply stated that “devotion equals promotion. The more you work the higher you rise.”<sup>28</sup> Other respondents commented on other consequences of emphasizing billable hours production.<sup>29</sup> One consequence that should concern

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25. Rather than using an hours-driven bonus system, some firms rely primarily on salary adjustments to recognize total contributions made by attorneys. For example, Schmeltzer, Aptaker & Shepard, P.C., a mid-size litigation boutique, evaluates partners and associates “holistically,” considering a number of factors, as opposed to setting compensation solely on hours. A.B.A. BILLABLE HOURS COMMISSION REPORT, *supra* note 1, at 54-55.

26. Out of the fifty-two percent of respondents who indicated that they agree with this statement, nineteen percent indicated that they “strongly agree.” In the 1999-2000 Associate Study, thirty-two percent of 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 forty-four percent indicated that they “somewhat agree” with the statement. 1999-2000 Associate Study *supra* note 9, at 277.

27. Approximately four percent of the twenty-two percent of respondents indicated that they “strongly disagree” with the statement, “My career advancement is principally based on the hours that I work.” 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, app. B at 97.

28. *Id.* at 19.

29. One respondent referred to this as an “obsession with the numbers.” Unpublished data from the 2005 NALP FOUNDATION WORK-LIFE SURVEY (on file with author) [hereinafter UNPUBLISHED WORK-LIFE SURVEY DATA]. In criticizing reliance on “the numbers,” one commentary warns that “using the number of hours to bill clients and assess productivity reduced attorneys’ work to something on par with a quota system” condemned in other settings. Robert Pack, *The Tyranny of the Billable*



firms as providers of legal services and clients is that rewarding high billable hours production “breeds overwork.” As explained by a supervised firm attorney, an “efficient and productive associate” is “penalized,” while the associate who may “pad” hours “gets a significant raise/bonus.”<sup>30</sup> Another survey respondent described the competitive disadvantage for ethical associates as follows:

The 2000 billable hour requirement is an impossible task for an HONEST hardworking attorney. I am here every day at least 12 hours and NEVER take a lunch. But not everything is billable. I made my hours last year but did so only because I did not take a vacation. I HATE being an attorney! I have no life. I know that my colleagues regularly falsely elevate their time entries. They have to because they all take lunches everyday and leave at 5 or 6 every night.<sup>31</sup>

This quotation captures the dilemma for ethical attorneys. If a firm largely bases compensation on hourly production, ethical associates who refuse to pad time may function at a competitive disadvantage when compared to associates who inflate their time. Based on study findings from my 1999-2000 empirical study on billable hours expectations and firm culture, I opined that a serious deleterious effect of “quantifying” value may be the exodus of ethical associates who leave private law practice rather than rationalizing questionable billing practices.<sup>32</sup>

Focus group participants provided additional insights on the connection between billing hours and firm culture, compensation, and attorney conduct. Firm associates and partners alike discussed increased pressure to bill. For example, in response to an inquiry on perceived changes in the legal profession, one New York partner noted that the demand for hours is “substantially higher.”<sup>33</sup>

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*Hour*, WASH. LAW., Jan. 2005, at 20. Personnel claims may be an unintended consequence of “quantifying” contributions. See *1999-2000 Associate Survey*, *supra* note 9, at 275-78 (discussing the risks of emphasizing quantity over quality).

30. UNPUBLISHED WORK-LIFE SURVEY DATA, *supra* note 29.

31. *Id.*

32. The *1999-2000 Associate Survey* asked respondents to indicate whether they agreed with the following statement: “Billing pressure causes ethical and competent attorneys to leave private law practice.” Forty-six percent agreed with the statement, while twenty-three percent disagreed. The balance neither agreed nor disagreed. *1999-2000 Associate Survey*, *supra* note 9, at 279 (concluding that findings related to the “exodus of ethical associates” may be “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”).

33. UNPUBLISHED WORK-LIFE SURVEY DATA, *supra* note 29. Another partner participant in the New York focus group concurred, stating, “Hours that are required

Partners participating in focus groups recognized the connection between increases in billing expectations and salary hikes. One Chicago partner questioned the trend of “mandating advancement in salary levels based upon mandated billable hours for the year.”<sup>34</sup> The partner explained that this trend resulted first in a “real bump in associate-starting salaries” and then an increase in the “level of billable hours . . . not only for associates, but for partners.”<sup>35</sup>

Commenting on increases in salary and billable hours requirements, an associate participating in the New York focus group explained:

The hours keep going up and it doesn't seem like there is a limit or ceiling on how high a firm thinks it can put those billable hours. . . . As the hours keep going up [there] is less recognition that you have a life outside of work and more recognition that you are supposed to be here billing. . . .<sup>36</sup>

Respondents frequently commented on employer emphasis on billable hours production and the pressure to clock long hours. In struggling to meet billing expectations or targets, respondents explained the additional time commitment associated with completing non-billable tasks such as recruiting, training, speaking, writing, and marketing. Some noted that this non-billable work does not receive credit or consideration for bonus purposes.<sup>37</sup>

For many, billable hours pressure and long hours were at the heart of work-life conflicts. From the standpoint of individual attorneys, the “obsession with the numbers” may make it difficult for people to be successful and have a balanced life. According to one respondent, “Obviously, my major life struggle comes from billable

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now are much greater than 10, 12 years ago, and I don't see any let up in sight going forward, either for partners or associates.” *Id.*

34. UNPUBLISHED WORK-LIFE SURVEY DATA, *supra* note 29.

35. *Id.* In speaking of the practice of “mandating advancement in salary levels based upon a mandated billable hours for the year,” the Chicago partner stated, “I think the profession would be better served and I think clients would be better served if that . . . became an unethical practice.” *Id.*

36. 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, at 67. The associate reported a willingness to take “\$25,000 less if you gave me back those fifty hours.” UNPUBLISHED WORK-LIFE SURVEY DATA, *supra* note 29.

37. In recognition of the fact that attorneys must devote time to activities such as continuing legal education, business promotion, and administrative work, the old rule of thumb was that one-third of an attorney's work time is non-billable. William G. Ross, *Kicking the Unethical Billing Habit*, 50 RUTGERS L. REV. 2199, 2203 (1998) (explaining that experts agree that approximately one-third of office time is “typically consumed by non-billable activities”). Apparently, this message has not been conveyed to associates who maintain that non-billable time should “count” toward billable requirements. UNPUBLISHED WORK-LIFE SURVEY DATA, *supra* note 29.

hours. I NEVER stay at work late because there's work to be done. I ONLY stay late, and deprive my family for a billable hour."<sup>38</sup>

A few managing attorneys commented on the personal toll taken when firms increase billable hour expectations. One firm manager noted that it was "ludicrous" that large firms that require over 2000 hours as a minimum "are also interested in quality of life issues."<sup>39</sup> The manager went on to say, "There is NOTHING more damaging to work-life issues than unrealistic billable hours. You don't need concierge services and other perks like that if your people have enough of a balance in their lives."<sup>40</sup>

In response to the open-ended inquiry that asked supervised attorneys to describe improvements their employers could make to ameliorate work-life conflicts, some respondents recommended eliminating billable minimums.<sup>41</sup> Many more urged lowering the billable hours requirement or target.<sup>42</sup> One respondent criticized a 2000 per year minimum, stating: "It is ridiculous that [2000 hours] is considered a 'minimum.' With a minimum that high I have no need to know what a maximum or above average expectation looks like."<sup>43</sup>

Beyond the work-life conflicts created by increased billable hours pressure, focus group participants, like survey respondents, expressed concern about inefficiency and unnecessary work performed when compensation structures create incentives to bill.<sup>44</sup>

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38. 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, at 19.

39. *Id.* at 29.

40. *Id.*

41. As stated by one supervised attorney who completed the Attorney Work-Life Survey:

Get rid of the billable minimum! It makes law firm work too stressful; it encourages bill padding, it discourages training. Law firm culture already insures we won't say "no" to assignments, so we don't need the 1950 threat looming over us to make us work and because our compensation is tied to meeting the 1950 threshold, its unfair to penalize associates who don't meet that requirement in years when there wasn't enough work available. It's a bad system.

UNPUBLISHED WORK-LIFE SURVEY DATA, *supra* note 29.

42. *Id.* For example, one respondent recommended reducing "minimum billable hours to a realistic goal, say 1,700-1,800." *Id.*

43. *Id.*

44. The focus group respondents shared concerns similar to those expressed by various commentators who question rewarding hours production. See 1999-2000 *Associate Survey*, *supra* note 9, at 275-78. As suggested by Professor David B. Wilkins and G. Mitu Gulati, using hours to measure associates' work creates an incentive for associates to inflate their hours. David B. Wilkins & G. Mitu Gulati, *Reconceiving the*

Speaking of high billable hours expectations, one Chicago partner cautioned:

There has to be a temptation—and then it gets realized—of billing hours that are, indeed, not necessary or not efficient because of the target of maintaining those billable hours is more important and is a bigger incentive than billing those hours, spending that time because you want to make sure that the clients' interests were served.<sup>45</sup>

Later in the focus group, the same Chicago partner explained that the partner's firm addressed the risk of inefficiency and overworking client matters by requiring billing attorneys to "scrutinize very heavily the hours."<sup>46</sup> Such scrutiny may help allay client concerns about the impact of firm practices of increasing billing requirements and calculating bonuses based on hours billed.<sup>47</sup> In addition, clients or their representatives may audit bills, looking for inefficiency and padding.<sup>48</sup>

While supervising attorneys, clients, and their representatives may be able to detect unnecessary billing entries, compromised performance may be more difficult to detect. To obtain information related to work demands and cognitive performance, the Attorney Work-Life Survey included two inquiries related to cognitive performance. The first question asked respondents to in-

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*Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1594 (1998).

45. 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, at 20.

46. UNPUBLISHED WORK-LIFE SURVEY DATA, *supra* note 29. As explained in a commentary on billing practices, "partners should review bills with new associates each month, so they can see how the law firm billed for their work." Stephanie Francis Ward, *Billing Basics, Associates Need to Learn Nuances of Billing Before Starting Big Projects*, 90 A.B.A. J. 42, 42, Oct. 2004 (quoting a fifth-year associate who suggests that such review does not occur because "everyone is so busy").

47. Unfortunately, anecdotal and study reports suggest that large percentages of supervising attorneys may not be closely monitoring billing entries. In the *1999-2000 Associate Survey*, sixty-one percent of firm associates reported that their supervising attorneys never questioned their billing entries during the past year. *1999-2000 Associate Survey*, *supra* note 9, at 256. Over seventy percent of associates in firms with over 100 attorneys indicated that their billings had never been questioned in the past year. *Id.* Supervising attorneys may be less inclined to devote time to scrutinizing billings, training, and mentoring if the partner compensation turns on objective measures, such as hours billed and business generated. *See id.* at 281-83 (discussing commentary and study findings related to the affect of partner compensation systems on partner willingness to serve as supervisors and mentors).

48. *See* Nat Slavin, *The Never-Ending Quest for Legal Alternatives*, CORP. LEGAL TIMES, Feb. 2004, at 4 (explaining that the 1990s movement to hire independent companies to audit bills was followed by a move to use software and Internet tools to examine fees charged by outside counsel).

dicating the average amount of sleep they obtain. Among law firm respondents, three percent reported that they average less than five hours of sleep per night before a work day and 35.7 percent reported that they average five to six hours of sleep per night.<sup>49</sup> These attorneys may not be obtaining adequate sleep for peak performance because sleep research has revealed that individuals consistently sleeping six or fewer hours per night may be accumulating a "sleep debt" that "cuts into their cognitive abilities."<sup>50</sup>

Another survey inquiry asked respondents to register their opinions on work demands insidiously undermining attorneys' ability to provide top quality legal services. The questionnaire asked supervised attorneys whether they agreed or disagreed with the following statement: "Working long hours adversely affects my ability to think critically and creatively."<sup>51</sup> The majority of firm respondents (62.8 percent) agreed with the statement. Only 19.2 percent of respondents disagreed with the statement.<sup>52</sup>

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49. 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, app. B at 94.

50. "Sleep Debts" Accrue When Nightly Sleep Totals Six Hours or Fewer, *Penn Study Find People Respond Poorly, While Feeling Only "Slightly" Tired*, SCI. DAILY, Mar. 14, 2003, available at <http://www.sciencedaily.com/releases/2003/03/030314071202.htm> (referring to research with sleep-deprived individuals). According to Dr. Hans P.A. Van Dongen, author of the sleep study, "[R]outine nightly sleep for fewer than six hours results in cognitive performance deficits, even if we feel we have adapted to it." *Id.*

51. 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, app. B at 97.

52. *Id.* at 27. The following breaks down the respondents' opinions on the critical thinking statement: 18.4 percent strongly agreed, 44.4 percent agreed, 17.9 percent neither agreed nor disagreed, 16.5 percent disagreed, and 2.7 percent strongly disagreed. In the 1999-2000 Associate Survey, twenty-two percent of respondents strongly agreed with the statement, "Working long hours adversely affects my ability to think critically and creatively." Another forty-two percent "somewhat agreed" with the statement. Only nineteen percent disagreed with the statement. 1999-2000 Associate Survey, *supra* note 9, at 274 n. 219 (discussing survey results and commentary related to the adverse effect on quality when attorneys consistently work long hours).

**TABLE TWO<sup>53</sup>**  
**AGREEMENT WITH STATEMENTS ON STRESS AND WORK-LIFE**  
**BALANCE AS REPORTED BY FIRM SUPERVISED ATTORNEYS**

Statement	Strongly Disagree	Disagree	Neither Agree/Disagree	Agree	Strongly Agree
I feel stressed and fatigued most of the time	3%	22%	22.5%	37.9%	14.6%
I must sacrifice fulfillment outside of work in order to advance in my career	4.1%	16.5%	16.5%	44.7%	18.2%
I have a good balance between my job and personal life	7%	35.9%	20.3%	31.9%	4.9%

Other survey inquiries provided insights related to the personal and professional toll taken when attorneys work long hours with little or no balance between their personal and professional lives. Table Two sets forth the respondents' level of agreement with statements related to stress and work-life balance.

As indicated in Table Two, the majority of law firm respondents indicated that they feel stressed and fatigued most of the time. In addition, the majority of these respondents believe that they must sacrifice fulfillment outside of work in order to advance in their careers. By comparison, smaller percentages of corporate and government respondents agreed with these statements. Among the three practice sectors, law firm respondents reported the lowest percentage of agreement with the statement, "I have a good balance between my job and personal life."<sup>54</sup> Long hours, stress, and work-life conflicts may contribute to job dissatisfaction and the desire to change employers. Survey results outlined in Table Three reveal a relationship between the responses on the work-life balance inquiries and respondents' desire to change jobs in the next two years.

**TABLE THREE<sup>55</sup>**  
**COMPARISON BETWEEN AGREEMENT QUESTIONS AND DESIRE**  
**TO CHANGE JOBS**

Positions on the Statements Reported as Means\*

53. 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, at 27.

54. 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, app. B at 97.

55. 2005 NALP FOUNDATION WORK-LIFE SURVEY, *supra* note 10, at 32.

I have a good balance between my job and my personal life.				
	All	Government	Corporate	Firm
Yes, I want to change employers in the next two years	2.60	3.15	2.50	2.49
No, I do not want to change employers in the next two years	3.48	3.63	3.41	3.43
Not sure if I want to change employers in the next two years	3.07	3.79	3.36	2.85
I must sacrifice fulfillment outside of work in order to advance in my career.				
Yes, I want to change employers in the next two years	3.81	3.27	3.79	3.93
No, I do not want to change employers in the next two years	2.87	2.34	2.93	3.07
Not sure if I want to change employers in the next two years	3.52	2.89	3.25	3.70

\* Higher numbers reflect greater agreement with the statement because means were calculated using the following scale:

1=Strongly Disagree 2=Disagree 3=Neither Agree/Disagree 4=Agree 5=Strongly Agree

Based on the mean calculations set forth in Table Three, respondents not interested in changing jobs reported more agreement with the statement, "I have a good balance between my job and my personal life," than respondents interested in changing jobs. At the same time, the mean calculation for supervised attorneys interested in changing jobs showed more agreement with the statement, "I have to sacrifice fulfillment outside of work in order to advance in my career," as compared to the mean for attorneys not interested in changing jobs. These results are consistent with the commonly held belief that billable hours pressure and long work hours play a prominent role in driving attorneys to the exit door.

"Numerous studies show that attorneys flee law firms because they believe that firms' high billable hours requirements prevent them from balancing their work and their personal lives . . . ."<sup>56</sup> Findings from the 2005 NALP Foundation Work-Life Study add to the body of empirical research indicating that working long hours adversely affects morale, job satisfaction, and retention.<sup>57</sup> In the 2005 study, thirty-seven percent of firm respondents reported that they were interested in changing jobs in the next few years.<sup>58</sup> When asked to identify the factor that was most influential in caus-

56. Joan Williams & Cynthia Thomas Calvert, *Part-Time Progress, Letting Lawyers Cut Back Can Save Money and Retain Talent—If Firms Do It Right*, LEGAL TIMES, Oct. 22, 2001, at 60 (noting that replacing a second or third-year associate costs between \$200,000 and \$500,000).

57. 2005 NALP FOUNDATION WORK-LIFE STUDY, *supra* note 10, 28-33.

58. *Id.*, app. B at 95.

ing them to change jobs, the largest percentage of firm attorneys (26.4 percent) checked "reduction of work hours."<sup>59</sup> The largest percentage of firm respondents who want to change jobs indicated that they were most interested in a corporate counsel job. Evidently, these attorneys are not leaving the field of law, but are interested in escaping billable hours practice.<sup>60</sup>

### **PART III: "BOTTOM-UP" AND MARKET PRESSURE TO ADDRESS THE DAMAGING EFFECTS OF INCREASED BILLABLE HOURS EXPECTATIONS**

While practitioners may bemoan the emphasis on billable hours production and other objective measures of success in law firms, they often express pessimism about the possibility of changes to address work-life conflicts.<sup>61</sup> In the 2005 NALP Foundation Work-Life study, various respondents criticized current approaches used in firms, while suggesting that lawyers are locked into the current system. For example, in response to the open-ended question that asked respondents to describe improvements to "ameliorate work-life conflicts," one respondent stated, "have everyone work less and earn less = fantasy."<sup>62</sup> Another respondent suggested that firms "eliminate billable hours, which will never happen."<sup>63</sup>

A few focus group participants discussed the possibility of change within law firms. One partner participating in a New York focus group attributed recent changes to "bottom-up" pressure from associates who communicate with their feet and leave firms. Change may occur if firms recognize what one Chicago partner de-

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59. For more detailed discussion of the survey results related to morale, satisfaction, and attrition, see *id.* at 95-96.

60. In the *1999-2000 Associate Survey*, thirty-nine percent of respondents reported that they were interested in changing employers in the next two years. When asked to indicate the factor most influential in causing respondents to change jobs, the largest percentage (twenty-eight percent) checked "reduction in hours." The largest percentage of associates who wanted to change jobs (thirty-seven percent) indicated that they were most interested in a "corporate counsel position." *1999-2000 Associate Survey*, *supra* note 9, at 283-87.

61. As stated by one commentator:

Hourly billing causes the lawyer's life to be consumed by the need to log an increasing number of billable hours. Law firms tend to become "hours factories" and the quality of the representation may decline as well as lawyer collegiality. Even though lawyers have recognized the harm caused to their profession and their client relationships, implementing change has been difficult.

Arthur G. Green, *Thinking Outside the Box*, BUS. L. TODAY, May-June 2004, at 17.

62. UNPUBLISHED WORK-LIFE SURVEY DATA, *supra* note 29.

63. *Id.*



scribed as a “powerful business rationale” for adopting policies that reduce “attrition of talented lawyers and the consequent reduction in the need to spend money to recruit and train lawyers. . . .”<sup>64</sup>

To determine what policies and systems will address associate attrition, firm managers can use feedback and recommendations provided by Associate Retention or Quality of Life Committees. In the 2005 NALP FOUNDATION WORK-LIFE STUDY, 41.6 percent of supervised firm attorneys reported that they would “definitely use” a quality of life and/or retention committee.<sup>65</sup> Such committees can serve as channel for associates to communicate their concerns and interests.

In 2002, a demonstration of “bottom-up” pressure occurred at Clifford Chance, the world’s largest law firm.<sup>66</sup> Following the publication of the results of *The American Lawyer’s* 2002 associate survey, in which Clifford Chance rated last, the firm sought feedback from U.S. associates on its personnel committee.<sup>67</sup> This group of six associates prepared a thirteen-page memorandum to Clifford Chance’s partners in its New York office (“Associate Memorandum”).<sup>68</sup> In referring to the “abysmal,” last place ranking in *The American Lawyer’s* October 2002 ‘Associates Survey,’ (‘the *AmLaw* Survey’), the Associate Memorandum stated, “our research has convinced us that the *AmLaw* Survey captures neither the breadth nor the depth of associate anger and frustration.”<sup>69</sup> Thereafter, the Associate Memorandum discussed problems that contribute to associate discontent. After the Associate Memorandum was leaked to the press, the portion of the memorandum that triggered the most attention was the 2,420 billable hours requirement, the first “major problem” listed in the Associate Memoran-

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64. 2005 NALP FOUNDATION WORK-LIFE STUDY, *supra* note 10, at 53.

65. In the same study, only 12.3 percent of supervised firm attorneys indicated that their firm currently had quality of life and/or retention committees. 2005 NALP FOUNDATION WORK-LIFE STUDY, *supra* note 10, app. B at 87.

66. Bob Sherwood, *Clifford Chance Calls “War Council,”* FIN. TIMES, Oct. 28, 2002, at 1.

67. Robert Lennon, *The Memo Heard Round the World*, AM. LAW., Dec. 2002, at 19 (discussing the “veritable uproar” and exaggerated media stories that followed news of the associates’ memorandum).

68. See *id.* (describing the genesis of the Associate Memorandum).

69. The full text of the Associate Memorandum was first reprinted in an article written by Bob Sherwood. See Sherwood, *supra* note 66, at 1. The memorandum itself explains that it incorporates comments made by associates at a Town Hall meeting (attended by approximately 140 associates), associates’ responses to a personnel committee survey, and discussions among personnel committee members and various firm associates.

dum.<sup>70</sup> After explaining that the “requirement constituted the greatest area of discontent by far,” the Associate Memorandum elaborated on specific consequences of the firm imposing such a requirement.<sup>71</sup> In referring to feedback obtained from firm associates, the Associate Memorandum stated:

Associates stated that the requirement is profoundly unrealistic, particularly in slow areas of the firm. Moreover, Associates found the stress on billable hours dehumanizing and verging on an abdication of our professional responsibilities insofar as the requirement ignores pro bono work and encourages “padding” of hours, inefficient work, repetition of tasks, and other problems. Associates expressed concerns that the requirement promotes misallocation of work to senior associates who “need” the hours when less expensive junior associates could do the work. Associates also stated that partners care only about associates’ billable hours.<sup>72</sup>

According to an article in *The Financial Times* that released the full text of the Associate Memorandum, the claims that attorneys were encouraged to “pad” billable hours sparked client inquiries.<sup>73</sup> To address possible client concerns related to overcharging and inflated legal bills, the firm reportedly convened a “council of war” to “co-ordinate strategy and decide on a united message to give to clients.”<sup>74</sup> *The Financial Times* article indicated that the firm “said it would review the billing hours requirement.”<sup>75</sup>

Following the unfavorable press related to the billing requirement and other associate complaints, Clifford Chance took steps to address associate concerns.<sup>76</sup> Press reports suggested that these changes contributed to Clifford Chance scoring the biggest percentage increase among firms rated in *The American Lawyer’s*

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70. A copy of the full text is available at <http://www.lawcost.com/clifchancememo.htm>. According to the Associate Memorandum, the requirements consisted of 2,200 hours of “hard billable” work and 220 hours of “soft billable” time. After the memorandum was leaked, a firm representative confirmed that the firm set a 2,200 hour “target,” while encouraging associates to spend time outside client billables. Lennon, *supra* note 67, at 19.

71. *Id.*

72. *Id.*

73. Sherwood, *supra* note 66, at 1.

74. *Id.*

75. *Id.*

76. Amy Vincent, *On the Move*, AM. LAW., Oct. 2003, at 103 (reviewing results and significant changes of firms rated in the 2003 *Am Law* annual mid-level associate survey).

2003 Associate Survey.<sup>77</sup> *The American Lawyer* indicated that one Clifford Chance associate believed that “the firm has finally convinced associates that it takes their concerns seriously,” and another respondent hailed “the revocation of the 2,420-hour billables requirement.”<sup>78</sup>

Reflecting on the Clifford Chance saga illustrates an interesting interplay of different forces and dynamics involved in large firm practice. First, the story started with *The American Lawyer* survey. Such surveys provide a vehicle for disgruntled associates to grade, laud, lampoon, and criticize their firms. Firms, particularly those seeking to be included in *The American Lawyer* listing of the “top 20 firms” in the legal profession, may take steps to improve their ratings.<sup>79</sup> Second, media reports may affect firm reputation, influence client perceptions, and trigger changes in firm policies and practices. In retrospect, “bottom-up” pressure from Clifford Chance associates, coupled with partner desire to improve survey ratings and the need to avoid client defections, may have led to the firm’s decision to revoke the 2,420-hour billing target.

The efficacy of “bottom up” pressure largely depends on firm size, position, composition, economics, and culture. In some firms, partners who view associates as fungible may discount the need to respond to associate complaints and concerns about billable-hours requirements and firm practices.

Even recalcitrant partners who resist changes sought by associates may take a different stance when forced to deal with market pressure. Specifically, partners may be persuaded to make changes if failure to do so adversely affects their ability to retain and attract clients. This could occur if consumers considered the prospective firms’ attrition rates and billable hours expectations.

General counsel for corporations, as buyers of legal services, are the best prepared client representatives to evaluate the firms that court their business.<sup>80</sup> Over the last two decades, general counsel for corporations have used different approaches in selecting

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77. *Id.* (reporting that Clifford Chance’s score rose from 2.74 in 2002 to 3.398 in 2003, a twenty-four percent increase in the firm’s overall rating).

78. *Id.*

79. In 2003, *The American Lawyer* introduced a list of the “best law firms in the land.” Aric Press, *The A-List*, AM. LAW., Sept. 2004, at 84. This list is based on a “carefully weighted ranking” derived from surveys of the *AmLaw* 200, the highest-grossing U.S. headquartered firms. The ranking is based on the following standards: revenue per lawyer, pro bono work, associate satisfaction, and diversity. *Id.* at 84-85.

80. See Brad Blickstein, “Mr. Inside . . . Mr. Outside”; *Getting the Right Message to General Counsel*, N.J. LAW.: THE WKLY. NEWSPAPER, Dec. 6, 2004, at 2487 (referring to the “increasing sophistication of general counsel as buyers of legal services”).

outside counsel. Faced with intense pressure to reduce amounts expended for outside counsel, many of these approaches involved cost-cutting measures, such as using independent legal auditors, task-based billing, and research outsourcing.<sup>81</sup> While the results of these efforts may be mixed, general counsel continue to proactively seek ideas to minimize the costs of outside counsel while maintaining and enhancing the quality of legal representation.<sup>82</sup> Surveys of general counsel reveal that their most pressing concern is controlling the costs of outside counsel.<sup>83</sup>

Corporate counsel are increasingly asking law firms to lower their bills<sup>84</sup> and to use alternative fee arrangements.<sup>85</sup> In experimenting with alternative fee arrangements, some general counsel recognize that the nature of billable hours practice may drive up the costs of legal services because the billable hours fee structure rewards inefficiency.<sup>86</sup> As explained by a law firm consultant, "Rates don't drive costs, [inefficient] staffing does."<sup>87</sup>

Beyond the inefficiency associated with billing hours to maximize income, increasing billable-hours requirements within firms also impacts the costs of legal services. As discussed in Part II, billable-hours pressure is driving many attorneys out of private practice. In addition to tangible attrition costs, attrition also can adversely impact the firm clients who are served by departed attorneys. Unless the outside law firm absorbs costs of "bringing the new attorney up to speed," attrition can increase the cost of attor-

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81. For a review of the relative success of popular approaches used by general counsel in the 1990s, see Krysten Crawford, *When Good Ideas Go Bad; In the 1990s, A Host of Trendy New Ideas Were Supposed to Change the Practice of Law as We Knew It, But Did They Actually Work?* LEGAL TIMES, Apr. 19, 2004, at 21.

82. Irving B. Levinson, *101 Ways to Control Outside Legal Costs; Part I, Do You Really Need to Hire Outside Counsel? Read This First*, CORP. LEGAL TIMES, Aug. 1995, at 11.

83. *See Cutting Costs*, NAT'L L. J., Oct. 27, 2003, at 6 (reporting that for the third year in a row a American Corporate Counsel survey of in-house counsel indicated that their "most pressing concern is trying to reduce outside legal spending").

84. Tom McCann, *Corporate Counsel Urge Law Firms to Use Business Sense*, CHI. LAW., May 2003, at 36.

85. Thomas L. Sager, *All Corporate Lawyers Should Embrace Alternative Billing*, CORP. LEGAL TIMES, Aug. 1997, at 13 (discussing DuPont's use of alternative fee arrangements).

86. *See, e.g.*, Jeffrey W. Carr & Mark D. Wolf, IN-HOUSE SUPPLEMENT, *Service Means More than Just Billable Hours*, TEX. LAW, Feb. 3, 2003, at 13 (two in-house counsel promoting a new fee-structuring model in which outside counsel share risks and rewards).

87. Crawford, *supra* note 81, at 21 (quoting Peter Zeughauser, a Newport Beach, California consultant).

neys who bill on an hourly basis.<sup>88</sup> Attrition may also adversely affect institutional knowledge and personal relationships.<sup>89</sup> Understanding the costs of turnover, some general counsel are “considering attrition” and quality-of-life issues that affect attrition “in deciding which firms to retain.”<sup>90</sup> General counsel factoring attrition into their selection of firms may spur firms to take additional steps to reduce attrition. As suggested above, setting a reasonable billing target or requirement should improve the retention of many attorneys who indicate that they are changing jobs for a reduction in hours.<sup>91</sup>

Given the connection between attrition and billable hours pressure, general counsel should seek information on firms’ billable hours requirements and factor that information into their decision to hire particular firms. General counsel who focus on the risks and costs associated with high billable hours requirements will realize that such information does not merely relate to firms’ internal operations, but rather to the cost and quality of legal services.<sup>92</sup> Those general counsel who consider billable hours requirements when hiring outside firms recognize that high billable hours requirements create incentives to “overwork” files. They also appreciate that attorneys’ ability to think critically and creatively may be adversely affected by consistently working long hours.

In retaining outside counsel, general counsel already weigh a variety of factors.<sup>93</sup> As demonstrated by the leadership role that gen-

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88. See Peter D. Zeughauser, *The Beauty Contest: Responding to the RFP*, N.Y.L.J., Mar. 14, 1991, at 45 (recommending that law firms address corporate concerns about turnover by undertaking to “absorb the cost of bringing new lawyer up to speed”).

89. Joan Williams & Cynthia Thomas Calvert, *Letting Lawyers Cut Back Can Save Money and Retain Talent—If Firms Do It Right*, LEGAL TIMES, Oct. 22, 2001, at 60.

90. See Lorelie S. Masters, *What Women (Lawyers) Want—And Need, More Than 200 Attorneys Gather in D.C. for NAWL Conference on Career Development, Law Firm Initiatives*, LEGAL TIMES, Apr. 26, 2004, at 18. (citing reports from Professor Joan Williams, Co-Chair of the Attorney Retention Project at American University’s Washington College of Law, and in-house attorneys Carole Jordan of Fannie Mae and Patricia Merrill of GE Asset Management).

91. See *supra* notes 55-60 and accompanying text.

92. See Tamara Loomis, *Partner Status is a Billing Issue*, NAT’L L.J., 2005, at 8. Beyond scrutinizing bills after legal work is already performed, some general counsel have sought information on firm structures and systems. For example, with the recent increase in the number of non-equity partners in firms, the legal department at E.I. du Pont De Nemours & Co. has asked firms to reveal the status of their partners when the firms ask for fee increases. *Id.*

93. Kirkpatrick & Lockhart, LLP, *Top of Mind, Second Annual Survey of In-House Counsel*, [http://www.klng.com/TOM\\_brochure\\_2004/media/topofmind\\_11.pdf](http://www.klng.com/TOM_brochure_2004/media/topofmind_11.pdf) (last visited July 24, 2005). According to a study of senior in-house counsel at FOR-

eral counsel have played in considering the diversity of the firms they retain, general counsel can positively influence firms who compete in “beauty contests” for corporate legal work.<sup>94</sup> By seeking information on firms’ attrition rates and billable hours requirements, general counsel may trigger firms to rethink the current course of affairs.

### CONCLUSION

The voices of study participants put a personal face on the costs and consequences of billable hour pressure. Firm leaders who understand the personal and professional toll of increasing billable hour requirements should fashion alternative work and compensation structures. Even firm principals reticent to change may respond to “bottom-up” and market pressure once they recognize the business case for allowing alternative approaches, such as reduced-hours arrangements for attorneys.<sup>95</sup>

Discriminating general counsel who seek information on firms’ attrition rates and billable hour requirements can play an important role in causing firms to withdraw from the billable hour derby. As suggested by two in-house attorneys who urged firms to be “customer-focused,” “in-house counsel will continue to insist on paying for value and efficiency and such insistence will ultimately lead to a changed law firm economic model.”<sup>96</sup>

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TUNE 500 and 1000 businesses, eighty-nine percent ranked “effective communication” as a top factor when choosing outside counsel. *Id.*

94. See Rick Palmore, *A Call to Action-Diversity in the Legal Profession*, Association of Corporate Counsel (Oct. 2004), at <http://www.acca.com/public/accapolicy/diversity.pdf>. *A Call to Action*, authored by Rick Palmore, the Chief Legal Office of Sara Lee, and signed by numerous general counsel across the country, stated that firms could “positively distinguish themselves through their diversity efforts.” The signatories also stated that we “intend to end or limit our relationship with firms whose performance consistently evidence a lack of meaningful interest in being diverse.” *Id.*; see also Leigh Jones, *GCS Call For Greater Diversity Among Top-Tier Firms*, THE RECORDER, Mar. 31, 2005, at 3 (explaining that *A Call to Action*, signed by hundreds of general counsel, is a revised version of a 1999 proclamation calling for more diversity in law firms). For a description of general counsel efforts to promote and track firm diversity, see Nathan Koppel, *The 27 Winners of the Oil Giant’s Beauty Contest Have One Thing in Common: The Firms Can Show—Through Hiring and Billable Hours-How Serious They are about Diversity*, CORP. COUNS., Aug. 2004, at 106.

95. 2005 NALP Foundation Work-Life Study, *supra* note 10, at 50-51. For an excellent commentary on the business justification for allowing attorneys to work less and make less, see JOAN C. WILLIAMS & CYNTHIA THOMAS CALVERT, *SOLVING THE PART-TIME PUZZLE: THE LAW FIRM’S GUIDE TO BALANCED HOURS* 11-23 (2004).

96. Carr & Wolf, *supra* note 86, at 13.

Rather than waiting for general counsel to inquire about attrition rates and billable hours requirements, law firms leaders could impress general counsel and other consumers of legal services by taking steps to address various deleterious effects of billable hours practice. For example, firms could lower onerous billable hours requirements and discontinue linking bonuses to billable hours production.<sup>97</sup> By adopting the Law Firm Billing Policy and “best practices” described in the ABA Billable Hours Commission Report, law firms can distinguish themselves when seeking business from new clients and fortifying relationships with existing clients.<sup>98</sup> In the long run, the desire to attract and retain clients may bring billable hour requirements back to a reasonable level, promising to improve the quality of work for clients and quality of life for firm lawyers.

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97. According to the A.B.A. Billable Hours Commission Report, a compensation “system that ties compensation—whether salary or bonus—directly to billable hours with no flexibility and no reflection . . . is a ‘worst practice.’” A.B.A. BILLABLE HOURS COMMISSION REPORT, *supra* note 1, at 46.

98. *Id.* at 46-51. To discourage associates from “simply compiling more hours for more money,” the A.B.A. Billable Hours Commission recommends that firms “place a ceiling on the number of hours, over which no additional compensation in salary or bonus will be paid regardless of how high the hours.” *Id.* at 47.