

# **The Law Firms Working Group**

## **ANNOTATED BIBLIOGRAPHY ON LARGE LAW FIRM ECONOMICS**

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This annotated bibliography compiles sources related to the economics of large law firms. The areas covered in detail are the partnership and economic structures of large law firms, the rise of the billable hour, and the drivers of attorney satisfaction.

## Introduction

We originally set out to answer the following questions regarding large law firm economics:

- (1) What are the reasons behind the rise of the billable hour, and are billable hour levels likely to remain high?
- (2) How are large law firms organized, and how does the billable hour factor into their profitability?
- (3) Are lawyers generally unhappy, as conventional thought would have it? What role does the billable hour play in their levels of satisfaction?

As we began our research, we realized it would be helpful to understand why large law firms are organized as they are. We found that originally most were general partnerships, but as an increasing number of states passed statutes allowing professional associates to organize as LLPs in the early 1990s, the LLP rather rapidly became the chosen form for large firms. Scholars have come up with a number of theories to explain the rise of the LLP, including rising liability fears, larger transaction sizes, inability of partners in large firms to adequately monitor one another, more frequent malpractice awards, failure of malpractice insurance to keep pace with the risks, and intricacies of internal firm economics and culture. *See generally* Scott Baker and Kimberly D. Krawiec, “Uncorporation: A New Age?: The Economics of Limited Liability: An Empirical Study of New York Law Firms”; Robert W. Hillman, “Organizational Choices of Professional Service Firms: An Empirical Study”; Poonam Puri, “Judgment Proofing the Profession.” One of the most cited books about large law firm economics is Mark Galanter and Thomas Palay’s 1971 *Tournament of Lawyers: The Transformation of the Big Law Firm*. The authors apply “tournament theory” to the up-or-out promotion-to-partnership competition that exists in the elite law firms they studied. They argue that the tournament works as a monitoring device to ensure that associates will not engage in opportunistic behavior by “shirking” or failing to exert maximum effort or develop professionally, “grabbing” by taking a partner’s client, or “leaving” by going somewhere else and taking the firm’s investment of training with them.

One notable critique of Galanter and Palay’s work is David Wilkins and G. Mitu Gulati’s 1998 “Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms,” in which the authors challenge several of the assumptions upon which *Tournament* relies. Wilkins and Gulati use signaling theory and relational capital to produce a more nuanced analysis of what they believe actually motivates large law firm associates to diligently work long hours. Specifically, they argue that, rather than working hard at their firms simply to make partner, associates are motivated by high wages, the fear of losing the reputational “bonds” they have with their firms, and their desire for the firms to train them. In response, the firms engage in “tracking” or only giving top-performing associates access to training and advancement opportunities; “seeding” or selectively starting some on the

training track based on those associates' prior achievements; and "information control" so that associates only have vague ideas about partnership criteria.

Next, we looked into why firms continue to grow seemingly exponentially. A series of articles between 1985 and 1990 by Gilson and Mnookin, especially "Sharing Among the Human Capitalists: An Economic Inquiry Into the Corporate Law Firm and How Partners Split Profits," examined what economic advantages a large law firm can provide. A large law firm creates an economy of scale, driving down the marginal average cost for each unit provided to the client. It has the advantage of specialization, which is increasingly important to clients. The reputation of large law firms signals quality of service, regardless of the clients' familiarity with individual lawyers. Finally, a large law firm provides hedging in the face of business cycles, given that intra-firm practice area variations offset each others' highs and lows. The large format, however, may introduce unique disadvantages. In a large law firm, partners may have incentive to "shirk" from their duties; they may ask for a higher percentage of firm profits by threatening to depart and taking some of the clients with them; and they may leave the firm with their clients and business in tow.

Since Gilson and Mnookin's 1985-1990 studies, though, a number of other articles, such as Baker and Parkin's "The Changing Structure of the Legal Services Industry and the Careers of Lawyers," have examined this topic and refined Gilson and Mnookin's theories. While the occasional article criticizes Gilson and Mnookin in passing, their general framework has withstood scrutiny and lays out the basic tenets upon which others have relied.

Finally, we focused on attorney satisfaction. Academics and the media have popularized the notion that attorneys, and especially large law firm attorneys, are extraordinarily unhappy. This section of our research investigated the most popular arguments and data used to support such claims.

First, if attorneys are unhappy, it is not because unhappy people choose to attend law school in unusually high rates. The work of Benjamin, et al. in "The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers," shows that entering law students are "normal" relative to the general population and become progressively unhappier as they progress through their schooling, even more so than other graduate and professional school students. This line of research is most compelling when it avoids broad questions of "satisfaction," and instead measures specific symptoms associated with unhappiness, including depression and anxiety.

This specificity is largely lost, however, in many pieces discussing the plight of practicing attorneys. Considering the profession as a whole, the data on attorney satisfaction are inconclusive. The surveys referenced by Patrick J. Schiltz's seminal article, "On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession," ostensibly showing that lawyers and especially large firm attorneys are miserable, are not entirely sound. Several surveys he cites have very low response rates, improperly selected samples, or results one critic (Hull) says are "greatly

exaggerated” by Schiltz to advance his argument. Similarly, other surveys would be more compelling if they more precisely reported their results. The American Lawyer’s mid-level associate surveys, for example, report one figure for average satisfaction per firm (without even an appropriate sample per firm), instead of breaking it down by percentages of associates reporting *how* satisfied they are (e.g., very dissatisfied, dissatisfied, satisfied, or very satisfied).

Satisfaction is described in this manner in Heinz’s *Chicago Lawyers* study, which found that large law firm attorneys are in the middle of the satisfaction spectrum when compared to attorneys in other practice settings. More public interest and government attorneys are “very satisfied” than large law firm attorneys, but more public interest and government attorneys are “very dissatisfied” than large law firm attorneys. In short, large law firm attorneys cluster in the middle, at “satisfied,” while other groups are skewed at the ends. Ultimately, however, few studies are specific as to how satisfaction is measured, and it would be helpful to have better data on clinical symptoms experienced by attorneys in different sectors, much like the data currently available on law students.

We have found a limited number of studies investigating specific areas of dissatisfaction, which suggest that working at a large law firm is a “satisfaction trade-off.” For example, according to the After the J.D. research, attorneys at large law firms are relatively unhappy with their control over the amount of work, job independence, trust given to them, and their employer’s policies. Several of these variables are correlated with lower overall satisfaction. But these potentially negative attributes of large law firm work are somewhat offset by high levels of satisfaction with compensation and opportunities for future job advancement.

Evidence about the effect of hours and billable requirements on attorneys is similarly nuanced. Young attorneys work very long hours, and those at large law firms are most likely to work over sixty hours each week, according to After the J.D. And there is a relationship between hours worked and mental and physical symptoms. No study, however, directly measures the toll of hours and billables on attorney happiness. With an appropriate data set, an estimate of this relationship could be more precisely measured.

## **Included Articles**

### **I. General Relevance**

Robert L. Nelson et al., *Observations from the After the JD Survey of the Bar Class of 2000*, 24 QUINNIPIAC L. REV. 539 (2006).

### **II. The Partnership and Economic Structures of Large Law Firms**

Altman Weil, Inc., *Annual Surveys of Law Firm Economics*, available at <http://www.altmanweil.com/publications/surveys/> for a fee.

Joseph B. Altonji & William G. Johnston, *Time to Rethink Associate Compensation*, N.Y. L.J., Feb. 28, 2002, available at [https://www.hildebrandt.com/Documents.aspx?Doc\\_ID=1046](https://www.hildebrandt.com/Documents.aspx?Doc_ID=1046).

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Scott Baker & Kimberly Krawiec, *Uncorporation: A New Age?: The Economics of Limited Liability: An Empirical Study of New York Law Firms*, 2005 U. ILL. L. REV. 107 (2005).

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### **III. The Rise of the Billable Hour**

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#### **IV. Understanding the Drivers of Attorney Satisfaction**

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Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & LAW 261, 281 (2004), available at [http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/images/undermining.pdf](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/images/undermining.pdf).

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## Annotated Bibliography

### *I. General Relevance*

**Robert L. Nelson et al., *Observations from the After the JD Survey of the Bar Class of 2000*, 24 QUINNIPIAC L. REV. 539 (2006).**

Hours: “New lawyers are generally portrayed in the legal press as overworked to a point of exhaustion. The AJD study suggests that this image is greatly exaggerated, even for large firm lawyers. In the entire sample, the mean number of hours reported for a typical work week was 49 and the median 50 — compared with a median of 40 hours for all full-time workers in the United States (US Census Bureau, 2000 Decennial Census of the United States, 5% Public Use Microdata Sample, 2002). The reported time commitment for new lawyers also is consistent with data reported on the general population of American lawyers (US Census Bureau, 2000 Decennial Census of the United States, 5% Public Use Microdata Sample, 2002).

The stereotypes, however, are not without some basis. About 20% of all new attorneys reported working 60 or more hours a week, and those who did were most likely to be in the largest firms; not surprisingly, the highest percentage of lawyers working more than 60 hours are those working in New York City (28% — rising to 39% working these hours in New York City’s largest private offices). Those least likely to report these long hours are working in government and public interest, where the means and medians for hours worked are also lower than the other practice settings. Substantial differences in practice settings are important, but the more general point is that 60-hour weeks do occur, but are not the norm, in every sector and market.”

Nature of Work (p. 34): The researchers classified work into three broad categories: routine, independence, and trust. Private attorneys report lower levels of trust and independence, and higher levels of routine activity, than public interest lawyers. Attorneys in the largest law firms report “strikingly lower levels” of trust and independence. The AJD researchers do not speculate as to what this means, but it could be that trust and independence may be correlated with attorney satisfaction, whereas routine work may not be. AJD shows that solo practitioners also report high levels of routine activity, yet they are supposed to be generally more satisfied with their work. So, it seems that routine work partially drops out of the equation, leaving trust and independence as two of the big differences between big firms and solo practitioners (along with hours, of course).

Pro Bono (p. 35): Large law firms (250+ attorneys), along with solo practitioners, have the highest percentage of participation (81%) in pro bono work. This may be due to institutional commitment, resources available to coordinate pro bono work, and to provide good training for associates (suggested by the fact that associates who do more

pro bono are less likely to ask for more training). However, small numbers of attorneys account for a disproportionate amount of firm pro bono work.

Satisfaction (p. 47): no evidence of widespread dissatisfaction, but the highest earners are less satisfied with their work and practice setting than the lower earners. Attorneys are least satisfied with their performance evaluation process. Big firm attorneys are happier with their compensation and career prospects, but are less satisfied with their work, its social value, and their hours. Conversely, smaller firm, government, and public interest attorneys are happier with their work, but are less satisfied with the career trajectory/earnings tradeoff. Main point: in large law firms, the unhappiness is a tradeoff for money and perceptions of advancement.

Mobility (p. 53): largest law firms had relatively low turnover (!), when compared to solos and small firm attorneys.

Gender: more women in government, public interest; lower earnings.

Gender + Satisfaction! (p. 58): women are more satisfied with the substance of the work; less satisfied with job setting, social value, and the advancement/earnings index. Relate this to large law firms: if there are more men in large law firms (p. 57), and men are unhappier with the substance of the work, then that skews the large law firm numbers downward.

Race (p. 64): black and Hispanic attorneys cluster in government and nonprofit jobs, so many have lower salaries. However, 80% of black and Hispanic attorneys are very satisfied with their career (again, this is skewed if they're in government and nonprofit jobs).

## ***II. The Partnership and Economic Structures of Large Law Firms***

**Altman Weil, Inc., *Annual Surveys of Law Firm Economics*, available at <http://www.altmanweil.com/publications/surveys/> for a fee.**

Altman Weil, Inc. is a large, well-known consultant to large law firms. Their surveys are sizeable in scope—over 10,000 lawyers and 400 firms—but limited to Altman Weil's clients and contacts. For each firm, the data collected covers income, expenses, unbilled time, receivables, realization, hourly rates, billable hours, partner compensation, associate compensation, administrative staff compensation, and personnel ratios. Next, specific positions—equity partner/shareholder, non-equity partner/shareholder, associate lawyer, staff lawyer, and of counsel—are analyzed. The data collected is then analyzed and compared in a number of categories: national (US), regional (US Census region), state, metropolitan area, population size, firm size, practice area, year admitted to bar, years of experience, individual lawyer specialties (litigation and non-litigation).

**Joseph B. Altonji & William G. Johnston, *Time to Rethink Associate Compensation*, N.Y. L.J., Feb. 28, 2002, available at [https://www.hildebrandt.com/Documents.aspx?Doc\\_ID=1046](https://www.hildebrandt.com/Documents.aspx?Doc_ID=1046).**

This is an interesting article describing the responsibilities of associates as they go up in the rank over the years phase by phase. Phase One: “A lawyer operating in the first performance phase (Phase One, the lowest tier) should be expected to generate a reasonably high level of billable hours in order to meet an “employment” threshold.” Phase Two: “Lawyers operating in Phase 2 (the middle tier) have more advanced skills and should be expected to generate a higher number of billable hours than those in Phase One. In fact, given that their skills are developed, but their client development and management responsibilities are likely limited, lawyers in Phase Two may have the highest productivity expectations of any group of lawyers within the firm.” Phase Three: “Lawyers in Phase Three (top tier) are the highest-level associates and those who will become eligible for income or equity partner status. Like Phase Two lawyers, lawyers in Phase Three should be expected to generate a high level of billable hours. However, as their client development and management responsibilities increase, Phase Three lawyers may experience a shift from a concentration on billable hours to an expanding concentration on use of the firm’s leverage. Of course, the Phase Three lawyer who does not have direct client responsibility should be expected to produce a higher level of billable than one who has an increasingly large book of business.”

***Am Law 100: Adding Value*, THE AMERICAN LAWYER, July 1, 2005, available at <http://www.law.com/jsp/article.jsp?id=1119603921844>.**

This article details the Am Law methodology for measuring law firm success from 1985 to 2005, with partner compensation as the primary economic value. The traditional Am Law metric included gross profits, profits per partner (PPP), revenue per lawyer (RPL), and the Am Law Profitability Index (API) (PPP divided by RPL). The article introduces the newest yardstick: value per lawyer (VPL). VPL is calculated as compensation of all partners (the combined payout to equity and non-equity partners) divided by total lawyer head count. The article argues that this newest measure ranks not only how much value a firm creates but also at what rate it does so, so that efficient firms end up ranked higher. The final line of the article epitomizes the basic premise of the Am Law rankings: “It’s not size but revenue that matters.”

**George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C.L. REV. 1635 (2006).**

The authors used Martindale data from 1998-2004 to explore, document, and refute some “stylized facts” about the legal services industry. They found:

1. It is true that there has been substantial growth in the largest firms. Firms with 389 or more lawyers account for slightly less than 10% of lawyers in 1998, but over 18% of lawyers in 2004. Thus, the largest firms are growing, perhaps

in response to the need to offer clients the capacity and the collection of practice areas needed for complex, multidisciplinary legal work.

2. There is no evidence, however, of a corresponding rise in small firms or a larger decline in midsized firms. In fact, it appears that the largest firms have grown at the expense of firms of all other sizes.
3. More Multi-office practice: In 1998, 50% of lawyers work in multi-office firms and over time the percentage of lawyers working at firms with at least five offices has increased. By 2004, 57% of lawyers work in multi-office firms and over 10% of lawyers work at firms with ten or more offices.
4. With the demise of longstanding client relationships, partners are spending an increasingly larger fraction of their time generating business. As a direct result, law firms need more lawyers to spend time doing legal work. Not wanting to dilute the rainmakers' earnings, which may result in the loss of business-finders, firms are likely to add business-minders at a non-partner level.
5. With the addition of associates and a constant number of partners, leverage will increase. However, the increased emphasis on rainmaking and number of competitors competing for the partnership "prize" reduces the likelihood that associates are promoted. A smaller expected prize may discourage associates from working long billable hours and, as a result, firms may have to increase leverage even more to counteract a reduction in hours per associate.
6. A high leverage ratio ensures that firms have a supply of relatively cheap labor to meet the short-term capacity needs of large clients. Optimal leverage is also connected to the level of complexity and specific specialty of the legal work.
7. As the importance of soliciting business increases for partners in law firms, current partners may find it more difficult to make new partner decisions. Since clients are now more likely to shift firms, associates must prove that they can also develop business if they are to be promoted to partner. Law firms are reluctant to admit new partners unable to generate business because rainmakers are highly mobile and any dilution of partner earnings might cause important partners to depart.
8. The average time to promotion - the amount of time between graduating from law school and being promoted - has increased by about half a year in the past seven years

**Scott Baker & Kimberly Krawiec, *Uncorporation: A New Age?: The Economics of Limited Liability: An Empirical Study of New York Law Firms*, 2005 U. ILL. L. REV. 107 (2005).**

This article offers a thorough overview of the organization forms available to law firms. It has a particularly comprehensive overview of the benefits and drawbacks of both the general partnership and the limited liability partnership. The authors review six theories traditionally advanced as rationales for the partnership form: (1) insurance, (2) monitoring, (3) generating trust and collegiality, (4) quality signaling, (5) preventing grabbing and leaving, and (6) providing incentives to mentor. In doing so, they collected

data on all New York City law firms listed in Martindale-Hubble and NALP with more than twenty-five lawyers, analyzing a number of facts including choices of form, date of transition to a new form, number of lawyers in that office, PPP, number of offices, rate of firm growth, “level of collegiality” (based upon whether the firm described its culture as such on its website), and “level of information asymmetry between the firm and its clients” Despite the number of benefits the LLP seems to offer though, the authors found that a surprising number of firms retained their GP status. They reconcile this finding by arguing that while the move to LLP may seem an inexpensive, quick, and easy alternative, the costs and benefits of the LLP form are more complicated than either academics or legal practitioners would like to believe. Specifically, the authors conclude that some firms must actually value unlimited liability, the only meaningful distinction between a GP and an LLP.

**LINDSAY BLOHM & ASHLEY RIVEIRA, PRESUMED EQUAL: WHAT AMERICA’S TOP WOMEN LAWYERS REALLY THINK ABOUT THEIR FIRMS (2006).**

In the third edition of this book, the authors present the results of an anonymous online survey of 4,000 anonymous female attorneys working at the nation’s largest and most prestigious law firms. The authors chose firms based upon *American Lawyer* and *Vault* rankings and then e-mailed the survey to several offices of these firms. When a firm declined to distribute the survey internally (18 did), the authors attempted to gather females’ e-mail addresses from the firm’s website and e-mailed these women directly. In the first edition, in 1995, the results reported were the mail-in responses of 600 female attorneys at 57 US law firms. The second, in 1998, reported results of a mail-in survey of 77 law firms that garnered almost 1225 responses.

In all three editions, the authors devote a separate section to each firm and report both comments and empirical results. The books rank how the women view their treatment in their firms, covering issues such as training and advancement, attitudes and atmosphere, flexible work arrangements, impact of the firm’s billable hours, diversity, business development and networking, mentoring, and firm leadership. The authors’ stated purpose in publishing these reports is to disseminate this information to law students making employment decisions, so both women and men have a sense of what life is like for women in these specific firms. They also hope to attract enough attention that firms are compelled to address women's concerns and strive to be more attractive to women professionals.

**Equal Employment Opportunity (EEO), Census 2000 Data, available at <http://www.census.gov/eo2000/>.**

This is a good data set in terms of the number of observations, but has few variables. Available related variables:

- Total number of lawyers
- Number in each state
- Number in Metropolitan areas

- Number in each county
- By Sex
- By Race
- By Earning
- By Age
- Earning by Sex
- Earning by Age
- Earning by Race
- Sex by Age
- Race by Age
- Race by Sex

**MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991).**

The book introduces and explains a great deal of the structure of private law firms, providing a comprehensive assessment of the sector from 1960-1985. It argues that law firms are structured around a ‘tournament’ from junior associate to partner, taking place over a 7-9 year period. The book includes the history of law firms, the emergence of large firms, varying rates of time-to-partner (interestingly, sometimes based on the national availability of lawyers, along with the city and the firm), a few figures on the increasing billable hour requirements, a description of increased competition/challenges, the larger numbers of women and minorities, and a significant amount of data tracking the associate-to-partner ratio in dozens of firms. It includes little to no data on satisfaction or how attorneys feel (other than bemoaning increased competitiveness). Unlike what the Boston Bar Association’s focus group participants say, it appears that it’s always been difficult to make partner – the tournament isn’t new.

The growth of large law firms and their structural incentives are perhaps best described in the authors’ 1999 response to Schiltz, found at 52 Vand. L. Rev. 953: [the content is the same as in the full book, but the 1999 article is shorter and clearer.] If you are an attorney and develop a successful practice, at a certain point your reputation leads you to have more business than you can handle by yourself. You could take on employees and pay to train them, but there is little incentive for them to stay unless you pay them more money each year and provide some future hope that they’ll eventually be your partner. Above all else you can’t risk losing them to someone else or their own firm – you would lose all the training expenses, and you might lose the clients as well. So attorneys created a system where you get very hard work out of many associates, and promise that a percentage of them will be partners after a certain number of years. You’re ensured competitive workers, low transaction costs, large profits, and an infinite growth in your firm, as long as the partner-to-associate ratio stays constant or increases. So the growth of large law firms (and their profits per partner) is not about greed, as Schiltz argued, but the never-ending expansion that naturally results from this system and its incentives.

They conclude (the short article) by pointing out research showing that professional prestige in the law is tied to how “establishment” your clients are – the bigger the better, so corporate law trumps criminal/personal injury/family/solo/consumer law – which shifts the meme from how much money you make to who your clients are. Prestige > money. See Heinz and Laumann, *Chicago Lawyers* 92-93 (1982).

**Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry Into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313 (1985).**

This is a very well-known article. Gilson and Mnookin use the portfolio theory to argue that the large law firm was primarily a device for capturing the economic benefits of legal specialization while diversifying away the concomitant risks. Specifically, a lawyer can render more sophisticated and efficient legal services if she develops a narrow practice area. But the higher expected payoff of specialization also exposes the lawyer's income to fluctuations in the business cycle. Gilson and Mnookin argue that the large general service law firm provides an optimal solution because “it facilitates several intra-firm practice areas with offsetting peaks and valleys, such as securities and bankruptcy law.” The authors caution that the potentially large gains from cooperation can be thwarted by three types of opportunistic behavior: (1) partners “shirking” their duty to be a fully productive member of the firm; (2) partners “grabbing” a higher percentage of firm profits by threatening to depart; and (3) partners “leaving” the firm with their clients and business in tow.

According to Gilson and Mnookin, the division of law firm profits falls on a continuum between a “sharing model” based on partner seniority and a “marginal product model” based on each partner's individual contribution. Gilson and Mnookin acknowledge that the sharing approach can deaden incentives and lead to the problem of shirking. But they argue that the marginal product model, because it cannot precisely quantify all dimensions of a lawyer's contribution to the firm, also opens the door for perverse incentives that can undercut a firm's efficiency, service quality, and profitability. Gilson and Mnookin ultimately conclude that the sharing model can, in theory, be “more productive than a marginal product approach.”

However, this conclusion was based on their belief that the agency problems of grabbing and leaving could be curtailed by the creation of firm-specific capital. They specify two sources of firm-specific capital. The first is the institutional knowledge of the client's business, which is typically developed over a period of years. This situation provides the incumbent firm with an inherent cost advantage and imposes costs on a client who might otherwise be inclined to price shop. The second source of firm-specific capital is the firm's general reputation for quality work. The primary competitive advantage conferred by firm-specific capital, according to Gilson and Mnookin, is that clients are attracted to the firm rather than its individual lawyers.

**William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. Rev. 1691 (2006).**

Hendersen, an Indiana University law professor, uses Am Law surveys to challenge the conventional belief that many firms moved to two-tiered systems to increase their profitability (PPP) and thus prestige and ability to attract talent. Instead, he looks at a comprehensive Am Law 200 dataset (surveys from 1995, 1999, and 2004) and finds that PPP of single-tiered firms are actually higher than those of two-tiered firms, even if controlled for geographic market segment and firm leverage. To explore the possibility that differences in the partnership tournament in single-tier versus two-tier firms lead to differences in the underlying determinants of firm profitability, he specified a linear regression model with profits per partner as the dependent variable and five independent variables related to firm profitability: (1) proportion of lawyers in New York and international cities; (2) leverage; (3) prestige; (4) average associate hours billed per week; and (5) likelihood that associate will be with the firm for at least two years. He argues that single-tiered firms' higher profitability is a function of their higher prestige levels that allow them to attract and retain a more lucrative client base. This higher prestige also allows single-tier firms to operate a rigorous partnership promotion tournament that compels associates to work longer hours and feel less secure about their futures with the firm.

The author argues also that the move to a two-tiered partnership track is associated with larger gains in PPP. He comes to this conclusion by looking at a ten-year longitudinal sample and controls for both relative starting position and geographic market. Since it seems unclear whether the two-tiered model actually brings financial benefits, the author hypothesizes that less prestigious firms use a two-tiered structure as a bonding mechanism "to institutionalize a marginal product method of partnership compensation and consolidate managerial control for the benefit of the firm's most powerful partners." He notes that a two-tiered system may provide senior associates with better exit options by virtue of the nomenclature (merely "associate" versus "junior" or "non-equity partner") and therefore may incentivize mid-level to senior associates to stay a few years longer than they otherwise would have. Thus this tiered structure may provide less prestigious firms more long-term economic stability than higher average PPP.

**Robert W. Hillman, *Organizational Choices of Professional Service Firms: An Empirical Study*, 58 BUS. LAW. 1387 (2003).**

During the summer of 2002, the author conducted two surveys on a state-by-state basis using Martindale-Hubbell to figure out firms' associational types. The first search focused on the online equivalent of the M-H "blue pages," offering comprehensive data on law firms and lawyers. The second search examined the online equivalent of the "white pages" (more detailed than the "blue pages") to gather data on firms with more than fifty lawyers, which the author calls "larger firms." He notes that firms are charged for white page but not blue page listings, so the blue pages are more comprehensive than the white pages, and also claims that differences in coverage likely disappear as firms grow in size and willingly incur these costs. The author then collated his results into five major groups: (1) PC/PA (professional corporations/professional associations), (2) LLC, (3) LLP, (4) GP, and (5) SP (sole proprietorships). On a national level, the data revealed



that there were more than 65,000 law firms in the United States, including sole proprietorships, organized as follows:

Professional Corporations/Associations (31,131)	8%
Limited Liability Companies (4,570)	7%
Limited Liability Partnerships (6,083)	9%
General Partnerships (17,055)	26%
Sole Proprietorships (other than PCs or LLCs) (6,300)	10%

The author argues that, contrary to conventional thought, law firms have been slow to adopt new forms even if those forms (i.e. the LLP) would clearly be beneficial. He suggests a number of causes for this slowness. Tax consequences may flow from the liquidation of a corporation and the potential default provisions may be triggered in contracts between third parties and a liquidating professional corporation. It may not be cost free to elect LLP status in many states that require security for claims against the firm. Some firms may fear how their clients would perceive their efforts to limit liability. Additionally, members of some firms may be reluctant to renegotiate the terms of their relationships. However, the author notes that these obstacles to a firm's changing its organizational form largely disappear as a firm grows in size. He argues that the LLP is the clearly dominant form among large firms because monitoring colleagues becomes more difficult as a firm grows. Additionally, large firms may have sophisticated clients who demand their lawyers keep abreast of changes in the legal environment, large firm lawyers may have expertise on forms of organization, and large law firms may perceive high risk by virtue of their representation of financial institutions and large commercial firms.

**Chris Parsons, *Law in Business: Talent Contest*, LEGAL WEEK, July 2006, available at <http://www.legalweek.com/ViewItem.asp?id=29781>.**

This is a short article examining what the author calls “war for talent” among magic circle law firms in England. Critical talent is scarce and increasingly important for law firms competing at the global level. Two issues have added to the scarcity problem: the retirement of ‘baby boomers’ and the growing skills gap. The younger generation is less attracted to the traditional route to partnership. As the author notes, “What once attracted those with ambitions to becoming a partner — the high profile, power, sizeable financial rewards and so on — are being deterred by the negative elements that go with it, such as the punishing schedule, exceptionally high workload and personal self-sacrifice. People increasingly want more from their careers and from their lives, with a different balance between work and family life — without the sacrifices. “ This has led to increasing number of lateral hiring at the partner-level among prestigious law firms.

**Jonathan Levin & Steven Tadelis, *Profit-Sharing and the Role of Professional Partnerships*, (Stanford Inst. for Econ. Policy, Research Paper No. 03-031, 2004), available at <http://ssrn.com/abstract=500322>.**

This widely-cited article presents a pessimistic view of firms that base production on human capital. The authors attempt to explain the historical prevalence of profit sharing in professional service industries such as law, accounting, medicine, investment banking, architecture, advertising, and consulting, and the relative scarcity of profit sharing in other industries. They argue that when consumers or clients have trouble assessing product quality, firms sub-optimally hire low ability workers. They also devote a substantial section to the up-or-out partnership promotion scheme, relying upon Gilson and Mnookin's "Sharing Among the Human Capitalists" and Am Law 100 surveys for their data. The authors conclude that in markets where clients may not be able to monitor quality well, partnerships emerge as the desired organizational form.

**Poonam Puri, *Judgment Proofing the Profession*, 15 GEO. J. LEGAL ETHICS 1 (2001).**

The author analyzes the rise of LLPs in the U.S. and Canada and provides a comprehensive overview of LLP statutes enacted in the United States. He especially focuses on the differences between the first wave of LLP statutes, which shielded innocent partners from personal liability resulting from the negligence of their partners, and the second wave, which provide even broader liability shields by granting full protection from other liabilities such as breaching an improvident lease. Puri argues that the benefits of limited liability will accrue disproportionately to partners in large law firms because the judiciary is more likely to pierce the LLP veil in the context of smaller law firms organized as LLPs, thereby further separating the two "hemispheres" of lawyers. He also believes it unfair for lawyers to be subject to unlimited personal liability while shareholders, managers and employees of businesses organized as corporations have the benefit of limited liability. Finally, Puri notes that law firm partners can contract around the default limited liability rule and demand that the other partners in the firm sign guarantees that they will be personally liable in the event that the partner performing the work is negligent.

**Joel A. Rose, *Ten Ways to Increase Law Firm Profitability*, available at [http://www.joelarose.com/articles/ten\\_way\\_firm\\_profit.html](http://www.joelarose.com/articles/ten_way_firm_profit.html).**

The title says it all. The suggestions are provided by a law firm management consulting firm.

**S. S. Samuelson & L. J. Jaffe, *A Statistical Analysis of Law Firm Profitability*, 70 B.U.L. REV. 185 (1990).**

The authors provide an extensive empirical analysis of firm profitability. In the first section, they review the general forces that have changed the legal industry. Next, they make the following hypotheses:

1. *The larger the firm, the greater the profitability.*
2. *The greater the ratio of associates to partners the more profitable the firm.*

3. *The greater the number of associates, the more profitable the firm.*
4. *The greater the number of partners, the more profitable the firm.*
5. *The more hours billed per partner and per associate, the more profitable the firm.*
6. *The higher the billing rates, the more profitable the firm.*
7. *Firms with lockstep compensation systems are more profitable than firms whose partners are compensated on a marginal product basis.*
8. *The larger the non-legal staff, the more profitable the firm. Tall firms are more profitable than flat firms.*
9. *The greater the number of computer work stations, the more profitable the firm. Firms located in New York City are more profitable than other firms.*

They test the hypotheses using a dataset collected by Price Waterhouse as part of their ongoing survey of American law firms. This study is based only on data collected from the 219 firms that participated in both the Compensation Survey and the Statistical Survey in both 1985 and 1986.

Results include:

1. *The larger the firm, the greater the profitability.* This measure of size is not, in itself, significant. It is subsumed by the other variables that also measure size.
2. *The greater the ratio of associates to partners, the more profitable the firm.* Nor is this hypothesis, in itself, supported. Leverage, too, is subsumed by other measures of size.
3. *The greater the number of associates, the more profitable the firm.* The single factor explaining the most variation in the profitability of law firms is the number of associates. This variable, by itself, explains twenty-five percent of the variation in profitability among firms ( $R=25\%$ ).
4. *The greater the number of partners, the more profitable the firm.* Confirmed, but the impact is not as nearly large as the impact of the number of associates.
5. *The more hours billed per associates and per partner, the more profitable the firm.* Associate hours is the third variable to enter the equation, explaining an additional ten percent of the variation.
6. *Firms with lockstep compensation systems are more profitable than firms whose partners are compensated on a marginal product basis.* Firms with lockstep compensation systems are indeed more profitable than firms whose partners are compensated on a marginal product basis. This variable accounts for an additional one percent of the variation in net partner income.
7. *The larger the non-legal staff, the more profitable the firm.* Six percent of the additional variation in profitability among firms is explained by the number of non-legal staff it employs.
8. *Tall firms are more profitable than flat firms.* This is not the case; firms with complex structures are no more or less profitable than those with a traditional arrangement.
9. *The greater the number of computer work stations, the more profitable the firm.* This hypothesis is supported by the data.
10. *Firms located in New York City are more profitable than other firms.* This final hypothesis is also supported by the data.

**Brenda Sandburg, *The New Math*, THE RECORDER, Apr. 27, 2004.**

Sandburg reviews the traditional measures of law firm profitability. Specifically, she looks at the conventional focus on PPP as a measure of success and reports that many no longer believe this calculation to be “the best shorthand of a firm’s status.” Instead, it may be too easily manipulated, since it does not take into account the firm’s capitalization, how much debt recourse and non-recourse obligations it has, how much each partner individually gets paid, or how much work each partner puts in to get his or her compensation. Additionally, partnership tiering at a number of firms can help boost those firms’ PPP, even though PPP provides no information about the gap between top rainmaker and low-rank non-equity partner compensation. Finally, Sandburg’s article suggests that revenue per lawyer (RPL) may be a better indicator of the firm’s overall financial stability.

***Note: Why Law Firms Cannot Afford to Maintain the Mommy Track*, 109 HARV. L. REV. 1375 (1996).**

The article attributes the fact that women are far less likely than their male counterparts to become managing partner or play a significant role in firm policy decisions to the difficulty in making partner if one pursues a part-time track. The authors cite a number of studies—both empirical and anecdotal—to conclude that high billable requirements are harmful to both men and women and may not even be efficient. Most notably, they rely heavily upon Galanter and Palay’s work in *Tournament of Lawyers*, arguing that Galanter and Palay’s model “suggests that firms should provide female associates with a reasonable expectation of attaining partnership” and that those that do not do so are sacrificing profits and long-term productivity. Traditional models may result in high attrition among senior female associates who are incredibly costly for firms to lose. The authors then look at a number of firms that have shifted to part-time partnership tracks and conclude that this can be a workable alternative to a part-time option that is effectively “a professional dead end – a track that never leads to partnership.” Finally, the article offers a number of alternative structures that may be friendlier to women, such as utilizing value billing or fixed-fee billing, reevaluating part-time programs and removing their associated stigmas, and instituting employer-assisted child care.

**David 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).**

The authors, law professors at Harvard and UCLA respectively, challenge the application of tournament theory to the study of large law firms’ institutional structures. Their analysis focuses heavily but not exclusively on Galanter and Palay’s *Tournament of Lawyers*. Wilkins and Gulati agree with Galanter and Palay’s proposition that elite law firms are struggling with mutual monitoring problems of partners and associates. They also concede that tournament theory still accurately describe the final few years when

senior associates compete with each other for partnership. However, they disagree that monitoring is the only problem plaguing large firms and, instead, focus on the difficulties firms face in training the next generation of senior associates and partners. They challenge several assumptions underlying Galanter and Palay's analysis and conclude:

- Associates have a variety of reasons for joining firms, some of which are unrelated or only tangentially related to playing in the tournament.
- Associates do not have an equal opportunity to win the tournament because of a variety of discriminatory variables.
- The interests of individual partners in monitoring, mentoring, evaluating, and advocating for associates may differ from those of the firm.
- Partners are not subject to a tournament, and there are a variety of mini-tournaments that take place throughout an associate's career, rather than just a partnership decision.
- The actual partnership decision is based, in large part, on factors not measured by past performance, such as rainmaking potential.
- The social processes through which the tournament operates are not transparent but rather cloaked in secrecy.

Instead of relying on a simple rank-order tournament theory, the authors use signaling theory and relational capital to produce what they call a "richer and more accurate account of the internal labor markets of big firms." They argue that rather than working hard at their firms simply to make partner, associates' diligence today is motivated by high wages, the fear of losing the reputation "bonds" they have with their firms, and their desire for the firms to train them. In response, the firms engage in:

- Tracking: Only associates who perform well early on are placed on the training track and allowed to rise up the ranks. Others are placed on the paperwork track with little chance of partnership. As a result, these associates leave voluntarily while those on the training track receive valuable mentoring and continue to compete in mini-tournaments.
- Seeding: Some associates are "seeded" directly onto the training track and immediately get assignments that give them both firm-specific and externally valuable training. These decisions are made based upon the associate's law school, clerkship, law review membership, and law school performance. Firms know such signals only loosely correlate with actual lawyering skills but it would be expensive to collect and difficult to evaluate more accurate information about candidates' potential.
- Information Control: Firms use a "black box" approach to their partnership decisionmaking, providing associates only a vague idea about the criteria for making partner.

Throughout their analysis, the authors analogize the treatment of associates to that of tennis players such as Andre Agassi and Pete Sampras competing in a multi-round tournament.

### ***III. The Rise of the Billable Hour***

**ABA Ad Hoc Committee on the Billable Hour, 2001-2002, available at <http://www.abanet.org/careercounsel/billable.html>.**

The committee produced a 90-page report examining “the billable hour itself,” specifically setting out to answer some questions: Does the billable hour unnecessarily aggravate the pressures that threaten to confine the lawyer to the office, insulating him or her from the community?” Does it “contribute to or undermine a practitioner’s ultimate goal—to provide clients with the best legal services possible?” And, is it possible to change billing methods? If yes, how? The preface by Justice Breyer sets the tone, arguing that “the profession’s obsession with billable hours is like ‘drinking water from a fire hose,’ and the result is that many lawyers are starting to drown. How can a practitioner undertake pro bono work, engage in law reform efforts, even attend bar association meetings, if that lawyer also must produce 2100 or more billable hours each year, say sixty-five or seventy hours in the office each week. The answer is that most cannot, and for this, both the profession and the community suffer.”

The ABA used four methods to collect data: (1) an online questionnaire for law firm lawyers regarding creditable hours, quality of life, and billing arrangements; (2) an online questionnaire for in-house counsel concerning alternative fee arrangements; (3) a questionnaire e-mailed to the Am Law 100 largest firms inquiring about evaluation and compensation systems and use of alternative fee arrangements; and (4) a web board dialogue in which users could share questions and concerns with the Commission and other colleagues under eighteen thread headings.

The Commission identifies a number of problems associated with the billable hour:

- Results in a decline in firm collegiality and increase in associate departures
- Discourages pro bono
- Does not encourage project or case planning
- Provides no predictability of cost for client
- May not reflect value to the client
- Penalizes efficiency and productivity
- Discourages lawyer/client communication
- Encourages skipping steps
- Fails to discourage excessive lawyering and duplication of effort
- Fails to promote a risk/benefit analysis
- Does not reward lawyer for productive use of technology
- Puts client’s interests in conflict with lawyer’s

- Client risk paying for inefficiency, associate training, associate turnover, and aggressive time recording
- Results in itemized bills that tend to report mechanical functions, not value of progress
- Results in lawyers competing based on hourly rates

The Commission attributes the continued dominance of hourly billing to interlocking pressures: simplicity, familiarity, profitability, efficiency, and amiability. It acknowledges the ubiquity of the billable hour and the difficulty of implementing alternative arrangements.

The Commission then presents and critiques a number of alternative billing arrangements, including fixed/flat fees, discounting, blended rates, and contingency fees. The report concludes with advice to practitioners regarding how to better structure the billable environment so that attorneys can “live within the billable hour.”

**John A. Beach, *ADR and Beyond: The Rise and Fall of Billable Hour*, 59 ALB. L. REV. 941 (1996).**

This is a short article looking at some of the underlying reasons for the rise of billable hours. The author starts by laying out the psychological landscape of dealing with clients. Lawyers, he argues, are not comfortable looking a client in the eye and stating what the legal services will cost. There are also (a) uncertainties as to how much work really will be involved in the matter, (b) fear of scaring the client away at the outset (c) pure greed (d) lawyers’ psychological insecurity. Billable hour solves these by providing a measure of the services provided. Then, he goes through the history of the rise of billable hours and the role of these factors, combined the rise of new accounting systems in the 50s and 60s, which led to the rise of billable hours method. Throughout he is critical of billable hours.

***Billable Hours and Time Management, available at***  
<http://www.hamline.edu/law/cso/survival/pdfs/Billables.pdf#search='billable%20hours%20%20law%20firm%20%20profit>.

This is an introductory guide for law students provided by Hamline University’s School of Law. We found it very useful as it entails a brief but relatively comprehensive summary of the billable hours method and the hybrid method

**Susan Saab Fortney, *The Billable Hours Derby: Empirical Data on the Problems and Pressure Points*, 33 FORDHAM URB. L.J. 171 (2005).**

The author argues that while billable hours is a cause of concern and unhappiness among the associates, clients identify billing as their most serious concern associated with

obtaining legal services. Survey data reflects the trend among law firms to adopt minimum billing expectations or requirements. 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 authors use a 2005 data by NALP Foundation and documents dissatisfaction of associates with the system, desire to leave, depression, etc. Not surprisingly, as the chart shows, larger firms have higher billable hour requirements.

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

***Fired Associate Wins \$1.1 Million Judgment, ABA JOURNAL ONLINE, available at: <http://www.abanet.org/journal/ereport/au18bill.html>.***

A California associate who alleged he was fired after a liver illness caused him to reduce his billable hours has been awarded \$1.1 million in a jury trial

**Stephen W. Jones & Melissa Beard Glover, *The Attack on Traditional Billing Practices*, 20 U. ARK. LITTLE ROCK L. REV. 293 (1998).**

The main argument in this article is that the hourly billing method is under attack from market forces, technological advances, and, most importantly, clients. The sophisticated clients of today are becoming unwilling to defer to their attorneys the complete control of their cases and, along with it, control of their legal expenses. The authors provide a detailed examination of the rise of billable hours showing that it was the product of market forces, which in combination with several major court cases, led to the spread of billable hours.

Toward the end, he argues that with the advancement of technology, attorney revenues will gradually decline under an hourly billing system unless one or more of the following three events occur: 1. Increased productivity attract additional business; 2. Law firms downsize to eliminate unprofitable or low margin services; 3. Corporate clients agree to increased hourly rates. Because none of the above scenarios is especially appealing and/or likely to occur, hourly billing will continue to discourage both the use of new technology and overall efficiency in law firms which bill by the hour. Disincentives to efficiency and abuses of the hourly billing system create an atmosphere that is ripe for change in the way attorneys bill their clients.



**M. Cathleen Kaveny, *Billable Hours in Ordinary Time: A Theological Critique of the Instrumentalization of Time in Professional Life*, 33 LOY. U. CHI. L.J. 173 (2001).**

The author argues that while the number of hours worked by lawyers, particularly those in big firms, is a substantial cause of their unhappiness, the problem runs deeper than the sheer *amount* of time they are required to devote to their professional lives. After all, he claims, “many physicians, clergy, and even academics seem to put in comparably long hours, apparently without experiencing the same level of dissatisfaction.” Furthermore, a large portion of any job is consumed by repetitive, uninteresting tasks that nonetheless require a great deal of attention. She argues that a neglected but important cause of lawyers' unhappiness is “not the *amount* of time they work, but rather the *way* in which they understand the time they spend working, which is directly related to the manner in which they are forced to account for it.”

At the heart of the problem is the widespread practice of charging clients for the amount of a lawyer's time that they consume. The regime of the billable hour presupposes a distorted and harmful account of the meaning and purpose of a lawyer's time, and therefore, the meaning and purpose of a lawyer's life, which, after all, is lived in and through time. The account, which ultimately reduces the value of time to money, is deeply inimical to human flourishing. Because large firm life can press many lawyers to internalize this commodified account of their time, they may find themselves increasingly alienated from events in their lives that draw upon a different and non-commodified understanding of time, such as family birthdays, holidays, and volunteer work.

***NALP Press Release: Part-Time Attorney Schedules Remain an Under-Utilized Option by Most Partners, Associates, Nov. 5, 2004, available at <http://www.nalp.org/press/details.php?id=5>.***

In 2004, 96.7% of all employers listed in NALP listed part-time programs as an option, either as an affirmative policy or on a case-by-case basis. This number was fairly close to the 96% documented in 2003. However, for the ten years that NALP has been compiling law firm's representations about offering part-time programs, very few attorneys have been documented as taking advantage of these opportunities, only 4.1% in 2003 and then 3.9% in 2004. The study claims that this distinguishes private law firm practice from both the U.S. workforce as a whole and from more defined segments of the workforce. It contrasts these numbers with Bureau of Labor Statistics (BLS) data that 14% of individuals employed in non-agricultural industries during 2003 usually worked part-time, as did a similar percentage of those employed in professional specialties (e.g. engineers, architects, physicians).

The press release does not really try to answer why so few attorneys take advantage of part-time programs, beyond saying: “It is likely that many factors play a role in determining whether or not an attorney avails him or herself of the part-time work option.

The relatively low use of what may be perceived as a positive perquisite may reflect law firm cultures. A decision not to pursue a part-time schedule in a law firm setting may also reflect concerns about the effect part-time work might have on one's career path.”

**Douglas R. Richmond, *The New Law Firm Economy, Billable Hours, and Professional Responsibility*, 29 HOFSTRA L. REV. 207 (2001).**

The author starts by arguing that law firms can compensate for their increased associated costs in three ways: by increasing their hourly rates, by partners accepting reduced profits, or by requiring their associates to bill more hours. Clients are very likely to resist attempts by their lawyers to pass along associate salary increases in the form of higher hourly rates and partners are not likely to be willing to accept a cut. Therefore, “billable hour requirements far exceeding 2000 hours seem destined to become the norm.” The author then argues that within this framework and given the importance of the number of hours for an associate’s reputation and career prospects, there will be exaggeration and inaccuracy in the number of hours reported, which raises all kinds of ethical questions. Then he goes on to examine the ethical implications of billable hours under variety of statutes and cases including Rule 1.5, ABA Formal Opinion 93-379, and a number of significant cases.

#### **IV. *Understanding the Drivers of Attorney Satisfaction***

**Connie J.A. Beck et. al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Participating Lawyers*, 10 J.L. & HEALTH 1 (1995).**

This article discusses the relationship between hours worked and emotional indices of distress. By assembling several statements, the following argument about large law firms can be constructed: Attorneys work very long hours during their first five years in practice, since that’s when “they establish themselves with a firm and hopefully move toward or gain partnership.” But long hours negatively affect at least two of the psychological symptoms studied: paranoid ideation, and social alienation/isolation. This argument applies to all attorneys working long hours (including PI, etc.) Also, the study matches up variables to those presented in Benjamin (1985); he was a researcher on both teams.

**G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 246.**

This paragraph is the article’s best summary: “As the results indicate, before law school, subjects develop symptom responses similar to the normal population. This comparison suggests that prospective law students have not acquired unique or excessive symptoms that set them apart from people in general. During law school, however, symptom levels

are elevated significantly when compared with the normal population. These symptoms include obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social alienation and isolation). Elevations of symptom levels significantly increase for law students during the first to third year of law school. Depending on the symptom, 20-40% of any given class reports significant symptom elevations. Finally, further longitudinal analysis showed that the symptom elevations do not significantly decrease between the spring of the third year and the next two years of law practice as alumni.”

The study appears to have external validity: “[The Benjamin] study is not burdened with many of the difficulties associated with earlier studies because it relied on validated, proven measurement instruments. It improved on the authors' previous study because it re-tested a number of the same subjects over their law school careers, using a longitudinal instead of a cross-sectional design.” Daicoff, Lawyer, Know Thyself: A Review Of Empirical Research On Attorney Attributes Bearing On Professionalism, 46 Am. U.L. Rev. 1337, 1379 (1997).

However, this commentator argues that the study does not support a hypothesis about long hours, large law firms, and unhappiness: “No ‘significant relationships were found between symptom levels and age, undergraduate grade-point average, law school grade-point average, hours devoted to undergraduate studies, hours devoted to law school studies, hours devoted to employment as alumni, passage of the state bar examination, and the size of the law practice,’ indicating that the often-quoted reasons for lawyer dysfunction and dissatisfaction of long hours and large law firms are not supported by the empirical data.

***Boston Bar Association, Report of the Boston Bar Association Task Force on Professional Fulfillment, 1997.***

This article is very different methodologically from others in this sample: instead of commissioning a large survey, the Boston Bar Association (BBA) created small committees and focus groups split among different levels/types of work, including partners, associates, PI, solos, law students, and minorities. The BBA’s conclusions seem politically correct, in that they do not ask for or demand any changes, but politely request that firms “look into” certain problems. The report also states strongly at the outset that professional happiness is an individual matter not dependant on institutional policies or actions, and suggests that blame be placed on attorneys who don’t know what they want and cannot control their professional life.

Even if the introduction seems tilted toward maintaining the status quo, the committee reports are fascinating in their honesty. The partners express their displeasure with modern practice of law (pace of technological change, client competition), and ask for law schools to be candid about the “trade-offs” inherent in big firm practice, suggest that firms discuss professional fulfillment at a retreat, and warn other partners to “manage their expectations” about large compensation increases. The associates, on the other hand, complain about their chances of making partner (while still wanting it to be an

exclusive club), the lack of business development training, long billable hour requirements, poor attorney management, and retention.

Other interesting points:

- The report punts on how women fare in large law firms, claiming a lack of statistics.
- In general, when women leave a large law firm, they go into other sectors. When men leave a large law firm, they go to another large law firm. (p. 26)

BBA quotes a UC Davis study reporting that “female lawyers who work more than 45 hours per week are three times more likely to have a miscarriage than female lawyers who work less than 35 hours per week, even after taking into account other factors.” Inferring from this, those employers with the worst hours would seem to have negative health consequences for women. (p. 27)

**Amy Delong, *Retaining Legal Talent*, 29 CAP. U. L. REV. 893 (2002).**

The author argues that the factors that influence associates to pursue private practice include compensation, sophistication of work, training, prestige and opportunities for experience. Yet firms are unable to meet these expectations, and associates are in pursuit of opportunities elsewhere. Headhunters have a strong influence. Many associates are not getting calls weekly but daily. So if the firm is unable to meet the associate's expectations or it is not following through with its promises, the associate feels options are limitless. The authors then examine the 2000 NALP study, *Beyond the Bidding Wars: A Survey of Associate Attrition, Departure Destinations & Workplace Incentives* (presented below), to show the large rate at which associates leave law firms.

Then the author argues that at first glance the billable hours seem very realistic. To bill 2000 hours a year, an associate will need to bill only 40 hours a week for fifty weeks. If they take an hour for lunch, their workday would be 8:00 a.m. to 5:00 p.m. Monday through Friday. But "what's . . . shocking is how little of their work can be billed and what that means in terms of putting in a full workday." The administrative time, the client contact time, and all of the other things that get written off' make it difficult meet 2000-billable hour requirement. When adding all the non-billable time, an associate can expect to bill approximately two of every three hours worked. Therefore, to bill 2000 hours a year, an associate will spend roughly 60 hours per week at the office.

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

This is an empirical examination of associate satisfaction using a survey of lawyers working in Texas firms of varying sizes. Exactly half of the respondents worked in firms with more than 100 attorneys (Large Firms), 27 percent worked in firms with 25-100 attorneys (Medium Firms) and 21 percent worked in firms with 11-24 attorneys (Small Firms). Important results include:

- 84% of the respondents reported firm annual billable hour expectations for associates. Of that number, the mean annual billable expectation for associates was 1,961 and the median was 1,980 hours. The average minimum billing expectation generally increased with firm size. At the same time, a smaller percentage of Large Firms required more than 2,100 hours as compared to Medium Firms.
- The income of respondents is related to the number of hours billed. The mean number of hours reported billed increased as income increased. This suggests that pre-tax income, including bonuses, relates to the number of hours billed by associates.
- The pressure to work longer hours created a kind of “time famine” for attorneys. 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.”
- 66% of the respondents report 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 the respondent’s personal life, 95 percent noted, “I have less time for my friends and family.” Twenty-five percent reported: “I have more trouble sustaining an intimate relationship than I used to.” Another 20 percent checked “other.”
- The mere mention of billable hours to a firm associate might cause the attorney’s blood pressure to rise. When asked to describe how billable hours pressure has taken “a toll on your personal life” 18 percent of the respondents checked “I get sick more often than before I worked for the firm” and another 20 percent checked “other.” Many of the descriptions portray associates whose lives are consumed with work and worry about billable work.
- In a work culture that focuses on minimum hour expectations, associates quickly learn that falling below the minimum risks job loss, while exceeding the minimum earns bonuses, promotion to partner, and an increased profit share percentage.
- 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” or even keeping her job. At the same time, since 1995 associate attrition has become a major concern of firm managers who are losing associates in droves. 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, seniority, and other factors). But this has not yet changed the billable hours culture.

**John P. Heinz et al., *Lawyers and Their Discontents: Findings from a Survey of the Chicago Bar*, 74 IND. L.J. 735 (1999).**

This article attempts to refute the flurry of academic and press coverage of unhappy lawyers in the late 1990s. It first describes this phenomenon by listing polls conducted in at least 7 states, each reporting unhappy lawyers. But the article argues that its study, a

series of 788 face-to-face interviews with practicing attorneys (no judges, professors, etc.) in Chicago, finds that lawyers as a whole are as satisfied as members of other professions. The authors argue that the only truth to the ‘unhappy lawyers’ meme is that female attorneys are unhappy (citing the ABA study, a SLS study, and other work on discrimination), and that even was not true in the Toronto study, the Minnesota study, and a NY Law Journal survey.

Relevance to large law firms: respondents from large law firms were generally satisfied, much more so than in other professions. The authors suggest that income is the driving variable in satisfaction, explaining why the firm attorneys are relatively happy and the government attorneys are less so. However, questions about autonomy/independence levels (p. 750) reveal that attorneys with less control over their legal strategy and less independence are accordingly less happy. There is no data presented on where these respondents were likely to work, but you can infer that attorneys at large law firms have less autonomy/independence than other attorneys.

Methodological questions: are people more likely to say that they’re satisfied in face-to-face interviews than in anonymous surveys? (fear of failure, judging, etc.). Did the unhappy lawyers self-select out of this survey by stopping the practice of law?

It is difficult to resolve the disagreement between Schiltz and Heinz. In some ways, it doesn’t matter whether attorneys as a whole are happier; we’re investigating the structure of large law firms, after all. But the concern also runs deeper, to an inability to tell whether a study’s methodology is incorrect, or whether the samples just reported opposite conclusions. Hull addresses some of these concerns by pointing out the flaws in Schiltz’s article.

**Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 MICH. L. REV. 953 (2000).**

Hadfield, a law professor at the University of Toronto, argues that the three main problems keeping the profession’s bills high are the complexity of legal reasoning and practice, the state’s monopoly over coercive dispute resolution, and the unified nature of the legal system. She begins the article setting out to answer the question, “Why do lawyers cost so much?” In doing so, she studies how market economics affects lawyers’ abilities to provide high quality services at fair prices.

First, she examines the market for legal services, arguing that lawyers face a series of market incentives to bill at much higher rates than those that would emerge in a competitive market. Her argument is that legal fees are high because legal resources are disproportionately in the corporate sphere. She attributes this to free market forces, including the cost of complex reasoning and process, the high ambiguity and unpredictability of the law, the fact that the law’s “winner-takes-all” nature places disproportionate importance on the relativity of performance, and the lack of mechanisms to control opportunistic behavior. As a result, individuals are largely priced out of the market. Only individuals with claims on commercial entities’ resources, such as mass

torts claims against corporate actors or products, and access to contingency fee arrangements can compete in this market for legal services.

Throughout the article, Hadfield looks to a number of empirical studies, including Heinz's *Chicago Lawyers*, Altman Weil's 1998 Survey of Law Firm Economics, and several studies focusing specifically upon the legal market in Ontario.

**Kathleen E. Hull, *Cross-Examining the Myth of Lawyer Misery*, 52 VAND L. REV. 971 (1999).**

The author questions Schiltz's data, finding that he finds attorney dissatisfaction by relying upon surveys with low response rates and incorrect sampling, while disregarding better surveys that show attorney satisfaction. Hull argues that dissatisfaction is not rising among attorneys, suggesting that the ABA study that found modest decreases in satisfaction were driven by a slower economy between the studied years.

Hull then considers the happiness of large firm attorneys by looking at more specific measures of satisfaction (responsibility, prestige, control over work, etc.). She finds that, relative to other lawyers in private practice, large firm attorneys like their salary, chances for advancement, and organizational prestige but are dissatisfied with their control over the amount of their work and law firm policies/administration.

**Ann Macaulay, *How to Attract (and Keep) the Best and Brightest Legal Talent*, CBA Practice Link, available at <http://www.cba.org/cba/PracticeLink/WWP/retention.aspx>.**

This is a short article looking at the steps law firms can take in order to better attract and retain law associates. The author talks about the large generational gap in expectations from what the baby boomers—many of whom are now law firm partners—think and what Generations X and Y want and expect. She argues that new law firm associates have a very different value system and a very different mindset compared to the partners at the time they first started. Firms must understand both that there is a generational difference or diversity within the firm and that what motivates and attracts and retains lawyers from each of these groups is very different. She then argues for more flexibility that includes better working hour arrangements, longer parental leaves, and changes in the attitudes and general atmosphere of the law.

**NALP Foundation for Research and Education, *Beyond the Bidding Wars: A Survey of Associate Attrition, Departure Destinations & Workplace Incentives*, Sept. 2000.**

This was a survey that was mailed to recruitment administrators in law offices nationwide. It requested empirical data on associate departures and destinations as well as documentation of the use of policies and practices that have been anecdotally correlated with retention. The table below summarizes the findings.

*Destinations of Associates Departing Law Firms in 1999*

*Office Size by Number of Attorneys*

	Overall	50 or fewer	51-100	101-250	250+
Total Departures	1,383	130	172	314	629
Departures to:					
Same or Larger Size Firm	26.20%	43.10%	35.50%	33.10%	18.30%
Smaller Firm	15.7	13.1	17.4	18.5	12.7
Full-time Family or Community	3.7	4.6	2.9	7	2.1
In-House for Client	10.6	11.5	11.6	11.1	10.5
Hi-Tech Non- Client	3.4	3.1	3.5	3.8	3.5
Professional Service Firms	1.6	0.8	0.6	1.2	1.8
Public Service	7.5	6.9	9.3	10.2	4.8
Solo Practice	0.2	0.8	0	0.6	0
Unknown	31.1	16.1	19.2	14.3	46.4

**Lawrence R. Richard, *Psychological Type and Job Satisfaction Among Practicing Lawyers in The United States*, 29 CAP. U. L. REV. 979 (2002).**

This study examines the relationship between psychological type and job satisfaction among practicing lawyers in the United States. The following research questions are investigated:

1. What is the extent of overall job satisfaction reported by practicing United States lawyers?
2. Are there any relationships between personality characteristics and job satisfaction of practicing United States lawyers?
3. Are there any relationships between selected demographic characteristics and personality characteristics among practicing United States lawyers?
4. Are there any relationships between job satisfaction, personality and other demographic variables among practicing United States lawyers?

The author then uses a sample of 3014 lawyers, representing American Bar Association members in all fifty states, who were polled by a mailed questionnaire. An analysis of the job satisfaction data shows that 21% of the sample reported job dissatisfaction and an additional 2% reported that they were very dissatisfied. In a departure from previous studies of lawyer job satisfaction, this study finds no statistically significant difference in the overall levels of job satisfaction between male and female lawyers. It further shows that an analysis of personality data reveals that psychological type does indeed play a role in selection into the legal profession. Greater job satisfaction was found among



extraverts over introverts, thinkers over feelers, and judges over perceivers, and among certain psychological types.

**Martin E.P. Seligman, Paul R. Verkuil & Terry H. Kang, *Why Lawyers are Unhappy*, 23 CARDOZO L. REV. 33 (2001).**

Unhappiness and discontent among lawyers is well documented. In addition to being disenchanting, lawyers are in remarkably poor health. They are at much greater risk than the general population for depression, heart disease, alcoholism and illegal drug use. The authors argue that lawyers' unhappiness stems from three causes:

(1) Lawyers are selected for their pessimism (or "prudence"), and this generalizes to the rest of their lives. The students of the University of Virginia School of Law, Class of 1987, were tested for optimism-pessimism with the Attributional Style Questionnaire ("ASQ"), a well-standardized self-report measure of "explanatory style" or one's tendency to select certain causal explanations for good and bad events. Law students whose attributional style defined them as "pessimistic" actually performed better than their optimistic peers in law school. Specifically, the pessimists outperformed more optimistic students on traditional measures of achievement, such as grade-point average and law journal success.

(2) Young associates hold jobs that are characterized by high pressure and low decision latitude (a term referring to the number of choices one has or, as it turns out, one believes one has), exactly the conditions that promote poor health and poor morale.

(3) American law is to some extent a zero-sum game, and negative emotions flow from zero-sum games.

**Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & LAW 261, 281 (2004), available at [http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/images/undermining.pdf](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/images/undermining.pdf).**

The authors studied two diverse law schools (Florida State and an unnamed "privately funded college located in a major urban area in the American Midwest") from orientation to the end of the first year and also followed one of the classes through their entire three years of law study. They found that in both schools, incoming students were happier, more well-adjusted, and more "idealistic/intrinsically oriented" than a comparison sample of undergraduates at University of Missouri. The authors argue this data refutes the idea that problems in law schools and the profession may result from self-selection by people with skewed values or who are already unhappy. However, as they studied these students through their first years, well-being and satisfaction fell significantly. This finding comports with previous studies.

What the authors claim distinguishes their work is that they attempted to investigate the students' values and motivation. They report that the generally "intrinsic values and motivations" of the students shifted significantly towards "more extrinsic orientations," which has distinct negative implications for the students' future well-being. In the sample followed during the final two years of law school, these measures did not rebound. Instead, students experienced a further diminution of all of valuing processes (both intrinsic and extrinsic) beginning in the second year. The authors take this finding to suggest a sense of disinterest, disengagement, and loss of enthusiasm. They suggest that the loss of valuing is in fact the cause of the students' decreased well-being and satisfaction. The authors further argue that this loss of values may mark what they call the beginning of the destructive "values-neutral" approach of many lawyers. They conclude that these findings provide empirical support for a concern that, contrary to conventional thought, American legal education undermines instead of cultivates the values and motivations promoting professionalism. When students leave law school they are more depressed, less service-oriented, and "more inclined toward undesirable, superficial goals and values."

**Deborah Rhode, *The Profession and Its Discontents*, 61 OHIO ST. L.J. (2000).**

Rhode examines why lawyers are increasingly unhappy with their jobs and their failure to change their working conditions. Job dissatisfaction is driven by, among other causes, the increasing pace of legal work, large billable hour expectations, the pyramid structure, low/nonexistent pro bono hours, lack of minority mentoring, lingering soft discrimination, and lacking commitments to diversity. Discussion of alternatives and improvements touches upon improving the quality of legal managers, encouraging pro bono, better part-time policies, and a genuine commitment to diversity.

The article also cites several ideas that may be useful leads for future research:

- "Money doesn't buy happiness:" See David Meyers, *The Pursuit Of Happiness: Who Is Happy And Why* 32–38 (1992) [hereinafter *The Pursuit Of Happiness*]; Robert H. Frank, *Luxury Fever: Why Money Fails to Satisfy in an Era of Excess* 133 (1999).
- "Life circumstances explain less than 2% of the variation of happiness": *Luxury Fever*, *supra* note 31, at 112; Daniel Goleman, *Forget Money; Nothing Can Buy Happiness, Some Researchers Say*, N.Y. TIMES, July 16, 1996, at C1, C9.
- There is "little correlation between job status and enjoyment." David G. Myers and Ed Diener, *Who Is Happy?*, PSYCHOL. SCI., Jan. 1995, at 10, 13
- "As organizations grow, it's harder to sustain a sense of collegiality, institutional loyalty, and collective responsibility." Galanter and Palay, *Tournament of Lawyers*, at 103-07.

**Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999).**

Shiltz's article is the classic, scathing critique of large law firms. It starts by examining the profession's relatively high rates of depression, anxiety/other mental illness, alcohol/drug abuse, divorce, suicide, and physical fitness. It then cites the Michigan and Boston studies to show that attorneys at big firms are the least satisfied with their lives. Why are these attorneys affected the most? High (and increasing) billable hours, greed, and the competition for prestige, according to the data presented. The negative ethical implications of these conclusions follow, along with advice on how to be an ethical lawyer: don't work for a large law firm (small firm lawyers are happier), and if you do, select one with care and/or leave quickly. The article assembles a great deal of data, especially from the Michigan, ABA, and North Carolina studies.