

Who's Keeping Score?

The Demand for More Balanced Metrics within Law Firms

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WHO'S KEEPING SCORE

People do what is measured. Corporate America realized long ago that singular focus on financial metrics, while potentially creating rosy results in the short term, may actually not be in the best interests of the organization over the long haul. Leading this movement, Harvard business professors Robert Kaplan and David Norton created the much lauded Balanced Score Card (the BSC).¹ Kaplan and Norton's recommendations focused on taking a more holistic, 360 degree view of an organization by looking at four key perspectives: finances; internal processes; people; and customers. Only by achieving success in and balance among all four areas is an organization likely to create long-term, sustainable success. According to strategy consulting firm Bain & Company, by 2004 about 57% of global companies were working with some version of the BSC.²

As with other strategy tools now commonplace in corporate America, many of the benefits around the BSC remain largely untapped within the legal industry. Instead, many firms focus intently on financial measures such as hours billed, profit per partner and realization rates. They often pay little formal attention to measuring much else, especially when it comes to what many partners may perceive as the "softer" issues such as culture, leadership, alignment and teamwork. Yet, according to Kaplan and Norton, developing a well prepared, strategically aligned and motivated workforce is one of the key drivers of better business performance.³

¹ Robert Kaplan and David Norton, *The Balanced Scorecard: Measures that Drive Performance*, Harvard Business Review, 1992.

² Rigby, Darrell, *Management Tools – Balanced ScoreCard*, Bain & Company website, (http://www.bain.com/management_tools/tools_balanced.asp?groupCode=2)

³ See Robert Kaplan and David Norton, *Strategy Maps: Converting Intangible Assets into Tangible Outcomes*, Harvard Business Press 2004.

The rules of the game are changing. Many within the legal industry might not think so, but clients, associates and even law students do. Complaints are mounting both inside and outside of law firms about issues including salaries and rates, time demands, dissatisfaction, burn-out, lack of diversity, attrition and even padded hours. Key constituents have started to keep score and hold firms accountable. The thing is, their metrics have nothing to do with profits per partner. It's time for law firms to catch up and take a more balanced, people-oriented and longer term view.

Leaders within the ABA working in conjunction with ModernThink, LLC are proposing a solution entitled the Great Law Firms Project. Based on requests from lawyers throughout the country, the Project seeks to provide firms with self-assessment tools including surveys, metrics and benchmarking data. Armed with these tools, firms can work to build cultures that lead to long-term recruiting, retention and competitive advantages. By taking a more balanced and long-term perspective of what it means to be successful, law firms can better serve their clients, their workforce and ultimately the profession as a whole.

In this article, we'll explore the following:

- I Law firms' singular focus on financial metrics
- II Client pressures for change
- III Associate and even law student pressures for change
- IV The hard dollar justifications for a more balanced view
- V Potential solutions including the Great Law Firms Project

I Law Firms' Singular Focus on Financial Metrics

Some managing partners often "manage" almost exclusively by the Law Practice Business Model introduced in 1984 by David Maister. Under the Maister Model, average income per partner is calculated using a formula involving the following:

- Leverage (ratio of associates to partners)
- Blended hourly billing rate
- Utilization
- Realization
- Margin

They may pay far less attention to other measures, especially when it comes to what many partners may perceive as the "softer" issues including culture, leadership, alignment and teamwork, four areas that Kaplan and Norton identified as keys to workforce development.⁴

In addition, national recognition lists like *AmLaw* 100 and the 50 most profitable US firms published in *The Lawyer* focus on profit per partner, revenue per lawyer and the like. In 2007, the top-grossing law firms in the United States finished the best sustained growth spurt – five consecutive years – since *The American Lawyer* began tracking firm financials in 1984.

Highlights from the 2007 *Am Law* 100 report include the following:

⁴ Id.

- Total revenues reached \$64.5 billion, an increase of 13.6 percent.
- Once again, Wachtell Lipton led the pack, with a record-breaking profits per partner of \$4.9 million.
- Two firms, Skadden Arps and Latham & Watkins, broke the \$2 billion barrier. It took Skadden 51 years to reach the \$1 billion gross mark, and eight more to hit \$2 billion.
- Nineteen firms had profits per partner of \$2 million or more, four more than in 2006.
- Head count grew by 6.8 percent to 77,816 lawyers.
- Three of the 19 firms each decreased their equity partner ranks by 4 percent last year: Dechert Milbank, and Weil Gotshal.
- The fastest-growing category was nonequity partners, which now account for 35 percent of all partners.⁵

Interestingly, Press and O'Connor from AmLaw themselves point out that much of the gain on the financial side has been borne on the backs of clients – through “unrelenting annual rate hikes” – and on the backs of associates and colleagues since “partners reaped the benefits of hard work – and of pulling up the ladder behind them. [There] has been a dramatic slowdown in the naming of new equity partners.”⁶

In addition, Press and O'Connor note that “the great run may be over”⁷ citing the following:

- a sharp decrease in deals
- failure of countercyclical practices – litigation and bankruptcy – to kick in
- a growth in head count which exceeded the growth in revenue per lawyer
- “much brooded-about associate salary increases” last year to \$160,000⁸

As detailed below, the “great run” might also be jeopardized by mounting pressures – both external and internal – to change law firms’ value proposition for both clients and employees including associates. Law firms now have a window of opportunity to broaden their measures of success not only for themselves but also for their key constituents.

II Client Pressures for Change

Clients are watching their firms ever so closely. Some are concerned by what they see especially in the areas of sky-rocketing profits per partner, perceived incentives to pad hours, escalating billing rates even for junior, unseasoned associates, and poor progress towards diversity. Interestingly, two of these four often cited shortcomings relate back to law firms’ people practices.

According to the results of the 2007 Association of Corporate Counsel survey, “In-house counsel are taking note of the rise in hourly rates and associate salaries, and are holding their outside firms accountable,” explains Fred Krebs, Association of Corporate Counsel President.⁹ Krebs explains that

⁵ Aric Press and John O'Connor, *Lessons of The Am Law 100: Is the Golden Age Over?*, Law.com, April 30, 2008 (<http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1209459933263>)

⁶ Id.

⁷ Id.

⁸ Id.

⁹ The Associated Press, *Survey Reveals In-House Counsel Are Requiring More of Their Outside Counsel*, October 31, 2007 (<http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1193735028558>)

while "focusing on client service is the latest buzz within law firms, they still aren't getting it."¹⁰ This year's survey showed that half of the respondents terminated relationships with some of their outside counsel during the prior year. Reasons cited included failure to meet expectations, high costs, and poor work product or results. In addition, almost 50 percent cited communication and personality issues as a driving force behind termination.¹¹ Krebs characterizes these results as a wake-up call for law firms. "The firms should focus on providing value to the client, and not profits per partner or hourly rates."¹²

Clients also express concern that high billable hour requirements mean that they get billed for things they shouldn't. According to Michael Roster, executive vice president of World Savings, a subsidiary of Wachovia Corp., "I would welcome [a lower billable hour] arrangement very much because we clients know that as it gets toward the end of the year, some of these kids look at their total hours, realize they're a hundred hours short, and their pencils get heavier."¹³ Other general counsels expressed similar thoughts. "We may be getting billed for stuff that we wouldn't be billed for if there weren't such aggressive targets for associates," says Barry Nagler, senior vice president and general counsel of Hasbro Inc.¹⁴

Tied to this theme from clients is their increasing resistance "to paying for new lawyers' starts and stumbles."¹⁵ "I'm happy to train associates. I just don't want to pay to train them," says Mike Dillon, general counsel of Sun Microsystems Inc.¹⁶ Bruce Stachenfeld of Duval & Stachenfeld sees the same trend, "There's a growing client distaste for the fact that junior lawyers cost a fortune, and are billing higher even if they're not that useful."¹⁷ Firms themselves experience discomfort and costs over the same issue. There's much "hand-wringing – and time" involved in determining which hours worked by junior associates are valuable enough to bill.¹⁸

Clients have also made it clear that they'd like to see firms be far more proactive regarding their people practices, especially diversity. In 1999, Charles Morgan, then executive vice president and general counsel of BellSouth Corp. drafted a Statement of Principle which said in part, "We expect the law firms which represent our companies to work actively to promote diversity within their workplace. In making our respective decisions concerning selection of outside counsel, we will give significant weight to a firm's commitment and progress in this area."¹⁹

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Stephanie Francis Ward, *The Ultimate Time-Money Trade-off, Associates tell us they'd take a pay cut to work less. Smart deal or impossible dream?* ABA Journal, February 2007 (<http://www.abanet.org/journal/ereport/f2as.html>)

¹⁴ Id.

¹⁵ Leigh Jones, *Midsized Law Firms Go for Big Changes: Hours cap appeases clients, first-years*, The National Law Journal, October 23, 2007 (<http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1193043814292>).

¹⁶ Id.

¹⁷ Peter Lattman, *Law Blog Associate Compensation Story of the Day*, Wall Street Journal, September 25, 2007, (<http://blogs.wsj.com/law/2007/09/25/law-blog-associate-compensation-story-of-the-day/>)

¹⁸ Leigh Jones, *Firm Kills Billable Hour for First-Year Associates*, The National Law Journal, August 20, 2007, (<http://www.law.com/jsp/article.jsp?id=1187341325148>)

¹⁹ <http://www.acc.com/public/accapolicy/diversitystmt.html>

In 2004, the movement intensified with a Call to Action, drafted by Roderick Palmore, the CLO of Sara Lee, and a member of the Board of Directors of the Association of Corporate Counsel (ACC)s. Call To Action outlined goals for corporations to follow in order to improve diversity in their own offices and in the law firms they hire, focusing on gender, race and sexual orientation. Over 500 general counsels have signed Call To Action, including those from The Boeing Co., Prudential Financial Inc., Microsoft Corp., Johnson & Johnson, Tyson Foods Inc., The Coca-Cola Co., and Bank of America Corp.

Unsatisfied with law firms' efforts thus far, Call to Action leaders convened a summit between General Counsel and Managing Partners in April 2008 to try to drive improvement.²⁰ "The statistics speak for themselves," Palmore said.²¹ Last year, for example, women made up less than 33 percent of lawyers employed in the U.S., according to the Bureau of Labor Statistics. Blacks made up less than 5 percent, Asians 2.6 percent and Hispanics 4.3 percent.²² "[O]ur progress in the profession has been disappointing."²³

Some corporate clients are holding outside counsel accountable for their diversity efforts (or lack thereof). According to Rees Morrison, a consultant who specializes in law department management, Accenture fired a firm in 2005 for refusing to complete its diversity survey. In addition, Accenture ranks its law firms on their diversity efforts using a red, yellow, and green scale. As of January 2007, no law firm had yet qualified as a green firm – one which has done an acceptable level of diversity improvement.²⁴

With some of the financial pressures forecasted by Press and O'Connor in *AmLaw* 100, see Section I above, clients are likely to gain increasing leverage. Law firms with foresight will institutionalize mechanisms to proactively gather and act on client feedback, much of which centers on firms' current people practices.

III Associate and Law Student Pressures for Change

With the proliferation of the internet, blogs, confidential surveys and law firm rankings, it's not hard to find evidence of associate and would-be-associate dissatisfaction. Key themes identified include the following:

- Shrinking likelihood of making partner
- High billable hour requirements leading to inefficient or even unethical behaviors
- Lack of mentoring and training
- Lack of work-life balance

²⁰ Amanda Bronstad, *GCs and Law Firm Managing Partners to Convene Over Diversity*, The National Law Journal, March 21, 2008 (<http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1206040363763>)

²¹ Id.

²² Id.

²³ Id.

²⁴ Rees Morrison, *Outside Counsel Mgt.* | Permalink, January 14, 2007 (http://www.lawdepartmentmanagementblog.com/law_department_management/2007/01/the_diversity_s.html)

Law firms have an opportunity to turn this very public – perhaps even too public – discussion inward by actively measuring and discussing progress on key people metrics and ensuring appropriate outlets for sharing concerns.

Those now looking to practice law in a firm environment face a dramatically different landscape than did their predecessors just twenty years earlier. While the partnership model has arguably always relied on some level of associate attrition, "[t]he era of 'if you work hard and pay your dues, you'll eventually make partner' has gone by the wayside," says legal recruiter Charles Garrison of Garrison & Sisson.²⁵ According to a study by NALP, many associates believe making partner is out of their grasp, either because the standards are unfairly applied or because firms don't want to further slice up their profits.²⁶ Even if they stayed to make partner, odds are slight that it would be an equity one. The fastest-growing category on the 2007 AmLaw 100 list was nonequity partners, which now account for 35 percent of all partners. If these growth rates continue, the number of nonequity partners will exceed equity partners by 2015.²⁷

Adding to the fray there's also the emergence of a clear difference in values and motivations between the Baby Boomers who are in charge and the Gen X, Gen Y and Millennials who are moving up – and often out of – the ranks. Among other things, the younger generations tend to value time, flexibility and balance above financial rewards and prestige.²⁸ In a survey conducted by the *ABA Journal* in November 2006, 84.2% of the 2,377 respondents indicated they would be willing to earn less money in exchange for lower billable-hour requirements.²⁹

Other associates, however, seem more motivated to see change within their own firm. Take the associates at Clifford Chance's New York office for example. After the firm scored "In the Cellar" on a 2002 *American Lawyer* firm ranking, the associates sent a memo to partners that was leaked to the public.³⁰ While complaining that the "Am Law Survey captured neither the breadth nor the depth of associate anger and frustration,"³¹ the associates went on to identify and explain seven major areas of discontent: (a) the 2420 billable hour requirement, (b) the assignment system, (c) reviews, (d) poor communications, (e) pro bono, (f) partner indifference, and (g) insufficient training.

Reacting to the memo, James Benedict, Clifford Chance's managing partner for the Americas, commented "I felt like I was reading about a law firm I didn't know."³² But Benedict also said the

²⁵ Marie Beaudette, *Associates Giving Up On Partnership*, Legal Times September 30, 2003 (<http://www.law.com/jsp/article.jsp?id=1063212109497>)

²⁶ *Id.*

²⁷ Press & O'Connor, *Lessons of The Am Law 100*, supra note 5.

²⁸ See, e.g., Virginia Grant and Marci M. Krufka, *The Young and the Restless: Understanding Generational Differences in Today's Law Firms*, Altman Weil, Inc. Report to Legal Management, July 2003; Saira Rao, *LAWYERS, FUN & MONEY BRAIN DRAIN HITS MAJOR LAW FIRMS*, NY Post, December 31, 2006 (http://www.nypost.com/seven/12312006/business/lawyers_fun_money_business_saira_rao.htm?page=0)

²⁹ Ward, *The Ultimate Time-Money Trade-off*, supra note 13.

³⁰ *The Clifford Chance Memorandum from its Associates to its Partners* (<http://www.lawcost.com/clifchancememo.htm>)

³¹ *Id.*

³² Anthony Lin, *Clifford Chance Memo Voices Associate Unrest*, New York Law Journal, October 25, 2002 (<http://www.law.com/jsp/article.jsp?id=1032128826242>)

memo was very helpful. "We clearly have a problem that we need to address," he said. "We're committed to that."³³ Clifford Chance's commitment to change has certainly paid off. The firm was recently honored as one of Vault.com's Best 20 Firms to Work For and as one of the top 30 places to work in London.

The Clifford Chance experience highlights the importance of a more forward-thinking and balanced way of assessing firm performance. There's little doubt the Managing Partner knew all about revenues per lawyer and profits per partner during that time frame, and yet he was purportedly stunned by how associates felt on some issues that were critical to the firm's overall health and success. When firms have no institutionalized mechanisms for collecting feedback, they may find themselves in reactive rather than proactive mode.

Some associates write memos and blogs. Others vote with their feet. According to NALP, a nonprofit organization that tracks legal job placement, nearly 80 percent of all associates leave large firms by the time they are in their fifth year of practice³⁴ and 73 percent of laterals leave within four years.³⁵ Even though firms rely on that turnover to some degree, according to NALP figures, firms report that 51 percent of associate departures every year are unwanted.³⁶

According to management consulting firm Hildebrandt, the reasons that associates leave typically fall into one of the following categories:

- Lack of training, mentoring, and development opportunities: "The absence of effective training, mentoring, and development not only limits an associate's substantive and professional growth, but also inhibits the associate from forming a longer-term relationship with the firm."³⁷
- Insufficient or problematic partner contact: "With ratios of 5-to-1 or higher in some top firms, fewer associates are getting regular, one-on-one contact with partners. . . In other cases, associates leave due to poor treatment by abusive partners, particularly in firms that fail to deal with bad behavior from partners or do little to train their partners to manage associates effectively."³⁸
- High workloads and a lack of work-life balance: ". . . associates increasingly view a flexible working arrangement and alternative career paths as critical tools for associate retention."³⁹

Still other associates stay, but with a mercenary attitude. This subset views law firms – especially those with high salaries – as an attractive way to pay-off their increasingly high student loan debts. In

³³ Id.

³⁴ Leigh Jones, *Dallas Firm Cuts Billables for First-Years: Strasburger & Price aims to enhance on-the-job training*, The National Law Journal, October 9, 2007 (<http://www.law.com/jsp/article.jsp?id=1191834194390>)

³⁵ Elizabeth Goldberg, *Is This Any Way to Recruit Associates? It's an associate's market – but some firms are challenging the status quo*, The American Lawyer, August 6, 2007 (<http://www.law.com/jsp/article.jsp?id=1185820712334>)

³⁶ Id.

³⁷ Hildebrandt International Study *Why Associates Leave: A Special Report*, (http://www.hildebrandt.com/Documents.aspx?Doc_ID=2531)

³⁸ Id.

³⁹ Id.

fact, some “cash and carry” associates are exploiting the big firms’ salary wars for their own financial benefit.⁴⁰ They have no loyalty or real relationship to the firm and are easily lured away by more dollars.⁴¹

Not surprisingly, many law students about to enter the field don’t like what they see. To shine light on what they consider fundamental flaws within the current law firm system, a group of law students from top-tier law schools across the country created the Building a Better Legal Profession (BBLP) movement by creating and publicizing their own balanced score card of sorts:

building a better legal profession is a national grassroots movement that seeks market-based workplace reforms in large private law firms. *by publicizing firms’ self-reported data on billable hours, pro bono participation, and demographic diversity, we draw attention to the differences between these employers.*⁴²

BBLP was started by Stanford law students who were studying trends in the legal profession including the leap from the ABA’s recommended billable hours of 1,300 per year in 1958 to today’s norm of well over 2,000 hours.⁴³ The group points to the current, unbalanced way of doing business as having costs to clients, firms, attorneys and the community. Examples cited include the following:

The costs to clients include:

- **Unproductive Work:** long hours cause impaired thinking and judgment
- **Inefficient Work Habits:** “Cloaked in the language of ‘zealous advocacy’ is the reality that attorneys frequently produce or expand deliverables far beyond their usefulness to clients and judges.”⁴⁴
- **Problems Matching Cost to Client Expectation:** Hourly billing is not predictable and does not necessarily reflect the appropriate value to the client
- **Damage to the Attorney-Client Relationship:** Clients’ interests are at odds with law firms: clients want quick resolution; firms make more by billing more

⁴⁰ Id.

⁴¹ Id.

⁴² <http://refirmation.wordpress.com/about-us/> (emphasis added)

⁴³ Michael Rappaport, *Stanford law students issue law firm report cards*, *The Lawyers Weekly*, May 9, 2008 (<http://www.lawyrsweekly.ca/index.php?section=article&articleid=679>)

⁴⁴ <http://www.betterlegalprofession.org/principles.php>

The costs to firms include:

- **Dangerous & Potentially Unethical Incentives:** perverse economical incentives reward time spent instead of efficiency; lawyers who work inefficiently or dishonestly can receive significant bonuses
- **Costs of Attrition:** associate turnover is expensive in both hard and soft dollar costs

The costs to attorneys include:

- **Widespread Unhappiness:** Law firm lawyers sacrifice life outside the office and often feel stressed and fatigued
- **Lack of Mentoring:** An estimated one-third of associates lack a mentor at largely due to pressures on partners to bill and generate business⁴⁵

To address these ills, the law students seek the following:

- “a renewed and meaningful commitment to real, measurable improvement in gender and racial equity and diversity”
- alternative billing and compensation systems to among other things, improve quality of life and remove the perverse incentive for overbilling
- transparency in performance evaluation systems
- a restoration of professionalism to the practice of law⁴⁶

The law students ask stakeholders throughout the legal community to hold firms accountable:

we encourage those choosing between firms — students deciding who to work for after graduation, corporate clients deciding who to hire, and universities deciding who to allow on campus for interviews — to exercise their market power and engage only with the firms that demonstrate a genuine commitment to these issues.⁴⁷

BBLP is already having an impact. Its first law firm ranking and report card – published on Oct. 10, 2007 – received much media fanfare including coverage in *The Los Angeles Times*, *The New York Times*, *The Wall Street Journal* and *The San Francisco Chronicle*. Law firms, including Venable, claim bragging rights for their recognition by BBLP: “Law Student Group Ranks Venable Fifth in Diversity Among Large DC Firms.”⁴⁸

The fanfare is particularly noteworthy given that BBLP’s inaugural action on April 2, 2007 was to mail a letter to the hiring partners and recruiting coordinators at the top 100 law firms in America asking for their firms’ commitment to the group’s principles. Only six firms responded.⁴⁹ Their hit rate would likely be higher now.

⁴⁵ <http://www.betterlegalprofession.org/principles.php>

⁴⁶ Id.

⁴⁷ <http://refirmation.wordpress.com/about-us/>

⁴⁸ <http://www.venable.com/announcements.cfm?action=view&id=22>

⁴⁹ Rappaport, *Stanford law students*, supra note 43.
(<http://www.lawyersweekly.ca/index.php?section=article&articleid=679>)

IV Hard Dollar Justifications

Even if pressures from clients, associates and law students aren't sufficiently compelling to adopt a more balanced view, there are also the hard dollar benefits of getting it right on the people side as well as the hard dollar costs of getting it wrong. A host of studies, some of which are cited below, demonstrate the pay-offs for strategic and measured people practices. Organizations with higher morale and/or employee engagement and those recognized as great places to work reap, among others, the following benefits:

- Higher employee – and customer – satisfaction
- Higher productivity
- Word of mouth referrals
- Higher number of job applicants
- Lower absentee rates
- Fewer and shorter disability claims
- Lower turnover

In the short term, investing in human capital takes resources – time (nonbillable), money, energy and effort. It will require a bit of a paradigm shift for many law firms. In the long term, however, as outlined below, research repeatedly shows that investments in people pay off.

On the getting it right side, Towers Perrin-ISR surveyed 664,000 employees at 50 global companies, and compared the financial performance of companies with varying levels of employee engagement over a 12-month period. It found that three financial indicators — operating income, net income and earnings per share (EPS) — rose when engagement was high and fell when engagement was low.⁵⁰ Nick Tatchell, senior projects director at Towers Perrin-ISR, explains "Were nothing to change in your business and were you to focus on getting closer to your business as a senior management team, being open and honest in communication with your staff and showing an interest in issues that mattered to them, you could expect to see engagement — and financial performance — rising."⁵¹

Gallup, a research company, says it has found a way to link employee engagement and EPS. In a 2005 study at 332 companies, researchers found that the EPS growth rate of top-quartile organizations (those with the most highly engaged employees) was 2.6 times that of organizations with engagement levels in the third and fourth quartiles.⁵²

CFO Denis Duverne from AXA in Europe shares his organization's analysis, "We know that in our companies where employee engagement is high we have better customer satisfaction indices than in our companies where employee engagement is low."⁵³ That trickles through to better overall performance. Studies conducted at two divisions — Axa France and Axa Equitable — show that

⁵⁰ Eila Rana, *When employees go the extra mile, does the bottom line benefit?* CFO Europe Magazine / CFO.com February 4, 2008 (http://www.cfo.com/article.cfm/10610786/c_2984355/?f=archives)

⁵¹ Id.

⁵² Jim Asplund, M.A., John H. Fleming, Ph.D., and James Harter, Ph.D., *Return on Investment in Engaging Employees*, Gallup Management Journal, (<http://gmj.gallup.com/content/102523/Return-Investment-Engaging-Employees.aspx>)

⁵³ Rana, *When employees go the extra mile*, supra note 50.

satisfied customers have a two to four times higher cross-sell rate and a two to three times lower cancellation rate than dissatisfied customers.⁵⁴

On the getting it wrong side, the most obvious identifiable cost is associate turnover. There have been a variety of attempts to quantify the hard dollar impact. One thoughtful analysis done by Edward Poll was published in Law Practice Management.⁵⁵ Assume a departing associate makes \$160,000 a year, that person likely was the product of a \$135,000 investment: \$25,000 in partner recruiting time (50 hours at a billable rate of \$500/hour), \$40,000 in search consultant charges (25 percent of annual salary) and \$70,000 in training (100 hours of associate time at \$200/hour, plus an equal amount of time for the \$500/hour partners who gave the training). That \$135,000 is lost every time a lawyer leaves the firm, and doesn't include lost productivity and a host of other items.⁵⁶ A Hildebrant survey estimates that it can cost a firm upwards of \$350,000 to hire and train a replacement.⁵⁷ Some managing partners have estimated that the average loss to the firm each time an associate lawyer leaves is between \$200,000 and \$400,000.⁵⁸ Regardless of which calculation is the most accurate, the numbers are big, and they add up quickly. Confounding the issue are the mass defections often seen after annual bonuses are paid out in large firms.⁵⁹

There are also the costs associated departures before associates "break even." According to one New York partner, "It's the mid-levels, the third through fifth years that are leaving, so you're losing people you've spent lots of money on training, and just as they start to run things, they leave, and firms become less profitable."⁶⁰ That analysis is consistent with a study released in 2003 by consulting firm Altman Weil, Inc., which found that the average big law firm doesn't start recouping its cash flow investment in an associate until about midway through an associate's fourth year, around the time most start acquiring the skill and confidence to run their own cases and deals.⁶¹ In addition, according to NALP, hiring laterals as replacements is expensive, running up to about \$300,000 per associate.⁶²

Other factors not as easy to quantify but that clearly have adverse impact are brain drain, the loss of institutional knowledge and the potential strain on client relationships as a fully trained associate – or even paralegal – who is up to speed on the client file leaves. In addition, clients are increasingly less willing to pay for the training costs of getting the replacement up to speed.

⁵⁴ Id.

⁵⁵ Edward Poll, *Owner or Employee? Financial Literacy and Openness Build a Partner's Perspective*, Law Practice Today, October 2005.

⁵⁶ Id.

⁵⁷ Rappaport, *Stanford law students*, supra note 43.

⁵⁸ Poll, *Owner or Employee?* supra note 55.

⁵⁹ See, e.g., John A. Cummens, "What the Managing Partner Doesn't Know Could Hurt You.", Law Practice Magazine, April/May 2006, Volume 32 Number 3 | Page 50 | Forum Organizer, Law Firm Administrators Forum; Saira Rao, *LAWYERS, FUN & MONEY BRAIN DRAIN HITS MAJOR LAW FIRMS*, NY Post, December 31, 2006. (http://www.nypost.com/seven/12312006/business/lawyers_fun_money_business_saira_rao.htm?page=0)

⁶⁰ Rao, *LAWYERS, FUN & MONEY*, supra note 59.

⁶¹ Ashby Jones, *The Third-Year Dilemma: Why Firms Lose Associates*, WSJ Online, January 4, 2006 (http://online.wsj.com/public/article/SB113571843977932357-8Y4J8IbL83hNYhzRvOIBaO5OtXM_20060111.html)

⁶² Id.

Also on the hard dollar costs of getting it wrong, there's a consistent and quite troubling undercurrent among the client, associate and law student feedback. It's the sense that the current firm environment, including but not limited to, high billable hour requirements, provides a perverse incentive that can lead to inefficiency or even dishonesty and unethical behavior. Whether justified or not, the perception has become reality. It's obviously a black eye on the profession, and one that attorneys and legal industry leaders need to mitigate. In addition, public corporations learned the hard way in the post-Enron era about the importance of proactively having a listening ear to the ground and ensuring proper checks and balances are in place. Absent proof they were doing so, Messrs. Sarbanes and Oxley were only too willing to help them along the way. Law firms need to build cultures where there is zero tolerance for unethical behaviors and provide mechanisms for confidential feedback and swift follow-through if and when needed. Implementing balanced metrics is one method of ensuring that firm management can raise its own yellow flag well before someone else – or some other entity – might feel the need to do so.

As mentioned above, investing in human capital means just that – investing. It requires time, energy, money and effort. Like other investments, the pay-offs are rarely immediate; they take time. But corporate America has demonstrated time and time again that investing in people practices is not only the right thing to do, it's also the best thing to do for the long term benefit of the organization. While it may require a bit of a paradigm shift for law firms to invest on the “softer side”, the business case is clearly present and quantifiable.

V Potential Solutions including the Great Law Firms Project

Some law firms are taking initiative towards a more balanced perspective. There have been, for instance, recent moves to reduce – or even eliminate – billable hour requirements. Examples among the pioneer firms include the following:

- In August 2007, Dallas firm Ford & Harrison with 190 attorneys decided to completely abandon billable-hour minimums for its new attorneys.⁶³
- Dallas-based Strasburger & Price announced that, instead of 1,920 hours, new lawyers would need to bill 1,600 hours to allow more time for associate training. The law firm, with 183 attorneys, said it would require incoming associates to spend 550 hours shadowing senior attorney mentors, participating in training sessions and working on pro bono projects.⁶⁴
- Chicago-based Chapman and Cutler, with 220 attorneys, recently decided to allow second-year associates to choose one of two compensation tracks. They can opt to work fewer hours at a lower pay level or more hours at a higher level. The firm hopes to compete with bigger rivals Sidley Austin and Mayer Brown by establishing the tracks in recruiting and retaining talent.⁶⁵
- Boston-based Lowrie, Lando & Anastasi, an intellectual property boutique launched in 2003, has grown from three attorneys to 27, in part by requiring just 1,600 hours from

⁶³ Jones, *Firm Kills Billable Hour*, supra note 18.

⁶⁴ Jones, *Dallas Firm Cuts Billables*, supra note 34.

⁶⁵ Jones, *Midsized Law Firms Go for Big Changes*, supra note 15.

associates but starting them at \$130,000. Its pay scale is about \$30,000 below the salaries that large firms in the area are offering first-years. But its billable-hour requirement is much lower than big Boston firms and about 100 hours lower than firms of the same size.⁶⁶

- Duval & Stachenfeld, a 50-lawyer Gotham firm, starts first-years at \$60,000, a \$100,000 below the big-firm market rate. Mid-years and senior associates, however, are promised the same compensation that they'd make at a large NY firm. In a clear departure from current practice, "...we [also] say that the partnership is yours to lose."⁶⁷

Reactions to these changes from the client side have been favorable, "[Reducing billable hour requirements] is definitely a step in the right direction," commented Mike Dillon, general counsel of Sun Microsystems Inc. "Besides providing a way for firms to compete for talented new lawyers without raising salaries, reducing or eliminating billable hours can help partner-client relationships."⁶⁸

From the law firm perspective, the change required forward thinking. According to C. Lash Harrison, managing partner of Ford & Harrison, his biggest concern was presenting partners with an idea that initially would bring in less money. Most partners liked the concept, seeing it as a way to eliminate all the "hand-wringing – and time" – involved in determining which hours worked by associates are valuable enough to bill.⁶⁹ Partners also saw the long-term payoff of training new lawyers to become profitable sooner in their careers.

Another category of solution involves providing law firms with the tools they need to proactively implement meaningful, balanced metrics. Leaders from the ABA and ModernThink are supporting the Great Law Firms Project, a law firm workplace survey and benchmarking program aimed at doing just that.⁷⁰

By way of background, the Great Law Firms Project is an offspring of the Section of Litigation's Raise the Bar initiative. Starting back in the summer of 2004, Section leaders convened a series of meetings of attorney groups across the country. Initially the conversations started about the purported generational divide between partners and associates. The dialogue expanded when it was discovered that these two groups had more in common than first thought. One consistent and widespread request across all of the meetings was the need for firms to have self-assessment tools and some way of knowing where they stood relative to other firms. There was also considerable interest in *confidential* feedback about how they could improve. Thus, the concept for the Great Law Firms Project was born.

The Project is designed to help firms assess and address many of the challenges they face today: skyrocketing associate salaries; mounting (and often unreasonable) time demands; limited professional development opportunities for associates; client pressures for diversity; lawyer dissatisfaction; burn-out; and turnover, especially among women and minorities. With input from ABA Leaders,

⁶⁶ Sheri Qualters, *An IP Firm Grows by Throttling Back on the Pressure*, The National Law Journal, October 15, 2007 (<http://www.law.com/jsp/law/sfb/lawArticleSFB.jsp?id=1192439001783>)

⁶⁷ Lattman, *Law Blog Associate Compensation*, supra note 17.

⁶⁸ Jones, *Midsize Law Firms Go for Big Changes*, supra note 15.

⁶⁹ Jones, *Firm Kills Billable Hour*, supra note 18.

⁷⁰ <http://www.moderthink.com>

ModernThink has developed two survey tools specifically geared towards the legal industry. One of the surveys is to be completed by individuals within the firm (including partners, associates, management professionals and support staff); the second survey is to be completed by firm management.

The ultimate goals of the Project include the following:

- Collecting data from law firms across the country about their people practices and about their workforce's perceptions of them as workplaces
- Establishing meaningful metrics for law firms to assess how they are doing in areas such as communication, evaluation, recognition, diversity and retention
- Providing participants confidential feedback as to strengths and weaknesses
- Supplying benchmarking data from other firms so that participants can see how they compare
- Sharing "best practices" so that the legal community as a whole can more proactively address some of the challenging workplace issues it faces

By providing detailed feedback including but not limited to responses by Job Role, Practice Group, Business Department, Location and Hours Billed, the Project will help law firms take a more holistic view. For some, it may even spark a reframing of the definition of who "contributes" with a firm. Law firm cultures notoriously focus on time keepers. In reality, it takes an entire team – from Managing Partner to paralegal, from Chief Operating Officer to receptionist – to deliver world class service. Some law firms already take a more expansive view. "What makes us different is that we have a 'one team' approach," says Robert Halton from DLA Piper. "Everybody is a professional and everyone contributes."⁷¹ Soliciting and potentially reacting to feedback from the entire firm will best position firms for future success.

ModernThink recently completed the pilot phase of this program with three multiple-office law firms. Gary Sasso, President and Chief Executive Officer of one of the pilot firms, Carlton Fields, had this to say about his firm's experience:

"We completed the ModernThink '[Great] Law Firms' survey last year and recently received our report. I never imagined that we would get so much detailed data back from a simple and rather painless process. This has helped us identify some important issues that we will want to address. I can certainly support your efforts to promote this within the ABA. I think it is a fascinating and very powerful tool that can really help a law firm improve the quality of its work environment."

⁷¹ <http://www.dlapiper.com/china/careers/>

VI Conclusion

The rules of the game are changing. Even the publisher of *AmLaw* believes that the “golden age” of escalating profits per partner may be over.⁷² Many firms are no longer willing – or even able – to keep pace with the skyrocketing salaries for starting associates. Clients are seeking a different level of accountability on financial, ethical, training and diversity issues. Few would argue that law firms’ attempts to throw money at the problems of associate dissatisfaction and turnover have been successful. Even law students have now mobilized to try to reform a legal profession they consider to be completely out of balance.

In short, corporate counsel, associates and even law students are keeping score, and they’re not using profits per partner as their yardstick. It’s time for law firms to catch-up. One way to do so is to be more proactive in acknowledging, embracing and even enhancing the more balanced and people-oriented score cards by which law firms are already being judged. The Great Law Firms Project is designed to provide firms with the self-assessment tools and benchmarking data they need to do just that.

The good news is that investing in people means investing in the long term health and ultimate profitability of the organization. As expressed by CFO Denis Duverne of European financial services firm Axa, “In financial services, you don’t have any patents, ***you don’t have anything other than the quality and engagement of your workforce to make you succeed.*** It’s the most fundamental driver of financial performance.”⁷³ The same can be said about all professional services firms, including law firms. As acknowledged by DLA Piper Chief People Officer Robert Halton, “People are crucial to our business because they provide us with our differentiation in the marketplace.”⁷⁴

The key question then is “Are you keeping score on your people practices?” If not, “Are you ready to start?”

⁷² Press and O'Connor, *Lessons of The Am Law 100*, supra note 5.

⁷³ Rana, *When employees go the extra mile*, supra note 50 (emphasis added).

⁷⁴ <http://www.dlapiper.com/china/careers/>

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She is now a principal of ModernThink, LLC, a strategic human resources consulting firm with expertise in building better workplaces and better bottom lines. Her particular expertise is using proactive people practices to gain a competitive edge, especially within professional services firms. She also has proven capability working with executive teams and Boards of Directors on corporate governance and strategic planning issues, especially as they relate to human capital. Eileen is a published author and featured speaker on topics ranging from building great workplaces to improving business results through employee engagement to implementing a balanced scorecard to create long term advantage.

Eileen is an active member of her community having served on several Boards including the University of Virginia's Alumni Association Board of Managers. A former Jefferson Scholar herself, Eileen serves on the University of Virginia's Regional Selection Committee for the Jefferson Scholars Program. She was recently awarded a *Susan G. Komen Award* for her cancer advocacy efforts. Eileen lives with her husband Nathan, her son Austin, her daughter Kelly, and her step-daughter Carson in Wilmington, Delaware.