



NOTE

SUPPLY, DEMAND, AND THE CHANGING
ECONOMICS OF LARGE LAW FIRMS

Andrew Bruck and Andrew Canter

NOTES

SUPPLY, DEMAND, AND THE CHANGING ECONOMICS OF LARGE LAW FIRMS

Andrew Bruck* & Andrew Canter**

INTRODUCTION.....	2087
I. THE RISE AND FALL OF LEGAL PROFESSIONALISM	2092
A. <i>The Transformation: The Tournament Intensifies</i>	2092
B. <i>The Effects of the Transformation</i>	2100
1. <i>Billable hour escalation</i>	2100
2. <i>A lack of racial and gender diversity</i>	2103
3. <i>High associate attrition rates</i>	2105
II. THE DEMAND SIDE: CORPORATE CLIENTS	2106
A. <i>What Reforms Do Clients Want?</i>	2107
B. <i>Will Clients Push Firms to Reform?</i>	2110
C. <i>Will Firms Comply with Client Demands?</i>	2114
III. THE SUPPLY SIDE: LAW STUDENTS	2116
A. <i>What Reforms Do Students Want?</i>	2117
B. <i>Will Students Push Firms to Reform?</i>	2118
C. <i>Will Firms Comply with Student Demands?</i>	2126
CONCLUSION.....	2129

INTRODUCTION

In 1991, Marc Galanter and Thomas Palay declared a “crisis” in the legal

* J.D., Stanford Law School, 2008; A.B., Princeton University, 2005. Co-President, Building a Better Legal Profession, 2007-08.

** J.D., Stanford Law School, 2008; M.P.P., Kennedy School of Government, Harvard University, 2008; B.A., University of Maryland, 2003. Co-Founder, Building a Better Legal Profession. Both authors wish to thank Michele Landis Dauber, Deborah Rhode, Deborah Hensler, Joan Williams, Cynthia Thomas Calvert, Alan Morrison, William Henderson, Craig Holt Segall, Katherine Reilly, Daniel Heller, Callie Kozlak, and Davida Brook for their insights on this paper and on legal profession reform generally.

world.¹ Their landmark book, *Tournament of Lawyers*, described how structural changes within the profession forced America's largest law firms to abandon professional norms in pursuit of ever growing profits.² Galanter and Palay's arguments confirmed fears that the legal "golden age" of the 1960s had given way to a model based on unchecked competition and growth.³

In spite of these developments, and partly because of them, the legal profession also faces an exciting new opportunity.⁴ The shift towards commercialism has introduced external market forces to an industry long insulated from them.⁵ If mobilized properly, the consumers of corporate legal services can use their new market power to address some of the most critical problems facing the elite firms, especially the lack of diversity within firm leadership, rising associate attrition rates, and an over-reliance on the billable hour.⁶

The "professionalism" that dominated elite firms in the middle of the twentieth century undoubtedly encouraged civility and trust between lawyers. But it also operated as a mechanism for shielding the narrow financial interests of big-firm partners and for marginalizing lawyers based on religion, race, and gender. Until recently, these norms were so deeply entrenched in large firms that outsiders could not seriously challenge the inequities and inefficiencies of the existing system. In today's market-driven model, however, two groups have developed the leverage necessary to push for change: general counsels of large corporations, who purchase the labor of large law firms, and elite law students, who supply this labor. They can squeeze firms simultaneously from the supply-side and the demand-side to correct some of the excesses and shortcomings of

1. MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS* 3 (1991).

2. *Id.* at 24.

3. *Id.* at 20-36; *see, e.g.*, ABA, *AT THE BREAKING POINT: A NATIONAL CONFERENCE ON THE EMERGING CRISIS IN THE QUALITY OF LAWYERS' HEALTH AND LIVES—ITS IMPACT ON LAW FIRMS AND CLIENT SERVICES* (1991); WALT BACHMAN, *LAW V. LIFE: WHAT LAWYERS ARE AFRAID TO SAY ABOUT THE LEGAL PROFESSION* (1995); MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994); ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 2 (1993) ("Disguised by the material well-being of lawyers, it is a spiritual crisis that strikes at the heart of the profession's pride."); Laurence H. Silberman, *Will Lawyering Strangle Democratic Capitalism?: A Retrospective*, 21 HARV. J.L. & PUB. POL'Y 607, 611-12 (1998); Michael Ding, *Bar Association Leader Critiques Legal Profession*, STAN. DAILY, Nov. 9, 2007, <http://daily.stanford.edu/article/2007/11/9/barAssociationLeaderCritiquesLegalProfession>.

4. For other examples of how scholars have considered the benefits of declining legal professionalism, see Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229 (1995).

5. *See, e.g.*, Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 MD. L. REV. 869, 899-03, 916 (1990).

6. Robert Eli Rosen, *The Inside Counsel Movement, Professional Judgment and Organizational Representation*, 64 IND. L.J. 479, 491-92 (1989).

the current economic model.

On one side, corporate decisions about hiring outside counsel determine the demand for legal services.⁷ The rapid expansion of elite firms over the past three decades has created intense competition for premium legal work. Corporate legal departments can now choose between a wide array of elite firms, which provides general counsels with substantial leverage to negotiate retainer agreements. These in-house lawyers seek to hire firms that are productive, efficient, and diverse, partly because they believe these traits are good for business, and partly because they worry that law firms lag so far behind the rest of the business world on such metrics.

On the other side, the rapid increase in firm size has made law firms increasingly dependent on hiring an escalating number of new elite⁸ law student recruits. Most prestigious law schools have not increased their enrollment to meet the rising demand,⁹ which has created scarcity in the labor market for new elite law graduates. One well documented effect of this scarcity has been spiraling entry-level salaries, although this is not the only consequence of the tightening market. Increasingly, new elite law graduates are seeking more than well paying jobs; they want positions at companies that maintain a diverse workforce and that respect the balance between work and family.

A unique set of economic conditions has created a buyer's market for in-house counsel and a seller's market for elite students. Corporate clients and law firm recruits have a substantial alignment of interest in improving the workplace environment at large firms, and the two groups can use their superior bargaining positions to collectively advance economically sound and socially responsible objectives. While neither has been successful thus far in

7. Gilson, *supra* note 5, at 916.

8. We intentionally avoid a precise definition of "elite" law students. Graduates of the "top fourteen" law schools, as ranked by U.S. News & World Report, are heavily recruited by law firms, although some employers may prefer hiring a top student at a lower-ranked school than a poor student at a "T14" school." The top fourteen are: Yale, Stanford, Harvard, Columbia, New York University, University of California, Berkeley, University of Chicago, University of Pennsylvania, University of Michigan, University of Virginia, Cornell, Northwestern, Duke, and Georgetown. U.S. NEWS & WORLD REP., AMERICA'S BEST GRADUATE SCHOOLS: SCHOOLS OF LAW 46 (2008), available at <http://grad-schools.usnews.rankingsandreviews.com/grad/law/search>. Students at less prestigious schools rarely enjoy the same luxuries. Indeed, the gap between the haves and the have-nots among recent law school graduates is startling. Distribution of 2006 Starting Salaries: Best Graphic Chart of the Year, Post of Bill Henderson to Empirical Legal Studies, http://www.elsblog.org/the_empirical_legal_studi/2007/09/distribution-of.html (Sept. 4, 2007, 3:29 PM); see Greg Burns, *Two Lawyers Walk Into a Bar . . .*, CHI. TRIB., Apr. 8, 2008, <http://www.chicagotribune.com/features/chi-lawyers-money-burns-story,0,6001085.story>.

9. Ian Shapira, *No Objections Here; Supply-and-Demand Has Top Law Firms' 'Summer Associates' Hitting Pay Dirt Without Breaking Much of a Sweat*, WASH. POST., July 24, 2007, at B01.

producing the widespread changes they seek, we argue that a coordinated strategy between these two groups can effectively bring pressure to bear and produce measurable progress toward these goals.

Recent events suggest that both clients and students are beginning to exert their market power to push for reform:

- In late 2003, Catherine Lamboley, general counsel of Shell Oil, surprised the legal world by changing the way her company hired outside counsel. Rather than simply selecting firms on traditional criteria such as the success rates of its practice areas, or the duration of a firm's relationship with the company, Shell announced that it would also seek out counsel with a diverse work force. She gathered Shell's outside counsel in one room and then told them they had two hours to explain their plans for increasing the number of women and minorities assigned to Shell's legal work. When the dust settled, Lamboley cut dozens of firms from Shell's roster, including Baker Botts, Houston's most venerable firm and one of the company's closest legal advisors.¹⁰
- In January 2007, Mark Chandler, general counsel of Cisco Systems, announced in a speech at Northwestern Law School that his company was moving away from paying outside counsel by the hour for most of the company's legal work. Chandler would instead pay a flat rate for various legal services, describing the profession's reliance on the billable hour to be "the last vestige of the medieval guild system."¹¹ In his speech, he argued that flat rates would help Cisco's bottom line, partly because ending the billable hour would cut attrition rates at large law firms, which, in turn, would reduce the cost of legal services.¹²
- Around the same time, a group of female students at Yale Law School published their first annual ranking of the ten most family friendly firms.¹³

10. Nathan Koppel, *Courting Shell*, AM. LAW., June 24, 2004, <http://www.law.com/jsp/article.jsp?id=1087855518341>.

11. Mark Chandler, Address at Northwestern School of Law's Annual Securities Regulation Institute (Jan. 2007), available at http://blogs.cisco.com/news/2007/01/cisco_general_counsel_on_state.html; see also Law Firms: The Last Vestige of the Medieval Guild System, Posting of Peter Lattman to Wall Street Journal Blog, <http://blogs.wsj.com/law/2007/01/29/ciscos-gc-on-law-firms-the-last-vestige-of-the-medieval-guild-system> (Jan. 29, 2007, 3:29 PM).

12. Chandler, *supra* note 11 ("The current system also misserves the lawyers themselves, particularly the associates, also known as the next generation of partners. In most of my major law firms, I see more and more problems retaining associates. I am inundated with resumes of top notch associates who don't want to work in large law firms any more."); see also Ashby Jones, *More Law Firms Charge Fixed Fees for Routine Jobs*, WALL ST. J., May 2, 2007, <http://online.wsj.com/article/SB117807097221289055.html>.

13. Press Release, Yale Law Women, Yale Law Women Releases 2nd Annual List of

They based their rankings on a series of criteria, including the number of weeks a firm offered for maternity and paternity leave, the existence of on-site childcare facilities, and whether attorneys working part-time had made partner during the last five years.¹⁴ The group released the rankings at the height of the on-campus recruiting season in order to influence the employment decisions of their classmates.¹⁵

▪ In October 2007, another group, this one based at Stanford Law School, released its own online rankings, grading every major firm in the nation's six largest legal markets by several quality-of-life criteria, including the average annual number of hours billed by associates, rates of pro bono participation, and demographic diversity. The group, which calls itself Building a Better Legal Profession, was led by the authors of this Note. Like Yale Law Women, the Stanford group timed the release to coincide with on-campus recruiting, and over 100,000 visitors viewed the rankings their first month online.¹⁶ The organizers encouraged their classmates to take the group's "report cards" into consideration when selecting a future employer, arguing that if elite students chose firms with the highest quality of life and greatest diversity, then the firms that scored less well in their rankings would have to improve in order to remain competitive.

These new efforts suggest a shift in the power dynamics at the top of elite law practice. For years, this segment of the legal industry failed to solve some of its most intractable problems: the under-representation of female and minority attorneys, rising attrition rates, and the dominance of the billable hour. Now the profession's buyers and suppliers are stepping in to fix the problems themselves. As Mark Chandler noted at Northwestern, the economics of large law firms are creating "unhappy lawyers and unhappy clients." With pressure coming from both sides, firms have to change. "The center," Chandler explained, "will not hold."¹⁷

This Note considers exactly why the "center" will not hold. It describes the changing dynamic between law firms and external market actors in three Parts. In Part I, we trace the rise and fall of professionalism in the legal industry, with a particular focus on how economic pressures created a workforce that was overworked, dissatisfied, and unrepresentative of the general population. Part II

the Top Ten Family-Friendly Firms (Sept. 24, 2007), available at http://www.yale.edu/ylw/Top_Ten_Press_Release_2007.doc.

14. Yale Law Women, Methodology Used to Compile Top Ten Family-Friendly Firms 2007-2008, <http://www.yale.edu/ylw/Methodology.htm>.

15. Press Release, Yale Law Women, *supra* note 13.

16. Andrew Bruck & Andrew Canter, *Transparency as Advocacy*, NEW LAW., Nov. 21, 2007, at 5.

17. Chandler, *supra* note 11.

examines the purchasers of legal services—corporate clients—and why they have gradually started to use their market power to change law firm practices over the past two decades. Part III considers the primary supplier of large firms—law students—and their nascent efforts to organize collectively for workplace reforms. We conclude by considering the overlapping interests of students and clients and suggesting that these two groups can use their power to promote a new ethos of inclusion and effective client service in the elite corporate bar.

I. THE RISE AND FALL OF LEGAL PROFESSIONALISM

Since the nation's founding, lawyers sought to create what Alexis de Tocqueville described as an "aristocracy of profession," an industry built upon its elite status and ability to exclude.¹⁸ They erected high barriers to entry first through the apprenticeship process of the nineteenth century, and later through law school accreditation and bar passage requirements.¹⁹ This professionalization created a cartel of elite law firms that controlled the upper segment of the legal market through the first half of the twentieth century.²⁰ But, as Galanter and Palay described, new developments have transformed firms over the past forty years. The growing demand for corporate legal services, combined with increased transparency in elite firms and the changing demographics in the legal labor market, triggered a decline in professionalism and opened the industry to outside economic forces.

A. *The Transformation: The Tournament Intensifies*

Before examining the present state of the elite legal industry, it is helpful to examine the earlier "golden era" of economic insulation. By 1960, the nation's most elite firms adopted a structure pioneered by Cravath, Swaine & Moore several decades earlier. The "Cravath system" divided firms into two groups: associates, who came to the firm directly from law school (or a judicial clerkship) and received an annual salary, and partners, who were more experienced attorneys and shared in the firm's profits. Associates typically outnumbered the partners, and only a select few would advance to the lucrative

18. ALEXIS DE TOCQUEVILLE, 1 *DEMOCRACY IN AMERICA* 283-90 (J.P. Mayer, ed., George Lawrence trans., Doubleday 1969) (1835); see also ERWIN O. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* 12-13 (1964); Russell G. Pearce, *Lawyers as America's Governing Class: The Formation and Dissolution of the Original Understanding of the American Lawyer's Role*, 8 U. CHI. L. SCH. ROUNDTABLE 381, 395 (2001).

19. RICHARD L. ABEL, *AMERICAN LAWYERS* 42-43 (1989).

20. Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification and Organization of Lawyering*, 44 CASE W. RES. L. REV. 621, 624-29 (1994).

partnership.²¹ This competition for eventual financial payout, also known as a “tournament model,” provided incentives for the younger attorneys to work long hours and the older attorneys to train new attorneys without fear that they would leave early and take clients with them. The ratio of associates to partners, or “leverage,” became an important predictor of a firm’s profitability, as increasing the number of salaried associates often resulted in greater returns for the partners.²²

The elite firms were also deeply secretive. Only partners knew exactly what determined promotion decisions, and most of them did not know how much money their colleagues made in a given year. Clients knew even less. Firms often billed companies based on fixed rate schedules developed by regional bar associations,²³ and it was not uncommon for firms to furnish bills without itemized expenses. Corporate clients shouldered the high cost of legal services, partly because it was considered unseemly to complain, and partly because they had no other choice.²⁴

Firms adopting the “Cravath system” remained ethnically and religiously homogenous well into the middle of the twentieth century. Most legal work involved corporate deal making, and as a result the firms recruited associates whose credentials²⁵ and pedigree matched the Anglo-Saxon background of the businessmen they served. As Eli Wald describes elsewhere in this Issue, the self-perpetuating recruitment process ensured ethnic homogeneity, even as Jewish and Catholic law students began graduating at the top of their classes.²⁶ Women and racial minorities were virtually non-existent in both elite law schools and elite firms.

Starting around 1960, however, the culture and economics of large firms began to transform. The first major change was an unprecedented surge in the demand for corporate legal services. Businesses faced increasing government regulation in various areas, including civil rights, employment law, product

21. This structure created an “up or out” system, whereby those elevated to partnership received lifetime tenure at the firm and those not promoted had to find employment elsewhere.

22. See Leigh Jones, *Starting Pay at Top Firms Falls Farther Behind Partners*, NAT’L L. J., Feb. 9, 2007, <http://www.law.com/jsp/llf/PubArticleLLF.jsp?id=1170842572765>; Kellie Schmitt, *Is Leverage Overrated?*, RECORDER, Dec. 8, 2005, <http://www.law.com/jsp/article.jsp?id=1133949910389> (discussing conflicting views on optimal leverage ratios for maximum profitability).

23. Niki Kuckes, *The Hours: The Short, Unhappy History of How Lawyers Bill Their Clients*, LEGAL AFF., Sept/Oct. 2002, http://www.legalaffairs.org/issues/September-October-2002/review_kuckes_sepoct2002.msp.

24. See Charles Reich, *Cravath Veteran Recalls Law Firm Life of Yesteryear*, AM. LAW., Dec. 17, 2007, <http://www.law.com/jsp/llf/PubArticleLLF.jsp?id=1197626690782>.

25. In 1957, seventy-one percent of the partners in the twenty largest Wall Street firms had graduated from Harvard, Yale, or Columbia Law Schools. SMIGEL, *supra* note 18, at 39.

26. Eli Wald, *The Rise and Fall of the WASP and Jewish Law Firms*, 60 STAN. L. REV. 1803 (2008).

liability, intellectual property, corporate contracts,²⁷ antitrust, and municipal bonds.²⁸ Law firms grew nationally and internationally to serve the needs of their clients, expanding their associate classes and encouraging greater specialization by developing distinct practice areas. Between 1960 and 1985, the number of law firms with more than fifty attorneys increased twelve-fold, from approximately 40 to 508.²⁹ In 1985, the legal profession contributed twice as much to the American economy as it did in 1960.³⁰

The increasing demand affected both the companies that hired law firms and the firms themselves. Corporate executives expanded the power of their in-house counsel, hoping that their company lawyers could help navigate an increasingly litigious business environment and better control the high cost of hiring outside counsel.³¹ The newly influential general counsels soon shifted more work in-house,³² which was cheaper,³³ and used the new competition between large firms to negotiate better rates for the remainder of their companies' legal work. These internal changes had an impact on private law firms. As they faced new market pressures from clients, big firm partners were forced to re-evaluate some of the less efficient aspects of their practice and their profession.

One of the first major changes to occur involved the system of billing clients. General counsels demanded a better method for determining the cost of legal work, and fixed fee schedules simply could not account for the ever growing and complex list of services that firms provided.³⁴ Drawing on recent research in organizational theory, some firms began to implement an hourly billing system, believing that this arrangement would make it easier for their clients and partners themselves to keep track of costs, and would also be more profitable for firms.³⁵ The system caught on. Firms that initially declined to

27. GALANTER & PALAY, *supra* note 1, at 41, 43.

28. Peter W. Bernstein, *The Wall Street Lawyers Are Thriving on Change*, FORTUNE, Mar. 13, 1978, at 104.

29. GALANTER & PALAY, *supra* note 1, at 46.

30. *Id.* at 40 n.22.

31. Abram Chayes & Antonia H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277, 277-78 (1985).

32. Aric Press et al., *The Highest Legal Fees*, NEWSWEEK, Aug. 24, 1981, at 71.

33. Bernstein, *supra* note 28 (noting that estimates in 1978 indicated that the hourly cost for work performed by in-house counsel averaged \$41, compared to \$79 per hour for outside legal counsel).

34. Kuckes, *supra* note 23; see ABA COMM'N ON BILLABLE HOURS, ABA COMMISSION ON BILLABLE HOURS REPORT 3 (2002), available at <http://www.abanet.org/careercounsel/billable.html>.

35. ABA COMM'N ON BILLABLE HOURS, *supra* note 34, at 3 ("Law firm consultants were advocating the keeping of time records by suggesting that lawyers who kept accurate time records and billed by the hour made more money."); Kuckes, *supra* note 23; Douglas McCollam, *The Billable Hour: Are Its Days Numbered?*, AM. LAW., Nov. 28, 2005, <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1132653918886>. Clients also preferred hourly billing, since they could easily understand the product—an hour of work—and

switch were essentially forced to in 1975, when the Supreme Court ruled that the fixed fee rates once advocated by bar associations violated the antitrust laws.³⁶ The billable hour became the industry standard.³⁷

The second major change involved increased transparency within elite firms. In 1977, the Supreme Court struck down another rule adopted by bar associations, one that prohibited lawyers from advertising to the public.³⁸ Firms could now discuss their work with journalists without facing reprimand by bar associations.³⁹ Within two years of the court decision, entrepreneurs launched two new legal publications, *The American Lawyer* and *National Law Journal*, both of which focused less on recent developments in the law and more on personalities.⁴⁰ The magazines reported on subjects previously considered taboo, including the size, starting salaries, total revenue, and client lists of elite firms. The publications ranked firms on a variety of metrics, providing an endless source of bragging rights or shaming tools for status-conscious attorneys. *American Lawyer*'s "profits per partner" calculations soon became one of the legal profession's most salient measurements of a firm's success.⁴¹

The explosion of information spurred further competition within and between firms. Lawyers sought to improve their position relative to their colleagues and to other high-status workers, particularly the investment bankers and bond traders who grew wealthy in the early 1980s.⁴² Firms pursued top-dollar clients and premium projects in pursuit of higher profits per partner, and then worked their young attorneys increasingly long hours to make the projects

because billable hours were relatively easy to fit into existing performance measurement systems: it's easy to plan for 50 hours at \$250 an hour and set the budget for \$12,500. Robert E. Hirshon, *Law and the Billable Hour: A Standard Developed in the 1960s May Be Damaging Our Profession*, 88 A.B.A. J. 10 (2002); see Thomas L. Sager & Steven A. Lauer, *The Billable Hour: Putting a Wedge Between Client and Counsel*, L. PRAC. TODAY, Dec. 2003, http://www.abanet.org/lpm/lpt/articles/nosearch/fin12032_print.html ("It fit well into an accounting-based approach to managing legal service and therefore was well accepted in the 1950s and 1960s.").

36. *Goldfarb v. Va. State Bar*, 421 U.S. 773 (1975).

37. Scott Turow, *The Billable Hour Must Die*, A.B.A. J., Aug. 2007, http://www.abajournal.com/magazine/the_billable_hour_must_die/print..

38. *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977).

39. GALANTER & PALAY, *supra* note 1, at 70-71.

40. As Steven Brill, the founder of *The American Lawyer*, said, the new paper was "about lawyers, not law." John A. Conway, *Love Those Lawyers*, FORBES, Aug. 21, 1978, at 10; see also *Lawyers; Gossip*, ECONOMIST, Sept. 30, 1978, at 49. A third paper launched at the same time, *Legal Times*, but the Washington-based publication was more focused on regulatory law and other developments in the nation's capital than on gossip and personalities. *Id.*

41. Bruce A. Green, *Professional Challenges in Large Firm Practices*, 33 FORDHAM URB. L.J. 7, 13, 22-23 (2005).

42. Darlene Ricker, *Greed, Ignorance, and Overbilling: Some Lawyers Have Given New Meaning to the Term 'Legal Fiction'*, 80 A.B.A. J. 62, 65 (1994).

profitable.⁴³ In 1961, a full-time lawyer billed 1200 hours annually.⁴⁴ By the mid-1980s, associates at large New York law firms averaged 1800 billed hours annually,⁴⁵ and a decade later, associates averaged between 2000 and 2500 hours.⁴⁶ Even Chief Justice William Rehnquist was taken aback by these developments, suggesting in the mid-1980s that partners treated associates like a manufacturer would treat “one hundred tons of scrap metal.”⁴⁷ “If you use anything less than the one hundred tons you paid for,” he commented, on the partners’ mindset, then “you are simply not running an efficient business.”⁴⁸

The declining work conditions made the prospect of partnership less appealing for young attorneys, which forced firms to raise entry-level salaries in order to attract the top recruits.⁴⁹ First-year associate salaries increased from

43. See, e.g., Nathan Koppel, *Fatal Vision: How a Bid to Boost Profits Led to a Law Firm’s Demise—Tax Shelters Paid Off for Jenkins & Gilchrist, Until IRS Took Interest*, WALL ST. J., May 17, 2007, at A1.

44. In other words, approximately twenty-five billable hours per week. JOAN C. WILLIAMS & CYNTHIA THOMAS CALVERT, SOLVING THE PART-TIME PUZZLE: THE LAW FIRM’S GUIDE TO BALANCED HOURS 11 (2004); see also McCollam, *supra* note 35 (“As a baseline, consider a study by the ABA in 1958 when billable hours were first coming into vogue. It found that there were approximately 1,300 fee-earning hours in a year (that assumption included working half-day Saturdays).”).

45. Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 891 (1999); see WILLIAM G. ROSS, THE HONEST HOUR: THE ETHICS OF THE TIME-BASED BILLING BY ATTORNEYS (1996).

46. Schiltz, *supra* note 45, at 893. Keep in mind that it takes more than 2000 hours at work to produce 2000 billables. Not all time in the office is billable: grabbing coffee, taking a bathroom break, and speaking to one’s significant other are all non-billable. *Id.* at 894. Yale Law School’s Career Development Office advises its students that they will have to work approximately 4 hours to generate 3 billable hours. YALE LAW SCH. CAREER DEV. OFFICE, THE TRUTH ABOUT THE BILLABLE HOUR (2007), available at http://www.law.yale.edu/documents/pdf/CDO_Public/cdo-billable_hour.pdf. Judge Schiltz and others place this ratio at 3 hours worked for every 2 hours billed. Schiltz, *supra*, at 894 (citing several other sources finding similar ratios).

47. Kuckes, *supra* note 23.

48. *Id.*

49. A growing number of associates were entering a tournament they would not win or did not want to win. As they recognized that only a handful of them would ever achieve the financial payout of partnership, they began demanding more money up-front. David Lat, *Partners vs. Profit*, N.Y. OBSERVER, July 24, 2007, <http://www.observer.com/2007/n-y-law> (quoting Mark Galanter, co-author of *Tournament of Lawyers*, that “[a]s the odds of getting the prize [of partnership] go down, and the prize itself is somewhat compromised by the fact that partnership now comes without the real guarantee of tenure, the present value of the prize goes down. Then people say, ‘O.K., if I’m not getting this big prize, I want more cash now.’”); see also Elizabeth Goldberg, *Midlevel Blues*, AM. LAWYER, Aug. 2006, at 98 (commenting on the generational change in the newest generation of lawyers who do not see themselves committed to law firms’ partnership tracks); Amy Kolz, *Don’t Call Them Slackers*, AM. LAW., Oct. 2005, at 114 (detailing the results of a survey about associate work habits, in which they express their views that partnership prospects are dim and thus the role of an associate should be more fulfilling and rewarding). It looks as though associate complaints that it is harder to make partner are true, at least in 2006 and 2007. A recent

\$10,000 in 1968⁵⁰ to \$71,000 in 1988,⁵¹ a seven-fold jump, and then doubled in the subsequent two decades, rising to \$160,000 by 2008. To subsidize these pay increases without sacrificing the all-important “profits per partner,”⁵² firms expanded the size of their associate classes at a faster rate than the partnership ranks, creating more leveraged—and often more lucrative—firms.⁵³

But the quick expansion and the pay raises had the unintentional effect of bifurcating associate classes. Young attorneys at large firms typically fell into one of two groups: those who genuinely aspired towards partnership and those who sought a quick financial payout but had no designs on management.⁵⁴ This second cohort was less interested in seeking out the best assignments, mentorship, and training. These short-term employees—“paperwork associates,” as David Wilkins and G. Mitu Gulati have called them—wound up with the firms’ drudge work, such as due diligence or document review, even though they worked the same long hours as their partnership-oriented colleagues.⁵⁵ Many of these lawyers reported high levels of job dissatisfaction and eventually quit.⁵⁶

survey of law firms found that in 2006 and 2007 law firms promoted relatively fewer attorneys to equity partner than in years past. Dan DiPietro, *Storm Warnings*, AM. LAW., Dec. 2007, at 75 (“The profit pie, however, will be sliced thinner due to an equity partner growth rate in the first half of 2007 of 1.5 percent, up from last year’s equity partner increase of just over 0.5 percent. But note: This year’s larger class of equity partners still trails the six-year CAGR of 2.6 percent.”)

50. Jerry J. Berman & Edgar S. Cahn, *Bargaining for Justice: The Law Students’ Challenge to Law Firms*, 5 HARV. C.R.-C.L. L. REV. 16, 22 (1970).

51. Debra Cassens Moss, *Associates’ Pay at \$71,000: N.Y. Firms OK \$6,000 Hike*, 74 A.B.A. J. 17 (1988).

52. Green, *supra* note 41, at 22.

53. Jones, *supra* note 22; Schmitt, *supra* note 22.

54. In 2007, only 44.9% of mid-level associates expected to still be at their firm in five years. Aric Press, *Annual Survey Shows the New Reality of Associate Life*, AM. LAW., Aug. 1, 2007, <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1185820712350>; see also Memorandum from the New York Associates, Clifford Chance, LLP, to the New York Partners, Clifford Chance, LLP (Oct. 15, 2002), available at <http://www.lawcost.com/clifchancememo.htm> [hereinafter Clifford Chance Memorandum].

55. David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1612-13 (1998).

56. The *Wall Street Journal* investigated the link between attrition and attorney satisfaction at Sullivan & Cromwell, a large New York-based firm. Sullivan & Cromwell blamed its high attrition on exceptionally low associate morale, among other reasons. Sullivan & Cromwell and Associate Morale, Posting of Peter Lattman to the Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2007/01/24/sullivan-cromwell-and-associate-morale> (Jan. 24, 2007, 11:51 EST). Firm productivity decreased as lawyers suffered growing rates of depression, anxiety, and other psychological illnesses. AM. BAR ASS’N, AT THE BREAKING POINT: A NATIONAL CONFERENCE ON THE EMERGING CRISIS IN THE QUALITY OF LAWYERS’ HEALTH AND LIVES—ITS IMPACT ON LAW FIRMS AND CLIENT SERVICES (1991); YOUNG LAWYERS DIV., ABA, SURVEY: CAREER SATISFACTION (1995). Conditions got so bad that Fried, Frank LLP hired its own staff psychologists, while Perkins, Coie LLP financed a “happiness committee” to boost company morale. Alex Williams, *The Falling-Down*

The third and final major change was the diversification of the legal profession. Since the demise of the “golden age,” a growing number of religious, sexual, and racial minorities have reached the highest echelons of elite firm practice.⁵⁷ This increased diversity added new perspectives and new insights in the operation of these firms.

Different groups enjoyed differing degrees of success at integration, however. Jewish lawyers succeeded only after creating their own large law firms, which specialized in lucrative practice areas that WASP lawyers considered ungentlemanly.⁵⁸ Women and racial minorities increased their numbers slowly, although they remained far from achieving parity between the percentages of minority partners at elite firms and their representation in the population at large.⁵⁹ By the mid-1980s, the American Bar Association (ABA) sought to encourage this progress, inserting a new Goal IX into its mission statement, committing itself to increase the number of women, minorities, and disabled persons in the profession.⁶⁰ In addition, regional bar associations often created voluntary targets for increasing the percentage of female and minority attorneys at each firm.⁶¹

Professions, N.Y. TIMES, Jan. 6, 2008, at L1; see also Lynnley Browning, *For Lawyers, Perks to Fit a Lifestyle*, N.Y. TIMES, Nov. 22, 2007, at C1.

57. See ABEL, *supra* note 19, at 90-99. In 1963, women made up 3.7% of law school students; in 2002, their enrollment was 42.5%. Leigh Jones, *Fewer Women Are Seeking Law Degrees*, NAT'L L.J., Oct. 1, 2007, <http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1191229385613>. Only a handful of minority lawyers were admitted to the bar as late as the 1970s. GERALDINE R. SEGAL, *BLACKS IN THE LAW: PHILADELPHIA AND THE NATION* 215-16 (1983). By the 1981, African-Americans still only comprised 2.3% of all associates in private firms and less than half of one percent of all partners. Rita Henley Jensen, *Minorities Didn't Share in Firm Growth*, NAT'L L.J., Feb. 19, 1990, at Appendix.

58. See *The Legal Masterminds Behind Merger Mania, How a Small Group of Lawyers Became Superstars in a 'Dirty Business'*, BUSINESS WEEK, Aug. 13, 1984, at 122.

59. In 1960, less than one percent of all lawyers were racial minorities, while slightly less than five percent of law students were. GALANTER & PALAY, *supra* note 1, at 39. In the same year, women accounted for only 2.6 percent of lawyers. BARBARA CURRAN, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN THE 1980s*, at 10 (1985).

60. See, e.g., ABA COMM'N ON WOMEN IN THE PROFESSION, *GOAL IX REPORT CARD* (2008), available at <http://www.abanet.org/women/goalix/2008goalix-women.pdf>.

61. Since the 1980s, bar associations in New York City, San Francisco, Washington, D.C., Los Angeles, and Philadelphia have attempted such programs. David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms?: An Institutional Analysis*, 84 CAL. L. REV. 493, 505 n.33 (1996). The first and most aggressive effort was the Bar Association of San Francisco, which in 1989 set goals and timetables for minority hiring and advancement. BAR ASS'N OF S.F., *GOALS AND TIMETABLES FOR MINORITY HIRING AND ADVANCEMENT: 2005 INTERIM REPORT 1* (2005). Over 100 Bay Area firms signed onto the projects, committing to meet certain benchmarks in 1995 and 2000. *Id.* at 5. Although the firms fell short of some of these targets, particularly the more ambitious goals set for 2000, the San Francisco bar did diversify much more thoroughly than other major markets during this time. *Id.* at 6. San Francisco's rise in minority lawyers is partly attributed to the number of Asian-Americans who entered the profession in the 1990s. The number of black and Hispanic lawyers in this market has grown only slightly since the Bar

For a variety of reasons, however, female and minority associates continued to leave firms at disproportionately high rates. Sometimes they found themselves relegated to a “paperwork” track that foreclosed the possibility of partnership.⁶² Women often left because they were unwilling or unable to combine the intensified hours of the elite law firm with their family responsibilities.⁶³ Part-time programs rarely solved the problem because they were stigmatized⁶⁴ and often suffered from “hours creep.”⁶⁵ Similarly, minority lawyers found it difficult to navigate the competitive pressure without mentors and the social networks that would enable them to develop a book of business.⁶⁶ According to Wilkins and Gulati, partners often failed to invest in

Association of San Francisco instituted its goals and timelines in 1989. *Id.* at 2.

62. See, e.g., Wilkins & Gulati, *supra* note 61, at 565-66; see also David Charney & G. Mitu Gulati, *Efficiency-Wages, Tournaments, and Discrimination: A Theory of Employment Discrimination Law for “High-Level” Jobs*, 33 HARV. C.R.-C.L. L. REV. 57 (1998); cf. Wilkins & Gulati, *supra* note 55, at 1612-13.

63. A recent study by the National Association of Law Placement indicated that, among young associates, women were twice as likely to leave their employers because of a desire to reduce billable hours. NALP FOUND., UPDATE ON ASSOCIATE ATTRITION: EXECUTIVE SUMMARY (2007); see also Kristin Choo, *The Right Equation: Despite Increasing Numbers of Female Lawyers, Gender Equality May Not Be Guaranteed in the Future*, 87 A.B.A. J. 58 (2001); Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291, 359-60 (1995); Debra Bruno, *Younger Female Lawyers Play by Their Own Rules*, LEGAL TIMES, Jan. 22, 2008, <http://www.law.com/jsp/law/sfb/lawArticleSFB.jsp?id=1200594602540>.

64. In one study, 30-40% of part-time attorneys said that their firm relationships had deteriorated, most commonly because of perceived lack of commitment, and approximately 25% felt that their abilities and contributions were devalued. EMPLOYMENT ISSUES COMM. OF THE WOMEN’S BAR ASS’N OF MASS., MORE THAN PART-TIME: THE EFFECT OF REDUCED-HOURS ARRANGEMENTS ON THE RETENTION, RECRUITMENT, AND SUCCESS OF WOMEN ATTORNEYS IN LAW FIRMS: EXECUTIVE SUMMARY (2000), available at <http://womenlaw.stanford.edu/mass.rpt.html>. Another way to confirm that part-time programs are stigmatized is to look at male participation, which is very low. Telephone Interview with Joan Williams, Prof., U.C. Hastings, in S.F., Cal. (Jan. 29, 2007); see also Katherine Reilly, *The Professional Parent* (2006) (unpublished college thesis on file with authors) (“The men in this demographic felt a conflict between their work and their obligations at home, but they tended not to feel that they could realistically make use of policies that might ease that conflict.”).

65. Project for Attorney Retention, *Does Your Part-Time Program Work? The PAR Usability Test*, http://www.pardc.org/LawFirm/PAR_usability_test.shtml. The National Directory of Legal Employers reports that participation in part-time programs is at 2.9% while firms with successful programs have 7-11% participation rates. *Id.*; PROJECT FOR ATTORNEY RETENTION, THE BUSINESS CASE FOR A BALANCED HOURS PROGRAM FOR ATTORNEYS 4 (2007), available at http://www.pardc.org/LawFirm/PAR_BusinessCase_8-23-07.pdf [hereinafter PROJECT FOR ATTORNEY RETENTION, THE BUSINESS CASE FOR BALANCED HOURS]. The Project for Attorney Retention has found some success implementing “balanced hours” programs (the new, non-stigmatized name for part-time) that focus on firm management and other tools to remove stigma and discourage schedule creep. Its publications and tools were able to help Fulbright & Jaworski increase the percentage of women in senior associate positions from 29% in 2002 to 47% in 2006. Interview with Williams, *supra* note 64.

66. Wilkins & Gulati, *supra* note 61, at 569. When Wilkins & Gulati surveyed black

the professional development of their minority lawyers, assuming perhaps that they were disinterested in corporate legal services.⁶⁷ The partners' assumptions became self-fulfilling, however, and the firm management remained homogenous even as associate classes diversified. These challenges continue to the present day.

B. *The Effects of the Transformation*

By 1991, the transformation described above had wreaked such havoc on the legal profession that Galanter and Palay declared it a "crisis."⁶⁸ In 2008, many of the same issues remain. The three most salient problems today are rising billable-hour expectations, a lack of racial and gender diversity among the partnership ranks, and high associate attrition rates.

1. *Billable hour escalation*

Fifty years ago, an ABA study found that large firm lawyers could not reasonably work more than approximately 1,300 fee-earning hours a year.⁶⁹ Over time, however, the hours that firms expect of their associates has increased substantially. Patrick Schiltz, a former law firm partner recently appointed to the federal bench, described the problem in his polemic *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*:

Conventional wisdom just a few decades ago was that lawyers could not reasonably expect to charge for more than 1200 to 1500 hours per year. Thirty years ago [in the 1960s], most partners billed between 1200 and 1400 hours per year and most associates between 1400 and 1600 hours. As late as the mid-1980s, even associates in large New York firms were often not expected to bill more than 1800 hours annually. Today, many firms would consider these ranges acceptable only for partners or associates who had died midway through the year.⁷⁰

By the mid-1990s, the situation had escalated to a point where "[a]t the biggest

graduates of Harvard Law School, they discovered that most who went to large firms had difficulty identifying mentors among the firm's partners or senior associates. Less than 40% surveyed said that a senior partner had taken an interest in their work, and a large majority of those respondents stated that the inability to receive mentorship played a significant role in their decision to leave the firm. *See id.* at 568.; *see also* Elizabeth Chambliss, *Organizational Determinants of Law Firm Integration*, 46 AM. U. L. REV. 669, 692-93 (1997).

67. Wilkins & Gulati, *supra* note 61, at 568.

68. GALANTER & PALAY, *supra* note 1, at 3.

69. McCollam, *supra* note 35 ("[T]hat assumption included working half-day Saturdays.").

70. Schiltz, *supra* note 45, at 891 (internal quotations and citations omitted); *see* WILLIAM G. ROSS, *THE HONEST HOUR: THE ETHICS OF THE TIME-BASED BILLING BY ATTORNEYS* (1996).

firms in the biggest cities, associates commonly bill 2000 to 2500 hours per year.”⁷¹

These steep increases come with significant costs to attorneys,⁷² firms,⁷³ and the community. High rates of depression, anxiety, and other forms of mental illness among attorneys have been well documented,⁷⁴ and blamed on the high number of hours required of attorneys in private practice.⁷⁵ Equally important, the pressure to bill long hours crowds out all other responsibilities for large firm lawyers, leaving less time for mentorship, training, and pro bono work. In 2002, Justice Stephen Breyer wrote the introduction to the final report of the ABA Commission on Billable Hours,⁷⁶ where he voiced concerns about the dominance of the billing system:

[T]he 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.⁷⁷

71. Schiltz, *supra* note 45, at 893; *see also* Silberman, *supra* note 3, at 615 (“[L]aw firms seem almost desperate to increase their billable hours to levels that we once would have thought unbearable. Many of my contemporaries, reaching the end of their legal careers, cannot understand what has happened to them. They make a good deal more money than they ever expected, but they hate what the practice of law has become and would gladly trade a good portion of their incomes to recover the old client-law firm relationship.”); Richard A. Posner, *The Material Basis of Jurisprudence*, 69 *IND. L.J.* 1, 28-29 (1993) (“Harder work, even when well remunerated, greater uncertainty of tenure, and the inevitably bureaucratic ‘feel’ of practicing law in a huge organization all reduce job satisfaction. Many lawyers claim with evident sincerity not to enjoy the practice of law as much as they once did. Many say they would not have gone to law school had they known what the practice of law would become.”).

72. Approximately 39% of firm attorneys report that they average six or fewer hours of sleep per night. Susan Saab Fortney, *The Billable Hours Derby: Empirical Data on the Problems and Pressure Points*, 33 *FORDHAM URB. L.J.* 171, 182 (2005). “These attorneys may not be obtaining adequate sleep for peak performance because sleep research has revealed that individuals consistently sleeping six or fewer hours per night may be accumulating a sleep debt that cuts into their cognitive abilities.” *Id.* (internal quotation marks omitted).

73. On attrition, *see* Part III *infra*.

74. *See generally* Schiltz, *supra* note 45.

75. *Id.* at 890, 893, 895. Even as recently as December 2007, the Wall Street Journal demonstrated the durability of the theme by reporting that “lawyers are among the most miserable of men – and women.” Sue Shellenbarger, *Even Lawyers Get the Blues: Opening Up About Depression*, *WALL ST. J.*, Dec. 13, 2007, at D1 (“For decades, watching the legal profession’s response to these work-life problems has been a little like watching paint dry.”).

76. ABA COMM’N ON BILLABLE HOURS, *supra* note 34.

77. *Id.* at vii; *see also* Law Students Building a Better Legal Profession, Costs to the Profession, <http://refirmation.wordpress.com/costs-to-the-profession> (Apr. 1, 2007); You Say You Want a Big-Law Revolution, Posting of Peter Lattman to Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2007/04/03/you-say-you-want-a-big-law-revolution> (Apr. 3,

As Justice Breyer suggested, the impact on pro bono work participation is especially pronounced. Attorneys generally devote little time to providing free legal services for persons or organizations in need. According to Deborah Rhode and David Luban, “[M]ost lawyers make no [pro bono] contributions, and the average for the bar as a whole is less than half an hour a week and fifty cents a day.”⁷⁸ Even worse, most of this work counted in this estimate is service on behalf of friends or family, not the indigent or true public interest causes.⁷⁹ The bar’s unwillingness to mandate pro bono work or set more stringent rules for what counts as legitimate pro bono⁸⁰ has, in one writer’s words, encouraged “a crazy quilt of exhortation and regulation, with the result that pro bono is celebrated at back-patting banquets and partner meetings.”⁸¹

Pro bono participation at large law firms is dismal. In a 2005 editorial titled *Brother, Can You Spare 20 Hours?*, *American Lawyer* editor Aric Press reported that among AmLaw 200 firms, only eighteen had 60% or more of their attorneys complete at least 20 hours of pro bono a year.⁸² While the total in-kind donation of the firms’ pro bono work came to just over \$1 billion, Press argued that such low participation rates were an embarrassment to the legal profession: “[W]ould we be in this state if pro bono activity were fully accepted as a core professional duty? Consider: If client confidentiality were treated the same way that pro bono is, about two-thirds of you would be doing something else for a living.”⁸³

2007, 9:05 EST).

78. DEBORAH RHODE & DAVID LUBAN, *LEGAL ETHICS* 884 (4th ed. 2004); *see also* Deborah Rhode, *Pro Bono in Principle and in Practice*, 26 *HAMLIN J. PUB. L. & POL’Y* 315, 326-30 (2005).

79. RHODE & LUBAN, *supra* note 78.

80. *See, e.g.*, ABA COMM’N ON PROFESSIONALISM, “. . . IN THE SPIRIT OF PUBLIC SERVICE:” A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 49 (1986) (“The Commission should not be understood as recommending a mandatory pro bono commitment.”); RHODE & LUBAN, *supra* note 78, at 883 (“The ABA Ethics 2000 Commission rejected proposals to make pro bono mandatory.”). *But see* Scott L. Cummings, *Access to Justice in the New Millennium: Achieving the Promise of Pro Bono*, *HUM. RTS.*, Summer 2005, <http://www.abanet.org/irr/hr/summer05/millennium.html> (arguing that the ABA “has provided strong leadership in promoting pro bono on behalf of poor and underrepresented clients” and showing the ABA’s gradually stronger language in support of pro bono).

81. Aric Press, *Brother, Can You Spare 20 Hours?*, *N.Y. LAWYER*, Sept. 2, 2005, <http://www.nylawyer.com/display.php/file=/probono/news/05/090205b>.

82. *Id.* This twenty-hour benchmark is still well below the fifty hours that the ABA recommends. MODEL RULES OF PROF’L CONDUCT R. 6.1 (1983) (“Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) [sic] hours of pro bono publico legal services per year.”).

83. Press, *supra* note 81. For an alternate take on this phenomenon, see Silberman, *supra* note 3, at 612 (“I believe, somewhat heretically I am sure, that all this talk of pro bono activities is quite counterproductive. Implicit in the emphasis on *pro bono* is the profession’s acknowledgment . . . that its normal work is not really something to brag about.”).

2. A lack of racial and gender diversity

The substantial gap between male and female partnership rates can no longer be blamed on an insufficient “pipeline” of women in law schools. In 1963, women made up 3.7% of law school students; in 1992, their enrollment surpassed 50%, and has been hovering near parity ever since.⁸⁴ Many observers expected that women would approach 50% of large law firm partnership ranks as their law school graduation rates became equal.⁸⁵

The following chart,⁸⁶ however, shows that in 2005 women constituted only 17% of partners in law firms:

The Law Firms Working Group

Breakdown by Subgroup & Title

Pipe line → To Partner | “Off Track” Categories

Group / Subgroup	Summer Associates	Associates	Partners	Of Counsel	Senior Attorneys	Staff Attorneys
Male	51.1%	55.8%	83.0%	75.3%	60.9%	42.3%
Female	49.0%	44.2%	17.0%	24.7%	39.2%	59.1%
Black	7.6%	4.2%	1.4%	1.8%	2.1%	5.0%
Asian	8.9%	7.0%	1.7%	1.8%	2.4%	5.5%
Hispanic	3.8%	3.0%	1.4%	1.3%	1.6%	2.6%

Instead of reaching partnership, senior women are often found in “off-track” positions like “Of Counsel,” which lack the prestige, formal power, and

84. In 1992 women outnumbered men in law school 50.4% to 49.6%. In 2002, women made up 49% of law school enrollment. Jones, *supra* note 57.

85. See Sacha Pfeiffer, *Many Female Lawyers Dropping off Path to Partnership*, BOSTON GLOBE, May 2, 2007, http://www.boston.com/business/articles/2007/05/02/many_female_lawyers_dropping_off_path_to_partnership/ (“For years, law firm leaders have insisted that as more women graduate from law school and enter private practice, the presence of women in leadership positions in the judiciary, in business, and in academia would grow correspondingly. But even though the gender gap in law firm hiring has been narrowing over the past decade, women are dropping off the partner track at alarming rates.”).

86. This slide is Professor Bill Henderson’s summary shot of data from the 2005-2006 NALP Directory of Law Firms. William D. Henderson, Race and Gender Differences in U.S. Corporate Law Firms: A Preliminary Analysis, Presentation to the Law Firms Working Group (October 12, 2007). In 2006, the proportion of female partners appears to have risen to 17.9%, according to NALP. Jones, *supra* note 57.

compensation of equity partnership. The partnership gap shown here warrants two short additional points. First, the 17% figure includes non-equity partners, so the percentage of female *equity* partners is presumably substantially lower. Second, it is not true that the problem will fix itself over time as elderly male partners retire or pass away: research by the Project for Attorney Retention suggests that partnership elections themselves are highly skewed toward men.⁸⁷

There are several possible causes for this decline, ranging from outright discrimination, to women “opting out” of the profession,⁸⁸ to the difficulty of balancing the responsibilities of work and family. Increasingly onerous billable hour expectations fall particularly hard on women. As a recent study by the National Association of Law Placement on law firm attrition noted, “female entry-level associates were twice as likely to leave their employers because of a desire to reduce billable hours than their male entry-level counterparts.”⁸⁹ The Project for Attorney Retention has discussed how motherhood affects young female lawyers:

Nationwide, 81% of women become mothers and 95% of mothers work fewer than 50 hours/week. Thus, an employer that requires 2200 billable hours annually—which equates to working from 8:00 a.m. to 8:00 p.m. every weekday and seven hours on Saturday, three times a month—stands to systematically eliminate more than three-fourths of women from its labor pool in an era when nearly half of law school graduates are women.⁹⁰

Large law firms also find it enormously difficult to retain attorneys from underrepresented racial and ethnic groups. A recent analysis of NALP’s law firm employment data by Building a Better Legal Profession found that “out of 74 large law firms in New York City,⁹¹ 27 (over one-third) did not have a single Hispanic partner, 25 did not have a single African-American partner, and 21 did not have a single Asian-American partner.”⁹² There are a variety of explanations for this difference, again ranging from discrimination to individual choice. One issue is the “pipeline problem”: there are fewer minority students in law school than minorities in society, thus no amount of law student recruiting will enable the legal profession to fully represent America. For example: African-Americans make up approximately 13% of the U.S.

87. Wendy Werner, *Where Have the Women Attorneys Gone?*, L. PRACTICE TODAY, May 2004, <http://www.abanet.org/lpm/lpt/articles/mgt05041.html>.

88. Lisa Belkin, *The Opt-Out Revolution*, N.Y. TIMES, Oct. 26, 2003, <http://www.nytimes.com/2003/10/26/magazine/26WOMEN.html>.

89. NALP FOUND., *supra* note 63, at 4. These are the firms’ own explanations for why attorneys left—actual reasons may have been kept private and undisclosed by departing attorneys.

90. PROJECT FOR ATTORNEY RETENTION, THE BUSINESS CASE FOR BALANCED HOURS, *supra* note 65, at 1 (internal citations omitted).

91. BBLP defined this group as those firms with 100 or more attorneys in their NYC offices and that filled out a single-office NALP form for February 1, 2007.

92. Press Release, Building a Better Legal Profession, New York Rankings (Oct. 10, 2007), available at <http://refirmation.files.wordpress.com/2007/10/new-york-release.pdf>.

population,⁹³ yet are only 3.9% of all attorneys.⁹⁴ Overcoming years this number may rise, since about 6.6% of law students are African-American,⁹⁵ although it will invariably not reach 6.6% as some of these law students decline to practice law or depart the legal profession quickly.

But everyone recognizes that there is more underneath the surface than just a pipeline problem. The above chart shows the problem *within* large law firms: minorities make up a significant portion of summer associates, a smaller portion of associates, and a minuscule portion of partners. Similarly, minorities make up 9.7% of all attorneys, yet only hold 5.2% of general counsel positions in the *Fortune* 500 and 4.3% of these positions in the *Fortune* 1000.⁹⁶ Something is happening within firms and corporations that restricts or discourages entry to the top of the profession.

3. High associate attrition rates

In 2006 the average associate attrition rate in law firms was 19%.⁹⁷ Only 1 in 5 of these departures are actually “wanted” by law firms,⁹⁸ and firms often lose talent before their associates are most profitable.⁹⁹ Attrition is thus incredibly costly: each second- or third-year associate that leaves costs the firm between \$200,000 and \$500,000.¹⁰⁰ This includes the costs of recruiting (including law student swag and numerous callback interviews), training (including partner time invested in the attorney), lost productivity from the vacant position, and the effect of high attrition upon morale and productivity of remaining attorneys.¹⁰¹ As discussed above, many of the departing associates are women unwilling or unable to balance the long hours with their family responsibilities and minority lawyers unable to navigate the competitive pressure without mentors and the social networks that would enable them to develop a book of business. A high attrition rate, therefore, often hurts a firm’s

93. U.S. CENSUS BUREAU, THE BLACK POPULATION IN THE UNITED STATES: MARCH 2002, at 1 (2003).

94. Daniel A. Panitz, *How Good Intentions for Diversity Fall Short*, LEGAL TIMES, Dec. 28, 2007, <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1198749899956>.

95. *Id.*

96. *Id.*

97. NALP FOUND., *supra* note 63, at 4. The 19% figure appears to be consistent over recent years; for example, it was the three-year annual average between 2002-2004. See Sullivan & Cromwell and Associate Morale, Posting of Peter Lattman to Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2007/01/24/sullivan-cromwell-and-associate-morale> (Jan. 24, 2007, 11:51 EST).

98. NALP FOUND., *supra* note 63, at 31.

99. A. HARRISON BARNES, BCG ATTORNEY SEARCH, LAW FIRM ECONOMICS AND YOUR CAREER (2008), available at <http://www.bcgsearch.com/crc/firmeconomics.html> (“[T]he real fact of the matter is that junior associates are profitable—but not as profitable as midlevel or senior associates.”).

100. WILLIAMS & CALVERT, *supra* note 44, at 18.

101. *Id.* at 18-19.

overall diversity, yet another cost of associate departure.

The *Wall Street Journal* has investigated the link between attrition and attorney satisfaction at Sullivan & Cromwell, a large New York-based firm.¹⁰² In February 2006, Sullivan partners were facing an astronomical attrition rate: 31% in 2004 and 30% in 2005.¹⁰³ “Meanwhile, in the *American Lawyer*’s midlevel associate satisfaction surveys, the firm compared unfavorably against peers In the 2005 survey, it ranked 155th out of 160 law firms.”¹⁰⁴ Sullivan & Cromwell itself blamed its high attrition on exceptionally low associate morale, including associates’ reported high workloads, low partnership prospects, little feeling of connection to the firm, “lack of communication by the firm, and isolated instances of mistreatment by partners and senior associates.”¹⁰⁵

Part of the reason why so many associates depart firms after several years results from information asymmetries during the hiring process. Law student recruits often lack access to reliable, high-quality information about life at a large firm, which results in adverse selection.¹⁰⁶ Most large law firms intentionally shield recruits from the less pleasant aspects of their work, using casual “callback” interviews and lavish summer associate events to obscure concerns about long hours and the lack of substantive legal work for young attorneys.¹⁰⁷ In addition, many elite firms fail to publicly report the average number of hours their associates bill per year,¹⁰⁸ leaving students unable to evaluate potential employers by one of the most important metrics for determining the ability to achieve work-life balance. It may be that some recruits are willing to work the long hours expected to today’s young associates. But without a more effective sorting mechanism, this imperfect information creates significant mismatch between students and firms, resulting in high associate dissatisfaction and attrition.¹⁰⁹

II. THE DEMAND SIDE: CORPORATE CLIENTS

Corporate clients on the demand side and elite students on the supply side

102. See *supra* note 56 and accompanying text.

103. *Id.*

104. *Id.*

105. *Id.*

106. See ARCHON FUNG, MARY GRAHAM & DAVID WEIL, FULL DISCLOSURE: THE PERILS AND PROMISE OF TRANSPARENCY 31-32 (2007). See generally Joseph E. Stiglitz, *Contributions of the Economics of Information to Twentieth Century Economics*, 115 QUART. J. OF ECON. 1441 (2000).

107. See Shapira, *supra* note 9.

108. See, e.g., BUILDING A BETTER LEGAL PROFESSION, ASSOCIATE BILLABLE HOURS: MANHATTAN (2007), available at <http://www.betterlegalprofession.org/comingsoon.php>.

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

have the desire and the power to address each of the three problems discussed. These two constituencies may have different reasons for wanting to correct the excesses of large law firms, and individual players within each group will differ in the commitment to these concerns, but the general trend is that both groups are increasingly vocal in demanding reform by firms.

Skeptics doubt that clients and students can actually effect the changes they seek. We evaluate this skepticism by considering the motivations and the market power of each group, as well as the likelihood that firms will respond favorably to specific demands. Parts II and III are divided into three questions. First, why does each constituency care about the concerns discussed above, and what reforms do they want? Second, what determines whether they will leverage their market power to change the way firms handle these issues? Finally, if clients or students actually leverage their power, what determines whether firms will acquiesce to their demands?

We begin with corporate clients, mostly because they have a longer tradition of using their market power to demand greater accountability from firms. At the height of the golden age, clients rarely challenged their law firms, paying inflated rates for basic legal services.¹¹⁰ But as competition has increased among elite firms, general counsels have come to embrace their role as “purchasing agents” able to dictate the terms of their agreements with outside firms.¹¹¹ This Part examines the past and future potential of clients to exercise this growing market power.

A. *What Reforms Do Clients Want?*

There is no clear formula for how chief legal officers select outside counsel. Unsurprisingly, two of the most important factors are the quality of the firm’s legal work and its cost-effectiveness.¹¹² Clients will define those parameters differently depending on their specific needs, but ultimately most hiring decisions focus on the core question of whether a firm can adequately answer the client’s legal questions without exceeding the company’s budget.¹¹³ All three of the concerns addressed in this Note—escalating billable hour requirements, a lack of diversity, and high associate attrition rates—affect a firm’s ability to efficiently serve client demand, and thus influence how a client selects outside counsel.

In-house lawyers began to consider these issues in the mid-1970s, when

110. Reich, *supra* note 24.

111. Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 EMORY L.J. 1057, 1085 (1997); 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, 383 (1985).

112. Koppel, *supra* note 10.

113. Chayes & Chayes, *supra* note 31, at 289-92.

they first assumed the power to negotiate with outside firms, and increasingly scrutinized their outside counsel as market competition intensified in the 1980s.¹¹⁴ The *ABA Journal* suggests that the recession of the early 1990s was a turning point, when corporations demanded a new round of cost-cutting from their legal departments.¹¹⁵ At the time, many large companies retained dozens of outside firms for specialized legal projects, resulting in unnecessary and redundant work. Firms were extracting as much value as possible out of these relationships, billing long hours for mundane legal tasks, writing the proverbial “20-page memo to summarize a 10-minute conference call.”¹¹⁶ A handful of general counsels realized that they could streamline operations by hiring a smaller number of firms to do a larger share of their outside work.

In 1992, for example, E.I. du Pont de Nemours & Co fired ninety percent of their outside counsel and consolidated their legal work in just thirty-five firms.¹¹⁷ Johnson Controls, a Milwaukee-based car parts manufacturer, took an even more radical approach. Starting in the early 1990s, the company moved to a more vertically integrated model, in which they hired a large team of in-house lawyers, including young associates, to do most of their legal work, and retained a handful of specialty firms only to perform the most technical projects. The model demonstrated the extent to which some companies were willing to experiment with new arrangements in order to reduce costs without sacrificing quality.¹¹⁸

This trend continued through the 1990s and 2000s. Recently, some general counsels have tried to cut costs by replacing traditional hourly billing systems with flat rate or fixed fee billing agreements. Mark Chandler, general counsel of Cisco Systems, has been a particularly strong advocate for new billing systems, dismissing the billable hour as anachronistic and inefficient.¹¹⁹ By 2007, his company was outsourcing nearly three-fourths of its \$125 million legal budget to outside counsel under fixed fee arrangements. Chandler consolidated Cisco’s legal work so that two firms could handle nearly all of it: Fenwick & West LLP, for securities and corporate law, and Morgan, Lewis & Bockius LLP for litigation.¹²⁰ Within five years, the portion of Cisco’s total

114. Association of Corporate Counsel, *Back in the Day: The Story of ACCA’s Founding*, <http://www.acc.com/anniversary/founding.html>.

115. John Gibeaut, *The Outside Looking In*, 90 A.B.A. J. 46, 49-50 (2004).

116. *Id.* at 49; GALANTER & PALAY, *supra* note 1, at 64; *see also* Lisa Lerer, *The Scourge of the Billable Hour; Could Law-Firm Clients Finally Kill It Off?*, SLATE, Jan. 2, 2008, <http://www.slate.com/id/2180420> (commenting on general counsels adopting cost-cutting measures, including avoiding paying for routine work done by low-level associates).

117. Gibeaut, *supra* note 115, at 49.

118. *Id.* at 49-50. Johnson Controls adopted this model from Toyota’s procedures for managing its suppliers.

119. Chandler is not the only person to hold this view. In 2001, the ABA Commission on Billable Hours issued a scathing report, criticizing the billing system for encouraging inefficient work. ABA COMM’N ON BILLABLE HOURS, *supra* note 34.

120. Jones, *supra* note 12.

revenue spent on legal matters dropped twenty-five percent.¹²¹ Other companies, such as Tyco, Advanced Micro Devices, and Pitney Bowes, have moved some of their legal work to flat-rate billing as well.

During this thirty-year period, some general counsels also began to consider the racial and gender diversity of outside counsel when deciding which firms to retain. In 1988, attorney Dennis Archer created a new project modeled on the “supplier diversity” programs that numerous corporations applied to other aspects of their business. He argued that the basic premise behind the programs—that companies could leverage their position as purchasers to ensure their suppliers employed a diverse workforce—would work with force in their legal hiring decisions.¹²² Archer, who would later become the mayor of Detroit and the ABA’s first black president, established the Minority Counsel Demonstration Program as a way to stimulate demand for minority lawyers working in majority-owned firms.¹²³ But as discussed in Part I, this early project did little to boost diversity at elite firms.

Diversity efforts gained new traction in 1997, however, with the founding of the Minority Corporate Counsel Association. The group, which consisted mostly of female, black, and Hispanic in-house lawyers, had two objectives: to advocate for expanded hiring, retention, and promotion of minority attorneys in corporate law departments, but also to push these goals at the corporate firms that they retained.¹²⁴ One of the group’s first projects was to produce a public statement known as *Diversity in the Workplace*, which called on other general counsels to demand that firms hire and retain more minority lawyers. It circulated through the legal community and won support from the general counsels of over five hundred large companies.¹²⁵ The association’s success attracting signatories for its statement indicated that a substantial segment of the business world recognized their ability to leverage their market power to increase diversity in the legal profession.

Finally, clients are increasingly distressed by high attrition rates. Firms

121. *Id.* Each firm signed renewable two-year deals to conduct all of Cisco’s work. Morgan, Lewis made 15% less on the deal than if they had charged Cisco by the hour.

122. Ford Motor Co. and JPMorgan Chase & Co., for example, required that a certain number of the goods and services provided to their companies be purchased from minority-owned businesses. Mayank Shah & Monder Ram, *Supplier Diversity and Minority Business Enterprise Development: Case Study Experience of Three U.S. Multinationals*, 11 SUPPLY CHAIN MGMT. 75, 75-78 (2006); David B. Wilkins, *From ‘Separate Is Inherently Unequal’ to ‘Diversity Is Good for Business’: The Rise of Market Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1566 (2004).

123. ABA COMM’N ON MINORITIES IN THE PROFESSION, INTO THE MAINSTREAM: REPORT OF THE MINORITY DEMONSTRATION PROGRAM 1988-1991, at 6 (1991); Wilkins, *supra* note 122, at 1568-69; Wilkins & Gulati, *supra* note 62, at 595-96.

124. Minority Corporate Counsel Association, About MCCA, <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=485>.

125. Melanie Lasoff Levs, *Call to Action: Sara Lee’s General Counsel: Making Diversity a Priority*, DIVERSITY & B., Jan. 2005, at 20; Peggy Nagae, *How General Counsels Support Their CEOs’ Diversity Efforts*, DIVERSITY & B., May/June 2005, at 50.

internalize part of the \$200,000 to \$500,000 they lose for every departing associate,¹²⁶ but also pass part of the costs of constantly recruiting and training junior associates onto their clients.¹²⁷ In addition, clients lose the benefit of skilled attorneys who are familiar with their company and matters. The Association of Corporate Counsel, the in-house counsel bar association, has grown increasingly frustrated with each new law firm salary hike, and in 2007, the organization's executive director tried to inspire client action against the rising salaries, in part by leveraging the high costs of attrition.¹²⁸

B. *Will Clients Push Firms to Reform?*

The anecdotes above suggest that some clients are increasingly troubled by the workplace environment at their outside counsel. But not all corporate counsel share these concerns, and even those who do vary in their willingness to address the problem. So what determines whether particular companies will decide to leverage their purchasing power and push law firms to correct the problems of escalating billable hours, low diversity, and high associate attrition? The answer depends on at least two factors: the fungibility of a firm's legal services and the personal priorities of general counsels who hire outside counsel.

The first factor that determines the extent of a client's power is the nature of the legal service sought. Some high stakes cases, including hostile acquisitions or bet-the-company litigation, require top-flight attorneys, and in these instances, companies are willing to pay exceptional prices to ensure success. In addition, some types of technical legal work may require such intense specialization that only a handful of lawyers in a particular practice area or geographical region can provide adequate services. As the scarcity of qualified lawyers increases, the power of clients to dictate the terms of the

126. WILLIAMS & CALVERT, *supra* note 44, at 18.

127. PROJECT FOR ATTORNEY RETENTION, THE BUSINESS CASE FOR BALANCED HOURS, *supra* note 65, at 2 ("Clients who spend a lot of time bringing an attorney up to speed get upset when, over and over again, an attorney they have invested their time in leaves a firm."); Aric Press, *In-House*, AM. LAW., Dec. 1, 2007, <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1133345109855> (Clients are "annoyed at annual rate increases, \$1,000-an-hour partners, and \$160,000-a-year first-years."). Some clients have indicated to us that they are more interested in paying for minority associates to be well-trained, as an investment in the larger legal profession. But this may be explained by their desire to later poach that associate: At the "The American Legal Profession: Current Controversies, Future Challenges" conference held at Stanford Law School on March 14, 2008, one participant said that clients are encouraging minority attrition from firms because they can then diversify their own general counsels' offices.

128. Susan Hackett, *Where Will In-House Counsel Draw the Line on Associate Costs?*, CORP. COUNSEL, Mar. 19, 2007, <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1174035814246> ("So let's say—again, conservatively—that the \$300,000 cost of a fully loaded first-year associate, when combined with the very real costs of attrition and recruiting, brings us to a nice 'blended' cost of about \$400,000 a year.").

relationship decreases.

On the other hand, a growing body of routine, fungible legal work can be handled in-house or by a smaller firm that charges lower rates.¹²⁹ Many companies will now seek outside counsel by soliciting bids through a “Request for Proposals” (RFP). These RFPs involve questionnaires of varying lengths,¹³⁰ which allows clients to collect information on a variety of metrics, including expected costs, incidental expenses, and demographic diversity.¹³¹ The more competitive the bid process, the more that a corporate client can leverage its position to extract concessions from the participating firms.

General Electric, for example, holds what it calls a “reverse auction,” where the company posts bids online and gives rivaling firms twenty minutes to beat the lowest price. The New Jersey-based pharmaceutical company Ingersoll-Rand awarded its intellectual property work to a little known Midwestern practice, Michael, Best & Friedrich, LLP, when the Wisconsin firm offered to open a new office in eastern Pennsylvania, just across the state line from the client’s corporate headquarters.¹³² As these examples suggest, competitive bidding have helped major companies cut legal expenses and enjoy improved service. But, as mentioned above, such bargaining is only possible when there are enough firms to create genuine competition for the business.¹³³

The other factor that determines the extent of the client’s market power involves the personal priorities and goals of the corporate executives hiring outside counsel. Some general counsels are more aggressive than others in pursuing their company’s goals. Mark Chandler, for example, is well known for driving a harder bargain than his colleagues in pursuing drastic cost-cutting measures.¹³⁴ It is reasonable to assume that companies would insist on more cost-effective legal services during lean times, either because of a budget

129. Lerer, *supra* note 116. Unfortunately for most large firms, many elite partners fail to recognize this trend, remaining focused on premium work even in an increasingly tight legal market. Craig Glidden, general counsel for Chevron, described the problem in the *ABA Journal*: “All law firms seem to be chasing premium-dollar work. . . . Frankly, there are more law firms out there than there is premium work.” Gibeaut, *supra* note 115, at 50 (internal quotations omitted); see also Julius Melnitzer, *British Legal Departments Lash Out at Skyrocketing Outside Counsel Fees*, CORP. L. TIMES, Jan. 2003, at 27.

130. Accenture Consulting, for example, requires prospective firms to complete a seven-page diversity survey before they will even consider hiring them. Aruna Viswanatha, *Pass, or Fail: Accenture Will Drop Law Firms that Don’t Make the Grade on Its Diversity Exam*, CORP. COUNSEL, Jan. 2007, at 20.

131. Terry Carter, *RFPs Won’t R.I.P.*, 92 A.B.A. J. 30 (2006); Fortney, *supra* note 72, at 190 (calling on in-house counsel to seek information about firms’ billable hour requirements and factor the information into hiring decisions); Douglas McCollam, *The Billable Hour: Are Its Days Numbered?*, AM. LAW., Nov. 28, 2005, <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1132653918886>.

132. Gibeaut, *supra* note 115.

133. *Id.*; Eriq Gardner, *Pfizer Litigators Endure Beast of a Beauty Contest*, CORP. COUNS., Oct. 31, 2005, <http://www.law.com/jsp/article.jsp?id=1130499504777>.

134. Jones, *supra* note 12.

shortfall or a general recession. On the flip side, it is possible that certain general counsels will not ask their outside firms for a better deal because they fail to grasp the extent of their companies' leverage.

The leadership and temperament of general counsels especially affect the extent to which a company considers diversity and other factors not directly related to the cost of the legal services. Some clients may believe that they have an ethical obligation to contract only with firms that uphold certain principles, such as workplace diversity or a commitment to pro bono. In such cases, the general counsel may value the psychic benefits of fulfilling its obligations more than the economic costs of their decision. More commonly, however, a client will hire diverse firms because he or she believes that it will help the company's bottom line, either by improving its public image or by creating a more hospitable workplace environment.¹³⁵ But while advocates of the "business case for diversity" have preached its message for several decades,¹³⁶ not all corporate executives accept its empirical claims. As a result, a company's willingness to consider diversity (or other metrics, such as pro bono participation or attorney satisfaction) will depend on whether the general counsel actually accepts the "business case."

It is difficult to gauge its precise support among corporate executives, although the large number of female and minority attorneys working in-house indicates substantial backing.¹³⁷ A recent initiative by the Minority Corporate Counsel Association (MCCA) demonstrates how clients are using their market power to encourage greater diversity in their outside firms. In 2004, Rick Palmore, general counsel for Sara Lee, circulated a petition in which companies pledged to terminate their relationship with law firms that failed to promote diversity initiatives.¹³⁸ The effort gave teeth to the MCCA's 1997 "Diversity in

135. Gail Robinson & Kathleen Dechant, *Building a Business Case for Diversity*, 11 ACAD. OF MGMT. EXECUTIVE 21 (1997).

136. Wilkins, *supra* note 122, at 1566-67.

137. The in-house legal departments at large companies were far more diverse than their outside counsel—in 2006, for example, Walmart's lawyers were 25% minority and 43% female, while the nation's top firms were only 11% minority and 31% female. Nagae, *supra* note 125; Sam Reeves, *Law Firms Need to Heed the Corporate Call to Action*, L. FIRM PARTNERSHIP & BENEFITS REP. NEWSL., May 4, 2006, <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1146647128531> [hereinafter Reeves, *Law Firms Heed Call*]; Press Release, Nat'l Ass'n of Law Placement, Partnership at Law Firms Elusive for Minority Women—Overall, Women and Minorities Continue to Make Small Gains, at tbl.2 (Nov. 8, 2006), available at <http://www.nalp.org/press/details.php?id=64>. Indeed, part of the reason that in-house lawyers are so eager to transform outside counsel is because they are women and minorities who began their careers in a corporate firm and left because of the inhospitable environment. See Arin Reeves, *CEOs Speak Out on the Business Case for the 21st Century: Diversity in Dollars and Sense*, DIVERSITY & B., Nov. 2002, at 9; Wilkins, *supra* note 122, at 1557.

138. The petition read:

As Chief Legal Officers, we hereby reaffirm our commitment to diversity in the legal profession. Our action is based on the need to enhance opportunity in the legal profession and our recognition that the legal and business interests of our clients require legal representation

the Workplace” statement by introducing the threat of market penalties for firms that lagged behind peer firms. General counsels from dozens of America’s largest companies, from Intel to PepsiCo to Halliburton, signed on.¹³⁹

Stories began circulating, many of them apocryphal, about general counsels dumping some of the nation’s most prestigious law firms over diversity issues. The most infamous involved the infamous Shell Oil “beauty contest” for new counsel in 2003.¹⁴⁰ As described above, Catherine Lamboley, general counsel for Shell, invited dozens of firms for a meeting at her company’s Houston headquarters. When they arrived, she announced that her office would now only hire outside counsel that demonstrated a genuine commitment to diversity issues.¹⁴¹

Lamboley, who later became chair of the MCCA Board of Directors, did not waste time implementing the new policy. As the meeting ended, she stated that each firm had two hours to explain how they would meet Shell’s criteria and was prepared to drop any firm that did not satisfy the requirements. Shell announced that it would retain only twenty-seven of the firms that attended the meeting. Among those left out was Texas’ most venerable firm, Baker Botts, whose ties with the oil company were so close that their Houston offices were located at One Shell Plaza.¹⁴² Even the firms that survived the beauty contest faced new constraints. The remaining twenty-seven “strategic partners” had to provide Lamboley with regular updates on the number of women and minorities in their offices, which Shell would then use to produce annual “report cards.”

that reflects the diversity of our employees, customers and the communities where we do business. In furtherance of this renewed commitment, this is intended to be a *Call to Action* for the profession generally, in particular for our law departments, and for the law firms with which our companies do business.

In an effort to realize a truly diverse profession and to promote diversity in law firms, we commit to taking action consistent with the referenced *Call to Action*. To that end, we pledge that we will make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms. We intend to look for opportunities for firms we regularly use which positively distinguish themselves in this area. We further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.

Call to Action, Commitment Statement, A Call to Action: Diversity in the Legal Profession, <http://www.tools.mcca.com/CTA/commitment-print.html>.

139. The petition may be viewed at Call to Action: Diversity in the Legal Profession, <http://www.clocalltoaction.com>.

140. Koppel, *supra* note 10.

141. *Id.*

142. *Id.*; see also BRIAN DALTON ET AL., VAULT GUIDE TO THE TOP 100 LAW FIRMS 27 (2007); VERA DJORDJEVICH ET AL., VAULT GUIDE TO THE TOP TEXAS & SOUTHWEST LAW FIRMS 22-26 (2007).

C. Will Firms Comply with Client Demands?

Convincing clients to leverage their market power is only half the battle. Even if corporate clients exploit their roles as purchasing agents to pursue broad changes within elite firms, it remains unclear if firms will actually undertake meaningful reforms to address their client's concerns. What determines whether firms will comply with client "needs" that until recently have only been "wants"? A firm's long-term reaction depends on the importance of the client's business, the extent of the client's follow-up, and the scope of the client's demands.

First, and obviously, firms are much more likely to comply when the client's account is a significant percentage of firm revenue. An anecdote from a 2006 MCCA conference illustrates the point. Arthur Chong, former general counsel for McKesson Corp., mentioned during a presentation that his company had rejected a bid from a prominent law firm due to its reputation for lacking racial and ethnic diversity. According to press reports, the statement did not seem to elicit much response from the crowd. He was, however, followed on stage by Thomas Mars, general counsel for Wal-Mart. Mars announced: "I know who that firm is, and I am going to speak to them."¹⁴³ (The firm was Gibson, Dunn & Crutcher, which only had five minorities out of 256 partners.) The prospect of America's largest company¹⁴⁴ scolding a prominent law firm stunned attendees, with *American Lawyer Media* going so far to ask if this was the "snub heard 'round the world."¹⁴⁵ The incident underscores that firms are more likely to respond the more highly they value a particular client. Some firms might not need McKesson's business, but few can afford to ignore Wal-Mart's.

Second, law firms are more likely to comply if they believe that the client will actually check up on the firm's progress. Corporations have demanded greater transparency from firms in general.¹⁴⁶ They developed new modeling tools to determine how much a certain piece of legal work should cost, which allowed in-house lawyers to track whether law firms were meeting these

143. Kellie Schmitt, *Corporate Diversity Demands Put Pressure on Outside Counsel*, RECORDER, Dec. 28, 2006, <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1167214010196>.

144. Based on Fortune Global 500, <http://money.cnn.com/magazines/fortune/global500/2007>.

145. Schmitt, *supra* note 143.

146. General counsels began scrutinizing firms all the more carefully after a series of news articles in the early 2000s accused law firms of overbilling their clients. The most famous incident took place in 2002, when a handful of Clifford Chance associates leaked a memo accusing firm attorneys of padding hours. Robert Clow & Bob Sherwood, *Top Law Firm Hit by 'Padding' Claims: Clifford Chance Says It Did Not Exaggerate Time with Clients*, FIN. TIMES, Oct. 26, 2002, at 1; Bob Sherwood, *Law Firms Face Greater Scrutiny over Charges*, FIN. TIMES, Oct. 29, 2002, at 4; Clifford Chance Memorandum, *supra* note 54.

targets.¹⁴⁷ In the most extreme cases, companies hired private investigators to study whether all of the invoiced expenses were appropriate.¹⁴⁸ Large law firms, anxious about the possibility of losing much-needed legal work, typically acceded to the corporations' demands.¹⁴⁹ All of these efforts help to keep costs in check and ensure that firms follow through on the commitments they made during the bidding process.

As part of their efforts to hire diverse counsel, corporate legal departments began demanding detailed follow-up demographic information about their outside counsel. Shell's annual "report cards" were only the beginning. Some companies now require firms to provide not only the number of women and racial minorities working on a case, but also explanations about the type of projects that these lawyers performed. Clients can learn who actually works on their matters, examine the pipeline of incoming law students, and see any diversity scholarships the firm offers for law students, among other various initiatives. They want assurances that minority attorneys are not staffed simply as "tokens," but that they are given genuine responsibility and leadership opportunities on their cases.¹⁵⁰ Sam Reeves, associate general counsel for Wal-Mart, has made clear the consequences for failing to provide adequate information. His company, for example, "has terminated law firms based solely on their unwillingness to embrace and appreciate our diversity commitment" and then sent "the work . . . to a competitor."¹⁵¹ This type of client follow-up ensures that law firms do not slip back into old habits as soon as they make it through the scrutiny of the initial bidding process.

Third, the extent of firm compliance is also dependent upon the scope of the client's demands. The narrower the scope, the more likely it is that a firm can accommodate a client's need. On the diversity issue, for example, a corporation could require that its outside counsel employ a certain percentage of women and racial minorities at various levels within the firm: for just the attorneys working on the company's legal matters, or for some broader category of lawyers at the company, such as a particular practice area, branch office, or the entire firm.¹⁵² The broader the scope, the more costly it is for a

147. The General Counsel Roundtable, for example, has developed an online tool that assists in-house lawyers analyze and compare various billing options when hiring outside firms. GENERAL COUNSEL ROUNDTABLE: ANTHOLOGY OF RESEARCH AND TOOLS 159 (2007); see also Serengeti: The Global Legal Platform, <http://www.serengetilaw.com> (describing its online tracking system permitting clients faster review of "bills, budgets, status reports, and documents from 100% of their firms. The result is a system that helps in-house counsel control legal spending while saving significant time and money.").

148. Daniel L. Abrams, *Legal Bill Review in an Era of Subtle Overbilling*, METROPOLITAN CORP. COUNSEL, Jan. 2004, at 27; Ricker, *supra* note 42, at 66.

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

150. Nagae, *supra* note 125.

151. Reeves, *Law Firms Heed Call*, *supra* note 137.

152. Most of the general counsels we have spoken with say they generally prefer

firm to implement. This is particularly important given the increasing mobility of high-status partners. If a client imposes too sweeping a requirement on a firm, it may cause those partners concerned with the high cost of implementing the demand to move to a rival firm with less onerous client obligations. Firms that risk losing lucrative partners with large books of business may be particularly wary of acceding to broad requirements that drive up firmwide costs.¹⁵³

In sum, clients can best encourage firm compliance when they have a large account to leverage, when they are serious about accountability—possibly by acting in concert with other corporations—and when they tailor their requests to encourage firm achievement without backlash or unintended consequences.

III. THE SUPPLY SIDE: LAW STUDENTS

Firms compete for law students just as they compete for clients. But while corporations have used this competition to advance their social and business interests, law students have been slower to recognize the extent of their market power. Recent efforts suggest, however, that this may be changing.

Elite law students possess tremendous power to influence the practice of large law firms. This phenomenon is the result of expanding demand for a flat supply of labor at the upper end of the market—elite firms are getting bigger while elite law schools remain roughly the same size. In the fall of 2008, the two hundred largest law firms in America will fill approximately 10,000 entry-level associate positions. The nation's ten most prestigious law firms¹⁵⁴ alone hire an astounding 1200 graduates per year.¹⁵⁵ By contrast, fewer than 1000 students graduate annually from Yale, Stanford, and Harvard Law Schools and fewer than 4700 graduate from *U.S. News & World Report's* top fourteen law schools.¹⁵⁶ In an industry where educational pedigree remains so important, this scarcity allows elite students to leverage their status and push their future employers to reform the workplace environment at large firms.¹⁵⁷

information about diversity on their own matters, because setting a narrow goal is more likely to be successful.

153. See Mark Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firms*, 60 STAN. L. REV 1867 (2008).

154. As ranked by Vault. The list includes: Wachtell, Lipton, Rosen & Katz; Cravath, Swaine & Moore; Sullivan & Cromwell; Skadden, Arps, Slate, Meagher & Flom; Davis Polk & Wardwell; Simpson Thacher & Bartlett; Cleary, Gottlieb, Steen & Hamilton; Latham & Watkins; Weil, Gotshal & Manges; and Covington & Burling. DALTON ET AL., *supra* note 142, at xiii.

155. *Id.* at 88, 96, 104, 112, 120, 126, 134, 142, 150, 158.

156. For the list of the top fourteen schools, see *supra* note 8. The number of graduates at these schools vary by year, but the most up-to-date information can be found at NALP, Directory of Law Schools, <http://www.nalplawchoolsonline.org>.

157. Unsurprisingly, as scarcity increases, so does the pay. Recent graduates who clerked for a federal judge typically receive an additional \$50,000 bonus upon arriving at a

The caveat, however, is that law students possess this market power only when they exercise it collectively. Skeptics doubt that highly recruited students will unite to push for broader goals, opting instead for whatever employment opportunities best fit their short-term self-interest. We evaluate the potential impact of student-led reforms the same way we evaluate similar client-led efforts. What do law students want in their law firms? Will students actually exercise their market power to bring about the changes they seek? And, if they do, how will firms respond?

A. *What Reforms Do Students Want?*

Elite students consider a variety of criteria when deciding where to work after graduation, including salary, prestige, quality of life, and potential for job satisfaction. How students weigh these criteria reveal what issues they think matter most in attaining professional fulfillment and indicate what types of reforms they wish to see at large firms.

As in most fields, salary remains one of the most important considerations for entry-level lawyers. Law school tuition is expensive and costs have risen dramatically. Between 1990 and 2006, the cost of law school education went up as much as 267%.¹⁵⁸ Students have borne these increases by taking on tens of thousands of dollars in debt. In 2006, the average private law school loan debt was \$76,763; for public school, the average loan debt was \$48,910.¹⁵⁹ A high-paying job provides a recent law student graduate with financial stability even in the face of daunting monthly debt payments.

There is also evidence that students are more materialistic than ever before. As Rhode has described, “[B]eing well-off financially is now the most important life goal of American college students. Three-quarters rate it as essential or very important, a figure that has doubled over the past quarter century.”¹⁶⁰ Assuming that equal or greater rates of materialistic students continue on to law school,¹⁶¹ compensation is now more important to a larger share of law students than it was to previous generations.

But compensation is not everything. As Ralph Nader wrote thirty years

firm; graduates who clerked for a justice of the U.S. Supreme Court get an additional \$200,000. See Dahlia Lithwick, *Bonus Round: What to Make of Those Astronomical Supreme Court Signing Bonuses?*, SLATE, Mar. 10, 2007, <http://www.slate.com/id/2161454/>.

158. Leigh Jones, *As Salaries Rise, So Does the Debt*, NAT’L L.J., Feb. 1, 2006, <http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1138701909390>.

159. *Id.*

160. Deborah L. Rhode, *The Profession and Its Discontents*, 61 OHIO ST. L.J. 1335, 1341 (2000).

161. This is a legitimate assumption considering how attractive big firm starting salaries are to college students weighing law school. See also Jones, *supra* note 158 (arguing that law students live too richly, drive better cars than faculty, and have overblown expectations of their future wealth).

ago, “status is also a prime attraction for competent law school graduates.”¹⁶² Bill Henderson and David Zaring have shown that graduates of Top 10 law schools are much more likely to choose a Top 10 firm with higher pay and prestige, despite significantly longer hours, less family-friendly working conditions, or worse communication with the partnership.¹⁶³ Prestige was always part of the Cravath model¹⁶⁴ and has only become more prominent with publication of the widely read *Vault* guides and *U.S. News & World Report* law school rankings.

Recent surveys, however, indicate that not all law graduates share these same top priorities.¹⁶⁵ Law students increasingly believe that quality of life and job satisfaction are important qualities that they must consider alongside firm prestige and compensation.¹⁶⁶ This is not a feeling limited to a class of students at elite institutions—this is a generational trend. “According to many human resource experts, the values and preferences of the next generation of lawyers, dubbed the Millennials, are on collision course with the work norms of large law firms.”¹⁶⁷ Elsewhere in this Issue, Galanter and Henderson present evidence that Millennials “demand a high level of racial and gender diversity within the firm’s workforce, are unwilling to sacrifice life and family for work, believe that work should be fun, exciting, and high paying from day one, and are more than willing to frankly express these views to their employer.”¹⁶⁸

B. Will Students Push Firms to Reform?

Each student will weigh these employer criteria differently based on his or her background, values, and personal priorities. The real question, then, is how students decide which issues matter the most to them. If reformers can succeed at changing the way recruited students evaluate future employers, they can also change the way large firms brand themselves and, possibly, the way the elite corporate bar operates.¹⁶⁹

162. Ralph Nader, *Law Schools and Law Firms*, 54 MINN. L. REV. 493, 498 (1970)

163. William D. Henderson & David Zaring, *Young Associates in Trouble*, 105 MICH. L. REV. 1087, 1099 tbl.3 (2007).

164. Galanter & Henderson, *supra* note 153, at 1870.

165. Mary Flood, *Pay Us Less, They Request, and Don’t Work Us So Hard*, HOUSTON CHRON., Apr. 16, 2007, at B1; 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?*, 93 A.B.A. J. 24 (2006); Marisa McQuilken, *Students Seek a More Reasonable Law Firm Life*, LEGAL TIMES, Sept. 24, 2007; Interview with Williams, *supra* note 64.

166. Stephanie Armour, *Generation Y: They’ve Arrived at Work with a New Attitude*, USA TODAY, Nov. 6, 2005, at B1; Anthony Balderrama, *Generation Y: Too Demanding at Work?*, CNN ONLINE, Dec. 26, 2007, <http://www.cnn.com/2007/LIVING/worklife/12/26/cb.generation>; Bruck & Canter, *supra* note 16, at 5; Penelope Trunk, *What Gen Y Really Wants*, TIME, July 5, 2007.

167. Galanter & Henderson, *supra* note 153, at 1922.

168. *Id.* at 155 (internal citations omitted); *see also* Bruck & Canter, *supra* note 16.

169. Social psychology suggests that the availability of information can influence the

This cannot happen unless two major changes occur. First, reformers must increase the salience of these issues among law students and convince more students to select firms based on these metrics. This is no small feat given the lack of easy to use, reliable data provided by large firms. Second, elite law students must overcome the collective action problem created by their inherent fungibility, a hurdle that may stymie even the most well intentioned reform efforts.

Before examining the likelihood of success on either front, it is helpful to consider a historical example that demonstrates the power of elite students once properly mobilized. In the late 1960s, students at several top law schools leveraged their scarcity in an effort to pressure firms to create pro bono programs. Their success provides a useful model that might be applied to the present situation.

In 1968, at the height of Vietnam War, law students were increasingly interested in devoting their careers to correcting widespread social ills, with a particular focus on low-income communities. The combination of a military draft and a new interest in poverty law caused a rapid decline in the number of students interviewing for entry-level associate positions at large corporate law firms.¹⁷⁰ The few students who wished to work at large firms still wanted the opportunity to “do good” while in the private sector.¹⁷¹ At the time, however, most firms did not offer pro bono practices.¹⁷²

Students at Stanford, Yale, Harvard, New York University, Columbia, Penn, and Georgetown worked to pressure firms to add community service opportunities for young lawyers.¹⁷³ This pressure took several forms. Some students stated that they would only join a firm if guaranteed that a certain amount of time could be spent on public interest cases, while others distributed

salience of particular criteria in decision making. David L. Hamilton & Roger D. Fallot, *Information Salience As a Weighing Factor in Impression Formation*, 30 J. PERSONALITY & SOC. PSYCH. 444 (1974). The current focus on compensation may be therefore a byproduct of easy access to salary information, with websites such as *Infirmination* and *Above the Law* publishing salaries and bonus ranges for every law firm in every market. See Shapira, *supra* note 9, at B01; *Infirmination*, Firm Salaries & Other Statistics Chart, <http://www.infirmination.com/shared/insider/payscale.tcl>. If reformers can shift the focus to other issues, such a workplace diversity or billable hour requirements, they can create new competition among firms to improve along these metrics as well.

170. Shapira, *supra* note 9, at 22-23, 23 n.19. At the University of Michigan, for example, only 26 percent of its 1969 graduates entered Wall Street firms, as opposed to 75 percent in previous years.

171. Berman & Cahn, *supra* note 50, at 16.

172. *Id.* at 17. The then-novelty of pro bono practice at large law firms is implied by the authors' statement that “[s]ome firms have already gone so far as to . . . institute[] an intra-firm policy that each member of the firm may devote a certain amount of office time to *pro bono publico* work.” *Id.* at 24-25. The entire article explores how firms went from having no pro bono practice—all volunteer at night—to actually letting people do pro bono as part of their firm time during the day.

173. *Id.* at 17 n.1.

a voluntary questionnaire to law firms to gather details about their pro bono programs.¹⁷⁴ They created the pro bono questionnaire not only to signal to firms that students cared about their public interest programs, but also so that they could track and publicize the relative efforts of each firm. In an article in the *Harvard Civil Rights-Civil Liberties Law Review*, two advocates of the program proposed a “reporter system” that compared firms’ pro bono programs and encouraged them to compete for improvement.¹⁷⁵

Firms initially responded to student pressure by raising salaries, and first-year associate pay increased by one half, from \$10,000 to \$15,000.¹⁷⁶ Students did not back down, however, and eventually firms finally acceded, agreeing to create pro bono and community service programs, all of which still exist today.¹⁷⁷ Hogan & Hartson and Arnold & Porter, for example, created new “Community Services Departments” to improve recruitments efforts,¹⁷⁸ while the predecessor firm to DLA Piper opened an unfortunately named “ghetto office” in Baltimore to entice students interested in poverty law.¹⁷⁹

Thus, the modern pro bono program within corporate law firms has its roots in the reform efforts of elite law students.¹⁸⁰ The movement succeeded in part because poverty-related issues were extremely salient for many law students, so much so that the movement attracted a critical mass of otherwise fungible participants.

Moving forward to the present day, students face similar opportunities and challenges. But in order to replicate the past success, today’s reformers must first convince a critical mass of law students to evaluate potential employers using criteria beyond compensation and prestige. The reformers must prime students to select firms, at least in part, based on billable hours, diversity, and associate attrition. It is a difficult task, as many large firms are unwilling to release much of that data, particularly regarding hours and attrition.¹⁸¹ Two

174. *Id.* at 16-17, 26-27; Nader, *supra* note 162, at 498 (“The responses which the firms give to these questionnaires . . . will further sharpen the issues and the confrontations. The students have considerable leverage. They know it is a seller’s market.”).

175. Berman & Cahn, *supra* note 50, at 27-28.

176. *Id.* at 22.

177. Although we cite continued concerns with the level of pro bono work done in firms, *supra* Part I.B, there is no question that almost every large law firm has a pro bono program and advertises it to potential recruits.

178. Berman & Cahn, *supra* note 50, at 24-25.

179. *Id.* at 23 n.20

180. *Id.* at 28-29. After their initial success, student organizers in the 1970s dreamt of more ambitious goals. They discussed creating a “National Law Students’ Union,” which would negotiate with law firms on behalf of students for other workplace reforms. This collective strategy would increase the students’ leverage and allow them to push for change throughout the legal profession. Although these plans were not fully realized, the law student movement for professional reform accomplished a great deal, and these efforts provide a reasonable model for Millennial generation efforts to get the attention of their future employers and to reform some of the worst excesses of the last twenty years.

181. The NALP Directory of Legal Employers contains self-reported information from

projects recently initiated by law students, however, suggest a new effort to increase transparency and promote better informed employment decisions.

The first project emerged at Yale Law School. In September 2006, the student-run Yale Law Women released its first annual rankings of “family-friendly firms.” Drawing from data provided by the National Association of Law Placement and a survey of Yale alumni, the women’s group determined which ten of the nation’s 200 most prestigious law firms offered the best environment for lawyers with families.¹⁸² Jill Habig, the organization’s “activism co-chair,” made clear in a press release that their efforts were designed to affect student decision making, asserting that “[i]f firms are to recruit and retain attorneys, they must change their work environments to not only accommodate but support lawyers with families.”¹⁸³ They released the survey in the middle of law firm recruiting season with the hopes of influencing students. During the second year of the rankings, the Yale group partnered with the Women’s Law School Coalition, which had representatives at a variety of elite schools, including Berkeley, University of Chicago, Columbia, Harvard, and Stanford.¹⁸⁴

Also in 2006, a handful of students at Stanford Law School started a similar project to bring attention to the harmful effects of increasing billable hour expectations at large firms. In January 2007, the group went public as Building a Better Legal Profession and sought to address the “declining professionalism” of law firm practice.¹⁸⁵ Three months later, one hundred students wrote a letter to the managing partners of the nation’s largest one hundred law firms, asking firms to sign onto a statement of principles encouraging a more hospitable work/life environment and threatening to notify other students at top law schools which law firms had not signed on.¹⁸⁶ Their proposals, as reported by the *Wall Street Journal*, resembled many of the demands presented by in-house lawyers looking to cut costs with their outside counsel. The students asked firms to (1) make concrete steps toward a transactional billing system, (2) reduce maximum billable hour expectations for partnership, (3) implement balanced hours policies that work, and (4) make work expectations clear.¹⁸⁷ The organizers stated their goal was to increase the salience of issues related to the billable hour and work-family balance for firms

virtually every major law firm in the nation. Although NALP asks firms for information regarding billable hours, few complete this information. NALP, Directory of Legal Employers, <http://www.nalpdirectory.org>.

182. Press Release, Yale Law Women, *supra* note 13.

183. *Id.*

184. *Id.*

185. See Law Students Building a Better Legal Profession, Principles for a Renewed Profession, <http://refirmation.wordpress.com/principles-for-a-renewed-legal-profession>.

186. Open Letter from Law Students Building a Better Legal Profession (Apr. 2, 2007), available at <http://online.wsj.com/public/resources/documents/lawfirm0403.pdf>.

187. Posting of Peter Lattman, *supra* note 77.

and students alike.¹⁸⁸

In October 2007, the group began a second, more ambitious project. Using publicly available data collected by the National Association of Law Placement, the student group ranked firms according to average associate billable hours per year, pro bono participation, and demographic diversity. They sorted firms for six different geographic markets—Manhattan; Washington, D.C.; Boston; Chicago; Los Angeles; and the San Francisco Bay Area—and then graded the firms based on how well they performed in the rankings. The group also praised a handful of firms for being more transparent and releasing data on pro bono and billable hours, and simultaneously shamed those firms that refused to provide any information about these topics.

Their findings sparked significant media attention. In particular, the fact that one-third of New York's largest law firms lacked a single Hispanic partner, and that an overlapping third lacked a single African-American partner stimulated a wave of media reports on the problem of diversity at the top of the legal profession.¹⁸⁹ The group then compiled multiple rankings into one sheet to create an overall "report card" for individual firms, making it easier for students and reporters to get a quick snapshot of a particular legal market.¹⁹⁰

The rankings generated news stories as far away as Germany and New Zealand.¹⁹¹ Within a month, over 100,000 people had visited the students' site. The *New York Times* reported that the effort "shook up the legal world," and quoted an expert in legal profession reform who suggested that the students' project was the part of a growing national "movement" to change firms.¹⁹² Joan Williams, Director of Center for Work-Life Law at University of California-Hastings, told the *Legal Times*, "I've been in legal academics for 30 years, and I've never seen a group like this."¹⁹³

188. Leigh Jones, *Exhibit A: Off the Beaten Track; Why Some Students Are Opting out of Lucrative Big Law Summer Clerkships*, AM. LAW. STUDENT EDITION, Summer 2007, at 14.

189. See Adam Liptak, *In Students' Eyes, Look-Alike Lawyers Don't Make the Grade*, N.Y. TIMES, Oct. 29, 2007, at A9; see also Thomas Adcock & Zusha Elinson, *Student Group Grades Firms on Diversity, Pro Bono Work*, N.Y.L.J., Oct. 19, 2007, at 24; Henry Weinstein, *Big L.A. Law Firms Score Low on Diversity Survey*, L.A. TIMES, Oct. 11, 2007, at B3; You Say You Want a Big-Law Revolution, Take II Posting of Amir Efrati to Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2007/10/10/you-say-you-want-a-big-law-revolution-take-ii> (Oct. 10, 2007, 11:47 EST).

190. The strategy of grading organizations is hardly new. The "report card" is an increasingly popular means of "encourag[ing] accountability to external audiences and . . . provid[ing] valuable feedback to service providers" amongst government agencies and consumer advocacy groups. WILLIAM T. GORMLEY, JR. & DAVID L. WEIMER, ORGANIZATIONAL REPORT CARDS 1 (1999).

191. See, e.g., Christine Gutweiler, *Moral Statt Moneten*, FIN. TIMES DEUTSCHLAND, Nov. 27, 2007; *Nine to Noon* (Radio New Zealand broadcast, Nov. 21, 2007) (including interview with Prof. Michele Landis Dauber and student Andrew Bruck, both of Stanford Law School.)

192. Lisa Belkin, *Who's Cuddly Now? Law Firms*, N.Y. TIMES, Jan. 24, 2008, at G1.

193. McQuilken, *supra* note 165. The market reacted quickly to this new information.

The project marked the first systematic, student-led effort to increase the number of students making employment decisions based on these criteria.¹⁹⁴ The organizers were explicit about this goal. They argued that most elite law students lack good information about elite law firms, causing most to see firms as “basically indistinguishable.”¹⁹⁵ Given that top students usually received multiple offers, and that all firms offered the same compensation, the organizers encouraged students to select their future employer based on the quality-of-life grades.¹⁹⁶ The more students factored this information into the decision, they argued, the greater their market force in encouraging firms to reform their culture. Firms that wanted the best students would ultimately have to change their practices or forgo hiring many of their most desirable candidates, just like the Wall Street firms that initiated pro bono practices thirty

Firms that scored well used this information to attract recruits. Venable bragged about its fifth-place rank for diversity on the front page of its company website. Press Release, Venable, LLP, Law Student Group Ranks Venable Fifth in Diversity Among Large DC Firms (Oct. 13, 2007), *available at* <http://www.venable.com/announcements.cfm?action=view&id=22>. The Chairman and CEO of Orrick, whose firm ranked fifth nationwide for overall diversity, issued a statement of support for the project. Law Students Building a Better Legal Profession. Orrick Speaks Out!, <http://refirmation.wordpress.com/2007/10/03/orrick-speaks-out>. Firms at the bottom of some rankings dismissed them as “totally ridiculous,” while fretting about how it might affect their recruiting season. Liptak, *supra* note 189. Meanwhile, law students flooded the organization with proposals to start chapters at schools across the country, all hoping that they could build the movement’s market power to affect large firms.

194. John M. Conley, an anthropologist who taught at the University of North Carolina’s law school, lamented that highly recruited students at his school never used their market power to encourage firms to change their hiring practices. He noted, however, that the power of even the most sought-after UNC students was probably less significant than the power possessed by recruits at the top law schools, were they ever to exercise it. John M. Conley, *Tales of Diversity: Lawyers’ Narratives of Racial Equity in Private Firms*, 31 L. & SOC. INQUIRY, 831, 846-49 (2006); *see also* Henderson & Zaring, *supra* note 163, at 1098 (noting research that reveals firms cannot be reduced to one single, oppressive monolith, and that young lawyers ought to gravitate towards firms that provide the best working conditions).

195. Bruck & Canter, *supra* note 16, at 7.

196. Crucially, Building a Better Legal Profession organizers and members always acknowledged that they were willing to make financial sacrifices to have a better work/life balance. We are explicit about this: “We recognize that law students have become part of the problem by focusing on paychecks and bonuses, while avoiding the tough questions about the conditions of working lives and associate satisfaction. But we are committed to focusing on the principles set forth below in our own job searches, and ask law firms to do the same. We recognize that these changes are not free: we are willing to accept reduced salaries in exchange for better working lives.” Law Students Building a Better Legal Profession, Principles for a Renewed Profession, <http://refirmation.wordpress.com/principles-for-a-renewed-legal-profession>. The media initially understood this point. “This is a labor movement asking for a smaller paycheck,” wrote Peter Lattman, *supra* note 77. But since then the point has gone unnoticed. Surveys suggest that a substantial number of young lawyers “would be willing to earn less money in exchange for lower billable-hour requirements.” PROJECT FOR ATTORNEY RETENTION, THE BUSINESS CASE FOR BALANCED HOURS, *supra* note 65; *see also* Ward, *supra* note 165.

years ago under similar market pressure.

The two projects—the first one at Yale, followed by the larger effort at Stanford—involved what Archon Fung, Mary Graham, and David Weil call “collaborative transparency.”¹⁹⁷ Rather than explicitly telling classmates to organize collectively, the organizers of both movements gathered publicly available data and then presented this information in ways that they knew would affect how students viewed the market.¹⁹⁸ They let the numbers speak for themselves—understanding that, by showing which firms were most family friendly, or had the lowest billable hour requirements, or had the highest number of minority partners, the data would affect student decision making. Under this model, high-performing firms enjoy a market benefit from their success, and in contrast, those with the worst records suffer market penalties. By promoting this “collaborative transparency,” the student organizers encourage their classmates to vote with their feet, which, in turn, prompts firms to improve their practices.¹⁹⁹

But even if students activists succeed at increasing the salience of hours, diversity, and attrition, they face another hurdle: the collective action problem. Law students are fungible, and an individual student—even a highly recruited one—cannot shift a market the way that a single corporation can. If a student decides not to work at a firm due to its poor performance on diversity or work-family policies, then the firm will most likely find another individual to fill that particular spot, even if a slightly less desirable one.²⁰⁰ As a result, skeptics might suggest, students are more likely to defect from any collective effort until they have some assurance of its success.

This places the burden on activists, who must convince their classmates that a collective effort advances their personal interests. On one hand, this is not an impossible sell, since most top firms offer an identical starting salary (currently, \$160,000), and thus elite students can choose a high-status firm that scores well on workplace environment metrics without sacrificing pay. But, on the other hand, this type of collective organizing is a daunting task, and one that is particularly difficult given that law students are known for being risk-adverse

197. FUNG, GRAHAM & WEIL, *supra* note 106, at 25 (describing a “nascent” movement to “employ computer power and the Internet . . . in order to create adaptable, real-time, customized information that reduces risks and public service flaws.”). These student-initiated transparency programs are the latest in a long line of projects which use information disclosure and consumer choice as a way of correcting market failures. Other examples, usually government-mandated, include drinking water safety reports, automobile rollover ratings, and campaign finance disclosure. *Id.* at 1-13.

198. Thomas Adcock & Zusha Elinson, *Student Group Grades Firms on Diversity, Pro Bono Work*, N.Y. L.J., Oct. 19, 2007, at 24.

199. FUNG, GRAHAM & WEIL, *supra* note 106, at 25.

200. And since firms have little intention of retaining that individual to partnership anyway, it hardly matters that the substitute may be somewhat less desirable on some dimensions.

and individualistic.²⁰¹

Student groups in other disciplines have used collective organizing strategies to great effect in the past. Starting in 1969, a group of graduate students at the University of Wisconsin-Madison organized themselves in order to obtain higher salaries and improved benefits from the campus administration. Since then, students across the country have organized in order to pressure their universities to secure better funding for teaching assistant positions.²⁰² This effort has continued over time: in 1995, over two hundred Yale University graduate students refused to submit the grades for the classes they taught in the previous semester as a way of applying pressure to the faculty.²⁰³ These students come from roughly the same generational cohort as today's law students, and perhaps law students could be convinced to unite in similar ways.²⁰⁴

Assuming that a broad coalition of law students share common interests in reasonable billable hours, realistic family accommodations, and more attention to a diverse workforce, then working together could make these goals attainable

201. Jonathan R. Macey, *Lawyers in Agencies: Economics, Social Psychology, and Process*, 61 L. & CONTEMP. PROBS. 109, 110-11 (1998); McQuilken, *supra* note 165; Eric Messinger, *First-Years Go Pass-Fail: Students Eschew Letter Grades, Tradition in Large Numbers*, STAN. DAILY, Jan. 8, 2008, <http://daily.stanford.edu/article/2008/1/8/firstyearsGoPassfail> (quoting a first-year law student, suggesting that classmates are "notorious for being cautious and risk-averse."); Thomas Vinciguerra, *Coming Soon: 'Law School Nation?'*, N.Y. TIMES, Oct. 28, 2007, <http://www.nytimes.com/2007/10/28/fashion/28wurtzel.html>; Posting of Brian Leiter to Leiter's Law School Reports, http://leiterlawschool.typepad.com/leiter/2006/04/high_gpas_at_to.html (Apr. 19, 2006); University of Michigan Outlaws, *Fourteen Things to Ponder Before Applying to Law School . . .*, <http://www.umoutlaws.org/2005/07/prospectives.html>.

There are, of course, scattered examples of students leveraging their power. The most common involves student organizations asking firms to underwrite various campus activities at law school. Every top law school hosts an annual "public interest auction," for example, and firms have proved more than willing to sponsor these events in exchange for the goodwill it generates with students. Firms such as Wachtell, Lipton, Rosen & Katz; Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Sullivan & Cromwell helped law students at Harvard and Stanford raise tens of thousands of dollars last year. *See, e.g.*, Harvard Law School Public Interest Auction, Building a Base for Public Interest, *available at* <http://www.law.harvard.edu/students/opia/auction/program3.pdf>; Stanford Public Interest Law Foundation, *Donate*, *available at* <http://spilf.stanford.edu/sponsors.shtml>.

202. William C. Barba, *The Unionization Movement: An Analysis of Graduate Student Employee Union Contracts*, BUS. OFFICER, Nov. 1994, at 35.

203. Yale Univ. et al., 330 N.L.R.B. 246, 246 (1999); *see also* Grant Hayden, "The University Works Because We Do": *Collective Bargaining Rights for Graduate Assistants*, 69 FORDHAM L. REV. 1233, 1236-44 (2001) (describing graduate assistant organizing efforts at Yale, University of Kansas, and other schools in the 1990s).

204. Robert Michael Fischl, *The Other Side of the Picket Line: Contract, Democracy, and Power in a Law School Classroom*, 31 N.Y.U. REV. L. & SOC. CHANGE 517, 529-32 (2007) (describing the tepid response among law students asked to join a boycott of on-campus classes in support of a strike by janitors at UM). Of course, the plight of graduate students unable to receive minimum wage for their teaching generates far greater outrage than recent law graduates making \$160,000 a year.

where individual action alone would have failed.²⁰⁵ So long as elite law students maintain their market position as highly recruited commodities,²⁰⁶ they can use their status to bargain for a better deal. These future employees can have a real impact on shaping the working conditions of their prospective employers—a rare phenomenon in the current labor market.

C. Will Firms Comply with Student Demands?

The final question is how firms will react to increased student pressure. In the past, law firms have responded to scarcity in the entry-level labor market by increasing salaries. Can law students convince the firms to make other accommodations, such as improved work/family balance policies and a renewed commitment to pro bono work?²⁰⁷ And, even if students succeed, what types of long-term impact would these cultural shifts have on the elite corporate bar?

To understand how eager law firms are to recruit top students, one need look no further than the recent salary wars at the nation's most prestigious firms. On January 22, 2007, Simpson, Thacher & Bartlett raised its starting annual salary for associates from \$145,000 to \$160,000. Above the Law, a popular legal blog, posted the announcement at 4:36 pm that day.²⁰⁸ The news sent shock waves through the elite legal world. By 3:59 the following afternoon, peer firms Sullivan & Cromwell; Cadwalader, Wicksham & Taft; and Paul, Weiss matched the pay increase.²⁰⁹ By the start of business on

205. KATE BRONFENBRENNER, ORGANIZING TO WIN: NEW RESEARCH ON UNION STRATEGIES 2-11 (1998). There are, however, other barriers to student action. Organizations that provide students with information about firms, as Yale Law Women and Building a Better Legal Profession do, must update their materials every year and remain highly engaged with their target populations. But law students only remain in school for three years, making it all the more challenging to establish a long-term effort with a continuity of leadership and institutional knowledge. Firms can wait for the current leaders of these organizations to graduate and hope that momentum dissipates in the next cohort of law students.

206. It is, of course, possible that students will lose this market position in the future. A sharp economic downturn would decrease the demand for entry-level associates at top firms. Similarly, if the top law schools expanded the size of their graduating classes, it would increase the supply of elite graduates. Either of these developments would weaken the bargaining power of recruited students.

207. Jessica Guynn, *Right Out of Law School, Starting Salary, \$160,000; Bay Area Firms Match Wages in New York to Draw A-List Talent*, S.F. CHRON, May 5, 2007, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/05/05/BUGU0PLI6O1.DTL&hw=legal&sn=002&sc=929>; see Ashby Jones, *More Work, but Cocktails Too—Law Firms' Summer Associates Ask for More Training, Still Get Baseball Outings, Fancy Lunches*, WALL ST. J., June 27, 2006, at B1.

208. Simpson Thatcher Raises Associate Base Salaries!!!, Posting of David Lat to Above the Law, http://www.abovethelaw.com/2007/01/breaking_simpson_thacher_raise.php (Jan. 22, 2007, 16:36 EST).

209. Skaddenfreude: S&C Says, "Charney Who?," Posting of David Lat to Above the

January 26, an additional nineteen had matched as well.²¹⁰ Within a week, nearly all of the nation's top firms increased entry-level salaries by \$15,000, all in an attempt to avoid a competitive disadvantage in the war for talent. Such intense recruitment wars are virtually unprecedented in American business, and the stampede to increase pay demonstrates how fiercely law firms compete over the best students.²¹¹

Recent developments suggest that students could marshal these market forces for something more than higher pay. In August 2007, Simpson Thacher announced another new job perk: increased parental leave. New mothers would now receive eighteen weeks of paid time off after a birth, a fifty percent increase from the twelve weeks the firm had previously granted.²¹² By December, Latham & Watkins also expanded its policy, moving from twelve to eighteen weeks of paid leave for new mothers, while also granting ten weeks of paid leave for "other primary caregivers."²¹³ A week later, when Davis, Polk & Wardwell announced that it would also match the new parental leave policies, Above the Law's David Lat called it the "hot new biglaw trend," with eighteen weeks of paid leave the "new 'market rate.'"²¹⁴ By March 2008, at least ten other firms had similarly changed their policies.²¹⁵ The example indicates that

Law, http://www.abovethelaw.com/2007/01/skaddenfreude_sc_says_charney.php (Jan. 23, 2007, 16:08 EST); Skaddenfreude: Here's the Cadwalader Memo, Posting of David Lat to Above the Law, http://www.abovethelaw.com/2007/01/skaddenfreude_heres_the_cadwal.php (Jan. 23, 2007, 15:43 EST); Skaddenfreude: Paul Weiss Has Matched Simpson Thatcher, Posting of David Lat to Above the Law, http://www.abovethelaw.com/2007/01/skaddenfreude_paul_weiss_has_m.php (Jan. 23, 2007, 14:45 EST).

210. Skaddenfreude: Morning Round-up, Posting of David Lat to Above the Law, http://www.abovethelaw.com/2007/01/skaddenfreude_morning_roundup.php (Jan. 26, 2007, 8:50 EST).

211. It is the same reason why law firms spend lavishly on summer intern lunches, or why nearly 100% of summer associates receive a full-time employment offer at the end of their ten-week stint. No firm wants to be known back on law school campuses as the Stingy Firm, or the Firm That Doesn't Give Offers To Its Summers. See Peter Lattman, *The Nerve! Students Tell Big Firms They Want a Life*, WALL ST. J., Apr. 4, 2007, at B2 (discussing why firms respond to student demands: "What's in it for the firms? Possibly avoiding negative chatter among potential hires. The students maintain that before the fall interviewing season they will spread the word on campuses about which firms haven't signed on."); Shapira, *supra* note 9.

212. Simpson Thacher Raises to . . . 18 Weeks!, Posting of David Lat to Above the Law, http://www.abovethelaw.com/2007/08/simpson_thacher_raises_to_18_w_1.php (Aug. 10, 2007, 12:00 EST).

213. Biglaw Perk Watch: Latham & Watkins Expands Parental Leave, Posting of David Lat to Above the Law, http://abovethelaw.com/2007/12/biglaw_perk_watch_latham_watki.php (Dec. 12, 2007, 15:35 EST).

214. Davis Polk Rolls Out New Parental Benefits (Or: Improved Parental Leave, a Hot New Biglaw Trend), Posting of David Lat to Above the Law, http://abovethelaw.com/2007/12/davis_polk_rolls_out_new_paren.php (Dec. 20, 2007, 15:30 EST).

215. See, e.g., Biglaw Perk Watch: WilmerHale and O'Melveny & Myers to 18 Weeks, Posting of David Lat to Above the Law, http://abovethelaw.com/2008/03/biglaw_perk_watch_wilmerhale_a.php (Mar. 27, 2008, 8:50 EST).

firms are willing to fight the war for talent with something more than a salary bump. If students convince firms that they care as much about diversity and attrition rates as about compensation, then firms may well respond with new, creative policies that improve workplace conditions.

But it is also worth considering the longer-term impacts of this new dynamic. As students push for more aggressive reforms, they must acknowledge that they are not acting in a vacuum, and the legal world may face much broader shifts than better parental leave policies. Firms could respond to student action in unexpected ways, choosing perhaps to abandon the Cravath model and instead filling their classes with talented students from lower-ranked law students. (Galanter and Henderson's article in this Issue maps out how this could happen,²¹⁶ and argues that firms will actually benefit because lower-ranked graduates are happier and less likely to leave for other firms.)²¹⁷

Large law firms could also change and attempt to internalize the demands of the Millennials, perhaps by changing their structure to a more corporate model of practice. As Galanter and Henderson describe, this would eliminate the up-or-out model of attrition, make the fewer-hours-for-less-pay trade-off, and mainly attract non-elite students who work on lower-stakes cases.²¹⁸ This is a trade-off that many reform advocates could support, although it then forces elite students to make a real trade of prestige for work/life balance, which so far they have not had to do within their private sector options. This is a cautionary tale for supply-side advocates: when students ask to renegotiate the terms of working at large law firms, are they prepared for it to come at a sacrifice of \$50,000 or greater?

An interesting option is whether some of the corporate-esqe law firms in existence today—like the rapidly-growing Axiom Legal, for example—can find a model that utilizes attorneys directly out of law school. Axiom is similar to the corporate description above, yet poaches elite lawyers away from firms

216. Galanter & Henderson, *supra* note 153.

217. Part of their unwillingness to leave is really an inability to leave, of course, since their law school credentials provide them fewer outplacement options. Movement to the next job will depend on whether other employers' prefer for work experience over education or vice versa. Such a redesign could actually increase costs, although any speculation now is premature. Firms would benefit from a more rigorous selection than the current superficial interviews, yet would have to cut down on the wining and dining. For an excellent description of the current model and investigation of how other professional industries recruit top candidates, see Elizabeth Goldberg, *Is This Any Way to Recruit Associates?*, AM. LAW., Aug. 6, 2007, <http://www.law.com/jsp/article.jsp?id=1185820712334> ("One of the biggest mistakes firms make, say legal consultants, is to rely too heavily on academic credentials.").

Moreover, although elite law schools do not have a monopoly on legal talent, even if this does happen there will likely be more than enough demand from New York firms who kept the Cravath model to keep elite student market power high. Additionally, over the long-term advocates will adjust and take their message to lower-ranked law schools that have become the new feeders to large law firms.

218. Galanter & Henderson, *supra* note 153.

after they are sufficiently trained. As participants at the “The American Legal Profession: Current Controversies, Future Challenges” noted, however, the profession may need to loosen its regulatory barriers that constrain these types of firms before we will see corresponding innovations in the training and retention of young attorneys in the private sector.²¹⁹ It is also possible that the supply and demand for law students will change dramatically. On the supply side, ABA accreditation standards and state bar entry rules could loosen, encouraging tens of thousands of new lawyers to enter the market. So far, however, there is no evidence that this will happen anytime soon. On the demand side, the need for corporate legal services could take a nose dive and result in a substantial lack of employment options for law students. This is not supported by the long-term trend described in the original or updated *Tournament of Lawyers*,²²⁰ however, and legal needs should continue to grow.

The lesson here is that there is a push and a pull inherent in every advocacy movement. Even if students successfully push for law firms to reform, these firms may react in unexpected ways and either fend off or internalize the reform movement. Advocates must be prepared to adapt to changing recruitment and organizational structures in the pursuit of their goals.

CONCLUSION

The great irony is that the market-driven efforts of corporate counsel and law students are only possible because of the economic forces that have undermined legal professionalism. The rising salaries, the longer hours, the increased attrition rates, the failure of firms to retain minorities to partnership—all of these trends emerged in part because the large law firms are no longer insulated from the free market. But just as economic forces have sparked a “crisis” in the legal profession, so too can economic forces be deployed to fix some of the problems befalling the legal industry.²²¹ The key to that deployment is a coordinated organizing effort by students aimed at producing real, measurable change. In the 1960s and 1970s, student organization resulted in the adoption of pro bono policies and practices that have been institutionalized and still exist thirty years later. Similarly, contemporary

219. This conference, entitled “The American Legal Profession: Current Controversies, Future Challenges” was held at Stanford Law School on March 14, 2008. This topic came up on the first panel with Professors Deborah Hensler, Marc Galanter, Gillian Hadfield, and William Henderson, along with Mark Harris, CEO of Axiom Legal. Gillian Hadfield’s contribution to this Issue, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control over Corporate Legal Market*, 60 STAN. L. REV. 1689 (2008), goes into much more detail about the relationship between innovation and regulation in the legal profession.

220. *Id.*

221. GALANTER & PALAY, *supra* note 1, at 3. For more discussion of problems in the industry, see GLENDON, *supra* note 3, at 4; Milton C. Regan, Jr., *Taking Law Firms Seriously*, 16 GEO. J. LEGAL ETHICS 155, 163 (2002).

students can organize for family-friendly policies, increased diversity, and a greater sense of sustainability in the workplace.

The “golden age” of law firms has long since passed. The demise of that era brought the end of many of the traditions that once bound together the legal profession. But simply because the members of today’s legal community are no longer united by the same sense of professionalism does not mean that their industry is irretrievably broken. Exposure of elite legal practice to market discipline can dramatically improve aspects of this segment of the profession. Today, the two most important forces acting in that market are the corporate clients of these firms and the elite law students whom the firms hope to recruit. Each of these groups can and will continue to leverage their power to bring change to the profession. Transparency regarding firm practices, aided by new information tools such as the Internet, allows both students and clients to select among firms, and in so doing to apply market-based pressure for reform.

Law students and corporate clients need to begin discussing their overlapping interests. Both want to correct the excesses of large firms, and can work together to achieve common goals. Consider, for example, data sharing. Students need better data about prospective employers, particularly regarding billable hours and attrition rates. Clients can demand this data from their firms as a condition of doing business. The two groups could work together to create information clearinghouses that provide both constituencies with the data they need to distinguish between large firms. Another possible project involves diversity initiatives. Clients want more diverse firms, but firms complain about a “pipeline problem.” Clients could go right to the source, and partner with minority groups at elite law schools and colleges to fund scholarships and mentoring programs. Such efforts would not simply benefit all of the parties involved, but would also help correct some of the problems within firms that the firms have failed to fix themselves.

Mark Chandler at Cisco, Catherine Lamboley at Shell, and the students of Yale Law Women and Building a Better Legal Profession all want the same basic thing: a humane and efficient profession. Together, they can help achieve it. Galanter and Palay are right: the rise of market forces in the legal profession over the past forty years has sparked a crisis in the industry. It is now time to use market forces to resolve that crisis.