

LAW & REORDER

Legal Industry Solutions for
Restructure, Retention, Promotion
& Work/Life Balance

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What follows below is excerpt from Deborah Epstein Henry's book, *Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*, published by the American Bar Association on October 18, 2010. The excerpt is taken from Chapter 3 entitled, *The Large Law Firm of the Future*. To review the book's Table of Contents, read advance praise, read press features, order the book, and learn more, visit www.lawandreorder.com.

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Many law firms, including the largest firms, are bracing for permanent changes in staffing and non-hourly billing arrangements.¹ According to the "BTI Premium Practices Forecast 2010: Survey of Corporate Legal Spending" study, spending by general counsel on outside counsel fees dropped 10.8 percent, from an average of \$20.8 million in 2008 to \$18.5 million in 2009. Another 4.3 percent drop in spending to \$17.7 million is expected in 2010.² These cuts in spending, among other challenges, are an impetus to change to the traditional law firm model that will be explored below.

Alternative Fees

In April 2009, William Henderson, Professor at the Indiana University Maurer School of Law, and a leading Australian risk manager, Anthony Kearns, convened a group of thought leader lawyers in a role-playing game called FutureFirm. They tried to devise a strategy for a hypothetical law firm to survive another decade.³ The lawyers at FutureFirm agreed that future firms would need to offer alternative fee arrangements to share risk with their clients.⁴

The concept of alternative fees is not new. It has been around for decades and discussed at length. Indeed, the American Bar Association (ABA) launched the Law Practice Management Section Task Force on Alternative Billing Methods in 1989. The Task Force's work culminated in the 2001–2002 ABA report on billable hours, which discussed a range of alternative fee options.⁵ There is greater urgency to heed these recommendations today. While clients are pushing harder, many large law firms are still uncomfortable moving away from billable hours and incurring more risk.⁶ They are concerned about the new level of budgeting, planning, and projecting of lawyer and staff time required to manage alternative fee arrangements.

Although many large law firms fear alternative fees, they no longer have a choice. . . . Law firms will need to be receptive to . . . general counsel demands or lose business. . . . The outlook for 2010 is similarly focused on alternative fees. . . .

With so much discussion of alternative fees, it is important to identify the more popular arrangements and understand what they entail. What follows below is a summary of the pros

and cons of popular alternative fee arrangements. . . . A firm that adopts any of these alternatives, at least initially, should continue to track hours, realization, utilization, and collection. This is important as a means to compare profitability and revenue generation.⁷

Fixed or Flat Fees/Unit Pricing. With fixed or flat fees, there is usually one set fee for a whole matter. Unit pricing sets one fee for each stage of a transaction or proceeding. These approaches are well received by clients because it gives them predictability and removes the problem of receiving astronomical legal bills that have no association with results or value.⁸ For law firms, fixed or flat fees reward efficiency and minimize delays in payments and declining realization rates.⁹ Fixed or flat fees work well with simple transactions like real estate closings, wills, employee contracts, or corporate filings. The risk is that they create incentives for firms to take shortcuts or not assign their talented lawyers to the work.¹⁰

Fixed and flat fees are more difficult to manage when time and workload is less predictable—for example, in litigation, buy-sell transactions, or bankruptcies.¹¹ However, it can be done. . . . Both law firms and corporations have extensive information on the past costs of different types of matters, and this can be a starting point for determining a fixed fee. Also, if a client has repeatedly worked with a law firm, they have a pattern of dealing that should reduce the risk.

Unit pricing, where the fixed fee is broken down based on the various stages of the representation, often makes more sense for complex and high-risk matters.¹² Particularly with unit pricing, it is important to define the scope of the transaction or proceeding clearly.¹³ Also, because certain matters are unpredictable, it is often appropriate to periodically review the pricing structure to ensure that it is fair.¹⁴

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Success, Bonus, or Incentive Fees. Success, bonus, or incentive fees are structured by determining a standard fee and then, prior to engagement, agreeing to reward fees commensurate with varying levels of success. . . . As with unit pricing, it is important to clearly define the success targets.¹⁵ A success fee ensures that law firm lawyers don't cut corners. It usually aligns lawyers' incentives with the clients'.¹⁶ However, the client and law firm interests do not always line up, because resolutions of matters are not always tied to performance. . . .

Holdbacks. A holdback is when a percentage of an engagement or monthly fee is withheld until the end of a matter or a predetermined time when a goal has been reached. . . . Some refer to holdbacks as success fees.

Retainers. With a retainer, a law firm provides certain services for an agreed-upon fee on a monthly basis or another specified period of time.¹⁷ Retainers provide predictability but their fairness depends on how accurate the law firm and client are in estimating the volume of work.¹⁸ Retainers are most popular when there is a large volume of relatively small matters.¹⁹ As with fixed fees, it may be appropriate to agree in advance to regularly review retainers, either monthly or quarterly, to ensure the fairness of the fee.

Contingent Fees. Contingent fees require a lawyer and client to agree on a goal to be achieved to trigger a payment and the consequences of achieving that goal. If the goal is not achieved, the client does not pay for the legal services rendered. Contingent fees are most commonly used with litigation plaintiffs where the lawyer's fee is typically one-third or one-fourth of a settlement or judgment they obtain.²⁰ Contingent fees are a form of "value billing" where the lawyer's fee is directly linked to the value received by the client.²¹ . . .

Alternative Fee Variations of the Billable Hour

There are variations on the billable-hour model that some consider to be alternative fee arrangements. Some firms and clients that struggle with designing creative alternative fees fall back on variations of the billable hour.²²

Discounted Hourly Rates. Some clients negotiate a discount on hourly rates, often for commodity work. Law firms often accede to this for significant clients with leverage.²³ There are risks associated with this arrangement on both sides. For law firms, the clients get accustomed to the discounts and when firms try to revert back to charging regular rates, it is often interpreted as a price increase.²⁴ The risk to the client is that their work will no longer be prioritized and lower-caliber lawyers will be staffed on their matters.²⁵ Also, discounting does not limit the numbers of hours billed and it does not improve efficiency.²⁶ In fact, it might encourage the opposite.

Volume Discounts. Volume discounts occur when clients commit to a certain amount of work if the work is performed at a discounted hourly rate. Thus, a firm agrees to charge a lower percentage of its standard hourly rates when its billable hours reach a negotiated threshold or series of thresholds.²⁷ . . . Clients face the same risk here as with discounted hourly rates.

Blended Rates. For blended rates, one hourly rate is negotiated for all the time spent by different timekeepers on a project. . . . While the benefit is potentially more efficient staffing, the detriment is an incentive to inflate hours or produce lower quality of work by delegating to less senior or less capable lawyers or paralegals.²⁸

Frozen Rates. Frozen rates are adopted when a law firm agrees not to raise its rates by more than an agreed-upon percentage for the length of a matter or during a certain period of time.²⁹

Per Diem Rates. Some clients prefer a daily rate, rather than an hourly rate, for certain lawyer time. . . .

Fee Cap. A fee cap places a limit on the maximum number of hours that will be billed for a matter or task. Law firms incur the loss if the maximum number of hours is exceeded.³⁰ Meanwhile the client risk, as with blended or discounted rates, is that they may receive lower-quality work and unwittingly provide an incentive to the firm to delegate their work to less senior or less capable lawyers.³¹

Hybrid. A hybrid is a combination of alternative fee arrangements and demonstrates the flexibility that can be exercised—for example, a flat fee plus an hourly fee or an hourly fee plus a contingency.³² Or, another hybrid might be a fixed fee plus a negative contingent fee.³³

There are some common elements among the alternative fee arrangements described above. In most, law firms share the risk with clients, and the law firm and client interests are aligned. Some firms fear shared risks but this can be mitigated by quarterly, or even monthly, assessments. Most alternative fee arrangements (that are not variations of the billable hour) focus on efficiency and results and present the opportunity for firms and clients to return to relationships founded on trust and fairness.

Alternative Fee Opportunities for Women and Work/Life Balance

Alternative fees also present significant opportunities for women and those working flexible and reduced hours. Women have been largely unsuccessful competing over time. Since 40 percent of women law firm lawyers with children work reduced hours in any one year,³⁴ these women will be hard pressed to ever achieve the same level of success when the measure of value is simply hours worked. However, with alternative fees, if the measure of value becomes quality of work, efficiency, and results, then women have the opportunity to level the playing field.

Additionally, firms that support flexible and reduced hours stand to benefit from the transition to alternative fees. The link between flexibility and increased productivity has been clearly demonstrated in other industries and should prove to be the same in law. For example, in 2005, the BOLD Initiative, a workplace diversity advocacy organization, found that ten large employers reaped sizeable economic gains after implementing workplace flexibility programs.³⁵ The BOLD Initiative arranged pilot projects for companies including the Chubb Corporation; Gannett Company, Inc.; Johnson & Johnson Services, Inc.; PepsiCo Inc.; Macy's Northwest; and Prudential Financial, Inc., among others. The pilot projects yielded compelling findings. Programs such as telecommuting, flex-time, and compressed workweeks resulted in decreased overtime, fewer unscheduled absences, increased productivity, and more efficient work processes. Each employer increased productivity by 5–10 percent.³⁶ Thus, lawyers working flexible and reduced hours will likely be even more profitable to firms adopting alternative fees.

Changes in Legal Staffing

Use of Temporary Attorneys

Another change to the large law firm model is the disaggregation and unbundling of legal services. . . . [M]uch of the work previously performed by junior associates will be outsourced to India and elsewhere.³⁷ Some firms have resisted the pressure to work with Legal Process Outsourcing (LPO) firms while others have embraced them.

In London, large firms are now considering using temporary attorneys. . . .

Employers that are not already rethinking their staffing model should do so. The use of temporary attorneys is a smart alternative for firms that are less certain of their staffing needs. Creating or turning to a team of pre-vetted attorneys is preferable to ensure quality control.

Shrinking Associate Classes and Increasing Use of Staff and Non-Partnership Attorneys

Due to the disaggregation and unbundling of legal services, among other factors, other staffing needs at large law firms are changing. In an *American Lawyer* survey of the top 200 law firm leaders, 72 percent said they expect their 2010 first-year associate class to be smaller.³⁸ This is because the traditional “leveraged associate” staffing model used by large law firms, which typically relies on a billing ratio of at least three associates for every partner, is being challenged.³⁹ . . .

With shrinking associate classes, another staffing trend emerging is the increased role of staff attorneys or two tiers of associates, with one a partnership track and one not. These staff or non-partnership attorneys do more routine work for less pay and at lower rates, and they are not on a firm's partnership track.⁴⁰ . . . Firms also plan to have larger pools of non-lawyer professionals who work at a reduced cost and increase efficiency for the client.⁴¹

Some firms are developing other creative solutions to combat the trend toward shifting work to LPOs or midsize and regional firms.⁴² At Orrick, for example, the firm has created an “insourcing” model in an office in West Virginia, where real estate and hourly labor are less

expensive than in urban centers. . . . The firm also announced plans to expand the number of attorneys doing routine legal work who can be paid and billed at lower rates.⁴³ . . .

Levels/Tiers of Associates

Another change to the large law firm staffing model is to create levels or tiers of associates. . . . The level system replaces lockstep associate promotion with typically three or four tiers of associates within its partner track.⁴⁴ . . .

Temporary, Staff, and Non-Partnership Track Attorney Work: The Impact on Women

The increased need for temporary, staff, and non-partnership track attorney work presents both risks and opportunities for women attorneys. Nearly one-third of women lawyers leave law firm practice⁴⁵ and many become full-time caregivers because of, among other reasons, the difficulties in managing a career with erratic hours and demands. But with an increased temporary, staff, and non-partnership attorney presence, these women may be more inclined to stay. . . .

If talented lawyers announce their plans to leave because of practice demands, temporary, staff, and non-partnership attorney positions should be offered as an alternative. Additionally, employers should recognize that if they can hire at-home mothers to do temporary work on an hourly basis, they will benefit. These lawyers will be more engaged in the work because of the lifestyle it offers them for the period of time that their kids are young. In turn, employers will benefit from having a stable pool of reliable workers rather than transitory lawyers looking toward their next move.

With the increased role of staff and non-partnership attorneys, there is a significant risk that more women will be “mommy tracked” and fewer will pursue the challenging alternative. The risk stems from the fact that generally, two groups of attorneys pursue the staff and non-partnership attorney path. One group of these attorneys is not as well credentialed or otherwise would not be hired for or cannot manage the higher paid, partnership track work. The other group of attorneys who pursue these roles are high-caliber lawyers who are seeking the less challenging work because it is more predictable and consistent with their lifestyle needs. This second group of lawyers is often women who work flexible or reduced hours in the staff or non-partnership attorney role. The bottom line is that many women have left the workforce entirely or have left law firms. If we provide women with another opportunity to remain engaged in the profession, these alternative positions should better serve them in the long run as long as certain cautionary measures are taken. In other words, it is better that women continue practicing law in a less challenging capacity than leave the profession entirely—as long as the overall representation of women in the profession increases, including the representation of women at the top.

There are critical safeguards law firms should implement to minimize the risk that the increased role of staff and non-partnership attorneys will be detrimental to women. These include the following:

1. *Track All Levels of Female Representation:* The representation rates of women at all levels of seniority needs to be tracked annually. The objective is to increase representation of women at the equity partner level and overall. In other words, the increased role of staff and non-partnership attorneys will only be beneficial if it results in more women staying in the profession overall *and* more women being represented at the highest level.

2. *Create an On-Ramp for Talented Attorneys to Return to Partnership Track:* Law firms need to recognize that some lawyers seek staff or non-partnership track work only temporarily during a certain life stage. Those staff or non-partnership attorneys capable of doing the more sophisticated, higher-paid work (often with irregular hours) should be given the opportunity to resume doing so if the business needs exist.⁴⁶ At some firms, it may be appropriate to separately label the non-partnership attorneys who are capable of doing the more sophisticated, higher-paid work but who have sought the less challenging and predictable work for lifestyle reasons. These high-caliber lawyers can be called “Fixed hour attorneys” rather than staff attorneys. The term “Fixed” suggests the predictability that this high-caliber talent is seeking and also separates this group of attorneys from those who do not have the capacity to do partnership-level work. If firms separately label these two groups of non-partnership track attorneys, attention must be paid not to degrade those attorneys who are in the permanent staff attorney role.

3. *Educate to Inform and Avoid Stereotyping:* Firm lawyers need to be educated about the different career paths that are available to them, what each path entails, and what are the risks and tradeoffs of electing the different career paths. Law firms must be vigilant that women are not being disproportionately steered into the staff and non-partnership attorney positions. Firms must also guard against assumptions that all women or all mothers belong in these positions. The message must be clear that many women with and without children will seek the highly challenging and higher-paid work that is often accompanied by more irregular hours. Additionally, the option for high-level talent to pursue staff or non-partnership attorney work should be available to men and women for reasons in addition to parenting.

Compensation

Over the past 10 to 15 years, there has been a growing pay gap between large law firms and the rest of the profession. . . .

Rising compensation appears to be disappearing as a result of the recession, like other bygone practices. The factors that are driving the decline in associate compensation include

clients' resistance to rate hikes, a decreased demand for legal services, and an increase in contract lawyers, LPOs, and virtual law firms.⁴⁷ . . . Regardless of whether firms abandon lockstep compensation, it seems that compensation among most associates in the United States will decline. It remains to be seen, however, whether UK firms will follow the United States' downward compensation trend. . . .

As of February 2010, almost 30 Am Law 200 firms (America's 200 top grossing firms, according to a law firm ranking by *The American Lawyer*) abandoned lockstep in favor of a merit-based system.⁴⁸ The new structure being established by nearly all of the firms has three tiers, with bonuses, raises, and promotions tied to annual evaluations.⁴⁹

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In terms of future compensation for associates, the picture is not entirely bleak. Top associate talent may earn more than associates do today.⁵⁰ Many think the issue is not that all associates are overpaid, just that many are.⁵¹ . . .

If compensation declines for most associates, there will likely be other accompanying trends. Perhaps the long hours will go by the wayside with the high compensation.⁵² It also may result in fewer graduating law students taking top law firm jobs as a means to repay their law school debt. These lawyers entering the profession may have the opportunity to choose work that is more closely aligned to their interests⁵³ or pursue midsize or regional firms where the pay gap with large law firms may be shrinking.

Changes in Recruiting

As large law firms change staffing, the recruiting process will become another ripe area for a market correction. Recruiting changes have been discussed widely since the economic downturn began in 2008 and even before. The recruiting problems start with the unrealistic premise that a legal employer should be able to accurately predict its hiring needs two years before a lawyer's start date. The problems are compounded by the fact that the leveraged associate pyramid model at law firms relies on the attrition of most of the associates hired.

The result is that law firms plan to shrink the number of law students hired to fill summer and first-year associate classes. A handful of firms took a stark approach and canceled on-campus interviewing in the fall of 2009 and their 2010 summer associate programs.⁵⁴ Most other firms shrunk the sizes of their summer associate classes, hoping they could reduce attrition by being more effective at screening applicants.⁵⁵ . . . The goal at many firms now is to cut the incoming class in half and expect a higher percentage of the class to be promoted to partner, rather than expecting only a 10 to 15 percent promotion rate.⁵⁶ Executing on this goal will prove challenging if firms do not significantly change their talent management system .

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Ultimate Challenge Facing Large Law Firms: Determining Value

With all of the challenges facing large law firms, one theme is consistent throughout: the challenge of measuring value. This challenge resonates in three ways.

1. Measuring the value of a case or matter is a challenge that makes alternative fee arrangements hard to effect. Firms and clients need measures to assess the value of a representation. Neither side wants to incur more than its fair share of risk.

2. Measuring the value and profitability of a law firm is another challenge. Firms are looking for new metrics and may move away from profits per equity partner as a defining measure to assess performance.⁵⁷ It is uncertain whether firms will develop varying metrics to measure profitability or if a new standard for all firms will evolve. If the measure moves away from profits per equity partner, then it is likely that the partnership structure itself will change. With all of the structural shifts being discussed regarding large law firms, there is an unusual silence about the future of law firm partners. Partner roles will inevitably need to evolve given all of the expected changes with law firm associates.

3. Measuring the value of associates for promotion purposes is a third challenge as firms move away from lockstep promotion and compensation. This is made more difficult by the use of blended methods. For example, if 30 percent of a firm's revenue is earned from alternative fees and the rest from billable hours, does that confuse the evaluation process? How much should billable hours be considered in evaluating associates, if at all? As firms transition from lockstep to competency-based evaluations, this concern may diminish. However, the challenge of assessing a lawyer's value based on a measure other than time will remain. . . .

One thing is clear: as large law firms face the obstacles of today, they should look closely at the new models emerging around them. These new-model firms have been built on the inefficiencies and imperfections of traditional law firms and the failures of the billable-hour model. In turn, traditional firms can improve their productivity and profitability through close examination and lessons learned from their alternatives.

¹ Ross Todd, *Law Leaders: Crunch Won't Cause Legal Revolution*, LegalWeek, May 13, 2009, available at <http://www.legalweek.com/legal-week/news/1171379/law-leaders-crunch-won-cause-legal-revolution>.

² Sheri Qualters, *Outside Counsel Spending Projected to Drop by 4.3 Percent Next Year*, Nat'l L.J., Oct. 9, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202434410545>.

³ Aric Press, *Legal Professionals Role-Play the Future of Big Law*, Am. Law., Apr. 21, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202430052156>.

⁴ *Id.*

⁵ Am. Bar Ass'n, ABA Commission on Billable Hours Report 2001–2002 (2002), available at <http://www.abanet.org/careercounsel/billable/toolkit/bhcomplete.pdf> [hereinafter ABA Commission Report].

⁶ Eric Young, *More Bay Area Firms Adopt Creative Legal Fees*, S.F. Bus. Times, Jan. 1–7, 2010, available at <http://sanfrancisco.bizjournals.com/sanfrancisco/stories/2010/01/04/story10.html>.

⁷ Alan G. Badey, *The Alternative Billing Debate Continues*, N.Y.L.J. (2009).

⁸ Ben W. Heineman Jr. & William F. Lee, *Two Veteran Lawyers Say Now Is the Time for Fixed Fees*, Corp. Couns., Aug. 24, 2009, available at <http://www.law.com/jsp/cc/PubArticleFriendlyCC.jsp?id=1202433261281>.

⁹ *Id.*

¹⁰ David Gialanella, *Taming the Billable Beast*, A.B.A.J., Feb. 1, 2008, available at http://www.abajournal.com/magazine/article/taming_the_billable_beast/.

¹¹ Badey, *supra* note 7.

¹² Heineman & Lee, *supra* note 8.

¹³ Badey, *supra* note 7.

¹⁴ Evan R. Chesler, *Kill the Billable Hour*, Forbes, Jan. 2009, available at <http://www.forbes.com/forbes/2009/0112/026.html>.

¹⁵ Badey, *supra* note 7.

¹⁶ Chesler, *supra* note 14.

¹⁷ Richard J. Rawson, et al., *Fee Arrangements*, in *Successful Partnering Between Inside and Outside Counsel*, at 8-17 (Robert L. Haig ed., 2000). . . . Note that the term “retainer” can also be used to refer to an up-front payment made by a client to assure payment (rather than as an alternative fee arrangement). *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ ABA Commission Report, *supra* note 5, at 18.

²¹ Rawson, et al., *supra* note 17, at 8-18.

²² Rachel M. Zahorsky, *Majority Say Law Practice Is Undergoing a Sweeping Evolution, Survey Says*, A.B.A.J., Mar. 26, 2010, available at http://www.abajournal.com/news/article/majority_say_law_practice_is_undergoing_a_sweeping_evolution_survey_says/.

²³ ABA Commission Report, *supra* note 5, at 17.

²⁴ Badey, *supra* note 7.

²⁵ *Id.*

²⁶ ABA Commission Report, *supra* note 5, at 17.

²⁷ Rawson, et al., *supra* note 17, at 8-15.

²⁸ Rawson, et al., *supra* note 17, at 8-14.

²⁹ *Id.* at 8-15–8-16.

³⁰ *Id.* at 8-14.

³¹ *Id.*

³² ABA Commission Report, *supra* note 5, at 18.

³³ Jeanne Graham, *Alternative Billing Increasingly Important for Texas Firms, Survey Shows*, Tex. Law., July 1, 2009, available at <http://www.law.com/jsp/law/sfb/lawArticleSFB.jsp?id=1202431903623>.

³⁴ Mona Harrington & Helen Hsi, *Women Lawyers and Obstacles to Leadership*, in A Report of MIT Workplace Center Surveys on Comparative Career Decisions and Attrition Rates of Women and Men in Massachusetts Law Firms 32 (2007), available at http://web.mit.edu/workplacecenter/docs/law-report_4-07.pdf.

³⁵ Leah Carlson, *Flexibility Proves Profitable for Large Firms*, Emp. Benefit News, Sept. 15, 2005, available at <http://www.allbusiness.com/labor-employment/working-hours-patterns-flexitime/8008526-1.html>.

³⁶ *Id.* The Chubb Corporation also experienced a 50 percent reduction in unscheduled absences and a 40 percent decrease in overtime hours per employee at a claims service center. *Id.*

³⁷ David Lat & Elie Mystal, *The New Biglaw Business Model*, According to O'Melveny & Myers, Above the Law, Sept. 16, 2009, available at <http://abovethelaw.com/2009/09/the-new-biglaw-business-model-according-to-omelveny-myers/>.

³⁸ Debra Cassens Weiss, *40% of Firms Cut Starting Associate Pay, While 44% Consider 2010 Cut*, A.B.A.J., Dec. 1, 2009, available at http://www.abajournal.com/news/article/40_of_firms_cut_starting_pay_for_associates_while_44_consider_2010_cut/.

³⁹ David A. Scherl, *Leverage and Rates*, N.Y.L.J., 2009, available at <http://www.morrisoncohen.com/downloads/NYJL%20Report%20Mid%20Size%20Firms.pdf>; see also Dan Slater, *At Law Firms, Reconsidering the Model for Associates' Pay*, The New York Times, Apr. 1, 2010, available at <http://www.nytimes.com/2010/04/01/business/01LEGAL.html>; Debra Cassens Weiss, "O'Melveny Aims to Become Fixed-Fee Leader, Leaked Plan Says," A.B.A.J., Sept. 17, 2009, available at http://www.abajournal.com/news/article/omelveny_aims_to_become_fixed-fee_leader_leaked_plan_says/.

⁴⁰ Scherl, *supra* note 39.

⁴¹ Lynne Marek, *DLA Piper Plans to Keep Reducing Associate Classes, Discard Lockstep System*, Nat'l L.J., June 25, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202431748925>.

⁴² Zach Lowe, *This Isn't the End of Big Law Firm Associates*, AmLaw Daily, Mar. 10, 2010, available at <http://amlawdaily.typepad.com/amlawdaily/2010/03/clobiglawassociates.html>. The idea of using lawyers outside of New York, Washington, D.C., and other big cities is gaining momentum. *Id.*

⁴³ Jill Redhage, *Orrick Shakes Up Big-Firm Staffing Model*, Daily J., July 2, 2009.

⁴⁴ Amanda Royal, *Orrick Breaks Lockstep in Response to Clients' Cost Concerns*, Recorder, July 2, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202431956146&rss=newswire>.

⁴⁵ Harrington & Hsi, *supra* note 34, at 8.

⁴⁶ Deborah Epstein Henry, *Facing the FACTS: Introducing Work/Life Choices for All Firm Lawyers Within the Billable Hour Model*, Diversity & the Bar, Nov./Dec., 2007, available at <http://www.flextimelawyers.com/pdf/art10.pdf>.

⁴⁷ Debra Cassens Weiss, *Associate Pay May Need to Return to 1998 Levels, Consultant Says*, A.B.A.J., Nov. 5, 2009, available at http://www.abajournal.com/news/article/associate_pay_may_need_to_return_to_1998_levels_consultant_says/.

⁴⁸ Julie Triedman, *Are Merit-Based Pay Switchovers Simply Hidden Salary Cuts?*, Am. Law., Feb. 18, 2010, available at <http://www.law.com/jsp/article.jsp?id=1202443769098>.

⁴⁹ *Id.*

⁵⁰ Dan Slater, *At Law Firms, Reconsidering the Model for Associates' Pay*, N.Y. Times, Apr. 1, 2010, available at <http://www.nytimes.com/2010/04/01/business/01LEGAL.html>.

⁵¹ *Id.*

⁵² Adam Cohen, *With the Downturn, It's Time to Rethink the Legal Profession*, N.Y. Times, Apr. 1, 2009, available at <http://www.nytimes.com/2009/04/02/opinion/02thu4.html>.

⁵³ *Id.*

⁵⁴ See, e.g., Rachel Breitman, *Morgan Lewis Cuts 2010 Summer Program*, Nat'l L.J., July 20, 2009, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202432352838>; Debra Cassens Weiss, *Triple Bad News for Law Students: Three Firms Ax Summer Associate Programs*, A.B.A.J., July 20, 2009, available at http://www.abajournal.com/news/article/triple_bad_news_for_law_students_three_firms_ax_summer_associate_programs.

⁵⁵ Lisa Smith, *Report from Law Firm Leaders Forum—Change Is the Name of the Game*, Hildebrandt blog, Mar. 12, 2010, available at <http://www.hildebrandt.com/blog/archive/2010/03/12/change-is-the-name-of-the-game.aspx>; see also Jeff Jeffrey, *Howrey Introduces Apprenticeship Program for Associates*, Nat'l L.J., June 22, 2009, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202431654426&rss=nlj242&hbxlogin=1>.

⁵⁶ *Id.*

⁵⁷ *Id.*