Gender Penalties: The Results of the Careers and Compensation Study

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Introduction

In 1993 the Colorado Bar Association and the Colorado Women's Bar Association surveyed Colorado attorneys, in part to assess and compare the economic status of male and female attorneys in Colorado. Using the Colorado Supreme Court's list of licensed, active attorneys, questionnaires were mailed to a random sample of 3100 attorneys. Confidential responses were received from 55.8% of the sample. 73.2% of those responding were male and 26.8% female, proportions that closely approximated the proportion of male and female attorneys in Colorado at that time.

When comparing male and female attorneys, a number of significant differences were apparent. First, male attorneys as a group were older and had practiced law for more years. 69.3% of male attorneys had practiced 10 years or more compared to only 37% of female attorneys. Second, family circumstances and part-time work patterns were significantly different for male and female attorneys. Almost twice the proportion of female attorneys were single (30.8% in contrast to 16.2% of the males), and a substantially greater proportion of male attorneys had children (68.6% compared to 47% of female attorneys). Almost twice the proportion of female attorneys worked part-time, 17.6% compared to 9.1% of male attorneys.

A third area of major difference found in the Economic Survey was in earned income. The average net income (after expenses but before taxes) for full-time female practitioners was only 59% of the average income for full-time male practitioners ($53,893 compared to $90,953). A significant factor in this disparity was the fact that male attorneys as a group had practiced law more years than female attorneys as a group. However, when years of practice were correlated with income, the significant gap between male and female attorneys remained. While income for male and female practitioners beginning their careers was fairly equal, female practitioners with 1 to 3 years experience averaged only 82% of the income of their male counterparts. At the 4 to 9 years of experience level, female attorneys reported making 86% of the average income of male attorneys of comparable experience, and at the 10 to 20 years of experience level, female attorneys made only 76% of the average income of their male counterparts. There were too few women who had practiced more than 20 years to make a statistically meaningful comparison with men at this level of experience.²

When income was correlated with firm size female attorneys across all firm sizes made substantially less than male attorneys. When the relationship between geographical location and income was analyzed, the pattern of gender difference remained the same across the state. In counties where a substantial number of women practiced law (Arapahoe, Boulder, Denver, Jefferson and El Paso), female income as a percentage of male income varied from a “high” of 75% in Arapahoe County to a low of 59% in Denver. The pattern of economic disparity continued when types of employment (sole practitioner, partner, associate, etc.) and areas of practice (criminal, litigation, family law, etc.) were compared. The data analyst also compared the number of hours billed, hourly rates, and collection rates for male and female attorneys and concluded that these factors did not explain the economic disparity.

² The base numbers employed in the comparison of the 1993 survey were narrowed when controlling for number of years of experience. Those with more than 20 years experience were included in the overall “average net income” of men and women and then eliminated in the comparison by years' experience due to the small number of women in these categories.
The CBA/CWBA Economic Survey results were disturbing to a number of Colorado lawyers. The CWBA took the lead and formed a study group to consider possible explanations for these economic disparities. Other states which have gathered this kind of data have found similar gender disparity patterns.

If years of experience and firm size do not explain the gender wage gap, then what does? Sociological research suggests that differences in the career paths followed by men and women might account for some of the income disparity. Women tend to be segregated into jobs or occupations that pay less than men. Women tend to opt for more specialized job roles that can open some opportunities and limit others. Women’s career progress is often less linear in its trajectory, moving in and out of careers, than that of their male counterparts. Career interruptions for family or other reasons are more typical of women than men. Some researchers have found that because many professional structures and practices are organized around men’s lives, women find them more difficult to follow than their male counterparts and the women are penalized economically as a result. The distribution of occupational resources in ways that protect men’s already advantaged position has explained income disparity as well. This kind of protection can happen when occupation categories are constructed (e.g., non-equity partners) that concentrate women’s labor into lower or mid-level positions, when mentoring is withheld, particularly around issues of salary negotiation, and when gender-segregated information networks develop. Women excluded from informal circles of information typically depend solely on formal communication systems that are more limited and constrained. Career paths, and thus compensation, can also be

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influenced by the following: economic climate at the time one enters the profession, internal labor markets; organizational structure, and job characteristics.

Research Questions

The series of discussions about what might explain the income gap led to the current study that examines the career histories of male and female attorneys in the Denver metropolitan area. Our goal was to collect data in the form of "stories" that could reveal patterns of constraint and choice in the formation of legal careers and the determination of compensation.

The focus of the research was to determine whether structures and processes that exist in the practice of law have an impact on pay disparity. Within this larger perspective, we defined a number of questions that we wanted to explore:

1. How do men and women attorneys progress on the partnership track?
2. What are the criteria used to determine levels of compensation of attorneys?
3. Do men and women experience the application of compensation and promotion criteria in the same manner?
4. How do men and women attorneys understand and approach client development practices? Do they experience equal levels of success in this realm?

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5. What is the role of mentoring in the development of lawyers? Do men and women attorneys experience mentoring relationships in the same way?

Unlike journalists capturing individual anecdotes, we subjected our "stories" to systematic social science analysis to uncover whether there were differences in the career patterns of men and women that might explain the gap in pay.

The study received financial support from the Colorado Women's Bar Association, the Colorado Women's Bar Foundation, the Colorado Bar Association and the Denver Bar Association. In addition, the study received in-kind support from the University of Denver College of Law and Sociology Department.

Methodology

The present study is based on in-depth interviews with 100 attorneys (52 women and 48 men) in the Denver Metropolitan area. As our funding was limited, we restricted our study to lawyers working in law firms. Solo practitioners, lawyers employed in government, legal aid, private industry, private associations, legal clinics, or law schools were excluded.

We selected the interviewees from the Martindale Hubbell Directory to insure that we had sufficient numbers of well matched men and women to represent a stratified picture of private law practice that had depth with respect to a few firms and breadth to represent a range of practice types. We included only those attorneys who had a minimum of 5 years practice experience as study sponsors advised us that this was when lawyers are most likely to begin to reflect factors that influence their compensation. We

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11 The authors would like to thank the members of the Advisory Committee to the study for their time, advice, and support. The members of the Advisory Committee include: Madeline A. Collison, Jerry Conover, Hubert A. Farbes, Bryant Garth, Natalie Hanlon-Leh, Edwin S. Kahn, Dennis Lynch, Pamela R. Mackey, Elizabeth A. Starrs, and Maria J. Williams.
first chose respondents to form in-depth pictures of a few firms. Attorneys were selected from large firms (50+ attorneys), national law firms, medium-sized firms (15-50 attorneys), and small firms (5-14 attorneys). We always tried to select equal numbers of men and women in similar positions including managing partners, senior partners, mid-level partners, new partners, and senior associates. This presented quite a challenge. We attempted to select similarly situated male and female attorneys. However, women have not been practicing in the larger firms long enough to be found in comparable numbers in the highest positions of these firms. Surprisingly, it was also difficult to find similarly situated male associates in the small firms! Our review of Martindale Hubbell found few small firms where there was a balance of men and women in similar positions. The typical gender pattern was to find male owner-partners practicing with female associates or male owner-partners with male associates.

**TABLE 1-1: THE INTERVIEW SAMPLE**

<table>
<thead>
<tr>
<th></th>
<th>MEN</th>
<th>WOMEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>LARGE</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>NATIONAL</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>MEDIUM</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>SMALL</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>MIGRANT</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>OTHER*</td>
<td></td>
<td>5</td>
</tr>
</tbody>
</table>

*Other includes individuals who left law practice to work in government, to go to the bench or to in-house counsel.

In addition to this sampling approach, we sampled a category of lawyers that we designated as "migrants." These lawyers were individuals who had made a minimum of three career moves between firms. Many of these individuals had, in fact made more
than three moves. The individuals in this final part of the sample turned out to be extremely valuable informants. Not only could they add to the breadth of practice contexts we explored, they often helped to round out our in-depth exploration of a few firms. "Other" includes women who left law firm practice for government work, the bench, or in-house counsel. All told, we estimate that we have at least some information on more than 70 law firms in the metropolitan area.

The interviews were conducted over two years (1996-1998). The interviews were taped and transcribed. The average length of the interviews was 1½ - 2 hours. We found that most lawyers were extremely generous with their time as well as their candor. All respondents were guaranteed individual as well as law firm anonymity. This guaranty was essential since the Denver legal community is small enough that individuals could be identified by giving only a few personal or professional characteristics. Pseudonyms have been used throughout this report.

Data were collected using a technique that focuses on "career histories." We began interviews by asking when and why people decided to go to law school, where they received their undergraduate education, and legal education, and the nature of their parents' occupations. Then the interviews proceeded in an unstructured format to collect information on all the career choices that our respondents had made - including initial job choices (including clerkships), and then decisions they made along their career paths. We wanted information on decisions to change jobs, work part-time, have families, etc. We asked for their perceptions of what was important (people and events) to a legal career. The interview typically included an exploration of mentoring experiences and understanding of the compensation system. In terms of compensation, we were often surprised by the vague understandings of how compensation worked. While this might be expected from newly minted attorneys, we were surprised to discover that many senior associates and even partners were poorly informed.
Our methodology presented both opportunities and challenges. The unstructured nature of the interviews allowed us freedom to explore a number of aspects of the practice of law in Denver and how it has changed over the last couple decades. It enabled respondents to describe in their own words how they progressed in the practice of law. All respondents were told that the focus of the study was on "pay disparities" between the incomes of men and women lawyers. Many were very candid in their personal reflection and observations. They provided nuanced stories about the functioning of the culture of their law firms and of the profession as a whole. The challenge was to find commonalities and systematic difference in the stories that might provide explanations for the income gap observed in the Colorado Bar Association/Colorado Women’s Bar Association study.

Our focus was to discover whether patterns of difference exist in the stories similarly situated men and women told about factors critical to compensation. We utilized a constant comparative method of qualitative data analysis during and after the fieldwork. We followed established procedures for exploratory studies that allow researchers to build "grounded" theoretical models (categories, properties, and hypotheses) from the data rather than using data to test pre-established theories. Computer-aided qualitative data analysis was deployed to help focus some of our inquiry. We began with a list of problems, concepts, and indices based on our discussions in the Economic Disparity Task Force. These were refined, modified, and added to during the course of our research. After the interviews were completed we reviewed the transcripts individually and as a group. The group process, while cumbersome in many respects, offered us a chance to check our individual interpretations against that of the other group members. Key career themes from each interview were compared to the themes generated from similarly situated men or women. Once patterns in a key group (e.g., woman associates, small firm) were identified they were compared to any patterns that might have emerged from their male counterparts.
How often did a finding of difference merit its reporting as a “pattern of difference”? There is no magical number. We were looking for responses that were sufficiently consistent to suggest that there were gender differences in the career stories of a significant number of attorneys. Does this mean that all or most attorneys experience these differences? Certainly not. Career differences among men and among women are as great, if not greater, than the differences between men and women. Our concern is whether the patterns we found in the male responses with all its variability look different than the patterns in the female responses. Did the responses of men include some key to career success that was missing from the responses of women in our sample? Were women more likely to include a factor in their career choices more often than their male counterparts? Looking across the range of responses, do men perceive the road to career success in different ways than are expressed by the range of women’s perceptions?

A final note. Throughout this report we use the term “partner” to include everyone who might be legally referred to as one of the following: partner, non-equity partner, member, owner, senior of counsel or special counsel.
SECTION TWO: THE LAW FIRM ENVIRONMENT

Law Firm Demographics

To create a picture of the landscape of legal practice that is the subject of our study, we took a snapshot of Denver area law firms with five (5) or more attorneys as listed in the Martindale Hubbell Directory. As expected, men continue to dominate the law firm terrain. In 1996, 76.2% of the attorneys listed as being in firms of five or more attorneys were men. 23.8% were women.

TABLE ONE:

MEN AND WOMEN IN LAW FIRMS WITH 5 OR MORE ATTORNEYS

<table>
<thead>
<tr>
<th>MEN</th>
<th>WOMEN</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>2433</td>
<td>759</td>
<td>3192</td>
</tr>
<tr>
<td>(76.2%)</td>
<td>(23.8%)</td>
<td>(100%)</td>
</tr>
</tbody>
</table>

Source: Martindale Hubbell Directory, 1996

We examined the relative proportions of men and women in different positions within law firms (partners, associates, of counsel). Women continue to be underrepresented in the higher statuses of law firms. Although women comprise
nearly 24% of the attorneys listed in firms of five or more attorneys, they are only 16.2% of the listed partners of firms of five or more attorneys. This represents a slight increase from earlier years. Forty percent of the listed associates are women. Women comprise nearly twenty percent of those listed as of counsel or special counsel.

**TABLE TWO:**

*Men and Women in Denver's Law Firms, 1996*

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member/Partners</td>
<td>1589</td>
<td>307</td>
<td>1896</td>
</tr>
<tr>
<td>Associates</td>
<td>581</td>
<td>387</td>
<td>968</td>
</tr>
<tr>
<td>Of/Special Counsel</td>
<td>263</td>
<td>65</td>
<td>328</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2433</td>
<td>759</td>
<td>3192</td>
</tr>
</tbody>
</table>

Source: Martindale Hubbell Directory, 1996. We use the member/partner designation as per the source.

When we examined the distribution of women by firm size we found that the proportion of women who are partners is greatest in the larger firms (19%) and somewhat less in the smallest firms (15% of firms with 11-30 lawyers and 16% of firms with 5-10 lawyers). Women are also better represented in the ranks of associates in firms of 50 or more attorneys (46% of the associates) than firms with less than 10 attorneys (i.e., 36% of the associates in the smallest firms).
TABLE THREE: MEN & WOMEN OF THE LAW FIRM

Men & Women of the Large (>50) Law Firm

Men and Women of the Medium (31-50) Law Firm

Men & Women of the Small (11-30) Law Firm

Men & Women of the Smallest (5-10) Law Firm

Male
Female
To assess the relative power of men and women in law firms in Denver, we counted the times women were listed as named partners. The assumption we held was that there is a certain amount of status and power associated with being a named partner. We found that only 44 (6.4%) of the 687 named partners were women. Not surprisingly, not one of the named partners in the larger firms was a woman. This reflects the very few women involved in the practice of law when those firms began. But surprisingly, we also found few women named as partners in the smallest firms. Smaller firms tend to be younger, and many were established when more women were involved in the profession. Nine percent of the named partners in the smallest firms (5-10 lawyers) were women in 1996. The representation of women declined as firm size increased. Women were 9% of the named partners of 5-10 attorney firms, 2% of the named partners in firms of 11-30 lawyers and none of named partners in firms with more than 31 attorneys.

Mobility is increasingly evident in law practice. Because job changes are traditionally thought to be associated with higher compensation, we decided to examine the mobility of attorneys who worked in law firms with eleven or more attorneys. Note the change in sample. The number of lawyers working in firms of 5 to 10 lawyers was too large for inclusion in this study. Again, examining the Martindale Hubbell Directory we looked in 1997 for any changes in the listing of attorneys who in 1996 worked in firms of eleven or more attorneys. As reported in Table Four, we discovered that 16.8% of attorneys in firms of 11 or more attorneys moved between 1996 and 1997. Women moved at a higher rate than men. 20.43% of women who worked in firms of 11 or more attorneys moved out of those firms between 1996 and 1997 compared to 14.3% of the men.

Do men and women make the same kinds of moves? A greater percentage of women seem to make “down tick” lateral moves, i.e., moved from partner to associate status in 1997. Five (19%) of the 26 female lawyers who moved to an associate position did so from a partnership position while only four (11%) of the 36 male lawyers did so. A greater percentage of women who moved were categorized as moving to an “unknown status” than was true for their male counterparts. “Unknown status” means that they
were listed with a new address that doesn't correspond with a firm address or they had the address listed in their individual listing was their 1996 firm address, but they were no longer listed with the firm.

We decided to explore these inconsistent listings further. We followed up on the current status of 131 men and women that were no longer listed in Martindale Hubbell or no longer listed with their 1996 firm but their individual listing was the address of the 1996 firm. We confirmed information on 112 attorneys. We found that most were continuing to practice law. Only five men and twelve women were confirmed to have

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**TABLE FOUR**

*Law Firm Transition from 1996 to 1997 for Firms with Greater Than 10 Attorneys*

<table>
<thead>
<tr>
<th></th>
<th>FEMALE (% change)</th>
<th>MALE (% change)</th>
<th>(% change)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL Lawyers</td>
<td>518</td>
<td>1567</td>
<td>2085</td>
</tr>
<tr>
<td>Movement</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To Partner at Different Firm</td>
<td>11</td>
<td>2.1%</td>
<td>41</td>
</tr>
<tr>
<td>To Associate at Different Firm</td>
<td>26</td>
<td>5.0%</td>
<td>36</td>
</tr>
<tr>
<td>To Of Counsel</td>
<td>5</td>
<td>1.0%</td>
<td>35</td>
</tr>
<tr>
<td>To Own Firm</td>
<td>7</td>
<td>1.4%</td>
<td>14</td>
</tr>
<tr>
<td>To Unknown Status*</td>
<td>30</td>
<td>6.6%</td>
<td>51</td>
</tr>
<tr>
<td>No Longer Listed</td>
<td>43</td>
<td>8.3%</td>
<td>40</td>
</tr>
<tr>
<td>TOTAL CHANGE</td>
<td>122</td>
<td>23.5%</td>
<td>217</td>
</tr>
</tbody>
</table>

Source: Martindale Hubbell Directory. *Unknown status includes a new address that doesn't correspond with a firm address, same address listed in individual listing, but no longer listed at the firms.
left law practice. Thirteen men and ten women moved to in-house counsel, representing 6% and 8.2% of the respective movement of men and women. Twelve men and thirteen women had moved to a new firm. Three male associates and four female associates were improperly classified as having moved. Interestingly, two of the four associates who were no longer listed with the firm were on maternity leave!

Table Five reports on within-state lateral movement of associates and partners. We found that women move laterally as often, if not more, than men do. Interestingly, none of the female partners in small firms made a lateral in-state move, while 3.7% of the males did so. Traditionally, lateral movement has meant a pay increase. But in today's turbulent legal environment (see below) this is no longer always the case. In some cases it may be a neutral economic move, or a negative economic one. For example, movement from a large firm to a small firm may reflect a lifestyle choice that results in a cut in pay.\textsuperscript{12} One must be careful, however, when making broad generalizations from only one year of transition data. Nonetheless, the data suggest that mobility patterns may be different for men and women. An extensive review is warranted before any firm conclusions can be drawn.

\textsuperscript{12} Or it might mean that the reduced overhead costs associated with a small firm can increase earnings without a substantial increase in work.
TABLE FIVE:
WITHIN STATE LATERAL MOVEMENT OF LAWYERS WORKING IN LAW FIRMS OF GREATER THAN TEN ATTORNEYS

<table>
<thead>
<tr>
<th></th>
<th>% of 1996 Females</th>
<th>% of 1996 Males</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Associate to Associate 1997 Moves Out of:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Large Firms</td>
<td>4.7% (N=128)</td>
<td>2.7% (N=151)</td>
</tr>
<tr>
<td>Medium Firms</td>
<td>10.0% (N=26)</td>
<td>2.7% (N=35)</td>
</tr>
<tr>
<td>Small Firms</td>
<td>16.7% (N=129)</td>
<td>4.0% (N=200)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>8.5% (N=283)</td>
<td>7.0% (N=386)</td>
</tr>
</tbody>
</table>

| **Partner to Partner 1997 Moves Out of:** |                   |                 |
| Large Firms            | 1.3% (N=79)       | 1.8% (N=385)    |
| Medium Firms           | 6.7% (N=30)       | 1.1% (N=185)    |
| Small Firms            | 0.0% (N=90)       | 3.1% (N=456)    |
| **TOTAL**              | 1.5% (N=199)      | 2.2% (N=1026)   |

Source: Martindale Hubbell Directory

The shifting legal landscape

Differences between the legal careers of men and women must be understood in context. Private legal practice over the past fifteen years has seen significant, some would suggest turbulent, change coinciding with the entrance of women into the profession in
more significant numbers. Five of these changes and their implications for the careers of female lawyers will be discussed. Each in their own way created a sticky path for women’s career advancement.

- A shift in orientation from client service to client production
- Increased intra-firm competition among lawyers
- Centralization of decision-making in firms
- Emergence of new statuses in law practice
- Lengthening the time to promotion

What is significant about each of these changes is that they represent a change in the rules of the game at about the time significant numbers of women were reaching tenure within legal practice.

**From Client Service to Client Production**

Prior to the late 1980s, the predominant compensation systems at most of Denver’s larger firms were characterized as a “lock-step” system where income was linked to tenure, number of years since graduating from law school or number of years since joining the firm. This system was based on the assumption that new associates and younger partners contributed their labor as “capital investment” in the firm. By the time an attorney reached senior partner status he would be able to work fewer hours and live, in part, off the labor of those that followed him. One respondent characterized the seniority model as people earning what they earned “based on time in place as much as anything … it was like being on the union list or something.” The lock-step system was comfortable to many of the lawyers who participated in it as long as the business continued to expand. Many small firms started with a compensation system that divided after-expenses-income equally between partners or negotiated the division of profit according to some plan that included acknowledged seniority as an important compensation factor.
Unfortunately, the business environment changed in the mid-1980s, S&Ls experienced failures, merger and acquisition business began to decline, oil and gas work dried up. The amount of corporate legal business conducted or coordinated by in-house counsel, many of whom were previously members of local law firms, grew and as they did, they took away some of the business from law firms. Corporate clients became more savvy, shopping around for cheaper legal services. Competition for clients became more fierce as a result.

Lawyers who were most responsible for bringing in clients began to voice their dissatisfaction with compensation systems based solely on tenure. As James Stuart, a senior partner in a large firm, describes it:

*It happened all over this city, it happened all over this country in fact in the 1980’s. The pot had more and more strains on it all the time. All of us are willing to give up a little money here and there for good purposes and motivations but you just felt like everybody had their hand in your pocket. So you went from this transition in the 1970’s when I joined (a) bunch of friendly guys out partying and doing whatever together and doing okay, to this group of people all of whom were fighting over the same sort of shrinking pie . . .*

To accommodate these new loud voices, firms began to reconfigure their compensation structures in ways that placed much heavier emphasis on “client development” and “practice development,” as well as hours billed and collected to determine compensation. The biggest change was the rewarding of rainmaking. Those who brought new clients to, the firm were compensated in three ways: 1) for the hours they billed working on a new client’s current business, 2) for the work done by others in the firm on the new client’s current business; and 3) for work done by anyone in the firm on future business from that same client, regardless of whether they were the billing attorney on that future business. This system rewards the well connected attorney who brings a lot of clients in the door and who farms out the actual work to junior partners or associates, all the while receiving compensation credit.
How did the change to compensation systems organized around client production affect the path of women joining the legal profession in the 1980s? As newer entrants into the profession, women were at a clear disadvantage under the seniority systems operating in the 1970s and 1980s. The irony is that the system disappeared just when women were reaching stages in their professional careers to reap its rewards! Few women are found at or near the top of the compensation rankings. Does this mean that they produce less? In Section Three we will look carefully at compensation systems and in particular the valuation of contributions to the firm. We will see that while the legal profession may have opened the door to women, it has not changed in ways that accommodate women's lives and/or fully recognized the contribution women make.

Intra-firm Competition

The move to production based systems represented some significant departures from what is often called the Cravath System where clients were viewed as firm clients and not clients of the individual lawyer. In fact, a number of the more senior partners in our study mentioned the fact that if a young associate in the 1970s had asked a senior partner about learning how to develop clients, they would have been told not to invest time in that kind of activity. Clients belonged to the firm and there were plenty of clients to go around. The 1990s were different. Clients belonged to a lawyer who could reap the benefits of that association long after he or she actually performed a legal service.

The change of firm culture has been significant, increasing the competition within law firms as well as between them. As Mark Lundberg, a senior partner in a large firm, describes it, it has

*added a dimension of tenseness that is quite different from the old days.*

*We talk among ourselves about the loss of camaraderie, the concern that there are people who horde work, the posturing for who brought in what client. In the hey day who brought in the client, that was nice but it's time to get the work done - and now there is an awful lot more...sort of public posturing of who got a new client last week and there are points attempted to be made by that...*
He goes on to describe an instance when he felt "stupid" because he referred a case to one of his partners and never got the credit for it. Several of our respondents described situations where senior partners jealously guarded their clients.

> It's counter to the culture, I guess, for them to turn clients over, to pass the reins over to people in the ranks. As a result there is no real leadership, you know. They don't leave a legacy. They don't train successors either as lawyers past a certain point or as leaders in the firm. So now that the upper level or the most senior level is retiring or dying in their offices, there's really nobody that is steeped in the culture of the firm—that has kept it as a firm (Carol Buyers, large firm partner)

Productivity systems do not have to result in cut-throat competition. One of our male respondents from a small firm opined that productivity systems accommodate different lawyering styles and career choices. Some lawyers in his firm were outstanding at client development and they were highly compensated. Others did less. This lawyer and others we interviewed saw productivity as a matter of personal choice. Thus, for some the system "works" because it allows them to work at their own comfort level, to be aggressive in client development activities or not. But for others, choice is not the issue. They are willing to work hard. They want the hours, the business, and the clients, but they are not forthcoming. Being willing to work hard is not enough.

What does it mean that women have entered the profession in significant numbers at a time when there is less camaraderie and more competition among their colleagues? Some suggest that opportunities for new entrants, both men and women, are significantly more limited. Senior partners reached a stage in their careers when they could turn over much of their working practice to younger attorneys secure in the knowledge that they would be supported. This is now rarely the case. Succession within a firm, where it existed before, has become more problematic. Moreover, Section Four will show, production is not fully a matter of individual choices. Law practice is a social activity, organized around affiliation and contact grounded in webs of entangled networks of actors. Understanding the gender differences in the organization of relationships will help explicate differences in how men and women manage relationships and the consequences
for "production" and compensation.

Centralization of Decision-making

Several of our respondents noted that part of the dramatic change that occurred in the late 1980s and early 1990s was a transition from law practice with somewhat dispersed management to that of law practice with extensive, centralized "hands on" management of both partners and associates. Most medium/large firms have created executive committees to manage the business of the firm, including compensation decisions. For some lawyers this provided needed relief from administration and more time for business development. Lucie Friedman, a female partner in a medium size firm, reflects on the change in this way,

... part of the restructuring was to get the administration to an executive committee and to quit spending all these partnership meetings doing a lot of this irrelevant stuff. So, the executive committee was elected and they were just granted these powers and I didn't object to that because I never felt I was in a partnership meeting where people actually said what was on their mind or shared real feelings about anything anyway. There was always a constraint and there always was a pecking order in terms of the money and the structure. It's a power game. Money is a piece of it and gender may be a piece of it but it was not gender driven, it was power driven. If you get too much power and you start getting out of line and I'm the power that be, be you male or be you female, you're going to get slapped down.

What does this mean for women in the profession? Executive committees do more than simply centralize Decision-making. Often, they solidify power structures and remove Decision-making from public scrutiny. Despite some inroads, several of which have occurred since this study began, still, very few women sit on executive committees. When they do they often fill what has been described as "women's slots." Thus, once again, just as women were reaching more senior status in the profession, the rules of the game changed. Decision-making which was once widely distributed in ways that would have included them became more centralized in ways that exclude them. This will be discussed further in Section Three.
New Statuses

During the 1990s many law firms have introduced new kinds of positions into their organizational structures. Notable has been the introduction of the non-equity partner position, officially called a number of things, but unofficially referred to by one respondent as the "pointless partnership." The non-equity partner or similar status was created in order to handle two perceived problems. One, as business declined and the number of associates hired declined, law firms became "top heavy." There were too many partners in proportion to associates. As a result, fewer people were moved into the partnership and the time to partnership was lengthened. This created dissatisfaction among the associates, and clients who worked with many-year associates questioned why they were not qualified to be partners. The solution was to call the lawyer a "partner" but not expand the ranks of the equity partnership. The second perceived problem was that too many partners who had entered the ranks in prior decades were not generating business, but merely working on projects for clients brought in by other partners. The solution was to create a status between an associate and an equity partner in which business generation and client development ability could be tested before admitting him or her into equity status. Typically a non-equity partner is paid a salary like an associate, although there is usually a bigger salary bump up when entering the non-equity partner ranks than would be normal for an associate.

In order to advance to equity status the non-equity partner must demonstrate his or her ability to generate business. The amount of business and the consistency of that generation are often flexible standards and, apparently, continually rising standards. Mary Reever, a newly minted non-equity partner, described her compensation this way:

*Our salaries are tied loosely to the money we bring in the door, but are really at the discretion of the executive committee. They look at it and come up with some magic number and that's a non-equity partner salary, and then we share none of the profits at all...I don't feel like it's such a great deal financially at all. Plus the magic number of business that you (must) control gets bigger every year...I feel like I'll never be an equity member.*
Section Four explores some of the difficulties women have in business generation. The hurdle between non-equity and equity status may well be a higher one for women.

During the 1990s the statuses described as "of counsel," "special counsel," and contract lawyer have become much more widely used in the Denver legal community. We interviewed a number of attorneys who were or had been in one or more of these statuses for a period of time, but our information is insufficient to draw any clear conclusions about the possible disparate impact of these statuses on women. What is clear is that each of these positions involves the individual negotiation of a compensation deal with a law firm. It may well be that individual negotiations adversely impact women. Section Three explores in detail some of the problems faced by women when negotiating their compensation.

Lengthening the Time to Promotion

Over time, the number of years required before partnership will be considered has increased significantly. While many of the more senior respondents report a three to five year time frame for "making partner," seven to nine years was more typical of the younger attorneys we interviewed. The use of non-equity partnerships described above extends this "probationary period" even longer. This is true for both men and women, although the impact may not be the same. Many of the younger women we talked to are looking for the "right time" to start a family and worry about starting a family while they are still an associate. Will they be seen as less committed if they take time off during a pregnancy? Will they be able to stay on track? As the time to partnership grows longer, women's decisions about the "right time" become more constrained. Simply put, the partnership clock confronts the biological clock. Is there a good time within the current compensation culture to have children? Section Three will explore the consequences of family choice on compensation.
SECTION THREE: COMPENSATION SYSTEMS AND THE DECISION PROCESS

Compensation Criteria

Most of our informants with experience in large and medium-sized firms reported that the determination of partner compensation was based on some combination of objective and subjective factors. In nearly every account, named objective criteria included some of the following:

- the number of hours billed and the hourly rate billed
- the dollars collected from the work done and billed
- hours billed or dollars collected from work done by others (usually associates or more junior partners)
- the development of additional work from existing clients
- the origination of new client work.

While different firms claimed to weigh these factors differently, almost all emphasized the growing importance of new client generation and expansion of existing client business. Many firms have elaborate, formalized systems for granting “credit” for work billed, work supervised, clients originated, or client work expanded, but we found no instances in which a precise formula of objective criteria determined the compensation received.

Lawyers with small firm experience described compensation systems that were much less formalistic than those found in the medium and large firms. Most of these firms were started by two or more persons (overwhelmingly they were males in our sample) and the founders, or at least some of them, remain the controlling partners a number of years later. Many started with a compensation system that divided the after-
expenses income of the firm equally between the partners, but few continue to do that. One very common system involved the senior, often founding, partners arguing it out among themselves.

Once a year we sit down, we have an all day business meeting just the partners... We sit down. We look at how much money we made; we look at what the cases were and who did what and... everybody makes their pitch for what they think they ought to get. Usually there is one of us who feels the grief over what happened a year ago... Usually they do better [than last year] because they're more passionate... We have that whole day; we fight about and talk about everything else until the end of the day... and then we get drunk. [John Pinkston, a founding partner of a small firm]

This firm gives no specific credit for client origination, but when there is a big case, origination is considered along with the amount of work done by the respective partners.

What is most valued --and rewarded in dollars-- varies between firms. What is clear at this firm, and many others described to us, is that compensation decisions are not formula based; they are negotiated --sometimes heatedly-- and controlled by a small partner group. Some firms value the generation of new clients and the expansion of client business and, therefore, compensate the "rainmaking" partners significantly above others who do the bulk of the legal work. Other firms value hard work in the form of hours put in, either doing legal work, doing business generation in the form of presentations and articles, or managing the firm.

Another compensation system used by a number of the small firms we investigated is a variation of the "office sharing" model. Using this model, firm overhead, including staff and associate compensation, is allocated among the firm partners based on calculations of their use of that element of overhead. A partner's compensation is determined by what he or she collects from his or her clients minus his or her share of the overhead. When clients or cases are shared, the allocation of collections from that work is negotiated by the partners and is sometimes divided strictly on a work-billed basis.
In some small firms described to us the pattern of founder control over the compensation decisions results in multiple tiers of compensation more typical of larger, more bureaucratically organized firms. What distinguishes the tier system in small firms from their large firm counterparts is the lack of lawyer mobility across the tiers. While the compensation of those in a second or third tier in a multi-tiered firm might well increase, it will never catch up or surpass the senior members. An example illustrates this phenomenon. Abigail Traylor, now a named partner in a small firm, was first hired by the founding partner as an associate with the understanding that she would become an equity partner. After several years, and when her billed collections exceeded that of the founder, she became a named partner, although at one-third of his equity level. Since then, two other partners have been added and three tiers of compensation have been established. In this firm, business generation is not an essential component of compensation, nor are hours worked, hours billed, or dollars collected. While Traylor continues to collect more billed dollars than her senior partner and develops client business with him and on her own, her compensation remains less than one-half of his “because the big clients were his when we started the firm.”

In medium and large firms, as a rule, associate compensation is based on a lock step system reflecting years of practice and/or years with the firm, at least for the first few years. Variations from this lock step are usually in the form of year end bonuses or a “tiered” associate lock step system, both of which might reflect extraordinary numbers of hours billed by an associate or non-quantifiable factors such as particular importance to a powerful partner, perceived fast-track or “star status,” or competition for a valued associate in the form of headhunters’ or other employment offers. Associates in small firms described their compensation structures in less formal terms than their counterparts from medium and large firms. Depending on the firm, associates may advance economically in a lock step manner without regard to hours worked or billings collected. Other firms provide bonus incentives for hours worked. In many firms, the hiring salary is based on the market. If the firm is competing with the medium and large firms for associates, compensation will be commensurate. If
they are seeking a different kind of lawyer or have a different kind of practice, associate compensation will be based on compensation in comparable firms in the area.

**The Negotiation of Compensation**

Despite differences in the formality of decision-making, nearly all those we interviewed described the compensation process as:

- contested and negotiated, its outcome determined by the position and power of the attorney
- grounded in perceptions of appropriate lawyer behavior
- centralized in the hands of a few
- often hidden and poorly understood

It is in these “social” characteristics of the process that we find the seeds of disparate impact.

**Contested Criteria** - A number of informants advised us that at least two of the “objective” compensation criteria are the subject of significant contest and their application negotiated. Who gets credit when more business comes in the door from a firm client? Is it the original attorney for the client? Is it the “responsible” or supervising attorney? Or is it the lawyer or lawyers who have done the client’s work and who have caused the client to expand his use of the law firm? Who gets the compensation credit when a client contacts more than one attorney in the firm about unrelated legal matters? In many firms compensation credit stays with whichever lawyer first had contact with the client. In others, the “expansion of client business” credit is shared or negotiated. How it is ultimately divided depends on the position and power of the attorneys and their aggressiveness in seeking compensation. As Barbara Kray, a junior partner in a large firm, explained:

*I mean there’re some people who just assume that if they ever talk to the person it’s theirs and there can be a little bit of that . . . there’s no particular procedures or anything set out that really governs that . . . There’re some people who I think it’s known won’t share or are difficult to*
make share; you have to deal with that.

Similarly, credit for the origination of a new client for the firm can be handled differently depending on the position and power of those who control the compensation decisions. Is the originating partner to forever benefit financially for bringing in a particular client? Does it depend on his or her ongoing personal-professional relationship with the client or the perception others have of that relationship? Does it depend on the amount of work that continues to be done by the originating lawyer for the client? What if a client leaves the firm for awhile and then returns with additional business to another lawyer within the firm?

Sandra Boxwell, a partner in a national firm, described a system of dividing this kind of compensation credit with the partner who brought the client initially to the firm as very discretionary. Her approach is one of reciprocity.

If it’s my client and I bring in the business, I set up the matter and decide who gets the split. Everybody’s different. Some people take 100% for themselves no matter who’s working on it. And other people split it. And I learned from...I kind of do what Joe does. If he brings in a matter and he’s not going to work on it at all and it’s somebody...a lawyer... that he knows and has sent him work...he’ll give him a 50-50 split. Then there’s somebody I’ve introduced to my (other) partner who doesn’t know anybody...and by the grace of God and me is meeting my client and going to get some work, I’ll probably give him a 25% split. But it’s all my personal judgment and what it is is that I hope someday that guy splits with me...Now a lot of people don’t split anything. A lot of people just keep it. Position and power determine whether it is split or kept.

The story told by Steve Morrison, a senior associate in a large firm who was about to be made a partner, about the problems he had negotiating the division of “client development” credit with a senior equity partner makes the point. A partner he worked with had introduced him to the key contact at a major client company. He had gotten involved in a lot of work with this person, spending days at the client’s office and getting to know a number of the people there. He subsequently got a call directly from the client
about new work that she wanted him to do. As he explained it:

[The client] called me directly, right. That's in our system at our firm. It's who actually gets the call or the contact. So the partner that asks me to work ... was the billing partner and is still my supervising lawyer and he may still bill time and work on the case with me, but if I got the original call I will get the credit for not only my own personal time but all of his time, all of the paralegal time, any other associate time, whatever is billed and paid for....In two or three of those situations within 30 minutes the partner who believes that he controls this business was in my office saying, oh what's this new matter that so-and-so called you about....And the one thing I disliked...that particular partner told that particular client that if she wanted to call me that was fine but if she wanted [him] to supervise my work she needed to call [him]. If she called me directly, she was going to be responsible for supervising my work. Needless to say I was not very happy about that.

The client stopped calling him directly after the senior partner had called her. At an associates’ meeting, Morrison explained to the managing partner his problem negotiating the allocation of client development credit:

It's hard to go to the partner and complain about it or be assertive and say this is what ought to happen, we ought to share it...it's even harder to bring it to your level [managing partner level]. If I bring this to your level and bitch about this with the partner...what does this do for my future working for the other guy?

The allocation of this element of compensation credit not only has an impact on his current compensation, more significantly, as a senior associate looking toward partnership, it will directly affect his pay two and three years from now.

But beyond negotiation about how the pot should be divided, the very substance of what is on the table (or not) will also depend on one’s position. Gender clearly matters. Annette Robinson, a young female associate with a small child, understands well that one’s “position” makes a difference as to what can or cannot be put on the negotiation table. She has looked around and seen many efforts to balance career and family fail. When she became pregnant a couple of years ago, she was anxious about the reaction of the senior partners. “In fifteen years no other attorney had dared to get pregnant. And so when I got pregnant my first thought was ‘do I get a maternity
policy?, what is it?, that kind of thing’. The firm did negotiate an arrangement with her for maternity leave, but that now affects her ability to push the issue of her compensation. Afraid to rock a boat already sailing in treacherous waters, she has not pushed the salary issue because she is not sure what she might want or need if she has another child. She notes that “it’s going to be years before I can ask for more salary again. I’m going to be 40 years old and finally I am going to be in a position to say, hey I’ve been underpaid for a decade, now what are you going to do?”

The point is that “objective” criteria used by firms are applied differently. How they are applied is negotiated between lawyers. The end result of the negotiation depends on the respective positions of the attorneys, the compensation aggressiveness of the attorneys involved, and the ability and willingness of a lawyer to complain and push the issue.

The negotiation of even the most objective components of compensation, number of hours billed and dollars collected, has a different impact on women and men. Commentators have often remarked on the difficulty women with families have putting in the same number of billable hours as men. What has not been often noted is that reducing hours around pregnancy leave or temporary part-time work can have a significant long-term financial impact when law firms do not consider time off in their calculations.

Several men and women from medium and large firms discussed the practice of calculating a three year average of the numbers of hours billed and dollars collected. Sandra Boxwell, a partner in a national firm who has made several lateral moves between law firms, explained that she had taken maternity leave and then worked part-time for three months. For the purpose of determining appropriate compensation when she made a lateral move, her new firm did not annualize her collections for the year in which she had a baby. Her collections were down substantially for that year and when added to make a three year average, reduced significantly her perceived “book of business” and, thus, her ability to negotiate a strong compensation package when she made the lateral
A similar approach was described in a medium sized firm. As a former member of the executive committee which set compensation, Tom Feinberg, told us:

*If your hours are in decline because you are pregnant and because you take it a little bit easier, when I say a little bit easier it's not 186, it's like 135 a month. That slips into your three year average and all the rest. We forget that a person was gone on leave; we forget a whole bunch of things about how those people work and what they do in this system...everything becomes objective when it's a woman's situation and things remain subjective with men and I mean it that way. The numbers work against the women...You'll sit there (on the executive committee) and somebody will go "well...Jesus her numbers are bad for three years" and somebody will go "what are you talking about, she was out of here for nine months. If you take those numbers and you look at the stuff and you factor them back, she's 5% up on all these other people."...[but she never gets that]*

As this informant explained, using a diagram he drew on a sheet of paper, the impact goes beyond the three year averaged cycle. In his words, "you never catch up."

*I say never catches up because I would use the kind of model we use for damages on a case...Whatever we [lawyers] are and whoever we are and whatever we do, we all start right there at our entry level. Let's have an unimpaired line and an impaired line. The unimpaired line is my track alright. I come in this firm, I stick with it year in and year out, I do all the stuff and I never vary from that track...The woman comes in here, she stays on the line alright and all of a sudden she comes off the line...At a minimum, when she gets back on...she's never out again, [no more maternity leaves or part-time work], and she's terrific, she's sensational, she does everything. [Points to the gap in income later in their respective careers.] Do you see that quantification in there? That is dramatic. That is the differential over her career and what she lost for jumping off the line.*

The interrupted careers that many women experience as they take time off to tend to family responsibilities can lead to losing clients and their future business. Sue Grafton, a woman partner in a large firm, took the better part of a year off. Upon her return, she found that the partner who had picked up the bulk of the work with her key client would not share that work with her.
I mean you just can't be gone a year. If you are gone a few months clients can kind of make due while you are gone; they don't really try to shift their loyalties. If you're gone a year, you know, some of them go off to different lawyers...While I was gone it [the work of a particular client] was handed over to a very senior partner who's...20 years my senior...He was going to really come in and try and take over the whole client and he did. He just drove me crazy for the first few years [after I came back to work full-time], it was like every time I did anything or they [the client] called me I was supposed to...let him know.

It was several years before she was able to regain a significant portion of that client's business.

One large law firm was described as giving no credit in time-towards-partnership when a woman (or arguably a man, although we heard of no man who had done this) worked part-time for awhile to take care of family or other responsibilities. So one year of working forty-hour weeks—often considered part-time—did not translate into any time credited toward partnership eligibility. Andrea Redman, a partner in a medium-sized firm, disclosed that a woman partner in her firm wanted to work part-time after having a baby. The firm's decision was that she could not be a partner and work part-time. Her equity interest was taken away from her.

There was this one guy in particular, who's no longer here, who was really the one who...over my dead body kind of guy; there's no such thing as a part-time lawyer in his world.

This is not the case in all firms. Women who work part-time have become partners, although this is certainly the exception.

The impact of family leave and part-time work is a long term one for women. It is not just reduced hours billed during the time involved and, therefore, reduced compensation during this time. Compensation is affected for years in the direct ways described above and in the more subtle ways described below in the next section. We have no indication from our sample that different objective criteria are applied to men and women. In fact, we heard the contrary. What we have observed, however, suggests
that the criteria themselves may create a disparate impact for women.

Perceptions - the Subjective Components of Compensation

Most informants who were or had been in compensation decision-making positions acknowledged that the assigned value of a lawyer to the firm, represented by his or her compensation, also included many non-quantifiable, subjective components. Often mentioned as being financially rewarded were the following:

- commitment
- attorney mobility
- potential, particularly business generation potential
- contribution to the firm through firm management, reputation in the legal community, community involvement, and historical role in the firm.

What dollar value is attached to these components of compensation is very idiosyncratic and dependent on the perceptions and expectations of the individuals in the firm who make compensation decisions. Lawyers with experience in all firm sizes recognized that non-quantifiable, subjective factors were an important component of the compensation of partners and senior associates although to different degrees depending on the firm. The question for this study was, do these kinds of compensation components have a different impact on women than on men?

Commitment - Many attorneys we interviewed mentioned the importance of “commitment” to the firm. Some informants talked about commitment in terms of numbers of hours billed a month and others spoke of it as the consistent and continual availability for “around-the-clock” work in trials or for transactional closings of one kind or another. Howard Wagner, a newly made partner in a small firm, explained the meaning of commitment in his firm this way:
It's all kinds of intangibles... For instance, I don't even come into the office on Saturday or Sunday unless I have something to do. I don't make an appearance to make an appearance. But other people do. Now whether they do that because it's politically correct I don't know. I think I would suggest it probably is... They [two senior partners who determine compensation in that firm] come in on Saturday... they come in on Sunday for four hours whether they have work to do or not... We've gotten more than our share of client's based on Saturday calls. They will tell you that... I don't buy into the weekend work... but I think the perception is... that my not coming in places a burden on them to be there because they believe someone should be there.

Women with "traditional" family arrangements, i.e., an employed husband and children, are less likely to be able to be available for work marathons or the "face work" of being there at all hours. And even if they are willing to come in at night and work around the clock, many in the firm will assume that they will not be available, or should not be available. Joy Drew, a senior partner in a large firm, talked about the advantage women without children have. They can act like the guys: they stay late at the office, play poker and go out drinking, etc.

There is something about you know not having to get home to the kids. And to some extent that may be an unfair thing for the women too because some who have kids don't want to get home to the kids but the guys think she should. [The result is] they include her in a different way. So I really think that that's a major, that has had a major impact. I look at the women partners in our firm and you may hear this from other big firms, too; there are very few women who are partners with traditional lives. Very few. And the ones that are there are not succeeding... [The ones succeeding] they've either got a stay-at-home partner, husband, whatever, they don't have kids. They're the primary bread-winner. You know, you name it.

Many men and women commented on the perception of less "commitment" to the firm when either a partner or an associate leaves the office to tend to family or takes time-off -- usually for pregnancy leave -- or works part-time for awhile. James Ferril, a partner in a large firm, explained that the perception of commitment is influenced by "gendered" reasons for not being at the office all the time.
Well it's okay, you know, if I can't work a night or something. I just say I'm sorry I'm tied up and that's accepted and it may not carry the implication [that] I have to go home and make dinner, but that's maybe that's what I'm doing, but I think it may be...there is less sensitivity about men setting limits for themselves. I may be going to play golf; I may be going to a class picnic, but I'm free to say it...Then the flip side is [how] people perceived it...I mean the perception of the audience--people...is she is not committed because of her family. Where it's okay...I mean we don't make the same judgment if he's not as committed because of his golf game or whatever.

Mr. Ferril may have become more sensitive to the position of women because he worked part-time for awhile to help care for his children; he was the only man in our sample who had done so. His experience was that because he had worked part-time for a year, it had changed the perception others had of him.

Once you announce that you're part-time the perception is no matter how long you've been back full-time and how hard you work a lot of people still perceive you as being part-time and that's going to influence their clients and their observations...I worked part-time for a year, I think not even a year after our first child was born...and three years later people still thought I was part-time.

When asked if he thought it had affected his compensation after he returned to full-time work, he indicated that it might well have, but that "its hard to filter it all out."

Barbara Kray, a junior woman partner in a large firm, who had worked at the firm for many years before having a baby, explained the problem this way:

I have a feeling that I am treated differently now.... [I know that there has been a perception about another woman in similar circumstances] that she was not going to be as available, not going to be working as hard and would she stay with the firm?

For this woman, the sole support of her family, there is no issue about leaving the firm or working part-time. And she pointed out that while she does have to leave to pick up her child at 6:00 p.m., she can make arrangements to return to the office in the evening if she has work to do. However, since the baby, the number of cases given to her by others in the firm has declined and she has had fewer opportunities to work with others.
on large cases requiring considerable commitment of time --cases, in other words, that show "commitment."

Most women we interviewed commented about this phenomenon and many worried about it. Several said that they had arranged their part-time work in such a way that they would be present part of each day so that they would be seen and people would not know that they were working shorter hours. Others described the heroic efforts of a woman with a difficult pregnancy who worked at home in her bed, with her secretary, etc. working along with her. An older woman attorney was quoted to us as telling 10 or 12 associates in a large firm: "Look one of the reasons I am successful here as a woman and as a woman partner and as a litigator is because I have put my clients and my practice first. I've put it before my family. Make no mistake about it, if you don't do that, it will not help you." The advice given was to never say that you were leaving early for a child's emergency in the middle of the day. Say one has an appointment. As several informants made clear, it is about perception. It is about making sure that you are perceived as putting clients and the firm first before family, even if you are not.

A former partner in a large firm laughingly told us the story of a firm retreat where the managing partner spoke to the associates about the importance of balancing one's professional and family life. However, the story he told communicated quite a different message. Apparently his young daughter had grabbed him around the legs as he was leaving to go back to the office to work and begged him not to go. He shook the child off his leg and went to work.

Traditional expectations about balancing one's professional and family life are different for men and women, and what almost all law firms expect and reward is the balance struck by men.

I have two small children that I care deeply about. After putting in a month like the last, I'm very happy to find as much spare time as I can and take it off. Typically my comfort level is right around 2000 hours a year. I can do that without working every weekend and I can still take my family on a vacation or two a year and I can still go to all my kid's baseball games and you know I can still be the father I want to be and the lawyer I
want to be. (Nelson Brown, partner in medium-sized firm)

Explains another male partner,

*It's not that we don't care about our kids, we don't want to spend as much time with them. I can't describe what that is. I love my children, but an hour or two a day is plenty. I don't need to go to school with them. I don't need that. I love my kids. Women tend to be more interested in their children than men and that's a very difficult problem.* (James Stuart, partner in large firm)

Balance within more traditional gender roles means that men might not work every weekend and might take some afternoons off--an hour or two--to watch a child's game. Many people believe that women "naturally" want more, and so the necessary balance must be different for them. The concept of "commitment" to the firm and your clients--of having the "right stuff"--is understood within the framework of traditional male lives and traditional family roles. It is a male model and, therefore, difficult for many women to follow.

In a busy law firm, when a woman takes time off or works part-time it is often hard on her peers because they will have to pick up the slack. Many informants spoke of resenting having to work harder because of someone's absence due to pregnancy or family needs. Even some women expressed this resentment. Janice O'Driscoll, a woman partner in a large firm, told this story on herself:

*There's another woman partner...who's really only working part-time and I'm grating over this because I had to give up my part-time situation...I was part-time after the second child was born for about a year--so 80% which was more like full-time...Anyway, so I find myself resentful and I complain to my husband 'yeah, she's coming in and getting paid full-time and she's really skimming off the top...and very carefully camouflaging that.' He said 'why do you care; here is another case of a woman not supporting a woman. She's making it work...Here you are complaining about that; you should be applauding it; that it can be done in your work environment.'*

The bottom line is that taking time off or working less than full bore affects how you are perceived in your firm and affects your relationships with peers, with clients and...
with senior people whose clients one does work for. And those relationships, with peers, superiors and with clients, may be negatively influenced long after one returns to work full-time.

Women attorneys, because of their numbers and relatively recent presence in the profession, are still often lumped together. What one woman does is used as an example of what “women” do. Numerous informants talked about their firm’s “bad luck” with women who take maternity leave and then either never come back to work or come back for only a short time. Anthony Settles, a partner in a national firm, made these comments:

*We have had bad luck but it’s fine now, but for awhile we went through bad luck with the pregnancies. Do the pregnancy, promise I am coming back, take the full leave, and then stiff us and it hurts. That has occurred and it occurs at every firm in the city....There was one in particular I really liked, she was a great gal and she says I’m coming back” and I said “you know you don’t know that until it happens.” You just don’t know what’s going to go on in there physiologically, how you are going to react. So we had one or two that were well intentioned...and then you know the physiology and the emotions took over.*

A woman partner in a medium-sized firm told a similar story about a young woman associate “who we really liked.” She negotiated a pregnancy leave:

*It was really, really a good deal and I was very proud and part of her deal was, you know “I’m committed, I’m committed to the firm, I want to be a career person and da, da, da.” She had the baby, she comes back from maternity leave, she was here for a week, she cried every day and she quit....who would have thunk it and they tried to do the right thing and she screwed them. (Andrea Redman)*

It is significant that we were told these kinds of stories numerous times. They seem to be the folklore of a number of firms. If many of our informants were playing a word association game and the stimulus phrase “female attorney” was given to them, their response would be “pregnancy,” or so it seems from many of our interviews. Does this have a long-term impact on how women attorneys as a group are perceived in the firm and broader legal community? There can be little doubt. Bryan Gordon, a founding
partner in a small firm, described his thinking when interviewing a woman for an associate position opening.

*I never thought I would say something like this because we have hired more women than men...And now it seems to me that there really is a means or a basis to be reluctant because you might not be able to get from them. It takes a lot of time and energy and training for our attorneys to become expert in the areas we're in. We don't want to see them leave. We're very frustrated...We're interviewing a woman we've talked to for three months...who may take the position of [the woman] who left....And she's engaged and she's about to be married and I'm sure she's expecting a family at some point. She also seems very interested in a career. And we'll probably offer her a job. But are we going to do it again?

The concept of "commitment" has a significant gendered component. Does a woman have to give up significant aspects of being a woman in order to be evaluated by her peers and superiors as committed? So it seems.

**Attorney mobility** - We could not determine from the limitations of this study whether there is, in fact, a difference in mobility between firms for men and women. (See Section Two.) However, the comments of many informants convinced us that there is certainly a perception within the Denver legal community that women are less apt than men to leave a firm to get more money. We were told time and again that women left the firm for life-style reasons, i.e., to go in-house, to have greater control over their time, to take government employment, etc., and that men left the firm to advance themselves economically. Both men and women informants described women on a whole as being less driven by money, as being more loyal to the firm, and as being less apt to play one firm off against another.

Karen Levine, a woman partner in a large firm, described a partnership discussion about two senior associates who were both being considered for partnership. The firm decided that they could only elevate one of these young lawyers to partnership even though both were judged to be excellent lawyers and both had the characteristics the firm was seeking in a partner. The discussion among the partners was about elevating the
male over the female because he had been talking to other firms and would leave if he were not promoted. This is the way the partnership decision would have gone if Levine had not "raised a stink." The men who took this perspective had not seen their decision as gender biased, yet it would have had a gendered impact. Nor had these men grappled with the inconsistency of their position and their concomitant concern about commitment to the firm. In time, the firm found a way to grant partnership to both.

In a similar vein, Duane Porter, a partner in a small firm who had previously been an associate and partner in a large Denver firm, described how he would position himself for raises as an associate.

*You sort of learn the system and learn the game...*You knew that it was your supervising partner who was going to go in and make the pitch for how much additional money you would get...you made sure that that person understood that you know um gosh I got a call from a head hunter and I was just am really surprised about the opportunities that are available out there...I mean the idea being is that what you wanted to do is take the raise out of the objective category and put it into the subjective category, which was well maybe we need to give this person another thousand dollars to keep him around.*

Women interviewees, far more than men, talked about not making career decisions based on money. A woman partner in a small firm acknowledged that she would not leave the firm for more money even though the division of the pie was not equitable and was not moving towards equity. She said she might leave to teach or work in government, but that money was not that important to her.

Both male and female informants commented on the perception that women do not need money as much as men because they are secondary wage earners in many of their families. Several men who had served on compensation committees described discussions about the respective "needs" of male and female attorneys. And several women told us that they were convinced that these considerations had played a role in setting their compensation. Paula Kramer's comment is typical.

*I don't think it was necessarily intentional. Although, um I have a husband who makes a good living and I'm not 'head of*
household'...Whatever that means. You know these men are, most of them do not have wives who work and they...some of these men have lots of kids. Alan has four boys so he really needs money more than I do...I'm sure they think about it.

A woman associate in a small firm, aware of these gendered considerations, understates her husband's financial success so that it will not be used against her when her firm sets her compensation. The bottom line is that women are perceived as less apt to leave for money and less in need of money. Later in this chapter we will discuss the hidden Decision-making process and women's failure to complain about their incomes in the way that men do. They are not the squeaky wheels.

Potential, particularly business generation potential - Compensation decisions involve not only an assessment of the actual performance of an attorney during the prior year or years, but also an assessment of the attorney's potential. Does this attorney have the "right stuff" for this firm? Will he or she develop into a business generator, for example. Do we want to bump up this person's compensation because he or she is on track in his or her development? Particularly in the large and medium sized firms, the perceived ability to generate new business for the firm is considered essential for promotion from associate to partner. It is acknowledged that business generation takes a number of years of experience in the practice of law and that many people, male and female, will never become significant business generators. The primary purpose of the new status of non-equity partner is to prevent those who do not become new business generators from becoming equity partners. It was the perspective of most of our informants, both men and women, that women have greater difficulty generating business, particularly new client business, than men. In a very real sense this can become a self-fulfilling prophecy. If a woman is perceived as having less potential for business development, it will negatively influence her promotions and her movement up the responsibility and compensation ladder. This issue will be further explored in Section Four.

Are perceptions of women's ability to develop in the future different than perceptions of men's future ability? Duane Porter, a former partner in a large firm,
advised us that he had observed that the impact of being passed over for partnership for one year was interpreted differently for men than for women.

There was this idea about tenacity um which is the idea being that if you got passed over once you were being tested um and all that meant for a man was that you would work harder and you would do better next year because then you know that tenacity would be rewarded. It just seemed like that tenacity test was not applied to women. It was if you got passed over, um, if you got passed over you were tainted. In other words it wasn't an issue of look you've just not developed as fast as this template that we have in our mind would suggest, but if you go back and work hard this next year and focus on the things that we have articulated need to be addressed in your review you'll be okay...It was almost as if um you don't have the right stuff. In other words you're being passed over because you're not quite bright enough, you're not hungry enough, you're not something or what ever it was. And the idea was that if you got passed over once you were going to be a senior associate for life, you didn't have another shot at partnership...It was also, whether anybody wants to admit it or not, there was at that time and there continues to be a stigma attached to women who take time off to have children.

Is there a difference in the help given to male and female associates who lack a particular quality? A number of women informants thought so. Several told us that they had observed that senior male partners “take under their wings” male associates who lack the outgoing personalities that facilitate contacts with clients and the broader business community. They provide them with assistance developing these relationships and pull them in on important cases with significant clients. Several women asserted that the same kind of assistance has not been given to women who are not “Ms. Personality.” It is very hard to identify particular instances in which all observers would conclude that similarly situated males and females were treated differently. But a number of informants were convinced of a difference.

**Contributions to the firm** - There are a number of things that firms consider when they talk about compensating someone for his or her non-quantifiable contributions to the firm: contributions to the management of the firm, including the mentoring of associates and less experienced lawyers; longevity with the firm, particularly early or founder status; reputation in the legal and business community; and community
involvement. Is there a gender twist to these intangible contributions? Yes, in many instances. A number of informants commented on the lack of women on the all-important executive committees and other important management committees. Sometimes this was a choice made by women who were too time-burdened to take on significant management obligations. But often it was a matter of women being excluded from these key roles by the vote or the control of male senior partners.

One area where several informants commented was the role of women in interpersonal matters within the firm. Tom Feinberg, a partner in a medium-sized firm, described the compensation committee's devaluation of a female partner's contribution:

The most valuable attorney in the litigation section today is the lowest compensated partner in the litigation section today...I'm telling you that we would be worse off, the disruption to us as a firm, to our work flow, to our ability to do what we do, would be the most significant if we lost Barbara in my opinion. We could absorb me [leaving] more easily than we could absorb her [leaving]...We lose Barbara and we lose the person who's all over so many serious cases for the office where our clients are relying on us and we've got you know she's working well with our associates and doing stuff. It is interesting and yet she is the lowest compensated.

The value assigned to seniority in many of the larger firms today is less than it once was. However, it is still a factor in compensation and an important one in most small firms. Obviously, value assigned to seniority, especially founder status, has a disparate impact on women since many more men have practiced longer and very few women have founded law firms. The impact of reputation in the legal and business community is much more illusive and intangible, yet it translates into dollars according to many of our informants. One woman partner in a national firm described the pay premium paid to a male with a strong reputation in the legal community. What impressed her was that his quantitative numbers did not justify his compensation, but, for the compensation committee, his reputation did.

The role of community involvement is also very illusive. A number of firms thought that certain kinds of community involvement were good for the reputation of the
firm and, therefore, compensated for it. Martin Seyfe, a former partner in a large firm, described this intangible:

But then there was another factor and that is how much promise did you have? Did you bring some kind of dignity to the firm that...were you head of the grievance committee or something like that that you can't put a number on? That was important too. I can think of people in the firm who were compensated well beyond their material value because of certain intangibles that they brought...I’m thinking of, for example, Brian Thompson at one time very prominent...Did’n’t bill a damn but he still...was an important factor. Thinking of another who was very high profile in the [particular ethnic community...and the work he did in politics.

Mr. Seyfe mentioned only one woman who was compensated for her community prominence, a woman who had been active in the Colorado Women’s Bar Association. His comment was, “that became harder and harder to sell” to the compensation committee.

How these non-quantifiable, subjective components of compensation play out is hard to precisely determine. But they can be very important, and access to these elements of compensation depends on one’s affiliations and contacts both within the firm and without.

The Hidden Decision-making Process - Actual compensation decisions within firms are often poorly understood and the process known to very few people. In small firms, as previously mentioned, a small group --often the founders-- will make the decision, and others in the firm may well not know what anyone else makes or understand what factors went into compensation decisions. In larger firms, the decision-making also is centralized in the hands of just a few people and in some instances even partners are unaware of what other partners are making. From our one hundred interviews, we concluded that (1) few people really know how their compensation is determined; and (2) even those involved in the decisions (heads of departments or practice groups, and members of executive committees or compensation committees) often cannot explain their own subjective perceptions that go into compensation decisions. The following are some of the comments made by partners involved in the
compensation decision-making process:

There's an executive committee comprised of three people and the managing partner who is not technically on the executive committee, and they sit down and they go through everybody. You know they have extensive, lengthy arduous sessions each year whereby they discuss everybody, and so it is subjective in the sense that they have a zillion management reports but when it comes down to it...they put it all down and see if it looks right and fair to them...Well, the whole thing is really pretty subjective. I mean it's based on ostensibly objective criteria and standards, but the ultimate decision is very subjective. (Sheri Sherwood, partner in medium-sized firm, emphasis added)

It's really a gestalt...The factors are what has been the contribution in terms of development...you have to grow the firm in some way...It's either developing more business from existing clients; developing an area of expertise or increasing the visibility...your visibility and therefore the visibility of the organization; helping other people become more visible; um you know helping to keep associates busy and in fruitful and interesting ways...It's little things you know. It's how you conduct your practice; it's how you conduct yourself with other counsel, with your clients, with opposing clients, as well as doing things like speaking, writing, volunteering, all the things that make people think about what you are, what you do, what your contribution is, your character. (Eric Ward, founding partner of small firm, emphasis added)

What the computer does is rank people and assign points [for billings, client origination and another “non-existent category”—her description]. It takes the pie and divides it up in accordance with the formula. So, then the subjective factor comes in and it's like look at all these things and consider has this person made a contribution that is not something that you know is not a formula contribution but service to the community, service to the Bar...you know something or other...or has this person just been a slacker...and so you just juggle the numbers around. [Andrea Redman, partner in medium-sized firm, emphasis added]

People know that the system involves a lot of perception and judgment. They are less aware of the role that gender can play in this hidden process. Ray Craig, a partner in a large firm who has served on the compensation committee, explained.

People recognized that those people who were most adept at...however you want to put it, either tooting your own horn or making the loudest threats, um, would result in moves [up] in compensation.
In his experience, the threats were always to leave the firm and always made by men. Sometimes the threats were blunt and sometimes more veiled. Sometimes they threatened to take others with them, and sometimes they involved taking a major client. The process used by the compensation committee he served on involved obtaining input from heads of departments, or practice groups, and others. It was his experience that these group heads were often just “cheerleaders” for particular people they were closely affiliated with in their group. In his judgment, there were often no real rationales given for compensating some more highly than others. He also commented that he and the other members of the compensation committee got many complaints from male partners, but none from female partners! The approach of the men was to either talk about how another man, and in one instance a woman, should be compensated higher, or the men would complain that their compensation was too low vis-à-vis another person’s compensation. It seemed that for men the issue was their position in the compensation rankings. Craig’s comment was that women seemed to be satisfied with their compensation; at least they did not complain.

This is an interesting comment. Were and are women satisfied? Sue Grafton, a woman partner in the same firm, told us about her reaction over several years when her compensation was set.

*I can remember like long walks with my mentor...I mean we were out like walking and I was sobbing you know kind of taking walks to discuss...how unfair it was ...it was like always disappointing...*

When she finally did get moved up in compensation, she said it gave her the confidence to “write memos to the executive committee, of course never complaining.” The key may well be that comment: never complaining.

When asked about the relative position of male and female partners on the compensation scale, Ray Craig acknowledged that there has definitely been a “glass ceiling” over the years for women and that women’s compensation has been more static than men’s. He asked several women how they felt about the way they had been treated
The few women I did ask said, look I make plenty of money, you know, and a couple people even said to me, I hope I can justify this...I didn't hear that from any man...I feel like I'm repeating cliches. But it was...it was stunning. ...Men are so much noisier about this stuff. And it's you know really is the cliché of the squeaky wheel.

Do these subjective components of compensation result in economic disparities between men and women? Many people think so. One informant had made a comparative analysis on her own of the compensation paid to male and female partners in her firm. Paula Richards, a senior partner in a large firm who has subsequently left, told us of the analysis she made several years ago. When she compared the quantifiable components of compensation for every partner in the firm, she found what she called a "gender penalty."

I decided that I was going to do what I call my gender penalties survey and I actually went back in, it took me about oh I don't know 60 hours, and pulled every woman's compensation, went back and looked at every woman's statistics and you know we were all...you know some of us were making quite a bit of money, but every single one of us was carrying at least a $25,000 gender penalty based on comparable statistics, comparable level. Now you know I mean somebody could have something that wasn't quantifiable that's in the equation, so and I mean I recognized that, but you know when you look at the hard, cold statistics it was pretty astonishing. So I went trotting to my good friends on the management committee and presented them with this...not in a threatening way, I don't think, but just to say, look you need to be aware of this...while some of us you know have been partners eight or nine years may not be screaming about it [but] it's going to cost us some of the younger women partners.

When she presented this information to the management committee, Richards said that they were appalled, that it was new information to them.

When you looked at the statistics, I mean it kind of jumped out at you...I mean they understood. The problem was I don't know that they knew what to do about it. And so what they decided to do about it was go out and hire someone to do diversity training, but it was not the answer to this one.
Another woman partner in a large firm recently compared the starting salaries of newly promoted non-equity partners. All the men made significantly more than all the women. She found this troubling, as did one of the male non-equity partners. But again, nothing was done about this when the management committee became aware that this disparity was known and being discussed.

The gender gap in income of male and female attorneys found in the 1993 economic survey is a real one. It is the result of the disparate impact of “objective” and subjective components of compensation and the different access men and women have to the hidden nature of the compensation Decision-making process. Access to the process, and the ability to acquire the contacts and affiliations that result in economic success, will be explored in the next chapter.
SECTION FOUR: RELATIONSHIPS

Being "social" is a critical factor in career development. The appearance of an income gap between male and female attorneys within two years of beginning practice suggests that there may be differences in how men and women relate to each other. Relationships are important because they generate the cases and clients that are traditionally rewarded. As importantly, it is through relationships that we come to understand and value each other's contributions. To understand how relationships influence, if not determine, compensation, we need to explore the dynamics of both internal and external relationship structures. Internal relationships are those lawyers establish with other lawyers in their firm and with firm clients. External relationships are those that develop with other lawyers outside the firm and with potential clients in the larger community.

Relationship Opportunities

Law practice is replete with opportunities to create the kinds of relationships that build careers. In this report we consider five distinct relationship opportunities. These include:

- Mentoring
- Inheritance/Succession
- "Care and feeding" of clients
- Lawyer referral networks
- Rainmaking
We found that men and women approach and exploit these relationship opportunities in different ways with different implications for compensation. Men were more likely than women to report developing relationships through social and professional connections. Men, for example, described taking periods of time during the day to talk to partners and to make themselves known to them, women found this activity far more problematic. Or, men would describe ways that they mobilized old law school friendships and family connections into extended referral networks. Women, by way of contrast, were more likely to note that they became “known” to others through their hard work or their special expertise. Myles Thompsen, a partner at a small firm, recognized this difference in approach in his associates:

*They approached it from different ways it seems to me, but equally effective. Steve’s approach was to use the foot-in-the-door to develop a social relationship and go from and use that along with his good analytical skills. He could earn the respect of clients and was a good talker. So he could really sell when it came to legal issues. Also he had a little insecurity so he kind of had to develop a social relationship first and start playing squash or doing this or doing that and they’d go drink or do something like that. And so ... he’d start there and the clients in my mind would have no question as far as having great respect for his legal talents and abilities. Whereas Janis on the other hand ... approached it more from the professional, the business and her legal abilities and brightness. She is equally as bright and capable from a law standpoint and her approach was more from the law standpoint. You know I don’t see any social type stuff. It clearly was more of a business, getting in the door and showing what you could do and ... gaining their confidence. And she started developing a nice area of expertise.*

For many women, being social was problematic. For some, family responsibilities preclude them from staying late to compensate for their taking “social time” during the day. For others, creating social relationships with primarily male clients and superiors is uncomfortable.

The cost to not making a social investment can be substantial. Ms. Allison, a former associate at a large firm, received poor evaluations from her supervisors. She could not figure out why. She worked long hours and never seemed to get ahead, while
the men in her group seemed to work less, could avoid certain assignments and always were viewed more favorably. Upon reflection, she believed that she did not fully realize the career significance of “being social.” She stopped going to the breakfasts that her work group held each morning, as she never felt comfortable attending them. She never understood “the social game” of the big law firm. Eventually Ms. Allison decided to leave the firm to work in a smaller law firm environment, although here, too, social relationships matter.

A partner in a large firm made this analysis:

*In the transactional area it seems to me that relationships are premised much more on the social aspect than they are on the actual quality of the work...It’s typically an ongoing kind of relationship and it’s typically something where when they call the lawyer they don’t want to just get right down to business; they want to chat about whatever it is they’re interested in, whether it’s fishing, hunting, you know the Broncos, whatever it is.* (Joy Drew)

She and others could identify one or more women who had been able to create these kinds of connections. They did male type activities with their clients and others: going to sporting events, drinking, smoking cigars, etc. But these women were the exception.

*Joan will play poker with them. You know she’ll joke with them; she’ll call them on their sexism; um she’ll just get right in their face. Joan doesn’t...and this is not a slam on Joan because I think she is one of the most terrific people I know. But she will not act like the woman in the room. She’ll act like one of the guys...but in a positive way.* (Joy Drew)

These comments echo others we heard about the difficulty most women have creating these guy-type relationships.

**Mentoring** - One of the earliest relationship opportunities occurs through mentoring. Relationships with senior lawyers in the firm, including partners, senior associates, and firm clients are important to associates from the day they are hired. Social connections within the firm can create key links to firm clients and can help
extend the reach of one’s practice to new sets of clients.

In recent years, a great deal of emphasis has been placed on “mentoring” and its role in the success of lawyers. Mentors can provide the affiliations and contacts that so many attorneys represent as critical to their economic success. Associates who receive a broader training experience are able to evolve more quickly into the contact person for a client so that they can, as one attorney described it, “worm [their] way into [the] clients’ hearts so that they can’t dispense with you.” The successful mentoring relationship also leads to perceptions on the part of mentors that their mentees are ready for expanded responsibilities, including cases from existing clients and even the inheritance of firm clients.

We asked those interviewed to describe their understandings and experiences with mentoring. With each informant we explored their personal experiences with mentoring when they first entered practice. With more senior lawyers, we explored their experiences as mentors. When we analyzed the discussion of mentoring we wanted to know, first, if there were apparent “models” of mentoring relationships that could be identified and, second, if such models exist, do they work differently for male and female attorneys.

With very few exceptions, almost all our informants identified one or more persons as having been their mentors. But it was also apparent that the concept of “mentoring” is multifaceted and people’s understandings of the concept and their experiences with mentors varied significantly. A number of large, medium, and small firms have formal mentoring systems in which a senior person, usually a partner, is assigned to a new or less experienced person as a mentor. Many of our informants did not think that these formal, assigned mentoring relationships were significant in their career advancement. They pointed out that the quality of the teaching varied highly from lawyer to lawyer (“the luck of the draw”), that some personalities were extremely difficult to work with, and that the personal component or bond necessary for an effective mentoring relationship was missing. Respondents cited the current compensation
structure as a disincentive to partners to spend substantial time in mentoring activities: mentoring is not a billable activity. Some of our respondents suggested that senior attorneys who bill the most hours are reluctant to waste time "training" younger attorneys. Several respondents said that they did not trust mentors entirely. They suggested that while mentors might boost your career, they might also turn on you as an easy target for their mistakes. They expressed concern that becoming dependent on one person makes an associate vulnerable. In fact, some respondents told us that they had more than one mentor to avoid "putting all their eggs in one basket."

Those identifying a strong mentoring relationship tended to describe these relationships as developing informally, often with someone who supervises the associate. Respondents expressed a wide range of understandings about what mentoring means. We identified three key mentoring roles: 1) teacher; 2) advocate; and 3) career launcher. The "teacher" was the most frequently offered descriptor of a mentor. In this role the mentor trains younger attorneys in the techniques and strategies necessary for the practice of law. Almost everyone in the study could identify someone who had acted in the teacher role during his or her career. Our informants talked about learning different ways to problem-solve, trial and writing skills, and how to organize work. The "advocate" was described as promoting the associate to others in the firm, i.e., praising the work of a young associate, running protection for the associate when trouble develops, and/or advocating on his behalf when it came to both compensation and promotion decisions. "Career launchers" include those mentors described as introducing the newly minted attorney to clients, giving client responsibility early, and generally guiding young attorneys so that they blossom into attorneys who can function on their own. The "career launcher" mentor helps the associate build bridges to external contacts both within the legal profession and in the broader community. While some of

13 Senior attorneys were more likely to report that their first mentor instilled in them "traditional values" about the nature of the profession. For example, a senior male attorney described his mentor as that person who taught him that "this was a learned profession, a proud profession, that lawyers were servants, that they were there to help people, that every lawsuit was an opportunity to make a friend, that you could disagree without being disagreeable, that... professionalism is more important than winning." He mentioned that once this mentor retired, his next mentor primarily set an example of a "strong work ethic."

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those we interviewed described experiences with all three kinds of mentoring, certainly not all did so. And men and women appear to experience the process differently.

Nearly all of those we interviewed recognized that the most successful mentoring occurs when "a senior lawyer takes a young lawyer under his or her wing and really works with them and cares about them." Successful mentoring involves establishing rapport and support. Perry Hunter, a young male associate in a large firm, describes the experiences of a significant number of, albeit not all, the male associates we interviewed.

*He takes the time to just talk. It doesn't happen during the day necessarily. It's 5:30 or 6:00 PM when you sit down and just you know kind of wind down from a day and say 'okay what happened to you,' whether or not we've really spent a lot of time together working on the same types of projects that day. In a lot of respects, and I don't want to take this too far, it's like what I do with my wife who is also a professional. We just kind of debrief at the end of the day. Sometimes we get into substantive legal discussions about things. Sometimes we just talk, you know, moan or groan about clients or this or that. Sometimes we talk about politics, the weather, and golf tournaments, something like that. But it's just kind of a almost like a debriefing. Actually in the last six months or so my mentor and I have started going to lunch and there's kind of this rotating group of people who show up on occasion. We may go out to eat. I've tried to do that with other associates - just stop by not with a project, not to hound about a project but to say "what's happening, what did you work on today, what's going on" and talk about stuff and I think that, to me, that's much more of the mentoring kind of thing. When I need the answer to a question real fast um you know I call whoever I think probably has the answer. Whether I've got a you know solid or real deep relationship with them or not it's like that person probably knows the answer and try and talk to them. But to me ... mentoring is just the day to day "what are you up to" you know "what were your hassles today" and "how did you deal with them and what can I do to help break through some of you know whatever problem you've got in terms of you know if you're trying to get something done and can't seem to get it done how can I help" breaking that down some.

The quality of support that Hunter received from his mentor appears to be more difficult to establish when males mentor females or vice versa. Simply put, lawyers are more comfortable mentoring younger attorneys of the same sex. Paula Richards, a senior
partner with a national law firm, notes that,

\begin{quote}
It's much easier to be a mentor to a woman than to a man. I understand when they tell me something what they mean. Women often talk in a little bit different way than men do. The code's different. It's just easier, it's more natural. So I understand how men feel [uncomfortable] the way they do.
\end{quote}

Or consider this from Gerald Somers, a senior partner in a large firm, who describes what constitutes a good mentor and then suggests a reason why a woman might have trouble finding one. Men simply don't have the experience base that women need.

\begin{quote}
[A mentor is] somebody that they can deal with not only on legal issues, how do you do this?, how do you do that?, what do I do in this case? [A mentor] can help impart some of the history and culture of the firm, can talk with them about how to deal with people that they're having difficulty dealing with, ...can be a resource for how you get around a firm, when you ought to be concerned and when you ought not to be concerned, about reviews or about feedback...you know a confident who is respected sufficiently by the associate that the mentors judgment is respected.
\end{quote}

Women have complained it is difficult for them to get the same kind of mentoring opportunities that men have, particularly as we have primarily guys like me. They've found the men to be uncomfortable in it or just not... It [male to male mentoring] is much easier particularly on issues outside... It is purely a matter of how you work and how you relate to clients and that kind of thing. It isn't how you deal with family issue...I wasn't the person she would have talked to.

But whom can she talk to? Our interviews suggest that women are not mentoring other women in significant numbers. Younger women, for example, Barb Solerno, an associate in a large firm, described more senior women as too busy, “too stressed, to find the time or energy to do any mentoring.” The more typical scenario is that described by Bruce Cornell, a partner in a medium sized firm,

\begin{quote}
Good old boys brought him along, he's a good old boy, he's bringing other good old boys along.
\end{quote}
The mentoring talk of men is full of ways they are made to “fit” or belong. It suggests a strong sense of entitlement to their place in the profession.

*A mentor is there... when you miss a deadline or do something stupid and the client ends up getting upset and calling the partner and the partner smooths the bumps out when you do something that you shouldn’t be doing or when you act your age in the context of an organization like this.*

*(Bradley Harris, a male associate in a large firm.)*

In contrast, women tend to describe mentoring as making them feel okay. Women “appreciate” and are “grateful” for the mentoring provided to them. Mentors help them overcome their lack of fit and, make them comfortable, and give them confidence. Teresa Eastman, a young female associate in a large firm, relates her experience of how she benefited from her mentors:

*I think the main thing that my mentors did for me was they gave me confidence in myself. It’s not a substantive law thing... it’s... having confidence in me and expressing it, thanking me, showing appreciation... taking me under their wing in a sense of you know here’s somebody that I really believe in as a person and as a lawyer you know doing things that ... make you feel really like you’re okay...*

She went on to report that her mentor would broadcast to other lawyers that she had done a wonderful job on a case he had given her. He would introduce her to clients, and would love it when the clients called him to tell him how well she was doing. She described one time that a client sent a letter to her mentor thanking him for the work she had done, and saying how grateful he was for the work. The mentor took great pride in sharing the letter with her. The mentor legitimated her work. Eastman’s talk as well as that of others seems to underscore a fundamental concern about lack of fit. That was not evident in the descriptions of good mentoring offered by men.

**Mentors can play an important role in launching a career and here, too, we see differences in the experiences reported by men and women. Bradley Harris, like many of the young men we spoke to, recognized that a good mentor does more than promote you**
to your senior colleagues and future clients. A mentor can be critical to developing
developing independent relationships with other lawyers and future clients.

*The whole concept of client development is a sideline or adjunct to the
mentoring kind of process because typically the mentor does have his or
her own clients and is sharing those client bonds or relationship with
whomever is being mentored and to the extent that you've got a good
mentor relationship you're going to have um that kind of a bond right out
of the box with the same kind of folks... (emphasis added).*

While some women reported that women mentors helped launch their careers,
more often it was a man who played that role for a woman. And when men act as
mentors to women, it introduces a gender twist that, in some cases, introduces
discomfort, and, in others, makes the independence of the mentee highly problematic.
Women as a whole appear to have greater difficulty creating the “bonds right out of the
box” that can be so important for career advancement.

**Inheritance** - While inheriting clients is an important way for young attorneys to
develop a client base, the process itself can produce important links between senior and
junior colleagues as the seniors look around for who might best succeed them. Despite
its potential, inheritance was not a big factor in building relationships among those we
interviewed. Several reasons for the decline of inheritance were offered. They included
the following: (1) Compensation systems reward lawyers for holding onto clients as long
as possible. Some senior lawyers were described as jealously guarding their clients and
preventing others in the firm from developing attachments. (2) Clients are no longer
loyal to the firm. A retirement is as an opportunity to shop the market. (3) Senior lawyers
are increasingly mobile. Partners who once were likely to bestow clients on younger
lawyers now leave law firms and frequently take their clients with them.

Mary Reever, a non-equity partner in a large firm, lamented the loss of
inheritance.
I have inherited basically a few clients from people. They were small so not cost effective for the partner to deal with or I think in one case a giant pain in the butt and the partner didn’t want to deal with it so now I have them.... But we haven’t had very many people retire. Almost everyone in our department is in their late 30’s to late 40’s and so that’s one of the things I kind of look on in despair is that there’s really nobody that’s going to retire and leave me all their clients in the time frame that I really need that to happen.

The Care and Feeding of Firm Clients - Internal relationships develop when attorneys handle matters for existing firm clients. These activities may initially include the associate calling the client to keep her informed of the progress of work being done. Later clients begin to call the associate rather than the supervising attorney. Finally, clients begin to call the associate about handling a new matter for them. William Dash, owner/partner of a small firm, discussed how important the care and feeding of clients can be for generating future business.

I always tell them [attorneys in his firm] the most important thing they can do is return calls to clients and call clients and give them updates on their cases on a Sunday night because there’s nothing better to convince a client that you really care about the case and then do it at night, especially on Sunday night.

Although both men and women reported taking care of firm clients, women seemed more likely to report that they were good at it and that it was a major source of their business. Men by contrast, were more likely to describe moving out to other sources of client development. Sue Grafton, a partner in a large firm with more than 20 years experience, is only now moving beyond “care and feeding.” She is very good at taking care of clients and seems to lack confidence in her ability to do more.

I’m working to become a business developer ... as I say I’m very good at taking care of clients ... but I have to admit it’s like if you give me the client I am so good at the care and feeding of clients and taking care of them and nurturing them and making them feel important and all that stuff. ... I haven’t brought in that many. I’ve brought in a few ... there’s been some real good possibilities and ... some days I’m kind of disappointed at that I haven’t gotten further ... looking back saying what else should I be doing and trying to model myself after other
people and saying what should I be doing? .... What more do I do to get this client to give us more work? ... I try to cross sell and I'm not sure it's been very successful yet. ... So I'm trying to make that transition to be more of a business developer because it's clearly what you need to do.

Other female partners with various levels of experience related similar stories. For Grafton the issue seemed to be one of comfort; nurturing was more her style. Indeed, both men and women remarked that women were far more able in this area than men.

*Women do a better job of making other people feel comfortable than men do and that can be helpful with clients... I think that they are verbal, verbally skilled, good writers, organized, ... and that all of those are necessary traits to be a successful lawyer.* (Carolyn Lucey, partner at a small firm)

But others suggest that it is time and opportunity (or the lack of time and opportunity to do other things) that make the difference and explain why women don't move beyond taking care of clients. Ruth Penrod, a female partner at a large firm, pointed out that she was able to develop business relationships with her male clients only because of her “unique” opportunity.

*a lot of it is because we've been traveling together a lot so we're sitting in a car for ... five hours at a time and talking about everything under the sun, ... it's a very natural setting.*

Women appear to have access to fewer “natural settings” that provide “unique” opportunities to develop independent client relationships. More significantly for this study is that despite its apparent importance, the care and feeding of clients is not as highly rewarded as other forms of business development. Under the current compensation scheme, if women remain with this form of business development and men do not, women will continue to earn less.

**Lawyer-Referral Networks** - Although both men and women agreed that lawyer referrals were key to establishing a career, they discussed those opportunities in quite different terms. Women described getting referrals from their networking at the Colorado Women's Bar Association, but there was no suggestion that this produced
large, repeat clients. From men, in contrast, we heard stories of networks of referring lawyers developing over extended periods of time. Men in small firms and medium sized firms described getting case referrals from big law firms because of their particular specialty, because of conflicts of interest in the larger firm, or because the cases were too small for the large firm. Sometimes the referred clients became repeat users of the small firms. Other times not. But the potential for expanding the firm’s client base comes out of these referrals. Mark Schiff, a partner in a small firm, explained it this way:

*You know in litigation so much of my work comes from other lawyers.... Those are just relationships that have built up over time through different cases, you know people on opposing sides, co-counsel. Big firms will go to [me] because [I] don’t pose a threat. I mean that’s the great situation where you can get relationships with big firms. I’m not going to be a threat to take away your client, and if you have a conflict or you have a piddly case you don’t want to do...I’ll be happy to do it.... I’ll always take the cases because I think if you say no [they won’t come back].... The reason why they refer something is because you’re doing them a favor...you take the problem off their hands and hopefully you’re doing a good job for maybe a client or somebody.... Sometimes you do a better job than other times in kind of following up...like I took a client to an Avalanche game yesterday...we spent enough time enjoying the game but also talked about business, so it was a very positive experience from the business getting point of view.*

The networks that have developed around white-collar criminal defense work illustrate this well. Whether the referral network was between former prosecutors and/or public defenders, high profile cases involving multiple defendants were parceled out among a group of almost exclusively male attorneys. Women are well represented in the ranks of attorneys with extensive criminal law experience, yet they are not well represented in these high profile case-referral networks. No comparable female attorney referral networks were described to us.

More men than women we interviewed described their lawyer referral networks in terms of social connections -- friends, spectator sports, golf games, etc.-- that allow them to build bigger networks. Myles Thompsen, a senior partner in a small firm, talked about how both he and a younger male partner in his firm were able to generate new business:
Jake is not active in any bar groups and but he had drawn on his associations through law school and friends he had in the practice of law. [Referring to himself] I've always been able to generate a fair amount of business from people I've opposed over the years. Jake couldn't do that. But at least he was able to... generate it through friends of his. Plus also you know a lot of it's just getting older. You know as Jake got older his friends got older and they got in better positions with... sometimes with the bigger firms so that there was business to kind of kick off when there was conflicts and stuff and so they'd give it to Jake.

In contrast to many of our male informants, our female respondents indicated that their social time in the legal and business community was more limited and, thus, it was harder to develop these relationships. Our research confirms what others have found: women lawyers have a tougher time marketing and developing business than their male counterparts. The reasons for this are discussed below.

In what might be considered a defense to the problem women encounter developing referral networks, many women report that they have been successful in their careers by building practice niches. The idea of the niche is to create a specialty on the leading edge of an area of practice or so narrowly defined that few others can compete. Women with strong “niche practices” do not have to compete against more established or well-connected men. Once you establish yourself as one of only a few experts in the area, lawyers refer clients to you: there are few other places to go. Although men certainly create niches, they do not talk about organizing their practices around them in the same way that women do. While many spoke of specializing, they spoke less of depending on that finite niche for business development. They threw their potential-client net much more widely. A male associate in a small firm explained the down side of a very specialized practice.

That's one of the reasons I'm still here. I've had headhunters call me and everything else, but I'm not interested in going because what I’m seeing is that you go to a big firm or you go to another firm where they pay you on a salary basis and you're just in a niche. You don't have this upward compensation potential where you can, where you have an incentive first to bring in your own clients, manage your own practice, take it upwards in terms of what you can make and collect because there's a reward at the end of it. (Nick Mason)
Niches may be an effective way to get clients to come to you, but they can also become traps that limit the potential for growth.

One can establish relationships by improving one's visibility in the business and legal communities in a number of established forums. One is to become active in the local and state bar associations. By writing articles in bar publications, giving CLE presentations, and becoming active in bar committees and sections younger attorneys can develop networks of lawyer contacts and possible referrals. A number of firms of all sizes also market their area(s) of expertise by presenting seminars and workshops for various kinds of potential or current client trade groups. And many law firms encourage the active participation of their lawyers in various community organizations to expand visibility and develop relationships that might lead to new clients and business for the firm.

We have no way of comparing the extent of the efforts of men and women to develop relationships in the business and broader communities, although our interviews suggest that women have fewer such contacts. Efforts have been made, however, to assess the extent of "formal" efforts at developing relationships with lawyers through bar association activities. We analyzed announcements for all CLE presentations done from June 1996 through May 1997 in the Denver area and found that 24.5% of the presenters were women attorneys in private practice. This percentage is reasonably comparable to the percentage of women attorneys in Colorado. Likewise, in a study done in 1997 of the composition and leadership of CBA committees and sections, the author concluded that in most, but not all, committees and sections women were well represented in membership and in leadership. Despite these efforts by women, both men and women attorneys that we interviewed believed that women were less successful at developing lawyer referral networks which resulted in good cases and economically viable clients.

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A problem that has pervaded the legal profession since women first joined the Bar seems to persist. A number of attorneys in our study saw developing successful business relationships and having a family as incompatible. We heard this idea from men in our study, but we also heard it from some women who clearly bought into this idea. Women don’t have the time to do the “extras” that are important to building relationships.

Women, in particular, said they do not have time to schmooze. As indicated earlier, women suggest that they do not want to waste the time they have for work, just to be able to do “face time.” Women, in much greater numbers than men, said that they want to structure their work so that they do not have to give up their personal lives. A number of women expressed the feeling that there is not enough time in the day to think about spending hours after work trying to generate contacts for business. The social component of business generation, particularly rainmaking, is substantial for many attorneys. As discussed in Section Three, the balance between one’s career and one’s family—when men have yet to pick up an equal share of family duties and responsibilities—is more difficult for women with families. And with compensation systems increasingly emphasizing business generation, women’s time constraints play a role in creating an economic disparity.

Rainmaking - From our respondents, as well as the literature on marketing for law business, it is clear that men are much more likely to become rainmakers than women. Who qualifies as a rainmaker? According to Deborah Graham, “rainmaking” connotes “the image of a tribal leader or a medicine man, possessing mystical powers to call forth precious rain from the heavens and save his people from disastrous drought.”

Rainmaking

The term connotes a sense of magic: a new business generator who does not have to work hard at it since he has a natural gift. Patricia Snow, a partner at a large firm, described a senior partner at her firm:

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He is the kind of guy who can walk into a bank, stand in line and walk out with a new client.

Referring to the senior and founding partner of his small firm, Nick Mason told us about this successful rainmaker.

*I think from the standpoint of getting clients in terms of the business aspect of it, David is an excellent example of you know kind of a socialite that uses the opportunity whenever he meets people. I mean he's people oriented and his relationships are based on his likes or dislikes of the people, but he certainly doesn't pass up an opportunity to let everyone know what he does for a living and to try to at least plant the seed everywhere that is that he's there and bring business in...A lot of it is image. I mean it helps to live in Cherry Hills as opposed to a bungalow in the suburbs. Or to be on the golf course versus somewhere else...Part of being a rainmaker is not just being in the courtroom, but being down at the athletic club and spending some time networking with people.*

Tom Jencks, a senior associate in a mid-sized law firm, compared the men in his firm who are rainmakers with other partners who generate business:

*These men are very very outgoing, gregarious at what I refer to sort of as salesman types of personalities. um, who, going back to what I said before, view every social engagement or any interpersonal engagement as an opportunity to generate business. um, and have really developed it into an art form. There are other men, and I think this probably applies to the women in the office as well, who generate business based on reputation of professional expertise and a lot of that comes from peers, recommendations from other lawyers. The first example I described is someone who's generating business directly from the client, developing a relationship with the client, convincing the client that we can do the job for you, but some of the others here are impressing attorneys on the other side of the courtroom or on the other side of the table with their abilities and get referrals that way.*

While there are certainly some women in our study who are “good” at generating business, they do not refer to themselves as rainmakers, nor do others talk about them or other women attorneys in this role. Rainmaking is identified as a male activity by those in
our study as well as others writing on the subject. Women in our study indicated that they were either puzzled about how to go about rainmaking activities, or they were very reluctant to spend their time engaged in the country club scene, or going to baseball or hockey games with potential clients. When we asked about rainmaking, women in our study would qualify the definition. For example, Ruth Penrod, a partner in a large firm, suggested:

*I think ultimately [the] term rainmaking is being able to stay very busy and keeping other people busy and I'm very good at that. I mean I am always busy, I have never had a down time. So, in that sense I am. In terms of you know having a lot of people I have never met, they call me and I need to work on that by going to conferences and so forth. I've also spoken at a lot of conferences. That's another way that... I haven't done as much of that this year but I have done a lot of it in the past.*

Rainmaking is seen as requiring a certain kind of personality, certain kinds of potential client interactions, and these characteristics are identified as male.

Janice O'Driscoll, a partner at a large firm suggested that you could predict who would become a rainmaker:

*It's interesting the people with the personalities to seek out those kind of opportunities often are the rainmakers down the road or you know to some degree. ... Most of them are ... I can only think of male associates like that and they're very personable, outgoing, also very smart, been good lawyers, they may not be the rocket scientists of the firm but they know, they're savvy and they know how to work a client. They also tend to be politically astute within the firm. That's a gross generality, not all of them are like that. We have one guy who kind of prides himself in being an eccentric. He got in [a new age firm], I mean he is the principle contact I don't know if he got them in the door. So he kind of gets more off the wall clients. I mean they're a pretty big corporate concern even though they got this young different rep. He kind of goes after, he knows where his niche is and he goes after that and he's very personable, he's very smooth and he makes them feel like they're well taken care of, very attentive. So, I can't think... I'm trying to think of ... I can't think of any recent women associates who have been I would say have bonafide rainmaking abilities already.*
We did not hear women described as rainmakers, i.e., as lawyers who can go out and get a lot of clients by developing personal relationships and selling the firm’s abilities. This, of course, does not mean that there are not such women, but the contrast in the interviews is striking. Rainmaking is highly compensated in most of the compensation systems we studied. If, as our respondents suggest, women do not fall into this category, then we would expect that they would fall into lower compensation ranks in law firms. As Sam Fulton, a senior partner of a medium-sized firm, said:

... [H]istorically women don’t have the old girl network...developed and if they can’t stand in the breeze and pull in some clients they aren’t of the same value to the law firm as I am...

Our interviews affirmed the cliché: men are rainmakers and women are client nurturers and business expanders.

Building Relationships

Relationships within the firm determine the quality and quantity of work that lawyers receive. External relationships with other lawyers and potential clients are the basis for client development, new client production, and higher compensation levels. Relationships also provide access to the process through which compensation decisions are made. We have found that the patterns of relationship building differ for men and women in ways that appear to disadvantage women. What explains the difference?

A senior partner at a small firm, Myles Thompsen’s analysis of the status of women in the profession was particularly insightful:

*We’re cranking more women out of law schools now than we are men. And so ... they ought to be there. But our women just kind of [end] up in positions of the worker bees you know and the guys are kind of taking the dough and ... the good positions. I figure over the years that women would certainly be more evident in both top level partnership management*
positions in firms and in income because women seem to be in more elevated positions in business. I think ... you need women somewhere else doing well to give legal business to women before women in the legal community start working their way up. It certainly isn’t just an issue of smarts or brights or anything else because most men wouldn’t be where they are. You know it really is to me, it’s connections.

He suggests, as did many others, that only when women, doing well elsewhere, give business to women will they succeed. Indeed, the increasing numbers of in-house counsel who are women was often cited as a solution to the problems women face establishing lawyer-referral networks. But the “solution” is problematic in three respects. First, after a number of interviews, it was apparent that the “solution” was a reference to only one particularly high profile woman who was now in-house. Second, women are not the only, or necessarily the main, beneficiaries of women going in-house. Many men in our study indicated that they had benefited from referrals from women corporate-counsel in the Denver community. Finally, not all women who go in-house are in positions that produce much business.

More importantly, the analysis, “Only when women do well elsewhere...,” underscores an underlying discomfort with male-female professional relationships as a source of business for women. Women’s efforts to build the key relationships that are important to their careers are constrained by gender roles and sex stereotypes that impede their career progress through traditional routes.

Gender Roles

While cross-gender professional relationships have improved since the 1970s, problems remain. Men and women are still uncertain how to develop these relationships outside traditional gender roles, either family roles such as that of father-daughter or dating roles. These traditional gender roles interfere with mentoring relationships and with the development of professional relationships with other lawyers and clients.
For example, when men take their male clients to a baseball game it can introduce a new dimension, friendship (however superficial and strategic) to the attorney-client relationship. When a woman takes a man to the baseball game, it is certainly possible that ‘strategic friendships’ develop, but the cross-gender aspect of the interaction makes this far less certain. Instead, the interaction may remain formal, i.e., “business.” Or, more problematic, it may be perceived as a “date!” To avoid the appearance of the latter, some female attorneys report that they bring their husbands or a male friend. Developing a “business” friendship with a male client or potential client can become problematic when new roles (e.g., wife) are introduced into the interaction.

Both male and female attorneys described the mentoring relationship, at least in its early stages, as a “parental one.” Bradley Harris, senior associate in a large firm, described his mentor-mentee relationship as:

...like a parent child kind of relationship because it is an on-going thing and you never know when there is going to be some kind of issue you have to deal with.

A number of female respondents also used a “surrogate parent” analogy to describe their relationships with male senior partners who they described as mentors. Referring to the male who had been her mentor, Karen Levine, a partner in a large firm, said:

I thought of him as my father. I also think it is a safe way to relate to an older man, it keeps a lot of other stuff off of the table.

Indeed, one way of dealing with the “sex” issue is to redefine the professional relationship in terms of familial roles (e.g., father-daughter or brother-sister). But it is important to note that the dependency implicated by a father-daughter relationship is qualitatively different than that understood to be the case for father-son relationships. Dependency is far more problematic for women who are trying to break out of traditional gender roles. Karen Levine, again commented on the problem of this paternalistic relationship:

women tend to think of a mentor as a surrogate parent, as someone who is looking out for them, and worrying about their development. But that
is not true. A mentor is someone who uses you for their own purposes, but if you are smart you are going to get something out of it.

Levine was concerned about the amount of trust that a woman would put into her male mentor defined in these terms. According to Karen, this is "very dangerous because inevitably they will betray you." When a mistake is made they may throw you to the wolves: it must have been your fault. Or they may turn a client over to someone else even though you were the one who has done all the work. According to Levine, the paternalistic mentor may "betray" the associate by taking credit for her achievements or by leaving the firm and "leaving her there."

Men seem to be less often misled by the process. Karen Levine contrasted her conversations with women associates to those with men associates.

_They just seemed to be more ruthless in their approach at the front end. They are men and they understand men better than women understand men. They do not have to create roles to take sex off the table. I am sure that there is this kind of father-son thing that goes on. Even the father-son relationship has an element of self protectiveness that is not built into how women relate...especially to their dads._

In several of the stories we heard about men providing opportunities to women, the men were described as acting in the traditional role of hero or protector. For example, a male mentor was described as someone who "...would have punched out somebody who said something ugly about [me]."

While many men and women may be comfortable with a dependency relationship, a young attorney has to rapidly grow out of that position. We heard several stories that illustrate that this can be more difficult for a woman. Annette Robinson, an associate in a small boutique firm with prior experience in a large firm, described the difficulty she experienced establishing her independence.
I'm pretty independent here and I took on a lot of responsibility early and generally they wanted that. But I got the feeling that sometimes it made them a little uncomfortable. People aren't always logical.

After preparing for hearings she would get repeated inquiries as to whether or not she wanted one of them to go along. One or another of the male partners would be concerned that she was nervous and offer to come to court with her. One even offered to take over the case the day before trial. As Annette put it,

*I was appalled. I didn't even know what he was talking about. I told him I was not going to be nervous, but that I'd call him when I got there if that would make him feel better. Seemed kind of silly to me. He wasn't up to speed on the case. So I went and I won. He got over it.*

For women and men, trapped by society's gender roles, negotiating the independent status of a young female lawyer may be a continuing struggle.

Escaping the notion that women are helpless and need to be saved is only one of the cross-gender problems that must be addressed by female attorneys. The traditional subordinate position of women may also play out in the pattern of male partners and female associates in small firms that we described in Section Two. Bryan Gordon, a founding partner in a small firm, made these very self-disclosing comments:

*You want an employee to have some...some subservient role to you know, to be loyal to the firm and to you...work hard for the firm and to place the firm above them...I don't think ...but I have to suspect that one of the reasons we have hired women is because we maybe anticipate that from them more...Owners of law firms don't like to be threatened by their employees in terms of either being better lawyers or better owners, potential owners of the firm.*

The pattern of men being more comfortable with subservient women has often been commented upon, and there is evidence to suggest that this pattern continues.

The sexual component of gender roles, also, cannot be ignored. While awareness of the problems around sexual harassment has increased significantly in recent years, the
problem has not disappeared. Darlene Ritchie, a senior attorney, described her experience as a senior associate at her former firm.

I had a mentor...that was in my department...It was blatant sexual harassment...Let me explain, because this person is someone that I really respect and am also somewhat, want to be more sympathetic because I feel I am obviously a stronger person. He was just probably having a mid-life crisis...I even talked him into going for employee assistance.

The problem for this woman was that he had become emotionally and sexually attracted to her and would not, or could not, separate that from the working relationship.

Because for me what started happening is he couldn't deal with it so we couldn't go on trips. All of a sudden, I am not going on major closings, different things are starting to happen because he can't handle being around me and not pursuing his own [sexual] interests...And finally I just, I mean the worst part was...that because of all this all of a sudden instead of handing off clients—there was too much tension—I was going to have to do it all myself...I was going to have to develop [my own practice], get totally separated...develop absolutely my own clients. And I guess it sort of frustrated me because I did not have the "hand off" that's sort of typical of a mentor-mentee type of circumstance. And it also was frustrating because you can...at that point in the game start to have a bit of self doubt. He wasn't the one necessary—that put me up for partner, I mean there were others; I'd worked with a number of different people. So it wasn't that. But you still start to have some self doubt that maybe he didn't, all he was trying to do was get me involved in these transactions for a different reason, not for...the quality of my work.

The senior partner's attraction to her destroyed the mentoring relationship, reduced her opportunities to be involved in key deals, undermined her self confidence, and forced her to go it alone without the assistance of an important person in her department.

Another new woman partner in a large firm described to us the consequences of refusing the overtures of a man who has a great deal of influence nationally in her area of practice. When she refused to go out with him, he effectively blackballed her from opportunities to speak at a key national convention. Her work, and that of her firm, is national in scope and for her to develop a practice of her own she needs exposure to other attorneys practicing in her area. Sex was put on the table and when she took it off, he
used his position to hurt the development of her practice.

The fear that some men have of being involved in allegations of sexual harassment may also impact women’s ability to develop key mentoring relationships. Both men and women reported to us that they believe that some men avoid close personal-professional relationships with their female mentees in order to avoid any appearance of impropriety and, perhaps in some cases, to avoid any sexual dimension to a close working relationship.

Sex Stereotypes

We discovered that a number of sex stereotypes operate within the practice of law and these inhibit the ability of women to establish the necessary relationships to boost their status within their law firms. We have identified five stereotypes from our interviews.

- Women cannot/will not travel and work long hours.
- Women are less self-reliant.
- Large corporate clients intimidate women.
- Women are not aggressive enough.
- Clients do not want a woman attorney.

While we know that stereotypes are frequently based on myths or ignorance rather than reality, they can become self-fulfilling prophecies. For example, even if a woman does not have children, it is assumed that she is less available for travel. We even heard stories from single, female attorneys in our study who said that partners would give a male associate the travel opportunity, even when the woman had done all the research on the project.

James Stuart, a senior partner at a large firm, addressed the question of whether women have what it takes to be successful in law practice. According to Stuart:

*Males tend to be a little more self-reliant. Maybe we were raised to be. I don’t know. Women tend to be ... it was a harder transition for them to our new order, if you will, where you really had to make it on your own and we weren’t going to take care of you ... Women tend to look for a*
place where they feel safe more than men do and for that reason they
don't do the kinds of things that are necessary to really thrive in the
system... Some of our very smartest lawyers are women, and yet it's hard
to put your finger on it—they just won't get out there and do what's
necessary to really generate big practice. I don't think they care to.
They're missing something that's a lot of the character. I think they have
a little bit different values than men do as a general rule.

Even if women are believed to be as intent on pursuing success as men, another
stereotype that we heard in comments from our respondents was the feeling that women
can be intimidated by large clients. Some women in our study reinforced this stereotype
by suggesting that they were not as self-confident as men. Nelson Brown, a partner at a
large firm, described the situation in his firm:

the female associates in this firm are more intimidated, less confident in
their abilities to generate new business partly because our clients are
Fortune 500 companies. We don't have the little mom and pop shops to
go calling on and because some of our female associates are young in age
and young in experience they don't feel that they have an equal
opportunity to compete with more seasoned male lawyers. And they think
they're just making a fool of themselves if they try. And it's a topic that
comes up every year at our retreat. They want to be taught how to
generate business, they want to be taught how to approach perspective
clients,... more so than the males. I do think there is a big difference there
and I don't know, maybe it's maybe we still have the vestiges of our prior
generations where women were ... raised to be homemakers and men were
raised to be bread winners and from a young age ... stereotypes are
ingrained, I don't know.

Another stereotype that affects women's ability to establish relationships with
clients is the idea that women are not aggressive enough, that they are too soft. Typically
this stereotype was laid at the feet of clients who still do not want their cases handled by
women attorneys. Mark Lundberg, a senior partner at a big firm, talked about one
client's resistance to having a woman do his legal work and consequently treated her
poorly "hey girl attorney, do this for me." Nelson Brown, a senior attorney, discussed
how women have problems representing companies that do business in various parts of
the country, primarily the deep south. According to Brown:
women are still not equal citizens in certain parts of this country, primarily the deep south. And we have clients who are either based there or who have work there and there is outright open opposition to sending a woman to battle in some parts of this country.

The problem is not limited to the deep south. A number of our informants described situations in which a male attorney was sent to work with a particular client because of the perception that a woman would not be acceptable. As Bryan Gordon, a founding partner of a small firm, explained it:

Some of the [clients] we deal with are substantially dominated by [older men]...it's a profile of uh the former culture if you will, of uh it's a man's job to do this and it's a woman's job to stand behind him and to keep quiet. And ...where those people are board members we might look very closely at the circumstance of having a woman involved...this is not a frequent occurrence...[but] we do honor the customer in terms of their preferences.

A number of attorneys also commented on the perception that women were not aggressive enough, particularly in the area of litigation. Duane Porter, a partner in a small firm who has had extensive large-firm experience, described the classic double bind for women litigators.

In the litigation side of things, it gets wrapped up in whether women ought to be like men as advocates or whether women can be like women as advocates...women are caught between a rock and a hard place because women who try to be like men were considered overly abrasive, they were bitches, they were you know whatever it was. And they didn't win, okay. And then women who were not like men but were different, were perceived to be not effective advocates because I don't understand your style and you're arguing in a different way, and you're not being as effective as I think you should be.

Women have an uphill climb as they attempt to advance in the profession. But climb they do. We heard of many exceptions that proved the rule: women who, because of their particular circumstances, were able to develop the “guy relationships” and the
“strategic friendships” that appear to be so necessary to excel under current compensation schemes. But the systemic problems remain. Traditional gender roles and sex stereotypes continue to complicate the female-male professional relationship. And women, far more than men, bear the burden of these complications. Women are more likely than men to become trapped in traditional support roles that are not as highly rewarded. Women find far fewer opportunities—in part because of their status as wives and mothers—to make the social connections that are so central to business development and to how they are perceived within their firms and within the legal community.
SECTION FIVE: CONCLUSION

This report has argued that the income gap between male and female attorneys is explained, in part, by

1) a changing law firm context that rewards behaviors, such as rainmaking, that are less accessible to women, given contemporary gender roles, and where the rules of the “compensation game” continue to change;

2) compensation decisions that are contested, negotiated, and hidden in ways that protect (advantage) those in power, typically men, and are, therefore, less accessible to women; and

3) the difficulties in developing key personal-professional relationships across genders within firms and in the broader lawyer and client communities.

The income gap between male and female attorneys observed in the 1993 Economic Survey must be understood within the context of changes in the organization and culture of law practice. During the late 1980s and early 1990s, at a time when more women were reaching senior status in the practice, the rules of the game changed. Business development became the raison d’être of many firms, seniority lost some of its financial benefits, Decision-making became more centralized, new “pointless partner” and other non-partner statuses were created, and the time to partnership was extended in most firms. We are assuming that none of these changes are targeted at women. But because the rule changes occurred just when women were advancing to positions where
they could begin to reap the benefits of traditional compensation systems, they appear to have had a disproportionate impact on the category of lawyer called female.

Looking at compensation systems themselves, we found that they are often organized in such a way as to be deaf to women’s voices and blind to their contributions. Despite the appearance of objectivity, compensation is highly subjective, not only in terms of the criteria used for evaluation and reward, but highly contested and negotiated in its application as well. What is valued and rewarded by firms is based on the expectations and perceptions of those in power. In most cases, those who set the values and make the evaluations are men. The patterns of women’s lives, particularly child birthing and rearing, are punished by contemporary compensation systems. Areas of perceived women’s strength --client care and nurturing-- are devalued and areas of perceived women’s weakness --development of new clients-- are highly rewarded. Decision-making is centralized, often hidden, poorly understood, and rewards “male behavior,” including intra-firm competition, threatening to leave, and complaining about compensation.

Personal-professional relationships are the key to both the “objective” and the subjective components of compensation. Obtaining good clients and good cases depends on one’s relationships with other lawyers in the firm, lawyers outside the firm, current firm clients, and potential clients within the broader community. Perceptions of the value of one’s contributions to the firm depend on the nature of one’s affiliations within the firm and in the legal and business community. For women attorneys the development of these key affiliations and contacts --most of which must still be with men-- is complicated by gender roles and sex stereotypes.

Both men and women are affected by society’s difficulties in getting beyond traditional gender roles and sex-based stereotypes. Both sexes expressed a lack of comfort in forging new kinds of cross-gender relationships. But the cost is borne by women in the legal context, a context which is still overwhelmingly controlled by men.

The authors of this report hope that it will be received with interest by practitioners and spark serious discussions within firms and among lawyers about the
statuses of women and men in the profession. Ultimately, women’s status will depend on their ability to assert, collectively and individually, their contributions to legal practice. We have found that women’s careers look different than men’s careers, and because of the structural changes in law practice, younger women’s careers are likely to look quite different than their older sisters’. Some women can play the game successfully on men’s terms. A good many other women, because they don’t care to or because family commitments within existing gender norms make it impossible, simply won’t do so. That “choice,” as it has often been described, has hurt women financially. It has not only hurt the women making these individual “choices,” but because women are often lumped together, it has hurt other women as well.

Significant changes in the structure of legal practice have occurred in recent years. These changes were made by practitioners and benefited parts of the profession at the expense of others. With consciousness and foresight, changes can and should be made in order to come to terms with the substantial presence of women in the profession. A number of questions have presented themselves to the study authors.

1) How can compensation decision-making become more open and decision makers more consciously aware of hidden gender biases and the disparate impact of decisions on women?

2) Is it acceptable to create and maintain environments, systems and practices within law firms which are incompatible with the needs of women? If it is unacceptable, what changes should be made?

3) Assuming that women’s contributions to the law are desired and needed, how can the practice be restructured to accommodate women’s lives and not just men’s lives?

4) Does the profession want to maintain a second class track—which appears to have been developed and is continuing—for women?

5) How can compensation systems be modified so that “male behaviors” (compensation complaints, threats to leave, hierarchical competition) are not rewarded more than “female behaviors” (loyalty, nurturing of clients and lack of compensation complaining)?
The list of questions could go on and on, but these few, we hope, will provide some food for thought. We suspect that many in the profession are comfortable with the current systems of influence and compensation. Others assume that these systems cannot be changed; that it is just the way things are. But we know from our interviews that many men and women practitioners are not comfortable with the current state of legal practice, its excessive competitiveness, and the values it rewards through compensation structures. More than one hundred lawyers in this community gave of their time and knowledge to help us create a picture of the structure of law practice in the Denver metropolitan community. It is our hope that this report will encourage a hard look at what is valued and what is rewarded in the profession.