

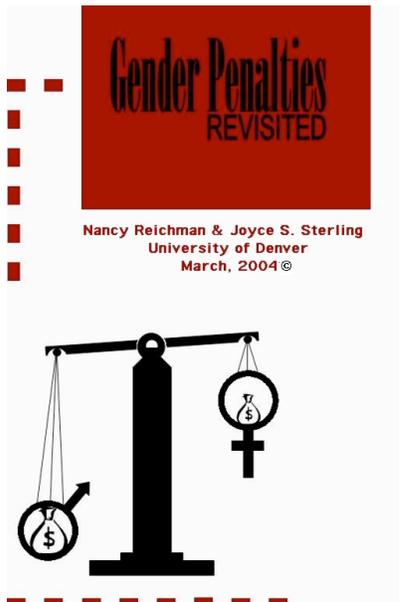
# Gender Penalties

REVISITED

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## Acknowledgements

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There have been several presidents of the Colorado Women's Bar Association since we began our work. Each one has provided encouragement and support. We gratefully acknowledge Pamela Mackey for starting this journey, and Natalie Hanlon-Leh, Madeline Collison, Mary Ricketson, Lorraine Parker, Kristi Livedalen, Lynda McNeive, Doris Truhlar, and Jeanne Coleman for their continued leadership.

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Finally, we would like to extend our thanks to the 100 attorneys who gave of their valuable time to make this study possible.

Reports of cracks in the glass ceiling of the legal profession have been around for nearly two decades. Many speculate that since women now comprise the new majority of students in U.S. law schools it is only a matter of time until women control the practice of law. A recent ABA Journal poll (2000) adds to the perception that the glass ceiling in law practice will soon disappear, "A widespread assumption is that barriers have been coming down, women have been moving up, and it is only a matter of time before full equality becomes an accomplished fact." In the ABA Journal's 2000 poll, only a quarter of female lawyers and three percent of male lawyers thought that prospects for advancement were greater for men than for women.<sup>1</sup> Thus, it is only "a matter of time" before women make it to the top of the law firm hierarchy; before women make as much money as men in the profession; and before we can move past questions of gender bias in the legal profession.

Certainly the status of women in the profession has improved since the 1970s when women began to enter the profession in substantial numbers. But, unfortunately, recent data on the profession suggest that neither changes in the number of female law students nor changes in the number of female associates has substantially changed the profile of the profession.<sup>2</sup> While it may be wrong to continue to say that the glass is half empty, the glass is certainly not yet half full.

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<sup>1</sup> DEBORAH L. RHODE, UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION p. 14, original source in note 7. (2001).

<sup>2</sup> NALP FOUNDATION FOR RESEARCH AND EDUCATION, PERCEPTIONS OF PARTNERSHIP (1999); and Rhode, *Ibid.*

This report examines three dimensions of gender disparity: **compensation, promotion, and retention/attrition**. They are inter-related, inequity in one dimension can produce inequities in the others. Compensation disparity is clearly the foundation of gender disparity. When compensation disparity and promotion disparity are combined, they result in problems of “retention.” The disparities that occur in these 3 components result in “sticky floors”<sup>3</sup> on which women get stuck and “glass ceilings” against which women’s advancement rebounds.

The data that form the basis of this report include the results of the 1993 CWBA analysis of the 1993 CBA Economic Survey and 2000 CBA Economic Surveys as well as 100 in-depth interviews with Colorado attorneys. Where appropriate, national data are introduced for comparative purposes.

## **STUDY BACKGROUND**

### **GENDER PENALTIES, c. 1993**

In 1993 the Colorado Bar Association and the Colorado Women’s Bar Association created a survey to assess and compare the economic status of male and female attorneys in Colorado.<sup>4</sup> 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

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<sup>3</sup> BARBARA F. RESKIN & IRENE PADOVIC, WOMEN AND MEN AT WORK 82 (1994).

<sup>4</sup> COLORADO WOMEN’S BAR, A REPORT OF THE CBA 1993 ECONOMIC SURVEY AS IT RELATES TO FEMALE ATTORNEYS IN THE PRACTICE OF LAW (1994).

responding were male and 26.8% female, proportions that closely approximated the proportion of male and female attorneys in Colorado at that time.<sup>5</sup>

A significant area of difference between men and women was in the average earned income reported in the 1993 survey. The average net income (after expenses but before taxes) for full-time women lawyers was only 59% of the average income for full-time male practitioners (\$53,893 compared to \$90,953). Some of the overall disparity between men and women attorneys was explained by men's longer tenure in the profession. However, when years of practice were correlated with income, the significant gap between men and women 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.<sup>6</sup>

When income reported in the 1993 survey was correlated with firm size, female attorneys across all firm sizes made substantially less than male attorneys. 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

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<sup>5</sup> As a group, men were older and had practiced law for more years. Almost twice the proportion of women was single (30.8% in contrast to 16.2% of the men), and a substantially greater proportion of men had children (68.6% compared to 47% of women). Almost twice the proportion of women worked part-time, 17.6% compared to 9.1% of the men.

<sup>6</sup> 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.

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.

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. These discussions led to the first study of career histories of male and female attorneys in the Denver metropolitan area. Our goal was to collect career narratives that could reveal patterns of constraint and choice in the formation of legal careers and the determination of compensation.

We conducted in-depth interviews with 100 attorneys (52 women and 48 men) in the Denver Metropolitan area. The sample was restricted to lawyers currently working in law firms of more than ten lawyers at the time of those interviews, although a number of those attorneys worked in other sectors at various points in their careers. The sample was purposefully selected to insure sufficient numbers of well matched men and women who could develop a picture of private law practice that was deep enough to offer insights into firm culture and broad enough to cover a range of practice types. Only attorneys with a minimum of five years practice experience were included to insure that our interviewees had sufficient experience to reflect on factors that influenced their careers. We attempted 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 sampling plan presented a number of challenges. We found that women had not been practicing in the larger firms long enough to be found in comparable numbers to men in the highest positions of these firms. We were surprised

to find that it was equally difficult to find similarly situated male associates in the small firms.

In addition to the sampling approach described above, 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.

The first wave of interviews was conducted over two years (1996-1998). The interviews were taped and transcribed. 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 (clerkships for example) 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. 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 are used throughout this report. We modified the quotes from lawyers to disguise identities and to maintain the flow of the conversation.

## **GENDER PENALTIES c. 2000**

In 2000, the CBA again surveyed a random sample of Colorado lawyers, including both members and non-members of the CBA.<sup>7</sup> Respondents were again asked to report their earned income, in this case earned income in 1999. We expected to observe a narrowing, if not the disappearance, of the income gap between men and women attorneys in Colorado. We were stunned to discover that the gap had not disappeared, but had actually increased in some sectors of legal practice.

The perpetuation of the income discrepancies motivated us to revisit our original sample of Denver lawyers. We attempted to find the original 100 respondents and to re-interview them to determine career changes that had occurred since our initial interviews – 5 to 7 years earlier. Only 3 of the original 100 respondents were not locatable. Many of the respondents had moved since we last talked to them, almost 60% of the sample had moved from their previous jobs. During the second wave of interviews, we wanted to pick up the career histories where we left off in what we now called “Time One.” We started the interviews by going back to the Time One interview and reminding people what they were doing when we last talked to them. We then asked them to bring us up to date on their career moves. In addition, we asked people to fill out a short web-based survey.

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<sup>7</sup> The 2000 CBA Economic Survey Report was based on 1077 responses that were usable for the final analysis.

## **The Imperative for Gender Equity**

It is important to distinguish the concepts of equality and equity as they are often confused. Equality is defined in terms of sameness, the same number, degree, value, or intensity; or the same rights, privileges, ability, rank, etc.. Equity, on the other hand, is defined as "justice, impartiality; the giving or desiring to give each person his due; anything that is fair." To pursue equity can mean to treat people differently in order to treat them fairly. It is the imperative for fairness that motivates this report.

Why is gender equity important?

- Without equity, that is, if women are not treated fairly, they will leave their firms and the profession. Career exits create measurable costs in recruitment, training, and talent. The cost of losing young associates exceeds \$300,000, according to some estimates; the costs of losing more talented attorneys will be arguably higher.
- Inequity leads to lost business as more and more clients demand diversity in the law firms they hire.
- Equity is related to diversity. Diversity is associated with innovative strategic thinking, important to firms in today's competitive legal market. Catalyst's recent study of 353 Fortune 500 companies found that the group of companies with the highest representation of women in top management outperformed the group with the lowest representation in both areas they measured, return on equity and total return to shareholders.<sup>8</sup>
- Finally, it is the right thing to do. It is the right thing for lawyers to do as community leaders. If lawyers don't champion equity, then who?

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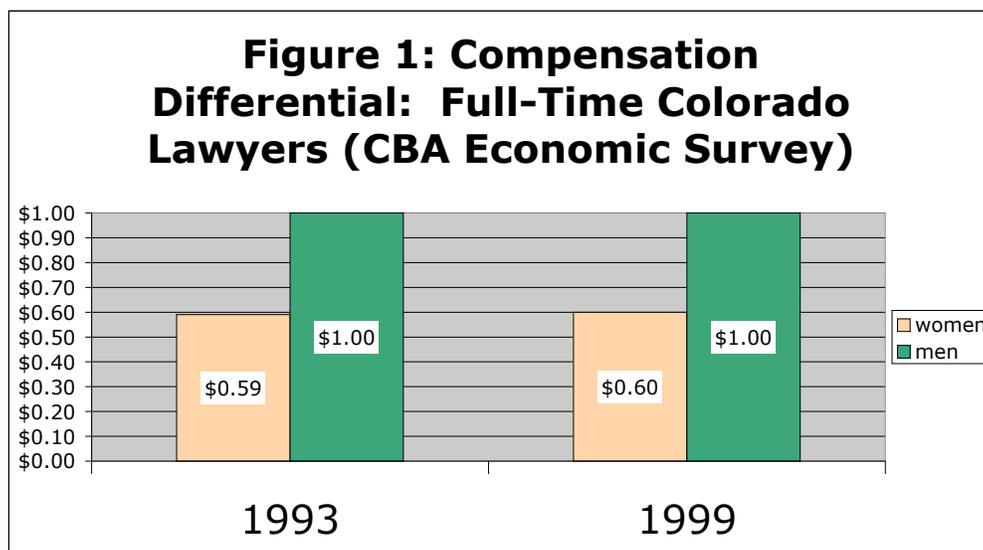
<sup>8</sup> CATALYST, THE BOTTOM LINE: CONNECTING CORPORATE PERFORMANCE AND GENDER DIVERSITY (2004).

## The Persistence of Gender Penalties In Compensation, Promotion and Retention

### Compensation

#### All full-time lawyers

A comparison of 1993 and 1999 mean net income of Colorado lawyers indicates that overall the gap between the earned income of men and women lawyers remained stable. In 1993, the average full-time woman lawyer earned only 59 cents for every dollar earned by her male counterpart. In 1999, the gap narrowed by one percent; the average full-time female attorney earned 60 cents of that earned by the average man.



Colorado is not alone. A recent study of Michigan's lawyers conducted by the State Bar of Michigan found that the average female attorney earned only 71 cents for

every dollar earned by her male counterpart.<sup>9</sup> After the JD, a national study of lawyers admitted to the bar in 2000, reveals gender differences in nearly all areas of practice with the largest difference between men's and women's salaries in the largest firms, i.e., in firms with more than 251 lawyers and in corporate law departments. Overall, the median salary for women admitted to the bar was \$66,000 compared to a \$80,000 median salary for similarly situated men, a female to male ratio of 0.83.<sup>10</sup>

The compensation gap between men and women is not unique to the legal profession either. Studies of full-time workers conducted by the US Department of Labor show a persistent, albeit narrowing, gap in men and women's earnings. In 1979, when comparable earnings data were first available, women earned about 63 percent as much as men did. In 2000, median weekly earnings for female full-time wage and salary workers were \$491, or 76 percent of the \$646 median for their male counterparts.<sup>11</sup> A survey of the members of the American Association for the Advancement of Science (life sciences professionals) revealed that men earn almost one-third more than women; \$94,000 versus \$72,000. The difference is greatest among academic administrators. The report finds "evidence that women are paid less for similar work even when type of employer is held constant."<sup>12</sup> A Catalyst study of over 1,000 men and women senior

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<sup>9</sup> Eric Freedman, "Pay Gap narrows for Black Lawyers, Remains Wide for Women:" CAPITAL NEWS SERVICE (December 5, 2003).

<sup>10</sup> Preliminary findings from AFTER THE JD: A NATIONAL LONGITUDINAL STUDY OF LEGAL CAREERS, presented at the annual meeting of Law Access, Orlando, FL (2003).

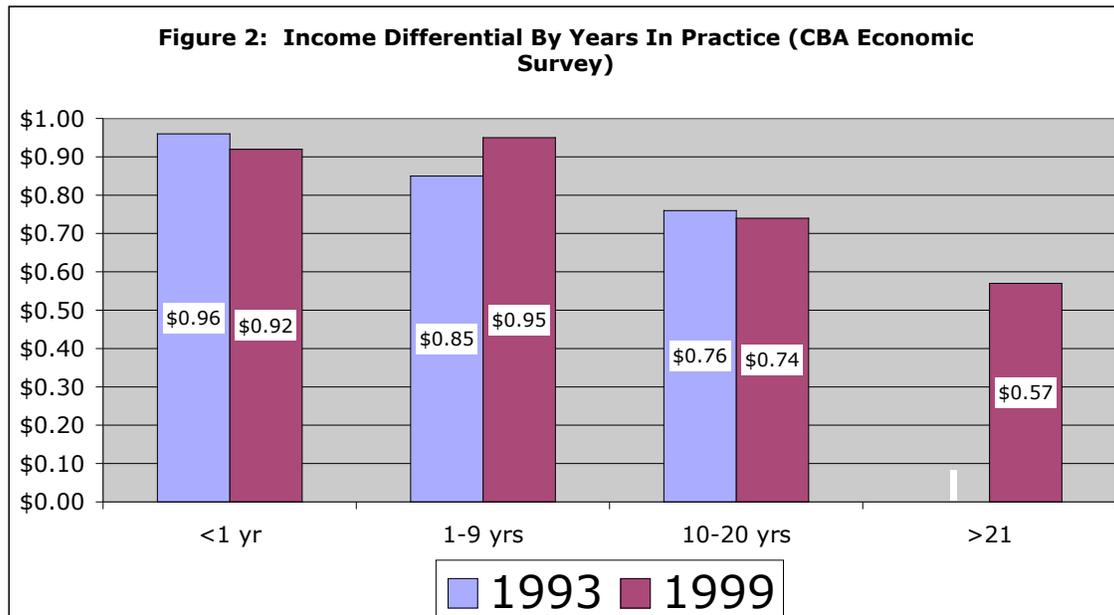
<sup>11</sup> U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS August 2001 Report 952.

<sup>12</sup> *General Contentment Masks Gender Gap in First AAAS Salary and Job Survey* 294 SCIENCE, 400 (October 2001).

executives found that while only 16 percent of the men surveyed earned less than \$200,000 in 2001, 38 percent of the women reported earnings less than \$200,000.<sup>13</sup>

### Years in Practice

The Colorado data allowed us to investigate whether the gap narrowed for full-time lawyers with different tenure in the profession. Given the attention focused on compensation disparity after the first CBA study we expected the gap between men and women to narrow, particularly in the case of newer lawyers.



As expected, we find some improvement for women lawyers with 1-3 years experience (82% in 1993 and 92% in 1999) and those with 4-9 years experience (86% of men's income in 1993 and 96% in 1999). However, the differential between the earned income of men and women lawyers widened slightly for lawyers with less than 1 year's

<sup>13</sup> E. Galinsky, et, al LEADERS IN A GLOBAL ECONOMY: A STUDY OF EXECUTIVE WOMEN AND MEN. (2003).

experience in the practice of law (women made 96% of men's income in 1993 and 92% of their income in 1999). The gap for those with 10-20 years actually increased slightly (76% of men's income in 1993 and 74% in 1999) as well.

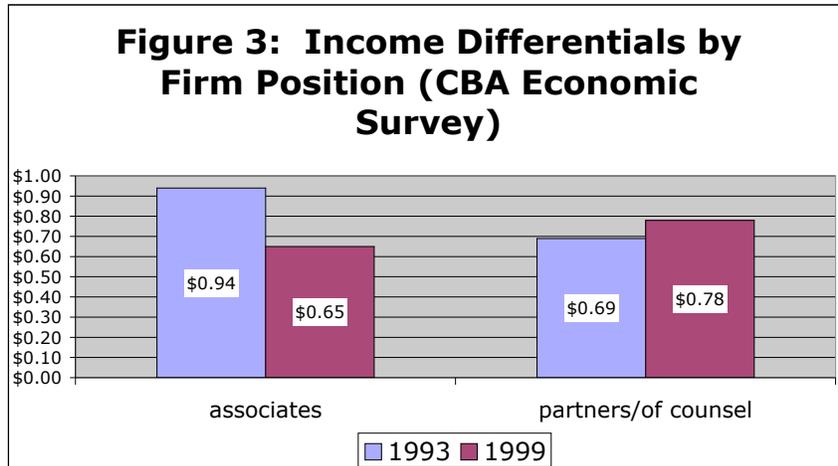
A study of two groups of University of Michigan graduates shows similar patterns in the differentials between the earnings of male and female attorneys with 15 years experience. At their fifteenth year of practice, the ratio of female-to-male average earnings for lawyers who graduated between 1972 and 1978 was 0.63. Study authors expected the gap between men and women to narrow for later years of graduates who had the benefit of increased numbers of women entering the profession. This was not the case. The female-to-male 15<sup>th</sup> year earnings ratio for graduates between 1979 and 1985 dropped slightly to 0.61.<sup>14</sup>

### **Type of Position**

Controlling for the type of position, the promise for women's advancement remains mixed. Women partners in 1999 narrowed the differential in earnings from 69% in 1993 to 78% in 1999. Surprisingly, the differential for associates grew in the six years between surveys. In 1993, the average female associate earned 94 cents to the dollar earned by her male counterpart; unexplainably in 1999 she earned only 65 cents to the dollar earned by the average man.

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<sup>14</sup> Mary C. Noonan, Mary E. Corcoran and Paul N. Courant, *Pay Differences Among the Highly Trained: Cohort Differences in the Male-Female Earnings Gap in Lawyers' Salaries*, National Poverty Center Working Paper Series, #03-1, May 2003.

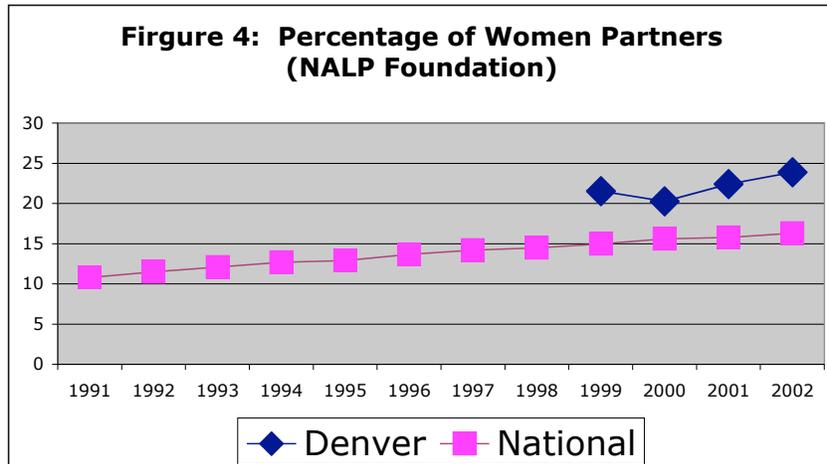


The CBA Economic Survey allowed for other comparisons not developed in this report. Women’s earnings have declined for solo practitioners/space sharers (60% in 1993 and 52% in 1999), and in-house counsel (79% in 1993 and 71% in 1999). The income gap has remained the same for government attorneys (83% in 1993 compared to 83% in 1999).

**Promotion**

The partnership rate, defined as the percentage of partners who are women, has remained relatively flat nationally, ranging from almost 11% in 1991 to 16% in 2002. The Denver data on partnership (reported by NALP) are more promising, however, only 18-21 firms reported to NALP in the period depicted in Figure 4.<sup>15</sup>

<sup>15</sup> NATIONAL ASSOCIATION OF LAW PLACEMENT, DIRECTORY OF LEGAL EMPLOYERS (2003).



As points of comparison, consider the following data from the business world. According to the Catalyst Census of Women Corporate Officers, overall, women made up 15.7 percent of senior officers of Fortune 500 companies in 2002, up from 12.5 percent in 2000 and 8.7% in 1995, when the census began. In 2002, women comprised 7.1 percent of the 496 Chief Financial Officers (CFO) and 16.1 percent of the 453 General Counsels (GC) up from 5.6 percent of the CFO positions and 13.7 percent of the GC positions in 2000.<sup>16</sup>

The EEOC recently released a study analyzing disparity in law firms of 100 or more employees that demonstrates that it may be more than a matter of time until women's representation in the ranks of partners is equal to their representation as law graduates. They conclude that women are less likely to be promoted. Using a combination of NALP and EEOC 2002 data about the number of partners and associates,

<sup>16</sup> CATALYST, CATALYST CENSUS OF WOMEN CORPORATE OFFICERS AND TOP EARNERS, (2002)

they calculated an odds ratio that a woman would be promoted to a partner in a firm.<sup>17</sup> When two groups have the same odds, the odds ratio equals one. In this case, the odds ratio was 5.330, “clearly not even odds for the two groups;” men have significantly greater odds of becoming partners than women.<sup>18</sup> Given these 2002 data, a man was five times more likely than a woman to become a partner. Note that this analysis does not take into account different qualifications such as years in practice.

Our in-depth study of 100 lawyers illustrates a similar pattern of promotion disparity. Consider the 29 associates we interviewed, all of whom had at least 5 years of experience when we first interviewed them, and who, all things being equal, should have become partners seven years later when we interviewed them again. 67% of the men were promoted to partnership, while only 46% of the women were promoted during the same time period. Considering movement to in-house as a different, yet still upward, career move one notices that nearly all the men moved up in status either in their firm or through a move; only slightly more than half of the women demonstrate that kind of upward career trajectory. (Of course the numbers are small.) Only women are represented among those who stayed at a firm without promotion or became inactive in the legal field – a clear indication of sticky floors.

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<sup>17</sup> As described by the EEOC report, the odds ratio is “based on the odds of White males being partners based on their employment as associates divided by the odds of the group of interest, for example women being partners based on their employment as associates.” They report that the average sampled firm would need to include 11 more women partners to make the proportion of female partners match the proportion of female associates. (US EEOC, Diversity in Law Firms, 2003 ([www.eeoc.gov/stats/reports/diveristylaw/index.html](http://www.eeoc.gov/stats/reports/diveristylaw/index.html)), p. 9)

<sup>18</sup> Op cit.

**Table 1: WHAT HAPPENED TO ASSOCIATES BETWEEN TIME1 and TIME2**

	<b>Women</b>	<b>Men</b>
Became a partner at their firm	18% <sup>19</sup> (n=3)	25% (n=3)
Moved & became partner elsewhere	24% (n=4)	42% (n=5)
Moved in-house	12% (n=2)	25% (n=3)
Moved but not a partner	12% (n=2)	8% (n=1)
Stayed at firm, not promoted	18% (n=3)	0
Left Law or Inactive	18% (n=3)	0
<b>TOTAL</b>	<b>n=17</b>	<b>n=12</b>

A computer model of promotion practices demonstrates how such small disparities in promotion have the potential to add up to more gross differences. The simulation created an organization with an 8-level hierarchy staffed at the bottom level by equal numbers of men and women. The model assumed that over time a certain percentage would be promoted. It also assumed a tiny bias of 1% in favor of promoting men. The researchers ran the simulation through a series of promotions. After many series, the highest level of the hierarchy was 65% male!<sup>20</sup>

<sup>19</sup> Percentage total reflects rounding.

<sup>20</sup> VIRGINIA VALIAN, WHY SO SLOW? THE ADVANCEMENT OF WOMEN (1998)

## Retention

Much of the national attention on issues of retention has focused on the issue of associate retention, however our research shows that the **pipeline of women lawyers leaks at all levels.**

Considering our oldest group of women, women who graduated from law school in the 1970s, we found that 31% of them had retired by the time we interviewed them in 2003; not one of the men who graduated from law school in that same period had done so when we scheduled our second round of interviews. This finding is reinforced by the results of the Catalyst study of 6300 graduates from selected law schools. They found that of those graduating in the 1970s, only 30% of the women law graduates, compared to 51% of the men, are still working in law firms.

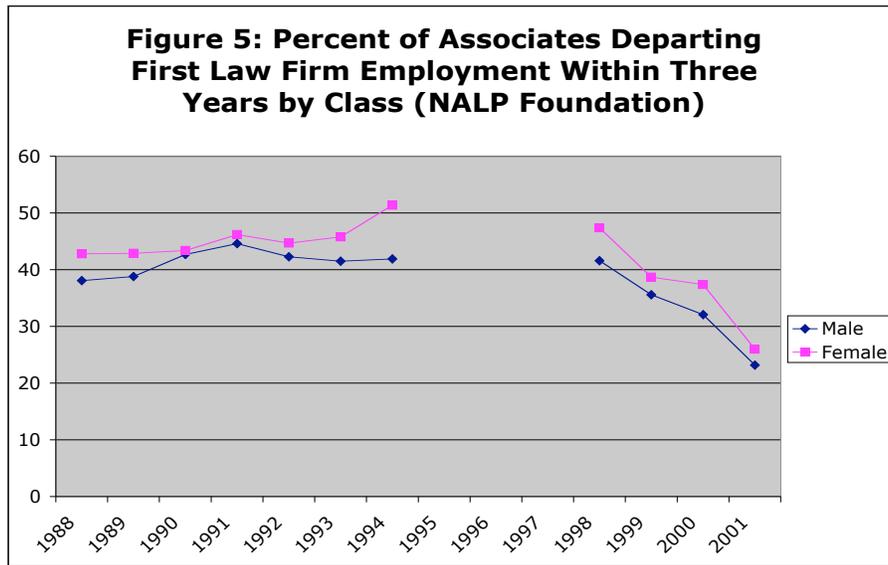
A stunning finding about women we interviewed who graduated from law school in the early part of the 1980's was that 40% left law practice to pursue other career opportunities. These are women in their late forties and early fifties, presumably at the peak of the legal careers and with substantial wisdom to offer their legal organizations. Interestingly, none of the younger women we interviewed had "opted out" of law practice to take care of their children as a recent New York Times article would suggest.<sup>21</sup>

Because we interviewed men and women with at least 5 years experience, we missed the very young lawyers who are the subject of much of the news on lawyer attrition. As demonstrated by national data (see Figure 6) the gap between men's and

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<sup>21</sup> Lisa Belkin, "The Opt-Out Revolution" NEW YORK TIMES MAGAZINE (October 26, 2003). Belkin suggests that the absence of women from top professional leadership results from a growing trend among high powered professional women to opt out for children. The article created a firestorm of discussion. Suffice it to say that it was methodologically and conceptually flawed.

women's attrition is persistent over the last decade. Women are more likely than men to leave their first law firm within 3 years.<sup>22</sup> Notice as well the effect of changing market conditions in the first years of the 21<sup>st</sup> century. Associate departures from first law firm employment dropped below 40% for the first time since 1989 and by 2001 were at their lowest levels since these data were collected.



<sup>22</sup> NALP FOUNDATION FOR RESEARCH AND EDUCATION, KEEPING THE KEEPERS: STRATEGIES FOR ASSOCIATE RETENTION IN TIMES OF ATTRITION (1998) AND KEEPING THE KEEPERS II: MOBILITY AND MANAGEMENT OF ASSOCIATES (2003).

## **Persistent Impact of Professional Trends on Gender Penalties**

While the fortunes of many individual lawyers improved since their first interview, many of the key concerns raised in *Gender Penalties* remained concerns in the second round.

Centralized management of law firms continues to dominate law practice; decisions within firms remain hidden and individually negotiated. Most importantly, according to some, the complexion of law firm management has changed. Lawyers use words like “dictatorship” or “young Turks” to describe firm governance.

When I first became a partner you voted compensation to all of your partners. You did what everyone used to call the beauty contest book. You would write these pages and pages about how incredibly wonderful you were and why you deserve more money than anyone else. And then the management committee I think would assign certain points to each person or there was a base that everybody had to get so that it wasn't possible to make no money. But then there were discretionary points that all of your partners spent time distributing among you. And I think that had worked very well for a very long time but it started breaking down. I'm not sure if it was the size of the firm or if it was women coming into the partnership. I'm not sure which it was. But it started breaking down and so you started seeing people who were really kind of getting screwed over big time. And they changed the system [so that compensation was set by the management committee]. One of the reasons that they said they changed the system was because they were afraid it would sort of disintegrate or fall into old boy-ism where it was the women who were going to be hit every time. Because you would see groups of people who would sort of pool their points and throw them somewhere. [Under the new system], the management committee had a great deal of say and control and at the same time you knew who was responsible and could hold them accountable. And to that end you always knew what everyone made [Paula Richards, Time 1].

In the late 80s, Richards began to notice gender inequities and brought them to the attention of the management committee who were “. . . appalled. They had never thought about it [gender bias] . . . they were not threatened by it.” They decided to introduce diversity training. She goes on to explain,

Did it get better in terms of compensation? For those of us at the top maybe but not for the newer female partners. It really it didn't get better. I cannot

tell you the answer. I think that the reason it did not get better for some of the younger people is because the complexion or the makeup of the management committee started to change and it started to change with the addition of younger people, people who tended to be about my age who in some ways were more threatened by the women being there than the older partners had been. And who in some ways were more competitive with everybody including the women and in some ways who saw success by a woman as somehow diminishing them. So that may have been why it didn't get fixed for everybody [Paula Richards, Time 1].

Two-tier partnerships and other "innovative" positions have become an accepted part of law firm structure in many of the medium and large firms. These "innovations" have not necessarily worked to the advantage of women. Rather, they have produced increased stratification within firms, creating a new form of "employee" lawyer without change in the traditional professional model that informs most firm cultures and compensation structures.

I love to get on my soapbox about this, so the only language I have is inflammatory. I feel like being a non-equity member is like being a serf. There is this mysterious, quote, formula for setting your compensation, but no matter how hard you work in any given year you never share in the upside of that year. You may be rewarded in the next year, and you may not. You share all the downsides. You have all the liability, you have all of the responsibilities for keeping track of your own stuff, supervising others, bringing in practice development. On the other hand you are a member of a firm that consistently under budgets revenues by twenty percent a year, who consistently over budgets overhead by twenty percent a year. So you're taking it in the shorts at both ends. You are always paying the higher overhead number which helps determine your compensation and you are never sharing in the extra twenty percent at the end of the year. So I just hate it. I think that smart people should never do that, it's a bad deal. But it's just one of the steps along the way, and by the time you get there, you've worked so hard. [Mary Reeve, Time2]

While both men and women occupy these positions, they are more likely to become traps for women. Despite the fact that most large firms offer "part-time" programs, very few lawyers take advantage of them.<sup>23</sup>

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<sup>23</sup> See, WOMEN'S BAR ASSOCIATION OF MASSACHUSETTS, MORE THAN PART TIME: THE EFFECT OF REDUCED-HOURS ARRANGEMENTS ON THE RETENTION, RECRUITMENT AND

Time to partnership is still 7-9 years in most firms, but some firms now have stretched partnership decisions to 8-10 years. Many attorneys are starting families at the critical moments in their careers when partnership decisions are looming. Given traditional gender roles, this is likely to have a greater impact on women's careers than on the careers of their male counterparts.

Changes in the market for legal services continue some of the gender penalties revealed in our earlier report and have brought new challenges to regional law firms as routes of opportunity for women. In the period between the first and second interviews, the economy went from the peak of a record-long boom to what many define as a recession. Several trends are noteworthy.

As a result of competition from the dot.com businesses and lawyers who serviced them, the salaries of law firm associates increased dramatically, arguably way ahead of the market. This put increased pressure on the leverage systems of large and medium sized firms, particularly regional firms. More senior lawyers in these firms report finding themselves working more hours and spending even more time on client development at a point in their careers when many expected they would be able to ease up on or at least control the pace of their practice. While men often responded to this inconsistency between personal expectations and changing firm demands by moving to new practice settings that required little or no leveraging, many women opted to retire early or move out of law to start a new career.

Lawyers report that the number of associates hired directly out of law school in large and medium firms has declined significantly, again with potentially different impact

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SUCCESS OF WOMEN ATTORNEYS IN LAW FIRMS (2000); JOAN WILLIAMS AND CYNTHIA THOMAS CALVERT, BALANCED HOURS: EFFECTIVE PART-TIME POLICIES FOR WASHINGTON LAW FIRMS - (FINAL REPORT, 2001).

on men and women. Lateral hires who can bring a book of business or law specialty with them have become more prevalent in larger firms. Although quantitative data are not yet available, several lawyers have observed that women are not well represented among lateral hires. Barbara Kray, an emerging career lawyer, describes a situation where the firm brought in two male laterals. She was surprised to learn that they did not come into the firm with their own books of business, as she thought that this was a necessary requirement.

I have a bone to pick with that right now. We have hired some laterals who actually have more experience than I do but they are from out of state and they don't have any of their own work. And they are men. My bone is that the head of the department is giving work to them because they wouldn't have work on their own as opposed to giving it to me because he figures oh she'll get her work -- one of her clients will need something or she has other means of getting it. I do think that's going on or that's my perception [Barbara Kray, Time 1].

She notes that she could have used the work.

If women continue to have less access to client development either because they do not have access to business generating networks or because they are perceived to have more difficulty generating business and are not elevated to positions and networks that allow them to realize their potential, they will have trouble making lateral moves.

Finally, law firms have not been immune to the changing nature of careers generally. "Non-performance-based" means of career advancement, including movements like lateral transfers and changing companies, as well as instrumental uses of social relationships with coworkers, supervisors, or other organizational mentors have become acceptable and routine.<sup>24</sup> Young lawyers perceive and operate under "new realities" in terms of professional advancement.

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<sup>24</sup> Audrey J. Murrell and Eirka Hayes James. "Gender and Diversity in Organizations: Past, Present and Future Directions," *SEX ROLES: A JOURNAL OF RESEARCH* (2001).

When I went to law school people tried to get clerkships with judges, and then they tried to go into the biggest named firm they could. There were always a few people who did other things but that was the whole focus and I'm not sure that gets you where you want to go anymore or you need to do it. I mean I think there are different ways to get ahead.

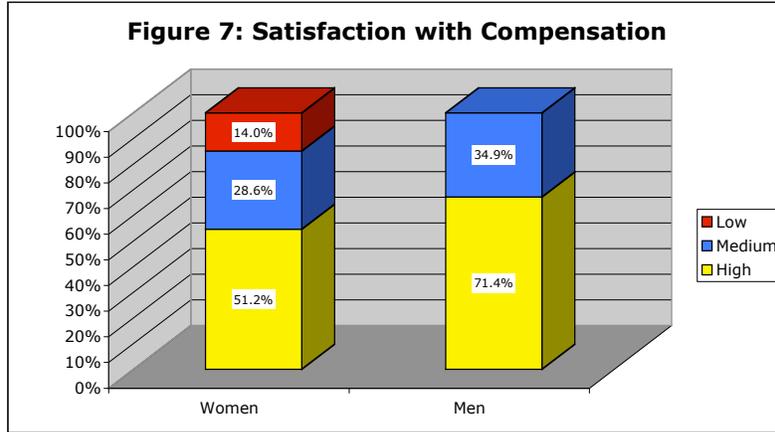
When I went to work we really couldn't switch among big firms. It was not accepted. I suppose somebody could come up with some example but basically you left and you went to something different. It would be like raiding, it would be inappropriate . . . It was one thing to compete for clients and what not, but you didn't steal. Whereas now you can go from one firm to another and nobody thinks about, and partners do it. So when I came out of school I think you were more making a choice and eliminating others. Your decision was more important because you were closing off certain doorways [Connie Newton Time1].

### **Choices and Constraints**

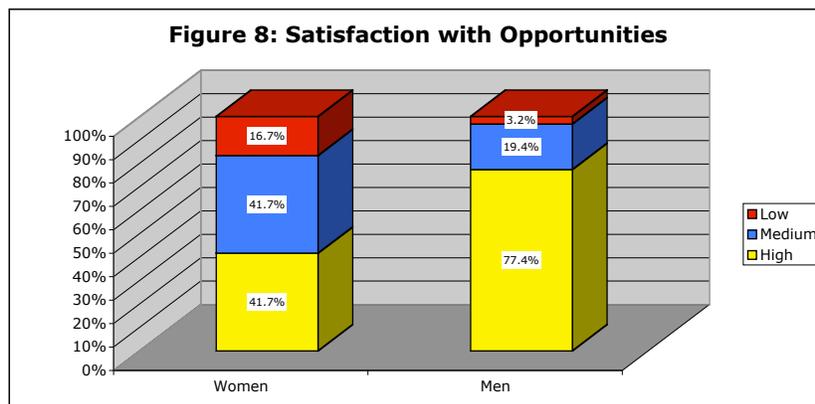
Although men and women report the same high level of overall job satisfaction, women tend to be more dissatisfied with particular aspects of their work such as compensation and job opportunities.<sup>25</sup> The survey distributed to each lawyer interviewed included questions that tapped the multiple dimensions of professional practice.

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<sup>25</sup> This finding is consistent with the results of the Chicago Lawyers Project. Although there was no difference between men and women in overall satisfaction, significant differences emerged when lawyers were asked about their satisfaction with particular aspects of work. Women are less satisfied with level of responsibility, recognition for work, chances for advancement, organizational policies and administrative, salary and control over amount and manner of work. (John P. Heinz, Kathleen Hull, and Ava A. Harter, "Lawyers and their Discontents: Findings from A Survey of the Chicago Bar," 74 INDIANA LAW JOURNAL 735 (1999))

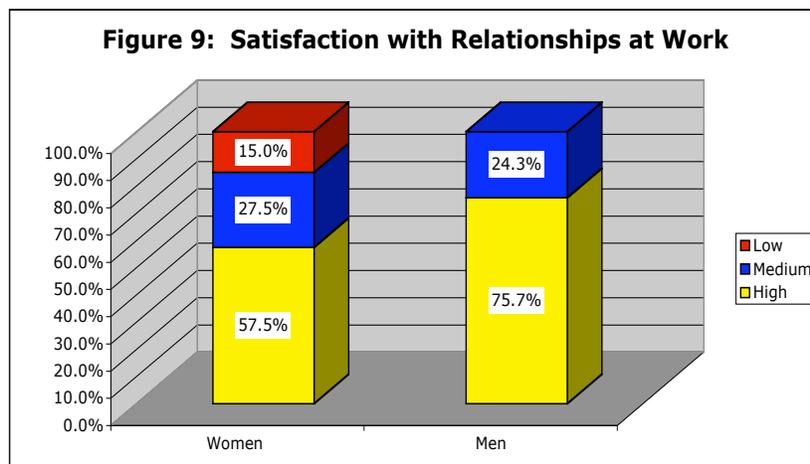


Seventeen questions about lawyers' satisfaction, including satisfaction with the tasks they perform, the intellectual challenge of their work, opportunities for advancement, and control over work, to name just a few, were asked. Men and women reported statistically similar levels of satisfaction in all but two areas: opportunities for advancement and compensation (including salary, benefits, and bonus, if applicable). As Figure 7 shows, women are significantly less satisfied with compensation; 14% of the women and none of the men responded at the bottom of the seven point scale.



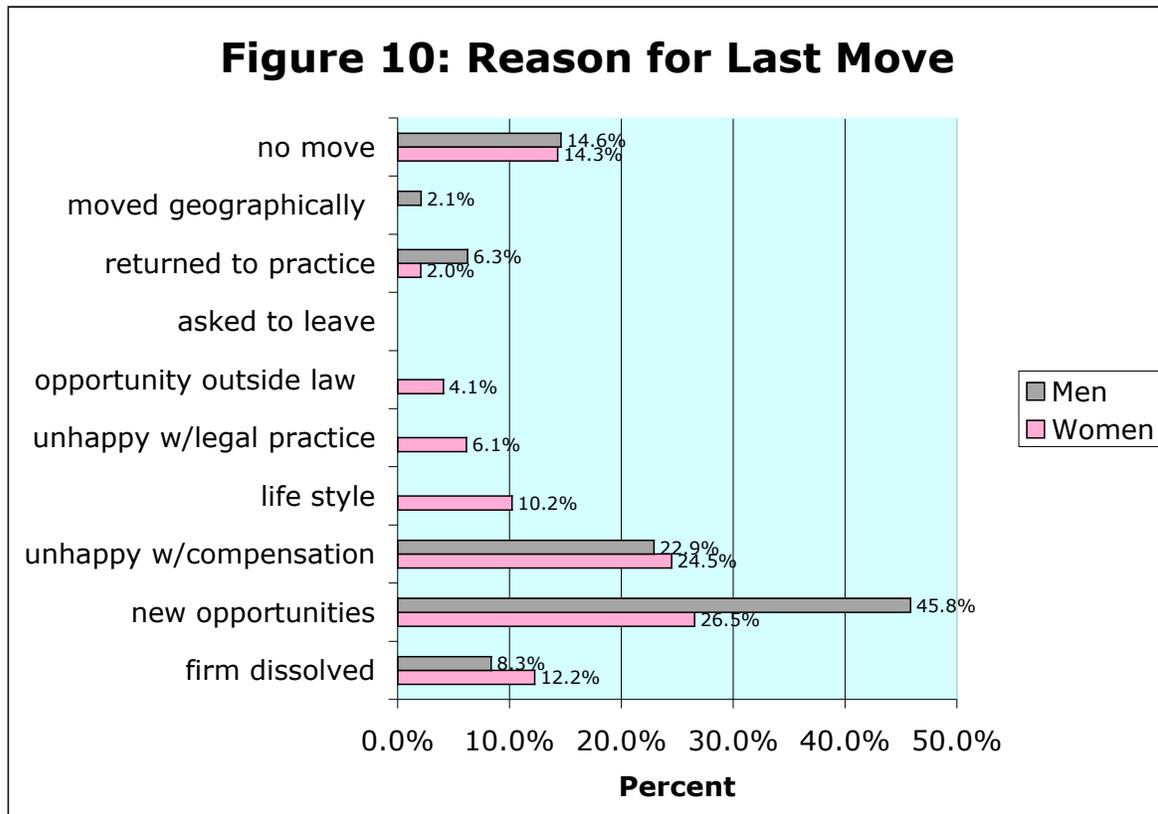
Fewer women were satisfied with the opportunities for advancement and compensation. Figure 8 reveals that only 41.7% of the women compared to 77.4% of the men expressed high levels of satisfaction with career opportunities.

Although the difference between men and women in other dimensions of satisfaction did not reach statistical significance, the trend was towards less satisfaction by women. Most notably, as shown in Figure 9, women expressed less satisfaction with relationships at work.



To get a better sense of how satisfaction might relate to career trajectory and compensation, the reasons for each career change reported in the interviews was analyzed. These are depicted in Figure 10. Our study found that women tend to report career changes as a result of their dissatisfaction with compensation, a “dysfunctional”

firm, or their interest in an alternative lifestyle. Men tend to characterize changes in their careers as the result of “new opportunities.”<sup>26</sup>



Systematic differences in why men and women move both reflect and reinforce their different gender status inside and outside the practice of law. It is perfectly [gender] appropriate for women to cite “family” or “lifestyle” as the reason they are leaving their firms. Indeed, some women reported that they did just that rather than express their dissatisfaction and risk closed doors in their future. Similarly, men may find

<sup>26</sup> These findings are interesting in combination with a finding from the national study of lawyers conducted by the NALP Foundation that partnership was an incentive to stay in their current position for 80.6% of men and 60.5% of women in large firms (101 or more lawyers). Partnership was an incentive to stay in their current positions for 82.9% of men and 63.8% of women in smaller firms (100 or fewer lawyers). NALP FOUNDATION FOR RESEARCH AND EDUCATION. PERCEPTIONS OF PARTNERSHIP: THE ALLURE AND ACCESSIBILITY OF THE BRASS RING. (1999).

it [gender] inappropriate to cite family or lifestyle as the reason they leave, preferring instead to focus on their new opportunities. Both responses, appropriate from their gender perspective, tend to reinforce the stereotypes of women's commitment to the practice of law.

Both women and men described tension between work and personal life. Both spoke about their need to "have a life" and the personal costs of overwork. But the push/pull of career and family was experienced quite differently; the constraints they faced and thus the "choices" they made were embedded in the gendered nature of both work and home. Women and men resolved these painful dilemmas quite differently that pushed women (and not men) away from traditional private practice and leading to disparate impact on compensation. Faced with **both** conflict within the work organization and life changes outside the organization, women partners, not just young women lawyers with young families, took on new career opportunities away from private legal practice or in some cases chose to retire. Men facing work-personal life dilemmas, tended to reconstitute their practices in ways that enabled them to get more control over their work, but they remained in the practice of law. To what extent these decisions reflected gendered choices (e.g. a woman's willingness to give up higher incomes to engage in something worthwhile) or gendered opportunities (a man's professional network) is hard to determine precisely. Whatever the reason, the impact is to move women away from more lucrative compensation and reinforce gendered expectations about commitment and competence.

Equally interesting and with some consequence for compensation are differences between men and women in how they make their moves. Men's stories are replete with examples of how they were thinking about making a move when coincidentally a friend

called and asked them if they might be interested in a change. They appear willing and able to capitalize on friendship networks. A typical “man’s story” was offered by William Crawley, now a mature career lawyer. Crawley was extremely unhappy with the direction his firm was taking. When “things got bad” at his firm, he approached “an old college buddy and an influential partner at ABC firm who had tried to win me away before.” He met with them and shortly thereafter decided to join that firm.

Women’s stories of career movement, by way of contrast, frequently mention clients’ repeatedly offering them in-house positions or other lawyers leaving and taking them along. Unlike the men, women in our study relied more heavily on those with whom they worked to provide them with new opportunities. These were people who know and appreciated their performance record, rather than friends who might only know their potential.

Jennifer Warden decided to leave her partnership at a medium sized firm to have more time with her family.

One client who’d been fathering me, not fathering me but asking me, inviting me for a while to join him said, “Whatever you want. Whatever you want we’ll do. You structure the deal. You set it up however you want to do it.” So it’s too good to be true, which of course it was too good to be true. So what we’ve worked out is a little bit more than I want to work but it’s still a pretty good deal [Jennifer Warden, Time2].

## **The Career Trajectories of Men and Women**

The in-depth interviews we conducted with 100 attorneys over the two phases of our project enabled us to develop extensive career histories within the context of individual life histories, in particular the interweaving of career and family, as well as within broader historical events, i.e., legal and social changes that influence work structures and opportunities. Few studies of the profession examine how careers unfold over time. Instead, they develop “snapshots” of legal careers, analyzing short segments. Moreover, most studies of women’s careers focus on how they depart from the masculine norm rather than considering women’s careers on their own terms.

Looking at women’s careers we noticed distinct “generations” according to when women entered legal practice. Using the generational differences of women lawyers as our point of reference, we grouped the lawyers we interviewed accordingly.

A reminder here: When we picked our sample to interview, we picked them to allow comparison by their position: senior partner, associate, of-counsel. The idea of using generations as a point of comparison developed out of our analysis that revealed important differences that were masked using firm position as a point of reference for our comparison of men and women.

Several general trends are noteworthy.

**The careers of women lawyers “map” differently than those of men and in ways that may continue to produce overall pay disparities between them.**

Women moved more than men, women moved earlier than men, women were more likely to move downward than men. 46% of the women we interviewed made

**Table 2: Generations**

	<b>Women</b>	<b>Men</b>
<b>Grand Old Men</b>		7 (14.6%)
<b>Mature Career</b>	16 (32.7%)	21 43.8%
<b>Peak Career</b>	10 (20.4%)	6 (12.5%)
<b>Emerging Career</b>	23 (46.9%)	14 (29.2%)
	49	48
missing	3	

their first firm move by the second year of practice. Only 14% of men moved at such an early point in their career. Instead, we find that men were likely to make their first move around the fourth or fifth year of practice. This difference suggests that women made decisions to leave jobs long before firms made decisions about potential partnership, while men's first move appears to correlate more closely to the partnership decision. Indeed, it appears that women made decisions about their law firm job sometimes even before our analysis of law firm practice suggests they would have received meaningful feedback on their future potential within the firm. By the fifth year of practice, 71% of the men made moves and 74% of the women had made a move. By this point in a lawyer's career, he/she can assess their "fit" within the firm and should have received at least informal cuing about their progress on the track to partnership. There was no evidence that movement was associated with age cohort or time spent in

practice. That is, these patterns appear to be equally true of lawyers who entered the profession 15 years ago or today.

Not only did women move earlier than men, they show slightly higher rates of movement than men.<sup>27</sup> We classified 53% of the women in our sample as having high rates of movement - movement that exceeds the sample median rate of 1.11 moves per 10 years -- compared to 41% of the men.

	<b>Women</b>	<b>Men</b>
No Movement	5 10%	6 15%
Below or at Median	18 37%	18 44%
Above Median	26 53%	17 41%
TOTAL	49	41

Sample Median = 1.11 moves/ten years

**Important generational differences among women (not as obvious in the career histories of men) make it difficult to create and sustain a “critical mass” or momentum for change.** The women who were the pioneers in law define their early careers in terms of being one of the boys. They believed that for women to

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<sup>27</sup> We attempted to normalize the differences in practice by calculating a rate, much like what is done when we calculate crime rates to normalize the effect of population. We calculated movement rates by dividing number of moves by the number of years in practice and multiplying by 10.

succeed, their gender/sex needed to be invisible. In contrast to the younger woman who brought her children to the office to “show them off” (Elizabeth McConnell), more senior women, if they had children at all, tended to hide them from their co-workers (Connie Newton). The new realities for women are recognized and appreciated in this commentary from one senior woman about another senior woman who doesn’t “get it.”

She came to work a year ago and has been assigned to work with him. She’s really really kiss ass and I’m not at all. But she is much more concerned with being one of the guys than I think I ever was and the other women in the firm really resent it because at the time when I started there was no alternative, you were either one of the guys or you weren’t there. You don’t have to do that now and yet that’s how she is. So, a lot of the other women really resent her behavior and her actions [Sher Sherwood, Time1].

**Despite some generational differences, the similarities in the career histories of women lawyers challenge popular perceptions that a woman’s successes (or failure) is the result of something “unusual” or unique.<sup>28</sup>** One mature woman lawyer who has retired notes that many senior women “don’t think their story is retraceable.” This is not their fault, she says. They have been told, “you got to do what you want because you’re so special.” This fuels women’s perception that their success is a matter of luck. “It just happened for me, so I can’t do that for someone else.” (Connie Newton)

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<sup>28</sup> When CFO Magazine interviewed female chief executive officers in 1995, most prefaced their interviews with the comment “I did something unusual.” ( Laura Walbert. “*Uncommon Women*,” CFO, 1995 pp. 34-40 cited in Mary Blair-Loy, “*Career Patterns of Executive Women in Finance: An Optimal Matching Analysis*,” 104 AMERICAN JOURNAL OF SOCIOLOGY 1346 (1999).

## **Grand Old Men**

The “**Grand Old Men**” of the study were lawyers who graduated from law school before 1969. None of the women interviewed fell in this category. These were the most traditional lawyers who typically made few moves in their careers and all report that they were managing or founding partners of mid to large firms at some point in their career. The average age of this group was a young 65. Half have now retired.

## **Mature Career Lawyers**

We define the lawyers who graduated from law school between 1969 and 1979 as “**Mature Lawyers.**” The mean age of the women in this group was 56 compared to 54 for the men. The median years in practice for this group was 27 for the women and 31 for the men. A significant number of lawyers in this cohort began their careers in some type of government work. This was not true for any other cohort in our study. It is not surprising that so many of the mature career women found their first job in government as it was one of the few options available. One mature woman suggests that she landed her first job in government after striking out with private law firms because the government sector was more “tuned into trying to have some sort of affirmative action plan.”

I went around to probably 15 plaintiffs firms armed with this letter from these great plaintiffs lawyers. You know what? Only one of them offered me a job. ***I have thought about that ever since.*** I bet if I had been a male with those kinds of letters and that much experience somebody would have hired me at a much better salary [Jana Castle].

We cannot explain why a government start was not found to be the case for the careers of any of the other cohorts of men.

The retirement of several women is a noticeable feature of this cohort. Women offered different reasons for their decision to stop practicing law, but in each narrative we hear the woman's desire to "cut back" or change the dimensions of her practice. Retirement, rather than some new arrangement within a law firm is their "choice," in part because avenues within law are closed to them and, in part, because they have "lives outside of law." Interestingly, many of these women continue to do law work as volunteers, or on contract for some specified project. When he heard about this group of incredibly talented pool of women, one thoughtful lawyer pondered whether they were a pool of talented lawyers who could be called in to cover when more junior lawyers, typically but not necessarily women, took time off for their families.

Several men in this cohort have made moves away from practices that required them to keep other [more junior] lawyers busy, Like women, they too are frustrated and burned out. What is different from the similarly tired and burned out women is that on the one hand, they are able to imagine and implement new possibilities for their careers. They do see "happy, wonderful, professional families down the street that welcome them with open arms." On the other hand, they cannot easily imagine their lives outside of law. These differences are developed in Table 4.

Women who had trouble finding "fit" earlier in their careers continued to do so. Consider this, perhaps extreme, example of searching for fit. Sally O'Hare began practicing in a legal aid office, moved to a high level government position, then to a large regional firm, and then to a national practice, and from there to a small local firm, back to a large regional firm and finally is of-counsel to a budding new practice.

While a few of the mature women reported having held leadership positions within their firms; more than half of the men had been managing or founding partners

of their firms. To the extent that women assumed leadership positions, they did so often as the “token woman,” champions of gender neutrality typical of this generation of pioneer women lawyers. Encouraged to fit in rather than make waves. Although she never served on a management committee, one senior woman recognized that administrative work might have value in furthering one’s career. She also observed that women who served on these committees rarely looked back.

I mean it was an honor. They were going to be the ones who, just like me, were climbing the ladder. And you don’t upset the applecart, you don’t bring in a contrary way of thinking about things, unless you are a really, really strong person. And there were women on there that were just into their careers. I was guilty of it too, of sort of riding this wave. You are doing very well and you aren’t sensitive to other peoples issues. You don’t have the foggiest idea because of course if your doing so well, why can’t everybody else do well? And you haven’t gotten to the point where you have limitations. So what do you do? And think about the guys here, they have women on this now and they are looking to bring in some of the contrary considerations. I don’t know how to say it. I think we bring it on ourselves a little bit. And until you have a couple of things that bump you off the bubble, until I really had to fight a different fight I didn’t have the foggiest idea [Darlene Ritchie, Time2].

Both the career value and the tendency to become “one of them,” was cited by another senior woman who did serve on her firm’s executive committee.

I went from being kind of this unhappy partner feeling a little bit ignored and other things, and then all of a sudden you’re on the executive committee. And it’s so funny, it’s kind of, I always call it the Patty Hearst syndrome. But it doesn’t take long before you start to kind of identify, with the group you’re now with [Sue Grafton, Time 2].

## TABLE 4

### MATURE WOMEN TALK ABOUT "CHOICE"

It is not a place I wanted to be, and then I thought well, do I want to practice at all? And I didn't. So all these things came together. I was happy to leave this place and I wasn't convinced there was another lovely, wonderful, warm, happy professional family right down the street that would just welcome me with open arms.

I really wanted to take some time off, and there was, there was no way to do it [at my firm].

It was really not a decision that was motivated by anything going on at the firm at the time. I would say the general business climate, but I'm sure you hear that from others. My husband was retired and I was going to keep working and then I thought how fun is that? I go to work all day and he plays around. I had witnessed the aging process of several attorneys in the office during the course of my career. I have long vowed that I really would never end up still practicing law past the point at which I was doing the best possible job that one could do. People sometimes do that when they don't have a lot of other things in their lives. You know there's a lot of things I'm interested in. I had a very long list of things I was going to do when I retired.

I was just burned out. I wanted something different. I didn't want to be an attorney anymore. The other reason that I quit is one of my parents died and there was family stuff to do. So I have been very busy.

### MATURE MEN TALK ABOUT "CHOICE"

The idea of "more" gets a little boring or even obnoxious when you're approaching 50 and productivity is measured by the hour.

More means more hours, not always an attractive goal, not always your personal goal, but definitely the firm's goal. So, looking at an erosion of my own clients, an erosion of my position within the firm, a desire on the firm's part not really to have a lot of 50+-year-old partners hanging around getting retirement, a desire on my part not to be in a situation where that was generally the way you were perceived and dealt with, not a real pleasant sort of a warm and fuzzy feeling, recognizing I had perfectly good options moving across the street and practicing with people that were in the same position, I know I can generate plenty of clientele to pay for myself. I ran the following risks: I'd have too much work and too much money, [or] not enough work and plenty of time to enjoy it.

Up until a few years before they depended on me. Like it or not they had to listen to me and be influenced by what I said. [After the firm became much bigger], I became much more of a little fish in a big bowl, where, before I'd been one of a few big fish in a small bowl, or whatever. So, even the things that I didn't like before, I was able to control or to change. But I no longer had the ability to influence things nearly as much. I was either going to have to accept the things the way they were going to go or not. I wasn't prepared to accept things the way they were going, so I left. I made a very deliberate choice not to become a partner [at my new firm].

[On my own] I have a chance to get closer, to clients and I'm enjoying it. I'm their lawyer. I have my own treadmill. I'm still trying to make this grocery bill but it's a little less overhead problem. I'm not trying to support other people, and I'm not trying to grow. I'm trying to maintain a level that I can comfortably handle myself. And you know if I finish with you all and wanted to go play golf this afternoon, and work tonight, I don't have to ask anybody.

Women who take on these roles particularly as the first and/or token woman resist being categorized as “the women’s voice.”

My role is much broader than [being the woman’s voice]. I think that anyone has got to be concerned about the finances of the firm, how the firm runs, women's issues, I mean all issues. So, you know you're a woman and presumably you have a sensitivity to women's issues but on the other hand the role is simply not to provide input on issues related to women. It's just having a woman on the Executive Committee. It's been great. The wonderful things about it are that you find what everyone is doing which is great because people are doing fascinating [Joan Gabel, Time2].

### **Peak Career Lawyers**

The third cohort of lawyers, “**Peak Career Lawyers**,” graduated from law school between 1980 and 1984. The average age of women in this group was 51, the average age of men was 48. Peak career women practiced an average of 21.5 years, peak career men 22 years. Women in this cohort who pursued a traditional career path have hit glass ceilings – they have either gone as far as they want to go given the structure of work or they have been blocked from further advancement. Some have responded to their frustrations at work by moving out of legal practice, others, like some of the mature men, have set up as solo practitioners.

Joy Drew was an extraordinarily successful lawyer in a large firm who no longer practices law . She explained her “choice” to us

In an environment where you’ve got coastal firms moving in and a lot less loyalty from clients, I kind of looked at that and said, “Life’s too short.” Because it was never about the money for me. . . I mean the money was nice, don’t get me wrong. It’s certainly not something I think you would do for much less money, you know, I would not practice law for what I’m making now. So, I don’t want to say it’s not at all about the money, but the money wasn’t worth it any more. It just wasn’t worth it any more. Despite the fact that my compensation had been growing tremendously [Joy Drew, Time2].

Sandra Boxwell began her legal career as assistant general counsel for a Fortune 500 company. She stayed in this job for more than ten years. As the company began downsizing and she turned 40, she began to think about going into private practice. She joined a national law firm with an office in Denver. She negotiated to enter the firm as a partner. Unfortunately the firm imploded after 1 year. She left with a number of lawyers from the firm for another national law firm with a Denver office. She entered the national firm as "of counsel," since the firm was only willing to take in 2 of the group as lateral partners; both were men. Two years later she became a partner. By the time we interviewed her a second time, Sandra had been practicing law for 20 years. Given her career progression and savvy during the first interview, we would have predicted that she would be a successful senior partner in the firm she joined. However, shortly before we interviewed her the second time, she quit the firm and opened a solo office. She described her choice to leave as motivated, in part, by her inability to get the resources she needed to get her work done.

I certainly was one of the higher billing partners that period of my time there. But it was still hard to attract associates to work with me because I was never one of the partners who was yelling at them that they had to do my work. I was never willing to say, "you have got to work, you've got to get this done and you've got to get this done now. And no, you cannot work on his work. You've got to work on my work." It was very hard for me and it got to be not worth the effort to try to put out what I needed to put out to get the associates to stay on my work. They would tend to put my work down and pickup somebody else's work. Take up my work again. My clients were getting pissed off. It got to be frustrating. I think the associates liked me. It certainly wasn't a popularity contest. It's just that that's the way their bread is buttered. I'm not complaining. I mean, it was my turn. I had to be the head of the hiring committee, which meant that I had to interview all these same people who wouldn't work for me later and to persuade my partners to have interviews with them so that they could ultimately go and work for them. These kinds of things began to happen to me [Boxwell, Time2].

This cohort is noteworthy as well for examples of women who took a less traditional path and are now finding success at their firms. Judy Findley's career story represents this trend. She began her career at a large regional firm. After six years

practicing at a firm during which time she had two children, she decided that she needed more flexibility. She began working "part-time," set hours each day. She subsequently decided that she wanted to be closer to home and moved twice, both times to small firms. Although she was happy at these firms, they proved to be less financially stable than she needed. She returned to the large regional firm on a part time arrangement.

I proposed that I would come back on a non partnership track and this time it was called senior counsel. By this time my girls were [old enough] so I didn't really care about a scheduled part time like 11:00 to 5:00. I just wanted less pressure to bill hours.

She quickly found she was billing lots of hours. After two years, at which point she was billing a full-time load, she decided it was silly not to go back on partnership track, an opportunity that had been discussed with her ever since she returned. She became a partner and shortly thereafter joined the firm's upper management.

We had very few "Peak Career" men. Thus, it was hard to identify a career trajectory pattern for them, other than to note that they were more likely to remain in private practice and to look like the mature men who preceded them.

### **Emerging Career Lawyers**

The fourth cohort, "**Emerging Career Lawyers**," includes attorneys who graduated from law school after 1985. The median age of women in this group was 45. The median age of emerging career men was 40. While there was some movement out of law by women, what distinguished this cohort was the entrepreneurship of some of the women who spun off from larger firm practice to create or join their own small firms. This was not without some financial risk to them. Emerging Career Men moved into different practice organizations as well, but unlike the women their movement

tended to be from large to medium size or national law firms with promising new, sometimes entrepreneurial, opportunities. The career stories of Susan Fry and Bradley Harris illustrate the gender difference we saw between the career trajectories of Emerging Career lawyers. She saw opportunities in striking out on her own; he saw opportunities in starting a new practice group at a large national firm.

Bradley Harris began his career at a large regional firm. On an upward trajectory throughout his tenure as an associate, Harris became a partner during his eighth year at the firm. Shortly thereafter he went through what he defined as his “periodic malaise” questioning whether he wanted to practice law anymore. Pondering his future as a lawyer didn’t seem to be the consequence of any particular event, just something that happens from time to time. He hadn’t resolved his career issues when a friend from a national firm called to recruit him to start up a new practice group at that firm. It didn’t take him long to recognize that that “the short, medium, and long-term opportunities for me would all be better at this shop.” He made the “difficult” decision to leave and join the national firm.

Susan Fry began her career at a large out of state firm. She worked there for two years and then moved to another state “for a guy.” She landed in a smaller local firm. She was there for less than a year because her husband got a job in Colorado. She joined a large regional firm in Colorado, the same one where Harris started, but for her it was “the most unfriendly firm I had ever worked at. By the time I left, there were partners who didn't know if my job was to work in that firm as an attorney or clean the toilets.” She was “pigeonholed” into a practice she came to hate and which did not offer her great assignments. She left the large firm and moved to a boutique. She also was divorced. She stayed at the boutique firm for 8 years during which time she remarried

and started a family. The boutique firm began to disintegrate. She left after she finally ran a big case on her own.

For the first time in my entire career I was the lead attorney. The ball finally rolled my way. Thirteen years, but finally I was the one who had to make the decisions on a daily basis. Go to the court hearings, talk to the client. It was me. And after I developed that for a year, I said that's it. Now's the time.

With a colleague, she established her own firm. Her practice is no longer "pigeonholed." She has a great variety of cases and the time to market for more. Her own firm offers less pressure and more time for her family. As for money, she reports "we're making what a first year associate in one of the big firm's downtown is probably making," but I'm much happier."

### **Explaining Difference**

Many, if not most, law firms have moved toward compensation systems that reward productivity and performance. Many have taken great pains to introduce objective measures of productivity designed to reduce the subjectivity of compensation and to value performance. (See the discussion on page 18.) Lock-step models that valued tenure and experience have been superceded by criteria about performance and productivity -- billables, collectibles, etc. Interestingly, the compensation schemes changed just as women were entering the profession.

Gender intervenes in two ways that challenge the objectivity of "productivity" models and the fairness associated with "objective" measures of performance. The first way is captured in models of income disparity like the recent GAO study<sup>29</sup> that suggests

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<sup>29</sup> GENERAL ACCOUNTING OFFICE, WOMEN'S EARNINGS: WORK PATTERNS PARTIALLY EXPLAIN DIFFERENCE BETWEEN MEN'S AND WOMEN'S EARNINGS (COTOBER, 2003).

that half of the 40% of the gap between men and women's earnings can be explained by barriers to women's investment in human capital (specifically hours worked and training), depreciation of human capital due to career interruptions, and by women's concentration in occupations or segments of occupations that are lower paying and less desirable, largely so, it seems, because women occupy them. The second way gender matters is that largely "unexplained" consequence of simply being a woman in a work world that tends to be organized around men's lives.<sup>30</sup>

Joan Acker's work exploring a theory of gendered organizations demonstrates that a workplace organized around men's lives would nearly always disadvantage women.<sup>31</sup>

To say that an organization ... is gendered means that its fundamental structure of advantage and disadvantage, exploitation and control, action and emotion, meaning and identity are constructed through, and in terms of, distinctions between male and female, masculine and feminine. Gender is not an addition to ongoing processes, conceived as gender neutral. Rather, it is an integral part of those processes, which cannot be properly understood without an analysis of gender.<sup>32</sup>

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<sup>30</sup> Looking at work experience, education, occupation and industry of current employment, and other demographic and job characteristics, the model can explain about *half of the difference*, leaving an unexplained wage gap of approximately 20 percent. Of the 24-percentage-point difference in earnings that the model does explain, about two-thirds is due to women and men having different characteristics – for example, men work more hours than women (hours of work is the single largest factor explaining earnings differences, not surprisingly). One-third is due to women and men receiving different rewards for the same characteristics. In fact, in the GAO model, most of the difference in rewards is not associated with any specific worker characteristic, but rather with the fact that women and men generally work in different labor markets – they work in different occupations, and the jobs women work in pay less than the jobs men work in, for reasons researchers have yet to fully document. INSTITUTE FOR WOMEN AND POLICY RESEARCH. NEW GAO REPORT FINDS CONTINUED, UNEXPLAINED GENDER WAGE GAP; WOMEN'S PROGRESS OF 1980s UNMATCHED IN SUBSEQUENT YEARS. Release dated November 20, 2003.

<sup>31</sup> Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, in *THE SOCIAL CONSTRUCTION OF GENDER* (J. Lorber and S.A. Farrell eds., 1991).

<sup>32</sup> JOAN ACKER, *DOING COMPARABLE WORTH: GENDER, CLASS AND PAY EQUITY*, at 17 (1989).

In a radical statement of this general hypothesis, Catherine McKinnon notes that,

“. . .virtually every quality that distinguishes men from women is already affirmatively compensated in this society. Men’s physiology defines most sports, their needs define auto and health insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military defines citizenship, their presence defines family, their inability to get along with each other- their wars and rulerships- defines history, their image defines God, and their genitals define sex.<sup>33</sup>

Gendered organizations silently create job descriptions, evaluate work performance, and define work rules around the “cult of domesticity”<sup>34</sup> -- men as ideal workers; women as caregivers.

### **Gender Constructs Opportunities for Productivity**

Opportunities to be productive lawyers are often the result of the assignments that are given and relationships forged among lawyers and potential clients. Certainly, individual initiative is a factor when considering a young lawyer’s efforts. But so is the distribution of assignments. The distribution of assignments is socially constructed in a world where gender stereotypes still operate. Thus, when an assignment is not given to a woman because someone thinks she won’t want to travel, or because someone thinks the client is too tough or too sexist for her to handle, or simply because she is pregnant, that woman is not given equal opportunity to be productive.

Susan Fry described a situation when a senior (woman) partner assumed that her male colleague would be available for travel and didn’t even think to ask her, even though she was the one working the case.

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<sup>33</sup> CATHERINE MCKINNON, FEMINISM UNMODIFIED, (1987).

<sup>34</sup> JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT (2000).

We did a lot of work for BIG CLIENT and on a typical Friday afternoon at 4:00 pm, BIG client had an operational accident. I got this assignment to analyze every potential aspect of liability. I worked all Friday night, all day Saturday, Saturday night pumping out this memo and the senior partner flew to the scene. On Saturday night she called me at the office and asked me for the phone number of a junior guy associate in our section who was one of the good old boys. She wanted him to fly out to the site of the accident, to drive the work with the government guys and try to figure out what was going on. I just didn't say anything at the time. I remember giving her the number and calling this guy and telling him basically get your bags packed and go out to the site. I hung up the phone and I just started crying. I was working all weekend on this and yet when it came time to do the fun stuff, I wasn't thought of to go out there. I could do it all and I was not called. The next day I decided I had to complain. . . She called me and basically apologized and said, "well, you know I just knew this other guy's availability and I wasn't sure." It was really like I'm sorry, but you know she is not. She wanted to do this great mentor women thing but then she never really pulled it off when it came time to hand out the work and do all that kind of thing [Susan Fry, Time1].

Subtle bias in the way cases are assigned may make it difficult for women to perform in ways that get them noticed by their more senior colleagues.

We have a couple of just monster cases in the office that have been broken up into kind of discreet segments and there are teams working on different pieces. Another woman partner isn't too busy right now. She's the woman who has a young child and they do not approach her to staff cases. She has to go in and say "I hear you're looking for someone to do this work" and they all stare at her "oh do you want to do that." I don't know why exactly. . .She's been actively working her whole life and then all of a sudden she has a child and people don't get it. They think, she's a single mom, she might not be there when the going gets tough even though she's always been there in the past. I mean I heard a conversation where two of the male partners in her department were wondering aloud to each other what was her child going to do to her and to them [Mary Reeve, Time1].

Women report that gender is a factor in the distribution of firm resources which hampers their ability to get their work done. This can occur when associates give preference to the work assigned by senior male colleagues because they know who has the power in the firm. One mature career woman described how senior men get "different work product" from associates than do women. Although women do much of the associate training, she suggested they tend to lose the benefits of training new lawyers when male partners "hog" the talent.

You start building the new talent. All of a sudden you turn around and instead of having nothing on their desk because they don't know anything and nobody else wants to take the time to work with them, everybody else's stuff is now on their desk, cause you've trained them.

Men do to women what they always do to women. They set up a new standard – you delegate, and you have this huge pyramid, and ya-da-ya-da-ya-da. You say I don't do that so now you're inadequate. But of course you don't do that because they take all, they hog all the talent [Joan Gabel Time2].

And from another senior lawyer we learned how she was unable to maintain a good book of business given the difficulty she had keeping associates on her work. She believed that the associates were making good political choices when they attached to more powerful male partners. Nevertheless,

To invest that kind of time and then have your associate just move on and take all of that effort on your part somewhere else is very disheartening and very difficult. It's actually one of the reasons I left private practice cause I had grown my book to a point where I couldn't service it myself any longer or I was going to go nuts. I finally got to a point where I hired a new associate dedicated to my work and she was very, very good and that got recognized very quickly and people started to take her away -- little by little, bit by bit. What can you do? She needs to get out there and work with other partners if she wants to move up the ladder internally in the firm. I saw the handwriting on the wall that I wasn't going to keep her captive to me very much longer. Then I was back to servicing a book that was about to kill me [Joan Hunt, Time2]

Success is social<sup>35</sup> and the bottom line is that boys clubs still exist. Women continue to report facing barriers when attempting to build relationships that further their training or provide access to clients and cases that are opportunities for greater productivity. These are discussed in more detail in our first report, *Gender Penalties: The Results of the Careers and Compensation Study*. In sum, women have a harder time reaching the big clients that offer more opportunities "to be productive."

In several interviews, women described instances where they would show up for meetings and find that the issues resolved without their input or consultation.

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<sup>35</sup> Wayne Baker, *ACHIEVING SUCCESS THROUGH SOCIAL CAPITAL* (2000).

I was elected to an important committee at my firm. I was the only woman. Well I found out that these guys were holding impromptu meetings over lunch and stuff and I wasn't being invited. So I thought, I'm not going to be their token so they could say they have a woman on management.

*Q: How did you find out about the impromptu meetings?*

Just slip of tongue, you know things were being decided and I wasn't part of it [Patricia Snow, Time2].

According to one emerging career lawyer, women might be involved in the hiring process, but when it came down to making hiring decisions they were excluded.

There have been offers made to people without anybody consulting any of the women that I know even though they interviewed...even though at various times have interviewed various of the candidates [Mary Reeve, Time 2]

Women have trouble finding the time to build productive networks because women work a second shift at home. Women tend to face a more compounded set of career choices and problems than most men.<sup>36</sup> Differences in how men and women describe work-life balance illustrate this phenomenon. For men work-life balance was regret that they could not see more of their children. For women, it was exhaustion from trying to maintain two roles.<sup>37</sup>

Liz Mastin, an emerging career woman lawyer, offered details about the problem of not having enough time to go out and develop business while trying to get her work done at the office, and still have time for her family.

I've been more focused on just getting my work done lately. That's the hard thing about it is, you have these billable hour requirements then you have your

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<sup>36</sup> See also Heleen FP Ietswaart, 2003. "Choices in Context: Life Histories of Women Lawyers in the Netherlands," Pp 353-370 in *Women in the World's Legal Professions* (U. Schultz and G. Shaw, eds.) Portland: Hart Publishing, p. 356 citing Judi Marshall, 1995, *Women Managers Moving On: Exploring Career and Life Choices*. London: Routledge.

<sup>37</sup> Sonia Liff, and Kate Ward, *Distorted Views through the Glass Ceiling: The Construction of Women's Understanding of Promotion and Senior Management Positions*, 8 GENDER, WORK AND ORGANIZATIONS 19-36 (2001).

family so it's hard to squeeze non-billable time in there. You have to make every second count when you're here to reach the expectations and then none of that marketing stuff counted toward anything unless it actually produces some work so. . .[Liz Mastin, Time2]

She goes on to describe how she requested and received a reduction in the billable hour expectations but continued to encounter difficulty managing the multiple roles of lawyer, marketer, and mother.

Well, I cut my hours back to 90% of the expectation.

Q: Did that translate for you into really truly less time here?

A: No, but it just meant that I got to be sure that I would meet my billable hours. But in terms of -- did I go home at four every day? No. it just meant I didn't have to sweat over how I was going to meet the hours, just more or less work at my normal pace. As it turned out, I still didn't meet the expectation because I had a huge pro bono case go to trial. There's some credit but nobody really knows how much. I don't think they penalized me for that. I gave up any right to distribution based on my percentage [Liz Mastin, Time2]

Although arguably the "second shift" is not something law firms can control, if firms truly want women in firm leadership then they must understand the conditions under which many women operate.

### **Gender constructs Perceptions of Productivity**

Women report that the work they do "disappears." In her book "DISAPPEARING ACTS" Joyce Fletcher describes how certain behaviors "get disappeared" --not because they are ineffective, but because they get associated with the feminine, relational, or so-called softer side of organizational practice -- not real work.<sup>38</sup> In our study, women report that they are overrepresented in the time intensive support work of law firms (associate and recruitment committees, etc.) that is not highly rewarded, despite the

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<sup>38</sup> Joyce K. Fletcher, DISAPPEARING ACTS: GENDER, POWER, AND RELATIONAL PRACTICE AT WORK (1999), P. 3.

fact that it is truly investment in the future of the firm. Paula Kramer, a peak career lawyer, was a department head in a medium size firm when we first interviewed her. She was the "go to" person for cases in a new practice area that she developed. She also was head of the recruitment committee and the associates' committee. All were essential to the smooth operation of the firm, but she was rarely given credit for the work she did on them. She told us that at "every compensation meeting I have ... been really miserable." She finally got so angry about the firm's low valuation of her work that she decided to write the executive committee a memo.

I felt that I was a good contributor and there were a lot of things that I did besides bring in business that were important to keeping the people happy and clients and also people who work here. So, I wrote this memo and I said "that if we were this far apart in our views of what they thought I was worth then I would never be happy." I wouldn't have gone on as before and I would sort of resign and then it was like one more year of having to just you know really minimal increase when other people were shooting up. So, I think they just hadn't thought about it. I don't think it was necessarily intentional. Although, I have a husband who makes a good living and I'm not "head of the household" [Paula Kramer, Time1].

When we inquired about the reaction of the executive committee to her memo, Paula said that the committee was shocked and suddenly worried that she would quit the firm. They did raise her salary significantly, but still not as high as the partner above her.

In a different kind of disappearance, Kramer also described a situation where her hard work was assumed to be just "luck." As she told us: "I think they really thought that my settling this big case was just luck and it would probably never happen again" [Paula Kramer, Time1].

Or women's work is taken for granted as in the case of several women who were told that they were to become partners but the partnership agreement never materializes.

There is a big discrepancy in what partner means to different people, and in that firm the male partners were the real partners. I was supposed to become what they called equity partner, but I never got the written agreement. Every time I raised the question it was brought up again and rewritten, And that went on, seriously for many years. My husband kept saying, "You're not getting it. He's hiring all female associates but women never really become partners. It took me a long, long time to really wake up and realize I did not have to take the kind of, I will now call it abuse. I would never have called it abuse while I was doing it. While I was doing it, it was just suck it up and do the job, and that's just, that's it. It also took me a while because as an older student it had been so ingrained that it was going to be really tough to get a job and to make it that I was scared to death, not to, you know to rock the boat at all. But when it came to the point where he was going to hire in an associate for more than I was making, I said, "That's it. I am done." "Oh no, you have to do this for the good of the firm." I said, "No I don't, I really don't." (Donna Hart – Emerging Career, Interview2].

For their part, many women who have grievances do not speak up. One of a growing number of quietly successful part-time lawyers, this senior woman underscores two dimensions of the problem of "voice." Women lawyers, like women generally, have a difficult time with self-promotion. Even when they are ready to address their grievance, women don't have access to the very information they need to "document" and "legitimate" their grievance.

Maybe I'm not promoting myself or I'm not promoting women but at the same time I think well I'm doing a good job, I'm doing, I'm creating part time as an acceptable career path,. But I really have not confronted my employer on what I ought to be paid and I guess it's because I judge that it was satisfactory to me and I really didn't have any hard facts [Jana Castle, Time2].

When we asked this woman whether she might consider seeking partnership, she responds with worry that drawing attention to her needs might make matters worse.

I would have to assert myself about that, and it would be a change. Because I don't know that anyone has ever been a partner here who hadn't worked full time. For my own preservation, I have a situation that I like, that works well for me professionally, personally, and I kind of don't want them to have to address my status, because it might be worse for me than better [Jana Castle, Time2].

Women quite rightfully worry about being labeled "the Bitch" if they become the squeaky wheel about compensation or if she "grand stands" about her accomplishments. When she is silenced in this way, her productivity becomes less visible. After describing

a situation where a woman friend and colleague complained about inequity and found her compensation frozen as a result, Patricia Snow, an emerging career lawyer discusses the dilemmas she faces when she considers whether or not to complain. She concludes that if things get so bad, leaving is a rational "choice," otherwise you keep on doing your work.

We've had this discussion numerous times. We make a very decent salary. We work on really interesting things. The level of our practice is higher than most. The question is what do you want to do?[when you see inequity]? Do you want to go out and start out all over? The kinds of things we work on, you need a big firm behind you. We always come out to the same place. If you are going to practice law, yeah there's the side that is absolutely awful. But there's also a great upside as well. You know if you get to the point where you just can't take it anymore, you should leave if that's what really is bothering you. I went through our roster, and women have left [Patricia Snow, Time2].

Women face a double bind in law firm culture that on one hand demands that they "fit in" and on the other hand demands that they get noticed. Women tend to hide, particularly when they need an accommodation. Epstein<sup>39</sup> reports on a woman who worked part-time and who always worked with her door closed so that her colleagues would never know exactly when she was or was not at the office. This invisible strategy adopted by many women for hiding part-time status, ultimately undermines the "face time" often described as an important part of a lawyers professional capital. And it is the opposite of strategies adopted by men who told us they want senior partners to believe that they are always at the office. Several men in our study said that they always left their door open and lights on and a coat jacket hanging in the office in order to convey the impression that they have stepped out of

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<sup>39</sup> Cynthia Fuchs Epstein and Carroll Seron, *The Symbolic Meanings of Professional Time* in 3 THE SOCIOLOGY OF CRIME, LAW, AND DEVIANCE: LEGAL PROFESSIONS: WORK, STRUCTURE AND ORGANIZATION (Jerry Van Hoy ed., October 2001).

their office and will return.

Commitment is the soft side, the subjective dimension of compensation that often separates men and women. Hard to define, commitment is often measured (and we use that term loosely) by the display of availability and conformity with the heroic worker whose business card indicates how to contact him 24/7. Lawyers are expected to bill considerable amounts of hours, to spend time marketing and developing business, and to participate in career-enhancing organizational activities (usually some sort of civic activity). But beyond billing in excess of 2000 hours a year and the business generating extra-curricular activities, many lawyers include putting in long hours, always being available, and visibility as important measures of their commitment to law. This might include appearing at the office on Saturday, whether they had work to complete or not, consistent and continual availability for "around-the-clock" work in trials or for transactional closings of one kind or another.<sup>40</sup> Law is a greedy institution,<sup>41</sup> organized around the expectation that a lawyer will have "someone at home" to take care of the non-work part of his life.

Gender assumptions operate here as one would expect, given the masculine oriented definition of commitment. Opportunities and advancement are allocated to the hero lawyers who can work long hours and woo new clients. Women's "commitment" to law is questioned because they reject or cannot create the impression of open-ended availability. Women with families are assumed less committed to the practice of law

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<sup>40</sup> For additional support about the unwavering demands for hours, commitment and travel availability --See, S. Elizabeth Foster, Comment, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA L. REV. at 1643 (1995).

<sup>41</sup> Lewis Coser defined greedy institutions as those which "make total claims on their members." These institutions demand exclusive loyalty and attempt to reduce competing roles and status positions for those within the institution (e.g. employees. See, Lewis A. Coser, 1974 *Greedy Institutions: Patterns of Undivided Commitment* (1974).

because they have other responsibilities in a gendered world, even when there is no empirical evidence to support that assumption. As one young woman explained, her commitment to the firm was challenged as soon as she announced her marriage.

Oh lots of things lead up to it [my move] I think. I hated life there. Everything was kind of just suffering because of the whole work environment. I wasn't married at the time. I'll never forget this one. I was still working on the BIG CLIENT team and I was planning on getting married. I broke the news to everybody about six months before the wedding. One partner just blew up, starting yelling at me and told me how stupid I was for planning a wedding around that time of year. He complained that I didn't think about the work load and we would probably have a big deal then. There was this thing coming down the pike and they really needed my help. You know this was like six or seven months ahead of time. So that's when..and this was with a big group of people I mean we were in a conference room, that's when I decided I'm out of here. Of course that deal never closed until two years later. That's when I kind of decided. My work was suffering so I wasn't doing well there anymore. I was just crabby and not fun to be around. So I started looking around [emphasis added].

Men with families are often assumed to be committed out of necessity even when there is no evidence to support that. Women's dissatisfaction with their work environment must be understood in the context of legal practice that continues to organize according to masculine gendered norms.

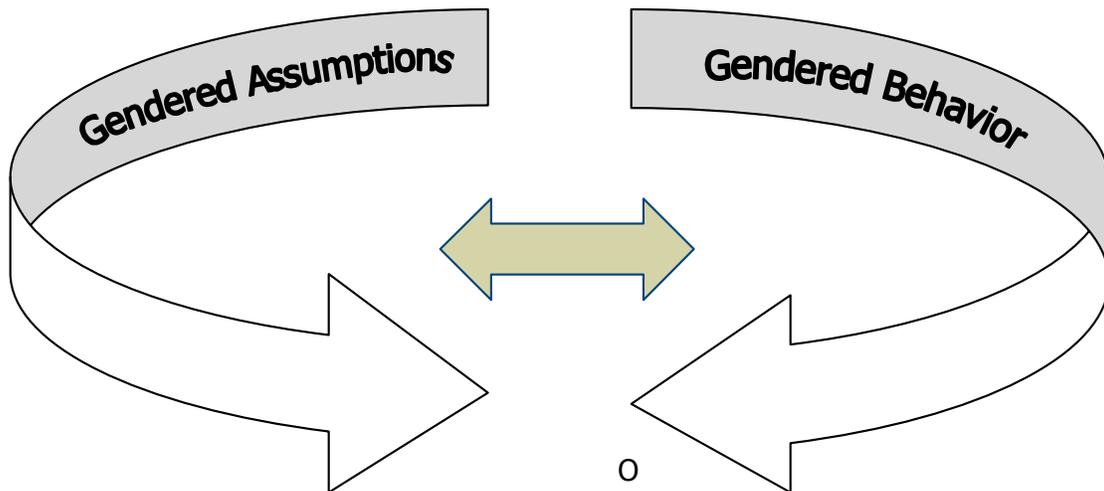
### **Gender Stereotypes Become Self-Fulfilling**

Most troubling is that unintentional gender bias can be self-fulfilling. When people assess others on the basis of gendered assumptions, the behavior that results often re-affirms the stereotype. This hypothetical,<sup>42</sup> not entirely different than Susan Fry's experience (see page 41) illustrates the point. A senior partner gets a big case and asks a junior partner, Craig, to put together a team. It is a plum assignment for a new associate. Two associates, Jim and Sue, seem appropriate based on their experience and

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<sup>42</sup> Hypothetical was adapted from Douglas McCracken, *Winning the Talent War for Women: Sometimes it Takes A Revolution*, 78 HARVARD BUSINESS REVIEW (2000).

workload. Recognizing that the case may take several years to develop and that the client is a little picky, Craig worries about continuity. He has heard that there is national data that women turn over more rapidly than men. Craig thinks, "if I put a woman on this case, she may leave and I may end up in trouble with the case and with the senior partner. He gives this plum assignment to Jim. Sue works on other things. After a while, Sue says I'm not getting any good assignments with this firm and she leaves. Craig says, "I knew it!" (Epilogue: One year into the case Jim leaves the firm for a "better opportunity").



Or, Jane announces she is pregnant. Immediately she notices that both the quantity and quality of work dries up. Six months later she has her baby and takes maternity leave. Somewhere around four weeks into her leave, she starts to think about work and, in particular the last six months or so of work at the firm. She wonders whether she will ever get back on track and thinking that she might not, she decides she might want to stay home for a while -- those diapers look pretty good compared to twiddling her thumbs in the office. The partners say, as we have heard, "We told you so. We have bad luck with pregnancy."

## **Bringing About Change**

Over the last decade, many law firms have taken steps to address issues of diversity. And many have tried to accommodate different kinds of work arrangements. Nevertheless, there is still much that can be done and needs to be done. The subtle and not so subtle forms of gender bias that are often taken for granted, and unintentional cannot be changed without sustained attention to them. To change a system as steeped in tradition as the legal profession requires a bold, thoughtful, approach.

The complexity and scope of change necessary to address gender inequity calls for strategies that organizational development specialists call small wins,<sup>43</sup> incremental change that delivers cumulative change over the long run. Breaking the cycle of gender bias is a marathon, not a sprint. Anyone who has trained for endurance recognizes the importance of setting intermediate goals.

### **Senior Management Must Take the Lead**

Students of organizational change note that change requires leadership. Firm leaders must demonstrate a willingness to listen and to send signals that it is legitimate and valuable to allow people to speak their minds and to challenge the conventional wisdom.<sup>44</sup> In addition they should be encouraged to:

- Establish the financial case for pay equity, advancement, and retention of women so that others see the necessity for initiatives to pursue these goals.

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<sup>43</sup> RHONA RAPOPORT, LOTTE BAILYN, JOYCE FLETCHER, AND BETTYE PRUITT. BEYOND WORK-FAMILY BALANCE: ADVANCING GENDER EQUITY AND WORKPLACE PERFORMANCE (2002).

<sup>44</sup> Debra Meyerson, *Everyday Leaders: The Power of Difference*, 23 LEADER TO LEADER (2002).

- Treat initiatives, including data gathering, as an investment in the firm.
  - ◆ Reward time spent addressing pay equity.
  - ◆ Allocate necessary resources.
  
- Establish outcomes and measure progress.

### **Test Your Compensation System. Is it Fair?**

As firms are making themselves more efficient and more business oriented, employing executive managers and the like, there has been a tendency in some cases to formalize the process and to make it more centralized and secret. Lawyers described this as a necessary step to cut out the “whining and complaining” that gets in the way of productive lawyering. But perhaps the pendulum has swung too far. The whining and complaining that some say has or will certainly accompany more open systems needs to be balanced by the need for monitoring and accountability. Test your system. Is it fair? It well may be that a systematic look at the compensation structure of any one firm is fair. If so, provide enough information so that the people whose compensation is determined by it can recognize it as fair.

### **Open Up the Dialogue**

Ask women about what they think about how the firm has is managed, what they think about their careers, what they think about the work they do, and what practices prevent them from being the best lawyers they can be. But don't stop with the discussion. Dialogue is a place to start, not a place to stop.

- ◆ Don't rely on assumptions when making assignments

- ◆ Make sure that discussions of work-life balance are not forbidden territory
- ◆ Openly discuss what activities are rewarded and valuable

With good reason, women report that they are reluctant to explore their ideas about creating work-life balance for fear that just the discussion might lead to their being excluded from meaningful work or from consideration for more promotion. The consequence is that there is no rational planning either from the individual or the organization on how to deal with short career interruptions

### **Examine Gender Differences in Evaluation**

Evaluations are one place where gender stereotypes operate. Take a look at your evaluation process. Is it fair? Are similarly competent men and women getting the same message? At a workshop to address gender stereotypes,<sup>45</sup> partners from a large accounting firm were asked to evaluate two associates who differed only in that one was named Jane and one Joe. Here is what they said:

- About Jane: She's really good, she gives 100%. But I just don't see her interacting with BIG CLIENT. She's not as polished as some. Her presentation skills could be stronger.
- About Joe: He's good. We need to give him more opportunities to get to know BIG CLIENT -- maybe take him golfing. I know he can grow into it; he has tremendous potential.

They discovered what many women already know: women are evaluated on their performance; men on their potential with radically different career outcomes.

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<sup>45</sup> Described in McCracken, supra 38.

### **Create Benchmarks**

Both firms and professional organizations should be encouraged to collect and maintain data that will enable monitoring of the status of women. Many firms have significant accounting systems that collect the information. Insure that they collect data that can be assembled in a form that would enable periodic analysis and update of women's status.

### **Question Authority**

While the senior management must take the lead, it is equally important for women to ask questions about what gender equity initiative are in place. Given the data for lawyers overall, it is reasonable to ask these questions when being interviewed for a new job (either entry level or lateral move). Once law firms realize that their access to talent depends on the existence of gender equity initiatives, firms will feel more pressure to begin them. Women must hold the profession's collective feet to the fire.

### **Set Up Best Practices**

Once data are collected and problems more clearly identified, firms must develop best practices that fit the culture of their firms. These might include a temporary part-time option available for men and women or the ability of lawyers to accrue time toward partnership in direct proportion to their part-time percentage. Be sensitive to ways new initiatives might become counter-productive. For example, if part-time policies do not include opportunities for client contact and business development, the lawyers who take advantage of them will be forever disadvantaged.

### **Promote Work-Life Balance!**

