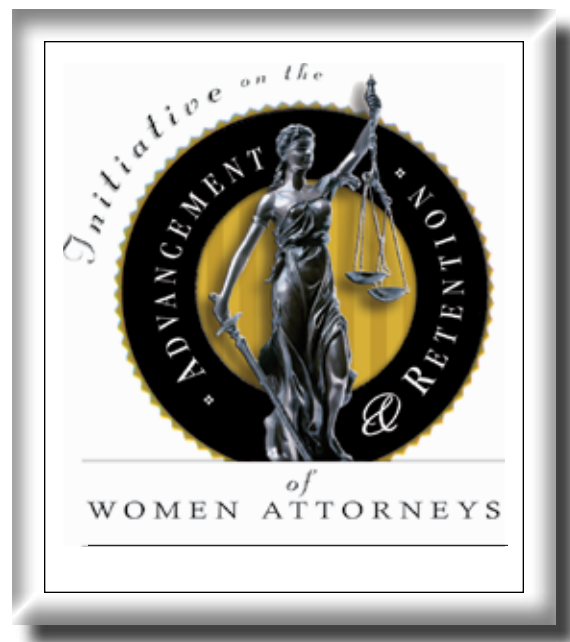


The Utah Report:

*The Initiative on the
Advancement and Retention
of Women in Law Firms*

OCTOBER 2010

Women Lawyers of Utah



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Chief Justice Christine M. Durham

Having graduated from law school in 1971, when women were less than welcome in many areas of the legal profession, I have watched the developments of the last forty years with great interest and about equal amounts of gratification and discouragement. The barriers to entry that my generation faced exist no longer, law schools educate as many women as men, and women can be found in every arena in which law is practiced. On the other hand, women lawyers are unequally represented in the top echelons of the profession (as well as in politics and business, it should be noted), they make less money than male lawyers for the same work, and they still experience implicit bias, sexual harassment and outright discrimination in private practice, as this Report demonstrates.

Those who conceived and implemented this project deserve enormous credit for a difficult job well done. The Report's benefit is two-fold: it clearly articulates the scope of the issues and it identifies the best thinking and practices around to deal with them. In the section entitled "Utah we have a problem," the Report clearly summarizes our demographics and our culture, and articulates what those numbers and those practices cost us in dollars and human capital. But rather than stop with the bad news, the Report meticulously identifies realistic solutions and improved approaches to enhancing the career development and lives of all lawyers, but particularly those who have been systematically overlooked.

The Report focuses on best practices that seem, in every instance, to be no more than good business. In urging law firms to be transparent and open about (and therefore to keep track of) work assignments and schedules, compensation formulae, attorney evaluation criteria and results, mentoring responsibilities and accountability, and client exposure and development, the Report contains a blueprint for well-run and successful law practices. I noted with particular interest the emphasis on urging firms to educate new lawyers on the business aspects of practice and on the logistics of client development and business generation. Lawyers often have superlative skills when it comes to the business activities of their clients, but check those skills at the door when running their own law firms.

Given that so much of what drives the continued obstacles faced by women lawyers in private practice appears to be implicit attitudes and stereotypes we all unconsciously harbor (take one of the Harvard IAT tests if you don't believe me), it is going to take deliberate, intentional, conscious effort to eliminate the barriers. This Report should become an action plan for every Utah law firm.

With this publication, four years of planning, fund raising, research, coordination, and effort come to fruition. Women Lawyers of Utah ("WLU") undertook this four year journey to answer two basic questions:

- 1) Do Utah law firms face greater challenges retaining and promoting female attorneys than male attorneys?
- 2) If so, what concrete, unbiased actions can Utah law firms and Utah attorneys take to meet these challenges?

WLU's effort has become known as the "Initiative on the Advancement and Retention of Women Attorneys" and is referred to herein as the "Initiative". To answer the first question and, if it was answered in the affirmative, to isolate the causes, WLU worked with professionals on preparing a survey. Following the survey, WLU held symposia in May and June 2009 – the first to explore the challenge further with the help of industry experts; the second to begin developing best practices.

This publication outlines the results of WLU's survey, incorporates concepts learned during the symposia, and provides feedback to Utah law firms and lawyers on best practices for promoting and retaining female lawyers. Unless noted otherwise, the statistics cited herein come from WLU's survey.

Perhaps more than anything we discovered throughout this process, the persistence of sexual harassment and sex discrimination in the workplace startled us. Thus, at the outset we address these overarching concerns which make the workplace undesirable for employees and clients. Following that discussion we give a condensed overview of the survey methodology and respondents and then break down the issues and suggestions into three areas: (1) Work Environment, (2) Professional Development, and (3) Recognition. While issues may overlap, each of these areas represents a particular opportunity to succeed in retaining and promoting women. Work Environment addresses many of the intangible factors that may encourage us to stay with an employer or seek a new one. Professional Development discusses how training impacts the retention and advancement of women. Recognition considers how we can better recognize the successes of women in firms as part of our overall effort to increase retention and advancement. One of the guiding principles structuring our suggested best practices is that a law firm is first and foremost a business that exists to make money. Therefore, best practices cannot detract from the purpose of the law firm.

THE TWIN ELEPHANTS IN THE ROOM: SEXUAL HARASSMENT & SEX DISCRIMINATION

One of the most surprising survey results was how many people, primarily women, reported overt unfair treatment in the legal workplace and how many believed such treatment escalated to the level of outright discrimination and harassment.

The frequency with which attorneys report sexual harassment and sex discrimination (when given the opportunity to do so anonymously) in law firms is shocking. The survey inquired whether people felt harassed or discriminated against. As lawyers, we know reporting that one feels harassed or feels someone else was harassed differs from being able to prove harassment in court. Nevertheless, these “feelings” will impact attorneys’ choices about where to make their professional homes. In Utah we fortunately still have a small, tightly knit legal community. Another positive is that as a culture, Utahns generally prefer to resolve their problems without resort to the legal system. Perhaps for these reasons, among others, women experiencing harassment or discrimination have chosen not to sue firms. However, firms must bear in mind the potential for legal action in the future.

Against this backdrop, an obvious first step for retaining female attorneys is to eradicate behavior that would lead to women feeling sexually harassed and discriminated against.

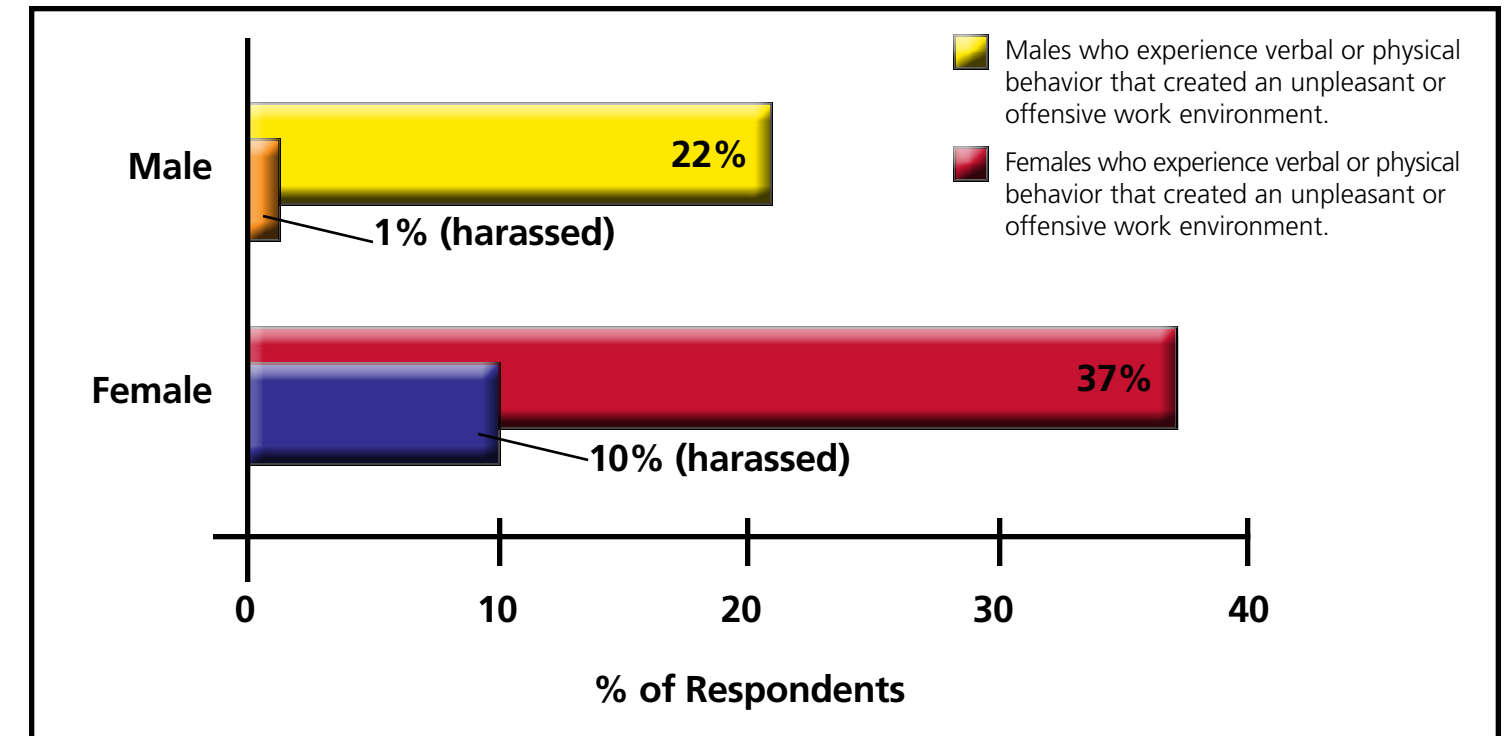
HARASSMENT

Of those surveyed, 37% of women in firms responded that they experienced verbal or physical behavior that created an unpleasant or offensive work environment. 27% of the 37% indicated that the situation became serious enough that they felt they were being harassed (approximately 10% of women in firms). The vast majority (86%) of those reporting harassment identified sex as the basis for the harassment. The others identified race, age, religion, disability, marital status, or caretaker status as the basis. Several survey respondents indicated that sexual harassment caused them to leave firm jobs.

The experience of female attorneys in law firms was not unique. 7% of female attorneys in government, 10% of female attorneys in corporate counsel positions, 3% of female attorneys in nonprofits, and 6% of female attorneys in academia reported feeling sexually harassed.

For males, the numbers were much lower. Only 22% of male attorneys in firms responding to the question said they had experienced an unpleasant or offensive work environment, and only 4% of the 22% said that they felt the unpleasant work environment rose to the level of harassment (approximately 1% of men in firms). Men reported the reasons for their harassment as race, age, or religion.

Figure 1: Reported Harassment in Law Firms by Gender



DISCRIMINATION

In addition, the survey asked whether the respondents felt they had been treated unfairly in their current position in terms of hiring, pay, job assignment, staff support, and working relationships. Women in law firms reported more frequent unfair treatment and more severe unfair treatment than men in law firms.

- 23% of women in firms feel they have been treated unfairly. Of those:
 - 65% reported unfair treatment by management.

- 50% characterized firm policies as unfair.
- 44% said co-workers treated them unfairly.
- 27% reported unfair treatment by clients.

Of the 23% who reported unfair treatment, 42% said the unfair treatment rose to the level of discrimination (approximately 10% of women in firms). Respondents overwhelmingly stated that the discrimination was based on sex but also reported it was based on marital status, caretaker status, age, religion, disability.

By contrast, only 16% of male respondents working in law firms felt they had been treated unfairly in their current positions in terms of hiring, pay, job assignments, staff support, and working relationships. Of that 16%, only 5% said that the unfair treatment rose to the levels of discrimination. Those men experiencing discrimination identified sex and age as the basis for it.

Female attorneys in other types of legal employment also report sex discrimination: 11% in government, 10% in corporate counsel positions, 8% in academia, but 0% in nonprofits.

When asked to assess how they were treated unfairly, women in law firms report the top sources as:

- (1) Compensation (44%)
- (2) Lack of Respect/Credit (13%)
- (2) Given Lesser Tasks/Assignments (13%)
- (4) Passed over for promotion (7%)
- (4) Criticism/yelled at (7%)

By far, compensation is the largest source of concerns about unfair dealing for both female and male attorneys.

By contrast, among males, the top sources were:

- (1) Compensation (46%)
- (2) Lack of Feedback/Support/Training (10%)
- (3) Passed over for promotion (8%)
- (4) Criticism/yelled at (6%)
- (4) Lack of Respect/Credit (6%)

One “take away” from these breakdowns is that if Utah firms want to focus on one area to improve contentment among their attorneys, they should focus on their compensation systems. By far, compensation is the largest source of concerns about unfair dealing for both female and male attorneys. We strongly encourage firms to consider the

best practices for compensation set forth later in this report.

Women provided the following examples of the reported unequal treatment in their survey responses:

“Out of 10 partners, 9 are men (some men promoted over women with more experience and client referrals). A woman with more experience and responsibility was paid much less than a man with less experience and responsibility.”

“Unequal pay.”

“Junior male associates with less ability were given plum assignments while the senior woman was passed over.”

Men reported the following explanations of the discrimination:

“Women were not offered positions, are not promoted, and have been forced out of the firm.”

“Raises were being given to men and not to women in the office.”

“History of male employees being treated better than female employees.”

Discrimination is one major reason why women express dissatisfaction with their law firms.

BEST PRACTICES TO ELIMINATE SEXUAL HARASSMENT AND SEX DISCRIMINATION

Firms

- Train attorneys and staff yearly about how to avoid sexual harassment and sex discrimination.
- Implement and follow policies prohibiting sexual harassment and sex discrimination.

- Open avenues for and encourage reporting of sexual harassment and sex discrimination.
- Review personnel policies for potential gender bias.
- Analyze hiring, compensation, retention, and advancement of attorneys with particular focus on different rates associated with gender to determine how gender bias may affect a particular workplace.

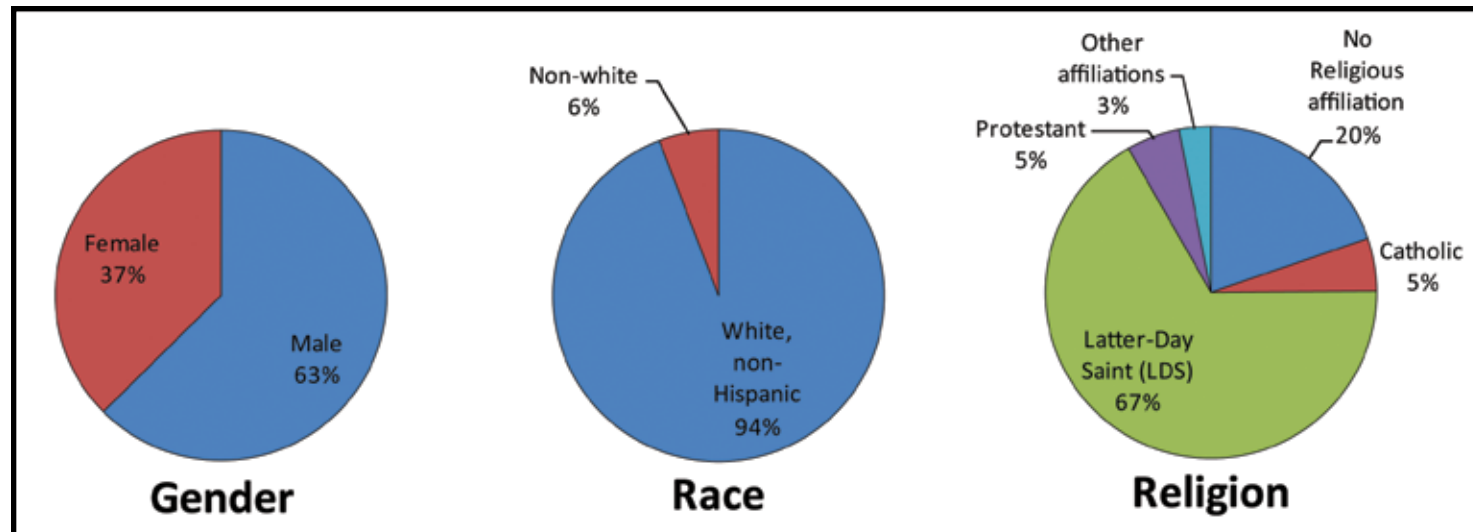
Attorneys

- Be able to identify appropriate and inappropriate workplace behavior, to differentiate between sexual harassment and sex discrimination, to distinguish between work and social environments, and to identify boundaries.
- Address sexual harassment and sex discrimination when one first suspects an inequity. We need to confront our friends, coworkers, and partners when they are out of line, rather than ignore the beginnings of a problem.

SURVEY OVERVIEW¹

Sampling Frame:	The study included all members, male and female, of the Utah State Bar admitted between 1985 and 2005 (irrespective of their current employment situation). ² The Utah State Bar created the mailing list from its membership records.
Sample:	The original mailing list included 5,620 names. During the survey we dropped 299 names from the list when the U.S. Postal Service returned notification letters as undeliverable. This number included a small number of attorneys with foreign addresses in the original file as well as a couple of attorneys who had moved to foreign countries. Our adjusted mailing list contained 5,321 names.
Field Period:	September 22, 2008 – March 2, 2009
Response Rate:	There were 2,730 recorded interviews in the Qualtrics data file. Of these, 424 were partial interviews (did not complete the entire survey). An examination of the partial interviews identified 62 survey entries that were “false starts” (started the interview but did not complete the first two questions on current job type). We dropped these 62 survey entries. That deletion left 2,668 usable surveys. The adjusted response rate is 50.14 percent (2,668/5,321) from the entire population of attorneys admitted to the Utah State Bar between 1985 and 2005. The margin of error (conservative estimate) is plus or minus 1.31%, 95% of the time (confidence level).

Figure 2: Demographic Breakdown of Survey Respondents



Descriptive Summary	Frequency	Frequency	
Male attorneys	1659 (63%)	Age 29 or less	57 (2%)
Female attorneys	991 (37%)	Age 30-39	985 (41%)
Declined to answer	18	Age 40-49	881 (37%)
		Age 50-59	387 (16%)
White, non-Hispanic	2245 (94%)	Age 60 or older	83 (4%)
Non-white	139 (6%)	Declined to answer	275
Declined to answer	284		
Veteran	238 (10%)		

	All	Male	Female
No Religious affiliation	470 (20%)	216 (14%)	254 (29%)
Catholic	122 (5%)	43 (3%)	79 (9%)
Latter-day Saint (LDS)	1585 (67%)	1150 (77%)	435 (49%)
Protestant	124 (5%)	59 (4%)	65 (7%)
Other affiliations	74 (3%)	24 (2%)	50 (6%)
Declined to answer	279		

	All	Male	Female
Law firm	1082 (41%)	775 (47%)	292 (30%)
Gov't agency	617 (23%)	333 (20%)	273 (28%)
Solo practitioner	287 (11%)	174 (11%)	103 (10%)
In-house counsel	289 (11%)	208 (13%)	72 (7%)
Non-legal	98 (4%)	67 (4%)	30 (3%)
Unemployed (not looking)	96 (4%)	6 (<1%)	90 (9%)
Other	74 (3%)	28 (2%)	46 (5%)
Academic	65 (2%)	29 (2%)	36 (4%)
Non-profit	62 (2%)	26 (2%)	36 (4%)
Unemployed (looking)	25 (1%)	11 (1%)	14 (1%)

1. This Survey collected a great deal of data about attorneys in Utah that is not analyzed in this report. WLU welcomes further exploration of the data collected, while maintaining the anonymity of those surveyed. For inquiries about further research please contact WLU at wlu@utahwomenlawyers.org.
2. The Survey intentionally excluded attorneys admitted to the Bar prior to 1985 because of the assumption that their experiences would have been and would continue to be significantly different, particularly with respect to female attorneys.

UTAH, WE HAVE A PROBLEM

Losing a single associate can cost a law firm between \$200,000 and \$500,000.³ This number includes training costs and the hours the replacement attorney will need to learn about the matters the departing attorney left behind and for which the clients will not pay. This number does not include the immeasurable cost of the negative impression associate attrition leaves on clients. Clients often believe they pay the price for associate attrition – they have to “break in” a new associate to their style, their company, their matters. Even if the firm writes off a new associate’s initial time, clients do not like the lost time spent catching up rather than moving forward. When the associate is one clients liked or the firm wanted to promote, that person’s departure can be devastating.

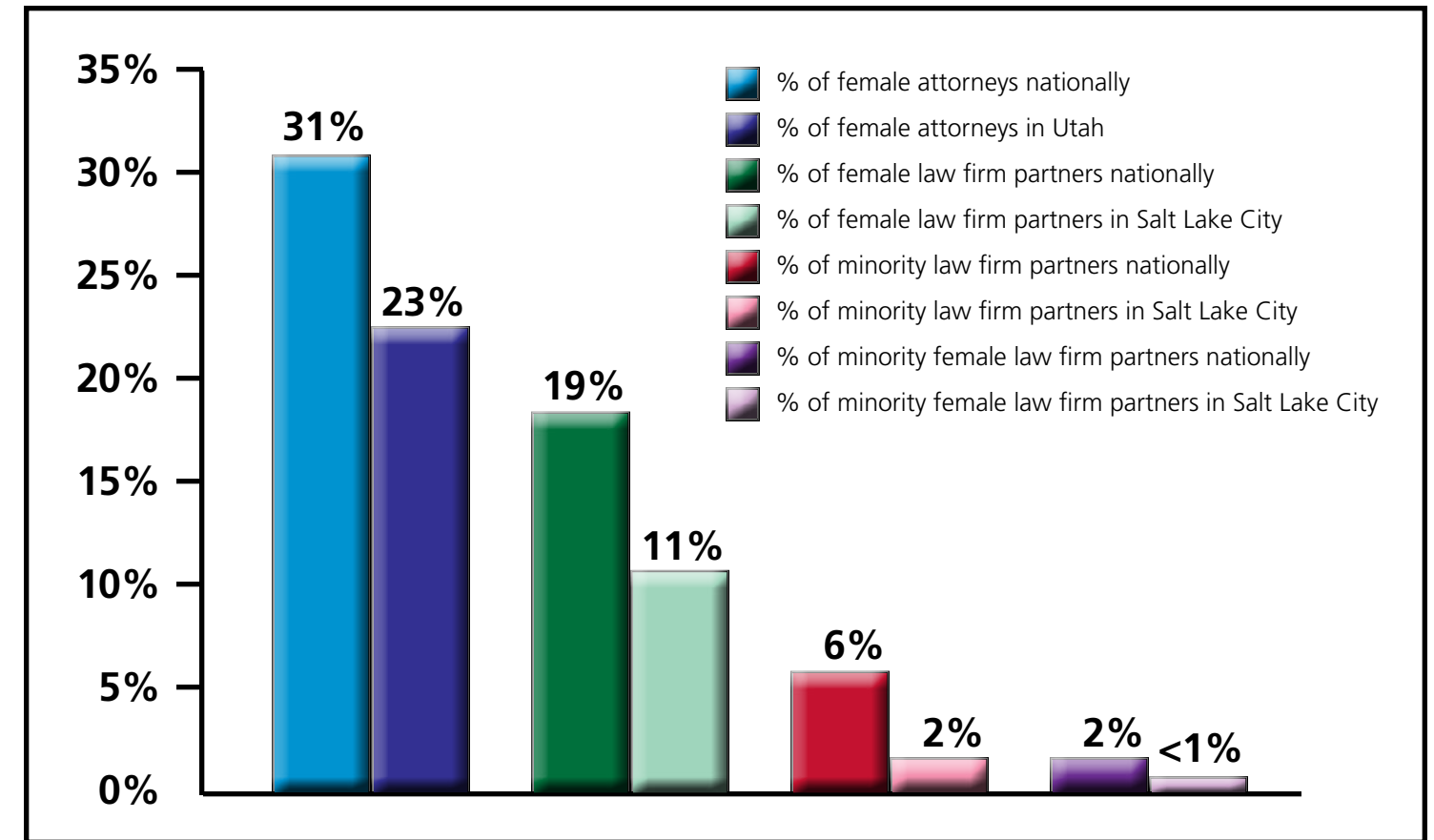
The survey results confirmed that female attorneys leave law firms at higher rates than male attorneys. To put the survey results into perspective, these statistics may be helpful.

- In Utah, approximately 62% of law school graduates are male, while 38% are female.⁴

- Nationally 53% of law school graduates are male, while 47% are female.⁵
- In Utah, 77% of attorneys are male, while 23% are female.⁶
 - Nationally 69% of attorneys are male, and 31% are female.⁷
- In Utah, 47% of male attorneys work in law firms as opposed to only 30% of female attorneys.
 - Nationally, 40% of male attorneys work in law firms, while 34% of female attorneys do.⁸
- In Salt Lake City, 11% of law firm partners are women.⁹
 - Nationally, 19% of law firm partners are women.¹⁰

Approximately 75% of the women in firms surveyed said they were satisfied with their current jobs at their current firms. Despite this, 75% of women in firms believed they would leave their firms within

Figure 3: Demographics of Attorneys Nationally and in Utah



5 years, and only 36% stated they would definitely like to work at their current firms for the rest of their careers. While the norm of lawyers practicing at the same law firm for their entire careers has shifted since the last century, that goal seems even more elusive for female attorneys in Utah.

These statistics cause concern. While approximately 77% of men surveyed were satisfied with their current jobs at their current firms (only 2% more than women),

75% of women think they will leave their firms within five years, when only 57% of men surveyed said they would leave within that same time period. 47% of the men surveyed (as opposed to 36% of the women) stated they would definitely like to work at their current firms for the rest of their careers.

Starting from the fact that 38% of law students in Utah and 47% of law students nationally are women and ending with the fact that 11% of law

3. New Jersey State Employment & Training Comm’n Council on Gender Parity in Labor & Education, *Legal Talent at the Crossroads: Why New Jersey Women Lawyers Leave their Law Firms, and Why They Choose to Stay*, 1 n.3 (collecting national statistics) (2009), http://www.cww.rutgers.edu/Docs/Legal_Talent.pdf.

4. This number comes from an unofficial count of the 2009 graduates from the Brigham Young University and University of Utah law schools.

5. *J.D. and LL.B. Degrees Awarded, 2007-2008 Academic Year*, American Bar Association Section of Legal Education and Admissions to the Bar.

6. Utah State Bar, 2009.

7. 2009 National Lawyer Population by State, American Bar Association Market Research Department.

8. Number provided by the ABA, Market Research Department.

9. NALP, *Law Firm Diversity Demographics Show Little Change, Despite Economic Downturn: Representation in Some Markets Declines While Others Show Small Gains*, (2009), <http://www.nalp.org/oct09lawfirmdiversity>.

10. *Id.*

firm partners in Salt Lake City, and 19% of law firm partners nationally are women leads to the conclusion that firms are either failing to attract and/or retain and/or promote women.¹¹ Moreover, one can conclude that the failing among firms in Utah is worse than it is nationally.

For years, people have dismissed the small population of women at the top of law firms as a “pipeline” problem, which will resolve itself as more women enter the profession and advance. However, this theory has now had time to run its course and fails to explain the differences in numbers of men and women at the top of law firms.¹²

Similarly, in Utah, lawyers like to dismiss the difference as wholly attributable to women leaving the profession to care for children. This proposition does not explain the lack of women at the top of law firms either. 9% of women attorneys surveyed are unemployed and not looking for a job. Even assuming all of these women have left the profession to care for children, and assuming all of these women would have chosen to be law firm partners had they not had children, the percentage of women partners in Salt Lake City would still only be 20%, well below the percentage of women currently entering the pro-

fession on a regular basis.

Thus there is a problem, and the usual excuses heard, do not explain the problem.

During one symposia break-out session, a female partner vividly expressed the frustration and consequences of this reality:

[I]t is heartbreaking. Over the years I have killed myself to hire women and encourage others to do the same, but unfortunately they leave. Their departure affects all of us in that situation. For example, I recently spoke with a senior male partner at a local firm who mentored a female associate over a number of years. When she left he was furious because he had invested so much in her. His resulting attitude affects all of the women in that firm in a fundamental way – the attorneys expect that women will not stay with the firm for the long haul. For those left behind, there is resulting hidden bias which affects assignments, mentoring, and attitudes.

Examining the issues behind why women leave law firms at greater numbers than men, identifying both formal and informal solutions, and making a real attempt to improve firm life for female attorneys is in everyone’s best interest.

FOSTERING ADVANCEMENT & RETENTION OF WOMEN THROUGH IMPROVING THE WORK ENVIRONMENT

Most law firm lawyers spend more time working than any other waking activity. Whether they enjoy their work tends to have more to do with the day-to-day experience rather than any specific factor. Subtle, implicit, or inherent biases can have an enormous impact on the work environment.

When firms find themselves unable to either retain or promote women, they should examine what they are doing to make women feel like part of the team. Chances are the firms do not welcome women into the higher echelons with open arms and instead require them to squeeze in through the cracks. That a firm has one woman partner or continually hires female associates is not enough to suggest the firm has made sufficient efforts to include women in its practice.

“If you truly want to retain women attorneys, the firm must make conscious choices that recognize having women in the profession as a core value. Hiring women simply to be politically correct or to please a particular client for example, will not be successful.”

– Cate Brabson,
a partner with Parsons, Kinghorn, Harris

Firms have to ask themselves how they make their intentions clear.

A national researcher who has studied attorney retention issues extensively and spoke at the first symposium – Cynthia Calvert of the Project on Attorney Retention (PAR) – reports a hidden gender bias based on which individuals in law firms make decisions and take action. The term “gender bias” is often (wrongly) used interchangeably with the term “sexism”. The term “gender bias” is more inclusive than the term “sexism” and relates to presumptions and expectations placed on one gender and not on another.

Gender bias helps explain why women feel stalled in their careers, dismissed, or ignored. Hidden gender bias also explains why fewer law firm women make equity partner, why women are underpaid, why women leave their firms.

Human nature dictates that people are likely to remember behavior that reinforces their own assumptions. Some common underlying biases about gender that reflect these assumptions include:

- Male lawyers enjoy a presumption of competence, whereas female lawyers are deemed competent only if they can prove it.
- People attribute men’s failures to situations or external factors, whereas they attribute women’s

11. An important aspect of law firms to understand in interpreting the data gathered is that employment of attorneys at firms in Utah typically is an “up or out” proposition. That is, if an attorney fails to be promoted from associate to partner, the attorney generally must leave the firm. Most firms do not permit attorneys to stay associates indefinitely. Nationally, many firms have created interim categories to which attorneys can be promoted and remain without becoming true “partners”. These categories are referred to by different names including “of counsel”, “non-equity partner”, “income partner”. However, these often are not long-term positions either. See Charles Toutant, *Most Tier Partners Still ‘On Path’ to Equity Status, Survey Finds: Few firms view nonequity partnership as final resting place*, NEW JERSEY LAW JOURNAL, (May 25, 2006).

12. Women’s Bar Association of the District of Columbia, *Creating Pathways to Success: Advancing and Retaining Women in Today’s Law Firms*, 6, (2006), http://wba.iimberlakepublishing.com/files/Advocacy%20&%20Endorsements%20Files/Initiative%20Reports/Creating_Pathways_to_Success-May_2006.PDF.

failures to their abilities or personal character traits.

- People evaluate men based on their potential, while they evaluate women based on their achievements.
- When a woman makes a mistake, people notice and remember it more than when a man makes a mistake.

These underlying biases result in more frequent poor evaluations of female attorneys, fewer challenging assignments for female attorneys, and the perpetuation of unwarranted negative stereotypes about female attorneys. Gender bias is frequently implicit, meaning we generally have no awareness of these implicit attitudes and may not endorse them upon self-reflection.

At least for some female lawyers in Utah, these biases are playing out according to the survey.

“Less pay, more work, and some secretarial duties. [I c]an’t always go to lunch with ‘the boys’ because I need to answer phones. I have been an attorney for [more than five years] and they say I am the smartest attorney in the firm.”

“Women staff, including marketing staff, are not as responsive as they are to man attorneys; junior male attorneys are not as responsive [to female attorneys] as to male attorneys.”

The survey results report experiences consistent with what Calvert reports: Female attorneys face

two types of bias in particular – (1) the glass ceiling and (2) the maternal wall.

GLASS CEILING

For one reason or another, women do not rise to the highest ranks of law firms. At least a portion of this phenomenon results from the glass ceiling keeping women in the lower ranks. The glass ceiling bias manifests itself in several ways according to Calvert:

- Men’s failures are often attributed to situations/ women’s to their personalities/abilities:
 - *e.g.*, “Paul didn’t meet a deadline because he’s so busy; Pauline has trouble with deadlines.”
- Men are evaluated on their potential/women on their achievements:
 - *e.g.*, “Although Paul hasn’t yet taken a deposition, he shows great promise as a litigator and should be promoted. Pauline doesn’t have deposition experience yet; we should wait another year before considering promoting her.”
- What is skill in a man is luck in a woman.
 - *e.g.*, “Paul earned that summary judgment. He did a great job on the briefs and oral argument. Pauline really got lucky with that win.”

MATERNAL WALL BIAS

The first component of the maternal wall bias is that mothers are presumed to be less competent

than others, resulting in less challenging work and the view that they are more “housewife” than “businesswoman.” The second component of the maternal wall bias is that mothers are presumed not to be committed to the firm, so they will just leave. Supervisors prefer to work with the male attorneys because the male attorneys are “more likely” to stay. The best assignments are reserved for those with a future with the firm, and mentoring relationships dry up. Absences are attributed to motherhood schedule, and mothers are more likely to be socially isolated. Often there is a heightened scrutiny of hours and work product, and others assume that mothers are going to be slacking off and try to catch them in the act.

Absences are attributed to motherhood schedule, and mothers are more likely to be socially isolated.

Maternal wall bias is alive and well here in Utah. Utah female attorneys report:

“Partners told a pregnant attorney in the firm that they would not give her certain projects because she was pregnant. Partners used the excuse of her maternity leave; however, it seriously impacted her ability to get work in the last few months of her pregnancy.”

“I felt that the firm management treated me unfairly for having taken two maternity leaves.”

“I was told that women should not be attorneys because they always put their family before their job. I refused to put my job before my family – on that point they were correct (as least as that comment pertained to me).”

“My boss did not treat women like attorneys, only like secretaries. Once I became pregnant, he completely wrote me off. I was passed up for the only available promotion at that job twice in six months. He said repeatedly, ‘The timing of your pregnancy could not have come at a worse time.’”

This bias directly conflicts with the core values we all share. Mary Crane, a nationally recognized speaker and trainer in the field of generational and gender relationships in the workplace, presented at the second symposium.

According to Crane’s findings, no matter what group of people one asks, all people will identify one of the following values as most important to them:

- FAMILY
- INTEGRITY
- LOVE

The majority of people will identify “Family” as their most important value. How people express their values may differ dramatically, but they share the values nonetheless. All attorneys have values that

take precedence over career, and the majority of the time, that value is family. Thus, firms would do well to acknowledge this priority and consider ways to support people’s commitments to their families.

WORK ENVIRONMENT

“More important than anything else is that employers, including law firms, proactively make sure individuals feel a connection in the workplace. Retention results from employees feeling included, accepted and part of the team.”

– Charlotte Miller,
O.C. Tanner, Senior V.P. & former Utah State Bar President

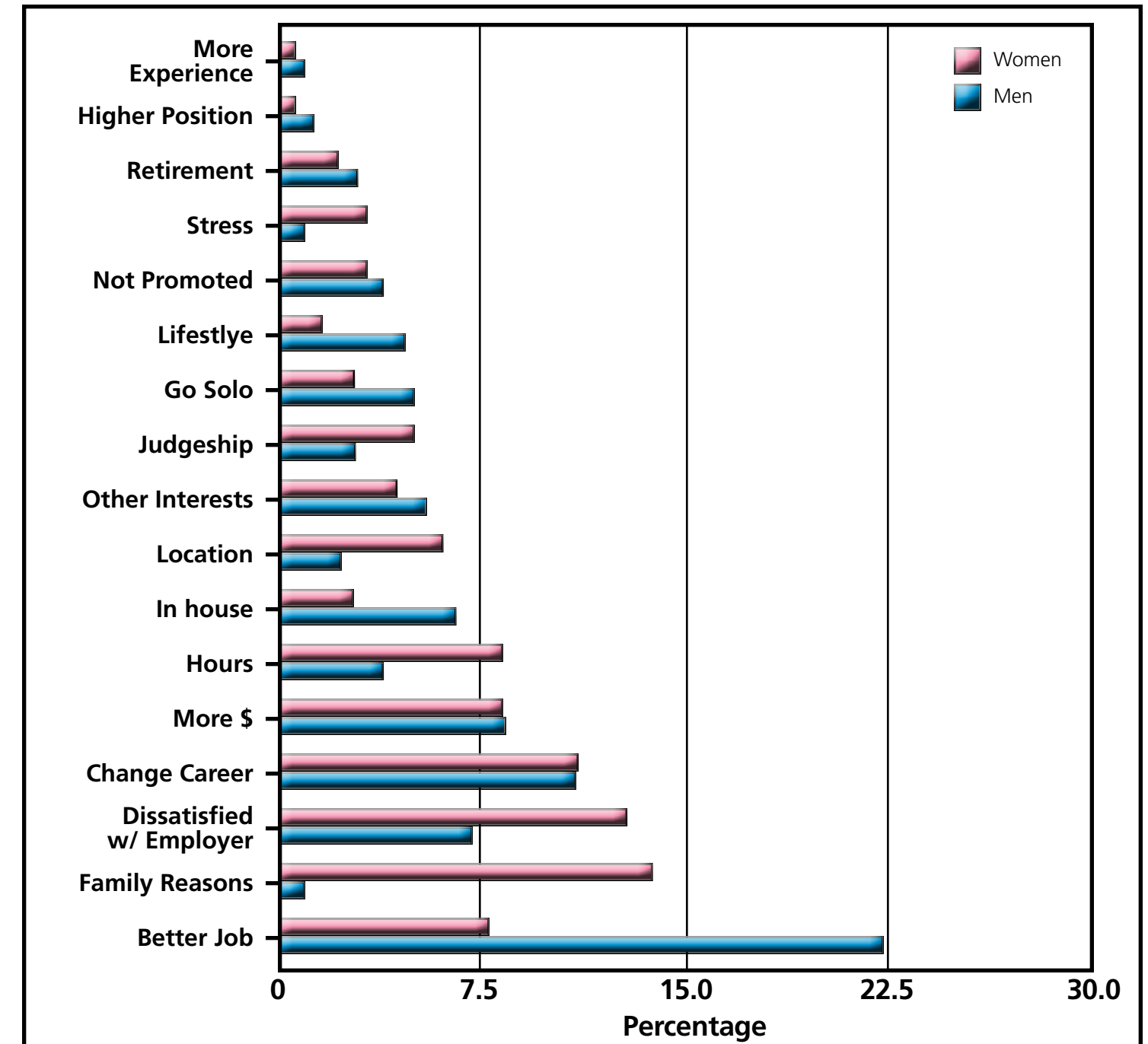
Many factors affect a person’s experience at a firm. Given the survey results, some factors must be encouraging women to leave firms at a greater rate than men. Each expert who contributed to the symposia noted that all individuals have an inherent gender bias, whether they know it or not. These subtle stereotypes about behavior and character often derail the best intentions in professional relationships, performance evaluations, case assignments, promotions, etc. For example, because senior positions in law firms are overwhelmingly male, many people ascribe masculine traits – such as overt confidence and assertiveness – to lawyers, penalizing those who do not exemplify those perceived

character traits. Similarly, a common perception that women are better organized than men can result in women receiving more work that requires attention to detail. In the worst cases, this perception leads people to give female attorneys work more appropriate for paralegals and legal secretaries.

Such bias may not be immediately obvious, but cumulatively, it has powerful impacts. A computer simulation done years ago best demonstrates the cumulative effect of bias. The simulation created an institution with eight levels for promotion. The institution had equal numbers of male and female employees. The model assumed a mere 1 percent bias favoring men over women in the promotion process. After eight rounds of promotions, the top level of management was composed of 65% men and just 35% women. This simulation demonstrates that even small biases accumulate over time and eventually impact formal employment decisions.¹³

In addition to the large impact a small gender preference can have on an organization, more subtle factors also affect a woman’s career choices. Survey results show a far greater percentage of women than men identify dissatisfaction with their current employer as their primary reason for leaving a job. For women, this reason for leaving is second only to family reasons.

Figure 4: Primary Reasons Attorneys Would Leave their Current Firms



13. Joan C. Williams and Consuela A. Pinto, *Fair Measure: Toward Effective Attorney Evaluations*, Ch. II at 15 (ABA Commission on Women in the Profession, 2d ed. 2008) (citing Richard F. Martell, et al., *Male-Female Differences: A Computer Simulation*, 51 AM. PSYCHOLOGIST 157, 158 (1996)).

By contrast, when government attorneys described why they would leave their current job, their top three reasons, both male and female, were Better Job (51% (male), 36% (female)), Judgeship (15%, 18%), and Retirement (14%, 15%). In fact no percentage of government attorneys identified dissatisfaction with employer as a reason to change jobs.

In their survey responses, female attorneys at law firms made the following observations:

“My current firm lacks mentoring. I feel like I have no chance for promotion; the firm lacks women partners. I feel that my firm has a good old boys’ mentality. The lack of meaningful assignments makes me feel like I am not valued as part of firm.”

“I will leave because I have been a loyal work horse for this firm, received very little feedback of any kind other than money, been given fewer opportunities and less mentoring than my male counterparts.”

Such comments illustrate a potential area in which to improve the work environment, and in so doing likely retain more female attorneys.

Assessments from the survey respondents and from participants in the symposia break-out sessions paint a telling picture of why women leave firms, and the consistent theme is that women do not feel valued:

“It is the small things that repeatedly occur, and

you then have a choice to do something differently, and somehow you didn’t succeed in being part of the club, it may be part of the reason you leave. And while you could stick with it, if you felt included rather than excluded, but because you have dissatisfaction with your supervisor and are not feeling part of the team, you leave.”

“Another woman at the firm was repeatedly denied partnership. She was often told that she didn’t work hard enough and bill enough hours; however younger and less experienced associates who billed the same hours were made partner.”

When female respondents were told to assume a job change and asked what they would like about a new position, the top three factors were:

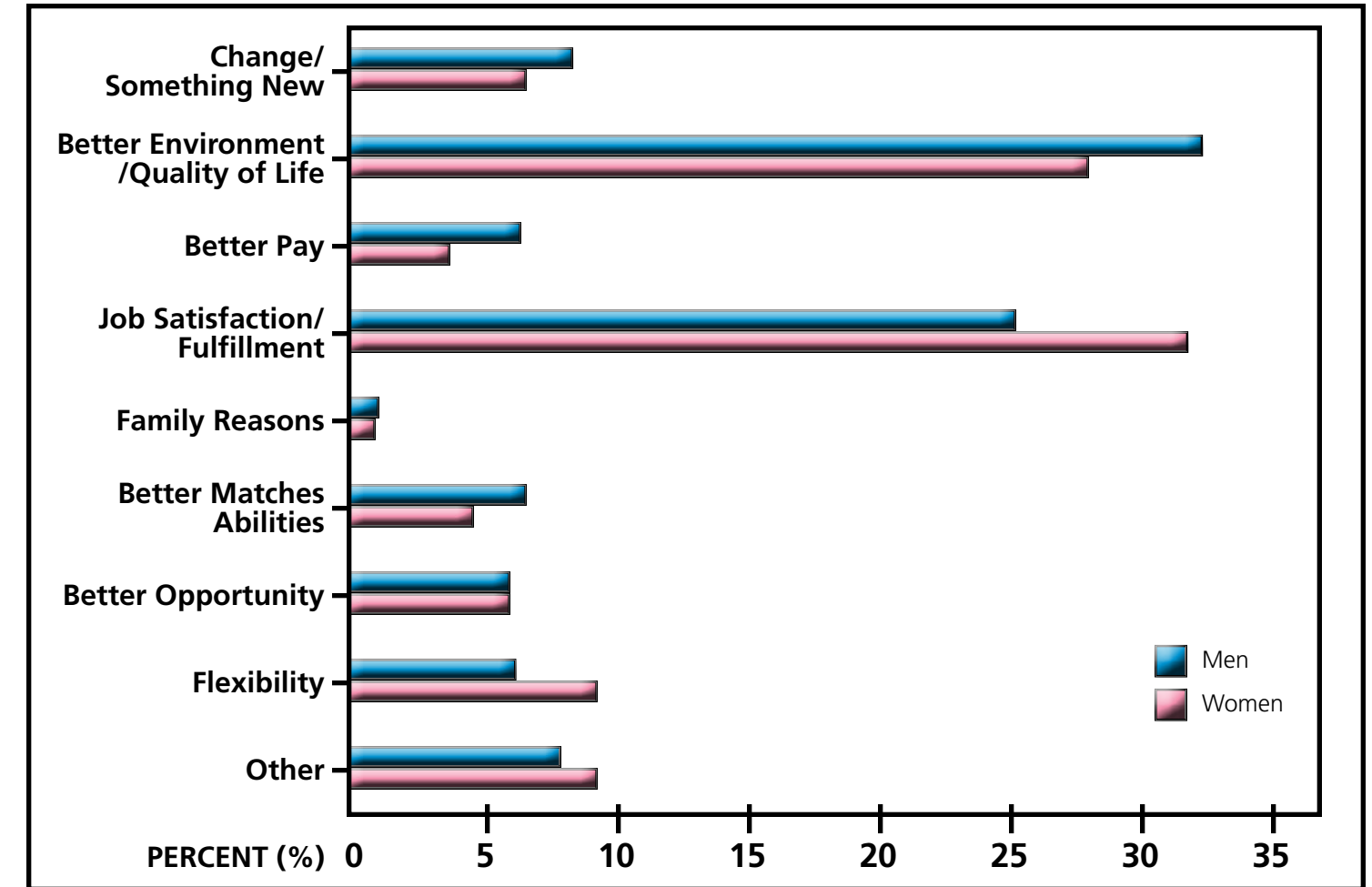
- (1) Job satisfaction/fulfillment (32%)
- (2) Better environment/quality of life (28%)
- (3) Flexibility (9%)

These factors correlate with the top reasons female attorneys leave their current positions – family reasons and dissatisfaction with their current position.

Interestingly, male attorneys stated similar attractions to a new position. The top three positive changes males hoped for in a job change were:

- (1) Better environment/quality of life (32%)
- (2) Job satisfaction/fulfillment (25%)
- (3) Change/something new (8%)

Figure 5: Factors Attorneys Would Like to See in a New Job



In addition, according to Mary Crane, working in a friendly environment with positive people is central to the job expectations of the youngest attorneys in the workforce and to the up and coming generation of attorneys – the Millennials – who were born between 1982 and 2002. Linear job progression and mere financial reward do not motivate Millennial attorneys. Their relationships with others in the workplace will

best predict whether they will remain in a job. With this generation beginning to enter firms (the first of whom entered firms as early as 2007), efforts by firms to increase connectedness among their attorneys will have benefits in retaining not only just women, but also the newest generation of attorneys.

Firms and individual partners have many ways

available to them to build teams, among them: enable open communication, share information, and provide inclusive social activities. While the suggested efforts will no doubt assist in retaining women, they will also increase the connectedness of all members of the firm.

COMMUNICATION

In the symposia break-out sessions, participants spoke repeatedly of the importance of including women in communications regarding the matters on which they worked. Women, particularly more junior women, often found themselves excluded from general communications on a matter, including strategy discussions. Instead, they were given discrete assignments or contacted only when their particular input was requested.

This sort of stilted communication not only marginalizes women, but also diminishes their ability to contribute to the matter.

How attorneys work together on matters constitutes the greatest percentage of an attorney's interaction with a firm. Thus in making women feel a part of the team on the large scale (the firm), all attorneys and law firms must make women feel like part of the team on the small scale (the matter).

In this age of e-mails, conference calls, instant

messaging, webinars, texting, intranets, and websites, no excuse exists for failing to have good team communication. Some firms have developed standard protocols for creating e-mail groups for each matter upon opening the matter. Similarly, some firms employ legal software designed to permit input from all members of the matter team and allow collaboration over time.

The symposia also revealed a heightened interest in ways to integrate the younger generation of attorneys into the workplace. Technological ability and information management are two qualities both Generation X (1962-1982) and the Millennials have in abundance. By embracing new technologies at all levels and ages, firms will be better able to bridge generational gaps as well as gender gaps. Indeed,

enlisting assistance from Generation X and the Millennials in employing technology to improve the practice of law would prove a wise first step.

Another aspect where communication often breaks down is in firm decision making: attorneys see the effects of decisions made – promotions, bonuses, terminations – but do not know why those decisions were made. Attorneys will develop reasons for these decisions in their minds that may or may not have validity. For example, junior female associates often look to the more senior female attorneys to assess

Transparency becomes more important, the more important the decision being made.

their potential for advancement, as demonstrated by responses to the open-ended survey questions. If senior women handle high profile matters and receive “good” work, junior women will feel encouraged. If the junior women perceive the senior women as not receiving equal treatment, they often assume they will receive similar treatment when they reach that level. With this lesson internalized, the junior women place a short horizon on their time with the firm and start to look for work elsewhere before reaching the more senior levels.

This pattern will likely become more prevalent as Millennials enter the work force. Because of their deep commitment to fairness in all matters, Millennials are likely to resent inequality in assignments, even if the issue is not personal to them. This effect is critical for firms to understand if they wish to keep junior associates. Making sure assignments are distributed fairly is an issue addressed subsequently, but sometimes the perceived inequality is not an inequality at all.

One way to combat sending unintended messages is to provide greater transparency about attorneys' positions with the firm. For example, if the senior woman has asked not to be put on cases that involve travel, that should be made known to junior attorneys as well as assigning attorneys so they do not perceive her as being excluded from “high profile, national” work. Transparency becomes more important, the

more important the decision being made. That is, when a firm promotes associates to partners, it needs to be clear both about why particular attorneys make partner and why others do not. Without transparency, associates may make assumptions that may differ considerably from reality. The attorney who seems just fine to the newer associates may not meet the firm needs.

BEST PRACTICES FOR IMPROVING COMMUNICATION

Firms

- Communicate a commitment from top level management to a firm free from gender bias as well as racial, ethnic, religious, and other inappropriate biases.
- Implement procedures to increase team communication, *e.g.*, e-mail groups, internal wikis,¹⁴ legal specific software that encourages collaboration, etc.
- Engage associates in discussions of purchasing and use of technology to improve the workplace.
- Insist everyone from the highest level partner to the lowest level member of the team understand and utilize the technology available to them.
 - Inclusion helps avoid needless duplication and repetition of explanations and increases the free flow of information and ideas.

14. A wiki is a website or similar online resource that allows collective addition to and editing of its content.

- Accept the existence of the rumor mill and use it to the firm's advantage by providing accurate information.
- Share the basis for firm decisions with the firm, *e.g.*, memoranda to firm shared through e-mail or intranet.
- Encourage decision makers to answer questions about firm decision making honestly and completely.

Attorneys

- Ask questions to better understand assignments, strategic choices, firm policy.
- Make oneself easily available by answering the phone, leaving voicemail and e-mail responses when one is likely to be hard to get in touch with, keep teammates and assistants personally informed of how best to make contact.
- Suggest and help implement better communication practices within the firm.

INCLUSION IN SOCIAL ACTIVITIES

A factor consistently raised in the symposia break-out sessions and in the open-ended answers to survey questions was the exclusion of women from social activities and key relationships with male partners. Many women expressed concerns that male partners would not travel for work with female attorneys, would not go to lunch with female attorneys, and would not mentor female attorneys. Given that

men make up 72% of the attorneys in law firms surveyed, this lack of socialization is not only an impediment to advancement, but can also lead women to feel isolated and disconnected from the team. When an attorney does not feel she is a valued member of the firm, leaving that firm becomes easier and therefore more likely.

Women's committees offer female attorneys a forum in which to meet and speak candidly. Because female attorneys often experience similar road blocks, open deliberations about their frustrations can open the door to new ideas and developments. Such committees encourage and generate initiatives that in turn benefit the law firm and help women feel less isolated in their firms. This kind of support often encourages women to weather difficult patches in their careers rather than flee the workplace.

BEST PRACTICES FOR INCLUSION IN SOCIAL ACTIVITIES

Firms

- Mandate partners go to lunch with female attorneys.
- Subsidize lunches between partners and associates, requiring balance between male and female associates over time.
 - Subsidizing the lunch not only makes going to lunch more attractive but also allows firms to more easily track the gender balance of attendees by requiring the host to submit the names of those attending along with receipts.

- Encourage, through subsidization or otherwise, associates to ask partners to lunch, again requiring gender balance over time.
- Reserve meeting rooms or hotel suites with a room separate from the bedroom for work sessions when attorneys are out of town.
- Invite spouses to all firm sponsored social events to encourage spouses to feel more comfortable with the attorneys' work relationships.
- Share firm tickets to sporting, arts, and fundraising events with female attorneys as well as male.
- Provide counseling for attorneys who find working with members of the opposite sex stressful or difficult.
- Fund activities for women's committees, bring in speakers, and produce media promoting women's development in the workplace.

Attorneys

- Socialize.
 - Women often make the mistake of thinking all they need to do is work hard to get ahead. Relationships are key to career success as a firm attorney.
- Invite multiple people to participate in the social activity to alleviate concerns about the appearance of impropriety.
- Invite people of different genders both above and

below one's position to have lunch.

- Participate and network with women-related organizations in the community like Women Lawyers of Utah or Utah Women's Alliance for Building Community or Women Trial Lawyers Caucus of the American Association for Justice or similar professional organizations.
- Take the implicit attitude tests at <https://implicit.harvard.edu/> to help one see what one's gender bias as well as bias towards other groups might be. (Click on "Take a Demo Test" to control which test you take.) Consider how that may impact one's relationships at work.
- Address perceived unfair treatment and uncomfortable environments on a personal level with the offending people before the behavior becomes harassment or discrimination.
 - Only through a frank discussion about these issues will firm members recognize and debunk presumptions about male and female attorneys.

MENTORING

Survey respondents had the following to say about mentoring:

"It would have been extremely helpful to have known an attorney well enough that I could have asked him or her questions about how to do things without fear of being judged and how to deal with the attorneys from whom I received work."

“[Having] someone who [is] actually interested in my development as an attorney [would have helped]. Rather than a partner who was required to be a mentor.”

“I had attorneys I looked up to, but I always felt they were too busy to bother them. I wanted someone to take the initiative with me, take me out to lunch, and ask me pointedly how things were going.”

Women consistently list mentoring as either the key to their success or the lack of mentoring as a reason to change firms. Blane R. Prescott, a principal with Hildebrandt Baker Robbins and a speaker at the first symposium, identifies mentoring as the most important factor in building loyalty, satisfaction, and competence.

The survey revealed the following information about mentoring in Utah:

- Mentoring relationships generally start in the same workplace (67%).
- For both sexes, mentoring relationships are more often with men than with women (73% for women, 93% for men).
- Of those responding attorneys who had never had a mentor, 87% reported they had never had the opportunity to have a mentor.

- 79% reported they wish they had had a mentor.
- Because more than 72% of attorneys at firms are men and approximately 89% of partners are men, the mentoring responsibilities fall more heavily on men.

Mentoring has various facets. Those facets include legal training, coaching, and championing, among others.

The Utah Supreme Court has recently adopted, and the Utah State Bar administers, the New Lawyer Training Program (NLTP) intended to:

[T]rain new lawyers during their first year of practice in professionalism, ethics, and civility; to assist new lawyers in acquiring the practical skills and judgment necessary to practice in a highly competent manner; and to provide a means for all Utah attorneys to learn the importance of organizational mentoring, including the building of developmental networks and long-term, multiple mentoring relationships.¹⁵

The Utah Supreme Court and the Utah State Bar have identified the following benefits of effective mentoring:

- Increases productivity for the individual and the organization

- Improves client relations and client attraction
- Reduces the likelihood of new lawyers leaving the organization
- Boosts morale
- Assists in attracting better talent to the organization
- Enhances work and career satisfaction
- Clarifies professional identity
- Increases advancement rates
- Promotes greater recognition and visibility
- Encourages career opportunities within the organization¹⁶

The NLTP mentor should be one mentor of many an attorney has over her career.

Prescott asserts that mentors also fill the following roles:

- A mentor is the “idealized” parent of our adulthood.
- A mentor helps form a long term goal or dream, validates it, and gives guidance.
- A mentor evaluates and critiques the protégé’s performance, *not* the protégé’s ability.

- A mentor does not equal an evaluator or a supervisor – as long as evaluation remains the primary focus, the relationship cannot become truly mentorial.

Mentoring roles, because of their nature, tend to grow in more natural relationship settings, rather than through assignments. Firms and attorneys should examine the other aspects of the mentor relationship: coaching and championing. This report uses the term “coaching” to encompass advice about

To achieve success in a law firm a person needs a champion among those who have already achieved success.

how to navigate the politics of the firm, how to position oneself for desired success, how to achieve desired outcomes, etc. “Championing” on the other hand, is more about how the mentor interacts with the others in the firm and in the legal community vis-à-vis the mentee. In particular, to achieve success in a law firm a person needs a

champion among those who have already achieved success. The champion will advocate for the mentee when the time comes for determining compensation, handing out assignments, voting on partnership, etc. Likewise, the champion will watch the mentee’s back, warn her of potential problems, and try to fend them off.

Notably, national research shows that women with senior male mentors advance in their careers and

15. NLTP Manual, 2009.

16. *Id.*

have a higher income than women who do not.

In the absence of sufficient, objective information to allow for a rational means of discriminating among aspiring attorneys, having a powerful male mentor signals to the predominantly male leadership that a woman lawyer possesses those sought-after competencies and qualities typically associated with her male peers.¹⁷

Thus, for firms and attorneys that are serious about wanting to retain and advance women, they need to make sure their female associates have powerful, male champions.

Coaching and championing come very naturally when we find an attorney we think is a superstar. For good, but non-superstar attorneys, partners do not tend to take the time either to coach or to champion them. For men, this is less of a problem because myths concerning men assume their competence. For women, however, the implicit bias – as discussed earlier – works against them. Thus, if a female attorney lacks a coach or champion to help her navigate the waters and educate other partners about the female attorney's strengths and potential, she will not receive the same presumption of competence as her male counterpart and will not have the same feeling of inclusion in the firm and will be less likely to advance.

Recently, according to PAR, several national law firms have determined that their partners should be held accountable for advancing the careers of female lawyers in the firm. As part of diversity initiatives, some firms have implemented formal mechanisms to hold individual and managerial partners financially accountable for their roles in retaining and advancing female attorneys. For example, many law firms have started compensating partners for their efforts to retain, train, and advance female attorneys. Other firms have started tracking (and holding accountable, if appropriate) practice group leaders and other partners for persistent attrition of female attorneys. Regardless of how it is being done, some firms now hold their partners responsible for the advancement of women.¹⁸

BEST PRACTICES FOR MENTORING

Firms

- Work with the guidelines provided by the NLTP for training first-year associates.
- Encourage partners and senior associates to understand the multidimensional role of mentoring.
- If mentors are assigned, review program annually to consider how well it is achieving its stated goals.
 - Avoid assigning mentors who directly supervise

the assigned associate.

- Avoid assigning mentors based on sex.
- Ensure partners and associates within firms champion and coach women at all levels of their careers.
- Provide billable credit, bonuses, or other incentives for mentoring activities.

Attorneys

- Actively seek out coaches and mentors from the pool of partners who will help navigate the firm and partnership waters.
- Make a special effort to advocate overtly for (champion) female associates.

MAKING ALTERNATIVE SCHEDULES AVAILABLE

The survey results demonstrate that attorneys have a high interest in the availability of alternative schedules and that the availability of such schedules varies widely among different types of jobs. This report, along with the survey, uses the term “alternative schedule” to encompass a variety of work arrangements including: nontraditional hours (start early/leave early, start late/leave late), telecommuting, condensed work weeks (same hours but completed in fewer days), extended work weeks (same hours but completed in more days), pay level determined by number of hours, part-time, job sharing, etc. Many of the alternative

schedules available have no impact on the hours worked by the attorney and in turn do not impact firm finances.

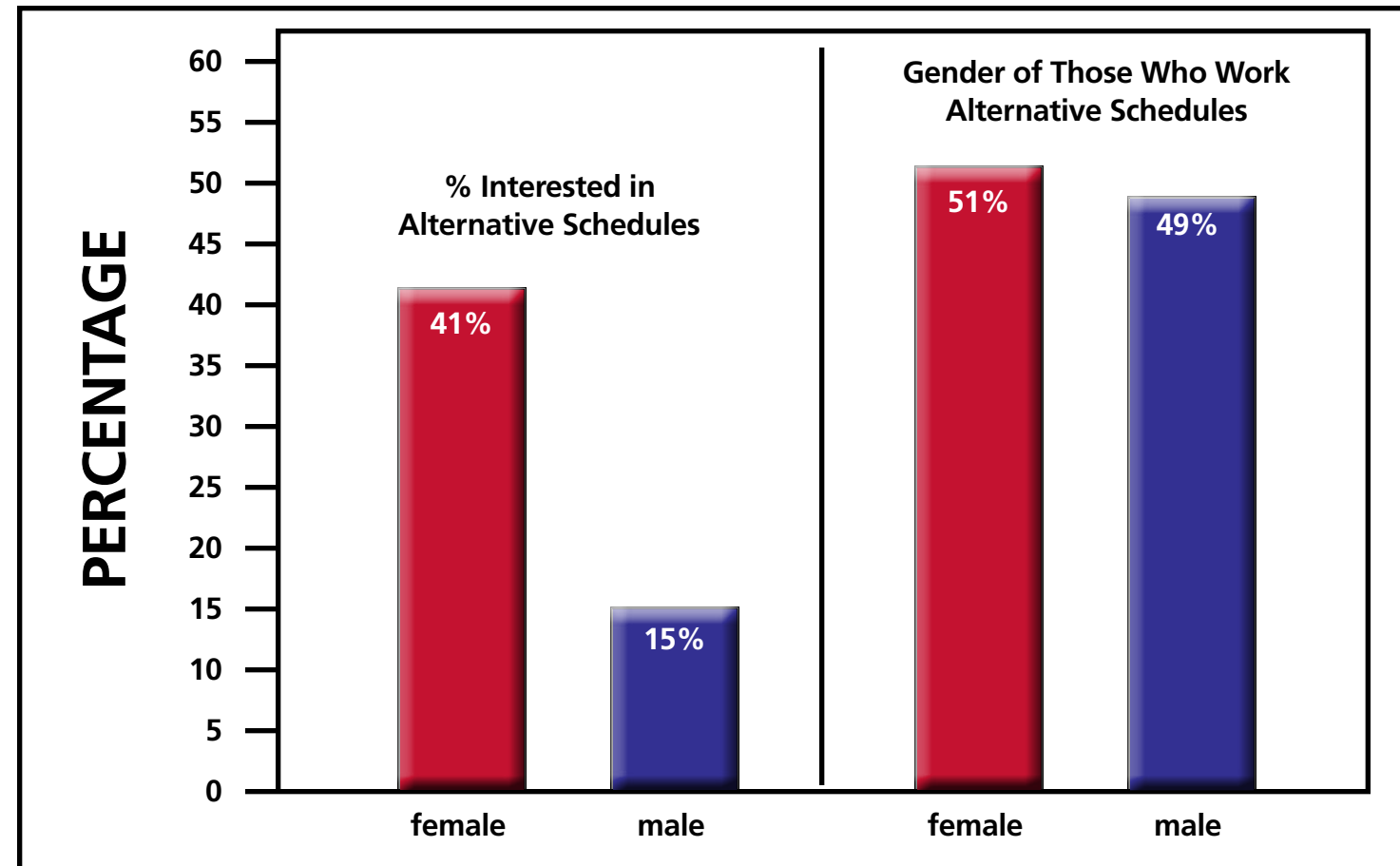
Law firms in Utah offer alternative schedules more frequently – 74% of the time – than other legal workplaces. In connection with other types of employment in the legal field, the availability of alternative schedules reported is 70% for those in academia, 67% for those in a non-legal capacity, 62% for those in a governmental capacity, 60% for those at non-profit organizations, and 38% for in-house positions.

A surprisingly large percentage of participants – 27% of those at law firms – said they currently worked an alternative or flexible schedule. A higher percentage of females than males work an alternative schedule in every employer type (law firm, company, government, etc.), although a significant percentage of males worked alternative schedules in almost every employer type. At Utah law firms, 45% of female attorneys and 19% of male attorneys in law firms work alternative schedules. Of those working alternative schedules in firms, 51% are female and 49% are male. In comparison, 76.6% of female, and 41.3% of male solo practitioners work alternative schedules. Of those working alternative schedules as solo practitioners, 53% are female and 46% are male. So while a greater percentage of women take advantage of alternative schedules, a substantial number of men work alternative schedules.

17. Ellen Ostrow, *Senior Male Mentors Help Women Get Promoted to Shareholder*, THE COMPLETE LAWYER (March 2009), <http://www.thecompletelawyer.com/focus-on/march-2009>.

18. PAR website; <http://www.pardc.org/>; Best Practice #9, Hold Partners Accountable.

Figure 6: Interest and Usage of Alternative Schedules at Law Firms by Gender



In addition, a large disparity exists in the percentages of females and males younger than 50 years of age working alternative schedules at law firms: 32% of females age 39 or younger say they work an alternative schedule as opposed to only 8% of males age 39 or younger; and 51% of females ages 40-49 report working an alternative schedule compared to only 18% of males ages 40-49. However, the disparity is narrower among males and females over 50 years of

age: 24% of females age 50 or older work alternative schedules while 21% of males do.

Demand for alternative schedules varied significantly between males and females. In virtually all cases, the percentage of females who reported wanting an alternative schedule exceeded the percentage of males. 41% of females and 15% of males at law firms expressed an interest in an alternative schedule. In

addition, regardless of age, a higher percentage of females than males at law firms report they would like to work an alternative schedule, and a higher percentage of younger females than older females report a desire to work an alternative schedule: 52% of females age 39 or younger compared to only 15% of males age 39 or younger; 30% of females ages 40 to 49 compared to 15% of males ages 40 to 49; and 27% of females age 50 or over as compared to only 14% of males age 50 or over.

The reasons for wanting an alternative schedule are virtually identical regardless of the type of employer for which an attorney works. As the primary reason both male and female firm attorneys want to work an alternative schedule, many attorneys listed wanting to spend more time with young children. Other reasons given by a high percentage of attorneys include a desire for flexibility, happiness/well-being, and convenience.

Literature in this area has suggested for some time that being a lawyer is a “two-person career”.¹⁹ Under most law firm advancement systems, a lawyer, in particular, needs to have assistance in carrying out the day to day obligations of life so that s/he can bill

the requisite number of hours and do the necessary socializing to become and remain a productive partner. These day to day obligations include not only caring for children, but also cooking, cleaning, picking up dry cleaning, paying bills, etc.²⁰ Male attorneys, far more often than female attorneys, have spouses that do not work outside the home.

The reasons female attorneys in Utah show a greater interest in alternative schedules are not surprising considering the family responsibilities of attorneys, especially female attorneys.²¹ While the rates of female respondents and male respondents with one to four children were nearly the same (64% of female respondents and 68% of male respondents), 75% of female respondents reported having spouses/partners who work outside the home, while only 22% of male respondents reported having spouses/partners working outside the home. In addition, 73% of female respondents reported being the primary caregivers for their children, while only 1% of male respondents reported being the primary caregivers for their children.

Symposia participants expressed surprise at the number of female lawyers who reported being the

19. See, e.g., Hannah Papanek, *Men, Women and Work: Reflections on the Two-Person Career*, 78 AM. J. SOC. 852 (1973).

20. Joan C. Williams & Veta T. Richardson, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, 62 HASTINGS LAW JOURNAL __, 23 (2010), <http://www.uchastings.edu/news/docs/same-glass-ceiling.pdf>.

21. When an attorney does not have a spouse at home to help support his/her legal career, the ability to compensate others to perform these day to day functions becomes critical. For example, the attorney must pay for child care, food preparation, food or dry cleaning or other delivery, fees for extended hours, etc. This understanding turns the traditional view – that a dual income family needs less pay than a single income family – on its head. If firms are going to consider the existence of a stay at home spouse in determining compensation (which we do not advocate), one can argue that attorneys without stay at home spouses should make more than attorneys with stay at home spouses to enable them to pay for services that will allow them to focus on their jobs.

primary caregiver for their children and expressed that they believed more women would report that daycare providers/nannies fulfilled this role. In addition, another 20% of female respondents reported sharing childcare responsibilities with a spouse or partner, only 12% of male respondents reported sharing care giving responsibilities with a spouse or partner. Female attorneys also appear to do more housework than their male counterparts. Among female attorneys, 71% reported doing 40% or more of household chores, while only 38% of male lawyers reported performing 40% or more of household chores.

When asked whether they would feel comfortable asking to work an alternative schedule, a majority of firm attorneys (54%) said they would not. When this number is separated into male and female respondents at law firms, it varies only slightly, with 56% of males and 51% of females reporting they would feel uncomfortable asking for an alternative schedule. When asked why they would feel uncomfortable asking for an alternative schedule, many firm attorneys reported that their firms did not allow alternative schedules. Others suggested that their firms did not encourage or “frowned upon” working an alternative schedule because the firm was or the partners in the firm were traditional and working alternative schedules ran counter to firm culture. Some attorneys said they were too new to the firm to ask for an alternative schedule. Some said they feared not being considered for promotions, not being considered for partnership, and even

termination. Many also expressed concern for a negative impact on their reputations because they would appear as unmotivated, unprofessional, noncommittal lawyers concerned only with themselves and not with the work or the firm. One attorney said asking for an alternative schedule would represent a “sign of weakness to my male partners.”

Some female attorneys wrote that because their female colleagues with young children worked full time, they felt pressured to do the same or were concerned they would appear not as “fully committed to [the] job as a male attorney.” On the other hand, several attorneys lamented that only those who had young children or other family-related reasons for working an alternative schedule were allowed to do so. One attorney stated “[o]nly women have been given the opportunity to work from home.” And one attorney wrote that all men were expected to work a regular, full-time schedule.

Those who work alternative schedules described their schedules similarly across all categories of employment, with emphasis on certain types of alternative schedules depending on the capacity or position. For those at firms, a majority said their alternative schedule allows them to work from home, work less hours and get paid hourly, get paid a percentage of billable hours, work fewer days, or work flexible hours.

A majority of those working alternative schedules in firms say their alternative schedule is not considered

less than full time. Regardless of employment position, a higher percentage of females than males report that their alternative schedule is considered less than full time.

A majority of those working an alternative schedule worked a full-time schedule previously. When asked whether they planned to return to a standard schedule at some point, 91% of those at firms said no.

When asked how flexible their current schedule was, regardless of whether it was considered an alternative schedule, those who work in law firms say their schedule is very flexible: 4% say their schedule has very limited flexibility (*i.e.*, sick leave and scheduled vacations only), 12% say it is somewhat flexible, 28% say it is moderately flexible, 34% say it is very flexible and 22% say it is completely flexible (*i.e.*, they have total control over their schedule.)

An alternative schedule does not always require an attorney to work less, and many alternatives exist to achieve personal goals.

BEST PRACTICES FOR ALTERNATIVE SCHEDULES

Firms

- Build flexibility into the workplace. Add as much flexibility to work schedules as firm finances and individual matters will allow.
 - Relatively inexpensive technology exists to make working somewhere other than one’s desk feasible.

- Because of technology clients and employers now expect attorneys to be available by telephone or e-mail twenty-four hours a day, seven days a week. As a trade-off, clients and employers should permit more flexibility with the understanding that the attorney will have telephone and/or e-mail availability.

- An alternative schedule does not always require an attorney to work less, and many alternatives

exist to achieve personal goals. *E.g.*, if an attorney wants to coach a child’s sports team that has practice every day at three o’clock, the attorney could reach that goal in a variety of ways, including coming to work early in order to leave early, working on the weekend to complete the required work, coming back to work after practice, working from home later

in the evening, etc.

- Eliminate “face time” requirements
 - Face time requirements create tension in attorneys’ lives without good reason. While attorneys need to get to know each other and establish relationships of confidence, trust, and respect, sitting at one’s desk every day from eight to six is not a prerequisite to building these relationships.
- Focus on billable hours or fee generation.

- Set billable targets or fee generation targets for the year and allow attorneys to take time off with pay and benefits as long as those targets are met. In this way, if the firm's caseload is such that an attorney can work very hard on a matter for nine, ten, eleven months of the year, say taking a big case to trial or closing a big deal, the attorney could then take three, two, or one month(s) off to write a book or travel or spend time with family or ski. The firm's bottom line will not suffer, and the attorney will have a reduced likelihood of burning out.
- Incorporate reduced hours programs.
 - Such programs do not necessarily cost firms money. Take the job sharing example: two attorneys share a case load, an office, a computer, a phone, support staff etc. Because of the reduced schedules, the firm may not need to provide certain benefits for the attorneys the firm might have to provide if the attorneys worked full time. Moreover, the matters they work on get two sets of eyes and two heads instead of one. The attorneys of course have to work well together and develop clear channels of communication. But such arrangements may actually save money.
 - Legitimate reduced hours programs save firms money. Attorneys who determine they want to work fewer hours will leave a firm if an equitable

reduced hours program is not in place. Attrition costs firms a great deal of money: \$200,000 to \$500,000 per associate. Those costs include not only the sunk costs spent on the departing associate but the additional costs required to bring the new associate up to speed. When considered in light of these costs, the slightly reduced income from a person working 80% time is insignificant.²²

- Firms should make alternative schedules available on equal basis regardless of gender or reason for wanting such a schedule.

Attorneys

- Consider what kind of alternative schedule might suit one's needs and ask for it before deciding to leave a firm on the assumption the firm will not permit an alternative schedule.
- Propose the firm adopt or revise its reduced hours opportunities.
 - Consider various materials available through PAR, including a Model Balanced Hours Policy, links to which can be found at <http://www.pardc.org/LawFirm/>.
- Differentiate between the concepts of face time and building a reputation, understanding that one has little value and the other is indispensable.

22. See *The Economics of Part-time Lawyers*, forthcoming at www.pardc.org.

FOSTERING ADVANCEMENT & RETENTION OF WOMEN THROUGH PROFESSIONAL DEVELOPMENT

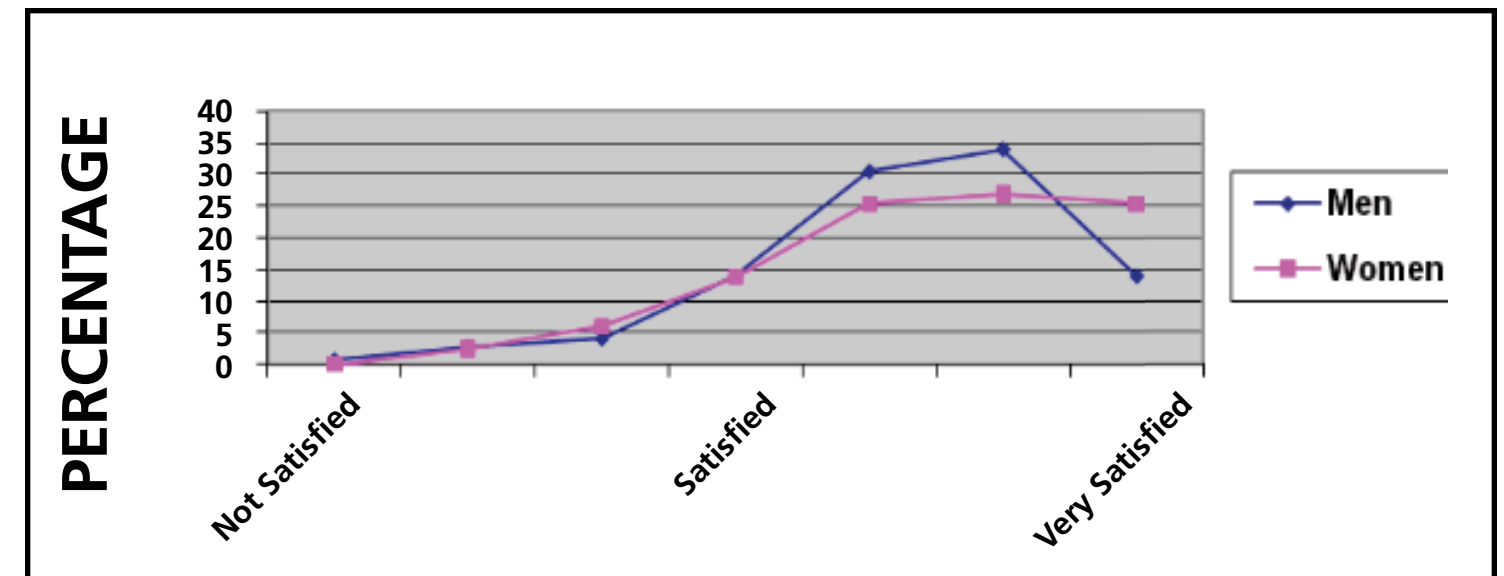
Partners and associates each have roles to play in professional development. Certainly no attorney ever sprang fully developed from law school into practice. Both partners and associates need to accept and take responsibility for their role in the professional development of associates. Associates have every incentive to take responsibility for their professional development. Partners on the other hand, not only do not have incentive to take responsibility for the advancement and retention attorneys, they have disincentives to take such responsibility – greater competition, non-billable time for mentoring/instruction, potentially wasted effort spent on associates

who go elsewhere. Not surprisingly, these disincentives contribute to discontent regarding professional development opportunities among attorneys, and female attorneys in particular, at Utah law firms. In analyzing this issue, we consider law firm policies, educational opportunities, workload, and client development issues.

ASSIGNMENT PRACTICES/POLICIES

The good news is that on the whole, firm attorneys have a fairly high level of satisfaction with their job assignments.

Figure 7: Attorney Satisfactions with Assignment Quality



Nevertheless, female attorneys in Utah appear to feel slightly less positive about their work assignments than their male counterparts do. They think their work is less challenging, and of a lower quality. Specifically:

- 86% of men surveyed, as opposed to 81% of women surveyed, felt that their work was challenging.
- 57% of the men surveyed, and only 52% of the women surveyed, felt their work was “cutting edge.”

Survey participants – men and women alike – rated the quality of work they normally received compared to that of their peers. However, women proportionally express a greater dissatisfaction when comparing the quality of their assignments with those of their peers. In fact, 8% of female attorneys reported they usually or almost always received assignments of lower quality than the work assigned to their peers, while only 3% of males had similar complaints. Moreover, 46% of male attorneys responded that the quality of their assignments was almost always or usually higher than the work given to their peers, whereas only 36% of female attorneys stated the same.

Survey participants then described the two primary reasons *why* they thought they received a different quality of assignment than their peers. While the majority of respondents attributed the quality of their assignments to ability level and experience, men, more than women, made this attribution. Male attorneys more than female attorneys credited their success in getting good assignments to their reliability, the nature of the firm, and the nature of the clients. On the other

hand, more women than men stated that the quality of their assignments was based on their personality and good relationships. Indeed, 24% of women attributed their assignments (good or bad), at least in part, to personality, whereas only 7% of the men surveyed made the same attribution. 4% of women surveyed said that the quality of their work assignments compared to that of their peers was directly related to gender. No men made that same assertion.

Some of the open-ended Survey responses read as follows.

“I am not ‘in’ with the attorneys that bring in the best projects.”

“Because I have small children at home, partners do not give me projects that are particularly demanding, require travel, or otherwise are viewed as detracting from my duties to my family.”

“I often feel like the really good work goes to other male associates. I feel as though I have to work harder to get good assignments.”

“Attorneys at my firm are paid a percentage of what is billed and collected – we are not salaried. I am not the sole provider for my household, unlike my co-workers. Therefore, I believe I get the lower paying, and sometimes non-paying work, because I have a dual income household, unlike the other associate attorneys (all male) who are sole providers.”

These comments suggest that at least some respondents believe underlying bias affects the distribution of

assignments as well. Assigning partners sometimes assume that women who work part-time, have children, or come from a dual-income household are not as dedicated, and thus less deserving of the more high-profile assignments.

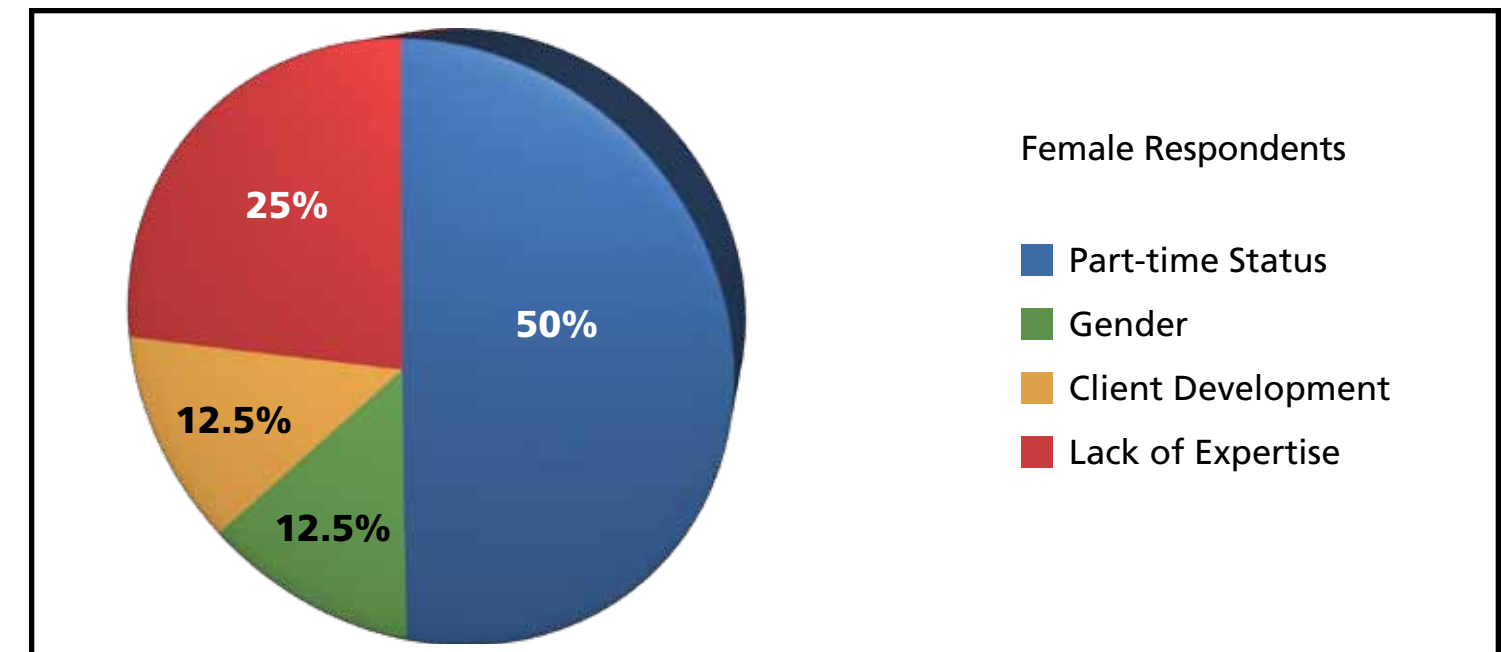
Underlying gender bias can create a self-perpetuating cycle when it comes to the distribution of assignments amongst lower level attorneys. The lack of mentoring for female attorneys and a belief that women who are mothers or who work reduced hours produce less and poorer quality work results in poorer relationships with assigning attorneys and, in turn, lower quality assignments. Consequently, female attorneys find

themselves falling short on their billable hours despite being willing and capable of doing the work. Typically, attorneys who fail to meet their billable hours find themselves forced out of their firms.

Of those women who felt their assignments did not match their level of expertise, the majority felt they received lower quality assignments because they worked reduced schedules.

When asked the question, “What is the primary reason why you feel you are not given assignments appropriate for your level of expertise?”, several attorneys expressed these concerns:

Figure 8: Primary Reason Female Attorneys Believe They Do Not Receive Assignments Appropriate to the Their Level of Expertise



“Not working full time. They don’t think the work can possibly be done on a part-time basis.”

“My alternative schedule gives others the perception that I’m not ‘all in’ at the firm since I’m not here from 7 to 7 daily.”

“Because I work part-time, the partners try to put me on less important things or make sure I work back-up support for another attorney. I make myself available on the days when I am home, and I don’t need to work full-time to handle some of the more important work. It is about perception. A full-time attorney virtually never spends more than 50% of his or her time on any one project and so I should be able to handle any project, but the perception is not that I need to limit the number of projects I have, but the size of the projects I have.”

“Being the only female attorney in the firm, I am often given secretarial-type assignments that would never be asked of male attorneys similarly situated.”

“I feel like my boss doesn’t take me seriously because I am on the ‘mommy track.’”

These reported discrepancies are not unique to Utah. According to PAR,

a major penalty for attorneys who reduce their hours is the loss of good assignments. PAR has heard reports of attorneys being

passed over for challenging and interesting assignments, being relegated to document reviews, and even being told to change their practice areas to do more rote work. [This penalty causes] frustration and a sense of second-class citizenship for the reduced-hours attorneys, and is a factor in their decisions whether to stay with the firm.²³

According to PAR, sometimes the loss of good assignments happens because partners assume that attorneys who work alternative schedules “don’t want to work on matters that might involve short deadlines or travel.” Other times, “partners tend to grab whichever attorneys are closest when an assignment becomes available – and attorneys who aren’t in the office as often don’t have as much of an opportunity to be grabbed.” Finally, some partners “won’t work with attorneys who work less than full-time [based on the] mistaken assumption that the attorneys will be unreliable.”

Whatever the reason, law firms suffer in the long run when attorneys on alternative schedules do not get a proportionate share of desirable assignments. The attorneys do not get the experience they need for their professional development, and the firms’ human capital assets stagnate or diminish rather than improve. Furthermore, the attorneys are more likely to leave their firms, thereby driving up attrition costs and weakening client relationships.

BEST PRACTICES FOR ATTORNEY ASSIGNMENTS

- Communicate a commitment to a clearly defined, articulated, and widely communicated assignment system free from gender bias as well as racial, ethnic, religious, and other inappropriate biases.
- Increase basic communication with attorneys regarding their workload, encouraging attorneys to raise their concerns.
- Use the statistics already available to evaluate workload distribution.
 - *E.g.*, managing or assigning partners can use billed hours to determine which associates are not getting enough work and then distribute projects to those attorneys.
- Distribute assignments with an eye toward spreading learning opportunities.
- Determine whether the firm would benefit from a different assignment system by taking a historical look at associates’ workload. If the same type of attorneys always get the best assignments (*e.g.*, full-time or male or LDS), the firm may need a better assignment system.
- Create a written policy setting forth the process for case assignment.
 - Include a method for attorneys to raise concerns if the policy is not followed.
- Include male and female attorneys at all levels in the firm in the design of the case distribution process.
- A partner or group of partners should be responsible for assigning work, or at a minimum conducting a regular review of associates’ caseloads.
- The policy should include a check for assignment disparity by tracking who is working for the firm’s biggest clients, who is working on the highest profile matters, and who is working with the firm’s most influential partners.
- Absent a concrete deadline or a specific business need or a real emergency, waiting to give associates assignments at the last minute (*e.g.*, at 5 P.M. on a Friday) is unnecessarily punitive.
 - Assigning work in this manner is detrimental to attorneys working alternative schedules as well as the personal lives of those working standard schedules.
- Assignments should always be accompanied by a specific deadline to prevent attorneys from treating all assignments as needing immediate turnaround.
 - Assigning work in this manner (*i.e.*, not on an emergency basis) allows attorneys on alternative schedules to be given equal consideration for work assignments.
- Assignments should have clearly defined goals, and associates must clearly understand assignments.

23. PAR website; <http://www.pardc.org/>; Best Practice #7, Check for Assignment Disparity.

- Attorneys should give feedback while the project is still on-going (preferably shortly after the project's inception), and not months after the associate completes the project.
- Attorneys should acknowledge associate contributions to clients.
 - This practice allows associates to build relationships with clients, which is invaluable to associates' morale and self-worth at work.
- Associates should have an opportunity to provide feedback to the partners from whom they receive assignments.
 - Partners, like associates, need to receive feedback to improve. The better a partner is at giving clear instructions and feedback, the better the associates who work for that partner will be. Furthermore, having associates review partners allows the firm to determine what a partner is like to work for and with. A partner who repeatedly gets negative reviews (especially from female associates) could signify a problem or a reason for high attrition of female associates.
 - ◆ As a practical matter, this last suggestion may not work in certain firms, offices, or practice areas.

Client Development

One critical aspect of professional development that firms and attorneys, particularly women, often

overlook is client development.

- 73% of men receive advice on how to develop clients, only 65% of women receive such advice.
- 28% of the female survey respondents felt that the advice they received on client development from someone inside their law firms was not helpful.
- 32% of the female survey respondents who received advice on how to develop clients felt the advice they received on client development from someone outside their law firms was not helpful.

All law firms are businesses. Lawyers hoping to advance in firms, and lawyers looking to help others advance in firms, cannot afford to lose sight of the importance of business generation. Without the ability to generate business, no lawyer – male or female – will excel in a law firm. Having one's own book of business gives an attorney a level of independence. If an attorney can generate enough business to keep herself busy, her dependence on other, more senior attorneys for her livelihood diminishes. When an attorney is self-sufficient in terms of clients, she can more easily change firms or open her own firm. If an attorney can generate enough business to keep other attorneys busy in addition to herself, she increases her ability to influence law firm practices and policy because she is of more value to the firm. With greater client generation capacity, her ability to change firms or open her own firm continues to grow, and her potential financial gain from either increases. The

drive to generate business is no different for attorneys working reduced hours.

Thus, in considering how to improve the advancement and retention of female attorneys in law firms, attorneys and firms should emphasize client development. Women often find themselves at a loss for how to develop clients. Women tend to be less comfortable with self-promotion than men.²⁴ The cliché of client development seems to involve an in-depth knowledge of sports or passable golf skills. Many women cannot imagine themselves fitting into that mold.

According to Blane Prescott of Hildebrandt Baker Robbins, clients tend to choose from among qualified attorneys those who are similar to them, whether in age, ethnicity, religion, interests, or personality. Nationally, businesses have employed, advanced, and promoted women and minorities at greater rates than law firms have. As a result, suggests Prescott, businesses will naturally gravitate towards law firms with more women and minority attorneys. Further, they will not expect women and minority attorneys to occupy only the entry level positions within the firm.

This increased preference for women and minority attorneys is not only playing out in subtle ways. Large, national companies such as Wal-Mart, Microsoft, and Shell Oil ask their outside attorneys for statistics on the number and position of women and minorities

within their firms. Some companies will only hire firms with diverse ranks; others give financial bonuses to firms actively hiring, retaining, and advancing women and minorities.

Whether to accommodate explicit client demands or position a firm to attract the greatest number of clients, firms need to take active steps to teach all of their attorneys about developing clients.

BEST PRACTICES FOR CLIENT DEVELOPMENT

Educate Attorneys about the Business Side of Practice

Firms

- Explain how the business works to new attorneys – account, billing, fee arrangements; overhead including salaries and benefits of staff, rent for office space, cost of equipment; growth, specialization, marketing.
 - Law school does not prepare new attorneys for the business side of a legal practice.
 - Often new attorneys learn the business side of the practice informally. Because women tend to have fewer informal relationships at firms than men, making sure female attorneys understand the business is critical.

24. Patricia Gillette, *Lack of Self-Promotion Hurts Women in Large Firms*, AM LAW DAILY, Jul. 7, 2009; Ellen Ostrow, *Women Lawyers & Business Development*, 1.3 THE COMPLETE LAWYER (2006); Deborah Tannen, *Talking 9 to 5: Women and Men at Work* (1994).

- Communicate target market and client parameters to new attorneys.
 - Institutional clients, types of clients, size of matters, positions espoused, billing arrangements – all can affect the type of client development a firm will welcome.
- Encourage successful rainmakers to share their early practices and successes with female associates on an informal or formal basis as appropriate to the firm culture.
 - Rainmakers often do not share these tips, instead dismissing the question with comments like “You don’t need to worry about this for a while yet” or “It’s all about relationships” with no explanation. Intentionally sharing information on how to embark on client generation will help attorneys to decide how they can best develop clients.
- Treat client generation as another skill to teach new attorneys.
- Provide business development coaches and mentors to help all attorneys design focused business development plans that maximize the potential for success.

Attorneys

- Inquire about client development parameters early in one’s career.
 - The type of clients a firm wants will often drive the type of client development activity in which

attorneys will engage. *E.g.*, an attorney trying to develop real estate clients may want to develop presentations for the Utah Association of Realtors.

- Attend outside seminars about rainmaking to further develop one’s repertoire of client development skills.
 - The more knowledge new female attorneys have about the business aspects of practice, the more they will understand how they fit in to the firm structure and what they need to do to succeed.

Networking

Firms

- Take female attorneys to Bar committee meetings and introduce them to other committee members.
- Pay for female attorneys to join Bar sections, committees, organizations, and participate in their activities.
- Invite female attorneys to join Inns of Court and other legal societies.
- Introduce female attorneys to contacts in the community who may need board members for their organizations.
- Encourage women to organize and meet with other professional women’s groups.

Attorneys

- Maintain contact with law school classmates ensuring they know one’s practice area(s) and

current contact information.

- Classmates represent potential sources of business or referrals in the future.
- Get involved with Bar committees and in Bar projects to meet other attorneys who have practiced longer and who may serve as mentors or sources of work.
- Become involved in one’s community and serve on a non-profit board.

Relationships with Clients

Firms

- Introduce female attorneys to clients and permit them to have contact with clients early on in their careers so that clients view women as their counsel and part of the legal team.
- Include female attorneys in pitch meetings and client meetings so that clients see how the law firm works with women as part of the team.
- Include women in client outings (*e.g.*, sports events, cultural events, celebrations).
- Tout women’s contributions and successes on matters to clients.
- Encourage female attorneys to take clients to lunch or to other functions the client would enjoy.
- Monitor access to key client opportunities to make sure women receive sufficient exposure.

- If a client objects to a female attorney working on a matter, the most senior attorney with the client relationship should talk with the client about his/her/its specific concerns (*i.e.*, availability, experience, reliability, as opposed to concern merely because of sex) and convey confidence and support of the female attorneys the law firm employs.
 - Identify tasks the female attorney has performed with success, provide assurances about the attorney’s availability if that causes concern, and explain the strengths this attorney brings to the team.
- Educate female attorneys about maintaining existing clients.
 - The partner with the primary relationship with the client should educate all those working on the client’s matters about the client’s preferences, including billing detail, time for reviewing work product, communication preferences, demeanor, etc.

Attorneys

- Provide excellent legal services.
- Return all phone calls, e-mails, etc. the same day or have someone else contact the client on the attorney’s behalf.
- Meet client deadlines, even if they appear pointless.
- Update the client regularly on the status of the matter.

- Provide the client with detailed descriptions of the services for which the attorney is billing them.

Visibility

Firms

- Encourage women to develop a name for themselves in the legal field and the community.
- Provide billable hour credit for client generation activities already discussed (up to a specified maximum).
 - Time spent in client and professional development has far more value than face time, and the firm should recognize that value.

Attorneys

- Find comfortable ways to promote oneself.
- Educate others in one's area of expertise.
 - Write articles for bar journals, newspapers, newsletters, books.
 - Make legal presentations and speak at seminars.

Evaluations

Performance evaluations play an important role in an attorney's professional development. Whether the evaluation comes informally during daily practice or as part of a formal evaluation, the evaluation provides guideposts towards career success. Not surprisingly, gender bias plays a role in performance evaluations as well as other areas of professional

development. Underlying gender bias creates a different explanation for performance depending on whether the attorney being evaluated is male or female, and a male attorney is often given a higher evaluation for equal achievement.

Evaluations have less meaning if the measure of performance is unknown. Likewise, irregular or "out of nowhere" evaluations can feel more punitive than helpful. One of the survey participants wrote that she had received "no feedback regarding alleged performance issues...until [a] formal letter outlining several issues that had never been brought to my attention."

Evaluations present difficulties for both the giver and receiver. Nonetheless, firms must have a way to critique their attorneys, and attorneys must receive feedback to improve.

BEST PRACTICES FOR ATTORNEY EVALUATION

- Create a written performance evaluation policy that sets forth the evaluation process and timelines.
 - Include a method by which an attorney can raise concerns if the policy is not followed.
- Evaluate associates frequently, setting specific intervals for formal evaluations, *i.e.*, every six months to a year.
 - Evaluations that identify and fix shortcomings or flaws have the greatest value to firms. Attorneys can more easily fix problems that are identified

early, before they become a habit or pattern. Similarly, identifying an associate's successes early can encourage the associate to develop good habits or patterns.

- Assign an attorney(s) to be responsible for providing constructive feedback.
- Determine what makes a good attorney and develop performance standards upon which the firm will evaluate all associates.
 - Make the performance measurable, tied to position requirements, and descriptive of the skills or experience the attorney must gain in order to achieve each objective. Focus on results, not personality.
 - ◆ *E.g.*, written skills would constitute one area for evaluation. Senior attorneys could evaluate those skills based on whether the attorney's written work communicates the necessary information, whether the grammar is correct, whether the written work has the appropriate tone – objective/persuasive, whether the work accomplished the desired objective with the client, the court, or a third party.
 - ◆ *E.g.*, evaluation criteria should differ between practice areas. The skills required to be a good litigator differ from the skills required to be a

Evaluations have less meaning if the measure of performance is unknown.

good bond attorney.

- Make use of existing data, *i.e.*, exact billable hours rather than an estimate for determining productivity, consider the number of different matters an attorney "pitched in" on in an effort to determine whether she is a team player.
- Include male and female attorneys at all levels of the firm in the creation of these criteria.
 - ◆ Include incentives, monetary and/or nonmonetary, for attorneys to devote time and effort developing these criteria.
- Avoid gender bias and consider different work and communication styles that have succeeded in the past. Do not expect each attorney to fit one mold.
 - Much of the criteria may be universal, but some criteria will be unique to the firm and its culture, as well as the practice group.
 - Make evaluation criteria consistent with recruitment criteria, which is in turn consistent with partnership criteria.
- Fully and consistently communicate performance criteria.
 - Make the policy and criteria widely available internally, *e.g.*, post on the firm's intranet site.

- Share with newly hired associates the reasons why the firm hired them and identify the criteria on which they will be judged as associates and eventually as candidates for partnership.
- Train attorney evaluators on proper techniques for conducting a performance evaluation.
 - Specifically, firms should train their evaluators to provide specific, factual feedback tied to job or position requirements, and based on concrete examples of behavior, performance, and conduct rather than on personality.
 - Evaluators should take a teaching approach to evaluations rather than a judging approach.
 - Training on giving effective evaluations is a great opportunity to reiterate issues of implicit gender bias and how to avoid it.
- Act like a unified enterprise and take responsibility for managing the development of firm resources, namely associates.
 - A complete buy-in from partners who have to spend a significant amount of time assisting associates in their professional development is necessary.
 - Hold partners responsible and accountable for the advancement of women and track the patterns for those who do not participate.
 - Require all attorneys to provide evaluations and create consequences for failing to complete evaluations, *e.g.*, withholding pay until the attorney completes the evaluations.
- Provide incentives, monetary and/or nonmonetary, to give thoughtful, productive feedback.
- Review evaluations for “quality control” – are men being positively evaluated for “potential” and women negatively evaluated for “personality flaws”?
 - Publicly discuss bias found so reviewers can learn from others’ mistakes.
- Give the attorney being evaluated an opportunity to respond in writing to his or her evaluators’ feedback, or include a self-analysis by the attorney being reviewed.
- Create action plans for each attorney reviewed based on the results of the evaluation.
 - Include experiences the attorney needs to continue her professional development, *e.g.*, take deposition, defend deposition.
 - If an associate is having trouble with hours, the plan should address and find solutions to fix the problem immediately.
- Annually review the firm’s evaluation form to ensure the criteria and standards remain consistent with the firm’s strategic goals and gender fairness policies.
- Coordinate evaluation policies and procedures with the assignment, mentoring, recruiting, promotion, and training functions at the firm.

FOSTERING ADVANCEMENT & RETENTION OF WOMEN THROUGH PROFESSIONAL RECOGNITION

As with any endeavor, recognition of one’s achievements and positive feedback encourage an attorney to continue working hard and honing her skills. Moreover, seeing deserved successes of others inspires those aspiring to similar goals. Firms have a variety of ways they recognize the professional achievements of their attorneys – compensation, promotion/partnership, positions of honor. Women, unfortunately, do not receive this recognition as frequently as their male peers. Some ways to address this failing are included below.

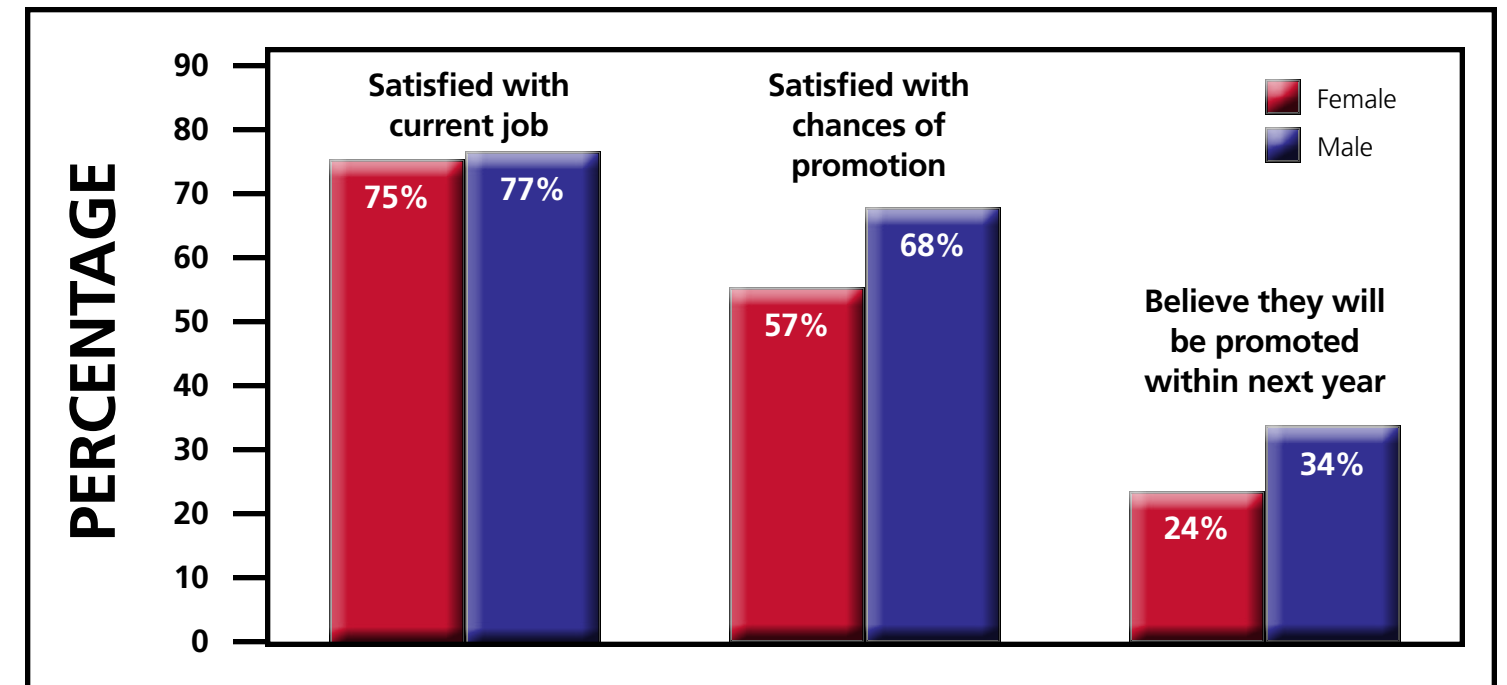
PROBLEMS WITH PROMOTION AND PARTNERSHIP

While both male and female attorneys report high levels of job satisfaction:

Only 57% of the women surveyed said they were satisfied with their chances for promotion at their current firms, whereas 68% of the men surveyed expressed satisfaction with their chances for promotion.

24% of the women and 34% of the men thought they would be promoted within the next year.

Figure 9: Job Satisfaction and Promotion in Law Firms by Sex



Addressing this problem is difficult because most lawyers in positions of authority or management believe their law firm is fair and unbiased in making decisions related to promotion. One male attorney responding to the survey wrote, “Pay and promotions are generally based on objective, not subjective, factors.” Other attorneys, both male and female, echoed this sentiment. Another male attorney responded, “No preference is given to any person – promotions are entirely based on productivity.” A female attorney responded, “Does not seem to take gender into consideration.”

Worth considering is the level of satisfaction with promotion potential survey respondents had who practiced in other settings. In all other settings, the level of satisfaction with promotion potential was higher, and male and female attorneys working in a non-legal setting had nearly the same level of contentment with promotion potential (89%, 86%). From these results, one could conclude that the systems employed by law firms for promoting attorneys are least satisfying when compared with other systems for promotion.

Along those lines, some female firm attorneys identified concerns with receiving enough work to meet productivity requirements.

“I have been held back twice from advancing due once to a failure to get hours and once to a change in practice area. The failure to get hours was in part due to the change in practice area and in part not getting sufficient work.”

“[W]hen others (males) have a drop in the their case loads, the firm (it appears) rallies behind them to get them some work to keep up their hours and collections, when my work load dropped I was left to fend completely by myself with the exception of already having a marketing budget in place for my practice group.”

Because firms frequently tie promotion to productivity and productivity frequently depends on the number and quality of assignments received from undefined assignment systems, promotion is likely to be affected by any bias which affects the assignment system.

Further, gender bias comes into promotions because people often perceive women as not aggressive enough. A male attorney stated, “A woman attorney was essentially forced out of the firm, mostly because of her sex. When hiring new attorneys, women are specifically rejected because the boss doesn’t feel that they are aggressive or ambitious enough to do the work.”

Another female attorney stated, “The disparities in my firm are due to gender. The firm is actually very good at promoting equality with respect to race, religion, national origin, marital status, and particularly, sexual orientation.” According to some survey respondents, gender bias occurs in law firms as follows:

“No promotions for women at the firm.”

“Women who had reduced work schedules were not considered for partner.”

If law firms generally promote attorneys based on productivity and other objective factors, female attorneys should have the same opportunities to obtain quality assignments and support within the law firm to meet the objective factors. If female attorneys do not, law firms must make their objective factors truly objective and attainable equally by both men and women within the firm. Some firms have recently eliminated lockstep advancement based on year of graduation from law school in exchange for tiers based on skills acquired. In these firms evaluations for promotion will have even greater significance than in firms operating primarily on a lockstep plan until partnership.

Further, female attorneys should have the same knowledge as male attorneys about the objective factors and productivity requirements upon which the firm evaluates attorneys for promotion. If attorneys informally communicate the billable hour and productivity requirements necessary to become a partner to male attorneys but do not end up telling the female attorneys, female attorneys remain at a disadvantage in competing for promotions.

Two recent trends in the area of origination credit may be beneficial to partners on reduced schedules. First, some firms have adopted a team approach to clients, recognizing that rarely does one partner bring in business on his or her own. Second, some

firms have moved toward broader credit-allocation systems giving credit to partners for: managing client matters, serving as a client’s primary contact with the firm, securing new business from existing clients, and otherwise tethering clients to the firm in addition to credit for originally bringing the client through the door. These more modern systems allow a firm to capture one of the key benefits of reduced schedule partners – partners who stay at the firm longer are able to develop deeper relationships with their clients.²⁵

Because the criteria used to evaluate attorneys should be consistent with the criteria considered when determining promotions and partnership, many of the best practices applicable to attorney evaluations are also applicable here.

BEST PRACTICES FOR ATTORNEY PROMOTION

- Create a written policy setting forth the process and timelines for promotion and partnership.
- Develop objective, specific, measurable performance criteria to consider in the promotion and partnership processes. These criteria should relate directly to position requirements, *i.e.*, indicative of the skills or experience an attorney needs to be effective at the next level or to become a partner in the firm.

25. Cynthia Thomas Calvert, *et al.*, *Reduced Hours, Full Success: Part-Time Partners in U.S. Law Firms*, 31 (Sept. 2009), <http://www.pardc.org/Publications/Part-TimePartner.pdf>.

- Some of those factors may include productivity evaluated based on billable hours or collections; verbal skills evaluated based on presentation of issues to partners, clients, opposing counsel, courts; client development potential based on reported satisfaction of current clients, participation in pitch meetings, client generation to date.
- The policy should have clearly delineated standards for promotion of attorneys working alternative schedules.
- The policy should articulate at what point law firms will consider attorneys on alternative schedules for partnership.
- Advancement opportunities for attorneys on alternative schedules should be at least proportional. For example, at a firm with an eight-year track to partnership, an associate who works full-time for four years and then moves to an 80% schedule should be considered for partnership after nine years. Similarly, if a firm normally has an 1800 hour billable requirement for full-time attorneys, an attorney working an 80% schedule should have a 1440 hour billable requirement.
- An increasing number of firms keep attorneys “on track” to be eligible for partnership with their classes if they work an 80% – 90% schedule.
- Firms may look not just to hours worked to determine partnership eligibility, but also to factors such as skills, knowledge, professional maturity, judgment, and business development potential.²⁶
- Firms should ensure partners on reduced schedules get credit for the work they do originate. The efforts of partners on reduced schedules should be recognized on par with those of full-time partners. To state the obvious, business origination credit should not be reduced due to a partner’s reduced schedule.
- Firms should include male and female attorneys at all levels in the design, implementation, and monitoring of the promotion and partnership processes.
- Discuss with the promotion and partnership decision makers how the decision-making process will occur.
 - The committee should base its decisions on objective, specific factors and concrete examples of behavior, performance, and conduct rather than on personality.
 - Decision makers should understand the subtle role gender bias can play in promotion and partnership decisions and avoid it.

26. Project for Attorney Retention website; <http://www.pardc.org/>; Best Practice #3, Adhere to the Principle of Proportionality.

- Create a second tier review (before results are communicated to the attorneys) that analyzes and compares all promotion/partnership evaluations for consistency, job-relatedness, and fairness. If possible, include a statistical analysis that correlates the gender of the attorney being evaluated with the overall scores of others up for promotion or partnership.
- If necessary, create action plans for each attorney passed over for partner based on the results of his or her evaluation.

Compensation

Firms communicate the value of an employee most clearly by how they compensate that employee. Compensation also represents the most objective method attorneys have for determining how much their firms value them. Specifically, attorneys regularly conclude that the firm values those paid more than them, more, and those paid less than them, less. Therefore firms need to review their compensation choices to make sure the message they send with their compensation choices reflects the message they intend to send.

Improvements made to the fairness of the compensation system will likely result in greater satisfaction among all attorneys.

Notably, when identifying sources of unfairness in law firms both male (46%) and female (44%) attorneys in Utah overwhelmingly identified compensation as the problem. Thus improvements made to the fairness of the compensation system will likely result in greater satisfaction among all attorneys.

Most firms employ at least two different attorney compensation plans – one for associates and one

for partners.²⁷ Traditionally, firms compensated associates on a lockstep schedule, paying all attorneys who graduated the same year the same amount regardless of performance or productivity. This system has many advantages in avoiding gender bias in pay. Year of graduation represents a completely objective factor that gender or other unwelcome bias

cannot influence. On the other hand, lockstep compensation does not provide incentives and rewards for good work or hard work.

In the late nineties, many firms started giving bonuses to recognize the greater contributions of some associates over others. Some firms tied these bonuses exclusively to billable hours; others, to quality of work, contributions to the firm generally, leadership, etc. Bonuses tied solely to billable hours

27. See James D. Cotterman, *Compensation Plans for Law Firms*, (5th ed. 2010).

prevented gender bias more than flexible bonus systems, but women still suffered to the extent partners were less willing to give women work than men. Thus where the assignment system permits gender bias that bias will also seep into the compensation system. For those firms with undefined bonus structures, the bonus pool became even more susceptible to underlying gender bias.

With the recent economic downturn, some firms have moved even farther away from lockstep compensation, eliminating lockstep compensation even in the base salary.²⁸ These new programs compensate associates based on performance and have many business advantages. Unfortunately, performance based systems can allow gender bias to impact the compensation arena significantly. For example, if the firm bases increased compensation on increasing levels of responsibility, but partners do not feel comfortable giving women increased levels of responsibility, then women will not achieve those increased levels of compensation.

For partners, compensation results from profitability of the firm. Firms have a variety of different methods for determining partner compensation ranging from a black box theory with one decision maker to detailed formulas based on partnership shares, seniority, fees collected, origination, client maintenance, teamwork,

firm profits, pro bono work, teaching/writing/speaking, collegiality, leadership, training, management, expertise, practice area, community participation, etc.²⁹ Again, some compensation systems leave greater room for gender bias than others.

In responding to the Survey, several female attorneys expressed concern about being paid less than other attorneys:

“Paid less than male peers with same qualifications (they have only one income household and know that I have a two income situation).”

“I received the same amount of bonus as a male attorney with less seniority, less collections and less origination credits. I see that happen to other female attorneys.”

A male attorney also recognized a disparity:

“Raises were being given to men and not to women in the office. Health care benefits were being given to male part-time employees and not to female part-time employees.”

Studies show female attorneys generally suffer from gender disparity in compensation. In 2000, the NALP Foundation began a project called “After the JD” – an “empirical study of the career outcomes of a cohort

of almost 5,000 new lawyers” for the first decade after law school graduation. Using statistics collected from this study, one group of researchers drew the following conclusions with respect to compensation and sex in law firms nationally:

- When all variables are accounted for (*e.g.*, hours worked, area of practice, law school performance, etc.), female attorneys make \$0.95 to every \$1.00 male attorneys make.
- This differential may appear slight, but “a 5 percent difference in return on investment over a lifetime is substantial and there is evidence to suggest that small differences in the earnings of male and female lawyers early in their career may become magnified over time.”³⁰

The disparity in pay increases as seniority increases.³¹ Nationally in 2009, female equity partners earned 88% of what male equity partners earned.³² A significant source of this disparity results from reliance on

origination credit with little thought about what behavior is being rewarded and the impact of that reward.³³ Most firms provide origination credit based solely on who brought the client to the firm and rewards that person virtually forever, regardless of whether the attorney works on the client’s matters or retains the client.³⁴ More irrationally, when the “originator” retires he usually designates a successor to receive the origination credit, without any check on this inheritance.³⁵ Because of a general affinity for people like oneself and the significant number of white male attorneys receiving origination credit, these rainmakers are more likely to designate white male attorneys to receive the origination credit after they retire and the origination has long since passed.³⁶

In Utah, the survey reflects an even bigger disparity in compensation than exists nationally.

Figure 10 reflects income of attorneys in all fields, not just law firms. The numbers are shocking; the charts nearly mirror each other. In all age groups, the

28. Blane Prescott, “Lockstep to Levels”: Moving from Lockstep to a Performance-Based Evaluation, Promotion and Compensation System, (Sept. 2009), <http://www.hildebrandt.com/Lockstep-to-Levels-09-25-2009>.

29. See Cotterman, James D., Compensation Plans for Law Firms (ABA 5th ed.)

30. Ronit Dinovitzer, et al., *The Differential Valuation of Women’s Work: A New Look at the Gender Gap in Lawyers’ Incomes*, 88.2 SOCIAL FORCES 819, 843 (2009).

31. See Stephanie A. Scharf, et al., *Report of the Fourth Annual National Survey on Retention and Promotion of Women in Law Firms* n.19 (2009), <http://www.nawl.org/Assets/Documents/2009+Survey.pdf> (showing comparative data on median income for male and female lawyers at associate, counsel, non-equity partner, and equity partner levels); Joan C. Williams & Veta T. Richardson, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, 62 HASTINGS LAW JOURNAL __, 3 (2010), <http://www.uchastings.edu/news/docs/same-glass-ceiling.pdf>.

32. *Report of the Fourth Annual National Survey on Retention and Promotion of Women in Law Firms*, 11 & n. 18.

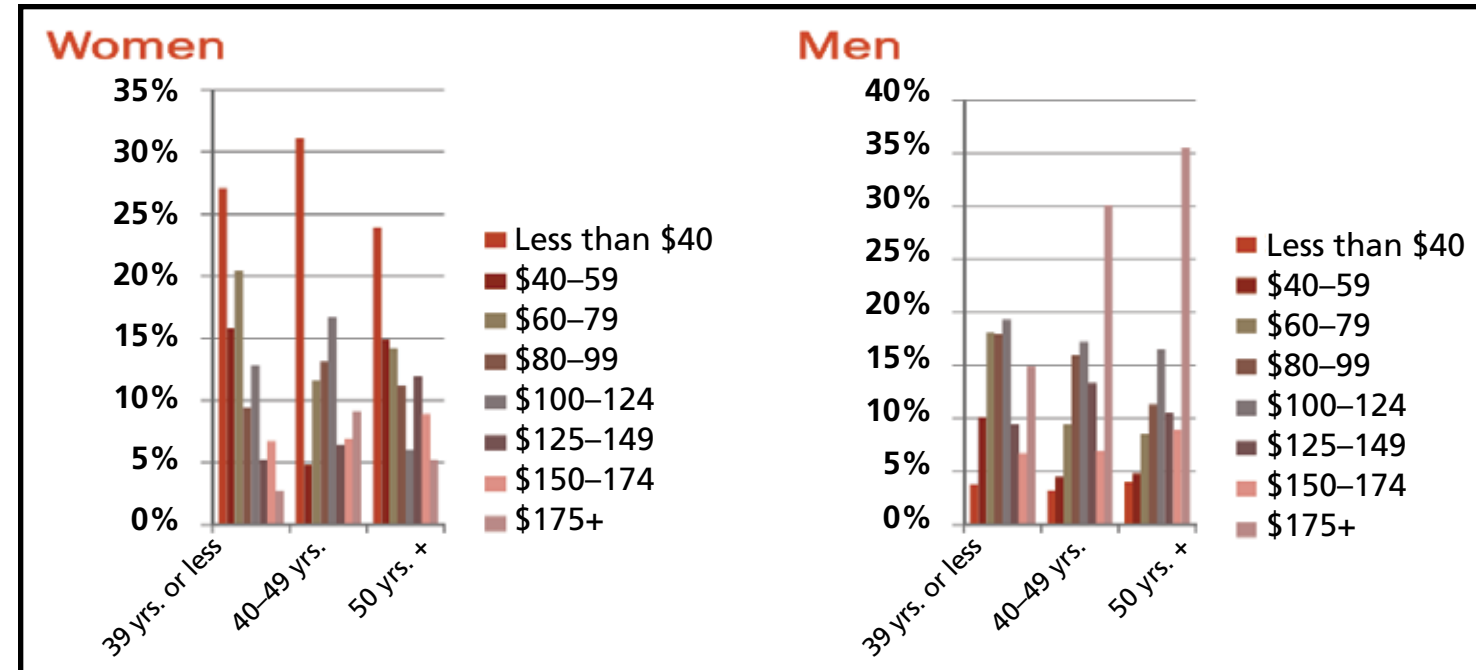
33. *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, 10, 25. This article extensively analyzes the factors that go into partnership compensation and makes suggestions for best practices.

34. *Id.* at 27.

35. *See id.* at 58.

36. *See id.* at 15 (“People automatically prefer people like them.” (Citation omitted)), at 58 (making origination credit inheritable “has very negative effects both on diversity and on the perceived fairness of a firm’s compensation system”).

Figure 10: Job Related Income of Attorneys Generally



largest group of women made less than \$40,000 a year. In contrast, in all age groups, the smallest group of men made less than \$40,000 a year, with a significant majority of men making more than \$175,000 a year. What these charts seem to indicate, at a minimum, is that among Utah attorneys, female attorneys provide the majority of low cost legal services.

In Figure 11 the chart shows only the income of those respondents working more than forty hours a week in law firms.

This graph differs considerably from the prior graphs, but nonetheless reflects that the majority of female attorneys at firms earn incomes below \$125,000, and the majority of male attorneys at firms earn incomes

above \$125,000 a year. The differences between male and female attorney income appears less stark when limited to full time law firm attorneys. However, the trend is still quite clear: Women earn less than their male counterparts.

While firms often pay more than other employers, if women feel they are paid less than others in their firm doing the same work, they are less likely to feel like valued members of the team. They may not leave the firm for more money, but they may leave the firm for more fairness in the distribution of money. Also of note with respect to this issue is the unwavering commitment of the Millennial generation to fairness. They will find any lack of equity in compensation offensive, potentially leading to dissatisfaction in the

Figure 11: Income of Firm Attorneys Working ≥ 40 hrs./wk.



workplace. Earning less money is less likely to contribute to attrition if the rules of compensation are fair.

BEST PRACTICES FOR ATTORNEY COMPENSATION³⁷

- Review compensation plans for equity generally and for gender equity specifically.
 - *E.g.*, list total compensation on a chart, then color code for sex. If the color distribution is not proportional, inherent gender bias may have infiltrated compensation decisions.

- Create a compensation system based on articulated, objective factors with repeatable results.
 - *I.e.*, male and female attorneys who “score” the same on objective factors should receive the same compensation.
- Make sure the firm compensates behavior that benefits the firm – *e.g.*, quality legal work, efficiency, teamwork, mentoring, – rather than behavior that may have negative secondary effects – hoarding of work, padding of hours, churning.

37. For greater detail and more suggestions on best practices, see Joan C. Williams & Veta T. Richardson, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, 62 HASTINGS LAW JOURNAL __, 51-63 (2010), <http://www.uchastings.edu/news/docs/same-glass-ceiling.pdf>.

- Include women in creating the compensation system.
- Gather feedback regarding the criteria and application of the compensation system from those attorneys governed by the system and communicate that feedback to the decision makers within the firm.
- Reduce the compensation system to writing and make it available, through the firm's intranet or otherwise, to those compensated under that system.
- Prior to deciding compensation each year, train decision makers on inherent gender bias and other bias concerns.
 - This training will help prevent attorneys from unwittingly allowing bias to affect their evaluation of the subjective factors in the compensation system.
- Communicate reasons for compensation decisions to attorneys individually, so that they understand how to increase their compensation in the future.

REDUCED SCHEDULES AND COMPENSATION

Certain compensation issues are unique to attorneys on reduced schedules. Proportionality stands as the base to the success of a reduced schedule program, particularly in the key areas of salary, bonuses, and benefits. If the principle of proportionality is not followed (for example, if all benefits are denied to an

attorney who reduces his or her hours), the reduced schedule program creates disincentives for use.

In addition to financial penalties, disproportionality produces a sense of unfairness and second-class citizenship. The program must attract the firm's attorneys who want to work fewer hours than traditionally expected at a law firm, or they will change employers. At the same time, firms need to make sure their alternative schedules work for their bottom line. For example, all attorneys need to cover their overhead expenses. Once overhead is met, both the firm and the attorney deserve to share in the profits. The mere fact that the attorney has chosen to work a reduced schedule should not result in a reduced percentage share of the profit.

Proportional pay for proportional work forms an essential component of a successful reduced schedule program. Giving employees who work reduced schedules a "haircut", by paying them 60% salary for working an 80% schedule, undermines the reduced schedule program. Further, firms face the problem of "schedule creep" – reduced schedule attorneys working more than the agreed upon hours. When that happens the reduced schedule arrangement can become unfair either to the attorney on it or to the other attorneys in the firm, depending on what the arrangement is.

Firms give bonuses to reward desirable behavior, regardless of an attorney's reduced schedule, and bonuses often encourage business development,

firm service, professional development, and the like. In recognition of the variety of reasons to bonus, many firms pay bonuses based on non-billable contributions and factors, in addition to billable hours. However, some firms exclude attorneys working a reduced schedule from receiving bonuses.

Similarly, attorneys working reduced schedules often have different benefits packages, including health care and leave. Some firms increase an attorney's contribution to health care to reflect the reduced schedule. Doing so reduces the firm's overhead for that attorney. However, an increasing number of firms provide full benefits to attorneys on reduced schedules.

Avoid penalizing associates and partners who return to full-time work after years spent on reduced schedules.

BEST PRACTICES FOR COMPENSATING ATTORNEYS WITH REDUCED SCHEDULES

- Pay partners who work reduced schedules as full-time partners who have similar billings and/or originations.
 - Partnership share should relate to collections, not to what schedule the partner chooses to work.
 - Where associate salary is based on billable hours, pay salaries proportionate to their billable hours.
- *E.g.*, 80% pay for 80% of billable hours.
 - Prevent schedule creep among associates by monitoring assignments and workload.
 - If that fails, allow attorneys who work hours in excess of their commitment to choose between additional pay or time off to compensate for the extra time worked.
 - Bonuses should be at least proportional.
 - Attorneys working reduced schedules should receive full bonuses for meeting criteria not based on hours and proportional bonuses for hours-based criteria.
 - Firms should review their insurance policies to see whether their providers have established a minimum number of hours an employee must work to be eligible for coverage (often 20-25 hours a week).
 - This minimum may be met by counting all work done by the attorney, including non-billable.³⁸
 - Avoid penalizing associates and partners who return to full-time work after years spent on

38. Project for Attorney Retention website; <http://www.pardc.org/>; Best Practice #3, Adhere to the Principle of Proportionality.

reduced schedules.

- *E.g.*, advance associates proportionately to hours worked. If a person gains a year of seniority for every “year”, the firm policy should advance associates a year of seniority for every 1800 hours worked.
- *E.g.*, in lockstep systems, keep associates on reduced schedules with their class and adjust their compensation (but not their class level) to reflect the percentage reduction in their schedules.
- Review all compensation based on discretionary factors to ensure that attorneys working a reduced schedule do not receive a disproportionately low award that may be influenced by biased assumptions about their commitment to the firm.³⁹

RECOGNITION OF WOMEN’S ACHIEVEMENTS

A firm’s recognition of female attorneys’ achievements demonstrates to associates and others that women can and do succeed in the firm. Most firms employ at least one method of recognition, though not necessarily consistently, and often do not recognize women’s achievements. Ensuring the consistent, equal praise and recognition of all attorneys’ achievements creates an atmosphere conducive to

retaining female attorneys.

Underlying gender bias often causes women’s achievements to be overlooked or downplayed. As discussed above, subtle beliefs about women often result in women’s achievements being attributed to luck, while men’s achievements are attributed to skill. This causes a woman’s achievements to be downplayed and not rewarded or celebrated. For example, consider that the Utah State Bar has named a Lawyer of the Year every year since 1970. To date, only two women have received that award – Ellen Maycock and Irene Warr.

Gender bias sometimes causes firms to consider a particular female attorney’s success an aberration and therefore discount it or fail to recognize the contributions of their female attorneys. For example, one attorney surveyed shared a comment from the head of her firm. He indicated to her that the problem with female attorneys is that they do not bill many hours. However, at the time, the highest billing attorney in the firm was female.

A factor further contributing to the lack of recognition of women’s achievements and to the perception that women do not succeed at law firms is the small percentage of women in positions of power or leadership within the firm. As discussed above, the percentage of female partners in Salt Lake City

firms is extremely low – around 11%. The national average is not much higher – around 19%. However, the balance of women in law school nationally hovers around 47% and locally around 38%. Thus, numerous women enter the profession and could be part of law firms and law firm leadership in the future. Hence, firms must consider what impact the lack of recognition of women’s achievements may have on incoming female attorneys. The result of low female partner visibility and lack of recognition is that women feel less important to the firm, and feel like their work does not pay off and will never pay off. For example, one of the participants of the symposium had the following story:

“Last year, my firm had a huge case that brought significant revenue into the firm. The case was fast tracked and offered travel, deposition and trial experience for many attorneys. The case received national media attention and was a very big deal. Of the numerous partners and associates involved, not a single one was female. It was unfathomable to me that on such a large experience intense case not one woman was qualified to be a member of the team, and it was disheartening that I also might not be considered qualified enough to be on the team.”

Without a belief that they will succeed and excel, female attorneys will not remain at firms.

Without a belief that they will succeed and excel, female attorneys will not remain at firms.

Interestingly, 18% of male attorneys at firms and 18.5% of female attorneys at firms who responded to the survey identified themselves as managing partners. Given the percentage of female partners generally, women seem overrepresented among managing partners. A variety of reasons could explain this over-

representation. One explanation could be that firms have enlisted the help of their female partners in guiding their firms, in part to inspire other women to join and remain with the firm. Another factor to consider is that the role of managing partner differs between firms, with the position being more administrative in some firms and more leadership oriented

in others. Where the position is administrative, it likely does not represent a respected position within the firm. An additional explanation would recognize the difficulty women face in succeeding within law firms and the acknowledgement by firms that the women who do make partner and continue to rise into leadership are extremely talented and thus well-suited for these management positions. Yet another conclusion one could reach would suggest that a number of women have chosen to start their own firms when they see the chances for

39. Cynthia Thomas Calvert, et al., *Reduced Hours, Full Success: Part-Time Partners in U.S. Law Firms*, 28 (Sept. 2009), <http://www.pardc.org/Publications/Part-TimePartner.pdf>.

advancement at established firms as small.

BEST PRACTICES FOR RECOGNITION OF ACHIEVEMENTS

- Firms should regularly collect and maintain information about attorneys' activities both inside and outside the firm.
 - Given the tendency of women to downplay themselves and their achievements, firms should make affirmative efforts to track this information in order to recognize and celebrate it.
 - ◆ *e.g.*, firm-wide e-mails announcing victories, closings, new clients, promotions, appointments/elections to firm leadership, publications, awards, appointments/elections to leadership in community organizations, celebrations and/or bonuses for such accomplishments.
 - Make certain that all attorneys involved in these achievements receive recognition.
- Attorneys should make particular efforts to promote the accomplishments of their female colleagues since women are less likely to share this information without prompting.
 - Mentors and friends within the firm should work together to help promote and recognize

each other's success at least to management and on a firm-wide level when appropriate.

- Firms should ensure women participate in significant decision-making processes in the firm.
- Firms should ensure women have the opportunity to occupy significant positions of power and leadership within the firm.
- Attorneys should encourage women to volunteer for and run for leadership positions inside and outside the firm and then support their efforts by advocating for their obtaining those positions.
- Attorneys should tell the stories of the women who have succeeded in the firm.
 - Everyone loves a war story, and the stories of the women who have succeeded in the firm will help guide associates in how to achieve similar successes.

BASIC PRINCIPLES AND CONCLUSION

This Initiative provides Utah's first statewide foray into addressing the modern issues facing law firms in advancing and promoting women. The Report provides practical and specific steps firms and attorneys can take to improve firm practice generally and the experience of women specifically. The Initiative has generated a community-wide conversation about these issues, which is an encouraging first step. However, conversation alone is not enough. Now is the time to act.

Throughout this Initiative some basic principles to advance and retain female lawyers have emerged. Interestingly, these principles apply with equal force to good firm management:

- 1. Increase awareness of potential for implicit gender bias.**
- 2. Commit to working toward and achieving a workplace free from gender bias.**
- 3. Create clear, consistent evaluation, promotion, and compensation systems.**
- 4. Communicate openly, honestly, and frequently.**
- 5. Invest equally in the success of all associates.**
- 6. Include all associates in formal and informal firm activities and relationships.**

With conscious effort we can make the practice of law fairer, less stressful, and more conducive to a happy personal life.



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