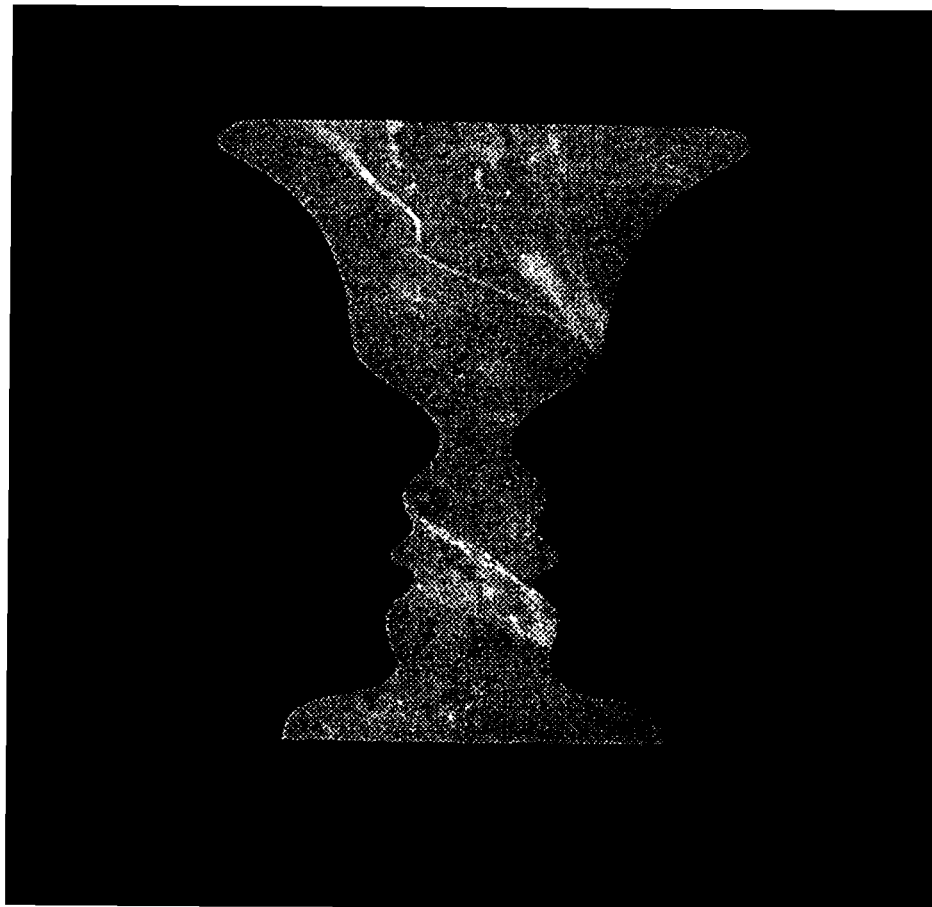


Report of the
Boston Bar Association
Task Force on

**Professional Challenges
and Family Needs**



FACING THE GRAIL

Confronting the Cost of Work-Family Imbalance



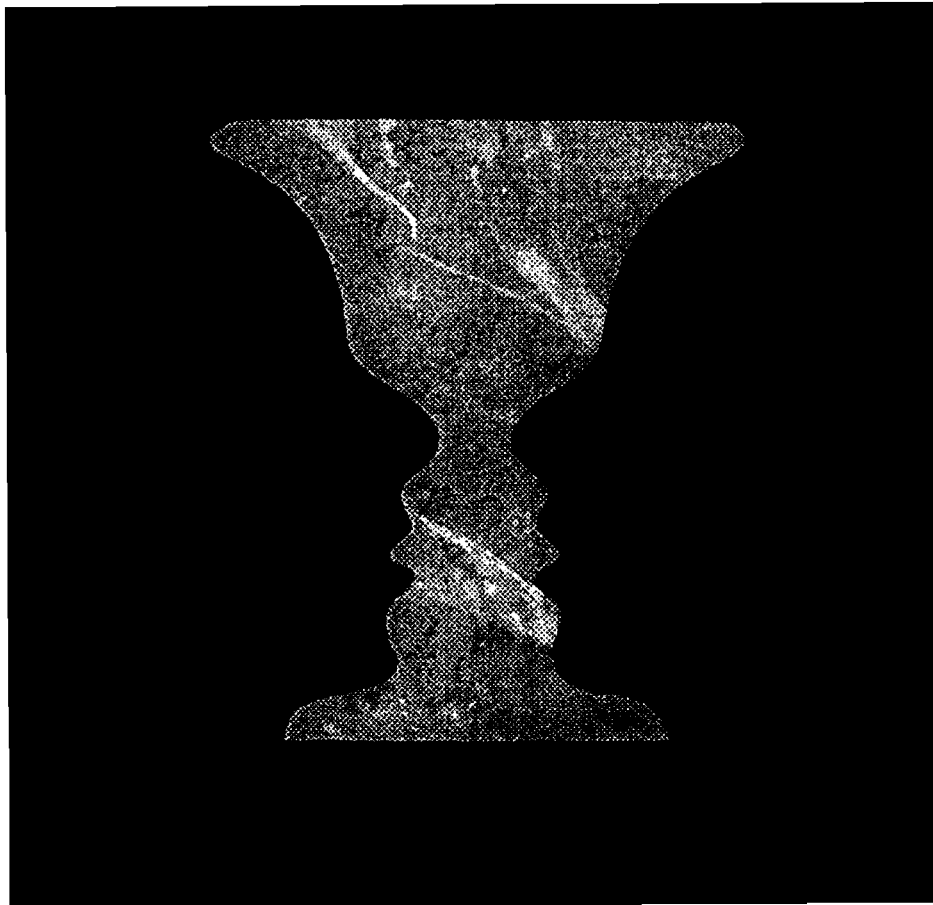
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Report of the
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and Family Needs**



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BOSTON BAR ASSOCIATION TASK FORCE ON PROFESSIONAL CHALLENGES AND FAMILY NEEDS

**FACING THE GRAIL:
Confronting the Cost of Work-Family Imbalance**

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The Boston Bar Association and the Task Force wish to thank Goodwin, Procter & Hoar, LLP which contributed hundreds of hours of secretarial and word processing time as well as the cost of secondary research materials and the duplicating costs involved in the preparation of this Report.

The Task Force also wishes to thank all of the partners, associates, law students and other professionals who contributed their time, advice and perspectives to this project.

The Boston Bar Association gratefully acknowledges the generous support of the Boston Bar Foundation and the Merrill Corporation in publishing this report.

FOREWORD

This report is an extraordinary documentation of the evolving nature of the practice of law, and its impact on our personal and family lives. It applies to all of us in this profession. This point must be emphasized because it is easy to read this document and feel complacent about how one's own law firm is addressing these issues.

These are difficult times in the legal profession. The demand for billable hours has increased significantly over the past decade, at the same time that the opportunities for partnership admission have narrowed. We are in danger of seeing law firms evolve into institutions where only those who have no family responsibilities -- or, worse, are willing to abandon those responsibilities -- can thrive. This is not an exaggerated perspective; it is a description of where many think we are heading, and where others think we have already arrived.

Throughout this year, I have spoken with young associates and senior partners about the work of our Task Force. The comments I received demonstrate a significant lack of communication. Most senior managers in law firms will tell you that the profession is troubled, but that their own law firm is grappling with these problems well. Most young attorneys contribute to that perception by failing to state within their own law firms the perceptions that they are willing to share with outsiders: that their firms are not addressing these issues in a meaningful way, and that their firms' inability to offer an acceptable balance between work demands and family needs leads them to question their own future in the profession.

This discrepancy between what firm owners and managers see as the truth and what associates experience, must be addressed. Firms need to develop mechanisms for lawyers to speak openly and honestly -- and even critically -- about these issues. The lack of open and honest communication between partners and associates, and even among young partners themselves, is a contributing factor to the difficulty in solving issues relating to law firm culture and its implications for how lawyers are able to live their lives.

This change must come from all of us, but lasting change requires a long-term commitment from the top. Firms must understand that law firm culture emanates from the managing partner and the management committee. Without full support at the most senior levels of a law firm to address these issues, there can be no change.

It is also critical for lawyers to understand that this is not simply a large law firm problem. Smaller firms, even those created by large firm émigrés, are capable of creating the same pressures on their associates as are the big firms. The reasons may be different, but the pressures are just as real and are confounded by the fact that there are fewer people with whom to communicate.

These are issues that will not diminish over time. Within the social context of our nation, we are seeing a rising demand for more family time. The literature addressing the problems of the time famine in our society and its impact on families is growing, and it is incumbent upon all of us to take a hard look at our own family-work balance to determine how we are handling this difficult issue.

The Task Force appreciates that no one report will solve this problem. We hope to contribute to the debate and encourage each law firm to address this issue in a meaningful way. Much is at stake.

I wish to express my profound appreciation to the members of this Task Force, who gave so much of their own personal time and energy to grapple with this problem over the past many months. The Task Force consisted of an amazing group of talented professionals, who share in common a commitment to improving our profession for the lives of our families. Words are insufficient to express our gratitude to Nancer Ballard, who spent countless hours synthesizing diverse perspectives and helping to create a cohesive and compelling report. This would not be the thoughtful, well-documented report it is without her contributions. In addition, we are grateful for the enormous generosity of Merrill/Daniels, a public-spirited company who printed this report based on their belief in its importance and widespread impact on our profession.

Appreciation is also due to the Boston Bar Association for its willingness to establish and support this Task Force. The BBA has long been on the cutting edge of critical issues in our profession, and this is no exception. Its foresight, commitment, and dedication to the issues raised in this report should be commended. Finally, the profession, itself, should be commended for its introspection, candor, and willingness to look internally and asks the difficult questions in order to create a better future. For all our flaws and difficulties, this is still a profession in which we can all take a great deal of pride. I shall always be grateful for the opportunity to have formed this Task Force, and to have worked with such a caring and dedicated group of people.

*Lauren Stiller Rikleen, President
Boston Bar Association
June 1999*

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
INTRODUCTION	4
I. THE PRIVATE LAW FIRM ENVIRONMENT	7
A. THE EVOLUTION OF THE PRIVATE LAW FIRM	7
<i>Rising competition and short-term commitments alter</i>	
<i>attorney-client relationships</i>	7
<i>The bottom line becomes a benchmark of professional and</i>	
<i>organizational success</i>	7
<i>Technology: growing money, losing free time</i>	8
B. THE EVOLUTION OF WORK AND FAMILY ISSUES IN THE	
LEGAL PROFESSION	8
<i>Family-work concerns: a longstanding dilemma</i>	8
<i>“The years teach much which the days never know.”</i>	9
<i>Work-family concerns take center stage</i>	10
II. HOW COME I DON’T FEEL THE UNIVERSE EXPANDING?	11
A. ECONOMICS AND WORK-FAMILY DYNAMICS IN PRIVATE	
LAW FIRMS	11
<i>The power of the billable hour</i>	11
<i>The revenue cycle</i>	12
1. Observations on Revenue Generation, Career Satisfaction	
and Work-Family Issues	14
<i>When the tail wags the dog</i>	14
<i>“There’s more to the dog ...”</i>	15
2. The Role of Expenses in Law Firm Economic Modeling	16
3. Profit, Revenue and Compensation	16
<i>“The most efficient engine is a black hole”</i>	18
<i>Combining gravity and leverage</i>	18

B. COMPETITION, MERITOCRACIES AND FAMILY-WORK DYNAMICS	20
<i>Inter-firm competition</i>	20
<i>Intra-firm competition</i>	21
C. THE ROLE OF GENDER IN WORK-FAMILY DYNAMICS	22
<i>Disproportionate impacts</i>	22
<i>Reluctance and accommodation</i>	24
<i>“Spend a week in my shoes”</i>	24
D. REDUCED HOURS ARRANGEMENTS	25
<i>A burgeoning field with few takers</i>	25
E. ATTRITION	26
<i>Hiring for attrition</i>	26
<i>When “up or out” means “mostly out”</i>	27
<i>The economics of attrition</i>	28
<i>Calculating the economic cost of attrition</i>	29
<i>The relationship costs of attrition</i>	30
<i>Attritions has a chilling effect on alternative family-work decision-making</i>	30
F. ASSOCIATES’ OBSERVATION ON LAW FIRM CULTURE AND FAMILY-WORK BALANCE	31
G. LAW STUDENT’S PERSPECTIVES ON WORK-FAMILY BALANCE	32
III. PROFESSIONAL CHALLENGES AND OPPORTUNITIES	33
<i>Bicameral vision, divided hearts</i>	33
<i>Do you see faces, or a vase?</i>	34
<i>The people and the container</i>	34
IV. WORK-FAMILY BEST PRACTICES	34
A. BEST PRACTICES IN THE LEGAL COMMUNITY	34

<i>Individualized flexible work-family alternatives</i>	35
<i>Mutual flexibility</i>	35
<i>Alternatives to equity partnership</i>	36
<i>Commitment to a culture of awareness</i>	36
<i>Clarifying expectations</i>	37
<i>Bottom-up review of work-family support</i>	37
<i>Flexible parental and family emergency leaves</i>	38
<i>Back-up child care facilities</i>	38
B. BEST PRACTICES IN ANOTHER SERVICE PROFESSIONAL FIELD	38
<i>Individualized work-life plans</i>	39
<i>Initiatives to enhance the quality of relationships with colleagues</i>	40
<i>Management commitment to balance and accountability for life-balance support</i>	40
C. SUGGESTIONS FROM ASSOCIATES FOR FUTURE BEST PRACTICES INITIATIVES	40
<i>Invite group efforts to identify problems and solutions regarding work-family life balance</i>	40
<i>Support the sharing of information and provide work-family plan support</i>	40
<i>Consider an attorney work-family advocate</i>	41
D. LAW STUDENT PROPOSALS FOR FAMILY-WORK INITIATIVES	41
<i>Show commitment to balance</i>	41
<i>Listen and learn</i>	41
<i>Keep going</i>	42
V. CONCLUSION	43
VI. APPENDICES	45
A. ECONOMIC CHARTS	47
1. Large Firm Economics-- Attorney Profitability Based on Per Capital Distribution of Representative Aggregate Expenses	47
2. Mid-Size Firm Economics-- Attorney Profitability Based on Per Capita Distribution of Representative Aggregate Expenses	48

3.	Large Firm Economics-- Number of Hours Required for Associate to Earn Per Capita Attorney Overhead plus his/her own Compensation	49
4.	Mid-Size Firm Economics-- Number of Hours Required for Associate to Earn Per Capita Attorney Overhead plus his/her own Compensation	50
5.	The Effect of Allocating Expenses on a Per Capita Bases and Distributing Profits According to Receipts Generated	51
6.	Generic Breakdown of Large and Medium Sized Firm Expenses	53
B.	DISCUSSION QUESTIONNAIRES	55
	Discussion Questionnaire on Attitudes regarding Competition	55
	Discussion Questionnaire on Organizational Attitudes regarding Professional Merit, Commitment, and the Family-Work Translation	57
	Discussion Questionnaire on Attitudes regarding Economics	59
	Discussion Questionnaire on Attitudes regarding Reduced Hours Arrangements	61
C.	DISCUSSION VIGNETTES	63
	Andrea Thompson's Story	63
	Ian Smith's Story	69
	Rachael Freedman's Story	73
D.	SOURCES AND REFERENCES	77

EXECUTIVE SUMMARY

The legal profession, and private law firms in particular, are on a collision course in which the pursuit of objectified measures of success is colliding with lawyers' and their families' needs for meaningful participation in families' daily lives. On the one hand, single-minded devotion to the workplace, one's clients, and revenue production is viewed as the key to success. On the other hand, non-workplace relationships which provide meaning and satisfaction require ongoing attention, care, and engagement. The convergence of these goals is at the core of work-family conflict. It is found in law firms of all sizes. Law students, associates, partners, and law firm management all contribute to, and are affected by, this dynamic. Most significantly, the culture and organizational structures of many private law firms exacerbate work-family conflicts and make lasting solutions difficult to implement and sustain.

Law firm organizations belong to lawyers. Lawyers' careers' belong to lawyers. The power to change our workplaces and our lives belongs to us. It will take self-examination and commitment to take the necessary steps to address work-family conflict on an individual and organizational level. Some of the first steps are apparent; others will not become apparent until the first steps are taken.

FINDINGS OF THE TASK FORCE ON PROFESSIONAL CHALLENGES AND FAMILY NEEDS

- ▶ The need for attention to family-work balance within the legal profession has never been stronger. Women have entered the legal field in large numbers, and women and men consistently state that they want rewarding careers and meaningful participation in the lives of their families. Both men and women lawyers are making employment and career choices based on their desires for intellectually challenging work *and* family involvement.
- ▶ Many law students, law firm associates and partners currently believe that being a successful partner or associate in private practice is incompatible with daily involvement in family life. Both external factors in the business environment and organizational and cultural issues within private law firms have contributed to the creation of a climate in which lawyers believe they must choose between meaningful family relationships and career success.
- ▶ Long-term assumed relationships between clients and law firms largely have been replaced by transaction-by-transaction business engagements. Increased market competition has led to fierce inter-firm competition, increased focus on the bottom line as a measurement of organizational success, and sensitivity to status. Internally, law firms have become more competitive and more focused on revenue production as the measurement of success. Law firm structural and cultural factors can fuel a

competitive, long-hours cycle that is at odds with work-family balance. Such factors can include, among others: pyramid hiring practices, certain revenue production based models of compensation, the “up or out” system, and a culture of success in which “merit” and “value” are equated with the willingness to dedicate one’s self to the workplace at the on-going expense of family relationships.

- ▶ Associates are choosing to leave law firms and, even the profession, in large numbers. Forty-three percent of new associates leave their firms within three years. Attrition rates are even higher for women, minorities and associates in the largest firms. A major reason for attrition is family-life balance concerns.
- ▶ As a result of the salary and overhead structure at many firms, associates often do not provide a financial return on their firm’s investment in them until their fourth or fifth year.
- ▶ The level of attrition that many law firms of all sizes now experience is: (1) extremely uneconomical; (2) impairs client service and client relationships; (3) disrupts collegial relationships within the firm; (4) breeds cynicism and discouragement regarding the possibility of real work-family balance for those remaining in the workplace; and (5) promotes further attrition.
- ▶ Law firms have become increasingly concerned about work-family balance and are willing to explore the issues in more depth than ever before. The steps that law firms have taken are, for the most part, good ones. Many firms now offer a range of reduced hours arrangements, flexible parental leave policies and back up child care arrangements. However, the cultural and organizational underpinning of law firms’ “cultures of success” must be addressed in order to bring long-term progress with respect to family-work balance, job satisfaction, and attrition.

RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL CHALLENGES AND FAMILY NEEDS

- ▶ Law firms need to examine their values, policies and culture. As part of this examination, a law firm should evaluate ways in which the firm does and does not support family-work balance; develop a firm-wide statement of its policies and practices regarding family-work balance; and establish internal benchmarks for promoting and measuring progress.
- ▶ Law firms must examine their economic assumptions, models and incentives. The culture of a firm and its economic assumptions are inextricably linked. For example, the level of attrition at many firms is very disadvantageous. Also, rewarding revenue production without regard to the associated expenses distorts economic realities and often penalizes those seeking work-family balance.

- ▶ Firms and individuals need to increase their awareness of language which equates “value,” “success” and “worth” with long hours and dedication to the firm in lieu of family time. For example, characterizations of firms as being “top firms” or lawyers as being “successful” based solely on hours or revenue promotes a firm culture that is not conducive to work-family balance. In particular, the Task Force recommends that “commitment” and “merit” not be equated with consistently long hours in the workplace, and that firms recognize that people with family responsibilities often overcome significant hurdles on a regular basis to produce quality legal work.
- ▶ Firms are encouraged to offer the broadest possible variety of individualized work-family plans. Such plans should be flexible and subject to modification as individuals’ and the firm’s needs change.
- ▶ Firms must not only support the concept of family-work alternatives, they must also support their successful implementation. To that end, the Task Force recommends that law firms publicize the array of flexible arrangements they offer; provide confidential e-mail groups or other networking opportunities for those who have, or are considering, work-balance alternatives; establish a program of regular review to ensure that such plans are being developed and implemented in a way that feels satisfactory to the participants and those with whom they work; and provide training and support to firm leaders on the implementation of work-family plans.
- ▶ Partners and organizations are encouraged to focus on ways to meet the needs of clients while providing flexibility to lawyers. Telecommuting, back-up client contact, e-mail, voice mail, and other mechanisms make continuity of relationship and client contact possible. Technology should be used as a tool to increase, not decrease, people’s flexibility.
- ▶ Bar associations and law firms should establish on-going internal and inter-firm consortiums or task forces in order to share ideas and experiences on work-family innovation; identify successes and barriers to the successful implementation of work-family programs; and explore new ideas to promote work-family balance opportunities throughout the legal community.

INTRODUCTION

In the past twenty years, enormous changes have taken place within the legal profession and in Americans' attitudes and patterns of behavior with respect to work and family. These changes have pulled the legal profession in two directions. First, women have entered the work force in large numbers, leading to an evolution in attitudes and expectations about parenting and paid work that is less gender identified. Increasingly, both women and men consistently state that they want rewarding careers *and* meaningful participation in the daily lives of their families. Men, as well as women, are making career and employment decisions based on their desires for family involvement. Second, increases in the size of urban law firms, changes in the nature of attorney-client relationships, the increased complexity of large transactions and mega-litigation, and advances in technology, have led to a law firm environment that is more competitive, more focused on the bottom line, and more status sensitive.

The convergence of these dynamics has brought tremendous stress and distress to the lives of lawyers and their families. In 1997, the Boston Bar Association convened a Task Force on Professional Fulfillment to examine the barriers to career satisfaction in the legal profession. The difficulties of balancing home life, work life and community service topped its list of concerns. These concerns have been confirmed by the 1998 NALP Foundation for Research and Education Report on associate attrition rates, and by numerous other national and regional bar association studies, researchers, writers and practitioners.¹

In 1998, Boston Bar Association President Lauren Stiller Rikleen assembled the Task Force on "Professional Challenges and Family Needs" to examine the interface between law firm environments and family needs. In the course of listening to hundreds of lawyers and reading and discussing a mountain of articles on the subjects of professional satisfaction and family-work² balance, two inconsistent but related images emerged. The first is a vision of

¹See, e.g., NALP FOUNDATION FOR RESEARCH AND EDUCATION, *Keeping the Keepers: Strategies for Associate Retention in Times of Attrition: A Best Practices National Research Study on Lawyer Careers* (January 1998) (hereinafter "*Keeping the Keepers*"); Kathryn K. Meier and Roberta Hayashi, QUALITY OF LIFE REPORT, SANTA CLARA BAR ASSOCIATION (Nov. 1994); AMERICAN BAR ASSOCIATION, *The Report of at the Breaking Point: A National Conference on the Emerging Crisis in the Quality of Lawyers' Health and Lives--It's Impact on Law Firms and Client Services* (April 5-6, 1991) (hereinafter "*At the Breaking Point*"); AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION, *The State of the Legal Profession 1990* (1991) (hereinafter "*The State of the Legal Profession*"); Nancer Ballard, *Equal Engagement: Observations on Success and Career Meaning in the Lives of Women Lawyers*, WELLESLEY CENTERS FOR WOMEN, WORKING PAPER NO. 292 (1998) (hereinafter "*Equal Engagement*").

²Issues bearing on work and family are identified as "work-family" issues and "family-work" issues interchangeably throughout this Report. No significance should be attached to the order of
(continued...)

success that is oriented around revenue production, hours, competition, and the pursuit of esteem. The second is an image that is based on the people in lawyers' lives and the evolving nature of their relationships with colleagues, clients, families and communities. The first goal of this Task Force has been to articulate the complexities of these two dynamics and how they affect work-family decision-making and experience. The Task Force's second goal is to identify ways in which bar associations, law firms, lawyers and other professionals can address family-work conflicts.

The Task Force includes partners and associates from large, medium and small law firms in the greater Boston area, as well as corporate counsel, and government attorneys. Its members include a managing partner, partners who serve on their firms' executive boards, lawyers directly involved in firm hiring and compensation, two bar association presidents, and the former Executive Director of the Boston Law Firm Group.³ Other Task Force members include an historian from Tufts University who has studied the evolution of women's presence in the legal profession, an economist, business organization specialists, psychologists, researchers who have examined changes in work-family policies and practices in the accounting field, and representatives of Harvard Law School.

In the course of its work, the Task Force has interviewed and gathered information from law firm partners and associates, in-house counsel and other business professionals, law students, legal recruiters, career counselors who specialize in legal professionals, legal management consultants, and the Employment Issues Group of the Women's Bar Association of Massachusetts. The experiences and perspectives of clients, law students, and professionals in closely related fields were considered as well as the experiences of partners and associates in law firms of all sizes.

The Task Force also has reviewed data gathered for a broad study on part-time work that the Women's Bar Association of Massachusetts is undertaking, and interview data from a study on career meaning in the lives of women lawyers conducted at the Wellesley Centers for Women and Brandeis University. Task Force members read and discussed numerous articles and studies by bar associations, legal practitioners, social scientists, psychologists, law professors, students, business professionals and other writers. (A list of resources for further reading is attached as Appendix D.)

Section I of this Report describes the evolution of private law firms and the workplace environment in which work-family issues currently arise. Section II examines the role that economics, competition, meritocracy, and gender each play in law firm culture and family-

(...continued)

these words in a given statement.

³The Boston Law Firm Group is a consortium of twenty-eight large law firms and two minority-owned law firms in the City of Boston, which is committed to increasing the representation of minority attorneys in large firms and in the City as a whole.

work dynamics. Section II also examines lawyers' perceptions and experiences of part-time work arrangements. Section III distills a broad range of lawyers' perceptions and experiences bearing on work-family issues and offers a framework for examining personal and organizational decision making. Section IV provides specific examples of "best practices" which partners, associates, clients, and professionals in related fields have found helpful in broadening work-family options, and contains proposals for future initiatives.

In the course of its work, the Task Force found that people's actual experiences regarding professional and family issues are usually more complex and more compelling than abstract discussion. In order to assist the legal community in considering the interplay of various workplace dynamics from multiple perspectives, the Task Force has developed a number of discussion questionnaires and vignettes on subjects relating to work-family decisionmaking. These are found behind the narrative portion of this Report in Appendices B and C. The Task Force hopes that these supplemental materials will be used by law firms, law schools, bar associations, and other organizations to further articulate and engage professionals in grappling with quality of life issues. Ideally, these materials and the narrative report provide a springboard for the development of additional materials and ongoing dialogue for creating and supporting professional environments in which participants can freely choose to have satisfying careers and fulfilling participation in family life.

I. THE PRIVATE LAW FIRM ENVIRONMENT

A. THE EVOLUTION OF THE PRIVATE LAW FIRM

Rising competition and short-term commitments alter attorney-client relationships

The pace, pressures, demands and rewards in the practice of law have changed dramatically over the last thirty years. Rising competition, increased focus on the bottom line, and technology have each contributed to these changes. Thirty years ago, many, if not most, attorney-client relationships were longstanding, and characterized by trust and a deep sense of loyalty. Ongoing relationships and commitment on both sides made possible lawyers' bills that said little more than "For Services Rendered" followed by a short paragraph describing the lawyer's work and an amount. The amount was determined by the lawyer, based on the time spent on the matter, the difficulty of the case or transaction, the experience required, and most especially, results achieved in light of the client's goals. With rare exceptions, the practice of law engendered little public attention or scrutiny.

Today, the presumption that a client seeks, or will have, a single long-standing relationship with one law firm has largely disappeared. Many clients "shop" their major matters to several firms and select or reject their lawyers transaction by transaction.⁴ Rising legal costs and, often, the need to justify those costs to others, has led clients to require their lawyers to provide them with an accounting for every hour (or fraction of an hour) spent on their matters. The relationships between clients and lawyers in private practice have been transformed into a series of business transactions. Single transaction engagements enable clients to compare law firm expertise, bargain for fee discounts, and demand immediate response. This transaction-by-transaction competition also induces lawyers to offer or accept tight deadlines without regard to need or reasonableness, and encourages them to view clients as short-term revenue sources.

The bottom line becomes a benchmark of professional and organizational success

Legal professionals have responded to marketplace changes by focusing increased attention on the business aspects of their practices. Billable hours, fee realization, and the firm's market share in a particular practice area or city have become the benchmarks for measuring success. This focus — indeed, some would say singular focus — on the financial bottom line has sharply increased the pressure on all lawyers to generate revenue. It also has fundamentally altered the structure of many partnerships. Historically, a lawyer who

⁴Some clients are motivated by a desire to obtain the best price for what they perceive to be a service that could be performed equally well by many law firms. Others shop for the highest level of expertise available to handle transactions that involve increasingly complex and specialized legal issues.

had developed quality legal skills could expect to move through the ranks to partnership with much effort but little anxiety. Today, only a very few of the many first year associates hired by the larger law firms will become partners, and even their fate is driven by bottom line considerations (such as the firm's needs at the time they are considered for partnership). Historically, profits were distributed equally or based on years of service. Today, most law firm compensation systems begin with the amount of revenue generated by a partner in a particular year. In short, the pressure on partners and associates at all levels to work longer and produce more revenue has increased at the same time that long-time relationships and job security has diminished.

Other external factors have also increased pressures within the legal profession. Twenty-five years ago, there was no *American Lawyer*, no *National Law Journal* and no *Court TV*. Lawyers rendered their advice privately and in relative anonymity. Today, major legal cases are reported in scores of publications and the media highlights every major misstep by a firm or lawyer. There are dozens of published lists detailing and ranking firms according to revenues, firm profits, and profits per partner. In many law firms, the amount of each individual partner's compensation is distributed to all partners. Web sites detail compensation of junior, mid-level and senior associates in different firms, including associate starting salaries and signing bonuses. Lawyers and law firms throughout the world are endlessly examined and compared, increasing the pressure to perform well for the press and the public. As a result, there is even greater focus on the bottom line.

Technology: growing money, losing free time

Technology, originally viewed by many as a savior, also has led to increased pressures in the practice of law. While technology promotes efficiency by allowing lawyers to accomplish a specific task in less time, it has not translated into more non-work time. Instead, technology simply allows us to do more in the same amount of time, e.g., revise a document more times, consult more people in and out of the office, search for decisions in more forums, and open new matters while on trial in another state. Technology also has created the possibility of a 24 hours per day, 7 day work week by making people and work accessible around the clock.

B. THE EVOLUTION OF WORK AND FAMILY ISSUES IN THE LEGAL PROFESSION

Family-work concerns: a longstanding dilemma

The challenge of integrating a legal career and parenthood is not a new one. In 1889, Lelia Josephine Robinson, the first woman admitted to the Massachusetts State Bar in 1882, wrote to the Equity Club, an organization of women law students and lawyers asking, "Is it practicable for a woman to successfully fulfill the duties of wife, mother and lawyer at the

same time?”⁵ For women lawyers, marriage and parenthood have always been a central issue in their professional lives.

The problem of integrating a legal career and family responsibilities today is somewhat different than when Robinson considered the issue. First, women's ability to plan family size and the timing of children was much more limited in 1890 than it is today. Second, when Robinson married, there were only 208 women lawyers in the entire country, compared to 9,422 men.⁶ The tiny number of women lawyers were viewed by most men as interlopers in their professional domain. Robinson and the other women lawyers of her day had to address the challenge of combining marriage, motherhood and career privately and on their own.⁷

“The years teach much which the days never know.”⁸

In the 1920's a new generation of lawyers approached family-work issues with greater optimism. Women lawyers of the 1920's believed that sexual discrimination and institutional obstacles to a career in law which had been so prevalent in the late nineteenth century, were a phenomenon of the past.⁹ Crystal Eastman, the first woman admitted to the New York City Bar and a supporter of suffrage, birth control, and equal employment opportunities for women, articulated the expectations of the women of the 1920's: “I grew up confidently expecting to have a profession and earn my own living, and also confidently expecting to be married and have children. It was fifty-fifty with me. I was just as

⁵Quote by Lelia Josephine Robinson in Letter to the Equity Club, May 22, 1889. Lelia Robinson's letter is printed in full in VIRGINIA G. DRACHMAN, *WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA: THE LETTERS OF THE EQUITY CLUB, 1887 TO 1890* (1993), at 168-71. See also VIRGINIA G. DRACHMAN, *SISTERS IN LAW* (1998) (hereinafter “*Sisters in Law*”).

⁶*Sisters in Law* at 253.

⁷Some women lawyers chose never to marry. Others gave up their careers when they married. A few tried to have both families and careers. Those who were most successful shared two qualities: a husband who was a lawyer with whom she could practice; and a husband who was supportive of her commitment to her career.

⁸Ralph Waldo Emerson, *Essay, Experience, III*, *THE COMPLETE WORKS OF RALPH WALDO EMERSON: ESSAYS* (1903) at 69.

⁹By 1920, all but twenty-seven of 129 law schools admitted women, every state bar was open to women, and the number of women lawyers had reached 1,738. The Nineteenth Amendment gave women the right to vote and made them full and equal citizens with men, and a view of marriage based on friendship, mutuality, and equality was replacing the nineteenth-century view of marriage grounded in dependency, obligation, and obedience.

passionately determined to have children as I was to have a career.”¹⁰ However, the 1920’s optimism did not bring the reality that many women lawyers hoped for. Forty years later, women still represented only about 3% of the profession.¹¹

Work-family concerns take center stage

During the 1970’s and 1980’s, the proportion of women associates hired by major law firms steadily increased. By 1989, women made up almost fifty percent of most law school graduating classes,¹² and by the late 1980’s many, if not most, major metropolitan law firms were hiring entering classes composed of 40% to 50% women.

At the same time, work-family lives in the United States, as a whole, were changing. In 1950, fewer than 13% of married mothers with children under age seventeen worked for pay; by 1994, 69% did so, and today, more than seventy percent do.¹³ The majority of families now consist of dual-career parents or full-time working single parents. Also, men are seeking greater participation in family life. Many men rate impact on family life higher than pay in choosing an employer.¹⁴ A 1996 National Institute of Mental Health study of dual-earner couples found that a close relationship with children was as important to men’s mental and physical health as to women’s.¹⁵

¹⁰*Sisters in Law* at 211.

¹¹Cynthia Fuchs Epstein, *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession, A Report to the Committee on Women in the Profession, the Association of the Bar of the City of New York*, 64 *FORDHAM L. REV.* 291, 313 (1995) (hereinafter “*Glass Ceilings and Open Doors*”).

¹²Elizabeth K. Ziewacz, *Can the Glass Ceiling be Shattered?: The Decline of Women Partners in Large Law Firms*, 57 *OHIO STATE LAW JOURNAL* 971, 975 (1996); *Glass Ceilings and Open Doors* at 295.

¹³See, e.g., ARLIE RUSSELL HOCHSCHILD, *THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK* (1997) at 6. See also, STEPHANIE COONTZ, *THE WAY WE REALLY ARE: COMING TO TERMS WITH AMERICA’S CHANGING FAMILIES* (1997) at 51; Laura Leete and Juliet B. Schor, *Assessing the Time-Squeeze Hypothesis: Hours worked in the United States 1969-89*, 33 *INDUSTRIAL RELATIONS* No. 1 at 25, 35 (1994). By 1996, less than 3% of American families had a breadwinner father and a stay-at-home mother. ROSALIND C. BARNETT AND CARYL RIVERS, *SHE WORKS/HE WORKS* (1996) at 3 (hereinafter “*SHE WORKS/HE WORKS*”).

¹⁴See e.g., *SHE WORKS/HE WORKS* at 65; *Keeping the Keepers* at 14.

¹⁵COONTZ, *THE WAY WE REALLY ARE* at 64: See also *SHE WORKS/HE WORKS* at 7, 59 (“Family issues are a major factor in men’s health and productivity. Men who had the fewest worries about their relationships with their children also had the fewest health problems.”); Maureen G. Guzlow, Gloria Bird and Elizabeth H. Koball, *An Exploratory Path Analysis of the Stress Process of Dual* (continued...)

Today, many associates and partners view life as a successful lawyer as incompatible with significant child care involvement or responsibilities. In the 1980's and throughout the 1990's, law firms have experienced dramatic attrition, especially in the junior classes, and among women and minorities.¹⁶ Associates identify their firms' practices regarding the balance of law practice and life as a major factor in their decisions to stay or leave their firms.

With women representing up to 50% of incoming associate classes, and with highly talented men and women openly stating that they are interested in legal environments that offer meaningful profession and family commitments, law firms are now actively searching for policies and practices to help make ongoing solutions possible. The challenge of integrating work and family is no longer a personal individual matter; it has become a problem of the legal profession as a whole, and one the profession must resolve for the twenty-first century.

II. HOW COME I DON'T FEEL THE UNIVERSE EXPANDING?

A. ECONOMICS AND WORK-FAMILY DYNAMICS IN PRIVATE LAW FIRMS

The power of the billable hour

By the end of the 1970's, the complexity and cost of many corporate transactions had mushroomed. In response, companies requested that bills provide more detailed information about the work performed to ensure that they were being charged a fair price. Many clients began to insist on itemized statements describing each billed hour (broken down into quarter hours or tenths of hours) with the expectation that this would prevent injustice, improve accountability, and lower fees. The billed hour, first mandated by clients approximately

(...continued)

Career Men and Women, JOURNAL OF MARRIAGE AND THE FAMILY, Feb. 1991 at 53.

¹⁶A broad study of associate attrition conducted at large, medium and small firms by the NALP Foundation for Research and Education, revealed that 43% of new associates depart within three years. Attrition rates among women and minorities are even higher. *Keeping the Keepers* at 11, 14. Attrition rates in many large law firms are also higher. According to a 1998 *New York Law Journal Survey* the largest New York law firms lose an average of 25% of their entire associate population each year. At two large New York firms more than 40% of the associates left in 1997. These rates are not confined to New York. A prestigious Philadelphia firm and a Los Angeles firm reported attrition rates of 56% and 37%. Debra Baker, *Cash-and-Carry Associates*, ABA JOURNAL, May 1999, at 40.

twenty-five years ago, has become, in most firms, the essential predicate for all law firm economic modeling and accounting.

The generation of fees based upon the billed hour now drives almost every law firm decision. Profit-per-partner calculations, viewed by many as the *sine qua non* of professional success, depend on fees generated from hours worked, billed, and collected. Capital investments, employment decisions, expansion and virtually all other law firm management decisions depend upon projected revenues which are based on billable hour projections, multiplied by anticipated hourly rates.

In recent years there has been much discussion of possible alternatives to the billable hour system. For example, both clients and law firms have endorsed, in principle, the flat or "fixed" fee, citing the potential for greater efficiency. However, law firms are reluctant to offer flat fees without a significant cushion, in case the work turns out to be more complicated, adversarial or protracted than anticipated. Clients, in turn, are generally not interested in fixed fees that appear to be more expensive than hourly billed fees. Contingency fees are most attractive to law firms when they are least attractive to clients that can afford to choose among payment methods -- e.g., when it appears likely that the contingency fee will exceed the number of hours worked multiplied by the attorneys' rates. In essence, law firms do not want to risk a significant short-fall without a substantial commitment of business or a large upside potential, and clients want alternative billing methods to save legal bills, not to pay law firms more than their hourly rates.

Without an on-going relationship in which it is understood that momentary dips in the scale will be evened out, no other system provides such financial clarity to both clients and law firms as the billed hour. This makes significant movement toward an alternative system unlikely except for the most routine assignments.

The revenue cycle

A chain of circumstances that brings about a situation in which the solving of one difficulty leads to a new problem involving increased difficulty in the original situation, is called a vicious circle.¹⁷ Many law firms face several of these vicious circles. For example, in most large and medium size law firms, the firm's largest expense is associate salaries and benefits.¹⁸ Law firms seeking to hire large entering classes from a limited pool of highly qualified law school graduates have offered entering associates higher and higher salaries and signing bonuses. Increases in associate starting salaries have a ripple effect throughout the firm. Associates further up in the hierarchy expect a higher salary/bonus package than

¹⁷Webster's Third New International Dictionary (1986) at 2550.

¹⁸For purposes of this report, medium size firms are firms with 50-150 attorneys. Firms with 150 or more attorneys are characterized as large firms. A breakdown of firm expenses at typical medium and large law firms is provided in Appendix A, Chart 6.

they earned the year before, and also one that is higher than associates more junior to them. Thus, when starting salaries are raised, adjustments are made throughout the associate classes. Mid-level and senior associate salaries and bonuses in many large firms now exceed the respectable partner's compensation of just a few years ago. Partners believe they deserve to earn more than associates because they have more legal experience and because they bear the burden associated with bringing in enough revenue to cover the growing salaries of associates, support staff, and rent. Thus, their compensation expectations rise.

This press for higher revenues among both associates and partners translates into pressure on everyone to work longer hours, raise their rates, and take on more work. As partners and associates work harder to generate the higher revenues, they come to expect that they will be even more highly compensated. And the cycle continues.

As attorneys' hourly rates have increased, the pool of potential clients that can afford the increased rates becomes smaller and the mix of work that is available to partners and associates is affected. For the most part, however, there have been sufficient clients willing to pay billing rate increases during good economic times to supply the hours needed to provide the revenue to maintain the cycle. Also, advances in technology have allowed law firms to offer, and clients to demand, an elevation in work product standards. Lawyers now routinely consult more reference sources, revise more drafts, and compare documents with those developed by others. Clients pay more for these additional efforts which, in turn, lead them to believe they can demand more. The cycle continues.

The need to collect enough revenue to pay rising salaries and to maintain or increase per partner compensation affects how many new partners a law firm is willing to add each year. Limiting the admission of new partners escalates inter-associate competition. One of the principal ways associates compete is by exceeding billable hours targets. The need to demonstrate exceptional dedication consumes the time for all other interests and causes professional dissatisfaction. The known narrowing of the portal to partnership, coupled with ever increasing billable hour expectations, leads to lawyer turnover, stress at all professional levels, and reduced morale. It also causes a substantial number of associates and partners to focus on their compensation as perhaps the only long-term benefit of their personal sacrifices and the only relevant measure of their current success.

In short, the increased revenue that is necessary for high associate salaries and partnership expansion leads to a demand for high billable hours, the narrowing of advancement opportunities, increased professional stress, and unprecedented financial conflict between associates and partners. Work-family balance is at the center of this conflict.

1. Observations on Revenue Generation, Career Satisfaction and Work-Family Issues

There is a strong link between an organization's economic modeling, budgeting assumptions, economic aspirations, and the firm's ability to embrace participants who wish to spend significant time involved in family and other non-revenue oriented pursuits. Economic modeling affects a lawyer's perception of profitability, and the "value" of individual participants, especially when revenues and compensation are closely tied to hours worked. This, in turn, deeply affects the availability of options regarding family-work career paths, and affects how those decisions are viewed by other members of the firm.

When the tail wags the dog

A firm's economic structure should flow from (and thereby support or enact) the purpose or mission of the organization. Some partners, associates, and commentators have suggested that they believe that law firms exist to provide high compensation to the partners. If this were true, the measure of a firm's success would be its profitability (in a given year or over a period of time) and the measure of a partner's success would be his or her compensation (in a given year or over time). If this were the overriding mission of private law firms, then it would make sense for each person, or at least each partner, to be focused primarily on maximizing his or her own income.¹⁹

Under a strict model of profit maximization, everyone would be encouraged to work, bill, and collect revenue for every hour of their waking lives. However, almost no one endorses or expects such behavior, even if sufficient people could be found to inhabit such a workplace. Instead, the standard for measuring commitment, contribution, and value tends to be the average or median hours being billed by the firm's attorneys. This standard has historically been set by male attorneys (who comprised more than 95% of private law firm partners and associates prior to the 1970's) in the context of an assumed lifestyle which anticipated that a lawyer would spend the bulk of his time and energy at work, and the

¹⁹Within this model, one's personal decision regarding family-work balance is theoretically neutral so long as it does not adversely affect someone else's profit or compensation. However, an associate's decision to work more or fewer hours always affects someone else's profit or compensation because the hours billed (and collected) by an associate in excess of his or her salary, benefits, and overhead, become partner compensation. Also, whether a partner or associate is perceived to be "pulling his or her weight" or "profitable" is influenced by the economic modeling and accounting methods used.

majority of family and child care responsibility would be handled by his spouse. This standard, and the lifestyle of the attorneys on which it is based, has been self-perpetuating.²⁰

Not surprisingly, lawyers who take a larger role in parenting or other family responsibilities than the “norm” may not find the “norm” compatible with their lives. The lawyers either have to work harder than their colleagues with different lifestyles, or they have to work fewer revenue-producing hours, or they have to sacrifice non-revenue producing work-related hours (e.g., mentoring, being mentored, socializing, networking, etc.), or some combination of these.

“There’s more to the dog ...”

Most firms, at least the management of most firms, do not describe their firm’s principal purpose as providing a platform for high compensation to partners. Firm brochures, firm mission statements, and managing partners describe their firms’ missions as “providing quality legal services,” “serving clients,” or performing “cutting edge,” “creative,” or at least, “intellectually stimulating” work, while maintaining a financially healthy organization and giving something back to the community. Even partners who believe that their firms’ behavior has become mono-thematically bottom-line oriented usually assert that the firm *should* have a broader mission, or that they have more diverse professional interests and values. Also, as has been documented on numerous occasions, a singular focus on the bottom line does not bring career satisfaction.²¹ Men and women lawyers consistently identify intellectual challenges, relationships with colleagues, having

²⁰More than 85% of the equity partners in Boston’s larger firms are men. Most of the partners and associates with whom the Task Force spoke reported that the great majority of equity partners with children in the home have a spouse who does not work for pay or who works very low hours (e.g., less than 20 hours per week).

²¹In a large nation-wide study of the legal profession conducted by the American Bar Association, lawyers ranked significant factors affecting their overall feeling about their jobs in the following order: (1) intellectual challenge; (2) time for self and family; (3) control over their work and workload; (4) interest in the substantive area in which they were involved; (5) financial rewards; and (6) work atmosphere. *The State of the Legal Profession 1990* at 58. In *Keeping the Keepers*, NALP identifies the primary criteria that associates use to choose a particular firm as: (1) the chemistry and collegiality of the people at the firm; (2) the nature, type and quality of work offered by the firm in their preferred substantive area of practice; (3) compensation; and (4) prestige. The NALP Report notes that the desire for a balanced lifestyle or the chance of having a desired life outside of the law office is a principal factor in associates’ decisions to *leave or stay* at their firm. *Id.* at 13-14. See also *At the Breaking Point* at 3-11; *Equal Engagement* at 10-15.

time for family and non-work pursuits, being of service to clients, and giving back to their communities as essential elements to their career satisfaction.

2. The Role of Expenses in Law Firm Economic Modeling

Task force members, economists, and others have noted that conventional economic theory is of limited value in understanding the internal economic organization of law firms.²² Law firm economic modeling is distinct from most other businesses in several respects. Work product at larger firms tends to be more expensive than at smaller firms. On a macro level, law firms do not benefit from economies of scale. A law firm's per attorney or per partner expenses (total firm expenses divided by the number of attorney earners or partners) rise rather than fall as the size of the firm increases. Even if associate expenses are removed from the calculation, larger firms, almost without exception, have larger per attorney expenses than smaller firms.

There are several reasons why per attorney expenses at large firms exceed those at smaller firms. First, the most significant "expense" category, by far, in mid-size and large law firms is associate salaries and benefits. Reducing the number of associates theoretically reduces the law firm's revenues.²³ Second, expense decisions tend to be based on revenue predictions which are based on anticipated aggregate billable hours. Third, revenue generation, rather than profit, guides most firms' compensation systems.²⁴

3. Profit, Revenue and Compensation

Generally, law firms determine their profit on a firm-wide basis. A law firm's profit, like that of other businesses, consists of revenue minus expenses. In other words, fees collected by each of the partners are aggregated, and aggregated expenses are deducted from the aggregated revenues to determine the firm's profit.

Historically, most law firms divided profits among partners on a "per capita" basis or based on seniority. The rapid growth and increased instability of law firms in the 1970's

²²In Ronald J. Gilson and Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STANFORD L. REV. 313, 318 (1985), the authors noted that, "what is styled the 'theory of the firm' in the traditional economic literature is not a theory of the determinants of firm structure at all. It is rather a theory of how economic units compete in the market for goods or services."

²³But see Section II.E., below for a discussion of the economic impact of hiring large junior associate classes and high attrition.

²⁴Larger law firms may also have slightly higher expenses because they often provide more overtime services, such as late night secretarial staff, to handle cases which are more time sensitive than price sensitive.

and 1980's prompted most medium and large firms to abandon "per capita" or "lockstep seniority" compensation models in favor of models that evaluate individual partners' relative "productivity."²⁵ The details of "productivity measures" vary slightly from firm to firm, but they generally are based on the number of billed and collected hours that a partner (and the associates working on his or her matters) generates, plus some "credit" for revenues associated with new business "originated" by the partner. Thus, compensation considerations focus on a partner's revenue production.

Except in unusual circumstances, compensation formulas do not take into account the expenses associated with such revenue production. Expenses are, in effect, distributed on a "per capita" basis, while profits are distributed according to who produces the revenue. To state the issue another way: profits are distributed according to revenue production rather than profit generation.²⁶ Even in law firms which do not use a strict revenue formula to determine compensation, this model influences perceptions of value and contribution.

Compensation modeling that is focused on revenue generation subtly influences how partners treat expenses. Expenses take a back-seat to revenue generation. Any individual expense has minimal impact on a partner's compensation, because the cost is distributed among all partners. Revenue production, on the other hand, has a significant impact on one's compensation. One feels a direct economic benefit from bringing revenue into the firm either through new clients or by working additional hours.

Over time, the per capita expenses of law firms, particularly large law firms, have steadily climbed.²⁷ As charts 1-4 in Appendix A demonstrate, high per capita expenses put significant pressure on hourly rates and the number of hours an attorney must work to be perceived as "profitable" or a "contributor" to the firm. Indeed, overhead (allocated on a

²⁵In the 1970's and 1980's it was widely thought that predetermined pie-division did not provide an incentive (or sufficient incentive) to partners to maintain a high level of productivity and, therefore, in the long run would be detrimental to a firm's prosperity, stability, and survival. A great number of firms became more "productivity" oriented to allay the fear of potential defections by large "rainmakers" who might believe that they were being compensated inadequately. There are, however, stable and profitable firms in the Boston area and elsewhere that do not base compensation of individual partners on an assessment of their relative productivity.

²⁶The effect of allocating profits based on revenue generation is illustrated in Appendix A, Chart 5.

²⁷Among the larger Boston law firms, per attorney expense has steadily risen. In 1998, per attorney expense was approximately \$100,000 to \$160,000 per attorney. When associate compensation is added to this number, per attorney allocated expenses rise to between \$225,000 to \$265,000 per attorney. See Appendix A, Charts 1, 3. In medium size firms, 1998 overhead, excluding associate compensation, ranged from \$50,000 to \$100,000 per attorney and with associate compensation, expenses were between \$120,000 and \$180,000 per attorney. See Appendix A, Charts 2, 4.

per capita basis) and junior associate salaries have climbed to the point where junior associates cannot work enough hours at the rates at which they can be billed to pay their own salaries and overhead. This puts additional pressure on more senior attorneys, especially if attrition has significantly reduced the number of profitable mid-level and senior associates.

“The most efficient engine is a black hole”²⁸

Under current law firm economic modeling, each partner has an incentive to bring in and commit the firm to as many matters (particularly large matters) as possible if it appears that the time the matter will take can be billed and collected. Since large revenue producers are seen as the “most valuable” in a system focused on revenue, these “rainmakers” are likely to receive permission to hire (or to have the firm hire) additional associates to perform their work. This, in turn, increases the associate expense that all the partners must bear. Once hired, these associates must be kept busy with the large rainmaker’s work or with other work, a responsibility that falls to everyone. Other partners are induced to work longer hours and bring in more revenue to keep up with their colleagues and to reduce the risk of over-hiring. This dynamic, together with large firms’ practice of hiring five to ten times as many associates as will ultimately be presented as candidates for partnership, creates a tremendous force felt by everyone toward the escalation of hours and revenues.

Combining gravity and leverage

In large firms, it is often said that the largest revenue producers leave the most “on the table” (i.e., in the firm). Indeed, this is often taken as a sign that those who have brought the most money to the firm are committed to the life and health of the firm, rather than to lining their own pockets. This is certainly a powerful message that many large producers can and do send to their partners and others at their firms. Another dynamic, however, is also at work. Decisions which lead to an increase in expenses tend to be weighted toward the needs of large revenue producers. Although satisfying large revenue producers is often viewed as crucial to firm stabilization, it can have the opposite effect.

The desire to keep large rainmakers happy can increase the dependency of other partners and the firm on the rainmaker if, as is often the case, the large revenues are associated with large expenses. For example, if a high revenue producing partner has more work than the associates in his department can handle or wants to expand a practice group, other partners tend to readily agree to hiring new associates. Few see any disadvantage as long as the large revenue producer believes he or she can keep the associates occupied. Nor is there generally any inquiry as to whether the partners whose work does not lend itself to associate leverage want to increase the firm’s expenses (e.g., their own per capita allocated expense) in order to generate revenue that will be distributed via the compensation system to the partner or partners that give work to the new associates. Nor are partners who wish

²⁸Jean Pierre LaSota, *Unmasking Black Holes*, SCIENTIFIC AMERICAN, May, 1999, at 41.

to spend less of their time on revenue-producing activities appreciated for endorsing a proposal that may have both relative and absolute compensation disadvantages to them regardless of whether or not the new hires are profitable.²⁹

In a production-based compensation system, it is also not clear that being a member of a large or mega firm stabilizes one's income. In such a system, if one's revenue production is in a down business cycle, one's compensation goes down, thus defeating the potential "smoothing out" effect of belonging to a large partnership. Often when one's revenue production decreases, so does one's utilization of associates. However, current compensation models recognize only a loss in revenue, not a reduction in the need for an expense. A partner whose work consistently requires less associate support, or who chooses to work fewer revenue producing hours in favor of more family time, may be at a continuing economic disadvantage in choosing to work in a large or very large law firm.³⁰ When the pressure to generate high revenue so as to be viewed as a contributor is combined with the economic disincentive to do otherwise, many partners conclude that family-work balance goals are beyond their reach.

Few, if any, partners articulate their frustration or discouragement in terms of an economic micro-analysis. However, economic assumptions and modeling play a tremendous role in shaping how we perceive our own success, who we think is profitable and why, and how we relate to our colleagues, clients, and families. Even if work-family considerations are never mentioned, every major firm economic decision affects how that firm views people who want to devote substantially less than all their waking hours to revenue generation.

²⁹Partners benefit from providing work to associates who generate fees that increase their compensation, even if the associate, as a whole, is not profitable. See Appendix A, Chart 5 for a simplified illustration of the economic effect of associate leverage and expense.

³⁰The reason that minimally leveraged partners in large firms generally make more than partners in small firms is that their billing rates are higher and their billable hours tend to be higher than those in smaller firms.

B. COMPETITION, MERITOCRACIES AND FAMILY-WORK DYNAMICS

Inter-firm competition

The quest for relative standing has biased law firms toward income rather than family-work alternatives.³¹ Competition among firms plays out in several ways. First, the relative success of a firm's partners and management is generally defined by the firm's net profit (income) per partner ("NIPP").³² Second, large firms tend to meet the high starting salaries offered by the very largest firms to preserve their image as a top-tier firm. Many medium and large firms try to appear as economically successful as the largest of firms to their clients, the community, and the law schools where they compete for lawyers. As a result, expenses which the very largest firms readily can sustain are incurred by firms for which it is more of a struggle. In the end, these factors all contribute to a culture where work levels in excess of 2000 billable hours a year are viewed as necessary to the success of firms and the advancement of young lawyers.

By defining success according to the firm's NIPP, and comparing the firm's NIPP to that of other similar firms, short term economic issues become paramount. What is the firm's NIPP this year compared to last year and compared to the other firms with whom we want to be competitive? What are this year's starting salaries? How did we do in recruiting? How many associates are partner candidates this year and will they have a positive or negative effect on NIPP? When a firm's relative economic standing is perceived to be the benchmark for success, even very favorable economic climates offer only momentary comfort. People and organizations moving very fast at the same rate appear stationary when they are measured against each other.

Several task force members from successful smaller firms proposed that firms consider another way of analyzing the economics of lawyering. Since, as a general rule, the per attorney overhead expenses at large and medium size firms represent approximately 1000 billable hours of junior attorneys' time, associates must bill at least 1000 hours to meet non-salary expense, and another 1000-1200 hours to pay their own compensation before they contribute any profit to the firm or increase the NIPP. (See Appendix A, Charts 1-4 for an analysis of the hours required to pay overhead and compensation at typical large and medium size firms). A number of firms, however, are now focused on identifying the expenses that specific attorneys must incur to serve clients in the information age. Suppose,

³¹See also JULIET SCHOR, *THE OVERWORKED AMERICAN: THE UNEXPECTED DECLINE OF LEISURE* (1992) at 123.

³²A firm's NIPP or "net income per partner" is calculated by dividing the firm's total profit by the number of ownership partners. It does *not* represent the amount that each partner in that firm is paid. As described in section II.A., the firm's profit is usually distributed according to partners' relative productivity rather than on a per capita basis.

for example, telecommuting and computer research could reduce overhead for some lawyers by the equivalent of 400 hours. This savings would allow an attorney to substantially reduce the number of his or her billable hours and, at the same time, bring more profit into the firm.

Intra-firm competition

It has been widely noted that large law firms attract a disproportionately high number of people who have long been successful in competitive situations and who bring to firms a continued drive to succeed. However, the breadth and depth of competition among associates, among partners, and among firms has increased palpably in the last twenty-five to thirty years -- to the point that partners in large law firms have been characterized as "practitioners who have made their way to the crest of a highly Darwinian vocation."³³

Although there has always been competition among associates vying for the approval or attention of partners for whom they would like to work, such competition and its relative success as a strategy was a product of the participants' personalities. Today, competition within many law firms is driven and supported by organizational systems such as revenue-oriented evaluative compensation systems and pyramid hiring practices.

Intra-firm competition is justified (and in some cases glorified) by law firms' characterizations of themselves as meritocracies -- "with the cream rising to the top." Merit is usually couched in terms of legal skills, client responsiveness, commitment to the firm, and team-work, but at least three of those four attributes are, from the perspective of associates and many partners, correlated with long hours and sacrifices of personal and family time.

When a lifestyle that requires one to push all non-work obligations aside on a regular basis is viewed as a symbol of commitment and a sign of merit, it is difficult for associates to make different choices even if they are not interested in partnership in the immediate future. Associates report that they regularly consider the competitive effect of their possible courses of action when making decisions. They compete for the most desirable positions on the most desirable cases; they jockey for recognition of their relative contribution to positive case outcomes; they search for reasons to distance themselves from mistakes or unsatisfying outcomes; and they vie for the esteem of partners whom they do not even know but who will decide their employment fate. They evaluate themselves and each other with respect to their bonuses, the size and financial status of their cases, and errant comments in the hall made by influential partners.

Partners compete for relative compensation, the currency of esteem in a competitive environment in which high revenue production is equated with merit and success. More specifically, partners compete with each other for staffing by the most talented associates, for "client billing credits" (including long-term credit for client retention and associated

³³Chris Klein, *Big-Firm Partners: Profession Sinking*, NAT'L L. J., May 26, 1997, at A01.

revenue growth) and for recognition by their partners and the firm. As one partner observed, "There's a sense of competition or criticalness that you can't get away from. It doesn't matter where you are in the firm. And everybody has it, it's not just me... everyone has it."

Choices by lawyers to devote significant time to non-revenue producing activities can be viewed by others within the firm as failure, the inability to attract sufficient clients or work, or a lack of commitment. Several partners noted that what would have been viewed as doing fine ten years ago may be viewed as "marginal," "barely productive," or "non-performing" now. Trying to live a life that places career and family on an equal footing in a culture which is dominated by those with a different work-family lifestyle and bills itself as a meritocracy can be exhausting and disheartening.

C. THE ROLE OF GENDER IN WORK-FAMILY DYNAMICS

Work-family issues are not gender specific.³⁴ The majority of working adults are or will be parents or primary caretakers during a significant portion of their working lives, and many who do not parent children will face caretaking issues with respect to their parents and/or other aging relatives. Nonetheless, restrictive family-work career paths have disproportionately adverse impacts on women's professional careers and men's family relationships.

Disproportionate impacts

Although many of the reasons why work-family decisions disproportionately affect women are obvious, several bear specific mention. First, in our culture, more women than men have primary responsibility for child care. In many families, there is an agreement that child care should be shared equally, but when this becomes impractical or impossible on a short-term or long-term basis, women tend to be the default child care giver. Second, women who work are judged by their peers and the larger community according to how well they parent and work, but particularly according to how devoted they seem to be to parenting. When children have problems, it is generally women who are expected to alter their professional commitments, and women are more harshly judged than men for not doing so. Third, twentieth century American culture has equated a man's success with his occupation, his status within his occupation, and his ability to provide for his family. Many men take pride in earning enough income that their wives do not have to work even when the price is not being home much. Fewer women have the prerogative or the goal of

³⁴It is worth noting that until the early nineteenth century the majority of American men and women worked together on farms or in small household businesses. Family life and breadwinning were not two different specialized jobs. The division of paid work and family care, and the resulting identification of masculinity with economic activities and femininity with nurturing care was largely a product of the nineteenth century transition from an agricultural household economy to an industrial wage economy. COONTZ, *THE WAY WE REALLY ARE* at 56.

adopting a lifestyle that enables them to devote substantially all their energy to the workplace while receiving behind-the-scenes support for their careers and peace of mind regarding the care of their children.³⁵

At the same time, many men feel that the dominant law firm culture inhibits them from being able to make long-term time commitments to child care or family life. As one male former associate noted, "It is okay to say that you would like to spend more time with the kids, but it's not okay to do it, except once in a while." Men who want more family time tend to leave their firms for more compatible environments rather than to press publicly for change within their firms.

While the problem of balancing work and family affects both men and women, in private law firms the struggle is still being lived most acutely by women. Attrition among women consistently exceeds attrition among men with disparities being the most severe in the senior associate and partnership ranks.³⁶ Consequently, the percentage of women equity or shareholding partners has not increased proportionately with increases in the presence of women in the profession.³⁷

³⁵Women attorneys who have husbands who do not work for pay or who are the primary child care provider in their families report that they still choose to spend more time with their children than most of their male colleagues do.

³⁶Women's attrition rates at large, medium and small firms have exceeded men's by several percentage points for most associate classes since the 1988 class. After five years the disparities widen, and by the eighth and ninth years the disparities are greater yet. *Keeping the Keepers* at 62-63. Women partners also have significantly higher attrition rates than do men when retirements are excluded.

³⁷In 1989, women made up 33% of the associates and 9.2% of the partners in the country's two hundred fifty largest law firms. In 1992, women constituted 37% of their associates and 11.2% of the partners. According to the National Association for Law Placement, women made up 12.9% of the partners in the 250 largest law firms in 1994, with firms in Boston, Seattle and Washington, D.C. reporting percentages at or near 14%. However, in the late 1980's, many firms revised their hierarchical structure to create a new tier of non-equity, non-shareholder partners between the rank of associate and what had, historically, been called a partner (*e.g.*, a person who has an equity interest in the partnership, who is paid from firm profits in lieu of receiving a salary, who votes on important firm matters, and who is generally viewed as having greater job security than associates). The inclusion of "junior" or "income" (non-equity) partners in many of the post-1984 reported statistics make evaluation of the actual increase or decrease of women with an ownership interest in law firms difficult unless breakdowns between junior and senior partner statistics are reported.

Reluctance and accommodation

Many believe that non-economic motives drive firms' reluctance to openly embrace a panoply of work-family alternatives.³⁸ Numerous lawyers noted that influential partners who do not have children at home or whose wives who do not work for pay, seem to assume that everyone's life is (or could and should be) like their own. Several speculated that men and many women who have had lives dominated by work believe that, just as they had to choose between work and family priorities, those who follow should have to choose also. This view is often believed to be embedded in the rhetorical statement: "Everyone has to make choices; you can't have it all." Both partners and associates observed that when family-work issues are discussed, the need to "accommodate" those with work *and* family responsibilities is viewed as the problem rather than workplace inelasticity being viewed as a problem.

"Spend a week in my shoes"

As associates move through the associate ranks, the senior associates against whom they are evaluated are, increasingly, men without child care responsibilities and women without children. For many women, their most arduous career push coincides with the running of their biological childbearing clock. Women report that critical family planning decisions often revolve around their decisions to pursue partnership or other employment opportunities. Moreover, when women decide to bear children, that decision becomes obvious as soon as she walks in the room, and the impact of that decision becomes the subject of open speculation by clients and other members of the firm. Women who seek to combine law firm careers and families also are sometimes frankly discouraged. Yet, almost no men report that they decided to postpone having children because they were coming up for partnership. It is difficult to imagine a man being told that he could have one child and be a lawyer, but that having two or more children would be "death to his career." Yet, several women reported being given such "friendly" advice.

Lawyers with significant child care responsibilities frequently note a jarring disconnect between their colleagues' perception of their lifestyles and their experience. For example, a significant number of women report being viewed as less committed to their firms or careers because they spend fewer hours in the office than colleagues without child

³⁸Production-based compensation models reduce the likelihood that partners with lower than average hours would be taking compensation from partners who have higher than average hours, and current models may even over-allocate expenses to those with less leverage and fewer hours. See Appendix A, Chart 5. As described below in Section II, E., associate attrition due to the perceived incompatibility of success with time for non-revenue producing activities is economically detrimental to firms.

care responsibilities.³⁹ When their law firm hours and their hours of primary child care responsibility are combined, the number of working hours that many women with children work exceeds even high law firm hours. As one woman exclaimed, “On most days I am taking care of children or commuting or working from the moment I get up until I fall in bed at night. *No one* would choose this if they weren’t very committed.”

D. REDUCED HOURS ARRANGEMENTS

In the late 1970’s, when there were law firms insisting that one could not be a committed professional on less than a full-time plus schedule, firms began to offer “off-track” (off-partnership track) part-time options, popularly known as “mommy track” positions.⁴⁰ There followed much debate about whether such “off-track” positions were progressive or regressive (e.g., whether they offered women expanded opportunities for participation in professional careers while raising families, or whether they provided a convenient mechanism for directing women with children away from meaningful participation in law firms where they became, in effect, the at-will employees of on-track attorneys, thereby perpetuating a culture that viewed professional life as incompatible with significant child care responsibilities).

A burgeoning field with few takers

The “mommy track” debate seems to have abated. Law firms and those seeking alternatives to the traditional route to partnership have gradually and incrementally spread the alternative “track” into more of a “field” of possible alternatives. The numbers and variety of part-time arrangements have expanded to include, among others: independent contractor attorneys who choose a specific number of hours per week or month, or specific projects, and bill the firm for his/her services; attorneys “on retainer” or who are paid a flat fee for up to a specified number of hours per month; part-time associates or “of counsel” attorneys working as few as 15 or 20 hours in two days per week; part-time attorneys who work 60%-80% of full-time billable hours targets; part-time attorneys with an 80% billable and non-billable annual commitment to be worked as the attorney chooses; part-time attorneys who work a traditional five day schedule but do not work weekends unless there is a “truly life-threatening” emergency; and attorneys whose hours vary, but who work the

³⁹See also BOSTON BAR ASSOCIATION/WOMEN’S BAR ASSOCIATION OF MASSACHUSETTS, *Task Force on Part-time Lawyering* (1995) at 7; *Equal Engagement* at 47.

⁴⁰Partners in some firms continued publicly to take the position that committed professionals could not work reduced hours schedules well into the mid-1990’s. See e.g., BOSTON BAR ASSOCIATION/WOMEN’S BAR ASSOCIATION OF MASSACHUSETTS, *Task Force on Part-time Lawyering* (1995) (quoting partner as stating: “In a large firm, the level of commitment required to progress is inconsistent with part-time work. The best that part-timers can hope to achieve is to go into a holding pattern until they can return to full-time, and if they can’t do that, they are fooling themselves.”)

same three or four days every week. At many of the largest law firms in Massachusetts, associates who work part-time for some or all of their careers are eligible for both junior and equity partnership. For partners, "part-time" tends to be an acknowledgment between the firm and the partner that the partner will work fewer hours than his or her colleagues and/or take on fewer matters.⁴¹

Despite the availability of reduced hours schedules, women associates and partners often believe that working fewer annual hours at their firm will be "death to my career." Men apparently do also: virtually no men formally seek a reduced schedule in order to increase their family care opportunities/responsibilities. Not surprisingly, it is painful for women and men who have been high achievers all their lives to be perceived as "not a player" or "uncommitted" for the first time in their lives, especially when this evaluation involves their career -- a major source of identity, time, and energy.⁴²

In private law firms, where hours expectations exceed those in many other occupations, the disappointment can be particularly acute. A number of attorneys working a "reduced schedule" of 70-80% report that they often work in excess of 45 hours a week. When people with "reduced hour" arrangements are viewed as less committed and valuable than their full time colleagues, they are more likely to leave their firms in search of a more compatible environment, or become less committed.⁴³

E. ATTRITION

Hiring for attrition

Most firms spend significant resources (both time and money) recruiting law school students. Competition by firms for the law students they perceive to be the best and the brightest is intense. In robust times, firms hire increasingly larger first-year classes, but even in tighter times firms hire many more first-year associates than have a chance at

⁴¹Since partners in most law firms are paid based on "production," the partners reduced hours automatically affect his or her compensation. Sometimes there are additional adjustments up or down.

⁴²Although 96.3% of Boston law firms offer reduced hours positions, and a great many lawyers state they would prefer more time over more compensation, less than 6% of eligible attorneys choose this option.

⁴³The Woman's Bar Association of Massachusetts is currently undertaking a broad study of the experiences of part time work arrangements by attorneys in the one hundred largest Massachusetts law firms, and plans to issue a report on attorneys' experience with part time work arrangements that will address this area in more depth.

partnership in the firm.⁴⁴ The hiring calendar requires a firm to decide in the late summer or fall of one year how many first-year lawyers the firm should have in the fall of the next year, long before firms are likely to know the actual needs of various departments. Since top law school students are likely to receive offers from several firms, a firm must make many more offers than the number of people they want to hire and rely on the law of averages to bring in the correct number.

When “up or out” means “mostly out”

Unlike most businesses, large private law firms have an “up or out” system in which, each year, an associate is “promoted” to a higher salary and billing rate and moves one year closer to partnership, or the associate is not promoted and asked to leave. Promotion depends partly on the associate’s legal skills and partly on other considerations such as the quality of the skills of other associates in the class, the needs of the firm in the associate’s chosen practice area, and the likelihood that the associate will bring in new clients or new matters from existing clients. Competition and employment insecurity lead many associates to depart on their own initiative, especially if other factors such as collegial relationships, interesting work, and support for time with their families are absent.⁴⁵ The 1998 NALP study of 154 law firms involving 10,376 associates from the classes of 1988 through 1996,

⁴⁴Hiring for attrition began in New York when large law firms realized they could increase profits by employing more associates than could be absorbed into the firm as partners. The larger law firms in Boston, Los Angeles, Washington and elsewhere followed suit until, by about 1980, it was commonly understood that first-year associates were hired in far greater numbers than either the firm or associates reasonably expect to become partners. Several partners interviewed by the Task Force noted that the meteoric rise in associate starting salaries in Boston law firms (which tracks, but slightly trails, salaries offered to first year associates in New York) coincided with the movement toward a pyramid law firm structure which demands attrition. In effect, large firms began to offer cash to associates in lieu of commitment to a long term relationship.

⁴⁵In recent years, some firms have created more than one class of partners and employ quite a large contingent of so-called non-equity partners who remain in this position indefinitely. Some firms have created “counsel” or “of counsel” positions for talented lawyers, who, for whatever reason, do not become an equity “owner” in the firm but who are viewed by the firm as having a contribution to make. Other firms have “off-track” associates, e.g., associates who are not on the “partnership track” and who are not subject to the “up or out” rule. In each of these cases the lawyer concludes that life in the firm as something other than an equity partner is a desirable alternative to other options. While this development can relieve, to some extent, the inevitable attrition which the “up or out” principle demands, most associates currently view these alternatives as, at best, second-class opportunities.

found that almost 10% left their firm within one year, 43% left within three years, two-thirds left within five years, and three-quarters left within seven years.⁴⁶

The economics of attrition

Associate attrition is very costly to law firms. Nearly all first and second year associates at large and many medium size firms represent, during those early years, an economic loss to the firm. Junior associates' salaries, benefits and per capita allocated overhead now exceed the billing rate that can be charged for the level of legal work most junior associates can perform, multiplied by the number of hours they can (reasonably or unreasonably) be expected to work. See Appendix A, Charts 3 and 4.

The period required for new lawyers to become profitable varies. A lawyer's ability to turn academic excellence into lawyering skills which are practical and responsive to client needs will affect the percentage of time worked by the junior lawyer that can actually be billed and collected. The nature of the practice area and work which the associate is asked to do can also be a significant factor (e.g., it is easier to recover a higher percentage of a new associate's costs if the associate is fully employed on a document production in a large commercial transaction or litigation matter, than it is if the associate's time is spent trying to understand a complex tax statute).

A number of countervailing influences limit a firm's ability to maximize the economic contribution (e.g., minimize the net loss) of junior associates. First, clients' perceptions of the relative value of work performed by the most junior associates prevents firms from raising first year rates to the point where most associates can (given their compensation and the firm's overhead) be profitable. Second, clients resent paying for what they believe to be "training time" and some major corporate clients restrict their law firms' use of junior associates.

The long-term training interests of the firm and the associate, and the associate's desire for intellectually stimulating work, also inhibit the prospects of early profitability. For example, a new associate may be most profitable (i.e., least unprofitable) working on a large document production or coordinating, assembling, and proofing corporate documents produced by others, but a steady diet of this work does not prepare the associate to take on more complicated and varied assignments, and it is not intellectually challenging. Additionally, associates who do not develop sophisticated legal and client relations skills are likely to remain unprofitable for longer, are more likely to be treated as fungible by partners and senior associates, and are more likely to feel unappreciated. In short, junior associates are a long-term investment.

⁴⁶Two-thirds of the firms surveyed by NALP were firms of 100 or fewer attorneys. Attrition is not just a "big firm" issue. *Keeping the Keepers* at 53.

Only after three or four years do associates' billing rates and legal skills catch up to their salaries, benefits and allocated overhead so that they begin to return the firm's financial investment in them. See e.g., Appendix A., Charts 1-4.⁴⁷ From an economic point of view, the primary return on a firm's investment in an entering associate occurs in years five to ten.⁴⁸

Calculating the economic cost of attrition

Because of the focus on revenue production, the difficulty of calculating the annual costs of attrition, and the difficulty of differentiating unwanted attrition from systemically desirable attrition, most firms simply treat attrition as a necessary cost of doing business.⁴⁹ If one looks, however, at the net profit or loss of individual associates over the course of their tenure at a firm, the enormous economic cost of attrition becomes apparent. As previously noted (and as illustrated in Appendix A, charts 3-4) most associates, particularly at medium and large law firms, represent a net loss to the firm during their early years. This is the firm's financial "investment" in the associate. Over time the associate's experience level and billing rate rises such that, during his or her third or fourth year, the associate (who if still at the firm) begins to "break even" and become profitable for the firm.

Accordingly, the cost of attrition can be calculated as the total amount of "investment loss" the firm sustains when an associate leaves before he or she is "breaking even" and has earned back the firm's investment in him or her in the prior years. Using this methodology,

⁴⁷The charts in Appendix A illustrate the number of hours an attorney at a specified billing rate must work to pay his or her salary and associated overhead. The actual billing rate of an attorney or class of associates varies throughout the city. The hourly rates shown on the charts are offered for comparison purposes only, the charts do not present an annual progression of rates at any firm.

⁴⁸The period from first-year associateship to equity partner varies from firm to firm but is generally eight to twelve years.

⁴⁹Some consultants have attempted to quantify the cost of attrition by calculating and adding the costs of: recruitment time and expense (interviews, expenses, attorney time, recruiting officer's time, and recruitment fees); lost time by the exiting employee (time spent locating new position, transferring work, not working, etc.); transition costs associated with the replacement lawyer ("getting up to speed" on matters handled by the exiting employee, firm orientation and training time); and the economic cost of the impact on others at the firm who must duplicate training, mentoring, and supervising the new lawyer. See e.g., Thomas W. Kahl, *The Cost of Employee Resignation: Final Report*, GEI CONSULTANTS, INC., Dec. 12, 1995. In law firms, the greatest of these economic costs is lost attorney time, e.g., time not worked by the departing associate, and duplication of time by others on the departing lawyer's matters. Calculation of this cost on an attorney-by-attorney or project-by-project basis is difficult because the amount of time and revenue lost depends upon a number of independent variables such as: the relative role of the departing associate with respect to on-going matters; the size of the transactions on which he or she worked; and the clients' sensitivity to paying "turnover costs."

it becomes clear that firms sustain a significant economic loss on any associate who leaves prior to his or her fifth year, unless that associate is not capable of developing sufficient legal skills to become a self-sustaining fifth year associate. But by the fifth year, two-thirds of the original associate class is gone. Thus the hiring process, the up-or-out principle, and the limitations on partnership openings converge. If associates leave in the early years, the firm cannot recover its up-front investment.⁵⁰ When a more senior associate leaves, the firm loses a profitable contributor. If the associate stays, and isn't promoted to partnership in an environment in which all other outcomes are viewed as failure, the associate is likely to feel like he or she gave their best years and most of their time to the firm "for nothing."

The relationship costs of attrition

Attrition also has a profound impact on people's relationships within the firm. Attrition dramatically affects lawyers' prospects for building lasting career support and creates a recurring sense of loss when meaningful relationships are broken or dramatically changed as co-workers depart. The associate who becomes an equity partner in one of the larger firms is likely to have seen three hundred other associates come and leave in the seven to ten years that he or she is an associate.

Individual partners are also frustrated by associate attrition. Partners must retrain new associates when those familiar with their cases leave. They also feel the disconnection of episodic relationships, and they feel the pressure of writing-off time spent by the replacement associate to "get up to speed" on client work. High associate turnover leads partners to become skeptical of associates' commitment as a group, which makes it more difficult for partners to devote non-billable time to mentoring, especially when there are many other demands on their time.

Attrition has a chilling effect on alternative family-work decision-making

Attrition has a particularly demoralizing effect on associates who are trying to integrate career and family responsibilities. Junior associates quickly look for role models within their firms. Because there are so few senior attorneys shouldering significant family care responsibilities, attrition can mean a loss of a significant percentage of those with whom they identify. The departure of a primary care giver can also diminish the belief of those who remain that attorneys with child care responsibilities can find success or satisfaction within the law firm. Minority lawyers are particularly vulnerable to, and affected by, attrition. Women minority lawyers with significant child care responsibilities spoke about feeling doubly or three times as isolated within their firms — as a woman, as a member of a minority, and as a woman with child care issues. Many minority lawyers feel a particularly urgent need to take part in their non-work communities because of ethnic and cultural isolation within the workplace. Minority lawyers also carry the additional burden

⁵⁰A few firms in Boston have addressed the up-front cost of junior associates and attrition by focusing their recruitment efforts on lateral hiring.

of feeling like they must be double role models and “pioneers” as well as being good lawyers, attentive spouses, and caring parents.

F. ASSOCIATES’ OBSERVATION ON LAW FIRM CULTURE AND FAMILY-WORK BALANCE

Associates frequently graduate from law schools with \$60,000 or more in school loans. Economically, large firms are very attractive to law firm graduates. Also, large law firms are hailed as the most elite career opportunity and many law schools measure, in part, their own success by the numbers of law students who obtain jobs in “elite” law firms. However, law firm graduates are also increasingly sophisticated and skeptical about life in large law firms. They recognize that the prospects of partnership are speculative at best, and many feel that the life of a law firm partner is not compatible with their own life goals. In this environment, it is not difficult to see that associates’ goals and attitudes are evolving. Many associates view the larger firms as a short-term career move which will enable them to pay off their loans more quickly, obtain good training, and preserve options for future opportunities.⁵¹ They view their commitment to these firms as symmetrical to their employer’s commitment to them.

As the 1998 NALP Report documents, associates’ decisions to stay or leave their law firms are often formed during the first year with the firm.⁵² Both male and female associates are expressing a strong preference for employers that support flexible work arrangements, including, but not limited to, telecommuting and part-time employment. Notwithstanding the fact that most firms now offer some form of reduced hours arrangements, associates of both sexes still perceive that, to be “successful” at most law firms requires complete alignment of one’s self with work. Associates frequently observe that most of the associates who “survive” to make partner are those who, whether male or female, closely model the traditional male career path: they have no children, or if they have children, there is a stay-at-home spouse who is responsible for the children’s day-to-day care.⁵³

Attempting to change the culture at many firms is a Herculean task. Many associates enjoy the practice at their firms and would prefer a long-term relationship with a workplace in which they feel appreciated over frequent disruptive career transitions. Associates,

⁵¹See e.g., *Keeping the Keepers* at 14 (“Associates in the study were quite candid about the time frame in which they made [the decision to stay or leave the firm]; they entered the employment relationship not thinking about permanence or long term employment, but rather, in terms of one year.”); Baker, *Cash-and-Carry Associates* at 40.

⁵²*Keeping the Keepers* at 14.

⁵³See, also BOSTON BAR ASSOCIATION/WOMEN’S BAR ASSOCIATION OF MASSACHUSETTS, *Task Force on Part-time Lawyering* at 9.

however, express genuine fear about how they would be perceived if they approached firm management to discuss family-work issues. At one law firm where female partners have formed an internal networking group for women attorneys, the partners “assured” the associates that, while they would be supportive of an individual associate’s attempts to grapple with firm life, family-work issues would *not* be a recurring topic of discussion at the group’s luncheon meetings. Most associates who perceive their firm to be unfriendly to family-work balance do not have the time or energy to challenge the firm culture. They vote with their feet.

G. LAW STUDENTS’ PERSPECTIVES ON WORK-FAMILY BALANCE

The socialization of young adults into a profession is analogous to the aculturalization of immigrants who optimistically choose a new country. They shape and are shaped by the new environment. At the same time, graduating students bring assumptions and perspectives on work and family that are different from those that entered the profession in the past.

Counselors in the Office of Student Life Counseling at the Harvard Law School have noted a marked increase in the number of students who are intensely concerned with family-work balance in their prospective profession. They note, as does the 1998 NALP study, that family priorities are influencing both men and women’s choice of employment and their broader career decisions. It is also apparent that more students are unwilling to defer beginning families while in law school, much less while employed.

Law students are eager for dialogue with future employers. In particular, they want employers to do more than simply develop parental leave and flex-time policies, they want firms to value lawyers who want to be both committed attorneys and parents. Law students at Harvard Law School and elsewhere have begun actively promoting family-friendly policies at their law schools and in the profession.

Ambitious and motivated students are accustomed to success, are determined to forge satisfying careers, and are willing to make sacrifices to achieve their goals. In many cases, however, they perceive a deterioration in the ethos of the profession, involving a disconnection with human values and a growing focus on business-related priorities. They can be suspicious of a law firm’s rhetoric about the balance between work and private lives, unless there is observable, concrete evidence to support the firm’s description. An absence of good will and support for work-family balance contributes to negative expectations and cynicism about employment conditions. These factors lead many students, particularly those with staggering debt, to focus on their own economic imperatives, and to devise a strategy of “take the money and run.” In so doing, many feel that they are reciprocating a firm’s strategy toward them, but it is a disheartening way to begin a life-long profession.

III. PROFESSIONAL CHALLENGES AND OPPORTUNITIES

The ingredients of professional satisfaction are remarkably universal. Lawyers at all levels of their careers identify relationships with their colleagues, clients, and work as central to their sense of career satisfaction. As one former managing partner of a large firm notes, "Lawyers become depressed when they lose connections. Our principal connections are with clients, colleagues, work, and life outside work."

Several men observed that at retirement dinners, it is almost always the relationships with one's colleagues that stand out as having been important. Women partners and associates with reduced hours arrangements expressed the most satisfaction with their workplace experience when they felt that people in their firms wanted to make their part-time arrangement work for them as well as for the firm, and when they felt valuable to the people in their departments and firms. Large and small corporate clients said that their attitudes toward lawyers with constraints on availability depended on the quality of the lawyer-client relationship. When clients felt that their lawyers understood their goals and were serving their needs, they were willing to arrange or re-arrange schedules and deadlines to meet the needs of both lawyers and clients. As a managing partner in a smaller firm observed, "It is failing to listen and help people one-on-one that causes the biggest disappointment."

Bicameral vision, divided hearts

In the course of listening to hundreds of people and reviewing a similar number of books and articles on the legal profession and work-family issues, two distinct but deceptively interrelated pictures of the legal profession and lawyers' goals emerged. The first, and most apparent, is a cycle of revenue production, hours, competition, and the pursuit of esteem. In this world-view, the currency for success is hours and money and the measure of one's success and commitment is revenue, hours, and compensation relative to others.

The second picture is less pronounced, but its presence or absence is keenly felt. Here, relationships are at the center of an organization's or individual's working experience. Men and women lawyers consistently identified learning and professional growth, being of service to clients, helping their communities, and having time to spend on people and/or interests outside of work as critical to their career satisfaction. These are achieved through relationships, and the quality of those relationships largely determines the quality of people's experiences.

Although the two dynamics are experienced very differently, they have certain common elements which can lead to confusion and obfuscation. In relationship-centered organizations and careers, revenue is not irrelevant -- people need to generate enough revenue to sustain a stable organization, and individuals need to earn enough to support themselves and their families. At the same time, money is experienced as emanating from

and supporting relationships; it is not merit nor an end in itself. Conversely, even if relationship concerns are not highly visible in the revenue cycle, they are not far away. As one partner remarked, "There's all this competition in firms and all these fine distinctions being made ... and for what? It's about who's better than who. And why does anyone care? ... Because you want people to think well of you."

Do you see faces, or a vase?

The two dynamics interact like the well-known picture of two faces and a vase, and our decision-making is heavily dependent on how we perceive foreground and background. Does one focus on the people or the expensive container? Of course, firms and careers are not single frame tableaux -- and whether an organization, and those in it, see themselves, their firm, and one another as relationship-centered or caught in a relentless revenue cycle is usually not black or white. We are a collection of our experiences, and people move toward or away from a more satisfying career experience, and firms become more or less professionally satisfying organizations, one decision at a time. In every decision, big or small, there is a choice -- will it be the people or the vase?

The people and the container

The following sections describe efforts by law firms and other service professions to implement policies and practices that support flexible career paths and create family-friendly workplaces. The Task Force notes that policies and programs do not, by themselves, make firms "family friendly" or supportive of work-family issues. The underlying orientation and commitment of law firm management and the people enacting the policy or initiative are crucial. Real change requires awareness, self examination, honesty, discussion, some imagination, and risk. Few risks, however, are actually so large that they cannot be modified or reversed if found to be unsuitable or detrimental. And the evidence is overwhelming that people and firms can benefit professionally, personally, and economically by supporting a variety of family-work choices.

IV. WORK-FAMILY BEST PRACTICES

A. BEST PRACTICES IN THE LEGAL COMMUNITY

Task Force members, and the partners and associates interviewed and polled by Task Force members, identified the following firm policies and practices as particularly helpful in promoting and supporting family-work career choices and opportunities.

Individualized flexible work-family alternatives

The variety of reduced hours arrangements in the Boston legal community is impressive, and not well known.⁵⁴ Part time arrangements range from contract attorneys that work on an “as needed” basis or for a specified number of hours per week or month, to equity partners who work a flexible number of hours on a reduced case load. Part-time partners and associates have arrangements that range from 40%-90% of full-time annual hours targets. There are attorneys who do not have specific hours targets. There are lawyers who work three days, four days, or five days, but not weekends. Some reduced hours associates and “counsel” attorneys are on an extended partnership track, some are on a flexible partnership track and some have elected or been forced to forgo partnership candidacy.

Not surprisingly, the first rule of effective and satisfying reduced hours arrangements is that “one size doesn’t fit all.” The development and implementation of reduced hours arrangements are affected by the nature of a lawyer’s practice, the type of clients he or she serves, the family or other situation for which reduced hours are being sought, the commuting time of the reduced hours lawyer, and the long-term career goals of the lawyer. A number of attorneys commented on the usefulness of voice mail, e-mail, lap-top computers, fax machines and internet connections between the office and home in fashioning their reduced hours schedules. Others cautioned that technology should not be used to convert a reduced hours schedule into a full-time schedule with reduced pay, and that technology is not a panacea for those involved in large document cases, work that involves frequent meetings, or matters requiring a lot of supervision of junior lawyers.

Mutual flexibility

The most satisfying reduced hours arrangements (from the perspective of reduced-hours attorneys and the attorneys with whom they worked) were ones in which all parties were truly committed to making the arrangement work for the firm and for the part-time attorney. Several lawyers remarked that “flexibility” was the hallmark of part-time work at their firms. When “being flexible” meant that the burden of day-to-day flexibility fell primarily on the part-time attorney, these observers noted a pattern of lawyers with reduced hours arrangements gradually working more and more hours to demonstrate their commitment and willingness to be flexible, and growing less and less satisfied with their

⁵⁴The majority of men and women with whom the Task Force spoke believed that, except for a few special cases, the only part-time alternatives were 80% or more for those interested in partnership (if partnership at their firm was a possibility for part-time associates) or 60% or more for those not interested in partnership.

firms.⁵⁵ The attorneys most satisfied with their reduced hours arrangements felt that their flexibility was matched by the firm's commitment to honor their arrangement. When there is mutual commitment to reduced hours career paths, flexibility naturally evolved.

Alternatives to equity partnership

In an environment in which partners are often working as hard as associates, and there is considerable pressure on partners to generate new revenue, young lawyers often do not view the possibility of becoming a partner to be worth great personal and family sacrifice. At the same time, firms benefit from experienced lawyers who can provide valuable long-term contributions in the form of legal experience, relationship continuity, and profitability.

Many smaller firms have employed indefinite or long-term associates for some time. The success of these arrangements largely depends upon the relationship, respect, and opportunities given the associates by the partners. Larger firms have begun to experiment with long-term senior non-ownership positions, including long-term non-equity partners, counsel, of counsel and permanent senior associate positions. Whether larger firms can create positions that are perceived as first-class opportunities to do challenging work, offer true family-work flexibility, and carry respect within the firm largely will depend on how broadly the firm and its partners are willing to view success for the firm and its participants.

Commitment to a culture of awareness

Much of a firm's culture and values are transmitted in casual conversations during which partners and associates characterize themselves or the firm relative to other lawyers and firms. Some firms define themselves as "entrepreneurial," or "tough and aggressive," "intellectual," "focused on practical solutions to practical problems," or offering quality services at a lower cost ("not providing a Cadillac when a Ford will get you there"). Although none of these identifiers refer to family-work balance, within a firm there is a translation of the meaning of the cultural ethic on the lives (as well as the work styles) of its partners and associates.

In addition to the specific cultural identity of a firm, there is a more generalized culture of "meritocracy" in many law firms that equates merit with revenue and size. How often do we refer to the "top firms" or "the most successful lawyers" without equating "top"

⁵⁵Several attorneys noted that unilateral flexibility becomes a double bind for the reduced hours attorney. In order to preserve her part-time status or the perception that she is a committed part-timer, the reduced hours attorney feels she must demonstrate she is "flexible" enough to work extra hours whenever the need arises. When the need to be flexible arises often, the lawyer can face the same family-work stress that the reduced hours arrangement was supposed to alleviate. This cycle has a demoralizing effect on both the reduced hours attorney and those around him or her who are observing the cycle.

and “successful” with size and revenue? In conversations which seem to have nothing to do with family-work balance, how often do we commend the dedication and commitment of attorneys who work long hours to the exclusion of family time? How often do we supplement these images of dedication or merit with similar recognition of the dedication and commitment of people with significant family care obligations?

Realizing that over time people receive a message that is more powerful than any official firm policy, several partners informed Task Force members that they have made personal commitments to colleagues to be aware of instances in which their language does not match their commitment to valuing diverse career options. Others have invited colleagues to confront them with any lapses and/or have made a public commitment to offer broader language in partner meetings whenever possible.

Clarifying expectations

Many lawyers have excelled throughout their lives through hard work. In workplaces where long hours are the norm, and people strive to exceed the norm, associates place pressure upon themselves (acting on what are perceived to be the implied messages in the workplace) that is unhealthy for them, and leads to attrition. Some firms have addressed their “culture of success” by telling associates when and how to limit their work lives without adverse effect. For example, at least two firms expressly discuss with their associates instances in which an associate is and is not expected to work on the weekend. Another firm has introduced “training” for both associates and department leaders on how associates should respond to inconsistent deadlines or demands, and how to obtain firm support, or, if necessary, intervention.

Advances in computer technology and telecommunications offer opportunities for increased flexibility in work schedules and location. At the same time, a number of attorneys noted that “face time,” or being in the office in the evening, seemed to be a prerequisite for being viewed as dedicated, or a “hard charger.” One firm has explicitly announced that each attorney may adjust his or her own work schedule, so long as the needs of clients and commitments to firm colleagues are being met. Another firm assists lawyers in purchasing at-home technology which is compatible with the firm’s network, and encourages attorneys to work at home on one morning or afternoon a week.

Bottom-up review of work-family support

A number of firms have begun institutionalized “360” or “bottom-up” reviews in which associates are asked to (on a strictly confidential basis) review their supervising or delegating lawyers with respect to supervision, training, feedback and mentoring. All of these firms report that the comments of junior lawyers are taken seriously by senior lawyers and management. Several associates suggested that work-family support be made an explicit part of the bottom-up review process.

Flexible parental and family emergency leaves

Many law firms now offer flexible leaves of up to six months, or more, to new female and male parents. Some women felt that their firms had become quite supportive of maternity leaves; others felt stigmatized. In several large Boston firms, increasing numbers of male attorneys are now taking paternity leaves.⁵⁶ In addition to providing an opportunity for the individual attorneys to spend time with their young children, paternity leaves play a role in firm culture. Associates in firms in which men and women took parental leave felt that their firms, and most of their colleagues, were supportive of individuals on maternity leave. Women at firms that do not offer paternity leave, or do not have men who take paternity leaves, report more mixed reactions.

Several firms also offer "family emergency" leaves, either formally or informally, to attorneys caring for a family member with extraordinary needs due to an accident, illness or trauma. The extraordinary "family emergency" leaves that were discussed with Task Force members tended to be quite short -- forty-five days or less. Those to whom the firm had offered such leaves often expressed deep gratitude.

Back-up child care facilities

Many firms offer back-up child care to attorneys (and in some cases staff) whose regular child care providers are not available due to illness, snow, school holidays, or other emergencies.⁵⁷ This arrangement usually involves the firm paying a downtown-based child care center for the right to reserve a certain number of slots for whomever at the firm is in need on a given day. Since back-up child care is usually used to address an extraordinary demand on a lawyer's time or a lapse in his or her children's care, this service can relieve situations which present tremendous stress to the working parent.

B. BEST PRACTICES IN ANOTHER SERVICE PROFESSIONAL FIELD

When the largest, most prestigious accounting firms suffered an exodus of increasingly large numbers of employees (particularly women), work-family issues and the advancement of employees within their organizations became the focus of their efforts to stem attrition. Major accounting firms have now adopted an impressive array of multi-

⁵⁶Until recently, many men took no time off for a new child or took a week of "vacation" to spend time with their wives and babies, rather than apply for parental leave.

⁵⁷Back up child care does not replace the need for regular child care providers nor does it provide coverage for a nine to twelve hour work day. It is also important to note that back-up child care is not a family-friendly service when its availability on nights and weekends is used to coerce lawyers into working very long hours on a regular basis.

faceted work-family initiatives.⁵⁸ These accounting firms are now reporting reductions in employee attrition rates; greater employee productivity; higher work quality and client satisfaction; savings of millions of dollars in recruiting, replacement and training costs; and greatly improved morale.⁵⁹

Individualized work-life plans

The major accounting firms have developed firm-wide programs to assist employees in fashioning individual work/life balance plans and provide information on others' experiences with their arrangements. For instance, more than 650 administrative and client service professionals at Deloitte & Touche now have flexible work arrangements that include compressed work weeks, reduced work weeks, reduced work loads, periodic reduced workloads, and/or telecommuting.⁶⁰

Ernst & Young maintains an on-line "tool kit" for employees to help them create their own work arrangements with the firm. The tool kit includes information on flexible work arrangements in use, biographies of employees who have chartered flexible work arrangements with the firm, and a "quiz" to assist employees in determining if a flexible schedule will work for them. The tool kit also includes information on issues that can arise between an employee and his or her supervisor with respect to flexible work arrangements, how to address these issues, and advice on the pitfalls and virtues of flexible work arrangements. In addition, participants in a life-balance pilot program at Ernst & Young are experimenting with telecommuting, innovative case staffing, and a 5/4/5 work-day week. The company plans to bring the program to all of its offices in the near future.

Another firm provides its employees with a CD-ROM interactive program containing information on the types of flexible work arrangements offered by the firm, "myths and facts" about the firm's flexible work arrangements, information designed to assist the employees in planning a flexible work proposal, and tips for making the arrangement work.

⁵⁸These initiatives focused primarily on the retention of women, but ultimately increased the retention of men as well.

⁵⁹Ernst & Young, for example, had been losing 22% of its women professionals annually and was spending \$150,000 per person to hire and train replacements. Following the company's implementation of flexible work initiatives, Ernst & Young has significantly reduced its attrition rate and has reduced its attrition "gender gap" – the difference between male and female attrition rates -- by 50%.

⁶⁰The percentage of each major category of flexible work arrangements is: continuing part time 48.0%; reduced workload 35.0%; compressed work week 8.0%; telecommuting 3.0%; periodic reduced workload 2.5%, and other 3.5%.

Initiatives to enhance the quality of relationships with colleagues

Many accounting firms also have developed programs to enable their workforces to better understand and appreciate work/lifestyle issues that affect men and women differently. For instance, Deloitte Touche requires its employees to attend an annual two-day workshop that focuses on men and women as colleagues on issues of gender relationships in the workplace. The workshops are structured to encourage employees to air concerns about the workplace which they would otherwise be reluctant to discuss and provide a forum for resolving issues or placing them on an agenda for review and resolution.

Management commitment to balance and accountability for life-balance support

The ultimate success of family-work initiatives requires the support of an organization at all levels. Accounting firms have recognized the need to train and assist firm leaders in the successful implementation of alternative work arrangements. One firm is compiling an electronic "Life Balance Matrix" to guide firm leaders in implementing work-family best practices in their own leadership areas at the firm. Another firm is considering a policy which would hold managers accountable for implementing life-balance practices.

C. SUGGESTIONS FROM ASSOCIATES FOR FUTURE BEST PRACTICES INITIATIVES

Invite group efforts to identify problems and solutions regarding work-family life balance

Many law firms have responded favorably to suggestions offered by formal or informal groups of associates for better mentoring, more in-depth evaluations, and more effective training. Such "strength in numbers" could be an equally effective approach with respect to work-family policies and practices. Several associates felt that group efforts to document both what associates perceive to be the problems and to make recommendations for improved work-family policies are less likely to raise questions about the participating associates' commitment to the firm than individual efforts. Associates also believe that it is important that associates who become partners maintain an interest in, and commitment to, supporting work-family alternatives for the next generation of associates.

Support the sharing of information and provide work-family plan support

Legal secretaries and/or human resource personnel responsible for support staff have set up bulletin boards in several firms to enable those who have non-traditional work arrangements to share information and tips regarding work-family balance. Accounting firm managers have set up similar sharing mechanisms among accounting professionals.

Attorneys and law firm management do not appear to have embraced the use of public e-mail bulletin boards among attorneys to the same degree. Public bulletin boards are useful for posting information about the firm's policies on part-time work arrangements, notice of events within or outside the firm related to family and family-work balance, the names of people within the firm with information on family-work policies and practices, and the name of someone who can address problems or concerns that the part-time attorney may be reluctant to bring to his or her department chair's attention.

However, in many law firms there is still a stigma associated with being on a reduced hours schedule and people with reduced hours arrangements are reluctant to use a public forum to discuss their arrangements. Accordingly, several associates felt that information sharing could be more effective if confidentiality could be assured. For instance, one associate suggested that a list of people interested in e-mail regarding work-family arrangements could be circulated among those interested attorneys, rather than creating a public bulletin board that is identified as a family-work issues board.

Consider an attorney work-family advocate

A number of associates with alternate career paths felt that they would benefit from the establishment of a family-work advocate within their firm who has management authority (or the ear of management) to monitor and help with the mutual implementation of reduced hour arrangements and other work-family concerns which lawyers felt they could not safely bring to their department head or practice group leader.

D. LAW STUDENT PROPOSALS FOR FAMILY- WORK INITIATIVES

Show commitment to balance

When law students learned that the Boston Bar Association is attempting to address the work-family balance within the legal profession, they told us that it helped to restore their belief in the underlying motives and values of the profession. Students understand that lasting change is achieved incrementally, and they report that a steady commitment to balance and small changes are worth more than rhetoric. They would like firms to realize that many students might be willing to accept changes in compensation and organization, including the sacrifice of very high salaries and a traditional notion of partnership tracks and timetables, in exchange for continuing commitment and time flexibility.

Listen and learn

Law students also believe that something more than occasional, isolated discussion and sporadic initiatives by individual firms is required. Law students would welcome a series of hearings, sponsored by bar associations, to obtain data regarding students' concerns and the impact of family-work policies on their employment decisions. They would also

like bar associations to actively recognize and provide incentives to firms, and firms to recognize and provide incentives to managers, developing and exploring innovative solutions to work-family dilemmas. Law students would like to see firms publicize the family-work opportunities they offer, solicit feedback, and respond openly to new ideas.

Keep going

Students have suggested that the bar associations sponsor an on-going consortium of law firms and legal professionals, comparable to the Boston Law Firm Group, to institutionalize firms' stated commitment to re-orienting law firm values and implementing policies that support work-family options. The consortium could develop a guide for law students and lateral candidates to use in assessing the "family-work" balance commitment of a law firm. Students would also like to see bar associations recognize concerted firm-wide efforts to enact work-family policies with publicity and prestigious rewards. Finally, they would like to see on-going commitment to creative solutions in regular columns on family-work issues in professional publications.

V. CONCLUSION

Men and women lawyers expect to have both careers and families, and they have an abiding interest in participating actively in both. Law students entering the profession are increasingly questioning a definition of success that does not include family and community involvement. As we enter the year 2000, our understanding of the commitment, energy, and engagement that children and adult relationships require has expanded and deepened.

Law firms, which lead communities in many ways, have lagged behind other occupations in their cultural support of family-work alternatives. The allure of extremely high salaries and compensation (i.e. success in financial terms) enabled this cultural lag. However, the warning signs are clear: a workplace in which connections with others are constantly strained or severed and where one's connections with family are stretched to the limit is an isolating and discouraging place. As we stand on the edge of a new millennium, our decisions with respect to professional commitment and work-family balance will profoundly affect the nature of law firms, the course of the profession, and the lives and families of those of us who choose law as a career.

How will we be remembered?

APPENDICES

APPENDIX A, CHART 1

LARGE FIRM ECONOMICS Attorney Profitability Based on Per Capita Distribution of Representative Aggregate Expenses

Attorney's Billable Hourly Rate	Number of Hours Required to Pay Overhead of:							
	Overhead of \$150,000 per attorney (excludes associate expenses)	Overhead of \$250,000 per attorney (includes associate expenses)	Overhead of \$250,000 plus 200-300 hours per year of Non- Revenue Producing Work*	Overhead of \$250,000, 200-300 hours per year of Non-Revenue Producing Work, and Partner Compensation of \$120,000**	Overhead of \$250,000, 200-300 hours per year of Non-Revenue Producing Work, and Partner Compensation of \$240,000**	Overhead of \$250,000, 200-300 hours per year of Non-Revenue Producing Work, and Partner Compensation of \$360,000**	Overhead of \$250,000, 200-300 hours per year of Non-Revenue Producing Work, and Partner Compensation of \$480,000**	Overhead of \$250,000, 200-300 hours per year of Non-Revenue Producing Work, and Partner Compensation of \$600,000**
\$120.00	1,250	2,083	2,283-2,383					
\$155.00	968	1,613	1,813-1,913					
\$200.00	750	1,250	1,550-1,450	2,150-2,250	2,750-2,850	3,350-3,450	3,950-4,050	
\$300.00	500	833	1,033-1,133	1,433-1,533	2,033-2,133	2,633-2,733	3,233-3,333	3,833-4,133
\$350.00	429	714	914-1,014	1,257-1,357	1,857-1,957	2,457-2,557	3,057-3,157	3,657-3,757
\$400.00	375	625	825-925	1,125-1,225	1,725-1,825	2,325-2,425	2,925-3,025	3,225-3,625

*Non-Revenue producing work includes: mentoring and supervision, being mentored, marketing, training, being trained, department and firm administration, 25 hours per year of pro bono work, bar association participation, non-billable client networking and intra-firm meetings and events. The ratio of each varies according to one's interests, responsibilities and seniority.
**Exclusive of associate leverage; assumes that partner's client origination "credits" and "deductions" are a wash.

APPENDIX A, CHART 2

MID-SIZE FIRM ECONOMICS Attorney Profitability Based on Per Capita Distribution of Representative Aggregate Expenses

Attorney's Hourly Rate	Number of Hours Required to Pay:					
	Overhead of \$75,000 per attorney (excludes associate expense)	Overhead of \$160,000 per attorney (includes associate expense)	Overhead of \$160,000 plus 200-300 hours of Non-Revenue Producing Work*	Overhead of \$160,000, 200-300 hours of Non-Revenue Producing Work, and Partner Compensation of \$120,000	Overhead of \$160,000, 200-300 hours of Non-Revenue Producing Work, and Partner Compensation of \$240,000	Overhead of \$160,000, 200-300 hours of Non-Revenue Producing Work, and Partner Compensation of \$360,000
\$60.00	1,250	2,667	2,867-2,967			
\$80.00	937	2,000	2,200-2,300			
\$100.00	750	1,600	1,800-1,900			
\$120.00	625	1,333	1,533-1,633			
\$140.00	536	1,143	1,343-1,443			
\$160.00	469	1,000	1,200-1,300	1,950-2,050	2,900-3,000	3,450-3,550
\$180.00	417	889	1,089-1,189	1,756-1,856	2,422-2,522	3,089-3,189
\$200.00	375	800	1,000-1,100	1,600-1,700	2,200-2,300	2,800-2,900
\$225.00	333	711	911-1,011	1,622-1,722	1,977-2,077	2,511-2,611
\$250.00	300	640	840-940	1,320-1,420	1,800-1,900	2,280-2,380
\$275.00	273	582	782-882	1,218-1,318	1,655-1,755	2,091-2,191
\$300.00	250	533	733-833	1,133-1,233	1,533-1,633	1,933-2,033
*Non-Revenue producing work includes: mentoring and supervision, being mentored, marketing, training, being trained, department and firm administration, 25 hours per year of pro bono work, bar association participation, non-billable client networking and intra-firm meetings and events. The ratio of each varies according to one's interests, responsibilities and seniority.						
						2,333-2,433

APPENDIX A, CHART 3
LARGE FIRM ECONOMICS

Number of Hours Required for Associate to "Break Even" Calculated as Per Capita Attorney Overhead Plus His/Her Own Compensation

Associate's Billed Hourly Rate	Number of Hours Required for Associates to pay Per Attorney Overhead and Own Compensation						
	Number of Hours to Pay Overhead of \$150,000 per attorney (excludes associate expenses)	Number of Hours to Pay Overhead, \$150,000 plus 200-300 hours per year of Non-Revenue Producing Work*	Number of Hours to Pay Overhead, 200-300 hours per year of Non-Revenue Producing Work* and Salary at \$90,000 plus Benefits (total compensation: \$108,000)**	Number of Hours to Pay Overhead, 200-300 hours per year of Non-Revenue Producing Work* and Salary at \$100,000 plus Benefits (total compensation: \$120,000)**	Number of Hours to Pay Overhead, 200-300 hours per year of Non-Revenue Producing Work* and Salary at \$115,000 plus Benefits (total compensation: \$138,000)**	Number of Hours to Pay Overhead, 200-300 hours per year of Non-Revenue Producing Work* and Salary at \$125,000 plus Benefits (total compensation: \$150,000)*	Number of Hours to Pay Overhead, 200-300 hours per year of Non-Revenue Producing Work* and Salary at \$130,000 plus Benefits (total compensation: \$156,000)**
\$120.00	1,250	1,450-1,550	2,350-2,450	2,450-2,550	2,600-2,700	2,700-2,800	2,750-2,850
\$140.00	1,071	1,271-1,371	2,042-2,142	2,128-2,228	2,257-2,357	2,342-2,442	2,385-2,485
\$155.00	968	1,168-1,268	1,865-1,965	1,942-2,042	2,058-2,158	2,136-2,236	2,174-2,274
\$160.00	937	1,137-1,237	1,812-1,912	1,887-1,987	1,999-2,099	2,074-2,174	2,112-2,212
\$175.00	857	1,057-1,157	1,674-1,774	1,743-1,843	1,846-1,946	1,914-2,014	1,948-2,048
\$190.00	789	989-1,089	1,557-1,667	1,621-1,721	1,715-1,815	1,778-1,878	1,810-1,910
\$200.00	750	950-1,050	1,490-1,590	1,550-1,650	1,640-1,740	1,700-1,800	1,730-1,830
\$225.00	667	867-967	1,347-1,447	1,400-1,500	1,480-1,580	1,534-1,634	1,560-1,660
\$250.00	600	800-900	1,232-1,332	1,280-1,380	1,352-1,452	1,400-1,500	1,424-1,524

*Non-Revenue producing work includes: mentoring and supervision, being mentored, marketing, training, being trained, department and firm administration, 25 hours per year of pro bono work, bar association participation, non-billable client networking and intra-firm meetings and events. The ratio of each varies according to one's interests, responsibilities and seniority.
 **Benefits are estimated at 20% of Salary.

APPENDIX A, CHART 4

MID-SIZE FIRM ECONOMICS
Number of Hours Required for Associate to Earn Per Capita Attorney Overhead Plus His/Her Own Compensation

Number of Hours Required to Pay								
Associate's Billed Hourly Rate	Overhead of \$75,000 per attorney (excludes associate expense)	Overhead of \$75,000 plus 200-300 hours per year of Non-Revenue Producing Work	Overhead, 200-300 hours of Non-Revenue Producing Work*, and Salary at \$50,000 plus Benefits (total compensation: \$60,000)**	Overhead, 200-300 hours of Non-Revenue Producing Work*, and Salary at \$65,000 plus Benefits (total compensation: \$78,000)**	Overhead, 200-300 hours of Non-Revenue Producing Work*, and Salary at \$70,000 plus Benefits (total compensation: \$84,000)**	Overhead of 200-300 hours of Non-Revenue Producing Work*, and Salary at \$80,000 plus Benefits total compensation: (\$96,000)**	Overhead of 200-300 hours of Non-Revenue Producing Work*, and Salary at \$90,000 plus Benefits (total compensation: \$108,000)**	Overhead, 200-300 hours of Non-Revenue Producing Work*, and Salary at \$100,000 plus Benefits total compensation: (\$120,000)**
\$60.00	1,250	1,450-1,550	2,450-2,550	2,750-2,850	2,850-2,950	3,050-3,150	3,250-3,350	3,450-3,550
\$80.00	937	1,137-1,237	1,887-1,987	2,112-2,212	2,187-2,287	2,337-2,437	2,487-2,587	2,637-2,737
\$100.00	750	950-1,050	1,550-1,650	1,730-1,830	1,790-1,890	1,910-2,010	2,030-2,130	2,150-2,250
\$120.00	625	825-925	1,325-1,425	1,475-1,575	1,525-1,625	1,625-1,725	1,725-1,825	1,825-1,925
\$140.00	536	736-836	1,165-1,265	1,293-1,393	1,336-1,436	1,422-1,522	1,507-1,607	1,593-1,693
\$160.00	469	649-749	1,024-1,124	1,136-1,236	1,174-1,274	1,249-1,349	1,324-1,424	1,399-1,499
\$180.00	417	617-717	950-1,050	1,050-1,150	1,084-1,184	1,150-1,250	1,217-1,317	1,284-1,384
\$200.00	375	575-675	875-975	965-1,065	995-1,095	1,055-1,155	1,115-1,215	1,175-1,275
*Non-Revenue producing work includes: mentoring and supervision, being mentored, marketing, training, being trained, department and firm administration, 25 hours per year of pro bono work, bar association participation, non-billable client networking and intra-firm meetings and events. The ratio of each varies according to one's interests, responsibilities and seniority.								
**Benefits are estimated at 20% of Salary.								

APPENDIX A
Chart 5

**The Effect of Allocating Expenses on a Per Capital
Basis and Distributing Profits According to Receipts Generated**

Revenue Generation

	<u>Revenue from Partner Hours</u>	<u>Revenue from Associate Hours *</u>	<u>Number of Associates Utilized</u>	<u>Total Revenue from Partners and Associates</u>
Partner Anderson	\$500,000**	\$ 0	0	\$ 500,000
Partner Butler	500,000	420,000	2	920,000
Partner Carlton	420,200	630,000	3	<u>1,030,000</u>
Total Aggregate Revenue:				\$2,450,000

Expense Utilization

	<u>Allocated Overhead Expense/ Attorney</u>	<u>Number of Associates Utilized</u>	<u>Associate Expense (Salary Expense Calculated at \$100,000/Associate)</u>	<u>Total Expenses Utilized By Partners</u>
Partner Anderson	\$150,000	\$0	\$ 0	\$ 150,000
Partner Butler	150,000	2	500,000	650,000
Partner Carlton	150,000	3	750,000	<u>900,000</u>
Total Aggregate Expense:				\$1,700,000

Aggregate Profit

Total Aggregate Receipts	=	\$2,450,000
Total Aggregate Expenses	=	1,700,000
Total Aggregate Profit	=	750,000

* In this hypothetical, the associate time billed and collected is 1400 hours at a rate of \$150/hour.

** Partners Anderson and Butler bill and collect for 1,600 hours at a rate of \$312/hour or 1,400 hours of work at a rate of \$357.00 to earn \$500,000.

Who is Profitable?

On an Individual Basis -

Partner Receipts, Expense Utilization and Profit calculated on individual basis:

Partner Anderson	\$ 500,000 - 150,000	=	\$350,000
Partner Butler	920,000 - 650,000	=	270,000
Partner Carlton	1,030,000 - 900,000	=	<u>130,000</u>
Total Aggregate Profit			\$750,000

Who is Viewed as Profitable?

Under Revenue Oriented Firm Compensation Formulas -

Partner compensation formulas that are revenue ("production") based determine compensation (e.g., divide partnership profit) according to the percentage of gross revenues generated by individual partners.

In this formula:			Total Aggregate <u>Profit</u>		
Partner Butler receives	20%***	of	750,000	=	\$ 153,061
Partner Butler receives	37.5%	of	750,000	=	281,250
Partner Carlton receives	42%	of	750,000	=	315,000

APPENDIX A
Chart 6

Generic Breakdown of Large and Medium Sized Firm Expenses

<u>CATEGORY OF EXPENSE</u>	<u>PERCENTAGE OF TOTAL EXPENSES</u>
SALARIES:	56 - 60%
Associates Salaries (36 - 40%)	
Legal Assistants, Law Clerks, Secretaries, Word Processing and Other Non-Legal Staff (20%)	
BENEFITS:	10 - 12%
Payroll Taxes, Retirement Plan Expense, Group Health Insurance, Life and Disability Insurance, Group Dental Insurance and Child Care Center Expenses	
OCCUPANCY EXPENSES:	7 - 10%
Rent, Personal Property Tax and Electricity	
OFFICE EXPENSES:	5 - 8%
Telephone, Postage, Stationary & Printing, Repairs & Maintenance, Office Moving Expenses and Outside Storage	
PROFESSIONAL EXPENSES:	7 - 9%
Legal Recruitment, Practice Development, Professional Development, Meetings & Functions, Insurance, Subscriptions (Books & Periodicals), Professional and Business Dues, Unbilled Disbursements Written Off, Training Expenses, Travel Expenses and Contributions	
TOTAL OF SALARIES & BENEFITS for most medium and large firms = 66-72%	

BOSTON BAR TASK FORCE REPORT ON
PROFESSIONAL CHALLENGES AND FAMILY NEEDS

APPENDIX B

Discussion Questionnaire on Attitudes regarding Competition

Quickly answer the following questions true or false. Do not deliberate too long on any one question. Your answers do not need to be consistent.

- ___ 1. Competition offers people an opportunity to better their position in an organization.
- ___ 2. Competition rewards creative thinking and innovation.
- ___ 3. Competition can stimulate greater involvement or engagement.
- ___ 4. Competition builds self-esteem and gives one a sense of confidence.
- ___ 5. Competition leads to greater rapport and comraderie.
- ___ 6. Competition provides an opportunity for one to succeed.
- ___ 7. Competition promotes hierarchical distinctions.
- ___ 8. Competition breeds insecurity.
- ___ 9. Competition undermines one's confidence and self-esteem.
- ___ 10. Competition makes one afraid to take risks and try new ideas that might not work.
- ___ 11. Competition undermines trust and mutual relationship.
- ___ 12. I am less likely to freely give my "all" to a project in a competitive environment.
- ___ 13. Competition encourages those with power to use that power to maintain their position or advantage at others' expense.
- ___ 14. If I don't compete I am seen as "less than", or "not able to hack it."

- ___ 15. If I don't compete, others will get opportunities that I won't.
- ___ 16. Sometimes I compete because that's the only way people seem to relate around here.
- ___ 17. I like being the best.
- ___ 18. I like being the best, but I don't like to admit it.
- ___ 19. Being among the best helps me to get the cooperation I need.
- ___ 20. Being the best gives me a sense of power.
- ___ 21. I want to win to demonstrate how stupid the whole competitive ethic is.
- ___ 22. I never think about whether I'm better than others, I just focus on the task at hand.
- ___ 23. Sometimes I am embarrassed or ashamed about feeling competitive.
- ___ 24. Sometimes I am embarrassed or ashamed about not wanting to compete anymore.
- ___ 25. Competition pushes me to choose between myself and relationship(s).

BOSTON BAR TASK FORCE REPORT ON
PROFESSIONAL CHALLENGES AND FAMILY NEEDS

APPENDIX B

Discussion Questionnaire on Organizational Attitudes regarding
Professional Merit, Commitment, and the Family-Work Translation

1. How would you describe your firm's identity in the legal marketplace?
2. How does your firm describe itself in firm brochures and marketing material?
3. How do people in and outside your firm describe your firm in conversation?
4. What is the firm's stated values with respect to work-family values and options?
5. How do people in the workplace describe the partners who are powerful? Who in the firm is held up as a role model or as representative of the firm's identity?
6. What is the translation of your firm's identity with respect to family-work options?
7. Describe the professional profile of partners and associates considered by your firm to be especially dedicated, committed or valued by the firm. Describe the family-work profile(s) of these attorneys.
8. Does your firm offer more than one career path and timetable for success? If yes, do those who have alternative career paths feel as valued by the firm as those who follow the dominant path? Do you believe the firm sufficiently values alternative career paths and those who choose them?
9. What is the firm's actual/enacted attitude regarding family-work balance and professional commitment?
10. What are your feelings and attitudes about combining a legal career and family commitments?

BOSTON BAR TASK FORCE REPORT ON
PROFESSIONAL CHALLENGES AND FAMILY NEEDS

APPENDIX B

Discussion Questionnaire on Attitudes regarding Economics

Please answer the following true or false questions. Where the answer calls for the perspective of another (e.g., the question asks for your perspective as a partner and you are an associate, or vice versa), answer as you believe you would if you were currently in the other's position. Feel free to answer the questions that are from the perspective of your actual position first. For purposes of discussion, don't deliberate too long on any question. Your answers do not need to be consistent.

As an associate---

- ___ 1. I feel that a realistic goal for me (and/or other junior associates at firms) is to make as much money as possible for a few years and to get good training, rather than to set my sights on "making partner" or being at the firm long-term.
- ___ 2. I would take a reduction in pay in exchange for a lower "billable hours" or "total hours" expectation if I could be sure that I would not be seen as less valuable than others who worked longer hours and the reduction in hours would not impair my long-term career prospects. The number of total hours I would like to work per year is approximately ____.
- ___ 3. I would be more committed to the firm, or more likely to remain at the firm, if I thought work-family balance were really possible without jeopardizing one's career or being looked down upon.
- ___ 4. I would take a reduction in pay in exchange for a lower billable or total hours expectation and a longer partnership track than my colleagues if I believed I would feel equally valued for the work that I do.
- ___ 5. I feel that it is extremely unlikely that I would be considered as valuable or as committed as other associates with higher billable hours if I chose to work 80% time on a permanent basis with an understanding that I would be reviewed for partnership a year or two later than my class.

As a partner--

- ___ 6. As a partner, I expect that associates will bill sufficient hours to earn their own compensation and overhead and provide some monetary contribution to the firm (e.g. to partners). This expectation is fair because the partners are taking the risk that there will not be enough work to pay for associate salaries, benefits, and other overhead to provide partners fair compensation for their efforts.
- ___ 7. The partners are entitled to expect that associates bill a certain percentage more than their salary and allocated overhead in order to be profitable, e.g., increase partners' compensation. That percentage is ____.
- ___ 8. I feel that it is impossible to be a fully performing partner and work forty-two or fewer (billable and non-billable) hours per week on a more or less permanent basis.
- ___ 9. I feel that it is unlikely or impossible to be viewed by other partners as a fully performing partner and work forty-two or fewer (billable and non-billable) hours per week on a more or less permanent basis.

As a partner or associate--

- ___ 10. When I have worked less than forty-five hours per week for any extended period of time, I have felt consistent pressure to work more hours in order to be viewed as a contributor to the firm.
- ___ 11. I would like to work in a law firm that is structured so that partners could choose to work thirty-five hours per week (excluding lunch hours) and still be profitable.
- ___ 12. I would like to work in a law firm that is structured so that lawyers could choose to work thirty-five hours per week, on average, and still be profitable.
- ___ 13. I would like to work in a law firm that is structured so that lawyers could choose to work thirty-five hours per week, on average, and still be profitable, but I think it is impossible.

BOSTON BAR TASK FORCE REPORT ON
PROFESSIONAL CHALLENGES AND FAMILY NEEDS

APPENDIX B

Discussion Questionnaire on Attitudes regarding Reduced Hours Arrangements

Please answer the following questions true or false. Your answers do not need to be consistent.

- ___ 1. Lawyers who work a reduced schedule feel isolated within the firm.
- ___ 2. Reduced hour schedules should be tolerated in order to keep good people from leaving, but they should not be actively encouraged because part-time people are not as good for the firm as a full-time work force.
- ___ 3. Reduced hour schedules should be of limited duration, e.g., between one and three years.
- ___ 4. Part-time people are profitable.
- ___ 5. Part-time lawyers are not profitable, but it would look bad to forbid lawyers to work part-time in all instances.
- ___ 6. The firm's overhead/expense planning and structure is based upon an assumption that attorneys work full-time, so it is difficult for attorneys with a reduced schedule to be and/or appear to be profitable.
- ___ 7. Reduced hour schedules should be of limited duration because reduced schedules present an inconvenience to other attorneys in the office.
- ___ 8. It is more convenient to juggle one's own schedule around someone else's trial or transaction commitments than it is to juggle them around someone else's family obligations.
- ___ 9. It feels better to juggle one's schedule around someone else's trial or transaction commitments than it does to juggle one's own schedule around someone else's family obligations.
- ___ 10. It is good for lawyers who work full-time to feel that they are more valuable to the firm than those who work on a reduced schedule.

- ___ 11. It is good for lawyers who work part-time to feel less valued than lawyers who work full-time.
- ___ 12. If it were not for the fact that I believe it would have a detrimental effect on my career and how I am perceived by others, I would consider working reduced hours on a regular basis.
- ___ 13. I fear that if too many people decide they want to work part-time (and the firm permits them to do so) that the firm will become less stable.
- ___ 14. I am afraid that if too many people work part-time the firm will become less collegial or less team-like.
- ___ 15. Attrition at the firm has affected the quality of my relationships within the firm and/or how connected I feel to the firm.
- ___ 16. I am not bothered by the hours or attrition at the firm, but I know other valuable lawyers here who are.

BOSTON BAR TASK FORCE REPORT ON
PROFESSIONAL CHALLENGES AND FAMILY NEEDS

APPENDIX C

DISCUSSION VIGNETTES

ANDREA THOMPSON'S STORY

Andrea Thompson was a black, third year law student at a prestigious law school. She had grown up in a working class family in Philadelphia. There had never been a lawyer or doctor in her family. She was the first. As a political science major from an Ivy League college, she had decided to go to law school to become an effective advocate for the disenfranchised and dispossessed, to advocate for the civil rights of others. She did not have a clear vision about how to accomplish this, but she thought that law would be her best vehicle.

In her second year of law school, she married Kevin, a medical student. They estimated that their combined indebtedness after graduation would be \$150,000. They could expect no financial assistance from their families.

Despite her initial reasons for pursuing a legal career, Andrea decided to join a very large corporate law firm in Boston, where her husband would do his medical residency. Andrea's decision was mostly a financial one. For the next several years, her husband's salary would be very low. Boston would be an expensive city to live in and she would have to begin paying her school loans. In addition, she felt responsible for helping to provide for her mother who was on a fixed income, as well as other family members who were in financial distress.

Her classroom and clinical experiences in law school made her question her whole idea of using the law as a tool for improving people's lives. In her housing clinic, the best she was able to do was to delay the inevitable eviction. It was clear to her that nothing she did there addressed the root causes of her clients' predicaments. She hoped that, with a well-known law firm behind her, she could combine the skills and contacts that she would develop with her personal finances and the firm's resources to help poor and under-served communities.

Andrea held very little hope of making partner at the firm. There would be thirty associates in her class. It was obvious from the partnership structure that most of those were not expected to still be at the firm when partnership decisions were made. But Andrea had done the impossible before. She reasoned that she was a hard worker and had great academic and personal skills. She would worry about the "baby thing" later and she would

try to ignore the fact that there was only one black senior associate who had recently become junior partner, one mid-level associate who was Latino, and a few junior associates of color in the firm. After all, Andrea thought, how different could a firm be from the predominately white schools that she had attended all her life and in which she had always managed to do well?

Having made up her mind, Andrea decided to accept the firm's invitation to a cocktail reception at a private club in Boston. At the party, she avoided the two partners who had made racially insensitive remarks to her during her interviews and she was overly attentive to the black waiters and bus boys who were serving them.

Andrea decided to seek out the firm's one black junior partner, Darren Matthews, to congratulate him on his recent success. She had barely seen or spoken to him during the summer, even though he had been one of her assigned mentors. He never returned her telephone calls and rarely attended the firm's summer events. At first, she thought that he was purposely trying to avoid her, but her other summer mentor told her that he was a nice guy and well-respected. However, the past year or so, he had been under a great deal of pressure working on an incredibly difficult case. He was also due to be considered for equity partner.

When she finally found him at the cocktail party, Darren was alone at a bar located on the outside patio. She shook his hand and offered her heartfelt congratulations. He had accomplished something very few black people had. He thanked her, but he seemed sad and somewhat aloof. Andrea, hoping to raise his spirits, told him how proud she was of him and that his success gave her hope.

Her comments seemed to have the opposite effect of what she intended. Darren looked at her and then hung his head. After some persistence, Andrea was able to convince Darren to tell her what was bothering him.

He admitted to Andrea that there was a part of him that was proud of what he had accomplished, but more and more he was feeling that he had made a big mistake. He was miserable; he felt alone, ashamed and trapped. And most of all, he explained, he was tired. He was tired of never seeing his wife and kids. Last month he had missed his daughter's birthday. He loved his wife, but he was sure that his marriage was failing. Sadly, he was either too busy or too afraid to ask. He did know that his wife felt that she was being asked to sacrifice too much for his job. Her own career was suffering because she had to take primary responsibility for their two kids. She had managed to work out a part-time schedule with her boss, but she was always working extra hours at home in between meals and baths, after bedtimes, and on the weekends. They had hired help, but it seemed that his wife was just working to pay the baby sitter. She told Darren that she felt wholly inadequate as both a mother and a professional.

He was tired of never seeing his folks. He hadn't been home in a year and his parents were getting older. His father had triple bypass surgery a couple of years before. At that time, the partner with whom Darren was preparing for a big trial was upset when Darren decided to spend a few days with his father after the surgery. As a result, Darren spent much of his time on the telephone with the client and the partner, reviewing and revising documents as he sat by his father's beside. His mother had been disgusted by the whole scene and told him so.

His work did not seem as meaningful or exciting as it once had. The intellectual stimulation was not enough. His clients were nice enough people, but it seemed that his job was to make rich people richer. And he was tired of feeling disconnected from his community. The demands of his job and family meant that he had no time to be involved in community concerns. He was never able to participate in meetings of the minority bar associations. He felt ashamed.

He explained to Andrea that he had grown up in a socially-active household. Both of his parents had been involved in the civil rights movement and had always stressed the importance of "giving back" to the community, examples which others in the family also lived by. Earlier in his career with the firm, he had taken on several pro bono cases, but, after awhile, he began to worry that he was falling behind the rest of his class. His concern was confirmed in his third year evaluation which came just after he had won a large settlement for a pro bono client. The partner barely mentioned the case; instead he pointed out how low Darren's billable hours were compared to many of his classmates and urged Darren to try to get assigned to one of the firm's big cases. Darren had followed this advice and had been quite successful working on one big case after another.

He was tired of feeling alone and having to swallow the racially insensitive slights of his clients and colleagues. The incidents were often small and usually subtle, but they were numerous enough so that he knew he was not imagining them. It was as much about what they did say or did do as what they did not do. There were the conversations that abruptly stopped when he came into the lunchroom; the partners' houses that he was never invited to; the arm of the senior partner that never wrapped around his shoulder pulling him close to whisper a warm congratulations or even to tell a silly joke.

More blatant prejudice came from the outside world: being continually questioned by building security when he first started working weekends at the firm; being mistaken for support staff by visiting clients, despite his attire; being humiliated in front of his clients by judges who grilled him in court about where he went to law school and when he passed the bar; being denied a handshake that his colleagues had received from opposing counsel.

Darren told Andrea that he was not even sure what the partners thought of him and whether they were really willing to make him a full partner. He was worried that the rules would change for him, because he was black. He feared that they would want more assurance that he would work out, because of the negative stereotypes some of them held

about him as a black person. After all, very few partners had made any attempt to get to know him.

Furthermore, he did not know if he wanted to be a partner of these men. Their lives were as out of balance as his was. He could tell that many of them were miserable and felt trapped. But, the money was so good that it seemed impossible to walk away from it without having to totally change their lifestyle and that of their families. Much, if not all, of their identity was wrapped up in the prestigious labels of attorney, large firm, and partner. Many of them secretly worried that they were incapable of doing anything other than what they had done all these years.

Even if he became an equity partner, he would still be under enormous pressure to bring in business, and black partners seem to have more trouble than white partners bringing business into the firm. Whether due to discomfort with difference or bigotry, its effect is that fewer potential clients are willing to give their business to black lawyers. In addition, as Darren further explained to Andrea, it is difficult for black partners to gain access to the exclusive old boy's network where favors, friendships, memberships, and familial-like relationships are how the game is played. Also, there are fewer black clients that could afford the firm's fees; therefore, black lawyers have not been able to bring in much business from what would be a natural base.

When he thought about what he would have to do to make equity partner, he wondered about his family and his own physical and mental health. If he left, where would he go? A smaller firm or an in-house counsel position may offer him more time with his family, but how would he and his wife pay their school loans and maintain their lifestyle? They had a beautiful house that they loved in a beautiful and safe suburban community with great schools for their girls. And how would he feel about himself as a black man if he walked away from this opportunity? He felt an obligation to prove himself. He believed that his failure would be viewed as a failure of the race as a whole. He wanted to be a role model to encourage young black attorneys like Andrea. He had always told himself that he was becoming a partner to have the money and influence to make a real contribution to his community. If he didn't go forward with this, he would have no way to help and he would have neglected his community and his family all these years for nothing. He was at his wits end about what to do.

Darren apologized to Andrea for expressing all his doubts and giving her such a bleak picture of the firm. He explained that it had been a difficult day; he had had too much to drink, and had let his guard down because it just felt good to talk to another black person. Andrea, overwhelmed by what she had heard, assured Darren that she understood and that he should not worry. She was sure he would figure it out.

When Andrea arrived home she told her husband all that Darren had said. She also mentioned what she had learned at the party about women at the firm. There were very few income or equity female partners and almost no female senior associates. The partner

Andrea had liked most from the summer had left the firm to start her own practice and now there was not one female partner left in her department. One woman had left on maternity leave and had come back within three weeks of delivering her baby, because the partner she had been working with on a case was calling her at home every day.

Andrea and Kevin talked all night and tried to think of an alternative to the firm, but their financial concerns made the few options that they could think of unfeasible. They decided that Andrea would work at the firm until Kevin completed his residency and then, hopefully, he would be making enough money so she could take another job.

After their conversation, Andrea calmed down. Perhaps Darren was wrong about the firm. Maybe he was just having a bad day like he said. This was just his personal story; it didn't have to be hers. Maybe Darren just had not been strong enough or smart enough. Also, he had kids; she didn't. She could wait (maybe until she had made partner). Nothing Darren had said changed anything really. She had already considered all the issues he had raised. If it didn't work; it didn't work. She vowed to take care of her health, make time for her husband, continue the youth tutoring project that she had started in law school, and make extra efforts to reach out and get to know the firm's partners. After all, she had done the impossible before.

THE BEGINNING

BOSTON BAR TASK FORCE REPORT ON
PROFESSIONAL CHALLENGES AND FAMILY NEEDS

APPENDIX C

DISCUSSION VIGNETTES

IAN SMITH'S STORY

Ian sat staring at his computer screen. It was 1:15 a.m. and he had just finished reviewing the final set of loan documents for the Pyramid Project. He was doing a last scan of his e-mail when he saw his best friend's name came up. Greg had e-mailed him at 12:30 p.m. to tell him that he and Bobbie were separating. Ian was stunned.

He knew that Greg and Bobbie had been having trouble with Greg's hours and traveling, but he hadn't thought they would really separate. The girls were doing fine, and Bobbie always seemed ... well frustrated, but managing. Their families had vacationed together every other year or so since Ian and Greg had graduated from law school. Separating, what did separate even mean? Greg was on the road so much. With a start, Ian realized it must mean they were going to get a divorce and Greg hadn't wanted to say that. How could it have gotten so bad? Greg and Bobbie loved each other, he had seen it. How could things have gotten so out of hand?

Ian knew exactly how. Not the exact moment when it had happened, but he knew how.... He and Sheila had been discussing Sheila's return to work. She had always said she would go back when the kids were in school and Todd was now almost six, but Ian hadn't thought it would happen so soon. He had thought Sheila might get used to being home, get involved in the schools, do community stuff. Unfortunately, Sheila wasn't that political, or at least she wasn't moved by local political action. Ian couldn't really blame her, Sheila was really good at clinical work, gifted even, but being a neuro-psychologist was so demanding ... and so unpredictable.

Ian typed in his response to Greg. "Sorry to hear the news. Hope you're okay. You realize, don't you, what this is going to do to our vacations?" Ian deleted the last sentence and substituted, "It's only a separation, maybe things will work out." He deleted that too, and typed in, "Maybe you guys just need a vacation." He deleted that too.

Last week, Sheila had said she was going to start looking for a job. She had kept up with her colleagues and professors over the past five years. She was published, and had been reprinted several times. Once she began looking, it wouldn't be long.

The kids needed somebody at home, not all the time, but a lot more than he had been able to be home. As an equity partner, Ian had thought he would have more flexibility. But now he had to make a name for himself, build his own practice. In many ways the pressures were stronger than ever. He knew that he had told Sheila it would be different. He knew that he had promised her there would be fewer deals in which he had to be there all the time. He had thought that senior associates could do it ... he really had. But the clients didn't want senior associates, they wanted him. And he felt both pleased and a little unnerved by that. Pleased, because it seemed to Ian that the key to having a life was to develop a few clients who had lots of business, so you didn't need to spend your whole life hunting up new prospects. This fit in with his plan of being a big producer without having to market all the time -- that's not why he became a lawyer.

But, now he felt chained. He had to respond whenever they called. Take the Loman deal-- the lead venture capitalist was divorced, the CEO didn't have kids; the general counsel just wanted you there all the time. Half of it was the thrill of the chase. Ian felt it too. The adrenalin rush when a deal was cut -- that was even better than the closing. Then, when things would start to unravel, you'd put it back with an incredibly clever move, without letting the other side know what was happening; you'd have them hooked again. Ian sighed. In between these moments of the deal were a thousand other grueling hours, when you'd just have to thrash out the documents, over and over. You could delegate, but, in the end, you couldn't really ignore the details. You needed to know where you could push, where the other side's sights were focussed, when to press and where to give without hurting yourself.

At lunch yesterday, Ian had mentioned to two of the guys in his department that his wife was thinking of going back to work. One of them had said that his wife could call Sheila with the name of the agency they had used to find a nanny. Ian thought his daughter would probably adjust fine to a nanny, but he wasn't so sure about his son. Todd was a bright kid, but he had a tendency to act up if he thought he could get away with something or to go off into his own little world.

"Well then, can't you convince Sheila to stay home until Todd is out of elementary school?" asked his partner, Barry. "Stephanie is happy doing that, heck I'd like to spend my days at home."

"No you wouldn't," said Jim, the other partner at the table.

"Well, okay, maybe not as a regular thing. But Stephanie likes it. And she does a wonderful job of keeping up the house and keeping up with the parents and volunteering at school."

"Sheila wants to do neuro-psychology," said Ian. "She's good at it."

"Well, sure. But can't she wait a few more years? Till the kids are more self-sufficient?"

"You can't exactly tell the firm you're going to go part-time," said Barry. Jim and Barry laughed. "It's not your fault that your career opportunities happen right when the kids

are young. Besides, your family will be happy later, when tuition bills start rolling in. My folks couldn't send us to college. It took me fourteen years to pay off my damn loans."

Jim laughed. "And the very next month you bought a place on the Cape."

"Actually, I bought the Chatham place the year before," said Barry. "It gives Marge and the kids some place to go in the summer. And it's a hell of a lot more convenient than a hotel room in some god-forsaken place. I can leave late on Friday night and be there by two or three in the morning and catch some rays the next day and still be near a fax machine and a decent modem line. It sure beats canceling vacations or ending up someplace where you can't even get a good cell phone connection. Hey, you should come down some weekend, we could catch a couple of ball games."

Ian had excused himself and had taken his dessert back up to the office. Back in his office, he dug into his work.

On the way home, Ian's thoughts again drifted to Greg's e-mail and to the upcoming discussion with Sheila. He glanced at the clock in his car. It was late enough now that he could avoid having to deal with the issue tonight. Maybe this weekend, but he still had to finish the Loman deal. This weekend wasn't going to be a very good time.

A year ago, Sheila had suggested that Ian take an apartment in town during the week so he could work as much as he wanted during the week, and could be home more on the weekends. Ian had resisted. He had asked Sheila if she was trying to get rid of him. Sheila had said no, and he had believed her. He had considered the idea of an apartment. Before they had the kids, he had spent a year clerking in New York. He had enjoyed flying up or having Sheila fly down on the weekends. They had gone out a lot and partied and just hung out. Ian always knew there would be plenty of time for work during the week. But it was different now with kids. Ian was afraid that if he took an apartment it would get too easy for them.... that it wouldn't be like he really lived with them. Now, thinking of Greg, he was glad he had rejected the apartment idea. But still, he usually came home after the kids were in bed, except on special occasions and weekends. He also tried to get home early on Fridays whenever he could. They usually all went out for pizza. He had loved Friday nights as a kid.

Now his Friday nights were probably going to disappear. No doubt he and Sheila would be shifting off each other on Friday nights, when she went back to work. "When," he told himself, was progress. He wasn't saying "if she went back to work." He was saying "when."

Ian felt exhausted. It was late, but it was more than that. Maybe Sheila would get involved with some school activity. Perhaps the school could use her skills. Or she could work part-time and see how it went. This all sounded logical to him, but he could hear Sheila's voice in his head, turning everything around, ... asking him if *he* would work part-time and "see how it went." Damn her, thought Ian. But that was why he had married her. She challenged him. She was so often right. And even when she wasn't, she usually had

a point he hadn't considered. Ian didn't want to deal with this, but he knew they would sooner or later ... or not, and he couldn't imagine being without her. In some weird way, he was doing it for her. Maybe she didn't want it. Then what?

Ian set this thought aside and reached for the radio. He was too tired to think any more that day. It was already tomorrow.

BOSTON BAR TASK FORCE REPORT ON
PROFESSIONAL CHALLENGES AND FAMILY NEEDS

APPENDIX C

DISCUSSION VIGNETTES

RACHAEL FREEDMAN'S STORY

Rachael Freedman sat in the dark in her office looking out at the Boston skyline. It was 11:00 p.m., over an hour since her plane from California had landed, but she was still shaken.

Earlier that morning, Rachael had thought she was doing very well. Her closing in California had gone smoothly and the client had been thrilled at how quickly she had been able to complete the deal. She was now a junior partner at a large, prestigious law firm. She worked on interesting and complicated transactions with successful companies. She was being asked to speak at seminars around the country. She was beginning to make inroads into business development. Most of the associates whom she supervised were bright and hardworking. On some nights she was getting home by 8:30 p.m., and she was moving toward equity partner more quickly than anyone else in her class.

Mia, her daughter, was four years old. Dan, her husband, was supportive of her career, and amazingly, had agreed to stay home with Mia for awhile after he had been laid off last year. They lived in a lovely home in a great neighborhood about 30 miles outside Boston. Her parents, especially her father, a lawyer with a small firm of his own, were really proud of her. She was close to becoming a full-fledged partner in a firm which only 25 years ago had no Jewish lawyers.

But as she sat in the dark in her office, Rachel didn't feel successful, she felt scared. The flight had been turbulent almost from the start, but Rachael had been on so many planes that she had learned to ignore a little turbulence and keep working. She had been formulating a reply to an e-mail that she had received from a client at 6:00 a.m. when the first big dip occurred. Her laptop went flying up off her tray table and landed in the aisle. As she reached down to grab it, the plane dropped again.

Passengers went scrambling and several were calling out or crying. The pilot urgently instructed to pull their seat belts tight around their waists and the flight attendants were instructed to take their seats. Rachael watched the people across the aisle trying to call home on the plane's telephone. It was useless to try to call Mia and Dan. What could they do? The plane dropped again and Rachael's stomach fell with it. After a few seconds the plane had leveled off but the remainder of the flight was very bumpy. Rachael abandoned

her work and thought about Mia and Dan and what things would be like without her. When the plane landed, the passengers had clapped. The woman next to her started weeping with relief.

Now, sitting in the dark, Rachel's thoughts against drifted to the entire span of her life. She realized that to describe her life was to describe her work. Her life was dominated by work. It was true that she liked the work she was doing, but was work good enough to spend so much time away from the people she cared most about?

Over the years, her biggest client had become much more demanding. The original partner on the deal was not in the office much. Rachael communicated with him weekly, but she was primarily responsible for the work. The mid-level associate on the deal had left to take an in-house counsel job. She had asked for help but was told that everyone in the department was very busy, and short of associates. The junior associate on the deal seemed to put her work last, all the time. She had spoken to him once, but was afraid that if she got too demanding, that he would criticize her in the bottom-up evaluation process that the firm had recently initiated, and discourage other associates from working with her. This particular junior associate was working on a deal with Jim Foster, a major rainmaker in the firm, and he was clearly more interested in impressing Jim than Rachael.

Rachael remembered that Mia's playgroup leader had told Dan that Mia had been crying easily last week. Rachael had worked 65 hours, including most of the weekend to close the California deal. Maybe it was unrelated. . . .

Before she had been made a junior partner, Rachael had told herself that once she was a partner she would consider going part-time, maybe 80%. She hated going three or four days in a row without seeing Mia awake. But now that she was on the edge of equity partnership, it seemed even harder than before to cut back. Some of the associates in her department worked part-time, but they were always exceeding their hours. It didn't make sense to take a pay cut and still work the long hours. She wasn't even sure that she could afford to take a pay cut if she and Dan were going to have another child. Something needed to change, but she was not sure what.

Rachel thought about having another child for the hundredth time. She recalled how the head of the department had reacted when she told him she was pregnant the first time. He hadn't even tried to hide his dismay about the prospects of finding alternative staffing. Rachel knew that several women senior associates had returned from maternity leave to find that all their clients had been taken away. To avoid this possibility, Rachael had worked up until her due date and only took a four-week maternity leave — the firm's vacation allowance — so that it would seem as if she hadn't really been away. Her mother had been outraged by Rachael's decision to return to work so soon and Rachael had been told that several younger female associates had made disparaging remarks about her commitment as a mother. They said that Rachael was setting the wrong example and making it harder for them to make reasonable work-family decisions.

Rachael looked at the message light blinking on her telephone. After she made equity partner she would slow down. But even as she formed the thought, it seemed like a lie. Most of the senior partners in her department worked long hours. Some were divorced. Some actually seemed to hang around at night longer than they really needed to be, as if they were avoiding going home. There were two female senior partners in her department, one had no children and the other one had a teenage daughter who was at boarding school.

Rachael realized how isolated she was. Her best friend at the firm had moved to D.C. because of her husband's job. She respected her partners, but they were busy and would forget her within a month if she ever left. There were only two people from her incoming class still at the firm, and her classmates were in different departments so she barely saw them. Rachael had no time to be involved with the bar associations or other community organizations, she was supposed to be out trying to develop business.

It was after midnight now. Rachael stood up and turned the light on. She picked up her suitcase and laptop, and began to gather the files that she had stopped by the office to collect for the weekend. The message light on her telephone was still blinking insistently. As she looked at the message light, the papers in her hand slipped from her grasp and spilled onto the floor. Rachael stared at them, unable to decide whether to pick them up.

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PROFESSIONAL CHALLENGES AND FAMILY NEEDS

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