



NEW MILLENNIUM,
SAME GLASS CEILING?

THE IMPACT OF
LAW FIRM COMPENSATION
SYSTEMS ON WOMEN

THE PROJECT *for*
ATTORNEY RETENTION

| M | C | C | A |[®]
MINORITY CORPORATE COUNSEL ASSOCIATION

by

Joan C. Williams

Veta T. Richardson

JULY 2010

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- 1 The Project for Attorney Retention (PAR) and the Minority Corporate Counsel Association (MCCA) wish to extend their grateful thanks to the American Bar Association Commission on Women in the Profession (ABA Commission), particularly to Roberta Liebenberg, Chair of the ABA Commission, and Catherine Lamboley, former Chair of the Commission. Commission members suggested the need for a report on this topic, and gave invaluable input in the preparation of the survey instrument. PAR and MCCA also thank Dr. Arin Reeves for contributing her considerable time, talent, and insights, which were invaluable to data collection and analysis, as well as, preparation of this report. Many thanks, too, to James D. Cotterman, Principal, Altman Weil, Inc. and Blane R. Prescott, Vice President, Hildebrandt Baker Robbins for their patience and expertise in helping us to understand law firm compensation systems. We also thank: Hadar Aviram, Cynthia Calvert, Linda Bray Chanow, Mary Cranston, Monica Parham, Nina Segre, James Sandman, Donna Crook, and Rolisa Tutwyler. Thanks, too, for the outstanding research assistance of Tamsen Drew, Elyse Grant, Jeremy Hessler, Allison Tait. Finally, Penelope Huang, Project Sociologist, provided invaluable assistance. This report will be published in 62 *Hastings Law Journal* (2010).
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Dear Colleagues:

Since its creation in 1987, the ABA Commission on Women in the Profession has sought to promote the success and advancement of women lawyers. One of our continuing concerns is that as women lawyers become more senior, they experience an increasing shortfall in income compared to male attorneys, as well as increasingly high rates of attrition. We believe these distressing phenomena are inter-related. Therefore, the creation and implementation of fair and equitable compensation systems is critical to help stem the tide of women leaving the profession, which in turn will increase the percentages of women in the equity partner ranks and law firm leadership positions.

A recent Census Bureau Report revealed that the median income of women lawyers is only 74% of that of male lawyers. Unfortunately, what starts as a \$2,000 annual gap between male and female associates accelerates to a \$66,000 annual gap between male and female equity partners.

Given this long-standing and substantial pay disparity, the Commission was excited to collaborate with MCCA and PAR on the first-of-its-kind survey of women partners on law firm compensation. This important study shines a much-needed light on how law firms distribute billing origination credit and how those decisions affect the compensation and advancement of women partners.

The results of this survey demonstrate that a number of steps must be taken in order to help reduce and eventually eliminate the significant income gap between male and female partners. First, it is clear that firms must increase the number of women partners on compensation committees, and particularly women partners of color. Too many compensation committees still have no women, or just one token woman. In addition, origination credit and compensation criteria must be transparent so that women lawyers understand exactly what they need to do to reach certain compensation levels. Also, firms must measure how women are being compensated compared to their male peers and carefully examine whether any disparities may be the result of gender bias.

The survey also demonstrates the importance of providing a means whereby concerns about origination credit can be addressed and resolved fairly. The startling fact that 30% of the survey respondents reported that they had been subjected to intimidation,

threats or bullying to back down after they had disputed the allocation of origination credit for a client speaks volumes as to the need for improved compensation appeal procedures. Finally, in-house counsel should exercise their considerable influence with their law firms to ensure that they are giving fair billing credit to the women handling the client's matters, and also ensure that these women are treated fairly in the succession process when the partner in charge of the client relationship retires.

Working together, we must encourage law firms to carefully review their origination credit and compensation systems so that they adequately recognize the substantial achievements and contributions made by their women attorneys. It is vitally important that women receive full credit for their role in attracting, maintaining and growing a client's business not only because it directly affects their compensation, but also because the attainment of law firm leadership positions often depends upon being considered a "rainmaker."

We are honored to be a part of MCCA and PAR's efforts to develop best practices for law firms in the areas of compensation and origination credit. We look forward to collaborating further with MCCA and PAR to transform these proposed best practices into reality.

Very truly yours,



Roberta D. Liebenberg
Chair, ABA Commission on Women in the
Profession



Catherine A. Lambole, Member
ABA Commission on Women in the
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EXECUTIVE SUMMARY

Annually, a number of sources document the slow gains being made in the advancement of women to the partnership ranks of major law firms, where women now represent only 16% of equity partners nationwide.⁴ Each time new statistics like these are released, they garner lots of attention. However, less attention is paid to the challenges women face when seeking to be compensated for their work on par with their male peers.⁵ Women law firm partners are a case in point. They earn dramatically less than their male counterparts: equity partners average \$66,000 less, while income partners average \$25,000 less.⁶

This study, based on a survey of nearly 700 women law firm partners, offers insights into their experiences and perspectives about compensation, explores possible reasons for the pay gap, and identifies best practices to close that gap. Both majority and minority women were surveyed: 14% of respondents were women of color. Among the women of color respondents, 55% reported they were equity partners and 45% reported they were income partners.⁷ Among the majority partners, 40% were income partners and 60% were equity partners.⁸

While many of the women partner respondents viewed both their individual compensation and their firms' compensation systems, as fair, others expressed doubts. In fact, several respondents expressed frustration and outrage over salary differentials and the degree of subjectivity used to determine compensation levels. One women partner reported: "I was the highest paid woman in my office, and my compensation was about 50% less than any...male partner in my department in my office...". Another said: "It is hard to say that gender is not a factor, when the median compensation for male partners is almost double that of female partners in my department, which is the largest department in a large international law firm. Once bonuses (which are confidential) are factored in, it is my informed belief that women partners in my practice group make less than half as much as the male partners."

KEY FINDINGS

The study collected both quantitative and qualitative data and the respondents were candid in sharing their experiences. Key findings include:

Fewer than half of equity partners, and only about one-third of income and minority partners, are satisfied with their compensation systems. Overall, only about half (47%) of the equity partners, 35% of the income partners, and just over one-third of minority partners surveyed were satisfied with their compensation.⁹ Although we did not survey men, an earlier study found that about half of women (51%) but closer to three-fourths of men (71%) reported high levels of satisfaction with their compensation systems.¹⁰ Respondents were even less sanguine about whether their compensation systems were applied consistently from year to year, and from person to person. For example, only about one in three equity

4 THE NATIONAL ASSOCIATION OF WOMEN LAWYERS AND THE NAWL FOUNDATION, REPORT OF THE FOURTH ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 7 (2009) (hereinafter 2009 NAWL STUDY).

5 Despite the many advantages and often-sizeable compensation levels that professional women in general achieve, professional women have reportedly experienced the widest gender wage gap in the economy. Historically, they earned proportionately less, as compared with professional men, than did women in non-professional jobs. See Trond Petersen & Laurie A. Morgan, *Separate and Unequal: Occupation-Establishment Sex Segregation and the Gender Wage Gap*, 101 AM. J. SOC. 329, 355 (1995).

6 THE NATIONAL ASSOCIATION OF WOMEN LAWYERS AND THE NAWL FOUNDATION, REPORT OF THE THIRD ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 13-14 (2008); 2009 NAWL STUDY, *supra* note 1, at 11-12.

7 94 of the women partner respondents reported being a racial or ethnic minority. Of these respondents, 36 respondents indicated they were equity partners and 29 respondents indicated they were income partners. 29 cases are missing information on partner status, and percentages are calculated accordingly.

8 For majority partners, 140 respondents reported being income partners and 155 as being equity partners.

9 No statistically significant differences were found by partner race.

10 Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEXAS J. WOMEN & L. 27, 47 (2004).

partners (36%), one in four income partners (24%), and one in five minority partners (22%) expressed satisfaction that their firms' compensation systems were applied consistently from partner to partner.¹¹

Committees in charge of compensation lack diversity. Respondents commented frequently on the lack of diversity on the committees that decide compensation. One-fifth of the women surveyed indicated that there were no women on the committees deciding their compensation. About half had one woman on the relevant committee. Research shows that one woman serving on a committee of men can give rise to tokenism dynamics that negatively affect both the woman herself and her ability to influence decisionmaking.¹² Our respondents were even more likely to have no minorities or out lesbian and gay attorneys on their compensation committees. In nearly 90% of the firms of white respondents, and 80% of those of minority respondents, no minority woman sat on the committee in charge of compensation.

Many respondents question whether compensation systems reward the right combination of factors. A huge majority of our respondents did not believe that their firms took into account the right combination of factors when setting compensation. Only about one in three equity partners (32%), one in six income partners (16%), and one in six minority partners (15%) was satisfied that her firms' compensation system recognized the right combination of individual partner contributions. Many respondents felt a disconnect between the factors their firms *said* they considered and what factors *actually influenced* compensation.

Many women partners feel their firms' compensation systems lack transparency. Many respondents felt their firms' compensation systems lacked transparency: only 60% of equity partners, 30% of income partners, and 34% of minority partners said they were clear or extremely clear about how their firms' compensation systems worked. Slightly higher proportions of white respondents found the criteria clear or extremely clear: 39% of equity partners and 25% of income partners, as compared with 23% of minority partners.¹³ Respondents' comments reflected a pattern social scientists call "in-group favoritism," which often emerges when information about organizational systems is not transparent.¹⁴

Individual cash flow metrics weigh heavily, while institutional investments are given little weight. Respondents showed a remarkable level of agreement about which factors are "important" or "very important" in the setting of partner compensation. The top three factors reported – origination, revenue collected and the partners' own billable hours— all attempt to measure the extent to which a partner functions as an individual cash-flow generator within the firm. Institutional investments such as contributions to the firm's human capital, associate development, and contributions to diversity, according to our respondents, typically play little role in partner compensation. Majority and minority women partners alike held these views. The underweighting of institutional investments has a particularly deleterious effect on women because women, particularly women of color, often are expected to make more institutional investments than the typical man.

Disputes over origination credit are common, and painful. Nearly one-third (32%) of white income partners, and one-fourth (27%) of white equity partners, reported that a partner had tried to intimidate, threaten or bully her into backing down in a dispute over origination credit. Minority partners were even more likely to report having been intimidated, threatened, or bullied over origination credit. Just under three-fourths of white equity partners and just under 80% of white income partners reported having some sort of dispute over origination credit. Minority women partners were considerably more likely than were majority partners to report having such disputes (84% of minorities did). Minorities also were more likely than whites to report that such disputes occurred often and less likely to report that they never occurred.

11 While no statistically significant differences by race are found, overall, equity partners are significantly more satisfied than income partners that their firm's compensation is applied consistently from partner to partner: $t=2.69$; $p<0.01$; income partner mean satisfaction = 2.44; $SD=1.12$; equity partner mean = 2.80; $SD=1.21$.

12 ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* (1993).

13 T-test statistic of the difference between income and equity partners' rating of compensation criteria transparency = 4.45; $p<0.001$; Income partner mean = 2.65; $SD= 1.09$; Equity partner mean = 3.14; $SD=1.07$

14 See, e.g., Gerald R. Salancik & Jeffrey Pfeffer, *Uncertainty, Secrecy, and the Choice of Similar Others*, 41 SOC. PSYCHOL. 246 (1978) (discussing how secrecy and conflicting criteria tend to fuel in-group favoritism).

Problems in negotiating compensation are commonplace. Although over half of white female equity-partner respondents (53%) felt comfortable or extremely comfortable negotiating over compensation, only about one-third (34%) of both majority income partners and minority partners did. Nearly one in three equity partners (32% white; 36% minority) felt uncomfortable or extremely uncomfortable raising such issues, as compared to 45% of white income partners. Minority women income partners reported the highest level of discomfort (61%). Social science studies suggest that women are often reluctant to negotiate compensation due to fear of backlash, fueled by gender stereotypes.¹⁵

A significant number of women have been de-equitized. Among our respondents, 14% of the white income partners, 12% of minority partners, and 3% percent of the white equity partners had been de-equitized.¹⁶ The most common factor identified by the equity partners was a low level of originations (63%), trailed distantly by low billable hours (25%). Among the income partners, the most common factor was a firm's decision to increase profits per partner (52%), trailed by low billable hours (30%) and low originations (26%).

Lack of succession planning exacerbates problems with origination credit. Most respondents reported that their firms allowed the attorney with origination credit to bequeath it to another attorney if the originating attorney left the firm. The most common system reported was to allow originating attorneys to decide who would inherit their origination credit, with little or no oversight by the firm. Many respondents opined that this system advantages white men.

Women partners' compensation continues to be negatively impacted by their exclusion from rainmaking opportunities and receipt of a proportionate share of the financial benefits associated with a successful client pitch. Respondents reported that their firms did not provide women with equal opportunity to participate in client pitches. When they were invited to participate, respondents reported that they often participated in successful client pitches but did not receive a proportionate share of the origination credit or otherwise have their contribution recognized financially. Over half of the survey respondents reported situations in which they had participated in "beauty contests" but had not been included in the client work that resulted. Over 70% of minority income partners, 58% of minority equity partners, 55% of white equity partners, and 48% of white-income partners reported that, in the last three years, they had participated in successful client pitches in which they did not end up billing a significant number of hours. Forty-two percent of white and minority equity partners, 48% of minority income partners, and 31% of white income partners report having this happen once or twice, while 14% of white equity partners and 18% of minority partners and 8% of white income partners had experienced this 3 or more times.¹⁷

Subjectivity is inevitable in setting partner compensation but it introduces significant risks of gender bias. Subjectivity is both inevitable and appropriate in setting law firm compensation. A completely objective system is infeasible in most firms, given the wide range of contributions made and roles played by various partners, yet some systems are subjective to the extreme: one consulting-firm survey found that over one-third of respondents reported 75% or more of total partner compensation at their firms as being subjective.¹⁸ This presents challenges, given that decisions made on the basis of subjective criteria are especially vulnerable to the influence of stereotypes and bias.¹⁹ The stereotypes that emerge give a boost to men but operate as a drag on women in male-dominated workplaces. Comments from our respondents provide evidence of several patterns of gender bias that commonly arise in subjective systems, for example requiring women "prove it again!"

15 See LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK* (2008). The basic thrust of *Women Don't Ask* is that women don't get ahead because they don't negotiate as well as men—that "women don't ask." Babcock's academic studies suggest that many women don't ask because they encounter pushback when they do.

16 Given that de-equitized partners, by definition, are no longer equity partners, respondents to this question who reported themselves equity partners most likely were de-equitized at a different firm.

17 No statistically significant differences were found between the four groups on this item.

18 James D. Cotterman, *Law Firm Compensation Practices Update*, in REPORT TO LEGAL MANAGEMENT 9 (July/August 2009).

19 See William Bielby, *Minimizing Workplace Gender and Race Bias*, 29 CONTEMP. SOC. 120, 123 (2000) ("[P]ersonnel systems whose criteria for making decisions are arbitrary and subjective are highly vulnerable to bias due to the influence of stereotypes A high degree of segregation in such a system is usually a strong indicator that ascriptive traits are strongly influencing personnel decisions").

i.e. provide more evidence of achievement than men in order to gain the same level of reward.²⁰ Respondents also reported other patterns of gender bias, including the stereotype that women “don’t need” their paycheck because their husbands can support them, whereas men “really need” their paycheck because they are supporting their families.

Self-advocacy often puts women in a double bind. Although the most common form of input into partner compensation decisions reported by our respondents were objective reports of billables, collections, originations, the next most common input was partners’ written self-advocacy, reported by 69% of minority-partners respondents, and 77-79% of other respondents. The central role played by self-advocacy can put women in a double bind: “women may be stuck in a Catch-22 in which they are damned if they do self-promote, and damned if they do not.”²¹ Research documents social reprisals for women who self-promote.²²

WHERE TO GO FROM HERE?

Many commentators feel that current compensation systems overvalue individual cash flow measures and undervalue institutional investment measures. Our data indicate some movement away from compensation systems that create incentives that are mismatched with firms’ long-term strategic goals. Yet the key features that create perverse incentives remain robust in the law firms of our respondents. Systems that served the profession well thirty or sixty years ago no longer are working well. While the good news is that many women believe their compensation, and their firms’ compensation systems, are fair, the bad news is that law firm compensation systems open the door to gender bias when they do not include checks on potential disparities and so much of the negotiation surrounding compensation takes place out of sight without women present.

Many of the law-firm compensation practices that present the greatest difficulties for women are the same approaches that management consultants have identified as outdated and/or not in the best long-term interests of today’s larger law firms. A measure of progress is already evident in firms that have redesigned the origination credit allocation process to incentivize teamwork. Roughly one-third of respondents noted that cross-selling and/or expanding work for an existing client is a very important factor. This trend is even stronger if we widen the inquiry: 84% of equity partners, and over three-fourths (77%) of income partners, listed these activities as either “important” or “very important” in the setting of compensation. Law firms are well on their way to encouraging teamwork with respect to *gaining* clients, even if they have a long way to go in incentivizing teamwork with respect to *servicing* clients.

Compensation will continue to serve as a key incentive for partners to meet the objectives of their clients and their law firms. Better oversight and more transparent management of compensation practices will benefit everyone, particularly women partners, —and ultimately, the firm’s bottom line.

20 Prove it Again!, Gender Bias Learning Project, http://www.genderbiaslearning.com/stereotype_proveitagain.html (last visited Jun. 22, 2101).

21 Laurie A. Rudman, *To Be or Not to Be (Self-Promoting)*, *The Consequences of Counterstereotypical Impression Management*, in *POWER AND INFLUENCE IN ORGANIZATIONS* 290 (Roderich M. Kramer & Margaret A. Neale, eds., 1998).

22 *Id.* at 21.

INTRODUCTION

Professional women have the largest gender wage gap in the entire economy: they earn proportionately less, as compared with professional men than do women in non-professional jobs.²³ For example, while the wage gap between male and female engineers has evaporated, the wage gap between men and women in the law remains robust. A 2009 study of lawyers found clear evidence of a continued gender gap among lawyers working full time in private practice who were otherwise similarly situated.²⁴

Rigorous studies have suggested that law firm compensation systems probably play a role in the persistence of the gender gap in the law. A 2004 study found that women lawyers were more likely to be dissatisfied with their compensation than men were: 14% of the women, but none of the men, rated their compensation systems on the bottom of a seven-rung scale. Only about half of women (51%) but closer to three-fourths of men (71%) reported high levels of satisfaction.²⁵

Happily, the gender gap in law firm compensation has decreased in recent years. According to one study, women partners narrowed the gender gap in compensation from 69% in 1993 to 78% in 1999.²⁶ Yet two studies by the National Association of Women Lawyers (NAWL) found that dramatic pay differentials persist. NAWL's 2009 report found women equity partners typically earning about \$66,000 less than their male counterparts—an improvement over the \$87,000 differential they found in 2008 probably due to overall declines in compensation caused by the Great Recession.²⁷ The wage gap among income partners also remains substantial: in 2009, male income partners averaged \$25,000 more than female income partners.²⁸ Another factor depressing the compensation of women partners is that women as a group take longer to attain the rank of equity partner than do men.²⁹

The most common explanations for differentials between male and female partners are that women's family responsibilities mean that they do not spend the hours necessary to develop business, or that they are more likely to go into less lucrative legal specialties. No studies of gender differentials in partner compensation are available, but a rigorous study discounted these explanations for why men are more likely to become partners—at a rate that has not decreased since women entered the law in significant numbers in the late 1970s. “Male graduates are more likely than female graduates to be partners even when men and women have comparable career plans, law school GPAs, marital status, parental status, work histories, and legal specializations. Sex also strongly predicts partnership among lawyers,” a correlation that remains robust even among more recent law school graduates, conclude Mary Noonan, Mary Corcoran, and Paul Courant.³⁰

The 2009 study by Ronit Dinovitzer, Nancy Reichman and Joyce Sterling found that the wage gap among young lawyers preparing for partnership does not result from the human capital women bring to their careers, or from their childrearing responsibilities. “Lifestyle” considerations result in a modest narrowing of the gender gap. A much larger factor is what sociologists call “opportunity paths”: networking opportunities, and the ability to work on career-enhancing assignments.

23 Trond Petersen & Laurie A. Morgan, *Separate and Unequal: Occupation-Establishment Sex Segregation and the Gender Wage Gap*, 101 AM. J. SOC. 329, 355 (1995).

24 See Ronit Dinovitzer, Nancy Reichman & Joyce Sterling, *The Differential Valuation of Women's Work: A New Look at the Gender Gap in Lawyers' Incomes*, 88 SOC. FORCES 819, 843 (2009).

25 Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEXAS J. WOMEN & L. 27, 47 (2004).

26 *Id.* at 37.

27 THE NATIONAL ASSOCIATION OF WOMEN LAWYERS AND THE NAWL FOUNDATION, REPORT OF THE THIRD ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 13-14 (2008); THE NATIONAL ASSOCIATION OF WOMEN LAWYERS AND THE NAWL FOUNDATION, REPORT OF THE FOURTH ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 11-12 (2009) (hereinafter 2009 NAWL STUDY).

28 *Id.* at 11.

29 *Id.* at 8.

30 Mary C. Noonan, Mary E. Corcoran & Paul N. Courant, *Is the Partnership Gap Closing for Women? Cohort differences in the Sex Gap in Partnership Chances*, 37 SOC. SCI. RES. 156, 171, 170 (2007).

“These findings confirm that in professional settings such as law firms, where work assignments travel from senior to more junior employees, socializing with more senior lawyers in both work and non-work settings can directly affect earnings.” The study found that field of law also contributes to the gender gap. “[T]he gender wage gap we find in our research signals that there may be something unique in the early professional work of lawyers that allows for the kind of subjective assessments and interactions that underlie differences in pay and account for significant within-occupation wage gaps.”³¹

Thirty years ago, most large law firms had no more than a few hundred attorneys, along with lockstep compensation systems. Lockstep systems both assumed and created a symbiosis between “finders, minders and grinders”: attorneys whose skill set rested on finding new clients, attorneys who were best at binding existing clients to the firm through attentive relationship skills, and attorneys who produced the high-quality legal work that fed the whole machine. Most large firms had stable long-term relationships with institutional clients whom everyone—both attorneys and clients—assumed would not change firms absent dramatic misbehavior. Nor did partners leave their firms: this was frowned upon, and consequently rare. Moreover, in all but a few firms, lawyers made very high middle class salaries, but did not expect to move into the ranks of the truly wealthy.³²

Today, much has changed. As investment banking salaries exploded in the 1990s, large-firm New York lawyers’ salary expectations rose sharply: top partners looked at the millions their clients were making, and asked themselves why their salaries weren’t equivalent. This began a cycle in which the ratio between the highest- and lowest-paid partners climbed sharply: in mid-sized firms, top partners now average six times the compensation of their firms’ lowest-paid partners. In large firms, the ratio is now about 10:1.³³ Said one respondent:

[After a merger] most of the partners were effectively de-equitized.... All this was done to increase the profits per partners and to consolidate the income in a select top tier of partners.

For complex reasons, probably related in part to lawyers’ exploding salary expectations, corporate clients became far more willing to demand value and to change firms. This made rainmakers much more important. As rainmakers’ power increased, the taboo on changing firms evaporated.³⁴ The result is the current compensation system, which dramatically over-values “finding,” and dramatically undervalues “minding” and “grinding”—those oddly dismissive terms for doing high-quality legal work. This is not to say that firms do not care greatly about performance. In all top firms, however, the expectation of outstanding legal work is completely assumed to such a degree that client management becomes the differentiating factor in evaluations.

The 2009 Altman Weil survey of law firm compensation, as noted above, found that individual performance factors account for 64% of law firm compensation.³⁵ Another 27%, which goes into the bonus distribution pool, probably often also goes disproportionately to rainmakers.³⁶ The study author concludes:

That leaves less than 10% weighting to teamwork in practices, departments, and offices. If the “talk” is collaborative and encouraging of team behavior, then clearly the “walk” of compensation is not aligned with those aspirations.³⁷

Consultants wax purple on the perverse incentives built into the current system, a topic that has been discussed above. Over-valuation of billable hours leads to the hoarding of work, with the consequent failure to match work to the attorney (a) with the relevant skill set, who (b) can deliver a high-quality product in the most cost-efficient fashion.

Over-valuation of rainmaking also leads to dissatisfaction among attorneys—men as well as women—who keep the clients

31 Dinovitzer, Reichman & Sterling, *supra* note 5, at 848 (citation omitted).

32 See MARC GALANTER & THOMAS PALAY, TOURNAMENTS OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 4-30 (1991).

33 Experts’ Views of What Works Now With Partner Compensation Plans, 1, 13 (2005).

34 BERNARD BURKE & DAVID MCGOWAN, SCHUMPETER, COASE AND THE FUTURE OF THE (LAW) FIRM 10-11 (2010).

35 James D. Cotterman, *Law Firm Compensation Practices Update*, in REPORT TO LEGAL MANAGEMENT 9 (July/August 2009).

36 *Id.*

37 *Id.*

happy, both through relationship building and by providing high-quality legal work. Also lost in the shuffle are the tasks that the new larger law firms need to survive and thrive as institutions. Consultants wax eloquent, as discussed above, about how law firms undervalue both teamwork and the kinds of institutional investments that are vital to the long-term viability of any business organization.

This study combines a review of the literature on attorney compensation with PAR's extensive research into experimental studies of gender bias, and the results of "A Survey of Women Partners on Law Firm Compensation" ("Survey of Women Partners"), a collaborative effort undertaken by the Minority Corporate Counsel Association (MCCA), the Project for Attorney Retention (PAR) and the American Bar Association Commission on Women in the Profession (Commission), administered on the website of the MCCA from July 13, 2009 to November 22, 2009.³⁸ The survey was completed by 694 respondents. Fourteen percent of respondents were racial or ethnic minorities. Among our minority-partner respondents, 55% were equity partners, while 45% were income partners.³⁹ Generally, minority equity and minority income partners' responses will be reported separately. However, the responses for both groups are aggregated in instances where there is no significant difference between the two, or when the numbers for any one response category are so small (less than 10) as to compromise the anonymity of the respondents.

Our sample is overwhelming female: 99% of equity- and income-partner and 97% of minority respondents were women. This stemmed from a decision by the MCCA and PAR, due to budgetary constraints, to limit our outreach to women. The result is that we can draw conclusions, based on our data, about what women report, and believe, but we cannot compare women's impressions with those of men. An important point is that, to avoid awkwardness in the text, we have generally referred to "equity partners," rather than using more precise formulations, e.g. "women equity-partner respondents." Yet all of the survey data here represents findings about women, not the larger universe of lawyers.

Our survey respondents were more likely than lawyers in general to be in large law firms: roughly three-fourths of our respondents were in firms of over 250 attorneys, as compared with 26.4% of lawyers in the U.S. who are in private practice.⁴⁰ 15% of our respondents were in medium-sized firms (100-250). Our sample was less likely than U.S. lawyers in general to work in small firms of one to five attorneys: only 4% worked in firms of ten or fewer attorneys.

Our respondents also were less likely than were U.S. firms in general to be in very small firms of five lawyers or less. Overall, the majority of the sample was in multi-practice and litigation firms (86%). Majority equity-partner respondents (91%) were more likely than majority income- (81%) or minority equity partners (86%) to be in multi-practice and litigation firms. Minority income partners were least likely to be in multi-practice and litigation firms (69%). Although litigation-only firms were represented by only 4% of the sample, minority partners (7%) were more likely than majority equity (3%) or income partners (5%) to be in firms that do only litigation. Majority equity partners (6%) were less likely than majority income (13%) and minority (12%) partners to be in boutique firms with specialty practices.

Our income-partner respondents were about as likely as equity partners to be in law firms whose footprint is regional; they were more likely to be in national firms, and less likely to be in international ones. Minority partners were more likely than partners in general to be in firms with an international footprint, slightly more likely to be at regional firms, and less likely to be in national firms. (See Appendix.)

38 Please also see "Sustaining Pathways to Diversity" - A Survey of Women Partners on Law Firm Compensation and Recommended Approaches for a More Equitable Playing Field" which is available in hard copy from the Minority Corporate Counsel Association or in electronic copy at www.mcca.com. In addition, it is important to point out that this report, the "Survey of Women Partners," focuses on structural solutions designed to control for automatic bias. A different, but equally important, topic, concerns the strategies individual women can use to succeed. See JOANNA BARSH, SUSIE CRANSTON, & GEOFFREY LEWIS, *HOW REMARKABLE WOMEN LEAD* (2009). The Center for WorkLife Law also has gathered individual solutions on a website, at www.genderbiaslearningproject.com (strategies for surviving gender bias).

39 94 respondents reported being a racial or ethnic minority. Of these respondents, 36 respondents indicated being equity partners and 29 respondents indicated being income partners.

40 See GITA WILDER, *GENDER AND THE LEGAL PROFESSION. WOMEN IN THE PROFESSION: FINDINGS FROM THE FIRST WAVE OF THE AFTER THE JD STUDY 9* (NALP, 2007)

FINDINGS

WHO MAKES COMPENSATION DECISIONS?

A key factor in assessing the gender gap in law firm compensation is that law firm partnership ranks remain overwhelming male. In 2009, only 16% of equity partners and 27% of income partners were women, despite the fact over 30% of law school graduates have been women since 1980 and as of 2000 one-half were women.⁴¹ The under-representation of women among law firm equity partners has a profound influence on compensation decisionmaking. The most obvious influence concerns who makes the compensation decisions.

Respondents were asked to list all parties who play a role in setting compensation at their firms. Little difference emerged among the different groups of respondents.⁴² The most common answer (39-40%) was that a management or executive committee made overall compensation decisions, as well as decisions regarding the salaries of income partners (35-40%), the compensation of equity partners (40-42%), and whether bonuses are distributed and who gets them (37-39%).

Next most common (22-27%) were systems where a separate compensation committee determined overall compensation levels as well as the compensation of income and equity partners, with compensation committees the most likely to set the compensation of income partners (27%) and less likely to set the compensation of equity and minority partners (22-23%).⁴³

Nearly as many respondents said that the managing partner, chair or president set overall compensation levels at their firms, although considerably fewer income (14%) than equity partners (19-20%) reported this system.

Practice group leaders played a role in setting income, draws, and bonuses at 12% or fewer of our respondents' firms. Partner vote plays a role in 7% or fewer of respondents' firms.

The committees that decide compensation tended to have between five and ten members, although some had 31 or more members. Membership on the compensation or other key committee was most commonly determined by election by the partnership: 34% of equity partners, and 23% of income partners, reported this system. The next most common system was appointment by the chair or equivalent, reported by 28% of equity partners and 23% of income partners. Next most common were systems that included a combination of elected and appointed members, reported by 14% of equity partners, 17% of income partners. Comments on the surveys indicated that, in some firms, elections are pro forma, in that a pre-selected panel is typically or invariably elected.

The only major difference between women minority and majority partners was that minority partners were considerably more likely to be in firms in which compensation decisions were made by a combination of elected and appointed committee members: 26% of minority partners were, as compared to 14% of equity and 17% of income partners.

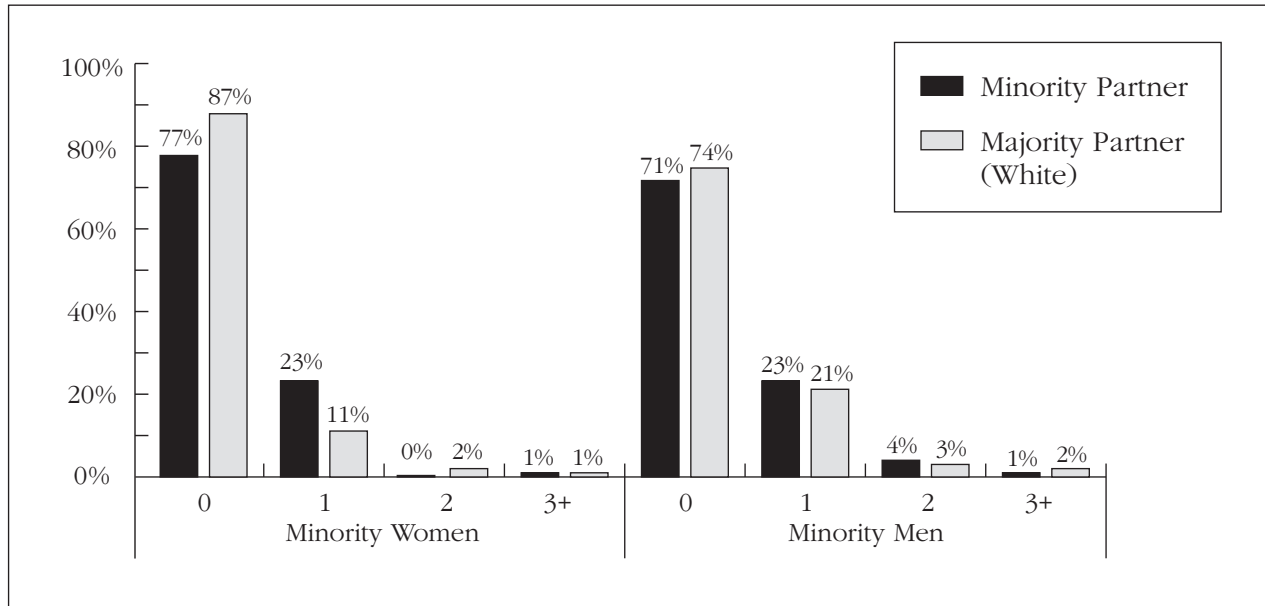
In addition, minority representation on the committee in charge of compensation often was low or nonexistent. As shown in Figure 1, the compensation committee had no minority women in nearly 90% of white respondents' firms and nearly 80% of minority respondents' firms. Compensation committees had no minority men in roughly 75% of minority respondents' firms, and 71% of white respondents' firms.

41 2009 NAWL STUDY, *supra* note 8, at 7.

42 No difference was noted from the disaggregation of minority respondents into income and equity partners.

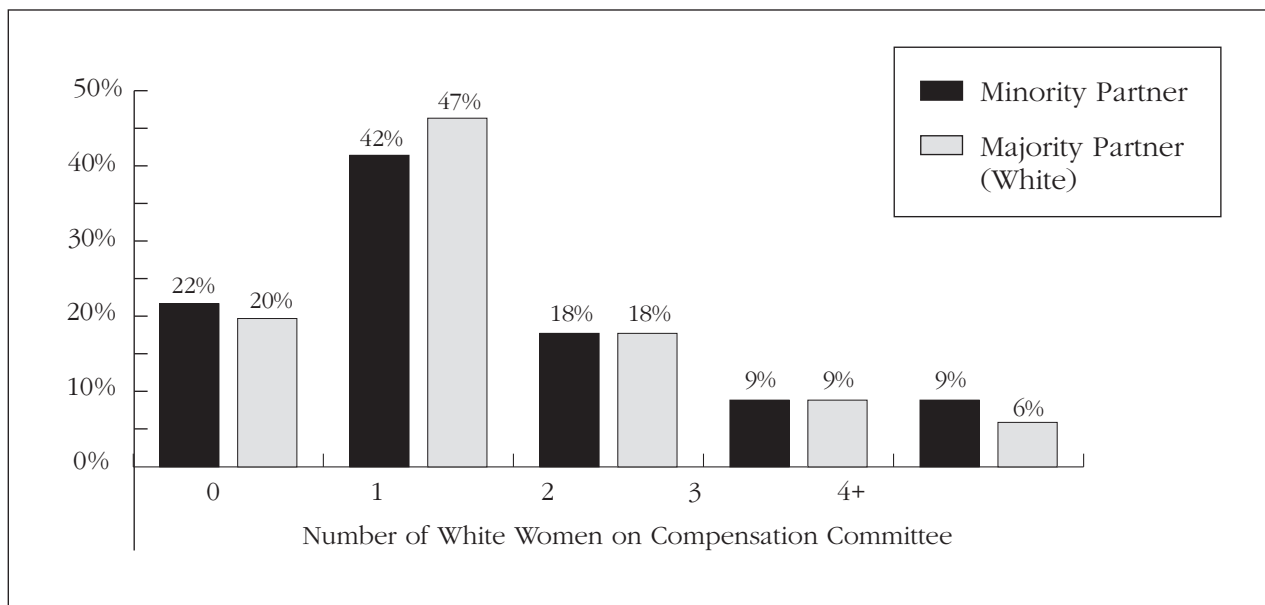
43 These differences are not statistically significant.

**Figure 1: Compensation Committee Composition:
Numbers of Minority Women and Minority Men by Minority Status of Partner**



Representation of women on compensation committees also was low. About half of respondents had one woman on their compensation committee. One-fifth had none. Another fifth had two women on their compensation committee, as shown in Figure 2. Said one respondent, “We have only one woman on our management committee, and one woman group head—which is disturbing.” Three respondents disclosed that they serve on their firms’ compensation committees. Research shows that one woman serving on a committee of men can give rise to tokenism dynamics that negatively affect both the woman herself and her ability to influence decisionmaking.⁴⁴ Minority partners were slightly more likely to be at firms with no women on their compensation committees, and were slightly less likely to be at firms with one woman.

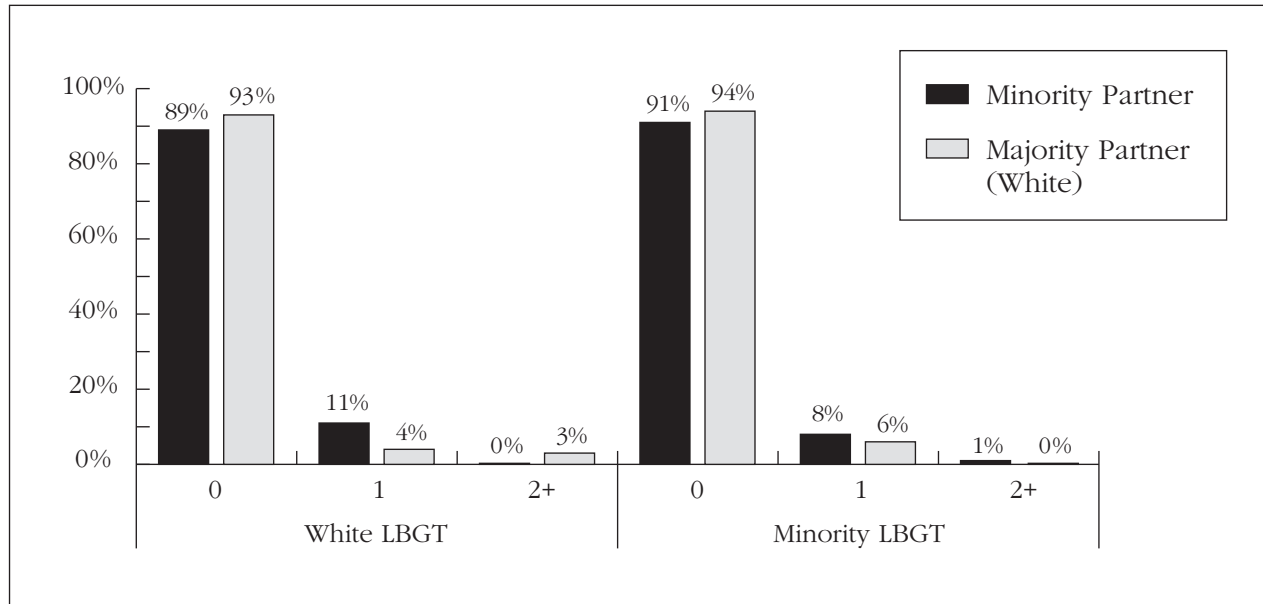
**Figure 2.: Compensation Committee Composition:
White Women by Minority Status of Partner**



44 ROSABETH MOSS KANTER, MEN AND WOMEN OF THE CORPORATION (1993).

Out lesbian and gay lawyers also are rare on compensation committees, as shown in Figure 3,

**Figure 3: Compensation Committee Composition:
Number LGBT by Minority Status of Partner**



In short, our respondents’ perception was that, at many firms, the committees that decide law firm compensation often are startlingly lacking in diversity. Data on law firm committee assignments suggests that powerful compensation and management committees are much more likely to be staffed by men. The National Association of Women Lawyers’ Fourth Annual Survey on Retention and Promotion of Women reports that “about 14% of the nation’s largest firms have no women at all on their governing committees.” The average percentage of female members on the largest firms’ governing committees has not changed substantially in the last four years.⁴⁵

Equity partners reported that compensation or executive committees were most likely to have responsibility for compensation decisions (38-42%), with special compensation committees (20-23%) and firm leaders (19-21%) roughly half as likely to play a role. Income partners were slightly more likely than equity partners to report participation by a special compensation committee (26-29%) and slightly less likely to report participation by firm leaders (14-16%). Among minority attorneys, firm leaders were more likely (17-21%), and the management or executive committee was less likely (35-40%), to play a role in compensation.⁴⁶

Having practice group leaders involved in compensation decisions was a much less common practice: 8-12% of equity partners, 7-14% of income partners, and 8-10% of minority partners reported involvement of practice group leaders in setting bonuses and the salaries of income partners. Practice group leaders were very rarely involved in setting the compensation of equity partners.

45 2009 NAWL STUDY, *supra* note 8, at 2, 5. See also Note, Laura R. Hammargren, *Servant Leadership and Women in the Law: A New Nexus of Women, Leadership and the Legal Profession*, 4 U. ST. THOMAS L. J. 624, 634 (2007) (“[D]espite women’s equal parity in law school and entrance to the profession, gender composition at law firms has remained at 70 percent male since 1997 and leadership percentages are even worse. The most compelling number reflecting the stagnancy of women advancement is the 18 percent of women equity partners that did not grow or expand from 2000 to 2005”).

46 No difference was noted from the disaggregation of minority-income and minority-equity partners.

The demographics of law firm partnerships, and of the committees and individuals in charge of compensation, pave the way for a pattern called in-group favoritism.⁴⁷ In-group favoritism flips the common image that gender bias discriminates *against women*. In-group favoritism is a potentially powerful form of bias that discriminates *in favor of men*. In-group favoritism tends to be strongest when men greatly outnumber women, because then gender is salient—it jumps out as unavoidably apparent. In addition, subjective and highly discretionary decisionmaking, which describes most law firm compensation systems, can exacerbate in-group favoritism.⁴⁸ In-group favoritism leads to remarks like this one from a respondent: “The inner circle of white male lawyers, whether they bring in business or not, generally do much better in the firm compensation system than the female lawyers.”

People automatically prefer people like them.⁴⁹ They feel more comfortable with them, more obligated to them, more loyal to them. They impute positive attributes,⁵⁰ trust them, remember their positive traits while forgetting their negative ones, and favor them in distributing rewards.⁵¹ When men are the in-group, men, but not women, tend to be given the benefit of the doubt. Objective rules tend to be applied rigidly to women but leniently to men.⁵²

In-group favoritism does not mean that all men are in the in-group. In a typical law firm, the pattern instead means that, although some men are excluded from the in-group, most members of the in-group are white men. Said one respondent, who commented that it helps to know and be known. “(White men seem to fare best on this, but not all white men do well—but of people who do well, almost all (maybe all) are white men.)”

Some respondents expressed a high opinion of those committees’ work. Said one, “I think the compensation committee works very hard, makes tough decisions equitably and tried to do the right thing.” Yet floods of comments by other respondents demonstrated the effects of in-group favoritism when asked what factors played an important role in their compensation systems.

Anomalies are visible in the firm’s compensation patterns. Most partners attribute this to whether you are in the chairman’s inner circle or not.

Partners who have the support of powerful partners are [more highly] compensated than other partners with the same metrics.

Being part of the ‘in crowd’

47 Paul R. Sackett, Cathy L. Z. Dubois & Ann Wiggins Noc, *Tokenism in Performance Evaluation: The Effect of Work Group Representation on Male-Female and White-Black Differences in Performances Ratings*, 76 J. APPLIED PSYCHOL. 263, 266 (1991) (finding that “women are rated about half a standard deviation lower than men when women make up less than 20% of the group” but that “[w]hen women make up more than 50% of the work group, they are in fact rated more highly than men”); Robin J. Ely, *The Power of Demography: Women’s Social Constructions of Gender Identity at Work*, 38 ACAD. MGMT. J. 589, 625 (1995) (“In firms in which few women were in positions of power, sex roles were more stereotypical and more problematic. Women in these firms, when compared to women in firms with higher proportions of senior women, . . . evaluated feminine attributes . . . less favorably in relation to their firm’s requirements for success.”).

48 See William Bielby, *Minimizing Workplace Gender and Race Bias*, 29 CONTEMP. SOC. 120, 123 (2000) (“[P]ersonnel systems whose criteria for making decisions are arbitrary and subjective are highly vulnerable to bias due to the influence of stereotypes A high degree of segregation in such a system is usually a strong indicator that ascriptive traits are strongly influencing personnel decisions.”); Daniel Brass, *Men’s and Women’s Networks: A Study of Interaction Patterns and Influence in Organizations*, 28 ACAD. MGMT. J. 327, 340 (1985) (“Men and women appeared to build networks equally well, although each gender tended to interact with itself. . . . The result of this segregation was that women were less central to men’s networks, in particular the interaction network of the dominant coalition. Access to this group of high-level men was very strongly related to influence for the women employees and was significantly related to promotions for the entire sample.”).

49 James N. Baron & Jeffrey Pfeffer, *The Social Psychology of Organizations and Inequality*, 57 SOC. PSYCHOL. Q. 190, 192 (1994).

50 Charles Perdue, John F. Dovidio, Michael B. Gutman & Richard B. Tyler, *Us and Them: Social Categorization and the Process of Intergroup Bias*, 59 J. PERSONALITY & SOC. PSYCHOL. 475, 478 (1990) (“In-group words demonstrated the potential to imbue neutral stimuli with positive connotation by simply being concurrently presented.”).

51 Baron & Pfeffer, *supra* note 30, at 192, 198.

52 See Perdue, Dovidio, Gutman & Tyler, *supra* note 31, at 482 (finding that in-group and out-group pronouns (e.g., “us” and “them”) “may perpetuate and possibly transfer in-group-related biases to evaluations of other people”); Baron & Pfeffer, *supra* note 30, at 198-99 (“The available evidence is quite clear that work performed by women is valued less highly than comparable work done by men.”); Marilyn Brewer & R.J. Brown, *Intergroup Relations*, in 2 Handbook of Social Psychology 554 (Daniel T. Gilbert, Susan T. Fiske & Gardner Lindzey eds., 1998); Marilyn B. Brewer, *The Social Psychology of Intergroup Relations: Can Research Inform Practice?*, 53 J. SOC. ISSUES 197, 205 (1997) (“[W]e-they distinctions . . . produce differential evaluation, liking, and treatment of other persons depending on whether they are identified as members of the in-group category or not”).

Personal relationships with power partners

If a powerful partner cares about your compensation.

Seniority plays no role but having a cheerleader, particularly if that cheerleader sits on the management committee, can play a huge role.

Whether you are supported, well liked, etc. by partners with significant clout.

Although the starting point of the discussions is an objective one, subjective judgment of the senior management plays a huge role.... It is staggering how two partners who are similarly situated on paper can end up in very different organizational tiers, and how people in the same tier can be incomparable on paper. Political relationships and history with the firm are significant, although unspoken, factors.

It is primarily based on client base and billings but the firm also considers contribution to firm operations and management and other subjective factors, such as whether one of the partners on the compensation committee personally supports or favors you.

Some respondents felt that members of the relevant committee took care of themselves: “Somehow members of the Executive Committee (who make the decisions) and the Practice Group Leaders seem to be the most highly compensated and seldom lose ground...during their tenure on the Committee.” Another respondent noted that being in the in-group not only translated directly into higher compensation, but also paved the way to management positions that could do so.

Being a friend of managing partners seems to translate into higher compensation. It also leads to management positions, which can be leveraged into higher compensation.

The problem with the questions is that some of these criteria are relied on by the management to reward themselves and those they want to reward, but not others.

In an environment where women and people of color are under-represented, both among partners and on the committees that make compensation decisions, in-group favoritism opens the door to gender (and race) bias. Again, comments abound:

Getting someone from the 97% male group that really runs the firm to advocate for you.

It's mostly a “good old boy” system.

When you see the distribution of compensation among partners, it has the appearance of a solid old boys' network.

Also includes total hours and subjective criteria and old boy relationships.

As an unwritten principle, whether you are one of the “boys.”

I was the highest paid woman in my office, and my compensation was about 50% less than any... male partner in my department in my office. There was significant backlash as a result of my sexual orientation internally.

An extensive literature documents what everyone knows: people tend to associate with people like them. This is not news, but if job benefits are then distributed through males' network ties, gender bias can appear.⁵³ In addition, in a context where decisionmaking involves secrecy and complex sets of often-countervailing factors, in-group favoritism is more likely to have an influence.⁵⁴

Sometimes gender creeps in not only because law firms are predominantly male, but because more senior attorneys are. A few respondents expressed sentiments to the effect that "senior partners were compensat[ed] unfairly vis-à-vis junior partners." One added, "Of course, this is a gender concern as well because there are far fewer senior women partners."

Another respondent identified not only male networks but also masculine assumptions and ideals as disadvantageous to women.

Origination is skewed by (1) historical firm client control (typically male), (2) individual partner generosity or lack of same in attributing origination to others when multiple efforts have gone into attracting and keeping a client (more powerful partners (usually male) may claim origination without challenge from others). The final piece of compensation is entirely subjective—board's discretion to consider special circumstances deserving additional comp—male dominated ideas of measuring value and what is 'special.'

Some respondents felt their firms crossed the line into outright gender discrimination.

Pure gender—women are paid less, period, although management would deny this.

Law firm compensation at most firms in the AmLaw Top 50 is a per se violation of [federal law].

Other comments do not identify reasons, but express their sense that men clearly make more than women.

Across the board, men make more than women in the firm's NYC office.

It is hard to say that gender is not a factor, when the median compensation for male partners is almost double that of female partners in my department, which is the largest department in a large international law firm. Once bonuses (which are confidential) are factored in, it is my informed belief that women partners in my practice group make less than half as much as the male partners.

I do not believe the firm could withstand a fairness audit that applied more objective criteria to compensation. We will never know, but most women partners believe their compensation is less than male counterparts.'

Attorneys who put in many hours or bring in an important case are typically awarded bonuses. However, the firm has discriminated and used bonuses to pay certain women and gay men so that they do not have to increase the "base compensation" of the partner. This is important because the partnership agreement provides that a partner's comp cannot drop more than 25% per year. By awarding bonuses instead of additional comp, the firm does not have to commit to paying a high salary next year. The bonus was used in such a discriminatory way one year that a woman partner filed a claim against the firm, arbitrated it (won), and left the firm.

53 For a review of the literature on how gender shapes workplace networks, see G.M. McGuire, *Gender, Race, and the Shadow Structure: A Study of Informal Networks in Work Organization*, 16 GENDER & SOC'Y 303 (2002).

54 See, e.g., Gerald R. Salancik & Jeffrey Pfeffer, *Uncertainty, Secrecy, and the Choice of Similar Others*, 41 SOC. PSYCHOL. 246 (1978) (discussing how secrecy and conflicting criteria tend to fuel in-group favoritism).

At some firms, problems surrounding compensation appear to be part of a larger problem. Said one respondent:

At this firm, women are almost never asked to go on a pitch unless it is to a female. We also get no referrals from male attorneys other than the men we worked with at our previous firm who moved with us to this firm. I have had to tell men not to call me “dear” and “kiddo” and they have been insulted by that. And our compensation and bonuses are clearly not the same.

OVERALL SATISFACTION

Overall, compared to income partners, equity partners reported significantly higher levels of satisfaction with their annual compensation in relation to their peers.⁵⁵ Somewhat under half (47%) of equity-partner respondents were satisfied or extremely satisfied with their annual compensation in relation to their partner peers, as compared with approximately 35% of income partners.⁵⁶ When responses are examined by race we find that, among minority attorneys, approximately equal proportions indicated they were satisfied/extremely satisfied as indicated they were dissatisfied or extremely dissatisfied (36% and 37%, respectively). White equity partners were considerably more likely than were white income partners and minority partners to be satisfied or extremely satisfied, as shown in the table below.⁵⁷

TABLE 1: Are you satisfied with your annual compensation in relation to your partner peers?

	Majority equity partners	Majority income partners	Minority partners
Satisfied or extremely satisfied	50%	39%	36%
Dissatisfied or extremely dissatisfied	31%	38%	37%

Equity-partner respondents were about as likely to be satisfied/extremely satisfied with their bonuses as with their compensation (48%) (data not shown). They were less likely to be “dissatisfied” or “extremely dissatisfied” (27%). Minority partners were almost-equally balanced between those who were satisfied/extremely satisfied (34%) and those who were dissatisfied/extremely dissatisfied (33%) with their bonuses. Minority respondents were about as satisfied with their bonuses as they were with overall compensation. Among white respondents, equity partners were much more likely to be satisfied than income partners: only 27% of income partners were satisfied/extremely satisfied with their bonus amounts, whereas 51% of equity partners were satisfied/extremely satisfied.⁵⁸

Respondents were less sanguine that their compensation systems were applied consistently from year to year. Equity partners had more confidence about this than did the other two groups: about one-third were satisfied/extremely satisfied. The two other groups were distinctly dubious: only about one in four minority (25%), and income partners

55 (t=2.42; p<0.05). On a satisfaction scale of 1-5 (1=Extremely dissatisfied; 5=Extremely satisfied), income partners scored an average of 2.90 (SD=0.98), compared to 3.65 (SD=1.09) satisfaction score rated by equity partners.

56 No statistically significant differences were found by partner race.

57 T-tests of statistically significant differences between income and equity partners indicate that among white attorneys, equity partners are significantly more satisfied with their compensation relative to their peers (t=2.13; p<0.05). Mean satisfaction among white income partners is 2.92 (SD=1.17), whereas white equity partners rate their satisfaction at 3.25 (SD=1.18).

58 These differences are statistically significant; Overall, equity partners are more highly satisfied with their bonus amounts than income partners are (t=2.7; p<0.01; income partner mean satisfaction = 2.88, SD = 0.98; equity partner mean satisfaction = 3.27; SD = 1.13); No statistically significant differences were found by partner race.

(26%), reported being satisfied/extremely satisfied about year-to-year consistency.⁵⁹ Among white respondents, a greater proportion of equity partners than income partners was satisfied or extremely satisfied that the compensation system is applied consistently (40% and 30%, respectively).

TABLE 2: Are you “satisfied” or “extremely satisfied” that your compensation system is applied consistently *from year-to-year*?

	Majority equity partners	Majority income partners	Minority partners
Satisfied or extremely satisfied	40%	30%	25%
Dissatisfied or extremely dissatisfied	38%	42%	51%

Satisfaction levels fell again when respondents were asked whether their firms’ compensation systems were applied consistently from partner to partner. About one in three equity partners were satisfied/extremely satisfied, as compared to one in five income partners and one in four minority partners.⁶⁰ Once again minority partners looked more like income than equity partners.

TABLE 3: Are you “satisfied” or “extremely satisfied” that your compensation system is applied consistently *from partner-to-partner*?

	Majority equity partners	Majority income partners	Minority partners
Satisfied or extremely satisfied	36%	24%	22%
Dissatisfied or extremely dissatisfied	45%	54%	56%

In summary, about half of equity-partner respondents were satisfied/extremely satisfied with their compensation and bonuses, while only one in three was satisfied/extremely satisfied that compensation systems were applied consistently from year-to-year and from one partner to the next. Not surprisingly, income partners were less likely to be satisfied/extremely satisfied than were equity partners. Unfortunately, in this exploratory study we are not able to compare these levels of satisfaction with the satisfaction rates of male partners. However, the finding that between 35% and 44% of respondents were satisfied/extremely satisfied with their compensation is lower than the 2004 study, which found that 51% of women but 71% of male lawyers reported high levels of satisfaction with compensation systems.⁶¹ This is not surprising, given that the earlier study assessed the satisfaction of law firm associates as well as partners, during an era when most law firms paid associates in lockstep. This meant that the women associates typically were getting the same compensation as the men, which would naturally create a situation in which women associates were more satisfied with their compensation systems than women partners were.

59 These differences are statistically significant; Equity partners are more highly satisfied than income partners that compensation rules are applied consistently year after year ($t=2.49$; $p<0.05$; income partner mean satisfaction = 2.63, SD = 1.12; equity partner mean satisfaction = 2.96; SD = 1.17); No statistically significant differences were found by partner race.

60 While no statistically significant differences by race are found, overall, equity partners are significantly more satisfied than income partners that their firm’s compensation is applied consistently from partner to partner: $t=2.69$; $p<0.01$; income partner mean satisfaction = 2.44; SD=1.12; equity partner mean = 2.80; SD=1.21.

61 Reichman & Sterling, *supra* note 6, at 47.

Our data also allow us to draw some conclusions about racial differences in satisfaction rates among women law firm partners. Although slightly over half of the minority-partner respondents (55%) were equity partners, the minority-partner respondents were far closer to income partners than to equity partners in terms of their overall satisfaction with their firms' compensation systems and with the consistency of their firms' compensation systems from partner to partner and from year-to-year. This racial difference in satisfaction rates is an important finding, although further study is needed to ascertain whether this pattern holds among men.

WHAT FACTORS ARE IMPORTANT IN SETTING LAW FIRM COMPENSATION?

The firm gives lip service, when evaluating for compensation, to firm management activities, committee work, participation in non-billable events, but it seems they are unevenly applied in order to justify the subjective whims of the evaluators....Management activities are not compensated for; leadership is not, mentoring is not, and attorney who are good billers, but do poorly in these areas, or are destructive factors, are nonetheless rewarded without any effort at correction.

Huge majorities of our respondents did not believe that their firms take into account the right combination of factors when determining compensation. Only about one in three equity partners (32%), one in six income partners (16%), and slightly less than one in six minority partners (15%), was satisfied or extremely satisfied that their firms' compensation systems recognized the right combination of individual partner contributions. Of course, some respondents showed confidence that their firms took into account a wide variety of factors, and seemed content overall.

Subjective factors play a significant role, e.g. participation in management, civic and pro bono activities, etc. Being a team player, cross-selling to other groups, business development efforts and being a mentor are non-objective factors that are considered.

Contribution to firm administrative, client development, trainings and other non-billable activities is taken into consideration during the compensation process.

Very few respondents had true lockstep systems: only two equity partners reported such a system. By far the most common system reported by our respondents was one in which partner compensation is based "on the partner's own client base and total billings or collection for that client base." Nearly half (47%) of equity partners reported this type of system. This percentage is dramatically higher than what management consultants have found: they find such "eat what you kill" systems confined to small firms, with few such systems surviving beyond the founding generation of partners.⁶² The likely explanation is that respondents felt that, although firms' systems were not formally "eat what you kill," in practice they place so much value on originations, partners' billable hours, and revenue collected that they operated much like one. The next most common (37%) system reported by equity partners was an objective system with various factors taken into account. Very few equity-partner respondents (less than 1%) reported a true lockstep system: this system (once widespread) has nearly been eliminated, although at least one respondent strongly felt that women fared far better under her firm's lockstep system than under alternative types of systems. However, 20% of equity-partner respondents reported that seniority was one factor considered in setting compensation. Only 19% reported totally subjective systems, which comes as no surprise. Small firms are much more likely than large ones to have totally subjective systems, and the respondents tended to come from larger law firms.⁶³

62 Personal communication from Blane Prescott, Senior Vice President, Hildebrandt Baker Robbins International Inc., to Joan C. Williams (Dec. 3, 2008).

63 *Id.*

While some firms are explicit about the weighting of factors that play a role in partner compensation, many are not. Many provide only a long list of factors, without much information about how the different factors are weighted. Feelings were mixed about how different factors are weighted in the setting of law firm compensation. Some of the comments received were upbeat about the factors taken into account by their compensation systems:

Our focus is to take a qualitative look at a partner's contribution and fairly compensate everyone.

My firm does stress teamwork and the value of putting the interests of the firm ahead of individual interests.

Excellence, collegiality.

Willingness to undertake firm projects; ability to work effectively in a team-based environment.

Quality of work, efficiency.

Overall reputation for excellence of the partner.

The firm considers a combination of business generation, fees received on time, and matter management as objective statistics and then look to the subjective factors such as team work, service to the firm, cross selling etc.

External profile and visibility.

Ironically, only a few comments explicitly mentioned that excellent legal work as a factor that affects compensation. A rare example:

Mix of objective/subjective.....Subjective based on legal skills, teamwork, and client relationships.

Transparency. *A surprising number of respondents did not know what factors drive compensation at their firms.*

I have no idea what the factors are.

Other respondents knew what factors count, but not how those factors are weighted.

The method, we are told, considers objective factors like client billings and billable hours. However, there are other factors, such as mentoring, collaboration etc. that are considered. There is no way to know how these factors are weighed or even quantified.

Many respondents felt that their firm's compensation systems lacked transparency. Only slightly more than one-third (37%) of equity partners, one-fifth (22%) of income partners, and one-fifth (23%) of minority partners reported that the criteria the firms use to determine partnership levels were clear or extremely clear. Slightly higher proportions of white respondents found the criteria clear or extremely clear: 39% of equity partners and 25% of income partners. However, equity partners rated their firm's compensation system significantly more transparent than income partners reported.⁶⁴ When information about organizational systems is not transparent, in-group favoritism can have a profound effect on who gets access to the necessary information through their informal networks.

⁶⁴ T-test statistic of the difference between income and equity partners' rating of compensation criteria transparency = 4.45; $p < 0.001$; Income partner mean = 2.65; SD = 1.09; Equity partner mean = 3.14; SD = 1.07

I have no idea how partner compensation is determined. You should have a “no clue” option in this survey.

Completing this survey is difficult because the process is not completely transparent or understood, although efforts are being made to improve[] in this respect.

Surprising numbers of respondents reported that they are not clear about how their firms’ compensation system works, although equity partners again hold an advantage over income partners, such that equity partners indicate significantly higher levels of clarity in their understanding of how their firm’s compensation system works.⁶⁵ Only 60% of equity partners, 30% of income partners, and 34% of minority partners reported that they were clear or extremely clear about this crucial information. Sixty-four percent of white equity partners and 33% of white income partners were clear or extremely clear on this. The finding that law firm compensation systems lack transparency confirms a findings of a 2004-2005 study by Nancy Reichman and Joyce Sterling, who quote an income partner:

There is this mysterious, quote, formula for setting your compensation, but no matter how hard you work in any given year you never share in the upside of that year. You may be rewarded in the next year, and you may not. You share in all the downsides...So you’re taking it in the shorts at both ends.⁶⁶

Lack of information affects some equity partners as well. One survey respondent, in a firm with a closed compensation system, reported the sense that women partners were not informed about the necessary criteria for elevation in the partnership ranks. A “closed system” is a system in which individual partners do not know how much their partners’ make: this information is limited to members of the compensation (or other) committee that decides compensation.

One positive comment highlighted the importance of transparency—even in a firm with a closed compensation system.

I think this is the best managed law firm anywhere, and that’s because compensation is done in a fair way—notwithstanding the closed system—transparent to the individual.

Gap between policy and practice: what really counts?

Many respondents felt a disconnect between the factors their firms *said* they considered and what factors *actually influenced* compensation. Few people had data: one would need to do a regression analysis to ascertain what factors actually play an important role in the setting of compensation in an individual firm.⁶⁷ “A regression analysis by a McKinsey-trained woman senior manager showed that the most dominant factor in setting compensation is origination credit,” noted one respondent. Many others noted a gap between policy and practice:

Theoretically, subjective factors are taken into account, but in truth, we are only compensated for the amount billed and the number of hours we work.

There is a complete disconnect between what my firm says it values and how the compensation system is then set up. We pay all kinds of lip-service to diversity, associate training and mentoring, recruiting, etc., but when it comes to compensation the only thing that matters is whether you brought in the business and billed a lot of hours.

65 T-test statistic of the difference between income and equity partners’ rating of understanding of their firm’s compensation system= 6.37; p<0.001; Income partner mean = 2.90; SD= 0.98; Equity partner mean = 3.65; SD=1.09

66 Reichman & Sterling, *supra* note 6, at 44.

67 Cotterman, *supra* note 16, at 3-4.

I checked not important for pro bono/community service and bar association activities because while people are encouraged to participate, their compensation suffers if their revenue hours slip so that they can do these types of activities.

Where I indicated “not important,” most of these items the Firm would say it considers as important, but the compensation does not appear to reflect that.

Consultants also have noted a gap between policy and practice. Joel A. Rose warns that “[t]ensions can develop when the direction of firm’s compensation system is unclear or receives only lip service.” He cites three examples:

- When a firm encourages partners to delegate work but “overcompensates for revenue collected from partners” own billable hours rather than delegation;
- When a firm encourages joint business development, but tends not to split origination credit; and
- When a firm encourages partners to do important nonbillable work (marketing, training, etc.) but “rewards those activities marginally in favor of billable hours/revenue” collected.⁶⁸

A key arena in which a gap yawns between policy and practice concerns the types of factors that actually influence compensation, as opposed to the factors that firms list as relevant, but which in fact rarely have a significant impact. This issue is discussed below.

“Personal productivity.”⁶⁹

The number of hours a partner bills personally is often referred to as “partner productivity.” Yet, as will be discussed below, rewarding partners for working as many hours as humanly possible is not necessarily a good business model. A most-hours-wins system tends to disadvantage women because it favors law firm partners who have a specific family form that most male law firm partners, but few women law firms partners, have: the “two-person career.” A lawyer with a two-person career has the advantage of a spouse who takes care of most, or all, of the lawyer’s nonwork responsibilities, from waiting for the cable repairman to picking up the dry cleaning to caring for children and elders.⁷⁰ Lawyers with two-person careers have an advantage over both mothers and single women, as noted by one African-American attorney quoted in *Visible Invisibility*:

*All the male associates had stay-at-home wives who took care of all the everyday things. Even if they didn’t have children, their dry cleaning was picked up, their dinner was cooked, their house was cleaned. And women have to do all that stuff on top of their work.*⁷¹

Two-person careers are the norm among female, but not male, law firm partners. Our sample reflects nationwide trends: 69% of equity-partner respondents (virtually all women) had a spouse or partner who worked full time for pay. Only 10% had spouses or partners who worked only part time, and only 13% of the women who were married had partners at home full time. Prior studies show that about half of male attorneys have wives at home full time.⁷²

68 JOEL A. ROSE, HALLMARKS OF A WELL-CONCEIVED PARTNER COMPENSATION SYSTEM, IOMA’S REPORT ON COMPENSATION & BENEFITS FOR LAW OFFICES 1, 3-4 (2009).

69 James D. Cotterman, *Making Better Compensation Decisions*, in REPORT TO LEGAL MGMT. 4, 5 (April 2006), http://www.altmanweil.com/dir_docs/resource/b5d4d901-8e9e-4851-9be2-c30a030ea56c_document.pdf (“The performance factor that most highly correlates with lawyer compensation is personal productivity as measured by fees collected”).

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

71 Janet E. Gans Epner, *Major Research Findings*, in VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS 33 (2006).

72 Linda Bray Chanow & ABA Commission on Women in the Profession, *The Business Case for Reduced Hours*, PROJECT FOR ATTORNEY RETENTION,

Taking a closer look at the women who had partners at home full time, we found that 17% were white equity partners, 14% were white non-equity partners, and 7% were minority partners. In keeping with national trends, roughly 70% of each group of partners we surveyed had a spouse or partner who worked full time for pay: 69% of equity partners, 70% of income partners. However, a comparison by minority/majority status of the partners reveals that a larger proportion of minority partners have a spouse or partner who works full time for pay relative to majority partners: 79% minority income partners and 83% minority equity partners, as compared to 68% majority income partners and 65% majority equity income partners. This is consistent with prior research that finds women attorneys to be substantially more likely to be married to a professional spouse than male attorneys; a trend that has persisted since the 1960s.⁷³

About two-thirds of majority equity- (69%) and minority-partner respondents (66%), and a slightly lower percentage of majority income partners (59%) had primary or shared caregiving responsibilities for children under 18 during their tenure at their current firms. (Presumably, some respondents had child care responsibilities at an earlier or a later stage of their careers, while others had no children.) In professional families with children, mothers tend to find that “the buck stops here.” Said one mother in Pamela Stone’s influential study of professional women (describing her husband), “He has always said to me, ‘You can do whatever you want to do.’ But he’s not there to pick up any load.”⁷⁴ Stone found that husbands played a role in the decisions of two-thirds of the women she interviewed to leave their careers.⁷⁵

Why? Professional men feel under intense pressure to fulfill workplace ideals—even if (according to management consultants) those ideals place an artificially high value on working as many hours as possible. Being a good provider still is seen as an integral part of being a good father.⁷⁶ Fathers with child care responsibilities risk being seen as wimps, so a man who fails to perform as an ideal worker risks being seen both as a bad father and a failure as a man. Think of everyday language: when mothers dream about their daughter marrying a “successful” man, most are thinking of paychecks, not Snuglis. Said one upper-middle class man, “Let’s face it, most men want to build their ego by saying, ‘I’ve made it, I’ve been successful.’ Hell, how do you grade that success? You grade it by the amount of money you made.”⁷⁷

In short, gender pressures push men towards, and women away, from two-person careers. Our respondents likely were affected by these patterns, given that, in addition to child care, one in four (25%) equity-partner and nearly one in six (17%) income-partner respondents had primary or shared responsibility for elderly parents or grandparents (including in-laws) or other elderly relatives. In keeping with other studies, we found that a higher percentage of minority-partner respondents had elder care responsibilities: nearly one in three did (32%).

Not big news: as a group, women have more responsibility than men for family caregiving. This is why compensation systems that confuse an attorney’s work schedule with the attorney’s productivity disadvantage women—particularly women with children, but also women without them.

http://www.pardc.org/Publications/business_case.shtml (“Nearly half of married [male] attorneys have stay-at-home wives.”). See also Betsy Morris, *What is a Corporate Wife Worth?*, FORTUNE MAGAZINE (Feb. 2, 1998) (“[I]n 84% of the marriages in this country both spouses now have jobs. Yet the topmost rungs of the corporate and professional American are still heavily populated by ‘traditional’ couples.”)

73 KENNETH GLENN DAU SCHMIDT, MARC GALANTER, KAUSHIK MUKHOPADHAYA, AND KATHLEEN HULL, GENDER AND THE LEGAL PROFESSION: THE MICHIGAN ALUMNI DATA SET 1967-2000 (2007).

74 Pamela Stone & Meg Lovejoy, *Fast-Track Women and the “Choice” to Stay Home*, 596 AM. ACAD. POL. & SOC. SCI. 62, 76 (2004).

75 PAMELA STONE, OPTING OUT?: WHY WOMEN REALLY QUIT CAREERS AND HEAD HOME (2007).

76 NICHOLAS TOWNSEND, THE PACKAGE DEAL: MARRIAGE, WORK AND FATHERHOOD IN MEN’S LIVES (2002); William Marsiglio & Joseph H. Pleck, *Fatherhood and Masculinities*, in HANDBOOK OF STUDIES ON MEN AND MASCULINITIES 249, 260 (Michael S. Kimmel, Jeff Hearn & R.W. Connell, eds., 2004) (“[W]hen men are unemployed or underemployed, they often find it difficult to feel good about themselves as fathers because the provider role continues to be an important feature of hegemonic images of masculinity and men’s fathering experience”).

77 MICHÈLE LAMONT, MONEY, MORALS, AND MANNERS: THE CULTURE OF THE FRENCH AND THE AMERICAN UPPER-MIDDLE CLASS xxix (1992).

Origination and billable hours are king.

“[T]he two most important partner compensation criteria in law firms remain the ability to bring in new clients to the firm and to be personally productive, as measured by fees collected as a working lawyer,” reports James D. Cotterman, a management consultant at Altman Weil. Blane Prescott, of Hildebrandt Baker Robbins, agrees, noting that 80% of partner compensation has historically been based on some combination of origination and productivity.⁷⁸ Other experts agree.⁷⁹

In fact, Cotterman’s regression analyses suggest that origination typically is more important than billable hours: he reports that “one can explain 80% to 90% of the variability in [equity] partner compensation by knowing just one performance metric—origination.”⁸⁰

The percentage of compensation determined by origination varies from firm to firm: “95% of comp is based upon client base and billings, and 5% discretionary,” reported one respondent to the “Survey of Women Partners.” Comments indicate that both origination and billable hours are important in some firms, while in other firms one factor or the other clearly trumps.

Originations and worked collections are all that matters.

Billable hours, billable hours, billable hours.

It’s all about originations.

Other respondents mentioned different factors, highlighting the variation between firms:

Firm really tries hard to do comprehensive evaluation of each candidate.

Ability to carry case management responsibilities start to finish, trial abilities.

What practice area do you belong to and is that an area of growth for the Firm.

Niche practice value.

We don’t consider billable hours. It’s money in the door. Is there any other calculus?

Partner/associate leverage ratio (keeping at least two associates busy full time).

Our findings confirm that originations (by client or by matter, or by revenue collected) and hours worked are—by far—most often listed as being in the top factors in the setting of compensation in the law firms of our respondents. The following table lists the top ten factors listed as either “important” or “very important” in ranked order.

78 Email from Blane Prescott, Senior Vice President, Hildebrandt Baker Robbins International Inc., to Joan C. Williams, (Feb. 14, 2010).

79 Institute of Management and Administration Inc., Compensation Decisions Surveyed: Economic Troubles Change Game, Compensation and Benefits for Law Offices (2009) (origination and “fee income to the firm’s top line” the two top factors in setting partner compensation).

80 Cotterman, *supra* note 16, at 11. See also Email from James D. Cotterman, Principal, Altman Weil, to Joan C. Williams (Feb. 14, 2010).

TABLE 4: Top ten factors listed as “important” or “very important” in setting law firm compensation

	Majority equity partners		Majority income partners		Minority equity partners		Minority income partners	
#1	Revenue collected	96%	Origination	93%	Origination	89%	Origination	93%
#2	Origination	95%	Revenue collected	91%	Revenue collected	86%	Revenue collected	86%
#3	Billable hours	86%	Billable hours	81%	Billable hours	83%	Committee rating	83%
#4	Client matter expansion/cross-selling	87%	Committee rating	81%	Being billing partner	83%	Billable hours	79%
#5	Firm management	81%	Client matter expansion/cross-selling	78%	Committee rating	77%	Being billing partner	69%
#6	Committee rating	82%	Firm management	71%	Firm management	74%	Client matter expansion/cross-selling	67%
#7	Practice group management	67%	Being billing partner	61%	Client matter expansion/cross-selling	66%	Firm management	59%
#8	Whose work currently binds client	66%	Practice group management	61%	Whose work currently binds client	63%	Meeting threshold # of billable hours	55%
#9	Being billing partner	56%	Whose work currently binds client	60%	Partnership rating	54%	Practice group management	55%
#10	Partnership rating	45%	Meeting threshold # of billable hours	56%	Practice group management	53%	Ownership share	46%

Individual cash flow metrics. Our findings confirm the opinions of law firm consultants concerning the dominant role of partners’ billable hours and originations. Our respondents showed a remarkable level of agreement about which factors are “important” or “very important” in the setting of partner compensation. The top three factors are origination, revenue collected and the partners’ own billable hours: origination and revenue collected as high-universal factors, followed closely by billable hours. All assess the extent to which a partner functions as an individual cash-flow generator within the firm; these will be referred to as the “individual cash flow” factors. Origination credit is the single most common of these factors, followed by revenue collected by an individual partner. These would obviously be the crucial measures if an individual partner was in solo practice, for they measure whether the firm has clients, work and cash flow.

The next most common factor is another measure of client relationship: being the billing partner. (In some firms, the billing partner is almost always, or often, the originator; at other firms, the two functions overlap less.) This factor is more likely to be important for minority equity partners (83%) than for others (56% - 61%), perhaps because minority equity partners are less likely to have origination credit or for other reasons. Given that equity partners are much more likely to be billing partners than are income partners, this may mean that being the billing partner is more important for minority partners because they are so much less likely to receive a high rating by the compensation committee, or to be awarded origination credit.

Individual cash flow factors can be designed in different ways. For example, billable hours can be assessed through a system that rewards those who work the highest possible number of billable hours, which is the typical system. An alternative, reported by 12% of equity-partner and 20% of income-partner respondents, is a system that requires partners to meet a billable-hours threshold, but does not give partners ever-increasing credit for working billable hours in excess of the

threshold.⁸¹ Such a system reflects an assessment that partners' time may be better spent balancing short-term profitability with contributions to the long-term future of the firm, through business development or human capital development. Among our respondents, the most-hours-wins approach was close to twice as common as requiring partners to meet an hours threshold, with equity partners the least likely (44%) to report the threshold approach.

Origination, too, can be designed in different ways. The most common is the "first touch" system, in which the partner who brings in the client is paid forever on all future work billed by that client—whether or not the "originator" did any work on the matter at hand. This system is five times as common as one in which the originator only receives future credit if he or she is the attorney whom the client actually calls to work on a new matter, according to equity-partner respondents.⁸²

Some firms have abolished formal origination credit altogether, although our survey shows that origination credit remains important in many of those firms. Other firms have moved towards systems that reward teams rather than individuals (described below as part of the section on best practices). Another trend is to reward not origination, but who currently binds the client to the law firm: about half of majority and minority income partners, and two-thirds of majority and minority equity partners, report that this is "important" or "very important" in their compensation systems.

Institutional investment measures. Measures of long-term investments in the law firm as an on-going institution, from teamwork to effective development of human capital to strategic initiatives, are much less likely to play an important role than are individual cash flow measures. Less than 10% of law firm compensation rewards teamwork, according to the Institute of Management and Administration.⁸³ In our survey, teamwork does not show up in the top ten factors affecting the compensation. Other institutional investments are weighted little, if at all, as discussed below. The only context in which respondents' firms weigh institutional investments to any significant extent concerns client matter expansion/cross-selling, which was the 4th most common factor on equity partners' lists, and lower down on those of income partners (5th), minority-equity partners (7th), and minority-income partners (6th). These data may indicate that income partners are less likely than equity partners, and minority partners are less likely than either group, to feel that they are able to gain fair credit for their contributions to client work when they lack origination credit.

Committee rating. Rating by the committee in charge of compensation also was listed by many respondents as playing an important role in compensation. For majority income and minority partners, rating by the compensation committee shows up in the top five factors; many equity partners listed it, too, although it appears to be somewhat less common a factor in determining equity partner compensation. In some firms, committee rating merely reflects objective metrics; in others, it can be partially or totally subjective. The role, and impacts, of subjectivity in the setting of law firm compensation will be discussed in a later section of this report.

81 These are the percentages of respondents who listed the billable-hours threshold as "very important" in the setting of compensation. These percentages climb to 44% and 56%, respectively, in answer to the question of what factors are either "very important" or "important."

82 We do not report the statistic for income or minority partners, because of nearly one-third of these groups were unsure or didn't know how origination credit worked at their firms, as were nearly one-fourth of minority partners.

83 Institute of Management and Administration Inc., *Compensation Decisions Surveyed: Economic Troubles Change Game, Compensation and Benefits for Law Offices* (2009).

Which factors are listed as “most important”?

A greater divergence emerges between the three groups of partners when asked which factors are “very important” in setting compensation at their law firms. The following table lists the top factors listed as “very important” in ranked order:

TABLE 5: Top ten factors listed as “very important” in setting law firm compensation

	Majority equity partners		Majority income partners		Minority partners	
#1	Origination	66%	Revenue collected	64%	Revenue collected	57%
#2	Revenue collected	63%	Origination	60%	Origination	52%
#3	Committee rating	62%	Committee rating	56%	Committee rating	47%
#4	Client matter expansion/cross-selling	37%	Billable hours	41%	Billable hours	35%
#5	Firm management	27%	Client matter expansion/cross-selling	36%	Firm management	27%
#6	Billable hours	26%	Being billing partner	27%	Client matter expansion/cross-selling	26%
#7	Whose work currently binds client	18%	Ownership share	21%	Being billing partner	25%
#8	Being billing partner	18%	Firm management	19%	Ownership share	24%
#9	Rating by other partners	12%	Meeting threshold # of billable hours	18%	Whose work currently binds client	18%
#10	Partnership rating	11%	Whose work currently binds client	17%	Meeting threshold # of billable hours	17%

This chart highlights the tremendous power of compensation committees at many, although not all firms. Their ratings emerge high on the list for all partners, and appear to play a particularly large role in the compensation of our equity-partner respondents.

While equity, income, and minority partners agree (Table 5) that revenue collected and origination are the two most important factors, they reverse the order of importance, with equity partners more focused on origination, while income and minority partners focused more on revenue collected. This probably indicates no more than that partners with books of business are more likely to be equity partners. All three groups listed committee rating as the third most important factor, while income and minority partners again list billable hours, which again presumably signals that these groups are less likely than equity partners to have origination. Billing a lot of hours, therefore, is more likely to seem the best way to increase compensation for income and minority partners. Firm management seems more important to equity and minority partners than to income partners. Being billing partner seems more important to majority than minority lawyers.

What factors are not important in setting draw or salary?

The finding that individual cash flow categories are more important than factors that measure long-term investments in human capital emerges in sharp focus if we look at investment measures specifically. Effective development of the firm’s human capital and associate development rarely play a role in partner compensation. Nor does teamwork, contributions to diversity, or community service. Even effective leveraging of associates, which is important for short-term profitability, does not play a significant role in respondents’ firms. The group most likely to be tapped to help with diversity efforts, minority partners, is the least likely to feel that the contributions to diversity efforts are rewarded.

TABLE 6: Factors rarely listed as “very important” in law firm compensation (ranking out of 22 possible factors is included)

Majority equity partners			Majority income partners			Minority partners		
#14	Effective development of firm’s human capital	7%	#14	Contributions to diversity efforts	4% (tie)	#13	Teamwork	7% (tie)
#15	Effective leveraging of associates	5%	#14	Teamwork	4% (tie)	#13	Effective development of firm’s human capital	7% (tie)
#16	Contributions to diversity	3%	#16	Effective development of firm’s human capital	2% (tie)	#16	Effective leveraging of associates	5%
#18	Associate development work	2% (tie)	#16	Effective leveraging of associates	2% (tie)	#19	Pro bono and community service	2% (tie)
#18	Pro bono and community service	2% (tie)	#18	Associate development	1%	#19	Contributions to diversity	2% (tie)

These factors are more often listed as “important” but not “very important,” as shown in Table 7 below. Equity partners are much more likely than income partners to believe that effective leveraging of associates and firm committee work (other than on diversity committees) play an important role in compensation at their law firms; minority lawyers again were in the middle, reflecting that group’s composition of a combination of income and equity partners. Fewer than one in three of each group of partners believed that associate development, firm committee work, or diversity contributions were “important” or “very important.”

TABLE 7: Factors less often listed as “important” or “very important” in law firm compensation (ranking out of 22 possible factors is included)

Majority equity partners			Majority income partners			Minority partners		
#12	Effective leveraging of associates	42%	#15	Effective leveraging of associates	28%	#15	Effective leveraging of associates	32%
#16	Other firm committee work	30%	#17	Associate development	22%	#17	Associate development	19%
#17	Contributions to diversity efforts	29%	#18	Other firm committee work	21%	#18	Contributions to diversity efforts	18%
#18	Associate development	27%	#19	Contribution to diversity efforts	21%	#19	Other firm committee work	17%

Thus some of the activities crucial to the long-term health of law firms as institutions typically play little role in partner compensation. Today's top lawyers will not live forever, yet their firms typically do not reward associate development or effective development of the firm's human capital. All kinds of measures of teamwork typically are not rewarded, including teamwork itself. More intriguing still, effective leveraging of associates is often under-valued (while a partners' personal hours billed, which cuts against effective leveraging, is overvalued). And, of course, committee work other than on the compensation or management committee is undervalued, with work on diversity often valued even less.⁸⁴

All this negatively impacts the compensation of women as a group. Women are more likely to serve on diversity or associates' committees than on compensation, business development, or partnership selection committees.⁸⁵ Nancy J. Reichman and Joyce Sterling's study of Colorado lawyers quoted Paula Kramer, a department head in a medium-sized firm, who quoted a lawyer describing one of her colleagues:

She was to 'go to' person for cases in a new practice area that she developed. She also was the head of the recruitment committee and the associates' committee. All were essential to the smooth operation of the firm, but she was rarely given credit for the work she did on them. She told us that at 'every compensation meeting I have...I have been really miserable.'⁸⁶

When she complained, her firm was shocked, and raised her compensation (but still not as high as the partner above her), noted Reichman and Sterling. Appointment of women to these less-powerful committees is driven, in part, "by the desire of firms, for good reasons, to have diversity in their committee rosters," notes James J. Sandman, former Managing Partner of Arnold & Porter and current General Counsel of the District of Columbia Public Schools. "Usually the most important committees are elected, often by a weighted vote, with the votes of partners having more shares carrying more weight." The results speak for themselves: women are underrepresented on elected compensation and executive committees. Sandman concluded, "Firms end up doing what they can – through appointments to other committees – where they can to create committee opportunities for women."

The issue is not malevolent intent, but results. Once women are asked to serve on the less powerful committees, it may be hard to say no. Said Kate Fritz, Managing Partner of Fenwick & West LLP:

I do think generally, with respect to all administrative duties, it is much easier for men to say no and take no penalty for it because the assumption is they must be spending their time doing something else for the firm. A woman, on the other hand, both may feel more internal pressure to say yes (the "good girl" problem) and every "no" may raise a question about her commitment to the institution. I think this is just a different flavor of the potential/achievement dichotomy applied to a different set of tasks (he has a better potential way to spend his time/she needs to do what we ask her to do or she isn't achieving).

Sandman adds, "When a man turns down a committee assignment saying, "I would like to concentrate on building my practice,' people tend to nod and say 'that's a smart decision.' That may happen less often if it's a woman. Women are more likely to say 'I've got a lot on my plate,' or to feel guilty and express their guilt." This may be because women feel less entitled than men, or may be because they expect pushback if they simply refuse to serve in a direct way.

84 An interesting wrinkle is that rigorous studies show that serving on the firm's recruitment committee does have a positive effect on compensation. Dinovitzer, Reichman & Sterling, *supra* note 5, at 835.

85 Judith S. Kaye & Anne C. Reddy, *The Progress of Women Lawyers at Big Firms: Steadied or Simply Studied?*, 76 *FORDHAM L. REV.* 1941, 1945 (2008) (citing a 2001 New York State Bar Association study).

86 Reichman & Sterling, *supra* note 6, at 67.

In addition, social science documents that, in male-dominated environments, women often face pressures to play traditionally feminine roles. “I’m like the frigging firm mom,” said one woman, who clearly felt trapped by the role, “People come to me if they’re having problems.”⁸⁷ Social psychologists identify other traditionally feminine roles that may arise in workplace settings: the *princess*, who aligns with but does not threaten the dominance of a powerful man; the *cheerleader* who applauds male achievements; *Ms. Efficiency*, who cheerfully accepts the ministerial tasks; the *daughter* who looks up to the men around her.⁸⁸ This pattern may also help explain why women end up playing traditionally feminine roles such as attending to the development of the young (associate development; running the summer program) and acting communal (pro bono committee).

In short, women may well find themselves facing pressure, at times gentle and well-meaning, to contribute to law firms in ways that are important to the long-term health of the firm, but whose value is not rewarded when compensation levels are set.

What factors are important in setting bonuses?

In roughly three-fourths of respondents’ firms, the same evaluation mechanisms and processes applied in the case of cash bonuses. Among respondents whose firms used a different system for bonuses, a mix of objective and subjective factors is used in roughly two-thirds of income-partner respondents’ firms and half the firms of minority and equity-partner respondents. About one in four equity and minority partners, but only 6% of income partners, reported that bonuses are awarded solely on subjective assessments. This probably reflects the fact that income partners’ bonuses tend to be very formula-driven, and therefore objective. About one-third of all respondents said that bonuses are rewarded solely on objective criteria.

Wide variation exists with respect to bonuses. Comments indicate that firms use bonuses in a wide variety of contexts. Some examples are bonuses given to partners who had a particularly good year, to “overwhelming work on a firm (nonbillable) project,” to “friends of managing partners...and those on committee deciding compensation and bonuses,” to “extraordinary efforts or results in a given year by young partners,” to originators of new clients or new matters, to “the most highly compensated partners,” and, finally, “It is a mystery to me...” “[T]he threat of leaving [by] big originators appears to be very influential.” And another: “Our bonusing is very subjective and is simply ‘fairness’ based.” One respondent noted that bonuses depended on the overall profitability of the firm. Some firms give bonuses chiefly to income partners, while at other firms they appear to go chiefly to equity partners.

When bonuses were given, the top factors influencing prospective law firm compensation were very similar to the top factors used to set retrospective bonuses. Factors below the top four are considerably less common in the calculation of bonuses than they are in influencing prospective compensation. With the exception of majority income partners’ 44% agreement that committee ratings are “very important” in setting bonuses, the fifth-highest ranking item reached less than a 30% consensus among partners.

87 HOLLY ENGLISH, GENDER ON TRIAL: SEXUAL STEREOTYPES AND WORK/LIFE BALANCE IN THE LEGAL WORKPLACE 119 (2003).

88 Peter Glick & Susan T. Fiske, *An Ambivalent Alliance: Hostile and Benevolent Sexism as Complementary Justifications for Gender Inequality*, 58 AM. PSYCHOL. 109, 113 (2001); Taylor, *infra* note 104, at 84, in COGNITIVE PROCESSES IN STEREOTYPING AND INTERGROUP BEHAVIOR (D. Hamilton ed., 1981); Kay Deaux et al., *Level of Categorization and Content of Gender Stereotypes*, 3 SOC. COGNITION 145, 166 (1985). See also Joan C. Williams, *The Social Psychology of Stereotyping: Using Social Science to Litigate Gender Discrimination Cases and Defang the “Cluelessness” Defense*, 7 EMP. RTS. & EMP. POL’Y J. 401, 419-20 (2003).

TABLE 8: Top factors listed as “very important” in setting bonuses

	Majority equity partners		Majority income partners		Minority equity partners		Minority income partners	
#1	Revenue collected	63%	Revenue collected	62%	Committee rating	50%	1. Revenue Collected	64%
#2	Origination	58%	Origination	56%	Revenue collected	42%	2. Origination	61%
#3	Committee rating	56%	Client matter expansion/cross-selling	30%	Billable hours	38%	3. Billable hours	59%
#4	Billable hours	42%	Billable hours	46%	Origination	34%	4. Committee rating	56%
#5	Client matter expansion/cross-selling	29%	Committee rating	44%	Numbers too small to report	~	Numbers too small to report	~

We also analyzed what were the factors listed as either “important” or “very important” in the setting of bonuses.

TABLE 9: Factors listed as “important” or “very important” in setting bonuses

	Majority equity partners		Majority income partners		Minority equity partners		Minority income partners	
#1	Origination	81%	Revenue collected	87%	Revenue collected	77%	Revenue collected	79%
#2	Revenue collected	81%	Origination	86%	Origination	75%	Origination	79%
#3	Committee rating	75%	Billable hours	77%	Committee rating	72%	Committee rating	78%
#4	Billable hours	71%	Committee rating	69%	Billable hours	69%	Billable hours	70%
#5	Client matter expansion/cross-selling	69%	Client matter expansion/cross-selling	70%	Being billing partner	69%	Client matter expansion/cross-selling	57%
#6	Firm management	58%	Being billing partner	56%	Client matter expansion/cross-selling	59%	Being billing partner	54%
#7	Whose work currently binds client?	53%	Firm management	50%	Whose work currently binds client	57%	Firm management	47%
#8	Being billing partner	41%	Whose work currently binds client	47%	Firm management	52%	Practice group rating	44%

Once again, with the exception of cross-selling and committee ratings (themselves often based on individual cash flow metrics), individual cash flow metrics appear to predominate in the setting of bonuses. Consultant commentary confirms that bonus pools, which are becoming more common, typically are used to reward an equity partner who “had an usually good year.”⁸⁹

⁸⁹ Cotterman, *supra* note 16, at 1 (stating that bonuses are becoming more common).

Do the factors that are important in setting compensation differ from the factors important in determining elevation to equity partnership?

Our survey also asked what factors play important roles in the decisions whether to elevate lawyers from income to equity partner. Once again, revenue collected, billable hours, origination, and committee rating were the top four factors listed by all groups of respondents. Yet some striking differences emerged between the factors considered for elevation to equity partnership and the factors that influence partner compensation. Equity-partners' responses suggest that teamwork (61%), effective leveraging of associates (43%), committee work (37%), effective development of the firm's human capital (43%), associate development (36%), and contributions to diversity effects (32%) are considerably more likely to be considered "important" or "very important" for criteria for elevation to equity partnership than they are as criteria for partner compensation.⁹⁰ These factors may well play an important role in elevation to partnership than in partner compensation because lawyers who are just being elevated to partnership status often do not yet have significant originations—which means that other factors inevitably play a larger role.

THE ALLOCATION OF, AND DISPUTES OVER, ORIGINATION CREDIT

Just today, a capital partner indicated to me in an email, which he copied to the client, that I should not have opened a new matter (regardless that he was getting credit for the new matter). This after he ignored my repeated inquiries about the issue. It should be noted, this is a client that the capital partner inherited from another attorney who left the firm (and that attorney in turn inherited)...[F]rom what I can tell, I've worked with the client longer than he has.

According to consultant Joel R. Rose, in many firms origination credit ranges between 20% and 25% of billings, with credit in some firms ranging as high as 33%.⁹¹ This is particularly dramatic because, in many firms that award formal origination credit, such credit never "sunset" but instead lasts forever. "Relationship credit survives until the partner has absolutely no involvement with the client any longer," said one respondent. Of the equity-partner respondents who reported that their firms had origination credit, over half (56%) reported permanent credit for all work on a given client account. Another 11% of equity-partner respondents reported a different system: partners received origination credit only for new work if the client placed the phone call to original originating attorney when a new matter came in. Fully 11% did not know how origination credit worked at their firms, which, given the complexity of some firms' systems, and the ambiguities in the way origination credit is defined, probably is not surprising. In several comments, some respondents reported "sunsets": that origination credit at their firm was limited to three years. Other firms had a functional, although not a formal, sunset: "Almost always some credit for future, frequent splitting with others; if originator becomes detached from client/work, this credit is given little or no weight."

Forty percent of equity-partner respondents worked in firms that formally award origination credit, yet this far underestimates the importance, and the prevalence, of origination credit. As noted above, origination is one of the top factors considered in setting compensation at most firms—even in firms that do not formally award origination credit.⁹² Of the 40% of firms that award formal origination credit, most (88%) reported systems that allow partners to split origination credit. This may be more aspirational than commonplace: the Altman Weil survey of law firm compensation systems reported that, in fact, "Strikingly few clients are 'shared' for origination purposes...."⁹³ Four in five (80%) equity-partner respondents felt they

⁹⁰ These factors may well play an important role in elevation to partnership than in partner compensation because lawyers who are just being elevated to partnership status often do not yet have significant originations—which means that other factors inevitably play a larger role.

⁹¹ Rose, *supra* note 49, at 5.

⁹² This is slightly lower than the percentage of firms in general: law firm consultant James D. Cotterman reported in 2008 that 56% of law firms surveyed by Altman Weil, Inc. awarded formal origination credit. Cotterman, *supra* note 16, at 1.

⁹³ *Id.* at 8.

had been denied their fair share of origination credit at some point over the past three years. Thirteen percent said this happened often, 38% said it happened occasionally, and 30% said it had happened, but rarely.

Income-partner respondents were more likely than equity partners to work in firms that awarded origination credit (50%).⁹⁴ They were as likely as equity partners (88%) to report systems that allow partners to split origination credit. Income partners were a bit more likely than equity partners (83% v. 80%) to report having been denied their fair share of origination credit over the past three years, and were also more likely to believe that this happened to them often (18% v. 13%) and less likely to believe it happened rarely (16% v. 30%).

Minority partners were less likely than other respondents to work in firms that award origination credit (39%), and less likely to report systems that allow partners to split origination credit (76%). Minority partners were about as likely as other respondents to have been denied their fair share of origination credit: Approximately 14% of white income and minority partners and 16% of white equity partners report having “never” been denied credit.

TABLE 10: Origination credit

	Majority equity partners	Majority income partners	Minority income partners	Minority equity partners	Minority partners
Work in firms that award origination credit	40%	51%	46%	34%	39%
Split origination credit	91%	88%	85%	~	76%
Denied fair share of credit in last three years	84%	82%	~	~	86%
Often	14%	16%	~	~	19%
Occasionally	37%	22%	~	~	19%
Rarely	33%	22%	~	~	47%

Disputes over origination credit.

Compared to majority partners, minority-partner respondents faced disputes about origination credit more frequently.⁹⁵ Forty-eight percent faced them often or occasionally, compared with only about one-third (30%) of equity partners and income partners (32%). Minority-partner respondents also were less likely to report that such disputes occurred rarely (44% equity; 46% income v. 32% minority) or never (27% v. 22% v. 16%). This is one of the strongest racial differences we identified.

⁹⁴ This difference is marginally statistically significant; $t = 1.92$; $p = 0.056$.

⁹⁵ T-test statistic = 2.45; $p < 0.05$.

TABLE 11: Strong racial differences in disputes over origination credit

	Majority equity Partners	Majority income Partners	Minority Partners
Disputes over origination credit	73%	78%	84%
Often	8%	3%	12%
Occasionally	22%	29%	40%
Rarely	43%	46%	32%
Never	27%	22%	16%

Approximately one-fourth (27%) of white equity-partner respondents reported feeling that a partner had tried to intimidate, threaten or bully them into backing down in a dispute over origination credit, compared to 32% among white income partners and 36% of minority partners. A few respondents felt that they had been bullied, but no more than men were: “But no more than that person would have bullied a male.” Some answers are vague (“I don’t feel comfortable providing this detail”) while many are vivid:

I have had experiences where men tried to undermine my involvement, take credit for my work, claim credit for relationships when the client literally did not know who they were, and in the past, I have literally been told I was stupid to think the client was basing its decision to use my services on me.

My practice group leader demanded a large percentage of origination credit for a client where I had the relationship. Since he was my practice group leader, I felt intimidated to agree.

Senior equity partner with no real relationship to client made it difficult for me to claim origination for client where origination is obvious. Had to split origination with him 50/50 although he has not had relationship with or billed anything to client in over 3 years.

Senior white partner starts to have lunch with and meet with my clients—not telling me about it and excluding me from the client relationship. He then claims that he brought in the additional new work from my client, and that he is sharing one-half credit.

Once I was told that I shouldn’t take a matter, that I should give it to someone else because it wasn’t my direct area of litigation, which others never had to do in similar situations; once I was lead counsel on trial team but had no supervisory origination credit because partner who brought the matter in needed the credit that year.

Some respondents reported being told they would be cut out of future relationships unless they shared or ceded origination credit.

Threats to pull all future work and opportunities.

Suggestion that would not refer any work in the future....

Implicit threat that if they had to share credit on this matter, they wouldn’t come to you with another.

“I can make your life difficult.” “On the other hand, I can be helpful.”

I was actually told that I was “trying to steal clients” and that it would make more sense to send all the work to associates. I struggled for a year trying to build up my own practice separate from managing partner who made the threat (and stood by it).

In yet another context, the power of firm leaders and power players emerges in clear focus.

The other partner called the conflict screening people and told them to change the billing credit. I elected not to fight, as...he was on our firm’s management committee that made compensation decisions.

My own department chair opened a matter for one of my clients, but told me that “this one was his,” and refused to give me any credit.

[Origination credit went]...to the practice group leader who was a good friend of the partner.

Origination from “institutional clients” is not divided fairly. Cold calls that come into the firm are directed to the head of department or members of the board. Given that firm management (e.g. head of litigation department) does not change very often (once every ten to twelve years), this type of origination tends to cluster with the senior men.

[Originations are] not necessarily connected to your being the reason the client sent the work to the firm. Rather they arise from being the first contact and having the internal political clout to demand that you are to get all or most of the origination. If you are the one who expands a client relationships there is no reason to believe that you will get any origination credit for your effort.

[O]r they just lie to your face and agree to do something and simply never follow up equitably as promised. These same people make the decision on my future and pay.

Other researchers have made similar findings. Said a partner in a national firm, “Power and position determine whether [origination credit] is split or kept.”⁹⁶

A few comments highlight the costs to clients of law firms’ decision to treat partners as individual profit centers.

Tax lawyer refused to work further on a multi-jurisdictional transaction if I did not let him be an originator and billing partner...at a point...when the deal needed him. I went to Managing Partner and won the “appeal” but nothing happened to the tax lawyer.

I brought in work outside of my area and other partner refused to do work unless granted billing credit. I refused. Work was ultimately turned down resulting in my loss of client.

...I went to our group Managing Partner to discuss the matter and he summarily dismissed my concerns and stated that partners often get work from different contacts at a client (not generally true unless by agreement of the partners) and that my client contact (a woman known to him) was just trying to rile things up.

⁹⁶ Nancy J. Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 CAP. U. L. REV. 923, 946 (2002).

Two recognizable patterns of gender bias emerge in the comments on disputes over origination credit. The first is when women have to “try twice as hard to get half as far” because of an unspoken sense that men are entitled to share credit (but women are not).

This issue has been the most challenging for me. Some of the young male partners are just handed shared origination because “their brains also brought in the client.” I have not had the same level of shared financial opportunity, despite more years of helping to build the very clients whom I requested to share...

The second pattern stems from a pattern known as the double bind. Studies show that women are often faulted for lacking in collegiality or for having personality problems for behavior that, in a man, is seen as showing “he is someone to be reckoned with” or that “he knows his own worth.” Women who behave confidently and assertively are not as well received as men who do so.⁹⁷ Women managers who adopt a direct, assertive style tend to trigger strongly negative evaluations.⁹⁸ Women who act assertively tend to be less popular than men who do so.⁹⁹ The risks for women are particularly pronounced when macho behavior is rewarded (“Rainmakers and aggressiveness are important factors,” noted one respondent), given that aggressiveness is often admired in men but faulted in women.¹⁰⁰ Disputes over origination credit can jeopardize the reputations of women partners unless they have an unusual degree of political skill and savvy—more than is required of their male partners.

This gender dynamic is exacerbated if women have to struggle to gain origination credit that would have been offered automatically to a man. When women have to fight more battles, not only are they likely to win fewer; they may well also pay a long-term price in terms of perceived likability. This situation is exacerbated because women who are not likeable often are judged more harshly than men who behave in similar ways. The double bind stems from a pattern called “ambivalent sexism,” in which women who show traditionally feminine behaviors are met with benevolent approval but not necessarily taken seriously, while women who do not are respected, but met with hostile disapproval.¹⁰¹ Of course, to succeed in most organizations requires being both liked and respected. The most concise description of the double bind offered by our respondents was the following:

I know that I will be punished [for] raising my concerns, and yet know that I’ll be mistreated if I don’t.

Another respondent voiced her fear of getting “a reputation as a difficult woman.” A third “got the impression the older male partner thought I was being ‘uppity.’” A fourth reported “they make your position seem selfish....” Allegations that women are behaving selfishly often stem from the unspoken insistence that women conform to feminine role expectations

97 Doré Butler & Florence L. Geiss, *Nonverbal Affect Responses to Male and Female Leaders: Implications for Leadership Evaluations*, 58 J. PERSONALITY & SOC. PSYCHOL. 48, 54 (1990) (finding that “intellectual assertiveness by women in mixed-sex discussions elicits visible cues of negative affect” and that women leaders received fewer “pleased” responses and more “displeased” responses from group members, while male leaders experienced the opposite); Madeline Heilman, Caryn J. Block, Richard F. Martell & Michael C. Simon, *Has Anything Changed? Current Characterizations of Men, Women, and Managers*, 74 J. APPLIED PSYCHOL. 935, 941 (1989) (though not the central focus of the study, reporting that women managers were described as “bitter, quarrelsome, and selfish,” with “an unbridled ambition for power and achievement”); Norma Costrich, Joan Feinstein, Louise Kidder, Jeanne Marecek & Linda Pascale, *When Stereotypes Hurt: Three Studies of Penalties for Sex-Role Reversals*, 11 J. EXPERIMENTAL SOC. PSYCHOL. 520, 520-530 (1975) (finding that women who engaged in sex-role reversals by behaving in line with stereotypes counter to their sex (i.e., as aggressive-assertive) suffered adverse effects in their popularity ratings and their perceived psychological adjustments).

98 Alice Eagly, Mona G. Makhijani & Bruce G. Klonsky, *Gender and the Evaluation of Leaders: A Meta-Analysis*, 111 PSYCHOLOGICAL BULLETIN 3, 3, 5-6, 12, 16 (1992) (finding that “women in leadership positions were devalued relative to their male counterparts when leadership was carried out in stereotypically masculine styles, particularly when this style was autocratic or directive”).

99 Costrich et al., *supra* note 78, at 520-30.

100 *Id.*; see also Eagly et al., *supra* note 79, at 16.

101 See, e.g., Susan T. Fiske et al., *(Dis)respecting Versus (Dis)liking: Status and Interdependence Predict Ambivalent Stereotypes of Competence and Warmth*, 55 J. SOC. ISSUES 473, 476 (1999); Peter Glick & Susan T. Fiske, *Ambivalent Sexism*, 33 ADVANCES IN EXPERIMENTAL SOC. PSYCHOL. 115, 151 (2001).

that women are selfless and communal, concerned more with the welfare of others than with their own interests.¹⁰² Said one respondent, “It is an old boys’ network and if you complain you are accused of not being a team player.” The speaker clearly has the impression that a man would not have encountered the same problem.

Other respondents report harsh consequences for women who do not gracefully back down from their claims for origination credit or increased compensation:

Meeting held with me and four male partners at which my contribution was totally trashed, until I agreed to waive any claim to credit and then my practice group leader took a cut himself apparently for facilitating. It was just me arguing against the two guys claiming the credit should be totally theirs although it had been my client for years. The other two guys said nothing.

Last year when I did make a stink after a phenomenal year, management purported to reward me for my great performance...but simultaneously hosed my husband, who is also partner, by exactly the same amount to the penny and denied (they were affronted by my drawing) any relationship.

These situations are particularly intriguing. Assuming the informants’ assessments were correct, one possible explanation stems from studies that document that “violating stereotypes can result in social and economic reprisals—a phenomenon known as the *backlash effect*.”¹⁰³ In a series of experiments, men and women competed in a computer game about football. When women beat men at this male-domain task, women tended to be sabotaged—male subjects were more like to provide them with misleading clues in preparation for the next task to be undertaken. Subjects who sabotaged the gender deviants showed greater subsequent self-esteem.¹⁰⁴

When faced with the double bind, one strategy is to fight. The other, less risky and probably more common, is to give way in order to conform to expectations.¹⁰⁵

It is subtle. You just know not to make an issue of it.

I would never be confrontational about this.

I would never enter into such a dispute...for that would have extremely negative consequences with management far in excess of any benefit associated with the billing credit.

I just back down. I depend on others to share the origination with me so it is not worth it to me to get a reputation as one who disputes origination allocation.

I make it a practice not to dispute business generation credit with my partners. I am a firm believer that “what goes around comes around.” I find, however, that my male partners are much more aggressive about “grabbing” credit in circumstances that might be questioned by an objective observer.

102 JOAN C. WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 14-36, 251 (2000). *See also* Eagly et al., *supra* note 79, at 12 (finding that women leaders were viewed more negatively when they adopted an autocratic, masculine leadership style, as compared with a democratic, feminine style); ALICE H. EAGLY & LINDA L. CARLI, THROUGH THE LABYRINTH: THE TRUTH ABOUT HOW WOMEN BECOME LEADERS 78-81, 87 (2007) (positing that women who are too supportive or “communal” may be seen as weak, while women who are too assertive may not be liked by others).

103 Laurie Rudman, *Self-Promotion as a Risk Factor for Women: The Costs and Benefits of Counter-stereotypical Impression Management*, 74 J. PERSONALITY AND SOC. PSYCHOL. 629, 629 (1998).

104 Laurie Rudman & Kimberly Fairchild, *Reactions to Counterstereotypic Behavior: The Role of Backlash in Cultural Stereotype Maintenance*, 87 J. PERSONALITY AND SOC. PSYCHOL. 157, 162, 166 (2004).

105 *Id.* at 169-70.

Survey comments alone cannot answer the relevant question: Are these respondents giving way because life is too short to fight with one's partners, or because they recognize that they will pay a price if they are seen as "difficult" for doing what, in a man, would be seen as legitimately trying to protect one's own interests?

Research suggests that the double bind often plays a role in compensation decisions. One survey respondent referred researchers to a news article reporting on a study that women who attempt to negotiate often face negative consequences. "Anyone studying how women do, or do not, get ahead in the workplace should go read this article." The most relevant study, co-authored by Linda Babcock (who wrote *Women Don't Ask: Negotiation and the Gender Divide*, which sends quite a different message¹⁰⁶) examined whether and how women negotiate for compensation. The first experiment, which investigated whether subjects were willing to hire candidates who initiated a salary negotiation, found both male and female evaluators were more likely to penalize female candidates who initiated salary negotiations more than men who do so. The second experiment, which explored people's willingness to work with women who negotiated salary, found that women, but not men, incurred a large penalty for attempting negotiations—women's penalty was 5.5 times as steep as men's—and women as well as men were less willing to work with other women who initiated salary negotiations. The third experiment, which involved a video of the candidate's interview rather than a resume, found that male evaluators (but not females) penalized women for salary negotiations, and they insisted on a greater degree of likeability from women job candidates than from men. The final experiment when the evaluator was male, women were more reluctant than men to negotiate compensation. This difference did not exist when the evaluator was a woman.

Babcock and her co-authors asked whether women's greater reluctance "to initiate negotiations over...compensation could be explained by the differential treatment of male and female negotiators"¹⁰⁷ and concluded "the answer is yes."¹⁰⁸ In the first three experiments, the authors pointed out, male evaluators punished women more than men for attempting to negotiate salary. In the third, women's reluctance to negotiate salary disappeared when negotiating with a woman. "We show with this research that women's disinclination relative to men to initiate negotiations over resources, such as compensation, may be traced to the higher social costs that they face when doing so."¹⁰⁹ The authors point out that their results indicate that society rewards women for living up to the feminine ideals of modesty, niceness, warmth and sensitivity to others, and often penalizes women for engaging in the kind of competitive, self-promoting behaviors that are accepted as appropriate for men. "As lower-status group members making claims to the privileges of higher-status group members, women are likely to appear inappropriately demanding if they attempt to negotiate for higher levels of compensation,"¹¹⁰ especially (but not only) if the evaluator is a man. Other studies confirm that women's inability to negotiate disappears when negotiating for others; it is only when they negotiate for themselves that they falter, for fear they will transgress the separate-spheres mandate of selflessness. This conclusion is further supported by the findings of a meta-analysis of 62 different studies.

This may help explain why few respondents to our survey were "satisfied" or extremely satisfied" with their ability to negotiate or address any concerns they had regarding compensation. Only about one in five minority (21%) and income (19%) partners and one in three (32%) equity partners reported satisfaction, as noted in Table 12.

106 The basic thrust of *Women Don't Ask* is that women don't get ahead because they don't negotiate as well as men—that "women don't ask." Babcock's academic studies suggest that many women don't ask because they encounter pushback when they do. See LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK* (2008).

107 *Id.* at 98-99.

108 *Id.*

109 *Id.* at 99-100.

110 *Id.* at 86.

TABLE 12: How satisfied are you with your ability to effectively negotiate or address any concerns you may have regarding your compensation?

	Majority equity partners	Majority income partners	Minority partners
Extremely satisfied	11%	2%	5%
Satisfied	23%	20%	13%
Neutral or mixed opinion	22%	32%	27%
Dissatisfied	25%	20%	40%
Extremely dissatisfied	19%	26%	16%

Partnership status significantly affected whether our respondents felt comfortable raising questions or concerns about their compensation with law firm management or their firm’s compensation committee. Equity partners were significantly more comfortable than income partners in raising such concerns.¹¹¹ Some patterns by race emerged as well, although these differences did not rise to the level of statistical significance. Over half of white equity-partner respondents (53%) felt comfortable or extremely comfortable, but only about one-third (34%) of majority income partners and minority partners did. Nearly one in three equity partners (32% white; 36% minority) felt uncomfortable or extremely uncomfortable raising such issues, as compared to 45% of white income partners. Minority income partners reported the highest level of discomfort (61%). Discomfort about raising questions and concerns may stem from personal hesitations, or it may reflect fears of pushback that are exacerbated not only by gender, but also by race.

On the bright side, some respondents reported that they had not run into trouble over matters of origination, or that their firms dealt effectively with partners who are unfair in the allocation of origination credit.

The compensation committee knows which partners have a habit of not distributing credit fairly and makes behind-the-scenes adjustments.

Credit is negotiated between partners, and partners who have a reputation for “fairness” in credit sharing and collaboration, arguably have a competitive advantage in the long haul.

In our firm, we have a policy that each partner will help others on their pitches for no compensation or share of the client if the client comes on board....

[In our lock-step system, where] the ideal is that we are a team and it takes everyone to make the firm profitable for us all, I don’t want to let my partners down and I work harder. I don’t think it is just women either. I believe research shows that there are many motivators to human behavior other than money.

Other respondents felt well-equipped to deal with any problems that arose.

I generate almost all of my own work (\$2.5 million+ book), so I am rarely in a position where I have to ask for credit. When I do pitch work with other partners, I ask for an agreement before the pitch that we will split any credit for the new work equally. If a partner won’t agree to this arrangement then I don’t do a pitch with them.

111 T-test statistic = 2.75; p<0.01 (Income partner mean = 2.43; SD=1.09; equity partner mean = 2.80; SD = 1.25).

If there is resistance I don't push the issue. I would not want to poison my well over this sort of thing. It does however influence my actions going forward.

Disputes over origination credit are typically handled either through negotiations between the affected partners or through review by the compensation or other internal committee. Equity-partner respondents were more likely (67%) than the other three groups (58% minority-income, 56% income, and 41% minority-equity) to report disputes handled by negotiation. Income partners were much less likely than the other groups to report that disputes over origination credit were handled by the compensation or other internal management committee (28%, as compared with 48% of equity partners, 41% of minority income, and 25% of minority income partners).¹¹²

Compared to income partners, equity partners indicate greater satisfaction with the way in which disputes are generally resolved.¹¹³ Income- (21%) and both groups of minority-partner respondents (25%) were much less likely than equity partners (45%) to report being “satisfied” or “extremely satisfied” with the way such disputes are generally resolved. Majority and minority income partners were considerably more likely to be dissatisfied: 31% of income and 42% of minority-income partners were dissatisfied, as opposed to 17% of minority and majority equity partners.

In short, disputes over origination credit are a significant factor in the lives of many women lawyers. Among the 50% of respondents whose firms awarded origination credit, four out of five equity partners, and even more income and minority partners, reported having been denied a fair share of origination credit in the past three years. Minority-partner respondents were even more likely than majority women to find themselves in disputes over origination credit. Most disturbing, a quarter of equity-partner respondents, a third of income-partner and minority-equity respondents and 40% of minority-income respondents reported feeling that a partner had tried to intimidate, threaten or bully them into backing down in a dispute over origination credit.

ISN'T THE REAL PROBLEM THAT WOMEN HAVE LESS TIME FOR RAINMAKING?

The common assumption is that women's compensation is lower than men's because they have less time for rainmaking. Such comments were rare—a finding reinforced by PAR's recent study of part-time partners, which found that part-time equity partners tend to do as much, or more, rainmaking, as do full-time partners (virtually all of whom are women).¹¹⁴ Indeed, some comments indicated the opposite situation.

Women tend to be lone rangers at the firm (i.e. they are not part of big teams on big cases...On the other hand, many of the partners (all male) working for the leaders of the section serve as “support” lawyers—they spend all their time billing hours on their senior partners' clients' files. Naturally, the senior partner ensures they are promoted in order to keep his kingdom growing...The women tend to leave and try to find a firm that rewards the ability to generate business.

I have...the distinct impression that [origination]...matters not at all to determining my compensation as I have been categorized as a “worker bee.”

More common were comments to the effect that respondents' firms did not provide women with equal opportunity to participate in client pitches.

112 These differences were not statistically significant between each of the four groups.

113 T-test statistic = 2.83; p<0.05; Income partner mean = 2.90; SD=0.85; equity partner mean = 3.37; SD=1.00.

114 CYNTHIA THOMAS CALVERT, LINDA BRAY CHANOW, & LINDA MARKS, REDUCED HOURS, FULL SUCCESS: PART-TIME PARTNERS IN U.S. LAW FIRMS 14 (2009).

Women are routinely left out of client pitches and have to scream to get the attention of marketing professionals at the firm. The firm simply does not take female lawyers seriously.

I have not been invited or gone to a beauty contest in the past three years. My firm does not adequately compensate “service” partners.

While the compensation is on its face objective...I have found that women who are “service” partners do not have as many opportunities to work on high profile cases and clients. Those opportunities more often than not go to men and as a result their compensation is increased.

Women are not groomed in the same way men are at the firm for business development....You have to be in the boys’ club to get the origination, which is really the way power is measured at the firm... [T]hey are perceived as not being able to develop clients and they are encouraged to keep their noses to the grindstone. Then when they don’t have their own business, they are forced out. And no one worries about this because the powers that be figure by this time the women will be getting ready to have a baby, etc.

Although I feel like I am well compensated and the compensation system is fair currently, I do not think I have as many opportunities to participate in pitches and other important matters as my male counterparts.

My concerns regarding partnership compensation are not about the “fairness” of how the system compensates (I think the determinations made are very fair in that they accurately compensate partners for their contributions in past years), but rather about the ability of women partners to get the types of opportunities and responsibilities that generate the “objective” (billable hours, client generation) and “subjective” (management, client responsibility, trial experience) performance that the system ultimately rewards.

The 2004-2005 interview-based study by Reichman and Sterling found quite a different dynamic at work:

I was certainly one of the higher billing partners that period of time. But it was still hard to attract associates to work with me because I was never one of the partners yelling at them that they had to do my work....It was very hard for me and it got to be not worth the effort to try to put out what I needed to put out to get the associates to stay on my work. They would tend to put down my work and pick up somebody else’s work...My clients were getting pissed off...I think the associates liked me. It certainly wasn’t a popularity contest. It’s just that that’s the way their bread is buttered. I had to be head of the hiring committee, which meant that I had to interview all these same associates who wouldn’t work for me later and persuade my partners to have interviews with them so that they could ultimately go and work for them.¹¹⁵

This partner quit her firm and opened a solo practice. Another informant said that the politics of her firm made it impossible for her to keep practicing:

It’s actually one of the reasons I left private practice cause I had grown my book to a point where I couldn’t service it myself any longer or I was going to go nuts. I finally got to a point where I hired a new associate dedicated to my work and she was very, very good and that got recognized quickly and

115 Reichman & Sterling, *supra* note 6, at 58.

*people started to take her away—little by little, bit by bit. What can you do? She needs to get out there and work with other partners if she wants to move up the ladder internally in the firm. I saw the handwriting on the wall....*¹¹⁶

Over half of our respondents reported situations in which they had participated in “beauty contests” but had not been included in the client work that resulted. Over 70% of minority income partners, 58% of minority-equity, 55% of white equity partners, and 48% of white income partners reported that in the last three years they had participated in successful client pitches in which they did not end up billing a significant number of hours. Forty-two percent of white and minority equity partners, 48% of minority income partners, and 31% of white income partners reporting having this happen once or twice, while 14% of white equity partners and 18% of minority partners and 8% of white income partners had experienced this 3 or more times.¹¹⁷

Respondents also reported that in the last three years many had participated in successful client pitches but did not receive a proportionate share of the origination credit or otherwise have their contribution recognized financially. Forty percent of white equity partners, 37% of white income partners reported this experience. Among minority partners, 52% of income partners and 39% of equity partners reported this experience. This happened once or twice among one-fourth of minority equity partners and majority income partners, while 28% of white equity partners and 35% of minority income partners experienced this once or twice; a slightly smaller proportion of white equity and income partners (12% each) had encountered this 3 or more times in the prior three years as compared to minority partners (15%).¹¹⁸

LACK OF SUCCESSION PLANNING

Who inherits the credit when an attorney leaves the firm? Firms that have origination credit typically allow them to be passed on if an attorney leaves a firm: only 4-7% of respondents said their firms disallowed this. The majority of respondents reported no consistent approach (35%). Roughly one in three majority equity partners, and one in five majority income partners reported no consistent approach, with minority partners in between (29%). The most common system reported was that partners with origination credit are allowed to decide who will inherit their origination credit, with 32% of the sample (28% of majority equity partners, 30% of minority equity partners, and 32% of majority income partners) reporting this practice. Minority income partners were most likely (50%) to identify this practice as their firm’s approach to succession planning for origination credit. Much less common was for firm management to play a role (6-14%). Clients rarely played a role in choosing their new lawyer (1-3%). A surprising 16% of respondents did not know how succession was handled at their firms: 26% of majority income partners, 12% of majority equity partners, and 10% of minority partners did not know their firm’s approach to succession planning.

Most comments said that the partner who “owns” the client chooses the successor. A few felt this system had a negative effect on women.

Succession appears to consist of person bequeathing the credit to their “chosen person,” w[ho] is typically a white male.

Men are consistently provided with succession opportunities or the opportunity to get credit for landing a client—women are not.

When partners leave and their clients stay they have not been even partially assigned to me as requested even though I have built relationships with these clients and often do much of the work.

¹¹⁶ *Id.* at 65.

¹¹⁷ No statistically significant differences were found between the four groups on this item.

¹¹⁸ No statistically significant differences were found between the four groups on this item.

More firm involvement appears to be a trend.

If the originating attorney leaves the firm but the client stays, the Compensation Committee may transfer the origination credit to another shareholder who demonstrates that he or she is the primary cause of the client's continued use of the firm's services.

Often the current partner in charge has a large say.... However, the firm is becoming more active in selecting successors. The firm does not allow partners to pass on credit for a client without approval of management.

Successor is chosen based on the best interest of the client.

A few respondents mentioned that origination credit ended at their firms if the originating attorney left the firm: "When a partner leaves, the client is assigned to the firm in general." Only a few comments indicated that the client had a say in deciding what happens.

Most, subjective determined by the partner in charge, but firm management occasionally "chooses..." I bet clients sometimes pick too.

A few comments described active firm involvement.

Our approach is to introduce a client to more than one originating partner so there is a team that is available to service the account.

We encourage each senior partner to come up with and propose a plan to transition key clients. The plan is reviewed by the practice group head and the Advisory Board. The focus is not on who becomes the new "engagement partner" but on making sure the client is connected to enough people that it will remain with the firm.

Clearly, in institutions in which women tend to be more junior partners, systems that continue to reward lawyers for service rendered years ago will disadvantage women far into the future.

SUBJECTIVITY

By a wide margin, most respondents had compensation systems that combine objectivity and subjectivity: 85% of equity-partner respondents reported such systems; while 10% had completely subjective systems and 4% had completely objective systems. Our respondents reported a sharply higher percentage of systems that combine objectivity and subjectivity, and sharply lower percentage of firms that rely on completely subjective systems than do medium and large firms in general. One consultant's study reported that only 32% of law firms with 100 or more lawyers had a combination of objectivity and subjectivity, while 42% rely on totally subjective systems.¹¹⁹

Altman Weil's 2008 survey found that just over one-third of respondents reported that 75% or more of total partner compensation at their firms is subjective.¹²⁰ An additional 35% of respondents reported that some part of compensation was subjective, but said this component counted for less than 75% of total compensation.¹²¹ Our respondents also had a sharply lower percentage of purely objective systems: the Altman Weil compensation survey found that nearly one-third of law firms

119 Alan R. Olson, *Subjective Law Firm Compensation Systems, Marketing and Origination*, in REPORT TO LEGAL MANAGEMENT (April 2003).

120 Cotterman, *supra* note 16, at 9.

121 *Id.*

had compensation systems with no subjective component.¹²² Both differences probably reflect that our respondents were more likely to be in large law firms than are lawyers in general, and that large law firms are more likely to have subjectivity as a significant part of the systems. Income and minority partners reported similar findings. In other firms, every partner votes on the compensation of every other partner, typically using subjective criteria in the process. “Each lawyer can use whatever criteria she wants to determine her vote....”

A flood of comments stressed that law firm compensation is subjective even when objective factors are considered:

Subjective application of a list of 12 objective criteria.

Articulated 10 factors but application is subjective.

Factors related to compensation are published but decisions seem totally random.

There are “policies” for determining compensation, including a number of objective criteria regarding billings, hours, client generation, and your history, but there is lots of room for subjective variations.

“Numbers” (amounts billed, amounts collected, origination, hours worked) are considered; these are objective criteria. But how these objective factors are weighed and how other factors are taken into account is subjectively done by the executive committee...[B]onuses are given every year (totally within the discretion of the executive committee.)

Purportedly based on origination, managing, responsible and working collections for three-year period, but decisions subjectively made by Comp Committee.

Subjectivity is inevitable and appropriate in setting law firm compensation. A completely objective system is infeasible in most firms, given the wide range of contributions made and roles played by various partners. Yet decisions made on the basis of subjective criteria are especially vulnerable to the influence of stereotypes and bias.¹²³ The stereotypes that emerge give a boost to men but operate as a drag on women in male-dominated workplaces. Such workplaces define competence in ways that are considered a natural fit with the typical man—ambitious, aggressive, rational, direct¹²⁴—but an uneasy fit with the typical woman—who is seen as modest, selfless, and emotional.¹²⁵

Because stereotypes drive perception and memory, people tend to notice and remember stereotype-consistent information better than stereotype-inconsistent information.¹²⁶ Because stereotypes drive inference, observers tend to attribute behavior to stereotype-consistent explanations than to stereotype-inconsistent ones.¹²⁷ Consequently, men’s successes tend to be attributed to abiding dispositions, while women’s successes tend to be attributed to fleeting, outside conditions: this pattern is often called the “he’s skilled, she’s lucky” syndrome.¹²⁸ The reverse is also true: men’s failures tend to be attributed

122 *Id.*

123 See Bielby, *supra* note 29, at 123 (“personnel systems whose criteria for making decisions are arbitrary and subjective are highly vulnerable to bias due to the influence of stereotypes”). See also Susan Fiske & Shelley Taylor, *Social Inference*, in *SOCIAL COGNITION* 246-285 (1984) (discussing the default mechanisms of social inference that operate most particularly in the absence of complete and/or reliable information).

124 JEANETTE N. CLEVELAND, MARGARET STOCKDALE & KEVIN R. MURPHY, *WOMEN AND MEN IN ORGANIZATIONS: SEX AND GENDER ISSUES AT WORK* 44 (2000).

125 Madeline E. Heilman, *Description and Prescription: How Gender Stereotypes Prevent Women’s Ascent Up the Organizational Ladder*, 5 *J. SOC. ISSUES* 657 (2001).

126 Dave L. Hamilton & Jim W. Sherman, *Stereotypes*, in *HANDBOOK OF SOCIAL COGNITION* 1-68 (Robert S. Wyler, Jr. & Thomas K. Scrull, eds., 1994) (summarizing two decades of research on this phenomenon, called “illusory correlation”; *id.* at 11-15); Galen V. Bodenhausen & Robert S. Wyler, Jr., *Effects of Stereotypes in Decision-Making and Information-Processing Strategies*, 48 *J. PERSONALITY & SOC. PSYCHOL.* 267, 281-82 (1985).

127 Bodenhausen & Wyler, *supra* note 107, at 279-81.

128 See generally Janet K. Swim & Lawrence J. Sanna, *He’s Skilled, She’s Lucky: A Meta-Analysis of Observers’ Attributions for Women and Men’s Successes and Failures*, 22 *PERSONALITY & SOC. PSYCHOL. BULL.* 507 (1996); Jeffrey H. Greenhaus & Saroj Parasuraman, *Job Performance Attributions and Career Advancement Prospects: An Examination of Gender and Race Effects*, 55 *ORG. BEHAV. & HUM. DECISION PROCESSES* 273, 274, 276, 290 (1993).

outside conditions (no one could have won before that judge) while women's tend to be attributed to stable personality traits (she lacks the forcefulness to be a litigator). These simple principles account for the sense, mentioned above, that women (and people of color) have to "try twice as hard to get half as far." Unfortunately, once stereotypes are activated, they tend to reinforce themselves, as new information is interpreted through the lens of stereotypes—information that then is interpreted as further evidence of the proof of the stereotypes' accuracy.¹²⁹

These processes appear to be at work in the lives of our respondents. For example, several comments report that objective factors sometimes are given different weights for men and women.

Thus some factors are "important" if they justify paying a man, especially a man with a family, and other factors are "important" if they will justify paying a woman, especially a single woman, less.

While statistics are considered in the process, instances of double and triple counting for the same business [is] rampant among the boys' club, while women rarely get the same level of credit unless they are in a position to "walk" the business.

Each of the items listed above assumes uniform application of the factors. [T]hese items matter more for some partners but not for others...That should be a focus of whether women partners' compensation is commensurate with that of their male colleagues.

Again, depends on who is being compensated, especially with respect to whom management favors. A factor that means nothing as [to] one partner can be the reason to compensate another partner, if someone on management wants to protect/cover that person.

These comments indicate a specific pattern fed by the general principles outlined above. Eric L. Uhlmann and Geoffrey L. Cohen found that when two job candidates were considered for a male-dominated job, respondents preferred the male candidate when he had more experience, citing the importance of experience, but when the male candidate had more education, they still preferred the male, citing the importance of education. In both cases, a female candidate, who was objectively very similar, lost out.¹³⁰

The same basic principles also drive another well-documented pattern, called leniency bias, in which objective rules are applied leniently to men but rigidly to women.¹³¹

My compensation was "adjusted" those years I worked less than goal due to young children. Several of my male colleagues have worked equivalently under goal for years with no adjustments made. Instead, I'm told that they have illness/family/other issues that we all must support them through.

One disparity I see is that male partners who experience a decline in business due to factors outside their control are protected from a reduction in their partnership share while the earnings of similarly situated women partners declines rapidly and dramatically.

129 See Bodenhausen & Wyler, *supra* note 107, at 279 ("The effects of activating a stereotype appear to override the effects of other information available about the target. . . . [S]tereotypes functioned as judgmental heuristics in interpreting the target's behavior and why it occurred. . ."); Lucy Johnston, *Resisting Change: Information-Seeking and Stereotype Change*, 29 EUR. J. SOC. PSYCHOL. 799, 799 (1996) (finding that stereotype-preservation bias affected information gathering and prevented modification of existing stereotypic beliefs). See also Greenhaus & Parasuraman, *supra* note 109, at 275-78 (discussing gender differences in performance attributions and how those attributions inform and reinforce supervisors' subsequent behavior toward their subordinates).

130 See, e.g., Eric Luis Uhlmann and Geoffrey L. Cohen, *Constructed Criteria: Redefining Merit to Justify Discrimination*, 16 PSYCHOL. SCI. 474 (2005) (discussing unfettered discretion in hiring criteria; criteria used to assess merit can be defined flexibly to favor certain groups).

131 See Marilyn Brewer, *In-Group Favoritism: The Subtle Side of Intergroup Favoritism*, in CODES OF CONDUCT: BEHAVIORAL RESEARCH INTO BUSINESS ETHICS 58-68 (David M. Messick & Ann E. Tenbrunsel, eds., 1996).

Most of the patterns above link back to a basic precept: men enjoy an assumption of competence in male-dominated environments, while women seem to not to “fit.”¹³² As a result, women may find they need to prove themselves over and over again. A 1988 report concluded that women lawyers felt they had to “work harder, do better and make fewer mistakes” than men and that they are “treated with a presumption of incompetence,” whereas male lawyers’ enjoy that presumption of competence that is “overcome only after numerous significant mistakes.”¹³³ Our survey suggested that women still may have to prove themselves over and over again. Examples:

I firmly believe that the achievements of women in the firm are routinely and systemically discounted and have confirmed that through an analysis of compensation statistics. We are called upon to contribute heavily in administrative time and commitment, to build big books of business and bill [lots of] hours to “earn” our place.

There are clearly discrepancies with male and female partners with equal or better numbers from an objective standpoint. If you want to appeal, you are appealing to the same seven people who made that decision.

It is very difficult with our firm to figure out their logic. There are several male partners whose numbers are significantly less than female equity partners but their compensation is dramatically higher.

A quite different type of bias emerges from the assumption that men are breadwinners while women are not. This leads to the unspoken sense that men with children “need” the money, whereas women with children don’t because they have men supporting them.

Perception with respect to whether the partner “needs” the income, which leads to less pay for women (particularly married women) than that for men (particularly men with children to support).

In setting a female partner’s compensation, it is my impression that the firm considers whether a woman will have children, take the allotted maternity leave, whether the woman will return to work, and whether the woman will return full- or part-time. All of these factors appear to negatively impact a woman’s compensation and equity partner track.

[T]he firm seems to use whatever factors justify paying men more and women less, particularly men with families.

For example, that a man, recently divorced, was now “effectively a single parent” and therefore needed a raise, while [everyone else was] being cut...

I am expecting in January. In December, met billing obligations, got de minimis bonus. Told the firm would be flexible with me in future. Never asked for flexibility. Just wanted fair bonus for past year.

Decisionmaking that is subjective and unchecked gives free rein to gender stereotyping. This stereotyping reflects the unspoken sense that men are a good fit with the skill sets one needs to succeed in the law, which—both historically and today—is identified both with men and with masculinity.¹³⁴

132 Madeline E. Heilman, *Sex Bias in Work Settings: The Lack of Fit Model*, 5 RESE.ORG. BEHAV. 269, 280 (1983).

133 AMERICAN BAR ASSOCIATION, REPORT TO THE HOUSE OF DELEGATES 3 (1988), <http://www.abanet.org/women/1988ReportToHouseOfDelegates.pdf>.

134 See Peter Glick et al., *What Mediates Sex Discrimination in Hiring Decisions*, 55 J. PERSONALITY & SOC. PSYCHOL. 178, 186 (1988); Peter Glick et al., *Images of Occupations: Components of Gender and Status in Occupational Stereotypes*, 32 SEX ROLES 565, 570 (1995); Peter Glick, *Trait-Based and Sex-Based Discrimination in Occupational Prestige, Occupational Salary, and Hiring*, 25 SEX ROLES 351, 365 (1991); Madeline E. Heilman, *supra* note 113, at 280. See also Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 GENDER & SOC’Y 139 (1990).

THE PERILS OF SELF-ADVOCACY FOR WOMEN

It can also be referred to as ‘law of the jungle’—those who fight for credit and are in the inner circle get origination credit.

The most common form of input into partner compensation decisions reported by our respondents were objective reports of billables, collections, originations, etc.: 94% of respondents reported this type of input. The next most common input was partners’ written self-advocacy, reported by 79% of the sample (69% of minority-partners respondents, and 77-79% of other respondents). Next most common were evaluations by heads of practice groups/departments, reported by 67% of respondents (54% of minority partners and 65% of other respondents),¹³⁵ followed by committee interviews (47% overall, 29% minority, 37% income, 52% equity),¹³⁶ then evaluations by other partners (43% overall, 34% minority, 40% majority partners – 40% income, and 44% equity partners), and). In a small percentage of firms, as noted above, each partner votes on the compensation of every other partner.

A number of respondents commented that they needed to fill out self-assessments but that, in practice, these seemed to play a limited role in compensation decisions.

They say self-assessments and meeting with partners are considered but they are not.

Partners are asked to fill out self-assessment, but it is unclear how much they matter.

Sometimes self-evaluations are combined with direct lobbying of the decision maker(s).

Partners write a self-evaluation, but my assessment is that they have no impact.

Numbers and individual “lobbying” of the firm chair seem to affect compensation.

Where self-assessments and personal lobbying are important, women may face another facet of the double bind. Women often encounter push-back for self-promotion. To quote one study, “Self-promotion may be instrumental for [establishing competence]...yet women who self-promote may suffer social reprisals for violating gender prescriptions to be modest.”¹³⁷ Women may be reluctant to self-promote for fear they will be seen as unfeminine and pushy. In short, “women may be stuck in a Catch-22 in which they are damned if they do self-promote, and damned if they do not.”¹³⁸

All this affects women partners. Most systems rely on partners to put their best case forward for increased compensation, either in writing or in person or both. In some firms, this self-advocacy is directed to the head of the firm. In others, it is directed to management or compensation committee members. In a few firms, it is directed to every one of one’s partners. This places many women partners in the situation of having to have one or many hallway conversations where they detail their accomplishments—and may well face one or more crucial partners who find this distasteful: “You certainly think highly of yourself, don’t you?” may be the reaction.

135 This difference is statistically significant (Pearson chi-square=3.47; p<0.05).

136 The difference between the proportion of majority and minority partners indicating committee interviews as an input for compensation decisions is statistically significant (Pearson chi-square = 3.95; p<0.05).

137 Rudman, *supra* note 84, at 629.

138 Laurie A. Rudman, *To Be or Not to Be (Self-Promoting), The Consequences of Counterstereotypical Impression Management, in POWER AND INFLUENCE IN ORGANIZATIONS* 290 (Roderich M. Kramer & Margaret A. Neale, eds., 1998).

DE-EQUITIZED PARTNERS

Some people want to make much more money at the cost of others' compensation.....[Others] think we have to have a stronger upper tier of compensation to attract laterals. The result, in my mind, is fewer people making equity partner and more existing partners being de-equitized.

Fourteen percent of the white-income-partner, 12% of minority-partner, and 3% percent of the white-equity partner respondents had been de-equitized.¹³⁹ In each group, the total number who responded to this question was small, so these numbers should be treated with caution: based on their self-identifications, 8 minority partners and 20 white partners said they had been de-equitized.¹⁴⁰

The most common factor identified by the equity partners was a low level of originations (63%), trailed distantly by low billable hours (25%). Among the income partners, the most common factor was a firm's decision to increase profits per partner (52%), trailed by low billable hours (30%) and low originations (26%).

For income partners who had been de-equitized, the most common factor was their firms' decision to increase profits per partner (52%), followed by low billable hours (30%) and low origination of new clients (26%).

Minority partners, half of whom were equity partners, were about as likely as non-minority income partners to have been de-equitized (12%). For them, the most common factor was a firm's decision to increase its profits per partner (63%), trailed distantly by low new client origination (38%) and low existing partner expansion (38%).

A small number of the comments reflected a decision by an individual partner to cut back her commitments due to child care responsibilities.

I had twins (so three children) and decided that I wanted to reduce the commitment [while they were young] to client development and marketing, which was expected of equity partners....I was told that I would be welcomed back as an equity partner in the future. I regained equity partner status when the girls were ten.

...I was a young equity partner and had just had twins (in addition to a six-year old), so my time/attention to client development and marketing was limited. I chose to be "de-equitized" as a way to balance the demands at the time. Ten years later, I returned to equity.

Note that, in both cases, firms match an "off-ramp" with an "on-ramp"—and gained a happy and productive partner as a result. Other respondents' stories lacked a happy ending.

[Why I was de-equitized] was never fully explained to me. The head office instructed our office to reduce the number of equity partners, and I was the one chosen (during my pregnancy, even though I had significant revenue generation and billable hours.)

Other personal reasons included one attorney who had undertaken a transgender transition, and other with medical issues.

Other respondents were de-equitized for work-related reasons.

139 Given that de-equitized partners, by definition, are no longer equity partners, respondents to this question who reported themselves equity partners most likely were de-equitized at a different firm.

140 Chi-square tests of statistical significance indicate a significant difference between income and equity partners' de-equitization (chi-square = 13.40; $p < 0.001$); however, due to the small number of cases (8 equity partners; 24 income partners), these results may not be reliable and must be interpreted with caution.

This was my decision, as a way to continue working but reduce the hours and the responsibility for training associates and feeding work to a specific group of associates. I can now focus on developing business and helping in firm management with less concern about billable hours.

A few respondents clearly felt burned by their firms' decisions to de-equitize them.

I was asked to handle a significant pro-bono [matter] and my "profits per partner" numbers weren't acceptable.

Several respondents tied decisions to de-equitize to their firms' desire to increase profits per partner, or profits per equity partner:

Our compensation system has been changing significantly in the last few years as profits per equity partner (versus profits per partner) is used by more firms to tout their finances to merger targets. It is becoming much harder to become an equity partner and I anticipate that a number of partners will be de-equitized this year. I had to fight like hell to avoid that last year.

Other scholarship has questioned whether de-equitization is a significant trend in law firm compensation. One recent study followed the attrition of 100,000 lawyers at 285 law firms. The report found that "[d]espite anecdotal evidence that partners were affected by layoffs through the "de-equitization" process . . . we find no evidence of large direct effect on partners. Even at firms with the largest layoffs, partner attrition rates have been at standard levels throughout the process."

WHERE TO GO FROM HERE?

*Compensation represents a tangible expression of a person's value. It defines lifestyle, position within a community, status among peers, friends and family, and measures the relative importance of the individual in an organization.*¹⁴¹

No wonder people care a lot about compensation. This report shows some strong racial and gender effects in current law firm compensation systems—yet changing these systems is not something one does lightly. Someone's ox is always gored, which can lead to serious inter-firm conflicts. According to Altman Weil consultant James D. Cotterman, generally "it will take two or three years to move from an existing system to a new one."¹⁴²

Nonetheless, a discussion of best practices is important for several reasons. First, this report provides to women some helpful guidance on how to choose their law firms: some firms have compensation systems that work well for women, while others have systems that present significant career difficulties for at least some of their women partners. Before women choose their law firms, they should find out some crucial facts about its compensation system.

A discussion of best practices also is important for law firms. The discussion below will highlight a striking conclusion: the aspects of law firms' compensation systems that open the door to hidden bias (against lawyers of color as well as women) also have been widely criticized by law firm management consultants. Failing to address the problems with compensation systems will have a disproportionate impact both on women and on lawyers of color, but good management will help everyone—and the firm's bottom line.¹⁴³

This section will first address the common claim that the current design of law firm compensation systems simply reflects economic reality. It then will proceed to a discussion of best practices.

ECONOMIC REALITY?

Our survey data appear to confirm that, while many firms say they consider a wide range of factors in setting compensation, as perceived by respondents to our survey, the key factors in most law firm compensation systems are origination and hours worked, measured in various ways.

Isn't this just economic reality? After all, if partners do not bring in work, no law firm can survive. Yet many consultants believe that existing compensation systems do not incentivize behavior that is in the best long-term interest of firms.

Management guru David Maister comes out swinging. "Many law firms have discovered you can make money if you work everybody very, very hard and really slash your costs and don't care about how people—partners, associates, or staff—feel about their work lives. 'Let's succeed by working more hours and ever-decreasing amount of support' is not the most sophisticated piece of business thinking I have ever heard," he notes with irony.

Not surprisingly, others take a softer line. Notes the Vice President and General Counsel of Hildebrandt Baker Robbins:

*[W]hen Partner A needs help from another specialist, Partner B will either expressly or implicitly refuse to give his best service to Partner A's client because Partner A will collect the origination fee forever. Partner B figures, "I'm better off finding my own client, rather than working on Howard's client."*¹⁴⁴

¹⁴¹ James D. Cotterman, *Examining Your Compensation System*, in REPORT TO LEGAL MANAGEMENT 1, 4 (April 2003).

¹⁴² Cotterman, *supra* note 16, at 10.

¹⁴³ See generally LOTTE BAILYN, *BREAKING THE MOLD: WOMEN, MEN AND TIME IN THE NEW CORPORATE WORLD* (1993).

¹⁴⁴ Brian W. Bell, *Compensation: A Law Firm's Pandora's Box*, ILL. LEGAL TIMES, Sept. 1996 (quoting Joel F. Henning, Senior Vice President and General Counsel of Hildebrandt Baker Robbins Inc.)

Joel A. Rose, a law firm management consultant, highlights the perverse incentives that can plague law firm compensation systems. “Tensions can develop when the direction of the firm’s compensation system is unclear or only receives lip service.” He cites several examples:

- Where the firm verbally encourages partners to delegate work to others, but “overcompensates for revenue collected from partners’ personal production.”
- When the firm verbally encourages partners “to work together to develop business from existing and potential clients but rewards individuals at the expense of joint origination.”
- When a firm verbally encourages partners “to perform consequential nonbillable work to progress the firm (e.g. marketing, enhancing the firm’s image, training, management of the firm and its substantive practice areas, etc.) but rewards those activities marginally in favor of billable hours/revenue from personal production.”¹⁴⁵

Compensation systems that focus on origination also give partners incentives to bring in clients “regardless of client quality, not only in terms of putting the firm at greater risk of claims, but also at greater odds of writing off fees. Since D gets a share as originator without doing the work, the write-off falls disproportionately on those doing the work.” Peter J. Winders, a partner with Carlton Fields in Florida, is particularly harsh in his criticism of origination credit:

*Make a rule that Brown, the corporate lawyer, cannot dabble in litigation. Thus, Brown is theoretically forbidden from handling the litigation, but if he goes ahead and does it anyway, he is rewarded for doing so. Unworthy clients are to be avoided, but compensation is paid for originating one. Crime does in fact pay, but one person is appointed as cop to keep him from doing it. And of course since the cop work is underpaid (it is non-billable, and not provided for in the system) there is a temptation to do it only sporadically. It is like hoping to stop the importation of drugs from Columbia by decreasing penalties and manning law enforcement with unpaid volunteers.*¹⁴⁶

Winders also highlights the perverse incentives that stem from a focus on partners’ billable hours. Then each partner “is tempted to favor ‘his own’ clients, so long as he has plenty to do...[over] stepchilding” his partners’ clients’ work, even if that is of greater long-term value to the firm.

Consultants warn that an excessive focus on long work hours incentivizes behavior harmful both to clients and to law firms. When firms place too much of an emphasis on partners’ billable hours, partners lack sufficient motivation to “develop and delegate client work to others within and outside their area of expertise,” notes Rose.¹⁴⁷ He continues, “Most firms that place a premium on revenue from partners’ personal production find that partners tend to hold their client relationships too close to their vests’ they frequently hoard client work rather than spread it around to other partners...; partners perform work that could be performed by associates...; partners do billable work when their better use for the law firm is to generate additional business from existing and potential clients; and lawyers may perform work outside their princip[al] areas of expertise that others in the firm could perform more effectively and efficiently.”¹⁴⁸ Another consultant, Michael J. Anderson, notes “liability risks when partners perform work in areas in which they are not proficient,”¹⁴⁹ while another author has

¹⁴⁵ Rose, *supra* note 49, at 5.

¹⁴⁶ Peter J. Winders, *The Ideal Law Firm Compensation System*, 16 PROF. LAW. 1, 14 (2005); See generally S. Kerr, *On the Folly of Rewarding A, While Hoping for B*, 18 ACAD. MGMT. J. 769, 769 (1975) (discussing reward systems that reward discouraged behaviors, while failing to reward desired behaviors).

¹⁴⁷ Rose, *supra* note 49, at 5.

¹⁴⁸ *Id.*

¹⁴⁹ Michael J. Anderson, *Partner Compensation Systems in Professional Service Firms Part I*, EDGE INTERNATIONAL, <http://www.edge.ai/Edge-International-1057905.html>.

argued that the structural conflicts of interests set up by current compensation systems place lawyers at risk of violating the American Bar Association Model Rules of Professional Conduct.¹⁵⁰

Our respondents reported a variety of perverse incentives at work in their firms. One noted that a high billable hours requirement can lead to padding:

The high billable hour requirement encourages padding...It's a system with few realistic incentives other than to work yourself silly or lie about it.

More common were reports of client hoarding:

Several senior partners have retired in the past five years and the work simply went away—no one had planned for succession, in my view because the partners were busy hoarding credit to advance their careers, and not to look at either the client's interests or the law firm's. Dysfunctional compensation systems can really cripple a firm.

After seeing the two systems at work, it seems to be that lock-step is much fairer to women. There is substantially less hoarding of clients, exclusion from contacts, elbowing women out once the client gets in the door (after we're trotted out for appearance of diversity).

I have expressed my dissatisfaction with the compensation system, which I believe encourages partners to hoard work, not to develop teams and not to institutionalize clients.

Other respondents identified other behaviors not in the long-term interest of their firms:

As a minority female, I am clearly in an outer circle, and at the mercy of others. Efforts have been made to thwart my business development in my respective practice group. It is very frustrating.

[The b]illing partner is said not to matter at all, except that there is a trend, since this is a multi-office firm, of writing off time of lawyers in other offices and otherwise gaming the system, and this is the power of the billing partner. So while the "status" is not said to be important, the position is important nonetheless.

Some consultants fault compensation systems that focus on origination and personal production for focusing on revenue rather than the bottom line. Such systems stress cash flow over cost controls, and ignore the need to incentivize the investments needed to ensure long-term viability of a business organization.¹⁵¹ The lack on progress on valuing the kinds of human capital management activities that are vital to the long-term vitality of a business organization emerges clearly in our survey. Many firms now operate on a modified "eat what you kill" system, which in its pure form, notes Anderson, results in

a total lack of responsibility for managing the entity. Because no one gets recognition for non-billable time spent there is often a void when it comes to firm management, training of juniors, firm marketing or human resources....The system creates no need for collegiality other than as a method for partners to market other partners for work for their clients.¹⁵²

150 Edward A. Bernstein, *Structural Conflicts of Interest: How A Law Firm's Compensation System Affects Its Ability To Serve Clients*, 2003 U. ILL. L. REV. 1261 (2003) (arguing that the shift away from lockstep sets up incentives that can cause partners to give poor legal advice.).

151 John W. Olmstead, *Cutting the Pie, Determining Partner Compensation*, OLMSTEAD & ASSOCIATES - LEGAL MANAGEMENT CONSULTANTS, <http://www.olmsteadassoc.com/Resource/Articles/Cutting.html> ("Compensation systems should do more than simply allocate the pie – they should reinforce the behaviors and efforts that the firm seeks from its attorneys. Many firms are discovering that desired behaviors and results must go beyond short term fee production and must include contributions in areas such as marketing, mentoring, firm management, etc. to ensure the long term viability of the firm").

152 Michael J. Anderson, *Partner Compensation Systems in Professional Service Firms Part II*, EDGE INTERNATIONAL, <http://www.edge.ai/Edge-International-1057907.html>.

As noted above, even law firm and practice group management are rated far below the individual profit-center factors. Other forms of institutional investment play little, if any, role in law firm compensation.

“The most advanced method is to look at how groups are performing,” says Cotterman. “You need some element of compensation that recognizes group success and performance. You want to make sure compensation rewards collaboration.” Our data indicate that this trend is still in the birthing stage. Some comments signaled it, as when one respondent reported that “associate profit of the practice group/office” was part of the compensation formula. Yet only 4% of income partners, and 11% of equity partners, felt that teamwork was very important in determining compensation. More progress is evident if one widens the scope of inquiry: 32% of income partners, and 46% of equity partners, felt that teamwork was “important” or “very important.” Yet both figures trailed measures reflective of hours worked and origination by a very wide margin. Even more striking, from an economic standpoint, is how rarely “effective leveraging of associates” plays a role in law firm compensation. This is, of course, vital both from the viewpoint of the firm, to enhance profitability, and from the viewpoint of clients, to ensure cost-effectiveness. Yet rewarding leveraging remains rare: it is virtually never a major factor in setting compensation, and was listed as “important” or “very important” by fewer than half of our respondents.

A bit more progress is evident in redesigning origination credits to incentivize teamwork. Roughly one-third of respondents noted that cross-selling and/or expanding work for an existing client is a very important factor. This trend is even stronger if we widen the inquiry: 84% of equity partners, and roughly three-fourths (77%) of income partners, listed these activities as either “important” or “very important” in the setting of compensation. It thus seems that law firms are well on their way to encouraging teamwork with respect to *gaining* clients, but that they have a long way to go in incentivizing teamwork with respect to *servicing* clients.

Another problem with the design of law firm compensation systems is the undervaluing of long-term investments. Peter Winders highlights the perverse incentives that arise when “nobody is paid for minding the store.” Partners are incentivized to “avoid committee assignments, recruiting interviews and other time consuming duties that benefit the firm because they do not benefit him monetarily. He can then claim he brings in more money than anybody, ignoring, as the formula does, the fact that the other duties are essential if the firm is to thrive.”¹⁵³

One point that does not appear in the consultant literature, but is suggested by our survey, is that the attrition of women partners, which is higher than that of male partners, is sometimes linked with the perception of gender bias in compensation. Said one respondent:

A key motivating factor in my decision to leave the firm was that I learned that my base salary and bonus were lower than those of a male peer (same law school graduating class, similar prior work experience, similar expertise, same practice group) despite the fact that my work product was consistently in demand and I was consistently busy, whereas he had trouble maintaining a solid workload and many partners expressed concerns about the quality of his work.

Of course, when a partner leaves, she takes her book of business with her. This is a cost of current compensation practices at some firms that has, to our knowledge, never been noted in the literature.

If the long-term economic viability of law firms does not explain contemporary law firm compensation systems, what *does* explain them? We posed that question to James J. Sandman. He first addressed the over-valuation of hours worked. “Rainmakers make the argument all the time” ‘Measuring me in terms of the hours I work doesn’t make sense—that’s not the best use of my time.’ [The reason partners’ billable hours survives] has to do with lawyers’ skill sets. Rainmaking skills are not equally distributed across the lawyer population. Other partners can generate revenue for the firm more easily by working a lot of hours. The many risk-averse partners who do not want to gamble their compensation on their business-generating success feel that maximizing their billable hours as service partners gives them more control over and certainty about their compensation.

¹⁵³ Winders, *supra* note 127, at 14.

The result, Sandman continued, is that:

certain things the firm needs in the long term are not valued. The trend in partner compensation is toward trying to measure the individual partner's economic contribution to the firm. This tends to devalue less tangible but nevertheless important attributes that are not easily measured. Teamwork? A partner who cites that as his or her best argument for compensation would be considered a lame advocate.

In summary, many commentators feel that current compensation systems over-value individual cash flow measures and under-value institutional investment measures. Our data indicate some movement away from compensation systems that create incentives mismatched with firms' long-term strategic goals. Yet the key features that have been widely criticized by consultants as creative perverse incentives remain robust in the law firms of our respondents.

BEST PRACTICES

This study suggests that many law firms could benefit from changes to their compensation systems. Such changes are not easy: abrupt and controversial changes to a firm's compensation system can easily lead to the firm to break up. Yet gradual progress towards fairer and more effective compensation practices is, in the opinion of many of our respondents, clearly needed. Steps toward this type of compensation practice include:

1. *Improving transparency*
2. *Benchmarking*
3. *Improving diversity on compensation committees and introduce other checks on bias and in-group favoritism*
4. *Re-examining the billable hours threshold*
5. *Redesigning origination credit*
6. *Ensuring a diverse committee handles disputes over reward allocation, particularly origination credit*
7. *Taking pro-active steps to check the hidden bias that will otherwise surely emerge in the context of compensation systems*
8. *Developing a process that does not penalize women for self-advocacy*
9. *Conforming to standard business practice by linking compensation to individuals' contributions to the long-term viability of the firm*
10. *Designing a compensation system that does not penalize part-time partners*

1. Improving Transparency

The path to becoming a billing partner is varied, with inconsistencies, and there is no official guidance as to how one becomes a billing partner. Sometimes it is just who gets the file open first; sometimes it is the partner with the most political clout. We have partners who are named as billing partners for clients who never do any billable work for those clients....There is no consistency and no one to turn to for guidance; there are no rules. Yet this is [important] to the overall determination of partner compensation.

A system that is not clearly and formally explained to everyone means that, to gain the knowledge necessary to understand the system, one needs to rely on informal networks and relationships with people in power. This situation will disadvantage out-groups, which in most law firms means that it will disadvantage disproportionate numbers of women and people of

color. Informal, opaque systems also will disadvantage many white men who are too shy or introverted to know the right people, and the ropes.

A best practice is to write a memo that explains clearly how a firm's compensation system works, and provides for each new partner an introductory session with an existing partner-mentor to explain the system and to answer questions. Of course, the partner-mentor needs to be someone who actually understands the compensation system: as our survey indicates, many partners do not.

When the compensation system is changed, this needs to be clearly explained. This probably will be best handled in small meetings: in large meetings, people will be reluctant to ask questions, whereas one-on-one meetings are likely to yield inconsistency in the information given.¹⁵⁴

A more basic point is that firms need to understand what factors *actually* play a major role in a firm's compensation—to talk about realities rather than aspirations. Gaining this information often will require a statistical analysis, to identify what factors are actually influencing compensation, as opposed to what factors are announced to have an influence. This kind of statistical analysis typically will require an outside consultant—but this is a type of analysis familiar to consultants who specialize in compensation systems.

A final point is that firms need to understand whether those factors that play an important role in elevation to partnership are different from those factors that play an important role in the setting of partner compensation. If different factors have a major influence on the setting of partner compensation than on the elevation to partnership, firms need to inform new partners of this fact. Again, making this kind of information process more formal can avoid in-group favoritism—where “those in the know” succeed, while those who are not in the know tend to fail. Allowing in-group favoritism to flourish will disadvantage not only women, but also people of color, lesbian and gay lawyers, and perhaps others.

2. Benchmarking

The system is effectively feudal. Compensation is centralized with a very small group of partners. Because voting is weighted, the firm chair knows exactly how many votes he needs to control the firm and he pays the top tier enough to buy their loyalty. The dominant factor is origination credit, but there are virtually no rules or guidelines and so credit is a free for all, with the strongest usually winning. Sadly, the partners compete as much with each other within the firm as with those outside the firm. The women partners approached firm management five years ago and asked the firm to research best practices and do a benchmarking survey on compensation systems....These efforts were entirely rebuffed.

A first step is to establish baseline information on the percentage of revenues/profits generated by, and credited to, women lawyers, and lawyers of color.¹⁵⁵ The second, and perhaps most important step is to implement regular monitoring and analysis of the impact of a given compensation system on out-groups, including women and people of color.¹⁵⁶

This type of benchmarking is important in order to control the kind of biases that occur even in organizations where good intentions abound. A recent study of a business with an elaborate performance evaluation process, and a strong commitment to merit-based compensation systems, found that women and people of color nonetheless got lower raises when supervisors took the evaluations and awarded raises, without a process to check for bias at that step of the process.¹⁵⁷

154 Email from James J. Sandman to Joan C. Williams, April 4, 2010.

155 NATIONAL ASSOCIATION OF WOMEN LAWYERS, ACTIONS FOR ADVANCING WOMEN INTO LAW FIRM LEADERSHIP: REPORT OF THE NAWL NATIONAL LEADERSHIP SUMMIT 20 (July 2008) (hereinafter NAWL SUMMIT REPORT 2008).

156 Bielby, *supra* note 29, at 126 (2000) (detailing the need for such monitoring).

157 Emilio J. Castilla, *Gender, Race, and Meritocracy in Organization Careers*, 113 AM. J. OF SOC. 1479, 1482 (2008).

To quote a well-known phrase, what gets measured gets done.¹⁵⁸ To put this differently, “If you’re not keeping score, you’re only practicing.”¹⁵⁹ If systematic differentials in compensation by race and/or sex emerge, further steps can be initiated. Given the wide range in different types of compensation systems, probably the best advice is to call in a consultant to analyze where the problems arise, and how best to address them.

3. Improving diversity on compensation committees and introduce other checks on bias and in-group favoritism

In our respondents’ firms, the committees in charge of compensation were remarkably white, and remarkably male. This creates the perfect conditions for in-group favoritism that systematically disadvantages women, and people of color of both sexes. An important point is that if the relevant committee has one woman or person of color, this creates the risk of the unhealthy dynamics that surround tokenism. For example, when only one woman is on an important committee, her sex become so salient that she may feel the need to judge women more harshly to prove that she is not favoring women. Or she may feel that every time she opens her mouth her comments are taken as representing all women. A variety of dynamics can emerge.¹⁶⁰ In short, heterogeneous committees can provide a break on bias.

The fact that many committees in charge of compensation are elected may contribute to those committees’ lack of diversity. In this context, it is worth noting that many respondents said that—although the committee in charge of compensation, in theory, is elected—in practice the election typically rubber-stamped candidates that have already been chosen by the powers that be.¹⁶¹ One useful approach may be for the management committee to propose a diverse slate of candidates for the compensation committee (if that firm has a separate compensation committee).

A final practice that exists in some firms can help mute in-group favoritism in the operation of compensation committees: the rule that no partner’s compensation can rise more than 10% while he or she is serving on the comp committee.¹⁶² Said Barbara Caufield, equity partner at Dewey & LeBoeuf, “We used to do this. I don’t know why we ever stopped. It was very effective in ensuring that nobody stayed too long on the compensation committee!”

4. Re-examining the billable hours threshold

Billable hours inevitably play a significant role in the level of partner compensation. Yet two different models exist for taking billable hours into account. One requires all partners to meet a certain billable-hours threshold in order to receive all the credit available for the billable-hours component of attorney compensation, on the theory that billable hours are only one type of contribution partners need to make for firms to flourish. The other system rewards the attorneys who work the most hours, signaling that billing hours is a critical contribution to a firm’s long-term financial viability.

The threshold approach to billable hours was used in only a small minority of our respondents’ firms. The predominant system presumably was one in which attorneys who work the longest hours tend to receive increased compensation even if, for example, a partner could be increasing a firm’s profitability more by leveraging associates better, decreasing unwanted attrition among valued attorneys, or moving from lower- to higher-margin practice areas. Because many more men than women have two-person careers in which they can rely on their partner to take care of all matters outside of work, a most-hours-wins systems disproportionately disadvantages women partners. In addition, in the opinion of many law firm consultants, systems focused heavily on billable ours not only are not economically justified; they introduce perverse incentives, most notably the hoarding the work and inefficiencies that are detrimental to clients’ interests.

158 Maureen Giovannini, *What Gets Measured Gets Done: Achieving Results Through Diversity and Inclusion*, 27 J. FOR QUALITY AND PARTICIPATION 21 (2004).

159 Oral Communication from James Potter, Senior Vice President, General Counsel and Secretary of Del Monte Foods and Chair of the Advisory Board to Joan C. Williams, Project for Attorney Retention (Spring 2009 and thereafter).

160 KANTER, *supra* note 25.

161 Personal communication from Cathy Salvatore, Director of Career Development, to Joan C. Williams (March 5, 2010).

162 Personal Communication from Barbara Caufield, Partner, Dewey & LeBoeuf, to Joan C. Williams (March 18, 2010).

5. *Redesigning origination credit*

Sixty percent of firms in the survey do not formally award origination credit. Yet even in firms without formal origination credit, origination often plays a central role in the setting of law firm compensation. Old-fashioned origination credit could usefully be redesigned in a number of ways:

- *Origination credit should not be inheritable.* If the purpose of origination credit is to incentivize lawyers to bring in new clients, it is hard to discern the rationale for allowing the partner who “owns” the client to pass on origination credit to whomever he or she wants. This practice has very negative effects both on diversity and on the perceived fairness of a firm’s compensation system.
- *Reward teams, not individuals.* The point of a law firm is to build teams of lawyers that, together, can serve a client’s interests better than a sole practitioner could. As noted above, consultants often advocate systems that recognize a variety of contributions to a given client’s work. One step in this direction is the common practice of dividing credit among three or more attorneys: the one who brought in the work, the billing partner, the partner who manages the client relationship, and the partners who actually do the work. Obviously, if the weight given to origination credit swamps the other factors considered, the resulting system will differ little from old-fashioned origination credit. Another alternative is to shift away from origination credit, towards an analysis of whose work currently binds a given client to the firm. Less than one in five majority equity partners and only roughly one in six income- and minority equity partners reported this kind of system when asked what factors were considered “very important” in setting compensation. Yet a majority of firms appear to already be engaged in this calculation: 66% of majority equity partners, 63% of minority-equity partners, 60% of majority income partners and 45% of minority-income partners said this factor was either “important” or “very important.”
- *Origination credit by matter, not by client.* A complementary practice is to reward origination credit according to who brings in a given matter, rather than who first introduced the client to the firm. Along with that, suggest that expansion of work does not go to first contact, but to the expander and also spread among the other secondary roles – important because women and minorities are more likely to be expanders than first contacts. Finally, suggest the sunset and then acknowledge how difficult change is.
- *Sunsets.* Some firms have a three-year sunset on origination credit. “At that point,” said James G. Cotterman of Altman Weil, “either new business credit ceases or is reduced. Other compensation credits, such as billing attorney credit and working attorney credit, would remain in most systems and palliate the abrupt reduction in new business credit.”¹⁶³ Sunsets recognize the importance of origination, while also ensuring that different lawyers have relationships with a given client, to ensure that the client stays with the firm even if a single attorney on the team serving the client leaves.
- *Pitch credit.* A pervasive complaint by both women and people of color is that they are invited on pitches in order to appeal to in-house departments intent on diversity—but then get no origination credit. This could be eliminated by a clearly stated and widely disseminated policy to the effect that, if a woman or person of color is invited on a client pitch, that attorney needs to be given part of any origination credit that results from the pitch—and part of the work.

163 Alan R. Olson, *How Law Firms Use Formulaic systems to Reward Business Development*, in OF COUNSEL (May 2003).

6. Ensuring a diverse committee handles disputes over reward allocation, particularly origination credit

Not only the system of reward allocation, but also the process for settling disputes, can make a tremendous difference for women and people of color. This study shows clearly that the current system, in which origination credit contests are left to be negotiated privately between the contesting partners is having a highly negative effect on many women and attorneys of color. This is precisely the kind of context—out of the public eye, with no oversight whatsoever—in which hidden bias flourishes.

The National Association of Women Lawyers recommends that firms establish “a powerful and diverse oversight committee” charged with resolving disputes over origination credit.¹⁶⁴

7. Taking pro-active steps to check the hidden bias that will otherwise surely emerge in the context of compensation systems

The first step is to look very carefully at law firm compensation systems that are totally subjective. While these may work well in some small firms, they present very serious risks of gender and racial bias. This also have serious drawbacks from a business standpoint, which is why, as one consulting firms notes delicately, “Altman Weil’s consultants find it difficult to justify totally subjective systems.¹⁶⁵ If a firm has a totally subjective system, benchmarking to assess whether it is creating racial and gender disparities is even more important.

Even where a firm’s system is not totally subjective, subjectivity is an inevitable part of most firms’ compensation systems. If biases are unmonitored and unchecked, both women and attorneys of color often will find themselves having to “try twice as hard” to make half as much. This occurs, as noted above, because the successes of women (and the literature is much the same with respect to people of color¹⁶⁶) will tend to be overlooked or attributed to quirks of fate, while evidence of their failures and limitations will tend to be noticed, remembered, and interpreted as evidence of lack of merit. Again, this will happen even when the individuals in a given firm have no hostility or ill-will towards women or people of color, and believe in good faith that they are sincerely committed to advancing women and attorneys of color.¹⁶⁷

Luckily, employers can institute practices that control for cognitive bias.¹⁶⁸ The goal is not to eliminate bias, which is impossible, but to teach people what assumptions they need to double-check. An efficient way to accomplish this in a law firm setting is to require training in the context of performance evaluation, given each year, to introduce the four basic patterns of gender stereotyping:

- Prove it again!: When women have to prove their competence over and over again in order to be judged as competent as men.
- Double bind: When women face social pressure to play a limited number of traditionally feminine roles—and encounter pushback if they don’t. Research shows that, too often, women who conform to traditional roles are liked but not respected, while women who do not conform are respected but not liked. This is important for all attorneys because they all weigh in on others’ advancement and compensation (be it of associates or partners).

¹⁶⁴ NAWL SUMMIT REPORT 2008, *supra* note 136, at 20.

¹⁶⁵ Alan R. Olson, *Subjective Law Firm Compensation Systems, Marketing and Origination*, in REPORT TO LEGAL MANAGEMENT (April 2003).

¹⁶⁶ See, e.g., G. G. Hodson, John F. Dovidio & S.L. Gaertner, *Processes in Racial Discrimination: Differential Weighting of Conflicting Information*, 28 PERSONALITY AND SOCIAL PSYCHOL. BULL. 460 (2002).

¹⁶⁷ See Fiske & Taylor, *supra* note 104, at 274-79 (1984); G. V. Bodenhausen & C.N. MacRae, *The Self-Regulation of Intergroup Perception: Mechanisms and Consequences of Stereotype Suppression*, in STEREOTYPES AND STEREOTYPING 227-253 (C.N. MacRae, C. Stangor & M. Hewstone eds., 1996).

¹⁶⁸ Barbara F. Reskin, *Employment Discrimination and Its Remedies*, in SOURCEBOOK ON LABOR MARKET RESEARCH (Ivar Berg & Arne Kalleberg eds., 2001) (employers can control cognitive bias); James N. Baron & Jeffrey Pfeffer, *The Social Psychology of Organizations and Inequality*, 57 SOCIAL PSYCHOL. Q. 190 (1994); Bielby, *supra* note 29, at 126 (detailing the need for such monitoring).

- Maternal wall: When motherhood triggers strong assumptions that women are no longer committed or competent.
- Gender wars: When gender bias against women turns into conflicts among the women.

The committee that decides compensation needs additional training to ensure that they do not penalize women for self-promotion, do not discount women's successes, do not award men more compensation "because they have a family to support" or award women less compensation "because they have someone to support them."

Many programs and consultants are available to provide this training. Another important resource is the American Bar Association's Commission on Women in the Profession's *Fair Measure: Toward Effective Attorney Evaluations*.¹⁶⁹

In addition, studies show that procedures that require the formal articulation of reasons for a decision provides a check on bias, because then people stop and self-check to examine their assumption.¹⁷⁰ This recommendation poses a challenge for compensation systems that traditionally have operated in the closet. Unfortunately, that kind of decisionmaking opens the door wide to unexamined bias, particularly in an environment in which there are relatively few women, people of color or other diverse attorneys.

The literature also stresses that putting someone in charge of diversity who has access to leadership is the single most effective way to achieve diversity.¹⁷¹

A minimum first step is to introduce a formal metric, formally disseminated, that reports the breakdown of women and people of color in tiers of compensation. This will no doubt be a controversial proposal but, again, "if you're not keeping score, you're only practicing."

8. Developing a process that does not penalize women for self-advocacy

In firms with effective performance evaluation training, partners will soon learn that penalizing women for self-promotion that is seen as unobjectionable by men is gender bias. Firms that fail to do so, at the very least need to make partners aware that their instincts may be to find distasteful in women, the kind of self-promotion they take for granted in men. Again, implicit bias *will inevitably be a factor affecting law firm compensation of women and attorneys of color unless and until the firm makes its partners aware of the need to recognize the kinds of patterns that commonly arise, and to self-correct when they do so.*

As noted above, women are often sanctioned for self-advocacy, particularly by other women. One way to address this is a memo that delineates what is expected and encouraged in self-advocacy memos and conversations, outlining the type of information required and describing what is inappropriate self-advocacy. It is important to have female as well as male partners discuss this, given that studies show that women actually are more likely than men to sanction a woman for self-promotion.¹⁷² The key is to have the partners who are deciding compensation ask: what is my reaction—and would my reaction be the same if partner ABC (a male partner at the woman partner's level, not just an anonymous man) had written the same thing?

169 ABA COMMISSION ON WOMEN, *FAIR MEASURE: TOWARD EFFECTIVE ATTORNEY EVALUATIONS* (2nd ed. 2008)(written by Joan C. Williams and Consuela Pinto of the Project for Attorney Retention).

170 Alexandra Kalev, Frank Dobbin & Erin Kelly, *Best Practices or Best Guesses? Assessing the Effectiveness of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOC. REV. 589 (2006).

171 *Id.*

172 Laurie Rudman, *Self-Promotion as a Risk Factor for Women: The Costs and Benefits of Counter-stereotypical Impression Management*, 74 J. PERSONALITY AND SOC. PSYCHOL. 629, 629 (1998).

9. Conforming to standard business practice by linking compensation to individuals' contributions to the long-term viability of the firm

An important point, rarely mentioned, is the current system's odd focus on *current cash flow*. To state the obvious, cash flow differs from the bottom line, which is a measure of the difference between revenue flow and expenses. Consultants sometimes circle around this, as when they note that partners in practice areas with higher profit margins should be rewarded financially.¹⁷³ To quote the Brian W. Bell of Hildebrandt Baker Robbins:

*Very often celebrity lawyers...will...say 'They're not paying me enough money. I brought in \$2 million worth of business.' I'll look into it and I'll often find that it costs \$3 million to bring in that \$2 million worth of business.*¹⁷⁴

He continued: "If you measure hours, receipts and originations, that doesn't take into account whether the work is profitable or not."¹⁷⁵

Of course, cash flow is easier to measure than the bottom line. A particular challenge faced by law firms is that those who manage them typically have had no training in how to manage a large business organization—nor do most law firm partners have an appreciation for what they did not learn by choosing not to go to business school. The lack of sophisticated management in the part feeds skepticism about the potential for sophisticated management in the future. The result, notes David Maister, is an absence of trust that leads to "extreme short-term orientations of many law firms. If partners don't believe the firm will remember or value contributions to future success, why would they make any investment that they may ultimately not get credit for?"¹⁷⁶

The basic principle is easy to articulate: "Compensation theory generally says that you ought to be rewarding people for the behaviors that you are trying to elicit," notes Joel F. Henning, the Senior Vice President and General Counsel of Hildebrandt Baker Robbins.¹⁷⁷ The typical approach in most business settings is to link compensation to the individual's annual goals, which in turn reflect the organization's strategic plan. One survey respondent noted that her firm had instituted such a system outside of the compensation context: "Individual must meet the specific written elevation criteria and reflect/support standards set forth in the firm's strategic plan." Other comments offer intriguing hints of systems designed to reward teamwork when asked what factors into compensation: "Cross-office fertilization (ability to generate work for lawyers in other offices); ability to generate marketing and billable opportunities for lawyers in other practice groups."

Law firms' failure to link partners' compensation to lawyers' contributions to the long-term viability of the firm has a disproportionate impact on women, for several reasons. Most important, women lawyers often are under significant informal pressures to make such contributions, for example through service on committees related to recruitment, associate development and diversity. In addition, due to women's history of gender discrimination in the profession, women may feel a greater obligation than do men to mentor women, and to help other women develop their careers—contributions that help develop a firm's human capital, but rarely play a significant role when partner compensation is set.

A straightforward fix is for firms to reward all of the different kinds of contributions partners are asked to make to the firm, both through mentoring and other programs, and through committee work, on the theory that if the firm requires partners to make this type of contribution, it is important enough to the long-term future of the firm be recognized when compensation is set—and that if a given type of contribution is not important enough to recognize when compensation is set, perhaps it is not important enough to be required.

173 Joel A. Rose, *Dealing with Tensions Surrounding Partner Compensation*, JOEL A. ROSE & ASSOCIATES, INC., MANAGEMENT CONSULTANTS TO LAW OFFICES, http://www.joelarose.com/articles/dealing_with_tensions.html.

174 Bell, *supra* note 125 (quoting Joel F. Henning, Senior Vice President and General Counsel of Hildebrandt Baker Robbins Inc.)

175 *Id.*

176 David Maister, *Are Law Firms Manageable?*, THE AM. LAW. (April 2006).

177 Bell, *supra* note 125 (quoting Joel F. Henning, Senior Vice President and General Counsel of Hildebrandt Baker Robbins Inc.)

How these factors are taken into account also matters. For example, we suspect that most firms represented by lawyers in our survey *say* that they take into account, when setting compensation, partners' contributions to diversity, associate development, etc. Yet many of our respondents were notably skeptical; evidently many felt that their firms gave lip service, but did not actually, take such activities into account to a significant extent when compensation was set. This finding may indicate that firms need to communicate better now they actually *do* take these types of contributions into account. Alternatively, firms may need to set up more formal systems than they currently have; it may be that existing informal recognition ("it's in the mix; we just don't quantify it") translate good intentions into few results.

More sweeping than a mechanism for adding additional factors into the mix in setting law firm compensation is to shift to the type of compensation systems adopted long ago. For example, Ernst & Young's compensation system weighs partners in four different arenas: quality, people, markets, and operational excellence.

Quality is, quite simply, the quality of the partners' work—something rarely considered explicitly in law firm compensation systems. At Ernst & Young, detailed assessments of quality are performed for each major "engagement," as client matters are called.

"People" concerns whether a partner is "actively involved in attracting growing and training our people," said Cathy Salvatore, Director of Career Development, "because our people are the only thing we have." Partners can choose how they will contribute to human capital development of others in the firm: "I tell them, these are the people who are going to pay for your retirement," Salvatore said. Some partners choose to focus on recruiting, either on-campus or experienced hire recruiting. Individuals are given responsibility for recruiting from their alma maters. "They own it. It is their responsibility to see that we get what we need, and to make sure the relevant professors are happy." Other partners focus on inclusiveness and diversity, or serve as Service Program leaders, teaching in-house training programs, and recruiting others to do so. Also included is how a partner interacts with his or her team. "How they are going to engage with people on the job? It is very easy for a partner to never be on the scene—to come in at beginning, at the end, and other than that only if there's a problem. Younger people love to see the partners," Salvatore noted. But a partner who spent all his or her time with their engagement team, who was totally invisible at office events and "was not driving anything cross functionally" would be penalized under the "People" category. The focus is on strategic development: "how are you contributing to what E & Y needs to do to make sure we have the strongest workforce, period—across all accounts not just your account." A single respondent reported a law-firm system that reflects some of these concerns: her firm's partner compensation took account of associate evaluations of partners.

"Markets" includes revenue generated, but goes far beyond that. It measures the extent to which a partner engaged in strategic development of new markets—not only for him or herself but also for the firm as a whole. Markets also measures whether the partner has brought in work, and worked strategically to penetrate new markets or develop new products. One consideration is "account planning—how you prepare to get your teams ready to deliver whatever service has been contracted for," Salvatore noted. It also includes strategic work to penetrate a new market: "Who are we going to go after and how are we going to go after them."

Operational excellence focuses on whether work is performed, and revenues are collected, efficiently and in a timely manner. So if a partner has "a lot of days of revenue sitting uncollected," or has a significant number of write-offs, this would show up in the operational excellence metric. Also considered is "fee-sharing": efficient deployment of the person with the relevant skill set who is closest to the geographical locale of the engagement. This discourages partners from using people they know over and over again because it may be more cost-efficient to use someone closer to the client," said Salvatore.

A straightforward approach would be to adopt this kind of system: law firms who inquire will find that many of their larger clients have a similar system. Firms that feel this is too large a leap, could adapt their current systems by awarding points for a variety of institutional investments (from management to developing the firm's human capital). A third alternative is to set aside a specific percentage of firm profits to be distributed based on institutional investments.

10. Designing a compensation system that does not penalize part-time partners

In some cities, the number of women partners who are working as part-time partners is fast approaching 20%.¹⁷⁸ And although the numbers remain small, the number of partners working part time has almost tripled in the last 15 years.¹⁷⁹ These numbers indicate an increasing demand for part-time work even at the partnership level and firms that support these flexible arrangements “are going to be able to hire from a larger pool of applicants, save recruiting costs by hiring fewer new lawyers, retain a diverse group of lawyers, reduce attrition costs, attract new clients, and increase the satisfaction of their current clients.”¹⁸⁰ In addition, supporting part-time partners is often seen as a “powerful message[] of a firm’s commitment to diversity.”¹⁸¹ Given the increase in part-time work for law firm partners, coupled with the benefit that supporting it can bring to a firm, it is important that law firms understand how to design compensation systems for these part-time partners. It is also immediately relevant as 14% of part-time partners in one study felt that “their compensation was unfair” while a full 40% reported feeling stigmatized or devalued.¹⁸²

The essential goal of the firm should be to recognize part-time partners’ contributions fairly, since “[u]nfairness-- whether real or perceived-- will undermine the success of any part-time partner arrangement.”¹⁸³ Suggestions for creating equitable systems that do not penalize these part-time partners include:

- Avoiding the “haircut” scenario by making sure that compensation for part-time partners is proportional. The “haircut” occurs when there is a disproportionate differential in pay and part-time partners who work, for example, 80% in terms of hours receive less than that percentage in pay. A fair system would mean being paid proportionally to the number of hours billed, not awarding fractional shares to part-time partners, and not indexing compensation to the actual number of billable hours if there is a tiered system.
- Compensating part-time partners for hours that they work in excess of those agreed upon. Similarly, if part-time partners end up having billings and/or originations that are comparable to full-time partners, they should be compensated accordingly. Ultimately, this means designing a system in which part-time partners’ compensation increases in conjunction with any increase in billable hours.
- Taking into account the non-billable contributions that part-time partners make to firm life. Part-time partners are often highly involved in firm governance and serve as managing partners, on compensation and hiring committees, and in associate training and mentoring programs. These activities build a strong firm and should be both recognized as valuable service and taken into account in compensation decisions.¹⁸⁴

178 See Press Release, NALP, Most Lawyers Working Part-time Are Women — Overall Number of Lawyers Working Part-time Remains Small (Dec. 17, 2009), <http://www.nalp.org/parttimesched2009>. Table 2 shows the rates by city and also by firm size.

179 *Id.* The NALP survey found that “The growth rate of part-time work among partners has been greater, rising from 1.2% in 1994 to 3.5% in 2009.”

180 THE PROJECT FOR ATTORNEY RETENTION, REDUCED HOURS, FULL SUCCESS: PART-TIME PARTNERS IN U.S. LAW FIRMS 6 (2009).

181 *Id.*

182 *Id.* at 18.

183 *Id.* at 32.

184 *Id.* at 16.

CONCLUSION

*No compensation system is perfect. But some are awful.*¹⁸⁵

In 1960, only 38 U.S. law firms had over 50 lawyers.¹⁸⁶ The largest law firm in the United States had only 169 lawyers in 1968.¹⁸⁷ Between 1998 and 2004, the only size category of law firms that increased appreciably were the largest firms: the number of attorneys working for these firms doubled during that period.¹⁸⁸ By 2008 the average AmLaw 100 firm had 778 lawyers and 183 equity partners; the average AmLaw 200 firm had 289 and 92 equity partners.¹⁸⁹

As law firms have transitioned into the 21st century, systems that served the profession well thirty or sixty years ago no longer are working well.¹⁹⁰ The Great Recession has exacerbated many of the tensions surrounding law firm compensation, by making a broad swath of law firm partners feel at risk. Several studies have substantiated this fear and its impact on women, including a survey conducted by Paul Oyer and Scott Shaefer, which followed over 100,000 lawyers between 2008 and 2009. Their findings indicated that “being female increased the turnover rate by about 7.5%.”¹⁹¹ However, the trend did not start with the beginning of the Great Recession. Nancy Reichman and Joyce Sterling recall an interview with a woman partner, who began to notice gender inequities in partner compensation in the 1980s and brought them to the attention of the management committee, who were “appalled. They had never thought about it.” They introduced diversity training....” It really—it didn’t get better.... I think that the reason....[is that those who took over were] people [who] tended to be about my age who in some ways were more threatened by the women being there than the older partners had been. And who in some ways were more competitive with everybody including the women and in some ways saw success by a woman as somehow diminishing them.¹⁹²

The bad news is that existing law firm compensation systems open the door to gender bias because they contain tremendous amounts of subjectivity and lack transparency, and because so much of the negotiation surrounding origination credit takes place out of sight. In a profession in which 90% of women lawyers report having encountered sex discrimination—a percentage that has not decreased since the early years of women’s entry into the legal profession in the later 1970s—these practices open the door wide to bias and discrimination.¹⁹³

Yet, if that is the bad news, the good news is that many of the aspects of law-firm compensation that present the greatest difficulties for women are the same elements that knowledgeable management consultants have identified as outdated and/or not in the best long-term interests of today’s new, larger law firms. Changing law firms’ compensation systems will not only help diversity. It will enhance the economic robustness of law firms.

185 Winders, *supra* note 127, at 14.

186 Marc Galanter, “*Old and in the Way*”: *The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 WISC. L. REV. 1981, 1090.

187 Marc Galanter & Thomas M. Palay, *Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms*, 76 VA. L. REV. 747, 749 (1990).

188 George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C. L. REV. 1635, 1659 (2005-2006).

189 Aric Press and John O’Connor, *Am Law Second Hundred: Steady Does It*, THE AM. LAW. (May 30, 2008), <http://www.law.com/jsp/article.jsp?id=1202421806313>.

190 See LARRY E. RIBSTEIN, *THE DEATH OF BIG LAW* (2010); BERNARD BURK & DAVID MCGOWAN, *SCHUMPETER, COASE AND THE FUTURE OF THE (LAW) FIRM* (2010); Michele Beardslee et al., *Hiring Teams from Rivals: Theory and Evidence on the Evolving Relationships in the Corporate Legal Market*, presented at the CELS 2009 4th Annual Conference; *available at* <http://ssrn.com/abstract=1442066>.

191 Paul Oyer and Scott Shaefer, *What Drives Turnover and Layoffs at Large Law Firms?*, 7 (2010); working paper *available at* <http://www.law.georgetown.edu/LegalProfession/documents/oyerlayoffs.pdf>.

192 Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEXAS J. OF WOMEN AND THE LAW 27, 43 (2004-2005).

193 Mary C. Noonan, Mary E. Corcoran & Paul N. Courant, *Is the Partnership Gap Closing for Women? Cohort differences in the Sex Gap in Partnership Chances*, 37 SOC. SCI. RES. 156, 173, 163 (2007).

APPENDIX

Minority partners were as likely as non-minority partners to be in one-tier partnership systems. Approximately 30% of white and minority partners were in firms with one-tier partnership systems.

Roughly two-thirds of white equity (70%) and minority income and equity (63% and 68%), but only 54% of white income partners' firms used a compensation systems based on levels or points. In most such systems, the levels or points are re-evaluated annually: 80% of white equity partners, 71% of white income partners, and 75% of minority income partners, and 82% of minority equity partners reported this practice. The remaining firms, with one exception, re-evaluated every two years: 14% of white equity partners, 10% of minority, 4% of white income partners reported this practice.

Most white equity partners (76%) reported open compensation system, where partnership compensation is disclosed and circulated; 5% reported closed systems, while 14% reported semi-open systems, where compensation is available but is not distributed automatically. Among our non-minority income-partner respondents, only 48% reported open systems, while 26% reported closed and 20% semi-closed systems. Minority partners were in the middle, with 48% reporting open systems, while 22% reported closed systems, and 23% reported semi-open systems. Comments indicate that open compensation systems typically are open only for equity partners.