

Retention and Reduced Hours

It was a warm evening in June when Hale and Dorr partner David Sylvester had a conversation that would divert his career and rattle his firm. He was talking to his 10-year-old daughter, Elaine, at the family's kitchen table. "It was near the end of the school year, and we were chatting about some problem she was having at school," Sylvester recalls. "She said, 'My teacher understands because he knows me better than you do.' " "That was that. I went in and told my partners that I was going." [1]

Law firms have proved much more resistant to the demand for flexible work arrangements than most other types of workplaces. [2] In significant part, this may be because law firms are run by lawyers rather than by executives who have training in management and business techniques. In addition, the perception exists that flexibility is not feasible in the high-pressure law firm context, where short deadlines are often imposed by judges (in litigation) or by clients who are used to "having an answer *now*." The time pressures inherent in law firm practice are exacerbated by a traditional system in which lawyers bill clients by the hour and lawyers are evaluated and compensated based on the number of hours they bill. The end result is tremendous pressure to bill as many hours as possible.

The pressures to work long hours show up in statistics on the long hours that lawyers work. One recent study found that at least 55 percent of all attorneys bill over 2,400 hours per year. This requires billing 45 hours/week, which in turn requires working considerably longer. Associates in the average large firm in New York City bill 2,500 hours annually; some require billings of 3,000 hours, which requires an average of roughly 80 hours a week. [3]

The pressures to bill large numbers of hours sharply increased this year as a result of the sharp increase in salaries for first-year associates: in many leading law firms next year, first-year associates will be making \$150,000/year. [4] A partner in a Boston firm estimated that the salary increases there translate into 200 additional billable hours each year. [5] Many firms have raised the number of hours an attorney is expected to bill as a result of the new, high salaries. [6]

Law firms feel caught in the scramble to attract the best legal talent. They point out that their recruitment of attorneys right out of law school is determined in significant part by the standard form they fill out at law schools in order to gain permission to interview students. The form contains a single line for the initial starting salary, and another box to check off whether or not the firm has a part-time policy. The incentives for law firms are to post as high an initial salary as possible, and to provide a standard part-time policy without much attention to whether attorneys feel free to use it. [7]

The recent round of salary increases has produced a widespread perception that "something has to be done." Law firms are already aware, and concerned, about the high levels of attrition among young lawyers. Commercial seminars on how to stem attrition are very popular. [8] Of particular concern is the high rates of attrition among women attorneys.

More than 85 percent of law firm partners are still men. [9] "Throughout the 80s we were told it was simply a matter of time," said Patricia Wald, a prominent judge. "But now. . . we know better. There are indeed more women in big firms, there are more women partners (about 11 percent), but nowhere near the level one would expect from the number of entry-level associates (about 50 percent.)" Moreover, the situation may not be improving. An influential study by sociologist Cynthia Epstein found a sharp decrease in the number of women being made partner after 1990. A study by the American Bar Association found that men were more than twice as likely to be partners as compared with women of similar backgrounds. [10]

Work/family conflict clearly plays a significant role in the failure of women to advance to law firm partnership. Epstein pointed out that legal work makes such "dramatic demands on the practitioner's time and makes it difficult or nearly impossible to have a life in which family obligations or other non-work activity are experienced in a conventional way. [11]" Said one New York lawyer:

I couldn't come home at nine three nights a week after my kids have gone to bed. . . .It's not something I could have done in their infancies, and it would be even harder now with my daughter in first grade, having homework, to say, "See you tomorrow; see you in the morning, if I happen to be around when you're up. [12]"

A survey of the graduates of Harvard's business, law and medical schools found that most (70 percent) worked shorter hours after having children, though most (85 percent) believed that this would hurt their careers. [13]

The irony is that most law firms now have part-time policies. [14] Unfortunately, those policies are flawed in the ways documented by Arlie Hochschild in *The Time Bind*. [15] Many lawyers are reluctant to use the policies because of the perception, and often the reality, that by doing so they will jeopardize their chances for advancement. Some of the policies formally take the lawyer off the partnership track; though others do not do so officially, the perception is that it is still rare for an associate to be made partner while working part-time. A recent study by Linda Chanow sponsored by the Gender, Work & Family project found that part-timers in law firms are almost exclusively women, typically mothers with child care responsibilities. [16]

The tenuous hold part-time attorneys have on advancement is only one issue that arises in the context of current part-time policies. Another is the widespread sense that part-time attorneys often end up working far more hours than they originally agreed to work. Frustration builds up quickly in instances where the attorney is not paid for the hours worked in excess of her part-time schedule: a common statement among part-time attorneys is that their firms perceive that "the only responsible way to work part time is to work full time." Frustration also mounts up even if the part-time attorneys are paid for the extra hours worked, for by choosing part-time in the first place the attorney has stated that she values her time at home more than the money she could earn if she worked during those hours. The Chanow study found that, in some firms, attorneys who worked part-time felt pressure to take on the same case load as full-time attorneys, a situation that virtually guarantees that part-time attorneys will end up working more than their agreed-upon schedule. [17]

The high rate of attrition among mothers is a subject of increasing concern among law firms. This concern has now reached a head because of the recent pressure to raise law firm salaries. Law firm partners know they cannot offer the extraordinarily high salaries first-year associates now command without demanding very long hours. And they feel they must match the high salaries being offered by law firms with whom they compete for legal talent. Yet some partners are troubled ethically by a system demands work to the exclusion of personal life. Some are troubled by the common response of providing a nominal part-time policy because they recognize that it creates artificial hierarchies among partners and associates based on who can work the most hours. They are now searching for a fair way to respond both to the need to attract top legal talent and the demands for shorter hours.

PAR proposes to help create solutions, and develop a model part-time policy that implements, on anti-discrimination grounds, the principle of proportional pay, benefits, and advancement for part-time work ó and at the same time takes into account the business need to provide high quality service to clients. This proposal entails practical challenges of how to articulate a policy that will not marginalize those who use it, as well as pay close attention to the concerns that flexibility for some attorneys should not come at the price of a more hierarchical atmosphere for all attorneys, or at the price of violating the principle of equal pay for equal work.

1. [Vanessa Blum](#), *David Sylvester Takes Clients Public. But One Day He Called Timeout For His Own Private Offering*, [Legal Times](#), March 9, 2000.

2. [Dana Friedman](#), *Interview in Washington, D.C.*, March 1998.

3. All material cited in [Joan Williams](#), UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 71 (2000).

4. [Betsy Anderson](#), *Interview in Washington, D.C.*, March 2000.

5. Lauren Stiller Rikleen, Speech in Boston, Massachusetts, New England School of Law, March 7, 2000.
6. Charles Buffon, Interview in Washington, D.C., March 7, 2000.
7. *Id.*
8. Andy Marks, Interview in Washington, D.C., January 1999.
9. Arthur Hayes, "*Color-Coded Hurdle*," *Women Lawyers*, January 28, 1999.
10. See *supra* note 2, at 76, 67.
11. *Id.* at 71.
- 12.
- 13.
14. Linda Chanow, Results of Lawyers' Work and Family: A Study of Alternative Scheduling Programs at Law Firms in the District of Columbia, May 2000.
15. Arlie Hochschild, *The Time Bind* (1997)
16. See *supra* note 12.
17. *Id.*