BALANCED HOURS:

EFFECTIVE PART-TIME POLICIES FOR WASHINGTON LAW FIRMS

THE PROJECT FOR ATTORNEY RETENTION

FINAL REPORT

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Executive Summary

Most Washington law firms already have part-time policies. They also have high attrition, few women partners, lower profits, and clients who are increasingly dissatisfied with high turnover. Law firms have yet to learn what corporate America already knows: restructuring part-time work to make it professionally rewarding will cure these ills.

The issue confronting law firms is how to make their part-time programs effective retention tools. In this final report, the Project for Attorney Retention ("PAR") concludes that most existing part-time programs do little to stem attrition because they do not offer usable and effective programs. This conclusion is similar to that of a report published last year by The Women's Bar Association of Massachusetts, which found that lawyers who use part-time programs often feel stigmatized, and that many full-time attorneys leave their firms rather than going part-time because of the perception that part-time programs are not ineffective.[1] PAR's key findings about the failure of existing part-time programs were published in its Interim Report, which is attached as an appendix to this Report.

What many lawyers want is not "part-time," with its implication of partial commitment; they are committed professionals who want a balanced life combined with suitable career development. This report shows how balanced hours policies can work well at Washington law firms to increase retention, morale, client satisfaction, and profitability.

- A significant proportion of male and female attorneys, non-parents and parents alike, cite long work hours as a major reason for leaving law firms and state they would like to exchange salary for fewer hours.

- Law firms typically focus on revenue generation rather than bottom-line profitability. For this reason, they may overlook the fact that they are losing millions of dollars to high attrition. Replacing each attorney who leaves costs between $200,000 and $500,000 -- and this does not include the hidden costs of client dissatisfaction due to turnover, lost business of clients who leave with departing attorneys, and damage to the firm's reputation and morale.

- Clients are beginning to look at firm attrition, and quality-of-life issues that affect attrition, when deciding which firm to hire.

- Law firms, accounting firms, and major corporations that have implemented effective balanced hours programs have benefited from increased productivity, retention, staff and client loyalty, and bottom-line profits. In addition, they have found significant improvement in their recruiting efforts, attracting highly qualified applicants who are in search of balanced lives.

A key finding of PAR is that a communication gap exists between managing partners, who often feel they have addressed the demand for part-time, and lawyers who feel that existing policies are neither usable nor effective. To help close this gap, the **PAR usability test** gives firms a quick read on whether or not their existing policy is usable and effective.

PAR also has developed recommendations for effective balanced hours policies that are based on best practices currently in use in law and accounting firms. The key recommendations are:

- *The Principle of Proportionality*: Attorneys on balanced hours schedules should receive proportional salaries, bonuses, benefits, and advancement. This means the budgeted hours for a balanced hours attorney should include billable and non-billable time; their assignments should include interesting and high-profile work comparable to that of standard hours attorneys; and they should be promoted to partnership based on the same criteria as other attorneys.

- *Flexible and Fair Policies*: The potential retention benefits will not be attained when reduced hours are available only for a few superstars. While each attorney seeking balanced hours must present a viable business plan, balanced hours should be available to any attorney who does so and should be tailored to meet the attorney's individual needs. Balanced schedules should not be limited only to women, or to parents, or to primary caregivers.

- *Effective Implementation*: Implementation is the key to success. Critical aspects of implementation include: clear and consistent support from the top; an effective implementation plan that includes training and a part-time coordinator who monitors benchmarks to assess whether the program is fair and effective; and planning processes for attorneys and the firm to create balanced schedules that meet the needs of both.

Finally, this report addressed common objections to effective balanced hours policies, many of which are based on misunderstandings about what they are or how they can work within law firms. Two of the most important are:

- *"We can't afford to let people go part-time."* A common myth is that overhead expenses are so high that having attorneys working balanced hours will drain a firm's profits. Once firms look at the bottom line rather than at revenue alone, the bottom-line benefits of usable and effective Balanced hours programs emerge in sharp relief.

- *"Some practice areas aren't amenable to part-time."* PAR found lawyers successfully working balanced schedules in litigation, mergers and acquisitions, and other practice areas commonly considered "not suited to part-time." In some practice areas, balance needs to be defined as taking fewer cases over the course of a year rather than working a set number of days or hours a week. That said, the key issue determining the success of balanced hours is whether one's colleagues and supervisor are supportive of the agreed-to schedule.

In conclusion, Washington law firms today are caught in a cycle of skyrocketing salaries and skyrocketing attrition. It *is* possible to turn this situation around. Indeed, the major accounting firms have done so over a fairly short time period, and some law firms are already headed down the same path. This report is an invitation to other firms to join them. Those firms that offer quality balanced hours policies will rapidly become the employers of choice for top-notch lawyers.

INTRODUCTION

This report shows that some law and accounting firms have realized significant economic benefits from reduced attrition by implementing usable and effective balanced hours programs. It first sets out the business case for effective balanced hours policies. It then discusses the problems encountered by attorneys on reduced schedules, and introduces a simple test (the "PAR usability test") designed to assess whether a law firm's policy is usable or not. The third section discusses recommendations for creating effective Balanced hours policies, which are best practices found in law firms, accounting firms, and corporations. A Model Balanced Hours Policy based on the recommendations is contained in the Appendix. The final section responds to some common myths about balanced schedules.

Why Law Firms Need Balanced Hours Policies to Succeed. Lack of flexibility in scheduling fuels attrition, which is expensive. By conservative estimates, a firm loses $1 million every time five associates walk out the door. Though firms have significant financial motivations to implement an effective balanced hours policy, typically these motivations go unnoticed: the conventional wisdom remains that "part-time lawyers cost the firm money." This report analyzes the reasons why the bottom-line benefits, widely recognized in corporate America, have not been equally apparent in the law. Because of law firms' tradition of focusing on revenue generation as opposed to bottom-line profitability, the steep costs of attrition typically are not considered in firms' internal incentive structures.

Taking the Measure of Current Part-Time Programs: PAR's Usability Test. "We measure what we treasure."[2] Many firms do not keep track of the benchmarks that are needed to determine whether existing policies are effective. PAR introduces a simple, six-part test designed to show law firms whether or not they have effective balanced hours policies.

Best Practices/Model Policies: Creating Effective Balanced Hours Policies and Putting Them into Practice. Without exception, the practices necessary to make balanced hours policies usable and effective already have been implemented by law and accounting firms. If any individual law firm were to implement in a comprehensive way practices already in place at other law firms, it could become the "employer of choice" in an era when many lawyers -- men as well as women -- are feeling the need to continue as serious professionals at the same time as they "get a life." PAR's model policies demonstrate concrete practices that can effect a change into law firm culture.

Response to Common Myths. Do high rates of overhead make balanced hours economically unfeasible? Are some areas of practice simply not suitable for balanced schedules? Are balanced hours attorneys less committed? The final section discusses these and other common myths.

This is the final report of the Project on Attorney Retention ("PAR"), an initiative of the Program on Gender, Work and Family of American University, Washington College of Law, funded by the Alfred P. Sloan foundation and supported by the Women' s Bar Association of the District of Columbia. PAR began studying law firms in Washington, D.C. in June 2000 with the goals of learning the current state of part-time work at Washington law firms and developing

benchmarks, recommendations, and model policies for effective reduced-hours programs for these firms. PAR's advisory committee includes leaders from the Washington legal community, representatives from corporations that have notable work/life programs, and work/life experts. PAR's work has included: interviews with law firm managing partners, hiring partners, partners in charge of part-time programs, and human resources personnel from amongst the 90 largest law firms in Washington, D.C.; focus groups, interviews and surveys of attorneys who have worked, are working, or would like to work less than full-time at their firms; interviews of representatives from non-legal corporations and client service firms, and of partners at law firms outside of the District of Columbia that have increased their retention rates through effective reduced-hours programs; and conferences with sociologists, psychologists, and work/life consultants. More information about PAR can be found at PAR's website: www.pardc.org.

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Joan Williams
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This report is dedicated to Norman Williams, Esq., one of the founders of Sidley & Austin.

--JCW

I.

WHY LAW FIRMS NEED BALANCED HOURS POLICIES TO SUCCEED

A. Protect The Bottom Line

By conservative estimates, it costs a firm $200,000 to replace a second-year associate.[3] (Other estimates range from $280,000-$500,000.)[4] **The high cost of attrition means that, every time five associates walk out the door, the firm loses a million dollars or more.**

The costs of attrition include, first, the costs incurred when a person leaves, including:

- The lost productivity, calculated at a minimum of 50% of the person's compensation and benefit for each week the position is vacant
- The costs of the training the firm provided
- The costs of lost knowledge, skills, and contacts that the departing person takes with him or her
- The costs of losing clients the employee will take with him or her
- The costs of stopping payroll and other administrative costs
- The effect of high attrition on the morale and productivity of the attorneys who remain at the law firm

"We are spending substantial amounts to recruit [associates], keeping them here and training them for the first two or three years in which they are not profitable, and then we see them begin to leave at about the time they become profitable."
-- Partner in Washington firm[3.1]

To these costs, one must add new hire costs consisting of:

- Recruiting expenses, including advertisements and entertainment expenses
- Headhunter fees and/or referral bonuses
- Hiring or signing bonuses, bar and moving expenses
- Interviewing time spent by lawyers at the firm
- Training costs
- Lost productivity costs of an inexperienced attorney or one unfamiliar with the firm's clients, including time written off for getting the new attorney up to speed on client matters

In addition, none of these figures take into account a very important cost of attrition: the discontent of clients caused by constant turnover in the attorneys who represent them.

To make matters worse, associates often leave before they become profitable. At the new high associate salaries, law firms typically are in the red until a new lawyer's third or fourth year of practice. By that time, close to half the new lawyers are gone. A 2000 study by the National Association of Law Placement Foundation found that nearly 40% of associates leave the end of their third year, and nearly 60% are gone by the end of their fifth year.

When Aetna Life & Casualty Co. extended its unpaid parental leave to six months, it halved the rate of resignations among new mothers, and saved $1million in hiring and training expenses.[5.1]

NALP also found lower third-year attrition in law offices that offered alternative work schedules than in offices that did not.[5] Given, as is amply documented by this Report, that current alternative work schedules are under-utilized due to significant stigma, it is reasonable to expect law firms' attrition rates to fall dramatically with the introduction of effective balanced hours policies such as proposed herein. Indeed, that is what corporate America and major accounting firms have found: non-stigmatized flexible work policies translate into millions of dollars in savings.

Deloitte & Touche has estimated that its flexible work arrangements saved $13 million in 1997 due to reduced attrition.[5.2]

B. Attract and Preserve Legal Talent

How to "keep the keepers" is a crucial question for law firm management.[6] The most common approach today is to raise salaries – and hours. In fact, this only exacerbates the problem by creating "cash and carry" associates who pocket "the financial rewards and [grab] the practical experience with little thought of investing in the long haul."[7] An American Management Association survey of 352 companies that found employers reported more success in retaining employees by "giving them a life" than by offering more cash.[8]

"The biggest fear as the lawyers start out in the profession is lack of life outside the office. . . . While 63% said they would like to work less than full-time at some point in their legal career, 58% said working flex or part-time hours prohibits someone from advancing to partnership at their firm." [8.1]

Here's the math. "Professional firms are facing a 25% shrinkage in their nonpartner labor force. There is going to be a huge people shortage, and its effects will be major," according to David Maister, a former Harvard Business School professor.[9] Simultaneously, women are becoming an ever-increasing percentage of the labor pool. "There is a shortage of human capital.," said the principal of a national search firm. "Women are an important part of that, because there just aren't enough men to do the work. That is the simple reality of it."[10]

Most women lawyers become mothers at some point in their careers, and given that women are still responsible for a disproportionate amount of the caregiving in our society, a firm that wants to attract and retain women must address the needs of mothers – and fathers. A recent Catalyst study of the graduates of six elite law schools found that 71% of law graduates with children report work/life conflict.[11] "Making $600,000 so I can spend it on domestic help, nannies and a retirement fund I may never get because I had a heart attack does not seem to make sense. That is not a choice that is right for me."[12] A consultant who works with lawyers on work/life issues quoted one mother:

Catalyst found that work/life balance was the number-one consideration for 45% of women law graduates in choosing their current employer.[11.1]

> Recently I spoke with a seventh-year associate in [a large firm]. The mother of two young children, she'd made a valiant attempt to be successful in her career while struggling to be involved in their lives. … She'd been working a reduced-hour schedule for several years [so] she could leave in time to meet her children when they came home from school. But in order to get her work done, she had to go back to work after the children went to sleep. So for months she'd been working from 9:00 PM until 1:00 or 2:00 in the morning, and then trying to be emotionally available for her children as she got them off to school. Often even after going to bed, she lay awake worrying about all the unfinished work. But her exhaustion was far less a problem for her than her isolation at her firm. She felt like a pariah or a disabled person. Although her firm allowed part-time schedules, she felt they were regarded as a special accommodation to the family-challenged.[13]

I graduated from UVA in 1985, and none of my women friends from law school are in law firms anymore. Although most of them are very successful, they are either in corporations, solo practitioners, government attorneys, in completely different fields, or home with their children.
-- A Former Washington Lawyer

The women "are voicing the concerns of a growing number of men."[14] Slightly over 70 percent of men in their twenties and thirties (in contrast to only 26 percent of men over 65) said, in one study, that they would be willing to take lower salaries in exchange for more family time.[15] Said the Gen-X father of a one- and a four-year old, "I want to be a parent who's involved. I want to be a dad who, 30 years down the road, my kids say, 'Yeah, he was a big part of our life.' And right now I'm not that."[16] "The thing I'm always struck by is how much men keep this to themselves. There's this unwitting collusion between men and women and employers. No one wants to put this on the table, so the assumption is perpetuated that it's a woman's issue," said James A. Levine of the Family and Work Institute's Fatherhood Project.[17]

"My main concern was travel. I traveled all the time. That's one of the reasons we forgot to have children: we were never in the same bed. I figured I need to get off that travel schedule, and the only way I could think to do it was to go part-time."
-- A Washington Partner

"Today's young attorneys have watched what's happened to their parents and others. They have seen people work hard for a payoff down the road that never comes," said Paula Patton, Executive Director of the NALP. "They are cynical and skeptical about the future. It creates a short-term view. They will work hard and are capable, but they have a high regard for friends and

family."[18] The result is a generational conflict, between Gen-Xers concerned about "having a life" and baby boom partners who "don't even have a clue how many billable hours they work, they don't care, it's part of their modus operandi."[19] "I have friends who work until midnight every day of the week," said one second-year associate. "Being a lawyer is a big part of my life. But it's not everything."[20]

> "I can count on one hand the number of people who have left here to make more money elsewhere. Many more have left for lifestyle reasons."
> -- Partner in a Washington Firm

The "legal work week makes [such] dramatic demands on the practitioner's time [that it is] difficult or nearly impossible to have a life in which family obligations and other non-work activity may be experienced in a conventional way," concludes one influential study.[21] In an era when many attorneys have elder as well as child care responsibilities – and many other Gen-Xers simply "want a life" -- the result is high, and costly, attrition.

"Law firms have a choice between two basic strategies," said John W. Nields, Jr. of Howrey Simon Arnold & White, LLP. "They can either adopt a short-term strategy by paying ever-higher salaries, or a long-term strategy of retaining the best lawyers by offering them a life." "If associates say no amount of money can solve life's problems," notes Patton of NALP, raising salaries probably won't work to attract and keep the best.

Under current conditions, young lawyers are reluctant to trade off salary for lifestyle because they have all heard stories of part-time lawyers working full schedules for part pay and ending any chance they had for partnership. PAR's Interim Report, attached in the Appendix, discusses the deficiencies of most firms' part-time policies. But firms that have demonstrated their commitment to balanced hours have found themselves able to tap a rich lode of legal talent. Prime examples are the firms Sullivan, Weinstein & McQuay and Harris, Wiltshire & Grannis, which are discussed at length in Section IV.

Indeed, Washington firms have begun to acknowledge that some desirable associates prefer not money, but time. With the recent bump-up in salaries, a number of firms have adopted a two-tier system that allows attorneys to choose between a higher salary and a lower billable hours target. The lower target offers lower pay but the same rate of advancement. (This system is discussed further in Section IV below.)

> I am amazed at how many attorneys, men and women, want something other than the stereotypical 2000-plus hour work year. They jettisoned the notion that the law is a "jealous mistress", as we were told during our first day of law school, and allow themselves to enjoy more of what life has to offer.
>
> During the past two years, I have had highly credentialed attorneys, from second year associates to partners with millions in business, request part-time or reduced hours. These attorneys have had some success in finding part-time work, both in-house and in firms, but only after a long search.
>
> Just yesterday I met with a highly qualified attorney--top 10 law school with major New York law firm transactional experience--who has decided he wants to work, or bill, about 30 hours a week. He has made the insightful realization that he can live comfortably on a part-time salary of an attorney, and have time to enjoy his other interests. It is too bad that many employers would essentially penalize him, and not hire him on a part-time basis, because he has broad interests.
> -- Mary Adelman Legg, Legal Search Consultant

C. Satisfy Clients

"Stability is extremely important. Outside lawyers who have an institutional memory are incredibly valuable to us."
--Senior In-house Counsel [22.1]

Clients invest a substantial amount of time and energy in educating their outside counsel about their business and developing a smooth working relationship with them. High attrition rates frustrate clients who have to train new attorneys – again and again. Turnover also weakens the bonds between client and firm that were developed by personal relationships. Increasingly, clients are looking for firms with high retention rates that can provide stable representation.

Clients also want to hire more women and minority attorneys, and look for diverse law firms.[22] Firms with high attrition rates among women and minorities caused by inflexibility in scheduling therefore become less attractive to these clients:

> "It is frustrating when outside counsel don't provide consistent lawyers... [N]othing [is] worse than investing in and relying on someone, and then having that person pulled out. Or, even worse, the firm isn't treating them well enough to keep them. We have tried to look at how our outside counsel treat their young lawyers . . . including demands in terms of billing. These are all issues that we think ultimately have an impact on the services we receive."[23]

High attrition impacts client development in another very important way. The attorneys who leave law firms may be moving to positions where they will be potential clients, and who are they going to hire – the law firm that just treated them badly or a law firm that is able to satisfy and retain its lawyers? It greatly disserves a firm to have a large number of disgruntled former employees, whether they move to in-house positions or not; word spreads quickly these days via not just mouth and email, but also Internet bulletin boards and websites devoted to tracking issues at law firms. A reputation for unfair treatment of employees will make referral sources for clients and recruits dry up.

"I consulted with one firm that believed that the women who left were all going home to be full-time mothers. Our studies showed that they weren't – instead, they were getting jobs in corporations and the government. Needless to say, when these former women employees were asked for recommendations of firms to hire, this firm was not on their list."
--Washington Work/Life Consultant

I have found that clients, being very bottom-line oriented, quickly grasped that they would rather have 80% of an attorney that they knew and trusted, than 100% of an attorney that knows neither them nor their deals. All this being said, I do not want to give the impression that life is easy now that I'm working an 80% schedule, it has just kept me from being put in a straight jacket.
-- A Senior Partner at a Firm Outside Washington

Balanced hours will also attract clients who are looking to hire law firms and attorneys who are like themselves. Corporate clients frequently offer extensive work/life programs to their employees, including balanced hour options. They have already recognized that balanced hours make good business sense, and they will be most comfortable with law firms that reflect this same judgment. Similarly, as more women, Gen-X and minority in-house counsel rise to positions of hiring outside counsel, they will look for outside counsel with whom they share values – and they won't find them at firms that have lost their women, Gen-X and minority attorneys due to inflexible schedules.

> *"The recruitment and retention of minority attorneys is important not only from a societal perspective, but also from an economic one. The substantial attrition rates of minority attorneys greatly affect a law firm's internal finances, and ultimately result in lost business from new and existing clients. In ever-increasing numbers, corporate clients expect a diverse pool of qualified attorneys to service their legal needs; otherwise, they will not hesitate to take their business elsewhere."*
>
> -- Traci Mundy Jenkins, Law Firm Diversity Consultant

D. Do The Right Thing

Most lawyers want to earn a good living. Most also want to do the right thing. Providing balanced hour policies is the right thing to do. It responds to the widespread and uncontroversial sense that children need and deserve time with their parents, and that one's parents and partners deserve time and attention when they are ill. It permits attorneys to participate in the world outside the law, doing things that are meaningful to them and their communities. Allowing attorneys to meet these moral obligations without having to sacrifice their careers not only recognizes the differing needs of a diverse attorney population, but it promotes the development of well-rounded attorneys and increases attorney morale. It establishes a firm's reputation for fairness as well.

II.

TAKING THE MEASURE OF CURRENT PART-TIME PROGRAMS: PAR'S USABILITY TEST

> *At [one large Washington law firm] where I was being heavily recruited, the firm sent me to lunch with two women. I believe both were married. One had children and raved about how wonderful the firm's part-time program was. Yet she also explained that to take advantage of that program, she had to leave her former specialty and go to another group. She explained with a smile on her face that the practice area didn't really interest her, but that was the group where most of the part-time moms went because there was a partner who was "very accepting." She thought she was selling the firm. I was mortified. At [another large Washington law firm], one of the people I interviewed with was a part-time woman. As soon as my chaperone left the room, this woman was almost frantic to "be honest with me" about the realities of part -time work at her firm. She complained that she really worked just as many hours as she used to, so she was going to decrease her 'official' hours even more so that her true schedule would approach the number of hours she really wanted to work. She seemed angry and, for lack of a better word, betrayed. I could tell she was trying to hide it, but she was very unsuccessful. After these interviews, I thought to myself, "How blind must these firms be to the realities of their part-time programs to be presenting them to a person they are trying to convince to join the firm?" Obviously the firms had no idea how these women felt.*
>
> -- Woman Associate in Washington

Common knowledge, and a number of recent studies, show significant problems with existing part-time policies. PAR has also found a communication gap between firm management, which often feels it worked hard to address the demand for part-time, and the attorneys who use existing programs, or wish to do so, but feel that working part-time is a professional kiss of death. A dramatic story, which involves a firm outside Washington, was related to one of PAR's co-directors: A managing partner of a major firm was proud of his firm's part-time program, which he explained at length. He described how hard the firm had worked to make reduced schedulessuccessful. He spoke sincerely. Yet earlier that day, part-time attorneys at his firm had reported that they felt so demoralized that they put an "L" (for loser) on their heads when they met each other in the library.

PAR has found in Washington similar differences in perception between firm managers and attorneys who have or who want to reduce their hours. After discussing the problems with existing part-time programs, this section introduces the PAR usability test, which is designed to give firms a heads-up on whether or not they have a usable and effective program.

Ninety percent of the women lawyers surveyed by the National Law Journal said that working part- or flex-time hurts a woman's legal career.[24] The major sources of dissatisfaction with reduced-hours policies were explored in depth in *More than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms*, a report of The Women's Bar Association of Massachusetts (the "Massachusetts study") published in 2000. That study found:

- Three out of four partnership-track associates reported that they believed that their reduced schedules had already affected their road to partnership or would do so in the future.[25]

- Thirty to forty percent of attorneys at every level of seniority reported that their relationships with partners and associates deteriorated after they had reduced their hours. The problem most commonly identified was skepticism about their level of professional commitment.[26]

- Roughly one-fourth of those respondents felt their skills or they as professionals were devalued.[27] Comments included: "I used to feel I was a valued and well regarded member of the firm. Now I feel as if I am an outcast."[28] "I was no longer a desirable associate to have on a client team."[29] "I once felt well liked and very much a part of this place. I am now seen as a 'slacker.'"[30]

- Forty-three percent reported that their substantive work assignments had been affected.[31]

"Lawyers can balance three cases and not get stigmatized. Why can't they balance two cases and a kid?" -- A Washington Lawyer

Some attorneys found that the stigma persisted long after they had returned to standard schedules. "I was only on part-time for two weeks after a maternity leave, but long after I had returned to full-time, partners still kept asking me when I was coming back full-time if I happened to be out of the office one morning."[32] A woman who had been partner for 22 years and who returned to full-time years ago reported, "For years after I returned to full-time, partners would tease me, 'Oh, you're here today.'" [33]

Many attorneys found that they quality of their assignments fell after they went part-time. Often partners who worked with them while they were on standard schedules refused to work with them once they reduced their schedules. An associate who had worked part-time in a medium-sized firm told PAR: "Everything changed once I moved to part-time. I was taken off all firm committees, and one partner didn't want to work with me anymore – he said it was because I couldn't travel, although he never asked me if I could still travel." Some associates also felt that they received lower-quality assignments once they went part-time. Said one: "I feel strongly that people have decided I am not committed to my career and are reluctant to assign me to assist them on cases I know I would have been assigned to handle if I were working full-time."[34] One Washington associate wrote to PAR that after she reduced her hours, "I was given work in an area in which I had no background. It was a type of work that the other associates hated."

Said a partner who had worked with a firm for twenty years, "[going part-time] has destroyed [my career] for all intents and purposes. It has completely, utterly, and irreversibly altered my future, my practice, my finances, my reputation, my relationships, and my friendships."[35]

"One part-time lawyer found to her surprise that they had forgotten to invite her to the practice group retreat. They had invited male attorneys far junior to her, but they forgot to invite her."
-- Law Firm Consultant

Refusal to give effect to part-time schedules also emerged as a problem. Several associates noted that they were continually "on call" on their days out of the office, although they were not paid for that time. Said one: "Certain partners consistently forget or ignore my time constraints when scheduling meetings of conference calls or in promising overnight turn around on documents. I have to perpetually remind these partners of my arrangement and disappoint them. It is difficult and frustrating."[36]

Schedule creep, the tendency of reduced hours schedules to increase over time, also emerged as a significant problem, as it did very consistently in talking with Washington lawyers. One attorney reported having adopted a 60% schedule so she could keep her hours in the 80% range.[37] Another wrote that, at her firm, the two women who worked part-time (Monday - Thursday) "took a cut in pay but still put in the same hours."[38]

The following section addresses the difficult issue of how firm management can determine whether its existing reduced hours program is working well. One approach, used successfully by many employers, is to hire a consultant to interview lawyers on a confidential basis: the Massachusetts study shows the importance of talking not only with associates, but also with partners. A number of lawyers interviewed by PAR said that they thought this would be useful, and wished their employers would do this.

"When I came back after my first child, I went to a four-day workweek and for a while it worked well. Then I basically found that we were just too busy and it was very overwhelming and I found that I was either working more than I wanted to be working or I was just always stressed because I was always behind the eight-ball." – A Washington Associate

This may well be a useful approach, but it is no substitute for an on-going program to monitor whether an existing program is usable and effective. For this purpose, PAR has developed a simple test to give firms a quick read on whether their existing policy is effective and usable, or a mere "shelf product."

Does Your Part-Time Program Work? The PAR Usability Test

PAR's usability test is designed to test whether a firm's reduced-hours policy is usable and effective. The concept of usability is derived from the important work of Professor Susan Eaton of the Kennedy School of Government, Harvard University.[39] The PAR usability test employs six basic measures. The first two are direct measures of usability; the second two measures are designed to test for the presence of two common problems; the final two measures are indirect tests of whether a firm's policy is successful in achieving retention goals. The last three measures are derived from the benchmarking program of Deloitte & Touche.

The PAR usability test:

1. Usage rate, broken down by sex

2. Median number of hours worked and duration of the balanced hours schedule

3. Schedule creep

4. Comparison of the assignments of balanced hours attorneys before, and after, they reduced their hours

5. Comparative promotion rates of attorneys on standard and balanced hours schedules

6. Comparative attrition rates of attorneys on standard and balanced hours schedules

The discussion below addresses each of these six measures of a usable balanced hours policy.

1. Usage Rate

Only 2.9% of the attorneys in the law firms listed in the National Directory of Legal Employers work reduced schedules.[40] Retaining a few lawyers is certainly better than retaining none at all, but a usage rate this low will not result in improving overall retention rates among mothers – and others – who seek a balanced life. Moreover, research in social cognition reports

that, when women are substantially outnumbered in a predominantly male environment, the tendency is for a few superstars to be treated very, very well, whereas most others drop off the map – even women who are fully as qualified as are the males in their class.[41] Firms need to ask whether their existing part-time programs have this "superstar problem": whether successful use of their part-time policies is limited to a handful of exceptional performers. In this context, the firm stands to lose from its pool of talent many women who are at least as talented than the men who ultimately make partner.

Some firms consciously discourage use of balanced hours options for fear that "if we make it easy to go part-time," the floodgates will open. In fact, this has not happened at any firm, as is discussed in Section IV, *infra*.

A low usage rate is a strong signal that a firm's culture makes the use of hours options undesirable, either because of schedule creep, or because adverse career consequences perceived to accompany a decision to reduce hours, or both.

2. Median Hours Worked and Duration of Balanced Hours Schedules

A common assumption in Washington is that the "responsible" way to work balanced hours is to work an 80% schedule for only a limited period. Firms that structure their reduced-hours programs around this assumption likely do not have a usable policy that will result in decreased attrition.

A survey by the ABA showed 46.8% of associates at large firms nationally work more than 60 hours per week, which translates into a 48-hour week for a typical 80% "part-time" schedule.[42] Even at firms where associates bill an average of 2,000 hours per year – as is common in the Washington – part-time attorneys work about 40 hours per week to make their billable targets. Given the low percentage of mothers in the labor force who work substantial overtime,[43] this is not a schedule that will prove effective at retaining women in proportionate numbers. Moreover, the assumption that lawyers will reduce their hours only for a limited period is problematic. The Massachusetts study found that the partners who responded to its questionnaire had been working a reduced schedule for an average of seven years (which probably meant that many partners had been working reduced hours for a much longer period).[44]

For these reasons, it is important for firms to track the median number of hours worked, and the median duration of balanced hour schedules. (The median is chosen instead of the mean because this makes it less likely that the short hours or long duration of one person's schedule will give a false impression of the experience of balanced hours attorneys considered as a group.) If firms find the median hours of balanced hours attorneys are in a range that would be considered full-time or overtime by non-law firm standards, their policies are not effective and usable. Similarly, if firms find the median duration of balanced hours schedules is short, a few months to a year, their policies probably will not be effective retention tools.

3. Schedule Creep

Talk of schedule creep is rampant in Washington. It is one of the major reasons attorneys leave law firms rather than seeking balanced hours, and that attorneys on reduced schedules give up and decide to leave their firms. Indeed, some Washington lawyers have suggested that schedule creep is part of a semi-conscious policy to undermine reduced-hours schedules, to ensure that few people opt to work less than the standard schedule.

Measuring schedule creep is an indispensable step to implementing a usable and effective policy of balanced hours. Surprisingly few employers keep track of it, although it is easy to do. Firms that have demonstrated a substantial commitment to making balanced hours work have done so for some time. Records already exist documenting how much time each attorney works; all that's required is to compare the hours worked with the hours budgeted. If the comparison shows that attorneys on nonstandard schedules are consistently working more hours than their balanced hours agreements call for them to work, then schedule creep is undermining the effectiveness and usability of the policy.

4. Comparison of Work Assignments

"Assignments determine skills, skills determine advancement."[45] If balanced hours attorneys do not get quality work assignments – and many report they do not – their development will suffer. Moreover, if balanced hours attorneys are shifted to nothing more than low-level, routine matters, they will soon become disenchanted and leave the firm.

> *"Eventually, the head of the litigation department decided that the best way to use someone in my anomalous (part-time) position was to assign me sole responsibility for the smaller, less sophisticated matters (or, to put it more bluntly, the "dog cases") that the litigation department took on more or less as a favor for clients of the firm's business department. Once I figured this out, it wasn't long before I started looking for another job."*
>
> --Email sent to PAR webpage

Both Ernst & Young and Deloitte & Touche keep track of whether those on alternative schedules are receiving high quality assignments by assessing whether they are assigned to work with the firm's largest and most valuable clients. This is a rough initial test that can signal whether a nonstandard schedule negatively affects the quality of assignments. It is not a perfect measure, for sometimes balanced hours attorneys are marginalized in other ways – by being assigned rote tasks, or only small parts of larger matters. Perhaps the best test is to compare the assignments an attorney received while working a standard schedule, with those he or she received while working reduced hours. (For new hires, the attorney's assignments can be compared to those of other attorneys at the same level in the same practice group.)

To compare work assignments, firms need only look at the billing records of balanced hours attorneys. If too much rote work and too little client contact is evident, for example, firms know their policies are likely not effective and usable.

5. Comparative Promotion Rates

Most law firms now hire entering classes composed of roughly equal numbers of men and women, yet 1999 data show that 85% of Washington partners are still men.[46] One factor contributing to the low proportion of women partners is the practice, *de facto* or *de jure*, of taking reduced-hours attorneys off the partnership track.

As noted, numerous attorneys view reduced-hour work as ending all hope of partnership. Firms should test the accuracy of this perception by comparing the promotion rates of attorneys on balanced schedules to those on standard schedules. While the promotion rate will not necessarily be identical for these two groups, a persistent imbalance in favor of standard hours attorneys may well indicate that balanced hours attorneys are being penalized in terms of promotions.

6. Comparative Attrition Rates

The final element of PAR's test compares the attrition rates of attorneys on balanced schedules with those of attorneys on standard schedules.[47] The Massachusetts study found that, given the problems with existing part-time policies, the attrition rates among reduced-hours attorneys were even higher than among other attorneys. While men with standard schedules had an attrition rate of 9% and women working standard schedules had an attrition rate of 12% in 1997 and 1998, women working reduced hours averaged nearly 23%.[48] These figures suggest the usefulness of a comparison between men working full-time, women working full-time, men working part-time, and women working part-time. Given the intense demand for reduced hours, if the attrition rate among attorneys working reduced hours is significantly higher than for the other groups, this may signal that problems exist with the existing balanced hours policy.

III.

RECOMMENDATIONS FOR EFFECTIVE BALANCED HOURS PROGRAMS

> *"You can make reduced hours work if you believe in it. When law firms' clients ask them to do things out of the ordinary, these firms don't say our billing system doesn't allow it. Once you are on the other side of the belief system, all the objections look silly."*
> -- Deborah Holmes, National Director of the Center for the New Workforce, Ernst & Young

PAR has sought out best practices for making balanced hours schedules effective and feasible, looking at successful law firms, accounting firms and corporations, and has created a set of recommendations based on these best practices. The first set of recommendations presented are the elements common to existing policies that have been successful in increasing retention. PAR here incorporates and systematizes an important principle that has underlain many of the existing policies, but has never been articulated in a formal way: the principle that balanced hours programs should offer proportional pay, proportional benefits, and proportional advancement. This Principle of Proportionality is spelled out first, followed by a discussion of the fairness and flexibility that are essential to effective policies. A Model Policy incorporating the recommendations is provided in the Appendix.

As James Sandman, Managing Partner of Arnold & Porter, has advised, "Policies are necessary, but they are not sufficient. They are only a starting point. Implementation is the key." The experience of the last decade has shown how difficult it is to implement an effective policy, and ineffective implementation is the cause of failure for many well-intentioned reduced hours policies. The innovative second portion of this section therefore provides recommendations for successful implementation of balanced hours policies based on best practices already in use.

A. Creating Effective Balanced Hours Policies

Each firm is unique and will have to craft a policy that suits its own culture, business needs, and retention requirements. Given this, some may question the necessity of having written policies at all – and, indeed, PAR has found that many Washington firms either have no written policies or have very vague policies that are then interpreted and adapted to individual attorney's situations. PAR strongly encourages detailed, written policies that set forth the firm's balanced hours program. A written policy emphasizes the firm's commitment to providing and supporting balanced hours, and it ensures even-handed application of the policy to all attorneys. (Even-handedness does not mean rigid sameness, however, as is discussed in the Flexibility and Fairness section below.)

1. The Principle of Proportionality

Proportional Pay

> *"I am very happy with my part-time arrangement. My firm pays me a percentage of the full-time salary that is equal to the percentage I work (e.g., 70% pay for 70% work). I get good assignments and good performance reviews, and I don't feel like a second-class citizen the way I have heard some part-time attorneys at other firms feel."*
> -- A Woman Lawyer

Until the last few years, it was not uncommon for firms to pay reduced-hours attorneys a lower percentage of the standard salary than the percentage of hours worked. For example, a typical arrangement was an attorney working 80% of a standard hour schedule and receiving 70% of the standard hour salary. The firms offering such arrangements justified them by claiming there was an "overhead differential" that made reduced-hours attorneys more costly to keep. This claim is discussed and discredited in section IV, *infra*.

PAR has found that most firms in Washington now pay balanced hours attorneys a salary that is proportional to the hours they work, so that attorneys working 80% of a standard hour schedule receive 80% of a standard hour salary. Clearly, this is the best practice and the most equitable position; it is also the position that is less likely to provoke an Equal Pay Act suit. Several reports were received throughout the year of disproportionate pay, however.

Proportional Benefits

A number of firms in Washington provide full "insurance" benefits to balanced hours attorneys (typically requiring a minimum percentage schedule), and proportional "time" benefits.

A sampling of firms providing full benefits to attorneys (some with minimum hour or percentage requirements):

Akin Gump Strauss Hauer & Feld, LLP
Arnold & Porter
Bryan Cave LLP
Covington & Burling
Crowell & Moring, LLP
Dickstein Shapiro Morin & Oshinsky, LLP
Hogan & Hartson, LLP
Venable Baetjer Howard & Civiletti, LLP

The "insurance" benefits include medical, dental, life, and disability. Typically, firms pay the full cost for their standard hours attorneys, and some pay the full cost for their balanced hours attorneys as well. Some firms pay the full amount for standard hours attorneys and only a proportional amount for balanced hours attorneys and charge the latter for the balance. While this latter practice conforms with the principle of proportionality, firms with this practice may want to examine why they charge balanced hours attorneys $60 or $100 per month as their "share" of the benefits. If it is to make balanced hours less attractive, the practice should stop if the firm is interested in retaining its attorneys. If it is because the firms believe that the balanced hours attorneys "cost the firm more" and thus the firms should

save money wherever they can, they should read section IV, *infra*, that discusses the "higher overhead" issue.

Most firms provide insurance under plans that cover only employees who work a minimum number of hours per week, and on occasion some firms have had to deny benefits to balanced hours attorneys on that basis. PAR received reports of some firms that met the minimum-hours requirement by looking at all the hours a balanced hours attorney works, not just billable hours. Thus, time spent talking to clients from home, working on business development, or doing pro bono work would be counted toward the minimum hour requirement. Additionally, policies should be examined to see if they permit averaging of hours to meet the minimum weekly amount.

"Time" benefits are those that are typically calculated based on hours worked or salary earned. These include vacation days and some profit-sharing or retirement plans. Typically, these are calculated and awarded proportionally to the schedule worked, although some firms provide full benefits for these types of benefits as well.

A few firms eliminate all benefits entirely for reduced-hours attorneys. This may well result in financial hardship to the attorneys, and attaches a clear stigma to the reduced-hour status. A reduced-hours program that does not provide benefits is unlikely to be an effective retention tool.

Proportional Bonuses

Bonuses are given to attorneys at many Washington firms to recognize exceptional work, motivate rainmaking, reward high numbers of billable hours, bring individual attorneys' income into line with that of colleagues, retain good attorneys, and other reasons. At some firms, the amount of bonuses is significant – up to $50,000 – and represents a substantial portion of an attorney's income.[49] It would stand to reason then that balanced hours attorneys would be eligible to receive bonuses according to the same criteria as standard hours attorneys, and that their eligibility and their bonuses would be adjusted on a pro rata basis in accordance with their reduced hours. While a number of the largest firms in Washington do just that, other Washington firms either expressly disqualify balanced hours attorneys from the bonus pool or base bonuses on only the number of billable hours worked in excess of the firm's target level for standard hours attorneys.

> "*I was in a firm where the bonus system was based primarily on how many hours you had worked in a given year. And they averaged your hours over a three-year period. What that meant in practice is that an attorney who had a baby rarely got a substantial bonus*."
> – A lawyer outside Washington

Ineligibility for bonuses, either due to a formal policy or due to practice, contributes to the stigma of a balanced hours schedule. Moreover, as with salary, bonuses send messages to individual attorneys about how their performance is valued and what their future is with the firm. A firm's policy or practice that makes balanced hours attorneys ineligible for bonuses can promote attrition.

"At Dickstein, when we are looking at hours worked for bonus purposes, we factor out from our analysis the time spent on parental leave. That way a person can receive additional compensation if she or he works exceptional hours during the part of the year when not on parental leave. It works like this: If a person works at a 2400-hour pace for nine months and then takes three months of parental leave, he or she will receive 75% of the additional compensation for the 2400-hour level, because he or she worked those exceptional hours for 75% of the year. The system works well because there is an incentive to work hard, even if the attorney anticipates taking or has taken a recognized leave. We receive the benefit of the extra hard work during a part of the year and are happy to pay extra for that work." -- Michael E. Nannes, Deputy Managing Partner, Dickstein Shapiro Morin & Oshinsky

Firms that maintain balanced hours attorneys' eligibility for bonuses emphasize factors other than, or in addition to, hours worked. In addition, they apply eligibility criteria and award bonus amounts on a pro-rated basis. For example, if a bonus criterion at a particular firm is meeting the firm's target billable hours requirement, balanced hours attorneys would be eligible for a bonus if they met their individual billable hours targets, and the amount of bonus they receive would be in proportion to the percentage schedule they are working (*e.g.*, an attorney working an 80% schedule would receive 80% of the bonus paid to standard hours attorneys who achieve the billable hours target).

This pro-rated bonus structure works whether an attorney works a reduced number of hours per week or per year. It is particularly effective at insuring that attorneys are not disqualified from bonuses for taking parental leave or elder care leave.

"Not all bonuses are based on hours worked. Bonuses are paid for meritorious work, pro bono work, and other things. Part-time attorneys remain eligible for all bonuses. For bonuses that are based on hours, part-time attorneys receive a percentage equivalent to the percentage of hours they work." -- Bing Leverich, Partner, Covington & Burling

Proportional Assignments

"I love my schedule and the flexibility I have. The people I work with are all pleasant. The problem is that I am the last in line for projects because I am part-time and there is a real desire to keep the other full-time associates fully occupied. I think my schedule adversely affects the work I receive and my status in the firm. I am considering leaving."
-- AWoman Associate

An attorney's success and job satisfaction often depends on the type of work they do. A chief complaint from attorneys working balanced hours is that once they reduced their hours, they began to get less interesting work. Some were even removed from their chosen area of practice altogether. Tales of relegation to document reviews and repetitive administrative work are not uncommon. Not surprisingly, attorneys in such situations often lose interest in their work and leave.

Even if balanced hour attorneys whose work assignments suffer from their reduction in hours do not leave the firm, their development as attorneys will suffer. If litigation associates, for example, are not given the opportunity to take depositions or argue a motion, their skills will not progress and they will not be judged ready when it is time to be considered for partnership.

Decentralized work assignment practices are common at law firms. Similar to what is called in military circles "Hey, you tasking," it typically involves a partner assigning work to the first person he or she sees after a need for work arises. Clearly, a physical presence at the firm is necessary to obtain work under such systems, and the more time one is present, the more likely one is to get interesting assignments. After a task force at Deloitte & Touche found that one of the most significant career obstacles for women was the system under which assignments were made, the firm began a system of reviewing assignments periodically, to ensure that men and women are given equal access to desirable assignments.

"Supervisors couldn't keep track of my schedule, I definitely was not considered 'serious," I definitely was given secondary work. My supervisor wanted to deprive me of benefits required by law until personnel office stopped her."
-- AWashington Lawyer

"We have annual assignment reviews. You can tell a lot by who is assigned to high profile clients. If women are not on the team, there is a problem. I take the top 20 clients and look at the engagement team. I look at the top women by performance, and see if they are on at least one top client. This goes for those who work reduced hours as well."
--V. Sue Molina, Deloitte & Touche

Firms should monitor to assess whether balanced hour attorneys are receiving the same type of work as those working a standard hour schedule. As set forth in the Implementation section, *infra*, this effort begins with advising partners that refusing to work with balanced hour associates is unacceptable. It also includes training to help partners understand the nature of balanced hours schedules and the availability of balanced hours attorneys

Assignment to firm committees and other non-billable firm work is also important. Often, balanced hours attorneys find that they are shut out of firm committees and management, usually as the result of well-meaning attempts to reduce the attorneys' work loads. As with client work, the firm work is important to attorneys' professional development and is a necessary part of law practice that should not be foreclosed. Assignments to firm committees should be periodically reviewed to make sure that balanced hours attorneys are included.

"I work a part-time schedule. My reviews have all been very good. But I am not eligibel for bonuses or a promotion to counsel. These are two new policies which have made me feel disenfranchised."
-- A Woman Associate

Proportional Billable Hour Ratio

> *"I work almost a 60% schedule. Pro bono, business development, required administrative work, etc. are done on my own time. I usually am in the office 6-7 hours a day but usually take some time for lunch and occasional personal matters (up to an hour a day). I am not eligible for promotion to counsel (or partner). I am thinking about leaving the firm."*
> – A Woman Associate

Attorneys do more than bill hours. They participate in bar activities, serve on firm committees, perform pro bono work, develop business, take continuing legal education courses, and the like. Yet when most firms and attorneys set up a balanced hours schedule, they budget only the number of billable hours the attorney should work. Attorneys, understandably wanting to maximize billable time, plan to use every available hour for paying client work without realizing that failure to perform nonpaying work can irreversibly hurt their partnership chances. Law firms, also understandably wanting to maximize billable hours, are content to leave nonbillable work to the discretion of the attorney. Over time, the result is disastrous for the attorneys' careers and, ultimately, for the firms.

At several firms in Washington, balanced hours agreements expressly address the issue of non-billable work. At the vast majority, however, they do not. The attorneys at such firms report struggling to fit firm administrative work and professional development activities into their non-working hours, and many admit giving up altogether on business development, firm management, and pro bono work.

> "I hate to admit it, but I did very little business development, bar work, or pro bono while part-time. I was always so busy doing my billable work at the office and I had little time outside the office to get the nonbillable work done.
> -- A Washington Lawyer

A sampling of Washington firms where balanced hours include billable and nonbillable work:

Arnold & Porter
Dickstein Shapiro Morin & Oshinsky, LLP
Howrey Simon Arnold & White LLP
Swidler Berlin Shereff Friedman, LLP

The best practice is for firms and attorneys to recognize from the outset that non-billable work has to be planned and scheduled. It should be part of the written agreement, and the hours worked should be recorded.

Proportional Advancement

Part-time associates at Swidler, Berlin Shereff and Friedman, LLP have been promoted to partner. At Dickstein, Shapiro, Morin & Oshinsky, LLP, the first woman to make partner while working on a part-time schedule had been working part-time since she was a second year associate and made partner at the same time as the rest of her class.[50] While PAR has received reports of other Washington reduced-hour attorneys make partner, it remains unusual. Taking balanced hours attorneys off the partnership track, *de jure* or *de facto*, remains a common practice in Washington law firms. Some firms still have the old rule that any attorney with reduced hours is permanently off-track. More common is a *de facto* rule, in which the partnership rate is much lower (or non-existent) among balanced hours attorneys than among

standard hours attorneys. Another common variation is the rule that, in order be eligible for partnership, an attorney must return to full-time work before being considered for partnership.

Given how common it is to take attorneys with reduced hours off the partnership track, either formally or *de facto*, the first step is to articulate why balanced hours attorneys ought to remain eligible for partnership. The reason is that balanced hours attorneys can meet the three major requirements that typically enter into the partnership decision.

- One criterion for partnership is a certain level of professional maturity and confidence. Assuming balanced hours attorneys are not given less desirable assignments, they should develop these skills as do other attorneys, although perhaps on a more extended schedule.

- A second criterion is that lawyer has "paid his dues." Balanced schedule attorneys pay the same "dues" as other attorneys – they just pay them on a different schedule.

- Finally, assuming that balanced hours attorneys have an arrangement that includes nonbillable as well as billable hours, they should become equally adept not only at "doing the work, but also at getting the work" due to time invested in bar association, firm committees, and client development.

> Everyone my year and the year below me are going to make partners, I don't want to be still called an associate. It doesn't matter to me personally. I've never been a title person but it just seems like, she's been here 10 years and she's still an associate. Like something must be wrong. I don't want to look like that.
> -- A Washington Associate

Washington firms that keep balanced hours attorneys on the partnership track and have a good record of actually promoting balanced hours attorneys to partner have varying practices with regard to what effect a reduced schedule has on the timing of the partnership decision. At some firms, the effect is known from the outset and is formula-driven: *e.g.*, for every two years an attorney works 80% time, the attorney will be delayed a year on the track. At other firms, the partnership decision may be delayed for attorneys who began working a balanced hour schedule early in their careers and continued the schedule for their entire careers, but the decision may not be delayed for attorneys who began balanced hours schedules as senior associates. At such firms, delay is more likely the more the standard schedule has been reduced.

> *"When I went out with my first child, there were a couple of other women part-time all of whom were just about to come up for partnership when they went part-time and basically they had to give up partnership. It was clear to me, too, that when I went part-time I was giving up partnership."*
> -- A Washington Associate

At still other firms, partnership decisions remain entirely individualized and are based on an attorney's readiness as determined by performance and other factors. In this context, it is likely that some attorneys will be ready to be promoted with their entering classes.

The best practice is for firms to keep balanced hours attorneys on partnership track, have consistent policies for promotion of balanced hours and standard hours attorneys, and make sure that the policies accurately reflect the criteria the firms use for making partnership decisions.

2. Flexibility and Fairness

Universal Application

"You can't solve an institutional problem with an individual accommodation."
– Anne Weisberg, Catalyst

Balanced hour arrangements often are still treated as individual accommodations for a superstar. Sometimes attorneys are told to keep them a secret. Even if they are not, the motivation to do so is strong, given the tenuous hold most lawyers feel on their reduced-hours "deals." Said one Washington lawyer:

> If an attorney has a favorable/flexible work arrangement, that attorney had a strong incentive to keep it a secret. If other attorneys at the firm found out about it and asked for similar treatment, the first attorney ran a high risk of having the favorable arrangement terminated, because the firm would be unwilling to make it available to all. Also I have observed senior attorneys, such as partners with their own clients, who quietly worked flexible schedules, but still met yearly hourly billing requirements. These attorneys, however, would never openly admit they worked flexible schedules, presumably because of the stigmatization described in [the PAR interim report].

The "secret deal" approach to balanced hours often creates resentment among those who are not offered the deal. Even attorneys who do not have demands on their time from sources outside the office feel resentful if they believe they cannot reduce their hours and must "pick up the slack" caused by attorneys who are working reduced hours. The same resentments flourish if balanced hours programs are available only to parents.

When employees want to work a flexible schedule, including fewer hours, we do not ask the reason why. But flexibility is not an entitlement, and the employees must make a business-based case for their requests that shows us how the flexible arrangement will sustain or enhance their performance.
-- Susan Z. Holik, Vice President of Human Resources, Fannie Mae

In the corporate world, successful work/life programs provide reduced hours to all employees, or entire categories of employees, without regard to the reason a reduced schedule is sought. To quote one panel of human resources professionals, employers need to ask not "why do you need it?", but "will it work?"[51] When non-parents have the same opportunities as parents, this significantly reduces "backlash" against reduced hours that has recently been reported in the media. (Another component of preventing backlash is effective management of workloads so that standard hours attorneys are not expected to work longer hours to "pick up the slack"; this is discussed in the section on Planning, *infra*.)

Individually Tailored

Creating a policy that is universally applicable does not mean creating a policy that is one-size-fits-all. Attorneys have different work and personal needs, and some may need to work fewer hours each day, or each week, or each year. Policies should be flexible enough to allow for individuation.

Here are some balanced hours schedules that have worked well at Washington firms:

1. *Fewer hours each day*. Attorneys agree to work a set number of hours per day with regular beginning and ending times.

2. *Fewer hours each week*. Attorneys agree to work a set number of hours per week, but have flexibility in determining the hours they will be in the office. For example, an attorney may work 9:00 to 5:00 on Monday, work 9:00 to 2:00 on Tuesday and take a sick parent to the doctor, and work 9:00 to 3:00 the remaining days of the week. The following week, the schedule may vary.

3. *Fewer hours each year*. Attorneys agree to work a set amount of billable and non-billable hours over the course of a year. This works well for litigators and others with unpredictable schedules. An attorney on this type of schedule may work 70 or 80-hour workweeks while in trial, and then take time off or work 20-hour work weeks when not busy. Caveat: The firm and the attorney need to make sure that compensatory time off is taken; this is discussed more in the Handling Schedule Creep section below.

Flexible in Duration

Balanced hours schedules also need to be flexible in terms of duration. While many attorneys want reduced hours for a short period of time or a defined longer period of time, others may want them indefinitely. Some Washington firms, however, set deadlines requiring balanced hours attorneys to return to standard schedules after a year or two, or before being considered for partner. Allowing indefinite balanced hours schedules, subject to periodic reviews as set forth in the Implementation section below, is the best way to support attorneys' needs.

Similarly, it is important to create flexible, non-stigmatized balanced hours programs that allow attorneys to move between balanced hours and standard hours without fear of repercussion. Researchers Phyllis Moen and Shin-Kap Han have documented the need to replace the rigid model of an ideal worker who works full-time full-force for forty years with a "phased career" model that allows for variation without career penalty. In another study, Moen and her colleague Yan Yu found work/family conflict particularly acute among dual-earner couples with young children.[52] As children grow older and as family needs change, attorneys need the flexibility to return to standard hours if they wish. Attorneys may wish to move between balanced and standard hours several times over the course of their careers. Demand for reduced work hours is high not only among the parents of young children, but also among Americans of

retirement age, many of whom want to continue their employment with a part-time schedule.[53] Senior attorneys also need the flexibility to be able to reduce their hours.

Available to New Hires

Balanced hours policies will have the greatest impact on a firm's recruiting efforts if the firm hires attorneys who want to work reduced hours from the outset. Many Washington firms require attorneys to be employed by the firm for a minimum amount of time before making a proposal to reduce their schedules. Recently, however, several Washington firms have hired attorneys on a balanced hour basis and information from local headhunters and law school placement personnel indicates that the number of applicants who want balanced hours schedules is growing.

A sampling of Washington firms where new hires can work reduced hours:

Arent Fox Kintner Plotkin & Kahn, PLLC
Arnold & Porter
Howrey Simon Arnold & White, LLP
Jones, Day, Reavis & Pogue
Morgan, Lewis & Bockius, LLP
Swidler Berlin Shereff Friedman, LLP
Wilmer Cutler & Pickering

B. Putting The Effective Balanced Hours Policy into Practice

Leadership From The Top

To produce results for the firm, a balanced hours program has to be supported from the top. This means not merely circulating a memo from the managing partner announcing the program, but rather demonstrating commitment from all the partners and senior administrative staff of the firm. For most firms, it means directing a deliberate shift in firm culture.

"At our firm, we are not just permitting flexible work arrangements, we are facilitating them. I know what it is like to have to juggle work and other commitments. When my first child was born, I took a six-month sabbatical and stayed home to take care of him from the day he was three months until the day he was nine months old. Since then, I have felt the frustrations of combining parenthood with practicing law. If we can help people to stay employed at the firm by giving them some flexibility, we are going to try very hard to do it."
-- Managing Partner of Washington Law Firm

A good place to start is making sure that all the partners in the firm understand the economic impact that high attrition has on the firm and the relationship between long hours and attrition. The partners, as the ones assigning and supervising work, are key players. If they understand that their ability to reduce attrition costs, meet client demand for stability and diversity, and compete with other firms for legal talent – all issues that ultimately impact their wallets – depend on the success of the balanced hours program, they will make it work. If they understand that the need to support nonstandard schedules is a bottom-line issue, they will see that it is not acceptable to their partners or firm management for them to undermine the program by refusing to work with balanced hours

attorneys, assigning balanced hours attorneys excessive work, or scheduling key meetings at times when balanced hours attorneys are unavailable.

Modeling at the top is also important. Balanced hours policies should be available to partners as well as associates and counsel. If all the partners of a firm work long hours and are seemingly intolerant of those who do not, the firm sends a message that attorneys working a balanced schedule have no future at the firm. Partners who work balanced schedules should be open about their schedules and their experiences, recognizing that they are role models and potential mentors. Partners who work standard hours should be sure to take vacations and be honest when they leave work for a personal reason. Partners who are willing to say that they are leaving to coach a soccer game or relieve the babysitter demonstrate their acceptance of those who also have demands on their time from personal sources.

Publicize the Policy

In addition to frequent communication from firm management of its support for the policy, the policy needs to be publicized.

Too often, attorneys do not know or are misinformed about the terms of their firm's part-time programs. Some attorneys do not know their firm even has a policy that allows them to reduce their hours. While this may be unintentional, it may also be the result of a firm culture that not-so-subtly discourages the reduction of hours.

Two findings illustrate the pitfalls of not publicizing the firm's balanced hours policy. First, women law students report that when white women interview at law firms (even those who have no intention of having children) typically they are introduced to women working reduced schedules; it is assumed that they will be interested in issues of balance. According to some reports, balance is less likely to be mentioned to women of color, and women of color are less likely to be introduced during interviews to attorneys on reduced schedules. The Catalyst study found that 70% of white women respondents, and 57% of women of color respondents, reported that they found work/life balance difficult.[54] The 13% differential may help account for the differences in perception and treatment. Yet the underlying point is that a majority of women of color *are* concerned about issues of balance – and that some white women are not. Publicizing the policy ensures that all attorneys who are interested in balanced hours get the information they need.

A second finding is that, when a policy is not publicized, men who are interested in balance may find it much harder to find out the rules. In the absence of a well-publicized policy, information about common practices typically is passed through informal networks – typically women's networks. This means that a man interested in exploring the possibility of balanced hours has to draw attention to himself even to discover what options are available. This may feel daunting, given the perception that attorneys interested in balance are not committed professionals. PAR has received reports of men not knowing that their firms had policies that would allow them to reduce their hours. In one instance, PAR found that men and women in one firm were given different information regarding availability of reduced hours.

When Deborah Holmes, National Director of the Center for the New Workforce for Ernst & Young, arrived from Catalyst in 1996, she found rampant ignorance about the part-time program. "We had a lot of people working part-time, but not partners. Each had crafted a deal with her supervisor, and no one was supposed to know about it." Holmes, who reports directly to the Chairman and CEO, "got clearance to open up the doors." She circulated an extensive questionnaire to every person on a flexible work arrangement, and produced a data base that lists the name and contact information of about 500 people on flexible work arrangements (with their permission), along with information on what had worked well as well as the challenges each respondent had to face. The results are on the computer desktop of everyone at Ernst & Young, and can be sorted by type of flexible work arrangement, type of work, rank, and geography. "For anything you want to do, someone has done it," says Holmes.

On the desktop computer's initial screen, there is a message from the CEO expressing his strong support for flexible work schedules as a key to Ernst & Young's commitment to attracting and retaining the best talent available. This data base, in Holmes' view, has helped transform the culture of Ernst & Young. The usage rate of flexible work arrangements increased sharply, along with the rate at which women have been made partner. Ernst & Young's innovation is important because it resolves an abiding tension. On the one hand, only the employee and supervisor have the hands-on knowledge to design a workable balanced hours arrangement. On the other hand, "You can't solve an institutional problem with an individual accommodation." Ernst & Young's data base resolves this tension by authorizing individuals to craft an arrangement that both works for them and meets the business needs of the organization, not as a secret "deal," but as part of a firm-wide commitment in an organization that understands and embraces the business case for balanced schedules.

> "Make success stories visible. Hold up those who work well on a part-time basis, and let them be role models and mentors."
> -- James Sandman, Managing Partner of Arnold & Porter

Law firms can follow this best practice by establishing a regularly-updated database of existing balanced hour arrangements, and making it available to all attorneys. Similarly, holding open meetings to discuss the balanced hour arrangements in place at the firm and encouraging the creation of support groups for attorneys who are working or who want to work balanced hours will facilitate the free flow of information. If attorneys do not feel comfortable attended open meetings on this issue, it may be a signal that a firm's culture discourages balanced hours.

Training

It is unrealistic to think that a new balanced hours policy can be introduced cold to a law firm and succeed without careful thought as to how to implement it. Two types of training are essential to make the program work: basic training to ensure that attorneys understand the economics of attrition, as well as how to reduce their hours or to supervise or work with someone who has; and training to overcome unconscious assumptions that can make a well-intentioned policy unusable. Firms may want to hire professional trainers or law firm consultants to assist with training.

Basic training. The basic training should include:

- *How-to.* Provide information on how to develop successfully and supervise a balanced hours proposal. This includes the pros and cons of different types of balanced hours schedules and consideration of business needs; communication between balanced hours attorneys and others in the firm, including availability when not in the office; responsiveness to clients, including whether and how to inform clients of the balanced hours; use of technology; time management and realistic deadline-setting; and criteria for evaluating the success of individual schedules.

- *Resentment and the business case.* It is important that not only supervisors but also colleagues understand why a successful balanced hours policy is important for the firm's bottom line. To avoid resentment, associates as well as partners need to understand that balanced hours lawyers have traded off money for time; that they can do so, too, if they make a viable business proposal; and that negative comments and jokes to attorneys working nonstandard schedules are not appropriate. It may be necessary to establish an approved channel to deal with perceived unfairness that can lead to backlash.

Cognitive bias. Attorneys on nonstandard schedules often face assumptions that are barely conscious, yet deeply influential. When a partner informs a woman associate that his wife has her hands full even though she's at home full time and he doesn't see how one can be a good lawyer and a good mother at the same time, this is an example of "prescriptive bias" – he is enforcing a traditionalist notion of how good mothers should behave."[55] More common is "descriptive bias," which stems not from an insistence on traditional gender roles, but from "the content of our categories."[56] Here's an example:

> "If you're in a job share, they'll blame it on the fact that you're not there every day that you're not getting your work done. Instead of, if you're full-time, you're just overburdened because you're busy."[57]

Here's another. "When a man says he cannot make an 8 o'clock meeting because he has to take his children to school, somehow the meeting is magically rescheduled, and everyone thinks he's a great guy. But when a woman says she can't make it for the same reason, somehow the meeting is not rescheduled, and it's further evidence she's not committed to her career," notes Dotty Lynch, Senior Political Editor for CBS News.

Much of the disadvantageous treatment of part- and full-time attorneys involves unconscious bias that can be addressed only by bringing it to a conscious level and discussing it.[58] Some firms already have diversity training and could incorporate the balanced hours training into the existing program. Others need to initiate a new program, which should be provided for all attorneys and staff.

Planning by Attorney

Often, attorneys reduce their hours without much forethought about how work will get done – and then wonder why their balanced schedule does not work. Like any business decision, a decision to move to balanced hours needs to be planned with input from others and put in writing.

A good starting point for creating a balanced hour plan is talking with people who have worked balanced hours to find out what has worked and what has not. Accessing a database of balanced hours arrangements, if the firm has one, would also be a good starting point. A conversation with supervising attorneys is a crucial next step. Some of the items that should be considered are:

What schedule does the attorney wish to work?

Will the attorney will give up clients or matters to reduce work load, and if so, what?

Whether, and how, clients will be informed of the new schedule?

To what extent is the attorney willing to be contacted by colleagues or clients when not in the office?

How will the arrangement affect colleagues and how will these impacts be addressed?

What technology will the attorney need to stay in touch with the office and clients?

How will the attorney will respond to emergencies that arise when he or she is out of the office?

If the attorney is reducing hours for caregiving responsibilities, how will those responsibilities be handled if the attorney has to work at a time when he or she was scheduled to be off?

What effect does the attorney understand the balanced schedule will have on his or her advancement, and is that an acceptable effect?

What effect does the attorney understand the balanced schedule will have on his or her compensation and benefits, and is that an acceptable effect?

How will the attorney keep supervisors and colleagues informed of the status of matters he or she is working on?

How does the attorney plan to stay integrated with firm life, including social events?

What firm committees and administrative roles does the attorney plan to be involved with?

How does the attorney plan to accomplish business development activities, pro bono work, and CLE?

If the attorney works more hours than budgeted, does the attorney want to be compensated in time off or money?

If problems arise with the schedule, from whom will the attorney seek guidance?

> I meet with anyone who wants to go on an alternative schedule. I go over the policy with them, and also help them navigate their proposal. I try to iron out issues that might arise before they become problems. I might even sit down with the managing partner in the practice group to discuss someone's proposal. By facilitating the process, it is more efficient.
> -- Gabrielle Roth, Alternative Schedule Advisor , Dickstein Shapiro Morin & Oshinsky LLP [58. 1]

Balanced hours schedules will likely need to change over time as attorneys' professional work and outside lives change. This planning process may need to take place several times to adjust for changes.

Planning by Firm

The firm also needs to plan for an attorney's move to a balanced hour schedule. Supervising attorneys need to consider at least the following:

Will the schedule proposed by the attorney work in light of the attorney's responsibilities and clients?

How will the work that the balanced hours attorney is no longer doing get done without overburdening standard hours attorneys?

Should clients be informed of the times that the attorney will not be available, if the attorney plans not to be available, and who should the clients call when they cannot reach the attorney?

How will the supervisor and the attorney's colleagues stay apprised of the status of the attorney's matters?

Does the supervisor know what the attorney's schedule is and how to reach the attorney when he or she is out of the office?

What technology does the supervisor need to stay in touch with the attorney?

Are there regularly-scheduled meetings or conference calls that will need to be rescheduled to a time when the attorney will be in the office?

If the attorney is consistently having to work more hours than budgeted, how can work be re-assigned or redesigned to correct the problem?

If there are problems with the attorney's balanced schedule or work is not getting done, how will the supervisor address this?

The supervisor's plan, like the attorney's plan, may also change over time as the attorney's and the firm's needs change. The supervisor should anticipate revising the plan from time to time.

Handling Schedule Creep

A frequent complaint heard from lawyers at Washington law firms and elsewhere is that part-time attorneys find their schedules gradually increasing back to full-time. The result is that these attorneys not infrequently find themselves working full-time for part-time pay. ***Schedule creep is almost always caused by the failure to adjust the balanced hours attorney's case load to match the shorter work hours.*** Often there is an unspoken expectation on the part of the firm that the attorney will continue

> I have always said I would work between 1200 and 1400 hours a year. Because I have committed to a range I have not in eleven years fallen outside of the range. . . I can also tell you from my own experience that if in a given fiscal year I have accumulated enough hours to be comfortable I'll make my target for the year, I will take more time off during the second part of the year. I'll go on more field trips, do more volunteer work, attend more yoga classes, etc.
> -- Corporate Mergers and Acquisitions Attorney

to do the same amount of work, and a corresponding desire on the part of the attorney to prove that he or she is still a valuable team member who can pull his or her own weight.

Firms may compensate part-timers for the extra hours worked – although sometimes not without a struggle. A number of Washington lawyers reported facing uncomfortable situations where they feel they need to "spend points" or come off as unreasonably demanding, just in order to get paid for the time they have actually worked in excess of their agreed-to schedule. Some Washington firms provide an automatic "lookback," so that attorneys are paid automatically for the hours they worked in excess of their contracted schedule - without having to go back and negotiate for such payment. Some of these "lookback" provisions provide compensation only for hours worked in excess of a particular percentage over the budgeted hours. For example, at one firm that compensates hours more than 10% over budget, if an attorney is budgeted to work 1200 hours and works 1400, he would be compensated for 80 hours – the hours in excess of 110% of the budgeted hours. Compensating additional work is far better than not doing so — but the fact is that if part-time attorneys wanted more pay rather than more time, they would not have reduced their hours in the first place. A lookback provision is most definitely a best practice – although, in a firm with usable and effective policy, it will be rarely used.

A sampling of Washington firms with lookback provisions:

Arnold & Porter
Dickstein Shapiro Morin & Oshinsky, LLP
Hogan & Hartson LLP
Venable, Baetjer, Howard & Civiletti. LLP

Rather than offering money, the best practice is to monitor for schedule creep, and if a balanced hours attorney's hours are consistently higher than budgeted, to redesign or re-assign work to prevent the creep, as discussed in the next section. This approach could be combined with a model identified by Eileen Applebaum of the Economic Policy Institute, through work funded by the Alfred P. Sloan foundation to identify best practices internationally. Applebaum found that the key in determining whether compensatory time off ("comp time") helped or hurt those seeking balance lay in *the length of the period is during which the comp time is taken*. In a German professional services firm, each professional had a "time account" into which he or she logged all overtime hours. The firm made a commitment to allow comp time to be taken within three months after it was accrued. This arrangement made it easy to implement an effective hours-per-year (rather than hours-per-week) arrangement. In sharp contrast, in a different company that allowed an 18-month comp time period, employees typically found it impossible to use the comp time accumulated.[59]

The key to eliminating schedule creep is not a rigid schedule where an attorney never works more than her budgeted hours: the peaks and valleys of certain types of legal practice are unavoidable, and most balanced hours attorneys work more than their time-budget requires from time to time. The problem arises in one of two situations. One is where a supervisor is not respectful of a balanced schedule and consistently assigns a part-time attorney responsibilities inconsistent with his or her schedule. The other is when a part-timer does not feel comfortable taking off hours to compensate for the overtime worked once the crisis is past. The latter is key to making a balanced schedule work.

Balanced Hours Coordinator

The Massachusetts study found that, 61% of all respondents said that no one at their firm had worked with them to develop their reduced-hours arrangements. Nearly 80% reported that no one at their firms met with them on a regular basis to discuss how their balanced hours arrangement was working.[60] In interviews and focus groups, we found most Washington lawyers on balanced schedules in the same situation. A notable exception is at Dickstein, Shapiro, Morin & Oshinsky LLP. There, a partner receptive to balanced hours acts as the Alternative Schedule Advisor, and is an advocate and a resource for attorneys exploring reduced schedules, or on them. The partner, Gabrielle Roth, herself works reduced hours, and made partner while doing so. Reports are that, at some firms, the attorneys who have been placed in charge of implementing balance hours are not perceived as being supportive of attorneys with balanced hours.

Ms. Roth not only helps lawyers develop their proposals; she also monitors for schedule creep. As do law firms in other cities with a demonstrated commitment to balanced hours, notably Morrison and Foerster in San Francisco and Palmer & Dodge in Boston, Dickstein Shapiro keeps tracks of the disparity between the schedule an attorney has agreed to work and the actual hours worked. Most firms leave it up to the balanced hours associate to confront their supervisor with the disparity between the scheduled promised and the schedule actually worked. Obviously, this situation calls for great delicacy, and may hold considerable risks.

Dickstein eliminates the need for this. One of the functions of the Alternative Schedule Advisor is to intervene to prevent schedule creep. To quote Ms. Roth: "I also watch the hours of part-time attorneys, and if someone is way over on their hours, I call them up. Every part-time attorney fills out an evaluation for six months into the schedule, and I review those forms to make sure they are on track."[61] While Ms. Roth's job includes meeting with supervisors of balanced hours attorneys if schedule creep needed to be addressed, the situation has rarely arisen. A system where one partner approaches another, asking whether the supervisor needs help in implementing a balanced hours policy to which the firm is committed for financial reasons, holds more potential for success than a system that relies on the success of balanced hours associates negotiating with their supervisors.

Functions of a Balanced Hours Coordinator:

- Collect and Provide Information about Balanced Hours at the Firm
- Help Attorney and Firm Plan Balanced Hour Proposal
- Monitor Schedule Creep and Assignments
- Address Excessive Hours with Supervising Attorneys
- Advocate and Support Balanced Hours Attorneys

A final function of the Alternative Schedule Advisor is to monitor the quality of assignments of attorneys on alternative schedules. To

quote Gabrielle Roth: "[I make sure that part-time attorneys] are getting the level of assignments that are appropriate for them."[62]

Hold Practice Group Leaders Accountable for the High Costs of Attrition

> Remember the lawsuit against Denny's Restaurant chain? At Denny's, the challenge was how to improve service to African-Americans after a court held the firm liable for racial discrimination. Denny's tried a number of approaches, but still the complaints persisted. Then it tried another tack. It adopted a rule that docked the bonus of the manager of any store where the independent civil rights monitors received more than a certain number of calls complaining of discrimination. Suddenly, managers themselves sought out experts to find out how they could eliminate complaints.[62.1]
>
> Employers who get serious about balanced hours as a program vital to a firm's bottom-line success typically incorporate managers' success in implementing the program into the firm's salary calculations.

At Pillsbury Winthrop, LLP, practice group managers are held accountable for attrition. "A well-run group will watch the make-up of their group, and if there is a problem they will look into it and report to the managing board," said Mary Cranston, Chair and CEO. The firm has a very active system of reviewing associates, so "we have a very complete picture of who is a top performer and who is not." If attrition is higher than expected, managers can go in and see "whether a practice group head is weeding people out," or is losing top performers. "We are not passive about these things. If there is a lack of mentoring or a problem with a partner, we expect group heads to come to us with solutions." Cranston concludes, "Very bad attrition because of a failure to manage or a failure to make the workplace friendly for everyone is a particular factor in compensation."

The managing partner, Marina Park, became partner while working part-time. Said Cranston, "We make sure all the young women know that [nonsupport for attorneys on balanced schedules] is not acceptable - that if there is a problem they should let me or [the head of HR] know. We just have no patience for that here."

"You've got to look at the big picture here. If women or men with family obligations can't find what they need here, they will vote with their feet. You've got to load all of the costs of attrition into the equation. In light of the demographics of who is graduating from law school, firms that get diversity right will have much lower attrition. This more than swamps out the slightly higher overhead costs."

Employers who get serious about balanced hours as a program vital to a firm's bottom-line success typically incorporate managers' success in implementing the program into the firm's salary calculations. At Ernst & Young, partners' compensation is set pursuant to four factors, one of which concerns management of human capital within the firm.

Pillsbury Winthrop, LLP found that support for balanced schedules "is absolutely positive for the bottom line. During the recent period when the market was aggressive and it was very hard to hang on to lawyers, we lost many fewer associates. We really didn't lose that many women. It gave us a tremendous edge," concluded Cranston.

Consciously Work to Eliminate Stigma: Changing the Language of Success

"When a lifestyle that requires one to push all non-work obligations aside on a regular basis is viewed as a symbol of commitment and a sign or merit, it is difficult for associates to make different choices even if they are not interested in partnership in the immediate future."[63]

A key challenge for Washington firms is to create a firm culture that separates the ability to work a certain schedule with being a "team player," where being a "hard charger" is not the only currency of the realm. Professor Lotte Bailyn of the Massachusetts Institute of Technology points out that many employers confuse the issue of *who has talent* with the issue of who puts in more "face time."[64]

Easier said than done. When Deloitte & Touche faced this challenge, it responded by creating mandatory workshops for all accountants on "Men and Women as Colleagues." Men and women were asked to define who was a committed professional. The men tended to equate commitment with long hours, and to assume that people working in flexible work arrangements were less committed. The women did not. They tended to assume that, given the difficulties faced both at home and at work in working reduced hours, that those in flexible work arrangements were more committed: otherwise, they would simply have quit. "On most days I am taking care of children or commuting or working from the moment I get up until I fall in bed at night," said one lawyer quoted in the Boston Bar study. "No one would choose this if they weren't very committed."[65]

The Catalyst study documented a significant perception gap between men and women regarding barriers to women's advancement. While two out of three women named commitment to family and personal life a barrier for women, only 58% of men did so. In a related finding, a profound perception gap was reported between men and women regarding barriers to women's advancement: only 45% of women were satisfied with advancement opportunities, compared with 59% of the men.[66]

Changing the language of success in law firms is a key to implementation of a usable balanced hours policy. Workshops such as those instituted by Deloitte may jump-start the process, and help sustain it: Deloitte held the workshops not once but over a period of years, and required attendance not only by partners but by all professionals at and above the manager level. Changing institutional culture requires sustained effort and a long-term commitment. The issue is not bad faith, it is "the content of our categories," notably that of the ideal or committed worker.[67]

Provide Adequate Information Technology (IT) Support for All Attorneys

The challenge did not seem too daunting: take instructions from the client at 5:25 p.m. and e-mail the revised document to him by 9:00 the following morning, along with a comparison showing the changes from the previous version. If I hadn't had to leave the office by 5:30 p.m., I would probably have marked up the document by hand and given it to word processing to incorporate the changes. My preference would have been to deal with it by the same method from home. However, at that time I could not afford a fax machine and the firm would not provide one. So I put the document on my laptop and made the changes in the document myself later that evening.

My problems started when I tried to connect to the firm's network. It took me several attempts to make the connection. Every time I instructed the computer to run a comparison of the revised and original documents, it froze and I had to reboot and start the connection process all over again. Eventually, I managed to [get the document] to the client.

If I had undertaken the same task in the office, I estimate it would have taken me about 25 minutes to revise the document, run the comparison and send the e-mail to the client. Working from home, it took over two hours and a huge amount of frustration to achieve the same result.
-- Associate at a Washington law firm.

Many attorneys on balanced schedules, as well as many who are not, rely heavily of technological support to sustain their productivity. If an attorney has to spend two hours trying to email a document that should have taken half and hour to write and send, this is bound to make attorneys working balanced hours look unproductive. Investing sufficient funds in high-quality IT support makes business sense not only for balanced hours attorneys; it makes sense for everybody. Today, one suspects it is the rare attorney who does not do some work from home. The Catalyst report recommends that firms "provide resources to those going onto a flexible schedule, including some one to whom they can come for advice."[68]

A sampling of information technology made available to attorneys:

Akin, Gump, Strauss, Hauer & Feld, LLP is working toward giving all of its attorneys laptops.

Hogan & Hartson, LLP, gives its attorneys laptop subsidies.

Howrey Simon Arnold & White, LLP gives all of its attorneys laptops.

Skadden, Arps, Slate, Meagher, & Flom, LLP gives its attorneys an allowance to purchase information technology.

End Up or Out

> "We have to be the only business that exists in the universe that spends a fortune recruiting people, training people, and then discarding them." --Bruce McLean, Chairman of Akin, Gump[69]

Quite abruptly in the last few years, many law firms have ended the venerable institution of "up or out," in which associates who did not make partner were expected to leave. Motivated in part by the growing recognition of the costs of attrition, and in part by the economic boom that left firms short-handed, firms have introduced new options, beyond the traditional category of "partner" and "associate."

One example is the new system introduced at Wilmer, Cutler & Pickering. At Wilmer, the partnership track is eight years long. At year seven, qualified attorneys are promoted to "counsel," with the understanding that "we would like them to stay on indefinitely. This means that they have met all of our standards and practice at the level we expect lawyers to practice," according to William Lake, a partner who was instrumental in developing the program. Attorneys then come up for partner in their eighth year; if they are not made partner, their practice group may bring them up for partner once more, at a time of their choosing.

Another firm that has abolished up or out is Akin, Gump, Strauss, Hauer & Feld, LLP. In 2000, there were 55 lawyers in permanent "senior counsel" positions, approximately double the number there were two years before. Attorneys are told after five years whether they have a chance of getting either a partnership of a senior counsel position; if they are, their title changes from "associate" to "counsel." Bruce McLean, chairman of the firm, estimated in 2000 that about three-fourths of associates were promoted to counsel, and that attrition among that group had virtually ceased.[70]

A third firm to have abolished "up or out" is Shearman & Sterling. Shearman tells associates at the end of their sixth or seventh year what their long-term prospects are at the firm. If their prospects are positive, they get a $50,000 bonus; if they are not, the firm helps get them another job, often at a client of the firm's to encourage future referrals.[71]

The end of "up or out" is a potentially very positive development. It opens the way for the development of alternative models that can be responsive to people's need for what sociologist Phyllis Moen calls "phased careers": an end to the rigid lockstep, in place of a more flexible model in which professionals can adopt different schedules at different life phases, either for family care or for other reasons.[72]

While the end of up or out represents an important opportunity, the risk is that "counsel" positions will develop into a "mommy track." The PAR usability test, by allowing firms to track the comparative rates at which attorneys on standard and nonstandard schedules make partner and leave the firm, will prove useful in ensuring that the new two-track systems do not have the unintended consequence of creating a pink-collar ghetto.

Periodic Evaluations

Balanced hours schedules should be reviewed periodically to ensure their success. Quarterly or semi-annually meetings among a balanced hours attorney, his or her supervisor, and the Balanced Hours Coordinator should cover such things as adherence to schedule, with appropriate flexibility to respond to emergencies; timely and satisfactory completion of work; quality of assignments; and relationships with clients. Adjustments in workloads, hours, or working conditions should be made as necessary.

Periodic evaluations should complement, not replace, ongoing communication between the balanced hours attorney and his or her supervisor, and monitoring of hours by the Balanced Hours Coordinator.

IV. RESPONSE TO COMMON MYTHS ABOUT BALANCED HOURS

MYTH #1: Balanced Hours Attorneys Cost Firms Too Much Money

We have heard repeatedly that "we can't afford part-time" or "we can't afford to have people go below 80%" because we lose money on part-timers. Typically, what this means is that the firm calculates the cost-effectiveness of balanced hours by applying the overhead calculation allocated to full-time attorneys, often in excess of $200,000, to each balanced hours attorney. This methodology makes part-time look unprofitable. It also reflects flawed accounting methods. Said Alison Hooker of Ernst & Young, "Often times it is the internal accounting practices that ensure that part-time employment will be infeasible. If one looks at the underlying cost allocation issues, much of this can be corrected."

- **Firms need to look not only at revenue generated but also at expenses.** Standard procedure in law firms is to assess profitability in terms of revenue generated. This is strikingly different from the standard business models, which assess not revenue alone, but the bottom line: revenue minus expenses. "Rewarding revenue production without regard to the associated expenses distorts economic realities" and often makes reduced-hours attorneys look too costly, whereas in fact they are improving a firm's bottom line.[73]

- **Once firms look at expenses, they will be struck by the high costs of attrition.** Said one consultant. "Law firms know that attrition is a problem, but typically they haven't really looked at the numbers. Last week, when I was going over the formulas with the management committee of one firm, they were startled when they realized how much attrition was costing them."

When attrition is included in overhead, it skews the picture. In some firms, the only way attrition is counted economically is as overhead. In that context, the high cost of attrition dramatically inflates the overhead figure and makes balanced hours look costly, despite the fact that a usable part-time policy, by reducing attrition, would reduce overhead.

- **The methods of calculating overhead costs typically are flawed.** Even where attrition is not included in overhead, the method used to calculate overhead typically rests on several conventions that make it look too costly.

  1) Overhead is not the same for all attorneys. The first convention is that associates use overhead at the same rate as partners. Typically, this is not the case, as partners have bigger offices, and typically have much higher expenses related to business development. Vinson & Elkins is one firm that allocates different overhead rates to partners and associates.

2) As a practical matter, balanced hours attorneys impose only marginal costs. The second unwarranted convention is that the standard overhead calculation does not take into account that each balanced hour attorney represents only marginal costs. Many partners at major firms both in Washington and elsewhere have pointed out that real estate typically is the chief overhead cost, and that most firms keep an inventory of empty offices. The firm pays for the offices whether balanced hours attorneys are in them or not. In many situations, the marginal cost of a balanced hours attorney is minimal.

3) Set off overhead expenses against costs saved due to reduced attrition. The third unwarranted convention is that the standard way of calculating overhead does not set overhead expenses off against the costs saved through decreased attrition.

- **Firms do not consistently require every department to show equal profitability.** Some firms consider the standard overhead calculation flawed in another way. They point out that, while some law firms insist on treating each individual as a short-term profit center, this principle is not applied consistently to every part of the legal practice. Some cost centers, indeed some entire departments, are maintained because they offer value to the firm that may not be reflected in a short-term cash flow analysis. An example is where a firm provides a probate department in order to serve the needs of its major clients, or where it maintains a practice group whose profitability rate is lower than the average because it is felt this is necessary in order to be a "full-service firm." In this context, the fact that a given attorney (or a balanced hours program) is not a profit center is irrelevant.

- **It is not necessary to view individual attorneys as short-term profit centers.** Other firms note that they do not treat individual attorneys as short-term profit centers. Instead, some contend, the right question is to ask what an attorney, over his or her lifetime, will bring to the firm. Or, as others contend, the right question is to ask whether it is possible to attract and retain the highest quality workforce without a usable balanced hours program.

MYTH # 2: Some Practice Areas Are Not Amenable to a Balanced Hours Schedule

> "Litigators often spoke about corporate practice as an area that might be more amenable to part-time schedules, while several attorneys in corporate departments voiced the opposite view."
>
> -- From a Report on Large New York Law Firms[74]

Every time someone tells PAR that a given practice area – say, litigation – is not amenable to a balanced hours schedule, we find someone else who tells us that she litigates on a nonstandard schedule. How is this possible? Often the conviction that balanced hours are not feasible in a given practice area stems from the assumption that a limited schedule means than the attorney can leave every day like clockwork at 3 p.m., or can take specific days off each

week without exceptions. As noted above, many attorneys who work a balanced schedule remain sufficiently flexible that they end up working, in effect, a given number of hours per year, rather than a rigidly pre-determined number of hours per week. In the boxes below we have provided first-hand descriptions of how attorneys limit their hours in practice areas commonly cited as unsuitable for balanced hours attorneys.

What seems to determine the environments that are "good for part-timers" is not the practice area, but the attitude of the supervisor. Time and time again, we have heard of attorneys seeking balanced hours congregating in the practice areas where the practice head values their work and supports balanced schedules. In one firm, the litigation department may be such an environment, leading to the conviction that "reduced hours is particularly suited to litigation," as one Boston litigator told us (contradicting the established wisdom). In another firm, a specific regulatory practice may be headed by a supervisor who is supportive of balanced hours while the litigation department may have what one lawyer referred to as a "Harley-Davidson culture" where reduced hours are not tolerated; in that firm, people may end up convinced that litigation is "just not suited for part-timers." We even have heard stories of attorneys changing practice areas in order to gain access to a supervisor who supports balanced schedules.

Here are two examples of attorneys who have been successful in practice areas commonly considered to be among the most difficult to practice on a balanced schedule:

Mergers and Acquisitions

One transaction I worked on was a $45,000,000 leveraged lease (in 1990). I drafted all the documents, attended all the negotiating sessions, and never worked a Friday during the course of the deal. We traveled and the hours were intense, yet I managed to spend Fridays with my children. I also managed to leave most days by 5:00 p.m. Now this often meant working after my children went to bed, but I was willing to do this because the work was interesting and I could still find the balance I needed. After the deal was done, I let things move more slowly for a period of time. In 1997, I represented a client in the closing of a $300,000,000 acquisition of multiple plants located in the southeastern United States. Again the work was intense, there was some travel involved, but in 1997 with the advent of email and voice mail I had even an easier time. When my children were preschool age I took Fridays off, though I checked my voicemail a couple of times a day. During the period I took Fridays off (five years) I can count on one hand the number of Fridays I worked. Now that

> Both of these extremely talented and experienced [litigators] were in the process of leaving their existing firms and were looking for a new firm that would enable them to spend more time at home with their young children. . . . [I was receptive to part-time because several years before] an outstanding woman associate who had been working with me on a piece of major litigation [became] involved in another matter that required her to work two days a week outside the office for a different partner. [Rather than lose her work entirely], I decided to take three days a week. And then I realized: Virtually every associate who works with me works on other cases for other partners, and the therefore a part-time lawyer as far as my cases are concerned.
> --Andrew Marks, Partner at Crowell & Moring [74.1]

I come in every day, I take the time in fits and starts as I need it. My colleagues know that I am committed to a project I take on and my clients can always reach me when needed, yet my billable hours will not exceed 1350 this fiscal year.
-- Terri Krivosha, partner in the corporate department of Maslon, Edelman, Borman & Brand in Minneapolis, Minnesota.

Litigation

I worked part-time in a litigation firm, doing white-collar criminal defense and complex civil matters. I typically worked from 7:30 a.m. until 3:00 p.m., and occasionally at home on the weekends for a few hours. I found that the type of work I was doing – depositions, written discovery, witness interviews, reviewing evidence, meeting with opposing counsel, writing motions – could all be scheduled to be done during my regular working hours. I had some flexibility in my schedule so I could stay "late" for an all-day deposition or hearing. My colleagues were terrific about not scheduling conferences late in the day, but if late-day scheduling couldn't be avoided, I would participate from home. Of course, as trial deadlines approached, I would work longer hours but then I would take time off as soon as the trials were over. I worked this way for three years as an associate and was made a partner while still part-time.
-- A Washington Lawyer

I worked an 80% schedule for seven years as an associate with the firm, and for two years as a partner, and just resumed a full-time schedule at the beginning of this year. My 80% schedule meant that I tried to take one day off per week. In my experience it is possible to handle a litigation practice on a part-time schedule, with the exception of trials. Over the past five years I've had five jury trials, so that's an average of just one a year. Obviously when you are preparing to try a case, a part-time schedule goes out the window. Apart from trials, however, most litigation work is fairly easy to schedule. Typically, you know well ahead of time when a filing will be due, or a deposition or a hearing will be held, and these events can often be scheduled with the cooperation of opposing counsel or the court. Very occasionally, you have to handle a temporary restraining order or something that can't be anticipated, but that is really the exception not the rule. So I never felt that it was impossible to litigate on a part-time schedule.
-- A Partner outside Washington

MYTH # 3: Balanced Hours Cannot Work in a High-Powered Law Firm

In many respects, standard hour attorneys practice law in a manner very similar to that of balanced hours attorneys. Balanced hours attorneys are not available full-time to clients because they juggle multiple demands on their time; the same is true of standard hours attorneys -- although their multiple demands typically are the demands of other clients rather than those of family members. Both balanced hours and standard hours attorneys are still responsive to each client. Balanced hours attorneys not always in the office and available for in-person conferences because they have scheduled time out of the office; standard hours attorneys are not always in the office and available for in-person conferences because they have scheduled other

commitments or are traveling for other clients. Balanced hour attorneys do a lot of work from remote locations in order to give prompt service to clients, and standard hour attorneys on travel or in trial do a lot of work from remote locations in order to give prompt service to clients.

There is very little that is revolutionary in the idea of working fewer hours. Until a few decades ago, lawyers in the full-time practice of law worked only 35 or 40 hours a week. Lawyers with health problems, lawyers who hold part-time political office or teaching positions, and lawyers who have regular golf games all spend reduced hours in the office. Even the most respected and accomplished of lawyers – the senior partners who have given decades of their lives to build their firms – work reduced hours as they phase out of the practice of law.

MYTH # 4: Lawyers Who Work Balanced Hours Are Not Committed To The Firm

> *I think reduced schedules can be a rip-roaring success. Absolutely. I have a part-time man who works for me. I've always thought that you can get the most out of people by working with their quirks and demands as opposed to fighting them. If I have a big project he works on it and then when I don't need him he goes off and [does his other business] and the comes back when I need him. And it works out very well. Similarly, the woman who started with me, when she wanted to come back to work she was working for me and she worked three days a week. I thought I got a tremendous amount out of it. And then she increased her participation. I decreased my participation on that client and finally trailed off. I thought it was a fine trade-off. I got brains. I got hard work. So I didn't have somebody there the minute I had to , but most of the time it was only in somebody's mind that it had to be done that minute.*
> --Partner in a New York law firm. [74.2]

A common perception is that attorneys who work nonstandard schedules are not sufficiently committed. Often it is not entirely clear what they are not sufficiently committed to.

Sometimes the "not committed" language implies that they are not sufficiently committed to their careers. Lawyers on reduced schedules typically feel this is untrue. Recall the lawyer who responded to the Boston Bar survey (quoted above), who said: "On most days I am taking care of children or commuting or working from the moment I get up until I fall in bed at night. No one would choose this if they weren't very committed." This sentiment was echoed in the Deloitte & Touche "Men and Women as Colleagues" training. In that context, too, the women tended to describe part-timers as more rather than less committed than those on standard schedules.

At other times, the "not committed" language refers not lawyers' commitment to their careers, but their commitment to the firm. What constitutes commitment to the firm? This question goes to the heart of how we define the ideal worker.

A work environment that defines "commitment" as being available to work 24/7, in effect, gives parents two choices. Either they can have a family structure where their partner

provides the virtually all of the family child care, or they can decide that they feel comfortable leaving their children in paid care for, oftentimes, ten or more hours a day.

Defining "commitment" in this way systematically disadvantages women. Few families are willing to leave their children in paid care for virtually all of their waking hours. This leaves only the second option, which is open to many men but few women. The Catalyst study found that 28 percent of the married men surveyed reported that they provided 100 percent of the family income. Only 5 percent of the married women did.[75]

MYTH # 5: "Clients Won't Accept Reduced Schedules"

> *Now that I'm working three days a week, 95% of my work is just dealing with people who are calling me directly, so I myself am managing expectations. It is much easier than when a partner said to the client, 'We'll get back to you tomorrow, and the coming into my office and saying, 'Why don't you work tomorrow?' It's me saying, 'I'm not going to get a chance to look at it today, and actually I'm not in tomorrow, can I look at it on Wednesday, and nine out of ten times that is absolutely acceptable. It's because I am straightforward about when I can do something and when I can't and am managing the client's expectations without the partner setting expectations for me.*
> -- A Washington Lawyer

A common concern is that clients won't accept attorneys who aren't available 24/7. Indeed, the word on the street is that clients expect ever faster turnaround; some lawyers boast that they take their cell phones and computers on vacation, so that their clients never even know they were gone.

The first point is that achieving balance often will involve not *slower turn-around* time but *fewer matters*: not skimping on service to existing clients, but on having balanced hours attorneys take on fewer cases or clients. Said one New York attorney:

> Clients are only paying for the time they're getting. They are getting the same service. By getting me, they are not getting any different service than they got when I was full-time.... I think all of the women who want these concessions are professionals and are willing to be flexible - if something comes up and if someone is on a three-day work schedule and it is one of the days they are supposed to be off and a client say, 'I'm flying in from France, and this is the day I'm going to be there,' they are going to juggle their schedule and be there for the client. . . .I think clients are much more flexible than the lawyers. Clients are dealing with it in their own businesses and are finding ways to deal with flex-time and child care. Law firms are not willing to do this yet.[76]

The second point is that, though some clients *are* uncomfortable with balanced hours, most aren't. Only 17% of the lawyers surveyed in the Catalyst study said that clients are uncomfortable working with lawyers with reduced schedules.[77] In fact, in Washington, one common type of client is in-house corporate counsel. This group can be expected to be receptive to issues of balance because many went in-house in order to seek it. One study found that 61%

> One woman's husband, an in-house counsel, said to her before she attended a PAR focus group: "'My only comment to you is to let your client know.' He was working with someone who worked a four-day week and never told him. He would call her on Friday, and bring her things, and, had she just told him, 'I'm not here on Fridays," he would have respected that and called her on Monday. So now my voice mail message says I'm in the office on these days, and these are my hours. My clients know my schedule and generally work within it and respect it.
> – A Washington Associate

of women in-house counsel chose their jobs primarily for reasons of work/life balance.[78] Even those who are not themselves concerned with balance may well expect to take such issues seriously, and to understand the business reasons for doing so: according to work/life consultants, corporations have taken issues of balance far more seriously, and made far greater strides, than have law firms. Many corporate clients work in an environment where work/life initiatives have been in place for years.

It is important not to assume that clients will be insensitive to the need for balance if law firms raise the issue – and to remember that attorneys on standard schedules sometimes need to set limits on clients expectations. That said, current understandings will need to be changed in some contexts. Any in-house counsel who has lost two, three, or four attorneys in a row will see that it is not in his or her own interest to insist that attorneys work so hard that they quit. High turnover is expensive and inefficient not only for law firms; it is expensive for their clients as well. A senior in-house counsel was quoted above: "Stability is extremely important. Outside lawyers who have an institutional memory are incredibly valuable to us."[79]

In some situations lightning-speed turnaround is required; in others it is not. It is in the client's interest to be able to distinguish the one situation from the other. This process will sometimes require initiating a conversation with clients about how best to handle work flow so as to minimize turnover on the client's account. To accomplish this, one law firm in Australia initiated a seminar about work/life issues – and invited their clients. They found it highly successful at opening a dialogue between lawyers and clients about work/life issues.[80]

MYTH # 6: Fear of Floodgates: "The Whole Firm Can't Work Balanced Hours"

Some firms fear that offering effective balanced hours policies will open the floodgates, that everyone will want to reduce their hours. In fact, this has not happened at any firm. A number of firms, such as Arnold & Porter, Hogan & Hartson, LLP, Dickstein Shapiro Morin & Oshinsky, LLP and Shearman & Sterling have worked hard on work/life issues, and while they have higher usage rates than other firms, no floodgates can be said to have opened. The consensus among consultants is that usage will top off at between 5% and 10%.[81] High usage rates certainly are not the economic death knell for firms, in any event; Palmer & Dodge has an unusually high percentage of attorneys on balanced schedules (14% of associates work a balanced schedule) and it has remained highly profitable.[82]

Two examples of firms committed to balanced hours and enjoying success follow.

Harris, Wiltshire & Grannis

Scott Harris, a partner at Williams & Connolly for eight years, founded Harris, Wiltshire & Grannis in 1998 with two other lawyers with whom he had practiced at Williams & Connolly, the Federal Communications Commission, and Gibson & Dunn. The firm now has sixteen attorneys.

"All three of us had young kids, and had felt a tension between practicing law and our families, and we decided that need not be the case," said Harris. "I wanted an environment where I could be my daughter's room parent, which I am, and I could coach my son's Little League, which I do, and not feel like we were letting the firm down. We didn't want a financial structure where you had to bill 2000 hours."

"We attempted to create a new model ." Under their compensation system, everyone, partners, associates and staff receives points in the firm. For the support staff, most of the income is based on salary. All associates get the same base salary -- $100,000 -- in addition, they receive points based on seniority with the firm. "If we meet our budget projections, associates earn as much as the top-earning associates in this town. If we beat our budget projections, they earn more." (Firm budget projections were exceeded for the second and third years of the firm's existence.) "If we miss the projections, they share the pain. We don't skimp on salary. The policy of giving points protects us a little on the down side, and that gives us confidence." Partners "tend to earn more than their peers at other firms"; for associates, salaries are about the same as in other Washington firms.

A key factor is the firm's decision to limit overhead. "We are incredibly careful about our expenses." They moved into a "B" building, on 18th and M. "They are wonderful offices in a renovated building. But they're just a lot less expensive." They have one secretary for every three lawyers, and distribute a lot of the administrative responsibilities, so they "avoid having a lot of centralized staff."

No billable-hours standard is set. Instead, budget projections are based on experience. So far, billable hours have averaged around 1700 per lawyer. The partnership reviews hours from time to time. "But it's just a management tool to see if someone doesn't have enough work, or, occasionally, we find someone who is overburdened, and have to ask: 'Does it make more sense to redistribute the work?'"

Lawyers do a variety of things with their time outside the office. "For example," said Harris, "I just went to see my partner, and he's at his daughter's school until 1 o'clock. It's a delightful way to practice law." "We anticipate people having personal lives. This allows us to bring aboard people who share those values. " Different people use the time for different reasons. "One associate who was up for partner wanted to ride across the country for a bicycle trip for three months to raise money for lung cancer research. He took an unpaid leave. Another, a former Supreme Court clerk, wanted to take some months off for paternity leave. Why should you not do that? He came here, in part, because other firms looked at him as if he was from outer space."

"You should see the resumes we get." There are some inconveniences, Harris admits, "but they are far outweighed by the quality of the people we are able to attract. The resumes match up with those of any firm in the country." "When I was in the government, I found many talented attorneys, particularly women, who were driven out by law firms' unwillingness to accommodate their schedules. I saw that as an opportunity. For example, I hired a fabulous corporate attorney by offering her a part-time deal. I told her: 'You can come in when you want.'" They pay her by the hour. "The only cost to us is her computer and her desk."

Harris questions the practice of refusing to hire an attorney unless he or she can "carry a full load of overhead." "Most of that's sunk cost anyway. The rent is the rent. It's not like we are going to pay any less rent if she isn't here. Once you look at the marginal cost, it becomes a very different equation."

Sullivan, Weinstein & McQuay

Sullivan, Weinstein & McQuay was founded in 1995 by three lawyers who had been partners at Palmer & Dodge. The firm now has thirteen attorneys, five of whom work reduced hours ranging up from 1200 hours/year. A number of attorneys also telecommute, including one, a health care attorney, who bills roughly twenty-two hours a week, working three days a week from an office (paid for by the law firm) a few blocks from her home in Exeter, New Hampshire. Said Bob Sullivan, "I had two central theses. One was that law firms were doing nothing to bring expenses under control. They were so expensive they often could no longer represent individuals, which was putting a lot of strain on certain segments of large law firms where the kind of work they did couldn't bear the same charges that the corporate work could. "The other part of it was that I could see that there were talented women lawyers out there whom large law firms hadn't figured out how to retain. My sense was that, given the economic model they were using, which told them that part-time people are not profitable, the large firms were not likely to have part-time policies that really worked."

"For example, I talked to my partners and said, 'Life would be so much simpler for Maggie if she had a computer at her home.' But there were questions of, "'If we do it for her, would we have to do it for others?'" "Why not do it for everybody? I realized when I came here in 1995, that electronics are dirt cheap. I mean you can equip a lawyer outside the office for $3,000. You can use electronics extensively, so that you do not have the terrific overhead that the large firms have. They have yet to figure out that, having a lawyer typing a letter that's part of the creative process. We have no secretaries here. I can no longer compose except on the computer. Here you can have any equipment you want: literally, anybody can have anything they ask for." "We also control administrative expenses. For example, we don't charge for, and so don't have to keep track of the costs of a cab or of copying. I mean, does it make sense, on a bill for $100,000, to charge $12.50 for copying? It costs more to keep track of all that than you take in."

The firm also controlled expenses by moving into a "B" building. "It's a nice building, overlooking the Boston Common, but it costs a lot less than the rents the large law firms are paying." Because the firm keeps tight control of expenses, it can afford to charge clients about 30% less than the fees of the large laws law firms. Lawyers make somewhat less, too but they also work fewer hours. Bob Sullivan said his goal was for full-time lawyers to work around 1600

or 1700 hours a year. He estimates that he works 1800 a year, including time spent for administration.

Sullivan raises substantial questions about the culture in firms where associates are encouraged to bill 2400 hours or more. "When I started out in practice, if you had a question, you'd go next door to an associate who had been practicing a little longer, and he'd help you get oriented, and answer your questions. If you did this today, the older associate would have to bill that time. Someone might say to the younger associate, 'Hey, who said you could bring him in on this case?' So as a result a lot of the peer education that used to occur isn't occurring. Today, you can only go to someone who isn't going to squeal on you by putting down the time."

How does the firm coordinate attorneys' work with a variety of different schedules? Everyone tries to be in the office and on-site on Wednesdays, "so that for staff meetings and lunches we're all here."

MYTH # 7: It's Not Practical to Offer Balanced Schedules to Support Staff

If lawyers are allowed balanced hours schedules without opening up the same option to support personnel, bad feelings often result. PAR has even heard stories of lawyers having their requests for reduced hours denied, on the grounds that then the support staff would want it, with the sense that "that's impractical."

At the law firm of Maslon Edelman Borman & Brand in Minneapolis, 13% of the support staff work alternative schedules. This includes eight legal secretaries, a librarian, someone in the business office, and three paralegals. The alternative arrangements include two secretaries who job share. Part-timers generally work three to four days a week. "We have no hard and fast policy," said Sandy Collen, the head of Human Resources. "Various employees have approached us about alternative work arrangements, and where we can we accommodate them." In fact, the firm has hired some support personnel on a four-day-a-week schedule.

The reasons for the balanced schedules include child and elder care, and the desire to take college classes. Said one legal secretary Sheri Alman, "I didn't get married never to see my husband. I do errands and my husband and I go out of town quite often – often we go camping. Also, I do some volunteer work with children, clean the house, and prepare a nice meal. I do it for quality of life reasons."

When secretaries work a four-day week, typically the remaining day is covered by a floater.

"It's a very tight labor market, even tighter for legal secretaries and paralegals. Law firms have had to implement some life balance type programs," said Collen. "We tend to be pretty open-minded when people need to come in late, leave early – we tend not to micromanage those types of things as long as they're able to get their work done and it works well with their supervisors. There have been occasions when we've had to say no, but we are more than happy to be as flexible as we can."

Firms that have allowed flexibility to support personnel have found a number of advantages. Maslon Edelman found that a key advantage of job sharing is that finding a replacement becomes the responsibility of the job-sharing employee rather than the supervisor. The firm also found that flexibility helps in recruiting: When the firm advertised a job-share for a human resources support position, they got a "deluge" of applications. "We had a hot ticket!" said the head of Human Resources.[83] Other employers have found that having two part-timers improves coverage. For example, if one can come in early and leave early, while the other comes in late and leaves late, coverage is available for more hours than on a standard schedule. In addition, some employers have found that, in the event of a work crunch, it is much easier to bring in trusted permanent (part-time) employees rather than to rely on temps.[84]

CONCLUSION

The standard fear is that "we can't afford part-time." The reality is that law firms can't afford *not* to offer balanced hour policies that are both usable and effective. To keep the keepers in an era when half or more of law students are women, and in a society where the younger generation has become more insistent on work/life balance, law firms need to offer balance without career penalties. Those that do so become the "employers of choice," able to attract and retain legal talent better than their competitors.

When PAR began its research, we often heard from the work/life community that "law firms are far behind the corporate sector," or that "law firms just don't get it." This view it outdated: some do. Some firms have expressed a top-down commitment to quality reduced-hours programs, and are seeking viable models. Not only can such firms look to accounting firms, which have made dramatic changes in firm culture; they can look to other law firms.

All that PAR has done is to gather best practices currently in use, and to compile them into a Model Policy. For firms who have been searching for a way to "make part-time work," this Final Report provides a road map derived from the best practices of law firms themselves.

Response to this Report is welcome. Please send comments to FinalReport@pardc.org or visit the PAR webiste, www.pardc.org and complete the comments form.

Endnotes:

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[9] Catalyst, ADVANCING WOMEN, *supra* note 2, at 23 (quoting David Maister)

[10] Catalyst, ADVANCING WOMEN, *supra* note 2, at 26.

[11] Catalyst, WOMEN IN LAW: MAKING THE CASE (Catalyst 2001) at 18.

[11.1] *Id.*

[12] Baker, *supra* note 7, at 44.

[13] Ellen Ostrow, *Beyond the Billable Hour* (Oct. 5, 2000), *available at* www.lawyerslifecoach.com.

[14] Catalyst, WOMEN IN LAW, *supra* note 11, at 1.

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[16] Keith H. Hammonds, "The Daddy Trap," *Business Week*, Sept. 21, 1998 at 56.

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[23] *Id*.

[24] Deborah K. Holmes, "Learning from Corporate America: Addressing the Dysfunction in the Large Law Firm," 31 *Gonzaga Law Review* (1995-1996), 373, 400.

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[29] *Id*. at 19.

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[31] *Id*. at 7. *Accord* Epstein, *supra* note 19, at 404.

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