

4-1-2006

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Recommended Citation

Audrey J. Lee, *Negotiating Part-Time Work: An Examination of How Attorneys Negotiate Part-Time Arrangements at Elite Law Firms*, 6 Pepp. Disp. Resol. L.J. Iss. 3 (2006)

Available at: <https://digitalcommons.pepperdine.edu/drlj/vol6/iss3/3>

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Negotiating Part-Time Work: An Examination of How Attorneys Negotiate Part-Time Arrangements at Elite Law Firms

Audrey J. Lee*

INTRODUCTION

A recent body of literature suggests that women are less able negotiators than men.¹ In particular, some research suggests that women are less likely to see and take advantage of opportunities to negotiate and that women fare worse than men when negotiating in the absence of objective norms, such as comparator salary offers in salary negotiations.² Some academics posit that this observation is the product of lower expectations among women than men, while others suggest the reported gender differences are attributed to discrepancies in self-worth and entitlement.³ Notably, these studies have primarily used college students, and occasionally MBA students, as subjects.⁴

The issue of part-time work at law firms provides a ripe domain for the analysis of the role of gender in negotiation. Prior studies on part-time work and women's advancement in law firms have focused generally on the

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1. See, e.g., LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE* (2003).

2. *Id.* at 2-3; see HANNAH RILEY & KATHLEEN MCGINN, *WHEN DOES GENDER MATTER IN NEGOTIATION?* 10-12 (John F. Kennedy Sch. of Gov't Fac. Res. Working Paper Series, RWP02-036, 2002), available at [http://ksgnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP02-036/\\$File/rwp02_036_riley.pdf](http://ksgnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP02-036/$File/rwp02_036_riley.pdf).

3. Brenda Major & Ellen Konar, *An Investigation of Sex Differences in Pay Expectations and Their Possible Causes*, 27 *ACAD. MGMT J.* 781, 787 (1984).

4. See *infra* Part I.A.

problems facing part-time attorneys, with little emphasis on how attorneys negotiate their part-time arrangements and their actual nature.⁵ Accordingly, little is known about how attorneys prepare for this negotiation, what their alternatives are to reaching an acceptable arrangement with the firm, how flexible firms are with respect to agreeing to arrangements beyond their stated policy, and attorney satisfaction levels. An analysis of these negotiations may yield constructive advice for both law firms and attorneys.

In viewing the current study through a negotiation lens, it is important to consider how this sample, women attorneys, may differ from samples used in the studies described above. Prior gender and negotiation studies primarily used college students and occasionally graduate students; some have relied on anecdotal evidence from interviews of professional women in a variety of industries.⁶ By contrast, the current study sample is drawn from practicing attorneys, all of whom engaged in advocacy and adversarial experiences as part of their professional education. In addition, all participants selected to work in a competitive geographic market, which suggests an inclination to work in potentially more competitive environments. The frequency with which female attorneys view the discussion of part-time arrangements as opportunities to negotiate will be measured by assessing how attorneys approached their negotiations. The impact of criteria or standards, believed to assist women achieve better outcomes, on female attorneys' negotiations will be measured by analyzing how often attorneys negotiated beyond their firm's stated part-time policy.

The current study will examine some of the prevailing gender and negotiation hypotheses by examining how often women attorneys approached the conversation regarding part-time work as a negotiation. The conversations are measured by preparation and comparison of arrangements negotiated by attorneys at firms with specific part-time policies (i.e., 80 percent hours and compensation) and those with no default terms (i.e., the firm has no specific policy on part-time but will handle requests individually). Part I will provide background information pertaining to recent research on gender in negotiation and prior studies on part-time work at law firms. Part II will discuss the methodology and sample of the current study of part-time work arrangements of attorneys at elite law firms in one major metropolitan legal market.⁷ Part III will discuss the current study's results with respect to whether attorneys viewed this situation as an

5. See *infra* Part I.B.

6. See *infra* Part I.A.

7. In order to preserve respondent confidentiality and anonymity, the firms' locations have been withheld and specific response details regarding actual part-time arrangements have been generalized in certain instances.

opportunity to negotiate, measured by their preparation, and whether attorneys' approaches were impacted by the existence of objective criteria, viewed here as the firm's part-time policy. Part IV will provide prescriptive advice to attorneys and law firms based on the results of the current study. The study's results suggest that women attorneys are more able negotiators than recent gender and negotiation research has concluded about women generally.

I. BACKGROUND

A. *Recent Research on Gender and Negotiation*

Studies on the role of gender in negotiation have analyzed differences in gender with respect to approach, conduct, and outcome in a range of contexts. A number of studies suggest that women are less likely than men to view everyday conversations and situations as opportunities for negotiation. In their 2003 book, *Women Don't Ask: Negotiation and the Gender Divide*, Carnegie Mellon University Economics Professor Linda Babcock and co-author Sara Laschever describe the findings of a number of studies examining differences in gender approaches to negotiation.⁸ Their basic finding is that women fail to see opportunities to negotiate both in their daily personal and professional lives.⁹ In a study of several hundred subjects inquiring about respondents' most recent negotiations (which they had attempted or initiated themselves), Babcock and her colleagues found that men reported that their most recent negotiations occurred two weeks ago on average, while women reported that their most recent negotiations occurred approximately four weeks ago.¹⁰ The average reported second-most-recent negotiations spanned an even wider divide: seven weeks ago for men and twenty-four weeks earlier for women.¹¹ Women also appear to only identify more structured negotiations as opportunities to negotiate. In over one-hundred interviews conducted by Babcock and Laschever, women tended to identify their most recent negotiation as a widely recognized variety of a

8. BABCOCK & LASCHEVER, *supra* note 1.

9. *Id.* at 3.

10. *Id.* at 2-3.

11. *Id.* at 3.

structured negotiation, such as the purchase of a car.¹² Men, on the other hand, frequently identified less formal situations as their most recent negotiations, such as negotiating with a spouse over household chores or with a colleague over the assignment of project tasks.¹³

This perceived tendency arguably spills over into women's professional lives, manifesting itself in women generally asking for and receiving lower salary increases and fewer promotions. In one representative study that examined the starting salaries of Carnegie Mellon students graduating with their master's degrees, Babcock found that the starting salaries of men were 7.6 percent or almost \$4,000 higher on average than those of women.¹⁴ While surprising, particularly given that the school career services office had strongly advised students to negotiate their job offers, the discrepancy may be attributed to the finding that only 7 percent of women but 50 percent of men negotiated their salary offers. The impact of choosing to negotiate the salary offer appears particularly powerful given the finding that those students who chose to negotiate their offers were able to increase their salaries, on average, by 7.4 percent or \$4,053, which almost exactly corresponds to the average salary difference between men and women.

A second strand of research in this area suggests that once women decide to negotiate, they negotiate relatively worse outcomes than men in the absence of objective standards to guide them and perhaps justify their interests.¹⁵ Much of this research is based on social psychology research on the "paradox of the contented female worker,"¹⁶ the finding that women exhibit equal or higher pay satisfaction despite earning less than men in comparable positions, and related research on pay expectations.¹⁷ Some academics have advanced the theory that women exhibit such high rates of satisfaction for the simple reason that they expect less; if women have lower aspiration values,¹⁸ or justifiable ideal goals, than men it would make sense that they would be content with lower outcomes. One representative study

12. *Id.* at 3. The authors note that the exceptions to this trend were young mothers who generally reported they constantly negotiated with their children. *Id.*

13. *Id.*

14. *Id.* at 1-2.

15. *See, e.g.*, RILEY & MCGINN, *supra* note 2, at 10-12.

16. BABCOCK & LASCHEVER, *supra* note 1, at 41-42 (citing FAYE CROSBY, *RELATIVE DEPRIVATION AND WORKING WOMEN* (1982)). This phrase was coined by social psychologist Faye Crosby, author of a 1982 study of several different types of organizations which was among the first to document such a phenomenon.

17. *Id.*

18. ROGER FISHER, WILLIAM URY & BRUCE PATTON, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 97-106 (2d ed. 1991); ROBERT H. MNOOKIN, SCOTT R. PEPPET & ANDREW S. TULUMELLO, *BEYOND WINNING: NEGOTIATION TO CREATE VALUE IN DEALS AND DISPUTES* 34 (2000).

of undergraduate and MBA students found that women have significantly lower career entry and peak pay expectations: men expected to earn 16.5 percent more at entry level and 46 percent more at career peak.¹⁹ This study also supports the finding that women with comparable education and work qualifications as men were equally satisfied despite receiving less pay. Other studies have yielded similar findings supporting this view.²⁰

Another explanation for researchers' conclusion that women negotiate worse outcomes relative to men turns on differences in determinations of self worth or entitlement. In a study examining salary negotiations for a job, the researcher conducted extensive post-negotiation interviews to learn MBA students' approaches in determining their own worth as they prepared for their negotiations.²¹ Mapping onto studies cited above, the study found that more men than women made remarks suggesting they knew their own self worth (85 percent) and that they were entitled to more than others (70 percent), as compared to women, a majority of whom made remarks indicating they were unsure of their worth (83 percent) and that they were entitled to the same as others (71 percent).²² Men were also more likely to indicate they could justify their demand for a higher salary during the negotiation (64 percent), as compared to the majority of women who suggested they would prove their worth on the job (83 percent).²³ Another

19. Brenda Major & Ellen Konar, *An Investigation of Sex Differences in Pay Expectations and Their Possible Causes*, 27 ACAD. MGMT J. 777, 787 (1984). One similar study hypothesized that the most effective means of eliminating discrepancies in pay expectations between men and women may be to directly indicate that salary offers did not differ for men and women. This study of undergraduate students majoring in business found that despite receiving information on salary ranges for different types of jobs, women still expected to receive lower salaries. In comparing their results to those of comparable studies, the authors noted that Major's study (cited above) provided prior salary information for both men and women, which appeared to be averaged by the majority of students in deriving their expected pay. In contrast, this study did not provide gender specific salary information. In the absence of gender specific salary information, which research suggests both men and women prefer to rely upon, the authors hypothesize that women relied on other sources of information, such as female mentors or friends, whose salaries have historically been lower than that of men. See Beth Ann Martin, *Gender Differences in Salary Expectations When Current Salary Information is Provided*, 13 PSYCHOL. WOMEN Q., 87, 92-93 (1989).

20. See, e.g., L. A. Jackson, P. D. Gardner, & L. A. Sullivan, *Explaining Gender Differences in Self-Pay Expectations: Social Comparison Standards and Perceptions of Fair Pay*, 77 J. APPLIED PSYCHOL., 651 (1992) (primarily attributing gender differences in estimated starting and career-peak salaries to divergent conceptions of fair compensation).

21. Lisa A. Barron, *Ask and You Shall Receive? Gender Differences in Negotiators' Beliefs About Requests for a Higher Salary*, 56 HUM. REL. 635, 642-43 (2003).

22. *Id.*

23. *Id.* at 644.

study asking students to determine their own wages for specific, discrete tasks they were recruited to perform yielded similar results. Men paid themselves on average more than women for the same work or determined that they needed to work less than women did to earn the same compensation (by approximately 22 percent).²⁴ What is particularly striking is the range of the discrepancy by gender: men paid themselves almost twice as much on average as women.²⁵

Another explanation may be related to what sources of information men and women turn to in gathering data for salary negotiations. Research indicates that both men and women prefer same-sex salary information in gathering compensation data.²⁶ This is problematic for women, who, because of the sex segregation of work and other factors, end up comparing themselves to underpaid women.²⁷ In addition, women's lower rates of initiating negotiations related to these issues would place them at a considerable financial disadvantage vis-à-vis men.

Researchers have found, however, that the gender gap manifested in salary negotiations disappears when subjects are provided identical background information, suggesting that women fare better when they are provided with criteria.²⁸ One representative study of this work found that the gender difference in negotiated salaries disappeared when men and women were given the same information on prevailing industry standards for various jobs.²⁹ In other words, both men and women who were informed that others had been highly paid felt entitled to more compensation than did men and women who had been informed that others had been paid lesser amounts.³⁰ A study of MBA graduates' starting salaries and bonuses from one Ivy League business school conducted by Babcock, Harvard Kennedy School Professor Hannah Riley, and Harvard Business School Professor Kathleen McGinn corroborates this finding. Based on data from the school's career services department, they found that women's starting salaries for their first jobs after graduation were 6 percent lower on average

24. Brenda Major, Dean B. McFarlin, & Diana Gagnon, *Overworked and Underpaid: On the Nature of Gender Differences in Personal Entitlement*, 47 J. PERSONALITY & SOC. PSYCHOL. 1399, 1403, 1408 (1984).

25. *Id.* at 1403.

26. Martin, *supra* note 19, at 93 (citing B. Major & B. Forcey, *Social Comparisons and Pay Evaluations: Preferences for Same-Sex and Same-Job Wage Comparisons*, 21 J. EXPER. PSYCHOL. 393 (1985)).

27. Wayne H. Byslma & Brenda Major, *Two Routes to Eliminating Gender Differences in Personal Entitlement: Social Comparisons and Performance Evaluations*, 16 PSYCHOL. WOMEN'S Q. 193, 194 (1992).

28. *Id.* at 198.

29. *Id.*

30. *Id.*

than that of the male students, after controlling for industry, pre-MBA salary, functional area, and office location.³¹ More surprising, however, was the finding that women negotiated guaranteed yearly bonuses that were 19 percent smaller than those negotiated by men, even after accounting for the potentially differentiating factors described above.³² The researchers attribute this finding to the absence of guidelines for standard bonus amounts given that reliable information exists for starting salaries in a range of industries.³³

In another study, undergraduates from the Boston area were recruited to participate in a sales negotiation and were divided into two groups.³⁴ One group was given a bottom line, meaning sellers were told a minimum they could accept and buyers a maximum amount they could offer to pay.³⁵ The other group was given a bottom line but was also provided a target amount to which to aspire.³⁶ The results correspond to the prior McGinn and Riley study's findings.³⁷ Among female and male students who were just given a bottom line, female buyers set less aggressive goals than male buyers (approximately 10 percent) and ultimately negotiated prices 27 percent lower than those achieved by their male counterparts.³⁸ But among students in the second group, there was no gender difference in negotiated prices.³⁹ These studies suggest that women should perform better in negotiations when they are provided criteria or standards, and in particular, upper range estimates for valuation.

It is important to note that discrimination, conscious and unconscious, arguably plays a role in the observation drawn from these studies that men tend to negotiate better outcomes than women. Professor Ian Ayres' well-known study of negotiation outcomes based on gender or race in the context of purchasing a new car exemplifies this issue.⁴⁰ The study was based on

31. BABCOCK & LASCHEVER, *supra* note 1, at 59-60 (citing Hannah C. Riley, Kathleen McGinn & Linda Babcock, *Gender as a Situational Phenomenon in Negotiation* (2003) (unpublished manuscript)).

32. *Id.* at 59.

33. *Id.* at 59-60.

34. *Id.* at 137.

35. *Id.* at 137.

36. BABCOCK & LASCHEVER, *supra* note 1, at 137.

37. *Id.*

38. *Id.* at 138.

39. *Id.* at 137-38.

40. Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817 (1991).

more than 180 independent negotiations that occurred at ninety car dealerships in the Chicago area with testers of different races and genders using a uniform negotiation strategy.⁴¹ In addition to employing a uniform negotiation strategy, testers were also selected and/or trained to project a similar external appearance with respect to age, educational background, attire, economic class, occupation, address, and attractiveness.⁴²

The results are striking, though not entirely surprising. Ayres found that white women paid 40 percent higher markups than white men, African American men paid more than twice that of white men, and African American women fared the worst, paying more than three times that of white male testers.⁴³ In addition, female and minority testers experienced other differences in treatment regarding the information provided to them about the car and were steered toward salespeople of their own gender and race.⁴⁴ Ayres concludes that the strongest explanation for the disparity in treatment is due to revenue-based statistical discrimination.⁴⁵ Among possible factors within revenue-based statistical discrimination, Ayres posits that car dealers may generally offer higher prices to minorities and women because of the inference that members of these groups are averse to bargaining. In other words, the impression held by salespeople that women and minorities will give more concessions during the bargaining process as compared to whites and/or that members of these groups will simply not engage in negotiation and will thus be more likely to accept a higher sale price, leads sales people to offer and settle on higher prices for women and minorities.⁴⁶ While overt discrimination or unthinking stereotyping of women on the part of their negotiating counterparts has an impact on women's negotiated outcomes, for purposes of this study, this component will not be explored in depth given the difficulty in measuring discrimination and in providing recommendations based on the results of the current project.

B. Prior Research on Part-Time Work at Firms

Part-time policies have become a commonplace and expected offering of law firms. In 2004, virtually all firms in the National Association of Law Placement ("NALP") Directory of Legal Employers (96.7 percent) offered a

41. *Id.* at 818.

42. *Id.* at 825.

43. *Id.* at 819.

44. *Id.*

45. *Id.* at 847. *See id.* at 847-52 (discussing revenue-based statistical discrimination as an explanation for the test results).

46. *Id.* at 850.

part-time work schedule, either as an affirmative policy or on an individual, case-by-case basis.⁴⁷ Over the last decade, part-time policies have become more prevalent at law firms.⁴⁸ Part-time law firm policies have improved over time, at least in terms of their formal nature. Firm policies from a decade ago sometimes formally limited the option to associates and placed explicit limits on duration (with the expectation being that such an arrangement was only temporary).⁴⁹ Today, most firm policies, at least in terms of official policy, allow part-time attorneys more flexibility. In 2004, partners are generally able to seek reduced schedules (comprising 2.6 percent of partners in the NALP 2004 study),⁵⁰ and attorneys appear able to work part-time for a number of years, though some firms still appear to place limits on duration.⁵¹ Many firms have detailed written statements, outlining a standard policy, such as eighty percent schedule and compensation, while others have vague policies that only state that the firm will accommodate requests for reduced or flexible schedules. Today, approximately 3.9 percent of attorneys nationwide report working part-time.⁵²

Advocates of part-time programs trumpet them as enabling mostly female caregivers to balance work and family appropriately and that such programs are even in a firm's economic self-interest. Some of the staunchest advocates are firms that have adopted part-time programs. The Managing Partner of Arnold and Porter, James J. Sandman, offered the business case for effective part-time programs at a 2002 American Bar

47. *Part-Time Attorney Schedules Remain an Under-Utilized Option by Most Partners, Associates*, National Association for Law Placement, http://www.nalp.org/press/p_t2004.htm (last visited Apr. 21, 2005) [hereinafter *Part-Time Attorney Schedules Remain an Under-Utilized Option*].

48. See Cynthia Fuchs Epstein, *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 *FORDHAM L. REV.* 291, 395-400 (1995) [hereinafter *Glass Ceilings*]. In Epstein's comprehensive study of eight large, well-regarded law firms in New York City, two firms had stated part-time policies while the remaining six firms expressed their willingness to accommodate part-time attorneys on a case-by-case basis.

49. *Id.* at 395-98.

50. See *supra* note 47, *Part-Time Attorney Schedules Remain an Under-Utilized Option*.

51. Women's Bar Ass'n of Mass., Rep. of the Emp. Issues Comm., *More Than Part-Time: The Effect of Reduced-Hours Arrangements on Retention, Recruitment, and Success of Women Attorneys in Law Firms* at 14 (2000) [hereinafter *Women's Bar Ass'n of Mass. Rep.*].

52. *Availability and Use of Part-Time Provisions in Law Firms - 2004*, National Association for Law Placement, <http://www.nalp.org/nalpresearch/mw04sum.htm> (last visited Apr. 21, 2005).

Association meeting.⁵³ Sandman argued that an accessible, part-time program enables firms to compete both in the market for talent and for clients: recruits appreciate the option to attempt to balance work and personal needs and clients appreciate committed attorneys who are sometimes better able to focus on their cases because they are assigned to fewer of them. Some advocates argue that part-time programs at law firms are a business necessity because it is precisely at the time that a substantial portion of female attorneys elect part-time – while they are senior associates – that the firm expects to make the most profit from their work.⁵⁴ Other studies suggest that part-time attorneys are more efficient.⁵⁵ Despite these arguments, part-time attorneys consistently report differential treatment, particularly around concerns related to their commitment to the firm, work assignment distribution, and partnership prospects.⁵⁶

Prior research on part-time and flex-time policies at law firms has mostly derived from broader studies that focused on issues confronting women at law firms. These studies did not focus on part-time arrangements holistically or from a negotiation lens; they focused on obstacles confronting women at law firms but did not gather information on how attorneys prepared for and conducted themselves in requesting part-time arrangements. One of the most comprehensive studies was conducted in 1995 by the New York City Bar Association. The purpose of the study was to learn more about women's experiences at large law firms and more specifically, to learn what obstacles hindered their advancement within the firm. The researchers analyzed empirical data provided by eight, large, corporate New York firms and interviewed attorneys and alumni (174 attorneys) of these firms.⁵⁷ Part-time work arrangements were one component of this multi-faceted study. Researchers found that attorneys were dissuaded from pursuing part-time because they were told, sometimes explicitly, that doing so would scuttle their prospects for advancement. During the period of this study, the early 1990s, part-time attorneys in this sample were almost exclusively associates (one partner of eighteen

53. James J. Sandman, Remarks at "Summit on Keeping Her in Her Place: New Challenges to the Integration of Women in the Profession," SEC. OF LITIG., AM. BAR ASS'N 1-3 (Aug. 11, 2002) (transcript on file with the author).

54. See Note, *Why Law Firms Cannot Afford to Maintain the Mommy Track*, 109 HARV. L. REV. 1375, 1376 (1996); Ronald J. Gilson and Robert H. Mnookin, *Coming of Age in a Corporate Law Firm*, 41 STAN. L. REV. 567, 574 (1989).

55. Deborah L. Rhode, *Balanced Lives: Changing the Culture of Legal Practice*, AM. BAR ASS'N COMM'N ON WOMEN IN THE PROF. (2001), at 41.

56. See Emily Couric, *Women in the Large Firms: High Price of Admission?*, NAT'L L.J., Dec. 11, 1989, at S2; Women's Bar Ass'n of Mass. Rep., *supra* note 51, at 17-33.

57. *Glass Ceilings*, *supra* note 48, at 307.

attorneys) and all female. Two firms had written policies on part-time arrangements; the remaining six firms had no formal part-time policies but reported willingness to accommodate attorneys on an ad hoc basis.⁵⁸

A more recent study offered insights on the nature of part-time policies at law firms and their impact on women's advancement within the firm. A 2000 Women's Bar Association of Massachusetts study focused on Boston area firms' part-time policies with the goal of learning why women had not broken partnership ranks in larger numbers to correspond with their increased representation among associates.⁵⁹ This study found that the number of attorneys with a reduced-hours arrangement continues to rise and that a substantial percentage of attorneys who left firms cited dissatisfaction with their firm's policy or approach to part-time as influencing their decision to leave.⁶⁰ Major sources of dissatisfaction among part-time attorneys were consistent with prior findings: a lack of institutional support from the firm, deterioration of professional relationships within the firm, and adverse career consequences (e.g., perceived commitment level, substantive work assignments). The study's results also suggested that well-integrated and functioning part-time programs reduced attrition rates and increased loyalty to the firm: many part-time associates and almost all partners had been at the firm longer than the average full-time associate.⁶¹ Based on its findings, the study concluded that firms should strive to foster and implement individualized arrangements, allow attorneys to remain on partnership track, compensate for hours worked beyond the agreed-upon schedule, and avoid setting time limits on the duration of such arrangements.⁶²

Given the significance of the issue of part-time arrangements at law firms and recent studies' suggestion that women are less skilled in negotiating in the workplace, an examination of how attorneys approach and conduct the negotiation of part-time work arrangements at law firms is ripe for analysis. In particular, what can existing negotiation theory add to assist women attorneys and their firms reach more optimal outcomes? The current study aims to shed light on the compatibility of recent research findings on this group of women and to derive practical implications from the results.

58. *Id.* at 395, 398.

59. Women's Bar Ass'n of Mass. Rep., *supra* note 39.

60. *Id.* at 3.

61. *Id.* at 4.

62. *Id.*

II. NEGOTIATING PART-TIME WORK AT ELITE LAW FIRMS: THE CURRENT STUDY

A. Methodology

A hard copy and email survey was sent to approximately 1,000 attorneys at three major firms in the same city. The location was selected given the large number of attorneys drawn to the city and the general perception that it is extremely difficult to effectively manage a part-time arrangement at the city's prestigious firms. Firms were selected based on their general reputation and inclusion in the Vault rankings as top firms in the region. An additional criterion was the ability to determine an attorney's tenure at the firm via the firm's website given the range of attorneys surveyed, mid-level associates (defined as fourth-year associates) through partners. Attorneys were identified as falling within this specific range based on information provided on their firm website.⁶³ Given that the number of attorneys at large firms often exceeds five hundred, this demarcation was made in order to compare results across firms and because of the view that most part-time attorneys are beyond the first few years of firm work.

Each attorney was sent a personalized cover letter explaining the research project, a one-page, double-sided survey, and a stamped, self-addressed return envelope. The survey asked attorneys about their desire to pursue part-time work at their firm and more detailed questions for those who had negotiated a part-time arrangement at some point during their tenure at the firm. The portion of the survey on part-time arrangements included questions regarding what concerns attorneys had about pursuing part-time work, how they prepared for their negotiation with the firm, the nature of the negotiation with the firm, the terms of the arrangement, and satisfaction levels with the arrangement. Surveys were color-coded by firm. A copy of the survey is found in Appendix C. The email version included the cover letter and survey. Past and present part-time attorneys were asked on the survey if they would agree to a confidential interview. Phone interviews were conducted with fourteen attorneys. Phone interviews provided an opportunity to supplement respondents' survey responses and to inquire in more detail about their preparation, ideal terms, factors

63. Because this information was derived solely from firm website information on attorney law school graduation year, it is possible that some attorneys have worked less than three years at the firm due to clerkships or prior work experience before joining the firm.

contributing to satisfaction, and level of support from colleagues and firm management.

*B. The Sample*⁶⁴

Approximately 3.8 percent of attorneys surveyed (38 of 1,007 attorneys) reported having worked or working part-time. Within this group of respondents, seven are currently partners, twenty are associates, and seven hold other positions at the firm (e.g., counsel, senior counsel, etc.); thirty-one attorneys are female and five are male. The majority of attorneys were either in the corporate or litigation departments (13 and 9 attorneys, respectively), with five attorneys in the tax department and eleven scattered in other, smaller departments (i.e., trusts and estates, labor and employment, etc.). The most cited reason for pursuing part-time was childcare needs (30 attorneys), followed by other reasons (i.e., improve quality of life, pursue other interests) (9 attorneys), non-child family needs (4 attorneys), and personal health (2 attorneys).⁶⁵ Approximately twenty-five attorneys currently work part-time.⁶⁶

An analysis of the experiences of this group of former and current part-time attorneys, while limited in some respects by response rate and size, is nevertheless likely to be fairly representative of part-time attorneys at elite firms for several reasons. While the absolute number of part-time respondents is small – thirty-eight – only a small fraction of attorneys are estimated to work part-time, currently estimated at 3.9 percent nationwide.⁶⁷ In addition, the three firms included in the sample represent different firm cultures. Two firms are generally regarded as having collegial work environments, while the other is regarded as having an intense work culture. Also, given that the firms surveyed are considered elite firms in a competitive geographic market, it is likely that the usage rate for part-time work at these firms is below the nationwide average calculated by NALP.

64. Some percentages do not add up to 100 percent because respondents did not always respond to every question (particularly position, number of years at the firm, and gender).

65. Attorneys were asked to select all options that applied which resulted in some attorneys selecting more than one reason for pursuing part-time work.

66. Of the thirty-eight responses, five no longer work part-time, one attempted but failed to negotiate an acceptable arrangement, and one will begin part-time work in the near future; based on information provided by attorneys, it could not be determined whether six attorneys are currently part-time.

67. The NALP 2004-2005 Directory of Legal Employers, *available at* <http://www.nalp.org/nalpresearch/pt04summ.htm>.

Another factor supporting the representative nature of the survey results is the reported satisfaction levels of attorneys. Contrary to what one would assume if a selection bias were present with respect to satisfaction (i.e., the hypothesis that either extraordinarily satisfied or unsatisfied part-time attorneys would respond in much greater numbers than the average part-time attorney), no overwhelming position among attorneys appeared. While approximately 64 percent (23 of 36 attorneys responding to this question) reported satisfaction with their arrangements,⁶⁸ further analysis of attorneys' other survey responses and interviews suggests that fewer attorneys are actually satisfied with part-time arrangements.⁶⁹

Finally, comparison to Epstein's comprehensive earlier study, which included information on part-time work arrangements at well-regarded New York law firms, suggests that the absolute number of responding attorneys in this study is worth consideration. Epstein's study included analysis of eighteen part-time attorneys from eight large, corporate law firms. Of particular note is that Epstein conducted her study in cooperation with all eight firms and was still only able to interview eighteen part-time attorneys, past and current.⁷⁰ This study takes the view, espoused by Epstein, that any information regarding part-time arrangements will contribute to further understanding of this issue given the limited empirical studies of this nature.⁷¹ For these reasons, the data compiled in this study on the experiences of the surveyed part-time attorneys practicing at elite corporate firms merit consideration.

III. ANALYSIS OF SURVEY AND INTERVIEW RESULTS

The current study's results are examined against the hypotheses generated from recent research on gender and negotiation.⁷² The survey and interview results will be examined from the following three perspectives:

- (1) Did attorneys view this discussion as an opportunity to negotiate, as measured by the extent of their preparation?
- (2) How did the existence (or absence) of objective criteria, in this case the firm part-time policy, impact the nature of the actual arrangement?
- (3) How satisfied are part-time attorneys with their arrangements?

68. 22 percent (eight of thirty-six attorneys) reported mixed levels of satisfaction, noting areas in which they were satisfied and others that caused dissatisfaction with their arrangements, and fourteen percent (five of thirty-six) reported that they were unsatisfied.

69. See *infra* Part III.C.

70. *Glass Ceilings*, *supra* note 48, at 307.

71. *Id.*

72. See *supra* Part II.A.

Prescriptive advice for attorneys and firms is discussed in Part IV. Information regarding the overall attorney response rate, from which attorney interest in part-time work was derived, is provided in Appendices A and B, respectively. The overall response rate from attorneys at the three firms surveyed was approximately 33 percent (333 of 1,007 attorneys).

A. Did attorneys recognize their discussion with the firm as an opportunity to negotiate?

Self-reported methods of attorney preparation suggest that many attorneys did not consider their conversation with the firm to be a negotiation. If an attorney were approaching this as a negotiation, one would expect the attorney to prepare in as comprehensive a manner as possible. In preparing for a negotiation, it is important to prepare by both considering one's individual needs and by marshalling support to justify the terms that will satisfy them.⁷³ For negotiation purposes, it is important to give consideration to one's ideal terms ("aspiration value"), walk-away threshold ("reservation value"), and one's best alternative to a negotiated agreement ("BATNA").⁷⁴ Once full consideration has been given to these issues, the attorney would then prepare objective criteria (e.g., others' actual arrangements, other firms' policies, etc.) that the firm will also recognize as legitimate standards by which to evaluate the request.

Only one attorney reported preparing in a thorough manner, by considering the firm policy, his/her ideal terms, part-time attorneys' actual arrangements, and other firm policies. Only one additional attorney considered other firms' policies during her preparation. A surprising number of attorneys – just under one-half (15 of 36 attorneys responding to this question) – reported that they did not consider their ideal terms in preparing for their negotiation with the firm and a comparable number (17 of 36 attorneys) stated they did not consider their firm's policy in their preparations. It is worth noting that 25 percent of attorneys prepared by considering their ideal terms only.

Attorney preparation styles appeared to influence attorneys' actual approaches to the negotiation.⁷⁵ The overwhelming majority of attorneys

73. FISHER, URY & PATTEN, *supra* note 18, at 97-106; see also MNOOKIN, PEPPET & TULUMELLO, *supra* note 18, at 32-35.

74. FISHER, URY & PATTEN, *supra* note 18, at 97-106.

75. Two attorneys had unusual negotiation experiences. One attorney stated that the firm made a "take-it-or-leave-it" offer (that appeared due to her particular, unique need to telecommute

who had prepared their ideal terms also asked for them during their negotiations.⁷⁶ In addition, a few attorneys who reported that they did not prepare their ideal terms reported that they asked nonetheless for the terms they wanted. Ten attorneys asked for terms they knew other part-time attorneys had negotiated, half of whom asked for these terms in addition to their own desired terms. Eight attorneys in the sample from Firms A and B (which have default, stated policies), all women, stated that they asked for the terms they wanted during the negotiation and that these appeared to be consistent with the firm's stated policy. Interviews appear to corroborate this interpretation of the data as most attorneys from Firms A and B described their desired terms in terms of their firm's existing arrangements. With few exceptions,⁷⁷ all three firms appeared to readily grant attorney requests.

Attorneys' approaches to the negotiation suggest that the majority of them did not consider the terms of their part-time arrangements to be negotiable or that they were satisfied with the policy offered by the firm. Many attorneys either did not prepare in a comprehensive manner or asked merely to "take" the formal policy at firms A and B, or both, suggesting that many of them, predominantly women, did not see the discussion of this issue as an opportunity to negotiate. It is difficult to distinguish these two factors. Many attorneys in both surveys and interviews expressed that they "elected" to take a particular arrangement provided by the firm (either 60 percent or 80 percent). Another common statement was that the attorney "knew the policy" and simply asked (or was asked in some instances, at the start or end of maternity leave) to "take" the policy. Another attorney stated that she decided to take the 80 percent policy because she didn't want to "rock the boat" by reducing her schedule even further because she knew many attorneys were on the 80 percent schedule. These statements connote the idea that these attorneys have been given some choice in deciding the terms of their arrangement but it appears, given the comparative study data, that other attorneys were able to negotiate more for themselves. In fact, these

from another state for a discrete period of months) and another attorney (a female former partner) was initially offered terms (pay by the hour) by her firm.

76. One attorney who had prepared her ideal terms did not ask for them during her negotiation. In addition, two attorneys did not complete information regarding whether they asked for the terms they wanted during the negotiation.

77. Three attorneys reported difficulties in their negotiations: (1) one attorney reported she was denied a larger reduction in schedule (she desired sixty percent but was only permitted an eighty percent schedule); (2) one attorney was given a take-it-or-leave-it offer (although self-admittedly for the unique need to telecommute from a different state); and (3) one attorney stated she was only able to obtain her desired terms "after months of fighting."

attorneys appear to have missed the point that they had an opportunity to negotiate the terms of their arrangements to better suit themselves.

While in interviews most attorneys stated that there were no additional terms they desired and that they asked for these terms, it seems safe to assume that virtually all attorneys would want compensation for any hours worked beyond their negotiated schedule. Indeed, in interviews, several attorneys noted that this is one of the main pitfalls of part-time work – the lack of pay for additional hours worked given that most (but not all) attorneys interviewed stated that they work more than their stated schedule. This issue is potentially even more pervasive. A few attorneys noted that they did not cut back further on their schedule (e.g., elected to work eighty percent instead of sixty percent) because of financial concerns. Yet, if the attorney had been able to negotiate her arrangement such that she would be compensated for any additional hours worked, it is likely that this interest would have been met. Indeed, at least one attorney at each firm was able to negotiate such terms with respect to compensation.⁷⁸

It is not clear why some female attorneys appear to be satisfied with merely electing to take their firm's policy while others chose to negotiate additional terms. One possible answer is that this subset of female attorneys in the sample exhibits a low sense of entitlement. This hypothesis would find support in the social psychological and negotiation studies discussed earlier. Yet, it is difficult to explain why this trait, generally attributed to women in prior studies, only appears to have manifested in a subset of the current study. A few possible explanations emerge. The fact that 75 percent of attorneys in this group were associates may be explained by the hypothesis that associates would be more likely to believe that part-time terms were non-negotiable and/or to be content with them. Of the six associates, the group was evenly split between junior and senior associates.⁷⁹ Firm culture may also play a role in attorney attitudes. Seventy-five percent of attorneys were from Firm B, where several attorneys noted in interviews that part-time arrangements and the firm's approach to them were secretive. It is interesting to note that half of attorneys in this group were from smaller departments (e.g., trusts and estates, exempt organizations, executive

78. Of the four attorneys who negotiated pay by the hour agreements, one is a partner, two are associates, and the position of the fourth was not provided. That at least half of these attorneys are associates suggests that this is not a term available only to partners.

79. It is also plausible, however, that more senior associates would be interested in pursuing a part-time schedule considered more standard in order to decrease the delay for partnership consideration.

compensation), contrary to the assumption that it would be easier to pursue a flexible schedule, if desired, in these departments. Finally, one of the eight attorneys is a partner at Firm A, which appears to have a more rigid part-time policy for partners.⁸⁰

It is worth noting that while the part-time attorney sample is 13 percent male,⁸¹ all attorneys in the subgroup discussed above are female. While there are six male attorneys in the sample, one did not provide data on his arrangement and another was unsuccessful in negotiating an arrangement because he was denied the option to telecommute, a desired term. Of the three remaining male attorneys at Firms A and B, all negotiated terms beyond the stated policy. Yet this finding should not be overstated. One attorney simply negotiated a different percentage schedule, 70 percent, but was considered to have a modified schedule because it varied from the stated policy and it appears he may have negotiated eligibility for a prorated bonus. The second male attorney negotiated three months off per year, but this arrangement may be based on his individual needs as opposed to an arrangement desired by many other attorneys (explaining why other attorneys did not negotiate similar arrangements).⁸² Finally, the third attorney negotiated hourly pay, but this arrangement was also negotiated by a female associate at the same firm.

B. Did the existence of objective criteria, the firm's policy, impact the discussion?

As discussed above, some research has indicated that women tend to negotiate better on behalf of themselves when there are objective norms or criteria in place.⁸³ In the context of part-time work negotiations, this would suggest that female attorneys would negotiate more successfully when a structured part-time policy is in place. For purposes of this inquiry, success is defined as an attorney's ability to negotiate beyond the stated policy based on the theory that most attorneys' ideal arrangements would include additional terms (e.g., full compensation for additional hours worked, etc.). Attorney arrangements will be analyzed by firm because each of the three firms' policies varied, providing contrasting criteria upon which attorneys could rely.

80. See *infra* note 87 and accompanying text.

81. This percent excludes one male attorney who was unsuccessful in negotiating a part-time arrangement (because he required the ability to telecommute).

82. For instance, another attorney negotiated three months off unpaid leave per year for a very specific reason: to accommodate his academic wife who would need to work extended hours during each spring semester.

83. See *supra* Part I.A.

1. Firm A: Structured part-time policy

a. The stated policy

Firm A has a structured part-time policy that allows attorneys to work the equivalent of an 80 percent schedule. The firm also suggests that a 60 percent schedule may be permitted.⁸⁴

b. Actual arrangements

Eleven attorneys who had worked or are currently working part-time completed surveys from Firm A. The group was comprised of eight female and three male attorneys and seven associates and three partners.⁸⁵ Six attorneys had part-time arrangements consistent with the firm's stated policy and four were modifications of the policy. One attorney had approached the firm but was unable to secure his desired terms, in this case, telecommuting, which resulted in the attorney taking an undesirable leave of absence.⁸⁶ It should be noted that of the six attorneys with arrangements consistent with firm policy, three are partners, all female. During interviews, partners stated that the firm's policy with respect to partners was actually less flexible than that available to associates, with the policy being generally 80 percent schedule and compensation (lockstep at this firm).⁸⁷ Of the three associates with part-time arrangements consistent with the firm's policy, two attorneys chose to work at 80 percent (the expectation of working approximately 80 percent for 80 percent pay) while the third initially worked a 60 percent schedule with corresponding pay before shifting to an 80 percent schedule. This information is summarized in Table 1.

84. This information is derived from the firm's website, last visited March 22, 2004.

85. One respondent did not select a title, noting only that he has worked seven to nine years at the firm. While this is the period during which associates are generally considered for partnership, the attorney noted that he has worked part-time for a few years, which is known to delay partnership for most associates. Because of the ambiguity relating to his title, he has not been included as either an associate or partner for demographic purposes.

86. This may be more of an anomaly than representative of firm policy regarding this type of request as several attorneys interviewed at this firm noted that telecommuting is available to all attorneys as part of the general practice of attorneys at the firm.

87. In an interview, one partner described her eighty percent schedule as lacking a formal structure but simply allowing her to take a few hours off here and there to attend parent-teacher meetings or field trips.

Part-time arrangements that were modifications of the stated policy varied widely in their terms:

- 9:00 am – 6:00 pm arrangement negotiated upon hiring
- Pay of approximately \$93 per hour with a weekly cap of 35 hours, no minimum billing requirement (unclear if compensated for hours beyond weekly cap)
- Pay by the hour with a cap on hours to be paid. In practice, the attorney worked on a case-by-case basis, whereby he worked like any other associate, but could say no to new assignments based on workload
- Three months off per year

The above arrangements were negotiated by two male and two female associates. Litigation associates negotiated the pay-by-the-hour part-time arrangements, a corporate associate negotiated the three months off per year arrangement, and a real estate associate negotiated the 9:00 am – 6:00 pm arrangement.

c. Differences in negotiated arrangements

Aside from discrepancies in the terms of the arrangements negotiated, attorneys were also able to negotiate differing durations for their part-time status. Attorneys requesting to take the firm's stated part-time policy appear to have no limit to the length of time they may remain part-time.⁸⁸ The default appears to be that you will remain part-time until the attorney seeks to return to a full-time schedule. Negotiated duration for attorneys with modified part-time schedules varies considerably. One real estate associate, with the 9:00 am – 6:00 pm arrangement described above, has worked part-time for several years. Interestingly, two attorneys who negotiated similar arrangements involving compensation paid by the hour, had different length outcomes, four months compared to her colleague's arrangement which had been ongoing for a few years at the time of the survey. This also suggests that duration may be negotiable despite stated policy or understood practice.

88. The firm's stated policy, as manifested in its website description and consistent with most respondents' understanding, is primarily for childcare needs. One attorney noted in an interview, however, that this is not monitored by the firm in any regard, resulting in attorneys remaining on part-time for years after their children have grown. Another attorney noted that attorneys seeking part-time or flexible arrangements for non-childcare needs, such as work on a developing country's constitution, must undergo a separate process within the firm, primarily through their supervising attorney.

Table 1. Past & Present Part-Time Attorney Respondents - Firm A

	Stated Policy Arrangement	Modified Arrangement
Number of Attorneys	6	4
Gender	Female: 6 Male: 0	Female: 2 Male: 2
Position	Partners: 3 Associates: 3	Partners: 0 Associates: 4
Practice area	Corporate: 4 Litigation: 1 Tax: 1	Corporate: 1 Litigation: 2 Real estate: 1

2. Firm B: Structured part-time policy with stated preference

*a. The stated policy*⁸⁹

The firm's website states that flex-time working arrangements are available for requesting parents. The firm's internal policy allowed attorneys to reduce their schedules to 80 percent for up to one year. Beyond one year, approvals for continuation were made on a case-by-case basis. The firm permitted a 60 percent schedule but encouraged attorneys to adopt an 80 percent schedule.

b. Actual arrangements

Eighteen attorneys who had worked or are currently working part-time completed surveys from Firm B. Four attorneys, however, did not provide detailed enough information regarding their arrangement to be included in portions of the following analyses. The group was comprised of fifteen female and two male attorneys (one attorney did not identify gender). With respect to position, the group consisted of eleven associates, three counsel,

89. While a few attorneys noted that additional compensation for work beyond 10 percent of the agreed upon schedule was firm policy, this has not been included because the firm's formal, stated policy does not include this information and it did not appear that all part-time attorneys at this firm were aware of this provision.

two partners, and two attorneys holding other positions. Of the fourteen attorneys providing information regarding the terms of their arrangements, three attorneys had part-time arrangements consistent with the firm's stated policy of an 80 percent schedule and corresponding pay, four attorneys had the "discouraged" firm policy of a 60 percent schedule and pay, and the remaining seven attorneys had modifications of the policy. The modified arrangements include 80 percent and 60 percent arrangements with one or more additional negotiated terms, such as additional compensation or telecommuting. This information is summarized in Table 2.

Part-time arrangements that were modifications of the firm's stated policy varied:

- 60 percent schedule with compensation for hours worked above 70 percent for predetermined period of time (2 attorneys)
- 70 percent billables with identical proportional compensation as colleagues in same associate class
- 70 percent schedule over 3.5 days with compensation for additional hours worked over 80 percent
- Limited hours over 3 days, paid hourly (no information provided on hourly rate)
- 60 percent schedule over 3 days, 1 day telecommute from home
- 80 percent schedule over 4 days, telecommute 1 day when possible

The seven modifications to the firm's stated part-time policy were negotiated by five women and one man (one attorney did not identify his/her gender). Of the five female attorneys, four are associates and one is counsel. The male attorney in this group is an associate.

c. Differences in negotiated outcomes

No trends emerge by practice area or gender. The male associate negotiated an arrangement involving compensation for work beyond 10 percent of the agreed upon arrangement, similar to that negotiated by a few women. Likewise, attorneys from different practice areas (i.e., litigation, tax, and labor and employment) negotiated terms involving compensation for additional hours worked beyond agreed upon arrangement and for telecommuting (i.e., litigation and exempt organizations). This suggests that for this sample these options were negotiable and not based on differing departmental norms or needs.

Table 2. Past & Present Part-Time Attorney Respondents – Firm B

	Stated Policy Arrangement	Modified Arrangement
Number of attorneys	11	7
Gender⁹⁰	Female: 10 Male: 1	Female: 5 Male: 1
Position	Partners: 2 Counsel/Other: 3 Associates: 6	Partners: 0 Counsel/Other: 1 Associates: 6
Practice area	Corporate: 3 Litigation: 2 Tax: 0 Other: 6	Corporate: 1 Litigation: 3 Tax: 1 Other: 2

3. Firm C: Unstructured part-time policy

a. The stated policy

Firm C’s internal policy states that interested attorneys should speak to their managing partners about flexible work schedules. Attorneys generally stated that the firm appeared willing to consider any type of part-time arrangement proposal.

b. Actual arrangements

Eight attorneys completed surveys from Firm C. The group was comprised of seven female attorneys and one male attorney. With respect to position, the group consisted of three associates, two counsels (title used for former partners), and two partners; one attorney did not provide this information.

90. One attorney did not identify his/her gender.

Lacking any stated default part-time arrangement, the actual arrangements of attorneys at this firm varied considerably:

- Paid by the hour, no minimum billing requirement
- One-half salary, minimum of 21 hours per week at times and days attorney requests for four months
- Approximately 80 percent hours and compensation (2 partners, 1 counsel)
- For 5.5 months: 60 percent schedule and compensation, 1200 billables, 3 days per week in the office; for 4 months: 80 percent schedule and compensation, 1600 billables, 3 days per week in office, 1 day telecommuting
- Three months unpaid leave per year, bonus and vacation prorated, no minimum hours or billing requirement (consistent with firm policy)
- Four days per week, telecommute one day; later resumed full-time, telecommute two days per week

Notably, no litigation attorneys were represented in this sample. Attorneys responding to the survey worked in the corporate department (4), tax (2), or trusts and estates (2).

c. Difference in negotiated outcomes

With no default policy, actual negotiations varied considerably. The range is quite large with respect to schedule (from 50 percent to 80 percent), length, telecommuting, and other aspects. One hypothesis for the wide range in arrangements is that the firm is so amenable because attorneys tend to resume full-time work. However, this is not clearly demonstrated by the survey results. Five attorneys have been working on a reduced schedule for more than one year, ranging from one year to five years. Two attorneys worked part-time for less than one year (four-six months, nine months) and one attorney planned to begin part-time work in the future for a discrete period of time.

Table 3. Past & Present Part-Time Attorney Respondents - Firm C Arrangements Negotiated with Unstructured Part-Time Policy

Number of attorneys	8
Gender	Female: 7 Male: 1
Position	Partners: 2

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	Counsel: 2 Associates: 4
Practice area	Corporate: 4 Litigation: 0 Tax: 2 Trusts & Estates: 2

4. Analysis across firms

Despite predictions by some academics, women attorneys appear to have negotiated successfully with both structured and flexible or vague part-time firm policies. Attorneys at Firms A and B negotiated beyond the default part-time policy for options such as additional compensation for hours worked beyond the agreed upon schedule, telecommuting, and duration. In particular, although men comprised only 13 percent of responding attorneys, it is notable that men were not overly represented among those who negotiated a modification of the stated policy at Firms A and B.

The results also suggest that firms were willing to accommodate attorneys' requests for specific, additional terms. Of particular note is that modifications to the stated policy in Firms A and B were granted to attorneys in different departments, suggesting that perceived differences between departments (with respect to compatibility with nature of work) did not result in differential treatment of requests. Generally speaking, firms appeared willing to accommodate requests for longer duration, additional compensation, and telecommuting.

C. How Satisfied are Attorneys with Their Part-Time Arrangements?

A closer examination of survey results and interviews suggests that attorneys are not as satisfied as they reported. A slight majority of responding attorneys stated in their surveys that they were generally satisfied with their part-time arrangements. Despite this apparent satisfaction, however, several attorneys noted dissatisfaction during interviews with respect to common issues of strain for part-time attorneys, in particular, compensation for additional hours worked and the ability to work on good cases. The information learned from this section will provide useful information for attorneys as they prepare for their negotiations and for firms

as they contemplate ways to improve their part-time programs. A firm by firm analysis is followed by a discussion of possible trends.

1. Firm A

Partners appeared more satisfied with their part-time arrangements than associates at Firm A. The three partners cited fair compensation (3), opportunities for professional development (3), and informal support (2) as reasons contributing to their satisfaction. Of the seven associates at Firm A who have or are currently working part-time, all expressed some level of satisfaction with their arrangements, though some noted sources of dissatisfaction as well. The attorneys cited fair compensation (7), continued professional development opportunities (6), informal support from colleagues (6), ability to reevaluate the terms of the arrangement with the firm (4), and the ability to work remotely and base hourly compensation on the annual salary of her associate class (1). In addition, two attorneys expressed dissatisfaction related to compensation, with one noting that bonuses are “disappointing” and another expressing concern regarding the “murkiness” with respect to compensation for hours worked beyond the weekly cap. A third attorney cited dissatisfaction with regard to his colleague’s lack of respect for his part-time arrangement.

2. Firm B

Of eighteen attorneys at Firm B, eleven attorneys expressed satisfaction with their arrangement, two attorneys expressed dissatisfaction with their arrangement, and five attorneys expressed mixed levels of satisfaction. A majority of attorneys who were satisfied with their agreement had negotiated arrangements that were modifications from the firm policy in some regard. The satisfied attorneys attributed their satisfaction to fair compensation (14), continued professional development opportunities (8), informal support from colleagues, senior attorneys, and management (8), and the ability to reevaluate the terms of the arrangement with a firm designee (3). One attorney was satisfied with only having to be in the office three days a week and another because the part-time schedule had been respected thus far. Other attorneys were dissatisfied with similar issues. Attorneys were disappointed with respect to other attorneys’ respect for agreed upon schedule (4), professional development and career advancement opportunities (3), compensation (3), and the absence of a system in place to regularly check in with someone at the firm about how the arrangement was working for both parties (2). Attorneys also expressed concern regarding

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partnership prospects, the temporary nature of the arrangement, and the inability to actually work the reduced number of hours agreed upon.

3. Firm C

Four of six responding attorneys expressed satisfaction with their arrangements and two were dissatisfied (two did not respond to this question). The satisfied attorneys cited fair compensation (3), continued professional development opportunities (3), informal support from colleagues, senior attorneys, and management (3), and the ability to reevaluate the terms of the arrangement with a firm designee (2). One attorney was satisfied that the arrangement was available immediately. Both dissatisfied attorneys expressed concern with respect to compensation and professional development and career advancement opportunities; one attorney was also dissatisfied with the level of respect for her part-time schedule.

4. Analysis

At Firms A and B, attorneys who had negotiated beyond their firm's policy did not appear to be more satisfied than those who had arrangements consistent with the stated policy. Roughly the same percent of attorneys at Firm C reported being satisfied as those at Firms A and B, suggesting that the ability to create their own arrangements based on their individual needs with no formal guidelines did not increase the likelihood of attorney satisfaction. Not surprisingly, a higher percentage of partners reported being satisfied with their arrangements (four of five partners responding), likely due in part to their ability to better control the enforcement of their terms as compared to associates. In addition, given that much of the dissatisfaction from part-time associates stemmed from the misallocation of desired cases, not feeling respected, and uncertainty about partnership prospects, the stability afforded by partner status likely influenced partners' overall satisfaction with their arrangements.

Are attorneys as satisfied as they claim to be? For at least a portion of attorneys reporting satisfaction with their arrangement, it appears that their satisfaction is in relative terms only, as interviews sometimes undermined positive survey responses. Satisfaction for part-time attorneys is a complex issue because many report being satisfied that they are able to pursue professional interests while also spending more time with their family, but many struggle with the difficult reality of attempting to meet high

expectations (often set by themselves) from both worlds.⁹¹ One hypothesis is that these attorneys are satisfied with their arrangements given low expectations – either based on others’ experiences or their own belief that proportionate compensation and good cases are unavailable for part-time attorneys. While this explanation is plausible, it also seems likely that attorneys would over-report satisfaction or that satisfaction would be slightly lower (based on comparison to their ideal world arrangement) because some issues of concern for part-time attorneys are beyond the control of the negotiating parties.

For instance, while several common complaints were provided as options in one survey question designed to discover attorneys’ concerns, only two issues – additional compensation for hours worked beyond agreement and ability to telecommute – are issues that are actually negotiable at the bargaining table. It is worth noting that virtually all attorneys who were able to negotiate compensation terms as described above and/or telecommuting reported being satisfied with their arrangements.⁹² The other four options, which appear to be outside the bounds of the negotiating authority of the parties, were having part-time hours respected, retaining “good” cases or clients, maintaining the respect of colleagues, and staying on partner track.⁹³ Accordingly, it would be understandable for an attorney to report that she is satisfied with her part-time arrangement but to still have concerns or some dissatisfaction with her arrangement because of a reason beyond her control, such as the feeling that she is unable to maintain the same degree of respect of her colleagues as she enjoyed as a full-time attorney. While firm management may be able to influence individual attorney attitudes by their own behavior, this is still an issue that is generally beyond the control of the individual attorney and law firm representative who are negotiating the terms of the part-time arrangement. Thus, this apparent over-reporting of satisfaction may be understood as more indicative of the limited terms that are negotiable as opposed to the observation that

91. In interviews, this complexity emerged in response to a question regarding attorneys’ happiness levels while working full-time and after they had transitioned to part-time work. No trend emerged from attorneys’ responses, leading to the conclusion that while some attorneys are able to strike the appropriate balance between work and other responsibilities, others find it challenging to do so effectively.

92. Two attorneys who negotiated telecommuting arrangements at the same firm were dissatisfied with their arrangements, but this appears to be due to the firm’s attitude toward telecommuting. One attorney noted that the firm was “hostile” to the idea of telecommuting and that her arrangement, 60% moving toward an 80% schedule, was the result of months of “fighting.” Another attorney at a different firm with additional compensation terms worked into her arrangement reported dissatisfaction with the arrangement’s temporary nature.

93. A few part-time attorneys expressed that they do not think it would be fair for them to be considered at the same time as full-time colleagues from the same class.

attorneys, primarily women, are setting low aspiration goals for their part-time negotiations.

IV. PRESCRIPTIVE ADVICE

The examination of data compiled from surveys and interviews provides an opportunity to analyze how attorneys and firms may learn from these attorneys' experiences to improve how both parties experience part-time arrangements at their firms. While the sample size is small, the recurring themes and trends that emerged from the study provide the foundation for the following recommendations for both attorneys and law firms.

A. Prescriptive Advice for Attorneys

One overwhelmingly common response from attorneys, particularly during interviews, was that their conversation with the firm to establish their part-time work arrangement was not a negotiation. Many were surprised that I was interested in researching this issue from a negotiation lens. Despite this understanding held by many, the study's results demonstrate that there is room to negotiate the issue of part-time work. The following recommendations are based on attorneys' survey responses and interviews. While each attorney's approach to the negotiation will differ based on her individual needs and interests, the following recommendations are geared toward a general audience of attorneys interested in negotiating a part-time arrangement. Some of the analysis provided below draws from the fundamentals of the principled approach to negotiation, as described in the foundational texts, *Getting to Yes* and *Beyond Winning*.⁹⁴

1. Prepare adequately.

Preparation can take many forms. In preparing for a negotiation, it is important to prepare by both considering one's individual needs and by marshalling support to justify the terms that will satisfy them.⁹⁵ For negotiation purposes, it is important to give consideration to one's aspiration

94. Some of the following areas of analysis were first introduced in the leading texts of principled negotiation, FISHER, URY & PATTON, *supra* note 18, and MNOOKIN, PEPPET & TULUMELLO, *supra* note 18.

95. FISHER, URY & PATTON, *supra* note 18, at 44-47.

value, reservation value, and BATNA.⁹⁶ Once full consideration has been given to these issues, the attorney should then prepare objective criteria (e.g., others' actual arrangements, other firms' policies, etc.) that the firm will also recognize as legitimate standards by which to evaluate the request.⁹⁷ While the idea of adequate preparation may seem obvious, the finding that only one attorney prepared in a comprehensive manner suggests that this issue warrants further discussion.

a. Consider your aspiration value, reservation value, and BATNA.

Virtually all interviewed attorneys reported that they would have left had they not been able to negotiate an acceptable arrangement with the firm.⁹⁸ Assuming that these attorneys would have been able to find another job with relative ease, these attorneys all had a strong BATNA. Yet despite the theory that a party with a strong BATNA is in a powerful bargaining position, this did not appear to impact the strategies used by attorneys in their negotiations. Only four of thirty-eight attorneys were able to negotiate terms, such as compensation for additional hours worked, that it seems safe to assume any part-time attorney would desire. Assuming a readiness to find a suitable alternative job and a willingness to push the envelope on these issues, attorneys who planned to leave if they were not able to reach a satisfactory arrangement with the firm should have felt free to ask for their ideal terms; in the worst case scenario, their request would have been denied and they would have left the firm, as originally planned.

Attorneys should also consider their aspiration and reservation values in advance of the negotiation. Research has demonstrated that individuals with high aspiration values often achieve better-negotiated outcomes.⁹⁹ Yet, a surprising number of attorneys (15 of 28 attorneys) reported that they did not consider their ideal terms in preparing for their negotiation with the firm. Although attorneys may have stated that they did not prepare their ideal terms because they did not believe they would be able to actually negotiate them, advance consideration of one's ideal terms is beneficial because it will enable an attorney to develop a strategy for approaching the negotiation with the goal of successfully negotiating an arrangement as close to their ideal as possible. The fact that a number of attorneys were able to negotiate beyond

96. FISHER, URY & PATTON, *supra* note 18, at 97-106; *see also* MNOOKIN, PEPPET & TULUMELLO, *supra* note 18, at 32-35.

97. FISHER, URY & PATTON, *supra* note 18, at 82-94.

98. A few attorneys noted that they had not considered this issue because their perception was that all requests for part-time would be granted. One partner stated that there was no doubt her request would be approved given her status.

99. *See* MNOOKIN, PEPPET & TULUMELLO, *supra* note 18, at 34.

their firm's stated policies – approximately 40 percent of attorneys at Firms A and B – suggests that advance preparation of this nature may be advantageous.

It is not clear whether attorneys consciously prepared their reservation values in advance. In interviews, attorneys appeared to have a general sense of their reservation values – the least acceptable arrangement that would be preferable to their BATNA – and these varied. Some attorneys stated that they would have accepted a slightly less desirable arrangement (e.g., 80 percent instead of 60 percent) while others' needs necessitated less flexibility (i.e., only three months off per year to accommodate spouse's intensive teaching schedule during the spring semester would be sufficient). Self-reflection and advance preparation of one's aspiration and reservation values will prepare attorneys to respond to the vicissitudes of the negotiation.

b. Bolster criteria at your disposal during the negotiation by expansively researching other arrangements and policies.

In addition to giving advance consideration to one's own interests and needs, it is also important to prepare by gathering information from external sources. Information on the arrangements of other attorneys at the firm and other firms may provide helpful leverage in one's own negotiation because the attorney can present her terms in relation to an objective standard – namely, what other attorneys have negotiated at the firm and the policies or practices of peer firms. Yet only fourteen attorneys reported that they prepared by considering other part-time attorneys' arrangements, and only three researched other firms' policies. This can be difficult to accomplish in part because attorneys sometimes feel that they must keep their terms undisclosed for fear that the uniqueness of their arrangement may be in jeopardy if others were to demand the same terms. For instance, an attorney at Firm B who recently negotiated a part-time arrangement to pursue educational opportunities expressed such a view. He stated that the perceived novelty of his arrangement led him to feel that he shouldn't advertise it lest it breed firm policy restricting such arrangements in the future or possibly even jeopardizing the continuation of his own arrangement. He also felt pressure to keep his arrangement quiet because he believes he is the only male attorney seeking part-time work for non-child care reasons, the perceived sole reason for being eligible to pursue part-time at this firm. This is unfortunate because it is precisely the secrecy that often

shrouds the issue of part-time arrangements that hinders their proliferation and creative expansion.¹⁰⁰

Even if it is difficult for attorneys to learn from their colleagues' arrangements, other sources of information provide helpful information on the gamut of possible part-time work arrangements. One such external resource is Flex-Time Lawyers, an association of attorneys with the goal of providing informal networks for information sharing among attorneys seeking work-life balance.¹⁰¹ Flex-Time Lawyers was created in 1999 by Deborah Epstein Henry, a commercial litigator and mother of three. The group first formed in Philadelphia and due to overwhelming demand, a New York City chapter followed in 2002. The groups meet monthly over lunch to exchange ideas and information on issues facing part-time attorneys. At an April 2005 meeting in New York, attendees, including both attorneys and firm management, discussed strategies and problems associated with the negotiation of part-time work arrangements.¹⁰² In particular, attorneys were able to hear how other attorneys were able to successfully negotiate part-time work arrangements, in some instances, instituting new programs at their firms. Other regional groups may provide useful information to help leverage other firms' programs against one another. The Project for Attorney Retention, created in 2000 as an initiative affiliated with the American University Washington College of Law, studies part-time work at Washington, D.C. law firms.¹⁰³ Its website provides attorneys with comparative information on area law firms' programs and ongoing research projects.¹⁰⁴

2. Approach the negotiation as an opportunity to advance your interests.

It is important to remember that the negotiation is an opportunity for attorneys to advance their interests. Before approaching the firm about part-time work, it would be important for the attorney to identify and prioritize

100. "Negotiating & Re-Negotiating Flex-Time," Flex-Time Lawyers Meeting, New York City, N.Y., Apr. 7, 2005 [hereinafter "Negotiating & Re-Negotiating Flex-Time"]. Flex-Time Lawyers Founder and President Deborah Henry Epstein noted that information exchange with other attorneys is one of the best ways for attorneys to improve their ability to successfully negotiate arrangements, particularly for less common terms.

101. Marci Alboher Nusbaum, *Lawyers Push to Keep the Office at Bay*, N.Y. TIMES, Sept. 7, 2003, § 3, at 13.

102. See Negotiating & Re-Negotiating Flex-Time, *supra* note 100.

103. Nusbaum, *supra* note 101, at 13.

104. *The Project for Attorney Retention*, available at <http://www.pardc.org> (last visited Feb. 6, 2006).

her interests, and also identify the firm's interests. For instance, an attorney may have an interest in working 80 percent hours, compensation for hours worked beyond 80 percent, and telecommuting. Going into the negotiation, she should understand the reasons behind each of these interests, and which are of paramount concern to her. Having prepared in this way, and having given some thought to the firm's interests with respect to these issues, the attorney will be in a better position to inquire as to why the firm may be resisting a part-time arrangement meeting all three of her interests, and might be able to creatively formulate an arrangement that meets all or most of her interests and those of the firm. While a firm may appear reluctant to accept a proposal that included terms beyond its stated policy, the firm may not be as inflexible as attorneys believe; indeed, Firms A and B agreed to additional terms 39 percent of the time. The issue of compensation for work performed in addition to agreed upon hours is an appropriate example. This was an important issue or complaint for many attorneys yet it appears that a majority assumed this issue was non-negotiable. All three firms, however, had at least one attorney who had negotiated a pay by the hour agreement.

One way to prepare for active self-advocacy is to be sure to prepare ideal terms. In this sample, the majority of attorneys who prepared their ideal terms asked for them during their negotiations. Effective self-advocacy in this type of negotiation cannot be overstated; firms will not be able to respond to your needs if they are never made aware of them. It is encouraging to note that only two attorneys in the sample were declined terms they requested (telecommuting and a further reduction in schedule).

3. Consider the advantages and disadvantages of email negotiation.

A few attorneys reported that their negotiation occurred in part or entirely over email. Some attorneys stated that the negotiation spanned several emails, occasionally with more than one firm designee (i.e., personnel committee or department, department head, managing partner). Given the heightened use of email in professional settings, this is not surprising. Its increased use presents an additional option for attorneys who are considering part-time work. For those who believe they may become too nervous during the negotiation, email may be the preferred route. Over an email, the attorney can present her desired terms in her preferred, precise language, setting out appropriate criteria (e.g., other attorneys' arrangements, other firms' policies or practices) to substantiate her terms. On the other hand, if an attorney feels more confident in her interpersonal skills or would like to be able to gauge her counterpart's reactions

throughout the negotiation, she may prefer to set up an in-person appointment.

4. Identify the most appropriate firm designee with whom to negotiate.

While some firms specifically state in their policy with whom an interested attorney should negotiate, this pre-negotiation issue may also be viewed as a negotiation opportunity. Although in some instances, the attorney will ultimately have to speak to the firm designee to gain formal approval of her part-time arrangement, an attorney should feel free to enlist the input and advocacy, if needed, of a supportive advising attorney. This may be particularly important in instances where the prospective part-time attorney is the first within her department to seek part-time status or when the firm designee, generally the department head and/or member of the Personnel Committee, is known to be unsympathetic. One attorney interviewed had heard that the attorney personnel contact was not sympathetic toward part-time arrangements and that another attorney had found him extremely difficult to negotiate with, which had resulted in an unsatisfactory negotiated agreement (and her ultimate decision to quit the firm). Informed with this knowledge, the attorney first met with the head of her department which contributed to a smooth negotiation experience for this attorney.

5. Renegotiate your terms if you're not satisfied or your circumstances change.

Attorneys generally stated that they would be willing to approach their firm and renegotiate the terms of their arrangement if their needs changed. However, very few attorneys had actually yet to do so, stating either that they were satisfied with their arrangement thus far and/or that they planned to raise the issue if their finances or family needs changed. One female partner noted that she had successfully negotiated a pay increase every few years. While her success in renegotiating this term may be attributed in part to her status as partner, it suggests that attorneys may be able to broach compensation and other issues if they are dissatisfied or their needs change.

D. Prescriptive Advice for Firms

While much of the onus rests with attorneys to make their interests known during the negotiation, firms may play a facilitative role by shaping their part-time programs to be responsive to known attorney concerns. The

finding that attorneys who successfully negotiated modifications of their firms' policies remain at the firm well beyond the average expected tenure of attorneys at large firms, working part-time in some instances fifteen or more years, suggests that a firm's willingness to accommodate attorney needs has long-term benefits for the firm. The following pieces of prescriptive advice for firms include those recommendations that should be able to be easily incorporated as well as those that may require substantial restructuring.

1. Compensate for additional hours worked beyond the arrangement.

The lack of compensation for hours worked beyond attorneys' agreed upon schedule was the most cited source of dissatisfaction among attorneys in this sample and a common complaint among attorneys in prior studies. What is interesting in this sample is that all firms were willing to provide additional compensation for some attorneys. It is not clear what factors led to firms' willingness to depart from their default position of not offering or accepting this option. With respect to compensation, the ideal for part-time attorneys would be pay by the hour, accomplished in some form by attorneys at each firm; of the four, two attorneys were able to negotiate this term with no cap on total hours. Other options include the provision of additional compensation after a threshold has been passed (e.g., compensation for any work performed beyond 10 percent of the attorney's arrangement), negotiated by two attorneys, or the prorating of bonuses, also negotiated by two attorneys.

It is interesting to note that two attorneys, each from different firms, reported that they were retroactively compensated in full for their part-time hours (worked beyond their arrangements) once they resumed full-time work. Firms' willingness to provide retro-active full compensation for part-time attorneys, but only on condition of them returning to a full-time schedule, is difficult to justify to part-time attorneys. If a firm is willing to compensate its attorneys for their total hours worked, this should extend to full-time attorneys as well; otherwise, this establishes a poor incentive system and sends the wrong message to part-time attorneys. Compensating attorneys for their additional work will contribute to attorney satisfaction and likely retention.

2. Create an open environment regarding part-time work arrangements.

A more transparent process with respect to actual work arrangements permitted by the firm will have a two-fold effect. First, such transparency will allow attorneys seeking part-time to have a better understanding of the range of possible arrangements. For example, two attorneys (one at Firm A and one at Firm B) who had negotiated part-time arrangements expressed uncertainty as to whether the firm had a part-time policy¹⁰⁵ and three attorneys expressed uncertainty as to whether their firm had a stated limited duration. The degree to which firms appeared to keep such arrangements undisclosed was surprising. Attorneys at one firm reported that management appeared unwilling to discuss the issue openly and that as a result, attorneys were not clear about what terms would be possible. Second, a more open approach to part-time work at firms may reduce tension among colleagues. Firms should ensure that other attorneys realize that the part-time attorney has made a trade-off: in return for being able to leave (at least in theory) at 6:00 pm or 7:00 pm, she also forgoes compensation (in most cases) for any hours worked beyond the terms negotiated. At a recent Flex-Time Lawyers meeting, it was apparent that some attorneys felt that they were subjected to unwarranted hostility by their full-time peers because their peers did not know or fully realize the trade-offs made when an attorney decides to work part-time.

3. Establish an internal system for review accessible to both part-time attorneys and colleagues.

There are several reasons why a firm would be well served by establishing a formal, internal system for review of part-time arrangements at the firm. Two attorneys specifically stated that such a system would have contributed to their satisfaction with their arrangement. Other factors suggest that this would be advantageous for both attorneys and the firm. First, all attorneys interviewed stated that there was no formal, distinct review of their part-time policies; for most, this resulted in no review of their arrangement. In most instances, attorneys stated that it was understood that they would be told if their arrangement was no longer working for the firm or that the opportunity for review was folded into their annual review. This appeared to be true even within the firm that informally stated that part-time arrangements beyond one year needed to be renewed and reviewed annually.

105. A third attorney noted that the firm policy is not widely distributed at Firm A.

This system fails to effectively serve part-time attorneys or their firms. If a part-time attorney's colleagues are having difficulty with her part-time schedule, it would be preferable for the attorney to be informed of this before the situation escalates. Given the reality that annual performance reviews are often delayed and sometimes perfunctory, it would be more efficient and mutually beneficial for firms to create their own accessible system for ongoing review. For example, a firm could designate a person within the firm and establish either an open door policy or a regular schedule for review (i.e., bimonthly, etc.). This attorney could also be responsible for reviewing the case assignments for part-time attorneys to monitor workload against the terms of attorneys' part-time arrangements. Having a designated individual, distinct from but working in conjunction with the assigning partner for full-time associates, may also increase attorney satisfaction with respect to assignments and workload.

4. Offer telecommuting.

Firms should offer telecommuting as one among a menu of options for attorneys. If the firm already explicitly offers telecommuting as an option to all attorneys, part-time or full-time, then this issue may not need to be addressed. While telecommuting is not an option desired by all part-time attorneys, several attorneys in this sample specifically negotiated this term into their arrangement. That one attorney was willing to forgo the option of working part-time because his request for telecommuting was denied suggests that it is an important issue for attorneys and one firms should consider offering as part of their standard part-time policy.

The nature of the attorney's practice and particular demands on the firm, which may necessitate more "face time" or direct client interaction, may not make this option realistic for all attorneys. However, firms should still be willing to consider this as one of several options for a part-time attorney. One option would be for the firm to allow part-time attorneys to begin telecommuting on a trial basis for a predetermined time; if the arrangement is not satisfactory to both parties, they should meet again to discuss modifying this aspect of the arrangement.

5. Clarify the firm's position regarding the treatment of part-time work toward partnership consideration.

A surprising number of attorneys expressed ambivalence as to their firm's treatment of part-time work toward partnership consideration. While not all attorneys expressed a desire to obtain the position of partner within their firm, several noted their current intention to remain at the firm long enough to be considered for partnership. It is worth noting that a few attorneys within the sample held positions at the firm equivalent to that of Senior Associate and Of Counsel, positions that are understood to be non-partner track positions. Nonetheless, for those part-time attorneys interested in being considered for partnership, clarity on the part of the firm as to its treatment of part-time status is a valued piece of information which will enable the associate to manage her expectations and work schedule appropriately.

CONCLUSION

The current study provided the opportunity to learn more about how attorneys prepared for, conducted, and experienced their negotiated part-time arrangements. Examining how attorneys approached their negotiations and how many negotiated beyond the stated policy, where one existed, allowed for the inference that those attorneys approached this issue as an opportunity to negotiate. Contrary to some academics' predictions, many women attorneys appeared to have negotiated successfully with both structured and unstructured firm policies. Finally, survey and interview results were used to formulate prescriptive advice for attorneys and firms. Although almost all attorneys would have been better served by preparing more rigorously to meet their concerns, a substantial minority (39 percent) of past and present attorneys were able to negotiate additional terms for their part-time arrangement. While much of the recent literature on gender and negotiation has concluded that women are less able negotiators, the current study suggests that women attorneys negotiating part-time work have fared relatively well.

APPENDICES

The survey used in this study was designed to capture information regarding attorney interest as well as detailed information from attorneys who had initiated a negotiation with their firm to pursue part-time work. Appendix A provides information on the response rates of the three participating firms. Appendix B provides information on attorney interest in part-time work at law firms. A copy of the survey is provided in Appendix C.

APPENDIX A: OVERALL ATTORNEY RESPONSE RATE

The overall response rate for the survey was thirty-three percent (333 of 1,007 attorneys responded).¹⁰⁶ Among firms, response rates varied. Firm A, with 285 attorneys in the band examined, had an 18 percent response rate (50 attorneys). Firm B, with 431 attorneys in the band surveyed, had a 37 percent response rate (160 attorneys responding). Firm C, with 290 attorneys in the band surveyed, had a 42 percent response rate (121 attorneys responding). Approximately 31 percent of male attorneys surveyed responded (207 of 668 attorneys) and approximately 35 percent of female attorneys surveyed responded (119 of 339 attorneys). Of those responding, 107 were partners, 150 associates, and 35 held other positions (i.e., counsel, special counsel, etc.). These figures are summarized in Table 1.

Table 1. Response Rates by Firm¹⁰⁷

	Firm A	Firm B	Firm C
Attorneys surveyed	285	431	290
Attorneys responding	50	160	121
Response rate	18%	37%	42%

106. This percentage reflects the number of completed surveys. In addition, 7 responses were received from attorneys (retired or semi-retired male partners) who replied to note that they did not think their information would be of use for this research. A handful of surveys were also returned from firms noting the attorneys' departure.

107. Two attorneys returned surveys without firm identifying information.

APPENDIX B: ATTORNEY INTEREST IN PART-TIME WORK AT FIRMS¹⁰⁸

Interest in part-time work at law firms is important to explore because of the pervasive assumption that only women are interested in part-time work and because this generalized assumption has been demonstrated to influence senior attorneys' attitudes toward the advancement of women at firms.¹⁰⁹ The following demographic analysis of interest in reduced schedules will be helpful in providing a more informed view on this subject. The data provided below is based on responses from the 295 responding attorneys who have never worked part-time at their firms.

A. Attorneys interested in part-time work who have not pursued part-time

Of attorneys who have never worked part-time, 44 percent (131 of 295 attorneys) expressed interest in pursuing part-time work under the right circumstances. The reason cited by most attorneys (67 percent or 88 of 131 attorneys) was child care followed by the desire to pursue other interests or improve quality of life (cited by 44 percent or 57 of 131 attorneys). Interest among the 131 attorneys interested in part-time work but who have not pursued it was approximately evenly split along gender lines, sixty-one male attorneys (47 percent) and sixty-eight female (52 percent). Associates were approximately three times more interested in part-time work than partners: seventy-five associates (68 percent of 110 attorneys responding to this question) expressed interest compared to twenty-five partners (23 percent of 110 attorneys responding to this question).¹¹⁰ Four counsels and six attorneys holding other positions were also interested in part-time work. Of associates, most are mid-level (58 are 3rd-6th year associates). Attorneys in the corporate departments of these firms expressed the most interest in part-time (72 attorneys), followed by litigation (45 attorneys). Only a small number of attorneys practicing tax law (2 attorneys) and in other practice areas (12 attorneys) expressed interest in part-time work.

108. Attorneys were asked to select all reasons that applied. Accordingly, percentages included in this section reflect the number of attorneys selecting a particular reason as possibly one of several for their interest or lack of interest in part-time work.

109. *Glass Ceilings*, *supra* note 48, at 298.

110. Figures for demographic information do not add up to 100 percent because some respondents did not complete all demographic survey questions.

B. Attorneys who are not interested in part-time

Approximately 56 percent of responding attorneys (164 of 295 attorneys) were not interested in part-time work at their firms. Of this group, the vast majority of attorneys (117 of 164 attorneys) cited lack of interest as their reason for not pursuing part-time work. Fifty attorneys cited financial reasons, seventeen attorneys cited their belief that their work is incompatible with part-time and that part-time would be a disservice to their clients, thirteen attorneys cited a concern for how they would be perceived by their colleagues, five attorneys believed the firm's arrangements with part-time attorneys appeared incompatible with their needs, and two attorneys believed that the firm's policy was incompatible with their needs.

Of these attorneys, the overwhelming majority is male (80 percent or 131 of 164 attorneys). Moderately more partners than associates comprised this group of attorneys (75 partners, 55 associates). Seven counsel and eleven attorneys holding other positions also expressed no interest in part-time work. Close to three times as many corporate attorneys than litigation attorneys expressed a lack of interest in part-time work (93 corporate attorneys, 35 litigation attorneys); sixteen attorneys worked in the tax department and the remaining twenty worked in other departments such as trusts and estates or bankruptcy.

In summary, while female attorneys are more likely than male attorneys to be interested in and pursue part-time work, men are interested in and pursuing part-time work at rates higher than previously assumed or measured. As predicted, child care is the reason most cited by attorneys interested in part-time work (among those who have actually pursued it and those who have not). These findings are summarized in Table 2.

Table 2. Attorney Interest in Part-Time Work

	Interested, pursued	Interested, not pursued	Not interested
Number of attorneys	38	131	164
% female	84%	53%	20%
% associates	82%	68%	34%
Most cited reason	Child care	Child care	Lack of interest

APPENDIX C: ATTORNEY SURVEY

Thank you for agreeing to complete the following survey.
Responses will be kept anonymous and confidential.

1. How long have you been at the firm? (select both tenure and title)

- A. 3-6 years B. Associate Partner
 7-9 years Counsel Other: _____
 10 or more years

2. Gender:

- Male Female

3. Primary practice area:

- Litigation Tax/regulatory
 Corporate Other: _____

4. Under the right circumstances, would you be interested in working on a part-time basis (part-time is defined as any reduction from the full-time work schedule expected of attorneys at the firm)? Y N

A. If yes, why? (select all that apply)

- Personal health reasons
 Non-child care family needs
 Child care issues
 Other: _____

B. If no, why not? (select all that apply)

- For financial reasons.
 I am not interested in part-time work.
 The firm's stated policy does not appear compatible with my needs.
 The firm's actual arrangements with part-time attorneys do not appear compatible with my needs.
 I am concerned about how I would be perceived and/or

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- treated by colleagues.
 __ My firm does not allow part-time work arrangements.
 __ Other: _____
5. Does your firm have a stated part-time work policy? __ Y__ N
6. Are there other attorneys who have/have had part-time arrangements? __ Y__ N
7. Have you approached your firm about structuring a part-time arrangement? __ Y__ N
- A. *If no, thank you for your time. Please return this survey to alee@law.harvard.edu or in the stamped, self-addressed envelope provided.*
8. If yes, what concerns did you have regarding your part-time working arrangement? (select all that apply)
- __ Getting compensated for hours actually billed beyond formal part-time hours.
 __ Ability to telecommute.
 __ Having my part-time hours respected by colleagues and clients.
 __ Retaining “good” cases or clients.
 __ Maintaining the respect of my colleagues.
 __ Ability to remain on partner track.
 __ Other: _____
 __ Other: _____
9. How did you prepare for your meeting to discuss your part-time arrangement? (select all that apply)
- __ Decided what terms I would ideally like to have.
 __ Researched my firm’s stated policy.
 __ Sought out other attorneys at the firm with part-time arrangements to learn their terms.
 __ Researched other firms’ stated and actual policies.
 __ Other: _____

10. How would you describe your conversation with the firm? (select all that apply)

- I asked for terms I wanted.
- I asked for terms I knew other part-time attorneys had negotiated.
- I waited for them to make the first offer.
- The firm offered its stated part-time arrangement as a “take it or leave it” offer.
- Other: _____.

11. With whom did you negotiate?

12. What were the terms of the part-time arrangement you negotiated? (hours, compensation, billing requirement, etc.)

13. How would you describe your part-time arrangement? (select all that apply)

- It is/was consistent with the firm’s stated part-time policy.
- It is/was a modification of the firm’s stated part-time policy.
- It is/was a unique modification of the firm’s stated part-time policy (i.e., I do not believe any other attorney has a similar arrangement.)

14. Are/were you satisfied with your arrangement? __ Y __ N

A. If yes, what factors contributed to your satisfaction? (select all that apply)

- Compensation was fair.
- Continued opportunities for professional development.
- Informal support from colleagues and more senior attorneys/management.
- Ability to discuss and reevaluate part-time arrangement with assigned mentor/firm designee.
- Other: _____.
- Other: _____.

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B. If no, what factors could have improved your satisfaction level?
(select all that apply)

- Compensation for all hours worked.
- Better professional development/career advancement opportunities.
- More respect for agreed-upon schedule.
- If someone at the firm had worked with me to design my part-time arrangement.
- If there were a system in place to regularly check in with someone at the firm about how the arrangement was working for me and the firm.
- If there were a system in place to renegotiate the terms of the part-time arrangement.
- Other: _____.
- Other: _____.

15. How long have you been/were you part-time?

16. Is there a stated limit on length of part-time work at the firm?

Y: _____ (time period) N

Thank you for taking the time to complete this survey.

I would agree to a confidential phone or in person interview (10-20 min.).

_____ (phone/email)

