



PROGRAM

OWLS 2015 Fall CLE Make It Work: From Frenzied to Fulfilled Friday, October 16, 2015

1:00 - 1:15	Welcome and introductions
1:15 - 2:15	Brigid Schulte presents
2:15 - 2:30	Q & A with Brigid Schulte
2:30 - 2:45	BREAK
2:45 - 2:50	Introduction of Pat Gillette
2:50 - 3:50	Pat Gillette presents
3:50 - 4:05	Q & A with Pat Gillette
4:05 - 4:10	Introduction of facilitator
4:10 - 4:40	Facilitated Q & A with Schulte & Gillette
4:40 - 4:50	Katherine H. O'Neil Volunteer Service Award Presented by Hon. Jill Tanner
4:50 - 5:00	Workplace Leader Award Presented by Heather Bowman
5:00	Closing remarks, reception and book signing with Brigid Schulte

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Speaker Biographies
Oregon Women Lawyers 2015 Fall Conference



Brigid Schulte is the author of the New York Times bestselling book on time pressure, *Overwhelmed: Work, Love & Play when No One has the Time*. She has spoken all over the world about how to make time for The Good Life by redesigning work cultures to focus on effective work and innovation, by re-imagining gender roles for a fairer division of labor and opportunity at work and home and, instead of seeking status in busyness, by recapturing the value of leisure. She was an award-winning journalist for *The Washington Post* and *The Washington Post Magazine* and part of the team that won the 2008 Pulitzer Prize, before becoming the founding director of The Good Life Initiative at The New America Foundation,

where she also serves as director of the Breadwinning and Caregiving program. She lives in Alexandria, Virginia, with her husband, Tom Bowman, a reporter for National Public Radio, and their two children. She grew up in Portland, Oregon and spent her summers with family in Wyoming, where she did not feel overwhelmed.

Sign up for her occasional newsletter, Toward Time Serenity, on the art and science of The Good Life: brigidschulte.com. Join the ongoing discussion about making time for work, love and play on her Facebook page: <https://www.facebook.com/brigid.schulte> and on Twitter @BrigidSchulte. You can find her Washington Post work here: <http://www.washingtonpost.com/pb/brigid-schulte>.



Patricia Gillette, a partner in Orrick's San Francisco office, is a member of the employment law group. Orrick's Employment Law and Litigation group was recently named **Labor & Employment Department of the Year** in California by *The Recorder*, the premier source for legal news, in recognition of their significant wins on behalf of leading multinational companies on today's most complex and challenging employment law matters.

Ms. Gillette's practice focuses on all aspects of employment law, including litigation of wrongful discharge and discrimination class actions and individual/multi-plaintiff cases in both state and federal court, representation of employers before administrative agencies, and counseling and training employers on preventive personnel practices. She is an experienced trial lawyer and regularly handles complex employment litigation. She is a frequent lecturer to management employment groups across the country.

Before joining Orrick, Ms. Gillette was head of Heller Ehrman LLP's Labor and Employment Practice Group for 10 years. Prior to joining Heller Ehrman, Ms. Gillette was in private practice and served six years as in-house counsel for Bank of America, where she was in charge of the Personnel Advice Section of the Legal Department.

Throughout her career, Ms. Gillette has been actively involved in national projects focusing on the retention of women in the legal industry and, as a result, is a frequent writer and keynote speaker on these issues. Her articles have been widely published in state and national publications. Ms. Gillette's focus recently has been on rainmaking. She served as chair of an Advisory Committee of law firms that helped create the newly published Rainmaking Study on the personal characteristics that make rainmakers successful.

Ms. Gillette is the co-founder of the Opt-In Project, a nationwide initiative focused on changing the structure of law firms to increase the retention and advancement of women in the workplace. She served for three years as a Commissioner on the ABA Commission for Women in the Profession, she co-chairs the San Francisco Bar Association's No Glass Ceiling Initiative, she served on the board of the National Association of Women Lawyers Foundation, and she is a member of the ABA's Gender Equity Task force, having co-chaired the Model Compensation Committee of that Task Force. Ms. Gillette is chairing Development for Direct Women, a non-profit dedicated to placing women attorneys on boards of public companies. Ms. Gillette is a member of the Austin Consortium, a national group of thought leaders on women's issues in the legal profession. At Orrick, Ms. Gillette chairs the Women's Affinity Group.

Ms. Gillette has been recognized for contributions to women in the profession as the recipient of the ABA Golden Hammer Award in 2015, Fay Stender Award from the California Women Lawyers Association in 2013, the San Francisco Bar Association's Award of Merit in 2012, and the Transformational Leadership Award in 2012 as a top Woman Rainmaker.

Ms. Gillette serves as an elected official in her home town of Kensington, California and is on several non-profit boards.

Admitted In

California

Practices

[Employment Law & Litigation](#)

Education

J.D., *cum laude*, University of San Francisco School of Law, 1976

A.B., Occidental College, 1973

Honors

Recipient of ABA Golden Hammer Award for promoting diversity in the profession, given by the ABA Law Practice Division and the ABA Women Rainmakers Division

Recipient of the Fay Stender Award, the highest award given by the California Women Lawyers Association

Recipient of the San Francisco Bar Association Award of Merit for her work as Co-Chair of the No Glass Ceiling Initiative (2010)

Recipient of the Transformational Leadership Award as the Top Woman Rainmaker (2012)

The Recorder's California Labor & Employment Department of the Year (2013-2014)

The Recorder's California Litigation Department of the Year (2013-2014)

The Recorder Leading Employment Lawyer (2012)

Consistently named among "The Best Lawyers in America," *Chambers USA*

American Registry's Top 50 Women Attorneys in Northern California

Daily Journal's Top Labor and Employment Lawyers in California (2010 and 2012)

Named as a Super Lawyer in Employment Law and Litigation for more than 20 years

The International Who's Who of Management Labour and Employment Lawyers

**Ten Ways to Find Time OUT of Time Confetti and Toward Time Serenity in
Work, Love and Play**
Brigid Schulte

1. **Pause.** Just take a moment to stop. Breathe. Take a walk. Do whatever it takes to disrupt the mindless cycle of busyness. Ask yourself: Do I really want to be baking these cupcakes at 2 am, at the office until late at night. Why am I doing this? Create space to reflect about what's most important to you and how to make time for THAT

2. **Be aware of the pressure of cultural ideals.** At work, we value the Ideal Worker who puts in insanely long hours of overwork and devotes body and soul to the job. At home, we value the Ideal Mother who is self-sacrificing and always available to her children. The standards for what we think it takes to be a good mother have never been higher, nor have we expected mothers to do so much alone. Be aware that right now, we wear our busyness like a badge of honor. Watch how you talk and think about your time. Are you really that busy, or need to be? Or do you feel compelled to be because everyone else is, and that's how we show our status and fit in? Be aware that these cultural ideals can work powerfully on an unconscious level. Uncover. Strive to make unconscious bias conscious.

3. **Set your OWN priorities.** And create a network of like-minded people so you can support each other in NOT being busy, glorifying overwork or overdoing at home. It's hard to buck the status quo on your own.

4. **Mind the Gap.** The best time management strategies? Realize you can't manage time, but you CAN manage your expectations and priorities. Plan. Do. Review. What's your vision for what you really want? Think about where you are, and the gap that it will take to get you where you want to go. Then experiment to find ways to bridge that gap. Plan it. Do it, then take time to review. Tweak. Repeat.

5. **Flip the List.** The To Do list is meant to help you, not tyrannize your life. The working memory can only hold 7 pieces of information at any one time. So give your brain a break. Do write stuff down. But think of it as a brain dump - getting it all out and on paper or on the computer or smartphone somewhere. That gives your brain a rest, it can stop expending energy trying to remember. And give yourself permission not to do any of it. Your real To Do list? Make sure you put what gives you joy, the priorities you've set, on that list and put them up high. The stuff of life never goes away, try not to devote more than 5 percent of your time and energy to it.

6. **Set Common Standards and Share the Load.** Research shows that even the most egalitarian-minded couples start to slide into traditional gender roles once the baby comes home. One study found that women began to do more around the house, and men less. Much of that is a function of our system, that's more likely to permit women to take maternity leave, giving them the time to develop confidence and competence with the new baby. Men don't get that. Paternity leave, if they have access to any, is short, and tends to be taken along with the

mother. Take a page from gay couples. Figure out all the work it takes to run the house and family. Find a way to share work and home duties fairly. It may not be 50/50, but it has to FEEL fair to both of you. Set common standards. Automate. Create systems for who does what, so you don't have to keep negotiating and keeping score, and find a way to keep each other accountable. Stop redoing chores that you think your partners have done badly. And focus on the fun you'll all have when the chores are done - or not.

7. **Chunk your time.** As much as you can, gather your bits of time confetti and do like things at one time. Chunk household errands, or phone calls. Set boundaries on the time you'll spend on email and social media, rather than check throughout the day if you can. Remember, humans have 90 minute attention spans. Work in concentrated 90 minute chunks, then take a break. Remember, your brain is wired for the insights come in breaks in the action

8. **More is NOT better. Find the sweet spot.** Think of the inverted U curve. Too little isn't enough. Too much, and you get stress and overwhelm. Find the sweet spot, the "good enough" spot for your work, your activities (does it have to be an hour-long work out to count? how about 20 sit ups, 20 squats and 20 push ups on days you're pressed for time. That counts. Want to meditate everyday? Give yourself a back door. Five breaths on the edge of the bed counts.

9. **Schedule PLAY.** What gets scheduled gets done. And until play and leisure become more acceptable in our work-focused culture, we're going to need to make an effort to bring it into our lives. That means taking vacation - and leaving work behind and cellphones off, at least for some of the time. That means letting your kids have unstructured time to wonder, wander, noodle, get bored and learn how to get unbored. That means women, who've never had a history or culture of leisure, need to realize that they don't have to earn leisure by getting to the end of a To Do list, which never ends. But that they deserve it. Right now. Couples "cosponsor" each other - to make sure you each have time to do what gives you joy and feeds your soul on your own - and then make time to connect with each other.

10. **Shorten your Time Horizon.** In the end, we really are on this earth for a short time. Take a lesson from older people - when you're more conscious that life will be over soon, you're much more likely to realize that today is a beautiful day.



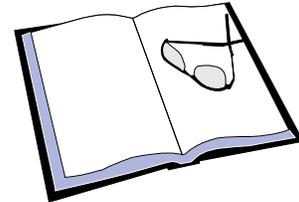
The OWLS Dress for Success fundraiser and fashion show was held on Oct. 2 at the Mark O. Hatfield U.S. Courthouse in Portland. Proceeds benefited the Dress

for Success Oregon program. Enjoying the event are (left to right) Kristen Stedman, Bodyfelt Mount, mother-to-be chic; OSB President Tom Kranovich, proud OWLS member model; and Traci Ray, Leslie Edenhofer, and Susan Pitchford, three of the event organizers.

Overwhelmed: Work, Love, and Play When No One Has the Time

By Brigid Schulte (Sarah Crichton Books/Farrar, Strauss and Giroux, 2014)

Book Review by Teresa Statler



Washington Post journalist and busy mother Brigid Schulte takes up the ongoing problem of women's "second shift": just why are women's lives so busy? Schulte, in this well-researched, yet entertainingly anecdotal book, tells us how our lives got to be this way and what we can do about it.

Schulte examines an assertion by time experts that women have 30 hours of "leisure" per week, and she notes that those hours include time that women spend playing with their children. Women spend another part of that supposed leisure time planning and thinking about the next thing they need to do, and thus Schulte calls that "contaminated time." She also notes that "if you have an education and a high-paying career, chances are you are working an insanely high number of hours and have little leisure time. If you're poor or uneducated, you're having trouble finding enough work at all, and your 'leisure' is often just blank hours of worry about how to pay the rent."

Schulte tells us that men enjoy longer stretches of unbroken time than women do, at work and at leisure, a fact that makes their lives less stressful than women's. Both men and women experienced less stress when the work they did was more physical, such as factory work or farming. Today, however, we all live in the world of "the overwhelm."

In the chapter entitled "Too Busy to Live," Schulte blames "the overwhelm" on the new American social norm of "busyness" and that of needing to keep up with the Joneses or risk being "social outcasts." She speaks with sociologists whose research shows that even though there is a compulsion for busyness, not many are happy about it. She notes that

adult American women are the fastest growing segment of people newly diagnosed with attention-deficit/hyperactivity disorder (ADHD).

Schulte also addresses the concept of the "ideal worker"—one who will give her all to her company or profession by being available 24/7, thanks to Blackberries, iPads, and email at all hours of the day and night. To the ideal worker, work is a "form of religion." "And because the ideal worker is just that, a demanding voracious ideal, no one can ever measure up." Combine this with the fact that the ideal worker is not compatible with the concept of the "ideal mother," and you have a perfect recipe for women feeling constantly overwhelmed.

Other reasons for today's time crunch include President Nixon's 1971 veto of the Comprehensive Child Development Act, which would have provided a high-quality, universal child-care system for all Americans. The rationale for the veto was to preserve the "natural" traditional family of the father as the breadwinner and the mother at home. Forty years later, researchers have found that parents with stable child care are "less stressed, better at coping, and more satisfied with their jobs." Stable child care also leads to more gender equity at work and at home for both mothers and fathers.

Schulte offers suggestions on how to get out from under "the overwhelm." She praises a "simplicity Moms' group" in Portland, whose members are "quietly seeking refuge from the cult of intensive mothering all around them." These moms recommend fighting the "inertia" of going along and doing what all the other mothers are doing.

Schulte also suggests that we play more. By *play*, she means "horsing around," moving our bodies, exploring novel experiences, and the like. She maintains that play is what keeps adult brains flexible and our lives less bleak. Likewise, Schulte encourages us to make time in the middle of the day to pause—if only for five minutes—and "sit quietly with a slight smile" on our faces. This pause helps us slow down and tells our nervous systems that we are not in danger.

An additional suggestion is that today's middle class parents become less child-centered. She recommends that instead of spending extensive time and energy focusing on their children's education and extra-curricular achievements, parents focus on the children's happiness.

An appendix entitled "Do One Thing" lists under the headings "Work," "Play," and "Love" the author's suggestions—learned from her own trial-and-error and from the experts she interviewed—for how to stop "the overwhelm."

Overwhelmed does not break any new ground. Its usefulness as a manifesto to time-stressed Americans is limited to middle- and upper-middle class working mothers; therefore, this reader thought the book should be subtitled "When Working Mothers Have No Time." In addition, Schulte's discussion of "love" seems limited to that of a mother's love. She does not offer any ideas for making more time for one's partner or spouse. *Overwhelmed* is nevertheless a worthwhile read, especially for those who tend to want to be both "ideal workers" and "ideal mothers."

Teresa Statler practices immigration law in Portland.

Implicit Bias: Light it Up

By: Patricia K. Gillette

Why are so many people afraid of the dark? Maybe because you don't know what's there. You sense danger. So you remain quiet and wait for someone to turn on a light.

That is what it feels like to be the victim of implicit bias. It is hard to detect. And while you can't see it or quite put your finger on it, you are pretty sure there is something amiss. Wanting to act rationally, you convince yourself it is only your imagination. And unless you persevere you will miss it, because implicit bias is the discrimination that lies in the shadows of the unspoken bases for employment decisions.

Although this type of bias is rooted in intentional discrimination, it is more difficult to regulate. Intentional discrimination can be addressed by legislation – as it was in the 1964 Civil Rights Act. With the passage of that law, overt discrimination was made illegal and, then, as a result of class action litigation and raising awareness, we began to see progress for women in the workplace. No longer was it permissible to have advertisements for “men only jobs”; to affirmatively publish different pay scales for men and women; or to deny a woman a promotion simply because she was a woman. Legal attacks on what had been common practice, began to make a difference and we saw women advancing into positions to which they had never before had access.

Yet, even now, 50 years later, the playing field isn't level. Women are still not as well represented in the upper ranks of corporate America and law firms as they should be. Women are still not compensated as well as men. Why is that?

The answer is complicated because it rests in the unarticulated motives of decision makers. As it became illegal and politically incorrect to engage in intentional discrimination, the people in power took note and changed their behavior. Political correctness replaced blatant sexism. Women were “allowed” to progress into higher level positions – as long as their numbers were limited. So the complete absence of women in leadership positions, for example, was replaced by the “woman's seat” – the one chair that is always filled by a woman at the table, with the rest of the chairs filled by white men. Women were paid better, but still not at the same levels as men. Women were allowed to advance into positions of power in their organizations, provided it was in the marketing department or human resources. But the places where power is really wielded, the places where decisions are really being made, continued to be reserved for white men.

How did this happen? Sometimes through intentional conduct that is illegal but unchallenged. But these biased decisions are also grounded in the assumptions people make about the skill sets of women; the preconceived notions about women who exhibit ambition; the stereotypes people apply as they assume what women want from their careers. As a result, implicit bias can be borne of good intentions: not wanting to force a new mother to choose an out of town assignment that is good for her career over a weekend at home with her family; reluctance to put

an young woman in a situation that might make her uncomfortable because of the aggressive men with whom she might have to work; a fear of sending the wrong message by offering a women an opportunity to accompany a man on a business trip. And those “good motives” are what makes this type of bias so hard to identify and thus, so insidious.

Addressing implicit bias in any formal way is also complicated by the people in power who deny its existence – particularly baby boomer men and women - who feel they paid their dues and had their successes and so they don’t “buy” the existence of implicit bias. They look at those who assert these claims as women who can’t cut it or who aren’t able to succeed because of their personalities or their manner of dealing with people. They explain away implicit bias as a pipeline issue or a disinterest in advancement or a lack of ambition. Those explanations, however, when fully examined, fall flat because there are simply too many examples of women who are in the pipeline, who want power, and who are qualified for advancement but are not chosen.

So what is the best way to begin to eradicate implicit bias? Litigation is one avenue of course. But litigating these claims is hard and forces everyone into a defensive position – where the goal is to win rather than to address the problem. The better solution may be to follow the methodology being advocated by thought leaders in this area – raise awareness about the issue, identify specific pockets of bias through the use of statistical analyses and internal equity studies, and then examine and correct those biases. To make this happen of course, institutions must be convinced there is a problem. They must be convinced that they are wasting talent by letting their preconceived ideas and stereotypes exclude half the workforce for positions of power in their organizations. They must understand that the loss of diversity of opinion in decision making bodies impacts the bottom line. Only if we can do this, can we create a business imperative to identify and eliminate this type of bias. And that requires open discussion and examination of the subject and commitment from the top of our organizations to root out behaviors that are grounded in “gender compliant” stereotypes or expectations.

That sounds daunting and unimaginable until you realize that implicit bias is to the next generation what intentional discrimination was to the last generation. Millennials don’t expect this type of bias; they were raised to think that everyone will be treated equally. But as implicit bias impacts their career trajectories and their opportunities, the millennial women will challenge it and their male peers will stand by their side. That is how they were raised; that is what they will do. We are entering the time when more women will be willing to tell their stories rather than stay quiet and pretend there is nothing there. Implicit bias is finally coming into the light.

Ms. Gillette is a motivational and inspirational speaker. Visit her website at patriciagillette.com for more information. She may be contacted through her website or at pkgillette@gmail.com

My 10 Cents

By Pat Gillette- June 20, 2014

First Published on Law 360

10 cents. That's how much it cost to change the behavior of hundreds of thousands of people in the Bay Area. When cities and counties imposed a 10 cent cost for a paper bag at the grocery store, overnight people began bringing their own bags. The change was across the board and it was immediate. In fact, a year ago, maybe one or two people in a line of six people would have their own grocery bags – and that was in Berkeley. Now, everyone brings his/her own bag and you are shamed if you have to buy a paper bag.

This is amazing considering that the paper shopping bag behavior is something that has been around for decades in this country. And yet, literally *on a dime*, the behavior stopped and was replaced by a behavior that makes sense economically, environmentally, and morally.

If we can change this type of ingrained behavior in the masses, why can't we change the behavior of lawyers in law firms? Why can't we get law firms to change the way they reward attorneys, promote attorneys, and compensate attorneys? Why can't we get law firms to increase diversity in their ranks because it is good for the economics of the firm, it is good for the culture, and it is the morally right thing to do?

Part of the answer to that question is history. Clearly, the roots of bias – conscious and unconscious – against women in law firms run deep and long. The way women are paid and perceived within their firms - these issues are laced with deep seated and unshakable prejudices and stereotypes.

But what if we took a lesson from the grocery stores and put a price on not complying with what is right economically and morally? What if we began to measure some portion of compensation based on a showing of commitment to diversity – sponsoring a woman for a leadership position, identifying a woman as the successor to an institutional client relationship, giving women assignments and opportunities that showcase their abilities and potential, sharing origination credit with a new and upcoming female partner.

Could it work? Maybe. We have seen law firms use monetary penalties to incent behaviors in the past – e.g., fines for failing to get time sheets in on time, decreases in draws for not getting bills out in a timely manner. And we know that with lawyers, money speaks. People actually argue over minor differences in compensation between them and their perceived peers.

So think about it. It only took the threat of a 10 cent cost to make people bring their own bags to the grocery store. What if we gave partners an extra \$10,000 for increasing diversity in their firms by engaging in specific and impactful conduct specifically identified by firm management to advance diversity in the firm?

Could it work? I'd bet my cloth grocery bag on it.

Not So Sweet 16

By Patricia K. Gillette, [Orrick Herrington & Sutcliffe LLP](#)

Published in Employment Law 360, March 11, 2011

Sweet 16 and never been kissed. That was the mantra for teenage girls in the 1950s and early 1960s. Sixteen was the beginning of everything — and if you had never been kissed, you soon would be, or so we all thought. It was the age you waited for because after that, everything was possible. And to celebrate reaching this auspicious number, you wore pink, you had a party with your friends, and you dreamed of the future.

Flash forward to 2011 and 16 is still a significant number for women. About 16 percent of the women lawyers in this country are partners in law firms; a little more than 16 percent of the general counsels are women; 16 percent of the members of Congress are women; and 16 percent of the CEOs are women.

But these 16s do not signify hope, progress, or a bright future. Instead, they evidence the inability of women to progress in the professions they have chosen; they reflect years of women being passed over for positions of leadership and economic power. These 16s demonstrate the bitter truth that despite the fact that women are graduating from college and graduate schools in equal numbers to men, they are often still treated as less than equals in the workplace.

Taking a deeper dive into just one of these professions reveals even more depressing statistics. The recently published study by the National Association of Women Lawyers shows that less than 10 percent of the rainmakers in large firms are women; 80 percent of the law firms surveyed have, at most, two women on their highest governing committees; and female equity partners earn 85 percent of what their male counterparts earn.

This, or worse, has been the story since women were allowed to go to law school, and continues even after women have started graduating from law school at the same rate as men.

Over the years, we have heard varying explanations for these numbers: women opt out, women don't need jobs to define themselves, women don't have business development skills, women choose not to be in leadership positions, women just don't work as hard, don't care as much, and don't have the drive and grit it takes to be at the top of the legal industry. And so, one begins to wonder, are these explanations or excuses? Do women not succeed at the rate they should because there is something different/wrong/self-limiting about the way they act vis a vis men in the legal world?

The answer is complicated. On the one hand, some women do engage in behaviors that are self-limiting: they are risk averse, they don't want to fail, they don't like to ask, they don't self promote. On the other hand, stereotyping can prevent women from even being considered for positions of leadership.

For example, a stereotype that is often unspoken, but nevertheless common, is that women with children are more conflicted about their professional and personal obligations than men. This stereotype becomes most evident when a woman has a child.

Given the billable hours expectations and 24/7 demands of some clients, there is a risk that the woman's commitment will be viewed as less certain than it was before the child was born because that fits the traditional stereotype. As a result, the woman may fall off the list — if she was even on it in the first place — as a potential leader of the firm, at least until she proves continued commitment. Contrast that with the man who becomes a father, and is then seen as more committed and more tied to the firm, and thereby still in the pool for leadership and power opportunities.

This is one of the more obvious examples of the hidden bias that keeps women out of leadership positions. The truth, of course, is that this problem is far more insidious and far more rampant than any of us would like to believe. In fact, some experts say that gender stereotyping is so ingrained in our culture that men often don't even register women's strengths, except for those that fit into their stereotyped image of how women should act and what women should do. As a result, women are easily credited with the traditional "soft" skills — collaboration, relationship building and teamwork — but are not seen as hard driving, business oriented leaders who can get a job done — even if they can or have.

So what do we do? Are we in some kind of Groundhog Day world where women will remain sweet 16 for all eternity? Hopefully not and especially not if we want our firms to progress and thrive in the current world. We know that when women are let in the boardroom, for example, they bring important skills to the table. In fact, the research shows that corporations with 30 percent or more of women on their boards are more successful than those with fewer women. It makes no sense, then, to not to move beyond the sweet 16s.

But to do so, we must address the limits imposed by unconscious bias. That requires a conscious commitment to actively recruit and groom women for leadership positions. And that means more than the token woman on the token committee. It requires firms to look at all of their women — just as they look at all of their men — as potential leaders and power players and to be willing to envision and commit to more than the one or two "women's" seats at power tables or at the top of the compensation list.

To effect that change, firms must create a level playing field where they recognize the presence and impact of hidden bias in their decision-making processes. That level playing field includes transparency in the way leaders are identified and groomed; accountability for the ways in which the firm develops and transitions large client relationships; and training to help partners assess and acknowledge their own biases and prejudices that may be holding women back.

Of course, these kinds changes will only work if women also take responsibility for

stepping out of what, for some, is their comfort zone by asking for and preparing themselves for positions of leadership and economic power.

It is time for corporations and professional services firms to acknowledge that there is nothing sweet about the 16s that continue to characterize their leadership ranks. These 16s hold no promise of things to come. Instead, they represent a status quo that ignores the reality of the new professional world where women and men exist in equal numbers and bring complimentary and different skills to leadership and power positions that are necessary to any successful organization. It is time to move past the 16s and find a new sweet spot.

[Patricia Gillette](#) is a partner in Orrick's San Francisco office, and a member of the firm's employment law group.

The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or Portfolio Media, publisher of Law360. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

Presented:
Thursday, May 31, 2007
The Palace Hotel, San Francisco

HellerEhrman^{LLP}

OPT-IN

PROJECT



Project Report

HellerEhrman^{LLP}

EXECUTIVE SUMMARY OF THE OPT-IN REPORT

Mission Statement

The mission of the Opt-In Project is to tap into the wisdom of industry leaders to find innovative strategies for the retention of professional women in the workforce. We recognize and applaud the measures many companies and law firms have taken to curb the exodus of women from the workplace. Our goal is to create a forum to take that discussion to the next level: *Are there more sweeping measures that should be considered to create greater career sustainability for both women and men?*

Roundtable Discussions

More than 900 people joined us this year from a variety of industries for events in San Francisco, Silicon Valley, Washington, D.C., and New York. Industry experts started each evening by presenting their ideas for improving retention and leadership opportunities for women. We then turned the conversation over to our participants for smaller group discussions, which generated many of the ideas outlined below.

Observations of the Workplace: A Case Study of Law Firms

Observation 1:

High Attrition in the First Five Years Can be a Drain On the Economics and Morale of the Firm

- Reconfiguring The First Two Years

Observation 2:

The Way Law Firms Track Hours and Bill For Services May Cause Unwanted Attrition

- Reconsidering the Use of Billable Hours For Internal Measurements
- Reconsidering the Use of Billable Hours For External Measurements

Observation 3:

The Up Or Out System May Cause Good Attorneys to Leave

- Redefining Promotional Opportunities
- Focusing on Career Management
- Creating On-Ramps

Observation 4:

The Workplace of the Future May Require Flexible Arrangements and Workdays

- Redefining the Work Day
- Redefining the Work Year
- Providing On-site Conveniences for Employees
- Recreating the Workspace
- Implementing Team Structures for Clients and Matters

Observation 5:

Part Time Should be a Viable, Non-Stigmatized Option for Men and Women

- Career Development
- Proportional Pay for Part-Time Employees
- Mainstreaming Part-Time Status

Observation 6:

There is a Need To Create Buy-in at the Top and Accountability Throughout the Organization

- Making the Business Case
- Getting Visible Commitment from Top Management

This yearlong study has confirmed that the retention and advancement of women is an issue facing all businesses. The collective wisdom and experience of businesses is a powerful resource that should not be wasted. We hope that the Opt-In Project is the beginning of a journey that businesses and law firms will take together to find a way for all workers to *opt in*.

INTRODUCTION

How Did the Opt-In Project Begin?

The Opt-In Project was Created in Response to Two Observations:

- The public discussion about women leaving professional positions was ramping up, but seemed to be focused on the problems, not the solutions.
- There was growing support for restructuring the traditional workplace to keep both men and women as valuable contributors to their organizations, but these discussions were confined within industry sectors.

We thought the time had come to facilitate a cross-industry study to gather the best practices of as many companies as possible for evaluation and collective thinking.

And so began the Opt-In Project in May 2006.

Over the past year, we have brought together industry leaders from across the country to share concerns, discuss ideas and brainstorm on ways to keep women in the workplace and in positions of leadership. This gave us the opportunity to gather the ideas and views of a vast array of people from different industries, backgrounds and perspectives, all grappling with the question of how to retain professional women in their workforces. We have heard not only from prominent experts on these issues, but also from the hundreds of individuals who have attended our programs in cities around the nation.

The Origin of Our Name

“Why don’t women run the world? Maybe it’s because they don’t want to.”
— *The New York Times*, “*The Opt-Out Revolution*,” October 26, 2003.

In 2003, this quote appeared on the cover of the New York Times Magazine. This was the beginning of an avalanche of articles examining the “Opt-Out Revolution.” Respected publications such as *Time*, *Newsweek* and *The New York Times* were splattered with articles such as “The Case for Staying Home,” “Mommy Madness,” and “The Opt-Out Revolution,” recounting the “trend” of women obtaining the highest levels of education, entering the workforce in record numbers, and then choosing to leave.

We wanted to test the conclusion that women were being pulled out of the workplace voluntarily against the theory that they were being pushed out of the workplace by the lack of viable alternatives to a traditional workplace structure. This structure, in conjunction with social forces that continue to put the primary responsibility for home and family on women, can make it difficult for women to feel successful and fulfilled.

Surveying the Landscape

The Alarming Statistics

- A survey of the class of 1981 at Stanford University shows that 57% of women graduates leave the workforce; a survey of three graduating classes at Harvard Business School reveals that only 38% of women graduates end up in full-time careers; and a broader gauged study of MBAs shows that one in three white female MBAs is not working full time, compared with one in 20 male MBAs.”¹
- Only 12 Fortune 500 companies have female CEOs.²
- Women account for only 30% of the enrollment in business schools today.³
- *As we focused more specifically on the legal industry, we saw the same pattern.*
- Women make up only 30.2% of the total lawyer population of the United States.⁴
- In law firms, 44.1% of associates are women, but only 17.3% of partners are women.⁵
- The rate of women in law school steadily increased over a 54 year period (from 1947 to 2001) to 49% of the law school population. Since 2001, however, the number has been decreasing with each year. For the 2005 to 2006 year the enrollment was 47.5%.⁶
- The percentage of U.S. Supreme Court female clerks has dropped dramatically. Throughout the last 15 years, the number of female law clerks rose to over 40% women and in the last five years leveled out at close to 38% clerks. But, in 2006 to 2007, the number dropped to 19%.⁷
- Women make up 16.6% of general counsels for Fortune 500 companies, and only 15.7% for Fortune 100 companies.⁸
- Only 5% of managing partners at large law firms are women.⁹

The Rest of The Story

Despite these statistics, however, there is no evidence that women are leaving the workplace because they are truly abandoning their careers.

37% of highly qualified women voluntarily leave their careers for a period of time, but their time out of the workforce is on average only 2.2 years.¹⁰ When they return, however, they do not usually assume the same types of positions they left.

1 Hewlett, Sylvia and Luce, Carolyn Buck. “Off Ramps and On-Ramps, Keeping Talented Women on the Road to Success,” Harvard Business Review. March 2005

2 Mero, Jenny. “Fortune 500 Women CEOs,” Fortune Magazine. 2007.

3 Catalyst Research, “Women and the MBA: Gateway to Opportunity,” 2000

4 American Bar Association marketing Research Department. “National Lawyer Population by State” 2006.

5 National Association for Law Placement (NALP), “Women and Attorneys of Color at Law Firms – 2005,” November 2005.

6 American Bar Association Section of legal Education and Admissions to the Bar. Legal Education Statistics Enrollment 2005-2006,007.

7 Greenhouse, Linda. “Women Suddenly Scarce Among Justices’ Clerks.” New York Times. August 30, 2006.

8 Minority Corporate Counsel Association. “MCCA 2006 Fortune 500 General Counsel Survey and MCCA 2006 Fortune 1000 General Counsel Survey.” May 2006.

9 American Bar Association Commission on Women in the Profession, “The Unfinished Agenda: Women and the Legal Profession” 2001.

¹⁰ Hewlett, Sylvia. “On Ramps and Off Ramps: Keeping Talented Women on the Road to Success.” May 2007.

TAKING ACTION —The Opt-In Project Cross Industry Initiative

The mission of the Opt-In Project is to tap into the wisdom of industry leaders to find innovative strategies for the retention of professional women in the workforce. We recognize and applaud the measures many companies and law firms have taken to curb the exodus of women from the workplace. Our goal is to create a forum to take that discussion to the next level. And so we ask: *Are there more sweeping measures that should be considered to create greater career sustainability for both women and men?*

In this report we bring you the findings from our yearlong discussions with industry leaders. We also present for discussion a “thought experiment” on how these ideas can be applied to law firms.

The Structure of our Roundtable Discussions

More than 900 people joined us this year from a variety of industries in five programs addressing different aspects of the workplace. We gathered research and data on the subject matter of each presentation to give our participants some background facts for the discussions. Industry experts joined us at each event, starting off the evening by presenting information and data reflecting their ideas for increasing the retention and advancement of women. Then we turned the conversation over to our participants for smaller group discussions. The discussion groups were designed to be as diverse as possible. We sat accountants next to lawyers, consultants next to professors, engineers next to CEOs, and interspersed all tables with Gen X and Gen Y law and business school students. Our objective was to determine how various industries were addressing the issues and implementing new strategies, and to assess whether these solutions were working.

Premiere “Women At the Top: Defining the Issues and Unveiling the Opt-In Project”

Location & Date: San Francisco, Calif. -May, 2007

Objective: Exploring the landscape of the state of women in leadership and charting the course for our round-table discussions.

We started our conversation with **Katherine Spillar**, executive vice president, Feminist Majority Foundation, executive editor of *Ms. Magazine*. She spoke to the big picture, opining that the state of women in all sectors is stuck at the “20% barrier.” She questioned the “woman’s spot at the table,” and encouraged women to demand representation in high level decision-making positions based on qualifications, not artificial quotas.

We asked **Joan Williams**, distinguished professor of law, Hastings College of the Law, founder and director of WorkLife Law and the Project for Attorney Retention, to provide an example of how changing one aspect of the traditional work structure, by allowing part-time employment, can increase the number of women in the workplace. She made the business case for part-time arrangements and debunked many of the myths about these types of arrangements.

We then turned to the evening’s attendees so they could share their ideas for stopping the brain drain of talented women from the workplace. From the information and ideas we obtained in these discussions, we were able to structure the rest of the year’s programs.

Roundtable One: “How Do You Do It?” A Discussion on Women’s Initiatives in the Professional Services

Location & Date: San Francisco, Calif. -September, 2006

Industry: Professional Services Firms

Strength: Established and widely accepted structures that have increased the retention and advancement of women.

We started with the professional and financial services industries because many of these firms have been pioneers in the world of work-life balance, offering flexible work places and work arrangements, on-site childcare, and new non-traditional career paths.

Cathy Benko, head of Deloitte’s Women’s Initiative, explained Deloitte’s approach to these issues, including the development of a completely new approach to work structures and work life. **Elissa Ellis**, founder of the Forte Foundation, explained how her organization has made major strides in convincing businesses to recruit more women and in implementing programs designed to retain and advance these women.

What We Learned

Many different companies in the financial and professional services arena offer flex-time, job sharing, telecommuting, compressed work weeks, seasonal schedules and reduced hours for their employees as a way to improve work-life balance. Some companies, for example, are using a “teaming” approach to work. This approach places employees in groups so they can share responsibilities for client service and deliverables. In this structure, personal commitments are scheduled into the team’s responsibilities to ensure an appropriate distribution of work. As a result, an evening class, childcare obligations, workout schedules and other “personal interests” can be more easily addressed and accepted. This structure has also created a higher level of service for clients.

Participants in the roundtables confirmed the benefits and challenges of different work structures. We heard about how work arrangements such as part time, flexible time, team approaches and job sharing had a positive effect on getting the work done, the company’s economics, and the morale of coworkers.

We also learned that offering advancement opportunities and leadership roles is important to the retention of women. Many companies have implemented leadership programs that offer advanced training, formal mentoring programs, personal coaches, formal succession planning, and detailed timelines and goals to make sure that women are rising within their ranks.

Roundtable Two: “Work Life Balance — Not Just for Women”

Location & Date: Silicon Valley, Calif. -January, 2007

Industry: Technology, Pharmaceuticals and Telecommunications Firms

Strength: Culture of flexibility and “buy-in” for flexible-work arrangements for all employees.

Who asks for work-life balance? Who benefits from it? When we think of programs to help implement work-life balance, do we assume they are only for women, or more specifically, for women who are mothers? Why? How does this affect the conversation and advancements in this area?

These are the questions that we wanted to answer at this program. We got those answers from representatives in the high-tech sector. In fact, high-tech companies, which are heavily dominated by men, have been able to make impressive advances in offering flexibility to highly demanding professionals.

The high-tech industry recognized early on that the employees who benefit from flexible programs are not just women. To attract and retain the employees they want and to make their business run efficiently, they have had to embrace and foster a work environment that accommodates all types of schedules and all types of needs. And their employees, both men and women, have taken advantage of this “alternative” work style.

We found that the high-tech sector’s approach to work-life balance is not as much about specific programs and formalized policies as it is about individuals controlling significant aspects of their work environment. We asked our panelists about the culture they have seen in the high-tech sector, how progress has been mapped, and how the benefits they have experienced could be translated to other industries.

Noni Allwood, Senior Director of Diversity and Inclusion for Cisco, and **Eric Drattell**, General Counsel for Risk Management Solutions, outlined how “buy-in” was created in their companies to restructure how work gets done and how they track and help support these fluid arrangements with their employees.

What We Learned

The programs and policies that surround work-life balance might have been created initially to help retain women or mothers in the workforce. But now the need for such balance has become a larger and more dominant issue for both genders. An increasing number of Gen X and Gen Y male employees are beginning to demand more balance for themselves and their families.

- In a 2000 Radcliffe Public Policy Center Study of 1,008 adults, 71% of men ages 21-39 said that they would give up some of their pay for more time with their families.¹¹
- In a Simmons School of Management study of 12 national organizations, 95% of all adults surveyed stated life outside work is just as important as—or even more important than—their work. There was no gender difference in these responses.¹²
- More than one-half of men and women in financial services and more than two-thirds of law school graduates report difficulty balancing work and personal demands. Of MBA graduates, one in three women and one in four men are not satisfied with their work-life balance.¹³
- In a *Fortune Magazine* survey of top level Fortune 500 male executives, 84% of respondents said they would like job options that let them realize their professional aspirations while having more time for things outside of work.¹⁴

Both men and women are seeking work-life balance from their current or prospective employers

¹¹ Radcliffe Public Policy Center with Harris Interactive, Inc. “Life’s Work: Generational Attitudes Toward Work and Life Integration,” 2000. (Results of survey based on interviews with nationally representative sample of 1,008 adults aged 21 and over interviewed in the winter of 2000)

¹² Simmons School of Management and Bright Horizons Family Solutions, “The New Workforce Reality: Insights for Today, Implications for Tomorrow,” January 2005 (Survey based on large scale national sample that included 12 U.S. based organizations across diverse geographic location and industries using analysis of Human Resource Information System, extensive survey of recent hires in participating organizations, and focus groups in selected participating organizations)

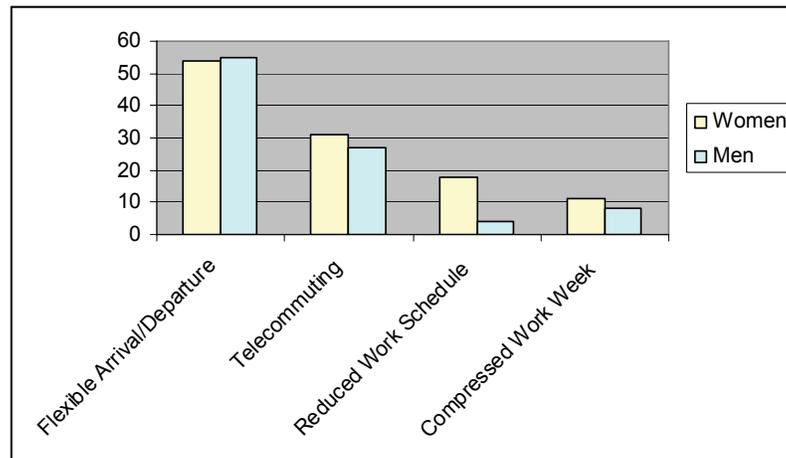
¹³ *Catalyst Viewpoints*, “Workplace Flexibility Isn’t Just a Women’s Issue,” August 2003 (Report based on collection of data by Catalyst research studying men and women different industries and demographic groups.)

¹⁴ Miller, Jody; Miller, Matt and Zappone, Chris. “Men Want to Live Too,” *Fortune Magazine Fortune Survey*, published along with the article, “Get a Life; Working 24/7 may seem good for companies, but it often is bad for the talent.” November 28, 2005. (Survey off 100 male top-level Fortune 500 executives. Typical age of males was over 50 and average workweek consisted of 58 hours.)

- More than two-thirds of men would look for a formal flexible work program with a new employer.¹⁵
- A Catalyst survey of men and women in the workplace showed a growing preference for alternative work arrangements. “The top three options selected by both women and men law graduates to help alleviate their work/life conflict are the ability to control work hours, telecommuting, and a reduced work schedule. A part-time schedule is the only item with a significant difference between men and women. Only when it comes to a reduced work schedule is there a significant gender gap.”¹⁶
- In Generation X, 80% of women and 70% of men said that flexible work polices and programs are important to their personal career advancement and satisfaction.¹⁷
- Of the male senior level executives surveyed by *Fortune*, 55% of them would sacrifice income for better workday.¹⁸
- 50% of the male senior level executives surveyed stated that the sacrifices they have made for their careers were not worth it.¹⁹

Some work arrangements, such as part-time employment, are still utilized by women more than men, but many other forms of flexible work arrangements are used by almost equal numbers of men and women:

Catalyst’s study Catalyst Viewpoints, “Workplace Flexibility Isn’t Just a Women’s Issue,” August 2003 illustrates this point:



A Catalyst survey found that in dual-earner couples, more men are telecommuting or working from home than women.

Participants in the roundtable discussions at our January meeting confirmed that more men are demanding flexible time and that both men and women are starting to take advantage of flexible arrangements. The biggest issue outside of the

¹⁵ *Catalyst Viewpoints*, “Workplace Flexibility Isn’t Just a Women’s Issue,” August 2003

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ Miller, Jody; Miller, Matt and Zappone, Chris. “Men Want to Live Too,” *Fortune Magazine Fortune Survey*, published along with the article, “Get a Life; Working 24/7 may seem good for companies, but it often is bad for the talent.” November 28, 2005

¹⁹ *ibid.*

high-tech industry, however, is finding a way to convince employees that they can and should take advantage of the new flexibility options that are being offered. Fear of being viewed negatively for not being at the workplace during “normal work hours” still predominates in many industries.

The roundtable discussions concluded that support from top management is a prerequisite to making meaningful changes in corporate culture. And getting men into the discussion and taking advantage of flexible programs is essential to making these work structure changes viable.

Roundtable Three: “Women in Charge: Making a Difference”

Location & Date: Washington, D.C. -March, 2007

Industry: Public Sector in Washington, D.C.

Strength: Number of women in leadership positions and number of women offered advancement opportunities.

We brought the Opt-In Project to Washington, D.C., for a discussion about the ways in which women in leadership positions change organizations. We wanted to hear about the different skill sets and approaches women leaders bring to their organizations as well as how those qualities influence the retention rates of men and women in the workplace. This discussion was centered on strategies for making sure women are in top leadership positions.

We partnered with The Center of Leadership and Ethics (COLE) at Duke University, beginning the evening with a presentation on specific leadership research identifying the characteristics that define effective leaders.

Kimberly Jenkins, executive in residence at Duke, helped us with this discussion, using her experience in the private and public sectors — as an executive for Microsoft and founder of a public policy think tank — to highlight the leadership strategies she used in her career. She told us how she asked for leadership opportunities, rather than waiting to be asked, and then made sure that she performed her leadership duties at the highest level possible. **Sanyin Siang** gave us insight into the basic differences in the way women and men approach leadership positions as well as relationships with coworkers.

What We Learned

We learned that the strengths generally ascribed to women leaders, which are purported to be communal and relationship focused, are very much in line with the way business is being transformed today.

- Female leaders are identified as more transformational leaders who engage in contingent reward behaviors (*i.e.*, exchanging rewards for followers’ satisfactory performance). Male leaders are more likely than female leaders to manifest active management by exception (attending to followers’ mistakes and failures to meet standards) than passive management by exception (waiting for problems to become severe before intervening).²⁰
- In 2000, *BusinessWeek* published an article which compared five privately conducted management studies (conducted by consulting firms on a national level studying a range of businesses from high-tech manufacturing to consumer services), the purpose of which was not to look at gender difference, but rather to compile and compare performance evaluations and identify successful skill sets. The results showed a statistical significance in terms of gender. Each study focused on performance evaluations and found the following skill sets were more highly ranked for female employees.²¹

²⁰ Eagly, Alice and Carli, Linda. “The Female Leadership Advantage: An Evaluation of the Evidence,” *The Leadership Quarterly*, September 5, 2003.

²¹ Sharpe, Rachel, “As Leaders, Women Rule,” *Business Week*, November 20, 2000.

Studies Cited: Hasberg Consulting Group, Management Research Group, Lawrence A. Pfaff, Personnel Decisions International Inc, and Advanced Teamware Inc.		
Skill	Men	Women
Motivating Others		5 out of 5 studies
Fostering Communication		4 out of 5 studies (one study men and women tied)
Producing High-Quality Work		5 out of 5 studies
Strategic Planning	2 out of 5 studies	2 out of 5 studies (one study men and women tied)
Listening to Others		5 out of 5 studies
Analyzing Issues	2 out of 5 studies	2 out of 5 studies (one study men and women tied)

Source: Sharpe, Rachel, "As Leaders, Women Rule," Business Week, November 20,2000.

Our experts also addressed certain commonly held myths or barriers that are ascribed to women who want to advance to leadership positions.

Myth: Women do not want to lead or do not have ambition.

The 2002 Catalyst census of Fortune 500 corporate officers and executives presented in the June 2003 *Harvard Business Review* stated that less than one- third of the 120 CEOs (almost all male) and the 705 female executives who responded consider a lack of desire to advance to senior levels a barrier to women’s advancement. Of those executive women not already at the very top, 55% said they aspire to the most senior leadership levels.²²

Myth: Women are preoccupied with personal life concerns while men are more work centric.

95% of adults surveyed in the Simmons School of Management and Bright Horizons Family Solutions study, “*The New Workforce Reality: Insights for Today, Implications for Tomorrow,*” stated that life outside work is just as important as—or even more important than—their work. There was no gender difference in these responses.²³

Myth: Women are more likely to leave or “opt-out” of their jobs than men.

The Family and Work Institute study “*Leaders in a Global Economy*” surveyed 1,192 global executives in 10 major US-headquartered global companies. It found an equal number of female and male executives - 44% - plan to leave their jobs in five years or less. Of those who want to leave, 30% are not planning on retiring. More women (32%) than men (26%) are in this category. Of the male and female executives who plan to leave but not retire, only 7% percent are planning to drop out of the workforce temporarily. The largest proportion - 56% - plan to pursue a different career.²⁴

²² Wellington, Sheila. “What’s Holding Women Back?,” *Harvard Business Review*, June 2003.

²³ Simmons School of Management and Bright Horizons Family Solutions, “The New Workforce Reality: Insights for Today, Implications for Tomorrow,” January 2005

²⁴ Families and Work Institute, Catalyst, and The Center for Work and Family. “Leaders in a Global Economy: A study of Executive Women and Men,” 2003.

Myth: Women choose either “the leadership track” or “the mommy track”

The Family and Work Institute study “*Leaders in a Global Economy*” found that while men and women executives make different life decisions to balance careers and personal lives, there is no measurable difference in the impact of work on the lives of women in senior management positions and women in lower management ranks. “We find that women executives in higher status jobs, however, have not given up more in their personal and family lives to manage their careers than women in lower status jobs. In fact, 70% of women closer to the CEO in reporting levels have children compared with 62% of women at reporting levels farther away from the CEO.”²⁵

Roundtable Four: “Asking for Directions: Finding Workable Career Paths”

Location & Date: New York, N.Y. -April, 2007.

Industry: Financial and Professional Services Industries

Strength: Established and successful “on-ramping” programs to recruit employees back to the workforce.

In our last roundtable discussion we turned back to the financial and professional services industries because we wanted to have a larger discussion about how these industries were addressing the traditional career path in the context of career sustainability.

Many of these companies have found that the traditional career path just will not work. Why? Because they have found that workers coming into the workforce are looking for a career path that can be tailored to their particular needs and desires. As a result, companies find that they are losing valuable employees when they try to impose a straight-line career model on their workers.

The financial and professional services industries have addressed these issues by focusing on developing innovative programs that keep current employees engaged, even when they want to move “sideways” instead of up the career ladder, and keeping former employees connected to the business.

These companies have found ways to give their employees a green light to stay in the game, without the stigma and the “second class citizen” badge that sometimes plague employees who try to find alternative career paths.

Why is this important and how does it work? Can it help with the brain drain of talented and successful employees from the workplace?

Our experts for the evening focused on two ways of responding to these questions.

Anne Weisberg, senior advisor to Deloitte & Touche LLP Women’s Initiative, and co-author of the book, *Mass Career Customization: Aligning the Workplace with Today’s Nontraditional Workforce* (HBS Press, 2007), outlined career customization – a system that changes the corporate ladder model of career progression into a corporate lattice.

Laila Worrell, head of Accenture’s New York Women’s Initiative, shared how Accenture is implementing a program of creating “on-ramps” to bring women and men who have “opted-out” back into the workforce.

²⁵ *ibid.*

In discussing “Career Customization,” a system Deloitte is now piloting, Anne Weisberg explained that this system breaks jobs into various components including pace, workload, location and role and requires employees to think about how they will perform in each of those categories as they progress through their careers. The system allows employees to factor into their careers times when they will be more engaged in one of these components than others because of personal commitments or other factors. For example, an employee might take a lesser role with less travel while his/her children are young. The system encourages employees and employers to focus on the whole career and the whole person.

Both experts also talked about programs their companies have designed that focus on how to bring the talented pool of former employees back into the workplace – thus, recapturing their “investment” in these employees.

The shrinking pool of qualified workers is one of the motivators enticing companies to seek out former employees. The Bureau of Labor and Statistics reports that between 1990 and 2025 the labor force growth rate will plummet from 11.9% a year to .2%, due to fewer entrants and the retirement of the Baby Boomers.²⁶

As employers face this labor shortage, it is likely that a competitive advantage for retaining talent will go to businesses offering flexibility in the way they structure careers.

What We Learned

Our discussions confirmed the obvious: The collective cost of attrition due to the loss of an employee adds up. Some of those costs include:

- loss of productivity;
- loss of revenue for a period of time;
- loss of recruiting and training costs;
- loss of skills, contacts and clients;
- loss of institutional knowledge;
- expenditure of time interviewing and recruiting replacement employees; and
- expenditure of time training new hires.

At the roundtables, participants expressed some concern about whether the career customization system used by Deloitte could be translated into other business models. But the concept of breaking down a job into various components that can be dialed up or down appealed to most participants. Finding creative ways to keep workers connected after they have left the workplace was also universally supported.

²⁶ The Future of Work Institute, “The Future of Work in the U.S. Presentation,” 2007. (Citation and analysis of the 2002 Bureau of Labor and Statistics data on the labor pool for the next 25 years.)

CASE STUDY: Can the Ideas Generated From the Opt-in Project be Applied to Law Firms?

The data we gathered in our yearlong study tells us that many businesses recognize that major structural changes to the workplace may be needed to address changing demographics, shifting attitudes of workers entering the workplace, and evolving desires of dual career couples. Even law firms that are risk averse and steeped in precedent and tradition are beginning to acknowledge the need for change. And law students as well as clients are speaking out in favor of such changes.

The ideas set forth below are just that: ideas that have been generated by the year-long study of the Opt-In Project. *They are not endorsed by any law firm, including Heller Ehrman.* None of these ideas will be applicable or acceptable to all law firms or businesses. In addition, there will no doubt be forces at play outside the control of a law firm or business, including client demands, market forces, and socioeconomic influences, that will make some of these ideas harder than others to put into practice in the near term (or ever).

We present these ideas for the sole purpose of generating further discussion and thoughts about ways to enhance the representation of women in law firms and businesses and ways to create a work structure and environment that will allow and encourage both women and men to *opt in*.

OBSERVATION 1: High Attrition in the First Five Years Can be a Drain on the Economics and Morale of the Firm

Every business we surveyed worries about attrition. Law firms are no different. In law firms, the attrition rate for associates before their fifth year is 57%, and in 2005 that rate increased to 78% in some firms.²⁷ In the 2007 MIT survey of law firms, 31 % of female associates left private practice entirely compared with 18% of male associates.²⁸

Law firms suffer a significant economic loss because of this exodus of talent, particularly since there is an increase in the departures of associates after their third year - the year in which they are often just becoming profitable.

Other businesses have taken steps to address this issue. Investment banking firms, accounting firms, and consulting firms have found that different ways of measuring performance and progression promote loyalty and cut down on attrition. In 2006, after several years of implementing strategies designed specifically to address issues relating to the retention of women in the workplace, Deloitte has increased its retention rate dramatically.

Can law firms redesign their systems to do the same?

The Cost of Attrition Breakdown

The Average Associate Leaving

- Lost Salary (**\$160,000**)
- Lost Investment in Recruiting (**\$65,000**)

\$25,000 in partner recruiting time (50 hours at a billable rate of \$500/hour), \$40,000 in search consultant charges (25 percent of annual salary)

- Lost Investment in Training (**\$70,000**)

(100 hours of associate time at \$200/hour, plus an equal amount of time for the \$500/ hour partners who gave the training)

TOTAL: \$295,000 per Associate

- Plus Client Concerns, lost productivity, new recruiting and training fees (**\$90,000**)+

Industry Estimate Total: **\$400,000** per associate

*Poll, Edward "So Associates Are Dissatisfied? It's Not Hard to See Why!" Law Practice Today August 2006

(continued)

27 National Association for Legal Professionals (NALP) "Keeping the Keepers II: Mobility and Management of Associates" Reports from 2003 and 2005

28 MIT Workplace Center "Women Lawyers and Obstacles to Leadership," Spring 2007

The Benefit of Addressing Attrition

It is easy to see how a company can save a substantial amount of money when it is able to increase the retention of good employees. Deloitte estimates it saved \$41.5 million in 2003 in attrition costs. Ernst and Young states it saved \$25 million in direct attrition costs and \$120 million in indirect costs by offering their workplace flexibility programs.

* Williams, Joan, “ Solving the Part Time Puzzle,” Project for Attorney Retention, May 2006

Reconfiguring The First Two Years

With first-year salaries soaring and driving up all other associate salaries, the investment a firm has in its associates is substantial. If associates stay only long enough to pay off their law school debts, the law firm loses most of its investment in that attorney.

Should Law Firms Consider:

- Having no billable hour requirement and lower salaries for the first two years of an associate’s career with the firm, thereby allowing the attorney to focus on training and skill development without the billable hour hanging over him/her. This might build loyalty to the firm as attorneys recognize that the firm is making an investment in them.
- Hiring fewer first-year associates, billing them out at a significantly reduced rate, and paying them less. This might allow firms to give associates significantly more training, mentoring and attention, building skills more quickly and forming a stronger bond with the firm.²⁹
- Allowing associates to choose between various salary levels or bonus opportunities they want based on how much time they want to work in a particular year, with the understanding that a reduced workload may impact the time frame for partnership.
- Having law firms pay back law school loans for new associates, in exchange for a commitment from the associate that he/she will stay with the firm for a period of years. Of course, there would have to be some way to bind the associate to this agreement and allow the law firm to terminate the agreement under certain circumstances, including poor performance.
- Allowing associates to intern in public service law firms, or governmental organizations, or be loaned as in house counsel for firm clients.

Law Students and Associates—Reduce the Salary, Reduce the Hour Commitment

In multiple cities we heard younger associates voice the same desire to trade money for more balance.

“I don’t know anyone among my law school friends who wouldn’t trade 20% of the hours commitment for 20% of the pay. But that deal is not being made.”—Associate at large law firm

“We begged our firm not go with the salary bump. We knew what strings were attached and it meant billing a lot more hours.”—Associate at large law firm

Refirmation—Law Students Taking Action to Get Firms to Lower Billable Hour Requirements

Refirmation is an effort launched by two Stanford law students, Andrew Cantor and Craig Holt, that has approached the nation’s top 100 law firms asking those firms to commit to the reduction of billable hour requirements for associates. In turn the group has stated that they would be willing to accept lower starting salaries for this work-life balance adjustment.

*Roemer, John “Students Prod Big Firms to Change,” San Francisco Daily Journal, April 10, 2007

²⁹ Incorporating the ideas in Observations 3 and 4 might also increase retention at this level and above.

OBSERVATION 2: The Way Law Firms Track Hours and Bill for Services May Cause Unwanted Attrition

Increasing Pressures on the Billable Hour

In 2005, *The American Lawyer* outlined the different reasons why the billable hour's days may be numbered. Douglas McCollaum wrote about several factors:

Offshoring

“[The traditional law firm’s] pricing model follows the production costs instead of following the needs of the buyer.” So says David Perla, former in-house lawyer for Monster.com and currently co-founder of Pangea3, a new company that offers legal services performed by lawyers and scientists based in India at dramatically discounted rates. Perla has stated to *The American Lawyer* that the current time-based American legal profession is “grossly inefficient.”

Automation of Certain Legal Services

The development of new legal software has allowed large and time consuming tasks – such as large document reviews - to be completed more quickly and efficiently. Several blind studies have shown that the software’s work product is more thorough than that of an associate billing twice as much.

Client Demand

Larger companies have been using their clout to explore alternative billing arrangements. Their goal is to increase the predictability of yearly legal fees and to focus on outcomes rather than amount of time spent on matters. In-house lawyers observe that legal services should be determined “not by the amount of time a lawyer spent on a matter but on the value he delivered to the client.” Some believe that a time-based metric encourages overstaffing on matters, billing for marginally useful services, and drawing out cases that might be brought to a quicker end.

E.I. du Pont de Nemours and Co. and General Electric are two companies that have been “aggressive in exploring alternative pricing models for legal services” where even long-time outside counsel have had to bid for the right to represent these companies using flat-fee billing structure arrangements. J. Warren Gorrell, managing partner of Hogan & Hartson Washington, D.C., states that he has seen a steadily increasing number of RFPs from clients who are looking for alternate billing arrangements or for scaling fees. He states that the requests for these arrangements are close to being “10 times higher than five years ago.”

*McCollaum, “The Billable Hour: Are Its Days Numbered?,” *The American Lawyer*, November 28, 2005

Law firms adopted the billable hour structure in the 1950s and are now stuck with two primary ways of increasing revenues: raising billable rates (creating pressures for clients) and raising the number of billable hours (creating pressures for both associates and partners). Accounting and consulting firms have been slowly moving away from the billable hour business model, relying more heavily on a project oriented billing system. Has the time come for a change in the way law firms charge for services?

Billable Hours As Internal Measurements

Currently, minimum billable hour requirements are used as an internal measurement of success for partners and associates. As a result, associates feel discouraged by what is sometimes referred to as the “billing hour pie eating contest,” where the reward for billing more hours is partnership in the law firm, leading to the expectation of billing more hours.

Should Law Firms Consider:

- Measuring performance and setting salaries without reference to the number of hours billed, focusing instead on such things as productivity (in terms of such things as the number of deals completed, or demonstrated efficiency in writing briefs or memos, preparing for deposition, or responding to discovery), quality of work, team work, client skills and participation in firm activities.
- Having bonus structures that reward productivity (as defined above) and high performance, not number of hours worked.
- Capping the number of hours an attorney can get “credit” for in any one day.

Billable Hours As External Measurements

Clients are used to paying by the hour for services rendered. As a result, they are sometimes concerned about alternative billing arrangements that cannot be easily reconciled with time spent on particular tasks. Yet clients also want predictability of legal fees and some way to control the increasing hourly rates charged by lawyers.

Should Law Firms Consider:

- Creating viable alternative billing arrangements that give clients predictability and control over legal costs
- Actively marketing and encouraging clients to consider different ways of billing for services rendered

OBSERVATION 3: The Up or Out System May Cause Good Attorneys to Leave

The accounting firms have begun to redefine career paths to reflect the fact that employees may have different levels of commitment and different time demands at various stages of their careers. Called “Mass Career Customization” at Deloitte, this approach assures newly-hired as well as seasoned employees that the firm is investing in them and in their long-term career with the company.

Mass Career Customization at Deloitte

Deloitte has run a pilot program using MCC with their own employees where each individual chooses how he or she want to accelerate or decelerate aspects of his or her career as he or she progress through the firm. While the obvious anxiety around this program is that employees will all choose the option of deceleration, in practice Deloitte found the opposite. Deloitte devised MCC after studying the careers of several employees over the years. A pattern emerged across the board for both men and women of a sine curve showing that employees “adjusted” their career speed to deal with personal obligations. MCC formalizes this process and offers a structured way to help employees and the organization understand and manage their talent pool.

* Weisberg, Anne. “Creating Options: Re-entry Programs,” April 12, 2007.

Currently, many law firms follow an “up or out” system, mimicking the famous scene from *The Paper Chase* in which the law professor emphasizes from day one how students who “don’t have what it takes” will be gone by the end of the first year.

We learned from the accounting firms that building lattices rather than ladders has been an effective response to the opt-out phenomenon in their industry. The accounting firms have found various ways to build these lattices into their work structure.

Careers as Lattices and Not Ladders

At our professional service roundtable Cathy Benko explained how offering a non linear path or a “lattice, not a ladder” has benefited Deloitte.

“And we actually see the corporate ladder, right, evolving into something we’ll term the corporate lattice, where you have upward momentum and you have growth and you have development, but it’s not serial. It can ebb and flow, it can dial up and dial down. I personally think the best way to fix the opt-out situation is to keep them in. So that you don’t have this problem. You know I have two kids. My oldest is in the 7th grade. And I see it with some of the moms in his class who have made a different choice-- that choice to opt-out. And they are ready to come back and the sense of frustration that they deal with is just-- it is really heart wrenching sometimes. And just like the guilt gods definitely visit me every day, it turns out they visit them too on choices that they made. They don’t kind of feel appreciated at home with their children because their children don’t understand the trade offs that they made. And to be honest with you, that’s one of the dirty little secrets when you are on the front end making that decision. You just think ‘it’s a couple of years, I’ll get back in,’ and now we know from some of the great work that Forte has done and described tonight, it isn’t that easy now is it?”

(continued)

“So let’s talk about this notion of the corporate lattice for a minute... You can customize jeans, you can customize sneakers, you can customize M & Ms, (you know custom colors, custom messages), you can even customize stamps. If you think about your credit card billing cycle, you're often asked, when would you like to get your bill. Would you like to get it on the first of the month or the 23rd of the month. What works for you? So if you take that notion of mass product customization, that we are kind of getting used to as a society, why couldn't you apply it to careers. Why not?” Cathy Benko, *The Opt-In Podcast*, “*The Day After Tomorrow*” - October 19, 2006

Can This Work in Law Firms?

Redefining Promotional Opportunities

Attorneys are tracked by the number of years out of law school for decisions affecting salary and promotion within the firm. They move up in compensation and billing rates with “their class,” and, the time frame for partnership consideration is driven by their year out of law school. But attorneys do not all progress at the same rate for various reasons — some relating to the experience they get at their firms; some relating to family obligations; and others relating to skill level.

Should Law Firms Consider:

- Tracking attorneys by performance and skill development instead of years out of law school.
- Developing a tiered approach to partnership beginning at year one and defined by skill level, not year out of law school. Under this system attorneys could stay in the same tier for different lengths of time.
- Having more levels of success, so that partnership is not the only alternative for associates. By creating multiple levels of “success,” the “in or out” club may cease to exist.

Focusing on Career Management

Many firms do not do a good job of managing the long-term careers of their attorneys. Instead, they manage each year of the career. This can lead to a skewed vision of an attorney’s value and contributions to the firm and suggest a “what did you do for me lately” mentality.

Should Law Firms Consider:

- Evaluating attorneys in the context of their careers by building identifiable and articulated skill sets that attorneys must achieve over the course of their careers and measuring their success against these skill sets.
- Doing away with the up or out system to increase the chances of keeping star performers who want to (or have to because of life circumstances or obligations) move up at a different rate from their peers.
- Requiring consultations between associates and partners as to how required skills will be developed and when they will be developed.
- Implementing a mandatory system in which every associate plans the next five years of his/her career with his/her managing partner by addressing and planning for issues that might impact the rate of forward progress.

Creating On-Ramps

Other professional services firms like Lehman Brothers and Accenture have implemented on-ramp and off-ramp programs in which they keep their employees who choose to leave the firms connected. This makes it easier for these employees to reenter the workforce when they are ready and allows firms to reconnect with employees who have been trained and who have the skills necessary to do the job. Put another way, these firms are recapturing their investment. Can law firms borrow some of these ideas?

Some law firms have created programs to keep up strong ties with attorneys who have left the firm in good standing. These ties, however, are often focused on potential client development rather than on the talent pool these attorneys represent. As a result, little attention is paid to trying to recruit these attorneys back into the law firm.

Should Law Firms Consider:

- Keeping bar memberships active for some period of time after an attorney has left the firm.
- Inviting alumni to in-house training programs in their practice groups.
- Inviting alumni and attorneys on leave to continue to hone their legal skills by providing pro bono services under the auspices of the firm.
- Partnering with law schools to create training programs for attorneys who have been out of practice for more than three years to bring them up to speed on technological advances and legal developments in their area of expertise.

Business Schools and Corporations Partner to Create On-Ramps

Tuck School of Business—“Back in Business,” Program with Citigroup and Deloitte

In October of 2006, Tuck School of Business greeted its inaugural class for the Back in Business Program. Forty-one participants, including men and women from all over the United States, spent alternating weekends on Tuck’s campus and in New York City in a targeted program that focused on updating and providing skills which would make re-entry into the business world a seamless transition.

The program was sponsored and supported by Lehman Brothers, Citigroup, and Deloitte and Touche, all of which see this type of program as a way to develop and tap into a set of talented workers who would otherwise not be targeted in the recruiting process. These companies actually paid half of the tuition costs for participants and, in return received access to the students for recruiting purposes.

We asked Hans Morris, chief financial officer of Citigroup’s Global Investing, about the impetus that led these companies to look to a program like this for their recruiting efforts.

“The look and the characteristics of talent continues to evolve and has evolved tremendously over my career. But I expect it to change further...partly due to demographics in the United States. But we operate in 100 countries and we have people from all over the world that work here and work in different places. And so what I’m interested in is sourcing great talent from all those different locations; making sure that we’re getting the best people from the top schools wherever those schools happen to be. ...[The] key thing is not losing people, right? And making sure we find roles for everybody, even as their life changes...we [need to] have a mechanism to accommodate them...I think many of the people that I’ve met from the program are just terrific. They’ve got experience and judgment and just maturity of view and they’re great. So I think...you don’t normally just find people like that when you’re recruiting from schools...I’m hopeful that we’re going to get a different type of person than we’ve ever gotten before.”

Professor Constance Helfat of the Tuck School of Business and Anant Sundaram are the co-architects of the 11-day program that runs over four weekends in Hanover, New Hampshire and New York City. They explained the impetus for the program:

(continued)

Professor Constance Helfat: *“If you go back and you think, well, why are we offering this in the first place? There are two goals that reinforce each other. They are obviously the participants seeking to re-enter the workforce. But at the same time, corporations are facing a shortage of managerial talent. And it’s really becoming quite clear to the companies that they need to find as many qualified people as possible...So I call this the virtuous cycle, where you can match people up and it works for everyone.”*

Professor Anant Sundaram: *“Basically, we view it as having three broad streams. One is the business skills part of the content, which goes through the standard updating and refreshing their knowledge of strategy, economics, finance, accounting, marketing, supply-chain management, global business topics and so-forth. That’s about fifty percent of the content. Then we built in leadership development – everything from managerial communications to self-assessment to tools to giving them a sense of comfort with the use of technology. By the end of the program they’re making quite a detailed presentation. We had the chairman of the board of Deloitte and Touche – her name is Sharon Allen – who spoke to the participants. One of the key themes from her talk was [that the] whole conversation in the last year or two has shifted from, ‘Oh, this sort of a demographic is nice to have’ to, ‘This demographic is someone or a group that is a must-have in a portfolio of applicants’” .*

*The Opt-In Podcast, “Back in Business” November 16, 2006.

OBSERVATION 4: The Workplace of the Future May Require Flexible Arrangements and Workdays

High-tech industries demonstrate just how flexible a workplace can be. Teleworkers and virtual teams are common in the industry, allowing employees to work from any location and to arrange their work schedules to meet their needs. The keys to these structures are trust and accountability.

Technology Used Wisely

Professor Kathleen McGinn on why remote working fits in to our lives:

If I had to look into my crystal ball and say what's it going to look like, I expect that organizations will start to be more mindful about what's a real business imperative and what can change. For example, face time is one of those things that we also assumed necessary, partially as a control mechanism, but partially as a socialization piece. When people have more complex lives they don't need the socialization piece. When we have ways of measuring productivity, that aren't hours based or face time based, then we don't need face time for that. And when we have the technology, that allows us essentially to do everything that we used to do in person, now we can do it, you can sit at your computer, and have a video kype conversation going on and with high definition computer screens it looks like someone is sitting right in front of you. So as those things change companies will say well face time isn't really a critical thing, what is it that we do need? So each one of those areas is where you say maybe we can do without this forces organizations to say what's important and what really matters. And I think organizations will look different. So high-tech sector doesn't really need to interact, they interact through code, consultants will always need to interact more than they will. So there will be differences by industry and differences by firm, but my guess is that we will see a very different workplace than what we see now.

**The Opt-In Podcast, "The Day After Tomorrow," October 19, 2006.*

The Work Day

With the advent of blackberries and cell phones, working away from the office is becoming more common. This has the advantage of allowing employees to "plug in" from their homes and to stay in touch with clients and coworkers through technology. It has the disadvantage, however, of extending the workday further into what used to be "personal time."

Should Law Firms Consider:

- Creating no-fault flexible time by allowing attorneys to obtain a flexible work schedule without justifying or even identifying the reasons for such proposal
- Having regular mandatory in-person meetings of teams or practice groups to ensure that the connections necessary for collegiality and personal growth occur even for those working remotely
- Providing employees with telephones that roll over to home phones or cell phones to allow seamless communication between attorneys and their colleagues and clients
- Providing employees with blackberries, fax machines, lap tops, and other conveniences that allow them to be connected when they are not in the office
- Putting a message on e-mails coming into and leaving the office system after 7 p.m. on Fridays stating "Are you sure you want to send this message or can it wait until Monday morning?"

The Work Year

In law firms, the work year is currently defined by billable hours that are measured each month and, in the aggregate, each year.

Should Law Firms Consider:

- Allowing attorneys to design a schedule for the year in conjunction with their manager and colleagues. For example, contributing at a higher level from September to June and at a lesser level over the summer to allow time with children who are out of school during those months.
- Allowing “no-fault” time off for up to a year, without pay, to allow a “breather” for those who need it or want it.
- Providing paid sabbaticals for associates and partners based on the number of years worked
- Measuring and evaluating performance for purposes of promotional opportunities based on contributions to the firm and skills development over a period of years, not just one.

No Fault Time Off—Bain & Company’s “Take Two” Program

“In the San Francisco office, we came up with this idea that, we’re project based, so why couldn’t we allow people to take time off between projects? We have a structured leave of absence program that a lot of people take advantage of. But it felt like there were some perceived constraints around taking time off that it had to be for a major life event in order to go through that channel. And so we experimented and created a program that we called Take Two, internally, where anyone can sign up, raise their hand, and say “I want to take two months off” in unpaid leave. And of course you could imagine that there would be some questions about what would this do to our business. Won’t everybody want to take two months off and how can the business sustain that? In reality, everyone appreciates that that program exists, but the number of people who have taken advantage of it has been completely manageable, even in the context of a very busy business for us over the last couple of years. And now that the program has been in place for about a year and a half, we’ve also seen that a range of different people, from entry levels, associates out of college, all the way on up to some of our most senior partners – a partner who’s been around Bain for twenty years just came back from a sabbatical. And so what it has done is it’s taken the stigma away from taking advantage of a formal leave of absence policy, which is absolutely still in effect, and you know, people like myself take advantage of after maternity leave or something, but it allows anybody for any reason – whether it’s building a house in sub-Saharan Africa or traveling the world for an extended honeymoon, or writing a business plan, or writing business school applications.” – *Heidi Locksimon, Partner at Bain and Company*

**The Opt-In Podcast, “The Day After Tomorrow,” October 19, 2006.*

On-site Conveniences for Employees

Every parent knows how difficult it is to schedule everything into the weekend — soccer games, swim meets, shopping, and cleaning or to deal with sick children. Employers can assist with this by offering conveniences to their employees on site.

Should Law Firms Consider:

- Providing on-site child care, even if it is just for sick children.
- Bringing services such as dry cleaning, car washing, and grocery deliveries to the workplace.
- Hiring a “concierge” to assist employees with certain types of tasks such as taking shoes in to be repaired, going to the post office to mail packages or get stamps, making appointments with dentists or doctors, getting airline reservations for personal travel, and other “weekend” type tasks.

The Workspace

The costs associated with workspace can be enormous, especially in larger cities. If attorneys work more often from locations outside of the office, the need for the “individual” office space may not be as critical.

Should Law Firms Consider:

- Using “hoteling” for employees who regularly work outside of the office, by eliminating assigned offices for attorneys who are working part time or spending significant time out of the office.
- Using videocasts or webcasts to keep employees connected who are working from home.

Team Structures for Clients and Matters

Team structures have been used by law firms for many years. These structures are usually defined by client needs. Teams have also been used by business to accommodate flexible work arrangements and personal commitments and to ensure a balance of opportunities and work.

Should Law Firms Consider:

- Creating teams with the dual goals of addressing client needs as well as the needs of the attorneys on the team. Members of these teams would know the work limitations of the other team members and plan for them. Thus, someone who has to leave at 5 p.m., for example, to pick up a child from day care or to look after an elderly parent or to attend a class at a local college, could do so without feeling guilty or facing resentment from other members of the team. In exchange, that team member might cover the “early shift” for a teammate who needs to attend to the early morning needs of his/her family. The teams would be charged with ensuring seamless service to the client, while allowing attorneys to have flexible schedules.
- Monitoring assignments within established teams to ensure that opportunities and workloads are being shared equally

Creating a “Teaming Culture” at PricewaterhouseCoopers

Teaming Culture has been implemented at PricewaterhouseCoopers as a way to keep up with the demand of 24/7 client service and to also make sure that their employees are offered a work environment that integrates work-life balance.

As a result, multiple employees share responsibility for client service and deliverables. This enables employees to create work schedules that work best for them, the team, and the client. PWC calls it “a new paradigm of work where personal goals are respected as much as professional goals, and contribution is measured by results, not by the number of hours you spend in the office. The genesis of our connected thinking mantra is in this teaming culture.” Work and performance evaluations are also conducted through teams as well and accountability for attrition and employee unitization are also analyzed by the team.

* Wiatrak, Kim and Johnson, Brooke. “How Do You Do It?—PricewaterhouseCoopers Answers” September 28, 2006)

Bain and Company also offers a teaming structure for their employees on each project. Teaming structures “help ensure that personal commitments are scheduled into the team’s responsibility and work so that everyone’s responsibility is equally respected from a Thursday night class, to child care arrangements or lunchtime workouts.

*Bain and Company , “Work- Life Balance website,” 2006

OBSERVATION 5: Part Time Should be a Viable Non-stigmatized Option for Men and Women

There is no question that full-time employment, even with flexible work schedules, is not right for every person or every family. Therefore, businesses have found it essential to offer part-time arrangements that are not viewed as exit strategies, but as ways to keep talented and valuable employees.

Many law firms have not been adept at creating part-time arrangements that actually work. The common challenges to the part-time person are keeping to the schedule, getting good assignments, continuing to advance in his/her career, and being stigmatized or viewed as a second-class citizen.

Career Development

Part-time schedules should not become exit strategies. To ensure that does not happen, however, it is critical that part-time employees get the same types of assignments as other employees and that their promotional opportunities are not negatively impacted by their part-time status.

Should Law Firms Consider:

- Appointing a partner to be in charge of all part-time arrangements who would have responsibility for monitoring assignments, client development opportunities, participating in training programs, continued attachment to the firm, and adherence to the part-time schedule.
- Including attorneys who are part time on firm committees to keep them connected to the firm.
- Tracking work assignments to ensure quality work.
- Tracking client pitch opportunities to ensure client development opportunities.
- Monitoring skills development, attendance at firm events, and other opportunities to develop both skills and relationships.
- Making part-time requests “no fault” for at least a year, which might encourage more men to take advantage of these policies.
- Measuring partnership readiness by skills developed, not by years worked or full-time status.

Pay for Part-Time Employees

Some firms require employees to take less than proportional pay when they go part time. The rationale for this “hair cut” is that the costs associated with part-time attorneys prevent them from being profitable at proportional salaries.

Should Law Firms Consider:

- Making compensation directly proportional to the time worked.
- Offering bonuses directly proportional to the time worked.

Mainstreaming Part-Time Status

One of the difficulties with part-time status is that it has become a “women’s issue.” As a result, few men take advantage of part-time arrangements. With only women in part-time positions, they feel stigmatized, which sometimes causes them to leave the firm.

Should Law Firms Consider:

- Making sure men (as well as women) are apprised of part-time policies
- Providing and promoting male role models who have taken advantage of such policies
- Proactively advising both men and women of part-time schedule opportunities when a child is born
- Ensuring that partnership opportunities are not adversely affected by part-time status by promoting qualified part-time associates to partnership status and by allowing for part-time partners

The Value Proposition for Part-Time Attorneys at Law Firms

James Sandman, former managing partner of Arnold & Porter crunched the numbers when he was making the case that part-time policies do not cause a law firm to lose money. “I start from the proposition that law firms compete in two markets: the market for talent and the market for clients. An accessible workable part-time program, I believe, benefits a law firm in competing in both of these markets,” said Sandman. Sandman states that the first principle for firms to understand is that any law firm that helps its lawyers achieve real work-life balance is going to have a huge competitive advantage in the market for talent. There is also value to the client in offering part-time status to attorneys who already have a knowledge base that is important to the client.

Sandman addresses the arguments against part-time status by stating:

“The two items I hear mentioned most often are occupancy expense—rent — and malpractice insurance, neither of which is reduced for a part-time lawyer. How much money are we talking about? In 2001, according to a survey of law firm economics I saw recently, average occupancy cost per lawyer in large law firms was \$41,000, and the average malpractice premium per lawyer was \$4,000. If we assume a part time lawyer working 75 percent of the hours of a full-time lawyer, that means the part-time lawyer is incurring \$10,000 in occupancy cost and \$1,000 in malpractice insurance expense more than would be the case if it were possible to reduce those costs pro rata with the lawyer’s reduced schedule. But what revenue is that lawyer generating, and how does this

\$11,000 in “excess” cost compare to that revenue? The same survey showed that average revenue per lawyer at large firms last year was \$533,000. Using that figure, a lawyer working a 75 percent schedule would, on average, generate \$400,000 in revenue. The \$11,000 in so-called additional cost looks immaterial to me when other relevant numbers are known.”

“The Business Case for Effective Part-Time Programs,” National Association of Women Lawyers, Women Lawyers Journal, Vol. 88 No 2, Winter 2003)

OBSERVATION 6:**There is a Need to Create Buy-in at the Top and Accountability Throughout the Organization****Accountability**

JP Morgan Chase ties executive bonuses to ratings that managers score based on their support of family-friendly programs.

*Working Mother 2006 100 Best Company Profiles, JP Morgan Chase, 2006

Booz Allen ties manager compensation to retention of women in different departments

*Working Mother 2006 100 Best Company Profiles, “Booz Allen” 2006

The Ernst and Young Snapshot is a tracking document, using a red/yellow/green scale, that contains more than 20 different measurements that add up to a comprehensive assessment of a women’s development and achievement in the firm. Metrics include a headcount, retention, promotions, women as a percentage of partner pipeline, flexible work arrangements, firm-wide survey scores and client assignments.

*Ernst & Young, “Achieving the Vision: Developing and Advancing Women,” 2005.

None of these ideas can work unless there is recognition at the highest levels of the company or law firm that changes to the work structure need to be made. That buy-in must be visible and must be translated to all levels of the organization. Other professional firms have made significant progress in retaining women and moving them into positions of leadership by having the urgency and importance of the message expressed by the top-level managers in the firms.

Law firms that want to implement these types of structural changes need to have the same type of buy-in. Managing partners, practice group heads, and leaders in the firm need to be on board to make any of these proposals viable and attractive to associates and other partners.

The Business Case

In law firms, like businesses, economics matter. To obtain the support from top management to implement any strategy successfully, the business case must be made.

Should Law Firms Consider:

- Tracking and quantifying the financial impact of unwanted attrition as well as the rewards of a more steady and permanent group of associates and partners.
- Tracking the number of clients who are expressing an interest in diversity and a willingness to reward law firms that attract and retain diverse talent at all levels.

Visible Commitment to a Balanced Work Environment

Businesses have had much more success in retaining women where there is a culture that reflects and respects work-life balance. As an example, awards given by “Working Mother” and “Pink” may influence women who are choosing between companies or law firms.

Should Law Firms Consider:

- Encouraging managers to talk openly about family obligations and activities in which they engage.
- Putting work-life balance as a priority in statements about culture.
- Normalizing alternative work styles by encouraging visible and influential members of the firm to use them.
- Making management accountable for the retention and promotion of women by including these numbers in performance measurement and evaluation systems.
- Formalizing succession planning for leadership positions.
- Creating emerging leader programs that reflect gender diversity goals.
- Actively recruiting female lateral partners.

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About Heller Ehrman LLP

Heller Ehrman LLP has more than 700 attorneys and professionals in 13 offices worldwide – Beijing; Hong Kong; London; Los Angeles; Madison, WI; New York; San Diego; San Francisco; Seattle/Anchorage; Silicon Valley; Singapore; and Washington, D.C. As a full-service law firm, we represent a wide range of industry leaders, from entrepreneurial, technology-driven enterprises to established, multinational conglomerates. At Heller Ehrman, we take a multidisciplinary approach to the practice of law, drawing upon our legal, scientific and industry knowledge from across the firm to build the best legal teams for our clients. Through commitment to our core values of Excellence, People, Teamwork, Innovation, Community and One Firm, we offer clients unparalleled legal service.

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Let's Make This Work...Get Involved with OWLS

Contact diane@oregonwomenlawyers.org to join any of these efforts.

Policies and practices subcommittee

This new subcommittee furthers OWLS' mission by researching, developing and promoting model practices and policies for law firms. The subcommittee works closely with the Working Parents Committee toward this goal.

Co-chaired by OWLS board members Elizabeth Milesnick (Portland) and Amanda Thorpe (Grants Pass). Most meetings have call-in capability.

Working Parents committee

This new committee works to support lawyers who are parenting or contemplating becoming parents. It provides programming related to family leave, work life-personal life balance, career advancement, alternate work schedules, childcare, and parenting skills.

This committee will work in partnership with the subcommittee of the transformation committee to develop model policies and practices needed to recruit and retain talented parent lawyers. The committee will explore establishing a parenting mentor system for lawyers who are new parents.

An OWLS motherhood group operates as a subcommittee to address issues faced by women lawyers related to fertility, giving birth, birth recovery and breastfeeding.

The committee also supports OWLS Playgroups statewide.

Co-chaired by Amber Hollister (Tigard/Portland) and Maya Crawford (Portland), most meetings has call-in capability.

OREGON WOMEN LAWYERS

CLE EVALUATION FORM
Make it Work: From Frenzied to Fulfilled
 October 16, 2015

Please complete this evaluation form and return at the end of the day. Thank you.

	Excellent	Good	Needs Improvement	Not Applicable
Overall quality of the CLE content	[]	[]	[]	[]
Overall quality of the speakers	[]	[]	[]	[]
Keynote Speaker: Brigid Schulte	[]	[]	[]	[]
Keynote Speaker: Patricia Gillette	[]	[]	[]	[]
Panel Discussion with Brigid & Patricia	[]	[]	[]	[]
Moderator: Kellie Johnson	[]	[]	[]	[]
Emcee: Elizabeth Milesnick	[]	[]	[]	[]
Written materials	[]	[]	[]	[]
Audio/Visual	[]	[]	[]	[]
Room where CLE was held – could you easily hear and see the speakers? Were you comfortable?	[]	[]	[]	[]

The most effective way for me to receive information about OWLS CLEs and programs is (check all that apply)	Articles in the AdvanceSheet	USPS Mailing	Email	Other <i>Please specify</i>
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Please list topics you would like to see in future OWLS CLEs or programs

Additional comments, more space on the back
