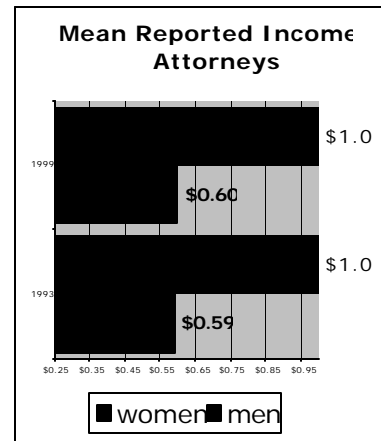


GENDER PENALTIES REVISITED SUMMARY OF FINDINGS*

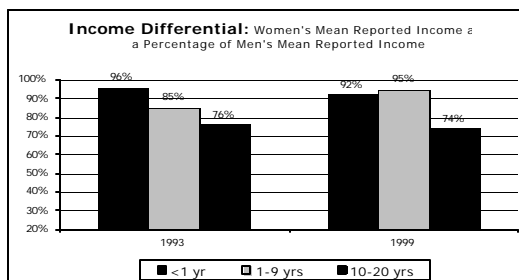
The story of the gap between the incomes of men and women lawyers is not a new one. Neither are the optimistic observations that women's numbers in the profession are increasing, hence "it is only a matter of time" before women make it to the top of the law firm hierarchy; before women make as much money as men in the profession; and before we can move past questions of gender bias in the legal profession. These optimistic observations have been called into play for more than two decades. Unfortunately, recent data on the profession suggest that neither changes in the number of female law students nor changes in the number of female associates has changed the profile of the profession.¹

THE PERSISTENCE OF PAY DISPARITY

The *CBA 1993 Economic Survey as it Relates to Female Attorneys in the Practice of Law*² found that the average net income for full-time female practitioners was only 59% of the average income for full-time male practitioners. Income disparities were reported even when years of practice were controlled. In 2000, the CBA again surveyed a random sample of 5100 Colorado attorneys about their 1999 income. Both members and non-members of the CBA were surveyed.³ The 2000 CBA Survey found that pay disparity between men and women remained; overall women reported median income that was 70% of that reported by men.



Was this progress? Had the differential between men and women's salary decreased since the first CBA survey? Because the income measures reported in the two CBA studies, average income and median income, are not directly comparable, the study re-analyzed the 1999 data using a common measure, mean net income that would permit comparison.⁴ The study compared mean reported income in 1993 and 1999 for all respondents and found little change in the overall

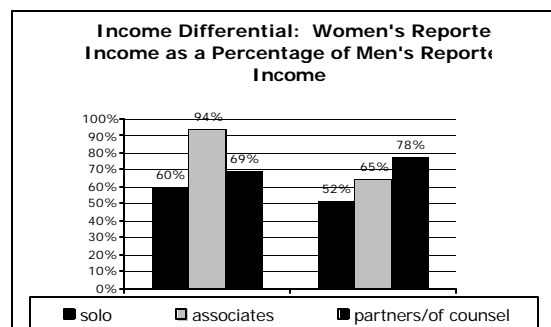


compensation disparity between women and men. On average, women earned 60 cents to the dollar earned by men.

Although there was some gain for women with 1 to 9 years experience, women with less than one year and women with 10 to 20 years

experience lost ground. Notably, women with 10 to 20 years experience now earned only 74% of similarly experienced men, compared to 76% of their earnings six years earlier. The gap between what women with 1 to 9 years experience earned and what men with similar experience earned narrowed during this period; women with 1 to 9 years experience earned 95% of the earnings of similarly experienced men, compared to only 85% reported in the first survey

Considering lawyers who work in private practice only, the study finds that income disparity decreased for partners/of counsel. Women partners/of counsel now earned 78% of similarly situated men, compared to 69% in 1993. Surprisingly, the disparity has dramatically increased for associates – women associates now earned only 65% of men’s income compared to 94% of men’s income in 1993. This increased disparity for newer lawyers is unexpected and warrants further investigation. Women who held in-house counsel positions earned 71% of comparable men’s income in 1999 compared to 79% of men’s income in 1993.



The differential between women’s reported income and men’s reported income narrowed for women in the larger firms and small to medium firms. Women in the largest firms in Denver earned on average 68% of similarly situated men in 1999, compared to 55% in 1993. Women in firms of 15-25 attorneys reported income that was 62% of the income reported by similarly situated men in 1999, compared to 49% in 1993. Women who work solo or who work in other sizes of firm have lost ground.

These data are consistent with national trends.⁵

Data obtained from the National Association of Law Placement (“NALP”)⁶ indicate that the percentage of women who are partners in Denver increased steadily through the 1990s, 16.4% in 1991 and 21.5% in 1999. Although these are some of the best data on partnership rates, it is worth noting that only a fraction of Denver firms report to NALP. Moreover, the increasing number of non-equity partners in the later part of the decade may overstate the advancement of women.

THE STUDY OF CAREER HISTORIES

The perpetuation of income disparity and the relatively slow growth in the percentage of women partners provoked further study. With financial assistance from the CWBA and CWBA

Foundation the original sample of Denver attorneys interviewed for *Gender Penalties: The Results of the Careers and Compensation Study*⁷ were re-interviewed to determine career and compensation changes that occurred since the initial interviews some seven years earlier. Although many (60%) of the respondents changed positions since they were first interviewed, all but 3 women of the original 100 attorneys were located. The second wave of interviews picked up the career histories where they had left off. Once again, career choices and constraints were discussed with each of the attorneys. They were asked about their client base and how it was developed. Each respondent was asked to fill out a short web-based survey that included personal demographics, measures of job satisfaction, and work activities. The goal was to assess changes in the conditions producing gender penalties observed in earlier work.

PERSISTENCE OF FINDINGS FROM 1998 GENDER PENALTIES STUDY

While the fortunes of many individual lawyers improved since their first interview, many of the key concerns raised in *Gender Penalties* remained concerns in the second round.

Many compensation systems lack the transparency that would enable women to expose when compensation decisions/criteria are gendered. Centralized management of law firms continues to dominate law practice; decisions within firms remain hidden and individually negotiated. Rewards still accrue to those who bring in clients and women continue to report difficulties in accessing business generating networks. The care and feeding of clients that many women do remains invisible work and a less recognized contribution to the firm. The subjective components of compensation, notably those related to commitment and potential, continue to be hard to define and, thus, hard to expose as gendered or disadvantageous to women. Thus, the study concludes that women remain outsiders to the compensation decisions, and are largely invisible in positions of power that would alter these structures.

Women continue to express their lack of “fit” and difficulty building relationships within their firms and in the broader lawyer and client communities that lead to substantial compensation. Feelings of isolation and lack of power to determine one’s destiny were evident in many interviews. Although many interviewed for the study no longer have a great need for mentors, the study suggests that there is little evidence that these now more senior women lawyers are becoming mentors to younger women or that mentoring was happening for women in a productive way.

Two-tier partnerships and other “innovative” positions have become an accepted part of law firm structure in many of the medium and large firms. These “innovations” have not necessarily worked to the advantage of women. Rather, they have produced increased stratification within firms, creating a new form of “employee” lawyer

without change in the traditional professional model that informs most firm cultures and compensation structures. Despite the fact that most large firms offer “part-time” programs, very few lawyers take advantage of these programs.⁸ The study suggests that while both men and women occupy these positions, they are more likely to become traps for women.

Time to partnership is still 7-9 years in most firms, but some firms now have stretched partnership decisions to 8-10 years. Many attorneys are starting families at the critical moments in their careers when partnership decisions are looming. Given traditional gender roles, this is likely to have a greater impact on women’s careers than on the careers of their male counterparts.

INSIGHTS FROM GENDER PENALTIES REVISITED

The study found that careers of women lawyers “map” differently than those of men and in ways that may continue to produce overall pay disparities between them.

Lawyer movement has become the norm in the legal profession. The study found that, overall, women move earlier and slightly more often than men. Career histories were analyzed by cohort, defined in terms of year of law school graduation,⁹ to enable analysis of the differences among women as well as those between men and women.

The “Grand Old Men” of the study were lawyers who graduated from law school before 1969. None of the women interviewed fell in this category. These were the most traditional lawyers who typically made few moves in their careers and all report that they were managing or founding partners of mid to large firms at some point in their career. Half have now retired.

The lawyers who graduated from law school between 1969 and 1979 were labeled “Mature Lawyers.” A significant number of lawyers in this cohort began their careers in some type of government work. This was not true for any other cohort in our study. The retirement of several women is a noticeable feature of this cohort. No man in this group has retired. Several men in this cohort have made moves away from practices that required them to keep other [more junior] lawyers busy with consequence to the possibility of passing down clients to them. Women who had trouble finding “fit” earlier in their careers continued to do so. While a few women reported having held leadership positions within their firms; more than half of the men had been managing or founding partners of their firms.

The third cohort of lawyers, “Peak Career Lawyers,” graduated from law school between 1980 and 1984. What distinguished this cohort was the number of women who left law practice to pursue an alternative career opportunity. More visible firm leadership also marked this cohort of women. The study concludes that the disappearance of productive, peak career women, when

combined with the retirement of mature career women cited earlier, reduces women's leadership. There are fewer role models and advocates for junior women with a potentially negative consequence for women's advancement generally. The failure to retain productive senior women clearly has business consequences as well. It was hard to identify a career trajectory pattern for "Peak Career" men, other than to note that they were more likely to remain in private practice.

The fourth cohort, "Emerging Career Lawyers," includes attorneys who graduated from law school after 1985. While there was some movement out of law by women, what distinguished this cohort was the entrepreneurship of some women who spun off from larger firm practice to create or join their own small firms. This is not without some financial risk to them. Few women who stayed in their firms report taking on leadership roles at this time, preferring to put in their time and not make waves. Emerging Career Men moved into different practice organizations as well, but unlike the women their movement tended to be from large to medium size or national law firms with promising new opportunities.

Changes in the market for legal services exacerbate some of the gender penalties revealed in the earlier report and have brought new challenges to regional law firms as routes of opportunity for women. In the period between the first and second interviews, the economy went from the peak of a record-long boom to what many define as a recession. Several trends are noteworthy.

As a result of competition from the dot.com businesses and lawyers who serviced them, the salaries of law firm associates increased dramatically, arguably way ahead of the market. This put increased pressure on the leverage systems of large and medium sized firms, particularly regional firms. More senior lawyers in these firms report finding themselves working more hours and spending even more time on client development at a point in their careers when many expected they would be able to ease up on or at least control the pace of their practice. While men often responded to this inconsistency between personal expectations and changing firm demands by moving to new practice settings that required little or no leveraging, many women opted to retire early or move out of law to start a new career.

Lawyers report that the number of associates hired directly out of law school in large and medium firms has declined significantly. Lateral hires who can bring a book of business or law specialty with them have become more prevalent in larger firms. This change continues to have a disproportionate impact on women given the persistence of gender penalties cited earlier. The study concludes that if women continue to have less access to client development either because they do not have access to business generating networks or because they are perceived to have more difficulty generating business and are not elevated to positions and networks that allow them to realize their potential, they will have trouble making lateral moves.

The interviews with lawyers suggest that regional firms may be facing increased competition from national firms for the services of younger talented lawyers who see new opportunities in these firms. National firms charge higher billing rates and have more upside compensation potential. While on its face this may not appear to have a disproportionate impact on women, as indicated above, women may have less access to these opportunities.

Although men and women report the same high level of overall job satisfaction, women tend to be more dissatisfied with particular aspects of their work such as compensation and job opportunities. The survey distributed to each lawyer interviewed included questions that tapped the multiple dimensions of professional practice. Seventeen questions about lawyers' satisfaction, including satisfaction with the tasks they perform, the intellectual challenge of their work, opportunities for advancement, and control over work, to name just a few, were asked.¹⁰ Men and women reported statistically similar levels of satisfaction in all but two areas: opportunities for advancement and compensation (including salary, benefits, and bonus, if applicable). Although the difference between men and women in other dimensions of satisfaction did not reach statistical significance, the trend was towards less satisfaction by women.

To get a better sense of how satisfaction might relate to career trajectory and compensation, the reasons for each career change reported in the interviews was analyzed. The study found that women tend to report career changes as a result of their dissatisfaction with compensation or their interest in an alternative lifestyle. Men tend to characterize changes in their careers as the result of "new opportunities."¹¹

Systematic differences in why men and women move both reflect and reinforce their different status in legal practice. It is perfectly [gender] appropriate for women to cite "family" or "lifestyle" as the reason they are leaving their firms. Indeed, some women reported that they did just that rather than express their dissatisfaction and risk closed doors in their future. Similarly, men may find it [gender] inappropriate to cite family or lifestyle as the reason they leave, preferring instead to focus on their new opportunities. Both responses, appropriate from their gender perspective, tend to reinforce the stereotypes of women's commitment to the practice of law. Thus, the study concludes women's dissatisfaction must be understood in the context of legal practice that continues to organize according to masculine gendered norms. Opportunities and advancement are allocated to the hero lawyers who work long hours and woo new clients. Women's "commitment" to law is questioned because they reject or cannot create the impression of open-ended availability.

Both women and men described tension between work and personal life. Both spoke about their need to "have a life" and the personal costs of overwork. But the push/pull of career and family was experienced quite differently; the constraints they faced and thus the "choices" they

made were embedded in the gendered nature of both work and home. Women and men resolved these painful dilemmas quite differently that pushed women (and not men) away from traditional private practice and leading to disparate impact on compensation. Faced with **both** conflict within the work organization and life changes outside the organization, women partners, not just young women lawyers with young families, took on work outside private legal practice or in some cases chose to retire. Men facing work-personal life dilemmas, tended to reconstitute their practices in ways that enabled them to get more control over their work, but they remained in the practice of law. To what extent these decisions reflected gendered choices (e.g. a woman's willingness to give up higher incomes to engage in something worthwhile) or gender opportunities (a man's professional network) is hard to determine precisely. Whatever the reason, the impact is to move women away from more lucrative compensation and reinforce gendered expectations about commitment and competence.

RECOMMENDATIONS

Develop a campaign for gender equity where equity is defined as the fair allocation of opportunities and constraints as well as fair compensation for women and men.¹²

1. Make the business case for gender equity; equity leads to organizational effectiveness.
2. Insist on greater transparency through Equity Audits that expose whether criteria for compensation and promotion are fairly applied.
3. Develop best practices for identifying, developing and deploying women lawyers as leaders within firms and across the profession generally.
4. Recognize and reward better rounded career trajectories, acknowledging the need for and benefits of better work-personal life integration.

* We would like to thank the Colorado Women's Bar Association, the Colorado Women's Bar Foundation for their support of both the initial study and the follow-up study. We also want to acknowledge the Hughes-Ruud Research and Development Committee of the University of Denver College of Law for their research support.

¹ See, NALP Foundation for Research and Education, *Perceptions of Partnership* (Washington DC, 1999); and Deborah L. Rhode, *Unfinished Agenda: Women and the Legal Profession* (Report prepared for the ABA Commission on Women, 2001).

² The study was conducted by the Colorado Bar Association ("CBA") and the Colorado Women's Bar Association ("CWBA")

³ The CBA 2000 Economic Survey Report was based on 1077 responses that were usable for the final analysis

⁴ The CBA 2000 Economy Survey reported median income, the middle value of a distribution of values, while the 1993 Survey reported means, the average. Although median values might be preferred, the original 1993 data were not available for re-calculation. Thus, the 2000 data were recalculated using the mean as the measure of central tendency.

⁵ Deborah L. Rhode, *Unfinished Agenda: Women and the Legal Profession* (Report prepared for the ABA Commission on Women, 2001; U.S. E.E.O.C., *Diversity in Law Firms*, 2003. (citing study by Mary Noonan, Mary Corcoran, and Paul Courant, "Pay Differences Among the Highly Trained: Cohort Differences in the Gender Gap in Lawyers' Earnings").

⁶ Figures reported here were obtained from National Association of Law Placement's Directory of Legal Employers. This is an annual compendium of legal employer data published by NALP. It consists primarily of large firm listings. Denver is one of the cities reported in the directory. Data for Denver is based on member firms reported in the Directory. As of 2002, there were 21 Denver firms reported in the Directory. National figures are lower.

⁷ Cathlin Donnell, Joyce Sterling and Nancy Reichman, GENDER PENALTIES: THE RESULTS OF THE CAREERS AND COMPENSATION STUDY (1998) Colorado Women's Bar Association.

⁸ See, Women's Bar Association of Massachusetts, *More than Part Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment and Success of Women Attorneys in Law Firms (2000)*; Joan Williams and Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time Policies for Washington Law Firms*. (Final Report) 2001.

⁹ Our analysis of the mean age of the men and women in each cohort revealed that women were on average one year older than the men in each cohort.

¹⁰ The full list of questions can be found in the final report.

¹¹ These findings are interesting in juxtaposition to a finding from the national study of lawyers conducted by the NALP Foundation that partnership was an incentive to stay in their current position for 80.6% of men and 60.5% of women in large (101 or more lawyer firms). Partnership was an incentive to stay in their current positions for 82.9% of men and 63.8% of women in smaller firms (100 or fewer lawyers). NALP Foundation for Research and Education. *Perceptions of Partnership: The Allure and Accessibility of the Brass Ring*. Washington DC: 1999.

¹² See Rapoport, R. et al. *Beyond Work-Family Balance: Advancing Gender Equity and Workplace Performance*. San Francisco: Jossey-Bass, 2002.