

## **Women in Leadership Positions in the Legal Profession: Do They Face a Glass Ceiling or Clogged Pipeline, or Is It Now a Ceiling of Lifestyle Bubbles?**

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### **Abstract**

Women lawyers have made significant progress in a relatively short period of time to take their place in the profession alongside their male colleagues. However, barriers still remain. Women lawyers are not assuming leadership roles within the profession in proportion to their numbers. As women have successfully gained equal access *into* the legal profession, women lawyers have not experienced equal progress *within* the profession. Surveys and studies continue to draw attention to issues of prejudice and bias faced by women lawyers. The issues are complex and multifaceted. Unlike twenty years ago, fewer women feel actions are gender-based and more recognize it as a life-style choice that applies to men as well, though perhaps not equally to men. Regardless of the reasons, we should all be concerned that women are not well represented in leadership roles within the profession whose oath calls for its members to fight for justice and champion the cause of the defenseless and oppressed. This should be a pointed concern for a profession whose elite have substantial social and political influence. Women's attainment of positions of power and influence within the legal profession has larger ramifications for women's access and opportunities throughout our society.

This article begins with a brief look at the history of women in the law and then discusses current common experiences of women in law schools, in the judiciary, and in the broader legal profession. Current initiatives to address women's issues in the profession also are discussed. The article concludes with suggestions to law schools and law firms for pressing forward with progress.

### **I. INTRODUCTION**

A twenty-seven-year-old female lawyer stood before a Chicago judge to present her case in his courtroom only to hear the judge admonish, "I don't think the ladies should be lawyers. I believe that you belong at home raising a family. Ladies do not belong down here."<sup>1</sup> The statement made the cover of the American Bar Journal, not in 1960, not in 1970. The year was 1986. Fast forward twenty-plus years to one of many articles on the topic of the stalled progress of women in the profession: "For women, the law remains a frustrating profession."<sup>2</sup> Women enter the legal profession in roughly equal numbers to men but few women reach the highest positions of status, power and economic reward.

As Harvard Law School Dean Elena Kagan said in a recent speech, whether we term it glass ceiling, sticky floor, clogged pipelines, scenic highways or off-ramps, "the bottom line is the same: Women lawyers are not assuming leadership roles in proportion to their numbers." Surveys and studies continue to draw attention to the issues. The issues are complex and multifaceted. From a historical perspective, significant progress has been made in a relatively short period of time. Nevertheless, as women have successfully gained equal access *into* the legal

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<sup>1</sup> Nancy Blodgett, *I don't Think That Ladies Should Be Lawyers*, A.B.A. J., THE LAW.MAG. (Special Report on Gender Bias & Women in the Law) (Dec. 1986) at 48.

<sup>2</sup> Sacha Pfeiffer, *Many female lawyers dropping off path to partnership*, BOSTON GLOBE, May 2, 2007.

profession, women lawyers have not experienced equal progress *within* the profession. These circumstances are quite remarkable for a noble profession whose oath calls for fighting for justice and championing the cause of the defenseless and oppressed. This should be a pointed concern for a profession whose elite have substantial social and political influence.<sup>3</sup> Women's attainment of positions of power and influence within the legal profession has larger ramifications for women's access and opportunities throughout our society.

After a brief look at the history of women in the law, this article will discuss the common experiences of women in law schools, in the judiciary and in the broader legal profession. Current initiatives to address women's issues in the profession also will be discussed. This article concludes with suggestions for pressing forward with progress.

## II. History Of Women And The Law

For much of our nation's history, women were thought to be too "delicate in their nature" to practice law. They were believed to lack the "decision and firmness which are presumed to predominate in the sterner sex."<sup>4</sup> In the last half of the 1800's and the early 1900's only a scattering of women lawyers obtained law licenses.<sup>5</sup> Even through the 1940's, 1950's and early 1960's, only a handful of women were enrolled in law schools as legal education became formalized.<sup>6</sup> Not until the late 1960's and early 1970's did women show up in law schools with regularity.

Discrimination during the 1950's, 1960's and 1970's was blatant and overt. When United States Supreme Court Justice Ruth Bader Ginsburg graduated from Columbia Law School in 1959, she became a law clerk for a federal judge only upon the promise of her professor that "a male graduate engaged by a Wall Street firm would be ready to step in and take over" if she did not work out. In 1963, the dean of Rutgers Law School offered her a position on the faculty with only a modest salary because her husband already received a good salary.<sup>7</sup>

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<sup>3</sup> Lawyers, influenced by ideologies and incentives, pursue societal change and the elimination of bad behavior. In this role, they are often key players in affecting the lived experience of Americans. EEOC, DIVERSITY IN LAW FIRMS REPORT 2, 15 (2003) (quoting Robert Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 CASE W. L. REV. 345-6 (1994); C. Beckman & D. Phillips, *Interorganizational Determinants of Promotion: Client Leadership and the Promotion of Women Attorneys*, draft manuscript, August 26, 2003.

<sup>4</sup> PHYLLIS HORN EPSTEIN, WOMEN-AT-LAW 28-9 (2004) (quoting Justice Bradley in *Bradwell v. Illinois*, 83 U.S. 130 (1873)).

<sup>5</sup> *Id.* at 10-11. See also Cunnea, Professor, *A Timeline of Women's Legal History in the United States*, <http://members.aol.com/aacdrcnnea/lawtime.htm>.

<sup>6</sup> EPSTEIN, *supra* note 4, at 16. Early lawyers were not required to graduate from law school in order to obtain a law license.

<sup>7</sup> MIRIAM BAMBERGER GROGAN AND HEATHER BRADLEY, JUDGE FOR YOURSELF: CLARITY, CHOICE, AND ACTION IN YOUR LEGAL CAREER, Introductory Remarks (2006).

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When Carolyn King, Chief Judge for the United States Court of Appeals for the Fifth Circuit graduated from Yale in 1962, “hiring a woman lawyer was generally unthinkable.” However, she interviewed for position with the United States Attorney in Houston who was known for being a bleeding-heart, liberal maverick. After a brief interview, he told her, “Don’t get me wrong ma’am. I’ve hired me a nigger and I’ve hired me a Mexican. But I ain’t up to hiring me a woman yet.”<sup>8</sup> Through some family and business connections, she was granted an interview with the law firm of Fullbright & Jaworski and was offered a job, but at half the salary of the men and doing low-profile collections work. She said, “I don’t want to do collection work and I worked too hard at Yale to start out being paid half of what the men were making.” The managing partner agreed to her terms and she spent her first year working for a trial lawyer. Since both her father and mother were trial lawyers she thought she would enjoy trial work, which she did until the firm decided that they did not want to put a woman in a trial court. They moved her to the corporate section. “That was distinctly because of my sex, but I loved practicing law. I didn’t care where they put me. As far as I was concerned, it was all fun.”<sup>9</sup>

She spent ten years at the firm working with two partners in the corporate section who were wonderful mentors and were very supportive of her. Her career path proceeded exactly like the career paths of the men. She loved the work and so many of the lawyers, clients and others with whom she worked. She found the clients to be most accepting of a woman lawyer. “What mattered to them was whether their work got done quickly and well and enthusiastically.” She billed 2500 to 3000 chargeable hours during those years, outperforming the men. She was assigned the best work in the corporate section, and they came to rely upon her to solve the most difficult issues for problematic clients, clients that other lawyers could not satisfy. She became a participating associate on time and, because of the incredible number of hours that she worked, she was paid very well, sharing in the firm’s profits in addition to her salary. She received maximum bonuses and salary increases. As she approached time to be considered for partnership in her tenth year, she knew that they were paying her a “huge amount of money” – much more than associates in her firm and other firms in Houston. However, she did could not imagine what

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<sup>8</sup> Judge King’s entire life history is very fascinating. Her experience at Yale Law School during the early 1960’s was very positive with the exception of one professor who chided her so that she chose not to attend the rest of his class lectures. She added a footnote to her stories of discrimination. The U.S. Attorney who would not hire her had, in fact, hired the first black and the first Hispanic Assistant U.S. Attorneys in the South, and he later became her good friend. Carolyn Dineen King, Keynote Address at Baylor Law School: Women in the Law, 1962 to 2004: A Personal Perspective (April 5, 2004). Interview with Judge King in Waco, Texas on April 13, 2007.

<sup>9</sup> *Id.*

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would happen next. She was denied partnership. The firm simply would not have a woman for a partner. Why was she hearing this for the first time after ten years? The managing partner explained, “we thought you would get pregnant and quit.” She had three children during those those years, taking only an average of three weeks off before returning to work after each. She left the firm devastated and went to a medium-sized firm. Surprisingly to her, some of her corporate clients followed. She said about the experience,

One of the worst results of discrimination is that it leaves you thinking that you failed, that you were measured up and found wanting and you continue to think that no matter how many people tell you that is not what happened. The damage to your sense of self worth is heavy, and to some degree it is permanent.<sup>10</sup>

By the late 1970’s, the world had changed, at least for Judge King. In 1978, a selection committee, charged by President Carter with the task of finding a qualified woman lawyer to appoint to the Fifth Circuit Court of Appeals, practically begged her to accept the appointment. She was not a trial lawyer. She had no experience as a judge. She was Republican. Yet, none of that mattered. She recalled them saying “What mattered was whether I was a good lawyer and a woman.” She added, “I remember being absolutely amazed that the very quality that had been such a liability in the early 1970’s had apparently been transformed into an asset by the late 1970’s.” When they prevailed upon her sense of public service, she accepted the appointment and set about to remake herself into the respected jurist she is today.

How does Judge King describe the events today? “It’s a wonderful story about American and what you can do in this country. Not that it is always going to be smooth sailing because it may not be. It may be that things that happen to you are very un-American but the overall direction certainly of my experience has been positive. It’s a very American story. Only in America could a woman move in forty years from where I began to where I am today.”<sup>11</sup>

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<sup>10</sup> *Id.* Judge King added that the Fullbright & Jaworski firm later asked her to come back to be the partner in charge of their bankruptcy section. She thinks of the firm “as the firm that gave me a superb job when no one else would have, the firm that trained me to be a good lawyer and, hopefully, a good judge and the firm that provided me with ten years of exciting and fulfilling law practice. I would not be where I am today if it were not for what they did to help me. That they also made a painful mistake (at least as I see it) proves, so far as I am concerned, that it was a human institution at a time when, in the history of this country, equal opportunities for women were not yet a reality.” *Id.*

<sup>11</sup> *Id.*

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By 1970, sex-based restrictions were eliminated from all accredited law schools.<sup>12</sup> In 1970, only nine percent of law graduates were women<sup>13</sup> and only three percent of American's lawyers were women.<sup>14</sup> By the late 1970's and 1980's, women law students still experienced some sexism; however, overt discrimination and accusation of taking the place of more deserving men no longer ruled the day.<sup>15</sup> When Judge Priscilla Owen entered Baylor Law School in fall of 1975, she was one of a handful of women. She believed being a woman in law school at that time was an advantage. "There were not many of us. You stood out in the classroom and the professors knew you," she said.<sup>16</sup> Judge Owen had no difficulty excelling in law school, graduating at the top of her class with honors.

In 1980, women accounted for 8% of American lawyers. By 1986, the time of the Chicago judge's comment, women comprised 15% of the lawyers and 41% of the students in law school.<sup>17</sup> While women generally did not experience any gender-based difficulties in law schools, many women continued to experience difficulties in practice. Kim Askew, a partner with Hughes & Luce, LLP, in Dallas, Texas, is African American and she recalls that the road was not easy when she graduated in 1983, "I was young. I was a woman. I was black. Nobody looked like me in the courtroom."<sup>18</sup> As one woman lawyer testified before a 1986 New York Task Force on Women in the Courts, "we [were] too often either treated disrespectfully or simply ignored."<sup>19</sup> In 1987, the American Bar Association created the Commission on Women in the Profession to identify barriers to the advancement of women and to provide a voice for women. The Commission continues to address challenges women face today and aims to "improve the quality of life for the profession generally."<sup>20</sup>

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<sup>12</sup> ABA COMM'N ON WOMEN IN THE PROFESSION, UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 13 (2001) (prepared by Deborah L. Rhode).

<sup>13</sup> Timothy O'Brien, *Why Do So Few Women Reach the Top of Big Law Firms?* N.Y. TIMES, March 19, 2006.

<sup>14</sup> Donna Fossum, *Women in the Legal Profession: A Progress Report*, 67 A.B.A. J. 578, 580 (1981).

<sup>15</sup> EPSTEIN, *supra* note 3, at 22.

<sup>16</sup> Interview with Priscilla Owen, Judge for the United States Court of Appeals for the Fifth Circuit in Austin, Texas (July 2, 2007).

<sup>17</sup> UNFINISHED AGENDA, *supra* note 12.

<sup>18</sup> Kim Askew graduated from Georgetown University Law Center in 1983. She clerked for a federal judge before joining her firm. Today she is a partner and serves on its management committee. In 2006-07, she was the first lawyer of color to serve as the Chair of the Litigation Section of the American Bar Association. Interview with Kim Askew in Dallas, Texas (July 9, 2007).

<sup>19</sup> *The Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URB. L.J. 11, 128 (1986-1987).

<sup>20</sup> A.B.A. COMM'N ON WOMEN IN THE PROFESSION, BALANCED LIVES: CHANGING THE CULTURE OF LEGAL PRACTICE, (2001) (prepared by Deborah Rhode) at 11-14.

From the mid 1980's through the early 2000's, the number of women entering law school steadily climbed. By 2000, women represented 48% of the students in law school.<sup>21</sup> At that time, with women securely in the majority in undergraduate programs, women were expected to become the majority in law schools.<sup>22</sup> That has not happened. The number of women entering law school peaked in the 2001-02 and 2002-03 years at 49%.<sup>23</sup> Since then, a slight decline has occurred. In the 2006-07 school year, women comprised 47 percent of total JD enrollment at the 195 ABA-approved law schools.<sup>24</sup> In the pool of 79,436 applicants to U.S. law schools in 2006-07, 49% were female. The women's mean grade point average of 3.31 was slightly higher than men's mean of 3.22. The men, however, scored higher on the Law School Admissions Test (commonly considered somewhat more important for admissions and scholarship purposes). The mean for the men was 154.1 and the women's mean was 151.7.<sup>25</sup>

As the number of women graduating from law schools increased so did the number of women in the profession. From 1986 to 2000, the percentage of women lawyers grew from 15% to 29%.<sup>26</sup> However, since 2000 the percentage of women lawyers has not increased substantially. As the number of women entering law school leveled off, so did the increase in the number of women in the profession. From 2000 to 2006, the percentage of lawyers who were women grew only slightly from 29% to 30%.<sup>27</sup>

### III. Women's Current Experiences In Law Schools

In recent years, the attention of studies of women in law schools has focused not upon discriminatory practices but upon the overall student experience of male and female students. In 2004, the Study on Women's Experiences at Harvard Law School found that the experiences of

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<sup>21</sup> A.B.A. COMM'N ON WOMEN IN THE PROFESSION, A SNAPSHOT OF WOMEN IN THE LAW IN THE YEAR 2000, <http://www.abanet.org/women/snapshots.pdf>.

<sup>22</sup> Richard K. Newmann, Jr., *Women in Legal Education: A Statistical Update*, 73 UMKC L. REV. 419, 420 (Winter, 2004).

<sup>23</sup> A.B.A. SECTION ON LEGAL EDUCATION, FIRST YEAR AND TOTAL J.D. ENROLLMENT BY GENDER, 1947-2005, <http://www.abanet.org/legaled/statistics/charts/stats%20-%206.pdf>. (Note that the chart indicates that the female enrollment was 50.4% in 1992-93 academic year; however, that statistic is not consistent with first year enrollment for that year and the previous two years which lists women as 42.8%, 42.6% and 42.2%. Additionally, there was no significantly larger attrition of men during that time to explain the 50.4% female enrollment.)

<sup>24</sup> A.B.A. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, <http://www.abanet.org/legaled/statistics/stats.html>.

<sup>25</sup> LSAC's *Applicant Summary and Qualification Profiles through May 15, 2007*, <http://members.lsacnet.org/>. See also Hope Samborn, *Two Steps Backward? Number of Women Law School Applicants and Enrollees Down*, 15 PERSPECTIVES 4 (Spring 2007) at 8.

<sup>26</sup> SNAPSHOT OF WOMEN IN THE LAW IN THE YEAR 2000, *supra* note 21.

<sup>27</sup> A.B.A. COMM'N ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW 2006, <http://www.abanet.org/women/CurrentGlanceStatistics2006.pdf>.

women and men students “differ markedly in numerous ways.”<sup>28</sup> Women volunteered less in class. They were less frequent talkers in class. On the other hand, women at Harvard Law School, in recent years, held more leadership positions on the editorial boards of journals and some other student boards.

While no gender differences in overall satisfaction were found, the men had somewhat higher grades and graduated with honors more frequently. Their actual performance in law school, however, was exceeded by their own assessment of their abilities. Thirty-three percent of the men believed themselves to be in the top twenty percent of the class in terms of legal analysis. Only fifteen percent of women thought they were in the top twenty percent. Even more striking, forty percent of the men indicated they were in the top twenty percent of their class in quantitative reasoning as compared to only eleven percent of women.<sup>29</sup> Interestingly, but not surprising to many, the women had a lower opinion of their abilities than did the men.

Differences were also found that related to career plans upon graduation. The women pursued public interest work at higher rates than men. Women were more interested in careers in which they could help others and advance ideological goals; however, more men were interested in high salary and envisioned themselves working at a law firm for at least 10 years.<sup>30</sup>

When looking at the makeup of the law school faculties in 2006, thirty-five percent were women.<sup>31</sup> However, female professors continue to disproportionately hold un-tenured, lower-status and lower-compensated faculty and administrative positions.<sup>32</sup> In administration, few women were in the top position. While forty-six percent of the associate deans in law schools were women, only twenty percent of the deans were women.<sup>33</sup> One statistic that appears to be an optimistic indicator to outsiders is that sixty-nine percent of assistant deans and directors were women; however, many assistant deans and directors are not lawyers and not on tenure track, and the compensation and prestige is generally less than that of faculty positions.

Many of the issues women face in attaining a faculty position and moving into leadership positions are parallel to those faced by women in law firms as discussed below (gender-based preferences in hiring decisions and work assignments, lack of effective mentorships, insufficient

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<sup>28</sup> Working Group on Student Experiences, *Study on Women’s Experiences at Harvard Law School* (2004).

<sup>29</sup> *Id.* at 3-5.

<sup>30</sup> *Id.* at 5-6. See also NALP FOUND. FOR LAW CAREER RES. & THE AM. B. FOUND., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 57 (2004).

<sup>31</sup> A CURRENT GLANCE AT WOMEN IN THE LAW 2006, *supra* note 27.

<sup>32</sup> Newmann, *supra* note 22, at 429.

<sup>33</sup> A CURRENT GLANCE AT WOMEN IN THE LAW 2006, *supra* note 27.

self-promotion, etc.)<sup>34</sup> Additionally, women considering a move from practice to teaching, or from a faculty position to a deanship, often face an additional hurdle. They must be willing to relocate, and mobility is more challenging for women with professional spouses and children.<sup>35</sup>

In a recent article about women law deans discussing the barriers women still face in legal education, one dean offered another thought:

At the end of the day, there are many women who are well qualified for the job of law school dean, and even if tempted to reach for the golden apple, they do not.

Why? One leader succinctly answered as follows:

In a world with many options now available to highly educated young women, is leadership an appealing choice? I raise this question mainly because more than thirty years after the new feminism, women have made very limited advances in positions of leadership and power. At the same time, we see many examples of highly educated young women shaping professional and family lives that do not include dreams of becoming leaders. Have today's young women seen previews of the leadership life, not found it particularly appealing, and decided to skip the full feature? Are other scripts more enticing? It appears that the answer is "yes" for many women who are able and qualified but not pursuing leadership opportunities. . . . Although many women have moved up the ladder, countless others are not willing to sacrifice their personal lives, their personal styles, or their sanity.<sup>36</sup>

#### **IV. Status Of Women Lawyers In The Judiciary**

For graduating law students, landing a clerkship with a high-level appellate court is a coveted first job that often leads to even greater immediate and future opportunities. Firms reportedly have paid hiring bonuses of \$200,000 to clerks of United States Supreme Court. Unfortunately, the number of women in these positions declined recently. In 2006-2007, only

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<sup>34</sup> See, e.g., Ann Farmer, *The Rocky Road to the Ivory Tower*, 15 PERSPECTIVES 4 (Spring 2007) at 4; Laura Padilla, *A Gendered Update on Women Law Deans: Who, Where, Why and Why Not?*, 15 AM. U.J. GENDER SOC. POL'Y & L. 443 (2007).

<sup>35</sup> Padilla, *supra* note 34, at 518.

<sup>36</sup> *Id.* at 528-529.



seven of the thirty-seven United States Supreme Court clerks (19%) were women. There were thirteen of thirty-seven (35%) in 2005-2006.<sup>37</sup>

Judge Priscilla Owen and Harriet O’Neill, Justice for the Texas Supreme Court, experienced a similar and disappointing decline in the number of outstanding women applying for clerkships with their courts last year.<sup>38</sup> Both indicated that in past years the number of applications from qualified candidates were generally equal male and female, and resulted in the hiring of approximately equal numbers of men and women. This was the first year that all three of Judge Owen’s clerks were men. She said, “There was one woman I wanted to hire but her line was literally busy. I could not get through to her.” This young woman was hired within minutes of the time that federal judges began making offers. Judge Owen added, “I will be interested to see what the applications look like this fall.”<sup>39</sup>

When it comes to judges elected to the bench through a political process, many agree that gender is no longer a significant factor. “People are looking at the person, the background. It’s gender neutral,” said Judge Owen. Justice O’Neill shared that she heard an interesting comment from an older partner in a law firm when she was deciding to run in her first judicial race in 1992. “Some of the best judges we are getting right now are women because they don’t want partnership track. They are coming from top law firms to keep their legal careers going without the difficult time of juggling litigation and families.” The manageability of the work load of a judge was attractive to Justice O’Neill. In discussing her pathway to becoming a justice on the Texas Supreme Court, the highest civil state court in Texas, she described her journey this way: “I have evolved through my legal career to meet my family needs much more than I have perceived men have who have been my peers.” She “recreated” herself whenever necessary to meet the changing needs of her two daughters. She began in 1982 with a smaller, well respected litigation boutique firm in Houston, Texas, working the same very long hours as the men. When she started a family, she left the firm and transitioned into a then newly-developing field of practice – mediation – because the workload was much more conducive to balancing the practice of law and being actively involved in her daughters’ lives, including coaching their basketball teams. “Mediation was more family friendly,” she said. As her kids started school, she decided

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<sup>37</sup> Linda Greenhouse, *Women Suddenly Scarce Among Justices’ Clerks*, N Y TIMES, August 30, 2006.

<sup>38</sup> Interview with Owen, *supra* note 16; Interview with Harriet O’Neill, Texas Supreme Court Justice in Austin, Texas (July 2, 2007).

<sup>39</sup> Interview with Owen, *supra* note 16.

to run for a state district court judge position. She recalled, “I perceived the trial bench as being something I could get my arms around. I knew what my schedule would be. I could be home at a certain time.” Her career ambitions continued to evolve as her daughters grew older and needed her less. In a state-wide race, she was elected to the Texas Supreme Court in 1998 and re-elected in 2004.<sup>40</sup> She currently is the only woman of the nine justices.<sup>41</sup>

Judicial appointments are another story. Being a woman is often times still a plus factor when nomination committees are considering qualified candidates to fill vacancies. However, the committees face an interesting challenge when approaching women. Women are not always willing or able to seek the nomination if it means a move to another location. Spouses’ professional position and other family obligations make mobility a barrier for some. For those women willing to seek an appointment, they may experience a different kind of attention and scrutiny because of their gender. One of the most horrendous recent examples of this was the nomination process of Harriet Miers to fill Justice Sandra Day O’Connor’s seat on the United States Supreme Court. As the media contact for her firm, Jerry Clements, managing partner of Locke Liddell & Sapp, received numerous inquiries about her former law partner Harriet Miers during the process. She said some of the questions were shocking and offensive -- questions that would not be asked if the nominee was a man. Ms. Clements knows Harriet Miers well and had this to say, “While Justice Alito is a great justice, Harriet Miers would have been a wonderful Justice of the United States Supreme Court. She would have been fair minded. And what I liked about her nomination was that she was a person who had actually been a trial lawyer, who had served and practiced law in the courts throughout the United States. It’s unfortunate.” However, Ms. Clements believes, and she said Harriet Miers would agree, that the attacks were not gender-based, but politically-based from opponents who were intent on derailing her nomination at all costs.<sup>42</sup> Unquestionably, “the selection of Supreme Court justices is inevitably a political,

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<sup>40</sup> Interview with O’Neill, *supra* note 38. Prior to running for the Texas Supreme Court, she was appointed to the 14<sup>th</sup> Court of Appeals in 1995 by Governor George W. Bush and she won election to that year in 1996. She left the court of appeals with a 91 percent approval rating (1998 Houston Bar Poll), the highest rating on her nine-member court.

<sup>41</sup> Women are not underrepresented on all courts. For example, four of the nine judges are women (44%) on the Texas Court of Criminal Appeals, the state’s highest criminal court, and 40% of the Texas Court of Appeals justices are women. [http://www.courts.state.tx.us/pubs/AR2006/jud\\_branch/6-judge-profile-090106.pdf](http://www.courts.state.tx.us/pubs/AR2006/jud_branch/6-judge-profile-090106.pdf).

<sup>42</sup> Interview with Jerry Clements in Austin, Texas (July 6, 2007). Judge Priscilla Owen agreed that the treatment of Harriet Miers was “atrocious” and “way out of bounds.” Questions included questions about who she dated, why she did not marry, why she did not have children, and focus on her makeup and dress. Although, Judge Owen’s own nomination process to the Fifth Circuit Court of Appeals was long and difficult, she did not feel that she was treated differently because she was a woman. However, she thought there “absolutely was a difference” in the treatment of Harriet Miers. Interview with Owen, *supra* note 16.

ideological and controversial process;”<sup>43</sup> nevertheless, the treatment of Harriett Miers was abominable and reminiscent of the discriminatory days of old with inappropriate attention to aspects of her life irrelevant to her qualifications as a justice.

In the federal judiciary, 26.5% of judges on the bench were women in 2006.<sup>44</sup> While finding more qualified women, and minorities, for appointments to judicial benches seems still to be the stated goal of many, less urgency exists today. In the 1970’s and 1980’s when few or no women held such positions, searches continued until a qualified woman was found. Judge Carolyn King’s story demonstrated the sense of urgency to secure increased representation of women in judiciary. Now that appointing women to various high-profile judicial benches is less novel, there seems to be more of a “been there, done that, not as important to do again” approach.

#### **V. Continued Difficulties For Women Lawyers Practicing Law**

Upon graduation from law school, women are well-represented in private law firms, but only at the entry level. In 2006, women represented 45% of associates, 28% of of-counsel lawyers, 26% of non-equity partners, and only 16% of equity partners. Sixteen percent of governance committee members and 5% of managing partners were women.<sup>45</sup> As the number of women attending law school increased in the 1980’s and 1990’s, the logical assumption was that the lack of women in leadership roles was a pipeline issue and that the number of women partners and leaders would increase over the expected period of time it took to make partner (seven to ten years).<sup>46</sup> Such was not the case. The statistics emphatically tell us that women are leaving law firms, especially larger ones, in droves, but why? The reasons are multifaceted and complex and cannot be as easily distilled into short answers and simple statistics as some articles and studies suggest.

##### *A. Modern Law Practice as a Highly Competitive Business*

To understand the complexity of the issues related to women moving up the chain of command in a private law firm, an explanation of the landscape of private law practice is necessary. The modern law practice has evolved into big business with the bottom line driving

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<sup>43</sup> JOYCE A. BAUGH, SUPREME COURT JUSTICES IN THE POST-BORK ERA 3 (2002). *See also* LEE EPSTEIN & JEFFREY A. SEGAL, ADVICE AND CONSENT: THE POLITICS OF JUDICIAL APPOINTMENTS (2005).

<sup>44</sup> A CURRENT GLANCE AT WOMEN IN THE LAW 2006, *supra* note 27.

<sup>45</sup> 2006 National Survey on Retention and Promotion of Women in Law Firm, 92 WOMEN LAW. J. 1 (October 2006) at 2, <http://www.abanet.org/nawl/docs/NAWIFINALPUBLICATION10-25-06SURVEYREPORT.pdf>.

<sup>46</sup> O’Brien, *supra* note 13.

the way. Law firms admittedly spend significant time focused on the economics and business aspects of the profession, much more so than in past decades. Symposia are now conducted to focus on the *business* of law. An Australian law firm just became the first publicly traded law firm in the world. Proposed legislation may allow law firms in the United Kingdom to follow. Such changes are not likely to follow in the United States because changing the rules within the context of accepted ethical norms would be difficult; however, such an international trend could influence the structure of American law firms.<sup>47</sup>

In modern legal practice, lawyers commonly are hired straight out of law school or a judicial clerkship to join the firm as an associate, working for a salary with no equity ownership in the firm. Especially in large law firms, associates are paid very well (first-year associate salaries in the top 100 law firms in 2006 were \$140,000 to \$160,000).<sup>48</sup> For that level of salary, much is expected. Even in many small and medium size firms, first-year associates are paid as much as \$90,000 to \$130,000, albeit with somewhat, or substantially, similar work expectations.<sup>49</sup> Associates are expected to produce 2000 to 2300 billable hours each year.<sup>50</sup> They are expected to become “rainmakers,” attracting new clients to the firm. In their spare time, they are expected to be good colleague in their firms and active members in their communities, serving on boards and providing *pro bono* work to those in need.

To produce the requisite level of billable hours, most lawyers must average somewhere around 60 to 80 hours of work a week, with a lot of “face time” at the office (although technology is allowing them to be somewhat more mobile). “[S]taying at the office with the partner you are working with is important,” said Nancy Heilman, an associate in Cohen & Grigby’s office in Pittsburg. “Some of the most interesting work comes in after five.”<sup>51</sup> Most associates routinely work 12 to 14 hours a day during the week with significant additional hours

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<sup>47</sup> Jason Krause, *Selling Law on an Open Market: The World’s First Publicly Traded Law Firm Ignites Debate*, ABA JOURNAL (July 2007). Each state would have to modify their professional rules of conduct.

<sup>48</sup> See e.g., Miriam Rozen, *Susman Godfrey Raises Associate Salaries*, TEXAS LAWYER, July 24, 2007.

<sup>49</sup> Only about 37% of graduates who go into private practice end up working for firms with 101 attorneys or more. For the rest, the salaries can be considerably less, and often the work load is less as well. For firms with two to 25 lawyers, the national median salary was \$67,000. See Leigh Jones, *About that huge salary: It’s a longshot*, N. LAW JOURNAL (July 9, 2007) (quoting National Association of Law Placement’s latest information).

<sup>50</sup> See e.g., A.B.A. COMM’N OF WOMEN IN THE PROFESSION, CHARTING OUR PROGRESS: THE STATUS OF WOMEN IN THE PROFESSION, (2006) at 7; BALANCED LIVES, *supra* note 20, at 11. “Time billing began in the 1960s as a way to eliminate fee schedules, track lawyer productivity and provide clients with better information about charges.” Computers made the recording and tracking of hours readily available and the practice became the standard in the 1980’s and 1990’s. Francesca Jarosz, *Tipping the Scales: Law Firms in Search of Work-Life Balance* (June 2007), [www.abanet.org/media/youraba/200706/articile12.html](http://www.abanet.org/media/youraba/200706/articile12.html).

<sup>51</sup> Nancy Heilman finished law school the year her youngest of five children went to college, which allowed her to work long hours. Krysia Kubiak, *Women Partners in Pittsburg*, 8 No. 20 LAWYERS J 4 (September 29, 2006).

on the weekends. These law firms handle critically important litigation and transactional matters that demand immediate and constant attention for their powerful, influential and well-paying clients. Clients pay at least \$200 per hour for an associate and \$400 to \$1000 per hour for a partner.<sup>52</sup> Working on such matters sometimes requires working well into the night, hopping on a plane at a moment's notice, and living out of town for weeks or months at a time – not exactly conducive to life outside of work.

This work ethic is not new, although some of the reasons are relatively new. In the 1960s, 1300 billable hours was considered full-time and expected for partnership consideration.<sup>53</sup> In the 1980's, it was 1800. However, even in the 1960's, 1970's and 1980's, most successful lawyers worked the same arduous schedule as today. Judge King admits to working like a demon but not because she had to. "The reason I worked those hours was not because I felt that I had an extra hurdle to get over. It was because I was just addicted to it. I loved practicing law. I was doing what I wanted to do. I was just having fun." She had an intensity about her work and an enthusiasm for the client's business that made her the first choice for the firm's most complex and problematic corporate assignments.<sup>54</sup> Kim Askew also recalls that the long hours were by choice and more client-motivated back then. "I was doing things that I thought would build my career. It was fun." However, even back then, there was a limit to how much was healthy. Ms. Askew's firm warned her about burn out.<sup>55</sup> Judge Owen recalls what it was like to work a 2200 hour year when working on important litigation. It was a "bone crushing year."<sup>56</sup> Male lawyers with children typically had stay-at-home wives to raise the kids – much to the envy of the women lawyers. The women with children much more so had relatives, nannies or shifts of babysitters and housekeepers to help with it all.

Modern clients are even more demanding. Modern day law practice is operated as a business in a highly competitive market. So much so that large and midsize firms employ business managers, recruiters, marketing professionals and other non-lawyer professionals to

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<sup>52</sup> Interview with Clements, *supra* note 42. See also, *Up, Up and Away: More Money, More Hours and More Alternative Billing at Texas Firms*, TEXAS LAWYER, <http://www.law.com/jsp/tx/specials/salary2007.jsp>; *Lawyers Gear Up Grand New Fees*, WALL STREET J, August 22, 2007, B1.

<sup>53</sup> CHARTING OUR PROGRESS, *supra* note 50, at 7.

<sup>54</sup> Interview with King, *supra* note 8.

<sup>55</sup> Interview with Askew, *supra* note 18. Burn out and depression are real concerns for the legal profession. "Over the last two decades, as law firms have devoted themselves more keenly to the bottom line, depression and dissatisfaction rates among both female and male lawyers has grown, analysts say." O'Brien, *supra* note 13.

<sup>56</sup> Interview with Owen, *supra* note 16.

assist with business aspects of client development and firm management, including supervision and training of associates.<sup>57</sup>

As noted by a poster on the *Wall Street Journal* Law Blog discussing the disproportionate number of women leaving law firms,

“[m]ost people go into these jobs with their eyes wide open. They know that they are going to be paid very well and will have to work long hours. It’s not like it is a surprise to these women. Bottom line is, the Biglaw firms can afford salaries where a first year associate makes more than a judge with 20 years experience precisely because they work you to the bone. If you can’t handle it leave.”<sup>58</sup>

Added another poster, “the work environments at big law firms will stay the same and they will have plenty of people knocking at the door for the big buck.” And another wrote, “Biglaw is tough. The hours are brutal. If you don’t want to sacrifice your personal life and happiness, don’t go, or get out. It’s true for both men and women. As long as there are still people who are willing to make these sacrifices, there is no reason for Biglaw to change.”<sup>59</sup>

For those who opt to stay for the 7 to 10 years it takes to make partner and meet the expectations of the law firm to be a productive, profitable and well-rounded contributors to the firm and the community, the rewards are significant. The 2006 salaries (profits per partner) in top 200 law firms generally range from \$400,000 to \$1+ million.<sup>60</sup> Salaries for partners in small and medium size firms with somewhat, or substantially, similar work expectations are generally \$200,000 and up.<sup>61</sup> While obtaining partnership status gives lawyers some more control over their workload, it does not lessen the professional expectations. Partnerships ever increasingly demote or force out underproductive partners. “The new rules of partnership? Tenure is dead.

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<sup>57</sup> Leigh Jones, *Retention Is a Midsize Law Firm Priority*, NAT’L L.J. (July 16, 2007); Petra Pasternak, *Midsize Firms Try to Keep Their Associates Happy*, THE RECORDER, <http://www.law.com/jsp/law/careercenter/CareerCenterArticleFriendly.jsp?id=1182848791>.

<sup>58</sup> Peter Lattman, *Big Law Losing Women Lawyers to Other Jobs* (June 13, 2007), [www./blogs.wsj.com/law/2007/06/13/big-law-losing-women-lawyers-to-other-jobs](http://blogs.wsj.com/law/2007/06/13/big-law-losing-women-lawyers-to-other-jobs). In 2006, federal district court judges earned \$165,200, U.S. appeals court judges earned \$175,100, U.S. Supreme Court associate justices earned \$203,000, and U.S. Supreme Court chief justice earned \$212,100. David Savage, *Chief Justice Roberts wants raises for federal judges*, LOS ANGELES TIMES (January 1, 2007) A10.

<sup>59</sup> Lattman, *supra* note 58.

<sup>60</sup> The mean for the top 100 firms was \$1.2 million in 2006. The average among top 100 firms headquartered in New York was \$2.05 million. Aric Press & John O’Connor, *Lessons of The Am Law 100*, AM LAWYER (May 1, 2007).

<sup>61</sup> Interviews with several Texas medium size law firms with significant work expectation (July 2007). Small and medium sized firms with lesser work expectation will obviously mean lesser salaries for partners. In an article in Working Mother magazine, equity partners’ share of firm profits is reported from \$200,000 to \$3 million or more annually. Gina Kopecky Wallace, *Making Partner*, WORKING MOTHER (Aug/Sept 2007) at 78.

Produce (at an attractive rate) or perish.”<sup>62</sup> This lifestyle is not for everyone and law firm partners are quick to point that out.

Not all associates make partner. Many leave within the first few years.<sup>63</sup> Unquestionably, more female than male associates leave the partnership track. The reasons vary and include some reports of women feeling pushed into leaving because no alternative structure exists to allow them to stay and have a more balanced work-family life.<sup>64</sup> These are the traditional “up or out” firms and they still exist today. Some associates, however, switch from partnership track to an alternative arrangement with the firm, such as working reduced hours for reduced pay and expectations, or working as an independent contractor, paid by the hour with no benefits. Even more women leave the firm altogether to take jobs with smaller, more flexible firms, general counsel offices for businesses, government agencies, law schools, and with courts as staff attorneys. These alternatives generally pay less but carry lesser work expectations (generally 40 to 60 hours a week) and more predictable and controllable schedules.<sup>65</sup> Some women seek work environments that are more female friendly.

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<sup>62</sup> Since 2000, the only significant category for the Am Law top 100 firms to decline was the percentage of equity partners. Press & O’Connor, *supra* note 60. “De-equitization” has become one of the most popular buzz words in law-firm management. “Peter Zeughauser, a law-firm consultant in Newport Beach, Calif., says firms increasingly want to promote their tough-minded approach to penalizing underperformers. ‘More and more, firms realize you need to send a message to the market that you are a hard-working firm.’” Nathan Koppel, *Partnership in No Longer a Tenured Position: More Law Firms Thin Ranks of Partners to Boost Profits, Attract, Keep High Earner*, WALL ST. J, July 6, 2007, at B1.

<sup>63</sup> Overall mobility within the legal profession has increased in recent decades, particularly in private practice and especially within the first few years of practice. NALP FOUNDATION REPORT, *supra* note 45, at 53.

<sup>64</sup> O’Brien, *supra* note 13.

<sup>65</sup> A sampling of the current range of pay in the alternative positions:

1. Median entry salary for 1-50 lawyers - \$75,000; Eighth-year associate - \$107,000  
Median entry salary for 51-100 lawyers - \$85,000; Eighth-year associate - \$110,000  
Median entry salary for legal services attorney - \$36,000; 11-15 years - \$55,000  
Median entry salary for public interest organizations - \$40,000; 11-15 years - \$65,000  
Median entry salary for prosecutors - \$45,000; 11-15 years - \$70,000  
NAT’L ASSOC. OF LAW PLACEMENT, NALP BULLETIN (October 2006).
2. Median salary of lawyers in 1-9 attorney offices - \$63,829  
Median salary of lawyers in 10-49 attorney offices - \$74,219.  
[http://www.payscale.com/research/US/Job=Attorney\\_%2f\\_Lawyer/Salary/show\\_all](http://www.payscale.com/research/US/Job=Attorney_%2f_Lawyer/Salary/show_all).
3. 2006 Median income of Deputy Chief Corporate Legal Officer - \$135,000.  
Abbott, Langer Association Surveys. [www.abbott-langer.com/lawsumm.html](http://www.abbott-langer.com/lawsumm.html)
4. 2006 local government average salary - \$84,570  
2006 state government average salary - \$77,970  
2006 federal government average salary - \$116,700, U.S. Bureau of Labor Statistics,  
[http://www.collegeboard.com/csearch/majors\\_careers/profiles/careers/106289.html](http://www.collegeboard.com/csearch/majors_careers/profiles/careers/106289.html).
5. Federal district court judges - \$165,200, Savage *supra* note 57.  
Federal law clerks - \$46,000  
Federal court staff attorneys - \$80,000  
Interviews with staff attorneys.
6. Median salary of associate law professors - \$100,000  
Median salary of tenured law professors - \$131,000,  
2006-07 SOCIETY OF AM. LAW TEACHERS SALARY SURVEY, 2007 SALT EQUALIZER 1 (February 2007)

*B. Gender Biases in Law Firm Hiring and Promotion Practices*

Bodies of work describe the nature of modern gender discrimination and prejudice in the general workforce as subtle, covert, automatic, unintentional, unconscious, and pervasive. Other terms used to describe subtle gender discriminatory events or their collective effects include chilly climate, microaggressions, microinequities, and selective incivility.<sup>66</sup> What is the status of discrimination in the legal profession? Many fewer occurrences than in the past; however, the legal profession is not so different from other vocations that women lawyers no longer have to concern themselves with potential discriminatory practices and biases.

University of Virginia sociology professor Elizabeth Gorman and others have studied law firm hiring practices to determine if gender bias influenced law firm hiring and promotion practices. Professor Gorman identified possible influences that favor men in decisions on hiring, assignment of better cases, and promotion to partner, including “in-group preferences.” Male partners as decision makers in law firms “feel more comfortable with members of their own in-group, finding them more trustworthy and cooperative.” “It may not be conscious, it may not be deliberate at all, it may just be an automatic feeling of being more comfortable with them,” especially when working together on a case or project is involved.<sup>67</sup> All else being equal, this in-group preference should work the same for women in the role of decision maker, except that presently too few women are in positions as decision makers. As a result it is possible that case assignments, client development opportunities and promotions are more likely to favor male associates in male dominated law firms unless the issues are addressed and controlled by firm management.

Studies also address the impact that gender schemas (gender-based thinking and expectations) play in forming perceptions of competency for a particular job. “Studies have

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<sup>66</sup> CATALYST, WOMEN “TAKE CARE,” MEN “TAKE CHARGE:” *STEREOTYPING OF U.S. BUSINESS LEADERS EXPOSED* (2005); Benokraitis, *Working in the ivory basement: Subtle sex discrimination in higher education*, in CAREER STRATEGIES FOR WOMEN IN ACADEME: ARMING ATHENA. (L. H. Collins, J. C. Chrisler, & K. Quina eds., 1998); Lilia M. Cortina, *The Climate for Women in Academic Science: The Good the Bad and the Changeable*, 30 PSYCHOL. OF WOMEN Q. 47 (2006); John F. Dovidio, *On the Nature of Contemporary Prejudice: The Third Wave*, 57 J. Soc. Iss. 829 (2001); Madeline E. Heilman, *Description and Perception: How Gender Stereotypes Prevent Women’s Ascent Up the Organizational Ladder*, 57 J. Soc. Iss. 657 (2001); K. Rolin, *Gender and trust in science*. HYPATIA, 17 (4), 95-118 (2002); D. Solorzano, M. Ceja & T. Yosso, *Critical race theory, racial microaggressions, and campus racial climate: The experiences of African American college students*. THE JOURNAL OF NEGRO EDUCATION, 69 (1/2), 60-73 (2000); D. W. Sue, C. M. Capodilupo, G. C. Torino, J.M. Bucceri, A. M. B. Holder, K. L. Nadal & M. Esquilin, *Racial microaggressions in everyday life: Implications for clinical practice*. AMERICAN PSYCHOLOGIST, 62 (4), 271-286. (2007).

<sup>67</sup> Elizabeth Gorman, *Gender Influences Law Firm Hiring, Promotion*, [www.law.virginia.edu/html/news/2006\\_spr/gorman.htm](http://www.law.virginia.edu/html/news/2006_spr/gorman.htm). See also WOMEN’S BAR ASSOC. OF THE DISTRICT OF COLUMBIA, INITIATIVE ON ADVANCEMENT AND RETENTION OF WOMEN, CREATING PATHWAYS TO SUCCESS, May 2006 at 7. For similar analysis with regard to women in law schools, see Padilla, *supra* note 35.



shown people generally list men's traits as being aggressive, decisive, logical, responsible, and good leaders. In contrast, people characterize women as submissive, indecisive, good at caring for others, passive, illogical and emotional."<sup>68</sup> While these perceptions are not necessarily accurate (especially for women who select law as a profession and who spend three years in law school training for the profession), nevertheless, partners' and clients' perception of who they should hire as a lawyer can be influenced by what they believe are the core characteristics of a good lawyer or what they believe are the necessary skill sets for the particular area of practice. These perceived differences, to be sure, are not automatically disadvantageous to women and they may explain why women lawyer were traditionally more accepted in areas of practice such as family law. More recently, women lawyers are sometimes perceived (accurately or not) to be better able to calm volatile situations and to find compromise between parties who appeared to be at an impasse. On the other hand, law firms and clients looking for stereotypical aggressive lawyers might be more inclined to choose a male lawyer over a female.

These gender schemas may also disadvantage women who try to exhibit stereotypically male characteristics expected of successful lawyers. Women who are naturally aggressive and competitive may be considered "bossy and unpleasant." As Gorman notes, "It's a bit [like] being between a rock and a hard place."<sup>69</sup> As a woman lawyer described her experience in a May 2006 article in the *New York Times*, "Women are held to higher standards, and if they don't jump up and down like a man would at a meeting they aren't seen as partnership material." Another asked, "why is a woman who hunts down her male boss for a chat seen as overly aggressive or possibly flirtatious, while a male doing the same thing is seen as merely ambitious?"<sup>70</sup> These statements are not representative of all firms today, but these attitudes still prevail in many.

Perhaps still another phenomenon influences the lag of women reaching higher positions. Studies show that many women are less comfortable with self-promotion.<sup>71</sup> Women may opt not to pursue certain career paths or advancements because of "innate gender differences," biological differences," or "strong cultural socialization."<sup>72</sup> Some women lawyers have more difficulty in

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<sup>68</sup> *Id.*; See also CATALYST, *supra* note 66; Alice H. Eagley, *Female Leadership Advantage and Disadvantage: Resolving the Contradictions*, PSYCHOLOGY OF WOMEN QUARTERLY 31 (1), 1-12 (2007); Sarah DeArnond, Mary Tye, Peter Y. Chen, Autumn Krauss, D. Apryl Rogers, and Emily Sintek, *Age and Gender Stereotypes: New Challenges in a Changing Workplace and Workforce*, J OF APPLIED PSYCHOLOGY 36 (9), 2184-2214 (2006).

<sup>69</sup> Gorman, *supra* note 67.

<sup>70</sup> O'Brien, *supra* note 13.

<sup>71</sup> CREATING PATHWAYS TO SUCCESS, *supra* note 67, at 8. See also O'Brien, *supra* note 13.

<sup>72</sup> Gorman, *supra* note 67.

asking for what they want and need. They are less willing to negotiate for themselves. Kim Askew tells her young women associates, “If you are waiting for people to make it right in your career, you are never going to be a success. You have to go and ask for what you think you need.”<sup>73</sup>

*C. Differences in Experiences of Male and Female Associates*

Consequently, are there really differences between the experiences of the men and women lawyers? The answer is commonly understood to be “yes.” As the decades pass, the differences become more subtle. Although stories continue to surface about discriminatory acts (as they do throughout society), more recent surveys and studies suggest that actual discrimination is no longer a major barrier to women’s advancement, yet subtle and sometimes unconscious biases continue. “Law firms are way beyond discrimination – this is about advancement and retention. Problems with advancement and retention are grounded in biases, not discrimination,” opined Karen M. Lockwood, a partner at Howrey LLP in Washington, D.C.<sup>74</sup>

Achieving partnership status is a difficult task for all young lawyers. As already stated, associates must be judged by the partners to be a good colleague who is actively contributing to the firm by meeting their productivity and profitability expectations while meaningfully representing the firm in professional and/or community organizations. These biases, unconscious or not, still can affect the start and continued success of women associates.

*D. New Lawyers’ Struggle for Credibility*

All young lawyers must prove themselves in new situations. Clients greet young lawyers with trepidation assuming the young lawyer will be less experienced and less successful than the wise old sage whom they had envisioned would handle their important legal matter. Upon greeting a young lawyer, opposing counsel pauses to wolfishly ponder their good fortune as they plot to lead the innocent young lamb to slaughter. Lawyers in adversarial roles commonly and deliberately try all manner of learned strategies to posture themselves to begin the negotiation, deposition, or trial from a position of power and dominance. If a young lawyer were a baseball player stepping up to the plate, being young is strike one.

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<sup>73</sup> Interview with Askew, *supra* note 18.

<sup>74</sup> O’Brien, *supra* note 13.

## Forum on Public Policy

Being a woman in a traditionally male-denominated profession with demanding expectations of competency and skill is strike two. Research shows “that people generally consider men more competent than women and require stronger evidence of ability before they will conclude a woman is capable.”<sup>75</sup> Women lawyers generally must work harder, be smarter, to earn the same respect and credibility. And if the young female lawyer is a young female lawyer of color, well, that is a foul tip on two strikes. She is not out yet, but it is close.

Two strikes does not mean she is out. It simply means she starts a little farther down in the count than her male colleague with only one strike against him for being young. Many home runs are hit out of the park on a 0-2 count. Most women lawyers experience this phenomenon during their associate days. Karin Crump, who graduated from law school in 1997, described it this way:

With that initial meeting (with the client) it was almost disappointment that ‘You’re a little young female lawyer. I want an old, mean tough guy.’ It always disappeared when the relationship developed and they began to trust, but it was always a hurdle to get past with opposing counsel, with judges, with clients. [There always remained this] perception about the fact that I was young and female. It was really hard at first.<sup>76</sup>

Young women lawyers are still mistaken for court reporters, secretaries or paralegals, but less so than twenty years ago. In 1984, during Kim Askew’s first year, she was told the counsel’s table was only for lawyers and she would have to move. Her senior partner quickly jumped to her defense to inform the bailiff that she was one of the lawyers, part of their team. She has never forgotten how that simple gesture by her older, male, white partner made her feel supported. How it immediately established to all her importance in that situation.<sup>77</sup>

Successful women lawyers agree that, as a woman in the legal profession, you need a relatively tough skin and cannot over react to each and every potentially offensive interaction. Young women must learn to measure the appropriate amount of sensitivity required in a given situation – when to be personally offended by inappropriate behavior, and when to understand it was an inadvertent mistake, an innately generational or cultural difference with no harm intended,

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<sup>75</sup> Gorman *supra* note 67; Padilla, *supra* note 34, at 534.

<sup>76</sup> Interview with Karin Crump in Austin, Texas on July 2, 2007.

<sup>77</sup> Interview with Askew, *supra* note 18.

or perhaps simply part of the games lawyer play. Justice O'Neill related a story from early in her career when a colleague asked her how she, as a young female lawyer, handled the older male lawyer yelling in her face just before a mediation. Justice O'Neill responded that she understood he was just posturing the way a coach would by yelling at a referee after a questionable call early in the game. He was not mad. She, like a referee, did not take it personally. She understood that he was jockeying for position in order to influence the next close call in the game.<sup>78</sup>

*E. Influences of Mentors and Superiors*

The experience of women associates and partners is largely determined by the attitude and approach of the law firm. Without deliberate and systematized approaches to supporting, encouraging, advising, and mentoring young lawyers, young women lawyers are less likely to seek out, or to be sought by partners, who are predominately white male partners. Again, men naturally are more inclined to spend time, and share wisdom, with their younger male counterparts. Without formal and informal mentoring, associates doing adequate-to-good legal work are likely to be left behind for failure to meet the other non-legal expectations, such as client development and community presence.

Unquestionably, the right firm environment enhances women associates' positive experiences. For women who have options and choose a firm with an open and receptive attitude toward women, it can make all the difference in terms of quickly establishing their worthiness in the eyes of clients, judges, opposing counsel and other associates. Many successful women lawyers attribute some or all of their success to the support and encouragement provided by their firms and mentors. Jerry Clements recalls that in 1981 a woman as a general trial lawyer was a new phenomenon. She attributes her success to working in a supportive law firm environment and the good fortune to work for, and with, a wonderful gentleman, Morris Harrell, who served as President of the American Bar Association and who also was one of the great trial lawyers. His endorsement of her gave her instant credibility with clients and the personal reassurance that she could do it.<sup>79</sup> Ms. Clements added that she was fortunate to have a second great mentor in later years to guide her on the path to leadership positions. Ms. Clements attributes to Harriet Miers her success in obtaining leadership positions within the firm. Ms. Miers was one of the

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<sup>78</sup> Interview with O'Neil, *supra* note 38.

<sup>79</sup> Interview with Clements, *supra* note 42. Morris Harrell was one of the country's most honored and respected lawyers for his quiet diplomacy and professional dedication. He also served as the president of the State Bar of Texas, American College of Trial Lawyers, National Conference of Bar Presidents.

early women to reach leadership roles in the profession, serving as co-manager of a major Texas law firm and as the first women president of the State Bar of Texas. Kim Askew also had senior partners in the 1980's who showed confidence in her as an associate which translated into standing before clients and others. Both admit that they worked extremely hard to earn the confidence of their partners; however, practicing in a supportive environment and having the opportunity to observe great role models allowed them to focus upon learning how to become good lawyers. The support and guidance they received served them well. Both Ms. Clements and Ms. Askew have spent their entire careers with the same firms and today they are great lawyers. Ms. Clements' firm Locke Liddell & Sapp, based in Houston and Dallas, is merging with Chicago-based Lord, Bissell & Brook to create a 700 lawyer firm with offices all over the United States and in London. Ms. Clements will be the managing partner. She has been named as one of the Top 50 Most Influential Women in America by *The National Law Journal*. Ms. Askew is a partner on the management committee of Hughes and Luce, LLP, a 150 member firm based in Dallas, and she just completed a year as the first lawyer of color to serve as the chair of the prestigious American Bar Association Section of Litigation.

Keara Gordon, now an equity partner with DLA Piper U.S. in New York, joined the firm in 1993, and she describes her key mentors, two male senior partners, as endlessly generous in teaching her what she needed to learn, giving her responsibilities early in her career and praising her work to clients and higher-ups. "They'd send emails to the chair of the firm saying, 'We just won a big case, and Keara wrote the brief. Please join us in congratulating her,' she recalls."<sup>80</sup>

However, all women lawyers are not so fortunate to have great mentors and to work in supportive environments. Not all women graduating from law schools have many options. Opportunities at graduation are determined largely by the reputation of the law school and the student's class ranking. Women with fewer options (especially those with law school indebtedness, now averaging \$50,000 to \$80,000)<sup>81</sup> worry less about finding the right environment in which to practice and more about finding any position that will allow them to pay their bills, at least until other opportunities become available.

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<sup>80</sup> Wallace *supra* note 61 at 74.

<sup>81</sup> These are average law school debt for public and private law schools, but do not include a student's undergraduate indebtedness. Press Release, Equal Justice Works, Debt for Law School Graduates Grows (December 18, 2006), [http://www.equaljusticeworks.org/press\\_release/financing\\_the\\_future\\_2006.htm](http://www.equaljusticeworks.org/press_release/financing_the_future_2006.htm).

Regardless of the start, smooth and supportive, or rocky and discriminatory, women who stay in the practice generally agree that with time, experience, confidence and earned reputations for quality work and integrity, the differences disappear a few years, or sometimes a number of years, into practice once the woman lawyer finds the right work environment.

*F. Women Lawyers as “Rainmakers”*

Traditionally, women lagged behind men as “rainmakers.”<sup>82</sup> In previous decades, in the male-dominated worlds of lawyers and clients, client development took place on the golf course, over drinks, at athletic events, and on fishing, hunting or other trips of typical interest to men. Judge Owen noted her experience as a trial lawyer in the 1970’s and 1980’s. “The guys would play golf together. Take hunting trips together. Wives would not be comfortable with the women going on those trips. I wasn’t invited and I didn’t expect to be. It was just one of the unspoken things.” She adds that “things have loosened up a lot now.” She eventually did join fishing and hunting trips. She added that by the 1980’s, women lawyers in her firm were beginning to entertain business clients – arranging informal dinners and taking clients on ski trips to Aspen.<sup>83</sup>

When Justice O’Neill graduated from law school in the early 1980’s, she said, if “you wanted to entertain clients, you had to learn to play golf or power lunch at the club.”<sup>84</sup> That’s exactly what Jerry Clements did when she graduated in 1981. She learned to play golf and she still enjoys the game. “There is a great deal of bonding that happens on a golf course.” She claims that it is still the single best client development activity and she recommends it to all young associates. She adds however that it is most important for lawyers to find activities that they enjoy and that can be shared with clients. She advises, “if it’s not you, it won’t work.” All manner of activities are encouraged today. Women in her firm take women clients for spa weekends. Her firm’s Dallas office hosted a cooking class for their female clients.<sup>85</sup> Justice O’Neill also observed the changes she saw in the 1980’s this way:

In my evolution, women began dropping out [of law firms] to do many things. Women dropped out to go in-house. They would start their own offices out of their kitchens, out of their homes. And I found that the network that was going on

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<sup>82</sup> CREATING PATHWAYS TO SUCCESS, *supra* note 67, at 8; Lynne Marek, *Exit Women*, NAT’L L. J., June 18, 2007. “Rainmaking” is the term characterizing a lawyer’s ability to attract new clients and business for the firm.

<sup>83</sup> Interview with Owen, *supra* note 16.

<sup>84</sup> Interview with O’Neill, *supra* note 38.

<sup>85</sup> Interview with Clements, *supra* note 42.

was going on is carpool lines. And women were becoming general counsel and they wanted to hire more women. Law firms started paying more attention.<sup>86</sup>

Women lawyers today are much more innovative in finding ways to entertain and network. The truth is many women lawyers today can play golf with the guys one day and join the ladies for a pedicure the next day. The objective is to make their clients feel welcome and appreciated.

Community presence and involvement in charitable events also can greatly assist with business development and is encouraged or expected of associates. In part, law firms recognize their obligation to share their talents and resources in support of community organizations working to improve human and societal conditions. As Judge King explains, “lawyers have a particular burden. They have a much greater contribution to make. Lawyers are able to contribute so much to organizations – more than ordinary people can – because they understand how organizations work and how they are suppose to work.”<sup>87</sup> Equally important to the firms, however, is the recognition that serving on boards and volunteering at community events are excellent ways to make business contacts in the community. Many women are naturally inclined to join volunteer efforts and non-profit organizations seek lawyers to serve on their boards. Women lawyers have vast opportunities to serve and they should; nevertheless, they need to be careful that too much time is not spent in this manner to the detriment of their billable hours and profitability.

*G. Initiatives Addressing Women’s Issues*

As Justice O’Neil stated, law firms have started paying more attention to the needs of their women lawyers and they are doing so in larger numbers, in part due to clients committed to the advancement of women and minorities. Some clients now require the law firms handling their legal matters to report the number of women and minorities at the various levels within the firm and also among those working on their matters.<sup>88</sup> More law firms are realizing that to continue to lose a huge part of their talent pool is a costly measure that they cannot afford. Firms

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<sup>86</sup> Interview with O’Neill, *supra* note 38.

<sup>87</sup> Judge King adds, “I think you are obligated to tithe your time the way you are obligated to tithe your money,” and she did.

Interview with King, *supra* note 8.

<sup>88</sup> Interview with Bridget Fusilier, Assistant Professor, Baylor Law School, and former shareholder, Mehaffy Weber, P.C., Beaumont, Texas, and Kristin Simpson, Assistant Professor, Baylor Law School, and former associate, Weil, Gotshal & Manges, L.L.P. and Rembolt Ludtke, L.L.P.

lose an estimated \$300,000 in recruiting and training costs when replacing a third-year associate.<sup>89</sup>

Regardless of the motivation, relatively new initiatives are specifically designed to address issues particular to the women lawyers in the firms. Cathy Fleming, immediate past president of National Association of Women Lawyers says, “[f]irms are starting to get it. We’re not there yet, but I’m seeing improvement.”<sup>90</sup> Firms are creating committees and task forces to consider issues that disparately impact women. Women have access to online work/family discussion groups to share tips on everything from pediatric dentists to breastfeeding. Firms are establishing on-site or close child-care centers and contracting with companies to send a certified caregiver when after-hours work and business trips necessitate back-up and out-of-town child care services.<sup>91</sup>

Firms are establishing mentoring programs to help navigate associates through the competitive waters of the partnership track. More law firms have committees to monitor or control work assignments from partners to associates to insure that the assignment of high-profile and important cases are fairly distributed. Law firms today, especially larger ones, hire business professionals to train associates in business and client development which insures that all associates receive the necessary help, rather than only the fortunate few with devoted mentors. Firms create workshops for the women focused on innovative ways to network and cultivate new client relationships in a manner that is more comfortable and natural for women lawyers and the women decision-makers in the businesses that hire lawyers. Some bar associations are actively engaged in the dialogue as well. Across the nation, events such as Chicks & Chats, champagne and classical music, Wine, Women & Shoes, and holiday teas are more common.<sup>92</sup> Unfortunately, not all firms have the same commitment to the importance of these matters, at least not yet.

#### *H. Motherhood’s Incompatibility with Private Practice and Attempts to Accommodate*

These initiative and efforts are all well and good and if implemented widely should move the profession toward resolving the inequities. However, there remains a 800 pound gorilla on the table -- MOTHERHOOD.

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<sup>89</sup> Wallace, *supra* note 61 at 74.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 82-83.

<sup>92</sup> CREATING PATHWAYS TO SUCCESS, *supra* note 67, at 11-14. Joyce Gannon, *Firms teach women lawyers importance of networking to climb law firm ladder*, Pittsburgh Post-Gazette, October 18, 2006. *See also* O’Brien, *supra* note 13.



Returning to some comments posted on the *Wall Street Journal* Law Blog recently illustrates the tension. “Successful women attorney = nanny.” “[L]aw firms expect the job of a lawyer to be a 24/7 gig. That’s impossible for a mom. . . . at a large firm your work is expected to be your life.” BigLaw lady posted, “If it works for men or women, it works because they either don’t have nuclear families or they have spouses with non-traditional careers or no careers outside the home, and/or (usually and) nannies.”<sup>93</sup> Karin Crump just completed an elected position as the president of the Texas Young Lawyers Association, with its 20,000+ members. Through her travels and interactions with these lawyers who are primarily under the age of 35, she noted that as a general rule the women lawyers with children who work full-time on partnership track as associates for law firms had nannies to care for their children and the men with children had stay-at-home wives.<sup>94</sup> Studies agree.<sup>95</sup>

Undoubtedly, parents, both mothers and fathers, who want to spend evenings and weekends with their children find the 60-80 hour work week expected by private law firms difficult, if not unacceptable. Many, like Lawyer Mom who posted on the *Wall Street Journal* Law Blog, suggest that it is not a female issue. She writes, “Big law firms shouldn’t just try to attract and keep female attorneys. What they should do is help make the practice of law more family-friendly for both men and women.”<sup>96</sup> The truth is that male lawyers desiring time off or reduced schedules to be with their kids are often subject to more ridicule and criticism than women.<sup>97</sup> However, it is still the case that only women can experience pregnancy and child birth. When it comes to parenting, it is still the case that most women carry the brunt of the parenting responsibilities. The reality in most lawyer families is that they want or need it to be that way.<sup>98</sup>

The reality of law firm life is that the natural cycle of motherhood coincides with the struggle to earn and maintain a coveted partnership position and, thus, the conflict arises. Some are able to make it work. Judge King was able to do so with the help of a supportive husband who was also a lawyer and Ollie, an “absolute jewel” of a housekeeper who stayed with them for 36 years and who, with the assistance of a second shift of babysitters, help them raise three

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<sup>93</sup> Lattman, *supra* note 58.

<sup>94</sup> Interview with Crump, *supra* note 76.

<sup>95</sup> Similar findings appear in Mona Harrington & Helen Hsi, *Women Lawyers and Obstacles to Leadership: A Report of MIT Workplace Center Surveys on Comparative Career Decisions and Attrition Rates of Women and Men in Massachusetts Law Firms* (Equality Commission, MIT Workplace Center, Spring 2007) 32.

<sup>96</sup> Lattman, *supra* note 58.

<sup>97</sup> MIT Workplace Center Report, *supra* note 95, at 34.

<sup>98</sup> *Id.* at 16.

children. “My children think Ollie hung the moon. That made all the difference in the world.” Judge King likes to advise young women to settle in on a reliable babysitter within the first few months of the baby’s life by hiring the best person they can and then to stick with that person. “Continuity is critical. [The child] will bond with that person.”<sup>99</sup>

Others on the *Wall Street Journal* Law Blog agreed that it can work. Ella, a partner in a large law firm with two small children, writes,

“[y]ou have to pick a practice area that has longer deadlines and less travel; you have to live close to the office; you have to have reliable child care; and you have to have a spouse who feels equally responsible for childrearing. It also helps if your colleagues care more about results than about facetime.”

CrazyBusy Mom, a partner in a medium sized firm and two children agrees, “We (she and her very involved husband) make it work by the grace of God, multiple Grandmas, coordinating our calendars and a super babysitter.”<sup>100</sup>

Marina Park was ready to leave her position in Pillsbury Winthrop Shaw Pittman’s San Francisco office to take a more manageable government job until her mentor and head of the litigation practice group convinced her to stay and switch from litigation to international corporate work which involved less travel. The transition took a year. “It was the hardest I’ve ever worked,” says Marina. “But if the firm hadn’t made that investment in me, I would have left.” She later became the managing partner for the firm, on the condition that she could continue to keep her 80 percent schedule (working 8:00 a.m. to 6:00 p.m.). A full-time caregiver who is still with the family for more than 17 years and current technology were also important to the success of her arrangement.<sup>101</sup>

Others have spouses who leave their jobs to become stay-at-home dads or change jobs in order to take on more child-care responsibilities. Catherine Dargan has a great caregiver, but her husband also left a travel-heavy management-consultant position to become a math teacher with more kid-friendly work hours. Catherine is now an equity partner with Covington & Burling in Washington, D.C. and was instrumental in the firm’s investment in its own state-of-the-art day-

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<sup>99</sup> Judge King also recommends paying well for the services. “You get what you pay for.” She added that having family to help would have been great as well, but neither family lived near. Interview with King, *supra* note 8.

<sup>100</sup> Lattman, *supra* note 58.

<sup>101</sup> Wallace, *supra* note 61 at 76-77.

care center. Although Catherine does not need the center, she says that it has made a huge difference in the lives of her colleagues who do.<sup>102</sup>

These women who chose to become mothers and stay in the practice of law believe that there is a benefit to lawyers and their firms when the lawyers have children. They recognize that motherhood makes them better lawyers. “When you have kids, you have to cultivate calm,” says Keara Gordon. “Dealing with opposing counsel is sometimes like dealing with toddlers.” “Being a mom also makes you efficient. I’m much more focused because I want to get home at a certain time.” Catherine Dargan adds, “[i]n a corporate deal, you’re trying to reach a common goal. You’re negotiating, settling disputes, making sure everyone gets something out of it. As a mom, I spend a lot of time doing these things. The skill sets are the same.”<sup>103</sup>

*I. Alternatives More Readily Available to Women Today*

The good news is that unquestionably women lawyers today have many more choices for a variety of reasons. “In the late 1980’s and early 1990’s, there were few alternatives to the full-time practice of law.”<sup>104</sup> The trend of women leaving big law firms today is to pursue alternative jobs that are more conducive to a balanced work/personal life. Women are leaving the big firm life to work for themselves, smaller firms, governmental agencies, legal aid offices, non-profits, and as in-house counsel. These women acknowledged that their big firm experience “was essential to their career development;” however, they gravitated to positions with less pay but more flexibility and personal time. They believed the work to be more professionally satisfying without the need to sacrifice a family life and relationships with their children.<sup>105</sup> “[I]n reality, there are plenty of exit opportunities. . . The trouble is, they typically don’t pay as well as the large firm.”<sup>106</sup> Posted by one female lawyer in response to a March 2006 article, *Women at Law Firms*, on the subject, “[i]t’s not all discrimination that leads to fewer women having those jobs. I would rather make \$35k a year at legal aid, work from 9 to 4:30, get six weeks vacation per year, and have supper with my kids every day.”<sup>107</sup>

Cheryl Heisler, founder of Lawternatives in Chicago, who advises lawyers regarding legal career options, is not surprised that women lawyers in their mid-twenties, single, career-

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<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 75.

<sup>104</sup> Joanne Cronrath Bamberger, *Where’s the Class of ’88?*, LEGAL TIMES, September 22, 2004.

<sup>105</sup> Marek, *supra* note 80.

<sup>106</sup> MIT Workplace Center Report, *supra* note 95, at 8.

<sup>107</sup> Jeremy Blachman’s Weblog, *Women at Law Firms*, March 19, 2006, [http://jeremyblachman.typepad.com/jeremy\\_blachman/2006/03/women\\_at\\_law\\_fi.html#comments](http://jeremyblachman.typepad.com/jeremy_blachman/2006/03/women_at_law_fi.html#comments).

mindful and ambitious, find that their priorities change at different points in their life.<sup>108</sup> Karen Crump can identify. As a young associate in two law firms and as the owner of her own office, she understood what it took for a successful litigation practice. During those first six years of practice, working all the time was the norm for her and she never questioned it. She said, “I thought at the time, I am a career woman!” Then she had her first child and said she discovered that “[t]hese are little human beings that need you.” She added, “there is a tremendous amount of guilt to have someone else raise your children.” After the birth of her first child, she accepted a part-time, of counsel, position with a firm in Austin that is family-friendly and supportive of the concept of part-time. Additionally, she transitioned out of a litigation practice into mediation which is much more controllable and predictable in terms of demands and schedule. She is currently pregnant with twins and wonders how she will be able to practice at all after what she expects to be the premature birth of her twins.<sup>109</sup>

For a variety of reasons, (the law, economics, accepted social norms, etc.), employers are accommodating, to various degrees, the needs of the individuals working within their organization.<sup>110</sup> Are law firms providing meaningful alternatives that work? It depends on who you ask. Alternatives, sometimes called “mommy tracks” are becoming more readily available options. Not all firms have formal policies. Most prefer to negotiate with individuals on an *ad hoc* basis, believing that each lawyer’s circumstances are different. Firms are still experimenting with what will work. Some have begun to study accounting firms which have been successful in retaining and bringing back part-time professionals.<sup>111</sup>

#### *J. Mixed Success of Alternative Arrangements*

Even when an alternative is available, some women are dissatisfied. Said one lawyer in a recent study in Massachusetts, “[m]any firms have flextime policies but are ‘clever in discouraging their uses.’”<sup>112</sup> Some experience the “schedule creep,” working more hours than they bargained for, with no additional pay. Some feel devalued – like second class citizens.

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<sup>108</sup> Bamberger, *supra* note 104.

<sup>109</sup> Interview with Crump, *supra* note 76.

<sup>110</sup> Federal Equal Employment Opportunity laws do not prohibit discrimination against caregivers; however the Equal Employment Opportunity Commission has recently issued “Enforcement Guidance: Unlawful Disparate Treatment of Worker with Caregiving Responsibilities” which suggests that certain stereotypes against persons with caregiving responsibilities could consist unlawful disparate treatment under federal EEO laws. The EEOC issued the Guidance because “. . .changing demographics, including women’s increased participation in the labor force, have created a *potential* for greater discrimination against working parents and others with caregiving responsibilities.” <http://www.eeoc.gov/policy/docs/qandacaregiving.html>.

<sup>111</sup> CREATING PATHWAYS TO SUCCESS, *supra* note 67, at 23; O’Brien, *supra* note 13.

<sup>112</sup> Pfeiffer, *supra* note 2, quoting “Women Lawyers and Obstacles to Leadership.”

They may or may not be earning credit toward partnership if they decide to return later to the full-time practice of law. As a result, some women still feel “pushed” out of the legal profession for lack of any viable alternatives.<sup>113</sup> Men seeking time off to stay home with children have an even more difficult time and are more likely to experience ridicule and criticism.<sup>114</sup>

Many firms are willing to work with their associates requesting reduced or flexible schedules because they recognize the tremendous loss of talent and years of investment in developing that talent. However, law firms have a different perspective when it comes to the terms of the arrangements. Kim Askew, as a partner on her firm’s management committee, is supportive of part-time arrangements; however, she notes, “I have a duty to treat all of my associates alike. I recognize what is special. I recognize needs may be different but I am in a position along with other partners where we have to do what is in the best interest of all of the associates and of the firm and there are no easy answers.” She adds, “[c]an law firms do more? Of course they can, but law firms are businesses. Clients want results. They care about you having your baby as long as it doesn’t get in the way of you getting their brief filed by the deadline. My job as a partner is to make sure that brief gets filed.”<sup>115</sup> Unfulfilled obligations in the legal profession can mean not only the loss of a client, but more seriously, a potential malpractice claim.

For those who negotiate a part-time or flex-time arrangement with their firm, there also is a difference in the kind of work that can be assigned to them. Ms. Askew explains, “You can’t work on the cases I work on if you need to go home to the kids every night. That’s just the reality. I may have to get on a plane at anytime. When my client calls me at 3 a.m., I don’t have to worry about getting a babysitter and my husband getting upset. There are differences.”<sup>116</sup>

Jerry Clements knows that part-time arrangements can work if both sides are flexible. Her firm recognizes the tremendous financial investment in training associates. The loss of that talent permanently makes poor business sense. As a general rule, associates in their first three or four years do not make money for the law firms.<sup>117</sup> Everyone’s best interest is served if a mutually satisfactory arrangement can be created to keep the associate involved at some level

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<sup>113</sup> O’Brien, *supra* note 13.

<sup>114</sup> MIT Workplace Center Report, *supra* note 95 at 34. Interview with Fuselier and Simpson, *supra* note 88.

<sup>115</sup> Interview with Askew, *supra* note 18.

<sup>116</sup> *Id.*

<sup>117</sup> Studies estimate that the cost of replacing an associate at a large firm ranges from \$250,000 to \$500,000. CREATING PATHWAYS TO SUCCESS, *supra* note 67, at 30.

with the hope that she or he will return one day to full-time practice. Ms. Clements adds, “so long as there is flexibility, these things can work.” She finds the key to a successful part-time arrangement for a woman with children is a supportive law firm committed to making it work, a really supportive husband, and a good nanny, babysitter or other support system.<sup>118</sup>

Keara Gordon agrees that staying on partnership track while working part-time requires flexibility. Even after the birth of her twins, she continued her litigation practice, with its unpredictable hours and demands. She cut back to a four-day week with Friday off but always remained ready to work when needed. “You can’t be rigid in litigation,” she says. “Clients are relying on you, so you can’t say, ‘Sorry, I don’t work on Fridays.’” She attributes the success of her arrangement to her flexibility, a full-time babysitter and backup care provided by the firm.<sup>119</sup>

Most certainly law firms today are businesses, and unfortunately many of its lawyers are without business training. Lawyers with an understanding of the economics of law practice are more likely to negotiate a satisfactory balance between the lawyer’s family and career and the firm’s need to meet its client and business demands.<sup>120</sup> The dissatisfaction of the part-time associate can sometimes be resolved if the firm shares the economic reality of the arrangement with the lawyer. Associates who feel that the firm’s compensation package or hourly expectation for part-time lawyers is exploitive should review the financial data. Sharing firm revenue and cost information with associates was uncommon in the past. Modern firms are more willing to open their books to show the associate the costs to provide full benefits, an office, support staff, etc., for the part-time lawyer. This full disclosure is more likely to result in a negotiated arrangement which is satisfactory to both sides.

Marina Park, equity partner with Pillsbury Winthrop Shaw Pittman in Palo Alto, California, made several adjustments in her arrangement with her firm. She joined the firm in 1983. In 1987, she switched from litigation to international corporate work with less travel. She gave birth to her son in 1989 and became one of Pillsbury’s first lawyers to work a part-time, 65 percent schedule (7:00 a.m. to 3:30 p.m. with Wednesdays off when possible). However, her schedule crept up to 80 percent and she and another part-timer negotiated the creation of a part-time partner status. Working from 8:00 a.m. to 6:00 p.m. every day would not be considered

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<sup>118</sup> Interview with Clements, *supra* note 42.

<sup>119</sup> Wallace, *supra* note 61 at 74.

<sup>120</sup> See MIT Workplace Center Report, *supra* note 95 at 35 quoting Lauren Stiller Rikleen, ENDING THE GUANTLET: REMOVING BARRIERS TO WOMEN’S SUCCESS IN THE LAW (2006).

part-time for others, but for attorneys it is. She later became managing partner keeping her 80 percent schedule; however, soon after that she realized she was working full-time for part-time pay so she switched back to full-time.<sup>121</sup>

Going forward, it's likely that the newer generation of lawyers, both men and women, will push for more formal policies with regard to their alternatives. Today's young lawyers are more aware of the balance of work-life issues, they want to know what options they have and what expectations they must meet at the firm, and they want it in writing.<sup>122</sup> "We X-ers expect to be valued, says Megan Frese Porio who turned down a coveted spot at a big New York City firm and instead opted to join Gibbons, a regional firm in Newark, New Jersey. "I'm just not willing to sacrifice time with my family for a job." "Megan's priorities reflect an attitude prevalent among Gen X and Gen Y law school grads." They want "a new kind of legal lifestyle – one that acknowledges that things like family, yoga and volunteering should be as much a part of the good life as working hard and taking home a nice paycheck." "Today, associates would rather be paid less and not have to be here until nine at night," notes Betty Quick, managing partner of Womble Carlyle's Winston-Salem office.<sup>123</sup>

Some characterize the current status of law firms as a cultural war between three or four generations of lawyers within the same organization. The older, traditionalist partners, men *and* women, find it difficult to envision a world where they share firm equity interests with someone with a lesser level of commitment and sacrifice for the firm than they have had.<sup>124</sup> Some women report that the older female partners are almost worse than the men, expecting all women lawyers to sacrifice as they did.<sup>125</sup> The new generation of lawyers likely will have an impact, over time, in changing the thinking. Inevitably, the younger generations will make the firms their own, assuming they are able to make those changes and survive the market pressure toward more productivity and profitability.

Is it unfair that the women who want a career in the legal profession have to make difficult choices in order to find some balance between work and family? Yes, but at least these women have the choice. They have options. Many can work in a more family-friendly

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<sup>121</sup> Wallace, *supra* note 61 at 76-77.

<sup>122</sup> *Id.*; Amber Prochaska, *The 21<sup>st</sup> Century Law Firm: Changes in the Legal Workplace*, RES IPSA 15 (Spring 2007). *See also* Pamela Roberts, *The Balanced Law Firm: Reality or Pipe Dream?* 15 PERSPECTIVES 4 (Spring 2007) 2; Stephanie Goldberg, *Building a Better Law Firm* 15 PERSPECTIVES 4 (Spring 2007) 10

<sup>123</sup> Wallace, *supra* note 61 at 81-82.

<sup>124</sup> Prochaska, *supra* note 122, at 16-17.

<sup>125</sup> CHARTING OUR PROGRESS, *supra* note 50 at 8; Interview with Fuselier and Simpson, *supra* note 88.

environment, for 40 to 50 hours a week and still make \$70,000 to \$100,000, and for some even more. Is it not equally unfair that some other mothers have no options? That some women must work two minimum wage jobs, working nights and weekends, just to provide the basic necessities for their children? Those women have fewer or no choices. Women with law degrees are privileged to have the choices we have. That's the beauty and value of higher education today.

That does not mean we stop fighting for a better quality of life for lawyers and for all of our citizens; however, it does mean that women lawyers are ahead of the curve. As Boston Lawyer posted on the WSJ Law Blog, "life is full of choices. Despite what Oprah says, maybe it isn't possible to 'have it all.' Make your choices and stand by them." Ms. Askew expresses the sentiment somewhat differently when she tells young women, "You can have it all, but none of us gets it all at the same time."<sup>126</sup> My dean and mentor, Brad Toben, expresses the sentiment in yet another variation: "Life has its seasons and in each one – albeit different – we have the opportunity for fulfillment."<sup>127</sup>

Being a lawyer is a privilege granted only to those who choose the profession and who successfully meet the qualifications and expectation of the profession. With that license comes not only great responsibility but also great opportunity to chart one's own life course. During each phase, a lawyer has, or should have, the opportunity to choose that upon which she will focus her energy and talents presently, knowing that as the circumstances of her life changes, she will be able to refocus her efforts on new ventures at different times throughout the journey.

## VI. Conclusions And Suggestions For Continued Progress

So the question remains, why are so many women jumping off pathways that lead to positions of power and influence? Does the ceiling remain unyielding because of gender-based actions, or has the ceiling dissolved into a thin membrane that can be easily popped assuming you are willing to tip the work/life balance scales heavily in favor of career advancement in the legal profession – a profession traditionally described as a "jealous mistress" and now recognized as a highly competitive business? Unlike twenty years ago, fewer women feel

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<sup>126</sup> Interview with Askew, *supra* note 18.

<sup>127</sup> Brad Toben has been dean of Baylor Law School since 1991, at which time he asked me to become the associate dean to fill the vacancy he left. As I struggle with the balance of life throughout the years, he reminds me that we must focus on those priorities which we determine must be so for now, knowing that by the grace of God, there will be time in the future for time spent on others for which we have no room presently.



actions are gender-based and more recognize it as a life-style choice that applies to men as well, though perhaps not equally to men.

Are there still male partners who tell crass, inappropriate jokes at firm meetings? Will opposing counsel still get in the face of a young female lawyer and make inappropriate remarks about her female attributes in an attempt to dishevel her, to try to establish dominance at the beginning of a deposition? Do clients still show their disappointment when their new lawyer turns out to be a young, petite woman instead of the gruff, old bull dog or intimidating young buck that they had envisioned would be the best lawyer to handle their legal issues? The reality is yes, though much less than twenty years ago.

Are there still more male lawyers in positions to assign the lucrative, high-profile cases of important clients that will lead to a nice bonus and faster promotion? Are they more likely to assign those cases to the young male associate with whom they play golf, who can work every weekend and who does not have to rush home at 6:00 every night to be with his kids? Again, the answer is yes, at least in some firms.

In that case, what needs to be done? Unquestionably, work needs to continue to change our culture – to change the way professional women are perceived and treated. Much remains to be done and the effort must involve law schools, law firms and other legal employers, as well as the general public.

Law schools need to educate women about the issues they will face and the choices some will have to make. Women, as well as men, need to graduate law school equipped not only with knowledge and skills necessary to become competent, ethical lawyers, but also with information to make reasoned decisions about lifestyle choices and career options and to become successful associates if they so choose. The women need to be armed with the tools, information and strategies to level, or change, the playing field. Here is a list of suggested topics to be discussed with all law students before they graduate to help them become successful associates as well as lawyers, some of which are particularly important for the women:

1. **Law as a Business.** Young lawyers must become business persons in addition to skilled lawyers. Young lawyers will benefit from opportunities to learn strategies for client and business development, effective management of time, self-promotion (making partners aware of your abilities and successes), and asking for what they need (training, mentoring, opportunities to work on high profile work, etc.).

2. **Mentorships, Formal or Informal, are Beneficial.** Young lawyers need to understand the importance of developing relationships both within their own organization and in other venues. Young lawyers should seek opportunities to learn from seasoned lawyers, experienced business persons, and community leaders who have much wisdom and guidance to offer about all aspects of life. Observing successful people is a form of mentoring. Noting the inappropriate behavior or unsuccessful actions of others can be a valuable learning opportunity as well.
  
3. **Charting Your Own Path.** Young lawyers must determine the professional lifestyle for which they are well-suited. They must not wait for others to hand them opportunities. They must actively and judiciously seek out opportunities that will create or enhance their path to advancement. For some, it is simply a matter of making decisions rather than a *laissez faire* approach to what comes what may. Young women lawyers must understand that it is still the case that simply doing a good job does not always equate to equal opportunities and pay. They must take ownership of their future.

“The importance of the legal profession in today’s society is unquestionable. Lawyers are often powerful players in social, economic and political circles.”<sup>128</sup> Law firms and other legal employers must recognize the importance of including more women within the circles of influence. Suggestions for law firms are:

1. **Commit to the Advancement of Women.** Law firm management must commit itself to embracing innovative initiatives and alternatives for the advancement of women. Same should apply for minorities. To fail to do so will result in the loss of a tremendous wealth of talent trained by them. Law firms should sensitize its partners to the negative implications of biases, including the resulting economic impact. Failure to maintain a diverse workforce limits business development opportunities as more corporate clients

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<sup>128</sup> U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, DIVERSITY IN LAW FIRMS REPORT 2 (2003).

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focus on the racial and gender diversity for themselves and those with whom they do business. All lawyers must recognize that women are equally capable of successful outcomes while bringing unique perspectives to what still should be a noble profession. Their differences should be embraced and valued in the legal profession as well as in other positions of leadership within the community. Supporting women for leadership positions within the firm and in other professional and community organizations should be a priority.

2. **Adopt Policies and Structures to Support Women.** Law firms must create and, very importantly, enforce structures and policies to insure that women have the same opportunities for mentoring, training and advancement as the men. Management or a committee should insure that women associates receive appropriate formal training and career guidance, and that high-profile and profitable work is distributed fairly.
3. **Provide Flexibility to Those Who Need It.** Law firms should offer options for reduced work schedules for those associates who decide to have children, both men and women. Lawyers who desire to remain contributing forces professionally while trying to balance the needs of their precious charges should be able to find viable options to do so. Associates should have the opportunity to become partners and parents. The arrangements should be satisfactory to both parties, taking into consideration the existing economic and market conditions. Such arrangements should be reconsidered and adjusted as circumstances and conditions change.

All must continue to help society evolve to recognize and embrace the fact that women lawyers are equally capable, and sometimes more capable than their male counterparts, to serve as counselors, negotiators, and litigators to successfully guide their clients through the murky waters of their legal issues and to affect positive societal changes.

Tremendous progress has been made in a relatively short period of time; however, much remains to be done. Until parity is achieved, this much is certain: women in the legal profession

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are resilient and most are able to find ways to succeed, even if it means cutting a new path or taking the long route to reach the desired destination. In the meantime, as history teaches us, until such time as all have the opportunity to fully succeed, we cannot fulfill the assumptions upon which this nation stands.

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