

ABA COMMISSION ON WOMEN IN THE PROFESSION

**THE
Unfinished
Agenda**

**WOMEN
AND THE
LEGAL
PROFESSION**

Deborah L. Rhode

Acknowledgments

The Commission gratefully acknowledges the invaluable contributions of those who commented on early drafts of this report: Laurel Bellows, Brooksley Born, Pam Bresnahan, Mary Cranston, Cunyon Gordon, Deborah Graham, Gabi Kupfer, Bobbi Liebenberg, Charisse Lillie, Christel Marquardt, Ellen Mayer, Judith Resnik, Lynn Hecht Schafran, and Joan Williams.

In addition, the Commission extends special thanks to Stanford Law School for posting the publication on its website: womenlaw.stanford.edu; to Stanford Law School student Shana Scarlett for her crucial research assistance; to Stanford Librarians Paul Lomio and Erika Wayne for their exceptional reference support; and to Mary Tye of the Stanford Law School for her tireless dedication in preparing the manuscript. Without all these collaborative efforts, this report's agenda would also have remained unfinished.

Acknowledgement	2
Commission Members	4
Executive Summary	5
Preface	13
I. Elusive Equality	14
A. Myths of Meritocracy	14
B. Gender Stereotypes	14
C. Mentoring and Support Networks	16
D. Workplace Structures	17
E. Sexual Harassment	19
F. Gender Bias in the Justice System	20
II. Gender Issues in Context	23
A. Law Firms	23
B. Solo Practice	24
C. Corporate Counsel	25
D. Government and Public Interest Organizations	25
E. The Judiciary	26
F. Legal Education	27
III. The Difference Gender Difference Makes	30
A. Women’s “Different Voice”	30
B. Differences Among Women	31
IV. An Agenda for Change	33
A. Guiding Principles: Commitment and Accountability	33
B. Strategies for Legal Employers and Bar Associations	33
C. Strategies for Addressing Gender Bias in the Justice System	36
D. Strategies for Legal Education	36
V. Conclusion	38
Appendix 1	39
Endnotes	40

THE COMMISSION ON WOMEN IN THE PROFESSION

Chair

Deborah L. Rhode

Members

Brooksley Born
Pamela A. Bresnahan
Patricia Diaz Dennis
Lee Smalley Edmon
J. Cunyon Gordon
Peter Langrock

Amelia Rea Maguire
Pamela J. Roberts
Barbara Paul Robinson
Lish Whitson
Angela F. Williams

Special Advisor

Roberta D. Liebenberg

Board of Governors Liaison

Christel E. Marquardt

Liaisons

Barbara B. Aldave
Leslie M. Altman
Pamela I. Banner
Phyllis G. Bossin
N. Kay Bridger-Riley
Barbara O. Bruckman
Kristy A.N. Bulleit
Karen Clanton
Mary Beth Clary
Hope B. Eastman
Pamela Chapman Enslin
Laura Farber
Judith D. Fryer
Kristin Booth Glen
Marcia D. Greenberger
Andra B. Greene
Katherine L. Henry
Judith S. Kaleta
Dianna Kempe

Justice Elizabeth B. Lacy
Lori Levin
Marcia G. Madsen
Kathleen M. Martin
Anita Podell Miller
Jean Moyer
Katherine H. O'Neil
Jean Pawlow
Judith Resnik
Lynn Hecht Schafran
Debbie Segal
Jennifer Smith
Sheila Thomas
Kelly E. Toole
Hon. Aleta A. Trauger
Petty Tsay
Elizabeth Ann Tursi
Vickie Yates-Brown

Staff

Ellen T. Mayer
Staff Director

Gabi E. Kupfer
Communications & Publications Manager

Kimberly Youngblood
Programs & Projects Manager

Karen Berenbaum
Meeting Planner

Jackie Cyriac
Legal Intern

American Bar Association

Commission on Women in the Profession

750 North Lake Shore Drive

Chicago, IL 60611 (312)988-5715

Copies of this publication can be obtained on the
Commission's website: www.abanet.org/women

THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION

EXECUTIVE SUMMARY

This report provides the most comprehensive contemporary review of the status of women in the American legal profession and justice system. Published by the Commission on Women in the Profession, this third status report chronicles progress toward gender equality and progress yet to be made.

Since its creation in 1987, under the initial leadership of Hillary Rodham Clinton, the ABA's Commission on Women in the Profession has been the leading national voice for women in law. And since its beginning, the status of women has dramatically improved. Over the last dozen years, the number of women law partners, general counsels, and federal judges doubled. At the turn of this century, women accounted for almost a third of the nation's lawyers, and for the first time constituted a majority of entering law students.

Yet despite substantial progress towards equal opportunity, that agenda remains unfinished. Women in the legal profession remain underrepresented in positions of greatest status, influence, and economic reward. They account for only about 15 percent of federal judges and law firm partners, 10 percent of law school deans and general counsels, and five percent of managing partners of large firms. On average, female lawyers earn about \$20,000 less than male lawyers, and significant disparities

persist even between those with similar qualifications, experience, and positions. Studies involving thousands of lawyers find that men are at least twice as likely as similarly qualified women to obtain partnerships. The underrepresentation of women of color is still greater. They account for only 3 percent of the profession and their small numbers limit the information available about their experience. However, what data are available find significant inequalities in pay and promotion for lawyers of color, as well as for lesbian and disabled attorneys.

The problems are compounded by the lack of consensus that there are in fact serious problems. In the *ABA Journal's* 2000 poll, only about a quarter of female lawyers and three percent of male lawyers believed that prospects for advancement were greater for men than for women. Most attorneys equate gender bias with intentional discrimination, and the contexts in which they practice produce few overt examples. Yet a wide array of research finds that women's opportunities are limited by factors other than conscious prejudice. Major barriers include unconscious stereotypes, inadequate access to support networks, inflexible workplace structures, sexual harassment, and bias in the justice system. This report provides an overview of these barriers and recommends appropriate responses.

I. BARRIERS FOR WOMEN IN THE LEGAL PROFESSION

A. Gender Stereotypes

A longstanding obstacle to equal opportunity involves the mismatch between characteristics associated with women and those associated with professional success, such as assertiveness and competitiveness. Women still face a long-standing double standard and a double bind. They risk criticism for being too “soft” or too “strident,” too “aggressive” or “not aggressive enough.” And what appears assertive in a man often appears abrasive in a woman. A related obstacle is that female attorneys often do not receive the same presumption of competence or commitment as their male colleagues. In large national surveys, between half and three quarters of women believe that they are held to higher standards than men. The problem is compounded for women of color or other identifiable minorities including lesbians and disabled women. The performance of these groups is subject to special scrutiny, and their achievements often are attributed to special treatment rather than professional qualifications.

The force of traditional stereotypes is reinforced by other biases in decision making. People are more likely to notice and remember information that confirms prior assumptions than information that contradicts them. For example, attorneys who assume that working mothers are less committed tend to remember the times they left early, not the nights that they stayed late. People also want to believe that their own evaluations and workplaces are meritocratic. If women are underrepresented, the most psychologically convenient explanation is that they lack the necessary qualifications and commitment.

B. Support Networks

An equally persistent problem is inadequate access to informal networks of mentoring, contacts, and client development. Despite recent progress, many attorneys are most comfortable supporting others who seem similar in backgrounds, experiences, and values. Many organizations fail to provide adequate time and rewards for mentoring. The small number of women, particularly women of color, in senior positions prevents adequate assistance for all the junior colleagues who need it. Female attorneys who have substantial family commitments also have difficulty making time for mentoring relationships and for the informal social activities that generate collegial support and client contacts.

The result is that many female lawyers remain out of the loop of career development. They aren’t given enough challenging, high visibility assignments. They aren’t included in social events that yield professional

opportunities. And they aren’t helped to acquire the legal and marketing skills that are central to advancement.

These barriers can become self-perpetuating. Overburdened senior attorneys are reluctant to spend scarce time mentoring women who seem likely to leave. Women who are not supported are in fact more likely to leave. Their inability to reach senior positions then reduces the pool of women mentors and perpetuates the assumptions that perpetuate the problem. Again, the problem is particularly pronounced for women of color; in recent national surveys, fewer than a third were satisfied with the availability of mentors and fewer than one percent remain at firms where they are initially hired.

C. Workplace Structures

One of the greatest challenges for the profession involves workplace structures that fail to accommodate a balanced life. About two-thirds of surveyed lawyers report experiencing work/family conflict and most believe that it is the greatest barrier to women’s advancement. Only a fifth of surveyed lawyers are very satisfied with the allocation of time between work and personal needs, or with their opportunities to pursue the social good.

The most obvious failures in workplace structures are excessive hours and resistance to reduced or flexible schedules. Client expectations of instant responsiveness and total availability, coupled with lawyers’ expectations of spiraling salaries, have pushed working hours to new and often excessive levels. Hourly requirements have increased dramatically over the last two decades, and what has not changed is the number of hours in the day. Unpredictable deadlines, uneven workloads, or frequent travel pose further difficulties for those with substantial family obligations.

Unsurprisingly, most female attorneys feel that they do not have sufficient time for themselves or their families, and half report high levels of stress in juggling their responsibilities. Moreover, women who do not have families often have difficulty finding time for relationships that might lead to them. Unmarried associates frequently report ending up with disproportionate work because they have no acceptable reason for refusing it. Yet many lawyers who would like to adjust or reduce their hours bump up against considerable resistance. A wide gap persists between formal policies and accepted practices. Although over 90 percent of surveyed law firms allow part time schedules, only about three to four percent of lawyers actually use them. Most women surveyed believe that any reduction in hours or availability would jeopardize their prospects for advancement.

The result is yet another double standard and another double bind. Working mothers are held to higher standards than working fathers and are often criticized for being insufficiently committed, either as parents or professionals. Those who seem willing to sacrifice family needs to workplace demands may be thought lacking as mothers. Those who need extended leaves or reduced schedules may be thought lacking as lawyers. These mixed messages leave many women with the uncomfortable sense that whatever they are doing, they should be doing something else. Assumptions about the inadequate commitment of working mothers can influence performance evaluations, promotion decisions, and opportunities for the mentoring relationships and challenging assignments that are crucial for advancement.

Yet contrary to conventional wisdom, there is little basis for assuming that working mothers are less committed to their careers than other lawyers. Women are not significantly more likely to leave legal practice than men. Rather, they typically move to positions with greater flexibility. Also contrary to popular assumptions, taking a reduced schedule does not necessarily signal reduced professional commitment. In fact, it generally takes exceptional dedication for women to juggle competing work and family responsibilities in unsupportive working environments.

Although the inadequacy of family-friendly policies is not just a “women’s issue,” the price is paid disproportionately by women. Despite a significant increase in men’s domestic work over the last two decades, women in two-career couples continue to shoulder the major burden. Part of the reason involves longstanding socialization patterns and workplace practices that deter men from taking part-time schedules or family leaves for more than a few weeks. Only about 10-15 percent of surveyed law firms and Fortune 1000 companies offer the same paid parental leave to men and women.

Yet these norms make little sense, even from the most narrow economic calculus. A wide array of research indicates that part time employees are more productive than their full time counterparts, particularly those working extended hours. Bleary burned-out lawyers seldom provide cost-effective services, and they are disproportionately prone to stress, substance abuse, and other health-related disorders. Moreover, full-time employees are not necessarily more accessible than those on reduced or flexible schedules. Lawyers at a deposition for another client are less available than women at home with cell phones, emails, and fax machines. The limited research available finds no negative impact on client relations from reduced or flexible schedules.

Considerable data also indicate that such arrangements save money in the long run by reducing absenteeism, attrition, and corresponding recruitment and training

costs. Adequate opportunities for alternative schedules and reasonable working hours are becoming increasingly important in attracting as well as retaining talented lawyers. Almost half of surveyed women and a third of men placed work/life balance among their top reasons for selecting their current legal employer.

Similar points could be made about other workplace policies that affect lawyers’ quality of life. Organizations that fail to provide benefits for domestic partners, and to welcome them at social events, are overlooking cost-effective ways of making lesbian attorneys feel valued and comfortable in their workplaces. And organizations that fail to offer reasonable accommodations for lawyers with disabilities are paying a similar price. Greater efforts to insure the inclusiveness of legal workplaces would serve the interests of both lawyers and their employers.

Greater support for pro bono activities would yield similar benefits. ABA surveys consistently find that lawyers’ greatest source of dissatisfaction with their legal practice is the absence of connection to issues of social justice. This lack of involvement is partly attributable to the lack of employer support. Many organizations fail to give full credit for pro bono service in meeting billable hour requirements, or to reward it in promotion and compensation decisions. Although the inadequacy of pro bono policies is a concern for the legal profession generally, it also assumes special importance for women. Without employer support, pro bono service is likely to fall by the wayside among female lawyers who already face particular difficulties in juggling family and work commitments. The absence of pro bono assistance also carries special costs for women as potential clients, since women account for about two-thirds of the low income Americans who lack adequate access to legal services.

The result is to shortchange all concerned. Lawyers lose valuable opportunities for training, contacts, and connection to social justice causes that often sent them to law school in the first instance. Legal employers lose opportunities to build the morale, skills, and reputation of their workforce. And the public loses opportunities for assistance with urgent unmet legal needs.

D. Sexual Harassment

Another context in which inadequate policies assume particular significance for women involves sexual harassment. Of course, considerable progress has been made since the Commission was founded in 1987, when only about a third of surveyed law firms had sexual harassment policies. Almost all firms now have such policies. Yet, here again, the gap between formal policies and actual practices remains substantial. In the most recent surveys, about half to two-thirds of female lawyers, and a quarter to half of female court personnel, reported experiencing or observing sexual harassment. Almost three-quarters of

female lawyers thought harassment was a problem in their workplaces.

It is a problem for which women pay a substantial and disproportionate price. They account for about 90% of reported complaints, and many experience both economic and psychological injuries, such as loss of employment opportunities, unwanted transfers, anxiety, depression, and other stress-related conditions. Organizations pay another price in decreased productivity, increased turnover, and risks of legal liability.

The problem is often magnified by the costs of identifying it. Many women justifiably fear ridicule or retaliation. Those who complain are often dismissed as humorless and hypersensitive, and are subject to informal blacklisting. As a result, surveys from a wide variety of occupational contexts find that few women, typically well under 10 percent, make any formal complaint; fewer still can afford the financial and psychological costs of litigation. Yet while the likelihood of complaints is small except for the most serious behavior, concerns about unjust accusations often deter men from mentoring or socializing informally with younger women.

E. Gender Bias in the Justice System

The gender bias confronting women attorneys is part of a broader pattern that affects women throughout the justice system. Efforts to address bias in these other settings again reflect partial progress. Since 1982, when the first gender bias task force was formed, some 65 state and

federal courts have issued reports on bias in the justice system. The ABA has also amended both the ABA Model Code of Judicial Conduct and Model Rules of Professional Conduct to include prohibitions on bias. Yet despite such initiatives, bias commissions generally find persistent problems, involving not only gender but also race, ethnicity, disability, and sexual orientation.

Gender-based disparities are apparent in a wide variety of areas: in the composition of the bench, bar, and court personnel; in the outcomes for male and female litigants in areas like bail, sentencing, and custody awards; and in perceptions of participants in the justice system. Between two thirds and three quarters of women report experiencing bias, while only a quarter to a third of men report observing it and far fewer report experiencing it. About two-thirds of African American lawyers, but less than a fifth of white lawyers, report witnessing racial bias in the justice system. Forty percent of surveyed lawyers report witnessing or experiencing sexual orientation bias in professional settings, and between a quarter to a half of lawyers with disabilities also experience various forms of bias in the legal system. The most commonly cited problems involve disrespectful treatment, such as racist, sexist or homophobic comments; devaluation of credibility and injuries; and stereotypical assumptions about gender, race, ethnicity, disability, and sexual orientation. Although women are the most common victims of adverse gender stereotypes, men can be targets as well, particularly in areas such as custody disputes.

II. GENDER ISSUES IN CONTEXT

Although many of the opportunities and obstacles for women in the legal profession and legal system are widely shared, there are also some important differences across practice contexts. This report reviews key variations in women's experiences. About a third of female attorneys now work in law firms and another third are in solo practice. About 10 percent work in government or corporate counsel offices. About three percent are in the judiciary or in public interest, public defender, or legal aid organizations. And about one percent are in legal education. Compared with men, women are less likely to work in law firms, and more likely to work in public interest and public sector offices.

Part of the reason for such gender disparities may reflect perceptions about the different opportunities for women and men in these practice settings. Most studies find that men's chances of becoming partners in law firms are two to three times higher than women's. Gender disparities are especially pronounced for managing and equity partners, and for women of color. Minority women hold fewer than 1 percent of equity partnerships and their attrition rate after 8 years is virtually 100 percent. By contrast, women, particularly women of color, have traditionally perceived more hospitable environments in public interest and public sector positions. When relieved of the obligation to reward business

development and maximize profits, many governmental and public interest organizations find it easier to advance women and to establish flexible work structures.

So too, many in-house counsel offices have attracted women by offering reasonable hours and freedom from client development obligations. However, the most recent national survey data indicate that only a quarter of women in corporate law departments are satisfied with opportunities for advancement, and that they experience similar difficulty in balancing personal and professional lives as women in law firms.

For women in the judiciary, progress has been dramatic, but they still remain significantly underrepresented in positions carrying the most power, status, and job security. For example, the percentage of female judges on federal district and appellate courts doubled in the last decade, but still remains under a fifth of the total. Some of the underrepresentation may be due to the exclusion of women from informal networks and from the tendency of selection and confirmation processes to penalize those with public sector or public interest backgrounds. These backgrounds are often assumed to predict “activism” on

controversial issues. Such assumptions work against women, particularly women of color, who are disproportionately likely to come from these practice settings, or to have involvement with such issues. So too, women who have gained judicial positions report many of the same problems concerning credibility and disparaging treatment that confront other women in the justice system.

For women in legal education, progress has been similarly dramatic but similarly incomplete. Since the 1960s, women’s representation among students has increased from under five percent to over fifty, and the representation of women professors has climbed from under five percent to more than twenty percent. But female faculty are still clustered in the least prestigious and rewarded academic positions, such as librarians, research and writing instructors, and non-tenured clinicians. Gender disparities in status and pay persist even within these specialties. A wide array of studies also finds significant gender bias in student class participation, teaching evaluations, faculty promotions, and curricular priorities. For women in legal education, like women in the profession generally, equal opportunity remains an aspiration, not an achievement.

III. THE DIFFERENCE GENDER DIFFERENCE MAKES

For those concerned with women and the profession, a crucial question is what difference gender difference makes. Do women bring demonstrably different qualities than men to their work? The evidence is mixed, but the best answer appears to be “some women, some of the time.” However, the differences tend to be smaller than often assumed. In general, psychological research finds few respects in which men and women consistently differ, and even for those characteristics, gender typically accounts for only a small part of the variation among individuals. Contextual forces and other factors like race and ethnicity can be equally or more significant.

Systematic evidence concerning women in the legal profession is limited and not entirely conclusive. The most extensive research involves judicial behavior. Some, but not all studies, find gender differences, although not necessarily on issues of gender equality. Unsurprisingly, however, there is ample evidence that women as a group

attach particular importance to such issues. Professional organizations like the National Association of Women Judges, the ABA Commission on Women and the Profession, women’s bar associations, and women’s networks all have helped transform the legal landscape on women’s issues. Yet it also bears emphasis that many of these initiatives have been actively supported by men.

It is equally critical to emphasize that gender differences are experienced differently by different groups of women in different practice contexts. There is no “generic woman.” Race, class, ethnicity, disability, age, and sexual orientation can be as important as gender in defining professional opportunities and concerns. In order to ensure equality for all women, it is crucial to build alliances across these groups. A candid acknowledgment of differences encourages a better understanding of commonalities and a stronger collective effort to address shared concerns.

IV. AN AGENDA FOR CHANGE

A. Guiding Principles: Commitment and Accountability

The most important factor in ensuring equal opportunity for women in the legal profession is a commitment to this objective, a commitment that is reflected in both institutional and individual priorities. Legal employers and bar associations must be prepared to translate principles into practice, and to hold their leadership accountable for the results. Lawyers in positions of influence need to build a moral and a pragmatic case for diversity, and to incorporate diversity goals into their organization's policies and reward structures. Progress toward those goals should be a factor in evaluating supervisors, law firms, and other legal employers. Bar associations, women's organizations, and corporate and governmental clients can assist this effort by monitoring the performance of employers, and by steering business or providing special recognition to those with successful records. What strategies are most effective will depend on the particular workplace, but the information available suggests certain best practices that are most likely to be successful.

B. Strategies for Legal Employers and Bar Associations

1. Assessment of Problems and Responses: Policy Evaluation, Benchmarks, and Training

- Organizations should collect systematic information concerning women's experience in areas such as promotion, leadership opportunities, compensation, alternative work schedules, sexual harassment, and satisfaction levels.
- Organizations should review formal policies, procedures, and educational materials to ensure that they reflect adequate commitments to equal opportunity and inclusiveness. Model policies from the ABA Commission on Women and other bar organizations can provide useful guidance. At a minimum, employers need to specify diversity-related objectives, prohibited conduct, and remedial processes.
- Organizations should establish formal benchmarks for monitoring progress on diversity-related goals, and should consider progress toward these goals in evaluating lawyers' performance.
- Organizations should consider providing management training and employee education on diversity issues and enlisting assistance from expert consultants. Such initiatives should be seen as a catalyst, not substitute for, broader changes.

2. Evaluation Structures, Leadership Opportunities, and Professional Development

- Organizations should review their evaluation, work assignment, and compensation procedures to ensure equal opportunity.
- Legal employers and bar organizations should provide adequate opportunities for formal and informal training in areas that affect professional development, such as marketing, leadership, communication, and related skills.
- Organizations should reexamine leadership selection criteria and structures to ensure adequate opportunities and diversity.

3. Quality of Life and Work-Family Initiatives

- Employers need to develop adequate policies and practices concerning flexible and reduced schedules, family leaves, telecommuting, child care assistance, domestic partners, disability accommodations, and related quality of life initiatives.
- Organizations need to monitor implementation to ensure that options that are available in principle are acceptable in practice and that standard billable hour expectations are not excessive.

4. Mentoring Programs and Women's Networks

- Legal employers and bar organizations should establish formal mentoring programs and support voluntary women's networks that provide informal mentoring and career assistance. Well-designed programs should assess and reward mentoring efforts.
- Women's networks should receive adequate assistance for activities such as workshops, seminars, speaker series, and informal events, and for outreach to particular groups of women who may encounter special obstacles, such as women of color, lesbians, women with disabilities, and women on part-time schedules. Where appropriate, support staff should be included in network initiatives.

5. Sexual Harassment

- Organizations should develop or review sexual harassment policies to ensure adequate procedures for receiving complaints, providing effective sanctions, and preventing retaliation. These procedures should also establish adequate safeguards against unwarranted accusations, and overly punitive responses to genuine misunderstandings or inadvertent offenses.
- Bar ethical authorities should treat sexual harassment as a form of professional misconduct.

6. Pro Bono Work By and For Women

- Employers and bar associations should provide adequate opportunities, rewards, and recognition for pro bono work. Assistance should be available for initiatives that effectively link women lawyers and women's professional organizations with programs that assist women in particular need of assistance.

C. Strategies for the Justice System

Courts and bar organizations should work with gender bias specialists to ensure that every justice system has strategies such as:

- A standing committee or administrative structure with adequate staff and resources to address gender bias;
- Effective education, not just in "bias sensitivity" but also in the social, economic, and psychological research that should inform decision making on gender-related issues;

- Complaint structures that provide options for confidential reports and protections against retaliation;
- Codes of conduct that specifically address gender bias;
- Attention to the intersection of multiple forms of bias, including not only gender but also race, ethnicity, sexual orientation, and disability;
- Initiatives to ensure equal opportunities for women at all levels of the justice system;
- Collaboration with other groups, both within and outside of the courts, concerned with eliminating gender bias;
- Collection of data to identify persistent problems and to monitor the effectiveness of responses.

This is not a modest agenda. But it is critical to maintaining a legal system that is committed to equal justice in practice as well as principle.

ABOUT THE COMMISSION

The Commission on Women in the Profession was created in 1987 to assess the status of women in the legal profession and to identify barriers to their advancement. Hillary Rodham Clinton, the first chair of the Commission, set the agenda for the Commission to change the face of the legal profession by issuing a path breaking report. That report provided a comprehensive review of the obstacles to equal opportunity in the profession.

Now, in its second decade, the Commission aims not only to address the challenges that women lawyers face, but also to combat bias in the justice system and to improve the quality of life for the profession generally. Drawing upon the diverse backgrounds and expertise of its twelve members who are appointed by the ABA President, the Commission develops programs, policies, and publications to promote gender equality.

As the national voice for women lawyers, the Commission is dedicated to ensuring fairness in the justice system and equal opportunity in legal workplaces.

The Commission's Newsletter

Published three times per year, *Perspectives* gives you crucial insights on professional development:

- Advice and resources for career advancement
- Political and legal developments that affect women in the profession
- Profiles of leading women lawyers
- Activities of the Commission and other bar associations and women's rights organizations

To subscribe to *Perspectives*, you may call (800) 285-2221 or order through the Commission's website at www.abanet.org/women.

New Commission Publications

Two other Commission publications expected this year are:

Lawyers and Balanced Lives. A second edition to one of the Commission's most popular publications, *Lawyers and Balanced Lives* is a practical guide to drafting and implementing effective workplace policies. While the policies described in the manual are designed to promote equal opportunity, *Lawyers and Balanced Lives* also serves to enhance the quality of life for all members of the legal profession. An introductory section provides a comprehensive overview of research, reports, and recommendations on effective workplace practices. The remainder of the manual provides sample policies and guidelines on family leave, alternative work schedules, and pro bono work.

The Difference "Difference" Makes A new report highlights the findings of the Women's Leadership Summit held in the spring of 2001 and cosponsored by the ABA Office of the President and The Kennedy School of Government at Harvard University. This publication explores the difference gender makes in both access to leadership and in its exercise. With a focus on law, politics, and business—three arenas of greatest public influence—this report explores the difference gender makes in leadership opportunities, styles, effectiveness, and priorities. Strategies for change at both an institutional and individual level are also included.

To order these new publications, or others from the ABA Commission on Women, call (800) 285-2221 or visit the Commission's website at www.abanet.org/women.

THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION

PREFACE

For most of American history, women were considered unfit for law, or law unfit for women. Until early in the 20th century, judges, legislators, and legal educators largely agreed that women lacked a “legal mind;” the “peculiar qualities of womanhood, its gentle graces, its purity, its delicacy... and its emotional impulses” were not qualifications for “forensic strife.”¹

Even after formal legal prohibitions on admission were lifted, informal barriers persisted. Until the early 1960s, women constituted no more than 3 percent of the profession, and it was not until the 1970s that all accredited law schools eliminated sex-based restrictions.²

During the past three decades, the number and prominence of female lawyers have grown dramatically. Women now constitute almost 30% of the profession and about half of entering law school students. Women’s representation in leadership positions has similarly increased. Since 1987, when the American Bar Association’s Commission on Women in the Profession was formed, the number of female federal judges, large firm partners, and general counsels has more than doubled. At the turn of the 21st century, two women sat on the Supreme Court, and women served as Attorney General, President of the American Bar Association (ABA), and President of the National Conference of Bar Presidents. Female leaders can be found within virtually every field of private and public sector practice. And their success generally comes through the support of men as well as women who are deeply committed to equal opportunity.

Yet despite substantial progress toward equal opportunity, that agenda remains unfinished. The first report of the Commission on Women in the Profession, submitted in 1988 by Chair Hillary Rodham Clinton, predicted that “time alone is unlikely to alter significantly the underrepresentation of women in law firm partnerships, judicial appointments, and tenured faculty positions.” The research summarized in this report confirms that prediction.

Barriers persist, and a central problem is the lack of recognition that there *is* a significant problem. Ironically enough, women’s increasing progress has created its own obstacles to change. In recent surveys by the American Bar Association and National Association for Law Placement, a majority of lawyers, both male and female, agreed that women are treated equally in the profession.³

Even those who acknowledge gender bias to be a problem often discount its significance, or fail to recognize

its persistence in their own workplaces. Many attorneys equate bias with intentional discrimination and the legal settings they encounter produce few clear examples of it. Most individuals are reluctant to see their own actions and organizations as anything other than meritocratic.⁴

This ‘no problem’ problem is of central concern both for the profession and for the public.⁵ Barriers to women’s advancement compromise fundamental principles of equal rights and social justice, as well as impair effective organizational performance. In an increasingly competitive and socially diverse environment, the profession needs to reflect a similarly diverse set of backgrounds and experiences at all levels, in all fields of practice. In occupations like law, where half of new entrants are women, organizations must insure equal opportunity in order to attract, retain, and motivate the best qualified individuals. Unsurprisingly, current research finds that the employers most successful in promoting gender equality are also the most successful in financial terms such as economic growth and return on investment.⁶

It stands to reason that an organization’s ability to take full advantage of the entire pool of talented professionals will affect its productivity. Clients, colleagues, and the public all benefit from a diverse workforce that can bring different experiences, perspectives, and concerns to the resolution of legal problems.

Moreover, as gatekeepers of our nation’s justice system, lawyers should be leaders in promoting equality. Fundamental fairness requires a legal profession that adequately represents the community it serves. We remain a considerable distance from that goal.

There is no greater
inequality than the
equal treatment
of unequals.

*Justice Felix Frankfurter,
Dennis v. United States*

I. ELUSIVE EQUALITY

A. Myths of Meritocracy

Gender inequalities in the legal profession are pervasive; perceptions of inequality are not. A widespread assumption is that barriers have been coming down, women have been moving up, and it is only a matter of time before full equality becomes an accomplished fact. In the *ABA Journal's* 2000 poll, only a quarter of female lawyers and three percent of male lawyers thought that prospects for advancement were greater for men than for women.⁷

As lawyers responding to state gender bias surveys have put it, “time [will] take care of the problem.” “The so-called gender gap is vastly overblown. If people who enter the arena will concentrate on the job and get the chip off their shoulders . . . they should do fine in today’s society.” “Of all the problems we have as lawyers . . . discrimination is low on the list of important ones.”⁸

Such perceptions are hard to square with the facts. Time alone, and women’s relatively recent admission to the profession cannot explain the extent of sex-based disparities in pay or promotion. At the turn of the 21st century, women in legal practice made about \$20,000 a year less than men, and surveys of law firms and corporate counsel salaries have consistently found a significant gender gap even among those with similar positions and experience.⁹

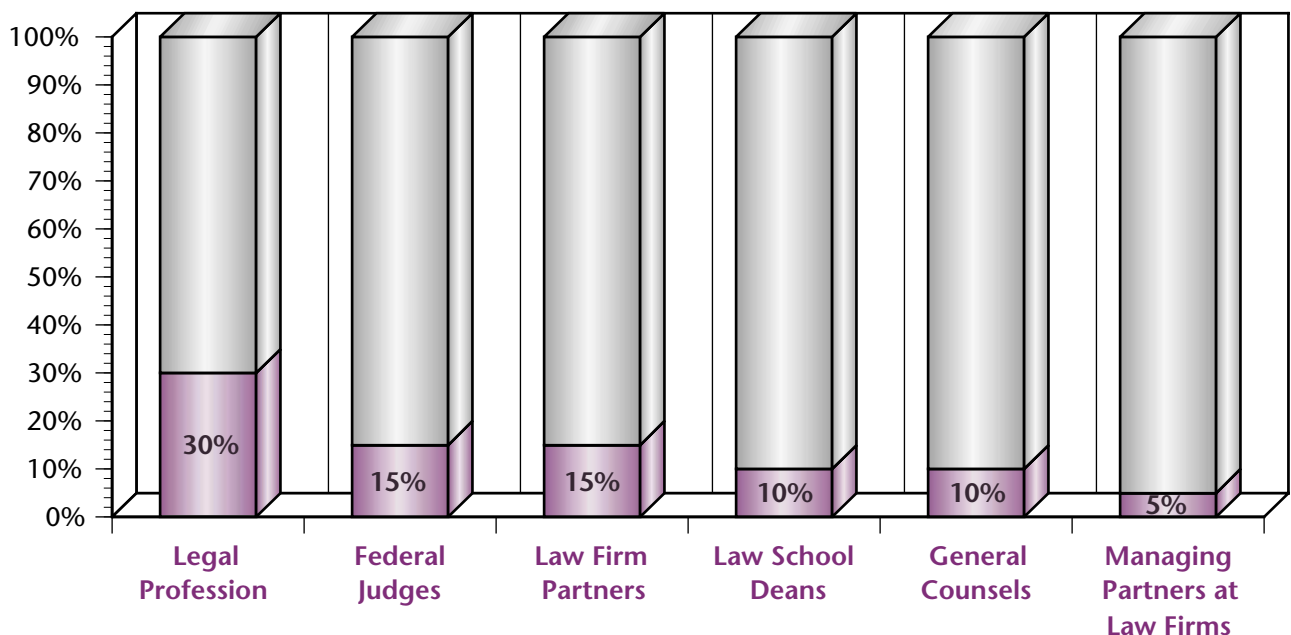
Moreover, male and female attorneys with similar qualifications frequently do not obtain similar positions. In law, as in most other professional contexts, women are underrepresented at the top and overrepresented at the

bottom. Women now account for almost 30 percent of the profession, but only about 15% of federal judges and law firm partners, 10% of law school deans and general counsels, and 5% of managing partners of large firms.¹⁰ Comparable gender disparities are apparent in court administrative positions.¹¹ Studies involving thousands of lawyers have found that men are at least twice as likely as similarly qualified women to obtain partnership.¹² The underrepresentation of women of color is still greater. They account for only 3% of the profession and their small numbers have limited the information available about their experience.¹³ However, what data are available reflect significant disparities in pay and promotion for lawyers of color, as well as for members of other identifiable groups such as lesbian and disabled lawyers.¹⁴ The pipeline leaks, and if we wait for time to correct the problem, we will be waiting a very long time.

In accounting for these persistent and pervasive disparities, a wide array of research reveals common patterns. Few of the problems reflect intentional discrimination. Women’s opportunities are limited by traditional gender stereotypes, by inadequate access to mentors and informal networks of support, by inflexible workplace structures, and by other forms of gender bias in the justice system.

B. Gender Stereotypes

In order to make sense of a complex social world, individuals rely on a variety of techniques to categorize



information. One strategy involves stereotypes, which associate certain socially defined characteristics with identifiable groups.¹⁵

In virtually every society, gender is a fundamental aspect of human identity and gender stereotypes influence behavior at often unconscious levels. These stereotypes work against women's advancement in several respects, even among individuals and institutions fully committed to gender equality.¹⁶

First, and most fundamentally, the characteristics traditionally associated with women are at odds with many characteristics traditionally associated with professional success such as assertiveness, competitiveness, and business judgment. Some lawyers and clients still assume that women lack sufficient aptitude for complex financial transactions or sufficient combativeness for major litigation.¹⁷ Particularly in high stakes matters, risk averse managers are often reluctant to gamble on female practitioners.¹⁸

Yet professional women also tend to be rated lower when they depart from traditional stereotypes and adopt "masculine," authoritative styles. Negative evaluations are particularly likely when the evaluators are men, or the role is one typically occupied by men.¹⁹

As a consequence, female lawyers often face a double standard and a double bind. They risk appearing too "soft" or too "strident," too aggressive or not aggressive enough.²⁰ And what appears assertive in a man often appears abrasive in a woman.

A related obstacle is that women often do not receive the same presumption of competence as their male counterparts. In large national surveys, between half and three-quarters of female attorneys believe that they are held to higher standards than their male counterparts or have to work harder for the same results.²¹ Only about a third of women are very satisfied with their opportunities for advancement.²²

Particularly where the number of women is small, their performance is subject to closer scrutiny and more demanding requirements, and their commitment is open to greater question.²³ The devaluation of women and the influence of gender stereotypes is especially likely in organizations that have few women in leadership positions.²⁴ Even in experimental situations where male and female performance is objectively equal, women are held to higher standards, and their competence is rated lower.²⁵ Women also see themselves as less deserving of rewards for the same performance and they are less likely to be viewed as leaders.²⁶ And as subsequent discussion notes, working mothers, unlike working fathers, are often assumed to lack the commitment necessary for demanding legal positions.

The problem is compounded when evaluators have little accountability and those evaluated are women of color or other identifiable minorities including lesbians and disabled women.²⁷ The performance of these groups is more often subject to criticism, and their achievements

more often attributed to luck or special treatment.²⁸ These stereotypes are particularly hard to avoid for women of color, whose positions are frequently attributed to affirmative action rather than professional qualifications.²⁹ Of course, the form these stereotypes take varies somewhat across, and even within, racial and ethnic groups. For example, Asian-American women face different expectations than African-American women, and there are also important variations in the experiences of women with Mexican-American, Puerto Rican, Cuban, or other Latin American backgrounds.³⁰

However, all of these groups also share an experience of devaluing and demeaning stereotypes. As an earlier Commission report notes: "Although certain assumptions of incompetence or weakness are leveled at women generally, or at minority males, neither group has to weather both sets of stereotypes the way multicultural women do."³¹

Yet that double disadvantage is often overlooked or understated by those who never experience it. About two thirds of black lawyers, compared with only 10 percent of white lawyers, believe that minority women are treated less fairly than white women in hiring and promotion.³² Unsurprisingly, women of color also are significantly less satisfied with their professional opportunities than other lawyers.³³

Women with disabilities and lesbians who are open about their sexual orientation face analogous problems. In representative surveys, between half and three-quarters of disabled lawyers believe that their condition has limited their employment opportunities.³⁴ And a majority of gay and lesbian lawyers similarly report that their sexual orientation has adversely affected their careers.³⁵

The force of traditional stereotypes is compounded by the subjectivity of performance evaluations and by other biases in decision-making processes. People are more likely to notice and recall information that confirms prior assumptions than information that contradicts them.³⁶ Attorneys who assume that working mothers are less committed tend to remember the times they left early, not the nights they stayed late.

A related problem is that people share what psychologists label a "just world" bias.³⁷ They want to believe that, in the

They called me the "lady lawyer" a pretty sobriquet which [enabled]... me to maintain a dainty manner as I browbeat my way through the marshes of ignorance and prejudice.

Clara Shortridge Foltz, the first woman lawyer on the Pacific coast

absence of special treatment, individuals generally get what they deserve and deserve what they get. Perceptions of performance are frequently adjusted to match observed outcomes. Individuals are also motivated to interpret information in ways that maintain their own status and self-esteem.³⁸

Lawyers who have achieved decision making positions generally would like to believe that the system in which they have succeeded is fair, objective, and meritocratic.³⁹ If women, particularly women of color, are underrepresented in positions of greatest prominence, the most psychologically convenient explanation is that they lack the necessary qualifications or commitment.

The problem is compounded by the disincentives to raise it. Women who express concerns often learn that they are “overreacting” or exercising “bad judgment.”⁴⁰ The result is to prevent candid discussions of diversity-related issues. Lawyers who experience bias are reluctant to appear confrontational, and decision makers are reluctant to air concerns about performance that could make them appear biased.⁴¹

Recent studies also find that women are less inclined than men to engage in internal office battles that often yield power and financial rewards. Traditional gender roles and stereotypes discourage many female lawyers from feeling entitled to complain about credit, compensation, and committee assignments.⁴² Rather than appear “pushy” or “strident,” women often lump it or leave it, which perpetuates a structure unresponsive to their concerns.

C. Mentoring and Support Networks

An equally persistent problem is inadequate access to informal networks of mentoring, contacts, and client development.⁴³ Despite recent progress, many men who endorse equal opportunity in principle fall short in practice; they support those who seem most similar in backgrounds, experiences, and values.⁴⁴

Some individuals don’t like the tension of working with those who seem “different.” Concerns about sexual harassment or the appearance of impropriety can heighten that discomfort. Male attorneys often report reluctance to mentor or to be seen alone with female colleagues because of “how it might be perceived.”⁴⁵ Others enjoy the bonding that occurs in all-male social or sporting events. Law firm surveys offer repeated refrains of exclusion from “boys clubs” or “old boys’ networks.”⁴⁶

It is, of course, not only men who are responsible for these patterns of exclusion. Recent surveys reveal frustration with some senior women who believe that if they managed without special help, why can’t everyone else.⁴⁷ These attitudes may be rewarded by the special power, visibility, and status that come with being one of the few women at the top.

By contrast, many other prominent women leaders are concerned about gender-related problems but reluctant to

become actively involved in the solution. Some worry about being “typed as a woman” by participating in special women’s networking groups or by giving disproportionate support to other women, particularly those whose performance is not sure to reflect favorably on their sponsors.⁴⁸

Many other senior women, particularly women of color, do what they can but are too overcommitted to provide adequate mentoring for all the junior colleagues who need assistance.⁴⁹ And female attorneys at all levels who have substantial family commitments also have difficulty making time for mentoring relationships and for the informal social activities that generate collegial support and client contacts. Excessive hourly demands, inadequate rewards for mentoring, and high attrition rates compound the problem. Overworked senior lawyers are reluctant to invest time assisting those who are soon likely to leave.

The result is that many female lawyers remain out of the loop of career development. They aren’t adequately educated in their organization’s unstated practices and politics. They aren’t given enough challenging, high visibility assignments. They aren’t included in social events that yield professional opportunities. And they aren’t helped to acquire the legal and marketing skills that are central to advancement.⁵⁰

These barriers can then become self-fulfilling in several respects. Women who don’t achieve prominence within their organizations have difficulty attracting clients, contacts, and recognition outside it. This lack of external influence prevents women from demanding the internal opportunities that would help secure it. So too, women who aren’t gaining the experience necessary to succeed have difficulty gaining mentors who could help address the problem. Overburdened senior attorneys are often reluctant to spend scarce time mentoring junior colleagues who seem unlikely to advance. Women who are not mentored are in fact less likely to advance. Their disproportionate attrition then reduces the pool of mentors for lawyers of similar backgrounds, and perpetuates the assumptions that perpetuate the problem.⁵¹

Problems of exclusion are greatest for those who appear “different” on other grounds as well as gender, such as race, ethnicity, disability, or sexual orientation. Many women of color report being treated as outsiders by white colleagues, and as potential competitors by minority men. In Catalyst’s 2001 survey, fewer than a third of the women of color were satisfied with the availability of mentors.⁵² This absence of support is part of the reason why women of color have the lowest law firm retention rate of any group.⁵³

A related problem for these women is being confined to certain specialties where race or ethnicity is viewed as an asset, such as employment discrimination cases, or government relations with minority-led agencies.⁵⁴ In the *ABA Journal’s* most recent survey, fewer than 10 percent of black attorneys believed that law firms had a genuine commitment to diversity.⁵⁵

So too, women with disabilities frequently report being shunned or stigmatized by other lawyers.⁵⁶ And despite growing tolerance toward gay and lesbian attorneys, those who are open about their sexual orientation too often risk isolation and denial of access to clients who might be “uncomfortable” working closely with them.⁵⁷ Many legal employers fail to include sexual orientation in their anti-discrimination policies.⁵⁸ Even in jurisdictions that prohibit discrimination on the basis of sexual orientation, some professionals remain quite explicit about their prejudices. As one anonymous participant in a Los Angeles bar survey described his firm’s attitude: “Don’t have any, don’t want any.”⁵⁹

D. Workplace Structures

A further obstacle involves workplace structures that fail to accommodate substantial family responsibilities and pro bono commitments. In recent surveys, about two-thirds of lawyers report experiencing work/family conflict and most believe that it is the greatest barrier to women’s advancement.⁶⁰ Only a fifth of surveyed lawyers are very satisfied with the allocation of time between work and personal needs, or with their opportunities to contribute to the social good.⁶¹

The most obvious failures in workplace structures are excessive hours and resistance to reduced or flexible schedules. Part of the problem involves the increasing pace and competition of commercial life. Technological innovations have been a mixed blessing. They make it easier for attorneys to work from home, but by the same token, they also make it harder for attorneys to *not* work while at home. Lawyers remain perpetually on call—Btethered to the workplace through cell phones, emails, faxes, and beepers. Client expectations of instant responsiveness and total availability, coupled with lawyers’ expectations of spiraling salaries, have pushed working hours to new and often excessive limits.⁶²

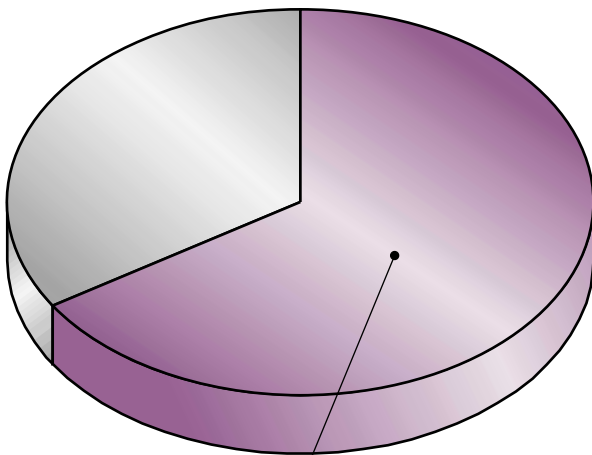
Hourly requirements have increased dramatically over

the last two decades, and what has not changed is the number of hours in the day.⁶³ Twelve hour days and week-end work are typical of many practice settings.⁶⁴ Unpredictable deadlines, uneven workloads, or frequent travel pose further difficulties for those with substantial family obligations. Unsurprisingly, most female attorneys feel that they do not have sufficient time for themselves or their families, and half report high levels of stress in juggling their responsibilities.⁶⁵

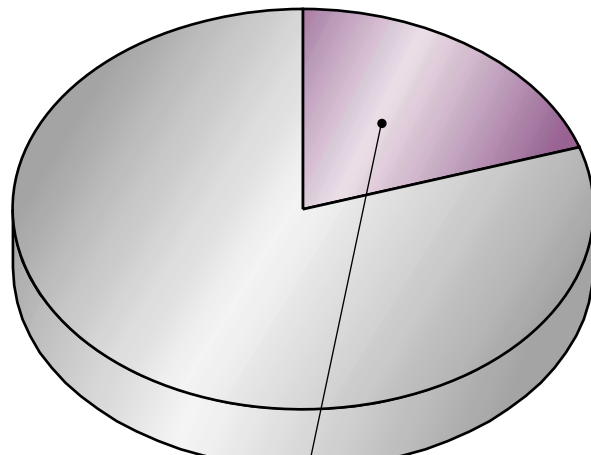
Few supervisors are as blunt as the partner who informed one junior colleague that “Law is no place for a woman with a child.”⁶⁶ But that same message is sent by resistance to “special” treatment for working mothers. Moreover, women who do not have partners or children often have difficulty finding time for relationships that might lead to them. As unmarried associates in a recent law firm survey noted, they end up with disproportionate work because they have no acceptable reason for refusing it.⁶⁷

The problem is compounded by the tendency to view long hours as a measure of other qualities such as commitment, ambition, and reliability under pressure.⁶⁸ The result is a “rat race equilibrium” in which most lawyers feel that they would be better off with shorter or more flexible schedules, but find themselves within institutional structures that strongly discourage such alternatives.⁶⁹

A wide gap persists between formal policies and actual practices. Although over 90 percent of surveyed law firms report policies permitting part time schedules, only about three to four percent of lawyers actually use them.⁷⁰ As is clear from a forthcoming ABA Commission Report, “Lawyers and Balanced Lives,” part of the problem involves the inadequacy of many policies in terms of laws, eligibility, assignments, and advancement. Most women surveyed believe, with good reason, that any reduction in schedule or availability would jeopardize their prospects for promotion and could put them “permanently out to pas-



Lawyers experiencing work/family conflict⁶⁰



Lawyers satisfied with the allocations of time between work, personal needs and opportunities to contribute to social good⁶¹

ture.”⁷¹ The lack of adequate work arrangements is a similar problem for women throughout the legal system, such as court administrative personnel.⁷²

The result is yet another double standard and another double bind. Working mothers are held to higher standards than working fathers and are often criticized for being insufficiently committed, either as parents or professionals. Those who seem willing to sacrifice family needs to workplace demands may be thought lacking as mothers. Those who need extended leaves or reduced schedules may be thought lacking as lawyers. These mixed messages leave many women with the uncomfortable sense that whatever they are doing, they should be doing something else.⁷³

Assumptions about the inadequate commitment of working mothers can influence performance evaluations, promotion decisions, and opportunities for the mentoring relationships and challenging assignments that are prerequisites for advancement.⁷⁴ Some women lawyers come back from maternity leaves and receive only routine work, while other women encounter choices that aren't really choices, such as “would you rather sleep or win?”⁷⁵ In the *ABA Journal's* 2000 poll, a third of women doubted that it was realistic to combine successfully the roles of lawyer, wife, and mother. The number of women expressing such doubts has almost tripled over the past two decades.⁷⁶

Yet contrary to conventional wisdom, there is little basis for assuming that working mothers are less committed to their careers than other lawyers. Women are not significantly more likely to leave legal practice than men.⁷⁷ Rather, they typically move to positions with greater flexibility.

Also contrary to popular assumptions, taking a reduced schedule does not necessarily signal reduced professional commitment. In fact, it generally takes exceptional dedication for women to juggle competing work and family responsibilities in unsupportive working environments. As one lawyer told a Boston Bar Association task force: “On most days I am

taking care of children or commuting or working from the moment I get up until I fall in bed at night. No one would choose this if they weren't very committed.”⁷⁸

Although the inadequacy of family-friendly policies is not just a “women's issue,” the price is paid disproportionately by women. Many male attorneys have spouses who assume the bulk of family responsibilities; the vast majority of female attorneys do not. Almost half of women in legal practice are currently unmarried (compared with 15% of men) and few women have partners who are primary caretakers.⁷⁹ Despite a significant increase in men's domestic work over the last two decades, women in two career couples continue to shoulder the major burden.⁸⁰

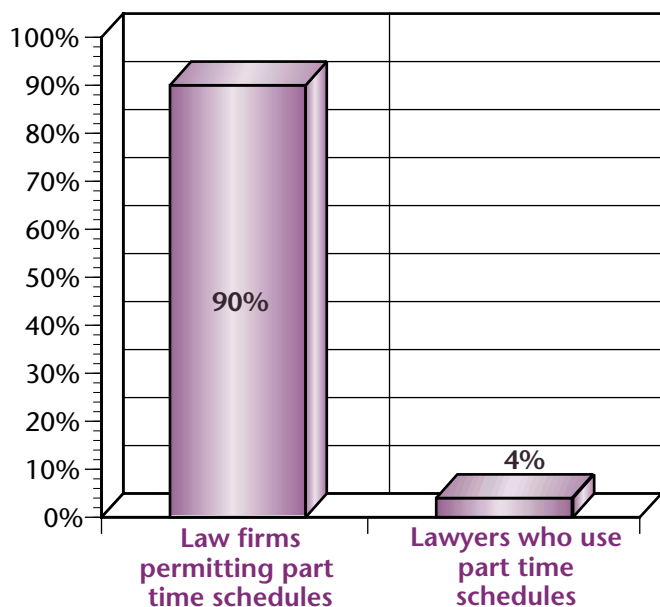
Part of the reason involves longstanding socialization patterns and workplace practices that deter men from taking part-time schedules and or extended family leaves. Workplaces that only grudgingly accommodate mothers are even less receptive to fathers. Only about 10-15 percent of surveyed law firms and Fortune 1000 companies offer the same paid parental leave to men and women.⁸¹ Almost no male lawyers take reduced schedules and few feel free to ask for leaves beyond a few weeks.⁸²

Ironically enough, the expectation that fathers will remain fully committed to their careers may sometimes give them greater leeway than mothers in seeking modest accommodations for family needs. In a recent survey of large law firms, several women noted with resentment that when male colleagues wanted time off in the middle of the day for family reasons, they were thought “caring and devoted” or “cute and endearing,” but when women left for similar reasons, they were typed as unreliable and uncommitted.⁸³

However, that special leeway for men extends only so far. As one male lawyer explained to a Boston Bar Association work/family task force, it may be “okay [for men] to say that they would like to spend more time with the kids, but it is not okay to do it, except once in a while.”⁸⁴

As a consequence, many workplace structures short-change both men and women as well as their families. Recent research suggests that close parent-child relationships are crucial to the well-being of fathers and mothers.⁸⁵ Yet men have fewer acceptable justifications than women for seeking reduced schedules. And women's justifications tend not to be seen as truly acceptable as long as they are viewed as “women's issues.” In short, men cannot readily get on the “mommy track.” Women cannot readily get off it.

The result is that those with the greatest family commitments rarely achieve positions with the greatest influence over workplace policies. By contrast, many lawyers who do reach those positions have made substantial personal sacrifices and resist accommodating colleagues with different priorities. A recurrent refrain in management circles is “I had to give up a lot. You [should] too.”⁸⁶ If women want to be “players,” the message is that they have to play by the existing rules.⁸⁷



Yet these rules make little sense, even from the most narrow economic calculus. A wide array of research indicates that part time employees are more productive than their full time counterparts, particularly those working sweatshop schedules.⁸⁸ Bleary burned-out lawyers seldom provide cost-effective services, and they are more prone to stress, substance abuse, and other health-related disorders.⁸⁹

Nor are these full-time employees necessarily more accessible than those on reduced or flexible schedules. Lawyers at a deposition for another client are less available than women with a cell phone on the playground. What little research is available finds no negative impact on client relations from reduced or flexible schedules.⁹⁰ And considerable data indicate that such arrangements save money in the long run by reducing absenteeism, attrition, and corresponding recruitment and training costs.⁹¹

Adequate opportunities for alternative schedules and reasonable working hours also are becoming increasingly important in attracting as well as retaining talented lawyers. In the Catalyst 2001 survey, almost half of women and a third of men placed work/life balance among their top reasons for selecting their current legal employer.⁹²

Similar points could be made about other workplace policies that affect lawyers' quality of life. Organizations that fail to provide benefits for domestic partners and to welcome them at social events, are overlooking cost-effective ways of making lesbian attorneys feel valued and comfortable in their workplaces.⁹³

And organizations that fail to offer reasonable accommodations for lawyers with disabilities are paying a similar price. Most requests for assistance are on the order of a few hundred dollars, and many obvious needs of a similarly modest nature remain unmet because lawyers are afraid to draw attention to their disabilities.⁹⁴ Greater efforts to insure the inclusiveness of legal workplaces would serve the interests of both lawyers and their employers.

Greater support for pro bono activities would yield similar benefits. ABA surveys consistently find that lawyers' greatest source of dissatisfaction with their legal practice is the absence of opportunities to further the social good.⁹⁵

That lack of opportunity is partly attributable to the lack of employer support. Many organizations fail to give full credit for pro bono service in meeting billable hour requirements, or to reward it in promotion and compensation decisions.⁹⁶ The result is to shortchange all concerned. Lawyers lose valuable opportunities for training, contacts, and connection to social justice causes that often sent them to law school in the first instance.⁹⁷ Legal employers lose opportunities to build the morale, skills, and reputation of their workforce. And the public loses opportunities for assistance with urgent unmet legal needs.

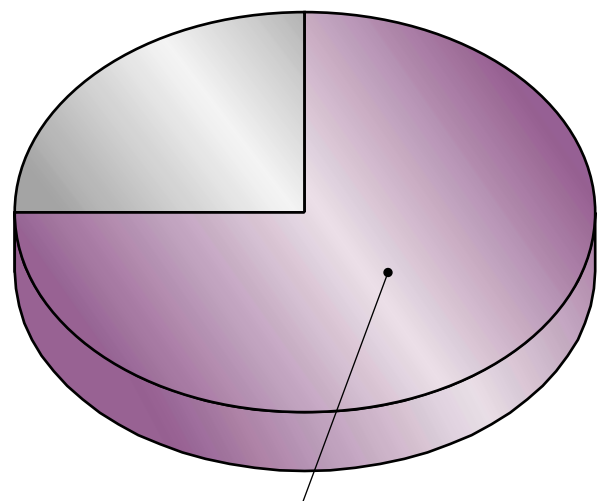
Although the inadequacy of pro bono policies is a concern for the profession generally, it also assumes special importance for women. Without employer support, pro bono service is

likely to fall by the wayside among female lawyers who already face particular difficulties in juggling family and work commitments. The absence of pro bono assistance also carries special costs for women as potential clients, since women account for about two-thirds of the low income Americans who lack adequate access to legal services.⁹⁸

E. Sexual Harassment

Another context in which inadequate policies assume particular significance for women involves sexual harassment. About 90% of reported complaints are from women, and many pay a substantial price in both economic and psychological terms, such as loss of employment opportunities, unwanted transfers, anxiety, depression, and other stress-related conditions.⁹⁹ Organizations pay another price in decreased productivity, increased turnover, and risks of legal liability.¹⁰⁰ Those risks can be considerable, in terms of reputation as well as dollars. A widely publicized example involved a mid-1990s multimillion dollar verdict against a prominent San Francisco law firm for failure to prevent repeated harassment by one of its leading partners.¹⁰¹

The point has not been lost on employers. Considerable progress has been made since the Commission was founded in 1987, when only about a third of surveyed law firms had sexual harassment policies.¹⁰² Recent studies indicate that almost all firms now have such policies, which typically follow federal regulations prohibiting unwelcome sexual advances and conduct creating an intimidating, hostile, or offensive working environment.¹⁰³ Yet in some organizations, the gap between formal prohibitions and actual practices remains substantial. The most recent surveys find that between about half to two-thirds of female lawyers, and a quarter to half of female court personnel, report experiencing or observing sexual harassment.¹⁰⁴ Almost three-quarters of female lawyers believe that harassment is a problem in their workplaces.¹⁰⁵ It is, of course, impossible to determine from such surveys how much



Women lawyers who believe sexual harassment is a problem in their workplace¹⁰⁴

of the conduct at issue would be held serious enough to justify legal remedies. But gender bias studies and reported cases leave no doubt that some clearly illegal harassment persists in legal workplaces: sexual propositions, physical groping, and abusive comments remain a problem.¹⁰⁶

The problem is magnified by the costs of identifying it. Many women justifiably fear ridicule or retaliation. Those who complain are often dismissed as humorless and hypersensitive, and are subject to informal blacklisting.¹⁰⁷ As a result, surveys from a wide variety of occupational contexts find that few women, typically well under 10 percent, make any formal complaint; fewer still can afford the financial and psychological costs of litigation.¹⁰⁸ Yet while the likelihood of complaints is small for all but the most serious behavior, concerns about unjust accusations are considerably higher. As noted earlier, many men report reluctance to mentor, or to socialize informally with younger women, because of concerns about the appearance of sexual impropriety.¹⁰⁹

In short, our progress in addressing sexual harassment over the last decade should not obscure the progress that still remains to be made. Part IV identifies strategies that can help legal workplaces in deterring and remedying serious harassment while also avoiding overly punitive responses to minor or unintentionally offensive conduct.

F. Gender Bias in the Justice System

The gender bias confronting women attorneys is part of a broader pattern that affects women throughout the justice system. Efforts to address bias in these other settings again reflect partial progress. As late as 1980, only one article on the entire subject had appeared in mainstream legal literature.¹¹⁰ Two years later, the first gender bias task force was established in New Jersey, and within a decade most states had followed suit. Their efforts were spearheaded by the National Judicial Education Program to Promote Equality for Women and Men in the Courts, a program created by the NOW Legal Defense and Education Fund in 1980 and cosponsored by the National Association of Women Judges. Some jurisdictions also established separate commissions on racial and ethnic bias, or gave one commission responsibility to consider all diversity-related issues. By the turn of the 21st century, some 65 state and federal courts had issued reports on bias in the justice system.¹¹¹ The ABA had also amended both the ABA Model Code of Judicial Conduct and the Model Rules of Professional Conduct to include prohibitions on bias.¹¹²

These initiatives, and the social forces that produced them, have fundamentally altered the legal landscape. No longer do we tolerate courts that sanction a witness of color for refusing to answer when addressed by her first name, or a female attorney for refusing to use her husband's name.¹¹³

Judgments have been reversed, judicial discipline has

been imposed, policies have been issued, and training programs have been implemented.¹¹⁴

Yet while egregious discrimination is rare, more subtle forms of bias are not. As the New York Task Force on Women and the Courts bluntly concluded, gender bias remains a “pervasive problem with grave consequences.”¹¹⁵ And its costs are compounded by other forms of bias, particularly those involving race, ethnicity, disability, and sexual orientation.

The extent of the problem is, of course, difficult to measure with any precision, and studies have varied in their methodologies and findings. Commissions typically have relied on some mix of quantitative and qualitative approaches, and have considered issues such as the demographics of the bench, bar, and court personnel; the outcomes for male and female litigants in areas like bail, sentencing, and custody awards; and the perceptions of participants in the justice system.¹¹⁶ In general, these studies find significant evidence of bias, as well as significant race and gender gaps in perceptions of bias. Between two thirds and three quarters of women report experiencing bias, while only a quarter to a third of men report observing it and far fewer report experiencing it.¹¹⁷ Women are also more likely than men to believe that bias is a significant problem and that female attorneys are treated less favorably than male attorneys by judges and opposing counsel.¹¹⁸ Two-thirds of African American lawyers, but less than a fifth of white lawyers, report witnessing racial bias in the justice system in the last three years.¹¹⁹ About forty percent of surveyed lawyers report witnessing or experiencing sexual orientation bias in professional settings, even in jurisdictions that have ordinances prohibiting it.¹²⁰ Between about a quarter to a half of lawyers with disabilities also experience various forms of bias in the legal system.¹²¹

Perceptions of bias are common among the general public as well. In the American Bar Association's 1999 study, close to a third of Americans did not believe that courts try to treat males and females alike, and about half did not believe that the courts treat all racial and ethnic groups the same.¹²²

The most commonly cited forms of bias fall into several categories: disrespectful treatment; devaluation of credibility and injuries; and stereotypical assumptions about gender, race, ethnicity, disability, and sexual orientation.

1. Disrespectful Treatment

Demeaning conduct takes a variety of forms. To be sure, gender bias rules and educational programs have reduced the most egregious problems. Female lawyers no longer routinely cope with labels such as “pretty girl,” “little lady,” “lawyerette,” “baby doll,” “sweetie” and “attorney general-lette.”¹²³ Nor do women frequently encounter questions such as whether they “really understand all the economics involved in this [antitrust] case,” or whether their clients

are “satisfied with the representation [they] had at trial even though [the lawyer] was a woman.”¹²⁴

However, some of these problems persist, particularly those involving disrespectful forms of address. Female lawyers, administrative personnel, and witnesses are still addressed by their first names, while male counterparts are not.¹²⁵

Women of color and other identifiable subgroups face also bias on two fronts. Racial slurs range from the obviously invidious such as “tarbaby” or “taco bell,” to the ostensibly benign but backhanded compliment for being a “credit to your race.”¹²⁶ Homophobic jokes and comments are not uncommon.¹²⁷ Lawyers with disabilities report disparaging remarks and lack of reasonable accommodation by judges, court personnel, clients, and other counsel.¹²⁸

Women also report recurring instances of being ignored, interrupted, or mistaken for nonprofessional support staff.¹²⁹ And support staff, for their part, often experience similarly demeaning comments and have been expected to perform menial personal services, such as making coffee or running non-work related errands.¹³⁰

Such problems persist partly because they are not acknowledged as problems. Many white men, who have not been on the receiving end of systematic bias, tend to discount its significance. The gender gap in experience is striking. For example, in the District of Columbia Circuit survey of lawyers, only 3 percent of white men, but over a third of white women and half of women of color, had been mistaken for non-lawyers by other counsel.¹³¹

When men do observe such incidents, they often seem like isolated, idiosyncratic, or inadvertent slights. A common reaction is that women should just “grow up and stop whining.”¹³² Such reactions both silence and stigmatize complainants. Many women are unwilling to jeopardize a client’s case or their own career prospects by antagonizing decision makers or earning a reputation as “humorless,” “oversensitive,” or a “troublemaker.”¹³³

These incidents assume broader significance when viewed not as isolated occurrences but as part of a systematic pattern. However unintentional, they serve to undermine competence, confidence, and credibility. The message is unstated but unmistakable when female lawyers or judges of color are repeatedly assumed to be court reporters, and occasionally even asked to verify their status.¹³⁴ That message inevitably affects perceptions not only about the qualifications of women, but also about the fairness of the justice system.

2. Devaluation of Women’s Credibility and Legal Claims

Another common finding of gender bias studies is that the credibility of female lawyers, litigants, and witnesses is often discounted. Examples range from the occasional overt comment, such as “Shut up. Let’s hear what the men have to say,” to the much more common and subtle pat-

terns of devaluation, such as openly ignoring or trivializing claims.¹³⁵

In some instances, judicial attitudes are tied to perceptions about the substantive rights or injuries at issue. Claims involving violence, acquaintance rape, sexual harassment, and employment discrimination face special skepticism. In New Jersey’s recent follow-up survey of gender bias, about 60 to 70 percent of women (compared with about a quarter of men) reported that victims of domestic violence and sex harassment had less credibility than other victims.¹³⁶

Again, examples range from the occasionally outrageous to the more routinely callous. At one end of the spectrum are the domestic violence cases where one judge sentenced a batterer to take his victim out to dinner once a week and “try to work it out,” and another judge, after hearing testimony about a woman who had been doused with lighter fluid and set on fire, responded by singing “you light up my wife” to the tune of “you light up my life.”¹³⁷ In some courtrooms, brutal assaults appear to matter less when they are “family matters.”¹³⁸

At the other end of the spectrum are dismissive attitudes that are less explicit but therefore less readily identified and remedied. A widely shared perception among those responding to gender bias surveys is that courts view employment discrimination and sexual harassment cases as “small potatoes,” a “waste of time,” and diversions from more important issues on the judicial docket.¹³⁹

Yet as the Working Committee of the Second Circuit’s Task Force on Gender, Racial and Ethnic Fairness in the Courts noted: “whether a case is worth the time it takes is also a function of the values and life experiences that a judge brings to the case. One could argue plausibly that cases involving individual rights and protection against discrimination, even if small and affecting only a single individual, are *more* rather than *less* deserving of the attention and expertise of the federal bench, than a large commercial case in which the parties could probably get a fair resolution in a variety of dispute resolution

While we can be justly proud of putting our once invisible issues on the national court reform agenda, we must understand that, as with liberty, eternal vigilance is the price of gender fairness in the courts.

*Lynn Hecht Schafran,
Director, National Judicial
Education Program,
NOW Legal Defense and
Education Fund*

fora. The point is simply, that when a case is properly before a federal court, a judge's belief that it is too trivial for his or her attention can too easily result in actual unfairness to a litigant—a result that disproportionately disadvantages both women and members of minority groups. This is a problem that deserves attention.”¹⁴⁰

3. Stereotypical Assumptions

Stereotypical assumptions about gender, race, ethnicity, and sexual orientation are equally in need of attention. Gender bias studies reveal problems across a wide range of substantive areas, particularly those involving family, criminal, and employment law. Commonly cited assumptions are that:

- domestic violence victims are responsible for provoking, tolerating, or declining to report abuses;
- rapes involving acquaintances are less harmful than “real” (i.e., stranger) rapes;
- mothers who work full time or who have same-sex partners are less deserving of custody than fathers who are heterosexual or who have second wives willing to be full time caretakers;
- promiscuity is more serious for female juvenile offenders than for male offenders.¹⁴¹

Although women are the most common victims of adverse gender stereotypes, men can be targets as well.

Custody cases are the most commonly cited illustration; maternal preferences may be impermissible in law but they persist in practice, at least for parents of young children.¹⁴² Gender bias in criminal charging and sentencing decisions is also common. For example, male defendants are likely to be held more responsible than their female counterparts for joint crimes, or treated more harshly for certain offenses.¹⁴³ Yet it bears note that even in contexts where women as a group have advantages, not all women benefit. Although female defendants with children may be less likely than male defendants to face extended prison terms, those who do, largely poor women of color, confront additional hardships because of their disproportionate childrearing responsibilities and the lack of facilities for female offenders near their families.¹⁴⁴

Comprehensive strategies for addressing such bias have been carefully designed and broadly publicized. They have not, however, been widely implemented. Lynn Hecht Schafran, Director of the National Judicial Education Program, notes that progress has been “uneven.”¹⁴⁵ Relatively few jurisdictions have done what is really required. As discussion in Part IV makes clear, every court needs a “comprehensive framework that will establish long-term implementation” of gender bias strategies.¹⁴⁶

II. GENDER ISSUES IN CONTEXT

Although many of the opportunities and obstacles for women in the legal profession are widely shared, there are some important differences across practice contexts. There are also some sex-based differences in career paths that affect women's representation in particular practice settings. The following table reflects the most recent comprehensive survey of the workplace settings of male and female attorneys.

Table 1
Distribution of Male and Female Lawyer Populations by Employment

Employment Setting	Male Lawyers		Female Lawyers	
	No.	%	No.	%
Solo practice	225,584	34	72,139	36
Firm practice	265,356	41	71,395	35
Federal judicial department	2,127	<1	810	<1
Other federal government	18,163	3	8,643	4
State/local judicial department	14,746	2	3,944	2
Other state/local government	25,609	4	13,214	7
Private industry	53,882	8	17,468	9
Private association	3,308	1	2,185	1
Legal aid or public defender	4,938	1	3,561	2
Education	582	1	2,604	1
Retired or inactive	6,328	6	6,345	3
Total	655,623	100	202,308	100

As this table indicates, female lawyers are more likely than male lawyers to work in private industry, government, legal aid, and public defender programs, and less likely to practice in law firms. The reasons for those disparities may partly reflect different career preferences among law school graduates, but some of the variation may be attributable to women's perceptions of the opportunities open to them in particular practice settings.¹⁴⁸

As the following discussion makes clear, prospects for advancement in law firms remain especially limited.

A. Law Firms

In summarizing recent trends, an American Bar Foundation statistical report notes: "the most pervasive underrepresentation of female lawyers, although of lesser magnitude than in [previous decades] . . . existed among partners in law firms. In spite of improvements over time, only . . . 60 percent as many female lawyers were partners in law firms . . . as would have been expected had women been fully represented among partners. Moreover, when representation is controlled for age, women were persistently underrepresented in all age groups."¹⁴⁹ Similarly, in

the New York Bar Glass Ceiling study, women were three times less likely to become partners as men. In the American Bar Foundations study, women's chances were less than half of men's.¹⁵⁰

The disparities are especially pronounced for equity and managing partners. Among large firm partners, only about sixty percent of female attorneys, compared with three quarters of male attorneys, have equity status.¹⁵¹

And as noted earlier, only about 5 percent of managing partners in surveyed firms are women.¹⁵² Underrepresentation is greatest for women of color; their proportion of equity partners remains stuck at under one percent, and their attrition rate after eight years is one hundred percent.¹⁵³

The difficulties for women in law firms reflect the problems faced by women in the profession generally: unconscious bias and stereotypes; inflexible work structures; and exclusion from mentoring and social networks. However, certain distinctive

features of law firm settings compound the difficulties.

One involves the heightened competition within and across professions. Law firms face greater economic pressures due to substantial increases in the size of the bar, coupled with increasing competition from nonlawyers and in-house counsel, as well as increasing competition for talented law graduates.¹⁵⁴ These pressures have, in turn, heightened competition within firms. Partnership means less and is harder to obtain. Increasing emphasis is placed on maximizing billable hours and on developing new business. Such priorities tend to disadvantage women, given their greater family responsibilities and their greater difficulties in networking with largely male clients.¹⁵⁵

A preoccupation with the bottom line has also squeezed out other values that are central to workplace satisfaction. It has reduced time for mentoring that is often key to the success of junior women.¹⁵⁶ And the priority of profits has discouraged the kind of pro bono work that lawyers rank among their most satisfying professional experiences. Ironically enough, recent increases in law firm revenues and salaries have eroded, not expanded support for public service. For example, over the last decade,

when the profits of the nation's highest earning firms increased by over 50%, average pro bono contributions dropped by a third.¹⁵⁷ As noted earlier, the absence of support for pro bono activities poses particularly painful tradeoffs for women. Their disproportionate family commitments often leave little free time for work that does not count toward escalating billable hour requirements.

All of these forces contribute to disaffection and attrition that ill serve the interests of women and their firms. Over forty percent of associates leave within three years, generally before their firms have had time to recover their initial

investment in recruiting and training.¹⁵⁸ Because many offices fail to track or allocate attrition costs, their reward structures often overcompensate rainmakers who "churn" associates and undercompensate supervisors who are effective mentors.¹⁵⁹

Moreover, the costs of excessive attrition extend well beyond financial expenses. As the Boston Bar Association's work/family task force noted, rapid turnover disrupts relationships and discourages mentoring.¹⁶⁰

Supervising lawyers do not want to invest time assisting associates whom they expect to leave. Women who lack assistance are more likely to leave. Their departures reduce the pool of mentors for lawyers of similar background, and perpetuate the expectations that perpetuate the problem.¹⁶¹ The problem is greatest for women of color, who have the highest attrition rates and greatest difficulties obtaining mentors.¹⁶²

So too, "every woman who opts to 'have a life' means one less woman in the

management 'pipeline.'"¹⁶³ Women who want substantial time for their families or for pro bono work disproportionately drift off the leadership track, leaving behind a decision making structure insulated from their influence.

Some of these problems are less pronounced in small firms where lawyers often have closer working relationships and greater willingness to accommodate colleagues with competing commitments. However, smaller firms

also have fewer attorneys available to cover for those on leave or alternative schedules. And these firms are less likely to have formal policies that attempt to support and regularize such options. Some women have sought greater flexibility by working in women-owned firms or in firms with other family members.¹⁶⁴ Yet these choices come at a cost. Although satisfaction with quality of life is relatively high in small firms, they generally do not offer the same status, economic rewards, or professional leadership opportunities as larger firms.¹⁶⁵

So too, in some practice settings, competitive pressures have pushed small firms in the same direction as their larger counterparts—toward extended hours, constant availability, and bottom-line orientations.¹⁶⁶ Franchise firms are a case in point. Many chains of small local offices that have promised "family friendly environments" have yet to provide them.¹⁶⁷ Female attorneys who are "too family oriented and not entrepreneurial enough" have lost out in compensation and promotion decisions, and have rarely achieved managing partner positions.¹⁶⁸

Changing these patterns is no small challenge. Economic pressures are substantial and likely to increase. But so is the representation of women in the profession. At a time when half of law school graduates are women, firms cannot afford structures that disadvantage so much of the talent pool. Yet although many firm leaders lament the decline of law from a profession to a business, too few have taken an effective businesslike approach to human resources issues.¹⁶⁹

To make significant progress, equal opportunity for women needs to be seen as an economic as well as moral issue, and treated as a bottom-line priority. As discussion in Part IV makes clear, cost-effective strategies are available to help firms of all sizes move closer to gender equality in practice as well as principle.

B. Solo Practice

Although about a third of women are solo practitioners, there is relatively little systematic information about their experience, or about the dynamics of their practice settings. The limited accounts available suggest that the opportunities and obstacles for women in solo practice are similar to those in small firm settings. Female attorneys who work on their own are generally seeking flexibility, independence, control, and direct client contact.¹⁷⁰ Some work out of home offices, which helps to reduce work/family conflicts. The price for such advantages is often paid in greater isolation, economic uncertainty, and instability, as well as lower income and status.¹⁷¹

The absence of mentoring and back-up support poses additional stresses. For some solo practitioners, a lack of time or contacts for business development, together with an inability to afford professional membership dues and subscription fees, can compound the economic difficulties.¹⁷²

Women comprise almost 50 percent of law students and hold leadership roles in the profession, such as Supreme Court justices and even bar association presidents. But much remains to be done. . . . I look forward to the day when the real celebration is the accomplishment itself, not the fact that it was done by a woman.

*Martha Barnett,
President of the American
Bar Association, 2000*

Many women attempt to minimize these problems through cooperative office sharing arrangements with other lawyers. Some also manage through the economic security provided by spouses or partners in well-paying positions.¹⁷³ Although many of the challenges are inherent in the nature of solo practice, Part IV identifies initiatives that can assist solo practitioners.

C. Corporate Counsel

The percentage of women in corporate counsel positions has grown dramatically over the past five years, up from about a quarter in the mid 1990s to over a third at the turn of the century.¹⁷⁴ However, women are still underrepresented, particularly at the highest levels. About 11 percent of female lawyers, compared with 18 percent of men, work in corporate legal departments. At the turn of this century, only ten percent of the general counsel of Fortune 500 companies were women. Only one of those was a woman of color.¹⁷⁵

The reasons for this partial progress reflect both the increasing attractiveness of corporate employment, and the continuing legacy of gender stereotypes and inflexible workplace structures. In-house counsel positions typically offer somewhat more regular hours and greater job security than law firms, along with an escape from up-or-out promotion structures and client development obligations.¹⁷⁶ In recent national surveys, about two-thirds to three-quarters of corporate counsel indicated that gaining a better balance between their professional and personal life was a major reason for their current job choice.¹⁷⁷ Many women also like the opportunities for proactive problem solving and for movement into management positions that are available in corporate settings.¹⁷⁸ And in some companies, a recent focus on diversity initiatives has created a particularly supportive climate for women of color.¹⁷⁹

Yet many female attorneys confront the same barriers to advancement in corporate legal departments as in other practice settings. These barriers include stereotypical assumptions about the qualifications of women and minorities; exclusion from informal social activities and mentoring networks; isolation from other practitioners; and extended hours for those in senior positions.¹⁸⁰ Although in house counsel do not face the same business development obstacles as lawyers in private practice, neither are these counsel free from all marketing obligations and from the disadvantages that gender, race, ethnicity, disability, and sexual orientation impose. Corporate counsel need to be sufficiently liked and respected to work effectively with management and with outside community and industry constituencies that are not always free from unconscious bias.¹⁸¹ Here again, women of color are especially likely to confront obstacles and most do not believe that corporations are making genuine efforts to diversify corporate counsel positions.¹⁸²

Moreover, in some companies, downsizing and cost-containment strategies have created economic pressures

analogous to those in firms, and have compromised the quality of life for legal employees.¹⁸³

In Catalyst's 2001 survey, women in corporate law departments did not report significantly less difficulty balancing their professional and personal life than women in firms, and in-house counsel were even less likely to believe that they could use flexible work arrangements without jeopardizing their advancement. Only about a quarter were satisfied with their advancement opportunities.¹⁸⁴

The strategies for equalizing opportunities in corporate settings are also analogous to those developed for other legal employers, discussed in Part IV below. However, women holding senior in-house positions have certain special challenges and opportunities that come with control over hiring decisions and selection of outside counsel. Increasing efforts have been made to convince these women to recruit and channel business to other women, and to prefer firms with good records on diversity.¹⁸⁵

Women's networks and social events with those objectives have had mixed success. Some general counsel are wary of charges of favoritism: how can they "preach fairness" and then give preferences based on race or sex?¹⁸⁶ And if performance problems later arise, women worry that they will be criticized for not choosing lawyers strictly on the merits.

Although these are valid concerns, they suggest reasons for selecting only well-qualified counsel, not for abandoning efforts to identify women who meet those standards. Past a certain threshold, what counts as merit is often subjective. As the federal Glass Ceiling Commission notes, "comfort and chemistry" have long played a role in corporate personnel decisions and women, particularly women of color, have long been left out of the loop from which selections have been made.¹⁸⁷ Efforts to correct those historic patterns of exclusion are a way to match formal policies on diversity with actual business practices.

D. Government and Public Interest Organizations

Although only a small percentage of lawyers work in public interest or public sector jobs, women are quite well represented in those positions. As Table 1 indicates, female lawyers are more likely than males to work in government, legal aid, or public-interest organizations. The pattern begins early: among recent law school graduating classes, about a third of women, compared with a quarter of men, take government, public interest, or judicial clerkship positions.¹⁸⁸ In some sectors, such as the federal government, women constitute about a third of lawyers.¹⁸⁹ Women of color are particularly likely to work in such positions. For example, 6 percent of minority female law graduates take public interest jobs, compared with 2 percent of white men.¹⁹⁰

There are several reasons for these patterns. One is that

public interest and public sector organizations are perceived as more “meritocratic” than private practice.¹⁹¹ When relieved of the obligation to attract paying clients, lawyers can focus more on the quality of their legal work, and worry less about exclusion from men’s social networks that are crucial to business development.

A second explanation for the attractiveness of government and public interest jobs is that they also tend to have more family-friendly and egalitarian environments than other legal workplaces. The hours are often more reasonable and predictable, or at least more likely to be chosen than imposed. Some public sector agencies like the U.S. Department of Justice have been leaders in addressing quality-of-life issues: they offer part-time work, job-sharing, flexible work schedules, and on-site dependent care.¹⁹² While there is often some gap between formal policies and

acceptable practices, that gap tends to be smaller than in private practice.¹⁹³

Government employers also have a reputation for being more progressive on diversity-related issues than most law firms. Agencies that are politically and financially accountable to the broader public generally are under some pressure to be representative of the community that they serve.¹⁹⁴

So too, many public interest organizations have particularly strong commitments to equal opportunity and to egalitarian management structures in which women and minorities are adequately represented.

Another explanation for women’s greater representation in public sector and public interest positions involves tradeoffs between ideological commitments and financial opportunities. Women are somewhat more likely than men to choose law for reasons related to

social justice.¹⁹⁵ Women are also less likely than men to see themselves as their families’ primary wage earners. Both factors increase women’s willingness to accept low-paying public interest and public sector work. Although attorneys in these positions often report frustration with their lack of resources, status, or advancement opportunities,

many find offsetting benefits in their control, responsibility, and connection to social causes.¹⁹⁶

E. The Judiciary

1. Underrepresentation

Women’s representation in the judiciary has also increased substantially over the past decade. At the turn of the 21st century, women accounted for about 18 percent of federal district and appellate judges, double the percentage from the early 1990s.¹⁹⁷ Although comprehensive information is not available for state courts, the limited data indicate similar, if somewhat uneven progress. In some jurisdictions, the increase in female representation has been especially dramatic. In Massachusetts, for example, women constitute 30 percent of the bench and a majority on the supreme court.¹⁹⁸

Yet such progress should not be grounds for complacency. Much of the increase in women’s representation on the federal bench has been recent, and has reflected exceptional commitment to diversity. President Clinton’s appointment of 100 female judges nearly tripled the number appointed by Presidents Bush and Reagan.¹⁹⁹

Sustaining that level of commitment should be a high priority for the profession. As in other contexts, women in the judiciary still remain underrepresented at the highest levels and overrepresented at the lowest. In the federal system, they account for fewer federal judges with life tenure than for lower tier, non-Article III appointments (e.g., magistrates and bankruptcy judges).²⁰⁰ Similar patterns hold in many states, and the underrepresentation of women of color is still greater in both systems.²⁰¹

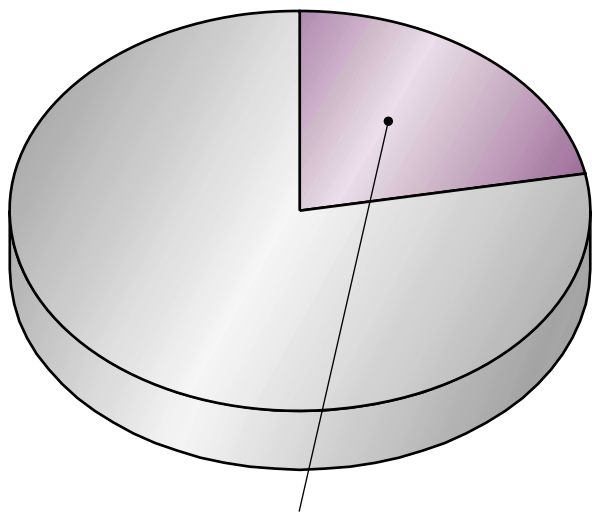
2. Bias

Part of the reason for such underrepresentation may have to do with biases in selection and confirmation processes, biases that most surveyed women, but not men, identify as problems.²⁰² Another reason may be the tendency of such processes to penalize applicants who have public service and public interest backgrounds, because these backgrounds are assumed to predict “activism” on controversial issues.²⁰³

Such assumptions work against women, particularly women of color, who disproportionately come from such backgrounds or who have been involved with such issues. The result is to deprive the judiciary of the diversity of experience necessary to ensure both the fact and appearance of justice. As Justice Ruth Bader Ginsburg noted in the ceremony marking her appointment to the U.S. Supreme Court, “women, like persons of different racial groups and ethnic origins, contribute . . . [to the U.S. judiciary a] distinctive medley of views influenced by differences in biology, cultural impact, and life experience.”²⁰⁴ Diversity is critical to the legitimacy, credibility, and quality of the justice system.

Women judges are “important as symbols that positions of power and responsibility are attainable for women; they are indispensable as well to the public’s confidence in the ability of our courts to respond to the legal problems of all Americans.”

Hon. Patricia M. Wald, former judge, U.S. Court of Appeals, District of Columbia, Hague, Human Rights.



Women federal district and appellate judges¹⁹⁷

Efforts to combat the bias facing women judges are equally critical. Studies of judicial performance evaluations find that female judges are rated consistently lower than their male counterparts, and that male lawyers are particularly critical.²⁰⁵ State and federal gender bias surveys also reveal similar biases, including a significant incidence of disparaging comments by male judges about their female colleagues and about the number of women on the bench.²⁰⁶ Female judges often receive criticism for strong and decisive action, while the same behavior by male judges attracts praise.²⁰⁷ The credibility and self esteem of women on the bench can be further undermined by unconscious slights, such as being mistaken for court staff and occasionally for each other.²⁰⁸ In anticipation of such problems, the National Association of Women Judges presented Justice Ginsburg and Justice O'Connor matching T-shirts. One read "I'm Ruth, not Sandra," the other, "I'm Sandra, not Ruth." As Ginsburg later noted, wearing them might have avoided embarrassment for an Acting Solicitor General who, three times in one term, addressed her as Justice O'Connor.²⁰⁹

Although such mistakes can be humorously dismissed by women at the highest judicial level, they reflect and reinforce patterns of devaluation that carry more serious consequences for other women. As the preceding discussion of gender bias indicates, the accumulation of these incidents, however inadvertent, sends a signal about credibility and legitimacy that is not lost on other participants in the legal system. The symbol of justice may be blind, but lawyers, litigants, and witnesses generally are not. And the judiciary has not yet realized its aspirations to exemplify, as well as dispense, equal justice under law.

F. Legal Education

The experience of women in legal education again reflects a history of dramatic, but still only partial progress. Until the 1970s, women in law schools were

noticeable largely for their absence. Only three schools had ever had women deans, and few had more than one or two women faculty.²¹⁰ Female students constituted no more than 3 percent of entering classes and the atmosphere for those present was less than fully welcoming. Some professors ignored their presence as much as possible except on "Ladies Days." Then, women students were singled out for questions on "women's issues," such as sexual assaults or hypotheticals involving needlework.²¹¹ Justice Ruth Bader Ginsburg recalls that when she attended law school, there were associations for wives of law students but not for women students themselves.²¹²

By the turn of the 21st century, the academic landscape had been transformed. Women now account for a majority of entering law students and racial and ethnic minorities constitute about 20 percent.²¹³ But women, particularly women of color, remain overrepresented at the bottom and underrepresented in the upper ranks of legal education. And at many schools, the curriculum and climate for women still leaves much to be desired.

1. Underrepresentation

Despite substantial progress, women in legal education still have not achieved wholly equal opportunities, particularly for leadership positions. Only 20 percent of full professors and 10 percent of law school deans are female, and only about 5 percent of those in either position are women of color.²¹⁴ Women faculty are still clustered in the least prestigious academic specialties and positions, such as librarians, research and writing instructors, and non-tenured clinicians.²¹⁵ Gender inequalities persist within as well as across these specialties. For example, women account for two-thirds of legal writing instructors, but are only half as likely as their male counterparts to hold tenured positions or to direct writing programs.²¹⁶ At many schools, women students are also underrepresented in the most prestigious positions such as law review editors, class officers, and members of academic honor societies.²¹⁷ The limited research available finds that these gender and racial disparities cannot be entirely explained by objective factors such as academic credentials or experience.²¹⁸ Some evidence also suggests that women of color are underrepresented in student bodies relative to their undergraduate performance and academic potential.²¹⁹

Such findings should come as no surprise. Racial, ethnic, and gender biases persist within the legal profession generally, and there is no reason to expect legal education to be different. Female students and faculty are subject to the same double standards and double binds that women encounter in other legal settings. Their competence is subject to heightened scrutiny and they risk criticism for being too assertive or not assertive enough.²²⁰

Women's disproportionate family responsibilities also carry a cost when pitted against substantial research,

teaching, and committee obligations. Although work schedules in law school generally permit more flexibility than those in legal practice, performance pressures and time demands can be even more unbounded.²²¹ The problem is exacerbated by the overlap between women's biological and tenure clocks. About two-thirds of surveyed women law professors cite work/family conflicts as a significant problem.²²²

Although there is no reason to expect law schools to be exempt from broader patterns of gender bias, there is reason to expect them to address the issue more effectively. Without a critical mass of similar faculty colleagues, women bear disproportionate burdens of counseling and committee assignments, and lack adequate mentoring and support networks.²²³

Institutions also lose valuable guidance and students lose valuable role models. And without adequate racial and ethnic diversity among faculty and students, prospective lawyers lack the informed classroom interchanges, and understanding of multiple perspectives that is critical to practice within an increasingly multicultural world. Empirical research consistently finds that students who experience racial diversity in education show less prejudice, more ability to deal with conflict, better cognitive skills, clearer understanding of multiple perspectives, and greater satisfaction with their academic experience.²²⁴

Yet efforts to achieve such diversity have been compromised by recent assaults on affirmative action. California's Proposition 209 and a federal Court of Appeals ruling in *Hopwood v. Texas*, 78 F 3 932 (5th Cir.), cert. den. 518 U.S. 1033 (1996), *Grutter v. Bollinger*, ___ F. Supp. 2d, No. 97-CV-75928-DT (E.D. Mich. March 27, 2001) have barred reliance on race at universities within their jurisdictions. Similar litigation and legislative initiatives are underway in other states as part of a national

campaign against affirmative action. Partly as a result, the number of law students of color has grown less than one percent over the past five years, the lowest increase in over twenty years.²²⁵

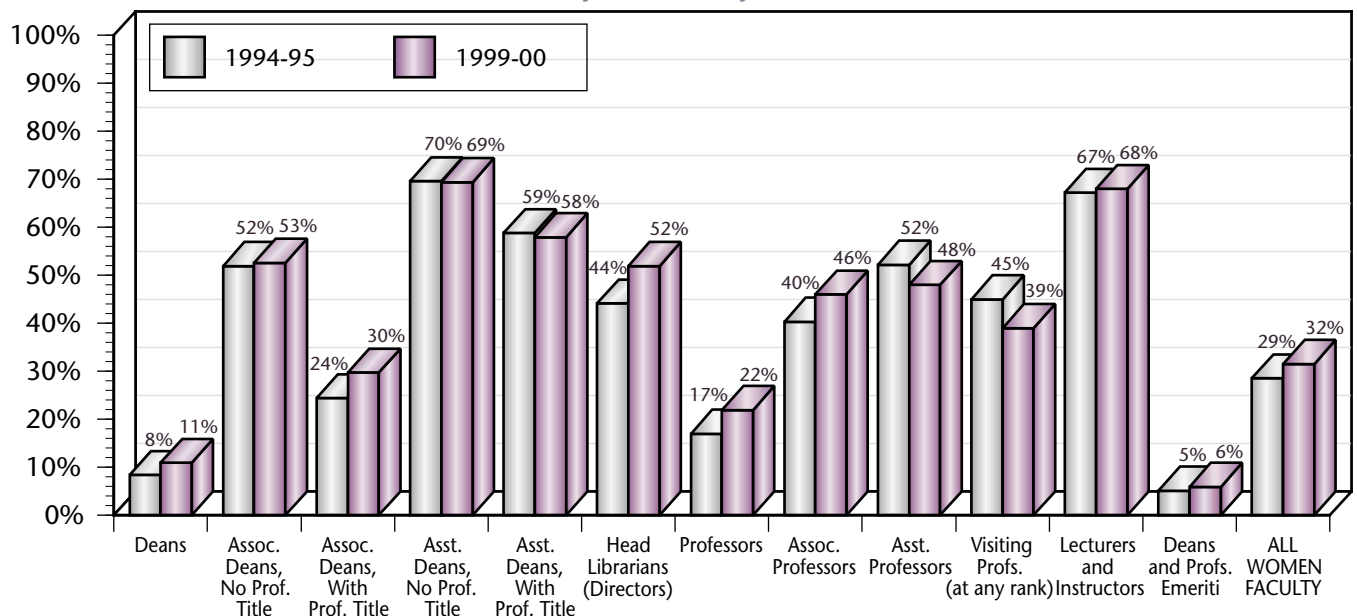
This lack of progress is particularly disturbing in light of the broad consensus about the importance of diversity for legal education. As is clear from recent position papers by the Association of American Law Schools (AALS) and a coalition of virtually every other major organization in higher education, challenges to affirmative action compromise academic excellence. In summarizing experts' views, the AALS statement concludes: "different backgrounds enrich learning, scholarship, public service, and institutional governance. They promote informed classroom interchanges and keep academic communities responsive to the needs of a changing profession and a changing world."²²⁶ Meeting these needs requires sustained recruitment and retention efforts.

2. Educational Climate and Curricula

A true commitment to equal opportunity will also require broader changes in the educational culture. Research over the last decade consistently finds that women, particularly women of color, are more likely than men to be silenced in the classroom. Female students volunteer less frequently and make fewer follow-up comments. The gender differentials are most pronounced in courses that are taught by men and that have high male-female ratios.²²⁷

Part of the reason appears to be the largely unconscious biases that continue to affect classroom experiences. When women speak in mixed groups, they are often heard differently than men. Female students' comments are more likely to be overlooked, devalued, or misattributed. The highly competitive atmosphere of many law school classrooms also tends to silence students with lower self-

Women Faculty in Directory of Law Teachers



confidence, who are disproportionately women, especially women of color.²²⁸

The marginalization of women's classroom participation is compounded by the marginalization of issues concerning race, gender, and sexual orientation in core curricula, as well as the disparaging treatment of students and faculty who introduce such concerns. Reviews of gender bias in casebooks disclose that these issues generally receive insignificant coverage.²²⁹ And in class discussions, such topics are often tacked on as curricular afterthoughts—as brief digressions from the “real” subject. Some teachers exclude issues of obvious importance, such as domestic violence, same-sex marriage, or pornography, because the discussion may become too volatile. When such issues do arise, students or faculty who express strong views frequently are dismissed or demeaned.²³⁰

Most institutions have experienced racist, sexist, and homophobic backlash in e-mails, graffiti, or anonymous flyers, and many have experienced other egregious forms of sexual harassment.²³¹ In Law School Admission Council surveys, discrimination is reported by about two-thirds of gay and lesbian students, a majority of African-American students, and a third of women, Asian American, and Hispanic students.²³² Harassment is also common for conservative students who express unpopular views on gender and diversity issues.

What is especially disturbing about such patterns is the tendency among many faculty to dismiss their significance. A common response is simply to ignore inappropriate comments or to rely on other students to respond. Yet tolerance of intolerance falls short of ensuring the equal opportunity and mutual respect that professionally responsible educators should demand. Many schools have also failed to respond adequately to other forms of demeaning or biased treatment. Women faculty often experience classroom challenges to their competence and authority.²³³ Women of color, women who are open about their same-sex orientation, and women who take strong feminist positions have been especially likely targets of offensive comments, adverse evaluations by

students, and marginalization by colleagues.²³⁴ The devaluation of teaching and scholarship that focuses on gender, race, ethnicity, and sexual orientation also discourages junior faculty from pursuing such interests and disadvantages those who persist.²³⁵

In short, too many women, particularly women of color and lesbians still feel uncomfortable in the educational environment and too few have advanced to positions where they can significantly affect it. And too few schools have committees or other administrative structures charged with addressing gender-related concerns.²³⁶ Given these patterns, it is scarcely surprising that women report higher levels of dissatisfaction and disengagement with the law school experience, and that women of color have the greatest likelihood of alienation.²³⁷ If our goal is to create an educational community, and ultimately a profession, of equal opportunity and mutual respect, we have a significant distance yet to travel.

3. Pro Bono Commitments

If our objective is also to inspire commitments to pro bono service, there is also progress still to be made. Only about ten percent of law schools require pro bono participation by students and fewer still impose requirements on faculty.²³⁸ About a third of schools have no voluntary law-related pro bono projects or programs involving fewer than fifty participants a year. As a result, most students graduate without pro bono work as part of their educational experience.²³⁹

The absence of adequate pro bono programs should be a matter of concern for the entire profession, but it also holds particular importance for women. As noted earlier, women are especially likely to come to law school with public service interests and to make those interests a focus of their careers.²⁴⁰ Moreover, since women account for a disproportionate share of low income clients with unmet legal needs, pro bono programs are an important way to build awareness of women's concerns and the gender inequality that produces them.

III. THE DIFFERENCE GENDER DIFFERENCE MAKES

For those concerned with women and the profession, a crucial question is what difference gender difference makes. A longstanding issue is whether male and female lawyers bring different, gender-linked perspectives to their work, and if so, what follows from those differences. A related set of questions involves diversity among women. To what extent are gender differences experienced differently across race, ethnicity, age, sexual orientation, and related characteristics? How can bar associations speak on behalf of women without losing sight of the diversity in their backgrounds, values, and concerns?

A. Women's "Different Voice"

Perceptions of gender differences are widely shared. In the recent ABA Journal poll, fewer than a fifth of women lawyers believed that male and female lawyers had the same strengths, the same weaknesses.²⁴¹ Slightly under half of male lawyers believed that men and women had the same strengths and weaknesses.²⁴² Women lawyers were thought to have greater empathy and "better people skills," but insufficient assertiveness and aggressiveness.²⁴³

Some feminist theorists have made broader claims. They argue that women reason in a "different voice," one more sensitive to values of care, compassion, and cooperation than prevailing legal norms.²⁴⁴

Such perceptions build on broader cultural assumptions about gender difference. Some of these assumptions draw on biological differences such as those involving cognitive capacities, hormonal levels, and childbearing. Other perceptions are shaped by patterns of socialization and subordination, which encourage women to develop greater interpersonal sensitivities, caretaking abilities, and cooperative styles.²⁴⁵

The evidence for many presumed gender differences is, however, weaker than commonly supposed. Psychological research finds few characteristics on which men and women consistently differ along gender lines, and even on these characteristics, gender typically accounts for only about 5 percent of the variation.²⁴⁶ Contextual forces and other factors like race, ethnicity, and sexual orientation can be equally significant. The most respected recent studies avoid sweeping claims about inherent gender differences, but also acknowledge the role of gender-based experiences and expectations in professional lives.

For example, surveys of leadership styles and decision-making behavior have reached mixed results that underscore the contextual variations in gender difference. Some research based on laboratory experiments and individuals' self-descriptions finds that women display greater

interpersonal skills and adopt more participatory, democratic styles, while men rely on more directive and task-oriented approaches.²⁴⁷

Yet other large scale studies based on self-reports find no such gender differences.²⁴⁸ Nor do these differences emerge in most research involving evaluations of leaders by supervisors, subordinates, and peers in real world settings.²⁴⁹

There are several explanations for these divergent results. One involves sex stereotypes, which are particularly likely to influence lab studies and self-descriptions. In experimental situations, where participants have relatively little information about each other, they are more likely to fall back on conventional assumptions about appropriate masculine and feminine behavior. Such assumptions may also skew individuals' willingness to behave or to describe their behavior in ways that deviate from stereotypical norms.²⁵⁰ Since women do not enjoy the same presumption of competence, the same latitude for assertiveness, and the same access to power as their male colleagues, a less autocratic style may seem necessary.²⁵¹

By contrast, the force of conventional stereotypes is weaker in actual organizational settings than in lab studies or self-assessments. Women who have achieved decision-making positions in traditionally male-dominated professions generally have been socialized to follow prevailing practices. It is not surprising that their styles are similar to those of male counterparts.²⁵²

Efforts to determine whether women lawyers approach their work differently than men yield similarly mixed results. The bottom line appears to be "some women, some of the time."²⁵³

The most systematic studies involve judicial behavior, but their reliability is sometimes limited by small sample sizes and inadequate controls for factors other than gender. Early studies tended to find no significant gender differences in judicial rulings, even on women's rights issues.²⁵⁴ By contrast, some more recent studies have found differences at least on certain issues, although not always on women's rights or on matters traditionally thought to inspire feminine compassion.²⁵⁵

An equally critical question is the extent to which women judges have used their leadership to press for changes in the judicial process that would make it more responsive to the needs of women. Here again, the evidence is mixed. In some respects, as Judge Gladys Kessler notes, "there has truly been a 'revolutionary reform' of the justice system's response to women's concerns" in areas such as domestic violence, child support, and gender bias.²⁵⁶ Much of this change has resulted from efforts by female judges, not only through

their rulings but also through their work in organizations like the National Association of Women Judges.²⁵⁷

Yet as Kessler also observes, many women leaders have “become the victims of [their] own success.” They have so many individual opportunities and claims on their time that their collective reform efforts are suffering from a “fading sense of urgency, diminishing energy, and a loss of commitment.”²⁵⁸ Many pressing needs of women in the justice system remain unmet, and not all women judges and bar leaders have joined forces to respond.²⁵⁹

The same point could be made about other legal contexts. What limited information is available about women lawyers and women’s professional organizations again provides a mixed record. Many female attorneys have made a crucial difference in promoting women’s issues and in creating institutional structures that will do the same. The ABA’s Commission on Women in the Profession is a reflection of those efforts, as are many women’s bar associations, women’s networks, and women-owned law firms. These institutions have both provided support for individual members and have pressed for fundamental reforms on issues such as family leaves, sexual harassment, flexible or reduced schedules, performance evaluations, mentoring programs, and other diversity initiatives.²⁶⁰

Yet many men have also been leaders on these issues. And not all women have been committed to creating “kind[er], gentler” workplaces.²⁶¹ While some women-owned firms have sought to institutionalize more family-friendly policies, collaborative dispute resolution approaches, and egalitarian management structures, other have adopted the same “business ethic” as traditional firms.²⁶²

Surveys of law firms and corporate law departments also find some senior women who do not actively advocate women’s interests. One of the most common complaints by female associates is that powerful female partners have not always “played a role in promoting the opportunities and quality of life” of junior colleagues.²⁶³ Some women in corporate decision-making roles have been similarly reluctant to press gender-related issues.²⁶⁴

Underlying these different priorities are differences in personal commitments, rewards, risks, and influence. The most obvious explanation for varying levels of support concerning women’s issues is women’s personal investment in those issues. Experiences of discrimination, marginalization, or work/family conflicts leave some women with a desire to make life better for their successors. By contrast, other women have internalized the values of the culture in which they have succeeded. These lawyers have “gotten there the hard way,” they have “given up a lot,” they “have conformed to the system.”²⁶⁵ If they managed, so can anyone else.

What lessons women draw from their own struggle may in part depend on what consequences that they anticipate from continuing the struggle on behalf of other women .

These consequences vary considerably across contexts. In some settings, the rewards from pressing such concerns outweigh the risks: women are viewed as “brave,” or “fair minded” for “standing up for what [they] believe.”²⁶⁶ Other, more tangible benefits can also result from becoming a “squeaky wheel:” more equitable compensation structures, greater flexibility in workplace schedules, increased career or client development opportunities, and a larger critical mass of supportive female colleagues.²⁶⁷

Yet for many women, such potential benefits come at too great a cost. One common concern involves becoming “pigeon-holed” as a “feminist” or “women’s libber.”²⁶⁸ These labels are rarely meant as compliments. The more conservative the organization, the more women justifiably worry about taking positions that will brand them as “extremist,” “strident,” “oversensitive,” or “difficult to work with.”²⁶⁹

Such risks leave many women lawyers in a double bind. Those who “rock the boat” on women’s issues may lose the collegial support and career development opportunities that would provide a power base within their organizations, and make their advocacy effective.²⁷⁰ But those who obtain influence by conforming to organizational values may feel unable to use that influence on behalf of those who might benefit most.

There are no easy answers to these tradeoffs. However, as discussion in Part IV indicates, one of the best ways for women to minimize risks and maximize effectiveness is to seek allies. Support from other women and women’s groups can be crucial in building the foundations for reform.

B. Differences Among Women

As the preceding discussion makes clear, gender differences are experienced differently by different groups of women in different practice contexts. There is no “generic woman.”²⁷¹ Race, class, ethnicity, age, disability, and sexual orientation can be as important as gender in defining professional opportunities and concerns. These differences among women highlight a longstanding challenge for those working on behalf of women. By definition, the

The Glass Ceiling is not only a setback that affects two thirds of the population but a serious economic problem that takes a huge financial toll on American business. Equity demands that we destroy the glass ceiling. Smart business demands it as well.

Robert Reich

women's movement claims to speak from the experience of women. Yet that experience counsels attention to its own diversity, and to the role of contextual forces and multiple identities in mediating gender differences.

For women in the legal profession, the greatest challenges have generally occurred across race and ethnicity. In an effort to bridge those differences and to insure stronger cooperation and coalitions, the ABA's Commission on Women in the Profession and its Commission on Racial and Ethnic Diversity have jointly sponsored the Multicultural Women Attorneys' Network. That Network's programs and publications, including its recent collection of multicultural women's essays, *Dear Sisters, Dear Daughters*, have been crucial in increasing understanding among different racial and ethnic groups.²⁷²

More such initiatives are necessary, as are efforts to build alliances across other differences. One central challenge, too often unaddressed, involves bridging the generational divide. A recurring frustration among younger women lawyers is a perceived lack of understanding and support from some senior women colleagues, particularly on quality of life issues.²⁷³ Whether intended or not, their message seems to be, "If I had to struggle to make it, so should you;" "I had to give up a lot, you do it too."²⁷⁴

Younger women unwilling to make these sacrifices often report difficulty identifying sympathetic mentors and role models. Of course, that difficulty may at times reflect more a lack of time than a lack of support by sen-

ior women. But it is also the case that some of these women express frustration with junior colleagues who expect special treatment and time-consuming assistance, but then leave before those efforts are repaid. It can also be hard to empathize with younger colleagues who do not seem to recognize the obstacles faced by their predecessors and who demand choices that they never had.²⁷⁵

These difficulties are not always easily resolved. A generation of women who grew up expecting equal opportunity in the workplace cannot see why they should settle for less, or why they must give up satisfying personal and family lives to achieve it. A generation of women who had to struggle to be treated as equals cannot see why their successors should expect so much more while sacrificing so much less. However, some progress in bridging these differences is possible by institutionalizing opportunities for interchange and collaboration among women at different levels of seniority. As Part IV notes, formal mentoring programs and women's networks are often effective strategies in building mutual respect. Some research also suggests that generational differences are less pronounced and less divisive in organizations that have a critical mass of women in senior positions.²⁷⁶

Yet in order to secure conditions that will permit this critical mass to succeed, women need to work together. And a candid acknowledgment of differences encourages a better understanding of commonalities and a stronger collective effort to address shared concerns.

IV. AN AGENDA FOR CHANGE

A. Guiding Principles: Commitment and Accountability

The most important factor in ensuring equal opportunity for women in the legal profession is a commitment to this objective, a commitment that is reflected in both institutional and individual priorities. Legal employers and bar associations must be prepared to translate principles into practice, and to hold their leadership accountable for the results. Lawyers in positions of influence need to build a moral and a pragmatic case for diversity, and to incorporate diversity goals into their organization's policies and reward structures. Progress toward those goals should be a factor in evaluating supervisors, law firms, and other legal employers.²⁷⁷

Bar associations, women's organizations, and corporate and governmental clients can assist this effort by monitoring the performance of employers, and by steering business or providing special recognition to those with successful records. What strategies are most effective depends on the particular workplace, but the information available suggests best practices that are most likely to be successful.

B. Strategies for Legal Employers and Bar Associations

1. Assessment of Problems and Responses: Policy Evaluation, Benchmarks, and Training

To promote equal opportunity in practice as well as principle, it is often helpful to conduct formal or informal surveys. Such surveys can assess women's experience in areas such as compensation, leadership positions, promotion patterns, alternative work arrangements, and satisfaction levels.²⁷⁸ Confidential exit interviews with lawyers who have left the organization can be equally useful, particularly if their results are tabulated and monitored over time.²⁷⁹

Organizations need systematic information about whether men and women are advancing in equal numbers, whether they feel equally well supported in career development, and whether they are experiencing problems such as gender bias or sexual harassment. Information about the full costs of dissatisfaction and turnover can be a powerful catalyst to reform.²⁸⁰

Related strategies are to provide management training on diversity issues or to enlist a diversity consultant in identifying problems and designing appropriate responses.²⁸¹ Where an organization's leadership fails to acknowledge any significant "woman problem," survey findings or recommendations by an outside expert can serve as a constructive persuasive tool. And where colleagues fail to perceive the stereotypical assumptions and structural barriers that limit women's opportunities, diversity training can be similarly helpful.²⁸²

However, such initiatives need to be seen as a catalyst, not as a substitute for change. Many women, particularly women of color, doubt the effectiveness of some training efforts. As one disillusioned associate noted, law firms can hire diversity consultants or "put on programs until the cows come home," but significant progress will also require leaders to act on the recommendations they hear.²⁸³ That, in turn, will require benchmarks for assessing progress and procedures for monitoring performance. As bar leaders and management experts often note, what isn't measured isn't done.²⁸⁴

Comparisons with similar organizations and guidance from best practice standards by bar associations can often help in developing realistic strategies. For example, the Commission on Women in the Legal Profession has published materials and model policies on alternative work schedules, family leave, sex harassment, and performance evaluations. A forthcoming Commission Manual also identifies best practices on related issues such as mentoring, compensation, marketing, and career development.

At a minimum, organizations need formal policies and educational programs that clearly specify diversity-related commitments, prohibited conduct, and remedial processes. Such processes should provide for adequate investigation of complaints, appropriate sanctions, and protection against retaliation.²⁸⁵ To achieve equal opportunity for all women, employer initiatives should also target issues including racial and ethnic diversity, sexual orientation, and disability.²⁸⁶

In the long run, the effectiveness of these strategies depends not only on their specific content, but also on the process by which they are adopted and implemented.²⁸⁷ Although that process will vary across organizations, its basic objective should be the same: to insure that women's concerns are fully aired and systematically addressed.

2. Evaluation Structures, Leadership Opportunities, and Professional Development

In *Fair Measure: Toward Effective Attorney Evaluation*, and a forthcoming manual on Best Practices, the ABA's Commission on Women in the Profession identifies strategies that can help eliminate gender bias in performance assessments and compensation decisions. Other bar organizations have developed related materials. Appropriate strategies include monitoring written evaluations for stereotypical characterizations; placing greater reliance on objective outcome-related criteria; reviewing assignments to provide equal opportunities for career development; ensuring adequate diversity in leadership and key committee positions; and educating attorneys about how to make and receive effective performance and compensation assessments.²⁸⁸

Having associates evaluate their supervisors can also help to address diversity-related biases and barriers.²⁸⁹

Legal employers and bar organizations also should provide more opportunities for formal and informal training in nonsubstantive areas that affect professional development. Marketing, leadership, communication, and related skills are particularly critical for women lawyers, who are not competing on an equal playing field. They should also be encouraged to develop specific career objectives and to seek training, and feedback that will advance those goals.

Reexamining an organization's leadership selection systems, criteria, and structures can be equally important. The more democratic and participatory the process, the greater the likelihood that women will have opportunities

to serve on nominating committees or to be considered as leadership candidates. Rotation systems for key decisionmaking positions can similarly help women gain leadership expertise, as well as prevent entrenchment of senior attorneys who do not view diversity as a priority.²⁹⁰

Selection criteria that do not give excessive weight to business development are equally critical. Both women

and firms can benefit from adequate consideration of other leadership capabilities, particularly interpersonal skills.²⁹¹

Organizations can also help equalize leadership opportunities by providing adequate support for women who assume them. Many individuals, especially those with significant family responsibilities, have seen too little to gain from accepting a senior management position. Others have dropped off the leadership track after being "worn down and worn out" by serving as a token woman with insufficient influence to compensate for the obligations.²⁹²

The problem is especially pronounced for women of color, whose small numbers often mean disproportionate administrative burdens. Insuring adequate recognition, respect, and credit for leadership responsibilities can encourage more women to seek them. A critical mass of senior women can then promote the workplace cultures and policies that make for truly equal opportunities.²⁹³

3. Quality of Life and Work-Family Initiatives

Any serious commitment to equal opportunity requires a similarly serious commitment to addressing work/family conflicts and related quality of life issues. Promising proposals are not in short supply. The ABA's Commission on Women in the Profession, as well as many local bar associations and national policy organizations, have identi-

fied best practices concerning matters such as flexible or reduced schedules, telecommuting, leave policies, sexual orientation, and disability assistance.²⁹⁴

Although the details of effective policies will vary across organizations, the key factors are mutual commitment and flexibility. Both the individual and the institution have to be willing to make adjustments that are fair for all concerned. Women on reduced schedules need to be prepared to increase their hours when short-term needs emerge. Their colleagues need to avoid taking advantage of that availability, to provide adequate compensation for additional work, and to make reasonable accommodations of women's scheduling concerns. To that end, employers should establish benchmarks for monitoring the effectiveness of alternative work arrangements, including usage, satisfaction, and promotion rates, and perceptions about the acceptability of such options. Some administrative structure or position should be established to assist those considering alternative work arrangements and to help insure their success.

Technological innovations that blur the boundary between home and work can both promote and sabotage these flexible scheduling opportunities. Lawyers should have access to tele-commuting resources such as home computers, cell phones, and faxes, and should not be judged on "face time" in the office. But neither should they be expected to remain perpetually on call when they are out of the office. Women who seek to demonstrate their commitment and accessibility should not end up with part-time status but full-time schedules.

Employers also need to insure that women who seek temporary accommodations do not pay a permanent price. "Stepping out" should not necessarily mean "stepping down." Rigid up- or-out promotion structures should be reconsidered, but alternatives to equity partnerships should not become new "pink ghettos." Lawyers who opt for reduced or flexible schedules should not lose opportunities for challenging assignments, eventual promotion, and fair compensation. Nor should other attorneys bear undue burdens as a result of their colleagues' restricted availability. Peer resentment can sabotage the most family-friendly policies, so employers have a responsibility to structure workloads in ways that are reasonable for all concerned.

Finally, and most important, quality of life concerns should be seen not just as "women's issues" but also as workplace priorities. Organizations that want the most able and diverse group of lawyers possible need an environment that can attract and retain them. At a minimum, that will mean restructuring the sweatshop schedules that are increasingly common in private practice. Reasonable working hours yield more efficient performance, better morale, and fewer stress and health-related problems.²⁹⁵

In the *ABA Journal's* 2000 survey, a majority of lawyers agreed that the increase of women in the profession would ultimately promote a better balance between work and

Women are not merely a 'special interest' group, but half the human race.

Bella Abzug

family, more flexible work arrangements, and a higher quality of service.²⁹⁶ Those are changes long overdue, and lawyers cannot afford to wait until women have sufficient influence to ensure them.

4. Mentoring Programs and Women's Networks

Although the importance of mentors has often been recognized, the institutionalization of mentoring has lagged behind. For many women, senior colleagues can play a critical role in career development by providing advice, support, and as role models.²⁹⁷

Mentors can sponsor women for challenging assignments and prestigious positions, as well as channel clients and business development opportunities in their direction. In many mentoring relationships, the rewards run in both directions. Quite apart from the satisfaction that comes from assisting those who need assistance, senior colleagues may receive more tangible benefits from the loyalty and influence that their efforts secure. Talented junior colleagues generally want to work for effective mentors, and to support them for leadership positions.

Yet as earlier discussion indicated, these benefits have not been sufficient to provide adequate access to mentors. Part of the problem is that the upper levels of the professional partnerships are dominated by men, who often prefer bonding with younger men, or who worry about the appearance of impropriety of forming close relationships with younger women. Senior women cannot adequately fill the gap; their numbers are too small and their schedules are too overcommitted to provide support for all the junior colleagues who need it. Women in solo practice, or those working part-time from home offices, are especially likely to feel out of the loop of advice and contacts.

Formal mentoring programs in firms and bar associations are a partial solution. Of course, relationships that are assigned are seldom as effective as those that are chosen.²⁹⁸ But formal programs can at least remove the concerns about appearances that sometimes inhibit mentoring relationships, and can create accountability for some measure of assistance. Well-designed programs that evaluate, monitor, and reward mentoring activities can make a significant difference; the benefits show up in participants' skills, satisfaction, marketing capacities, and retention rates.²⁹⁹

Another strategy is to encourage voluntary mentoring through women's networks. A growing number of networks have emerged both within and across organizations.³⁰⁰ These networks sponsor a variety of activities, such as workshops, seminars, speaker series, and informal social events. Some groups link lawyers with potential clients; some help participants develop marketing, leadership, and other career advancement skills; some focus on showcasing women's achievements and representing their interests on workplace issues; and some assist particular groups, such as women of color, lesbians, women with disabilities, and

women on part-time schedules. In many organizations, those efforts have benefitted from advocating the interests of female support staff and including them in appropriate events. These networks can play a crucial role not only in expanding opportunities for women, but also in improving the productivity and marketing capacity of their employers.

Building effective networks does, however, present its own share of challenges. Not all female attorneys—or their male colleagues—see the value of separatism. Some women are concerned about being “branded” with women's issues and appearing to want special favors; others worry about being seen as elitist and concerned only with problems of privileged professional women.³⁰¹ Some men resent subsidizing career development opportunities that are not available to them, or fear that networks will expose sex discrimination problems resulting in legal liability.³⁰²

How best to respond to these concerns varies across organizations. One strategy for reducing resentment is to include men as members or to invite their participation in major events. Another strategy is to build a financial case for all-female memberships by developing substantial new business through marketing initiatives.³⁰³

Proactive recruiting and inclusive programming efforts can also help networks increase their responsiveness to underrepresented groups, especially women of color. Although the activities of successful networks differ, they generally rely on similar processes. After systematically assessing women's needs, these groups set attainable goals and monitor progress. Their “small wins” often establish the groundwork for more significant change.³⁰⁴

5. Sexual Harassment

As earlier discussion noted, almost all legal employers have policies on sexual harassment, but not all are effective in deterring or remedying harassing conduct, or in preventing employee backlash. In designing appropriate policies, legal employers need to strike a balance. They must establish procedures that make it safe for targets of sexual harassment to complain, and that insure appropriate

Never underestimate the ability of a small, dedicated group of people to change the world; indeed it's the only thing that has ever changed the world.

Margaret Mead

sanctions for inappropriate conduct. But these procedures must also provide adequate safeguards against unwarranted accusations, and overly punitive responses to genuine misunderstandings or inadvertent offenses.

Given the amount of time that lawyers spend at work and the importance of informal social activities to professional success, it is unrealistic to think that all sexually freighted conduct can be banished from the workplace.³⁰⁵ But it is realistic to do more to prevent coercive, demeaning, and abusive behavior, through well designed policies and educational programs. At a minimum, employers should: train supervisors in identifying and responding to inappropriate conduct; establish user-friendly grievance procedures with multiple reporting options; insure protection against retaliation; impose meaningful sanctions; and monitor the effectiveness of procedures.³⁰⁶ Bar ethical codes should also treat sexual harassment as a form of professional misconduct, and disciplinary agencies should act where other remedies are insufficient.³⁰⁷

6. Pro Bono Work By and For Women

Organizations that are truly committed to equal opportunity must also assume some obligation to promote it in the world outside their workplace. Although pro bono

initiatives are not distinctively “women’s issues,” they hold particular importance for women in several respects. First, women are especially likely to enter law with a commitment to social justice and social welfare.³⁰⁸ Moreover, support from these women and their employers has been crucial to the struggle for gender equality. To take only the most obvious examples, the Commission on Women and the Profession, as well as women’s rights organizations, have all depended on pro bono contributions from the private sector. Public interest initiatives are an essential vehicle for women of influence to use that influence for the common good, and to speak on behalf of those who lack opportunities to speak effectively for themselves.³⁰⁹

Greater support from a greater number of individuals and institutions is needed. Far too few law firms and businesses that are readily able to make substantial contri-

butions have actually done so. Too many women work in organizations where bottom-line concerns have discouraged the public interest pursuits that traditionally have ranked among professionals’ most satisfying experiences. More collaborative pro bono efforts are necessary among employers, bar associations, law schools, and service providers. Initiatives sponsored by the ABA Commission on Women in the Profession, the National Conference of Women’s Bar Associations, and by many local women’s bar associations are a step in the right direction. But far more could and should be done to enable lawyers to connect their principles with their practice, particularly on issues of special concern to women.

C. Strategies for the Justice System

Many state commissions, as well as the National Judicial Education Program (NJEP), have provided guidance for addressing gender bias. NJEP has compiled a comprehensive Implementation Resources Directory, and has developed key components of a model plan that are set forth in Appendix One.³¹⁰

That plan, together with recommendations from the state gender bias commissions on which it draws, emphasizes certain crucial strategies:

- A standing committee or administrative structure with adequate staff and resources to address gender bias;
- Effective education, not just in “bias sensitivity” but also in the social, economic, and psychological research that should inform decision making on gender-related issues;
- Complaint structures that provide options for confidential reports and protections against retaliation;
- Codes of conduct that address gender bias with specificity;
- Attention to the intersection of multiple forms of bias, including not only gender but also race, ethnicity, sexual orientation, and disability;
- Initiatives to ensure equal opportunities for women at all levels of the justice system;
- Collaboration with other groups, both within and outside of the courts, concerned with eliminating gender bias;
- Collection of data to identify persistent problems and to monitor the effectiveness of responses.³¹¹

This is not a modest agenda. But it is critical to maintaining a legal system that ensures equal justice in practice as well as principle.

D. Strategies for Legal Education

An important first step for law schools committed to equal opportunity is to evaluate their own performance and to establish administrative structures with explicit responsibility for addressing gender and other diversity-related concerns.³¹² To that end, schools should gather information about the experience of women and the effectiveness of policies that affect them. The ABA Commission on Women in the

However complicated our lives, however tough the personal struggles to balance it all, I urge you to commit some of your time, your skill, your talent to improve our public life.

*Hillary Rodham Clinton,
First Chair of the ABA’s
Commission on Women
in the Profession,
United States Senator*

Profession has published a sample questionnaire, and has identified promising strategies for reform.³¹³ The ABA's Commission on Racial and Ethnic Diversity in the Profession has also proposed initiatives to promote equal opportunity in legal education.³¹⁴ These recommendations, together with other research in the field, suggests reforms on several levels.

One involves admissions. Although women now constitute at least half of entering classes, women of color are still underrepresented. Part of the reason involves admission criteria that place undue reliance on combined gradepoint averages and LSAT scores. These ostensibly "merit" based criteria cannot adequately assess it.³¹⁵ They predict only about a quarter of the variation in law school performance.³¹⁶ And there is reason to doubt how well they predict success in practice. The few attempts to follow students after graduation have not found that undergraduate GPAs and test scores correlate with graduates' income, career satisfaction, or pro bono contributions. Minorities admitted under affirmative action have done as well on these measures as other graduates admitted under more quantitative criteria.³¹⁷

A serious commitment to diversity as well as educational quality argues both for maintaining affirmative action programs and for developing more inclusive admission standards. For example, a growing number of institutions are considering additional, non quantitative characteristics such as leadership ability, employment experience, community service, and perseverance in the face of economic disadvantage or other hardships. Consideration of such factors does, of course, carry a cost; it requires more time and carries more risk of idiosyncratic bias than reliance on GPAs and test scores. But the costs of overreliance on quantitative factors are far greater. Both the public and the profession have a stake in promoting judgments that consider applicants' full potential and that foster diverse learning environments.³¹⁸

Similar considerations argue for closer scrutiny of senior faculty and administrative appointments. The underrepresentation of women, particularly women of color, cannot be explained solely on the basis of "objective": merit-based considerations.³¹⁹

Law schools need to identify and address factors that may disadvantage women, such as unconscious bias in fac-

ulty and student evaluations; disproportionate counseling and administrative burdens; insufficient mentoring; inadequate work/family policies; and devaluation of scholarship related to race, gender, sexual orientation and related topics.

These topics also should receive more effective treatment throughout the educational experience. The core curriculum needs to move beyond the conventional "add woman and stir" approach, which offers an occasional case or reference to gender but little effort at systematic analysis or inclusive course materials. Promising reform strategies include adding diversity-related topics to faculty workshops and lecture series, and providing support for curricular integration. Professors should be encouraged to develop supplemental readings, case studies, and exercises that address issues such as gender, race, ethnicity, class, and sexual orientation.

Other efforts should center on teaching strategies that will promote broader student participation. Less competitive classroom atmospheres, and greater opportunities for interactive, experiential learning could create more inclusive educational environments. Faculty also could do more to insure tolerance and mutual respect. Harassing and demeaning conduct should be viewed as institutional problems demanding institutional responses.

Finally, law schools should make greater efforts to promote pro bono service. The AALS Commission on Pro Bono Opportunities and Lawyers for One America have recommended that schools should make available to all students at least one well-supervised, law-related pro bono opportunity and either require service or find ways to attract the great majority of students to volunteer.³²⁰

Efforts along these lines could help increase understanding of women's unmet needs and foster commitments to respond. Making public service a rewarded and rewarding opportunity in law schools is one of the best ways to inspire continuing service after graduation.

All of these strategies will require a sustained and substantial commitment. Faculty, administrators, alumnae, and bar accrediting authorities must join together to place greater priority on issues of equal opportunity, and on the profession's obligation to address them. The foundations of our legal culture are laid in law school, and they need to express our aspirations to equality in practice as well as principle.

V. CONCLUSION

At the turn of the last century, some states still prohibited women's admission to the bar; others reported no women interested in applying.³²¹ Many had fewer than a dozen female lawyers, and the nation as a whole had fewer than two dozen African-American women in legal practice.³²²

"Bring on as many women as you choose," offered one District of Columbia judge. "I do not think they will be a success."³²³

By the turn of the 21st century, the profession had been transformed. If current trends in law school applications continue, women's representation will equal men's in the foreseeable future. But whether equal numbers will bring

equal opportunities is less certain. Much depends on the profession's willingness to address the gender biases and barriers that persist. The mission of groups like the ABA's Commission on Women in the Profession is to help meet these remaining challenges.

Women's increasing influence in the bar also raises broader opportunities. As Virginia Woolf once observed, women for centuries had stood only as spectators before the "procession of educated men."³²⁴ Now that barriers to entry have lifted, women are free not only to join this procession but also to rethink its direction and the terms on which they will participate. That opportunity holds great promise for women, the profession, and the public.

Key Components to Achieve and Secure Gender Fairness in the Courts³²⁵

1. A standing committee on gender fairness.
2. Staff and funding to carry out the work of implementation on a long-term basis.
3. Education for judges, court personnel, and judicial nominating and disciplinary commissions on an ongoing basis.
4. Gender-fairness initiatives that address the different court-related issues confronting women of diverse racial and ethnic backgrounds and lifestyles.
5. Codes of conduct for judges, court personnel, and lawyers that address gender bias with specificity.
6. Legislation recommended by the task forces and implementation committees.
7. Gender-neutral/gender-appropriate language in courtrooms, court rules and correspondence, jury instructions, opinions, and other court communications.
8. Mechanisms for handling formal and informal complaints of gender bias.
9. Initiatives to ensure gender fairness in the judicial nomination, election, evaluation, and disciplinary processes.
10. Initiatives to ensure gender fairness in court employment.
11. Collection of necessary data to monitor known areas of gender bias and identify new problems on an ongoing basis.
12. Collaboration and alliances with other groups, both inside and outside the court system, that can implement task force recommendations, monitor progress, and initiate new activities.
13. Wide diffusion of the task force's findings and initiatives to entities such as district attorney/public defender offices, police, academic institutions including law schools and community organizations.
14. Periodic evaluation to assess the task force's implementation efforts, analyze their effect on reducing gender bias in the courts, and identify new problem areas.
15. Initiatives to ensure that each court planning and reform effort addresses the relevant gender fairness concerns.

ENDNOTES

1. Karen Morello, *The Invisible Bar: The Woman Lawyer in America, 1638 to the Present* 181 (1986); Deborah L. Rhode, *Justice and Gender* 20–23 (1989); Deborah L. Rhode, “Perspectives on Professional Women,” 40 *Stan. L. Rev.* 1163, 1166 (1988); In the Matter of Goodell, 39 *Wis. 232, 244* (1875).
2. Rhode, *supra* note 1, at 24; Donna Fossum, “Women in the Legal Profession: A Progress Report,” 67 *Women’s L.J.* 1 (1981).
3. Hope Viner Samborn, “Higher Hurdles for Women,” *ABA J.* September 2000, at 30, 33 (60% of men and 52% of women); Abbie F. Willard & Paula A. Patton, National Association of Law Placement Foundation for Education and Research, *Perceptions of Partnership: The Allure and Accessibility of the Brass Ring* 33 (1999) (83% of men and 58% of women).
4. Deborah Graham, *Getting Down to Business: Marketing and Women Lawyers* 61–63, 151–53 (1996). See *infra* text accompanying notes 305–307.
5. Deborah L. Rhode, *Speaking of Sex* 3–4 (1998).
6. Jeannette W. Cleveland, Margaret Stockdale & Karen R. Murphy, *Women and Men in Management* 363 (1999); Business and Professional Women’s Foundation and the American Management Association, *Compensation and Benefits: A Focus on Gender* 23 (1999); Susan Stites-Doe and James J. Cordiro, “The Impact of Women Managers on Firm Performance: Evidence from Large U.S. Firms,” *Int’l Rev. of Women and Leadership*, July, 1997.
7. Samborn, *supra* note 3, at 33; Lynn S. Glasser, “Survey of Female Litigators: Discrimination by Clients Limits Opportunities,” in *The Woman Advocate: Excelling in the 90s*, at 60, 72 (Jean MacLean Snyder & Andrea Barmash Greene, eds. 1995) (58% of women surveyed believed they had equal opportunity at their firms).
8. Report of the Ninth Circuit Gender Bias Task Force, *The Effects of Gender in the Federal Courts* 60 (Discussion draft, 1992); Diane F. Norwood and Arlette Molling, “Sex Discrimination in the Profession: 1990 Survey Results,” *Tex. Bus. J.*, June 1992, at 50, 51; for similar comments see Judith Resnik, “Gender Bias: From Classes to Courts,” 45 *Stan. L. Rev.* 2195, 2207 (1993) (quoting comments that surveys were “a complete waste of time and money,” and “much ado about nothing”); Cynthia Fuchs Epstein et al., “Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession,” 64 *Fordham L. Rev.* 291, 356 (1995) (quoting male attorney’s belief that women’s advancement is “only a matter of time”).
9. National Bureau of Labor Statistics, 1999; Kenneth G. Dau-Schmidt & Kavshik Mukhopadhyaya, “The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession,” 49 *J. Legal Educ.* 342, 364 (1999); Susan Bianchi-Sand, “Gender Wage Disparities are Still Widespread and Require Congressional Action,” *Legal Times*, Aug. 23, 1999, at 22; Elizabeth Amon, “Women Make About 58 % as Much as Men, Group’s Survey Finds,” *Nat’l L. J.* Sept. 20, 1999, at A11; Jeff Blumenthal, “Bar Survey Holds Up a Mirror to Changing Face of Philly Lawyers,” *The Legal Intelligencer*, June 29, 2000, at 1; Kathleen E. Hull and Robert Nelson, “Divergent Paths: Gender Differences in the Careers of Urban Lawyers,” 10 *Researching Law* 1 (Summer, 1999); Scott Bortnick, “Survey of Women Lawyers Shows Inequities in Pay, Partnership,” *L.A. Daily J.*, Aug. 25, 1998, at 3; Message of the President of the Woman’s Bar Association of Massachusetts, *Mass. Law. Weekly*, May 11, 1998 (finding that surveyed women on average billed more hours per week than men, but that only a fifth of women earned as much as the majority of men); Wynn R. Huang, “Gender Differences in the Earnings of Lawyers,” 30 *Colum. J. L. & Soc. Probs.* 267 (1997); Cathlen Donnel, Joyce Sterling, and Nancy Richman, *Gender Penalties: The Results of Careers and Compensation Study* (Colorado Women’s Bar Association, 1998) (finding that the average income for full time female practitioners was 59 percent of males, and that significant disparities persisted after controlling for experience, areas of practice, geographic location, and other factors).
10. ABA Commission on Women in the Profession, *A Snapshot of Women in the Law in the Year 2000*; Lesley Guth, “Women Making Progress, But Not Enough,” *Recorder*, June 16, 2000, at 7; Minority Corporate Counsel Association 2000 Survey; Melody Petersen, “Her Partners Can Call Her Ms. Chairman,” *N.Y. Times*, Oct. 9, 1999, at C1; Matt Fleischer, “Women in NLJ 250 Hit a Glass Plateau,” *Nat’l L. J.*, Dec. 11, 2000, at A1.
11. Richard C. Kearney and Holly Taylor Sellers, “Gender Bias in Court Personnel Administration,” 81 *Judicature* 8, 9 (1997) (noting that women are a majority of court personnel but are clustered in low level, undercompensated positions); Laura Gatland, “Courts Behaving Badly,” *ABA J.* Nov. 1997, at 30 (reporting Eighth Circuit finding that women filled about three-quarters of staff positions but only a third of management positions).
12. Epstein et al., *supra* note 8, (noting that in the period of study, men’s chances of making partnership were 17 percent and women’s 5 percent); Cynthia Grant Bowman, *Bibliographical Essay: Women and the Legal Profession*, 7 *Am. U. J. Gender Soc. Pol’y & L.* 149, 164 (1999) (citing studies); ABA, Young Lawyers Division, *The State of the Legal Profession* (1991).
13. Data is hard to come by because research on race and gender differences rarely considers women of color as a separate category. Surveys that focus on the intersection of race and gender find that the barriers for women are compounded for women of color. See ABA Commission on Opportunities for Minorities in the Profession, *Miles to Go: Progress of Minorities in the Legal Profession* xi (2000); Nancy E. Dowd, “Resisting Essentialism and Hierarchy: A Critique of Work/Family Strategies for Women Lawyers,” 16 *Harv. Blackletter L. J.* 185, 193–95 (2000) (discussing both the barriers for women of color and the limited data available). According to National Association of Law Placement data, lawyers of color account for only 3 percent of law firm partners and women account for only 14 percent of that number. Arthur S. Hayes, “Color-Coded Hurdle,” *ABA J.* Feb. 1999, at 56; Donna Gill, “Diversity Survey: Women Advancing Faster than Minorities as Firm Leaders,” *Chi. Law.*, June, 2000, at 22.
14. David B. Wilkins and G. Mitu Gulati, “Reconceiving the Tournament of Lawyers: Tracking, Seeing, and Information Control in the Internal Labor Markets of Elite Law Firms,” 84 *Va. L. Rev.* 1581 (1998); National Association for Law Placement Foundation, *Keeping the Keepers: Strategies for Associate Retention in Times of Attrition* 53–57 (1998); ABA Commission, *supra* note 13, at 5; David B. Wilkins and G. Mitu Gulati, “Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis,” 84 *Cal. L. Rev.* 493, 570 (1996) [hereinafter Wilkins & Gulati, “Black Lawyers”]; L.A. County Bar Association Ad Hoc Committee on Sexual Orientation Bias, *The L.A. County Bar Association Report on Sexual Orientation Bias*, reprinted in 4 *S. Cal. L. & Women’s Stud.* 295, 305 (1995); California Bar Association, *Report and Recommendations Regarding Sexual Orientation, Discrimination in the California Legal Profession* 2 (1996); State Bar of California, *Employment of Legal Professionals With Disabilities and Chronic Medical Conditions* (1996) [hereinafter State Bar of California, *Employment of Legal Professionals With Disabilities*]; State Bar of California, *Subcommittee on the Employment of Attorneys With Disabilities, Survey of Attorneys and Judges With Disabilities and Chronic Medical Conditions* (1993) [hereinafter State Bar of California, “Survey”].
15. Irwin A. Horowitz & Kenneth S. Bordens, “Social Perception: The Construction of Social Reality,” *Soc. Psychol.* 87, 91–94 (1994); Susan T. Fiske, “Stereotyping, Prejudice, and Discrimination,” in *The Handbook of Social Psychology* 357 (Daniel T. Gilbert, Susan T. Fiske & Gardner Lindzey, eds. 4th ed., 1998); Jody Armour “Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit,” 83 *Cal. L. Rev.* 733, 750 (1995).
16. See Virginia Valian, *Why So Slow?: The Advancement of Women* 16–17 (1998); Mark R. Poirier, “Gender Stereotypes at Work,” 65 *Brook. L. Rev.* 1073, 1086–89 (1999).

17. Graham, *supra* note 4, at 46-51, 72; Elizabeth K. Ziewacz, "Can The Glass Ceiling Be Shattered?: The Decline of Women Partners in Large Law Firms," 57 Ohio St. L. J. 971, 977 (1996); Epstein et al., *supra* note 8, at 337; Kathryn Reed Edge, "Gender Bias Goes to Ground in Tennessee," *Judges' Journal*, Spring, 2000, at 29; Glasser, *supra* note 7, at 59.

18. Graham, *supra* note 4, at 328, 353, 360, 376.

19. Alice H. Eagly, Mona G. Makhijani, & Bruce G. Klonsky, "Gender and The Evaluation of Leaders: A Meta-Analysis," 111 *Psychological Bulletin* 3 (1992); Cleveland, Stockdale, & Murphy, *supra* note 6, at 106, 307.

20. See Kathleen Hall Jamieson, *Beyond the Double Bind: Women and Leadership* 4, 129 (1995); Ann M. Morrison et al., *Breaking the Glass Ceiling: Can Women Reach the Top of America's Largest Corporations?* 54, 61-62 (1994); Deborah L. Rhode, "Gender and Professional Roles," 63 *Fordham L. Rev.* 39, 67 (1994); Eagly, Makhijani, & Klonsky, *supra* note 19, at 17.

21. Samborn, *supra* note 3, at 31 (57 percent believe women must work harder); ABA Commission on Women in the Profession, *Fair Measure: Toward Effective Attorney Evaluation* 14 (April 1997) (three quarters believe women held to higher standards); Glasser, *supra* note 7, at 59.

22. *Catalyst, Women in Law: Making the Case, Executive Summary* 5 (2001).

23. The landmark study was Rosabeth Moss Kanter, *Men and Women of the Corporation* (1977). For more recent work, see Rhode, *supra* note 5, at 145-48; Thomas F. Pettigrew and Joanne Martin, "Shaping the Organizational Context for Black American Inclusion," 43 *J. Soc. Issues* 41, 36-57 (1987); Graham, *supra* note 4, at 377.

24. Robin J. Ely, "The Power in Demography: Women's Social Constructions of Gender Identity at Work," 38 *Acad. Mgmt. J.* 589, 614, 619 (1995).

25. Martha Foschi, "Double Standards in the Evaluation of Men and Women," 59 *Soc. Psychol.* 237 (1996); Jacqueline Landau, "The Relationship of Race and Gender to Managers' Rating Of Promotion Potential," 16 *J. Organizational Behav.* 391 (1995).

26. See studies cited in Rhode, *supra* note 5, at 145; Virginia Valian, "The Cognitive Bases of Gender Bias," 65 *Brook. L. Rev.* 1037, 1050 (1999); Cecilia J. Ridgeway and Shelley J. Correll, "Limiting Inequality Through Interaction: The End[s] of Gender," 29 *Contemp. Soc.* 110, 113 (2000).

27. Foschi, *supra* note 25, at 237; Federal Glass Ceiling Commission, *Good for Business: Making Full Use of the Nation's Human Capital, Fact Finding Final Report*, BNA Daily Labor Report, March 17, 1995, at 26-28, 64-72, 93-96, 104-106; ABA Commission, *supra* note 13, at 5-7; Multicultural Women Attorneys' Network of the ABA, *The Burdens of Both, The Privileges of Neither*, 23-24 (1994); Boston Bar Association Task Force on Professional Fulfillment, *Expectations, Realities, and Recommendations for Change* (1997).

28. See sources cited in Rhode, *supra* note 5, at 145; Diane L. Bridge, "The Glass Ceiling and Sexual Stereotyping: Historical and Legal Perspectives of Women in the Workplace," 4 *Va. J. Soc. Pol'y. & L.* 581, 605-06 (1997); Jacob Herring, "The Everyday Realities of Minority Professional Life in the Workplace," discussed in Bar Association of San Francisco, *Committee on Minority Employment, Interim Report: Goals and Timetables for Minority Hiring and Recruitment* 28 (2000); NALP, *supra* note 3, at 92.

29. Rhode, *supra* note 5, at 163-171; Ridgeway and Correll, *supra* note 26, at 114; David Segal, "For Minority Attorneys, Big Law Firms Prove Trying," *Washington Post*, Jan. 16, 1992, at A8.

30. Federal Glass Ceiling Commission, *supra* note 27, at 585-86, 609, 620-21, 635; Timothy P. Fong, *The Contemporary Asian-American Experience* 109 (1998); Pat K. Chew, "Asian Americans: The 'Reticent' Minority and Their Paradoxes," 36 *Wm. & Mary L. Rev.* 1 (1994).

31. Multicultural Women Attorneys' Network, *supra* note 27, at 17.

32. Hayes, *supra* note 13, at 56. See NALP, *supra* note 3, at 32-36.

33. *Catalyst*, *supra* note 22, at 6.

34. Laura F. Rothstein, "Disabilities and the Legal Profession in

Texas," 60 *Tex. B. J.*, July 1997, at 690; State Bar of California, *Employment of Legal Professionals With Disabilities*, *supra* note 14, at 1.

35. L.A. County Bar Association, *supra* note 14, at 341.

36. Linda Hamilton Krieger, "The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity," 47 *Stan. L. Rev.* 1161, 1207-09 (1995); Federal Glass Ceiling Commission, *supra* note 27, at 26-28, 64-72, 93-96, 104-06, 123-25.

37. Melvin J. Lerner, *The Belief in a Just World: A Fundamental Delusion* vii-viii (1980); Valian, *supra* note 26, at 1059.

38. Horowitz & Bordens, *supra* note 15, at 91.

39. See sources also in Graham, *supra* note 4, at 43; Deborah Rhode, "Myths of Meritocracy," 65 *Fordham L. Rev.* 585 (1996).

40. "Green Pastures," *Perspectives*, Summer 1995, at 3; Paul M. Barrett, *The Good Black: A True Story of Race in America* 59 (1999); Suzanne Nossel and Elizabeth Westfall, *Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms* 105, 108 (2d. ed. 1998).

41. David A. Thomas and Karen L. Proudford, "Making Sense of Race Relations in Organizations," in *Addressing Cultural Issues in Organizations* (Robert T. Carter, ed., 2000); Graham, *supra* note 4, at 210.

42. Donnel, Sterling, & Richman, *supra* note 9, at 26, 34, 45-46; Deborah Graham, *Best Practices*, chapter 5 (ABA Commission on Women in the Profession, forthcoming); Sheila Wellington & *Catalyst*, *Be Your Own Mentor* 64 (2001).

43. *Catalyst*, *supra* note 22, at 4-6; Rhode, *supra* note 39, at 589; "The Effects of Gender Bias in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force," 67 *S. Cal. L. Rev.* 803 (1994); See generally Ida O. Abbott, *Lawyer's Guide to Mentoring* (2000); "Women Still Struggle to Climb Legal Ladder," *Roundtable Forum*, *Illinois Legal Times*, May, 1996 at 16.

44. Mats Alvesson and Yvonne Due Billing, *Understanding Gender and Organizations* 194 (1997); Judith Lorber, *Paradoxes of Gender* 237-38 (1994).

45. Epstein et al., *supra* note 8, at 356.

46. A striking number of women volunteered these descriptions in a recent survey of large law firms. Nossel & Westfall, *supra* note 40, at 68, 99, 113, 129, 144, 173, 179, 187, 194, 200, 203, 204, 224, 228, 259, 264, 274; 356, 361, 366, 374, 379.

47. Epstein, et al., *supra* note 8, at 408; Harvard Women's Law Association, *Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms* 18 (1995); Mona Harrington, *Women Lawyers: Rewriting the Rules* 40 (1993); Rhode, *supra* note 39, at 590; Nossel & Westfall, *supra* note 40, at 126, 187, 266, 277, 297.

48. Abbott, *supra* note 43; Nossel & Westfall, *supra* note 40, at 50, 59, 176; Amy Saltzman, "Woman Versus Woman: Why Aren't More Female Executives Mentoring Their Junior Counterparts?," *U.S. News & World Rep.*, March 25, 1996; Graham, *supra* note 42, at chapter 2.

49. Nossel & Westfall, *supra* note 40, at xii, 131, 266, 299; Cynthia Fuchs Epstein, et al., *The Part-Time Paradox: Time Norms, Professional Lives, Family, and Gender* 5 (1999); Boston Bar Association Task Force, *supra* note 27, at 25.

50. Nossel & Westfall, *supra* note 40, at 9, 45, 101, 176, 211-212, 291.

51. Epstein, et al., *supra* note 8, at 28; ABA Commission, *supra* note 13, at 6-7, 14-15; Bar Association of San Francisco, *supra* note 28, at 17, 25; Wilkins & Gulati, "Black Lawyers," *supra* note 14, at 570; Thomas & Proudford, *supra* note 41.

52. Ninth Circuit Gender Bias Task Force, *supra* note 8, at 171. See also *Catalyst, Women of Color in Corporate Management: Dynamics of Career Advancement* 15 (1999); Ella L. Bell, Toni Denton and Stella Nicomo, "Women of Color in Management," *Toward an Inclusive Approach*, in *Women in Management: Trends, Issues, and Challenges in Managerial Diversity* 114 (Ellen A. Fagenson, ed. 1993); Geoffrey A. Campbell, "Slow Progress for Minorities in Law," *ABA J.* Sept. 1998, at 82; *Catalyst*, *supra* note 22, at 6.

53. National Association of Law Placement, *supra* note 14.

54. Bar Association of San Francisco, *supra* note 28, at 34; ABA Commission, *supra* note 13, at 26-27.

55. Wendell LaGrand, "Getting There, Staying There," ABA J. Feb. 1999, at 54.
56. State Bar of California, Survey, *supra* note 14; "Networking Forum for Lawyers with Disabilities and Lawyers Who Practice Disability Law," 22 *Mental & Physical Disability L. Rep.* 124 (1998); David Arocho, "A Difficult Journey: Acquiring a Disability After Starting Practice," *The Complete Lawyer*, July, 1999, at 46; Pamela Coyle, "What Sylvia Law, Jonathan Pazer and David Glass Confront When They Read or Write," ABA J. Sept. 1996, at 64.
57. L.A. County Bar Association, *supra* note 14, at 444-49, 471. See also Nossel & Westfall, *supra* note 40, at 256, 266, 297; William B. Rubenstein, "Queer Studies II: Some Reflections on the Study of Sexual Orientation Bias in the Legal Profession," 8 *UCLA Women's L. J.* 379, 394 (1998). Some evidence suggests that these patterns are changing, especially in the large firms. For comments suggesting supportive attitudes towards gay and lesbian attorneys, see Nossel & Westfall, *supra* note 40, at 76, 90-91, 138, 144, 168, 175, 251, 288-291, 319.
58. Jennifer Purian, "Queer Studies I: An Examination of the First Eleven Studies of Sexual Orientation Bias by the Legal Profession," 8 *UCLA Women's L.J.* 343-344 (1998).
59. L.A. County Bar Association, *supra* note 14, at 312.
60. Catalyst, *supra* note 22, at 8, 10.
61. ABA Young Lawyers Division, Career Satisfaction Survey, Table 15 (2000). See *infra* note 94.
62. Epstein et al., *supra* note 49, at 5; Deborah L. Rhode, In the Interests of Justice: Reforming the Legal Profession 10, 35 (2000); Catalyst, *supra* note 22, at 40; Heidi L. McNeil, A Problems Identified: Life, Law and the Pursuit of Balance: A Lawyers' Guide to the Quality of Life 14 (Jeffrey R. Simmons, ed., ABA Young Lawyers' Division).
63. Juliet B. Schor, The Overworked American: The Unexpected Decline of Leisure 1-5, 79-82 (1993); Rhode, *supra* note 62, at 10, 35; ABA Young Lawyers Division, *supra* note 61, at 11 (finding that over a third of surveyed lawyers billed over 2000 hours, compared with a fifth of lawyers in 1995).
64. Almost half of young lawyers in the ABA's most recent survey worked more than 50 hours a week. ABA Young Lawyers Division, *supra* note 61, at 1; Joan Williams, Unbending Gender: Why Family and Work Conflict and What to Do About It 71 (2000); Arlie Russell Hochschild, The Time Bind: When Work Becomes Home and Home Becomes Work 70 (1997); Carl T. Bogus, "The Death of an Honorable Profession," 71 *Ind. L. J.* 911, 925-926 (1996).
65. Rhode, *supra* note 62, at 10; Bogus, *supra* note 64, at 926; Marc B. Schenker, et al., "Self-Reported Stress and Reproductive Health of Female Lawyers," 39 *Occupational & Envtl. Med.* 556 (1997).
66. Marilyn Tucker, "Will Women Lawyers Ever Be Happy?" *L. Prac. Mgmt.*, Jan./Feb. 1998, at 47. See also Epstein et al., *supra* note 49, at 34 (quoting advice "If you want to be a lawyer, be a lawyer. If you want to be a mother, be a mother.").
67. Nossel & Westfall, *supra* note 40, at 90, 259, 270.
68. Renee M. Landers, James B. Rebitzer, and Lowell J. Taylor, "Rat Race Redux: Adverse Selection in the Determination of Work Hours In Law Firms," 86 *Am. Econ. Rev.* 329 (1996); Epstein et al., *supra* note 49, at 56.
69. Landers, Rebitzer, & Taylor, *supra* note 68.
70. Epstein, et al., *supra* note 49, at 5; Willard & Patton, *supra* note 3, at 99; Project for Attorney Retention, Program on Gender, Work, and Family, Interim Report 4 (Washington College of Law, American University, March 2001); Catalyst, A New Approach to Flexibility: Managing the Work Time Equation 16, 25-27 (1997).
71. Nossel & Westfall, *supra* note 40, at 168; see also *id.* 3, 14, 59, 71, 180-81, 194, 199, 255, 358, 362, 366, 375. See Samborn, *supra* note 3, at 35 (findings that 46 percent of surveyed women believed that taking a leave or part-time status after becoming a parent would be very likely to have an adverse effect on advancement and another 35 percent thought it was somewhat likely). In a recent study of part-time lawyers, only 1% had become partners. Epstein et al., *supra* note 49, at 56; Michael D. Goldhaber, "Part Time Never Works' Discuss," *Nat'l L.J.* Dec. 4, 2000, at A31 (finding over 40% of associates believed that part time is under utilized because it never works). See also Women's Bar Association of Massachusetts, More Than Part-Time (2000); Project for Attorney Retention, *supra* note 70, at 4.
72. Kearney & Setters, *supra* note 11, at 14-15.
73. Harrington, *supra* note 47, at 20; Cameron Stracher, "All Aboard The Mommy Track," *Am. Law.*, March 1999, at 126; Rhode, *supra* note 39, at 592-93; Meredith K. Wadman, "Family and Work," *Wash. Law.*, November, December, 1998, 33; Willard & Patton, *supra* note 3, at 99; Epstein et al., *supra* note 8, at 391-399.
74. Harrington, *supra* note 47, at 33; Epstein, *supra* note 8, at 298; Women's Bar Association of Massachusetts, *supra* note 71; Project for Attorney Retention, *supra* note 70, at 4; Harvard Women's Law Association, *supra* note 47, at 72; Rhode, *supra* note 39, at 588. In the NALP survey, half of the women believed that female attorneys were considered less committed than their male colleagues. Willard & Patton, *supra* note 3, at 37; Catalyst, Flexible Work Arrangements III: A Ten Year Retrospective of Part-Time Arrangements for Management and Professionals, 46-47 (New York: Catalyst, 2000).
75. Harvard Women's Law Association, *supra* note 47, at 72; David O Krent, "Get Me David Boies," *Time*, Dec. 25, 2000/Jan. 2, 2001 (quoting David Boies).
76. Terry Carter, "Paths Need Paving," ABA J. Sept. 2000, at 34. (In 2000, 33% of women believed that the successful combination of roles was unrealistic compared with 13% in 1983.)
77. Tucker, *supra* note 66, at 44; National Association of Law Placement, *supra* note 14.
78. Boston Bar Association Task Force on Professional Challenges and Family Needs, Facing the Grail: Confronting the Course of Work Family Imbalance 25 (1999); Laura Gatland, "The Top 5 Myths About Part-Time Partners," *Perspectives*, Spring, 1997, at 11; Catalyst, *supra* note 74, at 46-47.
79. Deborah Arron, "Connection Gaps," ABA J., Oct. 1999, at 60; Dowd, *supra* note 13, at 198.
80. The extent of the inequality is estimated differently by researchers using different methodologies. Compare studies cited in Williams, *supra* note 64, at 71 (citing studies suggesting that women perform about 70 percent of the tasks); Rhode, *supra* note 5, at 7-8, 149 (citing studies suggesting that employed women spend about twice as much time on family matters as employed men); with Tamar Lewin, "Men Assuming Bigger Role at Home," *N.Y. Times* citing James To Bond et al., The 1997 National Study of the Changing Workforce (1998) (discussing Families and Work Institute study finding that men reported performing one hour less than mothers doing household chores on the average workday and on the average day off work).
81. Families and Work Institute, Business Work-Life Study (1998); John Turrettini, "Mommie Dearest," *Am. Law.*, April 2000, at 19. See also Jill Schachner Chanen, "Daddy's Home," ABA J., Nov. 2000, at 90, 91.
82. Final Report and Recommendations of the Eighth Circuit Gender Bias Task Force, 31 *Creighton L. Rev.* 7, 54 (1997); Linda Chavez, Results of Lawyers' Work And Family Study of Alternative Schedules at Law Firms in the District of Columbia, (unpublished manuscript); "Women Still Struggle to Climb Legal Ladder," *supra* note 43, at 16.
83. Nossel & Westfall, *supra* note 40, at 42-43, 270.
84. Boston Bar Association, *supra* note 78, at 17. See also Catalyst, *supra* note 70, at 25-26.
85. Boston Bar Association, *supra* note 78, at 15.
86. Nossel & Westfall, *supra* note 40, at 126 (quoting lawyer at Fried Frank). See *id.*, at 9, 44, 187, 266, 277, 297; Peggy Orenstein, Flux: Women on Sex, Work, Kids, Love, and Life in a Half Charged World 253 (2000).
87. Nossel & Westfall, *supra* note 40, at 21, 24, 261, 277.
88. ABA Commission on Women in the Profession, Lawyers and Balanced Lives: A Guide to Drafting and Implementation: Sexual Harassment Policies for Lawyers 23 (1992).
89. An estimated one-third of American attorneys suffer from depression or from alcohol or drug addiction, a rate two-to-three

times higher than the population generally. See sources cited in Rhode, *supra* note 62, at 8. Almost half of women lawyers, and almost two-thirds of those working more than 45 hours a week, report such stress levels have adverse effects on reproductive health. Schenker, et al., *supra* note 65, at 556. See also Mary Beth Grover, "Daddy Stress," *Forbes*, Sept. 6, 1999, at 202.

90. "Firm Feedback on Part-Time Lawyering," *Mass. Lawyers Weekly*, April 22, 1996, at B4 (reporting findings of Boston Bar Association study indicating little impact on client relations); *New Models for Part-Time or Flex-Time Partnerships, Compensation and Benefits for Law Offices*, Jan., 1997, at 12; "Part Time Partners," *Am. Law.*, April 1997, at 82; Gatland, *supra* note 78.

91. Williams, *supra* note 64, at 71-73; Boston Bar Association, *supra* note 78, at 39; Catalyst, *supra* note 70, at 20-21; Catalyst, *supra* note 74, at 16.

92. Catalyst, *supra* note 22, at 10.

93. Rubenstein, *supra* note 57, at 398; National Association for Law Placement, *Recruiting, Hiring, and Retaining Gay, Lesbian, Bisexual, and Transgender Attorneys* (1998).

94. Report from the Commission's Subcommittee on Lawyers with Disabilities, *supra* note 56; State Bar of California, *Survey*, *supra* note 14; Coyle, *supra* note 56, at 64.

95. ABA Young Lawyers Division, *supra* note 61, at Table 15; ABA Young Lawyers Division, *Career Satisfaction Survey 11* (1995).

96. See Rhode, *supra* note 62; Deborah L. Rhode, "Access to Justice," 69 *Fordham L. Rev.* 101 (2000).

97. Robert V. Stover, *Making It and Breaking It: The Fate of Public Interest Commitment During Law School 9-35* (1989); Robert Granfield, *Making Elite Lawyers 184* (1992).

98. Over four-fifths of the legal needs of the poor are unmet. See sources cited in Rhode, *supra* note 96.

99. See sources cited in Rhode, *supra* note 5, at 101, 285 n. 14; Kerry Seagrave, *The Sexual Harassment of Women in the Workplace: 1600 to 1993*, 203 (1994); David N. Laband and Bernard F. Lentz, "The Effects of Sexual Harassment on Job Satisfaction, Earnings, and Turnover Among Female Lawyers," 51 *Indus. & Lab. Rel. Rev.* 594, 600-604 (1998); Lynn Hecht Schafran, "Sexual Harassment: An Ounce of Prevention," *Trial*, January 1994, at 15; Pamela White, "Sexual Harassment: Risky Business in the Law Office," 31 *Mary. B. J.*, September-October 1998 at 21.

100. Rhode, *supra* note 5, at 101, 285, n.14; Laband & Lentz, *supra* note 99, at 600-04; Seagrave, *Sexual Harassment*, at 203-04.

101. Jane Gross, "When the Biggest Firm Faces Sexual Harassment Suit," *N.Y. Times*, July 29, 1994, at B7. The trial court reduced the jury's award of \$7.1 million in punitive damages to about \$3.5 million. William Vogeler, "Record Verdict Cut," *ABA J.*, Feb. 1995, at 18.

102. "Looking Backward, Moving Forward," *Perspectives*, Fall, 1997; Thom Weidlich and Charise K. Lawrence, "Sex and the Firms: A Progress Report," *Nat'l L. J.*, Dec. 20, 1993, at 1.

103. See 29 C.F.R. 1604, Guidelines on Discrimination Because of Sex. For the frequency of policies, see Minnesota Women Lawyers Association, *Self-Audit for Gender Equity [SAGE] 13* (June 1999) (97 percent of surveyed firms have written policy); Dana Casale, "Area Firms Share Sexual Harassment and Anti-Discrimination Policies," *Lawyers J.*, June 30, 2000, at 4.

104. Lorraine Dusky, *Still Unequal: The Shameful Truth About Women and Justice in America 223-24* (1996) (half of female litigators, 43 percent of law firm lawyers); Glasser, *supra* note 7, at 60; Lisa Pfenninger, "Sexual Harassment in the Legal Profession: Workplace Education and Reform, Civil Remedies, and Professional Discipline," 22 *Fla. St. U. L. Rev.* 171, 176-77 (1994); Margot Slade, "Law Firms Begin Reining In Sex-Harassing Partners," *N.Y. Times*, Feb. 25, 1994, at A19; Weidlich & Lawrence, *supra* note 102, (half female lawyers check); Laband & Lentz, *supra* note 99, (66 percent of women in law firms and 46 percent of women in corporate and public sector organizations); Catherine E. Shanelaris et al., "Ten Year Gender Survey," *New Hampshire B. J. March* 1998, at 56-78 (between half and two thirds of female lawyers in New Hampshire reported various behaviors constitut-

ing sexual harassment); Kearney & Sellers, *supra* note 11, at 8, 10 (49% of female court employees in Missouri reported instances of sexual advances to obtain job benefits; 35-40 of Rhode Island women experienced sexual comments, touching or disrespectful interest; 27% of Mississippi women experienced unwanted verbal or physical harassment).

105. Joanna Grossman, "Sexual Harassment in Law Firms: Why It Still Exists, and Why Firms Haven't Taken Steps to Prevent It and to Decrease Their Own Liability," *Find Law's WritBLegal Commentary*, Nov. 11, 2000 (citing mid 1990s National Law Journal poll.)

106. *Cincinnati Bar Assn. v. Young*, 731 N.E. 2d 631 (Ohio, 2000); *People v. Lowery*, 894 P. 2d 758 (Colo. 1995); Debra Baker, "Plague in the Profession," *ABA J.*, September, 2000, at 40; Bill Kisliuk, "A Tale of Destruction," *Recorder*, March 5, 1997, at 1; Pfenninger, *supra* note 104, at 176-77, 179-80.

107. See Rhode, *supra* note 5, at 93.

108. See Rhode, *supra* note 5, at 95, American Management Association, *Sexual Harassment Policies and Practices* (1996); Louise F. Fitzgerald, Suzanne Sean, and Karla Fisher, "Why Didn't She Just Report Him?: The Psychological and Legal Implications of Women's Response to Sexual Harassment," 51 *J. Soc. Issues* 117 (1995); Pfenninger, *supra* note 104, at 174-76.

109. Epstein et al., *supra* note 8, at 356; Pfenninger, *supra* note 104, at 174; see also Karin Klenke, *Women and Leadership: A Contextual Perspective 185* (1996).

110. Norma Wikler, "Water on Stone: A Perspective on the Movement to Eliminate Gender Bias in the Courts," *Proceedings of the National Conference on Gender Bias in the Courts*, May 18, 1989, at 6.

111. Deborah R. Hensler and Judith Resnik, "Contested Identities: Gender Bias Task Force and the Obligations of the Legal Profession" in *Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation 240* (Deborah L. Rhode, ed. 2000).

112. See Model Rule 8.4. That Comment's prohibitions cover "a lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice;" The ABA Model Code of Judicial Conduct, Section 3B(6) provides that: "lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding."

113. *Hamilton v. Alabama*, 376 U.S. 650 (1964); "U.S. Judge Won't Allow Lawyer 'To Use that Ms.,'" *N.Y. Times*, July 14, 1988, at 23.

114. Vicki C. Jackson, "What Judges Can Learn From Gender Bias Task Force Studies," 81 *Judicature* 15, 16 (July-Aug. 1997); "Gender Bias Case Law," *Judges J.*, Spring 2000, at 48.

115. Report of the New York Task Force on the Status of Women in the Courts 5 (1986). See also Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts, *Final Report 2* (December, 1989) (there is evidence that bias does occur with disturbing frequency at every level of the legal profession and court system).

116. Hensler & Resnik, *supra* note 111, at 240; Jackson, *supra* note 114, at 15-16; Jeanette F. Swent, "Gender Bias at the Heart of Justice: An Empirical Study of State Task Forces," 6 *S. Cal. Rev. L. & Women's Stud.* 1 (1996); Judith Resnik, "Asking About Gender in Courts," 21 *Signs* 952 (1996).

117. Ann J. Gellis, "Great Expectations: Women in the Legal Profession, A Commentary on State Studies," 66 *Ind. L. J.* 941, 971 (1991); Ellen S. Podger, "Lawyer Professionalism and Gender Bias," 47 *S. Car. L. Rev.* 323, 344 (1996); Ruth Bader Ginsberg, "Forward to the Report of the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts," *Annual Survey of American Law* 4 (1997) (noting that in the Second Circuit study, half of women and no white men reported encountering gender bias in the preceding 5 years); Resnik, *supra* note 8, at 2202, 2206 (noting gender differences

- in perception and rarity of male complaints); Elizabeth A. Delfs, "Foul Play in the Courtroom: Persistence, Causes, and Remedies," 17 W.R.L. Repr. 309, 312, n. 34 (1996) (citing findings that over 90% of male judges perceived little or no gender bias against male attorneys, and that male attorneys had similar views); see Margaret Graham Tebo, "Equal Justice," ABA J. Sept. 2000, at 44 (noting that nearly all reports found some degree of bias). But see Laurence H. Silberman, "The D.C. Circuit Task Force on Gender, Race, and Ethnic Bias: Political Correctness Rebuffed," 19 Harv. J. L. & Pub. Pol'y 759, 765 (1996) (reporting no "statistically significant incidences of bias"); Hensler & Resnik, supra note 111, at 261 n. 62 (discussing D.C. report).
118. New Jersey Supreme Court Task Force on Women in the Courts, Gender Bias Survey Report ii, 4 (July, 1998); Edge, supra note 17, at 29 (reporting survey findings that about three-quarters of male attorneys, but only one-quarter of female attorneys, disagreed that the outcome of cases is affected by bias against female attorneys).
119. Terry Carter, "Divided Justice," ABA J., Feb. 1999, at 42.
120. L.A. County Bar Association, supra note 14, at 297-298; Association of the Bar of the City of New York, "Report on the Experience of Lesbians and Gay Men in the Legal Profession," 48 The Record 843, 860 (1993).
121. State Bar of California, Survey, supra note 14; Rothstein, supra note 34, at 690.
122. ABA, Perceptions of the U.S. Justice System 65 (1999).
123. Rhode, supra note 20, at 66; Myra C. Selby, "Examining Race and Gender Bias in the Courts: A Legacy of Indifference or Opportunity?," 32 Ind. L. Rev. 1167, 1171 (1999).
124. See the California study cited in Rhode, supra note 20, at 66 and the California and Florida reports cited in Delfs, supra note 117, at 315.
125. Hensler & Resnik, supra note 111, at 248-49; Jackson, supra note 114, at 16; Kearney & Sellers, supra note 11, at 10; Boston Bar Association Task Force, supra note 27, at 24-25.
126. See Rhode, supra note 20, at 66.
127. See L.A. County Bar Association, supra note 14, at 297-298; Association of the Bar of the City of New York, supra note 120, at 854, 855, 860-62, 663; Jennifer Gerarda Brown, "Sweeping Reform from Small Rules?: Anti-Bias Canons as a Substitute for Heightened Scrutiny," 85 Minn. L. Rev. 363, 380-87 (2000).
128. State Bar of California, Survey, supra note 14.
129. Hensler & Resnik, supra note 111, at 248-49; Multicultural Women Attorney's Network, supra note 27, at 19; Pfenninger, supra note 104, at 6, 178; Gatland, supra note 11, at 30; Podger, supra note 117, at 343; see Gina L. Hale, "Miles to Go Before We Sleep," Judges Journal, Spring 2000; Jackson, supra note 114, at 16; Hayes, supra note 13, at 56; Boston Bar Association Task Force, supra note 27, at 24-25.
130. Kearney & Seller, supra note 11, at 10.
131. Lynn Hecht Schafran, "Will Inquiry Produce Action? Studying the Effects of Gender in the Federal Courts," 32 U. Rich. L. Rev. 615, 643 (1998).
132. State Bar of Texas, Gender Bias Task Force of Texas, Final Report 20, 25 (1994); Norwood & Molling, supra note 8, at 50, 51.
133. Hensler & Resnik, supra note 111, at 250; Kearney & Seller, supra note 11; Jackson, supra note 114, at 4; Podger, supra note 117, at 344; Gatland, supra note 11, at 30; Delfs, supra note 117, at 34 (reporting court's dismissal of complainant as a "humorless feminist"). See also Pfenninger, supra note 104, at 177 (reporting experience of complainant who was told she was "menopausal").
134. Patricia Wald, "A Thousand Cuts: The Reality and Perception of Discrimination," unpublished remarks, quoted in Jackson, supra note 114, at 16; Donald J. Hall, "Gender Bias Still Here," Judges' J., Spring 2000, at 37.
135. Second Circuit, supra note 117, at 345; Hensler & Resnik, supra note 111, at 260n., 581 (reporting conclusions of some 20 reports); Jackson, supra note 114, at 116-17; Reiko Hasuike, "Credibility and Gender in the Courtroom: What Jurors Think," in the Woman Advocate, supra note 7, at 117; Delfs, supra note 117, at 316; Boston Bar Association Task Force, supra note 27, at 24.
136. New Jersey Supreme Court Task Force, supra note 118, at iv.
137. Tebo, supra note 117, at 44; Supreme Court of the State of Florida, Report of the Florida Supreme Court, Gender Bias Study Commission 14 (1990).
138. See Rhode, supra note 5, at 110-111.
139. Second Circuit, supra note 117, at 342, 344; Jackson, supra note 114, at 17; Resnik, supra note 8, at 2207.
140. Second Circuit, supra note 117, at 353.
141. See cases cited in Rhode, supra note 5, at 121-22, 190-191; Lynn Hecht Schafran, "Gender Equality in the Courts: Still on the Judicial Agenda," 77 Judicature 110 (1993); Laura A. Barnickol, "The Disparate Treatment of Males and Females Within the Juvenile Justice System," 2 Wash. U. J. L. & Pol'y 429, 442-445 (2000).
142. See cases cited in Rhode, supra note 5, at 188; New Jersey Supreme Court Task Force, supra note 118, at iii.
143. Resnik, supra note 8, at 2202-3.
144. Resnik, supra note 8, at 2203.
145. Lynn Hecht Schafran, "A Call to Action from Lynn Hecht Schafran," Judges' J., Spring 2000, at 34.
146. Id.
147. Clara N. Carson, The Lawyer Statistical Report (American Bar Foundation, 1999) (Table 9).
148. Hull & Nelson, supra note 9, at 5 (noting that gender differences in job preferences explain only part of the variation in male and female career paths).
149. Id., at 14.
150. Epstein et al., supra note 8, at 359 (finding women's chances to be about 5 percent and men's 17 percent); Hull & Nelson, supra note 9, at 4 (finding men's chances to be 40 percent and women's 16 percent).
151. Fleischer, supra note 10, at A1; Chris Klein, "Women's Progress Slows at Top Firms," Nat'l L.J., May 6, 1998 at 1, 15.
152. See supra note 9. Comprehensive information is unavailable about leadership positions outside of large firms, but experts generally agree that underrepresentation of women is a pervasive problem; Graham, supra note 42, at chapter 3.
153. Arthur S. Hayes, "Asians Increase at Big Firms," Nat. L.J., Feb. 18, 2000, at A11 (noting that African American, Asians, and Hispanics each account for only about 1% of equity partners, and that the percentages have not significantly increased since 1998); David B. Wilkins, "Partners Without Power?: A Preliminary Look at Black Partners in Corporate Law Firms," 2 J. of Institute for Study of Leg. Ethics 15 (1999). For attrition rate, see National Association of Law Placement Foundation, Beyond the Bidding Wars: A Survey of Associate Attrition, Departure, Destinations, and Workplace Initiatives 23 (2000).
154. See Rhode, supra note 62, at 9-10, 28-30.
155. Graham, supra note 4, at 74, 333; Graham, supra note 42, at chapter 4; Donnel, Sterling, & Richman, supra note 9, at 68-71.
156. See Abbott, supra note 43; ABA Commission, supra note 13, at 26-27; Catalyst, supra note 52, at 13.
157. Siobhan Roth, "In-House Lawyers Are Still Mostly White," N.Y. L.J., August 8, 2000, at 5; Aric Press, "Eight Minutes a Day," American Lawyer, July 2000, at 13.
158. National Association of Law Placement, supra note 14, at 53-57; Diane M. Vogt and Lori Ann Richards, Keeping Good Lawyers: Best Practices to Create Career Satisfaction 72 (ABA Law Practice Management Association, 1999); Boston Bar Association, supra note 78, at 28-29; Debra Baker, "Cash and Carry Associates," ABA J. May 1999, at 40; Project for Attorney Retention, supra note 70, at 4.
159. Catalyst, supra note 22, at 26.
160. Boston Bar Association, supra note 78, at 30-31.
161. Rhode, supra note 62, at 38; Wilkins & Gulati, "Black Lawyers," supra note 14, at 570-71.
162. National Association of Law Placement, supra note 14; David B. Wilkins, "Rollin On the River: Race, Elite Schools, and the Equality Paradox," 25 Law & Soc. Inquiry 527, 547 (2000); Wilkins, supra note 153.
163. Kathleen Wu, "Life, Family, and the Pursuit of Partnership: For Each Woman Who Downshifts Her Career There is a Trade-off," Tex. Law., May 31, 1999, at 46.

164. Carroll Seron, *The Business of Practicing Law: The Work Lives of Solo and Small-Firm Attorneys* 41, 44 (1996); Deborah Graham, "Law's New Entrepreneurs," *ABA J.*, Feb. 1995, at 54.

165. ABA Young Lawyers Division, supra note 61, at 20-21; Boston Bar Association Task Force, supra note 27, at 3; Graham, supra note 164, at 58.

166. Seron, supra note 164, at 107, 124; Jerry Van Hoy, *Franchise Law Firms and the Transformation of Personal Legal Services* 115, 116 (1997).

167. Van Hoy, supra note 166, at 115-16.

168. *Id.*, at 115-116, 127.

169. Graham, supra note 4, at 47-51; Rhode, supra note 62, at 45.

170. Seron, supra note 164, at 12, 79-80; "As We See It...A Roundtable Discussion Among Solo/Small Firm Practitioners," *Houston Law.*, Jan./Feb. 1998, at 10; Sherri Kimmel, "Alone and On Your Own: The Growing Allure of Solo Practice," *Pa. Law.*, July/Aug. 1997, at 12. Women give similar reasons for starting other businesses. Catalyst, *Women Entrepreneurs: Why Companies Lose Female Talent and What They Can Do About It* 21 (1998).

171. Seron, supra note 164, at 80; Kimmel, supra note 170, at 12-13; Clyde Jay Eisman, "The Ups and Downs of Practicing Alone," *N.Y. L. J.*, Nov 12, 1999, at 24.

172. Boston Bar Association Task Force, supra note 27, at 12.

173. Rhona Mahony, *Kidding Ourselves: Breadwinning, Babies, and Bargaining Power* 148-49 (1995); see Catalyst, *Two Careers, One Marriage; Making It Work in the Workplace* 8, 28-29 (1998).

174. Catalyst, supra note 22, at 47 (noting that 25 percent were women in 1993 and 37 percent were women in 2000); Roth, supra note 157, at 5.

175. Carter, supra note 76, at 37; *Lawyers for One America: Action is the Difference We Make* 6 (2000).

176. Boston Bar Association Task Force, supra note 27, at 14.

177. Catherine Amon, "Despite the Mergers and Fast Pace, In-House Lawyers are Basically Happy," *Conn. Law Tribune*, Oct. 9, 2000 (77%); Catalyst, supra note 22, at 11 (61%).

178. Zack Martin, "Diversity 99: Women and Minorities Discover the Welcome Mat In-House," *Chi. Law.*, May, 1999, at 68; Ritchenya A. Shepherd, "Top In-House Women Gain Ground," *Nat'l L. J.*, Sept. 6, 1999, at B4.

179. Martin, "Women and Minorities," at 68; Tatiana Boncompagni, "Breaking Down Barriers: Five Women and Minority Lawyers Who are Changing the In-House Image," *Legal Times*, July 31, 2000, at 28.

180. Roth, supra note 157, at 5-6; Carter, supra note 76, at 37; Boncompagni, supra note 179, at 28; Boston Bar Association Task Force, supra note 27, at 14.

181. Graham, supra note 42, at chapter 4.

182. Cliff Hocker, "Making the Majors," *ABA J.*, Feb. 1999, at 58.

183. Carter, supra note 76, at 37; Graham, supra note 4, at 341.

184. Catalyst, supra note 22, at 46, 56.

185. Roth, supra note 157 (discussing letter signed by 300 General Counsel to their outside lawyers indicating that diversity efforts will count in selecting firms to handle their corporate legal matters).

186. Boncompagni, supra note 179, at 28 (quoting Vanessa Allen); Graham, supra note 4, at 374-82.

187. Federal Glass Ceiling Commission, supra note 27, at 552.

188. National Association Law Placement, *Jobs and JDs: Employment and Salaries of New Law Graduates* (1999).

189. National Technical Information Service, *Federal Civilian Workforce Statistics, Occupation of Federal White Collar and Blue Collar Workers*, 70-71 (1993).

190. Hayes, supra note 13, at 56.

191. *Id.*; Jeffrey Toobin, "Women in Black," *New Yorker*, Oct. 30, 2000, at 49; Victoria L. Radd, et al., "Women of Justice: Reflections," 18 *Harv. Women's L. J.* 1, 46 (1995).

192. Catalyst, supra note 22, at 60; See "Women Still Struggle to Climb Legal Ladder," supra note 43, at 16 (describing Securities and Exchange Commission); Mary Jo White, "Glass Ceilings and Open Doors: A Response," 65 *Fordham L. Rev.* 619, 622 (1996) (describing advantages for women in a Justice Department where women lawyers outnumber men). See also Marilyn Tucker & Georgia A. Niedzielko,

Options and Obstacles: A Survey of the Studies of the Careers of Women Lawyers 18 (ABA Commission on Women in the Profession, 1994); Mary Wisniewski Holden, "Women and Minorities Find Benefits at Government Offices," *Chicago Lawyer*, May 1997, at 16 (describing Chicago government offices).

193. Some anecdotal evidence suggests that there is often a gap between formal policies and actual practices and government agencies; mid-level supervisors are not always willing to provide "family friendly" accommodations. Dowd, supra note 13, at 210, n. 43; "Redesigning Work and the Benefits Related to It," 49 *Am. U. L. Rev.* 851, 885, 888 (2001).

194. Holden, supra note 192, at 16; Laurence Pantir, "In the States, Women Gaining More Government Jobs," www.womensenews.org, Jan. 12, 2001. See also Tucker & Niedzielko, supra note 192, at 18.

195. Rhode, supra note 20, at 41.

196. See Catalyst, supra note 22, at 51; Dowd, supra note 13; Boston Bar Association Task Force, supra note 27, at 13-14.

197. As of January 1, 2001, approximately 22% of federal district and appellate judges were women: 36 of the 154 judges serving on the U.S. Courts of Appeals, and 130 of the 606 judges serving on the U.S. district courts. Federal Judges Biographical Database, and the Federal Judicial History Office of the Federal Judicial Center; Hensler & Resnik, supra note 111, at 258, n. 38.

198. Sacha Pfeiffer, "In a Dramatic Shift, 30% of Massachusetts Judges Are Now Women," *Boston Globe*, Feb. 27, 2000, at B1.

199. Alliance for Justice, *Judicial Selection Project Annual Report* (1999). During President Clinton's initial term, 31% of his judicial appointments were females, compared with 19% under President Bush and 8% by President Reagan. See Carl Tobias, "Choosing Federal Judges In the Second Clinton Administration," 24 *Hastings Const. L. Q.* 741, 749 (1997); Sheldon Goldman, "Judicial Selection Under Clinton: A Mid-Term Examination," 78 *Judicature*, May/June, 1995, at 276.

200. Hensler & Resnik, supra note 111, at 258-59, note 38.

201. *Id.* For example, in Florida, 70 percent of the states' judges are white men. Three-quarters of federal courts of appeal have no African-American or Latino judges. *Lawyers for One America*, *Bar None* 5 (2000).

202. New Jersey Supreme Court Task Force, supra note 118, at 20 (reporting that about two thirds of women believed that female judicial candidates were treated less favorably often or most of the time, while about three quarters of men believed that such bias occurred rarely). See Alliance for Justice, *Judicial Selection Project* (discussing charges of bias by women and civil rights supporters).

203. Debra Baker, "Waiting and Wondering," *ABA J.*, Feb. 1999, at 53. See Alliance for Justice, *Judicial Selection Project*.

204. Elaine Martin, "Women on the Bench: A Different Voice?," 77 *Judicature* 126 (Nov.-Dec. 1993) (quoting Justice Ruth Bader Ginsburg's remarks following her inauguration as an associate justice of the U.S. Supreme Court, August 10, 1993). See also Sherrilyn A. Ifill, *Racial Diversity on the Bench: Beyond Role Models and Public Confidence*, 57 *Wash. & Lee L. Rev.* 405 (2000).

205. Christine M. Durham, "Gender and Professional Identity: Unexplored Issues in Judicial Performance Evaluation," *Judges J.*, Spring, 2000, 11, 12; Resnik, supra note 116, at 971. For example, in a Colorado survey, male lawyers rated female judges lower on all attributes including demeanor, courtesy, compassion, and legal ability. Female lawyers rated female judges equally in legal ability but lower than male judges in compassion, courtesy, performance in motions and settlement proceedings, and overall performance. Joyce S. Sterling, "The Impact of Gender Bias on Judging: Survey of Attitudes Toward Women Judges," 22 *Colo. Law.* 257 (1993).

206. Durham, supra note 205, at 11; Mary Flood, "Texas Journal: Where Many See Too Many Men, Some See Too Few," *Wall St. J.*, June 16, 1999, at T2 (reporting that 9 percent of the male judges, and 1 percent of female judges believed that there were too many women on a bench that is 22 percent female).

207. "The Effects of Gender in the Federal Court: The Final Report of the Ninth Circuit Gender Bias Task Force," supra note 43, at 803.

208. See *supra* text accompanying notes 129-131.
209. Justice Ruth Bader Ginsburg, "Remarks on Women's Progress in the Legal Profession in the United States," 33 *Tulsa L.J.* 13, 14 (1997).
210. Carter, *supra* note 76, at 38; Herma Hill Kay, "The Future of Women Law Professors," 77 *Iowa L. Rev.* 5 (1991).
211. Cynthia Fuchs Epstein, *Women in Law* 66-67 (1981).
212. Ruth Bader Ginsburg, "Women at the Bar—A Generation of Change," 2 *U. Puget Sound L. Rev.* 1, 6 (1978).
213. Carter, *supra* note 76, at 38.
214. Richard A. White, Summary From the Directory of Law Teachers, Unpublished Memoranda (Washington, D.C.: Association of American Law Schools, 2000).
215. *Id.*; American Bar Association Commission on Women and the Profession, *Elusive Equality: The Experiences of Women in Legal Education* 32-33 (1996); See Deborah Jones Merritt and Barbara F. Reskin, "Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring," 97 *Colum. L. Rev.* 199, 258-73 (1997); Marina Angel, "The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure," 50 *J. Legal Educ.* 1 (2000).
216. Angel, *supra* note 215, at 5. See also Kathryn M. Stanchi & Jan M. Levine, "Gender and Legal Writing: Law Schools' Dirty Little Secrets," *Berkeley Women's Law J.* (Forthcoming).
217. ABA Commission, *supra* note 215, at 29, 32-33; Lani Guinier, Michelle Fine, & Jane Balin, *Becoming Gentlemen* 41 (1997).
218. Merritt & Reskin, *supra* note 215; Angel, *supra* note 215, at 13; Deborah J. Merritt & Barbara F. Reskin, "The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women," 65 *S. Cal. L. Rev.* 2299 (1992); ABA Commission, *supra* note 215, at 29-31. See also Richard White, *The Association of American Law Schools, The Promotion, Retention and Tenuring of New Law School Faculty Hired in 1990 and 1991* (1999) (finding disparities in promotion without attempting to control for variables); Leland Ware, "People of Color in the Academy: Patterns of Discrimination in Faculty Hiring and Retention," 20 *B.C. Third World L. J.* 55, 69-71 (2000); J. Cunyon Gordon, "A Response From the Visitor From Another Planet," 91 *Mich. L. Rev.* 1953 (1993).
219. William C. Kidder, "Portia Denied: Unmasking Gender Bias on the LSAT and its Relationship to Racial Diversity in Legal Education," 12 *Yale J. L. & Feminism* 1, 12-13 (2000).
220. Catharine Pierce Wells, "The Perils of Race and Gender in a World of Legal Abstraction," 34 *U.S.F. L. Rev.* 523, 529-31 (2000); Christine Haight Farley, "Confronting Expectations: Women in the Legal Academy," 8 *Yale J. L. & Feminism* 333, 335-343 (1996); Deborah L. Rhode, "Whistling Vivaldi: Legal Education and the Politics of Progress," 23 *N.Y.U. Rev. Law & Soc. Change* 217, 222 (1997).
221. Lotte Bailyn, *Breaking the Mold: Women, Men, and Time in the New Corporate World* 50-53 (1993).
222. *Catalyst*, *supra* note 22, at 60.
223. ABA Commission, *supra* note 215, at 27; Susan B. Apel, "Gender and Invisible Work: Musings of a Woman Law Professor," 31 *U. S. F. L. Rev.* 993 (1997).
224. "On the Importance of Diversity in Higher Education," Statement by 67 Higher Education Organizations, included in the Amicus Curiae Brief of the Association of American Law Schools et al., in *Grutter v. Bollinger*, (E.D. Mich., 1999); Association of American Colleges and Universities, *Diversity Works: The Emerging Picture of How Students Benefit* (Washington, D.C., AACU, 1997); Expert Report of Patricia Gurin in *Graetz v. Bollinger*, and *Grutter v. Bollinger*; Maureen T. Hallinan, "Diversity Effects on Student Outcomes: Social Science Evidence," 59; Long-Term Consequences of Considering Race in College and University Admissions, *Ohio St. L. J.* 733, 746-750 (1998); William G. Bowen and Derek Bok, *The Shape of the River* 218-255 (1998). In a 1999 survey of some 1800 students at two leading law schools, some 90 per cent reported positive effects of diversity on their educational experience. Gary Orfield and Dean Whitla, *Diversity and Legal Education: Student Experiences in Leading Law Schools* 14-16 (1999).
225. ABA Commission, *supra* note 13, at 1.
226. Association of American Law Schools, *Statement on Diversity* (1998).
227. See, e.g., Guinier, Fine, & Balin, *supra* note 217, at 28-29; Linda F. Wightman, *Law School Admission Council Research Report Series, Women in Legal Education: A Comparison of the Law School Performance and Law School Experience of Women and Men* 25, 36, 72-74 (1996); Rhode, *supra* note 220, at 223.
228. Guinier, Fine, & Balin, *supra* note 217, at 28-29; Elizabeth Mertz, et al., "What Difference Does Difference Make? The Challenge for Legal Education," 48 *J. Legal Educ.* 1, 6-7 (1998); Rhode, *supra* note 220, at 223; Linda F. Wightman, *Law School Admission Council, "Women in Legal Education: A Comparison of the Law School Performance and Law School Experience of Women and Men,"* (1996): ABA Commission, *supra* note 215, at 16-17.
229. Rhode, *supra* note 220, at 221-222; Law School Outreach Project of the Chicago Bar Association Alliance for Women, *Women Students' Experience of Gender Bias in Chicago Area Law Schools*, 24 (1995); ABA Commission, *supra* note 215, at 21.
230. ABA Commission, *supra* note 215, at 15; Rhode, *supra* note 220, at 220-21; Law School Outreach Project, *supra* note 229, at 27-28.
231. ABA Commission, *supra* note 215, at 14-15; 25; Rhode, *supra* note 220, at 220-21; Jennifer M. Russell, "On Being a Gorilla in Your Midst, or The Life of One Blackwoman in the Legal Academy," 28 *Harv. C. R.-C. L. L. Rev.* 259 (1993); Wells, *supra* note 220, at 529-30; "5 Women Leave FSU Faculty; Four of the Professors Said They Were Subjected to Constant Harassment and that Administrators 'Turned a Blind Eye,'" *Orlando Sentinel*, May 8, 1999, at D1; "3 Women Rowers Sue Temple Over Sex Harassment," *Phila. Inquirer*, May 23, 1996, at B1.
232. Law School Outreach Project, *supra* note 229, at vii, 27, 35, 56; Guinier, Fine & Balin, *supra* note 217, at 56, 28-29, 68; Rhode, *supra* note 220, at 220; Lorraine Dusky, *Still Unequal: The Shameful Truth About Women and Justice in America* 28-39 (1996); Scott N. Ihrig, "Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Law Students," 14 *Law and Inequality* 555, 568 (1996); Janice L. Austin et al., "Results from a Survey: Gay, Lesbian, and Bisexual Students' Attitudes About Law School," 48 *J. Legal Educ.* 157, 166 (1998).
233. See sources cited in ABA Commission, *supra* note 215, at 25-26, 31; Wells, *supra* note 220, at 529-31.
234. *Id.*, at 25-26.
235. ABA Commission, *supra* note 215, at 30-31; Resnik, *supra* note 8, at 2195.
236. Rhode, *supra* note 62, at 192. According to data collected by the Diversity Committee of the ABA Section on Legal Education and Admission to the Bar, only 10 schools have committees on gender. About 40 have committees that could deal with gender-related issues under broader mandates, such as Committees on Diversity, Student Life, or Educational Environment. See Final Report of the Committee on Diversity, American Bar Association Section on Legal Education and Admission to the Bar (2000).
237. ABA Commission, *supra* note 215; Linda F. Wightman, *supra* note 228, at 25, 36, 72-74; Rhode, *supra* note 220, at 217; Law School Outreach Project, *supra* note 229, at 24; Guinier, Fine, & Balin, *supra* note 217, at 28-29, 51-62.
238. Rhode, *supra* note 62, at 204.
239. *Id.*, Association of American Law Schools Commission on Pro Bono and Public Service Opportunities in Law Schools, *Learning to Serve: A Summary of the Findings and Recommendations of the AALS Commission on Pro Bono and Public Service Opportunities in Law Schools* 4 (1999).
240. See *supra* text accompanying notes 187 and 194.
241. Carter, *supra* note 76, at 34.
242. Forty percent thought that the strengths of male and female lawyers were the same, and 49 percent thought that they had the same weaknesses. *Id.*
243. Carter, *supra* note 76, at 37.
244. See Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (1982); Rand Jack and Dana Crowley

Jack, *Moral Vision and Professional Decisions: The Changing Values of Women and Men Lawyers* (1989); Susan P. Sturm, "From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession," 4 *Duke J. Gender Law & Pol'y* 119 (1997); Carrie Menkel-Meadow, "Portia in a Different Voice: Speculations on Women's Lawyering Process," 1 *Berkeley Women's L.J.* 39, 55 (1985). For an overview, see Rhode, *supra* note 20, at 40-43.

245. For an overview, see Rhode, *supra* note 5, at 21-42. For a discussion of the influence of these patterns on decisionmaking, see Alice H. Eagly and Wendy Wood, "Explaining Sex Differences in Social Behavior: A Meta-Analytic Perspective," 17 *Personality and Social Psychol. Bull.* 306, 314 (1991); Eagly, Makhijani, & Klonsky, *supra* note 19, at 18.

246. Rhode, *supra* note 5, at 37-38.

247. Cleveland, Stockdale & Murphy, *supra* note 6, at 307; Alice H. Eagly and Blair T. Johnson, "Gender and Leadership Style: A Meta-Analysis," 108 *Psychol. Bull.* 233, at 233-256 (1990); Alice H. Eagly, Steven J. Karau and Mona G. Makhijani, "Gender and the Effectiveness of Leaders: A Meta-analysis," 117 *Psychological Bulletin* 125, 125-145 (1995); Robert I. Kabacoff, Management Research Group, "Large Sample Study of Gender Differences in Organizational Leadership."

248. Radcliffe Public Policy Institute and The Boston Club, *Suiting Themselves: Women's Leadership Styles in Today's Workplace* (1999).

249. Gary N. Powell, *Women and Men in Management* 45-49, 105-109 (1988); Klenke, *supra* note 109, at 160; Kabacoff, *supra* note 247 (finding no difference in task orientation); Gary N. Powell, "One More Time: Do Female and Male Managers Differ?," 4 *Acad. of Mgmt. Executive* 68 (1990); Eagly and Johnson, *supra* note 247, at 246-47; Cherryl Simrell King, "Sex Role Identity and Decision Styles: How Gender Helps Explain the Paucity of Women at the Top," in *Gender Power, Leadership and Governance* 67, 71 (Georgia Duerst-Lahti, Rita Mae Kelly, eds., 1995). See Alvenson and Due Billing, *supra* note 44, at 146, 151; Linda Molm and Mark Hedley, "Gender, Power and Social Exchange," in *Gender, Interaction and Inequality* 8 (Cecilia L. Ridgeway, ed. 1992); Ronald J. Burke and Marilyn J. Davidson, *Women in Management: Current Research Issues* (2000).

250. Klenke, *supra* note 109, at 151; Cleveland, Stockdale & Murphy, *supra* note 6, at 307; Eagly, Makhijani, & Klonsky, *supra* note 19, at 18; Eagly and Wood, *supra* note 245, at 314.

251. Eagly and Johnson, *supra* note 247, at 247-48.

252. Joanne Martin and Debra Meyerson, "Women and Power: Confronting Resistance and Disorganized Action," in *Power and Influence in Organizations* 311, 313 (Roderick M. Kramer & Margaret A. Neale, eds. 1998); Cynthia Fuchs Epstein, *Deceptive Distinctions: Sex, Gender, and the Social Order* 173-84 (1988); Cleveland, Stockdale, & Murphy, *supra* note 6, at 293-99; Barbara Kellerman, *Reinventing Leadership: Making the Connection Between Politics and Business* 149 (1999).

253. Rhode, "The Difference Difference Makes" in *The Difference Difference Makes: Women and Leadership* (ABA Commission on Women in the Profession, forthcoming).

254. Michael E. Solimine and Susan E. Wheatley, "Rethinking Feminist Judging," 70 *Ind. L. J.* 891 (1995); Thomas G. Walker & Deborah J. Barrow, "Diversification of the Federal Bench: Policy and Process Ramifications," 47 *J. Pol.* 596, 607 (1985); John Gruhl et al., "Women as Policymakers: The Case of Trial Judges," 25 *Am. J. Pol. Science* 308, 319-320 (1981).

255. Theresa M. Beiner, "What Will Diversity on the Bench Mean for Justice?," 6 *Mich. J. Gender & L.* 113 (1999) (suggesting some differences on civil rights suits); Sue Davis, et al., "Voting Behavior and Gender on the U.S. Court of Appeals" 77 *Judicature* 129 (1993) (finding some differences in employment discrimination and search and seizure cases but not obscenity cases); Jennifer A. Segal, "The Decision Making of Clinton's Nontraditional Judicial Appointees," 80 *Judicature* 279 (1997) (finding differences on individual liberties and criminal procedure but not on women's issues); Toobin, *supra* note 191, at 48 (finding greater severity in enforcement of the criminal laws in general and the death penalty in particular by Texas' female judges than male judges).

256. Gladys Kessler, unpublished paper for Women Justice and Authority Conference, Yale, 2000, at 4.

257. Carolyn Heilbrun & Judith Resnik, "Convergences: Law, Literature, and Feminism," 99 *Yale L. J.* 1913, 1948-50 (1990).

258. Kessler, *supra* note 256, at 4.

259. Rhode, *supra* note 96; Jona Goldschmidt, "How Are Courts Handling Pro Se Litigants?," 83 *Judicature* 13, 14 (1998).

260. *Catalyst, Creating Women's Networks: A How-To Guide for Women and Companies* (1999); ABA Commission on Women in the Profession, *Unfinished Agenda*; ABA Commission, *supra* note 88.

261. Graham, *supra* note 164, at 55 (quoting Christine M. Roach).

262. *Id.*

263. Nossel & Westfall, *supra* note 40, at 349. See also *id.*, at 30, 187, 261, 266-67, 365; Harrington, *supra* note 47, at 38-40, 86-87.

264. Martin & Meyerson, *supra* note 252, at 340; Susan J. Ashford, "Championing Charged Issues: The Case of Gender Equity Within Organizations," in *Power and Influence in Organizations*, at 349, 375-76; Graham, *supra* note 4, at 358-363, 374-82.

265. Nossel & Westfall, *supra* note 40, at 277, 126, 261. See also *id.* at 187, 251, 266, 277. Harrington, *supra* note 47, at 38; Ely, *supra* note 24.

266. Ashford, *supra* note 264, at 365-366, 370.

267. *Id.*, at 365; Graham, *supra* note 42, at chapters 1-6..

268. Ashford, *supra* note 264, at 369-70; Nossel & Westfall, *supra* note 40, at 103-108.

269. Ashford, *supra* note 264, at 369-370, 375.

270. Nossel & Westfall, *supra* note 40, at 50; Graham, *supra* note 42, at chapter 1, 3.

271. Elizabeth V. Spelman, *Inessential Women: Problems of Exclusion in Feminist Thought*, 114, 117 (1988); Rhode, *supra* note 5, at 38-42.

272. *Dear Sisters, Dear Daughters: Words of Wisdom from Multicultural Women Attorneys Who've Been There and Done That* (Karen Clanton, ed., 2000). See also *Multicultural Women Attorneys' Network*, *supra* note 27.

273. Nossel & Westfall, *supra* note 40, at xxii; "Women Struggle to Climb the Legal Ladder," *supra* note 43, at 16; Michael D. Goldhaber, "Female Lawyers Confronting a Generation Gap," 156 *N. J. L. J.* 768 (1999); Harrington, *supra* note 47, at 31, 38; Bruce Balestien, "Mommy Track" *New York L. J.*, June 9, 2000; Douglas M. McCracken, "Winning the Talent War for Women," *Howard Bus. Rev.*, Nov.-Dec. 2000, at 162.

274. Nossel & Westfall, *supra* note 40, at 40, 126.

275. *Id.*, at 102, 187, 251; Saltzman, *supra* note 48.

276. Ely, *supra* note 24, at 589.

277. *Catalyst*, *supra* note 52, at 69-74; Bar Association of San Francisco, *supra* note 28, at 34-37; Ridgeway & Correll, *supra* note 26, at 118.

278. *Catalyst*, *supra* note 52, at 32-33, 66; *Catalyst, Advancing Women in Business: Best Practices From the Corporate Leaders* 39-52 (1998); Mary C. Mattis, "Organizational Initiatives in the USA for Advancing Managerial Women," in *Women in Management: Current Research Issues* 275 (Marilyn J. Davidson and Ronald J. Burke, eds., 1994); Graham, *supra* note 42, at chapter 1.

279. Barbara Paul Robinson, former President, Association of the City of the Bar of New York, Unpublished memoranda, 2001; *Catalyst*, *supra* note 278, at 39.

280. *Catalyst*, *supra* note 22, at 13; McCracken, *supra* note 273, at 162; National Association of Law Placement, *supra* note 14.

281. Robin J. Ely and David A. Thomas, "Making Differences Matter," *Harv. Bus. Rev.*, Sep.-Oct. 1996, at 79; Graham, *supra* note 42, chapter 1.

282. Graham, *supra* note 4, at 515-21; John F. Davidio et al., "On the Nature of Prejudice: Automatic and Controlled Processes," 33 *J. Experimental Soc. Psychol.* 510, 535-36 (1997); Valian, *supra* note 26, at 1058; E. Ashby Plant and Patricia G. Divine, "Internal and External Motivation to Respond Without Prejudice," 75 *J. Personality and Soc. Psychol.* 811 (1998).

283. Stephanie Francis Cahill and Pearl J. Platt, "Bringing Diversity to Partnerships Continues to Be an Elusive Goal," *San Francisco Daily J.*, July 28, 1997, 1-2. For similar skepticism about sexual harassment

training, see Susan Bison-Rapp, "An Ounce of Prevention is a Poor Substitute for a Pound of Cure: The Questionable Embrace of Employee Sexual Harassment Training by the Legal Profession" (forthcoming 2001).

284. Barbara Paul Robinson, former President, Association of the City of the Bar of New York, Unpublished memoranda, 2001; Catalyst, supra note 278, at 39.

285. ABA Commission, supra note 88.

286. ABA Commission, supra note 13, at 30-31; L.A. County Bar Association, supra note 14; California State Bar, Survey, supra note 14.

287. Mattis, supra note 278, at 275. For general discussion of benchmarks, see Catalyst, supra note 278, at 39-57; Catalyst, supra note 52, at 31-32.

288. ABA Commission, supra note 21, at 9-24; Graham, supra note 42, at chapter 5. See also Catalyst, Women in Corporate Leadership: Progress and Prospects (1996).

289. ABA Commission, supra note 21, at 21. See also Jill Schachner Chanen, "You Rang, Sir?," ABA J., Oct., 2000, at 82, 83.

290. Graham, supra note 42, at chapter 3.

291. Id.

292. Id. For general discussion of tokens, see Klenke, supra note 109, at 176; Kanter, supra note 23. For women's underrepresentation on executive committees, see Claudia Rosenbaum, "For Men Only?" Cal. Lawyer, April 2001 at 17.

293. Ely, supra note 24; Elizabeth Chambliss & Christopher Uggen, "Men and Women of Elite Law Firms: Reevaluating Kanter's Legacy," 25 Law & Soc. Inquiry 41 (2000).

294. See sources cited in ABA Commission, supra note 88; Catalyst, supra note 70; Boston Bar Association, supra note 78; Catalyst, supra note 22, at 13-14.

295. Catalyst, supra note 70; Williams, supra note 64, at 112; Catalyst, supra note 70, at 16.

296. Samborn, supra note 3, at 30.

297. Klenke, supra note 109, at 183-184; Catalyst, supra note 52, at 27; Catalyst, supra note 278, at 62-63; Ronald J. Burke and Carol A. McKeen, "Career Development Among Managerial and Professional Women," in Davidson and Burke, supra note 249, at 65, 73.

298. Cleveland, Stockdale & Murphy, supra note 6, at 374; Catalyst, supra note 288, at 29.

299. Catalyst, supra note 22, at 67-68; Abbott, supra note 43, at 25, 32-33.

300. Catalyst, supra note 260, at 5; Catalyst, supra note 22, at 70; Susan Beck, "Sisters in Law," Am. Law., March, 1999, at 62; Margaret A. Jacobs, "'New Girl' Network is Boon for Women Lawyers," Wall St. J., March 4, 1997, at B1.

301. Graham, supra note 42, at chapter 2; Pat Terry, "Marketing Groups Shape New Rainmakers," Perspectives, Fall, 2000, at 7,8.

302. Catalyst, supra note 260; Graham, supra note 42, at chapter 2.

303. Catalyst, supra note 260; Terry, supra note 301, at 8; Graham, supra note 42, at chapter 2.

304. For discussion of small wins, see Debra E. Meyerson & Joyce K. Fletcher, "A Modest Manifesto for Shattering the Glass Ceiling," 78 Harv. Bus. Rev. 1, Jan. 1, 2000.

305. Studies by the Edelson Worldwide Marketing Association and the Bureau of National Affairs note that more than seven million married couples met at work. See Deborah L. Rhode, "Danger or Delight? Is Romance at Work all Bad?" Nat'l L. J. Nov. 23, 1998, at A21. Overly broad prohibitions on sexual involvement by coworkers seldom prevent such relationships; rather, they force them underground. Id. (quoting Freida Klein).

306. ABA Commission, supra note 88, at 4-16; Laura Gatland, "Sexual Harassment: An Ounce of Prevention," Perspectives, Fall, 1998, at 4-6; Grossman, supra note 105; Pfenninger, supra note 104, at 191-94; Schafraan, supra note 99, at 14; White, supra note 99, at 21. For a discussion of the limits of sexual harassment education programs and the need for more evaluation of their effectiveness; see Bison-Rapp, supra note 283.

307. Neither the ABA Model Rules of Professional Conduct nor the ABA Model Code of Professional Responsibility expressly address

sexual harassment. However, a growing number of states have adopted rules prohibiting all or some forms of harassment, such as demanding sexual relations with clients or engaging in discriminatory conduct. See Pfenninger, supra note 104, at 213; Bowman, supra note 12, 749. Some courts also have imposed discipline for harassment under general ethical rules prohibiting conduct that adversely reflects on fitness to practice law. Model Rule 8.4; Model Code D.R. 102(A)(6). See Pfenninger, supra note 104, at 213-14. The comment to Rule 8.4 defines misconduct in terms that could encompass sexual harassment. See note 112 supra.

308. Rhode, supra note 20, at 41.

309. Judy Perry Martinez, Speech Before the Women's Caucus of the ABA Forum on Franchising Law, Oct. 21, 2000.

310. Lynn Hecht Schafraan, Norma Wikler, and Jill Crawford, Gender Fairness Strategies Implementation Resource Directory (1998). The Directory describes a wide range of "products" ranging from bench books, to codes of conduct, to judicial education programs created by gender bias task force implementation committees that can be adapted or adopted by other states. See also Lynn Hecht Schafraan and Norma J. Wikler, Gender Fairness in the Courts: Action in the New Millennium (forthcoming 2001).

311. National Judicial Education Program, "Key Components to Achieve and Secure Gender Fairness in the Courts," reprinted in Appendix I and in 39 Judges Journal 12, 16 (2000). See also Judith McConnell and Kathleen F. Sikora, "Gender Bias and the Institutionalization of Change: Lessons from the California Experience," 39 Judges' Journal 12 (2000); Edge, supra note 17, at 30.

312. Final Report of the ABA Committee on Diversity, supra note 236, at 5.

313. ABA Commission on Women in the Profession, Don't Just Hear It Through the Grapevine: Studying Gender Questions at Your Law School (1998).

314. ABA Commission, supra note 13, at 29-30.

315. Kidder, supra note 219.

316. David L. Chambers, Richard O. Lempert, and Terry K. Adams, Michigan's Minority Graduates in Practice: The River Runs Through Law School, 25 Law & Soc. Inquiry 395 (2000); Wilkins, supra note 162; Wightman, supra note 228; Linda F. Wightman, "The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions," 72 N.Y. U. L. Rev. 1 (1997); Kacy Collons Keys, "Privileged Classes," The Recorder, May 28, 1997, 4; ABA Commission, supra note 13, at 24; Lani Guinier, "Lessons and Challenges of Becoming Gentlemen" 24 N.Y. U. Rev. L. & Soc. Change 1, 12 (1998).

317. Chambers, Lempert, & Adams, supra note 316; David L. Chambers, Richard O. Lempert, and Terry K. Adams, "Doing Well and Doing Good, The Careers of Minority and White Graduates of the University of Michigan Law School, 1970-1996," 42 Law Quadrangle Notes 60 (1999).

318. Rhode, supra note 62, 193-95; Lawyers for One America, supra note 201, at 24; Association of American Law Schools, Statement on Diversity; Lani Guinier, "Confirmative Action," 25 Law & Soc. Inq. 565 (2000).

319. See supra text accompanying note 218.

320. AALS Commission, supra note 239; Lawyers for One America, supra note 201, at 28.

321. Ginsburg, supra note 212, at 14.

322. Geraldine R. Segal, Blacks in the Law 1, 4, 213, 215 (1983); Virginia G. Drachman, Sisters in Law: Women Lawyers in Modern American History 253 (1998).

323. Belva Lockwood, "My Efforts to Become a Lawyer," in Women in the American Economy: A Documentary History, 1675-1929, 297, 301 (W. Elliot Brownlee & Mary M. Brownlee eds. 1976).

324. Virginia Woolf, Three Guineas 162 (1938).

325. Available from National Judicial Education Program, 395 Hudson Street, 5th Floor, New York, New York 10014 (212)925-6635, Fax: 212 226-1066, njep@nowldef.org;