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### Book Review of *Gender on Trial: Sexual Stereotypes and Work/Life Balance in the Legal Workplace*

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# Book Review

*Gender on Trial: Sexual Stereotypes and Work/Life Balance in the Legal Workplace*

Holly English

(ALM Publishing, 2003, 300 pp., \$44.95)

*Reviewed by Nicole B. Porter†*

## I. INTRODUCTION

Holly English's book, *Gender on Trial: Sexual Stereotypes and Work/Life Balance in the Legal Workplace* offers a very interesting, albeit mostly anecdotal, look at the many real or perceived sexual stereotypes in the legal workplace.<sup>1</sup> Her book is the result of interviews with 180 lawyers (fifty of them men) over a two-year period in all regions of the country.<sup>2</sup> Her main purpose of the book was to "explore the fact that persistent gender stereotypes present a continuing obstacle that obstructs the availability of broad opinions and choices for men and women lawyers."<sup>3</sup> Through eight substantive chapters, she seeks to explore a variety of stereotypes present in the legal workplace, from stereotypes that question women's competency, to sex (literally) in the workplace, and finally, the ever-present work/life balance that affects all attorneys but plagues working mothers most. While some of the issues are unique to the legal workplace, many other industries would find value in the information contained in English's book. Much of the book is anecdotal and

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† Assistant Professor of Law, St. Louis University School of Law, effective July 2004. B.A. 1992, Michigan State University; J.D. 1998, magna cum laude, Order of the Coif, University of Michigan Law School. My personal experiences shaped my review of this book. I had my first child before law school, and had two more children while working at a large law firm and as in-house counsel (one at each). I have worked full-time most of my legal career, but I have some experience with working a reduced-hour schedule and some experience requesting a reduced-hour schedule and having it denied.

1. HOLLY ENGLISH, *GENDER ON TRIAL: SEXUAL STEREOTYPES AND WORK/LIFE BALANCE IN THE LEGAL WORKPLACE* (2003).

2. *See id.* at 10.

3. *Id.* at 9.

descriptive in nature. However, when English does offer her analysis of the various stereotypes and their effect on the workplace, it is both insightful and precise.

English's first chapter, "Confronting the Expectations Gap," attempts to define the problem of sexual stereotypes in the legal workplace. It relates many common themes that were prevalent throughout the discussion of the various stereotypes. Although English states that we are in a post-sex-discrimination era,<sup>4</sup> a great deal of the information she provides would lead most employment lawyers (such as myself) to realize, many with shock, that there are still attorneys who engage in behavior that could lead to sex discrimination and sex harassment lawsuits. English, however, believes that these persistent stereotypes cause a much more subtle type of discrimination. Because women have achieved so much success in the legal workplace (as compared to generations past), English believes that we are suffering from the "no-problem problem," which theorizes that full equality is a *fait accompli* because the glass ceiling has been shattered.<sup>5</sup> Those who do not experience full equality suffer from the "expectations gap," where "expectations have outstripped reality."<sup>6</sup> English opines that one reason why there is a disconnect between expectations and reality is that people are unsure whether gender bias is the culprit for some of the problems they perceive. Many of the respondents stated: "I can't tell if it's gender or personality."<sup>7</sup>

After defining a stereotype, English attempts to explain how different people adjust to stereotypes. While some "conform gracefully" to stereotypes, finding it easier to modify one's behavior to get the job done while not offending social norms, others urge women not to perpetuate stereotypes that confirm typically feminine behavior, because it limits the traits that are acceptably female.<sup>8</sup> English believes neither is a good approach and that such approaches have caused lawyers to reach a plateau in addressing gender issues.<sup>9</sup> She states:

The better approach is to deconstruct stereotypes, to take them apart and get to know them all over again. Dismantling a stereotype allows us to examine all its assumptions and prejudices—and challenge and debate their validity. Awareness of the genesis of gender roles can lead to questioning and revision of attitudes. In turn, dissolving or softening stereotypes

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4. See *id.* at 4.

5. See *id.* at 6.

6. *Id.* at 7.

7. *Id.* at 7.

8. See *id.* at 9-10.

9. See *id.* at 10.

increases options for behavior for both men and women.<sup>10</sup>

While English believes that the deconstruction of stereotypes is necessary, it is unclear whether her book really accomplishes that goal. Most of the book is a summary of what others have said about gender stereotypes issues including an extensive (and sometimes overabundant) use of direct quotes. Though the reader might agree with the anecdotal statements of others, the reader is not necessarily left with solutions to the problems that many woman employees face in the legal workplace. In her conclusion, English suggests possible solutions to the stereotype debate, but overall the book leaves the reader seeking more analysis, and less story-telling.

In the first chapter, English explores several themes. The first is the "genderation gap," which illustrates that gender issues and how they are perceived differ depending on the generation to which one belongs. The second theme is that rhetoric, along with metaphors and images, provides insights into how we frame and define a debate.<sup>11</sup> The final theme is a discussion of reasons why men tend to gravitate toward men and women toward women, especially in informal settings, thus reflecting the multi-faceted awkwardness that men and women experience working with one another.<sup>12</sup>

This chapter concludes by outlining English's three main purposes: (1) to provide a new starting point for the debate about sexual stereotypes; (2) to prod both men and women to think more about men's gender issues; and (3) to help realize a vision for the future in which men and women work together effectively.<sup>13</sup> Her book accomplishes these goals but fails to address one of the most important goals—to help women deal with the effects (both negative and positive) of sexual stereotypes in the legal workplace.

## II. CLOTHING AND SEX

Chapter 2 discusses "Changing Clothes: Erosion of a Stereotype." This chapter is English's least significant and was an unnecessary inclusion in this otherwise useful book. It discusses the long-held, although no longer very prevalent, stereotype that an attractive woman is presumed to be frivolous or incompetent.<sup>14</sup> English concludes that clothing issues affect both women and men especially with the insurgence of "business casual" and all of the questions and uncertainties that accompany that change in

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10. *Id.* at 10.

11. *See id.* at 13.

12. *See id.* at 14. I found this theme to be lacking both in the book and in real life.

13. *See id.* at 15.

14. *See id.* at 19.

dress code. The only remaining vestige of stereotypes regarding clothing is that there is still greater scrutiny of women's dress than men's dress, although one wonders how much of that is because the clothing options for women (both in formal and casual business dress) are so much more copious than for men.

One of the more useful aspects of this chapter is English's discussion of what happens when a stereotype crumbles. First, English tells us that options and choices increase.<sup>15</sup> Second, the double bind that is often at the heart of a stereotype starts to unravel. Finally, a more neutral image arrives of the "female lawyer." Also significant is English's conclusion that because men and women both deal with dress issues, it is much easier for those issues to be addressed.<sup>16</sup>

In Chapter 3, "Sex and the Bar: Two Steps Forward, One Step Back," this Author parted experiences with some of English's interviewees.<sup>17</sup> English begins the discussion of sexual harassment by noting one of the many "genderation" gaps, i.e., that younger men and women are surprised by the sexual harassment and discrimination seen in the workplace. They attended law school where men and women were seen as and treated as equals and are therefore shocked when older partners use words like "sweetie" or "dear" or engage in other inappropriate behavior.

The other significant finding in this chapter is the discussion of men's avoidance of possible claims of sexual harassment by avoiding working with women.<sup>18</sup> According to English, a man is often worried that if he works late or has a closed-door meeting with an attractive younger woman, such actions could be misconstrued. He worries that his wife will become suspicious or that rumors will start about the two of them. In the worse scenario of all, there exists the possibility that something he does could be construed as sexual harassment and he might be the subject of a lawsuit. Because of these fears, many men choose to mentor other men, take men out to lunch or golfing, and they will often choose a man over a woman to work on a case that is likely to involve late nights or travel.<sup>19</sup>

English states (correctly in my opinion) that the most troubling aspect of the avoidance mechanism is that it results in the discrimination of women. If male partners constantly favor other male associates in assignments, when choosing associates to mentor or even as a lunch

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15. *See id.* at 32.

16. *See id.* at 34. In other words, apparently, if an issue is only a women's issue it is not taken as seriously.

17. Certainly, I have experienced inappropriate language and sexual innuendo in the legal workplace; however, some of the anecdotes in this chapter allege behavior much more illicit and egregious than anything I have seen in the legal workplace. I found this chapter especially interesting because it presented scenarios that were unfamiliar to me.

18. ENGLISH, *supra* note 1, at 65-69.

19. *See id.* at 65-69.

partner, women will be at a disadvantage.<sup>20</sup> While men may not intend to discriminate and, in fact, may intend to avoid harassment, the unintended consequence of their actions is the discrimination against women.<sup>21</sup> Because avoidance results in sex discrimination, being able to recognize and acknowledge the avoidance should help to maximize the power and talent of the organization.

### III. THE COMPETENCE QUESTION

In Chapter 4, "Question Marks and Quizzical Looks: Closing the Competence Gap?" English questions whether female attorneys are viewed as being as competent as male attorneys. Her research revealed that there is a "genderation" gap in that older men have less respect for the competency of women lawyers than do younger men.<sup>22</sup> While one might conclude then it should be only a matter of time before the gap is closed indefinitely, English concludes that there are still many problems and explores how stereotypes affect views on women's competency in the legal field.<sup>23</sup>

First of all, the majority of attorneys are men, especially among the upper ranks. Accordingly, many clients assume that the man is in charge in any given situation.<sup>24</sup> Furthermore, many women reported (and this author has had similar experiences) that they are underestimated in every situation.<sup>25</sup> Although many women report that the surprise element gives them an advantage in contentious situations, nevertheless it shows that there is still a bias.<sup>26</sup>

Women also report that while they eventually earn the respect they deserve it often takes longer. They feel they are more strictly scrutinized during the initial meeting or interaction.<sup>27</sup> English states: "Responding to critical oversight keeps women on the defensive, reinforcing questions of competence and effectiveness."<sup>28</sup> Because of the lack of trust and respect, many women are frustrated by the fact that they need the backing of a male attorney to convince the client that the advice or course of action is correct. As in-house counsel, I have often found myself asking for back-up from my more senior male colleague when delivering advice that I knew would not be well-received, even though I was more knowledgeable about a

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20. *See id.* at 72.

21. *See id.* at 72.

22. *See id.* at 75.

23. *See id.* at 77.

24. *See id.* at 78.

25. This author has had similar experiences.

26. ENGLISH, *supra* note 1, at 81.

27. *See id.* at 82.

28. *Id.* at 86.

particular subject matter. Although doing so can be infuriating, many women seek the male backing because it puts the client's interests first.

English also believes that a woman's perceived lack of dedication to her job leads others to conclude that she is not a competent attorney.<sup>29</sup> "Because competence in legal practice is so closely linked with an all-out passion for the law, any deviation from that norm even for reasons such as motherhood or work/life balance, is construed as a lack of lawyering ability."<sup>30</sup> Some people actually admitted that they prefer not to hire women because of the perceived lack of dedication.<sup>31</sup> English also explores the idea that women tend to have more problems garnering respect as they get older.<sup>32</sup> This is in part based on the fact that women's practices are often not self-supporting.<sup>33</sup>

While English explores some of the methods that women use to try to overcome this competency gap such as having a "can-do attitude,"<sup>34</sup> and reaching out for the help of others,<sup>35</sup> she ultimately offers no solutions to the problem claiming that this issue is very hard to resolve because it is predominantly a women's issue and men have no interest in resolving it.<sup>36</sup>

Chapter 5, "Being the Boss: Making Room for the Authoritative Woman," seeks to answer the question: Does society's expectation of women's style—inclusive, nurturing, non-aggressive—harm their ability to be law firm's leaders?<sup>37</sup> Women experience a "double bind"—a woman's femininity collides with authority; people get mad when women act like men.<sup>38</sup> Because women are expected to be nice and nurturing,<sup>39</sup> many believe it is difficult for them to effectively supervise. According to English, "[w]earing the mantle of authority lightly allows it to be more easily pushed off your shoulders."<sup>40</sup> This is especially true when females are supervising the law firm staff.<sup>41</sup>

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29. See *id.* at 89.

30. *Id.* at 91.

31. See *id.* at 91.

32. See *id.* at 91.

33. See *id.* at 95. For a discussion of discrimination against older women, see Nicole Buonocore Porter, *Sex Plus Age Discrimination: Protecting Older Women Workers*, 81 DENV. U. L. REV. 200 (forthcoming 2003).

34. ENGLISH, *supra* note 1, at 104.

35. See *id.* at 105.

36. This statement is disheartening. Simply because an issue is a women's issue does not mean that men should have no interest in resolving it. Hopefully, English's pessimism, in this respect, is not shared by all.

37. See *id.* at 115.

38. See *id.* at 116.

39. See *id.* at 117.

40. *Id.* at 119 (quoting DEBORAH TANNEN, *TALKING FROM 9 TO 5: WOMEN AND MEN IN THE WORKPLACE: LANGUAGE, SEX AND POWER* 185 (1994)).

41. See *id.* at 122-23.

English reports that, in some respects, men have an easier time being supervised by women than women do. Many of the men interviewed reported that women were great bosses. The natural womanly traits come in handy for managing people, and women tend to be supportive managers.<sup>42</sup> However, being “too nice” has its pitfalls. One problem with stereotypes, as English frequently concludes, is that they put women in traditional boxes where they are expected to act in a particular manner. Another disadvantage of being seen as “too nice” is that it is often difficult for women to get the respect they deserve because others do not take them as seriously.<sup>43</sup>

How do women get beyond nice and, more importantly, should they try to? English notes that, when they feel it is necessary many women overcompensate to appear tough. It appears these women continue to garner respect because their natural personality is appealing.<sup>44</sup> However, an overly aggressive and assertive woman who screams and bullies is despised by both men and women.<sup>45</sup> While women might be able to handle the overly aggressive male, those same women often cannot handle the overly aggressive female.<sup>46</sup> If a man is overly aggressive, he might be called “obnoxious,” but he would not be labeled “bitchy,” as the overly aggressive female often is. Most would agree the “bitch” label has a much more negative connotation.<sup>47</sup> Furthermore, men have many more options in choosing a management style and are, therefore, not left in the “double bind” in which women find themselves when they attempt to balance “nice” and authoritative.<sup>48</sup> Even if the “nice” method has some respect, the default style of a strong leader are still those qualities most often possessed by men. “[W]hereas people applaud a feminine approach to management they still see the male as the default leader and masculinity as the default management method.”<sup>49</sup> As is occasionally the problem with English’s book, she does not attempt to find solutions to deal with the negative effects of this stereotype.

In Chapter 6, “Getting Ahead: Are ‘Confident Insiders’ Born or Made?” English explores the basic stereotype that men are confident and women are deferential and retiring.<sup>50</sup> Most will agree that successful lawyers must possess confidence<sup>51</sup> and this is true for both men and

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42. *See id.* at 124-25.

43. *See id.* at 126.

44. *See id.* at 128-29, 140.

45. *See id.* at 132.

46. *See id.* at 134-35, 137, 139.

47. *See id.* at 142.

48. *See id.* at 149.

49. *Id.* at 150.

50. *See id.* at 155.

51. *See id.* at 156.



women.<sup>52</sup>

I enjoyed English's exploration of the alternative explanations for the lack of confidence women are perceived to possess. A woman's attempt to "go with the flow" might be a result of empathy or an attempt to restore balance in a highly contentious matter.<sup>53</sup> Or, a woman might simply have too much integrity to give an unequivocal answer when she has real doubts about a particular case.<sup>54</sup> From my perspective and experience, both of these explanations make sense. Nevertheless, English believes the basic stereotype probably holds true; women are less confident on the job than men. English credits that partly to the fact that women have fewer informal relationships with men<sup>55</sup> which, results in a lack of mentoring opportunities to help them gain confidence.<sup>56</sup> While I have no reason to doubt her findings, they simply do not comport with my experiences.

Regardless of the reasons why the stereotype might be more or less true, English attempts to offer solutions for women's lack of confidence. Many women have had to learn to present their personal cases to the firm's management to obtain a raise or a promotion and have had to learn to overcome their lack of natural confidence.<sup>57</sup> English explores whether confidence is truly as necessary to be a successful lawyer as many believe it to be and whether some other typically female traits also serve the practice of law just as well.

Many workplaces don't measure skills that women may be more likely, at present, to bring to the office, and that are desirable for any good lawyer. Other firms or in-house departments within corporations that feature highly developed human resource systems are more likely to measure and rate "female" characteristics such as teamwork, collaboration, communication skills, focusing on a business objective, innovation, creativity, and getting along with the client. When more skills are measured, the likelihood of a broader mix of styles and approaches increases. If only one model is available not only are people with different personalities automatically left out, but the workplace also loses by excluding diverse influences, attitude, skills, and viewpoints. A variety of voices and abilities strengthens a workplace.<sup>58</sup>

Until workplaces are willing to value the variety of perspectives and styles, English believes women will continue to experience the "double

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52. *See id.* at 158-59

53. *See id.* at 166.

54. *See id.* at 167.

55. *See id.* at 169.

56. *See id.* at 172-73.

57. *See id.* at 182.

58. *Id.* at 190.

bind” of being either too indecisive or too driven.<sup>59</sup>

#### IV. WORK/LIFE BALANCE ISSUES

English’s seventh chapter is perhaps her most relevant and significant. In this chapter she discusses the issue that is hotly debated in most legal work environments, i.e., part-time or other alternative work arrangements. Because of the negativity and stigma attached to the part-time attorney, her chapter is aptly named “Real Lawyers Don’t Work Part-Time.” English states very early on in her book and in this chapter that the main gender issue her interviews revealed was issues surrounding work/life balance especially as that balance pertains to women with children. She adequately summarizes the problem as follows:

The “real lawyers” staunchly resist changes to the proven success formula, charging that alternative schedules are inequitable and that part-timers lack commitment. These tensions make the part-timers feel resentful for the lack of respect they get from their colleagues, but also guilty about slacking off on the job.<sup>60</sup>

While the statement that part-timers are not real lawyers does not specifically mention women, it is mostly women who seek these part-time arrangements, and therefore women who are affected by this stereotype.

English does a good job of explaining why companies should offer flexible schedules. She first notes that the turnover rate among attorneys is very high; in large part due to dissatisfaction resulting from work/life conflicts, but flexible schedules should make attorneys happier.<sup>61</sup> She quotes another author, who stated, “[s]atisfaction and success in the legal profession—an oxymoron, you might say.”<sup>62</sup> In-house attorneys are not much happier with their work/life balance.<sup>63</sup> English notes that part-time arrangements can reduce costs and increase productivity.<sup>64</sup> Almost all attorneys would prefer to work fewer hours and are willing to take less pay for working fewer hours.<sup>65</sup> Despite the reasons why attorneys might want a part-time arrangement, English notes that very few attorneys actually work part-time.

Many firm managers are opposed to reduced hour schedules, most often citing financial complaints. English notes that those financial

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59. *See id.* at 191.

60. *Id.* at 195.

61. *See id.* at 195.

62. *Id.* (quoting Marcia Pennington Shannon, *Charting a Course for Satisfaction and Success in the Legal Profession*, LAW PRACTICE MANAGEMENT (Mar. 2000)).

63. *See id.* at 197.

64. *See id.* at 196.

65. *See id.* at 197.

complaints are rarely well thought out. Firms rarely add up the costs of high turnover, including recruitment costs, training costs, lost productivity, etc.<sup>66</sup> Most firms only look at the short-term costs. Even though firms are paying attorneys less money for part-time, many firms will argue that, despite the lower pay, the other overhead costs remain the same for a part-time attorney. Because that attorney is bringing in less money, the logic says it costs more to employ a part-time attorney.

Even when firms boast of part-time arrangements, they are rarely used with much success. Many part-timers, including in-house lawyers, believe that a part-time arrangement will affect their advancement progress.<sup>67</sup> Many firms do not have formal policies, and look at each case individually.<sup>68</sup> Under this method, often only attorneys who have "proven themselves" will be given a favorable part-time arrangement. Ironically, firms fail to see that a lawyer who has a less than stellar billable hour record may be in that position because of family/life concerns that cause them to seek part-time. It becomes a "Catch-22." A lawyer with family concerns cannot put in the massive hours required of associates because of her children, but she may not be granted a part-time arrangement because she has not put in those hours. The reason for seeking the reduced hour relationship is the same reason why she may not be given one. English falls short in that she fails to address this very real problem.

When attorneys are granted part-time arrangements, they often discover that working part-time is a "death sentence."<sup>69</sup> They are viewed by their colleagues as less visible, less important, and less worthy.<sup>70</sup> The assignments become less favorable and their advancement is negatively affected.<sup>71</sup>

I enjoyed and agreed with English's exploration of why the part-time arrangements often do not work. First, she notes, others perceive a lack of equity. Even though the part-timer gets paid less, those putting in the long hours claim that they would be willing to be paid less in order to work less, but they are not given that opportunity.<sup>72</sup> Those left behind complain about being left to handle the rest of the work when the part-timer has to leave early. Some feel that it is unfair that children have to be involved in order to get a part-time arrangement. One attorney told English that he would like to have one day off per week to play golf.<sup>73</sup> Surprisingly, some of the most heated opposition to part-time arrangements came from other women,

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66. *See id.* at 199.

67. *See id.* at 201.

68. *See id.* at 202.

69. *See id.* at 203.

70. *See id.* at 203.

71. *See id.* at 204.

72. *See id.* at 205.

73. *See id.* at 206.

often older women who did not have those choices when they were young attorneys.<sup>74</sup>

Others oppose part-time arrangements because they believe that part-timers are not as committed. Part-timers (or even full-time attorneys who have child-care responsibilities) believe that they are just as committed as other attorneys and are successful because they are “hyper-efficient.” Many refuse to go out to lunch, choosing to instead spend their hours at work working rather than socializing.<sup>75</sup> When it comes to criticism by other attorneys, the lower pay received by the part-timers does not seem to matter. They are still seen as lazy and neglectful. Other attorneys report feeling betrayed by the part-timers.<sup>76</sup>

Attorneys who work alternative schedules report feeling a lack of respect and claim that the firm is out to penalize them as a way of discouraging other attorneys from wanting to work part-time.<sup>77</sup> This lack of respect is hard to accept for those of us who choose to become lawyers and often have very driven, “Type A” personalities.<sup>78</sup> Unfortunately, management does not understand that the failure to value those working alternative schedules may likely cause many part-timers to leave, bringing the firm back to where they started—with high turnover because of unfavorable working conditions.

One of the main reasons many “part-time” attorneys are dissatisfied is because of their own guilt. Many women are guilt-ridden about everything from the cleanliness of their house, to the hours they put in at work, to their participation on their children’s PTA. These women feel guilty about not working as hard as the attorney next door, which makes the arrangement less than ideal. Sometimes, attorneys who are billing close to (but not quite reaching) the billable hour quota will seek a reduced-hour schedule to relieve some of the guilt associated with not working as much as everyone else.

English believes that the only way part-timers are going to be successful is if law firms and corporate legal departments redefine commitment. She states that we need to change our thinking from “real lawyers are totally devoted to work at all times” to “real lawyers can work different schedules when they do excellent work and make a profit or otherwise fulfill the mission of the workplace.”<sup>79</sup> I believe English is right about the goal of “redefining” commitment but her analysis falls short.

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74. *See id.* at 207. I was not surprised by this fact because I frequently see examples of other women being our own worst enemies.

75. *See id.* at 209-11.

76. *See id.* at 212.

77. *See id.* at 213-14.

78. *See id.* at 215.

79. *Id.* at 217.

Until partners stop depending on associates to be at their beck and call (and clients stop expecting their attorneys to be available 24/7), commitment will continue to be defined by an attorney's availability. Because many lawyers (especially the more old-fashioned variety) follow the "out of sight, out of mind" mantra, a part-time attorney will always seem less committed.

One issue English does not address is the language surrounding alternative arrangements. Most law firms refer to any type of reduced-hour arrangement as part-time, which has a connotation of an attorney who is half-dedicated. In fact, many part-time arrangements are an eighty percent arrangement, where the attorney gets eighty percent of her salary and is required to bill eighty percent of the required billable hours. Because eighty percent of billable hours often requires close to (if not more than) 40 hours of actual work per week, referring to that attorney as "part-time" is simply inaccurate. I am aware of an in-house attorney who asked to leave one hour earlier each day in exchange for a ten percent reduction in pay and management referred to that as a request for part-time. Those who work alternative arrangements (and their children) can attest to the fact that they do not feel they work only "part-time."

Another of English's discussions that was especially personal for me was her chapter on "The Kid Thing: Redefining Success at Home and at Work." In this chapter, English seeks to raise the question: can a woman be a good lawyer and a good mother? She states: "[There is a] cultural collision between traditional stereotypes and newer ways of thinking, because of false expectations and unrealized assumptions."<sup>80</sup> Women these days want it all, but it seems very few are successful at having it all, depending of course, on how you define "all." In fact, English states that many people believe it is impossible to be a good mother working full-time and vice versa.<sup>81</sup>

Accordingly, many respondents reported a "back to the '50's" mentality, where many women attorneys are leaving their law jobs to stay home full-time with their children.<sup>82</sup> While some noted that corporations had more flexible hours generally, others reported that corporations were less willing to offer a truly flexible arrangement.<sup>83</sup> My experience confirms that finding. Even now, in the twenty-first century, very few women remain at a firm long enough to make partner if they have children. Women are lending credence to traditional stereotypes. "Women leaving the workforce to be with their children affirm long-held stereotypes that the proper place for women is in the home. Although you might admire them

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80. *Id.* at 221.

81. *See id.* at 222-23.

82. *See id.* at 224.

83. *See id.* at 225.

and affirm the validity of traditional mothering, the reasoning goes, you should be careful about hiring women for that very reason.”<sup>84</sup> This type of reasoning is the most troubling consequence of these types of stereotypes. While it is illegal to not hire women because they will someday have children, many employers can find other, legitimate, excuses for not hiring a woman in order to defend any possible sex discrimination claim or pregnancy discrimination claim.<sup>85</sup>

Many women are choosing to stay home because they have husbands who can earn a comfortable living for their family.<sup>86</sup> Of the legal workplaces in which I have worked, the vast majority of the male attorneys have stay-at-home wives. It is difficult for the men who work with working mothers to understand their time constraints when they have someone at home to handle all of the things that working mothers must do. While many women claim that before they had children, they did not think that gender was an issue, they often feel differently in their post-kid life.<sup>87</sup>

English also addresses one of the more troubling aspects of having children while working, which is that others view you as a “suspect mother” if you do not appear to be the ultimate super woman.<sup>88</sup> Working women must learn to accept that they will always feel that both their work and their families and homes suffer some of the time. The working mothers I know freely admit that they will never win the “mother of the year” award, and must learn to be comfortable being “just good enough.”<sup>89</sup> One of English’s more poetic statements about motherhood while working brings this reality to light: “A woman’s career stock plummets as her maternal stock skyrockets. Society applauds one moment and punishes in the next, bringing the full force of tenacious stereotypes to bear on mothers in the workplace.”<sup>90</sup>

Because of the difficulty of working full-time while having children, many younger women are disillusioned when they look at what is ahead.<sup>91</sup> English does not address this, but it seems to me that it is the personality that many women lawyers have (the “Type A” personality and the drive for perfection), that makes it very difficult for them to be working mothers.

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84. *Id.* at 226.

85. See Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (1994) (prohibiting sex discrimination) and the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) (1994) (prohibiting discrimination based on pregnancy).

86. ENGLISH, *supra* note 1, at 227.

87. See *id.* at 228.

88. See *id.* at 230.

89. Reshma Memon Yaqub, *Less Than Perfect*, PARENTS, at 99 (Feb. 2004) (encouraging women to stop trying to be perfect and learn that being just good enough mothers is good enough).

90. ENGLISH, *supra* note 1, at 233.

91. See *id.* at 233-34.

Unless the mother/lawyer is willing to accept less than perfection in one area of her life or the other (or if she is smart, alternating between the two areas of her life), she will either fail or burn out.

Older women who have been through the working mother rigmarole claim that the only way to make it work is to hire a nanny to do all of the non-essential mothering and homemaking functions. These more senior women were shocked that the younger women did not seem to approve of their practice of hiring someone to take care of their lives, claiming that younger women still have a great deal of traditionalism.<sup>92</sup> To make matters worse, women are resented by other women without children because they feel that their need for balance is not valued and they are left picking up the slack.<sup>93</sup>

On the flip side, men who become fathers are not seen negatively at all—in fact, society's expectation of the father is simply to be a good breadwinner. Firms enjoy when men become fathers because they are believed to begin working harder to make a better living for their families.<sup>94</sup> Furthermore, most men do not feel comfortable asking to have more time home with their kids, hence, the stereotype of women as the caregivers, affect men as well.<sup>95</sup>

English believes that parenthood affects men and women in different ways. A woman's issue is that once she becomes a mother, that role trumps all others in the eyes of the firm. She is primarily a mother and only secondarily an attorney.<sup>96</sup> Accordingly, the stereotypical contradiction between motherhood and competence remains in place. This is the "double bind" from which women suffer. For men who become fathers, "the paternal role is all but invisible in the workplace, respected but irrelevant."<sup>97</sup> Accordingly, "women are overwhelmed by their new role, men hardly dented."<sup>98</sup> The work/life issue therefore remains primarily a women's issue.

English warns that we will return back to the 50's unless stereotypes change. She believes that if the part-time and other flexible hour arrangements become more popular, acceptance of working mothers will increase.<sup>99</sup> I am not so sure I agree with that prediction. As long as reduced-hour arrangements are denigrated by the legal workplace, working

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92. *See id.* at 237.

93. *See id.* at 236.

94. *See id.* at 238-39.

95. *See id.* at 240. For a refreshingly different view, see RANDI MINETOR, *BREADWINNER WIVES AND THE MEN THEY MARRY: HOW TO HAVE A SUCCESSFUL MARRIAGE WHILE OUTEARNING YOUR HUSBAND* (2002).

96. ENGLISH, *supra* note 1, at 249.

97. *Id.* at 249.

98. *Id.* at 249.

99. *See id.* at 251.

mothers will still be seen as a disadvantage to the firm. Accordingly, the discussions in Chapters 7 and 8 really could have been combined into one chapter, discussing the delicate work/life balance, which has its most profound effect on women with children.

English concludes this chapter by stating that if firms are flexible, they will attract superior talent, and women will be more loyal. She states: "The new definition [of success] could be a practitioner who does superb quality work, who is celebrated—not patronized—for creatively organizing his or her life to include real time for parenting, and who includes criteria for success other than earning a significant amount of money."<sup>100</sup> The legal workplace will be much more pleasant for working mothers when this theory becomes a reality. I don't recommend holding our breath waiting for that day.

English's organization of the book is a little peculiar. After two chapters on work/life issues, she switches to a chapter that discusses the debate of another stereotype—that women are emotional. In Chapter 9, "We Care: Debating a 'Good' Stereotype," she discusses the stereotype that women are more caring, more honest, have more humility, and engage in less game playing.<sup>101</sup> These appear to me to be more than just one characteristic, but it is understandable why English lumps them together. They all have to do with a woman's emotional side.

While this chapter was an interesting read, it does not warrant more than a cursory discussion. Although English notes that many of these characteristics benefit a woman's practice, she states: "The obvious problem of linking women with even a positive set of stereotypes is that it puts women back in the box."<sup>102</sup> Those who do not follow the stereotypes are not respected. She also discusses how a woman's emotional characteristics can create problems for women who lose the confidence of their client, or cheat themselves of opportunity by their humility. She concludes, however: "Some of the same women who complain about the tyranny of negative stereotypes still revel in the advantages that 'good' stereotypes confer upon women."<sup>103</sup>

## V. CONCLUSION

Finally, in Chapter 10, "Conclusion: Snapshots, Present and Future," English provides more than just anecdotes and attempts to solve the "problem" of stereotypes in the legal workplace. Although I do not think all of English's solutions are realistic, I admire her attempt to tackle some of

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100. *Id.* at 252.

101. *See id.* at 255.

102. *Id.* at 274.

103. *Id.* at 291.



the thorniest gender issues affecting us all.

She begins by noting that women are no longer immigrants in the legal workplace, but that there is still an "expectations gap" between what we expect to happen to us and what actually happens in real life.<sup>104</sup> She notes that women are, in many ways, outsiders, and that the default image of an attorney is still male.<sup>105</sup> While she notes that many women embrace the stereotypes in order to help them professionally, this behavior limits options based on their sex. She also notes that if men and women share a problem (such as proper clothing in the workplace), accepted behaviors and alternatives expand more easily. However, she fails to note that, by virtue of biology alone, men and women will never share the problem of pregnancy, childbirth, maternity leaves, and breastfeeding issues. Therefore, those will always remain women's issues. She also suggests, and I agree, that there is still a "genderation gap" in that the younger generation has a less combative view of many current gender issues and will, as a matter of course, resolve some of the conflicts.<sup>106</sup>

English then discusses how women are currently handling these types of issues, describing three different styles: lone rangers; copers; and trailblazers. Lone rangers are seen most often in the older generation of women lawyers—those who made it through sheer force of will and never-ending effort.<sup>107</sup> The problem with this style is that it still leaves persistent stereotypes—these women are seen to have succeeded despite the stereotypes and society often expects that all women should be able to succeed just as the lone rangers did.

Another style is to simply cope with the stereotypes. These women do not necessarily defy the stereotypes, but they learn to cope with the way they are perceived. They learn to develop confidence and work within the framework of the stereotypes, while not trying to change the stereotypes.<sup>108</sup> Trailblazers, on the other hand, use leadership, mentoring, and preventative skills to attempt to make a difference, not just for themselves but for other women as well.<sup>109</sup>

English also discusses the types of organizational initiatives firms and other legal workplaces should undertake to help negate the effect of gender-based stereotypes.<sup>110</sup> Before discussing the initiatives, English first provides her arguments for the reasons firms should care about gender issues and how those initiatives can be justified.

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104. *See id.* at 295.

105. *See id.* at 296.

106. *See id.* at 297.

107. *See id.* at 298.

108. *See id.* at 299.

109. *See id.* at 301.

110. *See id.* at 305.

Some believe that diversity is simply the right thing to do. Others make a business case argument—that firms may lose high-performing lawyers due to family issues and lifestyle concerns. Furthermore, as more women become in-house attorneys, they may begin to demand that firms become more diverse. English aptly states:

Each of these views can inform the other. Workplaces that are driven by a ‘socially just’ mission must integrate the business case so that good intentions aren’t swamped by the realities of trying to make ends meet (and so that expectations aren’t raised unduly only to be dashed when the economics won’t support ambitious changes). And those firms that are driven by business concerns will find greater dedication to their initiatives if they develop a consensus to eradicate gender bias within their offices.<sup>111</sup>

English then makes the argument for some proposed solutions organizations should attempt.

English first notes, “informality is the enemy of diversity.”<sup>112</sup> Well-designed, streamlined systems are the key to building trust.<sup>113</sup> Performance reviews should be revamped so that there are no gender-biased criteria; mentoring systems need to be formal systems to avoid the “good old boys network” and to give women the chance to be mentored by some of the male attorneys.<sup>114</sup> While I agree, on an intellectual level, that mentoring systems need to be formal to avoid bias,<sup>115</sup> this argument avoids the fact that forcing mentoring relationships on people does not allow for good personal relationships to develop on their own.

She also states that the distribution of work assignments should be transparent so that everyone can see who is being assigned what, to avoid any perceived or real bias in the assignment distribution.<sup>116</sup> One suggestion with which I agree wholeheartedly is for organizations to make any flexible work arrangement policies clear and non-discretionary and to publicize the terms of such arrangements to avoid any misconceptions.<sup>117</sup> Perhaps if other attorneys were aware of the financial sacrifice “part-timers” were making, they would not be so envious and resentful. Finally, English notes

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111. *Id.* at 305.

112. *Id.* at 306.

113. *See id.* at 306.

114. *See id.* at 307.

115. I have made a similar argument with regard to encouraging the diversity of arbitrators. *See* Nicole Buonocore, *Resurrecting a Dead Horse—Arbitrator Certification as a Means of Arbitrators to Achieve Diversity*, 76 U. DET. MERCY L. REV. 483 (1998) (arguing that there needs to be a formal certification process for entering the arbitration field to avoid perpetuating the good old boys network).

116. ENGLISH, *supra* note 1, at 307.

117. *See id.* at 308.

that firms have to be willing to be risk takers if they are truly going to diminish the gender stereotypes affecting our workplaces.<sup>118</sup>

English also uses this chapter to encourage firms to engage in a dialogue about these issues. Opening up the communication lines will hopefully rid of some common misconceptions—for example, that women do not like to travel.<sup>119</sup> English also hopes that her book will encourage others to have a debate about whether the “real lawyer” model is still useful.<sup>120</sup> While she notes that this model allows clients to be well served, she also states: “Another perspective is that a consequence of including parents in the workplace is that children need care; that childcare duties don’t last forever; and that treating part-timers as second-class citizens alienates them and jeopardizes any possibility of a long-term relationship.”<sup>121</sup> She states that attorneys should be evaluated based on performance, rather than conformance to gender expectations.

Finally, English gives her vision for the future. First, she states that women should not concentrate strictly on the numbers because doing so does not take men’s interests into account and that it is important that a vision motivates both men and women. This is an interesting perspective. While it might not be a welcome statement to the die-hard feminists, it was, to me, an important recognition of the fact that we need men to help advance the causes of women. English also believes the legal profession needs to adjust its views regarding which traits we believe make a good lawyer, taking into account that there are many varieties of personalities.<sup>122</sup>

By re-thinking the qualities of a good lawyer, there would be an opportunity for each practitioner to add new tools and approaches to his or her everyday practice. The benefit would be a more thoughtful understanding of what traits contribute to good lawyering, which again leads to better, more professional performances.<sup>123</sup>

Firms should rethink authority and leadership, taking into account that there is more than one way to be an effective leader.<sup>124</sup>

Another of English’s visions for the future is for firms to have a more flexible view of commitment to work, noting that a lawyer’s commitment varies throughout the lawyer’s life.<sup>125</sup> My own perspective is that some firms are afraid that the lawyer will not stay long enough to reap the

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118. *See id.* at 309.

119. *See id.* at 309.

120. *See id.* at 312.

121. *Id.* at 312-13.

122. *See id.* at 316.

123. *Id.* at 316.

124. *See id.* at 316.

125. *See id.* at 316-17.

benefits of providing flexibility early on in the career, and that view causes firms to be less supportive of alternative work arrangements, which in turn causes women who need those types of arrangements to be less satisfied with their jobs and to ultimately leave their firms. It is easy to see how this circularity makes it difficult to really cause any significant changes.

Finally, English notes that firms need to have a different conception about parenthood versus professionalism—both should be valued of both sexes. She believes we need to be rid of the traditional stereotypes of men and women as parents and lawyers.<sup>126</sup> English concludes that the future should include more support of people who step outside the stereotypical norms.<sup>127</sup>

In sum, English does a good job of explaining the various gender stereotypes in the legal workplace and makes an admirable attempt in her conclusion at providing some solutions. I was left with a greater understanding of the gender stereotypes in the legal workplace, but perhaps also a bit more pessimism, wondering whether her lofty goals are really possible.

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126. *See id.* at 317.

127. *See id.* at 317.