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WOMEN LAWYERS, THEIR STATUS, INFLUENCE, AND RETENTION IN THE LEGAL PROFESSION

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I. INTRODUCTION

Two of the most significant challenges law firm leaders face in today's highly competitive climate are cultivating firm profitability and retaining high performing, diverse attorneys. Women attorneys become key players in this equation. In the context of law firm success, they are in the spotlight as members of a minority group in which law firms are finding a wealth of rising stars and high performers.

The numbers tell the story: women comprise about one-half of the ABA-accredited law school graduating class but account for only 16.81% of the partners in law firms nationwide.¹ More than half — 70.9% — of women lawyers work in private practice law firms.² These figures suggest that, relative to total headcounts, women attorneys are under-represented among those in partnership. Although graduating from law school and being hired as entry-level attorneys in adequate numbers during the past decade, women are not remaining with their law firm employers as career lawyers who aspire to and achieve partnership status. The data paints a complex picture of women legal professionals. The facts suggest that while they are growing in numbers world-wide, women lawyers continue to face occupational barriers and gender segregation.

II. RETAINING WOMEN AND ATTRACTING THEM TO PARTNERSHIP

The link between organizational profitability and the associates of a law firm is clear, but it can be observed in a new light by reviewing the troubling statistics and informative anecdotes from two seminal studies of attrition. In 1997, with the NALP Foundation's

* CEO/President, The NALP Foundation for Research and Education. Much of the information provided in this article regarding the historical progression of law firm culture is based on my observation of those shifts over time.

1. National Association for Law Placement, *Women and Attorneys of Color Continue to Make Small Gains at Large Law Firms*, Nov. 7, 2003, available at <http://www.nalp.org/press/minrwom03.htm>.

2. CLARA N. CARSON, AMERICAN BAR FOUNDATION, *THE LAWYER STATISTICAL REPORT: THE US LEGAL PROFESSION IN 1995* 24 (1999).

publication of *Keeping the Keepers — Strategies for Associate Retention in Times of High Attrition*, the legal community awoke to the fact that associate attrition was a bottom-line business issue of extraordinary consequence.³ The data revealed that among entry level associates, nearly one in ten — 9.2% — departed their firms within one year of being hired and nearly half — 43% — departed within three years.⁴ Overall, nearly three-quarters of all associates hired left their original firms within six years of first being employed.⁵

These statistics represent merely the beginning of the 'bad news.' Women were much more likely than men to be represented in these attrition statistics. Subsequent documentation of attrition revealed that the departure of women from law firms was endemic, with a 2003 study finding that 8.9% of women had departed their firms within sixteen months of being hired and that more than half — 54.9% — had departed within four and one-half years of their start dates.⁶ Departures by laterally hired women were equally rapid. Nearly one in five female lateral hires had departed within two years of being hired and within five years, a total of two-thirds were gone.⁷

Until the NALP Foundation published its 2003 study of attrition, the reasons for this mass exodus of women remained elusive. The data from this study, however, revealed that among entry-level departures, 18.2% of women left because of unmet performance standards.⁸ Compare this number to the 22.5% of men who left for that reason.⁹ Somewhat more women — 7.7% — than men — 4.7% — departed because of billable hour pressures.¹⁰ Women were nearly ten times more likely to report that their departures were predicated by dependent care responsibilities.¹¹

When a law firm is unable to "keep the keepers," that is those women who have the potential to become partners and future firm leaders, or when it is unable to recoup the investment it made in recruiting and training female associates because they

3. See generally THE NALP FOUNDATION, *KEEPING THE KEEPERS — STRATEGIES FOR ASSOCIATE RETENTION IN TIMES OF HIGH ATTRITION* (1997) [hereinafter *KEEPING THE KEEPERS I*].

4. *Id.* at 11.

5. *Id.*

6. THE NALP FOUNDATION, *KEEPING THE KEEPERS II — MOBILITY AND MANAGEMENT OF ASSOCIATES 23* (2003) [hereinafter *KEEPING THE KEEPERS II*].

7. *Id.* at 22.

8. *Id.*

9. *Id.* at 63.

10. *Id.*

11. *Id.*

depart earlier than expected, the costs to firm profitability, employee morale, and organizational stability can be enormous. The data show that the exodus of women occurs before they are likely to reach and sustain a basic level of profitability, typically sometime during the third year of employment.¹²

III. MOTIVATION AND ASPIRATION OF WOMEN LAWYERS: WHY FEMALE LAW GRADUATES CHOOSE PRIVATE PRACTICE

A 1998 study undertaken by Nancer H. Ballard, entitled *Equal Engagement*,¹³ suggested that there is a marked consistency in the reasons why women decide to become lawyers.¹⁴ Ballard reported that women choose law as a career because they are engaged by the intellectual challenge, enjoy the opportunity to solve problems, and have an interest in advocacy; because they want to make a positive difference in civil, environmental, consumer and social issues; and because they have a desire to ensure their economic independence through use of their skills in a vital industry.¹⁵

Ballard's investigation supports the idea that women seek interesting, important work that challenges them and provides continued opportunities for professional growth, professional relationships that are supportive and equitable, and purposeful, ethical involvements that contribute to a 'greater good.'¹⁶ In numerous studies and focus groups, women reported that substantive work remains key.¹⁷ This refers to work that allows women to be proactive, to use their intellect, savvy, resourcefulness, and astuteness, and to solve complex business problems.¹⁸

Women's apparent motivation and aspiration offer a compelling basis for the legal community to consider the question posed by Carrie Menkel-Meadow:¹⁹ Will women change to adapt to the male-

12. *Id.* at 22.

13. NANCER H. BALLARD, *EQUAL ENGAGEMENT: OBSERVATIONS ON CAREER SUCCESS AND MEANING IN THE LIVES OF WOMEN LAWYERS* (Ctr. for Res. on Women, Working Paper No. 292, 1998).

14. *Id.* at 6.

15. *Id.* at 6-8.

16. *See id.* at 9-16.

17. *Id.* at 9-10 (noting "[t]he most frequently identified reason . . . for becoming a lawyer was the interviewee's belief that she would . . . 'find the work interesting'").

18. THE NALP FOUNDATION, *PERCEPTIONS OF PARTNERSHIP — THE ALLURE AND ACCESSIBILITY OF THE BRASS RING* (1998) [hereinafter *PERCEPTIONS OF PARTNERSHIP*].

19. CARRIE MENKEL-MEADOW, *THE COMPARATIVE SOCIOLOGY OF WOMEN LAWYERS: THE FEMINIZATION OF THE LEGAL PROFESSION* (Inst. for Soc. Science Res., Working Paper Vol. 3, No. 4, 1997).

centered legal profession, or will the profession change to embrace and assimilate women? Menkel-Meadow suggests if women are expected to alter the nature of the legal profession, then perhaps an even more important question is, how will women affect this shift?²⁰ Women might change the legal profession through integration and assimilation of their cultural, social, and biological differences.²¹ They might also change lawyering through rebelling against and rejecting the hierarchical tradition and the stratification of private practice organizations.²²

The documented and anecdotal differences in the legal careers of men and women are best viewed in context. Over the past ten to fifteen years, private legal practice has seen significant — some would suggest turbulent — changes with the entrance of women into the profession in record numbers.²³ Five of these changes and their implications for women lawyers are of particular interest, since each has created an uncertain path for women's career advancement.

A. Compensation Structure

The first notable change is that private law firms have experienced a shift in orientation.²⁴ In general, law firms have evolved from a client service orientation to a client production orientation.²⁵ This difference is monumental. Prior to the late 1980s, law firms and their partners served clients, clients whose loyalty was uncompromised.²⁶ Lawyer compensation was almost entirely 'lock-step' — that is, income was linked to tenure, number of years since graduation, or number of years since joining the firm.²⁷ This pyramid structure was based on the premise that new associates and younger partners contributed their labor as 'capital investments' in the firm, and by the time an attorney achieved senior partner status, *he* would be able to work fewer hours and live, at least in part, off of the labor of those who followed

20. *Id.* at 12-16.

21. *See generally id.*

22. *Id.* at 14.

23. *See* BALLARD, *supra* note 13, at 2 (detailing women's participation in the legal arena since the late 1960s).

24. *See generally* Ameer McKim, *The Lawyer Track: The Case for Humanizing the Career Within a Large Law Firm*, 55 OHIO ST. L.J. 167, 172-75 (1994).

25. *See id.*

26. *Id.* at 172-73.

27. *See* S.S. Samuelson, *The Organizational Structure of Law Firms: Lessons from Management Theory*, 51 OHIO ST. L.J. 645, 654 (1990).

him.²⁸ It was easy to assume that clients were equable and the amount of legal work they required from the firm would, likewise, remain stable.²⁹

However, the business environment changed in the mid-1980s.³⁰ In addition to widespread downturn in the profitability of specific practice areas such as real estate and oil/gas, the phenomena of conducting and coordinating corporate legal business through in-house counsel groups expanded.³¹ As in-house lawyers handled more work, the business community relied decreasingly on law firms.³² At the same time, corporate in-house counsel and corporate clients became very savvy, shopping for cheaper legal services.³³ These elements combined to result in fierce nationwide competition for clients among law firms.³⁴

As competition for clients evolved, the lawyers most responsible for bringing in clients began to voice their dissatisfaction with compensation systems based solely on tenure. Thus, as an accommodation, firms began to reconfigure compensation structures to place heavier emphasis on 'client development' and 'rainmaking' as well as billable hours and collections. Those attorneys who brought new clients to the firm were generally compensated in three ways: first, firms paid for the hours they billed working on a new client's current business; second, firms paid the rainmaking attorney for work done by others in the firm on the new client's business; and finally, firms paid the rainmaker for work done by anyone in the firm on that client's future business regardless of whether the attorney was actually working on that future business. This system rewards the 'well-connected' attorney who can bring in large numbers of new clients and farm the work out to junior partners or associates, by allowing *him* to collect 'origination credits' for any work performed by any attorney for those clients.³⁵

This shift in the compensation/progression paradigm notably affected the paths of women attorneys. As newer entrants in the

28. See *id.*

29. See *id.* at 653.

30. See *id.* at 654 (noting the "great maw of mergers and acquisitions that has been so prominent on the American business scene over the last ten years").

31. *Id.* at 653-54.

32. See *id.*

33. McKim, *supra* note 24, at 172.

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

35. See Cynthia Fuchs Epstein et al., *Glass Ceiling and Open Doors: Women's Advancement in the Legal Profession; A Report to the Committee on Women in the Profession, The Association of the Bar of the City of New York*, 64 FORDHAM L. REV. 291, 297 (1995).

profession, women were at a clear disadvantage under the old 'time and tenure' seniority compensation system that operated in the 1970s and 1980s. Ironically, the phase out of that system coincided with the time when women began reaching the stages in their careers at which they could reap its rewards. As a result, today, very few women are found at or near the top of law firm compensation rankings.³⁶

B. Competition

A second important change in law firm culture was the phenomenon of increased intra-firm competition among lawyers.³⁷ The move to production compensation systems represented a significant departure from the traditional system, in which clients 'belonged' to the firm as a whole and not to the individual lawyer. This was so entrenched in legal/law firm tradition that senior partners in the 1970s would likely have advised young associates to forgo investing time and energy in learning how to develop clients because they did not view it as an efficient use of time. Clients belonged to the firm, but the 1990s ushered in a different model — clients suddenly belonged to the *lawyers*, lawyers who would reap benefits from 'owning' their clients long after they individually performed any legal services for those clients. Moreover, it meant that clients could follow individual lawyers from firm to firm if they chose.

Women entered the legal profession at a time when there was significantly less camaraderie and more competition among lawyers than there traditionally had been. Some suggest that this resulted in severely limited opportunities for women lawyers because senior partners are less likely, now, to turn over their working practices to younger attorneys, preferring the monetary benefits of retaining open books of business at their firms. This significantly circumscribes the opportunity for new women lawyers to become rainmakers since the practice of law is organized around networks.³⁸ It is these networks that lead some, but not all, lawyers to rainmaker status.³⁹ By limiting women's access to existing clients, the 'lawyer-owned client' paradigm restricts their ability to develop the networks that would allow them to become rainmakers.

36. *Id.* at 297.

37. See Samuelson, *supra* note 27, at 654-56.

38. Epstein et al., *supra* note 35, at 297.

39. See *id.*

C. Centralized Decision-Making

Decision-making in law firms has become centralized. During the late 1980s, law practice witnessed a transition from dispersed management to extensively centralized, 'hands on' management of *both* partners and associates. Executive committees manage firms' business transactions, with considerable consequences for women in the profession. It is no secret that executive committees do more than simply centralize decision-making, however. They often solidify power structures and remove decision-making from public scrutiny. Relatively few women sit on executive committees, and when they do, they often fill 'women's slots.'⁴⁰ The cumulative effect of this is intense: without representation on the committees that exert the most power and affect lawyers' careers the most, women's opportunities to rise to the highest echelons of partnership remain poor at best.

D. New Levels of Status

The emergence of new statuses within the profession signifies another change in the law firm paradigm. Law firms have introduced a new kind of partnership position into their organizational structures: the non-equity or income partnership.⁴¹ These partnerships help law firms that find themselves 'top heavy' because of a decline in business or the number of associates.⁴² Firms need an answer for clients who question why associates with whom they have worked for many years are 'unqualified' for partnership, and an easy solution is to call those lawyers 'partners' without actually expanding the ranks of equity partnership.⁴³ Additionally, this label gives firms the ability to retain partners who do not *generate* business but still perform valuable work on projects for clients brought in by other partners.⁴⁴ This solution, which creates a status between associate and equity partner, allows the firm to test business generation and client development ability before promoting an attorney to 'full partnership,'

40. These are seats reserved to be filled by a woman at all times, thus creating a politically correct appearance for the committee and ensuring continuation of the male-dominated make up of the committee by sending the message that only 'women's slots' are available to women.

41. PERCEPTIONS OF PARTNERSHIP, *supra* note 18, at 27.

42. *Id.*

43. *Id.*

44. *See id.* at 28.

and the extra step lengthens the time an attorney must spend on the 'partnership track.'

Whether and how the introduction of this new status step may disadvantage women is yet unclear. Because status in a firm involves individual negotiation of a deal with the firm, women could conceivably suffer severe adverse impacts.⁴⁵ Women report that they were required to negotiate with executive committees of all men — often men who did not value women's contributions, potential, or commitment to the firm as highly as their male counterparts.⁴⁶

E. Extended Partnership Track

Finally, the extended amount of time that firms are imposing before lawyers can expect promotion adversely affects women. Many senior partners can recall a time frame of three to five years for 'making partner' in their firms. Today, seven to nine years is typical.⁴⁷ The use of non-equity partnership positions extends the 'probationary period' for both men and women,⁴⁸ but the impact of that extension differs across gender lines. Because women make a greater biological time investment in reproduction, they must determine the 'right time' to start a family, and many women worry that no time during their careers as associates is the 'right time' to get pregnant. Unfavorable assessments regarding commitment to the firm and to their jobs for female associates who do become pregnant, not to mention the decrease in the number of hours they are able to bill, affect their ability to stay on the partnership track. Simply put, the partnership clock confronts the biological clock for women in a way that it does not and likely will not for men. In the end, these family choices have an adverse impact on the compensation women attorneys can expect.

IV. WOMEN LAWYERS' PERCEPTIONS

When asked to identify what their law firms value in attorneys, the answers reported by women lawyers in private practice

45. Joanne Lubin, *Why Women Must Hone Their Negotiating Skills*, WALL ST. J., Aug. 2004, available at <http://www.careerjournal.com/columnists/manageyourcareer/20031105-managingyourcareer.html> (last visited Nov. 10, 2004).

46. *Id.*

47. See e.g. MENKEL-MEADOW, *supra* note 19, at 7.

48. PERCEPTIONS OF PARTNERSHIP, *supra* note 18, at 27.

consistently reveal that firms prize attributes traditionally associated with men. These values may be organized into five general categories.⁴⁹

A. *The Ability to Make Money*

Making money for one's self and for a law firm may require both men and women to spend substantial amounts of time coaxing new clients to the firm at the expense of time spent on substantive legal work. Ironically, the latter remains a main source of professional satisfaction for both male and female attorneys.⁵⁰ According to Nancer Ballard's study, valorization of money-making in law has become extremely acute.⁵¹ While the profession has traditionally presented itself to potential members of the legal community as a field in which they would enjoy independence, intellectual satisfaction, and an affluent lifestyle, arguably the only benefit remaining for future lawyers is the potential for affluence.⁵² Women, in growing numbers, question the relative value of this 'perk' in their lives and cultivate a new roster of gender-related values on which to base their career decisions.⁵³

B. *Commitment to the Workplace*

Single-minded devotion and commitment to the workplace is a second value that researchers suggest evolves from male professional perspectives. Researchers have long noted that legal careers have largely been shaped by and for the man with a family who is 'family free.'⁵⁴ This means that his family commitment rarely requires him to participate in homemaking, child rearing, or family development.⁵⁵ Despite the prevalence of dual income households and the notable presence of a 'new generation of men' — young, male associates who are married to professional women and who yearn for more participation in homemaking, child rearing,

49. BALLARD, *supra* note 13, at 19.

50. *Id.* at 20 (citing Chris Klein, *Big Firm Partners: Profession Sinking*, NAT'L L.J., May 26, 1997, at A1).

51. See generally *id.* at 19-21.

52. *Id.* at 20 (quoting Chris Klein, *Big Firm Partners: Profession Sinking*, NAT'L L.J., May 26, 1997, at A1).

53. *Id.* at 21 ("When . . . asked what they would do if they could make one change in their workplaces, a majority . . . stated they would decrease revenue and hours expectations with a correlative reduction in compensation.").

54. HOLLY ENGLISH, GENDER ON TRIAL — SEXUAL STEREOTYPES AND WORK/LIFE BALANCE IN THE LEGAL WORKPLACE 230 (2003).

55. *Id.*

and family development — the 'family free' model has retained dominance in the legal world.⁵⁶ This model expects utmost commitment to the workplace and willing sacrifice of any family life, creating an unfortunate conundrum for lawyers with families: the more money a lawyer produces for his or her firm, the more money he or she brings home to the family members he or she loves and the less time he or she has to spend with those family members.⁵⁷ Particularly susceptible to this double edged sword, women lawyers often suffer from a feeling that they do not give enough time and attention to their children, spouses, and families, while their co-workers criticize them for dedicating more to their home lives than to their firms.⁵⁸ The sword strikes even though they commit and work at full capacity in both spheres.⁵⁹

C. Individual Prowess and Achievement Proven Through Competition and Adversity

Sociologists concur that competition, adversarial relationships, pugnacity, and combativeness are characteristics more frequently demonstrated by males than by females.⁶⁰ The profession thrusts female lawyers into just such a male-dominated environment.⁶¹ Researchers report many law firm partners view most of their relationships with their fellow partners as competitive rather than supportive.⁶² Some partners characterize these relationships in even more castigating terms: undermining and contentious.⁶³ A competitive workplace environment has a profound negative effect on workplace relationships and one's ability to be engaged with one's work — two fundamental goals for women lawyers in their careers, as reported by Ballard.⁶⁴ The nature of competition as "mutually exclusive goal attainment" renders it damaging to relationships.⁶⁵ As a work environment becomes more competitive and adversarial, the individuals in that environment become increasingly individualistic, viewing each other as rivals who

56. BALLARD, *supra* note 13, at 22.

57. *Id.*

58. *See id.* at 23-26.

59. *Id.* at 26.

60. *See* CAROLYN S. DUFF & BARBARA COHEN, WHEN WOMEN WORK TOGETHER: USING OUR STRENGTHS TO OVERCOME OUR CHALLENGES 13-17 (1993).

61. *See* BALLARD, *supra* note 13, at 19.

62. *Id.* at 26.

63. *Id.*

64. *Id.* at 27; *see also id.* generally.

65. *Id.* at 27 (quoting A. KOHN, NO CONTEST: THE CASE AGAINST COMPETITION 136 (1986)).

potentially block the road to success or esteem and who "must be defeated, outdone, or overcome."⁶⁶ Competition requires lawyers to constantly prove themselves rather than allowing them to enjoy engaging in their work.⁶⁷

D. Rationality and Non-Emotionality

Ballard's research indicated that even though women lawyers consider themselves "more emotional or closer to their feelings than men," firms and other lawyers expect that women will, at all costs, avoid expressing emotion when something upsets them.⁶⁸ Studies show that men often enjoy greater latitude than women in expressing their emotions especially when that expression includes screaming, yelling, and abuse, which defeats the other person.⁶⁹

E. Power

Finally, power, or the ability to take charge and control one's environment including those within it, surfaces as a value in the male-centered legal workplace. According to Ballard, in many environments, lawyers' core mentality is simple: they refuse to admit their flaws, weaknesses, or vulnerabilities, thus appearing to others, both within and outside their firms, to be completely in control.⁷⁰ This mentality evinces itself in work product expectations, which focus on perfection and intolerance for mistakes in response to the highly competitive environment.⁷¹

V. GAPS, BARRIERS, AND STRATIFICATION

Through anecdotal reports and empirical data, women provide information about both subtle and profound issues that confront them in the legal workplace. The following brief discussions highlight several of these issues.

66. *Id.*

67. *See id.*

68. *Id.* at 29.

69. *Id.* at 29-30.

70. *Id.* at 30.

71. *Id.* at 31.

A. *Women's Assignments*

Carrie Menkel-Meadow reported that comparative studies of women and men in the legal profession reveal a stunning disproportionality in the number of women clustered in practice areas that are considered the 'lowest echelons' of the profession.⁷² Interestingly, however, examining the practice of law on a global basis uncovers the fact that the 'lowest echelon' practice differs dramatically from country to country.⁷³ Because of this, women lawyers have potential opportunities to demonstrate their competence and capacity to perform brilliantly in every area of the law. Women nevertheless often fall prey to gender-based segregation predicated by stereotypical perceptions about their abilities and characteristics, for example, 'women function well as family lawyers.'⁷⁴

Biological or life-cycle choices factor into predictions about women's assignments within the legal field.⁷⁵ Unfortunately, this often places women in practice or task areas based on stereotypical perceptions of what women are good at, such as domestic relations work.⁷⁶ This prevents women from participating in work generally considered to have higher status.⁷⁷ Researchers have found that women with children receive fewer challenging work assignments than women without children.⁷⁸ This is not because they have poor track records in productivity or ability: it is the result of a perception that a woman with children is more devoted to the needs of her children than those of her partner or client.⁷⁹

In addition, occupational allocation barriers — that is, the perceived 'prestige' of certain types of work and the tradition of giving only certain types of work to women — weigh equally in firms' decisions to funnel women into particular practices and away from others.⁸⁰ Carrie Menkel-Meadow cites data showing that in Germany, because of a unique regulatory scheme that supports gender segmentation, women are disproportionately represented in public sector jobs.⁸¹ The German judiciary allows part-time employment, guarantees child care to women lawyers,

72. MENKEL-MEADOW, *supra* note 19, at 9.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. ENGLISH, *supra* note 54 at 223.

79. *Id.*

80. MENKEL-MEADOW, *supra* note 19, at 10.

81. *Id.* at 9.

and provides an opportunity for young mothers to leave work for several years and re-enter the same job on their return.⁸² On the other hand, in Belgium very few women are members of the judiciary, which is considered the nation's most prestigious occupation.⁸³ Women lawyers in France are disproportionately clustered in suburban practices rather than in the more prestigious Paris-based practices.⁸⁴ In Norway, women are under-represented in the courts in part because these professions are viewed as requiring "aggressive defiance," a characteristic women are thought not to possess.⁸⁵

United States data suggests that being female has a significant negative effect on a new lawyer's willingness to take her first position in solo practice or with a small or medium sized firm.⁸⁶ Being female may also significantly increase a lawyer's odds of working in government or public interest legal jobs and of taking altogether non-legal employment after graduation.⁸⁷ This obviates a significantly lower likelihood for women to become partners in law firms than for men, other inequalities between them notwithstanding.⁸⁸

Intriguingly, parenthood seems not to significantly alter women's odds of being employed in any particular setting. This suggests that women do not necessarily choose work settings that allow them to combine their paid work with heavy family responsibilities. On the other hand, parenting may have a positive effect on men's likelihood of becoming a firm partner.⁸⁹ A perception that a man with a family is stable, committed, and likely to participate more fully in his community than a single man creates a 'halo effect' for lawyers who are husbands and fathers.⁹⁰

B. Compensation

Establishing salaries in professions generally requires assignment of criteria to positions and then consideration of the value of those criteria. Entry-level positions come with lesser

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* (citing J. JOHNSEN, PROFESSIONALIZATION OF LEGAL COUNSELING IN NORWAY (1984)).

86. *Id.* at 10.

87. *Id.*

88. *Id.*

89. ENGLISH, *supra* note 54, at 238.

90. *Id.*

compensation than those positions which require experience and developed skills. The income gap for entry-level attorneys is significant, pervasive, and presumably transects the legal profession at ever higher levels than most. The fact that this gap takes longer for women to close than for men can be explained, in part, because compensation systems have rewarded roles, such as that of rainmaker, that have been less accessible to women and because partnerships periodically change the rules of the compensation game.⁹¹

Most firms base the salaries they pay on market imperatives, but they often also have a certain core of objective criteria to consider. Those objective criteria generally include hours billed and the hourly rate charged to clients, collectibles and receipts, hours billed and collected for work performed by others on behalf of senior partners, development of additional work from existing clients, and origination of new client work. However, the most valued and monetarily rewarded criteria varies among firms. Some highly value the generation of new clients and the expansion of client business, thus they compensate rainmakers above those who perform actual legal work. Others more highly value the number of hours that lawyers spend on legal work, business generation through presentations and articles, or management and administrative responsibilities. In the end, the criteria themselves may not matter much, because compensation tends to be negotiated and controlled by small groups. Sometimes in fact, especially in smaller firms, a single leader of the firm strictly controls compensation levels. Associates in one firm may earn higher salaries in lockstep fashion without regard for hours worked or billings collected, while in another firm salary increases coincide with competition in the market. Some firms calculate a three year average of the hours billed and dollars collected to arrive at some formula for setting salaries. For a woman who takes maternity leave and experiences a decrease in average hours from 180 per month to, for example, 135, such a formula for salary calculation can have a lasting negative impact.

Salary determinations, despite differences in criteria, almost always come down to the following process: salary decisions are publicly grounded in perceptions of appropriate lawyer behavior, including face time, work ethic, productivity, quality of work, collegiality, teamwork, leadership, contributions to firm and community; determined by the position and power of each individual

91. See discussion *supra* Part III.A.

attorney, by considering his or her book of business, status as 'star,' mobility or threat to firm over departure, or commitment; and centralized in hands of only a few individuals. Different firms apply objective criteria differently and may negotiate those criteria to satisfy their needs depending on the attorney's position, aggressiveness, and willingness to contest and push the issue. Interestingly, indications reflect that firms often have no valid rationale for compensating some attorneys more highly than others, and anecdotal reports suggest that while compensation committees receive many complaints from male attorneys, they receive few if any from females. As a result, women appear satisfied with their compensation because they do not complain. Consider, however, they may not complain because they have angst over needing maternity leave or greater flexibility to accommodate their children's changing needs. Perhaps women do not complain because they tend to feel that they have to justify receiving a higher level of compensation.

C. Work Place Environments

The job satisfaction of women lawyers, like that of all lawyers, is unmistakably interwoven with and profoundly influenced by the most rudimentary factors of law office life.⁹² Practice area assignments head the list.⁹³ Lawyers join a law office and affiliate by choice, or by chance, with a particular practice group. Months may pass before they realize the impact that the nature of that practice group, the quality of practice group management, and the availability of significant work within that group has on their success in the office and their future career. Practice area assignments, according to anecdotal insights gained through prior NALP Foundation research, are key to the quantity and quality of training and mentoring that associates receive, affect the level of visibility they acquire, prompt assessments of their relative 'profitability,' and ultimately dictate their prospects for advancement within the firm.⁹⁴ These influential results elevate the importance for each attorney to get his or her fair share of 'good' work assignments.⁹⁵

In the NALP Foundation's 1999 study *Perceptions of Partnership*, a new measure regarding tolerance for errors was

92. See generally PERCEPTIONS OF PARTNERSHIP, *supra* note 18.

93. *Id.* at 77.

94. *Id.* at 77-79.

95. *Id.*

established from perceptual input provided by attorneys of both genders.⁹⁶ A significant number of female and male attorneys agreed that tolerance and forgiveness for errors was not equitable between the genders: overall, men received greater latitude than women from superiors when they made comparable errors.⁹⁷ In addition, women lawyers participating in focus groups reported having a sense that they, to a much greater degree than men, were still required to prove their competence as attorneys.⁹⁸

A significant factor in developing loyalty and a sense of belonging at a firm lies in the opportunities the firm provides for associates to participate in the management of office life and governance.⁹⁹ Most associates covet the opportunity to have input in office business and governance matters, despite the obvious diminutive impact this has on their billable hours.¹⁰⁰ Relationships within a firm govern the quality and quantity of work that lawyers receive and provide access to the process through which partners make compensation decisions.¹⁰¹ Those attorneys who are politically astute pursue relationships for the long term benefits they will generate.

Mentoring is one way that some firms provide broader training and opportunities for associates to learn experientially, allowing them to advance more quickly toward becoming the 'contact person' for clients and win clients' loyalty. Mentors are teachers, advocates, career launchers, and more. Mentoring relationships lead to expanded responsibilities, including management of existing client case loads and inheritance of clients, but mentoring also creates the affiliations and contacts critical to attorneys' economic success. The suggestion that women fail to mentor other women in significant numbers implies an important issue for women attorneys. Three possible explanations exist for this failure: women are too busy with the demands of work and family to mentor; women are simply discouraged from committing to a mentoring relationship by the pressures of the billing structure; or, unfortunately, women hold grudges for the fact that no one helped them along the way.

96. *Id.* at 93-94.

97. *Id.* at 94.

98. *Id.* at 115-17.

99. *See id.* at 109-113.

100. *Id.* at 109.

101. *Id.* at 112-13.

D. Work/Life Balance

The growing presence of women in the legal field has been the impetus for expanding the lexicon of the legal community to include work/life balance. Though debatable, it is commonly believed that contemporary Americans work harder and longer hours than any of the three previous generations. While workers may be realizing certain benefits for this increase in productivity in the forms of compensation, material goods, and professional expertise, they may also be incurring significant liabilities in the form of dysfunctional personal lives, mental angst and illness, drug and alcohol abuse, and general dissatisfaction with their lives. The concept of work/life balance enters the equation, making part-time schedules, flexible schedules, and innovations in reporting and supervisory structures more commonplace. Corporations and law firms who have made an effort to implement this concept have learned a great deal from their experiences. As achieving work/life balance becomes an important value in firms, a challenge grows to encourage all members of the firm community to invest in the values and beliefs that drive work/life policies and practices within the firm.

Scheduling options as a means of ameliorating work/life conflict began as tools for retaining female attorneys who might succumb to the pressures of trying to balance firm life and family.¹⁰² However, flexibility in work schedules has increasing importance to every employee as more than one-third of all employees today expect to need time away from their jobs for elder care, child care, or health care, among other responsibilities.¹⁰³ Thus, when organizations contemplate offering flexible scheduling to attorneys, they must increasingly consider time issues not as 'women's' issues but as 'family' issues.¹⁰⁴ Across the board, men are as likely as women to consider time off to meet family responsibilities an important benefit provided by employers.¹⁰⁵

According to NALP data, while a majority of employers have policies permitting part-time work, an underwhelming 4.1% of all attorneys avail themselves of the part-time option.¹⁰⁶ The

102. See *KEEPING THE KEEPERS II*, *supra* note 6, at 16.

103. See *id.*

104. See *id.*

105. See *id.*

106. Press Release, Nat'l Ass'n for Law Placement, Inc., Part-Time Attorney Schedules Still Widely Available, but Remain Rarely Used by Partners, Associates, (Nov. 7, 2003), available at http://www.nalp.org/pressp_t2003.htm.

reasons there are so few part-time attorneys of record, according to associates, partners, and management committees, stem from three primary realms of concern: whether part-time lawyers can adequately meet the client service standards of the firm, whether part-time lawyers are cost effective, and whether working on a part-time basis stigmatizes attorneys' careers.¹⁰⁷

E. Women's Leverage

Law firms have initiated some interesting structural changes in response to new market realities. Law firms find themselves 'top heavy' after declines in business, the number of partners too heavily outweighs the numbers of associates, or the partners generate too little new business to sustain themselves, and it becomes apparent that those firms must institute policy changes.

One of these changes includes the development of equity and non-equity partnership.¹⁰⁸ The creation of two partnership tracks allows firms to promote rainmakers to full partnership at a faster rate than other attorneys in the same associate classes.¹⁰⁹ It also establishes a status level in between associate and equity partner at which the firm tests business generation and client development abilities before promoting attorneys to full equity status.¹¹⁰

Perceptions of Partnership reported two factors that help explain the emergence of the non-equity partnership track as a viable alternative to equity partnership.¹¹¹ First, 42% of women — a significant percentage — believe that there is not a 'level playing field' for women and men in their pursuit of partnership.¹¹² Surprisingly, 17% of male attorneys agreed with this assessment.¹¹³ Second, almost half of all women associates, 47%, indicated a lack of interest in partnership.¹¹⁴ With these two factors in play, it is not surprising that the number of women partners has failed to grow significantly.

107. See generally PERCEPTIONS OF PARTNERSHIP, *supra* note 18.

108. See discussion of these types of partnership, *supra* Parts III.D-E.

109. See discussion of rainmaker partners and non-equity partners, *supra* Parts III.B, III.D.

110. See PERCEPTIONS OF PARTNERSHIP, *supra* note 18, at 27-29.

111. See generally *id.*

112. *Id.* at 33.

113. *Id.*

114. *Id.*

Most firms now have some structure in place to shift associates off of the partnership track and into 'of counsel' type positions.¹¹⁵ Such positions are generally offered to those associates who have proven themselves capable as attorneys but either lack a desire to become partner or have been less productive than other attorneys in terms of client development and rainmaking.¹¹⁶ Some firms label these positions 'counsel,' 'special counsel,' 'senior counsel,' 'non-equity partner,' or 'staff attorney' rather than 'of counsel.'¹¹⁷ Other firms pursue an entirely different approach to partnership by hiring 'contract attorneys.'¹¹⁸ This allows firms to hire a senior associate or partner to work for a relatively short, designated time period. At the end of the contract period, firms often consider a contract attorney for traditional partnership.¹¹⁹

This growing list of options is generally positive news for women. It may signify an institutional softening of the 'up or out' approach to which law firms have traditionally subscribed. Most importantly, however, it sends the message that firms value talented lawyers even if they choose not to pursue partnership or prefer a delayed partnership track. An unfortunate side effect to the growing prevalence of these options is an increase in the expectations and demands that firms place on those attorneys who choose to follow the traditional progression toward equity partnership.

The emergence of the non-equity partnership track has also resulted in structural changes with significant implications. In recent years, for example, in some law firms, a new diamond structure has replaced the traditional pyramid structure of advancement.¹²⁰ In the traditional pyramid structure, entry-level and junior associates comprised the largest group.¹²¹ This allowed a relatively small group of equity partners to be supported by a larger number of senior associates, contract associates, and paralegals, and an even larger group of junior associates.¹²² Hiring efforts focused primarily on new associates, allowing

115. See *Yale Law Women 2001 Quality of Life Survey: Report and Analysis 3*, at <http://www.yale.edu/ylw/survey.pdf> (last visited Oct. 27, 2004) [hereinafter *Yale Law Women 2001*].

116. See PERCEPTIONS OF PARTNERSHIP, *supra* note 18, at 28.

117. *Yale Law Women 2001*, *supra* note 115, at 8.

118. See PERCEPTIONS OF PARTNERSHIP, *supra* note 18, at 28.

119. See *id.*

120. See Nicholas Varchaver, *Diamonds Are This Firm's Best Friend*, AM. LAW., Dec. 1995, at 67.

121. See McKim, *supra* note 24, at 173.

122. See *id.*

horizontal associate hiring only to obtain specific expertise or to compensate for attrition.¹²³

Contrarily, constructing a diamond-shaped leverage structure requires hiring fewer entry-level associates and dramatically increasing the numbers of contract attorneys, paralegals, and lateral mid-level associates.¹²⁴ Senior associates, as they assume non-equity partner roles, create a new level of support for a smaller number of equity partners at the very top. In this instance, however, diamonds may not be "a girl's best friend."¹²⁵ With fewer entry-level positions available at law firms, fewer women may enter the profession as private practice attorneys, further exacerbating the dearth of women in leadership roles and partner positions. Additionally, as the demand for special expertise and use of contract attorneys to fulfill this demand increases, to remain competitive in the market women will likely specialize and develop areas of expertise, removing themselves further from the traditional partnership track. Finally, the question remains whether the numbers of women included in 'the select few' will swell or whether women will overwhelmingly, by choice or in response to market forces, 'opt out' of partnership.

VI. THEORIES ON CAREER PROSPECTS AND THE INFLUENCE OF WOMEN LAWYERS

Cynthia Epstein suggests, "Classic sociological studies have implied that the sex division of labor within professions is an expression of realistic adjustment to private and professional demands."¹²⁶ As such, three accounts of women's adjustment to "private and professional demands" explain their career prospects in the law.¹²⁷ The first account can be labeled assimilation.¹²⁸ Given enough time, women will percolate into positions of power and earn rewards as they become a critical mass in the legal sphere and as they gain the requisite experience and skill for high level positions. This model requires a 'time lapse.'

Gendered choice, the second account, suggests that women choose patterns of practice either on essentialist grounds — that is, women prefer certain kinds of work — or for the pragmatic

123. *See id.*

124. *See, e.g.,* Varchaver, *supra* note 120, at 68.

125. MARILYN MONROE, DIAMONDS ARE A GIRL'S BEST FRIEND (Golden Stars 2000).

126. CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW 109 (1983).

127. *See generally id.*

128. *See id.* at 15.

reason that different types of work allow them to better balance career and family demands.¹²⁹ Women may invest in career moves to accommodate their family responsibilities and, as a result, trade away remuneration, position, power, and potential.

The final account, gendered constraint, suggests that circumstances for women in the legal field continue to follow the same pattern because the pattern rules the circumstances — things are the way they are because they have always been that way.¹³⁰ This paradigm limits women's choices regarding labor markets, employing organizations, competition for scarce resources, and acquisition of wealth.¹³¹

VII. CONCLUSION

Despite their numbers and past accomplishments, women continue to struggle though an uphill battle to advance in the legal profession, but they continue to persevere. Women's legal careers look considerably different than men's, and the careers of the newest women attorneys are likely to look significantly different from those of their predecessors. Ultimately, women's status in the law will depend on their ability to assert, collectively and individually, their contributions to legal practice.

What outcome can women in legal careers expect? Despite the many troubling issues and barriers women face, potential positive outcomes continue to exist that will allow women in the law, and indeed the profession as a whole, to thrive.

In 1971, women accounted for 3% of lawyers in the United States. By the year 2000, women represented 28.9% of all American lawyers and 46% of law students.¹³² These increasing numbers impact both the structure and the operation of law firms. As firms become more dependent upon women's labor and those women demand flexible work schedules and recognition for their myriad contributions, the structural organization of those firms will evolve. Operationally, women's influence on the practice of law could conceivably alter the 'win or lose' nature of litigation. The developmental psychologist, Sally Hegelsen,¹³³ wrote that women as compared to men have heightened communication skills, are

129. *See id.* at 37-38.

130. *See id.* at 79-81.

131. *Id.* at 80.

132. Joni Hersch, *The New Labor Market For Lawyers: Will Female Lawyers Still Earn Less?*, 10 CARDOZO WOMEN'S L.J. 1, 1 (2003).

133. Sally Hegelsen is one of the leading theorists on gender differences and leadership. *See generally* SALLY HEGELSEN, *THE FEMALE ADVANTAGE: WOMEN'S WAYS OF LEADERSHIP* (1990).

better at listening and empathy, and possess advanced intermediary skills such as negotiation and conflict resolution.¹³⁴ It is, therefore, possible that an array of fresh substantive solutions to legal problems could develop and that a 'more mediation, less litigation' model could take hold as a reflection of women lawyers' influence on the profession.

134. Karyn Prentice, *Whose Ladder is it Anyway*, available at <http://www.manage-mentskills.co.uk/articles/ladder.htm> (last visited Oct. 27, 2004) (citing SALLY HEGELSEN, *THE FEMALE ADVANTAGE: WOMEN'S WAYS OF LEADERSHIP* (1990)).