



2000

The Glass Ceiling in Law Firms: A Form of Sex-Based Discrimination

Rebecca Korzec

University of Baltimore School of Law, rkorzec@ubalt.edu

Follow this and additional works at: http://scholarworks.law.ubalt.edu/all_fac

 Part of the [Civil Rights and Discrimination Commons](#), [Law and Gender Commons](#), [Legal Profession Commons](#), and the [Sexuality and the Law Commons](#)

Recommended Citation

The Glass Ceiling in Law Firms: A Form of Sex-Based Discrimination, 2 J. of Employment Discrimination L. 251 (2000)

This Article is brought to you for free and open access by the Faculty Scholarship at ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in All Faculty Scholarship by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

The Glass Ceiling in Law Firms: A Form of Sex-Based Discrimination

Presented at the Stetson University College of Law 14th Annual National Conference on Labor and Employment Law: Critical Issues for 2000, March 23-24, 2000, Clearwater Beach, Florida

I. Introduction

Although women have made substantial strides in the work world, overcoming significant obstacles and earning the right to earn a living in the professions, they have made anything but impressive progress in the legal profession. Today, women comprise almost 50 percent of entering law school classes—an impressive increase from eight percent in 1970.¹ In addition, women comprise almost 39 percent of all law firm associates,² a drastic improvement from 2.9 percent in 1969.³ However, these increases have not resulted in a significant increase in the percentage of women partners in law firms, where women comprise a mere 13 percent of all partners.⁴ Clearly, these statistics demonstrate that the number of women partners is disproportional to the number of entering law students and the number of female associates.

At a certain level, women lawyers collide with a “glass ceiling,” an invisible, artificial barrier which prevents women from being promoted to management and leadership positions within a business or firm.⁵ “The glass ceiling ‘represents a subtle form of sex discrimination—unwritten, generally unspoken, but very pervasive.’ Its presence is reflected in trends and statistics which consistently reveal women’s underrepresentation in executive and management positions.”⁶

Scholars have advanced numerous theories to explain the glass ceiling in law firms. Some scholars argue that the glass ceiling is attributable to women’s shortcomings, rather than to discrimination, despite the fact that women enter law school with better qualifications than men.⁷ Others have suggested that “the glass ceiling exists as a result of either organizational bias or negative attitudes held by decision makers regarding female candidates’ abilities and qualifications for promotion to senior-level positions, rather than the candidate’s qualifications and career choices.”⁸ Some argue that it is “blatant discrimination against women in the promotion-to-partner process [that] may explain the scarcity of female partners.”⁹

By Rebecca Korzec

Rebecca Korzec is a Professor of Law at the University of Baltimore School of Law. She has taught courses in advanced commercial transactions, comparative civil liberties, consumer protection law, contracts, legal analysis, research and writing, products liability, property, sales, and sex-based discrimination. Prior to teaching, Professor Korzec was an Associate at the law firm of Venable, Baetjer and Howard in Baltimore, Maryland. She was a Visiting Professor at the University of Aberdeen in Scotland. Currently, she is a Faculty Associate at the Hoffberger Center and a Fellow at the Center of International and Comparative Law.

This article focuses on whether the glass ceiling formed as a result of sex discrimination, blatant or subtle, or whether it formed as a result of women lawyers' differing qualifications or career choices. It explores many aspects of law firm culture, including business development, mentoring, and the demands and pressures associated with becoming a partner. Moreover, it addresses family issues and the effects of family life on succeeding in a law firm environment. Finally, it discusses the effects of sex discrimination, sexual harassment, sex stereotyping, and the devaluation of women in law firm partnership.

II. Factors Contributing to the Glass Ceiling

A. Business Development

In today's cost conscious society, clients have a "bottom-line mentality" and are no longer loyal to their law firms.¹⁰ Law firms cannot "depend on client commitment; the days when firms could wait for business and bill fees that went unquestioned are gone. Today, clients shop around for law firms, parceling out their business to different firms and demanding more accountability."¹¹ Therefore, law firms place increased pressure on both partners and associates to develop and retain business.

Lawyers who obtain many clients or generate large sums of money for the firm are labeled "rainmakers."¹² Rainmaking is the act of securing and retaining clients. Generally, lawyers use three methods to secure business: (1) senior partners may refer business internally to a lawyer; (2) current and former clients may refer new work to a lawyer; or (3) a lawyer may obtain new business by soliciting new contacts.¹³

Generally, women are not considered as skilled at rainmaking as men, with very few women having the reputation of being "independent rainmakers."¹⁴ The impediments women face in becoming rainmakers at their law firms are attributable to many factors, especially the misperceptions of both men and women of women's place in business and the lack of business connections that prevent women from networking.

Both men and women perceive women as less business-oriented than men.¹⁵ Women do not have the same level of client contact as men through involvement in activities which traditionally have provided men with a business network. Women do not have "access to social networks that men use to develop business relationships" and women need to devote more efforts than men in developing contacts.¹⁶ Men develop business contacts through college and law school friendships; often these male friends attain senior management positions having the power to hire attorneys.¹⁷ Because it takes less time to become a senior associate or partner in a law firm than it does to become senior management in a corporation, women who reach the senior level in law firms generally are much younger than their female equivalents in the business world, leaving women lawyers without significant contacts.¹⁸ Moreover, most decision makers in corporate America are men,¹⁹ and most people prefer working with individuals who are most like themselves.²⁰ Significantly, networking and client development often occur at sporting events or on the golf course. Men perceive women as unwilling to attend these events even if invited.²¹

Women who wish to attend social and athletic events experience difficulties. Often they have less time than men to devote to client development because men frequently have time to take clients out to breakfast, lunch, and dinner.²² Women, frequently, have obligations outside the firm, as primary caregivers in their families.²³ Therefore, women tend to have lunch with clients, rather than dinner. "But even for women with time available, dinner invitations are problematic because of questions concerning the propriety of a woman inviting a male client to dinner."²⁴ Clients may feel uncomfortable accepting a social invitation from a female attorney.²⁵

"Because women are not invited to participate in social gatherings that produce networking ties often leading to client relationships, women find it more difficult to forge links with present clients and find it difficult to establish the sort of professional networks available to men which foster new client development."²⁶ Most women executives are generally not senior enough to

be able to present business opportunities to women partners.²⁷ Moreover, some women are reluctant to give business to part-time attorneys, a sector comprised almost entirely of women.²⁸ The practice of law, with its unanticipated complications, the severe penalties associated with missing a deadline, and the need for corporate attorneys to be available to travel, makes it impracticable and undesirable to have part-time attorneys in charge of accounts.²⁹

Although women may encounter difficulties with many aspects of business development, they may enjoy some advantages over men. Women are viewed as better able to deal with and solicit women clients.³⁰ Furthermore, women have created alternative methods to develop business and a client base. For example, women have initiated "all-women get-togethers" in which women partners invite women business leaders to meetings.³¹ Instead of entertaining at sporting events, women take clients to the theater, art shows, or book signings.³² Women participate in bar association committees, write articles and newsletters, and lecture at seminars.³³

B. Mentoring

The structure of law firms fosters mentoring. "Mentoring is a system of associate advancement in which older, more experienced partners in large law firms take junior associates 'under their wings'—that is, grooming, preparing, and promoting the associate for partnership."³⁴ Many women lack mentoring relationships, a situation which may inhibit their growth and development as lawyers.³⁵

Mentors take on many roles in the training of associates. They teach their protégées by "providing challenging and varied assignments, teaching the craft of lawyering, offering strategies on how to deal with clients, and sharing insights about how to negotiate the organizational systems and politics of firm life."³⁶ Mentors also act as advisors and confidantes, providing a source with whom the protégées can "share personal difficulties—for example, about the stresses of balancing work and family responsibilities—and someone with whom to talk over problems."³⁷ In addition, mentors serve as advocates for their

protégées offering "sponsorship by recommending protégées for special assignments[,] . . . provid[ing] opportunities for protégées and their work to be exposed or showcased to influential partners in the firms . . . and offer[ing] protection in controversial situations."³⁸ "Ultimately, the mentor advocate—who has watched over and guided the career steps of a junior colleague—promotes his or her protégée for partnership."³⁹

The lack of mentoring disadvantages women in their pursuit of partnership. Female junior associates may not receive projects and assignments that exhibit their intelligence and potential as successful attorneys.⁴⁰ As a result, partners may not select those associates to work on significant projects that allow them to interact with different partners and clients and to enhance their ability to develop business.⁴¹

Interestingly, both men and women are reluctant to mentor women associates, but for different reasons. Male partners hesitate to develop close mentoring ties with female associates because the relationships may be perceived as improper.⁴² In a climate of heightened sensitivity and ambiguity about sexual mores in the workplace, the main concern is that the relationship will be misconstrued as a sexual liaison or possibly a cover for sexual harassment.⁴³

Women partners are hesitant to develop mentoring relationships with female associates because women partners are usually less powerful than men in the firms and therefore will be less effective in promoting associates for partnership.⁴⁴ When women sponsor women for partnership, men discredit the female partner's advocacy as unobjective.⁴⁵ The male partners view women as only sponsoring women because they are women, regardless of their qualifications.⁴⁶ In addition, women choose not to mentor because they regard "mentoring as an extra responsibility that [is] added to their already heavy workload."⁴⁷ The most troubling reason why women do not mentor younger women, however, stems from the view that the older women had many obstacles to overcome with "no special doors opened for [them] or special opportunities made available [to them]."⁴⁸

Despite the prevailing view that women are less powerful than men, many junior women associates prefer to be mentored by women because "it provides the foundation for a greater sense of identification and mutual understandings."⁴⁹ Women associates perceive women partners as "more attuned" than their male counterparts "to the unique needs and problems that junior women face in the firms and as professionals."⁵⁰

C. Pressures of Law Firm Culture

"The increasing expectations regarding billable hours [is] one of the greatest impediments to women's movement up the career ladder at large firms."⁵¹ Firms measure productivity and commitment to the firm by the number of hours the attorney bills during a year. The law firm culture requires its members not only to work extremely long hours, but also to spend time developing business and participating in bar and civic activities.⁵² Thus, it is impossible for a lawyer working these hours to be the primary caregiver in a family.⁵³ Moreover, the traditional law firm culture requires attorneys to be constantly available to clients.⁵⁴ This environment imposes unpredictable, burdensome time demands on attorneys.⁵⁵

Increased competition for clients forces firms to stress superior service to clients at the expense of maintaining and nurturing an efficient and productive staff.⁵⁶ "Law firms which focus only on clients' demands, to the exclusion of the needs of their own employees, are failing to maintain their human capital investments and are running the risk that these investments will become less efficient or cease producing entirely."⁵⁷ Inevitably, employees who are overworked and exhausted will produce inferior work product.⁵⁸ Therefore, by measuring productivity solely on the basis of billable hours, law firms create an unintended polarity between the number of hours billed and the actual production of quality, efficiently-produced work.⁵⁹

The demands and pressures of being an associate in a large law firm may be particularly difficult for women. For instance, measuring a lawyer's performance by the number of hours billed versus the quality of performance may pe-

nalize women, who tend to act as primary caregivers of families. Women lawyers often devote less office hours but not less skill.⁶⁰ Women may be disadvantaged because lawyers are expected to be available "twenty-four hour[s] a day, seven days a week, 365 days a year . . . and clients . . . demand that sort of availability and that sort of response from [their lawyers] any-time."⁶¹ Clients do not want to worry that their concerns will go unanswered while their lawyer tends to carpool duty.⁶² Since success in the traditional firm requires long hours, associates who aspire to partnership are forced to make personal sacrifices that they would not ordinarily make.

D. Becoming Partner

The decision to offer an associate an interest in the partnership centers around two distinct standards, one subjective and the other objective. Some firms base their partnership decisions on traditional factors and select those associates who are most like the partners already in the firm.⁶³ Other law firms employ a more objective approach, basing their partnership decisions on economic criteria.⁶⁴ These firms view themselves as "market-driven entities where decisions about partnership revolve around profitability."⁶⁵ In either case, women are significantly disadvantaged.⁶⁶

Using the subjective approach, partners already in the firm select the candidates based on criteria that disparately impacts women.⁶⁷ The majority of the partners in firms are males, and therefore, the men will accordingly choose men from the pool of associates, which further hinders the advancement of women.⁶⁸

Using the more objective approach based on profitability, firms disproportionately select men based on the assumption that men are better able to bring in business.⁶⁹ Because associates are not expected to bring in business, partners ultimately select candidates for partnership based on prospective, stereotypical expectations and projections about a person's ability to develop business.⁷⁰ These expectations are largely based on subjective criteria which are susceptible to influence by stereotypes about the roles and aspirations of women.⁷¹

Significantly, women differ about whether they aspire to become partners in large law firms; making partner is not every woman's goal.⁷² Clearly, there are many rewards to becoming a partner in a large firm: higher salary, equity ownership, job security, reduced work schedule, greater independence, more interesting work, higher intrafirm rank, and more prestige with clients. However, partnership may not be appealing to some associates because of the responsibilities, including financial liability, management responsibilities, business development, and the duty to train and supervise associates.⁷³

In particular, women associates discover that the conflict between partnership responsibilities and family obligations is an overriding consideration when making the decision to become a partner.⁷⁴ "Because firm profitability demands 'long hours, disrupted 'spare' time, and intense pressures and sacrifices for the associate who wishes to strive for the partnership mantle,' many women who are able to work successfully in firms choose not to do so because the demands on their time and the stress on their families exact too much of a personal cost."⁷⁵ Women conclude that to make partner, they are compelled to make great sacrifices, which many women are unwilling to do.⁷⁶

E. Family Issues

As previously mentioned, in order to be a long-term player in a law firm, women attorneys are consistently forced to make choices that affect their decision to marry and, more commonly, to have children. For many women partners, the decision to remain childless is not a choice, but a consequence that results "from difficulties in trying to combine, love, relationships, motherhood, and career commitments."⁷⁷ Statistics demonstrate that women attorneys are less likely to be married than male attorneys.⁷⁸ Law firms view unmarried attorneys as highly desirable because they do not have outside commitments, enabling them to devote more time to the firm.⁷⁹ Not surprisingly, however, "remaining single or romantically uninvolved . . . is seen by some [attorneys] as an undesirable consequence of the standards for professional work required by the firms."⁸⁰ Single women attorneys are typically younger than men at the same level. The women are forced

to sacrifice their personal lives and possible relationships to be a lawyer.⁸¹

Married women lawyers must also make significant personal sacrifices. Law firm life requires tremendous time commitments, leaving little time for relaxation, or for spouses.⁸² Without a supportive husband, the female lawyer will be unable to devote adequate time to both her marriage and her career.⁸³

Attaining partnership most significantly affects a woman's desire to have children.⁸⁴ In American society, motherhood is regarded as a full-time career.⁸⁵ As a result, motherhood is considered a deterrent to career mobility because outside commitments and obligations make it difficult to manage both a career and a family.⁸⁶ Those "women who tip the balance in favor of family" by reducing or postponing work during their children's early years end up behind those who continued to work during those years.⁸⁷ Therefore, women attorneys face a Hobson's Choice and "either postpone having children until they become partner and risk being physically unable to bear children at all . . . or have children during their partnership track years and risk being denied a partnership position."⁸⁸

In order to have both a career and a family, women are forced to employ new strategies that allow them to accommodate both segments of their lives.⁸⁹ At the suggestion of many women, law firms have developed strategies to alleviate some time demands, allowing them to balance work with family life.⁹⁰ These strategies include part-time or reduced hours, job sharing, and telecommuting.⁹¹ In addition, firms have created new categories of job titles for attorneys, such as "of counsel" or "special counsel", contract lawyers, and permanent associates.⁹² However, the female attorney who utilizes an alternative work arrangement may appear less committed to her firm and her clients. As a result, she may never be considered an appropriate candidate for partnership.⁹³

Working part-time as an associate is usually comparable to a full-time job in other sectors of service industries.⁹⁴ Nevertheless, a reduced

schedule of three, four, or five days a week or a system of reduced quotas for billable hours may allow women attorneys to have more regular schedules with more predictable hours. In theory, these reduced schedules offer women attorneys increased flexibility so that they can tackle the dual careers of attorney and mother. In reality, they may offer no solution at all.

Alternative work arrangements may appear to be a temporary solution to the problem. However, many women attorneys with young children are reluctant to take advantage of these arrangements.⁹⁵ In 1994, for example, only four percent of associates and one percent of partners utilized reduced work schedules.⁹⁶ "According to the Bureau of Labor Statistics, the 'dearth of part-time attorneys distinguishes the profession from both the workforce as a whole' and from other professional specialties; in 1993, sixteen percent of those employed in professional specialties worked on a part-time basis compared to 2.4 [percent] of attorneys in large firms."⁹⁷

Since alternative work schedules seem to be a temporary solution, many women attorneys do not choose to take advantage of these options. They fear that working part-time will have a serious impact on their professional careers and will impose serious difficulties on career advancement.⁹⁸ Moreover, traditional male and female lawyers feel that it would be unfair for the part-timer to advance as quickly as full-time lawyers.⁹⁹ In addition, the full-time attorneys, both men and women, resent reduced schedules for women lawyers because such schedules may increase workloads for other attorneys.¹⁰⁰ As a result, part-timers typically receive less desirable and less substantial work, which further inhibits their growth and development in the profession.¹⁰¹ Furthermore, "feelings of jealousy and comparison may build into hostility which can create a gender-biased hostile work environment which is not pleasant for the part-time attorney to practice in[,] even part-time."¹⁰²

F. Sex-Based Discrimination

Sex-based discrimination within law firms may be the major reason for the dearth of women

partners and the high rate of attrition among women associates. The most frequently cited forms of sex discrimination are sexual harassment, stereotyping of women, and devaluing women.¹⁰³ Sex discrimination may be blatant or subtle and may exist within the firm or originate with clients.¹⁰⁴ When the sex discrimination comes from clients, the firm may take little or no action on behalf of the female attorney for fear of offending the client and losing business.¹⁰⁵ When the discrimination comes from within the firm, firms may be more sensitive because of Title VII considerations.¹⁰⁶

Title VII prohibits an employer with fifteen or more employees from discriminating against any individual with respect to the terms, conditions, or privileges of employment because of an employee's sex.¹⁰⁷ Therefore, Title VII of the Civil Rights Act of 1964 may provide protection from sex discrimination for female associates.

Sexual harassment is sex discrimination that creates a hostile or abusive work environment.¹⁰⁸ It covers a wide range of behaviors and may vary from "sexual exploitation to the use of sexual innuendo and jokes with a sexual theme."¹⁰⁹

[I]n law firms, like other work environments, there is a certain amount of sexuality that is expressed between individuals. Some people welcome it, others are ambivalent about it, and some regard it as entirely inappropriate. Because much of this is expressed on a nonverbal level, and even when verbally communicated there is often misunderstanding and poor communication, some people believe communication with sexual overtones of any kind is entirely inappropriate This is especially the case in work environments as intense as that of law firms, where there is little sex segregation and people work long hours during the week, as well as weekends, and have most of their social interaction within the firm.¹¹⁰

In this environment, men and women may become overly sensitive to what others may per-

ceive as sexual harassment.¹¹¹ As a result, men may become more cautious about their contacts with women lawyers which “serve as a restriction on informal communication and interaction between male attorneys and women attorneys.”¹¹²

Sexual stereotyping is another form of sex discrimination.¹¹³ “Discriminatory stereotypes greatly hinder women’s attainment of full equality . . . [and] strengthen the glass ceiling because they reinforce a sex-based division of labor and the accompanying sex-based roles in which discrimination takes root.”¹¹⁴ Sexual stereotyping is defined as characterizing attitudes and defining behaviors that are appropriate for men and women.¹¹⁵ “According to current sex stereotypes, men are believed to be competent, rational, assertive, independent, objective, and self confident [whereas] women are considered [to be] emotional, submissive, dependent, tactful, and gentle.”¹¹⁶ In addition, women are viewed as inadequate partnership candidates, uncommitted to their careers, unable to network, and unlikely to command a room and to take charge.¹¹⁷

Gender stereotyping is a barrier for women lawyers throughout their careers. Women face these barriers during the hiring process when applying for positions that have traditionally been dominated by men.¹¹⁸ Once hired, women continue to face obstacles stemming from their employer’s expectations of men and women in performing job duties.¹¹⁹ Sex stereotyping, therefore, creates a “double-bind” for women inasmuch as “women who behave in a stereotypical manner face underestimation of their competence and effectiveness; while women who deviate from sex stereotypes are viewed as displaying inappropriate masculine behavior and are labeled abrasive or maladjusted.”¹²⁰ Because the legal profession has been traditionally dominated by men, women attorneys who are grouped into one of these categories . . . “[,] suffer detrimental and discriminatory consequences as a result of being female.”¹²¹

The devaluation of women is another type of sex discrimination prevalent in law firms.¹²² Senior male partners engage in discriminatory se-

lection by choosing and favoring male associates for the most interesting and difficult work, while assigning the more mundane tasks to women.¹²³ Partners may exclude women from certain areas of specialty because the specialty is associated with maleness.¹²⁴ Senior attorneys perceive female attorneys to be less committed to their jobs and therefore do not want to invest time and training if the associate is going to leave and get married or have children.¹²⁵ In addition, some men still prefer to retain the “boys’ club” atmosphere in law firms because they view business as a “locker room” and feel more comfortable working with men than they do women.¹²⁶ Thus, women are treated as “outsider[s]” which “impacts on their ability to take part in informal interactions necessary to learn the intricacies of professional roles, and to establish relationships necessary for career mobility.”¹²⁷

III. The Glass Ceiling as Discrimination

The glass ceiling formed as a result of sex-based discrimination and perpetuates such discrimination. Although the glass ceiling dates back decades, it is present in today’s law firms, blocking able women from running on the partnership track. The glass ceiling has formed as a result of discrimination, both subtle and blatant, and this discrimination helps explain why highly qualified women are not becoming partners in law firms.¹²⁸

Women encounter discriminatory conduct at every stage of their legal careers, beginning in law school and continuing through making and working as a partner in a law firm.¹²⁹ As women advance in their careers, inequality and sex-based disparity become more obvious.¹³⁰ Women lawyers who progress to top positions in law firms eventually meet the glass ceiling in one form or another.

To succeed in the traditional law firm, a woman lawyer must give her career total devotion.¹³¹ “This is evidenced by the profession’s emphasis on maximizing billable hours, maintaining full availability to clients, investing time in rainmaking, and climbing the ladder to part-

nership regardless of the degree of intrusion on one's personal life."¹³² All of these factors contribute to the glass ceiling by providing additional obstacles for women lawyers, resulting in sex discrimination. The emphasis on billable hours and maintaining constant availability to clients subtly discriminates against women who may be the primary caregivers in their families, forcing them to spend less time at the office.¹³³ The pressure that firms place on their attorneys to engage in rainmaking discriminates against women. Both men and women perceive and stereotype women as unable to develop business, whether because they lack the social connections that men typically have or because of family commitments.¹³⁴ Law firms discriminate against women when deciding partnership issues. Partners may discriminate against women subjectively by choosing associates that are most like themselves, thereby retaining the predominantly male setting; or partners may discriminate against women "objectively" by choosing male associates who the partners presume to be potentially more productive than female associates.¹³⁵

Sexual harassment, gender stereotyping, and devaluation of women are forms of sex discrimination in the law firm which contribute to the glass ceiling. Because men have become more aware of behavior that women find offensive and that may constitute sexual harassment, they may become increasingly sensitive to interacting with women.¹³⁶ This hesitancy to associate with women serves as a communication barrier between men and women which impedes women's progress. Sex stereotyping operates as a barrier to women and strengthens the glass ceiling by reinforcing men's perception of women as inferior to men.¹³⁷ These negative characterizations of women "prevent women from sharing fully in . . . the work environment . . . because the traits associated with men and women are valued differently."¹³⁸ Underrating women's abilities as lawyers and viewing them as less committed to their jobs discriminately impacts women.¹³⁹ Women, as a result, are unable to progress as much as their male counterparts. Without the training and challenging assignments provided to men, women lawyers cannot

develop.¹⁴⁰ "In increasing numbers, women are leaving [law firms] or avoiding partnership tracks."¹⁴¹ This "[a]ttribution perpetuates the glass ceiling, as fewer women are available for promotion[,] and more men remain in decision making positions as a result."¹⁴² Women are more likely than men to leave a law firm prior to the senior associate level because they essentially must choose either to conform to the accepted lifestyle or to alter their lives in order to accommodate both family and career.¹⁴³

Because women apparently have the option to "assimilate" or "alter"¹⁴⁴ it may appear that women do not become partners as a matter of personal choice. Although women are equally as qualified as men when they enter law school and join law firms in equal proportions,¹⁴⁵ they do not achieve the success of their male counterparts measured by traditional standards. This "choice" that women make appears indicative of a glass ceiling that is self-imposed, a result of women's free choice.¹⁴⁶

This choice, however, is really no choice at all.¹⁴⁷ Women who do conform to the traditional law firm lifestyle may make partner. However, often they must forego having children and a family life to devote significant, necessary time to their careers. On the other hand, women who alter their careers to accommodate family life may never be able to achieve the traditional success of a law firm partner. As a result many women leave the large firm environment to practice law in smaller, boutique firms, to start their own firms, to work as in-house corporate counsel, or to work for the government.¹⁴⁸ Some scholars argue that women lawyers who pursue legal careers outside the large law firm may be better able to accommodate both career and family.¹⁴⁹

IV. Conclusion

The glass ceiling did not develop as a result of women's perceived weaknesses and choices. Rather the glass ceiling in law firms has evolved and continues to be pervasive as a result of sex-based discrimination. This glass ceiling will not crumble until the male-oriented norms are eliminated.¹⁵⁰ Women lawyers should not be com-

pelled to assimilate male norms to have a career in a large law firm. Societal misperceptions about women lawyers' abilities and dedication must change. Until law firms modernize, adapting their policies to permit women to accommodate fam-

ily responsibilities, the glass ceiling will continue to deprive women lawyers from reaching their full potential. In the final analysis, this sex-based discrimination disadvantages not only women lawyers, but also the profession as a whole. ♦

Endnotes

- ¹ Basic Facts from Women in the Law: A Look at the Numbers, 1995 A.B.A. Commission on Women in the Profession Rep. 1 (hereinafter "Basic Facts"). See also, Elizabeth K. Ziewacz, Comment, Can the Glass Ceiling be Shattered?: The Decline of Women Partners in Large Law Firms, 57 Ohio St. L.J. 1971 (1996).
- ² Id.
- ³ Diane L. Bridge, The Glass Ceiling and Sexual Stereotyping: Historical and Legal Perspectives of Women in the Workplace, 4 VA. J. Soc. Pol'y & L. 581, 597 (1997) (obtaining statistics from the Bureau of Labor Statistics).
- ⁴ See Ziewacz, *supra* note 1, at 971. Another American Bar Association study found that although women comprise more than twenty percent of all lawyers and almost fifty percent of all law students, women continue to fall behind men in income, a gap of \$7,000 between men and women with one to three years experience and \$20,000 for more experienced lawyers. Unfinished Business: Overcoming the Sisyphus Factor, 1995 A.B.A. Commission on Women in the Profession Rep. 5, 7, 9).
- ⁵ Carol Hymowitz & Timothy D. Schellhardt, The Glass Ceiling: Why Women Can't Seem to Break the Invisible Barrier that Blocks Them from the Top Jobs, Wall St. J. Mar. 24, 1986, § 4 at 1 (coining the phrase "glass ceiling" as a metaphor describing the barrier preventing women from advancing to senior leadership positions within organizations). See also Federal Glass Ceiling Comm'n, Good For Business: Making Full Use of the Nation's Human Capital, DLR No. 52, March 16, 1995 S-2 ("The term 'glass ceiling' first entered America's public conversations less than a decade ago, when the Wall Street Journal's 'Corporate Woman' column identified a puzzling new phenomenon. There seemed to an invisible—but impenetrable—barrier between women and the executive suite, preventing them from reaching the highest levels of the business world regardless of their accomplishments and merits.").
- ⁶ S. Elizabeth Foster, Comment, The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners? 42 UCLA L. Rev. 1631, 1636 (1995) (quoting 20/20: Taking on the Boy's Club (ABC Television Broadcast, Jan. 3, 1992)).
- ⁷ See, e.g. Linda Chavez, Would-Be Women Lawyers Need to Quit Looking for Excuses and Get With the Program, CHI. TRIB., Apt. 16, 1997, at 23 (commenting on the book, *Becoming Gentlemen: Women, Law School and Institutional Change* by Lani Guinier, a University of Pennsylvania law professor).
- ⁸ Bridge, *supra* note 3, at 581-2. See also Cynthia Fuchs Epstein, Glass Ceilings and Open Doors: Advancement in the Legal Profession, 64 Fordham L. Rev. 291, 297 (1995) (concluding that "sex stereotyping and the perception of differences between men and women were serious obstacles to women's mobility both pre- and post-partnership").
- ⁹ Ziewacz, *supra* note 1, at 980 (quoting Grace M. Giesel, The Business Client is a Woman: The Effect of Women as In-House Counsel on Women in Law Firms and the Legal Profession, 72 Neb. L. Rev. 760, 774 (1993)).
- ¹⁰ Epstein, *supra* note 8, at 331.
- ¹¹ Id.
- ¹² See Ziewacz, *supra* note 1, at 985.
- ¹³ See generally Epstein, *supra* note 8, at 331.
- ¹⁴ Id. at 332.
- ¹⁵ Id. (interviewing men lawyers in large law firms and finding that few men stated that they could imagine any of the women partners to "fill[] the shoes of the senior ranking rainmakers of their firms"). See also Deborah Graham, Getting Down to Business—Marketing and Women Lawyers 402 (1996) ("The barriers that hold many women lawyers back from marketing—or doing so effectively—are individual and institutional. The problem lies with the attitudes of the women themselves, within the law firms where they work, and within the clients that represent their internal market.").
- ¹⁶ Epstein, *supra* note 8, at 332.
- ¹⁷ Id. at 333. One woman attorney in Epstein's study explained that she does not have the business contacts that men have because her friends from college are housewives, and in her law school class, she did not have many women friends. "Women are not told the value of friendships as a future business thing."
- ¹⁸ Id. at 334. It takes an average of ten years to make partner in a law firm and significantly longer to become senior management. Therefore, women associates will achieve senior positions in a law firm before their colleagues will attain similar ranking positions in the corporate world. A male associate stated that women particularly have a problem rainmaking because "the men who bring in the most amount of business are generally older than women partners . . . You get in the corporate banking world out there and the guys, the powers that be, are the fifty-year-old, white men." Id. at 333. One woman noted that "ten years from now[,] it will be a whole other world." Id.
- ¹⁹ Bridge, *supra* note 3, at 600 ("A 1988 study revealed that white

Endnotes

- males . . . hold more than ninety-five percent of the top management jobs in the country's one thousand largest corporations." (citing Korn/Ferry Int., Korn/Ferry International's Executive Profile: A Survey of Corporate Leaders in the Eighties 43, 44 tbs. 23 & 24 (1989)).
- ²⁰ Ziewacz, *supra* note 1, at 1984. Men typically prefer working with men and therefore because the clients are predominately men, they will choose to work with men. *Id.*
- ²¹ *Id.* at 986.
- ²² Epstein, *supra* note 8, at 334.
- ²³ See *infra* text accompanying notes 85-87.
- ²⁴ Epstein, *supra* note 8, at 335.
- ²⁵ *Id.* A woman interviewed in Epstein's study stated that she "would be less likely to ask some guy out that [she did not] know to try and get him" as a client than she would to ask another woman. *Id.*
- ²⁶ Ziewacz, *supra* note, at 986.
- ²⁷ *Id.* 339-40.
- ²⁸ *Id.* at 339.
- ²⁹ *Id.*
- ³⁰ *Id.* at 339.
- ³¹ Epstein, *supra* note 8, at 340.
- ³² *Id.*
- ³³ *Id.*
- ³⁴ Ziewacz, *supra* note 1, at 982 (citation omitted).
- ³⁵ *Id.*
- ³⁶ Epstein, *supra* note 8, at 345.
- ³⁷ *Id.*
- ³⁸ *Id.* One of the male associates interviewed in Epstein's study stated, "Do I wish I had a powerful partner who would stick up for me and sort of have a personal relationship with me? Sure, you'd be foolish not to want that." *Id.*
- ³⁹ *Id.*
- ⁴⁰ Ziewacz, *supra* note 1, at 983.
- ⁴¹ *Id.*
- ⁴² Epstein, *supra* note 8, at 355.
- ⁴³ *Id.*
- ⁴⁴ *Id.* at 353.
- ⁴⁵ *Id.* 353-54.
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*
- ⁴⁸ *Id.* Gaps between generations exist between women partners and the younger associates, and many older women do not believe that the younger women should be nurtured in the ways that the older women were not. In addition, "[o]lder women brand as unrealistic their younger colleagues' belief that law firms should change to accommodate the reality of working caregivers. Young lawyers think older women were too ready to sacrifice either their careers or their personal goals." Ziewacz, *supra* note 1, at 983-84 (quoting Amy Saltzman, *Woman Versus Woman: Why Aren't More Female Executives Mentoring their Junior counterparts?*, U.S. News & World Report, Mar. 25, 1996 at 50).
- ⁴⁹ Epstein, *supra* note 8, at 351.
- ⁵⁰ *Id.* One female associate in Epstein's study who had a male mentor stated that she would go to him with work problems or clarifications about work things. However, she unequivocally stated: "I wouldn't go to him saying that I'm thinking about having children, and I don't know if this is a good time or not. I wouldn't go talk about the fact that these hours are too much, or that I'm not sure if I want to continue doing this. I wouldn't go to him with personal problems." *Id.*
- ⁵¹ *Id.* at 378.
- ⁵² *Id.* at 378-79 (describing the law firm as "greedy").
- ⁵³ Ziewacz, *supra* note 1, 988 (stating that "many women find the time demands and expectations of firm life too imposing on family life or other personal interests and responsibilities").
- ⁵⁴ Ziewacz, *supra* note 1, at 987.
- ⁵⁵ A male attorney in Epstein's study stated. "The bad side of [working in a large law firm] is that the hours are erratic." Epstein, *supra* note 8, at 386. Several female attorneys also stated that it was not the hours that were the problem, but it is the fact that they were unable to make plans because of the unpredictability of the workload. See *id.*
- ⁵⁶ Foster, *supra* note 6, at 1680.
- ⁵⁷ *Id.*
- ⁵⁸ *Id.*
- ⁵⁹ "There is always a tug of war between quality, efficiency and billing hours." Epstein, *supra* note 8, at 389.
- ⁶⁰ *Id.*
- ⁶¹ *Id.* At 385.
- ⁶² If a female attorney is not available to her clients, she is considered not dedicated. See Ziewacz, *supra* note 1, at 987.
- ⁶³ See Epstein, *supra* note 8, at 364. This theory is referred to as either the traditional approach or the subjective approach. See *id.* This criteria has implications of sexual discrimination based on gender discrimination. See *infra* discussion in Section F.
- ⁶⁴ *Id.* For example, rainmaking is viewed by some as a sufficient condition for promotion to partnership.
- ⁶⁵ *Id.*
- ⁶⁶ *Id.* at 365.
- ⁶⁷ "In the traditional bound model, firms will replicate themselves as white, male institutions" *Id.*
- ⁶⁸ *Id.*
- ⁶⁹ "The ostensibly more meritocratic market driven firm disadvantages women because they face more barriers than men in developing business." *Id.*
- ⁷⁰ *Id.*
- ⁷¹ *Id.* at 364-65.
- ⁷² *Id.* at 359.
- ⁷³ *Id.* at 359-60. "Every partner is . . . charged with developing and training associates, which means a lot of often very difficult situations . . . recommending or not recommending people for partnership or continued employment. And partners also have a very big expectation to develop the business and make a lot of money. They have to show revenues and justify their salary[ies] . . . [In addition,] partners come up for review the same way associates do and . . . they [face] a higher standard." *Id.*
- ⁷⁴ *Id.* at 360.
- ⁷⁵ Ziewacz, *supra* note 1, at 988.
- ⁷⁶ See Epstein, *supra* note 8, at 360. One female associate in Epstein's study stated that she could never imagine living the life that the female partners lead. She stated: "I want to have children. I want to have a little bit more time with my husband, and no matter how hard you work at it, you just can't do it

Endnotes

- if you are a partner in a [large law firm.]” *Id.* See also *supra* notes 51-61 and accompanying text.
- ⁷⁷ Epstein, *supra* note 8, at 415.
- ⁷⁸ *Id.* For example, in her study, Epstein found that 47% of the associates were married, and of the total associates, 51% of the male associates were married compared with 42% of the female associates. In addition, 89% of the partners were married, and of the total partners, 90% of the male partners were married compared with only 73% of the female partners. See *Id.* See also Foster, *supra* note 6, at 1650 (stating that “studies of lawyers during the 1980s showed that only six to eight percent of men but close to one-third of women had never been married.”).
- ⁷⁹ See *e.g.*, *id.* at 1650 (stating that “the ideal female lawyer is unmarried and childless”).
- ⁸⁰ Epstein, *supra* note 8, at 390.
- ⁸¹ A female partner in Epstein’s study who remained childless and unmarried stated that there was more to life than work and that she will not have a very fulfilled life if she had to spend her “whole life alone and have a tremendously successful career.” *Id.* at 417.
- ⁸² Working in a law firm adds stress to the marriage whether the attorney is husband or wife. See *Id.* at 436 (noting that the male attorneys interviewed recognized that the time demands of working in a firm produces strains on marital relations).
- ⁸³ *Id.* (noting that “support from one’s spouse is one of the factors that various informants noted as an important influence on the professional career paths of women”). In Epstein’s study, “one woman succinctly observed, ‘For the women where [their work puts stress on their marriage], they’re out of here, because it just doesn’t work. You have to have a supportive husband to have a job [in this firm].’” *Id.* A senior male partner noted that he has seen a lot more women get divorced than men when the spouse is not supportive of the legal career. See *Id.*
- ⁸⁴ In Epstein’s study, many female partners mentioned that “their ascendance in the firms [placed] limits around their choices about motherhood.” *Id.* at 416. For the married attorneys, “the most significant decision was whether or not to have children.” *Id.*
- ⁸⁵ Motherhood is “an absorbing role.” *Id.* at 417.
- ⁸⁶ Both motherhood and being a lawyer are considered absorbing. See *id.* The conflict between being a mother and being a professional is not only temporal but goes to the core of identity. To be a true professional is defined by one’s occupational role with the expectation that this will be given first priority. *Id.*
- ⁸⁷ Foster, *supra* note 6, at 1655-56.
- ⁸⁸ *Id.* at 1656. “Women feel caught between the brass ring and the biological clock.” *Id.* at 1650.
- ⁸⁹ See Epstein, *supra* note 8, at 392 (noting that without alternative work arrangements, women tend to ignore family life altogether).
- ⁹⁰ See Ziewacz, *supra* note 1, at 992 (noting that many firms have “family friendly” policies that are designed to ease the difficulty in balancing the competing identities of attorney and mother). See also Epstein, *supra* note 8, at 392.
- ⁹¹ *Id.* at 392-414. Part-time work does not have a single definition and varies between firms; however, it is generally referred to as “any alternative to the full-time norm of fifty or more hours per week and/or open-ended schedules.” *Id.* at 392. Examples of part-time are a five-day work week, a three- or four-day work week, reduced quotas for billing hours. See *Id.* Job sharing is “where two or more part-time attorneys assume the responsibilities that would normally be delegated to one individual.” *Id.* at 412. Telecommuting is where the attorney works out of her home through “[f]ax machines, cellular telephones, [portable computers,] computer networks, and other forms of new communications technology.” *Id.*
- ⁹² *Id.* at 393.
- ⁹³ See, *e.g.*, Ziewacz, *supra* note 1, at 987.
- ⁹⁴ Some of the firms in Epstein’s study determined that part-time is a 5-day work week. See *supra* note 91.
- ⁹⁵ See Ziewacz, *supra* note 1, at 992.
- ⁹⁶ *Id.*
- ⁹⁷ *Id.* (citations omitted).
- ⁹⁸ *Id.* For example, “women who choose to work part-time are often less dedicated to the firm, and therefore not worthy of promotion, compared to men who are at the office more than 2,000 hours a year.” *Id.*
- ⁹⁹ *Id.*
- ¹⁰⁰ See Epstein, *supra* note 8, at 403. For example, “say something comes on Wednesday, needs to be done that week, and [the part-time person] will be back on Monday. Somebody else either has to do it or you have to kind of acclimate the clients who are waiting and make a judgment about whether it’s really a crisis or not.” *Id.*
- ¹⁰¹ See Ziewacz, *supra* note 1, at 992-93.
- ¹⁰² *Id.* at 992.
- ¹⁰³ See *infra* notes 108-127 and accompanying text.
- ¹⁰⁴ *Id.* at 980. Examples of subtle forms of sex discrimination are comments and jokes that may be difficult to classify as friendly, joking, hostile or discriminatory.
- ¹⁰⁵ *Id.* An example of client-generated sex discrimination is when the firm tolerates a client stating that he does not want to work with women lawyers. See generally Epstein *supra* note 8, at 377.
- ¹⁰⁶ See Ziewacz, *supra* note 1, at 981.
- ¹⁰⁷ See 42 U.S.C. § 20003-2(a) (1988 and Supp. 1993). Although Title VII protects female associates in medium to large firms, Title VII does not protect a female attorney from being discriminated against once she has achieved partnership status. See *e.g.*, *Serapion v. Martinez*, 119 F.3d 982 (1st Cir. 1997) holding that a partner is not an employee and therefore not entitled to the protections of Title VII). Rather than adopting a per se approach, the court, stated that “the correct course is to undertake a case-by-case analysis aimed at determining whether an individual described as a partner actually bears a close

Endnotes

enough resemblance to an employee to be afforded the protection of Title VII." *Id.* at 987. The court noted that "form should not be permitted to triumph over substance when important civil rights are at stake." *Id.* See also *Auld v. Law Offices of Cooper, Beckman & Tuerk*, 981 F.2d 1250, 1992 WL 372949 (4th Cir. 1992) (holding that based on Justice Powell's concurring opinion in *Hishon v. King & Spaulding*, 467 U.S. 69 (1984), partners are not 'employees' of the firm as an independent entity for the purposes of Title VII). The court did not address the applicability of a case-by-case approach, the "economic realities" test, because it did not apply to the plaintiff in this case.

¹⁰⁸See, e.g., *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (adopting the Equal Employment Opportunity Commission's ("EEOC") definition of sex discrimination and becoming the landmark case regarding hostile environment sexual harassment). A form of prohibited sex discrimination is sexual harassment conduct that creates an "intimidating, hostile, or offensive working environment." 29 CFR ch. XIV § 1604.11(a)(1995).

¹⁰⁹Epstein, *supra* note 8, at 372. In her study, Epstein found that with the exception of unwanted and unwelcome physical touching or sexual advances to which all agree, there was little or not agreement between the firms about which behaviors constitute sexual harassment. *Id.* Interestingly, there is a generation gap in the perceptions and definitions of sexual harassment. Younger women define sexual harassment more broadly than older women, including joking and sexual innuendo as well as any physical touching whereas older women define harassment more specifically as only unwanted sexual advances. *Id.* at 373-74.

¹¹⁰*Id.* at 373.

¹¹¹See *id.* at 376.

¹¹²*Id.*

¹¹³See Bridge, *supra* note 3, at 603-613 (stating that stereotyping based on sex is prohibited because "such simplifications lead to bias toward

a particular individual on the basis of his or her membership in a particular category"). In addition, the EEOC Guidelines expressly state that a bona fide occupational qualification may not be based on stereotyped characteristics of men and women. See *Id.* at 612.

¹¹⁴Foster, *supra* note 6, at 1646.

¹¹⁵Bridge, *supra* note 3, at 604. "Stereotyping is a concept that involves the application of a set of beliefs, often negative, that are presumed to be true about individuals on the basis of their membership in a particular social category. The process results in societal expectations relating to the proper behavior, appearance, dress, and ability of the individual member of the social group." *Id.* at 602.

¹¹⁶*Id.*

¹¹⁷See *supra* notes 10-20 and accompanying text. See also Epstein, *supra* note 8, at 368.

¹¹⁸Bridge, *supra* note 3, at 606. "In simulated hiring situations involving both female and male applicants, male applicants for managerial positions were rated higher and accepted more frequently by both female and male evaluators than were equally qualified females, particularly for positions with greater responsibilities." *Id.* The legal profession has always been dominated by men. See *supra* notes 1-4 and accompanying text.

¹¹⁹*Id.* at 606-7 ("an equally qualified woman, for example, is less likely to be promoted or offered training opportunities than her male counterpart. Similarly, achievements by women are more likely to be discounted than the same accomplishments by men"). In addition, in law firms, sex stereotyping may determine what practice group a female attorney is placed in. See Epstein, *supra* note 8, at 369 (finding that men view women to be poor litigators because an aggressive personality is needed whereas in real estate, it may not be an issue).

¹²⁰Bridge, *supra* note 3, at 607-8.

¹²¹*Id.* at 608.

¹²²See Epstein, *supra* note 8, at 377.

¹²³*Id.* (noting that one woman partner heard "women associates in the

firm referred to as 'document girls' because they process documents, a dreary task that she seemed to think men of the same rank managed to avoid").

¹²⁴*Id.* (noting that labor law is an example of "a culture typified by toughness and 'dirty' talk").

¹²⁵*Id.* at 378.

¹²⁶*Id.*

¹²⁷*Id.* See also *supra* text accompanying notes 42-43.

¹²⁸"In the legal profession, the glass ceiling prevents the record numbers of women now practicing law from attaining the position of greatest power, prestige, and economic reward — that of a law firm partner." Foster, *supra* note 6, at 1636.

¹²⁹See *supra* note 7 and accompanying text. The Socratic method of teaching in law schools has been proven to discourage the success of women. See Ziewacz, *supra* note 1, at 975-76. The Socratic method is a "combative and argumentative way of learning" and "studies have shown that many women withdraw from class participation when conflict arises, and voluntarily participate less. This withdrawal from participation may cause some women to feel alienated and disappointed that they are not receiving the same caliber of education as their male colleagues. Additionally, casebooks may increase feelings of alienation by not addressing women's issues, or by presenting women stereotypically." *Id.* at 976.

¹³⁰See Foster, *supra* note 6, at 1635.

¹³¹*Id.* at 1636.

¹³²*Id.*

¹³³See *supra* text accompanying notes 51-62.

¹³⁴See *supra* text accompanying notes 14-30.

¹³⁵See *supra* text accompanying notes 63-71.

¹³⁶See *supra* text accompanying notes 108-112.

¹³⁷See *supra* text accompanying notes 113-121.

¹³⁸Bridge, *supra* note 3, at 604. See also *supra* text and accompanying notes 116-117 (asserting that men are stereotyped as possessing traits of aggressiveness, competence and

Endnotes

independence whereas women are stereotyped as possessing traits of emotion, submissiveness and dependence, and thus, men are perceived to make better managers).

¹³⁹See supra text accompanying notes 122-126.

¹⁴⁰See supra text and accompanying note 127.

¹⁴¹Foster, supra note 6, at 1657.

¹⁴²Id.

¹⁴³Id.

¹⁴⁴Id. at 1650 (using the terms "assimilation" to describe the pattern when women succumb to the lifestyle "which demands extended

working hours, total availability to clients, and the virtual exclusion of all other needs and desires an individual lawyer may have" and "alteration" to describe the pattern when women alter their lives to accommodate the "requirements of home, family, and personal life"). Foster asserts that both assimilation and alteration perpetuate the glass ceiling. See *id.*

¹⁴⁵See supra text and accompanying notes 1, 2, and 7.

¹⁴⁶For example, women perceive themselves as not able to bring in business, see supra text and note

15; women do not want to mentor other women, see supra text and notes 44-48; women have outside personal interests and other responsibilities, see supra note 53; women choose not to make the sacrifices necessary to become partner, see supra text and notes 74-76.

¹⁴⁷See supra text and accompanying note 88.

¹⁴⁸See Foster, supra note 6, at 1658.

¹⁴⁹Id.

¹⁵⁰Id. (referring to the concept of total career devotion). See also supra text and accompanying notes 131-135.