WOMEN IN CORPORATE LAW: REWRITING THE RULES

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[W]omen in the law, by their very beings, herald a new order even if they arrive with no personal revolutionary intent.[1]

Approximately one-half of law school graduates are women.[2] However, the percentage of women in law firms that feel they have the same opportunities to advance as men, and the percentage of women that advance to partner status, is not as high as we may like to believe.[3]

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1. MONA HARRINGTON, WOMEN LAWYERS 7 (1993) (arguing that women's claims to exercise the rule-making authority of lawyers necessarily upsets a tradition that allowed only men to make rules).

2. *See* S. Elizabeth Foley, Comment, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA L. REV. 1631, 1639 n.22 (1995) [hereinafter Foley] (noting that estimates of the number of female law students range, between 40% and 50%). The American Bar Association's Commission on Women reported in 1994 that 42.6% of law students in 1992 were women, and the Census Bureau reported that 43% of all J.D. and LL.M. degrees awarded in 1991 went to women). The ABA's Section of Legal Education and Admission to the Bar also reported a 43% enrollment figure for women for the 1993-94 academic year. Ashley Kissinger, *Civil Rights and Professional Wrongs: A Female Lawyer's Dilemma*, 73 TEX. L. REV. 1419, 1421 n.8 (1995); *see also Women and Minority Lawyers Still Face Stumbling Blocks; Recruiters Say Small Pool of Minorities Limits Hiring*, CORP. LEGAL TIMES, Jan. 1994, at 40 [hereinafter *Recruiters*] (discussing legal employers' efforts to recruit female and minority students). In a 1991 lecture, Supreme Court Justice Sandra Day O'Connor stated that "[i]n my own time and in my own life, I have witnessed the revolution in the legal profession that has resulted in women representing nearly thirty percent of attorneys in this country and forty percent of law school graduates." Justice Sandra Day O'Connor, *Portia's Progress*, Lecture at the New York University School of Law (Oct. 29, 1991), *in* 66 N.Y.U. L. REV. 1546, 1548 (1991) (citing FEMINIST MAJORITY, THE FEMINIZATION OF POWER: WOMEN IN THE LAW 7 (1990)). "Projections based on data from the Census Bureau and Department of Labor indicate that forty years hence half the country's attorneys will be women." *Id.* at 1548-49 (citing FEMINIST MAJORITY at 1).

3. According to the National Association for Law Placement, women comprised 39% of law firm associates in 1994. Foley, *supra* note 2, at 1639 n.26. But women held only 12% of all large firm partnerships in 1994, and 11% of partnerships in the top 251 firms. Foley, *supra* note 2, at 1639 n.27. A survey conducted by the ABA's Young Lawyer's Division showed that 73% of male attorneys and 61% of female attorneys worked in private firms in 1990. 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, 772-73 n.44 (1993); *see also Recruiters*, *supra* note 2, at 1 (stating that:

Women have made substantial advancements since the 1972 amendments to the Civil Rights Act allowing the Equal Employment Opportunity Commission (EEOC) to bring suits challenging discriminatory practices in the hiring and treatment of women in the workplace.[4] Unfortunately, however, women still face countless barriers.[5] Despite positive statistics regarding women breaking through the "glass ceiling,"[6] when women enter the big Wall Street-type firms,[7] subtle barriers exist that not only create disillusionment and frustration, but also keep women who are talented at playing the corporate game from advancing to prestigious positions similar to those held by their male contemporaries.[8]

Section I of this article provides a background of women's entry into the world of Wall Street-type firms. Section II examines the concept of the corporate legal world as the "hunt for big game,"[9] and why this world is fertile ground for gender bias within the corporate

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[o]nly 41% of women in law firms believe that they have as good a chance of advancement as men. After five years in practice, one-half of the women have left law firms. After 10 years, 59% of men make partner, compared to only 23% of women. Currently only 8% of the partners in the largest 250 firms are women.).

But see Justice O'Connor, *supra* note 2, at 1549 (stating that:

[w]omen today are not only well-represented in law firms, but are gradually attaining other positions of legal power, representing 7.4% of federal judges, 25% of United States Attorneys, 14% of state attorneys, 18% of state legislators, 17% of state and local executives, 9% of county governing boards, 14% of mayors and city council members, 6% of United States congresspersons, and of course, just over 11% of United States Supreme Court Justices (citations omitted)).

4. Equal Employment Opportunity Act, Pub. L. No. 92-261, 86 Stat. 103 (1972) (codified at 42 U.S.C. § 2000e 1-16 (1988)) (amending the Civil Rights Act of 1964 to give the EEOC greater powers to bring cases under the Act).

5. Barriers to women's advancement in the legal profession include receiving less desirable case assignments, being assigned only supporting roles in litigation, and earning less pay than their male counterparts. Foley, *supra* note 2, at 1641-42.

6. The "glass ceiling" describes the invisible barrier that keeps women from attaining top positions in corporate America. *See* SARAH HARDESTY & NEHAMA JACOBS, SUCCESS AND BETRAYAL 209 (1986) (citing a *Wall Street Journal* article shortitled "The Glass Ceiling," which describes the dearth of women in top-level corporate jobs). "Clearly, women aren't getting to the top. Their experience within the corporate culture as they top out, are frozen out, or slug it out for a few token slots is often perceived as betrayal at this landing." *Id. See also* Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1187 (1988) (noting that women who perform traditional care taker roles are not likely to break through corporate glass ceilings).

7. *See generally* CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW 17 (2d ed. 1993) (describing historical growth of large firm employment epitomized by Wall Street firms and a recent corporate trend to use non-New York firms).

8. *See* Rand Jack & Dana Crowley Jack, *Women Lawyers: Archetypes and Alternatives*, 57 FORDHAM L. REV. 933, 935 (1989) ("Women entering the practice of law find that the mores of that game bear the imprint of boys' play rather than that of girls. Simply put, in subtleties of custom, structure, and decorum, law is still a man's game."); *see also* Rhode, *supra* note 6, at 1163 (stating that "[a]lthough women have been moving into upper level professions in greater numbers, they have not attained the positions of greatest power, prestige, and economic reward. Formal barriers to entry have fallen, but informal obstacles to advancement remain.").

9. *See infra* notes 44-46 and accompanying text.

firm, both from the perspective of colleagues and clients. Section III sets forth various approaches made by some corporate firms to handle these biases and offers several suggestions on advancing equality in the corporate law environment.[10]

I. WOMEN'S ENTRY INTO CORPORATE LAW

Academic achievement is generally based on merit. If a student excels in academics, he or she is rewarded, regardless of gender. Such a system is particularly significant in law school because academic achievement determines who receives the best interviews and subsequent job opportunities. Rarely, however, does this structure remain intact in the outside work world, especially in corporate firms.[11] In moving toward the goal of equalizing power in the legal field as well as in society, it is important to understand the corporate firms' rules for achievement since many of the profession's rules are established in corporate law firms.[12]

In order for women to shape rules within the profession or to move on to other positions of power, such as judgeships or government official jobs, they generally must do so by moving from partnerships in leading firms.[13] The large firm is the source of lawyers' professional authority; therefore, women's status as lawyers will be determined by the rules governing access to the leading firms' inner circle.[14]

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10. Clearly, many of the biases that will be addressed apply to other areas of law and the workplace in general; however, this piece focuses on the dynamics within the corporate, mid to large-size firms.

11. HARRINGTON, *supra* note 1, at 18.

> To achieve full authority in the legal profession, to be heard, to be able to make a difference if they choose to try, women must traverse the partnership track in the big firms. But the traditional partnership rules, in and of themselves, make it difficult for women to stay on the track. And this is true in spite of the fact that the rules, as they have been applied to women, have undergone several major permutations.

Id.

12. *See* HARRINGTON, *supra* note 1, at 16 (stating that:

> [l]awyers work in many settings throughout the commercial, charitable, educational, and governmental life of the country. But the authoritative center of the legal profession, the structure that designates the holders of serious professional authority, is the large corporate law firm.).

Harrington observes that the primary work of lawyers is to organize the use of capital through corporate channels. Consequently, the partners of law firms that do this work for the most important corporations are the legal profession's "lords" who set the profession's rules. *Id.*

13. HARRINGTON, *supra* note 1, at 17 (noting that the authority of judges and government lawyers generally arise from their status as law firm partners).

14. HARRINGTON, *supra* note 1, at 17.

A. Breaking the Barrier

Wall Street firms were the most notorious for maintaining a closed club comprised only of white males from comfortable economic backgrounds.[15] The doors of Wall Street firms began to open slowly for women lawyers during World War II.[16] However, women's entry into these firms did not become significant until the 1970s.[17] "By 1977, women represented 12 percent of the legal staff [attorneys] in the 32 largest New York City firms (then having more than 95 attorneys each)."[18] In 1977, twenty-nine of the 1,520 partners among the large New York firms were women.[19]

The hiring of women by these Wall Street firms was precipitated by pressure against law school placement offices[20] and the naming of several prominent Wall Street firms in gender discrimination litigation.[21] For example, in the fall of 1969, women students at New York University and Columbia Law Schools, aided by Columbia Law School's Employment Rights Project, made discrimination claims against several Wall Street firms, including Sullivan & Cromwell ("S&C") and Rogers and Wells ("R&W").[22] The campus interviewers

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15. *See* Rhode, *supra* note 6, at 1174 (noting that in 1965 only three women were partners at Wall Street firms).

16. *See* FUCHS EPSTEIN, *supra* note 7 at 176 (reporting that World War II created opportunities for women in Wall Street firms). "The war did not open significant numbers of doors, however. Erwin Smigel reported counting a total of only 18 women lawyers in Wall Street firms in 1956 . . . [a]nd in 1968, [Fuchs Epstein] estimated that only 40 women were working in Wall Street firms or had some Wall Street experience." *Id. See generally* Rhode, *supra* note 6, at 1174 (describing 1956-65 survey data showing a widespread policy among legal employers against hiring women).

17. FUCHS EPSTEIN, *supra* note 7, at 179. *See* Rhode, *supra* note 6, at 1174 ("Women remained under 1% of the legal profession until 1920, and it took another half century for their representation to reach 5%.") (citing Halliday, *Six Score Years and Ten: Demographic Transitions in the American Legal Profession*, 1850-1980, 20 LAW & SOC'Y REV. 53, 62 (1986)). All too common was the experience of Justice Sandra Day O'Connor who, after achieving a distinguished academic record at Stanford Law School, found no major firm willing to hire her, except as a legal secretary. *Id.* (citing Mann & Fiduccia, *Sandra Day O'Connor: The Making of a Precedent*, STAN. LAW, Fall/Winter 1981, at 5, 6).

18. FUCHS EPSTEIN, *supra* note 7, at 179 (citing Erwin O. Smigel, *The Wall Street Lawyer Reconsidered*, NEW YORK, Aug. 18, 1969, at 36-41 and Cynthia Fuchs Epstein, Women and Professional Careers: The Case of the Woman Lawyer (unpublished Ph.D. dissertation, Department of Sociology, Columbia University, 1968)).

19. FUCHS EPSTEIN, *supra* note 7, at 179. Fuchs Epstein reports that his figure represented almost a tenfold increase since 1971. *Id.* A survey made of woman partners in Wall Street firms in 1979 showed an increase to 34. By the summer of 1980 there were 41; at that time, of 3,897 partners in the top 50 law firms in the country, 85 were women. . . . Today about 3.5 % of all partners are women. *Id.*

20. *See* FUCHS EPSTEIN, *supra* note 7, at 184-89 (describing legal challenges to placement offices' tolerance of discrimination by recruiters).

21. *See* FUCHS EPSTEIN, *supra* note 7, at 184-86 (describing law suits against the firms Sullivan & Cromwell and Rogers & Wells).

22. FUCHS EPSTEIN, *supra* note 7, at 184-85.

from these and other firms freely admitted that they did not hire women, that women could not be as good litigators as men, and that they could not grant serious interviews to women because the "senior partners . . . won't stand for it."[23] During New York University student Diane Blank's interview with S&C her interviewer admitted that the firm was biased against women and that women who were hired by the firm were relegated to blue sky work.[24] He then proceeded to inquire about her husband's career (her husband was an attorney) and how she planned to manage home and job responsibilities.[25] Diane Blank's suit against S&C was settled, and S&C adopted a hiring formula similar to the terms of the R&W case,[26] in which R&W was found to have systematically discriminated against women in hiring.[27] The hiring formula included a "guarantee that the firm would offer over twenty-five percent of its positions each year to female graduates."[28]

The legal challenges and the 1972 amendments to the Civil Rights Act, which prohibited firms from discriminating in hiring, forced big firms to change their recruitment practices.[29] Firms began seeking women to hire and promote, and sought to lure women who were already rising stars elsewhere.[30]

B. Existing Barriers

Women's progress in the legal profession was also due to efforts to expose and shatter the myth of the "true woman."[31] Dismantling the stereotype freed women to do "men's jobs."[32] Despite the fact that

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23. FUCHS EPSTEIN, *supra* note 7, at 187.

24. FUCHS EPSTEIN, *supra* note 7, at 185 (describing "blue sky work" as the dull, almost clerical job of keeping abreast of changes in securities law).

25. FUCHS EPSTEIN, *supra* note 7, at 185.

26. FUCHS EPSTEIN, *supra* note 7, at 186.

27. FUCHS EPSTEIN, *supra* note 7, at 185.

28. FUCHS EPSTEIN, *supra* note 7, at 185.

29. FUCHS EPSTEIN, *supra* note 7, at 186.

30. FUCHS EPSTEIN, *supra* note 7, at 186.

31. The myth of the "true woman" is used here to describe the stereotype that a woman's place is in the home and certainly not in the world of corporate law.

32. Justice O'Connor, *supra* note 2, at 1549 (recounting the history of judicial and societal beliefs in women's gentle, non-intellectual nature). In her speech, Justice O'Connor shows how this social change was reflected, "as most social change eventually is, in the Supreme Court's jurisprudence." *Id.* She comments that it was not until the second half of the twentieth century that the Court "began to look more closely at legislation providing dissimilar treatment for similarly situated women and men." Justice O'Connor, *supra* note 2, at 1551. Justice O'Connor notes that *Reed v. Reed*, 404 U.S. 71 (1971), which invalidated an Idaho statute giving preference to the appointment of men as administrators of estates, "signaled a dramatic change in the Court's approach to the myth of the 'True Woman.'" Justice O'Connor, *supra* note 2, at 1551. After discussing how the Court has stepped away from many of these gender-classifications in deciding sex discrimination and Title VII cases, she points out that many feminist commentators

women are increasingly present in big firms and are becoming partners in the big firms, they are still often neither seen nor heard.[33] For example, Mona Harrington interviewed a woman who is a partner in a mid-sized corporate firm:

> What I find very frustrating is, now I've paid my dues, I've climbed up the ladder, I've made partner, but I find there is still resistance to giving women a real voice of authority and really listening to what they say. . . . Even women who bring in business, who are very bright, women with very strong personalities, they're just not members of the club. . . . It's very hard to pin down. . . . The wall that you beat your head against is getting the respect, having people listen to you on an administrative matter, on promotion things, just sort of the running of the firm, and that I think women still have to a much lesser degree than men. . . . And the younger men I see coming up in the firm are no different. They're still very macho, male-oriented, into male, hierarchical games. You would expect that generation to be different, but they aren't. They're still into that masculine, tough-it-out, we're-going-to-beat-the-shit-out-of-you-so-you-can-prove-to-us-that-you're-a-real-man kind of thing. It's very frustrating.[34]

The "traditional view" of women continues to impose heavy restraints upon their efforts to promote professional equality. It can be as blatant as a conscious statement: "I don't feel comfortable working with a woman," or as subtle as unconsciously ignoring an idea made by a female colleague during a meeting and later adopted the same idea when it is offered by a male co-worker.

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are asking whether women's differing styles have made a difference in the legal profession: "Ironically, the move to ask again the question whether women are different merely by virtue of being women recalls the old myths we have struggled to put behind us. . . . [The] gender differences currently cited are surprisingly similar to stereotypes from years past." Justice O'Connor, *supra* note 2, at 1552-53. Justice O'Connor calls this renewed discussion of gender differences the "New Feminism," and warns:

> Asking whether women attorneys speak with a 'different voice' than men do is a question that is both dangerous and unanswerable. It again sets up the polarity between the feminine virtues of homemaking and the masculine virtues of breadwinning. It threatens, indeed, to establish new categories of 'women's work' to which women are confined and from which men are excluded.

Justice O'Connor, *supra* note 2, at 1557.

33. *See* HARRINGTON, *supra* note 1, at 124 (reporting difficulties women lawyers have with assimilating into the culture of large firms).

34. HARRINGTON, *supra* note 1, at 124.

II. GENDER BIAS WITHIN THE FIRM: CLIENTS AND COLLEAGUES

In many ways, overt discrimination has diminished. The women's movement and the changes brought about through the legal system[35] have opened the way to success for many women in corporate law. Yet within the corporate law world, the "visibility of women's undesirable trait—their non-maleness" cannot be diminished, nor can the prejudices about women's ability to compete in a male-dominated field.[36]

A. Tokenism

Gender bias within the corporate firm may be subtle rather than blatant.[37] For example, "tokenism" continues at many corporate firms where an in-group accepts one or a few members of an undesirable group in order to counter accusations of discrimination, but does not sincerely commit to ceasing to discriminate against qualified out-group members.[38] Firms may represent to the public that they are hiring and promoting women, but keep them in areas typically relegated to women, such as domestic and blue sky law,[39] without fully integrating them within the actual corporate legal structure. Such tokenism not only enables the in-group to postpone radical change by hiring non-threatening members of outsiders, but also places the token members under such stress that they become

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35. *See* CAROL HYMOWITZ & MICHAELE WEISSMAN, A HISTORY OF WOMEN IN AMERICA 349-56 (1978) (discussing the consciousness-raising and group formations that occurred as a result of the women's movement). *But see* NADINE TAUB & ELIZABETH M. SCHNEIDER, *Women's Subordination and the Role of Law, in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 151, 170-71 (David Kairys ed., 1990) (stating that although the Supreme Court appears to have moved from a separate spheres approach in differentiating men and women, the Court continues to view women's childbearing capacity as a difference that justifies discrimination, thereby continuing to validate inequality by legitimizing differential treatment).

36. FUCHS EPSTEIN, *supra* note 7, at 183.

37. FUCHS EPSTEIN, *supra* note 7, at 188. *See also* Carrie Menkel-Meadow, *Excluded Voices: New Voices in the Legal Profession Making New Voices*, 42 U. MIAMI L. REV. 29, 40 (1987) (stating:

> Lest you think the struggles are over, let us explore some of the more subtle and modern forms of exclusion. Though some claim [that] women have now entered the legal profession in large numbers . . . [this] entrance has been sufficiently recent, and women are still found disproportionately in the lower reaches of the profession. They serve more often as associates than partners, in the public rather than private sector, and in particular fields of specialization. Women, for example, are less likely to be found practicing corporate law.).

38. FUCHS EPSTEIN, *supra* note 7, at 193.

39. *See supra* note 24 and accompanying text (describing blue sky work); *see also* Menkel-Meadow, *supra* note 37, at 40 (arguing that women specialize in areas like domestic relations, trusts and estates, and criminal law because men avoid those fields and that believers in women's "natural affinity" for these fields fail to explain the contradiction between supposed female delicacy and the arduousness of criminal defense work).

unable to perform.[40] It has been argued that hostile in-group members see tokens in stereotypical ways, but eventually see the undesirable group members' behavior as natural and non-stereotypical once the number of out-group members becomes sufficiently large to surpass token levels.[41] The more women that enter the firms, the more natural their presence will seem.[42]

B. Client Bias

Firm bias is also present in client attitudes toward female corporate attorneys.[43] Clients often view women as unable to participate in the hunt for big corporate game.[44] In her article entitled "Women Hunt Big Game,"[45] Rella Lossy examines several gender biases in a hypothetical situation that focuses on a female lawyer (Karen), a male lawyer (Bob), and a male client (B.G., "Big Game").[46] Karen and Bob have been working on an important case for B.G. and are scheduling a meeting to finalize the legal arrangements.[47] B.G. tells Bob that he does not want Karen at the meeting—it just "doesn't feel right [because] there's a lot riding on this."[48] He is afraid she will be seen as weak by the other side and, consequently, undermine his negotiation position.[49]

This hypothetical examines Karen's options in responding to B.G.'s biases.[50] One option is to directly confront B.G. and ask him why he is uneasy about her attending the meeting.[51] Alternatively, she can agree not to attend the meeting despite her belief that she should be present.[52] This decision will probably confirm B.G.'s reluctance to have her at the meeting because he will perceive her as accepting "exclusion from the team of big game hunters."[53]

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40. *See* FUCHS EPSTEIN, *supra* note 7, at 193 (reporting that tokens suffer stress as well as self-consciousness, distancing, and over and under-conforming) (citations omitted).
41. FUCHS EPSTEIN, *supra* note 7, at 193.
42. FUCHS EPSTEIN, *supra* note 7, at 193 (noting that larger groups of out-group members are more free to express their personalities and talents, and thus, undermine the stereotypes attributed to the token).
43. *See* Joel F. Henning, *Women and Minority Lawyers Still Face Stumbling Blocks,* CORP. LEGAL TIMES, Jan. 1994, at 40 (asserting that clients say they want diversity for public relations but really want the best lawyer, which they typically believe is male).
44. *Id.*
45. Rella Lossy, *Women Hunt Big Game,* BUSINESS LAW TODAY, May/June 1993, at 13.
46. *Id.* at 14.
47. *Id.*
48. *Id.*
49. *Id.*
50. *Rella Lossy, Women Hunt Big Game,* BUSINESS LAW TODAY, May/June 1993, at 13.
51. *Id.*
52. *Id.*
53. *Id.*

Option two is what the author calls the "well-planned approach."[54] Under this option, Karen can call B.G. (after talking with Bob), and present reasons that she should attend the meeting, the role she will play, her strengths, and the issues that call for her negotiation skills. She may then tell B.G. that although the decision is his, she believes that her presence at the meeting will assist B.G. in achieving his desired goals.[55] This approach shows Karen's ability to plan a successful "hunt" as a team member, while basically ignoring B.G.'s "surface communication"[56] and directly addressing the nonverbal bias that is evident in B.G.'s fear of her presence at a crucial negotiation.[57]

In addition, Lossy's article describes how gender socialization perpetuates bias[58] and sets out a list of the "Rules of the Game of Law."[59] Besides setting out an insightful representation of gender bias, the article sends the more important message that the only one who can address B.G.'s underlying bias (and perhaps Bob's as well), is Karen herself.[60] She cannot rely on Bob to allay B.G.'s fears. In fact, if she attempts to rely on Bob, she again sends the message of a weak woman who cannot successfully play the game.

The second option is a well thought out and effective strategy for the situation presented. B.G. may conclude that Karen's presence at the meeting is not only acceptable, but necessary. In the final analysis, however, will B.G. change his thought process regarding the parties he feels can best participate in the hunt? It is likely that he

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54. *Id.*

55. *Rella Lossy, Women Hunt Big Game,* BUSINESS LAW TODAY, May/June 1993, at 13.

56. *Id.* at 15.

57. *See id.* at 15-16 (stating that clients often believe that "weak womenfolk should not hunt big game because such hunts are too important and too dangerous. Women are likely to become scared or reveal our position to the quarry, unintentionally bringing about failure or injury to us.").

58. *Id.* at 15-16 (discussing how women should be careful of their walk, posture, general demeanor, and voice in order to be accepted in a male-dominated society).

59. *Id.* at 16. The "Rules of the Game of Law" were developed by an attorney, Joan Saltzman, and a psychologist, Adrienne Mendell. They called them the "Ten fundamental rules followed by successful male lawyers." The rules are as follows: (1) Business is a game; (2) A good game requires a game plan—develop a strategy to play the game; (3) Act competent; (4) Act strong; (5) Do some things that are trying, distasteful and repugnant; (6) Don't get emotionally involved while playing the game; (7) Be aggressive—that's part of the game; (8) Fight—that's also part of the game; (9) Be part of a team; and (10) Always give 100%, or make it look like you do. *Id.* at 16. *See also* Nell B. Strachan, *A Map for Women on the Road to Success,* 70 A.B.A.J. 94, 94-96 (May, 1984) (describing how to succeed in a man's world:

> Don't shirk late hours or weekend projects. Don't cook and tell, i.e., avoid going home to cook dinner — or if you do, don't let anyone know. Keep your personal life in the background . . . Never make excuses based on the needs of a spouse or children. . . . Don't think of yourself, or allow anyone to think of you, as anything but a hard-driving capable lawyer.).

60. Rella Lossy, *Women Hunt Big Game,* BUSINESS LAW TODAY, May/June 1993, at 16.

will not. Instead, Karen will be an "exception" to the rule that women cannot effectively and successfully participate in the hunt for big game.[61] This is harmful to women who are trying to bring in business, which becomes increasingly important as the legal climate changes.[62] Associates are expected to create new business in addition to billing numerous hours.[63] A client's perception of a particular attorney, then, whether fostered by another attorney within the firm or by that client's own bias, is something that needs to be addressed.[64]

I presented the above hypothetical to several of the corporate attorneys I interviewed. Jane Brown, a female partner in a D.C. corporate firm, felt that with the initial phone call, Bob should have stated that Karen is a key member and that she should be present at the meeting.[65] She remarked that "[s]ometimes clients look for the opportunity to have lawyers back-bite with each other. When that starts to happen, the client can play on it. If Bob doesn't say anything to support Karen, he could be undermining her even more than B.G., because the clients will always test."[66] In her own experience, Brown said she faced this type of situation and found it very difficult:

> Sometimes you don't know how to approach the situation—in a market where the client always comes first, you look bad if you challenge a client's request. Sometimes you don't know if it's the client or the other attorney trying to get you out of the deal. Each case needs to be handled differently depending upon the situation. It also depends on whether Karen is an equal to Bob or a heavy subordinate.[67] As a subordinate, it is unlikely she would have much, if any, communication or ties with the client, and thus would not have option two available to her.[68]

Susan Kane, a fifth year associate specializing in litigation, felt that Bob should have said something to convey that he needed Karen's

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61. *See* Carrie Menkel-Meadow, *supra* note 37, at 40 ("[I]n each individual country, women are clustered in particular occupations and particular tasks that are, not surprisingly, the least valued forms of legal practice in that particular culture. There is widespread occupational segregation and segmentation—a slightly more subtle form of exclusion.").

62. *See* FUCHS EPSTEIN, *supra* note 7, at 199 (remarking that large clients in large law firms seem to have less trouble with a woman lawyer working on the team).

63. *See* Amy Donohue, *Judgment Day*, PHILADELPHIA MAG., Dec. 1994, at 136. (quoting an attorney in an interview who stated, "Client origination is as important—or more important—than good legal skill . . . [t]he pressure—well, it's just very important. And people don't go to law school thinking they have to be a good salesman.").

64. FUCHS EPSTEIN, *supra* note 7.

65. Interview with Jane Brown, Esq., (Nov. 11, 1994) [hereinafter "Brown Interview"].

66. *Id.*

67. *See* Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 SIGNS 635 (1983).

68. Brown Interview.

expertise and help in the meeting—that they are a team and would not be as effective for the client without Karen present.[69] Ms. Kane felt that the situation was the same as if Karen had been black and B.G. had objected to her race—what would Bob have said then? Would he let that go without saying anything? Kane also felt that Karen may have said something directly without being confrontational.[70] Kane spoke of her father as an example: he works in the banking industry and frequently asks his female employees to bring him coffee—"that was just the way it had always been done—and he never thought about it until one of his employees said that she did not appreciate being asked to do that and what it represented. After that incident he started thinking more about what his comments and orders actually conveyed and substantially tailored his manner."[71] Whether Karen could approach B.G. in a nonconfrontational manner would depend upon more specific situational factors, such as whether she is a heavy subordinate, what kind of rapport she has had with B.G. in the past, and the support she has within her firm.[72]

C. Male/Female Dualism

Deborah Rhode describes three levels on which unconscious gender bias can operate: (1) prototypes, the images associated with members of a particular occupation; (2) schema, the personal characteristics and situational factors that we use to explain conduct; and (3) scripts, definitions of appropriate behavior in a given situation.[73]

In this hypothetical, Karen may not have appeared aggressive enough, or merely by virtue of being female B.G. could not reconcile his image of her as a competent negotiator with his views of women in general.[74] Women who do not conform to an employer's ideals for the corporate professional suffer from these stereotypes.[75]

Throughout the nineteenth and early twentieth centuries society has perpetuated the concept that women are too emotional for the stresses that accompany professions like law and medicine.[76]

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69. Interview with Susan Kane, Esq., (Oct. 28, 1994) [hereinafter "Kane Interview."]
70. Kane Interview.
71. *Id.*
72. *Id.*
73. "Thus, when a female applicant for a given position (e.g., litigator) does not fit the evaluator's prototype (e.g., aggressive male), her credentials will be judged with greater skepticism." Rhode, *supra* note 6, at 1188.
74. Rhode, *supra* note 6, at 1188.
75. Rhode, *supra* note 6, at 1188.
76. Rhode, *supra* note 6, at 1182. *See* Virginia E. O'Leary, *Some Attitudinal Barriers to Occupational Aspirations in Women, in* BEYOND SEX-ROLE STEREOTYPES 319, 320 (A. Kaplan & J. Bean eds., 1976) (arguing that psychological factors such as societal sex role stereotypes,

Experimental and clinical evidence shows that the stereotype of the successful professional directly conflicts with the stereotype of an ideal woman.[77] There is also a large gap between traits associated with femininity and traits associated with vocational achievement.[78]

Frances Olsen, in his article *The Sex of Law*,[79] sets forth three feminist strategies for attacking the dominant dualistic system of thought that identifies men with the "rational, active, thought, reason, culture, power, objective, abstract, principled"[80] side of the dualism, and identifies women with the "irrational, passive, feeling, emotion, nature, sensitivity, subjective, contextualized, personalized"[81] side. This system identifies law with the male side of the dualism.[82] This system's classification of the divisions betewen men and women are, briefly, as follows:

1. REJECT SEXUALIZATION. This strategy "accepts the hierarchy of rational over irrational, of active over passive, and so forth."[83] However, it rejects the notion that women are inevitably irrational and

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attitudes toward women in management, and attitudes toward female competence inhibit the woman worker from practicing achievement-directed behavior, which the author thinks is necessary for promotion in the business world); *see also* HARRINGTON, *supra* note 1, at 197 (stating that "the traditional devaluation of women in the law—they are not tough enough, they have their children on their minds, they avoid arenas of fierce competition—completely misses the value to the law of what women do know through their social training . . .").

77. *See* Rhode, *supra* note 6, at 1188 (claiming that "[t]he aggressiveness, competitiveness, dedication, and emotional detachment traditionally presumed necessary for advancement in the most prestigious and well-paid occupations are incompatible with traits commonly viewed as attractive in women: cooperativeness, deference, sensitivity and self-sacrifice.").

78. Rhode, *supra* note 6, at 1166 (discussing women's need to move outside of the private sphere and become politically active in order to break such concepts). "Much of the opposition to women professionals stemmed from assumptions about their intellectual, physical, and psychological unfitness. Their brains appeared too small, their powers of reasoning too primitive, and their disposition too unstable for more demanding occupations." Rhode, *supra* note 7, at 1166. *See also* STEPHEN J. GOULD, THE MISMEASURE OF MAN 105 (1981) (quoting Gustave Le Bon, a student of Paul Broca's school of craniometry in the late nineteenth century, who stated that "[p]sychologists who have studied the intelligence of women . . . recognize today that they are closer to children and savages than to an adult, civilized man. They excel in fickleness, inconstancy, absence of thought and logic, and incapacity to reason."); DEBORAH TANNEN, PH.D., TALKING FROM 9 TO 5 40-41 (1994) (stating that "[m]en who are not very aggressive are called 'wimps,' whereas women who are not very aggressive are called 'feminine.' Men who are aggressive are called 'go-getters,' though if they go too far, from the point of view of the viewer, they may be called 'arrogant'. This can hurt them, but not nearly as much as the innumerable labels for women who are thought to be too aggressive—starting with the most hurtful one: bitch.").

79. Frances Olsen, *The Sex of Law, in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 453-65 (David Kairys, ed. 1990).

80. *Id.*

81. *Id.*

82. *Id.* at 454; *see also* Ronnie Cohen, *Feminist Thought and Corporate Law: It's Time to Find Our Way Up From the Bottom (Line)*, 2 AM. U. J. GENDER & L. 1 (1994) (analyzing the male corporate sphere through the eyes of feminist jurisprudence).

83. Francis Olsen, *The Sex of Law, in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 455 (David Kairys, ed. 1990).

passive. The individual chooses his/her sex role. The emphasis is on equal treatment and women's achievement of power and prestige equal to that of men's.[84]

2. REJECT HIERARCHIZATION. This strategy rejects the hierarchy of the dualism, but does accept that men and women are generally different.[85] The focus is on the characterization of irrational and passive.[86] The author states, however, that "[t]o reverse or invert the hierarchy between rational and irrational, active and passive, and so forth, could simply reinforce the dualisms and ultimately maintain dominant values."[87]

3. ANDROGYNY. This strategy attacks the stereotype that men are more rational, objective, and principled than women.[88] It challenges the notion that the most admirable qualities are rational thinking and objectivity.[89] The focus is on the disruption of sex roles and challenges the stereotypical distinctions made between men and women.[90]

What aspect of the division between males and females does Lossy's hypothetical address? Karen's handling of the hypothetical situation seems to be a rejection of sexualization. She attempts to show B.G. that she can perform the task at hand in a "manly," as opposed to a weak, "womanly," manner.[91] Does this really destroy the bias and attack the dualism that is at work?

One of the women interviewed, Susan Kane, believes that the androgyny strategy, while not ideal, was the closest to how she handles the dualism that society perpetuates.[92] Kane feels that attorneys, male and female alike, need to create a balance of male and female qualities that work best for them.[93] She also says that traditional female qualities and their effectiveness are not given enough attention in the legal profession. Kane thinks that there is a lot of emphasis on forcing women to be like the men's image of what a man should be like, which is very aggressive, very loud, and very in-your-face, as a way to accomplish things without an appreciation for a more feminine way

84. *Id.* at 456.
85. *Id.* at 457.
86. *Id.*
87. *Id.* at 458.
88. Olsen, *supra* note 79, at 458.
89. Olsen, *supra* note 79, at 458.
90. *See* Olsen, *supra* note 79, at 459 (challenging traditional notions of the qualities typically desired in a professional because "[i]t is rational to be irrational and objectivite is necessarily subjective").
91. Rhode, *supra* note 6, at 1166.
92. Kane Interview.
93. *Id.*

of doing things.[94] According to Kane, women are generally working towards a win-win, less in-your-face approach.[95] Women want to be "as assertive as a man, with the same results (or better results), but maybe not as aggressive, not feeling the need to yell."[96]

I asked Kane if she believed there was more bias from clients or from co-workers within the firm. She stated that she thought most gender bias came from within the firm.[97] I asked her to read the "Rules of the Game,"[98] and indicate whether she felt forced to use those rules to be a successful attorney.

> I won't engage in a fight just to fight—I don't treat my opponents that way. I don't think you have to play by those rules to win. I think there's the perception (within the firm) that I'm not as aggressive or hard-driving as I could be. It hasn't hurt me, though, to use my style in my cases, or in court with judges in achieving successful outcomes for my clients. But as far as the perception of the attorneys here, I think there's an idea that I don't want to win. Male attorneys look up to someone who's a big obstructionist during a deposition, for example. So, for my success in their eyes, it might be better for me to adopt those rules.[99]

Kane added that the firm's perception of her makes her more withdrawn and less likely to brainstorm with other male attorneys.[100] Ultimately this means that she feels less a part of a team and less effective for her clients.[101]

Kane thinks that because she is a successful attorney, any misgivings that her clients may have about her style or mannerisms are effaced.[102] Despite this, she does not feel that she gets as much recognition for her good results as male attorneys do.[103]

Mona Harrington, in her book *Women Lawyers* states that:

> [W]hat is needed—and what women who are particularly discomfitted by untempered competition might provide—is discussion that complicates and breaks down the simplistic division between masculine and feminine, tough and soft, in the practice of law. Taking responsibility for the weak is a 'soft' activity assigned to others—mainly women. To strengthen social responsibility the

94. *Id.*
95. *Id.*
96. *Id.*
97. Kane Interview.
98. *See* Lossy, *supra* note 45 and accompanying text (describing a hypothetical situation in which a corporate lawyer is rejected because she is a woman).
99. Kane Interview.
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*

> economic system generally and the legal system specifically, the tough/soft line needs to be erased and the mechanism of competition carefully reconstructed.[104]

One of the most distinct lines drawn between men and women is the traditional role that women play in raising children.[105] Even in modern times, women still bear most of the burden of child-rearing.[106] One of the woman partners interviewed in Mona Harrington's book stated that out of a firm of two hundred lawyers, approximately half a dozen are married to women who have full-time jobs as well as children.[107] The fact that two-career couples have started having children has not substantially changed that division, and many attorneys still have wives that stay at home with their children, either because it is more economical or by choice.[108] The result is that in reality, "women's issues" are still just women's issues, and women who find themselves juggling a law career and a family are having a hard time changing the rules.[109]

> [T]he rules place nearly unbearable pressure on women and repeatedly force most of them out—while the rulemakers remain oblivious to the dynamics of the problem. . . . And in an environment in which you have no men coping with getting to a day care by six or dealing with what women have got to deal with, the millions of things, you have no basic understanding of what's going on with women . . . and no impetus for change. The management of the firm now is different from what it was fifteen years ago but has people who are no more sensitive to any of these notions than the older generation because they're still not dealing with it. And you don't have cadres of bright young men coming up through the system confronting these issues. There aren't very many bright young men coming up through the system who are doing the coping.[110]

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104. HARRINGTON, *supra* note 1, at 149-50.

105. *See* CAROL GILLIGAN, IN A DIFFERENT VOICE 7 (1982) (asserting that the problem in women's development is integrally linked to their experience in relationships, such as those within the family).

106. *See* ARLIE HOCHSCHILD, THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME 271-73 (1989) (summarizing studies which show that married working women have less leisure time than their husbands because the women spend significantly more time on housework and child care).

107. *See* HARRINGTON, *supra* note 1, at 23 (explaining that when women partners have children, they generally quit or work part-time).

108. HARRINGTON, *supra* note 1.

109. *See* CATHARINE MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 70-71 (1987) (relating differences between women and the legal profession).

110. HARRINGTON, *supra* note 1, at 23. *See also* Rhode, *supra* note 6, at 1206 (stating:

> Of equal importance are concrete strategies that would better accommodate work and family demands among both men and women. . . . How to secure such changes is a complicated question. . . . Tax incentives and government regulation would be helpful

III. POSSIBLE RESPONSES TO GENDER BIAS

How do women change the rules and structures within the corporate law world in order to gain a powerful voice? Do they speak their interests without trying to conform?[111] Do they take a safer road by doing what Professor Littleton[112] describes as assimilation and trying to be "one of the guys?" Or should women take a more liberal approach by refusing to conform and consequently risk alienating their male colleagues and becoming more isolated, distrusted and undermined?[113]

A. Institutional Policies

One method of tackling the problem of gender bias in the corporate work place is used by the two-person legal department for Watkins-Johnson Company, in Palo Alto, California.[114] This defense-electronics business won the Distinguished Legal Service Award in December 1993 for their campaign against gender bias.[115] The legal team began a campaign against sexual harassment in 1980, which developed from reporting sexual harassment, to a program where the legal team speaks to employees, management and labor and uses "target educational measures, escalating if necessary to discipline and finally termination."[116]

The Watkins-Johnson Company legal team believes it has been successful insofar as no sexual harassment suits have been filed against the company, but points out the following:

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catalysts in some areas. Collective efforts by formal professional associations and informal workplace organizations could also be critical. . . . In the long run, failure to mitigate work-family conflicts will prove expensive to all concerned.).

111. HARRINGTON, *supra* note 1, at 40 (stating that "[t]he operating rules of the big firms not only place many women in them under great pressure and professional disadvantage, but they silence the women as well. Dissident speech will mark a woman more quickly than anything else as an outsider, someone who doesn't belong, not an equal.").

112. *See infra* note 78 and accompanying text (discussing the different ways in which women in the corporate setting respond to gender bias).

113. HARRINGTON, *supra* note 1, at 40. A female partner who wanted change in her firm stated that she is "not sure whether acting together openly is a good or bad thing to do and that she fears the power base of the women is not big enough to go public on women's issues . . . it's safer at this point to raise problems for women . . . in one-to-one discussions. 'Men feel threatened when women get together, and also the women are not unified in their view of what's going on.'" HARRINGTON, *supra* note 1, at 40.

114. *See* David Rubenstein, *Watkins-Johnson Attorneys are Breaking the Glass Ceiling*, CORP. LEGAL TIMES, Dec. 1993, at 6 (discussing Watkins-Johnson's gender bias policy).

115. *Id.*

116. *Id.* (explaining that if a sexual harassment issue arises, the team conducts a class for the whole department. A film is included in the educational segment of the program called "It's Not Just Courtesy, It's the Law.").

> [The] issue [of gender bias] is just coming into its own [and is] proving to be more persuasive but less dramatic than sexual harassment. It's more a question of what doesn't happen than what does, and it is inextricably linked to the elusive concept of 'corporate culture.' [Watkins-Johnson Company is currently] developing a program to deal with gender bias, a program that was originally set in motion by the CEO and president of the company [in a response to some people leaving the company], to make sure it is not some institutional policy that would discourage women from staying here . . . [and to] attract new women and minorities from outside. He wants them on the ladder and in senior management positions. He wants a more diverse workplace.[117]

The program was initiated by a series of interviews with employees (mostly women) to ascertain their thoughts about the company "as a place to work, whether they had personally experienced bias, whether they thought it a fair place to work, and whether it was a place where they wanted to spend their careers."[118] The interviews focused mainly on "ambiance, management style and the company's male-oriented culture."[119] The complaints seemed to focus on two areas: the presence of few women within the company, and the lack of female role models.[120]

After interviewing the employees, the team wrote a report and presentation for top management.[121] The resulting program provided females and minorities mentors from top management, trained by consultants to address various issues involved in the workplace. "After that, mentorees will be expected to become mentors and bring the movement into the ranks."[122] One of the goals of the program was to discover if there were gender biases that keep women from staying in the company and moving up through the ranks. As discussed earlier, women's perception of their potential

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117. *Id.*

118. *Id.* When conducting the interviews, Millie (one of the attorneys on the legal team) would state that she was there at the CEO's request and that she, in her discretion, could individually bring their message or combine it with others messages. *Id.*

119. *See* David Rubenstein, *Watkins-Johnson Attorneys are Breaking the Glass Ceiling*, CORP. LEGAL TIMES, Dec. 1993, at 6 (discussing Watkins-Johnson's gender bias policy). (explaining that Millie interviewed approximately 40 people over the course of one year to ascertain their views.).

120. *See* Rubenstein, *supra* note 114 (relaying the dissatisfaction felt by many women about the absence of females in top management positions).

121. Rubenstein, *supra* note 114.

122. Rubenstein, *supra* note 114 (quoting Carol Millie) ("We realize this whole project puts us at greater risk for stirring up discontent, and we may draw some charges, but we are willing to take that risk, because we want the diversity. And frankly, we just don't have it right now."). The hope is also that "[i]f employees know our inquiry is sincere, hopefully they will be happier with us, less likely to sue us, and more likely, if they have an issue, to come to us and say, 'Deal with me on this.'" *Id.*

success is an important issue. A similar program could be implemented by corporate firms to address this concern.

B. Top-Down Commitment

A large firm in San Francisco, Morrison & Foerster, established several substantial policies that contributed to women attaining critical mass.[123] Much of this was due to forward-thinking that began at the top by three male leaders in the firm who made the decision to hire more women and defy stereotypes that handicap many other firms, as well as academic and government institutions.[124] Despite arguments that women were not well-suited to practice law, they instituted a meritocracy.[125] The firm's female lawyers also played a big role in the creation and implementation of the policies, which dealt with maternity leave and flex-time and "women's concern that they risked being professionally calcified into a sort of 'permanent associate' status."[126] Consequently, the firm has won many awards for its policies, such as the Catalyst Award for creating an environment that fosters success among their female associates.[127]

Support of the "top-down" policy has been echoed by the attorneys interviewed for this article. Jane Brown, for example, was adamant

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123. Kathleen V. Fisher, *Women's Day—By the Bay*, BUS. L. TODAY, May/June 1993, at 19.
124. *Id.*
125. *Id.* at 20.
126. *Id.* at 21.
127. The firm suggests ten policies that firms can implement to address gender issues: (1) a top-down commitment: managing partners can make their commitment to supporting the success of women in the firm clear by rewarding successful women; (2) formal training on issues of concern to women: incorporate discussions of different ways men and women communicate and other, gender-sensitive, issues into training programs for firm members; (3) flex-time policy: give appropriate recognition to lawyers who, though working long hours, may not be as visible because they do not work standard office hours; (4) part-time policy for lawyers: given an appropriate adjustment of years to partnership, associates working part-time can remain on the partnership track and, once partners, can remain within the regular compensation system, by being paid according to the number of hours they bill; (5) parental leave for lawyers: a parental-leave policy should apply equally to men and women and should include adoption as well as the critical illness of a child; (6) alternative forms of client entertainment: expand your firm's social contacts with clients to include theater, musical, and other cultural events; (7) firm events for women lawyers and women clients: the women in your firm can be an important part of your marketing strategy and may be interested in seminars on such topics as gender-based communication and the juggling of career and family; (8) encouragement for women involved in professional activities: encourage women to get involved in professional organizations in order to gain excellent networking and rainmaking opportunities, and increase self-confidence and professionalism; (9) a client non-discrimination policy: in addition to the firm's sexual harassment policy, clients need to know that your firm hires only the most qualified lawyers; and (10) a written sexual harassment policy: every firm must have a written sexual harassment policy that is actively enforced and is the subject of education for all men and women within the firm. It may be wise to also include a provision in your partnership agreement requiring a person found guilty of sexual harassment to indemnify the firm against any loss. *Id.* at 22.

that gender bias in the firm starts—or stops—at the top.[128] "It's not as blatant as saying I don't like women or don't like to hire women. It's silent, a nuance, such as not being part of a group as you sit in your office and watch four or five guys go off to lunch together."[129]

Brown states that from her experience, other attorneys in firms take their cues from the top: "to [t]he extent that you set an example at the top, that this is the way something is going to be handled, whether it be in a company, a law firm, a department or with a client, I think people go along with the example that is set by a person with good integrity and character."[130] She added that by demonstrating a sense of respect and equality, those at the top level in the firm are setting the behavior pattern to follow. The example also extends to clients, who see that the firm has women in senior positions, emphasizes diversity, and cultivates a power structure comprised of women and men.[131] Brown was emphatic, however, that she is not talking about, nor does she advocate, tokenism.[132]

Paul Smith, a partner in a Washington, D.C. mid-sized firm, practices labor law, which is one of the most historically male-dominated areas of law.[133] He agreed that the "top-down" policy generally holds true, and that associates should take advantage of that policy if it exists in their firm.[134] In Smith's view, associates on the five-year track fall into three categories: (1) those who will not make it, (2) those who are competitive, and (3) those who are superstars.[135] For the superstars, he claims that gender bias doesn't matter—if you clearly excel—your gender and race does not matter. He does not clarify, however, what one has to do to overcome such bias on the path to superstardom. Those who are somewhere in the middle (who are competent and successful though not 'superstars') are often engaged in the type of work that exposes gender bias, such

128. Brown Interview.
129. *Id.*
130. *Id.*
131. *Id.* Jane Brown stated that the average person who runs a law firm for 20 years may not be aware of many of the perspectives and nuances surrounding gender bias. For instance, Brown states that men tend to be very clinical about problematic situations, where women tend to know when to give. A woman may be able to extend more sympathy to someone who has had a career disappointment or who feels they have been treated unfairly. Brown feels much of the problem is rooted in apathy and that both men and women need to make an effort to demonstrate appropriate behavior. It is crucial to have the perspective of women in senior management who can perpetuate the theories and the goals that will move toward an equalization of power in the firm. *Id.*
132. *See supra* note 38 and accompanying text (explaining how tokenism devalues women's roles in the company).
133. Interview with Paul Smith, Esq., (Dec. 28, 1994) [hereinafter "Smith Interview"].
134. *Id.*
135. *Id.*

as managing people, cases, and marketing, even more than top-level work.[136]

Susan Kane stated that it is important that the message to support women comes from the top—and from everyone in the firm—that the firm does not operate in a manner that allows gender bias to exist.[137] As an example, she referred to the Lossy hypothetical:[138] "It would be important to have the entire firm's support of Karen to send the message that she is important and that Karen is not just a trouble-maker who is "bucking the tide."[139]

C. Consciousness-Raising

Professor Christine Littleton, from UCLA Law School, thinks a crucial step in the restructuring of the power formation in firms is a new round of consciousness-raising among women lawyers.[140] She states that when there has been an exclusionary structure and you are trying to place the excluded into that structure, three reactions can occur.[141] The first is a form of "allergic reaction."[142] For example,

> [i]n the legal profession, a lot of women in law firms find it so alien, and the men in power in the firms find those women so alien, that there is no communication. And those women either leave or are forced out. They leave to go into other forms of practice, or they leave law altogether and the law firm goes on its merry way thinking this person was not really a good lawyer.[143]

The second reaction is from women who have assimilated so thoroughly that their voice sounds like that of the old guard—they are accepted and to a certain extent, they get some voice.[144] Professor Littleton states that the tragedy of these women is that at some point "the guys" will realize that they are, in fact, women and, unless the underlying issue of gender bias is dealt with, the men will eventually discriminate against them.[145]

The third reaction is by those women who fit in enough to be seen as credible attorneys, but who are "always uncomfortable and are

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136. *Id.*
137. Kane Interview.
138. *See* Lossy, *supra* note 45 and accompanying text (analyzing a hypothetical situation in which a female attorney is confronted with a biased client and discussing the attorney's options for dealing with such bias).
139. Kane Interview.
140. HARRINGTON, *supra* note 1, at 199.
141. HARRINGTON, *supra* note 1, at 199.
142. HARRINGTON, *supra* note 1, at 199.
143. HARRINGTON, *supra* note 1, at 199.
144. HARRINGTON, *supra* note 1, at 199.
145. HARRINGTON, *supra* note 1, at 199.

always making the guys uncomfortable . . . [they] hang in somehow . . . but . . . see that the system is exclusionary and find ways to criticize it."[146]

Professor Littleton stresses that we need to find a way that the three types of reactions can work together in order to get the benefit of all three perspectives.[147] She states that developing a model that "allows for criticism and support in which neither one is trivialized"[148] would be a positive way to start.

D. The "Old-Girl Network"

Another way to combat gender bias and create a powerful network is to work within women's groups and then move that power beyond those groups. Jane Brown, for example, sought to develop and be a part of what she calls the "old girl's network."[149] She joined several women's organizations in the commercial real estate field such as CREW (Commercial Real Estate Women) and WIRRE (Women in Retail Real Estate).[150] At the same time, she began creating her own network outside those groups. She said that many of the women role models she had when she began to practice had the unproductive attitude that they were not going to help other women, but were instead going to make it harder on women coming up.[151]

E. Communication

In moving toward the equalization of power, women need to understand the differences between male and female communication styles. In her book, *Talking from 9 to 5*, Deborah Tannen describes different styles of communication and how they work to one's advantage or disadvantage, often depending upon the gender of the speaker.[152] She states that, taking into account the range of variation among cultural or biological lines, a flexible communication style is the best.[153]

For example, Tannen describes a typical way that people, especially women, "try to avoid seeming presumptuous by prefacing their statements with a disclaimer such as, 'I don't know if this will work,

146. HARRINGTON, *supra* note 1, at 199.
147. HARRINGTON, *supra* note 1, at 199.
148. HARRINGTON, *supra* note 1, at 200.
149. Brown Interview.
150. *Id.*
151. *Id.*
152. TANNEN, *supra* note 78 (explaining how women's and men's conversation styles affect who gets heard at work).
153. TANNEN, *supra* note 78, at 314.

but . . .' or 'You've probably already thought of this, but . . .'"[154] Tannen refers to a study conducted by linguist Susan Herring regarding meetings conducted via e-mail with five men and thirty women.[155] All but one of the five women "used an attenuated/personal voice: 'I am intrigued by your comment. . . . Could you say more?' The tone adopted by the men who dominated the discussion was assertive ('It's obvious that . . .'; 'Note that . . .')."[156]

Another study conducted by Eleanor Maccoby, a Stanford University psychologist, and her colleague, Carol Jacklin, showed that marked differences in communication occur during childhood and "style differences often put females at a disadvantage in interaction with males."[157] They observed boys and girls, between the ages of two-and-a-half and three years old, playing in pairs.[158] During their interaction, one frequently objected to what the other did.[159] "[W]hen girls told boys to stop doing something, the boys just kept right on doing it, but boys did respond to the verbal protests of other boys. Girls, in contrast, responded to the verbal protests of both girls and boys."[160]

In a similar study, Maccoby and Jacklin noticed that when girls and boys who did not know each other played together in pairs, the girls often stood aside while the boys played with the toys.[161] Yet, when girls played together in pairs, the girls in general did not respond in a passive manner.[162]

Jacqueline Madhok studied groups of four students working on a science project and found that "[w]hen a group was composed of three girls and a boy, the girls deferred to the boy, who ended up speaking twice as much as all the girls put together. But when a group was composed of three boys and a girl, the boys ignored and insulted the girl."[163] In one such group, a girl protested, "You guys aren't even asking for my opinion, but then who cares."[164] When she volunteered her opinion, they ganged up on her.[165]

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154. TANNEN, *supra* note 78, at 279.
155. TANNEN, *supra* note 78, at 279.
156. TANNEN, *supra* note 78, at 280.
157. TANNEN, *supra* note 78, at 286.
158. TANNEN, *supra* note 78, at 286.
159. TANNEN, *supra* note 78, at 286.
160. TANNEN, *supra* note 78, at 286-7.
161. TANNEN, *supra* note 78, at 287.
162. TANNEN, *supra* note 78 at 287.
163. TANNEN, *supra* note 78, at 287.
164. TANNEN, *supra* note 78, at 288.
165. TANNEN, *supra* note 78, at 287.

Thus, male children cooperate with and pay more attention to other male children of their age than to female children.[166] This phenomenon is analogous to the experiences of adult women in the corporate setting who are often ignored by their male counterparts at meetings.[167] Tannen states that the presence of these behavioral patterns do "not mean women cannot get heard; it just means that they start out with a handicap that may be more easily overcome if it is understood."[168] She offers some suggestions:

> [W]omen—or anyone who feels ignored—may push themselves not to utter disclaimers: [j]ust jump in and state an idea without worrying about how important it is or whether anyone else has thought of it before. They may practice speaking louder and at greater length, resisting the impulse to let their intonation rise at the end—an intonational pattern often used by women to show considerateness and invite response, but often interpreted as a sign of uncertainty and insecurity. (Note, however, that research has shown that rising intonation is interpreted as uncertainty and incompetence in women but not in men.)[169]

F. Rewriting the Rules of Gender

As society seeks equality and the elimination of gender bias in the legal field or, as Mona Harrington calls it, "rewriting the rules of gender,"[170] women must deal with several of factors that often conflict. These factors include: the current legal culture and structure, "fitting in," not "fitting in," sociological and biological differences between the sexes, socialization cues and patterns developed since childhood, perceptions as too aggressive or not aggressive enough, and the sometimes unconscious gender bias that stems from subtle forms of all of these factors.[171] If women take a militant approach, they may find themselves alienated and their purpose defeated.[172] If they attempt to gain power through assimilation into the current legal culture, they risk "selling out," or being "found out."[173]

> The degree to which women's entrance will prompt such fundamental changes in the workplace structures remains unclear.

166. TANNEN, *supra* note 78, at 287.
167. TANNEN, *supra* note 78, at 288.
168. TANNEN, *supra* note 78, at 288.
169. TANNEN, *supra* note 78, at 288.
170. HARRINGTON, *supra* note 1, at 231.
171. HARRINGTON, *supra* note 1, at 231.
172. TANNEN, *supra* note 78, at 164.
173. *See supra* note 145 and accompanying text (describing what happens when women attorneys who have successfully assimilated as "one of the guys" are "found out").

> Although much of the recent work in feminist theory has emphasized women's distinctive nurturing values, such gender linkages are culturally contingent. Given the limitations of existing research, it is by no means clear how different woman's different voice in fact is, or how much that difference is linked to the particular roles she has been socialized to assume.[174]

Despite obstacles and many conflicting positions assigned to both men and women in today's legal structure, as women redefine their roles and accumulate the power to rewrite the rules women should find it increasingly possible to innovate rather than imitate.[175]

174. Rhode, *supra* note 6, at 1207.
175. Rhode, *supra* note 6, at 1207.