

Breaking Barriers and Ending the Gauntlet

Lauren Stiller Rikleen

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/rrgc>



Part of the [Women Commons](#)

Recommended Citation

Lauren S. Rikleen, *Breaking Barriers and Ending the Gauntlet*, 7 U. Md. L.J. Race Relig. Gender & Class 1 (2007).
Available at: <http://digitalcommons.law.umaryland.edu/rrgc/vol7/iss1/2>

This Conference is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in University of Maryland Law Journal of Race, Religion, Gender and Class by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

BREAKING BARRIERS AND ENDING THE GAUNTLET†

LAUREN STILLER RIKLEEN*

My goal in writing *Ending the Gauntlet: Removing Barriers to Women's Success in the Law*,¹ was to look at the institution of law and ask: What is law firm practice like today? What is going on in the world of law firms that makes it so much more difficult for women to succeed?

Statistically, that is, in fact, what has been happening. Women are not succeeding at the same rate that men are. That was why I wanted to write about the profession.

I have been a partner in a law firm for many years. Through a lot of my diverse experiences — and most significantly being a parent through all my years as a partner — I was keenly aware of the added issues which women who are mothers face in the workforce generally, and in the law, in particular.

I thought it might be interesting to highlight some of the key areas of my research. While writing *Ending the Gauntlet*, I interviewed a cross section of women from around the country who are either in-house counsel, clients of firms, partners of firms, associates, and people who have left firms. I also interviewed Managing Partners. I learned from those interviews — and most of the issues raised were corroborated by the research — that there is a real disconnect between how people running law firms see their world and how people who are working in those same law firms experience that world. I was struck by these disconnects and how frequently they would occur in all of my interviews.

The first such disconnect, and one that is most significant to young lawyers, has to do with the work assignment process. Work assignments are very important when you get into a law firm — who you

† The following article is based on a transcript of Ms. Rikleén's speech at the *University of Maryland Law Journal of Race, Religion, Gender and Class* November 16, 2006 symposium entitled "Breaking Barriers: Current Issues Relating to Women, Labor and the Law." Many of the author's assertions are based on interviews she conducted under agreements of anonymity for her book, *Ending the Gauntlet: Removing Barriers to Women's Success in the Law*.

* Lauren Stiller Rikleén is the founder and Executive Director of the Bowditch Institute for Women's Success (www.bowditchinstitute.com). Through the Bowditch Institute, Lauren works with law firms and business organizations to improve the retention and advancement of women in their workplace. She is also a senior partner in the Real Estate and Environmental Law practice of Bowditch & Dewey, LLP.

1. LAUREN STILLER RIKLEEN, *ENDING THE GAUNTLET: REMOVING BARRIERS TO WOMEN'S SUCCESS IN THE LAW* (WEST LEGAL WORKS 2006).

are working for, the quality of the work, and the client exposure are all factors in your ability to succeed. When you talk to Managing Partners in law firms, they see the assignment process as something that is very organized and clear cut. Yet, when you talk to women in those same law firms, they see a process that is full of discretion and which sometimes can be very unfair.

For example, one of the women lawyers I interviewed had this anecdotal comment, "For a young associate, the distribution of work assignments is one of the more critical elements of a successful career path. Every firm has its share of dog cases which no one ever wants to work on, work that is from a difficult client, is not challenging, requires mind-numbing hours of document review, or offers little opportunity for demonstrating one's creative talent."

As the research showed, it is not that women do not get great assignments. Of course they do. It is just that, when there are bad assignments to distribute, they disproportionately go to women. Part of the rationale for this result is that women may be the path of least resistance, as they are less likely to push back when they are given a less interesting or desirable assignment. It is not really clear why it happens so frequently, but there is a lot of research supporting gender disparity in the assignment process.²

Another area of disconnect has to do with the Managing Partners' view that lawyers today are not working any harder than they did as young lawyers. Of course, lawyers have always had to work very hard to succeed, and I am sure all of you hear about the difficulties around billable hours and the driving pace of law practice today. Managing Partners look at their own past and say, "I always worked hard. I had to do all-nighters. It is just no different today than it ever was."

But, in fact, the one major disconnect in that discussion is that technology has had a tremendous impact on the way in which law is practiced today. In many ways, this impact has not been for the better. It has added a stress level that did not exist a decade or so ago. One Managing Partner admitted to me, "I know I worked very hard and I

2. See, e.g., Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 *FORDHAM L. REV.* 291 (1995); see also Reichman and Sterling, *Gender Penalties Revisited* (2004); see also Heinz, et al., *Lawyers and Their Discontents: Findings from a Survey of the Chicago Bar*, 74 *IND. L. J.* 735 (1995); see also Lovell et al., *Does Gender Affect the Link Between Organizational Citizenship Behavior and Performance Evaluation?*, 41 *SEX ROLES: J. RES.* 469 (SEPT. 1, 1999); see also SUZANNE NOSSEL AND ELIZABETH WESTFALL, *PRESUMED EQUAL: WHAT AMERICA'S TOP WOMEN LAWYERS REALLY THINK ABOUT THEIR FIRMS* (Career Press 1998).

worked long hours. But when I walked out of the office at the end of the day, I would find everything to be the same when I came back in the next morning.”

Today, the issue is, how late into the night do people feel the need to check their Blackberry? How late can you return phone calls once you are home? Or, after the kids go to bed, how late will you be up working? The sheer physical impact of having the stress of work follow you twenty-four hours a day is a vast change in the profession. Too little attention is being paid today to the incredible impact of technology. Technology is something that is adding to the stress of practice generally, and it is contributing to people leaving the workforce in large numbers.

Another area of disconnect that kept coming up during my interviews with Managing Partners was their view of the commitment of women to their work. Managing Partners would frequently state that women did not succeed the way men did because of their family obligations. Generally speaking, women had these “other issues” so they lacked the “commitment” to their work that men demonstrated. One Managing Partner noted: “In a profession where time is money, and the unit of productivity is the hour, this impacts how people view the value of others.”³ In other words, if you do not have that same amount of “face time,” or perhaps your hourly output is not exactly the same because of family responsibilities, then you are deemed less committed.

This is contrary to my observations of the many women I interviewed. I was deeply impressed with the heroic commitment that so many of these women showed on a day-to-day basis. They juggled their work obligations and their family responsibilities in a way that was invisible — the workplace never saw or understood the extraordinary commitment they demonstrated.

One anecdote best captured all of this. I was interviewing a senior associate who was describing a colleague who worked very long hours into the late stages of her pregnancy. She observed: “Even as she went into premature labor she was anxiously trying to convince her husband to allow her to deliver documents to her partner on the way to the hospital. She continued to work full-time after the birth of her second child. One evening after a recent surgical procedure, she came back to work late at night. As she checked her e-mails, there was a

3. RIKLEEN, *supra* note 1, at 258.

message from one of her partners complaining about her absence from the office earlier that day. That was when she finally quit.”⁴

That is symptomatic of the attrition that results when this level of devotion and hard work is invisible to the firm. Ultimately, women feel pushed out, so they leave.

Another major area of disconnect had to do with the continued low percent of women partners. Managing Partners will say, “Women do not become partners in higher numbers because they lack the business acumen and they don’t have time to become good business generators.” Many of the Managing Partners I spoke with noted a similar theme: “Achieving partnership is all about having to go and generate business. Women just do not have the time to generate the business; so therefore, they’re not becoming partners in higher numbers.”

What they miss in their comments are all of the other issues with respect to women and their business generation role. One, in particular, is that women tend to be excluded from the informal networks through which relationships and connections are made and business is developed. In law firms, sports have traditionally and historically been a very big marketing tool for lawyers. But many women are uncomfortable using sports as a client development tool for a number of reasons. Even women who love sports expressed discomfort with the social context.

Other issues that arise with respect to business generation is that women are great advocates for other people, but they are not as comfortable advocating for themselves. That impacts business development in a number of ways. For example, women generally do not like to ask for business and they are much less comfortable than men mixing their personal life with their business life. Women need to understand that if they have friends who are in-house counsel, it is OK to talk about their skills and expertise to those friends and ask them for their business. So Managing Partners may correctly perceive that women do not generally bring as much business into the firm, but the reasons are complex and the need for focused mentoring and training is critical.

With respect to the low percent of women partners, Managing Partners incorrectly believe that there is this vast pipeline which, as soon it is filled, will result in more women becoming partners. But that myth is easily dispelled by one simple statistic: by the year 2000, half as many women were partners in law firms than would have been expected in light of their years in the profession.

4. RIKLEEN, *supra* note 1, at 63.

The notion of this trickling pipeline is simply incorrect. In fact, there is a very clogged pipeline and women are just not emerging through. The numbers of women becoming partners has been relatively flat for about a decade. Moreover, many firms now are creating two tiers of partnership. Accordingly, becoming an equity partner — that is, becoming an owner in a firm — is becoming even more of an elusive goal.

Another area of disconnect in these interviews had to do with the notion that compensation is merit based and, therefore, there is no disparate impact on women. Here again, Managing Partners view this as a very fair process. Yet, every study, every piece of data that looks at gender and compensation, or looks at female wages in the workplace clearly demonstrates a significant gender disparity across all sectors and all workplaces.⁵

And that gender disparity increases at the upper income levels. Indeed, in law firms, the gender gap in compensation is particularly significant at the point which compensation becomes discretionary, for example, bonus levels and partner compensation.

Another issue that kept arising as an area of disconnect is mentoring. We all can read countless articles about the importance of mentors in our careers. I never had one — I wish I had; but by and large, it is better to have one than not have one.

There is a significant amount of data and research regarding the role of mentors in law firms. Not surprisingly, gender disparity exists with respect to the availability of mentors for women. In fact, women just do not have access to the same types of mentoring opportunities that men have. As Lani Guinier wrote in her book, “We tend to mentor those we know or those who remind us of who we once were.”⁶ This means that senior men are more likely to mentor their junior male colleagues.

5. See, e.g., NANCY J. REICHMAN & JOYCE S. STERLING, GENDER PENALTIES REVISITED (2004); see also *Final Report – 2001 Self-Audit for Gender and Racial Equality: A Survey of Washington Law Firms*, 2001 NORTHWEST RES. GROUP 24; see also Dinovitzer et al., *After the JD: First Results of a National Study of Legal Careers*, 2004 NALP FOUND., available at <http://www.NALPFoundation.org>; see also COMM. ON WOMEN, N.Y. ST. B. ASS'N, REPORT ON GENDER EQUITY IN THE LEGAL PROFESSION: A SURVEY, OBSERVATIONS AND RECOMMENDATIONS 16, 42 (2002), available at <http://www.nysba.org> (follow “Publications” hyperlink; then follow “Substantive Reports” hyperlink); see also Archambeault, *MBA Survey Reflects Income, Gender Trends*, 13 MASS. BAR ASS'N LAWYERS J. 2, (Oct. 2005); see also EVELYN MURPHY & E.J. GRAFF, GETTING EVEN: WHY WOMEN DON'T GET PAID LIKE MEN AND WHAT TO DO ABOUT IT (2005).

6. LANI GUINIER, MICHELLE FINE, & JANE BALIN, BECOMING GENTLEMEN: WOMEN, LAW SCHOOL AND INSTITUTIONAL CHANGE 22-23 (2002).

With so few women in senior roles, there are simply far fewer opportunities for women to benefit from those mentoring relationships. Many firms have put in place formal mentoring programs, which are very good, but what they lack is the benefit that comes from somebody giving you informal, workplace navigation advice and guidance. For example, I thought this was best captured in an interview where one woman said, “There were two men at the firm who became my mentors. I did a lot of work for them. I learned a lot from them. But it was all professional guidance as far as ‘the area of specialty works this way.’ There was never any guidance such as ‘you should really get to have a better relationship with so-and-so; he’s the guy who really matters here.’ Nobody ever told me things like that.” That is what you miss when you have a formal program or a formal assignment of mentors — you do not have the benefit of the advice that comes from informal relationships.

Another area of disconnect that came up consistently is the notion that women are leaving the workforce in larger numbers because it is a choice they often make when they have children. What Managing Partners do not see here is the way in which women are really pushed out after making effort after effort to work their hours around their family responsibilities.

This is a huge area of disconnect in the Managing Partner’s view of the world — the idea that somehow everybody is leaving voluntarily and happily. It misses what the firm can do to create institutional change that would allow lawyers to meet both their client obligations and their family obligations appropriately. There is interesting workplace data that shows that women actually approach their careers with greater focus after becoming mothers, yet they are continually viewed as being less committed in their firms.⁷ There are studies that show that working mothers are viewed as less competent, less worthy of training, and less worthy of promoting.⁸ Of course, this has a direct impact on how women are evaluated and promoted within the firm when you have such attributional bias taking place.

Another area of disconnect has to do with the notion that firms have workable part-time policies and people can take advantage of these policies and still be successful. Even the Managing Partners have a sense that “maybe it’s not working quite the way we think it should be.” Managing Partners invariably expressed ambivalence during our

7. Epstein et al., *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64 *FORDHAM L. REV.* 291, 423 (1995).

8. Cuddy et al., *When Professionals Become Mothers, Warmth Doesn’t Cut the Ice*, 60 *J. SOC. ISSUES* 701, 711 (2004).

interviews about reduced-hours' policies or working part-time. One Managing Partner said, "There are lawyers involved at the senior level who don't respect the part-time nature of a particular lawyer's commitment. They say, 'Look, the work has to be done. If she wants to be in these matters then she's got to do what I do. I worked that sixth day. I didn't go on vacation, or I left my kids at Disneyland and came home because I had to.' That's what we do."⁹ Whenever I talk about that quote I always have this image of these kids getting off a ride at Disneyland, looking for their father and wondering where he went.

The sad fact is that the utilization rate of reduced-hours policies today is about four to six percent. When you have a utilization rate of any policy that is so low, you know it is a failed policy and that a lot of work needs to be done. There are a multitude of challenges with the implementation of reduced-hours' policies. These include schedule creep, being given inferior assignments because people do not take you as seriously, and lack of respect by managers in the firm. For all the problems, however, there is so much potential to fix these issues. It is a shame that there is not more focused attention within firms to solving these challenges.

The last area of disconnect that I will mention is the notion that attrition is inevitable, so it is just treated as a cost of doing business. Even as attrition rates rise, there is a sense of "Well, it happens, and it's not that big a deal." But those words are said without any attention to the math, and insufficient efforts to understand what this high attrition really means to the bottom line. I believe if firms really did that, it could have a significant impact on changing the culture. There have been enough recent studies looking at this issue to demonstrate that the cost of attrition runs about \$250,000 to \$500,000 every time a lawyer leaves a law firm.¹⁰ And those are the measurable costs. It does not even take into account the hard-to-measure costs such as clients' frustrations with changing teams or poor morale in the firm due to constant turnover.

Another critical issue impacting attrition rates that must be addressed is the impact of the intersection of race and gender. I think the most compelling work on this topic is the American Bar Association Commission on Women in the Profession report called, *Visible Invisi-*

9. RIKLEEN, *supra* note 1, at 266.

10. Task Force on Prof. Challenges and Family Needs, *Facing the Grail: Confronting the Cost of Work-Family Imbalance*, 1999 BOSTON B. ASS'N.; see also *Beyond A Reasonable Doubt: Building the Case for Flexibility*, CATALYST (2005).

bility, which is a comprehensive study on the issue of the intersectionality of race and gender.¹¹

The other issue regarding attrition that law firm managers do not even seem to have on their radar screens has to do with the generational changes — the Millennial Generation/Generation Y and their potential impact on the workforce. The way in which members of the Millennial Generation view work, and their relationship to work, is quite significant. Studies of this generation are showing that they have significant concern about flexibility in the workplace and their ability to address their work and family needs. Yet firms are still recruiting on the basis of compensation, rather than respond to these workplace concerns.

These are just some of the areas that I highlighted in *Ending the Gauntlet*, where I focused on these and other disconnects and related research. I also discuss at some length where the pressure points are for change. For example, I discuss the power of law students to help bring about change through the questions they ask and the way they approach the interview process, and the importance of using their voice once they get into the workforce. People are competing very hard for you, as the need for associates continues to grow in law firms.

I also write about the failings of law schools to reform its curriculum to help teach law students about what it really means to work in a law firm. Today, the majority of law students enter private practice. But students are not taught what it means to be in the workforce. Being in the workforce has a lot less to do with how well you understand an area of substantive law and how well you can research something. Rather, success in today's law firm environment means having a business notion about what the practice of law means, and what you need to do to take charge of your own career.

Although the book takes a very hard look at the legal profession, my overall feeling about the profession is one of optimism. I feel we are at a point in which real change can happen. Certainly, we have seen tremendous progress made in this profession compared to the very overt and much more systemic discrimination that was taking place when my generation was coming into the workplace. Today's problems — even as they are far more subtle and complex — are of a different tone.

11. Brown, et al., *Visible Invisibility: Women of Color in Law Firms* 2006 A.B.A. COMM. ON WOMEN PROF.

I would like to offer a few words of advice that evolve from my own experiences. One of the most important lessons I learned from writing *Ending the Gauntlet* is the need to distinguish between fulfillment and success. Success is something everyone thinks about and strives to achieve, but success is measured by other people. Fulfillment, on the other hand, is measured by you.

Everybody thinks about wanting to have a successful career, but what I wish for you is a fulfilling career, which means that you fulfill yourself in your work experience and your personal life. There are many, many roads that you can take in trying to achieve both success and fulfillment and it does not always need to follow a linear path.

Sometimes you can get very anxious when you are in law school, and can get caught up viewing certain pathways as critical. I have certainly learned from my own very meandering career path, and in observing the career paths of others, that there are an awful lot of ways to find fulfillment and success in your career. It is something you have to be conscious of with each stage, and be sure you always ask yourself the right questions. It is important to choose wisely when you are making decisions about jobs, and not choose out of fear. Don't take the job you do not want because you are afraid that what you really want to do will not be available. If you are lucky enough to have a sense of what you want to do, or if you have a clear passion, I would certainly advise you always to find that passion, and be able to work in an area that keeps you fulfilled and passionate about your work each day.

I talk a lot in the book about the importance of women's relationships with each other. In the workplace, women have been very isolated. Their voices have been isolated and women have not collaborated and worked together enough. One of the things that I try to encourage women to do is to think about working together on Women's Initiatives and finding a common voice.

I am also heartened by the generational changes taking place. Young men have as much of a potential to impact and change law firms today than ever before. More and more, men are leaving professional schools and entering the workforce, and recognizing their own roles and responsibilities as parents. It is a fundamentally different model than may have existed from generations before. I certainly urge women to think about being collaborators — even recognizing that means that sometimes it involves being competitive collaborators — and for men and women to engage each other in changing the workplace environment.

Finally, there is something to be said for hanging in there. There will always be times in your career when you are going to feel like: “Why am I doing this?” That usually happens to me once or twice a day! It is very common to feel overwhelmed at some point, or that the responsibilities are too much, or that you are unhappy with a particular something or other. I have seen a lot of people who have left work entirely for all the wrong reasons. When you have those dark moments and are ready to give it up, I would encourage you to consider whether you would be leaving for the right reasons or the wrong reasons. There are benefits to reaching a senior level in your career. Things really do change.

I heard a wonderful quote from a female partner of a major national firm who was talking about difficult circumstances in her own life, and she used the expression, “You end up where you aim.” I loved that statement because I think it says a lot about how to think about what you want out of your career, and how to try to achieve those goals.

I hope that when you go forward and enter into practice that, however you use your legal skills, you think about these issues and how you can bring about change in your own workplace. It is important that you help make the workforce a place where you can live a fulfilling and satisfying career. It is critical to remain true to your values and actually be able to do some great parenting, which I think is pretty key and has always been the number one priority in my life.