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Association of the Bar of the City of New York, Committee on Women in the Profession

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Cover Page Footnote

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ESSAYS

RESPONSES TO GLASS CEILINGS AND OPEN DOORS: WOMEN'S ADVANCEMENT IN THE LEGAL PROFESSION

FOREWORD

*The Association of the Bar
of the City of New York, Committee
on Women in the Profession**

THE Committee on Women in the Profession of the Association of the Bar of the City of New York, and we suspect much of the legal profession, felt disheartened after reading Professor Cynthia Fuchs Epstein's report, *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*¹ (the "Glass Ceiling Study"). The study of eight major New York City law firms found that, after years of a steady upward trend in the proportion of women associates hired and the entry of women into all specialties, progress is now eroding. Almost no women head a practice group or have a management role in these firms; and the rate of promotion for women declined in the 1990s to a greater extent than that of men. As Barbara Paul Robinson, immediate past president of the Association of the Bar of the City of New York, noted, "The report's finding that the 'glass ceiling' problem is getting worse, not better, counters the perception of 'a lot of people [who] think they've done the "women thing," that they fixed the problem.'"²

Although the Committee is proud of its role in bringing the report to fruition and publication, its substance confirmed many of our serious concerns. The experience at these firms is important not only for the lawyers at the firms but for those throughout the profession and in other fields. "[T]he influence of law firms extends well beyond the attorneys who are employed therein. Leaders in many spheres of American private and public life have spent time in large firms. Law firms shape the law by litigating cases and by sending their leaders to

* Barbara Berger Opatowsky, Chair; Ellen Friedman Bender, Secretary. This Foreword was co-authored by Margaret S. Rubin, a member of the Committee, and Ellen Friedman Bender.

1. Cynthia Fuchs Epstein et al., *Glass Ceilings And Open Doors: Women's Advancement in the Legal Profession*, 64 *Fordham L. Rev.* 291 (1995).

2. Edward A. Adams, *Partnership Odds Worsen for Women in New York*, N.Y. L.J., Sept. 22, 1995, at 1, 1 (quoting Barbara Paul Robinson).

the state and federal judiciaries.”³ Large law firms, because of their prominence and the respect they command, set the standard for others.

In the year since the Glass Ceiling Study was completed, several other reports have been published that echo many of Professor Epstein's findings. The Harvard Women's Law Association published *Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms*.⁴ The authors concluded, based on their survey of the fifty-seven largest law firms in the United States, that there are significant limits to the effect of formal equality.⁵ An article in *New York Magazine* reminded us of what we have all known for some time, namely that New York's top firms are losing some of their best women lawyers.⁶ And in January 1996, the American Bar Association's Commission on the Status of Women published its report *Unfinished Business: Overcoming the Sisyphus Factor* and reiterated Professor Epstein's findings: Although women make up twenty-three percent of the lawyers in the United States and forty-four percent of the law school population, “women in the profession continue to suffer from discrimination and lag in pay and positions of authority.”⁷

These various reports confirm both that the news is not good and that the time for studies of the obstacles facing women in large law firms has passed. This Committee, like the profession, must finally focus its attention and resources to find ways out of this impasse.

As a first step, the Committee invited several prominent members of the profession—including judges, practitioners, and academics—to respond to Professor Epstein's report. The results are published on the pages that follow. As intended, the responses reflect the divergent experiences of their respective authors, yet they all are concerned with the significant problems that remain.

A number of the respondents have been leaders in addressing gender issues for many years. Bettina Plevan was the first Chair of this Committee. Judith Vladeck has litigated some of the most significant gender discrimination cases of our time. Judge Patricia M. Wald led the D.C. Circuit Task Force on Gender, Race and Ethnic Bias. Deborah Rhode has been a leading academic in this field. And Chief Judge Judith S. Kaye has long been a voice for change.

Perhaps Judge Kaye has most vividly described the lack of progress by comparing the capacity of large law firms to integrate new technol-

3. Harvard Women's Law Association, *Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms 2* (1995).

4. Harvard Women's Law Association, *Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms* (1995).

5. *Id.* at 4-5; see Wade Lambert, *Lawyers and Clients: Women Lawyers Talk About Double Standard At Work*, in *New Book*, Wall St. J., Oct. 16, 1995, at B5.

6. See Amy Bach, *Life v. The Law*, N.Y. Mag., Dec. 11, 1995, at 48.

7. Matthew Goldstein, *ABA Report Finds Women Still Lag in Pay, Authority*, N.Y. L.J., Jan. 8, 1996, at 1, 1.

ogies to their ability to integrate women: "[T]he sad truth is that women are not doing nearly as well as PCs, faxes, and cellular phones."⁸ Thus in the period of a few years, the large New York City firms that were the subject of Professor Epstein's report went from using computers only for word processing and LEXIS searches to having state-of-the-art PC technology, including Internet access, databases, imagers, document management systems and the like, thereby demonstrating the capacity of these firms for "lightning-fast change." In contrast, during the same time period, women's progress up through the ranks of these firms slowed.

Not surprisingly, several of the responses emphasized that women in our society—including women lawyers—still bear the brunt of family responsibilities. They acknowledge that the eight-to-ten-year partnership track in most firms (which will take most women through their mid-twenties to mid-thirties) coincides with peak childbearing and childrearing years.

However, the firms apparently have not yet recognized, as has Judge Wald, that their high tech improvements "should facilitate the ability of women (and men) lawyers to do their work where and when they want to," allowing lawyers who are also caregivers the flexibility necessary to address the needs of their clients and their families without detracting from either.⁹

All of the responses refer to the need for a more equal division of parenting responsibilities and for a more flexible work environment. Deborah Rhode notes, "Women's career sacrifices are attributable not just to women's choices but to men's choices as well. Male spouses' failure to shoulder equal family responsibilities and male colleagues' failure to support alternative working arrangement are also responsible."¹⁰ Perhaps, as Judith Vladeck eloquently suggests, someday the profession will recognize that being a mother, like being a soldier or an engineer or an architect, is not only an enhancement of a woman's value as a human being, but also is an enhancement of her value as a lawyer.¹¹

Another issue addressed by the responses is that of numerical imbalance. Even if the incoming classes of associates are equally balanced between men and women, the partnerships (and beyond that, the firm management committees) are still overwhelmingly male, and white male at that, thereby presenting additional challenges for women of color. As Deborah Rhode points out, "[m]inority retention

8. Judith S. Kaye, *Moving Mountains: A Comment on the Glass Ceilings and Open Doors Report*, 65 *Fordham L. Rev.* 573, 575 (1996).

9. Patricia M. Wald, *Glass Ceilings and Open Doors: A Reaction*, 65 *Fordham L. Rev.* 603, 616-17 (1996).

10. Deborah L. Rhode, *Myths of Meritocracy*, 65 *Fordham L. Rev.* 585, 591 (1996).

11. Judith P. Vladeck, *Response to Glass Ceilings and Open Doors: A Modest Proposal for Change*, 65 *Fordham L. Rev.* 595, 598 (1996).

rates in law firms are especially poor and few women of color have obtained partnership."¹²

Mary Jo White, the first woman United States Attorney for the Southern District of New York and a former partner of Debevoise & Plimpton, highlights the effect of numerical imbalance by an uncommon example, a leadership group that is predominately women:

The importance of the "numerical atmosphere" was brought home to me in the last couple of years in my experience with the hierarchy of the United States Department of Justice. For the first time, that hierarchy has been predominantly women At high-level meetings, where the women officials have significantly outnumbered the men, I do not think it was my imagination that the women and the expression of their ideas flourished in this setting, while the men seemed more reserved and tentative. We women have become so accustomed to being in the minority in partnership, client, and professional settings that we forget what an advantage these demographics give men.¹³

The Justice Department is obviously not the norm. And, past predictions that the sheer volume of women entering the profession would lead to a gradual erosion of the numerical imbalance found in law firms, and corporations, have proven false.

The potential flexibility afforded by technology and the changing nature of the practice of law should enhance the opportunities of female practitioners. But they are unlikely to be enough. We must now focus on those practical measures that will effect change.

Individual women and men must act consciously to advance the status of women at these firms. First, we must avoid stereotypical thinking about women's abilities and roles. Second, we must test alternative work arrangements, mentor and promote female colleagues, challenge inequitable conduct or practices, provide access to clients and equitably make work assignments. As a profession, we also must work to foster the balance of childcare responsibilities between men and women and provide assistance to both men and women in meeting those responsibilities. And as clients, we must hire law firms that have demonstrated their commitment to the advancement of women. If that happens, we will begin to see real change.

12. Rhode, *supra* note 10, at 588.

13. Mary Jo White, *Glass Ceilings and Open Doors: A Response*, 65 *Fordham L. Rev.* 619, 622 (1996).