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## Glass Ceilings and Open Doors: A Response

### Cover Page Footnote

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## **GLASS CEILINGS AND OPEN DOORS: A RESPONSE**

*Mary Jo White\**

**A**N enormously useful and informative undertaking and report has been produced through the efforts of the Committee on Women in the Profession of the Association of the Bar of the City of New York. *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*<sup>1</sup> (the "Report") offers important insights that should be pursued and acted upon in the continuing effort to remove the multiple glass ceilings that face women lawyers at every level of the legal profession's hierarchy. The challenge now is to respond with further study, concrete recommendations for change, and proactive initiatives. Where we go from here is critical to ensuring and enhancing the permanent place and leadership role of women in the legal profession.

Many of the findings of the Report are encouraging, but they inspire only guarded optimism for the future. Women lawyers entering and advancing in the higher echelons of the top law firms have made tremendous progress. The progress has been greater at the entry level than at the partnership level. Even women obtaining the partnership prize face additional, still-standing barriers and ceilings to top management and leadership roles in their firms. Mostly good and not insignificant accommodations have been made to the demands and priority of family obligations that the majority of women in the profession face. But there are substantial barriers to advancement posed by even the best part-time and "deferred track" programs. The alarming attrition rate of women lawyers from the top firms continues to prevent meaningful inroads at the partnership and management levels. That phenomenon must be reversed in order for women to achieve parity in the profession.

The process of achieving equality for women lawyers, particularly in the power levels of the power New York City firms, must recognize and overcome some harsh realities. Legal life in large New York City law firms has become increasingly difficult and competitive for men and women alike. To a great extent, the long-term life of lawyers in such firms is destined to be hard, often not satisfying, and allowing for full personal and family lives only with great difficulty, if at all. New York lawyers are a special breed. There is no close second in expertise, talent, or hard work. Nowhere are these differences more pro-

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

nounced than in the large New York City law firms where rightfully demanding clients flock for the "best help money can buy."

Our colleagues in other cities have always seemed to have saner, more balanced lives. But for awhile now, there has been growing, healthy pressure everywhere for lawyers to reorder their priorities and alter dramatically the uni-dimensional commitment to and absorption in their professional lives. Families, personal interests and leisure, as well as community responsibilities are (rightly) being given greater emphasis. I would like to think that the presence of increasing numbers of women lawyers in New York City firms has forced the profession to engage in some searching self-examination and change as we enter the twenty-first century. Part of that change should have been to begin to produce nearly equal numbers of women lawyers, not only in entry level positions but also in the top leadership positions of the major firms.

As the Report plainly teaches, however, such equality is not imminently at hand nor easy to attain. The large New York City law firms, particularly as the legal economy continues to tighten, are not destined for dramatic transformation. They will largely remain the excessively hard working, competitive, cutting-edge institutions they have always been. The warring conflicts between professional and personal lives will persist and continue to fall unequally on women lawyers. And, less so than in the past, women lawyers will not forego or as significantly diminish their at least equally important roles as mothers and people. The challenge is to confront these realities and at the same time enhance the presence and leadership of women lawyers in the profession. To do so will require some not insignificant adjustments by both the firms and women lawyers.

The springboard for the analysis of all of these issues is Judge Patricia Wald's on-the-money observation and lament quoted in the foreword to the Report:

With luck, we have a worklife of almost 50 years after leaving law school. How can 3-4 of them be so crucial that we are not allowed a second chance if we don't heave to on the career front twelve hours a day, six days a week in our late twenties and early thirties?

....

The unsuccessful search for a niche that allows women practitioners during a few early years of their working lives, to keep regular hours, take vacations, go home when their kids are sick, is, I am convinced, the major factor in the remarkable attrition rate of women lawyers from the front lines of legal practice. Most never return, and I think we are the worse for it.<sup>2</sup>

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2. *Id.* at 298 (quoting Chief Judge Patricia M. Wald, *A Thousand Cuts: The Reality and Perception of Discrimination*, Remarks at the Aspen Law & Business Third Annual Institute: Woman Advocate 1995 (June 12, 1995) (on file with the *Fordham Law Review*)).

That this is so is borne out by the Report's findings.

On the positive side, since 1980, the relative percentages of new women lawyers hired by the firms has essentially equaled those for men.<sup>3</sup> But, although the number of women partners has also increased, the historically male-dominated profile of major law firm partnerships, particularly in the top leadership positions, has not materially changed.<sup>4</sup> We cannot kid ourselves. The total numbers at all levels are important.

It used to be that we all marked and remarked on every significant "Woman Firsts." It was, and still is to some degree, noteworthy and newsworthy that a female lawyer becomes the first (or second) woman partner in a major firm, the Attorney General of the United States, the Chief Judge of the New York Court of Appeals, the President of the City Bar, or, in my case, United States Attorney for the Southern District of New York. These now fallen barriers and ceilings needed to be broken and celebrated. But we have to go beyond them if their shattering is to be permanent. Despite these and many other milestones, the overall low number of women partners and women in law firm leadership positions is a cause for concern.

The numbers—and a renewed and intensified search for their cause—are vital to the future of women lawyers. It is a fact that women leave their firms in much greater numbers than their male counterparts. The reasons, as the Report confirms, extend beyond leaving to attend to family responsibilities. My belief is that women, still not bred to be breadwinners, are less conservative than men in making career changes and choices. We will leave objectively good positions sooner than men when our jobs do not measure up sufficiently in terms of professional satisfaction, fulfillment, and the ability to balance the demands of our work and non-work lives. This is not a bad thing and I, for one, hope women do not become more conservative and less flexible in their willingness to change their professional positions over what are long legal careers that can only benefit by diverse learning experiences.

Maximizing the "slices of legal life" for all lawyers is good for the individual lawyer, the profession, and the public. But, if women are to become and remain a force in the major firms as they should be, we have to figure out how to keep more women in the firms and to attract them back to the firms after a period of doing other things—whether it be full-time motherhood or jobs in the public sector or more manageable, in-house positions. The essentially inflexible "up and out" model of the law firms must become a thing of the past—both for the firms and in the minds of young women lawyers.

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3. *Id.* at 296.

4. *Id.*

The significance of the expectations and working environment of the major firms to the attrition rate of women lawyers cannot be overstated. What makes us want to stay in or return to a firm? Obviously, the work needs to be challenging and satisfying. It needs to be possible for us to balance, however imperfectly, all of the severely competing parts of our lives. But we also need to be comfortable and valued in our work setting and, to a large extent, the number of women in the firms at all levels of the firm hierarchy determines the comfort level. It is simply a fact of life that men and women are different and that we are most comfortable around people like us—including, for women, other women. When a firm partnership is eighty percent to ninety-five percent male, the atmosphere is not as comfortable or as reinforcing for women lawyers as it would be if the percentages were equal, nearly equal, or predominantly women. Some of the more subtle forms of discrimination, including the unintended “locker room” atmosphere referred to in the Report, stubbornly remain in the firms, I believe, primarily because of the imbalance in numbers.

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: the Attorney General, Deputy Attorney General, and a majority of the Assistant Attorneys General have been 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. To repeat, we simply must enhance the number of women in law firm partnerships and in the top leadership positions.

Numbers in the outside world also matter. The ability of women lawyers to rainmake successfully is, at least for now, significantly correlated with the gender composition of the decision-makers of the major business corporations. When top potential client positions are occupied by women, and women are well-represented in the partnerships of the top firms, the chemistry and positive outcome of rainmaking efforts is, I believe, significantly altered for women lawyers. Efforts to ensure that professional women attain and remain in top corporate positions are thus also crucial to the ascension of women lawyers in their firms where rainmaking is a badge of both business worth and professional prestige.

Urging equality in numbers is obviously much easier said than done. But it must occur if women lawyers are to achieve parity with men in the major firms. To accomplish that requires, first, recognition on the part of the firms that to keep talented women lawyers in the firms for

the long-term is in the financial interests of the firm. Next, the “up and out” model, as the expected or even most common path to partnership must be abandoned. Then, the firms and the profession generally must focus intense efforts and research on how to keep women in the firms. This undoubtedly will involve both greater understanding of and adjustments to the particular requirements of most women lawyers. These requirements, for many women, do not permit “goose-stepping” through the firms on the now prescribed partnership track. There may be years where the work must be on a part-time basis; for some women (and men), there will be a need for periods of total “time outs” to attend to other priorities and demands. In short, firms must be made more “women friendly.”

The firms must be sensitive, flexible, and creative in meeting these challenges. Women lawyers must be all of that and incredibly committed and energetic as well. Women now well-established in the profession must step up to their responsibilities and actively help lead this process and reach out to support and guide young women lawyers. Male leaders of the profession must do the same.

What I would like to see the Committee—and other leaders of the Bar—do is to commission further study directed at all of the legal profession’s ceiling issues, with particular and concrete emphasis on what has “worked best” to keep women lawyers in the various firms working productively, and with satisfaction and success for all of the periods of their professional lives. Professional consultants, including business behaviorists, should be used in this process. The end result of such further study and efforts, I would hope, would be a set of practical recommendations and choices for both firms and women lawyers.

Study and recommendations will not be enough. Leadership, renewed zeal, and follow-up with law firm leaders are also essential. Perhaps, as a start, the same firms that participated in this study can be engaged to continue their self-auditing process and experiment with changes and the most promising programs to achieve meaningful progress for attracting and retaining women lawyers in the firms. Only such unrelenting self-examination, attention, and commitment will enable us to take that next “leap” so that women lawyers—in large numbers—achieve partnerships and leadership in the major firms. The winners will be not only women lawyers, but also the firms and the profession in general.

