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ESSAY

THE PROGRESS OF WOMEN LAWYERS AT BIG FIRMS: STEADIED OR SIMPLY STUDIED?

Judith S. Kaye & Anne C. Reddy*

In the twenty years since now—Chief Judge Judith S. Kaye published her essay on women lawyers in big firms, interest in the subject has mushroomed, as the profession continues to grapple with issues of gender equity. This update reflects the voluminous new literature and looks behind the statistics to find fresh efforts and pathways to solutions that can benefit women as well as the profession generally.

Twenty years ago, I was privileged to deliver the Second Annual Noreen E. McNamara Memorial Lecture at Fordham Law School. The lecture was published in the Fordham Law Review in essay form, titled Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality.1 The following year the Law Review published a companion monograph, Gender Equality in the Legal Profession, a collection of responses by practitioners, judges, and academics.2

At the time, I was an associate judge of the New York Court of Appeals—the first woman ever to serve on the state’s highest court. I chose to focus on the obstacles to advancement women were facing in the big firm environment—the “glass ceiling”—because it was the setting I had just come from, having entered the litigation department of Sullivan & Cromwell in 1962 as one of what might be considered the second generation of female lawyers at big firms (Noreen McNamara of Milbank Tweed’s class of 1952 having been in the first, if you could call it that). In 1988, recognizing that the influence of big firms uniquely positioned them to expend resources and create solutions that would be widely replicated, I saw the changes underway at these firms as a harbinger of societal progress

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toward gender equality. Whether firms have recognized this potential or assumed the responsibility that went along with it is a question I frequently ask myself.

Today, I am fortunate to serve as chief judge of the State of New York and chief judge of the New York Court of Appeals, one of four women on the state’s highest court. Looking back over my own career, I am probably one of the few women attorneys who can honestly say that the glass ceiling did not create an impediment to my own advancement. Quite possibly, once I had made the initial jump to a prestigious law firm (not easy in 1962, but that story is for another day), my gender may have actually assisted me along the way—I was there at a moment in time when it became desirable to have a “first.”

I am, however, still decidedly one of the exceptions rather than the rule, and the certainty with which I can say this is a primary reason for revisiting this subject yet again. Given my background—biological, familial, and experiential—I have long been intensely interested in the subject of women in the law, have collected materials, and even from time to time have written on the topic’s evolution since 1988. It was clear in 1996, in 2006, and is equally apparent today that women’s advancement in the profession requires “conspicuous, vocal vigilance.” And I continue to believe that “the progress of women in the legal profession is not a natural phenomenon, like erosion or accretion. It doesn’t just happen. It never will.”

In 1988, I concluded that women did not yet have the numbers to effect significant change in big law firms and questioned whether the structural changes—the main one being the advent of the billable hours economic model—would help or hinder their ascendance as the numbers of women entering the profession reached parity. Now, on the twentieth anniversary of the original essay, the Fordham Law Review has given me the opportunity to take another look at the progress big firms have made toward gender equality and to answer my own questions.

In doing so, I was forced to confront a chorus of voices insisting that “little has changed” in the decades since the original essay. True, big firms have not, as hoped, paved the way for gender equality in advancement; the public sector is closer to reflecting the percentages of women represented in the law school talent pool over the last two decades, and even that sector lags behind the almost 50% mark predicted by women’s levels of entry into the profession. Commentators have tried to make sense of the fact that equal percentages of female and male first-year associates do not translate,
ten years later, into equal percentages in firm partnership ranks, a phenomenon known as the "leaky pipeline." Indeed, it seems that everything has been well documented over the last decade. The new literature and new nomenclature, if not the changes, are substantial.

Numbers aside, however, there are noticeable paradigm shifts within big firm culture that have weakened the glass ceiling as the term was originally coined, referring to women's inability to ascend to the highest level—equity partner. The "up or out" mentality has changed to "across or out" as partnership is harder to achieve for both sexes without strategic use of lateral advancement. Even then, as law firm growth has slowed and law school enrollment has increased, "making partner" is not realistic for the majority of young lawyers. For those who do make it to the partnership pool, two-tiered partnership has created an avenue for women (and men) to continue in the firm, ostensibly as members, without impeding the earnings rankings of equity partners.

At the same time, equity partnership may not be the "golden egg" it once was, as firms have turned to de-equitizing and terminating partners in efforts to improve rankings and attract talent. Attrition rates, while remaining high for midlevel women associates and astronomical for recently arrived minority associates, reflect not only advancement disparity but also a general discontent with the "bottom line" mentality contemplated by the billable hours model, encouraging a willingness to look for more manageable work/life situations. The economic consequences of high rates of attrition are slowly leading firms to implement retention initiatives.

For junior lawyers who practice during the years when their children are young, firms today are seemingly more amenable to adjusting to the needs of those associates (overwhelmingly female) who are willing to make the sacrifices that big firm careers continue to require. And for women who leave when starting a family—either by "opting out" or by being pushed out by what they perceive as inflexible policies—firms are expressing increased interest in hiring from the "reentry pool" ready to rejoin the ranks, and helping women stay connected during sabbaticals. Finally, firms are facing the external economic pressure of corporate clients that insist on diversity when selecting outside counsel and the influence exerted by the rising number of women general counsel of Fortune 500 companies.

The first part of this Essay centers on statistics, comparing the profile of women in the profession in the mid-to-late-1980s with that of the last few years. However, as shifts in law firm culture and policy are admittedly subtle and their effects gradual, statistics present only a piece of the picture.

5. The focus of this Essay is on women lawyers and the particular career stresses associated with the need to care for young children (which was my personal experience and is the subject of a great deal of the literature). I recognize that many other life issues present similar dilemmas for both lawyers and their firms. I also recognize the need for greater diversity in firms and throughout our profession. Hopefully, my concentrated focus on women will illuminate pathways to greater diversity, which requires the same conspicuous, vocal vigilance.
The second part, therefore, questions whether, over twenty years, there are areas—even crevices—where changes, though statistically unimpressive, are nevertheless contributing to the ultimate goal of gender equality. Lastly, this Essay looks for answers in recent “success stories” both in and out of the profession, and poses questions for the decade ahead. What will it take for women to fill leadership positions in law firms in numbers statistically appropriate to their entry percentages? What numbers are necessary to influence the culture of the firm? Is breaking through the glass ceiling a goal that still carries meaning, or should we reevaluate methods of measuring gender parity? These questions may be obsolete in 2028, or they may be as relevant as those that I posed back in 1988 are today.

Undeniably, the incremental changes of the last twenty years must be seen as points of departure and provide encouragement to women attorneys who otherwise thrive in the fast-paced, intellectually stimulating environment that a big firm can provide.

I. TWENTY YEARS LATER: WOMEN LAWYERS IN 1988 AND 2008

I turn first to private practice, the setting where many lawyers choose to begin their careers. Back in 1988, law schools were near the end of a twenty-year trajectory that saw women’s enrollment increase by an astounding 850%. This escalation promised rapid progress toward gender parity within the profession as a whole, presumably with large firms at the helm, as this newly populous generation of women lawyers rose through the ranks.

This was not to be the case. Whatever the precise percentages, statistics for the past ten to fifteen years show that the nation’s law schools produce a relatively equal number of qualified male and female attorneys and that, though firms generally hire women associates in numbers correlative to the talent pool, women do not reach partnership at the same rate as men.

6. In 1966 to 1967, women made up 4.3%, or 2520 candidates, of the total enrollment in American Bar Association (ABA) schools. See ABA, First Year and Total J.D. Enrollment: by Gender, 1947–2005 (n.d.), available at http://www.abanet.org/legaled/statistics/charts/stats%20-%20pdf. By 1986 to 1987, this number had increased to 40.7%, or 47,920 women J.D. candidates. Id. The upward trajectory continued until 2002, when it reached a pinnacle of 49% female candidates, and then hovered—as it continues to do—at a respectable 47% to 49%. Id. In 2006 to 2007, for example, the survey reported that women’s enrollment had dropped incrementally to 46.90%, or 66,085. Id. A more localized study found that women made up 48% of the graduating class of 2005 for New York City law schools. See N.Y. City Bar, 2006 Diversity Benchmarking Study: A Report to Signatory Law Firms 9–10, available at http://www.abcny.org/Diversity/FirmBenchmarking06.pdf. Another study found the 2006 national numbers to be closer to 51%. See Karen J. Mathis, Get Involved and Invent the Future, Perspectives, Winter 2007, at 3, 3.

7. In 1987, women accounted for 40% of the entering associate class at Milbank Tweed, a number that reflected the New York large firm average at the time. See Kaye, supra note 1, at 111. Milbank Tweed was Noreen McNamara’s firm, and, as statistics were less available twenty years ago, I used numbers provided by Milbank Tweed as a case study for the essay.
This “fallout” occurs to some degree in all sectors of the profession, but is most pronounced within law firms, both big and small.\(^8\) A national graduation class composed of 50% women does not translate—ten or even five years down the road—into an equal percentage of practicing women lawyers, much less women lawyers holding firm leadership positions.\(^9\) While the lower percentage of women attorneys overall can be attributed in part to three decades of almost exclusive hiring and promotion of male attorneys who are still practicing, it does not explain why women hired by firms in high numbers out of law school over the last fifteen years have not been promoted and retained at the same rate.

Take, for example, statistics on partnership. Members of a firm’s entry-level associate class become candidates for partnership between eight and ten years out of law school. In 1987, since the high number of women graduating from law school was still a relatively new development (up from 26% just ten years earlier), it was (optimistically) hypothesized that the sheer number of women in the “pipeline” would correct the gender disparity.\(^10\) In other words, given time, the numbers of women entering the profession would be promoted at similar numbers after the normal period of career ascendency.

Not so. Although the ranks of women partners have increased, they have not matched the percentages of women making up the junior associate ranks. In 1988, fewer than 8% of partners at big firms were women, although the associate entry-level class was 40% female.\(^11\) In 2007, women accounted for 16% of equity partners, 26% of nonequity partners, and 30%...
of “of counsel” lawyers, although the associate entry-level class was close to half female. The number of women promoted to partner continued to increase significantly in the late 1980s and early 1990s, yet the male-to-female ratios soon leveled off and have remained relatively stagnant since 1992, hovering at just over 15% for equity partners for the last fifteen years (known as the “50/15/15” conundrum). Even accounting for experience discrepancies between female and male attorneys—the average number of years in private practice for females in 2004 was 9.5 and the average for men was 19.5—this does not explain why the disparity has not diminished more than it has over the last fifteen years.

A more encouraging development is found in recent promotion percentages. The New York City Bar Association reports that, as of January 2006, women represented 29% of recent partner promotions (up from 20.3% in 2004) and 20.3% of lateral partner hires (up from 12.8% in 2004). While significantly higher, these numbers continue to reflect a troubling gap, considering that women constituted half of the entry-level associate class a decade earlier.

Reported compensation levels also reflect continuing disparity, at least in the upper tiers. As recently as November 2007, the National Association of Women Lawyers found that, of thirty-five firms willing to report compensation by gender, the average median compensation of a male equity partner was almost $90,000 higher than that of a female equity partner, $27,000 higher than that of a female nonequity partner, and $20,000 higher in the of counsel position. Ninety percent of firms (and in


13. For more than fifteen years, half of law school graduates have been women, yet only approximately 15% of law firm equity partners and chief legal officers have been women. The fifteen-year mark is significant as 1992 is the first year that J.D. enrollment by gender reached 50%. See ABA, supra note 6, at 1.

14. Comparable statistics in public interest and government were 13.1 years and 17.3 years, respectively, an experience discrepancy of about four years. Comm. on Women in the Law, N.Y. State Bar Ass’n, Gender Equity in the Legal Profession: A Survey, Observations and Recommendations 12 (2001), http://www.nysba.org/AM/Template.cfm?Section=Substantive_Reports&CONTENTID=2846&TEMPLATE=/CM/ContentDisplay.cfm.


16. Nat’l Ass’n of Women Lawyers, supra note 12, at 3. The income disparity has actually increased since 2006, when the average median compensation of a male equity
one study, of the 112 firms responding only 55 answered this question) reported that their highest paid lawyer was a man.\textsuperscript{17}

Women who do make it to the top tiers at large firms tend to stay there. In 1988, there were so few women in management positions that their achievement was confirmed by individual human interest profiles in the press.\textsuperscript{18} That there are now gross statistics is a good sign. In 2007, even though top firms reported close to 15% female membership on firms’ highest governing committees (comparable to equity partnership in general), still only 8% (6% at one-tier firms, 9% at two-tier firms) of managing partners were women.\textsuperscript{19} Overall committee membership statistics also tend to demonstrate women’s continued failure to reach positions of power. A 2001 New York State Bar Association study showed that women in private practice were more likely to be appointed to diversity or associates’ committees than to compensation, business development, or partnership selection committees.\textsuperscript{20}

Attrition rates, while markedly higher for female midlevel associates, only go so far toward accounting for the continued disparity in management and compensation. In 1988, attrition was recognized as a product of the glass ceiling phenomenon. As the American Bar Association (ABA) Commission on Women in the Profession put it, women’s “observation of a bleak future coupled with the barriers currently being faced . . . very often lead to dissatisfaction which sometimes results in a search outside the profession for a better situation.”\textsuperscript{21} It was clear then that women were leaving the profession in greater numbers than their male counterparts,\textsuperscript{22} but

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\textsuperscript{17} Nat’l Ass’n of Women Lawyers, \textit{supra} note 12, at 8, 18; N.Y. State Bar Ass’n, \textit{supra} note 14, at 16 (reporting that, when adjusted for years in practice, 62% of men but only 51% of women attorneys working sixteen to twenty years earned over $100,000 in 2000); see also Press Release, ALM Media, Inc., New ALM Research Study Finds Female Lawyers Bill Clients at Lower Rates Than Male Counterparts (Jan. 24, 2008), http://biz.yahoo.com/bw/080124/20080124005608.html?v=l (reporting the results of the 2007 ALM Research Survey Report of Billing Rates and Practices).


\textsuperscript{19} Nat’l Ass’n of Women Lawyers, \textit{supra} note 12, at 7. This number has increased from the 5% reported by NAWL in 2006. This disparity exists in the business world in general, where women hold 50% of management and professional positions yet only 2% are Fortune 500 chief executive officers. See Catalyst, \textit{The Double-Bind Dilemma for Women in Leadership: Damned if You Do, Doomed if You Don’t} (2007).

\textsuperscript{20} N.Y. State Bar Ass’n, \textit{supra} note 14, at 23 tbl.5a (noting that 10% of women reported sitting on the compensation committee compared to 14% of men; 6% reported sitting on the business development committee compared to 20% of men; 22% reported sitting on the associates committee compared to 12% of men).

\textsuperscript{21} ABA, \textit{supra} note 10, at 7.

the rates, motivations, and departure destinations were not yet reliably
documented or analyzed.

Over the past decade, however, attrition has been closely monitored, at
least on a state or national—as opposed to firm—basis.\textsuperscript{23} The most recent
data reveal that junior associates of both sexes have a high rate of attrition
at around 19.5% overall (and rising),\textsuperscript{24} with the greatest number of
associates (although not the highest percentage by year) leaving after two to
three years.\textsuperscript{25} According to one large firm study, although women’s
attrition rates are marginally higher, the gender differential becomes
pronounced at the mid-associate level, when 41.8% of female associates
depart from their firms as compared to 32.2% of male associates.\textsuperscript{26} The
National Association for Law Placement (NALP), on the other hand, found
that the departure rates for 2006 were relatively uniform by gender at the
firms—especially at the larger firms—although 73% of entry-level female
associates left by their fifth year as compared to 69% of male associates.\textsuperscript{27}
Lateral associates, who represented 50% of new associate hires overall in
2006, left in equal numbers, at 81% by year five.\textsuperscript{28}

In any event, when correlated with associate hiring, associate attrition
was at an all-time high in 2006.\textsuperscript{29} (This exodus ebbs, for obvious reasons,
at the partner and of counsel levels, when women leave at a lower rate than
men\textsuperscript{30} and both generally stay put.) Loss of midlevel talent is apparently a
growing problem.

Attrition is costly. In 2006, firms reported that 51% of associate
departures were unwanted and only 21% were actually desired.\textsuperscript{31} By one
estimate, it costs a firm 150% of a professional person’s salary when he or

\begin{footnotes}
\item[24] See N.Y. City Bar, supra note 6, at 7; see also NALP, Update on Associate Attrition, supra note 7, at 12 (reporting a 19% national associate attrition rate).
\item[25] NALP, Update on Associate Attrition, supra note 7, at 11.
\item[26] Id.
\item[27] NALP found an increased level of female associate attrition within the first two years at the smaller firms (34% compared to 16%), but that this number evened out around the four-year mark. See NALP, Update on Associate Attrition, supra note 7, at 15, reporting that women left at rates higher than their firmwide percentages (female associates at 48%, compared to 44.3% overall composition), which accounts for a widening gender gap among senior associates. Another study reported that 77% of white women and 81% of women of color left their firms within the first five years. See NALP, Toward More Effective Management of Associate Mobility, Executive Summary (2005), http://www.nalpfoundation.org/webmodules/articles/anmviewer.asp?a=112&z=15; see also N.Y. City Bar, supra note 6, at 16; ABA Comm’n on Women in the Profession, Visible Invisibility: Women of Color in Law Firms 1 (2006) (noting that in the late 1990s, more than 75% of minority female associates left their firms within the first five years).
\item[28] NALP, Update on Associate Attrition, supra note 7, at 18.
\item[29] Overall attrition averaged 66% in 2006. Id. at 4.
\item[30] Id.
\item[31] Id. at 31 tbl.28.
\end{footnotes}
she quits.\textsuperscript{32} Applying this percentage to the associate salaries offered today, most big law firms expend $200,000 to $500,000 in salary and resources to replace a second-year associate.\textsuperscript{33} When a firm is losing large numbers of second- and third-year associates (and losing well-paid seventh-year associates at the highest rate), replacement costs can hurt. In addition, studies show that there is an immeasurable added cost in client discontent when a firm experiences a high level of turnover, especially within the midlevel associate ranks.\textsuperscript{34}

One of the primary reasons for these high levels of associate attrition is the need to work fewer or more regular hours during child-rearing years.\textsuperscript{35} Before encountering the glass ceiling, many women hit what Professor Joan Williams, founder of the Center for WorkLife Law at University of California, Hastings College of Law, termed the “maternal wall,” or the onset of negative assumptions about a woman’s career aspirations once she becomes pregnant or seeks a maternity leave.\textsuperscript{36} One survey found that nearly half of highly qualified women—women with graduate degrees, professional degrees, or high-honors undergraduate degrees—choose to

\begin{itemize}
\item \textsuperscript{33} Catalyst places the average cost to a firm when an associate leaves at $315,000. Catalyst, Beyond a Reasonable Doubt: Lawyers State Their Case on Job Flexibility 6 (2006), available at http://www.catalystwomen.org/files/full/BeyondReasDoubtJobFlexibility.pdf.
\item \textsuperscript{36} See Joan C. Williams, Hitting the Maternal Wall, Academe, Nov.–Dec. 2004, at 16, 16; see also Joan C. Williams & Nancy Segal, Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job, 26 Harv. Women’s L.J. 77 (2003). In the latter article, Professor Williams discusses the viability of maternal wall discrimination as a legal theory that has achieved success in both federal Title VII and state causes of action, and the need for competent representation of family caregivers with viable claims. See also Mary C. Still, The Center for Work/Life Law, Univ. of Cal., Hastings Coll. of the Law, Litigating the Maternal Wall: U.S. Lawsuits Charging Discrimination Against Workers with Family Responsibilities (2006), available at http://www.uchastings.edu/site_files/WLL/FRDreport.pdf.
\end{itemize}
“off-ramp,” or take time off, at some point in their professional lives.\textsuperscript{37} Of this group, 93\% want to return to their careers yet only 74\% are able to do so, and only 40\% return to full-time, professional jobs.\textsuperscript{38} Of the small number of women attorneys who choose to “opt out,”\textsuperscript{39} the great majority hope to pick up where they left off within a relatively short period of time—only not necessarily with the same firm.\textsuperscript{40} With employment rates out of law school at close to 90\% for the last decade, the fact that women lawyers who attempt to rejoin their careers are compelled to accept jobs for which they are overqualified, for less pay, is indeed regrettable.\textsuperscript{41}

Even assuming that attrition has become, by 2008, somewhat more gender neutral, family issues play a greater role in female associates’ career decision making. A statistically higher number of entry-level female lawyers report leaving their firms because of issues involving work/life balance, such as a desire for a more regular schedule,\textsuperscript{42} yet today the vast majority exit the firm but not the profession.\textsuperscript{43} One study found that attorneys who hit this maternal wall left their firms for greener pastures due to perceptions (not necessarily grounded in personal experiences) that the

\begin{itemize}
  \item \textsuperscript{38} \textit{Id.}
  \item \textsuperscript{39} See Employment Issues Comm. of the Women’s Bar Ass’n of Mass., \textit{More Than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms} (2000), http://womenlaw.stanford.edu/mass.rpt.html [hereinafter More Than Part-Time]. The number of departing associates reporting their departure destination as full-time caretaker for dependents was only 4\%. \textit{Id.}
  \item \textsuperscript{40} See Hewlett & Luce, \textit{supra} note 37, at 52.
  \item \textsuperscript{41} See Williams et al., \textit{supra} note 35, at 24; Press Release, NALP, Market for New Law Graduates Up—Topping 90\% for First Time Since 2000 (July 25, 2007), http://www.nalp.org/press/details.php?id=70 [hereinafter NALP, Market for New Law Graduates]; see also Monica McGrath et al., \textit{Back in the Game: Returning to Business After a Hiatus: Experiences and Recommendations for Women, Employers, and Universities} (2005), available at http://knowledge.wharton.upenn.edu/papers/1298.pdf (noting that 83\% of reentering MBAs reported that they accepted a position at a comparable or lower level, and of those who entered at a higher level, two-thirds accepted comparable responsibility or lower). One woman MBA reported that “[s]he was thinking of removing a reference to her MBA education from her resume” in order to find a lower level job and be given the chance to prove herself, as potential employees found her overqualifications threatening. \textit{Id.} at 10.
  \item \textsuperscript{42} NALP, Update on Associate Attrition, \textit{supra} note 7, at 24–25. These numbers vary with regard to lateral associates; although twice the number of female lateral associates listed better support for work-life balance among their reasons for departure and four times as many cited family responsibilities, departing female laterals were less concerned with reducing billable hours than their male counterparts. \textit{See id.} at 26 tbl.25. The highest overall reason for departure of female entry-level associates was to pursue a practice interest. \textit{Id.} at 25. The greatest number of laterals left due to work quality standards not being met. \textit{See id.} at 26.
  \item \textsuperscript{43} \textit{Id.} at 28 (reporting that 39\% relocate to positions in different law firms, 19\% to corporate in-house counsel, 7\% to government, 5\% to judicial clerkships or nonprofits; only 2\% left for nonlegal corporate or business positions).
\end{itemize}
firm's attitude toward leave and flextime policies was "indicative of how the firm felt towards women generally." 44

Similarly, although three-quarters of women who have children take parental leave of some duration (as opposed to less than 20% of men) and the great majority work fewer hours than men during significant times in their children's lives, 45 surprisingly low percentages of women attorneys take advantage of part-time or flextime programs (surprising for me, given that the opportunity for part-time law firm employment back in the late 1960s was my salvation). 46 Statistics on reduced hours were not available in 1988, but in 1994, when NALP first began to track these numbers, it reported that 86.4% of big firms offered these programs yet only 2.4% of attorneys worked reduced schedules. Twelve years later, in 2006, 96% of firms provided for part-time schedules yet only 5% of lawyers took advantage of them. 47 Of this number, 3.8% were women, 48 striking when compared to the 25% of women overall working part-time 49 and the 16% of highly qualified women 50 working part-time in the general population. Part II of this Essay discusses some of the reasons for this diminutive percentage. 51

44. More Than Part-Time, supra note 39.
45. See id. at 16, 43.
46. See, e.g., Kaye, 'Mommy Track' in Practice, supra note 4. I was a part-time associate in the late 1960s before such a schedule was termed a "mommy track." I found that such an arrangement worked very well for both me and the partners (all male) at the firm and did not merit the backlash it received in the late 1980s resulting from its later—and unfortunate—label. When I wrote the essay, it seemed to me that reduced hours were the wave of the future.
47. This breaks down to 4.7% of associates and 2.8% of partners, with of counsel and staff attorneys accounting for the highest rate of part-time work at 16%. Id.
48. Press Release, NALP, Few Lawyers Work Part-Time, Most Who Do Are Women (Dec. 15, 2007), http://www.nalp.org/press/details.php?id=74. The 3.8% of women lawyers amounted to 11.4% of partners and only 9.5% of associates, whereas 23% of women in the legal profession as a whole work part-time schedules. Id. But see Nat'l Ass'n of Women Lawyers, supra note 12, at 3 (finding that in a survey conducted at the nation's top 200 firms, one in eight women worked part-time).
50. Hewlett & Luce, supra note 37, at 48.
51. In New York City, the percentages were even lower: only 7% of women partners and 1.4% of partners of both sexes and 8.4% of women associates and 4.2% of associates of both sexes worked part-time in 2006. See Women's Bureau, U.S. Dep't of Labor, supra note 49. Interestingly, outside of the city, New York State had the highest level of both part-time women associates and partners, at 13.4% and 12%. Id.
This issue also raises a question of terminology: whereas only 5% of lawyers have officially worked part-time, when asked how many had taken advantage of flexible work arrangements (FWAs), almost one in four, or 24% of Canadian lawyers, reported that they had. Catalyst, supra note 33, at 10. FWAs include not only part-time schedules, but also telecommuting and flextime (full-time hours on a flexible schedule). Id. at 12. Although lawyers voiced the same concerns about FWAs in general as about part-time work, i.e., partnership track derailment or limiting professional growth, the numbers of lawyers who took advantage of them was significantly higher. Id. at 13. Interestingly, only 21% of the men who used FWAs, compared to over 50% of the women, said that they believed "their FWA participation limited their professional development and made them appear less
Today, work/life balance, thankfully, is not seen purely as a women's issue. Men play active roles in their children's lives; factor in single fathers, fathers with joint custody, and same-sex couples adopting children, and the issue becomes more distinctly gender neutral. Moreover, many junior associates—with or without children—report that flexibility is a significant factor in choosing to work at another firm. Others say they are willing to leave large-salaried positions for a better quality of life at a small firm or government office.

Statistics on women in other private sectors of the profession paint a somewhat rosier picture. In the late 1980s and early 1990s, few Fortune 500 companies employed women as their top lawyers. In 2007, however, 18% of Fortune 500 companies reported that women served as their general counsel. Although these percentages are hardly overpowering, they have risen sharply since even 2000, when only 8.8% of Fortune 500 general counsel were female. By contrast to big law firm partnership, committed to their firms," while 31% of men (and only 11% of women) said that they believed others saw them as more productive because of their participation in a flexible work arrangement. Id. at 4, 15.


53. See Catalyst, supra note 33, at 2; Catalyst, supra note 52.

54. See Joan Williams & Cynthia Thomas Calvert, Balanced Hours: Effective Part-Time Policies for Washington Law Firms: The Project for Attorney Retention, 8 Wm. & Mary J. Women & L. 357, 369-72 (2002); see also Catalyst, supra note 52, at 3 (finding a firm that supports family and personal commitments and personal choice is a top priority for lawyers changing firms); Debra Bruno, Younger Female Lawyers Play by Their Own Rules, Nat'l L.J., Jan. 22, 2008, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1200996333873; Dreessen, supra note 52.

55. Williams and Calvert found that 70% of men in their twenties and thirties would “be willing to take lower salaries in exchange for more family time.” Williams & Calvert, supra note 54, at 369; see Kirstin Downey Grimsley, Family a Priority for Young Workers; Survey Finds Change in Men's Thinking, Wash. Post, May 3, 2000, at E1.


58. Id. Only 1.8% of Fortune 500 companies had women chief executive officers, although 14.6% of Fortune 500 board directors were women in 2006. This reveals a notable discrepancy between firms' practices regarding legal counsel and leadership—a discrepancy often present within law firms as well. See id.
representation of women among the ranks of general counsel has increased substantially, even astoundingly, in recent years.59

II. WHAT HAS, AND WHAT HAS NOT, CHANGED?

Why is it so important to revisit statistics? In my experience, numbers can be misleading; the substance of a shift in societal norms is often, especially at its inception, more accurately represented anecdotally or experientially. It is certainly the case that many of my women colleagues have achieved great success over the past twenty years regardless of the bleak picture painted by the numerous studies on women’s advancement.

The numbers, however, are important precisely because of the superachieving women who illuminate the profession. As mentioned, I can happily point to many examples of women who have risen to the highest levels (without sacrificing family and friends or “selling their souls”). What the profession still lacks is a critical mass of women to mentor junior associates approaching pivotal points in their careers, to ensure not only implementation of diversity programs but also accountability with regard to

59. Other sectors of the profession are also somewhat encouraging. Women held 24% of law school deanships, 45.5% of associate or vice deanships, and made up 27% of tenured and 44.2% of tenure track professors in 2006 to 2007, as compared to an 11% national average for tenured women and 33% in tenure track positions in 1988. See ABA, Total Male Staff & Faculty Members—2006–07 (2007), available at http://www.abanet.org/legaled/statistics/charts/facultyinformationbygender.pdf; see also Richard H. Chused, The Hiring and Retention of Minorities and Women on American Law School Faculties, 137 U. Pa. L. Rev. 537, 556 (1988). But see Ass’n of Am. Law Schs., Statistical Report on Law School Faculty and Candidates for Law Faculty Positions, Preliminary Tables, 2005–2006 (2006), available at http://www.aals.org/documents/statistics/20052006statisticsonlawfaculty.pdf (finding that women made up 18.8% of law school deans and 57.8% of associate deans and 43.8% of associate professors in 2005 to 2006, for a total of 35.9% of all faculty). The statistics are also far different in government and legal services positions. See Carson & Curran, supra note 9; see also Catalyst, Women in Law: Making the Case 59 (2001) (noting that 35% of executive branch federal government attorneys were women in 2001). More recent NALP statistics show that close to 31% of entry-level women took government, judicial clerkship, legal service, and public defender positions in 2006 as compared to 25% of men. NALP, Market for New Law Graduates, supra note 41; see also NALP, Jobs & JDs: Employment & Salaries of New Law Graduates—Class of 2006 (2007).

The judiciary is also making progress toward gender parity. Recent surveys report that 23.3% of sitting federal district court judges and 23.6% of federal court of appeals judges are women. See ABA Comm’n on Women in the Profession, A Current Glance at Women in the Law 2006, available at http://www.abanet.org/women/CurrentGlanceStatistics2006.pdf; see also Alliance for Justice, Demographic Overview of the Federal Judiciary, http://www.judicialselectionproject.org/demographics.asp (last visited Jan. 22, 2008). The numbers are significantly higher in New York, where four out of thirteen, or 31%, of Second Circuit and fifteen out of forty-eight, or 31.5% of New York district court judges are women. See Nat’l Ctr. for State Courts, Judicial Selection and Retention: Membership on State Courts of Last Resort, by Sex (2006), available at http://www.ncsconline.org/WC/Publications/KJS_JudSelCOLRsex.pdf. On the state level, 29.2% of judges sitting in courts of last resort are women, and 35.9% of these courts—and I happily include New York as one of them—have female chief justices. See id.; see also Kaye, Women Chiefs, supra note 4.
these programs, or to influence firmwide decisions from the management ranks. The statistics tell us that we are definitely not there yet.

So where does that leave us? As women, it leaves some of us looking for support outside of the firm and others hoping for signs from within that firm culture is gradually abandoning traditional constructs that created the glass ceiling, leaky pipeline, and maternal wall in the first place. This part, therefore, draws on not only the extensive data now available, but also the perspectives of individual lawyers in an attempt to determine what, in the last twenty years, has changed within the purview of women in the profession, what remains the same, and—always most interesting—the gray areas where the two intersect.

What has changed? For one, “women’s issues” as defined in the 1980s are now increasingly gender neutral. For another, firms are responding to increased pressure to show results in their diversity efforts, at the risk of diminished status within rankings and other external measures of firm standing and prestige—and at the risk of losing fresh talent and even clients.

What has not changed? Three issues that were the focus of much criticism twenty years ago regrettably still linger: the persistence of gender stereotypes, the resistance to flexible work arrangements, and the use of the billable hours economic model. Given the breathtaking scientific, technological, and cultural advances of the past twenty years, does it not seem that greater progress should have been made?

A. Gender Stereotypes

Reports of the perseverance of age-old assumptions—for lack of a better word, stereotypes—within the legal profession continue to astonish me. At one end of the continuum is the notion that women are not only the primary caregivers but also the partners who shoulder the great majority of family responsibilities. This stereotype affects all women, not just those with children. The logical ripple effect is that women cannot assume equivalency to men in their career pursuits—not just legal careers—until men assume equivalency in their care responsibilities.

There is a lot of wisdom in this simple equation. Mary Robinson, giving the 2005 Annual Ruth Bader Ginsburg Lecture on Women and the Law, noted that Justice Ginsburg, when asked about a male clerk who worked a flexible schedule to accommodate his young child, explained, “This is my dream of the way the world should be—when fathers take equal responsibility for the care of their children, that’s when women will be liberated.”60 It is telling that this simple premise lays a foundation not only for the practical realities of gender disparity in the workplace, but also for a discussion of global human rights—the subject of the Ginsburg Lecture. The solutions are conceptually not that far removed.

At the other end of the continuum lies the notion that women lawyers are less competent, less committed, and more tolerant of sexual innuendo or suggestion. Unbelievable as it might seem in 2008, studies show that women lawyers report they are still referred to as “baby” and “sweetie,” called by their first names rather than by their titles, mistaken for legal assistants not lawyers, and subjected to condescending treatment, sexist jokes, and inappropriate comments. Sensitivity programs are a mainstay of big firms, yet many women attorneys report that sexual harassment in its various forms continues to be part of firm life—even if fear of a lawsuit deters the most egregious occurrences. Although women lawyers today may be less worried about this type of outright discrimination, such behavior continues to bookend the subtler stereotypes that cause surreptitious harm.

Common assumptions include the idea that women readily abandon their careers, at least temporarily, to care for children, or willingly postpone or forbear from making strategic moves that would advance their careers in order to do this (or, in the part-time sphere, avoid committee involvement and accept inferior assignments without complaint as a trade-off for more family time). Gender stereotypes underlie the “double-bind”: that an assertive, uncompromising female attorney is overly aggressive or “masculine,” yet a woman whose lawyering style tends toward compromise over confrontation is ineffective or weak. (I have to acknowledge a suspicion that this feeling about us—whatever our position may be—just never goes away.) These stereotypes form the basis for the misconception.

61. A New York judge recently ordered court-supervised depositions after a male attorney apparently called opposing counsel “‘hon’ and ‘girl’ and asked her why she was not wearing a wedding ring.” Anthony Lin, Ruling Faults Lack of Civility in Remarks at Deposition, N.Y. L.J., Dec. 12, 2007, at 1; see also ABA Comm’n on Women in the Profession, Charting Our Progress: The Status of Women in the Profession Today 5 (2006) (reporting on testimony at the Commission’s 2003 hearings).

62. ABA Comm’n on Women in the Profession, supra note 61, at 5.

63. Comm. on Women in the Law, supra note 14, at 24.

64. See ABA Comm’n on Women in the Profession, supra note 61, at 5; Comm. on Women in the Law, supra note 14, at 30–31; see also Report of the Special Committee on Gender to the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias, 84 Geo. L.J. 1657, 1849 (1996); Patricia M. Wald, Glass Ceilings and Open Doors: A Reaction, 65 Fordham L. Rev. 603, 604 (1996).


67. See Catalyst, supra note 19, at 6, 13; see also DRI, supra note 35, at 10; Deborah L. Rhode, Balanced Lives: Changing the Culture of Legal Practice 17 (2001); Sara Sklaroff, Women in Charge, Wilson Q., Summer 2007, at 63, 66 (pointing to evidence that “women aren’t that much less aggressive than men—they’re just better at hiding it”).
that women partners or women in other positions of power got there because of affirmative action instead of professional qualifications.\textsuperscript{68}

While they do not amount to sexual harassment, the continued existence of these assumptions reinforces a culture that advances basic misunderstandings regarding the choices women lawyers make, such as the decision to (or not to) switch to flextime or part-time, to opt for a career in the public interest, or to accept an of counsel position as opposed to pressing for equity partnership.

Gender stereotypes are famously resilient. My years as a lawyer and a judge lead me to conclude that part of the difficulty lies in interpretation—what is a big problem for some may go completely unnoticed by others. This incongruity continues to create a great divide between women’s perceptions of their position within the profession—whether as a group or as individuals—and that of their male colleagues. Studies show that the ideological gap between male and female attorneys, who had entirely different views of the issues women faced in the firm environment twenty years ago, remains today.\textsuperscript{69} The 1988 ABA Commission on Women in the Profession report identified “subtle barriers” to advancement of women in the profession.\textsuperscript{70} Women perceived that they had to “work harder, do better and make fewer mistakes” to achieve the same degree of respect as men, and were “treated with a presumption of incompetence” that they had to overcome whereas men were treated with a presumption of competence “overcome only after numerous significant mistakes.”\textsuperscript{71} Men, the report found, “perceive fewer problems of discrimination, and . . . are more likely to regard the issues that greatly disturb women in the profession as silly or trivial.”\textsuperscript{72}

When confronted with these biases, however, the traditional response of male lawyers was to “deny that bias exists or . . . that the profession is responsible,” implying that women themselves were to blame.\textsuperscript{73} Deborah Rhode remarked on this ongoing phenomenon in her 1996 essay \textit{Myths of Meritocracy}, noting that for male attorneys “a common response to gender bias surveys is that barriers have broken down, women have moved up, and full equality is just around the corner,” while women reported incremental progress and that barriers were securely in place.\textsuperscript{74} In a 2001 survey conducted by the New York State Bar Association, male attorneys reported

\begin{itemize}
\item \textsuperscript{68} See Rhode, \textit{supra} note 65, at 15.
\item \textsuperscript{69} See Comm. on Women in the Law, \textit{supra} note 14, at 26–30 (finding that 86% of male but only 67% of female attorneys agreed that male and female lawyers were treated the same; that 93% of males but only 70% of females agreed that female lawyers were compensated the same as male lawyers for comparable work; that, conversely, 44% of females but only 9% of the males agreed that female lawyers have to work harder than male lawyers to get comparable results).
\item \textsuperscript{70} ABA, \textit{supra} note 10, at 3.
\item \textsuperscript{71} \textit{Id.} at 12.
\item \textsuperscript{72} \textit{Id.} at 3.
\item \textsuperscript{73} \textit{Id.} at 13.
\item \textsuperscript{74} See Deborah L. Rhode, \textit{Myths of Meritocracy}, 65 Fordham L. Rev. 585, 586 (1996).
\end{itemize}
that the playing field was equal or close to equal and failed to recognize what women identified as differing standards of reward for achievement, differing measures of competence for advancement, and differing measures of success with regard to diversity programs and initiatives, to name a few.75

Again, this is why statistics are so important. Women who have dedicated a large part of their time and energy to legal careers do not want to see the operation of a double standard within their much-loved profession.76 And some of us from a generation in which these difficulties were even more pronounced learned to be, as Bettina Plevan aptly summarized, “more tolerant of differing treatment and less inclined to demand special treatment.”77 The numbers, however, continue to tell us that we cannot let the exception swallow the rule or, even subconsciously, accept the slow pace of the past twenty years as evidence of a natural progression.

I return to the persistence of stereotypes about family responsibilities (predominantly child raising) that compromise firm expectations, if not policies. Over ten years ago, in response to the landmark report Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession,78 commentators from all sectors acknowledged the need for “a more equal division of parenting responsibilities” as “[w]omen’s career sacrifices are attributable not just to women’s choices but to men’s choices as well.”79 In considering “what has not changed,” this issue strikes a resounding chord because it epitomizes the push and pull, the double-bind, the operation of forces both for and against gender parity that create conflicting perceptions of how far we have come, contributing to stagnation in this area.

Double standards, stemming from the perpetuation of gender stereotypes, exist for men as well as for women. One 1999 survey indicated that almost two-thirds of chief executive officers and human resources directors believed that “none” was a reasonable paternity leave following the arrival of a child;80 in 2006, even as studies reported a greater sharing between spouses and partners of family, childcare, and home-life responsibilities, less than 10% of male lawyers reported taking any significant paternity leave.81

76. See, e.g., Rhode, supra note 65, at 15–16 (attributing this tendency to what psychologists termed the “just world” bias: “lawyers who have achieved decision making positions generally would like to believe that the system in which they have succeeded is fair, objective, and meritocratic”).
80. See Rhode, supra note 67, at 18.
81. Catalyst, supra note 33, at 6.
Firms have demonstrated the capacity for "lightning-fast change" when the upper echelons buy into it. In the same vein, a program can proceed at a snail's pace when it is not entirely accepted as necessary. So I, for one, am not convinced that the profession as a whole is unable to repair the leaky pipeline.

B. Flexibility

The continued existence of gender disparity does not diminish the value of balanced hours programs—intended for use over a particularly challenging period—that increase opportunities for women to succeed within big firms. Although technology has made it possible for lawyers to work from almost anywhere (especially at the associate level), associates seem little more willing to sign on to "formal" part-time programs than they were twenty years ago when the fax and phone were lawyers' only lifelines.

So why, in a world where part-time and flextime have long been accepted as the norm (in 1988, 25.7% of women worked part-time) and long been accepted in the legal profession outside of the associate and partner ranks, has it been so difficult for this concept to gain ground within this sector of the profession? There are several answers.

First, resistance can be attributed to a perception of these programs as a "professional kiss of death." Women lawyers surveyed in large Washington firms in 2002 with near unanimity said that they thought working part-time hurts a woman's career. In another study, over 70% of women who did take advantage of part-time programs reported that the decision derailed their partnership aspirations. This is an area where the generation gap has had a strong influence. In 1988, many of the firms that did institute part-time policies did so understanding that part-time associates

82. Kaye, supra note 3, at 575.
83. See, e.g., Lisa Pulitzer, A Structure of Their Own, N.Y. L.J. Mag., Feb. 2007, at 18; see also Lisa Pulitzer & Wendy Davis, More Than Just Talk, N.Y. L.J. Mag., Feb. 2007, at 14, 17 (noting that Dickstein Shapiro's program allows lawyers who work longer hours when "on trial, or closing a deal" to "compensate . . . by working fewer hours later").
84. See Rhode, supra note 67, at 12.
86. See Kaye, ‘Mommy Track’ in Practice, supra note 4; see also supra note 46 and accompanying text.
87. Williams & Calvert, supra note 54, at 375.
88. In the United States, lower wages for part-time work exist outside of the legal profession. Women working part-time are paid an average of 21% less per hour than those working full-time, and, by some estimates, employees working thirty-four hours earn less than half what those working forty-four hours earn. For professions that operate on a partnership model, however, this hostility with regard to part-time work can impact employees' entire careers by affecting the factors that employers consider to merit advancement. See Warren Farrell, Exploiting the Gender Gap, N.Y. Times, Sept. 5, 2005, at A21.
89. See More Than Part-Time, supra note 39.
were not considered “partnerable.” Although firm policies may now explicitly state that their part-time programs do not derail associates aspiring to partnership, there are still not a lot of examples of part-time associates actually achieving that status.

Second, although career setback may be the overriding concern, many part-time associates also report negative repercussions such as newfound skepticism about their level of commitment, devaluation of their skills, and a decline in the quality of substantive assignments they receive, affording them less training in areas of expertise necessary for advancement. Engagement with the profession as a whole and opportunities for valuable mentor relationships, business development, and pro bono experience are necessarily inferior for attorneys on reduced hours status.

Then too, there are problems inherent in the profession’s concept of the number of hours in a workweek. “Schedule creep” describes the all-too-familiar phenomenon of the part-time associate who ends up working as many hours as a full-time associate yet is compensated at the agreed-upon lesser percentage. This occurs when a part-time associate, in an effort to be accommodating, has more work than she can manage within the hours of the part-time arrangement. As an attorney working 80%-time can already expect to work around forty hours, “schedule creep” can result in part-time employees maintaining a forty-plus-hour workweek. This “part-time” arrangement does little to address the concerns that prompted the attorney to make use of the program in the first place—a program that by all accounts already threatens her professional status at the firm.

Inevitably, these negative factors tend to undermine reduced hours programs, resulting in attrition of part-time attorneys as well. In sum, although there is a marginal increase in the number of attorneys participating in these programs, part-time associates seemingly still have not yet arrived at full first-class citizenship.

If anything has changed in this area, it is that firms are now expected to monitor the success of these programs, hire or designate reduced hours

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90. See, e.g., Jill Abramson, For Women Lawyers, an Uphill Struggle, N.Y. Times, Mar. 6, 1988, at A36.
91. More Than Part-Time, supra note 39, at 21–34; see also Rikleen, supra note 8, at 43–51.
92. See Catalyst, supra note 33, at 11. Catalyst found that 53% of women believed that the use of a reduced or flexible schedule limited their professional development, while only one in five men held the same belief. Id. at 15.
93. See generally Rikleen, supra note 8, at 133–52.
94. Id. at 138.
95. See Cynthia Thomas Calvert & Natalie M. Hiott-Levine, A New Path to Excellence: Balanced Hours 101, in Raise the Bar 113, 121 (Lawrence J. Fox ed., 2007) (finding that traditional part-time programs often exacerbate attrition rates). Once she has tried a part-time schedule and found it unsuccessful, the chances are good that either the lawyer will drop out of the profession entirely and then face barriers to reentry when she tries to resume her career, or will choose to develop her career in the public sector or with a small firm with less demanding requirements.
96. Id.
97. See Rikleen, supra note 8, at 144.
coordinators if necessary, and dedicate firm resources to troubleshooting and creative problem solving when they are underutilized. When used effectively, they have proven capable of stemming the tide of associate attrition and attracting women who plan, from initial recruitment, on staying the course with a large firm.

Flextme, on the other hand, is what many attorneys unwittingly practice on an everyday basis. (How many lawyers work all night while a case is at trial and, understandably, are barely seen the week after it ends? Or, how many come in early to prepare for a meeting, then take work home at midday?) Flexible schedules are just that: they allow attorneys to structure work hours among the office, home, and outside obligations—arrangements

98. To this end, the Project for Attorney Retention formulated a six-factor objective test to measure whether a firm is running a successful program. It includes measurement of the usage rate of the program by gender, the median number of hours worked and duration, schedule creep, comparison of assignments before and after assuming part-time (“balanced hours”) status, comparative promotion rates of attorneys on standard and reduced hours schedules, and comparative attrition rates of attorneys on standard and reduced hours schedules. See Project for Attorney Retention, Usability Test, http://www.pardc.org/LawFirm/PAR_usability_test.shtml (last visited Jan. 22, 2008).

99. According to one survey, nearly all of the women who worked part-time and stayed with their firms said that the availability of part-time programs affected their decision to stay (or to join the firm in the first place), and “[m]any senior associate Respondents and virtually all” of the partners with reduced hours arrangements had been at their firms longer than the average full-time associate. More Than Part-Time, supra note 39, at 4, 36; see NYWBA Spotlight on Haynes Boone (N.Y. Women’s Bar Ass’n, New York, N.Y.), Jan. 2008, at 4. (reporting that the example of women who have been at Haynes Boone for twenty years and managed full careers and families has provided a positive example for younger attorneys interested in joining the firm); see also Chanow, supra note 32.

Two notable examples of programs that incorporate flexible hours into successful women’s initiatives, although outside of the law firm context, are accounting firms Deloitte & Touche and Ernst & Young. One component of Deloitte’s program, called “Mass Career Customization,” charts “career aspirations and changing life circumstances” over a thirty-year period, and attempts to align these shifts with its own market needs. Deloitte & Touche, The Initiative for the Retention and Advancement of Women, 2006 Annual Report 34 (2007), available at http://www.deloitte.com/dtt/cda/doc/content/us_win_ar2006_270307.pdf. Deloitte’s 2006 annual report on the Initiative for the Advancement and Retention of Women claimed two consecutive years of eliminating the gender gap in attrition rates and continued strides toward equalizing promotional levels. Id. at 1. In 1992, 3 women were selected as partners, principals, or directors, compared to 134, or 32% in 2006; 54% of Deloitte’s rehires were women in 2006. Id. at 13. Ernst & Young was the recipient of Catalyst’s Award for Advancing Women in Their Ranks in 2003, based on the success of its women’s initiative. Since the initiative commenced in 1996, the representation of women at the partner, principal, and director level has tripled, from 5% to 15%, and the promotion rate for women at the partner level more than doubled between 1996 and 2002—from 12% to 25%. The presence of women in the management ranks increased from zero in 1996 to 15% in 2006. Press Release, Ernst & Young, Ernst & Young Ranked in the Top 10 Among the “100 Best Companies for Working Mothers” (Sept. 25, 2006), http://www.ey.com/global/content.nsf/US/Release__09-25-06DC. These initiatives reportedly have saved these firms up to $41 million per year. Calvert & Hiott-Levine, supra note 95, at 115.

100. One in four Canadian lawyers reported using flexible work arrangements when that term was defined to include telecommuting and selection of in-office hours. See Catalyst, supra note 33, at 4. Partners were more likely to use these programs than associates. Id. at 10.
that are aided in an environment where conference calls and e-mail constitute a large part of client interactions, and BlackBerries ensure that everyone is in constant communication. As a result of these changes in the way lawyers communicate and structure their time, this is an area that to some degree has remained unchanged on paper yet has seen marked change in daily life. Although statistics show small gains in their formal use, informal use of flexible arrangements is inescapably paving the way for institutional acceptance.

Studies show that the present generation of large firm associates, faced with no alternative to the billable hours model and with a BlackBerry as a constant companion, will seek flexibility in scheduling. Many associates plan on remaining at a firm only for the time it takes to pay off student loans, and others consider a few years at a large firm a valuable educational experience on the way to another legal career. Workable part-time and flextime (as well as reentry) programs help to attract and retain talented lawyers. Competition among firms based on work/life balance is an unmistakable sign that change is underway.

C. Billable Hours

The bill-by-the-hour economic model was introduced in the 1960s, in part to respond to potential antitrust issues created by bar association fee schedules and in part to address client demands for greater accountability.

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101. See Calvert & Hiott-Levine, supra note 95, at 117 (noting that “[s]eventy percent of men in their 20s and 30s said that they would be willing to take lower salaries in exchange for more family time”).
102. See id.; see also Chanow, supra note 32; Dreessen, supra note 52 (explaining that the younger generation of women want more balanced work lives than their predecessors and do not believe that they are required to sacrifice time with their families in order to have successful careers). As a result, some partners look at new associates merely as “cannon fodder” rather than as true colleagues or future potential partners. See, e.g., Michael H. Trotter, A Pig in a Poke? The Uncertain Advantages of Very Large and Highly Leveraged Law Firms in America, in Raise the Bar, supra note 95, at 33, 39.
and precision in billing.\textsuperscript{104} It became the choice of law firms nationwide by the late 1970s.\textsuperscript{105} Over the years, as firms have increased the number of hours attorneys are expected to bill, the system has been blamed for everything from the balance of work/life issues and high attrition rates among associates\textsuperscript{106} to assaults on the reputation of the profession.\textsuperscript{107} Although the billable hours model and the firm culture it creates affect both genders, it has taken a particularly high toll on women attorneys, who are more likely at some point in their professional lives to experience irreconcilable conflicts between meeting both firm billing minimums and family responsibilities.\textsuperscript{108}

The billable hours model is the premier example of what decisively has "not changed" in the past twenty years. Although there are conflicting accounts of the magic numbers expected by large firms both in 1987 and now—for every article that says the number has increased to an unthinkable 2500-plus per year there is another that reports averages around 1750 or 1800\textsuperscript{109}—the universal acceptance of the system, at least by large firms, has not been challenged. And as with the flextime or part-time option, it has long been a truism that firms expect, and reward, a time commitment that exceeds the stated minimum, so it is hard to pinpoint the actual number of hours lawyers are "expected" to bill.\textsuperscript{110} Moreover, studies estimate that 1.5 actual working hours are spent for each billable hour.\textsuperscript{111}

As the literature reflects, complaining about problems inherent in the billable hours system has long been popular. It has been criticized as, at best, conferring clarity at the expense of rewarding inefficiency, and at

\begin{itemize}
  \item \textsuperscript{104} See ABA Comm'n on Billable Hours Report, at ix (2002); Lawrence J. Fox, \textit{End Billable Hour Goals… Now, in Raise the Bar, supra} note 95, at 15, 16.
  \item \textsuperscript{105} See Fox, supra note 104, at 16.
  \item \textsuperscript{106} See Rikleen, supra note 8, at 310. When the billable hour was first introduced, lawyers on average billed around 1300 hours per year. See ABA Comm'n on Women in the Profession, supra note 61, at 7.
  \item \textsuperscript{107} See ABA Comm'n on Billable Hours Report, supra note 104, at ix; see also ABA Young Lawyers Div., Life in the Balance: Achieving Equilibrium in Professional and Personal Life (2003), available at http://www.abanet.org/yld/about/writtenguide03.pdf.
  \item \textsuperscript{108} See More Than Part-Time, supra note 39, at 7.
  \item \textsuperscript{109} Milbank, Tweed, Hadley & McCloy LLP reported an average of approximately 1800 billable hours for both partners and associates in 2006. But see Scott Turow, \textit{The Billable Hour Must Die}, A.B.A. J., Aug. 2007, at 32 (noting that today's minimum hovers around 2100 to 2200 whereas the expectation for Chicago firms in 1986 was 1750 to 1800 hours). The 2002 ABA study reported an average minimum requirement of between 1750 and 2050 hours, with bonuses tied to 2100 and 2200 hours, on average. See ABA Comm'n on Billable Hours Report, supra note 104, at 45–46. In 1987, the ABA Commission on Women in the Profession heard testimony that "[2100], 2200 and 2500 billable hours per year are not uncommon." ABA, supra note 10, at 16.
  \item \textsuperscript{110} Some firms set bonus benchmarks at hourly increments above the minimum required. In such a case, of course, an associate achieving merely the minimum would be less compensated, and likely less valued, than one meeting additional benchmarks.
\end{itemize}
worst, contributing to padding of hours and ethical conflicts. It has more recently been criticized for its tendency to discourage knowledge sharing now available through the technological exchange of substantive resources.  

As for lawyering, the need to bill a certain number of hours encroaches on time available for developmental activities once a cornerstone of the profession, such as mentoring, continuing education, and pro bono representation. Its impact is felt even within the realm of billable activities, as many junior associates report that they simply do not write as much—clients often prefer research results in e-mail sound bites instead of legal memos, which take less time but do not develop composition and drafting skills essential to good writing. (Trust me when I say that a good brief makes a real difference in the outcome of a case.)

The simple, disturbing conclusion of most reports is that working under such a model promotes unhappiness for young attorneys. As lawyer/novelist Scott Turow recently wrote, horrified at his daughter’s intent to become a litigator, the firm environment under the billable hours model has become “a highly paid serfdom—a cage of relentless hours, ruthless opponents, constant deadlines and merciless inefficiencies.”

So why has the billable hours system persevered, and why is it far from being phased out in favor of a value-based, or even possibly hybrid, system? In a 2002 study, the ABA’s Commission on Billable Hours concluded that, apart from general resistance to change, it is profoundly difficult to calculate the value of lawyers’ services. This is true for several reasons: for one, it is not possible to predict the value of, for example, a motion that is granted as opposed to denied; for another, the level of expertise on a particular (possibly tangential) issue varies from firm to firm and even a “standard” service can differ vastly in complexity between similarly situated clients. The system, moreover, is profitable for firms, relatively easy to administer, and can be attractive to clients as it

112. See Terry Carter, New Routes into the Corporate Door, A.B.A. J., Aug. 2007, at 36 (describing the services offered by LegalOnRamp, an online service provider whose members collaborate on legal knowledge and strategies and whose mission includes the “development of business process and metrics classification systems for the legal industry,” and benchmarking surveys”).

113. This explains why, although only 7% of associates reported a “[d]esire to reduce billable hours” and 9% a “[d]esire to gain a more regular schedule” as a reason for leaving a firm, other qualitative or performance-related reasons, as well as lack of support in areas such as mentoring and training, can be traced back to the billable hours model. See, e.g., NALP, Update on Associate Attrition, supra note 7, at 32.

114. This is based on informal discussions with junior associates at large firms. See Trotter, supra note 102, at 47.

115. See, e.g., Bruce D. Collins, A View from Outside the Law Firms, in Raise the Bar, supra note 95, at 87, 97; Robert L. Nelson, Organizational Perspectives on Raising the Bar: Five Tentative Solutions, in Raise the Bar, supra note 95, at 53, 53.

116. Scott Turow, Our Gilded Cage, in Raise the Bar, supra note 95, at 3, 5.

117. ABA Comm’n on Billable Hours Report, supra note 104, at 8.

118. Id.
avoids cumbersome and difficult “big picture” analysis. The model, finally, can be applied to any legal services, regardless of the size of the firm or the skills involved. These benefits support both firms’ beliefs that clients prefer such a system and clients’ beliefs that it is the firms who refuse to budge from the model.

The profession, moreover, has been hard pressed to come up with a different model. Proposed alternatives have largely remained the same for decades. The only notable change is that use of these alternatives has increased incrementally, including contingent fees, flat fees, blended billing rates, success premiums, retainers, value-based billing, or other individualized arrangements, each with its own deficiencies. Even the system’s strongest detractors admit that abandoning the billable hour entirely is simply not realistic. No wonder the system is so entrenched.

III. SOLUTIONS OR JUST THE SAME OLD SUGGESTIONS?

Plainly, the terms coined to describe the problems identified in this debate outnumber the ideas circulating to resolve them. And as some of the most resilient issues may require wholesale change in firm culture rather than attention to specific problems, it is likely that comprehensive change will occur only as a byproduct of more women in management positions and a shift in the economic model. In the meantime, however, investment in paradigm change may be measured incrementally through some of the more successful—and creative—approaches that have been taken.

First, however, I must comment on the recent deluge of reports ranking firms with regard to diversity, work/life balance, commitment to pro bono,

119. The Commission concluded that billable hours agreements alleviated the tensions of law department attorneys by focusing on hourly tasks rather than requiring them to “think about the larger contribution to their company of the law firm’s services.” Id. at 9.
120. Id.
121. Id. at 15, 19.
122. ABA Comm’n on Billable Hours Report, supra note 104, at 15. Contingent fees are in some cases unethical; flat fees may provide a disincentive to settlement and are risky due to inherent overruns; outcome-based billing is risky for obvious reasons and not particularly amenable to relationship representation of corporate clients on an array of related and unrelated matters; value-based billing requires an extraordinary level of client trust and risk on both sides.
123. Id. at 19.
124. See ABA Young Lawyers Div., supra note 107; see also ABA Comm’n on Billable Hours Report, supra note 104, at 41–59 (suggesting ways to make the billable hour system work better overall); Turow, supra note 109, at 36. But see Fox, supra note 104 (proposing a firm compensation model focused on qualitative evaluation of legal work and other professional activities). This proposed compensation model, however, does not address the relationship of compensation to billing, or suggest an alternative billing model. See Steven G. Nachimson, Time to Eliminate Hourly Billing, N.Y. L.J., Jan. 28, 2008, at 14; see also Lisa Belkin, Who's Cuddy Now? Law Firms, N.Y. Times, Jan. 24, 2008, at G1 (noting that firms, large and small, are backing away from the billable hour or adjusting hourly requirements).
and everything else imaginable. While informative, these lists can be misleading and contradictory. But even if such statistics are flawed as a measure of a firm’s overall merit, the lists do serve as watchdogs that keep firms on their toes with regard to the numbers game. Whether such a strategy turns paper initiatives into invested efforts has yet to be seen.

Rankings aside, many large firms (and corporations) have, over the last twenty years, been creating and strengthening programs aimed at removing the barriers to increased female representation at the top (the “50/15/15” conundrum). Internally, recurring themes include implementation of business models that reward attainment of diversity goals and renewed focus on the reentry market for female attorneys. Externally, several firms have signed on to initiatives that set benchmarks for hiring and promotion of women and minorities and participate in bar association activities that require a base level of commitment to these groups’ agendas. (Media coverage of these initiatives does not hurt either.) Furthermore, there is pressure to meet the expectations of corporations that factor diversity into selecting their lawyers and pressure from legal resource companies that incentivize corporations to choose legal services based on competitive flat-fee bidding for standardized services, enabling a bit of distance from the billable hour.

Finally, and perhaps most importantly, more women attribute their successes to personal accountability—taking control of their careers in ways not thought possible twenty years ago: engaging in strategic planning to chart a course for advancement, setting limits on their time that are


126. The Stanford group and Yale Law Women’s rankings often differ, presumably due to the fact that they measure different variables: Building a Better Legal Profession counts heads while Yale Law Women looks at benefits, for one example. See, e.g., Paul Needham, In Rankings, Yale Law Groups Evaluate Quality of Life at Firms, Yale Daily News, Oct. 30, 2007, http://www.yaledailynews.com/articles/view/22105 (“The two groups’ rankings often diverge in their results—sometimes starkly. New York law firm Proskauer Rose, which ranked second on Yale Law Women’s list this year, received only an overall diversity grade of C– from Building a Better Legal Profession.”) Others say that these discrepancies indicate that there is no “truly family-friendly law firm.” Id.


128. See supra note 13 and accompanying text.

129. Due to the increased gender neutrality and overlap within categories, many firms organize women’s initiatives as subcommittees of broader diversity programs that address the concerns of women, minorities, and gay and lesbian lawyers. See, e.g., Milbank, Tweed, Hadley & McCloy LLP, Diversity at Milbank, http://www.milbank.com/en/Diversity/Milbank_Affinity_Groups.htm (last visited Jan. 22, 2008).
respected by colleagues and firm management without sacrificing the needs of clients, developing external support systems, and, when a large firm cannot provide sufficient opportunities for professional enrichment, opening or joining smaller firms where they can have greater control. These strategies have resulted in notable successes, a few of which follow here.

A. Structuring the Firm to Achieve Results

Successful diversity initiatives increasingly give businesses a competitive advantage in a global market. As the benefits of this market-based approach have been evident to corporations—especially multinational corporations—they understandably have been leaders and innovators in the development of outcome-based diversity initiatives (including women's initiatives).

Corporations have approached the issue as one best solved through use of a business model. In 2006, the Minority Corporate Counsel Association published a report on corporate law department best practices based on its study of forty-eight companies representing a wide range of businesses and legal departments. The report included a model demonstrating the different levels at which corporate legal departments were operating with regard to their diversity efforts. As the model made clear, any successful initiative requires at least one full-time, high-ranking officer responsible for the program's ongoing efforts as well as for monitoring its progress, establishing a means for characterizing and dispersing such information, and creating incentives (at the program's highest level, compensation is often tied to diversity benchmarks). Other elements can include succession planning (i.e., implementing management responsibility for ensuring that women and minorities are in line and reviewed for higher

130. The Minority Corporate Counsel Association categorized the results in a three-tiered system. Compliance, the bottom tier, requires only that the corporation meet federal, state, or local government contractor requirements regarding affirmative action and equal employment opportunities. See Minority Corp. Counsel Ass'n, Creating Pathways to Diversity: A Study of Law Department Best Practices 6 (2006), available at http://www.mcca.com/_data/n_0001/resources/live/Pathways_Green_2005_book.pdf. Characteristics of companies in the second tier, diversity, assign responsibility for monitoring and reporting on progress on diversity within the law department, externally track spending with minority- and women-owned law firms as well as majority-owned firms committed to diversity, and/or addresses the advancement of these goals through performance reviews. See id. A company that reaches tier three, inclusion, has enacted a formal plan for diversity with measurable objectives and reports reviewed by senior management whose compensation is tied to the results of such efforts. See id. Each tier has different expectations regarding the level of incorporation of recruitment, retention, external diversity, and metrics measurement tools. See id.

131. See Kara Mayer Robinson, Minority Corp. Counsel Ass'n, Beyond the Basics: Three Corporate Legal Departments Take Diversity Efforts to the Next Level, http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=1395 (last visited Jan. 22, 2008) (stating that Lucent Technologies' general counsel decided to tie some initiatives to compensation in order to "put[] some teeth in it").
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positions), use of metrics to measure the economic effects of meeting diversity goals, communicating diversity policies and accomplishments via a web site or a newsletter, and designating outside firms distinguished in diversity as preferred providers while removing low performers from approved outside counsel lists.

Although few, if any, law firms have adopted a precise business model with regard to women’s initiatives, firms receiving consistently high marks for diversity and quality of work life have executed internally some form of at least two of these proven strategies. First, they have created formal, staffed women’s initiatives (incorporating flexible schedules) involving senior management and engaging men as well as women as their champions. Initiatives such as these make work life better for everyone. Second, they measure and report the progress of these programs firmwide and in some cases externally, and engage the media to achieve some level of transparency with regard to their efforts.

132. Minority Corp. Counsel Ass’n, supra note 130, at 24.
133. For a corporation (as well as for a law firm, presumably), metrics programs can measure the effect diversity has on business outcomes such as total costs, total recoveries, and total payouts, using elements such as placements, new hires, promotion rates, turnover costs, retention differentials, compensation analysis, and complaints/grievances. Id. at 6; see also Hewlett & Luce, supra note 37, at 50.
134. DuPont Corporation, for example, developed the DuPont Legal Model in 1992 to create more efficiencies in managing the delivery of in-house and outside counsel. From its inception, the model put a mechanism in place to ensure diversity with regard to selection of outside firms and service providers. These efforts have produced measurable results with regard to percentages of women and minorities representing DuPont and employed by DuPont’s outside counsel. See DuPont, Setting the Standard in Corporate Law, http://www.dupontlegalmodel.com/ (last visited Jan. 22, 2008); see also Minority Corp. Counsel Ass’n, supra note 130, at 24–34.
135. Morrison & Foerster, ranked first in diversity for 2003 to 2007 (second for 2008) and in the top ten in quality of life by Vault.com, instituted a formal, firmwide program over ten years ago. See Morrison & Foerster, Diversity at Morrison & Foerster, http://www.mofo.com/about/diversity/index.html (last visited Jan. 22, 2008). In 2003, Morrison & Foerster formed a Diversity Strategy Committee comprising partners, the chair of the firm, and the firm’s managing partners for operations, with the goal of advising the firm’s board of directors and management of “what the firm’s major diversity objectives should be and [to] provide strategic direction to the firm to achieve those goals.” Morrison & Foerster, Diversity Initiatives, Committees, Policies, and Achievements #2 (n.d.), available at http://www.mofo.com/docs/pdf/DiversityExecutiveSummary.pdf. Dickstein Shapiro (taking first place in the 2008 Vault survey) supports its efforts with full-time diversity/pro-bono counsel, has women managing partners in its New York and Los Angeles offices, and has a formal women’s initiative with reduced hours policies that maintain partner candidacy for any attorney working 50% or more and compensate for excess time worked due to “schedule creep.” See Dickstein Shapiro, Women’s Leadership Initiative, http://www.dicksteinshapiro.com/firmoverview/diversity/women/ (last visited Jan. 22, 2008).
136. Holly English, president-elect of NAWL, said “[T]he key question is how these firms intend to measure the success of their programs,” cautioning that “without a measurement plan in place, management could view many of these programs as failures.” Pulitzer & Davis, supra note 83, at 14; see also Women Play a Less Significant Role in Firm Governance, L. Off. Mgmt. & Admin. Rep. (Inst. of Mgmt. & Admin., New York, N.Y.), Jan. 2007, at 1. This also brings to mind a sign I saw displayed by a manufacturing client I represented years ago: “People do what you inspect.” I think this is a basic, enduring truth.
Another recent internal development is firms’ recruitment from a “reentry pool” of women lawyers—a group that has long been marginalized. Corporations again lead the charge in this respect; some have gone so far as to track women’s professional lifespans and build flexibility (lower hours and less travel during a period of child or elder care, for example) into the arc of an entire career, correlating changing life circumstances with the company’s needs. Initiatives such as these can go a long way toward serving the best interests of clients, permitting valued relationships to continue through periods of reduced engagement.

Firms are reportedly also beginning to realize the benefit of employing attorneys who are not only experienced but often rejuvenated and enthusiastic about starting the second phase of their practices, and they are willing to expend resources and expand their women’s initiatives to focus on recruiting from this group. Some have also put support systems in place to keep women involved and associated with the firm, with an eye toward their return. Studies indicate that these measures, with the addition of offering reentrant skills development and lowering expectations during the “step-in” period, will assist in making reentry and reattachment viable options.


139. See also Hewlett & Luce, supra note 37, at 54 (noting that with women composing 58% of college graduates and nearly half of professional degrees, and projected to grow disproportionately over the next decade, firms such as Goldman Sachs realize that “it is in our direct interest to give serious attention to these matters of retention and reattachment”).

140. Skadden, Arps, Slate, Meagher & Flom’s new program, Sidebar, ensures that new mothers home for a period of time keep in touch with the firm by assigning candidates mentors, inviting them to programs, and allowing them to take on ad hoc work when they are ready. See Pulitzer & Davis, supra note 83, at 14, 17.

141. See McGrath et al., supra note 41, at 16. Until firms begin to understand the “complexities of women’s nonlinear careers” and incorporate support structures as a standard component of their women’s initiatives, many women lawyers will continue to experience frustration and isolation upon attempting to pick up where they left off, and the pipeline will continue to leak. See, e.g., id. at 9; Williams et al., supra note 35, at 16.
In sum, what we learn from the business model approach to system change adopted by corporate forerunners is that firms can create formal programs and ensure accountability for results through engaging senior management and allowing a certain amount of transparency, if not visibility, in their efforts.  

B. Response to External Demands

Outside organizations, legal service providers, and corporate client agendas can exert pressure on firms to compete within fields such as diversity and quality of life. The San Francisco Bar Association's No Glass Ceiling initiative, created in 2001, has since been replicated (with substantial variation) in Sacramento and Chicago. It requires signatories to commit to taking "concrete steps" to achieve, among other things, at least 25% representation of women at the partner level by 2010 with an approximate pro-rata percentage in management (or the equivalent for public sector and corporate legal departments). As of September 2006, the Bay Area was so far ahead in percentages of women partners that the

142. Sidley, Austin, Brown & Wood was honored by Catalyst in 2005 for appointing thirteen women of thirty newly appointed partners, a rate of 43%. The firm attributed its achievement to its policy of "reduced-hour schedules, extended maternity benefits, group mentoring for women and—most importantly—partner accountability for the overall success of the program." Thomas Adcock, Promotion of Women Brings Sidley Honors, N.Y. L.J., Apr. 1, 2005, at 16; see also Pulitzer & Davis, supra note 83, at 17 ("Women have told [Timothy Goodell, co-head of mergers and acquisitions and a member of White & Case's management board] that having a member of the firm's management board on their side adds credibility to the push for equal opportunities.").


145. Other objectives include having at least one female chairperson or managing partner by 2010; achieving approximately equal retention rates for male and female attorneys beginning in 2007; collecting feedback from employees on gender issues and addressing unconscious gender bias; providing statistical information to NALP and the San Francisco Bar Association; providing networking opportunities, developmental activities, and projects geared at management training; embracing part-time and flexible work schedules; and establishing gender neutral origination, billing, and responsible attorney credit procedures. See Bar Ass’n of S.F., Breaking the Glass Ceiling Updated Commitments: Through January 2010 (2008), available at http://www.sfbar.org/forms/about/ngc_committments.pdf.
regional benchmark was increased by 5%.\textsuperscript{146} At the same time, not every bar association has chosen to take this approach.\textsuperscript{147}

We have also seen the advent of Internet-based companies that offer forums for negotiating value for legal work or outsourcing parts of their legal budgets.\textsuperscript{148} Some of these companies perform simple document review and other discovery tasks, others are based on information sharing within an online community of corporate in-house counsel and law firms,\textsuperscript{149} still others incorporate use of a bidding process.\textsuperscript{150} Although not every law firm would be comfortable with this discount-oriented method of providing legal services, some corporations and firms report that they have found the experience of soliciting and submitting flat-fee proposals illuminating even if not ideal for all legal services.\textsuperscript{151}

Finally, as another recent development, some large corporations have created diversity requirements (both formal and informal)\textsuperscript{152} that are instrumental to selection of their law firms.\textsuperscript{153} Shell Oil Company’s approach is to “have key law firms that we’ve identified and to whom we give most of our work,” to “designate who will be on the Shell team within

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147. Pledge commitments can be difficult to keep and not everyone agrees with the affirmative action aspect. See, e.g., Jon A. Geier & Holly R. Lake, Meeting the Diversity Challenge: Race and Gender-Conscious Decisions in Recruiting, 763 Prac. L. Inst. 825 (2007) (discussing the risks of reverse discrimination claims with regard to making diversity a factor in employment decisions but advocating use of such programs where underutilization is proven, the action taken is narrowly tailored and not permanent, and appropriate exceptions exist); see also Johnson v. Transp. Agency, 480 U.S. 616 (1987).
150. See eLawForum, http://www.elawforum.com/how.adp (last visited Jan. 22, 2008). This particular company works with clients to analyze areas of work that can be aggregated, analyzes what these services have cost in the past, then submits a “joint venture” bid. \textit{Id.} Company-selected law firms submit proposals, and although the client chooses the firm, the company provides “quantitative and qualitative” analysis of each proposal, earning a percentage of the savings below the estimated cost. \textit{Id.} It only permits bidding on a flat-fee basis. \textit{Id.; see also ABA Comm’n on Billable Hours Report, supra note 104, at 31.}
151. See ABA Comm’n on Billable Hours Report, supra note 104, at 34–35.
153. Between 2000 and 2005, over 500 general counsels signed a document titled “Diversity in the Workplace: A Statement of Principle” to show commitment to diversity in the legal profession. See Minority Corp. Counsel Ass’n, supra note 130, at 4. In addition, similar to the glass ceiling initiatives created by various bar associations, more than 90 had signed a “Call to Action,” agreeing to “actively look for opportunities to work with law firms that distinguish themselves in terms of diversity and to end or limit their relationships with law firms whose track records reflect a lack of meaningful interest or progress in diversity.” \textit{Id.} at 4–5.
the law firm,” and to “pick those lawyers to ensure that there’s diversity.”154 The company issues a diversity scorecard rating each strategic partner, reviews the results yearly, and issues written expectations for improvement if necessary.155

C. Focus on Individual Goals

In researching this Essay over the last months, I met with women lawyers, many of whom have crossed my path over the years as law clerks, litigants, or colleagues. When asked about their own achievement, invariably the conversation would return to personal, individual accountability for their own happiness. This may seem like a no-brainer, but studies have shown that women find it more difficult to state what they want and what they need in order to achieve professional satisfaction.156 As one former law clerk, now a large law firm partner, aptly summarized, rather than proving their skills as a “worker bee,” women need to put themselves in success mode, even as a part-time practitioner.

So what is “success mode”? It differs, of course, for each of us, yet there are common denominators shared by the women with whom I spoke. First, at a relatively early stage in a woman lawyer’s career, she must decide what kind of lawyer she wants to be and insist on some degree of personal autonomy. Second, she must set up a support structure. Absent a stay-at-home spouse157 (and there are many more stay-at-home dads today), we need 100% buy-in from our partners. There must be recognition and acceptance of the time commitment that law firm life requires—even reduced hours schedules equal a significant time investment when compared to other careers—and a willingness to share family responsibilities. Support structures may also include external mentoring groups, both formal and informal.158 Increasingly women lawyers are finding that the sharing of intergenerational experiences, as well as those


155. Id. at 7.

156. See Timothy L. O’Brien, Why Do So Few Women Reach the Top of Big Law Firms?, N.Y. Times, Mar. 19, 2006, § 3, at 1. Bettina Plevan, Proskauer Rose partner, explained that “[s]aying these two words, “I want,” is not something many women are used to doing... They have a different style of self-promotion. But women need to learn how to be comfortable saying, “I want,” and how to say it effectively.” Id.

157. So-called “wife-envy” is reportedly a common (if often ironic) complaint among working women who see “their lack of devoted spousal support as an impediment to getting ahead in their careers, especially when they are competing against men who have wives behind them, whether those wives are working or staying at home.” Shira Boss, Wedded to Work, and in Dire Need of a Wife, N.Y. Times, Aug. 11, 2007, at C6.

from different sectors of the profession, can help them confront institutional barriers.\textsuperscript{159}

Third, she must be able to produce quality work. For a large firm associate, this includes being able to let partners know what the limits are, even if their initial response is less than gratifying. A former law clerk of mine described it as "setting boundaries." She noted that she would much rather work with a part-time associate who had firmly established her unavailability after 5 p.m. than with a full-time associate who, although technically "available," had difficulty fulfilling assignments. These personal "boundaries" obviously cannot ignore the tradition of the last-minute crunch (unavoidable even with the best-laid plans), but can operate to balance high intensity periods with lesser ones.

I recognize that this is easier said than done. Asking for more money, acknowledging limits, claiming credit for work done, and bringing business into the firm are generally still harder for women. Decades ago, as a big firm associate with young children, I found myself in an impossible situation—traveling weekly to a trial in another city. My solution was simply to tender my resignation rather than ask for special treatment; thankfully it did not come to that, but even then I learned that speaking up was a good idea. Assertiveness with regard to compensation and benefits, however, is reportedly more common given the ease with which associates make lateral moves. Moreover, women associates have a greater appreciation of their own worth as firms see that periods of lighter workloads due to family responsibilities may produce longer-term advantages.

Ultimately, some women find that leaving and joining or opening a small firm is their best option.\textsuperscript{160} Women who "set up their own shop"\textsuperscript{161} not only have more control over their schedules and professional development,\textsuperscript{162} but also often find that they can explore specialties in

\textsuperscript{159} See id. Some firms are experimenting with offering this kind of experience themselves. Proskauer Rose has invited clients and guest speakers to participate in women’s forums with the goal of providing “an opportunity for women in-house counsel to get to know each other, and to meet the female partners at Proskauer,” explained labor and employment partner Elise Bloom. Pulitzer & Davis, supra note 83, at 16. “Reverse mentoring”—the juniors enlightening the seniors—also reflects the benefit of these intergenerational relationships. See Terry Carter, Recipe for Growth, A.B.A. J., Apr. 2004, at 85.

\textsuperscript{160} ABA 2007 Margaret Brent Award recipient Roxana C. Bacon created a woman-owned firm that used value billing and case management software that enabled firm lawyers to work from anywhere at anytime. See 2007 Margaret Brent Awards, Roxana C. Bacon, available at http://www.abanet.org/women/bios/BaconBio.pdf.

\textsuperscript{161} See DVD: ABA 17th Annual Margaret Brent Awards Luncheon, Remarks of Roxana C. Bacon, Aug. 12, 2007 (Madtown Media 2007) (on file with author).

\textsuperscript{162} See Pulitzer, supra note 83, at 18 (finding that lawyers at the women-owned firm of Moran Karamouzis were looking for “balance, to be the decision makers, to have more control over [their] lives”). I am delighted to know, and know of, several women-owned law firms. See, e.g., Elizabeth Stull, For These Small Firm Partners, Gender Is Not an Issue, Law.com, Oct. 17, 2005, http://www.law.com/jsp/law/sfb/lawArticleSFB.jsp?id=1129280712639.
nontraditional practice areas\textsuperscript{163} or explore fields of particular interest to women such as employment law, including discrimination and harassment.\textsuperscript{164} Of course, many women do not have the resources available to start their own firms at the time when they most need a flexible schedule, and not every switch to a small firm comes with a reduced time commitment.

\textbf{CONCLUSION}

Of late, I find myself increasingly enmeshed in conversations on the subject of women lawyers at big firms—with lawyers of all ages, in various stages of life, in all sorts of places—and each encounter invariably produces new insights, people to call, and materials to read. Clearly, at some point this Essay must end although the discussion is admittedly incomplete; it necessarily continues, and it changes.

I feel comfortable reaching only these conclusions. First, this is a hot topic today, which I know simply from the voluminous current materials. Even as I completed my research, new sources came across the transom, adding new ideas and new references.\textsuperscript{165} Twenty years ago, my essay on the subject was barely fifteen pages long; the literature was sparse. Hopefully, all the attention to what is concededly a problem will stimulate more solutions.

Second, it is, for all of us, an important topic, with important ramifications. It is important because success in large firms (whether or not you see them as the pinnacle of the profession) is a desirable short- and long-term option for women lawyers, just as it is for male lawyers who pursue that career path; it is important because these firms have the skill and resources to find ways to minimize continuing disparities; and it is important because of the firms’ extensive influence.

Third, while my focus remains on women—and hopefully the substantial number of senior women lawyers in firms today can be especially helpful in preparing newer lawyers for the bumps in the road—in truth these issues increasingly have become genderless life issues, offering a special incentive for men as well as women to seek out solutions. Productive legal careers these days may go on for four or more decades. Surely ways can be found to navigate a particularly challenging period that typically falls at the mid-associate level, enabling women to later enjoy their families as well as leadership in their firms, in the profession, on the bench, and in public life. For now, I see genuine avenues of opportunity in mentoring and support

\begin{itemize}
  \item \textsuperscript{163} Intellectual property law, health care, and finance are three areas that have seen increased interest by women lawyers. See Robert Ankeny, \textit{Women in Law: Intellectual Property, Health Care Among Growth Areas for Women in Law}, Crain’s Det. Bus., Aug. 20, 2007, at 11.
  \item \textsuperscript{164} See id.
  \item \textsuperscript{165} See, e.g., Lisa Belkin, \textit{Some Orders That the Boss Should Heed}, N.Y. Times, Dec. 27, 2007, at G2; \textit{see also} Belkin, supra note 124; Sklaroff, supra note 67; Alex Williams, \textit{The Falling-Down Professions}, N.Y. Times, Jan. 6, 2008, at G1.
\end{itemize}
programs, in part-time, flextime, and reentry programs, and in exploring alternatives to the billable hour. This list can never be exclusive. Vigilance in the pursuit of creative solutions for these ever-changing life issues can only make firms, and the profession, better for everyone.

Finally, I recognize that statistical parity remains elusive and may not even be possible. The progress that I envision is more accurately reflected in whether women perceive that they truly have a choice, and whether the role they play at their firms helps to influence choices available for the next generation. I predict that significant advances toward these goals will be the conclusion of Fordham Law Review's next twenty-year update.