
BREAKING THE GLASS CEILING

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Achieving gender equity in the workplace is more than a “women’s issue,”—the glass ceiling is a fundamental business issue that negatively affects the growth, economic prosperity, recruitment, and business development of law firms and legal departments nationwide. Retention and promotion of women lawyers are crucial aspects of a smart business plan.

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By Angela M. Bradstreet

Clara Shortridge Foltz, admitted to the bar in 1878 and the first woman lawyer in California, once observed that “they called me the lady lawyer, a dainty soubriquet that enabled me to maintain a dainty manner as I brow-beat my way through the marshes of ignorance and prejudice.”¹ Once, during a closing argument, Foltz’s opposing counsel informed the jury that “[s]he is a woman, she cannot be expected to reason. . . . This young woman will lead you by her sympathetic presentation of this case to violate your oaths and let a guilty man go free.”²

This may seem an extreme case of obvious bias, one that can be attributed to nineteenth century attitudes and perhaps a petulant opposing counsel, until we remember that 50 years ago Justice Sandra Day O’Connor was unable to find work in a law firm after graduating with honors from Stanford University. No firm would hire her as an attorney because of her gender, but finally one firm offered her a job as a secretary. To avoid this fate, she took

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the position of deputy county attorney for San Mateo County, California, the first of many public service jobs during her lifetime.

Without doubt, progress has been made since 1878, or even 1952, when O’Connor left Stanford. Indeed, we have seen a substantial growth of women lawyers in the past 30 years. In 1974, enrollment of women in law schools approved by the American Bar Association was 20 percent.³ Today just under 50 percent of the lawyers entering the profession are women,⁴ and women constitute some 30 percent of the legal profession.⁵ To bring the point home, we have the example of John F. Kennedy University School of Law, where 60 percent of the 2004 graduates were women (and 40 percent were racial or ethnic minorities),⁶ a tribute to the vision of Dean Therese A. Cannon.

Yet, despite such a strong pipeline, a huge gender disparity remains at the top levels of our profession. Only 16 percent of the partners at law firms nationwide are women.⁷ The figures for managing partners are even more alarming, with barely 5 percent being women.⁸ Similarly, merely 13.7 percent of general counsel of Fortune 500 companies are females.⁹

Gender Disparity, Power, and the Law

Studies by the American Bar Association show that 75 percent of women attorneys feel that they are being held to a higher standard than their male counterparts. Only 25 percent of them feel that their chances for advancement are equal to those of men.¹⁰

These perceptions of bias do indeed have a basis in fact. For example, Dr. Martha Foschi, a sociologist at the University of British Columbia, conducted a number of experiments where male and female performance was objectively identical. She found that a double standard existed regarding the perceived competence of each.¹¹ The evaluations of the equal objective performances rated the women participants consistently lower than the men. Foschi determined that a stricter standard was applied for females when evaluating ability. She concluded that “double standards also are at the root of several other important phenomena. Two possible effects of differences in requirements are the gap in earnings between men and women with equal qualifications, and the gender differences in the amount and intensity of work-related stress they experience.”¹²

Similarly, Claudia Goldin and Cecilia Rouse, professors of economics at Harvard University and Princeton

University, respectively, conducted an extensive study of audition data for orchestras from 1960 to 1996, in Europe and the United States, to test gender-biased hiring.¹³ Using the standard audition procedures, where the judges were able to view the sex of the people auditioning, women constituted only 10 percent of orchestra new hires. When the people auditioning were placed behind screens and played without being seen by the judges, more women advanced beyond the preliminary rounds and even were hired at substantially higher rates. Goldin and Rouse concluded that the switch to “blind” auditions resulted in a 30 to 55 percent increase in the number of females among the new hires.

The truth is that gender stereotyping remains a very real problem in our legal profession. Women who are strong leaders are often seen as too aggressive. Have you ever heard a male colleague refer to a male managing partner as “too bossy” or “too strident”? And if women are not being charged with such over-assertiveness, they are perceived at the other end of the spectrum, as being too emotional or too weak. It is painfully evident that a much narrower acceptable range of behavior exists for a woman in power.

This was well demonstrated in the Supreme Court case of *Price Waterhouse v. Hopkins*.¹⁴ In brief, the facts were these. Ann Hopkins joined Price Waterhouse in 1978, as a member of the professional staff in the firm’s Office of Government Services in Washington, D.C. She enjoyed a successful career there and, in 1982, was proposed for partnership. Hopkins’s record at the firm documented outstanding accomplishments as a senior manager. She had no difficulty dealing with clients, who appeared to have been very pleased with her work. None of the other partnership candidates at Price Waterhouse that year had a comparable record in terms of successfully securing major business for the firm. Hopkins was generally viewed as a highly competent project leader who worked long hours, pushed vigorously

to meet deadlines, and demanded much from the multidisciplinary staff with whom she worked.

When Hopkins came up for partnership consideration, however, a number of comments submitted by partners criticized her “interpersonal skills,” suggesting that she was sometimes “overbearing” and “abrasive.” One partner described her as “macho.” Another suggested that she “overcompensated for being a woman,” while a third advised her to take “a course at charm school.” Several partners criticized her use of profanity. In contrast, a supporter explained that Hopkins “had matured from a tough-talking, somewhat masculine hardnosed manager to an authoritative, formidable, but much more appealing lady partner candidate.”¹⁵

In March 1983, Price Waterhouse’s policy board voted not to admit Hopkins as a partner. Rather than dismiss her outright, the board decided to “hold” her candidacy, with the possibility that she might be reconsidered the following year.

When Hopkins consulted with the head partner at the Office of Government Services, who was her strongest supporter, she was advised to “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”¹⁶ This was not 1878. It was just 20 years ago. And so we must remember to balance our sense of progress with some common sense regarding the harsh realities for women, and especially for women in positions of power.

These realities make working within the legal system difficult, at best, for many women lawyers. A recent study by the American Bar Foundation and the NALP Foundation for Law Career Research and Education found that women who were hired at the same salaries as male lawyers earned substantially less than their male counterparts after only two years in their profession.¹⁷ Women also reported that they were dissatisfied with the lack of meaningful part-time

opportunities within the legal profession. Even if the firms at which they worked had part-time and similar policies, oftentimes these were more closely allied with recruiting efforts than at actual implementation, leaving the women frustrated at not having their working hours respected. Similarly, they were dismayed by the fact that the percent of women partners at major law firms had risen less than 5 percent in the last decade or so.

The Glass Ceiling Hurts Business

Frequently mislabeled a “women’s issue,” the glass ceiling is in fact a fundamental business issue that negatively affects the growth, economic prosperity, recruitment, and business development of law firms and legal departments across the country.

Why, you ask. Quite simply, it is because American women control an astounding amount of wealth. Law firms need to consider carefully that 60 million women work outside the home and collectively earn over \$1 trillion per year.¹⁸ Further, women make 80 percent of all purchasing decisions, own half of America’s investment wealth, and stand to inherit a large portion of the \$110 trillion that will change hands during this decade. As to potential law firm clients, 43 percent of Americans with assets greater than \$500,000 are women.

A recent study by Catalyst, a research and advisory organization regarding women’s career advancements, found that corporations having the highest number of women in senior management perform the best financially.¹⁹ Catalyst examined 353 companies on the Fortune 500 list four of the five years between 1996 and 2000. The study showed that companies with the highest representation of women on their senior management teams had a 35 percent higher return on equity and a 34 percent higher total return to shareholders than companies with the lowest women’s representation.

Further, according to the Simmons

College School of Management in Boston, a new definition of leadership is emerging because of women in the workplace. Women are not motivated by the traditional male meaning of "being a leader." Rather than worrying about who is in charge and obtaining satisfaction merely from running the ship, women state that their motivations stem from making a difference once they have attained leadership positions, often through a collaborative approach.

One last economic item that law firms should note is that, because of their dissatisfaction, women lawyers are leaving the profession at alarming rates. When a firm considers that it essentially costs 150 percent of a person's salary to replace that person, it should realize that retaining as many qualified female attorneys as possible makes good business sense. The retention and promotion of women thus become crucial aspects of a law firm's business plan.

Robert Reich, the former secretary of labor under President Bill Clinton, succinctly summed up the impact of the glass ceiling on business. He stated: "The glass ceiling is not only an egregious denial of social justice that affects two-thirds of the population, but a serious economic problem that takes a huge financial toll on American business. Equity demands that we destroy the glass ceiling. Smart business demands it as well."²⁰

San Francisco's Glass Ceiling Initiative

In 2002, the Bar Association of San Francisco made a concerted effort to help women lawyers break through the glass ceiling. It did so by asking over 80 law firms and corporate legal departments to sign pledges promising to ensure gender equity within their workplaces. Specifically, the firms and departments had to commit to (1) raising their levels of women partners to at least 25 percent, and by installing women in 25 percent of management positions by year-end 2004; (2) having at least one female chair or managing

partner by year-end 2005; and (3) embracing the concept of part-time partnership.

This is believed to be the first city bar association initiative to contain specific percentage goals. The goals were unanimously set by a blue ribbon task force established by me and chaired by Mary Cranston, the firm-wide chair of Pillsbury Winthrop. The results of the first prong of the initiative, released in July 2005, show substantial progress. An impressive 63 percent of the responding firms reported having at least 25 percent women in partnership positions, compared to only 22 percent two years ago. Sixty-nine percent of firms responding reported having at least 25 percent women in management positions, and 54 percent of legal departments of corporations and public entities reported having at least 25 percent women in management positions. These percentages are far above the national average.

These are certainly encouraging and important gains, and many hope other bars will follow the example of the Bar Association of San Francisco in setting specific goals toward eradicating the glass ceiling in the legal profession. But other measures are needed. Mentoring, or, more aptly, womentoring programs must be developed in a more institutionalized manner, especially to foster networking opportunities for women. All too often women who are placed on recruiting or other "lower level" firm committees are responsible for entertainment and planning, rather than serving on various governance committees and making policy, as are their male colleagues. This limits their contact with powerful partners and precludes their opportunity to advance within firms. Such underlying structural problems need to be addressed. Further research about the progress of women in the profession is needed. Luckily, the American Bar Foundation-NALP Foundation study will continue to track the progress of nearly 5,000 lawyers who began practicing in 2000, and will do so until 2010, making this a major longitudinal study of the legal workplace

and hopefully enlightening us further regarding gender discrimination and the measures to combat it. There are a number of other avenues to pursue, not the least of which is a commitment by women lawyers to fight their own internal glass ceilings by asking for, and even insisting upon, equal business opportunities. In-house counsel are increasingly requiring the participation of women attorneys as a condition of their selection of outside counsel. Such client awareness of gender disparity will play a crucial role in the eradication of the glass ceiling. Most important of all, however, is a demonstrated commitment by managing partners and by general counsel to placing qualified women attorneys into positions of real power and leadership. ■

Notes

1. Barbara Allen Babcock, *Clara Shortridge Foltz: "First Woman,"* 30 ARIZ. L. REV. 673 (1988) (citing Clara Shortridge Foltz, *The Struggles and Triumphs of a Woman Lawyer*, NEW AM. WOMAN (Oct 1916)).

2. Clara Shortridge Foltz, *Struggles and Triumphs of a Woman Lawyer*, NEW AM. WOMAN 4, 10 (Jan. 1918).

3. See www.abanet.org/legaled/statistics/femstats.html.

4. *Id.*

5. ABA COMMISSION ON WOMEN IN THE PROFESSION, *THE UNFINISHED AGENDA: WOMEN IN THE LEGAL PROFESSION* 14 (Executive Summary 2001).

6. See the university's Web site, www.jfku.edu/?a=law&cid=2&spid1=26.

7. CATALYST, *WOMEN IN LAW: MAKING THE CASE* (2001). The executive summary of this report can be found at www.womenlaw.stanford.edu/law.inside.fixed.pdf.

8. See *supra* note 5.

9. See *supra* note 3.

10. *Id.*

11. Martha Foschi, *Double Standards in the Evaluation of Men and Women*, 59 SOC. PSYCHOL. Q. 237 (Sept. 1996).

12. *Id.* at 252.

13. Claudia Goldin & Cecilia Rouse, *Orchestrating Impartiality: The Impact of "Blind" Auditions of Female Musicians*, 90 AM. ECON. REV. 715 (Sept. 2000).

14. 490 U.S. 228, 262 (U.S. 1989).

15. 618 F. Supp. 1109 (1985), defendant's exhibit 27.

16. 618 F. Supp. at 1117.

17. AMERICAN BAR ASSOCIATION & NALP FOUNDATION FOR LAW CAREER

RESEARCH AND EDUCATION, AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS (2004). For a thought-provoking discussion of this study, see Hope Viner Samborn, *10 Years and Counting: Gender Disparities in Salary and Advancement Continue in the Legal Workplace*, 14 PERSPECTIVES 12 (Summer 2005).

18. BUREAU OF LABOR STATISTICS, EMPLOYMENT AND EARNINGS (1995).

19. CATALYST, THE BOTTOM LINE: CONNECTING CORPORATE PERFORMANCE AND GENDER DIVERSITY (2004).

20. U.S. DEP'T OF LABOR, GLASS CEILING COMMISSION, A SOLID INVESTMENT: MAKING FULL USE OF THE NATION'S HUMAN CAPITAL (Final Report, Nov. 1995).

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