

## Cracks in the Ceiling

*By Patricia Gillette*

**April, 2009**

Timing is everything.

Two years ago, I embarked on a study called The Opt In Project to look outside of the legal profession for examples of the successes and failures of retaining women and advancing them to leadership positions. At the time, I was a partner at Heller Ehrman. I had been working as a labor and employment lawyer for nearly 30 years and had started to believe that people in large law firms were too focused on part-time and mentoring/client development training programs as The Solution to the exodus of women from those firms.

Working with my colleague Anne Mercogliano (she was then a diversity coordinator at the firm), the hope was that our research would shed some light on the challenges faced by women in the legal profession and lead us to recommendations that might, over time, result in meaningful change.

Our findings were discouraging, interesting, surprising, and even hopeful. One point in particular made a strong impression on me. The factors that were pushing women away from law firms were the same ones cited by Gen Y lawyers entering the profession as important to their careers: a desire for a more balanced work life, even if that meant reduced pay. I was struck by the fact that the women voicing these concerns in law firms were seen as outliers; in corporations, the women were driving change.

In May 2007 we published The Opt In Report ([download the report here](#)), presenting the argument that law firms must rethink their traditional structures in order to survive--from the way lawyers progress in their careers to the way clients are billed for services. Those changes, in turn, were needed to keep women in the profession.

In the year after the report came out, as I traveled around the country to talk about our work, what I found most shocking were the reactions to our findings. At conferences, bar events, and other gatherings, the response of most law firm leaders present was "Are you nuts?" I vividly remember one prominent law firm leader who wondered out loud, at a leadership conference in New York, why anyone would think such changes were necessary when there were plenty of "white men" to staff law firms under the existing law firm structure.

Fast forward nearly two years. Everything, it seems, is in a state of flux, the result of the financial crisis that hit full force last fall. The economy is tanking, businesses (including law firms) are downsizing, legal budgets are shrinking, and big-firm lawyers with big-firm rates are being reevaluated by legal officers at Fortune 500 companies who control shrinking legal budgets.

With work drying up and the almighty profits per partner reduced, law firms are retrenching, laying off lawyers and staff, eliminating training and diversity programs, and focusing on the bottom-line/billable-hour metric where more hours = more dollars = success.

So where does this leave the women lawyers? Has the time passed for making significant changes in the way law firms operate and, by extension, the hiring, training, and retention of women?

One school of thought says yes. The movement died when the economy went south. Why? Most law firms live in the present, and in the present law firm management is not concerned about retention. Survival is the name of the game. Ignoring reality in favor of fixing the present, the prevailing attitude in many firms is that work-life balance programs and other ideas about changing the status quo should be put on the back burner or left to die a slow death.

There is another school of thought, the one that I subscribe to. It is this--the economic crisis provides law firms with opportunities they never before had. Those include: stepping away from the salary and bonus programs that destroyed collegiality and prevented flexibility; making structural and organizational changes long overdue; killing the billable hour once and for all; and getting ahead of the sea change that is coming to the legal profession.

Now is the time to take advantage of the immobility of partners and associates and the weakening bargaining position of law students, to make changes that may not be popular with everyone, but are long overdue. And these changes, in the long run, will benefit women and will answer the cries of all Gen Y lawyers for a kinder and gentler law firm life.

The cracks in the model are obvious. You've read about them in this very space. Here's what the cracks mean for everyone, but especially for the women:

**-The demise of the billable hour.** For women, many of whom have worked efficiently for years and been punished by the billable hour system, it means being evaluated on quality and efficiency, rather than time. And that can only help.

**-Competency-based progression.** Big law firms like Howrey and Orrick, where I am a partner, are promoting progression based on competencies rather than lockstep movement determined by the year you graduated law school and started working. This allows women--and men--to adjust their careers to accommodate what is happening in their lives. Deloitte calls this a career lattice rather than a career ladder; that's how I like to put it.

**-Rethinking the first two years.** Firms are rethinking how they hire lawyers out of law school and how they treat new lawyers. New associates, women included, will no longer be fungible commodities. They will be investments in the firm's future, as law firms choose associates more carefully, nurture them through the first years, and rebuild trust in the partner-associate relationship. This will, in turn, create a bond that encourages longevity and incentivises flexibility.

Women have waited a long time for law firms to realize that the traditional law firm model is not a viable one. They are now being joined by men who, in acknowledging this, are repeating--even claiming as their own--the precise changes that women have been touting for years. If this will finally bring about the much needed change that everyone in the profession will benefit from, I welcome it. If timing is everything, then the time for this change is now.



*Patricia Gillette is a labor and employment partner at Orrick, Herrington & Sutcliffe. She can be contacted at [pgillette@orrick.com](mailto:pgillette@orrick.com).*