

**THE REFLECTING POOL:  
HOW CLIENTS, JUDGES, AND JURORS VIEW WOMEN  
LAWYERS**

by  
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**I. TO EVALUATE HOW CLIENTS, JUDGES AND JURORS SEE WOMEN LAWYERS ONE MUST CONSIDER THE IDENTITY AND VALUES OF THE CLIENTS, JUDGES AND JURORS.**

How clients, judges, and jurors regard any lawyers they employ or who appear before them depends on whether the clients, judges, and jurors see themselves and their values appropriately represented. Thus, how clients, judges, and jurors regard women lawyers depends on whether women lawyers are viewed as representing those persons and their interests. In other words, do clients, jurors, and judges see the legal profession responding appropriately to women lawyers? Is the legal profession keeping up with the business world upon which it relies? The following assesses this question in light of the current climate of change.

**A. Does The Practicing Bar Reflect The Business World At Large?**

Over the last one-hundred years, women have entered the workforce and the legal profession in record numbers. As a result of their presence, traditional, stereotypical attitudes about women are fading. Still, some women attorneys have experienced clients who would rather work with the older male partner, or question whether women attorneys are suited to take their cases to trial. Such attitudes are increasingly becoming outdated as women's economic power grows.

**1. As Clients Continue To Manifest Diversity In Their Own Affairs, Clients Seek Diversity In the Firms and Businesses With Which They Partner.**

Women now represent a significant economic force in the overall economy. In response, companies such as American Express, Price Waterhouse Coopers, Proctor & Gamble, Marriott Corporation, Apple, Union Pacific, Washington Mutual, and Marathon Oil Corporation, have and maintaining diversity is corporate policy.<sup>1</sup> For example, American Express is consistently ranked by national publications such as Fortune and Working Women as one of America's best places to work. American Express earns such recognition because it is dedicated to maintaining diversity in its work force as part of its overall business strategy, and has achieved its goal of being one of the most ethnically diverse companies in the United States.<sup>2</sup> American Express's commitment to diversity helps the company attract quality employees which, in turn, benefits the company's bottom line.

**a. Women-Owned Firms Represent a Significant Economic Force.**

Corporations are diversifying their employee bases and partnering with women and minority-owned business in response to the changing demographics of the business landscape and the world as a whole. While the economy has seen large corporations either consolidating or downsizing, women-owned businesses have been growing significantly. As employers and revenue producers, women business owners are making a tremendous impact on the economy.<sup>3</sup>

Studies from the Center for Women's Business Research in Washington, D.C., show that women-owned businesses have significantly contributed to increases in employment and

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<sup>1</sup>See <http://www.vault.com>. The Vault is a career information website highlighting companies and their diversity policies; see also <http://www.workingmother.com/oct03/100BestList.shtml>.

<sup>2</sup><http://www.vault.com/companies> ("The Top Reasons to Work for American Express").

<sup>3</sup>[http://www.womens-equity.com/1Q\\_2002womenbusiness.html](http://www.womens-equity.com/1Q_2002womenbusiness.html) ("Women-owned Business Growth in the U.S.").

revenues in the United States.<sup>4</sup> Sales generated by women-owned firms increased by 40% nationwide during the period of the study, with these sales totaling nearly \$1.15 trillion. Women entrepreneurs generate nearly \$2.3 trillion in revenues to the U.S. economy. 10.1 million businesses, representing 46% or nearly half of all business, are at least 50%-owned by a woman or women.<sup>5</sup>

The growing contribution of women-owned businesses to the economy is a result of the increasing numbers and growth of women-owned businesses. The number of women-owned employer firms grew by 37% between 1997 and 2002. That is four times the growth rate of all employer firms. Between 1997 and 2002, the number of privately-held businesses predominantly owned by women grew by 11%, more than one-and-one-half times the growth rate of all privately-held firms. Women-owned firms employed nearly 9.2 million workers during 2002, up 30% from 1997. This growth has not been limited to any particular region or metropolitan area, and according to Colleen Anderson, Executive Vice President and head of California Business Banking for Wells Fargo, “the growth in the number of women-owned firms exceeds the overall rate in all 50 states.”<sup>6</sup> In fact, one in every eleven adult women owns a business. More than 18 million workers are employed by women, with one of every seven workers employed by a woman-owned business.<sup>7</sup>

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<sup>4</sup>[Hhttp://www.womensbusinessresearch.org/CompletingthePicture.htm](http://www.womensbusinessresearch.org/CompletingthePicture.htm)H (“Completing the Picture”, see also “Women-Owned Businesses in 2002: Trends in the U.S. and 50 States,” (Dec. 2001) produced by the Center for Women’s Business Research, in partnership with and sponsored by Wells Fargo).

<sup>5</sup>[Hhttp://www.womensbusinessresearch.org/CompletingthePicture.htm](http://www.womensbusinessresearch.org/CompletingthePicture.htm)H (“Completing the Picture”, see also “Women-Owned Businesses in 2002: Trends in the U.S. and 50 States,” (Dec. 2001) produced by the Center for Women’s Business Research, in partnership with and sponsored by Wells Fargo).

<sup>6</sup>[http://www.womens-equity.com/1Q\\_2002womenbusiness.html](http://www.womens-equity.com/1Q_2002womenbusiness.html)H (“Women-Owned Business Growth in the U.S.” citing to the Wells Fargo sponsored Center for Women’s Business Research study).

<sup>7</sup>[Hhttp://www.womensbusinessresearch.org/CompletingthePicture.htm](http://www.womensbusinessresearch.org/CompletingthePicture.htm)H (“Completing the Picture”, see also “Women-Owned Businesses in 2002: Trends in the U.S. and 50 States,” (Dec. 2001) produced by the Center for Women’s Business Research, in partnership with and sponsored by Wells Fargo).

Moreover, women are not just starting new businesses at a higher than average rate, but women also continue to diversify into nontraditional industries.<sup>8</sup> The greatest growth in the rate of women-owned firms is seen in construction at 36%; agricultural services at 27%; transportation, communications and utilities at 24%; and finance, insurance and real estate at 14%. Sales for women-owned firms and agricultural services have increased by more than 100%, while sales in construction increased by 94%. As a result, employment by women-owned businesses in these two industries increased by 74.8% and 69.9%, respectively. The largest share of women-owned firms remains in the service sector at 53% or 3.3 million, which include business services, engineering services, and professional services such as law, medicine, and accounting.<sup>9</sup>

Businesses owned by women of color have become a particularly powerful economic force.<sup>10</sup> As of 2002, there were an estimated 365,110 majority-owned, privately-held firms owned by African American women in the United States, with these businesses employing nearly 200,000 people and generating almost \$14.5 billion in sales. Between 1997 and 2002, the number of African American women-owned firms increased by 17%, their employment grew by 17%, and their sales rose by 7%. The number of majority-owned, privately-held firms owned by Asian and Pacific Islander women in the United States was estimated at 358,503 in 2002, employing over 370,000 people and generating \$49.1 billion in sales annually. Between 1997 and 2002, the number of Asian and Pacific Islander women-owned firms increased by 45%, their employment grew by 18%, and their sales rose by 29%. For Hispanic women, the number of

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<sup>8</sup>[http://Hwww.womens-equity.com/1Q\\_2002womenbusiness.html](http://Hwww.womens-equity.com/1Q_2002womenbusiness.html)H (“Women-Owned Business Growth in the U.S.” citing to the Wells Fargo sponsored Center for Women’s Business Research study).

<sup>9</sup>[http://Hwww.womens-equity.com/1Q\\_2002womenbusiness.html](http://Hwww.womens-equity.com/1Q_2002womenbusiness.html)H (“Women-Owned Business Growth in the U.S.” citing to the Wells Fargo sponsored Center for Women’s Business Research study).

<sup>10</sup><http://Hwww.womensbusinessresearch.org>H (“Fact Sheets” published through the support of the Kaufman Center for Entrepreneurial Leadership).

their majority-owned, privately-held firms reached an estimated 470,344 as of 2002. These businesses employed nearly 198,000 people and generated \$29.4 billion in sales. Between 1997 and 2002, the number of Hispanic women-owned firms increased by 39% and their sales grew by 8%. Native American and Alaskan Native women as of 2002 owned an estimated 77,483 majority owned, privately-held firms in the U.S., employing nearly 88,000 people and generating \$8.7 billion in sales. Between 1997 and 2002, the number of Native American and Alaskan Native women-owned firms had increased by 45%, employment had grown by 18%, and sales had risen by 29%.

It is vital to note that, as the number of women-owned and majority-women-owned businesses have grown in number, number of employees, and sales, employment nationally *decreased* by 16% over that same period.<sup>11</sup> Thus, the growth, success, and importance of women-owned businesses are not a manifestation of the expansion of the economy at all; rather women-owned businesses have prospered even while the rest of the economy has faltered. As a result, doing business with women and minority-owned firms not only is a matter of good business, it is the corporate way of life for small business and large corporations alike.<sup>12</sup>

**b. Embracing Diversity and Partnering with Women and Minority-Owned Businesses is Good Business.**

Corporations are actively looking for women vendors both because of the successful track record amassed by women-owned businesses and companies' increasing commitment to diversity. The corporate message is clear: women-owned firms are a significant force in today's

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<sup>11</sup><http://www.womensbusinessresearch.org>H ("Fact Sheets" published through the support of the Kaufman Center for Entrepreneurial Leadership).

<sup>12</sup> [www.womensbusinessresearch.org](http://www.womensbusinessresearch.org)H ("Women-Owned Businesses in 2002: Fact Sheets for the U.S., 50 States and District of Columbia and Top Metro Areas").

economy and they are growing at rates that will make them an even more formidable force in the future, thus partnering with these firms makes good business sense.

For example, Marriott Corporation, a leader in the hospitality industry, has a corporate commitment to global diversity that encompasses every business unit worldwide.<sup>13</sup> Marriott proudly publicizes that it was the first worldwide hospitality company to have established a formal supplier diversity program. According to J. W. Marriott, Jr., “[Marriott’s] supplier diversity endeavors will make it easier for us to find one another, so we can start working – and winning – together.” This is not simply advertising or lip service, since in 2002, Marriott spent over \$177 million partnering with minority and women-owned U.S. businesses.<sup>14</sup> Marriott is making an impact that has a tremendous economic ripple effect. The company also requires that all of its vendors work with minority and women-owned businesses, as well. This second tier program has increased Marriott’s supplier diversity spending in 2002 by an additional \$28 million.<sup>15</sup> These business relationships have a direct impact on the economy.

Another company, Nebraska-based Union Pacific Railroad, Inc., one of the largest railroad companies in North America, recognizes that “strengthening and utilizing businesses owned by minorities and women contributes to the economic growth and expansion of the communities we serve.”<sup>16</sup> Like many companies, Union Pacific has not been immune to the economy’s downturn. However, while engaging in cost cutting measures, Union Pacific has continued “to work extremely hard to develop approaches that continue to promote the solid growth of women and minority-owned, controlled and operated firms through meaningful and,

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<sup>13</sup>[http:// www.marriott.com/corporateinfo](http://www.marriott.com/corporateinfo).

<sup>14</sup>[http:// www.marriott.com/corporateinfo](http://www.marriott.com/corporateinfo).

<sup>15</sup>[http:// www.marriott.com/corporateinfo](http://www.marriott.com/corporateinfo).

<sup>16</sup><http://www.uprr.com>.

when possible, permanent procurement relationships.”<sup>17</sup> Having developed its original supplier diversity purchasing program in 1982, Union Pacific has increased its women and minority-owned business spending since that time. Specifically, the 2002 corporate goal was to spend \$160 million or 4% of the total dollars spent.<sup>18</sup>

In 1999, Fred Anderson, CFO of Apple Computer, recognized that businesses owned by women and minority groups not only accounted for an increasing segment of United States suppliers, even more critically, these businesses constituted an ever-increasing and important segment of Apple’s customer base.<sup>19</sup> Because of this, Apple’s corporate policy is to develop and more fully utilize these businesses as suppliers. According to Anderson, “Apples’ senior management views [the supplier diversity program] and efforts to support this program as business fundamentals.” Marathon Oil Corporation’s President and CEO, Clarence P. Cazlot, Jr., mirrors Anderson and Apple’s commitment, “incorporating supplier diversity as an integral part of our global procurement strategy makes good business sense.”<sup>21</sup>

**c. Investors Reward companies that Value Diversity and Advance women’s Social and Economic Status.**

A unique example of the strength of women’s economic power is the Women’s Equity Mutual Fund, a fund with investments only in public companies that advance the social and economic status of women in the workplace.<sup>22</sup> This Fund is evidence that the investing public is interested in putting its money where its values are. The Fund’s success indicates that those

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<sup>17</sup>Jennifer Repo, “Delivering Diversity”, Minority Business Entrepreneur, 19, no. 5 (September-October 2002).

<sup>18</sup>Repo.

<sup>19</sup>[Hhttp://www.apple.com/supplierdiversity/documents/asdppolicy.html](http://www.apple.com/supplierdiversity/documents/asdppolicy.html)H.

<sup>20</sup> Supra, note 19.

<sup>21</sup>[Hhttp://www.marathon.com/values/diversity/supplierdiversity/MOCH](http://www.marathon.com/values/diversity/supplierdiversity/MOCH).

<sup>22</sup>[Hhttp://www.womens-equity.com](http://www.womens-equity.com)H.

companies that are committed to advancing the status of women are doing well. For example, from June 1st of 1999 to May 31st of 2002 the fund was at 3.1% as compared to the Standard & Poor 500's 5.23%.<sup>23</sup> The qualifying companies make up an impressive list, and include Adobe Systems, Inc., American International Group, Automatic Data Processing, Bank of America Corp., Bell South Corp., Chubb Corporation, Costco Corporation, CBS Corporation, MBNA, Merck, Microsoft, Nokia, Pfizer, PepsiCo, Oracle, SBC Communications, Dell Computer Corporation, Fleet Boston, Home Depot, Johnson & Johnson, and Wells Fargo, among many others.<sup>24</sup>

The Women's Equity Mutual Fund invests in companies that have reputations for and evidence of being good environments for working women.<sup>25</sup> For example, the Fund invests in Adobe because it is ranked in the top ten of Fortune Magazine's "100 Best Companies to Work For," and three out of the top fourteen executives are women. The Fund invests in Agilent Technologies because, since it was spun off from Hewlett Packard in late 1999, Agilent has adopted an array of policies and programs designed to promote diversity, work life balance, and employee involvement. Moreover, approximately 20% of Agilent's senior officers are women. Hershey Foods makes the Fund's list because the company's Board of Directors is comprised of one-third women, and Hershey has a high number of female directors. The Fund also invests in Merck, where women make up more than a fourth of the executives and over a third of middle managers. Further, Merck's corporate policies resulted in Merck being included for its 17th year as an honoree on Working Mother's list of "Best Companies for Working Mothers in 2002."

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<sup>23</sup><http://www.womens-equity.com>

<sup>24</sup><http://www.womens-equity.com>.

<sup>25</sup><http://www.womens-equity.com>.

The Women's Equity Mutual Fund is a clear example of how investors send a message about their values. This is a significant demonstration that policies and practices that embrace and support diversity is good business.

How does the increased importance of women in business and expanding commitments to diversity impact to the legal profession? Companies owned by women or committed to diversity are lawyers' clients and prospective clients. How law firms and lawyers respond to the demands and needs of these clients will dictate the success of the firms and lawyers. Lawyers and firms that do not recognize the value of, and institute practices and policies supporting, diversity are making strategically dangerous choices.

## **II. THE INCREASED PRESENCE AND IMPORTANCE OF WOMEN IN BUSINESS IS SIMILARLY BEING FELT IN THE COURTROOM.**

### **A. Juries Reflect And Incorporate The Full Range Of U.S. Demographics.**

Jurors are invested with significant authority and power that impacts lawyers and their clients. Therefore, the relationship of the client's counsel to the jurors is critical, and begs answers to these important questions: Who are these jurors? Who do they see when they look out from the juror box into the courtroom? The answers: The people that serve as jurors today are impacted by today's economy, which, in turn, is affected by the importance influence of women.

Because of the very nature of the jury system, and both clients' and counsels' desire to understanding the jury that will determine a particular case, there is an entire industry specializing in jury and trial consulting. One trial consultant, Robert Ladner, a communications psychologist and sociologist in Miami, Florida, specifically advises lawyers on how jurors perceive differences in gender and race, as well as other factors. Accordingly to Ladner, in the jury system, stereotyping is a constant. Ladner believes that some jurors are "essentially playing

to the crassest sexual stereotyping that exists in American culture.”<sup>26</sup> However, others suggest that stereotyping may have no impact on the jury’s decision making. For instance, Paul Jepson, a trial consultant with Minneapolis-based Jury Think Inc., contends that a lawyer’s gender is less relevant today to juries than it was 10 to 15 years ago.<sup>28</sup> While noting that jurors continue to evaluate women litigators on their appearance and dress more so than they do male litigators, he knows of no connection between this superficial evaluation and the jury’s decision making.

Today, the people sitting in the jury box run the gamut of U.S. demographics. Although juries were once impaneled from a pool consisting only of white men, the venire from which juries are drawn reflects the cross-section of society. Moreover, the U.S. Supreme Court has promulgated limitations on how attorneys can use peremptory challenges to restrict the demographic composition of a jury. Thus, while there is reason to believe that some jurors will engage in gender stereotyping that may impact a client’s case, these are not the only jurors to which litigators are trying their cases. There is equally significant reason to note that jurors are as impressed by diversity in the court room as they might be in choosing what company to work for or where to make investments comporting with pro-diversity values. These people bring to that jury box an expectation that the professionals making their case before them be as likely women and minorities as not.

**B. Like The Business World At Large, The Judiciary Is Recognizing The Value Of Embracing Diversity And Eradicating Bias.**

What remains to be seen is whether other aspects of the judicial system similarly manifest the more diverse and women-empowered aspects of contemporary society.

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<sup>26</sup>Scott Brede, “Women Litigators Still Face Job Pressures Men Don’t,” The Connecticut Law Tribune, 7 Sept. 1999.

<sup>27</sup> Brede, Scott, “Women Litigators Still Face Job Pressures Men Don’t,” The Connecticut Law Tribune, (September 7, 1999).

<sup>28</sup>Brede.

Traditionally, judges have been disengaged, dispassionate adjudicators of the actions before them, reluctant to intervene in any way during trial court proceeding regarding the behavior of the attorneys or the clients in front of them.<sup>29</sup> It has also long been acknowledged that, as Judge Learned Hand wrote in 1933, “justice does not depend on legal dialectics so much as upon the atmosphere of the courtroom, and that in the end depends primarily upon the judge.”<sup>30</sup> A courtroom can be particularly unjust where the judge participates in or allows an atmosphere of gender bias. Such bias takes a toll on all present in a courtroom. However, it creates a particular dilemma for the woman litigator before the court. She must constantly balance not alienating the judge and not jeopardizing her credibility with her client.<sup>31</sup> Gender bias on the bench makes this especially difficult.

While many women litigators have experienced gender bias, one exceptionally poignant example is instructive of just how damaging such bias can be. For three weeks, attorney Franklin tried a tough case with millions of dollars riding on the outcome. Ready to tell the jury all the reasons why a verdict must be for her client, she was stopped by the judge right before she started her closing remarks. The judge asked her to approach the bench, welcomed her opposing counsel, smiled and said, “Mrs. Franklin, before we finish up here today, I just wanted to tell you how great you look in that suit. It really shows off your legs. I’ll bet your husband loves it.”<sup>32</sup> While it may be possible that in some social context the judge’s comments might have been benign, there in the courtroom, his calling attention to the attorney’s appearance and marital

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<sup>29</sup>Kimberly A. Lonsway, Leslie V. Freeman, Lilia M. Cortina, Vickie J. Magley, and Louise F. Fitzgerald, “Understanding the Judicial Role in Addressing Gender Bias: A View From the Eighth Circuit Federal Court System,” 27 *Law & Society Inquiry* 205 (Spring 2002), 206.

<sup>30</sup>Lonsway, et al., 206 (quoting *Brown v. Walter*, 62 F.2d 798, 799-800 (1933)).

<sup>31</sup>Rebecca Korzec, “Prejudice Gender Bias: Continuing Challenges and Opportunities,” 29 *Litigation* 14 (Spring 2003), 16.

<sup>32</sup>Korzec, 16.

status was inappropriate and denigrating. The comment undermined not only that particular attorney's effectiveness in that case, but it also undermined all women in the legal profession.<sup>33</sup>

Certainly this example is extreme, but even subtle gender bias is destructive.

### **1. Gender Bias In The Courts Has Been Reduced.**

Since the early 1980s, more than 40 states, the District of Columbia, and federal circuits formed task forces with the intention of investigating gender bias in the courts.<sup>34</sup> These studies documented evidence of gender bias and issued directives to eliminate it. In that vein, in 1990, the ABA revised its model code for judicial conduct to require that:

A judge perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice . . . and shall not permit staff, court officials and others subject to the judge's direction and control to do so. A judge shall require lawyers in proceedings before the judge to refrain manifesting, by words or conduct, bias or prejudice . . . against parties, witnesses, counsel or others. This section . . . does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.<sup>35</sup>

These efforts demonstrate that judges are taking steps in the right direction. Justice Sandra Day O'Connor has urged judges to learn to recognize gender bias and work to banish any such bias from their chambers and courtroom.<sup>36</sup> When asked whether they should intervene when an attorney, witness or parties are treated with bias in their courtroom, about three-quarters of the Second Circuit judges surveyed indicated that they should "always" intervene.<sup>37</sup> Similarly, judicial respondents in an Eighth Circuit study reported a willingness to intervene in

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<sup>33</sup>Korzec, 16-17.

<sup>34</sup>Korzec, 17.

<sup>35</sup>Lonsway, et al., 209.

<sup>36</sup>Lonsway, et al., 207-208.

<sup>37</sup>Lonsway, et al., 209 (citing The Second Circuit Task Force On Gender, Racial and Ethnic Fairness in the Courts, 1997).

many situations of gender bias misconduct.<sup>38</sup> One possible explanation offered was that judges do not personally observe instances of gender bias and such incidents are not otherwise brought to their attention.<sup>39</sup> On one hand, such a finding might suggest that gender bias merely is hidden from the judicial system. However, this explanation might also reflect an important aspect of the current system: if judges are not seeing gender bias in their courtrooms then they are freer to do their work and to view counsel in an equal manner.

## **2. Efforts Are Made to Select Judges Free of Gender Bias, and Women Judges are Empowered to Act.**

Another indication of the successful progress toward eliminating gender bias on the bench, was Massachusetts Governor Mitt Romney's February 11, 2003, signing of Executive Order 445 (No. 03-3), entitled, "Order Reconstituting the Judicial Nominating Commission and Establishing a Code of Conduct for Commission Members and Nominees to Judicial Office."<sup>42</sup>

The Governor declared that the Constitution of Massachusetts:

[G]uarantees every citizen the right to judges as 'free, impartial and independent as the lot of humanity will admit'...whereas judicial candidates should be drawn from a cross section of our community, representing not only geographically diverse parts of the commonwealth, but reflecting as well the diversity of our citizens . . . . I do hereby revoke Executive Order 420 and Amendments thereto and order as follows . . . . A judicial nominating committee commission is hereby established to identify and invite application by persons qualified for judicial office . . . . The commission shall consist of 21 persons including the chairperson, appointed by the governor and serving at his pleasure . . . . The commissioners shall reflect diversity of race, gender, ethnicity, geography and, among commissioners who also are members of the bar, various practice areas and size of practice.<sup>43</sup>

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<sup>38</sup>Lonsway, et al., 224.

<sup>39</sup>Lonsway, et al., 224 and 232 (citing a report by the Eighth Circuit Gender Fairness Taskforce produced in 1997).

<sup>40</sup> Lonsway, 227.

<sup>41</sup> The Final Report of the 9th Circuit Gender Bias Taskforce" 67 S.Cal. Rev. 745, 959 (1994).

<sup>42</sup>[http://www.state.ma.us/jnc/Executive\\_Order\\_445.htm](http://www.state.ma.us/jnc/Executive_Order_445.htm)H.

<sup>43</sup>[http://www.state.ma.us/jnc/Executive\\_Order\\_445.htm](http://www.state.ma.us/jnc/Executive_Order_445.htm)H.

The expressed intention to create a diverse nominating committee and to draw qualified judges from all segments of society manifests how the judicial system has evolved in its efforts at eradicating bias from the bench.

Another significant finding from the Eighth Circuit study was that female judges received attorney requests for intervention more frequently than their male counterparts, and they were more likely than their male peers to intervene in response to such a request.<sup>44</sup> Judges set their courtroom's tone and they lead by example and by using their authority and influence they can ensure the court offers truly equal access to all lawyers, litigants and court employees.<sup>45</sup> Thus, the manner in which litigators are willing to engage women judges ensures that women on the bench have the opportunity and influence needed to fully assert themselves in the judiciary.

### **III. SELF REFLECTION: HOW IS THE PRACTICE OF LAW DOING? ARE LAWYERS AND LAW FIRMS KEEPING UP WITH THE CHANGES?**

Clients are more diverse and are expecting to see a level of diversity in the advocates they engage. Similarly, juries are impaneled in a way that reflects demographical and attitudinal shifts. Even the judiciary is actively working to foster diversity and eradicate destructive bias. How are the lawyers and law firms responding?

In 1873, the U.S. Supreme Court denied Myra Bradwell the right to practice law, holding "The paramount destiny and mission of women are to fulfill the noble and benign office of wife and mother."<sup>46</sup> Now, just slightly more than a century later, two women sit on the Supreme Court, and almost half of all law school faculty are women.<sup>47</sup> In 1880, there were only 200

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<sup>44</sup>Lonsway, et al., 227.

<sup>45</sup>"The Final Report of the 9th Circuit Gender Bias Taskforce" 67 S.Cal. Rev. 745, 959 (1994).

<sup>46</sup>Korzek, 14.

<sup>47</sup>Korzek, 14.

women lawyers in the entire United States, which was less than the number of women doctors practicing in Boston alone.<sup>48</sup> Now at the turn of the century women account for almost one-third of the nation's lawyers and for the first time constitute a majority of entering law students.<sup>49</sup>

However, even with this statistical progress, women in the legal profession remain underrepresented in positions of greatest status, influence, and economic reward. They account for only about 15% of federal judges and law firm partners, 10% of law school deans, 10% of general counsels, and 5% of managing partners of large firms. On average, female lawyers earn about \$20,000 less than their male lawyer counterparts and there are significant disparities that persist even between those with similar qualifications, experience and positions. Women of color account for only 3% of the profession and their small numbers limit the information available about their experience.<sup>50</sup>

**A. Lawyers Fail to Recognize the Lack of Opportunities for Advancement in Law Firms.**

Deborah Rhode, Professor of law at Stanford and Chair of the ABA Commission on Women in the Profession, has opined that practitioners fail to recognize persisting inequalities in the treatment of women and men in the legal profession:

Barriers persist and a central problem is the lack of recognition that there is a significant problem. Ironically enough women's increasing progress has created its own obstacles to change. In recent surveys by the American Bar Association and National Association for Law Placement, a majority of lawyers, both male and female, agreed that women are treated equally in the profession. Even those

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<sup>48</sup>Meg Gorecki, "Legal Pioneers, Four of Illinois First Women Lawyers," *Illinois Bar Journal*, (Oct. 1990), 510 (quoting from Ronald Chester, *Unequal Access: Women Lawyers in a Changing America*, (Bergen & Garby, 1985)).

<sup>49</sup>Deborah L. Rhode, "The Unfinished Agenda: Women and the Legal Profession," ABA Commission on Women in the Profession (2001), 5.

<sup>50</sup>Rhode, 5.

who acknowledged gender bias to be a problem often discount its significance or fail to recognize its persistence in their own workplaces.<sup>51</sup>

There is a significant problem. A study released in the summer of 2001 by Catalyst, a New York City-based organization that works to advance women in business and the professions, notes that while women reached a measure of critical mass in the legal profession more than a decade ago, there have been problems.<sup>52</sup> “The problem is that the rate of increase in the percentage of female partners and equivalent senior positions has lagged behind the rate of increase in the percentage of women in the profession overall.” The report concludes “The numbers indicate that women’s integration into the legal profession is not simply a pipeline issue.”<sup>53</sup>

Ann Weisberg, a project director for the Catalyst study, stated that law firms must begin to recognize and respond to the same factors that are getting the attention of the business community. “The business case has become so strong that law firm leaders cannot afford not to be paying attention.”<sup>54</sup>

**B. Life/Work Balance Issues Disparately Impact Women Attorneys.**

A pervasive self-limiting issue that undermines the advancement of women attorneys is the desire of many attorneys, both male and female, to seek a work/life balance. Both the Catalyst study and the ABA’s “Unfinished Agenda” report recognize, that even with societal roles changing, women’s family roles tend to hamper their own advancement. The Catalyst report states “Women’s careers are impacted by this conflict in a way that men’s careers are not

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<sup>51</sup>Kristin Choo, “The Right Equation: Despite Increasing Numbers of Female Lawyers, Gender Equality May Not Be Guaranteed in the Future,” 87 A.B.A.J. 58 (August 2001).

<sup>52</sup>Choo, 58.

<sup>53</sup>Choo, 58.

<sup>54</sup>Choo, 58.

– yet.”<sup>55</sup> According to the ABA Journal’s Year 2000 Survey, the percentage of lawyers who believe that women can do it all has dropped since 1983. While 81% of female respondents believe women can combine roles of lawyer, wife, and mother in 1983, only 64.5% believe women can do it all in the year 2000.<sup>56</sup> Men as well as women can benefit from efforts to bring more work/life balance into the legal profession, the reality is simply that changes are unlikely to come about without support from both men and women.<sup>57</sup>

Citing to the Catalyst study, of the 1400 respondents, 70% reported work/family conflicts, and more than half the women reported that family friendly policies are the main reason for changing employers.<sup>58</sup> Also in 2001, the Boston Bar Association published a study “Facing the Grail, Confronting the Cost of Work, Family and Balance.” This study found that law firms are becoming increasingly bottom-line-oriented and, as a result, they are creating a culture that discourages balance.<sup>59</sup> Interestingly, this ideology flies in the face of what lawyers appear to want.

A 2001 ABA report noted that both men and women lawyers were willing to earn less if they could have more family time.<sup>60</sup> The same study concluded that the wide disparity between what lawyers want and what their employers require is attributable to generation and gender gaps. Older men who are not expected to participate fully in family life often hold management positions. Senior lawyers who made substantial personal sacrifices to achieve professional

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<sup>55</sup>Choo, 58.

<sup>56</sup>Jacquelyn H. Slotkin, “Should I Have Learned To Cook? Interviews With Women Lawyers Juggling Multiple Roles,” 13 Hastings Women’s L.J. 147 (Summer 2002), 183.

<sup>57</sup>Choo, 58.

<sup>58</sup>Korzek, 15.

<sup>59</sup>Korzek, 15.

<sup>60</sup>Korzek, 15.

success expect the younger generation of lawyers to make the same tradeoffs. Younger lawyers see other workplaces changing to accommodate more balanced lives and become frustrated by law firms' resistance to change. Although men and women lawyers both face work-family issues, a disproportionate burden of family care still falls to women. Women litigators have taken different approaches to solving this conflict and some have chosen to leave the practice of law. Reports reveal that women are leaving the profession in greater numbers than men.<sup>61</sup>

While it might seem easy enough to say “old white men and outdated attitudes” are the problem, this is insufficient. Regardless of who is represented in the leadership of firms, and certainly the largest percentage are older white men, it is only at this level of law firm leadership that change can actually be effected. As one woman attorney from Washington, D.C., noted, “the bottom line is that the culture of the firm is set at the top, and unless the top of a company or firm – leadership across the board – is invested in addressing diversity issues and puts its money where its mouth is, then the culture will not change.”<sup>62</sup> Fortunately, as Weisberg of Catalyst says, “These are demographic-driven forces, they aren't going to go away. There is optimism for change.”<sup>63</sup>

### **C. What must the legal profession do to move ahead?**

Clients increasingly demand that the firms that represent them also demographically reflect the diversity that they adhere to in their companies and that they demand of their other suppliers and vendors. Clients will be those women and minority-owned businesses with interesting and critical legal issues that will expect a professional law firm to be equipped to handle the matter, to mirror their diversity and exhibit that the firm values diversity. The clients

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<sup>61</sup>Korzec, 15.

<sup>62</sup>Choo, 58.

<sup>63</sup>Korzec, 15

law firms want and need are dictating change. Law firms will be forced to respond and the most successful will be those that have already put mentoring, diversity, work-life balance and retention policies securely and successfully into place.<sup>64</sup> A dedicated hiring plan which focuses not only on hiring but retaining and promoting women must be implemented. Clients want women and minority lawyers with experience making it critical for firms to ensure that less experienced lawyers get time in the court room, take depositions, work with and defend expert witnesses during depositions and contribute meaningfully during trial. Sophisticated clients are seeking information about the diversity of law firms and looking not just the “number” of women and minority lawyers, but the number who are partners, senior associates with leadership responsibilities and a demonstration of continued commitment to hiring women over the years, not just on occasion.

Clients also select counsel by their observations of law firm representations or speakers at seminars, community events and continuing legal education program. Does your law firm give any thought to the section of which lawyer has the skills and experience to be the firms spokesperson while reflecting the firm’s commitment to diversity. Some clients when undertaking the “beauty pageant” for law firm selection, have gone beyond asking the names and seniority of women and minority attorneys, but are requesting copies of diversity policies and policies on leave for pregnancy or disability and work/lifestyle statements. As clients continue to ask “are you walking the walk, or just talking the talk” firms need to aggressively recruit, retain and advance women lawyers, and benefit from a more balanced work place, an employee pool that looks more like the client and juror’s pool and stays in step with the demands of a changing economy in which many other businesses are “ahead of the game” in terms of women in ownership and leadership positions.

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<sup>64</sup>Rhode, 10-11.