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August 2012

## Women Leaders in the Areas of Higher Education, the Legal Profession and Corporate Boards: Continued Challenges and Opportunities

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## Women Leaders in the Areas of Higher Education, the Legal Profession and Corporate Boards: Continued Challenges and Opportunities

Natasha Ann Lacoste<sup>1</sup> and María Pabón López<sup>2</sup>

### Introduction

Many believe the “woman problem” has been solved, since women are now represented in powerful positions in government, academia, business, and the law.<sup>3</sup> It is true that women today occupy more positions of power than ever; however, these numbers are quite small at the top level, especially for women of color.<sup>4</sup> This article seeks to build on an earlier publication by Dean María Pabón López, *The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing the Recent Trends*<sup>5</sup>, and introduce some other topics for consideration.

In 2008, Dean López assessed the current trends of women in the legal profession.<sup>6</sup> In that article, she reviewed data collected by the Commission of Race and Gender Fairness, which was created by the Indiana Supreme Court.<sup>7</sup> She also compared the Indiana study to data on a national level.<sup>8</sup> Her findings indicated that since the first Indiana study, conducted in 1990; the trend that women are not reaching the highest areas in the law profession has continued, as evidenced by the Indiana study conducted in 2004.<sup>9</sup>

This article begins with an overview of women in the workforce and their presence in education; and then goes on to review the current data on women in three settings—higher education faculty, the law, and corporate boards. Next, it examines the barriers women encounter in reaching the top positions in their respective fields. In this section, barriers that women face generally are discussed; for instance gender stereotypes, the struggles of balancing work and family life, and a lack of mentors and mobility are analyzed. This section also examines barriers women face which are specific to higher education, the law, and corporations.

The article concludes with potential solutions to the impediments faced by women. For example, general recommendations include: organizations should be amenable to employees working remotely and should offer more flex-time and sick leave to both genders. In addition, assumptions regarding the undervaluing of childcare or that women “choose” to work in less demanding jobs need to be altered. It further proposes that because many presidencies will become vacant at institutions of higher learning in the next few years, there is presently an ideal opportunity to increase diversity at this level. Regarding the law, various solutions may encompass: a reexamination of the law firm work culture; educating law students about work

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<sup>3</sup> Laura M. Padilla, *A Gendered Update on Women Law Deans: Who, Where, Why, and Why Not?*, 15 AM. U. J. GENDER SOC. POL’Y & L. 443, 504 (2007).

<sup>4</sup> *Id.*

<sup>5</sup> María Pabón López, *The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing the Recent Trends*, 19 HASTINGS WOMEN’S L.J. 53 (2008).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 55.

<sup>8</sup> *Id. passim.*

<sup>9</sup> *Id.* at 55.

experiences in the legal profession; and a renewed commitment to addressing the status of women in the law. In the corporate area, solutions involve encouraging women to pursue financial and legal careers, and examining steps taken by other countries regarding the dearth of women on corporate boards.

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## **Part I. Women's Presence in the Workforce and Education**

### **A. Women in the workforce**

Women's participation in the labor force has increased dramatically since 1950. In 1950 women comprised a mere 34% of the workforce,<sup>10</sup> and in 2011 they comprised 58.1% of the workforce.<sup>11</sup> Interestingly, while women's participation in the labor force has increased, men's participation has declined.<sup>12</sup> Furthermore, the number of women in the workforce is projected to grow more rapidly than the number of men. By the year 2020, it is estimated the female workforce will grow by 7.4% while the male workforce will grow by 6.3%.<sup>13</sup> Although women have entered the workforce in large numbers and their participation in the workforce is projected to continually increase; today, as it was historically, there is a demarcation between the genders in what type of work they perform.<sup>14</sup>

Women with children are working more than ever; and there is a large number of women working with young children at home. In 2011, 55.8% of mothers who had children under one year worked and 63.9% of mothers who had children two years of age worked.<sup>15</sup> The number of women with children under eighteen that work has also risen. In 1975, 47.4% of women with children under the age of eighteen worked,<sup>16</sup> compared to 70.6% in 2011.<sup>17</sup> Of these working women, a little over one-third were the sole income producers of the household.<sup>18</sup> Among families where both husbands and wives worked, wives earned more than their husbands 28.9%

<sup>10</sup> Mitra Toossi, *A Century of Change: the U.S. Labor Force, 1950 – 2050*, MONTHLY LAB. REV., May 2002, at 15.

<sup>11</sup> Table 3. *Employment status of the civilian noninstitutional population by age, sex, and race*, U.S. BUREAU OF LAB. STAT. (2012).

<sup>12</sup> U.S. CONG. JOINT EXEC. COMM., REP. ON WOMEN AND THE ECONOMY 2010: 25 YEARS OF PROGRESS BUT CHALLENGES REMAIN 2 (Aug. 2010) [hereinafter WOMEN AND ECONOMY].

<sup>13</sup> *Occupational Outlook Handbook, Projections Overview*, U.S. BUREAU OF LAB. STAT. § Labor Force (Mar. 2012).

<sup>14</sup> See Table 11. *Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity, Annual Averages 2011*, U.S. BUREAU OF LAB. STAT. (2012) [hereinafter Table 11]; WOMEN AND ECONOMY, *supra* note 12, at 4; Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 UMKC L. REV. 293, 293 (2004).

<sup>15</sup> Table 6. *Employment status of mothers with own children under 3 years old by single year of youngest child and marital status, 2010-2011 annual averages*, U.S. BUREAU OF LAB. STAT. (2012).

<sup>16</sup> WOMEN AND ECONOMY, *supra* note 12, at 4.

<sup>17</sup> Table 5. *Employment status of the population by sex, marital status, and presence and age of own children under 18, 2010-2011 annual averages*, U.S. BUREAU OF LAB. STAT. (2012). The percent of men with children under eighteen that work is 93.5%. *Id.*

<sup>18</sup> WOMEN AND ECONOMY, *supra* note 12, at 11.

of the time.<sup>19</sup> The number of women working part-time versus the number working full-time has remained relatively constant over approximately the last thirty years.<sup>20</sup>

Historically, women's salary has lagged behind that of men's. Although the numbers have gotten closer, there is still a substantial difference between the two; especially for women of color. Compare women's percentage of median annual earnings to men's—in 1960, women made 60.7% of men's salaries and in 2010, they made 77.4% of men's salaries.<sup>21</sup> The ratio between men and women's salaries was fairly consistent at around 60% from the 1960s to around 1982.<sup>22</sup> Interestingly, this longtime statistic has a biblical reference—a chapter in Leviticus states that a woman's value is worth thirty shekels of silver and a man's value is worth fifty.<sup>23</sup>

The most recent statistics from 2012 show the median weekly earnings for women who worked full-time was \$647 and for men it was \$848.<sup>24</sup> Thus, women are making 76.3% of men's salaries.<sup>25</sup> All minority women made less than their male counterparts.<sup>26</sup> Also, women of color, excluding Asians, made less than white women.<sup>27</sup> The wage gap between the genders was greatest for white women and Asian women.<sup>28</sup> Age also plays a role in the salary difference between women and men; with younger women's salaries closer to men's, and as women age the salary gap between the genders becomes more disparate.<sup>29</sup> Although the difference between men's and women's salaries may not seem very drastic, this variance can have significant consequences. For example, “if current wage patterns continue, a 25-year-old woman, who works full-time, will earn \$523,000 less than the average 25-year-old man will by the time they both reach 65.”<sup>30</sup>

<sup>19</sup> WOMEN IN THE LABOR FORCE: A DATEBOOK, REP. 1034 BY U.S. BUREAU OF LAB. STAT., Table 25 (Dec. 2011) [hereinafter DATEBOOK 2011].

<sup>20</sup> WOMEN AND ECONOMY, *supra* note 12, at Figure 4. In 1984, 27% of women worked part-time and 73% worked full-time. This number is basically the same in 2009, with 26% working part-time and 74% working full-time. *Id.*

<sup>21</sup> Table P-40, *Women's Earnings as a Percentage of Men's Earnings by Race and Hispanic Origin: 1960 to 2010*, U.S. CENSUS BUREAU, CURRENT POPULATION SURV., ANN. SOC. & ECON. SUPPLEMENTS (2011) [hereinafter Table P-40]. In 2010, the median annual earnings in dollars for full-time women workers was 36,931; and the median annual earnings in dollars for full-time men workers was 47,715. *PINC-05, Work Experience in 2010—People 15 Years Old and Over by Total Money Earnings in 2010, Age, Race, Hispanic Origin, and Sex*, U.S. CENSUS BUREAU, CURRENT POPULATION SURV., ANN. SOC. & ECON. SUPPLEMENTS (2011) (see Female, 15 Years and Over, All Races, and Men, 15 Years and Over, All Races).

<sup>22</sup> See Table P-40, *supra* note 21.

<sup>23</sup> Leviticus 27:1-4 (Holy Bible, New International Version). [Haha! No idea if this will stay, but love the reference.](#)

<sup>24</sup> *Usual Weekly Earnings of Wage and Salary Workers First Quarter 2012*, U.S. BUREAU OF LAB. STAT. Table 2 (Apr. 2012).

<sup>25</sup> See *id.*

<sup>26</sup> *Id.* Black or African American women made \$602, 88.92 % of Black or African American men, at \$677. Hispanic or Latina women made \$525, 89.9% of Hispanic or Latino men, at \$584. Asian women made \$830, 80.82% of Asian men, at \$1027. *Id.*

<sup>27</sup> *Id.* White women made \$713. *Id.* White men made \$874; thus, white women made 81.58% of white men's salaries. *Id.*

<sup>28</sup> *Id.* White women made 81.58% of white men's salaries, and Asian women made 80.82% of Asian men's salaries. *Id.*

<sup>29</sup> HIGHLIGHTS OF WOMEN'S EARNINGS IN 2010, REP. 1031 BY U.S. BUREAU OF LAB. STAT. Table 1 (July 2011) [hereinafter HIGHLIGHTS OF EARNINGS]. Women's earnings as a percent of men's for the following age groups: 16-19 years, 94.6%; 20-24 years, 93.8%; 25-34 years, 90.8%; 35-44 years, 79.9%; 45-54 years, 76.5%; 55-64 years, 75.2%; 65 years and older, 75.7%. *Id.*

<sup>30</sup> Deborah Kolb, et al., *Confronting the Gender Gap in Wages*, WOMEN'S MEDIA (Apr. 14, 2009, 8:22 PM), <http://www.womensmedia.com/money/107-confronting-the-gender-gap-in-wages.html>.

Statistics demonstrate that education has a positive effect on earnings—the higher the educational level, the more money one earns. However, women’s salaries lag behind men’s in all areas of education attainment.<sup>31</sup> For example, women’s salary for all education levels is 80.55% of men’s salary; and women’s salary is 74.14% of men’s salary for all college graduates.<sup>32</sup> Furthermore, the median salary of management, professional, and other related occupations for women was 74.15% of men’s.<sup>33</sup> Even though women’s salaries lag, women’s growth of earnings has been higher than that of men’s. Earnings for women with a college degree has increased by 33.4% since 1979; whereas earnings for men with a college degree has increased by only 19.9%.<sup>34</sup> The numbers are even more startlingly when all women and men are compared, not just college graduates. “Women’s earnings grew 44% from 1970 to 2007, compared with [a] 6% growth for men.”<sup>35</sup>

The wage gap also varies depending on where a women resides. For example, women in Louisiana make only 67.2% of men’s salaries.<sup>36</sup> Compare this figure to women residing in Louisiana’s sister states—Mississippi, 74.8%; Arkansas, 74.6%; and Texas, 80.1%.<sup>37</sup> The lowest wage gap for women is in the District of Columbia, where they make 91.4% of men’s salaries.<sup>38</sup> And in Puerto Rico, women actually make more than men, at 103.3%.<sup>39</sup>

Interestingly, for both genders, marriage has a positive impact on earnings. In 2010, women who were married and had a spouse present had median weekly earnings of \$727 compared to single women, at \$591, and women of other marital status, at \$653.<sup>40</sup> Men who were married and had a spouse present had median weekly earnings of \$939 compared to single men, at \$608, and men of other marital status, at \$774.<sup>41</sup> Moreover, the beneficial impact of marriage was also observed in a study of lawyers.<sup>42</sup> It found that marriage, for both genders, was positively associated with attaining partnership in a law firm.<sup>43</sup>

<sup>31</sup> See DATEBOOK 2011, *supra* note 19, at Table 17.

<sup>32</sup> *Id.* The following is a list of women’s salary as a percentage of men’s for various levels of degrees: Doctoral, 80.19%; Professional, 72.41%; Master’s, 75.74%; Bachelor’s, 76.52%; Associate’s, 76.41%; high school graduate with no college, 76.48%. *Id.*

<sup>33</sup> Table 39. *Median weekly earnings of full-time wage and salary workers by detailed occupation and sex*, U.S. CENSUS BUREAU, CURRENT POPULATION SURV., HOUSEHOLD DATA, ANN. AVERAGES (2012) [hereinafter *Table 39*]. Women in the field of education administrators had one of the lowest percentages of men’s salaries, at 69.26%. *Id.*

<sup>34</sup> HIGHLIGHTS OF EARNINGS, *supra* note 29, at Chart 3.

<sup>35</sup> RICHARD FRY & D’VERA COHN, WOMEN, MEN AND THE NEW ECONOMICS OF MARRIAGE, PEW RESEARCH CTR. 3 (Jan. 2010).

<sup>36</sup> *Median Earnings for Full-Time, Year-Round Workers by State and Sex*, NAT’L WOMEN’S LAW CTR. (2010) (NWLC based its calculations on 2010 American Community Survey data) [hereinafter *Median Earnings by State and Sex*]. Note that the data from American Community Survey is for 2009, and thus, it is a bit different than the data from NWLC. *Men’s and Women’s Earnings for States and Metropolitan Statistical Areas: 2009*, AM. CMTY. SURVEY BRIEFS, 4, Table 1 (Sept. 2010) [hereinafter *Statistical Areas*]. Louisiana has the second highest wage gap, the only other state that is larger is Wyoming, where women make 63.8% of men’s salaries. *Median Earnings by State and Sex*.

<sup>37</sup> *Median Earnings by State and Sex*, *supra* note 36.

<sup>38</sup> *Id.*

<sup>39</sup> *Statistical Areas*, *supra* note 36, at 4, Table 1.

<sup>40</sup> HIGHLIGHTS OF EARNINGS, *supra* note 29, at Table 1. Other marital status includes women who are divorced, separated, or widowed. *Id.*

<sup>41</sup> *Id.* Other marital status includes men who are divorced, separated, or widowed. *Id.*

<sup>42</sup> Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 ANNALS AM. ACAD. POL. & SOC. SCI. 130, 130, 135-37, 140-41 (2004).

<sup>43</sup> *Id.*

## B. Women's Presence in Education

Women have been attaining degrees at high rates and “now outnumber men in every group among college students who are U.S. citizens.”<sup>44</sup> For example, in the 1899-1900 academic year, women received only: 19% of Bachelor's degrees; 19% of Master's degrees; and 6% of Doctor's degrees.<sup>45</sup> Compared to the 2010-11 year, where women received: 57% of Bachelor's degrees; 60% of Master's degrees; and 52% of Doctor's degrees.<sup>46</sup> Throughout all these categories, the number of women attaining degrees is going to decline slightly for a few years.<sup>47</sup> However, even with this decline, women are still projected to earn more degrees than men in every category.<sup>48</sup> After this period of decline, the number of women earning degrees is expected to continue increasing.<sup>49</sup>

## Part II. Women among Faculty in Higher Education, the Law, and Corporations

### A. Women's Presence among Faculty in Higher Education

Even today, there is a lack of diversity among faculty in higher education.<sup>50</sup> For instance, “[b]etween 1979 and 2000, only fifty-two out of an estimated 2,100 predominately white institutions were headed by African Americans.”<sup>51</sup> The typical president of a university is still an aging white man.<sup>52</sup> The first national census of Chief Academic Officers (CAOs), published by the American Council on Education in 2009, revealed fairly limited diversity among current CAOs; reporting that: 85% of all CAOs are white; 6% are African American; 4% are Hispanic; 2% are Asian American; and approximately 1% are American Indian.<sup>53</sup> Women were underrepresented as well—less than half of CAOs are women (40%).<sup>54</sup> Also, “[o]nly 30 percent of CAOs intend to seek a presidency, despite ACE data that show the most common path to the president's office is through the CAO position.”<sup>55</sup>

<sup>44</sup> CHRONICLE OF HIGHER EDUCATION 2011, 42 [hereinafter CHRONICLE OF HIGHER EDUCATION].

<sup>45</sup> Table 283. *Degrees conferred by degree-granting institutions, by level of degree and sex of student: Selected years, 1869-70 through 2020-21*, NAT'L CTR. FOR EDUC. STAT. (2011) [hereinafter Table 283].

<sup>46</sup> CHRONICLE OF HIGHER EDUCATION, *supra* note 44, at 42.

<sup>47</sup> Table 283, *supra* note 45.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* It is projected that by the 2020-21 academic year, women will attain: 58.0% of Bachelor's degrees; 60.7% of Master's degrees; and 53.8% of Doctor's degrees. *Id.*

<sup>50</sup> For example, minorities comprise the following percentages of faculty and administrators in higher education: 18.4% of total faculty members (with Asians representing the largest portion of faculty, at 8.4%; followed by African Americans, at 5.6%; and Latinos, at 3.9%); 14.1% of professors; 13% of college and university presidents; 22.9% of total staff members; and 19.4% of executive, managerial, and administrative staff. CHRONICLE OF HIGHER EDUCATION, *supra* note 44, at 28-29.

<sup>51</sup> Kamille Wolff, *From Pipeline to Pipe Dream: The HBCU Effect on Law School Deans of Color*, 14 J. GENDER RACE & JUST. 765, 776 (2011) (citing ALBERT L. SAMUELS, *IS SEPARATE UNEQUAL?: BLACK COLLEGES AND THE CHALLENGE TO DESEGREGATION* 105 (2004)).

<sup>52</sup> CHRONICLE OF HIGHER EDUCATION, *supra* note 44, at 29. Men comprise 74% of college presidents and women comprise 25%. The percentage of college presidents who are white is 86%. *Id.*

<sup>53</sup> ACE Releases First National Census of Chief Academic Officers, AM. COUNCIL ON EDUC., Feb. 9, 2009, [http://www.acenet.edu/AM/Template.cfm?Section=HENA&TEMPLATE=/CM/ContentDisplay.cfm&CONTENT\\_ID=31044](http://www.acenet.edu/AM/Template.cfm?Section=HENA&TEMPLATE=/CM/ContentDisplay.cfm&CONTENT_ID=31044) (last visited June 3, 2012).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

In the 1974-75 academic year, women comprised 23% of full-time faculty.<sup>56</sup> This number has risen to 42% in the 2010-11 academic year.<sup>57</sup> Thus, although progress is being made, male faculty still outnumber female faculty.<sup>58</sup> The largest discrepancy is in the rank of professorship; with men numbering 126,526 thousand, and women numbering 49,132 thousand.<sup>59</sup> Additionally, “women are less likely . . . to be promoted to full professor than men, and their promotions take longer.”<sup>60</sup> There are also more women (44%) in full-time non-tenure track positions than men (33%).<sup>61</sup> This difference between the genders in full-time non-tenure track positions has remained relatively constant since 1976.<sup>62</sup> At least one commentator has called this difference between men and women an unstated “mommy track.”<sup>63</sup>

In the realm of academia, parallel to the general workforce, women’s salaries lag behind that of men’s across all types of institutions and at each faculty rank.<sup>64</sup> This salary gap is especially great at the rank of full professor.<sup>65</sup> Also, women spend more time mentoring and teaching than do men.<sup>66</sup> One study found:

Although associate professors of both sexes worked similar amounts of time overall—about sixty-four hours a week—the distribution of work time varied considerably. Men spent seven and a half hours more a week on their research than did women. Even if these differences in research time occurred only during semesters, not during summer or holiday breaks, this would mean that men spent in excess of two hundred more hours on their research each year than women. On the other hand, women associate professors taught an hour more each week than men, mentored an additional two hours a week, and spent nearly five hours more a week on service. This translates to women spending roughly 220 more hours on teaching, mentoring, and service over two semesters than men at that rank.<sup>67</sup>

<sup>56</sup> John W. Curtis, *Persistent Inequality: Gender and Academic Employment*, AM. ASS’N OF UNIV. OF WOMEN Figure 2 (Apr. 2011); available at [http://www.google.com/url?sa=t&rct=j&q=persistent%20inequality%3A%20gender%20and%20academic%20employment&source=web&cd=1&ved=0CFEQFjAA&url=http%3A%2F%2Fwww.aaup.org%2FNR%2Frdonlyres%2F08E023AB-E6D8-4DBD-99A0-24E5EB73A760%2F0%2Fpersistent\\_inequity.pdf&ei=YgviT-j5PIeC2wXH3vzLCw&usq=AFQjCNG2hlbACV119N1VgyAf9QOaFz76fQ](http://www.google.com/url?sa=t&rct=j&q=persistent%20inequality%3A%20gender%20and%20academic%20employment&source=web&cd=1&ved=0CFEQFjAA&url=http%3A%2F%2Fwww.aaup.org%2FNR%2Frdonlyres%2F08E023AB-E6D8-4DBD-99A0-24E5EB73A760%2F0%2Fpersistent_inequity.pdf&ei=YgviT-j5PIeC2wXH3vzLCw&usq=AFQjCNG2hlbACV119N1VgyAf9QOaFz76fQ).

<sup>57</sup> *Id.*

<sup>58</sup> CHRONICLE OF HIGHER EDUCATION, *supra* note 44, at 28. There are 406,848 thousand men compared to 306,071 thousand women. *Id.*

<sup>59</sup> *Id.* This means that there are roughly 34% women full professors. *Id.*

<sup>60</sup> Joya Misra, et al., *The Ivory Ceiling of Service Work*, 97 ACADEME no. 1 (Jan./Feb. 2011), available at <http://www.aaup.org/AAUP/pubsres/academe/2011/JF/Feat/misr.htm>. A study done by the Modern Language Association found it took women on average “from 1 to 3.5 years longer than men to attain the rank of professor.” *Standing Still: The Associate Professor Survey*, MODERN LANGUAGE ASS’N 5 (2009) [hereinafter *Standing Still*].

<sup>61</sup> Curtis, *supra* note 56, at Figure 4.

<sup>62</sup> *Id.* In 1976, the number of women full-time faculty in non-tenure track positions were 26% and the number of men were 16%. *Id.*

<sup>63</sup> *Id.* at 8.

<sup>64</sup> *Id.* at 4. See also ANNUAL REPORT ON THE ECONOMIC STATUS OF THE PROFESSION 1999-2000 IN ACADEME, AM. ASS’N OF UNIV. PROFESSORS 18-19 (2000) [hereinafter ANNUAL REPORT IN ACADEME, 2000].

<sup>65</sup> CHRONICLE OF HIGHER EDUCATION, *supra* note 44, at 22. Women’s salary as a percentage of men’s salary for the following types of faculty: Professor, 87.6%; Associate Professor, 93.3%; Assistant Professor, 93.1%; Instructor, 96.1%; and Lecturer, 90.5%. *Id.*

<sup>66</sup> Curtis, *supra* note 56, at 5.

<sup>67</sup> Misra et al., *supra* note 60.



Data indicates that faculty who spend more time researching rather than teaching have higher basic salaries.<sup>68</sup> Again, as mentioned previously, this variance in salaries between the sexes can have significant consequences. For example, “initial inequities in the salaries of women and men faculty are very difficult to resolve through the annual process of awarding merit or across-the-board salary increases.”<sup>69</sup>

### 1. A Subset of Women Faculty—Women Law Faculty

Gender segregation persists in almost all areas of legal education—the more prestigious positions are overwhelming male, and the less prestigious positions are overwhelming female.<sup>70</sup> A thirteen year longitudinal study of courses listed by the Association of American Law Schools (AALS) showed that this occupational segregation by gender was widespread and growing.<sup>71</sup> For instance, top positions at law schools, like deans and library directors, are generally stereotyped as male, while less prominent positions are stereotyped as female, like assistant deans and non-director librarians.<sup>72</sup> In addition to these positions being associated with a male/female stereotype, most law deans and tenured full professors are men while assistant deans and off-tenure track skills teachers are usually female.<sup>73</sup>

Furthermore, similar to the statistics in the above section on women faculty generally in higher education, in the field of legal academia, men receive a higher percentage of the associate professor appointments and women tend to be appointed at the assistant professor rank.<sup>74</sup> Also, women obtain tenure at lower rates than men.<sup>75</sup> Additionally, women are hired into positions off the conventional tenure track at high rates “and at those same schools proportionately fewer women are being hired onto the conventional tenure track.”<sup>76</sup> Those who teach in the off tenure track usually teach skills in clinics, simulation courses, and legal writing programs, and are paid much less (often less than half) than conventionally tenure-tracked teachers.<sup>77</sup> Within the fields of clinicians and legal writing, women are paid less than men, even when controlling for

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<sup>68</sup> Laura Walter Perna, Visiting Assistant Professor, Dep’t of Educ. Policy & Leadership, Coll. of Educ., Univ. of Md., Paper presented at the annual meeting of the Am. Educ. Research Ass’n: Sex Differences in Faculty Salaries: A Cohort Analysis 14, 16 (Apr. 2000).

<sup>69</sup> *Id.* at 3.

<sup>70</sup> Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 314, 323 (2000) [hereinafter Neumann, *What the Statistics Show*]; Richard K. Neumann Jr., *Women in Legal Education: A Statistical Update*, 73 UMKC L. REV. 419, 425 (2004) [hereinafter Neumann, *A Statistical Update*]. See also Kornhauser, *supra* note 14, at 295 (finding women are congregated in less prestigious and/or more traditionally feminine subjects and males teach more prestigious harder male courses); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 199-200 (1997) (finding men were more likely to teach high status courses, like constitutional law, while women were more likely to teach low status courses, like skills).

<sup>71</sup> Kornhauser, *supra* note 14, at 295.

<sup>72</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 346.

<sup>73</sup> Neumann, *A Statistical Update*, *supra* note 70, at 442.

<sup>74</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 313, 340-41. See also Merritt & Reskin, *supra* note 70, at 199 (noting “men were more likely than women to begin teaching at a higher professorial rank”); Neumann, *A Statistical Update*, *supra* note 70, at 435 (men are more likely to be hired as associate professors than women).

<sup>75</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 313. See also ANNUAL REPORT IN ACADEME, 2000, *supra* note 64, at 26 (noting women still achieve tenure at lesser rates than men).

<sup>76</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 346. See also Neumann, *A Statistical Update*, *supra* note 70, at 431 (finding “that the least secure, least compensated, and lowest status teaching jobs in law schools are predominantly female”).

<sup>77</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 323. See also Neumann, *A Statistical Update*, *supra* note 70, at 441 (in the sectors of legal education that are surveyed for salary and gender—librarians and legal writing, men tend to be paid more than women).

employment status and experience.<sup>78</sup> Evidence indicates that this trend persists in other academic positions, whereby “women are paid less than similarly qualified men within the same status (tenured, tenure-track, etc.).”<sup>79</sup>

#### a. A Subset of Women Law Faculty—Women Law Deans

There is an extremely small number of law deans who are women, and of those, an even smaller portion are minorities.<sup>80</sup> “[W]omen deans are a relatively new phenomenon.”<sup>81</sup> From 1951 to 1981 the number of women law deans varied, with the highest number serving simultaneously in 1975.<sup>82</sup> For approximately the next twenty years, the number of women law deans rose fairly steadily. In the 2008-2009 academic year, there were forty-one women law deans; making the percentage of women deans 20.6%.<sup>83</sup> Interestingly, female law deans tend to serve longer terms than male law deans.<sup>84</sup> However, minority women deans serve shorter terms than both men and women generally.<sup>85</sup>

From 1950 to 2003 there have been five minority women who have served as deans at ABA accredited law schools.<sup>86</sup> Of these five, only one led a school that was not part of the Historically Black Colleges and Universities (HBCU).<sup>87</sup> Since 2003 through the 2005-06 academic year, three women of color served as deans; two at traditional universities and one at a HBCU.<sup>88</sup> In the 2008-2009 academic year, there were five minority women law deans.<sup>89</sup>

### B. Women in the Law

In 1988, a report issued by the American Bar Association’s Commission on Women in the Profession observed that there was a great deal of gender discrimination in the legal profession.<sup>90</sup> It noted that “higher” positions in the law were overwhelmingly held by men and women were “overrepresented in the least lucrative segments of the profession.”<sup>91</sup> Additionally, it commented on the fact that women were failing to reach partnership in private practice.<sup>92</sup> It concluded its statistical introduction by stating “time alone is unlikely to alter significantly the

<sup>78</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 338-39.

<sup>79</sup> *Id.* at 347.

<sup>80</sup> Herma Hill Kay, *Women Law School Deans: A Different Breed, or Just one of the Boys?*, 14 YALE J.L. & FEMINISM 219, 219 (2002).

<sup>81</sup> *Id.* at 224.

<sup>82</sup> *Id.* In 1975, there were five women law school deans. *Id.*

<sup>83</sup> *Id.*; 2008-2009 AALS Statistical Report on Law Faculty, ASS’N OF AM. LAW SCH., available at <http://www.aals.org/statistics/2009dlt/titles.html> [hereinafter *AALS Statistical Report on Law Faculty*].

Unfortunately the authors were unable to find more current statistics from a reputable source.

<sup>84</sup> Padilla, *supra* note 3, at 474-75. Women served an average of 6.62 years, while men served an average of four years. *Id.*

<sup>85</sup> *Id.* at 474-76. Women deans of color served an average of 3.83 years. *Id.* at 475.

<sup>86</sup> Wolff, *supra* note 51, at 783; Padilla, *supra* note 3, at 461-62.

<sup>87</sup> Padilla, *supra* note 3, at 462. A HBCU is defined as “any historically black college or university that was established prior to 1964, whose principal mission was, and is, the education of black Americans, and that is accredited by a nationally recognized accrediting agency or association.” *Integrated Postsecondary Education Data System, Glossary, Historically black colleges and universities*, NAT’L CTR. FOR EDUC. STAT., <http://nces.ed.gov/ipeds/glossary/?charindex=H> (last visited June 3, 2012).

<sup>88</sup> Padilla, *supra* note 3, at 462.

<sup>89</sup> *AALS Statistical Report on Law Faculty*, *supra* note 83. There was one Latina dean and four African American deans. *Id.* Unfortunately the authors were unable to find more current statistics from a reputable source. By 2012, the number has increased by at least one, since Dean López is Latina.

<sup>90</sup> ABA Comm’n on Women in the Profession, Report to the House of Delegates 5 (1988).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

underrepresentation of women” in higher legal positions and “[e]ntry of women into these positions at a rate proportional to their numbers out of law school requires serious examination of the structures, practices and attitudes of the profession.”<sup>93</sup>

Have things improved in the past twenty-four years? Many believe they have and think that women have “arrived” in the law profession.<sup>94</sup> Women have pervaded all levels of law practice—they have gone “from exclusion to full integration.”<sup>95</sup> They make up about half of law school classes<sup>96</sup> and are awarded almost half of all law degrees.<sup>97</sup> For instance, in the 2011-12 class, women made up 47% of J.D. students.<sup>98</sup> And in 2011, 47.3% of law degrees went to females.<sup>99</sup> Furthermore, approximately one-third of those practicing law are women.<sup>100</sup> Yet, “growth in . . . numbers alone does not equal progress.”<sup>101</sup>

Empirical evidence illustrates that although, as previously mentioned, women are entering law schools, receiving degrees, and going into the practice of law at high rates; “they are failing to reach the higher levels within the profession.”<sup>102</sup> Thus, to borrow a term from economics, the glass ceiling had pervaded the law profession back in 1988 and is still present in 2012.<sup>103</sup> The remainder of this section examines various statistics on women in the legal profession.

Today, women comprise 31.9% of all lawyers.<sup>104</sup> At law firms in 2011, 45.4% of associates and 47.7% of summer associates were women.<sup>105</sup> However, women are glaringly underrepresented as partners in law firms. Within law firms, women comprise 19.5% of partners<sup>106</sup> and a mere 2.0% of partners are women of color.<sup>107</sup> Furthermore, women make up only 15% of equity partners.<sup>108</sup> Among the 200 largest firms, women comprise 6.0% of

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<sup>93</sup> *Id.*

<sup>94</sup> López, *supra* note 5, at 53.

<sup>95</sup> *Id.*

<sup>96</sup> ABA, Enrollment and Degrees Awarded 1963-2011 Academic Years (2012), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/enrollment\\_degrees\\_awarded.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.pdf) [hereinafter ABA, Enrollment and Degrees].

<sup>97</sup> ABA, JD. and LL.B Degrees Awarded 1981-2011 (2012), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/jd\\_llb\\_degrees\\_awarded.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_llb_degrees_awarded.pdf) [hereinafter, ABA, JD. and LL.B Degrees].

<sup>98</sup> ABA, Enrollment and Degrees, *supra* note 96.

<sup>99</sup> ABA, JD. and LL.B Degrees *supra* note 97.

<sup>100</sup> ABA Comm’n on Women in the Profession, A Current Glance at Women in the Law 1 (2011), available at [http://www.americanbar.org/content/dam/aba/marketing/women/current\\_glance\\_statistics\\_2011.pdf](http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_2011.pdf) [hereinafter ABA, A Current Glance at Women in the Law].

<sup>101</sup> López, *supra* note 5, at 55.

<sup>102</sup> *Id.* at 54.

<sup>103</sup> See also *id.* at 59.

<sup>104</sup> Table 11, *supra* note 14.

<sup>105</sup> *Law Firm Diversity Wobbles: Minority Numbers Bounce Back While Women Associates Extend Two-Year Decline*, NAPL 1 (Nov. 2011) [hereinafter *Law Firm Diversity Wobbles*]. The number of women associates has declined for the second year in a row. *Id.* Percentages of women associates: in 2009, 45.66%; in 2010, 45.41%; and in 2011, 45.35%. *Id.*

<sup>106</sup> *Id.* In 1995, the percentage was 13.4% and in 2010 it was 19.4%. *Women in the Law in the U.S.*, CATALYST 2 (2012). Thus, the rate of change is extremely small. *Id.* “Given the same rate of change, Catalyst estimates that it will take more than a woman lawyer’s (born in 2010) lifetime to achieve equality.” *Id.*

<sup>107</sup> *Law Firm Diversity Wobbles*, *supra* note 105, at 1.

<sup>108</sup> REPORT OF THE SIXTH ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS, NAT’L ASS’N OF WOMEN LAWYERS AND THE NAWL FOUND. 3 (Oct. 2011) [hereinafter NATIONAL SURVEY OF WOMEN IN LAW FIRMS, 2011].

managing partners,<sup>109</sup> and 11% of the largest firms have no women on their respective governing committees.<sup>110</sup> A survey of graduates from the University of Michigan Law School found that women were less likely than men to “become partners, even after controlling for a number of individual characteristics”—race, experience, GPA, family status (marriage and children), working part-time, satisfaction, and having a mentor.<sup>111</sup>

Evaluated against law firms, statistics show similar numbers of women who serve as general counsel in Fortune 500 and 1000 companies. At Fortune 500 Companies, women comprised 18.8% of general counsel;<sup>112</sup> and among these women, fifteen were minorities.<sup>113</sup> At Fortune 1000 Companies, women made up 16.0% of general counsel;<sup>114</sup> and among these women, five were minorities.<sup>115</sup>

Comparable to the low number of women at law firms and serving as general counsel at Fortune Companies, women are underrepresented among both federal and state judgeships.<sup>116</sup> In 2011, women held only 23% of federal judgeships and 27% of state judgeships.<sup>117</sup> Critical mass is “the threshold where women’s presence and perspectives make a difference.”<sup>118</sup> This is reached when women make up one-third of the membership in a group.<sup>119</sup> Today, critical mass has been achieved in three states for federal judgeships<sup>120</sup> and six states and the District of Columbia for state judgeships.<sup>121</sup>

Historically, women’s salaries have made less than men’s in the law profession. Unfortunately, this trend continues. See table below for the median weekly salaries of men compared to women.<sup>122</sup>

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Men	\$1,547	\$1,610	\$1,710	\$1,748	\$1,891	\$1,783	\$1,875	\$1,934	\$1,895	\$1,884
Women	\$1,073	\$1,237	\$1,255	\$1,354	\$1,333	\$1,381	\$1,509	\$1,499	\$1,461	\$1,631
Women’s Salaries as a Percentage of Men’s	69.4%	76.8%	73.4%	77.5%	70.5%	77.5%	80.5%	74.9%	77.1%	86.6%

<sup>109</sup> ABA, A Current Glance at Women in the Law, *supra* note 100, at 1.

<sup>110</sup> NATIONAL SURVEY OF WOMEN IN LAW FIRMS, 2011 *supra* note 108, at 4. And 35% of firms have only one woman on their governing committee. *Id.*

<sup>111</sup> Noonan & Corcoran, *supra* note 42, at 140.

<sup>112</sup> ABA, A Current Glance at Women in the Law, *supra* note 100, at 2.

<sup>113</sup> *MCCA Survey: Women Serving as General Counsel At Fortune Companies Reaches New High*, MINORITY CORPORATE COUNSEL ASS’N (Oct. 2011) [hereinafter *MCCA Survey*].

<sup>114</sup> ABA, A Current Glance at Women in the Law, *supra* note 100, at 2.

<sup>115</sup> *MCCA Survey*, *supra* note 113.

<sup>116</sup> “No state has achieved equal representation of women (50% of all seats)” on the bench. *Women in Federal and State-level Judgeships*, CTR. FOR WOMEN IN GOV’T AND CIVIL SOC’Y, Highlights (2011).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 8.

<sup>119</sup> *Id.*

<sup>120</sup> Those states are New Jersey, Vermont and Connecticut. *Id.* at 8.

<sup>121</sup> Note there is a discrepancy in this report. It states that “7 states and the District of Columbia have reached or passed the 33% threshold” of critical mass. *Id.* at 11. However, the chart listing the State Ranks Based on the Number of Women in State Judgeships lists six states as having reached or passed critical mass. *Id.* at 10. Those states are Vermont, Montana, Rhode Island, South Carolina, Oregon and Kentucky. *Id.* The authors chose to cite to the chart.

<sup>122</sup> Table comprised of statistics from Table 39 of the Labor Force Statistics from the years 2002 through 2011. See Table 39, *supra* note 33.

Interestingly, the salary of women lawyers as a percentage of men's showed a substantial increase (of 9.5%) between 2010 and 2011. Hopefully, this increase will continue to make the same type of leap in the years to come.<sup>123</sup>

### C. Women's Presence on Corporate Boards

Corporate boards are discussing diversity at greater lengths than ever. For instance, in 2009, the SEC

[A]dopted a rule to assess a company's commitment to developing and maintaining a diverse board. In summary, public companies are now required to disclose whether diversity is a factor in considering candidates for nomination to the board of directors, and how the company assesses how effective the policy has been.<sup>124</sup>

However frequent these discussions have been, it does not change the fact that the number of women on corporate boards still remains dismally small, especially the number of minority women. An interesting statistic was reported in 2007, that corporations with more women board directors outperform those with the least representation of women by over 50%.<sup>125</sup> A brief highlight of the composition of Fortune 500 and 1000 corporate boards follows.

In 2011, a mere 16.1% of women were directors at Fortune 500 Companies;<sup>126</sup> and women comprised less than 15% of directors at Fortune 1000 Companies.<sup>127</sup> Thus, approximately 85% of directors at the largest corporations in the United States are men. Furthermore, in 2011, only 14.1% of executive officers were women at the Fortune 500 Companies.<sup>128</sup> Among the top earners at Fortune 500 Companies, women comprised a scant 7.5%.<sup>129</sup> Women of color fair even worse than white women on corporate boards. In 2011, 12% of Fortune 500 corporate boards had no minorities,<sup>130</sup> and a mere 3% of minority women were directors.<sup>131</sup>

Additionally, many corporations have few women, or none, serving on their boards. At Fortune 500 Companies in both 2010 and 2011, less than 20% of company's boards had 25% or more women directors and approximately 10% of companies had no women serving on their boards.<sup>132</sup> At Fortune 1000 Companies: 16% have no women; 36% have one woman; 33% have

<sup>123</sup> Although after a 7% increase between 2005 and 2006, the percentage decreased by 7% for the next year.

<sup>124</sup> Luis A. Aguilar, SEC Commissioner, Keynote Speech before the 2011 Hispanic Association of Corporate responsibility, An Update on Diversity and Financial Literacy (Apr. 30, 2011), available at <http://sec.gov/news/speech/2011/spch043011laa.htm>. See also Proxy Disclosure Enhancements, 74 Fed. Reg. at 68,355.

<sup>125</sup> *The Bottom Line: Corporate Performance and Women's Representation on Boards*, CATALYST (2007), available at <http://www.catalyst.org/file/139/bottom%20line%202.pdf> (the exact percentage was fifty-three).

<sup>126</sup> 2011 Catalyst Census: Fortune 500 Women Board Directors, CATALYST 1 (2011) [hereinafter *Fortune 500 Women Board Directors*]. In 2010, women held 15.7% of board seats. *Id.*

<sup>127</sup> *Women on Boards: Review & Outlook*, CTPARTNERS, Exhibit. 1 (2012), available at [http://www.ctnet.com/uploadedFiles/Women-On-Boards\\_2012.pdf](http://www.ctnet.com/uploadedFiles/Women-On-Boards_2012.pdf) [hereinafter *Women on Boards*].

<sup>128</sup> 2011 Catalyst Census: Fortune 500 Women Executive Officers and Top Earners, CATALYST (2011) [hereinafter *Fortune 500 Women Executive Officers and Top Earners*]. In 2010, women held 14.4% of executive officer positions. *Id.*

<sup>129</sup> *Id.* In 2010, the percentage was 7.6. *Id.*

<sup>130</sup> 2011 Spencer Stuart Board Index, 6 (2011).

<sup>131</sup> *Fortune 500 Women Board Directors*, *supra* note 126, at 2. The breakdown by race of women serving as directors on Fortune 500 Companies was as follows: 11.3% were African American; 4.9% were Latina; and 2.5% were Asian. *Id.*

<sup>132</sup> *Fortune 500 Women Executive Officers and Top Earners*, *supra* note 128.

two women; 11% have three women; 4% have four women; and none have five or six women.<sup>133</sup> Moreover, in both 2010 and 2011, more than 67% of Fortune 500 Companies had no minority women directors and no companies had three or more women of color directors serving together.<sup>134</sup>

### **Part III. Barriers that Women Face—Generally and those Specific to Higher Education, the Law, and Corporations**

#### **A. Barriers that Women Face—Generally**

Articles and commentary that discuss why women are underrepresented today in the areas of faculty in higher education, the law, and corporations all have recurring themes. Therefore, this section examines the barriers that women face in general; and thus, these impediments can be generalized to all women.

In the past, it was easy to spot gender discrimination—a woman, after returning from maternity leave would be demoted or passed over for a promotion or partnership; or a promotion would go to a less experienced male colleague.<sup>135</sup> However, this type of overt discrimination is rarely seen today. Instead, “discrimination against women lingers in a plethora of work practices and cultural norms that only appear unbiased.”<sup>136</sup> Consequently, this type of discrimination frequently goes unnoticed and is rarely questioned.<sup>137</sup> Nevertheless, these work practices and cultural norms “create a subtle pattern of *systemic* disadvantage, which blocks all but a few women from career advancement.”<sup>138</sup>

##### 1. Gender Stereotypes

A barrier to women’s progress is gender stereotypes. Stereotypes still persist that men are better fit to be leaders.<sup>139</sup> For example, qualities traditionally associated with leaders are masculine; such as forcefulness, assertiveness, and being authoritative.<sup>140</sup> However, when women exhibit these “masculine” behaviors they are often punished. For instance, men who are perceived as autocratic leaders receive positive evaluations and women receive negative evaluations for exhibiting the same behavior.<sup>141</sup> Additionally, the same type of action can be perceived as strength in the man and weakness in a woman.<sup>142</sup> For instance, compare “he speaks too fast—it’s hard for him to come down to our level” with “she speaks too quickly. She must be nervous.”<sup>143</sup>

Aside from the gender stereotype that men are better leaders, there are still traditional notions that women should do more house work than men.<sup>144</sup> For example, a study that surveyed female scientists from some of the most prestigious research institutions found:

<sup>133</sup> *Women on Boards*, *supra* note 127.

<sup>134</sup> *Fortune 500 Women Board Directors*, *supra* note 126, at 2.

<sup>135</sup> See Debra E. Meyerson & Joyce K. Fletcher, *A Modest Manifesto for Shattering the Glass Ceiling*, 78 HARV. BUS. REV. 127 (2000).

<sup>136</sup> *Id.* at 128. See also Rebecca K. Lee, *Core Diversity*, 19 TEMP. POL. & CIV. RTS. L. REV. 477, 478 (2010).

<sup>137</sup> Meyerson & Fletcher, *supra* note 135, at 128.

<sup>138</sup> *Id.* (emphasis in original).

<sup>139</sup> Padilla, *supra* note 3, at 485.

<sup>140</sup> DEBORAH L. RHODE, *THE DIFFERENCE “DIFFERENCE” MAKES: WOMEN AND LEADERSHIP* 8 (2003).

<sup>141</sup> KARIN KLENKE, *WOMEN AND LEADERSHIP: A CONTEXTUAL PERSPECTIVE* 166 (1996); Padilla, *supra* note 3, at 507.

<sup>142</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 349.

<sup>143</sup> *Id.* at 340 (citing Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 340 (1996)).

<sup>144</sup> Curtis, *supra* note 56, at 8.

[D]espite women's considerable gains in science in recent decades, female scientists do nearly twice as much housework as their male counterparts. Partnered women scientists . . . do 54 percent of the cooking, cleaning, and laundry in their households; partnered men scientists do just 28 percent. This translates to more than ten hours a week for women—in addition to the nearly sixty hours a week they are already working as scientists—and to just five hours for men.<sup>145</sup>

Stereotypes may also have a profound effect on minority women. This is evidenced by a study that examined the issue of race through leadership categorization theory.<sup>146</sup> This theory espouses that leaders are viewed as “most effective when they are perceived to possess prototypical characteristics of leadership.”<sup>147</sup> Interestingly, the study found that “being White” was an attribute of the leader prototype.<sup>148</sup> Whites were judged to be “more effective leaders” and to possess “more leadership potential.”<sup>149</sup> Thus, whites “may be more likely to be promoted to leadership positions more frequently than racial minorities.”<sup>150</sup>

## 2. Work Performed by Women Not Seen as Competent as Work Performed by Men

Another barrier for women is that work performed by men is usually seen as competent, no matter how well done or whether done at all.<sup>151</sup> Conversely, work performed by women, no matter how effective or to what result, frequently goes unrecognized.<sup>152</sup> For example, when the Modern Language Association adopted an anonymity rule, there was an extreme increase in the submission/acceptance ratios of papers authored by women.<sup>153</sup> This acute increase “was considered such clear evidence of prior sex discrimination that the anonymity rule was extended to all MLA Journals.”<sup>154</sup> Similarly, another journal had the same result when it introduced a double-blind review.<sup>155</sup> The Journal of Behavioral Ecology had “a significant increase in female first-authored papers, a pattern not observed in a very similar journal that provides reviewers with author information.”<sup>156</sup>

Another example of women being perceived as less competent than men occurred “[w]hen resumes, identical except for name and sex, were given to chairmen of psychology departments, more men were considered suitable for tenure-track positions than women. Male

<sup>145</sup> Londa Schiebinger & Shannon K. Gilmartin, *Housework is an Academic Issue*, 96 ACADEME no. 1 (Jan./Feb. 2010), available at <http://www.aaup.org/AAUP/pubsres/academe/2010/JF/feat/schie.htm>.

<sup>146</sup> See Ashleigh Shelby Rosette, et al., *The White Standard: Racial Bias in Leader Categorization* 93 J. APPL. PSYCH. 758 (2008).

<sup>147</sup> *Id.* at 758.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at 773.

<sup>151</sup> Padilla, *supra* note 3, at 508; Neumann, *A Statistical Update*, *supra* note 70, at 442.

<sup>152</sup> Padilla, *supra* note 3, at 508; Neumann, *A Statistical Update*, *supra* note 70, at 442. “[I]n academia, as elsewhere in life, people who are in a position to make or influence decisions about others tend, at least unconsciously, to credit what men do and discredit what women do, even if men and women are doing the same thing, because of a tendency to consider males and male traits the ‘norm’ in all situations other than those in which women predominate.” *Id.*

<sup>153</sup> Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don’t Know about Women Law Professors*, 25 ARIZ. L. REV. 869, 884-85 (1983).

<sup>154</sup> *Id.* at 885.

<sup>155</sup> See Amber E. Budden et al., *Double-Blind Review Favours Increased Representation of Female Authors*, 23 TRENDS IN ECOLOGY & EVOLUTION 1 (2007).

<sup>156</sup> *Id.* at 4.



candidates also were offered the hypothetical positions at higher ranks.”<sup>157</sup> The above examples demonstrate that work is devalued or seen as less competent by the mere fact it bears a woman’s name. However, this is not to say this is deliberate or intentional; rather, it is more likely that some type of unconscious bias is taking place.

### 3. Lack of Mentors

The lack of mentors is another barrier for women. Until a short time ago, women had few role models, while men have had them for many years.<sup>158</sup> Also, networking appears to give men an advantage. The “[o]ld boys’ networks persist not because of pernicious intent, but rather because they already exist and provide recognizable benefits to in-group members.”<sup>159</sup> When making recommendations or when mentoring colleagues for leadership positions, men who are already in leadership positions are more likely to think of other in-group members.<sup>160</sup> “It is very natural for people with decision-making power over leadership promotions to choose people who resemble themselves.”<sup>161</sup> It is also interesting that “people who have with male mentors often do better than those who are mentored by women and minorities, precisely because the former have more power than the latter.”<sup>162</sup> Within the legal profession women lawyers, particularly minority women, tend to be dissatisfied with the availability of mentors. For example, a study reported that 43% of white women and 31% of women of color were satisfied with the availability of mentors.<sup>163</sup>

### 4. Women are Sometimes Viewed as “Token” Leaders

Many women in positions of power are seen as “token” leaders.<sup>164</sup> This means that all their actions are closely scrutinized and often “they must exceed standards to be considered acceptable.”<sup>165</sup> This is especially true for women of color. An ABA report on multicultural women noted “[a]s a result of stereotypes and assumptions, multicultural women find themselves over scrutinized and expected to conform to incompatible work styles. In addition, multicultural women contend with isolation, hostility, and disrespect.”<sup>166</sup> Thus, it appears many women “are not willing to sacrifice their personal lives, their personal styles, or their sanity” to move into leadership positions.<sup>167</sup>

Moreover, occasionally diversity is seen as a “one-time commitment.”<sup>168</sup> Examples include, once a woman is hired, no more women are sought; or when a woman is hired to a position of power, when she leaves, a white male will be hired fill that vacancy.<sup>169</sup>

### 5. A Lack of Mobility

Another barrier is mobility. “Few women have the luxury of relocating in order to attain job advancement. Ninety percent of women reported they would relocate only if their husbands

<sup>157</sup> Zenoff & Lorio, *supra* note 153, at 885.

<sup>158</sup> Padilla, *supra* note 3, at 500.

<sup>159</sup> *Id.* at 511.

<sup>160</sup> *Id.* at 511-12.

<sup>161</sup> *Id.* at 512.

<sup>162</sup> Cristina González, *Leadership, Diversity and Succession Planning in Academia*, CTR. FOR STUDIES IN HIGHER EDUC., 8 (May 2010).

<sup>163</sup> *Women in the Law: Making the Case*, CATALYST 15 (2001) [hereinafter *Making the Case*].

<sup>164</sup> Padilla, *supra* note 3, at 517.

<sup>165</sup> *Id.*

<sup>166</sup> *The Burdens of Both, The Privileges of Neither*, A Report of the Multicultural Women Attorneys Network, ABA 17 (1994).

<sup>167</sup> Padilla, *supra* note 3, at 529.

<sup>168</sup> González, *supra* note 162, at 8.

<sup>169</sup> *Id.*



secured employment. Seventy-five percent of men would relocate for a better job with or without the spouse's employment."<sup>170</sup>

#### 6. Work/Family Life

Statistics show that women leaders are more likely to be single and to never have had children. For example, 52% of executive women have never had children; 26% of executive women are single; 16% of executive women are divorced or separated; and only 46% of the top corporate women are married.<sup>171</sup> These statistics are all higher than the national norm.<sup>172</sup> Contrast the statistics of leading women to those of men: 94.6% of executive men are married compared to 81.6% of men in the general population.<sup>173</sup>

#### 7. Reaching the Top in a Profession is Seen as a Linear Climb

Today, as it has been historically, the path to a successful career in most disciplines is through a linear sequence of vertical steps.<sup>174</sup> This type of linear climb is problematic for women due to inflexible work schedules.<sup>175</sup> As one woman noted, "[h]aving control over your schedule is the only way that women who want to have a career and a family can make it work."<sup>176</sup> Furthermore, it is not just inflexible workplaces that hinder women; oftentimes this climb necessitates excessive travel and working long hours at the office.<sup>177</sup> During this linear climb, women frequently take time off from work or work part-time in order to have and care for young children.<sup>178</sup> In addition, women may have other dependent care responsibilities, such as the care of elderly relations.<sup>179</sup>

"The women who have managed to be both mothers and top professionals are superhuman, rich, or self-employed."<sup>180</sup> Women who have reached top positions of power tend to espouse to the younger generation "that 'having it all' is, more than anything, a function of personal determination."<sup>181</sup> One prominent woman noted there are things that older generations of women tell younger women which are really "half-truths." These "half-truths" purport it is possible to reach the top if women: are committed enough; marry a supportive spouse; and sequence their lives to have both career and family.<sup>182</sup> However, is determination really enough?

When women take time off, work part-time, or accept non-tenured positions in order to assume a care giving role, they "are still more often than not restricted from mainstream access to leadership positions."<sup>183</sup> For instance, a survey of lawyers found that taking time off or

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<sup>170</sup> Regina M. Watkins et al., *The Juxtaposition of Career and Family: A Dilemma for Professional Women*, ADVANCING WOMEN IN LEADERSHIP J. (1998), available at [http://www.advancingwomen.com/awl/winter98/awlv2\\_watkins5.html](http://www.advancingwomen.com/awl/winter98/awlv2_watkins5.html).

<sup>171</sup> *Myths About Women in Business*, FEMINIST MAJORITY FOUND. (2012), [http://feminist.org/research/business/ewb\\_myths.html](http://feminist.org/research/business/ewb_myths.html) (last visited July 5, 2012).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> See Padilla, *supra* note 3, at 514; Anne-Marie Slaughter, *Why Women Still Can't Have it All*, ATLANTIC (July/Aug. 2012), available at <http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-can-8217-t-have-it-all/9020/>.

<sup>175</sup> Padilla, *supra* note 3, at 514; Slaughter, *supra* note 174.

<sup>176</sup> Slaughter, *supra* note 174 (quoting Mary Matalin).

<sup>177</sup> *Id.*; Lee, *supra* note 136, at 483-84.

<sup>178</sup> Padilla, *supra* note 3, at 520.

<sup>179</sup> *Id.* at 514.

<sup>180</sup> Slaughter, *supra* note 174.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> Padilla, *supra* note 3, at 514; see also Curtis, *supra* note 56, at 6-7.

working part-time significantly decreased a woman's probability of partnership.<sup>184</sup> Moreover, there are a number of women who have made it to the top in their respective fields by sacrificing the work/family balance.<sup>185</sup> For example, look at a small sample of women in top positions who have children compared with men:

Every male Supreme Court justice has a family. Two of the three female justices are single with no children. And the third, Ruth Bader Ginsburg, began her career as a judge only when her younger child was almost grown. The pattern is the same at the National Security Council: Condoleezza Rice, the first and only woman national-security advisor, is also the only national-security adviser since the 1950s not to have a family.<sup>186</sup>

#### 8. Assumptions

It is often argued that women "choose" to opt out of the more traditional demanding jobs, especially when they decide to work part-time or enter the non-tenured faculty track.<sup>187</sup> However, is this really the case? The assumption that women "choose" less demanding jobs in order to be able to provide care giving is really no more than that—an assumption. If the workplace was more forgiving to all workers, not just to women, when they take time off or work part-time—this would enable more women to reach the top echelons in various fields. As mentioned previously, the women of today struggle against barriers that push them into less prestigious positions due to the fact they must devote time away from their careers to care for others.

Another assumption seen today is that the role of parenting should be done mainly by women. Of course, more men than ever are stepping up and becoming more involved in their children's lives; however, the belief still persists that the caretaking of children is a woman's task. For instance,

Famous and high-powered men who have children are rarely feted for their ability to be both dads and career-driven movers and shakers. Men are expected to be out in the world while someone else cares for their kids. However, well-known women who have children are frequently promoted on magazine covers as both career successes and ('devoted') moms. The message is simultaneously encouraging ('*She can do it, so can you!*') and demeaning ('*She can do it, why can't you?*').<sup>188</sup>

Thus, if the assumption persists that women should care for children, "the workplace norm will continue to be male-oriented, with work-family policies considered a female-need accommodation."<sup>189</sup>

### **B. Barriers that are Specific to Women among Faculty in Higher Education, the Law, and Corporations**

<sup>184</sup> Noonan & Corcoran, *supra* note 42, at 130, 135-37, 141.

<sup>185</sup> Slaughter, *supra* note 174.

<sup>186</sup> *Id.*

<sup>187</sup> Curtis, *supra* note 56, at 6-7.

<sup>188</sup> Melissa Stanton, 'Supermoms' Should Tell the Truth About Their Perfect Lives, ATLANTIC (June 25, 2012, 4:13 PM), <http://www.theatlantic.com/business/archive/2012/06/supermoms-should-fess-up-about-their-staff/258903/> (emphasis in original).

<sup>189</sup> *Id.*

In the preceding section, barriers women are confronted with in general were explored. This section attempts to highlight various obstacles that are more particular to women among faculty in higher education, the law and corporations.

### **1. Reasons Women are Underrepresented among Faculty Generally in Higher Education Institutions**

There are several barriers for minorities, including women, to reach the top echelon in the field of academia. These include: “hostile campus environments, salary inequities, isolation, and overwhelming personal and professional duties.”<sup>190</sup> Minority women are often confronted with more barriers than either white women or minority men.<sup>191</sup> These women frequently cite “being treated as outsiders by white colleagues and as potential competitors by minority men.”<sup>192</sup>

One problem, faced by all women, is that male faculty outnumber female faculty; the largest discrepancy being among full professors.<sup>193</sup> In addition, women are promoted to full professor at a lower rate than men.<sup>194</sup> Thus, because the majority of faculty are white men; it is easy to presume much of faculty hiring is effected by that segment of the population.<sup>195</sup> Due to these barriers, it is not surprising that women, especially minority women, are underrepresented among faculty in higher education.<sup>196</sup>

Securing a diverse faculty is extremely important for institutions of higher education. This is so, because there is a large presence of minority students in these institutes; therefore, leadership of these of these institutes should reflect the student population.<sup>197</sup> Furthermore, the minority population is projected to rapidly expand in the next forty years; especially the Latino and Asian populations, which are expected to more than double in size by the year 2050.<sup>198</sup> Moreover, while minority populations are projected to grow, the white population is projected to decline by approximately 6%.<sup>199</sup>

#### **a. Reasons Women are Underrepresented at the Level of Presidency in Higher Education Institutions**

<sup>190</sup> Wolff, *supra* note 51, at 784 (citing Wilma J. Henry & Nicole M. Glenn, *Black Women Employed in the Ivory Tower: Connecting for Success*, 29 ADVANCING WOMEN LEADERSHIP J. (2009), available at [http://advancingwomen.com/awl/awl\\_wordpress/black-women-employed-in-the-ivory-tower-connecting-for-success-2/](http://advancingwomen.com/awl/awl_wordpress/black-women-employed-in-the-ivory-tower-connecting-for-success-2/)).

<sup>191</sup> Padilla, *supra* note 3, at 462.

<sup>192</sup> RHODE, *supra* note 140, at 13.

<sup>193</sup> CHRONICLE OF HIGHER EDUCATION, *supra* note 44, at 28.

<sup>194</sup> Misra et al., *supra* note 60. A study done by the Modern Language Association found it took women on average “from 1 to 3.5 years longer than men to attain the rank of professor.” *Standing Still*, *supra* note 60, at 5.

<sup>195</sup> Pamela Trotman Reid, *Black and Female in Academia*, THE PRESIDENCY, AM. COUNCIL ON HIGHER EDUC. 7 (2012).

<sup>196</sup> For example, African American women hold fewer positions in higher education than African American men. LENA WRIGHT MYERS, A BROKEN SILENCE: VOICES OF AFRICAN AMERICAN WOMEN IN THE ACADEMY 12 (2002).

<sup>197</sup> CHRONICLE OF HIGHER EDUCATION, *supra* note 44, at 42. Today, 34% of the United States population is minority, and in higher education, 34% of the current student population is minority. *Id.* See also Martha Fallgatter Walda, *On Board with Diversity*, THE PRESIDENCY, AM. COUNCIL ON EDUC. 9 (2008).

<sup>198</sup> Jennifer M. Ortman & Christine E. Guarneri, *United States Population Projections: 2000 to 2050*, U.S. CENSUS BUREAU 3, Table 1 (2009), available at <http://www.census.gov/population/www/projections/analytical-document09.pdf>. It is estimated that the Latino population will grow from 49,726 million (16%) in 2010 to 132,792 million (30%) in 2050; and the Asian population from 14,415 million (4.6%) in 2010 to 34,399 million (7.8%) in 2050. *Id.* at Table 1.

<sup>199</sup> *Id.* at 3, Table 1. The population projections for whites show a population of 246,630 million (79.5%) in 2010 to 324,800 million (74.0%) in 2050. *Id.* at Table 1.

Presidents usually stem from the pool of academic officers, an area of academia that has traditionally been comprised of white males.<sup>200</sup> This process of mainly looking only to academic officers in order to locate future presidents puts women at a disadvantage.<sup>201</sup> It also stymies “access to new ideas, new viewpoints, and innovative ways of addressing new challenges.”<sup>202</sup> Furthermore, when seeking chief academic officers, colleges and universities often hire outside the institution; thereby overlooking potentially qualified candidates who are currently present at that institute.<sup>203</sup>

b. Explanations as to Why Women are Underrepresented among Law School Faculty

The academic field of law mirrors the field of higher education generally. At the beginning of a professoriate career, males receive more associate professorship appointments than females.<sup>204</sup> Also, women are tenured at lower rates than men.<sup>205</sup> One commentator noted “[t]he statistics create the impression that women are welcome in legal education in subservient roles but otherwise are greeted, at best, with ambivalence.”<sup>206</sup>

c. Causes Behind Women being Underrepresented in Deanships of Law Schools

Many of the reasons behind the low representation of female deans parallel the reasons behind the underrepresentation of women at the level of president in colleges and universities. Most deans have the academic rank of a full professor; thus, this is the pool from which the majority of deans are drawn.<sup>207</sup> In the 2008-2009 academic year, women held merely 29.9% of full professorships.<sup>208</sup> Of the 13.5% minority professors, only 5.5% were women.<sup>209</sup> Thus, because the pool from which law deans are drawn is so small for women, especially for minority women, it is not surprising there are a low number of women deans. However, the relative lack of women holding the rank of professor does not tell the entire story. As one researcher noted, “[i]f the female percentage of law school deans in 1999-2000 had been equal to the female percentage of full professors, 40 law schools would have had female deans. That is exactly twice the number of schools that actually did have female deans at the time.”<sup>210</sup> An additional explanation for the low representation of minority women deans could be because deans of color are less likely to be reappointed to a deanship than whites.<sup>211</sup> As of 2007, there were only two law school deans of color who served as deans of more than one of the majority law schools while there were thirty-two white law school deans who served at more than one decanal appointment.<sup>212</sup>

<sup>200</sup> James C. Renick, *The Spectrum Initiative: Advancing Diversity in the American College President*, THE PRESIDENCY, AM. COUNCIL ON EDUC. 3 (2008).

<sup>201</sup> William E. Kirwan, *Diversify the American College Presidency*, THE PRESIDENCY, AM. COUNCIL ON EDUC. 5 (2008).

<sup>202</sup> *Id.*

<sup>203</sup> González, *supra* note 162, at 2.

<sup>204</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 313, 340-41. *See also* Merritt & Reskin, *supra* note 70, at 199 (finding “men were more likely than women to begin teaching at a higher professorial rank”); Neumann, *A Statistical Update*, *supra* note 70, at 435 (men are more likely to be hired as associate professors than women).

<sup>205</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 313. *See also* ANNUAL REPORT IN ACADEME, 2000, *supra* note 64, at 26 (noting women achieve tenure at lesser rates than men).

<sup>206</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 352.

<sup>207</sup> *Id.* at 346.

<sup>208</sup> AALS *Statistical Report on Law Faculty*, *supra* note 83.

<sup>209</sup> *Id.*

<sup>210</sup> Neumann, *What the Statistics Show*, *supra* note 70, at 323-24.

<sup>211</sup> Wolff, *supra* note 51, at 772; LeRoy Pernell, *Reflecting on the Dream of the Marathon Man: Black Dean Longevity and its Impact on Opportunity and Diversity*, 38 U. TOL. L. REV. 571, 575 (2007).

<sup>212</sup> Wolff, *supra* note 51, at 773.

On a positive note, there are more female law deans than ever before.<sup>213</sup> What does this increase stem from? Some explanations include: more mentors; large numbers of recent women graduates from law school; the Women Dean's Databank, maintained by the AALS; and the fact that recent articles have illustrated how few women actually serve as law school deans.<sup>214</sup>

## 2. Explanations as to Why Women are Underrepresented in the Law

Minority women lawyers face many barriers to reaching the top of their fields. One Catalyst study examined barriers that are specific to women of color at law firms.<sup>215</sup> The study found that minority women: observed and experienced exclusion and stereotyping more than other demographics; felt overlooked by diversity efforts; were most likely to feel a need to make adjustments to fit in; experienced a lack of candid and constructive feedback as a barrier to advancement; perceived a lack of commitment from senior leadership toward promoting diverse candidates; were less likely to speak to men in the firm; and were also less likely to aspire to partnership.<sup>216</sup> In addition, minority women associates leave firms at extremely high rates—75% leave by their fifth practice year and almost 86% leave before their seventh practice year.<sup>217</sup>

As seen in the section which explored barriers that women generally encounter, females have difficulties balancing the demands of work with those of family life. However, among lawyers, both genders espouse difficulties with this task. For example, over 70% of men and women, including partners and associates, note that balancing the demands of work with those of personal life is difficult.<sup>218</sup> Over half of attorneys have children (57% of female lawyers, 65% of male lawyers).<sup>219</sup> Interestingly, the number of law school deans who have children is higher than that of attorneys in general. One study found that 70% of women law deans have children and over 90% of male law deans have children.<sup>220</sup> Nearly twice as many female lawyers (84%) as male lawyers (44%) have a spouse who is employed full-time.<sup>221</sup> Furthermore, women are more likely to be single.<sup>222</sup> Thus, although more men continue to take an active role in parenting, “female lawyers continue to carry the majority of the load in this area.”<sup>223</sup>

Frequently attorneys who struggle to balance the demands of their professional lives with the demands of their personal lives, particularly those rearing children, seek alternative work schedules.<sup>224</sup> To balance the needs of their families, lawyers regularly turn to part-time work.<sup>225</sup> One study found that “almost one in two women and one in five men want a reduced work schedule.”<sup>226</sup>

In 2010, nearly all of the firms (98%) listed in the National Directory of Legal Employers have either formal or informal flexible work policies; however, only 6.4% of lawyers in those

<sup>213</sup> Neumann, *A Statistical Update*, *supra* note 70, at 441.

<sup>214</sup> Padilla, *supra* note 3, at 474-79.

<sup>215</sup> See *Making the Case*, *supra* note 163, at 15.

<sup>216</sup> *Id.* at 5, 7.

<sup>217</sup> Deepali Bagati, *Women of Color in U.S. Law Firms*, CATALYST 1-2 (2009).

<sup>218</sup> *Making the Case*, *supra* note 163, at 40.

<sup>219</sup> *Id.* at 12.

<sup>220</sup> Padilla, *supra* note 3, at 527.

<sup>221</sup> *Making the Case*, *supra* note 163, at 12.

<sup>222</sup> Padilla, *supra* note 3, at 520. See also RHODE, *supra* note 140, at 15.

<sup>223</sup> López, *supra* note 5, at 94.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Making the Case*, *supra* note 163, at 42.

firms work on a part-time basis.<sup>227</sup> More women work part-time than men, of the 6.4% of attorneys who work part-time, 70% were women.<sup>228</sup> “Among women lawyers overall, 13.6% work part-time; among female partners, 11.9% are working part-time; and among women associates the figure was 10.3%. This contrasts with a rate of just 2.9% among all male lawyers.”<sup>229</sup> Most associates who work part-time are women (88.1%) and among partners working part time, 64.1% were women.<sup>230</sup> During the five years the NALP has compiled this information, the distribution of part-time associates has changed very little between the genders; however, the distribution of part-time partners among men and women has changed to some extent.<sup>231</sup> In 2006, almost 72% of part-time partners were women and in 2010 that figure was 64.1%.<sup>232</sup> Interestingly, attorneys employed at large firms, as a group, work part-time less than the general workforce and also less than other specialized segments of the workforce population.<sup>233</sup> For example, 6.4% of lawyers at major firms work part-time compared to approximately 14% of the workforce as a whole and 13.5% of specialized segments of the population, such as engineers, architects, and physicians.<sup>234</sup>

Thus, although a greater number of firms than ever make part-time work available, lawyers are not taking advantage of this type of work schedule.<sup>235</sup> Why? One reason may be the negative perception that is associated with working part-time.<sup>236</sup> Lawyers may be concerned their superiors and peers will perceive working part-time as the work of an unmotivated, lazy, or uncommitted individual. In addition, “the ever-increasing billable hour requirements at firms” tends to reinforce the negative perceptions associated with working part-time as well as being a major contributor to the difficulties attorneys have at balancing the demands of work and family.<sup>237</sup> Moreover, “[t]hese [billable] requirements show the change in the legal profession from a profession to a business, and the concomitant increased competition at the large law firms which are trend-setters in the profession.”<sup>238</sup>

The fifty best law firms for women have all made improvements in work-life policies.<sup>239</sup> For example: 100% have reduced hour policies; 44% of have written full-time flex policies; 78% offer full-time telecommuting; 94% of firms allow their reduced-hour lawyers to be eligible for equity partnership; and 78% provide backup childcare at a facility.<sup>240</sup>

### 3. Causes Behind Women being Underrepresented in the Corporate Arena

<sup>227</sup> Press Release, *Part-time Lawyers Continue to Be the Exception at Law Firms, Ranks Made Up Mostly of Women, But the Number of Male Partners Practicing Part-time Edges Up*, NAPL 1 (2011), available at [http://www.nalp.org/uploads/pressreleases/PartTimePressRel\\_2011.pdf](http://www.nalp.org/uploads/pressreleases/PartTimePressRel_2011.pdf).

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* at 2.

<sup>234</sup> *Id.*

<sup>235</sup> López, *supra* note 5, at 95.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* at 97.

<sup>238</sup> *Id.*

<sup>239</sup> See *Best Law Firms for Women 2011*, NAFE AND FLEX-TIME LAWYERS, “EXECUTIVE SUMMARY” (2011), available at [http://www.wmmsurveys.com/2011\\_NAFE\\_and\\_Flex-Time\\_Lawyers\\_Best\\_LawFirms\\_for\\_Women%20Executive%20Summary.pdf](http://www.wmmsurveys.com/2011_NAFE_and_Flex-Time_Lawyers_Best_LawFirms_for_Women%20Executive%20Summary.pdf).

<sup>240</sup> *Id.* at 13, 15, 19.

Most corporate boards are looking for prior CEO experience, industry experience and prior directorship experience when seeking a director.<sup>241</sup> Thus, one reason women may not fare well in the corporate board selection is because they may not possess the necessary experience.<sup>242</sup> Common pathways to corporate board rooms include the executive suite, the government, the law, and financial careers.<sup>243</sup>

Furthermore, most employers use surface or marginal diversity. Surface diversity is when an organization hires diverse employees but then once they are hired, “disregards any differences among its employees and expects them to act in identical ways.”<sup>244</sup> Marginal diversity is when an organization applies employees’ cultural differences in a restrictive way by assigning them to “certain projects, functions, or client and constituent groups based on workers’ particular demographic and cultural characteristics.”<sup>245</sup>

## Part IV. Recommendations/Solutions and Conclusion

### A. In General

Society today is structured around the notion of “time macho,” the need for workers to work longer hours, travel extensively, and be constantly available.<sup>246</sup> A prime example of this is the requirement of high billable hours at law firms.<sup>247</sup> However, even other industries promote the above notion by rewarding those who work long hours and are available twenty-four-seven. One potential solution is for organizations, be they corporations or law offices, to allow for more remote work from home “where the office is a base of operations more than the required locus of work.”<sup>248</sup> This would help members of both genders balance the demands of work with those of family life.

Regarding the climb up the linear ladder, women should view the climb instead as “irregular stair steps,” where they can pass on job opportunities in order to spend more time with family.<sup>249</sup> However, this may be easier said than done. Although more companies are allowing flex-time and leave to tend to sick relatives, this type of “irregular stair step” may be frowned upon.<sup>250</sup> Thus, perception is important and companies should take steps to encourage this type of career model.<sup>251</sup> It is important that companies offer flex-time and leave to partake in care giving to both men and women. By doing so, this will help alleviate the negative perceptions people have regarding working part-time or taking time off from work.

People also need to change some of their assumptions regarding women; such as the undervaluation of childcare or that women “choose” to work in less demanding jobs.<sup>252</sup> “If women are ever to achieve equality as leaders, then we [,women,] have to stop accepting male

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<sup>241</sup> Lawrence J. Trautman, *Boardroom Diversity: Why it Matters* 25 (Apr. 25, 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2047750](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2047750).

<sup>242</sup> Nancy M. Carter & Christine Silva, *Women in Management: Delusions of Progress*, HARV. BUS. REV., Mar. 2010, at 19, 19-21; see also Elizabeth A. Nowicki, *Economic Concerns, Beleaguered Corporations, and Women in Corporate Boardrooms*, 30 HAMLINE J. PUB. L. & POL’Y 549, 553-55 (2009).

<sup>243</sup> Trautman, *supra* note 241, at 49.

<sup>244</sup> Lee, *supra* note 136, at 489.

<sup>245</sup> *Id.* at 491.

<sup>246</sup> Slaughter, *supra* note 174.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> See *id.*; Curtis, *supra* note 56, at 6-7.



behavior and male choices as the default and the ideal. We must insist on changing social policies and bending career tracks to accommodate *our* choices, too.”<sup>253</sup>

## B. For Higher Education

In the next few years, there will be a number of vacant presidencies at colleges and universities.<sup>254</sup> Therefore, this is the perfect opportunity to increase diversity at this level in those institutes.<sup>255</sup> In order to bring more women and minorities into the college presidency, institutions should build on prior advancements in diversity.<sup>256</sup> This can be accomplished by striving to promote underrepresented groups through the ranks;<sup>257</sup> especially to department chairs, an area from which presidents are often selected.<sup>258</sup> This, in turn, would give women and minorities the needed access to academic leadership positions.<sup>259</sup>

In addition, institutes should consider novel ways to fill vacant presidencies; for example, looking to nontraditional candidates from outside the realm of academic officers.<sup>260</sup> An institution could also develop training programs for academic leaders.<sup>261</sup> For instance, it could select a handful of young administrators and prepare all of them for a future presidency.<sup>262</sup> Then, it would select the president from that group of administrators.<sup>263</sup> The individuals not selected would then be well trained upper level academic officers.<sup>264</sup>

Building on a topic from a previous section, mentorship is crucial for both students and new faculty. It is important to encourage students to pursue doctoral degrees, which in turn would help to diversify the faculty at institutes of higher education.<sup>265</sup> By mentoring new faculty, the mentors can encourage and assist them to become future leaders.<sup>266</sup> This can be accomplished by current presidents forming support networks, imparting their knowledge and experiences, and making the effort to answer questions.<sup>267</sup> Moreover, simply asking minorities to move from the professoriate to the realm of administration can help increase diversity.<sup>268</sup>

## C. For the Legal Profession

### 1. Effectuate Change in the Law Firm Work Culture: Billing, Evaluation and Hours

Legal institutions could use a board paradigm shift to effectuate change in the structure of the institution itself rather than asking women to change to fit the existing structure.<sup>269</sup> One way

<sup>253</sup> Slaughter, *supra* note 174 (emphasis in original).

<sup>254</sup> Beverly Daniel Tatum, *Engaging the Restless Professor: Building the Pipeline to the Presidency with Campus Talent*, THE PRESIDENCY, AM. COUNCIL ON EDUC. 11 (2008); Renick, *supra* note 200, at 1.

<sup>255</sup> Tatum, *supra* note 254, at 11.

<sup>256</sup> Kirwan, *supra* note 201, at 6.

<sup>257</sup> *Id.*

<sup>258</sup> González, *supra* note 162, at 4.

<sup>259</sup> *Id.*

<sup>260</sup> Kirwan, *supra* note 201, at 8; Walda, *supra* note 197, at 9.

<sup>261</sup> González, *supra* note 162, at 2.

<sup>262</sup> *Id.* at 3.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> Renick, *supra* note 200, at 12; Scott, S. Cowen, *The Changing of the Guard*, THE PRESIDENCY, AM. COUNCIL ON EDUC. 16 (2008); Kirwan, *supra* note 201, at 7.

<sup>266</sup> Cowen, *supra* note 265, at 17.

<sup>267</sup> *Id.* at 18.

<sup>268</sup> Renick, *supra* note 200, at 12.

<sup>269</sup> Padilla, *supra* note 3, at 530.



to accomplish this is to switch to a per-project basis.<sup>270</sup> Today, “[b]ecause of the heavily billable hour requirements, the organizational structure of law firms only evaluates and promotes lawyers based on the number of hours they bill yearly and in comparison to their co-workers. This system promotes inefficiency.”<sup>271</sup> Adopting a per-project basis allows attorneys to “complete their projects in an efficient number of hours, leaving more time to take on additional projects or to work reduced schedules.”<sup>272</sup>

A project-based structure would alleviate the need for lawyers to be constantly available while giving schedules more predictability.<sup>273</sup> This type of system would allow attorneys to more easily balance the demands of work and family life.<sup>274</sup> “The ultimate aim of a per-project system would be to redefine the ideal lawyer, from a constantly available and inefficient one to one who produces the highest quality work and has a balance of work and life.”<sup>275</sup>

## 2. Encourage Law Schools to Educate Students about the Work Experiences in the Legal Profession, by Exploring the Use of Apprenticeships and Other Experiential Based Curriculum

Law schools, along with teaching substantive courses and ethics, should strive to educate future lawyers regarding the demands of the legal profession.<sup>276</sup> It is vital that this education include discussions on ways to balance the demands of work and family life.<sup>277</sup> Potential lawyers, especially women, should know the demands of their profession.<sup>278</sup> Understanding the demands of the profession would enable students to “alter their future course of employment (e.g., by choosing a particular area of practice or legal employment) or at the very least, enter the profession with open eyes.”<sup>279</sup>

One way to educate law students about the demands of the profession would be a state sponsored apprenticeship program.<sup>280</sup> This type of program enables students to spend time in the legal workforce under the supervision of senior lawyers.<sup>281</sup> This experience in the legal workforce would give students important perspectives on the demands of the profession. It would also allow students to impart their experiences to fellow classmates.<sup>282</sup> As it is crucial for students to have mentors during their undergraduate studies, it is important to continue this process for students in law school.<sup>283</sup> Models whereby students are mentored by the attorneys with whom they are apprenticed should be encouraged and considered.<sup>284</sup>

Additionally, law schools could themselves implement a type of apprenticeship course. For example, Georgia State University College of Law implemented an experimental course,

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<sup>270</sup> López, *supra* note 5, at 97-98.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.* at 98.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* at 99.

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

titled the “Fundamentals of Law Practice,”<sup>285</sup> The course began with fieldwork which partnered students with an attorney in solo practice or in a small firm.<sup>286</sup> This fieldwork component lasted seven weeks.<sup>287</sup> During this aspect of the course, students observed lawyers in various aspects of their practices, such as initial intake interviews, court hearings, depositions, mediations, file review sessions, lawyers at work in their offices, billing practices, and accompanied the attorneys to bar association events.<sup>288</sup> Students then had to prepare a paper on their experiences during the fieldwork component of the course.<sup>289</sup> After the fieldwork, the remainder of the course was structured around “topics drawn from students’ own assessments of the skills, practice management tools, and ethical decision making abilities they would need in practice.”<sup>290</sup> These topics were what the students themselves deemed important during their fieldwork study.<sup>291</sup>

Another solution which could assist students in becoming prepared for the practice of law involves a complete overhaul of law school curriculum. One article proposed the idea of a “legal rotations model,”<sup>292</sup> which is similar to what is done in medical school, where the first two years are spent more in the classroom and the second two years are spent in clinical environments rotating through various specialties.<sup>293</sup> This legal rotations model seeks to combine “early exposure to practical lawyering, traditional study and analysis of law, and meaningful skills-based preparation for a career in the law.”<sup>294</sup> The model also promotes the use of mentors by suggesting that law students have three mentors—an upper-class student, a member of the faculty and a practicing attorney.<sup>295</sup>

Because traditional case study method is an important aspect of legal education, especially in the first year of law school, this model seeks to incorporate exposure of the practice of law in real and simulated settings into the first year curriculum.<sup>296</sup> In each first year course, some hands-on activity should be implemented; such as drafting agreements in Contracts or pleadings in Civil Procedure.<sup>297</sup> Furthermore, students should receive more feedback throughout the course in the form of frequent skill-based assignments rather than one traditional final exam at the end of the semester.<sup>298</sup>

In the second year students enter a rotations model, which is part simulation and part clinical.<sup>299</sup> Once students enter these rotations, they do not return to traditional classroom settings.<sup>300</sup> Instead, they attend check-in sessions with fellow students and administrators to discuss their experiences.<sup>301</sup> Simulation rotations are more in-class skill set learning workshops

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<sup>285</sup> Charlotte S. Alexander, *Learning to be Lawyers: Professional Identity and the Law School Curriculum*, 70 MD. L. REV. 465, 467 (2011).

<sup>286</sup> *Id.* at 468.

<sup>287</sup> *Id.* at 469.

<sup>288</sup> *Id.*

<sup>289</sup> *Id.* at 470.

<sup>290</sup> *Id.* at 472.

<sup>291</sup> *See id.*

<sup>292</sup> Drew Coursin, *Acting Like Lawyers*, 2010 WIS. L. REV. 1461, 1467.

<sup>293</sup> *Id.* at 1466, 1478-80, 1490.

<sup>294</sup> *Id.* at 1481.

<sup>295</sup> *Id.* at 1482-83.

<sup>296</sup> *Id.*

<sup>297</sup> *Id.* at 1483-84.

<sup>298</sup> *Id.* at 1486.

<sup>299</sup> *Id.* at 1489.

<sup>300</sup> *Id.* at 1488.

<sup>301</sup> *Id.* at 1488-89.

where students do not interact with live clients.<sup>302</sup> Clinical legal rotations are similar to law clinics, where students work with live clients.<sup>303</sup>

In the third year, students either enter a legal residency or an advanced rotation.<sup>304</sup> In legal residencies third year students work full time for a law firm and perform the work of a first year associate, but do not receive compensation.<sup>305</sup> They are called “apprentice associates.”<sup>306</sup> An advantage of this system is that by the end of the apprenticeship these law students are ready to enter the legal field as practicing attorneys.<sup>307</sup> For advanced rotations, the students “would delve deeply into complex skills development” and receive more “individualized feedback than” in their second year.<sup>308</sup>

Implementing this type of curriculum at a law school has two major benefits. First, it provides students with the necessary tools to be practice ready upon graduation from law school. Second, it helps impart knowledge to students regarding the demands of the legal profession by giving them an understanding of the potential challenges involved in balancing the demands of work with those of family life.

### 3. Continue the Use of Task Forces and Bar Associations to Assist in Bringing About Change through further Research and Analysis, Including Comparative Research Regarding Other Countries and Other Professions

Over the past fifteen years task forces have been created through the joint efforts of bar associations and state supreme courts.<sup>309</sup> These task forces have focused on many issues, including diversity and gender equality.<sup>310</sup> However, additional efforts should be made concerning “the experiences in the legal profession of other underrepresented groups, such as racial, religious, ethnic and sexual-orientation minorities.”<sup>311</sup> Moreover, it is imperative that gender inequality be scrutinized further.<sup>312</sup> “[T]wo specific areas that need more attention and further analysis: The disparity in financial compensation between the genders and the elevation of more female judges to the bench.”<sup>313</sup>

Also, research into gender equality in the legal profession in other countries may help to highlight solutions that could be implemented here in the United States.<sup>314</sup> Moreover, as this article seeks to accomplish, a comparison of women in the legal field to women in other professions is important.<sup>315</sup> Disciplines such as the medical profession and business may help illustrate similar barriers with which women are confronted and may also offer potential solutions to the legal profession.<sup>316</sup>

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<sup>302</sup> *Id.* at 1499-93.

<sup>303</sup> *Id.* at 1491-92.

<sup>304</sup> *Id.* at 1495.

<sup>305</sup> *Id.* at 1496-97.

<sup>306</sup> *Id.* at 1497.

<sup>307</sup> *Id.* at 1498.

<sup>308</sup> *Id.*

<sup>309</sup> López, *supra* note 5, at 100.

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> *Id.* at 101.

<sup>316</sup> *Id.*

#### 4. Renew the Commitment to Addressing the Concerns Raised Regarding Women in the Legal Profession

Although women are entering the legal profession at high rates, they are failing to reach the most prestigious positions—partner, judge, and tenured faculty. Thus, “[n]either the passage of time nor the slowly tricking pipeline” has lead to women gaining access to the aforementioned positions.<sup>317</sup> Therefore, “[f]emale lawyers continue to be ensconced in the ‘50/15/15 conundrum’ where it has been 15 years since women comprised 50% of law students but only constituted 15% of law firm partners.”<sup>318</sup> However, “this should not be cause for pessimism; rather, it should usher in an era of renewed commitment to addressing the concerns” raised in this article.<sup>319</sup>

#### **D. For the Corporate Arena**

As mentioned previously, most corporate boards are seeking prior experience when looking for a director, and common pathways to corporate boardrooms include the executive suite, the government, the law, and financial careers.<sup>320</sup> One commentator noted in order to help women gain the experience that would make them more attractive candidates for boards; they should be encouraged to pursue law and financial degrees.<sup>321</sup>

Instead of using surface or marginal diversity, which stymie diversity, employers should embrace the differences between employees and realize minorities have new viewpoints and experiences to contribute to the organization.<sup>322</sup> In essence, organizations should use core diversity. They should “question the traditions and power dynamics that have exclusionary effects, and provides an antidote in the form of drawing out and incorporating diverse members’ various ideas concerning the organization’s central work.”<sup>323</sup> Additionally, one commentator suggests activists investors should demand more women board members and that law schools should encourage women to take corporate law courses.<sup>324</sup>

Looking to other countries may generate solutions as well. For example, Norway, France, Spain and Sweden all have laws requiring boards to have a percentage of women on corporate boards.<sup>325</sup> In those countries, the quotas range from twenty-five to fifty percent.<sup>326</sup> These laws are deemed “hard quotas.”<sup>327</sup> Yet even though research has not established that gender-diverse boards perform more efficiently; clearly there are benefits to having women on corporate boards.<sup>328</sup> The value of equality of opportunity for women leaders and the diversity of viewpoints they can bring to the table are only the beginning.

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<sup>317</sup> *Id.*

<sup>318</sup> *Id.* (citing NAWL’S FIRST NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS, NAT’L ASS’N OF WOMEN LAWYERS AND THE NAWL FOUND. 1 (Oct. 2006), available at <http://nawl.timberlakepublishing.com/files/NAWL%20FINAL%20PUBLICATION%2010-25-06%20SURVEY%20REPORT.pdf>).

<sup>319</sup> *Id.*

<sup>320</sup> Trautman, *supra* note 241, at 25, 49.

<sup>321</sup> *Id.* at 49; see also Nowicki, *supra* note 242, at 559-60.

<sup>322</sup> Lee, *supra* note 136, at 495.

<sup>323</sup> *Id.* at 491.

<sup>324</sup> Nowicki, *supra* note 242, at 558-60.

<sup>325</sup> Richard Leblanc, *A Fact-Based Approach to Boardroom Diversity*, 154 DIRECTOR J. 6, 6 (2011).

<sup>326</sup> *Id.*

<sup>327</sup> *Id.*

<sup>328</sup> *Id.* at 8.

In sum, the status of women leaders in the legal profession, higher education and the board room is one of great challenges while at the same time as presenting some opportunities for growth and experimentation. A continued spirit of creativity, equality and innovation will continue to afford women opportunities so they can succeed in any leadership endeavor they seek in these professional arenas. Let us all work towards this transcendent goal.