Charting Our Progress

The Status of Women in the Profession Today
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In 1988, the ABA Commission on Women issued its first landmark report, The Status of Women in the Legal Profession. That report identified barriers preventing the full integration and equal protection of women in all aspects of the legal profession. It predicted that time alone was unlikely to remedy the statistical under-representation of women in law firm partnerships, judicial appointments, and tenured faculty positions, or to eliminate the subtle, and sometimes not so subtle, discrimination facing women lawyers.

A second report, Unfinished Business: Overcoming the Sisyphus Factor, followed in 1995. It confirmed the prediction that time alone would not erase the impact of discrimination. The 1995 report found that while some progress had occurred, barriers continued to exist and were reinforced by entrenched attitudes. The report also highlighted, in a way that the first report had not, the need to promote a balance of professional and personal priorities for both men and women.

Building on these two reports, the Commission held hearings and collected data again in 2003. Once again, the data revealed incremental progress — slightly higher percentages of law firm partnerships, judicial appointments, and tenured faculty positions — but brought into sharper focus the continuing disparity in advancement that women face, with an even greater disparity among women lawyers of color. In addition, testimony at the 2003 hearings reflected continued concern about work-life balance.

I. Our Progress – Incremental Advances

First, the good news from the 2003 hearings and data since 1995: the percentage of women in all aspects of the profession has grown. The representation of women in the profession grew to 29.1%¹ of all lawyers in the United States, from 23% in 1994.² Moreover, as the statistics below illustrate, women have increased their presence in law schools, in law firm partnerships, as general counsels of major corporations, and in the judiciary. From approximately 1994 to 2002:

- the percentage of law school entrants who were women increased from 45%³ to 50%⁴;
• the percentage of women in tenured positions at law schools increased from 5.9%⁵ to 25.1%⁶;
• the percentage of women partners in major law firms increased from 12.91%⁷ to 16.3%⁸;
• the percentage of women general counsels in Fortune 500 companies increased from 4%⁹ to 15%¹⁰;
• the percentage of women in the federal judiciary—Supreme Court remains at 22% (until 2006);
• the percentage of women in the federal judiciary—U.S. Court of Appeals increased from 13%¹¹ to 17.4%¹²; and
• the percentage of women in the federal judiciary—U.S. District Courts increased from 12%¹³ to 16.2%¹⁴.

In addition to these advances, the median weekly earnings of women lawyers working full-time inched up from 73% of the earnings of their male counterparts in 2000 to 76% in 2003.¹⁵

The increase in women leading corporate legal departments and achieving tenure on law school faculties is particularly significant. In light of the number of women law school graduates over the past 25 years, however, the overall data and the hearings testimony make it clear that the American legal profession has not yet come close to achieving gender equity.

II. Our Current Status

Men still hold the great majority of leadership positions in the profession and overwhelmingly surpass women lawyers in compensation. Moreover, testimony at the Commission’s 2003 hearings confirmed that the same problems women described during the earlier hearings continue to pose a challenge. Among those issues are:

Gender Stereotypes
The 1995 report noted that “[b]oth men and women report that women lawyers are viewed as insufficiently aggressive, uncomfortably forthright, too emotional, or not as serious as men about their careers. When women opt for family leave or report sexual harassment, these stereotypes are reinforced.”

In 2003, there was evidence that those stereotypes have not dissipated. The past president of a large California bar association testified that women attorneys are often perceived as “too bossy, too aggressive, not aggressive enough, too emotional, or too strident.” The problem may be worse in smaller towns. For example, women attorneys from mid-sized towns in New York and Florida testified that judges and bailiffs called them “baby” and “honey” and referred to them by their first names while addressing males by their titles.

Difficulties with Rainmaking and Business Development
The 1995 report cited a series of focus groups indicating that men often
view women as ill-equipped to generate business. Such attitudes, the report noted, discourage women’s access to traditional business development networks, which center on the informal networks men have with one another.

Witnesses at the 2003 hearings continued to express concerns about obtaining entry to the circle of rainmakers. For example, a litigator from Miami observed that in the private sector, “the [business development] cycle ultimately is self-perpetuating: Because men are known to have business, other lawyers refer more business to them, hoping to be rewarded with the return favor of a client referral. Referring business to a lawyer who has no business to refer back is seen as wasting a perfectly good opportunity at business development.” The problem is worse for women of color. An African-American lawyer noted that women of color who are the first women in their families to become college graduates or professionals often lack the social and professional contacts needed to develop a client base.

Work-Life Balance Issues – Part-Time Schedules
While the 1995 report found that most law firms had official “family-friendly” policies permitting part-time schedules, several witnesses at those hearings suggested that lawyers were reluctant to take advantage of those policies because they feared professional repercussions and that they would be perceived as less seriously committed to the profession than their full-time counterparts. Worse, some witnesses complained that those who did opt for a part-time schedule with a part-time salary often found themselves the victims of “schedule creep,” where work expands beyond the agreed-upon hours with no corresponding increase in compensation.

Current data indicate that more and more firms are allowing part-time schedules, but women testifying in the 2003 hearings still reported that choosing the part-time option posed professional risks. Several reported that any reduction in schedule or availability would jeopardize their prospects for promotion. A partner at a large national law firm reported a consensus at her firm that the part-time policy is simply “words on a piece of paper. . . . [Y]our commitment to the firm is still questioned once you have decided to go on a reduced-hours schedule.” In addition, five participants reported that “schedule creep” is a continuing problem.

Acute Problems for Multicultural Women
The 1995 report noted that “multicultural women lawyers encounter persistent, pervasive and unique barriers to career opportunity, growth and advancement.” Those barriers included the need to repeatedly establish their competence, gender discrimination in minority bar associations, and race discrimination in majority bar associations.

In the 2003 hearings, many women of color reported facing a double
set of biases about their competence based on gender and race. The persistent biases reported during the 2003 hearings were a motivating force for the in-depth analysis that the Commission on Women in the Profession has undertaken to study the impacts caused by the intersectionality\textsuperscript{16} of race and gender in the profession.

III. OUR FUTURE – EMERGING ISSUES AND CONCERNS

Although women have advanced in the profession since 1988, the witnesses in 2003 continued to voice most of the same concerns expressed in 1988 and 1995. Some of the more pressing challenges include:

**Billable Hours**

When the billable hour first became the economic model used by lawyers in the 1960s, lawyers on average billed around 1,300 hours a year.\textsuperscript{17} Today the story is vastly different. Billable hour requirements have been significantly increasing in response to escalating overhead costs and escalating associate salaries. Some attorneys testified in 2003 that lawyers at large New York firms were expected to bill 2,200 to 2,400 hours per year, in addition to 600 non-billable hours.

Work-life balance, professional development, mentoring, and lawyer/client relationships all suffer as a result of billable-hour pressures. According to an attorney at the hearings who works as a copyright examiner, lawyers in jobs with high billable-hour requirements often find that they cannot participate in “the ‘extras’ that help define an attorney, such as publishing articles, making presentations at meetings, participating in professional associations and basic networking,” without sacrificing time with their children. Two law students at the hearings also testified that the emphasis on billable hours has led some women to avoid private practice and opt for jobs in the public sector instead.

**The Emerging “Sandwich” Generation**

At the first Commission hearings in 1988, many mothers reported that they were shouldering more responsibility for child care than men, and that this affected their real or perceived availability for work. These concerns were echoed in 2003. Moreover, women attorneys at the 2003 hearings reported that they were increasingly bearing a disproportionate share of the burden of caring for elderly parents as well.

Obviously, it becomes even more difficult to “sandwich” time for a legal career between these two responsibilities, and the emotional pressure is multiplied. A law professor from California testified that “[w]omen have long complained about child care and elder care responsibilities [and the impact that such responsibilities have on their careers]. . . . In essence, women are being told, ‘It’s your individual problem, and you’re a failure if you can’t deal with it.’”
The Technology Trap
Testimony at the 2003 hearings made clear that technology can both help and hinder efforts to balance career and family responsibilities. On the one hand, technology has enabled many attorneys with parent and/or child care responsibilities to telecommute. One partner at a large San Diego law firm testified that she uses a cell phone and a Blackberry to receive phone calls and e-mails throughout the day, even when she is at home with her children. She added, “Although that obviously makes the separation between work and life less, I think that in general it helps you continue to keep all those balls in the air, while at the same time spending quality time with your children.”

But other attorneys noted the downside to technology: Lawyers are increasingly tethered to their jobs by pagers, cell phones, fax machines, and e-mail. Clients expect total availability, as well as immediate responses. These expectations and intrusions will be more problematic for women as long as they shoulder a disproportionate share of the burden of child and elder care.

The Generational Divide
Earlier generations of women lawyers faced obstacles to entering and advancing within the profession that more recent generations may not fully appreciate. Conversely, some of earlier generations who built their careers at tremendous personal cost expect young women today to do so as well. Not surprisingly, a recurring theme among younger attorneys at the 2003 hearings was their frustration with older female attorneys, particularly on quality of life issues.

For example, the president of a women lawyers’ group in Washington testified that while her firm has one of the highest percentages of women equity partners in the United States, most of the women are not realistic role models because they have never been married or do not have families or obligations outside the profession. She commented, “The prior generation had to make sacrifices that the next generation of women simply does not want to make.”

Some younger women at the hearings also recounted their frustration with senior women who do little to help them. A young attorney from a southern law firm noted, “It was as if the more senior women in the firm had become a part of the good-old-boy network, rather than railing against it.”

The Ramifications of Increasing Diversity
The number of women entering the legal profession in itself increases diversity. However, individuals who testified at the 2003 hearings also commented frequently on the increasing diversity of the profession in other ways, with particular emphasis on women of color, older attorneys,
and gay and lesbian lawyers. Such diversity presents new challenges.

The acute difficulties faced by women of color are highlighted above. Gay and lesbian attorneys also reported on the challenges they experience. Although testimony at the hearings disclosed that openly gay and lesbian attorneys are now practicing at a number of firms in large cities at both the associate and partner levels, all of the lesbian panelists noted that much work still needs to be done to address the issues facing gay and lesbian attorneys.

Similarly, many women are entering the profession later in life, and this, too, increases the diversity of the legal community. But it also highlights the difficulties encountered by older women as they enter the legal workforce. For example, an attorney who spent 20 years as a social worker before entering law school noted that interviewers often expressed concern about whether she could keep up with the pace at a law firm. Another lawyer commented, “I definitely felt that in several cases I was not hired because of my age; by the time I would make partner, I’d be retiring.”

Like the work-life balance issues, these diversity issues affect all lawyers, not just women. However, as one speaker at the 1995 hearings emphasized, “We need to bring us all along, not just some of us.”

IV. STRATEGIES FOR CHANGE

Many participants at the 2003 hearings proposed ways to improve the legal workplace for women. Others noted developments that, over time, could have a positive impact.

One of the positive developments noted was the increasingly significant influence of corporate clients in the push for diversity. Many large corporations link the hiring of outside counsel with a requirement for diversity in the law firm teams that service them. The law firms thus have an additional economic incentive to support the retention and advancement of women and lawyers of color.

Other positive developments include “no glass ceiling” and related initiatives at various state and local bar associations, special programs at law firms (which include, for example, providing senior female associates more access to clients and placing women on firm committees), and bar-sponsored training programs that include such topics as career paths and rainmaking.

Some speakers recommended that their organizations take a longer-range view of developing women as leaders and identified mentoring as critical. For example, a law firm partner commented that mentoring works best if it is “by way of example” – when women see other women who have succeeded in both their careers and having a family. Because relatively few women are in senior positions, however, several participants observed that younger women should seek both male and female mentors who can bring different perspectives and values to the relationship.

Witnesses also considered women’s groups and networking as important to gender equity. A partner in a Houston law firm noted that her firm’s Women’s
Initiative sponsors marketing activities that bring together all of the firm’s women clients and women attorneys several times a year. Activities range from seminars to informal social events and have enabled women associates to develop relationships with clients in a relaxed atmosphere.

Other recommendations included the following:

- Senior women should consciously make sure that other qualified female attorneys and attorneys of color get their fair share of the “plum” assignments, include them on project teams, and provide opportunities for client exposure.
- Legal employers should recognize the costs attributable to “brain drain” when young women leave the profession because of the imbalance between work and family.
- Law firms should back up their “flexible” written policies with a supportive environment. Among the successful arrangements cited were –
  
  - Two-track billable hour arrangements in which young lawyers on the partnership track have a higher billable hour requirement than those who choose to work more flexible schedules. Firms using this arrangement generally place more emphasis on quality than on quantity of work.
  - Recalculation of hours and increase in compensation when “part-time” schedules suffer from “schedule creep.” While this arrangement does not prevent schedule creep, at least it recognizes the event and compensates for it.
  - Flexibility in work hours (and the concomitant elimination of the notion that “face time” at the office equates to one’s commitment to the profession). This arrangement calls for a limited number of “core” work hours, but as long as attorneys are present during those core hours, they are free to adjust their schedules as needed during the rest of the day.
  - Temporary suspension of the “clock” for tenure or partnership to allow for childrearing. This arrangement accommodates women with children who want to continue working but want to postpone for a time the additional effort required to satisfy stringent tenure or partnership requirements.

**Conclusion**

Since the Commission on Women in the Profession first held hearings in 1988 to address the barriers facing female lawyers, women have made significant progress into the profession. Unfortunately, however, women, and particularly women of color, continue to lag behind men in compensation and advancement to leadership positions. Women also continue to experience subtle discrimination and unequal treatment. Many women, faced with inflexible work environments that conflict with the demands of their personal lives, leave their law firms to find more hospitable work environments, or leave the profession altogether.
Women are now entering law school in numbers nearly equal to men. As the number of women in the profession approaches parity with men during the next several years, organizations must find ways to retain and advance their female employees. Failing to eliminate barriers will cost those organizations enormously, as large numbers of women and minorities will choose to work in environments that value their contributions while respecting their family responsibilities.

The good news is that organizations are beginning to understand the business imperatives for retaining and promoting women and insisting on diversity in the workplace. According to one lawyer at the hearings, the legal profession now offers a broad range of options for young attorneys, who do not face the same challenges and barriers as the generations before them. Although much work remains, she held out “tremendous hope for the future.”

ENDNOTES

1. AMERICAN BAR ASSOCIATION MARKETING RESEARCH, NATIONAL LAWYER POPULATION SURVEY STATISTICS 2003.
4. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION STATISTICS FALL ENROLLMENT 2002.
5. RICHARD WHITE, ASSOCIATION OF AMERICAN LAW SCHOOLS, STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS 1999-2000.
7. NATIONAL ASSOCIATION FOR LAW PLACEMENT, 1994 DIRECTORY OF LEGAL EMPLOYERS. This directory was based on approximately 900 individual law offices. The 12.91% number includes women who were of counsel as well as partners.
10. Id.
16. According to Kimberly Crenshaw, who coined the term “intersectionality,” the idea grew out of trying to conceptualize the way the law responded to issues where both race and gender discrimination were involved. That is, someone standing in the path of multiple forms of exclusion is likely to get hit by both. See Intersectionality: The Double Bind of Race and Gender, PERSPECTIVES Magazine (Spring 2004) (Commission on Women in the Profession).
17. 2003 SURVEY OF LAW FIRM ECONOMICS (Altman Weil Publications, Inc.).