



PERSPECTIVES

A Magazine for and about Women Lawyers



Broken Rungs on the Career Ladder:

A New Analysis on Problems Encountered
by Women Lawyers in Private Practice

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Broken Rungs on the Career Ladder: A New Analysis of Problems Encountered by Women Lawyers in Private Practice

By Cynthia L. Cooper

Cynthia L. Cooper is an independent journalist in New York with a background as a practicing lawyer.

After nearly three decades of law practice, Washington, D.C., trial attorney Beth Wilkinson left her partnership in one of the nation's large law firms in 2016 to co-found Wilkinson Walsh & Eskovitz, a D.C.-based litigation firm. "I was definitely aware of the limitations of BigLaw. It was definitely harder for most women. I thought we could do it better, or at least differently," says Wilkinson, a trial lawyer with a strong business book as well as—by her description—a working mother.

"All these big firms focus on diversity, and I believe they care about it," she notes. "People kept telling me it's going to get a lot better. But the truth is, there weren't a lot more women partners percentage-wise after 30 years than when I started. So I thought I could complain or I could try and do something differently."

Wilkinson contends that an emphasis on billable hours does not adequately reward lawyers who bring excellence, experience, and efficiency to a practice. So her firm uses an alternative system of billing and compensation.

In addition, Wilkinson's firm seeks to accommodate "real-world challenges," allowing flex-time and work-from-home arrangements. The three-year-old firm now counts 50 percent women among its 45 lawyers and five women partners of 12 total.

Wilkinson's midcourse adjustment reflects the experiences of many women at the nation's largest law firms. They've gone on the associate roster at 45 percent of the total for more than a quarter-century, but their ranks thin dramatically as the years go by.

The statistics reveal a disheartening picture. In 2018, women comprised only 19.5 percent of equity partners and 30.5 percent of nonequity partners in the nation's 200 largest firms, according to an annual survey by the National Association of Women Lawyers (NAWL), based in Chicago. That's only a 3 percent increase of equity partners from 12 years earlier—"a sluggish upward trajectory," NAWL concludes.

At this rate, women will achieve gender parity in equity partnerships in 160 years, according to a 2015 analysis by *The American Lawyer* in its *Special Report: Big Law Is Failing Women*.

Male partners also make substantially more money than women do. Men earned \$959,000 on average, compared to \$627,000 for women partners, according to the *Partner Compensation Survey* of 1,390 law firms released in 2018 by legal search firm Major, Lindsey & Africa. This 53 percent gap is significantly wider than the differences calculated in four previous surveys since 2010.

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Cases of gender disparity in BigLaw have also found their way into legal actions. In the last five years, Sanford Heisler Sharp, LLP, which has made a niche practice in the area, has brought more than 40 cases against 30 BigLaw firms, according to David Sanford, chairman and co-founder.

He says a majority of these cases involve women partners seeking pay compensation, typically involve origination credit, and tend to resolve quickly and confidentially. “Most are great firms with talented people,” Sanford says. “This has been a male profession, and males are in a power position. It’s very difficult to give it up.”

Searching for Weak Links

Now, robust new research has tested the various rungs on the BigLaw career ladder to identify breaking points for women and to offer proposed solutions. [*Walking Out the Door: The Facts, Figures and Future of Experienced Women Lawyers in Private Practice*](#) was released in fall 2019. It is one of four studies conducted by the ABA under the Presidential Initiative on Achieving Long-Term Careers for Women in Law, which was kicked off in 2017 by then-ABA president Hilarie Bass with the participation of the Commission on Women in the Profession (CWP).

The study was undertaken in collaboration with ALM Intelligence, based in New York City. Reports on the three additional components of the Presidential Initiative will be released in the coming months to round out the picture—one traces the career steps of women and men law graduates over time; two will share the results of focus groups across the country (one with lawyers from private firms and another specifically with experienced women of color).

“I think the [*Walking Out the Door*] report will open a lot of eyes,” says Bass, who in 2018 founded the Bass Institute for Diversity and Inclusion in Miami after 35 years in BigLaw to devote her full-time energy to the issue.

“You have a lot of managing partners trying to respond to these diversity surveys from top clients, scratching their heads, and saying, ‘What happened to all the women?’ So much of the focus has been on the pipeline. We have all of these women coming in, but people have been asleep at the switch. They are all coming in, but they are all going out the door.

“One of the things the study will do is make it a reality for managing partners who are prepared to look at it and say, ‘Oh my, this really is an issue,’” Bass adds.

The research for the report consisted of a comprehensive survey that looked at how women and men lawyers at senior levels experience the practice of law in the nation’s largest firms. “The decision to undertake the study was to confirm with data the reasons why women were choosing to leave the practice,” Bass notes.

“Gender bias continues to impact women lawyers,” she continues. “In category after category, metric after metric, women have a very different career trajectory and a very different career experience.”

Lawyers at NLJ 500 law firms with 15 or more years of experience were invited to participate. The survey instrument, sent out in 2018, asked about everyday experiences that contribute to success for men and women lawyers as well as perceptions about why women stay at or leave private firms. Participants were also asked to assess the success of gender parity measures in their firms.

Researchers were able to analyze responses from 1,262 individuals—70 percent women and 30 percent men. Of the respondents, 53 percent were equity partners and the rest were nonequity partners or counsel. Twenty-eight managing partners participated.

The results show that experienced women and men do find satisfaction in some of the same areas. Both men and women enjoy the legal work that they do—for example, all rate positively the intellectual challenges, substantive area in which they work, and legal tasks they perform.

Where men and women diverge is in their satisfaction with how they are treated in the firm—women express decidedly more discontent with credit, compensation, evaluation, transparency, possibilities for advancement, and their firm’s commitment to parity.

On a day-to-day level, women also reported negative encounters that men did not—being subject to sexual harassment, receiving demeaning comments, finding themselves mistaken for a lower-level employee, feeling that they have less access to business development or promotion opportunities, and being perceived as having less commitment to their career. The report finds the gender differences “both striking and alarming.”

Why Women Turn Away

Men and women generally agreed on some of the reasons why women depart. Both identify caretaking responsibilities, demands for billable hours, stress, and the desire to move to a different profession. But women, to a substantially greater degree than men, also pointed to other causes for the exit of women: marketing demands, limited opportunity for advancement, and compensation concerns.

“On so many aspects of the building blocks for success, women have more negative experiences than men,” says Stephanie A. Scharf, coauthor of *Walking Out the Door* and chair of the ABA’s CWP.

Scharf, a former partner at two BigLaw firms, says she had positive experiences during her tenure but watched other women struggle. “I spent 25 years in BigLaw, including raising two children, so I certainly understood why a lot of my women colleagues basically left in very large numbers compared to the men,” says Scharf, today a founding partner of the women-owned firm Scharf Banks Marmor LLC in Chicago.

The research finding that most fascinated Scharf has to do with parenting. “I was surprised—I should not have been surprised—but I was surprised by the impact that childcare has on the careers of women lawyers,” Scharf says.

In delving into childcare commitments, the survey shows that experienced women lawyers, far more than their male counterparts, bear the burden of overseeing the care of children. One finding shows that 35 percent of women said that arranging childcare is their full responsibility, while a mere 1 percent of men responded similarly.

“There are things that law firms can do to ameliorate that impact, but most are not doing it,” Scharf says. “That is a huge burden that many women carry, and it really affects the course of their career.” Seventy-five percent of women believed that paid parental leave, the ability to work from home, and part-time work policies are central to advancing senior women, the survey found. *Walking Out the Door* specifically recommends that firms address family responsibilities by rejecting the stigma that can attach to flex-time or part-time policies and removing barriers to advancement of lawyers who use them, as well as supporting childcare programs and concierge services.

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The survey also probed the perceptions of lawyers on the efforts of firms to address gender disparity. Again, men and women had starkly differing responses, notes coauthor Roberta (Bobbi) Liebenberg, who previously worked with Scharf on a 2015 study of gender differentials between first chairs at trial.

A former chair of the CWP, Liebenberg worked at BigLaw until age 50 before leaving to set up her own firm for eight years and then joining the Philadelphia antitrust firm Fine Kaplan and Black, R.P.C., where she is now a senior partner.

When asked about the gender-parity efforts at their firms, managing partners and senior men had a much more rosy view than women. “There is just this huge disconnect,” Liebenberg says.

For example, 88 percent of managing partners and senior men believe that gender diversity is a priority at their firm compared to 54 percent of women. “If people at the top think that they are doing a great job and they’ve checked off all the gender and diversity boxes for their firm, and, in fact, they are not succeeding—especially in terms of how women and diverse lawyers are feeling—then this is another issue that should be a huge concern for law firms.”

Extending the Discussion

Focus group research extends the study by engaging experienced lawyers in deeper conversations. A report on findings from a dozen focus groups with over 100 people with 20 years or more of experience in private firms will be released this summer, according to Joyce Sterling, a professor of law at the University of Denver Sturm College of Law, who guided the project. Groups were convened in Boston; New York; Washington, D.C.; Chicago; San Francisco; Houston; and Miami.

The issue that rose to the top: compensation. Women participants in the focus groups repeatedly pointed to inequitable pay, promotion, and origination credit as the downsides of their practice.

“A number of people said to us that they’d been promoted to equity partner, and at that point they could go look at what everybody was earning,” Sterling points out. “And they suddenly realized that they were making significantly less than men who weren’t even partners. So, of course, as you can imagine, it was very unsatisfying to them.”

One woman described how three men were granted promotions while she and two other women on the same track were not. Confronted, the managing partner explained that the men had families to support.

“A lot of this may be classified as implicit bias,” Sterling says. “The big firms all talk about, ‘Oh yes, we want to have more women, more women should be on the compensation committee, and so on.’ But they actually don’t know how in operation to make it a priority.”

Paulette Brown, past president of the ABA and a partner at Locke Lorde LLP, is guiding a study that will report on focus groups of women of color in law. “When a study of long-term careers of women in law was announced, I knew the experience of women of color was going to be different,” says Brown, who will be preparing results from eight focus groups convened in New York, Los Angeles, Atlanta, and Chicago for a fall release.

Where to Go Next

Walking Out the Door is unique, Liebenberg says, because it presents specific recommendations in

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addition to the data. “If people actually want to make sure that women and diverse lawyers advance and succeed, there has to be a clear commitment, there have to be benchmarks and goals, and there has to be accountability for the failure to do so,” Liebenberg observes.

“This is not rocket science,” she adds. “The most important solution is strong leadership from the top.”

For her part, Bass is hopeful that BigLaw firms will step up. “Clients are demanding diversity on their teams, and they’ve become much more sophisticated about it. You can’t be competitive in 2020 if you are leaving 50 percent of the talent at the door,” Bass says. “I do believe we are at an inflection point.”

VOICES

Leap, and a Net Will Appear

By Carolyn A. Dubay

Carolyn A. Dubay is the executive director of the North Carolina Judicial Standards Commission, the state judicial ethics agency. She received her B.A. from Duke University in 1991, her J.D. from Fordham University in 1995, and her LL.M. from Georgetown University in 2010.

Years ago, someone gave me a book featuring a series of photos of a very wise English bulldog named Zelda, who was dressed in various costumes and offered inspirational quotes. Without question, my favorite was “Leap, and a Net Will Appear.”

As someone who is averse to taking risks of virtually every kind, the impact of the quote was not to change me into a person who boldly plunges into new adventures. Quite to the contrary, I rely on a net that is there to ease the worry about what the future holds when change is thrust upon me. With a little patience, something always seems to work out, and change has made me realize that there is a world of opportunity for lawyers willing to think outside the box. When I’ve been forced to leap, a safety net for my soul has appeared.

After graduating from law school in 1995, I started my career with grand ambitions of using my degree to be a forceful advocate for my clients and contribute to the profession in other meaningful ways. As a New Yorker, I imagined myself as a partner in a big firm, living a comfortable life (at least after my student loans were repaid). When I graduated from law school, I sat for and passed the New York bar exam and joyfully threw away my bar review books while proclaiming, “never again!” I bought a condo on the Upper East Side and settled into a job at a big firm.

With this plan firmly in place, my life and career shortly changed in positive ways that I never could have imagined. First, I accepted a position for a two-year clerkship with a federal district court judge in the Eastern District of New York. Second, I met the man who is now my husband of 20 years. He was then an active-duty lieutenant in the U.S. Air Force about to begin pilot training. I had no idea what that meant for his career or mine, as my only knowledge of military aviation was from the movie *Top Gun*.

Leaving a big firm and a big salary for a federal judicial clerkship was easy. It was certainly no blind “leap”—I knew the position was prestigious, and I knew I would learn more about litigation and the federal courts than I could in two years of practice. During many military moves, that clerkship has been a “net” to catch me ever since. It gave me a lifelong relationship and mentor in “my” judge—one that was there throughout the ups and downs of my career. It helped me secure a position with a wonderful law firm, allowed me to return to my home in the federal courts after having children, and instilled in me a deep respect for the judiciary’s role in securing the rule of law in our democracy. That respect and understanding ultimately led me to the job I have today—ensuring the highest levels of professionalism and ethics among judges in North Carolina.

Deciding to sell my condo and move to another state to find a job, take another bar exam, and start life as a military “dependent” was another story. But “leap” I did, and with no regrets. Ever. And to anyone married to an active-duty military member and trying to balance a career, you know there are lots of leaps that you have to make. But you also know it is worth it. The military family and my own family were the

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other “nets” in my life. From country to country, from state to state, for one year, two years, three years, and occasionally longer, they kept me grounded. Frequent moves also made me open to new jobs, new experiences, and new colleagues who I would later call friends.

This is not to say these changes were easy. There are few jobs an American litigator can get overseas without language skills and an international business background. Stateside, there were no special rules at the time I came through for granting bar admission to military dependents. Three bar exams later, plus gaps in work while living overseas, finding a job after each new move became the way I had to exist. This fact of my life—one that gave me so much joy and opportunity I never expected—also made me leap from job to job. And each time, my family and network of friends and former colleagues I made along the way were there to catch me.

So, to all those young lawyers who are afraid to take leaps, fear not, for Zelda has a net for you.

CHAIR'S COLUMN

A New Year and New Beginnings

By Stephanie A. Scharf

Stephanie A. Scharf is a founding partner of Scharf Banks Marmor LLC in Chicago and chair of the ABA Commission on Women in the Profession.

Happy New Year! As we begin 2020—and a new decade—what things will shape your 2020? Are you about to welcome a new family member? Are you beginning a new job? Did you just get assigned to your dream case or deal? Are you feeling stressed and don't know what to do about it?

At about this time, many of us may look back at 2019 and start 2020 with resolutions for change. Some of these resolutions might pertain to our careers, like “take on some meaningful pro bono work” or “do a major deal” or “work on getting a key sponsor.” Others might be about life outside of work, such as “deepen my friendships” or “take two hours out of every week for self-care.”

In 2020, the ABA Commission on Women in the Profession will launch a number of resources to help women lawyers focus on what they want to do in their careers and in life in ways that are tailored to the special “me” in each of us. As one example, we would be delighted to have you join us at our inaugural *Launching Leaders Retreat* (April 30–May 2)—with an emphasis on “retreat”—to learn together about making your life and career better for “you.” For more information, please visit www.ambar.org/retreat2020.

Along a different dimension, I hope that you will join the Commission to celebrate the 100th anniversary of the Nineteenth Amendment, which gave all women in the United States the right to vote. The fight for women's equality, in the legal profession and society at large, has been a long one with many successes along the way and more to be achieved.

We can see the push/pull of progress in certain projects spearheaded by the Commission, such as the November 2019 report, *Walking Out the Door*, published jointly by ALM Intelligence and the American Bar Association. Although the innovative data in this report show areas of progress for advancing women, the data also elaborate on continuing impediments—factors that we need to better understand and help to change.

The *Men in the Mix* project, whose initial research results will be unveiled at the ABA Midyear Meeting, presents another way for understanding how women advance in the profession, including how best to engage male colleagues on issues of gender equity.

We welcome all of you to participate in the Commission's conferences, learn from our publications, and, perhaps most satisfying, join other ABA members to volunteer in creating the resources for women lawyers to succeed in their profession and enjoy life while doing so. It may be a program, a workshop, research, or something that is right now just a kernel of a new idea—all it takes to begin is your email to connect with us.

Very warm wishes for a happy and gratifying 2020!

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CWP NEWS

2020 Margaret Brent Awards Nominations Close on January 24, 2020

The Commission on Women in the Profession's nominations for the 2020 Margaret Brent Women Lawyers of Achievement Awards will close on January 24, 2020, at 5:00 p.m. CST. Previous nominators from 2018 and 2019 are welcome to resubmit their nomination. Those who resubmit are required to send in a new narrative and an updated resume, but other materials may remain the same. For more information about resubmission, please contact Program Associate Laura Tannous at 312.988.5715 or laura.tannous@americanbar.org.

Established in 1991 to recognize and celebrate the accomplishments of women lawyers, each year this prestigious award honors up to five outstanding women lawyers who have achieved professional excellence within their area of specialty and have actively paved the way to success for other women lawyers. These women demonstrate excellence in a variety of professional settings and personify excellence on either the national, regional, or local level. More information about criteria for the award and the application process can be found at www.ambar.org/brentawards.

CWP NEWS

Men in the Mix Program Finalized for Midyear Meeting in Austin, TX, in February

A program introducing the preliminary results of *Men in the Mix* is being planned for the 2020 ABA Midyear Meeting on Saturday, February 15, from 2:30 to 4:00 p.m. The program's title is "Men in the Mix: How to Engage Men on Issues Related to Gender in the Profession." During this program, the ABA Commission on Women in the Profession will reveal some of the early results of its newest research project—*Men in the Mix*—which utilized focus groups and qualitative research to better understand why and when men engage in issues traditionally considered "women's issues" in the law. Following a presentation of initial results, a panel of experts will talk about strategies they are deploying to engage all in advancing attorneys in the legal profession.

Speakers include:

- Research Presentation: Anne Collier, CEO and Certified Professional Coach, Arudia
- Panelists: Evan Anderson, CEO, PLACED Legal Career Strategies; Paulette Brown, Senior Partner and Chief Diversity and Inclusion Officer, Locke Lord, LLP; Tommy Preston, Immediate Past Chair, ABA Young Lawyers Division; The Honorable Rodolfo A. Ruiz II, U.S. District Judge, U.S. District Court, Southern District of Florida
- Moderator: Katherine M. Larkin-Wong, Associate, Latham and Watkins, LLP

This program will be part of the "Defending Liberty, Pursuing Justice" Working Together for Access, Equity and Inclusion Conference coordinated through the efforts of the Center for Diversity and Inclusion as a whole. Registration for the ABA Midyear Meeting is complimentary. More information can be found at www.ambar.org/midyear.

CWP NEWS

Spring Summit for Advancing Women in the Law

The Commission on Women in the Profession and the Women’s Bar Association of Illinois are cosponsoring the Spring Summit for Advancing Women in the Law on March 3, 2020, at the Everett McKinley Dirksen United States Courthouse in Chicago, Illinois. The Summit will bring together legal professionals from firms, corporations, and the judiciary to discuss the current landscape for women in law and what research from the ABA Long-Term Careers for Women in the Law tells us about the need for change. Registration is now available at <https://www.xpressreg.net/eReg/?ShowCode=CWPL0320>.

A number of additional cosponsors have been confirmed, including Advocates Society, Appellate Lawyers Association, Asian American Bar Association of Greater Chicago, Black Women Lawyers’ Association of Greater Chicago, Catholic Lawyers Guild of Chicago, Chicago Bar Association’s Alliance for Women, Chinese American Bar Association of Greater Chicago, Cook County Bar Association, Decalogue Society of Lawyers, Diversity Scholarship Foundation, Federal Bar Association, Filipino American Lawyers Association of Chicago, Hispanic Lawyers Association of Illinois, Illinois Judges Association, Illinois State Bar Association’s Women in the Law Committee, Illinois Supreme Court Commission on Professionalism, Korean American Bar Association of Greater Chicago, Lesbian and Gay Bar Association of Greater Chicago, Muslim Bar Association of Chicago, Puerto Rican Bar Association of Illinois, Serbian American Bar Association, South Asian Bar Association of Chicago, and the U.S. District Court of Northern Illinois.

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