Gender Bias in the Legal Profession

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Introduction

SYSTEMIC SEXISM IS A STRUGGLE that has plagued society for eons, not just American culture. Recently, there has been a systematic effort to achieve gender equality in the United States. With the emergence of the “Me Too” movement, women’s rights have moved to the forefront of national concern. As a reaction to public outcry for a diverse workforce, large corporations restructured their bylaws and ethical rules. The upper echelon of the work force used to be dominated by men. However, because of this movement towards gender equality, the work force is increasingly becoming diverse. Now “more than half the U.S. work force . . . consists of minorities, immigrants, and women” thereby making “white, native-born males, though undoubtedly still dominant, . . . a statistical minority.” Further, American companies now have the ability to do “their best to become more adaptable, to compete more successfully for markets and labor, foreign and domestic, and to attract all the talent they can find.”

However, the movement against gender bias in the workplace is far from complete. In the legal industry, progress towards gender diversity is still underdeveloped because of “the continuing lack of gender diversity in the
legal profession’s most influential and honored positions.”\textsuperscript{6} Statistically, the gap among men and women in law schools, law firms, and on the bench is still blatant—"only six percent of managing partners at the largest 200 American law firms are women and approximately four out of five law school deans are men."\textsuperscript{7} Some academics attribute the gap “to negative stereotypes portraying women either as workplace cutthroats or, conversely, as secretaries or housewives,” and as such, “decision-makers continue to subordinate women to men in the highest levels of the legal profession.”\textsuperscript{8} However, the issue is far more complex. This Comment aims to shed light on gender bias in the legal profession and how to combat it.

There are three issues that are continuous propagators for gender bias in the workplace: (1) disproportionate advancement opportunities in legal positions due to stereotypes; (2) sexual harassment against women in the workplace; and (3) disincentives for taking parental leave due to negative career impact.

I. Disproportionate Advancement Opportunities in Legal Leadership Positions

While statistics show women have no problem getting into law school,\textsuperscript{9} and data shows that “women are represented in the profession at a relatively high number,” the unfortunate and unmistakable conclusion is “they have not advanced to management positions in any percentage commensurate with their overall representation.”\textsuperscript{10} A recent study conducted by the Commission on Women in the Profession ("CWP") and Minority Corporate Counsel Association ("MCC") showed that “many women . . . felt they were held to a higher standard than white men.”\textsuperscript{11} The CWP report showed that women felt forced to behave “in feminine ways” and felt criticized for displaying stereotypically masculine conduct. They were “more often

\textsuperscript{6} See Justin D. Levinson & Danielle Young, Implicit Gender Bias in the Legal Profession: An Empirical Study, 18 DUKE J. GENDER L. & POL’Y 1, 1 (2010).

\textsuperscript{7} See id. at 2.

\textsuperscript{8} See id.; see also Cynthia Fuchs Epstein et al., Report, Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession, 64 FORDHAM L. REV. 291, 311–16 (1995) (discussing the historical context of social pressure and its influence on women’s advancement in the workplace).


\textsuperscript{10} See Ellen A. Pansky, Gender Bias in the Legal Profession, 82 WOMEN LAW. J. 16, 16 (1996).

saddled with ‘office housework,’ like taking notes, ordering lunch or comforting a co-worker in distress.”

One problem with these sort of duties and this type of treatment is that “in a law firm, that kind of work reduces billable hours, which can hurt compensation.” While it helps the organization, it also takes up time and energy and “often does not lead to career advancement.” So women are left with the conundrum of either behaving in “feminine” ways to appease their boss, thereby neglecting their duty to their clients, or fully performing their legal duty to their clients and frustrating their boss.

While the solution to the issue of men and women having different work duties is to give women and men the same work, this solution does not resolve the entire gender bias issue, leaving the issue of inequality in pay untouched. Liane Jackson’s ABA article spoke to this issue when she discussed the CWP report You Can’t Change What You See: Interrupting Racial & Gender Bias in the Legal Profession. She gave a succinct explanation of the report, stating it showed that “[n]early 70 percent [of women] said they were paid less than their colleagues with similar experience and seniority, compared to 36 percent of white men. White women also reported high disparities in compensation, with 60 percent responding they were paid less than similarly situated co-workers.”

The CWP report showed that thirty-five percent of active American lawyers in 2016 earned less than their male colleagues. Moreover, only twenty-six percent of the top lawyers from Fortune 500 companies were women. Lastly, even though a great amount of women are graduating from law school, only thirty-two percent of law schools have female deans. With women making up only twenty-six percent of top lawyers in Fortune 500 companies and only thirty-two percent of law school deans, they still remain the minority in leadership positions in the legal field.

The truth is that women must work twice as hard to advance in any position in the work force. Society holds women to a higher standard than their white male counterparts. To fight the issue of gender bias in the legal

12. Id.
13. See id.
14. See id.
16. Id.
17. See Zraick, supra note 11.
18. See id.
19. See id.
profession and break the glass ceiling, this reality must be addressed. Prejudice against women leaders interferes with “women’s ability to gain authority and exercise influence,” thereby producing “discrimination when it is translated into personnel decisions within organizations and political structures.”

II. Sexual Harassment in the Workplace

According to Lian Jackson’s ABA article on the CWP report, above a “quarter of female lawyers reported that they had experienced sexual harassment at work, including unwanted sexual comments, physical contact and romantic advances.” Stated otherwise, one in four women in the legal profession—a profession duty bound to behave with candor and integrity—are the recipient of sexual harassment. The impact of this sexual harassment, as the CWP report stated, “had career costs.” The CWP report stated that “about one in eight white women . . . said they had lost opportunities because they rejected sexual advances.” In fact, “[a]mong all respondents, about 70 percent said they had heard sexist comments, stories or jokes at work.”

The CWP report shows systemic barriers women around the nation face in the workplace. The statistics show that women who refused sexual advances in the workplace felt they lost many job opportunities and sometimes even their position in the law firm. When women are faced with these problems, rationally available solutions are sparse. Women are generally left with three options: (1) report sexual advances; (2) seek removal from the assignment; or (3) quit their job. Reporting the problem can lead to additional problems such as retaliation. Requesting removal from an assignment may present the appearance of performance issues if unexplained, and it certainly does not resolve the underlying issue of undesired sexual advances. Lastly, quitting sometimes is not an option because of financial considerations.

To deal with this issue, there needs to be a systematic change for reporting sexual harassment in the workplace. First, it is not enough to educate employees about sexual harassment. Women in the workplace need to feel safe to report sexual harassment, and their abusers need to know sexual harassment has adverse repercussions in the workplace. This means

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22. See id.
23. Id.
24. Id.
there needs to be a guarantee that no retaliation will occur if the harassment is reported.

III. The Negative Impact of Taking Parental Leave

According to the same CWP report, “lawyers of both genders felt that taking parental leave would have a negative impact on their career.”25 A recent Finnish-Canadian study showed the “professional ethos of law firms discourages men from taking parental leave.”26 Consistent with the CWP report, the Finnish-Canadian study found men are not encouraged to combine their professional career with childcare because “professional culture in law firms rests on traditional masculine ideology, with men regarded as the providers for their families.”27 If men are discouraged from taking parental leave and choose not to, women will bear the child rearing responsibility. If women bear this responsibility alone, then they are not in the office working. This absence may limit their career opportunities because they may not be able to complete their billable hours, thus risking a halt to their career growth. Meanwhile, the men are in the office being exposed to career-enhancing opportunities and able to accept work that furthers their career.

The fact that “few male lawyers take parental leave is an indication of gender inequality within the legal profession.”28 Many law firms’ family guidelines and adaptable working hours are directed mostly at women.29 Pushing only women to take parental leave hurts their career growth because it further stigmatizes women and provides men more opportunities simply because men are physically present to take the work and women are not.30 Undeniably, if fathers took a more active role in childcare, “it would facilitate the emergence of a professional culture that is more family-friendly. In the process, it is also likely that this would reduce gender bias in the division of legal tasks and career paths within law firms,” as researcher Marta Choroszewicz from the University of Eastern Finland explained.31

25. Id.
27. See id.
28. Id.
30. See id.
31. See Univ. of E. Fin, supra note 26.
and Medical Leave Act of 1993 requires companies with more than 50 employees to provide 12 weeks of unpaid leave for new parents, it requires no paid leave. The 14 percent of companies that do offer pay leave, like Ernst & Young, do so by choice, not because of legislative requirements. However, “[t]wenty percent of companies that are supposed to comply with the law” still do not offer paternity leave. Additionally, almost half of United States workers are employed at smaller companies that are not required to offer any leave at all.

According to a March 2016 policy brief from the Organization for Economic Co-operation and Development, “the U.S. is the only member country that does not provide paid maternity leave.” Because professional culture in law firms rests on traditional masculine ideology where men are required to provide for their family, men are discouraged from taking parental leave because taking leave means losing career opportunities, which means they are not fulfilling their obligation as a provider. It is no surprise that men feel subconsciously obligated to stay at work while women take time off from work and miss career opportunities.

Optimistically, the United States is moving towards a widespread systematic change in all law firms. We must continue to push for a large-scale shift in law firm culture across the nation. To be effective, that push should begin with male partners. Male partners with the help of their female counterparts, side by side, must drive law firms into a new era of gender equality.

**Conclusion**

Gender bias in the legal profession is real and very prevalent in the United States. Statistics show there is a deficit of women in leadership positions in the legal profession. Three prevalent issues for gender bias in leadership positions include: (1) women lack opportunity to advance in legal positions due to stereotypes; (2) women are sexually harassed in the workplace without proper channels to report it; and (3) taking parental leave negatively affects men’s and women’s careers, which disproportionately affect women and men differently.

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33. Id.

34. Id.

affects women due to traditional masculine ideology. To combat gender bias, the industry must first acknowledge that there is a problem. Then legal professionals must empower women by providing career advancement opportunities, proper channels to report sexual harassment without retaliation, and parental leave to both men and women without stigmatization. Only by empowering women will the legal profession truly be a meritocracy.