

The Business Client Is A Woman: The Effect of Women As In-House Counsel On Women in Law Firms and the Legal Profession

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I. INTRODUCTION

A recent survey of the nation's largest private law firms revealed that women represent eleven percent of the partners, the holders of power in the traditional law firm organization, while women constitute thirty-seven percent of all associates at those firms.¹ Women represent almost forty-three percent of all law students at accredited law

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1. Claudia MacLachlan & Rita Henly Jensen, *Progress Glacial for Women, Minorities*, NAT'L L.J., Jan. 27, 1992, at 1, 1. For more statistics regarding women in private practice as associates and partners, see *infra*, Section III.

schools.² While the representation of women in the associate ranks and in law schools encourages optimism, the dismal representation of women as partners in law firms indicates that many women with stellar educational credentials and valuable law firm training leave firms at or before the partnership decision or remain with firms but do not rise to partnership status. Commentators have stated that this phenomenon is the result of a "glass ceiling," an invisible promotion barrier within firms which blocks the rise of women to the partnership pedestal.³ The use of the term "glass ceiling" may give a false impression of simplicity to a tremendously complicated issue. The phenomenon of disproportionately few female partners certainly results from promotional barriers, both blatant and subtle. The phenomenon also results from an institutional environment that leads women to forsake firms at a higher rate than men. Whatever the cause of the process, many well-qualified female attorneys leave law firms before ever achieving partner status.

Many of these female attorneys move from law firms to rapidly expanding in-house legal departments. The presence of female in-house attorneys may lessen or eliminate some of the barriers to success which women in law firms traditionally have faced. The presence of women as in-house attorneys also may improve the law firm environment for women as well as men. Finally, the position of women in the legal profession should improve as a consequence.

In stark contrast to the first sixty years of the twentieth century,⁴ law schools graduated thousands of women in the 1970s and 1980s and continue to do so in the 1990s.⁵ In fact, law schools now have almost as many women in each class as men.⁶ Many of these women excel, earn-

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2. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AMERICAN BAR ASSOCIATION, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES FALL 1992 67 (1993)[hereinafter REVIEW OF LEGAL EDUCATION](reflects statistics from accredited law schools).
 3. See, e.g., COMMISSION ON WOMEN IN THE PROFESSION, AMERICAN BAR ASSOCIATION, REPORT TO THE HOUSE OF DELEGATES 7 (1988)[hereinafter ABA REPORT]. See also Judge Patricia M. Wald, *Breaking the Glass Ceiling*, 16 HUM. RTS. Q. 40 (Spring 1989); Mona D. Miller, *Breaking Through the Glass Ceiling*, 10 CAL. LAW., Aug. 1990, at 34; Christopher L. Griffin, *Women in Law: Breaking the Glass Ceiling*, 15 BARRISTER, Winter 1988, at 2.
 4. Women constituted only one percent of the law school graduates of 1910. Donna Fossum, *Women in the Legal Profession: A Progress Report*, 67 A.B.A. J. 578, 579 (1981). By 1963-64, women comprised only 3.7 percent of all law students. REVIEW OF LEGAL EDUCATION, *supra* note 2, at 67 (reflects statistics from accredited law schools).
 5. 6,682 women studied law in accredited law schools in 1970-71. 54,644 women studied law in accredited law schools in 1992-93. REVIEW OF LEGAL EDUCATION, *supra* note 2, at 67.
 6. Women represented 42.6 percent of all law students in the fall of 1992. REVIEW OF LEGAL EDUCATION, *supra* note 2, at 67 (reflects statistics from accredited law schools).

ing the badges of accomplishment vital to future triumph in the private sphere of the profession.⁷

After graduation, many of these successful women flock to "elite" law firms along with their male peers. Yet, as recent studies and statistics indicate, a disproportionate number of these women depart from law firms either before they become eligible for partnership or relatively contemporaneously with the partnership decision. Some women abandon the partnership quest, though they continue to toil in law firms.⁸

Many theories exist explaining why women depart from firms or exit from the partnership track. Some women leave because the demands of firm life do not mesh with the demands of family life. Some women leave because they feel that the firms as institutions and individual lawyers within the firms treat them as inferiors or outsiders. Some women depart or become permanent associates because they receive the message that they do not have partnership qualities. Others leave because of general job dissatisfaction. Law firms on the whole do not receive high ratings for hospitality, especially with regard to female attorneys.⁹

Many female attorneys leaving law firms become in-house attorneys for corporations and other businesses.¹⁰ Indeed, women are becoming visible not only as in-house attorneys, but also as general counsels,¹¹ the "managing partners" of in-house legal departments. As in-house attorneys, these legally sophisticated women now purchase, on behalf of their employers, the product law firms offer: legal services.

In-house legal departments have grown in size and sophistication in recent years and now assume much of the legal work once delegated to outside counsel. In-house attorneys actively manage the legal work that goes to outside counsel and select outside attorneys and firms generally unconstrained by any notions of corporate loyalty to a particular firm or attorney. Now more than ever, clients use in-house

7. See discussion *infra* Section II.

8. See discussion *infra* Section III.

9. See discussion *infra* Section IV.

10. See discussion *infra* Section V.

11. See David Machlowitz, *Corporate Moves*, 75 A.B.A. J. 62, 66-67 (1989)(enumerating some of the many women serving successfully as general counsels). See also William W. Horne, *Flying High at Phoenix*, AM. LAW. Oct. 1992, at 42 (discussing woman general counsel); Audrey Duff, *A Quieter Role for New Harvard G.C.*, AM. LAW., Nov. 1992, at 36 (discussing woman general counsel); Emily Barker, *Writing New Policies at Aetna*, AM. LAW., Jun. 1992, at 48 (discussing Zoe Baird, general counsel and one-time candidate for United States Attorney General); William W. Horne, *Empire Building at K-III*, AM. LAW., Jul./Aug. 1991, at 50 (discussing Beverly Chell, former general counsel of Macmillian, Inc. and present general counsel of K-III Holdings, Inc.). For statistics regarding the representation of women as general counsels, see *infra*, note 116 and accompanying text.

attorneys as agents who closely monitor outside counsel, not only regarding strategy, but also cost efficiency. Law firms must constantly monitor the work they do for clients to ensure that the client receives a good, efficient product. The firms must also continually and aggressively market themselves to both present and potential clients to ensure that those businesses consider them for any future legal matter.¹² Loyalty no longer dictates the distribution of work in the legal services market. Given the economic power and significance of in-house attorneys in the selection of outside counsel, the distribution of work, and the maintenance of relationships between law firms and business clients, the presence of female attorneys in those in-house positions should positively affect the success of women in law firms, the law firm environment, and the status of women in the legal profession.

All female attorneys should benefit from the high visibility of successful female in-house attorneys in positions of power and responsibility. In addition, female attorneys in law firms now and in the future should find those firms more receptive to the advancement of women within the firms, and should find those firms to be more hospitable places to work as the result of four basic processes that should occur as women take the role of in-house counsel and, therefore, the role of the business client. These processes are the enlightenment process, the familiarity process, the rain-making process, and the instrumental process.

The enlightenment process occurs as female in-house counsel confront male attorneys in positions of power within law firms that have negative opinions regarding female attorneys' abilities and dedication. When these female in-house attorneys disprove the negative opinions, these powerful male attorneys should receive the women in their firms more enthusiastically. These male attorneys should more willingly rely upon female attorneys, work with them, trust them, and promote them. The familiarity process occurs as the presence of female in-house counsel as clients forces male attorneys to deal with women as professional equals. Some male attorneys, especially those who attended law school before the presence of women in the classroom, may not doubt the ability of female attorneys, but may tend to deal with other male attorneys because they are more comfortable doing so. As these male attorneys are forced to deal with female in-house counsel as both their clients and equals, they may be more amenable to working with women within their firms, and may feel more relaxed in doing so.

The rain-making process creates a situation in which female attorneys bring business into the firms. Women working as in-house counsel may tend to send work to competent women in law firms. These

12. See discussion *infra* Sections V and VI.

women then become important to the financial well-being of the firms, not only for the work they do, but also for the work they attract to the firm for other firm attorneys to handle. To succeed in most firms, an attorney must prove the ability or potential to attract business. As women succeed in this aspect of firm life, they should gain power and prestige within firms, along with the partnership title. The instrumental process occurs when law firms marketing their services to female in-house attorneys place female attorneys in the firms in lead or vital marketing roles regarding the potential work in order to capture the business. Acting in positions of power and responsibility on a particular legal matter should improve those women's chances of being put in similar positions on other matters in the future, when the matter does not involve a woman as in-house counsel. These women should attain the experience and exposure necessary for success within firms. This process indicates that the presence of women in the power structure of a firm can be an important marketing tool.

Section II of this article discusses women in law school. Section III presents the status of women in the legal profession and, specifically, in the so-called "elite" law firms. Section IV analyzes the possible explanations for the current underrepresentation of women in the partnership ranks. Section V discusses the increasing presence of women as in-house counsel, as well as the emerging and major role of in-house counsel in the realm of legal services. Section VI discusses the plight of traditional private law firms in the 1990s as a consequence of the competitive market for legal services. Section VII presents the suggestion that female in-house counsel may greatly improve the opportunities for female attorneys, especially in law firms, by discussing the impact of the enlightenment process, the familiarity process, the rain-making process and the instrumental process.

II. WOMEN IN LAW SCHOOL

The American Bar Association Section of Legal Education and Admissions to the Bar has reported that women represented 42.6 percent of all students enrolled in J.D. programs at accredited law schools in 1992-93. The percentage of female law students has increased from 3.7 percent in 1963-64, to 8.6 percent in 1970-71, to 34.2 percent in 1980-81, to the present proportion.¹³ Since 1972, all accredited law schools

13. Total 1992-93 J.D. enrollment at the 175 accredited law schools was 128,212. 54,644 of those students were women. REVIEW OF LEGAL EDUCATION, *supra* note 2, at 67.

Total enrollment in 1963-64 was 46,666. 1,739 of those students were women. Total enrollment in 1970-71 was 78,018 with 6,682 women. In 1980-81 119,501 students enrolled with 40,834 of those students being women. *Id.* at 67. A heightened social awareness, the Vietnam war, and the women's movement contributed to the significant increase of women in law schools. Fossum, *supra* note 4, at 580.

have admitted women.¹⁴ The era in which women rarely appeared in the law school classroom has passed into antiquity.

While in law school, women succeed in obtaining the honors traditionally associated with future accomplishment and achievement within the profession. For example, law review mastheads from the 1989-90 school year reveal a substantial percentage of female law review members. An informal review of mastheads of fifty law reviews, including law reviews of the elite schools,¹⁵ discloses that women represent at least thirty-nine percent of the staffs of one half of those reviews. On forty-six of the fifty law review staffs, women constituted at least twenty-seven percent of the staffs.¹⁶ In a study of Stanford

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14. Fossum, *supra* note 4, at 579; Stephanie B. Goldberg, *Then & Now Seventy-Five Years of Change*, 76 A.B.A. J. 56 (1990). Northwestern School of Law, formerly Union College of Law, began admitting women in 1870. D. Kelly Weisberg, *Barred from the Bar: Women and Legal Education in the United States 1870-1890*, 28 J. LEGAL EDUC. 485, 494 (1977). Not until 1950 did Harvard Law School admit women. Cynthia Fuchs Epstein, *Rationales and Realities: Social Change, Women and the Law*, 37 DEPAUL L. REV. 367, 371 (1988). Chief Justice Harlan Fisk Stone, while acting as the Dean of Columbia Law School, stated in 1927 that the law school would admit women "over my dead body." See Wald, *supra* note 3, at 41. An anomaly was Portia Law School, now New England School of Law, a part-time school created in 1908 specifically to provide legal education to women. Ronald Chester, *Women Lawyers in the Urban Bar: An Oral History*, 18 NEW ENG. L. REV. 521, 524-25 (1983). See Virginia G. Drachman, *Women Lawyers and the Quest for Professional Identity in the Late Nineteenth-Century America*, 88 MICH. L. REV. 2414 (1990), for a discussion of the early years of women at the University of Michigan.
15. The law reviews considered were the reviews noted as the top fifty journals in a 1989 Chicago-Kent Law Review survey. That study ranked the journals on the basis of the frequency with which other reviews cited to them. The reviews considered were Harvard Law Review, Yale Law Journal, Stanford Law Review, Columbia Law Review, California Law Review, University of Chicago Law Review, Virginia Law Review, Cornell Law Review, New York University Law Review, Vanderbilt Law Review, Texas Law Review, Ohio State Law Journal, University of Pennsylvania Law Review, Michigan Law Review, UCLA Law Review, Northwestern Law Review, Boston University Law Review, Southern California Law Review, Georgetown Law Journal, Minnesota Law Review, Georgia Law Review, Wisconsin Law Review, William and Mary Law Review, Iowa Law Review, Maryland Law Review, Hofstra Law Review, North Carolina Law Review, Notre Dame Law Review, Duke Law Journal, Hastings Law Review, Emory Law Journal, University of Illinois Law Review, Arizona Law Review, Villanova Law Review, Washington Law Review, Missouri Law Review, Indiana Law Journal, Mercer Law Review, Rutgers Law Review, University of Pittsburgh Law Review, University of Miami Law Review, Florida Law Review, Boston College Law Review, Southwestern University Law Review, Brigham Young University Law Review, Fordham Law Review, Buffalo Law Review, Washington University Law Quarterly, Creighton Law Review and Tulane Law Review. See *Chicago-Kent Law Review Faculty Scholarship Survey*, 65 CHI.-KENT L. REV. 195, 204 (1989).
16. The total number of law review members included ambiguous names but the number of women members did not. Thus, the percentages for women are the smallest possible given that some of the women members were not counted as such because they do not have gender-specific names. Obviously, the percentages

Law School students and graduates, researchers found no statistically significant difference between men and women regarding election to Order of the Coif.¹⁷ To the extent that law review membership and election to Order of the Coif evinces motivation, ambition, and aptitude, the presence of women in these ranks demonstrates that women in law school desire to excel and do in fact prevail in the travails of legal study.¹⁸

Though law schools have reduced blatant sexism in their hallowed halls,¹⁹ the law school environment may retain distinctly male biases and prejudices.²⁰ In addition to sexist comments made by professors

discussed are not absolute but they indicate relatively well the participation of women on law reviews.

17. See Special Project, *Gender, Legal Education and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1243 (1988).
18. This may have been true since women first appeared in the law school classroom. A study of women who graduated from Columbia Law School between 1929 and 1950 revealed that the women performed in a superior fashion scholastically as compared to their male counterparts. See Edith Fische, *Statistical Survey of Columbia Law School Alumnae—A Tribute to Women*, 37 WOMEN LAW. J. 38, 38 (Sum. 1951). See also Alice D. Jacobs, *Women in Law School: Structural Constraint and Personal Choice in the Formation of Professional Identity*, 24 J. LEGAL EDUC. 462, 468-69 (1972) (women have performed at least as well as men); James J. White, *Women in the Law*, 65 MICH. L. REV. 1051, 1072-73 (1967) (survey of graduates of law schools showed no significant difference in performance); Bill Winter, *Survey: Women Lawyers Work Harder, Are Paid Less, But They're Happy*, 69 A.B.A. J. 1384, 1385 (1983) (1983 survey showed that women were more likely to graduate with honors). In contrast, a study done at Boalt Hall indicates that women's grades in two first-year courses (Contracts and Property) have declined since 1984. In 1984, one in ten men or women earned the grade of High Honors. By 1988, one in six men received High Honors while only one in sixteen women earned that grade. Suzanne Homer & Lois Schwartz, *Admitted but Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1, 30 (1989).
19. In the early days of women in law schools, some professors had "ladies' day" during which the professors questioned only women. See Geoffrey C. Hazard, *Male Culture Still Dominates the Profession*, NAT'L L.J., Dec. 19, 1988, at 13, 13. Cynthia Fuchs Epstein notes that one professor began his "Ladies' Days" with the comment, "Will all the little virgins move to the front of the class." See Epstein, *supra* note 14, at 371. See also Marina Angel, *Women in Legal Education: What It's Like to Be a Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L. REV. 799, 811 (1988); Eleanor M. Fox, *Being A Woman, Being A Lawyer and Being a Human Being—Woman and Change*, 57 FORDHAM L. REV. 955, 955 (1989); Howard A. Glickstein, *The Law Schools*, 61 N.Y. ST. B.J., May 1989, at 20, 21.
20. For discussions of the treatment of women in law school, see Angel, *supra* note 19; Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988); Kathleen S. Bean, *The Gender Gap in the Law School Classroom—Beyond Survival*, 14 VT. L. REV. 23 (1989); Shirley Raissi Bysiewicz, *1972 AALS Questionnaire on Women in Legal Education*, 25 J. LEGAL EDUC. 503 (1973); Richard Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 37 U. PA. L. REV. 137 (1988); Karen B. Czapanskiy & Jane B.

in the classroom,²¹ other factors also contribute to an alienating environment. The combative, argumentative atmosphere created by some applications of the Socratic method makes a travesty of the original notion of Socratic dialogue. Studies have shown that a disproportionate number of women withdraw from such conflict and voluntarily participate less in the classroom.²² Female law students sometimes

Singer, *Women in Law School: It's Time for More Change*, 7 LAW & INEQ. J. 135 (1988); Epstein, *supra* note 14; Nancy S. Erickson, *Sex Bias in Law School Courses: Some Common Issues*, 38 J. LEGAL EDUC. 101 (1988)[hereinafter Erickson, *Sex Bias*]; Nancy S. Erickson, *Legal Education: The Last Academic Bastion of Sex Bias?*, 10 NOVA L.J. 457 (1986)[hereinafter Erickson, *Legal Education*]; Donna Fossum, *Women Law Professors*, 1980 AM. B. FOUND. RES. J. 903; Ruth Bader Ginsburg, *Women's Work: The Place of Women in Law Schools*, 32 J. LEGAL EDUC. 272 (1982); Glickstein, *supra* note 19; Catharine Hantzis, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155 (1988); Cynthia L. Hill, *Sexual Bias in the Law School Classroom: One Student's Perspective*, 38 J. LEGAL EDUC. 603 (1988); Homer & Schwartz, *supra* note 18; Jacobs, *supra* note 18; Jurate Jason, Elizabeth Moody & James Schuerger, *The Woman Law Student: The View from the Front of the Classroom*, 24 CLEV. ST. L. REV. 223 (1975); E. R. Robert & M. F. Winter, *Sex-Role and Success in Law School*, 29 J. LEGAL EDUC. 449 (1978); Abbie Willard Thorner, *Gender and the Profession: The Search for Equal Access*, 4 GEO. J. LEGAL ETHICS 81, 83-90 (1990); D. Kelly Weisberg, *Women in Law School Teaching: Problems and Progress*, 30 J. LEGAL EDUC. 226 (1979); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988); Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147 (1988); Elyce H. Zenoff & Kathryn Lorio, *What We Know, What We Think We Know, and What We Don't Know About Women Law Professors*, 25 ARIZ. L. REV. 869 (1983).

21. Taunya Lovell Banks notes that sexist comments still occur in the classroom. See Banks, *supra* note 20, at 142-44 ("When you sleep with a bitch, you get fleas."). The American Bar Association Commission on Women in the Profession noted in its Report to the House of Delegates in 1988 that discrimination in law schools against women students and women faculty members persists. See ABA REPORT, *supra* note 3, at 8-9. Taunya Lovell Banks' study revealed that 47% of female law students had professors who used sexist humor. One professor joked that he could not get a good maid or secretary any more because they were all in law school. See Banks, *supra* note 20, at 144.
22. Professor Taunya Lovell Banks surveyed students at five schools and found that 17.6% of the women never volunteered in class compared to 9.6% of the men. During the first year, 15.9% of the women never volunteered. 6.7% of the men did not volunteer. By the third year, twenty-five percent of the women never volunteered in class compared to 16.9% of the men. See Banks, *supra* note 20, at 141-42. A study of Stanford Law graduates and students also found lower levels of participation for women. See Special Project, *supra* note 17, at 1239. A study at Boalt Hall confirmed that a majority of women never volunteer while two-thirds of the men stated that they volunteered with frequency. See Homer & Schwartz, *supra* note 18, at 29. See also Wald, *supra* note 3, at 41 (noting that women consistently participate less in class discussions); Weiss & Melling, *supra* note 20, at 1332-45 (discussing women's silence in the classroom); Wildman, *supra* note 20.

Participation rates and general dissatisfaction with law school augment the research of Carol Gilligan, James Foster, and Carrie Menkel-Meadow. These theorists suggest that women may approach situations and issues with a "differ-

feel that male faculty members do not fully value their contributions to class discussion.²³ Some women feel animosity emanating from male students.²⁴ Casebooks may assist in alienating female students by not addressing certain issues or by presenting women stereotypically.²⁵ Law schools may have no or few female faculty members²⁶

ent voice." This voice focuses more on relationships, compassion and caring than on justice, rights and reason. See CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982); James C. Foster, *Antigones in the Bar: Women Lawyers as Reluctant Adversaries*, 10 LEGAL STUD. F. 287 (1986); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L. J. 39 (1985).

23. Bernice Sandler, Director of the Project on the Status and Education of Women for the Association of American Colleges, noted, regarding all students, that women are not called upon as often, that women speak more hesitantly and that faculty members appear more attentive to males. BERNICE SANDLER, *THE CAMPUS CLIMATE REVISITED: CHILLY FOR WOMEN FACULTY, ADMINISTRATORS AND GRADUATE STUDENTS* (1986), discussed in Thorner, *supra* note 20, at 85.
24. See Taunya Lovell Banks, *Gender Bias in the Classroom*, 14 SO. ILL. U. L.J. 527, 533 (1990).
25. Several commentators have analyzed casebooks and curriculum and have found them lacking in coverage of subjects such as battered spouses. In addition, casebooks often contain depictions of women in only "traditional" female roles. See, e.g., Mary Irene Coombs, *Crime in the Stacks, or a Tale of a Text: A Feminist Textbook*, 38 J. LEGAL EDUC. 117 (1988); Nancy S. Erickson, & Mary Ann Lamanna, *Sex-Bias Topics in the Criminal Law Course: A Survey of Criminal Law Professors*, 24 U. MICH. J. L. REF. 189 (1990); Nancy S. Erickson & Nadine Taub, *Final Report: "Sex Bias in the Teaching of Criminal Law"*, 42 RUTGERS L. REV. 309 (1990); Erickson, *Sex Bias*, *supra* note 20; Erickson, *Legal Education*, *supra* note 20; Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U. L. REV. 1065 (1985); Ann Shallock, *Report of the Women and the Law Project: Gender Bias and the Law School Curriculum*, 38 J. LEGAL EDUC. 97 (1988).
26. Female law professors may face issues similar to their cohorts in private practice. As women in private practice find it difficult to vault into partnership, so female professors find tenure hard to obtain. See, e.g., Debra Cassens Moss, *Would This Happen to a Man?*, 74 A.B.A. J. 50 (1988) (discussing the denial of tenure to two female legal scholars). See also Angel, *supra* note 19, at 829 (in a study of five large law schools between 1970 and 1987, women constituted an average of 10.7% of the tenured faculty).

Women have always been underrepresented on law school faculties. In 1950, women constituted 0.3% of all tenure-track law teachers. Fossum, *supra* note 20, at 904-05 (five teachers assigned to teach trusts & estates, family law and legal research and writing). By 1970, women comprised 2.2% of all law school professors. *Id.* at 906. The Commission on Women in the Legal Profession noted in its Report to the House of Delegates in 1988 that women held twenty percent of the full-time faculty positions but that the majority of the women did not occupy tenure-track positions. Women represent eleven percent of tenured professors in law schools. See ABA REPORT, *supra* note 3, at 6. Richard Chused reported a twenty percent representation of women in the 1986-87 year with 15.9% in tenured or tenure-track positions. See Chused, *supra* note 20, at 548, 557. Chused found that "high prestige" schools particularly have a problem with underrepresentation of women. *Id.* at 550-52. More women achieved tenure at schools which already had more women. *Id.* at 550. See also Glickstein, *supra* note 19, at

who might otherwise infuse the law school environment with alternative approaches to the law and learning, and who might serve as valuable role models to female law students.²⁷

These general environmental effects contrast with the substantive effect of alienation caused by the gendered nature of law and legal reasoning. Some commentators suggest that the system of law, the law and its application, is patriarchal and male-oriented.²⁸ In other words, women may feel alienated by the treatment they receive in law school. They may also feel alienated by the male orientation of legal reasoning and the substance of legal rules.²⁹ This state of the law and the legal system may contribute to the cognitive dissonance felt by some women in law school.

In light of an environment that perhaps does not encourage success for many women, the representation of women on law reviews and at the top of their classes is particularly impressive. Such representation does not indicate that law schools nurture women, although some wo-

23-24 (discussing the progress of women on law faculties). Bias problems that may occur during the tenuring process and which may cause, in part, the low numbers of women on law faculties include denigration of scholarship in women's areas, teaching evaluations that measure women against the male "Kingsfield" model, a lack of consideration of "women's issues" service and male faculty members who judge collegiality of females using male standards. See Angel, *supra* note 19, at 830-36. See also Christine Boyle, *Criminal Law and Procedure: Who Needs Tenure?*, 23 OSGOODE HALL L.J. 427 (1985) (female perspective scholarship is often viewed as marginal); Hantzis, *supra* note 20 (discussing male models for law teaching); Thorner, *supra* note 20, at 90-92 (discussing the status of women in law teaching). For a discussion of the treatment women law faculty receive from students, see Banks, *supra* note 20, at 145 (noting hostile comments by male students about female professors and also noting that female faculty members generally receive lower student evaluations than men); Bean, *supra* note 20 (discussing perceptions and opinions of students).

27. Several writers have noted the lack of role models, the usefulness of role models and alternative approaches to the law and learning. See, e.g., CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 233 (1981); Weiss & Melling, *supra* note 20, at 1356; Homer & Schwartz, *supra* note 18, at 35.
28. See, e.g., Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3 (1988); Lucinda M. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886, 892-906 (1989); Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47 (1988); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988). See also Rand Jack & Dana Crowley Jack, *Women Lawyers: Archetypes and Alternatives*, 57 FORDHAM L. REV. 933 (1989) (discussing maleness versus femaleness in the practice of law and the law itself).
29. To some extent these notions overlap. A woman may feel uncomfortable in law school because she does not deal with confrontation aggressively and prefers a more compromising approach. Likewise, she may not feel comfortable with legal reasoning or a particular rule because it does not consider alternative, more compromising possibilities. In effect, perhaps both the law school environment and substantive law manifests the "differentness" concept developed by Carol Gilligan. See GILLIGAN, *supra* note 22.

men may find law school nurturing, just as some men may not. Perhaps some of the women who succeed in law school do so because they learn a foreign language of thought and action. The fact remains, however, that law schools graduate women in large numbers and that a respectable percentage of those graduates have credentials that should pave the way to success in private practice.

III. WOMEN IN FIRMS

The legal profession has a history of antagonism toward the idea of incorporating women into the ranks of lawyers. In the celebrated case of *Bradwell v. Illinois*,³⁰ the United States Supreme Court held that no common law right to practice law existed. The decision allowed the Illinois courts to interpret a state statute as banning women from the legal profession.³¹ Justice Bradley, in a concurring opinion, reasoned that

the civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . . The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother.³²

The Illinois Supreme Court finally admitted Bradwell to the bar, four years before her death.³³

Fortunately, the stance taken by the state of Illinois and the United States Supreme Court in *Bradwell* now exists merely as an unpleasant blemish on the history of the legal profession. The increasing

30. 83 U.S. (16 Wall.) 130 (1872).

31. *Id.* at 139.

32. *Id.* at 141 (Bradley, J., concurring). See also *In re Goodell*, 39 Wis. 232, 245-46 (1875)(Ryan, J., dissenting), in which Judge Ryan states:

Nature has tempered woman as little for the juridical conflicts of the court room as for the physical conflicts of the battle field. Womanhood is moulded for gentler and better things. . . . [Our profession] has essentially and habitually to do with all that is selfish and malicious, knavish and criminal, coarse and brutal, repulsive and obscene, in human life. It would be revolting to all female sense of the innocence and sanctity of their sex . . . that woman should be permitted to mix professionally in the nastiness of the world which finds its way into courts of justice. . . . The habitual presence of women . . . would tend to relax the public sense of decency and propriety.

See also Kathleen E. Lazarou, "Fettered Portias": *Obstacles Facing Nineteenth-Century Women Lawyers*, 64 *WOMEN LAW. J.* 21 (1978)(discussing several of the first women who attempted to gain admission into the legal profession); Charlotte Adelman, *A History of Women Lawyers in Illinois*, ILL. B.J., May 1986, at 424 (discussing Myra Brackwell, who was denied admission to the Illinois State Bar on account of her sex). See generally Lelia J. Robinson, *Women Lawyers in the United States*, 8 *LEGAL REF. SERV. Q.* 297 (1988)(view of women practitioners in the late 1800s).

33. CAROLINE BIRD, *ENTERPRISING WOMEN*, 110 (1976).

number of female law students has resulted in an increasing number of female lawyers. In 1988, women represented 16.1 percent of all lawyers. However, women constituted 32.2 percent of all lawyers twenty-nine years old or less.³⁴

Even with the right to practice law, female attorneys have not found the employment outlook bright over the years. In the early era of women in the legal profession, almost no one other than family employed female attorneys. Gradually, the public sector accepted women as prosecutors, public defenders, and other government lawyers.³⁵ Today, the percentage of female attorneys working in the public sector is higher than the percentage of male attorneys in the same sector.³⁶ United States District Judge Reena Raggi, a former United States Attorney, has noted that female prosecutors have handled many significant and complicated matters in recent years. Judge Raggi noted that women enjoy equal opportunity and equal treatment in the prosecutorial sphere, which she described as "long regarded as requiring the toughest, most aggressive lawyers."³⁷ Even in the public sector, however, women hold a disproportionately small percentage of high level or management positions.³⁸

Law firms have historically resisted incorporating female lawyers. Numerous accounts exist of law firms in the relatively recent past refusing to interview or hire women.³⁹ As the number of female law

34. See BARBARA A. CURRAN & CLARA N. CARSON, SUPPLEMENT TO THE LAWYER STATISTICAL REPORT: THE UNITED STATES LEGAL PROFESSION IN 1988 19 (1989). 116,421 of 723,189 attorneys in private practice were women in 1988 (16.1%). 23,984 of 74,538 attorneys in private practice twenty-nine years old or less were women in 1988 (32.2%).

35. See Kathleen Donovan, Note, *Women Associates' Advancement to Partner Status in Private Law Firms*, 4 GEO. J. LEGAL ETHICS 135, 135 (1990); Reena Raggi, *Prosecutors' Offices: Where Gender is Irrelevant*, 57 FORDHAM L. REV. 975 (1989). See also Margaret G. King, *Gender Equality in the Public Sector*, 57 FORDHAM L. REV. 985 (1989) (discussing the fact that public sector work generally allows attorneys more working autonomy, and therefore more opportunities to gain valuable experience, and also the fact that public sector work does not revolve around a billable hour and therefore is more amenable to the typical non-career commitments of women).

36. In 1988, 2.9% of all male attorneys worked in federal government, 4.2% in state or local government, and 0.8% in legal aid or public defender offices. 4.8% of all women attorneys worked in federal government, 8.1% in state or local government, and 2.3% in legal aid or public defender offices. CURRAN & CARSON, *supra* note 34, at 20. See also ABA REPORT, *supra* note 3, at 7 (estimating that 13% of female attorneys and 7.2% of male attorneys in 1988 worked in public sector jobs). A survey of members of the Indiana bar revealed that 16.6% of female attorneys and 5.1% of male attorneys worked in the public sector. See Ann J. Gellis, *Great Expectations: Women in the Legal Profession, A Commentary on State Studies*, 66 IND. L.J. 941, 944 (1991).

37. Raggi, *supra* note 35, at 975.

38. See ABA REPORT, *supra* note 3, at 3, 7.

39. In 1956, a graduate at the top of the class at Yale Law School where she had been

students increased, law school placement offices pressured firms to eliminate discrimination in hiring. Some schools barred firms for violating anti-discriminatory policies.⁴⁰ As late as 1989, however, the University of Chicago, Harvard, Columbia, Georgetown, and other schools barred a major law firm from interviewing on campus as the result of an interview in which a law firm partner asked a student an inappropriate question regarding both race and gender.⁴¹ Students continue to report that interviewers ask inappropriate questions or make inappropriate comments in the interview context.⁴²

The evolution of legal prohibitions regarding discrimination against women has encouraged firms to open their doors to women. For example, two class action suits in the 1970s held law firms liable under Title VII of the Civil Rights Act of 1964 for discriminatory interviewing practices.⁴³ The threat of this type of liability did much to convince law firms to consider women in the hiring process.

Today, law firms employ large numbers of women, although more male attorneys work in private law firms than do female attorneys. By 1988, sixty-six percent of all female attorneys worked in private practice. In comparison, seventy-three percent of all male attorneys worked in private practice.⁴⁴ According to a 1990 American Bar Asso-

a member of the *Yale Law Journal* interviewed with three elite New York City firms. Two of the firms told her that the firms did not hire women. In 1971, the firm of Sullivan and Cromwell had only two female associates, who comprised two percent of all associates hired from 1961 to 1970. See NANCY LISAGOR & FRANK LIPSIUS, *A LAW UNTO ITSELF: THE UNTOLD STORY OF THE LAW FIRM SULLIVAN & CROMWELL* 217-18 (1988). Everyone has heard of Justice Sandra Day O'Connor's experience upon graduation from Stanford Law School. The only major firm job to offer her a job offered her employment as a legal secretary. See Deborah L. Rhode, *Perspectives on Professional Women*, 40 *STAN. L. REV.* 1163, 1174 (1988). Judge Judith S. Kaye recounts a job offer that one firm made to her that included a starting salary below that offered to men. See Judge Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 *FORDHAM L. REV.* 111, 112 (1988).

40. See Donovan, *supra* note 35, at 139-40.

41. The interviewer at the University of Chicago asked the student how she would react if someone called her a "black bitch" or "nigger." See Charles-Edward Anderson, *Affirmative Reaction*, 75 *A.B.A. J.* 20 (1989) (discussing the incident and the responses of schools and the firm involved). See also Donovan, *supra* note 35, at 139.

42. See ABA REPORT, *supra* note 3, at 9.

43. See *Kohn v. Royall, Koegel & Wells*, 59 *F.R.D.* 515 (S.D.N.Y. 1973); *Blank v. Sullivan & Cromwell*, 15 *Fair Empl. Prac. Cas. (BNA)* 1774 (S.D.N.Y. July 15, 1975). The *Kohn* case resulted in a guarantee by the firm to offer twenty five percent of its positions to women. Sullivan & Cromwell stipulated that for three years it would submit recruitment records to the New York City Commission on Human Rights. See also LISAGOR & LIPSIUS, *supra* note 39, at 217-18. Several other interviewing situations found their way into reported cases. See Kaplowitz v. University of Chicago, 387 *F. Supp.* 42 (N.D. Ill. 1974); *Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 *F.2d* 707 (5th Cir. 1979).

44. CURRAN & CARSON, *supra* note 34, at 20. A 1990 American Bar Association

ciation Young Lawyers Division Survey on the Legal Profession, women constituted approximately seventeen percent of all private practitioners.⁴⁵ The American Bar Association Commission on Women in the Profession Report to the House of Delegates, done in 1988, noted that women represented twenty-five percent of all associates in private law firms.⁴⁶ A 1991 survey of the nation's largest firms revealed that women comprised thirty-seven percent of all associates in those firms. Even as a recession shrinks the total number of associates, the percentage of female associates has increased.⁴⁷ While the percentage of female associates still does not approach the percentage of female law students, and though a higher percentage of all male attorneys practice in private law firms than female attorneys, the statistics indicate that firms now hire, and have hired in the recent past, significant numbers of women.

Yet, studies indicate that firms continue to have relatively few women partners, the category of attorney which arguably defines success and power in private law firms. Women represent only eleven percent of all partners in the nation's largest law firms.⁴⁸ While the represen-

Young Lawyers Division survey regarding the legal profession revealed that seventy-three percent of male attorneys and sixty-one percent of female attorneys practiced in the private sphere. See YOUNG LAWYERS DIVISION, AMERICAN BAR ASSOCIATION THE STATE OF THE LEGAL PROFESSION 1990 63 (1991)[hereinafter YLD REPORT]. State studies reveal the same situation. For example, a study of the Indiana bar released in 1990 showed that fifty-three percent of female attorneys and seventy-four percent of male attorneys in Indiana worked in firms. See Gellis, *supra* note 36, at 961. A Wisconsin study found that fifty-four percent of female attorneys and sixty-eight percent of male attorneys worked in private practice. See Lois E. Rentmeester & Donna Jones, *Research Survey Report of the State Bar's Special Committee on Participation of Women in the Bar*, 60 WIS. B. BULL., Mar. 1987, at 8, 12 [hereinafter *Wisconsin Report*]. See also New Hampshire Bar Association, *New Hampshire Bar Association Task Force on Women in the Bar*, 29 N.H.B.J. 211, 232 (1988)[hereinafter *New Hampshire Report*](sixty-eight percent of female attorneys and eighty percent of male attorneys work in private practice); David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 LAW & SOC. INQUIRY 251, 261 (1989)(in study of University of Michigan Law School graduates, forty-four percent of the female graduates were in private practice compared to seventy percent of the male graduates).

45. YLD REPORT, *supra* note 44, at 45. Another study reported that in 1988, 16.1% of all attorneys in private practice were women. CURRAN & CARSON, *supra* note 34, at 20 (77,287 of 519,941 attorneys were women).

46. ABA REPORT, *supra* note 3, at 5.

47. MacLachlan & Jensen, *supra* note 1, at 1.

48. *Id.* The American Bar Association Commission on Women Report to the House of Delegates revealed that in 1988 six percent of all partners were women while 25% of all associates were women. As of the 1988 report, women were increasing their representation in the partnership category at a rate of only one percent each year. ABA REPORT, *supra* note 3, at 5. That rate appears to be remaining constant. The 1991 survey of the largest 250 law firms revealed that 11% of the partners were women while the 1989 survey indicated that 9.2% of the partners were

tation of women has improved greatly since 1965, when the masses of Wall Street law firms had only three female partners,⁴⁹ the percentage of female partners in the early 1990s remains unconscionably low in light of the number of women who have worked in the private practice realm in the last fifteen years. A study of the Harvard Law School Class of 1974 uncovered a telling statistic. After ten years, less than twenty-five percent of the female graduates who entered private practice had obtained partnership status. More than half of the men who entered private practice held the title of partner ten years later.⁵⁰ The American Bar Association Commission on Women, as a result of its investigation in 1988, concluded that "women in private practice are not rising to partnership in appropriate numbers," and that time alone cannot alleviate the situation.⁵¹ Though glimmers of hope appear, such as the 1991 partnership class of one New Jersey law firm (a class of four women),⁵² the situation for women in search of partnership, and thus traditional success in private law firms, still appears bleak.

IV. WHY MORE WOMEN ARE NOT PARTNERS

Blatant discrimination against women in the promotion-to-partner process may explain the scarcity of female partners. The United States Supreme Court in *Hishon v. King & Spalding*⁵³ held that Title VII of the Civil Rights Act of 1964 applied to partnership decisions, particularly if continued employment depended on obtaining partner status. Many law firms adhere to an "up or out" employment path. If an associate does not become a partner within a certain period of time, she must leave the firm. Clearly, the well-respected Atlanta law firm of King and Spalding violated Title VII if it denied Elizabeth Hishon

women. See MacLachlan & Jensen, *supra* note 1, at 31; Rita Henley Jensen, *Minorities Didn't Share in Firm Growth*, NAT'L L.J., Feb. 19, 1990, at 1. An Indiana Bar Report issued in 1990 indicated that thirty percent of the women in firms were partners while sixty-eight percent of men in firms were partners. See Gellis, *supra* note 36, at 945.

49. Rhode, *supra* note 39, at 1174. See also Kaye, *supra* note 39, at 112 (mentioning the lack of female attorneys in the Wall Street firms in the past and present).
50. See JILL ABRAMSON & BARBARA FRANKLIN, *WHERE THEY ARE NOW: THE STORY OF THE WOMEN OF HARVARD LAW 1974 201* (1986). See also Jill Abramson & Barbara Franklin, *Harvard Law '74: Are Women Catching Up? How They're Doing*, AM. LAW., May 1983, at 79, 80 (detailing the fact in 1982, seventy-three percent of the Harvard men in the same class had achieved partnership).
51. See ABA REPORT, *supra* note 3, at 5. See also Kaye, *supra* note 39, at 119; Judith S. Kaye, *Historical Observations: Yesterday, Today and Tomorrow*, 61 N.Y. ST. B.J., May 1989, at 12, 15 ("Women have already been in the profession for significant enough periods of time in significant enough numbers, and still they have not risen appropriately to their numbers.").
52. *Briefly . . .*, NAT'L L.J., Jan. 28, 1991, at 2. The managing partner of the law firm stated, "we're doing whatever we can to hang onto the women because they are an important resource."
53. 467 U.S. 69 (1984).

partnership simply on the basis of gender.⁵⁴

Any discrimination that takes place in a partnership decision-making process, however, tends to be veiled. In a plurality opinion in *Price Waterhouse v. Hopkins*,⁵⁵ the United States Supreme Court indicated that to present an actionable claim, a woman denied partnership must prove only that the decision-makers, in denying partnership, "relied upon sex-based considerations."⁵⁶ The Court concluded that Hopkins, an accountant, had stated an actionable claim.⁵⁷ Hopkins presented evidence that the accounting firm, in denying her partnership, relied on written comments by partners relating to a lack of interpersonal skills.⁵⁸ Hopkins presented evidence that some of those partners based their comments on sexual stereotypes.⁵⁹ The Court accepted the premise that if a partnership based its decision on a stereotype, such as the stereotype that women should not assert themselves, then gender motivated, at least in part, the decision.⁶⁰ To refute such a claim, said the Court, a partnership must prove that gender stereotyping did not affect the decision to deny the woman partnership.⁶¹

In the context of a law firm, the United States District Court for the Eastern District of Pennsylvania in *Ezold v. Wolf, Block, Schorr and Solis-Cohen*⁶² found that the law firm denied the plaintiff, a female associate, partnership on the basis of gender in violation of Title VII.⁶³ The court found that the firm promoted male associates with similar or worse evaluations than Ezold, and that gender stereotypes generated some of the negative evaluations of Ezold. For example, the firm evaluated the plaintiff negatively on the basis of her concerns

54. *Id.* at 76.

55. 490 U.S. 228 (1989).

56. *Id.* at 242.

57. *Id.* at 255-58.

58. Hopkins presented evidence that she had generated more new business for the national accounting firm of Price Waterhouse than any of the other eighty-seven partnership applicants, all of whom were male. The evidence presented also reflected that Hopkins received less than stellar reports regarding interpersonal skills. See *Hopkins v. Price Waterhouse*, 618 F. Supp. 1109, 1112, 1113 (D.D.C. 1985), *aff'd, in part, rev'd in part*, 825 F.2d 458 (D.C. Cir. 1987), *rev'd*, 490 U.S. 228 (1989).

59. The comments included the following: "she may have overcompensated for being a woman," she "needed to take a course at charm school," she had become a "much more appealing lady partner candidate," she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." 618 F. Supp. at 1116-17.

60. 490 U.S. 228, 250-52 (1989).

61. *Id.* at 244-45. For a detailed discussion of the employment law aspects of the *Hopkins* case, see Gerald A. Madek & Christine Neylon O'Brien, *Women Denied Partnerships: From Hishon to Price Waterhouse v. Hopkins*, 7 HOFSTRA LAB. L.J. 257 (1990).

62. 751 F. Supp. 1175 (E.D. Pa. 1990), *rev'd*, 983 F.2d 509 (3d Cir. 1992).

63. *Id.* at 1191-92.

regarding "women's issues" within the firm. The firm decided that she was "not a team player" and "institutionally disloyal."⁶⁴ A male associate who expressed similar concerns did not receive such negative evaluations.⁶⁵

The United States Court of Appeal for the Third Circuit disagreed with the District Court's survey of the evidence and held in favor of the law firm. The Court found that the plaintiff failed to prove that the law firm discriminated against her in the promotion evaluation.⁶⁶

These opinions have probably done much to improve the treatment of women in law firms, especially with regard to formal promotion processes and procedures and blatant acts of discrimination. The institution of the law firm, however, is still far from a level playing field. Studies continue to report that law firms do not treat women, throughout their law firm careers, the same as their male peers, and that this differential treatment contributes to poor performance evaluations of the women.⁶⁷

Women complain that they receive assignments which give them less opportunity to gain experience and less opportunity to exhibit their ability to shoulder significant professional responsibilities.⁶⁸ As a consequence, women who receive consistently weak assignments in fact do not have the experience and as a result do not appear as capable of handling important and difficult matters as other male associates who received stronger assignments. When the firm evaluates associates, the female associates suffer because of this lack of exper-

64. *Id.* at 1178.

65. *Id.* at 1192.

66. *Ezold v. Wolf, Block, Schorr and Solis-Cohen*, 983 F.2d 509, 547 (3d Cir. 1992).

67. A plethora of literature exists discussing this issue. See, e.g., Martha W. Barnett, *Women Practicing Law: Changes in Attitudes, Changes in Platitudes*, 42 FLA. L. REV. 209 (1990); Leslie Bender, *Sex Discrimination or Gender Inequality*, 57 FORDHAM L. REV. 941 (1989); Fox, *supra* note 19; Ellen V. Futter, *Women Professionals: The Slow Rise to the Top*, 57 FORDHAM L. REV. 965 (1989); Deborah K. Holmes, *Structural Causes of Dissatisfaction Among Large-Firm Attorneys: A Feminist Perspective*, 12 WOMEN'S RTS. L. REP. 9 (1990); Rosabeth Moss Kanter, *Reflections on Women and the Legal Profession: A Sociological Perspective*, 1 HARV. WOMEN'S L.J. 1 (1978); Kaye *supra* note 39; Linda Liefeland, *Career Patterns of Male and Female Lawyers*, 35 BUFF. L. REV. 601 (1986); Rhode, *supra* note 39; Thorner, *supra* note 20; Wald, *supra* note 3; Donovan, *supra* note 35. See also Mary Jane Mossman, "Invisible" Constraints on Lawyering and Leadership: The Case of Women Lawyers, 20 OTTAWA L. REV. 567 (1988) (discussing the situation of female attorneys in Canada).

68. See ABA REPORT, *supra* note 3, at 11; Gellis, *supra* note 36, at 954 (Indiana bar study revealed 28.5% of women felt that they were discriminated against in work assignments); Cynthia L. Spanhel, et al., *Discrimination: Perceptions and Experience*, 53 TEX. B.J., Sept. 1990, 900, 902 (in a Texas survey, 2/3 of women responding felt they had been discriminated against in the delegation of assignments).

tise. The plaintiff's claims in the *Ezold*⁶⁹ case provide a clear example of this effect. Ezold claimed that the firm assigned her to "small" cases by firm standards. For example, she claimed that she handled ten to fifteen bankruptcy matters in which the amount in question was less than four hundred dollars. The firm then criticized Ezold in performance evaluations for lack of proven ability to handle complex matters.⁷⁰

A female associate may receive weaker assignments for a number of reasons. The assignment decision may result from a partner's clearly discriminatory motive of not wanting to work on an important matter with a "girl." A lack of trust or professional respect for women's abilities may cause the assignment discrepancy. The male attorney may have an unconscious desire to work on stressful matters in the most comfortable environment—with others "like" him; specifically, men, and perhaps also men of the same racial group.⁷¹

The assignment situation may go so far as to relegate women to a certain substantive area of practice. For example, a firm may relegate its women to workers' compensation cases because the firm views the cases, individually, as intellectually and monetarily insignificant. Those women then find themselves labelled as workers' compensation attorneys, and cannot advance to partnership because the firm views workers' compensation as an inappropriate area of expertise for a partner.

Women generally lack mentoring relationships with powerful senior attorneys who can assist them in obtaining choice assignments.⁷²

69. *Ezold v. Wolf, Block, Schorr and Solis-Cohen*, 751 F. Supp. 1175 (E.D. Pa. 1990), *rev'd*, 983 F.2d 509 (3d Cir. 1992).

70. *Id.* at 1178-79.

71. See Linda E. Dávila, *The Underrepresentation of Hispanic Attorneys in Corporate Law Firms*, 39 STAN. L. REV. 1403 (1987) (discussing the theory that members of a dominant group prefer to interact with others similarly situated). See also Felice N. Schwartz, *Management Women and the New Facts of Life*, HARV. BUS. REV., Jan.-Feb. 1989, at 70 (men are still more comfortable with other men); Jane Wettach, *Women in the Practice: The Struggle Continues*, 37 N.C. ST. B.Q., Summer 1990, at 18, 20 (discussing anecdotal evidence of men feeling more comfortable with men).

72. See ABA REPORT, *supra* note 3, at 11. See also Thorner *supra* note 20, at 101-102 (discussing the mentoring issue). However, the 1990 American Bar Association Young Lawyer Division Survey found that more women in private practice had mentors than did men (46% of female attorneys had mentors, 39% of male attorneys had mentors). YLD REPORT, *supra* note 44, at 20. One study found that mentors are extremely vital to the apprenticeship of a female professional. The study noted that a few male mentors reported that they "maintain higher standards for female proteges than for male proteges" to "protect themselves." Lawton W. Fitt & Derek A. Newton, *When the Mentor is a Man and the Protégèe a Woman*, HARV. BUS. REV., Mar.-Apr. 1981, 56, 58. See also Barnett, *supra* note 67, at 216 (female partner attesting to the value of a mentor); Nancy Blodgett, *Whatever Happened to the Class of '81?*, 74 A.B.A. J., 56, 59 (1988) (noting value of

Some women have mentors in the form of more advanced female attorneys in firms. A small number of women have male mentors who actively participate in the power structure of the firm. Senior male attorneys shy away from mentoring female associates for a plethora of reasons, most of which probably relate to a desire to avoid the slightest appearance of sexual impropriety, the desire to associate with the familiar as opposed to the unfamiliar, and opinions about the competence and commitment of female attorneys.

A mentor assures fairness and champions the associate's cause in the delegation of assignments. In addition, a mentor can explain the politics of a particular firm to an associate so that the associate understands the true power structure and rules of the game.⁷³ The mentor guides the associate. Such a mentor can protect an associate from some of the political battles that occur in many firms. Without such a resource, associates must solve the riddle of firm life alone. Unfortunately, women constitute a significant proportion of these orphaned associates.

The lack of mentors also affects the ability of female associates to develop clients, a primary consideration in most promotional decisions in the 1990s. Even with mentors, women often have difficulty attracting clients or developing reputations as "rain-makers," attorneys who attract business.⁷⁴ Male attorneys may exclude female associates from social gatherings with clients or other attorneys because including the women could make the male attorneys feel uncomfortable. This freezeout creates a situation in which women have difficulty forging links with present clients and have difficulty establishing, across gender lines, the sort of professional network available to men and

a mentor); Marcia Chambers, *Sua Sponte*, NAT'L L.J., Feb. 1, 1993, at 17, 18 (noting the value of a mentor).

73. See ABA REPORT, *supra* note 3, at 11, for a discussion of the effects of the lack of a mentor.

74. See EPSTEIN, *supra* note 27, at 205-06 (women have problems generating new business for the firm); Barbara Kate Repa, *Is There Life After Partnership?*, 74 A.B.A. J. 70 (1988) (noting the importance of rainmaking). A North Carolina survey revealed that one-third of the men responding and forty-four percent of the women responding believed that men have less difficulty attracting clients. See Wettach, *supra* note 71, at 20.

Anecdotal evidence and surveys indicate that both men and women agree that women are less successful at attracting clients. See Emily Couric, *Women in the Large Firms: A High Price of Admission?*, NAT'L L.J., Dec. 11, 1989, at S2, S10 (survey revealed that women felt that they had a difficult time generating business); *Wisconsin Report*, *supra* note 44 (women spent less time on promotion and client development); *New Hampshire Report*, *supra* note 44, at 245 (fewer women saw promotion and client development as their principal responsibility). Joan Bernstein, general counsel of Waste Management, Inc., has stated, "It is still not a level playing field for women in firms because it is harder to get clients." Machlowitz, *supra* note 11, at 66.

which fosters client development.⁷⁵

Being frozen out of informal firm gatherings also impedes a female associate's progress in developing the strong relationships with other attorneys within the firm that are necessary for continued internal support on the path to partnership. Female attorneys cannot overcome the lack of familiarity or discomfort factor if they are robbed of opportunities to associate with the male attorneys who are uncomfortable with professional women.⁷⁶

Female attorneys continue to note that their superiors scrutinize their conduct and work more rigorously, and tend to hold their work to a higher standard than is true for the work product and conduct of male attorneys. As a result, women complain of having to work harder and perform better than their male peers to be viewed as equals to those same male peers.⁷⁷ If a woman does not practice law in the "typical" aggressive approach, male superiors may question that woman's competence, even though the female attorney very successfully represents the client's interests with her own, perhaps more conciliatory approach. If female attorneys practice law aggressively, they risk attracting disfavor and being labelled misanthropes who do not fit in the firm.⁷⁸ Obviously, this heightened scrutiny can negatively affect the performance evaluations of women.

Women also sometimes suffer from a presumption of a lack of dedication. Women who have children and who shoulder many of the accompanying childcare burdens often find themselves leaving work before the appropriate time for associates to depart. Though these women manage to bill the required or an adequate number of hours, the firms may look upon them as less than dedicated to their jobs because they allow other responsibilities to claim a portion of their lives. Firm

75. See ABA REPORT, *supra* note 3, at 11-12. Frequenting private clubs is often viewed as a necessary component of power and status. See Patricia C. Bobb, *The Private Clubs Issue: Irreconcilable Differences?*, ILL. B.J., May 1986, 446, 446.

76. See ABA REPORT, *supra* note 3, at 11-12. See also Blodgett, *supra* note 72, at 59-60 (anecdotal tale of exclusion from usual Friday afternoon cocktail gathering). The familiarity principle is introduced *supra*, note 71 and accompanying text.

77. ABA REPORT, *supra* note 3, at 12. See generally Thorner, *supra* note 20, at 102 (discussing heightened scrutiny). Women consistently receive lower evaluations even when grouped with equally qualified men. See Mary E. Becker, *Barriers Facing Women in the Wage-Labor Market and the Need for Additional Remedies: A Reply to Fischel and Lazear*, 53 U. CHI. L. REV. 934, 942 (1986); Nadine Taub, *Keeping Women in Their Place: Stereotyping Per Se as a Form of Employment Discrimination*, 21 B.C. L. REV. 345, 354 (1980).

78. ABA REPORT, *supra* note 3, at 13. See Judy B. Rosener, *Ways Women Lead*, HARV. BUS. REV., Nov.-Dec. 1990, at 119 (discussing differing work and leadership styles); Lloyd Burton, *Feminist Theory, Professional Ethics, and Gender-Related Distinctions in Attorney Negotiating Styles*, 1991 J. DISP. RESOL. 199 (discussing varying styles of negotiation); Mary F. Radford, *Sex Stereotyping and the Promotion of Women to Positions of Power*, 41 HASTINGS L.J. 471 (1990) (discussing generally sex stereotypes present in the evaluative process).

members often accord the same treatment to women who ask for part-time or flexible arrangements. The perception of a lack of dedication and commitment reveals itself in performance evaluations.⁷⁹

Firms consider the ability to perform effectively in court proceedings as an important characteristic in performance evaluations and promotions. Numerous studies have shown that female attorneys face a special negative bias in court proceedings.⁸⁰ Judges or opposing counsel may make inappropriate comments to female attorneys, or may refer to female attorneys in a deprecating manner. The types of inappropriate behavior female attorneys most commonly cite include being addressed in overly familiar terms, being subject to comments about personal appearance, and being subject to degrading remarks.⁸¹

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79. See ABA REPORT, *supra* note 3, at 15. In the 1990 Young Lawyers Division study, 59.3% of respondents said alternative work schedules would limit advancement and 40.2% said they would receive less important work assignments as a result. Similar results were obtained regarding maternity or male parental leave (loss of quality assignments 18%; loss of respect 14%; slowing or off partnership track 15%). YLD REPORT, *supra* note 44, at 27, 30. See also Steven Brill, *Labor Pains*, AM. LAWYER, Jan.-Feb. 1986, at 1, 13-14 (survey of New York law firms revealed that some firms had a strong resistance to accommodating women with family-based time demands); Karen Feiden & Linda Marks, *Working Part Time: A Work Option That Can Reap Unexpected Benefits*, 14 LEGAL ECON. July/Aug. 1988, at 27 (noting some opinions that a part-time attorney is not truly dedicated).
80. See ABA REPORT, *supra* note 3, at 9-10. A majority of states have set up gender bias task forces to study the issue. Andrew Wolfson, *Female Lawyers are Frequently Victims of Bias, Report Says*, THE COURIER-JOURNAL, Jan. 14, 1992, at 2, col. 5. Many of these states have issued reports of their conclusions. See, e.g., Tracy Breton, *Empirical Study Finds Gender Bias in Rhode Island Courts*, NAT'L L.J., Feb. 17, 1986, at 13; *New Hampshire Report*, *supra* note 44; *Wisconsin Report*, *supra* note 44; *The First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts-June 1984*, 9 WOMEN'S RTS. L. REP. 129 (1986); *Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URB. L. J. 11 (1986-87)[hereinafter *New York Report*]; Robert Craig Waters, *Gender Bias in Florida's Justice System*, 64 FLA. B.J., May 1990, at 10; Judge William Eich, *Balancing the Scales: Gender Bias and Justice in Wisconsin*, 60 WIS. B. BULL., July 1987, at 12; Ann N. Sundt, *Women in the Legal Profession*, 20 MD. B.J., May 1987, at 3 (1987); *Final Report of the Massachusetts Gender Bias Study: Gender Bias in Courthouse Interactions*, 74 MASS. L. REV., 50 (Summ. 1989); Ellen Razor, *Does Gender Discrimination Exist in Kentucky's Legal System?* 3 KY. B. NEWS, Jan.-Feb. 1992, at 1. See generally Lynn Hecht Schafran, *Overwhelming Evidence: Reports on Gender Bias in the Courts*, 26 TRIAL, Feb. 1990, at 28; Lynn Hecht Schafran, *Documenting Gender Bias in the Courts: The Task Force Approach*, 70 JUDICATURE 280 (1987); Karen Czapanskiy, *Gender Bias in the Courts: Social Change Strategies*, 4 GEO. J. LEGAL ETHICS 1 (1990); Lynn Hecht Schafran, *The Obligation to Intervene: New Direction from the American Bar Association Code of Judicial Conduct*, 4 GEO. J. LEGAL ETHICS 53 (1990); Lynn Hecht Schafran, *Gender and Justice: Florida and the Nation*, 42 FLA. L. REV. 181 (1990); Barnett, *supra* note 67, at 215-16.
81. ABA REPORT, *supra* note 3, at 10. See *New York Report*, *supra* note 80; Waters, *supra* note 80, at 15. See also Spanhel, *supra* note 68, at 900-01 (89% of the women responding to the Texas survey reported gender discrimination in the courts; almost one fourth of that discrimination involved judges); Nancy Blodgett, "I Don't

While such comments may seem inconsequential, they erode a female attorney's credibility in the eyes of the opposing counsel and the jury, thus making well deserved courtroom success for the female attorney and her client more difficult if not impossible.

Bias in the courts may involve not only inappropriate comments, but also a different set of rules or a different brand of justice for female attorneys.⁸² A bias study for the state of Indiana revealed that 14.1% of female attorneys responding to the random survey indicated that they believed that they had received adverse rulings from courts on the basis of gender.⁸³ Often, a judge views assertive behavior by a female attorney with disfavor, and therefore treats that woman more harshly than male attorneys who exhibit the same sort of behavior.⁸⁴ Biased treatment in the courts reflects itself in performance evaluations within the law firm on issues such as courtroom success, persuasiveness, demeanor, and style.

Some female associates choose to leave private law firms or the partnership track for reasons other than denial of partnership or because firms tell them in an earlier evaluation that they will not succeed in their partnership quest. Many women leave firms because they feel uncomfortable with the entire law firm environment. Surveys continue to report that female attorneys suffer physical and verbal harassment within firms.⁸⁵ Even if no harassment occurs, fe-

Think That Ladies Should Be Lawyers", 72 A.B.A. J. 48 (1986)(chronicling numerous incidents); Lynn Hecht Schafran, *Educating the Judiciary about Gender Bias: The National Judicial Education Program to Promote Equality for Women and Men in the Courts and the New Jersey Supreme Court Task Force on Women in the Courts*, 9 WOMEN'S RTS. L. REP. 109, 120 (1986); Elizabeth M. Schneider, *Task Force Reports on Women in the Courts: The Challenge for Legal Education*, 38 J. LEGAL EDUC. 87 (1988).

82. See ABA REPORT, *supra* note 3, at 10.

83. See Gellis, *supra* note 36, at 954. See also Martha Copleman, *Sexism in the Courtroom: Report from a "Little Girl Lawyer"*, 9 WOMEN'S RTS. L. REP. 107, 107-08 (1986)(discussing same concept).

84. See Waters, *supra* note 80, at 15. See also *supra*, notes 77-78 and accompanying text (discussing style differences).

85. The American Bar Association report cites the Boston Bar Survey indicating that 13.6% of female attorneys feel that they have been sexually harassed. ABA REPORT, *supra* note 3, at 8. An Indiana bar survey revealed that 11.4% of female attorneys believed that they had been physically harassed and 40% thought that they had suffered verbal harassment. Fifty-nine percent of those reporting harassment identified employers and supervisors as the harassers. Gellis, *supra* note 36, at 954-55. See also Couric, *supra* note 74, at S2 (at least 60 % of female lawyers surveyed experienced unwelcome sexual advances); Spanhel, *supra* note 67, at 901-02 (66% of the women responding to the Texas survey had experienced verbal abuse); YLD REPORT, *supra* note 44, at 67 (revealing significant percentages of female attorneys who feel that they have been victims of sexual harassment at the hands of superiors, colleagues and clients). See generally Nina Burleigh & Stephanie B. Goldberg, *Breaking the Silence: Sexual Harassment in Law Firms*, 75 A.B.A. J. 46 (1989)(discussing harassment in firms).

male attorneys may find firms inhospitable. The women may not have mentors, may not be invited for drinks after work with the "guys," may find themselves handling routine, boring matters which provide little intellectual stimulation or client contact or may simply tire of striving to attain perfection in order to gain a measure of professional respect.

Many women, as well as some men, find the time demands of firm life too great to mesh with parenting or other personal interests or responsibilities. The law firm system of promotion is based in part on a notion of complete dedication. Perhaps this model appropriately defined firms and attorneys in the era in which lawyers were men, wives generally supported husbands by handling all household tasks, and lawyers generally practiced law graciously. The model does not interact well with reality when the economics of legal services means that total dedication takes the form of extraordinary hours⁸⁶ by members of two-wage-earner couples.⁸⁷ Women still tend to shoulder the greatest burden with regard to childcare and other household duties,⁸⁸ though men also feel the squeeze of time.⁸⁹ A National Law Journal/

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86. See ABA REPORT, *supra* note 3, at 16 (noting that some firms require 2100 to 2500 billable hours per year); YLD REPORT, *supra* note 44, at 22 (16% of the lawyers responding to the survey reported billing 200 or more hours per month, 29% reported billing between 160 and 199 hours per month, 35% reported billing between 120 and 159 hours per month, and 20% reported billing less than 120 hours per month). See also Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1243, 1250 (1991) (noting that work week of 60 to 70 hours is common); David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 VAND. L. REV. 717, 735 (1988) (discussions with associates revealed demands of 2200 to 2400 hours). The pressure of increased time demands has been well characterized by L. Stanley Chauvin, Jr., past American Bar Association President. Mr. Chauvin has stated: "Law firms are tightening. They're requiring more work, more hours. There is intense pressure for billable hours. Lawyers at these firms feel like the time sheet is the whip over their head." Margaret Cronin Fisk, *Lawyers Give Thumbs Up*, NAT'L L.J., May 28, 1990, at S2, S12.
87. See Barnett, *supra* note 67, at 218 (discussing the model and its incongruence with female attorneys). See also Geoffrey C. Hazard, *supra* note 19, at 13 ("the language and internal culture of the law is still male").
88. ABA REPORT, *supra* note 3, at 14; Gellis, *supra* note 36, at 959. A Stanford study confirms that both sexes still view childcare as primarily a woman's responsibility. Project, *Law Firms and Lawyers With Children: an Empirical Analysis of Family/Work Conflict*, 34 STAN. L. REV. 1263 (1982). A 1990 North Carolina survey showed that female attorneys, regardless of the employment status of spouses, handled 70% of the childcare burden. Wettach, *supra* note 71, at 19. Accord Liefland, *supra* note 67, at 613-14. Abbie Willard Thorner has noted that the maleness of the profession not only disadvantages women because the partnership tract conflicts with biological childbearing years, but also because society still looks to women to shoulder much of the childcare burden and other burdens that are not related to the career. Thorner *supra* note 20, at 99-100.
89. See ABA REPORT, *supra* note 3, at 14-15. For example, the Indiana bar study revealed that 15% of women were dissatisfied or very dissatisfied with the

West Publishing Company job satisfaction survey found that fifty-four percent of the attorneys in the survey thought that their careers infringed on their personal lives. Seventy-five percent of the attorneys in large firms had this complaint.⁹⁰ A Stanford survey in 1988 determined that family-based pressures vis-a-vis law firms caused significantly more stress for female attorneys.⁹¹

Because of other responsibilities, women may also value the certainty of a regular work day that ends at a regular time, a day not generally available in firm life.⁹² One commentator has noted that, in effect, an associate at a private law firm is on call for twenty-four hours a day, every day.⁹³ Firm profitability demands long hours, disrupted "spare" time, and intense pressures and sacrifices for the associate who wishes to strive for the partnership mantle. Such time demands do not facilitate responsible childcare or other personal interests. Many women can work successfully in firms, but choose not to do so because the demands exact too great a personal cost.

Finally, the environment within the firm has changed in the last several decades such that the collegial atmosphere that once made firms pleasant working settings has all but vanished for all of the firm's participants. Marc Galanter and Thomas Palay, in their recent work, *Tournament of Lawyers: The Transformation of the Big Law Firm*,⁹⁴ present a telling picture of the large law firm in the era from 1950 to 1970 and in the present. The firm of the earlier time had sta-

number of hours worked. Only 10% of men were dissatisfied or very dissatisfied. 11.6% of women were very dissatisfied with the time available for themselves. 5.4% of men were in this category. Gellis, *supra* note 36, at 946. See also Liefland, *supra* note 67, at 615-616 (discussing comments of several male attorneys about the conflict of work and family).

90. Fisk, *supra* note 86, at S12. Forty percent of the attorneys responded that personal interests and activities were most injured by their career and fourteen percent said that their family and marriage were most injured. The Young Lawyers Division 1990 survey identified lack of personal time and the fact that careers infringed on personal lives as reasons for significant findings of lawyer dissatisfaction. YLD REPORT, *supra* note 44, at 52-62.

Nearly 50% of women in law firms in the Indiana study believed that excessive time demands had been an obstacle to success. Gellis, *supra* note 36, at 966.

91. Special Project, *supra* note 17, at 1228. See also Blodgett, *supra* note 72, at 57 (noting that of the six women who started as associates at a particular law firm in 1981, all left the firm and one of those who left went to an in-house position which combined less pressure regarding billables with interesting work). The Young Lawyers Division survey revealed that women in private firms were more dissatisfied than men in private firms. YLD REPORT, *supra* note 44, at 53-54.

92. More than one commentator has suggested that predictability of hours attracts women in particular to government employment, corporate settings, academics, and legal services. See Gellis, *supra* note 36, at 967 (government employment); Wettach, *supra* note 71, at 19 (all non-firm settings).

93. See Johnson, *supra* note 86, at 1250.

94. MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 20-36 (1991).

ble, enduring relationships with clients, manageable growth, and a bright future.⁹⁵ Firms hired attorneys at entry level and rarely hired laterally.⁹⁶ Firms promoted partners from within the firm. Lawyers, especially partners, did not leave firms and firms rarely disintegrated.⁹⁷ Though the up-or-out rule of promotion existed, firms only reluctantly discharged lawyers and, in fact, rarely did so.⁹⁸ Firms selected partners on the basis of competence, hard work, ability to relate to clients, and some consideration to the ability to attract business.⁹⁹ As one commentator phrased it, partnership really meant "collegial support, willingness to tolerate lapses in productivity, [and] mutual respect for another partner's eccentricity."¹⁰⁰

Firms of the 1990s may tout themselves as groups of individuals dedicated to the collegial pursuit of a profession, with family-like loyalty to the lawyers within each firm, but few partners or associates actually believe that the firms take such a form. The emphasis on the profitability of the firm has turned the firm into a business entity, with little regard for the quality of life of its participants.¹⁰¹ Firms demand enormous numbers of hours from the attorneys and place greater emphasis on the ability to attract business. Partner compensation often depends largely on what that partner has produced in the way of business, not on seniority or long-term service. In many firms,

95. *Id.* at 33-34. See also PAUL HOFFMAN, *LIONS IN THE STREET* (1973)(discussing firms of this earlier time). For a discussion of client and attorney or firm relationships, see *infra* section VI.

96. GALANTER & PALAY, *supra* note 94, at 23. See also HOFFMAN, *supra* note 95, at 60-61 (firms did not raid associates or partners); James W. Jones, *The Challenge of Change: The Practice of Law in the Year 2000*, 41 VAND. L. REV. 683, 683-84 (1988)(loyalty was a hallmark of a firm in the 1960s with leaving the firm the emotional equivalent of a marital divorce).

97. GALANTER & PALAY, *supra* note 94, at 23-24. See also HOFFMAN, *supra* note 95, at 60 ("[t]here has not been a significant split in a major Wall Street or Park Avenue firm for more than twenty-five years. Except for departures to government service, none has lost more than one partner at a time.").

98. See GALANTER & PALAY, *supra* note 94, at 28-29.

99. *Id.* at 30.

100. James F. Fitzpatrick, *Legal Future Shock: The Role of the Large Law Firms by the End of the Century*, 64 IND. L.J. 461, 463 (1989).

101. See Norman Bowie, *From a Profession to a Business*, 41 VAND. L. REV. 741 (1988); Fitzpatrick, *supra* note 100, at 463 (loss of loyalty and "family" in the firm); Johnson, *supra* note 86, at 1240-50; Arnie Kanter, *Lost Values, Lost Loyalty*, NAT'L L.J., Mar. 11, 1991, at 13 (success means money); Kaye, *supra* note 30, at 114 (discussing the new profit emphasis); Sylvia Lurie, *Quality of Life: Difficult Choices for Managers*, NAT'L L.J., Apr. 9, 1990, at 16 (quality of life versus the bottom line); William Rehnquist, *The Legal Profession Today*, 62 IND. L.J. 151, 151-52 (1987).

Deborah Rhode has noted that "[b]y choice or necessity, many lawyers with noncompetitive orientations or strong commitments to family or non-profit pursuits drift out of firm hierarchies, leaving management composed largely of those who accept revenue-maximizing priorities." Deborah L. Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589, 634 (1985).

the "eat what you kill" theory of partnership compensation rules. In addition, power division within partnerships often depends on the ability to attract business.¹⁰²

Internal loyalty has declined if it has not completely vanished. Articles about firms splintering and partners moving to other firms or even being "fired" by their partners abound in the trade journals.¹⁰³ Many of these moves relate to the ability or the lack of ability of the partners to attract business. Of course, the massive movement in associate ranks, both by choice and force, rarely makes news in the 1990s.¹⁰⁴ Attorneys move laterally; firms split, and firms merge. In addition, the focus on profitability has spurred the proliferation of extended partnership tracks and nonequity partnership plans, as well as the creation of permanent positions for attorneys who are not quite qualified for partnership, but good attorneys nonetheless.¹⁰⁵

All of these changes within firms arguably make them less pleasant working environments for both men and women. The effect of the changes in the law firm environment may explain, to some extent, the discontent attorneys feel regarding their jobs. In 1990, the Young Lawyers Division of the American Bar Association found a significant increase in job dissatisfaction among attorneys since a similar 1984 study. The 1990 study noted office politics, lack of personal time, and lack of sufficient correlation between ability and workload on one

102. See GALANTER & PALAY, *supra* note 94, at 52; Luban, *supra* note 86, at 735-36; Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 314-16 (1985) (noting movement related to money, challenges to the seniority-based compensation approach).

103. See, e.g., Randall Samborn, *The Ax Falls at Chicago Firms*, NAT'L L.J., Apr. 6, 1992, at 3, 35 (citing study revealing that sixty percent of the nation's largest one hundred five firms had asked partners to leave within the last eighteen months); Audrey Duff, *Streich Lang's Wolves Take Over*, AM. LAW., Apr. 1991, at 52 (Phoenix firm fired nine partners and eight associates); *Law and Firms as the Mirror of the Times*, NAT'L L.J., Dec. 25, 1989, at S13, S16 (noting collapse of certain firms and mergers of others). Occasionally, a firm disintegrates. See, e.g., Steven Brill, *Bye, Bye, Finley Kumble*, AM. LAW., Sept. 1987, at 3; Rita Henly Jensen, *Scenes from a Breakup*, NAT'L L.J., Feb. 8, 1988, at 1 (discussing the disintegration of Finley Kumble).

104. Occasionally, a dismissal of a large number of associates does make headlines. See, e.g., *Milbank Lays Off Twenty-Nine Senior Associates*, NAT'L L.J., Feb. 17, 1992, at 2.

105. See Johnson, *supra* note 86, at 1241-42. See also GALANTER & PALAY, *supra* note 94, at 58-64 (noting tiers of partners, the lengthened partnership track, the reduced chance of becoming a partner, and permanent associates); Kenneth Rutman, *The Boom Abates*, NAT'L L.J., Sept. 30, 1991, at S2, S2 (many of the nation's largest firms increased the number of attorneys in nonpartner categories or in nonequity partner categories). The 1990 ABA Young Lawyers Division Survey revealed decreasing stability of employment. For attorneys who had practiced six years or less in private practice, forty-five percent no longer worked with their original employer. See YLD REPORT, *supra* note 44, at 10.

hand, and respect and advancement on the other hand, as reasons for the dissatisfaction.¹⁰⁶ Significantly more women than men at every level of the firm were dissatisfied, perhaps indicating the particular impact the firm environment has on women. Almost twice as many women in private practice were dissatisfied as compared to their male counterparts.¹⁰⁷

V. WOMEN AS IN-HOUSE COUNSEL

A. Women's Presence

Many women now choose the in-house alternative to the pressure-laden environment of law firms, generally after a short stint in private practice. In 1988, women represented 16.3% of all attorneys working in private industry.¹⁰⁸ The 1990 American Bar Association Young Lawyers Division Survey estimated that women constituted twenty-three percent of all corporate attorneys.¹⁰⁹ A 1991 National Law Journal/Coopers and Lybrand study estimated that women comprised forty percent of in-house attorneys.¹¹⁰ As is true with government employment, studies indicate that a higher percentage of all female attorneys work in the in-house sphere than is true of male attorneys. In 1988, 9.4% of all female attorneys worked in private industry as compared to 9.2% of all male attorneys.¹¹¹ The 1990 Young Lawyers Division survey reported that nine percent of all female attorneys, as compared with seven percent of all male attorneys, worked in a corporate environment.¹¹² An Indiana bar study reflected the fact that in-house departments contain a higher ratio of female attorneys than other settings, such as private practice. Twenty-five percent of the attorneys in corporate legal departments reported having at least four female colleagues, while only ten percent of the attorneys in law firms reported having at least four female colleagues.¹¹³ An in-house legal

106. See YLD REPORT, *supra* note 44, at 52-62; Marjorie M. Shultz, *Study Sends Message to Law Firms*, NAT'L L. J., Nov. 26, 1990, at 22. See also Johnson, *supra* note 86 (discussing lack of attorney satisfaction in general).

107. See YLD REPORT, *supra* note 44, at 53-54 (forty-one percent of women in private practice were dissatisfied and twenty-eight percent of men in private practice were dissatisfied).

108. See CURRAN & CARSON, *supra* note 34, at 20 (10,894 of 66,627 attorneys in private industry were women).

109. See YLD REPORT, *supra* note 44, at 45, 46.

110. See Barbara Lyne, *The Pressure is On*, NAT'L L.J., Sept. 9, 1991, at S1, S9.

111. See CURRAN & CARSON, *supra* note 34, at 20.

112. See YLD REPORT, *supra* note 44, at 63. In a study of the Indiana bar, 11.1% of female attorneys worked in a corporate legal department while only 7.7% of male attorneys worked as in-house attorneys. Gellis, *supra* note 36, at 944. A North Carolina survey revealed that 2.6% of male attorneys work in corporate counsel positions and 5.2% of female attorneys work in corporate counsel positions. Wetach, *supra* note 71, at 21.

113. Gellis, *supra* note 36, at 945.

department comprised of fifty percent women is not extraordinarily uncommon.¹¹⁴ Some legal employment analysts believe that even more women will join corporate legal departments, thus creating an even higher representation of women as in-house counsel.¹¹⁵

Many in-house female attorneys act as general counsels, which indicates possession of significant power and authority, perhaps akin to that of the managing partner of a private law firm. In a 1991 survey of three hundred fifty general counsels, the National Law Journal found that women represented eleven percent of that group.¹¹⁶ If articles in trade publications indicate anything, women are blazing a trail to success in both general counsel and lesser in-house counsel roles.¹¹⁷

Many women may opt for in-house counsel positions because of the advantages that such employment has over law firm employment. Though men generally dominate the business world, causing the corporate environment to carry with it some of the same problems that law firms have, in-house counsel positions offer several distinct advantages.

First, a larger proportion of women thrive in the general business environment, many in positions of some power. Thus, women may experience less isolation, less of a feeling of second-class citizenship, and less subtle hostility. Women's concerns and anxiety with regard to their ability to attract clients¹¹⁸ disappear in the in-house framework. The in-house attorney must please only one client: the employer.

The pressure to become a partner vanishes as well. Within the typical in-house legal department, an attorney need not advance on a set

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114. For example, in 1990, Pacific Telesis had more than one hundred attorneys, almost one half of which were women. See Lurie, *supra* note 101, at 22.
115. See Machlowitz, *supra* note 11, at 62. The 1992 President of the American Corporate Counsel Association noted that a focus of 1992 was expanding opportunities for women both in house and in law firms by way of mentoring. Barbara Lyne, *In-House Lawyers Gather to Confer On Money, Respect*, NAT'L L.J., Nov. 25, 1991, at 15, 16.
116. Barbara Lyne & Daniel Bernstein, *Respondents are Strikingly Homogeneous*, NAT'L L.J., Sept. 9, 1991, at S1, S5. However, women general counsels one the whole reaped less compensation than their male counterparts and commanded smaller legal departments with smaller budgets. Daniel Bernstein, *For In-House Women, the Story Differs*, NAT'L L.J., Sept. 9, 1991, at S1, S7. See Machlowitz, *supra* note 11, at 66, 67 (citing numerous examples of women general counsels).
117. See, e.g., William Horne, *Bank of Boston's Overseas Operator*, AM. LAW., Jan.-Feb. 1991, at 52 (profiling Mary Belle Feltenstein, the bank's coordinator of international legal operations); Amy Singer, *Dream Job at the Top of the Charts*, AM. LAW., Apr. 1991, at 48 (profiling Deborah Dugan, director of business affairs at SBK Records); Gary Taylor, *Coastal's Crusaders*, NAT'L L.J., May 4, 1992, at 1, 34-35 (female in house counsel top litigator at Coastal Corp., supervises thirty-two attorneys). See also sources cited *supra*, note 11.
118. See *supra*, note 74 and accompanying text. See also Gellis, *supra* note 36, at 967-68 (discussing the fact of lack of rain-making pressure in government employment as a reason more women may turn to such employment).

schedule to a specific job. In-house attorneys tend to have more varied promotional opportunities. Usually, corporations and other businesses do not organize their legal departments in hierarchies that require that employees succeed in rising to the top on one particular path or otherwise leave as a failure. Many of the political hassles present on the road to partnership do not exist in the in-house legal department. For example, firms may offer part-time employment and relatively generous maternity leaves, but taking advantage of these benefits often causes political repercussions regarding perception of professional dedication and commitment. Businesses offer a wide variety of benefits, such as maternity leave and flextime and part-time arrangements, because they recognize that they have spent significant resources developing these attorneys professionally. Therefore, the businesses do not want to lose the attorneys.¹¹⁹ In addition to the fact that businesses generally offer superior benefits and leave policies, taking advantage of the policies has a less detrimental impact on an attorney.

The time demands of in-house counsel positions may attract women, especially women with other personal commitments. In-house attorneys do not necessarily work fewer hours than attorneys in law firms, but the stress caused by the billable hour requirements of firms does not exist. In addition, an in-house attorney generally has a more predictable and self-controlled schedule. In other words, an in-house attorney can be more certain that she can leave the office by a certain hour of the afternoon or evening. This is critical, for example, if the attorney must retrieve children from childcare or after-school activities. One female attorney working in-house for an insurance company noted that working for a corporation makes it easier to manage time. In addition to the lure of obtaining professional experience fast, the woman moved from private practice because "I have more time to take care of my kids." The attorney stated that in-house counsel employment is "attractive if you're concerned about the quality of life and establishing yourself professionally."¹²⁰ Another in-house attorney works on large, complicated deals, yet usually leaves work at 5:00 p.m.¹²¹ Richard Shlakman, general counsel of Electronic Data Systems, Inc., explained that he quickly amassed an elite group of in-

119. Robert J. Berkow & Laura E. Sejen, *Benefits: A New Focus on Families*, AM. LAW., July-Aug. 1991, at 49. An Ernst and Young survey revealed that sixty-six percent of corporate legal departments offer an average of three months paid maternity leave, twenty-eight percent offer flextime, twenty-two percent offer part-time and nineteen percent offer paternity leave. *Id.*

120. Carol Kleiman, *In-House Lawyers Making A Comeback*, CHI. TRIB., Mar. 31, 1991, sec. 8, at 1. Another woman moved from a firm to an in-house position because she could not be both a great mother and a great attorney in a firm. See Machlowitz, *supra* note 11, at 62.

121. See Machlowitz, *supra* note 11, at 64 (Gail Granoff of Rohm & Haas).

house attorneys because the legal employment market was teeming with "superb, superb lawyers who have not developed the skill of being a rainmaker . . . and don't want to take that time away from their families."¹²²

As some of the comments indicate, the general attractiveness of in-house positions due to the interesting assignments, experience, and responsibility factors, which lead to career advancement and satisfaction, also contributes significantly to the decision to move to an in-house counsel position.¹²³ The offer of stimulating work and responsibility especially entices women in law firms who have experienced fewer of those commodities than their male counterparts.¹²⁴

B. The Changing Role of In-House Counsel

A substantive development in the world of legal services in recent years has been the increased importance of in-house counsel. The sheer number of attorneys practicing in corporations and other businesses has increased greatly, and the role that those attorneys play in the scope of legal services to the client—the business—has been enlarged. Once an actor with no lines, the in-house counsel now directs the production.

Many organizations have sizable in-house legal departments. For example, the top ten industrial corporations in 1991, as identified by *Fortune* magazine, employed, on the average, two hundred eighty-seven in-house attorneys.¹²⁵ These legal departments rival the largest law firms in size.¹²⁶ Many commentators have noted the increase in

122. Peter Carbonara, *Slashing and Building at EDS*, AM. LAW., June 1991, at 40, 44.

123. One attorney went in house for EDS to experience the challenge of being in charge of something, to avoid the billable hour targets, rain-making chores, and to have the opportunity to advance into nonlegal positions. Carbonara, *supra* note 122, at 49. See generally CLIFFORD R. ENNICO, A PRIMER FOR NEW CORPORATE LAWYERS 8-32, 9-12 to 9-19 (1990)(noting attorneys often move from law firms to corporate legal departments for regular hours, the simplicity of having only one client, and exciting work).

124. However, the 1990 ABA Young Lawyers Division survey revealed that women in in-house counsel positions were only slightly more likely to be satisfied or neutral than their counterparts in private practice. YLD REPORT, *supra* note 44, at 54 (fifty-nine percent in private practice; sixty-three percent in corporate atmosphere).

125. *Who Represents Corporate America*, NAT'L L.J., Jul. 8, 1991, at S5. Numerous corporations have greatly increased their in-house legal departments in recent years. See Kleiman, *supra* note 120 (Kemper had eighty-six attorneys in 1985 and one hundred forty-one in 1991 because having work done in-house is cost-effective). See also Harry N. Turk, *The Rise of Corporate Law Departments: Pressure on Both In-House and Outside Counsel*, 10 EMPLOYEE REL. L.J. 551 (1984).

126. See *The National Law Journal 250 Annual Survey of the Nation's Largest Law Firms*, NAT'L L.J., Sept. 28, 1992, at S5 (the largest firm has 1,604 attorneys; the smallest firm on the list has 130).

the size of in-house legal departments.¹²⁷

Sophisticated, highly-skilled attorneys with superior expertise populate these legal departments. Numerous stories exist of successful, experienced, private attorneys who take their skill and expertise in-house.¹²⁸ Corporations and other businesses have sought attorneys with particular expertise and have developed expertise in other attorneys.¹²⁹

The composition of in-house legal departments contrasts with the historical notion that lesser attorneys practice law as in-house attorneys.¹³⁰ In the past, law firm attorneys who did not become partners

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127. See, e.g., Abram Chayes & Antonia H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277, 277 (1985) (noting the rapid growth of in-house law departments); J. Randolph Ayre, *In-House—Better Than Ever*, NAT'L L.J., Feb. 15, 1982, at 11 (finding that the number of inside attorneys quadrupled from 1962 to 1982, citing a Boise Cascade Co. study); Mitchell Lynch, *Moving the Law Inside at Mass Mutual*, 70 A.B.A. J., 45 (1984) (discussing Harvard Law School study of selected corporations indicating a doubling of the number of lawyers working in-house from 1973 to 1983); Jeffrey S. Slovak, *Working for Corporate Actors: Social Change and Elite Attorneys in Chicago*, 1979 AM. B. FOUND. RES. J. 465, 494 ("the house counsel sector of the Bar has enjoyed a rapid growth that shows little sign of abating in the future"). See also BARBARA A. CURRAN, ET AL., THE LAWYERS STATISTICAL REPORT: A STATISTICAL PROFILE OF THE UNITED STATES LEGAL PROFESSION IN THE 1980s 19 (1985) (noting a forty percent growth in in-house numbers between 1970 and 1980). But see Allison Frankel, *Continental Bank's Ten Million Dollar Solution*, AM. LAW., Apr. 1991, at 40 (discussing a corporation's move to eliminate the legal department).
128. Several of the most celebrated moves involved General Electric. General Electric developed a plan to amass a group of the best and the brightest attorneys and hired partners from some of the elite firms of the country with specialized talents. See Anthony Borden, *Ben Heineman's In-House Revolution*, AM. LAW., Sept. 1989, at 100 (discussing the plan in general); Steven Brill, *Miserable on the Outside, Happy on the Inside*, AM. LAW., Sept. 1990, at 57 (General Electric attorneys include partners from several well-known national firms); Audrey Duff, *The Long Arm of General Electric*, AM. LAW., Dec. 1990, at 38 (Dewey, Ballantine partner and international law expert moved to General Electric); D.M. Osborne, *The Sidley-Heineman Connection*, AM. LAW., May 1990, at 33 (partner from Sidley & Austin who once headed the Department of Justice Land and Natural Resources Division moved to General Electric). See also Carbonara, *supra* note 122, at 42, 44 (discussing building of EDS in-house department with attorneys from national law firms); William W. Horne, *Allied-Signal Recruits Arnold and Porter Partner*, AM. LAW., Mar. 1992, at 52 (discussing recruiting effort); Singer, *supra* note 117, at 50 (associate receiving good reviews at elite law firm shifts to in-house counsel position).
129. See Toby Spitz, *In-House Departments Seek Specialists*, N.Y.L.J., Mar. 4, 1991, at 43 (corporate legal departments seek expertise in regulatory areas, patent law environmental law tax, and labor).
130. See ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 56 (1988); Walter B. Davis, *Reflections of a Kept Lawyer*, 53 A.B.A. J. 349 (1967) (discussing the bar's lowly opinion of "kept" lawyers); Jeffrey S. Slovak, *The Ethics of Corporate Lawyers: A Sociological Approach*, 1981 AM. B. FOUND. RES. J. 753, 772 (corporate counsel viewed as "second class citizens" of the world of attorneys); Jeffrey S. Slovak, *Giving and Getting Respect*:

or who were notified that they would not make partner in the future may have worked in house.¹³¹ Traditionally, the legal profession perceived in-house counsel as attorneys who farmed work to outside attorneys and did very minor, routine duties themselves.¹³² The perception of the caliber of in-house attorneys, along with the perception of the job as mundane and unchallenging, combined to make in-house counsel less respected and lower on the status scale than attorneys in private law firms.¹³³

The present position of in-house counsel within many organizations, and within the legal profession, has changed immensely. In-house attorneys do much of the legal work once sent to outside counsel because in-house attorneys are extraordinarily competent and capable, and because the in-house attorneys can do the work more efficiently.¹³⁴ Legal departments are highly dynamic places. The attorneys frequently work on complex, interesting matters. In-house attorneys handle complex issues, dealing with subjects such as real estate, mergers, international trade, and regulatory compliance.¹³⁵ In-

Prestige and Stratification in a Legal Elite, 1980 AM. B. FOUND. RES. J. 31 [hereinafter *Giving and Getting Respect*](same). See generally CHARLES C. WOLFRAM, MODERN LEGAL ETHICS § 13.7.3, at 736 (1986).

131. See HOFFMAN, *supra* note 95, at 7; WOLFRAM, *supra* note 130, at § 13.7.3, at 736; Chayes & Chayes, *supra* note 127, at 277; Gilson & Mnookin, *supra* note 102, at 382. See also LISAGOR & LIPSIUS, *supra* note 39, at 58, 191 (more than 100 firm attorneys moved to client companies).
132. Chayes & Chayes, *supra* note 127, at 277. See also Audrey Duff, *Chiquita Flies Solo in Stock Sale*, AM. LAW., Mar. 1991, at 46 (Charles Morgan, general counsel of Chiquita Brands International, expressed commonly held belief that, in the past, in-house counsel did "scut" work and farmed out the "exciting stuff").
133. See Robert Eli Rosen, *The Inside Counsel Movement, Professional Judgment and Organizational Representation*, 64 IND. L.J. 479, 479-80 (1989); Theodore J. Schneyer, *Professionalism and Public Policy: The Case of House Counsel*, 2 GEO. J. LEGAL ETHICS 449, 481 (1988). In-house attorneys still hear jokes about their status and feel prejudice engendered by their jobs. Taylor, *supra* note 117, at 34.
134. Spiraling legal fees for outside counsel have created an environment conducive to the development of sophisticated corporate legal departments and those same increasing fees make keeping as much legal work as possible inside those legal departments the cost efficient approach. See generally J. RANDOLPH AYRE, CORPORATE LEGAL DEPARTMENTS: STRATEGIES FOR THE 1980S 1-2 (1984); JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 366 (1982); Chayes & Chayes, *supra* note 127, at 277-78. An Ernst and Young study revealed that, on average, fifty-four percent of in-house expenses relate to outside fees and forty-six percent relate to inside costs. *ALA Interviews: Section Heads Consider Challenges, Strategies*, NAT'L L.J., Apr. 9, 1990, at 16, 27. See also Carbonara, *supra* note 122, at 40 (in 1989 EDS used ninety firms and had no meaningful in house department; in 1991 EDS used only a handful of firms and had a top flight legal department).
135. See Audrey Duff, *supra* note 132, at 46 (Chiquita in-house attorneys handle anti-trust matters, international trade issues, corporate securities matters, real estate, admiralty, employment matters and government relations); Susan Beck, *P&G Lawyers Highlighted in Revlon Deal*, AM. LAW., June 1991, at 35 (in-house staff

house attorneys more and more frequently litigate or involve themselves substantially in litigation sent to outside counsel.¹³⁶ One corporation's general counsel tries at least one important suit himself each year.¹³⁷ In fact, the tide may have turned so that businesses keep the interesting work in their legal departments, while sending the mundane work out to private firms.¹³⁸ Even when corporations and other businesses select projects to send to outside counsel, in-house attorneys select the counsel and manage that work with significant involvement in cost control and strategy.¹³⁹

The job of in-house counsel also allows the attorney to practice pre-

handled purchase of Revlon with little outside assistance); Carbonara, *supra* note 122, at 47 (EDS in-house attorneys handled responsibilities for deals totaling fifty million dollars). See also Vicki Abeles & Peter Goldfeder, *Corporate Counsel are Gaining Respect*, N.Y.L.J., Mar. 4, 1991, at 49 (legal departments are self-sufficient and dynamic places). At DuPont, in-house counsel serves as principal environmental counsel on all sorts of issues. Emily Barker, *DuPont Tries to Clean Up Its Act*, AM. LAW., Oct., 1991, at 40.

136. See Hans U. Stucki, *Bringing Litigation Inside Can Help Curb Costs*, NAT'L L.J., Mar. 16, 1992, at S15 (discussing the merits of in-house counsel handling litigation, including decreased cost and increased insight for decisionmaking); Alison Frankel, *J.C. Penney's Inside Out Litigation*, AM. LAW., Sept. 1992, at 42, 43 (discussing active participation of in-house counsel in litigation).
137. Taylor, *supra* note 117, at 34. As in-house counsel that attorney won a verdict of \$549 million dollars in 1986, the third largest civil judgment at that time, thus doing much to prove the competence of in-house attorneys as litigators. *Id.*
138. See Duff, *supra* note 132, at 46 (general counsel of Chiquita Brands International stated, "We cherry-pick what we want to do and give the boring stuff to outside firms."); Brill, *supra* note 128, at 57 ("I am convinced that the ratio of exciting, stimulating work as an inside lawyer to the drudgery that is inevitably part of any law practice is much higher than as a outside lawyer.") See also *Corporate Counsel Take New Directions*, NAT'L L.J., Nov. 5, 1990, at S1 (discussion of general counsels regarding the activities of their departments).
139. In-house attorneys decide what they will send to outside counsel and choose the outside attorneys to perform the tasks. A 1991 National Law Journal/Coopers & Lybrand study revealed that in house counsels have significant responsibility regarding the choice of outside counsel. Lyne, *supra* note 110, at S1, S5. See AYRE, *supra* note 134, at 121, 138 (in-house attorneys direct outside counsel); Chayes & Chayes, *supra* note 127, at 290 (in-house attorneys decide which tasks outside counsel will do and organize the work); Slovak, *supra* note 127, at 481 (in-house attorneys coordinate legal work); Rosen, *supra* note 133, at 484-85 (in-house attorneys exercise strategic control over work done by outside counsel). Lawrence M. Friedman, et al., *Law, Lawyers and Legal Practice in Silicon Valley: A Preliminary Report*, 64 IND. L. J. 555, 565 (1989)(in-house counsel has "major voice" regarding what to buy and from whom). See also Ellen Joan Pollock, *Chase Makes Milbank Hustle*, AM. LAW., Sept. 1990, at 44 (discussion of the new balance of power between in-house counsel and outside counsel); *A New Corporate Powerhouse: The Legal Department*, BUS. WK., Apr. 9, 1984, at 66-71 (in-house counsel has control). DuPont focuses, like many corporations, on minimizing the use of outside counsel. For example, in one litigation matter, in house attorneys took depositions and set strategy while outside counsel handled oral arguments and motion drafting. Barker, *supra* note 135, at 45. See also Lyne, *supra* note 115, at 15 (cost containment a major issue of in house counsel at meeting of American

ventive law in a way that is practically impossible for outside counsel.¹⁴⁰ For many organizations, in-house attorneys constitute an essential part of the total management team, and involve themselves, with organizational approval, in all sorts of management decisions.¹⁴¹ In addition, the team atmosphere once thought of as an advantage in the law firm is alive and well in many legal departments. A feeling of collegiality and teamwork may exist because all in-house attorneys work for one client and have one client's interests in mind.¹⁴²

Thus, the job itself can satisfy and reward an attorney interested in professional development and challenge. As a result of the expansion of duties of in-house counsel and the other attributes of the job—such as freedom from client development—many high-quality lawyers have flocked in-house,¹⁴³ despite the fact that the compensation for this work may fall short of compensation in private firms.¹⁴⁴ Because of

Corporate Counsel Association). Former American Corporate Counsel Association Chairperson Peter Zeughauser stated:

Corporate counsel took a look at this market-driven economy and it brought them together to share their experience in a way it hadn't before . . . They shared information on how to bid work out, how to competitively increase the quality of service and, at the same time, decrease costs.

Id. at 15. In-house control of outside counsel pervades Electronic Data Systems (EDS). EDS books travel arrangements for outside counsel working on EDS matters to ensure that the attorneys fly on the cheapest ticket available. Carbonara, *supra* note 122, at 40. Citicorp has a policy statement regarding the outside counsel-inside counsel relationship which firms must sign. Audrey Duff, *Sign Here or Else, Says Citicorp.*, AM. LAW., Dec. 1992, at 30. *See generally, Do Clients Want Partners or Hired Help?*, AM. LAW., Sept. 1992, Supp., at 38 (discussing the nature of the relationship).

140. *See Rosen, supra* note 133, at 483, 503-25; Chayes & Chayes, *supra* note 127, at 279-89. *See also* Horne, *supra* note 11, at 50 (in-house attorney spends time on preventive law); J. Edwin Dietel, *Preventive Law Saves the Day*, AM. LAW., Mar. 1991, at S14 (discussing preventive role of in-house counsel); *The Inside View*, AM. LAW., June 1991, 6 (general discussion of aspects of in-house counsel job including preventive aspect); Barker, *supra* note 135, at 40 (important part of DuPont attorneys' practice is preventive law).
141. Chayes & Chayes, *supra* note 127, at 281 (involvement of in-house counsel expected in major transactions); L. Edmund Rast, *What the Chief Executive Looks for in His Legal Department*, 33 BUS. LAW. 811 (1978) (in-house attorney must act as a member of the management planning team); Taylor, *supra* note 117, at 35 (in-house attorneys have access to management and respect from management). Robert McClements, Jr., President and Chief Executive Officer of Sun Co., characterized the relationship of the corporation to its in-house attorneys as one of "admiration and respect". Kleiman, *supra* note 120, sec. 8 at 1. Robert Berendt, associate general counsel of Monsanto has stated that "[t]he in-house lawyer manages the litigation, supervises what the outside counsel is doing and is involved in strategy and policy-making." *Id.*
142. Lurie, *supra* note 101, at 22, 26.
143. *See ENNICO, supra* note 123, at 9-13 to 9-17.
144. Kleiman, *supra* note 120 (citing study showing that attorney with seven years of experience earns \$70,000 in private practice and \$60,000 in a corporate legal de-

the metamorphosis of the role of in-house counsel, in-house attorneys now enjoy power, prestige, and status far superior to that experienced by predecessor in-house attorneys.¹⁴⁵

VI. THE RELATIONSHIP OF LAW FIRMS AND CLIENTS IN THE 1990S

Years ago, attorneys within law firms and clients formed relationships that endured for decades, and sometimes even lifetimes. Once a law firm established a professional relationship with a business client, that client used the law firm's services for any and all legal needs. Both the law firm and the client expected the relationship to continue indefinitely. A strong bond of loyalty tied the two parties together.¹⁴⁶ A 1959 study of manufacturing corporations revealed that three-fourths of those companies retained outside counsel on a continuing basis. Generally, the relationships endured for significant periods of time, and the corporations never considered using other attorneys.¹⁴⁷

The nature of the law firm-client relationship in the 1990s has moved far from this earlier model. In part, the rise in importance of in-house counsel has caused the change. In-house attorneys now handle much of the legal work once performed by outside attorneys.¹⁴⁸ In addition, because in-house departments can capably perform more of the sophisticated, as well as the mundane, legal work for the organiza-

partment). A National Law Journal survey revealed that some general counsel are among the most highly compensated attorneys. In-house salaries compare well to law firm salaries though law firm salaries tend to exceed in-house compensation. *What Lawyers Earn*, NAT'L L.J., Apr. 27, 1992, at S1. See also Nicholas Varchaver, *Two Takes on General Counsel Pay*, AM. LAW., Jan.-Feb. 1993, at 32 (discussing two surveys of general counsel salaries, both revealing average compensation of greater than \$200,000); Susan Beck, *The Inside Money*, AM. LAW., Jul.-Aug. 1991, at 42 (general counsels with one hundred or more attorneys on staff earn an average (including bonus) of \$515,000); Lyne, *supra* note 110, at S5 (survey revealed that ninety-one percent of general counsels earned more than \$101,000; thirty-nine percent earned \$101,000 to \$200,000; thirty-three percent earned \$201,000 to \$400,000); Taylor, *supra* note 117, at 34 (general counsel of Coastal Corporation receives compensation of over \$500,000).

145. See Rosen, *supra* note 133, at 479 (general discussion of prestige of in-house counsel); Slovak, *Giving and Getting Respect*, *supra* note 130, at 31 (discussion of prestige and status of in-house attorneys). In-house counsel interviewed in a Silicon Valley survey in 1988 felt more professional and independent than they had in law firms. Friedman, *supra* note 139, at 566.
146. GALANTER & PALAY, *supra* note 94, at 33-34. See LISAGOR & LIPSIUS, *supra* note 39, (general discussion of the relationship between the law firm of Sullivan & Cromwell and its clients in the first portion of the century). See also James W. Jones, *supra* note 96, at 684 (clients shopping for attorneys or firms was "unattractive and unacceptable").
147. GALANTER & PALAY, *supra* note 94, at 34 (citing National Industrial Conference Board, 1959, Organization of Legal Work, The Conference Board Business Record, 16:463-68, 464).
148. See *supra*, notes 134-139 and accompanying text.

tion, outside counsel must deal with the diminished amount of legal work sent out under the omnipresent threat that if the in-house attorney monitoring the work believes that in-house attorneys can do the work more cost efficiently, or even that another attorney or firm can do it more efficiently, the in-house attorney will act upon that belief. The advent of sophisticated in-house legal departments means that clients make many of the critical decisions regarding a particular legal matter. Additionally, the client is now more likely to question decisions, strategic or otherwise, made by outside counsel assigned to a particular matter. An attorney or law firm always faces the threat of losing a client, even a loyal client of many years.

Clients and law firms¹⁴⁹ now focus squarely on the monetary value of legal representation. The sanctified relationships of the past rarely exist in the 1990s. The traditional links between firms and clients have crumbled.¹⁵⁰ The law firm of the Nineties cannot assume that the client it services today will be a client tomorrow. Nor can the law firm assume that the client using the firm for an employment matter will also use it for a merger transaction or any of its other possible legal needs.¹⁵¹ Interviews conducted in 1988 with in-house counsel in Silicon Valley revealed a movement toward the use of many firms, rather than only one or two. The reasons often given for changes in outside counsel included cost, lack of expertise, and lack of partner-level attention to work.¹⁵² These interviews are indicative of the types of experiences attorneys have had across the nation. The law firm of the Nineties must market itself by doing excellent work in a cost-efficient manner. Even the most traditional, established, and well-respected law firms must market themselves to present and potential clients in other ways as well.

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149. For a discussion of client cost concerns, see *supra*, note 134 and accompanying text. For a discussion of the worship of profit within firms, see *supra* notes 101-102 and accompanying text. See also GALANTER & PALAY, *supra* note 94, at 52-53 (extensive discussion of the increased emphasis on profit); Gilson and Mnookin, *supra* note 102 (same).
 150. See, e.g., *TWA Dumps Weil, Gotshal for Jones, Day*, AM. LAW., Oct. 1991, at 13. A 1991 National Law Journal/Coopers and Lybrand study revealed that long term relationships are disappearing. Lyne, *supra* note 110, at S2. See also Rita Henly Jensen, *Will In-House Counsel For Banks Maintain Outside Firm Ties?*, NAT'L L.J., Sept. 9, 1991, at S21 (examples of long established ties that may not continue).
 151. Corporate legal departments now look for firms with particular expertise and allocate work accordingly. *ALA Interviews: Section Heads Consider Challenges, Strategies*, NAT'L L.J., Apr. 9, 1990, at 16, 27. See also Jones, *supra* note 96, at 688 (discussing the corporate approach to obtaining outside counsel).
 152. Friedman, *supra* note 139, at 565-66. See also Duncan A. MacDonald, *Speculations by a Customer About the Future of Large Law Firms*, 64 IND. L.J. at 593, 593 (New York in-house counsel stated he uses outside counsel on the basis of cost, efficiency, expertise, and flexibility); Chayes & Chayes, *supra* note 127, at 294 (discussing in-house counsel selection of outside counsel).

Ironically, during the same time period that these pressures in the legal services market developed, the United States Supreme Court opened the floodgates for attorney advertising.¹⁵³ Thus, law firms can now participate in heightened and open competition for legal business. Firms in the 1990s seek to obtain clients by having a presence at social gatherings, participating in seminars, producing newsletters and brochures, and by explicit advertising.¹⁵⁴ A brave new world has arrived.

VII. THE EFFECT OF WOMEN AS IN-HOUSE COUNSEL

Given the economic power and significance of in-house attorneys in the establishment and continuance of the law firm and client relationship, women's presence in in-house positions should positively affect other women's success in law firms and the legal profession as a whole. The change caused by the existence of women as in-house counsel should occur in a more subtle fashion than law suits and forced policies. Yet the changes will be grounded, in part, in economics, which is perhaps *the* driving force of the practice of law in firms of the 1990s.

A. Enlightenment Process

Though their numbers probably dwindle consistently, a group of male attorneys continue to hold an opinion that women on the whole have lesser intelligence, lack the capability to practice law or lack the appropriate dedication to the professional practice of law. If these

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153. See, e.g., *Shapero v. Kentucky Bar Ass'n*, 486 U.S. 466 (1988); *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977). See also Terry Calvani, et al., *Attorney Advertising and Competition at the Bar*, 41 VAND. L. REV. 761 (1988) (advertising increases competition in the market for legal services).
154. Many firms now have in-house marketing specialists. See, e.g., Rita Henly Jensen, *Survey Marketers Satisfied But are They Accepted?*, NAT'L L.J., Aug. 6, 1990, at S2. See also David Bradlow, *The Changing Legal Environment: the 1980s and Beyond*, 74 A.B.A. J. 72, 73 (1988) (noting the importance of marketing in the future); Kurt P. Ross, *Some Easy Ways to Market Your Law Firm*, 36 PRAC. LAW., July 1990, at 59 (discussing methods for marketing to in-house counsel); C. Alan Chapman, *Keeping the Downsizing Corporate Client*, 36 PRAC. LAW., Mar. 1990, at 55 (discussing marketing to in-house counsel); Sally J. Schmidt, *In-House Staff Can Market Its Own Product*, NAT'L L.J., Mar. 16, 1992, at S23 (noting that the many and varied forms law firms now use to market their wares often target in-house attorneys). Some firms have attempted to market themselves by offering nonlegal services and expanding globally. See Thom Weidlich, *Ancillary Businesses Prospering Quietly: The Most Successful Subsidiaries are Those that Play on Their Firms' Strengths, Experts Say*, NAT'L L.J., Dec. 21, 1992, at 1; *Ancillary Businesses of the Nation's 250 Largest Law Firms*, NAT'L L.J., Dec. 21, 1992, at 32; Thom Weidlich, *Law Firms Struggle to Define—and Describe—the Entity*, NAT'L L.J., Dec. 21, 1992, at 32; Thomas F. Gibbons, *Branching Out*, 75 A.B.A. J. 70 (1989); Timothy Harper, *Going Global: Big Law Firms Expand Overseas*, 75 A.B.A. J. 68 (1989).

men are forced to deal with successful women in in-house counsel positions, this exposure should correct some of these misconceptions.¹⁵⁵ Perhaps some male attorneys have never been exposed to successful female attorneys, or have ignored them in the past. Being forced to take strategic instructions from female in-house attorneys, being forced to justify decisions, expenses and fees to female in-house attorneys, and being forced to work along side, if not subordinate to, female in-house attorneys should provide a setting in which many male attorneys will gain respect and admiration for all female attorneys. Once these male attorneys have these positive professional experiences with female attorneys, perhaps they will work more willingly with women in their own firms. Perhaps they will send assignments to female associates, and perhaps they will evaluate female associates on the basis of individual merit, rather than on the basis of groundless prejudices.

In addition, a woman working as in-house counsel will not send work to a male attorney who has indicated, subtly or not so subtly, that he has these negative opinions of female attorneys. A woman working as in-house counsel might perceive the male attorney's opinions by comments, or simply by the manner in which the male attorney deals with her. The in-house counsel might discover the attorney's or even the firm's opinion of women by perceiving how the attorney or firm treats female attorneys within the firm. If a male attorney with these opinions holds power within a firm or if the firm seems to treat women as inferiors, the in-house counsel probably will look elsewhere for legal services. This threat of lost legal business provides an economic incentive for firms to educate attorneys as to the appropriate treatment of female attorneys, and should encourage appropriate treatment of all female attorneys, both inside and outside firms. As a result, women within firms should find less prejudice to overcome in order to succeed, and the firm environment should become less hostile to them. Female attorneys, in general, may also feel less hostility.

B. Familiarity Process

Many male attorneys do not actually believe that female attorneys constitute a lesser species. Yet, these attorneys feel uncomfortable

155. A recent North Carolina survey showed that five of every one hundred attorneys responding believed women are less competent attorneys than men. See Wattach, *supra* note 71, at 20. A recent study suggests that exposure to successful women may lessen a male hiring official's tendency to hire males rather than females. See Madeline E. Heilman & Richard F. Martell, *Exposure to Successful Women: Antidote to Sex Discrimination in Applicant Screening Decisions?*, 37 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 376 (1986). This effect may carry over to promotion decisions. See also Rhode, *supra* note 39, at 1188, 1188 n.136 (discussing evidence of bias).

working with female attorneys because they have no or very little experience doing so.¹⁵⁶ This seems to be a special problem for older attorneys who attended law school before women represented a sizable portion of law school classes. These attorneys did not receive professional training with women and did not practice with women in the early, formative days of their careers. These men may not have spouses who work in the professional sphere. However, these male attorneys now find themselves in a world populated by female attorneys, and they have no idea what the rules of the game are now that the players have changed. Male attorneys in this category would probably rather work with men because they know the appropriate standards for behavior in that context. They know when to joke and when to react seriously. They know when other men are joking. They know what they can say or not say. Consciously or unconsciously, they would rather not work with women because they do not feel at ease doing so. They do not know how they should relate to female attorneys. Some of these men fear that a working relationship with a female attorney will become sexual or, at the very least, will appear sexual.

Men who have this discomfort with professional women harm female attorneys within their firms. These men are less likely to hire a woman because she is not "one of them." These men, many of whom hold positions of power within law firms, choose to work with male associates rather than female associates. If a complicated matter arises which requires intensive, side-by-side work with a subordinate attorney, the senior male attorney desires a male associate as the assistant. Thus, the attorney treats the male associates in the firm preferentially in the distribution of assignments. Male attorneys of this sort do not mentor women or provide other general guidance to female associates which might help those women in the development of all facets of a practice. A male attorney who feels uncomfortable with women will not ask a female associate to accompany him on a business lunch, or even to a local bar for drinks after work. Such contact with female attorneys might ameliorate the feeling of discomfort that male attorneys may have in dealing with women in a professional capacity. However, the fear of discomfort blocks the cure. All of these contacts would assist female associates in succeeding in law firms, and do in fact assist male associates who the senior male attorneys invite to social events, work with, and mentor.

The increased importance of in-house counsel and the increased presence of women in the role of in-house counsel should create an environment that forces some of these attorneys who feel uncomfortable with female attorneys to deal with successful female in-house at-

156. See *supra*, note 71 and accompanying text for additional discussion of the familiarity principle.

torneys in a professional context. The contact with these women should lessen some of the discomfort created by the lack of familiarity. Simply working with female in-house counsel should provide male attorneys with a positive experience of working with a professional woman, and should educate that attorney as to how a man and woman can interact and work together in the professional sphere without danger of sexual overtones, and without undue pain and trauma.

A male attorney who initially feels discomfort working with women may find that discomfort lessened with the experience of working with a female in-house attorney who is both a client and a professional equal, if not a professional superior. He may be more likely in the future to work with women within the firm, to give women choice assignments that would require extensive contact with them, to mentor women, and to invite women to professional or social gatherings without fear or discomfort. Continued contact with female attorneys should provide multiple experiences with professional women and should serve to further eliminate the discomfort that a lack of familiarity breeds. While the elimination of the familiarity issue should benefit female attorneys in law firms, female attorneys in general should benefit from a lessened tension in dealing with some male members of the profession.

C. Rain-making Process

Female attorneys have not distinguished themselves generally as great attractors of business. Yet, the ability to attract business signals a successful practice, and thus indicates merit for partnership. Firms consider the proven or potential ability to attract business both in terms of promotion and in terms of power positions within law firm partnerships. The ability to attract business has become particularly important in these times of a more competitive market for legal services.

The presence of women as in-house counsel should cause more women within firms to successfully prove their ability to attract clients and legal work. Many female in-house counsel will send legal work to women within law firms. Female in-house attorneys often work in private firms before moving in-house and have experienced first-hand the pressure within firms for attorneys to originate legal business. Female in-house counsel also have a network of female attorneys they know from their days in private practice, women's lawyer groups or other networks. Few female attorneys fail to perceive the plight of women in the legal profession, especially the plight of women in private firms. Given the nature of the in-house counsel position, female in-house attorneys have great opportunity and incentive to send legal business to female private practitioners, if quality and cost do not suffer as a result. For example, if a female in-house counsel has an em-

ployment matter that she would like to channel to a particular firm, she might first call a woman in the firm so that the woman can claim that she attracted the business. Ultimately, someone else in the firm might do the legal work on the matter. Female in-house attorneys certainly will send business to female attorneys they feel comfortable with and can deal with as equals, rather than to male attorneys who have exhibited a condescending attitude or other attributes which make the working relationship unpleasant.

As women in law firms attract more business, they should fare better in the promotion process because they will have a proven record of rain-making. To the extent that power within the firm depends on rain-making ability, women who have succeeded in this sphere should find themselves able to grasp more of the internal power of the firm. These women can then assure appropriate treatment of all women within their firms.

D. Instrumental Process

Often, in this day and time of competitive marketing of legal services, law firms focus on the fact that many clients, for purposes of obtaining legal business, are female in-house attorneys. Firms often place women within the firm in positions of power and responsibility with regard to a particular client's legal business in order to attract or retain that client. For example, if a corporation requests several law firms to make presentations regarding the legal services that the firms could render for the corporation in a merger, and if the general counsel or the in-house counsel making the decision as to which firm to hire is a woman, those firms may place a female attorney in charge of the proposal or may indicate that a female attorney will handle a significant portion of the matter. Some firms may simply make a female attorney the contact person for the in-house attorney. In any of these scenarios, the firms place women in positions of power and responsibility because the firms benefit economically by doing so.

If such a firm does not obtain the legal business, the presentation to in-house counsel has at least highlighted the female attorney and her skills. In-house counsel may remember that attorney in the future when other business arises. If a firm that has indicated that a female attorney within the firm will be significantly involved actually obtains the legal business, then the female attorney within the firm has an opportunity to have valuable client contact and substantive experience and responsibility. The female attorney then gains the experience necessary to obtain promotion. In addition, other attorneys in the firm have the opportunity to view the female attorney's work, her ability to deal with clients, and her sense of responsibility. Once the female attorney proves her ability, perhaps the attorneys in the firm will give her more opportunities and responsibility in the future on

matters totally unrelated to female in-house counsel. In this way, female associates have a much better chance to succeed within firms.

E. Ultimate Effect of the Processes

Each of these processes should allow more women to succeed in traditional law firms as they obtain the necessary skills and prove themselves worthy of the partnership mantle. Firms should begin to judge these women in a way that minimizes the gender prejudices inherent in past promotion decisions within law firms. In addition, the firm environment should become less hostile to women as some of the subtle discrimination that has occurred in the past wanes.

As a secondary result, more women should obtain the status of partner and more women should hold positions of power within firms. This increased presence of successful and powerful women should further enhance the opportunities within law firms for women. Successful women participating in the power structure of firms can assure that firms treat female associates appropriately with regard to assignments, social contacts, and performance evaluations.

Perhaps more importantly, women in the power structure can do much to adjust the law firm environment so that all law firm inhabitants feel less hostility. For example, a female managing partner can do much to eliminate a firm ethic that associates must work every night until eight. A new firm ethic that associates must reasonably dedicate themselves to their work and bill a certain number of hours can replace the former ethic. The end legal product and profit column may not change; yet, the latter ethic allows associates, female or male, who have children or other nonfirm commitments or responsibilities to mesh all the facets of their lives, assuming a reasonable billable hour requirement. The presence of women in the decision-making circle should help firms establish such a reasonable billable hour requirement. This is but one small example symbolic of the fundamental change in the law firm environment that can occur as the result of the increased involvement of women in roles other than that of assimilators of the traditional model of the firm. The presence of women can force the institution of the law firm to accommodate women and the world of the 1990s. As women succeed in firms, as well as in the role of in-house counsel, their collective position within the legal profession in general should improve. Female attorneys of all types should benefit from a heightened respect and prestige.

Though the presence of women as in-house counsel may improve the plight of women in law firms and the legal profession, as this article hypothesizes, one must note that female in-house attorneys will not, in and of themselves, solve all the problems of female attorneys, especially female attorneys in law firms. The existence of women as in-house counsel may remove but a few stones from a wall of many.

VIII. CONCLUSION

Despite the progress women have made in law school representation and performance, and despite the progress women have made in representation in the ranks of private law firm associates, women are still painfully absent from the partnership table, and lack the power and respect that goes with partnership in a traditional law firm. The presence of women as in-house counsel at a time when in-house attorneys act as vitally important members of the legal services team—making decisions with regard to work that the business sends to outside attorneys and selecting the outside counsel to handle that legal business—may alter the gender composition of partnerships in the near future. The fact that the market for legal services has become incredibly competitive and cost-conscious has intensified the power and effect of in-house counsel and, thus, the power and effect of female in-house counsel.

Within this setting, the presence of women as in-house counsel may improve the plight of female attorneys in law firms by enlightening male attorneys within those firms to the true character of female attorneys, familiarizing male attorneys with female attorneys as a class, increasing the rain-making potential of women in law firms, and causing firms to place female attorneys in positions from which they can gain valuable experience and also develop and exhibit the ability to handle responsibility and power. The end result of having women as in-house counsel probably will not cause a monumental change in the position of women in law firms. It should, however, improve, even if slightly, the present situation of women in law firms and women in the legal profession.