

***“I have yet to hear a man ask for advice on how to combine marriage and a career.”***

- Gloria Steinem

The American legal profession reflects our culture. Although the paradigm of traditional gender roles is shifting in America, the conservative consciousness of large law firms does not move quickly.<sup>1</sup> This is clear when looking at the trajectory of women attorneys in private firms. As women, we make up 50% of our law school classes.<sup>2</sup> Also, we are hired into private firms at a similar rate to men.<sup>3</sup> However, attrition rates for female associates are almost twice as high as male associates.<sup>4</sup> In 2017 women only held 19% of the equity partner positions and 30% of the non-equity partner positions in private firms.<sup>5</sup> Finally, women equity partners are "significantly" out-earned by male partners by at least 30%.<sup>6</sup>

This decline in numbers is dramatic and frustrating. Further, the statistics do not properly represent the women with whom I share classrooms and work spaces. The women I know that are forging into the legal frontier are not quitters, they do not shirk responsibility and they achieve the goals set before them. So, what is happening?

To make sense of the discrepancy, we need to consider the traditional roles of men and women in our society and the impact these roles have in a professional legal setting. Historically, men are expected to earn a living and women are expected to devote their attention to family, especially child care.<sup>7</sup> Regardless of the increase in men's domestic work over the last twenty years, women continue to "shoulder the burden" of domestic responsibilities.<sup>8</sup> These cultural roles have significant professional consequences that impact women's advancements and earnings in the private sector.

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<sup>1</sup> Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041, 1041 (2011) [hereinafter *From Platitudes to Priorities*] (discussing the struggle for diversity in the legal profession).

<sup>2</sup> <http://www.nawl.org/p/cm/ld/fid=1163>

<sup>3</sup> Id.

<sup>4</sup> Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 Conn. L. Rev. 271, 284 (discussing the failure of the legal profession to provide just and inclusive workplaces, leading to greater dissatisfaction and higher attrition rates among female associates).

<sup>5</sup> <http://www.nawl.org/p/cm/ld/fid=1163>

<sup>6</sup> Vivia Chen, *Pay Gap Between Male and Female Partners Is Now Gaping Hole*, THE CAREERIST (Sept. 19, 2012), <http://thecareerist.typepad.com/thecareerist/2012/09/bad-news-women-mla-report.html> (describing the distinct salary difference between male and female partners).

<sup>7</sup> Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors*, 49 U. KAN. L. REV. 733, 733 (2001).

<sup>8</sup> Rhode, *From Platitudes to Priorities*, supra note 1, at 1057.

Personally, I am familiar with these consequences. Because I am a single parent, managing a marital separation and happily raising my daughter with the majority of the parenting time, I will graduate later than my classmates. Also, I have passed up amazing opportunities out of state because I choose not to uproot my daughter and lose my childcare support system. The reality is: Because I am raising a child, I have additional complications in my professional choices. My choices are more limited than a single person or a person that has a spouse who handles the family's personal affairs.

Decades of data show that I am not alone. Choosing between personal life priorities and professional advancement is a documented obstacle for women attorneys.<sup>9</sup> Unfortunately, this limitation often translates to a loss of status, compensation and advancement within the legal profession. The disparity between men and women's longevity in the legal profession occurs because law firms are "gendered organizations" that value "on demand" availability and freedom from domestic responsibilities, and women, in general, shoulder those responsibilities.<sup>10</sup>

This domestic gender gap has been referred to as "mental load."<sup>11</sup> It identifies that even if a woman's partner helps in the chores, she alone is the manager of what needs to be done. This "invisible second shift" of domestic project management is constant, endless, and leads to burn out.<sup>12</sup> Additionally, the idea of child rearing has also changed over the last decade. The expectation to keep our children well-rounded and active has escalated the demands of parenting.<sup>13</sup> Children are shuttled from one activity to the next. These highly valued activities are in addition to providing meals, household duties and helping with homework. Because of our cultural conventions these duties fall primarily to women.

Women attorneys often attempt to solve this issue by balancing these conflicting demands with part-time work solutions. However, this solution has

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<sup>9</sup> Id.; Joyce S. Sterling & Nancy Reichman, *Navigating the Gap: Reflections on 20 Years Researching Gender Disparities in the Legal Profession*, 8 FIU L. REV. 515, 516 (2013) ("[W]omen are more likely than men to depart from the practice of law."); Nance & Madsen, *supra* note 4 (discussing the failure of the legal profession to provide just and inclusive workplaces, leading to greater dissatisfaction and higher attrition rates among female associates); Deborah Graham, Do Women's Initiatives Work?, A.B.A. J. (June 1, 2013), [http://www.abajournal.com/magazine/article/do\\_womens\\_initiatives\\_work](http://www.abajournal.com/magazine/article/do_womens_initiatives_work) (questioning the effectiveness of diversity campaigns); IILP Review 2012: The State of Diversity and Inclusion in the Legal Profession, INST. FOR INCLUSION IN THE LEGAL PROF. 11 (2012), <http://www.theiilp.com/Resources/Documents/IILPReview2012.pdf> [hereinafter IILP Review 2012] (seeking to improve diversity and inclusiveness in the legal profession).

<sup>10</sup> Sterling & Reichman *supra* note 9 at 518-19.

<sup>11</sup> <http://www.harpersbazaar.com/culture/features/a12063822/emotional-labor-gender-equality/>

<sup>12</sup> <http://time.com/money/4561314/women-work-home-gender-gap/> (discussing the domestic work shouldered by women is thinking, worrying, paying attention, and delegating, which is work that is largely invisible, gets almost no recognition, and involves no pay or benefits).

<sup>13</sup> Epstein *supra* note 7, at 751.

proved to be a non-solution. Over 90% of American law firms report offering part-time work, however only 4% of attorney's actually use the programs.<sup>14</sup> Many women find that in reality, reduced hours are not honored, they are given less "desirable" assignments and they are stigmatized for being unavailable.<sup>15</sup> As a result, many lawyers believe, with good reason, that any reduction in hours or availability would jeopardize their careers.<sup>16</sup> On average, part-time status and time out of the workforce results in long-term losses in earnings as well as lower chances for partnership.<sup>17</sup> Considering traditional domestic roles, it is not surprising that women's attrition rates are higher.

Where do we go from here?

Awareness of this ongoing conundrum is essential. Without understanding the challenges for women (or men) who shoulder the burden of childcare, their professional choices can be misinterpreted and resented.<sup>18</sup> Currently, women who experience bias regarding limited hours are reluctant to openly address it.<sup>19</sup> They fear being labeled as difficult or "confrontational" or they do not want to "rock the boat."<sup>20</sup> When concerns are expressed the consequences are often negative.<sup>21</sup> There is a lack of space and time for candid dialogue between the firm and the attorney that does not fit the "gendered organization."

Having discussed this with many of my classmates, I realized the majority of my colleagues have not crossed the threshold into family life. They are still single, quite young, and have seemingly limitless choices ahead. Also, these particular challenges set out above are not often discussed in a legal educational setting. We plan our curriculum, internships, externships, clerkships and career path. However, we do not get granular when planning how those goals intersect with the private

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<sup>14</sup>Paula Patton, *Women Lawyers: Their Status, Influence, and Retention in the Legal Profession*, 11 WM. & MARY J. WOMEN & L. 173, 189 (2005).

<sup>15</sup> See Rhode, *From Platitudes to Priorities*, supra note 1, at 1056-57 (discussing how taking time off or working reduced hours as a lawyer hurts chances for advancement); Sterling & Reichman, supra note 9, at 529-30 (describing how women that ask for reduced rates end up working full hours for less pay).

<sup>16</sup> Patton supra note 12, at 180.

<sup>17</sup> David Leonhardt, *Financial Careers Come at a Cost to Families*, N.Y. TIMES, May 27, 2009, at B1 (discussing findings that pay gap for lawyer who had taken time out was about twenty-nine percent fifteen years after graduation).

<sup>18</sup> Rhode supra note 1, at 1059.

<sup>19</sup> Id. at 1058.

<sup>20</sup> Id.

<sup>21</sup> Joan C. Williams & Veta T. Richardson, The Project for Attorney Retention & Minority Corporate Counsel ass'n, New Millennium, Same Glass Ceiling?: The Impact of Law Firm Compensation Systems on Women 14 (2010), available at <http://www.attorneyretention.org/Publications/SameGlassCeiling.pdf>.

lives we lead. But it is awareness and discussion of these issues that will eventually allow a solution to take root.

Looking to the future, projects like the American Bar Association's *Achieving Long-Term Careers for Women in the Law* will be the impetus for much needed discussions and understanding. Ultimately, we may find that the "gendered" structure of the legal profession has potential to be more malleable and accommodating than before.