Women Beneath the Glass: Gender Bias in the Legal Field

D. Loren Washburn

Follow this and additional works at: https://scholarsarchive.byu.edu/byuplr

BYU ScholarsArchive Citation

This Article is brought to you for free and open access by the Journals at BYU ScholarsArchive. It has been accepted for inclusion in Brigham Young University Prelaw Review by an authorized editor of BYU ScholarsArchive. For more information, please contact scholarsarchive@byu.edu, ellen_amatangelo@byu.edu.
Women Beneath the Glass: Gender Bias in the Legal Field

D. Loren Washburn

In a 1986 article in the Wall Street Journal, a new phrase, "the glass ceiling," was introduced to describe the invisible barriers that face women as they climb to the top of the employment ladder. Since then, public awareness about gender bias in all major employment fields has increased. In the legal field, however, progress has come slowly. Over eighty percent of women attorneys surveyed perceive a subtle attitude of gender bias in their field (Women in Law Committee 2). The gender bias pervasive in the American workforce in general is prevalent in the legal field.

The Glass Ceiling Commission, a group appointed by President Bush in 1991, studied gender bias in the American workforce in general. Among its findings, it concluded that three major reasons exist for the glass ceiling. The first reason is "societal barriers, which may be outside the direct control of business educational opportunity and attainment" (Glass Ceiling Commission 7-8). The second reason for the existence of the glass ceiling is internal structural barriers within the employing organization. Finally, government barriers exist which
impede women’s attempts to progress within industries (7-8).

Societal barriers are generally a result of the personal biases of managing officers. These biases manifest themselves in biased hiring and advancement practices as well as discriminatory attitudes. The commission found that although these biases were conspicuous, they were not always conscious. Much of the problem comes from unconscious stereotyping and an undercurrent of prejudice. Women in the legal field often attribute the bias to their inability to become part of the “old boys” network. This, however, is not the only cause of discrimination; many women attorneys believe that some of the discrimination against them arises from the aggressive nature of young male associates (Women in Law Committee 1).

The negative bias is often felt in women lawyers’ external dealings with opposing counsel, clients, and judges. A full three-fourths of female attorneys feel that gender bias is a major factor when dealing with opposing counsel; nearly as many feel clients were less amenable to having a female attorney represent them than they are to having a male attorney. At the same time, under half of female attorneys feel gender bias exists among their peers and co-workers (1). It is apparent that the public bias, and not simply an institutional bias against women, is an important factor in the success and advancement of women in the field.

The second cause of discrimination in the workplace found by the Glass Ceiling Commission is within the direct control of the employer. The areas of discrimination include:

- outreach and recruitment practices that do not seek out, reach, or recruit minorities and women
- corporate climates that alienate and isolate minorities and women
- pipeline barriers that directly affect opportunity for advancement
- initial placement and clustering in staff jobs or in highly technical and professional jobs that are not on the career track to the top
- lack of mentoring
- lack of management training
- lack of opportunities for career development, tailored training, and rotational job assignments that are on the revenue-producing side of the business
- little or no access to critical developmental assignments such as memberships on highly visible task forces and committees
- special or different standards for performance evaluation (8)

These factors contribute to an atmosphere in which women feel that they are unable to compete with their male colleagues. This feeling is so pervasive in the legal field that women feel that a qualified woman is nearly thirty percent less likely to be advanced than a qualified man (Judicial Council Advisory Committee 2).

The institutional bias in the legal field is not restricted to internal matters in firms. In the “1990 Report of the Judicial Council Advisory Committee on Gender
impede women's attempts to progress within industries (7-8).

Societal barriers are generally a result of the personal biases of managing officers. These biases manifest themselves in biased hiring and advancement practices as well as discriminatory attitudes. The commission found that although these biases were conspicuous, they were not always conscious. Much of the problem comes from unconscious stereotyping and an undercurrent of prejudice. Women in the legal field often attribute the bias to their inability to become part of the "old boys" network. This, however, is not the only cause of discrimination; many women attorneys believe that some of the discrimination against them arises from the aggressive nature of young male associates (Women in Law Committee 1).

The negative bias is often felt in women lawyers' external dealings with opposing counsel, clients, and judges. A full three-fourths of female attorneys feel that gender bias is a major factor when dealing with opposing counsel; nearly as many feel clients were less amenable to having a female attorney represent them than they are to having a male attorney. At the same time, under half of female attorneys feel gender bias exists among their peers and co-workers (1). It is apparent that the public bias, and not simply an institutional bias against women, is an important factor in the success and advancement of women in the field.

The second cause of discrimination in the workplace found by the Glass Ceiling Commission is within the direct control of the employer. The areas of discrimination include:

- outreach and recruitment practices that do not seek out, reach, or recruit minorities and women
- corporate climates that alienate and isolate minorities and women
- pipeline barriers that directly affect opportunity for advancement
- initial placement and clustering in staff jobs or in highly technical and professional jobs that are not on the career track to the top
- lack of mentoring
- lack of management training
- lack of opportunities for career development, tailored training, and rotational job assignments that are on the revenue-producing side of the business
- little or no access to critical developmental assignments such as memberships on highly visible task forces and committees
- special or different standards for performance evaluation (8)

These factors contribute to an atmosphere in which women feel that they are unable to compete with their male colleagues. This feeling is so pervasive in the legal field that women feel that a qualified woman is nearly thirty percent less likely to be advanced than a qualified man (Judicial Council Advisory Committee 2).

The institutional bias in the legal field is not restricted to internal matters in firms. In the "1990 Report of the Judicial Council Advisory Committee on Gender
Bias in the Courts," multiple problems were identified.

Gender issues, the report found, were often used during trials to discount the credibility of female attorneys. A Rhode Island judge recalled a trial that she was involved in as an attorney when "pregnancy had swollen her ring finger, making it impossible to wear her wedding band. A senior partner, worried that she might convey a wrong message to the jury, "suggested I go to Woolworth's and buy a gold ring." (Providence Journal Company 3).

Though she did not consider this to be an unreasonable request, it demonstrates the societal biases which work against women's efforts to succeed.

The Judicial Council Advisory Committee also found sexual harassment to be pervasive in the legal field. They found evidence of the prevalence of "words and acts focusing on the sexual attributes or personal appearances of women participating in courtroom proceedings" (2). Similarly, a study in California found that nearly half of the women attorneys in the state believed that they had been the object of sexual harassment during their legal career (Women in Law Committee 2). Echoing the findings of these two surveys, the "Preliminary Report of the Ninth Circuit Gender Bias Task Force" concluded that a full sixty percent of women attorneys had been sexually harassed by others in the legal field. Likewise, forty percent received comments about their sexual orientation (2).

While the undercurrent of unconscious bias that exists in the legal field is damaging to the careers of women, the pervasive attitude of harassment is devastating to their personal lives as well. In the California survey, thirty-five percent of women had made career changes due to discrimination or harassment. Of the sixty-five percent who had never changed careers due to discrimination, thirty-seven percent said they had never changed careers because they did not believe the atmosphere would be better anywhere else (2). Clearly women believe that discrimination and gender bias is so pervasive in the field that changing their employment within the field would not significantly improve the work climate.

As the Glass Ceiling Commission concluded, it is within the power of the legal profession to stop discriminatory practices. The greatest hurdle is the ignorance of lawyers. Many male lawyers perceive women as being less dedicated to the legal profession, believing that women will "quit to stay home with the kids." Other attorneys believe women leave the legal field simply because "[they] can't take it...that they're not as tough as men." Indeed these perceptions have caused many male lawyers to conclude that sex discrimination is not a problem in the legal field (Institute for Continuing Legal Education 4-5). This ignorance is perhaps the most dangerous aspect of discrimination. Male attorneys no longer see the need for major changes in the legal system to avoid sexual discrimination.

The final aspect of the glass ceiling is government barriers. The Glass Ceiling Commission concluded that these barriers exist because of lax enforcement of laws, confusing data, and inadequate reporting and education about glass ceiling issues (8). Certainly the legal profession lacks understanding about the pervasiveness of the gender discrimination problem. Lack of enforcement
Bias in the Courts," multiple problems were identified. Gender issues, the report found, were often used during trials to discount the credibility of female attorneys. A Rhode Island judge recalled a trial that she was involved in as an attorney when "pregnancy had swollen her ring finger, making it impossible to wear her wedding band. A senior partner, worried that she might convey a wrong message to the jury, suggested I go to Woolworth's and buy a gold ring" (Providence Journal Company 3). Though she did not consider this to be an unreasonable request, it demonstrates the societal biases which work against women's efforts to succeed.

The Judicial Council Advisory Committee also found sexual harassment to be pervasive in the legal field. They found evidence of the prevalence of "words and acts focusing on the sexual attributes or personal appearances of women participating in courtroom proceedings" (2). Similarly, a study in California found that nearly half of the women attorneys in the state believed that they had been the object of sexual harassment during their legal career (Women in Law Committee 2). Echoing the findings of these two surveys, the "Preliminary Report of the Ninth Circuit Gender Bias Task Force" concluded that a full sixty percent of women attorneys had been sexually harassed by others in the legal field. Likewise, forty percent received comments about their sexual orientation (2).

While the undercurrent of unconscious bias that exists in the legal field is damaging to the careers of women, the pervasive attitude of harassment is devastating to their personal lives as well. In the California survey, thirty-five percent of women had made career changes due to discrimination or harassment. Of the sixty-five percent who had never changed careers due to discrimination, thirty-seven percent said they had never changed careers because they did not believe the atmosphere would be better anywhere else (2). Clearly women believe that discrimination and gender bias is so pervasive in the field that changing their employment within the field would not significantly improve the work climate.

As the Glass Ceiling Commission concluded, it is within the power of the legal profession to stop discriminatory practices. The greatest hurdle is the ignorance of lawyers. Many male lawyers perceive women as being less dedicated to the legal profession, believing that women will "quit to stay home with the kids." Other attorneys believe women leave the legal field simply because "[they] can't take it...that they're not as tough as men." Indeed these perceptions have caused many male lawyers to conclude that sex discrimination is not a problem in the legal field (Institute for Continuing Legal Education 4-5). This ignorance is perhaps the most dangerous aspect of discrimination. Male attorneys no longer see the need for major changes in the legal system to avoid sexual discrimination.

The final aspect of the glass ceiling is government barriers. The Glass Ceiling Commission concluded that these barriers exist because of lax enforcement of laws, confusing data, and inadequate reporting and education about glass ceiling issues (8). Certainly the legal profession lacks understanding about the pervasiveness of the gender discrimination problem. Lack of enforcement
of the laws is an extensive problem as well.

Most state bar associations require an antidis­
discrimination attitude in the legal field in their states. For 
example, the Rules of Professional Conduct for the 
California State Bar declare that it is illegal to discriminate 
on the basis of sex in "hiring, promoting, discharging, or 
otherwise determining the conditions of employment of 
y any person" (4-5). Despite this, many instances have been 
shown in which women in the legal field feel that they 
have been discriminated against. In many of these cases, 
outside action must be used to solve the problem. 
Unfortunately, when a majority of female lawyers feel 
gender discrimination exists inside the courtroom, it is 
doubtful that the solution can come from the courts. 

The Glass Ceiling Commission has outlined the 
important characteristics of programs which remove the 
glass ceiling. They all have certain characteristics in 
common:

- they have CEO support
- they are part of the strategic business plan
- they are specific to the organization
- they are inclusive—they do not exclude 
  white non-Hispanic men
- they address preconceptions and stereotypes
- they emphasize and require accountability 
  up and down the line
- they track progress
- they are comprehensive (9)

Any program which will successfully deal with the 
problem of gender discrimination in the legal field must 
have these characteristics. Plans that include these 
characteristics are working for many states and firms. 
Nationwide, the percent of female lawyers and judges has 
increased from 5.8% to 22.7% (Feminist Majority). The 
increase in the total number of women in the workplace is 
sure to help solve the problems of gender bias; the 
California survey found an inverse correlation between the 
number of women in the legal workplace and the 
perceived amount of discrimination (California Bar 
Association 1). In other words, as the percentage of 
lawyers who are women increases, discrimination in the 
legal field will decrease.

The legal field, though it suffers from the same 
gender bias problem as many other fields, is well 
equipped to tackle the problem. Though the cultural 
biases, especially those of clients, will be hard to combat, 
the institutional biases can be eliminated using a plan 
which conforms to the guidelines set forth in the Glass 
Ceiling Commission report. Governmental barriers will 
fall as the number of women and other minorities 
increases. The legal profession need only educate its 
members about the pervasiveness of gender bias, 
reminding them that there is work yet to be done to 
overcome the problem.

Works Cited

Feminist Majority Foundation. "Affirmative Action: 
Expanding Employment Opportunities for Women." 
Online. Internet. 18 Nov. 1998. Available: 
www.feminist.org/other/ccri/aafact2.html.
Glass Ceiling Commission. "The Executive Summary of
of the laws is an extensive problem as well. Most state bar associations require an anti-discrimination attitude in the legal field in their states. For example, the Rules of Professional Conduct for the California State Bar declare that it is illegal to discriminate on the basis of sex in “hiring, promoting, discharging, or otherwise determining the conditions of employment of any person” (4-5). Despite this, many instances have been shown in which women in the legal field feel that they have been discriminated against. In many of these cases, outside action must be used to solve the problem. Unfortunately, when a majority of female lawyers feel gender discrimination exists inside the courtroom, it is doubtful that the solution can come from the courts.

The Glass Ceiling Commission has outlined the important characteristics of programs which remove the glass ceiling. They all have certain characteristics in common:

- they have CEO support
- they are part of the strategic business plan
- they are specific to the organization
- they are inclusive—they do not exclude white non-Hispanic men
- they address preconceptions and stereotypes
- they emphasize and require accountability up and down the line
- they track progress
- they are comprehensive (9)

Any program which will successfully deal with the problem of gender discrimination in the legal field must have these characteristics. Plans that include these characteristics are working for many states and firms. Nationwide, the percent of female lawyers and judges has increased from 5.8% to 22.7% (Feminist Majority). The increase in the total number of women in the workplace is sure to help solve the problems of gender bias; the California survey found an inverse correlation between the number of women in the legal workplace and the perceived amount of discrimination (California Bar Association 1). In other words, as the percentage of lawyers who are women increases, discrimination in the legal field will decrease.

The legal field, though it suffers from the same gender bias problem as many other fields, is well equipped to tackle the problem. Though the cultural biases, especially those of clients, will be hard to combat, the institutional biases can be eliminated using a plan which conforms to the guidelines set forth in the Glass Ceiling Commission report. Governmental barriers will fall as the number of women and other minorities increases. The legal profession need only educate its members about the pervasiveness of gender bias, reminding them that there is work yet to be done to overcome the problem.

Works Cited

Glass Ceiling Commission. “The Executive Summary of


Online links to the following references are found in "What Lawyers Need to Know About Gender Bias in the Legal Profession:"
- The Judicial Council Advisory Committee on Gender Bias in the Courts. 1990 Report.
- The Women in Law Committee of the State Bar of California and The Employment Legal Aid Society of San Francisco. Results of a joint survey.