



## Women Leaders in the Areas of Higher Education, the Legal Profession and Corporate Boards: Continued Challenges and Opportunities in the United States

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WOMEN LEADERS IN THE AREAS OF HIGHER EDUCATION, THE  
LEGAL PROFESSION AND CORPORATE BOARDS: CONTINUED  
CHALLENGES AND OPPORTUNITIES IN THE UNITED STATES

Natasha Ann Lacoste\* and María Pabón López\*\*

*Many believe the “woman problem” has been solved, since women are now represented in powerful positions in government, academia, business, and the law. It is true that women today occupy more positions of power than ever; however, these numbers are quite small at the top level, especially for women of color. This article begins with an overview of women in the workforce and their presence in education; and then goes on to review the current data on women in three settings—higher education faculty, the law, and corporate boards. Next, it examines the barriers women encounter in reaching the top positions in their respective fields. Common obstacles women face include: gender stereotypes, the struggles of balancing work and family life, a lack of mentors and mobility. The article concludes with potential solutions to the impediments faced by women.*

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## I. INTRODUCTION

Many believe the “woman problem” has been solved, since women are now represented in powerful positions in government, academia, business, and the law in the United States.<sup>1</sup> It is true that women today occupy more positions of power in that country than ever; however, these numbers are quite small at the top level, especially for women of color.<sup>2</sup> This article seeks to build on an earlier publication by Dean María Pabón López, *The Future of Women in the Legal Profession: Recognizing*

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1 Laura M. Padilla, *A Gendered Update on Women Law Deans: Who, Where, Why, and Why Not?*, 15 AM. U. J. GENDER SOC. POL’Y & L. 443, 504 (2007).

2 *Id.*

*the Challenges Ahead by Reviewing the Recent Trends*,<sup>3</sup> and introduce some other topics for consideration. It should be noted that the statistics referenced throughout this article focus on women in the United States; but the barriers and issues that women face, and thus the proposed solutions, transcend to global settings.

In 2008, Dean López assessed the current trends of women in the legal profession in the United States.<sup>4</sup> In that article, she reviewed data collected by the Commission of Race and Gender Fairness, which was created by the Indiana Supreme Court.<sup>5</sup> She also compared the Indiana study to data on a national United States level.<sup>6</sup> Her findings indicated that since the first Indiana study, conducted in 1990; the trend that women are not reaching the highest areas in the law profession has continued, as evidenced by the Indiana study conducted in 2004.<sup>7</sup>

This article begins with an overview of women in the workforce and their presence in education; and then goes on to review the current data on women in three settings—higher education faculty, the law, and corporate boards all over the United States. These three, rather disparate, areas were picked for discussion because they highlight the issue that women are underrepresented in all facets of U.S. society. Also, the authors are especially interested in the number of women in law, specifically law school faculty, since this is an area they encounter on a daily basis. Next, the article examines the barriers women encounter in reaching the top positions in their respective fields. In this section, barriers that women face generally are discussed; for instance, gender stereotypes, the struggles of balancing work and family life, and a lack of mentors and mobility are analyzed. This section also examines barriers women face which are specific to higher education, the law, and corporations.

The article concludes with potential solutions to the impediments faced by women in the United States. For example, general recommendations include: that organizations should be amenable to employees working remotely and should

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3 María Pabón López, *The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing the Recent Trends*, 19 HASTINGS WOMEN'S L.J. 53 (2008).

4 *Id.*

5 *Id.* at 55.

6 *Id. passim.*

7 *Id.* at 55.

offer more flex-time and sick leave to both genders. In addition, assumptions regarding the undervaluing of childcare or that women “choose” to work in less demanding jobs need to be altered in U.S. society and worldwide. Regarding the law, various solutions may encompass: a reexamination of the law firm work culture; educating law students about work experiences in the legal profession; and a renewed commitment to addressing the status of women in the law. In the corporate area, solutions involve encouraging women to pursue financial and legal careers, and examining steps taken by other countries regarding the dearth of women on corporate boards.

## **II. WOMEN’S PRESENCE IN THE WORKFORCE AND EDUCATION IN THE U.S.**

### **1. Women in the Workforce**

Women’s participation in the U.S. labour force has increased dramatically since 1950. In 1950 women comprised a mere 34% of the workforce,<sup>8</sup> and in 2012 they comprised 57.7% of the workforce.<sup>9</sup> Interestingly, while women’s participation in the labor force has increased, men’s participation has declined.<sup>10</sup> Furthermore, the number of women in the workforce is projected to grow more rapidly than the number of men. By the year 2020, it is estimated the female workforce will grow by 7.4% while the male workforce will grow by 6.3%.<sup>11</sup> Although women have entered the workforce in large numbers and their participation in the workforce is projected to continually increase; today, as it was historically, there is a demarcation between the genders in what type of work they perform.<sup>12</sup>

Women with children are working more than ever; and there are a large number of women working with young children at home. In 2011, 55.8% of

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8 Mitra Toossi, *A Century of Change: the U.S. Labor Force, 1950 – 2050*, MONTHLY LAB. REV., May 2002, at 15.

9 Table 3. *Employment status of the civilian non-institutional population by age, sex, and race*, U.S. BUREAU OF LAB. STAT. (2013).

10 U.S. CONG. JOINT EXEC. COMM., REP. ON WOMEN AND THE ECONOMY 2010: 25 YEARS OF PROGRESS BUT CHALLENGES REMAIN 2 (Aug. 2010) [hereinafter ‘WOMEN AND ECONOMY’].

11 *Occupational Outlook Handbook, Projections Overview*, U.S. BUREAU OF LAB. STAT. § Labor Force (Mar. 2012).

12 See Table 11. *Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity, Annual Averages 2012*, U.S. BUREAU OF LAB. STAT. (2013) [hereinafter ‘Table 11’]; WOMEN AND ECONOMY, *supra* note 10, at 4; Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 UMKC L. REV. 293, 293 (2004).

mothers who had children under one year worked and 63.9% of mothers who had children two years of age worked.<sup>13</sup> The number of women with children under eighteen that work has also risen. In 1975, 47.4% of women with children under the age of eighteen worked,<sup>14</sup> compared to 70.6% in 2011.<sup>15</sup> Of these working women, a little over one-third were the sole income producers of the household.<sup>16</sup> Among families where both husbands and wives worked, wives earned more than their husbands 29.2% of the time.<sup>17</sup> The number of women working part-time versus the number working full-time has remained relatively constant over approximately the last thirty years.<sup>18</sup>

Historically, U.S. women's salary has lagged behind that of men's. Although the numbers have gotten closer, there is still a substantial difference between the two; especially for women of color. Compare women's percentage of median annual earnings to men's—in 1960, women made 60.7% of men's salaries and in 2011, they made 77.0% of men's salaries.<sup>19</sup> The ratio between men and women's salaries was fairly consistent at around 60% from the 1960s to around 1982.<sup>20</sup> Interestingly, this longtime statistic has a biblical reference—a chapter in Leviticus states that a woman's value is worth thirty shekels of silver and a man's value is worth fifty.<sup>21</sup>

13 Table 6. *Employment status of mothers with own children under 3 years old by single year of youngest child and marital status, 2010-2011 annual averages*, U.S. BUREAU OF LAB. STAT. (2012).

14 WOMEN AND ECONOMY, *supra* note 10, at 4.

15 Table 5. *Employment status of the population by sex, marital status, and presence and age of own children under 18, 2010-2011 annual averages*, U.S. BUREAU OF LAB. STAT. (2012). The percent of men with children under eighteen that work is 93.5%. *Id.*

16 WOMEN AND ECONOMY, *supra* note 10, at 11.

17 WOMEN IN THE LABOR FORCE: A DATEBOOK, REP. 1040 BY U.S. BUREAU OF LAB. STAT. Table 25 (Feb. 2013) [hereinafter 'DATEBOOK 2013'].

18 WOMEN AND ECONOMY, *supra* note 10, at Figure 4. In 1984, 27% of women worked part-time and 73% worked full-time. This number is basically the same in 2009, with 26% working part-time and 74% working full-time. *Id.*

19 Table P-40, *Women's Earnings as a Percentage of Men's Earnings by Race and Hispanic Origin: 1960 to 2011*, U.S. CENSUS BUREAU, CURRENT POPULATION SURV., ANN. SOC. & ECON. SUPPLEMENTS (2012) [hereinafter 'Table P-40']. In 2011, the median annual earnings in dollars for full-time women workers was 34,875; and the median annual earnings in dollars for full-time men workers was 42,459. *PINC-05, Work Experience in 2011—People 15 Years Old and Over by Total Money Earnings in 2011, Age, Race, Hispanic Origin, and Sex*, U.S. CENSUS BUREAU, CURRENT POPULATION SURV., ANN. SOC. & ECON. SUPPLEMENTS (2012) (see Female, 15 Years and Over, All Races, and Men, 15 Years and Over, All Races).

20 See Table P-40, *supra* note 19.

21 *Leviticus* 27:1-4 (Holy Bible, New International Version).

The most recent statistics from 2013 show the median weekly earnings for women who worked full-time was \$704 and for men it was \$867.<sup>22</sup> Thus, women are making 81.2% of men's salaries.<sup>23</sup> All minority women made less than their male counterparts.<sup>24</sup> Also, women of color, excluding Asians, made less than white women.<sup>25</sup> The wage gap between the genders was greatest for white women and Asian women.<sup>26</sup> Age also plays a role in the salary difference between women and men. However, there are differences between reporting years. For instance, in 2010 younger women's salaries were the closest to men's; and as women aged the salary gap between the genders increased for each age category.<sup>27</sup> Contrasted to 2011, where the salaries for the youngest category of women, ages 16-19, showed a larger gap than the 20-24 and 25-34 age categories.<sup>28</sup> Although the difference between men's and women's salaries may not seem drastic, this variance can have significant consequences. For example, "if current wage patterns continue, a 25-year-old woman, who works full-time, will earn \$523,000 less than the average 25-year-old man will by the time they both reach 65."<sup>29</sup>

Statistics demonstrate that education has a positive effect on earnings—the higher the educational level, the more money one earns. However, women's

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22 *Usual Weekly Earnings of Wage and Salary Workers First Quarter 2013*, U.S. BUREAU OF LAB. STAT. Table 2 (Apr. 2013).

23 *See id.*

24 *Id.* Black or African American women made \$597, 89.63 % of Black or African American men, at \$666. Hispanic or Latina women made \$531, 89.54% of Hispanic or Latino men, at \$593. Asian women made \$831, 78.54% of Asian men, at \$1058. *Id.*

25 *Id.* White women made \$723. *Id.* White men made \$888; thus, white women made 81.41% of white men's salaries. *Id.*

26 *Id.* White women made 81.41% of white men's salaries, and Asian women made 78.54% of Asian men's salaries. *Id.*

27 HIGHLIGHTS OF WOMEN'S EARNINGS IN 2010, REP. 1031 BY U.S. BUREAU OF LAB. STAT. Table 1 (July 2011) [hereinafter 'HIGHLIGHTS OF EARNINGS 2010'].

28 HIGHLIGHTS OF WOMEN'S EARNINGS IN 2011, REP. 1038 BY U.S. BUREAU OF LAB. STAT. Table 1 (Oct. 2012) [hereinafter 'HIGHLIGHTS OF EARNINGS 2011']. Women's earnings as a percent of men's for the following age groups in 2010 and 2011: 16-19 years, 94.6% (2010), 88.6% (2011); 20-24 years, 93.8% (2010), 93.2% (2011); 25-34 years, 90.8% (2010), 92.3% (2011); 35-44 years, 79.9% (2010), 78.5% (2011); 45-54 years, 76.5% (2010), 76.0% (2011); 55-64 years, 75.2% (2010), 75.1% (2011); 65 years and older, 75.7% (2010), 80.9% (2011). *Id.*; HIGHLIGHTS OF EARNINGS 2010, *supra* note 27, at Table 1.

29 Deborah Kolb, et al., *Confronting the Gender Gap in Wages*, WOMEN'S MEDIA (Apr. 14, 2009), available at <http://www.womensmedia.com/money/107-confronting-the-gender-gap-in-wages.html>.

salaries lag behind men's in all areas of education attainment.<sup>30</sup> For example, women's salary for all education levels is 81.04% of men's salary; and women's salary is 74.92% of men's salary for all college graduates.<sup>31</sup> Furthermore, the median salary of management, professional, and other related occupations for women was 71.61% of men's.<sup>32</sup> Even though women's salaries lag, women's growth of earnings has been higher than that of men's. Earnings for women with a college degree have increased by 30.8% since 1979; whereas earnings for men with a college degree have increased by only 16.3%.<sup>33</sup> The numbers are even more startlingly when all women and men are compared, not just college graduates. "Women's earnings grew 44% from 1970 to 2007, compared with [a] 6% growth for men."<sup>34</sup>

The wage gap also varies depending on where a woman resides. For example, women in the state of Louisiana make only 67.2% of men's salaries.<sup>35</sup> Compare this figure to women residing in Louisiana's sister states—Mississippi, 74.8%; Arkansas, 74.6%; and Texas, 80.1%.<sup>36</sup> The lowest wage gap for women is in the District of Columbia, where they earn 91.4% of men's salaries.<sup>37</sup> And in Puerto Rico, women actually make more than men, at 103.3%.<sup>38</sup>

30 See DATEBOOK 2013, *supra* note 17, at Table 17.

31 *Id.* The following is a list of women's salary as a percentage of men's for various levels of degrees: Doctoral, 79.07%; Professional, 77.07%; Master's, 74.26%; Bachelor's, 77.56%; Associate's, 77.50%; high school graduate with no college, 76.94%. *Id.*

32 Table 39. *Median weekly earnings of full-time wage and salary workers by detailed occupation and sex*, U.S. CENSUS BUREAU, CURRENT POPULATION SURV., HOUSEHOLD DATA, ANN. AVERAGES (2012) [hereinafter 'Table 39']. Women in the field of education administrators had one of the lowest percentages of men's salaries, at 67.18%. *Id.*

33 HIGHLIGHTS OF EARNINGS 2011, *supra* note 28, at Chart 3.

34 RICHARD FRY & D'VERA COHN, WOMEN, MEN AND THE NEW ECONOMICS OF MARRIAGE, PEW RESEARCH CTR. 3 (Jan. 2010).

35 *Median Earnings for Full-Time, Year-Round Workers by State and Sex*, NAT'L WOMEN'S LAW CTR. (2010) (NWLCL based its calculations on 2010 American Community Survey data) [hereinafter '*Median Earnings by State and Sex*']. Note that the data from American Community Survey is for 2009, and thus, it is a bit different than the data from NWLC. *Men's and Women's Earnings for States and Metropolitan Statistical Areas: 2009*, AM. CMTY. SURVEY BRIEFS, 4, Table 1 (Sept. 2010) [hereinafter '*Statistical Areas*']. Louisiana has the second highest wage gap, the only other state that is larger is Wyoming, where women make 63.8% of men's salaries. *Median Earnings by State and Sex*.

36 *Median Earnings by State and Sex*, *supra* note 35.

37 *Id.*

38 *Statistical Areas*, *supra* note 35, at 4, Table 1.

Interestingly, for both genders, marriage has a positive impact on earnings. In 2011, women who were married and had a spouse present had median weekly earnings of \$741 compared to single women, at \$595, and women of other marital status, at \$662.<sup>39</sup> Men who were married and had a spouse present had median weekly earnings of \$955 compared to single men, at \$614, and men of other marital status, at \$804.<sup>40</sup> Moreover, the beneficial impact of marriage was also observed in a study of lawyers.<sup>41</sup> It found that marriage, for both genders, was positively associated with attaining partnership in a law firm.<sup>42</sup>

## **2. Women's Presence in Higher Education**

Women have been attaining degrees at high rates and “now outnumber men in every group among college students who are U.S. citizens.”<sup>43</sup> For example, in the 1899-1900 academic year, women received only: 19% of Bachelor's degrees; 19% of Master's degrees; and 6% of Doctor's degrees.<sup>44</sup> Compared to the 2011-12 academic year, where women received: 56.9% of Bachelor's degrees; 59.6% of Master's degrees; and 52.1% of Doctor's degrees.<sup>45</sup> Throughout all these categories, the number of women attaining degrees is going to decline slightly for a few years.<sup>46</sup> However, even with this decline, women are still projected to earn more degrees than men in every category.<sup>47</sup> Then after this period of decline, the number of women earning degrees is expected to continue increasing.<sup>48</sup>

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39 HIGHLIGHTS OF EARNINGS 2011, *supra* note 28, at Table 1. Other marital status includes women who are divorced, separated, or widowed. *Id.*

40 *Id.* Other marital status includes men who are divorced, separated, or widowed. *Id.*

41 Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 ANNALS AM. ACAD. POL. & SOC. SCI. 130, 130, 135-37, 140-41 (2004).

42 *Id.*

43 CHRONICLE OF HIGHER EDUCATION 2011, 42 [hereinafter ‘CHRONICLE OF HIGHER EDUCATION 2011’].

44 Table 283. *Degrees conferred by degree-granting institutions, by level of degree and sex of student: Selected years, 1869-70 through 2020-22*, NAT'L CTR. FOR EDUC. STAT. (2012).

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.* It is projected that by the 2021-22 academic year, women will attain: 57.9% of Bachelor's degrees; 61.9% of Master's degrees; and 53.6% of Doctor's degrees. *Id.*

### III. WOMEN AMONG FACULTY IN HIGHER EDUCATION, THE LAW, AND CORPORATIONS IN THE U.S.

#### 1. Women's Presence among Faculty in Higher Education

Even today, there is a lack of diversity amongst faculty in higher education.<sup>49</sup> For instance, “[b]etween 1979 and 2000, only fifty-two out of an estimated 2,100 predominately white institutions were headed by African Americans.”<sup>50</sup> The typical president of a university is still an aging white man.<sup>51</sup> The first national census of Chief Academic Officers (CAOs), published by the American Council on Education in 2009, revealed fairly limited diversity among current CAOs; reporting that: 85% of all CAOs are white; 6% are African American; 4% are Hispanic; 2% are Asian American; and approximately 1% are American Indian.<sup>52</sup> Women were underrepresented as well—less than half of CAOs are women (40%).<sup>53</sup> Also, “[o]nly 30 percent of CAOs intend to seek a presidency, despite ACE data that show the most common path to the president’s office is through the CAO position.”<sup>54</sup>

49 For example, minorities comprise the following percentages of faculty and administrators in higher education: 18.0% of total faculty members (with African Americans representing the largest portion of faculty, at 7.0%; followed closely by Asians, at 6.3%; and then Latinos, at 4.2%); 12.6% of college and university presidents; 22.9% of total staff members; and 18.8% of executive, managerial, and administrative staff. CHRONICLE OF HIGHER EDUCATION 2012 [hereinafter ‘CHRONICLE OF HIGHER EDUCATION 2012’]. And the percentage of minority professors is 14.1. CHRONICLE OF HIGHER EDUCATION 2011, *supra* note 43, at 28.

50 Kamille Wolff, *From Pipeline to Pipe Dream: The HBCU Effect on Law School Deans of Color*, 14 J. GENDER RACE & JUST. 765, 776 (2011) (citing ALBERT L. SAMUELS, IS SEPARATE UNEQUAL?: BLACK COLLEGES AND THE CHALLENGE TO DESEGREGATION 105 (2004)).

51 CHRONICLE OF HIGHER EDUCATION 2012, *supra* note 49, at 19. Men comprise 73.6% of college presidents and women comprise 26.4%. The percentage of college presidents who are white is 87.4%. *Id.*

52 *US: National census of chief academic officers*, UNIV. WORLD NEWS, Feb. 15, 2009, available at <http://www.universityworldnews.com/article.php?story=20090212185733308> (last visited Apr. 25, 2013) [hereinafter ‘*Chief Academic Officers*’].

53 *ACE Releases First National Census of Chief Academic Officers*, AM. COUNCIL ON EDUC., Feb. 9, 2009, available at <http://www.acenet.edu/AM/Template.cfm?Section=HENA&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=31044> (last visited June 3, 2012).

54 *Chief Academic Officers*, *supra* note 52.

In the 1974-75 academic year, women comprised 23% of full-time faculty.<sup>55</sup> This number has risen to 42% in the 2010-11 academic year.<sup>56</sup> Thus, although progress is being made, male faculty still outnumber female faculty.<sup>57</sup> The largest discrepancy is in the rank of professorship; with men numbering 126,526 thousand, and women numbering a mere 49,132 thousand.<sup>58</sup> Additionally, “women are less likely . . . to be promoted to full professor than men, and their promotions take longer.”<sup>59</sup> There are also more women (44%) in full-time non-tenure track positions than men (33%).<sup>60</sup> This difference between the genders in full-time non-tenure track positions has remained relatively constant since 1976.<sup>61</sup> At least one commentator has called this difference between men and women an unstated “mommy track.”<sup>62</sup>

In the realm of academia, parallel to the general workforce, women’s salaries lag behind that of men’s across all types of institutions and at each faculty rank.<sup>63</sup> This salary gap is especially great at the rank of full professor.<sup>64</sup> Also, women spend more time mentoring and teaching than do men.<sup>65</sup> One study found:

55 John W. Curtis, *Persistent Inequality: Gender and Academic Employment*, AM. ASS’N OF UNIV. OF WOMEN Figure 2 (Apr. 2011); available at [http://www.google.com/url?sa=t&rct=j&q=persistent%20inequality%3A%20gender%20and%20academic%20employment&source=web&cd=1&ved=0CFEQFjAA&url=http%3A%2F%2Fwww.aaup.org%2FNR%2Frdonlyres%2F08E023AB-E6D8-4DBD-99A0-24E5EB73A760%2F0%2Fpersistent\\_inequity.pdf&ei=YgviT-j5PIeC2wXH3vzLCw&usg=AFQjCNG2hlbACV19N1VgyAf9QOaFz76fQ](http://www.google.com/url?sa=t&rct=j&q=persistent%20inequality%3A%20gender%20and%20academic%20employment&source=web&cd=1&ved=0CFEQFjAA&url=http%3A%2F%2Fwww.aaup.org%2FNR%2Frdonlyres%2F08E023AB-E6D8-4DBD-99A0-24E5EB73A760%2F0%2Fpersistent_inequity.pdf&ei=YgviT-j5PIeC2wXH3vzLCw&usg=AFQjCNG2hlbACV19N1VgyAf9QOaFz76fQ).

56 *Id.*

57 CHRONICLE OF HIGHER EDUCATION 2011, *supra* note 43, at 28. There are 406,848 thousand men compared to 306,071 thousand women. *Id.*

58 *Id.* This means women comprise roughly 34% of full professors. *Id.*

59 Joya Misra, et al., *The Ivory Ceiling of Service Work*, 97 ACADEME no. 1 (Jan./Feb. 2011), available at <http://www.aaup.org/AAUP/pubsres/academe/2011/JF/Feat/misr.htm>. A study done by the Modern Language Association found it took women on average “from 1 to 3.5 years longer than men to attain the rank of professor.” *Standing Still: The Associate Professor Survey*, MODERN LANGUAGE ASS’N 5 (2009) [hereinafter ‘*Standing Still*’].

60 Curtis, *supra* note 55, at Figure 4.

61 *Id.* In 1976, the number of women full-time faculty in non-tenure track positions was 26% and the number of men was 16%. *Id.*

62 *Id.* at 8.

63 *Id.* at 4. See also ANNUAL REPORT ON THE ECONOMIC STATUS OF THE PROFESSION 1999-2000 IN ACADEME, AM. ASS’N OF UNIV. PROFESSORS 18-19 (2000) [hereinafter ‘ANNUAL REPORT IN ACADEME 2000’].

64 CHRONICLE OF HIGHER EDUCATION 2011, *supra* note 43, at 22. Women’s salary as a percentage of men’s salary for the following types of faculty: Professor, 87.6%; Associate Professor, 93.3%; Assistant Professor, 93.1%; Instructor, 96.1%; and Lecturer, 90.5%. *Id.*

65 Curtis, *supra* note 55, at 5.

*Although associate professors of both sexes worked similar amounts of time overall—about sixty-four hours a week—the distribution of work time varied considerably. Men spent seven and a half hours more a week on their research than did women. Even if these differences in research time occurred only during semesters, not during summer or holiday breaks, this would mean that men spent in excess of two hundred more hours on their research each year than women. On the other hand, women associate professors taught an hour more each week than men, mentored an additional two hours a week, and spent nearly five hours more a week on service. This translates to women spending roughly 220 more hours on teaching, mentoring, and service over two semesters than men at that rank.*<sup>66</sup>

Data indicates that faculty who spend more time researching rather than teaching have higher basic salaries.<sup>67</sup> Again, as mentioned previously, this variance in salaries between the sexes can have significant consequences. For example, “initial inequities in the salaries of women and men faculty are very difficult to resolve through the annual process of awarding merit or across-the-board salary increases.”<sup>68</sup>

Paralleling higher education in general, gender segregation persists in almost all areas of legal education—the more prestigious positions are overwhelming male, and the less prestigious positions are overwhelming female.<sup>69</sup> A thirteen year longitudinal study of courses listed by the Association of American Law Schools (AALS) showed that this occupational segregation by gender was widespread and growing.<sup>70</sup> For instance, top positions at law schools, like deans and library directors, are generally stereotyped as male, while less prominent positions are

66 Misra et al., *supra* note 59.

67 Laura Walter Perna, Visiting Assistant Professor, Dep’t of Educ. Policy & Leadership, Coll. of Educ., Univ. of Md., Paper presented at the annual meeting of the Am. Educ. Research Ass’n: Sex Differences in Faculty Salaries: A Cohort Analysis 14, 16 (Apr. 2000).

68 *Id.* at 3.

69 Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 314, 323 (2000) [hereinafter ‘Neumann, *What the Statistics Show*’]; Richard K. Neumann Jr., *Women in Legal Education: A Statistical Update*, 73 UMKC L. REV. 419, 425 (2004) [hereinafter ‘Neumann, *A Statistical Update*’]. See also Kornhauser, *supra* note 12, at 295 (finding women are congregated in less prestigious and/or more traditionally feminine subjects and males teach more prestigious harder male courses); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 199-200 (1997) (finding men were more likely to teach high status courses, such as constitutional law, while women were more likely to teach low status courses, like skills).

70 Kornhauser, *supra* note 12, at 295.

stereotyped as female, like assistant deans and non-director librarians.<sup>71</sup> In addition to these positions being associated with a male/female stereotype, most law deans and tenured full professors are men while assistant deans and off-tenure track skills teachers are usually female.<sup>72</sup>

Furthermore, men receive a higher percentage of the associate professor appointments and women tend to be appointed at the assistant professor rank.<sup>73</sup> Also, women obtain tenure at lower rates than men.<sup>74</sup> Additionally, women are hired into positions off the conventional tenure track at high rates “and at those same schools proportionately fewer women are being hired onto the conventional tenure track.”<sup>75</sup> Those who teach in the off tenure track usually teach skills in clinics, simulation courses, and legal writing programs, and are paid much less (often less than half) than conventionally tenure-tracked teachers.<sup>76</sup> Within the fields of clinicians and legal writing, women are paid less than men, even when controlling for employment status and experience.<sup>77</sup> Evidence indicates that this trend persists in other academic positions, whereby “women are paid less than similarly qualified men within the same status (tenured, tenure-track, etc.).”<sup>78</sup>

There is an extremely small number of law deans who are women, and of those, an even smaller portion are minorities.<sup>79</sup> “[W]omen deans are a relatively

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71 Neumann, *What the Statistics Show*, *supra* note 69, at 346.

72 Neumann, *A Statistical Update*, *supra* note 69 at 442.

73 Neumann, *What the Statistics Show*, *supra* note 69, at 313, 340-41. *See also* Merritt & Reskin, *supra* note 69, at 199 (noting “men were more likely than women to begin teaching at a higher professorial rank”); Neumann, *A Statistical Update*, *supra* note 69, at 435 (men are more likely to be hired as associate professors than women).

74 Neumann, *What the Statistics Show*, *supra* note 69, at 313. *See also* ANNUAL REPORT IN ACADEME 2000, *supra* note 63, at 26 (noting women still achieve tenure at lesser rates than men).

75 Neumann, *What the Statistics Show*, *supra* note 69, at 346. *See also* Neumann, *A Statistical Update*, *supra* note 69, at 431 (finding “that the least secure, least compensated, and lowest status teaching jobs in law schools are predominantly female”).

76 Neumann, *What the Statistics Show*, *supra* note 69, at 323. *See also* Neumann, *A Statistical Update*, *supra* note 69, at 441 (in the sectors of legal education that are surveyed for salary and gender—librarians and legal writing—men tend to be paid more than women).

77 Neumann, *What the Statistics Show*, *supra* note 69, at 338-39.

78 *Id.* at 347.

79 Herma Hill Kay, *Women Law School Deans: A Different Breed, or Just one of the Boys?*, 14 YALE J.L. & FEMINISM 219, 219 (2002).

new phenomenon.”<sup>80</sup> From 1951 to 1981 the number of women law deans varied, with the highest number serving simultaneously in 1975.<sup>81</sup> For approximately the next twenty years, the number of women law deans rose fairly steadily. In the 2008-2009 academic year, there were forty-one women law deans; making the percentage of women deans 20.6%.<sup>82</sup> Interestingly, female law deans tend to serve longer terms than male law deans.<sup>83</sup> However, minority women deans serve shorter terms than both men and women generally.<sup>84</sup>

From 1950 to 2003 there have been five minority women who have served as deans at ABA accredited law schools.<sup>85</sup> Of these five, only one led a school that was not part of the Historically Black Colleges and Universities (HBCU).<sup>86</sup> Since 2003 through the 2005-06 academic year, three women of color served as deans; two at traditional universities and one at a HBCU.<sup>87</sup> In the 2008-2009 academic year, there were five minority women law deans.<sup>88</sup>

## 2. Women in the Law

In 1988, a report issued by the American Bar Association’s Commission on Women in the Profession observed that there was a great deal of gender

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80 *Id.* at 224.

81 *Id.* In 1975, there were five women law school deans. *Id.*

82 *Id.*; 2008-2009 *AALS Statistical Report on Law Faculty*, ASS’N OF AM. LAW SCH., available at <http://www.aals.org/statistics/2009dlt/titles.html> [hereinafter ‘*AALS Statistical Report on Law Faculty*’]. Unfortunately the authors were unable to find more current statistics from a reputable source.

83 Padilla, *supra* note 1, at 474-75. Women served an average of 6.62 years, while men served an average of four years. *Id.*

84 *Id.* at 474-76. Women deans of color served an average of 3.83 years. *Id.* at 475.

85 Wolff, *supra* note 50, at 783; Padilla, *supra* note 1, at 461-62.

86 Padilla, *supra* note 1, at 462. A HBCU is defined as “any historically black college or university that was established prior to 1964, whose principal mission was, and is, the education of black Americans, and that is accredited by a nationally recognized accrediting agency or association.” *Integrated Postsecondary Education Data System, Glossary, Historically black colleges and universities*, NAT’L CTR. FOR EDUC. STAT., available at <http://nces.ed.gov/ipeds/glossary/?charindex=H> (last visited Apr. 25, 2013).

87 Padilla, *supra* note 1, at 462.

88 *AALS Statistical Report on Law Faculty*, *supra* note 82. There was one Latina dean and four African American deans. *Id.* Unfortunately the authors were unable to find more current statistics from a reputable source. By 2012, the number has increased by at least one, since Dean López is Latina.

discrimination in the legal profession.<sup>89</sup> It noted that “higher” positions in the law were overwhelmingly held by men and women were “overrepresented in the least lucrative segments of the profession.”<sup>90</sup> Additionally, it commented on the fact that women were failing to reach partnership in private practice.<sup>91</sup> It concluded its statistical introduction by stating “time alone is unlikely to alter significantly the underrepresentation of women” in higher legal positions and “[e]ntry of women into these positions at a rate proportional to their numbers out of law school requires serious examination of the structures, practices and attitudes of the profession.”<sup>92</sup>

Have things improved in the past twenty-five years? Many believe they have and think that women have “arrived” in the law profession.<sup>93</sup> Women have pervaded all levels of law practice—they have gone “from exclusion to full integration.”<sup>94</sup> They make up about half of law school classes<sup>95</sup> and are awarded almost half of all law degrees.<sup>96</sup> For instance, in the 2011-12 class, women made up 47% of J.D. students.<sup>97</sup> And in 2011, 47.3% of law degrees went to females.<sup>98</sup> Furthermore, approximately one-third of those practicing law are women.<sup>99</sup> Yet, “growth in . . . numbers alone does not equal progress.”<sup>100</sup>

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89 ABA Comm’n on Women in the Profession, Report to the House of Delegates 5 (1988).

90 *Id.*

91 *Id.*

92 *Id.*

93 López, *supra* note 3, at 53.

94 *Id.*

95 See ABA, Enrollment and Degrees Awarded 1963-2011 Academic Years (2012), *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/enrollment\\_degrees\\_awarded.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.pdf) [hereinafter ‘ABA, Enrollment and Degrees’].

96 See ABA, JD. and LL.B Degrees Awarded 1981-2011 (2012), *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/jd\\_llb\\_degrees\\_awarded.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_llb_degrees_awarded.pdf) [hereinafter ‘ABA, JD. and LL.B Degrees’].

97 ABA, Enrollment and Degrees, *supra* note 95.

98 ABA, JD. and LL.B Degrees *supra* note 96.

99 ABA Comm’n on Women in the Profession, A Current Glance at Women in the Law 1 (2013), *available at* [http://www.americanbar.org/content/dam/aba/marketing/women/current\\_glance\\_statistics\\_feb2013.pdf](http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_feb2013.pdf) [hereinafter ‘ABA, A Current Glance at Women in the Law’].

100 López, *supra* note 3, at 55.

Empirical evidence illustrates that although, as previously mentioned, women are entering law schools, receiving degrees, and going into the practice of law at high rates; “they are failing to reach the higher levels within the profession.”<sup>101</sup> Thus, to borrow a term from economics, the glass ceiling that had pervaded the law profession back in 1988 is still present in 2013.<sup>102</sup> The remainder of this section examines various statistics on women in the legal profession.

Today, women comprise 31.1% of all lawyers.<sup>103</sup> At law firms in 2011, 45.4% of associates and 47.7% of summer associates were women.<sup>104</sup> However, women are glaringly underrepresented as partners in law firms. Within law firms, women comprise 19.5% of partners<sup>105</sup> and a mere 2.0% of partners are women of color.<sup>106</sup> Furthermore, women make up only 15% of equity partners.<sup>107</sup> Among the 200 largest firms, women comprise 4.0% of managing partners,<sup>108</sup> and 11% of the largest firms have no women on their respective governing committees.<sup>109</sup> A survey of graduates from the University of Michigan Law School found that women were less likely than men to “become partners, even after controlling for a number of individual characteristics”—race, experience, GPA, family status (marriage and children), working part-time, satisfaction, and having a mentor.<sup>110</sup>

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101 *Id.* at 54.

102 *See also id.* at 59.

103 *Table 11, supra* note 12.

104 *Law Firm Diversity Wobbles: Minority Numbers Bounce Back While Women Associates Extend Two-Year Decline*, NAPL 1 (Nov. 2011) [hereinafter ‘*Law Firm Diversity Wobbles*’]. The number of women associates has declined for the second year in a row. *Id.* Percentages of women associates: in 2009, 45.66%; in 2010, 45.41%; and in 2011, 45.35%. *Id.*

105 *Id.* In 1995, the percentage was 13.4% and in 2010 it was 19.4%. *Women in the Law in the U.S.*, CATALYST 2 (2012). Thus, the rate of change is extremely small. *Id.* “Given the same rate of change, Catalyst estimates that it will take more than a woman lawyer’s (born in 2010) lifetime to achieve equality.” *Id.*

106 *Law Firm Diversity Wobbles, supra* note 104, at 1.

107 Barbara M. Flom, REPORT OF THE SEVENTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS, NAT’L ASS’N OF WOMEN LAWYERS AND THE NAWL FOUND. 3 (Oct. 2012).

108 ABA, A Current Glance at Women in the Law, *supra* note 99, at 2.

109 Barbara M. Flom & Stephanie A. Schart, REPORT OF THE SIXTH ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS, NAT’L ASS’N OF WOMEN LAWYERS AND THE NAWL FOUND. 4 (Oct. 2011). And 35% of firms have only one woman on their governing committee. *Id.*

110 Noonan & Corcoran, *supra* note 41, at 140.

Evaluated against law firms, statistics show fairly similar numbers of women who serve as general counsel in Fortune 500 and 1000 companies. At Fortune 500 Companies, women comprised 21.6% of general counsel;<sup>111</sup> and among these women, seventeen were minorities.<sup>112</sup> At Fortune 1000 Companies, women made up 15.6% of general counsel;<sup>113</sup> and among these women, five were minorities.<sup>114</sup>

Comparable to the low number of women at law firms and serving as general counsel at Fortune Companies, women are underrepresented among both federal and state judgeships.<sup>115</sup> In 2012, women held only 24.1% of federal judgeships and 27.5% of state judgeships.<sup>116</sup> Critical mass is “the threshold where women’s presence and perspectives make a difference.”<sup>117</sup> This is reached when women make up one-third of the membership in a group.<sup>118</sup> Today, critical mass has been achieved in three states for federal judgeships<sup>119</sup> and eight states and the District of Columbia for state judgeships.<sup>120</sup>

Historically, women’s salaries have been lower than men’s in the law profession. Unfortunately, this trend continues. See table below for the median weekly salaries of men compared to women in the legal field.<sup>121</sup>

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111 ABA, A Current Glance at Women in the Law, *supra* note 99, at 3.

112 *MCCA Survey: Women General Counsel At Fortune 500 Companies Reaches New High*, MINORITY CORPORATE COUNSEL ASS’N (Aug. 2012) [hereinafter ‘MCCA Survey’].

113 ABA, A Current Glance at Women in the Law, *supra* note 99, at 3.

114 *MCCA Survey*, *supra* note 112.

115 “No state has achieved equal representation of women (50% of all seats)” on the bench. *Women in Federal and State-level Judgeships*, CTR. FOR WOMEN IN GOV’T AND CIVIL SOC’Y, Highlights (2011) [hereinafter ‘*Women in Judgeships 2011*’].

116 Dina Refki et al., *Women in Federal and State-level Judgeships*, CTR. FOR WOMEN IN GOV’T AND CIVIL SOC’Y 1 (2012).

117 *Women in Judgeships 2011*, *supra* note 115, at 8.

118 *Id.*

119 Those states are New Jersey, Vermont and Connecticut. Refki et al., *supra* note 116, at 3-5.

120 Those states are Vermont, Maryland, Massachusetts, Montana, Minnesota, Rhode Island, Oregon and Washington. *Id.*

121 Table comprised of statistics from Table 39 of the Labor Force Statistics from the years 2003 through 2012. See Table 39, *supra* note 32.

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Men	\$1,610	\$1,710	\$1,748	\$1,891	\$1,783	\$1,875	\$1,934	\$1,895	\$1,884	\$2,055
Women	\$1,237	\$1,255	\$1,354	\$1,333	\$1,381	\$1,509	\$1,499	\$1,461	\$1,631	\$1,636
Women's Salaries as a Percentage of Men's	76.8%	73.4%	77.5%	70.5%	77.5%	80.5%	74.9%	77.1%	86.6%	79.6%

Interestingly, the salary of women lawyers as a percentage of men's showed a substantial increase (of 9.5%) between 2010 and 2011. Unfortunately this trend did not continue between the years 2011 and 2012, where the number decreased by 7%.

### 3. Women's Presence on Corporate Boards

Corporate boards are discussing diversity at greater lengths than ever. For instance, in 2009, the SEC:

*[A]dopted a rule to assess a company's commitment to developing and maintaining a diverse board. In summary, public companies are now required to disclose whether diversity is a factor in considering candidates for nomination to the board of directors, and how the company assesses how effective the policy has been.*<sup>122</sup>

However frequent these discussions have been, it does not change the fact that the number of women on corporate boards still remains dismally small, especially the number of minority women. An interesting statistic was reported in 2007, that corporations with more women board directors outperform those with the least representation of women by over 50%.<sup>123</sup> A brief highlight of the composition of Fortune 500 and 1000 corporate boards follows.

<sup>122</sup> Luis A. Aguilar, SEC Commissioner, Keynote Speech before the 2011 Hispanic Association of Corporate responsibility, An Update on Diversity and Financial Literacy (Apr. 30, 2011), available at <http://sec.gov/news/speech/2011/spch043011laa.htm>. See also Proxy Disclosure Enhancements, 74 Fed. Reg. at 68, 355.

<sup>123</sup> *The Bottom Line: Corporate Performance and Women's Representation on Boards*, CATALYST (2007) (the exact percentage was fifty-three) [hereinafter '*Bottom Line* 2007']. For more information on how corporate boards perform better with women members see *The Bottom Line: Corporate Performance and Women's Representation on Boards (2004-2008)*, CATALYST (2011) [hereinafter '*Bottom Line* 2011'].

In 2012, a mere 16.6% of women were directors at Fortune 500 Companies;<sup>124</sup> and women comprised 15.6% of directors at Fortune 1000 Companies.<sup>125</sup> Thus, approximately 85% of directors at the largest corporations in the United States are men. Furthermore, in 2012, only 14.3% of executive officers were women at the Fortune 500 Companies.<sup>126</sup> Among the top earners at Fortune 500 Companies, women comprised a scant 8.1%.<sup>127</sup> Women of color fare even worse than white women on corporate boards. In 2012, 15% of Fortune 500 corporate boards had no minorities,<sup>128</sup> and a mere 3% of minority women were directors.<sup>129</sup>

Additionally, many corporations have few women, or none, serving on their boards. At Fortune 500 Companies in both 2011 and 2012, less than 20% of company's boards had 25% or more women directors and approximately 25% of companies had no women serving on their boards.<sup>130</sup> At Fortune 1000 Companies: 16% have no women; 36% have one woman; 33% have two women; 11% have three women; 4% have four women; and none have five or six women.<sup>131</sup> Moreover, in both 2011 and 2012, more than 69.8% of Fortune 500 Companies had no minority women directors and no companies had three or more women of color directors serving together.<sup>132</sup>

124 *2012 Catalyst Census: Fortune 500 Women Board Directors*, CATALYST 1 (2012) [hereinafter '*Fortune 500 Women Board Directors 2012*']. In 2011, women held 16.1% of board seats. *Id.* And in 2010, they held 15.7% of board seats. *2011 Catalyst Census: Fortune 500 Women Board Directors*, CATALYST 1 (2011).

125 *Women Gain in US Company Boardrooms According to 2012 2020 Gender Diversity Index*, 2020 WOMEN ON BOARDS (Oct. 2012), available at <http://www.2020wob.com/about/press/release/women-gain-us-company-boardrooms-according-2012-2020-gender-diversity-index> (last visited Apr. 25, 2013).

126 *2012 Catalyst Census: Fortune 500 Women Executive Officers and Top Earners*, CATALYST 1 (2012) [hereinafter '*Fortune 500 Women Executive Officers and Top Earners 2012*']. In 2011, women held 14.1% of executive officer positions. *Id.* And in 2010, they held 14.4% of executive officer positions. *2011 Catalyst Census: Fortune 500 Women Executive Officers and Top Earners*, CATALYST 1 (2011) [hereinafter '*Fortune 500 Women Executive Officers and Top Earners 2011*'].

127 *Fortune 500 Women Executive Officers and Top Earners 2012*, *supra* note 126, at 1. In 2011, the percentage was 7.5. *Id.* And in 2010, the percentage was 7.6. *Fortune 500 Women Executive Officers and Top Earners 2011*, *supra* note 126, at 1.

128 2012 Spencer Stuart Board Index, 21 (2012).

129 *Fortune 500 Women Board Directors 2012*, *supra* note 124, at 2.

130 *Fortune 500 Women Executive Officers and Top Earners 2012*, *supra* note 126, at 2.

131 *Women on Boards: Review & Outlook*, CTPARTNERS, Exhibit 1 (2012), available at [http://www.ctnet.com/uploadedFiles/Women-On-Boards\\_2012.pdf](http://www.ctnet.com/uploadedFiles/Women-On-Boards_2012.pdf).

132 *Fortune 500 Women Board Directors 2012*, *supra* note 124, at 3.

#### IV. BARRIERS THAT WOMEN FACE—GENERALLY AND THOSE SPECIFIC TO HIGHER EDUCATION, THE LAW, AND CORPORATIONS IN THE U.S.

##### 1. Barriers that Women Face—Generally

Articles and commentary that discuss why women are underrepresented today in the areas of faculty in higher education, the law, and corporations all have recurring themes. Therefore, this section examines the barriers that women face in general; and thus, these impediments can be generalized to all women.

In the past, it was easy to spot gender discrimination—a woman, after returning from maternity leave would be demoted or passed over for a promotion or partnership; or a promotion would go to a less experienced male colleague.<sup>133</sup> However, this type of overt discrimination is rarely seen today. Instead, “discrimination against women lingers in a plethora of work practices and cultural norms that only appear unbiased.”<sup>134</sup> Consequently, this type of discrimination frequently goes unnoticed and is rarely questioned.<sup>135</sup> Nevertheless, these work practices and cultural norms “create a subtle pattern of *systemic* disadvantage, which blocks all but a few women from career advancement.”<sup>136</sup>

A barrier to women’s progress is gender stereotypes. Stereotypes still persist that men are better fit to be leaders.<sup>137</sup> For example, qualities traditionally associated with leaders are masculine; such as forcefulness, assertiveness, and being authoritative.<sup>138</sup> However, when women exhibit these “masculine” behaviors they are often punished. For instance, men who are perceived as autocratic leaders receive positive evaluations and women receive negative evaluations for exhibiting

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133 See Debra E. Meyerson & Joyce K. Fletcher, *A Modest Manifesto for Shattering the Glass Ceiling*, 78 HARV. BUS. REV. 127 (2000).

134 *Id.* at 128. See also Rebecca K. Lee, *Core Diversity*, 19 TEMP. POL. & CIV. RTS. L. REV. 477, 478 (2010).

135 Meyerson & Fletcher, *supra* note 133, at 128.

136 *Id.* (emphasis in original).

137 Padilla, *supra* note 1, at 485.

138 DEBORAH L. RHODE, THE DIFFERENCE “DIFFERENCE” MAKES: WOMEN AND LEADERSHIP 8 (2003).

the same behavior.<sup>139</sup> Thus, it is true that “[a]ggressive and hard-charging women violate unwritten rules about acceptable social conduct.”<sup>140</sup> Moreover, the same type of action can be perceived as strength in the man and weakness in a woman.<sup>141</sup> For instance, compare “he speaks too fast—it’s hard for him to come down to our level” with “she speaks too quickly. She must be nervous.”<sup>142</sup>

Aside from the gender stereotype that men are better leaders, there are still traditional notions that women should do more house work than men.<sup>143</sup> For example, a study that surveyed female scientists from some of the most prestigious research institutions found:

*[D]espite women’s considerable gains in science in recent decades, female scientists do nearly twice as much housework as their male counterparts. Partnered women scientists...do 54 percent of the cooking, cleaning, and laundry in their households; partnered men scientists do just 28 percent. This translates to more than ten hours a week for women—in addition to the nearly sixty hours a week they are already working as scientists—and to just five hours for men.*<sup>144</sup>

Stereotypes may also have a profound effect on minority women. This is evidenced by a study that examined the issue of race through leadership categorization theory.<sup>145</sup> This theory espouses that leaders are viewed as “most effective when they are perceived to possess prototypical characteristics of leadership.”<sup>146</sup> Interestingly, the study found that “being White” was an attribute of the leader prototype.<sup>147</sup> Whites were judged to be “more effective leaders”

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139 KARIN KLENKE, WOMEN AND LEADERSHIP: A CONTEXTUAL PERSPECTIVE 166 (1996); Padilla, *supra* note 1, at 507.

140 SHERYL SANDBERG & NELL SCOVELL, LEAN IN: WOMEN, WORK AND THE WILL TO LEAD 17 (2013).

141 Neumann, *What the Statistics Show*, *supra* note 69, at 349.

142 *Id.* at 340 (citing Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 340 (1996)).

143 Curtis, *supra* note 55, at 8.

144 Londa Schiebinger & Shannon K. Gilmartin, *Housework is an Academic Issue*, 96 ACADEME no. 1 (Jan./Feb. 2010), available at <http://www.aaup.org/AAUP/pubsres/academe/2010/JF/feat/schie.htm>.

145 See Ashleigh Shelby Rosette, et al., *The White Standard: Racial Bias in Leader Categorization* 93 J. APPL. PSYCH. 758 (2008).

146 *Id.* at 758.

147 *Id.*

and to possess “more leadership potential.”<sup>148</sup> Thus, whites “may be more likely to be promoted to leadership positions more frequently than racial minorities.”<sup>149</sup>

Another barrier for women is that work performed by men is usually seen as competent, no matter how well done or whether done at all.<sup>150</sup> Conversely, work performed by women, no matter how effective or to what result, frequently goes unrecognized.<sup>151</sup> For example, when the Modern Language Association adopted an anonymity rule, there was an extreme increase in the submission/acceptance ratios of papers authored by women.<sup>152</sup> This acute increase “was considered such clear evidence of prior sex discrimination that the anonymity rule was extended to all MLA Journals.”<sup>153</sup> Similarly, another journal had the same result when it introduced a double-blind review.<sup>154</sup> The Journal of Behavioral Ecology had “a significant increase in female first-authored papers, a pattern not observed in a very similar journal that provides reviewers with author information.”<sup>155</sup>

Another example of women being perceived as less competent than men occurred “[w]hen resumes, identical except for name and sex, were given to chairmen of psychology departments, more men were considered suitable for tenure-track positions than women. Male candidates also were offered the hypothetical positions at higher ranks.”<sup>156</sup> The above examples demonstrate that work is devalued or seen as less competent by the mere fact it bears a woman’s name. However, this is not to say this is deliberate or intentional; rather, it is more likely that some type of unconscious bias is taking place.

148 *Id.*

149 *Id.* at 773.

150 Padilla, *supra* note 1, at 508; Neumann, *A Statistical Update*, *supra* note 69, at 442.

151 Padilla, *supra* note 1, at 508; Neumann, *A Statistical Update*, *supra* note 69, at 442. “[I]n academia, as elsewhere in life, people who are in a position to make or influence decisions about others tend, at least unconsciously, to credit what men do and discredit what women do, even if men and women are doing the same thing, because of a tendency to consider males and male traits the ‘norm’ in all situations other than those in which women predominate.” *Id.* See also SANDBERG & SCOVELL, *supra* note 140, at 43.

152 Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don’t Know about Women Law Professors*, 25 ARIZ. L. REV. 869, 884-85 (1983).

153 *Id.* at 885.

154 See Amber E. Budden et al., *Double-Blind Review Favors Increased Representation of Female Authors*, 23 TRENDS IN ECOLOGY & EVOLUTION 1 (2007).

155 *Id.* at 4.

156 Zenoff & Lorio, *supra* note 152, at 885.

The lack of mentors is another barrier for women. Until a short time ago, women had few role models, while men have had them for many years.<sup>157</sup> Also, networking appears to give men an advantage. The “[o]ld boys’ networks persist not because of pernicious intent, but rather because they already exist and provide recognizable benefits to in-group members.”<sup>158</sup> When making recommendations or when mentoring colleagues for leadership positions, men who are already in leadership positions are more likely to think of other in-group members.<sup>159</sup> “It is very natural for people with decision-making power over leadership promotions to choose people who resemble themselves.”<sup>160</sup> It is also interesting that “people who have white male mentors often do better than those who are mentored by women and minorities, precisely because the former have more power than the latter.”<sup>161</sup> Within the legal profession women lawyers, particularly minority women, tend to be dissatisfied with the availability of mentors. For example, a study reported that 43% of white women and 31% of women of color were satisfied with the availability of mentors.<sup>162</sup>

Many women in positions of power are seen as “token” leaders.<sup>163</sup> This means that all their actions are closely scrutinized and often “they must exceed standards to be considered acceptable.”<sup>164</sup> This is especially true for women of color. An ABA report on multicultural women noted “[a]s a result of stereotypes and assumptions, multicultural women find themselves over scrutinized and expected to conform to incompatible work styles. In addition, multicultural women contend with isolation, hostility, and disrespect.”<sup>165</sup> Thus, it appears many women “are not willing to sacrifice their personal lives, their personal styles, or their sanity” to move into leadership positions.<sup>166</sup> Moreover, occasionally diversity is seen as a

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157 Padilla, *supra* note 1, at 500; SANDBERG & SCOVELL, *supra* note 140, at 8, 67.

158 *Id.* at 511.

159 *Id.* at 511-12.

160 *Id.* at 512.

161 Cristina González, *Leadership, Diversity and Succession Planning in Academia*, CTR. FOR STUDIES IN HIGHER EDUC. 8 (May 2010).

162 *Women in the Law: Making the Case*, CATALYST 15 (2001) [hereinafter ‘*Making the Case*’].

163 Padilla, *supra* note 1, at 517.

164 *Id.* See also SANDBERG & NELL, *supra* note 140, at 161.

165 *The Burdens of Both, The Privileges of Neither*, A Report of the Multicultural Women Attorneys Network, ABA 17 (1994).

166 Padilla, *supra* note 1, at 529.

“one-time commitment.”<sup>167</sup> Examples include, once a woman is hired, no more women are sought; or when a woman is hired to a position of power, when she leaves, a white male will be hired to fill that vacancy.<sup>168</sup>

Another barrier for women is a lack of mobility. “Few women have the luxury of relocating in order to attain job advancement. Ninety percent of women reported they would relocate only if their husbands secured employment. [However, only] [s]eventy-five percent of men would relocate for a better job with or without the spouse’s employment.”<sup>169</sup>

Statistics also show that women leaders are more likely to be single and to never have had children. “From an early age, girls get the message that they will have to choose between succeeding at work and being a good mother.”<sup>170</sup> For instance, 52% of executive women have never had children; 26% of executive women are single; 16% of executive women are divorced or separated; and only 46% of the top corporate women are married.<sup>171</sup> These statistics are all higher than the national norm.<sup>172</sup> Contrast the statistics of leading women to those of men: 94.6% of executive men are married compared to 81.6% of men in the general population.<sup>173</sup>

Today, as it has been historically, the path to a successful career in most disciplines is through a linear sequence of vertical steps.<sup>174</sup> This type of linear climb is problematic for women due to inflexible work schedules.<sup>175</sup> As one woman noted, “[h]aving control over your schedule is the only way that women

167 González, *supra* note 163, at 8.

168 *Id.*

169 Regina M. Watkins et al., *The Juxtaposition of Career and Family: A Dilemma for Professional Women*, ADVANCING WOMEN IN LEADERSHIP J. (1998), available at [http://www.advancingwomen.com/awl/winter98/awlv2\\_watkins5.html](http://www.advancingwomen.com/awl/winter98/awlv2_watkins5.html).

170 SANDBERG & NELL, *supra* note 140, at 92.

171 *Myths About Women in Business*, FEMINIST MAJORITY FOUND. (2012), available at [http://feminist.org/research/business/ewb\\_myths.html](http://feminist.org/research/business/ewb_myths.html) (last visited Apr. 26, 2013).

172 *Id.*

173 *Id.*

174 See Padilla, *supra* note 1, at 514; Anne-Marie Slaughter, *Why Women Still Can't Have it All*, ATLANTIC (July/Aug. 2012), available at <http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-can-8217-t-have-it-all/9020/>.

175 Padilla, *supra* note 1, at 514; Slaughter, *supra* note 176.

who want to have a career and a family can make it work.”<sup>176</sup> Furthermore, it is not just inflexible workplaces that hinder women; oftentimes this climb necessitates excessive travel and working long hours at the office.<sup>177</sup> During this linear climb, women frequently take time off from work or work part-time in order to have and care for young children.<sup>178</sup> In addition, women may have other dependent care responsibilities, such as the care of elderly relations.<sup>179</sup>

“The women who have managed to be both mothers and top professionals are superhuman, rich, or self-employed.”<sup>180</sup> Women who have reached top positions of power tend to espouse to the younger generation “that ‘having it all’ is, more than anything, a function of personal determination.”<sup>181</sup> However, some powerful women of today have a problem with that way of thinking. One notes that the coining of the phrase “[h]aving it all” is “[p]erhaps the greatest trap ever set for women.”<sup>182</sup> Another noted these types of statements were really “half-truths.”<sup>183</sup> And these “half-truths” purport it is possible to reach the top if women: are committed enough; marry a supportive spouse; and sequence their lives to have both career and family.<sup>184</sup>

When women take time off, work part-time, or accept non-tenured positions in order to assume a care giving role, they “are still more often than not restricted from mainstream access to leadership positions.”<sup>185</sup> For instance, a survey of lawyers found that taking time off or working part-time significantly decreased a woman’s probability of partnership.<sup>186</sup> Moreover, there are a number of women who have made it to the top in their respective fields by sacrificing the work/

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176 Slaughter, *supra* note 174 (quoting Mary Matalin).

177 *Id.*; Lee, *supra* note 134, at 483-84.

178 Padilla, *supra* note 1, at 520.

179 *Id.* at 514.

180 Slaughter, *supra* note 174.

181 *Id.*

182 SANDBERG & NELL, *supra* note 140, at 119.

183 Slaughter, *supra* note 174.

184 *Id.*

185 Padilla, *supra* note 1, at 514; *see also* Curtis, *supra* note 55, at 6-7.

186 Noonan & Corcoran, *supra* note 41, at 130, 135-37, 141.

family balance.<sup>187</sup> For example, look at a small sample of women in top positions who have children compared with men:

*Every male Supreme Court justice has a family. Two of the three female justices are single with no children. And the third, Ruth Bader Ginsburg, began her career as a judge only when her younger child was almost grown. The pattern is the same at the National Security Council: Condoleezza Rice, the first and only woman national-security advisor, is also the only national-security adviser since the 1950s not to have a family.*<sup>188</sup>

It is often argued that women “choose” to opt out of the more traditional demanding jobs, especially when they decide to work part-time or enter the non-tenured faculty track.<sup>189</sup> However, is this really the case? The assumption that women “choose” less demanding jobs in order to be able to provide care giving is really no more than that—an assumption. If the workplace was more forgiving to all workers, not just to women, when they take time off or work part-time—this would enable more women to reach the top echelons in various fields. As mentioned previously, the women of today struggle against barriers that push them into less prestigious positions due to the fact they must devote time away from their careers to care for others.

Another assumption seen today is that the role of parenting should be done mainly by women. Of course, more men than ever are stepping up and becoming more involved in their children’s lives; however, the belief still persists that the caretaking of children is a woman’s task. For instance:

*Famous and high-powered men who have children are rarely feted for their ability to be both dads and career-driven movers and shakers. Men are expected to be out in the world while someone else cares for their kids. However, well-known women who have children are frequently promoted on magazine covers as both career successes and (‘devoted’) moms. The message is simultaneously encouraging (‘She can do it, so can you!’) and demeaning (‘She can do it, why can’t you?’).*<sup>190</sup>

187 Slaughter, *supra* note 174.

188 *Id.*

189 Curtis, *supra* note 55, at 6-7.

190 Melissa Stanton, ‘Supermoms’ Should Tell the Truth About Their Perfect Lives, ATLANTIC (June 25, 2012, 4:13 PM), available at <http://www.theatlantic.com/business/archive/2012/06/supermoms-should-fess-up-about-their-staff/258903/> (emphasis in original).

Thus, if the assumption persists that women should care for children, “the workplace norm will continue to be male-oriented, with work-family policies considered a female-need accommodation.”<sup>191</sup>

## **2. Barriers that are Specific to Women among Faculty in Higher Education, the Law, and Corporations in the U.S.**

In the preceding section, barriers women are confronted with in general were explored. This section attempts to highlight various obstacles that are more particular to women among faculty in higher education, the law and corporations.

### *i. Reasons Women are Underrepresented among Faculty Generally in Higher Education Institutions*

There are several barriers for minorities, including women, to reach the top echelon in the field of academia. These include: “hostile campus environments, salary inequities, isolation, and overwhelming personal and professional duties.”<sup>192</sup> Minority women are often confronted with more barriers than either white women or minority men.<sup>193</sup> These women frequently cite “being treated as outsiders by white colleagues and as potential competitors by minority men.”<sup>194</sup>

One problem, faced by all women, is that male faculty outnumber female faculty; the largest discrepancy being among full professors.<sup>195</sup> In addition, women are promoted to full professor at a lower rate than men.<sup>196</sup> Thus, because the majority of faculty is white men, it is easy to presume much of faculty hiring is effected by that segment of the population.<sup>197</sup> Due to these barriers, it is not

191 *Id.*

192 Wolff, *supra* note 50, at 784 (citing Wilma J. Henry & Nicole M. Glenn, *Black Women Employed in the Ivory Tower: Connecting for Success*, 29 ADVANCING WOMEN LEADERSHIP J. (2009), available at [http://advancingwomen.com/awl/awl\\_wordpress/black-women-employed-in-the-ivory-tower-connecting-for-success-2/](http://advancingwomen.com/awl/awl_wordpress/black-women-employed-in-the-ivory-tower-connecting-for-success-2/)).

193 Padilla, *supra* note 1, at 462.

194 RHODE, *supra* note 138, at 13.

195 CHRONICLE OF HIGHER EDUCATION 2011, *supra* note 43, at 28.

196 Misra et al., *supra* note 59. A study done by the Modern Language Association found it took women on average “from 1 to 3.5 years longer than men to attain the rank of professor.” *Standing Still*, *supra* note 59, at 5.

197 Pamela Trotman Reid, *Black and Female in Academia*, THE PRESIDENCY, AM. COUNCIL ON HIGHER EDUC. 7 (2012).

surprising that women, especially minority women, are underrepresented among faculty in higher education.<sup>198</sup>

Securing a diverse faculty is extremely important for institutions of higher education. This is so, because there is a large presence of minority students in these institutes; therefore, leadership of these institutes should reflect the student population.<sup>199</sup> Furthermore, the minority population is projected to rapidly expand in the next fifty years; especially the Latino and Asian populations, which are expected to more than double in size by the year 2060.<sup>200</sup> Moreover, while minority populations are projected to grow, the white population is projected to slowly decline.<sup>201</sup>

Women are underrepresented at the level of presidency in higher education for a number of reasons. Presidents usually stem from the pool of academic officers, an area of academia that has traditionally been comprised of white males.<sup>202</sup> This process of mainly looking only to academic officers in order to locate future presidents puts women at a disadvantage.<sup>203</sup> It also stymies “access to new ideas, new viewpoints, and innovative ways of addressing new challenges.”<sup>204</sup> Furthermore, when seeking chief academic officers, colleges and universities often

198 For example, African American women hold fewer positions in higher education than African American men. LENA WRIGHT MYERS, *A BROKEN SILENCE: VOICES OF AFRICAN AMERICAN WOMEN IN THE ACADEMY* 12 (2002).

199 Today 37% of the United States population is minority. *U.S. Census Bureau Projections Show a Slower Growing, Older, More Diverse Nation a Half Century from Now*, U.S. Census Bureau Dec. 12, 2012, available at <http://www.census.gov/newsroom/releases/archives/population/cb12-243.html> (last visited Apr. 25, 2013) [hereinafter ‘*U.S. Census Projections*’]. And in higher education 39% of the current student population is minority. CHRONICLE OF HIGHER EDUCATION 2012, *supra* note 42, at 31. See also Martha Fallgatter Walda, *On Board with Diversity*, THE PRESIDENCY, AM. COUNCIL ON EDUC. 9 (2008).

200 *U.S. Census Projections*, *supra* note 199. The Latino population will grow from 53.4 million in 2012 to 128.8 million (a 41.5% increase) in 2060 and the Asian population from 15.9 million in 2012 to 34.4 million (a 46.4% increase) in 2060. *Id.*

201 *Id.* The population projections for whites show that the population is going to peak “in 2024, at 199.6 million, up from 197.8 million in 2012.” But then it is expected to “slowly decrease, falling by nearly 20.6 million from 2024 to 2060.” *Id.*

202 James C. Renick, *The Spectrum Initiative: Advancing Diversity in the American College President*, THE PRESIDENCY, AM. COUNCIL ON EDUC. 3 (2008).

203 William E. Kirwan, *Diversify the American College Presidency*, THE PRESIDENCY, AM. COUNCIL ON EDUC. 5 (2008).

204 *Id.*

hire outside the institution; thereby overlooking potentially qualified candidates who are currently present at that institute.<sup>205</sup>

The academic field of law mirrors the field of higher education generally; thus it is no surprise that women are underrepresented. At the beginning of a professoriate career, males receive more associate professorship appointments than females.<sup>206</sup> Also, women are tenured at lower rates than men.<sup>207</sup> One commentator noted “[t]he statistics create the impression that women are welcome in legal education in subservient roles but otherwise are greeted, at best, with ambivalence.”<sup>208</sup>

Many of the reasons behind the low representation of female deans parallel the reasons behind the underrepresentation of women at the level of president in colleges and universities. Most deans have the academic rank of a full professor; thus, this is the pool from which the majority of deans are drawn.<sup>209</sup> In the 2008-2009 academic year, women held merely 29.9% of full professorships.<sup>210</sup> Of the 13.5% minority professors, only 5.5% were women.<sup>211</sup> Thus, because the pool from which law deans are drawn is so small for women, especially for minority women, it is not surprising there are a low number of women deans. However, the relative lack of women holding the rank of professor does not tell the entire story. As one researcher noted, “[i]f the female percentage of law school deans in 1999-2000 had been equal to the female percentage of full professors, 40 law schools would have had female deans. That is exactly twice the number of schools that actually did have female deans at the time.”<sup>212</sup> An additional explanation for

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205 González, *supra* note 161, at 2.

206 Neumann, *What the Statistics Show*, *supra* note 69, at 313, 340-41. See also Merritt & Reskin, *supra* note 69, at 199 (finding “men were more likely than women to begin teaching at a higher professorial rank”); Neumann, *A Statistical Update*, *supra* note 69, at 435 (men are more likely to be hired as associate professors than women).

207 Neumann, *What the Statistics Show*, *supra* note 69, at 313. See also ANNUAL REPORT IN ACADEME 2000, *supra* note 63, at 26 (noting women achieve tenure at lesser rates than men).

208 Neumann, *What the Statistics Show*, *supra* note 69, at 352.

209 *Id.* at 346.

210 AALS *Statistical Report on Law Faculty*, *supra* note 82.

211 *Id.*

212 Neumann, *What the Statistics Show*, *supra* note 69, at 323-24.

the low representation of minority women deans could be because deans of color are less likely to be reappointed to a deanship than whites.<sup>213</sup> As of 2007, there were only two law school deans of color who served as deans of more than one of the majority law schools while there were thirty-two white law school deans who served at more than one decanal appointment.<sup>214</sup>

On a positive note, there are more female law deans than ever before.<sup>215</sup> What does this increase stem from? Some explanations include: more mentors; large numbers of recent women graduates from law school; the Women Dean's Databank, maintained by the AALS; and the fact that recent articles have illustrated how few women actually serve as law school deans.<sup>216</sup>

ii. *Explanations as to why Women are Underrepresented in the Law*

Minority women lawyers face many barriers to reaching the top of their fields. One Catalyst study examined barriers specific to women of color at law firms.<sup>217</sup> The study found that minority women: observed and experienced exclusion and stereotyping more than other demographics; felt overlooked by diversity efforts; were most likely to feel a need to make adjustments to fit in; experienced a lack of candid and constructive feedback as a barrier to advancement; perceived a lack of commitment from senior leadership toward promoting diverse candidates; were less likely to speak to men in the firm; and were also less likely to aspire to partnership.<sup>218</sup> In addition, minority women associates leave firms at extremely high rates—75% leave by their fifth practice year and almost 86% leave before their seventh practice year.<sup>219</sup>

As seen in the section which explored barriers that women generally encounter, females have difficulties balancing the demands of work with those

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213 Wolff, *supra* note 50, at 772; LeRoy Pernell, *Reflecting on the Dream of the Marathon Man: Black Dean Longevity and its Impact on Opportunity and Diversity*, 38 U. TOL. L. REV. 571, 575 (2007).

214 Wolff, *supra* note 50, at 773.

215 Neumann, *A Statistical Update*, *supra* note 69, at 441.

216 Padilla, *supra* note 1, at 474-79.

217 See *Making the Case*, *supra* note 162, at 15.

218 *Id.* at 5, 7.

219 Deepali Bagati, *Women of Color in U.S. Law Firms*, CATALYST 1-2 (2009).

of family life. However, among lawyers, both genders espouse difficulties with this task. For example, over 70% of men and women, including partners and associates, note that balancing the demands of work with those of personal life is difficult.<sup>220</sup> Over half of attorneys have children (57% of female lawyers, 65% of male lawyers).<sup>221</sup> Interestingly, the number of law school deans who have children is higher than that of attorneys in general. One study found that 70% of women law deans have children and over 90% of male law deans have children.<sup>222</sup> Nearly twice as many female lawyers (84%) as male lawyers (44%) have a spouse who is employed full-time.<sup>223</sup> Furthermore, women are more likely to be single.<sup>224</sup> Thus, although more men continue to take an active role in parenting, “female lawyers continue to carry the majority of the load in this area.”<sup>225</sup>

Frequently attorneys who struggle to balance the demands of their professional lives with the demands of their personal lives, particularly those rearing children, seek alternative work schedules.<sup>226</sup> To balance the needs of their families, lawyers regularly turn to part-time work.<sup>227</sup> One study found that “almost one in two women and one in five men want a reduced work schedule.”<sup>228</sup>

In 2012, nearly all of the firms (98%) listed in the National Directory of Legal Employers have either formal or informal flexible work policies; however, only 6.2% of lawyers in those firms work on a part-time basis.<sup>229</sup> More women work part-time than men, of the 6.2% of attorneys who work part-time, over 70% were women.<sup>230</sup> “Among women lawyers overall, 13.5% work part-time; among female partners, 11.7% are working part-time; and among women associates the figure

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220 *Making the Case*, *supra* note 162, at 40.

221 *Id.* at 12.

222 Padilla, *supra* note 1, at 527.

223 *Making the Case*, *supra* note 162, at 12.

224 Padilla, *supra* note 1, at 520. *See also* RHODE, *supra* note 138, at 15.

225 López, *supra* note 3, at 94.

226 *Id.*

227 *Id.*

228 *Making the Case*, *supra* note 162, at 42.

229 *Rate of Part-Time Work Among Lawyers Unchanged in 2012—Most Working Part-time Continue to Be Women*, NAPL, Feb. 21, 2012, available at [http://www.nalp.org/part-time\\_feb2013](http://www.nalp.org/part-time_feb2013) (last visited Apr. 25, 2013).

230 *Id.*

was 10.1%. This contrasts with a rate of just 2.7% among all male lawyers.”<sup>231</sup> Most associates who work part-time are women (89.4%) and among partners working part time, 64.1% were women.<sup>232</sup> During the six years the NALP has compiled this information, the distribution of part-time associates has changed very little between the genders; however, the distribution of part-time partners among men and women has changed to some extent.<sup>233</sup> “[I]n 2006 almost 72% of part-time partners were women; in 2012 that figure was about 65%.”<sup>234</sup> Interestingly, attorneys employed at large firms, as a group, work part-time less than the general workforce and also less than other specialized segments of the workforce population.<sup>235</sup> For example, 6.2% of lawyers at major firms work part-time compared to approximately 13.7% of the workforce as a whole and 13.1% of specialized segments of the population, such as engineers, architects, and physicians.<sup>236</sup>

Thus, although a greater number of firms than ever make part-time work available, lawyers are not taking advantage of this type of work schedule.<sup>237</sup> Why? One reason may be the negative perception that is associated with working part-time.<sup>238</sup> Lawyers may be concerned that their superiors and peers will perceive working part-time as the work of an unmotivated, lazy, or uncommitted individual. In addition, “the ever-increasing billable hour requirements at firms” tends to reinforce the negative perceptions associated with working part-time as well as being a major contributor to the difficulties attorneys have at balancing the demands of work and family.<sup>239</sup> Moreover, “[t]hese [billable] requirements show the change in the legal profession from a profession to a business, and the concomitant increased competition at the large law firms which are trend-setters in the profession.”<sup>240</sup>

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231 *Id.*

232 *Id.*

233 *Id.*

234 *Id.*

235 *Id.*

236 *Id.*

237 López, *supra* note 3, at 95.

238 *Id.*

239 *Id.* at 97.

240 *Id.*

The fifty best law firms for women have all made improvements in work-life policies.<sup>241</sup> For example: 100% have reduced hour policies; 44% of have written full-time flex policies; 78% offer full-time telecommuting; 94% of firms allow their reduced-hour lawyers to be eligible for equity partnership; and 78% provide backup childcare at a facility.<sup>242</sup>

iii. *Causes behind Women being Underrepresented in the Corporate Arena*

Most corporate boards are looking for prior CEO experience, industry experience and prior directorship experience when seeking a director.<sup>243</sup> Thus, one reason women may not fare well in the corporate board selection is because they may not possess the necessary experience.<sup>244</sup> Common pathways to corporate board rooms include the executive suite, the government, the law, and financial careers.<sup>245</sup>

Furthermore, most employers use surface or marginal diversity. Surface diversity is when an organization hires diverse employees but then once they are hired, “disregards any differences among its employees and expects them to act in identical ways.”<sup>246</sup> Marginal diversity is when an organization applies employees’ cultural differences in a restrictive way by assigning them to “certain projects, functions, or client and constituent groups based on workers’ particular demographic and cultural characteristics.”<sup>247</sup>

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241 See *Best Law Firms for Women 2011*, NAFE AND FLEX-TIME LAWYERS, “EXECUTIVE SUMMARY” (2011), available at [http://www.wmmsurveys.com/2011\\_NAFE\\_and\\_Flex-Time\\_Lawyers\\_Best\\_LawFirms\\_for\\_Women%20Executive%20Summary.pdf](http://www.wmmsurveys.com/2011_NAFE_and_Flex-Time_Lawyers_Best_LawFirms_for_Women%20Executive%20Summary.pdf).

242 *Id.* at 13, 15, 19.

243 Lawrence J. Trautman, *Boardroom Diversity: Why it Matters* 25 (Apr. 25, 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2047750](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2047750).

244 Nancy M. Carter & Christine Silva, *Women in Management: Delusions of Progress*, HARV. BUS. REV., Mar. 2010, at 19, 19-21; see also Elizabeth A. Nowicki, *Economic Concerns, Beleaguered Corporations, and Women in Corporate Boardrooms*, 30 HAMLINE J. PUB. L. & POL’Y 549, 553-55 (2009).

245 Trautman, *supra* note 243, at 49.

246 Lee, *supra* note 134, at 489.

247 *Id.* at 491.

## V. RECOMMENDATIONS/SOLUTIONS

### 1. In General

U.S. society today is structured around the notion of “time macho,” the need for workers to work longer hours, travel extensively, and be constantly available.<sup>248</sup> A prime example of this is the requirement of high billable hours at law firms.<sup>249</sup> However, even other industries promote the above notion by rewarding those who work long hours and are available twenty-four-seven. One potential solution is for organizations, be they corporations or law offices, to allow for more remote work from home “where the office is a base of operations more than the required locus of work.”<sup>250</sup> This would help members of both genders balance the demands of work with those of family life.

Regarding the climb up the linear ladder, women should view the climb instead as “irregular stair steps,” where they can pass on job opportunities in order to spend more time with family.<sup>251</sup> However, this may be easier said than done. Although more companies are allowing flex-time and leave to tend to sick relatives, this type of “irregular stair step” may be frowned upon.<sup>252</sup> For instance, the United States is the only industrialized nation “without a paid maternity leave policy.”<sup>253</sup> Thus, perception is important and companies should take steps to encourage more flexible career paths.<sup>254</sup> It is important that companies offer flex-time and leave to partake in care giving to both men and women. By doing so, this will help alleviate the negative perceptions people have regarding working part-time or taking time off from work.

People also need to change some of their assumptions regarding women; such as the undervaluation of childcare or that women “choose” to work in less

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248 Slaughter, *supra* note 174.

249 *Id.*

250 *Id.*

251 *Id.* See also SANDBERG & NELL, *supra* note 140, at 53.

252 Slaughter, *supra* note 174.

253 SANDBERG & NELL, *supra* note 140, at 23.

254 Slaughter, *supra* note 174.

demanding jobs.<sup>255</sup> “If women are ever to achieve equality as leaders, then we [women,] have to stop accepting male behaviour and male choices as the default and the ideal. We must insist on changing social policies and bending career tracks to accommodate *our* choices, too.”<sup>256</sup>

## **2. For Higher Education**

In the next few years, there will be a number of vacant presidencies at colleges and universities.<sup>257</sup> Therefore, this is the perfect opportunity to increase diversity at this level in those institutes.<sup>258</sup> In order to bring more women and minorities into the college presidency, institutions should build on prior advancements in diversity.<sup>259</sup> This can be accomplished by striving to promote underrepresented groups through the ranks;<sup>260</sup> especially to department chairs, an area from which presidents are often selected.<sup>261</sup> This, in turn, would give women and minorities the needed access to academic leadership positions.<sup>262</sup>

In addition, institutes should consider novel ways to fill vacant presidencies; for example, looking to nontraditional candidates from outside the realm of academic officers.<sup>263</sup> An institution could also develop training programs for academic leaders.<sup>264</sup> For instance, it could select a handful of young administrators and prepare all of them for a future presidency.<sup>265</sup> Then, it would select the president from that group of administrators.<sup>266</sup> The individuals not selected would then be well trained upper level academic officers.<sup>267</sup>

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255 *See id.*; Curtis, *supra* note 55, at 6-7.

256 Slaughter, *supra* note 174 (emphasis in original).

257 Beverly Daniel Tatum, *Engaging the Restless Professor: Building the Pipeline to the Presidency with Campus Talent*, THE PRESIDENCY, AM. COUNCIL ON EDUC. 11 (2008); Renick, *supra* note 202, at 1.

258 Tatum, *supra* note 257, at 11.

259 Kirwan, *supra* note 203, at 6.

260 *Id.*

261 González, *supra* note 161, at 4.

262 *Id.*

263 Kirwan, *supra* note 203, at 8; Walda, *supra* note 199, at 9.

264 González, *supra* note 161, at 2.

265 *Id.* at 3.

266 *Id.*

267 *Id.*

Building on a topic from a previous section, mentorship is crucial for both students and new faculty. It is important to encourage students to pursue doctoral degrees, which in turn would help to diversify the faculty at institutes of higher education.<sup>268</sup> By mentoring new faculty, mentors can encourage and assist them to become future leaders.<sup>269</sup> This can be accomplished by current presidents forming support networks, imparting their knowledge and experiences, and making the effort to answer questions.<sup>270</sup> Moreover, simply asking minorities to move from the professoriate to the realm of administration can help increase diversity.<sup>271</sup>

### 3. For the Legal Profession

Legal institutions could use a board paradigm shift to effectuate change in the structure of the institution itself rather than asking women to change to fit the existing structure.<sup>272</sup> One way to accomplish this is to switch to a per-project basis.<sup>273</sup> Today, “[b]ecause of the heavily billable hour requirements, the organizational structure of law firms only evaluates and promotes lawyers based on the number of hours they bill yearly and in comparison to their co-workers. This system promotes inefficiency.”<sup>274</sup> Adopting a per-project basis allows attorneys to “complete their projects in an efficient number of hours, leaving more time to take on additional projects or to work reduced schedules.”<sup>275</sup>

A project-based structure would alleviate the need for lawyers to be constantly available while giving schedules more predictability.<sup>276</sup> This type of system would allow attorneys to more easily balance the demands of work and family life.<sup>277</sup> “The ultimate aim of a per-project system would be to redefine the ideal lawyer,

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268 Renick, *supra* note 202, at 12; Scott S. Cowen, *The Changing of the Guard*, THE PRESIDENCY, AM. COUNCIL ON EDUC. 16 (2008); Kirwan, *supra* note 203, at 7.

269 Cowen, *supra* note 268, at 17.

270 *Id.* at 18.

271 Renick, *supra* note 202, at 12.

272 Padilla, *supra* note 1, at 530.

273 López, *supra* note 3, at 97-98.

274 *Id.*

275 *Id.*

276 *Id.* at 98.

277 *Id.*

from a constantly available and inefficient one to one who produces the highest quality work and has a balance of work and life.”<sup>278</sup>

Law schools, along with teaching substantive courses and ethics, should strive to educate future lawyers regarding the demands of the legal profession.<sup>279</sup> It is vital that this education include discussions on ways to balance the demands of work and family life.<sup>280</sup> Potential lawyers, especially women, should know the demands of their profession.<sup>281</sup> Understanding the demands of the profession would enable students to “alter their future course of employment (e.g., by choosing a particular area of practice or legal employment) or at the very least, enter the profession with open eyes.”<sup>282</sup>

One way to educate law students about the demands of the profession would be a state sponsored apprenticeship program.<sup>283</sup> This type of program enables students to spend time in the legal workforce under the supervision of senior lawyers.<sup>284</sup> This experience in the legal workforce would give students important perspectives on the demands of the profession. It would also allow students to impart their experiences to fellow classmates.<sup>285</sup> As it is crucial for students to have mentors during their undergraduate studies, it is important to continue this process for students in law school.<sup>286</sup> Models whereby students are mentored by the attorneys with whom they are apprenticed should be encouraged and considered.<sup>287</sup>

Additionally, law schools could themselves implement a type of apprenticeship course. For example, Georgia State University College of Law

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278 *Id.*

279 *Id.* at 99.

280 *Id.*

281 *Id.*

282 *Id.*

283 *Id.*

284 *Id.*

285 *Id.*

286 *Id.*

287 *Id.*

implemented an experimental course, titled the “Fundamentals of Law Practice.”<sup>288</sup> The course began with fieldwork which partnered students with an attorney in solo practice or in a small firm.<sup>289</sup> This fieldwork component lasted seven weeks.<sup>290</sup> During this aspect of the course, students observed lawyers in various aspects of their practices, such as initial intake interviews, court hearings, depositions, mediations, file review sessions, lawyers at work in their offices, billing practices, and accompanied the attorneys to bar association events.<sup>291</sup> Students then had to prepare a paper on their experiences during the fieldwork component.<sup>292</sup> After the fieldwork, the remainder of the course was structured around “topics drawn from students’ own assessments of the skills, practice management tools, and ethical decision making abilities they would need in practice.”<sup>293</sup> These topics were what the students themselves deemed important during their fieldwork study.<sup>294</sup>

Another solution which could assist students in becoming prepared for the practice of law involves a complete overhaul of law school curriculum. One article proposed the idea of a “legal rotations model,”<sup>295</sup> which is similar to what is done in medical school, where the first two years are spent more in the classroom and the second two years are spent in clinical environments rotating through various specialties.<sup>296</sup> This legal rotations model seeks to combine “early exposure to practical lawyering, traditional study and analysis of law, and meaningful skills-based preparation for a career in the law.”<sup>297</sup> The model also promotes the use of mentors by suggesting that law students have three mentors—an upper-class student, a member of the faculty, and a practicing attorney.<sup>298</sup>

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288 Charlotte S. Alexander, *Learning to be Lawyers: Professional Identity and the Law School Curriculum*, 70 MD. L. REV. 465, 467 (2011).

289 *Id.* at 468.

290 *Id.* at 469.

291 *Id.*

292 *Id.* at 470.

293 *Id.* at 472.

294 *See id.*

295 Drew Coursin, *Acting Like Lawyers*, 2010 WIS. L. REV. 1461, 1467.

296 *Id.* at 1466, 1478-80, 1490.

297 *Id.* at 1481.

298 *Id.* at 1482-83.

Because traditional case study method is an important aspect of legal education, especially in the first year of law school, this model seeks to incorporate exposure of the practice of law in real and simulated settings into the first year curriculum.<sup>299</sup> In each first year course, some hands-on activity should be implemented; such as drafting agreements in Contracts or pleadings in Civil Procedure.<sup>300</sup> Furthermore, students should receive more feedback throughout the course in the form of frequent skill-based assignments rather than one traditional final exam at the end of the semester.<sup>301</sup>

In the second year students enter a rotations model, which is part simulation and part clinical.<sup>302</sup> Once students enter these rotations, they do not return to traditional classroom settings.<sup>303</sup> Instead, they attend check-in sessions with fellow students and administrators to discuss their experiences.<sup>304</sup> Simulation rotations are more in-class skill set learning workshops where students do not interact with live clients.<sup>305</sup> Clinical legal rotations are similar to traditional law school clinics, where students work with live clients.<sup>306</sup>

In the third year, students either enter a legal residency or an advanced rotation.<sup>307</sup> In legal residencies third year students work full time for a law firm and perform the work of a first year associate, but do not receive compensation.<sup>308</sup> They are called “apprentice associates.”<sup>309</sup> An advantage of this system is that by the end of the apprenticeship these law students are ready to enter the legal field as practicing attorneys.<sup>310</sup> For advanced rotations, the students “would delve deeply into complex skills development” and receive more “individualized feedback than” in their second year.<sup>311</sup>

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299 *Id.*

300 *Id.* at 1483-84.

301 *Id.* at 1486.

302 *Id.* at 1489.

303 *Id.* at 1488.

304 *Id.* at 1488-89.

305 *Id.* at 1499-93.

306 *Id.* at 1491-92.

307 *Id.* at 1495.

308 *Id.* at 1496-97.

309 *Id.* at 1497.

310 *Id.* at 1498.

311 *Id.*

Implementing this type of curriculum at a law school has two major benefits. First, it provides students with the necessary tools to be practice ready upon graduation from law school. Second, it helps impart knowledge to students regarding the demands of the legal profession by giving them an understanding of the potential challenges involved in balancing the demands of work with those of family life.

Over the past fifteen years task forces have been created through the joint efforts of bar associations and state supreme courts.<sup>312</sup> These task forces have focused on many issues, including diversity and gender equality.<sup>313</sup> However, additional efforts should be made concerning “the experiences in the legal profession of other underrepresented groups, such as racial, religious, ethnic and sexual-orientation minorities.”<sup>314</sup> Moreover, it is imperative that gender inequality be scrutinized further.<sup>315</sup> “[T]wo specific areas that need more attention and further analysis: The disparity in financial compensation between the genders and the elevation of more female judges to the bench.”<sup>316</sup>

Also, research into gender equality in the legal profession in other countries may help to highlight solutions that could be implemented here in the United States.<sup>317</sup> Moreover, as this article seeks to accomplish, a comparison of women in the legal field to women in other professions is important.<sup>318</sup> Disciplines such as the medical profession and business may help illustrate similar barriers with which women are confronted and may also offer potential solutions to the legal profession.<sup>319</sup>

Although women are entering the legal profession at high rates, they are failing to reach the most prestigious positions—partner, judge, and tenured faculty. Thus, “[n]either the passage of time nor the slowly trickling pipeline” has led to women

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312 López, *supra* note 3, at 100.

313 *Id.*

314 *Id.*

315 *Id.*

316 *Id.*

317 *Id.*

318 *Id.* at 101.

319 *Id.*

gaining access to the aforementioned positions.<sup>320</sup> Therefore, “[f]emale lawyers continue to be ensconced in the ‘50/15/15 conundrum’ where it has been 15 years since women comprised 50% of law students but only constituted 15% of law firm partners.”<sup>321</sup> However, “this should not be cause for pessimism; rather, it should usher in an era of renewed commitment to addressing the concerns” raised in this article.<sup>322</sup>

#### **4. For the Corporate Arena**

As mentioned previously, most corporate boards are seeking prior experience when looking for directors, and common pathways to corporate boardrooms include the executive suite, the government, the law, and financial careers.<sup>323</sup> One commentator noted that in order to help women gain the experience which would make them more attractive candidates for boards, they should be encouraged to pursue law and financial degrees.<sup>324</sup>

Instead of using surface or marginal diversity, which stymie diversity, employers should embrace the differences between employees and realize minorities have new viewpoints and experiences to contribute to the organization.<sup>325</sup> In essence, organizations should use core diversity. They should “question the traditions and power dynamics that have exclusionary effects, and provide[] an antidote in the form of drawing out and incorporating diverse members’ various ideas concerning the organization’s central work.”<sup>326</sup> Additionally, one commentator suggests activist investors should demand more women board members and that law schools should encourage women to take corporate law courses.<sup>327</sup>

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320 *Id.*

321 *Id.* (citing NAWL’S FIRST NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS, NAT’L ASS’N OF WOMEN LAWYERS AND THE NAWL FOUND. 1 (Oct. 2006), *available at* <http://nawl.timberlakepublishing.com/files/NAW1%20FINAL%20PUBLICATION%2010-25-06%20SURVEY%20REPORT.pdf>).

322 *Id.*

323 Trautman, *supra* note 243, at 25, 49.

324 *Id.* at 49; *see also* Nowicki, *supra* note 244, at 559-60.

325 Lee, *supra* note 134, at 495.

326 *Id.* at 494.

327 Nowicki, *supra* note 244, at 558-60.

Looking to other countries may generate solutions as well. For example, Norway, France, Spain and Sweden all have laws requiring corporate boards to have a specific percentage of women.<sup>328</sup> In those countries, the quotas range from twenty-five to fifty percent.<sup>329</sup> These laws are deemed “hard quotas.”<sup>330</sup> There are clear benefits to having women on corporate boards.<sup>331</sup> The value of equality of opportunity for women leaders and the diversity of viewpoints they can bring to the table are only the beginning.

## VI. CONCLUSION

In sum, the status of women leaders in the legal profession, higher education and the board room in the United States is faced with great challenges, while at the same time presents some opportunities for growth and experimentation. A continued spirit of creativity, equality and innovation will continue to afford women opportunities so they can succeed in any leadership endeavor they seek in these professional arenas. Let us all work towards this transcendent goal, for all women in the U.S. and worldwide.

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328 Richard Leblanc, *A Fact-Based Approach to Boardroom Diversity*, 154 DIRECTOR J. 6, 6 (2011).

329 *Id.*

330 *Id.*

331 *Bottom Line* 2007, *supra* note 123; *Bottom Line* 2011, *supra* note 123.