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Recommended Citation

Leah V. Durant, *Gender Bias and the Legal Profession: A Discussion of Why There Are Still So Few Women on the Bench*, 4 U. Md. L.J. Race Relig. Gender & Class 181 (2004).

Available at: <http://digitalcommons.law.umaryland.edu/rrgc/vol4/iss1/6>

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GENDER BIAS AND THE LEGAL PROFESSION: A DISCUSSION OF WHY THERE ARE *STILL* SO FEW WOMEN ON THE BENCH

LEAH V. DURANT*

Since 1869, the year in which the first woman was licensed to practice law,¹ women have made great strides in increasing their presence within the legal profession.² Today, although women comprise nearly 30% of lawyers and roughly 50% of all incoming law students,³ women remain underrepresented in positions most associated with status and power within the legal profession.⁴ Studies researching the plight of women within the field reveal that women account for only about 15% of law firm partners, 10% of law school deans and general counsels, and 5% of managing partners at large firms.⁵ The lack of female attorneys holding positions of power within the legal field is especially evident on federal benches around the country, where women account for a mere 15% of all federal judges.⁶ Furthermore, although the number of women serving on state courts varies by locality, most state court benches remain predominantly male as well.⁷

Despite recent efforts that have been made to increase the number of women serving in the judiciary, the number of female judges continues to disappoint. This may be due in part to the role that

* J.D., University of Maryland School of Law, 2004. I would like to thank Professor Paula Monopoli for her pioneering work with the Women, Leadership and Equality Program at the University of Maryland School of Law. It was this program that sparked my interest in researching the numerous contributions that women have made (and continue to make) to the legal profession. I would also like to thank family member Michael Milmo for providing me with much needed encouragement and support.

1. Miriam Goldman Cedarbaum, *Women on the Federal Bench*, 73 B.U. L. REV. 39, 39 (1993) (noting that Arabella Mansfield was the first American woman to receive a license to practice law, in 1869).

2. DEBORAH L. RHODE, ABA COMMISSION ON WOMEN IN THE PROFESSION, *THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION* 5 (2001) (commenting that although the legal profession once barred women from its practice, today nearly one third of all practitioners are women).

3. *Id.* at 13-14.

4. *Id.* at 5.

5. *Id.* at 14.

6. *Id.* at 5.

7. Becky Kruse, *Luck and Politics: Judicial Selection Methods and Their Effect on Women on the Bench*, 16 WIS. WOMEN'S L.J. 67, 67 (2001).

gender bias⁸ continues to have on the success of women within the legal profession. While overt instances of discrimination against female attorneys have declined, subtle forms of gender bias persist, preventing women from rising to top leadership positions that might one day lead to judicial appointments.

The primary focus of this article will be to examine gender bias within the legal profession and its effect on the rise of women to the judiciary. Part I will provide an overview of the historical bias encountered by women as they have advanced within the legal profession, and the resulting response to gender bias by the legal community. Part II will discuss how, despite the existence of anti-discrimination legislation, current forms of gender bias persist in the legal workplace and impact the selection of judges, as evidenced by the glass ceiling effect, work-life issues, networking and mentoring opportunities, and access to political contacts and power. Finally, Parts III and IV will suggest solutions for improving the position of women within the legal profession in order to increase their representation on the bench.

I. HISTORICAL GENDER BIAS IN THE LAW AND THE LEGAL PROFESSION: WOMEN'S SLOW ADVANCEMENT AND THE LEGAL PROFESSION'S RESPONSE

A. Historical Gender Bias and the Slow Advancement of Women in the Legal Profession

The small number of female judges serving on courts today is a current manifestation of the history of gender bias within the legal profession. Historically, women experienced significant discrimination in both substantive law and gaining entrance into the legal profession.⁹ It is therefore helpful to provide a brief overview of the obstacles faced by women during their struggle to advance within the legal field.

Up until the early twentieth century, women were not allowed to vote and were largely considered to be the property of their

8. Gender bias is defined as "a tendency to think about or behave towards people primarily on the basis of their sex." Deborah Ruble Round, *Gender Bias in the Judicial System*, 61 S. CAL. L. REV. 2193, 2193 (1988).

9. Deborah Ruble Round, *supra* note 8, at 2194 (noting examples of the legal field's traditional deference towards men).

husbands.¹⁰ In many jurisdictions, married women had no control of their own property and could not obtain credit without their husband's consent.¹¹ Traces of this historical subordination could be seen as recently as the 1970's in the language of state statutes such as the California Civil Code, which contained a chapter placing women in the same legal category as children and idiots.¹²

Historically, women were considered unfit for the practice of law. Women seeking to enter the legal profession were often met with hostility and lawsuits, in which it was reasoned that they were physically ill-suited for the profession, unable to think like lawyers, or unable to contract without the permission of their husbands.¹³ This hostility persisted well into the twentieth century, as many female lawyers found it difficult to gain acceptance from their male peers and were unable to find gainful employment as lawyers after graduating from law school.¹⁴

Despite such blatant examples of bias against women, certain trailblazers gained admission into the legal profession. In 1869, upon gaining admission to the Iowa state bar, Arabella Mansfield became the first woman formally licensed by any state bar to practice law within the United States.¹⁵ Despite being admitted to the legal

10. Louise B. Raggio, *Women Lawyers in Family Law*, 33 FAM. L.Q. 501, 503-04 (1999).

11. See Judith McConnell, *Women in the Law: Changing the Way Courts Do Business*, Keynote Address at the Second Annual Women and the Law Symposium: Women and Family Law, Thomas Jefferson School of Law (Mar. 19, 2002), in 24 T. JEFFERSON L. REV. 199, 200 (2002).

12. *Id.* at 200.

13. See, e.g., *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 141 (1872) (Bradley, J., concurring) ("The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . . The harmony, not to say identity, of interests and views which belong . . . to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment . . . that it became a maxim of [the] system of jurisprudence that a woman had no legal existence separate from her husband. . . . [A] married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him."); *Bennett v. Bennett*, 23 N.E. 17, 19 (N.Y. 1889) (noting that a woman was unable to enter into a binding contract or to file suit at common law, as she was considered to be merely a legal extension of her husband).

14. See Round, *supra* note 8, at 2195. For example, when Supreme Court Justice Sandra Day O'Connor graduated third in her class from Stanford Law School in 1953, having been both a member of the Stanford Law Review and Order of the Coif, the only job offer that she received upon graduation was for a position as a legal secretary. *Id.*

15. Beverly Blair Cook, *Women Judges in the Opportunity Structure*, in WOMEN, THE COURTS, AND EQUALITY 143, 157 (Laura L. Crites & Winifred L. Hepperle eds., 1987). During the mid nineteenth century, preparation for the bar was decentralized, and varied by locality. *Id.* In lieu of attending law school, an individual could study law with a practicing attorney or judge and could thereafter take an examination, which was written and

profession, however, many women were forced to continue the fight to succeed within the legal field and were repeatedly denied admission to law schools.¹⁶ In 1878, after having apprenticed with a California lawyer, Clara Shortridge Foltz was denied admission to the University of California's Hastings School of Law solely because of her gender.¹⁷ Foltz filed suit against the law school and was ultimately admitted, becoming the first female attorney to practice law in the state of California and on the Pacific Coast.¹⁸

The experiences encountered by women such as Mansfield and Foltz reflect the larger bias faced by women in obtaining education. Throughout the nineteenth and twentieth centuries, many women endured blatant discrimination in education,¹⁹ as institutions often flatly denied them admission or maintained policies that prohibited married women from attending classes.²⁰ These practices of gender discrimination in education continued until Congress passed Title IX of the Education Amendments of 1972²¹ Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any education program or activity

administered by a local judge. *Id.* Arabella Mansfield became the first woman to gain admission to a state bar. See ROBERT CROWN LAW LIBRARY & STANFORD LAW SCHOOL, WOMEN'S LEGAL HISTORY BIOGRAPHY PROJECT, BELLE A. MANSFIELD, <http://www.law.stanford.edu/library/wlhbhp/profiles/MansfieldBelle.html> (last visited July 4, 2004).

16. Round, *supra* note 8, at 2194.

17. DAWN BRADLEY BERRY, J.D., THE 50 MOST INFLUENTIAL WOMEN IN AMERICAN LAW 33-34 (1996).

18. See generally ROBERT CROWN LAW LIBRARY & STANFORD LAW SCHOOL, WOMEN'S LEGAL HISTORY BIOGRAPHY PROJECT, CLARA SHORTRIDGE FOLTZ (featuring a number of biographical articles on the life and accomplishments of Clara Shortridge Foltz), at <http://www.law.stanford.edu/library/wlhbhp/csf03.html> (last visited May 27, 2004) (on file with MARGINS: Maryland's Law Journal on Race, Religion, Gender and Class).

19. SECRETARY OF EDUCATION'S COMMISSION ON OPPORTUNITY IN ATHLETICS, U.S. DEP'T OF EDUC., "OPEN TO ALL": TITLE IX AT THIRTY 12 (Feb. 26, 2003) [hereinafter COMMISSION REPORT].

20. One example was the daughter of President Lyndon Johnson, Luci Baines Johnson, who in 1966, was flatly denied re-enrollment to Georgetown University's School of Nursing after her marriage. *Title IX: A Sea Change in Gender Equity in Education*, in U.S. DEP'T OF EDUC., TITLE IX: 25 YEARS OF PROGRESS (June 1997), <http://www.ed.gov/pubs/TitleIX/part3.html> (last visited May 5, 2004) (on file with MARGINS: Maryland's Law Journal on Race, Religion, Gender and Class). At that time, the University's policies prohibited married women from attending classes. *Id.* Yet another stark example of gender discrimination in education was a section of the Virginia Code, which barred women from gaining admission to the College of Arts and Sciences at the University of Virginia. *Id.*

21. Pub. L. No. 93-318, §§ 901-05, 86 Stat. 373-75 (1972) (codified as amended at 20 U.S.C. §§ 1681-1688 (2000)).

receiving federal financial assistance.”²² Since the passage of Title IX, women have made substantial progress in closing the gender divide that once existed in higher education. According to the most recent statistics from the National Center for Education, women comprise the majority of students enrolled in degree granting programs. In 2001, for example, of the 15.3 million students enrolled full-time in post-secondary degree-granting institutions, more than 8.6 million were women.²³ In addition, women currently make up the majority of students receiving master's degrees,²⁴ and are entering professional programs such as business and law schools in record numbers.²⁵

The passage of Title IX has proven to be invaluable in increasing the presence of women within professional fields. In 1950, approximately 1,200 women were enrolled in law schools, whereas more than 62,000 women were enrolled in the year 2000.²⁶ Today, nearly half of all entering law school students are women.²⁷ However, these statistics are deceiving, as the majority of lawyers are still men, and more men than women hold positions of power within the field.²⁸

Given the fact that the history of women within the legal profession is relatively young, it is not surprising that the history of women within the federal judiciary is even more recent.²⁹ Women's advancement to the federal bench reveals substandard progress in the number of female appointees. In 1934, Florence Allen became the first woman appointed to an Article III federal court.³⁰

22. *Id.*

23. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., DIGEST OF EDUCATION STATISTICS, 2002 tbl. 267 (2002), <http://www.nces.ed.gov/programs/digest/d02/tables/dt267.asp> (last visited May 3, 2004) (on file with MARGINS: Maryland's Law Journal on Race, Religion, Gender and Class).

24. *Id.*

25. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., DIGEST OF EDUCATION STATISTICS, 2002 tbl. 274 (2002), <http://www.nces.ed.gov/programs/digest/d02/tables/dt274.asp> (last visited May 3, 2004) (on file with MARGINS: Maryland's Law Journal on Race, Religion, Gender and Class).

26. Hannah C. Dugan, *Does Gender Still Matter in the Legal Profession?*, 75 WIS. LAW. 10, 12 (2002).

27. *Id.*

28. S. Elizabeth Foster, *The Glass Ceiling In The Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UNIV. S. CAL. L. REV. 1631, 1636 (contending that discrimination prevents women from attaining the legal position of “greatest power, prestige, and economic reward – that of a law firm partner”).

29. See Cedarbaum, *supra* note 1, at 39-40.

30. See Ruth Bader Ginsburg & Laura W. Brill, *Women in the Federal Judiciary: Three Way Pavers and the Exhilarating Change President Carter Wrought*, Address Before the Annual Conference of the National Association of Women Judges in Atlanta, Georgia, Oct. 7, 1995, in 64 FORDHAM L. REV. 281, 283 (1995). At age fifty, Judge Florence Allen became the

Notwithstanding this huge success for women, it would take an additional fifteen years before a second woman would receive another appointment to the federal bench.³¹ Nearly twelve years later, Sara Tilghman Hughes was appointed by President Kennedy as a U.S. District Judge for the Northern District of Texas³² and in 1966, Constance Baker Motley became the first woman to sit on the U.S. District Court for the Southern District of New York.³³ Amalya Lyle Kearse was appointed to the Court of Appeals for the Second Circuit in 1979 and, by the end of that same year, there would be a total of ten women sitting on federal appellate courts throughout the country.³⁴ Finally, in September of 1981, more than one hundred years after the first woman gained admission to the legal profession, President Reagan appointed Sandra Day O'Connor to the U.S. Supreme Court, making her the first female Associate Justice on the Court.³⁵

B. Gender Bias and the Legal Profession's Response

As the women's movement grew during the 1960's and 1970's, problems facing women began to gain prominence in national attention.³⁶ Despite the fact that many of the formal barriers blocking women's entry into the legal profession were finally being removed, women recognized that they continued to face subtle forms of bias, which prevented them from succeeding within the legal field. It was during this period that organizations addressing the needs of women such as the National Organization for Women and the National Association of Women Judges were formed.³⁷

As the number of women attorneys increased during the 1970's,³⁸ women began organizing to address gender bias in the courts

first woman ever appointed to an Article III federal appellate court when she was appointed to the U.S. Court of Appeals for the Sixth Circuit by President Franklin Delano Roosevelt. *Id.*

31. *Id.* at 284. Burnita Shelton Matthews was appointed to the United States District Court for the District of Columbia by President Truman in 1949. *Id.*

32. Cedarbaum, *supra* note 1, at 41.

33. *Id.*

34. *Id.*

35. *Id.* Although this brief history has focused exclusively on the appointment of federal judges, the history of women within state judiciaries has mirrored this trend. Kruse, *supra* note 7, at 67.

36. See McConnell, *supra* note 11, at 201.

37. *Id.*; Herma Hill Kay & Geraldine Sparrow, *Workshop on Judging: Does Gender Make a Difference?*, 16 WIS. WOMEN'S L. J. 1, 4 (2001). "The National Association for Women Judges was created with 166 members in 1979." *Id.*

38. *Id.*

by targeting instances of bias displayed by members of the judiciary.³⁹ In the late 1970's, members of the legal community such as attorneys, female judges and law professors convened a meeting in Wisconsin called the Wingspread Conference, at which they discussed how the legal profession could eradicate bias and negative stereotypes of women.⁴⁰ After the conference, Judge Marilyn Loftus convinced the Chief Justice of the New Jersey Supreme Court to establish the first state task force on gender bias in the courts.⁴¹ Established in October of 1982, the goal of the New Jersey task force was to study the effect of gender bias in the courts, and to provide recommendations for change.⁴² After thoroughly researching this issue, the task force found evidence that men and women attorneys were being treated differently in courtrooms, chambers, and social gatherings.⁴³ They recommended that judges take active roles in discouraging gender bias in the courtroom.⁴⁴

Shortly after the New Jersey task force was commissioned, many state and federal courts began conducting similar studies on the effects of gender bias.⁴⁵ These task force studies produced similar findings, concluding that bias and stereotypes hindered the success of women within the profession.⁴⁶ For instance, in 1986, following a two-year investigation, the New York Task Force on Women in the

39. *Id.*

40. McConnell, *supra* note 11, at 202.

41. *Id.*

42. See NEW JERSEY SUPREME COURT TASK FORCE ON WOMEN IN THE COURTS, THE FIRST YEAR REPORT OF THE NEW JERSEY SUPREME COURT TASK FORCE ON WOMEN IN THE COURTS – JUNE 1984 (1984), reprinted in 9 WOMEN'S RTS. L. REP. 129 (1986) [hereinafter N.J. TASK FORCE REPORT]; see also Lilia M. Cortina, *The Study of Gender Bias in the Courts: Keeping Bias at Bay*, 27 L. & SOC. INQUIRY 199, 199-200 (2002).

43. N.J. TASK FORCE REPORT, *supra* note 43, at 136.

44. *Id.* at 171-72. Other suggestions that the task force provided included the use of gender neutral language and examining court hiring records for incidents of gender bias. *Id.* at 172-74.

45. Myra C. Selby, *Examining Race and Gender Bias in the Courts: A Legacy of Indifference or Opportunity?*, 32 IND. L. REV. 1167, 1169 (1999). In addition to the study conducted by the New Jersey Supreme Court Task Force, studies on gender bias were undertaken by many other states, with some of the first being New York, Utah, California and Maryland. *Id.* At around the same time, the American Bar Association established its Commission on Women in the Profession. Cynthia Grant Bowman, *Bibliographical Essay: Women and the Legal Profession*, 7 AM. U. J. GENDER SOC. POL'Y & L. 149, 165. (1999). Then chaired by Hillary Rodham Clinton its purpose was to study gender bias within the legal profession. *Id.* To date, a majority of states have conducted studies of gender bias in the courts. Myra C. Selby, *Examining Race and Gender Bias in the Courts: A Legacy of Indifference or Opportunity?*, 32 IND. L. REV. 1167, 1170 (1999).

46. Bowman, *supra* note 45, at 166-68.

Courts issued its findings.⁴⁷ It found that gender bias was present within the justice system in that women were not treated with the same level of respect as men and were frequently denied opportunities to realize their full potential within the profession.⁴⁸ The task force emphasized the need for education throughout the legal community and recommended regular training for judges.⁴⁹

In 1987, the State of Maryland followed their lead and created the Joint Committee on Gender Bias in the Courts.⁵⁰ The Committee, which was comprised of a diverse group of professionals within the legal profession, studied gender bias by conducting surveys, holding public hearings, and interviewing judges, attorneys, and court personnel.⁵¹ After concluding its two-year study, the Committee found that gender bias had a negative impact on the administration of justice and that such bias affected the process of judicial selection.⁵² In addition, the Committee reported that gender bias existed in all forms, particularly in cases involving domestic violence and family law, the selection of judges, the fair treatment of female court employees, and in the courtroom environment.⁵³ The Nebraska Supreme Court recently concluded its own gender bias task force report, in which it acknowledged its failure to attain gender diversity on the bench, and noted that, generally, the appointment of women judges in numbers representative of the population was critical to the achievement of gender fairness within the courts.⁵⁴

In addition to state courts, the federal bench also took an interest in addressing the effects of gender bias within the federal judicial system.⁵⁵ In its 1992 findings, the Ninth Circuit Task Force on

47. Round, *supra* note 8, at 2201.

48. *Id.*

49. *Id.*

50. Janet Stidman Eveleth, *Strides in Gender Equality*, 35 MD. B.J. 50, 51 (2002). The purpose of the Special Joint Committee on Gender Bias in the Courts was to explore the existence of gender bias within Maryland's judicial system. *Id.* The Committee's inquiry focused on a range of issues, including child custody, child support, alimony, the treatment of women in the courtroom and the judicial selection process. *Id.*

51. *Id.*

52. *Id.*

53. Upon completing their inquiry of gender bias in Maryland courts, the Committee found that female attorneys, witnesses and litigants were treated differently because of their gender. *Id.* at 51.

54. See Melanie Chesterman, *Nebraska Behind in Appointing Women As Judges*, INDEPENDENT, Jan. 19, 2003, available at http://www.theindependent.com/stories/011903/opi_chesterman19.shtml (last modified Jan. 19, 2003) (last visited Apr. 26, 2004).

55. See, e.g., GENDER FAIRNESS TASK FORCE, U.S. COURTS, EIGHTH CIRCUIT, FINAL REPORT & RECOMMENDATIONS OF THE EIGHTH CIRCUIT GENDER FAIRNESS TASK FORCE (1997),

Gender Bias identified many of the problems faced by women within the profession.⁵⁶ It noted that judges on the federal bench were predominantly male and that women were largely underrepresented in federal practice.⁵⁷ This finding was significant because it was believed that “with regard to gender representation on the bench, the Ninth Circuit was generally ahead of the rest of the nation.”⁵⁸

The study of gender bias by multiple federal and state supreme courts was a significant step in acknowledging the discrimination faced by women in the courts. The results of the state and federal gender bias studies revealed a consistent pattern of discriminatory treatment against women within the judicial system. Although courts have identified and taken steps to correct gender bias within the judicial system, subtle forms of gender bias persist within the legal profession itself, which must still be addressed.

II. CURRENT GENDER BIAS AND ITS EFFECT ON THE RISE OF WOMEN TO THE JUDICIARY

Although the passage of legislation such as Title VII of the Civil Rights Act of 1964 has reduced overt instances of gender bias,⁵⁹ subtle forms of discrimination against women continue to exist within the profession, resulting in fewer opportunities for selection to the bench. Discrepancies such as disparate family responsibilities, diminished networking opportunities, and reduced political contacts serve to limit the success and visibility of female attorneys.

reprinted in 31 CREIGHTON L. REV. 9 (1997); NINTH CIRCUIT GENDER BIAS TASK FORCE, THE EFFECTS OF GENDER IN THE FEDERAL COURTS: THE FINAL REPORT OF THE NINTH CIRCUIT GENDER BIAS TASK FORCE (1993).

56. *See* NINTH CIRCUIT GENDER BIAS TASK FORCE, THE EFFECTS OF GENDER IN THE FEDERAL COURTS: THE FINAL REPORT OF THE NINTH CIRCUIT GENDER BIAS TASK FORCE (1993).

57. NINTH CIRCUIT GENDER BIAS TASK FORCE, EXECUTIVE SUMMARY, THE EFFECTS OF GENDER IN THE FEDERAL COURTS: THE FINAL REPORT OF THE NINTH CIRCUIT GENDER BIAS TASK FORCE 6 (1993).

58. *Id.*

59. Title VII makes it illegal for law firms to discriminate against women solely on the basis of their gender. Pub. L. No. 88-352, tit. VII, § 703, 78 Stat. 255 (1964) (codified as amended at 42 U.S.C. § 2000e-2 (2000)).

It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin

42 U.S.C. § 2000e-2(a) (2000).

Additionally, work related issues pose a significant barrier to the appointment of women judges. Issues such as the glass ceiling effect, non family-friendly work environments, the lack of female mentors, and disparate monetary rewards may lead to the dissatisfaction and premature attrition of female attorneys from the legal profession.⁶⁰ Even though some of this gender bias and discrimination encountered by women at work may be actionable under Title VII, many may choose forego litigation and leave their positions rather than bring suit, thereby possibly reducing the number of qualified female attorneys available to serve on the bench.

A. Glass Ceiling and Monetary Rewards

Despite the fact that the formal barriers hindering the success of women in large firms have been removed, many women continue to encounter unspoken bias and unequal treatment once inside these firms.⁶¹ Some women complain that once they can see positions they wish to obtain, they eventually encounter a “glass ceiling,”⁶² a term which was coined to represent the “invisible” but very real barriers that prevent women from reaching the highest levels of power and prestige within their professions.⁶³ As a result of the glass ceiling, women continue to face sex-based prejudice, reducing their chances for success within the legal field,⁶⁴ thereby limiting opportunities to obtain a position within the judiciary. Glass ceiling issues decrease the number of women available for judicial selection by hindering the success of women at large firms, limiting the number of women offered partnership positions, and influencing women’s decisions to leave the legal field altogether.

In private practice, the glass ceiling prevents women from reaching the ultimate goal in terms of power and economic payoff – making partner.⁶⁵ Although more women than ever before are

60. See generally Foster, *supra* note 28.

61. *Id.* at 1641 (stating that although formal barriers to the entrance of women into large firms have been removed, many women have experienced unequal treatment once inside).

62. The term the “glass ceiling” first came into use in 1986 when two *Wall Street Journal* reporters coined the phrase to describe the invisible barriers that block women from advancing to leadership positions in professional fields. *Id.* at 1634 n.13 (citing Carol Hymowitz & Timothy D. Schellhardt, *The Glass Ceiling: Why Women Can’t Seem to Break the Invisible Barrier that Blocks Them From the Top Jobs*, WALL ST. J., Mar. 24, 1986, § 4, at 1).

63. *Id.* at 1636.

64. *Id.*

65. *Id.* at 1636.

currently employed at large law firms,⁶⁶ the number of women managing partners remains stagnant at 5%.⁶⁷ Many female attorneys continue to face bias while coping with male-oriented practices that can hinder their chances for success.⁶⁸ While instances of overt discrimination are less prevalent, many female attorneys report working in exclusionary atmospheres that stifle their professional growth,⁶⁹ particularly in the years leading to partnership selection. Some female lawyers report the existence of “private e-mail distribution chains among male attorneys, cliques and subtle discrimination in the form of snide remarks.”⁷⁰ And, although firms have increased the number of non-equity partnerships awarded to women as a way to recognize career achievement, these partnerships fail to confer any real managerial power or increased compensation.⁷¹

The glass ceiling also prevents many female attorneys from receiving equal pay for performing the same work as their male counterparts.⁷² Women have only entered the legal profession in large numbers in the past few decades and consequently, maintain fewer years of legal experience when compared to some men in their firms.⁷³ Another explanation, as some women report, is that although law firms are “generally accepting of women and minorities when they are associates, [female attorneys] meet resistance when [attempting to] . . . start building a client base.”⁷⁴ Finally, as firms become more internally competitive and economics begins to reduce the overall number of available partnerships, women may be forced to compete with men who are older, have practiced law longer and are more “connected” within their firms.

The effect of the glass ceiling also influences women’s decisions about remaining in the legal field altogether. Surveys reveal that, in comparison to their male counterparts, more female attorneys

66. Cynthia Fuchs Epstein, *Reaching For the Top: ‘The Glass Ceiling’ and Women in the Law*, in *WOMEN IN LAW* 105, 109 (Shimon Shetreet ed., 1998).

67. RHODE, *supra* note 2, at 14.

68. See Foster, *supra* note 28, at 1636 (noting that the current legal profession model is one-dimensional in that it requires total career devotion).

69. *Id.* at 1642-43 (noting that male partners typically choose to work with other males and females are excluded from fraternizing activities).

70. Donna Gerson, *A Work in Progress*, 25 PA. LAWYER 12, 12 (2003).

71. *Id.* at 14.

72. On average, studies reveal that female attorneys earn approximately \$20,000 less than male attorneys despite possessing similar qualifications and experience. RHODE, *supra* note 2, at 5.

73. Dugan, *supra* note 26, at 14.

74. See Gerson, *supra* note 70, at 14.

report dissatisfaction with their jobs.⁷⁵ As a result of this dissatisfaction, women are more likely to leave large firms before being considered for partnership status.⁷⁶ Attrition of female attorneys perpetuates the glass ceiling effect by reducing the number of qualified female attorneys, thereby shrinking the pool of women available for judicial selection.⁷⁷

B. Work-Life Issues

Another obstacle to the selection of women judges is the lack of support for families in the legal workplace. This lack of support particularly affects women, who continue to hold primary responsibility for family care. Most often, women are responsible for child rearing and family tasks and many may choose less prestigious, more family-friendly positions in government or public interest agencies during the prime of their legal careers.⁷⁸ Because women have only substantially increased their presence within the legal profession during the last thirty years, many report that, unlike their male counterparts, they must go out of their way to prove their competence in the workplace.⁷⁹ This is especially true of working mothers in that they may be seen as making family, rather than their careers, their first priority.⁸⁰

In a recent survey in which practitioners were questioned on the topic of work-life issues, nearly two-thirds of participants responded as having encountered problems with such issues.⁸¹ These attorneys reported a belief that work and family conflicts were the greatest issue obstructing the advancement of women within the legal field.⁸² These conflicts ultimately prevent women in private practice

75. See Foster, *supra* note 28, at 1656 (citing AMERICAN BAR ASSOCIATION, THE REPORT OF AT THE BREAKING POINT: A NATIONAL CONFERENCE ON THE EMERGING CRISIS IN THE QUALITY OF LAWYERS' HEALTH AND LIVES - ITS IMPACT ON LAW FIRMS AND CLIENT SERVICES 9 (1991); MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 136 (1991)).

76. *Id.* at 1657.

77. *Id.* at 1658.

78. Statistics tracking the career paths of women reveal that women in greater numbers self select into public interest or government agencies. See Foster, *supra* note 28, at 1657 (noting that women disproportionately accept government employment). Moreover, studies reveal a tendency for "confirmation processes to penalize those with public sector or public interest backgrounds." RHODE, *supra* note 2, at 9. These practices often disproportionately affect women who are most likely to have held public interest or government agency positions. *Id.*

79. RHODE, *supra* note 2, at 15.

80. See *id.* at 18.

81. RHODE, *supra* note 2, at 17.

82. *Id.*

from continuing in or advancing their legal careers to the point of being considered for judicial selection.⁸³ Work-life issues also pose difficulties for women who have become judges. For example, in one study of federal judges appointed by President Carter, female judges reported feeling a higher degree of conflict between their careers and parenting roles than their male colleagues.⁸⁴

All lawyers struggle with work-life conflicts, but these conflicts disproportionately affect women and limit their chances for success within the legal field. Lawyers are known for working excessive hours and for having little flexibility in their schedules. Many women face tremendous conflict trying to balance work and family life;⁸⁵ when the balance tips toward family, employers often question the commitment of a female lawyer to the firm or to her career.⁸⁶ Although many law firms advertise that they permit part-time work, some women report a belief that a reduction in hours would limit their prospects for advancement.⁸⁷

Furthermore, women may become discouraged as prospects for making partner appear to dim and may begin to withdraw from partnership tracks at the same time that men are focusing on their careers.⁸⁸ Perhaps it is for this reason that female lawyers anticipate leaving their employers three years earlier than most men,⁸⁹ long before being considered for top positions within their firms.⁹⁰ This may also explain why more women obtain legal employment where time constraints and travel are more compatible with family needs,⁹¹ such as in the public sector, government agencies, or part-time positions.

83. See Deborah S. Katz, *Perspectives on Women in Public-Sector Law*, in *WOMEN IN LAW* 75, 76 (Shimon Shetreet ed., 1998) (explaining that family responsibilities delay or block women from making partner); Sandra Day O'Connor, *The Challenge of a Woman in Law*, in *WOMEN IN LAW* 5, 10 (Shimon Shetreet ed., 1998) (explaining why family responsibilities cause women to opt for public sector jobs); Theresa M. Beiner, *The Elusive (But Worthwhile) Quest for a Diverse Bench in the New Millennium*, 36 U.C. DAVIS L. REV. 597, 616 (2003).

84. Beiner, *supra* note 83, at 616. Additionally, nearly two-thirds of female judges surveyed reported bearing primary responsibility for household responsibilities. *Id.*

85. See RHODE, *supra* note 2, at 6.

86. *Id.* at 18.

87. *Id.*

88. Epstein, *supra* note 66, at 124-25.

89. Press Release, Catalyst, Women in Law: Making the Case, Law Women Anticipate Leaving Their Employer Three Years Earlier Than Men (Jan. 30, 2001), available at http://www.catalystwomen.org/press_room/releases_01.htm (last visited Apr. 28, 2004).

90. Foster, *supra* note 28, at 1657.

91. Epstein, *supra* note 66, at 125.

Work-related travel poses yet another serious challenge for women with primary child-raising responsibilities. These women report having little flexibility in their schedules, which for them, makes out of town travel, especially for long periods of time, not an option.⁹² In addition, some women are required to take leave from the normal workday to tend to family matters, to say nothing of taking maternity leave. Again, such concerns may make traditional legal employers question the commitment and dedication of female employees.⁹³

Due in large part to these obstacles, the attrition rate among female attorneys is often higher than their male counterparts.⁹⁴ A common concern reported by many women is the difficulty in striking a balance between their personal and professional lives,⁹⁵ as such, many women are leaving large firms or avoiding the partnership track altogether.⁹⁶ As a result of work-life issues, many qualified women are choosing to “opt-out” of the legal profession, instead electing to focus on family responsibilities.⁹⁷ In sum, because of work-life issues, highly qualified female attorneys may simply leave the legal profession, never becoming available for judicial selection. Furthermore, those female attorneys who continue working in the field may experience significant pressures associated with work-life issues as they struggle to find a balance between family and work responsibilities.

C. Women Receive Fewer Networking and Mentoring Opportunities

1. Networking

Subtle forms of gender bias within the legal profession also prevent women from participating in the networking activities that help lead to judicial appointments. Many women are denied access to informal networks that exist within organizations.⁹⁸ These networks are not the formal lines present on an entity’s organizational chart; rather they are often discretionary patterns of interactions where the

92. Rhode, *supra* note 2, at 6, 17-19 (discussing the increased time demands placed on attorneys today and the failure of the legal workplace to accommodate the balancing of work and family life issues).

93. *Id.*

94. See Foster, *supra* note 28, at 1657.

95. *Id.*

96. *Id.*

97. Lisa Belkin, *The Opt-Out Revolution*, N.Y. TIMES, Oct. 26, 2003, §6 at 42.

98. See KARIN KLENKE, WOMEN AND LEADERSHIP 182 (1996).

relationship may be defined by work, social purposes, or both.⁹⁹ By virtue of their gender, most women do not obtain the benefits of “old boy networks” within the legal profession, informal arrangements whereby men in positions of power develop contacts or exchange information.¹⁰⁰ Because women have traditionally been excluded from these networks, many may lack access to the political, financial, legal and professional resources that have generally been open to men.¹⁰¹

The lack of networking available to women serves to prevent them from meeting people in positions of power. This in turn, contributes to a lack of notoriety within the legal community at large, hindering women’s chances of being selected for judicial vacancies. It is often the informal interaction with people in positions of power that assists in developing contacts and exchanging information, which can be significant assets when seeking an appointment to the bench. As Maryland Court of Appeals Judge Lynne Battaglia explains, “networking is one of the most important skills for men and women candidates. Historically, networking is how men have gotten [judicial] appointments.”¹⁰² In Judge Battaglia’s opinion, “women have not seen the same number of judicial appointments because they either have not been aware of the importance of networking or have not had female friends in power who could assist them in obtaining judgeships.”¹⁰³

2. *Mentoring*

In addition to experiencing fewer networking opportunities, women are often denied access to male-oriented mentoring activities, which further precludes women’s rise to positions of status and power within the field.¹⁰⁴ Unlike some large law firms, businesses have long realized the benefits of mentoring, which include career progress, motivation, and increased job performance and satisfaction.¹⁰⁵ Providing employees with mentors also helps businesses identify and retain their best employees and encourages creativity and

99. *Id.*

100. *Id.*

101. *Id.*

102. Telephone Interview with the Honorable Lynne A. Battaglia, Court of Appeals of Maryland (Mar. 22, 2004). Judge Lynne Battaglia is one of two women judges serving on the Maryland Court of Appeals, the highest appellate court in the State of Maryland. Prior to serving on Maryland’s highest state court, Judge Battaglia served as the Assistant U.S. Attorney for the District of Maryland from 1978-1981.

103. *Id.*

104. KLENKE, *supra* note 98, at 182.

105. *Id.* at 183.

commitment.¹⁰⁶ However, in the competitive world of the legal profession, mentoring is a necessary but often under-utilized resource.

Within the legal profession, male partners may choose to work primarily or solely with other males.¹⁰⁷ This may result in the exclusion of female attorneys from mentoring and fraternizing with partners while their male colleagues enjoy such benefits. As such, women may receive less training and mentoring opportunities than their male counterparts.¹⁰⁸ Furthermore, recent surveys reveal that some senior female attorneys report an unwillingness to mentor less experienced female attorneys because they themselves had to manage without such support networks.¹⁰⁹ Because successful women are usually a minority in large firms, these women may not wish to relinquish the power and reputation they have achieved by being one of the few women at the top of their firms, and may not be inclined to help other women join their ranks.¹¹⁰ Powerful women may also lack the time to mentor younger attorneys, as they must continue to work hard in order to remain in the upper echelon of their firms.¹¹¹ Some senior women do not want to be stereotyped as giving disproportionate attention to women.¹¹² Finally, already over-burdened senior women may be unwilling to put forth the additional effort required to provide assistance and guidance to women whom they believe to be more likely to leave the firm in a short amount of time.¹¹³

When there is no mentoring system in place, either formal or informal, women may experience a harder time overcoming the many obstacles in their way. Furthermore, without mentoring, many women may be excluded from the social events that would undoubtedly bolster their careers.¹¹⁴ The lack of available mentors may also affect the substance of their work, as women may not be provided equal opportunities to work on high visibility assignments.

106. *Id.*

107. *See Foster, supra note 28, at 1642.*

108. *Id. at 1643.*

109. *See RHODE, supra note 2, at 16.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

D. Political Contacts and Power

All federal judges are selected by the executive branch.¹¹⁵ States, however, select their judges in a variety of ways, including partisan or non-partisan elections, or by appointments carried out by nominating commissions or the state legislature.¹¹⁶ In both instances, judges are either elected or appointed, and political contacts become crucial to one's chance of obtaining a position within the judiciary. However, because men have historically dominated political life, women maintain limited access to the well-established networks and contacts within the political field.¹¹⁷ Additionally, few women currently hold decision-making positions within the political realm.¹¹⁸ As a result, women experience fewer opportunities for judicial appointments than similarly qualified men.¹¹⁹

U.S. politics have long been regarded as an area of government dominated almost exclusively by males,¹²⁰ and most male politicians have traditionally had a legal background.¹²¹ A look into our nation's history reveals that nearly half of the signers to the U.S. Constitution were either lawyers or jurists.¹²² From 1790 to 1930, two-thirds of U.S. Senators and approximately one-half of all members of the House of Representatives were lawyers.¹²³ Given that women have only recently begun to advance in the field of law, it is no wonder that, until recently, women have not had a seat at the political roundtable. As of

115. See Kruse, *supra* note 7, at 68.

116. *Id.* at 75.

117. See generally Elizabeth Holtzman, *Women Lawyers in the Political Arena*, in *WOMEN IN LAW* 83, 83 (Shimon Shetreet ed., 1998).

118. CENTER FOR AMERICAN WOMEN AND POLITICS, *FACTS AND FINDINGS, CURRENT WOMEN OFFICEHOLDERS*, available at <http://www.cawp.rutgers.edu/Facts/Officeholders/cawpfs.html> (last visited Apr. 27, 2004).

119. Interestingly, the number of women appointed to the federal judiciary increases when a merit system is used instead of the traditional political model. See Carl Tobias, *Closing the Gender Gap on the Federal Courts*, 61 U. CIN. L. REV. 1237, 1239 (1993). President Carter is largely noted for appointing women to the federal bench in more than token numbers. Theresa M. Beiner, *What Will Diversity on the Bench Mean for Justice?*, 6 MICH. J. GENDER & L. 113, 118 (1998). President Carter employed merit-based nomination commissions in selecting his judicial nominations. Ginsburg & Brill, *supra* note 30, at 288. During his one term as President, Jimmy Carter selected female judges in record numbers (41 women out of 258 appointees, or 15.9%) and the increase was due in large part to the selection process itself. Carl Tobias, *Closing the Gender Gap on the Federal Courts*, 61 U. CIN. L. REV. 1237, 1238-39 (1993).

120. *Id.*

121. See generally Holtzman, *supra* note 117, at 85.

122. *Id.*

123. *Id.*

2004, only 14 of the 100 senators in the U. S. Senate are women.¹²⁴ Additionally, of the 435 seats in the U.S. House of Representatives, only 59 are held by women.¹²⁵ Women are also poorly represented in state legislatures.¹²⁶ As of 2004, women comprise a total of 1,655 of all 7,382 state legislators. The state with the largest number of women serving as legislators is Washington, where women now hold 36.7% of all legislative seats.¹²⁷

In addition to the effect of gender bias on the selection of female judges, some commentators believe that the politicization of the judicial confirmation process has also had a negative impact upon the chances female nominees, and other non-traditional or minority candidates.¹²⁸ During the Clinton administration,¹²⁹ non-traditional appointees, such as women and ethnic minorities, took an average of six weeks longer to be confirmed than white males.¹³⁰ Such lengthy confirmation periods may serve to discourage executives from nominating women and minorities to positions on the federal judiciary.

E. The Limitations of Title VII

Despite the fact that women continue to face many obstacles in achieving success in the legal workplace, it is important to remember that women do enjoy statutory protection from gender discrimination while at work. Title VII of the Civil Rights Act of 1964 makes it illegal for law firms to discriminate against women solely on the basis

124. CENTER FOR AMERICAN WOMEN AND POLITICS, FACTS AND FINDINGS, CURRENT WOMEN OFFICEHOLDERS, *available at* <http://www.cawp.rutgers.edu/Facts/Officeholders/cawpfs.html> (last visited Apr. 27, 2004).

125. In addition to the fifty-nine seats held by women, three women (from Guam, Washington D.C., and the Virgin Islands, respectively) currently serve as Delegates to the U.S. House of Representatives. *Id.*

126. *Id.*

127. *Id.*

128. See Beiner, *supra* note 83, at 615.

129. President Clinton expanded upon Carter's diversity initiative by appointing women and minorities in record numbers to the federal bench. Rorie L. Spill & Kathleen A. Bratton, *Clinton and Diversification of the Federal Judiciary*, 84 JUDICATURE 256, 256 (2001). Of 370 judicial appointments, President Clinton successfully appointed 108 women to the federal bench. *Id.* at 258. Not unlike President Carter, President Clinton's quest for diversity focused primarily on the quality of appointees. When asked about his attempts at diversifying the federal bench, President Clinton responded that he "made an extra effort to look for qualified candidates who could serve with distinction[,] . . . contribut[e] to this country[,] and make the Federal bench reflective of the American population." Sheldon Goldman, *Judicial Selection Under Clinton: A Midterm Examination*, 78 JUDICATURE 276, 290 (1995). Compared with his three predecessors, President Clinton appointed the highest number of Ivy League graduates to the federal bench. See Beiner, *supra* note 119, at 126.

130. See Beiner, *supra* note 83, at 615.

of their gender.¹³¹ Without such protection, women might never have gained entry into prestigious law firms or obtained the opportunity to advance to positions within the judiciary. However, although Title VII has been an effective tool for combating sex discrimination, women continue to face gender-based barriers that prevent them from achieving success in the legal field.

In passing Title VII in 1964, Congress communicated a firm resolve to eradicate gender bias in the workplace by prohibiting employers from discriminating on the basis of sex. Prior to the passage of civil rights legislation, women received “virtually no protection” from the federal government against discriminatory practices based on gender.¹³² Title VII provides that employers must not “refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”¹³³ In addition, Title VII instructs employers that they may not “limit, segregate, or classify” employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect one’s status as an employee, because of such individual’s race, color, religion, sex, or national origin.¹³⁴

Title VII has been a useful tool in countering forms of gender bias in the workplace. This legislation has been held to apply to partnership decisions;¹³⁵ meaning that a woman cannot be denied partnership status simply because she does not conform to stereotypical feminine behavior,¹³⁶ nor can a woman’s partnership

131. Pub. L. No. 88-352, tit. VII, § 703, 78 Stat. 255 (1964) (codified as amended at 42 U.S.C. § 2000e-2 (2000)).

It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex or national origin

42 U.S.C. § 2000e-2(a) (2000).

132. See Sarah E. Burns, *Slouching Toward Gender Equality: Law and Doctrine on Sex-Based Employment Discrimination in the United States*, in *WOMEN IN LAW* 275, 276 (Shimon Shetreet ed., 1998).

133. 42 U.S.C. § 2000e-2(a)(1) (2000).

134. 42 U.S.C. § 2000e-2(a)(2) (2000).

135. See *Hishon v. Spalding*, 467 U.S. 69 (1984).

136. See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). In *Hopkins*, the majority of the Court stated that, “if an employee’s flawed ‘interpersonal skills’ can be corrected by a soft-hued suit or a new shade of lipstick, perhaps it is the employee’s sex and not her interpersonal skills that has drawn the criticism.” *Hopkins*, 490 U.S. at 256.

status be confined to a stereotypical role.¹³⁷ Even though the outcomes of Title VII litigation have proven useful to women in their quest for equality in the legal profession, in many instances, women still fail to attain the levels of success obtained by similarly qualified males. Despite the expansive reach of Title VII's grasp, many women continue to face resistance in their rise to positions of power within the profession.

Elizabeth Foster explored this phenomenon and examined the lack of female partners in top firms.¹³⁸ In her study, Foster reports that, "[d]isparities between women's and men's respective career paths as they climb the ladder of success remain substantial."¹³⁹ She found that "[s]ex-based stereotyping causes the segregation of women into less prestigious jobs and delays or stops women's career advancement."¹⁴⁰ Foster further found that "[w]ithin a decade after graduation from law school, women as a group experience significantly fewer and substantively less attractive career opportunities than their male counterparts as sex-based hierarchical patterns of discrimination relegate them to lower tiers within the workplace."¹⁴¹ Foster's findings are not atypical of the experiences faced by many women within the field. Studies such as Foster's reveal that while legislation has succeeded in eliminating many of the formal barriers used to shut women and minorities out of professional spheres, they continue to face subtle forms of discrimination when attempting to rise to positions most associated with status and power.

Title VII has helped women to gain a foothold in the legal profession. Without such protection, many women lawyers may have been denied equal access to employment opportunities, resulting in fewer female judges. On the other hand, while the gender bias and discrimination encountered by women at work may be actionable under Title VII, many may choose to forego litigation and leave their positions rather than bring suit. The environment at many law firms may be so suffocating for women that they simply choose to become an attrition statistic. Therefore, as well-qualified female attorneys choose to leave their firms rather than suffer discrimination at their workplace, the number of potential female judicial appointments shrinks.

137. See *Ezold v. Wolf, Bloch, Schorr & Solis-Cohen*, 826 U.S. 510 (1993).

138. See Foster, *supra* note 28.

139. *Id.* at 1641.

140. *Id.*

141. *Id.* at 1641-42.

III. SUGGESTIONS FOR THE FUTURE

Gender-bias task force studies and the enactment of anti-discrimination legislation have been useful tools in identifying and combating gender bias against women. Although much progress has been made to level the playing field, the poor showing in the number of women judges indicates that more work is yet to be done. Only by obtaining equal access to the political arena, increased opportunities for education, and drastic changes in the legal workplace will women enjoy equal opportunities for judicial selection.

A. Mentoring and Political Involvement

In order for the number of women in the judiciary to increase, women must be provided equal opportunities to groom themselves for judicial appointments. A key component of this process involves mentoring, training, and greater involvement in politics.

Although there are precious few women judges, those that do exist must continue to act as mentors for bright young women who express an interest in becoming members of the judicial branch.¹⁴² These judges can offer practical advice on how to advance a career with an eye toward becoming a judge. It is only through such personal involvement and mentoring of young attorneys that aspiring female judges may be identified and placed in a position to be selected for a judgeship.

Many judges are selected by a federal or state level executive, and have some connection to the world of politics.¹⁴³ Therefore, women must be afforded opportunities to become more involved in the political world, allowing them to develop and maintain the contacts that ultimately lead to judicial nominations. This may be no small feat. Like the legal profession itself, the world of politics is still largely dominated by men.¹⁴⁴ While it may be difficult to gain a foothold into this domain, there are many women who are involved in

142. Although this article focuses on the benefits of mentoring within the workplace, many organizations provide mentoring for youth, grooming them long before they enter professional fields. One such organization is the Maryland Mentoring Partnership Program, an agency that works to pair young people with mentors serving at the top of their respective professional fields.

143. See generally Kruse, *supra* note 7.

144. Holtzman, *supra* note 117.

politics and these women must aid their qualified female colleagues to gain access to the political arena, assisting them in distinguishing themselves by gaining visibility.¹⁴⁵ Women must increase their presence within the political arena, allowing greater opportunities to build the relationships that lead to judicial appointments. Qualified female attorneys must also be allowed equal opportunities to network within political and legal arenas.

Likewise, organizations such as the Women's Bar Association and the National Association of Women Judges must use their political power to educate both male and female politicians about the need to bring more women into the judiciary. Current statistics regarding the low percentage of women on the bench must be used as a battle cry for such organizations. As with other political issues, members of the executive must be held accountable for failing to increase the number of women judicial nominees and women must be willing to vote against politicians who do not produce satisfactory results.

B. Increased Education

Education about the benefits of a diverse judiciary is a crucial step to bringing more women into the ranks of the judicial branch. This educational process must begin early, long before admission to law school. Without this increase in education, many young lawyers will never come to understand the benefits of a diverse judiciary. Male and female lawyers and judges alike must emphasize the importance of this issue by banding together with an eye toward raising public awareness of the need for more women judges. Male and female role models must be available to serve as mentors, aiding young women in becoming the best and brightest in whatever profession they select.¹⁴⁶ In particular, women lawyers and judges must play a special role in nurturing and encouraging young women to reach the apex of the legal profession.

145. When asked about the importance of mentoring young women, Maryland State Senator, Lisa A. Gladden (D-41) replied "[n]etworking, mentoring and relationship-building become key for women when seeking political power. Once women begin to fully utilize these resources, I believe that we will see real gains in the number of women in politics." Interview with Lisa A. Gladden, Maryland State Senator, Annapolis, Md. (Mar. 2, 2004).

146. Such work is already being accomplished by programs such as the Women Leadership and Equality Program at the University of Maryland School of Law. Under the direction of Professor Paula Monopoli, this program seeks to identify and groom women leaders by providing them with professional mentors within their field of choice. For more information see <http://www.law.umaryland.edu/wle> (last visited July 4, 2004).

The educational process must take many forms and law schools must play a fundamental role in educating students of the benefits of a diverse judiciary. Law journals and student organizations must emphasize the need for women judges and work to promote scholarly discussion on the topic. Finally, community groups must also play a role, by recognizing women judges and their many accomplishments.

C. Changes in the Workplace

The legal profession must find ways to help women stay full-time within the profession. Statistics show that most women lawyers continue to be the primary caregiver for children, the parent who shoulders most of the family responsibility.¹⁴⁷ This leads some women away from the full-time practice of law. Inevitably, this negatively impacts a woman's chances for judicial selection. Law firms, corporations, government agencies, and other legal employers must seek more family-friendly solutions that allow women to pursue advancement within their profession while juggling parental and other family responsibilities. If women are driven from the workforce early in their careers, it is less likely they will ever be considered for positions on the bench.

Many non-legal employers are making substantial progress in addressing the need for family-friendly solutions by providing flexible hours, on-site day care, and permitting telecommuting. It is not surprising that employers who offer family-friendly solutions like alternative work schedules and reasonable work hours are having more success in recruiting and retaining their best employees.¹⁴⁸ Employers find that these solutions ultimately "save money . . . by reducing absenteeism, attrition, and corresponding recruitment and training costs."¹⁴⁹ Moreover, such practices assist both genders in obtaining a greater balance between work and family responsibilities.

While these solutions are currently being tested by some legal firms, much more must be done. Billing structures in large firms must change to reflect an attorney's completed work product instead of focusing primarily on billable hours. Attorney work day schedules, which usually continue long after school hours have ended, must be restructured to align more closely with school and family schedules,

147. See Katz, *supra* note 83, at 76; O'Connor, *supra* note 83, at 10.

148. RHODE, *supra* note 2, at 19.

149. *Id.*

thereby accommodating female attorneys who serve as primary caregivers for their school-aged children. Many employers have found that family-friendly work schedules enable them to retain both male and female employees and are more economically viable.¹⁵⁰ Large law firms must now follow this lead in order to retain greater numbers of women attorneys, thereby maintaining gender diversity within the legal workplace.

Men and women within the legal profession must take on the task of facilitating many of the above-mentioned solutions for change. For example, the consciousness of both male and female attorneys must be raised to treat all colleagues with respect and civility. Litigants, witnesses and counsel must also be educated to understand that all attorneys must receive the same level of deference. In this regard, the notion of tokenism¹⁵¹ will be eliminated only when men and women combine forces to defeat gender bias, ensuring that all persons are treated as equals within the legal profession.

IV. CONCLUSION

It is undisputed that gender bias has pervaded American law and legal practice for well over a century.¹⁵² Since the very early years of the legal profession, women were hindered as they attempted to join and rise within the legal field.¹⁵³ While women attorneys have experienced success in recent years, much work has yet to be done in bridging the gender gap in leadership positions. Today's women attorneys face unique challenges within the profession. Women are

150. *See id.* at 19.

151. In a study that examined the plight of women holding prominent positions in occupational settings, sociologist Rosabeth Moss Kanter coined the phrase "token" to refer to the relatively small number of women holding leadership positions at that time. *See* ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* (1977). In studying this issue, Kanter found that tokens were often treated as representatives of the marginalized social group to which they belonged. *Id.* at 214. Moreover, Kanter found that because tokens were required to perform their jobs under very different conditions than those faced by other workers, their status as tokens had important social and psychological consequences. *Id.* at 215. Kanter found that token women had the added pressure of having to work twice as hard to be seen as competent, while trying not to be seen as attempting to out-perform their male counterparts. *Id.* at 216. Kanter argued that tokens can never be seen as who they really are. *Id.* at 217. Rather, tokens must continually fight stereotypes and tailor their behavior to suit the desires and preferences of the majority group. *Id.*

152. *See generally* 1 *WOMEN IN AMERICAN LAW: FROM COLONIAL TIMES TO THE NEW DEAL* (Marlene Stein Wortman ed., 1985).

153. *Id.* at 217-23.

often denied acceptance by their male colleagues and fail to obtain support that would enable them to maximize their legal potential. Progress is being made and more progress can be expected as women now make up half of all incoming law school classes. One area that remains critical to the success of women in the profession is the appointment of women to the judiciary.

Women's ascent into the judiciary has been very slow. For example, in the federal judiciary, a significant number of women judges have been appointed within the past fifteen years. Today, although women comprise nearly 51% of the population,¹⁵⁴ they continue to represent a mere 15% of the federal judiciary.¹⁵⁵ Women must be better represented in this area of government. Maintaining a bench that is reflective of the population is crucial to the public's perception of the fair and impartial administration of justice.¹⁵⁶ The executive branch has made progress in ensuring that women and minorities are given a chance to hold key positions, but more must be done to guarantee that women are better represented in the judiciary. Including the perspective of women judges is critically important to our legal system and our society as a whole.

Although men and women must take the lead in fighting the barriers that block the path to judicial appointments, women must draw upon their best resource – themselves. Women must continue to educate themselves and the public as to the benefits of a gender-balanced judiciary. They must continue to make gender balance within judiciary an issue that cannot be overlooked without political consequence. Additionally, those women who are judges have a special role to play in fostering and mentoring those who will come after them. There is no doubt that by implementing such changes, the presence of female judges will become less of a novelty and more of a fundamental component of our country's judicial branch.

154. U.S. CENSUS BUREAU, U.S. SUMMARY: 2000 tbl. DP-1 (Profile of General Demographic Characteristics: 2000), http://www.census.gov/prod/2002pubs/c2prof00_us.pdf (last update May 28, 2004) (last visited July 4, 2004).

155. RHODE, *supra* 2, at 5.

156. See Beiner, *supra* note 83, at 613 (noting race and gender bias and its effect on public perception of the justice system).

