Finding Equality and Balance in the Face of Legal Typecasting

Cultural Competence

Employment and Labor

CHEAT SHEET

- ***Mentorship help.*** The comparative lack of senior women in law means fewer female mentors.

- ***A force for inclusion.*** Initiatives such as ACC's "Women In The House" seek to close the professional development gap in law.
- ***End of the mommy track.*** With technology enabling attorneys to do their work from anywhere, at any time, the mommy track career is fading.
- ***Flexible arrangements take hold.*** The rise of telework is facilitating a more inclusive workforce, enabling those with disabilities or children to work full time.

The greatest disparities in the legal profession are found in the upper levels of legal executives, such as general counsel or managing partners. A recent study published by the American Bar Association revealed that, of women in private practice, only four percent were managing partners, 17 percent were equity partners, and 20.2 percent were partners, while 44.8 percent were associates and 45 percent were summer associates. This same disparity was found in an evaluation of general counsel in both Fortune 500 and 500-1000 companies. Twenty-one percent of Fortune 500 general counsel were women, while Fortune 500-1000 companies were at an even lower 16.8 percent. Furthermore, this study revealed that, while the gap is slowly closing, there is still a significant disparity in income between men and women in the legal field. Women still make roughly about 80 percent compared to their male counterparts. Specifically, in equalized dollars, 69 percent of women in-house attorneys globally make less than US$200,000 compared to 56 percent of men. As the salaries rise, the percentage of women in that bracket decreases. At the US$300,000-US$599,000 range, seven percent are women compared to 13 percent of men, nearly a 1:2 ratio. Only two percent of female attorneys around the globe are represented in the highest range of US$600,000 and more, compared to more than double that number for men, at five percent.

"Women are less likely than men to reach the highest levels… and when they do they are still paid somewhat less than their male peers," said Stephanie Scharf, a senior partner with Scharf Banks Marmor LLC in Chicago, and a past president of the National Association of Women Lawyers. In fact, ACC shows membership comprising approximately 50/50 men and women (self-identified) until the numbers for general counsel and chief legal officers are assessed. There, women decrease to roughly one-quarter of the population.

This article explores how life circumstances, skills, behavior, and the availability of mentoring contribute to these differences, and the potential for technology to break down barriers. The data cited in the article come from studies conducted by others, as well as the results of a survey that ACC conducted, which had over 200 respondents.

Strengths of a woman

Firms that responded to a survey conducted by the National Association of Women Lawyers report that key obstacles to the advancement of women include: lack of business development opportunities, work-life balance issues, and attrition, as women lawyers leave firms for better job opportunities elsewhere. Stereotypes and bias still exist, and often women don't have the critical support needed from high-ranking sponsors who can actively campaign for their advancement. Yet, the strengths women bring to corporate boards of directors are intuitively translated into the skills that women can bring to business in general: enhanced dialogue, better decision making, more effective risk mitigation, excellent and crisis management, ability to weigh and balance risk taking to risk appetite, and challenge to status quo behavior.

Competitiveness may also play a role in the differences in professional outcomes for women and men. A recent study from the University of Chicago discovered that men are 94 percent more likely than women to apply for a job with salary potential that is dependent on outperforming their colleagues.

In our survey, attorneys ranked some characteristics or actions that have been suggested as underlying reasons women do not succeed as well in business as men, such as taking off years (for family reasons, children, etc.), networking, and how the genders define success. Three characteristics that are viewed as equal in men and women are ambitiousness, preferring lower stress jobs, and having well-developed business skills, and defining success in terms of being satisfied in the work performed. Not surprisingly, the two prominent issues that stood out as more prevalent in women were taking years off from work and requiring flexible time for family, children, health, etc. Traits that are attributed overwhelmingly to male lawyers that have helped them succeed are defining success as title/salary/position, negotiating better for each of those, using their network effectively, and having better mentors. We anticipated this last element (based on prior surveys and research) and took a closer look at mentoring.

Mentoring

Mentoring has been shown to lead to increased promotions, salaries, and job satisfaction. It is interesting to note that female mentees, who want to gain access to powerful leaders, increase their technical abilities, and obtain high visibility assignments may have more luck with a male mentor. According to research by the Minority Corporate Counsel Association, male mentees who had female mentors found that they were more comfortable discussing work-life balance and gender issues than they were with male mentors.

Based on our survey results, 43 percent of attorneys found that having a mentor as an attorney was very valuable. Forty-two percent of mentors or mentees were of the same sex, while 34 percent were of opposite gender. Research has indicated a positive correlation between strong mentoring and women’s advancement within the law firm setting. Female lawyers with senior-male mentors had higher compensation and career progress satisfaction than those without mentors and were more likely to be partners or hold senior executive positions than women without mentors.

There are several advantages to being mentored. One consistent theme voiced by numerous women leaders in the American Bar Association (ABA) is the fact that mentors pushed them to do more than they thought that they could do early in their careers. Others have credited mentors for helping them see for themselves that they really did know more than what they thought they knew and establishing that level of “confidence” early in one’s career sets the foundation and can act as a primary driver for success. Further, confidence boosts may also lead to more networking connections, in turn providing a strong foundation for success.

Mentors may underestimate how valuable they are to the people they mentor. In our survey, 43 percent of mentees responded that mentoring was very valuable to them. On the other side, of those who have been mentors, only 11 percent felt that they were very successful as mentors. It seems likely that many mentors may just be unaware of the significant impact that they can have on their mentees and their careers. In many ways, women have been frozen out of the mentoring dynamic because the approach of senior managers grooming promising individuals often meant identifying them based on personal relationships — and women did not have those relationships with senior attorneys, most of whom are male.

Often, young attorneys are advised to find a mentor, but are not provided guidance on how to do so and what qualities to look for in a mentor. Therefore, the natural consequence, which is simply based on pure human instinct, is to look for someone who looks like us. In a field where diversity is limited, this is quite challenging. In the launch of the “Women In The House” (WITH) initiative by ACC at the 2015 Annual Meeting in Boston, the accomplished senior women in-house speakers whole-heartedly endorsed finding mentors. But they took a different tactic than what is generally recommended. Rather than finding one mentor, they counseled to find an advisory panel. Mentors do not have to be valuable across-the-board in your career, but can be valuable in distinct areas for different needs.

Their advice was to decide what you need — whether it is a skill to succeed, or to make a critical decision, or where to aim next — and then seek input from people you admire and have a mutual relationship with on a certain level. Be strategic with your mentoring and remember that finding and keeping a mentor is often not about what you need (contrary to the common approach to mentoring); it is about developing a relationship. It is not easy to find mentors, but companies and professional associations may help.

When it comes to the corporate environment, the small number of women in senior positions stymies some mentoring efforts. Female attorneys who have substantial family commitments also have difficulty making time for mentoring relationships and for the informal social activities that generate collegial support and client contacts. The result is that many female lawyers remain out of the career development loop. They aren’t given enough challenging, high visibility assignments. They aren’t included in social events that yield professional opportunities. And no one helps them acquire the legal and marketing skills that are central to advancement. These barriers can become self-perpetuating. Overburdened senior attorneys are reluctant to spend scarce time mentoring women who seem likely to leave. However, it is circular because women who are not supported are in fact more likely to leave. Their inability to reach senior positions then reduces the pool of women mentors and perpetuates the assumptions that continue the problem.

Below are two responses received from our survey participants, which provide great insight into key issues to consider when looking at the overall impact that mentoring can have on one’s career path in the legal profession.

> “Generally, over my legal career I have seen that men are better mentors in ensuring promotion of mentees. While women claim to be mentors they themselves create a glass ceiling for their mentees, creating further discrepancies in the legal community between men and women.”

> “My mentor was male, and I have had both male and female mentees. I have found that female mentees have a different view of success, and are frequently surprised by some of the demands made by senior management in their firms or companies on their time. However, I have also found female mentees are better listeners, and internalize lessons to a much higher degree than male mentees.”

Because men and women do not experience the business world in the same ways, young women lawyers are well served to learn from male mentors how male lawyers experience the business world. This type of insight fosters the ability to achieve success in a male dominated profession.

It is clear that the mentor/mentee relationship can bring tremendous value to both parties, and the

manner in which a lawyer chooses his or her mentor can have a profound impact on the direction of one's career.

The potential for technology to bust the glass ceiling

Technology facilitates flexible work outside the office. Although attorneys may complain that this same flexibility also demands availability, there may be another benefit. In a prior survey and article on lawyers and technology, we had responses and discussions that indicated technology may be eroding the "mommy track," which is an unofficial designation that women who have children work a "reduced" amount of hours and are not expected to reach partner or executive level in the standard time frame — for partner level, this would typically be seven years. At the same time, research shows that men who become fathers receive pay raises and are viewed positively, while women face decreased bonuses and fewer opportunities to advance.

Rachel Simmons, a successful author and entrepreneur, wrote that "[o]ur culture sings in only two keys about how successful women manage motherhood and work: Either you're driving a hard line to the C-suite, parking the crib in your corner office, or you're shredding the Mommy track."

However, it may be that technology is helping to thin the glass ceiling. A little over 80 percent of attorneys feel that technology facilitates inclusivity in law, such as enabling those with disabilities or family concerns to maintain a full-time job. And full-time in law is rarely 40 hours a week. Anecdotally, 40 hours a week is considered the part-time or reduced hours that someone on the mommy track would work. Unfortunately, even though such a large percentage of attorneys feel that technology enables one to manage a full-time job, 43 percent of attorneys still feel that the mommy track remains.

Technology creates opportunities and makes workers flexible. Attorneys nowadays use technology to provide their clients with a holistic view of their business, be it from a law firm perspective or in-house. In fact, technology is used to manage and control what outside counsel spend, and for those firms to maximize their benefit to the corporation. And we are no longer limited in the information at our fingertips. We can view our business on a global scale in real-time — and provide the advice our clients need at nearly any time from any location.

So the question we have to ask is "Why?" Why is there still a mommy track when technology enables the job to be done basically anywhere at any time? This is not just a problem for the legal field, but for other traditionally male-dominated fields where the work can be performed remotely (thus, eliminating hands-on medical care — although, don't discount telemedicine).

Is this really still a thing?

In our survey, there were several comments that indicated that discrimination against women in the workplace is not a big issue. Every comment like that was from a male respondent. Unless you are a woman experiencing this discrimination or a man who deliberately pays attention to the matter, you likely do not see it. It is the same for people with disabilities or people of color — unless one is a member of the particular class — those who experience the comments, challenges, and inappropriate environment, it is nearly impossible to recognize it.

HERE ARE SOME OF THE COMMENTS WE RECEIVED IN THE SURVEY:

Heard a partner tell a pregnant female associate he should be consulted before she decided to have any other children.

Middle-aged male boss telling me (young female attorney) my work clothes . . . were more "business casual" because of the colors/patterns. His examples of my not-court-appropriate clothing were a pale green blouse shirt as opposed to white or black [shirt], light blue suit pants as opposed to navy, black, or dark grey, and floral blouses. A 20-minute lecture about clothing for women (by a male) and then a two minute prep talk for a particular kind of depo I had never taken and had asked for advice on. Moral of the story: skewed priorities.

*Once I had my first child I noticed much more negative expectation about my availability. Availability must be redefined for everyone — we are all available 24/7 on the "cr**kberry," why does this not count for working moms putting their kids to bed when it does for guys out at "client events"?*

In 2013, a male attorney across the table in an M&A deal not only said this out loud but wanted a clause written into the contract providing for the possibility of me getting pregnant in the next six months before the deal closed. He wanted there to be a penalty clause if we had to switch out attorneys because I got pregnant.

I have found that if a man's wife stays home with their children, it is very hard to get him to respect me and take me seriously in the workplace. In fact, I have had several of those men question why I am not at home with my child, asking: "Wouldn't I rather be at home? Wouldn't I be happier?" etc. It is incredibly offensive. Do they ask these same questions to their male counterparts?

Women advanced to executive level seem to feel more vulnerable than men in such positions.

Boss questioned whether senior executives would be comfortable with a female legal advisor.

Research indicates that the answer lies in traditional views of gender roles. Since the inception of the term mommy track in the late 1980s, people have seen only two types of women — those who were career-oriented and those who had children and worked. The issue seems to be in the balance — why not support women in both elements? Can a woman not be both career-focused and a mother? There seems to be no lack of support for men who are career-oriented and fathers. In fact, as referenced above, men appear to receive greater benefits for the same circumstances in which women are penalized.

Vodaphone announced in 2015 that it was changing its global policies for new mothers. After researching, Vodaphone discovered that 65 percent of new moms who left the company did so within the first year after they returned to work. So they now offer 16 weeks of paid maternity leave followed by six months of 30-hour weeks at full-time pay. They hope to retain women workers with this supported mommy track that aims to offer a non-stigmatized option.

Unsurprisingly, research into the legal mommy track show that 20 percent of attorneys in the top 50 best law firms for women take advantage of the flexible work arrangement, but it generally is only those at the partner level — presumably more secure in their employment. Of those, partners were more apt to work remotely and use flextime rather than reduced hours. So it seems that associates are still expected to put in face time. Would that really still apply if the partners are all working

remotely?

Interesting question, but it may not be a realistic comparison to make. Some people are simply not remote workers. Technology makes them available at all hours — when they don't want to be available. And although the newer generation are able to integrate work and personal lives, the older generations are still struggling to balance those two aspects. *We must answer that email or the client will be upset. We must submit that research to our boss tonight before bedtime.* At the same time, the boss is expecting to see that response, because we cannot turn it off.

It would be nice if we could integrate technology into our lives. If we are going to be "on" 24 hours a day, seven days a week — then we should be able to be "off" when our personal lives need attention, be that at 10 am or 7 pm. We should be able to do the right amount of work in the same amount of time, not squeeze more hours out of a tight week.

So to answer the question: Can technology erode the mommy track? Probably, but not entirely. It can, however, transform a negative state into a productive and supported one. There is no question that technology gives us the ability to revolutionize expectations and results. It is still up to us as professionals to mold that ability into reality — to innovate our view of mommies and shift our mindset from rolling the chair to ruling the work. Let us determine our best working place and time. And to the one older male partner… Yes, kindergarten graduation is a thing.

Companies focusing on fixing the gender pay gap

Recently, several companies have taken steps to ensure that they have no gender pay gaps. Marc Benioff, CEO of Salesforce, was skeptical when two female employees claimed that women were paid less than men. So he ordered a review of all 17,000 salaries — and is now spending about US$3 million to fix the problem. The other issue, that women only make up about 30 percent of the workforce and even less than that in leadership positions, will take more effort to fix.

In a bigger effort, Walmart took an unusual step in 2005 to insist that any law firms that work on their cases must assign a woman and/or person of color to their work as the lead attorney. They insisted on this leadership change and diversity reviews at each of their top 100 law firms by threatening to remove their business. Walmart states on its law firm supplier website: "As with diversity, firms handling Walmart work are required to implement Flextime policies that the law firm deems appropriate for the firm and its US-based attorneys. Walmart reserves the right to terminate its relationship any firm that does not comply with these requirements."

Intel, which has been vocal lately about its gender pay equality efforts, has taken the step to offer employees double the referral bonus for recommending new hires from historically underrepresented groups, including women. Intel's CEO pledged $300 million to support diversity programs.

Women on boards

The issue of having a critical mass of women on corporate boards of directors is a global one. Several countries have taken the step to require women on corporate boards by law, such as India, Malaysia, Colombia, Israel, Italy, and Slovenia.

In the lead with women on the boards are the European countries. In particular, Norway, France, Sweden, and Italy have the highest percentage of women on boards. Unfortunately, the Americas and the Asia Pacific region have the least amount of growth in gender diversity on boards. On a good note, the three global regions are about equal when it comes to having women as chair of the boards with Europe at five percent and the Americas and Asia Pacific equal at four percent.

Despite studies showing that companies with more than one woman on their boards outperform other companies by 26 percent on their return on invested capital and have higher share price, there are doubters. It is mainly a case of the chicken or the egg quandary. Do the successful companies have women on the board because the companies are progressive and open to challenging the status quo, or are they successful because they have women on the board? Are the companies without women on the board (and you have to have more than two to be truly diverse) mired in traditional values and views? It is not fair to proclaim companies fail/decline related to a lack of gender diversity on boards and in senior management, but it may be fair to say they fail due to lack of strategic and tactical vision. And part of that vision is a celebration of diversity with all of its benefits, perspectives, and change.

Last thoughts

Not every element we discussed is true for every man and every woman who is a lawyer — nor are they true in all geographical regions. Nevertheless, the numbers don't lie. It is a fact that female attorneys are not equally represented in the executive legal positions as male attorneys despite that just as many women as men enter into the legal profession. The issue is not a simple one to address, but the benefits that women bring are numerous and necessary to help businesses succeed. This issue can be addressed from many fronts — awareness and education, modernizing the "traditional" legal workspace, developing mentorship, and supporting women in efforts to advance and grow. ACC recognizes these concerns and is taking steps to support women in-house counsel by responding to the needs of its members in developing toolkits, facilitating education and open discussions, and illuminating the ongoing issue. If you want to be part of this effort or have comments, please join us or you can always contact the authors or ACC for more information via email.

Further Reading

2015 ACC Global Census: A profile of in-house counsel. Association of Corporate Counsel, 2015.

"Female Lawyers Still Battle Gender Bias," May 4, 2014, *Wall Street Journal*.

"Men vs. Women: Why the work divide maters," by Katherine Crowley and Kathl Elster, Special to Upstart Business Journal. January 10, 2103.

"When it comes to mentoring, does sex matter?" by Beth N. Carvin and Kerrie Main. June 24, 2013.

"Xavier or Magneto? Mentoring Lessons from the X-Men," ABA Section of Litigation 2012 Section Annual Conference.

"The Unfinished Agenda Women and the Legal Profession," by Deborah L Rhode. 2011, ABA Commission on Women in the Profession.

“Lawyers: Technological Evolution.” *ACC Docket*, October 2015.

"Measuring Attorney Quality of Life." An online survey conducted by K Royal September 24 – October 7, 2015.

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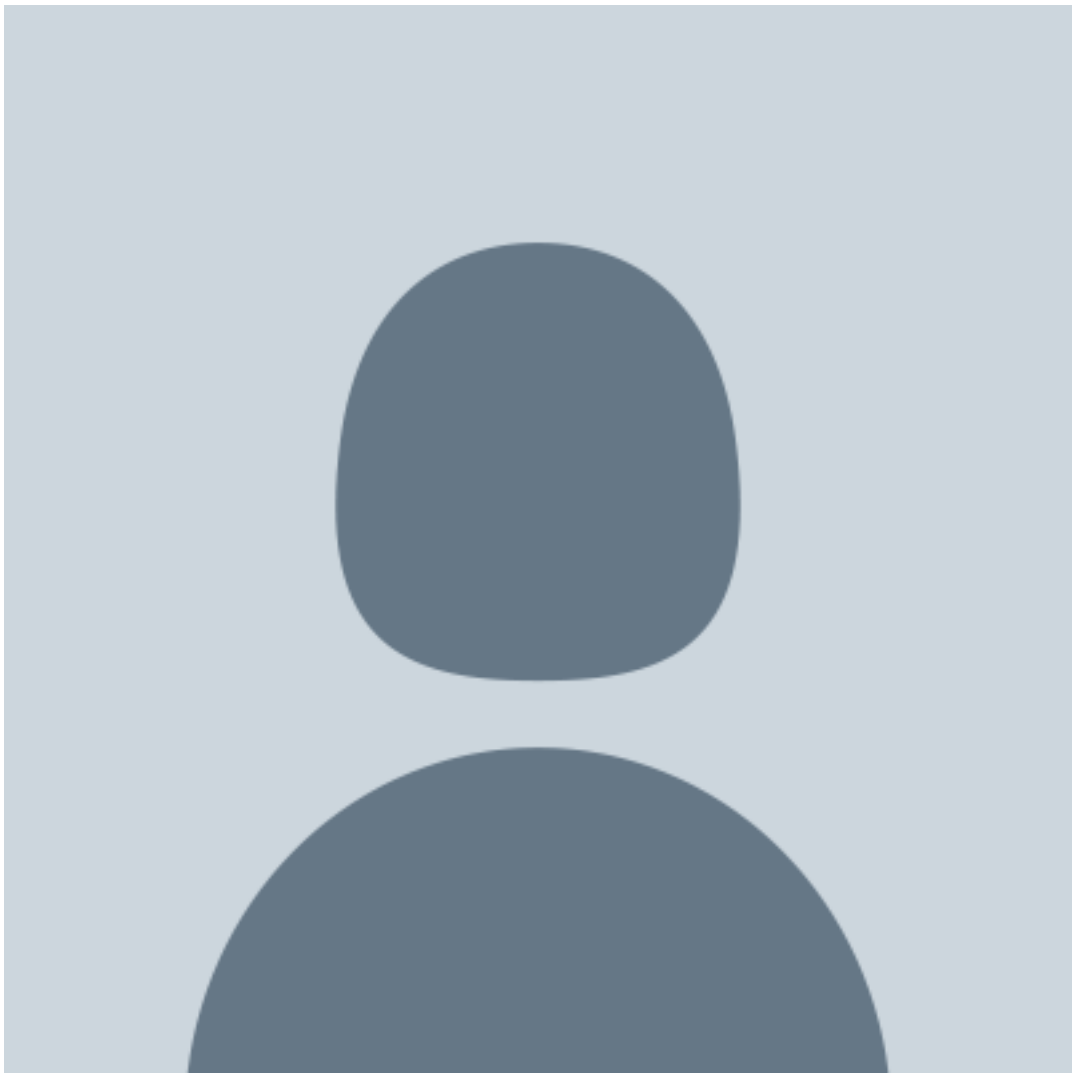

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