1996

Views from the Front: A Dialog about the Corporate Law Firm

S. Elizabeth Wilborn

Ronald J. Krotoszynski Jr.
University of Alabama - School of Law, rkrotoszynski@law.ua.edu

Views from the Front: A Dialog About the Corporate Law Firm

S. Elizabeth Wilborn[*]
Ronald J. Krotoszynski, Jr.[**]

Having spent a few years in the trenches at a major corporate law firm,[1] and, throwing caution to the wind, we decided to pursue a somewhat novel idea: a fictionalized discussion about the state of the corporate law firm between two ideological icons—Karl Marx and Betty Friedan.

The increasing clamor of associate dissatisfaction at corporate law firms requires that these institutions consider the desirability of fundamental, transformational reform in order to create a more user-friendly atmosphere for associates, partners, and long-suffering support staff. In short, revolution—and who better to sow the seeds of revolution than Karl Marx and Betty Friedan? Both Marx and Friedan developed transformational, holistic, social theories—theories that provide a useful analytical framework for deconstructing the corporate law firm.[2]

---

* Assistant Professor, University of Cincinnati. J.D., 1991, Duke University School of Law. Former Associate, large law firm, Washington, D.C.

** Assistant Professor, Indiana University School of Law - Indianapolis. J.D., LL.M., 1991, Duke University School of Law. Former associate, large law firm, Washington, D.C. The authors wish to thank their former classmates and colleagues for sharing their firm-related antics and anecdotes and for keeping us honest by reviewing and commenting on earlier drafts of this Article. (For obvious reasons, we cannot name any names.) We also wish to thank Ms. Betty Friedan for her invaluable insights and assistance. Ms. Friedan's scholarly efforts have established both the importance and viability of a new vision of gender equality in which both women and men enjoy greater freedom of choice in defining themselves and their life roles. We hope that this Article contributes in some small way to the ongoing dialog Ms. Friedan has facilitated about issues of gender, sex, and equality. Of course, the authors take full responsibility for any and all errors and omissions.

1. *Cf.* Frederick W. Lambert, *An Academic Visit to the Modern Law Firm: Considering a Theory of Promotion-Driven Growth*, 90 MICH. L. REV. 1719, 1724–25 (1992) (criticizing attempts by academics who lack any experience in big firm practice to deconstruct these institutions). Of course, the views expressed in this Article do not reflect the views of our former law firm. Moreover, the anecdotes and stories appearing in this Article are not necessarily drawn from events that took place at this firm. Instead, they represent a fictionalized amalgamation of experiences drawn from the real-life travails of associates at a number of larger big-city corporate law firms.

2. Interestingly, there is a relative paucity of scholarship about corporate law firms and how they operate. The legal academy only recently has turned its attention to the corporate law firm. *See* Robert W. Gordon, *Introduction to Symposium on*

The case for revolutionary reform is stronger than ever. Corporate law firms are in a state of turmoil.[3] Associate turnover is high.[4] Furthermore, both associates *and* partners report growing levels of dissatisfaction with the quality of life in some of the finest firms in the land.[5] Yet, by all accounts, corporate law firms are doing well. Profits per partner are up.[6] Associate salaries, after several years of stagnation, are once again increasing.[7]

By any objective measure, partners and associates should be pleased with the state of the corporate law firm. However, all is not well among the pin-striped set. Increasingly, both partners and associates are leaving big firm practice—or are leaving the law entirely.[8] At the same time, a pesky gender gap has remained unre-

---

the Corporate Law Firm, 37 STAN. L. REV. 271, 271–72 (1985) ("[I]t seems astonishing that law firms should have for so long remained almost unexplored in legal scholarship."). Although corporate law firms have been the subject of greater scholarly interest in the last 10 years, surprisingly little of this scholarship has been undertaken by, or reflected the experiences and sensibilities of, associates actually working at corporate law firms.

3. *See, e.g.*, Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 313–16 (1985) (describing rapid growth and increased institutional instability of law firms); James W. Jones, *The Challenge of Change: The Practice of Law in the Year 2000*, 41 VAND. L. REV. 683, 686–89, 692 (1988) (discussing fundamental changes within legal profession, including rapid firm growth, deteriorating attorney-firm and attorney-client relations, and growing acceptance of marketing).

4. *See* Arnie Kanter, *Lost Values, Lost Loyalty*, NAT'L L.J., Mar. 11, 1991, at 13, 13 (describing rising associate and partner "body count" as one result of large law firms' changing goals and structure); *see also* Jones, *supra* note 3, at 687–89 (reporting lawyers' increasing willingness to change firms several times during their careers).

5. *See, e.g.*, William H. Rehnquist, *The Legal Profession Today*, 62 IND. L.J. 151, 151–52 (1987) (offering anecdotal evidence of falling morale and lack of satisfaction in firms that specialize to maximize profits); *see also* Kanter, *supra* note 4, at 13 (describing cynicism that can result in firms where main motivation is "rainmaking"); Sylvia Lurie, *Difficult Choices for Managers*, NAT'L L.J., Apr. 9, 1990, at 16, 16–18 (reporting law firm leaders' concerns with sacrifices successful lawyers must make in life outside work).

6. *See* SOL M. LINOWITZ, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY 101 (1994) ("Over the last quarter of a century, the number of lawyers in the United States has gone up by almost two and a half times, and the income of lawyers has multiplied more than six times, probably topping $100 billion in 1993."); *see also* James F. Fitzpatrick, *Legal Future Shock: The Role of Large Law Firms by the End of the Century*, 64 IND. L.J. 461, 462–63 (1989) (detailing increase in per-partner profits in large law firms); Rehnquist, *supra* note 5, at 151 (noting lawyers today make "considerably more money" than 25 years ago and that number of lawyers in United States more than doubled from 1970 to 1985).

7. *See* Edward A. Adams, *Firms Give 'Going Rate' Gentle Boost*, N.Y. L.J., Apr. 17, 1995, at 1, 7 (reporting economic recovery in legal profession prompts associate salary packages of one million dollars over first seven years of practice).

8. *See* Michael Orey, *Misery*, AM. LAW., Oct. 1993, at 5, 5–6 (attributing higher

solved. Notwithstanding the great strides that women have made within the profession in general and in large corporate law firms in particular, women remain significantly less happy with corporate practice than do men.[9]

Given the good economic news, the malaise within the ranks is somewhat bewildering: if things are objectively so good, why do young attorneys so often report that their professional experiences in corporate law firms are awful, and why are women leaving in greater numbers than men? Which brings us to Karl and Betty.

Karl Marx, of course, is the father of communism, a philosophy that ostensibly celebrates the intrinsic value of each person's well-being and happiness over the well-being and happiness of the few.[10] In order to maximize the well-being and happiness of the many, the few must relinquish certain property, rights, and status. Addressing and resolving the quality of life complaints swirling around many corporate law firms will require rethinking the fundamental economic premises upon which most corporate law firms are built. As one commentator wryly observed, "[T]he large law firm is one of the only institutions in contemporary America that fits Marx's theory of exploitation with no fudging required."[11] Thus,

---

attrition in legal profession to lawyers' lack of personal fulfillment from work); Judith Schroer, *Discontented Lawyers Flee Profession*, USA TODAY, Oct. 7, 1993, at B1 (reporting lawyers leaving profession for jobs with less stress, conflict, and monotony); *see also* Saundra Torry, *Attorneys Who Come In-House from the Cold*, WASH. POST, July 10, 1995, at F7 (explaining money, retirement savings, and more interesting work are motivations for partners to become in-house counsel); Saundra Torry, *In-House Corporate Counsel Posts Have a Strong Appeal*, WASH. POST, Sept. 4, 1995, at F7 (explaining motivations of women leaving firms for in-house positions).

9. *See* AMERICAN BAR ASS'N COMM'N ON WOMEN IN THE PROFESSION, UNFINISHED BUSINESS: OVERCOMING THE SISYPHUS FACTOR 5–6 (1995) [hereinafter UNFINISHED BUSINESS] (describing significant personal sacrifices many women make to succeed in legal profession); MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 57–58 (1991) (stating women express dissatisfaction with conditions in large firms, particularly regarding firm obstruction of family life); Patricia M. Wald, *Breaking the Glass Ceiling*, HUM. RTS., Spring 1989, at 40, 41 (maligning barriers that continue to impede women from competing with men at highest levels of legal profession); *see also* Grace M. Giesel, *The Business Client Is a Woman: The Effect of Women as In-House Counsel on Women in Law Firms and the Legal Profession*, 72 NEB. L. REV. 760, 770–74, 776–83 (1993) (discussing subtle discriminatory practices that impede women lawyers' path to partnership).

10. Marx's classic statement of alienation was that the laborer expends labor on the object he produces but neither identifies with it nor owns it. *See* KARL MARX, ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844, at 110–11 (Dirk J. Struik ed. & Martin Milligan trans., Int'l Pub. 1964) (1844).

11. David Luban, *The* Noblesse Oblige *Tradition in the Practice of Law*, 41 VAND. L. REV. 717, 735 (1988); *see also* LINOWITZ, *supra* note 6, at 106 (arguing modern corporate law firms operate on Marx's theory of surplus labor). For a de-

who better to undertake a deconstruction of the corporate law firm than Karl Marx, who dreamed of rebuilding entire societies? Of course, were he with us today, Marx would have despised most, if not all,[12] corporate and business structures in the United States; his displeasure at contemporary American society surely would not have been limited to the organization and operation of corporate law firms. However, his philosophy plainly provides a useful means of deconstructing the institution of the corporate law firm.[13]

Betty Friedan, the godmother of the modern feminist movement, pioneered the discourse of choice. Today, most women take for granted the proposition that they are free to pursue a profession, to be a mother and caregiver, or to be (shocking) *both*. However, women in the law find it increasingly difficult to exercise meaningful choices about their lives and life roles. Friedan's work and philosophy[14] provide an excellent standard for critiquing the responsiveness of corporate law firms to gender equality issues.

As with Marx's works, Betty Friedan's writings do not purport to address directly gender issues in corporate law firms. However, her work identifies several of the more salient general problems and issues that confront professional women, including the need for women to find ways to define themselves as both women *and* professionals and the need for men to accept women fully as *both*.[15]

So, with tongues planted firmly in cheek, we are off on a voyage of professional self-discovery. Along the way, we will survey the current academic literature about the corporate law firm. This literature has grown up over the past decade or so and, we believe, has focused too much on identifying problems without bothering to offer concrete proposals for reform.[16] Although we do not intend to in-

---

scription of Marx's theory of surplus value and its exploitation by the capitalist class, see Karl Marx, *Capital, Volume I*, *in* THE MARX-ENGELS READER 294, 344–61 (Robert C. Tucker ed. & Samuel Moore & Edward Aveling trans., 2d ed., W.W. Norton & Co. 1978); Karl Marx, *The Grundisse*, *in* THE MARX-ENGELS READER, *supra*, at 221, 247–50 (Martin Nicolaus trans.) [hereinafter Marx, *The Grundisse*].

12. Perhaps Ben & Jerry's could have escaped his wrath, but even this is doubtful.

13. *See generally* Phillip E. Johnson, *Do You Sincerely Want to Be Radical?*, 36 STAN. L. REV. 247, 249–52 (1984) (discussing Critical Legal Studies movement and reasons why some of its adherents rely on Marx's social deconstruction techniques in their work).

14. *See* BETTY FRIEDAN, THE FEMININE MYSTIQUE 344–51 (1963) [hereinafter FRIEDAN, THE FEMININE MYSTIQUE]. For a description of Friedan's articulation of questions raised by the need to integrate career with relationships and family, see BETTY FRIEDAN, THE SECOND STAGE 35 (1981) [hereinafter FRIEDAN, THE SECOND STAGE].

15. *See* FRIEDAN, THE SECOND STAGE, *supra* note 14, at 6 (arguing both men and women must redefine success at home and work).

16. Indeed, one could fairly characterize scholarship in the field as "Perot-esque"

dulge in the blame game, we will offer a number of specific ideas for making corporate law firms better places to work for both women and men, for both associates and partners.

Our setting: a cafe in Greenwich Village, just off Washington Square. It is the kind of place that students and professors frequent, where the espresso is strong and so are the customers' opinions. Betty sits alone enjoying her double latte, occasionally eavesdropping on the next table's friendly discussion about the merits of abstract expressionism that suddenly degenerates into an argument about the phallocentrism of Joe Camel's nose.

* * *

Betty: Karl, please join me! I must confess that I am rather surprised to see you in this upscale and somewhat bourgeois atmosphere. What brings you to the Village? Recruiting new members to the Great Cause?

Karl: What, are you kidding? I am here solely because my granddaughter Michelle lives here. For reasons that escape me completely, she works at one of the many corporate law firms located here that daily treads across the back of the proletariat in their wing-tips.

Betty: Are you doing ok? You seem more radicalized than usual. Has something other than the new Russian economic liberalization plan upset you? I think you need a drink—Waiter, my friend Karl would like a drink.

Karl: I will have what she is having, umm, second thought, make mine decaf. Lunch with my granddaughter was quite stressful; I certainly don't need any caffeine now.

Betty: What happened? I thought you two were quite close.

Karl: We are. It is her job, not our relationship, that is the problem. She is having some difficulties at her firm and I am quite concerned. She's in an unrelentingly rent-seeking capitalist environment founded on the exploitation of surplus labor, so I am not really surprised that she is

---

in its fixation with defining the problems confronting corporate law firms. *See, e.g.*, Leslie Bender, *Sex Discrimination or Gender Inequality?*, 57 FORDHAM L. REV. 941, 953 (1989) (noting problems of gender discrimination but offering only vague "solution" that "[b]oth genders should be treated as the norm, treated equally, and permitted to contribute and flourish"); Kathleen A. Lahey & Sarah W. Salter, *Corporate Law in Legal Theory and Legal Scholarship: From Classicism to Feminism*, 23 OSGOODE HALL L.J. 543, 549 (1985) (reviewing several feminist critiques of corporate structure but providing few solutions); Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1184 (1988) (recognizing professional women receive mixed signals from society and workplace that they "must put . . . family first, but must not permit it to interfere with . . . employment obligations").

unhappy.

Betty: My grandson Michael is also going through some rough times professionally—he works at a corporate law firm in the city called Bidet Brothers. He graduated from Yeg Law School a few years back. He married his law school sweetheart right after graduation and got a great job with Bidet Brothers. Everything seemed to be going swimmingly. He and his wife had a child and appeared quite happy together. Lately, however, I have become worried. Michael has always been a hard worker, but now, I never see him because he's *always* at the office.

Karl: It sounds as if your grandson has become grist in the partnership's mill. He represents labor divorced from its own consciousness, from its own being!

Betty: Come again? Michael works hard, but he says he likes his job. It's hard for me to tell whether this is really true. I just don't see him much anymore. For example, we always make plans for lunch, or dinner, or whatever, but he always cancels, usually at the last minute. He broke his mother's heart last year when he didn't come home for Thanksgiving dinner—his wife and son came without him.

Karl: Michael's plight is the universal predicament of laborers everywhere: exploitation by the capitalist class.[17] Really, one must view this from an economic perspective. How many hours does he work?

Betty: His firm expects him to bill 2000 hours a year. Michael says he works about 2700 hours to make the 2000 hour billable goal.[18]

Karl: Again, you are proving my case: your grandson represents a form of human capital.[19] In fact, his situation is not materially different from that of a nineteenth-century English mill worker.[20]

---

17. *See* Karl Marx, *Alienation and Social Classes*, *in* THE MARX-ENGELS READER, *supra* note 11, at 133, 133–35 [hereinafter Marx, *Alienation and Social Classes*]; Karl Marx, *The Economic and Philosophic Manuscripts of 1844*, *in* THE MARX-ENGELS READER, *supra* note 11, at 66, 70–81 [hereinafter Marx, *Manuscripts*]; Marx, *The Grundisse*, *supra* note 11, at 247–55.

18. *See* Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 ST. JOHN'S L. REV. 85, 96–97 (1994) (listing several large firms that require associates to average 2000 billable hours per year).

19. *See* Marx, *Manuscripts*, *supra* note 17, at 98 ("[T]he worker is a [form of] capital."); *see also* Gilson & Mnookin, *supra* note 3, at 324 ("The ability to practice law is the observable manifestation of the lawyer's human capital."); Paul B. Stephan III, *Federal Income Taxation and Human Capital*, 70 VA. L. REV. 1357, 1358–63 (1984) (defining human capital as type of income for purposes of taxation).

20. *See generally* Friedrich Engels, *Working Class Manchester*, *in* THE MARX-

Betty: Sorry Karl, but I am not convinced. The analogy is hardly apt.

Karl: My point is that his relationship to his work is little different from that of a wage laborer. Indeed, "the [associate] sinks to the level of a commodity and becomes . . . the most wretched of commodities."[21]

Betty: I still don't see the connection.

Karl: Your grandson works to produce a good—the billable hour—that the firm sells at a profit. The firm pays Michael $40 per hour for his work and bills his work to its clients at $190 per hour. Even with overhead, the firm nets about $100 for every hour of his work. Over the course of an average year, that's over $200,000.[22]

Betty: The firm pays him a good salary, and his working environment is extremely plush. Aren't you overstating your case?

Karl: The fundamental issue is the condition of the laborer and the relationship of the laborer to his work, not the actual working environment.[23] The fact that Michael works in an office filled with oriental rugs, rare antiques, and postmodern paintings does not mean that he feels any differently than the assembly line worker at Ford who works over greasy floors (Penthouse centerfolds (only kidding)) in a windowless factory.

Betty: I think that this is a bit more complicated than you suggest.

Karl: No, it really isn't. As I see it, the problem is twofold: First, Michael has little control over the pace or the nature of his work; second, because a major corporate law firm is an elaborate kind of Ponzi scheme,[24] his immedi-

---

ENGELS READER, *supra* note 11, at 579, 579–85 (describing living and working conditions of English mill workers in nineteenth century).

21. Marx, *Manuscripts*, *supra* note 17, at 70.

22. *See* Fitzpatrick, *supra* note 6, at 464 ("[L]aw firms work on the Marxist theory of surplus value, transferring earnings from the bottom of the enterprise to the top.").

23. *See* Marx, *Manuscripts*, *supra* note 17, at 71–72.

24. A Ponzi scheme, named after a famous American swindler, is an investment scam where early investors are paid off with funds put up by later investors. *See* MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 905 (10th ed. 1995). Later participants, therefore, are subject to increasing risks. *See id.* The similarities are obvious between the scheme and the big firm structure, where associates below must work increasing hours to finance the growing salaries of partners above. *See* Fitzpatrick, *supra* note 6, at 464–65 (explaining partners' expectation of making more money requires ever larger pool of associates working more hours below).

ate supervisors have little incentive to maintain a serious mentoring relationship with him.[25]

Betty: You're saying that he does not enjoy his work.

Karl: I am saying that he *cannot* enjoy his work. You have to be connected to your work for it to have meaning. Work divorced from self is alienating.[26] It does not matter whether you turn a screw in a factory or Bates-stamp documents in a major civil case.

Betty: Well, Michael is on the partnership track, or so he tells me. And, if he makes partner, he and his family will be financially set for life. Anyway, he's getting the benefit of training under more experienced lawyers, or at least some benefit.

Karl: What exactly do you mean "some benefit"?

Betty: I'm not quite sure how to put this. One of Michael's partners has not met him yet, although he's been at the firm for over two years now. He just leaves phone mails and asks for documents to be "sent up." Michael talks about this partner he never meets. A more senior associate gives Michael his assignments. Sometimes Michael gets an e-mail describing a project and giving him a deadline. Michael has started calling the partner "Charlie" after the voice from the box in "Charlie's Angels."

Karl: You are describing optimal conditions for alienation: labor divorced from its humanity and converted into a means of production.[27] Here, the firm requires your grandson to

---

25. *See* LINOWITZ, *supra* note 6, at 106–07 (stating law firms no longer acculturate new lawyers to their profession but focus on turning them into profit centers).

26. Marx describes "alienation" as follows:

> [T]he fact that labour is *external* to the worker, i.e., it does not belong to his essential being; that in his work, therefore, he does not affirm himself but denies himself, does not feel content but unhappy, does not develop freely his physical and mental energy but mortifies his body and ruins his mind. The worker therefore only feels himself outside his work, and in his work feels outside himself. He is at home when he is not working, and when he is working he is not at home.

Marx, *Manuscripts*, *supra* note 17, at 74. Alienating work fundamentally distorts the psyche of the afflicted worker: "The worker puts his life into the object; but now his life no longer belongs to him but to the object. . . . [T]he life which he has conferred on the object confronts him as something hostile and alien." *Id.* at 72; *see also* Marx, *The Grundisse*, *supra* note 11, at 252–54 (discussing alienation of object of labor by worker).

27. *See* Marx, *Manuscripts*, *supra* note 17, at 71–76 (describing process whereby workers no longer relate in meaningful way to work product but become "estranged" from both product and activity of labor); *see also* Steven Brill, *Dealing with Layoffs*,

work overlong hours, provides him no control over either his work or his work schedule, and has not even introduced him to his principal supervisor! How could anyone be happy and well adjusted under such conditions?

Betty: Ok, ok, so it is not the optimal employee-employer relationship. Michael does receive benefits though. Let's go back to the surplus labor point. At a minimum, Michael receives the benefit of the firm's name and prestige; in turn, clients are willing to pay the firm relatively higher hourly rates for his work. The willingness of clients to do this, however, is completely contingent on Michael's association with the firm. These same clients, or similar clients, would not retain him at these rates were he a solo practitioner in Hoboken. So, it seems to me that Michael only has surplus labor value in the context of a large corporate law firm. He can capture a portion of that value *only* if he works at a place like Bidet Brothers; outside the large corporate firm his labor is worth significantly less.

Karl: Well, within the context of the firm, his surplus labor is being exploited.

Betty: I am not arguing that point. What I am saying is that the value of an associate's labor—and particularly a junior associate's labor—is a function of a law firm's goodwill.[28] So, it is not entirely accurate to say that these firms are "exploiting" associates' surplus labor, because the value of that labor arises from the worker's relationship to the firm.

Karl: Whereas a plumber's labor has a relatively constant value, whether he works for himself or for a larger concern . . . I will concede the point only in part: The firm confers value on the associate's labor by virtue of its client base, or goodwill; however, this does not excuse or justify the firm's behavior in exploiting its associate workforce. The conditions under which an associate labors should not necessarily be materially worse because the firm confers value on the labor.

Betty: He has to make some sacrifices, in the short term, to obtain a long-term benefit. It is a trade-off.

AM. LAW., June 1990, at 5, 37 (describing business strategy of one firm that required firing 15 hardworking lawyers to maximize profits).

28. *See generally* Rehnquist, *supra* note 5, at 154 (describing traditional role of institutional clients in maintaining firm's fiscal health).

Karl: [muttering] Shameless exploitation!

Betty: Karl, the law is a profession, and law firms are associations of professionals, not factories.

Karl: The reality of modern law firm life is rather grungy: corporate law firms operate largely, if not entirely, to maximize the partners' profits.[29]

Betty: Well, it is the partners' law firm, isn't it? Besides, you still have not addressed my point about training. Even if everything you say is true, and I am not saying that I agree with you, these associates, like Michael, do get the training. What about the training issue?

Karl: The economics of the firm are such that the "training" costs the partners virtually nothing and provides only a modest benefit to the associates.[30]

Betty: Karl, no one would stay in these firms if that were true.[31] There has got to be some training going on, maybe not much mentoring, but these associates are learning something of value. And Michael tells me that people leave the firm to go teach law, or work as federal prosecutors, or work as corporate counsel.[32] If the job were as useless as you suggest, nobody would hire these people.

---

29. *See* LINOWITZ, *supra* note 6, at 22, 54–56 (comparing stable and congenial law firm of 1930s to 1950s with "bloodlettings" and restructurings taking place at firms during early 1990s); *see also* LOUIS AUCHINCLOSS, THE PARTNERS 11–17 (1974) (providing fictional account of greedy management committee at one law firm basing all decisions on increasing profits to partners); Rehnquist, *supra* note 5, at 153–54 (arguing that focus on profits in law firms curtails expenditure of energy outside work to detriment of associates, profession, and public).

30. *See* LINOWITZ, *supra* note 6, at 106–07 (noting that because firms no longer provide mentoring to young lawyers, "it's not clear what [associates] get for their time except the money").

31. *See* Lambert, *supra* note 1, at 1735 ("A firm cannot be entirely whimsical in its promotion policies without suffering from associate attrition and a bad recruiting reputation. Except for cases of gross departure from established procedures, however, meaningful monitoring and enforcement of the promotion bargain by the associate are very difficult."); *see also* GALANTER & PALAY, *supra* note 9, at 102–08 (describing associate promotion as function of maintaining partner-associate ratio with little consideration of individual contribution). For a description of the "up-or-out" system and a critique of the "tournament" theory of promotion, see Kevin A. Kordana, Note, *Law Firms and Associates' Careers: Tournament Theory Versus the Production-Imperative Model*, 104 YALE L.J. 1907, 1921–33 (1995).

32. Of course, Betty's point is true only in part. Senior associates working in larger corporate law firms who wish to remain in private practice will find that many of their clients are "clients of the firm" and will therefore be faced with rebuilding their practices from scratch should they leave their firm (whether voluntarily or otherwise). *See* Gilson & Mnookin, *supra* note 3, at 354–60 ("[T]he return on this [firm-specific] capital is available to lawyers *within* the firm but is lost to lawyers who leave the firm.").

Associates leave with better practice skills. You've got to grant me this point.

Karl: Regardless of the net effects, the incentives run against meaningful mentoring. By this I mean that the personal dynamic between partners and associates is now driven by the economic relationship. Partners know that eight of ten new associates will be gone within the next seven years.[33] No real incentive exists to train or even to learn anything about the associate or his life outside the firm. On the contrary, the incentives run in the other direction—getting to know an associate is akin to adopting a Thanksgiving turkey as a pet: it's just going to cause you more guilt at the end.

Betty: Why would anyone work at these firms, if the conditions are so bad?

Karl: People stay for a variety of reasons, most of which are financial. My granddaughter Michelle graduated with $65,000 in law school debt. She already had $35,000 in college debt, for a grand total of $100,000. Assuming that she doesn't want to go bankrupt, she has to make a big salary just to service this debt.[34] Two of her friends just got married; together they have over $185,000 in debt, which they have dubbed "the House."

Betty: Couldn't she have applied for a debt-forgiveness program?

Karl: For most newly minted lawyers, these programs are not an option, either because there are not enough public interest jobs to go around or because their law school doesn't have the funding to meet the demand for this kind of assistance.

Betty: Well, the firm did just give all the associates raises.

---

33. *See* Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567, 571 (1989) ("The most peculiar aspect of the corporate law firm's capital budgeting process is the up-or-out system, which appears to have dominated employment practices over the entire period in which the institution of the modern corporate law firm has existed."). Changing standards midstream also presents a vexing problem for the eager young associate who dreams of partnership. *See* Lambert, *supra* note 1, at 1732 (explaining how switch in emphasis from quality of work standard to standard that incorporates number of billable hours shows there is no permanence or predictability).

34. *See* Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191, 2212 (1993) (explaining law school debt limits choices of many law students); *see also* LINOWITZ, *supra* note 6, at 132–33, 195 (explaining law students' hunt for large salary as necessary to repay student loans).

That's at least something.

Karl: So what? Higher wages are "nothing but *better payment for the slave*, and would not conquer either for the [associate] or for labour their human status and dignity."[35]

Betty: Again, you seem to be particularly radical today. Let's bring down the level of the rhetoric and refocus on the training and retention issues.

Karl: All big corporate firms know that they cannot expand their partnership infinitely without cutting the partner draws. If they keep slicing the same pie, each individual slice is going to get smaller. Accordingly, there is a tacit agreement that the pie slice will, at a minimum, be held constant.

Betty: I think I see your point. This organizational paradigm requires a steady outflow of associates, some for reasons related to the quality of their work, some for purely economic reasons.

Karl: Quite so. In fact, the firm has to maintain the view that associates are like Doritos: "Don't worry, we'll make more."[36]

Betty: And, because of the debt burden that most elite law school graduates carry, this prediction always comes true.[37]

Karl: On these facts, real training and real mentoring are simply not going to be firm priorities.

Betty: Yes, from a macroeconomic perspective, I can see your point. But what about from a microeconomic point of view? Individual partners have no disincentive to train associates; on the contrary, the more that they can delegate, the less time they must spend supervising the associates.

Karl: That's a "yes-but" point. Yes, partners do want to train associates to undertake work with increasingly less super-

---

35. Marx, *Manuscripts*, *supra* note 17, at 80.

36. *See generally* LINOWITZ, *supra* note 6, at 109 ("[N]ew associates can always be hired or existing associates worked even harder . . . as the [work] load expands.").

37. Workers, including associates, are often not entirely unconstrained in their employment decisions. On the inability of workers to exercise autonomy in choosing their jobs, see Marx, *The Grundisse*, *supra* note 11, at 255, where Marx explains that freedom of exchange of work (living labor) for money (objectified labor) "is a mere *semblance*, and a *deceptive semblance*." *See generally* Fitzpatrick, *supra* note 6, at 463–64 (discussing lack of job stability in law firms and probability that most lawyers will have to make three or four career changes).

vision. But this does not mean that they necessarily want to get to know or understand the associates.

Betty: Now that you mention it, Michael told me that one of the partners he works for expressed surprise when he learned that Michael was married. It only came up because he had to cancel dinner on his wife's birthday in order to work on last-minute changes to an offering prospectus. The partner attempted to mollify Michael by telling him that the partner's fourth wedding took place at the law firm several years ago and that he and his wife still had not been able to find time for their honeymoon. Sick! I am glad that Michael, at least for the moment, appears to be better adjusted than the partners he works for at the firm.

Karl: I'm not at all surprised that Michael's partners know little about his life. Why should they bother? Distance is an almost mandatory requirement of the partner-associate relationship, because the organization has to maintain a strong outflow of associates.

Betty: Again, hyperbole rears its ugly head: some people *do* make partner. And, you've completely ignored new "nonequity partner," "senior associate," and "of counsel" positions.

Karl: To be sure, some associates do make partner, but at what price? Look at the cost to their personal lives: a litany of children raised by au pairs and failed marriages.[38] How

---

38. Two recent motion pictures take up the theme of the dysfunctional corporate lawyer. HOOK (Tristar Pictures 1992), a thoroughly forgettable film directed by Steven Spielberg, featured Robin Williams as an adult Peter Pan turned corporate lawyer. The film attacked careerism in general and the practice of law in particular. For example, Peter routinely promised to attend his son's baseball games, but inevitably could not do so on account of work. Peter's solution: he arranged for a firm employee to videotape the games, so that he could watch them after the press of business subsided. (Of course, it never did.) After returning to Neverland, where Captain Hook menaced his children, Peter renewed his commitment to his family. Needless to say, Peter quit the firm upon his return from Neverland.

Along the same lines, in REGARDING HENRY (Paramount Pictures 1991), Harrison Ford played an attorney, who, after facing death and then amnesia, undergoes an epiphany. While still suffering from amnesia, Henry returns to work at his firm, only to discover that he is a horrible human being. To make matters worse, both his wife and children despise him. Recognizing the error of his ways, Henry renounces the partnership in favor of a more family-oriented lifestyle.

The intended message for attorneys in corporate law firms is not particularly helpful: one must abandon corporate practice in order to maintain a normal, healthy life. For many (if not most) partners in major law firms, leaving the firm is simply not an option.

many times can you miss the ball game, or the birthday party, the graduation, or the wedding?[39] "Everything which the [partnership] takes away from [associates] in life and in humanity, [it] replaces for [them] in *money* and in *wealth*; and all the things which you cannot do, your money can do."[40]

Betty: Now that you mention it, Michael did tell me that his wife and his son keep leaving cassette tapes of "Cats in the Cradle"[41] in his Explorer's stereo. Maybe you have a point. On the other hand, firms are responding, albeit slowly, to the problems associated with the traditional "up-or-out" system.[42] As I mentioned, many firms now have established these tenured, nonequity positions—Michael's firm included. So, even if he does not make partner, he could still enjoy a good job with an excellent salary.

Karl: Well, "tenure" is too strong a word. Senior associates may not routinely be fired, but their existence is still quite precarious.[43] Furthermore, some firms have not even both-

---

39. *See* Marx, *Manuscripts*, *supra* note 17, at 77 ("[I]n degrading spontaneous activity, free activity, to a means, estranged labour makes man's species life a means to his physical existence.").

40. *Id.* at 96.

41. HARRY CHAPIN, *Cats in the Cradle, on* VERITIES AND BALDERDASH (Elektra Records 1974) ("'When you coming home, Dad?' 'I don't know when, But we'll get together then. You know we'll have a good time then.'").

42. *See* Abbie Willard Thorner, *Legal Education in the Recruitment Marketplace: Decades of Change*, 1987 DUKE L.J. 276, 283 ("[N]ew personnel categories for lawyers are proliferating."). For example, "D.C. firms are increasingly beginning to promote associates to a position that is senior to that of an associate, but junior to an equity partner." Eleanor Kerlow, *Partnership Track: Bumpier than Ever*, LEGAL TIMES, Jan. 21, 1991, at 11. The trend of promotions short of partner has continued, unabated. *See* Susan Orenstein, *Derailing the Partnership Track*, RECORDER, Oct. 18, 1993, at 1 (explaining "the momentum is growing for expanding the number of positions between associate and partner" and "up-or-out policies are being consigned to the trash heap"); Judy Sarasohn, *Keeping a Lid on It*, LEGAL TIMES, Jan. 16, 1995, at S26 (detailing low number of associates who make partner and expanding number for whom partnership is no longer end goal). *But see* The Rodent, *Of Counsel? Of Course!*, RECORDER, Aug. 4, 1995, at 8 (parodying "of counsel" designation as appellation used for "the qualified associate who will never be elected partner" and explaining "even the guys in the mailroom know it's The Firm's scarlet letter"); Sarasohn, *supra* (reporting legal consultant's observation that he has "never met a lawyer who's remained of counsel for 10 years").

43. *See* Edward A. Adams, *Milbank Lays Off 29 Senior Associates*, NAT'L L.J., Feb. 17, 1992, at 2, 2 (describing layoff of 29 senior associates at one New York firm); *see also* Sarasohn, *supra* note 42 (noting "of counsel" position "carries its own trouble" and "is not necessarily a panacea for limited partnership chances"); Judy Sarasohn, *The Climb to Partnership: Partnership Door Open to Few Associates*, LEGAL

ered to define the position clearly before designating lawyers "senior associates" or "of counsel."[44] These new positions are not the same as being partner—in fact, it's not even close.[45]

Betty: But Karl, in today's economy, what worker does not have a tenuous grasp on employment?[46]

Karl: Here, there is a rather strong element of "bait and switch." A Monsanto worker is not promised lifetime employment as a reward for total commitment; associates, on the other hand, are told that if they work hard and pay their dues, they will receive tenure.

Betty: C'mon. Let's be honest—associates know the score when they take these jobs.[47] They have realistic expectations regarding the prospects for tenure from day one.

Karl: These new positions, whether styled "of counsel," "senior associate," or "nonequity partner," will be a meaningful alternative to full, equity partnership only if they are perceived as carrying the same tenure rights and professional status as partnership. Because these associate purgatories never do, they merely delay the inevitable and represent a source of false hope. Moreover, they permit the firm to demand the work required for partnership and then deny the contestants the prize.[48]

Betty: But the firms *are* trying. You may be fundamentally correct on your larger point: leveraged firms must shed associates because the partnership cannot expand indefinitely. However, most associates would probably prefer the option of a "purgatory" to the old "up-or-out" system.

Karl: Maybe so, but my main objection remains: simply put,

TIMES, Jan. 17, 1994, at S28 (reporting of counsel lawyers "are expected to bring in business and there's still no tenure").

44. *See* Sarasohn, *supra* note 42 (explaining "firms are still uncertain about the non-equity partnerships and counsel positions").

45. *See* Marley S. Weiss, *Risky Business: Age and Race Discrimination in Capital Redeployment Decisions*, 48 MD. L. REV. 901, 938 n.163 (1989) ("[T]he change from partnership track to nonpartnership track status entails a very drastic change in the 'incidents of employment.'").

46. *See generally* James Aley, *What About You?*, FORTUNE, Aug. 7, 1995, at 69, 69 (warning many employees' jobs are more vulnerable than they think).

47. As one partner at a major D.C. firm wryly observed, "Young lawyers who come to work at law firms are often inexperienced, but rarely are they terminally naive." William J. Dean, *A Firm's Bottom Line*, N.Y. L.J., Oct. 28, 1991, at 3.

48. *See* GALANTER & PALAY, *supra* note 9, at 58–64 (explaining associates are working longer before partnership decisions are made and fewer associates are making partner); Gilson & Mnookin, *supra* note 33, at 571–75 (discussing changes in law firm hiring practices and promotions).

neither alienating work, nor the wealth that it can generate, is the equivalent of mature, nurturing relationships. The working conditions in these places is not healthy for the associates, the partners, or the in-betweens.[49] Wealth, in whatever form, is a means and not an end.[50] The corporate law firm clearly warps some attorneys and denies them an authentic world view.[51]

Betty: Wait a second. Are you suggesting that the partners are not better off than the associates? But the partners do have tenure.

Karl: In many respects, "[t]he [partners] and the [associates] represent one and the same human self-alienation. But the former feels satisfied and affirmed in this self-alienation, experiences the alienation as a sign *of its own power*, and possesses in it the *appearance* of a human existence. The latter, however, feels destroyed in this alienation, seeing in it its own impotence and the reality of an inhuman existence."[52]

Betty: I think that you are being hyperbolic again. Most lawyers do not consider their existences "inhuman."

Karl: If anything, I have understated the problem significantly.[53] I would go so far as to question whether people

---

49. *See* Rehnquist, *supra* note 5, at 153–54 (characterizing law firm work as "drudgery" and not satisfying to many); *see also* Orey, *supra* note 8, at 5 (reporting growing disillusionment of lawyers with their work and erosion of traditional lawyer-client relationship).

50. Man's "spiritual inorganic nature, spiritual nourishment which he must first prepare to make it palatable and digestible . . . constitute[s] a part of human life and human activity." Marx, *Manuscripts*, *supra* note 17, at 75. However, when a person becomes alienated from his work, "the worker's *own* physical and mental energy, his personal life or what is life other than activity [is] an activity which is turned against him, neither depends on nor belongs to him." *Id.*

51. *See id.* at 74, 76 (describing alienation of labor and arguing "[t]he whole character of a species—its species character—is contained in the character of its life-activity"); Marx, *The Grundisse*, *supra* note 11, at 284–85 (describing effects of boring, mindless work on psyche of workers); *see also* LINOWITZ, *supra* note 6, at 107–08 (arguing that focus on billable hours and specialization is making young lawyers "less useful citizens," "less interesting human beings," and "less valuable to clients"). The fact that partners often do not enjoy meaningful personal lives provides little consolation—or justification—for this state of affairs. *See generally* Luban, *supra* note 11, at 736 ("The exploiters suffer alongside the exploited; Alberich sweats beside Mime.").

52. Marx, *Alienation and Social Classes*, *supra* note 17, at 133.

53. As Marx put it: "The less you *are*, the more you *have*; the less you express your own life, the greater is your *alienated* life—the greater is the store of your estranged being." Marx, *Manuscripts*, *supra* note 17, at 96. Attorneys, even corporate attorneys, have not always been relentless rent-seekers. Commitment to family and community were once standard virtues practiced by corporate lawyers. *See* LINOWITZ,

working in *any* corporate entity can be truly happy. In fact, in my opinion, no one living in a capitalist society can ever be legitimately happy.

Betty: I'm afraid that you're missing my point. Are lawyers really any less happy with their lot in life than doctors, accountants, engineers, or middle managers?

Karl: Actually, associates at large corporate law firms do seem to be less happy than doctors, accountants, engineers, and middle managers.[54] A hypothetical will demonstrate why. Suppose Monsanto hired a newly minted engineer, fresh out of MIT, and promised him professionally challenging work. Then, after he arrives, Monsanto informs him that for the next eighteen months, his task will be the professional equivalent of rolling toilet paper onto cardboard spools. How would the new hire react?

Betty: You've been reading "Dilbert," haven't you! Anyway, I think the worker would react rather badly. Why would Monsanto do that to a bright new hire?

Karl: Well, continuing with the hypothetical, suppose that Monsanto had customers anxious to pay engineers to perform this task.

---

supra note 6, at 58–60, 107–08, 196–98.

54. *See* Saralie Faivelson, *Many Doctors Think Their Job Is Fun*, CHI. SUN-TIMES, Jan. 9, 1994, at 51 ("Sixty-seven percent of doctors would choose medicine as their career again, a figure much higher than that found in other professions."); *Female Accountants Say They Must Work Harder*, TORONTO STAR, Oct. 18, 1993, at D3 (reporting results of study that found "87.8 percent of female chartered accountants believe their career was measuring up to their expectations"); Candee Wilde, *Downward Spiral*, COMPUTERWORLD, May 30, 1994, at 81, 85 (reporting results of survey of information service companies regarding job satisfaction: 77% of senior executives, 68% of middle managers, and 64% of engineers/technicians reported that they were "very satisfied" or "somewhat satisfied" with their jobs); *cf.* Orey, *supra* note 8, at 5 (reporting on associates' *and* partners' growing dissatisfaction with practice in corporate law firms).

Survey data regarding attorneys' job satisfaction paints a fairly stark picture. A 1990 ABA survey found that only three in 10 lawyers report being "very satisfied" with their jobs. *See Rising Concern About Stress in Lawyers' Lives*, N.Y. TIMES, Mar. 10, 1995, at B16 (explaining "longer hours at work, fewer hours with the family, pressures to make partner, [and] even the low esteem in which lawyers are held" cause stress). A more recent survey, conducted in 1992, found that 70% of the 449 California lawyers responding would welcome the chance to change careers. *See* Schroer, *supra* note 8 (describing complaints of lawyers that law is "a miserable profession, characterized by grueling hours, meaningless work, cutthroat colleagues—and golden handcuffs"). Plainly, the legal profession as a whole is suffering from a significant morale problem. *See, e.g.*, Orey, *supra* note 8, at 5 (reporting major law firm partner's confession that "[i]f any of my children ends up going into the practice of law, I will consider myself to have been defeated").

Betty: I see . . .

Karl: Monsanto does not wish the new hire any harm; in fact, Monsanto would like nothing better than to provide professionally challenging, interesting, fulfilling work. However, the company, like a law firm, has to service the needs of its customers.

Betty: Right, and these customers want the toilet paper rolled onto the spools by an engineer.

Karl: Exactly. Most new lawyers are ready and anxious to learn their profession. Instead, they get to work on titillating document reviews.[55] As the Chief Justice has observed, the drive toward profit maximization has "ma[de] the work of lawyers in these firms more like drudgery than similar work was twenty-five years ago."[56]

Betty: How can you make associates' work more satisfying professionally?

Karl: Pro bono assignments could help, in at least two ways.[57] First, the associates could work on matters that really interest them professionally. Second, pro bono work can be incredibly rewarding personally. If more firms encouraged, or even required, pro bono representations, associates would be more professionally satisfied.

Betty: But they cannot do pro bono work exclusively![58] This is a capitalist, not a socialist, country Karl. How can you fix the paying work?

---

55. *See* Mark S. Kende, *Shattering the Glass Ceiling: A Legal Theory for Attacking Discrimination Against Women Partners*, 46 HASTINGS L.J. 17, 72–73 & n.250 (1994) (arguing that associates' work is stressful and tedious); Paul M. Barrett, *Dreary Paper Chase Vexes Legal Rookies*, WALL ST. J., Oct. 21, 1996, at B1 (discussing document review work and increasing level of frustration developing among young associates).

56. Rehnquist, *supra* note 5, at 154. Of course, "[t]here is more than a little evidence that while associates are perfectly willing to take the increased pay that they receive from large firms, they do not find the work particularly satisfying." *Id.*

57. It also bears noting that all attorneys have an ethical obligation to undertake representations on a pro bono basis. The Model Rules of Professional Conduct expressly provide that "[a] lawyer should aspire to render at least (50) hours of pro bono publico legal services per year." MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1993).

58. For a discussion of the costs and benefits of pro bono work to a firm's bottom line, see Dean, *supra* note 47. Sadly, in too many cities, the bar does not take seriously its obligation to provide pro bono legal services. *See* Vera Titunik, *Big-Firm Pro Bono, All Over the Map*, SUPPLEMENT TO AM. LAW., July–Aug. 1995, at 24, 24 (reporting, on average, lawyers in Chicago spend only 33 hours per year on pro bono work and lawyers in Cleveland only 28 hours per year; in contrast, lawyers in Washington, D.C. spend average of 80 hours per year on pro bono work, and lawyers in San Francisco spend average of 66 hours per year on pro bono representations).

Karl: Well, someone has to review the documents. Perhaps more delegation of these chores to trained legal assistants would help. It does not require a J.D. to determine whether a document is subject to a claim of attorney-client or work-product privilege. In addition, such a scheme would lower litigation costs.

Betty: That's only a partial solution. And, all of your reforms presuppose less profit for the partners: pro bono hours are not a source of revenue, and delegating work to legal assistants means lower billable rates for document review work. In light of what you have said about the strong, perhaps dominant, profit motive of most law firm partners, I am doubtful that they would embrace these ideas.

Karl: Well, if they do not, they will continue to face the problems associated with poor morale and professional malaise. It's really up to the partners.

Betty: But my grandson Michael says that partners' lives are little better than the associates'! If they do not demand reform for themselves, why should they act to give the associates any relief?

Karl: Well, I will concede that the vast majority of partners fall into inauthentic lifestyles—largely through the force of inertia. In moments of reflection, they can recognize the inadequacy of their situations.[59] They also recognize the effects of the up-or-out system on the dynamic between partners and associates. For a variety of reasons, however, they don't act on this impulse.

Betty: Well, maybe that's right, but how can you force self-reflection? In my own work, I've found that women can live very unhappy lives, yet never identify precisely why it is that they are unhappy.[60] Your observation does not have any practical utility!

Karl: I have some concrete proposals. For example, perhaps the best model of reform involves organizing the vanguard of the proletariat, by which I mean . . .

Betty: At the risk of seeming overcritical, I think something less than total revolution is in order.

Karl: Although it goes against my better judgment, I can offer

---

59. *Cf.* Marx, *The Grundisse*, *supra* note 11, at 254 (explaining ability of slave to enjoy self-awareness of his exploitation).

60. *See* FRIEDAN, THE FEMININE MYSTIQUE, *supra* note 14, at 15 (discussing problem that "has no name"); FRIEDAN, THE SECOND STAGE, *supra* note 14, at 41 (discussing "malaise" that many women feel in workforce).

some concrete suggestions of a more limited nature. First, partners' salaries cannot be dependent on the leverage principle. So long as two or three associates must work to support one partner's salary, the corporate law firm remains a big Ponzi scheme.[61]

Betty: That would necessarily mean that both partners and associates will have to accept lower salaries.

Karl: True enough. This is an inevitable consequence of deflating the leverage balloon.[62] A corollary principle is that elite law firms will have to be choosier about their associates.

Betty: Instead of seeking out meat on the hoof at the initial hiring stage, they would have to consider more carefully whether they want a particular person for the long term?

Karl: Precisely. Finally, associates *and* partners are going to have to establish a meaningful dialog about the relative importance of quality-of-life issues and the ways that firms can create more user-friendly atmospheres.[63]

Betty: What about the ethical issues? Aren't they a major issue in attorney dissatisfaction?

Karl: I agree with your intuition that law firms could make practicing law less distasteful, and thereby less alienat-

---

61. In order to retain their leverage, firms must regularly shed themselves of large numbers of senior associates who are too expensive to do document reviews and other grunt work and, moreover, are often fully capable of doing the partner's job. This, in turn, helps give rise to working conditions that are suboptimal from an associate's perspective. *See supra* note 24 (discussing Ponzi scheme analogy).

62. Six-figure partner draws are a recent innovation. *Compare* LINOWITZ, *supra* note 6, at 101 ("Lawyers in my generation could not even have imagined the incomes partners twenty years younger than ourselves now take home in dozens of the huge 'businesslike' law firms."), *with* Gilson & Mnookin, *supra* note 33, at 585 ("[F]irm leverage is directly related to firm profit: the higher the firm's leverage, the higher the firm's per partner profit.").

63. *See* Duncan Kennedy, *Rebels from Principle: Changing the Corporate Law Firm from Within*, HARV. L. SCH. BULL., Fall 1981, at 36, 36–39 (arguing some evils of corporate law firms could be successfully remedied if liberal attorneys working in those firms subtly and consistently asserted their political opinions on issues such as firms' clientele and work atmosphere). Although Professor Kennedy was writing about advocating "left" causes and sensibilities within the confines of a corporate law firm, his proposal for direct communications about expectations could easily be applied to quality of life issues within these institutions. *See* Meade Emory, Commencement Speech at Duke Law School 6 (May 17, 1992) (transcript on file with authors) ("Duncan Kennedy is correct when he suggests that if you, and your peers, stand for something, even in your beginning life as an associate, you will be able to make things different when you own the place."). Accordingly, attorneys should remain on constant guard against complacency in the face of deteriorating (or nonexistent) personal lives.

ing. For example, from time to time, lawyers and law firms should tell clients "No," even at the risk of losing a client.[64] Attorneys operate under the myth that they are not morally responsible for any of their clients' decisions: not so, not so! Economic reform cannot fix a fundamental lack of decency.

Betty: Well put sir! Now, include the empowerment of women, and you've got my support.

Karl: What do you mean, "the empowerment of women"? The subjugation of the proletariat masses knows no gender inequalities.

Betty: Perhaps in your world Karl, but not in mine. Women and racial minorities face a litany of difficulties in the workplace and elsewhere that white males will never have to confront.[65]

Karl: Perhaps before we continue we should refresh our drinks. The waiter has been giving us nasty glances and I predict that I will need something stronger to sustain me through this "empowerment of women" discussion that I feel is coming. Waiter—please bring two martinis, straight up, with olives.

Betty: Waiter, I also would like two martinis, but make mine with a twist.

Karl: [Karl raises eyebrows and continues] Where were we? Something about law firms being more difficult for women, I believe. My granddaughter has suggested that idea to me. She says that life is harder for women at her firm—she's a seventh year associate at Mauve & Luggage.

Betty: Why don't you tell me about Michelle and her problems at work. Perhaps I can raise your consciousness about the importance of gender issues in contemporary society.

---

64. As Ambassador Linowitz puts it: "Professionalism presumes that in professional relations the customer is *not* always right. Lawyers, not clients, must decide what they will or will not do for the fees they are paid." LINOWITZ, *supra* note 6, at 88; *see also* LOUIS BRANDEIS, BUSINESS—A PROFESSION 315–21 (1914) (observing commercialized bar has neglected protecting interests of people as more lawyers have become business advisors); K.N. LLEWELLYN, THE BRAMBLE BUSH 178–81 (1960) (describing contradictory duty of lawyers to believe in their client's case on the one hand, but to ensure even unpopular cases receive fair trial on the other); Re, *supra* note 18, at 115–24 (arguing codes of professional conduct should be enforced and bar should prevent, rather than promote, litigation).

65. *See* UNFINISHED BUSINESS, *supra* note 9, at 5–6 (reporting that, 25 years after women first entered legal profession, initial problems of unequal pay, lack of opportunity for advancement, hostile work environment, and insensitivity to personal and family needs still exist and are magnified for minority women attorneys).

Karl: As I mentioned earlier, we recently had lunch—after repeated failed attempts due to her work schedule. The first shock was her appearance. She looked wan and washed out! Moreover, she had acquired all kinds of presumably stress-related tics since I had last seen her. To top it all off, she does not believe that the firm will make her a partner. Although I hate the institutions, she really wants to prove herself in the capitalist world and feels that this accomplishment would establish her worth. However, she says that she is more likely to be named the next Pope than to get a job at another comparable law firm.

Betty: Why does she doubt her chances for success?

Karl: She says it relates to her experience. Go figure.[66]

Betty: Is it possible that she is undergoing some kind of stressful event in her life? I know that my grandson is often quite stressed at his job. He now drinks like a sailor and he was never much of a drinker before he went to work at Bidet Brothers.

Karl: This involves a bit more than moderate substance abuse as a coping strategy.[67] Stress is making her dysfunctional: she works all the time and still can't seem to keep up with her work no matter how long she stays at the office. Moreover, she claims that she has "special problems" related to her gender. She said that she "just doesn't feel like she fits in" no matter how hard she tries. I am worried that she is in danger of losing control completely.[68]

Betty: What advice did you give her?

Karl: Very little. What do I know of how to prosper at Mauve & Luggage? Furthermore, I simply do not understand the things she tells me—this whole "women's perspective"

---

66. *See* Amy Stevens, *Lawyer with Six Years of Experience, Top Credentials, Seeks Job, Any Job at All*, WALL ST. J., July 22, 1994, at B1 (quoting legal recruiter as saying sixth-year associate or above "might as well be dead" when it comes to obtaining another law firm job). Moreover, law firms' "up-or-out" policies, which stigmatize those associates who do not make partner, are partially to blame for upper level associates' difficulty in obtaining lateral law firm jobs. *See id.*

67. *See* Kende, *supra* note 55, at 73 & n.252 (reporting disproportionate number of lawyers suffer stress-related problems such as psychiatric disorders, alcohol abuse, depression, and suicide).

68. In fact, some studies show that lawyers are one of the most highly stressed groups in society. *See* Schroer, *supra* note 8 ("We're talking mental disease . . . depression and substance abuse—in percentages twice as large as the general population."). Lawyers tend to drink too much and commit suicide at twice the rate of the general population. *See* Kende, *supra* note 55, at 72–73.

thing seems grossly overstated. Whatever happened to "Workers of the World Unite"? Gender, while potentially relevant, is far less important than class in arriving at a true and accurate assessment of the real relationship between labor and capital.[69]

Betty: Notwithstanding the importance of the economic issues, I think that there's another level of analysis here. What about race and gender? It seems to me that women and racial minorities have special burdens in these institutions that your average white male associate never even fathoms.[70]

Karl: Perhaps. However, an economic analysis is fundamental to understanding the dynamics of life in a corporate law firm.

Betty: Karl, I am not disagreeing with you. I am merely saying that there is a whole universe of problems that you have not even recognized, much less solved.

Karl: Well, as I mentioned earlier, my granddaughter has been experiencing some personal and professional difficulties. I assumed that she was merely reaping the full benefits of life in capitalist America.

Betty: Because of the overt and latent sexism that I understand still exists in law firms, I am sure that your granddaughter has experienced unique difficulties adjusting to the law firm environment that my dear grandson has not.[71] I am also confident that the firm treats her differently in

---

69. *See* Marx, *Manuscripts*, *supra* note 17, at 70–81 (arguing private property is created by labor of propertyless workers who, by laboring, suffer alienation, not only from work product, but from themselves and their community as well). *But see* CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW 245 (1993) (noting gender stereotyping and gender-motivated political animosity toward women judges); Paula England, *The Failure of Human Capital Theory to Explain Occupational Sex Segregation*, 17 J. HUM. RESOURCES 358, 358–60 (1982) (using empirical data to refute explanation of occupational sex segregation based on human capital theory); Rhode, *supra* note 16, at 1180 (arguing subtle influences such as socialization and institutional structures contribute significantly to gender inequality among professionals).

70. *See* UNFINISHED BUSINESS, *supra* note 9, at 10–13 (discussing reasons for disproportionately low percentage of women partners in law firms).

71. *See id.* at 18–19 (noting that despite legal profession's increased awareness of sexual harassment, it remains a destructive problem, with both males and females having observed at least one incident of sexual harassment by a superior); Geoffrey C. Hazard, Jr., *Male Culture Still Dominates the Profession*, NAT'L L.J., Dec. 19, 1988, at 13, 13 ("[T]he language and the internal culture of the law is still male."); *see also* EPSTEIN, *supra* note 69, at 22–24 (discussing factors that lead women to legal profession); Rhode, *supra* note 16, at 1187 (noting demands faced by professional women).

many ways.[72]

Karl: Both men and women are equally oppressed by the vagaries of the capitalist and his ways.

Betty: Actually, Karl, you are wrong there. I know that men and women do experience law firm life quite differently. As I mentioned before, the legal profession is still predominantly male and this fact puts many women at a severe disadvantage.[73]

Karl: Now that you mention it, I seem to recall reading about a number of academic studies and surveys that ostensibly demonstrate that women sometimes have a difficult time balancing their career and personal lives.

Betty: "Ostensibly"? "Some difficulty"? Karl, it's very real and often a *great deal* of difficulty! In fact, the corporate law firm provides a special challenge to young women.[74]

---

72. For example, female attorneys note that their superiors scrutinize their conduct and work more rigorously and often then hold their work to a higher standard than they apply to male attorneys' work product and conduct. *See* Giesel, *supra* note 9, at 779; Nadine Taub, *Keeping Women in Their Place: Stereotyping* Per Se *as a Form of Employment Discrimination*, 21 B.C. L. REV. 345, 354 (1980); *see also* Kathleen Donovan, Note, *Women Associates' Advancement to Partner Status in Private Law Firms*, 4 GEO. J. LEGAL ETHICS 135, 135–36 (1990) (noting number of women partners is not proportionate to number of women entering law firms as associates). *See generally* Mark R. Brown, *Gender Discrimination in the Supreme Court's Clerkship Selection Process*, 75 OR. L. REV. 359 (1996) (noting discrimination at highest levels of legal profession); Margaret G. King, *Gender Equality in the Public Sector*, 57 FORDHAM L. REV. 985, 987 (1989) (discussing gender equality in both private and public sector law practices); Martha Lufkin, *How to Succeed in a (Still) Masculine World*, NAT'L L.J., Aug. 19, 1996, at C8, C8 (reviewing women's slow progress to gain acceptance in large corporate law firms).

73. In a study of the Harvard Law School Class of 1974, after nine years, less than 25% of the female graduates who entered private practice had obtained partnership status. *See* Jill Abramson & Barbara Franklin, *Harvard Law '74: Are Women Catching Up? How They're Doing*, AM. LAW., May 1983, at 79, 79–80 (noting that in 1982, 73% of Harvard men in same class had achieved partnership). More than half of the men who entered private practice held the title of partner 10 years later. *See id.*; *see also* Judith S. Kaye, *Historical Observations: Yesterday, Today and Tomorrow*, N.Y. ST. B.J., May 1989, at 12, 15 ("Women have already been in the profession for significant enough periods of time in significant enough numbers, and still they have not risen appropriately to their numbers.").

74. Studies continue to report that law firms do not treat female attorneys, throughout their law firm careers, the same as their male peers and that this differential treatment contributes to poor performance evaluations of women. *See* Martha W. Barnett, *Women Practicing Law: Changes in Attitudes, Changes in Platitudes*, 42 FLA. L. REV. 209, 212–20 (1990) (describing women lawyers' unique challenges including covert discrimination, sexual harassment, barriers to partnership status, and negative impact on personal life); Bender, *supra* note 16, at 945 (arguing women should demand not only an end to sex discrimination in legal profession, but also true gender equality as well); Eleanor M. Fox, *Being a Woman, Being a Lawyer and*

Women are not fully accepted as equals by either their peers or by the partners. Partners, in particular, too often experience difficulty working with and accepting young women as competent professionals.[75]

Karl: Are you suggesting that the firm is not sufficiently sensitive to her "needs"? This is paternalistic pablum.

Betty: Well, as a matter of fact, I do believe that law firms, as well as other corporate entities, should adopt a more flexible approach to certain employee-management matters,[76] but I don't know what I can tell you until you fill me in on your granddaughter and her experiences. For starters, I don't understand why she is so convinced that she will not make partner.[77]

Karl: Ok, ok, my granddaughter, Michelle, has always been one of my brightest grandchildren. She went to McCallister College and graduated at the top of her class with all sorts of honors. She majored in anthropology and really enjoyed her college experience. Did I mention that she was president of the "Young Socialists"? I asked her why she wasn't in the local SDS chapter, and she told me it's

---

Being a Human Being—Women and Change, 57 FORDHAM L. REV. 955, 958, 962–63 (1989) (describing demands of legal profession and desires of young women attorneys and suggesting strategies for eliminating disparity); Ellen Futter, *Women Professionals: The Slow Rise to the Top*, 57 FORDHAM L. REV. 965, 966 (1989) (advocating gender-neutral flexible employment to avoid further "gender stratification" in workplace); Deborah K. Holmes, *Structural Causes of Dissatisfaction Among Large-Firm Attorneys: A Feminist Perspective*, 12 WOMEN'S RTS. L. REP. 9, 20–23 (1990) (reporting women attorneys may be dissatisfied with profession because they experience discriminatory hiring practices, lower pay, second-class social status, harsher performance demands, and disrespect in courtroom); Rosabeth Moss Kanter, *Reflections on Women and the Legal Profession: A Sociological Perspective*, 1 HARV. WOMEN'S L.J. 1, 6 (1978) (stating women's careers are often overshadowed by men's); *see also* Mary Jane Mossman, *"Invisible" Constraints on Lawyering and Leadership: The Case of Women Lawyers*, 20 OTTAWA L. REV. 567, 584–89 (1988) (discussing situation of female attorneys in Canada).

75. *See* EPSTEIN, *supra* note 69, at 423–64; Felice N. Schwartz, *Management Women and the New Facts of Life*, HARV. BUS. REV., Jan.–Feb. 1989, at 65, 70; Jane Wettach, *Women in the Practice: The Struggle Continues*, N.C. ST. B.Q., Summer 1990, at 18, 20.

76. *See* FRIEDAN, THE SECOND STAGE, *supra* note 14, at 147 (noting as society we have not been successful in getting men to assume roles traditionally held by women).

77. *See id.* at 58 (explaining difficulties women face in job market resulting from "the remaining barriers of insidious sex discrimination in every field, and the fact that standards on the job were set in terms of men who had wives to take care of all the details of life"); DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS 88 (1992) ("[I]n law, as in other elite professions, female members advance less far and less quickly than male colleagues with comparable qualifications.").

been defunct since Reagan's first term. Go figure. Anyway, she made some really inspiring speeches about the plight of coffee bean pickers in Guatemala and the effect of the Contras on Nicaraguan peasants.

Betty: With such a promising start, how did she end up becoming a lawyer?

Karl: Well, no one would hire her after college. So, rather than go to graduate school in the blithe hope of obtaining a teaching position at some indefinite point in the future, she decided instead to go to law school at the Humbolt Law School. She subsequently followed the usual track for HLS graduates: federal clerkship and then work at a white-shoe corporate law firm.

Betty: But why a corporate law firm? Why not a public interest outfit like the National Organization for Women or Planned Parenthood?

Karl: When I asked her why she went to a corporate law firm, she said, "Humbolt isn't cheap, you know!"[78] I am still upset by this apparent rejection of her old values. Where did all her passion and fire go?[79]

Betty: Had she ever worked in a corporate environment before this job? Maybe her current stress results from her inability to adjust to a fast-paced business environment?

Karl: To be sure, the corporate experience was a new one for her. Her commitment to a humane and life-affirming ideology had previously prevented such entanglements.[80] Now she is a shadow of her former self. Why, I don't know if she has any personal life whatsoever!

Betty: Does she get out of the office for fun at all?

Karl: At our lunch, she did not mention *any* personal life—that

---

78. *See* Kennedy, *supra* note 63, at 36–39 (suggesting desire to earn firm salary is not inconsistent with advocating liberal political ideals).

79. *See* Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3, 40 (1994) (noting although more women than men entered law school with intention of practicing public interest law, by end of law school, percentage of women interested in public interest law had dropped close to that of men); *see also* Kennedy, *supra* note 63, at 36–39 (arguing that signing on with corporate law firm need not and should not signal end to liberal attorney's devotion to promoting liberal politics). *See generally* Judith D. Fischer, *Portia Unbound: The Effects of a Supportive Law School Environment on Women and Minority Students*, UCLA WOMEN'S L.J., Fall–Winter 1996, at 81 (discussing benefits of more humane law school environment based on study completed at Chapman University).

80. *See* Kennedy, *supra* note 63, at 36–39 (discussing philosophical problems associated with private law practice).

was the problem.[81] She isn't maintaining any life outside of work. Notwithstanding the cultural smorgasbord that New York offers, Michelle has not been to the theater even once since she got here. Moreover, she has even allowed her membership in the Communist Party of New York to lapse!

Betty: Is she dating anybody?

Karl: She told me that most of the men she meets are at the firm and they are already married.[82] Not that their nominally unavailable status kept them from hitting on her during her first several years at the firm. During those early years, several particularly aggressive older partners repeatedly asked her out on dates—I told her to stay away from them. She said that she wasn't even tempted. Apparently, some of the partners view female associates as potential replacements for their former wives.

Betty: Ugh! It sounds like Michelle is experiencing sexual harassment from her male peers and colleagues. [Betty shudders] Unwanted sexual attention on the job is a very unpleasant experience for anyone, to say the least.[83] I

---

81. *See* Alex M. Johnson, Jr., *Think like a Lawyer, Work like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1250 n.77 (1991) (noting workweek of 60 to 80 hours is common); Luban, *supra* note 11, at 735 (describing discussions with associates who revealed demands of 2200 to 2400 billed hours per year).

82. *See* Rhode, *supra* note 16, at 1187 & n.30 (citing studies of lawyers and business executives during 1980s that found close to one-third of women, but only six to eight percent of men, had never married). Additionally, over nine out of 10 males in upper-level corporate positions have children and a nonworking spouse. *See id.* at 1187 n.30. Most female executives have neither. *See id.*; *see also* Susannah Bex Wilson, *Eliminating Sex Discrimination in the Legal Profession: The Key to Widespread Social Reform*, 67 IND. L.J. 817, 828 (1992) (arguing that legal profession, which measures success by number of hours worked, disadvantages women who still have primary responsibility for child care). The problem therefore appears to be gender specific.

83. Various studies continue to report that female attorneys suffer physical and verbal harassment within corporate law firms. *See* COMMISSION ON WOMEN IN THE PROFESSION, AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES 8 (1988) [hereinafter ABA COMM'N REPORT] (noting results of Boston Bar survey indicating 13.6% of female attorneys feel they have been sexually harassed); Ann J. Gellis, *Great Expectations: Women in the Legal Profession, A Commentary on State Studies*, 66 IND. L.J. 941, 954 (1991) (citing Indiana Bar survey indicating 11.4% of female attorneys believed they had been physically harassed and 40% thought they had suffered verbal sexual harassment); Emily Couric, *Women in the Large Firms: A High Price of Admission?*, NAT'L L.J., Dec. 11, 1989, at S2, S10 (noting at least 60% of female attorneys surveyed experienced unwelcome sexual advances). *See generally* Nina Burleigh & Stephanie B. Goldberg, *Breaking the Silence: Sexual Harassment in Law Firms*, A.B.A. J., Aug. 1989, at 46 (discussing sexual harassment in law firms).

must admit I am disappointed that it is occurring at a law firm with such a national reputation.[84] Naturally, such experiences would chill the work atmosphere and make it less likely that women like Michelle would want to stay.[85] Surely Michelle felt both threatened and offended by these advances.

Karl: I guess so, though she really did not say. She seemed to treat it as a big joke; it was just something that all female associates had to put up with in order to make it at the firm.

Betty: What do you mean? Please be more precise.

Karl: For example, she says she doesn't complain about the requests for dates or, for that matter, the annoying dirty jokes and anatomical assessments of other women in the office from male colleagues.[86] Michelle seems to have

---

84. *See, e.g.*, Beall v. Baker & McKenzie, No. 91-9448 (Cir. Ct. Cook County, Ill. filed Oct. 7, 1991) (involving suit by female partner against law firm on basis of sex and age discrimination). Ms. Beall recently settled her case. *See* Ann Davis, *Finally, Ingrid Beall 'Settles'*, NAT'L L.J., July 24, 1995, at A4, A4. In another case, a female associate sued her law firm on the basis of sex discrimination when she did not make partner. *See* Ezold v. Wolf, Block, Schorr and Solis-Cohen, 751 F. Supp. 1175 (E.D. Pa. 1990), *rev'd*, 983 F.2d 509 (3d Cir. 1992). The district court found that the law firm denied the plaintiff, a female associate, partnership on the basis of gender in violation of Title VII. *See id.* at 1191–92. The court noted that the firm promoted male associates with similar or worse evaluations than Ezold and that gender stereotypes generated some of the negative evaluations of Ezold. *See id.* For example, the firm evaluated the plaintiff negatively on the basis of her concerns regarding "women's issues" within the firm. *Id.* at 1178. The firm decided that she was "not a team player" and was "institutionally disloyal." *Id.* A male associate who expressed similar concerns did not receive such negative evaluations. *See id.* at 1192. The Third Circuit disagreed with the district court's survey of the evidence and held in favor of the law firm. *See* Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 547–48 (3d Cir. 1992). The court found that the plaintiff failed to prove that the law firm discriminated against her in the promotion evaluation. *See id.* at 547; *see also* Recent Case Note, *Employment Law—Gender Discrimination—Third Circuit Rules that Denial of Promotion Based on an Equally Applied Legitimate Subjective Criterion Is Not Discrimination*, 106 HARV. L. REV. 2039, 2039–44 (1993) (describing facts and court rulings in *Ezold* case). *But cf.* Hishon v. King & Spaulding, 467 U.S. 69, 78–79 (1984) (ruling female attorney's claim she was denied partnership on basis of gender was cognizable claim under Title VII).

85. *See* Rosabeth Moss Kanter, *Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women*, 82 AM. J. SOC. 965, 984 (1977) (stating women often find it easier to accept stereotyped roles than to resist).

86. *See* UNFINISHED BUSINESS, *supra* note 9, at 19 (noting most women do not report sexual harassment to law firms for fear of reprisal). *See generally* Susan Bisom-Rapp, *Scripting Reality in the Legal Workplace: Women Lawyers, Litigation Prevention Measures, and the Limits of Anti-Discrimination Law*, 6 COLUM. J. GENDER & L. 323 (1996) (discussing sex discrimination in legal profession and recommending law firms commit themselves to greater diversification).

dealt with it in her own way. She said that none of the partners are as bad as that guy at Baker & McKenzie,[87] so she feels that she has no room for complaint.

Betty: Why, Karl, this is truly terrible. Are you telling me that your granddaughter has to put up with this treatment on a daily basis? No wonder she thinks her partnership chances are slim. Taking women attorneys seriously means taking sexism seriously. Clearly, firms need to adopt a zero-tolerance policy toward such behavior.

Karl: Sure, sure. But what can you do? The world is thus.

Betty: Maybe your nineteenth-century "world is thus," but mine sure isn't! For starters, associates and partners should be censured for engaging in unprofessional sexual behavior, and punishment should be more than just a slap on the wrist.[88] At the very least, the individual's permanent file should contain information about his conduct. Firms should also consider whether more should be done to discourage dating within the firm, especially partner-associate dating. What a recipe for disaster! There are plenty of fish in the sea. Partners should look elsewhere!

Karl: That's easy for you to say. Michelle wants to work at this law firm. If she goes around complaining about harassment and requests for dates from partners, she can kiss her chances at partnership good-bye.[89]

Betty: Well, I see your point. Some people do not take criticism of their behavior toward the opposite sex well. Perhaps law firms should consider adopting an internal ethics committee consisting of well-respected partners to whom associates could go when they feel they are being harassed on the basis of gender—or race for that matter.[90]

---

87. In a now infamous case, Rena Weeks, a secretary at Baker & McKenzie, accused firm partner Martin R. Greenstein of fondling her breasts and making verbally assaulting comments to her. *See* Weeks v. Baker & McKenzie, No. 94-3043, 1994 WL 774633, at *4 (Cal. Super. Ct. Nov. 28, 1994). She ultimately brought suit against the firm for sexual harassment. Following a trial, a jury awarded Ms. Weeks over seven million dollars in compensatory and punitive damages. *See id.*; *see also* Barry A. Hartstein, Weeks v. Baker & McKenzie: *A Potential "Blueprint" for Sexual Harassment Litigation*, 20 EMPLOYEE REL. L.J. 657, 657–58 (1995) (discussing Ms. Weeks's sexual discrimination suit).

88. *See* UNFINISHED BUSINESS, *supra* note 9, at 19 (suggesting law firms should dismiss employees who sexually harass others).

89. *See id.*

90. Race and the plight of nonwhite associates have begun to attract serious scholarly attention. *See, e.g.*, Vance Knapp & Bonnie Kae Grover, *The Corporate Law Firm—Can It Achieve Diversity?*, 13 NAT'L BLACK L.J. 298 (1994); David B. Wilkins

The associate would remain anonymous. Then the ombudsman could decide how best to approach the alleged harasser. This system would take the burden off the associate and prevent harm to his or her career because the process would remain anonymous.[91]

Karl: Maybe that would work. But it doesn't resolve the "other" problem—Michelle has been sacrificing all of her outside interests to the firm.

Betty: Have you considered that perhaps Michelle is afraid to have a social life because she will be viewed as less committed, as interested in only having a family, not interested in business.[92] I mean, it might be viewed by a sexist person as a sign of frivolity and lack of professional commitment.[93]

Karl: What do you mean? I think they take her seriously. They certainly give her plenty of work. Of course, at first it was work she didn't like, trusts and estates, work that seemed appropriate for female attorneys, given their great attention to detail and their interest in family issues.

Betty: Ok, wait a minute. What do you mean by that comment?

Karl: You know what I mean. Michelle has a razor sharp memory and is very good at work that requires close attention

---

& G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms?*, 84 CAL. L. REV. 493 (1996); Rita Henley Jensen, *Minorities Didn't Share in Firm Growth*, NAT'L L.J., Feb. 19, 1990, at 1. A more limited number of studies address the race and gender issues that face many minority women. *See* ABA MULTICULTURAL WOMEN ATTORNEYS NETWORK, CHICAGO AM. BAR ASS'N, THE BURDENS OF BOTH, THE PRIVILEGES OF NEITHER 14–27 (1994) (discussing challenges faced by minorities in workplace); Claudia MacLachland & Rita Henley Jensen, *Progress Glacial for Women, Minorities*, NAT'L L.J., Jan. 27, 1992, at A1, A1 (reporting rarity of promotion of women and minority attorneys to partnership positions). Despite their obvious importance, these issues are beyond the scope of this Article.

91. Of course, there would be difficulties if the associate is the only person working for a specific partner. The ombudsman then would have to develop an approach for confronting the partner about his behavior that did not implicate the associate.

92. Women often must work harder than men to prove themselves because they are either presumed incompetent or their commitment is considered dubious by male colleagues. *See, e.g.*, FRIEDAN, THE SECOND STAGE, *supra* note 14, at 275–76 (discussing long hours worked by professional women); EPSTEIN, *supra* note 69, at 278–79 (discussing perceived need of women legal professionals to prove themselves).

93. *See* FRIEDAN, THE SECOND STAGE, *supra* note 14, at 26 (arguing "unarticulated malaise" exists among working women who question whether they can combine marriage, children, and career); *see also* UNFINISHED BUSINESS, *supra* note 9, at 12 (noting "one of the most harmful myths" about women lawyers is that they are less committed to profession and further that no such evidence of less commitment exists).

to factual matters. She is relatively soft-spoken and has a calming influence.

Betty: Karl, that is the most sexist thing I have heard you say this afternoon. Do you think that just because someone is soft-spoken they can't handle more aggressive litigation assignments?[94]

Karl: Well, maybe not. All I know is that during her reviews she was told that her voice modulation was too high and that tended to give others the impression that she lacked confidence in her legal conclusions.[95]

Betty: Now I have heard it all!!! I can't believe that you are giving credence to what these Neanderthal partners think about your granddaughter.

Karl: In fact, Michelle did mention that she does not think that the firm values her work as much as the male associates' work. At first, she said it was just little things. She would be mistaken for a secretary or a paralegal. She would be asked to make copies and type up reports. At meetings, she would be asked to get the coffee—little things to be sure.

Betty: You've got to be kidding?

Karl: Actually no. It gets better. She began to notice that they did not trust her to handle certain clients or "big" matters on her own when her male peers handled such clients and matters routinely.[96] She also complained that she has not been given the same direct case management experi-

---

94. *See* FRIEDAN, THE SECOND STAGE, *supra* note 14, at 244–48 (noting distinctions exist between masculine and feminine modes of leadership: masculine is direct and aggressive while feminine is intuitive, contextual, and relational).

95. One female associate actually received such a comment incident to a partner's written formal annual evaluation. For an interesting exploration of gender-linked differences in voice register and language use, see Janet Ainsworth, *In a Different Register: The Pragmatics of Powerlessness in Police Interrogation*, 103 YALE L.J. 259, 271–92 (1993).

96. *See* Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 FORDHAM L. REV. 111, 112 (1988) (discussing low percentage of women law partners during 1960s and 1970s); Linda Liefland, *Career Patterns of Male and Female Lawyers*, 35 BUFF. L. REV. 601, 604–08 (1986) (reporting survey results showing differences in career patterns for male and female attorneys); Rhode, *supra* note 16, at 1174 (noting "experience of Sandra Day O'Connor who, after compiling a distinguished academic record at Stanford Law School, found no major firm willing to hire her, except as a legal secretary"); Abbie Willard Thorner, *Gender and the Profession: The Search for Equal Access*, 4 GEO. J. LEGAL ETHICS 81, 98–102 (1990) (discussing difficulties experienced by women in classroom settings); Wald, *supra* note 9, at 40–43, 54 (discussing underrepresentation of women in legal profession).

ence that her male peers have had. Moreover, she says that often she will do the background preparation for a deposition, only to have a male colleague actually take the deposition because the partner in charge believes that the opposing counsel "might get a little rough."

Betty: Let me guess, the partner patted her on the head when he gave her the news about not doing the "rough" deposition. This is much worse than I anticipated. The firm and its clients clearly believe the old stereotype that women are weak and nonaggressive.[97] The organization appears unwilling to allow women to develop their own skills and means of dealing with "rough" opposing counsel. Just because someone has a soft or high voice doesn't mean that she cannot handle intense pressure.[98]

Karl: I have no wish to offend you, but I can understand the firm's point of view. They have to be sensitive to client sensibilities, and female attorneys are not generally known for their "brass knuckles" litigation skills.

Betty: Why are you perpetuating such stereotypes? You are part of your granddaughter's problem! Many law firms will not staff cases with women if the client appears to believe that women are incapable of handling his or her case.[99] When the firm does not provide women with equal opportunities, women will not get the experience needed to advance to partnership.

Karl: Well, if a person is not suited to a particular task, it isn't really gender discrimination, right?

Betty: [After pausing to compose herself and take a long sip of

---

97. *See* UNFINISHED BUSINESS, *supra* note 9, at 13 (stating many individuals view women lawyers as "insufficiently aggressive, uncomfortably forthright, [and] too emotional"); *see also* EPSTEIN, *supra* note 69, at 209–10 (stating women are often seen as less aggressive, less competent, and less committed). *See generally* FRIEDAN, THE SECOND STAGE, *supra* note 14, at 244–48 (discussing masculine and feminine leadership styles).

98. *See* Ainsworth, *supra* note 95, at 283 (discussing perceived effect of female register as being more indirect and tentative). Betty Friedan once described a visit to West Point in which a male cadet loaned her a book that suggested one contribution the feminine principle can make to the Army:

> "I have begun to discover that the toughness that I developed as a protective shell in order to survive in society's hostile environment is not really my strength as I thought it to be. Rather, it is my tenderness that leads me to strength—toughness is not strength; tenderness is not weakness."

FRIEDAN, THE SECOND STAGE, *supra* note 14, at 197–98.

99. *See* ABA COMM'N REPORT, *supra* note 83, at 12–13 (noting women attorneys are treated with "presumption of incompetence"); Couric, *supra* note 83, at S2 (discussing lack of mentoring and networking opportunities for women attorneys).

her second martini] Without the same experiences as male colleagues, the practical effect is that few, *if any*, women will be promoted to partnership unless they practice in a "mommy-track" area, like trusts and estates or ERISA.[100] Karl, did it occur to you that unless and until the firm steps up and stands behind its female attorneys, your granddaughter and others like her will continue to struggle in vain to be taken seriously as litigators?[101]

Karl: Shouldn't Michelle say something to the partners she works with about her assignments?

Betty: I don't think the burden should be on Michelle to ask continually for better and different work assignments. That just isn't feasible. She doesn't have the leverage. What we need is a solution that will provide Michelle with the experience she needs but that does not destroy her working relationship with these partners in the bargain.[102]

Karl: I have an idea. As part of the annual evaluation process the firm should require all partners to note the associates they have worked with and the particular assignments the associates completed for them. Specifically, the forms should include a variety of tasks with the partner indicating which tasks each associate had performed in the prior year. The firm's management committee could then code the evaluations and present each supervising attorney with a breakdown of his (or her) overall assignment patterns. Under such a system, the partner would be faced with the fact that he had assigned all the depositions to male associates or, even worse, had not even worked with a female associate over the past year. If it turns out that some partners haven't been affording male and female associates the same training opportunities, they should be

---

100. *See* Kende, *supra* note 55, at 31 n.67 (citing studies showing underrepresentation of women in high academic positions or as law partners).

101. *See* Barbara S. Bryant, *Sex and Race in Federal Court: A Courtroom Survey*, 13 GOLDEN GATE U. L. REV. 717, 720–21 (1983) (reporting low percentage of women litigators); Giesel, *supra* note 9, at 779 (noting women attorneys complain of having to work harder than male counterparts); *see also* Donna Fossum, *Women in the Legal Profession: A Progress Report*, 67 A.B.A. J. 578, 579–82 (1981) (reporting that despite some advancement of women into prominent positions in legal profession, women remain underrepresented).

102. *See* UNFINISHED BUSINESS, *supra* note 9, at 12 (noting "[t]he traditional law firm evaluation process . . . is riddled with myths and stereotypes" and informing law firms that using same criteria to evaluate men and women frequently undervalues contributions of women).

required to explain why this occurred.

Betty: Karl, that's splendid! Giving these partners the benefit of the doubt, much of the sexism reflected in the assignment process may be unconscious.[103] Hopefully, by making them aware of the situation, many of them will think more carefully about the assignment process over the course of the next year. If they don't improve over time, however, Michelle and other female associates will have documentation that the partners have not been providing them with the same experience. Pretty useful information for female associates if you ask me.

Karl: In my experience, raising an oppressor's consciousness is a necessary first step toward reform.

Betty: I agree completely. In fact, not only is there much work to be done in "raising consciousness" of law firms, but the attitudes of clients, who sometimes hold unfair gender stereotypes, must also evolve.

Karl: Perhaps I have been overly narrow in my view of female attorneys' abilities and accomplishments.

Betty: I'm going to leave that one alone, Karl. There are, of course, other structural barriers to success that female attorneys must overcome. Many of Michelle's male colleagues presumably have male friends who are also at the top of the corporate executive ladder. These male corporate executives hire their male attorney friends. There is no "old girls" network.[104] My grandson Michael has an edge in the legal profession simply because his friends are running companies of their own and can toss legal business to him at the firm.[105]

Karl: Michelle also complains about limited opportunities for court experience.

Betty: That should come as no surprise to you. Because too many men share your gender-based prejudices, attorneys like Michelle receive only limited opportunities to go to

---

103. *See id.* (noting seemingly objective evaluations are often based on stereotypes).

104. *See id.* at 13 (noting difficulty women lawyers have with rainmaking); Wald, *supra* note 9, at 42 (noting gender-based differences in legal career tracks); Donna K.H. Walters, *Barriers Still Persist, Women Lawyers Say*, L.A. TIMES, Mar. 10, 1994, at D1 (discussing barriers faced by women lawyers).

105. *See* Wald, *supra* note 9, at 42 (noting women hold only two percent of corporate executive positions). *But see* FRIEDAN, THE SECOND STAGE, *supra* note 14, at 333 (noting traditional women's volunteer organizations may be source of networking).

court. Does she have any courtroom experience at all?

Karl: Yes, but she did not really like it. Apparently the judge called her "honey"[106] and "little girl"[107] and then berated her for wearing pants.[108] She said that she also received rude comments from the opposing counsel concerning her competency.[109] Michelle said that she thought that her opposing counsel believed that if he bullied her she would back down. She stood up to him, but she indicated that she was afraid that her client did not think that she was doing a good job because both the judge and the opposing counsel made her appear incompetent in the eyes of the jurors.

Betty: Did this affect her performance?

Karl: In fact, she almost convinced herself that in order not to violate her ethical duties to the client, she was going to have to withdraw because her gender appeared to be detrimental to her client's case.[110]

Betty: I find it difficult to believe that any profession would

---

106. *See* KAREN BERGER MORELLO, THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT at xi (1986) (recounting personal incident in which judge who, in disbelief that she was an attorney, demanded Morello's credentials as participating bar member and when she provided them responded, "Okay . . . honey"); *see also* Nancy Blodgett, *I Don't Think that Ladies Should Be Lawyers*, A.B.A. J., Dec. 1, 1986, at 48, 53 (quoting male lawyer who explained that "[s]ome of the judges with these biases are older, and they are used to calling a woman 'honey'").

107. *See* Blodgett, *supra* note 106, at 51 (recounting instance in which New York state trial judge addressed attorney as "little girl"); *see also* ABA COMM'N REPORT, *supra* note 83, at 10 (describing situation in which judge told 5'2" female attorney to face the courtroom and asked, "'Ladies and gentlemen, can you believe this pretty little thing is an Assistant Attorney General?'" and expressing doubts about whether female attorney could command respect in such environment).

108. Judicial bias often takes the form of demeaning comments. One example involves a female Brooklyn assistant district attorney in court on a hot summer day. After the judge gave the defense counsel permission to remove his jacket, she asked for permission to remove hers. The judge replied, "'Don't remove your jacket unless you intend to remove all of your clothes!'" Ashley Kissinger, Note, *Civil Rights and Professional Wrongs: A Female Lawyer's Dilemma*, 73 TEX. L. REV. 1419, 1425 n.36 (quoting REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS (1986), *reprinted in* 15 FORDHAM URB. L.J. 11, 132–33 (1995)); *see also* Holmes, *supra* note 74, at 22–23 (discussing examples of sexist behavior toward women attorneys).

109. *See* Naomi R. Cahn, *Styles of Lawyering*, 43 HASTINGS L.J. 1039, 1045 & n.33 (1992) (noting that women are given less credibility than men in court and are subjected to hostile remarks and sexist behavior); *see also* Tracy Breton, *Empirical Study Finds Gender Bias in Rhode Island Courts*, NAT'L L.J., Feb. 17, 1986, at 13, 13 (finding lawyers are more likely than judges to display gender bias).

110. *See* Kissinger, *supra* note 108, at 1424–26, 1442–44 (discussing dilemma women lawyers face when pursuing civil rights claim on their own behalf might jeopardize client's case).

tolerate this kind of behavior. Gender bias from attorneys is bad enough, but it appears to reach the bench, too.[111] The rules of the game have to change.

Karl: Well, it seems to me that she should say something to them about it. Tell them to stop, and . . .

Betty: It should not be up to Michelle to call them on this. As a matter of professional ethics, this kind of conduct should be prohibited.[112]

Karl: How would I know? I'm just an economist.

Betty: I am virtually certain that this is not the kind of behavior that the lawyers condone among their own. If this behavior is occurring, Michelle and other women lawyers should start reminding opposing counsel who decide to use sexist comments rather than real lawyering skills that such behavior could result in a suspended license or a more serious sanction.[113] Really, Michelle should not have to

---

111. In the early 1980s, states began to form gender bias task forces in response to a growing awareness of gender bias in the legal community. *See* Dorothy W. Nelson, *Introduction to the Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 731, 732 n.4 (1994) (noting as of November 1992, task forces existed at some stage of development or implementation in "thirty-eight states, three federal circuits, Puerto Rico, and the District of Columbia"). These task forces have documented a significant amount of gender bias in the legal system. *See, e.g.*, GENDER BIAS TASK FORCE OF TEXAS, FINAL REPORT 30 (1994) (indicating nine out of 10 female lawyers representing clients in court or before administrative agencies said they had experienced gender discrimination at least once in past three years); NINTH CIRCUIT GENDER BIAS TASK FORCE, THE EFFECTS OF GENDER IN THE FEDERAL COURTS 69 (1993) (reporting in previous five years, 60% of Ninth Circuit's female attorneys had been target of unwanted sexual advances or harassment by colleagues, opposing counsel, clients, judges, or other court personnel); *Report of the Special Committee on Gender to the D.C. Circuit Task Force on Gender, Race and Ethnic Bias*, 84 GEO. L.J. 1657, 1707 (1996) (noting "[s]ignificant numbers" of female attorneys reported they experienced "subtle differences" in way judges and other attorneys treated them).

112. The ABA has failed to impose prohibitions on sexist displays by opposing counsel. A few proposals for amending the Model Rules to provide that discriminatory treatment based on sex constitutes professional misconduct were recently proffered to the ABA House of Delegates and are expected to be considered in an upcoming meeting. *See* Kissinger, *supra* note 108, at 1452 n.215. Many states, however, have approved rules that prohibit sexism in various areas of an attorney's practice. *See* Don J. DeBenedictis, *More States Ban Bias by Lawyers*, A.B.A. J., Jan. 1993, at 24, 24 (listing states that had adopted disciplinary rules prohibiting sexism by lawyers). By 1994, approximately 14 states had adopted such rules. *See* Joanne Pelton Pitulla, *Banning Bias—An Update*, PROF. LAW., Feb. 1994, at 1, 5. The protection provided by states varies widely. *See id.* at 5–7; *see also* Kissinger, *supra* note 108, at 1453 (noting states prohibit sexism in four general areas: "(1) in all professional activities; (2) in representing a client; (3) in a tribunal; and (4) in employment").

113. Attorneys have been disciplined under general rules of professional conduct. For example, in *In re Swan*, 833 F. Supp. 794 (C.D. Cal. 1993), *rev'd sub nom.* Unit-

deal with this type of behavior from judges either;[114] we cannot permit courts of law to tolerate this kind of nonsense![115] Michelle needs to find out more about how she can protect her rights through the enforcement of the professional and judicial rules of ethics.

Karl: I still think that she should say something to the oppressors.

Betty: I am not sure she should have that burden. It seems to me that the law firms and the courts should take a larger role in educating lawyers and judges about gender bias.[116]

---

ed States v. Wunsch, 54 F.3d 579 (9th Cir. 1995), the court sanctioned an attorney for sending a female prosecutor a printed page stating in all capital letters: "Male lawyers play by the rules, discover truth and restore order. Female lawyers are outside the law, cloud truth and destroy order." *Id.* at 796, 800–01. At least one court has sanctioned an attorney for violating that state's specific gender bias prohibition. *See* Principe v. Assay Partners, 586 N.Y.S.2d 182, 184 (Sup. Ct. 1992) (sanctioning attorney for referring to opposing female attorney during deposition as "little girl," "little mouse," and "little lady"—words court described as "a paradigm of rudeness" that "condescend, disparage and degrade a colleague upon the basis that she is female").

114. *See* MODEL CODE OF JUDICIAL CONDUCT Canon 3(B)(5) (1990). In addition to regulating judges' own conduct, Canon 3(B)(5) states that judges "shall not permit staff, court officials and others subject to [their] direction and control" to exhibit gender bias. *Id.* Additionally, Canon 3(B)(6) instructs that "[a] judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon . . . sex . . . against parties, witnesses, counsel or others." *Id.* Canon 3(B)(6). For an excellent discussion of the development of the gender bias provisions of the judicial code of conduct, see Kissinger, *supra* note 108, at 1449–60.

115. Although 17 states have adopted the two Canons of the Model Code of Judicial Conduct or similar provisions prohibiting gender bias by judges and their staffs, no states have yet disciplined any judges under these newly adopted Canons. In the past, judges have been disciplined for exhibiting gender-biased conduct under other provisions of their states' judicial codes or other laws. *See, e.g., In re* Kirby, 354 N.W.2d 410, 414 (Minn. 1984) (disciplining state court judge for calling female attorney "lawyerette" and questioning her failure to wear neckties); *In re* Stevens, 625 P.2d 219, 219 (Cal. 1981) (censuring superior court judge for initiating conversations with married couple during which he discussed sexual fantasies and proposed couple engage in certain sexual conduct); Geiler v. Commission on Judicial Qualifications, 515 P.2d 1, 11 (Cal. 1973) (in bank) (removing municipal court judge from office for repeated acts of crude behavior and vulgar conduct toward court employees, including brandishing dildo in chambers); *see also Judge Disciplined for Remarks Offensive to Women Lawyers*, N.Y. L.J., July 24, 1985, at 1, 1 (reporting admonishment of judge for his practice of referring to appearance and physical attributes of female attorneys); *State of New York Commission on Judicial Conduct*, N.Y. L.J., Mar. 2, 1983, at 12, 12 (reporting public censure of judge for calling female attorney "little girl").

116. *See* Deborah Ruble Round, *Gender Bias in the Judicial System*, 61 S. CAL. L. REV. 2193, 2199 (1988) (reporting censure of judges or attorneys occurs infrequently).

Karl: Yes, Michelle has said that she believes there must be, at least in theory, ways for her to enforce her rights. However, she has concerns about doing so because she does not want to jeopardize her client's case or her career by lodging a formal complaint against a judge.

Betty: Well, before she files a complaint against an attorney or a judge for noncompliance with these ethics rules, she should consult with other attorneys about the ramifications and the proper method for filing such a complaint. Do you know if there is some kind of "help line" for attorneys that would guide them through some of these ethical dilemmas?

Karl: I don't believe such a thing exists. I mean, how could it—it would cost the law firms money.

Betty: Perhaps it would, but it could provide an independent source of help and support regarding the ethical issues that associates confront when they face unethical conduct by others in the profession. It could operate as a kind of "hot line" for all associates.[117] In this way, an associate would not be alone when determining how to handle difficult situations. In fact, such a "help line" could provide advice on a wide variety of issues, including professional development and work-related stress.

Karl: Your suggestions are thought provoking, but I still don't see how they will be of any use to Michelle—after all, she is working all the time. She cannot continue to devote her life to the firm.

Betty: Could she work part-time?

Karl: I have suggested that she consider working part-time, but she told me that it would certainly delay and probably doom whatever partnership chances she has.[118] Actually,

---

117. The hot line could operate in much the same way as a college or university newspaper hot line operated by the Student Press Law Center ("SPLC"). Before publication of an inflammatory or controversial article, students can call the SPLC for advice on the First Amendment and the protection it might confer on their proposed article. In addition, the proposed hot line could occasionally provide legal representation in subsequent court proceedings. In the case of an associates' "hot line," the service would allow attorneys to share their concerns over unethical conduct and perhaps provide advice regarding other areas of their practice.

Along these lines, the ABA has begun a program named "ETHICSearch," which provides responses to attorney questions concerning the Model Rules and their application to specific situations. *See* Robert A. Stein, *Just Call the Ethics Experts*, A.B.A. J., Mar. 1997, at 98, 98.

118. *See* Wilson, *supra* note 82, at 843–44 (stating firm policies accommodating women attorneys reinforce notion that women are primary caregivers for children);

Michelle told me that she wasn't even sure if the firm would *allow* her to participate in the part-time program because she doesn't have any children. In any event, her firm's part-time policy is 9:00 A.M. to 6:30 P.M. and requires her to take a large pay cut.[119] That certainly doesn't sound like "part-time" to me! It doesn't even sound fair!

Betty: That's terrible! I cannot believe that the firm does not see the value of a part-time policy for all of its associates and partners. It should not be stigmatizing if a person wants to devote more time to his or her personal life.[120] It seems unfair that such a decision would prevent a person from making partner or somehow delay that decision interminably.

Karl: Please. Of course the capitalist wants to derive maximum rents from his stable of galley slaves. Why should he adjust his demands to accommodate his workers?

Betty: I think that policies creating leaves and flexible schedules are especially important in the legal profession where the greatest professional demands occur just before partnership decisions are made and coincide with the time period at which many couples begin to have children. Now that there are more two-lawyer families than ever, more lawyers confront the conflicting obligations of raising families and continuing their careers. Leaves and part-time work schedules must allow all workers the time and flexibility needed to fulfill not only their family duties, but also their own outside interests.

Karl: Can men go part-time? Perhaps the gender-specific nature of these policies is part of the problem.

Betty: Unfortunately, although some law firms provide part-time

---

Jennifer A. Kingson, *Women in the Law Say Path Is Limited by 'Mommy Track'*, N.Y. TIMES, Aug. 8, 1988, at A1 (stating typically only full-time associates are considered for partnership). For a general discussion of the difficulties of working mothers, see Mary Joe Frug, *Securing Job Equality for Women: Labor Market Hostility to Working Mothers*, 59 B.U. L. REV. 55 (1979).

119. *See* Kaye, *supra* note 96, at 123 (discussing part-time employment options for women attorneys); *see also* Patricia A. Mairs, *Bringing Up Baby*, NAT'L L.J., Mar. 14, 1988, at 1, 1 (discussing difficulties of women attorneys who try to work part-time).

120. *See* UNFINISHED BUSINESS, *supra* note 9, at 17–18 (noting although law firms had adopted "family-friendly policies," few lawyers felt they could use them); *see also* FRIEDAN, THE SECOND STAGE, *supra* note 14, at 261–62, 271–72 (emphasizing importance of restructuring work hours to accommodate women—and men—with children and providing leave for new parents).

policies and usually describe them in gender-neutral terms, they are not applied neutrally. Rather, workers perceive them as a benefit directed solely toward women. Additionally, like Michelle and other women, most men fear that their careers will suffer if they take advantage of any type of paternity-leave or flexible-time programs.[121] The adoption of humane, comprehensive flex-time and leave policies would provide needed recognition that all attorneys have interests beyond work.

Karl: It seems to me that these law firms should structure such programs so that the employee is not disadvantaged any more than necessary to be fair financially and professionally.

Betty: I agree completely. Currently, many of the law firms that have such policies actually discourage people from taking advantage of them because they do not provide adequate compensation. I would even go so far as to suggest that firms should have a two-tier partnership track; one for part-time and one for full-time.[122]

Karl: But wait, I haven't finished explaining the entire transformation of my granddaughter yet. It is more than just a lack of time, trying to be Superwoman[123] at the Firm, and disgruntlement over her lack of opportunity. . . . (he lowers his voice) . . . Well, um, well, over the last two years or so her looks and her behavior have changed rather dramatically.

Betty: I am not sure I understand what you are trying to tell me, Karl.

Karl: Please don't get angry with me for these next comments but I can't help it. I don't want to offend you . . .

Betty: I think it is a little late to worry about that Karl; please continue. I am not some porcelain doll.[124] Go ahead and

---

121. Although 30% of all companies offer paternity leave, only one percent of the eligible male workers take advantage of these policies. *See* Amy Saltzman, *Trouble at the Top*, U.S. NEWS & WORLD REP., June 17, 1991, at 40, 47–48. Men who do choose to use these benefits are perceived as adopting a woman's role. *See* Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1499–1500 (1983).

122. *See* Wald, *supra* note 9, at 43 (arguing because women do more caretaking than men, special part-time or flex-time employment options should be available).

123. *See* FRIEDAN, THE SECOND STAGE, *supra* note 14, at 335 (suggesting that women organize volunteer organizations to provide services they need, but cannot provide, even as "superwomen"); Rhode, *supra* note 16, at 1185–86 ("[F]olklore abounds with examples of the dedicated professional who bills 2000 hours while pregnant or is back 'faster than a speeding bullet' after childbirth.").

124. *See* FRIEDAN, THE FEMININE MYSTIQUE, *supra* note 14, at 112 (quoting

tell me about Michelle's problems . . .

Karl: You asked for it. She is not herself anymore. She is almost manly!

Betty: If she has modified her mannerisms and appearance to be taken seriously, that is truly a shame. She should be free to be herself.[125]

Karl: Well, she has told me that she is not comfortable with her so-called new look.

Betty: Obviously, Karl, the firm has failed to make women feel comfortable as women. Some women in conservative professions feel the need to dress and act like men. At the same time, I am surprised that these women partners have not taken more initiative and attempted to imprint their own style, be it loud and hardy or soft and firm, to change the corporate environment and gain acceptance for different lawyering styles.[126] Women should not be forced to incorporate themselves within the male value system.[127]

Karl: I am rather surprised that you find my concern for my granddaughter's manner and appearance legitimate. I expected a diatribe on sexism and appearance.

Betty: "'As a good old feminist, let me say categorically that I do not now believe and have never believed that feminism requires turning your back on love, men, marriage, children, or even the frivolous pursuit of fashion and the desire to adorn and attract.'"[128] I am really tired of seeing professional women portrayed as monsters à la "Fatal Attraction."[129] Men tease female colleagues—or worse—if they are attractive, and refuse to take them

---

Freud as saying "'[t]he loved one is not to become a toy doll, but a good comrade who still has a sensible word left when the strict master has come to the end of his wisdom'" (quoting 1 ERNEST JONES, THE LIFE AND WORK OF SIGMUND FREUD 110ff (1953))).

125. *See* FRIEDAN, THE SECOND STAGE, *supra* note 14, at 79, 164 (discussing problems faced by women who try to compete on men's terms).

126. *See id.* at 244–45 (discussing advantages of different leadership styles).

127. *See id.* at 79 (expressing concerns about definition of gender equality that includes adopting traditional male stress and sacrificing traditionally female forms of fulfillment); Cahn, *supra* note 109, at 1068–69 (discussing female and male lawyering styles).

128. Suzanne Fields, *Feminist Flights of Fuschia Fantasy?*, WASH. TIMES, Mar. 26, 1991, at G1 (quoting *Allure* magazine interview with Betty Friedan); *see also* Derek Humphry, *Playboy Interview: Betty Friedan*, PLAYBOY, Sept. 1992, at 51, 52 (stating pornography is not inherently harmful to feminism so long as celebration of sexuality does not negate woman's personhood).

129. FATAL ATTRACTION (Paramount Pictures Corp. 1987).

seriously. As soon as they begin to change and dress "seriously," they are ridiculed for their masculinity.[130] It is a terrible catch-22.

Karl: I really had not thought much about it, to be truthful.

Betty: I'm shocked. Stop now and think about it for a moment Karl. Has anyone made derogatory comments concerning a male attorney's appearance? Surely you have noticed that during the Simpson trial, prosecutor Marcia Clark's hairstyle and clothing choices received a great deal of media attention. Few people have bothered to comment on Johnnie Cochran's hair, his clothing, or even his ties. Not to mention Robert Shapiro's hair!

Karl: Well, it seems to me that, from your perspective, the real issue is changing people's attitudes about how a professional and competent attorney should look.

Betty: Precisely. Make no mistake Karl: this effort will require more than just having women associates stand up for themselves. Men will also have to realize the value of feminine traits. For too long women have focused on individual or personalized solutions, on their own self-improvement. Today, rather than allowing themselves to be defined by their law firms, women associates like Michelle need to work with all segments of society, including men, to challenge and transcend the limiting structures and institutions of society, including law firms.[131]

Karl: On to the barricades!

Betty: I am not sure that a political revolution is required. On the contrary, both women and men need to discover their own "personhood" and build a new society on that discovery without preconceptions and in the absence of social compulsion.[132]

Karl: No barricades? No overthrow of the ruling class?

Betty: No, dear. This project is about inclusion and redefining our gender-based assumptions.

Waiter: Uh, excuse me, but will there be anything else?

Karl: No . . . not for me.

Betty: No, thank you. Check please.[133]

---

130. *See* Wald, *supra* note 9, at 42 (stating some male attorneys describe women attorneys as "tough" or "wimp[s]" or "ferocious").

131. *See* FRIEDAN, THE SECOND STAGE, *supra* note 14, at 40–41 (noting real empowerment of women occurs when men and women restructure society's institutions on basis of real equality for women and men). "Sexual war against men is an irrelevant, self-defeating acting out of rage." *Id.* at 257.

132. *See id.* at 28.

133. Because of Karl's impecunious state, Betty paid. Besides, it was the modwoman thing to do.