

**Philadelphia Bar Association Women in the Profession Committee
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Luncheon Remarks as Prepared
“The Well and the Glass”

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I'm glad to be here with you today. Since my first day of law school, I've been pleased to be in the company of people who chose law as a career. I'm particularly pleased to see so many women in the audience today, because I want to talk to you about the state of women in the profession.

It's an interesting story. It's a little heavy on statistics, and therefore a little dry. But don't worry! Water will be served!

When I was growing up, I didn't know a single woman lawyer. Not one. And although no one ever told me that I couldn't be a lawyer, no one told me that I could. I found my way into this profession as the result of many things—one was my Mom telling me I was so good at arguing that I should make a living at it.

By the time I got to law school, there were a few like-minded women, 23 in my law school class of 150 at the University of Colorado. We felt like the Marines—the few, the proud!

Today, the first generation of women practicing law in any significant numbers is entering their 60s.

My generation—the baby boom—is thinking about retirement. It's a time when reflection is natural.

And so the theme of my talk today is a reflection on the past 40 years for women in the profession.

- And I want to explore with you the question: **is the glass half empty or half full?**
- How do we stand after 40 years?

Obviously, there is plenty of good news. In every corner of the profession, women

have made their presence known.

- Women are entering law school at rates almost equal to men.
 - They are succeeding when they get there.
 - In fact, nationally, a higher percentage of women than men reach graduation.
- All those women students are beginning to add up:
 - 30% of the 1.1 million lawyers in America are female
- There have been three women presidents of the ABA
 - I think we'll probably stop counting now.
- Two women on the Supreme Court.
 - Here, I think we should keep counting!
- There are 46 female law school deans, the highest number ever
- Over 16% of the Fortune 500 companies have a female general counsel

Even in politics, women lawyers are making their presence known:

- We have had a female Attorney General.
- And a woman lawyer is a likely (and formidable) candidate for president in the next election.

With those numbers, we should expect to see the whole issue of gender in the profession gradually fading.

- Indeed, I had expected by now that the phrase “woman lawyer” would be out of fashion.

But it isn't. After 40 years, with 300,000 women practicing law in the United States, parity does not yet exist in the profession as a whole. Women still have a different experience in the profession than our male colleagues.

Let's start at the beginning of the career ladder. With law students:

- In 2000, almost 50% of entering students were female, the highest percentage ever.
- With the rate of male college graduation falling, we expected women to outnumber men in law school classes.
- That isn't happening.
- Instead, as the result of a surge in law school applications, the number of women accepted has fallen.

Next step on the ladder: There was a recent article in the New York Times on

women Supreme Court clerks.

- At this most prestigious job, the number of women has dropped precipitously from a high over the last few years of 30%
 - This year there are only 7 women among the 37 new clerks,
- According to the Times, this is “the first time the number has been in single digits since 1994, when there when there were 4,000 fewer women among the country’s new law school graduates than there are today.”
- Justice Antonin Scalia has hired only two women among 28 law clerks during the last seven years. He has none this year.
- Why are these numbers falling? No one has an answer. All the justices say they are hiring the most qualified candidates. Several justices said this is just a chance fluctuation.
- Those outside the court speculate that the cause may be:
 - the relative scarcity of female students among the top editors of the leading law schools’ law reviews
 - or the absence of women among the federal appellate judges who provide a pipeline to the Supreme Court for their own law clerks.

You may find it surprising to learn that only Justice Breyer routinely hires an equal number of women and men.

- The Times reported, “In the last seven years, Justice Breyer has hired more women than any other member of the court; more than half his law clerks, 15 of 28, have been women, a result, he said . . . not of any conscious effort but of choosing the best available candidates.”

The best candidates. Qualification.

- It’s a tricky issue. I would not argue that any lawyer of either gender should be given a job for which she or he is unqualified.

But what precisely are the qualities that “qualify” a person for a job at the highest levels of the legal profession? I’ve noted over my career that “qualifications” is sometimes code for “I’m comfortable with him” or “he’s one of us.”

So are women less qualified than men? If being editor in chief of the Harvard Law Review is considered a key qualification for a Supreme Court clerkship, we could accept that there are fewer qualified candidates this year, and leave it at that.

Or we might go further and ask, why is the number of female editors at prestigious

schools falling? Statistical blip? I don't know the answer.

Let's move to the other end of the career ladder. Consider the statistics on women partners in big firms:

- According to a 2005 study by the National Association for Law Placement, the number of women partners at large law firms has consistently lagged behind their male counterparts.
- Women comprise 17% percent of large law-firm partners. In 1993, the number was 12%.
- I'm proud to note that Denver and Philadelphia are both slightly above the national average, but neither is over 20%.

Firms used to say that this was a "pipeline" issue, arguing that the number would increase as more women entered the profession.

- But it didn't happen.
- In 1991, 43% of students starting law school were women.
- That means that ten years later, about 40% of the partners should have been women
 - But the study shows fewer than half that many partners.

So something else is happening in that pipeline. There's a leak:

- Perhaps women are less qualified for partnership than men.
- Or we don't work as hard.
- Or we don't care about partnership.
- Or we choose other career paths.

We can accept these explanations:

- Or we can look more deeply for the causes of this disparity.

Look at average salaries for women v. men:

- Even controlling for years in practice, women earn 77% of the salary earned by men.
- The Allegheny County Bar Association recently released a study showing a persistent pay gap between male and female lawyers that had not narrowed in 15 years.

Let's move on to the bench: Statistics show a slightly better story:

- 23% of Federal District and Circuit Court judges are female
- Almost a third of state supreme court justices are female

- And not surprisingly, women judges earn the same salaries as men!

Legal education also offers a brighter picture. Legal education is the most diverse segment of the profession

- Although only 20% of law school deans are women, that's up from 11% in 2000.
- Associate and Vice deans are almost 50% female.
- And no surprise, assistant deans and program directors are over 60% female

But faculty members show a possible leak in the pipeline similar to private practice:

- While almost half the tenure-track positions are filled with women, only a quarter of tenured professors are currently female.

And so, after 40 years, the profession has not offered parity to women. The glass is still half empty.

For women of color, the numbers are even more discouraging. The ABA Commission on Women has just released a study, *Visible Invisibility: Women of Color in Law Firms*.

Let me offer some background on the study.

- In the late 1990s, the National Association of Law Placement found that more than 75% of minority women associates left their jobs in private firms within five years of being hired.
- After eight years, that figure rose to 85%.

The NALP study reported troubling data, but didn't answer the question:

- Why are women lawyers of color faring so much worse in law firms than other lawyers?

Visible Invisibility addresses several questions:

- What attracts women of color to the legal profession?
- Do their work experiences meet their expectations?
- How do legal employers affect job satisfaction?
- Why do women attorneys of color change practice areas and organizations, or leave the profession at such high rates?

The surveys included all lawyers:

- men and women
- white lawyers and lawyers of color.
- The responses of women lawyers of color were then compared to the other groups.

In addition, focus groups—comprising only women of color—provide context and personal perspective that no survey can capture.

This survey shows that experiences in law firms for different groups are starkly different.

- Nearly half of the women of color reported “demeaning comments or harassment,”
 - only 3% of white men reported this experience.
- Women of color felt they had to disprove negative stereotypes about their abilities and their career commitment,
 - Less than 10% of white men had similar feelings.

Let’s call this phenomenon “The Piece of the Pie.” White men enter practice with an imaginary piece of pie. They have to eat it or throw it in someone’s face to lose it.

- Women—and particularly women of color—too often come to the table without that piece of pie. They have to earn it.
- You all know, it is easier to be served a piece of pie than to make one from scratch.

Women of color may feel stuck in “dead-end” assignments, and feel that by their third or fourth years they lag behind their white male counterparts.

- 43% complained of limited access to clients and opportunities to cultivate relationships.
 - Many said the only time they met with clients was when their race or gender would be advantageous to their firm.
 - In these meetings, they often reported that they were not given substantive roles—despite the fact that their race and gender were perceived as attributes in the meetings.
- Nearly one-third of the women of color believed they received unfair performance evaluations
 - Less than 1% of the men felt the same.

- 20% of the women of color felt they were denied promotions
 - compared to 1% of the white men.

More disheartening is the feeling expressed repeatedly by women lawyers of color that they could not “be themselves.”

- They felt compelled to downplay their individuality, their gender, and their racial or ethnic identity.
- Many complained that they felt invisible, or that they were mistaken for support staff.

The stress of being a second-class citizen in the workforce often is too much to bear.

- *Visible Invisibility* reports that only 53% of women lawyers of color choose to stay in private practice, compared to 72% of white men.

The ABA Commission on Women in the Profession has made a series of recommendations to address these problems, including:

- Approaching the success of women of color as a firm problem, rather than a “woman” problem
- Integrating women of color into law firms’ professional and social fabric
- Increasing the awareness of the issue through dialogue
- Supporting women of color in their efforts to build support systems
- Assuring compliance with anti-discrimination and anti-harassment policies and holding firms accountable for non-compliance.

So here we are 40 years later, your mothers and your sisters. You must be disappointed in us.

We don’t know all the answers, but we know some:

- Some women are leaving firms because of work and family issues
- Some women are choosing the public sector, and corporate law departments, which have traditionally offered more flexibility.
- The women who remain in private practice are more likely to choose smaller firms.

As the women who led the women’s movement, who demanded entry in the largely male profession, we have to ask ourselves:

- How are we leaving the profession for women coming in?
- It certainly sounds like the glass is half empty.

I want to argue that, in fact, the glass is half full.

Without doubt, things are better for younger generations than they were for mine.

- There are a lot of women lawyers, there are female mentors, and most of us have successful and rewarding careers.
- Opportunities for women exist in every corner of the profession.

Remember, that glass didn't get full by itself. Here are some drops in the glass:

Law students:

- Remember that women are entering law schools at a rate nearly equal to that of men and they are graduating at higher rates.
- No girl needs to grow up, as I did, never meeting a woman lawyer.

Bar leadership:

- I am the third woman to serve as president of the ABA. Laurel Bellows of Chicago is the third woman to serve as Chair of the ABA House.
- Eleven states have women bar presidents.
- No surprises there.

The judiciary

- Several states have, or have had, a female majority on their highest courts

Private Practice

- Women are represented at all levels of practice. There are 300,000 women practicing law in the United States today.
- Women have risen to serve on the management committees of major law firms.
 - Mary Cranston just stepped down as the managing partner of Pillsbury Winthrop Shaw Pittman, a 900-person law firm with 16 offices around the world.
 - I served with Mary on the ABA Commission on Women.
 - She's a terrific person and a great lawyer, and she would be the first to tell you that there are plenty of capable women in law firm leadership.
- One law firm—Morrison & Foerster—was named one of the best places in America for women by Working Woman Magazine.
 - Not the best law firm, but one of the best places in all of American business.

Government

- We have had a female attorney general and two female Secretaries of State.
- Currently there are 5 women serving as state Attorneys General.
- In the military, where women have experienced astounding integration in the

last 40 years, 30% of the members of the JAG Corp are female.

Drops in the glass.

No question: in the last 40 years, women made remarkable progress.

So Now We Face the Future of the Glass:

Where are we going from here? Will the glass remain "half full"?

There are three possible outcomes:

1. Things will be better. Women will have parity with men in all facets of the profession. No one will talk about the issue because it just won't exist.
2. Things will stay the same. Women will be struggling against the same forces—sometimes mysterious, sometimes obvious—that we face today. We will continue to make headway, but slowly. We will be juggling work and family without the support of legal institutions.
3. Things will get worse. If arguments for change disappear, the gains we've accomplished may be washed away.

Yes, the glass can fill, but it is up to this generation of leaders to assure that the progress doesn't evaporate and leave future generations worse off.

- In the next 10 years, almost 80,000 women lawyers will retire
- It will have a profound impact all across the profession, from the classroom to the courtroom to the boardroom.
- You cannot continue to depend upon older women to lead the fight for change.
- But you don't need to:
 - This city—and this bar association—is filled to the brim with talent, with insight, with experience, and leadership.

And one more thing: When you feel like you are running out of steam, let the ABA be your well.

No other segment of the profession has the incentive to address and the resources to solve these issues.

- At a minimum, bar associations must make it crystal clear to the profession that the issue isn't moot.

Younger lawyers—male and female—have to hear from their mothers, and their partners and their professors and the bench *and* the bar that there is no option but

to continue improving conditions for women in the profession.

- They may grow tired of hearing about it.
- Tell them you'll stop when there is no statistic that makes you groan.

This reminds me of a story a friend told me: Once during a firm meeting about hiring the 6th woman, one of the men said to her, with a straight face, "Why does it have to be a woman? Don't we have enough women?" That firm had FIVE women out of 28. Just to be clear: there aren't enough women until partnership meetings have percentages equal to graduating classes!

I had the privilege to serve as chair the ABA Commission on Women in the Profession. An amazing group of women and men devote their energy and intelligence to addressing these questions and helping to resolve them.

- They are taking on the problems illustrated by *Visible Invisibility*.
 - We in the ABA understand we cannot permit these conditions to continue.
 - The Margaret Brent Awards Luncheon, honoring outstanding women in the profession, is the biggest event at the ABA meeting.
 - It never ceases to inspire everyone in attendance. These are women who have overcome the odds, and not only succeeded in the profession, but become beacons of hope to other lawyers, providing service to the profession and the country.
 - The Commission is about to issue the second edition of *Fair Measure*, a book that outlines practical steps to assure that women are compensated fairly.
 - After years in the making, the Commission has published *Empowerment and Leadership*, an amazing book that offers individual and institutional best practices for women lawyers.
- With the help of Roberta Liebenberg of Philadelphia, the ABA Section of Business Law is launching the DirectWomen Institute.
 - The Institute will select and train experienced women business lawyers for service on Fortune 500 boards.
 - DirectWomen is developing strategic alliances with other organizations, like Catalyst, to increase the representation of women lawyers on corporate boards.
 - The first Institute will be held March 28-30, 2007, in New York.

All in all, this isn't your father's ABA. Things *have* changed.

But if the glass is to fill to the brim and overflow, we need your collective drops, building to a stream, a flood!

- **You need to participate in the ABA, and in your state and local bars.**
- **You need to join firm management committees and mentor women associates.**
- **You need to develop policies to assure that women lawyers of color do not experience isolation and discrimination in your firm, your office, or your agency.**

There is still plenty of work ahead:

- Working parents are still at a disadvantage in private practice
- Women are still judged by different standards
- Women need to manage law firms and develop policies that permit men and women to succeed.
- Women must continue to start their own firms, as they have in record numbers.
- State and local bars, and women's bar associations, must continue to ask hard questions, shine a light on problem practices, and encourage the profession—women and men—to keep looking for solutions that will result in true parity.

Looking back, I'm proud of the work that we have accomplished:

- Dedication by women lawyers
- Support by male mentors and peers.

I'm not easily discouraged. Yes, there is progress yet to be made. But here is a room full of women ready to pour your collective energy and insight into the glass.

- Don't rest on our limited success.
- Show my generation how to accelerate the pace of change.

In effort, in talent, in intention, your cup runneth over.

Thank you.