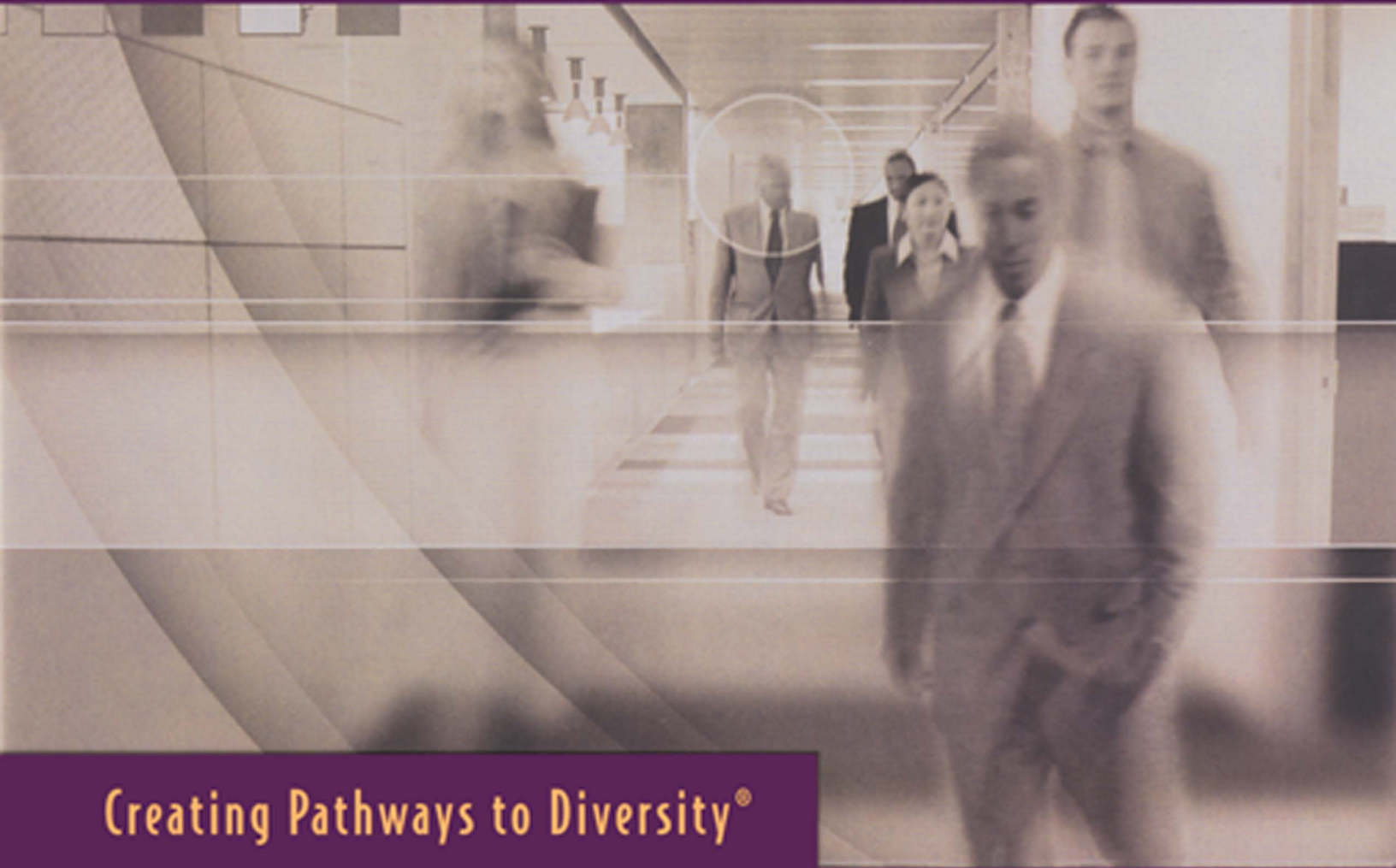


The Myth of the Meritocracy:

A Report On the Bridges and Barriers to Success in Large Law Firms



Creating Pathways to Diversity®

EXECUTIVE SUMMARY

I. Introduction and Research Methodology

The Minority Corporate Counsel Association (MCCA) was founded in 1997 to advocate for the expanded hiring, promotion, and retention of minority attorneys in corporate legal departments and the law firms that serve them. MCCA's efforts focus on the research, collection, and dissemination of information on the status of diversity in the legal profession and the use of that information to further the association's mission.

Creating Pathways to Diversity® — The Myth of the Meritocracy: A Report On the Bridges and Barriers to Success in Large Law Firms is the result of a year-long study launched to answer the following questions:

1. What criteria do partners use to decide who will attain partnership?
2. What factors distinguish those who make partner from senior associates who are not elected? Race? Gender? Education? Achievements and academic distinctions?
3. To what extent do credentials and experience, such as law school pedigree, law review, federal clerkship, or class rank/grades actually distinguish successful lawyers from those who do not make it to partnership?

In this report, MCCA issues the results of the second phase of a three-year effort to study how law firms can better design, implement, and monitor effective diversity programs. The findings are based on two sources: 1.) an analysis of demographic information gleaned from the professional biographies of 1,833 recognized leaders at 14 randomly selected law firms in the *National Law Journal's* list of the top 250 firms; 2.) qualitative data gathered through 25 interviews with highly-regarded partners from a cross-section of the nation's largest law firms.¹ Additionally, Professor Joan Williams of the Washington College of Law at American University analyzes cognitive biases that further impact the ability of women seeking to advance in today's competitive law firm environment.

II. Findings and Conclusions

1. **"Law firms are law school snobs."** Irrespective of the alma mater represented by the firm's partnership, law firms place a premium on students from the top 20 law schools in the country, especially those who graduated from Ivy League institutions, such as Harvard or Yale law schools.²

¹MCCA selected the interviewees after reviewing lists of top-ranked lawyers in the *National Law Journal*, *Corporate Board Member* magazine, and referrals by leading general counsel.

²However, it is interesting to note that with the exception of only ten or so schools consistently ranked among the top law schools, the rest of the field has continued to shift. For example, schools like Boston College and Boston University had been ranked among the Top 20; but this is no longer true. In fact, these schools are now not among today's Tier II. In addition, schools like the University of Minnesota-Twin Cities are more recent additions to the elite Top 20.

The traditional indicators of high academic performance, such as law review credentials, Order of the Coif, federal clerkship, or graduation with honors, are not prerequisites for success in large law firms, nor do many attorneys think they are reliable indicia of a law student's ability as a practicing attorney.

2. The traditional indicators of high academic performance, such as law review credentials, Order of the Coif, federal clerkship, or graduation with honors, are not prerequisites for success in large law firms, nor do many attorneys think they are reliable indicia of a law student's ability as a practicing attorney. This conclusion is supported by the fact that of 1,833 partners surveyed, 48.2 percent went to a Top 10 law school³, 20.2 percent had law review experience, 25.9 percent graduated with honors (*magna cum laude*, *summa cum laude*, or *cum laude*), 13.9 percent did a clerkship, and 8.7 percent were inducted into the Order of the Coif. In general, the relative importance assigned to grades, the rank of the law school, and other indicia of achievement are dependent on the background of the people on the hiring committee and the specific legal needs of the firm.
3. The standards are arbitrarily applied by law firms in promotion/recruitment decisions, usually with a stricter degree of adherence to high objective standards for those subjected to negative stereotypes, such as people of color.
4. The process of being nominated and elected to partner is not objective, nor is there a set of policies adhered to strictly in any firm. The skill sets, qualifications, or goals that a senior associate must possess in order to be elected to partnership are rarely specified in writing, nor are they clearly communicated to associates. The evaluation of each senior associate for partnership actually occurs prior to being nominated. Associates who will be successful are those who have made the transition from *being capable* of doing the work assigned to them to *generating* the work they do.
5. The legal specialty or practice area can influence the skill sets that distinguish lawyers who do make it to the next level from those who do not. While a firm's legal needs will vary based upon external factors (e.g., the economy, legislative climate, etc.), practice areas, such as securities, mergers & acquisitions, and intellectual property, enjoy a high level of respect and generate big profits for the firm.
6. Where a lawyer starts out heavily influences where he or she ends up. Of the six factors that indicate high academic performance, including the rank of the law school, law review participation, federal clerkship, grades or grade point average, class rank, and distinctions upon graduation, the most important factor in hiring decisions is the rank of the law school, especially in the first few years following graduation.
7. Whether an attorney will be successful in a large law firm is not necessarily predicted by grades, law school pedigree, or in the narrowly defined skill set reflected by other criteria, such as law review participation or a federal clerkship.

The process of being nominated and elected to partner is not objective, nor is there a set of policies adhered to strictly in any firm.

³In reviewing the law schools attended by nearly 2,000 partners, MCCA applied current ranking criteria from the 2003 List of Top Law Schools issued by *U.S. News & World Report*. It is worth noting that this percentage ignores the fact that at the time many of the surveyed partners attended law school, their alma mater may not have been as highly regarded. Thus, it is more difficult to measure the "quality" of the law school education they actually received.

The factors that differentiate those senior associates elected to partnership from those who are not include:

- Consistent, high-quality legal work and demonstration of good judgment;
- An influential mentor to grant assignments on matters with high visibility and client contact, vouch for abilities to other partners, and provide critical feedback;
- Excellent customer service;
- A consistent habit of doing internal and external marketing to develop a reputation and network, which encourages business referrals from partners and clients;
- Generation of revenue through high billable hours, favorable case results, sizeable judgments/verdicts, and rainmaking – generating new business from existing clients or landing new client accounts; and
- Initiative in consistently exceeding the expectations of partners and supervisors.

In large law firms, success is based mostly on reputation, both earned through case experience and unearned through the law school attended.

8. For minority lawyers, women, or other individuals who may be subjected to doubts about their intellectual ability or professional commitment, pedigree credentials, such as a degree from an Ivy League law school, abrogate questions from clients and their own law firm colleagues that are designed to size up their legal skills. This credential insulates them from the lower expectations faced by many attorneys of color and the negative perception that they were hired or promoted at the expense of quality.
9. The alma mater of law firm partners exerts a notable influence on where the firm recruits. Students who attend schools not ranked in the Top 20 have a much better chance of being hired by a major firm located in geographic proximity to their alma mater.
10. This study did not attempt to prove that there were a greater or lesser number of people of color and/or women as white men who had achieved high marks and academic distinction for their performance while in law school. What it has proven is that a significant number of partners at America's largest and most profitable law firms lack the "box credentials," which their hiring committees consistently use as barriers to the consideration of many minority candidates.⁴

⁴ For the purposes of this study, "box credentials" refers to the traditional indicators of high academic performance, such as graduation from a top 20 law school, law review experience, a federal clerkship, and graduation with distinction (e.g., Order of the Coif or *magna cum laude*).

III. Recommendations

1. Firms should examine the credentials and skill sets that distinguish partners at the firm from senior associates who were not elected. Data should be disaggregated at a minimum by race and gender, although there may be other demographic categories that the firm will wish to examine (e.g., marital status, sexual orientation, number of children, etc.). Based upon this audit, the firm should reexamine its hiring criteria against the findings and, as necessary, adjust their process of culling candidates from the hundreds of resumé's they receive annually.
2. Dispelling the myth of the meritocracy starts with successful lawyers taking the initiative to expand the firms' network of schools at which to conduct on-campus interviews and collect resumé's. By challenging the traditional "box credentials", attorneys may apply more practical measures of potential and legal aptitude to the law students they are considering as new hires.
3. Law firms serious about increasing diversity must extend their efforts past the recruitment stage to provide opportunities for all associates to get challenging assignments, work with important clients, and get critical feedback on their work.
4. Law firms should not depend solely on "box credentials" to evaluate the candidacy of students. Law firms and law schools must work together to provide opportunities for the 90 percent of all students who are not ranked in the top 10 percent of the class academically but whose leadership ability, interpersonal skills, oral argument, and other talents foretell their ability to be groomed into excellent attorneys.
5. Law schools have a role to play, too. They must do more to ensure a wider sector of their students, not simply those with "box credentials", have the opportunity to be considered by top law firms. This will entail reexamining the interview selection process, restructuring how the interview is conducted, and investing more resources to aid law students' career development and networking opportunities.
6. Undergraduate pre-law students need to understand that the rank of their law school is important in determining where they will practice and how they will be perceived as a new associate. They must also understand that to some extent, their selection will continue to influence the doors that open or close to them throughout their careers. This is particularly true for students of color.
7. Law students who are not at the top of their class academically, or who did not attend a top-ranked law school, must earn letters of recommendation from professors, clients, or partners/alumni of the firms where they seek placement.
8. Law firms must do better at being effective managers of people. Those entrusted with responsibility for leading departments and managing the performance evaluation process must be particularly vigilant about encouraging inclusive workplaces and ensuring that exclusionary tactics do not operate to disadvantage women and minority lawyers.

INTRODUCTION

In 2002, MCCA completed a comprehensive research project to identify barriers to diversity. People of color and women who participated in the study reported three obstacles most frequently:

1. Attrition of women attorneys driven by lack of viable work/life programs

Many female attorneys feel unable to maintain family commitments and high-pressure, time-intensive legal careers. They also note the lack of role models and the strained relationships with clients and senior firm management.

2. Stereotypes and assumptions

Stereotypes and assumptions about women and minorities still exist, stifling their career growth and a firm's diversity progress. For example, participants said because of family demands, it is still assumed that a woman will not be as committed to her profession as a man and that she will either leave or ask for "special treatment." Such stereotypes in law firms often do become "self-fulfilling prophecies."

3. Myth of the Meritocracy

The legal profession still traditionally views its institutions as being governed by a meritocracy—where success is the result of an individual's "innate" ability to perform well, as evidenced in such areas as law school grades or law review participation. While these credentials are acceptable measures of academic performance by a law student, they have yet to be proven reliable yardsticks to measure success as a practicing attorney. This cultural bias frames diversity negatively, as coming at the expense of excellent legal service instead of enhancing the quality of legal service.⁵

While ample research has been done on the issue of how to create policies that make it easier to balance work and family responsibilities (e.g., extended maternal and paternal leave) and deal with racial or gender stereotypes (e.g., diversity training), few projects have directly confronted the issue presented by the third barrier: the myth of the meritocracy in law. Through this research report and its overall *Creating Pathways to Diversity*® initiative, MCCA seeks to dispel myths, break barriers, and compel progress.

⁵The other challenges MCCA identified in a prior study are included in Appendix 1. This research report is part I of the *Creating Pathways to Diversity*®: A Set of Recommended Practices for Law Firms (also known as the MCCA Blue Book).

I. The Myth of the Meritocracy

The legal profession views its core hiring, retention, and promotion policies as based in a meritocracy in which one's success is commensurate with the talent, hard work, and skill of its practitioners. However, given America's long history of racial and gender discrimination, the lens through which the profession has viewed one's level of talent, what it means to be hardworking, and the credentials that underlie one's skill has been warped by other considerations that remain unwritten but that result in continued exclusion of people of color and women. Given the low numbers of minority and women partners, the profession continues to suffer from the deep-seated influence of cultural bias, in the form of inflexible systems originally designed for men by men, and more specifically, white men.

According to the myth of the meritocracy, undergraduates with the highest LSAT scores and grades go to the "best" law schools with the highest number of "brilliant" professors, and later matriculate to the "top" law firms, where they are uniquely qualified to rise to the top of their hiring classes and become partners. Said simply: the "smartest lawyers" and/or hardest working are the most successful because the system is predicated on an objective set of criteria by which everyone is judged, irrespective of gender, religion, race, or sexual orientation.

One of the assumptions that is at the core of the myth of the meritocracy is that the gauge of a law student's potential (or "merit") can be accurately determined by:

- The rank and reputation of the law school;
- Grade point averages and class rank;
- Participation on the law review;
- Graduation with distinctions, such as Order of the Coif or *cum laude*; or
- A federal clerkship.

These credentials stay with a lawyer throughout his/her career; additional factors are considered only as an attorney gains experience. For example, as a practicing attorney, case results (i.e., number of wins vs. losses, size of verdicts or settlements), billable hours, and the number of cases/clients in a book of business become valid indicia of success or failure.

Within the last five years, many law firms have instituted diversity programs that place an emphasis on the recruitment and retention of minorities and women, ostensibly shifting the focus from "merit" to race or gender as a consideration for employment. Those who are most adamant about judging others by traditional indicators of academic performance often do so in keeping with objective standards that have been in place for decades. Unfortunately, these criteria disproportionately weed out minorities and women, not only because there are few individuals who have these credentials, but also because these "objective measures" are not universally applied today, nor have they been historically.

Many firms actively profess to want only the best law students from the top schools and frequently insist on hiring from a very short list of law schools where the firm has always conducted on-site campus visits, such as Ivy League institutions, the University of Michigan, and New York University. Law firms complain all the time to corporations and MCCA alike that “they just can’t find them [qualified minorities].” However, law firms are infamous among women and people of color for using one set of criteria to hire, evaluate, and promote white males, and another for minorities and women.⁶ Subsequently, the attorneys of color who are hired and go on to make partner at major law firms are often more likely to possess the “box credentials” than are the majority of their white counterparts. This fact runs contrary to the popular belief among members of law firm hiring committees that they are “lowering the bar” to increase diversity.

II. Purpose of Study

The purpose of this study is to understand the importance of the tangible set of demonstrated abilities, embodied in the factors listed on the previous page, by looking at attorneys whose performance has distinguished them among their peers. Perhaps with a more realistic evaluation of the actual success traits partners embody or have developed, the criteria used to assess the potential of law school graduates will be expanded to be more reflective of characteristics of recognized leaders in the profession.

The goal of this project is to provide an accurate assessment of the core competencies and skill sets of successful attorneys in law firms and of the process of making partner so that incoming associates can emulate these behaviors — thus, helping to reduce the high levels of attrition and increase the number of women and people of color in the partnership. The findings should also encourage law firm hiring committees to reexamine who they select and why.



⁶See MCCA's *Creating Pathways to Diversity®: A Set of Recommended Practices for Law Firms* (2001) which reported the views of 141 lawyers.

STUDY OVERVIEW

Creating Pathways to Diversity® — The Myth of the Meritocracy: A Report On the Bridges and Barriers to Success in Large Law Firms is the result of a year-long project launched to answer the following questions:

1. What criteria do partners use to decide who will attain partnership?
2. What factors distinguish those who make partner from senior associates who are not elected? Race? Gender? Education? Achievements and academic distinctions?
3. To what extent do credentials and experience, such as law school pedigree, law review, federal clerkship, or class rank/grades really distinguish successful lawyers from those who do not make it to partnership?

This research project consisted of two parts: 1.) an analysis of demographic information gleaned from the professional biographies of 1,833 recognized leaders at 14 randomly selected law firms in the *National Law Journal's* list of the top 250 firms; 2.) qualitative data gathered through 25 interviews with highly-regarded partners from a cross-section of the nation's largest law firms.

I. Survey of Credentials of Nearly 2,000 Partners

Using the Martindale-Hubbell® *Lawyer Locator* database, located at www.martindale.com, MCCA collected the following biographical data for a group of 1,833 partners nationwide: law school attended, number of years practicing law, year of admittance to the first bar, age, date of birth, law review experience, federal clerkship, and distinctions upon



graduation (e.g., Order of the Coif or *cum laude*). This information was gathered and analyzed for the following three groups:

1. 25 interviewees who practiced at 18 different firms across the United States.
2. 14 law firms from the *National Law Journal* list of the largest 250 firms in the United States were selected at random with respect to the size and the geographic location of the firm's main office.
3. MCCA selected several lists of prominent and accomplished attorneys recognized by the *National Law Journal* as the top lawyers in their field, including: 1. Top Intellectual Property Attorneys; 2. Top Women Litigators; and 3. 100 Most Influential Lawyers in the United States. MCCA also included attorneys listed by *Corporate Board Member* magazine's list of America's Best Corporate Lawyers. Only attorneys who work at law firms on those lists were included.

MCCA assumed that all attorneys who did participate on the law review, graduate with distinction, or complete a federal clerkship would indicate such on the resumé submitted to Martindale-Hubbell. MCCA only included firms that listed not only the education of their partners/members, but also the credentials they earned while in law school or during their career.

II. Interviews with Power Players in the *National Law Journal* Top 250 Firms

MCCA conducted 25 one-on-one interviews with partners at major law firms in: New York, NY; Washington, D.C.; Chicago, IL; New England; South; West Coast; Mid-West; and Mid-Atlantic.

In order to make all attorneys comfortable sharing their most candid opinions and experiences, each person was asked about the critical factors of advancing to the next career level and the details of the consideration for partnership. Most of the questions were open-ended, which provided a depth and richness of data not otherwise possible. To encourage people to speak frankly and thoughtfully, MCCA guaranteed anonymity for all participants. Consequently, this report makes no reference to the sources of comments—either individual or firm.

Each interviewee was asked the same questions:

1. Can you describe your firm's culling process when you receive a large batch of resumé from law students? What factors distinguish those who will get interviews or further consideration from those who get a rejection letter?
2. Do you believe where one goes to school makes for a better lawyer and thus, is the law school's national ranking considered in assessing one's legal ability?

3. Are class rank, law review, and federal clerkships prerequisites for success in law? Are they more important during the hiring process than as a practicing attorney?
4. What does a candidate need instead of, or in addition to, these narrow credentials?
5. At any point, does experience become more important than the box credentials?
If so, when?
6. What qualities do the most successful lawyers share?
7. How important has mentoring been to you on a scale of 1 – 6? Define good mentoring.
8. Do women and minorities face any special obstacles to getting the exposure and assignments to make it to the next level?

MCCA included an additional question for graduates from Ivy League law schools:

- Do you believe that where you received your law degree has made an appreciable difference in your career?

In analyzing the data, MCCA chose to highlight those viewpoints that were expressed most frequently or offered particularly noteworthy perspectives. All data is reported in the aggregate, without attribution to a particular individual or law firm. The qualitative data collected from these interviews was essential to pinpoint the skill sets and core competencies that distinguish partners from senior associates not elected to the next level.

III. Research Team

The research that underlies this report was led by MCCA's Research Director, Scott Mitchell. Mr. Mitchell was responsible for the overall management and execution of this project, which included the research protocol, conducting the interviews, collecting and analyzing the survey data, and integrating both the quantitative and qualitative findings into this final report. He was aided greatly by the insights and recommendations offered by MCCA's Executive Director, Veta Richardson, who supported this project throughout the course of its two year production cycle. In addition, Professor Joan Williams of the Washington College of Law at American University was responsible for authoring the section on women lawyers in addition to providing valuable information regarding in-group favoritism and its impact in law firms.

MCCA acknowledges the contributions of Mr. Mitchell and Professor Joan Williams, in addition to those of Ms. Sheila Jackson, the graphics artist who was responsible for the design and layout of this report, and Ms. Jami Deise, who assisted with editing.

FINDINGS - What It Really Takes to Succeed

I. Partners - Credentials and Demographics

CREDENTIALS BY GEOGRAPHIC AREA

	New York, NY	Washington, DC	Chicago, IL	New England	South	West Coast	Mid West	Mid- Atlantic	ALL
Top 10 Law School (%)	58.8	50.1	39.5	57.5	13.6	13.6	4.9	47.9	48.2
Top 20 Law School (%)	67.9	65.9	60.1	64.7	33.3	90.7	14.6	55.2	63.1
Law Review Experience (%)	19.4	29.1	20.6	.6	6.1	12.9	60.9	2.1	20.2
Moot Court (%)	.5	2.6	.3	0	4.5	3.7	3.9	0	.8
Graduation with Honors* (%)	22.1	27.1	31.5	46.4	13.6	25.9	18.4	12.5	25.9
Order of the Coif (%)	4.8	6.2	15.7	0	10.6	3.7	29.1	16.7	8.7
Clerkship (%)	11.7	24.4	16.7	0	4.5	5.6	12.6	13.5	13.9
Years In Practice	21.7	21.5	21.1	20.6	22.4	19.1	19.4	19.7	20.7

* Graduation with honors refers to law students who receive cum laude, magna cum laude, or summa cum laude distinction upon graduation.

The chart above illustrates the significant effect of geographical proximity in the percentage of top 20 law schools represented by the partnership in local large law firms. Where there is no elite law school, there are fewer partners who graduated from these institutions. On the contrary, where there are elite law schools, such as New York, N.Y. (NYU, Columbia, Cornell, and Yale), Los Angeles, (UCLA, USC, or UC-Berkeley), or Chicago, Ill (Northwestern, University of Chicago, University of Michigan), the graduates of these elite institutions account for a large percentage of the partnership at the large law firms surveyed in this study. The one exception to this rule is Washington, D.C., which has only one top-ranked law school in the area: Georgetown. Many of the partners in the Washington area did attend Georgetown, while the majority of the top 20 law school graduates came from other top schools on the East Coast, such as Harvard, NYU, Yale, or Columbia.

CREDENTIALS BY LAW SCHOOL, GENDER & RACE

Law School (in order of rank)	#	Law Review (%)	Moot Court (%)	Graduation with Honors* (%)	Order of the Coif (%)	Clerkship (%)	At Least One Credential** (%)	Years In Practice (#)	Women (#)	People of Color (#)
Yale University	89	28.1	0	2.2	1.1	31.5	42.7	23.9	6	1
Stanford University	24	33.3	0	0	8.3	29.2	41.7	22.7	3	2
Harvard University	251	9.6	0	45.8	0	13.5	53.8	24.2	30	11
Columbia University	132	20.5	0	7.6	0.8	18.2	18.2	24.2	19	3
New York University	131	19.1	1.5	14.5	6.9	8.4	37.4	23.2	25	7
University of Chicago	46	21.7	0	19.6	11.0	26.1	45.7	22.0	6	0
University of California – Berkeley	9	0	11.1	11.1	11.1	22.2	44.4	19.0	2	0
University of Michigan – Ann Arbor	82	15.9	0	35.4	11.0	12.2	57.3	21.3	13	1
University of Pennsylvania	35	17.1	0	28.6	11.4	20.0	48.6	24.6	2	0
University of Virginia	88	8.0	0	2.3	19.3	18.2	36.4	23.0	22	0
Top 10 SUBTOTAL	887	16.3	0.3	22.2	5.5	17.0	42.5	22.8	128	25
Northwestern University	49	16.3	0	22.4	10.2	12.2	36.7	20.6	12	0
Duke University	25	20.0	4.0	16.0	16.0	4.0	48.0	20.1	3	0
Cornell University	30	20.0	0	36.7	20.0	10.0	56.7	23.8	4	0
Georgetown University	99	22.2	0	33.3	4.0	17.2	57.6	22.9	15	0
University of Texas- Austin	16	25.0	0	56.3	18.8	18.8	62.5	21.8	3	0
University of California – Los Angeles	18	11.1	0	11.1	0	11.1	27.8	19.3	4	0
Vanderbilt University	10	20.0	10.0	0	0	30.0	50.0	18.8	2	0
University of Iowa	15	33.3	6.7	13.3	6.7	0	53.3	21.5	1	0
University of Minnesota – Twin Cities	2	50.0	0	50.0	0	50.0	50.0	17.5	1	0
University of Southern California	6	0	0	0	0	0	0	20.0	3	0
ALL	1157	17.3	0.5	23.3	6.2	16.2	45.6	21.7	176	25

* Graduation with honors refers to law students who receive cum laude, magna cum laude, or summa cum laude distinction upon graduation.

** Includes law review experience, moot court participation, graduation with honors, induction into the Order of the Coif, or a clerkship.

Of the 1833 partners surveyed in this study, 887, or 48.2 percent, went to a school ranked in the top 10; 1157, or 63.1 percent, graduated from a top 20 law school. The importance of law school in hiring decisions is brought out by the percentage of partners who attended a top ranked law school.

II. What Do the credentials mean?

Law firms use grade point averages (GPAs), class rank, law review, and the rank or reputation of an applicant's law school to sift through the hundreds of resumés they receive from law students all over the country. Respondents indicated the following classifications as key criteria of candidates who are considered for placement as a first-year or summer associate (listed in order of importance):

1. **Law School:** Where a lawyer starts out heavily influences where he/she ends up. In fact, where one goes to law school can virtually determine a law student's opportunities at large law firms. Law firms place a premium on obtaining students from Ivy League institutions. Partners acknowledge that law firms like to brag to clients and other firms competing for the same talent about the number they snared, even if the firm's own partnership does not reflect representative numbers of graduates of top-ranked law schools. Every major law firm has graduates from the top law schools and maintains long-standing relationships with these institutions to conduct on-campus interviews and hire only the "best and brightest." Typically, these schools include at least the top five law schools (Yale, Harvard, Stanford, Columbia, and NYU) where the firm has always recruited, as well as the alma mater of the firm's partnership.

Firms may also recruit at schools that may not be ranked in the top 20 law schools, but are within the firm's geographic vicinity and have a good reputation. For example, a major firm in Boston might visit Suffolk Law School, Boston College, and Northeastern, while a Chicago area firm may set up a relationship with Kent, Loyola, or DePaul, even though none of these schools are currently ranked within the top 20 law schools. Of course, students at schools where the firm visits have a much better chance of receiving an offer from the firm than those who attend schools where the firm does not have a relationship. Conversely, students who are not at top-ranked law schools located near a major metropolitan area have little chance of being considered seriously at a large law firm, even if their law school is ranked higher than the schools outside of the top tier at which the firm annually recruits.

This phenomenon helps to dispel the myth that firms wish to recruit only from highly ranked schools, and supports MCCA's finding that outside of the top 20 law schools, law firm partners seek to mirror their own backgrounds by recruiting at the schools where they went, even at the expense of "quality" or ranking.

There was a significant local presence for all law schools, but especially for law schools not ranked within the Top 20. Of the partners who attended schools not ranked in the top 20 law schools, 70 percent practiced law within the same city or metropolitan area as their alma mater. Thus, graduates of Suffolk Law School were represented in Boston area law firms but almost nowhere else, while Harvard graduates were distributed at firms throughout the United States. However, even graduates from the top 20 law schools were more likely to practice in the major city closest to their law school.

Recently, some firms have expanded their on-campus recruiting to include law schools that regularly graduate a high number of minority law students, such as Howard University or the University of Houston. However, many partners within the firm doubt the intelligence and ability of

Fuzzy Math: Candidacy of Students from Different Law Schools

The image displays four overlapping resume cards for two individuals, John Smith and Juanita Smith. Each card features a large red stamp in the top right corner and a red arrow pointing right on the left side. The resumes are as follows:

- Card 1 (Top):** John Smith. Stamp: **YES**. Address: 123 Road, Anytown, USA. Phone: (123) 456-7890, Email: john@aol.com. Education: J.D. - Harvard Law School - Boston, M.A., 2000: Editor, Law Review, GPA: B; B.A. - Boston College - Boston, M.A., 1997: Political Science.
- Card 2 (Second):** Juanita Smith. Stamp: **NO**. Address: 123 Road, Anytown, USA. Phone: (123) 456-7890, Email: juanita@aol.com. Education: J.D. - Suffolk Law School - Boston, M.A., 2000: Editor, Law Review, GPA: A; B.A. - Dartmouth College - Hanover, N.H., 1997: Political Science. Strengths: Interperson, Proactive, Good Judgr, Excellent M, Team Playe.
- Card 3 (Third):** John Smith. Stamp: **OK**. Address: 123 Road, Anytown, USA. Phone: (123) 456-7890, Email: john@aol.com. Education: J.D. - Harvard Law School - Boston, M.A., 2000: Editor, Law Review, GPA: B; B.A. - Boston College - Boston, M.A., 1997: Political Science. Strengths: Interpersonal, Proactive, Good Judgme, Excellent Mari, Team Player.
- Card 4 (Bottom):** John Smith. Stamp: **OK**. Address: 123 Road, Anytown, USA. Phone: (123) 456-7890, Email: john@aol.com. Education: J.D. - Suffolk Law School - Boston, M.A., 2000: Editor, Law Review, GPA: A; B.A. - Dartmouth College - Hanover, N.H., 1997: Political Science. Strengths: Interpersonal Skills.

these students, viewing their selection as being more likely to have come at the expense of quality. These diminished expectations may influence their willingness to assign these students to desirable work, which can start a “self-fulfilling prophecy” that can ruin the careers of many minority attorneys when they do not meet performance standards.

2. GPA/class rank: Law firms evaluate grades with respect to percentages set and enforced by the hiring committee. Most firms in this study had rigid grade cutoffs for applicants, and only those who had performed in the top 25 percent of their class at most law schools were considered for interviews.

Many attorneys reported that their law firm will apply a different lens for students at law schools not ranked in the Top 20 as opposed to those who attend one of the most prestigious institutions. For example, a Harvard or Yale law student may be interviewed for a position as a summer or first-year associate despite not having the best grades possible. A student at a Tier 2 law school (see list in Appendix 3), however, will have to be at or very near the top of his/her class in order to be considered, in addition to having law review experience and an excellent undergraduate record at a reputable school.

CREDENTIALS BY RANK OF LAW SCHOOLS

	ALL	Top 10 Law School Graduates	Top 20 Law School Graduates	Non Top 20 Law School Graduates
Total Number (%)	1833	48.2	63.1	37.2
Law Review Experience (%)	20.2	16.3	17.3	26.5
Moot Court (%)	0.8	0.3	0.5	1.0
Graduation with Honors* (%)	25.9	22.2	23.3	29.9
Order of the Coif (%)	8.7	5.5	6.2	12.9
Clerkship (%)	13.9	17.0	16.2	10.5
Years In Practice	22.3	22.8	23.3	21.0
At Least One Credential**	49.6	42.5	45.6	56.2

* Graduation with honors refers to law students who receive *cum laude*, *magna cum laude*, or *summa cum laude* distinction upon graduation.

** Includes law review experience, moot court participation, graduation with honors, induction into the Order of the Coif, or a clerkship.

In fact, 56.2 percent of the partners surveyed who attended schools not ranked in the Top 20 possessed at least one of the traditional indicators of high academic achievement (law review, clerkship, graduation with distinction, such as *cum laude* or Order of the Coif), while only 42.5 percent of the partners from schools ranked in the top 10 listed the same achievements. With the exception of the attorneys who completed a federal clerkship, graduates from schools not ranked in the Top 20 exceeded partners from elite schools in every indicator of academic achievement.

- 3. Law Review:** This credential indicates to firms that a student is highly competitive, writes and edits very well, and has earned the respect of his/her colleagues. Participants made clear that the other journals published by the law school were not considered with the same weight as the main law review. Thus, it appears that law firms are impressed less by the skill set that law journal editors possess as by the prestige represented by the credential of the law review.
- 4. Clerkship:** More than law review, grades, or the rank of the law school, the value that a firm places on a clerkship experience varies from firm to firm or from one practice group to the next. MCCA interviewed several trial attorneys who attached great importance to this credential, more so even than law review. Participants indicated that clerks are better prepared to argue a case and write a persuasive brief. The relationship with the judge and the other federal clerks is an important connection that the firm also values highly.
- 5. Writing ability:** Every firm collects writing samples from law students they seriously consider for hire. Typos or grammatical errors are immediate disqualifiers. The hiring committee reviews materials for clarity, concise analysis, and original thought. A student who is on law review is presumed to write well, though all firms will consider the substance of their contributions to the journal.
- 6. Indicia of good judgment, initiative, and leadership ability:** While no participant could point to specific credentials or extracurricular activities that may foretell the qualities listed above, all attorneys thought that applicants must possess these key intangible abilities to receive an offer. These skills were reiterated frequently as vital to making partner in large law firms, in addition to other qualities reported herein.
- 7. Life experiences:** Firms that were committed to hiring more people of color and women placed a greater value on recruiting students with life experiences that distinguish them from their peers. Examples included students who had volunteered abroad, performed community service work in their neighborhood, or who had spent a year or two learning a foreign language.
- 8. Work experience:** While having no work experience was not a disadvantage, some interviewees believed that students who took off a few years between college and law school gained a more mature perspective and better people skills that would influence how they work with clients throughout their career. Only a few participants mentioned this criterion, all of whom had worked as paralegals or junior associates before or during their law school education.

The legal specialty of the law firm and the credentials of the partners on the hiring committee will determine the exact order of the list above. For example, a firm that specializes in litigation will look favorably on attorneys who have completed a federal clerkship because it indicates that they have exposure to prepare a brief for trial and are familiar with the factors a judge will consider in crafting a verdict. Thus, the practice area of the firm can affect the priority of each factor in culling the large stack of resumé to a short list of viable candidates.

Some attorneys of color believe that the firm will make exceptions to the above criteria for students who have important connections to the firm's major clientele, such as relatives of valuable stakeholders (e.g., client, judge, partner at firm). A recommendation or letter from a major client attached to a resumé will be noticed and perhaps make a difference in the firm's evaluation. In fact, it may trump the other criteria as being the central reason for employment even if the candidate is "not as qualified" (i.e., has lesser class standing, law school outside top tier, etc.) as his or her counterparts.

The Benefits of a Law Degree from a Top Five Law School

1. Reputation and prestige of school adds to individual abilities in the perception of employers, other law firms, clients, and colleagues.
2. May vouch for ability in the case of individuals subject to lower expectations or bias, such as women and people of color.
3. More opportunities that are less limited by geography. Most, if not all, major firms from across the nation recruit on-campus and cannot screen resúmes because of lottery system.
4. Excellent academic preparation.

III. Do Your Credentials Follow You?

The legal profession differs from others in that one's academic credentials continue to make a difference throughout one's career as a practicing attorney in the eyes of peers. Distinctions like Order of the Coif, clerkships, or law review are credentials that appear on attorney biographies in such regularity that not seeing it almost certainly means that the attorney did not participate in those activities or achieve that distinction. Those who do have those distinctions on their resumé or who graduated from a top-notch law school may continue to receive the benefit of the doubt in ambiguous situations. They also benefit from an "assumption of competence" from clients and peers whom they meet for the first time. Their law school helps them "get their foot in the door."

Some participants insisted that where an associate went to law school and what they did there stop mattering the day they enter the firm. How an engagement partner staffs important matters has naught to do with the law school's rank but with the lawyer's availability, experience, previous case results, references from others within their practice area, and their direct relationship with the attorney, if any. **"If I need to get something done quickly, I am not going to call down to H.R. to get an attorney's resumé before I assign them to do the work. I am going to call the partner or manager that supervises them."** According to others, however, law school pedigree, grades, law review participation, or a clerkship continue to matter during the first two years of practice at a major firm before the attorney has developed a reputation. In fact, many participants commented that credentials matter as long as an associate has not proven their ability to do the work well. Where they went to law school is presumed to say something about them until their work speaks for itself. By doing excellent legal work, associates decrease the time when their law school is their only calling card.

All participants emphasized that individuals who left the firm prior to their fourth or fifth year would be judged more critically by their law school credentials because they usually cannot sell themselves based on their experience, case results, or a book of business of their own. This opinion was, however, premised on the fact that the lawyer was leaving the firm to go to another law firm, rather than in-house, academia, or the public sector.

IV. Choice of Law School – Help or Hindrance?

Without exception, participants replied that they did not believe that going to a top law school necessarily makes one attorney better than another who did not study at a prestigious institution. Every interviewee knew an exceptional lawyer who went to a lesser known law school. However, it was clear that those extraordinary individuals were considered to be exceptions to the generally unspoken rule among the hiring committees at major law firms: top law schools produce the best lawyers.

Participants explicitly stated that students from second or third tier law schools had a very difficult time being considered at a large law firm, even those who had excellent credentials; this seems to imply, for example, that a middle-of-the-class student at Harvard is equal to the class valedictorian at Suffolk Law School. This implication suggests that there is a substantive difference between the education and preparation students receive at first and second tier law schools (hence, the ranking).

Though every participant emphasized the importance of law school pedigree and high academic achievement in being considered for employment, not one attorney believed that these qualities were prerequisites for success in law firms. The question follows naturally from this observation and the data culled from the survey of professional biographies collected from Martindale-Hubbell: if so many successful partners do not have stellar academic backgrounds or graduate from the top law schools, why judge law students by these credentials? Not one attorney could answer this question; their lack of response implies the answer: because this is the way it has always been done and *because that is the way they themselves were evaluated*. Implicitly, many attorneys endorse the idea that top law schools produce better lawyers. The rankings assigned to law schools and the hiring patterns of many law firms perpetuate this cycle of exclusivity that places a high value on law school pedigree and the “box credentials” and virtually ignores practical measures or other qualities that the partners interviewed in this report viewed as necessary to make partner.

Without exception, participants replied that they did not believe that going to a top law school necessarily makes one attorney better than another who did not study at a prestigious institution.

If so many successful partners do not have stellar academic backgrounds or graduate from the top law schools, why judge law students by these credentials?

The Brass Ring: Partnership

Based on the interviews, MCCA compiled the following list of success factors to make partner within a large law firm:

1. **Consistently high-quality legal work:** Unanimously, every participant said that doing consistently high-quality legal work is the key to making it to the next level. Based on the importance that interviewees placed on this factor, there is an implicit belief that partners are the best lawyers in the firm – a fact with which some attorneys may disagree if asked directly. While doing excellent work was the first priority, it was not sufficient to make an associate a partner.
2. **Mentors:** When asked about the importance of mentoring on a scale of 1 – 6 (6 being very important), the average rating was a 4.8. Participants did give different definitions of mentoring. Some classified mentoring as finding a cheerleader among other partners, while others focused on “being in the wake of a rainmaker” or someone who consistently generates high profits for the firm. All participants emphasized that **“the best mentoring is giving good work.”** An effective mentor should provide:
 - i. Assistance in getting high-visibility assignments and desirable projects;
 - ii. Honest feedback;
 - iii. A champion to vouch for an associate’s skills to other partners or supervisors who can assign work; and
 - iv. A confidential resource for career advice or conflict resolution.

All of these can be provided by senior associates or partners who need not be of the same race or gender as the associate, albeit with an understanding that both parties acknowledge their different backgrounds and seek to learn from each other.

It was clear that senior associates in serious contention for partnership have relationships with senior partners or rainmakers who champion their candidacy during the election process, and are willing to give them the benefit of the doubt when they make mistakes. Partners rely upon the opinion and recommendation of other partners in making their decision to elect or deny senior associates who are nominated. A doubt or negative comment from a supervisor familiar with a nominee’s work will raise a question in the minds of those who will elect new partners. Having an influential mentor who can serve as a cheerleader or who assigns associates to desirable assignments is critical to making it to the next level.

Invariably, new associates will make mistakes because they do not know the practice of law, something that only a senior attorney or partner can teach. Without that guidance, many associates do not get the feedback and instruction necessary to make it to the partnership level. Minorities and women, especially, are often the first to fall through the cracks since they do not have role models to emulate, nor are white male partners always comfortable enough to make them a part of their team.

Having an influential mentor who can serve as a cheerleader or who assigns associates to desirable assignments is critical to making it to the next level.

3. Customer Service: The core business is the following: large law firms provide legal service to corporate clients. Providing excellent customer service, then, is one of the highest priorities. Recommendations from clients or requests for an associate to be assigned to a matter go a long way towards moving one name above the rest. Clients want to have their questions answered quickly and want their outside counsel to help make them look good to their general counsel. By providing efficient service and getting excellent results, associates make themselves a part of the in-house counsel's team. However, only a minority of junior associates will get the client contact and highly visible work that will give them the opportunity to develop a relationship with important clients.

4. Marketing: “I spend 70 percent of my time working and 30 percent marketing.” In a large law firm where the entering class can be quite sizable, few qualities will distinguish the new faces from each other. Rainmakers have excellent people skills and demonstrate leadership ability in addition to being keen lawyers who work hard. Not everyone will make partner, so attorneys intent on making it to that level have to distinguish themselves in their work and get the recognition among firm leaders and important clients that will give them an advantage.

Externally, associates should publish journal articles, stay active in their local or national bar associations, and network outside of the law firm with clients.

5. Revenue Generation: Rainmakers are always welcome at the top. Attorneys who can close deals or bring in new clients have an advantage over those who are just legal experts. Initial success creates a precedent and a reputation among other attorneys that can lead to future successes.

“All partners have made the transition from being an employee of the firm to an owner.” This comment reflects the fundamental change in attitude that each partner must make in the transition from senior associate to partnership. Senior associates focus on doing the work that is assigned to them, while partners generate the work they do. Partners are not worried about their ability and availability to do the work; rather they are concerned about the business of the law firm – how to increase profits and decrease costs. According to participants, thinking like “an owner” means learning:

- To close deals at meetings with prospective clients;
- To extend relationships with clients to gain new business or get helpful referrals;
- To develop new associates who can generate revenue for the firm;
- To provide excellent customer service;
- To assign and manage teams of lawyers to provide efficient and excellent legal work for the client;
- To develop and maintain a reputation of being a winner or cutting-edge expert among partners within the firm and its important clients; and
- To get the most recognition for great work.

Senior associates focus on doing the work that is assigned to them, while partners generate the work they do.

Associates who have high billable hours, however, are not necessarily going to make it to partner. The quality and substance of their work is important, too. In fact, participants emphasized that being available to work lots of hours when they were needed was more important than just exceeding the requirement for all associates. An associate who bills 2000 hours of document review is not going to make partner. Attorneys who deliver good results on highly visible work with significant client contact will get to the next level.

The ability to generate business is not as important at the most prestigious law firms that have institutional clients and long-standing relationships. What counts at these firms is that partners can pass their books on to an associate who has met and worked directly with their clients.

6. Judgment: Often overlooked by many associates, participants consistently mentioned this attribute as critical to success. Partners have to manage a case independently, which means that they have to assemble a team of experts who can get the job done quickly, understand the client's business and objectives, and balance the concerns of all the important stakeholders in each case, including the firm, while continuing to manage other attorneys and matters. Successfully navigating these challenges requires excellent judgment.

7. Be proactive: “Don’t just do what you are told to do.” Associates who consistently exceed the expectations of their supervisors will be successful. Those who focus on submitting their assignments on time exactly as they were requested may not distinguish themselves. While it is important to be a team player and to communicate with other team members and supervisors, associates should approach each matter as if they had complete control of the case. This approach means that the associate is thinking for the client and thus, for the engagement partner, a quality that will set them apart from the lawyers who just want to do the best job possible.

Participants mentioned that a law firm that is not growing or that may be losing clients due to a poor economy will not be anxious to elect new partners. Thus, while a candidate may embody all the skills described above, the firm's partnership may be unwilling or unable to afford to split the pie more ways than it already does. An associate intent on ascending to the partnership at a small firm where few are annually elected, or a firm that is only marginally profitable, may need to explore options at other firms or corporations. They must keep in mind that by jumping ship, they may have to rebuild their reputation at their new employer and possibly, their book of business.

Attorneys at large law firms considering their chances for partnership should also note the ratio of partners to associates. Firms where the ratio is small (2 associates: 1 partner) consider their associates to be the future leaders of the firm. According to several interviewees, a smaller ratio means that they will develop their associates into partnership material and are not looking for “foot soldiers to do the work.” Law students are more

likely to receive the attention and feedback they need to practice law successfully at a law firm with a small ratio of partners and associates because the firm has additional incentive to improve the experience of their attorneys.

Large law firms where the ratio is four associates per partner or greater are not looking for future partners when they recruit on-campus. These firms may have large corporate clients who have had institutional relationships with the firm for decades. There is plenty of work to be done and the firm simply needs to find smart people who can get it done not future rainmakers to generate a large book of business from new clients. Typically, these firms are the most adamant about the importance of the “box credentials: in hiring or in conducting on-campus interviews at only the top law schools since they have not given serious thought to what their actual needs are. Because they only expect a few attorneys to rise to the partnership level, these firms will do little to curb the high levels of attrition by improving the quality of life of its associates or integrating new attorneys into the firm’s culture and management system. In this competitive environment, business as usual practices can isolate minorities and women from the firm’s informal network of clients, partners, and senior associates without being noticed by the partnership.

A firm with virtually the same number of partners as associates wants new hires who mirror the credentials and skill sets of its partners while a firm that has a large ratio of associates to partners prefers cookie cutter models of potential embodied by choice credentials, such as Ivy League law school degrees or law review experience. Competition for high-visibility matters that require a lot of client contact in large law firms with a high number of associates per partner is fierce and often “tilted” towards those with whom partners feel more comfortable assigning as part of their team.

DIFFERENT EXPERIENCES

GENDER & RACIAL DIVERSITY IN LAW⁷

	Women (%)	Minorities (%)
Students	49.00	20.02
Summer Associates	48.90	17.26
Associates	41.94	13.70
Partners	15.80	3.55

The table above shows the gradual decline in the representation of people of color and women as they progress through various career stages. The disparity between the diversity at the associate and partner levels attests to the high attrition rates at many large law firms; in fact, 86 percent of women of color leave their first firm before their seventh year. The numbers are significant for other groups as well: 76.6 percent of men of color; 72.4 percent of all men, and 77.6 percent of all women leave their law firm prior to being nominated for partner, usually during their seventh year.⁸

BIAS BY THE NUMBERS

- 47 percent of African American partners at major law firms in New York City graduated from either Harvard or Yale.⁹ According to this MCCA study, only 18.6 of all partners earned their degrees from those institutions.
- A recent study conducted by the American Sociological Review found that black male attorneys make 79 cents for every dollar earned by a white male attorney of the same education and work experience.¹⁰ While similar data was not reported for other racial minorities, it is doubtful that their experience would be significantly different.
- While 68 percent of all white male attorneys leave their first firm before their seventh year, 73 percent of all women and 86 percent of women of color do the same.¹¹
- The Harvard Black Alumni Report found that among black alumni who graduated in the 1980s from Harvard Law School and are in private practice, 74 percent of men are equity partners, compared to just 48 percent of women.¹²

⁷National Association of Legal Placement, "Dearth of Women and Attorneys of Color Remain in Law Firms" December 2001.

⁸American Bar Association: Committee on Opportunities for Minorities In The Profession "Miles To Go 2000: An Update" 2000.

⁹Wilkins, David B., and G. Mitu Gulati. 1996. "Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis." California Law Review 84:493-625.

¹⁰American Sociological Review.

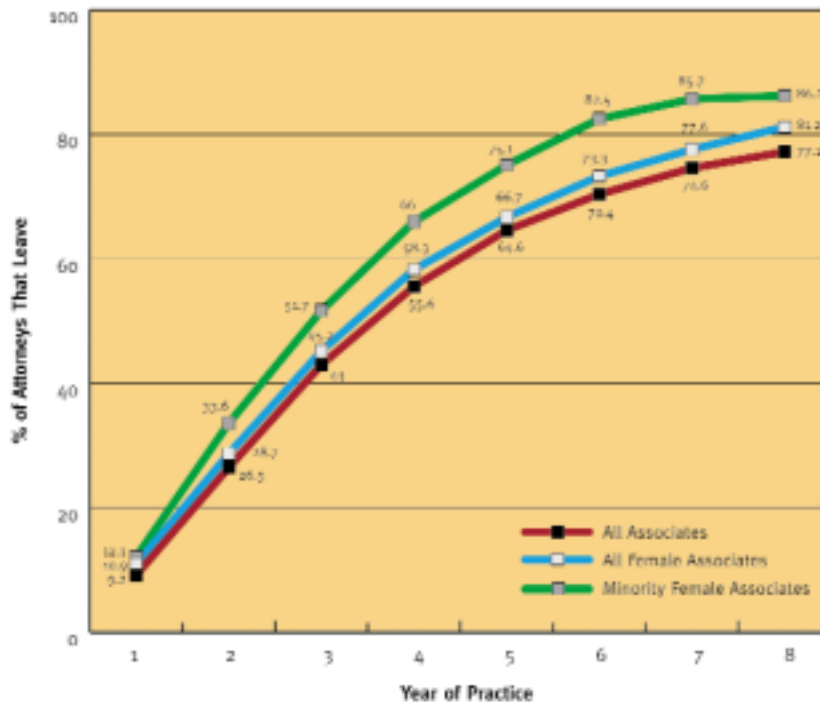
¹¹American Bar Association: Committee on Opportunities for Minorities In The Profession "Miles To Go 2000: An Update" 2000

¹²Program on the Legal Profession, Harvard Law School. "Harvard Law School Report on the State of Black Alumni: 1869-2000."

- Among all Harvard Law School black alumni in corporate law departments, 57 percent of men are general counsel, compared to only 19 percent of women.¹³
- Among African American Harvard Law School alumni who graduated in the 1980s and remain in private practice, the average salary among men is \$324,190, while the average income for women is \$184,683.¹⁴ For black women, this translates to about 60 cents for every dollar earned by their similarly educated black male colleagues in private practice. Given that black male attorneys earn only 79 cents for every dollar earned by white male attorneys of the same education and work experience, one can easily project that black women attorneys receive only 47 cents for every dollar paid to their white male attorney counterparts.

ATTRITION RATES BY GENDER AND RACE: YEARS 1 – 8

Law Firm Attrition (Year 1 – 8)



Why are so many lawyers leaving their firms right when they should be ready to progress to the next level? More precisely, what factors explain the greater numbers of people of color and women who are dissatisfied with their workplace compared to their white counterparts?

In the next two sections, MCCA will explore the common barriers to inclusion encountered by women and attorneys of color.

¹³Program on the Legal Profession. Harvard Law School “Harvard of Law School Report on the State of Black Alumni: 1869-2000.”

¹⁴Program on the Legal Profession. Harvard Law School “Harvard of Law School Report on the State of Black Alumni: 1869-2000.”

I. Experience of Partners of Color

According to the National Association for Legal Placement (NALP), minorities account for 3.55 percent of partners in law firms and women represent 15.80 percent in 2001. However, people of color are 13.70 percent of associates and 17.26 percent of summer associates, while women are almost 42 percent of associates and nearly half of summer associates.¹⁵ The gap between the percentage of minorities who are partners and those that are associates currently may be explained by several factors mentioned by partners of color during our interviews:

1. Negative stereotypes about intellectual ability that lead to discrimination or bias in the workplace against African Americans and Latinos. Some firms have changed their standards to recruit more people of color and women while others recruit at schools that are not within the top 20 law schools but that graduate a high number of people of color. The new practices seem to offend some powerful partners who insist on the narrow set of skills demonstrated by a high-caliber law school, law review participation, or clerkship to assemble their team. Without these credentials, partners are less forgiving of mistakes (which everyone invariably commits) and unwilling to work with those who they believe were hired “below standards.”
2. A “sink or swim” culture where there is an unspoken preference for “the way things used to be,” which creates resistance to change and a lack of flexibility. Proponents of change or attorneys who are integrating previously all-white law firms may feel unwelcome and excluded from networks of clients, partners, and co-workers that yield promising assignments and valuable relationships.
3. Lack of mentors who can provide honest feedback and vouch for their ability to key partners. The revolving door at most firms for people of color means that there is a dearth of senior minority partners who can mentor incoming associates. While effective mentors for minority associates do not have to be people of color themselves, a minority partner may serve as a role model and signal the firm’s willingness to develop and promote young minority attorneys.

The Question of Quality

MCCA used the 2002 *Minority Law Journal* to identify minority partners who were included in the random sample of attorneys surveyed in this study. Of the 30 minority partners selected at random, 83 percent went to a top 10 law school. Harvard, Columbia, and NYU accounted for 21 of the 30 partners of color, or 70 percent.

¹⁵National Association of Legal Placement “Dearth of Women and Attorneys of Color Remains in Law Firms” December, 2001.

CREDENTIALS BY RACE

	All	Minorities
Top 10 Law School (%)	48.2	83.3
Top 20 Law School (%)	63.1	83.3
Law Review Experience (%)	20.2	13.3
Moot Court (%)	0.8	3.3
Graduation with Honors* (%)	25.9	13.3
Order of the Coif (%)	8.7	3.3
Clerkship (%)	13.9	20
Years In Practice	20.7	18.4

*Graduation with honors refers to law students who receive cum laude, magna cum laude, or summa cum laude distinction upon graduation.

In 1995, David Wilkins, Kirkland & Ellis Professor of Law at Harvard Law School, surveyed the nation's largest 250 law firms to determine how many associates were hired in the last class (broken down by race) and where those individuals went to law school. One third of the firms responded; in the cities with the highest response rate New York (51 percent) and Washington, D.C. (50 percent), more than 50 percent of all African American associates graduated from either Harvard or the top schools in the local market – Columbia and NYC in New York or Georgetown in Washington. 40.4 percent in New York and 23.2 percent in Washington, D.C. of white associates, on the other hand, graduated from either Harvard or the top school in the local market.¹⁶ Wilkins also found that 77 percent of the African American partners listed in the 1993 edition of the ABA's Directory of Minority Partners in Majority Firms went to an elite law school; Harvard or Yale was the alma mater of 47 percent.¹⁷ The average for all firms included in the Wilkins survey of partners who went to either Harvard or Yale was 33 percent¹⁸; that number drops precipitously to just 18.6 percent for all partners in this study.

The statistics and the interviews with partners of color indicate that clients and colleagues on the hiring committee insist on excellent credentials for people of color, while other attorneys are not held to the same standards. This double standard begins at the hiring stage and continues to affect attorneys of color throughout their career. People of color, particularly African Americans, benefit greatly from a top law school credential. As a black partner in Chicago stated in 1996, **"If you're not from Harvard, not from Yale, not from Chicago, you're not adequate. You're not taken seriously."**¹⁹

The statistics and the interviews with partners of color indicate that clients and colleagues on the hiring committee insist on excellent credentials for people of color, while other attorneys are not held to the same standards.

¹⁶Wilkins, David B., and G. Mitu Gulati. 1996. "Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis." California Law Review 84:493-625.

¹⁷The Wilkins' study defined elite law schools as one of the following: Harvard, Yale, Stanford, University of Chicago, University of Michigan, Columbia, NYU, Berkeley, University of Virginia, University of Pennsylvania, and Northwestern. The percentage of minority partners who attended top law schools might be higher if this list included all of the schools currently ranked in the top 20 by *U.S. News & World Report*.

¹⁸Wilkins, David B., and G. Mitu Gulati. 1996. "Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis." California Law Review 84:493-625.

¹⁹Davis, Ann. 1996. "Big Jump in Minority Associates, But ...", National Law Journal, 29 April, pp. 1, 22.

For example, an African American partner at a prestigious law firm reported an experience when he interviewed at a major corporation for potential business. The partner presented his firm's brochure, including his resumé, to the client, who reviewed it while he was in the office, tracing his pen down the page as he read the materials. His attention fastened on one detail, Harvard Law School, where the interviewee had graduated nearly twenty years prior. The client circled the name, closed the brochure and called in the attorneys from their offices to present the details of the case to their new "counsel." This was one of several experiences that the interviewee recounted, explaining how his alma mater had helped him to assure new clients of his ability to complete the work. According to him, the pedigree of his law school abrogated other questions the client may have asked concerning his skills or intelligence. He stopped short of saying that this credential was enough to win business, but added that it was an important criterion to impress new clients. He added that prospective clients don't feel comfortable until he presents some initial credentials that speak for themselves, such as the pedigree of his law school or a sample client list. However, more information, such as the following, was necessary to gain the business and trust of the client:

1. References from individuals within the same industry who have retained their services;
2. A review of case results and relevant experience on similar legal matters;
3. The quality and credentials of the team the firm can assemble for the matter;
4. Cost and efficiency;
5. Reputation with media, judges, and other important stakeholders or key figures (e.g., officials at regulatory agencies);
6. A customer service orientation (e.g. provide clear, concise answers to questions asked or returning phone calls quickly, etc.); and
7. The reputation of the law firm with the company or other businesses in the same industry, not to mention within the geographic community, where the case will be tried.

Based on these experiences and on the comments of other minority attorneys with law degrees from Ivy League schools, going to a top-notch school insulates minorities from lower expectations and negative beliefs about their work ethic and intellectual ability. A Harvard or Yale degree vouches for their ability to do the work and may abrogate other questions about their credibility or experience.

Reverse Discrimination

Do minorities ever really overcome the perception that they are less qualified? Ivy-educated minorities may not always receive the benefit of the doubt; in fact, some whites may consciously or subconsciously exclude people of color with pedigree credentials from informal networks of clients or partners, or they may scrutinize their written work, resumé, transcript, or recommendations for minor errors or inconsistencies. An executive search consultant who has placed many attorneys at large law firms commented on how recruitment administrators at large law firms put up barriers to considering stellar-credentialed lateral candidates with large law firm experience.

Based on these experiences and on the comments of other minority attorneys with law degrees from Ivy League schools, going to a top-notch school insulates minorities from lower expectations and negative beliefs about their work ethic and intellectual ability.

Example 1: a Harvard Law educated black woman (Wellesley undergrad and stellar prep school) with 3 years of large firm experience and a letter of recommendation from a deputy general counsel client as to her outstanding ability, sought a position at several very non-diverse New York and Washington, D.C. law firms because she wanted to move East. She was attractive and well spoken but was continually rejected for reasons that were never made very clear. However, those rejecting her often lacked the paper credentials that she possessed and even though the firms maintained that they wanted only top flight hires she was continually turned away. This talented woman ended up taking a position in government, even though her resumé had no public service experience.

Example 2: Another top 5 law school educated black male associate (*magna cum laude* undergrad) in the litigation group of a very prominent law firm in New York City continued to face exclusion from the “old boys network” at his firm and decided to look for a similar opportunity at what he hoped would be a more inclusive large law firm work environment. He had good grades and recommendations but again, this time the hiring director said that what was wrong with him was that he had a B- on his law school transcript – the other great grades that he had were not even acknowledged. He resolved to look for a better opportunity while biding his time where he is.

Example 3: The graduate of a Tier 2 law school was ranked number 4 in her class of more than 200 students. She had been working for 3 years at a well-respected corporate law firm in New York and sought to lateral into a larger New York-based corporate firm with a need for associates in her practice area. The hiring coordinator of the larger firm rejected her resumé, saying the candidate need not bother because the firm only wanted “top credentials.” The candidate was Latina and although her credentials were not considered good enough, the larger firms’ partnership and associate ranks included a number of other Tier 2 law school graduates whose professional bios do not indicate having graduated with class standing as high as the Latina candidate.

Example 4: MCCA interviewed two male partners who practice at the same firm and graduated from Ivy League law schools. One is white and the other is black. The African American complained that new clients sometimes are surprised when they meet for the first time. Their initial telephone conversations were productive and very candid but the meeting is often filled with surprise, apprehension, and uneasy tension, at least until he can use his experience and law school to quell their doubts. The white male, on the other hand, repeatedly emphasized how irrelevant his law school credentials were to convincing clients or other colleagues of his expertise. He also stated that he does not look at the background of other attorneys when staffing a matter nor has anyone ever asked him where he went to law school. In contrast, the black partner reported that at one point in his career, he interviewed for a position at a corporation. The company requested not only his law school and undergraduate transcript but his LSAT scores, too!

These stories are consistent with reports from minority partners who say that they are sometimes subjected to hyper-critical comments about their work product in an attempt to seek to tear down the Ivy-educated lawyers’ preferred status. While Ivy League credentials are important for people of color to be taken seriously by their law firm, less-qualified whites, faced

While Ivy League credentials are important for people of color to be taken seriously by their law firm, less-qualified whites, faced with the competitive pressure of today’s law firm, may seek to exclude their more highly-credentialed minority peers from the informal networks of clients and mentors that yield the best work assignments.

with the competitive pressure of today's law firm, may seek to exclude their more highly-credentialed minority peers from the informal networks of clients and mentors that yield the best work assignments. And even years after graduating from an Ivy League law school, some still seek to minimize the credential by viewing the minority lawyer as having gotten admitted solely because of his or her race.

The Psychology of Exclusion

Dr. Marilynn Brewer defines discrimination as:

. . . differential treatment or outcomes associated with social category membership. In many policy-relevant contexts, this means differences in treatment accorded to members of one's own membership group (in-group) and that accorded to members of an out-group. Net discrimination is, by definition, the difference in outcomes received by the in-group relative to those of the out-group. [sic]²⁰

According to Dr. Brewer, the intergroup attributional bias refers to “the finding that positive behaviors by an in-group member are more likely to be attributed to the person's disposition (“He's a nice person.”) than are those same behaviors when performed by an out-group member, and that negative actions by an in-group member are more likely to be attributed to external reasons (“The heat was getting on his nerves”).²¹ Practically speaking, the intergroup attributional bias means that attorneys are more likely to be more lenient with members of their own in-group and to attribute their success to their innate ability; it also means that their mistakes or shortcomings are not reflective of their ability but aberrations caused by external reasons. For example, a misspelled word on a memo written by a white associate is just a typo, while the same error committed by a minority is indicative of their poor writing skills.

Brewer concluded that cold, objective judgment is reserved for members of the out-group while in-group members get the benefit of the doubt more often. For example, a white recruitment administrator at a large law firm may be ultra-critical about the resumé and transcript of a minority associate (as reported above) but might evaluate resumé of white attorneys for indicia of good judgment, leadership ability, or rainmaking potential without closely considering their grades or the caliber of their law school.

It would be simplistic, however, to assume that the basis for classifying in-groups and out-groups is only race. In fact, it might be other “like credentials,” such as gender, sharing the same law school, family circumstances, or growing up in the same area.

²⁰Marilynn Brewer, “In-Group Favoritism: The Subtle Side of Intergroup Discrimination,” in *Codes of Conduct, Behavioral Research Into Business Ethics* 58-68 (David M. Messick & Anne E. Tenbrunsel, eds., 1996).

²¹Marilynn Brewer, “In-Group Favoritism: The Subtle Side of Intergroup Discrimination,” in *Codes of Conduct, Behavioral Research Into Business Ethics* 58-68 (David M. Messick & Anne E. Tenbrunsel, eds., 1996).

CREDENTIALS: TOP 20 VS. NON TOP 20 LAW SCHOOL GRADUATES

	Top 20 Law School Graduates	Non Top 20 Law School Graduates
Total Number (%)	63.1	36.9
Law Review Experience (%)	17.3	26.5
Moot Court (%)	0.5	1.0
Graduation with Honors* (%)	23.3	29.9
Order of the Coif (%)	6.2	12.9
Clerkship (%)	16.2	10.5
Years In Practice	23.3	21.0
At Least One Credential** (%)	45.6	56.2

* Graduation with honors refers to law students who receive *cum laude*, *magna cum laude*, or *summa cum laude* distinction upon graduation.

** Includes law review experience, moot court participation, graduation with honors, induction into the Order of the Coif, or a clerkship.

Graduates from law schools not ranked in the Top 20 reflect the reported insistence on high academic achievement as illustrated above. Clearly, graduates at schools not ranked in the Top 20 (out-group) are held to high, objective standards (higher percentages of graduates were on law review, moot court, graduated with honors or were inducted into the Order of the Coif) while graduates from schools in the Top 20 (in-group) may get the benefit of the doubt regarding their ability to do the work.

In general, the relative importance assigned to grades, the rank of the law school, and other indicia of achievement are dependent on the background of the people on the hiring committee. This inherent bias in the hiring criteria of law firms means that individuals who resemble the background of the firm's partnership may have an advantage or might receive a partner's guidance on difficult matters (be included in their in-group). People of color with stellar, Ivy League credentials, on the other hand, might be rejected because of a lower grade in a particular class during law school, as was the case with the Ivy-educated minority male described earlier. The operation of the in-group, out-group dynamic does not stop at hiring. One partner of color reported that while he was an associate, his mentor was a white female partner who empathized with him because he needed to have a flexible schedule to take care of his mother. She allowed him to work through and correct mistakes and she helped him to get desirable assignments that did not involve a lot of travel because she, too, was responsible for her parents.

The barriers may have been higher for minorities when firms did not have any incentive to increase the number of minorities and women within their ranks. With the increased frequency and intensity of some corporations to aggressively seek more diverse outside counsel, firms have instituted diversity initiatives to hire more people of color and women. Now, many firms are actively looking for minorities and women, whereas twenty years ago, most paid little attention to the diversity issue. Perhaps, the credentials of minority partners may be more reflective of the general population of partners as more law firms open their doors and their minds to attorneys of color who lack the Ivy-League credential but who nonetheless are excellent attorneys.

II. Experience of Women Partners

By Joan Williams, Esq., Professor of Law,
PROGRAM ON GENDER, WORK & FAMILY, WASHINGTON COLLEGE OF LAW, AMERICAN
UNIVERSITY, WASHINGTON, DC

CREDENTIALS BY GENDER

	Men	Women
Top 10 Law School (%)	49.4	42.8
Top 20 Law School (%)	64.2	58.9
Law Review Experience (%)	21.4	14.4
Moot Court (%)	0.7	1.0
Graduation with Honors* (%)	25.6	27.4
Order of the Coif (%)	8.7	8.7
Clerkship (%)	14.3	12.4
Years In Practice	23.7	17.6

* Graduation with honors refers to law students who receive cum laude, magna cum laude, or summa cum laude distinction upon graduation.

Of the 1,833 partners surveyed randomly in this study, women represent 15.2 percent, exactly matching the numbers reported nationwide by other organizations.²² The chart above shows that women are less likely than men to have attended a top 20 law school. Women's decreased likelihood of attending an elite law school reflects, in part, that a man's wife or partner is far more likely than a woman's to move, if necessary, to maximize career opportunities.²³ This means that, whereas men are typically free to attend the most prestigious law school they get into, many women end up going to a local law school rather than a national one because they cannot move their families in order to accept a place at a geographically distant top school. This means firms that use attendance at an elite institution as a proxy for talent will inadvertently exclude a disproportionate number of talented women from consideration.

The average length of women's careers (17.6 years as opposed to 23.7 years for men) reflects that some women enter into the profession later than men, after their children have grown, while others interrupt their careers in order to raise children. Women's different career paths, and the higher rates of attrition among women associates, reflect the lack of fit between the work patterns of mothers and the 24/7 model of legal practice that has grown in recent decades. A little-known but important fact is that relatively few mothers work overtime during the key career-building years: 95 percent of mothers aged 25 - 44 work less than a fifty-hour week year-round.²⁴ Thus, law firms that require a fifty

²² Catalyst Report. *Women in Law: Making the Case*, (2001).

²³William T. Bielby and Denise D. Bielby, "I Will Follow Him: Family Ties, Gender-Role Beliefs, and Reluctance to Relocate for a Better Job," *American Journal of Sociology*, Vol. 97, No. 5. (Mar., 1992), pp. 1241-1267.

²⁴Suzanne Bianchi, Unpublished Tabulations from 2001 March Current Population Survey (on file with author).

or sixty hour week may well wipe most mothers out of their associate pool. Given that over 80 percent of women become mothers, this has a significant impact on the pool of women who reach eligibility for partnership.²⁵

ATTRITION OF ASSOCIATES: YEAR 1 – 8 (BY GENDER & RACE)²⁶

Year	All Male Associates (%)	All Female Associates (%)	Minority Female Associates (%)
1	8.0	10.9	12.1
2	24.9	28.7	33.6
3	41.5	45.2	51.7
4	53.7	58.3	66.0
5	63.0	66.7	75.1
6	68.2	73.3	82.5
7	72.4	77.6	85.7
8	74.3	81.2	86.2

Another factor impeding the success of women in large firms is the mixed success of existing part-time programs. Whereas most large firms have part-time programs, usage rates typically are very low.²⁷ Several recent studies report that existing programs often are marred by stigma and schedule creep. Schedule creep, which occurs when a part-time attorney's schedule creeps back towards full time, is particularly likely to lead to attrition when it is combined with the stigma often experienced by part-time attorneys. Ninety percent of women lawyers surveyed by the National Law Journal said that working part- or flex-time hurts a woman's career.²⁸ Said one part-time attorney: "I used to feel I was a valued and well regarded member of the firm. Now I feel as if I am an outcast." Said another: "I once felt well liked and very much a part of this place. I am now seen as a slacker."²⁹ In this context, it is not surprising that one study of Boston lawyers found higher levels of attrition among part- than among full-time lawyers.³⁰

The 24/7 schedule now common in large law firms plays a major role in impeding diversity. In addition, more subtle dynamics exacerbate the difficulties and challenges women face. Ultimately, two distinct types of problems contribute to the low number of women partners: the glass ceiling and the maternal wall.

²⁵Suzanne Bianchi, Unpublished Tabulations from 2001 March Current Population Survey (on file with author).

²⁶American Bar Association: Committee on Opportunities for Minorities In The Profession "Miles To Go 2000: An Update" 2000.

²⁷Joan Williams and Cynthia Calvert, "Balanced Hours: Effective Part-time Policies for Washington Law Firms" *William & Mary Journal of Women and Law*, 357, 379 (2002).

²⁸Joan Williams and Cynthia Calvert, "Balanced Hours: Effective Part-time Policies for Washington Law Firms" *William & Mary Journal of Women and Law*, 357, 376 (2002).

²⁹Joan Williams and Cynthia Calvert, "Balanced Hours: Effective Part-time Policies for Washington Law Firms" *William & Mary Journal of Women and Law*, 357, 376 (2002).

³⁰Women's Bar Association of Massachusetts (WBA). 2000. *More Than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms*. A Report of the Employment Issues Committee.

The Glass Ceiling

The best-understood problem experienced by women attorneys is the glass ceiling that makes it difficult for women to reach the highest ranks of the profession. Gone are the days when the glass ceiling meant that women were excluded from partnership luncheons held in all-male clubs. Yet exclusion from male social networks still affects women when the kind of socializing that leads to important mentoring and client relationships occurs in health club locker rooms, or through athletic activities typically enjoyed by more men than women; golf is often mentioned in this context. Substituting activities enjoyed by women as well as men not only will give women more access to socializing opportunities vital to advancement; it may also be a godsend for some non-athletic men.

More subtle problems also play a role in creating the glass ceiling. Scientific studies document the role of unexamined stereotyping and cognitive bias in making advancement more difficult for women in traditionally masculine occupations. These studies document that it is more difficult for women to be seen as competent and, ironically, that women who demonstrate high levels of competence may be penalized for doing so.

Why is it harder for women to be perceived as competent?

The patterns that make it harder for women than for men to be perceived as competent include in-group favoritism, status-linked competence assessments, attributional bias, and the problem of polarized evaluations.

In-group favoritism and women: Dr. Marilyn Brewer has challenged the traditional assumption that the key to avoiding bias is to monitor the treatment of women or other minorities. Instead, through a series of experiments, she has documented that increased attention is needed to the treatment of majorities.

Dr. Brewer has documented the kinds of practices through which in-groups, in this case men, are treated more favorably than out-groups, in this case women. One common pattern is “leniency bias,” where objective rules are applied flexibly to in-group members, while out-groups find themselves treated “strictly by the book.” Thus, a white man who lacks a certain qualification will be interviewed nonetheless because he shows “promise,” whereas a woman will be told she simply does not qualify because she does not meet the objective requirements of the job. One source that feeds in-group favoritism is the tendency for men or other in-groups to be judged on their potential, whereas women or other out-group members are judged on strictly on past performance.³¹

³¹Marilynn Brewer, “In-Group Favoritism: The Subtle Side of Intergroup Discrimination,” in *Codes of Conduct, Behavioral Research Into Business Ethics* 58-68 (David M. Messick & Anne E. Tenbrunsel, eds., 1996).

When judgments are uncertain, in-group members will tend to be given the benefit of the doubt. Coldly objective judgment often is reserved for out-groups. In-group favoritism is the first reason why women lawyers have a harder time than men proving their competence.

“Trying twice as hard”: status-linked competence assessments. Gender is often treated as a cue to competence. Dr. Cecilia Ridgeway of Stanford University has documented that men have to do less to establish ability, and are allowed more leeway to make mistakes without having their basic competence questioned.³² The higher a group’s status, the more convincing the demonstration of incompetence will have to be.

Conversely, women have their successful performances closely scrutinized. Studies report a double standard, with the advantage of being male ranging from 13 percent to 200 percent.³³ The result is often lower performance expectations for women that may become self-fulfilling prophecies. This is the psychological basis behind the oft-repeated statement that women (or other minorities) have to try twice as hard to receive half as much.³⁴

What is skill in the male is luck for the female: attributional bias.³⁵ On masculine tasks, men’s success is more likely to be attributed to ability than is women’s success. The result is attributional bias: a white male attorney who wins a sizeable verdict on a major case has “got the right stuff,” while a woman or minority who has the same success “just got lucky.”

The problem of polarized evaluations: “When she was good, she was very, very good. . .” A woman in a predominantly male environment will tend to experience the “solo effect,” or the problem of polarized evaluations. In environments that are predominantly masculine, women who are superstars will tend to get extraordinarily high evaluations. But women who experience some bumps in the road may well find themselves with extremely negative evaluations; the evaluations of a man in this situation may decrease only proportionately while the evaluations of a similarly situated woman may well plummet.

The interaction of these four factors means that women are less likely to be perceived as competent than men. Even people who believe themselves to be free of gender bias may in fact hold stereotypic beliefs about gender at an unexamined level.³⁶ Stereotypes influence perception, interpretation, and memory.³⁷ Thus an outstanding performance by a woman may not be perceived because no one stops to listen when she speaks up at a meeting; or it may be attributed to luck rather than talent and hard work; or it may not be remembered, given that people are more likely to remember gender-consistent information than information that

³²Cecilia L. Ridgeway, “Gender, Status, and Leadership” *Journal of Social Issues*, vol. 57, No. 4 (2001), pp. 637-655.

³³Virginia Valian, *The Cognitive Bases of Gender Bias*, 65 BKNLR 1037, 1040 (1999).

³⁴Monica Biernat and Diane Kobrynowicz, “Gender-and Race-Based Standards of Competence: Lower Minimum Standards but Higher Ability Standards for Devalued Groups,” *Journal of Personality & Social Psychology* 72 (1997): 544-577.

³⁵Janet K. Swim and Lawrence J. Sana, “He’s Skilled, She’s Lucky: A Meta-Analysis of Observers’ Attributions for Women’s and Men’s Successes and Failures,” *Personality and Social Psychology Bulletin* 22, no. 5 (1996): 507-519.

³⁶Kay Deaux and Marianne LaFrance, “Gender” *The Handbook of Social Psychology* 1 (1998): 788-827.

³⁷Madeline E. Heilman, “Sex Stereotypes and Their Effects in the Workplace: What We Know and What We Don’t Know,” *J. Soc. Behavior & Personality* 10 (1995): 3-26.

is inconsistent with gender stereotypes.³⁸ These types of assumptions, called *cognitive bias*, typically are spontaneous. But that does not mean they have to remain unexamined and uncorrected.

Penalizing women for being competent

Women are not only disadvantaged when they are perceived as less competent than men. Dr. Madeline Heilman of New York University has documented that women in non-traditional fields may be penalized if they do their jobs well; in some cases, *because* they do their jobs well.³⁹ This occurs because the law and other traditionally masculine jobs require behavior inconsistent with people's beliefs about desirable feminine behavior.⁴⁰

This situation arises through the interplay of stereotypes about women and stereotypes about jobs. In the classic description, women are warm, sensitive, emotional, dependent, and indecisive. This does not fit with the classic description of a lawyer; ambitious lawyers are seen as assertive rather than sensitive, analytical rather than emotional, commanding rather than indecisive. In other words, we associate the law with personality traits traditionally linked with masculinity. To quote Dr. Peter Glick of Lawrence University, bias “against women is likely to be stronger for a job such as lawyer, which is both highly sex-typed as male *and* requires masculine personality traits (e.g. persuasiveness), as compared to a job such as real estate agent, which may require a masculine personality, but which is not highly sex-typed.”⁴¹

The masculine gendering of the legal profession means that “the same competence that is applauded in men [may be] regarded as unattractive in women.”⁴² Women who live up to the ideals traditionally enshrined in the law – women who are assertive, analytical, and commanding – may well find themselves viewed as in a negative light, as was the experience of Ann Hopkins in *Hopkins v. Price Waterhouse*.⁴³ Hopkins, who brought more lucrative contracts into the firm than anyone else up for partnership in her year, was nonetheless deferred and advised to improve her “interpersonal skills.” In particular, she was advised to “**walk more femininely, talk more femininely, wear make-up and get her hair styled**”; one partner commented that she needed to go to charm school.

³⁸Alice H. Eagly and Steven J. Karau, “Role Congruity Theory of Prejudice Towards Female Leaders”, *Psychological Review* (in press): 35 (on file with author); Mahzarin R. Banaji, Curtis Hardin & Alexander J. Rothman, “Implicit Stereotyping in Person Judgment,” *J. Personality & Soc. Psychol.* 65 (1993).

³⁹Madeline E. Heilman, “Sex Stereotypes and Their Effects in the Workplace: What We Know and What We Don't Know,” *Journal of Social Behavior and Personality* 10, no. 6 (1995): 3-26.

⁴⁰Alice H. Eagly and Steven J. Karau, “Role Congruity Theory of Ideology and Prejudice,” *Psychology Review* (in press): 51 (on file with author).

⁴¹Peter Glick, “Trait-Based and Sex-Based Discrimination in Occupational Prestige, Occupational Salary, and Hiring,” *Sex Roles* 25, no. 5/6 (1991): 351-378.

⁴²Peter Glick, “Trait-Based and Sex-Based Discrimination in Occupational Prestige, Occupational Salary, and Hiring,” *Sex Roles* 25, no. 5/6 (1991): 351-378; Madeline E. Heilman, “Description and Prescription: How Gender Stereotypes Prevent Women's Ascent Up the Organizational Ladder,” *Journal of Social Issues* 57, no. 4 (2001): 657-674.

⁴³490 U.S. 228 (1989).

Researchers have extensively documented that women who do not conform to sex type may experience problems on the job. Dr. Heilman has documented how women in traditionally masculine roles are disadvantaged by the “lack of fit” between the occupational role, associated with traits traditionally tied to masculinity, and sex role, associated with feminine traits. The result is often that “women who perform competently at traditional male tasks are disliked and ostracized” as masculine females lacking in social grace and skill. Dr. Heilman studied women managers, and found that when a woman manager was seen as highly successful and designated as a top performer, she was seen as equally competent as her male counterpart but was thought to be far less likable.⁴⁴ Such women are often considered not only unfeminine, she concluded, “but . . . disliked.”⁴⁵

In a separate line of research, Drs. Susan Fiske, Peter Glick, and their colleagues have documented that women often are separated into one group composed of traditionally feminine women, who are liked but not respected, and another group with more masculine traits, who are respected but disliked.⁴⁶ There’s a trade-off: be perceived as warm but not competent, or as competent but not warm (i.e. be liked but disrespected, or respected but not liked).⁴⁷ The stereotypes of high-competence women feed attributional bias: A woman who loses her patience with an administrative assistant might be called an “aggressive bitch” while a man who blows up at his secretary just lost his temper.

Drs. Heilman, Fiske, and Glick have documented a Catch-22 that affects women in the law: if women act in traditionally feminine ways, they are likely to be considered unqualified for partnership because they are not “go-getters.” Yet if women act in traditionally masculine ways, they may trigger dislike that disqualifies them for partnership in a decision-making process in which assessments of compatibility play a central role. Because advancement in organizations depends not only on competence assessments but also on social acceptance and approval, the negativity that is a likely reaction to women who prove themselves to be competent in arenas that traditionally are off-limits to women can be lethal when they strive to get ahead.⁴⁸

In summary, the glass ceiling puts women in a series of double binds, created by dynamics that are often unexamined. Experts have found that **“even people who believe themselves to be free of gender bias may in fact hold stereotypic beliefs about gender”**⁴⁹ In fact, stereotypes are an inevitable part of the way we process information. Though stereotypes are inevitable, bias is not. A firm committed to diversity must bring unexamined stereotypes into view, and eliminate their influence in firm decision-making.

⁴⁴Madeline E. Heilman, “Description and Prescription: How Gender Stereotypes Prevent Women’s Ascent Up the Organizational Ladder,” *Journal of Social Issues* 57, no. 4 (2001): 657-674.

⁴⁵Id.; See also Peter Glick, Cari Zion and Cynthia Nelson, “What Mediates Sex Discrimination in Hiring Decisions?” *Journal of Personality & Social Psychology* 55, no. 2 (1988): 178-186.

⁴⁶Susan T. Fiske, Jun Xu, Amy C. Cuddy, and Peter Glick, “(Dis)respecting versus (Dis)liking: Status and Interdependence Predict Ambivalent Stereotypes of Competence and Warmth,” *Journal of Social Issues* 55 (1999).

⁴⁷Peter Glick and Susan T. Fiske, “An Ambivalence Alliance: Hostile and Benevolent Sexism as Complementary Justifications for Gender Inequality,” *American Psychologist* 56 (2001): 109-118.

⁴⁸Madeline E. Heilman, “Description and Prescription: How Gender Stereotypes Prevent Women’s Ascent Up the Organizational Ladder,” *Journal of Social Issues* 57, no. 4 (2001): 657-674.

⁴⁹Kay Deaux et al., “Level of Categorization and Content of Gender Stereotypes,” *Social Cognition* 3, no. 2 (1985): 145-167.

The Maternal Wall

Though the glass ceiling is alive and well, most women never get near it. So many women drop out of law firms, typically to practice law in more family-friendly environments,⁵⁰ that the pool of women who are still around when the time comes to make partner is often small.

Maternal-wall stereotyping parallels glass ceiling problems in some ways. Attributional bias is still a factor: A woman who is late for an appointment because of a child-related illness or emergency is unreliable, while a man who does the same thing is a wonderful father.

Millionaires and housewives

Other patterns surrounding motherhood at work are distinct from glass ceiling issues. Studies suggest that stereotypes surrounding motherhood disadvantage women in distinctive ways. One important study used a technique that plots stereotypes by warmth and competence, and found that, while “businesswomen” are rated as low in warmth but high in competence, similar to “businessmen” and “millionaires,” “housewives” are rated as high in warmth but low in competence, similar to (to use the researcher’s stigmatized words), the “elderly,” “blind,” “retarded,” and “disabled.”⁵¹

Women tend to fall from the “businesswoman” into the caregiver category when their role as mothers becomes salient. Typically, this occurs at one of three points: when they become pregnant, when they return from maternity leave, or when they go part-time.

“I had a baby, not a lobotomy”

A study of pregnancy as a source of bias in performance appraisals found that “performance reviews by managers plummeted after pregnancy.” A women’s pregnancy tends to trigger the most traditional feminine stereotype: the low-competence housewife. Researchers have found not only that performance appraisals plummet, but that pregnant women also report negative attitudes and behaviors by co-workers. Some may avoid the pregnant woman, while others expect her to conform rigorously to the mandates of traditional femininity, and to be understanding, empathetic, non-authoritarian, easy to negotiate with, gentle, and neither intimidating nor aggressive. **“People like pregnant women better when they behave passively than when they behave aggressively.”** Simultaneously, pregnant women are often seen as overly emotional, often irrational, and less committed to their jobs. These stereotypes can become a self-fulfilling prophecy: mothers may quit because they see their futures severely limited by these stereotypes.⁵²

⁵⁰Catalyst Report. *Women in Law: Making the Case* (2001).

⁵¹Susan T. Fiske, Jun Xu, Amy C. Cuddy, and Peter Glick, “(Dis)respecting versus (Dis)liking: Status and Interdependence Predict Ambivalent Stereotypes of Competence and Warmth,” *Journal of Social Issues* 55 (1999): 473-489.

⁵²Jane A. Halpert, Midge L. Wilson and Julia Hickman, “Pregnancy as a Source of Bias in Performance Appraisals,” *Journal of Organizational Behavior* 14 (1993); see also Alice H. Eagly and Steven J. Karau, “Role Congruity Theory of Ideology and Prejudice,” *Psychology Review* (in press): 51 (on file with author).

Some women who do not encounter these stereotypes while they are pregnant find themselves facing them once they return from maternity leave. One Boston lawyer made the famous statement “When I returned from maternity, I was given the work of a paralegal, and I wanted to say: Look, I had a baby, not a lobotomy.”⁵³ She had fallen from the high-competence “businesswoman” category into the low-competence “housewife” category.

Women who dodge caregiver stereotypes while they are pregnant and upon their return from maternity leave may encounter them if they begin to work part-time. One study found that for women, part-time employment is generally associated with substantial domestic obligations, and female part-time employees are consequently perceived as similar to homemakers although they are seen as less traditionally feminine than homemakers.⁵⁴ Part-time attorneys report severe attributional bias. Thus, one woman found that “before I went part-time, when people called and found I was not at my desk, they assumed that I was elsewhere at a business meeting. But after I went part-time, the tendency was to assume that I was not there because of my part-time schedule, even if I was out at a meeting. Also, before I went part-time, people sort of gave me the benefit of the doubt. They assumed that I was giving them as fast a turn-around as was humanly possible. After I went part-time, this stopped, and they assumed that I wasn’t doing things fast enough because of my part-time schedule. As a result, before I went part-time, I was getting top-of-the-scale performance reviews. Now I’m not, though as far as I can tell, the quality of my work has not changed.”⁵⁵

Do you want a baby or do you want a career here? Hostile and Benevolent Stereotyping

Another problem faced by lawyers who are mothers stems from conventional understandings of motherhood. “Good mother” and “good father” differ in important ways, as documented by Dr. Monica Biernat of the University of Kansas. Biernat and her colleagues found that someone who rates himself as “a very good father” spends about as much time away from his children as someone who rates herself as only an “all right mother.”⁵⁶ Other studies have documented the assumption that married mothers “will do anything for their children (e.g., children come first, always on call).”⁵⁷ This “mother mandate” gives rise to what psychologists call prescriptive stereotyping: statements of how mothers should behave.⁵⁸

⁵³Joan Williams and Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who are Discriminated Against on the Job*, (forthcoming *Harvard Women’s Law Journal* (on file with author); see also *Sigmon v. Parker Chapin Flattau Klimpl*, 901 F. Supp. 667 (1995) (pregnant law firm associate).

⁵⁴Alice H. Eagly and Valerie J. Steffen, “Gender Stereotypes, Occupational Roles, and Beliefs about Part-Time Employees,” *Psychology Women Q.* 10 (1986): 252-262.

⁵⁵Anonymity Requested, Interview by Joan Williams (summer 2002).

⁵⁶Diane Kobrynowicz and Monica Biernat, “Decoding Subjective Evaluations: How Stereotypes Provide Shifting Standards,” *Journal of Experimental Social Psychology* 33 (1997): 579-601.

⁵⁷Lawrence H. Ganong and Marilyn Coleman, “The Content of Mother Stereotypes,” *Sex Roles* 32, no. 7/8 (1995): 495-512.

⁵⁸Claire Etaugh and Denise Folger, “Perceptions of Parents Whose Work and Parenting Behaviors Deviate From Role Expectations,” *Sex Roles* 39 no. 3/ 4 (1998): 215-223.

Stereotyping that is linked with hostility towards those who seek to bend or challenge traditional roles is called *hostile stereotyping*. Employers generally know enough not to engage in hostile stereotyping against women in general, but statements about the proper role for mothers seem to be more common. In one case,⁵⁹ an employer told an employee seeking to return from maternity leave that a mother's place was home with her child. Another employer expressed doubts about working mothers in another case involving a woman lawyer,⁶² saying, **"I don't see how you can do either job well."**⁶⁰ Finally, in another case, the president of a company told the plaintiff she had to choose whether she wanted "a baby or a career here."⁶¹

More subtle prescriptive stereotyping also abounds. Another pattern documented by social scientists is called *benevolent stereotyping*.⁶² Employers who think they are just being solicitous of mothers' new responsibilities, for example, may fail to consider mothers for jobs that require travel.⁶³ In contrast to hostile stereotyping, benevolent stereotyping entails an employer who may see him- or herself as "just being thoughtful" or "considerate" of a new mother's new responsibilities. The key point, whether stereotyping is hostile or benevolent, is that it takes the decision about how to interpret the responsibilities of motherhood away from the woman herself, in favor of an assumption that this particular woman will (or should) follow traditionalist patterns.

For example, one instance has come to our attention where a husband and wife worked for the same employer. They had a baby, and afterwards, the wife was sent home at 5:30 p.m., with the solicitous sentiment that she should be at home with the child. In sharp contrast, the husband was given extra work and expected to stay late. Again, this was meant to be helpful: the sense was that now he had a family to support. Note how the employer was creating workplace pressures that pigeon-holed the family into traditionalist gender roles; the decision about how to distribute family caretaking responsibilities was taken out of the hands of the family itself.

A third, subtler pattern of bias occurs when prescriptions about how mothers ought to behave transmute into descriptions of what mothers want. Thus, in one of the above discussed cases, when the woman lawyer **"asked why she had not been considered for [a desirable job], the Managing Attorneys . . . told [her] that because she had a family they assumed that she would not be interested in the position."**⁶⁴ Such comments reveal how normative judgments, such as that mothers should have unlimited time to devote to family needs, translate into

⁵⁹*Bailey v. Scott Gallaher*, 480 S.E.2d 502 (Va. 1997).

⁶⁰*Trezza v. The Hartford Inc.*, 1998 U.S. Dist. LEXIS 20206.

⁶¹Joan Williams and Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who are Discriminated Against on the Job*, (forthcoming 26 *Harvard Women's Law Journal* (on file with author)).

⁶²Peter Glick & Susan T. Fiske, "Sexism and Other Isms: Interdependence, Status, and the Ambivalent Context of Stereotypes," *Sexism and Stereotypes in Modern Society: The Gender Science of Janet Taylor Spence* (William B. Swann, Jr., Judith H. Langlois & Lucia Albino Gilbert eds. 1999).

⁶³See *Trezza v. The Hartford, Inc.*, 1998 U.S. Dist. LEXIS 20206; Douglas M. McCracken, "Winning the Talent War for Women: Sometimes It Takes A Revolution," *Harv. Bus. Rev.*, 159 (Nov/Dec 2000).

⁶⁴See, e.g., *Trezza v. The Hartford, Inc.*, 1998 U.S. Dist. LEXIS 20206 at *1.

descriptions of what mothers want, e.g. that they are “not interested” in desirable jobs. The simple way to avoid this kind of stereotyping is to ask the mother in question what she wants to do.

A final component of the maternal wall is that when a mother tries to counter its negative impact, she may well find herself facing a different set of gender-related problems. An example is a woman who went part-time, only to encounter the assumption that “part-time” meant “part-competent” and “part committed.” When she responded by trying to highlight her accomplishments, she ran into another problem: what is considered in a man to be a healthy sense of his own worth, in a woman is often viewed as unseemly self-promotion.⁶⁵ The result, for mothers, may be a Catch-22 between the negative competence assumptions triggered by caregiver status, and the unspoken sense that self-promotion is unseemly in a woman.

Conclusion

Women lawyers have been roughly 50 percent of law school graduating classes for roughly twenty years, yet they still comprise only about 15 percent of law firm partners. Their progress has been severely hampered by both the glass ceiling and the maternal wall, which track documented patterns of cognitive bias and gender stereotyping. By shedding light on these issues, organizations seeking to make lasting progress on diversity issues will be better served.

⁶⁵Alice H. Eagly and Steven J. Karau, “Role Congruity Theory of Ideology and Prejudice,” *Psychology Review* (in press): 36 (citing many studies) (on file with author); Anonymity requested, Interview with Project on Attorney Retention (fall 2002).

CONCLUSIONS

1. **“Law firms are law school snobs.”** Law firm hiring patterns have institutionalized the pedigree of one’s law school for no apparent reason other than the established relationships of the firm with the school. This cycle of exclusivity continues because there are few firms willing to invest the time and resources to establish a relationship with other law schools or to change the hiring criteria to be more reflective of actual success traits, as opposed to historic indicia of academic achievement, such as the rank of the law school.

Irrespective of the alma mater represented by the firm’s partnership, all major firms place a premium on students at the top 10 law schools in the country, especially those at Ivy League institutions, such as Harvard or Yale law schools. In fact, many firms are willing to look deeper into a class at a top five law school (top half of the class) but will only consider students who are within the top five percent (by grades or GPA) of their class if they attend a school not ranked in the top 20 law schools.

2. **The pedigree of a law school is an important factor** in hiring decisions for any law student or attorney with less than three years of experience. The law school’s reputation and the lawyer’s scholastic performance prove particularly relevant during the culling process. However, all interviewees unanimously agreed that what makes a successful attorney is not immediately discernable from a resumé, transcript, or a 20-minute interview. After an attorney has developed an expertise or reputation in a particular practice area or has some case results and a book of business, academic credentials are less important. The road to this level of achievement is, however, laden with many more pitfalls and barriers for the minority lawyer who did not graduate from a top law school. In the case of his or her white male counterparts, many more white men who lack “pedigree credentials” are nonetheless allowed entry into large, profitable law firms, afforded access to important clients, and thus, given greater opportunities to achieve the holy grail of partnership.

Those who are fortunate and talented enough to attend law school at an institution within the Top 20 benefit from an assumption of competence and credibility in the eyes of clients, partners, and hiring officers in both the private (in-house departments and law firms) and public sectors. A Harvard or Yale graduate, for example, may continue to receive the benefit of the doubt from clients or colleagues, which is beneficial to “get your foot in the door,” overcoming early missteps common to all new lawyers, winning new business, and gaining the trust and respect of the partnership.

Being on the law review, doing a clerkship for a federal judge, or graduating with honors are not prerequisites for success in law firms, nor do many attorneys think they are reliable indicia of a law student’s ability as a practicing attorney. This conclusion is backed up by the fact that of 1,833 partners surveyed, 63.1 percent went to a top 20 law school, 20.2 percent had law review experience, 25.9 percent graduated with honors (*magna cum laude*, *summa cum laude*, or *cum laude*), 13.9 percent did a clerkship, and 8.7 percent were inducted into the Order of the Coif.

In general, the relative importance assigned to grades, the rank of the law school, and other indicia of achievement are dependent upon the background of the people on the hiring committee.

The traditional indicators of academic performance are important not because they confer an actual skill advantage, but because they are *perceived* as indicators of ability and potential. They are important because everyone *believes* they are important not because a candidate has better preparation, writing or analytical ability, or oral argument skills. Many students at schools that are not within the Top 20 can and do receive a high-quality education and possess equal or greater written, oral, or analytical skills. However, at many law firms, such students are excluded from consideration based upon false perceptions.

In general, the relative importance assigned to grades, the rank of the law school, and other indicia of achievement are dependent upon the background of the people on the hiring committee.

3. **Standards are inconsistent.** Based on the statistics of partnership at major firms, MCCA concludes that the standards are arbitrarily applied by law firms in hiring and promotion decisions, usually with a stricter degree of adherence to high standards for those subjected to negative stereotypes, such as people of color. In fact, the high academic standards imposed on law school graduates are often not reflected in the backgrounds of the partnership.
4. **The process of being nominated and elected to be a partner is not objective,** nor are the written policies adhered to strictly in any firm. The skill sets, qualifications, or goals that a senior associate must possess in order to be elected to partnership are rarely specified in writing, nor are they clearly communicated to associates. The evaluation of each senior associate for partnership actually occurs prior to being nominated. Associates who will be successful are those who have made the transition from *being capable* of doing the work assigned to them to *generating* the work they do.
5. **The legal specialty or practice area can influence the skill sets** that distinguish lawyers who do make it to the next level from those who do not. While a firm's legal needs will vary based upon external factors, such as the economy, legislative climate, etc., practice areas such as mergers & acquisitions and intellectual property enjoy a high level of respect and generate big profits for the firm. Litigators, for example, must possess excellent oral argument skills and a keen understanding of the personal and emotional cues that may sway a jury in their favor. Moreover, litigators do not specialize in one particular area of law, such as employment or intellectual property. Patent attorneys, on the other hand, must possess a solid foundation in mathematics, natural sciences, or engineering. Moreover, the culture and practice area of the law firm heavily influences the partnership process and the criteria used to assess each candidate.
6. **The importance of law school rank continues.** Of the six factors that indicate high academic performance, including the rank of the law school, law review participation, federal clerkship, grades or grade point average, class rank, and distinctions upon graduation, the most important element is the rank of the law school in hiring decisions. This factor may make a new associate stand out. It serves to vouch for their ability during the first two years, while they are still struggling to develop a reputation within the firm. No partner, however, will inquire about grades or distinctions at

The traditional indicators of academic performance are important not because they confer an actual skill advantage, but because they are perceived as indicators of ability and potential. They are important because everyone believes they are important not because a candidate has better preparation, writing or analytical ability, or oral argument skills.

graduation once a new associate completes several assignments. Instead, partners rely upon the recommendation of immediate supervisors to decide on assignments or how to staff an important matter.

7. **What makes a successful attorney is not necessarily reflected in their grades,** law school pedigree, or in the narrowly defined skill set reflected in the tangible criteria used by the hiring committees to screen applicants. The things that differentiate those senior associates elected partners from those who are not include:

- Quality and consistency of legal work;
- An influential mentor to guide assignments, support their candidacy for partner by vouching for ability, and provide feedback;
- Habit of doing internal and external marketing to develop reputation and get referrals from partners and clients;
- Flexibility on work load (e.g., be available when lots of hours are needed)
- Revenue generation-high billable hours and favorable case results or sizeable judgements/verdicts; and
- Ability to retain clients and get new business.

In large law firms, success is based on reputation, both earned through case experience and unearned through the law school attended.

8. **Lawyers must be groomed to succeed.** Whites and people of color uniformly report that attending a top law school or having outstanding grades or other academic distinction makes a big difference in how they are perceived. For minority lawyers, women, or other individuals who may be subjected to doubts about their intellectual ability, a degree from an Ivy League law school will help abrogate questions from clients or their own law firm colleagues. However, it is not sufficient to win business. Doing so requires a more in-depth review of case results, reputation in the legal community, an orientation of providing the best and most efficient service to clients, respect among key stakeholders, such as judges or media, and client references from those within the same industry.

Some minority partners who graduated from a top law school, participated on law review, or clerked for a federal judge often look for other people of color who have succeeded similarly. Instead of debunking the idea that these narrowly defined criteria do not reflect the potential of prospective associates to succeed at the firm, certain minority partners seek to validate a system that disproportionately weeds out diverse attorneys. This destructive behavior must stop.

Partners of color and women who have jumpstarted their firm's diversity initiatives have insisted that the firm expand its choice of schools to consider candidates who may not be at the top of their class but who can be groomed into excellent attorneys if given the same opportunities as other associates.

9. **Alma mater carries weight.** An important factor in the hiring practices of law firms is the partners' alma mater. The majority of the largest law firms recruit at the top 20 law schools. Thus, these students will get interviews and offers from firms nationwide. However, students from law schools that are not within the top tier have a better chance for a position at firms within their geographic region, where alumni at the firm may influence the firm's hiring decisions. For example, students from Catholic University have a better chance to join a firm in Washington, D.C., while those from Yale may receive offers from firms in Los Angeles, Chicago, or New York.
10. **The majority of highly successful white male partners lack "box credentials".** This study did not attempt to prove that there were greater or lesser numbers of people of color and/or women as white men who had achieved high marks and academic distinction for their performance while in law school. What it has proven is that a significant number of partners at America's largest and most profitable law firms lack the "box credentials," which their hiring committees consistently use as barriers to the consideration of many minority candidates. This disparity calls into question whether those credentials are "requirements" at all, or simply more subtle and covert methods of exclusion. Moreover, given that not one of the respondents believed that the "box credentials" were prerequisites for success in law firms, and lacking any proof that "box credentials" make better lawyers, one must also question why hiring committees cling to these standards.



RECOMMENDATIONS

1. Firms should undertake voluntary surveys of the partnership to examine the credentials and skill sets that distinguish partners. Firms should ask the following questions:

- Where did the partnership go to law school?
- What credentials (law review, clerkship, graduation with distinction) do they possess?
- Do they have children? At what point in their careers did they have children?
- How many are married and for how long?
- Have any taken parental leave or worked part-time for any reason?
- Prior to making partner, what were their billable hours?
- To whom do they plan to pass their books of business?
- On average, how long does it take to make partner?

Data should be disaggregated by race and gender or by other relevant categories (e.g., sexual orientation, marital status). Based on this audit, the firm should reexamine their hiring criteria and culling process. If none or few of the partners went to a law school ranked in the Top 20, the firm should not similarly limit its recruitment efforts, and should apply equal flexibility when reviewing the qualifications of minority and women candidates who did not attend a top 20 law school.

2. Dispelling the myth of the meritocracy starts with successful lawyers taking the initiative to expand the firms' network of schools at which to conduct on-campus interviews and collect resumés. By challenging the traditional "box credentials", attorneys may apply more practical measures of potential and legal aptitude to the law students they are considering as new hires.⁶⁸ MCCA recommends that firms include schools that may not be in the Top 20 but that regularly graduate a high percentage of minority law students, such as Howard University in Washington, D.C., and regional law schools with strong percentages of law students of color.
3. Law firms serious about increasing diversity must extend their efforts past the recruitment stage to provide opportunities for all associates to get challenging assignments, work with important clients, and get critical feedback on their work. The basis for these programs lies in two premises: people will always work with others like themselves, and unless challenged, will always do the same things they have done before. Firms have to enact policies that equalize the playing field by challenging long-held assumptions about what the client is looking for (e.g., the Harvard degree) and practices, such as how books of business are passed down to junior partners and/or senior associates. These initiatives are not special treatment. They serve to counteract the business as usual tactics that disadvantage people of color and women.

Dispelling the myth of the meritocracy starts with successful lawyers taking the initiative to expand the firms' network of schools at which to conduct on-campus interviews and collect resumés.

⁶⁸For the purposes of this study, "box credentials" refers to the traditional indicators of high academic performance, such as graduation from a top 20 law school, law review experience, a federal clerkship, and graduation with distinction (e.g., Order of the Coif or *magna cum laude*).

4. Law firms should not depend solely on “box credentials” to evaluate the candidacy of students. Law firms and law schools must work together to provide opportunities for the 90 percent of all students who are not ranked in the top 10 percent of the class academically but whose leadership ability, interpersonal skills, oral argument, and other talents foretell their ability to be groomed into excellent attorneys. Examples include professors actively recommending students who can perform in a competitive law firm environment but who may not be at the top of their class. Such students often have real potential, or may fit the firm’s environment, practice area, and success profile, yet slip through the cracks. These oversights may inhibit the firm’s efforts to diversify.
5. Law schools have a role to play, too. They must do more to ensure that a wider sector of their students, not simply those with “box credentials,” have the opportunity to be considered by top law firms. This will entail reexamining the interview selection process, restructuring how the interview is conducted, and investing more resources to aid law students’ career development and networking opportunities. Schools without a lottery system should implement one to ensure that a wider circle of students is considered. By exposing the firm to a broader group of candidates, an impressive student who would otherwise not have been interviewed will have an opportunity. In addition, law schools should lengthen interviews to permit firms to note other indicia of excellent judgment, proactive initiative, or intellectual curiosity. Most of the lawyers interviewed agreed that 20 minutes is too short a time to assess a candidate’s potential.

Law schools outside the elite Top 20 also have a responsibility to do more to help their law students and new graduates succeed in the face of the legal profession’s academic snobbery. This entails career services offices that are fully funded and equipped with resources to assist all students, especially the 90 percent not ranked in the top 10 percent, with developing employment networks and involving successful alumni.

6. Undergraduate pre-law students need to understand that the rank of their law school is extremely important in determining where they will practice and how they will be perceived as a new associate. Fair or unfair, this is reality. When evaluating law schools, students must look at what a school ranked outside of the Top 20 offers in the way of career services, alumni networks, and other resources that help to lessen the stigma of having gone to a law school that is not as highly regarded. They should adopt a long-term perspective to determine which school to attend, perhaps giving less emphasis to factors such as cost, location, or other personal matters. This is especially true for minorities, who will continue to face negative stereotypes and doubts about their abilities. The cushion of an Ivy League law school credential will lessen, but not eliminate, the degree of discrimination they face.

However, several Ivy League law school graduates report that having this credential also subjects them to increased levels of animosity from their peers who did not attend an Ivy League law school. In these instances, the non-Ivy-educated lawyers sought to exclude the Ivy-educated from critical law firm networks or important clients. The Ivy-educated lawyers were also sometimes subjected to hyper-critical comments about their work product in an attempt to seek to tear down the Ivy-educated lawyers’ preferred status. This tendency

Undergraduate pre-law students need to understand that the rank of their law school is extremely important in determining where they will practice and how they will be perceived as a new associate. Fair or unfair, this is reality.

toward creating a less inclusive and welcoming environment for the Ivy-educated lawyer of color was more likely to occur at the hands of non-Ivy-educated white senior associates and junior partners who view their better-credentialed minority peers as threats to their own progression in the highly competitive large law firm.

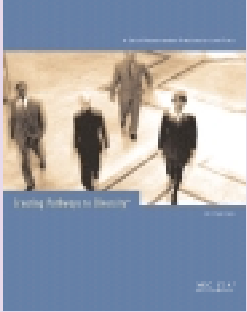
This dynamic may partially explain why Ivy League educated minority lawyers, like their non-Ivy-educated minority peers, continue to be largely excluded from the ranks of partnership in the nation's 250 largest law firms.

7. Law students who may not be at the top of their class academically should seek letters of recommendation from clients and attorneys of the firm to which they are applying, as well as professors and judges. These students should emphasize outside activities that distinguish them, such as volunteer experience, legal aid work, or other academic degrees. Those who go into law school believing that they simply need to graduate and pass the bar, or who fail to obtain strong work experiences, should not be surprised to find their opportunities are limited.
8. Law firms must do better at being effective managers of people. Those who lead departments and manage the performance evaluation process must be particularly vigilant about encouraging inclusive workplaces and ensuring that exclusionary tactics do not occur. Two important things all firms can do:

- * The performance review process should evaluate senior associates' ability to mentor and develop junior associates. The process should include asking a variety of junior associates for comments, not just those with whom the senior associate regularly works. Otherwise, those excluded from opportunities will never have their views heard, and management will remain ignorant to the problem.

- * Examine the way assignments are distributed to ensure women and minorities receive the opportunity to do high-level work and gain exposure to important corporate clients. If a senior associate or partner consistently fails to include women or people of color in his/her practice group, especially on high-quality, high-visibility client matters, a "red flag" should go off for management that these lawyers need to be reminded of the need to be more inclusive. Corrective steps must be taken promptly, and management should periodically review the work assignments of such senior associates or partners to ensure that the problem does not continue.

Those who go into law school believing that they simply need to graduate and pass the bar, or who fail to obtain strong work experiences, should not be surprised to find their opportunities are limited.



APPENDIX I

Barriers to Success

There are common challenges to all diversity programs:

1. Little understanding of the link between diversity and the bottom line or its connection to strategic business initiatives

The lack of an established business case for diversity explains why it is not fully supported by senior law firm management.

2. Myth of the meritocracy

The legal profession still traditionally views its institutions as being governed by a “meritocracy”—where success is the result of an individual’s “innate” ability to perform well in such areas as law school GPA or law review participation. While these credentials are acceptable measures of academic performance by a law student, they have yet to be proven reliable yardsticks to measure success as a practicing attorney. This cultural bias frames diversity negatively, as coming *at the expense of* excellent legal service instead of enhancing the quality of legal service.

3. Revolving door for incoming attorneys of color

Diversity at the associate level is not reflected in the senior partnership or management of most firms. Consequently, a steady stream of minority associates enters the pipeline but leaves within four years or less. That leaves a shrinking core of minority senior associates and an even smaller number of minority partners. *Diversity becomes a ‘disappearing act’ at the top levels of many law firms.*

4. Lack of senior partner commitment and involvement in the planning and execution of diversity initiatives

Partners drive law firm culture and change. Without the participation of management, inadequate resources are committed to the diversity program. Each initiative then depends on the free time of women or minority attorneys, who are still assigned to spearhead internal diversity initiatives and recruit diverse candidates, while meeting the demands of meeting requirements for billable hours.

5. Insufficient infrastructure and resources

Many of the participants said their firms had a diversity committee or council and/or a recruiting committee with a diversity component, as well as other committees dealing with various aspects of recruitment and retention. But in many cases, there was no central focus or coordinated firm wide set of goals. Instead, these structures were decentralized and sometimes lacked the authority to make a real difference. Results were not measured regularly nor were they tied to the compensation of the attorneys responsible for implementing each initiative. In fact, because hours spent on diversity management are non-billable, staff members who are assigned this responsibility often take a negative financial hit.

6. Attrition of women attorneys driven by lack of viable work/life programs

Many female attorneys feel unable to maintain family commitments and high-pressure, time-intensive legal careers. They also note the lack of role models and the strained relationships with clients and senior firm management.

7. Stereotypes and assumptions

There was evidence from the focus group data that stereotypes and assumptions about women and minorities still exist, stifling their career growth and a firm's diversity progress. Participants said because of family demands, it is still assumed that a woman will not be as committed to her profession as a man and that she will either leave or ask for "special treatment." Such stereotypes in law firms often do become "self-fulfilling prophecies."

8. Emphasis on entry-level recruitment of minority attorneys

Most of the initiatives that participants described focused on entry-level recruitment. Even when these efforts were successful, any gains that a firm made often were wiped out within a few years due to the attrition of the same people they had spent so much effort and money to hire.

9. Good intentions but little willingness to examine specific issues at each firm historically

Most law firms do not conduct an internal audit on firm hiring, culture, or promotion practices. Neither do diversity plans usually focus on internal causes that historically might have contributed to attorney attrition, particularly among women and attorneys of color. For example, a firm that hires exclusively from Ivy League schools or the alma mater of firm partners has unnecessarily limited their selection pool of minority candidates. To increase its staff of attorneys of color, a firm may have to extend its recruitment activities to law schools that regularly graduate a large number of minority law students.

10. External consultants design and implement a diversity training program that is not owned or understood by the firm's senior management

A training program that is not custom-designed but conducted in an "off-the-shelf, one-size-fits-all" manner for the organization will be an expensive failure. Typically, no staff members are designated to monitor the firm's progress toward the program's diversity goals. Such one-shot approaches fall short of expectations, further frustrating employees who want change to occur.

APPENDIX II

U.S. News & World Report Top Law Schools – 2003

1. Yale University (CT)
2. Stanford University (CA)
3. Harvard University (MA)
4. Columbia University (NY)
5. New York University
University of Chicago (IL)
University of California – Berkeley
University of Michigan – Ann Arbor
University of Pennsylvania
University of Virginia
11. Northwestern University (IL)
12. Duke University (NC)
13. Cornell University (NY)
14. Georgetown University (DC)
University of Texas – Austin
16. University of California – Los Angeles
17. Vanderbilt University (TN)
18. University of Iowa
University of Minnesota – Twin Cities
University of Southern California
Washington and Lee University (VA)
22. Boston College (MA)
Emory University (GA)
24. University of Notre Dame (IN)
25. Boston University (MA)
George Washington University (DC)
University of Illinois – Urbana-Champaign
University of Washington
University of Wisconsin – Madison
Washington University – St. Louis (MO)
31. University of North Carolina – Chapel Hill
32. College of William and Mary (VA)
Fordham University (NY)
University of California – Davis
University of Georgia
36. Wake Forest University (NC)
37. Brigham Young University
(J. Reuber Clark) (UT)
Ohio State University (Moritz)
39. Indiana University – Bloomington
40. University of Arizona
University of California (Hastings)
University of Colorado – Boulder
43. Tulane University (LA)
University of Connecticut
45. University of Florida (Lewin)
University of Utah (S.J. Quinney)
47. George Mason University (VA)
University of Alabama
49. American University (Washington College of Law)
Southern Methodist University (TX)
University of Kentucky

APPENDIX III

U.S. News & World Report Tier 2 Law Schools – 2003

Arizona State University
 Baylor University (TX)
 Brooklyn Law School (NY)
 Cardozo-Yeshiva University (NY)
 Case Western Reserve University (OH)
 Florida State University
 Georgia State University
 Illinois Institute of Technology (Chicago-Kent)
 Indiana University – Indianapolis
 Lewis and Clark College (Northwestern) (OR)
 Loyola Law School (CA)
 Loyola University Chicago
 Rutgers State University – Camden (NJ)
 Rutgers State University – Newark (NJ)
 Santa Clara University (CA)
 Seton Hall University (NJ)
 St. John's University (NY)
 Temple University (Beasley) (PA)
 University at Buffalo (NY)
 University of Cincinnati (OH)
 University of Denver (CO)
 University of Hawaii
 University of Houston (TX)
 University of Kansas
 University of Louisville (Brandeis) (KY)
 University of Maryland
 University of Miami (FL)
 University of Mississippi
 University of Missouri – Columbia
 University of Nebraska – Lincoln
 University of New Mexico
 University of Oklahoma
 University of Oregon
 University of Pittsburgh (PA)
 University of Richmond (VA)
 University of San Diego (CA)
 University of South Carolina
 University of Tennessee – Knoxville
 Villanova University (PA)

APPENDIX IV

Selected Bibliography

Psychology of Exclusion

Brewer, Marilynn. "In-Group Favoritism: The Subtle Side of Intergroup Discrimination." In *Codes of Conduct, Behavioral Research Into Business Ethics* 160 (David M. Messick & Anne E. Tenbrunsel, eds., 1996).

Banaji, Mahzarin R., Curtis Hardin & Alexander J. Rothman. "Implicit Stereotyping in Person Judgment." *J. Personality & Soc. Psychol.* 65 (1993): 272.

Deaux, Kay et al. "Level of Categorization And Content of Gender Stereotype." *Social Cognition* 3, no. 2 (1985): 145-167.

Deaux, Kay and Marianne LaFrance. "Gender" *The Handbook of Social Psychology* 1 (1998): 788.

Eagly, Alice H. and Steven J. Karau. "Role Congruity Theory of Ideology and Prejudice." *Psychology Review* (in press) (on file with author).

Kobrynowicz, Diane and Monica Biernat. "Decoding Subjective Evaluations: How Stereotypes Provide Shifting Standards." *Journal of Experimental Social Psychology* 33 (1997): 579-601.

Minority Issues

Harvard Law School, Profession on the Legal Profession. 2002. Harvard Law School: Report On The State of Black Alumni 1869-2000.

Lempert, Richard O., David L. Chambers and Terry K. Adams. 2000. Michigan's Minority Graduates in Practice: The Rivers Run Through Law School. *Law and Social Inquiry*: 25:395 – 505.

National Association for Law Placement (NALP). 1998. Keeping the Keepers: Strategies for Associate Retention in Times of Attrition. Washington, D.C.: Foundation for Research and Education.

Wilkins, David B., and G. Mitu Gulati. 1996. Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis. *California Law Review* 84:493-625.

Wilkins, David B. 1993. The Role of Legal Education in Shaping the Values of Black Corporate Lawyers. *Stanford Law Review* 45:1981-2026.

Wilkins, David B. 1999b. Partners Without Power: A Preliminary Examination of Black Partners in Corporate Law Firms. *Hofstra Journal of The Institute for the Study of Legal Ethics* 2:15-48.

Women's Issues

Bianchi, Suzanne. Unpublished Tabulations from March Current Population Survey (on file with author).

Bielby, William T. and Denise D. Bielby. "I Will Follow Him: Family Ties, Gender-Role Beliefs, and Reluctance to Relocate for a Better Job." *American Journal of Sociology*, Vol. 97, No. 5. (Mar., 1992), pp. 1241-1267.

Biernat, Monica and Diane Kobrynowicz. "Gender-and Race-Based Standards of Competence: Lower Minimum Standards but Higher Ability Standards for Devalued Groups." *J. Personality & Soc. Psychol.* 72 (1997): 544.

Catalyst Report. Women in Law: Making the Case, (2001).

Eagly, Alice H. and Valerie J. Steffen. "Gender Stereotypes, Occupational Roles, and Beliefs about Part-Time Employees." *Psychology Women Q.* 10 (1986): 252-262.

Etaugh, Claire and Denise Folger. "Perceptions of Parents Whose Work and Parenting Behaviors Deviate From Role Expectations." *Sex Roles* 39, no. 3/4 (1998): 215-223.

Fiske, Susan T., Jun Xu, Amy C. Cuddy, and Peter Glick. "(Dis)respecting versus (Dis)liking: Status and Interdependence Predict Ambivalent Stereotypes of Competence and Warmth." *Journal of Social Issues* 55 (1999): 473-489.

Ganong, Lawrence H. and Marilyn Coleman, "The Content of Mother Stereotypes." *Sex Roles* 32, no. 7/8 (1995): 495-512.

Glick, Peter. "Trait-Based and Sex-Based Discrimination in Occupational Prestige, Occupational Salary, and Hiring." *Sex Roles* 25, no. 5/6 (1991): 351-378.

Glick, Peter Cari Zion and Cynthia Nelson. "What Mediates Sex Discrimination in Hiring Decisions?" *Journal of Personality & Social Psychology* 55, no. 2 (1988): 178-186.

Glick, Peter and Susan T. Fiske. "An Ambivalence Alliance: Hostile and Benevolent Sexism as Complementary Justifications for Gender Inequality." *American Psychology* 56 (2001).

Glick, Peter and Susan T. Fiske. "Sexism and Other "Isms": Interdependence, Status, and the Ambivalent Context of Stereotypes." In *Sexism and Stereotypes in Modern Society: The Gender Science of Janet Taylor Spence* (William B. Swann, Jr., Judith H. Langlois & Lucia Albino Gilbert eds. 1999): 193-221.

Halpert, Jane A., Midge L. Wilson and Julia Hickman. "Pregnancy as a Source of Bias in Performance Appraisals." *Journal of Organizational Behavior* 14 (1993).

Heilman, Madeline E. "Description and Prescription: How Gender Stereotypes Prevent Women's Ascent Up the Organizational Ladder." *Journal of Social Issues* 57, no. 4 (2001): 657-674.

Heilman, Madeline E. "Sex Stereotypes and Their Effects in the Workplace: What We Know and What We Don't Know." *J. Soc. Behavior & Personality* 10, no. 6 (1995): 3-26.

McCracken, Douglas M. "Winning the Talent War for Women: Sometimes It Takes A Revolution" *Harv. Bus. Rev.* 159 (Nov/Dec 2000).

Ridgeway, Cecilia A. "Gender, Status, and Leadership." *J. Social Issues* (in press) (on file with author).

Swim, Janet K. and Lawrence J. Sana. "He's Skilled, She's Lucky: A Meta-Analysis of Observers' Attributions for Women's and Men's Successes and Failures." *Personality and Social Psychology Bulletin* 22, no. 5 (1996): 507-519.

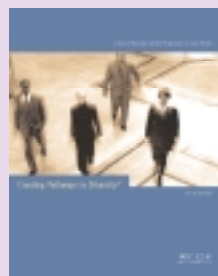
Valian, Virginia. *The Cognitive Bases of Gender Bias*, 65 BKNLR 1037, 1040 (1999)

Williams, Joan and Cynthia Calvert. "Balanced Hours: Effective Part-time Policies for Washington Law Firms." (2001) (on file with author).

Williams, Joan and Nancy Segal. *Beyond the Maternal Wall: Relief for Family Caregivers Who are Discriminated Against on the Job*, (forthcoming) (on file with author).

Women's Bar Association of Massachusetts (WBA). 2000. *More Than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms*. A Report of the Employment Issues Committee.

Additional resources from the MCCA® *Creating Pathways to Diversity®* Series.



LAW FIRMS



LAW DEPTS.



METRICS