

# Reducing Gender Inequity in the Academy and the Legal Profession

Susan Hanley Duncan

Thank you for the opportunity to be part of such a distinguished discussion group and to offer my observations and perspectives on this important topic, *Building Bridges Across Curricular and Status Lines: Gender Inequity Throughout the Legal Academy*. Others in this group will more eloquently describe the challenges women face in the academy. I, however, want to acknowledge that issues in the academy are similar to those women face every day in our profession. We educate and train women who will experience some of the challenges I am going to talk about when they graduate, and thus we must prepare them for that reality. To that end, some of my comments focus on ways to improve gender inequity both in the academy and in the legal profession.

Before addressing the challenges, we should set the scene. Currently, 35% of law school deans are female.<sup>1</sup> In 2015 we had fifty-nine women deans,<sup>2</sup> and now at least seventy, with a record number hired in 2019.<sup>3</sup> Women hold 39.9% of the law professoriate.<sup>4</sup> This statistic roughly corresponds to the 38% of those in the legal profession who are women.<sup>5</sup> For the first time in 2017, women enrolled in law schools outnumbered men.<sup>6</sup> In 2018, women make up 51.42% of the

**Susan Hanley Duncan** is Dean and Professor of Law at University of Mississippi School of Law

1. Karen Sloan, *More Minority Women Ascend to Law Dean Jobs*, NAT. LAW J. (Jan. 10, 2019), <https://www.law.com/nationallawjournal/2019/01/10/more-minority-women-ascend-to-law-dean-jobs/?fbclid=IwAR2-5ymSbZeehfFNK2t18G1LyXGcF5HgHqHsbmvUV9H38jV-JMbINqv1MQ>.
2. *Female Deans Taking Charge*, LAW.COM (June 22, 2015), <https://www.law.com/nationallawjournal/almID/1202730008416/female-deans-taking-charge/>.
3. *Id.*
4. Am. Ass'n of Law Sch., *Legal Education at a Glance: 2019* (2020), <https://www.aals.org/wp-content/uploads/2020/02/2019-Legal-Education-At-a-Glance.pdf>.
5. Commission on Women in the Profession, American Bar Association, *A Current Glance at Women in the Law* (2019) (citing the United States Census Bureau), [https://www.americanbar.org/content/dam/aba/administrative/women/current\\_glance\\_2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf).
6. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, 2017-2018 ANNUAL REPORT: THE YEAR IN REVIEW 17 (2018), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2017-2018-annual-report-legal-ed-final.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2017-2018-annual-report-legal-ed-final.pdf).

summer associates and 45.91% of the associates.<sup>7</sup> In the 200 largest firms of 2017, women constituted 25% of the law firm governance committee members, which is up from 20% over the past five years.<sup>8</sup> Likewise, women equity partners increased from 15% to 19%.<sup>9</sup> The number of women who are general counsels in Fortune 500 companies also increased from 26.4% to 30% from 2018 to 2019.<sup>10</sup> Finally, women hold 27% of federal and 34% of state judgeships.<sup>11</sup>

Despite these increases in our numbers, not all the news is good. For example, various studies find that:

- Salaries still lag. In 2015, women lawyers were paid 89.7% of what their male counterparts received.<sup>12</sup> A 2019 study shows the median weekly salary gap growing, with males making \$2202 compared with females making \$1878 (85.2%).<sup>13</sup>
- 25% of women lawyers surveyed reported that they had encountered unwelcome sexual comments, physical contact, and/or romantic advances in the workplace.<sup>14</sup>
- 70% of all lawyers surveyed reported that they had experienced sexist comments, stories, or jokes.<sup>15</sup>

7. NAT'L ASSO'N FOR L. PLACEMENT, 2018 REPORT ON DIVERSITY IN U.S. LAW FIRMS 9 (2019), [https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms\\_FINAL.pdf](https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf).
8. DESTINY PEERY, NAWL 2017 ANNUAL SURVEY REPORT: THE PROMOTION AND RETENTION OF WOMEN IN LAW FIRMS 6, <https://www.nawl.org/d/do/663>.
9. *Id.*
10. COMMISSION ON WOMEN IN THE PROFESSION, AMERICAN BAR ASSOCIATION, A CURRENT GLANCE AT WOMEN IN THE LAW 3 (2019), [https://www.americanbar.org/content/dam/aba/administrative/women/current\\_glance\\_2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf).
11. DANIELLE ROOT, ET AL. CTR. FOR AM. PROGRESS, BUILDING A MORE INCLUSIVE FEDERAL JUDICIARY (Oct. 3, 2019), <https://www.americanprogress.org/issues/courts/reports/2019/10/03/475359/building-inclusive-federal-judiciary/>. NAWJ, 2019 US STATE COURT WOMEN JUDGES, <https://www.nawj.org/statistics/2019-us-state-court-women-judges> (last visited Oct. 6, 2020).
12. U.S. Dep't of Lab., *Household Data Annual Averages, Table 39: Median Weekly Earnings of Full-Time Wage and Salary Workers By Detailed Occupation and Sex*, <https://www.bls.gov/cps/aa2015/cpsaat39.htm> (last modified Feb. 10, 2016).
13. U.S. Dep't of Labor, *2019 Household Data Annual Averages, Table 39*, <https://www.bls.gov/cps/cpsaat39.htm> (last modified Jan. 22, 2020).
14. JOAN C. WILLIAMS, ET AL., COMM'N ON WOMEN IN THE PROFESSION, AM. BAR ASS'N & MINORITY CORP. COUNSEL ASS'N, YOU CAN'T CHANGE WHAT YOU CAN'T SEE: INTERRUPTING RACIAL & GENDER BIAS IN THE LEGAL PROFESSION: EXECUTIVE SUMMARY 9 (2018), <https://www.americanbar.org/content/dam/aba/administrative/women/you-cant-change-what-you-cant-see-print.pdf>.
15. *Id.*

- Nearly 81% of women lawyers surveyed reported that they had been mistaken for lower-level employees.<sup>16</sup>
- “Approximately 30 percent of women lawyers reported that their gender affected their ability to achieve salary increases or bonuses, desirable assignments and access to sponsors.”<sup>17</sup>
- The number of women arguing before the Supreme Court has fallen off steeply. The court term of 2017-18 showed the fewest women participating in at least seven years, making up only 12% of the total appearances (compared with the previous term’s 21%).<sup>18</sup>

We know women in law school face similar climate issues:

- Women law students participate in classroom discussions less than men.<sup>19</sup>
- Women law students find it more difficult to develop relationships with professors, which impacts their ability to find mentors and obtain letters of recommendation. Often this lack of connection leads to women’s feeling isolated.<sup>20</sup>
- Many women law graduates pursue public interest jobs (women represent 77% of the lawyers in that field), nonprofit work (with women representing 70% of the lawyers), and positions in educational institutions (where 61% of the lawyers are women), compared with the 31% of lawyers at Fortune 1000 companies who are women.<sup>21</sup>

These statistics do not illustrate the even larger issues facing women of color.

In addition to the numerical statistics, a substantial body of research finds bias toward mothers, and demonstrates that women are consistently rated lower than men on qualities associated with leadership such as assertiveness, competitiveness, and business development.<sup>22</sup>

16. Liane Jackson, *Why Do Experienced Female Lawyers Leave? Disrespect, Social Constraints, ABA Survey Says*, AM. BAR ASS’N J. (Aug. 3, 2018) (citing preliminary results for an ABA report), [http://www.abajournal.com/news/article/why\\_do\\_experienced\\_female\\_lawyers\\_leave\\_disrespect\\_social\\_constraints\\_ABA/](http://www.abajournal.com/news/article/why_do_experienced_female_lawyers_leave_disrespect_social_constraints_ABA/).
17. Hilarie Bass, *It Was a Very Good Year: Research On Long-Term Careers For Women Tops President Bass’ Achievements*, AM. BAR ASS’N J. (Aug. 1, 2018), [https://www.abajournal.com/magazine/article/careers\\_for\\_women\\_president\\_basse](https://www.abajournal.com/magazine/article/careers_for_women_president_basse).
18. Mark Walsh, *Number of Women Arguing Before the Supreme Court Has Fallen Off Steeply*, AM. BAR ASS’N J. (Aug. 1, 2018), [http://www.abajournal.com/magazine/article/women\\_supreme\\_court\\_bar](http://www.abajournal.com/magazine/article/women_supreme_court_bar).
19. Yale Law Women, *Yale Law School Faculty & Students Speak Up about Gender: Ten Years Later* 21-22 (2012), <https://ylwyale.edu/wp-content/uploads/2013/03/YLW-Speak-Up-Study.pdf>.
20. *Id.*
21. Katherine A. Welz, *Within Reach: Legal Community Strives to Crack Glass Ceiling*, Feb.-Mar. 2018 CBA RECORD 42, 43.
22. Deborah L. Rhode, *Diversity and Gender Equity in Legal Practice*, 82 U. CIN. L. REV. 871, 879 (2014).

Although these facts and figures depressingly indicate that we still have a long way to go, possible solutions exist for the academy and the profession. We might group these solutions under these themes: reviewing structures, coaching/training, and cultivating our next women leaders. I come to these themes by reflecting back on my own life and what made a real difference for me personally. Many strong women got me where I am today. I would not have been able to pursue big dreams without my mother and aunts cheering me on. I also went to an all-girls high school and realized what great power and love a sisterhood can promote. This structure cultivated our leadership skills. Women have so much to offer other women.

Although I regrettably have no sisters, I do have a blended family of seven children. Six of them are daughters, so I know a thing or two about female companionship. I have watched my daughters grow and become wonderful young women, and although I hope I had some role in their successes, I can by no means take all the credit. They had wonderful women (and men) in their lives who told them they could do anything they wanted. They also had teachers who saw their potential and pushed them to reach higher. But most importantly, they had women in professional roles take interest in them and help them network. You cannot imagine how valuable it was for my girls to talk to women about their careers and listen to their advice. No matter what stage of our careers we are in, we can all show an interest right now for women at our law schools and young women in the legal profession. Each of you has so much wisdom you can give these young women, and mostly you can listen to their challenges and help support them. Just making introductions for them so doors can open would be a huge help. You can also make their day by sending them a note or text to congratulate them on their successes.

Years ago, I discovered Deborah Rhode's article "Diversity and Gender Equity in Legal Practice" in the *University of Cincinnati Law Review*.<sup>23</sup> Professor Rhode offered great advice then, and it still remains relevant today. Below I will expound on her tips on how to help women.

First, she urges us to quit calling this a women's issue or a minority issue but instead make this an organizational priority.<sup>24</sup> One of her suggestions is to review how the workplace operates. We need to be cognizant of barriers we might be creating in organizing our operations in a way that might be difficult for certain groups of people. For example, do we have meetings or classes in the very early morning or late in the day that makes it difficult for people with child care responsibilities? We also should be open to different and creative working arrangements including job sharing, working from home, or part-time positions.

Professor Rhode then suggests we look at how we structure reviews.<sup>25</sup> Performance reviews need to set clear expectations and concrete measurables.

23. *Id.*

24. *Id.* at 900.

25. *Id.* at 896-97.

Our staff members recently defined five of their core duties. Working together, the supervisor and the staff members outlined what performance for each of the duties would constitute good, very good, and outstanding efforts. I encouraged the staff to set realistic targets that could be measured. Staff members, although at first skeptical, now really appreciate the transparency surrounding how they will be reviewed and what they need to do to excel in their jobs.

In addition to making sure the review process is fair, transparent, and communicated, what is rewarded must be examined.<sup>26</sup> We should be asking ourselves whether we reward performance that reflects what we articulate as our values. For example, all law schools and firms profess their commitment to diversity. Reviews, however, do not always ask individuals to show what they did to forward the goal of diversity. If we truly value diversity we should make this part of the review process and reward people who do work to forward this value.

In the academic world we know rewards come not only at review time but can be distributed throughout the year when decisions are made about those eligible for certain opportunities. For example, a recent study revealed gender disparities in colloquium speakers at top fifty universities, with sixty-nine percent of the speakers being male compared with thirty-one percent female.<sup>27</sup> As dean, when I staff committees I need to constantly check whether my implicit biases risk my putting more women on committees that primarily serve students while putting men on the research-heavy committees. Because women typically do great work with their service obligations, I also always check that I am not unduly burdening my women faculty with too many service assignments and that I am nominating both men and women for prestigious university and national awards.

Besides reviewing structures, Professor Rhode advocates for formal leadership and coaching.<sup>28</sup> Excellent leadership programs exist for women. As a new dean, I took advantage of an executive coach offered through my university. I found it incredibly valuable to validate much of what I was doing but also to be coached on how to address certain sticky situations. I strongly urge women to consider utilizing an executive coach. Personally, I also appreciated a colleague coaching me on what salary to ask for when I became University of Louisville's interim dean. Her excellent advice helped me negotiate a higher salary than I would have received initially.

Affinity groups also can be helpful to some but not necessarily all individuals.<sup>29</sup> I appreciate having meetings with the other women deans. We can discuss issues that might impact us differently than our male counterparts.

26. *Id.* at 897.

27. Christine L. Nittrouer, et al., *Gender Disparities in Colloquium Speakers at Top Universities*, 115(1) PNAS 104, 106 (2017).

28. Rhode, *supra* note 22, at 895.

29. *Id.* at 898-99.

Recently, my school founded the Bessie Young Council, named after our first woman graduate. The goal of the Bessie Young Council is to employ scholarships and mentorships to assist those nontraditional students who bring diversity, fresh perspectives, and varied life experiences to our student body. Nontraditional students are broadly defined and can include individuals who are parents, those coming to law school later in life, veterans transitioning from military service, or any other student who could use mentoring and support. The council awards a scholarship at its annual mentoring conference. This new initiative is already making a big difference in the lives of our students.

Being a mentor helps us pay forward all the help someone gave us. Even today I still depend on my mentors to give me good advice. Some of my mentors participated in this panel with me. All of us need mentors no matter at what stage we find ourselves, and all of us need to be mentors to those young women who will take our places.

Part of being a mentor, I believe, requires us to model behavior for younger women. Recently, the University of Mississippi brought women law students together with women graduates, women faculty, and women staff to discuss some of the experiences they encounter when interviewing or being in class. We listened but also shared our own experiences. The female law students took away some ideas and approaches they could use but also came to the realization that some of these experiences still darken our lives. Knowing that older women face challenges and that we still struggle to know how to best address them helps prepare these future professionals for what awaits them.

Mentoring alone, however, won't do the trick unless we also cultivate strong women and broaden the pool. Initiatives such as the Bessie Young Council do just that not only by mentoring students, but by supporting them financially as well. Scholarships remain a powerful tool to recruit strong women into our profession. But just getting them to enroll in our schools is not enough. We also need to provide programming, opportunities, and encouragement for young women to thrive in our schools.

Finally, since we are expressing our opinions, I think one of the most important things we can do is to be patient with ourselves. I just cannot be everywhere for everybody all the time, and that is OK. We need to get over the guilt. We do the best we can, and we all do it differently. Women can be so judgmental of one another. We have to quit doing that. We have to forgive ourselves when we slip up and not worry too much with what others think of us. This may sound silly, but I still recall a time I accidentally misread a flight itinerary while rushing to leave work. This error caused my middle daughter and me to miss a flight to Florida for her field hockey tournament. I was determined to make this right: We jumped in a car, drove to Cincinnati an hour and a half away, slept in our clothes, and arrived at the fields just minutes into the first game. There I was still wearing my suit, pearls, and high heels from the night before. Definitely not the best look! The other moms stared at me, and I think were saying "bless her heart" behind my back. But who

cares? We got to the game. As a perfectionist, I felt horrible—but it showed my daughter we are all human and ultimately it all works out.

Above all, besides being patient with ourselves, what we need to model most is grit. We know the difficulties of balancing careers and family life, but it can be done. We need to show young women that anything worth doing is hard work, but the rewards are wonderful. It will not be easy, and disappointments and failures will come our way, but those women who summon their true grit will be genuine successes.