

UCLA

UCLA Women's Law Journal

Title

Gender and Emotional Labor in the Contemporary Law Firm: A Review of *Gender Trials* by Jennifer L. Pierce

Permalink

<https://escholarship.org/uc/item/1rp4j4sb>

Journal

UCLA Women's Law Journal, 7(1)

Author

Franklin, Cassandra S.

Publication Date

1996

DOI

10.5070/L371017669

Copyright Information

Copyright 1996 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

BOOK REVIEW

GENDER AND EMOTIONAL LABOR IN THE CONTEMPORARY LAW FIRM

A REVIEW OF *GENDER TRIALS* BY JENNIFER L. PIERCE

Cassandra S. Franklin*

ABSTRACT

Cassandra S. Franklin, Lecturer in Law at the UCLA School of Law and a former litigation attorney, reviews Jennifer L. Pierce's *Gender Trials: Emotional Lives in Contemporary Law Firms*. Pierce, who is Assistant Professor of Sociology at the University of Minnesota, conducted a fifteen-month case study of litigation attorneys and paralegals, analyzing the gender differences in emotional labor performed by male and female attorneys and paralegals. Pierce takes the position that litigation attorneys, predominately male, are held to a standard of "Rambo" lawyering, while paralegals, predominately female, are expected to adopt a "mothering" persona. According to Pierce, the nonreciprocal emotional labor that lawyers and paralegals perform in these roles is a significant force both in perpetuating and in destabilizing the gendered hierarchical structure of law firms. Franklin agrees that emotional labor plays a role in supporting the hierarchical structure of law firms. She contends, however, that Pierce's book oversimplifies the roles of litigators and paralegals and glosses over the powerful role of the structure itself in maintaining that hierarchy. According to Franklin, not all successful litigation lawyers are "Rambos." Franklin maintains that, although emotional labor may ease the stress of individuals who work in legal organizations, it is unlikely to have a significant effect on the gendered hierarchies of law firms. For those hierarchies to change, those who want a different structure must come into positions of power to institutionalize the change.

* Lecturer in Law at the UCLA School of Law. I would like to thank Professor Gillian Lester and Judith Gordon, Esq., for their incisive suggestions regarding this review. I would also like to thank the editors of the *UCLA Women's Law Journal* for their excellent editorial assistance and their infinite patience.

I. INTRODUCTION

Much has been written about the challenges women face when entering the legal profession. There are various "how to succeed" books as well as studies of salary differentials between women and men and surveys of how women fit into the power structure of law firms across the nation.¹ Jennifer Pierce's new book, *Gender Trials: Emotional Lives in Contemporary Law Firms*, does not offer much in the way of advice about how to approach this traditionally male profession. Nor does the book add much to the statistical studies of the status of men and women in the law. Instead, *Gender Trials* aims at something more ephemeral. Through her case studies of two large legal organizations, Pierce analyzes the emotional lives of women and, to some extent, men in contemporary law organizations. She does this not by focusing solely on lawyers but on legal assistants as well. *Gender Trials* gives us an insider's view of the interactions of lawyers with legal assistants in their workaday lives.

To gather data for her book, Pierce conducted a fifteen-month case study of litigation attorneys and paralegals.² For six months, Pierce worked as a litigation paralegal in a large San Francisco law firm.³ She worked for an additional nine months

1. See, e.g., THE WOMAN ADVOCATE: EXCELLING IN THE 90's (Jean Maclean Snyder & Andra Barmash Greene eds., 1995) (a collection of pieces with ideas regarding how women can succeed in this traditionally male profession); YOUNG LAWYERS DIVISION, AMERICAN BAR ASSOCIATION, THE STATE OF THE LEGAL PROFESSION 1990 (1991) (a comprehensive study on the state of the legal profession in 1990 finding, in part, that women respondents in the study perceived that men received better opportunities overall both in litigation and in transactional work and that women earn less than men in similar positions, especially when they are either solo practitioners or at partnership levels); NATIONAL ASSOCIATION FOR LAW PLACEMENT, CLASS OF 1994 EMPLOYMENT REPORT AND SALARY SURVEY 75 (1995) (reporting that male graduates in the class of 1994 received a national median starting salary of \$38,000, while female graduates received a lower median starting salary of \$35,000). *But cf.* David N. Laband & Bernard F. Lentz, *Is There Sex Discrimination in the Legal Profession? Further Evidence on Tangible and Intangible Margins*, 28 J. HUM. RESOURCES 230, 245 (1993) (finding "no evidence that female lawyers are discriminated against with respect to their pay").

2. Pierce is Assistant Professor of Sociology at the University of Minnesota. She began her work on this book while she was a graduate student in the Sociology Department at the University of California at Berkeley. JENNIFER L. PIERCE, *GENDER TRIALS: EMOTIONAL LIVES IN CONTEMPORARY LAW FIRMS* x (1995). Pierce chose to study litigation paralegals and attorneys because she saw their "occupations are strongly sex-typed by the proportion of men and women found in each and by the gendered idioms used to describe them." *Id.* at 14.

3. *Id.* at 17. Pierce changed the names of the entities and people described in her account to protect their privacy. The law firm, fictionally named Lyman, Lyman

in the legal department of a large corporation, also located in the Bay Area.⁴ Between these two jobs, Pierce attended three weeks of National Institute for Trial Advocacy (“NITA”) training sessions.⁵ While working as a paralegal, Pierce interviewed a random sample of attorneys, paralegals, and secretaries from each site.⁶ She also conducted eight interviews of personnel directors from Bay Area firms.⁷

In *Gender Trials*, Pierce attempts “to formulate a sociological framework to answer [the] questions” of why sex segregation persists in the legal field and what role “emotional labor” plays in law firms.⁸ Pierce defines “emotional labor” as the practice of workers “to induce or suppress feeling in order to sustain the outward countenance that produces the proper state of mind in others.”⁹

Pierce explores her subject in several stages. She begins with some background information about the theoretical underpinnings of her work, as well as an overview of the gendered structure of large law firms. Next, Pierce more thoroughly depicts the primary types of emotional labor lawyers and paralegals perform. She then explores how women and men navigate the challenges various types of emotional labor pose to their gendered sense of identity.

Ultimately, Pierce concludes that emotional labor is a significant force in the perpetuation of the gendered division of labor in law firms, as well as in engendering what little change there has been. “In my understanding, the gendered structure of law firms is at once reproduced and destabilized through legal workers’ practice.”¹⁰

I agree with Pierce’s conclusion that emotional labor plays a role in perpetuating the hierarchical structure of law firms. As she contends, the structure of most law firms is extremely hierarchical. Those at the top of the hierarchy are a great deal less

& Portia, employed approximately 150 lawyers, 40 paralegals, and 40 secretaries. *Id.* at 18.

4. *Id.* at 21. The legal department of the corporation, fictionally named Bonhomie Corporation, was approximately the same size as the law firm.

5. *Id.*

6. *Id.* at 22.

7. *Id.*

8. *Id.* at x.

9. *Id.* at 7 (quoting ARLIE HOCHSCHILD, *THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING* 7 (1983)).

10. *Id.* at 178.

concerned with how friendly and warm they are to their subordinates than vice versa. This lack of emotional reciprocity between subordinate and superordinate employees therefore mirrors the hierarchical structure of the organization. It also reinforces the hierarchy by operating within its boundaries. Those at the bottom of the totem pole support those at the top in terms of both the physical assignments they carry out and the emotional reinforcement they provide.

It is interesting to reflect on this phenomenon, as *Gender Trials* does, and perhaps even to use this insight as a springboard for change, which *Gender Trials* hints at. As Pierce suggests, those who institute some reciprocity in their emotional relationships and provide emotional support to subordinate employees do break the hierarchical mold to some extent.

However, Pierce's suggestion that this emotional labor can significantly change the hierarchical structure of law firms seems to put the cart before the horse. While a more reciprocal emotional labor may ease the stress on the individuals who work in legal organizations, it seems unlikely that emotional labor alone will have more than a minor effect on the hierarchical power structure of law firms. To change that structure, those who break the hierarchical mold must have enough power within legal organizations to institutionalize their more reciprocal mode of interacting with subordinate employees.

If, as seems true, a domineering mode of behavior is the winning strategy in the current adversary system, nondomineering attorneys are not likely to come into positions of power. It is those who dominate and "win," rather than those who work through conflict with a more cooperative, "win-win" approach, who ascend to positions of power. Therefore, the lawyers most likely to change the hierarchical structure of law firms are not likely to be in positions to do so.

Thus, *Gender Trials*, though noble in its utopian vision, is flawed. It focuses so heavily on the significance of the emotional labor of litigation employees that it downplays the intractability of the hierarchical power structure of law firms and other entities that involve litigation practice.¹¹ It also gives short shrift to the

11. My views are based on my own experiences as a woman litigator in two Los Angeles law firms, as well as the experiences of partners and associates I came to know during my almost six years of practice. Moreover, my vantage point is on the other side of the hierarchical structure from Pierce's frame of reference. To some extent, then, this book review engages in a dialogue with the book, providing not

universal impact the adversarial system itself has not only on women's but also on men's behavior both inside and outside the office.

Additionally, *Gender Trials* is tainted by Pierce's strong biases. Pierce tends to view the emotional labor performed by lawyers and paralegals with a predetermined focus. Perhaps because of her own experience as a paralegal,¹² Pierce evidently had developed clear views about lawyers and paralegals and about the men and women who work in those professions before she began her study. Her preexisting views often seem to foreordain her interpretations of the emotional interactions between lawyers and paralegals.

Moreover, because of her biases, the picture Pierce paints of women and men in law firms is one-sided. The male lawyers, almost without exception, are portrayed as, at best, egocentric and reserved, and, at worst, hostile and abusive. On the other hand, the women lawyers, with very few exceptions, are portrayed as pioneering spirits who are responsible for bringing what little humanity there is to an otherwise exceedingly oppressive workplace. Only women, for example, treat their subordinates with compassion.

Of course, women lawyers have been and remain pioneers of sorts. The litigation profession is still predominantly a man's world. There are still many more men who litigate than women; there are still many more male partners than women partners in most law organizations. Nevertheless, in my experience, men in the profession are not uniformly the "Rambo" litigation monsters *Gender Trials* suggests.¹³ Nor are all women lawyers particularly relational or compassionate. This is not necessarily because they have suppressed their feminine side to fit in with the masculine crowd, as Pierce suggests. As are some men, some women simply are less interested in relational issues than others.

Overall, then, *Gender Trials* provides some thought-provoking insights about the legal profession and its effects on women lawyers and paralegals. It is particularly interesting because it

only the counterpoint of lawyer to sociologist but also the response of lawyer to paralegal. It is the conversation you cannot have inside the hierarchy of the firm.

12. Pierce worked as a paralegal before embarking on her sociological case study. PIERCE, *supra* note 2, at ix. Starting in 1980, she spent several years working in "one of the largest law firms in San Francisco's financial district." *Id.* Because her experience was especially "oppressive," it seems to have left a particularly bitter taste in her mouth. *See id.*

13. *See, e.g., id.* at 50-82.

adds the vantage point of paralegals to literature that has more often focused on the challenges women face as lawyers. However, because of the bias that infuses *Gender Trials*, as well as its failure to account fully for the impact of legal organizations' hierarchical structure and the competitive nature of the adversary system in perpetuating the predominantly male world of litigation, the book ultimately fails to offer much of a solution to the ills of which it complains.

II. THE HISTORY AND PRESENT STATE OF GENDERED OCCUPATIONS IN LAW FIRMS — WHERE ARE WE AND HOW DID WE GET THERE?

In chapters 1 and 2, Pierce sets the stage for her analysis. Chapter 1 summarizes the sociological theories on which Pierce draws and gives an overview of what she hopes to accomplish in the book. In chapter 2, Pierce describes the gendered tiers of lawyers and paralegals and traces the entry of women into legal employment. While Pierce's portrait of the modern-day firm is accurate in its assessment of litigation practice as a highly stratified environment, her portrait suffers from exaggeration in its "bright-line" description of the roles men and women lawyers and paralegals play in law firms.

A. *The Sociological Underpinnings of Gender Trials*

Pierce draws on an impressive array of sociological scholarship, ranging from Rosabeth Moss Kanter's *Men and Women of the Corporation* (1977) (arguing that an individual's position within an organizational structure determines the individual's behavior) to Christine Williams' *Gender Differences at Work: Women and Men in Nontraditional Occupations* (1989) (arguing that men in nontraditional jobs behave differently from women in those jobs in an effort to maintain their masculinity) to Carol Gilligan's *In a Different Voice: Psychological Theory and Women's Development* (1982) (arguing that, while men generally approach moral dilemmas from the perspective of abstract rules and principles, women generally focus on equity-based notions, trying to maintain relationships and avoid hurting anyone). Some of these sources analyze sociological phenomena from a "macro" per-

spective — the structure determines the behavior.¹⁴ Others focus on the “micro” level of individual actors within the structures.¹⁵

Pierce sets out to fuse the “macro” and “micro” approaches into a theory that recognizes the reciprocal relationship between the gendered structures of legal organizations and the gendered emotional labor men and women perform while working in them.¹⁶ She draws heavily on the work of Michael Burawoy, whom she describes as theorizing that “the labor process is at once relational — the organization of relations between people in a workplace — and practical — the actual work that people perform. . . . [I]n [Burawoy’s] account of social reproduction, structure is the medium as well as the outcome of practice.”¹⁷ She also draws heavily on the work of Candace West and Don Zimmerman, whom she says suggest that emotional labor is a way of “doing gender.”¹⁸

Finally, Pierce attempts to incorporate Nancy Chodorow’s psychoanalytic theory of gender identity into *Gender Trials* to “add[] the subjective dimension missing in Burawoy’s account.”¹⁹ By incorporating a more subjective dimension to her analysis, Pierce seeks to show how gender may vary *within* a given profession as well as *between* professions.²⁰

B. *The History of the Modern-Day Law Firm — How We Got Here*

Pierce traces the entry of women into the legal workplace and the development of the sex-segregated firm. A summary of Pierce’s historical account follows.

For centuries, the practice of law was an exclusively male domain.²¹ From roughly 1870 through the 1920s, the law firm emerged as a new bureaucratic form of organization that women began to enter as clerical workers.²² According to Pierce, this was the first phase of change in the organizational structure of

14. See, e.g., ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* (1977).

15. See, e.g., CHRISTINE WILLIAMS, *GENDER DIFFERENCES AT WORK: WOMEN AND MEN IN NONTRADITIONAL OCCUPATIONS* (1989).

16. PIERCE, *supra* note 2, at 9-10.

17. *Id.* at 6.

18. *Id.* at 9.

19. *Id.* at 13.

20. *Id.*

21. *Id.* at 38.

22. *Id.* at 37.

law firms that led to the entry of women into law firms.²³ This new style of firm arose to serve the “powerful national economic elite in the late nineteenth century led by railroad, utility, and steel interests[] [as] the United States entered the age of corporate capitalism.”²⁴

The growth of big business and the increasing number of government regulations necessitated a new type of legal entity — one that was more specialized and used more technology.²⁵ Gone were the days of “gentlemen clerks” managing the office and male copyists carefully transcribing legal documents with quill pens.²⁶ The new system, largely attributed to lawyer Paul D. Cravath, recruited as lawyers predominantly “WASP” males who were law school graduates.²⁷ The development of technologies like the telephone and the typewriter gave rise to the need for clerical workers to operate them.²⁸ By the end of World War I, these clerical workers, mostly women, had almost entirely replaced the “gentlemen clerks” of the 19th century.²⁹

The new genre of firm was extremely hierarchical, with three tiers — partners, associates, and the largely female force of clerical workers.³⁰ Although the status attributed to secretarial work was not as low as it is today, legal secretaries were paid very little in comparison with lawyers who worked in the same firm.³¹ And, while the gentlemen clerks, whom secretaries had replaced, were essentially in training to become lawyers, secretaries had no upward mobility because a law degree had become the only way to obtain a position as a lawyer.³²

Not many women were allowed into law school in those days. Columbia, for example, admitted no women until 1928; Harvard admitted none until 1950.³³ Moreover, women who managed to obtain a legal education were essentially barred from employment in large firms.³⁴ A woman law graduate in the 1930s recalls being asked at every job interview “how she ‘could possi-

23. *Id.*

24. *Id.* at 37-38.

25. *Id.* at 38.

26. *Id.*

27. *Id.* at 40-41.

28. *Id.* at 41.

29. *Id.* at 42.

30. *Id.*

31. *Id.*

32. *Id.* at 43.

33. *Id.*

34. *Id.*

bly be expected to be considered when there were men out there with families to support. It was bad enough I wasn't going to get a job with any of those law firms — on top of it they insisted on making me feel guilty.'”³⁵

Apart from a brief period during World War II, when many men were serving overseas, women were rarely allowed into law firms as lawyers until the 1960s.³⁶ At that point, the entry of token women lawyers began.³⁷

At around the same time, firms began to undergo a second phase of organizational restructuring that led law firms to employ more women.³⁸ Their size grew exponentially through the 1980s because of at least two factors.³⁹ First, the growth of new civil rights, environmental, and occupational health and safety laws, among others, gave rise to a need for lawyers to handle litigation in these new specialized areas.⁴⁰ Second, the average American citizen became dramatically more litigious.⁴¹

Additionally, the practice of law became more competitive as a host of new technologies arose (*viz.*, computers, Xerox machines, facsimile machines), and more and more companies began creating in-house legal departments to handle at least some of their legal affairs.⁴² These new competitive pressures, naturally, led law firms to look for ways to cut costs.⁴³

The paralegal profession arose to take over some of these tasks starting in the 1960s.⁴⁴ From their inception in the 1960s, paralegals formed a new tier in the law firm hierarchy between lawyers and secretaries.⁴⁵ Unlike the gentlemen clerks of the 19th century, and like the secretaries that replaced them, paralegals are primarily women.⁴⁶ They are also, as noted above, paid

35. *Id.* (quoted in KAREN MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA, 1638 TO THE PRESENT* 203 (1986)).

36. *Id.* at 44.

37. *Id.* at 43-44.

38. *Id.* at 44.

39. *Id.*

40. *Id.* at 45.

41. *Id.*

42. *Id.* at 45-46.

43. *Id.* at 47.

44. *Id.*

45. *Id.*

46. *Id.* at 47-48.

significantly less than lawyers.⁴⁷ Paralegals, therefore, allow law firms to be more cost-effective.⁴⁸

Thus, in this second phase of the development of the contemporary law firm, women entered the profession in two capacities. First, an increasing number of women entered the profession as lawyers. Second, an even greater number of women entered the profession as paralegals. Women still predominantly filled the subordinate tiers of the firm hierarchy as secretaries and paralegals. And, though women had begun to break into this previously exclusively male domain, men still predominated in the upper tiers of partner and associate lawyers.

In law firms, as in most organizations, traditional structures do not change rapidly. Although some firms have modified their employment practices to offer alternative working arrangements for lawyers, such as part-time or "of counsel" positions, these work arrangements are rare.⁴⁹ Moreover, while they undoubtedly make it easier for women who want to raise children as well as pursue a career as a lawyer, part-time and "of counsel" work arrangements do little to change the basic hierarchical structure Pierce describes.⁵⁰ Indeed, that structure is still the norm today in both law firms and in the legal departments of corporations. This hierarchical structure is the backdrop against which Pierce studies the division of emotional labor along professional and gender lines.

C. *The Gendered Tiers of the Modern-Day Law Firm — Where We Are Now*

Pierce's typical modern-day law firm continues in the Cravath tradition. It is a "male-dominated bureaucracy with a professional, predominantly male tier on top and a non-professional, predominantly female, tier below whose primary service is to support members above."⁵¹ Within that structure, Pierce found a great deal of sex-stereotyping. The top tier — the law-

47. *Id.* at 32.

48. *Id.* at 47.

49. See, e.g., Amy Stevens, *More Firms Let Partners Work Only Part Time*, WALL ST. J., July 10, 1995, at B1.

50. Some might argue that these alternative arrangements actually hold women back and keep the upper echelons of a firm predominantly male. It generally takes longer for a woman working part-time to "make partner." Women who choose to be "of counsel" are generally not considered "heavy-hitters" within the power structure of law firms.

51. PIERCE, *supra* note 2, at 29.

yers — are thought of as “do[ing] the intellectual, analytic, prestigious, and well-paid work.”⁵² As Pierce points out, such work is often referred to as “men’s work” because it requires, among other things, “objectivity” and “object orientation.”⁵³ On the other hand, the lower tier — paralegals — supposedly do “routine, semi-skilled, low status, and low-paid . . . work.”⁵⁴ The work typical of paralegals is often considered “women’s work” because it entails helping or supporting others and a more “person-centered,” empathic orientation.⁵⁵

However, as Pierce also points out, there is a fair amount of crossover between the work attorneys and paralegals perform.⁵⁶ Both attorneys (at least beginning attorneys) and paralegals review documents in document productions. In some firms, paralegals also do legal research and writing.⁵⁷ Thus, although there is stereotyping about the roles lawyers and paralegals play in law firms, the boundaries between those roles are not so clear-cut when closely analyzed.⁵⁸

The rigid stratification of law firms also dictates, to a large extent, who socializes with whom.⁵⁹ Pierce tells the story of an associate who was admonished because he was observed lunching with a secretary.⁶⁰ He was told that professional people do not eat lunch with secretaries.⁶¹ While I never heard anything so extreme in either of the firms where I worked, the social stratification at both firms was significant. With few exceptions, neither paralegals nor secretaries tended to socialize with lawyers outside the firm.⁶² And, it certainly was more common for

52. *Id.* at 31.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. Pierce takes the position that sex-stereotyping is responsible for the significant income differentials between lawyers and paralegals, as well as differences between the types of offices and furniture lawyers and paralegals receive. *Id.* at 32-33. There may be some truth to this theory. However, the theory appears to be based on nothing more than the fact that paralegals are predominantly female while lawyers are predominantly male. One could as easily draw the inference that the differences between salary and perks reflect the more extensive and intensive professional training that lawyers receive.

59. *Id.* at 36.

60. *Id.*

61. *Id.*

62. There were, as Pierce mentions, some clear exceptions to this generalization, such as a few of the secretary-boss relationships that provide endless fodder for lunchroom gossip. *Id.* at 37. However, Pierce neglects other, less glamorous, but

paralegals to lunch with paralegals and for lawyers to lunch with lawyers than for the two groups to mingle.

Additionally, the higher up the lawyer was on the firm's ladder of power, the more pronounced the stratification became. While a mid-level associate might go to lunch with a paralegal or secretary from time to time, most partners almost never did so. Because most secretaries and paralegals are women and most lawyers are men, the lack of social interaction between the tiers of the firm reinforced the gendered division of the firm.

Finally, Pierce notes that the stratification in law firms seriously limits the mobility of lower-tier employees within the legal profession — or, at least, within the law firm.⁶³ She points out that only one of the lawyers within Lyman, Lyman & Portia had been a paralegal.⁶⁴ No one who had been a paralegal returned to the firm to practice as a lawyer.⁶⁵ According to Pierce, this lack of mobility is much greater for women than for men because lawyers tend to encourage male paralegals to go on to professional school more than they encourage women paralegals to do so.⁶⁶

In my experience, Pierce overstates the lack of mobility of paralegals. To begin with, many of the more experienced paralegals I knew chose to remain in their profession because they did not want to be lawyers. They did not want to work the long, grueling hours. Nor did they want the angst associated with always being the ultimately responsible party for every case they worked on. Thus, the absence of former paralegals from the ranks of lawyers is often due to paralegals' own aversion to becoming lawyers.⁶⁷

perhaps more meaningful inroads into the stratification of social spheres in law firms. In the firms where I worked, young attorneys, both men and women, formed lasting friendships with paralegals and secretaries. These friendships may demonstrate that, with younger attorneys entering the field, some of the structural stratification of law firms is breaking down.

63. *Id.* at 35.

64. *Id.*

65. *Id.*

66. *Id.*

67. Later in the book, Pierce describes paralegals' aversion to becoming lawyers as a rationalization male paralegals used to distance themselves from what she considers the demeaning nature of their work and to make themselves feel important. *Id.* at 171. It may well be a rationalization for some. However, the decision not to undertake a lifestyle so fraught with anxiety is not only a rationalization but also an entirely rational decision.

A partner's sense of ultimate responsibility extends not only to the partner's every move, but also to the decisions and actions of every associate, paralegal, and secretary on the partner's case. A small slip of the pen can be momentous. Every

Nevertheless, despite their firsthand view of the tremendous stress inherent in lawyering, a number of paralegals, both men and women, do go on to practice law. In my second firm, three of the most well-respected lawyers in the firm had been paralegals before they went to law school. Two of those lawyers were women. Moreover, more and more of my students, both men and women, have worked in a law firm, either as paralegals or, less frequently, as secretaries. Many students want some sense of what working in the law is like before they decide to commit themselves to three years of hard work and the very expensive bills associated with legal education. Therefore, while Pierce may be right that it is difficult to return as a lawyer to the *particular* firm where one worked as a paralegal, it is not as uncommon as she suggests for paralegals, both male and female, to go on to become successful law students and lawyers at *other* firms.

Overall, this section of the book portrays law firms as very bleak work environments, where the upper tier of employees — primarily men — exploits and oppresses the lower tiers of employees — primarily women. This portrait is perhaps overly grim and certainly overly simplistic. Not all the “ogres” in firms are male lawyers; nor are all the “angels” female paralegals or secretaries. There is clear and firmly rooted social stratification among tiers of workers in firms, and women are particularly concentrated in the bottom tiers. Nevertheless, the stratification is not as rigid and unassailable as Pierce suggests.

In the end, however, despite Pierce’s tendency to exaggerate, she is correct that women have made their way into law firms very gradually and, once there, they have been allowed into the upper tiers of employment very slowly and in small numbers. As one friend who is a highly successful woman partner recently put it:

I used to tell young women lawyers to just be themselves and things would work out if their work was good. I don’t say that anymore, though I still believe it is how it should be. I saw too many capable women attorneys suffer or fail by just being themselves. Now I tell them they can only be themselves

partner is ultimately the one responsible for such errors regardless of who makes them. Thus, the partner has to worry constantly about not only the errors he or she might make, but also about the potential errors of everyone working on the case.

Moreover, because partners are generally liable for each other’s torts, every partner in a law firm, in the final analysis, has to worry about how his or her colleagues are handling their cases. The stress is tremendous. It is not surprising, then, that some paralegals decide they do not want to become lawyers.

within the strictures of acceptable behavior at the firm and that a certain degree of conformance to the "male" norm is necessary to succeed. The place of women in the law is changing, but the pace is geologic.

III. OF MOTHERS AND SONS — THE GENDERED DIVISION OF EMOTIONAL LABOR IN LAW FIRMS

In chapters 3 and 4, Pierce explores in detail the types of emotional labor attorneys and paralegals are called on to perform both within and outside the firm or, in the case of Bonhomie Corporation, within the corporate context. Although she describes several different modes of emotional labor for each type of employee, Pierce does not go much beyond the standard "Rambo litigator" and "Mothering paralegal" hailed in the respective titles of these chapters.

Moreover, Pierce sometimes ignores the parallels between lawyers' and paralegals' emotional behavior to make them fit the very different categories in her hierarchical structure. One is always in the realm of inference when attaching emotional labels to human conduct. I would have liked to see Pierce explore more interpretations of the conduct she observed and examine the commonalties between lawyers' and paralegals' emotional labor in more depth. Nevertheless, Pierce provides us with some intriguing hypotheses about the ways in which both attorneys and paralegals use their emotions in their professional relationships.

A. *The Sons — The Lawyers*

Few would debate that the adversary system itself is a masculine system. Even the metaphors commonly used to describe litigation often involve images of the traditionally male arenas of war and sports.⁶⁸ Litigators are commonly referred to as "hired guns," for example. And, when the discovery squabbles between lawyers become overwhelming, a judge will often appoint a "referee" to keep the lawyers in check. Images of sex, insofar as they represent a form of domination and aggression, are also sometimes used to conceptualize the field of litigation.⁶⁹ For example, lawyers might describe a judge as having really "screwed" them

68. For a thorough exploration of these metaphors and how they are used, see Elizabeth G. Thornburg, *Metaphors Matter: How Images of Battle, Sports, and Sex Shape the Adversary System*, 10 WIS. WOMEN'S L.J. 225, 232-40 (1995).

69. *Id.* at 240-42.

when the judge denied a motion they thought they should win. And, like war, sports, and sex conceptualized as conquest, litigation is a binary system where one party wins (or dominates) and the other party loses (or is dominated).⁷⁰ As Pierce also points out, “[t]his emphasis on winning [and domination] is tied to traditional conceptions of masculinity and competition.”⁷¹

Because winning and domination are concepts so deeply embedded in our adversary system of litigation, lawyers often interpret their duty to be “zealous advocates”⁷² to require them to do anything they can, within the bounds of the law, to win.⁷³ “Doing dominance,” as Pierce calls it, is what many litigators believe they must do to win their cases and attain their professional ends.⁷⁴ This can, of course, be accomplished through a variety of pretrial and trial strategies and techniques — some involving appeals to emotion and some to reason. In practical application, most techniques appeal to both.

However, Pierce focuses primarily on the emotional labor of litigation lawyers. She describes this labor as taking one of two modes — “intimidation”⁷⁵ or “strategic friendliness.”⁷⁶ According to Pierce, both of these forms of emotional labor, as used by lawyers, are driven by the masculine desire to dominate.⁷⁷ Thus, according to Pierce, even the emotional labor performed by litigation lawyers is primarily masculine.⁷⁸

Intimidation is the more obvious way in which lawyers try to dominate the other side. They may try to intimidate at a substantive level, at an emotional level, or both. For example, lawyers generally try to defuse the impact of the other side’s witnesses on cross-examination. Lawyers may do this by destroying the witness’s credibility. Or, they may simply undermine a witness’s effectiveness by requiring the witness to confirm facts favorable to the lawyer’s side of the case. Either way, lawyers use intima-

70. PIERCE, *supra* note 2, at 54.

71. *Id.* at 73.

72. MODEL RULES OF PROFESSIONAL CONDUCT Preamble (1995); *see also* Rule 1.3 cmt., *supra*.

73. PIERCE, *supra* note 2, at 73. Pierce quotes one litigator as stating: “So long as you don’t violate the law, including the rules of procedure and evidence or do violence to the canons of ethics, winning is the only thing that matters.” *Id.*

74. *Id.* at 52.

75. *Id.* at 59.

76. *Id.* at 71. *Gender Trials* defines “strategic friendliness” as the art of using “charm or flattery to manipulate others.” *Id.* at 52.

77. *Id.*

78. *Id.* at 53.

tion to control the witness on the stand by asking closed and leading questions to which they know the answer.⁷⁹ These are ways in which the *substance* of a cross-examination can be intimidating.

Gender Trials, however, focuses more on *emotional* intimidation. Pierce suggests that lawyers routinely use hostility and anger to emotionally intimidate the witness. Pierce bases this conclusion on her attendance at some NITA trial advocacy classes, where the instructors apparently focused on "psyching oneself up" to get mad before a cross-examination,⁸⁰ and on depositions she attended.⁸¹ According to Pierce's description, the NITA classes advocated that one could not control a witness without being openly aggressive, if not hostile.⁸²

However, the best of the current literature on trial advocacy urges the opposite approach. For example, advocating a professional approach to cross-examination, the authors assert:

True, situations have undoubtedly arisen in which a witness has been so obviously mendacious that a factfinder has relished counsel's angry, hostile cross-examination questioning style. But such situations are rare. You can be firm and insist on an answer to which you are entitled. But you should not take such advantage of your power to ask leading questions that you belittle a witness. In most cases, all you would accomplish is to generate a factfinder's sympathy for the witness.⁸³

And, in my practical experience as well, the most effective and well-respected litigators were rarely those who used blatant hostility and aggression to accomplish their goals. Indeed, the most effective male lawyer with whom I worked was far from Rambo-like. In fact, he was particularly low-key in his demeanor inside and outside the courtroom. Nevertheless, he was well-respected in the Los Angeles legal community, having earned a wide reputation among judges and lawyers for being not only a brilliant strategist but also fair and trustworthy.

Pierce would say the lawyer I described was just being "strategically friendly." To some extent, that is true. Litigation law-

79. ALBERT J. MOORE ET AL., TRIAL ADVOCACY: INFERENCES, ARGUMENTS, AND TECHNIQUES 161-66 (1996). These questions are considered "safe" because they allow the lawyer to impeach the witness if the witness does not give the desired testimony. *Id.* at 164.

80. PIERCE, *supra* note 2, at 62.

81. *Id.* at 64-67.

82. *Id.* at 63.

83. MOORE ET AL., *supra* note 79, at 167.

yers, including the lawyer described above, do use strategic friendliness to “win over” others.⁸⁴ Much civil litigation involves negotiation — a two-way dialogue in which, if you offend the other side, you are far less likely to get what you and your client ultimately want. Additionally, as this same male partner also pointed out, “what goes around comes around.” If you accommodate and grant the other side an extension, they are far more likely to return the favor when you need it.

However, many lawyers use a more friendly demeanor for another reason as well. They may want simply to reduce the personal strain of constantly putting up an intimidating front. Contrary to the image *Gender Trials* paints of lawyers, particularly male lawyers, many litigators do not enjoy aggressive or hostile exchanges. Because such exchanges are not generally necessary to successful litigation, and because they are such an unpleasant way to attain one’s professional goals, many litigators make the conscious decision to engage in a more courteous kind of “combat.” They make substantively aggressive motions and take zealous stands on behalf of their clients, but they also behave civilly toward the other side. Thus, both male and female lawyers may choose a more collegial style of lawyering not only for strategic reasons but also for the sake of their own psychological well-being.

Because I see this less emotionally aggressive approach as more effective, not only in cross-examination, but in lawyering generally, I try to instill in my first-year law students a sense that they can behave professionally and courteously even when being substantively aggressive. As described above, a “scorched earth” emotional approach rarely yields any greater gain for the client inside the courtroom or out. On the contrary, it often creates such bad will that the other side is less likely to give you or your client what you want. Moreover, it often engenders unnecessary emotional wear and tear not only on the lawyer on the receiving end, but also on the lawyer dishing out the emotional hostility.

In ignoring these other motives for lawyers’ use of strategic friendliness, Pierce’s analysis is overly simplistic. For example, in an attempt to depict lawyers’ use of strategic friendliness as more manipulative and domineering than others’ use of this technique, Pierce contrasts lawyers’ strategic friendliness with the strategic

84. PIERCE, *supra* note 2, at 52.

friendliness of flight attendants.⁸⁵ According to Pierce, lawyers use strategic friendliness only manipulatively, to dominate either the other side or their clients.⁸⁶ Lawyers' strategic friendliness derives from a "peculiar combination of sensitivity to other people and, at the same time, ruthlessness."⁸⁷ Others, flight attendants for example, use strategic friendliness to be supportive and subordinate.⁸⁸

This view may have some superficial appeal because lawyers are generally thought of as domineering, while flight attendants are generally thought of as subordinate. However, at least one underlying purpose of flight attendants' strategic friendliness is to dominate, rather than be subordinate to, the passengers. While we are airborne on a commercial flight, flight attendants have more power over our actions than anyone. They tell us when to sit down and fasten our seat belts and when to put our tray tables and seat backs up. We may not move about the cabin without their permission. Thus, while they may *seem* subordinate to passengers, flight attendants, in a very real sense, dominate and control the movements and activities of passengers. And, like lawyers, the most successful of them do so by being friendly rather than harsh.

Thus, while there is some truth in Pierce's description of the emotional labor lawyers perform, her analysis of the motives behind their emotional labor is one-dimensional. Lawyers do, to some extent, seek to control and dominate with their strategic friendliness, but so do flight attendants and, I would guess, most others who use strategic friendliness as a form of emotional labor. Indeed, as discussed below, at a deeper level, there is considerable overlap between much of the friendly and supportive emotional labor Pierce describes paralegals as performing and lawyers' use of strategic friendliness.⁸⁹

B. *The Mothers — The Paralegals*

Indirectly, paralegals are also part of the adversary system. As Pierce points out, paralegals often perform many of the same legal research and fact investigation tasks as junior lawyers.⁹⁰

85. *Id.*

86. *Id.*

87. *Id.* at 80.

88. *Id.* at 52.

89. *See id.* at 31.

90. *See supra* note 56 and accompanying text.

However, they are not generally placed in the directly competitive positions that lawyers are. For instance, they are not usually asked to argue or negotiate with opposing counsel. Nor do they represent clients in court. Therefore, paralegals are not directly involved in the win-or-lose fray of litigation.

Moreover, paralegals form part of the support staff of a law firm. When they review documents or prepare witnesses, paralegals do so at the behest of the lawyers in charge of their cases. Thus, paralegals' work is subordinate to that of the lawyers whom they support. Because law firms are generally quite hierarchical, paralegals' subordinate role defines their status within a firm. That is, paralegals are fairly low on the totem pole.⁹¹

Pierce argues that, as the substantive work of paralegals is subordinate to and supportive of the lawyers with whom they work, so too is their emotional labor:

Much like the traditional wife and mother who defers to the wishes of her husband and children and attends to their psychological needs, the paralegals and the legal secretaries in the firms [Pierce] studied were expected to show deference for the attorneys for whom they work[ed] and to take care of their emotional needs.⁹²

According to Pierce, paralegals defer to lawyers by recognizing the attorney as the authority and not challenging the attorney as an equal.⁹³ They "affirm the attorney's status by enduring the humiliation" they feel when an attorney's anger and hostility spills out into their relationship.⁹⁴ They act uncritical of the attorneys for whom they work, regardless of what they really think.⁹⁵ They also put up with being treated as imminently interruptible; an attorney can walk into a paralegal's office with a problem at any time.⁹⁶ Paralegals are "invisible" in the hallways; attorneys feel free to walk right by them without acknowledging their existence.⁹⁷ Yet, paralegals in their caretaker roles are "expected to appear pleasant and cheerful no matter what else they are trying to accomplish."⁹⁸

91. Pierce notes that, "Much as in a caste system, in the law firm one's occupational status determined how one would be treated." PIERCE, *supra* note 2, at 96.

92. *Id.* at 86.

93. *Id.* at 91.

94. *Id.*

95. *Id.* at 95.

96. *Id.*

97. *Id.* at 96.

98. *Id.* at 98-99. Pierce notes with apparent disdain that paralegal review forms included categories evaluating these types of "people skills." *Id.* at 88. Pierce seems

I agree with Pierce that both the emotional labor of paralegals and the tasks they perform are generally subordinate to and supportive of lawyers. I also agree that paralegals' emotional labor entails being deferential to attorneys and often enduring unnecessary and unfair humiliation. However, I disagree with Pierce's depiction of the humiliation and deference as the exclusive province of paralegals.

In fact, these inequitable ramifications of the hierarchical structure of law firms extend beyond paralegals to junior lawyers as well. To begin with, junior lawyers generally do the "behind the scenes" gruntwork while the senior lawyers get all the glory. The junior lawyers do the long hours of legal research and brief-writing. Then, the more senior lawyers whisk out their red pens and put the finishing touches — and their signatures — on the briefs.

Equally as important, junior lawyers suffer much the same humiliation as paralegals at the hands of more senior lawyers. One woman lawyer I know recalls this example of the denigration she experienced as a young associate. A partner in her office ran into a lawyer who was opposing her at a bar. The partner had played no role in the case involved and had no significant knowledge of it. Nevertheless, because the partner was a friend of the opposing lawyer, he took it upon himself to try to settle the case over a few beers.

Apparently, the partner and the opposing lawyer reached a gentlemen's agreement as to the settlement terms. When the woman lawyer suggested to the partner that they should run the settlement by her client before agreeing to it, the partner looked at her and said, "You can't mean you expect me to call [the opposing lawyer] and go back on my word." The woman lawyer replied that she did not know how the client would feel about the settlement, but that she did not think they could agree to it with-

to suggest that it is inappropriate and even demeaning to evaluate paralegals' relational skills. *Id.* Presumably, she feels that only their technical skills should be evaluated. However, relational skills are important for both paralegals and attorneys. And, although Pierce never addresses whether attorneys are evaluated for their people skills, in fact, they are. Both my firms' evaluations for attorneys contained categories of evaluation for interpersonal skills very similar to those laid out in *Gender Trials*. *Id.* One attorney review form for a major Los Angeles firm evaluated lawyers for "intra-office relationships, relationships with clients, and relationships with third parties" as well as for leadership capabilities. Those categories are similar to the "(7) relationship to clients or professionalism, (8) work habits and relationship to others, and (9) managerial ability" paralegal evaluation categories Pierce discusses. *Id.* Other firms have similar forms.

out the client's assent. The partner sat in silence for a moment and then yelled, with the door to his office wide open, "Get the *fuck* out of my office!" The partner never deigned to apologize for his behavior. In fact, he acted as if it had never happened. The woman lawyer, however, has never forgotten how demoralized she felt as she left the lawyer's office to face all those who had heard the partner's outburst.

Most associates I know have similar, or worse, "war stories" to tell. All of us who have been associates have experienced denigrating interactions with our partners. Pierce's description of the emotional labor of paralegals and lawyers would have been richer and more accurate had she explored this area where lawyers' and paralegals' experiences coincide.

Pierce ignores the parallels between lawyers' and paralegals' emotional labor in other ways as well. Indeed, Pierce contends that, while there is a great deal of crossover between the technical tasks attorneys and paralegals must perform, there is essentially no crossover between the predominantly masculine emotional labor performed by lawyers and the predominantly feminine emotional labor performed by paralegals.⁹⁹ Pierce ultimately concludes that the nurturing and deferential emotional roles of paralegals reinforce and perpetuate the gendered structure of the law firm — with "paralegals becom[ing] feminized objects."¹⁰⁰

Pierce distinguishes the reassuring done by paralegals from the reassuring done by lawyers as follows:

Through . . . appeals to professional expertise, [the lawyer] underscores his superordinate position in relation to the client. By contrast, paralegals reassure attorneys by being supportive and deferential, thereby reinforcing their subordinate position in relation to lawyers. Thus, for attorneys reassuring clients is a way of "doing dominance," whereas for paralegals, it is a way of doing deference.¹⁰¹

Pierce suggests, for example, that a lawyer reassuring his client about how many cases he has handled before and how he cannot fail is somehow different from a paralegal telling a lawyer with whom she works that "everything will be okay."¹⁰² However, this distinction seems overblown. First, the most effective lawyers do not use boasting and promises of success as a method

99. *Id.* at 98-102.

100. *Id.* at 86, 91.

101. *Id.* at 82.

102. *Id.*

of bolstering their clients' spirits. Rather, they acknowledge and recognize the client's feelings and assure the client that they will do their best to help.¹⁰³ Those of us who teach a client-centered approach to lawyering emphasize, from the first year of law school, how foolish it is for lawyers to promise either directly (through promises of success) or indirectly (through boasts about their expertise) that a client's case will be successful. Because there is much uncertainty as to the likely outcome of most cases, a lawyer who makes promises of success is always in danger of seriously misleading the client.

More importantly, even lawyers who make foolish promises of success to assuage their client's doubts are not so very different from the paralegals who tell the lawyers they work for that "everything will be okay." Here, at least arguably, there are more similarities than differences. While there may be some altruism in the motives of paralegals and lawyers, both are also probably acting out of self-preservation. By assuaging the doubts of those higher up in the "food chain," they hope to retain their jobs.

Although she does not seem to recognize it, some of Pierce's own quotes from lawyers and clients portray these similarities. For example, Pierce quotes one lawyer who states, "Many clients have to be reassured, told the same thing over and over again. Clients seldom want to face reality."¹⁰⁴ Similarly, in describing the work of a paralegal, Pierce relates, "Jenna spent most of an afternoon doing what she called 'handholding.' By this she meant repeatedly reassuring John that he would make his five o'clock filing deadline."¹⁰⁵

Both the lawyer and the paralegal have to reassure to perform their jobs well. Both must subordinate their own feelings — be they anxiety over the ultimate result of a case or concern over a filing deadline that must be met — to alleviate the stress and anxiety of the person for whom they are working. Pierce suggests that the lawyer's job is easier because he or she gets to *act superior*. However, being able to act superior seems small solace for anyone who has to deny their own inner turmoil for the sake of soothing another.

103. See DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 46-68 (1991).

104. PIERCE, *supra* note 2, at 82.

105. *Id.* at 99.

The real problem, it seems to me, is not so much that paralegals nurture in a feminine way and lawyers do not, but rather, that nurturing within law firms is generally one-sided. While lawyers may nurture their clients, they rarely, if ever, take the time to nurture their subordinates — be they paralegals or junior lawyers. Pierce recognizes this lack of reciprocity: “It is male litigators who can expect to receive nurturing and support from women paralegals and not the reverse.”¹⁰⁶ However, Pierce focuses more on the gendered aspects of the relationship than on the structural aspects of it.¹⁰⁷

Based on my experience, the structural aspects of this one-way street are at least as important as the gendered aspects. The women lawyers with whom I worked were just as likely to need reassurance as the male lawyers. And, they expected to receive it from their subordinates — male as well as female paralegals and secretaries. While women lawyers were more likely than male lawyers to reciprocate and give paralegals reassurance when they needed it, the flow of support was generally in an upward direction. That is, paralegals were more likely to be called upon to reassure lawyers than vice versa, even when the lawyers were women.

In the end, the lack of reciprocity in nurturing is probably based in part on the lack of respect nurturing receives in the adversary system. As discussed below, lawyers are called on to nurture their clients. However, the most glamorous roles in litigation are those associated with competition and battle.¹⁰⁸ This emphasis on the combative aspects of lawyering mirrors the comparative lack of respect our society at large has for those who nurture. For example, teachers and nurses are generally among the lowest-paid professionals in their fields.¹⁰⁹ Unless nurturing becomes a more valuable commodity in our society, those in predominantly nurturing roles will continue to be at the bottom

106. *Id.* at 99, 102.

107. *Id.* at 102.

108. See Thornburg, *supra* note 68, at 249-51.

109. Pierce herself seems to “buy into” this view of nurturing as less valuable — especially when it is done by paralegals. She describes those paralegals who draw satisfaction from nurturing as “nicey-nice” or “fembots.” PIERCE, *supra* note 2, at 202. She explains her contempt as the product of her feminist politics. *Id.* However, feminism hardly seems to justify such a critical and judgmental response. Indeed, Pierce’s response seems incongruous with her own later position that the lives of women legal workers would benefit from law firms “recognizing the diversity and complexity in women’s experiences and identities.” *Id.* at 187.

of hierarchical business structures and pay scales. Furthermore, within hierarchical business structures, nurturing will likely continue to be a one-way, upward flowing stream, with those who provide nurturing considered less valuable than those who receive it. Without giving the societal context much more than a nod, Pierce mistakenly implies that this lack of reciprocity in employment relationships is the legal profession's cross to bear.

IV. NAVIGATING THE ROLES — THE DOUBLE BINDS FOR WOMEN

In chapters 5 and 6, Pierce explores the ways in which lawyers and paralegals conform to and bend the roles created for them in law firms. In these chapters, Pierce strikes at the core issue of the book — being a woman in the law is problematic. How can a woman lawyer be a zealous advocate and still maintain her feminine identity? How can a woman paralegal be nurturing and deferential and not be taken advantage of? The women Pierce portrays amply and accurately demonstrate the double binds women face as litigators.

While she touches on the ways in which men navigate their roles, Pierce's analysis of the men she studied is much less developed. The male lawyers and, to a lesser extent, the male paralegals Pierce describes are not portrayed fully enough to form the basis for much conclusion. Indeed, the male lawyers are almost caricaturesque. Thus, although Pierce's work accurately describes the double binds women face as litigators and the difficulties they face as paralegals, it fails to explore the experiences of "the other gender" — men — as fully as it could. Thus, the book falls short of the promise of a balanced picture implied in its title — *Gender Trials*.

A. *To Conform or Not to Conform? — The Choices Women Lawyers Face*

As Pierce points out, women are still a substantial minority in the practice of law, particularly in litigation.¹¹⁰ Moreover, a substantial number of women still perceive a continued "subtle pervasive gender bias" in the legal profession.¹¹¹ The exclusivity of the white, upper-class male culture at the top of firms disad-

110. *Id.* at 106.

111. *Id.*

vantages women.¹¹² Those of us who teach know that this bias begins in the law school classroom, where women are less likely to speak up, and those who do speak up are more likely than male students to be chastened by their male classmates for “monopolizing” the conversation.¹¹³

Once in the law firm environment, women associates are likely to feel as if they do not “fit in” as well as their male counterparts. They are also likely, at some point in their careers, to experience some form of sexual harassment. This harassment can be fairly mild, as was my experience as a very junior associate. I was waiting with an older male co-defense counsel to be heard by a federal magistrate. The lawyer observed another man sitting on a sofa in the magistrate’s waiting room. He pointed to the other man and said to me, “Why don’t you go over there and sit down by him? You’d make his day!” Or, it can be much more pernicious as it was in the incidents described in *Gender Trials* where more senior lawyers and even judges made verbal and physical passes at young women lawyers.¹¹⁴

Although less pronounced, there are other ways in which women lawyers are made to feel as if they do not belong. For example, women associates are often not invited to participate in long trips or other outings male associates are invited on.¹¹⁵ Furthermore, according to Pierce, even when women are invited, they may feel left out because the topics of discussion at such outings center on sports and other subjects typically of less interest to women than to men.¹¹⁶

112. *Id.* at 112. As Pierce notes, it is not only women who are disadvantaged in this environment; it is minority men as well. Not long ago, one of my minority students spent a summer at a firm that prides itself on its openness to women and minorities. Although the student’s work was praised for being of superior quality, the firm wondered whether the student had the “fire power” to become a good lawyer because he did not act like the typical white male lawyer. Interestingly, the student also did not feel particularly comfortable at the firm. He felt he had more in common with the staff at the firm. Like him, they came from a working-class background. These sorts of “invisible boundaries” are likely to continue to exist until more women and minorities enter into the “inner sanctum” of power in law firms. For that to happen, it is not enough for law firms to simply open their doors to women and minorities. They must stretch the “culture” of the firm to be more accepting of and comfortable for those from dissimilar backgrounds.

113. See generally Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988).

114. PIERCE, *supra* note 2, at 108-09.

115. *Id.* at 107.

116. *Id.*

The exclusion women experience stems not only from the actions of those within the firms and other legal organizations where women work, but also from outside sources, such as clients.¹¹⁷ Significantly, most heavy-hitting corporate clients are run by men. Those men often feel more comfortable with a man handling their cases.¹¹⁸ Thus, many women feel "frozen out" both by the male culture of their firm and by the unwillingness of important clients to work with them. And, of course, important clients are a tremendous part of what gives lawyers the leverage to get to positions of power within law firms.

Against this backdrop, *Gender Trials* describes women attorneys and the choices they make to survive in the predominantly "man's world" of litigation. This is one of the few sections of the book where Pierce offers a more positive vision of the practice of law. In this section, Pierce postulates that women entering the profession can choose to practice in a less adversarial way and that those who make such choices may gradually have some positive effect not only on intrafirm relations but also on the profession in general.

As noted above, without major structural changes, i.e., the entry of more lawyers who choose a caring and collegial mode of practice into the upper echelons of law firms, the positive effects of the entry of women into the profession are necessarily limited. Because Pierce fails to fully address the necessity of a major structural change, *Gender Trials* is somewhat misleading. Nevertheless, I agree with Pierce that women litigators can make, and indeed have made, some difference in the way litigation lawyers behave. As one of my male litigator friends recently put it, "With the increased number of women in the profession, the continued effectiveness of straight-out aggression has to be questioned. Women lawyers tend not only to be less aggressive themselves; they also tend to be more offended by out-and-out aggression than men lawyers might be."

Pierce analyzes the percentages of women who have tried to make a difference in the way lawyers practice. In Pierce's study, a relatively small percentage of women, approximately sixteen percent, still made the choice most of the first women lawyers in the field felt they had to make — minimizing their feminine

117. *Id.* at 109-10.

118. *Id.* at 110.

selves by adopting a male model.¹¹⁹ A larger percentage, twenty-eight percent, sought to reshape their roles as advocates to be less adversarial and more consistent with their caring orientation.¹²⁰ Finally, the largest percentage of women in Pierce's study, fifty-eight percent, "split the role" so that they were aggressive and adversarial in their lawyer roles outside the office and caring inside the office.¹²¹

Pierce gives us some vivid examples of women breaking the adversarial mold, both inside and outside the office. As noted above, most women lawyers chose, to some extent, to ignore the hierarchical relationships within the law firm. A woman Pierce calls Jessie put it this way:

A lot of lawyers think because they have a law degree, they're smarter than everyone else. I've never suffered from that delusion. I value what everyone on my team has to offer. . . . If [a secretary or paralegal] tells me I did something wrong, I listen. She's been in the office longer than I have and she knows a lot of things I don't. . . . The practice of law encourages hierarchical thinking. If we break that down, we can be better lawyers, better people.¹²²

Jessie also exemplified the substantial minority of women lawyers who went even further and looked for ways to practice without being completely adversarial. For example, when Jessie saw that the plaintiff in one of her cases seemed eager to settle, but always backed out whenever it came to finalizing a negotiation, she decided that there must have been some undisclosed reason why the plaintiff was not willing to settle. She felt that if she gave him a forum in which to express whatever was troubling him, he would be more willing to settle the case. Jessie called a settlement conference with both the plaintiff and her client present and explained how she suspected the plaintiff's repeated refusals of reasonable settlement offers indicated to her that he had some deep antagonistic feelings toward her client. She told the plaintiff: "[I] have a feeling that the only way you [and my client] can ever resolve this dispute is if we get to the bottom of this

119. *Id.* at 121. Because Pierce's view of the litigation lawyer is as a "Rambo," I assume here that Pierce's term "male model" refers to an adversarial, "tough guy" approach that manifested little or no affect. I do not assume, however, it encompasses behaving with outright hostility or "jerk" behavior. As discussed above, I do not think behaving with outright hostility is tantamount to the male model, though there are lawyers, both men and women, who choose to practice that way.

120. *Id.*

121. *Id.*

122. *Id.* at 125.

antagonism between the two of you. If you prefer not to discuss it, I'll respect your wishes."¹²³

As it turned out, the plaintiff was very angry with Jessie's client for marrying his ex-wife. After the two men had had an opportunity to air their grievances about this issue, Jessie "brought the discussion back to business."¹²⁴ She asked the plaintiff whether, after airing his real grievance, he would now be willing to accept her client's offer of settlement. The plaintiff accepted.

Analyzing Jessie's creative attempt at conflict resolution, Pierce accurately states:

Jessie's approach contrasts sharply to the adversarial model. Rather than focusing only on her client's interests, she attempted to create a resolution by considering the interests of all the parties involved. Furthermore, her relationship to the plaintiff was not purely instrumental and manipulative, but one of genuine interest and concern. She wanted to get to the bottom of things, and she believed that a more personal approach would work: "People think I am a pushover because I'm nice and pleasant. But sometimes I think practicing law can be different if you're pleasant and treat people with respect."¹²⁵

Lest some protest that Jessie's approach of considering all the parties' interests was a breach of her duty to zealously represent her client, it is important to note that Jessie's approach, in fact, put her client in a better position than he would have been in had she not tried to accommodate the emotional needs of her client's adversary. Had Jessie not provided the plaintiff with a forum in which to vent his anger about the defendant's marrying his ex-wife, the plaintiff probably would have remained unwilling to accept the defendant's settlement offers. Therefore, Jessie more fully effectuated her duty to zealously represent her client by being less adversarial. At least some of the more modern literature suggests this kind of noncompetitive, global approach to negotiation for both women and men.¹²⁶

Pierce's depictions of women lawyers and the choices they make are quite consistent with what I observed while in practice.

123. *Id.* at 124.

124. *Id.*

125. *Id.*

126. See, e.g., ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (Bruce Patton ed., 2d ed. 1991); Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984).

Not surprisingly, the women lawyers who had first broken into the field were most likely to adopt the typical male model. Given that they were not so much a minority as an anomaly, these women “pioneers” in the law may have felt that acting like a man was their only option for survival. The vast majority of younger women lawyers I know adopted one of the other approaches.

Given the short time frame of her study, Pierce could not explore how women lawyers change their behavior over time. It would be interesting to follow the women whom she interviewed and evaluate the choices they make over the years. My own experience suggests that those choices do change. At a recent meeting in a law firm where senior women lawyers were offering to mentor junior women lawyers, one bright young woman spoke up and said, “No offense, but if I want a mentor, I’m going to get one that counts. I’m going to get a man. What can any of you do for me?” This young associate was, apparently, headed down the path of adopting the male model.

Shortly after this meeting, a very well-respected senior woman lawyer joined the firm. Extremely courteous and feminine, even when taking substantively tough positions vis-a-vis an opponent in a lawsuit, this senior woman lawyer is the diametric opposite of the male model. When the junior woman lawyer was assigned to work with the senior woman lawyer, the junior woman lawyer soon began to lose her abrasive exterior and to develop a work persona that was more consistent with the warmer, more caring person she really was. Despite her earlier view that only men lawyers could offer her any valuable assistance, the junior woman lawyer had adopted a female mentor — or at least a female role model. In doing so, the young woman lawyer found that, instead of having to bend her personality to conform to a more “male” persona, she could be truer to her own values.

In short, women lawyers evolve different emotional styles over the course of their careers in the law.¹²⁷ Moreover, women lawyers — and men lawyers too, for that matter — should develop a range of emotional personae to use in different situations. For example, in negotiating a pretrial conference order, a woman lawyer may decide to try to work cooperatively with the opposing lawyer toward an order that satisfies as many interests as possible of both parties. Some opposing lawyers will respond

127. Unfortunately, the darker side of this may be that, to fit in with the “guys” at the top of the power structure, some women lawyers may adopt a more male model as they ascend the hierarchical ladder of the firm.

by working cooperatively; others will respond by pushing to take advantage because they perceive the woman's cooperative approach as weak. Thus, even if a woman decides to be more caring at the office, she may find there are some opposing counsel with whom she will have to deal more adversarially to avoid being taken advantage of.

This does not mean, however, that women lawyers — or any lawyers — have to behave discourteously or engage in “guerrilla warfare” with opposing counsel. It merely means that all lawyers who develop a more collegial style of practice have to be aware that some opposing counsel will perceive this style as a weakness and try to take advantage. With those opposing counsel, one may have to adopt a tougher stance — at least substantively.

Regardless of the emotional lawyering persona or personae a woman chooses, as *Gender Trials* suggests, a woman lawyer has less range within which to operate than a man. When women lawyers are not aggressive enough, they are viewed as too weak to be effective litigators.¹²⁸ When they are too aggressive, women lawyers are labeled “strident” or even “bitchy.”¹²⁹ Men, on the other hand, are more likely to be lauded for their aggressive tactics.¹³⁰ Pierce calls this the “double bind” for women lawyers.¹³¹ According to Pierce, the double bind is founded on the perception that “good” women are caring and concerned.¹³² People “perceive aggressive women, consciously or not, as inappropriate.”¹³³ On the other hand, many people also perceive nonaggressive lawyers as ineffectual. Therein lies the double bind. To be successful, women must find a middle ground that is neither too aggressive, nor too conciliatory. It is not easy.

In fairness, it must be said that Pierce gives short shrift to the men who choose different emotional personae in firms. The title of her chapter is “Women and Men as Litigators.” Never-

128. PIERCE, *supra* note 2, at 113, 115.

129. *Id.* at 113-14, 115. Pierce also states that women are denigrated for using strategic friendliness because they are accused of using their “feminine wiles” to get their way. Pierce's strategic friendliness by definition involves some wiliness—feminine or not. However, I never saw a woman lawyer criticized for strategic friendliness. Pierce may be correct that men and women who employ strategic friendliness face something of a double standard. However, because this double standard is not as pervasive as the double standard regarding aggressive tactics, it does not seem as pernicious.

130. *Id.* at 113.

131. *Id.*

132. *Id.* at 114.

133. *Id.* at 116.

theless, she spends comparatively little time exploring the ways in which men have chosen to forge less adversarial litigation personae for themselves. Pierce does mention a few men attorneys who are friendly with office staff. However, she characterizes them as being manipulative and “strategically friendly.” In contrast, Pierce characterizes women who act similarly as being genuinely concerned with their interpersonal relationships with staff. This, in my experience, does not bear out in reality.

Certainly, there were uncaring male lawyers with whom I worked. To give a particularly egregious example, one lawyer I know of simply left some typing on his secretary’s desk and returned to a phone call with a client when he saw that his secretary had passed out behind her desk. Nevertheless, there were a number of men lawyers who genuinely cared about what happened to their secretaries and paralegals, and who spent considerable time helping them when their personal lives were falling apart. Thus, Pierce’s description of “Men and Women as Litigators” is extremely one-sided. The reader is left with a very unclear picture of how many men litigators have chosen models other than the traditional “male model” and how they have implemented their choices.

In the end, however, this chapter is the book’s most hopeful because it gives such striking examples of how women lawyers have chosen to forge different paths from the traditional adversarial model. Pierce’s descriptions of women attorneys who have chosen a style emphasizing mutual trust and respect, rather than suspicion and combativeness, offer to all who work in the law, both men and women, some tangible evidence that the practice, adversary structure though it is, can be more humane and more enjoyable. In constructing less hostile emotional styles and lawyering successfully, these women begin to transcend the hierarchical structure of the law firm and the adversarial structure of the law.¹³⁴

B. *Saving Face — The Choices Paralegals Make to Maintain a Sense of Dignity*

In contrast to women in the lawyer tier at law firms, women in the paralegal tier are a strong majority. Yet, according to Pierce, the emotional challenges women paralegals face in working with their mostly male employers are at least as difficult as

134. See *id.* at 142.

those faced by women lawyers, who must craft a workable identity for themselves in a predominantly male world.¹³⁵ Paralegals, particularly women, also face a double bind in their emotional labor. As noted above, the primary emotional labor demanded of paralegals in law firms is nurturing — caring for and being deferential to lawyers.¹³⁶ According to Pierce, paralegals who define themselves more relationally and consent to the emotional labor demanded of them are exploited as nurturing women.¹³⁷ On the other hand, paralegals who openly resist the demands placed on them are considered problematic at best and uncooperative at worst.¹³⁸

Pierce explores the differences between how men and women paralegals cope with these demands. First, Pierce seems to feel that men paralegals have an easier time because they have greater prestige even as paralegals.¹³⁹ They are more visible than women because they are more likely to be mistaken for lawyers.¹⁴⁰

While they may be more visible, my own experience does not support Pierce's argument that men paralegals have greater prestige than women paralegals. There were only a handful of men paralegals at the firms where I worked. Contrary to Pierce's observations, they were not in the most key, influential paralegal positions in the firm. In both firms, the supervising paralegal was a woman. Moreover, certain of the women paralegals often received the best assignments because the lawyers tended to prefer their superior organization, efficiency, and attention to detail. Although she makes no mention of it here, Pierce earlier suggests that a similar preference existed in her case study firms.¹⁴¹ Thus, to some extent, Pierce's own observations undercut her ultimate conclusions regarding the treatment of men and women paralegals.

Pierce also argues that, like men lawyers, men paralegals have greater emotional range than do women. First, Pierce found that lawyers allowed men paralegals to go farther in expressing their anger at mistreatment than women.¹⁴² Although

135. *See id.* at 174-75.

136. *Id.* at 102.

137. *Id.* at 169, 174.

138. *Id.*

139. *See id.* at 144-45.

140. *Id.* at 149.

141. *See id.* at 89.

142. *See id.* at 149.

they censured men paralegals for actual outbursts, lawyers did not take men paralegals to task for coolly setting limits on their exploitation. On the other hand, lawyers reproached women paralegals if they refused even the most demeaning demands from the lawyers with whom they worked.¹⁴³

Second, Pierce contends that lawyers generally expected less nurturing from men paralegals than they did from women paralegals.¹⁴⁴ According to Pierce, while lawyers were likely to rely on women paralegals to listen to their personal problems, they relied on male paralegals to be “yes-men” who would provide political information and gossip to protect the lawyers’ interests.¹⁴⁵ Here Pierce’s argument seems to be that, because lawyers expected men paralegals to be somewhat less nurturing, lawyers were less likely to emotionally exploit men paralegals even though they were subordinates.

Finally, according to Pierce, the male paralegals she studied had greater range than women paralegals in dealing with the emotional aspects of being a paralegal. Male paralegals were more likely to perform their “caretaking tasks” by being polite or affectively neutral; women were more likely to become affectively engaged.¹⁴⁶ Men paralegals generally considered the nurturing aspects of their job as demeaning — “taking shit.”¹⁴⁷ Women paralegals, on the other hand, generally yielded to the pressure to “mother” the lawyers with whom they worked.¹⁴⁸ Thus, men were able to distance themselves from their work as paralegals.¹⁴⁹ They discussed being a paralegal as merely a stepping stone to a better job.¹⁵⁰ Some described working as a paralegal solely as a means to make enough money to support

143. *Id.* at 92, 149. Pierce describes an incident where a lawyer and paralegal, both bone tired from a three-week trial out of town, stood in line waiting to check in at the airport. The partner demanded that the paralegal count the partner’s more than twenty-five pieces of luggage. She replied, quite reasonably, that she was not his porter. When the attorney began screaming that no one spoke to him “that way,” the paralegal just ignored him. *Id.* When they returned from the trip, the paralegal was transferred to work for another attorney. *Id.* at 149.

144. *Id.* at 147-48.

145. *Id.*

146. *Id.* at 152.

147. *Id.* at 154.

148. According to Pierce, only 10% of the women refused to mother. *Id.* at 155. Over half mothered grudgingly; a little more than a third mothered without resentment. *Id.*

149. *Id.* at 170.

150. *Id.*

their "real jobs" — as artists, actors, or writers, for example.¹⁵¹ Still others simply stated they stayed in the job to maintain a lifestyle where they had enough time to socialize and have fun.¹⁵²

When Pierce and some other women paralegals tried to use a male strategy of distancing themselves from the profession, most male attorneys refused to take them seriously and treated them as dilettantes.¹⁵³ For instance, male attorneys taunted one woman artist about her "dabbling in fingerpainting."¹⁵⁴ And, the male attorneys could never recall what field Pierce was in or that she was getting her Ph.D. rather than her master's degree.¹⁵⁵

Instead of distancing themselves from their job, most women paralegals resisted the demeaning aspects of the job without explicitly distancing themselves from it. Some women paralegals "infantilized" the attorneys for whom they worked.¹⁵⁶ For example, these women paralegals referred to lawyers as babies and themselves as baby sitters.¹⁵⁷ In so doing, as Pierce astutely points out, the paralegals reversed the asymmetry in their relationships with attorneys; the powerful attorneys became helpless infants and the paralegals became all-powerful, all-knowing mothers.¹⁵⁸ Rather than truly caring for the attorneys who were their "infants," however, these paralegals held the attorneys in contempt.¹⁵⁹ Other women paralegals tried to personalize their relationships with the attorneys for whom they worked by be-

151. *Id.*

152. *Id.* at 171.

153. *Id.* at 174.

154. *Id.*

155. *Id.* Pierce also states that it is difficult for female paralegals to distance themselves from their roles as legal assistants because it means "in some sense distancing oneself from one's feminine identity." *Id.* at 175. Because a woman's identity is often tied to her relations with others, distancing oneself from those relations to maintain a sense of dignity is yet another version of the double bind. If a paralegal does not distance herself, her giving and caring capacity is exploited. *Id.* If she does distance herself, she denies a part of who she is. *Id.*

Here, Pierce seems to make an important point. However, her point is a generalization, subject to as many exceptions as the earlier point about women lawyers having trouble integrating their personal caring identity with their aggressive lawyer identity. Some women simply are not very nurturing or caring; those personal characteristics are not part of their identity. For those women, the double bind does not really exist in lawyering. It does in paralegaling, however, because paralegals will be censured for not behaving in a deferential, caretaking manner.

156. *Id.* at 162.

157. *Id.*

158. *Id.*

159. *Id.*

coming friends with them.¹⁶⁰ Still others tried being nice as a strategy for creating a more humane working atmosphere.¹⁶¹

It does seem likely that, as Pierce points out, men have a greater range of acceptable emotional behavior as paralegals, and there is quite a bit of unfairness in this. However, male paralegals also face particularly difficult challenges as male tokens in a predominantly female profession. Female tokens in a predominantly male profession at least have moved up the ladder of status and respect within the community. Women lawyers have to struggle to integrate their feminine identity into the practice of law, but they do not have to “save face” by making excuses for being in a male profession.

Male tokens, however, because they have taken a step *down* the status ladder, have their own double bind. First, like women lawyers, they must find a way to perform the support work required in their job and still feel “masculine.” Second, they must contend with the pressure of having to explain why they are in a traditionally female and lower-tier job.¹⁶² Unlike women lawyers, who feel pressures to conform to the male norms of litigation, male paralegals feel a need to be different from their female colleagues so they can “save face.”¹⁶³ Yet, as she does with other

160. *Id.* at 168.

161. *Id.* at 168-69. According to Pierce, all three of these women’s strategies have serious drawbacks. Infantilizing attorneys backfires when pushed too far. When the attorneys sensed the ridicule to which they were being subjected, they sometimes reacted harshly. *Id.* at 163. Both those who personalized the relationships with the attorneys for whom they worked, and those who used being nice as a means of transforming their working relationships, ran the risk of being hurt by a lack of reciprocity. *Id.* Moreover, all three of these strategies essentially maintain the status quo of the hierarchical structure within law firms.

162. *Id.* at 172.

163. *Id.* at 173. Interestingly, Pierce notes that men paralegals’ need to be different from women paralegals even took the form of opting out of women paralegals’ social events. *Id.* at 146. Pierce implies that this self-exclusion is different from the exclusion of women lawyers from men lawyers’ events. Yet, the reasons Pierce gives for men paralegals’ avoidance of these events are quite similar to the reasons women lawyers were affected by men lawyers’ “boundary heightening” behavior described earlier in the book. *Id.* at 107; *see supra* note 112 and accompanying text. Just as women felt uncomfortable discussing sports at all-male gatherings, so too the male paralegals expressed discomfort at discussing typically female topics, like children. *Id.* at 146. Both instances can be viewed as boundary-heightening behavior. Yet, in my experience, these topics of discussion are just as likely to be genuine preferences as they are to be boundary-heightening behavior. Groups of both men and women should try to open the discussion to more neutral topics when members of the opposite sex are present.

aspects of men's experiences in law firms, Pierce does no more than nod at the challenges men face in this lower-tier profession.

Of course, the double bind of male paralegals is not as restrictive as that of women lawyers, because male paralegals are apparently encouraged to be different and do not face losing their jobs if they are not "feminine" enough.¹⁶⁴ Women lawyers, on the other hand, take real risks when they break out of the male litigator model, particularly in their practice.¹⁶⁵

In the end, because lawyers are in positions of greater power than paralegals, change in the profession will more likely come from lawyers — women and men — who break the mold than from paralegals who do so. Moreover, the caring behavior of paralegals does not need to change. Rather, as discussed above, the lack of reciprocal nurturing from lawyers must alter if we are truly to make litigation practice a more humane work environment.

V. CONCLUSION — A VISION FOR THE FUTURE?

In the final section of *Gender Trials*, Pierce attempts to formulate some ways in which we might change the relationships and relations between attorneys and staff to make the practice of law more humane. Unfortunately, Pierce's suggestions for change take up a mere four pages of her 256-page book. Her ideas would have benefited immensely from further development. They also would have been more comprehensive had she given us concrete details about how to implement them.

Pierce proposes some minor structural changes — that law firms give women secretaries credit for the skills and knowledge they have acquired on the job. For example, she suggests building alternative career ladders into the profession to allow experienced women staff to obtain more challenging and better-paying jobs.¹⁶⁶ According to Pierce, these minor structural changes would encourage intrafirm mobility.¹⁶⁷

Although they sound intriguing, Pierce's proposals for structural change to the career ladder in law firms never go beyond this abstract level. It would have been helpful had Pierce given us some concrete suggestions about how to attain her idealistic

164. *See id.* at 145-46, 150, 157.

165. *See id.* at 141-42.

166. *Id.* at 184.

167. *Id.*

goals. For example, what alternative ladders might provide more challenging and better-paying jobs for women legal assistants?

Pierce's other suggestions for change also suffer from the same lack of well-defined, workable solutions. She counsels that we create a law firm work setting in which attorneys deal with their secretaries with a modicum of courtesy and respect.¹⁶⁸ However, Pierce does not really explore how to attain this laudable goal. How would she bring about the necessary behavioral changes in lawyers who view not only their secretaries and paralegals but also their junior lawyers as subhuman?

Pierce recommends that we educate men and women about what constitutes offensive behavior so that women do not have to undergo even mild forms of harassment and "the playing field" is leveled for them.¹⁶⁹ However, Pierce does not explore what kinds of educational efforts might be necessary to change the behavior of the "old boys" at the top of many firms' hierarchies.

Finally, Pierce suggests that we rework the adversarial model itself to make it more humane and less dependent on an ethic of domination.¹⁷⁰ Because the emotional labor of domination carries over into intrafirm relationships, creating a less adversarial system of litigation could ameliorate the law firm environment as well as the practice in general. As mentioned above, there are scholars who *have* begun to rethink the adversary system. Those of us who teach law can educate our students about less adversarial ways to resolve disputes, such as mediation and negotiation, as well as the benefits of practicing law in a more civil and collegial manner. Nevertheless, our efforts will be undermined without changing those at the top of the hierarchy. Unless we can bring the senior litigation partners who use the "Rambo" model back into the classroom and educate them as well, we run the risk that they will simply erase what we have taught by retraining our students in the old-style adversarial mold.

In summary, *Gender Trials* falls short of its promise in its concluding chapter as well as throughout the book. While Pierce attempts to integrate the micro-level of intrafirm relationships and the macro-level of law firms' hierarchical structure, she never synthesizes a complete vision of the interrelationship be-

168. *Id.*

169. *Id.* at 184-85.

170. *Id.* at 186.

tween the structure and the people who work within it. Her focus centers so much on the micro-level of agency relationships that it downplays too much the unassailable nature of the structure or the adversary litigation system that supports it. Although Pierce has lofty goals for law firms and the practice of law, she does not explain how to realize them.

Even on the micro-level, Pierce's vision is clouded by her apparent strong bias against men and attorneys in general. She succeeds in providing a broad-range perspective on the emotional labor options for women litigators and, to some extent, women paralegals. In the end, however, *Gender Trials* does not really offer much of a range for men in the legal profession.

Though flawed, *Gender Trials* offers some important insights into the ways in which lawyers interrelate not only with each other and their clients but also with their staff. It also offers some food for thought about significant changes that might be made to ameliorate law firms and the working relationships of the lawyers and paralegals who work within them. Perhaps the book will serve as a stepping stone for some other work that more thoroughly discusses how to implement those changes.