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Cover Page Footnote

Associate, Proskauer Rose LLP; J.D., 2004, University of Pennsylvania Law School. The views expressed herein are that of the author and should in no way be attributed to Proskauer Rose LLP. The author would like to thank her mentors, Professor Clyde W. Summers of the University of Pennsylvania Law School and Amelia Uelmen, Director of the Institute on Religion, Law and Lawyers Work at Fordham University.

INTIMIDATION AND THE CULTURE OF AVOIDANCE: GENDER ISSUES AND MENTORING IN LAW FIRM PRACTICE

*Elizabeth K. McManus**

I. MENTORING AND WOMEN'S ADVANCEMENT IN LAW FIRM HIERARCHY

While women are gaining equal access to the legal profession at the ground level, they have yet to achieve similar entrée to the upper echelons of law firm practice. Women currently constitute almost 50 percent of J.D. enrollment in ABA approved law schools¹ and women in law firms nationwide represent 42.4 percent of associates.² Yet they represent only 16.3 percent of partners³ and 5 percent of managing partners in large firms.⁴ The increased number of women law students and new women associates creates the mistaken belief that “‘the women problem’ has been solved”⁵ and that women in law firms are on equal footing.⁶ What is clear

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1. AM. BAR ASS'N, 2004 ENROLLMENT STATISTICS (2004), *available at* <http://www.abanet.org/legaled/statistics/fall2004enrollment.pdf>.

2. COMM'N ON WOMEN IN THE PROFESSION, AM. BAR ASS'N, A CURRENT GLANCE AT WOMEN IN THE LAW (2003), *available at* <http://www.abanet.org/women/glance2003.pdf>.

3. *Id.*

4. DEBORAH L. RHODE, COMM'N ON WOMEN IN THE PROFESSION, AM. BAR ASS'N, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 14 (2001) [hereinafter RHODE, UNFINISHED AGENDA], *available at* <http://womenlaw.stanford.edu/aba.unfinished.agenda.pdf>; *see also* U.S. EQUAL OPPORTUNITY EMPLOYMENT COMM'N, DIVERSITY IN LAW FIRMS (2003), *available at* <http://www.eeoc.gov/stats/reports/diversitylaw> (sampling a large number of firms and stating that “[t]he average number of women and White male associates in the sample firms are nearly identical (37.68 for women and 37.60 for White men) . . . [but] the mean number of White male partners far exceeds the mean number of women partners at 12.71 percent”).

5. Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001, 1001 (2002) [hereinafter Rhode, *The No-Problem Problem*].

6. *Id.* (stating that there is “[a] widespread assumption . . . that barriers have been

from these numbers, however, is that “[i]n law, as in life, women are underrepresented at the top and overrepresented at the bottom.”⁷

Many factors challenge women’s progress in law firms, including family issues, time commitments, lack of bona fide “part-time” options, sexual harassment, gender stereotyping, “rainmaking” difficulties, and lack of mentoring.⁸ Many well-researched studies help explain the difference between the number of women in law school and the number of women advancing in big firm practice.⁹ Because the possible explanations are so vast and varied, this essay does not exhaustively treat all the issues confronting women in big firm practice, nor does it explore the even more difficult path encountered by minority attorneys in the workplace.¹⁰ Instead, the purpose of this essay is to explore how the presence or absence of a mentor impacts both quality of life and potential for success in a law firm, especially for women lawyers.

The reality is that “[w]omen who are not mentored are in fact less likely to advance.”¹¹ Without mentoring,

[f]emale lawyers remain out of the loop of career development. They aren’t adequately educated in the organization’s unstated practices and politics. They aren’t given enough challenging, high visibility assignments. They aren’t included in social events that yield professional opportunities. And they aren’t helped to acquire the legal and marketing

coming down, women have been moving up, and it is only a matter of time before full equality becomes an accomplished fact”).

7. *Id.* at 1002.

8. See generally Cynthia Fuchs Epstein et al., *Glass Ceilings And Open Doors: Women’s Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291 (1995); Rhode, *The No-Problem Problem*, *supra* note 5; Elizabeth K. Ziewacz, *Can the Glass Ceiling Be Shattered? The Decline of Women Partners in Large Law Firms*, 57 OHIO ST. L.J. 971 (1996); Steve French, Note, *Of Problems, Pitfalls and Possibilities: A Comprehensive Look at Female Attorneys and Law Firm Partnership*, 21 WOMEN’S RTS. L. REP. 189 (2000).

9. See generally Epstein, *supra* note 8; Rhode, *The No-Problem Problem*, *supra* note 6; COMM. ON WOMEN IN THE LAW, N.Y. STATE BAR ASS’N, GENDER EQUITY IN THE LEGAL PROFESSION: A SURVEY, OBSERVATIONS AND RECOMMENDATIONS [hereinafter N.Y. STATE BAR ASS’N], available at http://www.nysba.org/Content/ContentGroups/News1/Reports3/Women_in_the_Law_report/womeninlawreport-recs.pdf; Ida O. Abbott, *Women in Law Firms: Redefining Success*, LAW PRAC., Apr. 2004, at 35. These studies ask why women are not advancing in numbers that more closely parallel the increase seen in the law school enrollment statistics.

10. See CATALYST, EXECUTIVE SUMMARY, WOMEN IN LAW: MAKING THE CASE 6 (2001), <http://womenlaw.stanford.edu/law.inside.fixed.pdf> [hereinafter CATALYST] (“Women of color law graduates are the least satisfied overall, and in particular are less satisfied than White women law graduates with factors related to advancement.”); see also Rhode, *The No-Problem Problem*, *supra* note 5, at 1005 (“The problem is particularly great . . . when those evaluated are women of color or other identifiable minorities.”).

11. RHODE, UNFINISHED AGENDA, *supra* note 4, at 16.

skills that are central to advancement.¹²

This exclusion results in a negative cycle, where women who do not advance are more likely to leave law firms and “[t]heir disproportionate attrition then reduces the pool of mentors for lawyers of similar background, and perpetuates the assumptions that perpetuate the problem.”¹³ The fewer women who are mentored, the fewer of them there are to rise to the top to act as mentors to new women associates.¹⁴

Mentoring opportunities are a necessary part of adequate career development. A good mentor acts as an advisor, teacher, exemplar, and career advocate. A good mentor can also acquaint a new associate with firm culture and client relations, and can help groom the associate for partnership.¹⁵ The road to success is often paved by a good mentor: “those in the legal profession who climb the ladder to success and those who are well integrated in the workplace proceed along tracks that are made available for them on courses that depend on assistance from experienced elders and gatekeepers.”¹⁶

An associate can benefit from a mentoring relationship on many levels. A mentor can listen to an associate’s concerns and questions about assignments and work-life balance, and can discuss his or her own encounters with similar dilemmas.¹⁷ In terms of career development, a mentor can give the plum assignments to his or her mentee and can ensure that the associate is exposed to a wide range of work experiences. This is especially critical as some junior women associates complain that they are not given assignments that place them firmly on a career track.¹⁸ Finally, there is the validation that comes with knowing that someone you admire thinks that you are worth helping.¹⁹

12. *Id.*

13. *Id.*; see also Abbott, *supra* note 9, at 35 (stating that lack of mentoring “lead[s] many women associates to conclude that they cannot succeed in the firm”).

14. See Abbott, *supra* note 9, at 37-38 (“[Women associates] are discouraged if there are no women partners, none of the women partners have children or there are no women in leadership positions. If they are discouraged enough to leave, it exacerbates the situation by depriving the firm of future women partners, leaders, mentors and role models for the next generation of associates.”).

15. See Epstein, *supra* note 8, at 346 (discussing the importance of mentors in career development, and discussing the reflections of a young associate who stated, “if you do come up for partnership, I think it’s going to probably affect you badly if you’re not mentored.”).

16. *Id.* at 343.

17. See *id.* at 345 (describing a mentor’s role as a “sounding board” for associates).

18. See *id.* at 346 (discussing one lawyer’s experience with a partner mentor who looked out for her long term position in the firm).

19. See IDA O. ABBOTT & RITA S. BOAGS, *MINORITY CORP. COUNS. ASS’N, MENTORING*

What goes on outside of the office is, perhaps, the most important part of the mentoring relationship. After the deal is done or the case is settled, informal mentoring takes place over dinner or drinks.²⁰ In such settings, senior attorneys and their mentees can truly get to know one another and find common interests. Informal settings also provide mentees with a place to interact with clients outside of the firm and learn about client relationships from experienced attorneys.²¹

Despite the importance of informal interaction, this is where women suffer most from lack of mentoring.²² In a survey taken by the New York State Bar Association, “96% of the male respondents but only 69% of the female respondents for whom it applied, agreed that opportunities to engage in activities out of the office (i.e., social or sporting events) were equally available for women and men.”²³ The issue becomes a question of why—why are women being excluded from informal mentoring opportunities and why aren’t more partners reaching out to provide this vital aspect of legal training? Before answering this question, it is important to address why law firms should be concerned about mentoring and what incentives there are to ensure that adequate mentoring exists.

II. WHY SHOULD BIG FIRMS WORRY ABOUT MENTORING?

Mentoring helps women advance in law firm hierarchy.²⁴ There is, however, an alternative way to express its value: diversity in the upper echelons of law firm partnership and management may help firms bring in or retain business.

The general counsel of Wal-Mart, the largest retailer in the United States,²⁵ has made clear to its top 100 law firms that “at least one person of

ACROSS DIFFERENCES: A GUIDE TO CROSS-GENDER AND CROSS-RACE MENTORING 18 (2004), <http://mcca.com/site/content/MCCA-mentoring.pdf> (stating that mentors will reach out to women and minorities in whom they see “extraordinary talent and potential”). “The mentor’s interest in helping [a] lawyer develop and advance [is] driven primarily by a desire to retain talented lawyers and increase the organization’s competitive advantage.” *Id.*

20. See Epstein, *supra* note 8, at 355 (relaying the reflections of a partner on mentoring and the importance of informal opportunities).

21. Rainmaking is vitally important to an associate’s advancement to partnership. See *id.* at 31-32.

22. See N.Y. STATE BAR ASS’N, *supra* note 9, at 43-44 (“More often in private practice settings, there is greater disparity in access to activities that would affect women’s growth potential. For example, men have greater access to activities outside the office and greater access to high-level responsibilities within the office setting.”).

23. *Id.* at 26. *But see id.* at 38 (noting that “[r]elatively low, but similar proportions of female and male attorneys (10-20%) are being mentored at work”).

24. RHODE, UNFINISHED AGENDA, *supra* note 4, at 16.

25. See, e.g., Meredith Hobbs, *Wal-Mart Demands Diversity In Law Firms*, FULTON

color and one woman must be among the top five relationship attorneys that handle its business.”²⁶ Other big businesses have followed suit: Visa International, Del Monte, Pitney Bowes, and Cox Communications now require outside counsel to “demonstrate that there are substantive numbers of women and minority lawyers in the upper levels of their firms.”²⁷ When big businesses like Wal-Mart spend up to \$200 million per year on outside legal services²⁸ and demand that women be present at the top, there is more than simply an altruistic incentive to ensure that women stay and excel in law firms. If the opinion of Wal-Mart’s general counsel and the recent trend in other corporations is any indication, law firms have even more incentive to mentor women associates as lack of women in top firm positions may ultimately hurt a firm’s business prospects.²⁹

Wal-Mart’s initiative is one example of how businesses pressure law firms to increase the number of women and minority lawyers at their upper levels. Another source of pressure comes from women who have left large law firms to work as in-house attorneys and are now in the position to purchase legal services.³⁰ Women who work in-house can steer where work goes and are likely to send business to women in law firms because “[f]ew female attorneys fail to perceive the plight of women in the legal profession, especially the plight of women in private firms.”³¹

In addition to wooing clients, mentoring women can be financially beneficial to law firms by helping them retain current associates. Junior associates who are not mentored miss out on an important aspect of their training and many respond by leaving their current firms.³² Lack of

COUNTY DAILY REP., July 6, 2005, available at <http://www.law.com/jsp/article.jsp?id=1120579809481>.

26. *Id.*

27. *Id.* (noting also that Sara Lee’s top lawyer, Roderick A. Palmore, said that he would consider a firm’s diversity when hiring outside counsel and that close to 100 general counsel, many from the nation’s largest companies, have followed suit).

28. *Id.*

29. *Id.* at 797 (remarking that the “threat of lost legal business provides an economic incentive for firms to educate attorneys as to the appropriate treatment of female attorneys”).

30. Grace M. Giesel, *The Business Client Is a Woman: The Effect of Women As In House Counsel On Women in Law Firms and the Legal Profession*, 72 NEB. L. REV. 760, 763 (1993) (“[T]he presence of female attorneys in those in-house positions should positively affect the success of women in law firms, the law firm environment, and the status of women in the legal profession.”).

31. *Id.* at 799 (noting that “[m]any female in-house counsel will send legal work to women within law firms”).

32. See Daniel D. Barnhizer, *Mentoring as Duty and Privilege*, 82 MICH. BAR J. 46, 46 (Jan. 2003) (stating that because senior attorneys are under tremendous pressure to produce billable hours, they are reluctant to mentor and as a result junior attorneys are leaving firms).

mentoring has a negative impact not only on associates, but on firm finances as well:

Firms commonly complain that “greedy” associates train at the firm’s expense for three years and then leave, taking with them the firm’s investment in their development. For their part, dissatisfied junior and midlevel associates claim that they feel abandoned, untrained, and unappreciated by their law firms, and with no personal connection to their firms or colleagues, willingly change jobs solely for better pay. Attrition costs firms between \$200,000 and \$500,000 per associate, including lost revenues, lost training expenses, lost institutional knowledge, and replacement costs.³³

The losses incurred by departing associates provide even more financial motivation for firms to aggressively encourage mentoring as part of associate retention plans. But this begs the question: if mentoring makes financial sense and is a key part of associate training, where has all the mentoring gone?

III. THE INTIMIDATION FACTOR AND A CULTURE OF AVOIDANCE

Young women associates are not adequately mentored because lawyers are intimidated. Young associates are afraid to approach busy partners for help, many women partners are afraid to turn away from their primary job responsibilities and saddle themselves with an added time demand, and some male lawyers (associates and partners alike) fear that a cross-gender interaction might be incorrectly perceived as sexual harassment. “The intimidation factor” is shorthand for the reality that fear may prevent partners and associates from interacting in mentoring relationships. Instead of confronting the issue, many lawyers, perhaps unconsciously, simply avoid the problem altogether. What results? A culture of avoidance where interaction between partners and associates is limited and women are not adequately mentored.³⁴

A. Why Associates Are Intimidated

Associates’ efforts to seek out mentors can result in the formation of fruitful mentoring relationships. Studies have demonstrated that those who

in record numbers citing a lack of training and mentoring opportunities as reasons why they feel little loyalty to firms).

33. *Id.* at 46-47.

34. Rhode, *The No-Problem Problem*, *supra* note 5, at 1003-04 (“Women’s opportunities [in the practice of law] are limited in three crucial ways: by traditional gender stereotypes; by *inadequate access to mentors* and informal networks of support; and by inflexible workplace structures.”) (emphasis added).

actively seek out mentors often find someone to fill that role.³⁵ To form these relationships, women associates need to reach out as often as possible to potential mentors and express their desire to work with them professionally and get to know them personally.³⁶

Assuming that young associates have the power to foster mentoring relationships, why aren't more women associates taking the initiative? This is where the intimidation factor first appears.

Young lawyers are very aware that partners and senior associates are busy trying to balance heavy workloads, clients, and personal matters. The intimidation factor reflects associates' fear that possible mentors might be too busy or just not interested in mentoring. Almost all young associates, both male and female, are intimidated by their experienced superiors to a certain extent—gender is not necessarily a factor. Oftentimes an associate will avoid approaching a partner for fear of being annoying or of crossing the line between personal and professional. The pressure of billable hours, which prevents many partners from taking the time to mentor, also affects associates.³⁷ Taking time out to chat on a personal level is non-billable and is, on some level, a “waste of time,” even though an associate might gain valuable experience from taking otherwise “billable” time to get to know a potential mentor. With young women associates, gender adds to the intimidation factor. Young women may avoid cross-gender interaction for fear that it might be taken the wrong way—for example, as an expression of romantic interest.³⁸

The solution might be as easy as turning to a woman for mentoring,

35. See, e.g., ABBOTT & BOAGS, *supra* note 19, at 12 (“The study results were clear: women and minority lawyers are capable of finding one or more mentors if they are strategic and proactive in seeking them.”).

36. See *id.* at 25 (“Because familiarity is important, find a way to interact often with a potential mentor. The most fruitful interactions are on business or client matters, but almost any activity is opportune if it allows you to prove, through your performance and commitment, that you ‘have what it takes.’ If occasions to work together are not immediately available, create opportunities for contact by offering to help on a legal matter by inviting the potential mentor to lunch.”).

37. See Barnhizer, *supra* note 32, at 46 (“[W]hile virtually every attorney will agree that mentoring the next generation is crucial for maintaining a skilled and ethical profession, growing pressure for billable hours in many private practices has limited severely the number of attorneys willing to take that next generation under their wings.”).

38. See Epstein, *supra* note 8, at 348 (“For women, there is the potential for the further gender specific problem that when one strong advocate also happens to be male, there may be a suspicion that the relationship may be personal. This was the experience of one woman senior associate, regarded highly by fellow associates in the firm (as reported not only by herself but also by a woman partner in the firm) but recently turned down for partnership. The male partner for whom she worked monopolized her time; when he ‘went to the mat’ and tried to persuade the rest of the partners to elevate her to partnership, they discounted his evaluation.”).

especially since many young women can easily identify with women partners' personal and professional lives.³⁹ Yet the relative dearth of women in top positions makes for a small range of choices. Moreover, there is an intimidation factor present between young women associates and women partners that may prevent the formation of mentoring relationships. Some senior women convey a lack of understanding towards junior women—"[w]hether intended or not, their message seems to be, 'If I had to struggle to make it, so should you.'"⁴⁰ A related issue arises when young women see the sacrifices senior women have made and refuse to make those choices in their own lives. These associates "reject some women partners as role models because they do not relate to the life choices these women have made."⁴¹ The fact that women partners are often already pressed for time also impedes the formation of the mentoring relationship. Finally, there is the issue of political clout. Because few women are in top positions, young associates may not reach out to them for fear that the women partners are not in a position to enhance young associates' careers.⁴²

B. Two Mentees for Every Woman Partner

If the intimidation factor prevents women associates from reaching out to potential mentors, why don't women partners take the initiative to have several women mentees? Initially, there is the issue of numbers. In some cases, there are simply not enough women mentors at a firm.⁴³ In addition to scarcity, women who are otherwise willing to mentor are unable to do so because of time constraints.⁴⁴

On the other hand, some senior women in firms suffer from a

39. *See id.* at 351 ("[S]ome believed that female partners could see earlier versions of themselves in female associates and could therefore connect more easily with them, whereas for male partners, in one associate's words, this is 'more of a stretch.' Further, female partners were thought to be more attuned than their male counterparts to the unique needs and problems that junior women face in the firms and as professionals.").

40. RHODE, UNFINISHED AGENDA, *supra* note 4, at 32 ("A recurring frustration among younger women lawyers is a perceived lack of understanding and support from some senior women colleagues, particularly on quality of life issues. Whether intended or not, their message seems to be, 'If I had to struggle to make it, so should you'; 'I had to give up a lot, you do it too.'").

41. Abbott, *supra* note 9, at 37.

42. Epstein, *supra* note 8, at 303 ("Women partners face problems taking on mentoring relationships because they have less power and less time to perform this role.").

43. *See* Abbott, *supra* note 9, at 37 ("[T]he scarcity of women partners means that there are not enough senior women to mentor all those who want to work with them.").

44. *See* Epstein, *supra* note 8, at 354 (noting that several women have "regarded mentoring as an extra responsibility that was added to their already heavy workload").

“mentoring ambivalence related more to generational issues—questions about whether women of the younger generation should be nurtured in ways that female partners were not as they were building their own careers.”⁴⁵ Because many women had so much to overcome with little or no help, some believe that women of the younger generation must also face the same obstacles.⁴⁶ Moreover, “[t]hese attitudes may be rewarded by the special power, visibility, and status that come from being one of the few women at the top.”⁴⁷ In this sense, some senior women contribute to the exclusion of young women associates from the mentoring–promotion cycle.

The reality, however, is that young women associates are not looking for special treatment, but rather are seeking access to mentoring, especially informal opportunities, on par with their male counterparts. While this may be a luxury women who fought their way to the top did not have, the cycle of exclusion should not continue. Senior women, in addition to being rewarded for their work, should be given incentives to share the fruits of their hard won experience with young women. Women partners must help young women associates overcome their fear of approaching or burdening them by being the first to reach out to establish a relationship.

C. Aren’t There Plenty of Male Attorneys Available to Mentor Women Associates?

There is more than one reason why men, who constitute approximately eighty-four percent of law firm partners, are not mentoring women in large numbers and exposing women to indispensable informal mentoring opportunities.⁴⁸ Some male partners simply fail to perceive the need to reach out and mentor women. Evidence of this is seen in studies that reveal that “[o]ver 50 percent of the women cite lack of mentoring opportunities as a significant barrier, but only 29 percent of the men agree.”⁴⁹ Some male partners may also refrain from mentoring women associates because of gender stereotypes⁵⁰ or the belief that they will be unable to provide the

45. *Id.* at 354-55.

46. *See* RHODE, UNFINISHED AGENDA, *supra* note 4, at 32 (expressing the idea that if one generation had to struggle so too should the younger generation).

47. *Id.* at 16.

48. *See, e.g.*, Epstein, *supra* note 8, at 355 (giving one partner’s description of the male bonding that goes on in informal settings which does not occur with female associates).

49. CATALYST, *supra* note 10, at 8. Also, “[o]ver 50 percent of women law graduates cite exclusion from informal networks within the organization as a barrier, while only 21 percent of the men see this as a barrier to women’s advancement.” *Id.*

50. *See* Epstein, *supra* note 8, at 352 (giving an example of one partner’s stereotypical view of working with women associates: “I’ve had a number of associates [come to see me]

right type of guidance to young women.⁵¹ Many also suffer from what scholar Deborah Rhode has deemed “the ‘no problem’ problem.”⁵² This describes the phenomenon that the increased number of women in law school and women working as associates in firms lead people to conclude that the glass ceiling has been shattered.⁵³

The issue, however, goes far beyond the “no problem problem” and gender stereotypes. It is instead an issue of fear; men do not mentor women because they are intimidated. This intimidation is driven by the heightened awareness of sexual harassment. One law firm partner clearly described this intimidation in Epstein’s “Glass Ceilings” Study:

When I’m on a transaction traveling, and we’re in a hotel, if you’re with a male associate, the deal is done, you can go to a room, and you turn on whatever—football game, basketball game, nerd films, whatever you want . . . [sic] It’s very hard to have that kind of camaraderie with a female associate. I will not have a female associate while I’m traveling. You’re just asking for problems down the road. So you have a lack of mentoring in most firms . . . [sic] You’ve got an issue of bonding . . . but you can’t bond as easily with a woman because you’ve got the whole issue of sexual harassment or whatever it is. It just is a problem for a lot of people.⁵⁴

Surveys show that about “half to two-thirds of female lawyers . . . report experiencing or observing sexual harassment.”⁵⁵ Many lawyers are aware of the impact of sexual harassment charges, as the prevalence of sexual harassment training far outweighs the time and energy invested teaching lawyers about the importance of mentoring. The legal profession has an acute awareness of the ramifications and high cost of sexual harassment litigation, which causes law firm partners to be understandably risk averse.⁵⁶

when a problem comes up in a deal. And you talk to them about it, and they break down and they start crying Now that doesn’t mean there’s anything wrong with that, but I’m saying . . . that’s not an appropriate response when you’re in a meeting and something goes wrong and you start crying.”) (brackets in original).

51. Abbott, *supra* note 9, at 37.

52. Rhode, *The No-Problem Problem*, *supra* note 5, at 1001 (arguing that the common belief that gender equality does not exist is actually a problem hindering gender equality).

53. *Id.*

54. Epstein, *supra* note 8, at 355.

55. RHODE, UNFINISHED AGENDA, *supra* note 4, at 7. In addition, “[y]ounger women more than older women also experience joking and sexual innuendo as harassment. They also regard any physical touching such as a hug or a hand put on their shoulder as sexual harassment.” Epstein, *supra* note 8, at 373.

56. *E.g.*, Epstein, *supra* note 8, at 376 (citing the \$7.1 million dollar sexual harassment judgment against Baker and McKenzie (later settled) as a reason why firms are so sensitive to the harassment issue); Jay Marhoefer, Comment, *The Quality of Mercy Is Strained: How*

Male lawyers' intimidation creates a culture of avoidance, and women in law firms suffer as a result: "[o]lder male lawyers note that it is easier under these conditions to avoid unnecessary interactions altogether. But this means that the women do not have the benefit of learning what goes on in informal settings."⁵⁷ Some men find it easier simply never to put themselves into what could potentially be a difficult situation.⁵⁸ Instead, they opt to work with young male associates.⁵⁹

Sexual harassment is a serious problem that must be confronted. The prevalent awareness of sexual harassment should not be permitted to have a negative impact on the mentoring of young women. Sensitivity to sexual harassment is "in some ways a two-edged sword . . . it has served to alert the male partnership to the seriousness of engaging in sexist behavior, [and] it has also made them cautious about their contacts with women lawyers."⁶⁰ When caution prevents senior male attorneys from mentoring women associates, women lose out on a vital aspect of legal training: the informal aspects of mentoring, which include business trips, client dinners, and personal interaction. Such activities can make being a young associate exciting, worthwhile, and it can also help pave the way to partnership.

IV. OVERCOMING THE INTIMIDATION: WHAT CAN BE DONE?

One popular solution to the mentoring problem is to set up a formal mentoring program.⁶¹ Formal programs seek to ensure that each woman associate is appointed a mentor and has someone to go to for guidance. A formal program is often desirable because it can foster cross-gender mentoring relationships, especially in environments where there are few women senior enough to act as mentors. Formal programs help make

the Procedures Of Sexual Harassment Litigation Against Law Firms Frustrate Both the Substantive Law of Title VII and the Integration of an Ethic of Care into the Legal Profession, 78 CHI.-KENT L. REV. 817, 823-32 (discussing at length the sexual harassment suit of attorney RoxAnne Rochester against the Chicago law firm of Fishman & Merrick in which Rochester was awarded \$1.4 million).

57. Epstein, *supra* note 8, at 445. The fear of sexual harassment causes ambivalence on the part of both men and women. *Id.* ("Easy casual interaction is undermined by evaluative judgments about the nature of the interaction. Some young women anticipate that older male lawyers may make improper comments or treat them inequitably.").

58. *Id.* at 355 (discussing a situation where a male partner simply avoided traveling with female associates altogether despite the fact that this same partner acknowledged that "business trips often provide opportunities to develop closer mentoring bonds").

59. RHODE, UNFINISHED AGENDA, *supra* note 4, at 16 (stating that some men prefer mentoring other men because they "enjoy the bonding that occurs in all-male social or sporting events").

60. Epstein, *supra* note 8, at 376.

61. See ABBOTT & BOAGS, *supra* note 19, at 12.

mentoring relationships that are cross-gender “normal rather than exceptional,”⁶² which is especially helpful for women as “it lessens the likelihood of sexual innuendo.”⁶³

While a formal mentoring program does, on some level, counter the culture of avoidance, such programs do not go far enough.⁶⁴ As discussed above, the most fruitful mentoring takes place via informal interaction.⁶⁵ While formal programs may get the mentoring process started, such programs do not completely address the culture of avoidance and the lack of informal opportunities for women associates.⁶⁶ Put simply, matching up partners and associates is not enough—law firms need to take a more comprehensive approach.

As already discussed, the awareness of sexual harassment and its potential ramifications has had an impact on law firms; in response to the problem, most law firms now provide sexual harassment training, have policies that discourage harassment, and have procedures for reporting incidents. Firms need to look to the types of efforts made to combat sexual harassment when looking for ways to encourage mentoring. Just as firms have policies and procedures in place to deal with harassment so to must they look to firm-wide imperatives that make mentoring a priority. These policies must also establish procedures in case problems arise within the mentor/mentee relationship.⁶⁷

In addition to establishing firm policies, partners need to be educated about mentoring. Mentoring can no longer be viewed as a superfluous aspect of being a senior attorney—it must be framed as a professional obligation. Law firms must adapt a mindset reflective of the time when apprenticeship was a mainstay of how a young associate was trained.⁶⁸ If partners come to see mentoring as an obligation rather than an option, there could be a dramatic change in the way partners and associates interact. The more a partner becomes accustomed to the role of teacher, the more mentoring becomes the norm rather than the exception.

62. *Id.* at 19.

63. *Id.*

64. *See id.* (stating that formal mentoring programs are supplemental rather than a substitute for informal mentoring).

65. *See supra* notes 20-23 and accompanying text.

66. *Id.*

67. *See* RHODE, UNFINISHED AGENDA, *supra* note 4, at 36 (“At a minimum, employers should: train supervisors in identifying and responding to inappropriate conduct; establish user-friendly grievance procedures with multiple reporting options; insure protection against retaliation; impose meaningful sanctions; and monitor the effectiveness of procedures.”).

68. *See* Barnhizer, *supra* note 32, at 46 (noting that historically mentorship is how lawyers learned their craft).

Another possible method of fostering mentoring in firms is to give “credit” to partners and senior associates for time spent mentoring. Because time pressure and billable hours are often cited as reasons why partners shy away from mentoring,⁶⁹ firms should consider giving billable credit or bonus incentives for partners who take the time to mentor young associates.⁷⁰ Partners might be more inclined to take an associate out for drinks or dinner, both of which are great opportunities for informal mentoring, if they had a budget to do so. Firms should think of such budgets as an investment in the firm’s future. Associates that are mentored are more likely to feel personal ties to the firm that trained them and are thus less likely to leave the firm after only a few years.

Even if given a budget to create informal mentoring opportunities, some male partners may not want to take a woman associate out for fear of how it might look or what accusations might follow. Group mentoring provides a solution; a partner can take out groups of associates in an informal setting, which may help prevent innuendo or accusations that the partner’s motivations are anything but professional. If, however, a partner wants to focus his energies on one associate, that partner may avoid potential problems by including the associate’s spouse or significant other. Having a significant other present can make an event even more personal while at the same time diffusing potential gender-related tensions.

Some authors indicate that if an associate looks hard enough a mentor will appear. Specifically, the aforementioned Abbott and Boags study, *Mentoring Across Differences*, emphasizes an associate’s ability to find mentors.⁷¹ For example, the study’s key findings indicate that “[w]omen and minority lawyers who wanted mentors could find them if they were strategic and proactive.”⁷² While this may be true among the persons studied, there is a problem with this statement. Such a finding indicates that the women and minorities who “wanted mentors” could find them. For women in law firms, it should not be a question of wanting a mentor. Having a mentor is not something women associates should simply want—it is something that they need. Without adequate mentoring, women associates are less likely to advance,⁷³ a fact that they may not be aware of

69. See ABBOTT & BOAGS, *supra* note 19, at 20 (“Time is often cited as a barrier to mentoring because the pressure of work, and in law firms, the lack of billable hour credit for mentoring, makes it difficult to schedule meetings and to interact casually.”).

70. *Id.* at 19 (suggesting that “tangible and significant awards” be given to outstanding mentors).

71. See *id.* at 6, 12.

72. *Id.* at 6.

73. See RHODE, UNFINISHED AGENDA, *supra* note 4, at 16 (stating that women who are not mentored are far less likely to advance).

when they arrive at a law firm. If an associate does not know the impact that having a mentor can have on her career, how can she know that the onus is on her to be both “strategic and proactive” in seeking one out?⁷⁴

While associates should take responsibility for their training and career development, expecting associates single-handedly to help themselves and partners vanquish the culture of avoidance is unrealistic. Such an approach fails to recognize the reality of a law firm’s power structure. Change will only come from a well-supported broad-based effort involving both partners and associates.

Making partners responsible for ensuring that associates, especially women associates, are adequately mentored properly acknowledges the power structure that exists in law firms. While associates should still be encouraged to look for mentoring opportunities on their own, a firm’s partners, who shape every other aspect of law firm life, are ultimately the ones who are in the best position to bring about real change. Making the mentoring of young women a professional obligation, building firm policies, and ultimately creating a culture around mentoring can facilitate the movement away from the culture of avoidance. Law firm partners must push to change firm culture because in the life of women associates, mentoring is not merely a nicety, but a necessity.

74. See ABBOTT & BOAGS, *supra* note 19, at 6.