

Women Solicitors as a Barometer for Problems within the Legal Profession – Time to Put Values before Profits?

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This article will consider the theoretical explanations for why women are not remaining within and progressing through the ranks of the solicitors' profession in England and Wales. It sets out the findings from a Law Society commissioned project to examine the reasons why women have had a break from practice or chosen to leave the profession. Finally, it considers whether one of the purported strategies used to empower women solicitors – the business case for equality of opportunity in the solicitors' profession – is actively working against women and the profession (more broadly), and that only a return to a wider values-based approach to professional identity will meet the criticisms raised by many of the women who participated in this research.

INTRODUCTION

The Law Society remains concerned about the rate at which and the reasons why women continue to leave the profession pre-retirement in relatively large numbers. The debate is wide ranging, covering issues from whether women should attempt to 'have it all' by combining a legal career with motherhood, to why there is a differential in promotion rates to partnership between male and female solicitors.¹ Even after three studies undertaken by

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- 1 There is also much debate in the legal professional press. For an illustration of the competing views see: 'Having it All?', Letter to the Editor, *Law Society Gazette*, 31 July 2003, at 16; 'Balancing Act', Letters to the Editor, *Law Society Gazette*, 14 August 2003, at 16; F. Burton, 'New Ways to Work Towards the Work-Life Balance:

or for the Law Society, on average one per decade, and subsequent Law Society initiatives to improve the retention and advancement of women in the profession,² progress remains slow.³ Within the period 1997–2002 1,568 solicitors failed to renew their practising certificates, which, when calculated by gender as a percentage of all solicitors who held practising certificates in 2002, represented non-renewal by 1.6 per cent of all male solicitors compared with non-renewal by 2.4 per cent of female solicitors.⁴ Even though these figures do not suggest an enormous difference in renewal patterns, it is the average age of renewal that highlights the differences. The mean male age of non-renewal is 52 years compared with 40 for women (three-fifths of women leave in their 30s). When Bradshaw and Thomas investigated the reasons why solicitors had not renewed their practising certificates, it became clear that men were more likely to allow their practising certificate to lapse because they had taken early retirement, whereas women's reasons were most likely to relate to child-related commitments. In addition, and perhaps related to this, female progression into senior positions appears to be a slow trickle up, rather than a constant and widening stream of advancement.⁵ While the problems facing women as a group have been highlighted and studied repeatedly, problems of double discrimination – gender

The Compleat Women Lawyer or Closing the Rhetoric-Reality Gap', edited paper from the Annual Woman Lawyer Forum (2002). See, too, recent research on pay and promotion prospects in the context of parenthood by V. Wass and R. McNabb, *Discrimination and the Law: Pay Promotion and Parenthood* (2004) at <<http://www.cf.ac.uk/carbs/econ/mcnabb/solspaper.pdf>>, which indicates that women solicitors' earnings are on average only two-thirds that of their male counterparts and that only one-third of the difference in pay is attributable to a difference in career progression rather than other factors. For a recent exploration of the potential for positive change by the use of affirmative action in the legal profession, see D. Nicholson, 'Affirmative Action in the Legal Profession' (2006) 33 *J. of Law and Society* 109.

- 2 Sommerlad and Sanderson's research identified strategies that may be employed to retain women solicitors who had had children. See H. Sommerlad and P. Sanderson, 'The Legal Labour Market and the Training Needs of Women Returners in the United Kingdom' (1997) 29 *J. of Vocational Education and Training* 45. See, further, H. Sommerlad and P. Sanderson, *Gender Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (1998).
- 3 The studies were conducted by A. Bradshaw and P. Thomas, 'Leaving the Profession': *A Survey of Solicitors Not Renewing their Practising Certificates* (1995); Sommerlad and Sanderson, id.; J. Siems, *Equality and Diversity: Women Solicitors Research Study* 48, vol. 1 (Quantitative Findings) (2004); and L. Duff and L. Webley, *Equality & Diversity: Women Solicitors Research Study* 48, vol. 2 (Qualitative Findings and Literature Review) (2004).
- 4 Siems, id.
- 5 In a survey of the largest 100 firms conducted by the Young Women Lawyers group, only 25 per cent of new partners that year were women: C. McGlynn and C. Graham, *Soliciting Equality: Equality and Opportunity in the Solicitors' Profession* (1995). See, too, C. McGlynn, *The Women Lawyer Making the Difference* (1998) at 84–5 for a discussion of some women's experiences in this context.

intersected with race, sexual orientation or disability have not reached this level of critical examination.⁶ Thus, while women have not yet reaped the full benefits of over two decades of equal opportunity initiatives, other marginalized or doubly marginalized groups face a long struggle even to reach this point.⁷

This article considers the theoretical explanations about why women are not remaining and progressing within the solicitors' profession at the same rate as men. It sets out our findings from a Law Society commissioned project to examine the reasons why women in the late twentieth and early twenty-first centuries have had a break from practice or have chosen to leave the profession. Finally, it considers whether one of the purported strategies used to empower women solicitors – the business case for equality of opportunity in the solicitors' profession – is actively working against women and the profession (more broadly), and whether only a return to a wider values-based approach to professional identity will meet the criticisms raised by many of the women who participated in our research. Concerns about the culture of the profession are not restricted to women, ethnic minority solicitors, and those from lower socio-economic groups.⁸ Some men are also beginning to voice concern that the culture within the profession is acting against their interests too. It appears that the commercialization of legal practice may have led to a commodification of the professional project that actively undermines the value placed on all solicitors.

6 For a discussion of the United States experience of double discrimination, see N. Dowd, 'Resisting Essentialism and Hierarchy: A Critique of Work/Family Strategies for Women Lawyers' (2000) 16 *Harvard Blackletter Law J.* 185; S. Sturm, 'From Gladiators to Problem-Solvers: Connecting Conversations about Women, the Academy, and the Legal Profession' (1997) 4 *Duke J. of Gender, Law & Policy* 119; E. Gorman, 'Work Uncertainty and the Promotion of Professional Women: The Case of Law Firm Partnership' (2006) 85 *Social Forces* 865.

7 See, further, Dowd, *id.* There is certainly evidence to suggest that other groups suffer as attention turns on the attempt to redress gender imbalance in the law. See C. Menkel-Meadow, 'The Comparative Sociology of Women Lawyers: The "Feminization" of the Legal Profession' (1986) 24 *Osgoode Hall Law J.* 987, at 901. For a discussion of gender resegregation within law firms, see F. Kay, 'Flight from Law: A Competing Risks Model of Departures from Law Firms' (1997) 31 *Law and Society Rev.* 301. See, too, R. Abel, 'Comparative Sociology of Legal Professions: An Exploratory Essay' (1985) 1 *Am. Bar Foundation Research J.* 1; K. Clanton, 'Glass Ceilings and Sticky Floors: Minority Women in the Legal Profession' (2001) 49 *University of Kansas Law Rev.* 176.

8 See A. Boon, 'From Public Service to Service Industry: the Impact of Socialisation and Work on the Motivation and Values of Lawyers' (2005) 12 *International J. of the Legal Profession* 229.

I. EXPLANATIONS FOR WOMEN'S POSITION IN THE SOLICITORS' PROFESSION AND STRATEGIES TO AID ADVANCEMENT

Some have argued that any barriers that women face are of their own making, as former President of the Law Society Martin Mears once famously said: 'There are no barriers to the advancement of women apart from those they choose themselves or those that are inherent in their biology.'⁹ This 'human capital' theory of female choices, in which it is argued that women invest less in their education and their career and thus get less out by way of pay and promotion, is used to explain why women are not promoted at the same rate and speed as men, why women feel less enchanted with their workplace, and why, it has been argued, women ultimately leave the profession or choose to put their role as a parent, or carer, before that of solicitor.¹⁰ Human capital theory, the dominant theory that seeks to explain how women are responsible for their own lack of progression and promotion, claims to unpack why women are not at parity with men in terms of status or pay. It also conveniently provides a solution to women – invest more heavily in your career and you will reach the higher echelons of the profession. The difficulty, however, is that for women to be perceived as making a similar commitment to men, they must 'choose' not to have children, as the status of mother appears to be automatic evidence of reduced commitment in a way that being a father is not.¹¹ For those women who are willing and able to take this stance, human capital theory would appear to be gender neutral and offer the opportunity of equal status, equal pay, and equal promotion. However, there is evidence to suggest that equal investment does not guarantee such a prize, as the potential to take maternity leave is seen as a future potential risk of reduced commitment.¹² Consequently, as McGlynn points out, human capital theory is a mask for discrimination – the potential for motherhood is inherent in women as a class and thus there is always the potential for a reduced commitment in the eyes of the profession. Being female is enough to

9 Martin Mears, President of the Law Society, 1995–1996, *Times*, 16 April 1996. See, in contrast, C. McGlynn, 'A Different Voice' (1996) 146 *New Law J.* 816; C. McGlynn, 'The Business of Equality in the Solicitors' Profession' (2000) 63 *Modern Law Rev.* 442 and, for a discussion of the role of cultural capital, see Sommerlad and Sanderson, *op. cit.* (1998), n. 2.

10 See C. McGlynn, 'The Status of Women Lawyers in the United Kingdom' in *Women in the World's Legal Professions*, eds. U. Schultz and G. Shaw (2003). See, further, J. Hagan and F. Kay, *Gender in Practice – A Study of Lawyers' Lives* (1995).

11 As Collier explains, fatherhood does not tend to make up such a strong part of core identity by comparison with paid employment: R. Collier, 'A Hard Time to be a Father? Reassessing the Relationship Between Law, Policy and Family (Practices)' (2001) 38 *J. of Law and Society* 520, at 530. See, too, C. Smart and B. Neale, "'I Hadn't Really Thought About It': New Identities/New Fatherhoods' in *Relating Intimacies: Power and Resistance (Explorations in Sociology)*, eds. J. Seymour and P. Bagguley (1999) at 530.

12 See McGlynn, *op. cit.* (2000), n. 9, at p. 447.

be perceived as having less commitment; equal opportunity cannot ever be achieved under the terms of human capital theory.¹³

By contrast, much of the feminist academic literature has focused on attacking assumptions of equality of opportunity for women and men, in part because male and female roles within the family continue to be distinctive,¹⁴ and in part because apparent gender neutrality in the work place is less neutral than gendered.¹⁵ Many articles have been written on the problems facing women within the legal profession. Holmes categorized the problems as those of ‘overwork; hierarchy, bureaucracy and specialisation; moral conflict, and the difficulty of combining work with childrearing’,¹⁶ as well as the fact that the profession was structured by men for men.¹⁷ Much of the discussion has focused clearly on issues of sex differentiation or, rather, sex-based prejudice within the profession, although the nature of the discrimination appears to be rooted less in overt sexism and more focused on covert gender discrimination – the charge that the current professional structure is both gender neutral and operates gender neutrally. Indeed Collier has highlighted:

the powerful economic, political and cultural shifts which have transformed, and are transforming understanding of employment, ‘family life’ and ... the ‘work-life relation’

and it is this which seems to be at the core of disjunction between women solicitors’ expectations and experiences within the profession.¹⁸ There is an

13 id.

14 In addition to those cited elsewhere in the article, see H. English, *Gender on Trial: Sexual Stereotypes and Work/Life Balance in the Legal Workplace* (2003) at 203; K. Hull and R. Nelson, ‘Gender Inequality in Law: Problems of Structure and Agency in Recent Studies of Gender in Anglo-American Legal Professions’ (1998) 23 *Law and Social Enquiry* 681; M.-J. Mossman, ‘Challenging “Hidden” Assumptions: (Women) Lawyers and Family’ in *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood*, eds. M. Albertson Fineman and I. Karpin (1995) at 290; Smart and Neale, op. cit., n. 11, at p. 118; Dowd, op. cit., n. 6; C. Fuchs Epstein et al., ‘Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession’ (1995) 64 *Fordham Law Rev.* 291. See K. Gerson, *No Man’s Land: Changing Commitments to Family and Work* (1994) for a discussion of the difficulties associated with categories such as men and women, the notion of family and work. See R. Collier, ‘“Nuttie Professors”, “Men in Suits” and “New Entrepreneurs”: Corporeality, Subjectivity and Change in the Law School and Legal Practice’ (1998) 7 *Social and Legal Studies* 27.

15 For a discussion, see D. Rhode, ‘The Profession and its Discontents’ (2000) 61 *Ohio State Law J.* at 8-9. See, further, Collier, op. cit., n. 11 and Collier (1998), id.

16 D.K. Holmes, ‘Structural Causes of Dissatisfaction among Large-firm Attorneys: A Feminist Perspective’ (1990) 12 *Women’s Rights Law Reporter* 9, at 13.

17 See the discussion in Canadian Bar Association, *Touchstones for Change: Equality, Diversity & Accountability* (1993) at 85 and, further, M. Thornton, *Dissonance and Distrust – Women and the Legal Profession* (1996) at 157.

18 R. Collier, ‘The Changing University and the (Legal) Academic Career – Rethinking the Relationship between Women, Men and the “Private Life” of the Law School’ (2002) 22 *Legal Studies* 1, at 3-4 for a discussion of reconceptualizing gender and, in

expectation of gender neutrality both by men, for whom the expectation is more usually met, and by women whose expectations of gender neutrality are met less often as they advance through their career.¹⁹ Many commentators, including the Association of Women Solicitors, consider that the answer to continued concerns about gender neutrality is reliance on a business-efficiency or a profit-maximization model within the legal profession as this should be gender neutral. The argument goes that the profession should be appraised of 'the business case', as it is often named, for equal opportunities policies and strategies.²⁰ It has been argued that by according women and minority groups full and equal status within the profession, profits will rise and the profession will benefit. The positive secondary benefit for the profession, it is claimed, is equal advancement for women. Thus, equal opportunities for women are attractively sold as higher profit margins for large commercial firms, a wider range of skills and thus organizational efficiency for smaller firms, and a way to reap the benefits of high training investment costs.

If the human capital theory provides little comfort for women in the profession, what of the business case for equality of opportunity? The business case for female advancement has been made, and continues to be made, to provide a market-based rationale for the need to implement equal opportunities policies. It has been made for over ten years, and yet the Law Society continues to express concern about the lack of diversity in the higher levels of the solicitors' profession, and has introduced yet more initiatives (such as the Diversity Access Scheme) in order to boost the numbers of solicitors from diverse backgrounds entering the profession.²¹ It has also

particular, our understanding of the masculine. Interestingly Collier also points to these problems in academic life in general in his review of Bradney's analysis of the changing face of academic life: A. Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (2003). For his discussion of Bradney's analysis, see R. Collier, 'The Liberal Law School the Restructured University and the Paradox of Socio-Legal Studies' (2005) 68 *Modern Law Rev.* 475, at 491–492. See, too, Dowd, *op. cit.*, n. 6.

- 19 M. Costello, 'Women in the Legal Profession: You've Come A Long Way – Or Have You?' (1997) *Detroit College of Law Rev.* 909, at 917:

They [women] do not believe or want to believe that they are almost certain to encounter gender bias at some stage in their careers that will have the potential to adversely affect their advancement. Because of their complacency, they are unprepared when reality strikes, and often react by changing jobs or careers, or simply dropping out of the work force – in too many cases, depriving the legal profession of their skills and talents.

- 20 For example, the Women Lawyers' Forum held in London in March 2005 focused on these issues.

- 21 As McGlynn indicates, the face of legal practice is changing rapidly, with increased female representation and greater interest being placed on the role and experience of women in the legal profession, after years of neglect. However, the interest is relatively recent and initiatives have yet to lead to a joined-up strategy to assist in fully supporting women solicitors. See McGlynn, *op. cit.* (1998), n. 5, at p. 2. See, too, the Law Society Diversity Access Scheme, *Diversity in Action – A Guide for Solicitors* <<http://www.lawsociety.org.uk/becomingasolicitor/careerinlaw/equalityanddiversity.lawas>>.

recognized that this good work will be undermined if women, and solicitors from lower socio-economic groups and from ethnic minority backgrounds, leave the profession in disproportionate numbers post qualification.²² The business case has also been undermined, not least because, by definition, it does nothing to challenge the economic imperative of the business model, and does not strive for equality as of right, but rather because it is economically rational to do so. It is based on the economic efficiency of markets and of firms that do not discriminate on economically irrational grounds, such as gender. McGlynn succinctly summarizes the three central tenets of the business case to be:

... the implementation and effective enforcement, at firm level, of equal opportunity policies will improve employee morale to an extent that is positively reflected in the productivity of the firm ... The second element ... suggests that it makes financial sense for employers to capitalise on any investment made in their employees, that is they make the best use of their human capital ... The third aspect ... is directed at frightening employers into adopting and enforcing equal opportunities policies in order to obviate expensive sex discrimination claims.²³

McGlynn then provides a persuasive argument for why the business case may not advance women in the workforce. If the business case is ultimately shown to be economically suspect, then the rationale for adopting equal opportunities policies would be diminished, and thus the gains that women had made in the legal profession may be lost.

She admits that the business case may, in the short term, improve the position of women in the profession, and much has been written on the need for firms to capitalize on the human capital of their women solicitors. However, women solicitors are still leaving the profession in greater numbers than men, even after Law Society initiatives that flowed from three studies to examine why this may be so. The literature still points to the pay gap between male and female solicitors and the slower promotion prospects of women. Some gains may have been made, but the business case has not led to wholesale change, and McGlynn would argue that the business case masks the problems that many women are facing. Basing equal opportunity arguments on the market perpetuates the solicitor as a unit of production, a

22 This is certainly not a new phenomenon and has been recognized in the United States literature for some time. Nelson and Trubek note that studies in the late 1980s suggest that, although a larger proportion of women and lower socio-economic law students and those from minority groups are entering the legal profession compared to previous decades, they are also the associates who are most likely to leave large law firms. R. Nelson and D. Trubek, 'Introduction: New Problems and New Paradigms in Studies of the Legal Profession' in *Lawyers' Ideals/Lawyers' Practices: Transformation in the American Legal Profession*, eds. R.L. Nelson, D. Trubek, and R. Solomon (1992) 1, at 9. Further references to United States literature on this area may be found in Nelson and Trubek's chapter.

23 McGlynn, *op. cit.* (2000), n. 9, at pp. 447–8.

form of human capital to be employed in the most efficient manner to maximize profits for the firm. It does not, nor does it purport to, deconstruct the structures and practices in law firms to examine the extent to which they act against women and other groups, and to seek to reconfigure the whole notion of legal practice and legal identity to promote genuine equality of opportunity for people of different cultural, social, and sexual backgrounds. Instead it seeks to fine-tune the existing model, without further reflection on its nature. In short, it reinforces the view that the legal profession is constructed in a manner that is gender neutral, if slightly less accommodating of women who have children, than of men or childless women. It is the antithesis of reflective practice.

Having said that, many of the proponents of the business case do seek to improve the lot of women in the profession, and in making some gains, may in time make more radical ones. If sufficient women rise to positions of power within the traditionally masculinist world of partnership, perhaps in time that world will be increasingly feminized and the identity of the profession will also shift.²⁴ That has certainly been the hope expressed by many – that, in time, the profession will change as women make up a larger percentage of senior staff. However, the business case is still not bearing much fruit even in the mid-2000s. The human capital theory appears to proffer the opportunity of equality on the basis of equal effort, equal commitment, and equal work for equal pay and promotion, as long as one is able to convince the partnership that one is not female. The business case appears to extend the opportunity of equality as long as it remains economically rational to do so.

In the meantime, during our recent research commissioned by the Law Society considering the experience of women solicitors who had had a break in their practising certificate in recent years, it became clear from our discussion that women solicitors were noting that their male colleagues were experiencing some of the same problems that they too had faced, but that men were more unwilling to leave or to speak up about the problems.²⁵ Collier too has noted many of the same concerns by male solicitors as we did with women solicitors.²⁶ This led us to consider whether in fact Sturm's analogy of the canary in the miner's lamp may be operating in the United Kingdom solicitors' profession – that women's progress within a sector is a barometer for how the profession is faring across its spectrum.²⁷ Her hypothesis is that the failure of women to thrive in a profession may be

24 However, see Menkel-Meadow, *op. cit.*, n. 7, who considers that such gains have not been made on this basis in the United States.

25 Duff and Webley, *op. cit.*, n. 3.

26 R. Collier, 'Male Lawyers and the Negotiation of Work and Family Commitments', paper given at SLSA Annual Conference 2004 on his research findings from the British Academy funded project.

27 Sturm, *op. cit.*, n. 6.

evidence not simply of gender and other forms of discrimination, but evidence of whether the profession is wholly dysfunctional. She notes that women are more likely as a class to experience discrimination than men; they are more visible than many other minority groups because of their greater numbers and provide more accessible indicators of problems within the profession. This is largely due to the more frequent examination of their position than that of solicitors from ethnic minorities, lower socio-economic groups, gay solicitors or solicitors with disabilities. If this were true, if women's experience were symptomatic of a wider problem facing the whole profession (albeit one that affected disadvantaged groups more substantially), then is it possible that the increasing drive towards business efficiency, the commodification of legal services, and profit maximization may now be adversely affecting the profession in the round? Problems affecting the whole profession are more likely to receive attention, and thus reach a resolution, than those only affecting marginalized groups. The next section of this article considers some of the main findings from our research into women solicitors' experience of legal practice.²⁸ It then considers the extent to which the business case for equal opportunities may in fact be actively undermining the position of women in the profession, and now also perhaps its more traditional constituency – men.

II. FINDINGS FROM THE LAW SOCIETY WOMEN SOLICITORS RESEARCH

1. *Methodology*

The Law Society commissioned us to undertake qualitative research to explore the current reasons why women were leaving the solicitors' profession,²⁹ to follow on from its own quantitative research, through which they had contacted all women who had had a break in their practising certificate at some time during the previous five years.³⁰ The Law Society's

28 It is admitted that using the term 'women' is a difficult one due to the risk of essentialism. We allowed women who participated in the study to define whether they considered the issues they faced to be ones that were individual to them or were issues that they believed to be specific to particular groups or to women more generally. The findings reflect their views on this rather than, necessarily, our own. We have tried to provide more specific detail on the women's own circumstances where they believed that the issues they raised related to their own characteristics rather than to all women solicitors. For a discussion of the difficulties associated with categories such as men and women, the notions of family and work, see Gerson, *op. cit.*, n. 14. See Collier, *op. cit.* (2002), n. 18, on reconceptualizing gender and, in particular, our understanding of the masculine.

29 A full account of the research and research method may be found at Duff and Webley, *op. cit.*, n. 3.

30 For findings see Siems, *op. cit.*, n. 3.

quantitative telephone interviews provided a group of women who expressed a willingness to take part in our qualitative research.³¹ The qualitative research was conducted using six focus groups, run in London, Leeds, and Manchester, of women solicitors with a recorded break or non-renewal of their practising certificate at some stage during the previous five years. The number of women in the focus groups we conducted ranged from three to six. Women were self-selecting – those that were willing and able to take part in the focus groups that were arranged in each of the areas were welcome to participate and childcare was provided when needed. The research did not include a control group – we did not interview women who had not had a break in their practising certificate, nor did we interview men. Research on male solicitors' views was already being undertaken by Collier at this time, and much previous research had been undertaken on women solicitors more widely. This research has been discussed in the preceding section and is returned to later in this article, where we believe there to be important comparisons.

Although we had originally categorized the participants as either 'returners' to or 'leavers' from the profession, in keeping with the Law Society's classification for their earlier quantitative research, some spanned both categories. Some of the women had subsequently returned to the profession, while others considered themselves as having left the profession for good. Some of the 'leavers' felt that in the future they might return to legal practice. Others who were 'returners' believed that in the future they might leave legal practice. Having said that, the 'returners' tended to have career breaks for two main reasons: child-care (rather than continuing employment with maternity leave) or to travel. Many 'returners' had taken the career break opportunity to return to a different type of legal practice, for example, to move in-house or to move into public sector or government based legal employment. Two participants had retired and one had been forced to leave on grounds of ill health. A small minority of participants had worked part-time in legal practice, however, the number who felt that it was successful was even smaller. In fact only three women felt that their part-time working was a really positive experience. The 'leavers' most often gave the reason that they had chosen a career change due to their dissatisfaction with legal practice.

31 The Law Society identified 529 women as the population of 'returners to the profession' or 'leavers from the profession' during the previous five years, based on information in the practising certificate records. This categorization is by no means clear cut, see Duff and Webley, *op. cit.*, n. 3, at p. 15. Of these, 82 per cent (439) were interviewed in the Law Society quantitative research, and 341 stated that they were willing to take part in our research. Potential participants were identified using a stratified random sampling technique in respect of these 341 women. The sample was divided into those with addresses in the north and those in the south. We should have preferred to adopt a more sensitive sampling technique; however, this was not possible within the confines of the research.

The issues to which the women repeatedly returned were lack of flexibility in the workplace, the long hours culture, the difficulty of fitting their work patterns into a male working paradigm, less favourable promotion prospects compared with male colleagues, poor management practices, and dehumanization of the individual by the firm. These were not universal, but were shared by the majority. The research did not seek to be representative of all women solicitors' views and we understand that our participants cannot represent women as 'a class' – essentialism is a difficulty in qualitative studies of this size, particularly when the participants comment on whether they believe that their experience is particular to them or one which they have seen, or they believe to be shared by other women. Their views are outlined below, and where we have considered their characteristics or firm characteristics to be important (or where they noted their importance) we have included those, along with any minority views, to illustrate our findings.

2. The culturally masculinist office

It is recognized by many commentators that masculinist cultures within many law firms make it difficult to retain women solicitors, as the appearance of gender neutrality masks the gendered traits privileged in the recruitment and promotion of staff.³² According to a consultant with a City firm:

There is an outpouring from law firms of the brightest and best (women), often to company legal departments, which, through sophisticated personnel and appraisal policies, are more likely to be meritocracies in which women do well.³³

This accords with the views of many of our participants; indeed, a number of them had taken the same route themselves, leaving private practice not to work in a completely different field, but to become in-house lawyers. They had since found that their assumptions of better management and terms and conditions had been borne out. The majority of our participants felt that women solicitors in private practice were expected to fit in to a masculinist working paradigm.

5F2: I still think it's very much a man's profession.

5F2: I think it's changing and there are an awful lot of women in the profession but I still think you're looked on as you're not as capable as they are. I still feel that, even when I finished. . .

The masculinist cultures of the profession have led to assumptions about what constitutes an ideal lawyer. These assumptions revolve around perceived masculinist characteristics rather than feminist ones, and therefore,

32 McGlynn, *op. cit.* (2000), n. 9. See, further, Dowd, *op. cit.*, n. 6; Fuchs Epstein, *op. cit.*, n. 14.; Menkel-Meadow, *op. cit.*, n. 7, and Sturm, *op. cit.*, n. 6.

33 Denise Kingsmill, in the *Law Society Gazette*, 4 February 1998, 152.

while women may aspire to be the ideal and idealized lawyer, it is rare that they will ever be able to achieve the ideal.³⁴ The image of authority is masculine, yet perceived as gender neutral – as Collier explains:

assessment of women against a normative ‘ideal’ employee, a figure understood simultaneously (and somewhat paradoxically) to be both distinctively gendered (as male/masculine: assertive, rational, competent, unemotional and so on); and, equally, to be somehow gender-neutral in terms of the commitments and dependencies which are seen as ‘outwith’ the field of paid employment.³⁵

The woman of authority is therefore other than the norm, the exception.

There was a widespread perception among our participants, from large and small firms, commercial, general practice and legal aid, that women solicitors must act like men if they want to achieve progression at the same rate as male solicitors. In other words, they argued that women are required to behave differently, to become someone they are not, in order to progress quickly.³⁶ This does not appear to be a finding unique to United Kingdom legal practice. Rhode’s research reveals that female characteristics and the characteristics expected of successful solicitors – assertiveness and competitiveness – are often perceived to be in contradiction.³⁷ Seron has gone further to suggest that to be a successful lawyer in a commercial context one needs to be a good entrepreneur, bringing in business and turning over a high volume of work and income, whereas it is difficult to find women who would be viewed as ‘very entrepreneurial’ because that implies the ability to ‘hustle’ and take risks that are often not typical female traits.³⁸ Thus, the characteristics of a good lawyer are the characteristics of an entrepreneur, and men are viewed as having these in greater measure than women. The vast majority of our participants, regardless of legal practice type or specialism, commented that traditionally masculinist traits were valued over feminist ones. The commercial and corporate law solicitors’ concerns principally related to the need to ‘hustle’ to bring in more business.

F31: ‘... I don’t mean it’s a peculiarly male thing but there’s an awful lot of men who can talk a good a job but they don’t necessarily *do* it and it has always riled me that a lot of my female colleagues, people who are really good

34 Thornton, op. cit., n. 17, at pp. 10–40.

35 See Collier, op. cit. (2002), n. 18, at p. 10.

36 H. Sommerlad, ‘Women Solicitors in a Fractured Profession’ (2002) 9 *International J. of the Legal Profession* at 215, stated by a finance lawyer in one of the Magic Circle firms.

37 D. Rhode, *The Unfinished Agenda: Women and the Legal Profession*, the ABA Report on Women in the Profession (2001) at 6

38 C. Seron, ‘Managing Entrepreneurial Legal Services: The Transformation of Small Firm Practice’ in Nelson, Trubek, and Solomon, op. cit., n. 22, at pp. 71–2. See P. Patton, ‘Women Lawyers, Their Status, Influence, and Retention in the Legal Profession’ (2004–5) 11 *William and Mary J. of Women and the Law* 173, at 182–3 for a discussion of the sociological literature on these traits.

at what they do and really efficient and get good outcomes are often ignored and passed over for promotion in favour of men who are frankly hopeless and the weakest people in the organisation but in front of the right people they've put on the right sort of front ...

This fits with Goriely and Williams's findings on the traditional approach to evaluating newly qualified solicitors, which relies more on measuring solicitors against the characteristics of the suitable 'chap' than on a rational and standardized approach to evaluation and appraisal.³⁹ It accords too with Sommerlad and Sanderson's and Kanter's discussion of cultural capital within legal practice, and with Gorman's statistical analysis that the greater the uncertainty in outcome in a case or transaction, the more likely that managers will return to cultural capital as a indicator of potential success than any past performance measure.⁴⁰ Many of our participants felt that they were being evaluated against the wrong criteria, and that the criteria used were not those that women as a group could meet as readily as their male counterparts – the classic definition of indirect discrimination. Nor did they believe the criteria to be inherently desirable as they were focused on individualistic tendencies such as competitiveness within the firm, rather than criteria that fostered positive team working environments that built long-term relationships with clients.⁴¹

Working patterns, styles, and skills were reported by most of the participants as other sources of inequality of opportunity for many women solicitors. They highlighted good communication skills, excellent client care, diligence, and a sense of responsibility as the key skills that they brought to the profession,⁴² but also felt that they were steered into areas of work that were considered to utilize these skills but were perceived to be women's work and consequently lacked status, promotion prospects or strong financial reward. Many believed that team working was seen to be a weakness rather than a strength. Some believed too that this difference in working patterns explained why male managers found it impossible to see how job and file sharing could work effectively as, for them, this would require a substantial change in working style as compared with many female staff who were more naturally inclined towards a collaborative style of working.⁴³

39 See T. Goriely and T. Williams, *The Impact of the New Training Scheme. Report on a Qualitative Study* (1996) at ch. 10 for a discussion and, in particular, at 124–5.

40 R. Kanter, 'Reflections on Women and the Legal Profession: A Sociological Perspective' (1978) 1 *Harvard Women's Law J.* 1, at 7. See, further, E. Gorman, 'Work Uncertainty and the Promotion of Professional Women: The Case of Law Firm Partnership' (2006) 85 *Social Forces* 865.

41 For a discussion of how teaching partisanship pervades attitudes to legal practice and of the dehumanization and commodification of solicitors, see Sturm, *op. cit.*, n. 6.

42 For a discussion of gender differences, skills, and leadership, see S. Hegelsen, *The Female Advantage: Women's Ways of Leadership* (1990).

43 Discussions around flexible and part-time working featured prominently in the focus groups. For reasons of space, and because they need more detailed discussion, they are not discussed in this article.

3. Competition and the market versus values and the private sphere

The long-hours culture and the lack of satisfaction with that, as well as the impact this has on women with caring responsibilities,⁴⁴ and the merger of the professional with the social in respect of business and networking events after work alienate some women solicitors.⁴⁵ Women in our research did not note their concerns about the sexual capital of women in marketing opportunities, but did point to the elision between sporting events and business development opportunities, along with a heavy drinking culture, that all the participants found at best difficult to keep up with and at worst alienating and exclusionary:

F3: That was a lot of evening drinks ... and I'm pleased to be out of that ... I mean some of them were quite fun, ... the clients we had were lovely ... the evenings in themselves weren't normally dull, just the number of them and the fact that you couldn't really say no, and the senior partner would organise it and you were expected to be there. There might be 2-3 in a week and there's a terrific drinking culture that's associated with it as well and so they go on until closing time and then where are we going now? If you say, well, actually I'm going home, they all look at you as if you're a lightweight. Ridiculous.

Sporting trips appeared to be by invitation only, were often during the working day, and were usually not open to women in the department. The after-work marketing events with clients were near compulsory, did not fit well with responsibilities outside work, and took up a lot of time in the evenings; they begrudged spending this time on what is after all, yet more work. Yet again, they felt that the goal of profit maximization was placed above the welfare of the firm's employees.

There was also a belief that a substantial proportion of their male colleagues relished the late nights and the feeling of working to tight deadlines, and that those solicitors who did not display similar traits were considered to be less than loyal to the professional project and the firm. But, this was not an exclusively male preoccupation; as the quote below suggests, it becomes part of the firm's culture:

44 The increased negative impact of long working hours on women solicitors who were primary child carers was noted by Sommerlad, *op. cit.*, n. 36, at pp. 217–22, as long hours tend to militate against flexible working practices. See, further, C. Epstein and R. Saute, *The Part-time Paradox* (1998) for a discussion. This was noted in the early 1990s in the United States by Fuchs Epstein, by Hochschild and, in the 1990s, Nelson and Trubek. See Nelson and Trubek, *op. cit.*, n. 22, at pp. 9–11.

45 McGlynn, *op. cit.*, n. 10, at pp. 103–4. Exclusion from mentoring and networking opportunities were noted as a concern by participants who believed these were beneficial to promotion prospects as well as important to professional development. For a discussion of the importance of networking and mentoring, see R. Dinovitzer and J. Hagan, 'Lawyers on the move: the consequences of mobility for legal careers' (2006) 13 *International J. of the Legal Profession* 119.

3F6: ... and I know this has been said about men going for drinks after work and that sort of thing but it's no different when you work in an office full of women. If you're there late at night you know, you get ... a kind of blitz spirit ... let's order a pizza ... and quite naturally those sort of bonds begin to develop but unfortunately it means that if you're not in a position to compete on the playing field ... you become more outside of the group and I don't know what the answer is to that.

Others noted that their male colleagues were equally unhappy about the long hours that were expected of them. Further, our participants all agreed that long hours in the office was seen as a 'good', regardless of productivity level or necessity. In addition, they believed that the long hours spent in the office were worn as a badge of honour, an expression of machismo, and that those who opted out of this culture were sidelined away from interesting work and work that was likely to lead to promotion.⁴⁶ It was suggested by some that the partners in their firms encouraged long working hours because they believed this would increase the firm's profit margin. However, the reverse may be true. Parsons argues the business case for reducing working hours, quoting 'The Quality of Working Life' report by the Institute of Management that shows that by reducing the hours that staff work, their business can become more profitable and also a more enjoyable place to work.⁴⁷ He provides evidence such as moves by companies like Bass that have inserted terms into their contracts for legal services that require firms to comply with a maximum 50-hour week for their lawyers.⁴⁸ Apart from anything else, fresher staff are more likely to produce better quality work, he argues. In addition, they are less likely to be away from work due to ill-health. Research conducted in 1999 by Solcare for Bygott Biggs, the legal recruitment agency, found that: 70 per cent of those who took part in the research were completely exhausted; 70 per cent were worried about the amount of work they had to do; 67 per cent worked long hours to get the job done; 30 per cent of male lawyers and 20 per cent of female lawyers were drinking to excess; alcohol-related deaths in the legal profession are twice the national average.⁴⁹ The vast majority of women that we talked to believed that firms could improve their productivity simply by cutting working hours and valuing their staff as people rather than renewable resources. The long-hours culture was universally condemned as a threat to health, enthusiasm and

46 This bears out Thornton's findings, *op. cit.*, n. 17, at p. 163.

47 Institute of Management, *The Quality of Working Life: 1998 Survey of Managers' Experiences*, cited by R. Parsons, *The Heart of Success: Making it in business without losing in life* (2002) at 30. See p. 26 for a humorous yet chillingly accurate comparison drawn between a city lawyer and a prisoner – the prisoner is considered to be in a better position than the lawyer, as the prisoner will be held captive for 15 rather than 40 years, even if the lawyer does get to leave the office on occasion.

48 Parsons, *id.*, at p. 28, citing a report in the *Times*, 22 January 2000.

49 *id.*, at p. 34.

commitment, family relationships, work efficiency and quality, client service, access to justice, and professionalism.

Sommerlad describes moves by some firms to push aside the impression that a long-hours culture is expected of lawyers and indeed to replace this with a 'nice place to work' ethos.⁵⁰ The rationale for this is that the firm is more likely to retain staff and to retain female staff than if it is perceived as working solicitors into the ground. Three of the women who participated in our research, all of whom had children, reported that they had been treated very well by their firms and enjoyed working in that environment, even though they too had at times worked long hours for their firms. Only one of them was based in London and she was very senior within that firm. However, this appears to be the exception rather than the norm, isolated instances rather than the beginnings of a whole shift in culture. Similar findings were reported in the quantitative study; of those solicitors who had considered leaving the profession, half of the females said they had considered leaving due to long hours and pressure compared to only a third of the males.⁵¹

Billing targets were another source of concern, although less so than is suggested by much of the United States literature. It was generally accepted that there was the appearance of parity in billing targets between them and their male peers, but that the way in which work was allocated meant that targets were harder to achieve for some than for others. One woman reported that her billed hours were 'stolen' by a senior male colleague while she was away on maternity leave. Many reported an overly aggressive culture associated with billing targets:

3F4: I think in some ways cost targets are quite good, you focus on what you're doing, you know, you earn good fees, you get a good salary, it's very clear but there's all sorts of shenanigans that then go on because of cost targets, I mean we used to have the most incredible office politics over good cases and he was stealing good cases and he was allocating work and it was the head of department's secretary so of course she was creaming off anything that she thought was going to pay well to, you know, her solicitor and all that sort of nonsense which I think is very destructive and it makes people not want to help each other out because you don't want to help one of your colleagues because you're thinking, well, I'm losing my billing time and I'm going to now have to stay late to make up my billable hours.

This quote relates to an exchange between women who had worked in City firms, high-street firms, and legal aid practices and was mentioned in the context of a legal aid firm rather than a large City practice. The participants all agreed with the problems inherent in billing targets, although one woman who was a partner in a large commercial firm believed that billing targets were not inherently problematic as long as they were managed properly by the partnership. In particular, some women felt that they were given 'softer'

50 Sommerlad, *op. cit.*, n. 36, at p. 221.

51 Siems, *op. cit.*, n. 3, at pp. 62–3.

work, or more administrative duties that detracted from their billable hours or their ability to meet the target, although others felt this was the case in some firms, but not their own.

2F3: women traditionally do sometimes do soft work, don't they, that bills, you know, that is less profitable, and sometimes women may take on more work ... on more administration within the firm and then their targets would be less. I mean our targets were always quite odd because some areas of the law pulled in the money and some didn't and actually again I was very lucky to be in a firm that didn't place too much emphasis on that. I say that slightly tongue-in-cheek, it's probably different in bigger firms ...

Thornton has highlighted the role differentiation between men and women in legal practice, suggesting that women have been viewed as handmaidens who support male lawyers in their career progression rather than carve out a career of their own.⁵² She goes further to suggest that women are now accepted and may even be preferred to male colleagues in certain roles, as long as they are acting under supervision, supporting senior male colleagues by 'reproducing conventional legal knowledge' as women work hard, can be trusted, will not take too many risks, and will seek advice if they feel they need it. These women, who act as backroom workers, provide an excellent service to senior men, without demanding career progression at the same pace as their male counterparts.⁵³ This had implications for their promotion prospects, for the type of work they were given, and also for the extent to which they felt valued for the work they did.

The majority of our participants believed that promotion prospects for women, particularly those who go on to have children, are lesser than those for comparable and even less well qualified and less hard-working men. This was perceived to be due to concerns by firms about promoting people who may ask for part-time or flexible working arrangements, which tends to be more associated with female colleagues. Others had experienced blatant discrimination once they had had a child, and sometimes from female rather than male colleagues, as this rather brutal quote illustrates:

1F1: ... it's as if you're always compensating for the fact that you might break your career, the fact that you were at high risk as a partner in case you had children, that's how they would have seen it. And ... when I went to an interview with my departmental head, ... who was a partner, at the end of my maternity leave when I'd had my first child, before I'd even sat in the chair she said don't even ask for part-time because there's no way that we'll consider it, she said, everybody knows where your loyalties will be and therefore we're not prepared to entertain it, and before I'd left the room she was phoning up the office that I worked at to ask about who could take my place before I'd even left the room. So, you know, there is that, there is such a big element of being prejudged.

52 Comments made by a senior barrister in Thornton, *op. cit.*, n. 17, at p. 149.

53 *id.*

And so, while for many women, they felt their experience was one of indirect sidelining within the firm, for others it was clear that a choice had been made about whether they would be totally loyal to the firm or not, and, if found wanting, they would be pushed aside.⁵⁴

Human capital theory would suggest that women were seeking less out of their work life than their male counterparts and that they did not invest the same mental and emotional energy into work as male solicitors do. This is in stark contrast to the views of our participants who had taken a career break.⁵⁵ Most of the women solicitors who had returned after a break were positive about their return to work because they found the work challenging and interesting. They particularly enjoyed the mental stimulation that work afforded them, especially those that had been on maternity leave. This group felt more self-confident on return to work, as they felt they were doing something in their own right and were being judged on this, although the feeling of confidence was in part attributed to working in a supportive environment. The women who did not feel supported on their return lost enthusiasm for the job and confidence in their abilities as a result. Participants also enjoyed the social interaction afforded by working outside the home. Some women came back to work reinvigorated and enthusiastic about practising as a solicitor, which seems at odds with the lack of identification between self-image and work. They perceived themselves to be more productive and more committed than their peers who had not had a career break. The return to work after a period away from the environment did highlight for many of the participants that while they were pleased to return to professional life, the culture that pervaded it felt very alien to them.

Although most explained that they were positive about their return to work, and regardless of the type of firm that they worked in, dissatisfaction began to creep in to the discussions when some of the women talked about conflicting work and family commitments. Some of our participants had only recently returned to work and had not yet found difficulties in juggling work and childcare, but over time some had found it very difficult to manage particularly after the birth of a second child. Galanter and Palay's research established that as female participation in law firms increased, they were less satisfied with legal practice than their male peers, and in law practice generally. In part, their dissatisfaction stemmed from the interplay between work and their family responsibilities.⁵⁶ The ABA Young Lawyers Division Survey⁵⁷ also suggests that younger lawyers, who it is contended were less

54 See, further, Patton, *op. cit.*, n. 38, at pp. 181–2.

55 Most of the career breaks were as a result of maternity leave, however, for others it was to travel, to work abroad, or to undertake other caring responsibilities.

56 See M. Galanter and T. Palay, 'The Transformation of the Big Law Firm' in Nelson, Trubek, and Solomon, *op. cit.*, n. 22, at p. 54 and their review of earlier United States research in the area.

57 B. Melendez, *ABA Young Lawyers Division Survey: Career Satisfaction* (2000) at <http://www.abanet.org/yld/satisfaction_800.doc>.

likely to have family responsibilities, were more satisfied than other surveys have suggested, such as the Boston Bar's research, which found that the difficulty of balancing home life, work life, and community service was one of the main barriers to professional fulfilment.⁵⁸ It is the lack of recognition of a life outside of the office that appeared to cause the greatest dissatisfaction, rather than the long hours that were required. Long hours in the office do not necessarily correlate with dissatisfaction, but it may be symptomatic of how little firms think of their staff and their lives. In our research, the extent to which our participants felt that their firm valued them as autonomous people made an enormous difference to their feelings of worth and their feelings towards their job. Four of our participants made it clear that they felt valued and enjoyed their work life as a result.⁵⁹

It could be argued that some models of the business case may not require people to enjoy their jobs, as long as they are prepared to continue to work at a level that makes financial sense to the firm. Other models may consider that enjoyment and productivity go hand in hand to maximize profit. However, one anathema to the business model must surely be poor management practice, as trained managerial level staff are required to make rational business decisions and manage their staff in the business interest.⁶⁰ Three of the four who enjoyed their working environment explained their satisfaction in part because they had tremendously supportive managers and this fostered their loyalty and commitment. However, the majority of women were concerned that some of the poor practice in the firms that they had worked in was a result of poor management rather than a deliberate attempt to exploit staff. A solicitor, who had formerly worked as a housing law specialist undertaking legal aid work, felt that many of the 'management' strategies were counterproductive, if unconsciously driven:

2F2: I think my main negative aspect was probably although in one way I quite liked being left to work on my own, in other ways I think I was quite often thrown into situations which I wasn't trained for or prepared for in any way

58 Boston Bar Association Task Force on Professional Fulfillment, *Expectations, Reality and Recommendations for Change* (1997) at <<http://www.bostonbar.org/prs/reports.htm>>.

59 One was a partner in a large City firm, one was an associate in a large provincial firm, another had just retired from a high-street practice specializing in non-contentious work, and the final one had worked 'at her husband's' firm as she described it. The other participants talked extensively about the stress they endured, at times at the expense of their physical and mental health, their family life, from the enormous burden of responsibility they felt towards their clients and their firms. There is insufficient space to discuss this in detail here, but it was one of the reasons why two of our participants had left work as a solicitor to become school teachers. Both reported lower levels of stress as a result, and noted that their personalities had reverted to their pre-law, more carefree days.

60 This is not a finding limited to the United Kingdom experience. See Rhode, *op. cit.*, n. 15, at p. 11, and J. Henning, *Maximising Law Firm Profitability: Hiring, Training and Productive Lawyers* (1993).

and I think in the long term that has an effect on your deep core of confidence because you're constantly dealing with situations where you think I shouldn't be doing this and somebody more superior should be assisting or guiding me and they're not, I'm just being dumped.

Others too highlighted the fact that managers in private practice rarely receive management training and this showed in the interaction between those managers and their staff:

4F: One of the things you used to hear, mostly as a joke, is that how good lawyers make bad managers.

Those who worked in-house believed that managerial practice was more enlightened in their current positions than in previous private practice employment, although there was one exception to that which was explained as one very poor manager rather than a lack of a good management system. They were also happier in their work and consequently felt more positively towards their work place. Perhaps the lack of management expertise leads solicitors to feel devalued in the work place, and dissatisfied with their professional lives?

4. The dehumanizing office – the commodification of the legal profession?

A long list of factors appear to affect a solicitor's satisfaction in the work-place including the extent to which they feel valued for the work that they do and the extent to which they considered themselves to be part of a profession that performs an important function in society. In the United States, the Boston Bar concluded that the list of factors that detract from feelings of worth and professionalism included: the increasing measurement and pressure for increased productivity, the increased commercialization of legal practice, the move towards lawyers as technicians rather than professionals, a decrease in the politeness and civility of members of the legal profession, particularly among litigators, the lack of mentoring, increased law student debt, feelings of isolation and alienation in legal practice, negative perceptions of lawyers, resources issues, and lack of practice management training.⁶¹ Many of these factors were noted by our participants, although not increased student debt (this may change in coming years), nor lack of civility in the litigation environment. It has been argued that large law firms and corporate legal departments rely on staff notions of legal professionalism to ensure that the work undertaken by their staff is of a high quality.⁶² This could equally be said to be true in smaller firms, legal aid firms, and law centres that rely heavily on the professionalism of their solicitors to work

61 Boston Bar Association, *Report of the Boston Bar Association Task Force on Professional Fulfillment* (2003) at <<http://www.bostonbar.org/prs/fulfillment.htm>> 6–7.

62 R. Nelson and D. Trubek, 'Arenas of Professionalism: The Professional Ideologies of Lawyers in Context' in Nelson, Trubek, and Solomon, op. cit., n. 22, at pp. 208–9.

often long hours, for low pay and in difficult circumstances.⁶³ However, across the legal profession there have been moves toward routinization of work and the adoption of corporate values that may either have the effect of deskilling staff, or at least giving the impression to staff that they are being deskilled and thus deprofessionalized.⁶⁴ As one of our participants explained:

3F4: the worse thing for me was the Legal Aid Board or whatever they call themselves now, I mean the amount of ridiculous nonsensical bureaucracy that's ... pointless and really quite insulting to your professionalism ... on top of everything else you have to do, to have to deal with the Legal Services Commission was a nightmare ... all our phones had a loudspeaker thing on them because you get put on hold by the Legal Services Commission for up to an hour and a half at a time and you'd walk round our office and you could just hear the Four Seasons because that's their hold music, coming out of every room.

Solicitors in the large and small firms, commercial, legal aid, City, and provincial all mentioned status as an important draw to the profession, but also their perception that the profession was losing its professionalism either through outside intervention (in the case of legal aid firms) or through pandering to the unrealistic demands of clients in the commercial sphere. A number of our participants were concerned that the profession was also losing its status and would soon become Supermarkets-R-Us-Law writ large, as a result of call centres replacing law offices and the professional ethos jettisoned for a consumer service ethos.⁶⁵ This dented their self-image and feelings of status. Solicitors in smaller firms and not-for-profit organizations felt that the lack of resources was hampering their ability to act as professionals for their clients. All our participants felt, to a greater or lesser extent, on a treadmill that they could not get off while staying in the profession, and it was one that did not value their experience or their skills, and did not wish to or was not able to value them as people.

Sommerlad's research identified the perception that working in a law firm may be a dehumanizing experience.⁶⁶ There was unanimous agreement from our participants, unprompted by us and in six separate focus groups, that firms did not to value their staff nearly enough, even from the four private practice staff who believed themselves to be valued by their most recent employer:

63 R. Moorhead, 'Legal Aid and the Decline of Private Practice; Blue Murder or Toxic Job?' (2004) 11 *International J. of the Legal Profession* 159.

64 However, see R. Abel, 'Constructing the Professional Commodity' in his *American Lawyers* (1989) for a fuller discussion about the factors that create the notion of legal professionalism.

65 See D. Clementi, *Report of the Review of the Regulatory Framework for Legal Services in England and Wales* (2004), downloadable at <<http://www.legal-services-review.org.uk/content/report/index.htm>>.

66 Sommerlad, *op. cit.*, n. 36, at p. 217.

IF2: I agree with that totally and I also think that value, value the human resources you've got, there are so many people with so much commitment and enthusiasm, but it needs to be nurtured and not just switched off and burnt out

...

It was argued that firms could increase loyalty and also productivity by valuing their staff. Not only that, but each group stated that it was economically nonsensical to lose staff through lack of value or neglect. Once more, some of the participants were referring to the business case for valuing staff:

IF3: Again I agree that having developed people and nurtured the talent and put people through training contracts at some expense, I think the firm has an interest in getting the right people in the right jobs, working in the right way for everybody and if there's a way to achieve that I think it would show dividends.

Others considered it more a matter of human decency. The lack of value was felt particularly strongly on return to work after a career break or maternity leave. This was evidenced as a perception that they had somehow lost their years of acquired skill and knowledge as a result of, in some instances, a relatively short period away from work.

Some of the anecdotes from our focus groups were so shocking that they brought focus groups to a complete standstill for some time, as the other women in the group first tried to take in what they had heard, and then offered support to the teller and finally burst into laughter at the absurdity of the situation. The next quote illustrates the extent to which one woman not only felt like she had been reduced to a number by her firm, but had indeed been so reduced:

F1: well, it's ... one of the biggest firms and it is anonymous, you're very much anonymous. You're viewed as a means of making income and very often nobody knows who you are anyway apart from that. I mean you get memos to sort of employee number 693, you know, they haven't learnt that skill of a name – [laughs] – so I think that's right, I think there is a big difference between small firms and big firms ...

It is difficult to say how this large law firm can consider that it values its solicitors as professionals, when it addresses them in such a fashion. Nor is it surprising when, as a result, solicitors feel that they have no choice but to move on. Mercifully this extreme situation did not appear to have been replicated amongst the other firms at which our participants had worked, nor did any of our participants find it anything other than shocking.

It has been suggested that women consider that they can compensate for the downsides of working in a masculinist culture with 'psychic income',⁶⁷ including working for the public good, creating a better quality of life for

67 See A. Gellis, 'Great Expectations of Women in the Legal Profession, a Commentary on State Studies' (1991) 66 *Indiana Law J.* 941, at 962.

themselves and their families, and other such non-monetary, 'softer' trade offs.⁶⁸ This certainly appeared to be the case for some of our participants. Some had traded money for a public sector legal job in the hope that this would increase their psychic income and consequently their quality of life, although some had found that with the move towards private sector ethics in the public sector, their hopes of increased psychic income were decreasing over time:

2F1: So it's a work culture thing and unfortunately it has drifted from commercial practice into the public sector in a way that the public sector is obsessively measuring itself.

There was concern expressed by those working in legal aid firms and law centres that the softer benefits that they had traded for less money and less status, were being eroded by the need to bring in more money, the move towards business efficiency, and the need to justify one's working practices to outside agencies. They felt that this could only get worse over time. Some had had to move out of the legal field entirely to find a more human environment and to regain an acceptable quality of life, and one even believed that retraining as a school teacher had been a major improvement.

The literature concedes that men are also afflicted by the masculinist cultures and also by the subordination of the employee to the demands of the firm. Whether subordination of the person, or dehumanization, and masculinist cultures are one and the same is a moot point; they may be products of the current rather unsophisticated business model that appears to be operating in many firms. A number of our participants explained that their male colleagues felt equally if not more trapped as they could not use the 'excuse', as one of our participants called it, of maternity leave to think about where next in terms of career, or use the break as an exit strategy for a new way of life.

3F1: ... the reaction of a lot of my male colleagues when I said I was leaving was that they would like to but then it was out of the question for them because they had families and they're still the main providers.

This differs from Thornton's view that the social pressure on men to succeed is so strong that:

[M]en are therefore encouraged to strive to suppress humanistic sentiments in order to slough off the feminised seeds of invidiousness associated with subordinate status. Women have rarely been perceived as serious careerists ...⁶⁹

although it may make it more difficult for men to leave work or change career. Collier's research into the views of male solicitors, carried out at a similar time as our own, would suggest that many male solicitors experience many of the suffocating effects of the legal culture, which have been dubbed

68 For a discussion see Thornton, *op. cit.*, n. 17, at pp. 158–62.

69 *id.*, at p. 153.

masculinist traits, and yet they too feel powerless to resist them.⁷⁰ However, women lawyers have been reporting the dominance and difficulties associated with the masculinist cultures in very similar terms for close to twenty years, with little evidence that the cultural shift is moving in the direction of women at all.⁷¹ They continue to do so, as this quote from a solicitor who moved in-house having trained at a City law firm and then worked at a niche practice in the West End explains:

3F3: I think it's probably something that's true of the characters of a lot of individuals in the law, particularly men I have to say, but I just found a lot of them incredibly aggressive and not particularly productive or helpful in getting things done and maybe I'm a particularly unaggressive person, I don't know, but it was something that I just, I shuddered at the thought of having to go back and deal with some of those people ... I wasn't prepared for [it] when I went into the profession in the first place, I really didn't expect people to be such bullies. I mean I'm not a wimp or anything but there was some people ... it's their aim just to get one over on you all the time and it just makes for unpleasant working ...

It may now be biting against male solicitors as well, and this may prompt change in the profession, whereas women's concerns seem to have affected little change over that period. The business case, as adopted by the legal profession at present, may be nemesis for professionalism and also for solicitor satisfaction with their work, for both women and men.

III. A VALUES BASED MODEL OF LEGAL PRACTICE?

There is good evidence from the United States that women are disproportionately affected and that alienation may be sufficient to cause women to leave the profession, and similar evidence is mounting in the United Kingdom. United States research conducted by Catalyst indicated that large numbers of women go to law school and yet women represented as little as 15.6 per cent of partners and 13.7 per cent of general counsels in Fortune 500 companies. The study⁷² found that women intended to stay with their current employer for three years fewer than the men in the study, and that women who were younger or from ethnic minority groups (women of colour as described in the United States report) intended to leave their present

70 Although see research by Richard Collier indicating that male solicitors also feel under pressure with the difficulty of balancing family and work: Collier, *op. cit.*, n. 26. See, too, R. Collier, 'Work-life balance: ladies only?' *The Lawyer*, 23 May 2005, 33.

71 See Menkel-Meadow, *op. cit.*, n. 7.

72 See Catalyst, *Women in Law: Making the Case* (2001) research undertaken by Catalyst and sponsored by Columbia University School of Law, Harvard Law School, the University of California at Berkeley Law School, the University of Michigan Law School, and Yale Law School.

employer sooner still. But alienation was not restricted to women, nor was the desire to leave their current positions. If alienation results in women leaving the profession, then it may lead men to leave too. The findings suggest that employers are more likely to retain solicitors if they provide them with opportunities for promotion and advancement as well as opportunities to develop themselves personally and professionally by making mentors available and allowing them control over their work.⁷³ The United States findings were similar to suggestions made by participants in our study, who also felt that career advancement, mentoring, and opportunities for personal development were important for retaining women in the profession. They also concluded that with the amount of time, money, and effort expended in training solicitors to full fee-earning potential, it was economically inefficient to then allow them to leave if there were ways in which their employment could be retained. Again, the business model was harnessed as a way to canvas support for equal opportunities policies.

It cannot be said that our participants found working as a solicitor to be an entirely negative experience and on that basis there is hope. All participants expressed positive aspects about their work as a solicitor; none felt that their career choice had been a complete mistake, nor that the profession was irredeemable. The great positives of working as a solicitor were the intellectual challenge and the variety of work that they carried out. For many, the satisfaction of working for and interacting with clients was an important, positive aspect of their role and for some, the status associated with being a solicitor was important. Some women enjoyed the interaction of office life, found teamwork to be a positive element of their work while retaining their independence as professionals. As one now retired member of the profession noted:

5F2: But I think it is a very good profession and I know it's harder now but it has given me an awful lot of pleasure and I hope I've given people what they wanted because I think your clients are important and I think it's something that you get a great deal of satisfaction from, if you're doing the job correctly, which hopefully we all do.

Participants also provided examples of the negatives about leaving work as a solicitor. For some it was the drop in pay (particularly those who had worked in commercial law practice), for others it was the loss of status or the feeling that they had lost part of their identity by leaving legal practice. Some women even went as far as to say that they felt a sense of failure for leaving the profession, for not being able to fit in with the established system of work within the profession:

73 The research was conducted through a detailed survey of 6,300 graduates from the participating schools from the classes of 1970–1999 with a response rate of 24 per cent. The research also involved interviews and focus groups with 21 lawyers from a representative sample.

IF2: I think to some extent a feeling of disappointment, that you'd achieved something, I felt I'd achieved something by qualifying and then feeling that you had put it on one side, that that part of your identity had gone.

A number of those that had felt compelled to leave still wished that they had been able to find a way to make working as a solicitor work for them.

The participants spoke constantly about the need for the 'establishment' in law firms to look to working practices in other sectors, to embrace difference and to value talent rather than conformity or the exclusive drive for short-term profit.⁷⁴ The women were passionate believers in the role that the profession could play in society and the importance of women solicitors in that project, but many felt that as long as their talents went under-recognized, women would continue to leave and these opportunities would be lost. Those few who spoke in support of their working environment expressed gratitude that their firms had treated them well. For the remainder, it was not concessions they wanted, it was working practices that made good economic, ethical, and social sense.⁷⁵ It is not so much that the profession has a choice as to whether it tackles these concerns, it is more that sooner or later it will have to. If not, the culture will continue to deteriorate, and solicitors, regardless of gender, colour, creed or sexual orientation, will be forced to choose between legal practice or life.

How best to reconceptualize professional identity and the professional project in order to further the advancement of women, and of other marginalized groups in the profession? A market-based business approach, as currently configured, has not succeeded to any great extent and as Radin and McGlynn explain, it continues to prize the economic above self. For those of us who believe that equality of opportunity is a social and moral right, as opposed to a means to the end of short-term profit maximization, it is difficult to conceive of a way to persuade a profession that is still relatively homogeneous in the senior ranks to reconsider its role and its identity in this way.⁷⁶ They may be swayed by long-term profit concerns, which would permit a more sophisticated business model to triumph, but ultimately this may not help those smaller firms and law centres and nor would it address the issue of values as fundamental rather than subordinate to the market. Sommerlad and Sanderson's research provides a good insight into why this may be so: the theory and the practice of cultural capital explains why the profession remakes itself in its own image, but what arguments may be advanced, or what strategies may be employed to enlighten the profession

74 Sommerlad and Sanderson have suggested strategies in this respect, *op. cit.* (1997), n. 2. See, too, Duff and Webley, *op. cit.*, n. 3 for further details of strategies suggested by participants in this study.

75 For reasons of space we have not included our participants' views on part-time and flexible working practices. These may be found in Duff and Webley, *id.* and in a subsequent article that will focus on this issue.

76 See R. Korzec, 'Working on the "Mommy Track": Motherhood and Women Lawyers' (1997) 8 *Hastings Women's Law J.* 117, at 136.

so that true progress may be made towards equality of opportunity?⁷⁷ The answer may lie in the findings of Collier's research into the experience of men and the dissatisfaction and the hurdles that many of them reported that they face during their working lives.⁷⁸ The work-life balance discussion, advanced by professionals and in the literature more usually in the context of women and, in particular, in the context of working mothers, appears to be gaining momentum with male professionals as well. Work-life balance debates are not exclusively market driven, although the business case is now being used in this context as well, in terms of increased enthusiasm and increased focus leading to greater productivity and quality of work. The work-life balance may, however, hold the key, to refocusing the profession as it focuses on the human experience both in work and outside work, rather than the needs of the firm as a purely profit-making enterprise.

There are obvious difficulties with this approach, not least that the work-life balance debate or 'theory' remains rather ill-defined.⁷⁹ It falls within the field of 'we know it when we see it', along with gut reactions, many of which have plagued the advancement of women in the profession in the past. It could be argued that work-life balance is really another branding for feminist cultures, but a less obvious and less threatening one for the legal establishment to consider. Work-life balance may be seen as code for having less commitment to the workplace, which has dogged part-time workers' (often women) promotion prospects.⁸⁰ Equally, unless law partners appear to see a benefit, to soften the blow of potentially lesser profits each year, then it is unlikely that law firms will take such theories seriously. There are, we are sure, many more arguments against raising the work-life balance debate as a counter to the current business case, not least the assumption that all firms are profit-making, or profit-focused, or that all firms are sufficiently financially viable to take non-financial considerations into account in the short term. Sadly, the threat that women will continue to leave the profession in large numbers, taking with them their valuable experience and the money that the firm has invested in their training and development, has not improved retention of women solicitors.

One wonders whether the threat of men leaving in similar numbers may galvanize firms into changing their approach to working practices, promotion decision making, and the culture of long hours and presentism that pervades the sector. The tide may be turning, if only as a result of male demands rather than female ones. A genuine acceptance of the need to reach

77 Sommerlad and Sanderson, *op. cit.* (1998), n. 2.

78 Collier, *op. cit.*, n. 70.

79 See Collier, *op. cit.*, n. 15. See, further, English, *op. cit.*, n. 14.

80 See, further, Fuchs Epstein et al., *op. cit.*, n. 14; E. Burton, 'More Glass Ceilings Than Open Doors: Women as Outsiders in the Legal Profession' (1996-7) 65 *Fordham Law Rev.* 565; C. Fuchs Epstein, 'Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors' (2000-1) 49 *Kansas Law Rev.* 733.

a work-life balance may well advance the position of women in the profession, although it may take men to demand the changes before it does. A more feminist culture may develop at the request of men, who are also feeling dehumanized and devalued, rather than from female intervention. It is unlikely to restructure the profession to such an extent that it will assist in developing a culture of equality of opportunity that will take down barriers affecting other marginalized groups.⁸¹ That will only be possible if the profession is genuinely prepared to examine its cultural capital foundations, and there is little evidence in our study and those of many others, to suggest that this is likely to occur in the near future.

CONCLUSIONS

Work-life balance debates bring the profession back to the issue of values, as opposed to one central value – law as business, law as profit. As Rhode discusses in the United States context:

most lawyers want not only a comfortable lifestyle, but also a supportive practice environment and socially useful work. Ironically enough, attorneys' success in achieving the first objective has limited their ability to achieve the others.⁸²

The pursuit of the current business model of law, which appears to lack sophistication or long-term focus and does not yield to basic ethical principles of equality and human value, pursues efficiency through routinization across all sectors, and profit in many. In the process, it has squeezed out the opportunity to undertake challenging and valuable (in a personal sense) legal work, has led to a management structure that removes much of the control from individual solicitors over workload, work type, and work patterns. It has also increased the dominance of the public over the private sphere to the extent that many once public-sphere activities have been moved to the private (voluntary work, pro bono activities), at a time when the private sphere is already under pressure in respect of family and other personal commitments.⁸³ The solicitor as a unit of production has become a reality in some firms. Until the pursuit of business efficiency and profit are relegated to the status of one value – but not the core value – of the profession, it is unlikely that the status of women, of minority groups, and for that matter of fathers, will improve substantially.

The research has demonstrated that many of the problems that have been reported in earlier studies on women in the legal profession, both in the

81 See Mossman, *op. cit.*, n. 14, at p. 293.

82 Rhode, *op. cit.*, n. 15, at p. 13. This lecture, published as an article, provides a detailed analysis of the profit versus wider values tension in the United States legal profession.

83 For a discussion, see D. Myers, *The Pursuit of Happiness* (1993) at 133–4. This point is also raised by Rhode, *id.*, at p. 6.

United Kingdom and in the United States, persist. The research participants were all women who had had a break in their practising certificate and their insights explained that the lack of a successful work/life balance, the institutionalization of the long-hours culture and, for some, the deprofessionalization of their work had an impact on whether they wished to remain in the profession. They believed that many of the problems were associated with the current business model adopted by firms, whether this was profit-driven or audit-driven. They also suggested that the negative effects were not isolated to particular groups of women but were being experienced to some extent by both genders and across all firms, even if they were more acute for traditionally marginalized groups. It will be interesting to see whether men are more able to effect institutional change in the profession and whether the change improves work/life balance for all solicitors regardless of gender.