

Lives of Women Lawyers Are More Than Billable Hours

Editor's Note: This article is third in a series about diversity in the Virginia bar.

by Dawn Chase

WHILE WOMEN NOW ARE WELL-REPRESENTED IN THE RANKS OF LAWYERS, statistics about law firm success indicate that the glass ceiling is still intact — especially for women of color.

A 2008 survey on retention and promotion of women in the nation's two hundred largest law firms by the National Association of Women Lawyers reports that

For more than two decades women have graduated from law schools and started careers in private practice at about the same rate as men, yet women continue to be markedly under-represented in the leadership ranks of firms, accounting for fewer than 16 percent of equity partners....

At every stage of practice, men out-earn women lawyers.... Men equity partners earn on average over \$87,000 a year more than female equity partners.

The survey, available at <http://www.nawl.org/Assets/Documents/2008+Survey.pdf>, suggests a disheartening outlook for the prospects of women who want to pursue a big-firm career.

Beyond measurement of graduation from law school, and success in big firms, and the comparatively few women who sit on the bench, statistics do not address many of the complexities faced by women practicing law.

Are caretaking responsibilities for children and elderly relatives dragging them down? NALP—The Association for Legal Career Professionals reports that women vastly outnumber men among part-time lawyers, with Richmond law firms leading the nation (20.4 percent of women associates). <http://www.nalp.org/parttimelawyers>. Part-time practice obviously puts a lawyer at a competitive disadvantage on the partnership track.

Men are far less likely to opt for part time (1 percent nationally, 0.3 percent in Richmond). The numbers do not otherwise address the fact that lifestyle choices in the youngest generation of lawyers affect the commitment of both women and men to the traditional work-dominated career path.

The numbers do not report on how often women sit first chair for trial work. While they track what happens to lateral hires after they arrive at big firms, the numbers do not specify what the lawyers were doing before they changed employers.

Were they practicing elsewhere, or involved in another line of work? If they came from outside law, how does that previous experience affect skill level, rainmaking, and, ultimately, promotion?

The numbers' implied stories of crushed ambitions and hard work unrewarded do not correlate with the experience of many women Virginia lawyers whose careers, albeit untraditional in the big-firm sense, have enabled them to employ their energies in deeply satisfying ways, to be of service to others, and to have influence in many areas of life where they can continue to learn and grow.

To those women, that wisdom is money in the bank.



Thompson



"It's like a daily new movie here — a constant study of human society," said Arlington lawyer **Betty A. Thompson**, who last month celebrated her sixtieth year of practice — most of it in family law. She is eighty-four. "There's not a day goes by that I'm not learning something about the law. The longer you do this, the less you know. You never reach the top."

Thompson said that, from the beginning, she had "a sense of being responsible for my own future. I've never treated myself as a 'woman lawyer,' but as a lawyer."

She states that "I have never felt discriminated against by my male peers nor by male jurists." Other women who have heard her stories might see it differently.

When Thompson graduated from George Washington University School of Law, a professor who had watched over her took her aside and said, "We've arranged for you to have an interview for a job at the Federal Trade Commission."

Thompson rejected that beneficence outright. "I'm going to be a real lawyer," she told him. "I never even went to the interview." Instead, she made cold calls to Northern Virginia law firms asking for work. After much jaw-dropping and closed-door consultations with their bosses, receptionists would emerge to tell her there was nothing available. "At best, potential employers thought I was a 'lawyerette,'" she said.

Finally, she found a clerical position with an attorney who taught bar review courses. That led to her opening her own office, first as a general practitioner, then as a family lawyer. “It’s often said that your clients determine your practice,” she said. She has taken on associates and partners over the years, but she has always run her own show.

When Thompson was feted by the Virginia Women Attorneys Association in her fiftieth year of practice, she observed, “Nothing in life is permanent. . . . You think you’ve got it together, but gradually over time everything is changing, and so you have to continue to regroup and adapt to what’s going on around you.”

It’s a skill that has sustained women through the centuries, and Thompson uses it adeptly in her life. Sixty years sounds like a long time, but “it seems like yesterday,” she said.



Mary Lynn Tate, an Abingdon attorney who focuses on personal injury law, business litigation, and transactions, is another woman who held her head high and marched into the profession with a clear inner conviction that she was meant to be a lawyer. Reared in Tennessee and southwest Virginia, the daughter of a coal miner who shared her love of television news and politics, she retains the soft-spoken graciousness of the region, as well as the steel just below the surface.

Tate went to the University of Richmond on a debate scholarship. While in law school, she worked for eminent attorneys at Hunton & Williams in Richmond, then lawyers in Abingdon. “They let me be their shadow,” she said. “My first year, I got to argue a case at the Fourth Circuit.” She was appointed by U.S. District Judge Glen M. Williams to handle Section 1983 cases involving treatment of prison inmates. Williams became a friend and a mentor.

In practice, she continued her education. She invited noted plaintiffs attorney Robert T. Hall of Reston to associate in a case so she could observe. “I’ll never forget the impact his taking the defendant doctor’s deposition had on me,” she said. She attended a summer program at Harvard Law School on federal jurisdiction and practice.

Now she has applied to be considered for a Fourth Circuit Court of Appeals judgeship.

She said her goal and the measure of her success has always been “when I’ve been able to help somebody or, in a business setting, make the playing field equal or obtain redress for some wrongful conduct.”

When time came to practice, Tate returned to Southwest Virginia. “I can go anywhere and do this, but I was comfortable being here, and felt there was a real need for competent legal services.”

Finding clients in Abingdon has never been a problem, she said. “This is a matriarchal society.” Through the generations, men have worked in the mines, hunted, and fished, and women managed the family and the household money. Going to a

woman for advice, once a trusted relationship is established, is customary in the region, Tate said. Once people saw her in court, her reputation spread.

Learning to negotiate the judicial system and do business with male lawyers when she was starting out in 1976 took more time. “Some male lawyers did really nasty things,” she said. Tate recalled that when she was two years out of law school she attended a deposition scheduled in Boston by opposing counsel. When her turn came for discovery, the other lawyer said she couldn’t, because she had not filed notice to conduct cross-examination.

Tate insisted that she in fact had the right to cross. The impasse was resolved when she placed a call to Judge Williams. “First he chuckled a little bit, then he got pretty mad,” she said. He spoke to the other lawyer, and cross-examination commenced.

The incident could as well have been a power play over a less experienced male lawyer, but as Tate describes it, it required her to step beyond the obsequiousness that many women are trained in. “Had I been the least bit timid or slow,” the opportunity would have been lost.

She turned to another cultural example to describe the phenomenon: a study of commercial airline collisions found that some crashes are attributed to a lack of assertiveness in communication between a subordinate copilot and a captain. The copilot knows there is an urgent situation, but is reluctant to offend the captain by pointing it out directly. Airlines have taken measures to reduce the hierarchical symbols, such as addressing the pilot as “captain” in the cockpit, to eliminate the impediment.

Tate joked that she had an early introduction to the assertiveness her job requires from “yelling at two older brothers.”



Judge **Joanne F. Alper** of Arlington has war stories of her own, from when she was starting practice in 1973. She, too, was mentored — by Harvey B. Cohen, a lion of the bar in the Washington, D.C., metropolitan area. “He took me everywhere,” she said. She started working for him as a clerk, and “I never had to look for another job. I was one of the crowd early on.”

The association didn’t shield her from bias, however. Once, she called a male lawyer on a case and he growled, “I’m not



Tate



Alper

going to talk to some broad. Put your boss on.” She ran into clients who “didn’t really want a woman lawyer.”

“When you tell women some of those stories today, they can’t believe it,” she said.

She practiced with Cohen’s law firm for eighteen years. When she had her first child, there was no policy for maternity leave — “we just sort of set our own rules,” she said. She took six weeks. For the second, “I was a partner, so I only took four weeks off.”

“The pressure on men has always been if you’re going to be a dog in the race you’ve got to be the top dog.” ... But many women say, “I don’t want to be the managing partner. I like what I’m doing.”

Her husband, a prosecutor in the District, had more flexibility and provided much of the child care. She also relied on colleagues in the office to cover for her during the occasional family emergency: “the kid’s sick and you don’t have day care, and you’ve got to be in court. We’ve all been there.”

In 1991, with her older child just starting high school, Alper went on the bench. Now, she sits on Arlington’s circuit bench, and she has thrown her hat in the ring for a Virginia Court of Appeals seat.

Alper said women should not define their success by looking at what the statistics measure.

“The pressure on men has always been if you’re going to be a dog in the race you’ve got to be the top dog,” she said. But many women say, “I don’t want to be the managing partner. I like what I’m doing.”

“I don’t know why women aren’t putting their names forward more often,” she said. The questions she thinks most candidates ask themselves are, “Do I have the desire to do it? Do I have the political ability to do it? Do I want to run and lose?”



Before flex time became an employee benefit, **Gail Starling Marshall** was working it out for herself.

She graduated from the University of Virginia School of Law in 1968 — one of two women in the class. She remembers at a student gathering in her first year she spotted the only African American student, and the two were drawn to each other in the sea of white men. “Is there only one of you, too?” he asked. “No,” Marshall said. “There are two of me.”

She offered an example of the travails of law firms adjusting to female lawyers: When she was applying for a job at an

established and respected law firm, she asked how much she would be paid. The interviewer, apparently not sure how to deal with that, said, “We pay our *men* such-and-such.”

Once, when Marshall told that story, someone asked, “Why didn’t you tell the story with the name of the firm in it?” “Because I was glad they offered me a job,” she said. She did not — and does not — want to discourage firms from “making baby steps.”

Her career ladder has been more of a career zigzag, she said. She worked for a commission that revised the Constitution of Virginia, taught at U.Va. for four years, then joined Hogan & Hartson in Washington, D.C., as an associate.

That’s where the flex time came in: She had married a widower with four children and later added a daughter to the family. She commuted, taking a bus or train between their home in Rapidan in Culpeper County and the District. She learned to be disciplined and efficient and she got the work done. Her husband, a university professor, took the lead caring for the children.

The firm worked with Marshall to accommodate her schedule, but in those early days with no precedent, the firm worried about details such as whether her male counterparts would be resentful. Still, Marshall became a partner in litigation at Hogan & Hartson.

Women faced another pressure back then: to be a credit to their gender. Marshall recalled hearing a conversation in which a U.S. senator and another attorney were tut-tutting over women taking law school slots that men could have had. Their theory was that women weren’t as likely to practice. She spoke up and informed them that “one hundred percent of the women from my law school class practice law.” Again, baby steps.

In 1985, Mary Sue Terry was elected attorney general of Virginia, and Marshall was invited to join her staff as deputy AG for judicial affairs. The offer required leaving her partnership, but she took it. The commute to Richmond began.

Terry was Marshall’s first woman mentor, and she was an unselfish coach. As attorney general, Terry could have taken over the big cases, but she encouraged Marshall to handle them and argue them all the way to the U.S. Supreme Court.

To describe her experience of letting go the secure law firm career to risk the unknown, Marshall pulled out a 1999 *New Yorker* article about Michelle and Barack Obama. He was trying to decide whether to pursue a political career. They were looking forward to having children. Michelle, a lawyer, foreshadowed the ride that lay ahead:



Marshall

[W]e are going to be busy people doing lots of stuff. And it'll be interesting to see what life has to offer. If I had stayed in a law firm and made partner, my life would be completely different. I wouldn't know the people I know, and I would be more risk-averse. Barack has helped me loosen up and feel comfortable with taking risks, not doing things the traditional way and sort of testing it out, because that is how he grew up.

http://www.newyorker.com/reporting/2009/01/19/090119fa_fact_cook?ytrail

Now, Marshall works part time as counsel to the Town of Orange, practicing from her home with the modern conveniences of faxes, e-mail, FedEx, and the Internet. She serves as appointed counsel in federal and state courts. She does pro bono work, teaches, and volunteers for other projects, legal and nonlegal.



Elizabeth B. Lacy, the first woman to serve on the Supreme Court of Virginia, shares the view that the definition of career success is different for different people, but she remains concerned about the relative scarcity of women on the bench and at the helm of law firms.

"The larger law firms in this country have a tremendous impact in a number of different ways," she said. For one, they have access to the legislative halls, which gives them influence on the direction of the justice system and legal profession.

"Women need to be part of this."

In addition to the perspectives they contribute to issues, the presence of women in leadership and on the bench has a "hugely symbolic aspect," she said. "How many young black men now think they can be president, when they didn't think that before?"

But statistics suggest that women—the older generations at least—have not been persuaded by law firms' attempts to make accommodations. "Ninety-eight percent of law firms offer flex hours. ... Five percent of lawyers take advantage of it. There is a perception that it's a disadvantage for your career," she said.

Raising a family takes time from traditional partnership tracks and puts women on a different schedule. But the choice does not necessarily kill a career. Lacy herself took a six-year hiatus when she moved to Virginia from Texas, and yet won appointment to the state's highest Court. She now is retired from the bench.

She said it will be interesting to see how members of the millennial generation fare in their decisions to sacrifice the corner office for work-life balance, trading less money for more time.

Marshall quoted U.S. Justice Ruth Bader Ginsberg's observation that a reasonable work-life balance will not be achieved until law firms do away with the billable hour. Many professions and some law firms now price their services as a project package. Charging by the hour is increasingly considered anachronistic. Yet firms are slow to relinquish it because it is the best measure they know of productivity—along with the number and quality of clients a lawyer recruits.



Kathleen J.L. Holmes, president of the Virginia Women Attorneys Association, is confident that the overt discrimination of the past has abated. "The incidents of [women] being required to show a bar card in various corners of Virginia are few and far between," she said.

She is one of the big-firm success stories—she's a partner with William Mullen, she practices in McLean, and she's a wife and mother. Her husband is a stay-at-home father. She's very active in bar work, and she's applying for a judgeship on the Fourth U.S. Circuit Court of Appeals.

The numbers contained in the statistics are "downright abysmal," she said. She anticipates that ultimately "there is going to be a shift in the practice of law and the kind of compensation that lawyers make." Holmes does not know what the result will be, but she suspects that the the law firm paradigm will shift as profoundly as the publishing world has in response to the Internet.

But, she says, the reality always will be that "law firms tend to be run by people who bring in the business. That's the key point, I think. It's the bottom line."



Lacy



Holmes

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Pointers for the Ladder — or Zigzag — of Success

Suggestions from women lawyers about steps that could expand women's — or anyone's — options in the practice of law:

Believe that if you're talented and work hard, you'll find a place. “The reality of the workplace today is that we need talented people,” said Kathleen Holmes, president of the Virginia Women Attorneys Association. “It can't matter whether that person is male or female, their race or culture or religious background.”

Mentorship. There are never enough mentors for young lawyers of any background. Women and minorities value all advice from experienced attorneys — especially those who are “like them.”

Work on your presentation. Remember Caroline Kennedy's recent political debut, splattered with hundreds of “you knows”? Get a speaking coach or media trainer to help you express yourself without verbal tics and with uncomplicated complete sentences that get to the heart of the matter. Learn to use a microphone and present yourself on camera.

Gail Starling Marshall of Rapidan has noticed in her law school teaching that many female students end every sentence, even declarative ones, with an upward inflection as if they are unsure of themselves. That mannerism plays into a gender stereotype. Women should train themselves out of it, she suggests.

Help develop the law. Throughout her career, family attorney Betty A. Thompson has found sections of law that needed tweaking. She introduced herself to legislators she thought would be interested and worked with them and like-minded lawyers to write legislation that addressed the problems. Eventually, one of those lawmakers approached her about serving on the bench — an offer she declined.

The General Assembly sponsors many commissions and studies on an ongoing basis. Participation offers a chance to contribute, networking opportunities, and a change of pace for a practitioner.

Throw your hat in the ring. Apply for judgeships and promotions. If you're shy, work through it. Most of these jobs don't come with an engraved invitation. “I think there are women who would very much like to be on the bench or in management positions, but there's a feeling they're not allowed to go there, or they don't know how to take the heat when they go there,” Abingdon lawyer Mary Lynn Tate said. “You've got to be willing to lose to ever succeed.”

Holmes said the Virginia Women Attorneys Association and its local chapters circulates news of judicial openings to encourage participation in the process.

Take a So You Want to Be a Judge course. The VWAA, Metropolitan Richmond Women's Bar Association, and minority bars offer the courses, which cover aspects such as introducing yourself to legislators, building a portfolio, soliciting endorsements, and the interview process. Marshall suggested that the Virginia State Bar could explore ways it could work with the association to bolster the program.

Provide interview coaching. Marshall says this is valuable for recent law school graduates, but it also is helpful to lawyers who face the question “you were out of the market for ten years?” “It's doubly important for women who are making career changes,” she said.

Negotiate. Law firms today are laying off attorneys. The firm manager calls an associate in and says, “We love your work. We're going to give you two months' severance pay.” “Ask for three months,” Marshall said. Ask for a letter of recommendation. “That would come second nature to a man. He would bargain for more than they were offering.”

Firms: give credit for bar work and pro bono. Lawyers who want to contribute their skills to their community look for firms that support them. “When an hour spent on bar work is treated the same way as an hour billing a client, you will see more participation,” Holmes said.

“If you're going to tout that your firm does pro bono, then it's got to count on the hours,” Marshall said. She added that she appreciates the Virginia State Bar's lead in recognizing work for the underprivileged not only by big firms, but from public sector and legal aid attorneys.

Firms: consider moving toward “value billing” based on project scope or case outcome. The lifestyle problems of big-firm lawyers are “not served by a lactation room,” Marshall said. Tying value to quality instead of quantity of work has the potential of improving a lawyer's life.

Read “Actions for Advancing Women into Law Firm Leadership.” Produced by the National Association of Women Lawyers National Leadership Summit in July 2008, this provides insights into where the bumps are for women in law firms, and how to smooth them over. <http://www.nawl.org/Assets/2008+Summit+Report.pdf>

Get involved in bar work. “Men are always working. They can convince themselves that when they're involved in bar work, they're still working,” Marshall said. But women, she suspects, tend to use their volunteer time with a wider variety of activities that aren't necessarily tied to the law.

Women should involve themselves in their local bars at least, she recommends. Participation is particularly important for people who practice part time or who don't go to court. Bar work gets your name out there, so people won't ask “who's that?” when your name appears on a list of prospective judges.

The Virginia State Bar Council has eighty members, eighteen of whom are women. Most were appointed by the Supreme Court to at large seats or elected to seats from Northern Virginia. “It is sad that you do not have more women on council,” said retired Virginia Justice Elizabeth B. Lacy. She suggested that might improve now that the VSB has a female executive director.

Network. The VWAA moved beyond introducing lawyers and judges to each other: it sponsors events that bring women of different professions, including law, together to exchange business cards and share a program about how to leverage technology to market a practice or business.

Bar groups and firms should include families in events. “The Virginia State Bar has been fantastic in this regard, making their annual meeting family friendly,” Marshall said. Family-inclusive events send the message that “your family is important to us, and if your family is not happy, then you’re not happy at work.”

When you’re on hiatus, stay in touch. Most people don’t give up their law license when they take time off or cease practicing for other employment. Lacy recommends that the VSB identify those people and encourage them to stay active in the profession by serving on committees or participating in sections.

Reach out to help other lawyers. “That came with the territory of being the first woman on the Court,” Lacy said. She made herself available to the bar and other groups, which she found personally enriching because it helped her “stay in touch with the real world of lawyers.... I enjoy the people. I enjoyed the change of pace — particularly on the appellate bench. It sure beats sitting in front of a computer everyday.”

Thompson said practice “is not about having clients and making money. It’s about giving back to the profession.” Lawyers who don’t do that miss out on “the real enjoyment that comes from giving of yourself.”

Don’t whine. This advice comes from Thompson, who in the 1960s used to return to her office in the evening and clean, because she couldn’t afford a maid service.

“Too many young people today come into an office and say ‘what are you going to do for me?’ Don’t be so damned selfish. Put more emphasis on ‘what I can do for the firm.’ Never say ‘I don’t know.’ Be creative and think. Don’t practice law by ear. Go to the book and read the Code. Don’t be afraid of hard work.”

Define “success” on your own terms. Some people need to step back — for a while, at least — to give priority to child rearing, caring for an elderly parent, or a special project one feels called to do. “The thing that I want to speak against is defining work in large firms as being what all lawyers are striving for,” said Gail Marshall.

“Either women are bamboozled — going into law without realizing that they have little chance of success — or they go knowing they will be successful.” Marshall believes that law students make the choice because they feel a law degree will help them achieve success that is not measured by the statistics.

Marshall describes her career as a zigzag that has included many jobs, many people, and many interests.

“I am very happy with my lives as a lawyer and particularly with the variety of work and problem-solving, people-serving opportunities it has offered,” Marshall said. “And I was delighted when my daughter, Starling, decided on a legal career. We have a roaring time analyzing, criticizing, arguing, and discussing all sorts of legal issues and issues within the profession. She is brimming with confidence.”

— Dawn Chase

*“You’ve got to be willing to lose
to ever succeed.”*