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Gendered Stigma in the Legal Profession

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Criminology, Law & Society

by

Amanda M. Fisher, J.D.

Dissertation Committee:
Professor Kirk R. Williams, Chair
Assistant Professor Lee Cabatingan
Professor Jane K. Stoeber

2021

DEDICATION

To

my husband, Bradley, and our son, Jax,

who have tirelessly supported me during this long endeavor. You two are my light, my driving force, and the reason I continue to work towards a better future;

and to my parents,

who have believed in me since day one and always encouraged me to go after my wildest dreams, and for their incredible willingness to take care of Jax in the middle of a pandemic so I could continue to make progress in my career.

“It all starts with one kernel.”

John E. Mayhall

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ABSTRACT OF THE DISSERTATION

Gendered Stigma in the Legal Profession

By

Amanda M. Fisher, J.D.

Doctor of Philosophy in Social Ecology

University of California, Irvine, 2021

Professor Kirk Williams, Chair

Women began entering the legal profession in large numbers in the 1970s, and in the 50 years since, quantitative evidence shows progress in metrics such as percentage of women in the profession and salaries. Qualitative evidence, on the other hand, demonstrates the persistent presence of gendered stigma. In this project, “gendered stigma” refers to circumstances resulting from one’s gender as a salient feature of their work, serving to discredit one’s abilities and accomplishments. The gender-driven experiences of women new to the profession belies the assumption that simply increasing the number of women would solve the disparities between men and women who practice law. This project aims to uncover differences in the lived experiences of women and men in the modern legal profession. Presumably, institutionalized gendered stigma is still prevalent in the profession and likely negatively affects women attorneys at work and at home more so than their male colleagues. An in-depth exploration into the day-to-day experiences of attorneys illuminates how gendered stigma is recognized, perceived, and internalized by attorneys. This study uses identity theory and stigma analyses to explore the cycle of gendered stigma still prevalent in the legal profession. This theoretical foundation then

informs practical solutions for mitigating the negative effects of gendered stigma on the profession and the individuals practicing within it.

INTRODUCTION

“Our strategy was the soul of simplicity. It was to go after the stereotypes that were written into law and to show that many could be disadvantaged by the stereotype, as well as women. We wanted people to be judged by what they do, by the functions they perform, and not by gender.”

-Supreme Court Justice, Ruth Bader Ginsburg

The courtroom was warmer than expected. Attorneys mingled casually, distinguishable by their suits and ease of movement throughout the room. Dozens of men, almost all in gray suits, chatted with each other and with the court staff—familiar with the process and comfortable with their duties. Women in skirt suits sprinkled the attorney-only areas, mostly talking amongst themselves, seeming slightly less comfortable than their male counterparts as they tended toward the back of the section and stayed put rather than moving about the room.

Shortly after 9:00 a.m. the judge took the bench. There were no “oyez” called out. Not even the more common, “All Rise!” preceding an announcement by a bailiff letting the courtroom patrons know the judge was taking the bench and to come to order. The judge walked out and sat behind the bench and then a bailiff called the court to order. Despite the request for order, the attorneys still milled about concerned only with their own tasks at hand. Two men at the front of the attorney line chatted amongst themselves about personal matters. “First in line!” the judge called from the station at the head of the courtroom. The two men continued chatting, unencumbered by the procedural flow they were impeding. Two other men standing nearby stopped their conversation and looked over at the line leaders anxiously, but said nothing. After a gracious pause, the judge again called for the first in line, this time louder and with more edge in her voice. She was annoyed. This got their attention and the men indicated to her that they did

not have defendants present and thus were not ready to be heard. Even more annoyed, she then called, “First in line with defendant present and ready to go!”

This observation took place in a courtroom in Southern California in 2018. During a time and in a place where one might expect women in positions of power to be afforded the same respect as similarly situated men. Yet, that was not the case. The judge, who happened to be a woman, was largely ignored in a situation where she should have been the focal point. Although her presence on the bench is a testament to how far women in the legal profession have progressed since it was a male-only profession, the lack of deference towards her position shows that the profession is still male-centric, even if it is no longer exclusively male. Whether it is a phenomenon that is preventing women from ascending, or whether it is a phenomenon that is pushing women out of the profession before they reach those ranks—it is important to understand why the profession remains male-dominated and centered around the male experience.

Research Objectives

“All we know is work, honey, work and come home and work some more.”

-Ida Phillips (*Phillips v. Martin Marietta Corporation*, 1971)

In this project, “gendered stigma” refers to circumstances resulting from one’s gender as a salient feature of their work, serving to discredit one’s abilities and accomplishments. This project investigated two aims:

(1) First, how gendered stigma operates in the modern legal profession for both men and women in order to further examine the effects of actual and virtual perceptions.

(2) Second, how women specifically experience gendered stigma in the legal profession and how that stigma affects their daily lives.

Part I of this Project examines how this project fits into existing literature on identity and stigma and how the aims of this project are framed by these theories. Part II explains the methods that I used to collect and analyze my data. Part III delves into the data itself and crafts a narrative from the themes and categories that arose from the data. The theoretical foundations are not discussed in Part III, but rather in Part IV where I overlay the data from Part III onto the literature from Part I to determine how these new perspectives can be used to make the legal profession more equitable. Part V discusses limitations, future research, and the broader impacts of this project.

Women who are attorneys are often jaded about the status of gender in the profession. On several occasions in conversation with practitioners regarding my research they would be curious about how this project would be unique. That women are treated poorly in the profession is regarded as a universal truth. One woman responded, “And water is wet. This isn’t news.” She was right, of course. It is not shocking, surprising, or even unexpected for women who’s day-to-day involves gendered interactions in the profession to respond with a bit of an eye-roll about a project looking into gendered stigma in the profession. Yet, the crucial distinction that was often overlooked by practitioners, was that I was not looking to prove that gendered stigma exists in the legal profession, but that I was hoping to take a look with fresh eyes—to employ a new perspective and see whether new insights emerged that might lead to more effective solutions. The fact that gendered stigma in the legal profession is as old as the profession itself, indicates that a new approach is necessary. Instead of quantitatively tracking how far women have come in

the profession, which is also crucial to solving this problem,¹ I choose to analyze a deep-rooted problem in a different way by allowing the data to guide me instead of putting theory to the test.

Women who practice law can easily recall experiences where their gender played a key role in how they were perceived by others. For example, being mistaken for the court reporter, the secretary, the judicial assistant, the janitorial staff; being instructed to perform administrative work outside their job duties; facing commentary about their wardrobe; and being referred to as “honey” or “sweetie.” (D'Angelo-Corker, 2019). All women in the U.S. workforce begin at a disadvantage and work harder to achieve the same status as men within the same field (Berdahl et al., 2018). This is particularly true for women in historically male-dominated fields, or operating under a male-centric scaffold (Berdahl, et al, 2018). The legal profession is no exception.

The American Bar Association formed a Commission on Women in the Profession in 1987 to “secure full and equal participation of women in the ABA, the profession and the justice system.” (American Bar Association [ABA], Commission on Women in the Profession, n.d.). More than 30 years later the legal profession still relies on this committee, among others, to identify and innovate solutions to gender inequity in the profession. Even though women are entering law school at equal or higher rates than men (ABA, Commission on Women in the Profession, n.d.), they are not achieving the same level of professional success as men. The 2019 Bureau of Labor Statistics report shows that women make up 36% of the profession and earn salaries that are 76.2% of male attorneys’ salaries² (Bureau of Labor Statistics, 2019). Further, male equity partners are still making 27% more than female equity partners (“Women in the

¹ Glaser and Strauss emphasize that both quantitative and qualitative research methods are important for mutual verification and both methods will generate theory (p. 18, 1967).

² In general, women in all occupations earn salaries that are 80.7% of men’s salaries (BLS, 2019).

Profession,” n.d.). The 2020 reports indicate that women now make up 37% of the profession (ABA Profile of the Legal Profession, 2020). With the effect of the COVID-19 pandemic on women in the United States’ workforce, it will be interesting to see what the 2021 statistics looks like for women who are lawyers.

Although all working women face obstacles, women who practice law continue to face battles unique to this particular profession. In Florida, for example, female trial attorneys are often the target of what has been colloquially termed the “no-crying motion.” This motion to preclude emotional display is routinely filed in cases that are headed to trial, regardless of the woman/attorney’s (the target of the motion) past experiences during trial. Essentially, this is a motion filed preemptively, asking the judge to instruct the target of the motion not to prejudice the jury and the trial process by inappropriate displays of emotion. Even though some judges make their annoyance at these motions known, it is still a tactic available to attorneys to use primarily against female attorneys. Once it has been filed, the damage is done. The female attorney is automatically labeled as not being in control of her emotions; therefore, she must not be a superior litigator (Bazelon, 2019). Not only does this send a message to the individuals present during the hearings on these motions (clients, potential clients, potential employers, etc.), but it also takes a toll on the women targeted by these motions. One seasoned attorney who has been the target of many of these motions recalled in her interview with *The Atlantic*, “‘I cannot tell you how much it demeans me,’ she said. ‘Because I am a woman, I have to act like it doesn’t bother me, but I tell you that it does. The arrow lands every time.’” (Bazelon, 2019). Despite her 30 years as a trial attorney, she still faces these demeaning tactics and has no option for recourse.

Moreover, attorneys who also happen to be nursing mothers face challenges particular to the practice of law. For example, trial schedules are set well before a trial begins. Any requests to alter the schedule must be done in advance and require motion and hearing on the matter. This process requires attorneys who are nursing mothers to detail in a public hearing their specific and private medical needs during their breastfeeding journey. While all nursing mothers who are also working mothers must make arrangements with their employer for time and space to pump, there is not another profession that requires such a public defense of the need for a specific schedule for women who are nursing. These examples of day-to-day problems experienced by women in the law lend themselves to a discussion of identity and stigma.

Women in the U.S. Workforce

The United States' workforce has been historically male. Women were primary caretakers of children, aging parents, and in charge of various domestic responsibilities. However, the tide shifted as U.S. men went off to battle in World War II. Women took up the responsibility of working outside the home in addition to their domestic duties. Surprisingly, the government even supported working mothers with subsidized childcare centers, so that mothers would have the support and means necessary to provide for their families while many husbands and fathers were away at war (Defense Housing and Community Facilities and Services Act of 1940 ("The Lanham Act")). As the war waned, and men returned home, there was an expectation that things would return to "normal;" the government even closed the childcare centers provided for under The Lanham Act. Much like today, working mothers were faced with the difficult decision of whether and how to work while raising a family. Fortunately, more legislation was on the horizon that would begin to level the workforce playing field for women.

Title VII of the 1964 Civil Rights Act also deals with equal employment opportunities. When it was first drafted, this section prohibited discrimination based on religion, race, color, and national origin. However, Howard Smith, a democratic Congressman from Virginia (and avid segregationist) proposed an amendment to add sex to the list of prohibited bases for discrimination. According to Smith, this was prompted by a letter from a woman who was concerned about her friends who were unlucky in love and could not find an eligible bachelor to take care of them (Thomas, 2017). Some believe this was Smith's attempt at ensuring that the Civil Rights Act did not pass, but after the laughter settled, several Congress-people were able to get serious consideration for the amendment. The amendment passed, and women became slightly more human (Thomas, 2017). Although this was a major victory for working women, it was not the end of the story. Courtroom battles ensued to define the boundaries of sex discrimination (i.e., *Young v. United Parcel Service, Inc.*, 2015).

Similarly, Title IX also affects women in the workforce since it prohibits discrimination at federally funded academic institutions. This law focuses on discrimination in the following areas: “[R]ecruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment.” (Title IX). This is particularly relevant to gendered stigma in the legal profession because pregnant and parenting law students may need accommodations out of medical necessity. Title IX guarantees that these students will be given the opportunity to make up any assignments missed provided that a doctor's recommendation is produced to the institution. As many institutions are becoming more available to women with flexible and part-

time schedules, the need for accommodations and protections of pregnant and parenting students becomes even more relevant.³

Similarly, the Violence Against Women Act (VAWA) works in tandem with Title IX to provide additional support for gendered violence such as stalking, sexual assault and dating violence. VAWA has been reauthorized three times since its implementation in 1994. The original act recognized that sexual assault and domestic violence were crises in the U.S. and authorized federal resources to aid community-based organizations to help reduce this violence. VAWA can be reauthorized every five years, so the next version was passed in 2000 and added a legal assistance program to the resources being offered. Then, in 2005, VAWA expanded again to include more programming and resources for survivors and also focused more on prevention. Finally, in 2013 resources were specifically focused toward Native Americans and the LGBTQ+ communities. The growing VAWA resources work with Title IX to ensure expansive coverage of gendered violence issues such as sexual assault and domestic violence. These laws also require that educational institutions, including law schools, comply with reporting requirements when mandatory reporters believe that a person is experiencing domestic violence or sexual assault. However, VAWA expired in 2018 and has not been renewed despite advocacy groups working to get an updated version reauthorized. The uncertainty in these protections also adds to the certainty of gendered disparities in modern U.S. society.

In 2019 women in the United States made up approximately 47% of the workforce. The situation for women seemed to be the best it had been, and was still improving. As the COVID-19 pandemic settled in during 2020, however, many women dropped out of the workforce

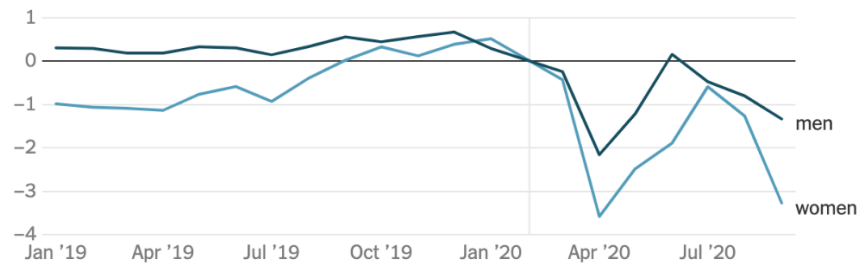
³ Even law schools, which are notoriously traditional, often “encouraging” first year students not to work and to rid themselves of any distractions in order to be successful, have become more flexible. This, among other things, may account for the rapid rise of women in legal education since the 1970s. However, despite the modern gender parity in law schools, the numbers do not hold for the profession.

completely – meaning not only are they not working, but they are no longer looking for work either (Catalyst). In September 2020 alone 865,000 women left the U.S. workforce. This was four times the number of men who exited the workforce that month. While some jobs are returning as states begin to open back up, October 2020 saw nearly 3 million fewer women in the workforce compared with October 2019 (Catalyst, Table A-1. Employment status of the civilian population by sex and age. (2020, November 6). Bureau of Labor Statistics; Concepts and definitions. Bureau of Labor Statistics.) Similarly, the New York Times covered various aspects of how the COVID-19 pandemic affecting mothers in the workforce. They published a useful diagram of the trends, which is reproduced below (Tedeschi, 2020).

Figure 1.

A Big Exit for Working Mothers in Recent Months

Percentage point change in labor force participation rate of parents of school-age children since February 2020.



Participation rate seasonally adjusted. Parents of children 5-17.

Source: Author's analysis of Current Population Survey • By The New York Times

These statistics are enlightening. Despite the progress that has been made, women’s status in the workforce is tenuous. They can be transported back to the 1940s quickly when there is not an infrastructure in place to support working women. Women have been sent the message that these struggles are their own to survive (Hogan, 2013). There is no help on the way. It is up to the individual person, and up to the individuals who make up the power structures in the workplace to forge sustainable solutions. Although the Civil Rights Act and other legislation did help

women's progress, these are largely focused only on discrimination. Discrimination is a surface level problem that is latent and exposed for all to see. Gendered stigma, however, includes micro-aggressions, which are more covert acts of sexism that do not rise to the level of discrimination (Sue, 2010). But, since the women who are experiencing these micro-aggressions are still left to deal with these situations on a personal and professional level, these are also instances of gendered stigma.

These laws and improvements in the workforce focus on women, because women are the marginalized group as between them and men. However, the culture that is being reified by traditional gender roles is also detrimental to men. Even though progress has been gained by women entering the workforce, the traditional gender roles are still a detriment to all people. Since around 2014 the phrase "toxic masculinity" has gained popularity particularly in news and popular culture largely due to a "new 'feminist moment.'" (Harrington, 2021; Banet-Weiser and Portwood-Stacer, 2017, p. 885). In gaining popularity, this concept is being used increasingly as a factor in gendered violence and other gendered social problems (Harrington, 2021). As one author explains, "Toxic masculinity is an epidemic that knows no borders. No society has yet found the cure for it." (Plank, 2020). Plank describes how boys' indoctrination to toxic masculinity begins in early childhood the same way that girls' indoctrination into caretaking begins with the toys marketed to each gender. (Plank, 2020). The social structure that has led to the perpetuation of gendered stigma towards women, is the same structure that has failed men in the same way. Men should be encouraged to participate more in the domestic and care-taking responsibilities rather than to have their emotions stunted (Plank, 2020). Gendered stigma and violence can be perpetuated by people of any gender-identity, but shifting the meaning of

masculinity in the context of U.S. society could potentially have a significant positive affect on reducing or eradicating gender-based social issues (Posadas, 2017).

Women in Law

Law School

Law school is a grueling three-to-five-year endeavor that is required in most U.S. jurisdictions to take a bar exam, which is the ultimate hurdle to becoming an attorney. Despite the fact that women may even outnumber men in some schools, the way that law school is taught continues to put marginalized groups at a disadvantage, including women (Mertz, 2007). For example, the Socratic method of teaching in law school is a challenge for marginalized groups who are historically taught that they have no voice and no place at the table (Mertz, 2007). This method is carried out by professors calling on students without warning and submitting the student to an intellectual inquiry based on the cases assigned for that class period (Gersen, 2017). Colloquially, this is referred to as “cold-calling” where students are unaware who the professor will call on next and must always be ready to answer questions. Depending on the professor, you may be required to stand when you are called on to recite a case and be subject to the professor’s inquiries. In the best-case scenario, the student is on call for a few minutes and when the professor is done with that student, the student is free to relax and pay attention to the remaining class discussion. However, some professors stay with one student for long periods of time, even over an hour. Ultimately, this can be an uncomfortable experience for anyone, but more particularly when there is a strained power dynamic between the typically older, white, male law professors and marginalized students (Gersen, 2017; Kennedy, 1971; Mertz, 2007).

The fear-inducing teaching methods (Kennedy, 1971) are not preventing women from flooding legal education in the United States. In 2019 the American Bar Association’s

Commission on Women in the Profession published a report showing that women make up 50% of people who complete their Juris Doctor. As a means of comparison, in 1971, the number of women in the legal profession was 3% (Sterling and Reichman, 2016). The ABA’s 2019 report found that women only make up 38% of the legal profession, despite numerical parity in law schools. Further, approximately 23% of partners in law firms are women (ABA, Commission on Women in the Profession, 2019). Importantly, law school takes several years—usually between three and five—depending on your program. Even with more women entering law school, it may take quite some time for those women to graduate, pass a bar exam, practice, and move their way into the upper tiers of the profession such as partnerships and judgeships. Since it may take several years for the number of women completing their Juris Doctor degrees to affect these statistics, and ultimately gender parity, the profession should focus now on eradicating gendered stigma in the profession so that the opportunities to achieve rank are realized.

The growth indicated by these statistics warrant an inquiry into the lived experiences of people in the profession. If women are entering and graduating law school in nearly equal numbers to men, but are not staying in the profession, or making it to the top tiers of the profession, there is attrition happening along the way. In 2018 the ABA launched an initiative into this exact issue. It found many reasons why women leave the profession even after 15 or 20 years, including caretaking responsibilities and toxic law firm culture.

Women in the Profession

Law is a “greedy institution” (Coser, 1974; Epstein, Seron, Oglensky & Saute, 1999), meaning that it is an organization that requires total commitment by its members; the military is another example. Practicing law can and does consume many attorneys. The advent of technology has made the profession more portable, but has also made lawyers more accessible.

Lawyers now can find ways to work during what used to be in-between times. For example, a lawyer might be able to work in a vehicle while someone else drives through the use of a hotspot. But there are downsides as well, like working from home with a feverish baby who needs comfort, and even being expected to take phone calls, respond to text messages and emails as late as 2:00 a.m. Family is also a greedy institution, particularly for women, based on traditional social expectations (Coser & Coser, 1974). As one attorney/mother indicated, “I am wear[ied] to my core—the kind of tired that sleep can’t fix.” As long as women face social expectations to both handle all domesticity and to be career minded, finding balance will continue to be a challenge.

Gendered stigma is a universal struggle for women in law.⁴ For example, in 1952 former Supreme Court Justice Sandra Day O’Connor graduated third out of her class of over 100 at Stanford Law. She had extraordinary credentials, including being on the editorial board of the *Standard Law Review*. Yet, she could not find work despite applying at firms across California. Instead, she was offered a position as a legal secretary, which she turned down (O’Connor Institute, n.d.). While it seems that these experiences were long ago, the tide still did not turn after she became the first woman appointed to the United States Supreme Court in 1981. Justice O’Connor spent 12 years on the Court before there was a women’s restroom in the judicial robing room. It was 1993, shortly after Ruth Bader Ginsburg joined the Court, that a women’s restroom was added (Ginsburg, Hartnett & Williams, 2016). This degree of obstacle has become quite rare, fortunately, but their victories are in the not-too-distant past.

In another example, women in the United States were still excluded from some law schools as recently as the 1960s (Mossman, 2006; Kay and Gorman, 2008). Furthermore, it was

⁴ All women struggle against gendered stigma, but the degree to which women experience stigma differs based on intersectionality, discussed in more detail below.

only 12 years ago in 2009 when the United States saw the first Latina woman appointed to the Supreme Court of the United States with Justice Sotomayor, and we are still waiting to see the first African-American woman appointed to the Supreme Court of the United States. While these examples are landmarks in women's equality and should be thought of as such, we still have a long way to go.

Finding room at the table is a constant battle. In an effort to encourage women to take their places, the ABA Commission on Women in the Profession published several reports about successful women attorneys having grit, and how women's successful experiences in the legal profession can be passed down to new female attorneys (ABA Commission on women in the profession; Larkin-Wong, 2015). Milania Hogan is credited by the ABA with the idea that grit makes women successful in legal careers. Grit is defined by Hogan as "persevere[ance] in the face of challenges, work[ing] harder and longer and . . . more likely to focus . . . efforts on improving . . . performance." In the context of Berdahl, et al.'s research on workplace masculinity contest (discussed in more detail below), this seems to tell women what they already know—you must work harder and longer than your male colleagues to have any hope of being viewed as an equal (Hogan, 2013). This idea of grit is easily challenged by the notion that women cannot simply work harder and longer and achieve success because of the structural frameworks in place in the profession. The ABA publication on grit explains its position by quoting one participant who said, "Grit is not about keeping my head down and just working super long hours. Grit is not about paper-pushing to keep all partners and clients happy. Instead, grit is being a team player, but also being tenacious about my own priorities and living consistent with my values." (Hogan, 2013). This idea seems to be a modern version of the classic adage, "Work smarter, not harder." But for women, it still translates into working smarter than your male

colleagues, even if you are not working as many hours as they are, in order to produce at the same levels.

Local factions of the legal community have been innovating solutions to specific challenges for women in the legal profession. Lactation rooms in courthouses are one example. An attorney may wait hours when attending a docket call, so having a place for a nursing mother to pump is as important as having restrooms for everyone else. Currently the Florida Association of Women Lawyers has a task force focused on getting lactation rooms in courthouses (Hudson, n.d.). This is a stepping stone in resolving one of the many issues that women face when deciding or trying to return to work after giving birth, which affects women's long-term career trajectories. However, the simple presence of a lactation room does not completely solve the problem for nursing attorneys. These women still must request permission from the court for trial and hearing timeline adjustments that take into account the potential need to deviate from standard procedure to accommodate a medical necessity (expressing breastmilk). These requests not only require women to discuss in open court their specific and personal breastfeeding journey, but it also opens the door for opposing counsel to object to the timelines and, as a result, object to the mothers' physical need to express breastmilk. Yet, no one can object to a male attorney needing a restroom break.

In an effort to refine the procedures for new parents who happen to be attorneys, Florida added a Rule of Judicial Administration allowing a 90-day continuance period for lawyers expecting the birth or adoption of a child. As long as the request is timely and the client will not face any prejudice, then the judge should grant the request by default. In the event opposing counsel objects to the continuance on the grounds of prejudice to the client, then the burden shifts to the requesting attorney to show that the client would face no prejudice as a result of the

continuance (Rule of Judicial Administration 2.570). Powerhouses in the profession opposed this rule as unnecessary because judges already have the discretion to allow for the continuance. Proponents of the rule argued that codifying this policy would ensure that expectant attorneys were provided with adequate time to recover from childbirth (Blankenship, 2018; Rule of Judicial Administration 2.570). This is a big win for all attorneys, as it is not specific to women. By allowing men to also take parental leave, the rule is helping to normalize the idea that domestic duties can and should be tended to by all people.

Women's issues in the legal profession are not limited to mothering responsibilities, however. For example, in September 2019 a Florida attorney was told by opposing counsel's expert witness that she was a "neophyte lawyer" who was "trying to break through the glass ceiling and excel in a man's game" before he threatened her with a complaint to the Florida Bar (Andrews, 2019). Although the man making these comments is not an attorney, he felt confident that his experience "doing real estate and foreclosure since [she was] doing half-naked body shots to impress drunken frat boys[]" outweighed her law degree, bar license, and experience as a practicing attorney (Andrews, 2019). Fortunately, the management at the attorney's firm took the issue seriously and publicly condemned this man's behavior towards one of their litigators. The support she received from her firm is extraordinary—not at all the norm. This situation highlights that, while women in the legal profession have advanced significantly since the early 20th century, the work is not yet done.

While it may be easy to speculate that some women join the profession unaware of these challenges and simply decide it is not the profession in which they want to remain, the ABA has recognized recently that many women with 15 to 20 years in the profession are also leaving. Recent research by the ABA focused on why women leave the profession even after 15 years of

practice or more. According to their findings, this is likely part of the reason women are not reaching the upper echelons of the legal profession. Not surprisingly, this research indicates that the top reasons women leave relate to caretaking obligations for children and aging parents. But these are not the only reasons—the report also indicates a problem in law firm culture. When team building activities often center on traditionally male activities such as sporting events or golf outings, it may leave women—and particularly women of color—feeling excluded.

While the United States' workforce has improved for all women, and specifically women in the practice of law, the stigma of being a woman in a male-centered profession remains. The progress made in the gender pay gap and other similar victories should be celebrated, but the cycle has not yet been broken. Despite decades of judicial rulings protecting gender status⁵ and the formation of commissions and task forces dedicated to effectuate positive change for women in the legal profession, women still lag behind men in important ways in the legal profession. This project begins uncovering the root causes of the gendered stigma cycle by collecting narrative accounts of men and women who practice law.

PART I: LITERATURE REVIEW

Identity

A very important thing is not to make up your mind that you are any one thing.

-Gertrude Stein

This project had two primary aims. One of which was to examine the effects of actual and virtual perceptions on women in the legal profession. Women who are attorneys battle a

⁵ *Frontiero v. Richardson* (holding that laws differentiating by sex are subject to strict scrutiny analysis), *Cleveland Board of Education v. Laflour* (invalidating rules forcing women to take unpaid leave after their first trimester because they were not suited to work and not allowing them to return to work until their child was three months old), and *Corning Glass Works v. Brennan* (determining that paying female inspectors less than male inspectors was a violation of the Equal Pay Act).

litany of external expectations by way of others' perceptions of them in addition to the internal pressure they apply to themselves. Identity theory forms the foundation for discerning whether the actual and virtual perceptions of women in the legal profession had an effect on these individuals in their personal lives and, further, how a person might reconcile who they believe they are (i.e., an excellent attorney) with what society dictates they are (i.e., a caretaker).

A person's Self is made of many identities. Some identities are roles that a person chooses to perform and other parts are constructed based on a comparison of a person with group expectations. The result is that identity is a mixture of self-selected roles and group expectations. Further, identity theory examines how individuals develop and organize a set of meanings encompassing the Self. In 1902, Cooley stated that "the individual and society are two sides of the same coin." (Burke and Stets, 2009). Each is informed and influenced by the other. The positions that people perform are referred to as roles or role-based identity. These can be thought of as individual level identities. Social identities relate to the expectations encountered from external sources. These are group level identities. Both individual and group identities are relevant to women who are attorneys. "Attorney" can be both a role-based identity and a social identity. People who are attorneys might self-select the role of attorney when describing themselves to others, but their behavior is also very much group focused in the sense that there are particular expectations of all attorneys. Many of those default group expectations are based around the standards for men.

Role-based Identity

Roles are one facet of how a person categorizes themselves within society's context. (Burke, 1980; McCall and Simmons, 1978; Stryker, 1980; Burke and Stets, 2009). For example, employee/employer, student/teacher, spouse, parent/child, etc. Roles are self-selected. People

who are in “professional” occupations often equate their occupation as a part of their whole Self. Doctors, lawyers, and priests are a few examples of professional occupations. Typically, when asked what they do for a living, the response from individuals in these professions might be, “I *am* a lawyer” or “I *am* a doctor.” Compared with other occupations like a salesperson, who might respond, “I *sell* cars.” The distinction between who you are versus what you do is nuanced and related to how salient that identity is to the person’s Self.

Although a role may be the label, the role identity is comprised of the meanings and behavioral expectations associated with that specific label (Ebaugh, 1988; Sluss and Ashforth, 2007). An important aspect of this project has been determining who decides what the meanings and behavioral expectations are for lawyers. Goals, resources, and behaviors are driven by the role identity—the meaning that the individual attaches to the role label (Burke and Stets, 2009). For this project, I refer to the meaning-making and behavior-enforcing group with the most power as “The Normals.” This group represents the driving force behind keeping the legal profession the way it has been rather than allowing and encouraging changes for a more inclusive profession.

Meaning may differ, however, within roles depending on the individual’s interpretation. Even though many people identify as lawyers, that does not mean that there are no differences between individuals. The group identity attaches certain meanings to the lawyer-role but there is space for some individuals to push the margins of the group. Burke and Stetts use the example that being a student may mean academic discipline for some, but for others, it may mean being social and having fun before “real life” begins (2009). Being a lawyer for some means living a lavish lifestyle but for others in means pursuing justice at any cost.

Further, behavior *implies* meaning (Burke and Stets, 2009). So, the behavior of individuals within a group stems from the meaning(s) associated with the role, but is distinct from the meaning itself. Therefore, when there is dissonance between what an individual believes is the meaning of a role that they hold and the behaviors related to the meaning, they must negotiate meanings to reconcile the differences. Consider first the role of parent. For some, this means staying home to focus on raising children. For others, this means going to work to support the children. These behaviors are different, but they both imply meaning that it is a parent's responsibility to care for their children. Gender also drives the behaviors and expectations of parents. Depending on the context, it may be more acceptable for a male parent to work long hours or for a female parent to not work outside the home.

Now consider the role of lawyer in addition to the role as parent, specifically mothers. In general, mothers often clash about whether staying home or being a working mother is the best option.⁶ One study indicated that working moms put in an average of 98 hours a week. In response, a Facebook user commented that moms work as much as lawyers. (Welch's Grape Juice Study). What does that mean for moms who are also lawyers?

Ultimately, the dissonance between whether being a mother means staying home or working is one example of how an identity's implications can be reconciled by renegotiating meanings.⁷ A significant part of this project was focused on figuring out how lawyers negotiate the expectations placed on them, both by themselves and by others, in order to reduce this dissonance. Whether someone is a working mom or a stay-at-home mom, the behaviors within

⁶ Social expectations are the driving force behind this clash. Some feel that a mother's "place" is in the home, raising children. Yet with U.S. society today, most people need significant income to support a family, meaning that parents may have no choice but to work.

⁷ This example is used in a vacuum to exemplify the concept of identity dissonance and renegotiating meanings. Often whether a parent stays home or goes to work is much less a choice than is described in this example. Parents of color and parents of low socioeconomic status may not have the luxury to choose whether to work or stay home with their children.

the role offer support for the children in different ways, so perhaps having the role of mother means that you care for your children, no matter whether that care looks like staying home or going to work. Being a lawyer is a demanding job and studying how people reconcile the equally demanding role of parent with the role of lawyer is an important focus of this project.⁸

Role Relationships and Identity Saliency

Sometimes the terms “identity” and “identification” are used interchangeably (Brewer and Gardner, 1996; Sluss and Ashforth, 2007), but the concepts are slightly nuanced through the more recent identity literature (Sluss and Ashforth, 2007). Role relational identity is the labeled position of one role in opposition from the counter role, such as supervisor/supervisee. This is the basic notion that one role is based on its relationship with another role. Role-relational identification, however, refers to how a person’s sense of self might be affected by the role-relationship. (Sluss and Ashforth, 2007). The difference is important in the context of this project because there are instances where a person has been devalued based on an identity, but through resistance mechanisms, the external devaluation did not affect the person’s sense of self.

Figuring out how important a particular role is to a person’s sense of self can also depend on the context of any given interaction. When a lawyer appears in court on behalf of a client, the lawyer role is likely most important, or most salient. Salient roles are those that are at the top of a person’s list (Stryker, 1980), meaning that they are most central to the person’s sense of self in a given context. That same lawyer may have other roles that are also salient, but those roles move down the hierarchy when lawyer is front and center. The more salient the role, the higher the likelihood that the role will give a person significant satisfaction if that role is verified (Callero,

⁸ While parenting is a prominent theme in this project, the concept applies to other identities as well. Parenting, and specifically mothering, is used in this example because often the identities of mother and lawyer tend to be at opposite ends of a spectrum. Further, reconciling mothering and lawyering was prominently discussed by the participants in this Project.

1985). Salience depends on context, however, and a role that is verified in one circumstance may take a backseat in another circumstance so that an alternative role may be verified.

Social Identity

Being a lawyer is more than an occupational role, it also means belonging to a group of people who have, minimally, also been through law school and passed a bar exam. Social identity comes from the groups to which individuals belong rather than the roles they perform (Tajfel, 1978; Hogg and Abrams, 1988). Social groups are made up of members who share similar views and behaviors that produce value or significance to each person in the group. Over time, those similarities become a collective personality (Abrams and Hogg, 1990; Burke and Stets, 2009). Even though lawyers vary widely in individual characteristics, there is a handful of primary motivations for attending law school, thus setting out on the journey to becoming an attorney. Individual motivations may change over time, but there tends to be certain similarities among lawyers including the desire to help others or seek justice.

Informally, individual views and behaviors are compared with those of the group. People who align with the group are part of the in-group, and people who do not are part of the out-group. This in-group/out-group categorization is the process of othering, or creating a collective “us” versus a collective “them.” As the group grows, a prototype forms as a composite of the members. The prototype embodies the features that make people within the group similar and people outside the group different (Hogg, 2006; Burke and Stets, 2009). Since lawyers rely heavily on networking, the informal process of othering can often happen via networking events.

At times, group membership can be arbitrary. The simple act of separating individuals into one group of people versus another without any regard to commonalities can establish a stakeholder relationship with group members. (Turner, Hogg, Oakes, Reicher, and Wetherell,

1987; Burke and Stets, 2009). At other times, the separation is intentional. In the legal profession, people often self-select into sub-groups. Practice area is a common way that attorneys separate into groups. There are bar associations, conferences, and gatherings that are planned based on practice area. Political affiliation is another example of social identity. When a person identifies with a major political party, one can assume that person shares views, feelings, and behaviors with the prototypical person from the political party. Lawyers, in particular, tend to have strong political leanings, which usually result in more sub-groups via professional associations such as The Federalist Society and the American Constitution Society. Further, just as in role-based identities, people seek out verification of their social identity as verification produces a sense of self-worth and a sense of belonging (Stets and Burke, 2000). Being part of a group that shares values is one way to verify a social identity.

Being part of an in-group does not mean that every member is exactly the same, but that there are enough similarities with respect to the prototype that the individual is more like the in-group and less like the out-group. Lawyers share perspectives, experiences, and behaviors. Lawyers are expected to be analytical, not because every person who is a lawyer is right-brained, but because lawyers all share foundational training. It is unlikely that anyone leaves law school and passes a bar exam without having a highly developed ability to analyze anything put in front of them. Lawyers are also expected to be hardworking and have a keen attention to detail, yet there are many sloppy lawyers. Group expectations, real or perceived, can be a driving force behind an individual's behavior.

Identity conflict

In any given situation, individuals seek to confirm the meaning of their identity.

What happens when pieces of an individual's identity conflict—when a person cannot verify one part an identity without invalidating another part? Women in the legal profession face this obstacle relentlessly. For many women who are both lawyers and mothers, this conflict may be a daily occurrence. Even for women who are not mothers and may never want to be mothers, but are perceived as being of child-bearing age can experience the same conflict due to the expectations being placed on them by external forces. How would a lawyer who is also a mother decide which identity to disconfirm? Which identity is more important than the other?

Without identity-verification, people become dissatisfied and may remove themselves from the situation that is not confirming their sense of self. The legal profession is rampant with people suffering from depression, substance abuse, and various other mental health struggles. A 2016 study surveyed nearly 13,000 attorneys in the U.S. and found that 28% of the respondents were suffering from depression, 19% from anxiety, 23% from stress, and 22.6% of respondents indicated problematic alcohol or substance use (Krill, Johnson, & Albert, 2016). Although the respondents in this study did not remove themselves physically from the profession, these results suggest that lawyers may cope with identity disconfirming contexts by removing themselves mentally. For many lawyers, external confirmation that one is, in fact, a good lawyer is rare. So, lawyers either find other ways to verify this part of their identity or they may choose to discard this piece of their identity all together.

Moreover, there is widespread attrition of women in the legal profession. In 2017 the ABA launched an initiative on Achieving Long Term Careers for Women in Law to gather empirical evidence supporting why women leave the profession. In 2019 the ABA released the first report from this initiative. This report focused specifically on why women leave the profession after 15 or more years as lawyers. The main influences on why women leave include

caretaking commitments (58%), Work life balance (46%), and personal or family health concerns (42%). Even though this report concluded with recommendation on how to prevent this attrition, one critic points out that the weakest suggestion for improvement was related to the most prominent reason women left—caretaking (Milhalich-Levin, 2020). Ultimately, the culture of the profession as a whole is typically not conducive to people with other obligations. When faced with whether to stay at a demanding job that made them unhappy or to leave and focus on other aspects of their identity, many women have chosen to exit. Viewing this problem against the theoretical framework of identity theory may help to discern the nuances in why women leave and how the profession might implement practical solutions to keep more women in the profession.

Intersectionality

At one time, lawyer was synonymous with wealthy, white male. While the stereotype remains, recent efforts to diversify the profession means that there are many differences within the lawyer group. Being a lawyer and being a parent are separate roles, but lawyer-parents form a social sub-group. That they are all lawyers, sets them apart from parents who are not lawyers, and that they are all parents sets them apart from all lawyers. Their collective experiences make them unique at the juncture of parent and lawyer. In addition to the roles people select and the groups they join, there are certain characteristics about a person that are immutable such as race, ethnicity, ability, and sexual orientation.

Race is an important part of a person's identity that drives their experiences in society at large. The National Association of Law Placement released a report in February of 2021 on diversity within the legal profession (NALP Report on diversity within the profession). One of the most astonishing statistics is that the percentage of associates who were black women in

2009 was 2.93%. By 2020, that number increased to 3.04%. It took eleven years for that percentage to increase by *one-tenth of a percent*. These numbers seem hopeless. As a comparison, the total percentage of associates who are women was 47.45% and the percentage of women of color who are associates was 15.17% in 2020. White women have a much larger presence in the profession than women of color. Given the stark contrast in the numbers, it would be ill-informed to assume that a group of white women who are attorneys might represent the experiences of all women attorneys.

Intersectionality recognizes that discrimination is not one characteristic versus another, such as race versus gender. Instead, a person's experience and the discrimination one faces is often a result of various facets of their identity overlapping, or intersecting (Crenshaw, 1991). Many women who are lawyers are mistaken for administrative professionals despite race or ethnicity, but women of color often face harsher devaluation than their white counterparts. In *DeGraffenreid v. General Motors*, a group of Black women brought a discrimination claim because they had all been laid off. The court found in favor of General Motors and stated,

The plaintiffs are clearly entitled to a remedy if they have been discriminated against. However, they should not be allowed to combine statutory remedies to create a new "super-remedy" which would give them relief beyond what the drafters of the relevant statutes intended. Thus, this lawsuit must be examined to see if it states a cause of action for race discrimination, sex discrimination, or alternatively either, but not a combination of both.

This court effectively erased these women's identities as Black women and indicated that they needed to choose between their race and their gender as their primary identity. But the difference between choosing one or recognizing that they intersect makes the case. If they chose race discrimination, they would likely need to include Black men who had also been laid off, and maybe there were none. If they chose sex discrimination, they would likely need to include white women who had also been laid

off and maybe there were none. This court refused to acknowledge the unique experiences of Black women due to their race and gender compounding on one another. Given this and other cases⁹ showing the same erasure of Black women's identities, this project critically analyzed differences between the experiences of white women and women of color in the legal profession.

Stigma

Until women themselves reject stigma and refuse to feel shame for the way others treat them, they have no hope of achieving full human stature.

-Germaine Greer

This project also explored how women experience gendered stigma in the legal profession, and how that stigma affects their daily lives. Stigma is closely related to identity theory because it explains how society assigns value to portions of individual identities. In 1963 Howard Becker wrote that, "social groups create deviance by making the rules whose infraction constitutes deviance[] . . ." (Becker, 1963, p. 9). As such, deviance first requires a set of norms. Then, as power emerges through social groups, there becomes a separation of those who follow the social norms and those who do not (Schur, 1984; Becker 1963). As with many areas of study, research on deviance largely focused on men. After all, men have always been the norm in most research studies, just as men are the norm in the legal profession. Women may be more present in the profession now, but since it is still a male-dominated and male-centric profession, women maintain their deviant status.

However, tides began to turn in the 1980s as academics started paying more attention to women. As Schur points out, "[W]e might . . . say that women have served as 'all-purpose deviants' within our society." Due, in large part, to the fact that men have most often been the

⁹ *Moore v. Hughes Helicopter; Payne v. Travenal.*

“deviance-classifiers and processors[,]” which lead to categorical devaluation of women (Schur, 1984 p. 7). Moreover, this categorical devaluation is maintained by everyday gendered interactions (Schur, 1984; Freeman, 1984). Deviance borne of powerful social strata is reified and reproduced through these day-to-day interactions because women are still fighting against male-dominated social structures. Therefore, men are The Normals and women are The Deviants.

Stigma, an outgrowth of labeling processes associated with the creation of deviance, has been described as a “spoiled identity” (Goffman, 1963). Spoliation often begins with a mark, or a negative attribute; a deviation from the norm (Jones, 1984). Once deviant marks are recognized, they aggregate into categories, which is the mechanical, unconscious processing of “maximum information with [the] least cognitive effort . . .” (Rosch, 1978 at p. 3). Importantly, marking only occurs when there is a normative entity with the power to label individual(s) as deviant (Goffman, 1963). Stigma is wholly dependent on power (Link and Phelan, 2001). Without a person or group in power, stigma cannot attach. Moreover, stigma can be characterized as negative effects resulting in discomfort and hostility, whereas stereotypes are the internalization of categories to the extent that the negative affect is “justified” (Jones, 1984). This highlights a flex point wherein a person can choose to internalize the external expectations they are experiencing as part of their identity, or they can choose to reject it. Women in the legal profession are marked by their gender and deal with these negative effects regularly. “Lawyer” turns into “female lawyer” as individuals are categorized in the aggregate.

More recent research has focused on minority related stressors and how marginalized individuals experience not only major life events as stressors, but also “from the totality of the minority person’s experience in dominant society” (Meyer, 1995, p. 39). Lewis, et al. focused

particularly on the minority stressors for the LGBTQ+ community, finding that life-stress (major life events) and gay-related stress (stressors unique to sexual orientation) are both positively correlated to depressive symptoms (Lewis, et al., 2003). Additionally, this study also found that stigma consciousness is another independent factor affecting depressive symptoms in LGBTQ+ individuals. Stigma consciousness is when a marginalized individual anticipates being stereotyped by others (Pinel, 1999; Lewis, et al., 2003). Pinel has developed stigma consciousness scales that are specific to marginalized groups—one for women and one for gay men and lesbians—as well as having conducted a total of six studies to test the reliability and validity of these scales (Pinel, 1999). The 10-item scale developed for women includes items such as, “Stereotypes about women have not affected me personally (R)” and “Most men have a problem viewing women as equals.” Women in the legal profession are indoctrinated into the profession beginning in law school. They are made aware of the inequities in the profession either directly or indirectly, but being aware of gendered stigma is different than experiencing it during the regular course of your occupation.

Pinel and Paulin further expanded on stigma consciousness in the workplace in their 2005 study. They took a sample of staff workers at an academic institution and related stigma consciousness with disrespect, which they predicted would lead to disengagement (Pinel & Paulin, 2005). Their hypotheses were supported, finding that people who feel disrespected at work are more likely to disengage and even leave their place of employment. Additionally, people who scored high on the stigma consciousness scale, perceived more instances of disrespect. An individual’s awareness of gendered perceptions (stigma consciousness) may affect how daily interactions are perceived. Even though women lawyers may not view themselves as

deviant simply by being present in the profession, battling gendered stigma is a common occurrence and women are not yet fully integrated with The Normals.

Since the literature on stigma is vast, and sometimes conflicting, researchers have grown accustomed to choosing how to define and apply it (Stafford & Scott, 1986; Crocker, et al., 1998; Jones, et al., 1984; Link, et al., 1999). Although Goffman's original iteration of stigma is a staple in the world of social psychology, more recent definitions and applications shifted to the sociological (Jones, et al., 1984; Link and Phelan, 2001). Moreover, by taking a more sociological perspective, Link and Phelan in 2001 have reconciled the core criticisms regarding stigma research—how it is defined and how it is applied—by reformulating stigma conceptually. This conceptualization of stigma addresses two challenges for stigma researchers. The first is that stigma is often researched by individuals who are not part of the marginalized group, and the second that stigma research often focuses only on the individual level without consideration of the structural aspects that allow (and encourage) stigma to continue.

To address these concerns, Link and Phelan have re-conceptualized stigma as a convergence of four components: (1) distinguishing and labeling human differences, (2) “dominant cultural beliefs link[ing] labeled persons to undesirable characteristics—to negative stereotypes[;]” (3) categorizing the labelled individuals into “us” and “them” groups; and (4) labelled people experience a status loss resulting in unequal treatment (Link & Phelan, 2001: 367). Despite the varied definitions and applications of stigma, Link and Phelan's conceptualization is ideal for this project because it harkens back directly to Goffman's origination of stigma while modernizing the concept and addressing major problems in other stigma-related projects. Moreover, the focus on stigma as a cluster of interrelated ideas rather

than a linear process reflects the intersectionality of the participants unraveled through interview, narrative, and qualitative analyses.

While gender is the focus here, it is undeniable that other characteristics are as important as gender on daily interactions. For example, age or race may compound with gender to produce stigmatic interactions. White women who are attorneys may commonly report being mistaken for an administrative professional, but Black women also report being mistaken for a member of janitorial staff. The complicated nature of one's identity can only be evaluated using a definition and application of stigma that acknowledges all the moving pieces.

Link and Phelan have been credited with first discussing structural stigma in addition to intrapersonal stigma (how an individual either internalizes or resists stigma) and interpersonal stigma (how stigma affects relationships between people) (Hatzenbuehler, 2016). While they did not provide a definition in 2001, they analogized this concept with institutional racism (Link and Phelan, 2001). Since then, researchers have continued to build on the concept of structural stigma and have discerned components (Hatzenbuehler, 2016). Components include institutional policies that disparately affect stigmatized individuals (Corrigan, et al., 2004), and dominant cultural norms that socially devalue particular statuses (Corrigan, et al., 2012). In 2014, in an effort to synthesize these components, Hatzenbuehler and Link offered an initial definition: "societal-level conditions, cultural norms, and institutional policies that constrain the opportunities, resources, and wellbeing of the stigmatized" (2014: 2).

As the concept of structural stigma broadens, researchers have determined two primary ways to measure structural stigma. The first is content analysis of institutional policies (Hatzenbuehler, 2016). But this method will necessarily overlook the informal ways in which stigma is perpetuated (Livingston, 2013). The second method of measuring structural stigma

involves aggregation of individual level social attitudes up to the community level (Hatzenbuehler, 2016). The aggregation approach is directly related to this project. Individual participants were asked about their personal experiences and perspectives, but they were also asked a referent-shifting question to “assess the climate of their group.” (Van Mierlo, Vermut & Rutt, 2009, p. 369).

Referent-shifting composition allows a researcher to collect individual data, but instead of directly using that data to aggregate the group’s perspective (direct-consensus composition), the researcher asks a referent-shifting question about the individual’s perspective of the group dynamic. If sufficient agreement is met, then the researcher can aggregate to the group level. (Chan, 1998; Van Mierlo, Vermut & Rutt, 2009). Moreover, a content analysis of legal institutional policies would not likely yield any results indicative of gendered structural stigma. For example, it is unlikely to be written anywhere that particular judges prefer women to appear in skirt suits in their courtrooms, but that information will be passed along informally between attorneys, which is why this project utilizes interviews to gather information. For these reasons, Link and Phelan’s components form the framework for this project.

Further, there is burgeoning literature on stigma resistance that builds directly from Link and Phelan’s conceptualization of stigma (Thoits, 2011). This literature suggests that despite the theories (e.g., symbolic interactionism, classic labeling theory) suggesting that social devaluation leads to self-devaluation, some individuals are able to resist stigma. Stigmatized individuals have three general responses: (1) internalize the stigma and devalue themselves, (2) be indifferent to the stigma, or (3) have higher self-esteem than non-stigmatized individuals, perhaps due to righteous anger (Thoits, 2011). Further, resistance strategies include denial of the stigmatized characteristic (much easier to do when the “mark” is invisible like mental illness or HIV positive

status rather than the more obvious attributes such as gender or race), confrontation of the stigma by educating others about their misconceptions, and embracing the idea that one can be successful and happy despite the social stigma (acceptance). Although stigma has been studied widely in social contexts, this framework provides a novel lens to examine not only the extent to which women in the legal profession remain stigmatized, but also how individuals in the legal profession react to or resist gendered stigma.

Defining Gendered Stigma in the Legal Profession

Component 1 of conceptualizing stigma according to Link and Phelan involves first identifying differences and then labeling those differences (Link and Phelan, 2001). Link and Phelan point out that even at the most basic level, categorization into rudimentary groups is still not ideal for distinguishing difference (2001). Despite major categories of race, there are many ways in which race overlaps, and there is a wide range of differences among individuals within each race category. The same concept holds true for gender. The widely accepted binary of male/female, woman/man takes for granted that biological sex and gender are (1) always in alignment, and (2) clearly distinguishable from the other. In fact, despite the many people who can be categorized into the gendered groups of woman and man based on their biological sex, there are still wide spectra of characteristics within each category. Just as race cannot be simplified only to “black” and “white” neither can gender be simplified into “male/man/masculine” versus “female/woman/feminine” (Rhodes, 2001). The legal profession lags behind society regarding gender identities and still recognizes only the gender binary rather than gender as a spectrum. ABA reports, for example, only include categories for men and women. Moreover, the dress codes required in certain courts or jurisdictions may force individuals into the binary regardless of whether they would otherwise choose to embrace such

gendered expressions (Hess, 2014). The long-debated issue of the attire of female attorneys is largely unchanged, perhaps in part because “the law moves slowly, and older male judges still reign behind most benches.” (Hess, 2014). Yet, “[t]here is no generic woman” (Rhodes, 2001). Despite the differences that are perceived between men and women, gender makes up a miniscule portion of those differences (Rhode, 2001).

In addition to distinguishing the differences, those differences then must be labeled. When Justice Ginsburg was a law student at Harvard in 1956, she and her female classmates were invited to a dinner at the dean’s home. While there, each woman was asked to justify why she deserved a place at Harvard Law instead of a man (Hirschman, 2016). Moreover, after women began being admitted to law schools, male law professors still insisted on referring to entire classes as “gentlemen,” not even acknowledging that there were women in the classrooms, because the ideal law student and lawyer was male (Guinier, Fine & Balin, 1997). Women were told that in order to be successful in law school and in the practice of law, they must indeed become gentlemen and therefore the professor(s) would refer to them as such, “elevating” their status from being women, to being gentlemen. While today’s professors are not as overtly sexist, the undertones are deafening.

Component 2: Link and Phelan describe Component 2 as associating human differences with negative attributes (2001). Epstein (2004) found that working women who hire help at home to focus on demanding careers continue to face criticism for outsourcing their home responsibilities. Before the COVID-19 pandemic, women across the world performed three times as much unpaid care and domestic work as men (UN Report, Progress of the World’s Women 2019-2020). The COVID-19 pandemic intensified these responsibilities of women to a breaking point that forced many women out of the workforce. Men also were forced out of the workforce

at the start of the pandemic, but have since regained nearly all of the lost 3.4 percentage points. Comparatively, women have regained .1 percentage point of the 2.9 that were lost (Smart, 2021). Additionally, the pandemic has illuminated how being a woman is a negative attribute for many employers. Whether regarding sexual harassment or the ability to bear children, women are viewed as a liability for employers (Cooper, 2020).

Men may be lauded for hiring help at home, but women are expected to work as if they do not have families, and raise families as if they do not work (Hocking, 2019). For women who are practicing law, this often means choosing career paths that are more sympathetic to having responsibilities outside the office. For example, compared with men, women are more likely to work in public sector or public service jobs instead of law firms (Rhode, 2001). Perceptions about the opportunities available in the different types of practice may be partially responsible for these disparities. According to Rhode, most studies show that men are two- to three-times more likely to make partner in a law firm than women (2001).

There is no debate that men and women face different societal expectations that often cause struggles in their work lives; but for stigma to apply, there has to be some sort of negativity that arises from the labelling of differences identified in Component 1. More specifically, Link and Phelan describe this component being a label and a stereotype “with the label linking a person to a set of undesirable characteristics that form the stereotype” (Link and Phelan, 2001). Stereotypes serve as pathways so that brain function is free to perform other tasks. In a psychological study by Macrae, et al., researchers found that subjects who were provided labels along with vignettes could more easily perform simultaneous tasks such as turning off a beeping computer compared with subjects who were not provided with labels (1994).

For many years, being a woman, specifically a woman who may already have or who may choose to have a family while employed in a private firm, was referred to as being on the “Mommy Track” as opposed to being on the partner track. The idea was that a woman could not both be a mother, and be successful as an attorney (Williams, Dempsey & Slaughter, 2018). The mark of being female has always carried negative connotation in the legal world. While the ways in which stigma attaches may have changed, gender still implies a negative association for women.

Component 3: The third component in Link and Phelan’s conceptualization of stigma is drawing the line between “us” and “them” (2001; Morone, 1997; Devine, et al., 1999). In the workplace, gender discrimination has been linked to cultural attitudes and beliefs about gender as reflective of distinct social types (Ridgeway & England, 2007; Bobbitt-Zeher, 2011). However, the mechanisms that reinforce these ideas within employment processes is still under scrutiny (Bobbitt-Zeher, 2011). Gendered stigma is born from centuries of the “us” versus “them” mentality ensuring that women in the workforce are still fighting against these negative attributions. Women in law are no exception.

The legal field began as an all-male profession. Although the numbers have become more equitable, the experiences have not. Men are still the default “us” and women are still the default “them.” Interestingly, Epstein has found that successful women are more likely married, although the reasoning for this may vary. Presumably, being married means women have someone else to share domestic responsibilities with (Epstein, 1981), but the extent to which responsibilities are shared in most heterosexual relationships is questionable.¹⁰ More likely,

¹⁰ Theoretically, single women or women without support systems are thus left trying to balance all responsibilities (Epstein, 1981; Kaufman, 1978), although time-poor theories for single mothers have been called into question (Pepin, et al., 2018). Significant research supports the notion that being married to a man does not reduce the amount

according to Epstein, is that married women are more plugged in to the male networks, and married women are more acceptable thus causing fewer issues for clients and colleagues (Epstein, 1981). Marriage may move heterosexual women closer to the margins of the “us” that are The Normals.

Furthermore, Berdahl, et al. examined what they refer to as Masculinity Contest Cultures. These are workplace environments where toxic masculinity and bullying take primary import over the entity’s mission. (“Work becomes a masculinity contest when organizations focus not on mission but on masculinity, enacted in endless ‘mine’s bigger than yours’ contests to display workloads and long schedules (as in law and medicine) (Blair-Loy, 2005; Kellogg, 2011) . . . ” (Berdahl, et al., 2018). The legal profession is adversarial by nature and it measures success by counting hours and sacrifices, championing those who work the most, even if their work is inefficient. This is another mechanism that may move women closer to the margins of the “us” as delineated by The Normals.

Component 4: The fourth and final component of Link and Phelan’s stigma framework is status loss and discrimination (2001). Importantly, these two concepts are distinct. Status loss happens immediately upon successfully labeling a person and placing the individual on a lower rung of the social hierarchy based on the identified negative attribute. Certain labels that are immediately recognizable (commonly race and gender) would be referred to as a “master status” by Goffman (1963). These are attributes that most people cannot hide from the general public even if they wanted to. These open traits allow others to place an individual on the social hierarchy upon first glance. Other traits that may be stigmatized, such as mental health, are more

of housework for women (Bianchi et al. 2000; Casper and Bianchi 2010; Sayer 2005; South and Spitze 1994; Vernon, 2010; Pepin, et al., 2018).

easily disguised. While stigma based on “invisible” traits is just as prevalent, the distinction is in the lived experiences of the individuals. A cis-woman may not be able to hide the fact that she is a woman, but she may be able to hide that she is also bi-polar. Since the legal profession is still heavily entrenched in the gender binary and since it also places significant emphasis on appearances, gender is not easily hidden.

Epstein wrote, “[I]t is one thing to be employed, and even paid well, and another to be a true working partner in the camaraderie of the legal community.” (1981; p. 209). Even when she published her book about women in law in 1981, Epstein recognized that simply fixing the gender pay gap and promoting women to similar positions as men would not solve the problem. In law, gender hierarchies begin in legal education. Although women are no longer asked why they took a valuable place in law school from a man (Hirschman, 2016), women still find themselves in classrooms where out-dated teaching methods leave them at a social disadvantage (Guinier, Fine & Balin, 1997; Mertz, 2007). Moreover, once women in law school graduate, pass the bar exam, and are inducted into the practice of law, they are subject to female diminution engrained into the profession.

Recently, committees within the ABA have proposed that the anti-discrimination rules (ABA Model Rule 8.4) be amended to address issues of discrimination in the rule itself and not just in the comments (D’Angelo-Corker, 2019). Despite the ABA Model Rules of Professional Conduct stating the importance of anti-discrimination efforts, there are other mechanisms falling below the threshold of discrimination that may still be hindering women’s experiences in practicing law. For example, women are often expected to perform more of the house-keeping responsibilities at the office, such as taking notes in meetings or even making coffee, more so than their male colleagues (Williams, 2014). Women also tend to take on more mentoring

responsibilities. These expectations, and perhaps even performance by the woman, are based on the historical expectation that women are caretakers (Taylor, 2002).

This project employed Link and Phelan's framework to conceptualize stigma in a complex manner to address differences in the lived experiences of women and men in the modern legal profession. Additionally, this project applied identity theory in conjunction with Link and Phelan's conceptualization of stigma in order to examine the effects on actual and virtual perceptions of attorneys.

Despite these frameworks, individuals still have agency (Burke and Stets, 2009). Studies on cognitive bias or confirmation bias indicate that people are highly unlikely to change their minds when presented with information that conflicts with their views (Jones & Sugden, 2001). In the context of this project, identity and stigma both allow room for people to reject the negative information they receive or the devaluation they experience. Role or group expectations may pressure a person into a pre-existing mold, but individuals can push those boundaries and re-create roles by renegotiating meaning. Additionally, when a person experiences stigma, those experiences can be rejected by stigma resistance mechanisms such as denial, confrontation, and acceptance.

These overlapping theoretical frameworks have allowed for an in-depth exploration into the day-to-day experiences of attorneys at work and at home to illuminate how gendered stigma is recognized (structural), perceived (interpersonal), and internalized or resisted (intrapersonal) by attorneys.

PART II: METHODS

Since gendered stigma in the legal profession is a familiar problem frequently addressed by professional advocacy groups with little success, I chose to employ an open approach to this

project in order to give the problem a new perspective and potentially a better theoretical framework to support solutions. This project relied on inductive (drawing general principles from specific cases and requiring evidentiary support) and abductive (processing observations and making a probable conclusion with the simplest and most likely option) reasoning (Timmermans & Tavory, 2012). Despite my intimate familiarity with the legal profession as an attorney and my own experiences of gendered stigma within the profession, several patterns and themes emerged that surprised me. I would have missed these themes if I had employed alternative methods that did not provide room for new thoughts and perspectives on this issue.

Although both abductive and inductive reasonings are based on observations, abductive reasoning results in a probable conclusion and inductive reasoning results in an inference. Abduction, therefore, leaves room for “an imaginative interpretation of studied life.” (Charmaz, 2009). This is, essentially, a way to construct the forest after recursive examination of the trees. I relied heavily on open coding, which means that I coded for substance after the data had been collected. I used open coding to analyze, sentence by sentence, line by line, and sometimes clause by clause to look beyond the words on the transcript page to find deeper meaning behind those words.

Further, during the coding process I took notes, referred to as “memoing,” to process the information. Then, I also went through a process of focused coding, meaning that I took the codes and went back through the data to group them into themes or categories (Orne and Bell, 2015). This system of coding can be incredibly time consuming, but for this project, allowing the data to guide me through open and then focused coding gave the most opportunity for themes and perspectives to arise from the data.

Another benefit of open coding is that it allowed me to make changes as I was guided by the data. Sampling, for example, may change as data collection progresses (Strauss and Corbin, 1998; Rudestam, 2015). As I collected and compared data, I became increasingly aware of its relevance to the emerging themes. As the process continued, I found that I needed to adjust sampling in order to explore different facets of gendered stigma, which is referred to as theoretical sampling (Corbin and Strauss, 2014, Rudestam, 2015). Further, I determined that more sampling was needed in specific categories to reach saturation, which is referred to as discriminate sampling (Corbin and Strauss, 2014; Morse, 2007; Rudestam, 2015). These sampling methods became increasingly important during my data collection as my recruitment efforts tended to produce many more white women than women of color and male participants and, particularly, Black men. By following the data, I was able to adjust my sampling as necessary throughout the process in order to exhaust all reasonable avenues to obtaining a diverse participant pool by allowing room for creative problem solving.

Open coding provided the foundation for this project in assessing a long-standing problem in order to seek a new solution. It was the correct approach because several themes emerged that proved imperative to a full understanding of the participants' day-to-day lives as lawyers. For example, one theme that arose unexpectedly in both the interviews and the surveys was physical stature. Women who tended to take up more physical space indicated different experiences with males in the profession than women who take up less physical space. Without open coding and abduction, this theme would likely not have arisen. However, it has become a prominent component in individuals' experiences within the profession. Further, I was able to layer identity theory onto stigma in the context of gendered stigma in the legal profession that gives basis to the recommendations at the end of the project.

Field Site

The research site for this project was the state of Florida. Florida has approximately 21.5 million people (U.S. Census Bureau, 2019; Bureau of Economic and Business Research, 2020) and the median household income is \$55,660 (U.S. Census Bureau, 2019). This was an ideal research site for this Project because there have been particularly disturbing gendered confrontations between attorneys that have been publicized in the recent past (Hughes, 2018).

Geographically, Florida is in the southern part of the United States, a region that tends to progress more slowly regarding issues of equality (National Women's Law Center, n.d.). Moreover, women in the southern United States¹¹ live a unique experience, which provided a fascinating backdrop for researching gender issues. Women in the south financially provide for their families more than the rest of the country as women tend to be household breadwinners more often in the south. This is especially true for Black women breadwinners who numbered 1.6 million in 2016 compared to the rest of the country at 1.5 million. Southern millennial women are more likely to have a bachelor's degree (33.6%) than southern millennial men (25.4%), yet these same women often endure a larger gender pay gap and a higher poverty rate in the south. In addition to the financial differences, southern women are more likely than women in the rest of the country to experience heart disease, breast cancer, and account for one-third of the country's total murders by men. (Status of Women in the South, 2016).

In the recent past, the Florida State Bar has taken a specific interest in exploring gender equality. In October 2016 the Florida Bar released results from a study that examined gender equality in the legal profession (Garcia, 2016). This study revealed that 59% of the female survey respondents believe that male lawyers attain more respect or status than female

¹¹ Alabama, Arkansas, the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

lawyers. However, only 17% of male respondents agree that they attain more respect than their female colleagues. Additionally, 54% of female attorney respondents believe that they have to work harder than their male counterparts to achieve the same success, whereas only 12% of the male respondents believe the same to be true. Further, regarding an issue that tends to be a particular problem in the southern United States, 29% of women who responded have experienced being called “honey” or “sweetie” by male attorneys within the last three years. Less than one percent of male attorneys reported the same. Given the climate of the legal profession in Florida, the recent willingness of the profession to seek identification of these issues, and because Florida is a large and diverse state, it made an ideal research site.

Data Collection

Data were collected through semi-structured interviews, focus groups, and survey responses of attorneys who currently practice in Florida. Quantitative data have been widely collected for many years regarding the number and position of women in the legal profession; however, there have been fewer qualitative data collection efforts designed to capture the lived experience of women and men who practice law (Epstein, Seron, Oglensky & Saute, 1999). Of the qualitative research that has been undertaken, there has not been a firm theoretical foundation built to help explain why this cycle continues, help determine critical solutions.

This project allowed a colloquy via open conversations about gendered stigma in the legal profession and how attorneys internalize or reject that stigma (intrapersonal), how it affects their relationships with others professionally and personally (interpersonal), and how the cultural norms have constrained the wellbeing of marginalized attorneys (structural). Moreover, this project built a theoretical framework for the cycle of gendered stigma in the profession. Further, narrative data, like the stories collected here, allow for interpretation beyond mere numbers. It is

a means of accessing the experiences of individuals (Polkinghorne, 2005). Even for the women who have “made it”—the ones who make up the 19% who are equity partners, for example—the numbers only show their career history without any indication as to what sacrifices they may have endured or, more specifically, what stigma they continue to battle in their day-to-day lives.

Participant Recruitment

Interviews and Focus Groups

My original plan for this project was to interview individuals in person both for the focus groups and the individual interviews. Then I planned to conduct courtroom ethnography to triangulate the data I was collecting from the interviews. However, the COVID-19 pandemic was already underway when I advanced to candidacy in April of 2020. That was the point in the pandemic where reality was setting in that this would not be a short-lived problem. I informed my committee that I would need to shift my methods slightly so that I could collect data remotely. I then chose to use Zoom as the platform for my interviews. This program was ideal for two primary reasons. First, I had institutional access, which meant that I did not need to rely on a version that would limit the number of participants or the time spent in a meeting. Additionally, Zoom transcribes recorded sessions automatically, which meant that I did not need to use an additional program for transcription or transcribe the interviews by hand.

This shift online due to the pandemic also significantly affected my recruitment efforts. Initially the plan was to attend local bar events and gatherings with attorneys so that I had the opportunity to network with people in person and talk to them about my project. However, virtual life is quite isolating, which made networking difficult. I turned to social media as a means for pushing out my project recruitment information. In the beginning the response was huge. In late April/early May many courts in Florida were still shut down. Because of this,

attorneys who are routinely in court found themselves with a little more free-time in their schedules. I used this to my advantage as much as possible and immediately began scheduling focus groups and individual interviews. The shift online offered some convenience because I was not driving all over the state to meet with people and it was likely easier for some participants for the same reason, but the challenges outweighed the convenience.

I interviewed practicing attorneys who provided detailed information about their experiences with gendered interactions in the profession and how these experiences affect their daily lives. I conducted both individual interviews and focus group interviews averaging between three and six interviews per week when I started. I interviewed 28 attorneys in 26 individual interviews and 7 focus groups. 22 people responded to the survey. 42 participants identified as women and 8 participants identified as men.¹²

Figure 2.

Method of Data Collection	Numbers of Participants
Focus Groups	28
Individual Interviews	26
Long Form	22
Short Form Survey	0

¹² Transgender participants were coded based on the identity they provided. For example, if a transgendered participant responded “woman” to the question about gender identity, then they were categorized as a woman in the data.

Figure 3.

Demographics		
<u>Gender</u>	<u>Number</u>	<u>Percentage</u>
Female	42	84%
Male	8	16%
Unknown	0	0%
<u>Race/Ethnicity</u>		
White	33	66%
Non-White	16	32%
Unknown	1	2%
<u>Years in Practice</u>		
1-5	15	30%
6-10	17	34%
11-15	7	14%
16-20	6	12%
20+	2	4%
Unknown	3	6%
<u>Practice Areas</u> Family Law Personal Injury/Insurance Defense Government Private criminal defense Specialty Areas (Ex. Securities, Intellectual Property, Trademarks, Association Law, Zoning and Land Use)		

The interviews focused on the individual experiences of each attorney, personal experiences with gendered stigma, and any opinions about whether gendered stigma affects their own lives or if they believe it affects the lives of others. For example, questions included, “Tell me about a time when you have been treated differently than a colleague because of your gender?” and “How has your gender affected a client’s perception of you?” Participants were also asked about their lives outside the office including how many hours they work from home a week compared to how many hours they put in at the office, as well as domestic responsibilities at home. (See Appendix A for the Focus Group Interview Instrument and Appendix B for the Individual Interview Instrument).

Further, participants were asked two referent-shifting questions: “What do you think about gender in the legal profession as a whole?” and “Does the profession’s treatment of gender affect you in your daily life?” Through these narrative accounts, I was able determine whether and how the status of being a lawyer converges or conflicts with gender. I also analyzed whether there is agreement across individuals about the overall climate in the profession regarding gender. This information is critical in determining how gendered stigma in their chosen profession affects the lived experiences of the participants.

Focus group conversations were more general and left the floor open for participants to take the conversation in any direction that they would like. Based on observations in each focus group, I began asking about issues that arose in other focus groups and individual interviews. In some groups I did very little talking but quite possibly gathered more data than in the other session where I did more prompting. Listening to the participants chat and tracking how they directed the conversation around their own experiences was invaluable. During coding, I realized that the rich part of my dataset came from the focus groups.

Yet, as with most social media phenomena, the excitement was short-lived as the profession caught up with the pandemic and began shifting responsibilities to the virtual world. It seemed that now everything was happening via Zoom or similar platform. Hearings were taking place again, meetings were being scheduled at a regular rate, and even social events like happy hours and game nights were being put on the calendar. It seemed there was hardly a break in the day that did not involve being in front of a screen.

By October, I was finding it difficult to schedule participants. I was also experiencing several no-shows. Looking back, I think this was the point that Zoom fatigue was starting to set in. I could not have predicted that sitting in front of a computer screen all day every day would

lead to a collective exhaustion. The intensity required to show focus and attentiveness on a video call is draining (Fosselin, 2020) In person, meetings are usually held in offices or conferences rooms where you can look away for a moment if you need to without fearing that you seem uninterested. Additionally, video conferences not only require hyper-focus on a screen, but we are also tending to stare directly at our own reflection for the entirety of the meeting, or many meetings, each day. The novel situation of holding all our meetings on video conferencing platforms causes our brains to fatigue without regular breaks. (Fosselin, 2020). As much as I was gaining from interviewing my participants in real time, it seemed less and less realistic that I would be able to continue down this path with the slow speed that I was adding interviews to the calendar.

With some court hearings having moved online by that point, I considered virtual courtroom ethnography. After attending a webinar put on by several federal judges in the Middle District of Florida, I realized that tracking down the timing of hearings paired with the logistics of getting access to multiple hearings links on multiple days in multiple courtrooms, would be more effort than I had available in the COVID-19 reality.¹³ Without the pandemic complications, this may have actually been a prime opportunity to visit courtrooms all around the state, but I simply did not have the capacity to coordinate the details. As such, I decided to postpone the entire ethnography portion of the project to a later time.

However, I wanted to find another way to try and generate more data. I decided that a survey might entice people to provide the information I was seeking without having to be face-to-screen for a minimum of two, one-hour interviews. Initially I tried to adapt previously used

¹³ Now there is a website put together by the state that tracks which courts are live and provides links to those courts for convenience.
https://courtrooms.flcourts.org/?fbclid=IwAR0FjsvwTGo6btxCfErIj54hHiRs1ZmUT_xg6uA_PcEtDtx0KNT6u7-bxNU

surveys regarding stigma but nothing quite worked with my project and the data I was seeking. After consulting with my chair, I chose to adapt my interview script to a survey format. I hoped this would allow deeper access to the profession and be more convenient which would prompt more widespread participation. Unfortunately, the surveys still did not garner the response I had hoped for.

Determining when to stop collecting data was challenging. Data saturation is the gold standard for qualitative research of this type. (Fusch & Ness, 2015). As such, I planned for data saturation to be the signal for ending my fieldwork. In preparing for the field, I reviewed recent stigma studies that used interviewing methodology as a guide to give myself an estimated goal. Several studies had less than 30 interviewees (Antin & Hunt, 2013; Grindlay et al., 2017; Keene et al., 2015; Quinn et al., 2018; Sternke & Abrahamson, 2014). In one specific example, a study from the United Kingdom regarding the lawyer-client relationship conducted in 2018 had 35 interviewees (Newman, 2018). Using theoretical sampling left me feeling uncertain about when to stop collecting data. Some refer to saturation as when you learn nothing else new from the data, and some take the approach that you never stop learning from your data, but you are saturated when there are no longer major theoretical developments emerging from the data (Orne and Bell, 2015).

Even when my data was saturated to the extent that I was no longer finding new themes emerging from the interviews and focus groups, I felt that I needed to ensure I heard from a diverse range of participants before I could comfortably stop collecting data. By using flexible methods that follow the data, a researcher can seek out new social locations as themes emerge in one social location (Orne and Bell, 2015). Given that this project sought to determine the differences in day-to-day experiences between men and women in the legal profession by

aggregating individual experiences, I believed it necessary to collect data from a range of social locations within the gender categories.

After my initial set of interviews and focus groups, I was still missing any participants who identified as Black men. Without hearing from more diverse participants and more men, I felt it would be challenging to construct an accurate narrative of gender in the legal profession. The surveys did allow me to reach more women of color, but did not reach any additional men of color.

Even though I found it difficult to ever consider my data collection done, the process of coding the information helped me recognize when I was no longer seeing new themes. I also realized from going through both open coding and focused coding how rich qualitative data can be, even within one-hour blocks of conversation.¹⁴

Participants were initially solicited through snowball sampling, on social media, and with the help of local bar associations such as the Hillsborough Association of Women Lawyers. I used Zoom to meet with participants during focus groups and individual interviews. I recorded each interview and Zoom transcribed automatically after each session was saved. This allowed me to have maximum participation in each conversation, rather than being consumed with notetaking. All the interview transcripts were uploaded to Dedoose, a qualitative analysis software, which allowed me to review and code the data.

Surveys

I used Qualtrics to deploy my survey. Initially I adapted my interview questionnaire only slightly so that it would fit a survey format. This resulted in a long survey with several open-ended questions, which is not ideal for a survey instrument. After receiving several incomplete

¹⁴ “Even an hour in the field can produce hundreds of ethnographic observations.” (Orne and Bell, 2015; p. 101)

responses, I then cut the survey down to primarily questions that could be answered by clicking a response rather than questions that required written responses. Participation fizzled significantly by this point, so after cutting the survey down, I used the Florida Bar website and performed an attorney search for each letter of the alphabet in order to create a database of email addresses. Once completed, I blindly emailed everyone on the list with a link to my survey. After completing this, I felt comfortable that I had taken all the steps I possibly could to ensure that I reached as many people as possible. Ultimately, I ended up with 22 usable responses to the long-form survey and 0 responses to the short form survey. Demographics improved only slightly based on these efforts.

Data Analysis

One common complaint about stigma research is that it is generally conducted by researchers who are not members of stigmatized groups. Therefore, their results tend to be more about the science and the numbers behind their findings rather than being “informed by the experiences of the people they study.” (Link and Phelan, 2001; Kleinman, et al., 1995; Schneider, 1988). To combat this problem, I focused on the actual experiences and perceptions of the individual participants in this study.

I also employed ethnographic perspectives as I collected and analyzed my data even though I was not able to conduct the courtroom ethnography that I had initially planned. Ethnography is often used when one is studying a culture and historically involved immersion into the culture by an outsider (Murdock, 1943). Further, having an ethnographic perspective means active observation rather than passive observation (Orne and Bell, 2015). It means that I looked deeper than the surface interactions and, in addition, observed how a person interprets, reacts, and assigns meaning to those interactions (Orne and Bell, 2015). Ethnographers typically

enmesh themselves in the field site. Traditionally this meant living amongst an unfamiliar culture in order to study it (Murdock, 1943). More modernly, enmeshment can be a lens rather than a physicality. During my data collection I was enmeshed in the legal profession with my participants by learning about their daily routines both in and out of the office to see how these interactions weave together to form their individual experiences.

In some ways, this project was slightly autoethnographic as well in that it allowed me to study myself in the context of the legal profession as well as my participants. My own position as a lawyer helped me gain access and rapport with my participants.¹⁵ My inside knowledge of the law, the legal system, and the legal profession added a sharper lens to my ethnographic observations and analyses. I was able to use my own experiences to inform my questions, guide each interview, and relate to my participants. As I was studying my participants and their experiences as lawyers, I was also examining my own experiences and relationship with the profession. For example, as more and more participants mentioned shoe choice for the courtroom and physical stature, I realized that I personally always wear heels to court. It certainly is not for my own comfort, but instead, it allows me to be eye-level with most men I may encounter. Even though I had never connected the fact that many women wear heels to court with the effect that physical stature has on these interactions, the data caused me to make the connection both for the participants and for myself. And it was more than a surface level connection—I felt the realization deeply. Having an autoethnographic filter on my lens allowed me a depth of analysis that I would not have had if I was not so intimately acquainted with the ins and outs of being a lawyer. Despite the richness that my experience added to my interpretation of the data, there are

¹⁵ In some instances, the participants already knew that I am an attorney. For participants who may have found me through social media, I used this fact about myself when I needed to put the participant at ease or establish that I had enough knowledge about the legal profession that the person could speak freely.

drawbacks to researching within my realm of experience as well. These drawbacks are discussed in the limitations section below.

Moreover, I coded and analyzed the data to preserve the narrative accounts of these attorneys' experiences. Narrative methods are the most effective way of answering how gendered stigma operates in the modern legal profession for both men and women because in the same way that narratives transform law from "merely a system of rules to be observed, [to] a world in which we live" (Cover, 1983, p. 5), narratives also transform the experiences of women and men in the legal profession from numbers in a report to meaningful and relatable experiences.

After completing the interviews and focus groups I transferred all the transcripts into Dedoose. Once the transcripts were all in the same place, I went through each transcript and coded for themes that were emerging. I first used open coding and read the transcripts with attention to minute detail, often coding singular words even. This was time consuming but insightful. In Dedoose, I was able to create tags for micro themes, which I would attach to relevant words or sections of each transcript. During the first round of coding, I tagged ideas without regard to how they might fit in to the bigger picture. For example, conversations about participants' experiences while pregnant were tagged "pregnancy" and conversations regarding clothing or shoes were tagged "appearances." After all the transcripts were tagged, I went through my list of micro codes to merge any duplicates—I unintentionally created two separate tags for "courts" for example, but merged them so the data would be together.

I also used focused coding by recursively analyzing the data to categorize the themes I was identifying in the open coding sessions. After tagging the transcripts and cleaning the list of tags, I started to group tags together by topic. For example, pregnancy, parental leave, issues

balancing work and children were all grouped into one idea of “parenting,” which ultimately became one of the subthemes. After creating the initial list of themes, I went through the data again reading through the conversations and evaluating the tags for accuracy in light of the theme I assigned, in case I needed to make any adjustments, but I was satisfied that the themes adequately captured the contextual landscape emerging from the data. With this list, I took to a physical whiteboard to create a concept map of the themes. The physical space of the whiteboard allowed me to see the themes constantly and think deeply about how the pieces fit together with one another in the context of the data, but also in the context of stigma and identity. Over a period of a few weeks, I continued to re-read the transcripts and, in some cases, re-watched the interview if I felt I needed to get a better sense of the participants tone or body language. During this time, I would make small tweaks to the concept map until I felt that the pieces clicked together uniformly and that I was not leaving out any of the major concepts from the data. I also paid attention to whether any new tags, subthemes, or major themes arose from the last five transcripts. Finding none, I was comfortable that I had reached saturation. This analytic process allowed me to review the data multiple times both at the micro and macro levels to exhaust the possible themes that could be gleaned from this data.

Survey data were analyzed within Qualtrics. I tried to export the survey data to Dedoose, but the data did not transfer smoothly. Since I already reached saturation with the interviews and focus groups, I was able to use the list of themes to code the survey responses and to determine whether any new themes emerged from the surveys. It was not as easy to use open coding through Qualtrics, but I was able to process and determine whether any new themes were emerging that were not captured in the previous interviews. I did not capture any new themes,

but I did add to the theoretical saturation in individual categories by manually tracking the themes from the surveys and comparing them with the themes from the interviews.

Another complaint of stigma research is that it focuses too much on the individual in that it looks at attributes or labels, rather than the system that is responsible for the labelling of the stigmatized individuals. Through this project, I have used participants' individual experiences to illuminate the breakdown in the system that is allowing gendered stigma to continue despite efforts to eradicate it. I have worked to identify who The Normals are and how power structures are responsible for allowing The Normals to continue to dictate customs and culture within the profession.

Using semi-structured interviews, focus groups, and surveys to collect ethnographic narratives of the day-to-day experiences of attorneys in Florida provided the most effective vehicle for uncovering whether and how gendered stigma exists in the legal profession in Florida, particularly given the restraints of collecting this data in a global pandemic. Abductive reasoning and data-driven coding was used a basis for analysis and allowing themes to emerge from data collection and review rather than imposing themes upon the data (Timmermans & Tavory, 2012; Strauss and Corbin, 1994). Because of this process, I was able to identify several crucial themes that I did not expect at the outset of this project—specifically, the themes of stature, age, and perceived parental status.

PART III: FINDINGS FROM THEMATIC ANALYSIS

“But I ask no favors for my sex. I surrender not our claim to equality. All I ask of our brethren is, that they will take their feet from off our necks, and permit us to stand upright[.]”

-Sarah Moore Grimke

In this section I will describe the themes that arose during my data analysis. For each theme, I will begin by explaining the meaning that I have attached, before giving examples from

the data. I will also incorporate the subthemes as exemplars. I will not discuss the theory in this section, but instead will weave the theory into the data in Part IV, wherein I will also make recommendations for changes based on the theories detailed in Part II and the data described here.

In 2019 a tenured professor and former judge was presenting to an incoming class of law students. The excitement and anxiety were palpable in the room. There were approximately 55 students present. The presentation was titled, “Critical Reading and Time Management.” He started the presentation by giving the students general words of wisdom. In doing so, he analogized to the book Men are From Mars, Women Are from Venus (Gray, 1992). Notably, he pointed out that the book has been labeled sexist, but recommended that the attendees just “take gender out of it.” He then proceeded to use the exact concepts from the book in giving these new law students advice. He explained that “some people” want to vent and just be heard (women, according to the book) and “some people” want to solve problems (men, according to the book). He went on to explain that, to be a successful attorney, you have to be the problem-solving type of person. Men, according to the book and to him, apparently. Therefore, he explained, if you were not already the type of person to think in the context of problem-solving naturally, it would be in your best interest to identify that now, and to overcome it as soon as possible. In his mind, he simply “took gender out of it” and it made the underlying concepts acceptable; however, his message was clear—to be a successful attorney, a woman must fight against her *inherent tendencies* and conduct herself more like a man.

Before these students even experienced their first day of classes, they were already being told that men are superior to women and make better attorneys. And this message was being

conveyed by a person who held multiple roles solidifying his position as a Normal—judge and professor, namely. This is a far cry from women in 1956 having to justify to their law school dean over dinner why they deserved a seat in the classroom over a man, but it is the same message packaged differently. Did the students consciously recognize the words they were being told or did they simply subconsciously internalize the advice? No one from the administration was present during this part of orientation and probably has no idea the students were being given this “advice.” How did we get here? Power structures mired in “tradition” and gatekeepers who are keen on keeping hold of their power rather than making the profession more inclusive, more effective, and less depressing.

Figure 4.

Theme	Sub-themes
Dissonance	Stigma Resistance Referent Shifting Questions
Culture and Power	The Normals Judges and Courtroom Culture Office Culture Appearance and Physical Stature
Identity and Intersectionality	Age Parental Status
COVID	Reimagining Meanings
Lost opportunities	Professionally Personally Managing Expectations
The Ones Who Get It Right	

Themes

Dissonance

Dissonance means there is a conflict, a lack of harmony in a given situation. In the context of this project, dissonance came up in a few ways. One glaring example was each discussion of the ideal attorney versus the typical attorney. In each focus group participants were

asked first to describe the ideal attorney. After giving ample time for answers, I then asked the group to describe the typical attorney. The juxtaposition usually elicited some form of amused reaction from the participants. The difference in tone was stark. Below are three sets of visual representations of the participants' responses to what characteristics make up the ideal attorney versus those that reflect their day-to-day experiences with the typical attorney. The first set is the combined responses of all the participants for ideal attorney characteristics versus typical attorney characteristics. The ideal attorney was most often described as being ethical, a critical-thinker, and solutions-focused. The typical attorney was most often described as being overworked, self-centered, and egotistical. The second set is a comparison between the responses of women versus men for the ideal attorney, and the third set is a comparison between the responses of women and men for the typical attorney.

Figure 5. Description of Ideal Attorneys: All Responses



These comparisons are telling. First, the differences between expected attorney characteristics versus typical attorney characteristics are quite opposite. Not one person said that the ideal attorney and typical attorney turn out to be the same. This is important because several participants noted the difference between how they perceived the profession as new attorneys versus once they became seasoned attorneys. Therefore, people who are recent law school graduates or newly barred attorneys have little to no real conception of what the practice of law entails on a daily basis. Additionally, the men I interviewed had far fewer characteristics to contribute than the women in the focus groups. Granted, there were few men who participated, but even in the focus groups that were split between men and women, the men had less to say on this matter. Moreover, women predominantly spoke up first and the men after when asked these first two questions. Without having more insight into the individuals here, there could be at least two possible factors to this dynamic. First, in the south, men generally abide by the chivalrous “Ladies first,” belief. But, perhaps more importantly, these particular women who participated in the project are more empowered than many women in the profession. They all projected an air of confidence, and some exuded rage, simmering just under the surface. These women were eager to discuss gendered stigma in the legal profession, and they did not seem to hold back in any of their responses or positions on the topic.

The stark differences between what currently practicing attorneys expect the ideal characteristics of their colleagues to be versus what they observe the actual standard characteristics of their colleagues to be, could present issues. This comprehensive dissonance in the profession can leave attorneys feeling dissatisfied with their chosen profession. When asked if they had ever considered leaving the profession only two participants answered decidedly not. Most responded that yes, they had considered it, but significant time, effort, and expense goes

into the process of becoming an attorney that many feel there really is no other option than to continue. One male participant stated, “Oh yeah, sometimes I say, why did I become a lawyer? I should have been a plumber.” Some strategies participants engaged for mitigating the dissonance included leaving a work environment to become a solo or small firm practitioner, leaving a work environment for a similarly structured work environment in the hopes that the culture would be different, and considering more education in order to become a teacher.

Mitigating dissonance can take the form of stigma resistance. Stigma resistance is a way that people cope with the stigmas placed on them by external sources. There are three main ways that people resist stigma: denial, confrontation, and acceptance. This theme was prominent in the data in all three ways. One participant who is a shareholder at a large, national firm indicated that when she was younger, she would take things more personally than she does now that she is more experienced and respected within the firm. As an example, she mentioned her role as an interviewer for new attorneys. On multiple occasions she was one of two interviewers in a room with a man interviewing for a position with the firm. The other interviewer was also a man. In each instance she described that the interviewee would not look at her, not even when she would ask questions to him directly. In the earliest instance, she remembered that this made her feel less-worthy, but now she feels confident and has the ability to speak up to the hiring decision-maker and mention that the interviewee did not even glance at her.

This ability to not internalize the interaction is a form of stigma resistance. Even though she did not address it with the interviewee, she confronted it by addressing the issue with the other interviewer and speaking up about the firm not hiring the candidate. This scenario is also an example where the role-relational identity was not contributing to her sense of self the way it did when she was younger and in the same role. The interviewee was rejecting her role as being

the same as the male interviewer and, perhaps, was giving her a different role-relational identity. He may have seen her as a “female” interviewer. He may have assumed she was lower on the organizational hierarchy, but here the labeling is less important than her ability to shift from internalizing the meaning attached to the role-relationship by the interviewee to rejecting the identification. Moreover, her years of experience empowered her to utilize her agency and make positive changes not only in her own life but also within the firm culture.

In multiple other interviews, stigma resistance was apparent when individuals indicated that despite a few negative gendered interactions with colleagues, they largely did not have experiences like the ones I was asking about. For example, when I asked about a time the participant was treated differently than a colleague or opposing counsel because of her gender, she replied that the legal community where she practices is small and mostly respectful. When probed about comments made to her about her appearance she revealed, “I’m abrasive. . . . I know I’m loud. I know I take up space. . . . I do think that my personality, kind of being rough around the edges, kind of makes people stop, like, I don’t really get that kind of bull****.” She goes on to explain her perspective that women are trained by society to not take up space and not to make waves, but that women need to reclaim their space and make waves by confronting these issues and inappropriate comments head on when they happen or when we overhear them. Although she felt that gendered stigma was not much of an issue for her, she did reveal certain instances that indicated she was being stigmatized. Her self-perception allowed her to deflect that stigma easily and ultimately deny the stigma all together.

In several interviews, participants indicated acute awareness of the gendered stigma that they experienced, but in a way chose to ignore it so they could continue to work as they intended. They knew they would be successful despite the stigma, so it didn’t bother them in their day-to-

day life. One participant explained, “I don’t even think about it, it’s just, you know, stuff that comes up occasionally and you get so used to it that you don’t even – it doesn’t affect me personally at all in any way.” This attorney was not at all of the opinion that gendered stigma does not exist in the profession at all, but just views it as a minor annoyance to brush off. Another participant described her reaction to her gendered encounters versus her husband’s. This participant was one of several whose spouse is also an attorney. She explained, “[My attorney husband] gets infuriated about [how I have been treated as a female attorney]. And to me, I’m just like well, I can either be the a**hole that says something that falls on deaf ears and then nothing is going to change, or I can just roll my eyes and walk away.” This participant in particular relayed incredibly disturbing accounts including men physically touching her within the courtroom as proceedings were happening. These two quotes are indicative of so many women’s realities in the profession. Fortunately, these participants were equipped with the tools to deflect and minimize the interactions in ways that allowed them to resist the stigma so it would not affect their personal lives. Importantly, both of these participants described work environments that were welcoming and inclusive. Part of their ability to let these issues roll off their backs might be that they are supported and appreciated by their immediate colleagues and supervisors.

Referent Shifting Questions

I asked each participant two referent shifting questions towards the end of our session together. I first asked them to give me an overview of gender in the profession from their experience. I asked them to look at this from an aerial perspective, the 30,000-foot lens looking down on the profession as a whole. The second question I asked them was whether the profession’s treatment of gender affected them in their daily life. These questions allowed me to

get individual perspectives of the group dynamic rather than solely relying on my analysis of their individual experiences to inform an overview of gender in the profession. The responses to both questions were enlightening.

When asked the first question one male participant responded with the following:

We're definitely getting better. I think we're definitely getting better and you see a lot more women in the profession. I think that the profession has accommodated, that's probably not the word to use, but it's accommodated women in the profession a lot more. But I think you see women lawyers . . . they're more transactional or not as much into the litigation aspect. . . . The biggest issue that I can think of in litigation is that . . . once a woman, you know, starts a family or begins a family it's hard because you very well know that law is very demanding, especially litigation. And it's almost like do I love it that much that I am willing to give up time, my family and stuff and whether we like it or not, I think that the woman is always going to be the primary caregiver.

This participant goes on to describe that the women who are in litigation tend to be in firms that are entirely comprised of women or they have a solo practice. He suggests that these moves were made because these women had bad experiences in the past and wanted to run things differently. He suggested that when firms and the profession "aren't catering or aren't accommodating, you know, women are . . . starting to branch out and say, hey, I can do something. I don't need you."

The second referent shifting question dealt more with how the gendered stigma in the profession affected the individuals in their lives even outside of work. The responses were varied among the female participants. The male participants, however, all answered that it did not affect them in their lives. One male attorney said, "I'm kind of a culprit where I can go home and not have this really bearing down on me, which is kind of unfortunate because obviously all of you do." This attorney is young, both in age and career stage, so his participation in the focus group, hearing the stories of women in the profession seemed to surprise him a bit. In contrast, another participant indicated that she had the opposite experience as the male described above. She said, "I just carry it with me all the time and it wakes me up in the night, so I mean to such a degree

that I feel like I function and compartmentalize . . . because of medication and that's really the only way that I'm just not enraged all the time." This particular participant has left the toxic firm that she was at for an all-woman team at another big firm and is having a much better experience to date.

I followed up with her about the process of her job search and interview process. She said she approached it in a way that more about her finding the right firm than vice versa. She told her interviewers what she was looking for in a firm environment and what kind of culture would drive her away. Her tactics, she admits, were risky. But for her, she needed to be sure that she was entering a healthy work environment instead of leaving one toxic firm for another. Even though this situation has worked out for this attorney, many other attorneys have the opposite experience where the next firm is just as toxic as the last. Moreover, people sometimes feel that they must stay in a position for at least a year, no matter how bad the situation is for them personally, because it may look bad to the next potential employer if they leave before then. Normalizing asking about company culture and being open about why prior firms were not a good fit would be another way to indicate to firms that employees will not tolerate unhealthy office culture. Then, firms that refuse to change, will be unable to recruit top new talent.

The referent shifting questions allowed me to get participants' perspectives both on an individual level and at the aggregate level. In the aggregate, all the responses indicated that there has certainly been progress regarding gender in the profession, but no one answered in a way that would indicate the work is done and gender balance has been achieved.

Culture and Power

The Normals

One facet of this project was unraveling the power structure from the perspectives and responses of the participants. Even when it is an institution causing oppression, there are still individuals reinforcing and replicating the ideals required to maintain the power in favor of the dominant group. I refer to these people who maintain the power imbalance as The Normals. This moniker is given to this group because it relates back to the sociological origins of deviance. In the context of the legal profession, the people who are maintaining the power structure currently in place are not homogenous, therefore they are difficult to identify in another way. However, these are the people and institutions that drive the in-group membership and expectations. Using this moniker is not a way to indicate that this structure should remain, but instead is a way to identify who is part of the group driving the culture of the profession. The Normals are the gatekeepers. They are the people for whom the profession sustains. Each foundational pillar holds up their power in a tragic game of keep-away from the people below them. The Normals are the people you imagine when someone says “lawyer” or “attorney.” The Normals have so much power that they are really the ones who need to force change if any real progress will be made. Not surprisingly, The Normals made their appearance in various ways during data collection, including the basic assumptions of who is an attorney, client interactions, and expectation at networking events.

One male participant said, “The way I’m dressed, the way I’m presenting myself, the fact that I am a male, nobody really questions [my role as attorney in the courthouse].” The key part of his statements is really the fact that he is male. Every attorney I spoke with regarded appearance as an important factor in how attorneys present themselves. Women also show up to

the courthouse in a suit and present themselves professionally but still get mistaken for administrative professionals. Another male participant weighed in, “I think part of the stigma—I mean I have maybe seen one male court reporter, [so some people] still have that perspective that it’s a woman’s job. . . . and [women’s] outfits are all different. Where men, like, we generally wear suits. It’s black, blue, and brown with a blue or white shirt and black or brown shoes. It’s always been very similar. So, for the most part [men] are wearing a suit and tie.” Despite the fact that women may have more color options, suits are standard attire for lawyers of any gender. Moreover, all of the women interviewed for this project indicated that they wear suits in neutral colors when appearing in court. But since men are the default and set the standard, a suit on a man equals a lawyer’s uniform, but a suit on a woman means she could be anyone.

While men are presumed to be attorneys based on their clothing and confidence, one woman was stopped mid-sentence *during an opening statement* by a male opposing counsel who asked, “Why is a non-attorney doing this opening?” The participant described her reaction to that moment, “And I’m like, how can you possibly think I’m not an attorney. I’m probably one of the few who puts ‘esquire’ behind my name, which I know can be frowned upon, like oh you’re touting that you’re an attorney. I do it so they don’t see [female name] and, you know, assume I’m an assistant. That’s how I eliminated that problem.” This participant also explicitly indicated that she always wears a pant suit to her proceedings in neutral colors (black, blue, or gray) with demure hair, makeup, and jewelry. There really is nothing more she could do to present herself as an attorney than dress the part and actually be giving an opening statement during a proceeding. The likelihood that a male attorney would have been interrupted in the middle of an opening to verify his status as a licensed attorney is small, and that is a gracious estimate. Since men are the norm, their status is not questioned.

Two other participants indicated that they have been questioned about their status as an attorney. One said she was blatantly asked, “Are you sure you’re barred?” The way this question is phrased makes it clear that the person asking was not simply confirming her status as a bar-card-holding attorney. The second participant was asked whether she was sure she was an attorney and not a paralegal. Anyone who is an attorney knows that there is absolutely no mistake about being licensed. To earn a bar card most people first attend and graduate law school. Apply and sit for the bar exam, which includes an intense background check in order to prove that one has the character and fitness to be an attorney including any past criminal, mental health, and financial history. Then study for two to three months for the bar exam that usually requires people to take time off from work and not have any semblance of a social life because bar preparation requires a minimum of 400 hours of studying. Then sitting for a two- or three-day long exam. After the exam is over, you wait weeks to months for your results. Once you have results, as long as you have passed character and fitness, the Multistate Professional Responsibility Exam, and any other jurisdictional requirements, you are cleared to be sworn in, at which point you pay a large fee to the state bar association (and federal if you chose to do so) and arrange to get sworn in by a judge. After you are sworn in, your oath signed by both you and the judge who swore you in, gets sent to the state bar licensing authority and finally, at long last, you receive your bar number. Anyone who has been through this, knows exactly how insulting these questions are to a fellow attorney. More than likely, these questions are used as a strategic tactic to reinforce the very power imbalance that keeps the reigns just quite out of reach for women.

One way to deal with being a female in a male-centric profession is to try and assimilate. I would argue that the norm is already to wear neutral suits like men do; neutral hair, make-up,

and jewelry to look more like men; wear heels to be taller like men. But one participant brought up another interesting tactic to be taken more seriously, like a man. She said, “I picked up this bad habit. I have a friend who gets on me about it all the time. My mentor, she was cis-gender, but she would always drop her voice down like when she was in a hearing. And so, I usually do, too [because I] just kind of picked that up from her.” This participant goes on to explain that being an advocate for a client puts attorneys in a unique position. “So, I mean, you can’t go in there and really be a special snowflake. You have to be something that’s palatable.” Unsaid, but left hanging in the air after her comment was that you have to be palatable to The Normals—the people in control over proceedings, jobs, and client outcomes.

Gendered stigma is also an issue for women in the profession with their clients. Participants indicated a range of responses from clients not listening to them because they are women to clients making inappropriate comments on their appearances. One participant indicated that she has most men in C-suite positions as clients. In her experience, “They’ll want to talk about everything, and then I’ll say, ‘Your wife is a whole lot cheaper. This is not something that is relevant to your case.’ I say, By the way you know you’re on the clock. Like this is going outside of the bounds [of your case]. I’m happy to listen but you know that you’re being charged.” It is important to note that this attorney warned her clients that they were on the clock. Another woman in a different field, but one where her clients are also mainly men, indicated that her clients would argue with her about their bills more often than her male colleagues. This has other implications as attorneys, ethically, must respond to their clients or risk a bar complaint. So here is a female attorney having to spend her time dealing with non-billable issues that her male colleagues are dealing with much less frequently, meaning she has to make up her time with another task that is billable.

Another participant was discussing how her clients' inability to listen to her sometimes delays their own outcomes. She mentioned a corporate client who delayed getting a quote and when she finally got it for the client, they were surprised that it was much less than they were expecting. In discussing how this client delayed its own result, she said, "I mean that [corporate client] is just a bunch of boys that kind of hang out and have beers together and stuff. I'm sure if I was one of the boys, they would have listened to me a month ago, at least." This same attorney goes on to explain, "My interactions with most of my [clients] is usually that I have to mom them. So, I end up coming in, taking over their lives, they won't listen to me, they'll freak out. I will calm them down and usually [then] I'm running the show." Whereas a man in her same position would have avoided that entire phase of client resistance.

One participant who owns her own law firm, explained that a male client has asked her to turn for him, so he could see her from all angles. Much like you might imagine at a beauty pageant. The issues with clients are tricky because they cannot necessarily be solved by the profession coming together as a more unified and inclusive front, but it does add to the microaggressions that women will always face as attorneys that men will not.

Even outside an attorney's official function, The Normals still control behavioral expectations. Despite the high statistics for substance abuse of attorneys in the U.S., it is still common practice for alcohol consumption to play a major role in many client meetings or networking events. When people, and particularly women, choose not to drink at those functions, they are perceived as "others." One participant recalls a regular situation she finds herself in regarding client meetings:

I was looked at odd if I wasn't drinking with them. But if I'm there taking notes and working, that's not the place to do it. I don't care if the client does, but you know, it's the men. It's like I'm not being collegial if I'm not going out with them. . . . I would order diet coke and people would assume that I must be

drinking liquor and they would look at me, holy cow, female attorney, look at her, she's drinking. And I'm like no, it's diet coke. Then when I would order water and they're like is that vodka? You must have had a rough day because everyone else is ordering a liquor drink. It's not an issues unless you're a woman, then you must be some brazen attorney So, you know, order ICE because you can't mistake that on purpose. . . . Or order like hot tea because you can't mistake that either, you know, I'll leave the tea bag and . . . there's no question what I'm drinking.

These issues are particularly relevant for women. One participant explains, "Why should I pay \$25 for my two [sodas]? And I have seen women sometimes they speak up. One of them is doing fertilization treatment and things and they can't have alcohol or whatever the case may be, there's always the question of why aren't you drinking? [People] don't want to have to say, well, because I'm breastfeeding." In addition to the medical or health necessities for not drinking, there are also personal safety issues all women are more cognizant of than men. Generally, women need to be more concerned about their safety when consuming alcohol than men, to the extent that a manufacturer created a nail polish that changes color if drugs are detected in a drink. While there are men who live with the same fear, it is not so widespread that specially manufactured beauty products have been created for their protection.

Even outside of actually drinking or not drinking alcohol, another issue that was brought up with the social expectation of being a lawyer is happy hour attendance. Firms or practice groups often meet after work for happy hour to blow off steam and to bond. One participant said, "The happy hours are always right after work. Well, some people say, well, their daycare closes at six [and] can't go but for 20 minutes or whatever the case may be." As women are generally the primary parent, this leaves many female attorneys out, preventing them from becoming integrated into The Normals and reinforcing the "Good Old Boys' Club" mentality. The Normals are typically the ones who have the time and flexibility to take part in these activities, which reinforces the stereotypical gender roles.

Judges and Courtroom Culture

Attorneys sometimes spend a lot of time in courtrooms and in front of judges. Since the idea is usually to convince a judge to take some action in favor of your client, they wield significant power over the profession. As such, the interview instrument included a section dedicated to asking about judges and courtroom culture. Participant responses varied across gender and ranged from hating court and avoiding practice areas that would require a lot of court, to people who absolutely love being in the courtroom. One woman indicated that, “It’s like home.” Along those same lines, a male participant said:

I enjoyed going to the courthouse [pre-COVID] because, you know, all the colleagues we have over there. . . . We barely talk about the law. It’s more like, how’s your family doing and things like that. So for me, it’s something that I have missed [since COVID shut down the courthouses]. . . . So I really missed that really like almost like a family atmosphere that we have amongst the defense attorneys and some of the prosecutors as well. So, for me it was a fun place to be.

For most people, the general courtroom experience was a necessary function of being an attorney and there were not strong feelings one way or another. However, dealing with individuals within the courtroom could sometimes be less pleasant.

One woman recalled, “You know there was one [judge who] would always call my case last. . . . No matter what he would call my case last and then he’d [ask me to approach the bench to say] you look very lovely today. I just wanted you to know.” This participant would reply, “Thank you judge may I be excused . . . my case is done. Can I go now?” to which he would tell her, “Yes, it was just, it was nice to see you today.” Despite her professional, respectful demeanor in response to his comments, he continued to treat her this way, and there was not really any other response available to her that would not have potentially affected the outcome for her clients. Every judge has particular preferences. Sometimes these preferences are just a matter of how or when pleadings should be filed or other particularities regarding paperwork.

But sometimes these preferences are extra-judicial and inappropriate like believing that women should always be in skirt suits and not pant suits. When an attorney goes against a judge's preference, the judge has the ability, within reason, to make the attorneys job more difficult and may even adversely affect the client.

Another attorney recalled various instances of inappropriate behavior that took place in the courtroom:

When I was at the [public defender's] office I had a prosecutor accuse me of intentionally wearing a certain dress to get the judge to give me a not guilty on my non-jury trial. . . . I had another attorney come up to me, put his arm around me and say, 'Don't you miss getting whatever you want [at that] bottom level division you are in? I can fix that.' Another attorney offered to take his wedding ring off if it made me more comfortable [during a conversation]. I mean, none of these people were my friends. None of them had I ever spoken to before. I knew none of them. . . . I will be standing in a courtroom and just feel an arm across my shoulders while there's a docket going on. . . . I had a deputy at the jail . . . when I flagged him over to ask him to let me out because they had to come let you out with their keys . . . [he] opens the doors, leans in front of me in the door frame like, 'What if I don't let you go. Can I just keep you locked up with me?' . . . And I had a bailiff come up one time and whisper in my ear, 'You should really think about wearing those pantyhose with the lines up the back.'

This participant's spouse is also an attorney who is appalled by how she has been treated over the years. Alternatively, her response is to "just roll my eyes and walk away." Partly, she explains, because nothing is going to change. And partly because the other reputational choice for women is to be the "stuffy b***h that you don't even bother trying to talk to[.]" Are these really a woman's only options for personalities as a lawyer? I would love to say decidedly not, but participant responses have indicated that there is a fine line for women to walk as attorneys. Another participant indicated that, "I had conversations with my boss about how [he wanted me] to be more feminine and ask people about their children." Her boss felt that she was too much like a male attorney and wanted her to play up a persona of femininity that she did not naturally project.

Women must be like men just enough to fit in and be taken seriously, but they still must be feminine enough to be relatable and, apparently, endure a level of sexual harassment not experienced by the male participants in this project.

Office Culture

Office culture is one prominent area where stigma is reproduced. In the pre-COVID era, many attorneys spend more waking hours at the office than they do at home. Supervisors, co-workers, and the atmosphere in the office can make a huge difference in how an employee feels about their job. In one particularly distressing situation, a participant described being micromanaged to the point where she “wished sometimes that [she] would get in a car accident on the way to work. Not bad enough for anyone to be seriously injured, but just to have a valid reason to not go in to the office.” While this reaction seems extreme, others agreed that they understood and had felt the same way at various points in their careers. While an observer may suggest that if someone is that miserable, they should certainly leave their job, attorneys are often saddled with crippling student loan debt and other financial obligations that prevent lateral moves. Further, the pervasiveness of this toxicity in the profession ensures that individuals can never be sure if they may jump off the burning ship and land in shark infested waters. Any other situation may be just as bad if not worse.

One participant indicated that once COVID forced everyone to work from home her managing partners started making the attorney report billable hours each day instead of weekly or monthly, which is more common under normal circumstances. She was required to bill a minimum of 200 hours per month. Fifty billable hours a week means a minimum of 60 to 70 actual hours worked. The firm was so concerned that people would not be working if they were allowed to be at home instead of the office that the spent time and effort micromanaging instead

of cultivating a culture that their attorneys would be glad to return to. By the end of data collection, this participant had also left Big Law for a more balanced work environment. She was a top-producer, but the firm lost her talent because of the culture despite change being entirely within their control.

Another participant explained that she came to her current firm with five years of experience and after she had been there over six months, her parking space and larger office were taken from her and given to a new male attorney who only recently passed the bar exam. Her work space was physically moved so that a less experienced, newer male attorney could have it because it was bigger and more desirable than the other office that was available. She ended up in that smaller office and she no longer had a designated parking space in the “attorney” parking area. This was another attorney who consistently exceeded all of her performance goals. Objectively, she was a valuable member of the firm. She speculated that this action was taken partly due to some nepotism within the firm, but she also believed that this would not have been the case were she a man. In a subsequent interview, the male who was given the parking space admitted that it was nepotism and unfair, but he still accepted the gratuities being offered. As a brand-new attorney, he was already being sent the message by the older, more experienced men that he was part of The Normals and that they take care of their own.

In discussing a multi-state firm, one participant barred in two states answers to managing attorneys only barred in one state. Regarding her cases in the state where the managers are not licensed, she mentions that they always second guess her and override her decisions even though they have no authority over cases in that jurisdiction. “They always say, ‘Well, let me check with [the male litigator on the team].’” In response to this scenario, she said that now, “I preemptively

get [the] male litigator on my team to put certain things in my [case] files because I know it will simply make my life easier. And I shouldn't have to do that. I don't see the difference between him saying it and [me] saying it. We both carry the same bar card.”

Another sub-theme within office culture is the expectation to overwork. This sub-theme presented itself often. One participant described all attorneys as being results-driven so reaching billable hours requirements or meeting goals and earning quarterly bonuses are common ways to get people to produce for a firm, but people might have a tendency to go too far in the wrong direction. “[C]ool, you got your bonus, but you also had a mental health breakdown. So, . . . where do you draw the line? [G]reat more money, but when are you going to spend it? Like, when are you going to go on vacation with your family when you're going to take a day for yourself. You're always at work who cares how much money you have, what are you doing with it?” So, where *do* we draw the line?

Another participant recalled that she was “sending emails about trials when I was on my honeymoon in Europe, like in another country.” Often even on vacation or parental leave attorneys are expected to maintain their cases. In another instance, “I literally collapsed during a court docket. I was the only prosecutor in the court, like . . . I was in like some rural town. They had to send someone else out there and I was like in the ER texting, like, okay here's everything you need to know about all of the motions this afternoon. . . . I can't think of any other profession where you would do that.” Other participants regaled stories of working from the hospital while experiencing a medical emergency or during and shortly after having given birth. From the data I have gathered, I have found no substantive reason why lawyers should not be given leeway for medical emergencies, giving birth, and other scenarios where time and space is

a common response in other professions. With preparation and organization, an office can be set up to continue running despite a person's unexpected absence.

Appearance and Physical Stature

As discussed above, attorneys are expected to look a certain way. Professionalism is an undercurrent through every area of the law. Based on this, appearance was a theme that I expected to arise in this project, but it arose more frequently in ways that I did not expect. Here are a few examples that were in line with what I expected to hear.

During a focus group, one female recalled that, at a prior firm she “was told that a certain male couldn't do motions to suppress with me because he was looking at my a** the whole time.” I followed up by asking a male in the same focus group whether he had experienced similar comments. He responded, “No, no one is looking at my a**.” In another conversation, one participant overheard a conversation between men about a particular female attorney and the comment was made, “Oh, she's so hot I don't even care if she's stupid.” While there was no additional context, this comment is rife with gendered stigma. Poignantly, that a woman's value as an attorney is based on her looks and not her intelligence and also that an attractive woman is unlikely to be intelligent. Another woman indicated that despite her best efforts to assimilate her appearance, she was still rejected by many people:

Normally when people are interacting with me . . . I'm in business attire and I have makeup on my hair is pulled back and I don't know I guess there's something about me that scares people . . . I keep a certain distance from people. . . There's people who, if I schedule a [pre-proceeding] meeting, they'll send out an email around . . . that I'm coming in. . . . I [remain austere] because I am transgender and I'm afraid that if I don't have my t's crossed and my i's dotted people are not going to take me seriously.

When I asked about how she felt working in a profession that is so focused on the gender binary, she said, “[I]t’s kind of scary. I’m always afraid I am going to be written off as some kind of freak. I’m the only trans person that I have interacted with in the course of my career.”

As we delved further into the expectations of appearances she said:

I don’t own a skirt suit. I recognize that that’s a product of at least 30 years of feminism and me showing up in a skirt suit is just kind of me trampling on that. If a cis-gender woman want to show up in a skirt suit . . . then more power to her if she wants to do that. But I’m not going to undermine her ability to wear pants by showing up as some caricature in a skirt. . . . I’m always worried about coming across as some caricature.

The legal profession can be a treacherous place for anyone not included in The Normals, but for trans attorneys gendered stigma is amplified by the profession’s ignorance of the gender spectrum in favor of the gender binary.

In several instances discussion of appearances resulting in conversations about dress code policies. One woman said that her firm participated in casual Fridays but, “[P]ersonally, I have never felt comfortable really [participating in casual Fridays]. So, like, I’ve always you know, I will have heels on on casual Friday.” Another common theme about appearances is that women lawyers tend to wear heels because they are accepted as more formal than flats. One male participant discussed how it was commonplace for women to wear flats walking into the courthouse (it can be a long walk from the parking garage, he explained), but then would change shoes in the hallway outside the courtroom to be in heels. There is some level of expectation that professional women wear heels even though it is an outdated idea and many women are much more comfortable in flats. Not to mention the havoc that wearing heels often can wreak on a woman’s body over time. Nothing about men’s professional attire has the ability to physically alter their bodies.

In another instance, a male partner discussed the idea of dress codes:

We don't have a dress code and we have had some incidents where I'm like we need to have a dress code because you know we are two male [partners] . . . in those scenarios where a female was dressed [in a way that] we thought was not appropriate for the office he's like you need to go say something, or I'm like no you go say something to her. . . . Nobody [said] anything to her . . . hopefully it won't happen again. A couple of times I've gotten very uncomfortable so we've talked about it that we need to have like a written dress code so that we can just refer them to it without it being uncomfortable for anyone.

This participant's concluding thought is accurate—having a policy in place before there is an issue protects people from being uncomfortable and also may shield the firm and the partners from discrimination issues.

Male appearance was discussed also, but in a very different way. Responses indicated that as long as men look clean and their clothes fit well and are not wrinkled, then their appearance is fine. One male participant indicated that his firm has a high profile in the area so he takes particular care in his appearance to not just be clean, but also to wear name brand suits and shoes. He shared the following meme that has circulated on social media platforms during the discussion about male attorney appearances:

Figure 9.



Related to attorney footwear, physical stature also came up during the interviews. In one interview that I found particularly disturbing, a female participant recalled a time when she was making her way to a courtroom one day when a male attorney who she does not have a relationship with, physically blocked her path and told her that he would not let her by unless she smiled. In recalling this instance, she told me that she is only slightly over five-feet tall and men often try to take advantage of her stature as a power play. After this, I began asking other participants about their height generally when issues like this came up. Taller women, particularly tall women in heels, tended to not have these same experiences with men trying to use their stature as a power play. Perhaps wearing heels is partly expectation and partly a return-power play by women to be able to stand eye-to-eye with the men they encounter in the profession.

Intersectionality and Identity

Age

During data collection, age came up much more frequently than anticipated. One participant, for example, indicated that an older male opposing counsel referred to her as “Little Girl” in a mediation session before storming out. In another instance, an older male opposing counsel wrote a letter to the judge assigned to their case about something that he claimed that she had done in the case, which she claims did not happen and the opposing counsel was upset that he was losing the case, and he told the judge, “I will chalk it up to her youth and inexperience.” One can speculate about whether these same instances would have occurred if she had been a young, male attorney rather than a young, female attorney.

In a focus group a young male attorney was listening intently to the experiences of the women in the room and eventually asked, “Do you guys think it’s more of a thing with older men, or are you, do you think it’s still just as prevalent with like the younger guys as well?” One female participant responded, “It’s more frequent with older men, but that’s not to say it doesn’t exist with younger men because like I had a trial partner who is my own age and he was the most condescending chauvinistic a**hole prick that I’ve ever dealt with.” Another response, “Younger men are less likely to say the chauvinistic a**hole things to your face. They’re more likely to come off as like your teammate and . . . like a proponent of women’s rights and things like that . . . but I also think that they are perfectly happy to accept what befalls them from purely just being a man in the office. They’re not going to make the necessary waves and it’s on us to make the waves to like effect the change, but we’re not the ones who put the system in place.”

Another participant indicated age as being as relevant as gender. She said, “I think the younger you are, you’re just automatically deemed inexperienced, which goes with any job, but

it affects it more in the legal profession, you must not be knowledgeable. . . . I didn't have that before. When I was in management, I think I was the youngest person in the company. And it was all men and I was their boss. That was tough for them but once they knew what I knew, that was a non-issue. . . . In the legal profession, I think that never goes away.”

When I asked a male participant about any factors as relevant or more relevant than gender, he also suggest age. As a person who had a career prior to law school, however, his perspective was a little different. He said, “I think the practice of law is made for a young person because it's very grinding, very grueling at first. And so that's, I think, age is probably the most important fact.” This comment also brings to bear the fact that for him, starting out in law at a younger age would have been a positive, but as women have described, being young intersects with their gender to give them even more stigma to battle.

Another male participant discussed how wearing a wedding band makes people take him more seriously. He felt that men who are not married are judged as being younger and less experienced, but men who are married are viewed more positively. Unfortunately, women who are married are viewed negatively, particularly if they are perceived as being within child-bearing age.

Gender

One focus group turned out to be all women, and after about 30 minutes one participant said, “I feel like this is like a vent session and I'm enjoying every comment because I felt everything that everybody said here.” Needless to say, this focus group provided rich data from the participants' experiences, but more importantly, it provided a safe space for these important topics to be scrutinized. Most of the women who participated in this project were empowered. Despite the depth of data gathered here with even a small sample size, there is

much to consider regarding the women who choose not to speak up or participate in groups or conversations where they might be supported. Recently, the Florida Lawyer's Assistance Program began hosting weekly meeting for mothers who practice law. While this is certainly a positive attempt to add support, everyone experiencing gendered stigma in the profession, parental status aside, would benefit from a small group environment allowing open conversation on the struggles of the profession. Gender is often regarded as a binary concept, especially in the legal profession, but it is a layered and complex term.

Parental Status

Parental status is often equated with gender because people think of women as caregivers. Issues faced by parenting attorneys came up often. However, issues of perceived parental status were just as relevant for the women of child bearing age who did not have any children. Multiple women described not being able to have an off day or a day where they were not feeling well without someone asking or commenting that they may be pregnant. Women's bodies are also policed by outsiders asking about pregnancy status based on weight gain or loss. Even though cis-men cannot biologically be pregnant, they generally do not face inspection based on whether they are feeling ill or if they have experienced a change in weight.

Perceived parental status and ability is also an issue when job hunting:

Although no one ever directly asked the question in an interview about like, what's your plans to have kids, because they know they can't, you know. . . . So they trained us . . . for women, to specifically to explain to them if you did fit in this category, which I did, I don't think I could ever not work, even if I had kids, [] I would at least want to be part time. . . . I don't think I could be a full time stay at home mom. But who knows, I don't know how I will feel once I have kids because I have heard people say that and then they're like, oh, I have this baby in my arms, now. But to explain to them how committed you are because otherwise they're going to wait until after that and see if you stay, if you're really committed, then they'll consider a partnership track. And I was just like are you kidding? I have to do all this to convince them I'm not going to just bolt once I have kids or *that you're even asking me to predict that right now?* So, there was

definitely that pressure with every interview with any firm that that's what they were thinking in the back of their mind.

This is an interesting and pervasive problem. Women are often counseled to not only not discuss whether they are married, have children or want children, but to go so far as to remove wedding bands for job interviews.¹⁶ Women interviewing for positions in the legal field feel pressure and fear, especially women of child-bearing age, to prove that they are so dedicated to their work that the firm should take a chance on them even though there may be a time in the future where they may or may not have children. Even though more is expected of women in the profession, they cannot be expected to predict the future.

Further, parental leave is another pervasive issue. When a male partner was pressed on whether he would offer parental leave to full time associates (he currently only has part-time employees and would allow them to take unpaid leave if they wanted) he responded, "As long as you're productive as long as you get done what you need to get done. As long as your clients are happy and they know they can access you at any time we don't care what time you get into the office." But in the next breath he mentioned that, "So the problem, though we run into with that is they almost take advantage of that and show up at 10:00 a.m. instead of paying their . . . , you know, much earlier when you're an associate you should, you know, you gotta try to be there before the partners get there and stay a little bit later to prove that you're going to put the effort in." He then went on to explain that he and his partner advise each other when they plan to be out of the office and neither questions the other and they try to extend that courtesy with everyone.

¹⁶ In my own experience I have felt the same pressure not to disclose my personal life for fear that I would not be hired by a firm if I mentioned having a family. I had virtual interviews with my current firm before they offered me a job. Each time I would be sure my son was out of the house and I would scan the space visible behind me to remove any signs that I had a family. I did mention my husband in one of the interviews. While I was apprehensive about that, I choose to do so strategically to inform them that relocation was a possibility in the future. Ultimately, they are incredibly family-friendly and have encouraged me on multiple occasion to put my family first, but I had no way of knowing—or any way to safely find out—their opinion on families during the interview process. The support from my firm is incredibly rare.

This brief conversation left it unclear whether true parental leave would ever be granted. The conversation did not turn to the Federal Medical Leave Act which only allows an employer to contact an employee for limited purposes and protects the employee from being required to perform full work duties while on leave. I would fully expect this participant to follow the law, but it seems like it would take an employee knowledgeable on these protections to assert them rather than the firm being proactive about it.

The COVID-19 Pandemic

The COVID-19 pandemic has changed the legal profession in significant ways. Primarily, the structure of the workday and work responsibilities have not changed: Attorneys are expected to work a minimum 9 to 5, and in most private firms, they are expected to meet rigorous billable hours requirements that leave people working much more than 40 hours a week. However, some firms are discontinuing the expectation that lower-level attorneys must pay their dues in facetime at the office. Rhode found in 2001 that the lack of balance in workplace structure was a primary concern for women in law, and it was viewed as one of the primary obstacles to women's advancement in the profession. With the increased availability and "always on" mentality of modern American society, women in the legal profession face increasing demands from clients and supervisors. Even though billable hours might allow a parent to leave work to attend a child's school function, those hours still have to be accounted for at some other time, leaving that parent to choose between early mornings or late nights to continue the work day. Coupled with family demands, this stress leaves women with no clear division between work and home, preventing them from having any time to rest or recharge (Rhode, 2001). The COVID-19 pandemic has exacerbated the troubles of working mothers and the current

presidential administration has gone so far as to declare that the hemorrhaging of women from the U.S. workforce is a national emergency (Rogers, 2021).

Despite the difficulties that the COVID-19 pandemic brought about, it has also helped force some positive changes as well. In a profession that has been historically built on being physically present either in the office or in court, 2020 proved that much of the profession, including a significant amount of court proceedings can be handled virtually. One male attorney reflected on the changes and said, “You know spending more time with my kids, my lawn is perfect now. Like everything is completely changed in my life and it feels good. So, I’m hoping we continue Zoom hearings and I don’t have to drive an hour to . . . ask for a continuance that’s going to take 10 seconds.” In that same vein, another participant discussed how working from home and attending virtual hearings made her mornings much easier. She no longer had to get the whole family dressed and out of the house early enough to drive through traffic to the courthouse and battle for a parking spot. This is one area where the pandemic has forced a reimagining of the meanings encompassed by the attorney role. Ideally, these positive changes will remain in the post-pandemic reality, but the decision is largely up to judges and partners – the two groups with the most power for change—lead by The Normals.

Lost opportunities

Professionally

Every area of practice has its quirks. One participant who practices criminal law indicated that he asks women who want to practice criminal defense a specific question to consider. Here is a portion of our conversation:

[C]an you be in a room—a cell block—that’s like six feet by six feet with a big bad criminal and there’s a panic button on the wall[?] . . . So, I always say that you can do it. There’s no doubt that you can do it, but there’s, you know, there’s some men that might feel uncomfortable, but women might feel very

uncomfortable in that situation, and can you represent that individual when physically, they might be intimidating to you or they're not happy with the outcome, and they're mad and you're sitting alone in that room with them at the jail meeting with them. So, I bring those issues up to the females because I'm like, it's different with criminal law. It's not like you're sitting in a boardroom, which could be just as intimidating, but this is like you could be physically hurt in a jail cell with your own client, which you won't, you don't have that fear in a boardroom. There's other fears, but sometimes from a personal safety perspective . . . think about that. And I think that's the reason why criminal defense is still dominated by men, even though other areas of law we're seeing more females. For criminal defense [it's] like 90% male.

This attorney's experience and perspective is a valuable consideration for anyone who wants to go into criminal defense, but he asks these questions from a position of power. Despite being non-white, he is a male and a very successful attorney in the state. By directing the question specifically to women who are considering breaking into the criminal defense field, he could be unintentionally deterring them from this specific field. Important to note is that the intent behind these questions is not malicious at all, but rather to give a realistic representation of this area of law. A better approach would pose these questions to everyone and not to specifically "other" women who may be considering this area planting seeds of self-doubt.

Although pay comparisons are not a focus point of this project, losing opportunities to get paid more is a common experience for women attorneys. Shockingly, one participant revealed, "When I got married . . . [the male managing partner] thought he could cut my pay because now I have a dual income. . . . He thought this was just for fun." To give a sense of recency for this experience, this attorney has been in practice only about 10 years, and she was married only about 4 years ago. These issues are not in the past. They happen nearly every day to nearly every woman in the profession. Stopping to think about how unfathomable these experiences are causes one to wonder what else is going on that is not being talked about. What is happening to

the women who cannot speak up for a variety of reasons, whether it is fear of reprisal or lack of agency and empowerment?

Additionally, several participants indicated that the culture of the profession often makes women, in particular, go solo. While having a solo practice can and is incredibly rewarding for many attorneys, it is also very demanding. One participant indicated, “I feel like the stigma is what’s caused so many people to go solo. [Women are] usually quicker to do it than men, from what I’ve seen in my own personal life.” From my observations throughout this project, women often do not have the luxury of time to wait for a situation to maybe improve, they tend to take change into their own hands so they can continue to do what they love - practice law, and still be present for the people they love - family and friends.

Personally

Working mothers juggle decisions about how and when to take time off to have children no matter what career they are in. However, mothers who are lawyers have additional considerations to manage such as how clients, judges, and opposing counsel will react. For example, if an attorney is going to be unavailable for any period of time, the attorney must file a notice of unavailability with the court to put the court on notice for scheduling purposes, including pregnant attorneys who plan to take parental leave. However, opposing counsel has the option to object if something needs to be continued (delayed) due to the attorney’s leave. These objections happen regularly adding an unnecessary layer of stress to the pregnant attorney. As a result, some attorneys are now hiding their pregnancies as much as possible. One participant described her experience with both of her children.

[W]hen I was pregnant with my first son, my managing partner came to me and actually said to me, *We were planning to make you our next partner but now you’re with child.* And I, you know, I said okay, well I don’t want to be your partner but you probably shouldn’t say stuff like that out loud to people ever again

if you want to keep your law firm. And then he tried to backtrack and he was like going on about how *I don't mean that in a derogatory way. I'm just saying your role as a woman in your family is different than my role as a man. My role is to be a breadwinner and your role is to be a caretaker.* And I was like, well, my husband is a firefighter, so I don't know who you think is earning money in this family but it's not him. And he wasn't that old. He's probably 10 years older than me. I'm 35.

...

When I had my second child, I owned my law firm and, he's eight months now, so it's relatively recent but I didn't tell anyone. I was afraid to tell anyone that I was pregnant. So, most of my clients didn't even know I had a baby until [he] was like two or three months old. . . . Because I know my clients would panic and opposing counsels were objecting to my notices of unavailability and things. It's crazy. So, I didn't even tell anyone with my second because of how things were with my first one and this time I had a lot more to lose because I own the law firm and I couldn't just take someone else's maternity leave, you know.

Another participant described how her motion to continue a bond hearing denied after the start of the pandemic.

I had a bond motion . . . we were in the pandemic [and I told] the judge I couldn't make it to [a city 6 hours away from participant's home] not only because of that, but I had a medical emergency, and it was denied. And first of all, as if it's not bad enough that there's a pandemic, why do I have to go in person? . . . Essentially, it's because I didn't explain what my medical emergency was, which I don't have to explain and I wasn't going. I actually had a miscarriage. So, I was three months pregnant and just lost the baby and I'm still going to work, going through mediation, the whole entire time during the process and at that time, it's like I feel like if I was a male colleague, they wouldn't have asked for an explanation or a lack of not only because it's something medical . . . I'm also an officer of the court . . . we're not lying about something that's going on but I feel like we have to jump through more hoops for credibility purposes and to show the importance and to show what we are going through and I shouldn't have to tell the whole courtroom.

These stories, unfortunately, are not unique. Every woman attorney I have spoken with in and out of the context of this project has either had this happen to them or knows someone personally who has gone through these experiences. In these situations, women are losing out on the opportunity to take part in personal life situations. In the instances of childbirth, these women are missing out on the excitement leading up to having a child and the bonding time immediately

following the birth. For women experiencing loss, they are being denied the opportunity to grieve because the male-centric system does not recognize a miscarriage as a traumatic experience that may cause some people to need time off. Importantly, miscarriages do not only affect the person who was pregnant, and bereavement considerations should be made for everyone with the person experiencing the physical loss having additional medical consideration in place. When discussing issues that may come up that women need to deal with, one participant expressed that it is seen as “a sign of weakness, instead of a reason to be human.”

Another participant indicated:

I postponed by wedding twice because of a job. One was a hearing being rescheduled where my boss knew it was [similar to a trial]. It was the only time I had blocked and they picked it anyhow, that kind of thing. I didn't realize how much I was- that it was a bad thing until I was telling somebody about it after it happened. I'm like oh my gosh I sound like a crazy person.

When I asked her how her husband felt about it, she responded:

He is the most patient human being I have ever met. He waited for me for many, many years. The second time it really, it killed him a little bit, but I mean it was out of my control. It wasn't like I just didn't speak up. I mean, I spoke up pretty heavily. . . . The [proceedings] were taking place in [another state] and [her boss] said, well, you can just have your honeymoon there. . . . We got it done in between Christmas and New Year's because that was the only time I could guarantee a trial would never be scheduled no matter what the religion was for the [person in charge of the proceeding]. So, I thought it was a real lack of respect because I was the only woman involved in that [proceeding].

This participant went on to explain that in her specialized field, cases can last a period of several years. Since she hopes to one day have children, she restructured her practice completely so that she would not be “stuck in something for the next four years or having to pass off the client to another attorney, you know, out of fairness to my clients.

Managing expectations

In modern popular media lawyers are portrayed as rich, powerful, and well-dressed (Suits, Boston Legal). Media portrayals often exacerbate stereotypes and lawyers are no exception. Several participants indicated that they tried not to reveal to others that they were a

lawyer. This is a situation where perhaps a person rejects the ideals and expectations of the group and so the group does not form part of the individual's identity. One such participant said that he avoided mentioning his profession at all costs. When pressed about how he would answer if he was asked directly about his occupation, he said he would tell them he is in customer service. Given the expectation that lawyers cater to their clients, he felt this was an honest characterization of his profession. When I asked him why he didn't want anyone to know what he does, he said he was tired of everyone expecting him to be innately wealthy because of his job title. In reality, most new lawyers do not land jobs in Big Law, which is where the incoming salaries are usually six figures. This particular participant did not internalize his group as part of his social identity, but he belonged to other groups that did become part of his social identity.

Managing expectations can also happen during legal education and training. Law students are often unaware of how demanding the Billable Hour can be when they first become attorneys. Everyone expects that attorneys work long hours, but without understanding exactly how the billable hour works or MAY work at certain firms, new attorneys do not even know what specifics to ask in an interview. For example, an interviewing attorney who has never worked billable hours may know to ask how many are required, but when are those hours calculated? Weekly? Monthly? Annually? Is the attorney credited hours put in, or the hours after the partners make their cuts? How is work distributed? How often are people unable to get enough work to make their hours? This is such a prominent part of private practice and one of the few areas that law students do not always have the opportunity to experience before joining the profession. Further, the billable hour drives production and individual success as an attorney in those areas that rely on it.

The Ones Who Get It Right

Even though the focus of this project has been the ways that the legal profession is perpetuating and encouraging gendered stigma, there were shining moments where people and firms were getting it right. Despite the fact that the profession can and should be doing more to eradicate gendered stigma, here are a few of the admirable descriptions from the interviews.

One participant describes her firm as a place she loves to work. When we were discussing parental leave, she said:

I had both my boys while I was there, and it was 12 weeks paid no questions asked. It was we won't bug you. We're here if you want to pop in and you get bored. We'd love to see your baby. But you get 12 weeks paid to just be gone. And they let me kind of wind down towards the end of my pregnancy, where I wasn't you know my billing wasn't the best and nobody said anything. Nobody really cared, it wasn't an issue. They were just happy that I was still there.

Her story is a stark contrast to the stories above where women were financially punished for taking maternity leave and even felt that pregnancies needed to be hidden. This example is imperative because many firms falsely believe that providing maternity leave will negatively affect their bottom line and allowing people to take paid time off is bad for business. But here is a successful firm with several attorneys that managed to work paid leave into their policies. It can be done—quite frankly, there is no reason not to.

In discussing how a firm was able to cultivate a positive working environment for parents, one participant indicated that her firm split. The two that went the other direction were less inclined to cultivate a positive culture. She recalls:

I think [he] was very leery to have a mom as an attorney employee because every mom that he had ever had there or any woman that he'd ever employed there that got pregnant ended up quitting and never coming back from leave. He's also older. He was in his 70s and was just very much in that mentality that maybe you'd be better suited with something part time if you're a mom and just didn't think that a full-time mom could be a full-time attorney successfully. But that culture left with them when they left.

Firms that do not create an inclusive and flexible environment for all parents are more likely to lose attorneys who give birth after their leave because it becomes difficult to return to an environment that will not be supportive of family obligations. One mom-attorney was considering increasing her hours with her firm. She had been working as an independent contractor but had hoped to take on a more substantial role. In discussing the matter with her managing partner, she mentioned that she would like to maintain the flexibility in hours as far as being able to take her son to swim classes or other obligations. Her managing partner responded,

That is the beauty of working remotely. I have been doing the for 20 years because I wanted to be around when my kids were growing up. When my daughter was in high school, I had to leave at 3:00 p.m. to pick her up and take her to volleyball. So, the flexibility will be there either way, it's more about what you want and what the firm needs from you.

If these firms have been able to make it work for parents, others can, too. The profession does not need to be as overworked and exhausting as it currently is.

The practice of billable hours is a theme in this project that I suggest needs to change. When I discuss this with practitioners there is a sense that billables absolutely cannot be reduced because then the business would flounder. Here is an example of a firm with a reasonable billable requirement where at least one employee is happy with her arrangement,

I bill between 100 and 120 hours a month. And that's completely acceptable. That's kind of our norm at the office because anymore if you want to be able to bill more than that you've got to be pulling 60-hour weeks. . . . There's no requirement [to work at home after hours]. Nobody's going to give you a pat on the back if you do. Nobody slacks. They all know that if I have to leave at 3:30 p.m. on Mondays then they trust that I'll make up that time. If I had a long day . . . 11 hours in a mediation conference [one] day then guess what? Who cares?

This idea that attorneys will get the work done on their cases and that working 60-hour weeks is not desirable is not the norm in the profession. These interviews allow positive working environments to be compared with the more typical working environments in the legal

profession. When juxtaposing these experiences, it becomes clear that there is really no justifiable reason for attorney to be obligated to work as much as most firms require them to. As many places begin to reimagine a new normal in the post-COVID world, now is the time to make these changes. Employers and employees alike will benefit from better policies and work environments.

Moreover, empathy and compassion are two concepts not typically considered in a discussion about the legal profession, but they should be. As grueling as legal work itself can be, the culture of the profession should not make it even more difficult. One attorney describes the way her firm works including attorneys and support staff alike, “We don’t have a typical hierarchy. . . . That’s not how we operate. We all understand that we would fail without each other.” She also explains that, “We all have kids that are under 18 . . . nobody’s out of touch with today’s world, and nobody’s out of touch with the needs that having kids puts on the family.” Even for attorneys who may not have children at all or who may not be/have been involved in the daily caretaking, empathy should fill the void. People who have not raised kids may not be intimately aware of details, but it does not mean that they cannot try to understand a parent employee’s perspective. Further, even people without children deserve a healthy work/life balance and the flexibility to prioritize other things in their lives besides work.

PART IV: DISCUSSION

“You may say I’m a dreamer, but I am not the only one[.]”

-John Lennon

In this section, I will discuss how stigma and identity theory work together to provide a deeper understanding of gendered stigma in the legal profession. The way I have conceptualized this section, is to show how the two theories overlap. There are three primary areas of overlap,

and I will make recommendations for how to reduce gendered stigma in the profession based on the data I have collected in light of the areas where the theoretical components overlap. The examples that I use in this section from the data are ones that, I believe, are the best representation of these issues, and they were not discussed only by one participant.

“We would like to offer you a job. The position is completely remote and you will never be required to be in the office unless you want to be. If you decide to work here in person, we have an office open and ready for you. You have complete control over your schedule and your hours. We will give you as much work as you want, but will pull back if you ask. If you want to move up the ranks to partner, fantastic. If not, that is perfectly fine, too. Oh, and we will pay you more than double your previously hourly rate. We are thrilled to have you on board.”

After hearing all of this, Sabrina¹⁷ was confused. This conversation did not go as she had expected. For the first time in her life, she had planned to negotiate the employment terms, but these terms were better than what she had planned to negotiate for. She was skeptical—what is the catch? When will the true nature of the firm be revealed? She had been through eight interviews with the firm. It seemed excessive to her, but she was also shocked that the attorneys at the firm would take so much of their own time in looking for a new associate.

Sabrina accepted the job in October. The firm had a virtual Halloween party complete with a costume and pumpkin carving contest. They did a holiday gift exchange, fully funded by the firm. Everyone was provided with firm swag (jackets, mugs, masks). Birthday wishes are sent from the firm for every person involved with them. Not just a boilerplate birthday card, but individual wishes from every person. There is no distinction between full and part time, salaried and independent contractors. The managing partner checks in with Sabrina every few weeks to

¹⁷ Pseudonym

make sure all is well and is never bothered when her toddler interrupts the meeting. Another named partner has emphasized that her child is THE priority when she apologized for not responding to a question immediately. The practice area is interesting and intellectual. There has yet to be any dispute over her billable hours. She never has to go to court or deal with opposing counsel. It is now July and Sabrina is still wondering when something will go wrong. Is it possible that she has landed the perfect lawyer position? Only time will tell.

To many attorneys, this story may seem unreal. Firms like the one described above are incredibly rare, but Sabrina is a real person and that is her current situation. So, if at least one firm can successfully operate in a way that prioritizes employees' needs as balanced with firm needs, more firms can follow the same model. Even though much of these data show the negativity of the legal profession, there are data that highlight the people and places that are leading the way in fostering positive work culture.

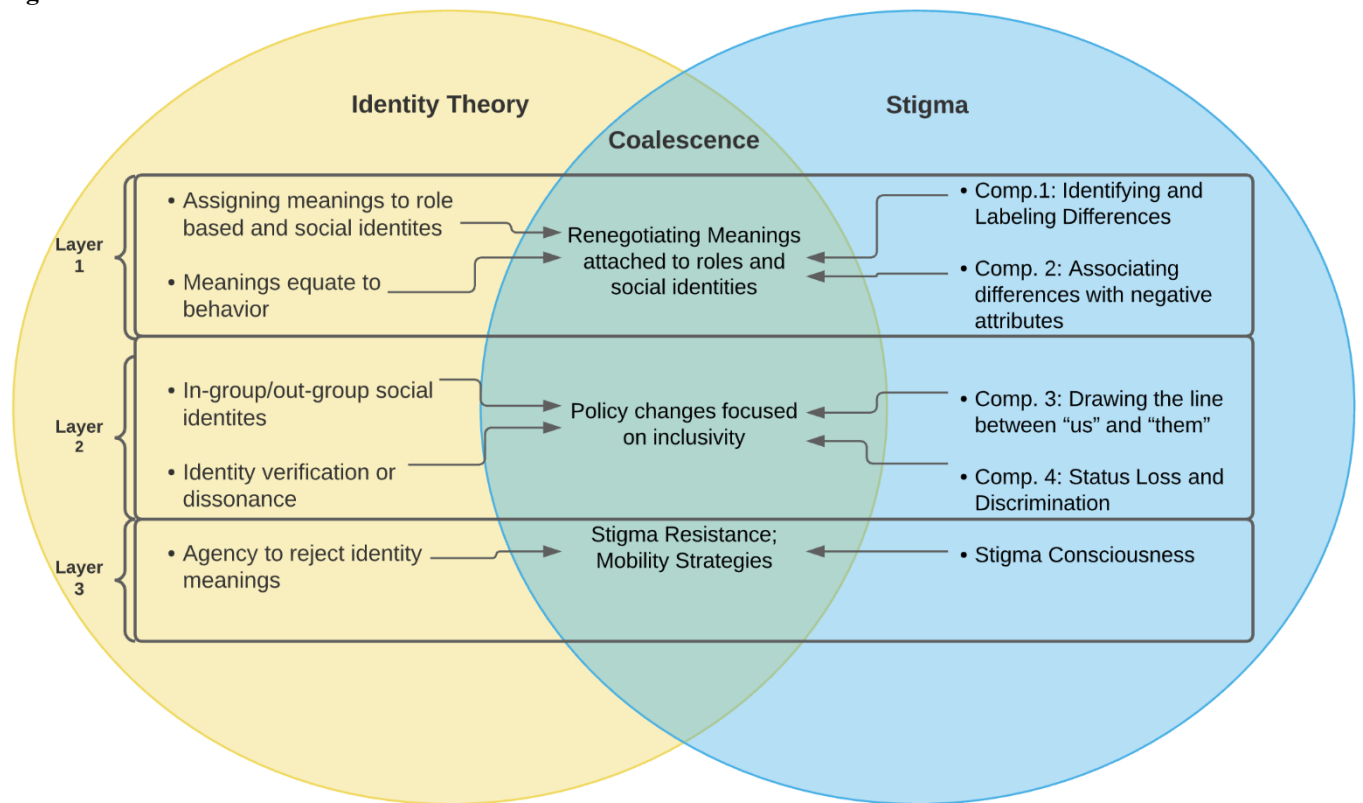
The relationship between the Self and society are interdependent. George Herbert Mead's posthumously published essays reflect on this relationship. "The unity and structure of the (complete self) reflects the unity and structure of the social process as a whole; and each of the elementary selves of which it is composed reflects the unity and structure of one of the various aspects of that process in which the individual is implicated. . . . [T]he structure of the complete self is thus a reflection of the complete social process." (George Herbert Mead, 1934: 144). If we want to change what we see in the mirror, we have to change what is being reflected back at us. In this situation, both the profession and the individual are being reflected at one another, and both need to change. Gendered stigma in the legal profession is better understood at the nexus of identity theory and stigma. These two theories intersect in a way that strengthens the potential for

real solutions. Identity theory provides an understanding of how individual identities and social identities coexist and sometimes clash, whereas stigma explains the process of devaluation.

This section is framed by the coalescence of identity and stigma separated into three layers. The first layer represents the aggregate of the people who hold the most power within the profession (Judges, partners, national law firms, and national bar associations, for example). The second layer represents the smaller groups within the profession (Such as individual firms the local bar associations). The third layer represents the individuals who make up the profession. For each layer, the related parts of identity and stigma will be discussed before explaining how these components merge to form the basis of solution-based recommendations supported by examples from this study's data.

With a renegotiation of role and social meanings by individuals and groups (Layer 1), institutional policy changes for inclusivity in the profession (Layer 2), and empowering individuals with stigma resistance mechanisms and the agency to be mobile within their roles and groups (Layer 3), the lived experiences of gender in the profession can be improved. Below is a diagram presenting these solutions as related to both identity and stigma. Each theory is discussed in more detail below in the context of the coalescence of theories.

Figure 10.



The legal profession is nuanced. There are various forces simultaneously at work. These forces can be operationalized in one direction to achieve common goals, or these forces can be divided in a way that keeps issues stagnant. Despite the efforts to make progress regarding gender in the legal profession, there have not been significant results to match the efforts. I argue here, based on the identity/stigma coalescence, that there are three distinct layers in the profession and that each layer needs to simultaneously make efforts to move in the same direction regarding gender in the profession before any major progress actualizes. The first layer is related to people and groups who have the most power within the profession. Judges, national organizations such as the American Bar Association, and other national law firms or groups with influence over changes in the profession. The second layer still involves people and groups in power, but on a smaller scale. This layer includes partners of law firms, local bar associations,

and local advocacy groups who have influence in their areas. The third layer is the individual—the lawyers—who are living these experiences day after day.

Layer 1: Judges, The American Bar Association, and Other National Groups

Identity: Assigning Meanings and Equating Behaviors

The process of determining an identity includes attaching meanings to concepts and equating behaviors with those meanings. This is not, in itself, anything negative. Being an attorney has certain meanings that equate to behaviors. Being a parent also has meanings that equate to behaviors, and so do religious or political affiliations. Participants in this project equate being a lawyer with being overworked, stressed, and self-centered (See Figures 5 - 8 above).

Stigma: Identifying, labeling, and associating differences with negative attributes

Stigma is a process of devaluation. Women who are lawyers have been historically devalued based solely on their gender and not on their work product. However, there are issues with broad categorizations like race or gender. These categories put people into large groups without accounting for the intra-group differences. For example, several participants in this study described that they often felt viewed as mothers or as being motherly. Even when they are not mothers, have no desire to be mothers, and may not even be physically capable of being mothers. Several participants discussed how the motherhood penalty affected them negatively despite their actual status of mother or non-mother. Based on the experiences of most female participants, in this process of devaluation, woman equals mother, which is viewed negatively. Yet, none of the men who participated in this project reported having experienced being devalued for their actual or perceived parental status. By renegotiating meanings and changing behaviors (identity), it will be more difficult to identify and associate differences negatively

(stigma), which would lessen the instances of devaluation (gendered stigma in the legal profession).

Coalescence: Renegotiating Meanings

Theoretically, individuals have the power to renegotiate meanings within role based and social identities. Institutional hierarchies, however, have taken that power from people through disenfranchisement and institutionalization. The majority of female participants in this study reported overwhelming feeling that the profession will not change. In the legal profession judges and national groups are at the top of the hierarchy. In these positions, there is power for positive change. If people are empowered by these powerful groups, there may be more ability to change the meanings within their identities. Empowering individuals to advocate for themselves is a delicate balance. All too often those who are disenfranchised are told to have grit, be resilient, pull themselves up by their bootstraps. The interviews in this study indicate that none of these pieces of advice are appropriate solutions to systemic inequities. Several women indicated that they had been told to work harder than men, or to prove commitment by putting in more hours than everyone else, but despite following this advice, they still felt the profession had a long way to go towards remediating gendered stigma. Instead, there needs to be a balance of power and the oppressors should listen and hear the voices of the people who continue to be marginalized. Several participants mentioned that they did not speak out against issues of gendered stigma because they felt that it would do no good. Essentially, they felt that no one would listen to them.

Gendered change in the legal profession has to start at the top. Individuals can be empowered once the group and aggregate changes have started. The American Bar Association has been working to advocate for change, but their efforts need to be met by the other institutional powerhouses, such as the judiciary. Until people feel that they have a foundation to

stand on and support from their community (here, the legal profession), then one can never require or expect that people will make waves when there is fear that the ocean will swallow them for doing so. Individuals need the support of the people and groups with the most influence in order to make changes.

Thematic Example: Dissonance

The theme of dissonance supports the idea that meanings need to be changed both for the role of lawyer and for the social identity of lawyers. Dissonance was one of the most prominent themes in this project and it came out in various ways, beginning with the first two questions asked in the focus groups about the ideal attorney versus the typical attorney. The answers to these two queries were at odds. Attorneys are expected to be capable, diligent, and passionate, but instead are burnt out, aggressive, and egotistical. The exclusive nature of law and specifically Big Law creates a deeper fissure by driving people out of powerful circles—those very circles that are necessary for change. For many of the participants in this study, specifically attorneys who are far removed from The Normals in the profession, the decision to go into solo practice is the only solution. After having spent many years and more money than is acceptable on their legal education, few people felt they had the privilege of simply opting out of the profession completely. Participants in this project were asked whether they had ever considered leaving the profession. Nearly all of them had considered it, but they stayed for various reasons, including that being a lawyer provides a stable income.

Going solo gives attorneys much more autonomy, according to the participants who left private practice to start their own firms. They felt that they have control over the cases and clients they take on. They can control their work hours and their balance, but they then do not necessarily have guaranteed income to rely on. People who choose to leave toxic firm life for

solo or boutique practice are not the problem, but the culture that drives so many people out *is* the problem. Based on the conversations in the focus groups, the participants in this project believed they would be joining the ranks of an elite profession where they would find fulfillment after graduating law school. Instead, they have found themselves in a profession that, although still mostly worth it, has issues that cause strife in their individual lives. Attorneys should have the ability and independence to challenge inappropriate and unacceptable cultural norms so that the choice to move to solo practice is one that is truly a choice—not a survival narrative.

If The Normals who are in the most influential groups in the profession can be convinced that these issues need their attention desperately and that changing these issues will improve the profession for everyone by reducing gendered stigma, then there may be more room for progress.

Thematic Example: Culture and Power via Billable Hours and the Production Machine.

Since participants in this study indicated that lawyers are overworked and burnt-out in general rather than in isolated pockets, the institution needs to be critically examined for areas ripe for change. One of the top complaints of lawyers is the billable hour (Campbell and Charlesworth, 2012) and how much emphasis is placed on more and more billable hours. The billable hour is one of the primary reasons that attorneys in private practice are regarded as working constantly. This is a problem for all attorneys, but is a specific issue for women because of competing social expectations (Sommerlad, 2002; Webley & Duff, 2007).

Billable practice ignores the administrative tasks necessary for practicing law. Meetings, tracking time, learning new skills, taking continuing legal education—these are all tasks necessary to being a successful attorney that are not billable. By focusing primarily on the billable hour and how many one can produce, the profession inadvertently encourages shortcuts (Parker & Ruschena, 2011).

This is another example of dissonance where the lawyer is battling between what she believes to be her duty—doing the work properly to achieve the best result for the client—and what is expected of her from a billable hours' perspective. If she spends more time on a project than is allowed by the client, the firm will cut her hours down so that the client is not paying more than anticipated. However, if she only receives one hour credit for a project that took her three actual hours of work, she then is left to figure out how to make up those two hours with something else that is billable. Several women who participated in this study discussed having to make up work after their children went to bed at night or in the early morning hours before their family wakes up.

The billable hour itself is likely not going to go away. Even if the profession was rebuilt from the ashes of its current iteration, the billable hour is likely the most effective way to charge clients. However, it is not the most effective way to evaluate an employee, and that is something that can be changed (Parker and Ruschena, 2011). When the profession was only men and it was a time in history where many men had wives at home to take care of all the domestic responsibilities, maybe chasing the billable hour made sense. The more an employee bills, the more money they bring into the business, so the business rewards the employee who works long hours. But the profession is no longer only men. Almost every participant indicated difficulty juggling multiple responsibilities and not being simply devoted to their jobs. This includes both men and women who were interviewed. This standard is negative for all people. Men who want to be more present and active with caregiving may not have a choice if they need to work long hours in order to financially support their families. Women who are lawyers are battling this same issue in addition to the societal expectations that they also be the default parent. With a changed perception of how many billable hours are acceptable, all lawyers of any gender would

have more freedom for other pursuits in their lives. This would also lessen the gendered stigma that many women who practice law refer to as the Motherhood Penalty. If everyone is able to have responsibilities outside of work, it will matter less when someone needs to leave to pick up children, versus leaving to take part in a hobby.

Moreover, as the profession has become technologically advanced and more efficient, there is less of a need to require so many billable hours from each individual (Campbell and Charlesworth, 2012). Before online legal search engines, attorneys needed to spend hours in a law library tracking cases and statutes to find an answer to a legal question. Now, that same search takes place electronically, significantly cutting down the time spent researching. Further, participants discussed how if courts do maintain some level of telephonic or virtual court appearances, this also cuts down on time attorneys are billing because most attorneys would bill the client for travel time to and from court, as well as the potential long wait in the courtroom while the court handles other cases on the docket. A hearing that may have been billed at two or three hours in the past, might take 15 minutes in a virtual courtroom, the attorney never having to leave their office. This is efficient in the world of real time, but also make it more difficult for lawyers to reach unrealistic billable hours requirements. Effectively, attorneys are working more as technology makes them more efficient.

For many people, the rat race of chasing the billable hour is not worth it even when salaries might be particularly high in some of these areas. With a *slightly* more diverse profession now, banking billable hours seems less productive than assigning everyone a reasonable number of hours to attain in a relatively normal workweek, especially because some participants described very reasonable billable expectations at successful law firms. If firms required 30 billable hours a week, which would take at least 40 actual hours worked, employees could

reasonably meet this goal and still have the opportunity to complete non-billable tasks such as professional development and to live a well-rounded life. As a profession that is already struggling with mental health and substance abuse, laying off the billables could create an environment open to collaboration instead of competition.

Thematic Example: COVID Adaptations and Office Culture

Another area where influential groups can push for change is intra-office culture. Office culture was a relevant subtheme that emerged from the data here. Based on the participants experiences, they seemed to feel that flexibility and autonomy for employees would go a long way in changing office culture. The vignette above should not represent the profession's anomaly. Many participants in this project worked from home for part or all of the first year of the COVID-19 pandemic. For many firms the COVID-19 pandemic has illuminated the possibility for remote and flexible work schedules. But some firms have tightened their grip. Billable hours typically might be reported on a weekly or monthly basis, but one participant reported that the pandemic had her employers so scared that their employees would not be working hard enough that they required her to report her billables daily. From the participant's perspective, the culture at this particular firm was built on micromanagement.

A little flexibility can go a long way in ensuring employee loyalty. The COVID-19 pandemic has exacerbated the troubles of working parents, and specifically the default parent.¹⁸ The legal profession is not exempt from this national emergency of women leaving the workforce, but allowing employees flexibility with their schedule in ways that will not negatively impact the firm would go a long way in helping to retain employees who have more to deal with in their lives than just work. The Normals are in the position to push for these

¹⁸ As used in this paper, default parents are individuals who take on primary caregiving responsibilities without regard to biological sex or gender identity.

changes by making clear statements and leading by example that flexible working environments are not only acceptable, but preferred. After all, reducing or eliminating commutes, for example, mean more time in the day for billing.

Further equitable distribution of employment perks will also improve office culture. That salary parity is necessary is assumed, but there are other benefits that are often used to entice people to work in specific firms that may leave current employees at a deficit. As in the situation discussed above where a participant explained how her parking space and larger office were given to a new male attorney, people who are in positions of power in the legal profession need to actively seek out disparities that are happening under their control and work to change them. Change includes policies, incentives or disincentives, and individual coaching when problems arise. The people best positioned to take on this work, are those at the very top of hierarchy who are benefitting the most from the system currently in place.

Being a lawyer does not have to reflect current social stereotypes. Lawyers do not have to be overworked, depressed, and suffering from substance abuse. New meanings can be negotiated lead by those in positions of influence so that the profession, overall is more comfortable for everyone. Being secure in a role or social group would allow more agency and collaborative conversations. Seeing one another as colleagues instead of adversaries would work toward unification. Attaching new meanings that extend to the behavior expected of attorneys will help reduce the instances of gendered stigma in the profession, but all lawyers will benefit from a more balanced work environment.

Layer 2: Local Firms, Bar Associations, and Other Small Groups of Influence

Identity: In-group/Out-group Social Identities, Verification, and Dissonance

Women were not present in the U.S. legal profession in large numbers until about the 1970s. This means that all the traditional moors of the profession have been based around the male experience. Being a lawyer is a role that people self-select into, but it is also a group that people join once earning their bar card. The group expectations, then, are also based on the male experience. Not to suggest that there have been no changes for men since women have entered the profession, but the basic group expectations still relate to men's experiences in the profession. For example, a few participants discussed the timing and nature of happy hour networking events and how it might be difficult for someone who is a default parent to attend. Historically, men were not the default parent, so these after-work events posed no issue for them. Moreover, these participants explained, there is an expectation that people attending these events drink alcohol, but the women felt judged based on their drink choice, alcohol or not, and felt that men can drink anything they want without question.

These group expectations for in-group members' behaviors and viewpoints can lead to identity verification or more dissonance. If a male attorney is the default parent, he may not drink at a networking event or he may not attend at all. If his behaviors were accepted by his peers, this would lead to identity verification—yes, he is the default parent, but he is also an attorney and he can embody both identities at once without losing sight of who he is. If, however, he is chided for not being a team player because he does not attend networking events or even jokingly teased about having caretaking obligations, this could lead to dissonance in his life based on his role as a parent being in conflict with the group expectations of his lawyer colleagues.

Stigma: Us versus Them, Status Loss, and Discrimination

Since the U.S. legal profession is historically male-only and is still male-dominated, it is not difficult to draw the lines in the sand separating the “us” who have built the profession, from “them” meaning everyone else who has entered the profession after it was established. Everyone who is non-white and non-male in the legal profession has been made aware, either covertly or explicitly that “they” do not quite fit in.

Coalescence: Policies for Inclusivity to Achieve Professional Closeness

Critical perspectives informed and motivated the interview instrument for this study and also played a large role in recruitment. Given the pervasiveness of gendered stigma in the legal profession, the profession’s most basic assumptions and foundations need to be examined and questioned critically. Although gender is the primary focus here, race and other identities that make up an individual further distinguish their specific sub-group experiences, as described by the participants in this study. Moreover, even though all women in the profession face gendered stigma, the experiences are different for white women versus women of color. There have been impetuses for bias interrupting and toolkits to train allies in order to effectuate tangible change in the profession (ABA Commission on Women in the Profession), but the stories shared by the participants in this project are heart-breaking and unacceptable in a profession that allegedly fights for justice and prides itself in having rigid ethical guidelines. More policies are needed—but they must be real policies and not those designed to make people feel good without actually making any changes. Local groups may not have the ability to make wide spread changes across the profession, but even pushing for changes within each community will garner the attention of those affiliated with the smaller groups or the issues at hand and inspire changes outside the immediate community.

Thematic Example: Identity and Intersectionality

Women in this study felt that their parental status played a role in how they were perceived by others in the profession. Even women who were not mothers, felt the Motherhood Penalty in the form of perceived parental status. Being a parent is a designation for any gender, but none of the male participants in this study indicated that they were devalued based on their parental status. One way to lessen the Motherhood Penalty is to create policies that blur the tradition gender lines, especially those felt by mothers.

For example, in Florida, local factions of the Florida Association for Women Lawyers formed a taskforce to lobby for changes in the judicial rules. In an effort to refine the procedures for new parents who happen to be attorneys, these groups won over Florida and the legislature added a Rule of Judicial Administration allowing a 90-day continuance period for lawyers expecting the birth or adoption of a child. This seems like a simple change, but came only after a hard-fought battle. Despite the resistance from powerhouses in the profession, local groups continued to advocate for this necessary change, which finally passed. Further, once these policies are put in place at the local or state level, other jurisdictions begin to take note and often affiliates of these smaller groups can then advocate for similar policy changes within their area and point to the first as having set precedent for the rule.

In another example, nursing lawyers also need blanket policy protections. Participants discussed the difficulties in navigating law practice when nursing and feeling insecure about asking for accommodations in order to provide for their child. Every courthouse and law office should be equipped for pumping or nursing attorneys. In addition to the physical facilities, there should be default plans in place that allow people to have the time needed to tend to nursing related issues. Even though people who do not deal with nursing in any capacity may be

uncomfortable talking about these issues, it is more uncomfortable for a nursing attorney to try and figure out how and when to handle a very normal bodily need. If jurisdictions begin to recognize the need for parental policies, then firms and professional organizations may be inclined to follow suit.

Issues involving parents are at the advocacy forefront lately, and this was also true of the interviews and survey responses in this study. These areas are the most visible and represent the most basic traditional gender stereotypes so they provide an easy target, but policies should not be limited to addressing parental inequities. The unfortunate truth about the profession as conveyed by these participants is that it is still very much considered a “Good Old Boys’ Club.” Much of the traditional standards for professionalism are based on white men, since they have been and they remain the largest demographic in the legal profession. Judges, partners, shareholders, law professors and anyone else who has a platform to push change should confront stigma in every form until the culture improves. But improving culture cannot focus only on gender, or race, ability or any other isolated category. The culture needs to be transformed so drastically that the profession becomes inclusive for everyone.

The lines that have been drawn to separate the in-groups from the out-groups need to be blurred. As these groups begin to erase some of these arbitrary divisions, practice groups, firms, and bar associations can achieve an unparalleled level of professional closeness. Professional closeness is a concept where people are tight-knit within a work environment and because of this closeness, they are able to achieve more efficient and more fulfilling goals for themselves and their employers (van Sandwijk, 2019). Even though the legal profession is adversarial because clients are representing from opposing positions, the interactions within the profession outside of

the courtroom can be much more collegial if individual differences are accepted rather than associated with negative attributes.

Another identity that intersects with gender in the legal profession to compound stigma is age. Age stigma is a bigger problem than it may seem on the surface. It is not necessarily on par with the typical age discrimination where an older person is devalued and pushed out. Instead, the women in this study believe there is an assumption of incompetency for young lawyers. Instances of more experienced lawyers berating new lawyers for their youth and newness to the profession are rampant. Young attorneys should not be referred to as “little girl” or be faced with letters from opposing counsel written to judges inaccurately accusing the newer attorney of making a mistake and indicating that it was due to “her youth and inexperience,” as happened to participants here. Importantly, the profession often considers a young attorney as someone who has only been in practice for a few years. Yet as one participant described in her daily interactions, she is perceived as being young in age is often treated worse even though she has 10 years of experience in the profession. On the other hand, you have people who become attorneys later in life, as a second career. Even though they may even have less experience in number of years in the practice, one participant felt that he often garners more respect because of his physical age and not because of how long he has been in practice. Moreover, the length of time in practice is publicly available in most jurisdictions on the public state bar website. Age compounds with other identities and was expressed more often by female participants in this project, but a male participant also indicated that he feels like men are taken more seriously if wearing a wedding band, for example, to indicate that they are so young and not newly barred. This perspective was interesting given the fact that women often need to hide their marital or

familial status, even to the extent of being counseled to take off their wedding rings when going to a job interview.

A few participants suggested that these issues will age out of the profession as prior generations leave the practice. However, change cannot wait until those eldest in the profession simply age out. These issues are growing and will not just disappear one day. Attitudes and perspectives are passed down from one generation to the next, so these meanings attached to the role of lawyer that drive people's behavior must be drastically altered to see real progress. Local groups are in the best position to sponsor these movements for progress and activating this powerful resource is necessary in addition to the national organizations discussed in Layer 1 and the individuals discussed in Layer 3.

Layer 3: Individual Attorneys

Identity: Agency and Rejection

One common reaction to systematic injustices is that if people do not like something about the institutional strata they are in, then they can move out of it or make changes in other ways. Individuals have agency—no one is forcing them to stay in a job where they are experiencing gendered stigma. Yet rejecting these structural stigmas is much more complicated. For people who have multiple strikes against them intersectionally, making changes on the individual level is not always an option. People who are the primary financial income in their household cannot just unilaterally choose to leave their job because it makes them miserable without a backup plan in place. The more layers of oppression, the less likely it is that someone has the ability to make major changes. Once people are empowered and supported, they are in a much better position to exercise their agency and make changes in their own lives.

Stigma: Stigma Consciousness

Participants indicated that a good attorney is thoroughly prepared. To that end, people who are armed with stigma consciousness are more prepared to steel themselves with stigma resistance mechanisms. Unfortunately, several participants indicated that during and immediately after law school, they believed that they would not be facing instances of gendered stigma. So, the first few times they did experience it, it took them by surprise. Teaching law students what the profession is currently like, but also helping them to understand how they can arm themselves against these issues and force positive change is crucial.

Coalescence: Resistance and Mobility

The legal profession moves slowly and cynically. According to many participants, remote working was one issue where many factions of the profession refused to budge before the pandemic. Now, however, the COVID-19 pandemic has allowed reimagining of age-old tenets of the legal profession and participants felt that remote and flexible work schedules would probably remain in some form even after the pandemic. While there seems to be a positive trend towards allowing more remote work and flexible schedules, creative reimagining should be employed more widespread to solve several of the major edicts on which the profession has been built. New meanings can be assigned to roles and groups can shift their prototype to encompass more inclusive behaviors and beliefs. For individuals to ask for changes that will make them more effective employees, they need to have the ability to ask for what they need. If people are able to take their ideas to management without fear of reprisal and management will listen and consider these options, the legal profession may find other areas of improvements that increase business operations and the bottom line.

Thematic Example: Lost Opportunities

Different divisions of the profession have been trying to make change since women were first allowed in, but these efforts have been largely siloed. Individuals have worked to make change by employing stigma resistance and identity agency. Participants sometimes called out inappropriate behavior directly and took steps to try and change the culture in a particular firm or courthouse. Often, especially for participants who are not part of the in-group *The Normals*, resistance means leaving for a better workplace or even going solo. While these efforts are commendable, they only affect the individual level problems in the profession. Some firms provide fantastic balance to their employees including remote work, flexible hours, empathy, and even compassion. While the powerhouses within these firms may be able to influence others to treat their employees better, this still only helps the attorneys fortunate enough to land a job at a place like this. Even the large-scale efforts like amending the model rules for more inclusivity or the advocacy work being done by so many ABA committees are barely moving the needle.

The stagnancy of gendered stigma in the legal profession leads to lost opportunities on various levels. Based on the comments by participants who were missing out on family time due to demanding schedules and missing out on work opportunities due to demanding family obligations, lawyers, of all genders, may be missing out on living a robust life because of chasing the archaic expectations of a profession designed for a completely different time. Employers are also missing out on fantastic employees who work hard and would be loyal if an employer would give them even a modicum of flexibility—shown by the participants who opened up solo practices and are making more money and growing their businesses. Some of the pillars that built the foundation for the profession just do not make sense anymore—one being inflexibility.

Change needs to be sweeping, it needs to toss aside all of the basic assumptions about the profession and start over. The COVID-19 pandemic has provided the tragic backdrop in a world that needs to change. The legal profession can take away significant positive changes from this collective experience of living through a pandemic. First, the people and groups who are at the height of the institution should take heed of some of the issues the profession is still facing, like gendered stigma, and publicly renounce these problems while working towards solutions to these problems. At the same time, local groups need to continue to force change in their direct areas as much as possible. Finally, with the support of the major institutions in the profession and the local groups, individuals should exercise their agency to resistance stigma, move within their realm of possibility, and have the freedom to innovate from their perspectives as employees, individuals, and lawyers. These changes are good for all attorneys and everyone who has any relationship with the legal profession, namely clients. If lawyers are in a healthy work environment and find their profession a boon to their life as whole, they will be more effective as an attorney.

PART V: CONCLUSION

Disparate experiences of men and women in the legal profession is a long-held phenomenon both in practice and as a subject of research. Despite the increasing numbers of women entering law school and the profession, the day-to-day experiences of women in the legal profession are not seeing positive progress. The problem with only looking at the numbers, is that the narrative goes untold. This study uses qualitative methods to dive deeper into these disparate experiences through the framework of stigma and identity theory. The American Bar Foundation supported a 15-year longitudinal study of lawyers' experiences in the U.S. called

“After the JD.” After the JD included qualitative data and it provided foundational support for this study.

After the JD

The American Bar Foundation has recognized that “[f]it goes beyond just getting a job” (Garth & Sterling, 2017 p. 80), by including qualitative interviews in their longitudinal study. These results have been published in three waves, the most recent being January 1, 2014. This study provides both quantitative and qualitative insights into attorneys’ experiences in the legal profession. One prominent finding of this study is that men and women have disparate experiences in the profession. Gender is one of several areas of focus for this study and, while similar methods are used (interview and survey) as in this study, there are differences between After the JD and my study, as well. Much of the qualitative data collected by After the JD is used to produce numerical representations of patterns discerned from the interviews and surveys. It is a large-scale study meant to get a big picture of several areas of lawyers’ lives. My study, instead, was designed to take a deep-dive into one primary area—gender—and only move to other areas when they were relevant to the participants’ experiences. I sought a narrative from the participants in my study. I wanted to know about their experiences and how gendered stigma affected other parts of their lives. I also applied different theories, using stigma and identity, to try and look at gendered stigma in the profession from a different angle to see if that would help uncover its deeply rooted perpetuation.

Unexpected Findings

Despite the prior research done on attorneys' experiences in the profession, I had a few unexpected findings in this study. In particular, these findings are different from those in the longitudinal After the JD study discussed above. The first was the relevance of physical stature to

the participants. I remember being surprised at one participant's mention that she felt that her height (5'2") plays a role in how she is treated by her male counterparts. Additionally, stature also came up for a participant who described herself as being taller than average, but was often viewed negatively because she would sometimes be taller than her male counterparts. Both women deviated from "average" in opposite ways, but were both devalued just the same. Stature was not mentioned by any of my male participants.

Another surprising finding was how often women faced stigma based on perceived parental status. One woman explained that every time she felt ill, someone would ask her if she were pregnant. She felt this inquiry was intrusive. Another woman described being asked about her plans to have children shortly after getting married. She also felt that the question invaded her privacy. This particular participant was also married to a male lawyer, who was asked once whether he and his newlywed wife were trying for children. The participant described her husband as having been so appalled and upset that he was complaining about it the rest of that evening when they were home together. She, on the other, sort of chuckled at his experience because, she said, it was such a common question for her to get. While the Motherhood Penalty was an expected theme as well as parenting issues in general, women who do not have children still face similar stigma.

Finally, the intersection of gender and age was surprising. While it was not wholly unexpected, it came out in opposite ways for men and women. Women in this study who are young and/or in their first decade of practice often faced compounded devaluation. Men in this study, however, had varied opinions. One participant said he felt that people thought he was inexperienced before he was married because they assumed he was young. This perspective would be similar to women's experiences here, except that marital status was not mentioned by the

women outside the context of removing wedding rings for job interviews. Another male participant felt that law is a “young man’s game” because of how intense the workload and work hours can be. This is an area ripe for deeper research in the future.

Limitations

There were several challenges in executing this project. Primarily involving recruiting participants for interviews and in soliciting survey responses. The first being finding people who had the time to commit an hour or two to the interview process. Not only are practicing attorneys very busy, but many who are in private practice get paid based on how many billable hours they put in for the firm. Billable hours take longer to accumulate than traditional hours, so it was difficult to find attorneys who work in Big Law to interview because of the time commitment. Further, while many employers gave employees some slack because of the pandemic, others actually tightened their reigns. As a result, my participants tended to be lawyers in solo or small practice or others who have a higher level of autonomy over their time.

I also anticipated a struggle in recruiting government attorneys because of their high caseloads. In my recruitment I was transparent about the amount of time necessary for the interviews and I did my best to stick closely to that timeframe unless the individual indicated they did not mind continuing to talk if I had questions remaining at the end of the estimated time. I did my best to schedule at each participant’s convenience, but the pandemic made this particularly challenging, as discussed above. However, I thought this was the minimum amount of goodwill I was able to offer to the participants for agreeing to talk with me.

Further, my own experiences as an attorney, a woman, and a mother informed this project. While this added a rich familiarity with the topic and an ability to relate to my participants and understand the legal world, it also put me in the position to constantly re-check

my biases. Being completely objective is impossible because all people have bias, but I consciously listened to my participants' responses to the questions I was asking and did my best to keep myself out of the conversation. As a member of the group I was studying, I would have loved nothing more than to have found that gendered stigma is petering out and no longer a common occurrence for currently practicing lawyers.

Broader Impacts and Future Research

If the problem is recursive, the solution also needs to be recursive. This will not be a one-time fix all. It takes work from every individual and every institution within the profession to make this change. The legal profession needs constant re-examination periodically to see how it can continue to improve for all people.

In a perfect profession, attorneys would feel comfortable being themselves in the office, in the courtroom, and in public spaces. They would not be afraid of being ostracized for not assimilating to a toxic culture and, quite frankly, the toxic culture would not even exist. People would not have to write off the option of becoming an attorney because the profession rejects any part of their Self. While this perfect profession may never be actualized, the push for progress should not be abandoned. These recommendations only graze the surface of a more equal profession. Sweeping changes need to be made at all levels, beginning with the aggregate since it has the most power to set a positive example. Even though the legal profession in the United States is more diverse today than it was in the 1970s, it is still more exclusive than inclusive—women are still being punished for having children, Black attorneys are still facing inherent structural racism, LGBTQ+ attorneys are still hiding their orientation in work settings, openly-trans attorneys are incredibly rare, other-abled attorneys still face logistical battles and stigma—the list goes on. A more equal legal profession would mean happier, healthier

advocates. In turn, clients would be better represented and, on a large scale, the legal profession would have the opportunity to lead other industries to making similar changes as well.

It is 2021 and diversity, equity, and inclusion permeate conversations across the country. Particularly in conference rooms where board meetings and faculty meetings are taking place. In a recent conversation during an optional faculty discussion about how to infuse diversity, equity, and inclusivity into law school class rooms, there was significant tension regarding the best approach. One faction of the group surprisingly took the position that law students should not be shielded from racial slurs in historical context or other microaggressions that may arise in the classroom because the students will experience these issues in the profession. This group vehemently believed that a professor's job is to prepare students for "the real world." However, I would argue the opposite. Although being realistic with students about the state of the profession is important so everyone knows what they are getting into, a professor's job should include preparing students to make the profession better than it has been. By teaching new generations of lawyers how to solve these age-old problems, legal education can force change more quickly. These students will be prepared with stigma consciousness, stigma resistance mechanisms, and be empowered in their own agency to make the changes they can. Most importantly, the students who end up in the positions of power can change the group profile for The Normals. It will take time, but individuals can be equipped for this process through legal education.

The system is designed to denigrate individuals into this state of powerlessness so that it will keep them from making real and comprehensive changes. People lose the desire to make waves and force large-scale changes when they are simply trying to survive a profession that has been built by oppressing people who are not part of the powerful gatekeeping group. Creating an environment that is so toxic for those outside The Normals exiles people into isolation. Solo

practitioners often become solos because they either already know how the profession reinforces sexist, racist, classist ideals or they become acquainted with that notion quickly after spending some time in practice. While private practice is the worst venue for gendered stigma, governmental agencies are not immune to it either. Participants in this project cover most of the major practice areas and career levels and their experiences were largely the same. Even people who have found wonderful work environments either in a small practice or as a solo still experience gendered stigma in other interactions in the profession. The only way to change the culture in the profession is for it to be all-encompassing. Individuals can no longer be advised to make it work in one way or another. Women cannot continue to be told that they simply need to outsmart and outwork the male-centric profession. The recommended changes discussed above would be a minimal start to a professional revolution that is 100% necessary. However more research needs to be done.

This project focused mainly on the gender binary because that is the most prominent system of gender in the profession. While transgender participants were included in this study, my future research will include projects focusing exclusively on the experiences of transgendered and non-binary attorneys and how they experience gender in the profession. Additionally, changes need to be made in legal education to shift the old-school notion that unfair, exclusive, and inappropriate practices like using racial slurs in the classroom for historical context are acceptable because it will prepare the next generation of lawyers, to a newer mindset of training future lawyers to critically examine the profession from racial, ethnic, gendered, class, ability, and other lenses in order to create a better future. The passive solution of allowing generations to age out of the profession is not enough. Those attorneys have planted their seed in every young associate they trained and mentored, and those young associates will eventually be

passed the torch to continue these same practices. Unless change happens at the aggregate, group, and individual levels, progress will continue to be stymied. Complacency is the kindling of stagnancy. The responses of individual participants aggregate into a desperate powerlessness. The overwhelming awareness that nothing will ever change settled over these data, casting gendered stigma penumbra throughout every conversation.

APPENDIX A: FOCUS GROUP INTERVIEW INSTRUMENT

Hello. My name is Amanda, and I am a Ph.D. student at the University of California, Irvine. Thank you for agreeing to meet with me. There are a few things I want to remind you of. First, this is a study of men's and women's experiences in legal profession. I am interested in your experience as an attorney. Specifically, I am interested in your day-to-day life as an attorney and how you experience your work and the profession as a whole. Second, I have questions prepared, but if you have anything to add that I do not ask, please let me know. This is more of an informal conversation, rather than an "interview." Feel free to talk with me like you would with a friend. We will be as informal as possible. Third, you can stop talking at any time. If I raise some issue you do not want to talk about, please just let me know and we will move on to something else.

I'd like to record our conversation so I can focus on what you're telling me and not be distracted by taking too many notes during the interview. That way I can really concentrate on what you have to say. However, if you want me to turn the recorder off for any reason or at any time, just say so. No one will hear the recording except for me, and after I have transcribed it I will erase the recording. Additionally, I take out your name and any other identifying information from the transcript.

- (1) Describe the ideal attorney.
- (2) Describe the typical attorney.
- (3) What are your thoughts on how the profession treats gender?

(3)a. Does this affect you in your personal lives?

- (4) What is the culture like in your office?

How have things changed in your office since the pandemic?

- (5) How is your workday different when you go to court?

Have you been to virtual court? If so, what is that like. If not, how are essential hearings being handled now?

- (6) What are the judges like?
- (7) What is the courthouse culture like?
- (8) What do you think is going to happen with juries?
- (9) Do lawyers comment on one another's appearances?

(9)(a) If so, in what ways?

APPENDIX B: INDIVIDUAL INTERVIEW INSTRUMENT

INTRODUCTION

It is great to see you again, thank you so much for agreeing to participate in my project.

Just a couple of reminders as we get started: I have questions prepared, but if you have anything to add that I do not ask, please let me know. This is more of an informal conversation, rather than an “interview.” Feel free to talk with me like you would with a friend. We will be as informal as possible. Also, you can stop talking at any time. If I raise some issue you do not want to talk about, please just let me know and we will move on to something else.

As I mentioned before, I am recording our conversation so I can focus on what you’re telling me and not be distracted by taking too many notes during the interview. That way I can really concentrate on what you have to say. However, if you want me to stop recording for any reason or at any time, just say so. No one will hear the recording except for me, and after I have transcribed it I will erase the recording. Additionally, I take out your name and any other identifying information from the transcript, although I will retain a participant list that only I will see for the duration of my data collection. After all the data is collected and the interviews complete, I will delete this list as well.

Do you have any questions or concerns before we begin?

OK, let’s start.

MODULE 1: DEMOGRAPHICS

1. What is your racial and ethnic identity?
2. What is your gender identity?
3. Which of the following ranges cover your income: Below 50k, 50k to 70k, 71k to 90k, 91k to 110k, 111k and above
4. How many years have you been in practice?
5. What is your title?
6. How many people are in your firm?
- [If firm has multiple locations] How many people are in your office?
7. How do you define your political ideology? [Liberal, progressive, moderate, conservative?]

MODULE 2: PRACTICE EXPERIENCE

1. What type of law do you currently practice?
2. What other areas have you practiced in?
 - [If others] Why did you switch?
 - [If none] What other areas of practice are you interested in?
3. How often are you in the courtroom?
 - How do you feel about that?
 - What are your thoughts one way or another about being in front of a judge?
 - We talked a little bit about the virtual hearings in the group discussion, but how do you think that will affect the practice of law going forward?
 - What do you think is going to happen with juries and jury trials?
4. Do you think that the type of law that you practice affect your professional experiences?
 - [For example, when I was practicing construction defect law in California, people reacted to me differently than my male colleagues because of the fact that I was dealing with construction.]

MODULE 3: PARENTING AND FAMILY BACKGROUND

1. Do you have children?
 - How many? What is your childcare situation? How does that affect your professional life?
2. How do people react when they find out you [do/do not] have children?
 - [Either answer] How does that affect you?
3. What do others expect of you at home?
4. Have you ever been asked about work/life balance?
 - [If yes] In what context? How did you react to being asked that question? How often are you asked about your family life? How does that affect you?
 - [If no] Why do you think that is?

5. Can you tell me anything else about your support system?

- Spouse
- Parents
- Siblings
- Friends

MODULE 4: RELATIONSHIPS

1. Are you comfortable sharing your sexual orientation with me?

- [If yes] Thank you.
- [If no] I understand. Let's move on.

2. Has your sexual orientation ever affected your professional life?

- [If yes] How so? Can you tell me more about that?

3. Are you or have you ever been married or in a committed relationship with another person?

- [If yes] How do people react when they find out you are married/ in a committed relationship? How does that affect you?

- [If no] How do people react when they find out you are NOT married/ in a committed relationship? How does that affect you?

4. Has your relational status ever affected your professional life, to your knowledge?

- [If yes] How so? Can you tell me more about that?

MODULE 5: ADVANCEMENT AND PROFESSIONAL GOALS

1. What are your professional goals?

- [If interviewee responds with long term goals] What about short term?
- [If interviewee responds with short term goals] What about long term?

2. How will you advance in your current position?

- What are the next steps?

- [If not likely] What would need to change in order for you to feel like you could advance?

MODULE 6: GENDER

1. Can you walk me through your pre-pandemic typical day?

- [If starts when arriving at work] Actually, I would like to hear about your whole day from when you wake up until you go to sleep.

2. Has your typical day changed since the COVID-19 pandemic?

3. What do others expect of you at work?

4. How many hours a week do you work at the office?

5. How many hours a week do you work at home?

- [If talks about office work] What about any household responsibilities?

- [If talks about housework] Does your employer ever expect you to work at home outside of “normal” working hours?

6. Not related to the substance of your cases, has anything shocking or surprising happened to you within the profession since you have become an attorney?

7. How do people react upon finding out that you are an attorney?

- How does that affect you?

8. Have you have been mistaken for a client or for an administrative professional rather than an attorney?

- What happened? How did that affect you?

- Have you ever been present when this has happened to a colleague?

- What happened?

9. Have you ever felt that you have been treated differently than a colleague because of your gender?

- [If yes] What happened? How did that affect you?

- [If no] Have you ever been present when this has happened to a colleague?

- [If yes] What happened?

10. Have you ever felt that your gender has affected a **judge**'s perception of you?

- [If yes] What happened? How did that affect you?

- [If no] Have you ever been present when this has happened to a colleague?

- [If yes] What happened?

11. Have you ever felt that your gender has affected an **opposing counsel**'s perception of you?

- [If yes] What happened? How did that affect you?

- [If no] Have you ever been present when this has happened to a colleague?

- [If yes] What happened?

12. Have you ever felt that your gender has affected a **colleague or employer**'s perception of you?

- How did that affect you?

- Have you ever been present when this has happened to a colleague?

- [If yes] What happened?

13. Have you ever felt that your gender has affected a **client**'s perception of you?

- How did that affect you?

- Have you ever been present when this has happened to a colleague?

- [If yes] What happened?

14. Since you have been in practice, have you ever received comments on your appearance?

- How often do others comment on your appearance? How did that affect you?

15. Since you have been in practice, what kind of comments have you heard about colleagues' appearances?

- What was your colleague's reaction?

16. Have you seen or heard about a person's gender (conforming or non-conforming) affecting how they are perceived by others?

-How does that affect you and your relationships with your colleagues?

17. What do you think about gender in the legal profession as a whole?

18. Does the profession's treatment of gender affect you in your daily life?

- [If yes] How so?

19. How do you navigate your personal life based on the gendered interactions in the profession?

20. Are there other personal attributes either more relevant than gender, or as relevant as gender that you believe affect others' perceptions of you in the profession?

21. Have you ever considered leaving the profession?

- [If yes] Why?

- [If no] Why not?

MODULE 7: FUTURE

All right, we're about done. Is there anything I should have asked about but didn't?

AFTER INTERVIEW:

Thank you so much for taking the time to meet and to talk with me. Would it be ok to contact you in the future if I have any follow-up questions? If so, what is your preferred method of contact?

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