WOMEN IN THE LEGAL PROFESSION IN SOUTH AFRICA: TRAVERSING THE TENSIONS FROM THE BAR TO THE BENCH

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I hereby declare that I have read and understood the regulations governing the submission of LLM in Public dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

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I came to this place thinking that merit was everything that all you needed in life was your brains and your ability to work hard... years later I know better on a whole number of scores.

(Participant D)

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I. INTRODUCTION

Nearly a hundred years ago Melius De Villiers in the South African Law journal said, 'it is absolutely most undesirable that women should be allowed to become practicing members of the legal profession.'[1] His remark only reflected the perspectives held by many in the profession at that time.[2] RPB Davis, four years earlier, directed the South African profession to the judgment in the American case of *Goodell* in which Judge Ryan concluded in unequivocal terms that 'womanhood is moulded for gentler and better things [than all the] nastiness of the world which finds its way into the courts of justice.'[3] Another writer in 1917 called the objection to women in the legal profession 'a wholesome one' because,

> The fact that women nurse and sew and wait at canteens is no indication of their capacity for the legal profession. If there is one calling in the world for which women are conspicuously unfitted it is the law…women have no idea of relevance, or analogy, or evidence.[4]

Today these objections to the presence of women in the legal profession are unlikely to be countenanced given the human rights framework in South Africa that would reject them as prejudiced and discriminatory. Yet arguably the legacy of these views still lingers. Despite the Constitution affirming substantive equality in its transformative agenda[5] the absence of women from the profession is apparent.

Although statistics do reveal an increase in women in the profession the progress has been slow. Despite the legislation permitting the admission of females into the profession in 1923 [6] it was only three years later that the first women, Constance Mary Hall and Gladys Steyn, were admitted into the profession. Hall was admitted as an

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[1] Mellius De Villiers 'Note' (1918) 35 *SALJ* 289 at 289.
[2] To be fair what these published comments really represent is the hegemonic influence of patriarchy and male dominance attempting to reassert itself in the face of dissenting views and actions such as that of the case of *Incorporated Law Society v Wookey 1912 AD 623 (*hereafter *Wookey)* in which Ms. Madeline Una Wookey, a female practitioner applied to be an articled clerk with a law firm willing to employ her.
[3] *The Matter of Goodell* 20 Am. Rep, at page 42 as cited by RPB Davis 'Women as Advocates and Attorneys' (1914) 31 *SALJ* 383 at 385.
[4] 'Note'(1917) 34 *S.African L.J* 342 at 343.
[5] The Constitution of the Republic of South Africa, 1996 s9; See also Catherine Albertyn 'Substantive Equality and Transformation in South Africa' (2007) 23 *SAJHR* 253 for an account of the way in which the conception of substantive equality has immense potential to address social and economic inequality.
[6] Women Legal Practitioners Act 7 of 1923.

attorney and Steyn was the first woman admitted to the bar.[7] In 1990, some 60 years after the admission of Gladys Steyn, only 6.4 per cent of practising advocates in South Africa were women. That is 65 out of 1015 advocates were women. [8]In more recent years women make up at least half, if not the majority of law graduates. In 2013, 55.4 per cent of students enrolled in the final year LLB class were female while in 2011, 56.2 per cent of the graduating class was made up of women.[9] However statistics from the profession reveal a slow increase in women entering and remaining in the profession and the judiciary. A Plus 94 survey of Large Corporate law[10] firms examined the distribution of individuals from specified categories (for example Black female) across employment levels by asking firms to indicate the number of employees in those categories at that level. The survey concluded that 'across race groups, there tend to be more males employed at senior levels (from Salary Partner to CEO) than females.'[11] It also concluded that 'even though females make up a greater proportion of legal professionals employed at participating firms overall (53.4 per cent), they tend to be employed in fewer senior roles'[12] This suggests that women entering the profession do not advance through to senior levels.

Perhaps more concerning in past years has been the lack lustre efforts of the Judicial Service Commission, the body charged with judicial appointments, who's leadership in this regard has been poor. An online newspaper reported that one commissioner in a sitting in October 2013 asked 'How can we find suitably qualified women?'[13] Another commissioner, at the same meeting asked whether women had organised themselves into an effective force.[14] These comments reveal a startling lack of awareness, from decision makers and leaders in the judiciary, about the status and condition of women in our legal system. They are symptomatic of a wider problem

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[7] Karen Blum SC "Portia Today - No need for drag" 1990 *Consultus* 15.
[8] Ibid.
[9] Law Society of South Africa, Legal Education and Development Statistics, May 2013 Accessed online at *http://www.lssa.org.za/?q=con,115,LEAD%20statistics%20on%20the%20profession* on 10 April 2015 (hereafter LSSA statistics).
[10] 'Plus 94 Survey of Large Corporate Law Firms in South Africa' available at *http://www.lssa.org.za/upload/Project%20Law_Report_20130520_Final_Revised.pdf* accessed on 10 April 2015.
[11] Ibid.
[12] Ibid.
[13] Tabeth Masengu and Katy Hindle 'The New JSC in a Man' *The Conmag* 10 November 2014 available at *http://www.theconmag.co.za/2014/11/10/the-new-jsc-and-the-patriarchy/* accessed on 9 April 2015.
[14] Ibid.

specifically that very little is known about how the circumstances facing women in the profession in South Africa hinders their progress.

However with the new Legal Practice Act[15] (the Act) set to uproot aspects of the legal profession new spaces and avenues for informed interventions could open up. The Act will institute a new regulatory scheme for the profession. Although the profession will remain split into attorneys and advocates, the different spheres will no longer regulate their own affairs. A single regulatory body, the South African Legal Practice Council, will regulate the profession.[16] While the Act has been enacted, aspects of it, like that pertaining to the Council will be delayed until such a time when an interim body can make recommendations to the Minister of Justice about the structure and organisation of the profession.[17] It is imperative then that researchers and practitioners alike capitalise on these developments and take proactive steps in sourcing knowledge and information that can build into these recommendations in a manner that impacts women in the profession positively.

This paper takes the view that the substance of that knowledge and information is to be found with the very women we are concerned with. It seeks to investigate this by eliciting the experiences of women who have entered the profession, specifically the advocate's profession, more commonly known as the Bar. Closer scrutiny of women in the profession in this way will determine whether and to what extent patriarchal normative attitudes, like those expressed by De Villiers and Davis above, are still operative in the legal profession.

To begin in Chapter II, a review of the literature will situate the issue of women in the legal profession within a broader range of legal and social issues such as the role of gender and the place of networks. This section will also justify why this issue matters in the broader context of transformative constitutionalism. Chapter III will outline the research design, state the research question and briefly explain the methodological choices made in attempting to uncover female perspectives. Following that the paper will outline the results of the research before entering into a discussion and analysis of them in Chapter V. This section will contend that a range of gender biases intersect with the peculiar work place structures of the Bar and other social norms (for example about

[15] Legal Practice Act 28 of 2014 (the Act).
[16] Ibid section 4.
[17] Ibid section 96 and section 97.

motherhood) to hinder the advancement of women at the Bar. The individuality and agency of women then overlaps these processes to create diverging judicial aspirations. Chapter VI concludes by giving a brief summary of the research and by giving some recommendations.

II. WOMEN IN THE LEGAL PROFESSION: THE ISSUES

From narrative accounts of women's experiences to theoretical analyses[18] the extent of the literature on women in the profession demonstrates the depth and breadth of the issues that are potentially relevant:[19] accessing networks, dealing with gender bias and stereotypes, navigating work place structures are some examples. Despite this wide range of literature the issues that emerge as problematic in one context are problematic in others. There is a measure to which this is to be expected when regard is had to the shared imperial and colonial history of, for example, the common law jurisdictions.[20]

The contexts covered by the literature are predominantly from the US followed by the UK.[21] Europe, New Zealand, and Australia feature fairly regularly in literature searches. There is, however, little work from Asia and noticeably lacking is research emanating from the South, particularly Africa. Schultz acknowledges as much, in the compilation of work that she edited on Women in the World's legal profession: 'what remains to be written is the story of women lawyers in underdeveloped and in developing countries.'[22] It remains then to be seen whether the issues that resonate widely in other jurisdictions also resonate in the South African content. Early indicators of anecdotal accounts and personal stories suggest that they do.[23] Among other things women seem to struggle with securing work and with managing their work hours in the face gendered division of labour.

Given that this project is motivated by the slow progress of women in the profession a useful place to begin is to consider the actual and current spread of women in the advocate's profession.

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[18] Ulrike Schultz 'Introduction:Women in the World's Legal Professions:Overview and Synthesis' in Ulrike Schultz and Gisela Shaw (eds) Women in the Worlds Legal Professions (2003) xxv-lix at xxvii

[19] Ibid.

[20] Ibid at xxvii.

[21] For examples see 'Compilation of Studies on Gender and the legal profession' in which over thirty publications are listed for the University of Maryland School of Law: Women, Leadership, & Equality Program completed January 2009 available at http://www.law.umaryland.edu/programs/wle/documents/Compilation_of_Studies.pdf accessed on 21 April 2014.

[22] Schultz and Shaw op cit note 18 at xxv.

[23] Vivienne Niles-Duner (Judge of Natal High Court) (August 2004) 'Are the mountains moving?' in *Advocate*, pp36-39; Fayeeza Kathree (JHB Bar) (August 2004) 'Eight years at the Bar and still discriminated against' in *Advocate*, p23; Anna-Marie de Vos (Judge) interviewed by Yvonne Kemp (2004) 'A Bar to Women?' in *Advocate*, August pp39-4; Ruth Kuper SC (JHB Bar) (August 2004) 'Some Personal Experience' in *Advocate*, pp34-35; Thandi Norman (Durban Bar) (August 2004) 'The Plight of women' in *Advocate*, pp24-26; Kate O'Regan (Constitutional Court Judge) (August 2004) 'Identifying the Barriers' in *Advocate.*

1. Women in their numbers

Women are poorly represented in the judiciary in South Africa. In 2012/13 the Department of Justice and Constitutional Development's Annual Report stated that, 'the appointment of female judges has been slower than was initially anticipated.' [24]

In 2013, the Deputy Minister for Justice and Constitutional developments said,

> 'Today, as "Mandela's children" prepare to vote for the first time, 100 black men and 49 black women, 71 white men and 21 white women serve our nation as judges. They do so knowing that they are part of a judiciary that is coming closer to reflecting the racial and gender composition of the South Africa, as is required by our Constitution.' [25]

The latest statistics, as of July 2014, are displayed in the table 1 below.

Table 1 showing Racial and Gender profile of the Judiciary as at July 2014[26]

RACE	GENDER	TOTAL	%
AFRICAN	**Male**	71	29,22%
	Female	35	14,40%
COLOURED	**Male**	15	6,17%
	Female	8	3,29%
INDIAN	**Male**	13	5,35%
	Female	12	4,94%
WHITE	**Male**	65	26,75%
	Female	24	9,88%
TOTAL		243	100%

Table 1

When women in South Africa make up 51.3 per cent of the population [27] there is cause to be sceptical about the Deputy Ministers remarks that the judiciary is coming

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[24] Department of Justice and Constitutional Development, Annual Report 2012/2013 available at *http://www.justice.gov.za/reportfiles/anr2012-13.pdf* accessed on 19 April 2014 at 7. (Hereafter Annual Report 2012/2013).

[25] Deputy Minister of Justice and Constitutional Development Andries Ne l 'Judiciary to mirror SA: Transformation of the legal profession a necessary imperative as envisaged by SA's Constitution' The New Age 10 May 2013. The article is based on notes for an address to a meeting of the Black Lawyers Association (BLA) Student Chapter held at the University of South Africa (Unisa) on 4 May 2013 'Transformation and the Legal Profession' available at *http://www.justice.gov.za/docs/articles/20130510-dm-tranformation.html#sthash.EO8zIt75.dpuf* accessed on 12 April 2015.

[26] Obtained from a presentations at Legal Sector Meeting Presentation in Durban, Kwa-Zulu Natal on 6 December 2014 organised by Democratic Governance and Right's Unit and SONKE Gender Justice (used with permission) (hereafter Legal Sector Meeting Presentation).

[27] Census South Africa, 2011available at *http://www.statssa.gov.za/publications/P03014/P030142011.pdf* accessed on 2 April 2015.

closer to reflecting the racial and gender composition especially when Table1 above shows that only 79 out 243 judges are women – only 32.5 per cent. The numbers instead confirm the Annual report statement that judicial transformation in terms of gender has been slow. In point the, report goes on to state that 'of a total of 311 judges appointed since the establishment of the Judicial Service Commission in 1994 only 76 are women', namely in 2012 only 24.4 per cent of the appointments made to that date were women. [28]

Moreover there is a perspective that the judiciary has come further along in terms of race than gender precisely because there has been an emphasis on race at the expense of gender.[29] South Africa's non-white population stands at about 90 per cent of the 51 million people in the country. In 1994, 160 of 165 judges were white males.[30] Today 154 of the 243 judges are non-white that is 63.37 per cent are non-white. Of the non-white judges, only 22.63 per cent of them are female. In other words even of non-white judges, males still make up the majority.[31] This stagnated gender development is not unique to the legal profession[32] which suggests that there are factors that transcend the legal profession that that contribute to the exclusion of women.

Barmes and Malleson argue that 'the profession plays a gate-keeping role that gives rise to the translation of entrenched group based identity hierarchies from legal practice to the judiciary.' [33] In South Africa the advocate's profession is traditionally espoused to be the preferred pool for judicial selections although no statistics can be found to verify this.[34] Nonetheless because of this predominant perception this research

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[28] Annual Report 2012/2013 op cit note 24.
[29] See the Annexed literature review of the Centre for Applied Legal studies in collaboration with the Foundation for Human Rights who began and conducted a similar research project in the Johannesburg, the report of which was issued in August 2014. The results and recommendations will be referenced in later chapters available at *http://www.wits.ac.za/files/25gim_5780950014270986 73.pdf* (hereafter CALS report) at 4. It argues that work done in South Africa by Pruit (2002) and Godfrey (2009) were mainly focussed on race rather than gender.
[30] Speech given by Andries Nel, Deputy Minister of Justice and Constitutional Development, May 2013 op cit note 25.
[31] Legal Sector meeting op cit note 26.
[32] Martin, P., & Barnard, A 'The experience of women in male-dominated occupations: A constructivist grounded theory inquiry' (2013) 39(2) *SA Journal of Industrial Psychology/SA Tydskrif vir Bedryfsielkunde* 1099.
[33] Barmes and Kate Malleson "The legal Profession as Gatekeeper to the Judiciary: Design Faults in Measures to Enhance Diversity" (2011) *The Modern Law Review* 74(2) 245 at 246 (Hereafter Barmes and Malleson).
[34] E Bonthuys "Gender and the Chief Justice: Principle or Pretext?" *Journal of Southern African Studies* (2013) 39(1) 59 at 68 (Hereafter Bonthuys).

proposes to focus mainly on the advocate's profession. Therefore the representation of women in the judiciary is significantly related to representation within the advocate's profession. The numbers of women in the advocate's profession is thus presented below.

1.1. Statistics in the Advocate's Profession

Table 2 showing the number of males and females at the Bar in South Africa [35] [36]

YEAR	GENDER	TOTAL	%
2009	**Male**	1666	79.4%
	Female	431	20.6%
2010	**Male**	1698	78.4%
	Female	469	21.6%
2011	**Male**	1754	77.3%
	Female	514	22.7%
2012	**Male**	1823	76.5%
	Female	561	23.5%
2014	**Male**	1926	74.9%
	Female	645	25.1%

Table 2

Of the 645 female advocates at the bar in 2014, 64.2 per cent of them are classified white, 18 per cent are classified black, 6.8 per cent are classified coloured and 11 per cent classified Indian. Mirroring trends in the judiciary Table 2 shows that in the last five years at the bar the percentage of woman at the bar has not increased markedly. Considering this, it is to be expected then that there are fewer women at the judiciary then there should be.

Although these national statistics show mediocre improvement the increase has not been insignificant – in 1994 there was only 1 female judge. Today there are 79. There has indeed been transformation. Therefore further calls for gender transformation raise questions about what kind of transformation has occurred in the profession

2. Gender Transformation

[35] 'Mapping of the Situation' presentation of Democratic Governance and Rights Unit, University of Cape Town (used with permission); See also Legal Sector Meeting Presentation op cit note 26.
[36] 2014 statistics received from Democratic Governance and Rights Unit, University of Cape Town (used with permission).

A starting point is to recognise that the meaning of transformation is contested.[37] To be sure Deputy Judge President Mojapelo reflected on as much when implored the profession to be critical about what transformation is and mindful of what transformative action is mandated by the constitution.[38] Failure to do so could leave room for the concept to be appropriated for other ends under the guise of transformation. In another speech the DJP argued that the constitution implores us to seek a judiciary that is just as substantively transformed as it is formatively transformed.[39]The endeavour to which a democratic South Africa has committed itself to requires more than transformation by numbers but rather seeks transformed jurisprudential thinkers. One writer that is most instructive in this regard is Karl Klare.[40] He considers the primary goal of 'transformative constitutionalism' to be the 'long-term project of constitutional enactment, interpretation and enforcement committed to transforming a country's political and social institutions and power relations in a democratic, participatory and egalitarian direction,'[41] Substantive transformation in the legal profession thus seeks to engender advocates that are not only technically and practically competent but are also truly committed to transformation in an egalitarian manner.

Further reasons for the importance of this egalitarian transformation become apparent when the historical context of South Africa is considered. Cowan sums up one of those reasons when she contends that a driving force in the quest to transform the judiciary is the question of legitimacy. During apartheid the courts were often used to enforce the discriminatory regimes that underpinned the system. Courts were 'positivist functionaries' which the majority of the population did not recognise, and the demography of the court only reinforced its

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[37] Morne Olivier 'A Perspective on Gender Transformation of the South African Judiciary' (2014) SALJ 130 448 at 449 (Hereafter Olivier).
[38] Deputy Judge President, Phineas Mojapelo, South Gauteng High Court. An edited version of an address to the annual general meeting of the Limpopo Law Council in Polokwane, 7 September 2012 available at *http://www.saflii.org/za/journals/DEREBUS/2012/101.pdf* accessed on 12 April 2014 (Hereafter DJP Mojapelo Limpopo Speech).
[39] DJP Phineas Mojapelo, South Gauteng High Court Address delivered at the launch of 'The Judiciary in South Africa' at the Chalsty Centre, Oliver Schreiner School of Law, University of the Witwatersrand, on Wednesday 21 May 2014 available at *http://constitutionallyspeaking.co.za/address-delivered-by-judge-phineas-mojapelo-at-the-launch-of-the-judiciary-in-south-africa/* accessed on 16 December 2014 (hereafter DJP Mojapelo Wits Speech).
[40] Karl Klare 'Legal Culture and Transformative Constitutionalism' (1998) 14 *SAJHR* 146 at 156 (Hereafter Klare).
[41] Ibid at 150.

complicit reputation. The call for the judiciary to be more reflective of society[42] is a call to legitimate the courts as the preserve of justice. Judge Mojapelo in support of a legitimate transformed judiciary states 'that the capacity to understand and emphasise with the aspirations of a particular race or gender would be found in the fullest and purest form in those who have lived the experience as opposed to those who have studied or grown to understand it.'[43]

There is thus a complex tension between representation and effecting deep and meaning transformation.[44] Increasing representation is only one part of that show of legitimacy; transformation, in other words, has to be seen to be done.[45] The judiciary needs to have women who 'have lived the experience' participating equally in the judiciary in order to fully legitimate the courts as representative and reflective of society. This aspect of transformation is more elusive because as Schultz argues, access to the profession is one thing while achieving equal participation is quite another. There are 'more subtle forms of discrimination [that] survived well beyond the formal opening of access to the legal professions for women.'[46] These include among others mechanisms of rejection and marginalisation in experience opportunities and in access to the forms of capitals, a topic which I shall return to later. [47] It is these more nuanced barriers to transformation in the profession that need to be subjected to critical exposition.

2.1. Judicial Transformation and the Law

The subtle forms of discrimination have been perpetuated through mechanisms that disguised them as neutral and the status quo. Undoubtedly 'the law' is one of those mechanisms. Women have been barred from the legal profession through the use of promulgated laws. Pradhan in a legal opinion about legal professions in the United States of America, United Kingdom and South Africa asserts that 'the legal arguments that have been used to exclude women from the legal profession are remarkably similar' turning on the rules of statutory interpretation and the question of the meaning of the

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[42] The Constitution, 1996 section 174(2).
[43] DJP Mojapelo Wits Speech supra note 39.
[44] Olivier op cit note 37.
[45] Ruth B. Cowan 'Women's Representation on the courts in the Republic of South Africa' (2006) 6 *U.Md.L.J Race Relig. Gender & Class* 291 at 298 (hereafter Cowan).
[46] Schultz and Shaw op cit note 18 at xxxv.
[47] Schultz and Shaw op cit note 18 at xxxix.

term 'persons' in the legislation that admitted legal professions.[48] The cases in essence all conclude that the term 'persons' was not intended to include women but men only. In support of this point Pradhan writes that 'these cases focus on the "essential nature" of women nurturing, caring, weak, unsuitable for the masculine legal profession.'[49]

In South Africa the leading case on admission of woman to the profession was *Incorporated Law Society v Wookey* 1912 AD 623. Madelaine Wookey, a female, was able to find a firm that was willing to register her for articles. In supporting the Law Society who objected to Wookey's attempt to register, Chief Justice Innes said the following,

> 'The question is not whether this lady is likely, adequately, and satisfactorily to discharge the duties of a legal practitioner. If it were, then its solution would present few difficulties. The inquiry is simply whether she belongs to the class to which the terms of the section in question refer. If she does, then she is entitled to be indentured; if she does not, she has no such right, and the Court can give her none. And that being so, assistance must be sought elsewhere. The Legislature of the country is the only source from which relief in a case of this kind can be obtained…'[50]

In all three jurisdictions it was indeed legislative reforms that permitted women access into the professions. It was the Women's Legal Practitioner's Act of 1923 that allowed women into the profession in South Africa. What is most pertinent to highlight is that even to this day the challenge of those essentialist views held by the Chief Justice Innes are still prevalent. There are debates within literature about whether essentialist or rather experiential arguments should be the basis for justifying the inclusion of women into the profession. These issues are revisited later in the chapter.

2.2. The Judicial Service Commission and Transformation

Arguable another disguising mechanism is the manner in which judicial appointments are made. More recently the body responsible for appointments, the Judicial Service Commission (JSC) has been the subject of legal debate and at times litigation. Although

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[48] Maithili Pradhan Women & Justice Fellow, Avon Global Center for Women and Justice, Legal Memorandum 'Exclusion of women from the legal profession in the United States of America, the United Kingdom, and South Africa Date' (November 25, 2012) accessed at *http://ww3.lawschool.cornell.edu/AvonResources/Memo-Womens-exclusion-from-the-legal-profession.pdf* on 12 April 2014 (hereafter Pradhan).

[49] Ibid.

[50] *Wookey* supra note 2 at 653.

it is constitutionally permitted to determine its own processes[51] its decision making in judicial appointments has come under scrutiny. The commission is formed in terms of Section 178 of the Constitution. [52] While it is charged with having a consultative role in the selection of judicial officers, in practice the JSC plays a large role in the selection process: members of the committee select and recommend candidates to the president who then officially appoints them.[53] In the Judicial Service *Commission v Cape Bar Council (Centre for Constitutional Rights as amicus curaie)* 2013 (1) SA 170 (SCA) the Supreme Court confirmed that despite the fact that decisions of the commission to select and recommend candidates are excluded from review under the Promotion of Administrative Justice Act[54] the decision is still reviewable under the doctrine of legality.[55] Decisions of the commission must not be irrational and arbitrary.[56] Critiques have disparaged the interview process for not canvassing relevant and important issues related to gender transformation and in the result perpetuating inequality.[57]

In any event, both the litigation and the critques, against the JSC evoke arguments put forward by Barmes and Malleson.[58] The authors configure selection committees as a site of intervention. In the UK that committee is called the Judicial Appointment Committee (JAC). The JAC operates within a regulatory framework that enables it to be passive in the quest to search for diverse candidates. Thus in order to encourage diversity within the judiciary perhaps more intervention needs to be targeted at the JAC so argue the authors. The same can be said of the JSC. Have they been passive in the quest for diversity? In the context because they must act rationally and transparently there is space to engage with the JSC about the factors that influence its decision.[59] Since the JSC is the established connection between the judiciary and the profession the qualities and criteria that they value will therefore impact what the profession values and aims

[51] The Constitution, 1996 at Section 178(6).
[52] The Constitution, 1996.
[53] The Constitution, 1996 at Section 174(3) and 174(4).
[54] Act 2 of 2000.
[55] Judicial Service *Commission v Cape Bar Council (Centre for Constitutional Rights as amicus curaie)* 2013 (1) SA 170 (SCA) at para 20 (Hereafter *JSC v Cape Bar Counci*l).
[56] Ibid at para 43.
[57] Masengu and Hindle Op cit note 13.
[58] Barmes and Malleson op cit note 33.
[59] *JSC v Cape Bar Council* supra note at para 51.

to engender. What the commission considers as meritorious will be merited by the Bar.

In the context of transformation to what extent then are women in the profession given a chance to amass and acquire those qualities as valued by the JSC? The literature suggests that a range of factors operate to affect women's chances of acquiring those relevant qualities. One such factor is the role of social and cultural capital in the work of advocates and is discussed below.

3. The Legal Profession and forms of capital

One certainly cannot consider issues around the legal profession without considering the wider realm of work on professions in general, most notably about the prominence of social and cultural capital and the formation of networks based on these varied types of capital. These themes have implications for some of the pillars upon which the legal profession often prides itself. For the advocate's profession one such pillar is that of 'independence'. Following a discussion of the impact of different forms of capital, this section will briefly discuss the structure of the profession and how that might impact women's agency. Furthermore it seems uncontroversial the legal professionals are considered 'elites'. This has implications for why this research matters.

3.1. Social and Cultural Capital: ways of knowing and ways of being

The ascription of 'profession' to the activities of legal scholars has an impact on the manner in which people are included or excluded from legal practice. Boon et al [60] do well to demonstrate this relevance by drawing attention to the relationship between knowledge and power: 'the power and legitimacy of professions is acquired in part from their status as organisations defined by their control over knowledge.'[61] The making of the legal professions is thus the making of a preserve of particular knowledge. Once that preserve of knowledge is acquired by an individual that person is distinguished with a qualification as a signifier. This individual thus has the requisite academic capital, in this case, in the form of legal knowledge.

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[60] Andy Boon, John Flood, and Julian Web 'Postmodern Professions? The fragmentation of legal education and the legal profession'(2005) 32(3) *Journal of Law and Society* 473 at 474 (hereafter Boon).
[61] Ibid at 474.

This drive towards the relevance of academic capital resulted in the move away from social status as the main criterion for entry into the profession. It most certainly opened up a pathway for women into legal practice, even if only a small one. Women, by displaying competence and ability to acquire and amass the knowledge necessary for qualification, showed their capabilities,[62] making it difficult to sustain objections to their presence. However knowledge stemming from access to other kinds of capital –social and cultural – did not cease to be relevant.

Dixon and Seron[63] elaborate on this by operationalising theories on human and social capital to investigate income disparities between men and women in different spheres of practice.[64] If one has regard to the fact that advocates are referred work from attorneys it is not difficult to see how social and indeed human capital is relevant. Human capital relates to the 'education and work *achievements*'[65] that an individual can call upon while social capital[66] can either relate to social origin[67] or family statuses.[68] These conceptualisation as defined are fairly practical in that they delineate the factors that constitute these capitals.

Capital is thus constitutive knowledge about how to be, how to talk, how to act and how to know what you know and is gained from access to different social circles, from family status and from access to particular kinds of educational backgrounds (for example elite schools). It is experiential. Schultz writes that some of the research undertaken in *Women in the World's Legal Professions* indicates that women's social capital, that is women's experiential knowledge, is valued less than men's.[69] Nicolson also writes about this.[70] He argues that affirmative action is necessary to counter the unfavourable effect , as

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[62] Schultz and Shaw op cit note 18 at xxxii.
[63] J Dixon & C Seron "Stratification in the Legal Profession: Sex, Sector and Salary" 1995) 29(3) *Law & Society Review* pp381-412 (Dixon and Seron).
[64] Ibid at 384-387.
[65] Ibid at 384.
[66] Ibid at 385-6.
[67] For example family background and education.
[68] For example Marital status and children.
[69] Schultz and Shaw op cit note 18 at xliv.
[70] Donald Nicolson 'Affirmative Action in the Legal Profession' (2006) 33(1) *Journal of Law and Society* Debating Affirmative Action: Conceptual, Contextual, and Comparative Perspective pp109-125 (hereafter Nicolson).

he sees it, of valuing cultural capital *differently*, thus echoing findings in *Women in the World's Legal Professions*.

Therefore from an academic perspective women have increased opportunity to enter the profession yet they still face some significant challenges that are constituted by preferring particular kinds of social and cultural capital within legal practice.[71] Women, partly because of their prior exclusion, and partly for the hegemonic atmosphere which preferences white males cannot readily access this kind of epistemological knowledge.[72] Nicolson writes that 'lacking the right cultural capital, women, ethnic minorities, and those from socially disadvantaged backgrounds are less likely to receive mentoring, patronage, and training and to be allocated the sort of work useful for promotion..'[73] Nicolson's paper highlights a solution that can be considered when building and working towards advocacy strategies to improve the lot of women. He essentially examines whether quota practices would be more effective to promote women in the profession because little progress has been made thus far.[74] Promotions he argued without affirmative action policies will be left to 'members who are likely to favour at least subconsciously those who look, sound and behave like themselves' [75] – in other words those who can mobilise their cultural capital.

These various aspects of capital may be useful when enquiring about how advocates acquire briefs in South Africa – is there a dominant from of capital that operates to exclude women? There are indications that the kinds of networks occasioned by the forms of capital that males can easily draw on are such that they function to impede women's success within the profession in South Africa. There are claims about the difficulty of penetrating, never mind changing, 'the old boy's network'.[76] Interestingly, conceptions about networks through which men operate in the profession raise some critical points about the purported independent nature of the profession, particularly the advocate's profession.

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[71] Schultz and Shaw op cit note 18 at xli.
[72] Schultz and Shaw op cit note 18 at xx.
[73] Nicolson op cit note 70 at 114.
[74] He makes this argument for Anglo-Welsh (not Scottish and Northern-Ireland) sectors of the legal profession. Ibid at 110 see also ff4.
[75] Ibid at 117.
[76] Charl du Plessis 'A new old boys' club?' *City Press* 20 July 2014 available at http://www.citypress.co.za/politics/new-old-boys-club/.

4. Independence and Networks

Independence in the legal profession is very highly regarded. Judicial independence is constitutionally mandated. The courts are 'independent and subject only to the Constitution' and are to apply the law 'impartially without fear, favour or prejudice.' [77] In addition organs of the state are obligated to 'protect the courts to ensure [their] independence, impartiality, dignity, accessibility and effectiveness.'[78] The Advocate's profession also values independence. The General Council of the Bar in South Africa states that, 'the independence of advocates is a source of professional pride to the Bar and a guarantee against conflicts of interest.' [79] Since judges are chosen from the profession then the independence of the Judiciary is inextricably linked to the independence of the profession. Again DJP Judge Mojapelo's comments are in point: 'An independent legal profession is essential for an independent judiciary - just as a transformed legal profession is a sine qua non for a transformed judiciary.'[80]

The literature provides a critical lens through which to scrutinise claims about the profession's independence. Laudably Kramarz and Thesmar posit a useful conception of independence. [81]They argue that it is crucial to distinguish between formal and real independence.[82] Advocates cannot elicit work from the general public and rely on receiving briefs from attorneys. By implication advocates are reliant on the relationships with attorneys which occasion these referrals. [83] Invariably their social and cultural capital activates to acquire those briefs. In this context, where women's social and cultural capital is valued differently, access is dependent on assuming particular modes and codes of behaving or acceding to those dominant (and sometime discriminatory) forms. Thus while indeed advocates may be formally independent do they have real

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[77] The Constitution,1996 section 165.
[78] The Constitution,1996.
[79] Available at http://www.sabar.co.za/advocates.html accessed online at 17 December 2014
[80] DJP Mojapelo Limpopo Speech op cit note 38.
[81] Kramarz, Francis and Thesmar, David 'Social networks in the boardroom' 2006 *IZA Discussion Paper No 1940* at 5 available *at http://www.crest.fr/ckfinder/userfiles/files/Pageperso/kramarz/board0707.pdf accessed on 26 May 2014* (hereafter Kramarz)*;* Lalanne, Marie and Seabright, Paul 'The old boy network: gender differences in the impact of social networks on remuneration in top executive jobs Available at http://idei.fr/doc/wp/2011/gend_diff_top_executives.pdf accessed on 26 May 2014 (hereafter Lalanne).
[82] Kramarz ibid at 5.
[83] In fact advocates cannot elicit work from the General public and rely on receiving briefs from attorneys. See Bonthuys op cit note 34 at 68.

independence? Can it really be said that the advocate's profession operates without favour or prejudice or without the conflict of interest that it espouses to. Examining the occurrence of networks in the advocate's profession in South Africa will no doubt help us approach an answer to this.

5. Structure, stratification and agency

Deborah Rhode confirmed that informal networks impact the work received by advocates and the ability or inability of women to access such networks (and mentors) amplifies their exclusion.[84] She also argues that work place structures impact women in the profession. Structure is constituted by schemas, that is rules both informal and formal, [85] about things such like maternity leave, works schedules (hours to work), and organisational hierarchy.

Focusing on hierarchy, Dixon and Seron asserts that the profession is highly stratified and segmented.[86] They acknowledge that stratification within the legal profession is often conceptualised on a vertical basis, on establishment of an internal hierarchy which in South African would be from candidate attorney (1st and 2nd year), to Associate (1st and 2nd year) to Partner to Senior Partner/CEO.[87] In the Advocates profession the hierarchy ranking would be pupil, junior (less than five years, between five and ten years, between 10 and 15 fifteen years, 15 years and more), senior counsel. This type of organisation certainly has implications – the aforementioned statistics revealing that women are not advancing up that hierarchy in the same way men are. However the authors also illustrate that there is a horizontal segmentation within the profession that is often overlooked. Differences between different sectors of practice specifically between private and public practice also have implications for women. The authors premise that there are 'differential levels of female participation'[88] among these sectors. Since this paper is focussed on the advocate's profession it will be important to see to what extent these difference are superimposed on the advocate's profession.

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[84] Deborah Rhode (March 2002) "Speech: Stanford Women The Difference "Difference" Makes" accessed online at *http://womenlaw.stanford.edu/pdf/rhodespeech.pdf* (hereafter Rhode Speech).
[85] Kathleen Hull and Robert Nelson "Gender Inequality in Law: Problems of Structure and Agency in Recent Studies of Gender in Anglo-American Legal Professions" (1998) Law & Social Inquiry 23(3) pp681-705 (hear after Hull and Nelson).
[86] Dixon and Seron op cit note 63.
[87] PLUS94 Survey op cite note 10.
[88] Op cit note 63 at 388.

Hull and Nelson on a review of the literature suggest that lacking from the research on hierarchy is the relationship between structure and agency. [89] Structure, although imposing, is not determinative and as such actors can still make meaningful choices. The formal and informal rules and principles that make up the work place structural properties of the Bar create bounds in which women can still exercise a measure of choice. The authors thus conclude that such an understanding of structure illuminates some questions: "what are the possibilities for women lawyers to effect meaningful change through their own action? That is, what [is the] nature and degree of women's agency within the legal profession? And third, what are the prospects for change within the current array of institutional structures that are dominated by men?"[90]These are important questions, which have not been explored in South Africa in any empirical way, and perhaps the accounts of women lawyers can reveal answers.

6. Women judges matter

Margaret Desmond's paper on the challenges of studying elites in the field was most informative.[91] Citing Mill she defines elites as 'those individuals "so well placed within the structure that by their decisions they modify the milieu of many other men".'[92]Legal professionals are counted as 'elites' precisely for the role that they play in judicial adjudication. As functionaries of the law the decisions they make have incredible influence on everyday life.[93]

It is now patently clear that the process and effect of adjudication and by implication justice cannot be abstracted from the adjudicator. Who a judge is matters. Their social, cultural, academic, economic and philosophical life experience undoubtedly impacts what they consider the law to be and how it should be applied. Since judges are selected from advocates then who an advocate is matters. Their making as an adjudicator does not begin only when they reach

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[89] Hull and Nelson op cit note 85.
[90] Ibid at 694-695.
[91] M Desmond "Methodological Challenges Posed in Studying an Elite in the Field" *Area* (2004) 36(3) pp262-269 at 267 (Hereafter Desmond).
[92] Mill J S 'The Structure of power in American Society' (1953) *British Journal of Sociology* at 112 as cited by Desmond ibid at 264.
[93] See Authors article 'Why Judges Matter:Beyond the Dewani Case' Groundup 8 October 2014 available at http://groundup.org.za/article/why-judges-matter-beyond-dewani-case_2331 accessed on 19 April 2015.

the bench. It is clear that their elite status as advocates and potential adjudicators makes them a research topic worth studying with the view to improve.

Feminist legal scholars have also argued that the study of the legal profession is necessary. [94] Feminist legal theory has two main central tenants. The first is that women have, through the application of law, been subjugated and oppressed as already discussed above. The second is that women most certainly do have something to contribute to law and justice. Consequently one of the major projects of the FL movement has been to work towards the inclusion of women in the profession.[95]

That said there are different schools of FL because the schools differ on the reasons for the second of those central tenants. Some FL scholars argue that women have something to contribute because they are equal to men in ability. Other schools of FL argue that it is women's difference (to men) that would benefit the legal profession.[96] In a South African context in which the Constitution simultaneously prohibits discrimination based on difference and promotes equal treatment in substance and form what will be the primary premise of the importance of the inclusion of women. There will likely be a complex tension between equality and difference and it clearly requires a consideration of work on difference, gender and stereotypes.

7. Gender, Difference and Stereotypes

Rhode argues that gendered stereotypes often inform ideas about the kinds of work that women in the legal profession are capable for and are suited to. In summary Rhode's concern is not difference per se rather how it is essentialised. Stereotypes about women being more suited to motherhood than work; stereotypes about women being less competent; stereotypes about women's ability to lead when taken to heart impede the promotion of women though the profession. Women find themselves in a double bind – conduct that does not conform to the stereotypes ostracises them as for example 'too aggressive' while conduct that does conform excludes them as for example 'not

[94] Martha Albertson Fineman 'Feminist Legal Theory' (2005) *Journal of Gender, Social Policy & The Law* 13 (hereafter Fineman).
[95] Ibid.
[96] Ibid at 15-16.

aggressive enough'.[97] In the South African context it will be crucial to examine whether similar stereotypes operate to the position women in the same double bind.

Menkel-Meadow's observation on difference theory offers a useful way of interrogating the reasons we think women at the bar should be a category worth researching. [98] Difference theory essentially posits treating and valuing men and women based on their sociobiological differences. She challenges researchers to ask what it is about gender over and above other identity markers that requires special attention as a research category. Angela Harris work can perhaps be taken as a critical response to Menkel-Meadow's challenge. Harris argues that the danger in difference theory based feminist legal arguments is what she terms 'gender essentialism – the notion that a unitary "essential" women's experience can be isolated and described independently of race, class, sexual orientation and other realities of experience'.[99] Her main contention is that gender in fact should not be given special attention over and above other identity marker. By essentialising gender in this way we risk preferencing a particular type of experience; we silence women whose experience does not conform to that essential preferred experience because it has been tempered by other factors such as class or race.[100] Is this risk apparent in the South African context? Is there an intersectional experience that hinders women? These questions will only be answered through experiential empirically based research.

8. Conclusion

The literature illustrates that a range of issues are considered germane when considering women in the legal profession. In the South Africa of chief importance is the constitutional backdrop against which all these issues must be framed. In other words, in the event that the issues present barriers to advancement they are therefore in the same breadth an impediment to the constitutional goals of equal representation and equal participation. The following chapter outlines the research design used to investigate the resonance of these issues - social and cultural capital matter in South

[97] Rhode Speech op cit note 84.
[98] Carrie Menkel-Meadow "Exploring a Research Agenda of the Feminization of the legal Profession: Theories of Gender and Social Change" (1989) 14(2) *Law & Social Inquiry* 289 (Hereafter Menkel-Meadow).
[99] See also Angela P Harris 'Race and Essentialism in Feminist Legal Theory' (Feb., 1990) *Stanford Law Review*, Vol. 42, No. 3 pp. 581-616 (hereafter Harris) op cit note 39 at 585.
[100] Harris op cit note 99 at 585-86.

Africa, it will uncover the role of networks, expose the structure of hierarchy and the operations of biases and stereotypes - in an African context.

III. METHODOLOGY: THE RESEARCH PROCESS

1. Research aims and objectives

Several lines of inquiry were possible to investigate the Bar [101] however because women are the subject of transformation debates, the study aimed to consider women's perspectives and opinions on the making of this preferred pool as it related to them.

The question that this research thus intended to answer was thus two-fold:

Firstly, what are some of the aspects of the organisation of the profession, both social and structural, that impact women in the advocates' profession and secondly, how do they impact women?

In more depth, some of the questions that were explored were:

- How is practice in the advocates' profession different for men compared to women?
- How do women see their own practices and their own positions in comparison to that of their male counterparts?
- Are there institutional arrangements (rules, regulations, practices or policies) that adversely (or positively) impact women in particular?
- Are there social arrangements (networks, stereotypes, behaviours, conceptions) that adversely (or positively) impact women in particular?
- Do these institutional and social arrangements (and their effects) intersect?
- What are women's aspirations? Do they have judicial aspirations?
- What are women's opinions on the state of the representation of the judiciary?
- What are their views about the current state of the advocates' profession and its future?

The issues that gender representation in the judiciary can potentially raise are numerous. This project is not intended to be a comprehensive and exhaustive examination or account of those issues. Rather it aims to begin to determine and catalogue what some of the issues in South African advocate legal spheres are and to see whether and how they resonate with the broader themes in literature on women in

[101] For example, it was possible to set up meetings with Bar Council Committee members.

the profession and other jurisdictions. In so doing this research intends to fill the gap on empirical research on women in the South African Legal profession. [102]

This research has the potential to insightfully and skilfully inform leaders of the judiciary, legal professionals and in deed the public at large about the potential interventions that they can encourage in the context of judicial transformation. Certainly the research will provide key insights and where appropriate some recommendations or actions points will be suggested.

2. Research Design

This study used a mixed methods design - combining qualitative open-ended semi-structured interviews and a quantitative online survey. This method was adopted because it offered some useful advantages. [103] First it allowed the researcher to triangulate the findings that is to identify a convergence (or for that matter divergence) of data collected in order to check the credibility of research. This was especially useful in the context of qualitative research, where reliability and validity are not easy to check. Second it allowed for complementarity where different methods are combined to gain a fuller understanding of the research problem. This helped to elaborate, enhance or clarify the issues. [104]

Although the design used both qualitative and quantitative methods the emphasis in data analysis rests with the qualitative data because the kind of information sought is generally best stimulated by qualitative methods. Hesse-Biber writes that 'qualitative methodologies are a particularly sensitive means of capturing the lived experiences of groups and individuals. '[105] Therefore since the aim of the research was to consider women's perspectives and opinions interviews were predominantly relied upon to answer the research question.

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[102] See also the CALS report op cit note 29 for another example of empirical research of a similar kind in South Africa.

[103] S Hesse-Biber (2010) Chapter 1 "Introduction to Mixed Methods Research in Mixed Methods Research". in *Mixed Methods Research: Merging Theory with Practice*. New York: The Guilford Press, pp. 1-27 (Hereafter Hesse-Biber 1) at pp 3-5: there are other advantages. For the purposes of my research only the two most relevant ones are listed.

[104] Burke Johnson,R and Onwuegbuzie, A "Mixed Methods Research: A research Paradigm Whose Time Has Come" (2004) 33(7) *Educational Researcher*, pp.14-26 at 22 (Hereafter Burke and Onwuegbuzie)

[105] Hesse-Biber op cit note 103 at 17

3. Semi-Structured Interviews

3.1. Sampling the Participants

'Qualitative samples are usually non-random and purposive or judgemental.' [106] The sample approach for this method was indeed non-random, purposive and judgemental. As already mentioned this project sought to illuminate the progress towards judicial transformation. Judicial selections typically occur from senior advocates – experience being the crucial factor.[107] Thus I targeted the following participants for both the interviews and the survey: senior female advocates of 10 years of experience or more. Initial scoping research indicated that this group of females would be particularly valuable since they would represent the next crop of potentially viable judicial candidates. Furthermore they have enough 'experience' to speak to the questions posed above. Their opinions are therefore valuable in understanding the challenges that face women in the legal profession on their way to the judiciary. The sample was also one of convenience because I specifically chose to interview female advocates in Cape Town because of their accessibility and proximity [108]

Since the research aims to consider the experience of women who are 'eligible' or approaching 'eligibility' for judicial selection there is a sense in which this research is phenomenological. It is a project that is uncovering the phenomenon of being a woman in a male dominated legal profession who potentially could be a judge in the future. A recommended sample size for qualitative research of a phenomenological kind is 10 interviews because it is expected that at around this number of interviews saturation point will occur – no new meaningful data will emerge for knowledge

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[106] S Hesse-Biber (2010) "Formulating Questions, Conducting a Literature Review, Sampling Design, and the Centrality of Ethics in Mixed Methods Research" *in Mixed Methods Research: Merging Theory with Practice*. New York: The Guilford Press, pp. 29-62 at 50 (Hereafter Hesse-Biber Forumlating Questions)

[107] Experience here taken to be a function of time spent in the profession. See JSC notice, which publishes the supplementary criteria, accessed at *http://www.capelawsoc.law.za/docs/Judicial%20Appointments%20-%20Criteria.pdf*. One of the criteria listed by the commission is 'Is the proposed appointee an experienced person?' The commission issued sub-aspects to that criteria namely technical experience and 'experience in regard to value and needs of the community'. See also Wesson, M. and du Plessis, M. (2008)' The transformation of the judiciary' *Paper commissioned for the Fifteen Year Review* at p9 - the authors cite an interview in the *De Rebus* with Chaskalson CJ: 'We have already drawn deeply into the pool of existing candidates from these sections of the profession. We need to increase the size of the pool. It takes time for people to have the necessary experience and be in a position where they can accept a place on the bench.'

[108] I was at the time of conducting the research based in Cape Town

building.[109] The sample size for the interviews was 12 female advocates. The interviews took place between January 2015 and March 2015.

The process of sampling initially began by way of referrals. I obtained the names of potential participants from individuals in the profession including advocates, attorneys and academics all of whom I had made initial contact with through the work for the DGRU. That process yielded 19 names of female advocates. Fifteen of the advocates met the criteria for inclusion into the sample, based on information on number of years of experience on the Cape Bar's online.

Once I had that list of fifteen potential referred advocates I made first contact using the website email portal system to contact all of them at the end of the year in 2014. The email communicated is attached as appendix A. The email communication was largely unsuccessful yielding only one response. A follow up email was sent some weeks later and returned three responses. I then followed up by telephoning other advocates on my list to set up interviews. Only one of the advocates contacted declined to participate due to personal reasons, thus I had 14 prospective interviewees out of the 15 referral contacts.

However after obtaining the initial list of 15 advocates and after having done some interviews it was clear that the sample was racially skewed – white women made up the majority of the named advocates on my sample list. Thus in a second wave of recruitment I used the Cape Bar directory and the parameters aforementioned to identify search for non-white women who met the criteria. During interviews the advocates themselves readily offered names for me to interview. Most of these referrals were names of women already on my initial list. Thus my interview sample was drawn partly from a list of referred advocates and partly from advocates found on the Website portal and consisted of seven white women and five non-white women. Ultimately it was only possible to arrange interviews with 12 advocates.

3.2. The Research Instrument

Interviews were conducted in person because they offered the most comprehensive way to explore the lived experiences of advocates. All interviews, except one, took place at the office of each respective advocate. One interview took place at a restaurant. Before

[109] Hesse-Biber Formulating Questions op cit note 106 at 53

beginning the interview I explained the background, context and aim of the research. The interviews were recorded, with the permission of the interviewees. Only one declined to have her interview recorded. Confidentiality was guaranteed to participants and as such any identifying information has been removed from the findings. Anonymous identifiers are therefore used in the write up of this research project.

Patton writes that by adopting a semi-structured interview strategy, the interviewer has

> 'flexibility in probing and in determining when it is appropriate to explore certain subjects in greater depth or even to pose questions about new areas of inquiry that were not originally anticipated in the interview instrument developed'.[110]

I began the recorded portion of each interview by asking the advocate to give me a general overview of their career, thereafter each interview varied; the response to this question directed which follow up question was asked. Generally, advocates, in their own terms, canvassed the issues that were noted in my interview guide. So although semi-structured interviews were used to help ensure that the interview discussion covered similar issues and themes across participants in some cases where time was limited participants only addressed some of the issues.

The interview schedule covered the following topics: the environment at the bar; relationship with attorneys, clients and other advocates; mentoring; organisation of the profession; acquiring and managing work; career aspirations; challenges. The interviews were transcribed and thematically analysed for similarities used to analytically build points for discussion.

3.3. Limitations of Semi-Structured Interviews

The wealth of data yielded presented a potential difficulty in analysis. The thematic analytical strategy and the interview recordings were crucial to mitigate the risk of being overwhelmed the thematic analysis. These items assisted in processing the potential volumes. Recordings afforded the opportunity to review and reconsider aspects of what the participants said with a measure of accuracy. And an initial review of the qualitative survey data provided guidance on where to focus.

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[110] MQ Patton "Qualitative Interviewing" *Qualitative research and evaluation methods* (2001) 3ed pp 339-418 at 347 (hereafter Patton)

4. Online Survey

4.1. Sampling the Participants

To make the quantitative survey and qualitative interview more comparable respondents with 10 years of experience were targeted. However to encourage response rates and for the purpose of stimulating knowledge production the manner in which the survey was disseminated did not exclude participants with less than 10 years of experience nor did it discourage their participation. The intention was for the sample to be drawn from a clustered group of advocates in Cape Town and Johannesburg.

Although the Cape Bar had an email portal on the website the portal did not allow the entry of the web-link for the survey. Attempts to get emailing lists from the Bar secretary were refused. In contrast the Johannesburg Bar had readily available email addresses. Thus because of this ease of access the sample of survey participants was drawn from the Johannesburg Bar and hence this was a convenience sample. To get the email list for the Johannesburg Bar I obtained a seniority list from their website.[111] I then went through the list and highlighted all the female advocates (signified by Ms) that had been admitted to the bar before and in 2004. The list that was generated from this process was then used as the sample group for the survey. The list contained 104 names of female advocates. I retrieved the contact information for each of the 104 advocates from the Johannesburg Bar Website after the list had been formulated. In summary the survey sample was drawn from the Johannesburg Bar.

4.2. Administering the Survey

The survey was designed and created through an online platform. The platform allows users to design and store surveys on an online cloud drive. One of the functions of the platforms enables users to disseminate the survey directly from the online storage cloud via email (as part of the email) or via a web link copied into an email. After designing and piloting the survey it was sent out to the email addresses from the compiled email list in November 2014. A web link to the survey was copied into the email which is attached in as appendix B.

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[111] Available at *http://johannesburgbar.co.za/members/* At the time of obtaining the list there was a link that enabled the production of pdf document for all members according to Seniority. The link has since changed, nonetheless it is possible to use the site to find advocates

The initial response was poor – no advocates took the survey. The survey was resent to advocates. Some of the emails were undelivered and thus the survey was sent only to 92 respondents. The response rate was much better. Reminder emails were sent to participants after a week. After another week, to increase response rates, a web link to the survey was sent to participants from the Johannesburg Bar Secretary after her assistance was requested to encourage participation. Thus it is not clear how many persons the survey was sent to.

50 individuals responded to the survey. 16 of the 50 respondents used the email link sent to them. This means that only 16 of those respondents came from the sample population list that was compiled. The rest of the respondents accessed the survey via the web link sent to them by the bar secretary of the JHB. The result is that not all of the respondents fit the main sample criteria of the interview, namely ten years of experience or more. Nonetheless the input of all respondents was considered valuable for knowledge production as aforementioned.

4.3. The Research Instrument: Surveying Participants

Surveys are particularly 'useful in describing the characteristics of a large population.' [112] Moreover surveys have a particular benefit for the following reasons: survey questions are generally standardised thus all respondents can be asked the same questions – they allow several questions to be asked of a group and can therefore generate several descriptive ascriptions. This is useful for comparative purposes. In addition the surveys offered the chance to collect information about the wider state of the professional field which would have been difficult to do via interviews. It certainly was the case in this research – the online survey made advocates in a different locality accessible.

For this reason the topics covered in the survey were similar to those canvassed in the interview. They keys issues included, demographic information, legal education and training, areas of practice, work environment, challenges and discrimination, mentoring, career Ambitions. A copy of the survey is attached as appendix C.

4.4. Limitations of Survey Method

[112] Babbie, E (2010) Chapter 9 Survey Research in *The Practice of Social Research.* Belmont, USA: Wadsworth, Cengage Learning, pp253-293 at p 287 (hereafter Babbie)

One of the concerns of the survey method relate to response rates.[113] Studies show that response rates for online based surveys are not only decreasing but are generally lower that paper based surveys. One study examining response rates of online surveys showed a response rate of 33 per cent while another showed a 32.6per cent response rate. [114]Advocates are generally considered to be incredibly busy thus the expectations regarding the response rates were conservative when the research began. It is possible that pitching the survey in a manner that encouraged participation (for example, emphasising that *their* perspectives can offer insights that are invaluable and or that the survey will not take long) also contributed to the responses. Follow up reminder emails and the offer to share selected results from the survey possibly also encouraged the 50 responses.

5. General Limitations

The extent to which the conclusions from this research can be generalised is limited because data was only elicited from two Bar Councils. However because the developments of the legal profession across provinces in South Africa is similar and related[115] it would not be an overstatement to say at the very least these findings present a microcosm of the experiences of women in South Africa. This is supported by similar findings in the report of the Centre for Applied Legal Studies in collaboration with the Foundation for Human Rights on Transformation of the legal profession. [116] Recall further that systematic and empirical research from the global South is sorely lacking from the plethora of literature on women in the profession. Mindful of this lacuna one of the aims of the research was to contribute an African perspective to the writings. These results indeed offer constructive insights into the experience of African women in the profession. Significant to note is the extent to which the experiences of women in South Africa, as expected, mirror the experience of women in the United Kingdom, United States and Australia.

6. A note on Ethics

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[113] Babbie op cit note 112 at 273

114 D.D. Nulty 'The adequacy of response rates to online and paper surveys: what can be done?' *Assessment & Evaluation in Higher Education* Volume 33, Issue 3, 2008 pp302-303

[115] L Wildernboer 'The Origins of the Division of the Legal Profession in South Africa: a brief overview' (2010) 16 *Fundamina* 199 (hereafter Wildernboer)

[116] CALS report op cit note 29

Ethics clearance for this research project was given and is attached as Appendix D, Reference L21-2014.

One ethical issue to note, first intimated at in the literature in Chapter II, concerns the elite status of legal professionals. When doing qualitative studies on elite groups, studying up as it were, a tension arises between anonymity and the thick descriptions[117] that are elicited by qualitative methods. Thick description is a process of doing research in a manner that prompts either the participants to explain their experience in depth or the researcher to record and describe the phenomenon with sufficient detail. The attention to detail has the potential to compromise the anonymity of participants because it can often be very personal and therefore easy to identify when the sample is small. Conversely the veracity of and validity of participants comments is often tempered in order to ensure that information is not presented in a way that can identify participants. This risk was present in this research given the small sample population.

Given that my sample criteria, for the interviews, was female advocates with 10 years of experience or more, in Cape Town, the actual sample population was small, 30 female advocates. From those the number sampled was 12 female advocates. In this context it should be noted that providing any demographic information beyond race will potentially compromise the anonymity and confidentiality of the participants. Indeed, although they had different sentiments about it, two of the research participants were alive to that aspect of the research:

> Well can I say and that's why I say it's going to be very difficult with anonymity which is why I'm not even concerned about it... (Participant B)

> But I don't want you to refer to that because it's so obviously me, it's so personal to me everybody would know who it is (Participant D)

Even then the racial demographics of the bar in so far as women are concerned are so poor that the pool of respondents could be easily identified if other identifying information was revealed. That said, the data reveals that the, the intersectional experience of race and gender will be a salient point in discussion and that potential significance justifies taking note of racial demographics.

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[117] Julia Bickford and Jeff Nisker 'Tensions Between Anonymity and Thick Description When "Studying Up" in Genetics Research' (2015) 25(2)*Qualitative Health Research 276 (*hereafter Bickford and Nisker*)*

IV. RESULTS: EMERGING THEMES

1. The Participants

Legal Education and Degrees

The career path of each of the interview participants to the Bar was varied and showed no significant patterns other than all except one women studied in the Western Cape. The majority of the 11 studied at the University of Cape Town while the rest studied at University of the Western Cape. Most of the participants did a combined stream programme studying three years for the Bachelor of Arts (BA LLB) or four years for the Bachelor of Commerce (Bcom LLB) before completing the two year Bachelor of Law component.

Thereafter their paths diverged – some went on to complete their articles with law firms while others joined non-governmental organisations or government departments. Most of the participants spent between 2 and 5 years at these various structures before coming to the Bar. On arrival at the bar two of the participants did pupillage for a year while the others joined at a time when pupillage training was still six months.

The majority of survey respondents studied in Gauteng – 16 at University of Witwatersrand, 7 at University of Johannesburg and 5 at the University of Pretoria. 7 studied at the University of South Africa while 15 studied at institutions in other provinces. In respect of their degrees, 18 survey respondents completed the combined stream programme (BA LLB/B SocSci LLB/ B com LLB/ B Bus Sci LLB), while 17 did four year undergraduate LLB. A significant number, 14 went on to do Masters.

Race

Of the 12 interviewees seven were white and five were non-white.

The majority of survey respondents were white women; 60 per cent (n =27) were white; 12 per cent were black; 9 per cent were Indian and 7 per cent were coloured. 5 per cent preferred not to answer while 7 per cent were of other ethnic or racial identities. 43 respondents answered the question. See Figure 1 below. These results implore us to consider that the majority of woman at the Bar may be white and to be mindful of the

work of writers such as Harris[118] who argues that essentialising gender and then emphasising race over it mutes the experience of black women. In this regard the interview responses of non-white participants will be important.

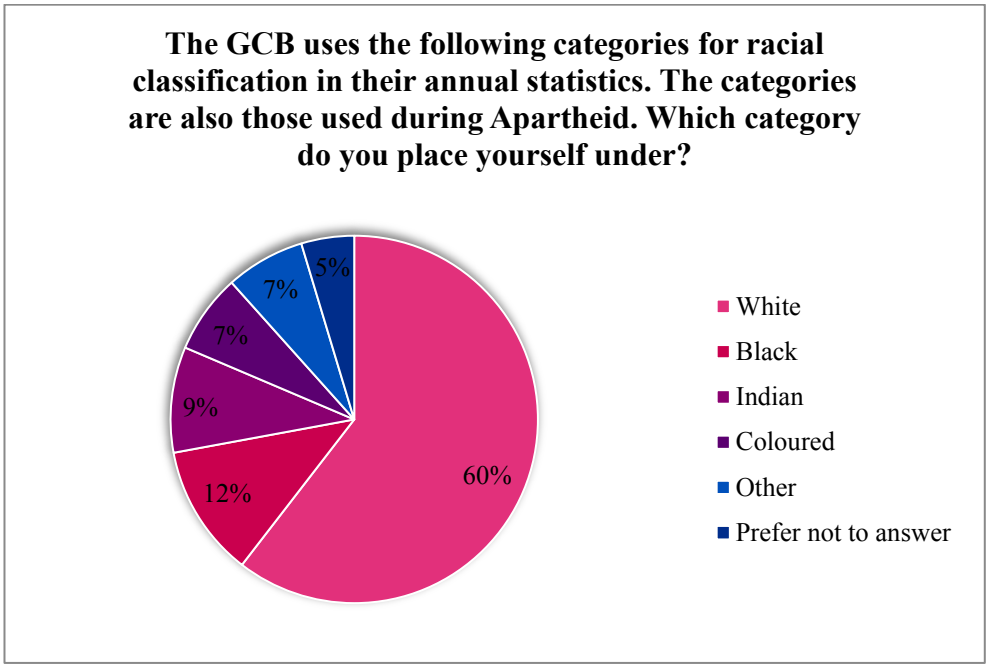

Figure 1 Racial profile of Survey Respondents

Years in Practice

The average number of years practiced by the interview participants is 15.83 years. In comparison of the survey respondents 39 per cent of the advocates (n = 17) have 10 years of experience or more. The remaining 26 have 10 years of experience or less. Figure 2 below represents the spread of advocates that responded to the survey according to their years in practice. 43 respondents answered this question. Thus this survey provides the opportunity to consider whether some of the reflections of the interview participants resonate more broadly with in the earlier years of their careers or later.

[118] Harris op cit note 99.

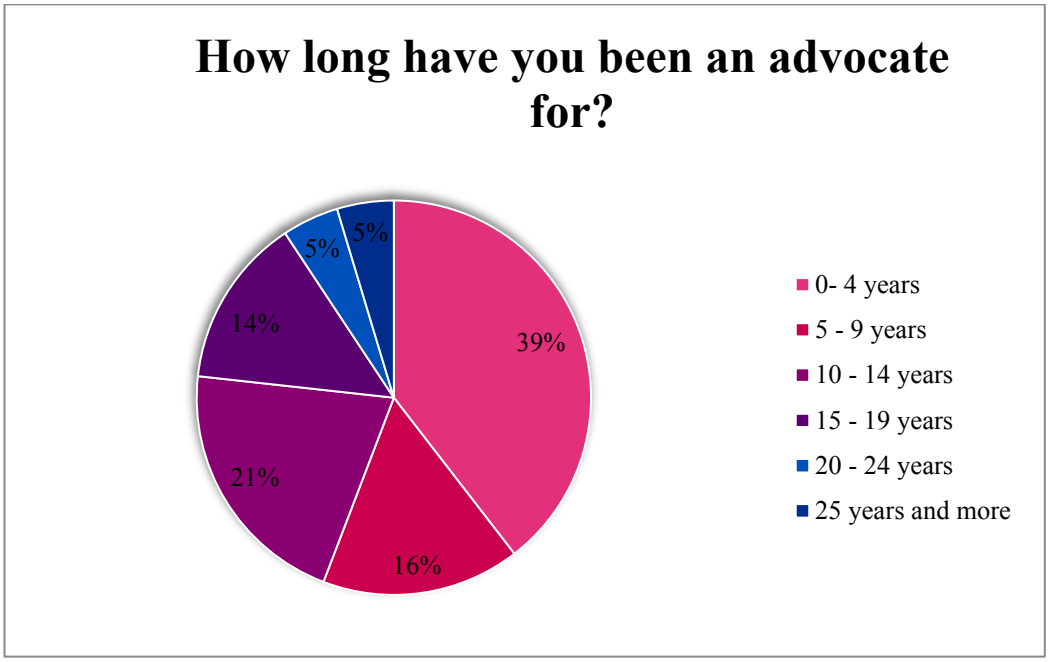

Figure 2 Years of Practice for Survey Respondents

Areas of practice

The most frequently cited areas of current practice for interview participants were public law (n = 6), family law (n = 5) and commercial law (n = 5). Most participants gave at least two areas of practice (see Figure 3).

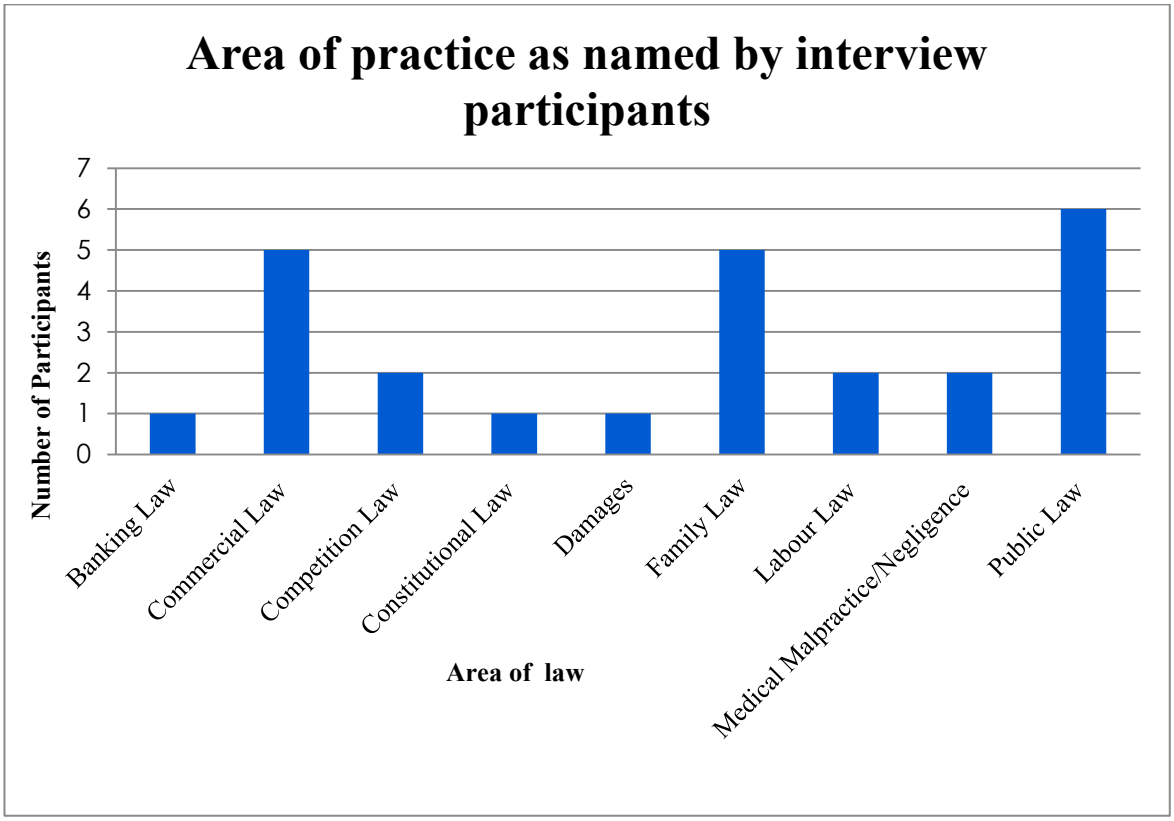

Figure 3 Area of Practice for Interview Participants

In contrast survey respondents (n = 42) selected up to three areas of regular practice. Still in a similar trend public law related areas such as administrative law and labour law and commercial law related subjects (including contract) had high frequencies. Figure 4 below depicts the results. The literature and accounts of women suggest that women are pigeon holed in family law.[119] However these survey statistics suggest that women in addition to being significantly represented in family law women have made some advancement into other areas. In point, the same percentage of respondents, 31 per cent (n = 13), regularly practice family law as they do in commercial law. More over 47.6 per cent (n = 20) regularly practice in contract law while 38.1 per cent (n = 16) regularly practice in delict. In the area of public law similar figures are seen- 31 per cent (n = 13) regularly practice in administrative law, while 26.2 (n = 11) per cent regularly practice in labour law.

[119] John H Wade 'The Professional Status of Family Law Practice in Australia' (1985) 183 *UNSW Law Journal* 8 (Hereafter Wade).

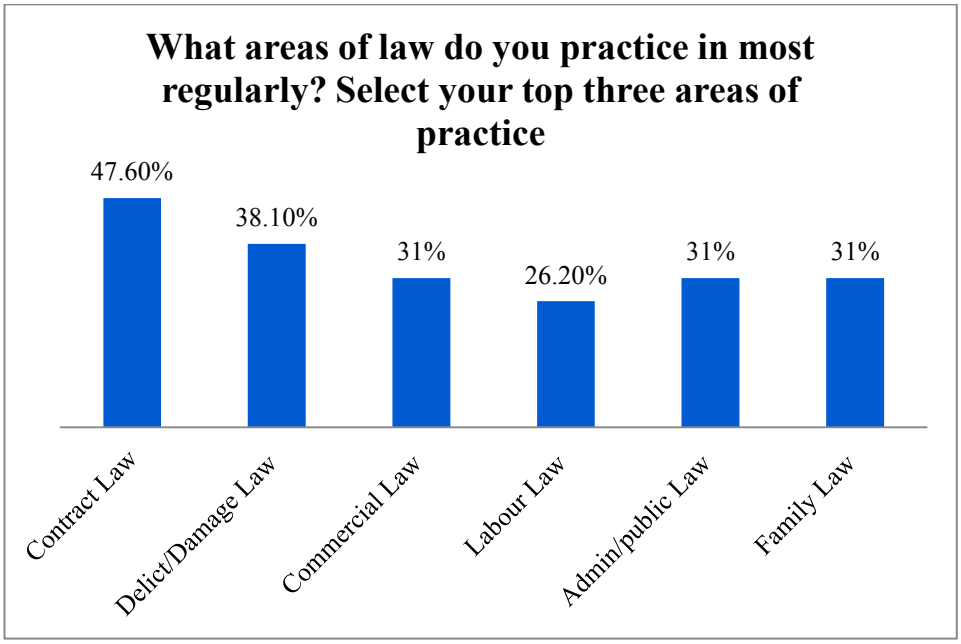

Figure 4 Most regular areas of practice for Survey Respondents

Children and Marital Status

Ten of the twelve interviewees have children. Of these women none of them have more than two children. Three of the women with children informed me that they were single parents and another three, also with children, mentioned their husbands during the course of their interview. Of the two without children, one of them mentioned in the course of the interview that they were single. Marital status data for the rest did not emerge in interview discussions.

Of the 43individuals who answered the question, 'How many children do you have?' 22 respondents do not have children, 6 respondents said that they have 1 child, 9 respondents indicated that they have 2 children and 5 respondents indicated that they have 3 children. About half of the respondents 49 per cent (n= 21) are married, 30 per cent (n=13) are single, 9 per cent (n=4) are divorced, 9 per cent (n = 4) are in life partnerships or are living with their partners.

International research suggests that 'the balancing of work and family responsibilities is a central problem in peoples' careers'[120] particularly full time working females. In this South African context in which a significant number of women have

[120] Kenneth G Dau-Schmidt et al 'Men and Women of the Bar: The Impact of Gender on Legal Careers' (2009-2010) 16 Mich. J. Gender & L. 49 at 66-67.

family commitments in it remains to be seen whether the accounts elicited in this research reflect this difficulty of balancing work and family.

2. The Themes

2.1. Work environment: competitive yet collegial and notional flexibility

The research reviewed indicated that the manner in which the profession is organised has implications for the experience of women in practice.[121] One organisational aspect of the bar, that participants highlighted, often in the context of the controversy of the maternity policy, relates to the bar as a voluntary organisation. Participant G explained that,

> '...the bar is a voluntary association we don't share our fees with each other. We look like we are because we are sharing premises. We share certain expenses but we all have independent practices of each other and we each develop our own reputation…But we don't support each other, if you are going through a bad month nobody is going to pay your bills for you unless they you mates.'

For participants this factor accounted for one of the reasons why the Bar is such a challenging place to work. There are no support mechanisms available to advocates that are struggling.[122] Individuals who come to the bar are ultimately responsible to cover their own costs and expenses and are personally answerable for the quality of the work that they do.

It is in this context, the bar becomes 'a very hard environment' (Participant J) to work in. Members then have to 'keep ahead of the curve' (Participant F) because they are only ever 'as good as [their] last brief' (Participant F). In the circumstance only the 'most assertive...the most hardworking' (Participant J) will succeed.

However at the same time, the same conglomeration of professionals lauded another quality of the voluntary association - the collegiality that they share with their colleagues. Participants felt that the bar was a place in which asking for assistance and sharing knowledge was a valued and respected practice. It was reported that 'you can work into anyone's chamber and ask questions and that is the open door policy that essentially everyone has' (Participant L).

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[121] Rhode Speech op cit note 84.

[122] In recent years there have been transformation initiatives introduced at the bar. Only the maternity policy is discussed to an extent because it emerged as significant.

Therefore the Bar creates a space that is competitive yet collegial giving rise to a tension which members must acclimatise to. The tension is sustained by the formal rule of voluntary association and the informal principle of collegiality.

In addition the fact that the bar is a voluntary organisation engenders a quality that some participants valued – a measure of flexibility that they would otherwise not have had in traditional employee-employer relationships where employees are subject to the demands of their employer. Participant N said 'you don't have to be in your office all the time. You don't have a boss. You can make your own decisions.' Instead at the Bar they are their 'own boss' and they can manage their own consultations to give them 'a hell of a lot of flexibility' (Participant A).

However, again a tension presents itself. This tension, reflected in some of these comments, was the recognition that their flexibility was very much shaped by their work commitments, by a job that is 'relentless' and requires you to be readily available. Hence one of the advocates called it 'notional flexibility'. Thus the freedom of choice that members have at the bar is in fact curtailed by the demands of work. Thus what members are attracted to about the profession is really the possibility of flexibility that it offer. Participant F described that attraction well. She said 'we all love it....cause we feel like we our own bosses but actually when you're piled with work there isn't really that much flexibility.'

2.2.The bar as a referral profession: 'Being known'

The advocate's profession is a referral profession.[123] Accounts form women indicate that the spread of work to women is limited because referral patterns, which are in essence briefing patterns are skewed in favour of men.[124] As such it is important to unpack this issue. Responses from participants indicate that the referral principle is weighted – to receive referrals, that is briefs, is to be known and to be known is to receive referrals. In point Participant G remarked that doing her articles before coming to the bar helped her because she had established connections with attorneys that could refer work to her. She said, 'you need to be known amongst attorneys for attorneys to have the confidence to pick you rather than somebody else.' Participant J reiterating this

[123] General Council of Bar rule 5.12 available at *http://www.sabar.co.za/GCB%20Constitution%20(updated%20July%202012).pdf*
[124] Op cite note 23.

said, without knowing somebody from the attorney's profession, 'it's difficult for you to start a practice a credible practice.' These findings are reminiscent of the literature which argues that the stratification of the profession is relevant. In this case the segmented nature of the bar is only overcome through the crossover of 'being known'. Thus although the profession is segmented there are important crossovers mechanisms. The importance of 'being known' has another inflexion namely that it is intricately linked to the operation of networks.

2.3.Networking and Relationships

The fact of 'knowing people' represents the ability to access a network of individuals. Literature indicates that relationships and the ability to access a network is a crucial factor in the success of a person's practice. [125] *Participant F* reported that without that initial ability to network, that is without 'knowing people' from the start it is 'much harder [and] takes longer to establish yourself' because there is no one to brief you. Being known and knowing people – and by inference having access to networks – is a therefore a function of several related process that were reported by participants.

First networks are a function of having a comfortable rapport with colleagues. Participants reported that who an attorney briefs, depends quite strongly on the good working relationship that they have with an advocate. Equally, senior advocates only bring juniors into matters when they have a comfortable and understanding working relationship with that junior. Participant A said '... I think that's attorneys choose people who they get on with more than this brilliant [person]...' Participant N reported that briefing networks 'have a lot do with comfort levels'

Secondly networks are a function of endorsements. Participants stated that such relationships are established only after an individual is endorsed as a 'good person to work with'. The ability to have access to a network of people (not necessarily from a legal background) which can endorse or recommend you therefore matters. Participant E explained that 'people would want other colleagues to endorse that colleague.' In particular she reported that she often gets asked to endorse and 'rate' her female colleagues.

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[125] Deborah Rhode 'The Subtle Side of Sexism'(2007) 16(3) *Columbia Journal of Gender and Law* 613 at 625-626 (hereafter Rhode Sexism).

Thirdly networks are constituted by historical ties between male members. This reflects research in other jurisdictions which argue that women are excluded for their inability to access the spaces that enable the creation of boys' networks.[126] Participants reported a sense of exclusion, as women, from networks mainly because there was a history of prior connections that often underpinned the endorsing networks – 'an old boys club' formed from relationships that began at boys' schools or during university or on the golf course. Being 'from Cape Town' was another aspect that could form the basis of exclusion or inclusion in some of the networks that facilitated access to briefs. Participant D described her experience of exclusion in the following way,

> I don't want any leg ups. That's always the way I spent most of my life. Until I started thinking about things and thinking but you know the playing fields aren't level. Women generally are excluded from the golf course and the whatever else it is that boys do and don't lets even start on the old boys tie – the big private schools –and the relationships that get formed there that continue afterwards… if you come from out of town like I did you don't have a prayer you know.

Participant C in support said,

> it's not a cliché you've got the old boys club that is how relationships are formed [at Bishops, in Constantia on the golf course, where the attorneys and the advocates children go to the same school] and those relationships are recognised and sustained at the bar.

Even in the context of affirmative action policies, good comfortable relationships are still crucial. Participant B confirmed this view. She said that although affirmative action had been of 'enormous benefit' to black women it was not a benefit to all because of human nature where, 'certain state attorneys develop a relationship with black women. They brief them regularly …and certain black women just never get work from the state attorney...'' Participant H echoed this sentiment and reported that despite the state attorney's affirmative action policy the briefs from the state were not evenly spread.

What emerges is the sense that the networks in which a large portion of the work lies are tightly knit and connected to the point where 'there will be little cabals that form

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[126] Carla D Pratt ‚Sisters In Law: Black Women Lawyers' Struggle for Advancement' (2012) *Mich. St. L. Rev.* 1777 at 1790 (hereafter Pratt).

and you know that work does not leave that little cabal. It's like a little black hole the briefs go in there and they never come out again' (Participant G).

Important to reiterate is that underpinning the function of these networks which impact briefing patterns is gender bias and prejudice. Participant C did not mix her words when she said that the 'heart' of the problem with briefs is 'racism and sexism, no other explanation for it'. Participant N's comments reflect this. In emphasising comfort levels as important she said 'for many there will be a prejudice underlying [briefing]'. Some participants clearly recognised that the operation of 'racism and sexism' had a greater exclusionary effect on non-white individuals.

> …I think these kind of challenges that I felt would probably be exacerbated for people from disadvantaged back grounds, for people of colour, for people coming from other countries. Its more subtle with women but it is definitely present that you do feel to a lesser or greater degree the sense of being an outsider trying to break in.

This adds credence to the research aforementioned about the intersectional experience of women of colour who have unique and particular experience in professional spheres.[127]

Survey results are instructive in this instance. They indicate the perception of women that gender bias and racial prejudice do in deed operate against them to deny them work opportunities. Respondents were asked to select grounds (as many as applied) upon which they felt that they had been denied briefs. 83.3 per cent (n= 25) who answered the question selected gender while 63.3 per cent (n=19) selected race. 31 people answered this question.

However at the same time and often in the same breathe a few women stated that in some cases their gender had assisted them to get work. Participant G said 'in fact in some instances my gender has possibly assisted me'. Participant A said, I haven't felt that my gender [has] been a problem for me. If anything its put me in my area by default and I happen to enjoy it.'

The survey results are again useful. This time 25 respondents answered the question 'do you feel that you have been offered briefs based on any of the grounds

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[127] Kimberle Crenshaw 'Mapping the Margins: Intersectionality, Indentity Politics, and Violence against women of Colour' (1991) 43 *Stanford Law Review* 1241 at 1242 (Hereafter Crenshaw Mapping).

listed?' 9 31.8 per cent (n= 7) indicated that they felt they had been offered briefs based on 'race'. However 86.4 per cent (n=19) felt that their 'gender 'had been a reason they had been offered briefs.

Recall the literature on social and cultural capital.[128] This research indicated that exclusion was perpetuated by the inability to assume the mannerisms and ways of understanding that made up the dominant status quo. Some women reported being excluded from networks because they could not and in some cases refused to assume a manner of behaving that permitted access to these networks; they could not be 'one of the boys'. *Participant H* in accounting her experience of being a 'black female' at the bar reported that one of the difficulties is that 'you have to look and talk a certain way, have the model C accent.' Participant D said

> ... I see my role as a woman to…never compromise my femininity, I don't have to descend into locker room humour, I don't have to be tough and I don't have to be something other than what I am in order to do my job effectively. I refuse to believe that being and advocate means that you have to be a male advocate...

Interestingly the survey results indicate, that despite being confident and comfortable in their environment several women still feel that they have to 'act in a particular way to fit in'. 38 respondents answered this question and 16 respondents agreed with the statement that 'I feel I have to act in a particular way to 'fit in' while 8 of those respondents strongly agreed with the statement. Although there is no way to tell from the survey the ways that women do not fit in, these results still add weight to the sentiment that being 'one of the boys' makes a difference to how one is perceived.

It was unclear whether women were beginning to form their own networks and relationship bases. Participant D mentioned that networks of female practitioners were occurring and forming in the family law sphere. However she went on to say, '…I think for me the frustrations is I would just love to see women able to network and empower each other but in areas other than family law....' Another participant indicated that women were not in the position to form networks of their own because of the gendered nature of the division of labour both at work and at home means that the capacity of

[128] Dixon and Seron op cit note 63; See also Schultz and Shaw op cite 71; See also Nicolson op cite note 70

women to form networks is limited because they are already stretched between work and home: 'when the finish [work] they want to go home and be mommies.'[129]

2.4.Mentoring

In recent years more attention has been paid to the role of mentoring in work place settings.[130] This research has identified mentoring has critical to the work place advancement and job satisfaction of mentees. The research indicates that mentoring has a particularly beneficial effect for women who face greater organisation, relational and personal barriers in the work place.[131] Echoing this research some participants declared mentoring to be 'vital' to a successful practice and an imperative throughout one's career. Participant D said mentoring was especially important at the Bar because 'it's the kind of job where you never stop learning. Mentoring happens all the way up and down all the time'. Participant J explained that mentoring played a significant role because of the pathway it opened up to be guided, to gain experience and to 'be introduced to attorneys and clients'. This is in keeping with literature that suggests mentoring provides a special form of entry into valuable networks that mentees would otherwise be excluded from through the established channels.[132]

Survey respondents were asked about mentoring. Their response also support some of the assertions made in the literature. Two third of the women who answered the question (n=24) had been mentored by a person other than their pupil mentor. Not all of these women indicated the length of that relationship. However those that did represented a varied length of mentorship. One respondent indicated that her mentoring relationship was on and off throughout her tenure at the bar while others indicated that the relationship had been ongoing for up to 10 years. The content of the mentoring relationship was fairly informal with respondents indicating that in the main they would talk to and discuss issues either in person (through set meetings or informally in the corridors), email, or over the phone. Respondents were asked to indicate how the relationship had helped them. The range of responses fell mainly into two categories

[129] Rhode op cite note 125 at 626.
[130] Jean E. Wallace 'The Benefits of Mentoring for Female Lawyers' (2001) 58 *Journal of Vocational Behaviour* 366–391 at 366.
[131] Ibid.
[132] Ibid at 368.

'increase confidence' and 'helped to improve some skill'. Crucially we can see then that indeed there are some benefits to mentoring as argued by some of the literature.[133]

However despite this some interviewees indicated that in some instances mentoring had not been successful. Specifically one participant explained that mentoring was 'very underrated' (Participant J). This is demonstrated by the fact that successful mentoring is itself dependent on a good relationship between mentor and mentee.

Although we cannot tell from the survey why it is noteworthy that nearly half, 44.1 per cent (n=15) did not continue their pupil-master relationship. 34 respondents answered that question. Some of the interviewees indicated that the success of the pupillage programme in which mentoring was a crucial component more generally was varied because it depended wholly on the mentor and his/her ability and willingness to be 'generous' with their time in order develop a good relationship with the mentee.

Research also suggests that there are particular benefits to having a same sex mentoring relationship. Particularly literature indicates that emotional satisfaction was higher amongst women who had been mentored by another woman, perhaps because female mentors can identify with the challenges faced by younger women. [134] However one participant stated,

> I'm sorry to say that I think that there are obviously exceptions and this is a gross generalisation but I think woman are really bad at helping other woman and I say that across the board. It's something you read about in business journals as well- successful women have a kind of well I fought my way through the glass ceiling attitude you can fight it as hard as I can attitude and there not that many woman that will help other women up. (Participant G)

Again, although the survey does not explore why, it is interesting to note that 20 survey respondents do not mentor anybody else. In summary what emerges is a sense that mentoring is indeed important and beneficial yet it is not occurring to an extent that accords with that view.

2.5.Gender Bias in the profession

[133] Ibid 368-373.
[134] Ibid at 385.

Embedded into the role of referrals is the fact that the legal profession for both advocates and attorneys 'was traditionally a male dominated profession and it still is' (Participant K). It would seem that there are still remnants of that in the form of gender stereotypes and bias at the bar. However participants suggested that the operation of the biases was 'more pronounced' at the Bar because it was a 'harder environment that the attorney's profession (Participant J).

The survey results support interviewee perceptions that gender bias operates in the profession. 76. 9 per cent (n = 30) who answered the question agree to strongly agree that 'the way that the profession operates is more suited to men'. Figure 5 below depicts this. Furthermore a significant portion of respondents, 68.4 per cent (n = 26), agree to strongly agree that 'male advocates show less confidence in female advocates' and that 'attorneys show less confidence in female advocates,' again supporting interviewee perceptions that gender bias operates.

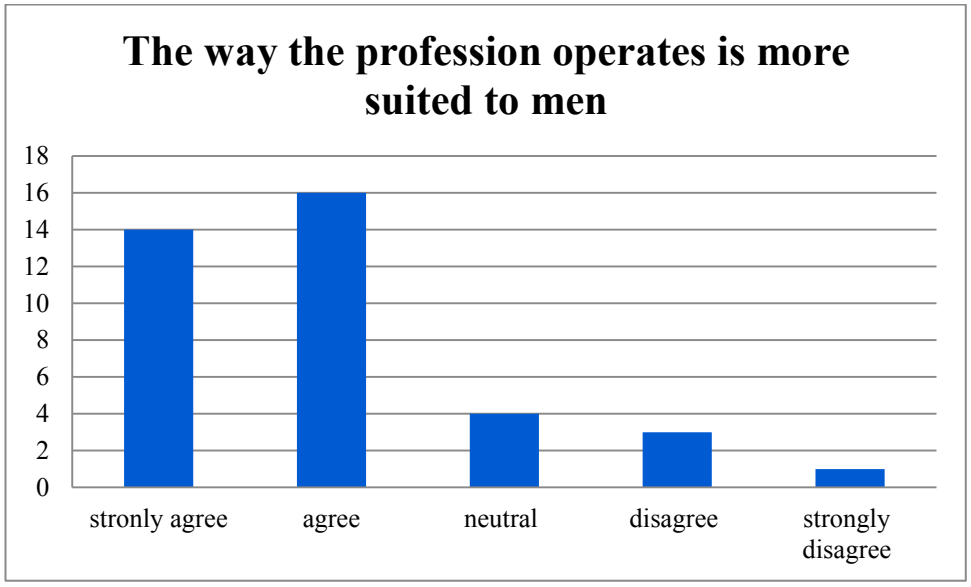

Figure 5 Perception that profession is more suited to men

This gender bias is active in various ways at the bar. The first of these ways is discussed below, the pigeon hole effect.

2.5.1. The Family law pigeon hole

Interviewees reported that there is a perception that women, because they are women, are suitable only for certain areas of practice like family law, maintenance, divorce, matrimonial issues. They spoke of being 'pigeon holed' into family law. Participant G

described the kinds of biases and stereotypes that encumber referral patterns in the profession:

> ...there seems to be this perception that woman are good at doing family law that's kind of what they do, you know women head up families they run families so when it comes to anything to do anything with family law we'll give it to a woman and conversely we can't give them something commercial cause that's not really what they do or not really what they good at...

Recall the statistics presented earlier which indicated the areas of practice. Certainly it emerged that a significant portion of participants practice in family law – 31 per cent of survey respondents and 5 interview respondents. Thus this would seem to accord with the participant who said that what you see is the 'feminisation of law' (Participant J). Her assessment was that,

> I could even comfortably say most...my female colleagues they do family law matters. They do divorce law, they do maintenance, they do rule forty three applications...whereas I think a male counterpart would more easily get a commercial brief you know commercial brief or administrative law brief or um you know something uh what we often call harder areas of law, more complex areas of law...

Another participant (D) identified the bias as 'chauvinism'. Similarly to the other perceptions of participants it operated to prescribe that,

> some areas are the big boys play ground like uh commercial work, insolvency, section 471 inquiries into big insolvencies, um big corporate disputes. In Cape Town ... you just generally don't see women getting their hands on those briefs.

Furthermore, because of this pigeon hole, there was a sense in which the manner that their practices evolved was not necessarily by choice. As participants G explained, 'I have a big family law practice but it's not that I chose it, it came to me.' As pointed out by Harris this raises the issues of agency of women in the profession and to what extent it is active within the overarching structures.[135] The comment from the above participant would suggest that agency and choice is curtailed within the structures of the bar. However other comments by participants reflect the dynamic nature of agency and choice to be able to shape meaning. Participant A reported being boxed into family law. However in the interview she said it was a great source of income and that she didn't

[135]Hull and Nelson op cit note 85

have regrets because 'its area that I like it's an area that I do uh really 99 per cent of my work is family law and I think it nice to have an area expertise rather than be a generalist'

Other participants (E for example) definitely echoed these views.

2.5.2. Family law as the second cousin

There is another way in which male dominance and gender bias are translated in the profession. Participants reported that some professionals perceive family law to be less complex than other areas of practice like commercial law, that family law is 'soft law' in comparison to other law. This is in accordance with some writers who consider the reasons for the low status of family law.[136]In explaining this further Participant A also reported that family law is considered to be the 'slightly inferior side of the law', 'the second cousin of the commercial and constitutional people that practice.' Consequently, some participants reported that this perception is also a contributing factor to the 'feminisation of law' in that there was reluctance to brief women in commercial law, insolvency because they were more 'complex' areas of law. In explanation Participant J said,

> ... The harder areas of the law are things like commercial law, commercial litigation, law of contract, administrative law um uh constitutional law you know things like that and there's just a perception that women are more suited to certain softer areas of the law and um men are more suited and that they have this ability to perform better in other areas, harder areas of the law

It should be noted that participants were aware that there was a larger social context in which these perceptions about women and types of work were perpetuated. In other words, as the literature suggests, participants were aware that despite the stratification and segmentation of the profession into attorney and advocates for example,[137] there were still crossovers as noted above. The segmented organisation still comes to bear on women in practice. In the context there was a slight difference of opinion as to whether it was attorneys or clients that perpetuate perceptions. *Participant G* was clear that attorney's hold these views: 'there is a tendency to assume amongst your market which is briefing attorney's it's not the general public [that] assumes that woman can only do certain kinds of things....'

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[136] Wade op cit note 119
[137] Hull and Nelson op cit note 85

Participant D suggested that in commercial law areas it might be that client's biases perpetuate these patterns. In any event she said,

> '...Particularly certain fields of law you know maritime law, shipping law, insolvency law things that are traditionally male it's still largely that way and *perhaps part of that is that those skills at the senior level are still in male hands largely*.'
>
> Thus gender biases operate as part of a larger social issue in which males dominate in most spheres. This is in keeping with literature that all levels of power women are poorly represented.[138]

2.6.None white women at the Bar: losing out on both tickets

Participants also revealed that women also tend to be found practicing in public law. For example Participant G explained that 'the other kind of work that comes to woman a lot is public law.' This viewpoint represents an interesting accent to the issue of pigeon holing. Due to affirmative action women are inadvertently pigeon holed into another area of law, public law. In the context of redress and affirmative action, Participant B, a non-white female advocate, said, 'you are still predominantly briefed by government as a woman, and as a black woman.' Thus we can see the gendered and racial quality to these redress measures which serve to pigeon hole women albeit arguably for the better. However because of the justification – to redress the exclusion of women, in fact none of the women described it as pigeon holing. Participant D said,

> you have um affirmative action policies that are women friendly and I think an exciting development there is you're going to see coming forward young black women who are going to benefit from those policies, rightfully so, and they're going to come to the fore, they're going to grow in the profession and not be piggy backed pigeon holed in matrimonial law.

However this belies the sentiments of some of the non-white participants. Some researchers argue that black women experiences are often overlooked or oversimplified.[139] The responses suggest that there is a unique complexity and particularity to the experience of non-white women that has not yet been adequately captured in South Africa. Participant C with strong reflections in this regard explained

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[138] Kate Malleson 'Prospects for Parity: the Position of Women in the Judiciary in England and Wales' in Schultz and Shaw (eds) op cit note 18

[139] Harris op cit note 99; See also Crenshaw Margins op cit note 127; See also CALS report op cit note 29 at 20

that the biggest issue is not gender but race. The emphasis on race means that black men are preferred over women. In this way we can see gender bias cross cut with racial redress to the detriment of women. In the same vein however redress along gendered line cross cuts with racial bias such that white women are preferred over non-white women. Thus rather than feeling as if they are 'coming forward' non-white women feel overlooked. Participant C reports

> So black women lose are out on the gender ticket and the colour ticket because the black men are benefitting from affirmative action because their black and then white women [the] gender ticket...

Participant H, a non-white interview participant, also iterated similar views. She said in her interview that she found it peculiar that black men see white women as their competition. Black women somehow fail to feature in that competitive equation. Participant J said the following when asked about her experience of being a non-white woman at the bar: 'it goes without saying that it was harder.' She went on to say that black women got the 'thin edge of the wedge or the stick and um a lot has to do be done to develop them and give them exposure and experience.'

The survey results were lacking in this respect but given that only 28 per cent of the respondents (n = 12) were non- white (Black, Indian, Coloured) perhaps this is to be expected. If anything the one survey respondent confirmed the sense in which intersectional experiences of women were ignored or overlooked. Her response was to the question on race was 'really what is the issue? All women have a raw deal - it's a boys club! Sometimes BEE counts in favour of women granting them access that white woman don't have. If your research is this facile why am I bothering...'

2.7.Motherhood and work: parental responsibilities and financial obligations

The challenge of motherhood presented itself as a significant finding because all the interviewees with children raised it as a particular challenge. Recall that 10 of the 12 interview participants have children while 43 survey respondents have children. Thus in keeping with literature and research that suggest that motherhood is particularly difficult challenge it emerged as a challenge in this research.[140] In point, Participant B said the 'most challenging part of practice' was 'to juggle motherhood and practice'. The survey indicated similar findings. When asked 'what to date had been the major challenges of

[140] Dau-Schmidt op cit note 120 at 66-67

your career?' 52.8 per cent (n = 19) women selected balancing work and family (see Figure 6 below).

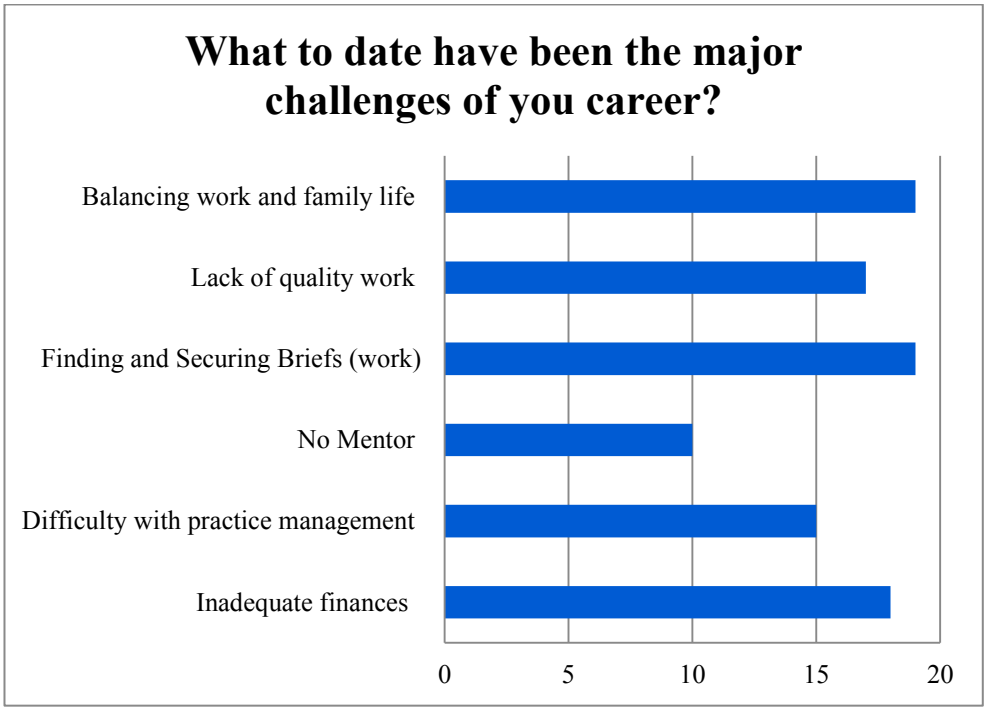

Figure 6 Major Challenges of women to date

Significant as a finding was that woman perceived that parenthood affected men the practice of men differently. More specifically that it had a less disadvantageous effect on men's practices than it did on women's practices or that difficulties presented by parenthood were more pronounced for women then they were for men There were several qualities to this perceived challenge.

The first was that despite having children men could still have an 'uninterrupted practice' because they did not have to take time off for maternity leave. Of this experience *Participant D* a mother of one child, said

> ...so you don't have that uninterrupted run. So the guys who started the same time as you are really going to get a two three four five year head start of you when you take that time out to have a family and you know that's time you just never get back and maybe you don't gain that ground back at all....

An attendant challenge was that of re-establishing ones practice after the interruption of maternity leave. *Participant G* said 'you may effectively be starting from scratch again' when you return. *Participant H* recalled the difficulty she had in returning to practice after maternity leave. She went on leave for 6 months but when she got back, she felt as

if she had to start again from scratch. The attorneys who were briefing her before her leave were no longer briefing her and people didn't know she was back at practice. She found the first year after returning to work incredibly hard – she couldn't understand why it was so difficult and it had a real effect on her confidence. She reported a sense of self-doubt about her abilities as an advocate during that period.

A second quality to the pronounced difficulties of motherhood iterated by *Participant N*, mother of two who said that competing with other advocates as a mother, particularly 'young eager male advocates who will...do whatever needs to be done' was sometimes not possible. She continued to say that even if those young male advocates do have children they are still able to compete because they 'don't carry shared responsibility in a meaningful way for the children'. This is again in keeping with research on women in the profession that states that women still carry the responsibility of family care over and above their male counterparts. [141]

A related quality of this unbalanced impact of parenthood relates to unequal gender roles and was explained by *Participant G* a mother of one, who said that women have to make choices about their careers in the face of parenthood that men 'don't necessarily have to agonize over'.[142] In the exercise of these choices she chose to 'put a lid' on her career because it was important for her to be around her children.

In addition to having to make difficult choices women reported that balancing the demands of practice with the demands of motherhood was hard. A few participants spoke of managing their unavailability at certain times during the day to attend to their families and the difficulty of doing that, particularly in the early years of their career, because of the ramifications on how they would be assessed as professionals. Participant G explained that some male seniors have very little 'tolerance and sensitivity' to junior women with children. She said that

> …they don't care whether you've got children to see to ... or if your child is sick or whatever if they want to consult at eight o'clock at night or ten o'clock at night or if they need to work until one o'clock in the morning they expect you to be there with them and to make arrangements…I

[141] Rhode op cit note 125

[142] To be clear this project did not speak to men and so cannot make statements about the veracity of points such as these. Perhaps men do agonize over these choices in South Africa.

> certainly have had experiences with ...senior counsel in previous years where they didn't care that my [child] was sick or they didn't care that it was inconvenient for me...because their wives are at home looking after their children...

Participants also spoke about difference within the challenge of raising children while at the Bar. In the first few months of motherhood the real difficulty lay in being able to meet the financial obligations of keeping chambers at the bar whilst simultaneously being on maternity leave. *Participant G* explained that 'They either have to say well I can't actually carry this financially so they leave the bar' or struggle under the burden of not earning a salary during that time and incurring debt.

However in the circumstance almost all the interviewees mentioned the maternity policy, introduced in 2009, aimed at alleviating the burden and stress on women. In 2009 the Cape Bar instituted a maternity leave policy[143] that was intended to ameliorate the disproportionate burden on women. Responses from interview participants who have benefitted from the survey indicate that the policy has been well received and certainly assists members.

In contrast, survey responses indicate that in Johannesburg there is no uniform policy on maternity leave. There members of the bar are organised and housed as Groups within the city, some of which have a maternity policy while others do not. One respondent said,

> There should be a maternity policy in place (as in the Cape Bar) where members contribute a small (paltry) amount per month to accomodate a 6 month rent-free period for pregnant/new mom advocates. To this end, there lacks the promotion of gender transformation...

As a result, with no maternity leave in place, the effect of having a family is different for women compared to men. This was also reported by the CALS reported. [144]One survey respondent explained the disproportionate effect as follows,

> The lack of maternity leave or any similar system in most groups impacts negatively upon many of my female counterparts. If a woman wishes to have a baby, she leaves practice for a number of months. This has direct and indirect costs - direct costs are group fees and chambers rent that must be

[143] An account of the policy was written by Geoff Budlender SC, Cape Bar 'Cape Bar adopts a new Maternity Policy 'available at *http://www.sabar.co.za/law-journals/2009/december/2009-december-vol022-no3-pp10-11.pdf*

[144] CALS Report op cit note 29 at 21

> paid when she is away and the other living expenses that she must pay when earning no income; the indirect cost is the cost of being away from practice and being replaced on attorneys' briefing lists. The direct costs can be addressed by maternity leave.

In later years of parenthood the challenge lies in being able to meet the demands of practice whilst also being attentive to children's needs. Participant N spoke of having to decline a very high profile constitutional law brief because she would not have been able to balance the work load while her husband was away that week. Participant G explained her difficulty in the later years of motherhood in the following manner:

> …Um where I'm finding it challenging now is that my child is a teenager and your children now need you in a different way so my son doesn't need me to attend to physical needs you know he's obviously very independent but your children still need you emotionally, they need you to be present for them and you can't be...We all take work home with us because the demands of our jobs are such that its unpredictable our works comes in rushes and flows and sometimes there aren't enough hours in the day to get it finished. So I often take work home with me but I've got to discipline myself to say put it aside for the moment to say he actually needs me to be present for him. And that's a challenge to constantly remind yourself about that…"

2.8.Sexual Harassment, Sexuality and Sexualisation

In other research Sexual harassment in the work place has been identified as a significant obstacle to women's careers,[145] particularly in an organisational structure in which men dominate through the social cliques, that is networks.[146]The research indicates that sexual harassment is seemingly under reported and often disregarded.[147] In the context of this research only three interviewees identified the operation of sexualisation and sexual harassment in the profession. Participant K said in 'Is there sexual harassment? Yes there is. Are there men at the bar who say inappropriate things? Yes.'

It was identified as a phenomenon experienced particularly by younger women at the hands of senior males. Participant N stated that had been many stories about 'stories about harassment of juniors, harassment about attorneys, candidate attorneys by

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[145] Schultz and Shaw op cit note 18 at 67

[146] Margaret Thornton *Dissonance and Distrust Women in the Legal Profession* (1996) at 261 (Hereafter Thornton Dissonance)

[147] Deborah L. Rhode 'The Unfinished Agenda Women and the Legal Profession' (2001) *ABA Commission on Women in the Profession* 1 at.at 8

counsel by advocates'. Moreover one survey response wrote that 'friendly flirting', which she related to sexual harassment, 'arises in the majority of professional interactions between young women and older men at the Bar.' This intimates to the process of sexualisation of women at the bar which some writers explain. One writer asserts that sexualisation operates in the profession such that women are expected to look like women – sexed but are not to be sexual.[148] Certainly this sexual bias operates in the South African context to make women conscious of the 'how they dress' and 'how they conduct themselves' in order to avoid being sexual. In contrast men are neutral[149] and are not faced with this 'burden' of sexualisation ensuring that they are 'not sexualising the relationship'.

In this context one survey respondent reported a sense of alienation because she was unable to access the sexualised repertoire of behaviour because of her sexual identity as a openly gay women. Nale dominance and bias presents itself again in the sense that even the sexualisation of women that occurs has a dominant nature, heterosexuality. The same survey respondent said, 'It is not possible for me know how being a lesbian affects my practice. I am not comfortable disclosing my sexual orientation to the majority of my clients and attorneys and do so only when necessary.'

Dealing with sexual harassment thus came up in the interviewees. Participant N explained that the Cape Bar had instituted a sexual harassment policy some years back. Another respondent indicated that since then she was could only recall one case coming up. For her the real benefit of the policy served to educate male members about acceptable behaviour. The policy was briefly explained in Advocate, the Bar council magazine:

> [the policy] takes selective aim at sexual conduct which may be demeaning or humiliating and conduct which, if unwelcome, may create an uncomfortable working environment. It protects Bar members as well as staff, attorneys and clients who engage with members. The complaint process which it introduces is designed to accommodate the special nuances of this type of complaint, with a focus on informal resolution and the protection of dignity and confidentiality.[150]

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[148] Thornton Dissonace op cit note 146 at 226
[149] Thornton Dissonacne op cit note 146 at 216
[150] *http://www.sabar.co.za/law-journals/2012/august/2012-august-vol025-no2-p13.pdf*

2.9.Hierarchy: the role of experience and seniority

The data also revealed that considerations of hierarchy as marked by seniority and experience have significant implications within the profession. Although those implications bear on both men and women in the profession, the prior historical exclusion of women accentuated the manner in which they mattered to women in the profession. For participants, the relevance of seniority lies with its signification – it is a 'branding mechanism'. It brands counsels who have been awarded senior status as excellent and exceptional. To be sure responses from the survey indicate this role of the award of senior counsel. Several respondents wrote 'status' as a reason for wanting to attain senior counsel (silk) while one respondent stated that 'becoming a silk connotes success and seniority as well as expertise and experience.'

The achievement of senior status is thus a function of gaining sufficient experience and having a reputable practice. The difficulty for some women with the role of seniority lay in the manner in which the status of silk – the highest level of seniority achievable – was awarded to members. Participant G acknowledged as much stating 'the decisions about whose allowed to have that brand behind that name are almost arbitrary...the Bar has tried to make the process more fair but it is an incredibly flawed process'. In accordance with this one survey respondent called the system of silk a 'farce' because it depends of 'who you know on the silks committee'.

This view is in line with a sense from some participants that the networks and relationships identified above were a crucial factor – attainment of silk dependant on whether 'you are known' and highly regarded which in turn is dependent on the networks in which your operate. For example, *participant H* stated that she was not sure whether she wanted to become silk. She said there's being a 'lawyer's lawyer' and being a 'business lawyer'. She wasn't certain that she had the acumen and personal skill to do the kind of business lawyering it would require to get silk. Likewise another survey respondent wrote, 'I am not prepared to play the "office politics" that appear to me to be required to achieve that status. It simply does not appear to be sufficient to be excellent at what we do.'

Against this the operation of relationships and networks in deciding who attained seniority made the process of applying for silk seem mystified and non-transparent and 'shrouded in mystery'. That said participant stated it had practical and real relevance –

having seniority opens doors in terms of work for areas such arbitration and opinion work (where the status of a silk makes the opinion more meaningful).

There was also a concern expressed that the inability to obtain experience in certain areas of work meant the denial of advancement -in other words improving seniority. That inability however in turn denied them further opportunities to get the experience that matter such that it was as if there was a cyclical pattern of exclusion. Participant G explained this cyclical nature as follows: 'the more experienced you become…the more able you are seen to be, and the more able you are… But if you don't get opportunities and experience then it will definitely have knock on effect.'

2.10. Dipping into the pool: Judicial Aspirations

It is a constitutional injunction that judges be 'appropriately qualified'.[151] Legal qualifications and training is thus the minimum threshold to overcome to be eligible for judicial selection. Therefore, like the literature directs, the legal profession becomes the pool out of which judges are selected.[152] However the JSC does not simply dip their hand into the pool and select whosoever they choose. Part of their difficulty in judicial selections is that candidates need to make themselves available to be selected. In the context judicial aspirations becomes pertinent. Being knowledgeable about the factors that influence aspirations is useful to assess interventions for transformation. Candidates who have judicial aspirations will avail themselves for vacancies.

When asked about whether or not they had judicial aspirations, the responses varied. Only three women had positive and direct judicial aspirations. Another two women did not want to go to the judiciary at all. Whilst another six indicated that for the time being they did not want to become part of the judiciary. One of the respondents was ambiguous in her response about judicial aspirations.

The ability and desire to serve was a motivating factor, in respect of positive judicial aspirations. Participant D said going to the bench was a 'burning passion' and that 'if you do that job you do it because you want to serve the people of this country and because you love the law and you love justice'.

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[151] The Constitution, 1996 Section 174
[152] Barmes and Malleson op cit note 33

Many women were open to the possibility of going to the judiciary but had not decided in the affirmative that it was something that they wanted to do. Some of these women were hesitant to give up the independence and flexibility of working at the Bar and even those that did want to go to the judiciary recognised the lack of independence as a difficult quality of life at the Bar. Participant C said of her acting appointment, 'what I didn't like was the restrictions on you freedom'. Another interviewee said, 'what's different is that there's a lot less independence there than here. You know your hours are you own here [the Bar].There you are a civil servant and you really have take that seriously and you have to be accountable....' Other women who fell into this 'open to it but not yet' category were content with this stage of their careers and wanted to focus on their current practice. Participant L said 'I wouldn't rule it out but for now...I think it's a case of just maintaining my practice trying to build it up. Every now and again I sort of think to myself ... what have I achieved... but I think for now...my focus is my practice.'

Another motivating factor for reserved (open to it but not yet) judicial aspirations was family. Participant L also spoke about how she wanted to get as much quality time with her children before they turned eighteen and wanted nothing to do with her. In a similar way, Participant B's aspirations were contingent on her ability to still be a present and active mother for her children, which in turn was dependent on her independence and flexibility as an advocate. Thus she too was reluctant to give up these benefits of the advocate's profession. She said,

> …do I see myself as wanting to be a permanent judge, is that where I am heading. If you're asking me that question now then the answer's no. I have the flexibility to leave, to leave to go home, to go sit on a cricket field on a Friday afternoon, to take the kids to school in the morning, to deal with all kinds of stuff. When I started practice...I was able to do school functions, school events, be the mommy of school outings which I still do...and I'm not sure being a permanent judge does that and my [child] is very young. So one has to weigh up whether that's what I want to do. I'm not at the state where I've decided that I want to go down that path.

Some of the women preferred the more adversarial work of an advocate to the adjudicative and contemplative work of a judge. Participant E said that she still liked the 'fists flying and the hurly burly of court and the interaction with my clients'. What emerged was the sense in which, the two professions (judge and advocate) although

related were in fact different in nature. To be a judge is to 'be removed' and 'distanced' no doubt to ensure impartiality and to prevent the perception of bias. Participant E explained as much and said '...to be as effective...with the public because you have to remove yourself you have to be dispassionate and you have to do the right thing.' Moreover the adjudicative task of a judge is a difficult task to undertake and one interviewee indicated that she would not put herself up for an appointment, acting or permanent, because of it. She said,

> …to sit with two clients, with two different perspectives, with two different views and to try and make a decision from that - I mean I'd hate to do it as judge. I think it's a very very pressurised job. I think it must be incredibly difficult....I'm aware of my own limitations...and it's not something that I would do easily... Dreadful.

From the survey 34 women answered the question on judicial aspirations, 52.9 per cent (n = 18) said that they did want to become a judge while the 47.0 per cent (n=16) said that they did not want to become a judge. Thus much like the interview participants there is a divergence of feelings when it comes to aspirations for the Bench. Similarly most of the reasons for wanting to become a judge were altruistic in nature. One respondent wrote that she wanted to 'serve my country and people fairly and independently guided by the constitution of our country and an inherent sense of right and wrong'. Another respondent said that this would be her way of 'giving back' to the profession and sending a 'message of hope' to female colleagues.

The survey respondent reasons for not wanting to become a judge however were more varied than interview responses. In addition to family and satisfaction at current level or practice several respondents cited that the fact that judges earn less as a reason. In point one respondent called it an 'act of insolvency'. Others disparaged the perceived politics behind judicial selections as a reason. For example, one respondent wrote 'why put oneself up for humiliation of the JSC. Good candidates are refused (even those who meet BEE criteria and have experience and knowledge) we who practise bear the brunt of the unsuitable choices made by the ANC caucus…who serve at the pleasure of the president'

It can thus be seen that the range of reasons for the judicial aspirations reflected above exemplify that women are able to make choices that are meaningful for them according

with the work researchers who state that despite overarching oppressive structures women are able to exercise agency.[153]

2.11 Attrition

While the research did not specifically consider attrition Participant L made available to me some statistics from the Cape Bar which demonstrate attrition. In 2011, 6 females left the bar; in 2012, 9 females left; in 2013 only 2 left; in 2014 10 left and as at 3 March 2015 8 women had left the bar.

[153] Hull and Nelson op cit note 85

V. DISCUSSION

The results above illustrate that there are a whole range of processes that intersect and cross cut to bear on women in a manner that impedes their advancement and colours their experiences. The fact that the bar is a voluntary association engenders an environment that is both collegial yet competitive giving rise to a tension. Referrals and networks are crucial tools through which the tension can be navigated. These networks are made up of relationships in which 'being known' is necessary. They are also made up of historical ties of connections made in spaces previously inaccessible to women, (in 'old boys clubs'). Underpinning these networks are pervasive yet subtle gender biases and stereotypes about the nature of women as being naturally suited to family responsibilities. Therefore women feel pigeon holed into family law practices. With redress policies aimed at countering the relegation of women are also 'found in' in public law related practice areas. The results also show that women struggle to balance family and work and that they perceive this challenge to fall differently for men, again because of gendered biases about the role of women. Sexual harassment and sexualisation was suggested as a frequent occurrence by participants. Furthermore seniority and hierarchy feature prominently as processes that hinder women's advancement. Women also reported differing judicial aspirations for a multiplicity of reasons.

An analysis of these results demonstrates that the peculiar work place structures of the bar simultaneously help and hinder women in practice. In this context a tension unfolds. What is significant about the tension is that women perceive that it is not suffered or felt to the same extent by male advocates. In their view, men are able to navigate, and in some circumstances circumvent, the tension by mobilising the social and cultural capital that constitutes networks such as the 'old boys club' so frequently mentioned by female advocates. In contrast, women find themselves on the outs because of the gender biases and stereotypes that are infused into the necessary social and cultural capitals. In the circumstance 'thicker' barriers are constructed against women. It is not necessarily that men 'have it easy' rather it is that women have to then work harder to survive. These experiences impress upon the agency of women in different ways such that they have diverging choices about their career aspirations and particularly their judicial aspirations.

1. Gender Bias and Stereotypes

There is a perception amongst the women interviewed and surveyed that historical gender bias and gendered stereotypes are prevalent at the bar in South Africa. These biases and stereotypes underlie the skewed briefing patterns in respect of women, they accentuate the work place challenges that women face and they hinder the advancement of women in the profession. It is thus important to consider them in more detail.

Certainly the view that gender, difference and stereotypes matter has been elucidated by authors such as Deborah Rhode,[154] Carrie-Menkel Meadow[155] and Mia Swart. [156] Swart, relying on the work by Martha Minow,[157] argues that stereotypes that '[reduce] an individual to one or two characteristics allows us to perceive the characteristics we have ascribed to her as constitutive of her entirety.' [158]South African participants certainly report labouring under stereotype impressions of what women are supposed to be. Levinson and Young in an article about implicit gender bias in the legal profession identify three themes of stereotypes in the literature which all seem to operate at some level in the South African context.[159] In the first place, they operate to hinder and exclude women by relegating them to spheres of practice outside of those that are considered dominant. In a process that one of the interview participants called the 'feminisation of law' and in accordance with stereotypes that place women as belonging at home and focussed on the family [160] the women reported that they often get 'bombarded with' and 'pigeon holed into' family law. Their perception is that it is assumed that, mainly by attorneys, 'women are better [at family law] and woman like it' and that family law is the only kind of work they can and indeed want to do. In this way the stereotypes both inform and reinforce the type of work that women receive.

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[154] Rhode Speech op cit note 84
[155] Menkel-Meadow op cit note 98
[156] Mia Swart 'The Carfininan Curse: The Attitudes of South African Judges towards women between 1900 and 1920' (2003) 120 *SALJ* 540 at 540
[157] Martha Minow *Making All the Difference: Inclusion, Exclusion and American Law* (1990) 236 as cited by Swart op cit note 40
[158] Swart op cit note 156 at 542
[159] Justin D Levinson & Danielle Young 'Implicit Gender Bias in the Legal Profession: An empirical Study' (2010) 18(1) *Duke Journal of Gender Law & Policy* 1 (hereafter Levinson and Young)
[160] Ibid at 9

The manner in which this plays out is inextricably linked with patriarchal views about family law in general. Family law is often regarded as a lesser more 'softer' form of law, than commercial law or related fields of law such as insolvency and tax. The low status of family law was also explored by John Wade in the Australian context. [161] Some of Wade's argument about the low status of family law was speculative. However this research adds credence to his views, at least to the extent that it confirms that women's experiences perceive it to be that way. In deed one of the research participants stated the following:

> ...You have some judges...who when you go to him with an urgent application or an opposed matter in family law will say to you 'you know this stuff is not law; it's not law'...

The corollary of this is that there is a reluctance to give women the more complex supposedly 'high level' commercial matters because it is assumed that they do not have the professional traits, qualities or competence to undertake this higher level of law. This assumption is the second theme of stereotypes that Levinson and Young identify in the literature: 'stereotypes about women's work styles, character traits and job competencies hinder women's ability to land and advance in high level positions.'[162]One interview participant said, 'there's just a perception that women are more suited to certain softer areas of the law and men are more suited and that they have this ability to perform better in other areas, harder areas of the law.' Such that even where women are proactive and 'openly state' that they would like commercial briefs the work goes to their male counterparts.

Certainly as illustrated in the results a significant portion of the interview participants do indeed have a practice in family law - 5 out of the 12 participants. The survey results indicate that over their years in practice just over half, 54.5 per cent (n= 23) have practiced in family law. However similar statistics are observed when considering commercial law. Like with family law, 5 out of 12 interview participants have a commercial law practice and 50 per cent (n= 21) who answered the question have practiced in commercial law over their years in practice. Moreover the spread of the most regular areas of practice for women does not show dominance in family law. Rather when asked, what areas of law they most regularly practice in, the same number

[161] Wade op cit note 119
[162] Levinson and Young op cit note 159 at 11

of women chose family law as did commercial law – 31 per cent (n=13). These similar statistics suggest that perhaps the pigeon hole effect that women report is more apparent than real.

However the apparent divergence between perceptions and reality is more likely related to the manner in which the survey and interviews were constructed and conducted rather than a misperception of women. The survey only asked respondents to select areas of practice. Perhaps it would have been more apt to directly ask women whether they have had *more or significantly more* practice or exposure in family law rather than commercial law or any other area of practice and or to list the number of cases or briefs they received in those areas. In addition, in the survey, there is no way to tell the practice combination of participants or whether the same or different women practice in family law as do in commercial law. Lastly and perhaps most importantly, these statistics would likely be more telling in the face of comparative statistics about men and their areas of practice as was done in a study in New Zealand in 1999. There the author found comparatively to men that 'women lawyers dominated in family law (76 per cent of those practising in family law) and had a sizeable share in relatively new areas such as employment law….'[163] As a preliminary statistic in this regard, 17 of the 25 advocates on the Cape Bar website that list family law as an area of practice are women suggesting perhaps that the perception of women about being pigeon holed is real.

Notwithstanding this the perhaps the most important point to be made in respect of stereotypes and the manner in which they hinder women is the role they play in denying women positions of power. The third theme of stereotypes as identified by Levinson and Young not only reinforces the operation of the other stereotypes but speaks to the exclusion of women from leadership positions at the Bar. The stereotype is that there are some jobs that are 'perceived as male jobs [which] females will be evaluated less favourably for.'[164] Participants in the interviews indicate that while it is possible that there is a shift in perspective about women practicing in more 'complex' areas what still not 'shifted is the perception that women can lead a team and be in the top positions'; women are not advancing into leadership especially in certain areas of law. That is,

[163] Georgina Murray 'New Zealand Women Lawyers at the End of the Twentieth Century' in Schultz (eds) op cit note 123-137
[164] Levinson and Young op cit note 159 at 12

while women may indeed be found in those areas of law, they are still not being selected in a senior-junior combination that, for example, makes them the most senior counsel in a team. A survey respondent reflecting on gender transformation of the judiciary wrote, along similar lines,

> There appears to be a major confidence gap between women and men in practice and that translates into...fewer women taking the lead in cases and developing their practices into silk practices.

One of the inescapable consequences of these interlacing and reinforcing gender stereotypes is that that women must work 'harder for a number of reasons: harder to get noticed, harder to get acknowledged, harder to get briefed.'[165] Rather than just being competent and knowledgeable, women need to be exceptional. Indeed Margaret Thornton writes that 'it is a feminist truism that for a women to succeed she has to be better than her male counterparts.'[166]

2. Gender Bias and Work Place Structures

When gender biases are superimposed on the distinctive work place structures of the advocate's profession, they combine to create a unique tension in the space of practice for women that they then need to navigate. One such distinctive structural aspect of the bar that has particular salience in this regard is the fact that the South African Bar is a voluntary association.[167] Members are in fact individual practitioners that choose to abide by the council rules and stipulations. Thus this particular work place structure - voluntary and independent association - creates a peculiar work space culture. On the one hand members have freedom (independence) and flexibility to organise their practice and work hours in a manner that suits them because they are not 'beholden to an employer'. On the other hand the traditional work place support and accountability systems are absent and members are individually liable and responsible for the cost of their practice and the quality of their work. In this space, because practitioners have to work conscientiously to maintain their practice, a tension arises which is brilliantly explained by one of the interview participants. She called it 'notional flexibility' which

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[165] The CALS Reports op cit note 29 at 21 reports a similar finding particularly in respect on young black women.

[166] Margaret Thornton ' "Otherness on the Bench: How merit is Gendered' Sydney Law Review Vol 29 (2007) 391 at 402 (Hereafter Thornton)

[167] See the Constitution of the General Council of the Bar accessed available at *http://www.sabar.co.za/about.html* (hereafter GCB constitution)

entails that ‘we all love it and such cause we feel like we our own bosses but actually when you’re piled with work there isn’t really that much flexibility. ’

This complex interaction between flexibility one the one hand and the demand to make a living, plays itself out for example in the realm of motherhood. As pointed out in the results almost all the participants identified the challenge of balancing motherhood and work. Most significant in their experiences was the manner in which the ‘burden’ of parenthood disproportionately impacted women.

Deborah Rhode in an article titled the ‘Subtle Side of Sexism’[168] makes an insightful and nuanced argument about the manner in which gender bias and sexism subtly operates in the intersection between family and work. In essence she argues that when it comes to the family and the home women, once again, labour under stereotypes about women as the natural and primary caregiver which results in unequal family burdens. Women thus are expected to bear the responsibility of family life. As already seen this has specific implications in terms of division of labour and briefs in the work place (women are pigeon holed into family) but what it also means is that it simultaneously has an effect on the manner in which women then balance work and family. Women labour under the elusive demands of work to be consistently present, active and productive but then are equally expected to carry out parental duties with the same presence and productivity. The imbalance occurs because while men are equally expected to work with the same activity and productivity as women are, to manage the tension between independence and individual account, they are not then expected to carry out parental duties.[169]

Interview participants were conscious about the imbalance in expectations they face in respect of their families that their male counterparts don’t face. For example, women who choose to have children inevitably have to take maternity leave. The prolonged absence from the bar has a negative impact on their practice that is not suffered by men who have children. That negative impact is strongly connected to the financial cost of practice. Within the voluntary association, members are allocated office space, more commonly known as chambers, for which they are individually liable to pay for. In addition to renting the office room, members are liable for the overhead costs and

[168] Rhode Sexism op cit note 125 at 626-629
[169] Ibid at 627

upkeep of renting chambers such as shared secretary staff and office supplies. One interviewee explained that it can be '...anywhere from R 20 000 to R25 000 just to be here every single month.'

During maternity leave, which in traditional work place structures can be up to four months,[170] female members are expected to meet the financial obligations of keeping chambers while not working. In past years the effect of this would be that women at the Bar in South Africa would take little to no maternity leave or leave practice rather than risk debt. One participant reported taking up to two weeks leave before returning to work, albeit temporarily to work on a case before taking time off again.

While the Cape Bar has certainly made significant and important strides in alleviating the burden described above there still remains clear and defined imbalances. A maternity policy alleviates what one participant called the 'direct costs' of pregnancy, namely the financial burden of keeping chambers. What the policy does not address, and perhaps cannot address on its own, is the 'indirect cost' namely the loss of work as a result of the necessary leave of absence. Women who do return from maternity leave often find that the substantive aspect of their practice has suffered. Two of the interview participants reported feeling as if they had to start their practice 'from scratch' because work had been directed elsewhere while they were away. They had to go through the difficult motions of re-establishing their name and presence at the bar, now with the added stereotype of being a mother over and above being a woman. In a professional setting in which a successful and sustained practice are crucial for advancement setbacks of this nature often mean women struggle to find work in the period after returning from leave. One participant reported that as a result of her pregnancy her earnings dropped by two thirds while another reported struggling for work for months after her leave because her previous briefing base has gone to other advocates. The Bar therefore perhaps needs to start considering creative ways to overcome this issue. One survey respondent suggested that allowing member who are on leave to work from home may be one solution.

Participants also reported that the task of balancing family life and work at the bar did not present their male counterparts with the same challenge that it did the women.

[170] Basic Conditions of Employment Act 75 of 1997 s25(1) states ' An employee is entitled to at least four consecutive months' maternity leave.'

Several participants reported that their male counterparts who do have children do not have to rearrange schedules and work commitments in the same way that they do. Women face a particular dilemma in trying to manage work hours with demanding clients and unsympathetic colleagues. While the voluntary and independent nature of bar means that women can in theory be flexible about working hours – notional flexibility – women always activate that flexibility at a risk. Rhode describes it as a double standard in which on the one hand 'working mothers are held to a higher standard...and are often criticised for being insufficiently committed parents or professionals'[171] while on the other hand women who sacrifice 'family needs for workplace demands appear lacking as mothers.'[172] One participant asserted that men are at liberty to take more work because they don't have to do the 'grunt' work of parenting. They do not 'have to agonise over those *choices* as much as women do,' she said.

Rhode argues that the 'imbalances in family responsibility are commonly assumed to reflect women's different choices'. [173]This certainly echoes some of the criticisms of the maternity policy instituted by the Cape Bar. Interview participants reported that there were some women who resisted the policy arguing that they should not be made to pay for another women's 'lifestyle' choice. Certainly the participant's comment above intimates at the choice she made, but the her comment reveals what Rhode brilliantly argues - that the bias and sexism that is prevalent means that men, despite the fact that they too have children, are not subject to the same 'lifestyle' choice criticism because that very same bias and sexism exempts them from the burden that creates the criticism in the first place. What these women are really being asked to subsidise is the cost and burden on women of unequal societal burdens. This argument essentially touches on a wider point about stereotypes and biases which is that the assumption is that they operate only negatively in one direction, in this case against women. However the reality is that men are also laden, arguably not to the same detriment, with these burdens. Thus for instance, the maternity leave policy at the Cape Bar does not have a corresponding paternity leave policy. Rhode in support of this states that, 'workplace structures leave both men and women feeling unfairly treated. Men cannot readily get

[171] Rhode Sexism op cit note 146 at 627
[172] Ibid
[173] Ibid

on 'mommy track'. Women cannot readily get off it.' [174] The result is that traditional allocation of roles does not get subverted.[175]

3. Networks, Relationships and Mentoring

Another salient finding in the research identifies networks, relationships and mentoring as process that occur in the Bar which have a decided impact on women. Again, gender stereotypes and historical gender biases underlie the manner in which networks and relationships matter at the bar. To elaborate on this it is necessary to explain in more detail the organisational structure of the Bar.

As has already been noted, the Bar is a voluntary organisation. Unlike traditional work place structures members of the bar are not employees, they work independently of each other and for their own account. This organisational aspect creates a peculiar work place structure in which gender bias then operates to have unequal impact on women as they attempt to balance work and family. However this same organisational aspect obliges members to work in chambers near one another. This proximity over the years has created a historical work place culture of collegiality and sharing knowledge which several of the participants acknowledged and lauded. They spoke about the 'open door policy' and the 'collegial environment' that enabled advocates to ask for advice and help in legal matters.

However another organisational aspect of the Bar adds another tension to the nature of the work space. The Bar operates as a referral profession.[176] Members are not permitted to solicit briefs from the public.[177] Rather work is referred to them by practising attorneys thus members of the Bar are in direct competition with one another to get those referrals. Thus the net effect of the voluntary association and the referral process

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[174] Rhode Speech op cit note 84
[175] Rhode Sexism op cit note 125 at 628
[176] General Council of the Bar Constitution *http://www.sabar.co.za/GCB%20Constitution%20(updated%20July%202012).pdf* at 6A
[177] General Council of the Bar Uniform Rules of Profession Ethics, rule 4.17 does permit advertise but there are restrictions – for example the advert must be factually true and cannot be misleading ultimately. Moreover advocates can only accept briefs from attorneys so what is that tension accessed at *http://www.sabar.co.za/GCB-UniformRules-of-Ethics-updated-July2012.pdf*

is to create a work place culture and space that is collegial yet competitive. In this space, where advertising is not permitted, networks and relationships are crucial to navigate the tension between collegiality and competitiveness. Once again gender biases are very much constitutive of the networks such that women are often excluded from them. [178]

How then do these networks work? Advocates are reliant on the relationships that occasion the referrals. Rhode argues that 'people generally feel most comfortable with those who are like them in important respects, like gender'. [179] In this context attorneys refer work to males whom they know and have a relationship while senior advocates select juniors who they are 'comfortable with' and with whom they know they have or can establish a good working relationship with. This excerpt from one of the interviewees explains this brilliantly.

> '...So there maybe five people or ten people or thirty people could do exactly the same brief but the attorney will tend to choose the person that they know, that they like, that they comfortable working...that's why those networks…the old school tie thing helps, the school you went to, the university you went to, the sports club you with, the golf club you go to...

The Bar was frequently described as an 'old boys club'. Women are excluded from these networks because they cannot gain access to them. As explained in the literature review, social and cultural capitals underpin the 'old boy' networks. Some women often lack the cultural capital, the codes and modes of behaviour, learned through years of connection at high schools and university, to insert themselves into them. In some cases women are not willing to take part in those codes and modes of behaviour – they refuse to 'descend into locker room humour' or 'compromise' their femininity to get on the inside of the important networks. Some women also often lack the social capital in the form of wealthy family and social status. Moreover the networks that occasion the work through referrals often operate in spaces, for example the golf course, in which women have historically been excluded from because of gender stereotypes.[180]

What becomes apparent then is that networks and 'comfortable' relationships are mutually constitutive. Networks are underpinned by a web of relationships while at the

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[178] Rhode Sexism op cit note 125 at 625
[179] Ibid
[180] Carla D Pratt ,Sisters In Law: Black Women Lawyers' Struggle for Advancement' (2012) *Mich. St. L. Rev.* 1777 at 1790 (hereafter Pratt)

same time those relationships are sustained by the forms of social and cultural capital comprising those networks. In this mutually constitutive space there is perhaps reason to be critical about the profession's claim to independence in the same way that Kramarz and Thesmar are with their conceptions of real versus formal independence.[181] In this in this work place culture and space relationships and network are crucial in governing the terrain – they are the job security, and they are the advancement opportunity to gain vital work and experience. Inability to have this base of network support makes practice incredibly difficulty and longevity at the bar becomes less and less certain. There is a measure to which the independence that advocates espouse is only formal rather than real because they are very much dependent on reciprocal networks for their work.[182]

In this context of exclusion from networks, several women reported how invaluable a good mentoring relationship could be. Mentoring affords women the opportunities to, at the very least observe the codes and modes of behaviour and the best practices for work which they would otherwise not know.[183] However several interview participants explained that the mentoring system at the bar was not necessarily successful because it depended on the individuals to carry out their mentoring roles with energy and commitment.

4. A Note on Individual Experiences and the Intersectionality of Race and Gender

It is perhaps apt here to pause and reflect more critically on the individual experience of women and the intersection of race and gender. There is a highly individualised nature of life at the bar. In 2004 Justice O'Regan carried out informal research in an attempt to identify barriers facing women. One of the main points of her findings was the following: Different women have different experiences at the Bar... Women experience the problem very differently, depending on the kind of field they practice in, the group they are in, the attorneys they attract....'' The experience of white women differs from black women...'[184]This differential nature of experience of life at the bar has been certainly been reflected in this research. In the interviews, one woman had contrary

[181] Kramarz and Themar op cit note 81
[182] Ibid
[183] Wallace op cit note 130
[184] Kate O'Regan (CC Judge) 'Identifying the Barriers' in Advocate, August 2004 at p 30

opinions to many of the other perspectives. For example while most of the participants felt that women had to work harder she expressed some doubt. She said, 'Have I worked hard? Yes I've worked hard. Do women have to work harder than men, I don't know.' She also expressed contrary opinions about the value of a maternity policy. She felt that a gender neutral policy would be better.

On the point of intersectionality, thus far this work has explicated the predominance of gender biases and stereotypes precisely because it is a project about gender. However exclusion is not linear. In the literature review, through the work of Harris, it was noted that gender essentialism – the notion that there is a unitary experience because of one's gender – mutes the operation of other possible identifying features on women's experiences. Of particular relevance in the context of the South African judiciary is the intersection between race and gender. Race is one of the predominant axis along which transformation is being propelled and this is reflected in the improvement of racial demographics as illustrated by statistics in the profession.

Kimberle Crenshaw writes that 'although racism and sexism readily intersect in the lives of real people, they seldom do in feminist and antiracist practices.' [185] This research would be remiss if it were to emphasise the gendered experiences of women over and above the other dimensions of identity for it would risk amplifying the exclusion felt by some participants by ignoring this intersection. Indeed it is clear that more attention needs to be paid to these intersectional experiences of women in the work place more broadly.

Certainly in this research non-white interview participants expressed a distinct quality to their experience as advocates of colour. In accordance with the work of Crenshaw, who argues that the focus on gender erases black women women's experience by 'limiting the inquiry to the experiences of otherwise privileged members of the group', [186] a few black interview participants conveyed the sense in which in many respects they felt counted out of the equation in efforts to transform the judiciary.

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[185] Crenshaw Margins op cit note 127 at 1242
[186] Kimberle Crenshaw 'Demarginalizing the Intersection' *1989 The University of Chicago Legal Forum'* 139 at 140 (Hereafter Crenshaw Demarginalizing)

It is thus contended that in this space black women feel a deeper sense of exclusion or alienation as they navigate the tensions that make up the Bar. They fall into a vacuum and leave the bar because in the context of transformation they lose out on the 'gender ticket' because white women fulfil that aspect of the quota while they simultaneously lose out on the 'race ticket' because black male fulfil those roles. White women are preferred because they have cultural capital in the form of their shared white history and background while black males are preferred because of the social capital that ensures male dominance. This is also reported in the CALS research on gender transformation.[187]

5. Seniority and Experience

What becomes apparent is that seniority as a marker of hierarchy and a signifier of status masks the processes that have been described above. It abstracts them from the social and structural context by presenting as objective – years in practice and reputable practice recognised by the highest authority in the country. The lived experiences of advocates, as we have seen, indicates that those 'objective' markers are in fact the making of very subjective practices. On the one hand experience is a function of one's ability to acquire work which as we have seen is in turn dependent on access to networks and relationships with particular subjective modes and methods of conduct. On the other hand these modes and codes are often historical, cultural and learned through the very exposure and experience that women are excluded from and which occur in private spaces. Moreover the very award of senior status is decided through a peer reviewed system. The peers that select senior counsel are often the very same peers that are part of dominant networks. One participant acknowledged as much when she said,

> …in practice what actually happens is that there's very small group of people called the bar that decide [senior counsel] and amongst the bar that there is an even smaller group of people that decide it…

What makes this particularly problematic is that in the process experience becomes conflated with and synonymous to merit. Thornton makes a similar point in her article about the gendered nature of merit. She writes, 'merit also encompasses the idea of desert...: *after twenty years at the bar, he deserved to be appointed to the bench*. The

[187] CALS Report op cit note 29

two meanings - excellence and desert – have become conflated (author's emphasis). [188] Thus women who never have quite enough experience because of a work place environment that denies and hinders them from opportunities, are in the same breadth deemed not quite good enough or competent for judicial office. This is reflective of similar occurrences in other jurisdictions in which women and merit are treated as disjunctive. Most intriguing is that several of the survey respondents seemed to have internalised this disjunctive perspective. One comment in point said that 'suitable women' should be appointed and 'not just some idiot to make up the gender numbers who then proceeds to do harm to the cause of competent women judges'. Another said that in the context of gender transformation 'quality [should] not be sacrificed to achieve transformation.' Thus the operation of male dominance at the Bar which places women in gendered categories has ramifications for women beyond the Bar – it extends into the judicial selection process. The placement in those places affects how they present as candidates for judicial selection.

To explain further, the constitutional criteria for judicial selections include experience as a supplementary criterion.[189] Relying on the work of Kate Malleson, Olivier points out that the constitutional criteria are not self-explanatory but rather they are imbibed with contextually situated meaning.[190] In this case the context is legal profession. Meaning is thus created by processes that confirm those legal spaces, such as the Bar, as pools for judicial selection. In other words the context in which merit is given meaning is the legal profession. Therefore the way in which it is defined in the profession impacts the manner in which it is received in the judiciary. Thus if status and worth at the bar is equated to experience then at the judiciary to be merited enough for selection is to have the experience valued at the bar. Given the biases that operate at the Bar to hinder women in their pursuit of work and experience that experience is invariably loaded by dominant male norms.

In the circumstance an imbalance presents itself. As Thornton asserts men are rarely challenged with incompetence or lack of experience in the face of advancement.[191] Women one the other hand are then placed in the position of always defending or

[188] Thornton op cit note 166 at 402
[189] See Judicial Criteria as published on op cit note 107
[190] Olivier op cit note 37 at 455
[191] Thornton op cit note 166

proving their professional competence, often by working harder, which only adds to the tensions that women have to traverse in the course of their career.

6. Judicial Aspirations

How then do women reconcile all of these structural and social processes? The answer to that is reminiscent of the work of Hull and Nelson,[192] mentioned in the literature review, is pertinent. These authors asserted that structure, though powerful, is not determinative so that actors within the structural organisations concerned can still make meaningful choices. This is discernible when regard is had to the judicial aspirations of the women in this research. The processes discussed in this research do not operate to have one outcome for all women. Rather, both within and in response to these confines, women can take actions and make decisions that give expression to their priorities, their goals and even their disappointments. For example in response to her disillusionment about the selection process one participant stated that she would not put herself up for 'the humiliation of the JSC.'

This is not to say that women are satisfied with the status quo. The findings clearly indicate otherwise. Rather it is to say that the choices that women make reflect that status quo and provide a window through which we can assess the state of judicial transformation. If women were resoundingly positive about going to the Bench and the process that gets them there, then we might say we have come a long way in transforming the work space and culture to be more egalitarian. However the reasons for judicial aspirations were or lack thereof was telling. For example, in terms of reserved or negative judicial a significant number of the participants were not willing to give up the independence and flexibility that the bar offered to be able to manage and balance their work and family life which tells us that perhaps judicial office structures need to transformed to accommodate women. In deed there is an argument to be made that Judicial Office was not intended for women. There are anecdotal stories of how court buildings did not have toilet facilities for women.[193] In summary the findings about

[192] Hull and Nelson op cit note 85

193 Pierre de Vos 'Where are all the women judges?' *Constitutionally Speaking* available at http://constitutionallyspeaking.co.za/where-are-all-the-women-judges/ accessed online at 19 April 2015

judiciary aspirations present an opportunity to reflect on the wider transformation of the judiciary and not just the legal profession.

VI. CONCLUSION

In closing, this research aimed to address a gap in the literature – little to no systematic research on Africa – about women in the legal profession. It confirmed that the challenges facing women at the Bar in Cape Town and Johannesburg are similar to those facing women in other jurisdictions. Gender biases and stereotypes subtly augment male dominance in the profession. Such dominance is asserted though social and cultural capital about modes and codes of behaviour and knowledge that males have access to as a result of historical networks, relationships and connections. In this context, women are strained to navigate work place tensions, created by the peculiar work place structures of the Bar, such as voluntary and independent association and referrals. Women must work under a double binding tension that is they must work in the absence of the dominant capital but under the operation of gender bias in order to survive at the Bar.

1. Recommendation 1: Women and Networks

The exclusion of women from relevant networks was identified as a problem. As a result women lack opportunities gain experience in wider range of legal practice. It is recommended that the profession find ways to increase capacity for mentoring and building networks for women including facilitating workshops and seminars. [194] At a judicial level one of the participants suggested using retired judges to mentor female judges. The same retired judges could be used to increase the mentoring capacity of the legal profession more broadly.

2. Recommendation 2: More Research

From the outset this research has intended to build knowledge with the purpose of informing debates and intervention for judicial transformation. While the discussion analysis has provided some valuable insights to build it does not provide the sum total of the complex issues. Therefore there is still scope for research and analysis both at the Bar and in the legal profession more broadly. Rhode in 'The Unfinished Agenda' argues that part of the process of prioritising transformation is the process of assessing the

[194] Rhode Unfinished Agenda op cit note 147 at10.

problems.[195] Thus one of the primary recommendations of this research is to charge civil society, legal academics and professionals, the Judicial Service Commission and the Department of Justice and Constitutional Development (DJC) to continue to be reflexive about the profession through engaged research. To that end the CALS report recommends that the DJC undertakes a research project 'to monitor the career paths of black female law graduates and determine how and if they progress in the legal profession over a ten year period'[196] no doubt to specifically address the unique position that black women find themselves. Other possible avenues for research are suggested below.

Tracking Attrition

The research has begun to identify the challenges that contribute to higher rates of attrition amongst women. Research that tracks down women who have left the Bar and catalogues the series of events and reasons that led to the decision to leave could be useful to identify critical stages in the career of women at which support and interventions could be targeted.

Mapping briefing patterns

As has been established briefing patterns play a predominant role in the exclusion of women from the profession. Mapping briefing patterns, that is identifying in more particular detail who (government, corporate, private) briefs who and when, could assist in tracking the changes in those patterns as transformation initiatives take hold. It will also provide empirical evidence upon which decisions about various sites of intervention can be based. For example, the private sector is heavily criticised for their briefing practices – mapping details like this will prove useful in challenging the practices and decisions that are taken at that level.

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[195] Ibid.

[196] CALS report op cit note 29 at 37. Perhaps useful in this regard will be to look back on any research done on women in the profession in earlier years. In this respect one of the interview participants mentioned research that was done by the Law Race and Gender Unit, now the Centre for Law and Society at UCT in 1995/1996 in which they interviewed final year law students. According to the participant the students filled out a form after each job interview. This was then followed up with focus group discussions facilitated by Debbie Budlender.

3. Recommendation 3: Reform opportunities and Advocacy strategies

The enactment of the Legal Practice Act [197] presents an opportune moment to mobilise advocacy and research to influence the way the Act is implemented. The preamble of the act states that its purpose is 'to provide a legislative framework for the transformation and restructuring of the legal profession in line with constitutional imperatives'. Civil society and the legal profession alike need to capitalise on this stated objective and insist on structures and practices that will achieve this. Critical to this is the establishment by the Act of a single regulatory body, the South African Legal Practice Council that will 'exercise jurisdiction over all legal practitioner'[198] (attorney and advocates) with the object of '[facilitating] the realisation of the goal of a transformed and restructured legal profession that is accountable, efficient and independent'.[199] The enactment of the act has been staggered and to this end the Council will only come into operation three years after an interim entity called the National Forum on the Legal Profession. This forum will be charged with making recommendations to the Minister on key structural and organisational aspects of the profession.[200] As demonstrated in this research structure and organisation can play seminal roles in the success of individuals at the Bar, thus it will be important that stakeholders mobile during this interim period to advocate for practical transformation initiatives and bench mark indicator, based on the kinds of research posited above.[201]

This new development consequently presents a critical moment to insist that stakeholder take to heart the transformative agenda. It is imperative that we move beyond the formal aspect of equal presence to the more substantive aspect of equal participant. [202] Regulating bodies need to take bold steps to achieve this balance and move beyond the formulation of transformative policies to the effective and practical implementation of those policies and so doing take bold steps. Perhaps is not enough to merely state that in

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[197] Supra note 15.
[198] Supra note 15, section 4.
[199] Supra note 15 section 5(a).
[200] Supra note 15 s96 and s97.
[201] Recall the work of Barmes and Malleson op cit note 33 who assert that bodies such as these, selection committees and regulatory councils, are key sites of intervention.
[202] DJP Mojapelo Wits Speech op cit note 39.

selecting counsel 'reasonable endeavour'[203] should be made to brief fairly and equitably. Perhaps the time is ripe to reconsider the institution of silk. Certainly maternity assistance should be mandated across all constituent Bars and certainly robust engagement must occur about the qualities and characteristics desired of our judicial officers.[204] Put simply, the kind of judges we determine we want as a society will determine the kind legal professional environment that will engender those qualities.

[203] Cape Bar Model Policy on Briefing Patterns available at http://www.capebar.co.za/index.php?option=com_content&view=article&id=45&Itemid=53.
[204] For an interesting account and list of proposed criteria see *Helen Suzman Foundation v Judicial Services Commission*, Case no. 8647/13

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The Constitution of the General Council of the Bar, GCB website available at

APPENDICES

APPENDIX A

Dear Advocate (XYZ)

Are you regarded differently from you male counterparts? Do you experience difficulty because of your gender? Do you really feel like a member of the advocates' profession?

My name is Rudo Chitapi and I am currently registered as an LLM Student at the University of Cape Town. My project research aims to investigate the **PERSPECTIVES AND OPINIONS OF WOMEN IN THE ADVOCATES PROFESSION ABOUT THEIR PROFESSION AND THEIR EXPERIENCES** and is being supervised by Tabeth Masengu of the Democratic Governance and Rights Unit at UCT.

This project requires interviews from practicing advocates and thus would you kindly consider being interviewed for this project.

With your help I seek to explore exactly how the legacy of exclusion of females (represented by the 'former' Chief justice De Villiers Comments above) has impacted women, how it is changing and what more needs to be done. Who better to answer these questions than you – women who are currently embedded in it!

If you would like to participate, please respond to this email indicating as much, so that we can arrange an interview. The length of the interview will vary depending on the topics brought up for discussion but I would appreciate it if you could set aside 1 hour at the most. Interviews can occur at a place of convenience and safety for you. Participation is completely voluntary and strict code of confidentiality and anonymity will be observed.

If you have any queries or would like more information on the project please read the excerpt below and or contact me or Tabeth Masengu (contact details provided below).

Yours faithfully

Rudo Chitapi
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Tabeth Masengu
Master's Thesis Supervisor
Researcher, Democratic Governance and Rights Unit
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APPENDIX B

Subject: FEMALE ADVOCATES - We need your views

…it is absolutely most undesirable that women should be allowed to become practising members of the legal profession…" – Mellius De Villers (1918), Former Chief Justice

Dear Advocate (XYZ)

My name is Rudo Chitapi and I am currently registered as an LLM Student at the University of Cape Town. My master's thesis aims to look at the experiences of women in the advocates' profession.

We know that the view expressed by the former Chief Justice has since changed but we still need your views as a female advocate to see just how much it has changed in South Africa! We want to know about your experiences!

Please help us by taking a survey. The link to it is here:

https://www.surveymonkey.com/s.aspx

This link is uniquely tied to this survey and your email address. Please do not forward this message.

If you have any queries or would like more information on the project please contact me or Tabeth Masengu.

Thanks for your participation!

Yours faithfully

Rudo Chitapi
Masters in Public Law
Law and Society, Criminology Programme
Tel: 0727368440
Email: chtrud003@myuct.ac.za

Tabeth Masengu
Master's Thesis Supervisor

Researcher, Democratic Governance and Rights Unit
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If you do not want to receive emails follow this link and you will be taken off our database.
https://www.surveymonkey.com/optout.aspx

APPENDIX C

THE VIEWS OF FEMALE ADVOCATES

Thank you for following the link to the survey! Your participation is important – it will help build knowledge about women in the legal profession.

Before you begin please take note of the following:

This project is interested in your experiences of life and work at the Bar and the impact of those experiences on you and your career.

We would like as many female advocates to participate – we want to have as many views represented as possible so please encourage your female colleagues to take the survey. We are particularly interested in women with 10 years of experience or more but participation from all female advocates will still be appreciated!

The survey will not take longer than 25 minutes.

Participation is completely anonymous. The process is organised in such a way that we cannot match your responses with your name.

Participation is also voluntary. The choice to participate is yours. Should you chose to, you can stop taking the survey at any time or skip a question. You can also choose not to take the survey by indicating a response to the question below and you will not be led to the survey.

All data generated will be kept on a secure password protected computer accessible only to the principal researcher and supervisors and used to compile an LLM thesis and report at the University of Cape Town.

Once you have completed the survey you will be informed of the process to follow should you wish to receive selected results from the survey.

If you have concerns about the research, its risks and benefits or about your rights as a research participant in this study, you may contact the Law Faculty Research Ethics Committee Administrator, Mrs Lamize Viljoen, at 021 650 3080 or at lamize.viljoen@uct.ac.za. Alternatively, you may write to the Law Faculty Research Ethics Committee Administrator, Room 6.28 Kramer Law Building, Law Faculty, UCT, Private Bag, Rondebosch 7701

* 1. Would you like to participate in this survey?

- ○ Yes

No

Next

PERSONAL INFORMATION

The questions in this section relate to your demographic, educational and family background. Please answer as accurately as you can.

2. The GCB uses the following categories for racial classification in their annual statistics. The categories are also those used during Apartheid. Which category do you place yourself under?

- ○ Black
- ○ Indian
- ○ Coloured
- ○ White
- ○ I Prefer not to answer
- ○ Other (please specify)

3. What is your age?

4. How many children do you have?

- ○ 0
- ○ 1
- ○ 2
- ○ 3
- ○ 4
- ○ 5
- ○ 6+

5. How many dependents (other than your children and your spouse) do you have?

- ○ 0
- ○ 1
- ○ 2
- ○ 3
- ○ 4

- 5
- 6+

6. How long have you been an advocate for?

- ○ 0- 4 years
- ○ 5 - 9 years
- ○ 10 - 14 years
- ○ 15 - 19 years
- ○ 20 - 24 years
- ○ 25 years and more

7. What legal degrees have you completed? Select all that apply.

- ☐ B-Juris
- ☐ B-Proc
- ☐ BA LLB
- ☐ B Soc Sci LLB
- ☐ B Bus Sci LLB
- ☐ B Com LLB
- ☐ Four year undergraduate LLB
- ☐ Three year postgraduate LLB
- ☐ Masters in Law (Mphil/LLM)
- ☐ Doctorate in Law (LLD)
- ☐ Other (please specify)

8. Where did you obtain the degree qualification selected in the question above?
Select all the institutions that you attended in the course of obtaining your legal qualifications

- [ ] University of Witwatersrand
- [ ] University of Cape Town
- [ ] University of Fort Hare
- [ ] University of Free State
- [ ] University of Johannesburg
- [ ] University of Kwa-Zulu Natal
- [ ] University of Limpopo
- [ ] North West University
- [ ] University of Pretoria
- [ ] Nelson Mandela Metropolitan University
- [ ] Rhodes University
- [ ] University of South Africa (UNISA)
- [ ] University of Stellenbosch
- [ ] University of Venda
- [ ] University of Western Cape
- [ ] University of Zululand
- [ ] Other (please specify)

9. What is your marital status?

- ( ) Single
- ( ) Married
- ( ) Life partnership/Living Together
- ( ) Divorced
- ( ) Other (please specify)

Prev Next

PROFESSIONAL PRACTICE

The questions in this section relate to your areas of expertise/practice, income and work hours. Please answer as accurately as you can.

10. Over your years of practice, what areas of law have you practiced in? Select all the areas that apply

- [ ] Constitutional Law
- [ ] Contract Law
- [ ] Property Law (including
- [ ] conveyancing) Intellectual Property
- [ ] Delict Law
- [ ] Commercial Law (including Tax)
- [ ] Labour Law
- [ ] Criminal Law
- [ ] Environmental Law
- [ ] Administrative Law
- [ ] Customary Law
- [ ] International Law
- [ ] Immigration/Refugee Law
- [ ] Family Law
- [ ] Other (please specify)

11. What areas of law do you practice in most regularly? Select your top three areas of practice

- [ ] Constitutional Law
- [ ] Contract Law
- [ ] Property Law (including conveyancing)
- [ ] Intellectual Property
- [ ] Delict Law
- [ ] Commercial Law (including Tax)
- [ ] Labour Law
- [ ] Criminal Law
- [ ] Environmental Law
- [ ] Administrative Law
- [ ] Customary Law
- [ ] International Law
- [ ] Immigration/Refugee Law
- [ ] Family Law
- [ ] Other (please specify)

12. On average, what are your net monthly income earnings?

- ( ) Less than R 25 000
- ( ) R 25 000 - R 34 999
- ( ) R 35 000 - R 44 999
- ( ) R 45 000 - R 54 999
- ( ) R 55 000 - R 64 999
- ( ) R 65 000 - R 74 999
- ( ) More than R 75 000
- ( ) Prefer not to answer

13. On average, how many hours per week do you work?

Prev Next

ORGANISATION OF THE PROFESSION

Bar and Chamber rules, regulations and policies

This section asks you to consider the rules, regulations and policies that affect your practice, both positively and or negatively. Please consider these questions as a female in the profession.

14. Are there rules, regulations or policies (of your bar, group or chamber) that you find challenging for your personal practice as a female advocate?

- Yes
- No

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15. Please name the rule, regulation or policy that you find most challenging and briefly describe how it impacts you?

16. Please indicate whether the rule mentioned above is a Bar, Group or Chamber Rule.

- Bar
- Group
- Chamber

17. Do you think that there are rules, regulations or policies (of the bar, group or chamber) that other female advocates find challenging for their personal practices?

- Yes
- No

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18. Please name the rule, regulation or policy that you think your female counterparts struggle with and briefly describe how it has impacted them.

19. Are there rules, regulations or policies (of your bar, group or chamber) that make it easier for your personal practice as a female advocate?

- Yes
- No

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20. Please name the rule, regulation or policy that you find most helpful and briefly describe how it impacts you?

21. Please indicate whether the above rule is a Bar, Group or Chamber rule

- Bar
- Group
- Chamber

22. Do you think that there are rules, regulations or policies (of your bar, group or chamber) that your female counterparts find particularly helpful for their practices?

- Yes
- No

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23. Please name the rule, regulation or policy and briefly describe how you think it has impacted your female counterparts?

24. Please indicate whether the rule above is a Bar, Chamber or Group rule

- Bar
- Chamber
- Group

Prev Next

GENERAL WORK ENVIRONMENT

The questions below ask you to consider your opinions, feelings and thoughts about your work environment and relationships.

25. To what extent do you agree with the following statements:

	STRONGLY DISAGREE	DISAGREE	NEUTRAL	AGREE	STRONGLY AGREE
I am confident in my work environment	○	○	○	○	○
I am comfortable in my work environment	○	○	○	○	○
I feel that I have to act in a particular way to 'fit it'	○	○	○	○	○
The way the profession operates is more suited to men	○	○	○	○	○
Attorneys show less confidence in female advocates	○	○	○	○	○
Clients show less confidence in female advocates	○	○	○	○	○
Male advocates show less confidence in female advocates	○	○	○	○	○
Female advocates show less confidence in other female advocates	○	○	○	○	○
I feel connected to male advocates (feel a camaraderie)	○	○	○	○	○
I feel connected to other female advocates (feel a camaraderie)	○	○	○	○	○

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CHALLENGES AND DISCRIMINATION

This section asks you to consider what the major challenges have been to your professional career and whether or not you have faced discrimination as a female advocate. Please answer as honestly and accurately as you can.

26. What to date have been the major challenges of your career? Select all that apply

- [ ] Inadequate finances
- [ ] Difficulty with practice management
- [ ] Problems with your physical health
- [ ] Problems with your mental and psychological health
- [ ] Problems with your emotional well-being
- [ ] The work itself (substantive content of the law)
- [ ] No mentor
- [ ] Finding and securing briefs (work)
- [ ] Lack of quality work
- [ ] Difficult work relationships
- [ ] Balancing work and family life
- [ ] Other (please specify)

27. To what extent do you agree or disagree with the following statements:

	STRONGLY DISAGREE	DISAGREE	NEUTRAL	AGREE	STRONGLY AGREE
In general, some of the challenges that I have faced (some of which have been described above) are **related to my gender**	○	○	○	○	○
In general some of the challenges that I have faced (some of which have been described above) are **related to my race** as indicated in question 2	○	○	○	○	○

28. Have you ever experienced discrimination based on any of the following grounds? Select all the grounds that apply.
The grounds listed are obtained from section 9 of the Constitution, Republic of South Africa

- [ ] Race
- [ ] Gender
- [ ] Sex
- [ ] Pregnancy
- [ ] Marital Status
- [ ] Ethnic or Social Origin
- [ ] Colour
- [ ] Sexual Orientation
- [ ] Age
- [ ] Disability
- [ ] Religion
- [ ] Conscience
- [ ] Belief
- [ ] Culture
- [ ] Language
- [ ] Birth
- [ ] Other (please specify)

29. In general, reflecting on all the grounds above, how frequently have you had such discrimination experiences?

Always	Often	Sometimes	Rarely	Never
○	○	○	○	○

30. Reflecting on you gender how frequently have you had discrimination experiences based on your gender?

Always	Often	Sometimes	Rarely	Never
○	○	○	○	○

31. Do you feel that you have been DENIED BRIEFS (i.e. not offered briefs) based on any of the listed grounds below? Select all that apply.
The grounds listed below are obtained from section 9 of the Constitution, Republic of South Africa

- [ ] Race
- [ ] Gender
- [ ] Sex
- [ ] Pregnancy
- [ ] Marital Status
- [ ] Ethnic or Social origin
- [ ] Colour
- [ ] Sexual Orientation
- [ ] Age
- [ ] Disability
- [ ] Religion
- [ ] Conscience
- [ ] Belief
- [ ] Culture
- [ ] Language
- [ ] Birth
- [ ] Other (please specify)

32. Do you feel that you have been OFFERED BRIEFS based on any of the grounds listed below.Select all that apply.
The grounds listed below are obtained from section 9 of the Constitution, Republic of South Africa

- [ ] Race
- [ ] Gender
- [ ] Sex
- [ ] Pregnancy
- [ ] Marital Status
- [ ] Ethnic or Social origin
- [ ] Colour
- [ ] Sexual Orientation
- [ ] Age
- [ ] Disability
- [ ] Religion
- [ ] Conscience
- [ ] Belief
- [ ] Culture
- [ ] Language
- [ ] Birth
- [ ] Other (please specify)

33. Do you feel that you have been denied promotion to Senior Counsel based on any of the grounds listed below. Select all that apply.
The grounds listed below are obtained from section 9 of the Constitution, Republic of South Africa

- [ ] Race
- [ ] Gender
- [ ] Sex
- [ ] Pregnancy
- [ ] Marital Status
- [ ] Ethnic or Social origin
- [ ] Colour
- [ ] Sexual Orientation
- [ ] Age
- [ ] Disability
- [ ] Religion
- [ ] Conscience
- [ ] Belief
- [ ] Culture
- [ ] Language
- [ ] Birth
- [ ] Other (please specify)

Prev Next

MENTORING

The section below seeks to find out more about the mentoring relationships you have had over your career as a female advocate.

34. Have you had other mentors other than your pupil master?

- Yes
- No

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35. How long has that other mentoring relationships lasted for? Estimate number of years of that relationship

36. How did you or do you maintain that relationship?
For example, "meet twice monthly" or "speak over the phone regularly"

37. How has that relationship been helpful?

38. Did you have a pupil master?

- Yes
- No

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39. Have you maintained that pupil-master relationship?

- Yes
- No

Prev Next

40. How have you maintained that pupil-master relationship? For example, "we meet every month"

41. Have you ever mentored or are you currently mentoring a female advocate?

- ○ Yes
- ○ No

Prev Next

42. What is/was the nature of that relationship? Select all that apply

- ☐ I give personal advice and guidance
- ☐ I give professional advice and guidance
- ☐ I recommend my mentee for briefs
- ☐ I work directly with my mentee on briefs
- ☐ Other (please specify)

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CAREER AMBITIONS

This sections asks you to consider the trajectory of your career and ambitions over the years.

43. Have your career aspirations changed over your years in practice?

- ○ Yes
- ○ No

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44. How have your career aspirations changed over your years in practice?

Prev Next

45. Why have your career aspirations not changed over your years in practice?

Prev Next

46. Do you want to get senior counsel (silk) status?

- Yes
- No

Prev Next

47. Why do you want to get senior counsel (silk) status?

Prev Next

48. Why do you not want to get senior counsel (silk) status?

Prev Next

49. Do you want to become a judge?

- Yes
- No

Prev Next

50. Why do you want to become a judge?

Prev Next

51. Why do you not want to become a judge?

Prev Next

JUDICIAL SELECTION FACTORS

This sections aims to get your opinions and views on what factors should be considered when selecting a judicial officers.

52. The Helen Suzman Foundation has suggested several factors in addition to race and gender that should be considered for judicial selection (see founding affidavit against Judicial Services commission available on their website).
The factors are listed below. Select the three that you think are the most important?

- [ ] Knowledge of the law
- [ ] Capacity to assimilate new areas of the law
- [ ] Legal and factual analytic ability
- [ ] Intellectual Integrity
- [ ] Impartiality and objectivity
- [ ] Ability to command the public confidence
- [ ] General Knowledge of everyday life
- [ ] Communication skills
- [ ] Public Image
- [ ] Administrative Efficiency

53. What is your opinion about the factors? Do you think they are a good measure of a judge?

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OVERALL GENERAL COMMENTS

54. Looking back over your career, and considering the path of women into the judiciary, how do you generally feel about your experience in the profession so far?

55. What are your comments and views on gender transformation at the judiciary in South Africa?

Prev Next

END OF SURVEY

Thank-you for taking the survey! If you would like to be sent selected results from the survey and research please send an email to the following address:

chtrud003@myuct.ac.za

Goodbye!

Prev Done

APPENDIX D

Faculty of Law

Research Ethics Committee

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23 September 2014

Ms RUDO CHITAPI (CHTRUD003)
Maters in Public Law
Law and Society, Criminology Programme

Tel: 0727368440
Email: chtrud003@myuct.ac.za

Dear Ms Chitapi

Re: Clearance Process for L21-2014: *"Women in the Legal Profession: Perspectives of Female Advocates in South Africa (Working Title)"*

Thank you for the revised documentation supplied on 18/09/2014 via the Faculty's Research Office.

This study has been carefully considered and all ethical concerns have been adequately addressed.

Ethics clearance is granted with effect from 23 September 2014 for 12 months subject to renewal for another 12 months. Please note that any material changes to the proposal will need to be cleared as an amendment.

With best wishes,

Dr Shane Godfrey
Chairperson of REC

CC: T Masengu (Supervisor, Public Law Department, UCT)