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## Did Attorney Evans Bump Her Head on the “Glass Ceiling”?



### CASE OVERVIEW

This case describes the problems that a seemingly well qualified female attorney in a prestigious law firm experienced in obtaining a partnership. The process the firm uses to decide on admitting a firm member to partnership is documented. Issues related to gender discrimination in professional advancement, particularly the glass ceiling phenomenon and the informal organizational culture, are the focus of the case. Policies of the firm, sample evaluations of the attorney, and some policy recommendations to firms from the American Bar Association are all included as supporting material in the appendices, as are the instructions for filing sex discrimination claims with the Equal Employment Opportunity Commission (EEOC).

## ❖ BODY OF CASE

Meghan Evans sat stunned in her friend Margot's apartment. Just that afternoon she learned that the Associates Committee in her law firm planned to recommend against considering her for partnership. This was only the latest negative experience for her at work; her entire seven-year history with the firm had been somewhat troubled.

**Background**

Meghan Evans managed, despite the added responsibilities of raising two children on her own, to complete law school with an outstanding record. Widely recruited by prestigious firms, and highly ambitious, she settled upon Wilson, Barnes, Sauer and Kahn, a firm of more than 200 attorneys. Her goal was to be a successful trial attorney, and she served in the litigation department of Wilson, Barnes. After seven years, Ms. Evans's superiors in the Litigation Department, with whom she had seven most closely, wanted her to be named a partner in the firm.

In recent years the firm, like many nationally, had toughened its standards for achieving partner status. Firms cannot afford partners who are unable to pay their own way, and many expect their partners to work very hard indeed. Women continue to have a harder time than men in achieving partnership, and many more women than men resign from large firms out of discouragement before reaching the number of years required (American Bar Association [ABA], 2001). While Meghan's firm overall had few women partners, there were several in the litigation department, though none in the area of corporate litigation. All the female litigation partners had opted for the firm's part-time partnerships. One of the two female equity partners (of a total of 55 equity partners), the highest rank in the firm, had children but complained she never saw them. The requirements of the firm to be "on call," and the difficulty of combining the hours requirement for partnership with the demands of a family were considerable.

Just last year the firm had raised its hours requirement—the number of billable hours to achieve bonuses as an associate and a standard for those seeking eventual partnership—to 2000 hours, the highest requirement among the major firms in her city. "We have to be 'lean and mean' in the current business environment," argued a partner with whom Meghan worked frequently. "You might as well get used to these hours, if this is the career you want."

Meghan loved her work in corporate litigation, but she also wanted and needed some predictability of hours and flexibility to meet

the needs of her family and to have a personal life. Nationally, her age cohort of young associates shared her concerns; many of them would gladly have taken substantial pay reductions in order to work fewer hours and not be on call every evening and weekend (ABA, 2001).

The firm had policies that seemed to allow both men and women to advance. A number of women had achieved partner status, though none in corporate law; the work culture required that attorneys dealing with business clients be on call, and the work frequently involved long hours and extended travel to other metropolitan areas. The firm's policies allowed for part-time partners; Meghan knew several women who had received these positions. Technically they worked fewer hours (30–35 hours per week, normally), but in practice they were often called in and sent on business trips just like full-time attorneys. Their arrangements called for a percentage of work over a year—60% of a full partner's hours, for example—but in practice they were required to finish any cases they had begun, to come in frequently on off days, even if doing so resulted in more hours worked than their contract required. "Do you think it is worth it?" Meghan had asked one of the female part-timers. "Yes, it is to me," the friend responded. "Even though I work far more than my agreement stipulates, I always know I will have no trouble in meeting my stated hours requirement." Meghan found this picture of "just as much work but less compensation" really unfair.

Pregnancy and family leave, as well as four weeks of paid vacation, were also policies on the books at Wilson, Barnes. In fact, though, Meghan's friend Anne reported that she experienced great difficulties after her pregnancy leave. "The partner who took on my clients refused to funnel all of the work back to me, after my return," Anne complained. "After the baby was born, I never regained the same referral status, in terms of getting prime assignments that I had before my pregnancy leave. So technically I was back at the firm, but in actuality I was receiving very different treatment." Anne subsequently left the firm for another position, following the example of many female associates, who have a much higher attrition rate from major firms than do men (National Association for Legal Practice, 2003). All six of the other female associates in Meghan's division during her time there had resigned for various reasons. Obviously this high resignation rate was one contributor to the small number of women partners in the firm.

Meghan also remembered the times she had felt excluded from some of the informal occasions that can lead to higher visibility and assignments in the firm, through social networking. One summer all the associates in the corporate division of the firm had gone on a weekend retreat to a resort area; the stated purpose of the event was

team building by spending informal time together. Told the event would end Saturday, Meghan and another female associate made plans to return to the city. During a meal conversation, they discovered that all the men had been invited to stay for an additional day of golf. On several other occasions, Meghan felt unable to attend evening social events because of family commitments.

While having to pass up attending such events may appear merely annoying, the events can in fact create personal networks in the firm that advantaged some associates, perhaps at the expense of others. On one of her major cases involving out-of-town court work, Meghan had not been invited to accompany the team, even though her work had figured prominently in the case's development. The supervisor told her, "Well, you know, I just knew this other guy's availability and I wasn't sure of yours." Getting credit for acquiring clients for the firm was another issue in which she felt men often were favored; women working with clients were sometimes seen as providing for the "care and feeding of clients," a phrase that somewhat downgraded their client relations. "If a guy is going for a game of golf, he is free to just say that; somehow if I say I have a family commitment, some perceive it as a lack of commitment to the firm," Meghan complained.

As her friend James points out, though, men who value family time may suffer even more informal discrimination in firms. "Only about 4% of all lawyers in a national study had ever worked part-time, and there is some evidence that men doing so rarely make partner," James asserted (Noonan & Corcoran, 2004). "When I took 12 weeks of parental leave when Jared was born, there were a lot of raised eyebrows among the partners, and no adjustment was made to my billable hours requirement that year, even though the leave was firm policy and fully compensated." "Yes," Meghan responded. "We are both caught in the same gendered trap . . . with me sometimes being punished by the assumption that my family makes me 'cheat' the firm, and you for taking fatherhood as seriously as your career."

### The Firm's Evaluation

The evaluation process to become a full partner at Wilson, Barnes, as in many large firms, was complex. It relied on personal networking and having the respect of existing partners—often heavily influenced by the visibility and importance of the cases to which the associate had been assigned—as well as an assessment of a portfolio of hundreds of written evaluations of her work. In these portfolio evaluations, those working with the attorney in question scored her in 20 categories and

also gave her an overall performance rating or score. Associates within two years of being considered for partnership were reviewed annually; less senior associates were evaluated semiannually. Aside from rumors, associates were never told how the results of their evaluations were arrived at, how the various factors might be weighted, or who served on the associates committee that recommended partners to the Executive Committee. Partners argued that this secrecy was necessary to prevent inappropriate lobbying for partnership status.

In the year an associate became eligible for partnership consideration, she was asked to name the five partners for whom she had done the most work in each of the previous 3 years. These partners received a detailed questionnaire, and the results were compiled by another partner, who presented them to the Associates Committee. The process attempted to recognize that successful attorneys need to be evaluated in a wide variety of areas, using a composite picture of their talents rather than a single attribute or skill, since no associate can achieve the highest level in each of the established criteria. (The reality is that some associates do certain things better than others, and the process forces each to be evaluated as an individual.)

Ten criteria of legal performance were listed on the forms: legal analysis, legal writing and drafting, research skills, formal speech, informal speech, judgment, creativity, negotiating and advocacy, promptness, and efficiency. Ten personal characteristics were also evaluated: reliability, taking and managing responsibility, flexibility, growth potential, attitude, client relationship, client servicing and development, ability under pressure, ability to work independently, and dedication.

Partners provided grades as well as written comments on these criteria. The evaluation forms described the grades as follows:

1. *Distinguished*: Outstanding, exceptional; consistently demonstrates extraordinary adeptness and quality; star.
2. *Good*: Displays particular merit on a consistent basis; effective work product and performance; able; talented.
3. *Acceptable*: Satisfactory; adequate; displays neither particular merit nor any serious defects or omissions; dependable.
4. *Marginal*: Inconsistent work product and performance; *sometimes* below the level of what you expect from associates.
5. *Unacceptable*: Fails to meet minimum standard of quality expected of an associate at this level; *frequently* below the acceptable level.

Evaluating partners were also asked to describe any particular strengths or weaknesses of an associate. In addition, partners were told to indicate their views on the admission of each senior associate to the partnership, among these five choices: "with enthusiasm," "with favor," "with mixed emotions," "with negative feelings," and "no opinion." Finally, partners were asked to respond yes or no to the following general question: "I would feel comfortable turning over to this associate to handle on his/her own a significant matter for one of my clients." In addition to recommendations of partners and the evaluation of portfolios, the review process included some quantitative measures of performance, such as hours billed, business generated, new business attracted to the firm, and so on.

Partners other than those for whom the attorney had worked the most were also allowed to submit evaluations if they wished. This happens informally, at a series of breakfast discussions. The review of the associate's record, including the evaluations submitted by all partners who cared to do so, was initially conducted by a 10-partner Associates Committee; with their favorable partnership recommendation, the matter was reviewed by a five-member Executive Committee, which makes recommendations to the entire group of partners, numbering 94 at the time of Ms. Evans's consideration. While the Executive Committee *usually* ratifies the choices of the Associates Committee, they are not required to do so. In any case, only those associates nominated by the Executive Committee would be presented to the entire partnership for a vote. The final vote of all the partners, while it is made to appear very democratic, is actually quite well controlled by the two committees making the recommendations; they lobby partners to support their choices, and all partners know who is being recommended.

Meghan had anticipated that her partnership seemed almost a foregone conclusion at Wilson, Barnes. Her superiors in the litigation department wanted her as a partner. They admired and respected her work, and they liked her as a person. In addition, in respect to the portfolio evaluation system, Meghan's reviews from the partners for whom she had done substantial work were consistently positive for the entire 7 years of her service. While such matters are obviously subjective and difficult to measure, she believed that a majority of the partners in the firm clearly seemed to respond favorably to her, both personally and professionally.

Despite this seemingly rosy picture, the 10-partner Associates Committee had just recommended, by a vote of 9 to 1, against Meghan Evans's acceptance as full partner. They did, however, recommend to

the Executive Committee that she be offered a special partnership (terms undefined) in the domestic relations department of the firm, a unit from which two partners were leaving the firm, and where they believed her skills would be most useful. The Associates Committee suggested that she might be able to make full partnership relatively soon in this department because of the positive evaluations she received on work with clients and in the courtroom.

The field of domestic relations has often been one of the most available specialties for women attorneys; Meghan believed she was being told that she must practice in the "women's part" of the firm. Further, given the nature of modern marriages, this work presents complex legal issues. The analytical skills required are daunting, especially with regard to the taxation issues involved. Thus, Ms. Evans, with 6 years of experience in business litigation, believed that she lacked the requisite background for the domestic relations work.

It was this news that Meghan had just received that afternoon.

### Meghan's Legal Argument

"I just cannot decide what to do next," Meghan said to her friend Margot, an employment attorney. Margot and Meghan agreed that her denial of partnership constituted discrimination on the basis of sex. Meghan recalled many indications of such possible discrimination. "In my initial job interview with the firm," she remembered, "a partner told me it would not be easy for me at Wilson because I 'was a woman, had not attended an Ivy League law school, and had not been on law review.'" Meghan also felt, at times, that she was given less desirable assignments, with less visibility, than her male counterparts received. "I think this probably has affected my evaluations from partners who have not had direct contact with me," she said.

Meghan also could provide specific crude and unprofessional statements made by one of the firm's male attorneys to female attorneys that demonstrated a work environment hostile to women. One corporate partner was widely known for attending strip clubs while on business travel and making frequent remarks about that to women attorneys also making the trips; several women had complained, but the behavior continued. He had circulated pictures of himself at the Playboy mansion to colleagues at work. On one occasion Meghan had been yelled at and had documents thrown at her by a male colleague with a bullying style. She confronted this behavior, and the colleague replied that it was common at the firm and she should get used to it. (Later, however, this colleague had been reprimanded and voluntarily left the firm.)

"I think you can prove discrimination here," said her friend Margot. "You would need to prove that the reason given for your denial—lack of sufficient legal analysis ability, was really a cover or pretext for gender discrimination. You'd also need to point out the instances in which your male colleagues were treated differently from how you were in the evaluation process. Since the evaluation is essentially a subjective one, we should be able to show how influenced it might be by gender bias. Further, there are only ten women partners in the firm, which strengthens our claim." There were only two female equity (ownership) partners, all the female litigation partners were part-time (by choice), and only one of the female equity partners had children. All female associates recently in corporate litigation had left the firm before partnership consideration. Attrition in the firm overall was high, and the vast majority of those leaving were female. All these conditions suggested to Margot a male-dominated power structure in the firm, which might easily result in biased treatment of female associates.

Meghan reviewed some of the additional evidence of discrimination. The senior partner who chaired the Associates Committee had stated that he had rated her low on "client satisfaction," despite high ratings in this area in her portfolio. The chair provided no specific facts in support of his rating, stating only that his opinion was that she was a *prima donna*. She was criticized by another senior partner for weak legal analysis skills, yet her overall rating in this area was the same as some of the male associates with whom she had been compared. In the Associates Committee's review, Ms. Evans was also criticized for being "too involved with women's issues in the firm" and "very demanding" and "insufficiently 'nonassertive and acquiescent'" to the predominantly male partnership. These comments suggested that she might have been punished in her review for raising issues in the firm or for not conforming to a submissive image or style.

At the time the Associates Committee at Wilson, Barnes declined to recommend Ms. Evans for partner, it did see fit to recommend a number of other associates. Out of a total of eight candidates in her class, five male associates and one female associate were recommended for regular partnership. One male associate was not recommended for either regular or special partnership. (As was commonly done, this associate would be offered a large cash settlement as part of his termination, but in exchange would have to file a release from any future legal action against the firm relating to its decision.) The evaluation portfolio data on the male associates most likely indicated that a few received higher ratings than Ms. Evans. The majority of the men recommended for partner were not superior to her, however, according to

one committee member's analysis. The quantitative measures of associate success—including total hours billed, volume of business generated, and clients individually attracted to the firm—presented a picture of Ms. Evans's performance as equal to that of most of the men and superior to that of some who were recommended for partner. In addition, Ms. Evans had actually tried several cases, which was unusual for an associate in litigation, since many cases are settled without trial and the few that go to trial are usually handled by partners. The volume of business generated by Ms. Evans had steadily increased in the several years just before her review for partner, and her colleagues in the litigation department remarked on this as an indicator of her likely future productivity for the firm.

Meghan's legal case could also make the argument that several male associates were made partner despite scathing reviews in their portfolios; the cited failings of these associates were not used to block their recommendation for partnerships. A number were made partners despite serious concerns about general competence and behavior. One male associate was even deemed by the partners to have been guilty of malpractice (his guilt was in fact later established, after he left the firm) and yet was recommended for partner by the Executive Committee. The committee went so far as to excuse another male associate's frequent, lengthy, and unexplained absences (which created liabilities for the firm as a result of missed deadlines) because of his abilities in another area. Ms. Evans maintained that these recommendations were in stark contrast with her own evaluation, in which criticism of her analytical abilities—about which partners disagreed, and for which her overall rating in the last year was more than satisfactory—was given so much emphasis in the final evaluation. She believed that this criticism was unfairly used to negate her entire track record of accomplishment in the firm in other areas of the evaluation. Indeed, Evans was convinced she had met and in many ways exceeded the explicit standards the firm had set, and that she evidenced none of the serious character flaws manifested by more than one male associate accepted for partner. She had taken one year longer to achieve the hours required for partnership consideration, a consequence of a family leave, but the firm's policy allowed this.

This, then, would be the basis of Meghan's lawsuit, if she chose to file one. She would claim both that the firm's stated reason for considering her for partner—lack of legal analysis skill—was a cover for gender discrimination and that she had been treated differently from male colleagues. Written reviews of men who had made partner the same year Evans was denied would be read into the testimony in the case.

(Some of these were potentially very embarrassing to the firm; one man had been guilty of malpractice and another had disappeared without notice and missed critical deadlines.)

"It is a classic glass ceiling case," her attorney Margot argued, "denying a woman advancement to the highest levels of the professions and management on the basis of sex, while making up other reasons." She also argued that overall data about the firm—including fewer women associates staying long enough to seek partnership, fewer women with full access to the social networks that assisted in achieving partnership, reduction in volume of work following maternity and other family leaves taken, among other considerations—contributed to a male-dominated work culture generally in the firm.

### The Firm's Likely Position

The firm of Wilson, Barnes, however, would undoubtedly make strong arguments of its own that it was not guilty of glass ceiling discrimination in denying Meghan a recommendation for partnership. The evaluation process allows for many interpretations, as there are no absolutely objective standards for judging performance. Some of the early evaluations of Meghan's legal analytical ability had been quite critical, from her early years with the firm, and the same issues arose in her final Associates Committee reviews. The firm would claim Meghan did not meet a minimum standard in legal analysis.

To the argument that Ms. Evans's other positive evaluations should have been allowed to offset some limitations in legal analysis, the firm was likely to cite a federal appeals court that had found that the final judgment of a legal firm should prevail in this matter. Their basic reasoning was that courts owe partnerships "special deference" in their decisions about conditions of employment. This line of argument presumes that small business associations ought not to be dictated by law but retain much latitude of judgment about selecting members and partners who fit the organization. This is an application of the freedom of association doctrine to small firms and groups. Of course, this position also reinforces whatever organizational culture prevails in the organization, by emphasizing that new leaders share the values and ethos of the incumbent group (*Ezold v. Wolf*, 1992).

In the same case, the court argued that it is not the job of the court to substitute its judgment about employment for that of the employer himself. The decision stated that the proper analysis should not have been whether in the court's view the lack of a particular legal ability was crucial to success as a partner. Rather, the court should analyze

whether male associates who were granted partnership had been similarly criticized. The opinion of the court in this case stated that "the district court's comparison of plaintiff with successful male candidates in categories *other than* the specific legal ability in question" was not an appropriate role for the court to take.

Thus a court might decide that the evidence of a "hostile" environment toward women at Wilson, Barnes was not convincing. The attorney who had made "offensive" remarks to women had left the firm before Ms. Evans's partnership decision was made, he had been reprimanded, and he had been unlikely to make partner in any event. The court might also find that the small number of women partners in the firm did not, in itself, prove discrimination against women or that the evidence of discrimination in the assignments Ms. Evans was given was not sufficient to prove such discrimination on the basis of sex. Recently a male partner had argued, in a discussion of female attrition at the firm, that the firm was not responsible. "These young women often leave without applying for part-time work status, and without seeking adjustments. They are making lifestyle choices, and the firm is not responsible for those," he said.

### Should Meghan Sue?

Margot, with her strength in employment law, continued to urge Meghan Evans to file a sex discrimination case in federal court. (A discrimination charge filed with the Equal Employment Opportunity Commission would have to precede the filing of a lawsuit; see Appendix C.) Margot believed the committee's recommendation was "a hideous injustice," and that the courts should prevent private firms such as Wilson, Barnes from using their freedom to exercise business judgment as a cover for prejudice and unlawful, unconstitutional discrimination in their employment practices. Seeing the Evans case as symbolic of the glass ceiling operating against the promotion of women and minorities to the highest and most lucrative positions in U.S. professions and businesses, Margot argued that she knew more than 60 groups that might offer to file amicus curiae ("friend of the court") briefs in support of Ms. Evans's case, if she brought one. Women's and civil-rights groups, in particular, were likely to come forward with support.

Meghan knew she had other options as well. She could file a discrimination complaint with the Equal Employment Opportunity Commission (EEOC) *without* subsequently bringing a lawsuit. Or she could simply resign for a different professional opportunity. She might

with her substantial firm experience be able to move laterally to another major firm. This, however, could put her back into the same sort of dilemmas she had experienced at Wilson, Barnes. She could seek employment in a smaller firm, which might offer better working terms, but then again might not; she would have to be very cautious in her interviewing and raise the issues that had troubled her previously. She might start a small firm of her own, in conjunction with other attorneys seeking a more flexible work environment; this option of course involved considerable financial adjustment and risk. Finally, she could consider work in the public or nonprofit sector, which might involve less extreme work hours, but it would also result in a substantial financial cut.

"I just don't know what to do," she said again to Margot. "Maybe a challenging legal career is just beyond me right now."

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