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**A Few Good Women, Breaking the Barriers to Top Management,
Chapter 16**

Jane White

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A Few Good **WOMEN**

**Breaking
the Barriers
to Top
Management**

== JANE WHITE ==
Foreword by Elizabeth Dole



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DEDICATION

*This book is dedicated to my husband, Bruce; we could use
a few more good men like him.*

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FOREWORD

The courageous women profiled in this book are part of a "quiet revolution"—a revolution which has seen women enter the workforce at an astonishing rate in the past several decades.

But despite this growth, who among us can say that discrimination against women has disappeared? Who among us can doubt that a woman, no matter how well-schooled or how golden her resumé, enters many business organizations with limited or no hope of reaching the top?

For the fact is that any overview or examination of the makeup of the American workforce finds women—and minorities—reaching plateaus from which they feel they cannot climb. For example, *Fortune Magazine* recently studied 800 of the largest U.S. companies. Of the 4,012 people listed as the highest-paid officers and directors of these companies, only 19 were women—that's less than one half of one percent.

Additional evidence of the presence of what has been called the "glass ceiling" can be found in a recent survey of the nation's 1,000 largest corporations by Korn-Ferry and the UCLA Anderson Graduate School of Management. This study revealed that minorities and women, who today account for more than half of the workforce, hold less than 5 percent of top managerial positions.

In an effort to help act as a catalyst for change in management attitudes and policies, in July 1990, as Secretary of Labor, I launched my "Glass Ceiling Initiative" to investigate the ways senior management positions are filled and whether minorities and women were being developed for such opportunities. Specifically, we examined training, rotational assignments, developmental programs, and reward structures—all the indicators of upward mobility in corporate America.

While I was Secretary, I heard from many companies who were already taking positive steps to dismantle their glass ceilings. Several companies developed tracking systems for identifying and developing high potential minorities and women for

their workforce. Others have now asked executive search and recruitment firms to make an extra effort to include minorities and women in their candidate pools.

Let me make it clear: The glass ceiling initiative had nothing to do with quotas, and everything to do with equal opportunity. I do not believe that the role of government is to mandate who private enterprise should hire for specific positions. Rather, I wanted to issue a "wake-up call" to American business, telling them in no uncertain terms that if they effectively block half of their employees from reaching their full potential, they're only hurting themselves.

In the next decade, fully two-thirds of new entrants into the workforce will be women. The bottom line is simple. If employers want to compete in today's complex global market, then they can't afford to discriminate. They can't afford to ignore the needs of working women. Employers who do will simply lose out to those who don't. And, in the final analysis, America will lose out.

I was struck—but not surprised—by the fact that many of the trail blazers portrayed in *A Few Good Women* stress the importance of mentors. As a young woman in my twenties working for a United States Senator from North Carolina, I sought out the advice of Maine's Margaret Chase Smith, who was regarded by many as the "conscience of the Senate." I don't know how many U.S. Senators would share an hour with a 22-year old total stranger seeking advice. But Margaret Chase Smith did, and she recommended that I bolster my education with a law degree.

This experience left me with a keen sense of responsibility to be available for young women who are in need of a mentor. My door is always open to them—and I hope your doors are open, as well.

I have always taken heart from the words of a woman who conquered incredible challenges. Unable to see or hear, she never ran for office, never raised a family, and never entered the job market. Yet she inspired millions.

"One can never consent to creep," said Helen Keller, "when one feels an impulse to soar."

Through the leadership of women such as those profiled by Jane White, I am confident that the "glass ceiling" will meet the same fate as the Berlin Wall, and that all women who enter

the workforce will be able to soar as far and rise as high as our skills and talents will take us.

Elizabeth Dole
President, American Red Cross
Former U.S. Secretary of Labor

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chapter **16**

Ann Hopkins of Price Waterhouse:

SUING HER COMPANY FOR SEX DISCRIMINATION

During the 1960s and 1970s when feminists were debating whether women should hang out with a multitude of sexual partners, Ann Hopkins was working for IBM figuring out how to make satellites hang out in the sky properly.

"I am not a movement person or a joiner," declares the management consultant.⁵⁶ "I've been cast as a role model but I've never thought of myself as one."⁵⁷

But in the 1980s Hopkins was nonetheless responsible for bringing the most significant sex discrimination lawsuit of the decade.

When in May 1990 a federal judge ordered accounting firm Price Waterhouse to make her a partner and give her \$370,000 in back pay, women's groups hailed the victory as a watershed among second-generation employment discrimination cases addressing the right of women to hold management positions. (The first generation, beginning in the 1960s, broke more blatant barriers to entering the workplace).

Lynn Hecht Schafran, a lawyer for NOW's Legal Defense Fund, called the judge's ruling "fabulous. It means women will be evaluated and valued by employers on the basis of the work product, not in terms of sex stereotypes."⁵⁸

If you ask Hopkins why she sued Price Waterhouse, she'll invariably say, "I got an unsatisfactory explanation for an irrational business decision."

The irrational decision she's referring to occurred in 1982

when Hopkins and 87 male colleagues came up for consideration as partners. Although in the previous few years Hopkins had played a big part in securing some \$40 million in contracts for the firm—an amount which she says was more than that of any other candidate for partner in 1982—she was not among the 47 people promoted.

In early 1983, Hopkins was told that the partnership decision had been delayed and a few months later she was informed that she would not be nominated. In 1984 she resigned and sued, claiming that the promotion process had violated Title VII of the 1964 Civil Rights Act, which prohibits job discrimination.

In his ruling, U.S. District Judge Gerhard A. Gesell ordered Price Waterhouse to admit her to the partnership as of July 1, 1990. Price Waterhouse subsequently appealed. Eventually, Hopkins returned to the company with her partnership.

Why She Sued: “You’re Supposed to ‘Behave Like a Woman’ ”

During her lawsuit, Hopkins learned about the psychological underpinnings of how irrational management decisions are made.

While she was nominated for partnership at age 38 because her “strong character, independence, and integrity are well recognized by her clients as well as her peers,” the very qualities that enabled her to bring more money into the firm than anybody else vying for the job, were considered liabilities by some partners.

The court found particularly damning a remark made by Hopkins’ mentor and chief supporter—in an ironic attempt to help her win over less enlightened partners: “He told me to walk more femininely, talk more femininely, wear makeup, have my hair styled, and wear jewelry,” Hopkins said at the trial.

“What the courts have found is that when it comes to the partnership, which is more like a club, that I was evaluated not as a manager but as a woman and I didn’t fit the stereotypical role of a woman,” Hopkins says.

“The situation is a double bind. Suppose that a woman’s approach to a business problem is ‘We’re going to take that goddam hill over there and if there are a few bodies along the way, tough’—which is one characteristic of the managerial norm—that’s sort of the mindset you have to have to get the job done.

“But that approach is in conflict with this notion that you’re supposed to ‘behave like a woman,’ which means that you’re supposed to dress femininely, talk femininely, and be soft, warm, and lovable. So instead of being evaluated on the basis of results and on what you have accomplished, you’re evaluated on a set of personality characteristics and whether or not they fit.

“It’s not whether you’re effective in getting the results, it’s a question of whether you fit some view of what a wife or mistress or daughter or somebody ought to look like.”

A Role Model Even in Her Early Years

Hopkins didn’t have any particular career goals after graduating from Hollins College in Roanoke, Virginia, so she did what a lot of her friends did and continued her education, pursuing a Master’s degree in mathematics from Indiana University.

“It was 1966–67, a time when graduate schools weren’t real thrilled about taking women from women’s colleges, where their experience is bad; in other words, women don’t typically finish the program. I viewed it as my responsibility to finish because the next ‘guy’ might not get in if I don’t get out.”

So while Hopkins doesn’t think of herself as a “movement” person, nonetheless she decided to do whatever she could to give her fellow female grad students the intestinal fortitude to complete the program.

“Since we were all in different disciplines, we didn’t help each other academically, we’d have a few beers together or a cup of tea and kept each other in a sufficient psychological state so that we could get through this.”

Climbing the Ladder at IBM and Touche Ross

Following graduation, after teaching briefly at Hollins, Hopkins traded in the academic world for the business world, joining IBM's Washington, D.C. federal systems division as system analyst.

For the next three or four years she managed a seven-person team at IBM that "worked with the effects of solar radiation, magnetic pressure, and aerodynamic pressure" on weather and scientific satellites.

"It was just about as good a job as you could possibly get if you happened to be interested in equations and things theoretical. However, I discovered that things theoretical were rather a lonely business. What's more, I want to work in the main line of a company's business. And software systems were not IBM's main line."

But neither was she happy working for various smaller software companies and ultimately followed a headhunter's advice to take her project management skills to Touche Ross. She joined the firm in 1974.

"They had an absolutely superb project management methodology and I had a marvelous time managing fascinating projects. One of them was putting in the medical claims processing system for the then 850,000-odd beneficiaries of the United Mine Workers health and retirement funds. I had a fascinating time—I've probably been in half of the coal mines in the country."

Coping With Difficult Attitudes Toward Working Mothers and a Two-Career Household

While working for Touche Ross, Hopkins also met her now exhusband and had a child. While she says she doesn't remember confronting noticeably backward views about women in any

of her work situations before the partnership debacle in 1983, she does recall how some of her co-workers and clients had a tough time coping with the notion of a working mom in the mid-1970s.

"I had indicated that I was going to be out for a couple of weeks and I was going to be back after my daughter was born. But despite the fact that I ultimately turned out to be away from the office for three weeks people were preparing for my departure if I was going to die or be hit by a truck. Because nobody believed me."

The next "rather strange, very anachronistic, and not very modern policy" Hopkins confronted is they both couldn't be partners at the same time while they were both employed by Touche Ross.

And since both members of the couple were ambitious, one of them had to look for a new job. Because as a by-the-numbers "hard consultant," Hopkins was seen as more marketable than her husband, she decided she would be the one to quit. Her husband, who also had more seniority than she, went on to become a partner.

Achieving Success at Price Waterhouse

Hopkins left to work for another consulting firm, American Management Systems. But that wasn't the right fit, either.

"I came to the realization that underneath my T-shirt tattooed across my chest were the words 'Big Eight Management Consultant.' So she joined Price Waterhouse in 1978. After managing a project for the Bureau of Indian Affairs which involved a lot of jetting around the country visiting Indian reservations, she decided that she'd rather work closer to headquarters.

"In my business you get a lot of requests for proposals, RFPs, from the federal government. And as I was flying back and forth, I got one of these what-do-you-think's on a proposal from the State Department. I usually avoided RFPs like the plague because when you only have a 14 or 15-person outfit it's a little tough to be credible selling into the government market unless you pick things real carefully."

But this project sounded like it was do-able with a small staff. And it kept on being do-able while it grew like Topsy and required a larger staff.

"It was the tip of a very, very large iceberg. I spent the rest of my career at Price Waterhouse working with the State Department as a client on a job that went from \$1 million or so to \$40 or \$50 million. And as this was going on, the office grew from some 14 or 15 people to hundreds of people, all in a span of three or four years.

"So I went from miners to Indians to diplomats. I got an absolutely remarkable set of results. When I sold the State Department project it was the largest piece of consulting work Price Waterhouse had ever had—and that's the nationwide firm. And I managed to do that in a humongous number of billable hours, which translates into bottom-line profits for the firm because the cost of sales weren't great compared to the billings. It's a great way to do business and it's normally the mark of a very accomplished consultant to be able to do it.

"So I was nominated for the partnership and the rest is history. I got the results. I just didn't get into the club."

"You Can't Go Home Again"—Why Hopkins Did

The first question on most people's minds following the outcome of the case is why go back to a company where the top brass seemingly values ineffectual feminine women over aggressive women who can make the company money?

For one thing, Hopkins points out, the number of female partners at the firm has grown since 1983, the year the lawsuit was filed—whether as a direct result of her lawsuit, or merely a function of changing times. By illustration, Hopkins talks about a party that was recently held for a woman in the Baltimore office who had been named a partner.

"There were more female partners at that party than there were women partners in the entire firm back in 1983. There are probably 15 female partners in the Washington area."

What's more, Hopkins contends that the down-and-dirty adversarial nature of the litigation process—which character-

ized her as a bitch who subjected underlings to verbal harangues—mischaracterized the partners' view of her the same way it has mischaracterized her.

"The litigation process polarizes. I am not what I have been characterized as in the newspapers and in the litigation process. I don't even recognize myself and people who know me don't recognize me at all. Nor in general would you recognize Price Waterhouse."

She has been back at Price Waterhouse since February 1991 and Hopkins says the work environment is "just fine. People in general have been incredibly supportive. All kinds of people have made all kinds of positive and congratulatory remarks to me, members of both sexes."

For all her bravado, however, Hopkins admits privately that the twists and turns of the case over more than six years have taken an emotional toll. "My kids would keep asking me how many times we have to win this case before it's over."⁵⁹

For that reason, she counsels others who would follow in her footsteps to weigh all the issues before considering a lawsuit as a remedy for workplace inequities.

She's accustomed to giving advice because she fields several phone calls a month from women who have read about her case. "I probably take a couple of people to lunch each month who are considering suing somebody for something.

"I remember talking to a woman who worked for the federal government who was thinking about bringing a lawsuit over being passed over for a promotion from a GS12 to a GS13. I told her she has to decide whether the stakes involved make it worth the effort. She might be better off pursuing administrative remedies and having somebody get his hands slapped because I'm not sure a lawsuit is worth it. It may not be worth it in terms of the toll it'll take on you, the toll it will take on your family, and the amount of nervous stress you'll have to bear for the period of time you're going to have to bear it."

Choosing Another Alternative: Working For An Enlightened Organization

Hopkins believes that whether as a result of the lawsuit or just changing times, companies are finally coming around to the realization that they ought to recognize female talent within

their employ. She cites the relatively enlightened attitude of the World Bank, an institution she worked for as a Budget Planner while waiting to be reinstated at Price Waterhouse.

"This is an international organization whose offices are located for all legal purposes 60 miles offshore of the United States and therefore not bound by the laws governing the United States. It's run by an international board of which not very many people give much of a damn about the role of women in the organization. However, the World Bank has a policy that in any instance where you've got a list of candidates for a management position in which a woman is shortlisted but not selected, the manager making the decision has to justify it. The World Bank has this policy despite having no incentive to give a bean about those kinds of issues."

No incentive? Maybe—or maybe this raised consciousness has something to do with a former female employee, Nancy Barry, who is currently President of Women's World Banking, which assists female entrepreneurs in developing countries.

Barry, one of the World Bank's few female Division Managers before she left in August 1990, had as one of her responsibilities compiling a report on the status of women at the bank. Among other things, the report showed that only 15 percent of its professional staff were women, a figure that had remained static since 1980. Barry says the president of the World Bank was "mortified" at her findings and at the end of 1988 implemented an action plan to recruit and promote women.

Barry confirmed that the very promotion policy Hopkins praised was a direct result of Barry's efforts at the bank. "There is definite causality there," she chuckled.

So it goes to show you that it only takes a few good women to make it better for other women in the workplace—one woman at a time.

chapter 17

FILING A LAWSUIT ON THE BASIS OF SEX DISCRIMINATION

Elizabeth Layman was 41 years old when Xerox Corp. eliminated her \$60,000-a-year job as Marketing Manager in the company's Dallas office. Layman, a Xerox employee for seven years, had been promised a transfer to California. But after she sold her home and made other preparations to move, Xerox reneged on the offer.

While it moved younger male coworkers to other desirable jobs, the company assigned Layman to a spot for which she was overqualified. When her efforts to remedy the problem proved futile, she filed a suit against Xerox, alleging sex and age discrimination and other claims.

Six years after the trouble began, Layman won a jury verdict of more than \$9 million. Her fight continues, however, since Xerox has challenged the verdict and made a motion for a new trial.

So not only does Layman have no money yet but she's spent plenty of her own, not to mention having her private life disrupted.

"There's nothing in my personal or work life that's not part of the public record," said Layman, who was on the witness stand for more than two weeks.⁶⁰

As Layman—and Ann Hopkins—illustrate, lawsuits take their toll emotionally and literally. Before they're through, employees may have spent tens or even hundreds of thousands of dollars

in lawyer's fees, recoverable only after a victory—if even then.

They must also cope with the emotional ups and downs of litigation, retaliation by employers (which may also be the basis of a legal claim) and the isolation that comes from being labeled a troublemaker. But if you have a case and want to pursue it, here's what you need to know.

Hitting Them Where They Live

Is it worth it to choose to fight—rather than switch, as Ann Hopkins did? From all appearances, Congress made life a little easier for victims of sex discrimination in the fall of 1991 when it enacted a civil rights bill that enabled them to receive jury awards for punitive damages, as opposed to mere compensatory damages that are intended to reimburse a plaintiff for injuries or harm—in other words, lost wages and out-of-pocket expenses. Previously, victims could only be awarded punitive damages in state courts in those states with statutes that allow it.

Under the new law, the ceiling on awards varies according to the size of the company, or, some might say, the depth of its pockets: up to \$300,000 if you work for a company with more than 500 employees; up to \$200,000 from a company that has between 201 and 500 employees; up to \$100,000 if the company has between 101 and 200 employees, and up to \$50,000 if the company has between 15 and 100 employees. Companies with fewer than 15 employees are exempt.

While business groups had contended that the law will result in a litigation explosion, this is highly unlikely. For one thing, most states in the north and far west already have laws on the books that permit jury awards. And women's advocates point to the likelihood the courts will continue to decide in favor of the defendants—the employers—if past is prologue. A study commissioned by the National Women's Law Center showed that plaintiffs only won 20 percent of 576 employment discrimination cases between 1980 and 1990. Furthermore, in nearly half the cases won by plaintiffs they didn't receive any damages;

even when damages were awarded only three of the plaintiffs got more than \$200,000.⁶¹

Not surprisingly, lawyers who represent aggrieved employees generally support the Civil Rights Act, believing that companies have to be punished severely enough that they "cry Uncle" before they will start treating people fairly on the job. At least that's the view of Detroit attorney Kathleen Bogas.

"Because money means so much in this country, you have to make it too expensive for the employer not to change," Bogas said.

Tough antidiscrimination laws wield the same corrective clout that product liability law did, Bogas avers. "The only reason why we have seat belts or airbags in cars, the only reason why we have protectors on (industrial) presses for people who work on the assembly line is because it was costing the manufacturer of those goods too much money" from lawsuits from injured people.

Bogas says that drastic measures must be taken to counter the proemployer bias on the part of judges that has prevailed since the advent of the Reagan Administration. "It used to be that an attorney could make a prima facie case for any type of discrimination by showing that I, a female, got passed over for a promotion and a white male got the job."

But recent regressive Supreme Court decisions, including one that forbids the use of statistical evidence alone to show discrimination in the workplace, have rippled down through various lower federal courts and state courts.

Will the new federal law make the workplace more fair for women, by virtue of the fact that companies will have to fork out if they violate the law, or will it just mean a bonanza for attorneys who represent employees in discrimination cases?

John Rapoport, a Manhattan employee-rights attorney with his own practice, says yes and yes. "Yes, more employees will sue. And because of the additional damages under the federal act, more lawyers will probably be willing to take those cases. But more importantly, more employers will start managing more effectively within the law. It creates more incentive for management to understand what the law is."

Moreover, he adds, progressive laws beget more progressive laws.

"The city of New York just passed a new human rights law,

among the toughest in the country. I predict you'll see a continuation of the process of states and municipalities creating their own legislation that will continue to go one step beyond the federal government."

But Washington, D.C. employee-rights attorney James Heller sees a darker side, fearing that a weak economy could pose a greater threat to job security than unenlightened bosses, since minorities and women are most likely to be placed in jobs that are considered ballast when it's time to lighten the employee load.

"Business cutbacks are not good for women," said Heller, a partner in the Washington, D.C. firm of Kator, Scott & Heller, which handled Ann Hopkins' case. "They are among the last to rise to senior levels and their jobs will probably be among the first to be eliminated if there are cutbacks. Secondly, women tend to get fewer of the line jobs in industry, the jobs that would be the last to be cut. Women don't run assembly lines as often as they end up in human resources or some marketing specialty where management is much more likely to decide to combine two jobs into one or eliminate the job.

"Finally, since they aren't part of the old-boy club, the informal network, women are the least likely to be protected when cuts happen.

"So, while the law will do a lot to warn companies about the consequences of certain actions, it will not as clearly warn them about which employees should be saved. Those women who have most recently become successful will be most vulnerable to becoming victims of neutral forces. So I think there's not just a glass ceiling for women but there's a collapsible floor."

To Sue Or Not To Sue: Proving Company-Wide Discrimination

While the new civil rights law creates more opportunities for a woman to get compensation for her suffering, it doesn't relax the rules for proving sex discrimination, lower the cost of bringing a lawsuit, or mitigate the emotional cost of undergoing a trial.

The first thing you've got to do is prove that your case isn't just airtight, it's hermetically sealed. Because while you may think you have a discrimination case, the judge may just say you merely experienced the misfortune of working for a jerk.

While you don't have to prove that all other women in the office were treated as badly as yourself, it probably helps, says Joseph Golden, an attorney who is a partner in the Southfield, Michigan firm of Sommers, Schwartz, Silver & Schwartz.

"Usually the main defense that an employer uses is, 'Look, these (other) women were promoted; it's a matter of the qualifications of the individual.' Or they say the complaint isn't justifiably discrimination, it's got nothing to do with race and sex—it's a 'personality conflict' between the woman and her boss. We hear that all the time. And of course that plays well with the jury because anybody who's ever worked for anybody else knows that there's plenty of those conflicts in the workplace."

The more specifics you can offer to demonstrate that other women besides yourself were treated differently than men, the better off you are, agrees Washington, D.C. attorney James H. Heller.

Heller gave an example of some of the specifics: "Did people at the company say outright 'smoking gun' sexist things (about women employees)? And were these the people in power? How were pregnancies handled at the company? How were maternity leaves handled? What can you find out about numbers (instances of other women not getting promoted) and why aren't they getting ahead? Are women getting 'junioried' to men all the time?"

Filing a Sex Discrimination Complaint

Before you sue you must file a claim with the Federal Equal Employment Opportunity Commission, which enforces Title VII of the 1964 Civil Rights Act prohibiting discrimination in hiring, firing, wages, fringe benefits, promotion, or training. The function of the EEOC is to act as a mediator, ensuring that the aggrieved individual has exhausted her administration remedies and that she has a genuine case.⁶²

If you decide to go the EEOC route, you must file a complaint generally within 300 days of the action you're protesting. If your state has a fair employment practice law, as 42 states do, your complaint may be sent to the state agency first.

If the state doesn't complete action on the complaint within 60 days, the EEOC may proceed to investigate the charge. The EEOC after its investigation makes a determination on the issue of "reasonable cause" as to discrimination. If there is reasonable cause, the agency makes its findings known to the employer and sees if the matter can be resolved. If that's not possible, the next step is a court suit.

Not surprisingly, the EEOC is as clogged with grievances, if not more, than the court system and in virtually every case the agency will issue you a "right to sue" letter. Once you receive the letter you have 90 days to file a court complaint.

Why bother to hire a lawyer if you can have the EEOC represent you for nothing? For one thing, like any federal bureaucracy, the EEOC may have its heart in the right place but it is understaffed and overworked, say attorneys. Attests Penny Nathan Kahan, a lawyer with her own practice in Chicago: "The EEOC is not an effective tool. They're overloaded and they don't put the time in that they should."

New York attorney John D. Rapoport rarely deals with the EEOC. "The (EEOC is) just too busy. They've got an enormous caseload; I've seen them turn people away who then came to me and they turned out to have a great case."

Before You Sue: Factors to Consider

Before you decide to sue, ask yourself whether you can afford to lose the case. Lawyers don't come cheap; depending on your geographic location, their fees range from \$75 per hour to \$350-plus an hour and few attorneys will handle your case on a strict contingency basis unless you've got an airtight case; i.e., in which case you win and the defendant winds up paying your attorney fees. Just paying court stenographers to prepare deposition transcripts can run \$1,000 a day.

Says attorney Maryann Saccomando Freedman of the Buffalo firm of Lavin and Kleiman, "Meeting the burden of proof

is tough to begin with in a sex discrimination case, it's going to be difficult to prove. And along with that you're going to have to lay out all this money and you may lose the case. That's a very serious concern because most women are not earning that much money to be able to pick up that tab."

The second question to ask yourself is why are you suing. Do you want your old job back, or the promotion you should have had, or money: restitution for lost salary and monetary damages for the psychological toll. This is the most important question to weigh and the answer will vary depending on your circumstances.

The reinstatement option isn't usually advised, says Kathleen Bogas of the Detroit law firm of Sachs, Nunn, Kates, Kadushian, O'Hare, Helveston, and Waldman.

"Very seldom do I represent somebody who is currently in a job and suing somebody for discriminatory practices," Bogas said. "I don't encourage people to file suit while they're still working there."

Why? Even if your old boss doesn't try to buy you off, getting your old job back—or even winning the promotion you deserved—is usually a psychologically devastating experience to the worker. Because you're really returning to the scene of the crime, as it were.

"It's psychologically damaging for people," Bogas said. "(The woman is) going to be looking over her shoulder constantly. If somebody doesn't say good morning to her in the morning she's going to think they didn't because she brought the lawsuit. You can't help it, it's a natural human reaction."

When a client insists she wants reinstatement, Bogas counsels her to analyze the emotional turmoil she's experiencing, which is not unlike being spurned by a lover and wanting him back.

"If they do (say they want reinstatement) when they first see me I say to them, 'Are you crazy? Why do you want to go back and work there? The best thing that could happen to you is that you got fired or left.'

"They come to realize that. But in an employment case you experience a variety of emotions—you go through anger, you go through hate and then at the end you say, 'You know, I'm just going to get what's mine.'

"And a lot of people unfortunately latch onto these cases and won't give up on them and live their lives and do everything

for the case. And that's the worst thing you can do. I don't know if life is worth it."

For one thing, Chicago attorney Penny Nathan Kahan points out that even if you win the promotion you deserved that doesn't mean you've achieved the "right" to continued career success at the company. Kahan can point to only one instance in her practice in which she was satisfied that her client's prospects were going to improve; in that case she was able to create a mentor system to assist in the woman's career climb.

What's more, Kahan says, even if you decide to pursue your career at a different company, your ability to get a job elsewhere may be tainted if people brand you as a troublemaker.

"If you're in a narrow field there's a strong grapevine" that could backfire if you tried to get another job, Kahan said.

John Poynton, an outplacement counselor with the Executive Assets Corp. in Chicago, agrees: "Corporations will hesitate to hire someone who's initiated an action." What's more, he said, the time and energy you spend on a lawsuit rather than on job-hunting, "directly lengthens the job search."⁶³

If You Quit: Proving Your Case

If you do decide to quit your job and sue your former employer, you may have to demonstrate to a skeptical judge that staying in the old job would have produced undue stress or that the company essentially "terminated" your career, says New York attorney John Rapoport.

This is called *constructive termination* says Rapoport, who is the author of *The Employee Strikes Back* (Macmillan, 1989). "Does the fact that you were passed over give you the right to quit?" Rapoport contends that in passing you over your employer was "really firing you, they just didn't say the words."

That was the argument of the attorneys for management consultant Ann Hopkins, who wasn't just pushed off the ladder but deprived of the top rung. In that case, not getting the job was perhaps more injurious to her career than fighting to get it back.

"When you're being considered for a partnership in accounting firms and law firms it's usually 'up or out'; once you're

not made partner you're out," said Rapoport. "And that has a lot of other stigmas attached to it because everybody knows you were up for partner. It significantly alters your ability to do your job when you're passed over."

But an individual who is a candidate for the partnership is a far cry from somebody who's "working for XYZ company who wants to be the Assistant Manager of widgets and they hire somebody else to do it instead," Rapoport said. "Not everybody passed up for advancement has the absolute right to a golden-parachute lawsuit."

While Rapoport agrees that staying at your old employer is "nuts most of the time," there are certain circumstances when it's worth fighting for. "If it turns out to be the greatest place I ever worked—I loved everybody there and they all loved me—but because some old fogey SOB didn't like women I didn't get promoted, don't you dare come to me and tell me I can't sue!"

On the other hand, "you don't have to go back. You can just take the back pay and other damages—in a state court suit you might get punitive damages too. Take them and run."

But aren't we now just talking about pure gut revenge against the company, as opposed to rectifying an unjust situation? Absolutely not, Rapoport avers. "It's no more revenge than if you fall down a flight of stairs because somebody consistently leaves a banana peel there and you sue for personal injury. You had a personal injury done to you."

Know the Laws that Protect Working Women from Sex Discrimination

Needless to say, being passed over for a promotion is only one of many ways women confront on-the-job discrimination. Employers sometimes try to get away with paying women less than men doing the same job, or they'll claim certain jobs aren't appropriate for women or they'll say that a woman who has left for a maternity leave has rescinded the right to have her old job back.

The next sections provide a brief summary of many of the important laws that protect working women.

THE PREGNANCY DISCRIMINATION ACT AND MATERNITY LEAVE LAWS

As recently as the 1970s, some employers weren't even keen on letting women work while they were pregnant, much less after they had attained Mom status.

In *LaFleur v. Cleveland Board of Education* (1974), female public school teachers successfully challenged the constitutionality of mandatory maternity leave rules of the Cleveland, Ohio and Chesterfield County, Virginia school boards.⁶⁴

Among the policies being challenged was the Cleveland School Board's policy requiring pregnant teachers to take leave five months before the expected date of birth, presumably because that's when a woman starts "showing," and to continue on leave until the beginning of the next regular semester following the date of the child's three-month birthday.

The Supreme Court held that the policy created an "irrebuttable" presumption that all pregnant teachers are disabled and thus unfit to teach, penalizing the teachers for exercising their fundamental right to decide whether or not to bear a child.

Have we come a long way, baby, when it comes to having babies? The laws have improved but corporate practices in general have not.

The Pregnancy Discrimination Act was added to Title VII in 1978 to prohibit discrimination on the basis of pregnancy, childbirth, or related conditions.

But the law doesn't say anything about getting your old job back when your maternity leave is over. In 1983 news anchor Mary Loftus was fired from her job at KSNT-TV the day she came home from the hospital after giving birth to her son.⁶⁵

Although she was able to get a job at a competing station, she started at the bottom again, for half her former pay. "The economic loss was substantial," she said. "And I took a giant step backward careerwise."

The United States is one of only two industrialized countries—the other one being South Africa—that fails to ensure that a woman can return to her job after taking time off to have a child, says Sally F. Goldfarb, staff attorney for the National Organization for Women Legal Defense and Education Fund.⁶⁶ A federal bill that would provide workers unpaid leave to care for new babies or sick parents was vetoed by President George Bush in 1990 and again in 1991.

Recent research indicates that maternity leaves are taken at a woman's own risk.

Wright State University researchers William Schoemaerk and Ann Wendt, who studied 2,000 employment discrimination claims between 1985 and 1989, say 23 percent of women who took maternity leave weren't rehired, compared to 2 percent of women who took leaves for other reasons.⁶⁷

In one case, a social worker found her belongings packed in boxes when she returned to work. Another, who had ironically enough taken over the job of a pregnant secretary, lost her own job four years later when she tried to return from maternity leave.

But Title VII does offer some job protection to women who want to work and have babies. Here are some of the provisos:

- A company can't refuse to hire a woman because she is pregnant.
- An employer can't fire a woman because she is pregnant.
- It's illegal to force a pregnant woman to leave her job if she is ready, willing, and able to perform.
- If a pregnancy prevents a woman from performing certain tasks—for example, heavy lifting—she must be given alternate assignments.
- The seniority process can't be delayed for an employee who has taken a leave to give birth or have an abortion unless seniority is similarly delayed for other disabled people. That goes for calculating vacation time and pay increases as well.
- Companies can't require pregnant workers to exhaust their vacation benefits before receiving sick pay or disability benefits unless all temporarily disabled employees are required to do the same.
- Pregnancy-related expenses should be reimbursed in the same manner as are expenses for any other medical condition.
- An employer can't have a rule that mandates a minimum duration of maternity leave.
- If an employer has a policy that permits people to take a leave of absence without pay for travel to further their education that isn't job related, the same leave must be

available for those who want to extend their maternity leave, even if the person is medically able to work.

- Unless the employee has informed the employer that she doesn't intend to return to work, her job must be held open on the same basis as jobs are held open for employees on sick or disability leave or for other reasons.

Read that last one carefully—this proviso does not mean a company has to have a maternity leave policy, it only means that if the company has a disability policy, it has to treat pregnant disabled workers the same as other kinds of disabled workers.

If your company doesn't have a disability policy that protects the jobs of temporarily disabled workers or a specific maternity leave provision, "there isn't anything they have to do," says Michigan attorney Joseph Golden. "They'll say we'll give you your old job back 'if it's available' or something similar 'if it's available'—and of course they fill it.

"You can't do anything about it unless you can show that in circumstances where men who were off the job under similar conditions—if a man broke his arm, for example—the company did not move to replace the man quickly as they did with the women."

About 25 states have some form of family leave protection, according to Donna Lenhoff, legal director of the Women's Legal Defense Fund in Washington.⁶⁸

The New York State Human Rights Law prohibits employment discrimination by employers with four or more workers on the basis of pregnancy, childbirth, or related conditions. New York state employers can't compel a pregnant employee to take a leave of absence unless the pregnancy prevents satisfactory job performance. New York also has a mandatory disability law so employees on pregnancy leave are entitled to disability benefits.

JOB DISCRIMINATION BASED ON GENDER

As we mentioned earlier in the chapter, Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, sex, color, religion, or national origin.

Among its strictures:

- Help wanted ads can't discriminate based on gender unless gender is a bona fide occupational qualification for the job involved. (Needless to say, outside of jock strap

modeling jobs, there ain't a heckuva lot of bona fide excuses for not considering a female candidate.)

- Prospective employers can't ask you a question on a job interview which expresses limitation or discrimination as to gender unless it's based on a bona fide occupational qualification.
- Employers can't forbid or restrict the employment of married women unless they do the same to married men.
- Employers can't qualify a job as male or female, maintain separate sex-based lines of progression or seniority requirements unless gender is a bona fide occupational qualification for the job.

Some states go further. California laws protect employees' jobs when they marry so that each partner must be allowed to retain the job (Compare this to Hopkins' experience with Touche Ross.) In some cases, these laws have been interpreted to cover married couples who work for competing companies.

Within California, the cities of Los Angeles and San Francisco prohibit discrimination or discharge on the basis of sexual preference or orientation.

EQUAL PAY

The Equal Pay Act of 1963 was the first federal law designed to prevent sex discrimination by forbidding unequal pay for women and men who work in the same establishment in the same or similar jobs; that is, jobs which require equal skill, effort, and responsibility.

Pay also refers to overtime, uniforms, and travel. Nor can companies treat men and women doing the same work differently in offering fringe benefits, including pension and retirement plans.

Employers can't claim that the cost of employing women is greater—because of time off from the job having babies, and so forth—in order to get away with paying them less. What's more, it's illegal to pay a woman less than a man because she's allegedly not the head of the household. Remember Shirley Prutch's story. At least we've made progress.

44. Janet Daly's observations are from "Still Belittled After 11 Years," *The (London) Independent*, November 21, 1990.
45. The Sadker study on college professors is from "Women on the Verge of an Education," *In View* (Whittle Communications), Vol. 2, Issue 4.
46. The Sadker study on schools is from "Sexism in Our Schools," *Better Homes and Gardens*, February 1981.
47. Florence Geis study is from "Studies Find Workplace Still a Man's World," *The Boston Globe*, March 12, 1990.
48. George Clement quote is from "Why Women Walk Out on Jobs," *The New York Times*, April 29, 1990.

Chapter 3: Why So Few Good Women?

49. Observations about immigrants is from *More Like Us*, James Fallows, Houghton Mifflin, 1989.
50. Observations about Californians (see note 49).

Chapter 12: Sara Levinson

51. Quotes on attending her high school reunion are from "What's the Big Idea," *Working Woman*, July 1990.

Chapter 15: Lessons from the Trenches

52. Jeanne Rice anecdote is from "When Fatherly Concern Isn't Welcome," *The Wall Street Journal Europe*, March 26, 1991.
53. Susan Cross anecdotes are from "Pregnant Employees in U.S. Still Encounter Discrimination Despite Legal Protection," *The Wall Street Journal Europe*, February 18, 1991.
54. Robin Piccone anecdote (see note 53).
55. Sara Corse study is from "Pregnant Managers and Their Subordinates: The Effects of Gender Expectations on Hierarchic Relationships," *The Journal of Applied Behavioral Science*, Vol. 26, No. 1.

Chapter 16: Ann Hopkins

56. "Movement person" quote is from "'Social Grace' Care Raises Question of Subtle Sex Bias in Workplace," *The Washington Post*, Oct. 29, 1988.
57. Role model quote is from "Bucking the System," *The Miami Herald*, May 18, 1990.
58. Lynn Schafran quote (see note 57).
59. How many times to we have to win quote is from "Forget Charm School," *Boston Globe*, June 19, 1990.

Chapter 17: Filing a Lawsuit

60. Anecdote about Elizabeth Layman is from "The High Cost of Suing the Boss," *The (New York) Daily News*, June 3, 1990.
61. National Women's Law Center study is from "Fight Isn't Over As Job Bias Bill Goes to Bush," *The Wall Street Journal*, October 18, 1990.
62. Data on filing complaints with the EEOC is from *The State-by-State Guide to Women's Legal Rights*, by the NOW/Legal Defense and Education Fund and Renee Cherow-O'Leary, McGraw-Hill Book Co., 1987.
63. Quote from John Poynton is from "Getting Mad, Then Getting Even," *The New York Times*, July 1, 1990.
64. Description of LaFleur v. Cleveland Board of Education is from "Legal Resource Kit: Employment—Pregnancy and Parental Leave," *NOW Legal Defense and Education Fund* (undated).
65. Mary Loftus anecdote is from "Taking Time off for the Family," *The New York Times*, March 25, 1990.
66. Sally Goldfarb quote (see note 65).
67. Wright State University research is from "New Mothers Have Trouble Getting Their Jobs Back," *The Wall Street Journal*, August 20, 1991 and "Caution: Maternity Leave Taken At One's Own Risk," *The Wall Street Journal*, November 13, 1991.