科技部補助專題研究計畫成果報告
期末報告

玻璃天花板之突破與我國性別工作平等促進法之再造—以中高階白領女性之職場平權為核心（V07）

計 畫 類 別 ： 個別型計畫
計 畫 編 號 ： MOST 105-2629-H-009-001-
執 行 期 間 ： 105年08月01日至106年10月31日
執 行 單 位 ： 國立交通大學科技法律研究所

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報 告 附 件 ： 出席國際學術會議心得報告

中 華 民 國 107 年 01 月 30 日

中文摘要：本研究的目的在於探討我國中高階白領女性的晉升障礙問題。近年來我國的女性勞動參與率呈現成長的趨勢，推動性別主流化、女權主義蓬勃發展以及推廣性別平等教育為我國婦女創造了更好的就業環境。但是，政府單位和民間機構最新的分析調查顯示，女性擔任公部門和私部門決策者的比例仍然偏低，此現象也說明了尤其在中高階職業領域，女性欲追求更高的自我實現，頭頂上的那層玻璃天花板仍然是不可逾越的，尤其在私部門更是如此。另外，由台灣的司法實務觀之，與性別因素有關之升遷障礙的訴訟也十分稀少。這也彰顯了我國的性別就業平等法在程序和實質內容上仍然無法全面地保障婦女在工作場域中的權利，若我國婦女無論在公領域或私領域中仍無法自由地在工作中追求自我價值的實現，我國在面對全球化競爭、老年化衝擊之下，對於現今整體社會甚而國家的經濟發展，都將產生巨大的影響。

考量到時間和實務案例的限制，本研究的主要對象將以女性律師事務所合夥人、會計師事務所合夥人和科技業高階經理人等中高階白領工作者為主，性傾向所造成的升遷障礙將不在本次的研究範圍之列。本研究將從我國婦女工作權發展的發展出發，從女性主義法學及勞動法的觀點進行現行法制的檢討，審視目前中高階白領女性所面臨的的玻璃天花板問題以及我國現今性別工作平等法的實行成果與不足。再者，將透過對1991年美國「玻璃天花板法」以及該國落實性別工作平等的法制改革歷程與祝耀判例，進行比較法之研究。在本研究的最後將提出鼓勵企業促進性別平等的一些立法建議。由衷企盼這項研究的成果可以幫助我國女性更自由自信且無所畏懼的追求晉升的權利。

中文關鍵詞：玻璃天花板，中高階白領女性，女性主義法學，1999年美國玻璃天花板法，2015德國公部門暨民間企業之女性及男性領導階層平等參與法

英文摘要：The purpose of this study is to investigate female white-collar workers’ promotion barriers. Taiwan’s female labor force participation rate has been increasing in recent years. The pursuit of gender mainstream, the flourish development of feminism and the education of gender equality creates a more gender-friendly working environment for Taiwanese women to perform their abilities. However, according to the latest analytical surveys conducted by authorities and private institutes, the percentage of women directors in both public and private sectors remains low, indicating the glass ceiling is still impenetrable. Especially, private corporations appear to have an obvious gap. In addition, observing Taiwan’s judicial practice, the number of promotion-related lawsuits is considerably less than expected. It is possible that our equal employment laws are not well-designed enough in the aspect of procedure and substantive contents to protect women’s rights in the workplace. The fact that women can barely reach the top positions in private sectors may lead to

great impacts on corporations, society and the country. In consideration of time and available cases, this study mainly focus on female lawyers, female accountant and female engineers. By comparative law studies about the United States' Glass Ceiling Act in 1991 and German's Gesetz fur die gleichberechtigte Teilhabe von Frauen und Mannern an Fuhrungspositionen in der Privatwirtschaft und im offentlichen Dienst, this study aims to re-analyze the history of Taiwan's female workers, the glass ceiling effect and the practice of our present equal employment laws. Finally, this study proposes some legislation advice in incentivize corporations to promote gender equality in promotion. We hope this study can take a step forward to promote the rights of Taiwan's female workers.

英文關鍵詞： the glass ceiling effect, women in white collars, feminist legal approaches, Glass Ceiling Act of 1991, Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst

科技部補助專題研究計畫成果報告

（□期中進度報告/☑期末報告）

（玻璃天花板之突破與我國性別工作平等促進法之再造—以中高階白領女性之職場平權為核心）

計畫類別：☑個別型計畫　□ 整合型計畫

計畫編號：MOST 105-2629-H-009-001

執行期間： 2016　年 8 月 1　日至 2017 年 10 月 31　日

執行機構及系所：交通大學科技法律學院

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本計畫除繳交成果報告外，另含下列出國報告，共 1 份：

□執行國際合作與移地研究心得報告

☑出席國際學術會議心得報告

□出國參訪及考察心得報告

中　華　民　國　107 年　1　月　30　日

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摘要

本研究的目的在於探討我國中高階白領女性的晉升障礙問題。近年來我國的女性勞動參與率呈現成長的趨勢，推動性別主流化、女權主義蓬勃發展以及推廣性別平等教育為我國婦女創造了更好的就業環境。但是，政府單位和民間機構最新的分析調查顯示，女性擔任公部門和私部門決策者的比例仍然偏低，此現象也說明了尤其在中高階職業領域，女性欲追求更高的自我實現，頭頂上的那層玻璃天花板仍然是不可逾越的，尤其在私部門更是如此。另外，由台灣的司法實務觀之，與性別因素有關之升遷障礙的訴訟也十分稀少。這也彰顯了我國的性別就業平等法在程序和實質內容上仍然無法全面地保障婦女在工作場域中的權利，若我國婦女無論在公領域或私領域中仍無法自由地在工作中追求自我價值的實現，我國在面對全球化競爭、老年化衝擊之下，對於現今整體社會甚而國家的經濟發展，都將產生巨大的影響。

考量到時間和實務案例的限制，本研究的主要對象將以女性律師事務所合夥人、會計師事務所合夥人和科技業高階經理人等中高階白領工作者為主，性傾向所造成的升遷障礙將不在本次的研究範圍之列。本研究將從我國婦女工作權發展的發展出發，從女性主義法學及勞動法的觀點進行現行法制的檢討，審視目前中高階白領女性所面臨的的玻璃天花板問題以及我國現今性別工作平等法的實行成果與不足。再者，將透過對 1991 年美國「玻璃天花板法」以及該國落實性別工作平等的法制改革歷程與祝耀判例，進行比較法之研究。在本研究的最後將提出鼓勵企業促進性別平等的一些立法建議。由衷企盼這項研究的成果可以幫助我國女性更自由自信且無所畏懼的追求晉升的權利。

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Abstract

The purpose of this study is to investigate female white-collar workers' promotion barriers. Taiwan's female labor force participation rate has been increasing in recent years. The pursuit of gender mainstream, the flourish development of feminism and the education of gender equality creates a more gender-friendly working environment for Taiwanese women to perform their abilities. However, according to the latest analytical surveys conducted by authorities and private institutes, the percentage of women directors in both public and private sectors remains low, indicating the glass ceiling is still impenetrable. Especially, private corporations appear to have an obvious gap. In addition, observing Taiwan's judicial practice, the number of promotion-related lawsuits is considerably less than expected. It is possible that our equal employment laws are not well-designed enough in the aspect of procedure and substantive contents to protect women's rights in the workplace. The fact that women can barely reach the top positions in private sectors may lead to great impacts on corporations, society and the country.

In consideration of time and available cases, this study mainly focus on female lawyers, female accountant and female engineers. By comparative law studies about the United States' Glass Ceiling Act in 1991 and German's Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst, this study aims to re-analyze the history of Taiwan's female workers, the glass ceiling effect and the practice of our present equal employment laws. Finally, this study proposes some legislation advice in incentivize corporations to promote gender equality in promotion. We hope this study can take a step forward to promote the rights of Taiwan's female workers.

Key words: the glass ceiling effect, women in white collars, feminist legal approaches, Glass Ceiling Act of 1991, Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst

報告內容

第一章 前言

玻璃天花板一詞於 1986 年華爾街日報的「企業內女性」專題中獲得廣大迴響，形容當前女性於企業內受到升遷障礙的困境：看似隱形(invisible)卻無法貫穿(impenetrable)[1]。美國國會於 1991 年制定「玻璃天花板法」（Glass Ceiling Act of 1991），並依此法成立「玻璃天花板委員會」（Glass Ceiling Commission），藉以研究女性陞遷時面臨之障礙並提出解決方案。德國國會甫於 2015 年 3 月 27 日立法《公部門暨民間企業之女性及男性領導階層平等參與法》(Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst)（以下簡稱女性及男性領導階層平等參與法），保障公私部門領導層中的人員席次男女均至少須達 30%，正式宣告將由政府強制介入公司管理階層的經濟權力分配，以立法途徑破除玻璃天花板效應（glass ceiling effect）對德國高階白領女性的長年桎梏[2]。事實上，挪威亦已於 2008 年完成所有民營企業董事會的董事席次中，女性不得低於 40%的規定[3]。而根據 Grant Thornton 於 2014 的國際商業報告，全球企業對於女性最低席次的立法保障也有 45%的支持比例[4]、2016 年世界經濟論壇(World Economic Forum)也將女性立法者、高階主管、經理人之性別比例列為衡量各國性別差距報告中的參數之一，可見全球對於女性工作權的保障業已從一般性的勞動條件（如同工同酬、單身條款、禁孕條款等）逐步進展到特定階層女性的陞遷保障[5]。

第二章 研究目的

本文旨在探討私部門中高階白領女性的陞遷障礙問題，期能以比較法研究方式及性別正義的觀點分析中高階白領女性的陞遷障礙、並對制度如何培力女性進入私部門決策階層作出研究貢獻。囿於篇幅、資料蒐集範圍和比較法案例對照，將以科技業女性經理人、會計師事務所合夥人及律師事務所合夥人做為研究對象；另外，關於性傾向造成之陞遷障礙，亦不在本文討論之列。本計劃以私部門的中高階白領女性為主體，主要以文獻回顧法及比較法觀點，探討我國婦女工作權的發展歷程、女性主義法學對此一議題的論述，並從勞動法的觀點進行現行法制的

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1. ADDISON HANNE, FEMINIST ECONOMICS 59 (2015).
2. 林志潔、邱羽凡，「玻璃天花板之突破與我國性別工作平等促進法之再造－以中高階白領女之職場平權為核心」，105 年性別與科技專題研究申請書，頁 15-16（2016）。
3. 劉梅君，職場玻璃天花板現象，台灣勞工季刊，頁 79（2010 年）
4. Francesca Lagerberg, 2014 International Business Report—Women in Business: from Classroom to Boardroom, Business (Mar. 7, 2014), http://www.grantthornton.global/en/insights/articles/Women-in-business-classroom-to-boardroom.
5. World Economic Forum, The Global Gender Gap Report 2016 (Oct. 26, 2016), https://www.weforum.org/reports/the-global-gender-gap-report-2016.

檢討與改革，本計畫認為可參照外國立法例制定董事席次的配額制，並加重行政罰進行相關軟硬體設施的強制規範、同時對於陞遷環境性別友善之企業則於行政罰中列為考量增減之因子。

第三章 文獻探討

在文獻探討部分，本文廣蒐國、內外相關學術文章及實務判決、研究報告、新聞與行政函令、統計資料，藉以瞭解玻璃天花板現象及相關法學議題，並試圖以比較法之方式，比較訴訟策略中，受玻璃天花板現象應相之一方可能可採取之策略、及立法論上應如何減低此種現象發生、鼓勵職場性別平權達成之法政策建議。惟文獻回顧之侷限，在於「法學文獻相對較少」：且實務上我國「陞遷性別歧視訴訟」之論述及案例較少，較難深化與觀察我國歧視理論之發展。

第四章 研究方法

本計劃主要以文獻回顧及判決分析進行研究。

第五章 結果與討論（含結論與建議）

第一節 玻璃天花板之意義及探討之重要性

第一項 我國性別工作平權法制發展

如前言所言，全球對於女性工作權的保障發展，乃從一般性的勞動條件進展到特定階層女性的陞遷保障。觀察我國職場平權法制發展之脈絡，也頗為相似，過往焦點聚集於男女同工同酬、禁止懷孕或單身歧視以及母性保護。然而在這樣的法制環境下，我國職場結構根據統計資料顯示，私部門女性決策階層或公部門高階職等比率均遠低於男性，以下將自我國職場平權法制發展簡史及統計資料呈現我國現況：

我國最早保護女性勞工的法律係民國 1929 年所制定的工廠法，其訂有男女同工同酬和母性保護的條款[6]。而於美國國會的壓力下，我國也於民國 1984 年制訂勞動基準法，其亦明確禁止性別歧視的規定[7]。後於民國 1992 年的就業服務法中，更進一步擴大保障勞工的範圍，並設有罰則予以強化之[8]。我國首部「男女工作平等法草案」係起源始於 1987 年的國父紀念館及高雄市立文化中心所爆發的

[6] 工廠法第 13 條前段：「女工不得在午後八十至翌晨六十之時間內工作。」；第 24 條：「男女作同等之工作，且效率相同者，應給同等之工資。」

[7] 勞動基準法第 25 條：「雇主對勞工不得因性別而有差別待遇。工作相同、效率相同者，給付同等之工資。」

[8] 就業服務法第 5 條第 1 項：「為保障國民就業機會平等，雇主對求職人或所僱用員工，不得以種族、階級、語言、思想、宗教、黨派、籍貫、出生地、性別、性傾向、年齡、婚姻、容貌、五官、身心障礙或以往工會會員身分為由，予以歧視；其他法律有明文規定者，從其規定。」

「單身條款」及「懷孕條款」事件，當時女性在招考此一機構時就必須簽訂切結書，自願在滿 30 歲或結婚或懷孕時自動離職。此一情形雖於當時的勞動環境十分常見[9]，且嚴重壓迫女性勞工在市場上的就業和陞遷情形[10]。後歷經十年，我國終於 2002 年 1 月 16 日公佈「兩性工作平等法」，開始正視女性勞動資源未能充分運用，且多集中於無前景的停滯性職業等問題[11] 。並於 2008 年後，在性別主流化的脈絡下更名為「性別工作平等法」，彰顯我國欲保障不同生理性別、社會性別及性傾向國民之相同工作權[12]，立法者並於 2008 年 1 月、2008 年 11 月、2011 年 1 月、2013 年 12 月、2014 年 6 月、2014 年 12 月及 2016 年 5 月數次修正該法內容，擴大適用主體、加強性騷擾之防治並促進工作平等措施，朝向建構更友善之職場平權環境為目標。迄今，性別工作平等法制定已有十六年，相較於其他國家，我國立法措施受到政治、民間企業等外在因素影響以致起步時間較緩，惟在制定之際已有多國立法先驅可資借鏡，故在相關實體、程序法規範設計上較有完足、整體之考量。

第二項 職場平權法制規範與女性陞遷之困境與救濟

一、 我國玻璃天花板現象及陞遷訴訟

我國統計資料顯示，縱有職場平權法制規範，男性與女性於職等或行業別之位階間仍有落差。根據銓敘部104年之統計年報，我國就公部門的部分，105年底全國公務人員具簡薦委任(派)官等之人數，總計186,429人，其中男性比率為43.4%，女性為56.6%，總體而言女性高於男性13.2個百分點。若依官等觀察，委任(派)女性比率為58.3%，男性為41.7%，薦任(派)女性比率為57.6%，男性為42.4%，此二官等女性比率皆已超越男性，至於簡任(派)官等之性別比率，則男性為67.5%，女性為32.5%，顯示高階文官之女性比率低於男性[13]。由前述統計資料可見，我國女性在高階公務人員的比例上仍與男性有相當之落差，且於委任、薦任及簡任之女性人數比率，有明顯之斷層。就私部門的部分，根據勞動部性別統計專題分析，2015年我國就業者擔任民意代表、主管及經理人員之女性占25.3%。專業人員共137.0 萬人，其中女性占53.1%，以女性較多。而若觀察女性在各工商團體的決策影響力，2015年各級農會主管階層女性所占比率為46.9%；工會理事、監事女性

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[9] 如 1989 年司法院曾針對信用合作社對女性所簽訂之單身條款、禁孕條款作出此類契約違反公序良俗而不具法律效力的解釋。請參閱司法院 78 年 8 月（78）廳民一字第 859 號涵、大法官解釋釋字 362 號和 552 號解釋。

[10] 陳昭如、張晉芬，性別差異與不公平的法意識—以勞動待遇為例，政大法學評論，第 108 期，頁 77（2009 年）。

[11] 焦興鎧，對我國建構兩性工作平等法制之省思，月旦法學雜誌，第 59 期，頁 62（2000 年）。

[12] 立法院公報，審查委員潘維剛之提案要旨，第 97 卷第 63 期，頁 73（2008）。

[13] 民國 105 年統計年報提要分析，銓敘部網站：http://www.mocs.gov.tw/pages/detail.aspx?Node=1134&Page=5378&Index=4（最後瀏覽日：2018 年 1 月 15 日）。

所占比率為 30.3%；中小企業負責人女性所占比率為36.6%[14]。依金融監督管理委員會統計，2014年底上市櫃公司（含公開發行及興櫃公司）女性董事人數1908人，占12.5%，男性董事人數13,411人，較女性多6倍[15]。然而此些統計方法各異，且未按照行業別進行區分。換言之，私部門的相關資料未如公部門般，可以從該領域中的男女負責人或董事比例，進一步推估女性陞遷中高階主管要職的比例。雖然可供使用之統計數據有此問題，但整體而言，仍可觀察出我國公私部門的女性決策參與比例不但差距大，且私部門中的女性決策參與比例更明顯偏低，顯示女性在工作陞遷上仍面臨相當之困境。

另外，觀察我國的司法實務，女性因陞遷障礙所提起之相關訴訟卻為數不多，我國於性別工作平等法第7條雖明文規定：「雇主對求職者或受僱者之招募、甄試、進用、分發、配置、考績或陞遷等，不得因性別或性傾向而有差別待遇。但工作性質僅適合特定性別者，不在此限。」其中明定陞遷不得因性別或性傾向而有差別待遇。但實務上進入法院之相關案例，主張性別工作平等法第7條之案件並不多見。至2018年1月20日，以「性別工作平等法第7條」於司法院法學資料檢索系統檢索全文內容含「性別工作平等法第7條」發現，行政訴訟共12件，其中有8件為雇用人因受雇人懷孕終止勞動契約或於求職時要求繳交驗孕報告之懷孕歧視、1件為受雇人著女裝而受不利益對待、1件為原告援引性別工作平等法闡釋證券交易法、1件為原告主張考試行政規則獨厚女性、1件為原告主張相姦人未受停職處分，認其停職處分違反憲法第7條及性別工作平等法第7條規定之平等原則[16]。民事訴訟共10件，其中2件為臺灣台北地方法院95年北簡字第21377號民事判決及臺灣高等法院97年上國字第5號民事判決將於後敘述(本文稱之女性少校陞遷案)。另外臺灣高等法院97年度上字第998號民事判決、臺灣高等法院98年度上更(一)字第164號民事判決、臺灣台北地方法院96年訴字第7313號民事判決即為後述宜蘭大學校長遴選案。另有1件為確認僱傭關係存在，事實略為生理男性之受雇人遭解雇，非本文探討之範圍[17]。1件為懷孕留職停薪請求給付工資[18]、1件為

[14] 我國女性政經參與概況，勞動部網站：http://www.mol.gov.tw/statistics/2461/2473/25116/（最後瀏覽日：2018年1月15日）。目前勞動部分析之我國女性政經參與概況統計僅截至2015年。

[15] 2016年性別圖像—權力、決策與影響力篇，主計處網站：http://www.stat.gov.tw/ct.asp?xItem=33340&ctNode=6135&mp=4（最後瀏覽日：2017年4月30日）。主計處2017年性別圖像—權力、決策與影響力篇之統計項目和本研究較無關聯，故引用2016年之資料。

[16] 最高行政法院裁定101年度裁字第2605號、臺灣新竹地方法院行政訴訟判決103年度簡字第15號、臺北高等行政法院裁定106年度簡上字第11號、臺北高等行政法院判決102年度訴字第633號、臺北高等行政法院判決101年度訴字第1425號、臺北高等行政法院判決100年度簡字第656號、臺北高等行政法院判決101年度簡字第54號、臺北高等行政法院裁定100年度訴字第1539號、臺灣臺北地方法院行政訴訟判決101年度簡字第164號、臺中高等行政法院判決102年度訴字第150號、臺中高等行政法院判決99年度簡字第222號、高雄高等行政法院裁定102年度簡上字第6號。

[17] 臺灣臺北地方法院100年度勞訴字第172號民事判決。

[18] 臺灣新北地方法院106年度勞訴字第21號民事判決。

再審之訴不合法裁定[19]、1件為臨時人員解雇案件[20]，均非本文探討之經理人玻璃天花板議題。

觀察前述統計資料，並非我國女性均可無障礙地進入決策圈，實乃我國法制無論在實體法和訴訟法上，致陞遷訴訟寥寥可數，可能對於中高階白領女性在陞遷上的權利保障不足。現行法令是否足以因應未來女性在職場上所面臨到的種種歧視與障礙，則不無疑問，尤其組織內結構和制度性障礙中所存有之性別刻板印象，仍然係阻擋我國白領女性陞遷的一大因素，而形成所謂的玻璃天花板現象，就以我國於2006年發生的宜蘭大學校長遴選案[21]及女性少校陞遷案為例，以下詳述：

二、 宜蘭大學校長案

此案中，陳金蓮女士為台灣科技大學前副校長，也是國立宜蘭大學校長遴選中唯一的女性候選人，其中，遴選委員五位均為男性，遴選委員於面試時詢問陳金蓮女士之問題，包括「女性候選人在募款方面比較吃虧，你認為呢？」、「那你跟你先生住在台北，你到宜蘭來，你的家庭怎麼辦？」等問題，最後做出決議「江教授（即江彰吉）的行政經歷完整且具親和力，又具私校經驗，有利公立大學的經營。陳教授（指上訴人）的學識與經驗豐富，有助學校之運作與發展。決定遴選江彰吉教授與陳金蓮教授，請部長擇一擔任國立宜蘭大學校長」供時任教育部長杜正勝圈選，最後陳金蓮女士未獲選任。陳金蓮女士因遴選委員質疑女性募款能力較差、懷疑女性在擔任此一要職時會無法兼顧家庭，起訴主張該遴選委員違反性別工作平等法第7條之規定，並要求被告（教育部、某遴選委員）連帶給付原告新臺幣貳佰萬元、於報上公開道歉[22]。一審法院認為，遴選委員詢問：「你先生在哪裡？」原告覆以：「住臺北。」後，有遴選委員詢問「那你到宜蘭來，你的家庭怎麼辦？」、隨後遴選委員以「女性候選人在募款方面較吃虧」等語藉與候選人毫無關係之衡量標準，質疑原告之能力確實屬於招募過程中及進用結果均有因性別而對陳金蓮女士不利對待。而針對教育部之抗辯，一審法院也有充分回應。教育部抗辯「女性候選人在募款方面比較吃虧」並未成為會議討論焦點，亦無由左右其他委員評斷並進而影響遴選結果之情形，因此沒有不利之對待。法院則回應：「法律係要求不得有任何直接或間接不利之對待。法律並不要求必須有任何特定形式或特定結果的不利對待。且立法者顯然未將『性別歧視之事實致受僱者或求職者無從取得聘用資格』列為本法受僱者或求職者請求損害賠償之構成要件。並認為「宜蘭大學校長之聘任結果是否考慮性別因素」與「原告是否遭受性別歧視之差別待遇」或「原告有無受到不利對待」係不同之事。針對教育

[19] 臺灣新北地方法院106年度勞再易字第1號民事裁定。

[20] 臺灣澎湖地方法院104年度勞訴字第4號民事判決。

[21] 請參閱臺北地方法院96年度訴字第7313號民事判決、臺灣高等法院97年度上字第998號民事判決、最高法院98年度台上字第2249號民事判決、臺灣高等法院98年度上更（一）字第164號民事判決、最高法院100年度台上字第1062號民事判決。

[22] 臺北地方法院96年度訴字第7313號民事判決。

部另外之抗辯「部長依其權責就包含原告在內之2名校長候選人予以擇選時亦未將之列入考量，並基此認被告教育部並無因原告之性別而為差別待遇情事。」法院則回應：「試問如何可能有任何一件兩性工作平等法之案件，雇主或其受雇人愚笨至極，而於其紀錄上，明白填載應徵者係因性別之緣故而不被任用或雇用？如依此見解，兩性工作平等法不但無法落實，更將被破毀殆盡。」觀察法院之論理及判決結果，陳金蓮女士於一審可謂大獲全勝[23]。二審法院則認為本案僅生國家賠償法請求賠償之問題，因而廢棄原判[24]。而後三審法院廢棄發回二審判決[25]。本案之終審法院認為教育部所頒遴選要點沒有差別待遇，並認為遴選要點依文義觀之，尚難認該部遴選標準有何差別待遇。而遴選委員之提問，並非教育部對候選人之審查標準，且該提問未經討論，沒有影響最後決議。另外，遴選委員，達成共識後，推薦之人選並未有優先順序之分，沒有不利之待遇。並認為該提問和未獲選間不具原因力，因為陳金蓮女士未能證明若無系爭提問，其必可獲選為校長。並回應上訴人認為遴選委員之性別比例並未有女性之比例，因而致不不平等之結果，法院認為上訴人亦未能證明教育部組成遴選委員會若有性別比例，其必然可以獲選為校長之不同結果，更與教育部是否違反性別工作平等法第7條規定無關。最後認為募款的提問在甄試上未產生歧異、不公平之情事，不屬於性別歧視的情形，故不存在兩性工作平等之人格法益上的損害[26]。此案過後，我國於2011年1月26日修訂大學法第9條、第10條，要求校長遴選委員會的組成應有1/3的性別保障配額條款。然而，根據教育部105學年度的大專院校女校長人數及比例統計[27]，我國公私立大專院校女性校長比例僅有9.49%，可見宜蘭大學校長案並非個案因素，且修改大學法也未能解決此一問題。另觀察近三任大學各學院院長之性別比例，由女性擔任院長之比例如下：台灣大學13%[28]、清華大學4%[29]、交通大學0%[30]、成功大學15%[31]。在性別刻板印象的運作下，就算女性工作者本身具備陞遷資格與意願，亦難以跨越性別垂直隔離障礙而進入決策位置。

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23 同前註。

24 臺灣高等法院 97 年度上字第 998 號判決。

25 最高法院 98 台上 2249 號。

26 最高法院 100 年度台上字 1062 號。

27 性別統計指標彙總性資料（大專校院女校長人數及比率），教育部網站：https://depart.moe.edu.tw/ED4500/cp.aspx?n=C1EE66D2D9BD36A5（最後瀏覽日：2018 年 1 月 20 日）。

28 國立台灣大學學術單位一覽表，國立台灣大學網站：http://www.ntu.edu.tw/academics/academics_list.html（最後瀏覽日：2018 年 1 月 20 日）

29 國立清華大學教學單位，國立清華大學網站：http://www.nthu.edu.tw/units/education（最後瀏覽日：2018 年 1 月 20 日）。

30 國立交通大學系所總覽，國立交通大學網站：http://www.nctu.edu.tw/about/edu（最後瀏覽日：2018 年 1 月 20 日）。

31 國立成功大學教學單位，國立成功大學網站：http://web.ncku.edu.tw/files/11-1000-182.php?Lang=zh-tw（最後瀏覽日：2018 年 1 月 20 日）。

三、 女性少校陞遷案

本案原告為軍訓教官，其主張被告教育部將男女教官分別評比，此一按照性別決定候晉中校之最低資績與評比行為，顯違反性別工作平等法第7條之規定。原告以侵權行為法律關係向被告教育部提起訴訟，台北地方法院認為，被告教育部將男女教官分別評比，縱有所爭議，仍非以不法手段侵害原告權利，原告無從以侵權行為法律關係請求損害賠償[32]。原告上訴後，高等法院認為即便上開按照性別決定候晉中校之行政裁量，顯有違反性別工作平等法第7條之虞，但根據94年第2梯次候晉中校資績分排序表，上訴人的資績分顯較規定積分低，可見縱令被上訴人統一評比男、女教官之績分，上訴人亦無被列入建議晉任名單之可能，換言之，上訴人未列入94候晉中校名單，與被上訴人分就男、女教官評比無相當因果關係，故上訴人主張並無理由[33]。本案涉及以男性為主職業中之女性陞遷議題，曾有研究指出，握有考評大權的軍訓主管，仍然是以傳統「男主外，女主內」的意識型態看待女性教官，因而基於男性教官須「養家餬口」之目的，而給予其較優渥之薪資和陞遷機會[34]，而現行軍訓教官之晉升制度仍存有許多盲點，蓋男性和女性仍然無法享有相同之職務歷練機會，故即便現行制度分開考評男女兩性，但那僅為形式上的平等，對於實質結構限制造成之不平等卻無法有效改善[35]。本案兩則判決先後出現「縱有所爭議」、「顯有違反性別工作平等法第7條之虞」等字句，似肯認分開考評男女軍官為基於性別所為之差別待遇，惟並未更進一步探討該行為如何構成性別歧視差別待遇、也並未探討該行為是否可能符合第7條但書之規定，而直接改以個案未符國家賠償法第2條第2項前段之構成要件而予以駁回，殊顯可惜[36]。

四、 遭受陞遷歧視之救濟途徑

遭受陞遷歧視之救濟途徑，規定於性別工作平等法第 34 條。受僱者或求職者發現雇主違反第 7 條時，得向地方主管機關申訴；倘若雇主、受僱者或求職者對於地方主管機關所為之處分有異議時，得於 10 日內向中央主管機關性別工作平等會申請審議或逕行提起訴願；倘若雇主、受僱者或求職者再對於中央主管機關性別工作平等會所為之處分有異議時，得提起訴願及進行行政訴訟。而根據同法第 35 條之規定，法院及主管機關對差別待遇事實之認定，應「審酌」性別工作平等會所為之調查報告、評議或處分，至於法院該如何「審酌」性別工作平等

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32 臺灣台北地方法院 95 年北簡字第 21377 號民事判決。

33 臺灣高等法院 97 年上國字第 5 號民事判決。

34 楊櫻華、游美惠，「女性軍訓教官的職場困境：以已婚育有子女者為例的性別分析」，台灣教育社會學研究，第 6 卷第 2 期，頁 142（2006）。

35 同前註，頁 143。

36 江欣曄，玻璃天花板效應對於女性經理人障礙之研究—以性別工作平等法第七條為中心，國立交通大學科技法律學院碩士論文，頁 111-112（2017）。

會之文書及兩者間關係為何，法院可以實質審查性別工作平等會之評議[37]。最後，根據同法第 33 條之規定，雇主為處理受僱者之申訴，「得」建立申訴制度協調處理，惟此一規定並不具有強制性[38]。後我國於 2009 年制定兩公約施行法，並於 2011 年也制定「消除對婦女一切形式歧視公約（CEDAW）」施行法。此些國際公約的內國法化，表示我國立法者希望能與國際接軌，並強化對國內女性工作者的保障。承上所述，我國從早期的工廠法、勞動基準法、就業服務法，至發生國父紀念館案後所制定的性別工作平等法，最後到兩公約和 CEDAW 施行法，可見我國法制對職場性別平權已有大幅度的進步。但司法實務上，案件仍寥寥可數，且前述宜蘭大學校長遴選案、女性少校陞遷案，原告之訴均遭駁回。實體法上，原告之請求權基礎如下：性別工作平等法第 26 條之規定，向雇主請求財產上之損害賠償，或按同法第 29 條之規定，向雇主請求非財產上之損害或回復名譽之適當處分。惟性別工作平等法第 26 條之爭議，在於雇主之「歸責原則」究竟為何[39]，我國司法實務與學說見解對此一議題意見分歧，亦可能使陞遷歧視受害者擔心敗訴之訴訟成本而不敢提起訴訟。在前述宜蘭大學校長遴選案中，二審法院首先採取「過失責任」之見解[40]，後其遭最高法院否決，並指出該條立法目的應屬於「保護他人之法律」，而尋繹其立法過程，可見立法者有意刪除「故意或過失」等文字，並提及德國民法第 611 條之 1 的設計，顯見立法者有意在性別工作平等法第 26 條中讓雇主採取「推定過失」責任[41]。對此，有學者指出「舉證責任」與「歸責原則」並不相同[42]，且性別工作平等法第 26 條與第 27 條之立法結構不

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37 參見林佳和，「法院對性別工作平等會之審查——台中高等行政法院 97 年度簡字第 66 號判決」，性別工作平等法精選判決評釋，臺北大學法律學院 勞動法研究中心編，頁 199-208(2014)。

38 江欣曄，前揭註 36，頁 99-101。

39 同前註，頁 99-102。

40 臺灣高等法院 98 年上更(一)字第 164 號民事判決：「惟由 91 年 1 月 16 日制定第 26 條、第 29 條之立法理由均載「參考我國民法第 184 條、第 195 條及德國民法第 611 條之 1 規定，明定雇主違反第 7 條至第 11 條或第 21 條第 2 項時之賠償責任」文義觀之，可見同法第 26 條、第 29 條規定應屬特別侵權行為型態，其成立要件仍應以過失責任為限。」

41 最高法院 100 年度台上字第 1062 號判決：「按性別工作平等法第二十六條雖規定受雇者或求職者因第七條之情事，受有損害者，雇主應負賠償責任，而未如民法第一百八十四條第二項但書設有舉證責任轉換之明文，惟該法係為保障性別工作權之平等，貫徹憲法消除性別歧視、促進性別地位實質平等之精神而制定（該法第一條規定參照），性質上應同屬保護他人之法律，且尋繹性別工作平等法第二十六條規定之立法過程，將原草案「故意或過失」文字予以刪除，及其立法理由提及參考德國民法第六百十一條之一（該條文捨德國一般侵權行為之舉證責任原則，將雇主違反兩性平等原則致勞工受損害者，改採舉證責任轉換為雇主）規定，明定雇主違反第七條規定時之賠償責任，並參照性別工作平等法第三十一條規定揭櫫舉證責任轉換為雇主之趣旨，應認雇主如有違反該法第七條因性別或性傾向而差別待遇之情事，依同法第二十六條規定負賠償責任時，雇主當受過失責任之推定，亦即舉證責任轉換為雇主，僅於證明其行為為無過失時，始得免其責任。查上訴人主張性別工作平等法係採雇主「無過失責任」，指原判決逕認係過失責任為違法一節，顯與上揭雇主「過失推定責任」之意旨，不盡相同，自有未洽。」

42 劉素吟，「性平法第 26 條損害賠償責任與過失推定？－最高法院 100 年度台上字第 1062 號民事判決」，性別工作平等法精選判決評釋，臺北大學法律學院 勞動法研究中心編，

同，不應作相同解釋，故可見性別工作平等法第 26 條應採取「無過失責任」較為妥當[43]。

第二節　國外玻璃天花板議題及案例研究──以美國法案例為中心

第一項 美國法中關於促進性別工作平等之法律

在所有工業化國家中，美國是推動「性別工作平等權」之保障上最具有代表性的國家之一，透過法案與行政命令與聯邦各級法院就個案做出的判例，對於婦女就業及待遇均等上均有積極正面的效果。關於美國反就業歧視與保護兩性平權的相關立法，以下依制定時間順序簡介之[44]：

一、　一九六四年民權法案第七章（Title VII of the Civil Rights Act of 1964）[45]

本法為美國處理就業歧視議題影響最深、範圍最廣的法律，其立法目的在於禁止各種基於雇用關係所產生的歧視行為。法條中明文規定「禁止雇主因員工的種族、膚色、宗教、性別與國籍而職業上的差別對待」，且特別設立「平等就業機會委員會」（Equal Employment Opportunity Commission, EEOC）[46] ，獨立執行本法規定之事項。本法一共歷經了三次修法，一九七二年賦予平等就業機會委員會有提起一般訴訟及集體訴訟之權能，約束範圍擴及聯邦、各州及地方政府、各處教育機構及所有雇用15人以上的雇主、就業機構（employment agency）[47]與勞工組織（labor organization），本次修法又稱「僱用機會平等法」（Equal Employment Opportunity Act of 1972）；一九七八年將禁止懷孕歧視法納入（Pregnancy Discrimination Act of 1978），使本法中對於「性別」之保障更近一步包含了因懷孕、生產及其他相關的生理條件所生之歧視行為禁止；第三次為增訂一九九一年民權法（Civil Rights Act of 1991）。本法的制定使得雇主在進行招募、解僱、給付薪資時的歧視行為，或者是在勞動契約中就勞動條件以及僱用上的特殊約定有涉及歧視者，都將變成違法。另外，就業機構也不能在雇用員工或在為企業徵才時歧視應徵者，勞工組織也被禁止將會員或工會做性別、種族、膚色、宗教或國籍等等形式的歧視性分類。

頁 199-200（2014）。

43 同前註，頁 202-205；江欣曄，前揭註 36，頁 99-102。

44 參見焦興鎧，「美國兩性工作平等救濟制度之研究」，勞工法論叢(二)，頁 171-181（2001）。

45 Civil Rights Act of 1964, Pub. L. No. 88-352, title VII, 78 Stat. 241 (1964).

46 42 U.S.C. § 2000e－4 (1964).

47 就業機構就是工作仲介機構，雇主可經由此機構與求職者媒合，或由求職者向此機構尋求可能之工作機會；此機構可為收費與免費性質。參見 42 U.S.C. § 2000e (c) (2000).

二、 一九七八年懷孕歧視法（Pregnancy Discrimination Act of 1978）[48]

在 1978 年時，美國國會將「禁止懷孕歧視法」（Pregnancy Discrimination Act of 1978）列入民權法案第七章中，其規定雇主不得因女性受雇者懷孕、分娩或其他相關醫療情況，而給予不利之歧視對待[49]。之所以會有此一立法，是因為美國聯邦最高法院在 1976 年的 General Electric Company v. Gilbert 案 中，否認懷孕歧視係屬於民權法案第七章之性別歧視之，蓋「基於性別之因素」（because of sex）與懷孕無涉 。此一判決引發社會嘩然，而後本法已被併入一九六四年民權法案，規定雇主不得因女性受雇者有懷孕、分娩或其他相關之生理情況，給予任何就業上的歧視待遇。除禁止歧視行為之外，本法也規定雇主對懷孕受雇者之福利措施應和對其他雖無同等生理情況，但工作能力相近的受雇者相同。

三、 一九九一民權法（Civil Rights Act of 1991）[50]

本法是為了推翻聯邦最高法院在一九八八年至一九九零年間做出幾則對婦女與少數族群受到就業歧視的不利判決而制定。本法案中作出以下修正：減輕就業歧視案件原告之舉證責任、減少提出反歧視訴訟之限制、延長對歧視性薪資制度提起訴訟之時效期間、確定某些公平就業法在境外適用之原則[51]。此外，本法並大幅修正一九六四年民權法案所規定之補償制度，因為根據舊法案的規定，被害人僅能請求法院予以衡平法之救濟(equitable relief)，如復職、積欠工資、律師費用或頒發禁止命令等[52]。本法為了鼓勵被害人勇於主動提出訴訟，以達嚇阻雇主蓄意之歧視性行為，除了增訂可請求補償性與懲罰性的損害賠償(compensatory and punitive damages)外，也可請求支付專家出庭費以及其他相關之訴訟費。但是此項規定也有其限制，亦即法院不得要求各級政府機構支付懲罰性的損害賠償，而補償性的損害賠償也不包括被告所必須支付的積欠薪資。此外，受害者若在就業歧視案件中獲得勝訴，補償性或懲罰性損害賠償之價額認定，由陪審團進行審查(jury trials)，使受害者獲得較為公平的損害補償[53]。為了保障更多的受僱者，該法將適用範圍擴充至眾議院以及國會附屬機構之員工[54]。另外本法也鼓勵當事人採取替代性解決爭議方案(Alternative Dispute Resolutions: ADRs)來解決爭議，替代性解決方案包括協商談判(settlement negotiations)、調解 (conciliation)、中介

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[48] 42 U.S.C. § 2000e (k) (2000).

[49] 焦興鎧，前揭註 44，頁 102-103。

[50] Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (codified as amended in scattered sections of 42 U.S.C.).

[51] 陳錦發，論我國兩性工作平等法制之爭議問題—以美國兩性工作平等法制之相關立法與實施情況為比較對象，國立中正大學勞工研究所碩士論文，頁 82（2011）。

[52] 焦興鎧，前揭註 44，頁 177。

[53] 陳錦發，前揭註 51，頁 83。

[54] 焦興鎧，前揭註 44，頁 178。

(mediation)、簡化程序(facilitation)、發現事實(fact finding)、小型審判(mini-trials)及仲裁(arbitration)等[55]。

四、 玻璃天花板法（Glass Ceiling Act of 1991）[56]

根據美國勞動部之定義，「玻璃天花板」係指雇主針對符合陞遷資格的女性以及少數族裔男性在機會上所設的人為阻礙，使其無法晉升企業內之主要管理層級（executive level positions）的現象[57]。本法特別規定應由聯邦政府成立「玻璃天花板委員會」（Glass Ceiling Commission），以研究如何消除針對女性及少數族裔晉升至經理及決策階層之各類人為障礙，增進女性在這方面之機會及發展經驗，並向美國總統以及國會相關委員會提出書面之事實發現及建議事項報告[58]。同時也創設一套全國性的獎勵措施，藉以鼓勵那些積極晉用女性及少數族裔至決策階層之績優廠商。此外，該委員會還被授權舉行相關之公聽會或採取必要之措施，藉以增進女性及少數族裔晉升至經理或決策階層之機會[59]。

五、 一九九三年家庭及醫療休假法（Family and Medical Leave Act of 1993）[60]

由柯林頓總統簽署通過，於一九九三年八月正式生效。本法提供受雇者長達十二週的無薪特別休假，使受雇者能順利生產或收養、照顧幼兒、照護配偶或健康狀況不佳的雙親、或者是受雇者回復健康狀況之休養等。需注意的是，本法僅適用於雇員達五十以上之事業單位，且受雇者必須在該事業單位任職滿一年以上，並在該年度工作總時數一千二百五十個小時以上(即平均每週二十五時)，才符合本法之資格限制[61]。

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[55] 42 U.S.C. § 12212. (1999).

[56] Title II of Pub. L. 102-166. 此法收錄於前述1991年民權法案第二章(Title II)。

[57] See Employment Standards Administration, Office of Federal Contract Compliance Programs (OFCCP) Glass Ceiling Report, "Glass Ceiling Initiative: Are There Cracks In The Ceiling? ", http://www.dol.gov/dol/esa/public/media/reports/ofccp/newgc.htm(last visited Ari..30, 2017)

[58] 焦興鎧，「私部門高階女性人力資源之開發與運用-美國『玻璃天花板委員會』報告初探」，經社法制論叢，第24期，頁311（1999）。

[59] 焦興鎧，「工作平等與優惠之平衡-美國經驗之借鏡」，國家菁英季刊，第7卷第2期，頁9-36，頁11（2011）；參見李孟玢，勞動人權之國際保障：以經濟、社會和文化權利國際公約為中心，論文發表於「兩公約與國內勞動法制」研討會，頁4註8之說明（2009）。

[60] Pub. L. No 103-3, 107 Stat. 6 (codified in scattered sections of 2, 5 and 29 U.S.C. §§2601-2654).

[61] HERMA HILL KAY, TEXT CASES AND MATERIALS ON SEX-BASED DISCRIMINATION 766 (4th ed. 1996).

第二項 美國中高階白領女性陞遷歧視之經典案例介紹

一、Price Waterhouse v. Hopkins[62]案

原告 Ann Hopkins 曾在普華會計事務所（Price Waterhouse）擔任五年的資深經理（senior manager），其曾連續兩年申請成為合夥人（partnership），但都遭到拒絕，其拒絕原因乃是原告走路、穿著、說話方式不具有女人味，他們並希望原告能多化妝、整理頭髮並穿戴珠寶上班[63]。Hopkins 認為其有足夠資格可以申請成為合夥人，而且她的表現也勝於其他男性同儕，因而認為普華會計事務所基於性別刻板印象的原因而拒絕陞遷之，已侵害其受民權法案第七章所保障之權利[64]。而雇主則抗辯該項不陞遷決定是因為原告人格特質不討喜與人際關係處理不佳，而非考量其性別所為之。

從客戶回饋與主管同事互評表中對於Hopkins的工作表現大多數人皆表示肯定，而在所有競爭者中，原告無論在業績表現或年資上也確實都比其他人突出。法院最終以事務所無法提出優勢證據證明該決定並非為基於性別偏見而生之差別待遇，判決原告勝訴。

二、Ezold v. Wolf Block, Schorr & Solis-Cohen[65]案

本案原告Nancy Ezold於1983年起，在被告訴訟部門中工作，起初Ezold在被告事務所負責刑事、保險、一般商業和其他領域案件，後其被指派去做民事或其他小型刑事案件，不僅工時長、案件小，也被限制僅能與特定合夥人工作，在1988年10月和1988年11月時，Ezold兩次申請陞遷為合夥人皆遭拒絕，理由是Ezold不具備足夠法律分析能力得處理複雜案件[66]，Ezold提起訴訟後，第三巡迴上訴法院認為法院不該任意僭越雇主之陞遷決定權，當被告事務所以法律分析能力作為陞遷之主要考量時，法院不得據以主張Ezold在其他項目上仍有出色表現，因而具備成為合夥人之資格[67]。另外並沒有任何證據可以證明該拒絕陞遷是基於性別歧視、而非客觀評價，例如原告無法證明她的能力確實優於同年度晉升的男性律師、原告於就職期間大部分只能獲派小型案件是因為受到性別歧視、參與晉升結果表決的主管性別也不因候選人性別有所不同。即便對於原告有利或不利的評價皆來自於和原告不相熟的主管，地方法院也未闡明採取不同標準證明力的原因為何等理由，駁回地方法院之見解，原告敗訴。

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[62] Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

[63] *Id.* at 232-236. ([T]homas Beyer advised, Hopkins should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.)

[64] *Id.* at 236-237.

[65] Ezold v. Wolf, Block, Schorr and Solis-Cohen, 758 F. Supp. 303 (3rd Cir. 1991).

[66] *Id.* at 512-521.

[67] *Id.* at 524.

三、Pao v. Kleiner Perkins[68]案

原告Ellen Pao（鮑康如，以下簡稱原告）控告美國加州矽谷（Silicon Valley）知名的風險投資公司凱鵬華盈(Kleiner Perkins Caufield & Byers，以下簡稱KPCB或被告)在她任職期間及最終被解僱之時，存在性別歧視。案件事實略述如下：原告是一位華裔風投分析師與法律專家，其具有普林斯頓大學工程學位及哈佛商學法律及商學碩士學位之優異背景，於2005年加入KPCB，並在2010年成為低階合夥人。然而原告聲稱，因為曾與同事Ajit Nazre有感情糾紛，向公司投訴受性騷擾未果，進而「遭到報復」，失去晉升機會，並於2012年被公司解聘。原告以KPCB違反《加州就業與住屋法》的規定，以「性別就業歧視」(employment discrimination based on gender)、「工作環境對申訴者之報復行為」（workplace retaliation）、「為採取合理行為防免性別歧視」(failure to take reasonable steps to prevent gender discrimination)、「報復性解僱」（retaliatory termination）向舊金山最高行政法院提出控訴，並要求1600萬美元的補償性與報復性賠償。

細究本案，原告於事實部分主張受到公司同事 Ajit Nazre 的歧視對待：原告拿出 Nazre 追求他時寫的係騷擾文字當證據，Nazre 聲稱已與妻子分居並對原告性騷擾，在被原告是破並拒絕其求愛後，開始對她展開報復性行為：包括拒絕與她溝通、不告知重要訊息、拒絕讓她出席重要會議（僅有男性 CEO 可以出席）等也提到她在職期間曾受到來自上司 Randy Komisar 多次性騷擾，例如曾送她一本《渴望之書》，內容含有大量不雅與性暗示的圖片及文字，也暗示她假日妻子不在，可以與她共進晚餐。原告也提到公司制度本身也充滿了「對特定性別族群不利」的氛圍，像是要求女性 CEO 做會議記錄等低階工作、公司風投分析師與工程師的性別比極度不平衡、公司內部充滿許多「紳士俱樂部」(Gentlemen's Club)等等，在在突顯了 KPCB 確實有違反就業歧視規定之可能。且原告表示在 2007 年她曾和兩位主管陳述受到歧視對待，但主管要她不要把小事放大；隨後她又向另一名主管提及遭受同 Nazre 歧視行為與上司 Komisar 的性騷擾，並表明自己想要離開工作崗位，但該名主管只是不置可否；2008 年原告於自我評鑑中再提上述兩件事，但負責檢閱與評鑑的主管機關也未給予回覆；2011 年一名女性同事告訴原告自己也曾遭受 Nazre 的性騷擾，原告於是為自己及該名女性同事再次提起申訴，而這次公司的回應為：「KPCB 無性別歧視」。而後原告聲稱在申訴後開始遭受公司「報復性對待」，使其失去晉升機會，且當時有三男三女之初階合夥人，即便女性的年資更久、表現也較為優異，但最後獲得陞遷機會者仍全為男性。隨後原告於 2012 年被解僱。被告 KPCB 則聲稱解僱原告是基於她表現未達陞遷標準與本身個性問題使然，例如她剛上任時指導上司評價其為人過於急躁、欠缺團隊合作精神、容易與人發生衝突等，即便在她晉升為全職的投資部門初階合夥人時，她那時的上司也表示過於自我、無法受人仰賴、防衛性過重等問題依然存

[68] Pao v. Kleiner Perkins Caufield & Byers LLC, Not Reported in Cal. Rptr. 3d, 1 (2013).

在；外部評鑑小組的評鑑中也明確指出原告缺乏成為投資者或董事會成員的特質。而關於原告提出的「報復性歧視對待」與「職場性騷擾」控訴，公司則指原告與 Nazre 之間係為兩情相悅，然而原告懷疑對方並無與妻子離婚的意思，雙方在幾經爭執後協議分手；其後原告向當時的指導上司揭露這樁婚外情，上司依公司規定懲處 Nazre 卻遭原告反對；2011 年原告與另一名女性同事卻有以「受 Nazre 性騷擾」為由提出申訴，然而原告卻屢屢拒絕調查員之訪談。又關於原告控訴「公司環境對特定性別顯不友善」一事，公司則以公司女性員工比例高於其他類似性質公司、許多性別友善政策在原告到職時便已令其知悉等理由作為抗辯；至於原告提出「KPCB 基於性別因素剝奪其陞遷機會」，被告方面則提出與原告同樣具有陞遷資格的 25 位初階管理人中，只有 5 位獲得陞遷機會，剩下的 20 位落選者中也有男性，以茲證明公司並非只單憑「性別」因素決定員工的陞遷與否。陪審團就原告提出的四項控訴進行事實認定之表決，駁回原告提出的四項控訴，決結果以 KPCB 未違反《加州就業與住屋法》之規定，判原告敗訴。

原告雖然敗訴，但也因為引起了廣大社會與學術上開始針對科技業與投顧嚴重的性別失衡問題與潛在的性別隔離與偏見進行全面的檢討，如同史丹福大學法學教授 Deborah Rhode 所言：「本案向矽谷，尤其是投顧業發出強而有力的訊息：『在法庭上勝訴的被告，也可能成為法庭外的失敗者[69]。』」另外，受到 Pao 案的啟發，於社群網路上也發起一個「谷裡的大象」(Elephant in the valley)的活動，統計女性在科技業中常遇到、但男性不會遇到的問題，試圖引起職場性別平權的重視[70]。

第三節　綜合評析：以性別的角度評析前述案例

第一項 性別刻板印象影響女性陞遷

有學者指出，女性被兩面牽制(double-bind)，若她沒有表現的像男性的模樣，會被認為不夠堅毅甚至不夠聰明；但若表現的強悍，又被嫌棄不夠有女人味或太有攻擊性[71]。而這種情形在女性律師是否能晉升為事務所合夥人時特別常見[72]。這裡突顯的問題是性別刻板印象，性別刻板印象就是忽略個體差異、並對性別角

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69 David Streitfeld, *Ellen Pao Loses Silicon Valley Bias Case Against Kleiner Perkins*, The New York Times (Mar. 37, 2015), https://www.nytimes.com/2015/03/28/technology/ellen-pao-kleiner-perkins-case-decision.html.

70 Elephant in the Valley, https://www.elephantinthevalley.com/ (last visited Apr. 10, 2017).

71 DEBORAH L. RHODE, WHAT'S SEX GOT TO DO WITH IT? : DIVERSITY IN THE LEGAL PROFESSION 17 (4th ed. 2006).

72 RAYMOND F. GREGORY, WOMEN AND WORKPLACE DISCRIMINATION: OVERCOMING BARRIERS TO GENDER EQUALITY 75 (2002).

色有著僵化、過度簡化或是類化的信念或假設[73]。而多數領導者的特質包含獨立、不情緒化、果決、充滿競爭力，而這些特質通常並非拿來形容女性[74]。美國玻璃天花板委員會在其報告中指出，刻板印象加深公司／組織高層主管對於特定族群的不舒適感，為避免此一情形發生，公司或組織內部應建立以「績效」為導向之評鑑模式，用客觀能力代替公司／組織高層主管對其能力的主觀判斷[75]。由於性別刻板印象的關係，女性在被考評工作績效時，也較容易被摻雜非工作表現之因素[76]。在傳統上被認為是較為雄性的工作中，女性容易因為不符合性別刻板印象而受到不利益的對待[77]。在 Hopkins 案中，主管認為 Hopkins 應該要更像個女人而不予晉升；在 Ezold 案中，Ezold 則有被認為人格特質猶豫不決，並認為「太過關注性別的問題」。在同事互評的結果中，Hopkins 和 Ezold 都被認為同「難相處」。相同的人格特質，放在男性身上可能是「堅毅」、放在女性身上卻成為「太有攻擊性」或「難相處」。另外，此等阻礙女性陞遷的性別刻板印象，也與上司或合夥人多為男性有關，在 Ezold 案中，當時律師事務所共 107 位合夥人，其中僅有 5 位女性。女性合夥人候選人被迫要合於「由男性主觀建立的合夥人印象」[78]。有些管理階層會認為女性因為要照顧家庭，所以無法參加下班後不定期的聚會、無法任意調職或赴他國出差、或無法長時間加班，因此偏好選擇男性作為晉升對象，這些都是雇主的人偏好因素[79]，性別刻板印象，也是高階女性面臨之陞遷障礙。不論是美國的 Hopkins 案、Ezold 案，或是我國曾發生的宜蘭大學校長案，均是「女性應該如何」或「女性某種能力較差」等性別刻板印象導致女性陞遷障礙，且顯現關於性別刻板印象影響女性陞遷之問題，不分公、私部門均如此。例如，研究資料亦顯示，女性學者可能比男性學者必須花更多的時間在教

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73 Tracy A. Baron, *Keeping Women Out of the Executive Suite: The Courts' Failure to Apply Title VII Scrutiny to Upper-Level Jobs*, 143 U. PA. L. REV. 267 (1994).

74 Mary F. Radford, *Sex Stereotyping and the Promotion of Women to Positions of Power*, 41 HASTINGS L.J. 471, 494 (1990).

75 Federal U.S. Glass Ceiling Commission, *Good for Business: Making Full Use of Nation's Human Capital*, http://digitalcommons.ilr.cornell.edu/key_workplace (last visited Apr. 30, 2017) (…artificial barrier to the advancement of minorities and women in the private sector that contradict this nation's ethic of individual worth and accountability…).

76 SEX BIAS IN WORK SETTINGS: THE LACK OF FIT MODEL IN 5 RESEARCH IN ORGANIZATIONAL BEHAVIOR 270 (B. Staw & L. Cummings ed. 1983)

77 *See* Bartol & Butterfield, *Sex Effects in Evaluating Leaders,* 61 J. APPLIED PSYCHOLOGY 446 (1976); *Coping in the Corporation, supra* note 25; Jago & Vroom, *Sex Differences in the Incidents & Evaluations of Participative Leader Behavior,* 67 J. APPLIED PSYCHOLOGY 776 (1982); Rosen & Jerdee, *The Influence of Sex-Role Stereotypes on Evaluations of Male and Female Supervisory Behavior,* 57 J. APPLIED PSYCHOLOGY 44 (1973).

78 *Supra* note 52, at 77.

79 M. Neil Browne & Andrea Giampetro-Meyer, *Many Path to Justice: The Glass Ceiling, the Looking Glass, and Strategies for Getting to the Other Side*, 21 HOFSTRA LAB & EMP. L.J. 61, 72 (2003).

學和研究上，才能獲得與男性平等的地位[80]。關於如何改變性別刻板印象，本研究認為，可從教育推廣部分著手，主管機關或公務人員訓練機構可要求上市櫃公司與政府需要一定教育時數。另外觀察宜蘭大學校長案後，大學法修法要求教育部的大學遴選委員會就要求女性占特定性別比例(大學法第 9 條、第 10 條參照)，此項修法應推廣至學校中各獨立學院院長的派任，否則若女性連擔任獨立學院院長，都可能面臨玻璃天花板，遑論階層更高的一校校長。至於私人企業，在我國如德國訂立《女性及男性領導階層平等參與法》之前可以先以獎勵方式而非強制女性領導階層之比例。獎勵的方式，我國政府目前對於提升女性參與企業決策比率之作法，多以「積極鼓勵民間企業董監事會採行三分之一性別比例原則」，於辦理績優企業表揚、企業申請之各補助案，將「是否達三分之一性別比例」納入評定指標之加分項目[81]。但以「對申請政府補助加分」作為對企業之誘因，本研究觀察結果顯示似乎效果不大。相對於外商企業，本土企業對於女性的拔擢尤為不足。勞動部如果可以鎖定一些所謂「社會形象」良好的本土大企業、進行內部訪視及調查，將會有助於瞭解造成陞遷機會的性別差異的內部操作[82]。本研究進而認為，若為鼓勵公司促進性別平等措施，可考慮於性別工作平等法中規定，若公司平時有善盡促進性別平等之義務，當違反相關法規時，作為勞動部裁罰基準之衡量因子之一。

第二項 難以打入的紳士俱樂部文化（Gentlemen's Club）

「紳士俱樂部文化」一般認為係起源於 17 世紀的英國，當時的英國上層社會將「俱樂部」視為一種民間的社交場所，成員多半為具有貴族頭銜、工業革命後以金融業或營造業起家的新興士紳階級、收入與社會地位高的律師、法官及議員等，或是在科學、藝術、文學等領域有傑出貢獻或才華備受肯定者等。可以說在英國社會，一個人擁有多少知名俱樂部的會員資格便是此人社會地位高低的表彰[83]。

「俱樂部」在西方上流社會中佔有舉足輕重的地位，也因為成員多半具有一定身份地位或為各領域的菁英代表，「俱樂部」便成為政治、科學與哲學的啟蒙地。而無論是大學中的兄弟會、特定領域菁英聚集的學會或是上流社會的高級俱樂部，他們的特點除了是菁英主義與悠久的歷史外，便是「男性文化」，尤其是「白人男性文化」的具體展現：這些知名俱樂部成員清一色都是男性，某些俱樂部甚至明文規定「禁止女性入會」[84]。隨著女權意識的興起，許多俱樂部在 19 世紀中後期開始取消女性禁止入會的規定，甚至在倫敦也曾經成立了許多「淑女俱

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[80] 黃煥榮，非營利部門性別偏差之研究：玻璃天花板現象之探析，行政院國家科學委員會委託研究，頁 5（2004）。

[81] 經濟部，經濟部 105 年度推動性別主流化執行計畫成果報告，https://www.moea.gov.tw/mns/dop/content/ContentLink.aspx?menu_id=2475（最後瀏覽日：2017 年 4 月 30 日）。

[82] 張晉芬，「性別勞動平權的進步與檢討」，台灣婦女處境白皮書：2014 年，陳瑤華編，頁 186（2014）。

[83] David Doughan & Peter Gordon, WOMEN, CLUBS AND ASSOCIATIONS IN BRITAIN 14-16 (2006).

[84] *Id.* at 43.

樂部」，例如在比如 1883 年成立的「大學女子俱樂部」（University Women's Club），便是其中最具知名度的女性私人俱樂部之一，只對有學歷的職業女性開放，如律師、科學家、作家、音樂家以及商人等，試圖與傳統的「紳士俱樂部」抗衡[85]。然而，女性要打入長期以來由男性主宰的（尤其是白人男性）社交圈仍然非常困難，女性成員被譏稱為 WORMS，即「會員的妻子」(Wives of Regular Members) 的簡稱，意指只取得形式上的入會資格，卻無實質的投票權、無法成為高階會員、無法參加部內重要活動等等的權利[86]。無法在俱樂部擁有等同於其他男性成員的權力，代表的不僅僅是花同樣的入會費卻無法享有同等的待遇，而是這些高級會所因為具有良好的隱密性與歷史意義，許多重要的決策會議、商業聚會或是思想辯論往往會選擇在這些場所舉行。當女性會員不被允許參加俱樂部的活動或是無法自由進出某些重要場所時，也象徵著女性仍被拒於長期由男性主宰的權力核心、學術成就與商業利益之外[87]。

而「紳士俱樂部文化」也被用來比喻在以男性佔多數的特定領域中，男性成員為了鞏固自己的權力優勢地位，而將企業本身看作是一個「俱樂部」，並以職業傳統、企業文化等類似入會規則的說詞，以「性別不符」為由，將女性職員排除在重要的商業社交場合與決策圈之外、阻礙女性的生涯發展的現象。而發生在矽谷科技業、風險投資業這類「男多女少」的職場環境的 Pao 案，便是一例。

由 Pao 案中我們可以看到 Pao 的男性主管與同事一直試圖透過言語的歧視、同儕排擠、不告知會議時間與地點、要求女性高階主管從事會議記錄等庶務工作等方式，消極地拒絕 Pao 進入核心決策圈。身為女性的 Pao 無法順利取得「決策俱樂部」的入會資格，也象徵了 Pao 不被認可為矽谷投資業的菁英成員。而更令人挫折的是這個決定可能無關乎她個人的學識能力，而是根源於「性別」或「種族」的原罪：意即男性為了樹立社會地位、追求生涯發展並鞏固自身的權勢而創造了「俱樂部」這類的社交場合，卻無形中更加將特定性別群體排除在階級流動與自我實現的可能之外，且有研究指出，因為職場中觀念認為男女相處不應太過親密，所以較無法與男性上司、部屬、或同事建立非正式的關係[88]。因為有這些不平等的期待，女性也就受到某些不平等的反應或對待，例如升遷機會較少，在工作上較不易獲得資源及資訊、易受到負面評價等等。本研究建議，「性別友善工作環境的建構」實屬必要。除了藉由法規配合與教育的推廣強化企業內員工性別平等觀念外，亦可鼓勵企業增設哺乳室、托兒或托老中心等相關福利設施或與

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[85] History and Heritage, University Women' s Club, https://www.universitywomensclub.com/the-club/history-heritage/ (last visited Apr. 30, 2017).

[86] Nancy Camp, *Gender Discrimination at Private Golf Clubs*, 5 SPORTS LAW. J. 89, 90 (1998).

[87] SUSAN FOMOFF, EQUAL TIME-GENDER DISCRIMINATION AGAINST WOMEN BY PRIVATE GOLF CLUBS, GOLFMAG, at 203 (1995).

[88] 陳皎眉、陳彰儀，當性別遇上權力－女性領導者之壓力研究，行政院國家科學委員會專題研究計畫，頁 4（2005）。

公司臨近之幼兒園、養護中心合作，減輕女性員工在職涯發展與家庭上兼顧的兩難，並落實性別工作平等法第 23 條。觀察台灣司法實務，性別工作平等法訴訟戰場上，仍以關於懷孕歧視的問題占大宗，可見女性的勞動參與，仍然被視為「暫時性的身體」，雇主對於女性勞動的待遇、持續參與的期待和投資就不如男性[89]。女性既不可能獲得什麼好位置、所從事的工作也無助於未來的陞遷。若要讓女性更有可能進入決策階層，對於勞動基準法和性別工作平等法相關的母性保護措施，更需要進一步落實。

第三項 此類案件舉證困難──結構性的性別歧視

在 Hopkins 案和 Ezold 案中，法院均須確認「性別因素」為該拒絕陞遷決定之重要考量，原告才可能勝訴。換言之，法院必須認定「拒絕女性候選人晉升之決定是為基於『性別』而做出的差別待遇歧視(disparate treatment discrimination)」。在 Hopkins 案中，法院判決原告勝訴之原因，是因為有對於原告「過於男性化」或應該多化妝、去上禮儀課之建議，尤其對主管甚至提到：「要更像個『女人』。」等等這類充滿對特定性別之刻板印象的言論，非常明顯是基於性別拒絕晉升決定。但有學者指出，中高階企業或事務所多有強而有力的人資部門，他們會協助審閱主管們提出的相關員工審查或評價報告，確保「文義上」不會出現顯而易見關於性別偏見或個人特質的歧視性字眼。於「混合動機歧視」的情形，美國法院雖有舉證責任轉換之規定，但於人資部門的潤飾下，受陞遷障礙阻撓的女性，仍可能在舉證責任上碰壁。混合動機歧視就是雇主在作成某項決定(例如陞遷或解雇與否)時，同時兼具合法與非法之動機，此類型之歧視行為通常是由事實證據所證明的動機違法所引起。然而這類案件不易舉證[90]，可能受雇者有明顯證據指出雇主的動機違法，但是雇主這邊也宣稱有合法的動機存在[91]。因此針對此類案件，目前美國聯邦最高法院認為，雇主必須證明「即使沒有違法動機存在，也會做出完全相同的僱用決定。」[92]。在「舉證責任」的分配上，法院認為原告僅需證明「性別」為僱主考量陞遷與否之動機即可，雇主則須提出「優勢證據」抗辯該項決定與性別無關。但在考量高階主管之陞遷，所以關於職場上性別歧視爭議在現今已不單純是顯而易見的直接歧視，而是更加隱晦的存在企業內部的員工評鑑制度、職務分配或是職場的整體氛圍中，也讓職場性別歧視的起訴與認定顯得更加困難與複雜。

這樣的舉證困難，就顯現在 Ezold 案中，法院審理中發現多數意見回饋看似

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[89] 同前註。

[90] 焦興鎧、康長健、謝棋楠及劉士豪，以人權觀點檢視我國勞動法制研究案，行政院勞工委員會委託研究，頁 99（2008）。

[91] 如受僱者能提出受到性騷擾的明確證據，但雇主也提出受僱者工作績效不佳的事實。參見陳錦發，前揭註 51，頁 87。

[92] 該法案第 107 條(a)規定：只要申訴之當事人能舉證其受到性別等相關因素的歧視，即使該僱用爭議仍含有其他因素所形成之動機，該僱用關係確認為非法。此法條係修正一九九零年民權回復法(Civil Rights Restoration Act of 1990)。*See* Section 107 of the Civil Rights Act of 1991.

都聚焦在原告的能力評價，例如「就處理例行的、瑣碎的案件類型上並無問題，但缺乏獨自處理複雜法律案件的能力」，但有沒有可能正因為原告是女性，故事務所總是派給她小型案件，讓她無法有客觀業績可以證明自己的能力？就被派到的案件複雜程度而言，Ezold 從未擁有超過 500 小時工時之案件，但與其他同階層之男性律師相比，其他男性律師均有超過 600 小時工時之大案件，但由案件累積出的工作考評仍然不被法院認為是基於性別之歧視。而若真有此情形，原告亦難有明確事證。且在 Hopskins 與 Ezold 案奠定了職場性別歧視的判斷準則後的數十年，Pao 案的出現，代表現今的職場性別歧視不再像過去一樣顯而易見，而是更內化的、根源於整體就業市場與企業文化的「隱性歧視」，它不再只是個人對個人的歧視性對待，而是透過內部組織架構或企業傳統，為特定性別或少數族群築起層層陞遷障礙，以「不適任」(unqualified)取代「不喜歡」(disfavored)，但本質上與歧視並無不同[93]。這類型的結構歧視，因為舉證上困難，再加上傳統認為差別待遇歧視的內涵只消極要求雇主個人不得基於性別所為差別對待，但不包含需負起積極創造及維護性平等的工作環境，導致此類陞遷障礙無法消除[94]。

有學者指出，在組織內的人事安排運作中，許多性別化的操作附著於結構和制度上：表面上看似中立，但執行時卻是充滿性別化的操作。例如針對同樣的工作，創造出兩個不同的職稱，訂出不同的薪資水準，女性被分配到薪資較低的職稱，男性則擁有另一個薪資較高的職稱[95]。採取這種歧視性作法的說詞仍然是因為「男性要養家」。此外，在有些組織中，曾經擔任過一些特定職務，或是具有特殊的資歷（例如有外派經驗），被視為陞遷與否的基本條件。然而，由於主管從來不問女性下屬是否願意被外派，就先假設她們一定會因為家庭因素而不願意接受。女性因此缺乏外派機會及經驗，幾乎難有陞遷。這也是統計歧視中的一種。但是男性同事中即使有些人並沒有經過外派等資歷，卻仍舊有機會晉升到管理決策的位置[96]。沒有外派經驗只是管理階層阻擋女性陞遷的公式化說詞，用以合理化性別歧視的操作，卻未必適用在男性身上。制度是否要遵守或變通，主要還是看男性主管如何操作和詮釋[97]。針對舉證責任困難之問題，本研究認為提出「訴

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[93] *See*, e.g., Sturm, *supra* note 45; Tristin K. Green, *Insular Individualism: Employment Discrimination Law After Ledbetter v. Goodyear*, 43 HARV. C.R.-C.L. L. REV. 353 (2008); Tristin K. Green, *A Structural Approach as Antidiscrimination Mandate: Locating Employer Wrong,* 60 VAND. L. REV. 849 (2007).

[94] *See*, e.g., David Benjamin Oppenheimer, *Negligent Discrimination*, 141 U. PA. L. REV. 899 (1993). (suggesting a theory of "negligent discrimination"); Deborah M. Weiss, *A Grudging Defense of Wal-Mart v. Dukes*, 24 YALE J. LAW & FEMINISM 119 (2012) (developing a "notice theory" of discrimination): Tristin K. Green, *The Future of Systemic Disparate Treatment Law*, BERKELEY J. EMP. & LABOR LAW (forthcoming) (suggesting a "context" model of systemic discrimination).

[95] 嚴祥鸞，「性別關係建構的科技職場」，婦女與兩性學刊，第 9 期，頁 187-204（1998）；張晉芬，「找回文化：勞動市場中制度與結構的性別化過程」，台灣社會學刊，第 29 期，頁 97-125（2002）。

[96] 張晉芬，同前註。

[97] 張晉芬，同前揭註 82，頁 199（2014）。

訟舉證責任的減輕與細緻化」之建議。司法實務方面，我國現有之性別工作平等法第 7 條要件尚不明確、且第 31 條舉證責任轉換之規定於訴訟實務上也未臻細緻化。關於第 7 條但書開放「工作性質僅適合特定性別」之例外情形，准許在特定條件下雇主得正當化其性別歧視行為，惟究竟何種工作僅適合單一性別所為、是否會對單一性別造成過大負擔？實務上均未類型化，導致法院、行政單位、雇主或受僱者未有一遵循之前鑑，難助於性別歧視訴訟之開展。至於 31 條舉證責任倒置於訴訟中的適用問題，本研究建議我國法院可參考美國「善意職業資格限制」（bona fide occupational qualification, BFOQ）嚴格解釋之實務發展。美國法院在審酌一件主張受有性別差別待遇歧視的案件時，第一步會先分類該差別待遇之態樣為何。若是可透過直接證據推定雇主確實對於受一九六四年民權法案第七章保障的少數族群或是女性給予差別待遇，稱為「顯而易見的差別待遇」。對於此類型的差別待遇，雇主僅得以「善意職業資格限制」作為抗辯事由（statutory defense）[98]。而另一種情況是通常受害者會認為雇主這種差別歧視待遇是一種藉口(pretext)，並且對於這種差別待遇歧視的推定只能根據間接的證據得來，大多只能經由比較及數據統計後的差別待遇證據進行推論證明雇主確實有歧視行為。這類的「間接性的差別待遇歧視」在民權法案第七章出現之前，申訴案件多半循國家勞動關係法(National Labor Relations Act, NLRA)之規定進行判定。在此時期的判決是以歧視動機的事實證據作為判斷依據，這對於不熟悉法令的雇主或許有效，但卻無法有效限制熟知法令規範或趁隙規避法律的雇主。因此在民權法第七章出現之後，聯邦最高法院在一九七三年的 McDonnell Douglas 案中，明確規定兩造舉證的次序以及份量[99]，視為法院開始嘗試透過「舉證責任」的安排處理性別歧視的問題。而到了 Hopskins 案與 Ezold 案時，開始出現了新的性別歧視態樣，也就是雇主在作成某項決定(例如升遷或解雇與否)時，同時兼具合法與非法之動機，此類型之歧視行為通常是由事實證據所證明的動機違法所引起，稱為「混合動機歧視」（mixed-motive discrimination）。然而這類案件比較不容易處理是因為這通常會涉及兩造在舉證上的責任歸屬問題[100]，可能受雇者有明顯證據指出雇主的動機違法，但是雇主這邊也宣稱有合法的動機存在[101]。聯邦最高法院透過兩則案例的審酌與討論，訂出一套審查標準，也就是舉證在雇主身上，且須從兩種方向進行：一為斷然否認有歧視動機存在，二為提供事實證據以證明真正的動機非屬歧視行為。總結而論，雇主必須證明即使沒有違法動機存在，也會做出完全相同的僱用決定。從兩案的的判決書中皆可見鉅細彌遺的事實證據討論：從主管往來的書信、同事的評價、考核表現、平時工作狀況與客戶回饋等等，以實質證據去檢驗雇主確實是因為其能力不足以勝任該項工作或工作表現確實並無達到升遷標準等屬於「善意的職業資格限制」，而非僅單純基於兩人的性別做出不

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[98] 42 U.S.C. § 2000e-2(e) (1988).

[99] McDonnell Douglas v. Green, 441 U.S. 792 (1973)；參見陳錦發，前揭註 51，頁 86。

[100] 焦興鎧，前揭註 11，頁 99。

[101] 如受僱者能提出受到性騷擾的明確證據，但雇主也提出受僱者工作績效不佳的事實。參見陳錦發，前揭註 51，頁 87。

同於其他擁有相同條件的雇員不同之對待。法院也會參酌其他成功取得工作機會者的情況，比如說在同一梯次的應試者中男女比例為何？最後錄取者的男女比為何？以過去的紀錄來看取得該項職業資格者的男女比例為何等等，做全面性的判斷與審酌。國會也在制定一九九一年民權法案當中也做出修正，將混合動機歧視之保障明文化，以避免雇主逃避責任[102]。在前開提到法院在審議 Hopkins 案時，兩造間對於是否真的有「基於性別所為之差別歧視」也是各執一詞：被告即雇主認為原告的能力確實可以勝任工作，公司也確實考慮繼續與她的聘雇關係，但是原告的人際關係不佳才是公司最後拒絕她的主因，而原告則認為所謂的「人際關係不佳」是因為她的言談與服裝不夠女性化所以不受同事青睞（且多數為男性同事）。法院要求雇主必須要提出「在不考慮 Hopkins 人際問題與不夠女性化等因素之後，雇主仍就會做出不續聘之決定」之證明，雇主無法成功舉證，最後法院便宣判原告有理，此即為混合動機歧視在美國法實務上的評價標準與實行流程。

綜上所述，我國法院若能參考美國聯邦最高法院之作法，訂定一套明確的審酌標準，並將舉證責任由雇主負擔，透過價值選擇與風險轉嫁的方式減輕原告在證據搜集上的困難與法院在事實認定上的爭議，也能間接鼓勵更多受到歧視的女性透過法律爭取自己應有的權益。

第四節 結論──如何建立性別友善之陞遷環境

本研究主要以中高級白領階層女性之陞遷障礙為研究對象，並以文獻回顧法，探討我國玻璃天花板效應之問題、可能之司法救濟、過去的案件探討、及現行法制下的不足。具體而言，本研究第一節指出以下問題：我國玻璃天花板現象成因與嚴重性及我國陞遷訴訟面臨法制面問題。本研究第二節以比較法學觀點，提出美國實務之經驗作為借鏡。本研究第三節則以性別角度綜合評析，提出公司治理面、國家政策面、司法細緻化舉證責任之建議。從性別角度以觀，權力關係的不平等不僅存乎於微觀的家庭個戶，家戶的群聚形成團體性的組織，組織間的互動更進一步交織成社會的網絡，形塑成現今的勞動市場。簡言之，觀察家庭內部的性別權力關係，可推導至組織間的權力結構問題，但問題不止乎於此：群體性增加一定的不確定性，也加深、固化某一觀念的生成，進而造成更嚴重的社會結構問題。性別不平等的權力結構在勞動職場上就有顯著的差異，而中高階白領女性所面臨之玻璃天花板，更係我國現今及未來將面臨之潛在職場問題。本研究所代表之意義，除呈現我國玻璃天花板現象之嚴重，期能使各界關注此議題之外，從法制重建的角度以觀本研究檢視我國性別工作平等法第 7 條對於我國私部門女性陞遷之實益及落實，進而以比較法之方式，對照我國訴訟環境如何能對於面臨陞遷障礙之女性更加友善，提供舉證責任轉換或減輕之建議，供未來立法部門或司法部門參考。本研究進一步發展之可能性，則是細緻化行業別，方能針對行業特性、陞遷與性別的關係深入研

[102] 同前揭註 92。

究，除探討不同類型行業之玻璃天花板現象及因應之道外，亦可結合管理學、心理學等領域，提出更適合因應私部門玻璃天花板現象之改善策略。

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科技部補助專題研究計畫出席國際學術會議心得報告

日期： 2017　年 8　月 15 日

<table>
<tr><td>計畫編號</td><td colspan="3">MOST　105-2629-H-009-001-</td></tr>
<tr><td>計畫名稱</td><td colspan="3">玻璃天花板之突破與我國性別工作平等促進法之再造ー以中高階白領女性之職場平權為核心</td></tr>
<tr><td>出國人員姓名</td><td>林志潔</td><td>服務機構及職稱</td><td>交通大學科技法律學院副院長</td></tr>
<tr><td>會議時間</td><td>2017　年 8　月 2 日至 2017 年 8 月 3　日</td><td>會議地點</td><td>新加坡</td></tr>
<tr><td>會議名稱</td><td colspan="3">(中文)跨國政治與法律研討會
(英文) International Conference on Law and Political Science(ICLPS)</td></tr>
<tr><td>發表題目</td><td colspan="3">(中文)玻璃天花板之突破ー以中高階白領女性之職場平權為核心
(英文) Breaking The Glass Ceiling—Equal Rights in The Workplace for Upper And Middle Class White-Collar Women</td></tr>
</table>

一、　參加會議經過

這次第 International Conference on Law and Political Science 的會議地點在新加坡的樟宜飯店，由於計劃主持人對於新加坡熟悉，故並未花太多時間找路，順利到達會議地點。計劃主持人並受邀擔任 keynote speaker。和其他與會者合影如下圖：

(圖片來源：http://conferencegallery.com/more_conference_gallery.php)

二、 與會心得

International Conference on Law and Political Science(ICLPS)為 International Institute of Engineers and Researchers 舉辦的研討會之一，故與會者之背景較為多元，有土木工程背景、數學背景、經濟背景等各地學者聚集。且由於舉辦在新加坡，地緣之關係，聚集許多來自於越南、緬甸等東南亞地區之學者，和一般在歐洲或美國舉辦之研討會組成成員大有不同。且與會期間正值我國同性婚姻議題熱門時段，一邊聽到他國甚至仍處罰男性間性行為，深感一個世界中不同法域對於權利保護和介入人民私領域之程度之落差甚大，並藉此機會向外國學者們介紹台灣對於性別多元之開放程度與性別平等之進展，外國學者們也對於台灣性別平權法制相當好奇，反應熱烈，是個相當特別的交流經驗。

三、 發表論文全文或摘要

Abstract

The purpose of this study is to survey female white-collar workers' promotion barriers. Taiwan's female labor force participation rate has been increasing in recent years. However, according to the latest analytical surveys conducted by authorities and private institutes, the percentage of women directors in both public and private sectors remains low, indicating the glass ceiling is still impenetrable. Especially, private corporations appear to have an obvious gap. In addition, observing Taiwan's judicial practice, the number of promotion-related lawsuits is considerably less than expected. It is possible that our equal employment laws are not well-designed enough in the aspect of procedure and substantive contents to protect women's rights in the workplace. In

consideration of time and available cases, this study mainly focuses on female lawyers, female accountant and female engineers. By comparative law studies, this study aims to re-analyze the history of Taiwan's female workers, the glass ceiling effect and the practice of our present equal employment laws. Finally, this study proposes several legal changes in incentivize corporations to promote gender equality.

Key words - feminist legal approaches, Glass Ceiling Act of 1991, the glass ceiling effect, women in white collars

全文

Breaking the Glass Ceiling--Equal Rights in the Workplace for Upper and Middle Class White-collar Women

Ch. 1: Introduction

This text discusses obstacles to promotion for upper and middle class white collar women in the private sector. This issue was analyzed using gender perspectives and comparative methods in hopes that the results of the research can help develop strategies to spur the promotion of white-collar women in the private sector. Due to limited space, we selected female technology managers, accounting firm partners and law firm partners as our research subjects. In addition, obstacles to promotion based on sexual orientation were not explored in this research.

The term "glass ceiling" was coined to describe the barriers to promotion that women experience in the workplace; these barriers are both invisible and impregnable[1]. In 2015, the German Congress (Bundestag) passed the "Law for the Equal Participation of Women and Men in Leadership Positions in the Private Sector and the Public Sector" (Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst)" which required public and private companies to set aside at least 30% of new board

[1] Addison Hanne, Feminist Economics, 59 (2015).

seats for women as a way of legally breaking the glass ceiling effect[2].Norway passed a law in 2008 that mandated all private enterprises meet a minimum quota of 40% in their boardrooms[3]. According to statistics from the 2016 World Economic Forum's report listing gender ratios among legislators, mid-level administrators and managers for every country, it's evident that global women's workplace rights issues have gradually progressed from barriers to entry into the workforce to promotion barriers for women in specialized, higher-level positions[4]

Ch. 2: The Significance of the Glass Ceiling and the Importance of Discussing it

1. Progress on Workplace Gender Equality in Taiwan

Observing Taiwan's legal workplace equality system in the context of its development, previous points of emphasis have included equal pay for equal work, barring discrimination of pregnant or single women and maternal protection. However, in this sort of legal environment, males continue to outnumber women in high-level decision-making positions among public or private Taiwanese companies. The following is a brief history of the development of the legal workplace equality system in Taiwan as well as some statistical data which sheds light on the current situation.

The earliest law on equal pay for equal work and maternal protection was the Factory Law passed by the Government of the Republic of China (ROC, Taiwan) in 1929[5]. In 1984, the government of ROC passed the Labor Standards Act which expressly

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[2] Lin Chih-Chieh, Qiu Yu-fan, *Breaking Through Taiwan's Glass Ceiling and Rebuilding Taiwan's Workplace Gender Equality Act-Equal Rights for Upper and Middle Class White Collar Women in the Workplace is Key*, APPLICATION FOR SPECIALIZED RESEARCH ON GENDER AND TECHNOLOGY, 15-16 (2016).

[3] Liu Mei-Jun, *The Workplace Glass Ceiling Phenomenon*, TAIWAN LABOR QUARTERLY, at 79 (2010).

[4] World Economic Forum, *The Global Gender Gap Report 2016*, available at : https://www.weforum.org/reports/the-global-gender-gap-report-2016.

[5] Factory Law, Article 13: "Female Employees Cannot Work Between 8:00 PM and 6:00 AM." Article 24: "Male and Female Employees that do the same work and are equally productive should have equal pay.

forbade gender discrimination in the workplace[6]. In the subsequent Employment Services Act, these protections were expanded and the penalties for violating them were increased[7]. Taiwan's first "Workplace Gender Equality Law" originated from the "Marriage Pregnancy Discrimination Act" of 1987. Back then, women often had to sign agreements when they were hired stating that they would willingly leave or be fired when they married, became pregnant or reached the age of 30[8]. In 2002, Taiwan finally announced the "Male and Female Workplace Equality Act" and the government started to focus on the problems of the female workforce[9]. After 2008, when the idea of gender had become mainstream, its name was changed to the "Workplace Gender Equality Act"[10].

2. Specifics about the Legal Workplace Equality system and the Plight of Women-the Case of National Yilan University

2.1 Taiwan's Gender Gap Still Exists

According to the Ministry of Civil Service's statistics from 2015, a gap still exists between Taiwanese men and women in industry and position. In 2015, 58.31% of public servants were men and 41.69% were women. As for the ratio of women across different ranks, 58.45% of Third-Class civil servants (weiren) are women, 57.20% of Second-Class civil servants (jianren) are women, and 31.27% of First-Class (jianren) civil servants are women; more than half of all Third-Class and

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[6] Labor Standards Act, Article 25: "Employers cannot treat employees differently because of their gender. Employees that do the same work and are equally productive should have equal pay."

[7] Employment Services Act, Article 5 Section 1: "To ensure that citizens have equal opportunities for employment, employers cannot discriminate against job applicants or employees due to their race, class, language, creed, religion, party, nationality, birthplace, gender, sexual orientation, age, marital status, appearance, facial features, physical or mental disabilities or past/present membership in a union or unions; Other laws have explicit provisions about these issues as well and must also be respected."

[8] Chen Chao-Ju , Chang Chin-Fen, *Legal Recognition of the Gender Gap and Gender Inequality-Using the Treatment of Laborers as an Example*, POL. L., Issue 108,at 77 (2009).

[9] Chiao Cing-Kae, *Thinking about How Taiwan can Establish a Legal Workplace Gender Equality System*, MINGDAN LAW J., Issue 59, at 62. (2000).

[10] Review Committee Member Pan Weian's Proposal, Legislative Council Gazette, Volume 97, Issue 63, at 73 (2008).

Second-Class civil servants were women, but less than a third of all First-Class civil servants are women[11]. Thus, it is fairly evident that women's progression through the ranks is being stopped at the mid-level (Second-Class). As for the private sector, according to the Ministry of Labor (MOL)'s gender analysis statistics, 25.3% of public representatives, administrators and managers are women. Women also made up a majority (53.1%) of the 1.37 million professional employees. However, if we examine women's influence among industrial and commercial groups, 46.9% of peasant association leaders are women, 30.3% of union directors and supervisors are women and 36.6% of small and mid-sized business administrators are women[12]. According to Financial Supervisory Commission statistics, at the end of 2014, 12.5% of publicly listed companies (including companies on both the Taiwan Stock Exchange and the OTC securities market) were chaired by women (a female to male ratio of 1:6)[13]. Although the female manager rate cannot be directly calculated from private sector materials, generally speaking, the proportion of females in decision-making roles in the private sector is noticeably low.

2.2 There is a Lack of Promotion-Related Lawsuits in the Taiwanese Judicial System

Not many lawsuits have been brought by women due to barriers to promotion. Although Article 7 of the "Workplace Gender Equality Act" clearly states that people cannot be treated differently with regards to promotions due to their gender and/or sexual orientation, in practice, very few cases of Article 7 are ever heard in Taiwanese courtrooms. A search of all court law and law school related materials containing

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[11] Ministry of Civil Service, *Summary Analysis of Taiwan's 2015 National Statistics Report*, http://www.mocs.gov.tw/pages/detail.aspx?Node=1062&Page=4001&Index=4 (Last visited: 4/30/2017).

[12] The Current State of Women's Political Participation in Taiwan, Labor Department. http://www.mol.gov.tw/statistics/2461/2473/25116/ (last visited: 4/30/2017).

[13] Articles on the Gender Gap-Equal Rights, Decision-making and Level of Influence, Main Office, http://www.stat.gov.tw/ct.asp?xItem=33340&ctNode=6135&mp=4 (last visited: 4/30/2017)

"Workplace Gender Equality Act Article 7" turned up 12 cases. Eight of those cases concerned employees whose labor contracts were terminated due to pregnancy or people who were required to pay for pregnancy tests as a condition of employment, one case concerned an employee who wearing women's clothing, one case in which the law was quoted by a plaintiff to explain the text of a securities law, one case in which the plaintiff advocated that the rules of a test be generous to women, and one case in which the plaintiff and one case in which a reporter was not suspended for violating the equality principle[14]. However, none of the cases found during the search has to do with women's inability to gain positions of leaders, especially internal organization stereotypes that block women from being promoted and form the glass ceiling. For that, we must examine the 2006 Yilan University Incident[15].

Ms. Chen Jinlian, the former Vice-President of National Taiwan University of Science and Technology, was the only female candidate for the nationally-run National Yilan University's presidency. The presidential selection committee was made up of 5 members, all male. During the interview, the committee members asked Ms. Chen questions including, "Women are relatively poor fundraisers, what do you think about that?" and "If you come to Yilan University, what will your family do?", etc. In the end, the committee decided "Professor Jiang has comprehensive administrative experience and is quite a skilled administrator; he also has experience managing both private and public universities. Professor Chen's wealth of knowledge

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[14] 2012 Supreme Court Decisions, No. 2605, 2014 Hsinchu District Court Decision Briefs No. 15, 2012 Taipei Superior Court Decisions, No. 1425, 2011 Taipei Superior Court Decision Brieffs, No. 656, 2012 Taipei Superior Court Decision Briefs, No. 54, 2011 Taipei Superior Court Decisions, No. 1539, 2012 Taipei District Court Decision Briefs, No. 164, 2013 Taichung Superior Court Decisions, No. 150, 2010 Taipei District court Decision Briefs, No. 222, 2013 Kaohsiung Superior Court Decision Briefs, No. 6

[15] Taipei District Court 96 Civil Judgment No. 7313, Taiwan Superior Court 97 Civil Judgment No. 998, 2009 Taiwan Supreme Court Civil Judgment No. 2249, Taiwan Superior Court 98 Addendum I Civil Judgment No. 164, Taiwan Supreme Court 100 Civil Judgment No. 1062.

and experience will help her manage and develop our school. We have decided to select Professor Jiang Zhangji and Professor Chen Jinlian as our preferred candidates, and the Minister of Ministry of Education (MOE) can choose one of them to be Yilan University's next president." Du Zheng-sheng, then serving as the Minister of MOE, was allowed to make the decision. In the end, Chen Jinlian was not selected. Chen Jinlian filed suit against the selection committee under Article 7 of the Workplace Gender Equality Act due to their concerns about women's poor fundraising and her inability to both raise a family and work at the same time. She demanded that the defendants (the Minister of MOE) and a few of the committee members) should pay her 4,000,000 NT as compensation and issue a public apology[16]. The first court thought that the committee members' questions, such as "what will your family do if you come to Yilan?" or "women are particularly bad fundraisers" did constitute unfavorable treatment during the hiring process because of gender. The Minister of MOE defended itself by claiming that the question about her ability of fundraising was not the main concern of the meeting and therefore did not constitute unfavorable treatment. The court's reply was as follows, "the legal system explicitly forbids any unfavorable treatment, not certain kinds of treatment and/or results." MOE responded that "the Minister did not take these matters into account when making his decision." The court replied that, "if we accept this explanation, not only will the Workplace Gender Equality Act be rendered impossible to implement, it will be broken entirely." The court awarded Ms. Chen Jinlian the entire amount she sought[17]. However, the final court believed that MOE did not treat the candidates differently with respect to the criteria used to make the decision. Furthermore, it ruled that the selection committee did have an order of preference with respect to the two candidates it

[16] Taipei District Court 96 Civil Judgment No. 7313.
[17] *Id.*

recommended and did not treat either of them unfavorably. The court felt that those questions it asked Ms. Chen were not the reason she was not selected. The court believed that Ms. Chen did not prove that MOE definitely could have made a different decision if the gender composition of the committee had been different, and its actions did not constitute gender discrimination[18]. In 2011, after the case was decided, Taiwan passed a new law requiring university president selection committees to have at least a 1/3 male-female ration. However, according to the statistics of MOE, in 2015, only 9.49% of public and private university presidents were women[19]. Therefore, we can see that this case was not an isolated incident, and that the University Act alone cannot solve the problem. With current gender stereotypes, even if a female employee is qualified for and desires a promotion, she will be hard-pressed to overcome the glass-ceiling and to assume a leadership role. In addition, other methods to avoid from gender discrimination, besides going to court, are specified in Article 34 of the Workplace Gender Equality Act. Employees or applicants can file a complaint with the local authorities; If either the party objects to the local authorities' decision, the matter can be transferred to the central authorities' workplace gender equality association for mediation or they can file a suit. If either party is still dissatisfied with the resulting decision, they can file a civil lawsuit. The court can then review the Workplace Gender Equality Association's decision and comments[20]. We must think more about how Taiwan can use laws, ordinances and education to create a pathways of promotion that are friendly to people of all genders. We must strive to ensure that

[18] 2011 Court No. 1062.

[19] Summary of Materials on Gender Statistical Indicators. Quantity and Ratio of Female University Presidents, Ministry of Education, http://depart.moe.edu.tw/ED4500/cp.aspx?n=C1EE66D2D9BD36A5 (last visited: 4/30/2017).

[20] Lin Jia-he, Court Decisions on Workplace Gender Equality-2008 Taichung Superior Court Briefs No. 66, Included in: Featured Decisions and Commentary on the Workplace Gender Equality Law, at 199-208.

women both in the public and private sectors can utilize their strengths freely without worrying about discrimination of gender.

Ch. 3: Research on Overseas Glass Ceiling Issues and Cases-Based on US Cases

1. US legal regulations and judicial system designed to spur the development of workplace gender equality：the following are listed and briefly described below in chronological order[21]:

1.1 Title VII of the Civil Rights Act of 1964[22]

This act was enacted to prohibit from all types of discriminatory behaviors that result from an employee-employer relationship. The act clearly states that "employers are strictly prohibited from discriminating against employees because of their races, skin colors, religions, genders and/or nationalities" and established the Equal Employment Opportunity Commission (EEOC) [23] to independently implement the items contained in the law. The law declared any discriminatory behavior with respect to pay for compensation when employers hire and fire employees illegally, as well as any discriminatory working requirements or special agreements.

1.2 The Pregnancy Discrimination Act of 1978[24]

In 1978, the US Congress added the Pregnancy Discrimination Act of 1978 to Title VII of the Civil Rights Act. It declared that employers could not subject female employees to discriminatory treatment due to pregnancy, childbirth or other related health conditions[25]. The original Civil Rights Act of 1964 already included a

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[21] Chiao Cing-Kae , *Research on America's Workplace Gender Quality System*, LABOR LAW SERIES (II), at 171-181 (2001).
[22] Pub.L. 88–352, 78 Stat. 241, enacted July 2, 1964.
[23] 42 U.S. Code § 2000e–4 - Equal Employment Opportunity Commission.
[24] 42 U.S.C. § 2000e (k) (2000).
[25] Chiao Cing-Kae, *supra* note 21, at 102-103.

provision barring discriminatory treatment due to pregnancy, childbirth or other related health conditions. Despite to the concern of physiological circumstances, this new act also mandated that employers should give the same beneficial treatment and payment to the pregnant female employees as the same as other capable employees.

1.3 The Civil Rights Act of 1991[26]

The following amendment was added to this act, including diminishing the liability of proof for plaintiffs in discrimination cases, diminishing the restrictions on bringing anti-discrimination suits, increasing the statute of limitations for discriminatory compensation suits, and confirming the legal principles can be applied outside the country[27]. In order to encourage victims to file lawsuits and thereby discouraging employers from discriminating based on gender, in addition to increasing compensatory and punitive damages, the act made guilty parties responsible for paying expert witness fees and other related court fees. Furthermore, if victims win their case, the law mandated that a jury will rule on compensatory and punitive damages to make sure the victims are fairly compensated[28]. The scope of the act was extended to apply to congressional employees and any affiliated staff. Also, the act encouraged the parties involved to use Alternative Dispute Resolution (ADR) to settle issues[29].

1.4 Glass Ceiling Act of 1991[30]

This act specified that the federal government would establish the Glass Ceiling

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[26] Chen Jin-fa, *Debates about Taiwan's Legal Workplace Gender Equality System-As seen in Comparison with America's Workplace Gender Equality Laws and Situation,* CHUNG CHING UNIVERSITY LABOR RESEARCH INSTITUTE MASTER'S THESIS, at 82 (2011).

[27] *Id,* at 83.

[28] Chiao Cing-Kae, *supra* note 21, at 178.

[29] Glass Ceiling Act of 1991.

[30] Title II of Pub. L. 102-166. This provision is part of Title II of the 1991 Civil Rights Act.

Committee of US Department of Labor to research how to remove barriers preventing women and minorities from being promoted into managerial and decision-making roles[31]. Additionally, it created national incentives to encourage blue chip manufacturers to employ women and minorities[32].

1.5 Family and Medical Leave Act of 1993[33]

This act provides employees with 12 weeks of special unpaid leave for childbirth, adoption, childcare, caring for a spouse or sick parents, for the employee who is in need of recovering and so on. However, this law is only subjected to companies that employ 50 or more staffs and only applied to employees who have worked there for at least 1 year or worked at least 1250 hours within the last 12 months (an average of 25 hours a week)[34].

2. Classic US Court Cases Involving Upper and Middle Class White Collar Women Who Faced Discrimination when trying to get a Promotion

2.1 Price Waterhouse v. Hopkins[35]

The plaintiff, Ann Hopkins, had worked for five years as a senior manager at Price Waterhouse. She had tried for two years to be promoted as a partner, but was rejected both times. The reason for her rejection was that she was not feminine enough. The plaintiff's employer also stated that they hoped she could wear more makeup, fix her hair and wear jewelry to work[36].Hopkins felt the reason she was

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[31] Chiao Cing-Kae, *The Balance between Workplace Gender Equality and Preferential Treatment-Learning from America's experience*, NATIONAL WEEKLY MAGAZINE, Issue 7:2=26, 9-36. at 11 (2001.06); *See* Ji Meng-ban, *Guaranteeing International Labor Rights: An approach centered on cultural rights and International Conventions*. The thesis paper was published in "Two Conventions and Domestic Labor Laws" seminar. Pg. 4, Note 8 (2009.12.11)

[32] *Id.*

[33] Pub. L. No 103-3, 107 Stat. 6 (codified in scattered sections of 2, 5 and 29 U.S.C. § §2601-2654)

[34] Kay, Herma Hill, *Text, cases and material son sex-based discrimination*, 4th ed., 766, (1996).

[35] Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)

[36] *Id*. at 232-236. ([T]homas Beyer advised, Hopkins should "walk more femininely, talk more femininely, d ress more femininely, wear make-up, have her hair styled, and wear jewelry.)

rejected was that she did not conform to the accounting firm's gender stereotypes and that this violated her rights under Title VII of the Civil Rights Act[37]. Her employer defended himself by saying that the reason she was denied for promotion was she did not get along well with her co-workers. They claimed the decision had nothing to do with gender. The majority of the evaluations of Hopkins made by clients, managers and co-workers praised her performance. Furthermore, Hopkins even outranked all of the other employees seeking the partnership. The court finally ruled in favor of Hopkins because the firm could not provide any evidence supporting their claim that the decision had nothing to do with gender.

2.2 Ezold v. Wolf Block, Schorr & Solis-Cohen[38]

The plaintiff, Nancy Ezold, had begun working for Wolf Block, Schorr & Solis-Cohen's defendant litigation department since 1983. Initially she was responsible for criminal, insurance, general business and other similar types of cases. Later on, she was assigned to civil and other minor criminal cases. Not only did she work for long hours on minor cases, but she was restricted to only working with a few specified partners. Ezold applied twice for partnership between October and November of 1988 and were rejected both times. The reason given was that she did not possess sufficient legal analytical skills to handle complex cases[39]. The Third Circuit Court of Appeals believed it should not arbitrarily revoke the firm's right to make its own decisions on promotions[40]. Furthermore, it ruled that there was no evidence to prove Ezold had suffered gender discrimination as a result of being rejected. Also, the subjective opinions, such as Ezold's legal analytical skills did not exceed her male colleagues, and she can only be assigned to minor cases because of her limited ability did not

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[37] *Id*. at 236-237.
[38] Ezold v. Wolf, Block, Schorr and Solis-Cohen, 758 F. Supp. 303 (3rd Cir. 1991).
[39] *Id*, at 512-521.
[40] *Id.* at 524

constitute discrimination based on gender. The court ruled in favor of the defendant.

2.3 Pao v. Kleiner Perkins[41]

The plaintiff, Ellen Pao (Pao Kangru, henceforth referred to as the plaintiff) claimed that she experienced gender discrimination, both while working at and when she was fired from Kleiner Perkins Caufield & Byers, a Silicon Valley investment firm (henceforth referred to as the defendant). The details of the case were as follows: The plaintiff became a junior partner at the firm in 2010. The plaintiff then claimed she complained to her employer about sexual harassment resulting from an affair with a co-worker, Ajit Nazre. Her employer did not act on this complaint, and she alleged she was later passed over for a promotion and eventually fired in 2012 as retaliation for filing the complaint. The plaintiff filed suit in San Francisco's Superior Court, alleging employment discrimination based on gender, workplace retaliation, failure to take reasonable steps to prevent gender discrimination and retaliatory termination in violation of the "California Employment and Housing Act" and sought 16 million dollars as compensation.

The plaintiff presented her case, explaining that she was a victim of gender discrimination from her co-worker, Mr. Nazre. She claimed Mr. Nazre started to retaliate against her after she broke off her relationship with him and refused his subsequent romantic advances. These retaliatory behaviors, including keeping important information from her, refusing to include her in meetings and so on. The plaintiff also stated that she was the victim of repeated sexual harassment by her superior, Mr. Komisar. Besides, she alleged that the company required its female CEO to take minutes during meetings, the male and female ratio among company employees was extremely unbalanced, and there were many Gentlemen's Clubs

[41] Pao v. Kleiner Perkins Caufield & Byers LLC, Not Reported in Cal. Rptr. 3d, 1 (2013).

within the company. The plaintiff explained that she told her supervisor about the discriminatory behavior in both 2007 and 2011, and that his reply was not to make too big a deal about it. In 2011, the company responded by stating, “our firm does not discriminate based on gender.” The plaintiff then claimed that the company retaliated against her after her complaint by denying her a promotion. At that time, there were three male and three female junior partners. The plaintiff claimed that even though the female partners exceeded the males in seniority and performance, in the end, only males were selected for promotion. The plaintiff was fired from the firm in 2012.

The defendant claimed that the plaintiff’s contract was terminated because of continuing substandard performance and personality issues. For example, her superiors commented that she was too impatient, lacked team spirit and prone to conflict and so on. An evaluation from an external group clearly indicated that the plaintiff lacked the special qualities required to become an investor or board member. As for the plaintiff’s claims of “retaliatory discrimination” and “workplace sexual harassment,” the company indicated that it decided to punish Nazre according to its company policy but that the plaintiff opposed that decision. They stated that when the claims were investigated in 2011, the plaintiff continually refused to be interviewed by the investigators. Concerning the plaintiff’s allegations about “an unfriendly company environment for women”, the company also pointed out that it employs a higher proportion of female workers than other similar companies, claimed it had many women-friendly policies and procedures that the plaintiff was told to familiarize herself with when she was hired and so on. As for the plaintiff’s claim that “the defendant denied her promotion because of her gender,” the defendant countered that only 5 out of 25 other employees serving in the same position as the plaintiff were promoted and that many of the 20 not chosen for promotion were men, proving that

the decision was not based on gender. The jury reviewed the facts of the case and decided to reject the plaintiff's four claims in the end.

Ch. 4 Comprehensive Analysis: Analyzing the Aforementioned Cases from a Gender Perspective

1. Gender stereotypes affect women's opportunities for promotion

Scholars have proposed that women are victims of a double-bind dilemma. If they do not act like men, they will be seen as lacking the necessary perseverance or even the necessary intelligence to succeed. However, if they do act like men, they will be branded as too aggressive[42]. This phenomenon is particularly evident when it comes to female lawyers' chances of promotion[43]. Gender stereotypes are the prominent issue here. Gender stereotypes ignore differences in personality and place people into rigid gender roles[44]. Many leadership qualities, including independence, decisiveness, hyper-competitiveness, etc. are not typically ascribed to women[45]. In a report, the Glass Ceiling Committee of US Department of Labor stated that gender stereotypes deepen discomfort among high-level executives towards certain groups. In order to prevent these situations from occurring, the company or organization should establish an internal performance-based evaluation model that uses objective criteria to replace upper-management's subjective assessments of their employees' abilities[46].

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[42] DEBORAH L. RHODE, WHAT'S SEX GOT TO DO WITH IT?: DIVERSITY IN THE LEGAL PROFESSION 17 (2006).

[43] RAYMOND F. GREGORY, WOMEN AND WORKPLACE DISCRIMINATION: OVERCOMING BARRIERS TO GENDER EQUALITY 75 (2002).

[44] Tracy A. Baron *Keeping Women Out of the Executive Suite: The Courts' Failure to Apply Title VII Scrutiny to Upper-Level Jobs*, 143 U. PA. L. REV. 267 (1994), available at: http://scholarship.law.upenn.edu/penn_law_review/vol143/iss1/9 (last visited Ari. 30, 2017).

[45] Mary F. Radford, *Sex Stereotyping and the Promotion of Women to Positions of Power*, HASTINGS L.J. 471, 494 (1990).

[46] Federal U.S. Glass Ceiling Commission, *Good for Business: Making Full Use of Nation's Human Capital*, http://digitalcommons.ilr.cornell.edu/key_workplace (last visited Apr. 30, 2017) (…artificial

Gender stereotypes often cause matters unrelated to professional performance to enter into women's performance evaluation[47]. In jobs that were traditionally thought of as men's jobs, women often receive unequal treatment because they do not conform to gender stereotypes[48]. In the Hopkins case, Hopkins' supervisor did not promote her because he thought she should have acted more feminine. In Ezold's case, they were hesitant because of her "personality traits". Both Hopkins and Ezolds' co-workers noted that they were "hard to get along with" in their performance evaluations. Men with the same personality characteristics might be thought of as "determined" but women are labeled as "hard to get along with." In addition, these gender stereotypes that become barriers to women's promotions are also related to whether their many of superiors or partners are men. In Ezold's case, her law firm had 107 partners, but only five of them were women. Female candidates for partnerships were forced to conform to "men's impressions on what partners should be like."[49] Some managers think that women cannot participate in occasional afterhours activities because they are busy raising a family, unwilling to go on business trips or unable to work lots of overtime. Therefore, they may select men for promotions instead. These are all reasons why men may be favored by employers[50]. Gender stereotypes also limit women's access to upper management positions.

2. It's Hard to Join in Gentlemen's Club

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barrier to the advancement of minorities and women in the private sector that contradict this nation's ethic of individual worth and accountability…).

[47] Sex Bias in Work Settings: The Lack of Fit Model in 5 RESEARCH IN ORGANIZATIONAL BEHAVIOR 270 (B. Staw & L. Cummings ed. 1983).

[48] *See* Bartol & Butterfield, *Sex Effects in Evaluating Leaders,* 61 J. APPLIED PSYCHOLOGY 446 (1976).

[49] *Supra* note 52, at 77.

[50] M. Neil Browne & Andrea Giampetro-Meyer, *Many Path to Justice: The Glass Ceiling, the Looking Glass, and Strategies for Getting to the Other Side*, 21 HOFSTRA LAB & EMP. L.J. 61, 77 (2003).

Club culture is the specific exposition of “white male culture”. Some clubs even have explicit rules of “forbidding women from joining[51]. It is still extremely difficult for women to join in the social circles that have been dominated by men (especially white men). Women are only able to gain formal membership but have no real voting rights, cannot become high-level members, cannot participate the club’s important internal activities, etc[52].When women members are not allowed to join in the club activities or cannot freely enter in some important places, it symbolizes how women are still the subject to the domination of men, regardless of their academic achievements or even the best interests of the business[53]. The “Gentlemen’s Club Culture” is still used as a metaphor to describe industries that are mostly dominated by men, places where men view the entire industry as a “Gentlemen’s Club” in order to secure and solidify their own status and positions. Entrance criteria to Gentlemen’s Clubs are based on traditions and corporate culture; “That’s not something women do.” is often used as a reason to exclude women from important business and social occasions and/or decision-making circles. Cases like Ms. Pao’s that occurred in male-dominated environments are a classic example of this. In the Pao case, Pao’s male superior and co-workers continually attempted to exclude her from meetings by failing to inform her about meeting times and locations, and required high-level female managers to take notes at the meetings, etc. By doing so, they refused to allow Pao to enter in the core decision-making circles. This originates from the sin of gender: men established a “club” based society in order to establish their own statuses, pursue career development and consolidate their own power so that robbing

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[51] *David Doughan & Peter Gordon, Women, Clubs and Associations in Britain, Routledge,* at 43(2006).

[52] Nancy Camp, Gender Discrimination at Private Golf Clubs, 5 Sports Law. J. 89, 89-107, at 90 (1998).

[53] Susan Fomoff, Equal Time-Gender Discrimination Against Women By Private Golf Clubs, GOLFMAG, at 203(June 1995).

certain gender groups' opportunities of class mobility and self-realization.

3. These Types of Cases are Difficult to Prove—Structural Gender-based Discrimination

In the Hopkins and Ezold cases, the courts had to determine that "gender" was an important consideration when the plaintiffs were refused promotions in order to rule in their favor. In other words, the courts had to determine that "the decisions about the female candidates' promotions were based on 'gender' which resulted in disparate treatment discrimination. In the Hopkins case, the court ruled in favor of the plaintiff because the numerous examples of speech expressing gender stereotypes made it extremely obvious that the plaintiff was refused the promotion because of gender. However, scholars have indicated that nowadays the human resources department in many companies have learned to ensure that there were never any written expressions or commend related to gender discrimination shown on working valuation or decision of promotion, which makes it much harder to find the obvious clue of discrimination compared to the time of Hopkins and Ezold. When it comes to upper-management promotions, modern-day gender discrimination disputes do not only include cases of obvious, direct discrimination; there are also more subtle instances of gender discrimination hiding in the employee evaluation system, work distribution or overall environment. This makes gender discrimination in workplace more difficult to identify and prosecute.

Therefore, there comes a new type of discrimination which is called Mixed-Motive Discrimination, a discriminative decision or deed with both legal and illegal intention at the same time[54]. As for mixed-motive discrimination, US courts have shifted the liability of proof (this shift will be described in detail in chapter five). The

[54] *Supra* note 26, at 87.

difficulty proving discrimination was evident in the Ezold case. The court found that most of the feedback seemed to focus on the plaintiff's abilities, but is it possible that her gender was the reason she was assigned to small cases, rendering her unable to demonstrate her true abilities? Because being assigned to less cases, Ezold never had a chance to require over 500 hours of casework experience (compared to other male lawyers on the same level as her had over 600 hours of casework experience). If this truly was the case, it would be very difficult for the plaintiff to prove the discrimination. Today's gender discrimination cases are not as clear-cut as those in the past; they are more internal, based on an overall employment market and culture of firms or organizations. These are not just one individual discriminating against another, but barriers to women and minorities in the entire internal structure of the traditions or culture of companies and industries; In this sense, "UNQUALIFIED" has been replaced with "DISFAVORED", but the true nature of the discrimination has not changed at all[55]. Traditional regulations designed to eliminate disparate treatment discrimination only bar employers from treating employees differently based on their gender, but do not require that employers actively maintain gender equality in the work environment. This is why barriers to promotion have still not been eliminated yet[56].

Scholars have indicated that while personnel planning and operations may look neutral on the surface, they are heavily influenced by gender in practice. For

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[55] *See*, e.g., Sturm, *supra* note 45; Tristin K. Green, *Insular Individualism: Employment Discrimination Law After Ledbetter v. Goodyear*, 43 HARV. C.R.-C.L. L. REV. 353 (2008); Tristin K. Green, *A Structural Approach as Antidiscrimination Mandate: Locating Employer Wrong,* 60 VAND. L. REV. 849 (2007).

[56] *See*, e.g., David Benjamin Oppenheimer, *Negligent Discrimination*, 141 U. PA. L. REV. 899 (1993). (suggesting a theory of "negligent discrimination"); Deborah M. Weiss, *A Grudging Defense of Wal-Mart v. Dukes*, 24 YALE J. LAW & FEMINISM 119 (2012) (developing a "notice theory" of discrimination): Tristin K. Green, *The Future of Systemic Disparate Treatment Law*, BERKELEY J. EMP. & LABOR LAW (forthcoming)(suggesting a "context" model of systemic discrimination).

example, employees may do the same jobs but are given different job titles in different pay grades. The female employee may be given a job title with a relatively low salary, while the male employee is given a totally different title with a higher salary because of the gender stereotype, “the men have to bring home the bacon.”[57] In addition, in some organizations, female subordinates are never asked if they wish to be sent out on assignment. Instead, it has already assumed that they will be unwilling to move due to family reasons. However, some of their male co-workers who have never had the experience of being out on assignment are still promoted to managerial positions[58]. The lack of this kind of experience is commonly used as an excuse to deny women promotions. It’s a rationalization of gender discrimination since the same criteria are not applied to men. The organization assesses male managers on their actual performance[59].

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57 Yang Xiang-luan, *Gender Relationship Constructs in the High-Tech Work Environment*, WOMEN AND GENDER 9, 187-204 (1998); Chang Chin-Fen, *Taking Back our Culture: Gender in the System and Structure of the Labor Market*, TAIWAN SOCIOLOGY 29, 97-125(2002).

58 *Id.*

59 CHANG CHIN-FEN, PROGRESS ON AND REVIEW OF WORKPLACE GENDER EQUALITY: WHITE PAPER ON TAIWANESE WOMEN’S RIGHTS 2014, Chen Yaohua edit, P. 199 (2014).

Ch. 5 Conclusion and Recommendations-How to Establish a Gender-Friendly Promotion Environment

This paper provides the following recommendations, divided into two categories: how the government can encourage industries to change and how Taiwan can develop its judicial practices. The specific recommendations are as follows: Currently, Taiwan's government "actively encourages private enterprises to adopt a minimum male and female ratio of 3:1 in their boardrooms" and uses this principal to praise companies for good performance. Companies can apply for various subsidies where they'll get bonus points for meeting this quota[60]. However, these subsidy bonus point programs seem to have been relatively ineffective. If the MOL can lock in large, local enterprises and investigate them, it will increase the understanding of the internal factors that create disparate promotion opportunities based on gender[61]. Taiwan can also directly pass laws mandating gender quotas in corporations' upper management teams, as Germany has already done. The MOL can also consider a company's past history on gender issues when doling out punishment for violations of gender equality laws. A proven record of promoting gender equality may result in a lesser punishment. This will encourage companies to take policies and procedures of institutes that promote gender equality.As for judicial practice, an important exception contained in Article 7 of Taiwan's "Workplace Equality Act" has severely affected Article 31's ability to shift the liability of proof in gender discrimination cases. Article 7 justifies companies' discriminatory behaviors under certain special conditions, providing that "the nature of the work is particularly suited to a certain gender." What

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[60] Ministry of Economy, *2016 Ministry of Economy Report on Mainstreaming Implementation of Gender Discrimination Laws*, https://www.moea.gov.tw/mns/dop/content/ContentLink.aspx?menu_id=2475 (Last visited: 4/30/2017).
[61] *Supra* note 59, at 186.

does that mean? In practice, it means that courts, administrators, employers or employees do not have a clear standard to abide by, making it very difficult to facilitate gender discrimination suits. Thus, the shift in the liability of proof for gender discrimination suits contained in Article 31 has been greatly weakened. To address this problem, Taiwanese courts can use the same strict interpretation used in US courts, that is bona fide occupational qualification (BFOQ). When US courts hear a disparate treatment gender discrimination case, they first determine the state of disparate treatment discrimination involved. If it is possible to presume differential treatment through direct evidences, the court will term the behavior to be "obvious differential treatment". In this case, the defendant will be limited to "professional qualifications" as their statutory defense[62]. In another type of case, the victim may feel that the employers' discriminatory behavior was based on a pretext. The presumption of disparate treatment discriminatory behavior in such cases could only be indirectly proven after Title VII of the Civil Rights Act was passed. In *McDonnell Douglas* case, the Supreme Court clearly defined the order and pro rata of liability on two parties[63]. After this case was decided, American courts started to shift the liability of proof in the determination of gender discrimination cases. After the Hopkins and Ezold decisions came down, new types of gender discrimination cases began to appear, this is called "Mixed Motivation Discrimination". These types of cases often arise when factual evidence proves the employer had illegal motivations. The liability of proof is often a problem in these cases[64]. The employee has clear evidence to prove the employers' illicit motivations, but the employer has also professed legitimate

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[62] 42 U.S.C. § 2000e-2(e) (1988).

[63] McDonnell Douglas v. Green, 441 U.S. 792 (1973); *See* Chen Jin-fa, *supra* note 26, at 86.

[64] Chiao Cing-Kae , *supra* note 9, at 99.

motives[65]. The Supreme Court has handed down a number of decisions establishing standards in such cases: the employer must prove that they would have made the exactly same decision if there is no illegal motivations. The court will consider the circumstances of other individuals who were successfully hired, including the male and female ratio of successful interviewees, etc. to reach a comprehensive judgment and review. Congress also inserted language in the Civil Rights Act of 1991 that attempted to protect against mixed-motive discrimination[66]. In the Hopkins case, both parties stuck to their view of "whether or not disparate treatment discrimination had occurred". The court required the employer to prove that "it would still have decided to terminate Hopkins' employment if there is no consideration of her personality and gender characteristic." The employer could not prove this, and the court decided in favor of the plaintiff, thus establishing a practical evaluation process for mixed-motive discrimination cases in US. If Taiwan can learn from the US Supreme Court and shift the liability of proof onto the employer, using value choice and transfer of risk to lighten the plaintiff's evidentiary burden, it can indirectly encourage more victims of gender discrimination cases to pursue the matters through legal channels. Back to Taiwan, the most cases of gender discrimination is pregnancy discrimination. It somehow demonstrates that women labor are still seen as "temporary" and thus employers tend to give women the same beneficial treatment, expectation of working and cultivation as men[67]. As a result, women may not receive good opportunities of promotion and have no choice but work in dead-end jobs which will not only make

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[65] "If Employees can Provide Evidence of Sexual Harassment, but the Employer can also Prove Substandard Job Performance", *see* Chen Jin-Fa, *supra* note 26, at 87.

[66] Article 107(a) of this law declares that as long as the plaintiff proves they have suffered discrimination based on gender, the employer is in the wrong, even if other legitimate factors played a role in their motivation. This was passed in 1991 (as an amendment to the "Civil Rights Restoration Act of 1990). *See* Section 107 of the Civil Rights Act of 1991.

[67] *Id.*

the gap of self-fulfillment between male and female bigger and bigger, but also make the economic situation of women become more and more tough. Therefore, if we want to protect and create more ways for to enter in decision-making roles in the future, the implementation of material protections in both the “Labor Standards Act” and the “Workplace Gender Equality Act” is necessary for sure.

四、 建議

本次研討會之議程稍晚公布之外其餘均好。

五、攜回資料名稱及內容

六、其他

105年度專題研究計畫成果彙整表

計畫主持人：林志潔				計畫編號：105-2629-H-009-001-		
計畫名稱：玻璃天花板之突破與我國性別工作平等促進法之再造—以中高階白領女性之職場平權為核心（V07）						
成果項目				量化	單位	質化（說明：各成果項目請附佐證資料或細項說明，如期刊名稱、年份、卷期、起訖頁數、證號...等）
國內	學術性論文	期刊論文		0	篇	
		研討會論文		1		BREAKING THE GLASS CEILING--EQUAL RIGHTS IN THE WORKPLACE FOR UPPER AND MIDDLE CLASS WHITE-COLLAR WOMEN Proceedings of 114 th The IIER International Conference, Singapore, 2nd-3rd August 2017 (available at: http://www.worldresearchlibrary.org/up_proc/pdf/996-15048505049-15.pdf)
		專書		0	本	
		專書論文		0	章	
		技術報告		0	篇	
		其他		0	篇	
	智慧財產權及成果	專利權	發明專利 申請中	0	件	
			發明專利 已獲得	0		
			新型/設計專利	0		
		商標權		0		
		營業秘密		0		
		積體電路電路布局權		0		
		著作權		0		
		品種權		0		
		其他		0		
	技術移轉	件數		0	件	
		收入		0	千元	
國外	學術性論文	期刊論文		0	篇	
		研討會論文		0		
		專書		0	本	
		專書論文		0	章	
		技術報告		0	篇	
		其他		0	篇	

	智慧財產權及成果	專利權	發明專利	申請中	0	件	
				已獲得	0		
			新型/設計專利		0		
		商標權			0		
		營業秘密			0		
		積體電路電路布局權			0		
		著作權			0		
		品種權			0		
		其他			0		
	技術移轉	件數			0	件	
		收入			0	千元	
參與計畫人力	本國籍	大專生			0	人次	
		碩士生			2		張芷綺、張以璇
		博士生			0		
		博士後研究員			0		
		專任助理			0		
	非本國籍	大專生			0		
		碩士生			0		
		博士生			0		
		博士後研究員			0		
		專任助理			0		
其他成果 （無法以量化表達之成果如辦理學術活動、獲得獎項、重要國際合作、研究成果國際影響力及其他協助產業技術發展之具體效益事項等，請以文字敘述填列。）							

科技部補助專題研究計畫成果自評表

請就研究內容與原計畫相符程度、達成預期目標情況、研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）、是否適合在學術期刊發表或申請專利、主要發現（簡要敘述成果是否具有政策應用參考價值及具影響公共利益之重大發現）或其他有關價值等，作一綜合評估。

1. 請就研究內容與原計畫相符程度、達成預期目標情況作一綜合評估
   ■達成目標
   □未達成目標（請說明，以100字為限）
   □實驗失敗
   □因故實驗中斷
   □其他原因
   說明：

2. 研究成果在學術期刊發表或申請專利等情形（請於其他欄註明專利及技轉之證號、合約、申請及洽談等詳細資訊）
   論文：□已發表 □未發表之文稿 ■撰寫中 □無
   專利：□已獲得 □申請中 ■無
   技轉：□已技轉 □洽談中 ■無
   其他：（以200字為限）

3. 請依學術成就、技術創新、社會影響等方面，評估研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性，以500字為限）
   本研究所代表之意義，除呈現我國玻璃天花板現象之嚴重、期能使各界關注此議題之外，從法制重建的角度以觀本研究檢視我國性別工作平等法第7條對於我國私部門女性陞遷之實益及落實，進而以比較法之方式，以美國實務上有的訴訟案例、美國法院細緻化舉證責任之歷程、對照我國訴訟環境如何能對於面臨陞遷障礙之女性更加友善，提供舉證責任轉換或減輕之建議，供未來立法部門或司法部門參考。本研究進一步發展之可能性，則是細緻化行業別，方能針對行業特性、陞遷與性別的關係深入研究。

4. 主要發現
   本研究具有政策應用參考價值：□否 ■是，建議提供機關勞動部,教育部,內政部,
   （勾選「是」者，請列舉建議可提供施政參考之業務主管機關）
   本研究具影響公共利益之重大發現：■否 □是
   說明：（以150字為限）