WOMEN AND THE PATH TO LEADERSHIP

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INTRODUCTION

When I was interviewing with a prominent Chicago law firm in the late 1970s, one of its leaders assured me that they had no “woman problem” in their firm. One of its seventy-odd partners was female, and she had no difficulty reconciling her personal and professional life. The past year, she had given birth to her first child. It happened on a Friday, and she was back in the office the following Monday.

Over the last several decades, the demographic landscape has been transformed. Yet particularly at leadership levels, progress seems stalled. One irony of this nation’s continuing struggle for gender equity is that the profession leading the struggle has so often failed to set an example in its own organizations. Women constitute nearly a third of the profession but only about a fifth of law firm partners, general counsel of Fortune 500 corporations, and law school deans.1

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Part of the problem lies in a lack of consensus on whether there is a serious problem, and if so, what strategies would effectively address it. Although the following discussion generalizes about women, that should not obscure differences across other dimensions such as race, ethnicity, and sexual orientation. The point rather is to understand how key aspects of individual identity intersect to structure the leadership experience and what leaders can do to promote diverse and inclusive legal institutions.

I. THE HISTORICAL CONTEXT

Until the past half century, almost no women reached leadership positions in law and almost no one in those positions considered this a problem. Both formal policies and informal practices reinforced exclusion on the basis of sex, as well as race, ethnicity, sex, and religion. As late as 1960, when women accounted for half of college graduates, they constituted less than 3% of lawyers and were notable for their absence at the upper level in government, law firms, and the judiciary. The same was true for lawyers of color, who accounted for only 1% of the profession. Not until 1964 did all accredited law schools formally abolish discrimination on the basis of race in admissions, and the last gender barriers did not fall until 1972.

For women, the obstacles took two main forms. One involved women's roles; the other involved men's preferences. For most of this nation’s history, the conventional wisdom was that women lacked a “legal mind” and legal temperament. An 1873 United States Supreme Court decision reflected such views in upholding the exclusion of Myra Bradwell from the Illinois bar. According to Justice Bradley, women’s “natural and proper timidity and delicacy” made them unfit for many vocations, including legal practice. The “law of the Creator” dictated marriage and motherhood as their “paramount destiny and mission,” and this role was incompatible with a “distinct and independent career.” Such views persisted well into the twentieth century. Public opinion polls in the 1930s, 1940s, and 1950s...
found that between two-thirds and three-quarters of men did not approve of their wives working. Nor were the attitudes confined to men. Almost half of female lawyers surveyed in 1920 believed that marriage and career were incompatible. In speeches and articles such as *I Gave Up My Law Books for a Cook Book*, women advised married colleagues, ""if the man objects, . . . for the happiness of all concerned, give it up." Many did. A survey during the early twentieth century found that only a third to half of women lawyers were married and only about a quarter had children.

A second cluster of concerns involved not the role of women, but the distraction and discomfort of men. Administrators worried about unchaperoned interchange in the library and the diversion of male attention in the classroom. At Hastings, they were concerned about the rustling of female skirts in the classroom, and at Columbia about the "freaks or cranks" who would adversely affect the school's culture and competitive edge. Other law school and law firm leaders put the problem of prejudice in pragmatic terms. Given discrimination by clients and colleagues, and pressures from family that would keep women from establishing successful careers, it made little sense to waste a position on them. The fact of bias thus became a sufficient reason for perpetuating it. In the absence of any accountability for restrictive policies, many decision makers saw no reason even to give a reason. When a woman barred from applying to Columbia Law School in 1922 asked Dean Harlan Stone (later Chief Justice of the United States Supreme Court) why the school would not allow women, his response was: "We don't because we don't."

In the face of such discrimination, early women lawyers faced steep hurdles even obtaining a law degree or establishing a practice, let alone achieving leadership positions. Ignored by clients, and excluded by employers and bar associations, these women encountered roadblocks in all the traditional paths to success. Even after women obtained the vote, they were almost never perceived as credible candidates for significant public or judicial office. Until the late twentieth century, the only political level at which women were well-represented were library and school boards, and most of

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the judicial positions women held were in family and juvenile court. In major firms, the options for women were generally secretary and office cleaners; stated reasons were that staff would not take orders from women lawyers, men’s wives would object to their presence, and no one would have lunch with them. Girl Lawyer Has Small Chance for Success ran the title of an early twentieth century interview, and the barriers it recounted left little doubt why so many women lost the “ambition and courage” to persist in practice.

Discrimination based on race, religion, and ethnicity created additional obstacles for women of color. By the 1940s, only fifty-seven black women were practicing as attorneys in the entire country. Women of color bumped up against all the stereotypes common in the culture generally: “ignorant,” “uncouth,” “slovenly,” “lazy.” Recent immigrants and Jews were often seen as “shrewd,” “[s]hifty,” “undesirable[] and unfit.” Again, the issue was not simply the presumed inferiority of the racial and ethnic groups, but the status and comfort of their privileged counterparts. In 1912, when the American Bar Association unknowingly admitted three blacks, members voted to institute a racial restriction that would “kee[p] pure the Anglo-Saxon race.” The policy remained in force until 1943. Other local bars took similar actions in order to preserve the “dignity” of their organizations, and some extended the exclusion even to law libraries. The problem was not only prejudice among whites, but also its influence among blacks and other disadvantaged groups. Many clients of color were reluctant to hire lawyers of their own background out of concern that they would be ineffectual.

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17. Drachman, supra note 9, at 215-17 (quoting Gertrude Smith) (citations omitted).
20. Auerbach, supra note 13, at 123, 127 (quoting Harlan Stone) (citations omitted). These characteristics were even presumed sufficient to disqualify some applicants to the bar in jurisdictions with rigorous moral character inquiry. Walter C. Douglas, Jr., The Pennsylvania System Governing Admission to the Bar, 52 Ann. Rep. A.B.A. 701, 702-05 (1929).
21. Auerbach, supra note 13, at 65-66 (quoting the ABA’s membership chairman).
22. Raquel Aldana, Beth Lyon, & Karla Mari McKanders, Raising the Bar: Law Schools and Legal Institutions Leading to Educate Undocumented Students, 44 Ariz. L. Rev. 5, 39, n.182 (2012).
Women and the Path to Leadership

tive in a biased legal system. The experience of the nation's first black woman lawyer in the United States was all too typical. Charlotte Ray gained admission at Howard Law School in 1868 by applying under her initials and persisting in spite of the "'commotion.'" Yet despite what contemporaries described as a "fine mind" and demonstrated expertise in corporate law, she found no one willing to hire her, and she ended up barely making a living as a public school teacher.

From a leadership standpoint, what is most interesting is less the extent of discrimination than the strategies that enabled some lawyers to mount successful challenges. While few obtained positions of prominence, early women lawyers often played leadership roles in the struggle for equal rights, and their efforts shed light on contemporary challenges.

These women leaders became interested in law for a mix of reasons, many unrelated to aspirations of leadership. Many sought intellectual challenge and economic security beyond what was available in the limited female occupations available such as teaching, dressmaking, and secretarial work. Some wives began with a desire to support their husbands; others turned to law when their husbands failed to support them. Myra Bradwell started as a helpmate, but then established a prominent legal journal that her husband ended up at times assisting. Clara Foltz, California's first woman lawyer, was abandoned by the father of her five children. Unable to provide for them by sewing or taking in boarders, she launched a highly successful career as a courtroom advocate and social activist. Women of color had particular reason to seek escape from the low-level menial jobs that were assumed appropriate to their abilities. Some stiffened their resolve in response to suggestions that law was an unrealistic aspiration. The mother of Constance Baker Motley, the nation's first black female federal judge, proposed hair dressing instead. Antonia Hernandez, who worked in the fields as a child and later headed the Mexican American Legal Defense Fund, was told that despite her excellent grades, she was not "college material" and that law was out of the question because "[y]ou're a girl."
For most of these early leaders, the support of mentors, role models, and family members was critical to their success. Myra Bradwell, who ran a successful lawyer's journal in defiance of the "law of the Creator," had the active assistance of her husband and used her publication to profile the achievements of other women practitioners.\textsuperscript{32} Clara Foltz and Belva Lockwood relied on relatives to help with childcare and domestic tasks.\textsuperscript{33} Constance Baker Motley received her college and law school tuition, as well as a wardrobe, from a white philanthropist.\textsuperscript{34} Irma Rangel, the first Mexican-American woman elected to the Texas legislature, was inspired to leave teaching and enter law by Cesar Chavez and a local farm workers' attorney.\textsuperscript{35} Thurgood Marshall served similar mentoring functions for Motley.\textsuperscript{36}

These leaders' responses to discrimination fell across a spectrum ranging from resistance to resilience. Some directly challenged policies of exclusion. Belva Lockwood, who became the first female attorney in the District of Columbia, attempted enrollment at four law schools before finally obtaining a diploma in 1873.\textsuperscript{37} Then, on being denied admission to the Court of Claims and United States Supreme Court, she drafted legislation authorizing women's practice and enlisted the local press in her campaign.\textsuperscript{38} "[P]atient, painstaking and indefatigable," was how she described her style and she saw it as part of a broader mission.\textsuperscript{39} "My cause," she noted, "[is] the cause of thousands of women."\textsuperscript{40} For other leaders as well, the personal and political were intertwined. Clara Foltz had the satisfaction of successfully suing the school that denied her admission even though the victory came too late to assist her directly.\textsuperscript{41} She was also famous for her use of humor in response to prejudice. When an adversary suggested at trial that she would be better off at home raising her children, Foltz responded, "A


\textsuperscript{33} See id. at 1254.

\textsuperscript{34} See Motley, \textit{supra} note 30, at 43, 45, 48.


\textsuperscript{38} See id.

\textsuperscript{39} See id. at 227.

\textsuperscript{40} Morello, \textit{supra} note 16, at 38 (quoting Belva Lockwood).

\textsuperscript{41} See Babcock, \textit{supra} note 13, at 46-51, 55-57; see also Williams, \textit{supra} note 36, at 75.
woman had better be in almost any business than raising such men as you."\textsuperscript{42}

When direct confrontation appeared fruitless, these early leaders established their own practices, institutions, and bar associations. Women joined firms with family members or occasionally with each other. Sadie Alexander, the first African American woman to earn a PhD and to gain admittance to the Pennsylvania bar, found that neither her economics nor law degree was sufficient for any law firm but her husband's.\textsuperscript{43} Women who were frustrated by the absence of schools that would admit women launched their own in Boston and the District of Columbia.\textsuperscript{44} Women denied officer positions in the black National Bar Association formed a separate division and then the National Association of Black Women Attorneys.\textsuperscript{45}

In an effort to bolster their credibility, these early leaders generally took particular care to conform their appearance to professional standards. Black women like Motley felt the need always to be "elegantly dressed."\textsuperscript{46} Marion Wright Edelman, founding president of the Children's Defense Fund, recalled her embarrassment at the "crestfallen" reaction of some local Mississippi blacks who came to "look for and at me" when she was in jeans and a sweatshirt.\textsuperscript{47} After that experience, she "never wore jeans in public again in Mississippi and made it a point to try to meet the expectations of poor Black Mississippians of how a proper lady lawyer should dress and act."\textsuperscript{48} Bella Abzug wore a hat and gloves so as not to be mistaken as a secretary.\textsuperscript{49} But even the most conservative wardrobe choices could only help so much. Supreme Court Justice Ruth Bader Ginsburg discovered the limits after tying for first place in her 1959 Columbia Law School class, but being rejected for law firm and clerkship positions.\textsuperscript{50} Justice Felix Frankfurter refused to consider her.\textsuperscript{51} "I can't stand girls in pants. Does she wear skirts?" he wanted to know.\textsuperscript{52} She did, but in the end, he still felt uncomfortable with the prospect of hiring a woman.\textsuperscript{53}

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\textsuperscript{42} Morello, supra note 16, at 64 (quoting Clara Foltz).
\textsuperscript{43} See id. at 148-49.
\textsuperscript{44} See Drachman, supra note 9, at 152-59, 162-63; Morello, supra note 16, at 70, 73-74.
\textsuperscript{45} See Morello, supra note 16, at 156.
\textsuperscript{47} Marion Wright Edelman, Lanterns: A Memoir of Mentors 79 (1999).
\textsuperscript{48} Id.
\textsuperscript{49} See Suzanne Braun Levine & Mary Thom, Bella Abzug 28-29 (2007).
\textsuperscript{51} Strebeigh, supra note 16, at 36.
\textsuperscript{52} Id. at 36 (quoting Justice Felix Frankfurter).
\textsuperscript{53} Id. at 36-37.
\end{flushright}
Many of these early pioneers attempted to conform to traditional norms in other ways as well. Bradwell avoided being a "shouter of woman's rights"; "she distanced herself from radical tactics and constantly presented herself as a devoted wife and mother."54 Lavinia Goodell, who brought the case challenging Wisconsin's exclusion of women, made sure she exhibited "no other alarming eccentricity than a taste for legal studies."55 She taught "Sunday school, attend[ed] the benevolent society and [made] cake and preserves."56 A century later, Sandra Day O'Connor broke other gender barriers through a similarly non-confrontational route. Although she graduated at the top of her Stanford Law School class, O'Connor found no law firm willing to hire her except as a secretary.57 But she talked her way into creating a position in a county district attorney's office, and then started a two-person firm in a shopping center.58 After giving birth to two sons and losing her babysitter, she decided to take time out.59 As she put it, "I . . . stayed home myself for about five years and took care of [my family]."60 In fact, a biographer observed, she "did[n't] really stay home."61 She became more active in Republican politics and civic activities, which paved the way for later positions with the state attorney general and election to the state legislature.62 There she earned a reputation as "attractive," "feminine," and a "pretty little thing [with] a disconcerting load of expertise."63 That political involvement laid the groundwork for her appointment to the Supreme Court, and it was only after that appointment that she began actively speaking out on women's issues.64 In later commenting on the impact of gender norms and family commitments on her career, O'Connor noted, "It never occurred to my husband or to me that he should assume a major child-rearing role. Of

56. Id.
57. JOAN BISKUPIC, SANDRA DAY O'CONNOR 28 (2005)
58. Id. at 30.
59. Id. at 31.
60. Id. (internal quotations omitted).
61. Id.
62. Id. at 33–36
63. Id. at 39 (internal quotations omitted).
64. Id. at 72-78. In supporting her appointment, Barry Goldwater described her as "epitomiz[ing] the American ideal of a mother and wife." Id. at 85 (internal quotations omitted).
course, as my husband was also fond of pointing out, things did turn out all right for me in the end. 65

The reasons for her happy ending had much to do with broader political, social, and legal campaigns in which many lawyers played a pivotal role. Yet even during the height of activism around civil rights and women’s rights in the 1960s and 1970s, many bar leaders resisted seeing problems in their own organizations. In 1971, when only nine women figured among the 1409 lawyers in New York’s largest firms, it took federal litigation and proceedings before the state’s Human Rights Commission to force some accountability. 66 King and Spaulding, one of Atlanta’s most respected firms, not only challenged the application of antidiscrimination statutes to law firm partnerships, it also staged a wet tee shirt contest during the litigation to identify the female summer associate whose “body we’d like to see more of.” 67 Even the few women who attended elite law schools encountered significant obstacles. When federal judge Nancy Gertner graduated from Yale Law School, her mother urged her to take the Triborough Bridge toll takers exam, “just in case.” 68

As changes in the legal, social, and political climate eroded overt forms of bias, formerly excluded groups faced challenges of a different order. With the rise of affirmative action, women and minorities had to prove that they “deserved” the positions at issue and were not simply the beneficiaries of preferential treatment. 69 Hard work, extended hours, and exceptional competence were the strategies of choice, but a sense of humor could be useful as well. When asked how she felt about getting her job as assistant attorney general in the Carter administration because she was a woman, Barbara Babcock responded, “It’s better than not getting your job because you’re a woman.” 70

67. Id. at 200-02.
69. See Vrato, supra note 31, at 152, 156 (noting that Patricia Wald’s receipt of a position as Assistant Attorney General owed much to President Carter’s pledge to appoint women); Hon. Anita Blumstein Brody et al., Women on the Bench, 12 Colum. J. Gender & L. 361, 370-71 (2003) (Ruth Bader Ginsburg describing speculation that her appointment at Columbia in 1972 was the result of affirmative action precipitated by pressure from the federal Office of Civil Rights).
II. THE GAP BETWEEN PRINCIPLES AND PRACTICE

Over the last several decades, opportunities for women and minorities have dramatically increased, as has public acceptance of women and minorities in leadership roles. Women now account for about 47% of entering law students, and minorities about 22%. 71 Recent surveys find that 96% of Americans feel comfortable with female members heads of law firms, 86% feel similarly about a Chief Justice of the Supreme Court, and 74% about the presidency. 72

Yet as noted earlier, at leadership levels, significant inequalities persist. In the nation’s major firms, women constitute 44% of associates but only 15% of equity partners. 73 That gap cannot be explained by differences in the pool of qualified lawyers. Attrition rates are almost twice as high among female associates as among comparable male associates. 74 In studies comparing the likelihood of making partner by gender, men’s rate ranges from two to five times greater than women’s, and substantial disparities persist even when controlling for other factors including law school grades and time out of the work force or part-time schedules. 75 Women are also underrepresented in leadership positions such as managing partners and members of governing and compensation committees. 76 So too, although

76. For women’s underrepresentation in managerial decision making, see Maria Pabón López, The Future of Women in the Legal Profession: Recognizing the Challenges Ahead By Reviewing Current Trends, 19 HASTINGS WOMEN’S L.J. 53, 71-72 (2008); JOAN C. WILLIAMS & VETA T. RICHARDSON, MINORITY CORPORATE COUNSEL ASS’N, NEW
female lawyers report about the same overall career satisfaction as their male colleagues, women experience greater dissatisfaction with dimensions of practice relevant to leadership opportunities, such as level of responsibility, recognition for work, and chances for advancement. Of some 1000 women of color in corporate counsel offices, about half “said that being a woman was a significant barrier,” and about a third “indicated that race impeded advancement.” In a survey of Latino lawyers, almost half felt ethnic identity had caused difficulties.

Rarely, however, do lawyers report examples of “blatant” or “overt” discrimination. And the absence of such demonstrable bias often makes it difficult for leaders to perceive problems in their own workplaces. Organizations’ tendency is to attribute racial, ethnic, and gender differences in leadership to differences in choices, capabilities, and commitment that the organization has limited ability or responsibility to influence. In response to an article about women’s absence in leadership positions, one reader responded:

Oh jeez, here we go again. Ever stop to think that maybe more women aren’t in power because they simply don’t want it. Have you ever personally known people who are at the top of large organizations? They have extreme type A personalities, a lot of enemies, and a ruined home and personal life due to the . . . obsessiveness required in order to maintain their position.

One managing partner put a similar point more diplomatically. His firm had been unable to persuade women to take leadership positions. Those with families didn’t want the travel and time commitments; others were unwilling to jeopardize their practice or give up control over their schedules.

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78. Vivia Chen, Prisoner’s Dilemma: Is Sex or Race a Bigger Career Obstacle?, AM. L. WRK., June 1, 2011, at 16 (internal quotations omitted).


and their lives. At a recent Women's Power Summit on Law and Leadership, participants also pointed to research underscoring many women's discomfort with the pursuit and exercise of power, which is inconsistent with traditional notions of femininity.

In accounting for the underrepresentation of leaders of color, lawyers generally blame the small pool of qualified candidates and believe that any responses involving special preferences would be counterproductive. Research by the Minority Corporate Counsel Association finds widespread concern that such affirmative action can cause resentment and "undermine . . . acceptance of diversity and inclusion." As one white male attorney put it, giving opportunities to lawyers "based upon race, gender, or sexual identity—is forcing us apart, not bringing us together . . . . I can think of few things worse for an ostensibly colorblind and meritocratic society."

Such attitudes help account for the relatively low priority that most legal employers attach to efforts to level the playing field for women and minorities. In a survey by the ABA Commission on Women in the Profession, only 27% of white men felt strongly that it was important to increase diversity in law firms, compared with 87% of women of color and 61% of white women. A study by Catalyst similarly found that only 11% of white lawyers believed diversity efforts were failing to address subtle racial bias, compared with almost half of women of color. Only 15% of white men felt that diversity efforts were failing to address subtle gender bias, compared with half of women of color and 42% of white women. Given these views among the group that dominates leadership positions, it is scarcely surprising that many legal employers cut back their diversity efforts during the economic downturn. Yet a vast array of evidence suggests that such perceptions underestimate the extent to which unconscious stereotypes, mentoring and support networks, and workplace structures disadvantage women and minorities, as well as the institutions in which they practice.

85. MINORITY CORPORATE COUNSEL ASS'N, supra note 80, at 25.
86. Id. at 15.
87. ABA COMM'N ON WOMEN IN THE PROFESSION, VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS 19 (2006) [hereinafter ABA COMM'N, VISIBLE INVISIBILITY].
89. Id. at 13.
90. Anna Scott, Diversity Has Been a Casualty of Law Firm Cutbacks, SAN FRANCISCO DAILY J., Mar. 17, 2010, at 4. For other employers, see generally Bennetts, supra note 82.
Racial, ethnic, and gender stereotypes play a well-documented role in American culture, and legal workplaces are no exception. The stereotypes vary across groups. For example, blacks and Latinos bump up against assumptions that they are less qualified. Many report that their competence is constantly questioned, and even if they graduated from an elite law school, they are assumed to be beneficiaries of affirmative action rather than meritocratic selection. Blacks who are assertive risk being viewed as angry or hostile. Asian-Americans are saddled with the myths of the “model minority”; they are thought to be smart and hardworking, but also “timid” and insufficiently assertive to command the confidence of clients and legal teams.

Gender stereotypes also subject women to double standards and a double bind. Despite recent progress, women, particularly women of color, often lack the presumption of competence enjoyed by white men. In national surveys, at least a third to three-quarters of female lawyers believe that they are held to higher standards than their colleagues and 40% of mi-
norities feel the same. A recent study of performance evaluations bears this out and reveals that similar descriptions of performance result in lower ratings for women. Mothers, even those working full time, are assumed to be less available and committed, an assumption not made about fathers. In one representative study, almost three-quarters of female lawyers reported that their career commitment had been questioned when they gave birth or adopted a child. Only 9% of their white male colleagues, and 15% of minority male colleagues, had faced similar challenges. Yet women without family relationships sometimes face bias of a different order; they are viewed as "not quite normal" and thus "'not quite leadership material.""99

Women are also rated lower than men on most qualities associated with leadership, such as assertiveness, competitiveness, and business development. People more readily credit men with leadership ability and more readily accept men as leaders. An overview of more than a hundred studies confirms that women are rated lower when they adopt authoritative, seemingly masculine styles, particularly when the evaluators are men, or when the role is one typically occupied by men. What is assertive in a

95. Deborah L. Rhode & Joan C. Williams, Legal Perspectives on Employment Discrimination, in SEX DISCRIMINATION IN THE WORKPLACE, supra note 94, at 235, 245; MINORITY CORPORATE COUNSEL ASS’N, supra note 80, at 32.
97. ABA COMM’N, VISIBLE INVISIBILITY, supra note 85, at 33-34.
98. Id. For other research, see generally Reichman & Sterling, supra note 77, at 30-72.
man seems abrasive in a woman, and female leaders risk seeming too feminine or not feminine enough. Either they may appear "too soft" or too "strident"—either unable to make tough decisions or too pushy and arrogant to command respect.103

Self-promotion that is acceptable in men is viewed as unattractive in women.104 In a telling Stanford Business School experiment, participants received a case study about a leading venture capitalist with outstanding networking skills. Half the participants were told that the individual was Howard Roizen; the other half were told that she was Heidi Roizen. The participants rated the entrepreneurs as equally competent but found Howard more likeable, genuine and kind, and Heidi more aggressive, self-promoting, and power hungry.105

Even the most accomplished lawyer leaders can encounter such biases. Brooksley Born, now widely acclaimed for her efforts to regulate high-risk derivatives while chair of the Commodity Futures Commission, was dismissed at the time as "strident" and a "lightweight wacko."106 During her presidential campaign, Hillary Clinton coped with sales of a Hillary-like nutcracker, charges that she reminded men of a "‘scolding mother’" or "‘first wife,’” and hecklers with signs demanding: “Iron my shirt.”107

Other cognitive biases compound the force of traditional stereotypes. People are more likely to notice and recall information that confirms their prior assumptions than information that contradicts those assumptions; the dissonant facts are filtered out.108 For example, when lawyers assume that a


104. Carli & Eagly, supra note 100, at 130; WILLIAMS & RICHARDSON, supra note 76, at 48; Laurie A. Rudman, To Be or Not To Be (Self-Promoting): The Consequences of Counterstereotypical Impression Management, in POWER AND INFLUENCE IN ORGANIZATIONS 287, 289-90 (Roderick M. Kramer & Margaret A. Neale eds., 1998).


107. Marie Cocco, Misogyny I Won’t Miss, WASH. POST, May 15, 2008, at A15 (quoting Mike Barnicle and Jack Cafferty); Kathleen Deveny, Just Leave Your Mother Out of It, NEWSWEEK, Mar. 17, 2008, at 32.

108. See generally David L. Hamilton & Jeffrey W. Sherman, Stereotypes, in 2 HANDBOOK OF SOCIAL COGNITION 1, 3 (Robert S. Wyer, Jr. & Thomas K. Srull eds., 1994);
working mother is unlikely to be fully committed to her career, they more easily remember the times when she left early than the times when she stayed late. Such selective recollection may help account for a study finding that where women and men worked similar hours, over a quarter of male lawyers nonetheless thought their female counterparts worked less, and a fifth rated the number of hours of these women as "fair or poor." So too, when female and minority lawyers are assumed to be less effective, their failures will be recalled more readily than their achievements. Both women and minorities also "receive less latitude for . . . mistakes." That, in turn, may make lawyers reluctant to seek risky "stretch assignments" that would demonstrate leadership capabilities.

IV. IN-GROUP FAVORITISM

A related set of obstacles involves in-group favoritism. Extensive research documents the preferences that individuals feel for members of their own groups. Loyalty, cooperation, favorable evaluations, mentoring, and the allocation of rewards and opportunities are greater for individuals who are similar in important respects, including gender, race, and ethnicity. As a consequence, outsiders face difficulty developing "social capital": access to advice, support, sponsorship, desirable assignments, and client development activities. In law firms, racial and ethnic minorities often report isolation and marginalization, while many women similarly experience exclusion


109. López, supra note 76, at 65 (internal quotations omitted).


from "old boys’ network[s]." In ABA research, 62% of women of color and 60% of white women, but only 4% of white men, felt excluded from formal and informal networking opportunities; most women and minorities would have liked better mentoring.

Part of the problem lies in numbers. Many organizations lack sufficient women and minorities at senior levels who have the time and commitment to assist others on the way up. Although a growing number of organizations have formal mentoring programs, these do not always supply adequate rewards or monitoring to ensure effectiveness. And they cannot substitute for relationships that develop naturally and that yield not simply advisors but sponsors—individuals who act as advocates and are in positions to open opportunities. Recent research on the corporate sector finds that men are substantially more likely to have such sponsors and to have their help in promotions. There is no reason to think law is different. As participants in one ABA study noted, female leaders may have “good intentions,” but are already pressed with competing work and family obligations or “don’t have a lot of power so they can’t really help you.” Concerns about the appearance of sexual harassment or sexual affairs discourage some men from forming mentoring relationships with junior women, and discomfort concerning issues of race and ethnicity deters some white lawyers from crossing the color divide. Others are reluctant to offer candid feedback to minority associates in their early years for fear of seeming racist or of encouraging them to leave. The result is that midlevel lawyers can find themselves "blindsided by soft evaluations": “your skills aren’t what


they are supposed to be, but you didn’t know because no one ever told you.’’

Assumptions about commitment and capabilities also keep mentors from investing in female or minority subordinates who seem unlikely to stay or to succeed. Such dynamics also put pressure on these lawyers to assimilate to prevailing norms. As one attorney of color put it, the only way to succeed in a large firm is to “‘make them . . . forget you’re Hispanic.’” If a minority lawyer “just doesn’t fit in,” the assumption is that the problem lies with the individual, not the institution.

In-group favoritism is also apparent in the allocation of work and client development opportunities. Many organizations operate with informal systems that channel seemingly talented junior lawyers, disproportionately white men, to the leadership tracks, while relegating others to “workhorse positions.” In the ABA Commission study, 44% of women of color, 39% of white women, and 25% of minority men reported being passed over for desirable work assignments; only 2% of white men noted similar experiences. Other research similarly finds that women and minorities are often left out of pitches for client business. Lawyers of color are also subject to “race matching”; they receive work because of their identity, not their interests, in order to create the right “look” in courtrooms, client presentations, recruiting, and marketing efforts. Although this strategy sometimes opens helpful opportunities, it can also place lawyers in what they describe as “mascot[]” roles in which they are not developing their own professional skills.

Linda Mabry, the first minority partner in a San Francisco firm, recounts an example in which she was asked to join a pitch to a shipping company whose general counsel was also African-American:

When [the firm] made the pitch about the firm’s relevant expertise, none of which I possessed, it was clear that the only reason I was there was to tout the firm’s diver-

120. See id. at 27.
122. INST. FOR INCLUSION IN THE LEGAL PROFESSION, supra note 1, at 46 (quoting participant from the Few and Far Between Study).
123. BAGATI, supra note 88, at 16.
124. ABA COMM’N, VISIBLE INVISIBILITY, supra note 87, at 21-22; see Wilkins & Gulati, supra note 113, at 565-71.
125. ABA COMM’N, VISIBLE INVISIBILITY, supra note 87, at 21.
126. See, e.g., WILLIAMS & RICHARDSON, supra note 76, at 42.
128. See, e.g., ABA COMM’N, VISIBLE INVISIBILITY, supra note 87, at 21-22; see also O’Neill, supra note 93, at 10.
V. WORKPLACE STRUCTURES AND GENDER ROLES

Escalating workplace demands and inflexible practice structures pose further obstacles to diversity and inclusion. Hourly demands have risen significantly over the last quarter century, and technology that makes it possible for lawyers to work at home makes it increasingly impossible not to. Expectations of constant accessibility have become the new norm, particularly for those in leadership positions. Law is the second most sleep-deprived profession, and long hours contribute to lawyers’ disproportionate rates of stress, substance abuse, and mental health disorders. These conditions of practice have made leadership positions unattractive to many women, especially those with significant family responsibilities.

Despite some efforts at accommodation, a wide gap persists between formal policies and actual practices concerning work/life conflicts. Although over 90% of American law firms report policies permitting part-time work, only about 6% of lawyers actually use them. Many lawyers believe, with good reason, that any reduction in hours or availability would jeopardize their leadership opportunities. Stories of the “faster than a speeding bullet” maternity leave like the one that opened this Article are still common. One of my former students who drafted discovery responses while timing her contractions saw it as a sensible display of commitment.

133. The problem is longstanding. Rhode, Perspectives, supra note 2, at 1185-86.
duced schedule after parental leave often find that it isn’t worth the price. Their schedules aren’t respected, their hours creep up, the quality of their assignments goes down, their pay is not proportional, and they are stigmatized as “slackers.” 134

These are not only “women’s issues,” but women bear their greatest impact. Despite a significant increase in men’s domestic work over the last two decades, women continue to shoulder the major burden. 135 An MIT study found that only a third of male lawyers, compared with over two-thirds of female lawyers, had spouses or domestic partners equally or more committed to their careers. 136 And of men with children, 85% work over fifty hour weeks, compared with just a third of women. 137 It is still women who are most likely to get the phone call that federal district judge Nancy Gertner received on the first day that she was about to ascend the bench: “Mama, there’s no chocolate pudding in my [lunch]!” 138 An American Bar Foundation survey reported that women were about “seven times more likely than men to be working part-time” or to be out of the labor force, primarily due to childcare. 139 Only 2% of male lawyers take part-time status and many worry that taking significant time off will signal that they are no longer “a player.” 140 Their fears are not without foundation. Male lawyers who make such choices suffer even greater financial and promotion costs than female colleagues who do so. 141

These patterns are deeply rooted in traditional gender roles and cultural norms that give bragging rights to those willing to work sweatshop hours. Particularly in challenging economic times, there is no shortage of lawyers in that category. At large firms, where average billable hours are over 2000, about three-quarters of midlevel associates described their workloads as


136. Harrington & Hsi, supra note 132, at 17.

137. Id. at 14.

138. Gertner, supra note 68, at 246.

139. Dinovitzer et al., After the JD II, supra note 75, at 62.

140. See NALP, Most Lawyers, supra note 131, at 1; Joan C. Williams, Reshaping the Work-Family Debate: Why Men and Class Matter 89 (2010) (quoting former president of Harvard University Derek Bok).

141. Dau-Schmidt et al., supra note 132, at 97-98; Levit & Linder, supra note 74, at 12-13.
"manageable." Of course those who reach such positions are a self-selected group, which likely excludes many of the most talented women that firms can ill afford to lose. The problems are likely to increase. Millennial lawyers, defined as the generation born after the 1980s, have expectations inconsistent with prevailing norms.

Although bar leaders generally acknowledge the problem of work/life balance, they often place responsibility for addressing it anywhere and everywhere else. In private practice, clients get part of the blame. Law is a service business, and clients' expectations of instant accessibility reportedly make reduced schedules difficult to accommodate. Resistance from supervisors can be equally problematic; particularly in a competitive work environment, they have obvious reasons to prefer lawyers at their "constant beck and call." So too, in public as well as private practice settings, the demands of leadership positions may be difficult to reconcile with competing commitments.

Yet neither are the problems as insurmountable as is often assumed. The evidence available does not find substantial resistance among clients to reduced schedules. They care about responsiveness, and part-time lawyers generally appear able to provide it. In one recent survey of part-time partners, most reported that they did not even inform clients of their status and that their schedules were adapted to fit client needs. Accounting, which is also a service profession and is anything but indifferent to the bottom line, has developed a business model that more than offsets the costs of work/family accommodation by increasing retention. Considerable evidence suggests that law practice could do the same and reap the benefits in higher morale, lower recruitment and training expenses, and less disruption in client and collegial relationships. And while some leadership positions may be hard to reconcile with substantial family demands, many women could be ready to cycle into those positions as family obligations decrease. The challenge lies in creating workplace structures that make it easier for lawyers of both sexes to have satisfying personal as well as professional

144. Galanter & Henderson, supra note 121, at 1921.
145. CALVERT, CHANOW & MARKS, supra note 134, at 13, 22.
146. Id. at 9, 13, 21-22.
148. See LEVIT & LINDER, supra note 74, at 169-70; Jeff Gearhart, General Counsel's Message, WALMART LEGAL NEWS, Nov. 2009, at 1; CALVERT, CHANOW & MARKS, supra note 134, at 10-12.
lives, and to ensure that those who temporarily step out of the workforce or reduce their workload are not permanently derailed by the decision.

VI. THE LIMITS OF LAW

Although antidiscrimination law provides some protection from overt bias, it is ill suited to address contemporary racial, ethnic, and gender obstacles on the path to leadership. Close to fifty years’ experience with civil rights legislation reveals almost no final judgments of discrimination involving law firms. The frequency of informal settlements is impossible to gauge but the barriers to effective remedies are substantial. Part of the problem is the mismatch between legal definitions of discrimination and the social patterns that produce it. To prevail in a case involving professional employment, litigants generally must establish that they were treated adversely based on a prohibited characteristic, such as race, ethnicity, or sex.

Yet as the preceding discussion suggested, much of the disadvantage facing women and minorities does not involve such demonstrably discriminatory treatment. Nor is it often possible for individuals to know or prove whether they have been subject to bias, given the subjectivity of evaluation standards for professional positions. Evidentiary barriers in these cases are often insurmountable, both because lawyers generally know enough to avoid creating paper trails of bias, and because colleagues with corroborating evidence are reluctant “to expose it for fear of jeopardizing their own positions.”

Even those who believe that they have experienced discrimination have little incentive to come forward, given the high costs of complaining, the low likelihood of victory, and the risks of informal blacklisting. Many women and minorities do not want to seem “overly aggressive” or “confron-
tional," look like a "bitch," or be typecast as an "angry black." Lawyers who do express concerns are often advised to "let bygones be bygones," or "just move on." Channels for candid dialogue are all too rare. Most law firms do not give associates opportunities to offer feedback about their supervisors, and of lawyers who provide such evaluations, only about five percent report changes for the better. The message in many law firm cultures is that "[c]omplaining never gets you anywhere. . . . [Y]ou’re [perceived as] not being a team player." Lawyers who persist in their complaints are putting their professional lives on trial, and the profiles that emerge are seldom entirely flattering. In one widely publicized case involving a gay associate who sued Wall Street’s Sullivan and Cromwell for bias in promotion, characterizations of the plaintiff in press accounts included "'smarmy,'" and "a paranoid kid with a persecution complex." In an equally notorious sex discrimination suit, Philadelphia’s Wolf, Block, Schorr & Solis-Cohen denied a promotion to Nancy Ezold, whom leaders believed lacked both analytic abilities and other characteristics that might compensate for the deficiency. According to one partner, "It’s like the ugly girl. Everybody says she’s got a great personality. It turns out [that the plaintiff] didn’t even have a great personality." What she did have, however, was access to sufficient evidence to prevail at trial. At the time she was rejected for partnership, the firm’s litigation department had just one woman out of fifty-five partners; nationally, about 11% of partners at large firms were female. Ezold had positive evaluations by the partners for whom she had worked, and a comparison with other male associates who had been promoted revealed performance

155. ABA Comm’n, Visible Invisibility, supra note 87, at 25 ("aggressive," "bitch"); Williams & Richardson, supra note 76, at 38 ("confrontational"); Reichman & Sterling, supra note 77, at 77 ("[b]itch"); see also Cruz & Molina, supra note 91, at 1019 ("rock the boat"); Marcia Coyle, Black Lawyer’s Life, Suit Told by a White Author, Nat’l L.J., Jan. 11, 1999, at A14, A15 ("angry black").

156. For the advice, see Robert Kolker, The Gay Flannel Suit, N.Y. Mag., Feb. 26, 2007, at 32, 36-37; ABA Comm’n, Visible Invisibility, supra note 87, at 21. For negative consequences following complaints about compensation, see Williams & Richardson, supra note 76, at 38.


158. ABA Comm’n, Visible Invisibility, supra note 87, at 27 (quoting women of color) (third alteration in original).

159. See Kolker, supra note 156, at 32, 35, 36.


161. Id. at 235-36, 241.
concerns at least as serious as those raised about her. Characterizations of some of those men included: “wishy-washy and immature,” “more sizzle than steak,” and “[n]ot real smart.” The record also revealed gender stereotypes, such as some partners’ belief that Ezold was too “assertive” and too preoccupied with “women’s issues.” Despite such evidence, the court of appeals found for the firm. In its view, the performance concerns of the two-thirds of partners who voted against Ezold were not so “obvious or manifest” a pretext to show discrimination. Yet, given the damage to the firm’s reputation and recruiting efforts, the victory was hardly a full vindication. In reflecting on the decision not to settle the case, one firm leader concluded: “This may have been a case that wasn’t worth winning.”

Similar evidentiary difficulties confront women who take reduced schedules and find themselves out of the loop of challenging assignments and career development opportunities. In dismissing a class action complaint brought by mothers against Bloomberg News, the district court expressed widely prevailing views. The law “does not mandate ‘work-life balance.’” In an organization “which explicitly makes all-out dedication its expectation, making a decision that preferences family over work comes with consequences.” Attorneys who experience such consequences seldom see options other than exit. One mother who returned from leave after three years at a firm found her situation hopeless: “I was simply dropped from all of my work, with no questions or discussion. . . . It was as if I had fallen off the planet.”

Not only does current antidiscrimination law provide insufficient remedies for individuals, it also offers inadequate incentives for institutions to address unintended biases. Columbia Law Professor Susan Sturm’s research suggests that fear of liability can discourage organizations from collecting information “that will reveal problems . . . or patterns of exclusion that increase the likelihood that they will be sued.” Yet while law has supplied inadequate pressures for diversity initiatives, other considerations are push-

163. Id. at 1184-87.
164. Id. at 1188-89.
166. Id. at 534; see also Rhode, Diversity in the Legal Profession, supra note 160, at 240, 243.
167. Id. (quoting Robert Segal).
169. Id.
171. Sturm, supra note 147, at 476.
ing strongly in that direction. Both the moral and business case for diversity should inspire leaders in law to do more to build inclusiveness in their institutions and in their own ranks as well.

VII. THE CASE FOR DIVERSITY

Drawing on arguments gaining influence in the corporate sector, advocates of more equitable leadership opportunities have increasingly stressed the business case for diversity. As the Minority Corporate Counsel Association put it, law firms must "commit to becoming diverse because their future, market share, retention of talent, continuation of existing relationship with corporate clients, and performance depend on understanding and anticipating the needs of an increasingly diverse workforce and marketplace." A 2009 Manifesto on Women in Law makes a similar business case for gender equity. Its core principles state:

A. The depth and breadth of the talent pool of women lawyers establishes a clear need for the legal profession to recruit, retain, develop and advance an exceptionally rich source of talent.

B. Women increasingly have been attaining roles of influence throughout society; legal employers must achieve gender diversity in their leadership ranks if they are to cultivate a set of leaders with legitimacy in the eyes of their clients and members of the profession.

C. Diversity adds value to legal employers in countless ways—from strengthening the effectiveness of client representation to inserting diverse perspectives and critical viewpoints into dialogues and decision-making.

Such claims draw on a wide range of evidence. Social science research suggests that diverse viewpoints encourage critical thinking and creative problem solving. Some, although not all, studies also find a correlation between diversity and profitability in law firms and Fortune 500 companies. It is, however, important not to undermine the credibility of diversity


175. Brayley & Nguyen, supra note 174, at 13-14; Cedric Herring, Does Diversity Pay?: Race, Gender, and the Business Case for Diversity, 74 AM. SOC. REV. 208, 219-20
justifications by overstating the business case. In studies finding correlations between diversity and profitability, it is unclear which way causation runs. It may well be that financial success sometimes enhances diversity rather than the converse; organizations that are on strong financial footing may be better able to invest in diversity initiatives and in sound employment practices that promote both diversity and profitability.176 Moreover, if diversity is poorly managed, it can heighten conflict and communication problems rather than enhance decision making.177 Yet despite such qualifications, the combined moral and economic justifications for diversity remain compelling. In a profession where over half the incoming talent pool consists of women and minorities, it is reasonable to assume that firms will suffer some competitive disadvantage if they cannot effectively retain those groups and create workplaces able to profit from differences in backgrounds and perspectives.

Moreover, an increasing number of clients are strengthening the business case for diversity by making it a factor in allocating work. Over a hundred companies have signed the “Call to Action: Diversity in the Legal Profession,” in which they pledge “to end or limit . . . relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.”178 A growing number of companies impose specific requirements, including reports on diversity within the firm and the teams working on their matters, as well as relevant firm policies and initiatives.179 Wal-Mart, which has been the most public and detailed in its demands, specifies that firms must have flexible time policies and include as candi-


dates for relationship partner at least one woman, one lawyer of color, and one partner on a flexible schedule. It has also terminated relationships with firms that have failed to meet its diversity standards. The Gap also inquires into flexible time policies and sets out expectations for improvements with firms that fail to meet its goals. Again, it is important not to overstate the reach of these initiatives. Almost no research is available to evaluate the impact of these policies, to determine how widely they are shared, or to assess how often companies that have pledged to reduce or end representation in appropriate cases have actually done so. The only national survey on point of general counsel and law firm partners, conducted in 2007, did not find that diversity was one of the most important factors in choice of a counsel, and it is unclear how much has changed in the intervening years. Still, the direction of client concerns is clear, and in today’s competitive climate, the economic and symbolic leverage of prominent corporations should not be discounted.

Nor should employers undervalue other considerations that underscore the importance of inclusiveness. Potential job applicants are becoming more informed about diversity and gender equity. Groups such as Building a Better Legal Profession rate firms based along these and other dimensions, and its information is readily accessible online. Moreover, apart from external pressure, workplaces have internal interests in reform. As the discussion below suggests, many practices that would improve conditions for women serve other institutional objectives as well. Better mentoring programs, more equitable work assignment practices, and greater accountability of supervising attorneys are all likely to have long-term payoffs. The question then becomes how leaders can help institutionalize such initiatives and build cultures of inclusiveness. And equally important, what can women do to put themselves on a path to leadership?

VIII. STRATEGIES FOR ASPIRING LEADERS

The basic leadership development strategies for women are those followed by the early lawyers described above. Aspiring leaders should be clear about their goals, seek challenging assignments, develop mentoring relationships, and cultivate a reputation for effectiveness. Succeeding in

180. Id. at 2595-97, 2599.
182. Mary Swanton, Making the Grade, INSIDE COUNSEL, July 2007, at 55, 61.
184. See supra Part I.
those tasks also requires attention to unconscious biases and exclusionary networks that can waylay careers.

So, for example, aspiring female leaders need to strike the right balance between “too assertive” and “not assertive enough.” Surveys of successful managers and professional consultants underscore the importance of developing a leadership style that fits the organization and is one that “men are comfortable with.” That finding is profoundly irritating to some lawyers. At an ABA Summit on Women’s Leadership, many participants railed against asking women to adjust to men’s needs. Why was the focus always on fixing the female? But as others pointed out, this is the world that aspiring women leaders inhabit, and it is not just men who find overly authoritarian or self-promoting styles off-putting. To maximize effectiveness, women need ways of projecting a decisive and forceful manner without seeming arrogant or abrasive. Experts suggest being “relentlessly pleasant” without backing down. Strategies include frequently smiling, expressing appreciation and concern, invoking common interests, emphasizing others’ goals as well as their own, and taking a problem-solving rather than critical stance. Successful leaders such as Sandra Day O’Connor have been known for that capacity. In assessing her prospects for success in the Arizona state legislature, one political commentator noted that “Sandy . . . is a sharp gal” with a “steel-trap mind . . . and a large measure of common sense. . . . She [also] has lovely smile and should use it often.” She did.

Formal leadership training and coaching can help in developing interpersonal styles, as well as capabilities such as risk-taking, conflict resolution, and strategic vision. Newly emerging leadership programs designed particularly for women or minorities provide supportive settings for addressing their special challenges. Profiles of successful leaders can also provide instructive examples of the personal initiative that opens leadership opportunities. These are not lawyers who waited for the phone to ring. Michele Mayes, one of the nation’s most prominent African American gen-


186. LINDA BABCOCK & SARA LASCHEVER, ASK FOR IT: HOW WOMEN CAN USE THE POWER OF NEGOTIATION TO GET WHAT THEY REALLY WANT 253-59 (2008) (internal quotations omitted).

187. Id. at 252-62.

188. BISKUPIC, supra note 57, at 56.

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general counsels, recalls that after receiving some encouragement from a woman mentor, she approached the chief legal officer at her company and "told him that I wanted [his] job." After the shock wore off, he worked up a list of the skills and experiences she needed and recruited her to follow him to his next general counsel job. She never replaced him, but with his assistance she prepared for his role in other Fortune 500 companies. Louise Parent, the general counsel of American Express, describes learning to "raise my hand" for challenging assignments and being willing to take steps down and sideways on the status ladder in order to get the experience she needed. Terry McClure, the General Counsel of United Parcel Service, was told she needed direct exposure to business operations if she wanted to move up at the company. After accepting a position as district manager, she suddenly found herself as a "lawyer, a black woman, [with] no operations experience walking into a . . . [warehouse] with all the truckdrivers." Her success in that role was what helped put her in the candidate pool for general counsel.

Setting priorities and managing time strategically are also critical leadership skills. Establishing boundaries, delegating domestic tasks, and giving up on perfection are essential for those with substantial caretaking commitments. What aspiring leaders should not sacrifice is time spent developing relationships with mentors who can open doors at leadership levels. To forge those strategic relationships, lawyers need to recognize that those from whom they seek assistance are under similar pressures. The best mentoring generally goes to the best mentees, who are reasonable and focused in their needs and who make sure the relationship is mutually beneficial. Lawyers who step out of the labor force should find ways of keeping professionally active. Volunteer efforts, occasional paying projects, continuing legal education, and reentry programs can all aid the transition back.

IX. STRATEGIES FOR ORGANIZATIONS AND THEIR LEADERS

Supporting aspiring leaders is itself a leadership skill, and one that has received inadequate attention in many legal workplaces. The most important factor in ensuring equal access to leadership opportunities is a commitment to that objective, which is reflected in organizational policies, priorities, and reward structures. That commitment needs to come from the top. An or-

190. Mayes & Baysinger, supra note 99, at 82.
191. Id. at 69.
192. Id. at 75.
194. Frank Dobbin, Alexandra Kalev & Erin Kelly, Diversity Management in Corporate America, Contexts, Fall 2007, at 21; Catalyst, Advancing Women in Business—the Catalyst Guide: Best Practices from the Corporate Leaders 6, 12-13 (1998); Catalyst, Women of Color in Corporate Management: Opportunities and Barriers
organization's leadership needs not simply to acknowledge the importance of diversity, but also to establish structures for promoting it, and to hold individuals accountable for the results. The most successful approaches tend to involve task forces or committees with diverse and influential members who have credibility with their colleagues and a stake in the results. The mission of that group should be to identify problems, develop responses, and monitor their effectiveness.

As an ABA Presidential Commission on Diversity recognized, self-assessment should be a critical part of all diversity initiatives. Leaders need to know how policies that affect inclusiveness play out in practice. That requires collecting both quantitative and qualitative data on matters such as advancement, retention, assignments, satisfaction, mentoring, and work/family conflicts. Periodic surveys, focus groups, interviews with former and departing employees, and bottom-up evaluations of supervisors can all cast light on problems disproportionately experienced by women and minorities. Monitoring can be important not only in identifying problems and responses, but also in making people aware that their actions are being assessed. Requiring individuals to justify their decisions can help reduce unconscious bias.

Whatever oversight structure an employer chooses, one central priority should be the design of effective systems of evaluation, rewards, and allocation of professional development opportunities. Supervising lawyers and department heads need to be held responsible for their performance on diversity-related issues, and that performance should be part of 360 evaluation structures. Such accountability is, of course, far easier to advocate than to achieve, particularly given the absence of systematic research on what oversight strategies actually work. Our knowledge is mainly about what doesn't. Performance appraisals that include diversity but lack significant rewards or sanctions are unlikely to affect behavior. However, we know little about what has helped firms deal with powerful partners who

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198. BAGATI, supra note 88, at 48-49; Rhode & Kellerman, supra note 100, at 27; Ridgeway & England, supra note 94, at 202; Ely, Ibarra, & Kolb, supra note 110, at 481. 360 evaluation structures include assessments by subordinates and peers, as well as supervisors.

rate poorly on dimensions that affect diversity, or whether incentives like mentoring awards and significant bonuses are effective in changing organizational culture. More experimentation and sharing of information could help organizations translate rhetorical commitments into institutional priorities. Many bar associations and groups such as the Leadership Counsel on Legal Diversity have initiatives to promote collaboration. 200

Research is, however, available on specific interventions that are frequently part of diversity initiatives. One of the least effective is training. Surveyed lawyers tend to be at best “lukewarm” about the usefulness of diversity education, and researchers who have studied its effectiveness are even less enthusiastic. 201 In a large-scale review of diversity initiatives across multiple industries, training programs did not significantly increase the representation or advancement of targeted groups. 202 Part of the problem is that such programs typically focus only on individual behaviors not institutional problems, provide no incentives to implement recommended practices, and sometimes provoke backlash among involuntary participants. 203

Other common strategies are networks and affinity groups for women and minorities. Almost all large firms report women’s initiatives that include networking. 204 Many organizations also support groups for minority lawyers within or outside the firm. These vary in effectiveness. At their best, they provide useful advice, role models, contacts, and development of informal mentoring relationships. 205 Affinity groups for women of color can be especially important in reducing participants’ sense of isolation. By

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bringing potential leaders together around common interests, these networks can also forge coalitions on diversity-related issues and generate useful reform proposals. Yet the only large-scale study on point found that networks had no significant positive impact on career development; they may increase participants' sense of community, but they do not do enough to put potential leaders "in touch with what . . . or whom they [ought] to know."207

The most effective interventions involve mentoring, which directly address the difficulties of women and minorities in obtaining the support necessary for leadership development. Many organizations have formal mentoring programs that match employees or allow individuals to select their own pairings. Well-designed initiatives that evaluate and reward mentoring activities can improve participants' skills, satisfaction, and retention rates.208 However, most programs do not require evaluation or specify the frequency of meetings and goals for the relationship.209 Instead, they permit a "call me if you need anything" approach, which leaves too many junior attorneys reluctant to become a burden.210 Ineffective matching systems compound the problem; lawyers often end up with mentors whom they have little in common.211 Formal programs also have difficulty inspiring the kind of sponsorship that is most critical for aspiring leaders. They need advocates, not simply advisors, and that kind of support cannot be mandated.

The lesson for leaders is that they cannot simply rely on formal structures. They need to model, cultivate, and reward sponsorship of women and minorities, and to ensure that diversity is a significant dimension of leadership succession plans. Being proactive in identifying and nurturing high performers should be a high priority.212 In building cultures of inclusion, it is important to emphasize the mutual benefits that can flow from mentoring relationships. Quite apart from the satisfaction that comes from assisting


207. Dobbin, Kalev & Kelly, supra note 194, at 25.


210. Id.


those in need of assistance, leaders may receive more tangible payoffs from fresh insights and from the loyalty and influence that their efforts secure. They can also take pride in laying the foundations for an organization that is reflective of, and responsive to, the public it serves.

Leaders who are most effective in these efforts are those who cast their agenda not as a "women's" issue, but as an organizational priority in which women have a particular stake. As consultants emphasize, "Inclusion can be built only through inclusion. . . . [Change] needs to happen in partnership with the people of the organization not to them." Leaders are critical to creating that sense of unity and translating rhetorical commitments into organizational priorities.
