

IPO Volunteer Profile – Serena Farquharson-Torres (Bristol Myers Squibb)



Serena Farquharson-Torres is Senior Corporate Counsel at Bristol Myers Squibb. She is involved with all aspects of patent law working primarily in prep and prosecution, IP due diligence support, client counseling and most recently post-merger integration management for the law and compliance department. She is chair of Bristol Myers Squibb's Law and Compliance D&I committee and Co-Chair of their black employee resource group STEM team.

Dr. Farquharson-Torres has been actively involved with IPO since 2016. She is a member of IPO's Diversity & Inclusion, Women in IP Law, and Pharmaceutical & Biotechnology Issues committees. She is also a recent presenter at both the IPO Annual Meeting and the IPO Chat Channel.

How did you get involved with IPO?

I was secretary for the Women in IP Law Committee so now more people know me on a personal and professional level. The issues we were addressing applies to other underrepresented groups. Henry Hadad, past president of IPO, appointed me to the Presidential Taskforce on Diversity and later I joined the D&I committee leadership team as Co-Chair of The Black-IP professionals along with Dr. Eldora Ellison, a partner at Sterne Kessler.

What do you get the most out of through your involvement in IPO?

Building relationships and driving change in corporations and law firms to strengthen the IP profession. In 2020 I worked with the D&I committee and Black IP Professional Resource Group to create the Black IP Professional Directory, The D&I Practical Guide, a webinar on The D&I Practical Guide in a Post-George Floyd Era, a presentation on my career for the Next Generation Committee, a panel on Allyship at the Annual Meeting and zoom meeting on IP careers for students of color.

What would you say to a potential corporate member who is considering joining IPO?

Similar to the value of having a diverse and inclusive workforce, the collective voice of the various diverse corporate members can make meaningful changes in the IP space. The way IPO is organized, there are competing agendas, but if all viewpoints are represented it leads to stronger more comprehensive policies.

What is your advice for a new IPO member looking to get involved?

We all have careers and families that take time and commitment as well, thus it is best to find an area where you would like to drive change, join the committee, take on various initiatives and in the process, you grow as a lawyer and build relationships in the process.

How has your participation in IPO committees helped you professionally?

I have developed professional and personal relationships with a diverse group of IP professionals that genuinely care about my advancement in the profession. I have increased my visibility across the profession as a thought leader with influence. I developed leadership and project management skills that are now opening opportunities for me to lead teams of lawyers on substantive matters in the law department in addition to my work in IP.

Outside of IPO, what's something that you're passionate about?

My faith and my family. I have been married for 16 years, I have three daughters, twins in middle school and one daughter in high school, and I am passionate about them growing up and being thoughtful girls with a voice that they are not afraid to use. I like to spend time with the family walking, biking, or if possible relaxing at the beach.

Anything else you would like to add?

In earning a B.S. in chemistry from Howard University, doctorate in biological chemistry from the University of Minnesota, and a law degree from the University of North Carolina, and working in private practice and in several pharmaceutical companies I have experienced the best and the worst in terms of inclusion, allyship, and fairness. I have found that Dr. Maya Angelou's statement is true, "equal rights, fair play, justice, are all like the air: we all have it, or none of us has it".

Thanks to Serena for sharing her wide range of experiences with IPO. IPO has 29 active committees working on the most important areas of IP law and practice. To learn more and get involved visit IPO's [Committee Resources](#) page.



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Breaking IP Barriers: Q&A With Leason Ellis' Melvin Garner

By **Dani Kass**

Law360 (November 5, 2020, 8:48 PM EST) -- When Leason Ellis LLP partner Melvin C. Garner applied for his first law job in the 1970s, his resume should have made him a shoo-in: a master's degree in electrical engineering, plus years of working as an engineer and drafting patent applications. But out of the 100 resumes the Black attorney sent out, only one led to an offer.



Melvin Garner

Garner accepted that offer from Brumbaugh Graves Donohue & Raymond. Over the next several decades, he worked at Darby & Darby PC and then Leason Ellis, building a practice on patent, trademark and copyright litigation and procurement, largely in the software field. He also leads Leason Ellis' Japan practice group.

In 2005, Garner became the first Black president of the American Intellectual Property Law Association, and the organization last month named him a **"Titan of the IP Bar."** He was also the first Black president of the New York Intellectual Property Law Association, starting in 2003. Both were one-year roles.

Garner spoke with Law360 as part of a new series of interviews with attorneys who have been on the front lines to make IP a more inclusive area of law.

This interview has been edited for length and clarity.

How did you get into IP law?

I was an engineer working for CBS Labs, and one of my fellow engineers said he was leaving. He told me he was going to Bell Labs, and they were going to teach him patent law during the day and send him to law school at night, and he was going to become a lawyer. As soon as he told me that, I thought, "That's a wonderful idea. I should do the same thing."

What was it like when you went to Bell Labs, a research and development hub for the telecom industry?

I worked at the Holmdel Labs of Bell Labs [in New Jersey], and I lived in lower Manhattan. Every morning I'd get up, drive down to Holmdel, and work during the day, [where] essentially I was drafting patent applications. Then around 5:30, I would drive to Brooklyn and go to Brooklyn Law School for two or three hours, and then drive home, and then do the whole thing over again. When I actually had to go and be a lawyer, it was actually a lot easier than it was going to law school.

You've likened your experience trying to find a job in law to that of the late Justice Ruth Bader Ginsburg, who wasn't able to get a job in private practice after law school.

I thought I had a pretty good resume because after I got out of engineering school [at Drexel University], I was working for IBM. I got my master's degree in electrical engineering [at New York University] while I was working for CBS Labs. By the time I was ready to graduate, I had about three years of experience drafting patent applications and doing searches, and I was doing fairly well in law school. I was on the law review and wrote articles that the law review published.

I figured with that kind of background, I should have a fairly easy time getting a job, but it turned out it wasn't so easy. I sent out 100 resumes, and I only got two positive responses for interviews. I went to the first interview, and it turns out they were looking for some woman who had been in Black Law Students Association, and they couldn't find her. I had put on my resume that I was in the Black Law Students Association, so they were trying to see if I could help them find her as opposed to offering me a job. I put that on my resume to try to avoid these awkward situations, and it turned out it created an awkward situation.

The second offer was from Brumbaugh [an IP boutique later acquired by Baker Botts LLP], and they ended up offering me a job.

I sent out 100 resumes, got two interviews and one job, and I guess Ruth Bader Ginsburg sent out some large number of resumes, and she was clearly more qualified than I was because she was top of her class at Columbia, and she didn't get any jobs. It's the way things were back then.

You've worked with AIPLA to get more Black attorneys working in IP. What has that involved?

They had a committee for Black attorneys called the minority committee [in the 1990s]; it's now called the diversity committee. They did outreach to some of the Black colleges in the D.C. area, talking to engineering students about going into IP.

I eventually got onto the board of directors, and there someone [had the idea] to offer scholarships. I helped to draft the initial proposal for doing the scholarship and helped shepherd that through the

board until it was implemented. They formed a \$10,000 annual scholarship [now called the Sidney B. Williams, Jr. Scholar Program] for somebody in law school and interested in going into IP. They started out just giving one, and it moved up to giving three.

The foundation AIPLA created in 2001 for the scholarship, now called the Foundation for Advancement of Diversity in IP Law, says it has given out more than \$2.5 million in scholarships.

What do you want to see from the IP community in terms of expanding diversity?

There's very little overt racism that you run into in the profession. But there's some institutional bias.

The profession tends to be very credentialed. You get [a pair of] engineering students, and one has a 3.6 average and the other has a 3.4 average, so you pick the one with the 3.6. But when you're dealing with clients and actually being a lawyer, your personality is far more important than whether you [are] two-tenths of a point smarter in engineering than another. If [a candidate] was smart enough and has an engaging personality, maybe that's the kind of person that will do well for your firm in terms of attracting clients and keeping them.

One of the people I point out is Oprah Winfrey. You can see how influential she is in terms of getting people to do what she wants. She didn't go to Harvard or Yale or any place like that, and who knows what her grade point average was, but she's a person who's got a personality that can convince people to do things.

Rather than just the strict criteria that firms usually look at, start looking at broader criteria, and you may end up with a more diverse workplace.

Do you have any advice for minority attorneys hoping to get into IP?

If they are already attorneys, try to increase their network. Coming to AIPLA meetings is certainly a good way to increase the number of people that you know and interact with. Try to do anything that can bring favorable attention to yourself — write articles for IP Law360. If it's an interesting topic, you may get some feedback from people. Essentially keep working at it. There are organizations like AIPLA and the ABA-IPL that have mentoring groups. Take advantage of anything being offered like that.

To nominate someone for this series, contact dani.kass@law360.com.

--Editing by Brian Baresch.

How I Made Partner: 'Become the Client's Go-To Adviser,' Says Cravath's Sharon Goswami

"I would recommend young lawyers ensure that they are doing the best possible job on their current cases."

By Tasha Norman

Sharonmoyee Goswami, Cravath, Swaine & Moore.

Office: New York.

Practice area: Litigation.

Law school and year of graduation: New York University School of Law, 2012.

How long have you been at the firm? As of October 2020, I will have spent seven years working at Cravath.



Sharonmoyee Goswami, a partner

Courtesy photo

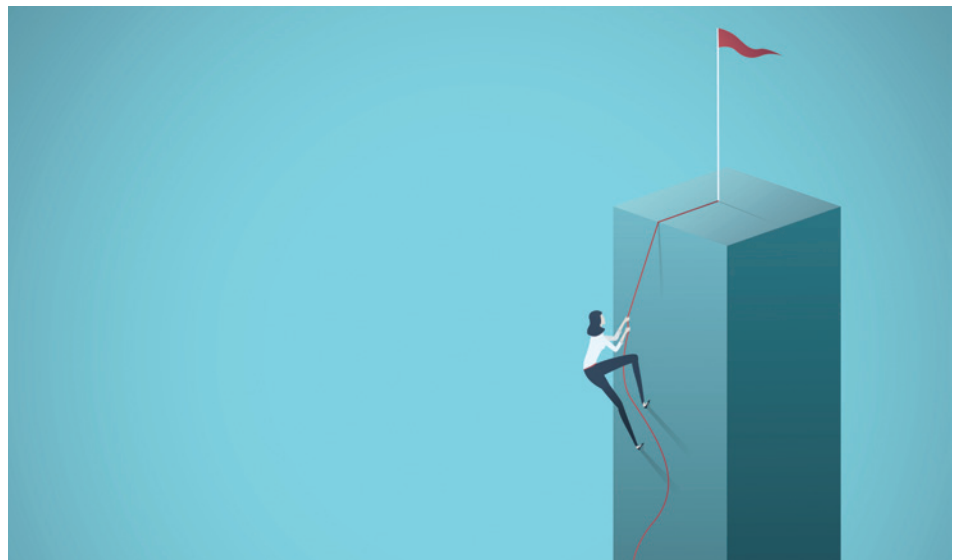


Photo: Shutterstock

How long were you an associate at the firm? I spent a total of six years as an associate at the firm, which I joined in 2012; in 2013 I clerked for the Hon. Timothy B. Dyk of the U.S. Court of Appeals for the Federal Circuit before returning to Cravath in 2014.

What's the biggest surprise you experienced in becoming a partner? I was surprised at how quickly I felt treated as a peer by our other partners; even in the

months before I was listed on the firm's letterhead, the other partners on my cases were already starting to defer to my judgment. This immediate shift in responsibilities made me appreciate Cravath's focus on ensuring that senior associates are able to take full ownership of client relationships and matters. My training over my six years as an associate laid the groundwork for me to feel both prepared to be a partner and empowered to work

collaboratively with my partners across the firm.

Describe how you feel about your career now that you've made partner. I feel good—it's been really rewarding! As an associate, I viewed being elected a partner as an end goal to work towards, much as I had worked towards graduating from law school or completing my senior thesis as an undergraduate. But after becoming a partner, I realized that while being an associate and attending law school was a small portion of my career, I now have the opportunity to think carefully about what the arc of my whole career as a partner should look like—what kinds of cases and clients will help develop my intellectual property practice, and how I want to build my expertise going forward. It's no longer just a question, if it ever was, of staying busy or doing the best possible job on a single case.

What's the key to successful business development in your opinion? In my view, the best thing I have done as an attorney to build business is doing the best possible job for my current clients. Doing a

good job for my current clients has led to repeat business from the same clients, and new business from client contacts who have moved to new organizations, or from client referrals.

Who had the greatest influence in your career that helped propel you to partner? Under Cravath's rotation system, associates have the opportunity to work in various practice specialties and under different partners, who take mentorship very seriously. Because Cravath does not generally make lateral hires, partners are incentivized to make sure that their associates are developing the skills.

With my background in biology and materials science and engineering, and my clerkship at the Federal Circuit, I knew that I wanted to focus on pharmaceutical and biotech patent litigation. My final rotation before making partner was a particularly long rotation with Cravath partner Keith Hummel, a renowned IP lawyer with broad and extensive experience litigating complex IP disputes. Keith did a great deal to help me develop the skills I needed to build an IP practice, including putting me in a

position with major clients to become their go-to adviser. He also helped me develop more nuanced skills in interacting with clients, witnesses, and judges—for example, the right tone to take on certain court submissions and important phone calls—all of which has been invaluable now that I am a partner.

What's the best piece of advice you could give an associate who wants to make partner? There is no one way to make partner, particularly at Cravath. Over the years friends at other firms have told me that a large part of their becoming partner—or not—hinges on building a book of business. That's not something our associates have to do at Cravath. Instead, I would recommend young lawyers ensure that they are doing the best possible job on their current cases. They should be up to date on the public information about their clients and develop a keen understanding of each client's business, and always be intimately familiar with the cases themselves. The client and your colleagues will always appreciate that depth of knowledge.

CRAVATH, SWAINE & MOORE LLP

Black IP lawyers reveal struggles with systemic racism

Black lawyers, from in-house and private practice, call for increased exposure and reveal everyday struggles of working in the legal industry

By **Max Walters**

June 15 2020



“Systemic racism impacts black lawyers in many ways,” says Ellisen Turner, partner at Kirkland & Ellis in Los Angeles.

“During oral argument, black lawyers are interrupted by the bench more frequently than other lawyers. And at least on a first encounter, they are, consciously and subconsciously, considered less intelligent or less capable than their equally credentialed, or even less credentialed, counterparts.”

When you put it like that, it’s no surprise that Turner and others want to see lasting change in the legal industry, including in IP, and for black lawyers to be adequately recognised.

The killing of George Floyd, an unarmed black man, by a police officer in Minneapolis last month sparked widespread protests both in the US and internationally that have called attention to the racism many people of black heritage face every day.

And the legal industry, including the IP sector, also faces problems when it comes to the struggles with racism.

As a partner at Kirkland – one of the best-known and [most profitable law firms in the world](#) – Turner has reached close to the top.

But he is acutely aware that many will not reach that level.

Poor representation

Not only is black representation in IP law not good enough, black lawyers are often overlooked, Turner says.

Diversity statistics published by the American Bar Association (ABA) show that little has changed in the past ten years.

The ABA's most recent Profile of the Legal Profession, an annual report of the gender and ethnic make-up of the legal industry (not just IP) in the US, shows that nearly all ethnic minorities are underrepresented compared with their presence in the wider population.

The figures are particularly damning for African American lawyers.

According to the [2019 edition](#), 5% of lawyers are African American, whereas African Americans make up 13.4% of the US population.

The figures are unchanged since 2009, but one caveat is that less than half of US states choose to report data.

Turner says the consensus is that the global recession of 2008 caused more black lawyers to lose their law firm positions than those from other groups, and that the numbers have never truly recovered from that.

He notes that this could happen again as firms begin to take austerity measures in response to the predicted recession caused by the COVID-19 pandemic.

Mareesa Frederick, partner at Finnegan in Washington DC, says firms not only need to recruit more black law students but to encourage black associates to remain in the profession once they join a firm as a qualified lawyer.

Mentorship programmes could help in this regard, she says.

“Black junior associates would greatly benefit from being sponsored and mentored by senior associates and partners. This would help them navigate the ups and downs of working at a law firm, which at times can be stressful. If they are given that support early on, nurtured and guided on what to expect, it will help improve retention.”

Male, white and grey-haired

Finding the right mentor, however, can be challenging.

Frederick says: “Senior partners, many of whom are white males, naturally seek to mentor those who look similar to them or who remind them of themselves. This is not an issue that is unique to law. It is human nature for people to stay within their comfort zone.”

Turner says many talented black lawyers may be passing under the radar because of racism – which has spread unconsciously and consciously into the work environment.

He notes that black lawyers often struggle to break into networking and business development groups.

“Business development is almost entirely based on networks and contacts. Systemic racism causes people to both intentionally and unintentionally self-segregate to homogeneous groups, both in the people they were close with in school and the networks they maintain in their career. Black lawyers are often left out.”

Like Frederick at Finnegan, Eldora Ellison, director at Sterne, Kessler, Goldstein & Fox in Washington DC, says black lawyers should be mentored but also educated on the “unspoken rules of the game” – something which, in general, they miss out on.

She describes these rules as a “catch-all term” that, while including networking, also focus on aspects not discussed openly such as how to navigate internal or external politics and power struggles, how to carry yourself, dress, speak and command a room, and how to respond to aggressive or passive-aggressive behaviour by others.

Because black lawyers fail to break into networking groups, lawyers tell us, they are often overlooked in favour of the “tried-and-tested” lawyer, who is more often than not male, white and grey-haired.

Turner at Kirkland & Ellis adds: “A handful of black patent litigators have been lead counsel on major matters in the past, but given their success it’s surprising that they don’t get these opportunities much more often. The talent is out there, so there is no excuse.”

He explains that instructing companies often say that they did not know that equally capable, experienced and leading black lawyers existed so opted for a familiar face instead.

“Once you are in the cycle of only using the faces you know and are familiar with, it’s hard to achieve diversity,” he adds.

Progress not enough

Joe Drayton, a partner at international firm Cooley in New York, says the overall representation of black IP lawyers in the US is not where it needs to be, but is much better than when he entered the profession in 1997.

From that time, he can only recall two prominent IP lawyers at major firms: Dan Johnson, from Cooley, and Errol Taylor, at Milbank.

However, like Turner at Kirkland, Drayton recognises that black lawyers often miss out on “big-ticket” litigation.

“We can increase the prominence of black IP lawyers by giving them the opportunity to work on critical matters for important clients. Our clients can demand it, and law firms can commit to staffing important cases with black attorneys.”

He adds that when law firms invest in and take a chance on black IP lawyers, good things happen for clients, including them benefitting from a diversity of experiences in areas like preparing witnesses, formulating a trial story and relating to jurors.

The UK experience

Daniel Alexander, an IP barrister at 8 New Square in the UK, says there are still some reasons to be positive.

Unlike in the US, the UK litigation profession is split between barristers – who lead cases in court – and solicitors, who instruct barristers and manage a case.

According to the [Bar Standards Board](#), the regulator for barristers in England and Wales, the percentage of black, Asian and minority ethnic (BAME) barristers has increased by 0.6 percentage points since December 2018 to 13.6% (as of January 2020). Those from black/black British backgrounds account for 3.2% of barristers overall.

The proportion of BAME solicitors working in law firms is 21% (as of March 2020), according to a report by the [Solicitors Regulation Authority](#). In total, 15% of those lawyers are Asian, while black lawyers make up just 3% of the total.

Though these statistics are not specific to IP, organisations like IP Inclusive are committed to encouraging more ethnic minorities to enter, and grow in, the IP industry. The [initiative's progress](#), as well as [that of IPReg](#), the regulator for patent and trademark attorneys in the UK, has been documented previously.

Alexander notes that in patent cases in particular – where the pool of candidates who have the required technical knowledge is already very low – one would probably “only expect a handful of diverse candidates” to emerge within that framework.

“At the moment there are probably one or two at partner and senior level, so there is more to be done, but I don’t think the situation is completely bleak. You have to be realistic and look at the overall number of people who meet the requirements to manage this kind of work.”

He notes that exposure before the courts may have a slightly different impact in the US. Most US IP cases are decided by a jury, often made up of a fairly representative group of people, whereas a specialist judge will hear disputes in England and Wales.

“I’m not saying the jury would be necessarily swayed by seeing a black litigator leading the case, but they may like to see more diverse advocates. Here it is less important as you are only in front of a judge and one who is already very familiar.

“I don’t believe conscious or unconscious bias comes into it – the subject matter is so technical to the point that judges are only truly interested in the arguments presented,” he says.

In-house demands

Giving black lawyers more exposure is a laudable aim, but how does this happen in practice?

Turner at Kirkland says that instructing counsel should do more but so should law firms that compile their diversity statistics.

He notes that when seeking external private practice lawyers, in-house decision makers may ask for a diverse team but tend not to pay too much regard to the roles within that team.

“They rarely focus on diversity at the lead lawyer level, and some companies focus on diversity across all their matters, rather than on each matter, or on their major matters. This allows the legal industry to respond by merely having black lawyers somewhere within a team, perhaps only at the lowest levels.

“That is important, but fails to give more black lawyers a chance to become well known, build a business and advance their career,” he adds.

Frederick at Finnegan agrees.

“In-house counsel can help improve diversity by demanding law firms staff their matters with diverse teams and give diverse attorneys meaningful roles. Many companies already require this. In-house counsel should serve as mentors for young black law firm lawyers to serve as a resource and offer different perspectives on their legal career.”

She adds: “Building a ‘book of business’ is also an area that black lawyers may need support with to ensure they are getting the opportunity to connect and build relationships with in-house attorneys.”

Organisations including the Leadership Council on Legal Diversity, made up of corporate chief legal officers and law firm managing partners, link diverse in-house counsel with outside counsel and help them build relationships.

Adraea Brown, chief trademark counsel at Harley-Davidson in Milwaukee, adds: “Companies have to hold firms accountable for what true diversity and inclusion looks like – which includes ensuring that the diverse attorneys are working on matters.”

Pharmaceutical company [Novartis](#) and technology business [Intel](#) have both insisted that the law firms they instruct must meet diversity targets.

Litigation support

Alexander at 8 New Square notes that the NextGen initiative – a programme designed to encourage young and diverse talent to lead on litigation – can help improve the diversity of legal teams managing cases.

At the end of last year, an all-female team – consisting of barristers Charlotte May QC and Lindsay Lane QC – led a patent case for the first time at the England and Wales High Court as a result of the NextGen programme. The barristers led Apple to victory in the dispute, *Conversant v Apple*.

This, says Alexander, also stemmed from technology companies’ desire to instruct a more diverse pool of candidates and not the tried-and-tested white male.

Although focussed primarily on young and female lawyers, programmes like NextGen could also target diversity. Alexander notes that a by-product of focussing on junior teams may be that more diverse candidates emerge.

Drayton at Cooley adds that to earn the opportunity to be lead counsel, lawyers must also demonstrate a record of effectively handling major litigation including at trial. To do this they need opportunities to prove themselves in the courtroom as early as practicable in their careers.

“These skills are not easy to develop in law firm settings, where cases often settle prior to trial and where all IP lawyers seek the same experiences,” he notes.

He says he was part of a trial team in his first year as a lawyer where Dan Johnson (then of Cooley) was the first-chair trial lawyer for a co-defendant. “It was great to see a prominent lawyer who looked like me; it materially contributed to my vision of success.”

Diversity data skewed

Turner at Kirkland and Brown at Harley-Davidson agree that while diversity statistics are important, they can sometimes fail to paint an accurate picture.

Any lawyer who belongs to an ethnic minority (including Asian, Hispanic or black) is often recorded as though they belong to one data set. Sometimes, Turner and Brown say, that set also includes other underrepresented groups, such as white women.

“That’s not to say that data for those other underrepresented groups is not worthy or is less important, but to get a more accurate picture on whether the industry is truly inclusive and improving, we should see more data directed to specific groups,” says Turner.

Alexander agrees that diversity statistics can be easily manipulated.

“In the England and Wales judiciary, for example, if you look deeper at the overall diversity statistics it might be that the Sikh and Jewish communities are particularly well represented when compared with the Afro-Caribbean community, which is probably larger overall [than the other two ethnic groups].”

When these statistics are broken down by class and educational background, further discrepancies may be found, he notes.

“When you begin to remove these filters you realise that diversity statistics can be skewed.”

Legal lists

Brown at Harley-Davidson says a focus on highlighting black IP lawyers would be very beneficial, particularly in the mainstream legal publications.

“We are here, but we’re often not showcased,” she says.

Turner at Kirkland agrees.

Specific information on the leading black IP lawyers, for example in directories or in lists of top lawyers, should be compiled so that companies that are keen to employ diverse lead lawyers can find exactly who they are looking for.

Frederick at Finnegan says those who compile the lists should always request feedback from a broad range of people. “If you ask a greater cross-section of society, you are likely to get a broader range of recommendations for inclusion,” she says.

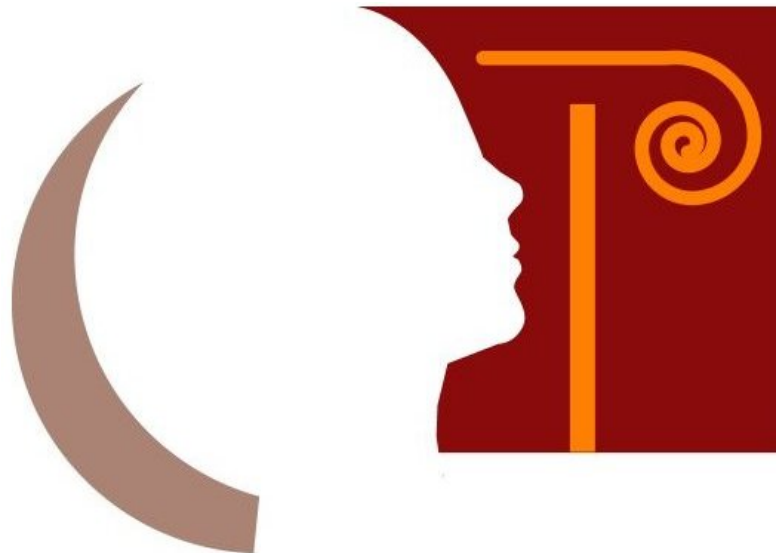
Kingsley Egbunu, research editor for Managing IP’s IP STARS publication, says: “I recognise that legal publications have a role to play here. We have publications and events to help address the issue of diversity and inclusion in the legal industry, but we’re always looking for ways to do more.”

He adds: “IP STARS ranks individuals on merit. We urge firms to tell us about all their high-performing IP practitioners and their work to help us look into them. The challenge, I think, is whether there are enough ethnic minorities at a senior level position in the industry.”

It will take time for society and the wider legal profession to truly understand the struggles faced by black lawyers. Biased behaviour such as using familiar faces may not be as stark as the racism displayed in the killing of George

Floyd. However, the negative impact on equality cannot be ignored – and must be reversed. If we can at least try to discuss potential solutions, we may see progress in the years to come.

A Current Glance at Women in the Law April 2019

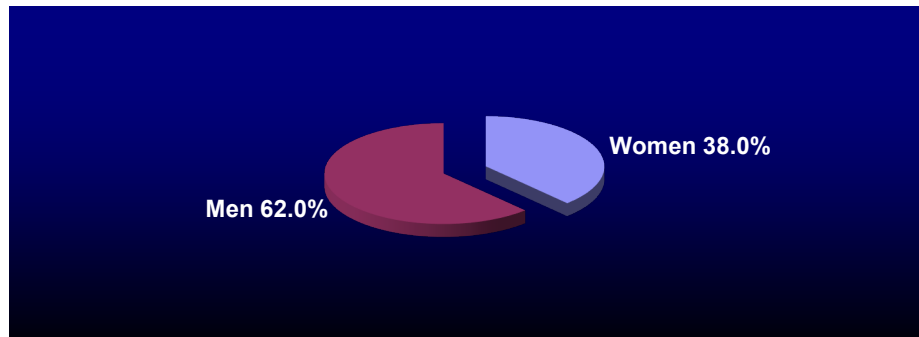


American Bar Association - Commission on Women in the Profession
321 N. Clark Street, Chicago, IL 60654
Phone: 312-988-5715 • Email: abacwp1@americanbar.org • Website: www.americanbar.org/women



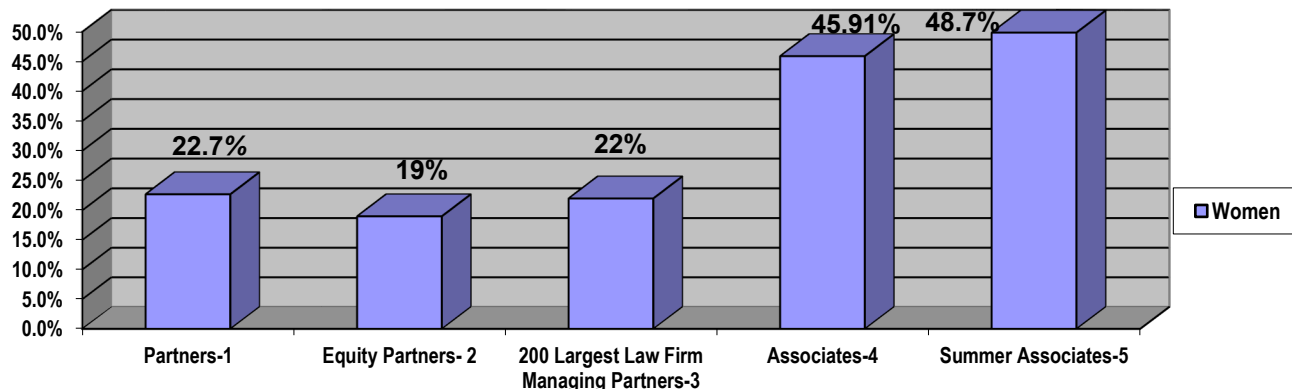
Copyright 2019 © by the American Bar Association. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Women in the Legal Profession



United States Census Bureau, January 18, 2019. <https://www.census.gov/library/stories/2018/05/women-lawyers.html>

Women in Private Practice



¹ *2017 Report on Diversity in U.S. Law Firms*. National Association for Law Placement, January, 2017. www.nalp.org/uploads/2017NALPReportonDiversityinUSLawFirms.pdf

² *Report of the Tenth Annual National Survey on Promotion and Retention of Women in Law Firms*. National Association of Women Lawyers and NAWL Foundation, September 2017. <http://www.nawl.org/d/do/663>

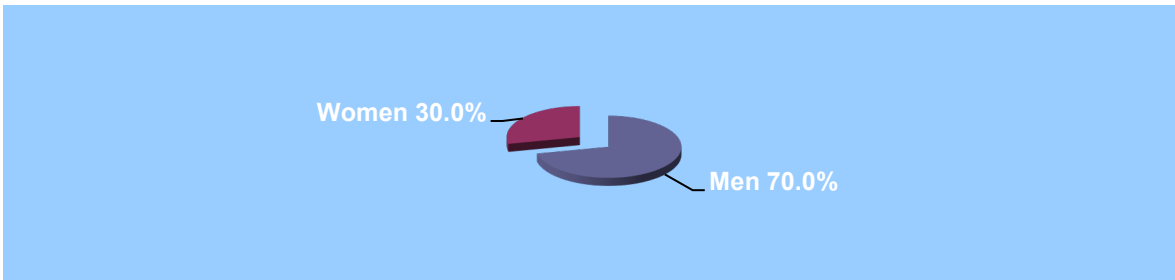
³ *Report on Promotion and Retention of Women in Law Firms*. National Association of Women Lawyers and NAWL Foundation, 2018. <https://www.nawl.org/page/2017>. Women are 22% of firmwide managing partners and 20% of office-level managing partners.

⁴ *2018 Report on Diversity in U.S. Law Firms*. National Association for Law Placement, February 1, 2019. Quoted in *Legal Intelligencer*: <https://www.law.com/thelegalintelligencer/2019/02/01/law-firm-associates-can-play-an-important-role-in-diversity-effort/>

⁵ *2017 Report on Diversity in U.S. Law Firms*. National Association for Law Placement, January, 2017. www.nalp.org/uploads/2017NALPReportonDiversityinUSLawFirms.pdf

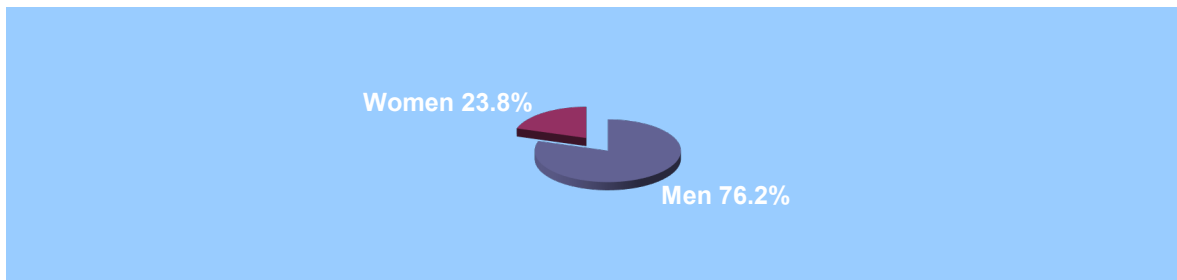
Women in Corporations

Fortune 500 General Counsel



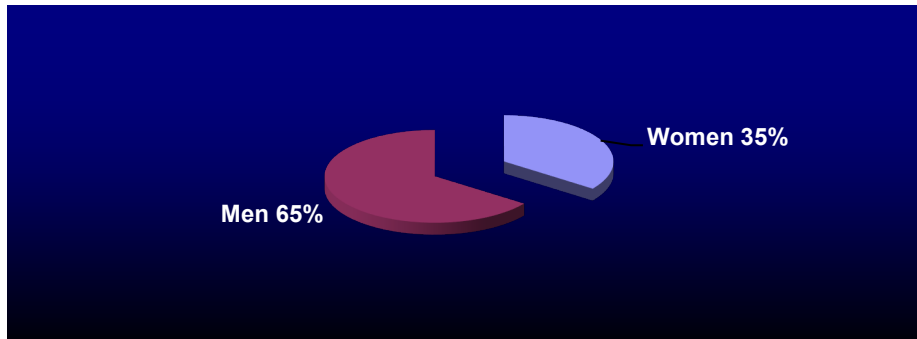
8 Stats You Need to Know about the Male-Female General Counsel Divide. Lawgeex, December 6, 2018.
<https://blog.lawgeex.com/8-stats-you-need-to-know-about-the-male-female-general-counsel-divide/>

Fortune 501-1000 General Counsel



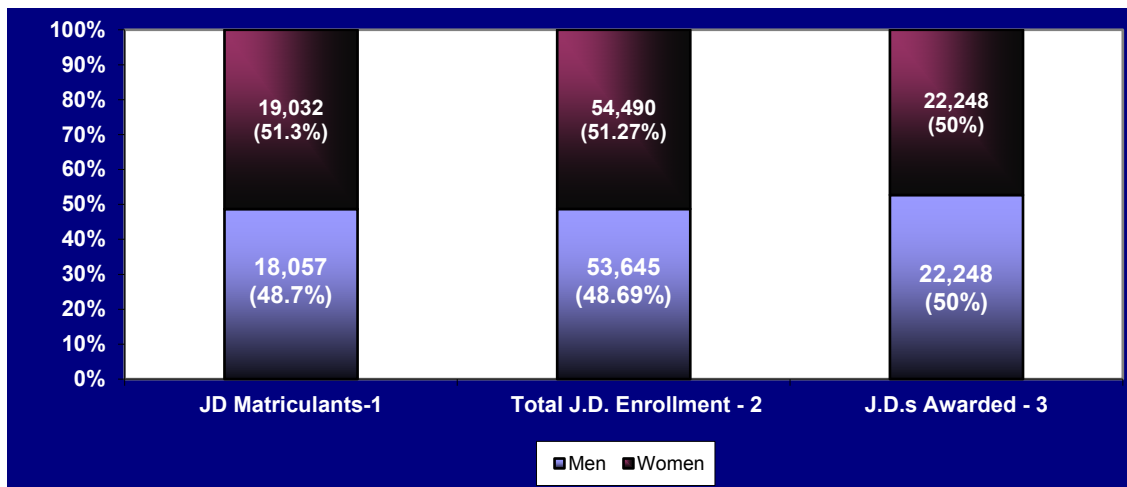
MCCA's 18th Annual General Counsel Survey: Breaking Through the Concrete Ceiling, One Woman at a Time. Minority Corporate Counsel Association, Winter 2017.
http://www.diversityandthebardigital.com/datab/winter_2017/MobilePagedReplica.action?pm=1&folio=8#pg 8

Law School Administration - Deans



National Law Journal, January 10, 2019. <https://www.law.com/nationallawjournal/2019/01/10/more-minority-women-ascend-to-law-dean-jobs/?fbclid=IwAR2-5ymSbZeehfFNK2t18G1LyXGcF5HgLhqHsbmvUV9H38jV-JMbINqv1MQ>

Women in Law Schools



¹2016 JD Matriculants by Gender & Race/Ethnicity, Fall 2016. American Bar Association Section of Legal Education and Admissions to the Bar.

²ABA Required Disclosures (Standard 509 Reports), American Bar Association Section of Legal Education and Admissions to the Bar. The ABA reported a total enrollment of 110,156 students as of Dec. 15, 2017. https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2017_509_enrollment_summary_report.authcheckdam.pdf

³Wisconsin Bar Association, October 17, 2018.

https://www.wisbar.org/newspublications/insidetrack/pages/article.aspx?volume=10&issue=18&articleid=26639&fbclid=IwAR0BRIWqg1hww5FvxXuTLBpCuz06jqnMj_bFrfrqBLRKcURHGtIpZOHNfec

Women on Law Reviews

“A random sample of the top 10 law reviews suggests that the number of women authors in 2017 is around 20%.”

<https://abovethelaw.com/2018/04/are-law-review-articles-a-waste-of-time/>

Women in the Judiciary

Representation of United States Federal Court Women Judges

Type of Court	Total # of Seats	Women	% of Women
United States Supreme Court	9	3	33.3%
Circuit Court of Appeals (Active) ¹	160 (active)	59	36.8% ²
Federal District Court Judges (Active) in the U.S. ³	570 (active)	194	34% ⁴

¹ U.S. Circuit and District Court Judges: Profile of Select Characteristics (R43426), McMillion, Barry J. U.S. Congressional Research Service. August 1, 2017. <https://fas.org/sgp/crs/misc/R43426.pdf>

² When considering the 19 vacancies that existed as of June 1, 2017, women were appointed to 33% of the 179 U.S. circuit court judgeships.

³ U.S. Circuit and District Court Judges: Profile of Select Characteristics (R43426), McMillion, Barry J. U.S. Congressional Research Service. August 1, 2017. <https://fas.org/sgp/crs/misc/R43426.pdf>

⁴ When considering the 103 vacancies that existed as of June 1, 2017, women were appointed to 29% of the 673 federal district court judgeships.

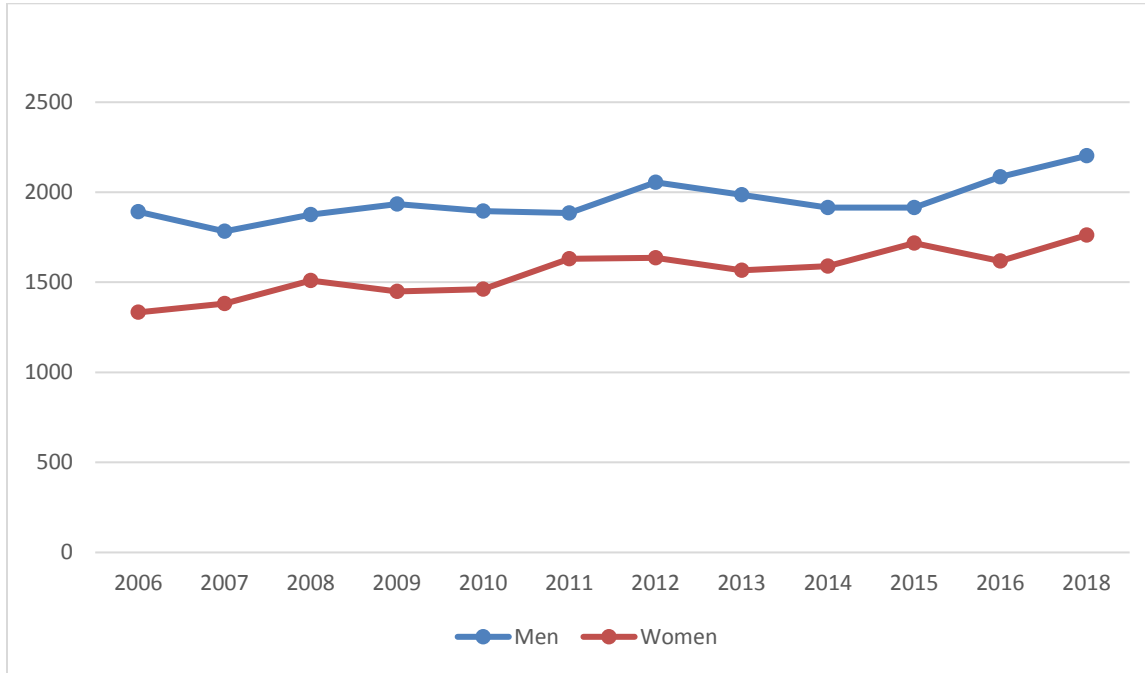
2016 Representation of United States State Court Women Judges

% White Women	% Women of Color
22	8

Gavel Gap (www.gavelgap.org)

Compensation

Weekly Salary Men vs. Women Lawyers



Women lawyers' weekly salary as a percentage of male lawyers' salary:

2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2018
70.5%	77.5%	80.5%	74.9%	77.1%	86.6%	79.6%	78.9%	83.0%	89.7%	77.6%	80%

2018 Bureau of Labor Statistics, *Median weekly earnings of full-time wage and salary workers by detailed occupation and sex*. <https://www.bls.gov/cps/cpsaat39.htm>

Women Equity Partners Compensation

Globally, male partners are paid 27% more than female.

Acritas Research, 2018. <https://www.youtube.com/watch?v=211rOLnA8h0&feature=youtu.be>

Women in the ABA through 2018

	Total	Women	% Women
ABA Lawyer Members	295,678	96,786	34.8%
Board of Governors	44	18	41.1%
Section/Division Chairs, 2017-2018 Bar Year	28	9	32.1%
Total Presidential Appointments, 2017-2018	750	385	51.3%
Committee Chair Appointments, 2017-2018	99	37	37.3%

Women Presidents of the ABA:

- Judy Perry Martinez, President-Elect (2019-2020)
- Hilarie Bass (2017-2018)
- Linda A. Klein (2016-2017)
- Paulette Brown (2015-2016)
- Laurel Bellows (2012-2013)
- Carolyn B. Lamm (2009-2010)
- Karen J. Mathis (2006-2007)
- Martha W. Barnett (2000-2001)
- Roberta Cooper Ramo (1995-1996)

Women Chairs of the House of Delegates:

- Deborah Enix- Ross (2016-)
- Patricia Lee Refo (2014-2016)
- Linda A. Klein (2010-2012)
- Laurel G. Bellows (2006-2008)
- Karen J. Mathis (2000-2002)
- Martha W. Barnett (1994-1996)

Secretaries

- Mary L. Smith (2017-)
- Mary T. Torres (2014-2017)
- Cara Lee T. Neville (2011-2014)
- Bernice B. Donald (2008-2011)
- Ellen F. Rosenblum (2002-2005)
- Donna C. Willard-Jones (1996-1999)

Treasurer

- Michelle A. Behnke (2017-)
- Alice E. Richmond (2008-2011)

First Women Members of the ABA:

- Mary B. Grossman; Cleveland, OH (1918)
- Mary Florence Lathrop; Denver, CO (1918)

For more information on women's advancement into leadership positions in the ABA, see the ABA Center for Diversity and Inclusion's *Goal III Report* at <https://www.americanbar.org/groups/diversity/resources/goal3-reports/>

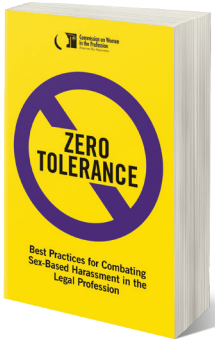
Women in Congress

23.4% of the U.S. House of Representatives and **25%** of the U.S. Senate are now female.

Catalyst. February 1, 2019. <https://www.catalyst.org/knowledge/women-government>

Want to improve these statistics for women lawyers? The Commission on Women in the Profession has resources for systemic change and personal empowerment. Turn the page to learn more!

American Bar Association - Commission on Women in the Profession
321 N. Clark Street, Chicago, IL 60654
Phone: 312-988-5715 • Email: abacwp1@americanbar.org • Website: www.americanbar.org/women



Zero Tolerance

Best Practices for Combating Sex-Based Harassment in the Legal Profession

A comprehensive update to the ABA Commission on Women in the Profession's previous sexual harassment material. The primary goal of this manual is to provide all too necessary tools to legal organizations and victims of harassment and bullying. It strives to enhance the common understanding of workplace abuse and expand it to include non-sexual abusive behavior, while introducing protections for individuals with a range of sexual orientations, genders, and racial and ethnic identities.

PRICE: \$49.95; ABA Members \$39.97 | PRODUCT CODE: 4920050

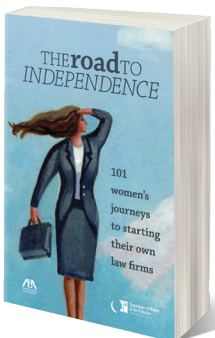


Grit, the Secret to Advancement

Stories of Successful Women Lawyers

This unique volume contains new research by the Commission on grit and growth mindset, two traits that have been shown to impact the success of women lawyers. The Commission's expanded research covered all legal work environments: solo practice; small, medium, and large firms; corporations; government; and nonprofits. The book also is a collection of 47 letters from a group of diverse women who have used these principles to advance in their careers, who share their advice, insight, and experience as female attorneys who have achieved success in the practice of law. You will learn from these women how to use grit and growth mindset to blaze your own trail to success.

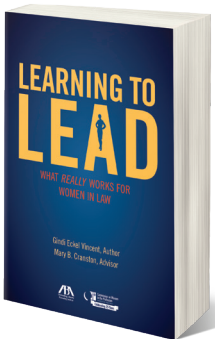
PRICE: \$34.95; ABA Members \$27.95 | PRODUCT CODE: 4920049



The Road to Independence

The Road to Independence is a collection of 101 letters from women who have taken the courageous and difficult step of creating a law firm of their own, either as a solo or with others. Focusing on the experiences of women-owned law firms, these women, in their personal voices, reiterate key themes: choosing a practice area true to their passion and high character and of controlling their destinies. Throughout this inspirational book, the reader will find business-savvy tidbits and practical tips for starting and growing a successful law practice in the words of the founders themselves. The letters compiled in this book reflect the voices of women who are happy with their practices, proud of their entrepreneurial spirit and business development skills, and eager to share their advice with others who may be emboldened to follow in their footsteps.

PRICE: \$39.95; ABA Members \$35.95 | PRODUCT CODE: 4920046



Learning to Lead

What *Really* Works for Women in Law

One of the Commission on Women in the Profession's highest priorities throughout the years has been to provide women lawyers with the information and tools they need to advance into leadership positions in all areas within the law. *Learning to Lead* provides a concise road map of the latest collective wisdom on leadership and applies those principles to women lawyers. It also features interviews with 11 women legal leaders who share their lessons learned and tips for success. Read this book, take action, and chart your course to leadership and success.

PRICE: \$24.95; ABA Members \$19.95 | PRODUCT CODE: 4920048

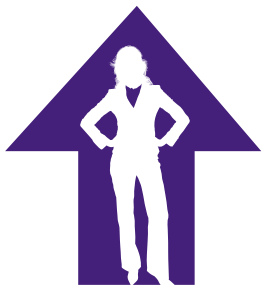


Women of Color Research Initiative—Strategies & Toolkit

The Women of Color Research Initiative

Following three cutting-edge research studies that analyzed the career trajectories and experiences of women of color and the prevalence of factors that support or undermine their retention and advancement, the Commission on Women in the Profession has developed the Women of Color Research Initiative Program Toolkit. This Toolkit—**available free of charge**

at ambar.org/WomenOfColor—guides you every step of the way and provides you with all the necessary tools to conduct a conference to inform on the research and strategies that will ensure the success of women of color. The Toolkit includes program agendas, customizable PowerPoint slides, video and written scenarios for discussion, program handouts, and a bibliography.



The Grit Project Program Toolkit

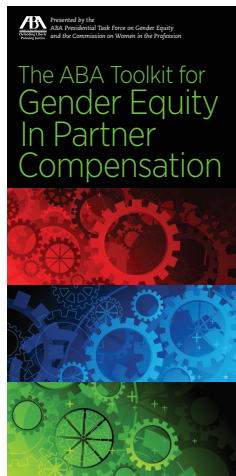
Using Grit and Growth Mindset to Advance Women in the Law

GRIT—perseverance and passion for long-term goals

GROWTH MINDSET—the view that one’s abilities can be developed

The Grit Project educates about the science behind grit and growth mindset and, through its online Toolkit, provides bar associations, law firms, corporate legal departments, and women attorneys with the resources to assess, teach, and learn these traits. Ultimately, these traits can be taught and leveraged to enhance

the quality and effectiveness of women lawyers and ensure competence, better communication between attorney and client, and zealous advocacy on behalf of the client. The Toolkit—**available free of charge** at ambar.org/grit—provides all the materials needed to present a successful program on grit, including program agendas, customizable PowerPoint slides, concept guides for presenters, a library of relevant scenarios for group exercises including several digital vignettes, program handouts, and a bibliography.



Gender Equity in Partner Compensation Toolkit

Working towards Fair Pay for Women Lawyers

June 10, 2018 marks the 55th anniversary of the passage of the Equal Pay Act, which prohibits wage discrimination on the basis of sex. Yet despite the Act, equally educated women and men in the same occupations with similar work experiences bring home very different paychecks. Women lawyers are not immune from income inequality. Women partners in law firms earn substantially less than their male colleagues even when they perform exactly the same work, have similar books of business, and make similar (or even greater) contributions to firm administration. Unequal compensation diminishes women’s prospects for success, and

unfairly undervalues the material contributions of women to their firms. Plus, pay inequities have a profound effect on a firm’s performance and profits. The Toolkit, **available free of charge** at americanbar.org/groups/diversity/women/gender_equity_task_force/toolkit_for_lawyer_compensation_achieving_gender_equity/ gives you all the materials you need to present a successful program, including: a program outline, customizable PowerPoint slides, questions for panelists, program handouts, and a bibliography. The Toolkit also provides text for use in your promotional efforts and suggested dates so that your program can coincide with national events to maximize publicity.



Zero Tolerance Program Toolkit

Combating Sex-Based Harassment in the Legal Profession

Thirty percent or more lawyers have experienced some form of sexual harassment and bullying in the workplace, and at law firms that number is likely higher. The persistence of sex-based harassment in the legal profession has profound effects on the physical and emotion well-being of female lawyers resulting in lowered job satisfaction and disillusion with the institution of law. As victims of sexual harassment come forward to the legal profession for support, what do the #MeToo and TIMES UP movements mean for lawyers who are themselves

the victims? The Toolkit, **available free of charge** at ambar.org/zerotolerance, examines the effects of sex-based harassment on associates and partners when they are attacked, sexualized and in other ways victimized on the job. The program also discusses how bullying can lead to prolonged cases of discrimination against victims. It explores the new *Zero Tolerance: Combating Sex-Based Harassment in the Legal Profession* manual so participants can learn how to build and enforce a successful anti-harassment policy statement.

August 2018

Diversity and Gender Equity in Legal Practice

Deborah L. Rhode

Follow this and additional works at: <https://scholarship.law.uc.edu/uclr>

Recommended Citation

Deborah L. Rhode, *Diversity and Gender Equity in Legal Practice*, 82 U. Cin. L. Rev. 871 (2018)
Available at: <https://scholarship.law.uc.edu/uclr/vol82/iss3/5>

This Article is brought to you for free and open access by University of Cincinnati College of Law Scholarship and Publications. It has been accepted for inclusion in University of Cincinnati Law Review by an authorized editor of University of Cincinnati College of Law Scholarship and Publications. For more information, please contact ronald.jones@uc.edu.

DIVERSITY AND GENDER EQUITY IN LEGAL PRACTICE

*Deborah L. Rhode**

I. INTRODUCTION

One irony of this nation's continuing struggle for diversity and gender equity in employment is that the profession leading the struggle has failed to set an example in its own workplaces. In principle, the American bar is deeply committed to equal opportunity and social justice. In practice, it lags behind other occupations in leveling the playing field. According to the American Bar Association (ABA), only two professions (the natural sciences and dentistry) have less diversity than law; medicine, accounting, academia, and others do considerably better.¹ Part of the problem lies in a lack of consensus on what exactly the problem is. What accounts for gender, racial, and ethnic inequalities in law firms? Who is responsible for addressing them? Which proposed solutions would be worth the cost?

These are not new questions. But recent economic and client pressures have made clear the need for better answers. Many of the obstacles to diversity and equity in legal practice are symptomatic of deeper structural problems. This Article focuses primarily on barriers involving gender, race, and ethnicity. Although these are not the only relevant dimensions of diversity, they provide a useful framework because they affect the greatest number of lawyers and have been subject to the most systematic research. However, much of the analysis below has broader application to improving the quality of professional life for other groups in legal settings.

The following discussion tracks conventional usage in referring to "women and minorities," but that should neither obscure the unique experience of women of color, nor mask differences within and across racial and ethnic groups. The point, rather, is to understand how different identities intersect to structure the professional experience.

* Ernest W. McFarland Professor of Law and Director of the Center on the Legal Profession, Stanford University. This article builds on the Robert S. Marx Lecture at the University of Cincinnati Law School, and draws on DEBORAH L. RHODE, *LAWYERS AS LEADERS* 129–53 (2013) [hereinafter RHODE, *LAWYERS AS LEADERS*] and Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 *GEO. J. LEGAL ETHICS* 1041 (2011) [hereinafter Rhode, *Platitudes to Priorities*]. The research assistance of Aaron Henson is gratefully acknowledged.

1. ELIZABETH CHAMBLISS, *MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION* ix (2004). For example, minorities account for about 25 percent of doctors and 21 percent of accountants, but only 11 percent of lawyers. Sara Eckel, *Seed Money; Skadden Gives \$10 Million to Boost Diversity*, *AM. LAWYER*, Sept. 1, 2008, at 20; *Legal Profession Statistics*, *AM. BAR ASS'N*, http://www.americanbar.org/resources_for_lawyers/profession_statistics.html (last visited Feb. 2, 2014).

II. THE GAP BETWEEN PRINCIPLE AND PRACTICE

A. Gender

Viewed historically, the American legal profession has made substantial progress in the struggle for gender equity. Until the late 1960s, women constituted no more than about three percent of the profession and were largely confined to low-prestige practice settings and specialties.² Now, about half of new lawyers are female; they enter law firms at about the same rate as men, and are fairly evenly distributed across substantive areas.³ In most surveys, women also express approximately the same overall level of satisfaction in practice as do men.⁴

Yet significant gender inequalities persist. Women constitute over a third of the profession but only about a fifth of law firm partners, general counsel of Fortune 500 corporations, and law school deans.⁵ Women are less likely to make partner even controlling for other factors, including law school grades and time spent out of the work force or on part-time schedules.⁶ Studies find that men are two to five times more likely to make partner than women.⁷ Even women who never take time out of the labor force and who work long hours have a lower chance of

2. Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163 (1988).

3. For new entrants, see Andrew Bruck & Andrew Canter, *Supply, Demand, and the Changing Economics of Large Law Firms*, 60 STAN. L. REV. 2087, 2103 (2008); Miguel R. Rivera, *A New Business and Cultural Paradigm for the Legal Profession*, 26 NO. 8 ACC DOCKET 66, 68 (2008). For specialties, see Fiona Kay & Elizabeth Gorman, *Women and the Legal Profession*, 4 ANN. REV. LAW & SOC. SCI. 299, 303 (2008).

4. See Kay & Gorman, *supra* note 3, at 316 (summarizing studies); JOHN P. HEINZ ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR 260 (2006).

5. ABA Comm'n on Women in the Profession, *A Current Glance at Women in Law*, AM. BAR ASS'N (Feb. 2013), http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_feb2013.authcheckdam.pdf. See also *MCCA Survey: Women General Counsel at Fortune 500 Companies Reaches New High*, METRO. CORPORATE COUNSEL (Aug. 8, 2012), <http://www.metrocorpocounsel.com/news/19992/mcca-survey-women-general-counsel-fortune-500-companies-reaches-new-high>; *Women in Law in the U.S.*, CATALYST (Mar. 11, 2013), <http://www.catalyst.org/knowledge/women-law-us> [hereinafter *Women in Law*].

6. Theresa M. Beiner, *Not All Lawyers Are Equal: Difficulties that Plague Women and Women of Color*, 58 SYRACUSE L. REV. 317, 328 (2008); Mary C. Noonan et al., *Is the Partnership Gap Closing for Women? Cohort Differences in the Sex Gap in Partnership Chances*, 37 SOC. SCI. RES. 156, 174-75 (2008).

7. A study of young lawyers by the American Bar Foundation (ABF) found that women attained equity partner status at about half the rate of men. See Ronit Dinovitzer et al., *After the JD II: Second Results from a National Study of Legal Careers*, AM. BAR FOUND. AND NALP FOUND. FOR LAW CAREER RES. AND EDUC. 63 (2009), <http://law.du.edu/documents/directory/publications/sterling/AJD2.pdf>. A study by the Federal Equal Employment Opportunity Commission found that male lawyers were five times as likely to become partners as their female counterparts. See *Diversity in Law Firms*, EQUAL EMP'T OPPORTUNITY COMM'N 29, 33 (2003), <http://www.eeoc.gov/eeoc/statistics/reports/index.cfm>.

partnership than similarly situated men.⁸ The situation is bleaker still at the level of equity partner. Precisely how bleak is impossible to say, because firms have resisted providing data and some use different definitions of equity partner in reporting diversity ratios and profits per partner. However, the best available evidence suggests that women constitute about fifteen to sixteen percent of equity partners.⁹ Women are also underrepresented in leadership positions such as chairs and members of management and compensation committees.¹⁰ Gender disparities are similarly apparent in compensation.¹¹ Those differences persist even after controlling for factors such as productivity and differences in equity/nonequity status.¹²

So too, although female lawyers report about the same overall career satisfaction as their male colleagues, women experience greater dissatisfaction with key dimensions of practice, such as level of responsibility, recognition for work, and chances for advancement.¹³ In attempting to account for this paradox, theorists suggest two explanations. The first involves values. Women may ascribe less significance to aspects of their work environment on which they are disadvantaged, such as compensation and promotion, than to other factors such as intellectual challenge, which evokes greater satisfaction among female attorneys.¹⁴ A second theory is that women have a lower sense of entitlement, in part because their reference group is other

8. Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 ANNALS AM. ACAD. POL. & SOC. SCI 130, 133–34 (2004); Kenneth G. Dau-Schmidt et al., *Men and Women of the Bar: The Impact of Gender on Legal Careers*, 16 MICH. J. GENDER & L. 49, 96–97, 100–02, 107, 111–12 (2009).

9. Leigh Jones, *Percentage of Women in NLJ 350 Law Firms Remains Low*, NAT'L L.J., June 12, 2013; Barbara M. Flom, *Report of the Seventh Annual NAWL National Survey on Retention and Promotion of Women in Law Firms*, NAT'L ASS'N OF WOMEN LAWYERS AND NAWL FOUND. (Oct. 2012), <http://www.nawl.org/d/do/60>.

10. *Women in Law*, *supra* note 5; María 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 (2008); Joan C. Williams & Veta T. Richardson, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, PROJECT FOR ATT'Y RETENTION AND MINORITY CORPORATE COUNSEL ASS'N 14 (July 2010), <http://worklifelaw.org/Publications/SameGlassCeiling.pdf>.

11. Karen Sloan, *ABA Issues Toolkit, Aiming To Eliminate Gender Pay Gap*, NAT'L L.J., Mar. 18, 2013 (women law firm partners earn about \$66,000 less than their male partners); Flom, *supra* note 9, at 15.

12. Marina Angel et al., *Statistical Evidence on the Gender Gap in Law Firm Partner Compensation* 3 (Temple U. Beasley Sch. of Law Legal Studies, Paper No. 2010-24), available at <http://ssrn.com/abstract=1674630>; Ronit Dinovitzer et al., *Differential Valuation of Women's Work: A New Look at the Gender Gap in Lawyer's Incomes*, 88 SOC. FORCES 819, 835–47 (2009).

13. Ronit Dinovitzer et al., *After the JD: First Results from a National Study of Legal Careers*, AM. BAR FOUND. AND NALP FOUND. FOR LAW CAREER RES. AND EDUC. 58 (2004), <http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf>; López, *supra* note 10, at 69; Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEX. J. WOMEN & L. 27, 47 (2004).

14. Kay & Gorman, *supra* note 3, at 317–18.

women or because they have “made peace with second best.”¹⁵ In either case, female lawyers’ dissatisfaction with certain aspects of practice, which is reflected in disproportionate rates of attrition, should be cause for concern in a profession committed to equal opportunity and diversity.

B. Race and Ethnicity

Progress for racial and ethnic minorities has also been substantial, but slower than progress for white women. In 1960, lawyers of color accounted for less than one percent of the profession.¹⁶ Although blacks, Latinos, Asian-Americans, and Native Americans now constitute about a third of the population and a fifth of law school graduates, they still only account for fewer than seven percent of law firm partners and nine percent of general counsels of Fortune 500 corporations.¹⁷ In major law firms, about half of lawyers of color leave within three years.¹⁸ Attrition is highest for women of color; about seventy-five percent depart by their fifth year and eighty percent before their seventh.¹⁹ Compensation in law firms is lower for lawyers of color with minority women at the bottom of the financial pecking order.²⁰

Satisfaction surveys reflect mixed and sometimes paradoxical results. In a large national study of young lawyers by the American Bar Foundation, blacks were happiest with their decision to become a lawyer and the substance of their legal work; whites and Asian-Americans were the happiest in their job settings.²¹ Among lawyers in large firms, the ABA’s Commission on Women in the Profession found stark differences among racial groups. White men graded their career satisfaction as A, white women and minority men graded theirs as B, and minority women hovered between B minus and C plus.²²

In short, the legal profession reflects substantial gender, racial, and

15. David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 *LAW & SOC. INQUIRY* 251, 280 (1989).

16. MARC GALNATER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 58–62 (1994).

17. *Women and Minorities in Law Firms by Race and Ethnicity—An Update*, NAT’L ASS’N FOR LAW PLACEMENT (Apr. 2013), <http://www.nalp.org/0413research>; *MCCA’s 13th Annual Minority General Counsel Survey*, DIVERSITY AND THE BAR, Sept.–Oct. 2012, at 30.

18. NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW*, 250 n.55 (2010).

19. Deepali Bagati, *Women of Color in U.S. Law Firms*, *CATALYST* 1–2 (2009), http://www.catalyst.org/system/files/Women_of_Color_in_U.S._Law_Firms.pdf.

20. ABA Comm’n on Women in the Profession, *Visible Invisibility: Women of Color in Law Firms*, AM. BAR ASS’N 28 (2006) [hereinafter *Visible Invisibility*].

21. Donovitzer et al., *supra* note 7, at 64.

22. LEVIT & LINDER, *supra* note 18, at 14.

ethnic differences in both subjective and objective measures of career achievement. But what accounts for those differences and how they can be addressed remain matters of dispute.

III. EXPLAINING THE GAP

A. Capabilities and Commitment

In a parody of diversity efforts during a celebrated British television series, “Yes Minister,” a stodgy white male civil servant explained the folly of such initiatives. By his logic, if women had the necessary commitment and capabilities, they would already be well-represented in leadership positions. Since they weren’t well-represented, they obviously lacked those qualifications. It should come as no surprise that similar views are common among law firm leaders. After all, those in charge of hiring, promotion, and compensation decisions are those who have benefitted from the current structure, and who have the greatest stake in believing in its fairness. Although many leaders are willing to concede the persistence of bias in society in general, they rarely see it in their own firms. Rather, they attribute racial, ethnic, and gender differences in lawyers’ career paths to differences in capabilities and commitment.²³

For lawyers of color, the most common explanation for underrepresentation is underperformance, measured by traditional merit standards. Minorities on average have lower law school grades than their white counterparts.²⁴ Because the vast majority of lawyers believe that grades and law school rank are important in hiring, racial disparities appear to be an unintended but inevitable consequence of the merit system.²⁵ One in-depth study of attitudes toward diversity found that the standard narrative in large firms ran something like this:

We understand that most big firms began in an era of overt discrimination. We regret this, and for many years have attempted to do something about it. We have tried a variety of things, and will continue

23. John M. Conley, *Tales of Diversity: Lawyers’ Narratives of Racial Equity in Private Firms*, 31 LAW & SOC. INQUIRY 831, 841–42, 851–52 (2006).

24. Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1755 (2006); Timothy T. Clydesdale, *A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age, and Related Gaps in Law School Performance and Bar Passage*, 29 LAW & SOC. INQUIRY 711, 740 (2004).

25. Around 80 percent of male partners and around 70 percent of female partners hold these views. *Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms*, MINORITY CORPORATE COUNSEL ASS’N 16 (2009) [hereinafter *Sustaining Pathways*], http://www.mcca.com/_data/global/images/Research/5298%20MCCA%20Pathways%20final%20version%202009.pdf.

to work very hard at the problem. However, it is very, very difficult to solve the problem without lowering our standards, which, of course, we can't do. All of this adds up to a metaphorical shrug.²⁶

In midsize firms, the narrative is much the same, with the added twist that they cannot compete with large firms in money or prestige in recruiting “qualified” lawyers of color.²⁷ In effect, firm leaders “claim to be trapped by a system that they have created and choose to maintain.”²⁸ Yet that system is highly imperfect in screening for talent; considerable research suggests that law firms grossly overestimate the effectiveness of credentials like grades and law school prestige in predicting performance.²⁹

Although concerns about merit surface for white women as well as racial and ethnic minorities, the “woman problem” is commonly explained in terms not of credentials but of commitment and client development. Because women continue to have disproportionate family responsibilities and are more likely to reduce their schedules or to take time out of the workplace than men, they are assumed to be less available, less dependable, and less worthy of extensive mentoring. In the ABA Commission on Women study, almost three-quarters of female lawyers reported that their career commitment had been questioned when they gave birth or adopted a child. Only nine percent of their white male colleagues and fifteen percent of minority male colleagues had faced similar challenges.³⁰ In another bar survey, although women and men reported working similar hours, over a quarter of male lawyers thought their female counterparts worked less and a fifth rated the number of hours these women worked as “fair to poor.”³¹ Women are also often presumed to be less adept in business development and in the self-promotional abilities that underlie it.³²

These attitudes may help to explain the relatively low priority that many law firm leaders attach to diversity and their relatively rosy assessment of efforts to enhance it. In a survey by the ABA Commission on Women, only twenty-seven percent of white men felt

26. Conley, *supra* note 23, at 841.

27. *Id.* at 844.

28. *Id.* at 850.

29. David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 526–27 (1996); James B. Rebitzer & Lowell J. Taylor, *Efficiency Wages and Employment Rents: The Employer-Size Wage Effect in the Job Market for Lawyers*, 13 J. LAB. ECON. 678, 690 (1995).

30. *Visible Invisibility*, *supra* note 20, at 33–34.

31. López, *supra* note 10, at 65.

32. Bagati, *supra* note 19, at 37; Tiffani N. Darden, *The Law Firm Caste System: Constructing a Bridge Between Workplace Equity Theory & the Institutional Analyses of Bias in Corporate Law Firms*, 30 BERKELEY J. EMP. & LAB. L. 85, 125 (2009); López, *supra* note 10, at 73.

strongly that it was important to increase diversity in law firms, compared with eighty-seven percent of women of color and sixty-one percent of white women.³³ In a survey by Catalyst, only eleven percent of white lawyers felt that diversity efforts were failing to address subtle racial bias, compared with almost half of women of color. Only fifteen percent of white men felt that diversity efforts were failing to address subtle gender bias, compared with half of women of color and forty percent of white women.³⁴

The research summarized below, however, suggests that many lawyers underestimate the impact of unconscious bias and overestimate the effectiveness of current responses. Those who are truly committed to a just and inclusive workplace need a better understanding of what gets in the way. This includes a deeper appreciation of how racial, ethnic, and gender stereotypes affect not just evaluations of performance but the performance itself, and the relative value attached to specific performance measures.

B. Racial, Ethnic, and Gender Stereotypes

Racial, ethnic, and gender stereotypes play a well-documented, often unconscious, 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 that even if they graduated from an elite law school, they are assumed to be beneficiaries of affirmative action rather than meritocratic selection.³⁵ Blacks who are assertive risk being viewed as angry or hostile.³⁶ Asian-Americans are saddled with the myths of the “model minority;” they are thought to be smart and hardworking, but also insufficiently assertive to command the confidence of clients and legal teams.³⁷ The special

33. *Visible Invisibility*, *supra* note 20, at 19.

34. Bagati, *supra* note 19, at 13.

35. MARIA CHÁVEZ & JOE R. FEAGIN, EVERYDAY INJUSTICE: LATINO PROFESSIONALS AND RACISM 72 (2011); Jill L. Cruz & Melinda S. Molina, *National Study on the Status of Latinas in the Legal Profession Few and Far Between: The Reality of Latina Lawyers*, 37 PEPP. L. REV. 971, 1010 (2010); Garner K. Weng, *Racial Bias in Law Practice*, CAL. MAG., Jan. 2003, 37–38; Lu-in Wang, *Race as Proxy: Situational Racism and Self-Fulfilling Stereotypes*, 53 DEPAUL L. RÉV. 1013, 1014 (2004).

36. *Visible Invisibility*, *supra* note 20, at 25; Weng, *supra* note 35, at 37–38.

37. Mona Mehta Stone, *Asian American Lawyers: Differences Abound*, in IILP REVIEW 2011: THE STATE OF DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION 76 (2011), available at <http://www.theiilp.com/Resources/Documents/IILPReview2011.pdf>; LeeAnn O’Neill, *Hitting the Legal Diversity Market Home: Minority Women Strike Out*, 3 AM. U. MOD. AM. 7 (2007); Bagati, *supra* note 19, at 37; *Visible Invisibility*, *supra* note 20, at 25; Sonia Ospina & Erica Foldy, *A Critical Review of Race and Ethnicity in the Leadership Literature: Surfacing Context, Power, and the Collective Dimensions of Leadership*, 20 LEADERSHIP Q. 876, 880 (2009).

stigma confronting women of color is apparent in the frequency with which they are still mistaken for secretaries, court reporters, or interpreters.³⁸

The result is that talented minorities lack the presumption of competence granted to white male counterparts; up and coming whites may be fast tracked based on promise, while minorities need to demonstrate performance.³⁹ Even outstanding capabilities of a leader of color may do little to dislodge traditional assumptions. Psychologists refer to this as the “flower blooming in winter” effect.⁴⁰ A classic example is the description Senator Joseph Biden offered of Barack Obama during the 2008 presidential campaign, as the “first mainstream African-American who is articulate and bright and clean and a nice-looking guy.”⁴¹ Although the exceptional lawyer can get a special boost, such praise does little to assist those aspiring to such roles.

Gender stereotypes also subject women to double standards and a double bind. Despite recent progress, women, like minorities, often fail to receive the presumption of competence enjoyed by white men.⁴² In national surveys, between a third and three-quarters of female lawyers believe that they are held to higher standards than their colleagues.⁴³ A recent study of performance evaluations finds some support for those perceptions; it reveals that similar descriptions of performance result in lower ratings for women.⁴⁴ Male achievements are more likely to be attributed to capabilities, and female achievements to external factors, a

38. *Visible Invisibility*, *supra* note 20, at 18; Cruz & Molina, *supra* note 35; O’Neill, *supra* note 37, at 8; Gladys García-López, “*Nunca Te Toman En Cuenta [They Never Take You Into Account]*”: *The Challenges of Inclusion and Strategies for Success of Chicana Attorneys*, 22 GENDER & SOC’Y 590, 601–03 (2008).

39. David A. Thomas, *The Truth About Mentoring Minorities: Race Matters*, HARV. BUS. REV., Mar.–Apr. 2001, at 99, 104.

40. ELLA L. J. EDMONDSON BELL & STELLA M. NKOMO, OUR SEPARATE WAYS: BLACK AND WHITE WOMEN AND THE STRUGGLE FOR PROFESSIONAL IDENTITY 145 (2001).

41. Lynette Clemetson, *The Racial Politics of Speaking Well*, N.Y. TIMES (Feb. 4, 2007), <http://www.nytimes.com/2007/02/04/weekinreview/04clemetson.html>.

42. For competence, see Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245, 2256 (2010); Cecilia L. Ridgeway & Paula England, *Sociological Approaches to Sex Discrimination in Employment*, in SEX DISCRIMINATION IN THE WORKPLACE 189, 195 (Faye J. Crosby et al. eds., 2007). For women’s need to work harder, see López, *supra* note 10, at 73. Even in experimental situations where male and female performance is objectively equal, women are held to higher standards, and their competence is rated lower. Martha Foschi, *Double Standards in the Evaluation of Men and Women*, 59 SOC. PSYCHOL. Q. 237 (1996). For the special pressures faced by women of color, see García-López, *supra* note 38, at 603–04.

43. Deborah L. Rhode & Joan C. Williams, *Legal Perspectives on Employment Discrimination*, in SEX DISCRIMINATION IN THE WORKPLACE 235, 245 (Faye J. Crosby et al. eds., 2007); *Sustaining Pathways*, *supra* note 25, at 32.

44. Monica Beirnat et al., *The Language of Performance Evaluations: Gender-Based Shifts in Content and Consistency of Judgment*, 3 SOC. PSYCHOL. & PERSONALITY SCI. 186 (2011).

pattern that social scientists describe as “he’s skilled, she’s lucky.”⁴⁵

Mothers, even those working full-time, are assumed to be less available and committed, an assumption not made about fathers.⁴⁶ 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 nine percent of their white male colleagues, and fifteen percent of minority male colleagues, had faced similar challenges.⁴⁷ 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.”⁴⁸

Women are also rated lower than men on qualities associated with leadership, such as assertiveness, competitiveness, and business development.⁴⁹ Even though women are more likely to use effective leadership styles, people more readily credit men with leadership ability and more readily accept men as leaders.⁵⁰ An overview of more than one hundred studies confirms that women are rated lower when they adopt authoritative, seemingly masculine styles, particularly when the evaluators are men, or when the woman’s role is one typically occupied by men.⁵¹ What is assertive in a man seems abrasive in a woman, and

45. Janet K. Swim & Lawrence J. Sanna, *He’s Skilled, She’s Lucky: A Meta-Analysis of Observers’ Attributions for Women’s and Men’s Successes and Failures*, 22 PERSONALITY & SOC. PSYCHOL. BULL. 507 (1996); Jeffrey H. Greenhaus & Saroj Parasuraman, *Job Performance Attributions and Career Advancement Prospects: An Examination of Gender and Race Effects*, 55 ORG. BEHAV. & HUM. DECISION PROCESSES 273, 276, 290 (1993).

46. Amy J. C. Cuddy et al., *When Professionals Become Mothers, Warmth Doesn’t Cut the Ice*, 60 J. SOC. ISSUES 701, 709 (2004); Kathleen Fuegen et al., *Mothers and Fathers in the Workplace: How Gender and Parental Status Influence Judgments of Job-Related Competence*, 60 J. SOC. ISSUES 737, 745 (2004).

47. *Visible Invisibility*, *supra* note 20, at 83. See also Reichman & Sterling, *supra* note 13, at 63–64.

48. SYLVIA ANN HEWLETT ET AL., *THE SPONSOR EFFECT: BREAKING THROUGH THE LAST GLASS CEILING* 24 (2011), available at <http://hbr.org/product/the-sponsor-effect-breaking-through-the-last-glass/an/10428-PDF-ENG>; MICHELE COLEMAN MAYES & KARA SOPHIA BAYSINGER, *COURAGEOUS COUNSEL: CONVERSATIONS WITH WOMEN GENERAL COUNSEL IN THE FORTUNE 500*, at 129 (2011) (quoting Dana Mayer).

49. Deborah L. Rhode & Barbara Kellerman, *Women and Leadership: The State of Play*, in *WOMEN AND LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE 7* (Barbara Kellerman & Deborah L. Rhode eds., 2007); *Women “Take Care,” Men “Take Charge.” Stereotyping of U.S. Business Leaders Exposed*, CATALYST (Oct. 19, 2005), <http://www.catalyst.org/knowledge/women-take-care-men-take-charge-stereotyping-us-business-leaders-exposed>; Linda L. Carli & Alice H. Eagly, *Overcoming Resistance to Women Leaders: The Importance of Leadership Styles*, in *WOMEN AND LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE 127, 127–29* (Barbara Keller & Deborah L. Rhode eds., 2007); Wald, *supra* note 42, at 2256.

50. Alice Eagly, *Female Leadership Advantage and Disadvantage: Resolving the Contradictions*, 31 PSYCHOL. WOMEN Q. 1, 5, 9 (2007); Carli & Eagly *supra* note 49, at 128–29; Laurie A. Rudman & Stephen E. Kilianski, *Implicit and Explicit Attitudes Toward Female Authority*, 26 PERSONALITY AND SOC. PSYCHOL. BULL. 1315 (2000).

51. D. Anthony Butterfield & James P. Grinnell, “Re-Viewing” *Gender, Leadership, 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.⁵²

Self-promotion that is acceptable in men is viewed as unattractive in women.⁵³ 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.⁵⁴ 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 “abrasive,” “strident,” and a “lightweight wacko.”⁵⁵ In commenting on those characterizations, a former aid noted, “She was serious, professional, and she held her ground against those who were not sympathetic to her position I don’t think that the failure to be ‘charming’ should be translated into a depiction of stridency.”⁵⁶ Hillary Clinton has been subject to even more vitriolic descriptions: “power-hungry,” “castrating,” “Hitlerian,” and “feminazi.”⁵⁷ During her presidential campaign, she coped with sales of a Clinton nutcracker, charges that she reminded men of a scolding mother or first wife, and

Managerial Behavior: Do Three Decades of Research Tell Us Anything?, in HANDBOOK OF GENDER AND WORK 223, 235 (Gary N. Powell ed., 1999); JEANETTE N. CLEVELAND ET AL., WOMEN AND MEN IN ORGANIZATIONS: SEX AND GENDER ISSUES AT WORK 106–07 (2000).

52. Alice H. Eagly & Steven J. Karau, *Role Congruity Theory of Prejudice Toward Female Leaders*, 109 PSYCH. REV. 574, 576 (2002); Alice H. Eagly, *Achieving Relational Authenticity in Leadership: Does Gender Matter?*, 16 LEADERSHIP Q. 459, 470 (2005); see generally *The Double-Bind Dilemma for Women in Leadership: Damned if You Do, Damned if You Don’t*, CATALYST (July 15, 2007), <http://www.catalyst.org/knowledge/double-bind-dilemma-women-leadership-damned-if-you-do-doomed-if-you-dont-0>; LINDA BABCOCK & SARA LASCHEVER, WOMEN DON’T ASK: THE HIGH COST OF AVOIDING NEGOTIATION—AND POSITIVE STRATEGIES FOR CHANGE 87–89 (2007); MAYES & BAYSINGER, *supra* note 48, at 131.

53. Carli & Eagly, *supra* note 49, at 130; Williams & Richardson, *supra* note 10, 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, 290 (Roderick M. Kramer & Margaret A. Neale eds., 1998).

54. Francis Flynn et al., *Too Tough Too Soon, Familiarity and the Backlash Effect 2011* (Stanford Business School, unpublished paper) (on file with author).

55. Rick Schmitt, *Prophet and Loss*, STANFORD MAG., Mar.–Apr. 2009, available at https://alumni.stanford.edu/get/page/magazine/article/?article_id=30885 (quoting Arthur Levitt); MICHAEL HIRSH, CAPITAL OFFENSE: HOW WASHINGTON’S WISE MEN TURNED AMERICA’S FUTURE OVER TO WALL STREET 1, 12 (2010) (quoting Robert Rubin and unnamed staffer).

56. Schmitt, *supra* note 55 (quoting Michael Greenberger) (internal quotation marks).

57. Katha Pollitt, *Hillary Rotten: Sexist Sticks and Stones*, in THIRTY WAYS OF LOOKING AT HILLARY: REFLECTIONS BY WOMEN WRITERS 16–18 (Susan Morrison ed., 2008).

hecklers with signs demanding “Iron my shirt.”⁵⁸

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.⁵⁹ For example, when lawyers assume that a 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. 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.⁶⁰ That, in turn, may make these lawyers reluctant to seek risky “stretch assignments” that would demonstrate outstanding capabilities. Biased assumptions about lawyers’ commitment or competence can also affect the allocation of work. The result is to prevent women and minorities from getting opportunities that would demonstrate or enhance their capabilities, which creates a cycle of self-fulfilling prophecies.⁶¹

C. In-Group Bias: Mentoring Sponsorship, Networks, and Assignments

A related set of obstacles involves in-group favoritism. Extensive research has documented 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.⁶² As a consequence, women and minorities face difficulty developing “social capital:” access to advice, support, sponsorship, desirable assignments, and new business opportunities.⁶³ In law firms, racial and ethnic minorities often report

58. Marie Cocco, *Misogyny I Won't Miss*, WASHINGTON POST, May 15, 2008, at A14; Kathleen Deveny, *Just Leave Your Mother Out of It*, NEWSWEEK, Mar. 17, 2008, at 32.

59. David L. Hamilton & Jim W. Sherman, *Stereotypes*, in HANDBOOK OF SOCIAL COGNITION 1–68 (Robert S. Wyer, Jr. & Thomas K. Srull eds., 1994). For confirmation bias generally, see PAUL BREST & LINDA HAMILTON KRIEGER, PROBLEM SOLVING, DECISION MAKING, AND PROFESSIONAL JUDGMENT: A GUIDE FOR POLICY MAKERS 277–89 (2010).

60. Robin J. Ely et al., *Taking Gender into Account: Theory and Design for Women's Leadership Development Programs*, 10 ACAD. MGMT. LEARNING & EDUC. 474, 477 (2011); Foschi, *supra* note 42; *Visible Invisibility*, *supra* note 20, at 27.

61. Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1234 (1995).

62. Williams & Richardson, *supra* note 10, at 49–50; Ridgeway & England, *supra* note 42, at 197; Marilyn B. Brewer & Rupert J. Brown, *Intergroup Relations*, in THE HANDBOOK OF SOCIAL PSYCHOLOGY 554 (Daniel T. Gilbert et al. eds., 1998); Susan T. Fiske, *Stereotyping, Prejudice, and Discrimination*, in THE HANDBOOK OF SOCIAL PSYCHOLOGY 357 (Daniel T. Gilbert et al. eds., 1998).

63. The term comes from Pierre Bourdieu, *The Forms of Capital*, in HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION 241, 248–49 (John G. Richardson ed., 1986). For

isolation and marginalization, while many white women similarly experience exclusion from “old boys” networks.⁶⁴ In ABA research, sixty-two percent of women of color and sixty percent of white women, but only four percent of white men, felt excluded from formal and informal networking opportunities; most women and minorities would have liked better mentoring.⁶⁵

Part of the problem lies in numbers. Many organizations lack sufficient women and minorities at senior levels who can assist others on the way up. The problem is not an absence of commitment. Recent research finds no evidence for the Queen Bee syndrome, in which women reportedly keep others from getting ahead.⁶⁶ In a Catalyst study, almost three-quarters of women who were actively engaged in mentoring were developing female colleagues, compared with thirty percent of men.⁶⁷ But the underrepresentation of women in leadership positions, and the time pressures for those juggling family responsibilities, leaves an insufficient pool of potential mentors. Although a growing number of organizations have formal mentoring programs, these do not always supply adequate training, rewards, or oversight to ensure effectiveness.⁶⁸ And these formal programs 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. 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.”⁶⁹ 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.⁷⁰ In cross racial mentoring

discussion in the legal context, see Cindy A. Schipani et al., *Pathways for Women to Obtain Positions of Organizational Leadership: The Significance of Mentoring and Networking*, 16 DUKE J. GENDER L. & POL’Y 89 (2009); see generally Fiona M. Kay & Jean E. Wallace, *Mentors as Social Capital: Gender, Mentors, and Career Rewards in Legal Practice*, 79 SOC. INQUIRY 418 (2009).

64. For minorities, see *Visible Invisibility*, *supra* note 20, at 18; Wilkins & Gulati, *supra* note 29, at 593. For women, see Reichman & Sterling, *supra* note 13, at 65; Timothy O’Brien, *Up the Down Staircase*, N.Y. TIMES, Mar. 19, 2006, at A4; Williams & Richardson, *supra* note 10, at 16–17.

65. *Visible Invisibility*, *supra* note 20, at 35; Jill Schachner Chanen, *Early Exits*, 92 A.B.A. J. 32, 36 (2006).

66. Sarah Dinolfo et al., *High Potentials in the Pipeline: Leaders Pay it Forward*, CATALYST 7 (2012), http://www.catalyst.org/system/files/High_Potentials_In_the_Pipeline_Leaders_Pay_It_Forward.pdf.

67. *Id.*

68. See Rhode, *Platitudes to Priorities*, *supra* note *, at 1071 nn.202–203, 1072 nn.204–206.

69. *Visible Invisibility*, *supra* note 20, at 12–17.

70. For the role of sexual concerns, see HEWLETT ET AL., *supra* note 48, at 35. For race-related

relationships, candid dialogue may be particularly difficult. Minority protégés may be reluctant to raise issues of bias for fear of seeming oversensitive. White mentors may be reluctant to offer candid feedback to minority associates for fear of seeming racist or of encouraging them to leave. The result is that midlevel lawyers of color 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.”⁷¹

Assumptions about commitment and capabilities also keep mentors from investing in female or minority subordinates who seem unlikely to stay or to succeed.⁷² 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 almost forget you’re Hispanic”⁷³ If a minority lawyer “just doesn’t fit in,” the assumption is that the problem lies with the individual not the institution.⁷⁴

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 leadership tracks, while relegating others to “workhorse” positions.⁷⁵ In the ABA Commission study, forty-four percent of women of color, thirty-nine percent of white women, and twenty-five percent of minority men reported being passed over for desirable assignments; only two percent of white men noted similar experiences.⁷⁶ Other research similarly finds that women and minorities are often left out of pitches for client business.⁷⁷

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

barriers in mentoring, see Monique R. Payne-Pikus et al., *Experiencing Discrimination: Race and Retention in America’s Largest Law Firms*, 44 LAW & SOC’Y REV. 553, 561 (2010).

71. *Visible Invisibility*, *supra* note 20, at 27. See also Thomas, *supra* note 39, at 105.

72. *Visible Invisibility*, *supra* note 20, at 15–16; Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008); Payne-Pikus et al., *supra* note 70, at 576.

73. Melinda S. Molina, *Los Puentes y Las Barreras: Latinas in the Legal Profession*, in IILP REVIEW 2011: THE STATE OF DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION 42, 46 (2011), available at <http://www.theiilp.com/Resources/Documents/IILPReview2011.pdf>.

74. Bagati, *supra* note 19, at 16; *Diversity in the Legal Profession: The Next Steps*, AM. BAR ASS’N 43 (Apr. 2010) [hereinafter *Next Steps*], http://www.americanbar.org/content/dam/aba/administrative/diversity/next_steps_2011.authcheckdam.pdf.

75. *Visible Invisibility*, *supra* note 20, at 21; Wilkins & Gulati, *supra* note 29, at 565–71.

76. *Visible Invisibility*, *supra* note 20, at 21.

77. Williams & Richardson, *supra* note 10, at 42.

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.⁷⁸ 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 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 diversity, which was practically nonexistent. In that moment I wanted to fling myself through the plate-glass window of that well-appointed conference room.⁷⁹

Race matching is particularly irritating when lawyers of color are assumed to have skills and affinities that they in fact lack. Examples include a Japanese-American asked to a meeting to solicit a Korean client and a Latina who was assigned documents in Spanish even after she explained that she wasn’t fluent in the language.⁸⁰ “Oh, you’ll be fine,” she was told, “look [anything unfamiliar] up in a dictionary.”⁸¹

D. 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 what hasn’t changed are the number of hours in the day. Technology that makes it possible for lawyers to work at home makes it increasingly impossible not to. Constant accessibility has become the new norm, with attorneys electronically tethered to their workplaces. The cost is disproportionately born by women, because as noted below, they are disproportionately likely to assume primary caretaking responsibilities.

The problem is compounded by the inadequacy of structural responses. Despite some efforts at accommodation, a wide gap persists between formal policies and actual practices concerning work/life conflicts. Although over ninety percent of American law firms report policies permitting part-time work, only about six percent of lawyers actually use them.⁸² Many lawyers believe, with good reason, that any

78. *Visible Invisibility*, *supra* note 20, at 21; O’Neill, *supra* note 37, at 10.

79. Linda A. Mabry, *The Token*, CAL. LAWYER, July 2006, at 76.

80. *Visible Invisibility*, *supra* note 20, at 26; David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity Is Good For Business”*: *The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1595–96 (2004).

81. *Visible Invisibility*, *supra* note 20, at 26 (internal quotation marks omitted).

82. *Most Lawyers Working Part-Time Are Women—Overall Number of Lawyers Working Part-Time Remains Small*, NAT’L ASS’N FOR LAW PLACEMENT 7 (Dec. 17, 2009),

reduction in hours or availability would jeopardize their careers.⁸³ Part-time status and time out of the workforce generally results in long-term losses in earnings as well as lower chances for partnership.⁸⁴ In one survey of University of Michigan law school graduates, just a single year out of the workforce correlated with a third lower chance of making partner and an earnings reduction of twenty-eight percent.⁸⁵ Stories of the “faster than a speeding bullet” maternity leave are all too common. One woman who drafted discovery responses while timing her contractions saw it as a sensible display of commitment. After all, if you are billing at six minute intervals, why waste one? Those who opt for a reduced 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.”⁸⁶

Although these are not only “women’s issues,” 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.⁸⁷ 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].”⁸⁸ In the American Bar Foundation’s Survey of young lawyers, 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.⁸⁹ In the University of Michigan study, only one percent of fathers had taken parental leave, compared with forty-two percent of

http://www.nalp.org/uploads/NALP_09PartTimePressRel.pdf.

83. Paula A. Patton, *Women Lawyers, Their Status, Influence, and Retention in the Legal Profession*, 11 WM. & MARY J. WOMEN & L. 173, 180 (2005). For lower partnership rates, see Beiner, *supra* note 6, at 326; Dau-Schmidt et al., *supra* note 8; Mona Harrington & Helen Hsi, *Women Lawyers and Obstacles to Leadership*, MIT WORKPLACE CTR. 28–29 (2007), http://web.mit.edu/workplacecenter/docs/law-report_4-07.pdf.

84. David Leonhardt, *Financial Careers Come at a Cost to Families*, N.Y. TIMES, May 26, 2009, at B1; Dau-Schmidt et al., *supra* note 8, 95–96; Beiner, *supra* note 6, at 326.

85. Noonan & Corcoran, *supra* note 8, at 146.

86. See Deborah L. Rhode, *Balanced Lives for Lawyers*, 70 FORDHAM L. REV. 2207, 2213 (2002). For stigma, see HOLLY ENGLISH, GENDER ON TRIAL: SEXUAL STEREOTYPE AND WORK/LIFE BALANCE IN THE LEGAL WORKFORCE 212 (2003) (reporting perceptions about slackers); López, *supra* note 10, at 95–96; Cynthia Thomas Calvert et al., *Reduced Hours, Full Success: Part-Time Partners in U.S. Law Firms*, PROJECT FOR ATT’Y RETENTION 17 (Sept. 2009), <http://amlawdaily.typepad.com/files/part-timepartner.pdf> (reporting that even among lawyers who had achieved partnership, about 40 percent feel stigma from taking part-time schedules).

87. Bureau of Labor Statistics, *American Time Use Survey—2010 Results*, U.S. DEP’T LABOR TABLE 1 (Jun. 22, 2011), http://www.bls.gov/news.release/archives/atus_06222011.pdf.

88. NANCY GERTNER, IN DEFENSE OF WOMEN: MEMOIRS OF AN UNREPENTANT ADVOCATE 246 (2011).

89. Dinovitzer et al., *supra* note 7, at 62.

women.⁹⁰ Part of the reason for those disparities is that the small number of fathers who opt to become full-time caretakers experience particular penalties. Male lawyers suffer even greater financial and promotion consequences than female colleagues who make the same choice.⁹¹

The problems are likely to increase. “Millennial” lawyers have expectations inconsistent with prevailing norms.⁹² Growing numbers of men as well as women are expressing a desire for better work–life balance, and examples of lawyers of all ages who insist on it are increasingly visible. A *New York Times* article titled, “He Breaks for Band Recitals,” reported that Barack Obama was willing to leave key meetings in order to get home for dinner by six or attend a school function of his daughters.⁹³

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 their 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.⁹⁴

Yet the problems are not as insurmountable as is often assumed. The evidence available does not indicate substantial resistance among clients to reduced schedules. They care about responsiveness, and part-time lawyers generally appear able to provide it.⁹⁵ 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.⁹⁶ Accounting, which is also a service profession, and 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.⁹⁷ 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

90. Noonan & Corcoran, *supra* note 8, at 137.

91. Dau-Schmidt et al., *supra* note 8, at 112–13; LEVIT & LINDER, *supra* note 18, at 12–13.

92. Virginia Grant & Marci M. Krufka, *The Young and the Restless*, L. PRACTICE, July–Aug. 2004, at 48; Galanter & Henderson, *supra* note 72, at 1922–23.

93. Sheryl Gay Stolberg, *He Breaks for Band Recitals*, N.Y. TIMES (Feb. 12, 2010), <http://www.nytimes.com/2010/02/14/fashion/14dad.html>.

94. Galanter & Henderson, *supra* note 72, at 1921.

95. Calvert et al., *supra* note 86, at 13, 22.

96. *Id.* at 9, 13, 21.

97. Deloitte and Touche has been a leader. See Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 493 (2001).

relationships.⁹⁸ Although 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 lives and to ensure that those who temporarily step out of the workforce or reduce their workload are not permanently derailed by the decision.

E. Backlash

A final obstacle to diversity and gender equity initiatives involves backlash; the concern is that addressing these issues might add more to the problem than the solution. Firm leaders who appear to support “special” treatment of women and minorities also have to worry about resentment among their white male counterparts. In their view, too much “reverse discrimination” causes backlash, and “stretch hires of minorities who are not qualified sometimes does much to undermine . . . acceptance of diversity and inclusion.”⁹⁹ As one white male lawyer put it, “taking opportunities . . . from those with merit and giving [them] . . . to people 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 color blind and meritocratic society.”¹⁰⁰ In a letter to the editor of the *National Law Journal*, a self-described “young, white straight male attorney, who also happens to be politically progressive” similarly protested employment termination decisions partly attributable to “meeting an important client’s newly asserted diversity demands.”¹⁰¹ From his perspective, “surely firing people even partially on the basis of an immutable characteristic is as unjust when done in the name of increasing diversity as it is when done to maintain homogeneity.”¹⁰² Many white lawyers appear to agree. In one ABA survey, only forty-two percent supported affirmative action.

By contrast, ninety-two percent of blacks expressed support.¹⁰³ And a strong case can be made that the insistence on color blindness comes generations too early and centuries too late. As David Wilkins argues, diversity initiatives remain necessary to “detect and correct the myriad subtle, but nevertheless pervasive, ways that . . . current practices

98. LEVIT & LINDER, *supra* note 18, at 170; Calvert et al., *supra* note 86, at 10–12.

99. *Sustaining Pathways*, *supra* note 25, at 25.

100. *Id.* at 15.

101. Ben Martin, *Letter to the Editor*, NAT’L L.J., Nov. 6, 2006.

102. *Id.*

103. Wendell Lagrand, *Getting There*, 85 A.B.A. J. 54 (1999).

differentially disadvantage certain [groups based on color].”¹⁰⁴

IV. 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. Close to fifty years experience with civil rights legislation reveals almost no final judgments of discrimination involving law firms.¹⁰⁵ 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.¹⁰⁶ Yet as the preceding discussion suggested, many disadvantages for women and minorities do not involve such overtly discriminatory treatment.

Nor is it often possible for individuals to know or to prove whether they have been subject to bias, given the subjectivity of evaluation standards. Evidentiary barriers are often insurmountable, both because lawyers generally are smart enough to avoid creating paper trails of bias and because colleagues with corroborating evidence are reluctant to provide it for fear of jeopardizing their own positions.¹⁰⁷ 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.¹⁰⁸ Many women and minorities do not want to seem “too aggressive” or “confrontational,” to look like a “bitch,” or to be typecast as an “angry black.”¹⁰⁹ Lawyers who do express concerns are often advised to “let

104. Wilkins, *supra* note 80, at 1572–73.

105. See Eyana J. Smith, *Employment Discrimination in the Firm: Does the Legal System Provide Remedies for Women and Minority Members of the Bar?*, 6 U. PA. J. LAB. & EMP. L. 789 (2004).

106. Title VII of the federal Civil Rights Act prohibits employment discrimination based on race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1) (2012). For an overview, see KATHERINE T. BARTLETT ET AL., *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* 89 (6th ed. 2013).

107. Rhode & Williams, *supra* note 43, at 243; *Riordan v. Kempiners*, 831 F.2d 690, 697 (7th Cir. 1987).

108. The problem is true of employment discrimination litigation generally. See Laura Beth Nielsen & Robert L. Nelson, *Rights Realized? An Empirical Analysis of Employment Discrimination Litigation as a Claiming System*, 2005 WIS. L. REV. 663 (2005); Linda Hamilton Krieger, *The Watched Variable Improves: On Eliminating Sex Discrimination in Employment*, in *SEX DISCRIMINATION IN THE WORKPLACE* 295, 296, 309–10 (Faye J. Crosby et al. eds., 2007).

109. *Visible Invisibility*, *supra* note 20, at 20 (“aggressive,” “bitch”); Williams & Richardson, *supra* note 10, at 38 (“confrontational”); Reichman & Sterling, *supra* note 13, at 69 (“bitch”); Cruz & Molina, *supra* note 35, at 1019 (“rock the boat”); Marcia Coyle,

bygones be bygones,” or to “move on.”¹¹⁰ 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.¹¹¹ The message in many law firm cultures is that “[c]omplaining never gets you anywhere . . . because then you’re [perceived as] not being a team player”¹¹²

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.”¹¹³ In an equally notorious sex discrimination suit, Philadelphia’s Wolf, Block, Schorr & Solis-Cohen denied a promotion to Nancy Ezold, whom firm leaders believed lacked both analytic abilities and other characteristics that might compensate for that deficiency. According to one partner, “It’s like the ugly girl. Everybody says she’s got a great personality. It turns out [that Ezold] didn’t even have a great personality.”¹¹⁴ What she did have, however, was 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, by contrast, about eleven percent of partners at large firms were female.¹¹⁵ 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 concerns at least as serious as those raised about her. Characterizations of some of those men included: “wish-washy and immature,” “[m]ore sizzle than steak,” and “[n]ot real smart.”¹¹⁶ The record also revealed gender stereotypes, such as some partners’ belief that Ezold was too

Black Lawyer’s Life, Suit Told By A White Author; New Book By a WSJ Editor Tells of a Harvard Law Grad Who Sued Katten Muchin, NAT’L L.J., Jan. 11, 1999, at A14 (quoting Mungin) (“angry black”).

110. For the advice, see Robert Kolker, *The Gay Flannel Suit*, N.Y. MAG. (Oct. 24, 2007), <http://nymag.com/news/features/28515/>; see also *Visible Invisibility*, *supra* note 20, at 21. For negative consequences following complaints about compensation, see Williams & Richardson, *supra* note 10, at 38.

111. NAT’L ASS’N FOR LAW PLACEMENT, *HOW ASSOCIATE EVALUATIONS MEASURE UP: A NATIONAL STUDY OF ASSOCIATE PERFORMANCE ASSESSMENTS* 74 (2006).

112. *Visible Invisibility*, *supra* note 20, at 27 (internal quotation marks omitted).

113. Kolker, *supra* note 110.

114. Deborah L. Rhode, *What’s Sex Got to Do With It: Diversity in the Legal Profession*, in *LEGAL ETHICS STORIES* 233, 246 (Deborah L. Rhode & David Luban eds., 2006) (quoting Charles Kopp).

115. *Id.* at 235.

116. *Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 751 F. Supp. 1175, 1184–87 (E.D. Pa. 1990), *rev’d*, 983 F.2d 509 (3d Cir. 1992), *cert. denied*, 510 U.S. 826 (1993).

“assertive” and too preoccupied with “women’s issues.”¹¹⁷ 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.¹¹⁸ 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 matter, one firm leader concluded: “This may have been a case that wasn’t worth winning.”¹¹⁹

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: “[t]he law does not mandate ‘work-life balance.’”¹²⁰ In an organization “which explicitly makes all-out dedication its expectation, making a decision that preferences family over work comes with consequences.”¹²¹ 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 my work, with no questions or discussion It was as if I had fallen off the planet.”¹²²

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.”¹²³ Yet while law has supplied inadequate pressures for diversity initiatives, other considerations are pushing 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.

117. *Id.* at 1188.

118. *Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 983 F.2d 509, 534 (3d Cir. 1992). *See also* Rhode, *supra* note 114, at 243.

119. Rhode, *supra* note 114, at 245 (quoting Robert Segal).

120. *Equal Emp’t Opportunity Comm’n v. Bloomberg L.P.*, 778 F. Supp. 2d 458, 485 (S.D.N.Y. 2011).

121. *Id.*

122. Amelia J. Uelmen, *The Evils of “Elasticity”: Reflections on the Rhetoric of Professionalism and the Part-Time Paradox in Large Firm Practice*, 33 *FORDHAM URB. L.J.* 81, 83 (2005).

123. Sturm, *supra* note 97, at 476.

V. THE CASE FOR DIVERSITY

Beginning in the late 1980s, bar leaders launched a series of initiatives designed to increase minority representation and influence in the profession. Drawing on arguments gaining influence in the corporate sector, they stressed the business case for diversity. As the Minority Corporate Counsel Association puts it: “law firms commit to becoming diverse because their future, market share, retention of talent, continuation of existing relationships with corporate clients, and performance depend on understanding and anticipating the needs of an increasingly diverse workforce and marketplace.”¹²⁴

A 2010 report by the ABA Presidential Initiative Commission on Diversity similarly emphasized that “[i]t makes good business sense to hire lawyers who reflect the diversity of citizens, clients, and customers from around the globe. Indeed, corporate clients increasingly require lawyer diversity and will take their business elsewhere if it is not provided.”¹²⁵

Advocates of gender equity take a similar approach. A widely recognized 2009 *Manifesto on Women in Law* elaborates the business case. 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 in dialogues and decision making.¹²⁶

In support of these claims, advocates rely on a variety of evidence. For example, some social science research suggests that diverse viewpoints encourage critical thinking and creative problem solving; they expand the range of alternatives considered and counteract “group think.”¹²⁷ Some studies also find a correlation between diversity and

124. Wilkins, *supra* note 80, at 1570 n.101 (quoting Scott Mitchell) (internal quotation marks omitted).

125. *Next Steps*, *supra* note 74, at 9.

126. *The Austin Manifesto*, CTR. FOR WOMEN IN LAW (May 1, 2009), <http://www.utexas.edu/law/centers/cwil/the-austin-manifesto/>.

127. Cedric Herring, *Does Diversity Pay?: Race, Gender, and the Business Case for Diversity*, 74

profitability in law firms as well as in Fortune 500 companies.¹²⁸ Other research has drawn on signaling theory to argue that diversity conveys a credible commitment to equal opportunity and responsiveness to diverse stakeholders.¹²⁹

It is, however, important not to overstate the business case for diversity. Not all social science research finds strong performance benefits from diversity.¹³⁰ If poorly managed, it can heighten conflict, arid communication problems, or cause outsiders to suppress divergent views.¹³¹ Nor do all studies find a correlation between diversity and profitability.¹³² In those that do, it is unclear which way causation runs. Financial success may sometimes do more to enhance diversity than the converse; organizations that are on strong financial footing are better able to invest in diversity initiatives and sound employment practices such as mentoring and work/life accommodations that promote both diversity and profitability.¹³³

There are, however, other strong reasons to support diversity initiatives. As the ABA Presidential Initiative Commission noted, increasing numbers of corporate clients are making diversity a priority 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.”¹³⁴ A growing number impose specific requirements, including reports on diversity within the firm and in the teams working on their matters, as well as

AM. SOC. REV. 208, 220 (2009); Elizabeth Mannix & Margaret A. Neale, *What Differences Make a Difference? The Promise and Reality of Diverse Teams on Organizations*, 6 PSYCHOL. SCI. PUB. INT. 31, 35 (2005); Douglas E. Brayley & Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 J. LEGAL PROF. 1, 13 (2009).

128. See Brayley & Nguyen, *supra* note 127, at 13–14; David A. Carter et al., *Corporate Governance, Board Diversity, and Firm Value*, 38 FIN. REV. 33, 51 (2003). For a review of this evidence and its methodological limitations, see Deborah L. Rhode & Amanda K. Packel, *Diversity on Corporate Boards: How Much Difference Does Difference Make?* (Rock Ctr. for Corp. Governance, Working Paper No. 89, 2010).

129. Lissa Lamkin Broome & Kimberly D. Krawiec, *Signaling Through Board Diversity: Is Anyone Listening?*, 77 U. CIN. L. REV. 431, 446–48 (2008).

130. See studies discussed in Rhode & Packel, *supra* note 128.

131. See studies discussed in Brayley & Nguyen, *supra* note 127; Frank Dobbin & Jiwook Jung, *Corporate Board Gender Diversity and Stock Performance: The Competence Gap or Institutional Investor Bias?*, 89 N.C. L. REV. 809 (2011); Jonathan S. Leonard et al., *Do Birds of a Feather Shop Together? The Effects on Performance of Employees' Similarity with One Another and with Customers*, 25 J. ORG. BEHAV. 731 (2004); Wilkins, *supra* note 80, at 1588–90.

132. See studies discussed in Rhode & Packel, *supra* note 128; Dobbin & Jung, *supra* note 131.

133. Brayley & Nyugen, *supra* note 127, at 34; Kathleen A. Farrell & Philip L. Hersch, *Additions to Corporate Boards: The Effect of Gender*, 11 J. CORP. FIN. 85 (2005).

134. *A Call to Action: Diversity in the Legal Profession Commitment Statement*, MINORITY CORP. COUNSEL ASS'N (Oct. 2004), <http://www.acc.com/vl/public/Article/loader.cfm?csModule=security/getfile&pageid=16074>.

relevant firm policies and initiatives.¹³⁵ Wal-Mart, which has been the most public and detailed in its demands, specifies that firms must have flexible time policies and include as candidates for relationship partner for the company 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.¹³⁶ The Gap also inquires into flexible time policies and sets out expectations for improvements with firms that fail to meet its goals.¹³⁷ Microsoft provides incentives for firms to hit its diversity targets.¹³⁸

Again, it is important not to overstate the reach of these initiatives. Almost no research is available to assess the impact of these policies, to determine how widely they are shared, or to ascertain how often companies that have pledged to reduce or end representation in appropriate cases have actually done so. The only national survey on point, conducted in 2007, did not find that diversity was one of the most important factors in general counsels' choice of outside law firms, and it is unclear how much has changed in the intervening years.¹³⁹ 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.

Moreover, there are other benefits of diversity initiatives. As noted earlier, some policies, such as those involving work–family accommodations, make business sense. So does fostering diverse perspectives when any resulting conflict can be effectively managed. In addition, as the discussion below suggests, many practices that would improve conditions for women and lawyers of color serve broader organizational interests. Better mentoring programs, more equitable compensation and work assignment, and greater accountability of supervising attorneys are all likely to have long-term payoffs, however difficult to quantify with precision. Skeptics of the business case for diversity often proceed as if the business case for the current model is

135. Christopher J. Whelan & Neta Ziv, *Privatizing Professionalism: Client Control of Lawyers' Ethics*, 80 *FORDHAM L. REV.* 2577 (2012).

136. *Id.* at 2597–2600; Clare Tower Putnam, Comment, *When Can a Law Firm Discriminate Among Its Own Employees to Meet a Client's Request? Reflections on the ACC's Call to Action*, 9 *U. PA. J. LAB. & EMP. L.* 657, 660 (2007); Karen Donovan, *Pushed by Clients, Law Firms Step Up to Diversity Efforts*, *N.Y. TIMES* (July 21, 2006), <http://www.nytimes.com/2006/07/21/business/21legal.html>.

137. *Diversity Business Matters: 2011 Corporate Programs Supporting Business for Diverse Outside Counsel*, *CAL. MINORITY COUNSEL PROGRAM* 18 (Mar. 2011), http://c.ymcdn.com/sites/www.cmcp.org/resource/resmgr/files/diversity_business_matters.pdf.

138. Melanie Lasoff Levs, *Carrot Money to Diversify*, *DIVERSITY & THE BAR*, Sept.–Oct. 2008, at 59.

139. Mary Swanton, *18th Annual Survey of General Counsel: Survey Snapshots*, *INSIDECOUNSEL*, July 2007, at 55.

self-evident. Few experts on law firm management agree.¹⁴⁰

The fact that data is lacking on many of these benefits is a reason to avoid exaggerating their significance, but not to dismiss their relevance. In a world in which the talent pool is half women and one-fifth lawyers of color, it is reasonable to assume that firms will suffer some competitive disadvantage if they cannot effectively recruit and retain these groups. Part of the reason that such disadvantages have been hard to quantify is that comparative data on diversity traditionally have been hard to come by. Now, with the emergence of more complete and accessible databases, job candidates and clients who care about racial, ethnic, and gender equity can make more informed decisions.¹⁴¹ Their decisions are likely to be significant, particularly if diversity is at least a potential tie breaker in today's increasingly competitive legal market.

The question then becomes how organizations can help institutionalize diversity and build cultures of inclusiveness. And equally important, what can women and minorities do to enhance their own career options?

VI. STRATEGIES FOR INDIVIDUALS

To improve their chances for success, women and minorities should be clear about their goals, seek challenging assignments, solicit frequent feedback, develop mentoring relationships, and cultivate a reputation for effectiveness. Succeeding in those tasks also requires attention to unconscious biases and exclusionary networks that can waylay careers.

So, for example, aspiring female lawyers 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 "with which men are comfortable . . ."¹⁴² 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 women inhabit, and it is not just men who find overly authoritative or self-promoting styles off putting. To maximize effectiveness, women need ways of projecting a decisive

140. For a sampling of criticism, see Williams & Richardson, *supra* note 10, at 51–55.

141. See, e.g., BUILDING A BETTER LEGAL PROFESSION, <http://www.betterlegalprofession.org/index.php/php> (making large firms' relative performance on diversity and other measures readily available online) (last visited May 8, 2014).

142. *Women in U.S. Corporate Leadership: 2003*, CATALYST 13 (2003), <http://www.catalyst.org/knowledge/women-us-corporate-leadership-2003>; ELEANOR CLIFT & TOM BRAZAITIS, MADAM PRESIDENT: SHATTERING THE LAST GLASS CEILING 321, 324 (2000).

and forceful manner without seeming arrogant or abrasive. Experts suggest being “relentlessly pleasant” without backing down.¹⁴³ 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.¹⁴⁴ Successful lawyers 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 a lovely smile and should use it often.”¹⁴⁵ 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. Leadership programs designed particularly for women or minorities provide especially supportive settings for addressing their special challenges.¹⁴⁶ Profiles of successful leaders can also provide instructive examples of the personal initiative that opens professional opportunities. These lawyers did not wait for the phone to ring. Michele Mayes, one of the nation’s most prominent African-American female 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 a job like his.”¹⁴⁷ After the shock wore off, he worked up a list of the skills and experiences that 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.¹⁴⁸ 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,

143. LINDA BABCOCK & SARA LASCHEVER, *ASK FOR IT: HOW WOMEN CAN USE THE POWER OF NEGOTIATION TO GET WHAT THEY REALLY WANT* 253 (2008).

144. *Id.* at 252–62.

145. JOAN BISKUPIC, *SANDRA DAY O’CONNOR: HOW THE FIRST WOMAN ON THE SUPREME COURT BECAME ITS MOST INFLUENTIAL JUSTICE* 56 (2005) (quoting Benie Wynn) (internal quotation marks omitted).

146. Ely et al., *supra* note 60; Erin White, *Female Training Classes Flourish*, WALL ST. J. (Sept. 25, 2006, 12:01 AM), <http://online.wsj.com/news/articles/SB115914673783772716>. The Leadership Council on Legal Diversity also offers a fellowship program for minorities on the leadership track.

147. MAYES & BAYSINGER, *supra* note 48, at 82.

148. *Id.* at 69.

[with] no operations experience . . . [w]alking into [a] warehouse the first day with all the truck drivers”¹⁴⁹ Her success in that role was what helped put her in the candidate pool for general counsel.

Setting priorities and managing time are also critical leadership skills. Establishing boundaries, delegating domestic tasks, and giving up on perfection are essential for those with substantial caretaking commitments. What lawyers should not sacrifice is time spent developing relationships with influential mentors.¹⁵⁰ To forge those strategic relationships, lawyers need to recognize that those from whom they seek assistance are under similar time pressures. The best mentoring generally goes to the best mentees: those 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.

VII. STRATEGIES FOR ORGANIZATIONS

The most important factor in ensuring equal access to professional opportunities is a commitment to that objective, which is reflected in organizational policies, priorities, and reward structures.¹⁵¹ That commitment needs to come from the top. An 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 generally involve task forces or committees with diverse and influential members who have credibility with their colleagues and a stake in the results.¹⁵² 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-

149. *Id.* at 77.

150. Susan A. Berson, *The Rules (For Women): Steps May Be Unspoken But They Are Necessary, Successful Partners Say*, 98 A.B.A. J. 28 (2012); Linda Bray Chanow & Lauren Stiller Rikleen, *Power in Law: Lessons from the 2011 Women’s Power Summit on Law and Leadership*, CTR. FOR WOMEN IN LAW 27, 32 (Jan. 2012), http://www.utexas.edu/law/wp/wp-content/uploads/centers/cwil/Summit_White_Paper-FINAL.pdf.

151. Frank Dobbin et al., *Diversity Management in Corporate America*, 6 CONTEXTS 21 (2007); CATALYST, ADVANCING WOMEN IN BUSINESS 6, 12–13 (1998); CATALYST, WOMEN OF COLOR IN CORPORATE MANAGEMENT: A STATISTICAL PICTURE 69 (1998).

152. Frank Dobbin & Alexandra Kalev, *The Architecture of Inclusion: Evidence from Corporate Diversity Programs*, 30 HARV. J.L. & GENDER 279, 283 (2007); Jeanine Prime et al., *Strategy Matters: Evaluating Company Approaches for Creating Inclusive Workplaces*, CATALYST 6 (May 15, 2010), <http://www.catalyst.org/knowledge/strategy-matters-evaluating-company-approaches-creating-inclusive-workplaces>; Beiner, *supra* note 6, at 333.

assessment should be a critical part of all diversity initiatives.¹⁵³ 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.¹⁵⁴

Whatever oversight structure an employer chooses, a central priority should be 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 bottom-up evaluation structures.¹⁵⁵ 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.¹⁵⁶ However, little is known about what has helped firms deal with powerful partners who rate poorly on 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 as well as groups such as the Leadership Counsel on Legal Diversity have initiatives to promote such collaboration.

Some research is available on specific strategies 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 experts who have studied its effectiveness are

153. *Next Steps*, *supra* note 74, at 28.

154. Emilio J. Castilla, *Gender, Race, and Meritocracy in Organizational Careers*, 113 AM. J. SOC. 1479, 1485 (2008); Stephen Benard et al., *Cognitive Bias and the Motherhood Penalty*, 59 HASTINGS L.J. 1359, 1381 (2008).

155. Bagati, *supra* note 19, at 49; Rhode & Kellerman, *supra* note 49, at 27; Ridgeway & England, *supra* note 42, at 202; Ely et al., *supra* note 60, at 481; Joanna Barsh & Lareina Yee, *Unlocking the Full Potential of Women at Work*, WALL ST. J., at 11 (Apr. 30, 2012), <http://online.wsj.com/public/resources/documents/womenreportnew.pdf>.

156. Dobbin & Kalev, *supra* note 152, at 293–94; Dobbin et al., *supra* note 151, at 23–24.

even less enthusiastic.¹⁵⁷ In a large-scale review of diversity initiatives across multiple industries, training programs did not significantly increase the representation or advancement of targeted groups.¹⁵⁸ Part of the problem is that such programs typically focus only on individual behaviors not institutional problems; they also provide no incentives to implement recommended practices, and sometimes provoke backlash among involuntary participants.¹⁵⁹

Another common strategy is networks and affinity groups for women and minorities. Almost all large firms report women's initiatives that include networking.¹⁶⁰ 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.¹⁶¹ Affinity groups for women of color can be especially important in reducing participants' sense of isolation. By bringing potential leaders together around common interests, these networks can also forge coalitions on diversity-related issues and generate useful reform proposals.¹⁶² Yet the only large-scale study on point found that networks had no significant positive impact on career development; they increased participants' sense of community but did not do enough to put lawyers "in touch with what they need to know, or whom they need to know, to move up."¹⁶³

One of the most effective interventions involves mentoring, which directly address the difficulties of women and minorities in obtaining the support necessary for career 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,

157. Darden, *supra* note 32, at 100. For the limited research and mixed or negative findings on effectiveness, see Deborah L. Rhode, *Social Research and Social Change: Meeting the Challenge of Gender Inequality and Sexual Abuse*, 30 HARV. J.L. & GENDER 11, 13–14 (2007); Elizabeth Levy Paluck, *Diversity Training and Intergroup Contact: A Call to Action Research*, 62 J. SOC. ISSUES 577, 583, 591 (2006).

158. Dobbin & Kalev, *supra* note 152, at 293–95; Dobbin et al., *supra* note 151, at 23–25.

159. Darden, *supra* note 32, at 117; Diane Vaughan, *Rational Choice, Situated Action, and the Social Control of Organizations*, 32 L. & SOC'Y. REV. 23, 34 (1998).

160. *National Survey on Retention and Promotion of Women in Law Firms*, NAT'L ASS'N OF WOMEN LAWYERS 15 (Nov. 2007), <http://www.nawl.org/p/cm/ld/fid=82#surveys>.

161. Cindy A. Schipani et al., *Pathways for Women to Obtain Positions of Organizational Leadership: The Significance of Mentoring and Networking*, 16 DUKE J. GENDER L. & POL'Y 89, 131 (2009); Alexandra Kalev et al., *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOC. REV. 589, 594 (2006); Rhode & Kellerman, *supra* note 49, at 30.

162. Bob Yates, *Law Firms Address Retention of Women and Minorities*, CHICAGO LAWYER, Mar. 2007, available at <http://www.mbtlaw.com/pubs/lfam2007.pdf>.

163. Dobbin et al., *supra* note 151, at 25.

and retention rates.¹⁶⁴ However, most programs do not require evaluation or specify the frequency of meetings and goals for the relationship.¹⁶⁵ Instead, they permit a “call me if you need anything” approach, which leaves too many junior attorneys reluctant to become a burden.¹⁶⁶ Ineffective matching systems compound the problem; lawyers too often end up with mentors with whom they have little in common.¹⁶⁷ Formal programs also have difficulty inspiring the kind of sponsorship that is most critical. Women and minorities 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 monitor the effectiveness of mentoring programs. Identifying and nurturing high performers should be a priority.¹⁶⁸ 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 those in need of assistance, mentors 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.

Organizations can also support efforts to expand the pool of qualified minorities through scholarships and other educational initiatives. For example, the law firm Skadden and Arps has pledged ten million dollars for a ten-year program offering law school preparation to students from disadvantaged backgrounds.¹⁶⁹ As one ABA official noted, “it’s the kind of money we need to make a difference Now we need just 500 other law firms to take action”¹⁷⁰

To make these reforms possible, organizations need leaders who are personally invested in building a broad consensus for diversity and in

164. Kalev et al., *supra* note 161, at 594; Rhode & Kellerman, *supra* note 49, at 30; Schipani et al., *supra* note 161, at 100–01; IDA O. ABBOTT, *THE LAWYER’S GUIDE TO MENTORING* 25, 32–33 (2000).

165. *Diversity and Gender Equity in the Legal Profession: Best Practices Guide*, MINN. STATE BAR ASS’N (June 2008), <http://www2.mnbar.org/committees/DiversityImplementation/DiversityBestPracticesGuideFinal.pdf>.

166. *Id.* at 77 (internal quotation marks omitted).

167. Ida O. Abbott, *Mentoring Across Differences*, *DIVERSITY AND THE BAR*, July–Aug. 2006, available at <https://mcca.com/index.cfm?fuseaction=page.viewpage&pageid=959>; Leigh Jones, *Mentoring Plans Failing Associates; High Attrition Rates Still Hit Firms Hard*, *NAT. L.J.*, Sept. 18, 2006.

168. Nancy M. Carter & Christine Silva, *Pipeline’s Broken Promise*, *CATALYST* 5 (2010), http://www.catalyst.org/system/files/Pipeline’s_Broken_Promise_Final_021710.pdf.

169. Eckel, *supra* note 1, at 20.

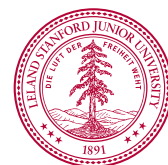
170. *Id.* at 20 (quoting Ruthe Ashley) (internal quotation marks omitted).

addressing any sources of backlash or inertia.¹⁷¹ This agenda has to be seen not as a “women’s” or “minority” issue, but as an organizational priority in which women and minorities have a particular stake. As consultants emphasize, “[i]nclusion can be built only through inclusion.”¹⁷² Change “needs to happen in partnership *with* the people of the organization not *to* them.”¹⁷³ Leaders are critical in creating that sense of unity and in translating rhetorical commitments into organizational priorities.

171. RHODE, LAWYERS AS LEADERS, *supra* note *, at 153.

172. FREDERICK A. MILLER & JUDITH H. KATZ, THE INCLUSION BREAKTHROUGH: UNLEASHING THE REAL POWER OF DIVERSITY 37 (2002).

173. *Id.* at 38.



DIVERSITY IN THE C-SUITE

THE DISMAL STATE OF DIVERSITY AMONG FORTUNE 100 SENIOR EXECUTIVES

BY DAVID F. LARCKER AND BRIAN TAYAN
APRIL 1, 2020

INTRODUCTION

There has been a broad push in recent years to increase diversity at the board and CEO levels of public corporations. Proponents argue that increased representation across gender and ethnic groups improves corporate decision making.¹ Furthermore, it is consistent with fairness and demonstrates that leadership opportunities should be equally available to all qualified members of the workplace.

To this end, State Street launched the “Fearless Girl” campaign in 2017, calling on its portfolio companies to increase the number of women on their boards.² Catalyst Group has long advocated for greater representation by females in both the boardroom and higher levels of corporations. And Goldman Sachs announced that, as of summer 2020, the company would not help companies go public unless they have at least one diverse board member.^{3,4}

Despite these and other efforts, however, diversity on boards and in senior leadership positions has not reached the levels to which advocates aspire. According to Institutional Shareholder Services, women comprise 27 percent of S&P 500 board seats and 19 percent of mid- and small-cap company board seats (see Exhibit 1). Non-white ethnic minorities hold only 10 percent of directorships among Russell 300 companies (see Exhibit 2). Despite most companies explicitly expressing an interest in recruiting new directors from these groups, gains have been modest for females and almost nonexistent for racially diverse candidates.⁵

Diversity efforts at the CEO level have been less successful, with women holding only 7 percent and ethnically diverse executives only 9 percent of CEO positions among Fortune 500 companies (see Exhibit 3).

Companies are not silent on this topic. Many publicly express their commitment to diversity at all levels of their organizations. Almost all Fortune 100 companies (96 percent) promote their diversity efforts through mission and value statements on their websites, or in human capital, diversity, or corporate social responsibility reports.⁶ These statements typically include the

importance of diversity in the employee base or supply chain; metrics on employee, board, or executive diversity; internal efforts—such as women or diversity councils—to further the recruitment and development of these employees; financial commitments to diversity; or awards and public recognition of diversity (see Exhibit 4).⁷ Half of companies disclose diversity and human capital oversight efforts at the board level through the annual proxy (see Exhibit 5).⁸ Half of the Fortune 100 also signed the Business Roundtable’s revised Statement on the Purpose of a Corporation, which embraced a commitment to serve all stakeholders and makes specific mention of “fostering diversity and inclusion, dignity, and respect” as an important objective.⁹

Some companies signal their commitment to diversity by including diversity-related metrics in the performance-evaluation process for awarding executive bonuses. For example, Microsoft and Intel both include “diversity and inclusion” as a factor in their bonus calculations for named executive officers. The specific contribution that diversity makes to the overall performance award is not disclosed. (Diversity is included as a subcomponent of broader organizational or cultural goals. See Exhibit 6.)

These efforts, however, have not contributed to tangible progress in increasing the prevalence of diverse executives in corporate leadership positions. Are companies actually preparing diverse executives to be viable successors to the CEO? Are they effectively equipping them to serve as board members at other corporations?

We provide new insight into this question by examining the size, structure, and demographic makeup of the C-suite (the CEO and the direct reports to the CEO). This data allows us to better understand the actual pipeline, as it stands today, for next year’s newly appointed CEOs and future board members. While many diversity advocates claim to “know” that diverse executives are underrepresented at the senior leadership level, the data in this Closer Look methodically documents their number and specific functional roles in the largest 100 U.S. companies (see Exhibit 7 for our methodology).

Our intention is not to criticize any specific company, but instead to highlight the current composition of the C-suite across the entire Fortune 100. We recognize that this analysis represents a single point in time. The composition of each company can and will change over time, resulting in either increased or decreased diversity. However, in aggregate, these numbers reflect the degree of diversity as it stands today.

DEMOGRAPHIC COMPOSITION OF THE C-SUITE

In order for an executive to be a viable CEO or board candidate, they must first have the managerial and functional skills required for those jobs. For a board candidate, this typically means having CEO, operating, or senior finance experience. In 2019, 68 percent of new independent directors had these backgrounds (see Exhibit 8).¹⁰ For a CEO, this means having profit or loss (P&L) responsibility or CFO experience. Over 90 percent of internally promoted CEOs served in a role with one of these responsibilities prior to appointment. Very few CEOs (5 percent) are promoted from functional groups outside of these roles, such as marketing, risk management, human resources, or general counsel (see Exhibit 9).¹¹ In the case of CEO promotions, being a direct report to the CEO is also critical. Almost no companies promote a CEO from more than one level below the CEO.¹²

If companies are adequately preparing executives for board and CEO positions, it therefore follows that diverse candidates must be represented in these specific roles (operating, P&L, or finance). Diverse executives are much less likely to be CEO candidates (and have lower potential to be a board candidate) if they serve in non-P&L positions, even if they directly report to the CEO. That is, *not all direct reports of the CEO are equally positioned to become CEO or join a board.*

To better understand the current pipeline for future leadership, we examine the composition of the direct reports to the CEO.¹³ (We use the term “C-suite” to refer to the CEO and his or her direct reports; the term “C+1” refers only to the direct reports.)

Our findings on gender diversity are as follows:

- *Women are severely underrepresented in the C-suite.* Only 25 percent of total C-suite positions are held by women. Only 7 companies have a female CEO. Nine of the Fortune 100 have no women directly reporting to the CEO (C+1 level).
- *Women are underrepresented in the most common C+1 positions.* The three most common direct reports of the CEO are P&L leaders, CFOs, and general counsel. Women hold only 15 percent, 14 percent, and 35 percent of these roles, respectively.
- *Women are underrepresented in positions that directly feed into*

future CEO and board roles, and they have greater representation in positions that are less likely to lead to these appointments. Women hold only 13 percent of positions with high potential for CEO promotion and board recruitment (CEO, CFO, and P&L leaders). By contrast, they hold 38 percent of positions with lower potential for advancement (general counsel, human resources, chief risk officer, etc.). That is, the representation of women in the C-suite is skewed toward lower potential positions.

- *Very few companies have a “deep bench” of female executives.* Nine companies have no women in the C-suite. Women comprise a third or more of the C-suite in 27 Fortune 100 companies, 40 percent or more of the C-suite in 10 companies, and half in only 2 companies. No Fortune 100 company has a majority of female executives in the C-suite.

Our findings on racial and ethnic diversity are as follows:

- *C-suite is even less diverse by race.* Racially diverse executives hold only 16 percent of total C-suite positions. Only 16 have a non-white CEO.¹⁴ Twenty-six of the Fortune 100 have no ethnic diversity at the C+1 level, and 6 have no ethnic or gender diversity at this level.
- *The CFO role is the least racially diverse position in the C-suite.* There are only 4 CFOs who are not white.
- *The representation of racially diverse executives in the C-suite is slightly skewed toward positions with lower potential for advancement.* Similar to our finding above, we find that ethnically diverse executives have lower representation in positions that directly feed into future CEO and board roles—although the degree to which this occurs is much lower than it is among female executives. Racially diverse executives hold only 13 percent of high potential positions (CEO, CFO, and P&L), and 20 percent of lower potential positions. The very low prevalence of non-white CFOs accounts for almost all of this skewing.
- *Few companies have a large number of racially diverse executives in the C-suite.* Twenty-six companies have no racially diverse executives in the C-suite. Non-white executives comprise a third or more of the C-suite in only 13 companies, 40 percent or more in only 5 companies, and half or more in only 2 companies.

(This data is summarized in Exhibits 10-13. Organizational charts of the C-suites of each of the Fortune 100 as of January and February 2020 are available [here](#).)

All of this data demonstrates that while companies tout their

efforts and their commitment to diversity, diversity is substantially missing at the CEO and C+1 levels. Furthermore, among CEO direct reports, diversity is less prevalent in positions that are most likely to be prime candidates for advancement. Instead, we find that many diverse executives serve in terminal functional roles that are not typically on a path to becoming CEO, and also not on a path (as it stands today compared with what boards look for in new directors) to corporate board service. Unless changes are made, the current composition of the C-suite of Fortune 100 does not portend well for increased diversity of corporate leadership in coming years.

WHY THIS MATTERS

1. While companies promote their diversity efforts, they have not been especially successful bringing diversity to the C-suite. C-suites of the Fortune 100 are characterized by low representation of female executives and even lower representation of ethnically diverse executives. What accounts for this lack of representation? At what step along the way does the process of promoting diverse executives break down?
2. Many companies publish diversity statistics on their website to demonstrate their commitment to diversity and their success in adding more diverse individuals to managerial roles. However, these data generally do not include the diversity of the C-suite and, in fact, somewhat obscure the degree to which the highest level of corporate leadership lacks diversity. How “honest” are diversity statistics? Should companies disclose diversity in greater detail by level or function? Would this highlight deficiencies and accelerate the rate of advancement?
3. The representation of racially diverse executives is low and fairly constant across job functions. This is not true of female executives, who have much higher representation in lower potential leadership roles—such as human resources, general counsel, and corporate communications. What accounts for this difference in distribution?
4. If P&L and CFO experience are key determinants of future promotion to the CEO role and board seats, companies need to do more to prepare diverse executives for these roles. Decisions are made on a company-by-company basis, presumably based on the individual talent pool and job openings available, and yet in aggregate company promotion efforts are failing. Do company diversity initiatives actually lead to tangible improvement? If so, when will this show up in the C-suite? ■

¹ This is a common claim for those arguing for more diversity. The research evidence on this point is not conclusive. See: David F. Larcker and Brian Tayan, “Diverse Boards: Research Spotlight,” Stanford Quick Guide Series (April 2016), available at: <https://www.gsb.stanford.edu/faculty-research/publications/diverse-boards>.

² State Street, “State Street Global Advisors Calls on 3,500 Companies Representing More Than \$30 Trillion in Market Capitalization to Increase Number of Women on Corporate Boards,” press release (March 10, 2017).

³ Hugh Son, “Goldman Won’t Take Companies Public Without ‘At Least One Diverse Board Candidate,’ CEO Says,” *CBNC* (January 23, 2020).

⁴ It is interesting to note that diversity advocates in recent years have focused their efforts primarily on increasing female representation on boards and less so on representation by non-white ethnic minorities. Search consultants we have interviewed acknowledge this fact but do not have an explanation for it.

⁵ According to Spencer Stuart, recruiting female directors was the highest priority profile for new directors in 2019 (above directors with technical expertise, active CEO experience, financial experience, or operating experience); and recruiting female and minority directors are each among the top five highest priorities over the next three years. See Spencer Stuart, “U.S. Board Index,” (2019); see also Heidrick & Struggles, “Board Monitor: U.S. 2019” (2019).

⁶ Research by the authors, conducted February and March 2020.

⁷ Some companies publish diversity employment statistics or make their Equal Employment Opportunity data available through their website to demonstrate diversity representation in their organization. For example, see Amazon, “Our Workforce Data,” available at: <https://www.aboutamazon.com/working-at-amazon/diversity-and-inclusion/our-workforce-data>; and Apple, “Equal Employment Opportunity, 2018 Employer Information Report,” available at: <https://www.apple.com/diversity/pdf/2018-EEO-1-Consolidated-Report.pdf>.

⁸ This statistic includes only reference to the board’s role in overseeing diversity or inclusion efforts in the employment ranks. It excludes board diversity efforts, which are required by the SEC under Regulation S-K. See Securities and Exchange Commission, “17 CFR Parts 229, 239, 240, 249, and 274. Proxy Disclosure Enhancements [Release Nos. 33-9089; 34-61175; IC-29092; File No. S7-13-09].”

⁹ Business Roundtable, “Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy that Serves All Americans,’” press release (August 19, 2019).

¹⁰ The rest of new independent directors have experience outside the corporation, either as an investment professional, banker, accountant, consultant, academic, or lawyer. Spencer Stuart, U.S. Board Index (2019).

¹¹ Crist Kolder Associates, “Volatility Report of America’s Leading Companies,” (2019).

¹² Estimate provided to the authors by a professional recruiter.

¹³ Studies have been done that examine the named executive officers (NEOs) of public companies. However, an analysis that includes only NEOs does not provide the full picture because it includes only five individuals: the CEO, the CFO, and the three other most highly paid executive officers. It is possible that a group of NEOs might include executives who are not direct reports to the CEO, and it is very likely that a CEO has direct reports in addition to NEOs. An analysis of the full C+1 level is therefore more accurate and complete.

¹⁴ This is higher than the number of female CEOs but still very low (16 percent).

David Larcker is Director of the Corporate Governance Research Initiative at the Stanford Graduate School of Business and senior faculty member at the Rock Center for Corporate Governance at Stanford University. Brian Tayan is a researcher with Stanford's Corporate Governance Research Initiative. They are coauthors of the books Corporate Governance Matters and A Real Look at Real World Corporate Governance. The authors would like to thank our research assistants for the detailed data collection required for this project, and Michelle E. Gutman for additional research assistance in the preparation of these materials.

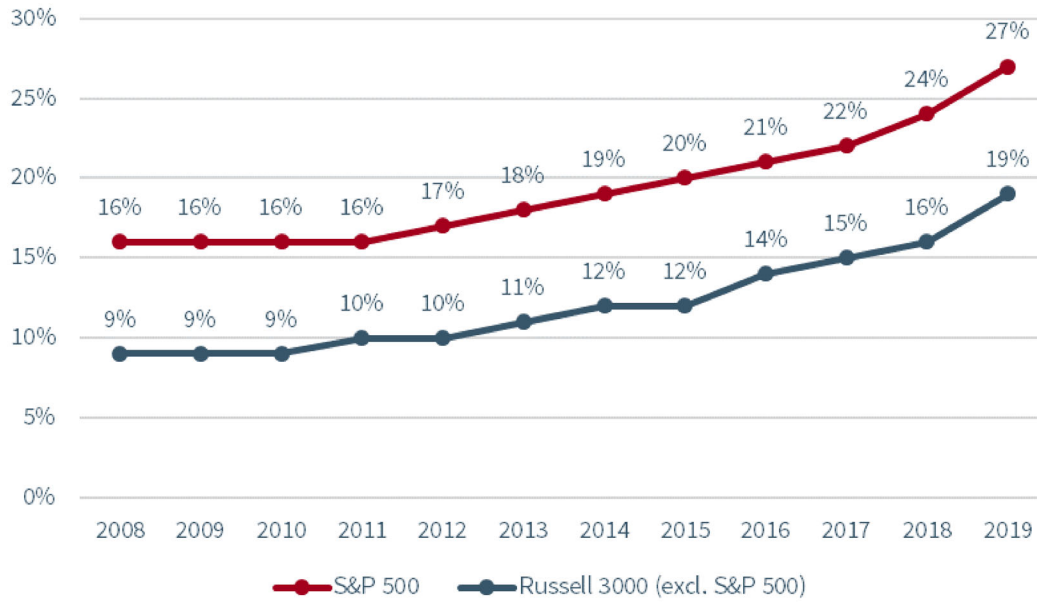
The Stanford Closer Look Series is dedicated to the memory of our colleague Nicholas Donatiello.

The Stanford Closer Look Series is a collection of short case studies that explore topics, issues, and controversies in corporate governance and leadership. It is published by the Corporate Governance Research Initiative at the Stanford Graduate School of Business and the Rock Center for Corporate Governance at Stanford University. For more information, visit: <http://www.gsb.stanford.edu/cgri-research>.

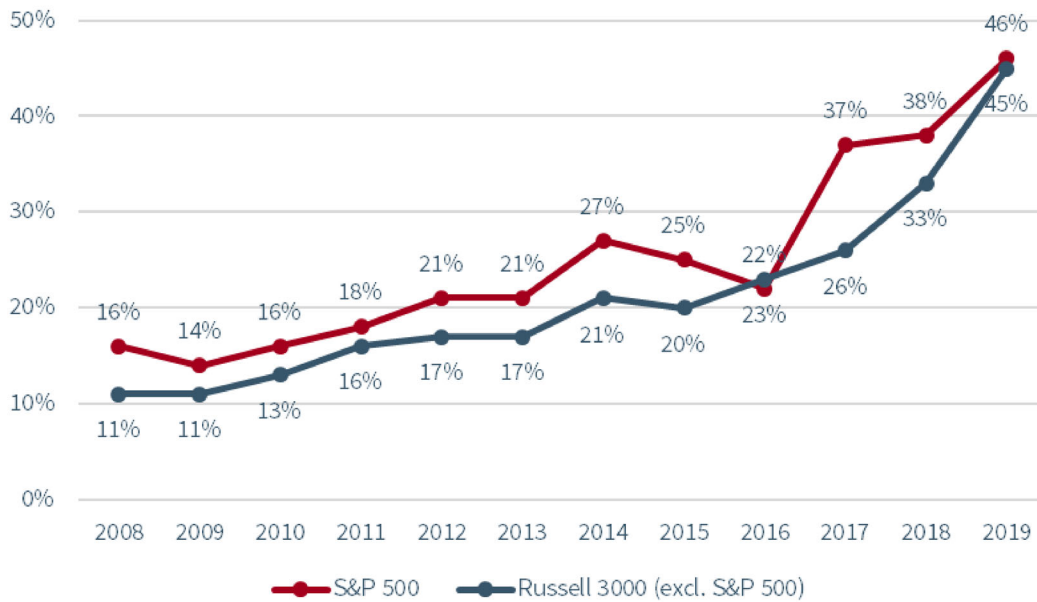
Copyright © 2020 by the Board of Trustees of the Leland Stanford Junior University. All rights reserved.

EXHIBIT 1 — PREVALENCE OF FEMALE DIRECTORS ON PUBLIC COMPANY BOARDS

FEMALES AS A PERCENT OF ALL DIRECTORS



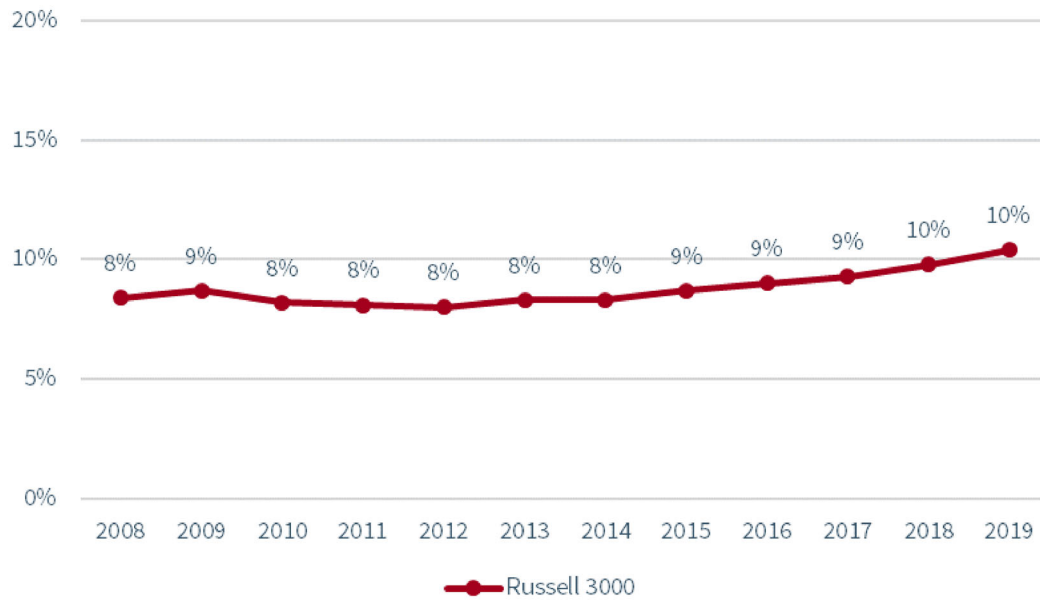
FEMALES AS A PERCENT OF NEW DIRECTORS



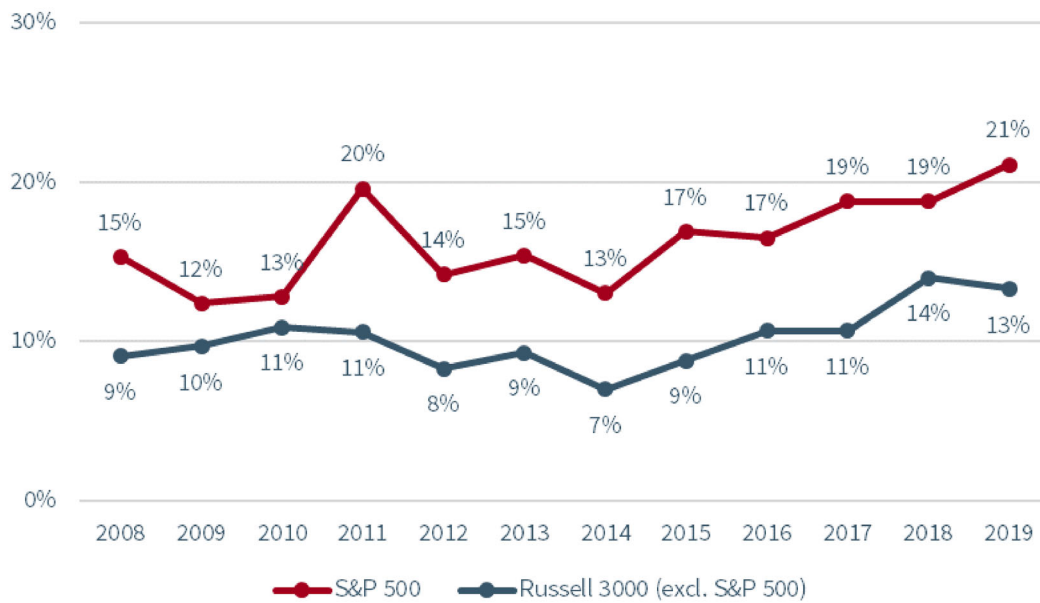
Source: Institutional Shareholder Services, "U.S. Board Diversity Trends in 2019," (May 31, 2019).

EXHIBIT 2 — PREVALENCE OF ETHNIC MINORITY DIRECTORS ON PUBLIC COMPANY BOARDS

ETHNIC MINORITIES AS A PERCENT OF ALL DIRECTORS



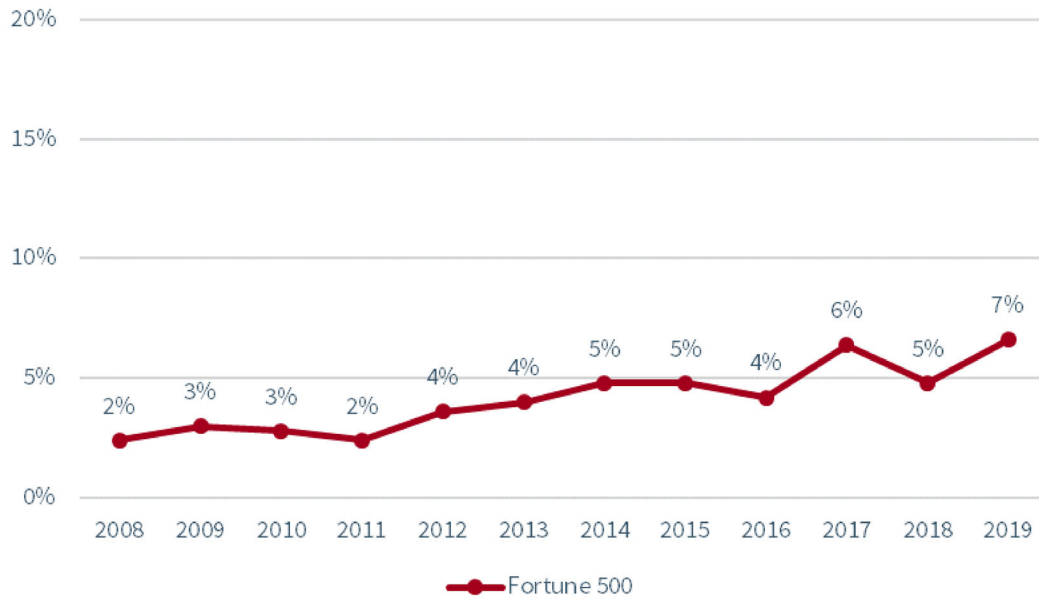
ETHNIC MINORITIES AS A PERCENT OF NEW DIRECTORS



Source: Institutional Shareholder Services, “U.S. Board Diversity Trends in 2019,” (May 31, 2019).

EXHIBIT 3 — PREVALENCE OF ETHNIC MINORITY DIRECTORS ON PUBLIC COMPANY BOARDS

FEMALES AS A PERCENT OF CEOS



ETHNIC MINORITIES AS A PERCENT OF CEOS

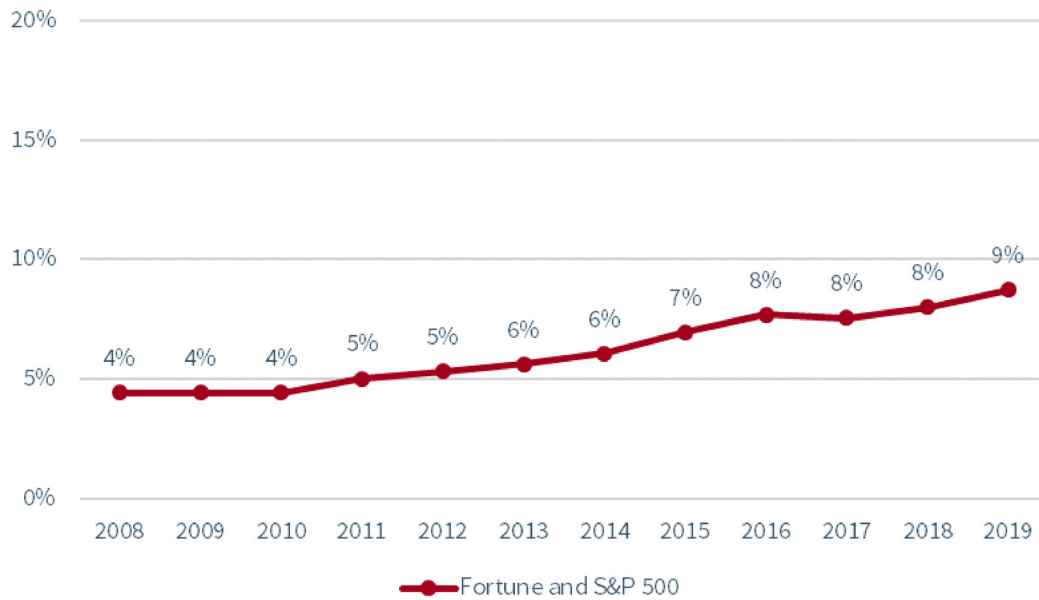


Chart 2 sample includes 682 sitting CEOs across 675 companies in Fortune 500 and S&P 500 companies.

Sources: Claire Zillman, “The Fortune 500 Has More Female CEOs Than Ever Before,” Fortune (May 16, 2019); and Crist Kolder Associates, “Volatility Report of America’s Leading Companies,” (2019).

EXHIBIT 4 — SELECTED LANGUAGE FROM HUMAN CAPITAL AND DIVERSITY STATEMENTS

EXXONMOBIL

Through a range of programs, activities and investments, we strive to create and maintain a diverse workforce representative of the numerous geographies where we do business. Our Global Diversity Framework is the foundation for this approach, with three interrelated objectives:

- Attract, develop and retain a premier workforce, from the broadest possible pool, to meet our business needs worldwide;
- Actively foster a productive work environment where individual and cultural differences are respected and valued, and where all employees are encouraged to contribute fully to the achievement of superior business results;
- Identify and develop leadership capabilities to excel in a variety of international and cultural environments.

The framework communicates these existing principles in the context of our increasing global operations.

AMERICAN EXPRESS

Diversity by the Numbers

- Women comprise over 50 percent of our global workforce and more than 30 percent of senior executives
- We contributed to 7 research studies in partnership with Center for Talent Innovation, focusing on how to advance women in the workplace
- 21 percent of our board are women
- 46 percent of our senior management team is diverse
- 16 Employee networks with nearly 100 chapters globally, bringing together employees with shared backgrounds
- 3 Executive employee networks that support black, Hispanic, and female executive leaders

BOEING

Diversity Councils and Business Resource Groups

Diversity Councils are integrated groups of site leaders, managers and employees who work to improve employee engagement, provide learning and leadership opportunities, increase communication and facilitate implementation of organizational diversity plans. Diversity Councils are supported by a local executive champion. Boeing has more than 40 Diversity Councils.

Business Resource Groups are employee-led associations designed to further personal and professional development, promote diversity within the company and strengthen networking. The members share a common interest, such as race, gender or cultural identity. The nine groups collectively have more than 130 chapters around the world. Membership is open to all employees.

Boeing Business Resource Groups include:

- Boeing Asian Professional Association
- Boeing Black Employees Association
- Boeing Employee Ability Awareness Association
- Boeing Employee Pride Alliance
- Boeing Familia
- Boeing Generation to Generation
- Boeing Native American Network
- Boeing Veteran Engagement Team
- Boeing Women Inspiring Leadership

Sources: ExxonMobil, available at: <https://corporate.exxonmobil.com/en/company/careers/global-diversity#globalDiversityFramework>; American Express, available at: <https://www.americanexpress.com/us/global-diversity-and-inclusion/index.html>; and Boeing, available at: <https://jobs.boeing.com/diversity> (Accessed March 6, 2020).

EXHIBIT 5 — SELECTED BOARD DISCLOSURE OF DIVERSITY AND HUMAN CAPITAL EFFORTS

GENERAL MOTORS

The Board reviews candidates for all senior executive positions to confirm that qualified and diverse successor-candidates are available for all positions and that development plans are being utilized to strengthen the skills and qualifications of successor candidates.

The Board's investment in people development does not stop with management succession planning. It actively takes an interest in making sure all employees are fully engaged and realizing their potential. To accomplish this, the Board annually reviews the diversity pipeline at all levels of the Company and receives an update on various hiring initiatives for diversity groups supported by the Company. At this time, the Board believes it has a deep and diverse talent pipeline from which to promote employees at all levels of the Company.

JOHNSON & JOHNSON

The Board and Committees are actively engaged in overseeing the company's talent development and human capital management strategies designed to attract, develop and retain global business leaders who can drive financial and strategic growth objectives and build long-term shareholder value. The Board's involvement in leadership development and succession planning is systematic and ongoing, and the Board provides input on important decisions in each of these areas. [...]

To improve the Board's understanding of the company's culture and talent pipeline, the Board conducts meetings and schedules site visits at the company's locations and meets regularly with high-potential executives in formal and informal settings. More broadly, the Board is regularly updated on key talent indicators for the overall workforce, including diversity and inclusion, recruiting and development programs, and is updated on the company's human capital development strategy.

PEPSICO

Beyond leadership development, our Board is continuously focused on developing an inclusive and respectful work environment where our employees across the entire workforce are empowered to speak with truth and candor, raise concerns and implement new ideas in the best interests of the business. The Board and its applicable Committees regularly engage with employees at all levels of the organization, including through periodic visits to PepsiCo's operations, to provide oversight on a broad range of human capital management topics, including corporate culture, diversity and inclusion, pay equity, health and safety, training and development and compensation and benefits.

Sources: General Motors, DEF 14A (April 18, 2019); Johnson & Johnson, DEF 14A (March 13, 2019); and PepsiCo, DEF 14A (March 22, 2019).

EXHIBIT 6 — DIVERSITY METRICS IN EXECUTIVE COMPENSATION PROGRAMS

MICROSOFT

Culture & Organizational Leadership (33.3% weight)

Mr. Nadella continued to demonstrate his commitment to evolve Microsoft culture, where his successes include achieving aspirational goals for diversity goals in hiring and retention. In fiscal year 2019, nearly 80% of employees and managers surveyed indicated they understand how to leverage a new core priority for inclusion to contribute towards building a more diverse and inclusive workplace. Moreover, 90% of employees said their managers created an inclusive environment. Work remains to be done to provide additional training and resources for the Company's mid-level managers and address the needs of the millennial workforce.

Surveys of employee sentiment and Senior Leadership Team feedback show strong support for Mr. Nadella's cultural push for One Microsoft and Growth Mindset initiatives.

INTEL

We set ambitious goals for our company and make strategic investments to advance progress in the areas of environmental sustainability, supply chain responsibility, diversity and inclusion, and social impact that benefit the environment and society. [...]

Long-term total stockholder return provides one measure of value creation, though we also consider other indicators of success for our deployment of capital, such as diversity advancement for our human capital. [...]

Operational Performance (50% Weighting)

Corporate-level and administrative group employees, including each of our listed officers other than Mr. Shenoy, are paid based on average of 10 business units' scores, subject to any adjustment for performance against corporate-level diversity and inclusion goal (focused on hiring and retaining diverse talent—not achieved).

Sources: Microsoft, Form DEF 14A (October 16, 2019); and Intel, Form DEF 14A (April 3, 2019).

EXHIBIT 7 — METHODOLOGY AND DATA COLLECTION

During the time period December 2019 to February 2020, a group of skilled, professional researchers methodically collected and verified information to identify the exact direct reports to the CEOs of all Fortune 100 companies, including their title, race, and gender. This is a difficult and tedious task because an executive's being listed as a named executive officer in the proxy statement or on an executive leadership webpage does not guarantee that the executive reports to the CEO.

Our methodology for the research study was as follows:

Step 1: Identify the executive leadership team of each company and their position.

Step 2: Use research tools to verify who does and does not report to the respective CEOs, including:

- A proprietary database that includes employment information about executives
- Public filings, including proxy statements, 10-Ks, and annual reports
- RelSci, a relationship capital platform that includes corporate executives
- LinkedIn
- Company websites
- Company press releases indicating hire or promotion dates for executives

Step 3: Call an executive at each company to verify the CEO's direct reports. In most cases, a second or third executive was called to ensure high confidence in the data.

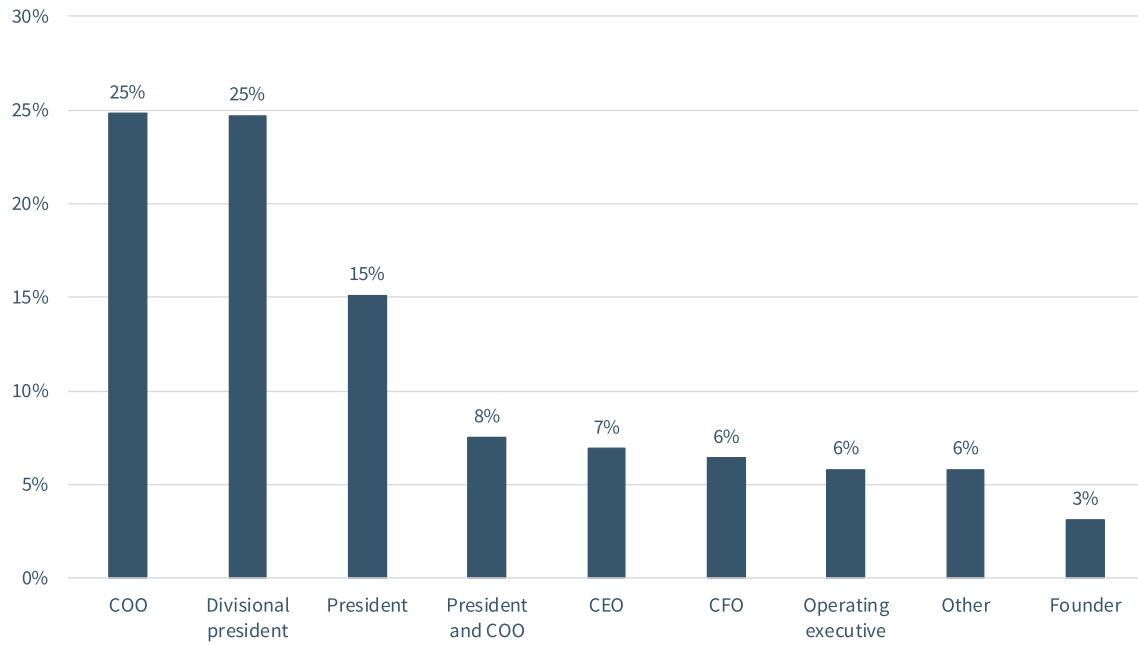
The data for each company and the date that each company was verified is noted on each company organizational chart available at [here](#).

EXHIBIT 8 — PROFESSIONAL BACKGROUNDS OF NEWLY ELECTED INDEPENDENT DIRECTORS

New Director Backgrounds - 2019	Total	Men	Women
Active CEOs	15%	20%	9%
Retired CEOs	15%	21%	7%
Line and functional leaders	14%	6%	23%
Financial executives/CFOs/treasurers	10%	8%	13%
Investors/investment managers	9%	13%	6%
Division/subsidiary presidents	9%	8%	11%
Bankers/investment bankers	5%	6%	4%
Academics/nonprofit executives	4%	4%	5%
Active chairs/presidents/COOs	3%	4%	3%
Consultants	3%	2%	5%
Public accounting executives	3%	2%	3%
Retired chairs/presidents/COOs	2%	2%	2%
General counsel	1%	0%	2%
Lawyers	1%	1%	1%
Others	6%	3%	8%

Sources: Spencer Stuart, U.S. Board Index (2019).

EXHIBIT 9 — IMMEDIATE PREVIOUS POSITION OF SITTING CEOs



Note: Sample includes 675 companies and 682 sitting CEOs among the Fortune 500 and S&P 500 Index.

Source: Crist Kolder Associates, Volatility Report of America's Leading Companies, (2019).

EXHIBIT 10 — C-SUITE SIZE AND COMPOSITION (FORTUNE 100)

Sample Characteristics	
Total Companies	100
Total # C-Suite Executives ^a	1,007
Average # Executives in C-Suite	10
Total # CEOs ^b	101
Total # Direct Reports (C+1)	906
Average # Direct Reports	9
Largest # Direct Reports ^c	16
Smallest # Direct Reports ^d	3
Female Representation in C-Suite	
# Companies with no females in C-Suite ^e	9
# Companies with no females in C+1 ^f	9
# Companies with female CEO ^g	7
# Companies with ≥ 33% female C-Suite	27
# Companies with ≥ 40% female C-Suite	10
# Companies with ≥ 50% female C-Suite ^h	2
Ethnically Diverse Representation in C-Suite	
# Companies with all white C-Suite	25
# Companies with all white C+1 ⁱ	26
# Companies with non-white CEO	16
# Companies with ≥ 33% non-white C-Suite	13
# Companies with ≥ 40% non-white C-Suite ^j	5
# Companies with ≥ 50% non-white C-Suite ^k	2

Notes:

- a. C-suite refers to the CEO and direct reports; C+1 includes only the direct reports of the CEO.
b. Enterprise Products has co-CEOs.
c. IBM and Procter & Gamble
d. ExxonMobil
e. ExxonMobil, Berkshire Hathaway, Amazon, Costco, FedEx, Energy Transfer, TJX, Enterprise Products, and Plains Group
f. Same. No company has a female CEO with all male direct reports.
g. General Motors, Anthem, Lockheed, Best Buy, Oracle (co-CEO), General Dynamics, Progressive
h. Anthem and Cisco
i. Plains Group has an Asian CEO with all white direct reports. All others have all white C-Suite.
j. HP, Merck, UnitedContinental, TIAA, and Coca-Cola
k. TIAA and Coca-Cola

Source: Research by the authors.

EXHIBIT 11 — GENDER REPRESENTATION IN C-SUITE POSITIONS AND THEIR POTENTIAL FOR PROMOTION TO CEO OR BOARD

Position	CEO / Board Potential	Male	Female
CEO	High	93%	7%
CFO	High	86%	14%
P&L Leaders	High	85%	15%
Other Business (Functional) Executives	Lower	74%	26%
Chief (Lead) Human Resource Officer	Lower	29%	71%
Chief (Lead) Communications Officer	Lower	41%	59%
General Counsel	Lower	65%	35%
Chief (Lead) Marketing Officer	Lower	65%	35%
Chief Information (Technology) Officer	Lower	85%	15%
Chief Risk Officer	Lower	79%	21%
Chief (Lead) Strategy Officer	Lower	91%	9%
Chief (Lead) Sales Officer	Lower	40%	60%
Chief (Lead) Administration Executive	Lower	29%	71%
Other Staff (Functional) Executive	Lower	55%	45%
	Total	75%	25%
	High	87%	13%
	Lower	62%	38%

Source: Research by the authors.

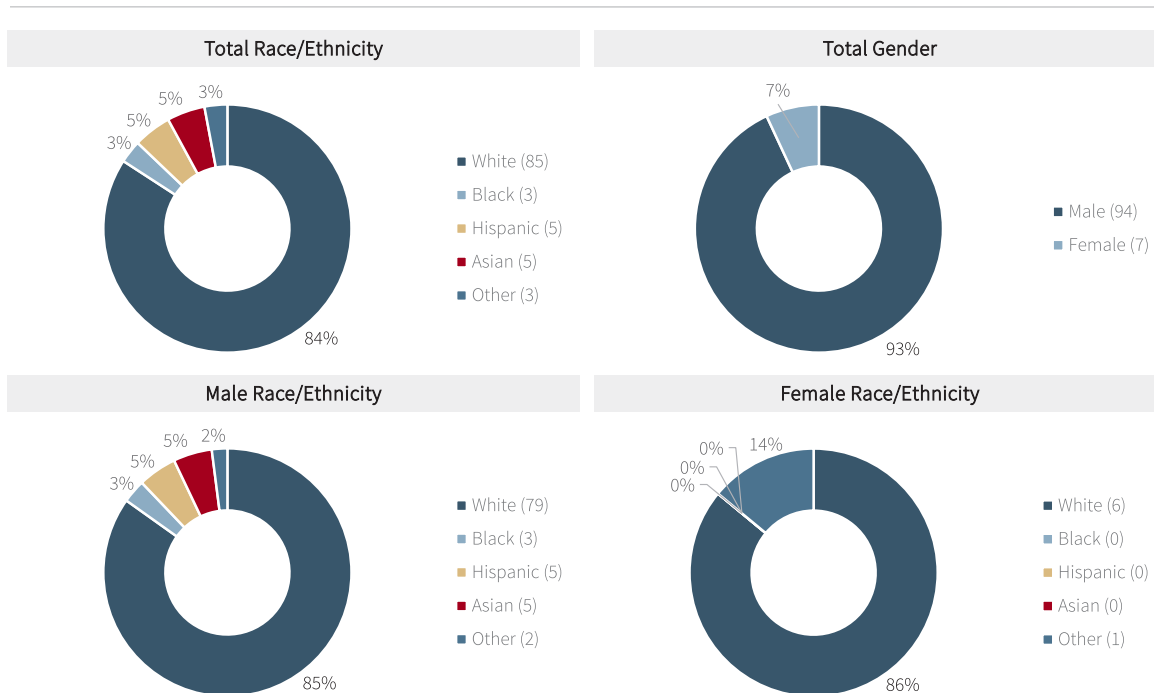
EXHIBIT 12 — RACIAL REPRESENTATION IN C-SUITE POSITIONS AND THEIR POTENTIAL FOR PROMOTION TO CEO OR BOARD

CEO / Board Potential	CEO / Board Potential	White	Black	Hispanic	Asian	Other
CEO	High	84%	3%	5%	5%	3%
CFO	High	96%	1%	1%	2%	0%
P&L Leaders	High	85%	3%	3%	8%	0%
Other Business (Functional) Executives	Lower	76%	10%	6%	7%	1%
Chief (Lead) Human Resource Officer	Lower	83%	13%	3%	3%	0%
Chief (Lead) Communications Officer	Lower	81%	4%	15%	0%	0%
General Counsel	Lower	84%	6%	3%	7%	0%
Chief (Lead) Marketing Officer	Lower	78%	9%	4%	9%	0%
Chief Information (Technology) Officer	Lower	80%	0%	5%	15%	0%
Chief Risk Officer	Lower	79%	0%	0%	16%	5%
Chief (Lead) Strategy Officer	Lower	73%	0%	5%	18%	5%
Chief (Lead) Sales Officer	Lower	40%	20%	40%	0%	0%
Chief (Lead) Administration Executive	Lower	57%	43%	0%	0%	0%
Other Staff (Functional) Executive	Lower	84%	13%	0%	3%	0%
	Total	84%	5%	4%	7%	1%
	High	87%	3%	3%	7%	1%
	Lower	80%	7%	5%	8%	1%

Source: Research by the authors.

EXHIBIT 13 — GENDER AND RACIAL REPRESENTATION BY C-SUITE POSITION

Chief Executive Officer (n=101)



1

Chief Financial Officer (n=96)

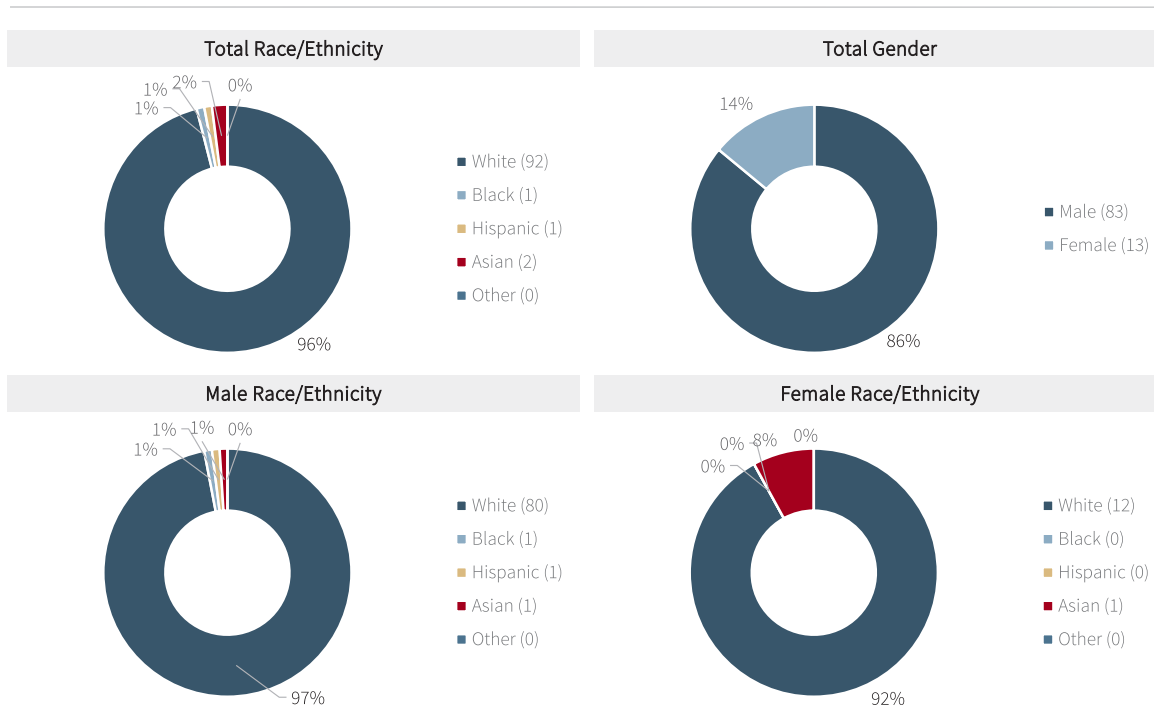
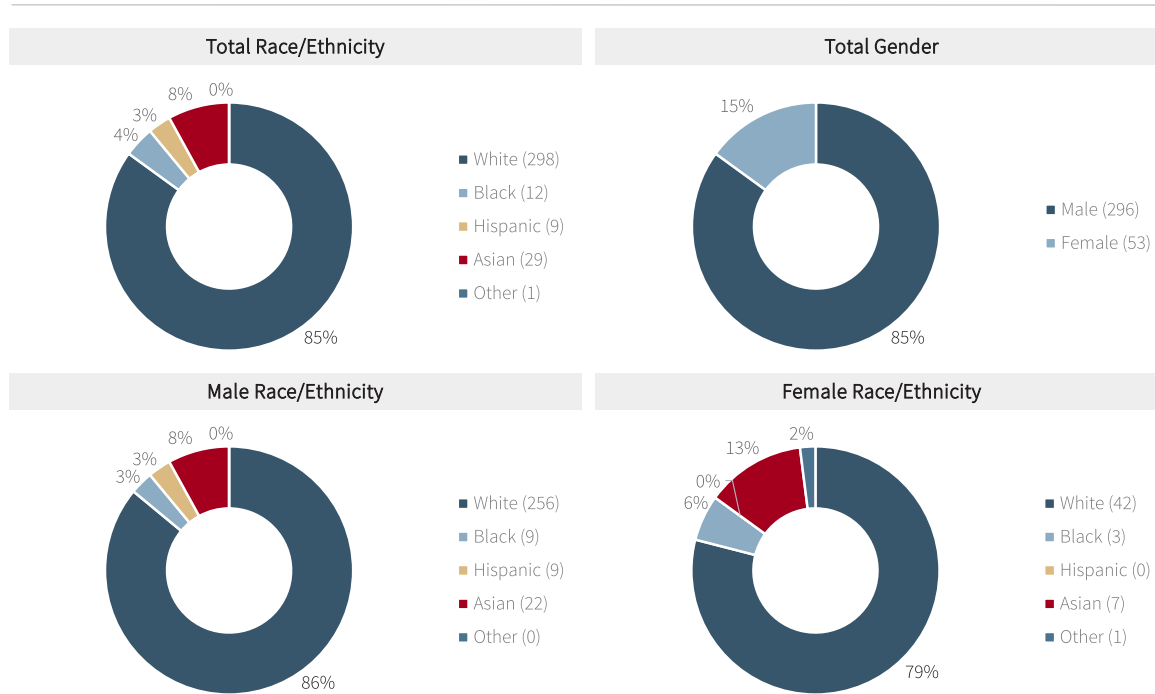


EXHIBIT 13 — CONTINUED

P&L Leaders (n=349)



3

Other Business (Functional) Executives (n=72)

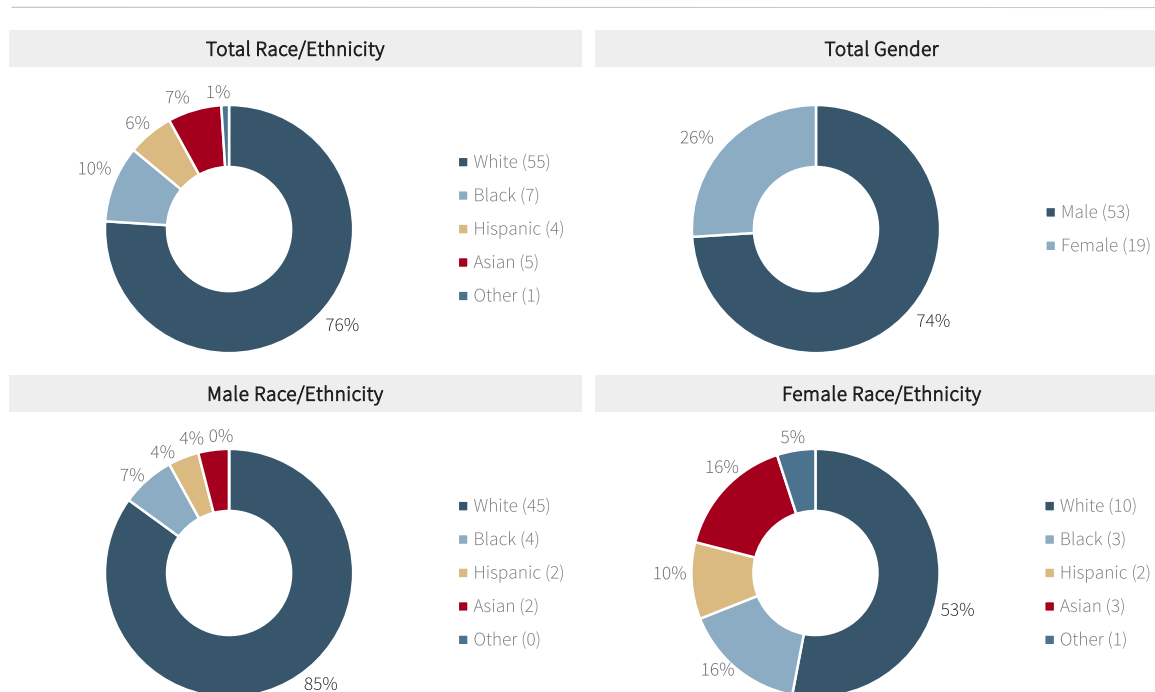
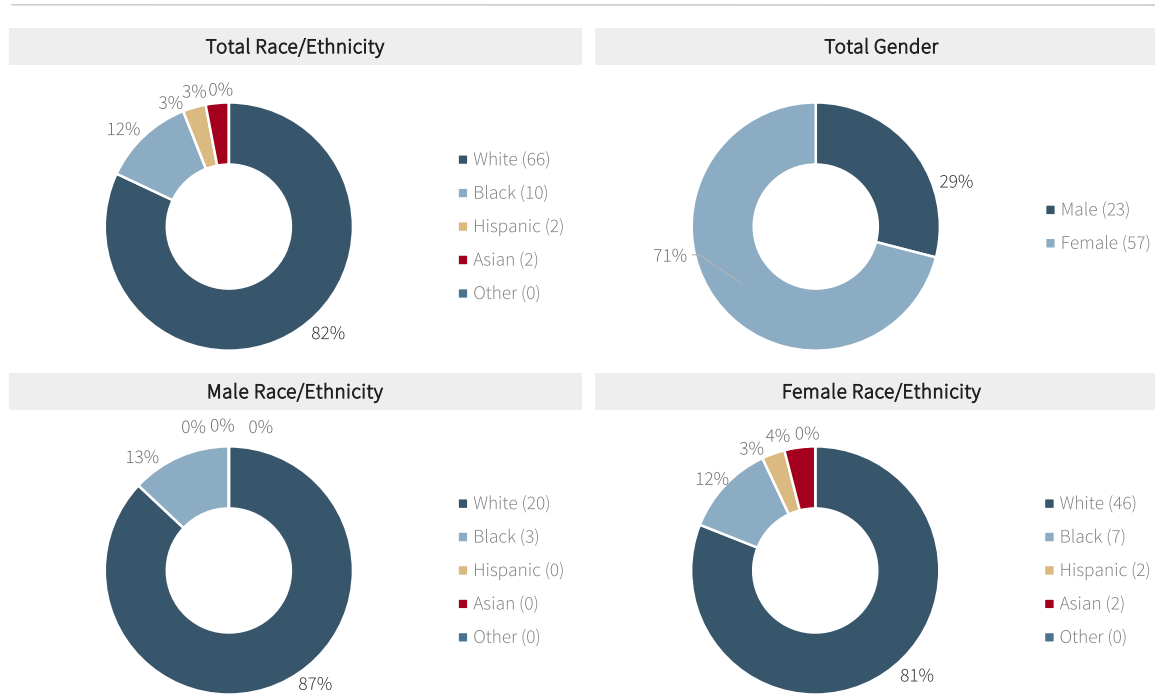


EXHIBIT 13 — CONTINUED

Chief (Lead) Human Resource Officer (n=80)



5

Chief (Lead) Communications Officer (n=27)

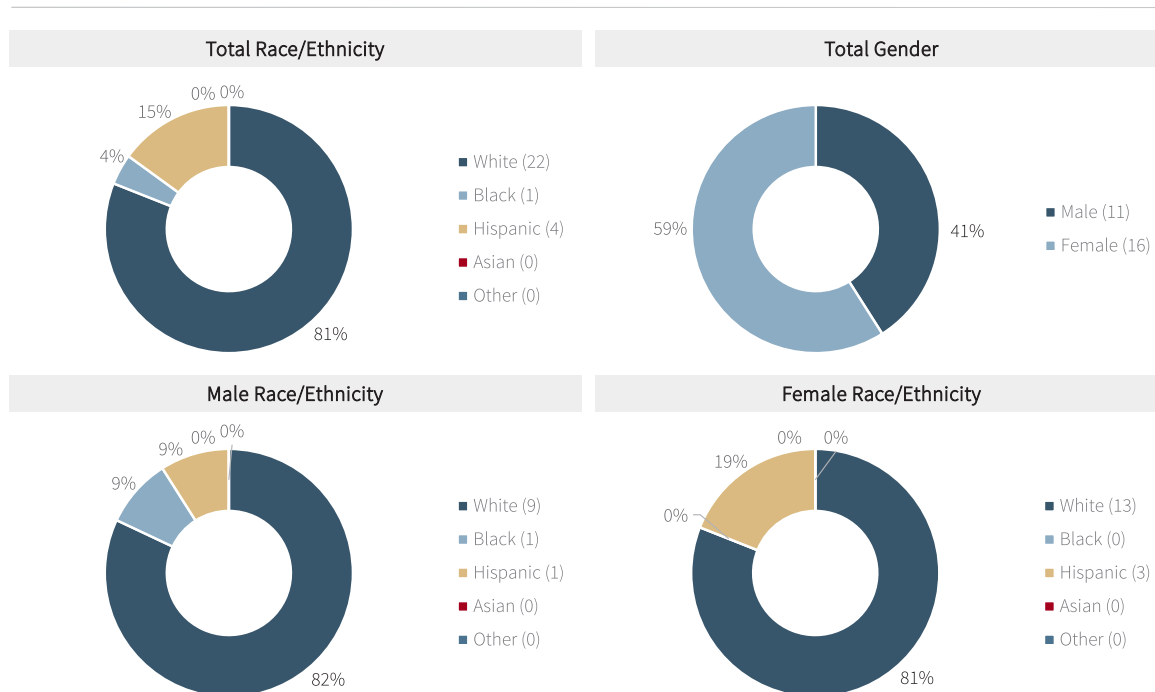
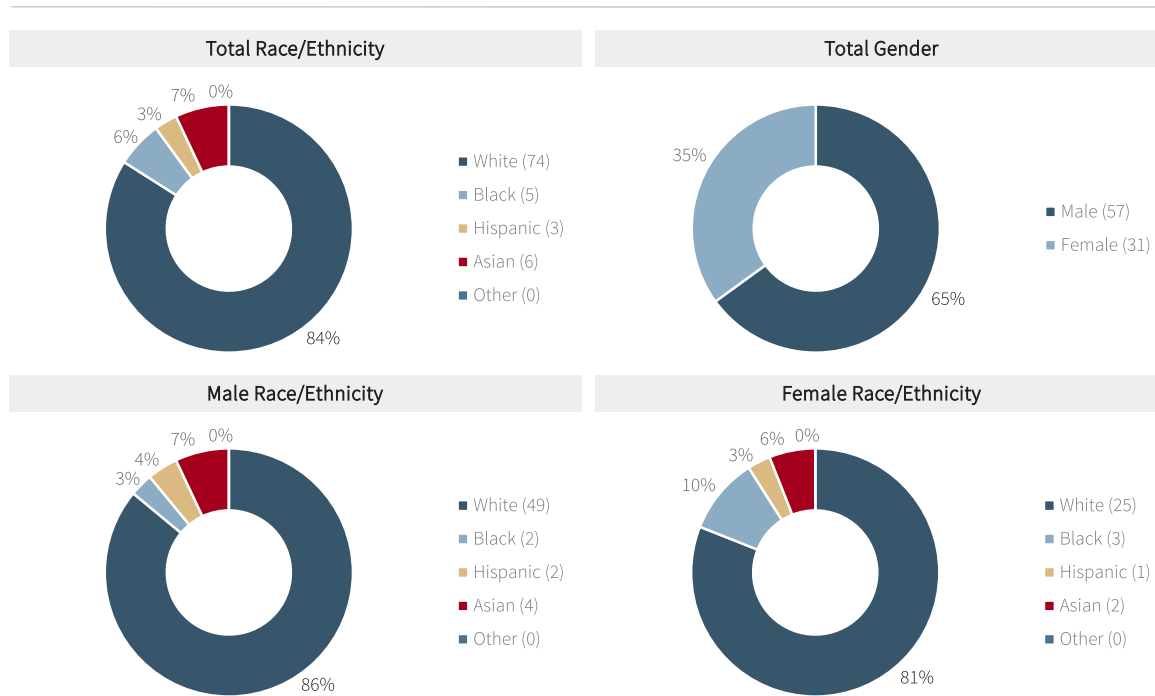


EXHIBIT 13 — CONTINUED

General Counsel (n=88)



7

Chief (Lead) Marketing Officer (n=23)

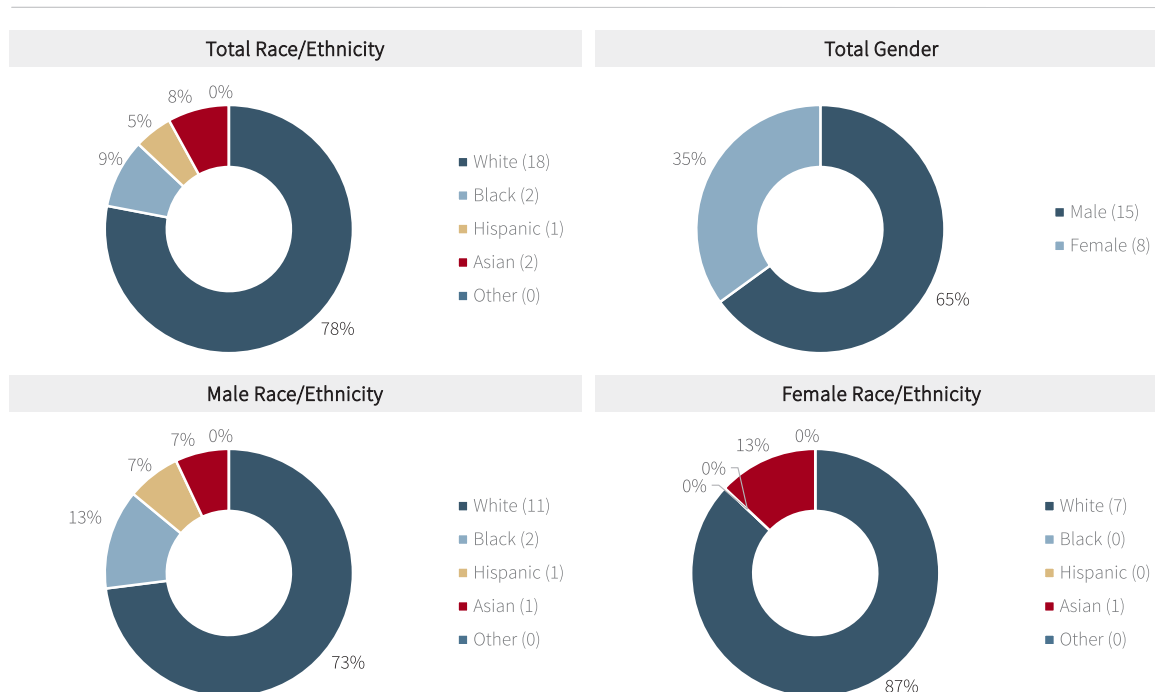
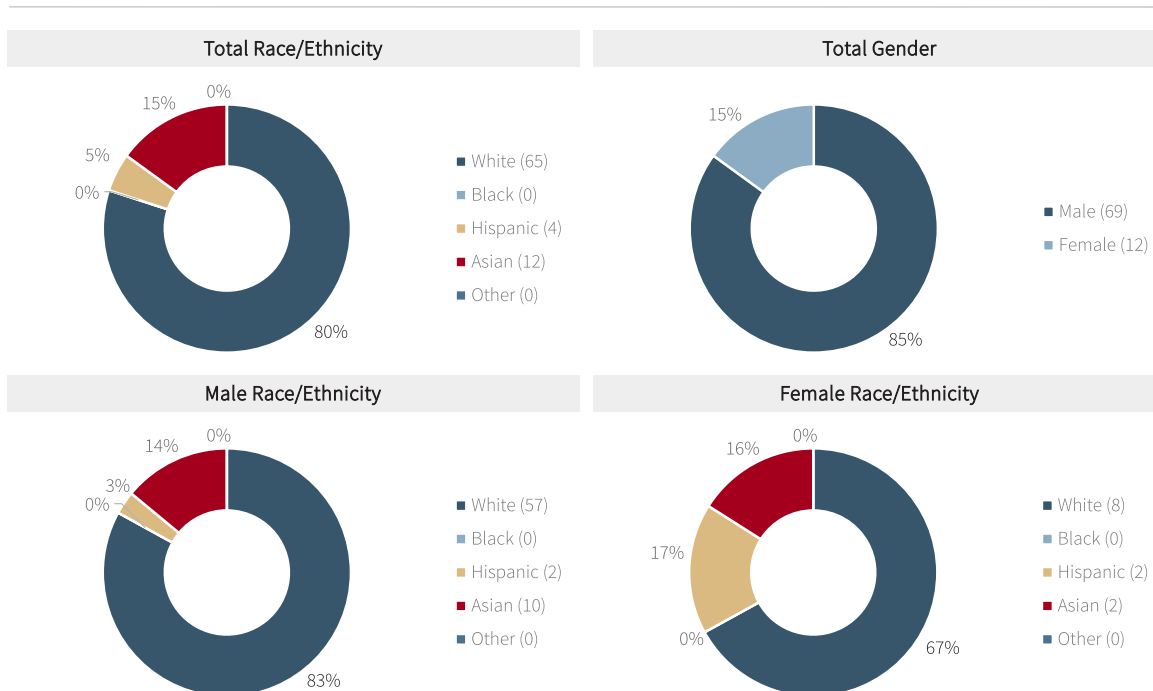


EXHIBIT 13 — CONTINUED

Chief Information Officer/Technology Officer (n=81)



9

Chief Risk Officer (n=19)

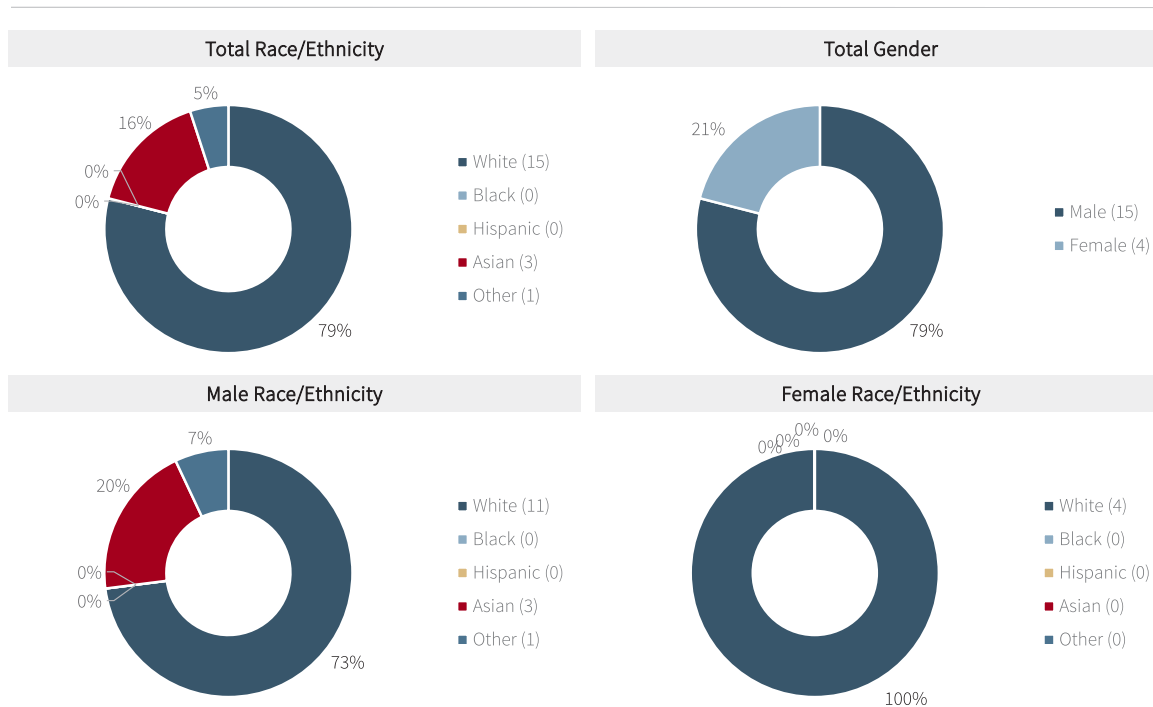
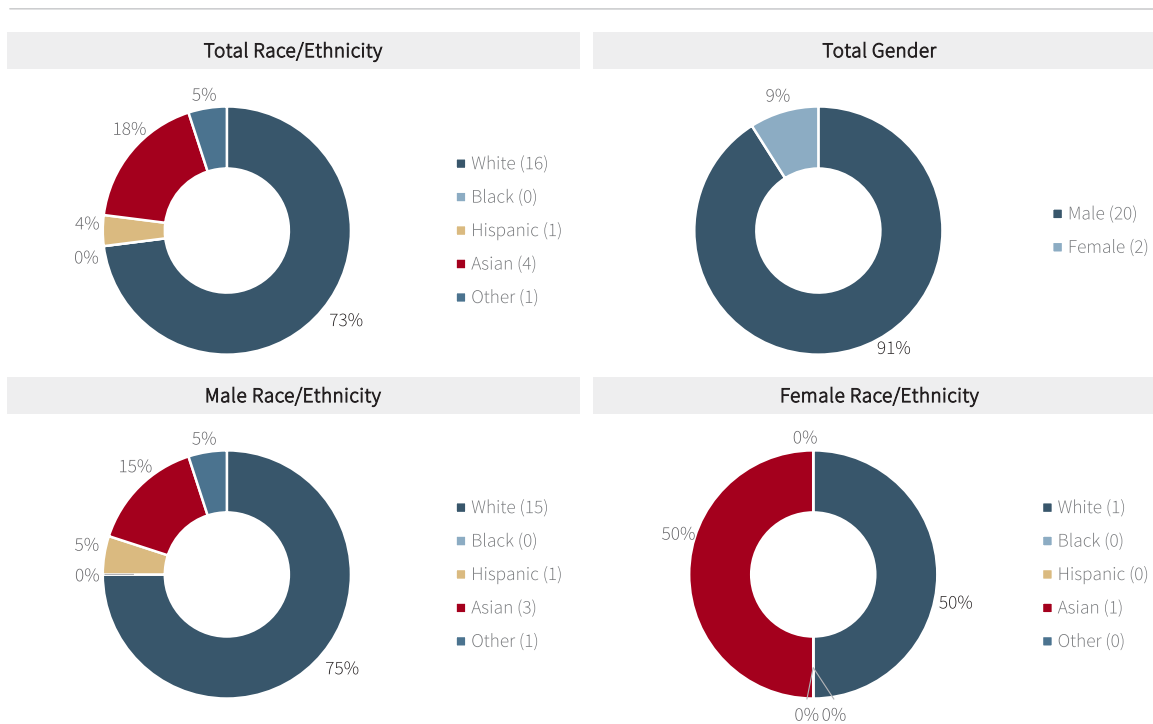


EXHIBIT 13 — CONTINUED

Chief (Lead) Strategy Officer (n=22)



11

Chief (Lead) Sales Officer (n=5)

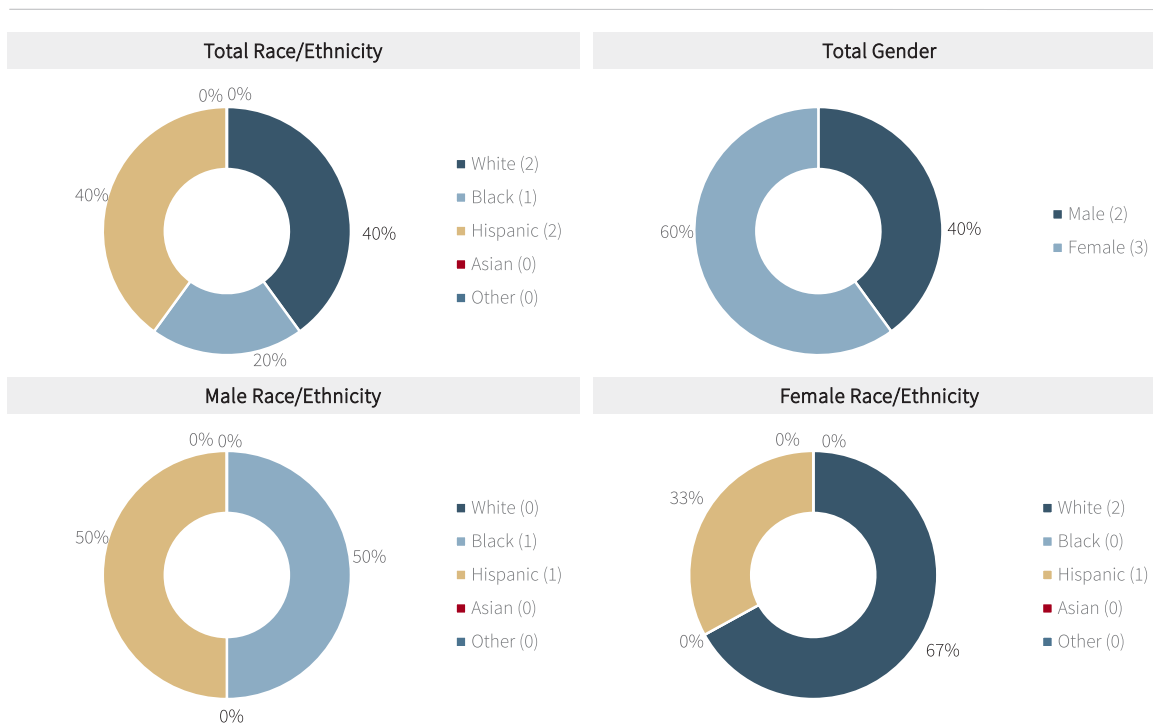
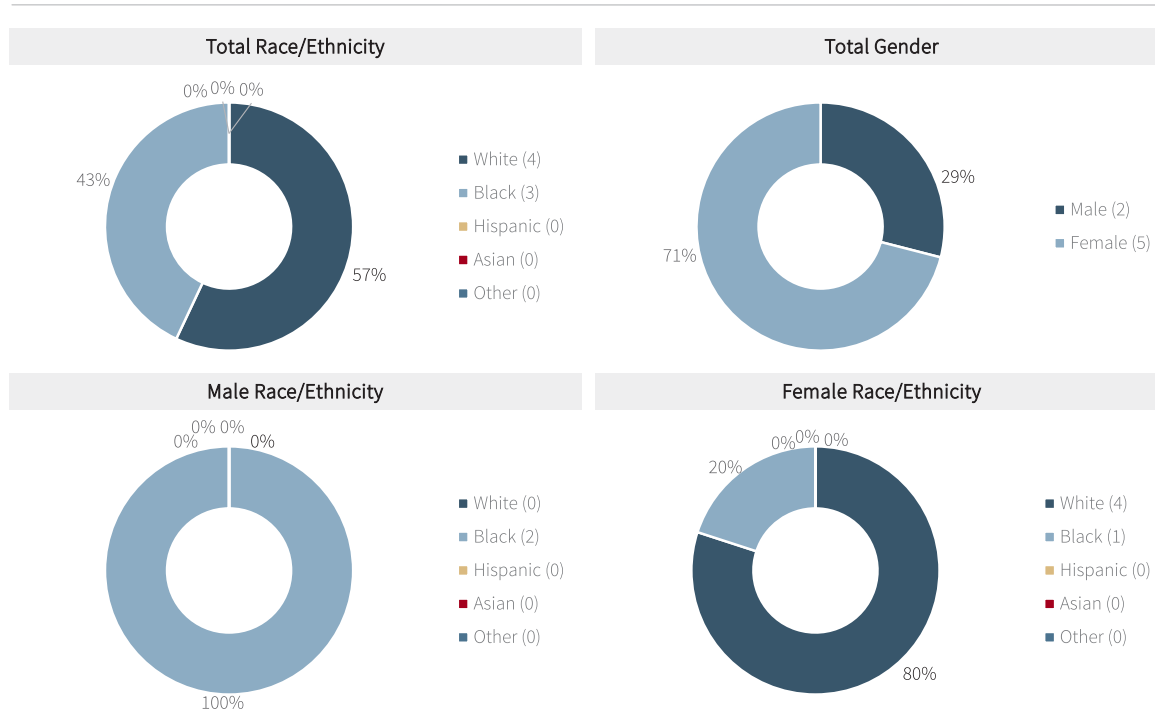


EXHIBIT 13 — CONTINUED

Chief (Lead) Administrative Executives (n=7)



13

Other Staff (Functional) Executives (n=38)

