Diversity and Gender Equity in the Workplace

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It's an enormous honor and pleasure to be with you this afternoon to honor someone who so richly deserved the honor. In settling on a topic, I tried to identify a subject that I thought she might believe is related to her legacy, and I offer some thoughts on gender and diversity in the workplace in that spirit.

When I was interviewing with a prominent Chicago law firm in the late 1970s, one of its leaders assured me that they had no "woman problem" in their firm. One of its 70 odd partners was female and she had no difficulty reconciling her personal and professional life. The past year she had given birth to her first child. It happened on a Friday, and she was back in the office the following Monday. **[Slide: cartoon, pregnant mother I'll be back]**

Over the last several decades, the demographic landscape has been transformed. Yet particularly at leadership levels, progress seems stalled. And because time today is short and the subject is large, leadership is where I want to focus. One irony of this nation's continuing struggle for racial diversity and gender equity is that the profession leading the struggle—lawyers—have so often failed to set an example in our own organizations. 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. At a time when people of color—blacks, Asian-Americans, Latinos and Native Americans constitute about a third of the American population, they account for just over 10 percent of lawyers.6 percent of the partners, 8.6 percent of general counsel (Fortune 500) and 18.9 percent of law school deans. **[Slide: graph]**

Nor is law atypical. Women and minorities are underrepresented in virtually all leadership positions in law, politics, and higher education. The U.S. Congress is 20.8% women

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and 18.2% minorities; among Fortune 500 companies, white men hold 77.6 percent of board seats, with 15.7 women and 9.8 percent minorities; the breakdown of CEOs among the Fortune 500 is: 96.4 percent men, 3.5 percent women, and 3.8 percent minorities. Part of the problem lies in a lack of consensus on whether there is a serious problem and if so, what strategies would effectively address it. We see women and minorities in so many leadership positions now, **[Slide: Obama and Hillary Clinton]** we lose track of where they are missing. **[Slide: add cartoon – no women joint chief of staff]** The point of today's talk is to force focus on the absences and their underlying causes. And although I'll speak in general terms about women and minorities, that should not obscure differences among them and differences across other dimensions such as class or sexual orientation. The point simply is to understand how key aspects of individual identity intersect to structure the professional experience and what can be done to promote more inclusive workplaces.

Let me begin with a little historical context. Until the past half century, almost no women or minorities reached leadership positions and almost no one in those positions considered this a problem. Both formal policies and informal practices reinforced exclusion on the basis of sex, as well as race, ethnicity, sex, and religion. As late as 1960, when women accounted for half of college graduates, they constituted less than 3 percent of lawyers and were notable for their absence at the upper level in government, law firms, and the judiciary. Minorities constituted less than 1 percent of the profession and were also absent at leadership levels. As late as 1940, one survey found only 57 black women lawyers in the entire country, and the only political positions in which women of any color were represented was school boards.

For women, the obstacles took two main forms: One involved women's roles; the other involved men's preferences. For most of this nation's history, the conventional wisdom was that women lacked a "legal mind" and legal temperament and public opinion polls found that between two thirds and three quarters of men did not approve of their wives working. Nor were the attitudes confined to men. In speeches and articles such as "I Gave Up My Law Books for a Cook Book," women advised married colleagues, "if the man objects, for the happiness of all concerned, give it up." **[Slide: picture of 19th century woman cooking]** Many did. Surveys during the early twentieth century found that only a third to half of women lawyers were married and only about a quarter had children.

A second cluster of concerns involved not the role of women, but the distraction and discomfort of men. Administrators at Harvard worried about unchaperoned interchange in the library, at Hastings about the rustling of female skirts in the classroom, and at Columbia, about the "cranks and freaks" who would adversely affect the school's culture and competitive edge. **[Slide: picture woman in rustling skirts]** Other law school and law firm leaders put the problem of prejudice in pragmatic terms. Given discrimination and family commitments that would keep women from establishing successful careers, it made little sense to waste a position on them. The fact of bias thus became a sufficient reason for perpetuating it. In the absence of any accountability for restrictive policies, many decision makers saw no reason even to give a reason. When a woman barred from applying to Columbia Law School in 1922 asked Dean Harlan Stone (later Chief Justice of the United States Supreme Court) why the school wouldn't allow women, his response was "We don't because we don't." **[Slide: picture Stone]** in the few schools where small numbers of women were allowed, they were permitted to speak only on special Ladies Days where the questions all involved women's issues, like rape, or hypotheticals

involving knitting or laundry. "Girl Lawyer has Small Chance for Success," ran the title of an early twentieth century interview, and it was right.

Discrimination based on race, religion, and ethnicity created similar obstacles for leaders of color. They bumped up against all the racial stereotypes common in the culture: "ignorant,"" uncouth," "slovenly," "lazy," as well as exclusions from professional associations and even law libraries anxious to preserve the "dignity" of the profession.

From a contemporary standpoint, what is most interesting is less the extent of discrimination than the strategies that enabled some lawyers to mount successful challenges. Some stiffened their resolve in response to suggestions that law was an unrealistic aspiration. The mother of Constance Baker Motley, the nation's first black female federal judge, proposed hair dressing instead. **[Slide: picture Motley]** The teachers of one of Seattle's first Latino lawyers suggested that he train as an auto mechanic instead of an attorney. Those who persisted often worked tirelessly to challenge policies of exclusion. Clara Foltz **[Slide: picture]** had the satisfaction of successfully suing the school that denied her admission even though the victory came too late to assist her directly. She was also famous for the use of humor in response to prejudice. When an adversary suggested at trial that she would be better off at home raising her children, Foltz responded, "A woman had better be in almost any [occupation] than raising a man such as you."

One of Supreme Court Justice Thurgood Marshall's **[Slide: Photo]** famous exchanges occurred in Japan in 1950, when he was heading the NAACP's challenge to racial discrimination pervasive under General MacArthur's command. The task was complicated by MacArthur's refusal to acknowledge the problem, despite ample evidence of racially disparate treatment in job assignments, promotions, and court martials. When Marshall pointed out the absence of blacks

on the entire headquarters staff MacArthur insisted that no blacks were qualified for such positions. Marshall then pointed out that the base's military band also had no blacks, and added, "Now General, just between you and me, goddammit, don't you tell me that there is no African American that can play a horn."

When direct confrontation appeared fruitless, these early leaders established their own institutions or attempted to fit into establishment circles by projecting a conventional image. Bella Abzug wore a hat and gloves so as not to be mistaken as a secretary. **[Slide: picture]** But even the most demure wardrobe choices could only help so much. Supreme Court Justice Ruth Bader Ginsburg **[Slide: picture]** discovered the limits after tying for first place in her 1959 Columbia Law School class, but being rejected for law firm and clerkship positions. Justice Felix Frankfurter refused to consider her. "I can't stand girls in pants. Does she wear skirts?" he wanted to know. She did, but in the end, he still felt uncomfortable with the prospect of hiring a woman.

Many of these early pioneers attempted to conform to traditional norms in other ways as well. Lavinia Goodell, **[Slide: picture]** who brought the case challenging the Wisconsin bar's exclusion of women, made sure she exhibited "no other alarming eccentricity than a taste for legal studies." She taught "Sunday school, attend[ed] the benevolent society and [made] cake and preserves." A century later, Sandra Day O'Connor broke other gender barrier through a similarly nonconfrontational route. **[Slide: picture]** Although graduating at the top of her Stanford Law School class, O'Connor found no law firm willing to hire her except as a secretary. She also took time out after giving birth to two sons and losing her babysitter, as she put it, "I stayed home myself for about five years and took care of [my family]." In fact, a biographer observed, she "didn't really stay home." She became more active in Republican politics and

civic activities, which paved the way for later positions with the state attorney general and election to the state legislature. There she earned a reputation as a "pretty little thing with a disconcerting load of expertise." I once had a conversation with Justice O'Connor about the barriers and her husband, who had heard the stories a few times too many finally broke in and observed, "things did turn out all right in the end."

The same was true for me although there were a few bumps in the road. I came to Stanford some three decades ago as the second woman on a faculty of 36 men. When I indicated wanted to teach course on gender, the dean was horrified. Type me as woman. Times changed so did deans.

Fast forward to today's lawyers and much has changed, but too much has remained the same. Women and minorities remain dramatically underrepresented at the top and overrepresented at the bottom of workplace hierarchies. Even controlling for relevant qualifications, studies find that men are two to five times more likely than women to be promoted to partner. Although they report about the same overall career satisfaction as their male colleagues, women and minority professionals experience greater dissatisfaction with dimensions of practice relevant to leadership opportunities, such as level of responsibility, recognition for work, and chances for advancement. For example, of some 1000 women of color in corporate counsel offices, about half said being a woman was a significant barrier, and a third indicated that race impeded advancement.

Rarely, however, do lawyers report examples of "blatant" or "overt" discrimination, and the tendency among men is to attribute racial, ethnic, and gender differences to differences in choices, capabilities, and commitment. Such attitudes help account for the relatively low priority that many employers attach to efforts to level the playing field for women and minorities. In one

representative survey, only a quarter of white men felt strongly that it was important to increase diversity in law firms, compared with almost 9 of 10 women of color. Another study found that only 11 percent of white lawyers believed diversity efforts were failing to address subtle racial bias, compared with 50 percent of women of color. **[Slide: with graph]** Yet a vast array of evidence suggests that such perceptions understate the extent to which unconscious stereotypes, mentoring and support networks, and workplace structures disadvantage women and minorities as well as the institutions in which they practice.

Let me say a word about each.

Gender, racial, and ethnic stereotypes play a well-documented role in American culture, despite recent progress, women, particularly women of color, often lack the presumption of competence enjoyed by white men. In national surveys, at least a third to three quarters of female professional lawyers believe that they are held to higher standards than their colleagues and 40 percent of minorities feel the same. A recent study of performance evaluations bears this out and reveals that similar descriptions of performance result in lower ratings for women. **[Slide: cartoon good point Miss trigg - lets wait].** In one sex discrimination case against a law firm, a woman was denied partnership because she lacked sufficient analytic abilities. Among the white male associates who had made partner were lawyers described by partners as "wishy washy and immature," "more sizzle than steak,"and "not real smart." An overview of more than a hundred studies confirms that women are rated lower when they adopt authoritative, seemingly masculine styles, what is assertive in a man seems abrasive in a woman, and female lawyer 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. **[Slide: When a woman wants to cut his head off she's a bitch]**

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Self-promotion that is acceptable in men is viewed as unattractive in women. In a telling recent 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. Even the most accomplished lawyers can encounter such biases. Brooksley Born, **[Slide: picture]** now widely acclaimed for her efforts to regulate high risk derivatives while chair of the Commodity Futures Commission was dismissed at the time as "strident" and a "lightweight wacko."

Women are also subject to double standards and double binds regarding appearance. They are held to higher standards of dress, weight, and grooming, and punished more severely when they fall short. They are also ridiculed for caring too much or too little about how they look—they can be faulted for seeming to lack self discipline and let themselves go, or for seeming vain and superficial to be preoccupied with how they look. **[Slide: CARTOON Does this make my butt look big]** In a recent conference of utility executives, the only woman president was missing during a session and the men joked, there must be a sale at saks. **[Slide: CARTOON woman shopper something less empowering]**

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. For example, when people 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. When men leave early, they are remembered for being SNAGS. **[Slide: cartoon woman and man leaving early]**

Such selective recollection may help account for a study finding that where women and men worked similar hours, over a quarter of men nonetheless thought their female counterparts worked less, and a fifth rated the number of hours of these women as "fair to poor."

Minorities also encounter adverse stereotypes; assumptions that they are less intelligent, less industrious, and generally less qualified. Even if they have excellent credentials, they are often assumed to be beneficiaries of affirmative action rather than meritocratic selection. In a telling recent experiment, participants listened to identical recordings of a lawyer questioning a trial witness. Half the participants were given a picture and name of a white attorney; the other half received the picture of an Asian attorney with an Asian name. Participants who believed they were free of bias nonetheless rated the white attorney as more effective and indicated they were more likely to hire him and recommend him to a friend. Similar studies find that the same resume is rated lower when it is thought to belong to a woman or a minority. So too, when those individuals are assumed to be less competent, their failures will be recalled more readily than their achievements.

A related set of obstacles involves in-group favoritism. Extensive research documents the preferences that individuals feel for members of their own groups. Loyalty, favorable evaluations, mentoring, and the allocation of rewards and professional opportunities are greater for individuals who are similar in important respects, including gender, race, and ethnicity. And white men still have all the advantages. **[Slide: 19th century lawyer]** Outsiders face difficulty in getting access to advice, support, sponsorship, desirable assignments, and client development activities. Racial and ethnic minorities often report isolation and marginalization, while many white women similarly experience exclusion from "old boys" networks. **[Slide: panel with no women]** In some recent research, 62 percent of women of color and 60 percent of white women,

but only 4 percent of white men, felt excluded from formal and informal networking opportunities.

Part of the problem lies in numbers. Many organizations lack sufficient women and minorities at senior levels who have the time and commitment to assist others on the way up. Although a growing number of these organizations have formal mentoring programs, these do not always supply adequate rewards or monitoring to ensure effectiveness. And they cannot substitute for relationships that develop naturally and that yield, not simply advisors, but sponsors—individuals who act as advocates and are in positions to open opportunities. Assumptions about commitment and capabilities also keep mentors from investing in female or minority subordinates who seem unlikely to stay or to succeed. Such dynamics also put pressure on these lawyers to assimilate to prevailing norms. As one attorney of color put it, the "only way to succeed in a large firm is to make them forget you're Hispanic." If a minority lawyer "just doesn't fit in," the assumption is that the problem lies with the individual not the institution.

Minorities are also subject to "race matching"; they receive work because of their identity, not their interests, in order to create the right "look" in courtrooms, client presentations, recruiting, and marketing efforts. Although this strategy sometimes opens helpful opportunities, it can also place minorities in what they describe as "mascot" or roles in which they are not developing their own professional skills. The practice is particularly irritating when they are assumed to have skills and affinities that they in fact lack. Examples include a Korean associate who was given Chinese materials to review, 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. "Oh, you'll be fine," she was told. "Look [anything unfamiliar] up in a dictionary." Linda Mabry, **[Slide: picture]** the first minority partner in a San

Francisco firm, recounts an example in which she was asked to join a pitch to a shipping company whose general counsel was also African-American. "When the firm made the pitch about the firm's relevant expertise, none of which I possessed, it was clear that the only reason I was there was to tout the firm's diversity, which was practically nonexistent. In that moment I wanted to fling myself through the plate-glass window of that well-appointed conference room…."

Escalating workplace demands and inflexible practice structures pose further obstacles to diversity and inclusion. Hourly demands have risen significantly over the last quarter century, and technology that makes it possible for professionals to work at home make it increasingly impossible not to. In many leadership positions, expectations of constant accessibility have become the new norm, and long hours contribute to disproportionate rates of stress, sleep deprivation, **[Slide: picture]** substance abuse, and mental health disorders. These conditions of practice have made leadership positions unattractive to many women, especially those with significant family responsibilities. **[cartoon she's all work and no play]**

Often the assumption is that because women choose not to adjust their lives to meet leadership responsibilities, the fault and the fix lie with women themselves. In a front page Sunday New York Times article about the Opt-Out Revolution, the author notes the underrepresentation of women as political leaders and asks "Why don't women rule the world?" "Maybe" she suggests, "they don't want to." But explanations based on women's choices ignore all the ways that those choices are constructed and constrained. If women aren't choosing to run the world it's partly because men aren't choosing to run the vacuum cleaner. Despite a significant increase in men's domestic work over the last two decades, women continue to shoulder the major burden. **[Slide: man with egg]** in one survey of 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. Forty percent of high achieving women feel that their husbands make more work around the house than they contribute. **[Slide: Husband wants to know if dishes are clean]** It is still women who are most likely to get the phone call that federal district judge Nancy Gertner **[Slide: picture]** received on the first day that she was about to ascend the bench: "Mama, there's no chocolate pudding in my [lunch]."

Yet women who assume disproportionate family responsibilities are in workplaces designed primarily by and for men. Despite some efforts at accommodations, a wide gap persists between formal policies and actual practices concerning work/life conflicts. For example, although over 90 percent of American law firms report policies permitting part-time work, only about 6 percent of lawyers actually use them. Many professionals believe, with good reason, that any reduction in hours or availability would jeopardize their leadership opportunities. America is the only nation in the developed world that does not offer paid parental leave. A federal statute that guarantees 3 months of unpaid leave covers only half the workforce and most of those eligible don't take advantage of it, partly because it is unpaid and partly because they worry that it would signal a lack of commitment. Stories of the "faster than a speeding bullet" maternity leave like the one that opened this chapter are still common. One lawyer I know drafted responses to pretrial requests for information while timing her contractions. 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." Wherever they are—at work or home, they have the sense they should be somewhere else. **[Slide: picture of woman with child over shoulder]**

So what is to be done? The first challenge is to overcome the sense among many law firm leaders that these problems are not serious problems in their workplace, or that responsibility for addressing them lie anywhere and everywhere else. A second challenge is to develop organizational policies and cultures that are committed to equal opportunity not just in principle but in practice. And a third challenge is to help aspiring leaders overcome subtle forms of bias. Let me just suggest a couple of strategies and then invite further suggestions in the question period.

At the individual level, what doesn't work—litigation. To be sure, you can occasionally read about multimillion dollar discrimination remedies, and hear about smoking gun evidence— like the accountant who brought in the highest billings but wasn't promoted; instead she was told she needed courses in charm school, and better make up and jewelry, and a more demure style. But these are the exceptions; at leadership a level, winning is extremely rare and even those who win in court often lose in the world outside it. The more subjective the qualifications the harder it is to prove that race or gender is the main reason for an adverse decision. Plaintiffs are putting their lives on trial and the pictures that emerge are seldom wholly favorable. In a recent case alleging sexual orientation discrimination, the male plaintiff was described in New York magazine as a smarmy paranoid kid with a persecution complex. **[Slide: picture Aaron Charney]**

What also doesn't work are token programs like diversity training. These are the most popular diversity initiatives although large scale research finds they are the least effective and don't correlate with higher levels of women and minorities in upper level positions. The reason- they are often poorly designed serve to entrench stereotypes or provoke backlash. There's a wonderful parody of a diversity day exercise on the office, in which the clueless manager gives

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everyone a hat that labels them as having a particular identity that they are unaware of—asian, woman, black, etc. and then the employees are told to have a conversation in which they treat the other person in a stereotyped manner. The employees find this artificial and uncomfortable, but when forced into the exercise one says to the man labeled Asian, "Ok if I have to say something to you reflecting stereotypes that I don't believe in I would say that you serve good food and are a terrible driver. To which the Asian responds, "Oh god, am I supposed to be a woman?" My husband, a public interest environmental lawyer, recently came home from a training in which they were all supposed to learn to deal with cultural differences through team building; he had to pick a team name and team song, and team logo, and to his horror, actually sing the song—He came home fuming about a day lost to pointless kumbaya exercises, **[Slide: picture campfire]**

So enough about what doesn't work: What does? First, what can individuals do to place themselves on the path to leadership? They can seek out mentors and challenging assignments. Surveys of successful managers and professionals also underscore the importance for women of developing a leadership style that fits the organization, and is one that "men are comfortable with." That finding is profoundly irritating to some lawyers. At an ABA Summit on Women's Leadership, many participants railed against asking women to adjust to men's needs. Why was the focus always on fixing the female? But as others pointed, this is the world that aspiring women leaders inhabit and they need ways of projecting a decisive and forceful manner without seeming arrogant or abrasive. Experts suggest being "relentlessly pleasant" without backing down.

Women can also follow the advice that Sheryl Sandberg COO of Facebook **[Slide: picture]** offered in her widely circulated Ted talk, "Make your partner your partner."

Particularly if they want children, and don't want to be just married to their job, **[Slide: cartoon woman wedding invitation married to job]** women need to find partners who want them too, and who believe in sharing the work, not just in principle but in practice. Supreme Court Justice Ruth B Ginsburg tells story of when she was litigating Supreme Court cases and her husband was a tax partner in New York firm. Their son was having some behavioral issues at school and the teachers and principal always called her when there was a problem. Finally, once in exasperation she said, "This child has two parents." And miraculously the calls stopped. Apparently the problems weren't significant enough to bother her presumably busy husband.

At the institutional level, what can be done? Support for diversity also needs to be reflected in organizational policies, priorities, and reward structures. That commitment needs to come from the top. An organization's leadership needs to not simply acknowledge the importance of gender equity, but also to establish structures for assessing and promoting it, and to hold individuals accountable for the results. So, for example, firms need not just to establish a part time policy but monitor who uses it and if it's few individuals, find out what can be done to make the policy fairer and more user friendly. Bottom up evaluations in which supervisors are rated on issues such as diversity and equity can help increase accountability. Another common strategy is formal mentoring programs and networks for women and minorities. At their best, these initiatives provide useful advice, role models, contacts, and development of supportive relationships. By bringing potential leaders together around common interests, these networks can also forge coalitions on diversity-related issues and generate useful reform proposals.

Organizations can also do more to expand the pipeline to professional careers. An example is Skadden and Arps, a Wall St. firm that partners with schools in low income areas to

improve minority performance and aspirations. As an American Bar Association official put it, now all we need is hundreds of other firms with the same commitment.

Organizations that are most effective in these efforts are those that cast their agenda not as a "women's" issue, or minority issues but as an institutional priority in which women and minorities have a particular stake. As consultants emphasize, "[i]nclusion can be built only through inclusion…. **[Slide: Anyone here not a feminist?]** Change needs to happen in partnership *with* the people of the organization not *to* them." Leaders are critical to creating that sense of unity and translating rhetorical commitments into organizational priorities.