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Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel

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DIVERSITY IN THE LEGAL PROFESSION: PERSPECTIVES FROM MANAGING PARTNERS AND GENERAL COUNSEL

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INTRODUCTION

Within the American legal profession, diversity is widely embraced in principle but seldom realized in practice. Women and minorities are grossly underrepresented at the top and overrepresented at the bottom. What accounts for this disparity and what can be done to address it are the subjects of this Article. It provides the first comprehensive portrait of the problem from the vantage of leaders of the nation's largest legal organizations. Through their perspectives, this Article seeks to identify best practices for diversity in law firms and in-house legal departments, as well as the obstacles standing in the way.

Part I begins with an analysis of the challenges confronting the American bar with respect to diversity and the gap between the profession's aspirations and achievements. Part II sets forth the methodology of the survey of law firm leaders and general counsel. Part III explores the survey's findings, and Part IV concludes with a summary of best practices. "We can and should do better"[1] was how one participant in the study described his firm's progress, and that view is the premise of this Article.

I. CHALLENGES[2]

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.[3] Women

* Ernest W. McFarland Professor of Law and Director of the Center on the Legal Profession, Stanford University. This Article is part of a larger colloquium entitled *The Challenge of Equity and Inclusion in the Legal Profession: An International and Comparative Perspective* held at Fordham University School of Law. For an overview of the colloquium, see Deborah L. Rhode, *Foreword: Diversity in the Legal Profession: A Comparative Perspective*, 83 FORDHAM L. REV. 2241 (2015).

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1. Telephone Interview with Ahmed Davis, Nat'l Chair of the Diversity Initiative, Fish & Richardson P.C. (May 6, 2014).

2. Analysis in this part draws on DEBORAH L. RHODE, THE TROUBLE WITH LAWYERS (forthcoming 2015).

3. ELIZABETH CHAMBLISS, ABA COMM'N ON RACIAL & ETHNIC DIVERSITY IN THE LEGAL PROFESSION, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 6–7 (2005). For example, minorities account for about 25 percent of doctors and 21 percent of

constitute over one-third of the profession but only about one-fifth of law firm partners, general counsel of Fortune 500 corporations, and law school deans.[4] 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.[5] Studies find that men are two to five times more likely to make partner than women.[6] Even women who never take time away from the labor force and who work long hours have a lower chance of partnership than similarly situated men.[7] The situation is bleakest at the highest levels. Women constitute only 17 percent of equity partners.[8] Women are also underrepresented in leadership positions, such as firm chairs and members of management and compensation committees.[9] Only seven of the nation's one hundred largest firms have a woman as chair or

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accountants but only about 12 percent of lawyers. Sara Eckel, *Seed Money*, AM. LAW., Sept. 2008, at 20; *Lawyer Demographics Table*, ABA, http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf (last visited Mar. 25, 2015) (estimate of minority lawyers drawn from 2010 U.S. Census data).

4. *See generally* ABA COMM'N ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN LAW (2014), *available at* http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_july2014.authcheckdam.pdf; *MCCA Survey: Women General Counsel at Fortune 500 Companies Reaches New High*, MINORITY CORP. COUNSEL ASS'N (Aug. 3, 2012), http://www.mcca.com/index.cfm?fuseaction=Feature.showFeature&FeatureID=350&noheader=1; *Women in Law in Canada and the U.S: Quick Take*, CATALYST (Dec. 10, 2014), http://www.catalyst.org/knowledge/women-law-us.

5. 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 (2008).

6. 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., NAT'L ASS'N FOR LAW PLACEMENT FOUND. FOR CAREER RESEARCH & EDUC. & THE ABF, AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 63 (2009), *available at* http://law.du.edu/documents/directory/publications/sterling/AJD2.pdf. A study by the Equal Employment Opportunity Commission (EEOC) found that male lawyers were five times as likely to become partners as their female counterparts. *See* EEOC, DIVERSITY IN LAW FIRMS 29 (2003), *available at* http://www.eeoc.gov/eeoc/statistics/reports/diversitylaw/lawfirms.pdf.

7. Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 ANNALS AM. ACAD. POL. & SOC. SCI. 130, 142 (2004); *see also* Kenneth Day Schmidt, *Men and Women of the Bar, the Impact of Gender on Legal Careers*, 16 MICH. J. GENDER & L. 49, 100–02 (2009) (comparing the respective likelihoods that men and women become partner).

8. NAT'L ASS'N OF WOMEN LAWYERS (NAWL) AND THE NAWL FOUND., REPORT OF THE EIGHTH ANNUAL NAWL NAT'L SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 7 (2014); *see also* Vivia Chen, *Female Equity Partnership Rate Is Up! (Just Kidding)*, CAREERIST (Feb. 25, 2014), http://thecareerist.typepad.com/thecareerist/2014/02/nalp-report-2014.html.

9. Jake Simpson, *Firms Eyeing Gender Equality Should Adopt a Corporate Culture*, LAW360 (Apr. 22, 2014), http://www.law360.com/articles/530686/firms-eyeing-gender-equality-should-adopt-corporate-culture (subscription required); *see* Maria Pabón López, *The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing Current Trends*, 19 HASTINGS WOMEN'S L.J. 53, 71 (2008); *see also* JOAN C. WILLIAMS & VETA T. RICHARDSON, PROJECT FOR ATT'Y RETENTION & MINORITY CORP. COUNSEL ASS'N, NEW MILLENNIUM, SAME GLASS CEILING? THE IMPACT OF LAW FIRM COMPENSATION SYSTEMS ON WOMEN 14 (2010).

managing partner.[10] Gender disparities are similarly apparent in compensation.[11] Those differences persist even after controlling for factors such as productivity and differences in equity/non-equity status.[12]

Although blacks, Latinos, Asian Americans, and Native Americans now constitute about one-third of the population and one-fifth of law school graduates, they still only account for fewer than 7 percent of law firm partners.[13] The situation is particularly bleak for African Americans, who constitute only 3 percent of associates and 1.9 percent of partners.[14] In major law firms, about half of lawyers of color leave within three years.[15] Attrition is highest for women of color; about 75 percent depart by their fifth year and 85 percent before their seventh.[16] Compensation in law firms is lower for lawyers of color, with minority women at the bottom of the financial pecking order.[17]

The situation is somewhat better for women in-house. Women hold the top legal job at 21 percent of Fortune 500 companies.[18] That number increased from 17 percent in 2009.[19] Interestingly, women seem to be doing best at the nation's largest companies: four women are general counsel at the seventeen largest companies.[20] But only 17 percent of general counsels in the Fortune 501–1000 are female.[21] Minority representation in the general counsel ranks of the Fortune 500 is 10

10. Kathleen J. Wu, *"Bossy" is "Bitch" on Training Wheels*, TEX. LAW. (Apr. 29, 2014), http://www.texaslawyer.com/id=1202653144141/Bossy-Is-Bitch-on-Training-Wheels?slreturn=20150202171343 (subscription required) (referring to Law360 survey).

11. BARBARA M. FLOM, NAWL & NAWL FOUND., REPORT OF THE SEVENTH ANNUAL NAT'L SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 15–16 (2012); Karen Sloan, *ABA Issues Toolkit, Aiming to Eliminate Gender Pay Gap*, NAT'L L.J. (Mar. 18, 2013), http://www.nationallawjournal.com/id=1202592488273/ABA-issues-toolkit-aiming-to-eliminate-gender-pay-gap-?slreturn=20150203201645 (subscription required) (noting that women law firm partners earn about $66,000 less than male partners). Women also have lower billing rates than their male counterparts. *See* Jennifer Smith, *Female Lawyers Still Battle Gender Bias*, WALL ST. J. (May 4, 2014), *available at* http://www.wsj.com/articles/SB10001424052702303948104579537814028747376.

12. Marina Angel et al., *Statistical Evidence on the Gender Gap in Law Firm Partner Compensation* 2–3 (Temple Univ., Legal Studies Research Paper No. 2010-24, 2010); Ronit Dinovitzer, Nancy Reichman & Joyce Sterling, *Differential Valuation of Women's Work: A New Look at the Gender Gap in Lawyer's Incomes*, 88 SOC. FORCES 819, 835–37 (2009).

13. *Women and Minorities in Law Firms by Race and Ethnicity—An Update*, NALP (Apr. 2013), http://www.nalp.org/0413research.

14. Julie Triedman, *The Diversity Crisis: Big Firms' Continuing Failure*, AM. LAW. (May 29, 2014), http://www.americanlawyer.com/id=1202656372552/The-Diversity-Crisis-Big-Firms-Continuing-Failure?slreturn=20140825135949 (subscription required).

15. NANCY LEVIT & DOUGLAS O. LINDER, THE HAPPY LAWYER 14 n.55 (2010).

16. DEEPALI BAGATI, WOMEN OF COLOR IN U.S. LAW FIRMS 1–2 (2009).

17. ABA COMM'N ON WOMEN IN THE PROFESSION, VISIBLE INVISIBILITY 28 (2006).

18. Sue Reisinger, *Top Women Lawyers in the Fortune 500*, CORP. COUNS. (Mar. 18, 2014), http://www.corpcounsel.com/id=1202647358761/Top-Women-Lawyers-in-the-Fortune-500?slreturn=20150110161812 (subscription required).

19. *Id.*

20. *Id.*

21. *Id.*

percent.[22] Five percent of Fortune 500 general counsel are African American, 2 percent are Asian, and 2 percent are Hispanic.[23]

II. METHODOLOGY

Between May and June 2014, a request to participate in this survey was sent to the managing partner or chair of the nation's one hundred largest firms[24] and the general counsel of Fortune 100 corporations. Telephone interviews were scheduled with all of those who indicated a willingness to be surveyed. In some instances, the organization's managing partner or general counsel identified someone else in charge of diversity initiatives to be contacted, and interviews were conducted with that person instead of, or in addition to, the managing partner or general counsel. Thirty firms and twenty-three corporations agreed to participate. Thirty spoke on the record; eleven requested anonymity; eleven requested that any quotations be cleared; and one did not indicate any preference. To gain additional perspectives, the authors interviewed members of a national search firm and a consultant on diversity, as well as in-house counsel of some smaller corporations. A list of survey participants appears as Appendix A.

By definition, those who were willing to take the time to participate in the study had a strong commitment to diversity. Moreover, they came from the sectors of the profession with the most resources available to invest in the issue. The findings therefore do not represent a cross section of the profession. Rather, they reflect the experience of those with the greatest willingness and ability to advance diversity in the profession. These participants' insights can help illumine the most effective drivers of change.

III. Findings

A. Diversity As a Priority

For the vast majority of survey participants, diversity was a high priority. Although this comes as no surprise, given the self-selected composition of the study, the strength of that commitment was striking.

Among firms, several members spoke of diversity as one of their core values or as part of the firm's identity.[25] A number of individuals stressed

22. AMENA ROSS, EXECUTIVE SUMMARY OF 2014 FORTUNE 500 GENERAL COUNSEL DIVERSITY (n.d.), *available at* http://www.lcldnet.org/media/uploads/resource/Executive_Summary_of_Amena_Ross_Fortune_500_General_Counsel_Diversity.pdf.

23. *Id.*

24. Based on *The American Lawyer*'s ranking.

25. For core values, see Telephone Interview with Nicholas Cheffings, Chair, Hogan Lovells (July 2, 2014); Telephone Interview with Robert Giles, Managing Partner, Perkins Coie LLP (July 18, 2014); Telephone Interview with Thomas Milch, Chair, Arnold & Porter LLP (June 25, 2014); *accord* Telephone Interview with Carter Phillips, Chair of Exec. Comm., Sidley Austin LLP (June 13, 2014) (one of firm's top three or four priorities). For firms' identity, see Telephone Interview with Joseph Andrew, Global Chairman, & Jay Connolly, Global Chief Talent Officer, Dentons (July 30, 2014); Telephone Interview with Maya Hazell, Dir. of Diversity & Inclusion, White & Case LLP (June 24, 2014); Telephone Interview with Larry Sonsini, Chairman, Wilson Sonsini Goodrich & Rosati (July 21, 2014).

that it was not just the "right thing to do," but also critical to firms' economic success.[26] In elaborating on the business case for diversity, many firm leaders indicated that diversity was central to providing quality service to clients:

- "A diverse team is a more effective team; it has a broader base of experience . . . and the client gets a better product."[27]
- "You can't get the best work without the best talent."[28]
- "This is a talent business. You need to cast the net broadly."[29]
- "The client base is changing and if we don't change with it, our bottom line will be impaired as a result."[30]
- "We're in the human capital business. [Diversity is a way to get] the best people and the best decision making."[31]

Some leaders also spoke of matching the clients and communities they served.[32] One noted, "a diverse profile is important to our clients."[33] Larry Sonsini, Chair of Wilson Sonsini, noted that sixty different languages were spoken in Silicon Valley.[34] Diversity, he said, is "inherent in what we do and who we represent. . . . Diversity is not a 'check the box' issue in this firm."[35] Joseph Andrew, the Global Chair of Dentons, made a similar point. Because the firm did not have a single nationality, its clients were diverse and the firm needed to follow suit.[36]

Whether leaders' views of diversity were fully shared within firm partnerships was, however, less clear. As the chair of one firm's diversity initiative noted, "It is apparent to me that there are people in the firm who if they had their druthers, there would be less focus on diversity. They keep that view to themselves."[37]

Firm leaders communicated their commitment in multiple ways. Many gave periodic updates to leadership and the partnership and included it in their state of the firm speeches and speeches to summer associates.[38] One

26. *See* Telephone Interview with Nicholas Cheffings, *supra* note 25; Telephone Interview with Brad Malt, Chair, Ropes & Gray LLP (May 8, 2014); Telephone Interview with Wally Martinez, Managing Partner, Hunton & Williams LLP (July 22, 2014); Telephone Interview with Thomas Reid, Managing Partner, Davis Polk & Wardwell LLP (July 31, 2014).

27. Telephone Interview with Guy Halgren, Chair of Exec. Comm., Sheppard, Mullin, Richter & Hampton LLP (July 23, 2014).

28. Telephone Interview with Greg Nitzkowski, Global Managing Partner, Paul Hastings LLP (June 3, 2014).

29. Telephone Interview with Wally Martinez, *supra* note 26.

30. Telephone Interview with Thomas Reid, *supra* note 26.

31. Interview by Deborah L. Rhode with participant (July 21, 2014) (on file with author).

32. Telephone Interview with Nicholas Cheffings, *supra* note 25.

33. Telephone Interview with Ahmed Davis, *supra* note 1.

34. Telephone Interview with Larry Sonsini, *supra* note 25.

35. *Id.*

36. Telephone Interview with Joseph Andrew & Jay Connolly, *supra* note 25.

37. Telephone Interview with Ahmed Davis, *supra* note 1.

38. *See* Telephone Interview with Guy Halgren, *supra* note 27; Telephone Interview with Lee Miller, Global Co-Chairman, DLA Piper (June 23, 2014); Telephone Interview

made sure that every presentation to partners discussed diversity.[39] Some included an update or a "come to Jesus" presentation at firm retreats.[40] Many had a formal statement on their website and some put diversity information in their newsletters or annual reports.[41] Diversity often figured in a firm's strategic plan.[42] One chair mentioned it in every major speech in an effort to keep it at the "forefront of peoples' attention."[43] One had a partners' meeting focused on the topic; another had a conclave on the issue for firm leadership, practice group leaders, office managing partners and other key people; and a third held diversity retreats annually.[44] Some emphasized it in required training for firm leadership or new partners.[45]

General counsel also stressed the importance of diversity, although some were slightly more reluctant to rank it among priorities.[46] As one noted, "I don't want to give you pablum. Every company says it's a high priority. The issue is whether you are doing something about it."[47] Most emphasized the same reasons as law firm leaders. Diverse teams provided a more diverse perspective; they avoided "group think."[48] Corporations wanted to "reflect and represent the communities in which we operate."[49] It is the "right thing to do and smart business."[50] It was not just a "check the

with Larren Nashelsky, Chair & Chief Exec. Officer, Morrison & Foerster LLP (June 24, 2014); Telephone Interview with Thomas Reid, *supra* note 26; Telephone Interview with Nadia Sager, Global Chair of Diversity Leadership Comm., Latham & Watkins LLP (May 7, 2014). Some leaders, including several who spoke off the record, had the diversity officer make a presentation at partner meetings. *See, e.g.*, Telephone Interview with John Soroko, Chairman and Chief Exec. Officer, Duane Morris LLP (July 24, 2014).

39. Telephone Interview with Carter Phillips, *supra* note 25.

40. Telephone Interview with Ahmed Davis, *supra* note 1 ("come to Jesus" talk); Telephone Interview with Robert Giles, *supra* note 25; Telephone Interview with Guy Halgren, *supra* note 27; Telephone Interview with Tyree Jones, Dir. of Global Diversity & Inclusion, Reed Smith LLP (July 2, 2014).

41. *See* Telephone Interview with Maya Hazell, *supra* note 25 (website and annual report); Telephone Interview with Lee Miller, *supra* note 38 (newsletter).

42. *See, e.g.*, Telephone Interview with Bob Couture, Exec. Dir., McGuireWoods LLP (June 30, 2014).

43. Interview by Deborah L. Rhode with participant (June 26, 2014) (on file with author).

44. For the conclave, see Telephone Interview with Lee Miller, *supra* note 38. For the diversity retreats, see Telephone Interview with John Soroko, *supra* note 38. The information about the partners' meeting came from an interview not for attribution.

45. Telephone Interview with Robert Giles, *supra* note 25 (leadership); Telephone Interview with Nadia Sager, *supra* note 38 (new hires).

46. These general counsel did not speak for attribution.

47. Telephone Interview with Stephen Cutler, Exec. Vice President & Gen. Counsel, JPMorgan Chase & Co. (Aug. 7, 2014).

48. Telephone Interview with Stephanie Corey, Chief of Staff for Gen. Counsel, Flextronics Int'l Ltd. (July 17, 2014); Telephone Interview with Charles Parrish, Exec. Vice President, Gen. Counsel & Sec'y, Tesoro Corp. (July 25, 2014).

49. Telephone Interview with Teri McClure, Chief Legal Commc'ns & Compliance Officer & Gen. Counsel, United Parcel Serv., Inc. (July 17, 2014); *accord* Telephone Interview with Tara Rosnell, Assoc. Gen. Counsel, Procter & Gamble Co. (June 6, 2014).

50. Interview by Deborah L. Rhode with participant (June 12, 2014) (on file with author).

box" program.[51] One mentioned being sued as a reason for focusing attention on the issue.

In terms of communication, corporations relied on more informal or indirect methods than law firms. The commitment could be conveyed through the leadership's involvement with minority bar associations or the Leadership Council on Legal Diversity.[52] Others stressed their diversity programming.[53] One noted leaders' emphasis on diversity to the people making hiring decisions.[54] Another pointed to its inclusion in performance evaluations.[55] Whatever the method of communication, it mattered that leaders were "personally and professionally committed."[56]

B. Diversity Initiatives

Diversity initiatives varied. Among law firms, some involved formal plans or goals.[57] Rarely did these specify numerical targets.[58] As the chair of one major Wall Street firm explained, "we don't want to be limited" or to "set up unrealistic expectations."[59] Most firms had a committee, council, or task force charged with coordinating diversity efforts.[60] For example, Wilmer Hale has a diversity committee with six partners representing the firm's six offices, each of whom is responsible for heading a separate committee on diversity in each office.[61] Orrick has an Inclusion Leadership Council, comprised of the heads of women's and diversity initiatives, two rising star partners, and two former members of the firm's board of directors.[62] In addition to sponsoring training, speakers' programs, and retreats, firms often had formalized mentorship or sponsorship initiatives. These sought to ensure that associates and junior partners of

51. Telephone Interview with Charles Parrish, *supra* note 48.

52. Telephone Interview with Gretchen Bellamy, Assistant Gen. Counsel, Wal-Mart Stores, Inc. (July 16, 2014); Telephone Interview with Debra Berns, Chief Compliance, Ethics & Privacy Officer & Senior Deputy Gen. Counsel, UnitedHealth Grp., Inc. (July 25, 2014); *see also* LEADERSHIP COUNCIL ON LEGAL DIVERSITY, http://www.lcldnet.org/ (last visited Mar. 25, 2015).

53. Telephone Interview with Susan Blount, Exec. Vice President & Gen. Counsel, Prudential Fin., Inc. (n.d.); Telephone Interview with Tara Rosnell, *supra* note 49.

54. Telephone Interview with Jonathan Hoak, Exec. Vice President & Gen. Counsel, Flextronics Int'l Ltd. (n.d.).

55. Telephone Interview with Mary Francis, Chief Corp. Counsel, Chevron Corp. (Apr. 29, 2014).

56. Telephone Interview with Debra Berns, *supra* note 52.

57. Telephone Interview with Brad Malt, *supra* note 26.

58. Telephone Interview with Lee Miller, *supra* note 38 (goals and objectives, not quotas for recruitment, retention, and promotion). *But see* Telephone Interview with Nicholas Cheffings, *supra* note 25 (global diversity plan that aspires to having women be 25 percent of partners in 2017 and 30 percent in 2022).

59. Interview by Deborah L. Rhode with participant (June 26, 2014) (on file with author).

60. Some had a committee and a smaller steering council. *See* Telephone Interview with Guy Halgren, *supra* note 27.

61. Telephone Interview with Peggy Giunta, Chief Legal Pers. & Dev. Officer, & Kenneth Imo, Dir. of Diversity, Wilmer Cutler Pickering Hale & Dorr LLP (July 28, 2014).

62. Telephone Interview with Mitch Zuklie, Global Chairman & Chief Exec. Officer, Orrick, Herrington & Sutcliffe LLP (May 9, 2014).

underrepresented groups had the professional development opportunities and assistance necessary to ensure retention and promotion.[63] McGuireWoods is piloting a reverse mentoring program in which diverse associates mentor department chairs; the firm also gives a diversity and inclusion award at its annual partnership retreat.[64] Some firms have adopted policies that conformed to best practices developed by outside groups, such as the Project for Attorney Retention.[65] One firm required a slate that included at least one diverse candidate for every open lateral position.[66] That practice is modeled on the Rooney Rule, which the National Football League established to ensure that minority candidates were considered for coaching positions.[67]

Most firms had a dedicated budget for diversity; others financed their efforts with funds allocated for other purposes, such as business development or recruiting. Thomas Reid, managing partner at Davis Polk, explained his firm's preference for an integrated approach: "I don't want people thinking of this as just a cost. Diversity is part of business development efforts. If it's seen as something we just have to do, it will not be sustainable."[68]

General counsel reported similar initiatives. Some have also adopted a modified Rooney Rule to guarantee diverse slates of candidates. One large technology company has a numerical goal for female hiring and promotion because the company found it challenging to achieve diversity in the technology industry. Most general counsel, however, did not focus on numerical goals. Many corporations had mentorship and sponsorship programs as well as speaker programs and training on unconscious bias.[69] Also common were minority summer internships and other pipeline initiatives such as street law for high school students.[70] J.P. Morgan has recently established a legal reentry program targeting lawyers—generally women—who have been out of the workforce for at least a year.[71] After an

63. Telephone Interview with Carter Phillips, *supra* note 25.

64. Telephone Interview with Bob Couture, *supra* note 42.

65. Telephone Interview with Lee Miller, *supra* note 38.

66. Telephone Interview with Bob Couture, *supra* note 42.

67. Brian N. Collins, *Tackling Unconscious Bias in Hiring Practices: The Plight of the Rooney Rule*, 82 N.Y.U. L. REV. 870, 871 (2007); Greg Garber, *Thanks to Rooney Rule, Doors Opened*, ESPN (Feb. 9, 2007, 3:03 PM), http://sports.espn.go.com/nfl/playoffs06/news/story?id=2750645.

68. Telephone Interview with Thomas Reid, *supra* note 26.

69. Telephone Interview with Susan Blount, *supra* note 53; Telephone Interview with Stephen Cutler, *supra* note 47; Telephone Interview with Bruce Kuhlik, Exec. Vice President & Gen. Counsel, Merck & Co., Inc. (July 18, 2014); Telephone Interview with Maryanne Lavan, Senior Vice President, Gen. Counsel & Corp. Sec'y, Lockheed Martin Corp. (July 17, 2014).

70. Telephone Interview with Debra Berns, *supra* note 52; Telephone Interview with Susan Blount, *supra* note 53; Telephone Interview with Maryanne Lavan, *supra* note 69; Telephone Interview with Teri McClure, *supra* note 49; Telephone Interview with Mary O'Connell, Head of Legal Operations, Google Inc. (June 5, 2014); Telephone Interview with Ashley Watson, Senior Vice President & Chief Ethics & Compliance Officer, Hewlett-Packard Co. (May 16, 2014).

71. Telephone Interview with Stephen Cutler, *supra* note 47.

eight-week internship, the company hopes to place them in permanent positions in the legal department.[72]

Evaluations of the success of diversity initiatives were mixed. Virtually all managing partners and general counsel were proud of their efforts but varied in their assessments of results. Those who spoke for attribution had particular reasons to put their best foot forward, and some were confident that their workplace was an inclusive meritocracy.[73] A number mentioned awards from clients and minority or women's organizations, as well as positive ratings from Working Mother Magazine or Yale Law Women.[74] Most felt that their numbers were better than their peers, and most general counsel felt that their offices were often more successful than their companies as a whole. Many firm leaders and general counsel cited progress for women at leadership levels as an example of success. Although women are still underrepresented at the top, a common perception was that this was on the path to being fixed. Some general counsel were also proud of their records in channeling increased business to women- and minority-owned firms, although it could be a challenge finding them in areas where the corporation had the greatest needs. On the whole, participants mentioned more success in recruiting than in promotion and retention. Many mentioned the lack of progress concerning African American partners as a continuing challenge. Some were particularly careful not to be complacent. Comments included:

- "We could be better."[75]
- "I don't think anyone is satisfied with the profession overall. And despite all the efforts, it's hard to see meaningful success in outside counsel."[76]
- "We do pretty good with hiring but we struggle with retention. It's a constant effort."[77]
- "With minorities, we are hiring but not keeping them."[78]

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72. *Id.*

73. For example, one participant felt confident that diversity efforts were successful because "there isn't any perception that people are here for any reason other than that they are doing a great job." Interview by Deborah L. Rhode with participant (July 30, 2014) (on file with author). Another noted, "I really do perceive a color-blind and gender-blind environment." Interview by Deborah L. Rhode with participant (June 30, 2014) (on file with author). One firm chair reported that "in terms of culture and inclusiv[ity], our feedback suggests we are very successful." Telephone Interview with Mitch Zuklie, *supra* note 62.

74. Telephone Interview with Tyree Jones, *supra* note 40; Telephone Interview with Brad Malt, *supra* note 26; Telephone Interview with Wally Martinez, *supra* note 26; Telephone Interview with Lee Miller, *supra* note 38; Telephone Interview with Jim Rishwain, Chair, Pillsbury Winthrop Shaw Pittman LLP (Aug. 2, 2014); Telephone Interview with Tara Rosnell, *supra* note 49; *see also* YALE LAW WOMEN, http://yalelawwomen.org/ (last visited Mar. 25, 2015).

75. Telephone Interview with Maryanne Lavan, *supra* note 69.

76. Telephone Interview with Susan Blount, *supra* note 53.

77. Telephone Interview with Robert Giles, *supra* note 25.

78. Interview by Lucy Buford Ricca with participant (July 21, 2014) (on file with author).

- "You look at the numbers and it's pretty depressing, but it's better than it would have been without initiatives."[79]
- "It's hard for us to walk away and say that we've moved the needle even though we've been trying. . . . It's not a lack of trying, it's a lack of impact."[80]
- "There's always room for improvement."[81]
- "The numbers [concerning African American partners] are pathetic."[82]
- "Not nearly successful enough, no question about it."[83]

C. Challenges and Responses

When asked about the challenges they faced in pursuing their diversity objectives, participants stressed common themes. With respect to minorities, the greatest obstacle was the limited pool of candidates with diverse backgrounds and the fierce competition for talented lawyers.[84] As one firm leader put it, "We hire many young diverse lawyers and then they often leave to go in-house, and then the clients come back and want diverse teams. That makes it difficult."[85] A director of diversity lamented that "[o]ur firm is a place where others come to poach."[86] Others complained about the difficulties of achieving diversity in lateral hiring, because "if firms have diverse lawyers, they work hard to keep them."[87] Corporate counsel noted that they often could not pay as much as large law firms. Carter Phillips, chair of the executive committee of Sidley Austin, expressed a common frustration: "It's tough even when you succeed in getting them in the door and giving them the best work, and they leave."[88]

A related frustration was that leaders were depending on a pipeline controlled by others. For example, across the technology industry, legal departments find it difficult to have a certain percentage of lawyers that meet their diversity goals because the entire pool of attorneys available to fulfill those goals is below that percentage.[89] Some put the blame squarely

79. Interview by Deborah L. Rhode with participant (June 30, 2014) (on file with author).

80. Interview by Lucy Buford Ricca with participant (July 21, 2014) (on file with author).

81. Telephone Interview with Teri McClure, *supra* note 49.

82. Telephone Interview with Thomas Reid, *supra* note 26.

83. Interview by Deborah L. Rhode with participant (July 18, 2014) (on file with author).

84. Telephone Interview with Joseph Andrew & Jay Connolly, *supra* note 25; Telephone Interview with Susan Blount, *supra* note 53; Telephone Interview with David Braff, Partner & Co-Chair of Diversity Comm., Sullivan & Cromwell LLP (July 31, 2014); Telephone Interview with John Soroko, *supra* note 38.

85. Telephone Interview with Bob Couture, *supra* note 42.

86. Telephone Interview with Kenneth Imo, *supra* note 61.

87. Telephone Interview with Robert Giles, *supra* note 25.

88. Telephone Interview with Carter Phillips, *supra* note 25.

89. Telephone Interview with Mark Chandler, Gen. Counsel, Cisco Sys., Inc. (July 24, 2014).

on law schools.[90] One law firm chair declined to participate in the study, explaining, "I simply believe that the academy is the principal problem and should be the focus of your inquiry. You're losing the war at the intake, and we are dependent upon you. . . . Fill our pipeline with diverse talent, and through sponsorship and other initiatives we'll know what to do with it."[91] Other participants put some of the responsibility on society: "A law firm alone can't make overnight changes; some of where we would like to be depends on [the] broader society."[92] To one managing partner, the situation regarding African American lawyers was "hopeless" given issues with the pipeline.[93]

With respect to women, the principle problem mentioned was a "culture that focuses heavily on hours as a metric of contribution."[94] According to one general counsel:

> Until law firms make certain fundamental changes in their business model, it's going to be hard to make meaningful statistical change. . . . When you look at women after forty years [of being in the pipeline] and look at leadership levels, law firms don't seem to be the right stewards on these issues. . . . To get beyond [current levels] firms will have to look at how people coach and invest in talent.[95]

A further challenge was "getting everybody to buy into the issue. Not all men see that there is a need to address women's issues. They see women partners and don't see inhibitions."[96]

Some firms identified broader attitudinal problems. They specified implicit bias, "diversity fatigue,"[97] and the difficulty of having an "honest conversation" on the issue.[98] "Keeping the dialogue fresh and avoiding platitudes" was a continuing challenge.[99] At Lockheed Martin, "the struggle is to avoid backlash and people just checking the box."[100] United Parcel Service worked hard to keep diversity as a "consistent focus . . . incorporat[ed] in the ways we do business, as opposed to . . . the next flavor of the month."[101] For one smaller company, not part of the study's sample, the biggest challenge was "pushback from white males. . . . We need to reassure [them that they] aren't being displaced, [and] get [them] engaged in the process."[102]

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90. Telephone Interview with Tyree Jones, *supra* note 40 (noting drop in diverse attorneys attending law schools).

91. Email from Peter Kalis, Chairman & Global Managing Partner, K&L Gates LLP, to Deborah Rhode, Professor of Law, Stanford Law School (June 13, 2014, 14:06 PST) (on file with author).

92. Telephone Interview with Nicholas Cheffings, *supra* note 25.

93. Interview by Deborah L. Rhode with participant (June 3, 2014) (on file with author).

94. Telephone Interview with Maya Hazell, *supra* note 25.

95. Telephone Interview with Susan Blount, *supra* note 53.

96. Telephone Interview with Nicholas Cheffings, *supra* note 25.

97. Telephone Interview with Kenneth Imo, *supra* note 61.

98. Telephone Interview with Ahmed Davis, *supra* note 1.

99. Telephone Interview with Mary Francis, *supra* note 55.

100. Telephone Interview with Maryanne Lavan, *supra* note 69.

101. Telephone Interview with Teri McClure, *supra* note 49.

102. Telephone Interview with Jonathan Hoak, *supra* note 54.

For some participants the biggest challenge was the location or nature of their organization. A few had their principal offices in Midwestern cities that "don't have a critical mass of racially diverse professionals."[103] Aetna has its corporate headquarters in Hartford, Connecticut, a city not all that "attractive to diverse groups."[104] Boston was reportedly less attractive to African American lawyers than other cities.[105] Some companies were in an industry not seen as "sexy" to "diverse lawyers [who] have a lot of options."[106] The general counsel of an oil and gas company noted that "[it's n]ot easy to recruit. You can't get any more old industry than us."[107]

Other participants expressed frustration with the pace of progress. Those in organizations where attrition was low had to realize that "change is very slow."[108] Pipeline programs took a long time to have immediate impact. "It's a marathon, not a sprint," said the Global Co-Chairman of DLA Piper.[109] The Chair of Morrison & Foerster agreed: "There's no magic bullet or overnight fix. . . . You never get a boulder up the hill."[110] The long-term nature of the struggle required a consistency in focus that was challenging to maintain. As one general counsel put it, "[W]hen [your] day job is putting out fires, [diversity] doesn't always make it to [the] priority of the day. Then six months out, you realize [you] haven't made much progress."[111]

Responses to these challenges took a variety of forms. Many firms invested in mentorship and sponsorship programs. Some took special steps to support their rising stars, such as pairing them with a partner mentor or sending them to outside leadership programs.[112] One placed "a thumb on the scale" for qualified diversity candidates for leadership positions.[113] Often the diversity officer sat in on evaluations and/or hiring decisions, or was notified when a diverse candidate received adverse performance ratings. One firm established a diversity challenge, which asked all attorneys to devote forty hours a year to diversity-related efforts, including recruiting, mentoring, participating in various events, and so forth. Some firms and clients partnered on diversity programs, which often increased their appeal. Some companies also offered internships or secondments for

103. Telephone Interview with Andrew Humphrey, Managing Partner, Faegre Baker Daniels LLP (July 18, 2014).

104. Telephone Interview with William Casazza, Executive Vice President & Gen. Counsel, Aetna, Inc. (June 30, 2014).

105. Telephone Interview with Brad Malt, *supra* note 26.

106. Interview by Lucy Buford Ricca with participant (July 21, 2014) (on file with author).

107. Telephone Interview with Charles Parrish, *supra* note 48.

108. Interview by Lucy Buford Ricca with participant (July 30, 2014) (on file with author).

109. Telephone Interview with Lee Miller, *supra* note 38.

110. Telephone Interview with Larren Nashelsky, *supra* note 38.

111. Telephone Interview with Mary O'Connell, *supra* note 70.

112. Telephone Interview with Diane Patrick, Co-Managing Partner & Chair of Diversity Comm., Ropes & Gray LLP (May 9, 2014).

113. Telephone Interview with Robert Giles, *supra* note 25.

minority law firm attorneys that could enhance their skills and build personal relationships.

Diversity training, particularly around unconscious bias, was common. One firm had lawyers take the implicit bias test or a refresher course before making promotion decisions.[114] Others required it for new hires or anyone involved in recruitment. Evaluations of its effectiveness were mixed. Some felt the programs were "not solving a problem that we had."[115] In one firm, the training had created a "bad tone around the subject. . . . It made people feel nervous."[116] In another firm, "people felt preached to and imposed upon."[117] The same program provoked disagreement in one firm. The firm's leader did not see the "value" of it; the firm's head of human relations disagreed.[118] According to the Chair of Hogan Lovells, "[M]ost people don't think they need it, but most take from the training the need for understanding the possibility of unconscious bias."[119] Another agreed: "[People] don't know what they don't know."[120] Lawyers were sometimes "pleasantly surprised" at the usefulness of the programs. A few leaders felt that it helped if programs were billed as something other than "diversity" initiatives, and many believed that the experience "helped with opening dialogue and making people aware."[121] No one had a concrete basis for his or her perception. As one chair of a diversity initiative acknowledged, "[I w]ould like to . . . know whether participants are taking away anything which affects practice. [I d]on't have any data."[122]

Another strategy involved affinity groups, variously named, which almost all firms and corporations sponsored.[123] Some groups included not just traditional categories based on race, ethnicity, sexual orientation, and gender, but also religion, disability, parent, and veteran status. Many of these groups were actively involved in recruiting, mentoring, and providing business development skills and opportunities. Some held retreats. Many had sponsors from the senior ranks of the organization. Their formality and usefulness varied.[124] One concern was that white men felt excluded or threatened, or that certain groups were better than others in getting their issues addressed. "I've always believed [that] separating people rather than

114. Telephone Interview with Joseph Andrew & Jay Connolly, *supra* note 25.

115. Telephone Interview with Brad Malt, *supra* note 26.

116. Interview by Deborah L. Rhode with participant (July 21, 2014) (on file with author).

117. Telephone Interview with Diane Patrick, *supra* note 112.

118. Interview by Lucy Buford Ricca with participant (June 30, 2014) (on file with author).

119. Telephone Interview with Nicholas Cheffings, *supra* note 25.

120. Telephone Interview with Larren Nashelsky, *supra* note 38.

121. Interview by Deborah L. Rhode with participant (July 1, 2014) (on file with author).

122. Telephone Interview with Ahmed Davis, *supra* note 1; *accord* Telephone Interview with Carter Phillips, *supra* note 25 ("[It's] hard to tell how successful they have been.").

123. At most companies, the affinity groups were company-wide, not specific to the legal department.

124. At several law firms, the only formal group was the women's initiative/group.

bringing them together is not the way to go," said one firm chair.[125] One general counsel felt that the groups were "not as effective as people hoped they would be. . . . I don't think they've made a difference."[126] Others had received feedback that they were "incredibly" important. One company had had senior executives come out in LGBT forums.[127] At the very least, most participants believed that these groups provided a sense of community and an opportunity for raising concerns that should be communicated to management. They helped ensure that diversity was "front and center" in the workplace.

D. Accountability

Participants were asked a number of questions about the structures used to achieve accountability on diversity-related issues. The first was whether they did anything to monitor the experience of employees concerning diversity. Eleven firms and sixteen companies reported relying on surveys to assess experiences related to diversity.[128] "We survey ourselves up the wazoo," reported one general counsel.[129] Most included diversity-related questions as part of a general quality of life survey; some had conducted surveys just on diversity. Some organizations held focus groups as a supplement or substitute for surveys. However, many leaders appeared to see no necessity for formal assessments; they believed that the organization's "culture and open door policy" made people feel that they could raise concerns. One firm worried that the issues could be "somewhat uncomfortable, so we have left it to informal dialogue."[130] But it is precisely because of the discomfort connected with raising such issues openly that some organizations found anonymous surveys useful. Many firms also collected information from exit interviews and 360 performance reviews. One conducted "stay" interviews with minority attorneys to find out what factors were most important to their retention.[131]

Participants were also asked what, if any, measures were in place to hold employees accountable for progress on diversity issues. "Nothing that has teeth," said one general counsel.[132] "I wish there were some," responded another, "That's a good idea."[133] It is, in fact, an idea that many companies

125. Interview by Deborah L. Rhode with participant (June 24, 2014) (on file with author).

126. Interview by Deborah L. Rhode with participant (July 30, 2014) (on file with author).

127. Telephone Interview with Maryanne Lavan, *supra* note 69.

128. Some law firms did not conduct their own survey but relied on the responses of their attorneys to Vault or Am Law surveys. These were included in the survey number.

129. Interview by Deborah L. Rhode with participant (June 12, 2014) (on file with author).

130. Interview by Deborah L. Rhode with participant (July 21, 2014) (on file with author).

131. Telephone Interview with Andrew Humphrey, *supra* note 103.

132. Interview by Deborah L. Rhode with participant (July 16, 2014) (on file with author).

133. Interview by Deborah L. Rhode with participant (June 30, 2014) (on file with author).

and law firms have embraced in some form. Seventy-seven percent of companies and 80 percent of firms surveyed make some effort to assess individual employees' performance on diversity. Some used the data from employee surveys to assess the performance of managers. Others used 360 performance reviews or information submitted as part of lawyers' self-evaluations. Some allocated specific dollar amounts to diversity contributions.[134]

Participants divided on the usefulness of tying compensation to performance on diversity. Twenty-nine percent of companies and 43 percent of firms surveyed acknowledged that an individual's diversity efforts could play a role in compensation decisions. According to one firm leader, financially rewarding diversity efforts gets people's attention and makes them realize that diversity is part of their job. Other leaders disagreed. Hogan Lovells had "taken the view that artificially incentivizing people to do the right thing is not the right way. We want it to be part of the culture of the firm. . . . [But] commitment to diversity above and beyond what we would normally expect is something we would take into account."[135] Other organizations similarly made it a matter for those who had "gone [the] extra mile" on diversity issues.[136] One company had gone "back and forth" and was still debating the issue.[137] The general counsel wanted it to be "part of [the] culture" but was unsure if incentives were the way to get there.[138]

Corporate clients also had opportunities to hold law firms accountable by requiring data on diversity and allocating their business on that basis. Most companies reported asking for general information on firms' composition as well as specific information about the staffing of their own matters.[139] Rarely did general counsel report terminating representation over the issue, although some seemed prepared to do so.[140] As the chief of legal operations at Google noted, "as much as we encourage it, there isn't a penalty or reward."[141] Only one firm reported losing business over the issue. Some companies gave awards and some had targeted expenditures

134. Associates as well as partners were rewarded.

135. Telephone Interview with Nicholas Cheffings, *supra* note 25.

136. Interview by Deborah L. Rhode with participant (June 26, 2014) (on file with author).

137. Telephone Interview with Teri McClure, *supra* note 49.

138. *Id.*

139. One general counsel did not ask because "we are hiring individual lawyers and not basing on social criteria." Telephone Interview by Deborah L. Rhode with participant (July 24, 2014) (on file with author).

140. One had "moved matters from firms that didn't have the same commitment as we have." Telephone Interview with Teri McClure, *supra* note 49. Another recalled letting a firm go about eight years ago because of its record on women. Another said she would terminate a firm if she didn't see a "diverse slate." Telephone Interview with Maryanne Lavan, *supra* note 69. One said he would not take an existing matter away but would "decrease business and channel it to firms doing the right thing." Interview by Deborah L. Rhode with participant (June 12, 2014) (on file with author). Another said, "[W]e have not dropped a firm but it is a factor in who we approve." Telephone Interview with Ashley Watson, *supra* note 70.

141. Telephone Interview with Mary O'Connell, *supra* note 70.

on minority or women-owned firms. One leader reported experience with a bonus program allocating additional business to firms that had a certain number of minorities and women working on their matters.[142] Most general counsel thought, "[T]he firms get it. This isn't a hard sell."[143] Evaluations of the effectiveness of these accountability efforts varied. A number of general counsel felt frustrated by the lack of progress made by outside firms. The senior vice president and chief ethics and compliance officer at Hewlett Packard expressed common views with uncommon candor. "We've always tracked it . . . but we're not that great at [getting results]."[144] According to one general counsel, "they want to send glossy documents describing their programs. It's not very productive."[145] Some faulted themselves for not "following through" on the reports. One felt frustrated with firms that "want me to goad them into doing the right thing."[146]

For their part, firms found it "frustrating . . . when clients take a hard stick on this and then don't do anything in response. People are doing cartwheels to comply and then don't get an increase in business . . . ."[147] Some corporations "say this is important but don't pay attention to it."[148] "A lot of it is half-hearted. . . . Even the most detailed response to questions never gets a follow-up."[149] One firm chair noted that clients' concern ran the gamut; some made diversity their top priority while others got questionnaire results year after year "and that's the last we heard of it."[150] "It ebbs and flows. If you get a [general counsel] who is passionate about the issue, it gets a lot of traction. If that person leaves or gets preoccupied, it fades."[151] Most of the interest came from large corporations; midsize companies and individual clients showed little interest. One firm chair thought that clients on the whole had gotten more serious about their inquiries. "[This] has moved over the last five years from 'we want to be [seen as] doing this' to 'we want to see that it's happening.'"[152]

When asked if pressure from clients had changed firm practices, many leaders said it had not.

- "We would be doing it anyway."[153]

142. Telephone Interview with Ahmed Davis, *supra* note 1 (describing Microsoft's approach).

143. *See, e.g.*, Telephone Interview with Mary Francis, *supra* note 55.

144. Telephone Interview with Ashley Watson, *supra* note 70.

145. Telephone Interview with participant (n.d.) (on file with author).

146. Interview by Deborah L. Rhode with participant (July 18, 2014) (on file with author).

147. *See, e.g.*, Interview by Deborah L. Rhode with participant (July 21, 2014) (on file with author).

148. Interview by Deborah L. Rhode with participant (June 23, 2014) (on file with author).

149. Interview by Deborah L. Rhode with participant (Aug. 6, 2014) (on file with author).

150. Telephone Interview with Guy Halgren, *supra* note 27.

151. Interview by Deborah L. Rhode with participant (July 21, 2014) (on file with author).

152. Telephone Interview with Nicholas Cheffings, *supra* note 25.

153. *Id.*

- "We expect as much from ourselves or more than our clients do."[154]
- "I'd like to believe [this] hasn't affected our commitment."[155]
- "We haven't been dragged to [the] conclusion" that diverse teams make for better lawyering.[156]

Other firm leaders registered a positive impact from the requirements. "Partners are responsive to anything clients highlight as a concern and follow up."[157] Some "wished there were more pressure. . . . It has helped to get people to see diversity as a bottom line issue. . . . It gets partners' attention."[158] Others similarly "welcomed" client interest because it "reinforces the importance of our own efforts."[159] At the very least, the "collective pressure from a lot of committed counsel has prevented things from being worse than they are."[160] According to Perkins Coie's managing partner, client pressure "really does help send the message home. . . . You get what you measure. It's a good thing to do, and if this [pressure] helps us achieve it, so be it."[161] Others agreed. Client inquiries had "raised awareness among partners—they were paying attention because they know clients care about it."[162] Senior lawyers who "may not have been all that committed listen when a client says we care about quality, cost, and diversity."[163]

E. Work/Family Issues

A final question asked leaders how they had addressed issues of work/life balance and how successful they had been. The vast majority claimed to have been successful. "If you don't want to lose good people, you have to be flexible."[164] A common view was that "we work hard but it's not a sweatshop."[165] Most organizations guaranteed fairly generous parental leaves, permitted flexible time and reduced hour schedules, and allowed telecommuting at least to some extent. A few had emergency childcare or on-site centers.[166] Law firms often were at pains to "demonstrate that you can be a successful partner with a balanced schedule—reduced hours or part time. This is important to attract the best talent: you don't need to be a

154. Telephone Interview with Jim Rishwain, *supra* note 74.
155. Telephone Interview with Andrew Humphrey, *supra* note 103.
156. Telephone Interview with John Soroko, *supra* note 38.
157. Telephone Interview with Maya Hazell, *supra* note 25.
158. Interview by Deborah L. Rhode with participant (July 1, 2014) (on file with author).
159. *Accord* Telephone Interview with Larren Nashelsky, *supra* note 38 ("Clients reinforce the message."); Telephone Interview with Diane Patrick, *supra* note 112 ("Some general counsel are active in pressing the issue. That's a good thing for us.").
160. Telephone Interview with Susan Blount, *supra* note 53.
161. Telephone Interview with Robert Giles, *supra* note 25.
162. Telephone Interview with Kenneth Imo, *supra* note 61.
163. Telephone Interview with Mitch Zuklie, *supra* note 62.
164. Telephone Interview with Lee Miller, *supra* note 38.
165. Telephone Interview with Guy Halgren, *supra* note 27.
166. Telephone Interview with David Braff, *supra* note 84 (emergency care); Telephone Interview with Thomas Milch, *supra* note 25 (on-site childcare).

staff attorney or [on a] different track."[167] Championing flexibility was also important in corporations. As one leader noted: "It's feasible for . . . caregivers to have a flexible work schedule; [they] really can do the work from anywhere."[168]

"But," she added, "there is the inherent obstacle in that in the legal profession [there is] a lot of work to do."[169] Many leaders made a similar point:

- "Everyone feels stressed. . . . It's the profession we've chosen. It's a client service profession and a demanding job."[170]
- "It's a tough environment to be part-time in."[171]
- "Clients expect availability twenty-four hours a day."[172]
- "We run a 24/7 business and it's international. We have a difficult and time-committed job."[173]
- "It's really difficult in the industry, especially for primary caretakers."[174]
- "It's a real tough [issue]. We do programs on the subject but I'm not sure people have time to attend. I don't think we've done anything really to address that issue."[175]
- "You have to be realistic. It's a demanding profession. . . . I don't claim we've figured it out."[176]

Although some leaders were sensitive to the problem of "schedule creep," and tried to avoid escalation of reduced hours, others saw the problem as inevitable. As one firm chair put it, "When you go on a reduced schedule, there are times when [you] have to work full-time to demonstrate [you] can do the job. [Lawyers] need a support system in place so that they can demonstrate the skills to be promoted. Sometimes people don't recognize that."[177]

Most general counsel felt that "corporations are easier places to combine work and family than law firms are."[178] As one general counsel put it, part of the reason "that lawyers move from firms to in-house is to achieve a

167. Telephone Interview with Joseph Andrew & Jay Connolly, *supra* note 25; *accord* Telephone Interview with Robert Giles, *supra* note 25 ("[We've] made a lot of people partner while [they were] on part-time status.").

168. Telephone Interview with Debra Berns, *supra* note 52.

169. *Id.*

170. Telephone Interview with Susan Blount, *supra* note 53.

171. Interview by Deborah L. Rhode with participant (July 1, 2014) (on file with author).

172. Interview by Deborah L. Rhode with participant (June 24, 2014) (on file with author).

173. Telephone Interview with Teri McClure, *supra* note 49.

174. Telephone Interview with Larren Nashelsky, *supra* note 38.

175. Telephone Interview with Stephanie Corey, *supra* note 48.

176. Telephone Interview with Andrew Humphrey, *supra* note 103.

177. Telephone Interview with Kenneth Imo, *supra* note 61.

178. Interview by Deborah L. Rhode with participant (July 30, 2014) (on file with author).

better work-life balance."[179] Another noted, "People could make more money in law firms. To counter that, we offer a better work/life balance as well as a competitive salary."[180] Because lawyers in-house do not bill by the hour, "no one is looking over your shoulder to make sure [you] are in [your] chair twelve hours a day. We just look to people to get their jobs done."[181] The general counsel of Cisco stated his belief that "the point is to measure output rather than input. We don't care how many hours are worked on a particular matter as long as the project gets done."[182] The general counsel of Aetna felt similarly: "We work pretty hard. But we let people do it at a time and place convenient to them."[183]

Leaders were of mixed views on whether to use their "family friendly" status in recruiting. Some were proud of their policies and their ranking by organizations like the Yale Law Women. Others opted for a lower profile. "I don't put it out there because I don't want to attract people who are coming for that reason," said one general counsel.[184] A firm chair similarly recalled that "we made the mistake of recruiting around work/life balance and got people who thought we weren't a 'type A' intense place."[185]

Whether organizations could do more to address the issue also evoked varied responses. Some leaders wished "we could stop talking about it because it raises the expectation that we can do something about it."[186] Others were less resigned. "The whole company, including the legal department, has room for improvement when it comes to work/life balance," said one general counsel.[187] Others similarly felt more change was inevitable, and desirable. "If we crack the code on work/life balance it will help women," said Mitch Zuklie, Chair of Orrick.[188]

IV. BEST PRACTICES

The findings from this study, together with other research and interviews with headhunters and a diversity consultant, suggest a number of best practices for advancing diversity in law firms and in-house legal departments.

179. Telephone Interview with Chan Lee, Vice President & Assistant Gen. Counsel, Pfizer, Inc. (July 29, 2014).

180. Telephone Interview with Gretchen Bellamy, *supra* note 52.

181. Interview by Lucy Buford Ricca with participant (July 30, 2014) (on file with author).

182. Telephone Interview with Mark Chandler, *supra* note 89.

183. Telephone Interview with William Casazza, *supra* note 104.

184. Interview by Deborah L. Rhode with participant (July 18, 2014) (on file with author).

185. Interview by Deborah L. Rhode with participant (June 12, 2014) (on file with author).

186. Interview by Lucy Buford Ricca with participant (July 21, 2014) (on file with author).

187. Telephone Interview with Charles Parrish, *supra* note 48.

188. Telephone Interview with Mitch Zuklie, *supra* note 62.

A. Commitment and Accountability

The first and most important step toward diversity and inclusion is to make that objective a core value that is institutionalized in organizational policies, practices, and culture. The commitment needs to come from the top. An organization's leadership must not only acknowledge the importance of diversity but also establish structures for promoting it and for holding individuals accountable. To that end, leaders need to take every available opportunity to communicate the importance of the issue, not just in words, but in recruiting, evaluation, and reward structures.

"What doesn't work is when leaders talk about the value of inclusion but fail to make it more than the seventh, eighth, or ninth priority," said Christie Smith, managing principal of Deloitte University Leadership Center for Inclusion.[189] So too, Miriam Frank, vice president of recruiters Major, Lindsey & Africa, saw "some companies purport to put it at the top of the list, but when push comes to shove, other qualities will creep up the ladder."[190] By contrast, true commitment from an organization's leadership can help stave off frustration or "diversity fatigue" that occurs when lawyers feel that programs are simply window dressing. What also does not work, according to Smith, are

> programs and initiatives around diversity without leadership expectations tied to [them]. . . . There are a lot of well-intentioned leaders who have abdicated responsibility to a few in the organization rather than making diversity and inclusion the responsibility of every leader in their organization. . . . [They] have stated values around inclusion but [they] don't live up to those values.[191]

To institutionalize diversity, a central priority should be developing effective systems of evaluation, rewards, and allocation of leadership and professional development opportunities. Women and minorities need to have a critical mass of representation in key positions such as management and compensation committees. Supervisors need to be held responsible for their performance on diversity-related issues, and that performance should be part of self-assessments and bottom-up evaluation structures.[192] Although survey participants were divided in their views about tying compensation to diversity, most research shows that such a linkage is

189. Telephone Interview with Christie Smith, Managing Principal, Deloitte Univ. Leadership Ctrs. for Inclusion & Cmty. Impact, Deloitte & Touche LLP (July 23, 2014).

190. Telephone Interview with Miriam Frank, Vice President, Major, Lindsey & Africa (June 9, 2014).

191. Telephone Interview with Christie Smith, *supra* note 189.

192. *See* BAGATI, *supra* note 16, at 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 1, 27–28 (Barbara Kellerman & Deborah L. Rhode eds., 2007); Cecilia L. Ridgeway & Paula England, *Sociological Approaches to Sex Discrimination in Employment*, *in* SEX DISCRIMINATION IN THE WORKPLACE 189, 202 (Faye J. Crosby et al. eds., 2007); Robin J. Ely, Herminia Ibarra & Deborah Kolb, *Taking Gender into Account: Theory and Design for Women's Leadership Development Programs*, 10 ACADEMY OF MGMT. LEARNING & EDUC. 474, 481 (2011); JOANNA BARSH & LAREINA YEE, UNLOCKING THE FULL POTENTIAL OF WOMEN AT WORK 11 (McKinsey & Co. 2012).

necessary to demonstrate that contributions in this area truly matter. Performance appraisals that include diversity but that have no significant rewards or sanctions are unlikely to affect behavior.[193]

Pressure from clients to hold firms accountable is also critical. Such initiatives need to include not just inquiries about diversity, which most clients make, but also follow-ups, which occur less often. Good performance needs to be rewarded; inadequate performance should carry real sanctions. This kind of pressure ensures that "regular partners have to think about it."[194]

B. Self-Assessment

As an ABA Presidential Commission on Diversity recognized, self-assessment should be a critical part of all diversity initiatives.[195] 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.[196]

C. Affinity Groups

Affinity groups for women and minorities are extremely common, but data on their effectiveness is mixed. Survey participants generally agreed with research suggesting that, at their best, such groups provide useful advice, role models, contacts, and development of informal mentoring relationships.[197] By bringing lawyers together around common interests, these networks can also forge coalitions on diversity-related issues and

193. Frank Dobbin & Alexandra Kalev, *The Architecture of Inclusion: Evidence from Corporate Diversity Programs*, 30 HARV. J.L. & GENDER 279, 293–94 (2007); Frank Dobbin, Alexandra Kalev & Erin Kelly, *Diversity Management in Corporate America*, CONTEXTS, Fall 2007, at 21, 23–24, *available at* http://scholar.harvard.edu/files/dobbin/files/2007_contexts_dobbin_kalev_kelly.pdf.

194. Telephone Interview with Thomas Reid, *supra* note 26.

195. PRESIDENTIAL INITIATIVE COMM'N ON DIVERSITY, ABA, DIVERSITY IN THE LEGAL PROFESSION: THE NEXT STEPS 23 (2010).

196. Stephen Benard, In Paik & Shelley J. Correll, *Cognitive Bias and the Motherhood Penalty*, 59 HASTINGS L.J. 1359, 1381 (2008); Emilio J. Castilla, *Gender, Race, and Meritocracy in Organizational Careers*, 113 AM. J. SOC. 1479, 1485 (2008).

197. *See* Rhode & Kellerman, *supra* note 192, at 30; Alexandra Kalev, Frank Dobbin & Erin Kelley, *Best Practices or Best Guesses: Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOC. REV. 589, 594 (2006); 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).

generate useful reform proposals.[198] Yet their importance should not be overstated. As one senior vice president put it, "[There's] only so much progress you can make by talking to people just like you. [You are] preaching to the choir."[199] 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 individuals "in touch with what . . . or whom they [ought] to know."[200]

D. Mentoring and Sponsorship

One of the most effective interventions involves mentoring and sponsorship, 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. Research suggests that well-designed initiatives that evaluate and reward mentoring activities can improve participants' skills, satisfaction, and retention rates.[201] However, most programs do not require evaluation or specify the frequency of meetings and set goals for the relationship.[202] Instead, they permit a "call me if you need anything" approach, which leaves too many junior attorneys reluctant to become a burden.[203] Ineffective matching systems compound the problem; lawyers too often end up with mentors with whom they have little in common.[204] Formal programs also may 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 organizations is that they cannot simply rely on formal structures. They need to cultivate and reward sponsorship of women and minorities and monitor the effectiveness of mentoring programs.[205]

E. Work/Family Policies

Organizations need to ensure that their work/family policies are attuned to the needs of a diverse workplace, in which growing numbers of men as well as women want flexibility in structuring their professional careers. To

198. Bob Yates, *Women and Minorities: The Retention Challenge for Law Firms*, CHI. LAW., Feb. 2007.

199. Telephone Interview with Ashley Watson, *supra* note 70.

200. Dobbin, Kalev & Kelly, *supra* note 193, at 25.

201. Rhode & Kellerman, *supra* note 192, at 30; *see also* IDA O. ABBOTT, THE LAWYER'S GUIDE TO MENTORING 32–33 (2000); Kalev, Dobbin & Kelly, *supra* note 197, at 594; Schipani et al., *supra* note 197, at 100–01.

202. *See, e.g.*, MINN. STATE BAR ASS'N, DIVERSITY AND GENDER EQUITY IN THE LEGAL PROFESSION, BEST PRACTICES GUIDE 65–79 (2008).

203. *Id.* at 77.

204. IDA O. ABBOTT & RITA S. BOAGS, MINORITY CORP. COUNSEL ASS'N, MENTORING ACROSS DIFFERENCES: A GUIDE TO CROSS-GENDER AND CROSS-RACE MENTORING (n.d.), *available at* http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=666; Leigh Jones, *Mentoring Plans Failing Associates; High Attrition Rates Still Hit Firms Hard*, NAT'L L.J. (Sept. 15, 2006), http://www.nationallawjournal.com/id=900005462642/Mentoring-plans-failing-associates.

205. CATALYST, THE PIPELINE'S BROKEN PROMISE 5 (2010).

that end, organizations should ensure that they have adequate policies and cultural norms regarding parental leave, reduced schedules, telecommuting, and emergency childcare. Most of the organizations surveyed had such formal policies. But existing research shows a substantial gap between policies and practices. One study found that although over 90 percent of law firms reported having part-time policies, only approximately 4 percent of lawyers actually use them.[206] Those who choose reduced schedules too often find that they aren't worth the price. Their hours creep up, the quality of their assignments goes down, their pay is not proportional, and they are stigmatized as "slackers."[207]

Surveying lawyers and collecting data on part-time policy utilization rates and promotion possibilities are critical in educating leaders about whether formal policies work in practice as well as in principle. Too many organizations appear resigned to the idea that law is a 24/7 profession.[208] Too few have truly engaged in the kind of self-scrutiny necessary to develop effective responses. As one survey participant noted, his firm's policies were "a work in progress." Other leaders need to take a similar view, and to subject their practices to ongoing self-assessment.

F. Outreach

Organizations can also support efforts to expand the pool of qualified minorities through scholarships, internships, and other educational initiatives, and to expand their own recruiting networks. The ABA's Pipeline Diversity Directory describes about 400 such initiatives throughout the country.[209] Many survey participants were undertaking such programs in recognition of their long-term payoffs. Some organizations had also cultivated contacts with organizations that support diverse talent. As one general counsel noted, "[I]f we are creative and think outside the box about the skills and experience needed to succeed in a position, we can find more qualified talent, including qualified diverse talent, for the pools from which we hire."[210]

CONCLUSION

Implementing these practices requires a sustained commitment and many leaders expressed understandable frustration at the slow pace of change. What is encouraging about this study, however, is that such a commitment

206. Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041, 1056 (2011).

207. *Id.* at 1056–57.

208. *See* discussion *supra* Part III.E. (discussing work/family issues).

209. *See Search the Pipeline Diversity Directory*, ABA, http://apps.americanbar.org/abanet/op/pipelndir/search.cfm (last visited Mar. 25, 2015). For a discussion of such programs, see Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 294–99 (2014).

210. Email from Bevelyn A. Coleman, Exec. Vice President & Deputy Gen. Counsel, Wells Fargo & Co., to Deborah L. Rhode, Professor of Law, Stanford Law School (Aug. 14, 2014, 10:24 PST) (on file with author).

appears widely shared. That, in itself, is a sign of progress. As one chair noted, "Ten years ago, it wasn't uncomfortable to walk into a room with a non-diverse team. The temperature of the water has changed. It's hard to succeed without a commitment to diversity."[211] Leaders of the profession recognize that fact. The challenge now is to translate aspirational commitments into daily practices and priorities.

211. Telephone Interview with Greg Nitzkowski, *supra* note 28.

Appendix A: Participant List	
Fortune 100 Companies	***Am Law 100 Firms***
Aetna, Inc.	Arnold & Porter LLP
Am. Int'l Grp., Inc.	Davis Polk & Wardwell LLP
Chevron Corp.	Dentons
Cisco Systems, Inc.	DLA Piper
Comcast Corp.	Duane Morris LLP
ConocoPhillips Co.	Faegre Baker Daniels LLP
Google Inc.	Fish & Richardson P.C.
Hewlett-Packard Co.	Hogan Lovells
Intel Corp.	Hunton & Williams LLP
Johnson Controls, Inc.	Holland & Knight LLP
JPMorgan Chase & Co.	Kirkland & Ellis LLP
Lockheed Martin Corp.	Latham & Watkins LLP
Merck & Co., Inc.	McGuireWoods LLP
Pfizer, Inc.	Morgan, Lewis & Bockius LLP
Prudential Fin., Inc.	Morrison & Foerster LLP
Tesoro Corp.	Nixon Peabody LLP
The Coca-Cola Co.	O'Melveny & Myers LLP
Procter & Gamble Co.	Orrick, Herrington & Sutcliffe LLP
UnitedHealth Grp., Inc.	Paul Hastings LLP
United Parcel Serv., Inc.	Perkins Coie LLP
Verizon Commc'ns	Pillsbury Winthrop Shaw Pittman LLP
Wal-Mart Stores, Inc.	Proskauer Rose LLP
Wells Fargo & Co.	Reed Smith LLP
	Ropes & Gray LLP
	Sheppard, Mullin, Richter & Hampton LLP
	Sidley Austin LLP
	Sullivan & Cromwell LLP
	White & Case LLP
	Wilmer Cutler Pickering Hale & Dorr LLP
	Wilson Sonsini Goodrich & Rosati
Additional Participants	
Major, Lindsey & Africa	
Deloitte & Touche LLP	
Flextronics Int'l Ltd.	
NetApp	