



Executive Summary

# Visible Invisibility

Women of Color in Fortune 500 Legal Departments





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# A Note From the Chair

Seen outside many courthouses and courtrooms as the symbol of a fair and unbiased judicial system, Lady Justice is often depicted holding scales and wearing a blindfold that symbolize objectivity and impartiality. However, when it comes to the careers of its female advocates, justice is neither blind nor weighted equally. Though women currently make up 33 percent\* of those in the legal profession, they make up barely 15 percent\*\* of equity partners, and when they reach that rank they are not compensated at the same level as their male peers. Often their career paths are littered with instances of unfair treatment and implicit bias that are anything but impartial. Women attorneys of color face even more challenges due to the dual burdens of gender and minority status.

The American Bar Association's Commission on Women in the Profession has long been bringing to the attention of the legal community the unique challenges faced by women, particularly women of color, beginning with its groundbreaking study, *Visible Invisibility: Women of Color in Law Firms* released in 2006 as well as its companion report *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms* released in 2008. This report, *Visible Invisibility: Women of Color in Fortune 500 Legal Departments*, looks at the diversity dynamics of those in corporate legal departments, comparing their experiences against those in law firms.

As you review the candid comments submitted by the over 1,000 individuals who responded to the survey, you will see that while women of color in corporate legal departments indicate a greater overall satisfaction with their career choice than those at law firms, racial, ethnic, and gender biases are still widespread. These biases become particularly ubiquitous in the middle and latter stages of their careers as women attorneys of color seek advancement opportunities.

To help ensure that all lawyers in corporate legal departments, regardless of gender, ethnicity, or race, have the opportunity to reach their full potential, we have included within this report recommendations on how bias can be reduced and hopefully ultimately eliminated. Extremely influential, Fortune 500 corporations are in a unique position to serve as role models for the legal community but first must take a close look at the dynamic present in their own legal departments. It is time that the legal community lives up to one of its most enduring symbols; Lady Justice is watching.



Mary B. Cranston  
Chair  
ABA Commission on Women in the Profession

\*American Bar Association Market Research Department, (April 2011)

\*\*The National Association of Women Lawyers and the NAWL Foundation, *Report of the Sixth Annual National Survey of Retention and Promotion of Women in Law Firms* (2011)

# A Note from the Prior Chair

While all women attorneys continue to confront obstacles in their effort to advance and succeed in the profession, this is particularly true for women attorneys of color, who face the “double bind” of both race and gender. The American Bar Association’s Commission on Women in the Profession has focused much-needed attention on the unique challenges faced by women attorneys of color through its “Visible Invisibility” research initiative, which was launched in 2003. Its groundbreaking 2006 study examined the experiences of women attorneys of color in law firms, focusing on four critical aspects of their careers: recruitment, hiring, retention, and promotion.

During my tenure as chair of the Commission, I was extremely proud that we continued this important initiative by turning the spotlight to women of color in corporate law departments. The extensive statistical data and anecdotal information obtained from our more than 1,000 survey respondents, who included men and women of all races, show that, just as was the case with law firms, women attorneys of color in corporate law departments are not faring nearly as well as their white male and female and black male counterparts. They are not afforded equal access to significant assignments, mentoring, and sponsorship opportunities; receive less compensation and fewer promotions; and have the highest rate of attrition. Indeed, this study confirms that many of the same significant inequalities and barriers that exist for women attorneys of color in law firms are also present in the corporate sector. However, the study also provides cause for optimism for women attorneys of color presently working or contemplating employment in corporate law departments, as survey respondents reported greater overall job satisfaction and work-life balance than the respondents in our 2006 survey of lawyers working in law firms.

This study is must-reading for corporations and everyone interested in promoting diversity, as it sets forth concrete and specific recommendations and strategies that should be implemented in order to ensure that women attorneys of color are provided greater opportunities to succeed. Given the tremendous influence that corporations have over law firms, corporations can and should lead the way in championing diversity not only within their own legal departments, but also in the law firms that represent or seek to represent them. The Commission is determined to continue working tirelessly to keep the goal of increased gender equality and diversity on the front burner, as it represents a paramount objective that simply must be achieved.



Roberta D. Liebenberg  
*Chair*  
ABA Commission on Women in the Profession  
September 2008- August 2011



# A Note from the Committee Co-Chairs

Women of color have been the focus of the American Bar Association Commission on Women in the Profession since 2003, when the first research initiative was launched to explore the unique experiences and concerns of attorneys who are women of color. The goal was, and continues to be, the development of educational materials and programs that would help improve the retention and advancement of all women of color in the legal profession.

Starting with *Visible Invisibility: Women of Color in Law Firms*, then moving to document the experiences of 28 women of color partners in law firms in *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms*, the Commission looked at key findings and pathways to success for women of color in law firms.

This year, after two years of work, we are excited to roll out the Commission's research on women of color in a corporate setting—*Visible Invisibility: Women of Color in Fortune 500 Legal Departments*. This study builds on results of previous studies on women of color in corporate law departments and, unlike prior studies, compares experiences across all demographic groups. Of course, we also compared and contrasted results against previous Commission studies on the experiences of women of color. Not surprisingly, the research tracked our previous findings in retention and advancement.

As co-chairs of this study, we have hope that this study will shine a new and determined light on issues and concerns of women of color in corporate law departments and renew all of our commitment to continue on the journey to an equal playing field for all. Women of color bear the brunt of many inequalities but also have a great opportunity to lead and be trailblazers in so many arenas. Each of you reading this study can be an important player in our quest for a diverse legal profession that represents the people we serve.

Many thanks go to our tireless researcher and friend, Arin Reeves of Nextions; our indomitable staffer who ensured that we were always on top of things, Melissa Wood; our Research Advisory Board for their continued support and wise analysis and comments; the Commission for its vision and commitment to inclusion; and the hundreds of male and female attorneys who took the time to answer the questions and be part of this important research.



Ruthe Catolico Ashley  
*Committee Co-chair*  
Women of Color Research  
Initiative Committee



Lorelie S. Masters  
*Committee Co-chair*  
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Initiative Committee



# Executive Summary

The story of women of color in the legal profession is multi-layered and deeply rooted in the broader societal issues related to racial, ethnic, and gender equality that have existed in the United States since this country's inception. Their story has been no fairy tale, and, so far, female attorneys of color are *not* living happily ever after. To the contrary, theirs has been and continues to be a narrative of struggle against marginalization, low expectations, and gross inequity, which, arguably, has rendered them second-class citizens in their chosen profession. Women of color stand as a visible and living embodiment of not only the natural ethnic and gender differences that exist between human beings but also of the artificial racial constructs that divide and separate. Their double minority status shades their experiences. The story of female attorneys of color has been told from a variety of perspectives, but its ending has yet to be written.

Female attorneys of color have made undeniable inroads into the leadership ranks of a number of Fortune 500 law departments. A small group of diverse female attorneys have reached the upper echelons of corporate le-

gal practice. In 2005, there were only five women of color general counsel. In 2010, there were 17 (approximately 3.41 percent of all Fortune 500 general counsels and 18.1 percent of the total number of women holding such positions). Despite these positive signs of forward movement, the majority of female attorneys of color continue to face barriers that thwart their ability to achieve their full potential. Unfortunately, female attorneys of color are more likely than other groups to be sidetracked by obstacles that limit their opportunities for success early on in their careers. For example, female attorneys of color:

- Have the highest attrition rate of any group of attorneys;<sup>1</sup>
- Are more likely than any other group to experience exclusion from other employees based on racial and gender stereotyping;<sup>2</sup>
- Are most likely to feel the need to make adjustments to fit into the workplace;<sup>3</sup> and
- Are more likely to cite dissatisfaction with current levels of work and access to high-profile client assignments relative to experience.<sup>4</sup>

## Overview

The American Bar Association (ABA) and its constituent entities continue to work tirelessly to effect the change that will eventually eradicate the inequities that disproportionately impact diverse and underrepresented groups in society at large. The ABA Commission on Women in the Profession, through its Women of Color Research Initiative, is contributing to this effort by giving female attorneys of color a platform from which to tell their unique stories, in their own words. This groundbreaking project was designed to:

- Shine an unforgiving light on the inequities affecting female attorneys of color, particularly in the areas of compensation and career advancement;
- Identify the root causes of these inequities;
- Develop replicable strategies that women of color in all areas of the legal profession can use to advance their careers; and
- Offer practical suggestions and recommendations to legal employers across all sectors that will enable them

to better address the needs of the diverse female attorneys they employ, which, ultimately, will enhance their retention of these attorneys.

In phase I of the Women of Color Research Initiative, the Commission examined the diversity dynamics of female attorneys of color in law firm settings. The findings of this study are detailed in the 2006 report entitled, *Visible Invisibility: Women of Color in Law Firms*.<sup>5</sup> This phase focuses on the experiences of women of color in corporate law departments.

Women of color bear what some describe as “dual burdens” of minority status. The goal of this and the Commission’s 2006 study is to elicit data specific to the impact that race/ethnicity and gender have on the career mobility of female attorneys of color, particularly in relation to recruitment, hiring, retention, and advancement. In fact, it is the cyclical and interdependent relationships among these four major aspects of an attorney’s career that are the central focus of this report. Female attorneys

of color are caught in a Catch-22 of sorts: they have to be recruited, hired, and retained to advance to leadership positions. Yet, without significant female attorneys of color already in leadership to help pave the way, organizations are not always ready to facilitate such advancement. Therein lies the challenge before us—growing and developing the number of female attorneys of color from entry-level to leadership positions.

This phase of the ABA Commission on Women in the Profession's initiative takes an in-depth look at the career experiences of women of color in relation to the experiences of their white male, white female, and men of color counterparts in corporate legal settings. The Commission's study of the combined impact of race, ethnicity, and gender on the career mobility of women of color in law firm and law department settings has produced a plethora of data on the subject. Building on the work of other organizations, the Commission's Women of Color Research Initiative has worked to develop a comparative study that will be the most comprehensive, systematic, and authoritative research conducted on the subject to date. The goal is to examine the underlying systemic and cultural factors that continue to prevent female attorneys of color

from achieving their full potential, and to identify practical and accessible solutions that can be applied across all legal practice sectors.

How does the Commission accomplish this? For starters the right questions must be asked: Is there a difference in success for women of color in corporate law departments measured both quantitatively and qualitatively, compared to white men, white women, and men of color? How do women of color compare their experiences in corporate law departments to those of white men, white women, and men of color? How much of their experience can be attributed to race, ethnicity, gender, or a combination thereof? What are the retention and attrition rates for women of color in corporate law departments, and what are the factors that cause women of color to leave? Are the reasons that cause women of color to leave different from those of white men, white women, or men of color? What strategies do women of color in corporate law departments use that lead to career success? Do these strategies differ from those of white men, white women, and men of color? And finally, how do the answers to these questions compare to those of female attorneys of color in law firms, as explored in our previous study?

## Methodology

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The current phase of the Commission's Research Initiative explores the diversity dynamics of female attorneys of color in Fortune 500 law departments. It is based on the results of a national online survey of more than 1,000 respondents conducted from October 2010 through February 2011. The survey targeted a broad cross-section of both current and former Fortune 500 in-house attorneys of both genders and all racial and ethnic backgrounds, which enabled the Commission to draw out a range of perspectives and experiences. The survey responses provided both quantitative and qualitative information on how the confluence of gender, race, and ethnicity affects the work lives of female attorneys of color in corporate law departments. The final version of the survey consisted of 52 questions that were designed to elicit responses on a variety of topics. The Commission on Women engaged the services of Nextions (formerly The Athens Group), a nationally-recognized, Chicago-based firm specializing

in diversity and inclusion strategic consulting, leadership development, and executive coaching, to conduct the underlying research for this study.

The survey sample was self-selected; thus, the respondents were not randomly chosen to participate. The total number of respondents in the survey sample who identified their gender was 784: 577 (74 percent) women and 207 (26 percent) men. Many of the survey respondents disclosed their race or ethnicity but some did not, making it impossible to determine exact percentage breakdowns of these subsets within the broad gender categories noted above. However, based on the demographic information obtained from those respondents who chose to self-identify, it is known that at least 386 were white women, 186 were women of color, 155 were white men, and 50 were men of color.<sup>6</sup> In short, 541 were white attorneys and 236 were attorneys of color.



## Summary of Findings

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The survey responses, in many ways, confirmed what the Commission, from its previous work on these issues, already suspected—that female attorneys of color in the corporate sector face many of the same issues and obstacles as their women of color counterparts in law firms, including the negative impact of bias and stereotypes on their careers. Survey responses were varied and often fell along racial, ethnic, and/or gender lines. However, in a few instances, no discernible experiential difference between groups was found.

Relative to the issue of mentoring, for example, 18 percent of women of color and 19 percent of white males reported that they had no formal mentors. The underlying reasons for their lack of mentors varied. Women of color were more likely to be without a mentor due to an inability to establish relationships with senior attorneys, who are overwhelmingly white males. White men were more likely to be without a mentor due to a belief that

they could succeed on their own and did not need a mentor to advance.

However, the survey responses also highlighted some distinctions between the experiences of female attorneys of color in law firms and those in the corporate arena, including greater overall job satisfaction and improved (though not perfect) work-life balance and integration policies for women of color in-house. The majority of the women of color surveyed in the law department study believed that their experiences of career-related bias are based on the combination of racial, ethnic, and gender factors. Of all of the groups surveyed, women of color reported the most consistent levels of discrimination across race, ethnicity, and gender. They were more likely to report higher levels of discrimination based on race and/or ethnicity than their white counterparts and greater levels of gender bias than their male colleagues.

## Recruitment and Hiring

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As was the case in the Commission's law firm study, the majority of the women of color participating in the law department survey reported a negligible influence of overt bias at the recruitment and hiring stages. Respondents in both studies reported a more insidious influence of bias during the mid- to later stages of their careers. This is particularly true for women of color, who have the highest attrition rate of all groups surveyed.

Recruitment is the first step in developing a strong talent pool of attorneys of color. As a threshold issue, unfortunately, the pipeline into the profession has become increasingly less diverse in the last 10 years. The number of women and minorities entering law school has dwindled significantly, resulting in a diminished pool of diverse candidates eligible for recruitment into the profession. The tepid economy has further debilitated what was already a weak stream of minorities and women primed and ready to move into entry-level legal positions.

Minority attorneys currently comprise only 10 percent of the legal profession. What is turning diverse attorneys, particularly women of color, away from the profession? Some argue that women's slow rate of progress in reaching leadership levels may deter young women of color from enrolling in law school. Others argue that disparities in compensation between male and female attorneys—which can result in a cumulative difference of \$2 million over the course of a lawyer's career—have discouraged women of color from choosing law as a career.

Women of color in corporate law departments are the least likely of all groups to be hired at top executive or senior management levels and the most likely to be hired at junior levels. Commensurately, women of color are most likely to be hired at salary scales lower than their white female and all male counterparts, across almost all pay categories.

## Retention

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Law firms especially struggle with retaining diverse attorneys. In fact, retention of talented minorities has proven to be the most problematic phase of the career continuum for women of color, as evidenced by their extraordinarily high attrition rate from law firms. Women of color make up 17 percent of associates who left their firms in their third year.<sup>7</sup> Aside from not feeling valued and appreciated, women of color leave law firms for a variety of reasons, including not feeling supported (22 percent), the inability to establish mentorship relationships (21 percent), feeling isolated and marginalized (16 percent), and being subjected to stereotypes and discrimination (11 percent).<sup>8</sup> Corporate law departments have been able to capitalize on this dissatisfaction and have successfully lured away record numbers of women of color who are looking for opportunities to advance their careers in more welcoming environments than those law firms have been able to offer.

The women of color surveyed highlighted some positive distinctions between their experiences in law firms and in corporate law departments, including the:

- Opportunity offered by their corporate law departments to broaden their expertise beyond the law into the business side of their companies;
- Ability to develop more intimate, meaningful relationships with clients; and
- Opportunity to escape the pressures of stringent billable hours requirements and establish a better work-life balance.

Although most were pleased with their decision to leave law firms for in-house practice, women of color reported being less satisfied with their decision than their white counterparts. Seventeen percent of female attorneys of color reported that they were extremely satisfied with their decision to work for a Fortune 500 company, compared to 48 percent of white males. Fourteen percent of women of color reported that they were satisfied with their decision to work for a Fortune 500 company, compared to 37 percent of white males. Eleven percent of women of color reported being dissatisfied with their decision to move in-house, compared to just 7 percent of white males.

According to survey responses, female attorneys of color were more likely than white male attorneys to leave their Fortune 500 law departments to gain greater experience and to obtain better work-life integration. The disparity in these statistics points to a fundamental difference in the experience of female attorneys of color and their white counterparts.

Respondents in both the Commission's law firm and law department studies noted the difficult choices and trade-offs that attorneys have to make to achieve a reasonable balance between their professional and personal lives. Concerns about, and dissatisfaction with, quality of life issues drove many of the respondents in the current study to leave their law firms for in-house jobs. The flexibility in scheduling and reduced pressure to meet billable hours requirements offered by in-house work enable women, particularly female attorneys of color, to better manage child care and other family-related obligations. Women of color have long had to deal with the misperception that they leave law firms because they want to avoid hard work. On the contrary, they are seeking ways to work smarter—ways that will enable them to have fulfilling careers without neglecting their families. Legal employers that offer female attorneys of color greater options in developing and advancing their careers without shortchanging their familial obligations will ultimately have greater success in retaining these employees (and others as well).

Survey respondents identified several factors that they believe would have a positive effect on their careers. Thirty-seven percent indicated that increased gender diversity would improve their career satisfaction. Twenty-three percent stated that more consistency in the implementation of alternative work policies would have a positive impact.

The respondents in our current study identified several problematic areas in corporate law departments, including limited or no access to networks (internal and external), unfair performance reviews, less-than-transparent promotion policies and procedures, disparity in pay, and the lack of mentors and sponsors willing to advocate on their behalf. The latter issues, compensation and mentoring and sponsorship, are issues that thread throughout a woman of color's career, from beginning to end. As can be expected, all play a significant role in determining career success and affecting lawyers' decisions to stay—or leave—their jobs.



## Mentoring

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The difficulty that women of color encounter in building professional relationships affects their careers in profoundly negative ways the further removed they are from law school. Women of color are often perceived as “flight risks”—not worth the investment of time and resources for career development. Ironically, it is this very type of investment that would most likely stem the tide of attrition among this group of attorneys. Moreover, women of color are more likely to come from less privileged and less moneyed backgrounds and are also more likely to be the first in their families to graduate college and law school. As a result, they often lack access to connections, support, and guidance from influential friends, family members, and business associates. Lack of access to these crucial career-enhancing relationships can mean the difference between career success and career stagnation.

Further, mentoring (or the lack thereof) can affect a lawyer’s ability to navigate successfully other notable trouble spots that arise at the retention stage for female attorneys of color, including limited or no access to important networks, unfair performance evaluations, access to quality assignments, and denial of promotion opportunities. As was noted in the Commission’s study of women of color in law firms, lack of access to networks, the inability to obtain quality work assignments, and limited opportunities for advancement may be the “critical differentiating factors in the careers of men and women, and especially women of color.”

The women of color respondents in the Fortune 500 study were hungry for mentors who often did not mate-

rialize. Many respondents in the law department survey found formal mentoring programs to be ineffective. Twenty-five percent of female attorneys of color surveyed had formal mentors. Those who had formal mentors were less likely to have white male mentors, which, in effect, limited their access to the influential powerbrokers in their departments.

Most of the survey respondents regardless of race, ethnicity, or gender believed that they received the most beneficial mentoring through informal channels. Many indicated a preference for mentoring relationships that developed “naturally” over time rather than more “forced” relationships established via formal mentoring programs. Twenty-two percent of female attorneys of color reported having informal mentors. As was the case with formal mentoring, female attorneys of color were less likely to be informally mentored by white male attorneys.

Fortune 500 companies offer mentoring options that law firms do not, namely, the opportunity to develop relationships and form alliances with mentors on the business side of the company. These mentors can serve as outside advisors who can help protégés navigate politically sensitive situations. They can also assist protégés in broadening their knowledge about the non-legal, business end of the company, thus grooming them for corporate advancement. Women of color generally reported access to mentors but less ultimate career success, a finding indicating that, while women often have many mentors, they have few sponsors—the influential leaders who can help ensure promotion and maximum career success.

## Compensation

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Complicating this scenario even more is the issue of compensation, which negatively impacts female attorneys of color at every juncture of their careers, in a variety of ways. The disparity between the salaries of male and female attorneys, particularly female attorneys of color, is compounded over time and affects not only base salary but bonuses, benefits, and retirement as well.

Fair and equitable pay is the clearest, strongest measurement of the value that an employer places on an attorney and her abilities. Thus, compensation is the prism

through which bias—both overt and subtle—against female attorneys of color can be measured. Furthermore, it is the most obvious metric by which to effectively judge the progress being made toward the achievement of parity between female attorneys of color and their white male counterparts.

Disparities in compensation related to salary, bonuses, benefits, and retirement have a ripple effect on the recruitment, hiring, retention, and ultimate advancement of women and women of color attorneys, and contribute

significantly to the high attrition rate among these groups. Female attorneys of color are at a distinct salary disadvantage from the day they accept their first job. This income disparity (typically a 25 percent difference between women of color and white men) grows disproportionately over the course of a lawyer's career. One study noted that "what starts as a \$2,000 annual gap between male and female associates accelerates to a \$66,000 annual gap between male and female equity partners."<sup>9</sup> Fairness issues related to pay can also have a negative impact on hiring, causing women of color to choose alternative employment where they feel more valued. Finally, the negative relationship between money and maternity cannot be dismissed, as having children does not disadvantage men; in addition, women of color are more likely than white women to be sole breadwinners and typically come from less affluent backgrounds, have fewer resources, and face more demands on their finances and time.

As female attorneys of color move through their careers, compensation becomes a more critical issue. Further exacerbating the situation is the documented fact that women are less likely than men to negotiate salary. Women are often reluctant to ask for what they are worth for fear of being labeled "pushy," "demanding," or "aggressive." This reluctance puts them at a disadvantage relative to compensation. Female attorneys of color, who are generally the least supported of any group, are even more handicapped when it comes to salary negotiation. They are consistently at the bottom of the salary totem pole, despite the fact that they are disproportionately the sole breadwinners in their households, with more de-

mands placed on their limited resources.

Unlike their white male counterparts, who also tend to be the sole breadwinners, female attorneys of color do not typically have the same level of spousal support to fall back on, particularly as it relates to child and elder care. Because they are often the sole or primary provider in their families, salary negotiation is a trickier, more delicate proposition for them. In addition to being saddled with negative labels, they often fear that, if they ask for "too much," they risk losing job opportunities that are essential to the support of their families. Likewise, they often have the fewest options to quit a professionally unrewarding job. This is an area where effective mentoring can make a meaningful difference but, unfortunately, is often lacking.

A good mentor will give his or her woman of color protégé the push needed to get to the next level through high-priority assignments and entrée into influential networks, which will, in turn, enable her to receive positive performance reviews and promotions. A sponsor will help drive his or her protégé up the ladder of career success. Ultimately, this type of career development will help the protégé establish the necessary credentials to increase her value to potential employers. Moreover, female attorneys of color with these advantages will be better able to merchandise themselves successfully during job interviews and performance evaluations. Unfortunately, female attorneys of color rarely receive this type of guidance, significantly diminishing their chances for career and salary growth, and further sowing the seeds of discontent, which often lead to attrition.

## Advancement

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The high levels of attrition and entrenched problems with retention (including issues of tokenism, stereotypes, double standards, and perceptions of incompetence) have placed a stranglehold on the pipeline of diverse female attorneys feeding into the leadership ranks of the profession. Therefore, it should come as no surprise that the pool of female attorneys of color groomed to ascend to leadership is severely limited. This fact, coupled with historical problems with bias in the promotion process, has resulted in a dearth of female attorneys of color in positions of authority. Four percent of female attorneys of color reported being denied promotion or advancement due to race or ethnicity, compared to 1 percent of white

male attorneys and male attorneys of color, and 0.6 percent of white female attorneys. Likewise, 4 percent of female attorneys of color reported being denied promotion or advancement based on gender, compared to 2 percent of white male attorneys, 0.1 percent of male attorneys of color, and 13 percent of white female attorneys.

Female attorneys of color reported more consistent levels of negative bias across racial, ethnic, and gender categories, further demonstrating the impact of these factors on their careers. The majority of respondents surveyed indicated that they would leave their employment with a Fortune 500 law department to obtain a salary increase and to take



advantage of an advancement opportunity. Women of color reported a significant likelihood of leaving to avoid barriers to advancement (23 percent), obtain experience not otherwise available to them (19 percent), and take advantage of an advancement opportunity (18 percent).

Finally, as women of color seek promotion to leadership levels, the inextricable connection between compensation and advancement becomes even more evident. Compensation disparities at this level manifest themselves in the form of disputes over salary negotiation, transparency, and client succession. Women of color must be able to master the art of salary negotiation; otherwise, they stand to lose more than half a million dollars by the end of their professional careers.

## Bias and Inequity in the Workplace

Workplace bias manifests itself in various ways. Respondents were asked to rate the level of bias they experienced in the following categories:

**Table I** Categories of Bias Reported

Category of Bias	Race/Ethnicity	Gender
Experienced demeaning comments or other types of harassment	9%	26%
Missed out on desirable assignments	6%	19%
Experienced one or more forms of discrimination	10%	26%
Lacked access to informal/formal networking opportunities	9%	27%
Received unfair performance evaluations	5%	11%
Denied promotion or advancement	7%	19%
Treated differently than peers	9%	24%
Lacked access to information negatively affecting ability to perform	4%	13%
Lacked access to resources negatively affecting ability to perform	17%	9%

**Table II** Amount of Racial and Ethnic Bias Reported by Category and Demographic Group

Racial/Ethnic Bias	Women of color	White women	White men	Men of color
Experienced demeaning comments or other types of harassment	6%	0.8%	0.5%	0.9%
Missed out on desirable assignments	3%	0.7%	0.6%	0.1%
Experienced one or more forms of discrimination	6%	0.5%	1%	2%
Lacked access to informal/formal networking opportunities	6%	0.6%	0.7%	2%
Received unfair performance evaluations	3%	0.2%	0.2%	1%
Denied promotion or advancement	4%	0.6%	1%	1%
Treated differently than peers	5%	0.5%	0.7%	2%
Lacked access to information negatively affecting ability to perform	3%	0.7%	0.2%	0.7%
Lacked access to resources negatively affecting ability to perform	2%	0.3%	0.2%	0.4%

**Table III** Amount of Gender Bias Reported by Category and Demographic Group

Gender Bias	Women of color	White women	White men	Men of color
Experienced demeaning comments or other types of harassment	6%	18%	0.7%	0.2%
Missed out on desirable assignments	4%	13%	1%	0.2%
Experienced one or more forms of discrimination	7%	17%	2%	0.2%
Lacked access to informal/formal networking opportunities	7%	18%	1%	0.2%
Received unfair performance evaluations	3%	7%	0.6%	0.1%
Denied promotion or advancement	4%	13%	2%	0.1%
Treated differently than peers	6%	16%	1%	0.2%
Lacked access to information negatively affecting ability to perform	3%	9%	0.4%	0.1%
Lacked access to resources negatively affecting ability to perform	3%	6%	0.3%	0.2%

Respondents indicated gender bias as the primary form of bias that affects their professional careers in all but one category. Women, more than their male counterparts, identified gender as having the greater negative influence on their careers in these categories. As one woman stated, “I have to work harder to make up for being a female.” White women were more likely to indicate gender as the most prevalent form of bias affecting their careers in these categories. However, attorneys of color cited race and

ethnicity as having greater negative effects on their careers than did non-minority respondents. Moreover, women of color were more likely consistently to report the negative effects of racial, ethnic, and gender bias combined across all bias categories. White male attorneys were most likely to report low levels of bias in these categories. For the most part, the respondents’ perceptions of bias and the impact of bias on their careers cut across racial, ethnic, and gender lines.

## Special Note on Bias: Reverse Discrimination

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The report includes a *Special Note on Bias* addressing the topic of “reverse discrimination.” A small number of respondents in the Commission’s law department study raised the issue of diversity-based hiring practices as a form of reverse discrimination. This notion is based on the false assumption that diverse candidates are inherently less qualified and, conversely, that white males are inherently qualified. The data derived from both the Commission’s law firm and law department studies, as well as other well-respected studies conducted on the topic, tell the story of the real and significant inequities that persist between minorities and non-minorities. These inequities belie the claims that women of color are reaping undeserved advantages at the expense of their white male counterparts.

The truth is that women of color face less fulfilling careers, with consistently lower compensation, bonuses, and

benefits, and also direct and indirect racial, ethnic, and gender bias and stereotyping on a daily basis. The statistics do not lie:

- Women of color attorneys have the highest attrition rate of any group;
- Women of color attorneys lag well behind other groups in compensation from the beginning to the end of their careers; and
- Women of color attorneys have the least access to mentors and important networks that facilitate career development.

Corporate legal employers must be prepared to respond to claims of reverse discrimination in intelligent ways if they seek to prevent such claims from derailing diversity initiatives in their companies.

## Conclusion

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The Commission believes that this phase of the Women of Color Research Initiative will play a role in leveling the playing field for women of color working in-house. Given the influence that in-house counsel can have on law firms, the Commission also believes that the work of its Research Initiative can have a critical influence on improving retention and advancement of women of color in law firms.

The findings of this report indicate that many respondents left law firm practice for greater career satisfaction in-house. In-house lawyers hire outside law firms, thus providing corporate law departments with the opportunity to improve diversity not only within their own ranks but also among the law firms, and outside lawyers, they hire. Corporate law departments are in a unique position to insist that their

outside counsel be represented by diverse teams of lawyers that include women of color and that these diverse lawyers receive the training, visibility, and origination and billing credit that will ensure their career success.

The substantial statistical and anecdotal data derived from the survey responses enables the Commission to compare and contrast the wide-ranging experiences of women of color. It is through these comparisons that the Commission is able to identify and isolate the hot-button issues affecting diverse women throughout the profession and, ultimately, to suggest strategies to ameliorate the disparities that continue to exist between women of color and their non-minority counterparts. The suggestions and recommendations that are offered here are intended



as a jumping-off point for corporate legal employers who are serious about creating and maintaining a diverse and fully inclusive work environment that supports the unique needs of female attorneys of color. The strategies highlighted in this report are meant to elicit thoughtful, creative, and meaningful solutions to problems that have their roots in this nation's historical struggle with racism, sexism, and discrimination.

Women of color bear the brunt of dual minority status in significant ways. They are the repository for every stereotype, negative bias, and low expectation associated with race, ethnicity, and gender. More than any other group, their intellect, abilities, and professionalism are routinely questioned and second-guessed, often in the subtle and poorly understood ways that stereotyping, unexamined bias, and unearned privilege are expressed. Women of color are underdogs who, as the Commission's work has shown, are consistently underpaid, underestimated, and undervalued. Sadly, female attorneys of color often are treated as second-class citizens in a profession that ironically is charged with the responsibility of ensuring justice and equality for all.

Women of color are disproportionately more likely to be single parents, sole providers, with little or no back-up financial support and limited options for the significant demands arising from care of children and elderly parents. Due to these constraints, many feel that they have no choice but to suffer in silence in work environments that do not embrace their diversity. They are, in essence, trapped in dead-end positions that are essential to their livelihood but do not nourish their intellect or career aspirations. Moreover, female attorneys of color are at once visible and invisible. Their visibility breeds both contempt and subtle (and not so subtle) acts of discrimination, while their invisibility breeds neglect. Further, they must often contend with these issues alone, with no one to mentor them and advocate on their behalf. The ABA Commission on Women in the Profession joins those other organizations that have been working to champion the cause of female attorneys of color—to be their voice. The Commission's goal is to bring about the change in the profession that will finally level the playing field for women of color, putting them on a par with their non-diverse colleagues, both professionally and financially.

It is the Commission's hope that Fortune 500 law departments will use the information and comments provided throughout this comparative study as a guide to aid them in supporting female attorneys of color as they strive to reach their full potential. With thoughtful policies and commitment, corporate law departments can avoid the missteps of their law firm brethren, which have resulted in the attrition of significant numbers of disenfranchised women of color. Instead, law departments must continue to maintain those areas that make them attractive to attorneys seeking an alternative to law firm life and strengthen those areas that the respondents in the study have identified as problematic. Furthermore, because of their unique relationship with outside counsel, law departments have an opportunity to positively influence law firms in their struggle to retain talented women and minorities. If law departments are able to do this, growing numbers of female attorneys of color will be seen in the partnership ranks of law firms and the general counsel suites of major Fortune 500 law departments in the very near future.

In 1994, the chief legal officers of approximately 500 major corporations signed their commitment to a document entitled, *Diversity in the Workplace—A Statement of Principle*.<sup>10</sup> Roderick Palmore, then Executive Vice President, General Counsel, and Secretary of Sara Lee, created the "Call to Action" initiative. In it, he asked the corporate signatories to commit to increasing diversity in their own law departments as well as in the law firms that they engaged as outside counsel. "Call to Action" was a highly visible catalyst for change in corporate law departments throughout the country for many years. However, the commitment to diversity appears to be leveling off, as evidenced by the some of the findings of our current study.

Studies demonstrate that organizations that embrace diversity achieve greater success.<sup>11</sup> To attract and retain the best and the brightest legal talent, and enhance opportunities for the greatest success, corporate law departments (and law firms) must work to reduce attrition and promote the career satisfaction of all lawyers. The recommendations that follow address the concerns respondents raised in the Commission's study on women of color in Fortune 500 law departments and provide strategies that will help ensure the success of this group of attorneys well into the future.

# Recommendations

In *Visible Invisibility*, its study of women of color in law firms, the Commission proffered the following solutions to assist law firms in integrating women of color into existing diversity, retention, and professional development efforts:

- Address the success of women of color as a firm issue.
- Integrate women of color into existing measurement efforts.
- Integrate women of color into the firm's professional fabric.
- Integrate women of color into the firm's social fabric.
- Increase awareness of issues of women of color through dialogue.

## Overall

### Formulate and implement a comprehensive diversity and retention plan.

- Involve leaders at top levels of the company in developing a comprehensive plan that integrates diversity and inclusion into all aspects of the department's functions by using metrics to create a baseline and implement programs designed to stem attrition and foster teamwork and inclusion.
- Integrate the ability to develop and advance all groups of people as a leadership competency.
- Task department leaders with developing a plan for creation of affinity groups, a key to a comprehensive diversity and retention plan. Such affinity groups can include women of color from both the legal and business sides of the organization. The support and camaraderie that affinity groups offer can help to counter the feelings of isolation and marginalization reported by many women in both law firms and corporate law departments.
- Use affinity groups to foster networking, and provide a forum for professional development, educational services and training, community outreach, and mentoring to its members, as well as to identify challenges in the culture of the organization.

- Support women of color's efforts to build internal and external support systems.
- Comply with anti-discrimination and anti-harassment policies and hold people accountable for noncompliance.<sup>12</sup>

These suggested strategies are just as relevant now as they were then and apply equally to corporate law departments. Fortune 500 companies are encouraged to review and incorporate these suggestions into their existing diversity programming. In addition to these strategies, the Commission offers the following recommendations to the leadership of corporate legal departments as a result of its work on this phase of its Women of Color Research Initiative.

### Actively communicate the notion that diversity breeds excellence and that the two are not mutually exclusive concepts.

- Communicate to all members of the legal department through its mission statements and formal diversity policies that diversity, done right, breeds excellence by bringing together the best and brightest from all demographic groups.
- Nip concerns about reverse discrimination in the bud. Underlying such concerns is the assumption that the women and minorities are inherently unqualified—and that every white male is qualified. Through consistent messaging about the value of diversity and visible action in furtherance of inclusive policies, law departments can move the reverse discrimination issue from a discussion of exclusion to one of inclusion.
- Hold department leaders accountable for ensuring diversity of their legal teams, as well as for their outside counsel.
- Identify ways to integrate diversity into ongoing discussions of departmental excellence and employee engagement.



## Hiring and Recruitment

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**Develop a comprehensive plan for recruiting and hiring a diverse staff to make maximum use of the talent pool.**

- Leverage women's and minority-based affinity groups and bar associations to recruit diverse candidates.
- Strengthen ties with law school administration, faculty, and student organizations, and increase the amount of time and resources allotted to on-campus interviews, given that female attorneys of color appear to rely more heavily on law school-related resources than other groups to secure their first in-house job.
- Broaden the pipeline to include high potential applicants from law schools with a high proportion of minorities and women.
- Use minority student organizations, such as the Black Law Student Association, Hispanic Law Student Association, and the Asian/Pacific American Law Student Association, as on-campus resources of diverse talent.
- Increase outreach through job-posting and other opportunities on national and local bars with a focus on diverse attorneys.
- Conduct outreach at specialty bar associations and diversity focused events.

## Retention

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**Offer regular and meaningful opportunities for law department members to work and socialize across racial, ethnic, gender, and generational boundaries.**

- Encourage development of informal relationships and mentorship opportunities by providing regular and ongoing opportunities for law department members to interact both on a department-wide basis and in smaller practice-based groups and to interact with clients on the business side of the company. Social interaction can take a variety of forms, ranging from formal breakfasts, luncheons, and dinners to informal "meet-and-greets," team-building activities, and law department gatherings for members' families.
- Encourage senior law department members to drop by the offices of their women of color colleagues to ask how they are doing and to offer assistance, if needed.
- Establish and use affinity groups to help train and educate existing staff on diversity issues and cultural sensitivity.
- Identify ways in which leaders can be held accountable for giving adequate and effective feedback to women of color.

**Develop a consistent, top-down, zero-tolerance policy toward acts of workplace bias against women of color, both subtle and overt, and be prepared to have hard conversations with staff regarding expectations of fairness and accountability.**

- Develop an accessible, yet confidential, reporting structure through which violations of anti-bias policies can be communicated and investigated. Women of color

must feel comfortable in reporting acts of bias without fear of retaliation or negative repercussion on their careers.

- Identify clearly defined consequences for the violations of these policies that are applicable to every member of the law department regardless of where they fall in the hierarchy. An anti-bias policy is only as strong as its enforcement.

**Develop effective work-life balance and integration programs.**

- There is often a stigma associated with the use of work-life balance/integration programs, especially for female attorneys. For such programs to be utilized and effective, legal employers must ensure that these programs are stigma-free and gender neutral.

**Develop policies that ensure that all members of the legal department have equal access to information and resources.**

- Female attorneys of color often lack access to informal mentors and networks that provide valuable information and opportunities for advancement, including good work assignments, which can make a tremendous difference in whether the attorney ultimately achieves success. As such, it is imperative that deliberate measures be taken to ensure that all legal department members are included and involved in activities that are valued and accessible by all.

- All female attorneys should have equal access to the tools and information necessary to perform her job and thus achieve success.

**Develop systems that review assignments and ensure that all attorneys are receiving access to high quality assignments and training.**

- Access to high quality work assignments is the lifeblood for a successful career as a lawyer. However, due in large part to unintentional bias, access is often based on whom the assigner knows or is comfortable with—usually another male attorney. In this way, it is imperative that department leaders develop more equitable and objective mechanisms for disseminating and reviewing work assignments across their legal teams.
- The source of work assignments is also important. Assignments from influential individuals often provide

higher visibility and the most gains.

- Efforts should be made to ensure that all attorneys receive similar training opportunities on legal, business, and other issues important to the company.

**Provide ongoing education and training on cultural disparities and sensitivities, particularly those affecting women of color.**

- Engage in ongoing education and training on issues of bias, especially unconscious bias. The goal is to create a common ground of understanding through dialogue and shared experience.
- Provide training to all employees on subconscious bias and stereotyping and the importance of an inclusive workplace to the success of the company.

## Advancement

**Develop transparent, bias-free performance evaluation systems, and clearly communicate benchmarks and performance standards to all members of the legal department.**

- Develop and monitor metrics to measure success in improving retention and diversity.
- Appoint a representative team to design and implement a bias-free evaluation process.
  - Develop job descriptions and objectives that identify the knowledge, skills, and abilities necessary for each class or job level.
  - Develop job-related competencies.
  - Implement an attorney self-evaluation process.
  - Implement an upward review process to help identify possible biases or tendencies that might indicate unconscious bias or exclusion. For example, does a senior lawyer have lunch only with people of his or her gender or race?
- Establish and publish a bias-free performance evaluation policy and process.
  - Establish how often the formal evaluation process will be conducted.
  - Educate the department about the policy through department-wide meetings.

- Obtain buy-in by stressing the benefits of this policy and connecting it to department or company objectives and its cost savings as a result of lower attrition and greater employee satisfaction.
  - Work with mentors to implement the policy and evaluation process.
- Train personnel about how to conduct bias-free evaluations.
- Review evaluation forms to identify unconscious bias. For example, do comments reflect gender bias or leniency bias, which rates certain lawyers higher than their performance would indicate is appropriate or that assumes that a man's mistakes are evidence of potential but a woman's errors of the same type mean that she is not capable?
- Encourage informal feedback on a regular basis, outside of the formal evaluation process.
- Provide constructive feedback on performance and training and advice on how to improve performance and bolster areas where additional expertise is warranted.

**Develop transparent strategies for equitable succession planning.**

- Develop criteria for making decisions about who will succeed retiring attorneys or upper level attorneys who leave the law department to help ensure that such



decisions are made fairly, that all qualified candidates are given equal consideration, and that decisions are not made based on personal relationships or without consideration of diversity and objective factors.

- Develop a process and objective factors to ensure that female attorneys of color are afforded the same critical developmental opportunities as lawyers in other groups

## Compensation

**Implement processes that ensure that compensation decisions are made fairly and with transparency.**

- Appoint compensation committees that reflect the diversity of the department and its commitment to diversity.
- Compare compensation, including salary, bonuses, options, and benefits, across all demographic groups in the department. Use these statistics to create a baseline and measure progress toward equalizing pay for comparable work year on year.

that will groom them for leadership. This requires a more strategic approach of viewing their career progression as a series of incremental steps toward a particular career-related goal (i.e., general counsel) to ensure that each step or rung of the ladder prepares them adequately for the next phase.

- Use objective metrics to help ensure that all attorneys in a certain class or level are paid equally for comparable work, regardless of race, ethnicity, or gender.
- Eliminate organizational structures and policies that may unintentionally disadvantage female attorneys of color (e.g., focus on actual performance, not how and where the work is performed, etc.).

## Endnotes

<sup>1</sup> *Diversity and Flexibility Connection—Best Practices* (The Project for Attorney Retention and the Minority Corporate Counsel Association), at 3 (Oct. 29, 2009) ([http://www.attorneyretention.org/Publications/DiverFlexConn\\_BestPractices.pdf](http://www.attorneyretention.org/Publications/DiverFlexConn_BestPractices.pdf)); see also Minority Corporate Counsel Association (MCCA), *The Myth of the Meritocracy: A Report on the Bridges and Barriers to Success in Large Law Firms*, “Different Experiences,” at 33 (Purple Book) (available at [www.mcca.com](http://www.mcca.com)).

<sup>2</sup> ABA Commission on Women in the Profession, *Visible Invisibility: Women of Color in Law Firms* at 9 (2006) ([www.americanbar.org/groups/women/initiatives\\_awards/women\\_of\\_color\\_research\\_initiative/2006wocannual.html](http://www.americanbar.org/groups/women/initiatives_awards/women_of_color_research_initiative/2006wocannual.html)). See also Catalyst, *Women in Law in the U.S.*, at 4 (2010) ([www.catalyst.org/publication/246/women-in-law-in-the-us](http://www.catalyst.org/publication/246/women-in-law-in-the-us)); Women’s Bar Association of the District of Columbia (WBADC), *Initiative on Advancement and Retention of Women, Creating Pathways to Success for All: Advancing and Retaining Women of Color in Today’s Law Firms* (May 2008) (available at [http://wba.timberlakepublishing.com/files/Advocacy%20&%20Endorsements%20Files/Initiative%20Reports/Creating\\_Pathways\\_to\\_Success\\_for\\_All-March\\_2008.pdf](http://wba.timberlakepublishing.com/files/Advocacy%20&%20Endorsements%20Files/Initiative%20Reports/Creating_Pathways_to_Success_for_All-March_2008.pdf)).

<sup>3</sup> *Visible Invisibility*, *supra* note 2, at 9. See also *Pathways to Success for All*, *supra* note 2, at 9-11.

<sup>4</sup> *Visible Invisibility*, *supra* note 2, at 9. See also *Women in Law*, *supra* note 2, at 4; *Pathways to Success for All*, *supra* note 2, at 11.

<sup>5</sup> *Visible Invisibility*, *supra* note 2. The Commission published a second report detailing the experiences of 28 successful women lawyers of color and their recommendations for achieving success. Commission, *From Visible Invisibility to Visibly Successfully: Success Strategies for Law Firms and Women of Color in Law Firms* (2007) ([www.americanbar.org/groups/women/initiatives\\_awards/women\\_of\\_color\\_research\\_initiative\\_vsendorsers.html](http://www.americanbar.org/groups/women/initiatives_awards/women_of_color_research_initiative_vsendorsers.html)).

<sup>6</sup> The sample size of the men of color participating in the Fortune 500 law department study is small relative to the number of women of color, white women, and white men surveyed. Given the self-selected nature of the survey, this type of statistical anomaly

can be expected. Notwithstanding the limited representation of men of color in the research sample, the overall methodology of the study is reliable, and the quantitative and qualitative data derived from the survey offers valuable insight into the experiences of the representative groups surveyed, including men of color.

<sup>7</sup> *Recession’s Impact on Minorities at Law Firms: Anomaly or Trend* (Oct. 4, 2010) (<http://www.lawschoolpodcaster.com/2010/10/04/recessions-impact-on-minorities-at-law-firms-anomaly-or-trend/>).

<sup>8</sup> *What Female Attorneys of Color Want*, Black Enterprise (July 2011) ([www.blackenterprise.com](http://www.blackenterprise.com)) (also available at [www.ccwomenofcolor.org/press/Black\\_Enterprise\\_7-11.pdf](http://www.ccwomenofcolor.org/press/Black_Enterprise_7-11.pdf)). See also *Visible Invisibility*, *supra* note 2, at 30-35 (discussing job satisfaction); *Pathways to Success for All*, *supra* note 2, at 8-9.

<sup>9</sup> Forward by Roberta D. Liebenberg & Catherine L. Lamboley to report by Joan C. Williams & Veta T. Richardson, The Project for Attorney Retention, MCCA, and ABA, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women* (July 2010) (<http://www.attorneyretention.org/Publications/SameGlassCeiling.pdf>). See also Martha Neil, *Survey Finds “Deep Vein of Anger” Among Women Partners Over Law Firm Pay Gap* ([www.abajournal.com/news/article/survey\\_finds\\_deep\\_vein\\_of\\_anger\\_among\\_women\\_partners\\_ove\\_lower\\_law\\_firm\\_pay](http://www.abajournal.com/news/article/survey_finds_deep_vein_of_anger_among_women_partners_ove_lower_law_firm_pay)).

<sup>10</sup> *A Call to Action—Diversity in the Legal Profession* (available at <http://www.acc.com/vl/public/Article/loader.cfm?csModule=security/getfile&pageid=16074>). See also [http://www.generalmills.com/Company/Leadership/Roderick\\_Rick\\_A\\_Palmore.aspx](http://www.generalmills.com/Company/Leadership/Roderick_Rick_A_Palmore.aspx); Stephanie Francis Ward, *Rick Palmore: Demanding Diversity*, ABA Journal ([http://www.abajournal.com/legalrebels/article/demanding\\_diversity](http://www.abajournal.com/legalrebels/article/demanding_diversity)).

<sup>11</sup> E.g., McKinsey & Co., *Women Matter: Gender Diversity, A Corporate Performance Driver* (Oct. 2007); see also McKinsey & Co., *Women Matter 2010: Women at the Top of Corporations: Making It Happen* (Oct. 2010) (both available at [http://www.mckinsey.com/client\\_service/organization/latest\\_thinking/women\\_matter](http://www.mckinsey.com/client_service/organization/latest_thinking/women_matter)).

<sup>12</sup> *Visible Invisibility*, *supra* note 2, at 37-40.



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