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Addressing Allyship in a Time of a “Thousand Papercuts”

Rangita de Silva de Alwis

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Addressing Allyship in a Time of a “Thousand Papercuts”

A study of the surveys on allyship, bias, and “stereotype- threat” conducted by the Women, Law, and Leadership Class at the University of Pennsylvania Law School in 2020

RANGITA DE SILVA DE ALWIS*

ABSTRACT:

In 2020, a team of students in the class on Women, Law and Leadership students interviewed 100 male law students on their philosophy on leadership and conducted several surveys on allyship and subtle bias. Complementing the allyship interviews, the class developed several survey instruments to examine emerging bias protocols and stereotype threats among a new generation of leaders at Penn Law from a diverse demographic. This exploration looked at individual patterns of conduct, institutional policies and organizational behavior that could combat a new generation of structural and systemic biases. Thirty years after the landmark study by Lani Guinier†, we look at the changing mores of a small group of women and men at Penn Law School.

This Project grew out of a partnership with Thomson Reuters Transforming Women’s Leadership Initiative.

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†Lani Guinier, Michelle Fine & Jane Balin, *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 UNIV. OF PA. L. REV. 1 (1994).

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I. INTRODUCTION TO SURVEYS AND ALLYSHIP REPORT

In the early years of the 1990's, Lani Guinier and her co-authors in "On Becoming Gentlemen: Women's Experiences at One Ivy League Law School" chronicle a law school experience stratified by gender.¹ Based on survey and focus group data, the authors argue that women attending the University of Pennsylvania Carey Law School 30 years ago, were significantly more likely to experience both discomfort with their class performance and alienation from the learning environment. Two of the hypotheses put forward examine the causal links between academic performance, classroom experience, overall law school performance, and mentorship.

30 years later, in the fall of 2020, the Women, Law and Leadership Class became an incubator to explore these hypotheses through a set of interviews and collection of qualitative data. We hypothesized that the experience of women students in our class would be different from their predecessors studied in "Becoming Gentlemen" by Guinier and her co-authors. Based on the over 90 interviews of male allies at Penn Law, we claim that this change is mainly due to the transformation in the attitudes of the male peers in the classroom and the conduct of male leaders in the workplace.

The 90-plus male students who were interviewed were both supportive of their female peers and the values of gender equality in general. The changes in male attitudes were key to altering the learning and working environments. While Guinier and co-authors showcased the way in which women were becoming "bi-cultural" and adopting male tendencies in order to succeed, what we noted was those men rather than the women were becoming "bi-cultural." Men were now more likely to embrace gender sensitive attitudes and more systemic and structural change on caregiving and workplace organizational behavior. Most of our respondents found it important to amplify women's voices, not only because it was the right thing to do, but because these diverse voices enriched their own insights on law and life.

1. Exactly 30 years ago, Lani Guinier published her pathbreaking Law Review Article in the University of Pennsylvania Law Review – **Becoming Gentlemen: Women's Experiences at One Ivy League Law School**. This is a study analyzing women's experiences in our law school in 1990-1991. Examining written first-person narratives, interviews, questionnaires, and qualitative research data, Lani Guinier writes that the analysis tells a "poignant story" of gender stratification. This impacts many women and some men. This stratification inhibits and silences women as it causes them to question their abilities and authority.

A. The Thousand Paper Cuts Survey

The male ally interviews were combined with mini surveys on how a new generation of women in the class experience a new expression of bias. These mini surveys were two-pronged. The first survey included fifty women: women in the class on Women, Law and Leadership and the women students in the Policy Lab on Sexual Harassment. The second survey included Black women in the class and their peers from outside the class.

The initial impulse for these surveys grew out of our in-class study of different forms of stereotypes, stereotype threat, and new way of addressing these new forms of “caste protocols” and deep-seated stereotypes.²

Although our qualitative data shows that attitudes among male students at Penn Law have changed dramatically, the ways in which women internalize stereotypes and the threat that these unexamined assumptions pose are real threats and have changed little over the 30 years. As Claude Steele says, stereotype threat is a problem as the reality of it.

It is clear that women then and now internalize stereotypes to their detriment. In “Becoming Gentlemen,” a female student stated 30 years ago: “After I discovered I was being called a feminized dyke, I never spoke in class again.” In 2020, the vernacular may have changed, but harmful stereotypes still lurk in the shadows and women tend to self-censure based on the fear of those tropes of the Janus-faced “aggressive” and “meek” female. However, what differentiates the current women and men of Penn Law from their predecessors 30 years ago is that they are no longer silent about issues of gender and intersectional stratification.

The Thousand Papercuts Survey was conducted with 52 respondents from the class on Women, Law and Leadership, Policy Lab on Sexual Harassment, and members of the Penn Law Women’s Association.³ The survey was circulated to assess the baseline experiences of gender bias amongst the class. Intended to extend the observations on the prevalence and impact of gender, racial, and other identity-based biases and sidelining practices in the workplace the survey inquired into our community’s experiences as a new generation of women and allies in the workforce. What

2. Deborah Rhode’s extensive work on the experiences of women in the legal profession, David Wilkins’s corpus of scholarship on diversity in the legal profession, Kenneth Mack’s work on Sadie T.M. Alexander and the history of Black women in the legal profession, Martha Minow’s scholarship on inclusion, and Vicki Schultz on her examination of implicit bias and women’s experiences in the workplace. We also immersed ourselves in the intersectionality work of Kimberly Crenshaw. We also read text on stereotype threat such as Claude Steele’s “Whistling Vivaldi and Other Clues to How Stereotypes Affect us” and discussed modern day variations of bias, including Isabel Wilkerson’s “Caste: The Origins of Our Discontent.”

3. UNIV. OF PA. CAREY L. SCH. & THOMSON REUTERS, FROM “BECOMING GENTLEMEN” TO BECOMING NORM ENTREPRENEURS: TRANSFORMING WOMEN’S LEADERSHIP AND THE ROLE OF MALE ALLYSHIP 7 (2020), <https://www.law.upenn.edu/live/files/11339-wll-report-part-1-final-january-4> [hereinafter BECOMING GENTLEMEN].

women now face is more difficult to distinguish and as a result more difficult to combat. The following data reflects the combined responses of 52 Penn Law women:

- 58 percent answered yes to the question: “Have you been criticized for being too soft-spoken or not assertive enough?”⁴
- 54 percent answered yes to: “Have you been hesitant to take on a leadership role because of criticism of your behavior?”⁵
- 71 percent answered yes to: “Have you been hesitant to speak up or speak frequently in meetings or group settings because of criticism of your behavior?”⁶
- 62 percent answered yes to: “Have you been spoken over or ignored in a meeting or group setting?”⁷
- 62 percent answered yes to: “Have you pressure to change the way you dress, style your hair, do (or don’t do) your makeup for your job or for law school networking events?”⁸

B. Black Women Future Leaders

In 1939, Penn Law’s first Black woman graduate and Pennsylvania’s first Black woman lawyer, Sadie Tanner Mossell Alexander, began corresponding with several dozen African American women attorneys practicing law in the United States. As Kenneth Mack describes in “A Social History of Everyday Practice; Sadie T.M. Alexander and the Incorporation of Black Women into the American Legal Profession, 1925-1960,” her correspondence, focusing on the lives of Black women in the legal profession, helped her create a nascent professional network of women who previously knew little about each other. Mack’s work shows how the experiences of outsiders matter in shaping the history of the legal profession. The students in the class on Women, Law, and Leadership modeled their own work on the correspondences that Alexander engaged with other Black women lawyers of her time.

4. *Id.* at 52.

5. *Id.* at 53.

6. *Id.*

7. *Id.* at 54.

8. *Id.* at 55.

The Report on “Black Women Future Leaders” is an analysis of the results of a survey of 50 Black Law Student Association (BLSA) members.⁹ The study found that the threat of stereotypes acts a silencing tool. Even when students may not have had a personal experience of being labeled, they adjust their behavior and speech patterns to avoid those labels. In both reports, what the data reveals is that stereotypes are invisible undercurrents of bias that confine women and restrict their agency.

C. You Cannot Change What You Cannot See: Survey of Gender Bias in Elite Law Firms in China

In contrast to the study done at the Law School, a survey of nearly 450 young lawyers aged 25-30 in elite law firms in China on their experience of bias and attitudes revealed that these young lawyers had difficulty identifying what constituted subtle bias.¹⁰ However, what was significant was their attitude toward pregnancy. Given the age group, only 7.92 percent of the women had children, but 100 percent of this cohort agreed that having a child had a negative impact on their career. Both the quantitative and qualitative data showed a fear of the “motherhood burden” and young women lawyers fears of the negative impact of motherhood on a career in elite law firms.

One lawyer stated: “Once female lawyers take a parental leave, their clients would be grabbed by other lawyers. To endure fairness, I think the only solution is to have mandatory parental leave on both female and male lawyers . . . I am still single, but I am so worried.”¹¹

Another lawyer stated: “I feel sad that there exists no discussion about gender bias in the legal industry in China.”¹² This reveals and confirms the importance of unmasking bias. As Joan Williams says in the ABA Commission on Women in the Profession report on “Interrupting Racial and Gender Bias in the Legal Profession, “You cannot change what you cannot see.” Seeing then is the first step. As our researchers point out, “It is important that we be trained to “see” gender bias lest it becomes invisible and ignored.”

D. Penn Law Student Participants in the Allyship Project: From “Becoming Gentlemen” to Becoming Norm Entrepreneurs

What our data shows is that subtle biases and stereotypes remain pervasive and might be masked by social protocols that normalize such

9. DANA DYER & MAGALI DUQUE, BLACK WOMEN FUTURE LEADERS (2020), <https://www.law.upenn.edu/live/files/11363-black-women-future-leaders-001> [hereinafter BLACK WOMEN FUTURE LEADERS].

10. BECOMING GENTLEMEN, *supra* note 3, at 17-18.

11. *Id.* at 85.

12. *Id.* at 102.

behavioral attitudes. However, men and women are aware of these invisible barriers to success and are no longer passive bystanders to a parade of caste protocols. In the final analysis, there is a marked shift from Penn Law women “becoming gentlemen” to both Penn Law women and men “becoming norm entrepreneurs” who are interested in changing social norms.

Of the 90 male student respondents (the first phase of research conducted in the spring included 30 Penn Law student respondents), all respondents have taken some sort of concrete action to qualify as an ally.¹³ More than 70 participants mentioned that they have either witnessed it firsthand or have taken immediate action to counter it.¹⁴ Of the 90 participants, 50 participants were explicitly asked if they have seen instances of exclusion, whether it took the form of implicit, systemic, or structural biases.¹⁵ Even though only 50 participants were explicitly asked about it, 58 participants talked about how such implicit, systemic, and structural biases exist.¹⁶ Most of these respondents also provided ideas of how a new generation of allies would respond to these biases that are so pervasive, they are invisible to the untrained eye.

Our findings through in-class interviews with female and male leaders, peer interviews with allies, surveys, and qualitative research data show that despite progress made, there remain subtle but pervasive undercurrents of gender bias that are so insidious that they are sometimes invisible to the naked eye. Whether in the classroom or in the workplace, men tend to attract more attention than their female peers. Women and women of color still face daily indignities, exclusions, and marginalization, that include not being credited for work done, misrepresentation of credit, coopting of ideas, subtle biases, and exclusions from meetings, networking events, stretch assignments, networks, and information. In isolation these incidents are not problematic, but in the aggregate they pose impediments that result in women self-censoring or reinforcing the prove-it-again mentality. Moreover, it impoverishes the workplace and robs it of creativity, innovation, and productivity. In the final analysis, what has changed is that both women and many men are becoming norm entrepreneurs in seeking to change this behavior and thereby developing a new cascade of normative and constitutive behavior that will create a more equal playing field for all.

II. WHAT IS ALLYSHIP?

“My Philosophy is very simple: when you see something that is not right, not fair, not just, stand up.”

13. *Id.* at 25.

14. *Id.*

15. *Id.*

16. *Id.*

—Congressman John Lewis, 2018

We borrow the definition of Allyship from Martha Minow, 300th Anniversary professor at Harvard University. Minow says she learned the word “upstander” from her former student, Ambassador Samantha Power, and “it means someone who stands up against injustice, bigotry, violence, or other wrongdoing.”¹⁷ An upstander according to her seeks a “sense of common purpose that makes all of us more likely to stand up against wrongs and on behalf of rights.”¹⁸

Power first used the term “upstander” in her first book, “A Problem from Hell.”¹⁹ To Minow, upstanders seek a sense of common purpose that makes all of us more likely to stand up against wrongs and on behalf of rights. The late great Congressman John Lewis gave a cogent definition of an upstander at Harvard Commencement in 2018 when he urged students to stand up when they see something that is “not right, not fair, not just.”

The CEO of Orrick also embraces the notion of the ally as an upstander. In his class discussion, he argued:²⁰

In order to be great allies, there has to be a mindset shift from wanting to help members of underrepresented groups to becoming intolerant of environments that are inequitable. So, it is about not tolerating inequitable situations.²¹

A new generation of allies too feel that it is about active allyship:

Proactive allyship. I’ve never heard that term before, but I would guess it has something to do with, you know, making sure that you try to acknowledge the fact that you’re missing a perspective, I’m not sure. But when other minority groups aren’t in the room, if something is said about a minority group, I like to ask people where

17. Lincoln Caplan, *The ‘Upstander’*, HARV. MAG. (Feb. 27, 2017), <https://today.law.harvard.edu/feature/the-upstander/>.

18. *Id.*

19. SAMANTHA POWER, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE* (2002).

20. Mitch Zuklie, Chairman & CEO, Orrick Law Firm, interview in UNIV. OF PA. CAREY L. SCH. SEMINAR ON: WOMEN, LAW, AND LEADERSHIP & THOMSON REUTERS, *LEADERSHIP IN A TIME OF CHANGE* 14 (2020), <https://www.law.upenn.edu/live/files/11338-wll-report-part-2-leader-interview-transcripts> [hereinafter *LEADERSHIP IN A TIME OF CHANGE*].

21. Other definitions of allyship have grown in the last few months. LeanIn’s first ever Report on Allyship at Work in 2020 described “allyship” as “using one’s power or position to support or advocate for coworkers with less power or status.”

they got their information from. I was like a soft way of being like “are you sure you’re not being biased right now?”²²

However, who can call themselves an ally remains ambiguous. According to LeanIn, more than 80 percent of white women and men say that they see themselves as allies to colleagues of other races and ethnicities. A majority of white co-workers see themselves as allies when only 10 percent of Black women and 19 percent of Latinas say the majority of their strongest allies are white.

In Microsoft’s words in their newest Report on Diversity and Inclusion 2020:²³ “You don’t get to decide whether or not you’re an ally.... it’s only once you can begin to deliver on that promise that someone else gets to decide whether or not you’re actually showing behavior that would represent what it means to truly be an ally.”

According to Microsoft, “effective systemic change calls on employees at every level to consciously create inclusive experiences and environments for each other.” Microsoft sees allyship as a “key behavior to advancing conversations that lead to change” and allyship is core to our diversity and inclusion efforts and a major investment for the organization.”

Cass Sunstein developed a lexicon for norm entrepreneurship in his 1996 paper “Social Norms and Social Roles”²⁴ and identified a category of people, who he calls *norm entrepreneurs*, who are interested in changing social norms.

A culture of allyship can in the ultimate analysis create new norms and allies can become norm entrepreneurs.

A. Skepticism About Performative Allyship

A collective reckoning on equality spawned by the social justice movements, and the great reset spurred by the pandemic, has brought the issue of allyship to the forefront. The inadequacy of current laws, rules, practices, and norms to address subtle pervasive and insidious bias and unactionable sidelining, or what is now referred to as a “thousand papercuts” in aggregate, result in exclusion, erasure, and finally women and minorities opting out of the workplace. Allyship is a way of standing up against these exclusionary practices. However, the central tension in allyship is the difference between allyship as action versus performative allyship or allyship

22. Interview #12, Peer, Univ. of Pa. Carey L. Sch., interview in UNIV. OF PA. CAREY L. SCH. SEMINAR ON: WOMEN, LAW, AND LEADERSHIP & THOMSON REUTERS, PORTRAITS OF ALLYSHIP 36 (2020), <https://www.law.upenn.edu/live/files/11340-wll-report-part-3-male-ally-interview-transcripts> [hereinafter PORTRAITS OF ALLYSHIP].

23. MICROSOFT, 2020 DIVERSITY & INCLUSION REPORT (2020).

24. Cass R. Sunstein, *Social Norms and Social Rules*, 96 COLUM. L. REV. 903 (1996).

for optical reasons such as for an external reward or recognition. As Craig Newmark, Founder of Craigslist and adviser to this project, has said: “We need less ally theatre and more people in positions of power to recognize that power, not advise it, and support women.”

Our research distinguished performative allyship from authentic forms of allyship.

A Penn Law Student Respondent noted:

I think I’ve been kind of skeptical of its usefulness. The reason that I feel like I’m skeptical of it sometimes is that I think it’s really been adopted more widely by corporations to basically name a certain way of being sort of progressive in the workplace and it’s kind of divorced it from the content of the work that’s being done. In the wake of George Floyd, all these big law firms came out with statements of allyship with the Black community and I mean I just think there’s a question about if a whole bunch of your work is slapping down race discrimination employment suits or something, and you’re saying, we want to be good allies, there are limits to how much that concept can be pushed there. I guess the recent fad around allyship has made me reluctant to think of myself in those terms explicitly, even if it is a useful concept sometimes and it certainly began with really good intention.²⁵

Another respondent was also reluctant to appropriate the label of ally, saying that “[y]es, I think I’m an ally for women. I’m a little skeptical of wearing the label of “ally” as a badge and self-identifying that way. “Ally” as a status...maybe reconceptualizing it as allying as a verb is more helpful. Even the best ally can be destructive.”

Another central paradox of allyship is, how can active allyship take place without taking away credit or agency from women? A balance was suggested by a student:

For me, allyship centrally is about being in a place where you are supportive of women in a way that doesn’t overshadow them, so it’s about finding the best way to accomplish whatever their goal is without taking credit or without being too overbearing in terms of your approach and your suggestions. It’s about combining being helpful and being hidden.²⁶

25. PORTRAITS OF ALLYSHIP, *supra* note 22, at 352.

26. *Id.* at 205.

B. Allyship and Interpersonal and Structural Change

Students saw allyship as constituting both interpersonal and structural change. While some articulated the importance of those personal steps taken to foster inclusion, others addressed the ways in which allyship altered the balance of power and thus the culture in an organization. A law student response stated:

Being an ally to women means making sure they are included in every aspect of the workplace. It means bringing up women's names in conversation and evaluating and rewarding people based on their capabilities rather than their gender. It also means standing up for women in a respectful way that may include speaking to the individual who undermined a woman because of their gender as a way to address the problem without exacerbating it.²⁷

Still, others felt it could not be reduced to a bumper sticker sentiment: "A commitment to advance the groups' interests, but more than just the belief that it's important to do so—it requires taking affirmative steps towards that goal. "Allyship" is more than just talk or a bumper sticker."

We also see that interpersonal support can also result in systemic change. Thurgood Marshall is one of history's great allies. He hired Constance Baker Motley to head the National Association for the Advancement of Colored People (NAACP), and she went on to become the first Black woman to serve on the Federal Judiciary. His clerk Deborah Rhode became the second tenured woman at Stanford. Other clerks like Martha Minow and Elena Kagan went on to become deans of Harvard Law School. The latter went on to become a Supreme Court Justice.

The importance of allyship as a determinant of systemic change was articulated by a respondent. Allyship is often the way to address residual effects of discriminatory laws, policies, and practices. As one student stated about the role of allyship as well as law school, "I think part of why I am where I am in law school...is because I want to be an ally in the fight for social justice and racial justice."²⁸

C. Allyship as Assailing Gender Stereotypes

Our allyship research further challenges sex-based stereotypes that limit both women and men's roles in the workplace and the family.

Women are often denied access to stretch assignments or feel subjected to higher standards than their male peers. Even when highlighted in public,

27. *Id.* at 402.

28. *Id.* at 353.

women professionals are often praised in ways that marginalize their contributions. Collectively, these incidents—which constitute what some have referred to as “gender sidelining”—accrue to create barriers to advancement for women at work.²⁹ However, as Jessica Fink has noted:

Not all bias appears in the form of a missed promotion, a cut in pay, or a seemingly groundless termination. Rather, for many women, the obstacles that they face at work are more difficult to pin down—a lack of access to certain opportunities, the diversion of credit for an idea, a nagging sense of being held to a higher standard than their male peers. In this sense... creep its way into the workplace, not in the form of “specific, observable employment decisions” but rather “build[ing] subtly over time so that an identified moment of decision making—such as the manager’s decision not to promote—may appear perfectly natural even when it is in fact the product of biased perceptions, judgments, and behaviors of the manager and also of others.³⁰

Similarly, The McKinsey Report in 2016 revealed that only 67 percent of women believe they are able to participate in workplace meetings and only 62 percent of women compared to 68 percent of men had received a challenging work assignment. Further, the Report noted that, “[w]omen get less access to the people and opportunities that advance careers and are disadvantaged in many of their daily interactions.”³¹

Several studies confirm this data. In Joan Williams et al.’s “The Language of Performance Evaluation: Gender-Based Shifts in Content and Consistency of Judgment,” the researchers examined performance evaluations received by both male and female junior attorneys and highlighted the heightened scrutiny and differential treatment that female employees face. Thus, it detailed the different ways in which women and men were treated in the company.³²

Almost all our GenZ participants have recognized these biases and say they have taken action where they can in an effort to recognize and expose

29. See generally Jessica Fink, *Gender Sidelining and the Problem of Unactionable Discrimination*, 29 STAN. L. & POL’Y REV. 57 (2018) (explaining the concept of gender sidelining and the impact it has on the workplace as a whole).

30. *Id.* at 64.

31. See *Women in the Workplace 2016*, MCKINSEY & COMPANY and LEANIN.ORG 10 (2016), https://wiwreport.s3.amazonaws.com/Women_in_the_Workplace_2016.pdf [hereinafter 2016 McKinsey Report].

32. See Monica Biernat, M.J. Tocci, and Joan C. Williams, *The Language of Performance Evaluations: Gender-Based Shifts in Content and Consistency of Judgment*, 3 SOC. PSYCHOL. & PERSONALITY SCI. 186, 186-192 (2012). See also *Peer Evaluation is not objective: Academia and Law Firms*, CURT RICE (Nov. 2, 2011), <http://curt-rice.com/2011/11/02/peer-evaluation-is-not-objective-academia-and-law-firms/>.

the gap in opportunities for women and address this discrepancy. Many claim that this means recognizing the unactionable lack of opportunity but taking action on what can be done: “proactive allyship is the process of not waiting to witness injustice before attempting to correct the systemic injustice that often causes the symptoms that many wait to correct. In many ways, being proactive prevents a self-fulfilling prophecy that prevents marginalized groups, in this case women, to overcome their exclusion.”³³ To this extent, one of our participants, knowing that female high school students are at a disadvantage in applying to Oxford, spoke to his alma mater about this discrepancy and advised them on how to “jump off the page.” He said,

Last year, I was invited back to speak at my high school, having been one of the first in the school’s history to study at Oxford. During my speech, I talked about something that I had been told by a female friend – namely that Oxford had put on a lecture for female law students at the start of the semester, during which the speaker told the group that professors have generally observed a trend whereby women were less likely to “jump off the fence” in essays. I shared this story with my school, asking the female students to bear this in mind, and encouraging them to be assertive in their writing.³⁴

While such efforts are necessary at the academic level to serve as a catalyzer for more confident, capable women in the workforce, the lack of opportunities in the workforce must still be addressed on their own. This can be something as simple as how one 2L addresses the problem by making “people aware that there are other perspectives not represented in the room. I try not to make the arguments I think they would make though, nor make it seem like their perspectives are monolithic.”³⁵ Or this can take the form of policy change. A 3L respondent believes that clear and transparent hiring practices and committees are needed because “folks need to recognize their limits with respect to debiasing. Anonymity helps, but I think committees can play a big role in mitigating the biases we all have.”³⁶ This is based on the understanding that debiasing the workplace will inherently help to create

33. Anonymous, interview in UNIV. OF PA. CAREY L. SCH. & THOMSON REUTERS, ALLYSHIP: UPSTANDER VS. BYSTANDER 30-31 (2020), <https://www.law.upenn.edu/live/files/10578-allyship-upstander1-vs-bystander-white-paper> [hereinafter UPSTANDER VS. BYSTANDER].

34. C.Z., interview in UNIV. OF PA. CAREY L. SCH. & THOMSON REUTERS, MALE ALLYSHIP IN THE FUTURE OF WORK: ADVANCING INCLUSIVE LEADERSHIP 57 (2020), <https://www.law.upenn.edu/live/files/10320-male-allyship-curated-report> [hereinafter ADVANCING INCLUSIVE LEADERSHIP].

35. *Id.* at 92.

36. *Id.* at 62.

more opportunities for all groups of people, even those that have been excluded like women, and specifically women of color.

Consistent with an effort to debias the workplace through policy initiatives, another GenZ advocated “non-CV, gender-blind based hiring”. He pitches the idea that “[c]andidates should be required to complete a questionnaire that asks them to answer various questions focused on situational challenges they have faced, strengths they have and weaknesses they want to work on.”³⁷ The purpose of the questionnaire would be to eliminate the inherent disparities and inequalities that exist in CVs. As he describes, “CVs are often proxies for privilege (those educated privately, for example, are disproportionately likely to go to the best universities).”³⁸ However, “a questionnaire, combined with in-person assessments (interviews, for example) would allow candidates to demonstrate intellectual capacity and ability to work hard. Certain threshold requirements (e.g. minimum of a bachelor’s degree) could be implemented to provide basic quality control.”³⁹ Through this process, women are given equal opportunities to compete for jobs and leadership positions.

Apart from the business case for diversity, the fundamental fact of having a diverse workplace is considered an important way of advancing creativity and innovation. Increasing gender inclusion will not only increase diverse perspectives and reduce the influence of cognitive biases in the design, training, and oversight of leadership, but also attenuate implicit and unconscious bias. Diverse teams are less likely to be weighed down by cognitive biases such as confirmation and/or relational biases.⁴⁰

The slow disruption of gender stereotypes comes from inclusion. This is why Ryan Plesh, a Penn Law student, says that “one of the most important things is making sure that there is a critical mass of women and women of color in the discussion. If there isn’t, those voices will be unheard.”⁴¹ Where their voices remain unheard, the stereotypes will remain. Another participant explains that it is of the utmost importance that “there is a representative who is able to speak or to represent a woman’s interest.”⁴²

However, respondents were aware of some of the tensions inherent in allyship and the importance of disavowing stereotypes. As one respondent

37. *Id.* at 82.

38. *Id.*

39. *Id.* at 82-83.

40. See generally NAT’L RSCH. COUNCIL, MEASURING HUMAN CAPABILITIES: AN AGENDA FOR BASIC RESEARCH ON THE ASSESSMENT OF INDIVIDUAL AND GROUP PERFORMANCE POTENTIAL FOR MILITARY ACCESSION 53 (2015) (describing how cognitive biases, such as confirmation bias and others, show how irrational decision-making results from failing to reflect on choices).

41. ADVANCING INCLUSIVE LEADERSHIP, *supra* note 34, at 61.

42. UPSTANDER VS. BYSTANDER, *supra* note 33, at 19.

described, “*fostering a sense of inclusion rather than ‘otherising’ minority individuals*” is important.⁴³

At the same time, diversity for the sake of optics and external rewards will produce fewer results than using diversity to promote the inclusion and participation of women. A 2L participant argued that employers should have:

[A] more nuanced view of things so you’re not constantly isolating different statistics, and you’re not purely statistically driven...because even if you do have wonderful statistics of people of various intersectional identities that are very diverse and providing all of these different perspective on things. If they are on the sidelines and not actually in leadership positions, then you probably haven’t achieved an idea of equality.⁴⁴

Within the context of subcommittees like hiring panels, performance review boards, etc., Justin Pendleton, another student, said that “*making sure that the panel is diverse with men, women, diverse racial backgrounds, and members of both the diversity and HR teams on it may be more fruitful.*”⁴⁵ Plesh agreed that “*a diverse team can provide a much fuller picture than one man can.*”⁴⁶ Understanding that the creation of such committees is still an ongoing process, one student suggested that if given the opportunity, he would staff the committee with a diverse group of people to:

[H]ear as many perspectives as possible, and then the hiring practice wouldn’t be set in stone. There would be a trial period and a feedback period because I would want to hear anyone that has any complaints or even the best laid out plans, because of implicit bias may still end up perpetuating implicit bias, so, you know, still having an open conversation so we get to hear all of those perspectives and try to adjust accordingly.⁴⁷

Diversity is also important in catalyzing changes in leadership. Thus, gender inclusion is vital because “*without strong female leaders in positions of power across all sectors it is difficult to instrumentalize a cultural shift.*”⁴⁸ It is for this reason a LLM student from Japan claimed that “[w]hat matters is that every employee acknowledges that diversity counts, and

43. ADVANCING INCLUSIVE LEADERSHIP, *supra* note 34, at 81.

44. *Id.* at 46.

45. *Id.* at 104.

46. *Id.* at 62.

47. *Id.* at 51.

48. *Id.* at 112.

*discrimination should not be allowed. In this perspective, particularly employers and high-ranking employees should value diversity.”*⁴⁹

As described by several of our participants’ experiences, altering the demographics of a workplace can create change and lessen the degree of implicit bias. The visibility of minority group members will help assail gender stereotypes. Similarly, Christine Jolls argues in *Antidiscrimination Law’s Effects on Implicit Bias* that “discrete changes in either population make-up of a group or the physical and sensory features of an environment can substantially reduce the degree of implicit bias.”⁵⁰

As another respondent put it, biases are so normalized that they are invisible to the naked eye. Allyship helps to identify and unmask these biases.

Because systematic and structural bias are always more underlying and unnoticeable. People sometimes bias against a specific group of people without even noticing that they are doing so. Under such circumstances, allyship is at the forefront because it can raise people’s awareness of anti-discrimination. In addition, combating structural bias demands joint efforts, which makes allyship at the forefront.⁵¹

When a member of an underrepresented group deals with inequity on a frequent basis, it often doesn’t leave room for trying to change the system and can also leave one exhausted or what has been called “emotionally taxed.” Allies are important because, as mentioned above, they have the power, the visibility, and the voice to help shine a light on injustice and help to raise awareness and create change.

One respondent noted the importance of allyship in implementing deep rooted changes, noting that “. . . it is difficult for a minority group who is structurally biased against to fight against systematic bias themselves. Male allyship is important because it can offer external resources for combating structural or systematic bias.”⁵²

Allyship needs to be seen to complement many efforts that have been ushered. For nearly two decades, corporations have made pledges on improving inclusivity and hiring more diverse workers. However, the leadership among women and women of color in the boardroom and C-Suite remains low. In the waning days of 2020, with the advent of Karen Lynch,

49. *Id.* at 72.

50. Christine Jolls, *Antidiscrimination Law’s Effects on Implicit Bias* 1-46 (Yale Law Sch., Pub. Law Working Paper No. 148, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=959228#.

51. PORTRAITS OF ALLYSHIP, *supra* note 22, at 22.

52. *Id.* at 29.

the newly appointed CEO of CVS, only 38 of the Fortune 500 CEO's were women.

In spring 2004, Sara Lee General Counsel Roderick Palmore created "A Call to Action: Diversity in the Legal Profession,"⁵³ a document reaffirming a commitment to diversity in the law profession and taking action to ensure that corporate legal departments and law firms increase the numbers of women and minority attorneys hired and retained. And if law firms don't, the document states, "We [the undersigned corporate legal department representatives] further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse."

Harvard Law School's David Wilkins has interrogated these calls to action. In the "Action tAfter the Call: What General Counsels Say About the Value of Diversity in Legal Purchasing Decisions in the Years Following the 'Call to Action'"⁵⁴ (with Young Kyu Kim) and in *Diversity in Practice: Race, Gender, and Class in Legal and Professional Careers*⁵⁵ (Cambridge University Press 2015), he examines the client-driven diversity efforts by law firms, but argues that diversity never became an imperative.⁵⁶ This begs the question of how we will look back at this moment of mass public reckoning on institutional racism in the year 2020.

Wilkins himself has provided us guidelines on how we can create structural and institutional change. In 2017, he lauded his student Kim Rivera, the General Counsel of HP for her "diversity holdback." Rivera in a letter to HP's outside law firms informed that the company may withhold up to 10 percent of invoiced fees for failure to meet its diversity standards.

In 2004, Wilkins argued in "From Separate is Inherently Unequal to Diversity is Good for Business: The Rise of Market-Based Diversity

53. Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, ASS'N CORP. COUNS. (Oct. 1, 2004), <https://www.acc.com/resource-library/call-action-diversity-legal-profession>.

54. David B. Wilkins & Young-Kyu Kim, *Action After the Call: What General Counsels Say About the Value of Diversity in Legal Purchasing Decisions in the Years Following the 'Call to Action'*, HARV. L. SCH. CTR. ON LEGAL PRO., Research Paper No. 2015-5 (2015).

55. *DIVERSITY IN PRACTICE: RACE, GENDER, AND CLASS IN LEGAL AND PROFESSIONAL CAREERS* (David B. Wilkins et al. eds., 2016).

56. Deborah Rhode told our class about the work of General Counsel in raising issues of diversity:

One of the things we found when we interviewed law firm managing partners and GCs, was yes, all the GCs said "Yes, this is important to us" and then we asked, "How many times have you pulled business from a firm because of its poor record?" "Well, not once" [was the answer] and when we asked managing partners, only one had actually lost a client because of this [lack of diversity]. And the managing partners were all furious because they said, "We put in all this time completing these diversity and inclusion reports for the clients who demand it and it's not clear anyone really reads it."

Arguments and the Fate of the Black Corporate Bar”⁵⁷ that we need both a business and moral case or a normative understanding of diversity which goes beyond corporate self-interest to an understanding that workplace segregation of gender and race is inherently harmful.

Apart from these client driven or market drive forces, internal changes can also be effective. Law firm leaders like Mitch Zuklie, CEO of Orrick and Adviser to our Women, Law, and Leadership class, has adopted the Mansfield Rule which measures whether law firms have affirmatively considered at least 30 percent women, lawyers of color, LGBTQ+ lawyers, and lawyers with disabilities for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions.

This is a rule similar to the Rooney Rule in the NFL which requires league teams to interview ethnic-minority candidates for head coaching and senior football operation jobs. Zuklie has also adopted the “Bias Interrupters,” a program pioneered by Joan Williams’s Center on Work Life Law at Hastings College of the Law. Bias interrupters “*interrupts the constant transmission of bias in basic business systems*” and is set up to change systems and not people.

Policy reform can be both normative and constitutive. In 2020, California Gov. Gavin Newsom signed a law requiring publicly traded corporations headquartered in California to appoint directors from underrepresented communities to their boards. It was the first law in the country to dictate the racial makeup of corporate boards. The law was inspired by first-of-its-kind legislation in 2018 that requires publicly held corporations headquartered in the state to diversify their all-male boards.

Leaders tend to hire, promote, and kindle with people of similar backgrounds. Men are given more strategic roles, whereas women are assigned more operational roles.⁵⁸ Allyship done properly helps to address these subtle biases. The term itself cannot be collapsed into a single formula. As our interviews showcase, allyship can redress disadvantages, address stigma, stereotypes, and prejudice, while enhancing dignity, equality, voice, and participation. Allyship’s greatest promise lies in its potential to accommodate differences and achieve structural change.

D. Allyship in a Time of a Global Public Health Crisis

The twin forces of the COVID-19 pandemic and the global public reckoning on race and gender shaped a new consciousness of the workplace and a way to address the legacy of racism and sexism in our workplaces and

57. David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity Is Good for Business”*: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar, 117 HARV. L. REV. 1548 (2004).

58. *Id.*

public life. The crisis in leadership has brought about a new awareness of the importance of leadership.

The pandemic has forced most of the world into an ambitious work-from-home experiment. Even before the 2020 pandemic many organizations had embraced flexible work arrangements including flextime, telework, compressed workweeks, and reduced work-hours programs. In some cases, these arrangements have become a standard way of operating. Flexibility remains the most popular and often requested work-life benefit for many employees, especially working parents, who at one time were seen as the primary driver for its popularity. At the same time with developing technologies and more global operations, an increasing number of women and men are working full time.

First, the pandemic is having a disproportionate impact on health outcomes for people of color, persons with disabilities, and other marginalized groups. Second, many of the jobs being cut as a result of the pandemic are disproportionately held by women and people of color.⁵⁹

As a respondent stated:

[T]he pandemic makes everybody more worried about their well-beings, as well as how to hold down a job and how to maintain the quality of life. During such a difficult period, allyship can provide people with sense of security. Secondly, objectively speaking, women are more likely to face a dilemma during a public health crisis, because they have to do more housework when staying at home. Thus, allyship is even more important during a time of a public health crisis.⁶⁰

Respondents by and large advocated for gender neutral flexibility and telecommuting.⁶¹

59. *Women in the Workplace 2020*, MCKINSEY & COMPANY and LEANIN.ORG 6 (2020), https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2020.pdf [hereinafter 2020 McKinsey Report].

60. PORTRAITS OF ALLYSHIP, *supra* note 22, at 22.

61. See responses from three interviewees: “During a time of a public health crisis, women will be exposed to more family-related contexts. As they have to spend more time doing the housework and taking care of their kids, they will have less time for their career. Therefore, allyship is important since men should undertake their responsibilities to share the burden with women.” “I think telecommuting will play an important role in the workplace going forward, particularly in the aftermath of the pandemic. This should help allow both men and women with family obligations to better balance those demands with work obligations.” “Honestly, the more flexibility with work, the better. Unless it means that people are just working longer hours. I feel like the flexibility also has to come with a commitment to understanding that people have lives and people.”

I think in the COVID-era, with work from home, this is something that we’re already doing. I think generally women are held to a higher standard of dress and makeup and all of that when they go to the office. I’m sure that this is also true over Zoom . . . [i]f I were in charge and one of my junior associates showed up dressed like me, I would do my best to remember that there should be no issue with that.⁶²

III. INTERSECTIONALITY AND MODERN DAY “CASTE PROTOCOLS”

In 1833, Maria Stewart, the women’s rights activist and abolitionist posed a question that is pertinent to our own study: “When I cast my eyes on the long list of illustrious names of fame among the whites, I turn my eyes within, and ask my thoughts, ‘Where are the names of our illustrious ones?’”

In the early 1990s, Kimberlé Crenshaw gave us a new language to speak about intersectionality. 30 years after Crenshaw gave us the lexicon to speak of the way in which race and gender interact to shape structural discrimination and the multiple dimensions of the experiences of women of color at work as well as at home, today, Isabel Wilkerson in *“Caste: The Origins of Our Discontent”*⁶³ gives us a new language to speak of subtle and often invisible biases. *“Modern day caste protocols are less often about overt attacks or conscious hostility. They are like the wind, powerful enough to knock you down but invisible as they go about their work,”*⁶⁴ Wilkerson writes.

“The hierarchy of caste is,” Wilkerson asserts, *“about power—which groups have it and which do not.”*⁶⁵ Caste, in Wilkerson’s acute observations, is the infrastructure that often we cannot see, but that is there forming beneath much of the inequality, injustice, and disparity in our institutions.

Despite the success of the women of color we interviewed, women lawyers and businesswomen of color still lack access to opportunities, encounter barriers to mentorship, or feel subject to greater scrutiny and criticism than their peers. Moreover, they are denied credit for their work, upstaged, sidelined, and silenced at conferences or meetings. At the same time, they are held to a different standard than their peers, which Joan Williams has named the “prove it again” bias that women of color often face.

62. PORTRAITS OF ALLYSHIP, *supra* note 22, at 196.

63. ISABEL WILKERSON, *CASTE: THE ORIGINS OF OUR DISCONTENTS* (2020), <https://www.isabelwilkerson.com/>.

64. *Id.*

65. *Id.*

As one respondent stated,

In light of the ongoing Black Lives Matter movement, I have heard many distasteful and off-color comments regarding both the movement and those actively participating in it. I, myself, am not black, but I do support this movement. Although none of the comments I have heard have been in the workplace, I have spoken up so as to quickly shut down any sort of negative conversation. I have also tried to provide some helpful insight and background in an effort to educate those making ignorant comments, though I fear these efforts were futile.⁶⁶

A. Commitments to Diversity

The year 2020 remains a turning point in public health and in work and family. The dual force of the pandemic and the mass public reckoning on gender and race have exacerbated the fault lines and revealed new political, racial, social, and gender divides. It has also created a new business movement in support of Black Lives Matter. The Fortune 500 have pledged over half a billion dollars to address systemic and institutional racism.⁶⁷

Despite concrete progress, a study financed by the Ford Foundation in the summer of 2020, “The Test Of Corporate Purpose,” finds that signatories to the new corporate purpose pledge have done no better than other companies while failing to distinguish themselves in pursuit of racial and gender equality. Since the pandemic’s inception, the study concludes that the Business Roundtable statement “*has failed to deliver fundamental shifts*

66. BECOMING GENTLEMEN, *supra* note 3, at 59.

67. Even before the world as we knew changed, there was a conceptual shift in the understanding of the business purpose. In 2019, we saw a shift from Milton Friedman’s idea of shareholder capitalism to stakeholder capitalism. Corporate purpose is now at the forefront of a fundamental and heated debate, with rapidly growing support for the proposition that corporations should move from shareholder value maximization to stakeholder interest and stakeholder governance and “stakeholder capitalism.”

From stakeholder capitalism to compassionate capitalism, businesses are rethinking business structures along the lines of sustainability and equality. Ebay’s the Omidyar Network’s commitment of funds over three years in support of its **Reimagining Capitalism** initiative with a focus on building the power, voice, and agency of working people — including low-wage workers of color and women — in “a post-pandemic” era. Marc Benioff the owner of Time magazine and founder of Salesforce has also called for a “new form of capitalism that focuses more on societal good.”

Klaus Schwab, the founder and CEO of the World Economic Forum (WEF) along with other business leaders has spurred into motion the project on the “Great Reset” Schwab along with His Royal Highness, the Prince of Wales will convene a twin summit on the Great Reset at the WEF in January. Schwab has said: “the pandemic represents a rare but narrow window of opportunity to reflect, reimagine, and reset our world.” A component of the Great Reset agenda would address shared goals, such as equality and sustainability.

in corporate purpose in a moment of grave crisis when enlightened purpose should be paramount.”

Although the huge financial commitments will certainly help, they also conveniently sidestep responsibility for tackling the challenge of the root causes of racial inequality. There is still a conspicuous absence of Black employees at the corporate or board levels. According to a Stanford Business School study titled *Diversity in the C-Suite: The Dismal State of Diversity Among Fortune 100 Companies*,⁶⁸ one in four companies in the group still have an all-white executive suite.

B. Allyship and Women of Color: Black Women Lawyers- Future Leaders

At the height of racial tension in the summer of 2020, Wendell Nii Laryea Adjetey, the W.L. Mackenzie King Fellow and Lecturer at Harvard University wrote: “The ghost of slavery and the curse of racism still threaten us 400 years later. . .” The murder of George Floyd pushes our nation into a public reckoning on our racist history in the same way that the #MeToo Movement challenged our collective conscience about sexism in the workplace. In 2020, the abolitionist Maria Stewart’s question asked in 1833 still resonates: “Where are the names of our illustrious ones?”⁶⁹ In responding to both moments in history, two students in my class, Dana Dyer and Magali Duque developed a survey to collect data from 30 Black Penn Law students. Of these 30 respondents, 24 of whom identify as women and 6 who identify as men, it was revealed that labels and stigmas for Black women and women of color endure the overlap of implicit gender and racial bias. Some of the labels Black women face are the “angry/ aggressive black woman,” the “shy black woman,” and/or the “unintelligent black woman.” 79.31 percent admitted to fearing being labeled as an angry black woman or as aggressive.⁷⁰

Being Black and female can be a double jeopardy that these leaders have navigated. As Margalynne Armstrong states in her article:

When a woman of color enters the legal profession, she steps into a forum that has only recently begun to permit her presence. The long tradition of excluding most minority men, white women, and women of color from law schools and law practice formed a bar and

68. David F. Larcker & Brian Tayan, *Diversity in the C-Suite: The Dismal State of Diversity Among Fortune 100 Senior Executives*, ROCK CTR. FOR CORP. GOVERNANCE STAN. U. CLOSER LOOK SERIES: TOPICS, ISSUES & CONTROVERSIES CORP. GOVERNANCE, No. CGRP-82 (2020).

69. See J. Clay Smith Jr., *Black Women Lawyers: 125 Years at the Bar; 100 Years in the Legal Academy*, 40 HOWARD L.J. 365, 365 (1997).

70. BLACK WOMEN FUTURE LEADERS, *supra* note 9, at 9.

bench devoid of the experiences and perspectives of the majority of the people that have lived in this democracy. The exclusion of outsider groups from law has had profound implications for our nation as a whole.⁷¹

One Black Penn Law student commented: “I equally feel pressured and at times, irritated, at having to address diversity issues when others, who essentially are a part of the problem, are silent. These sorts of conversations must be discussed amongst non-POC or these perpetual issues will never be fixed.”⁷²

This student highlighted the importance of discussing diversity amongst non-POC and the role in which they must play to create a space for inclusion of minorities. Black women and people of color have continuously spoken on diverse issues, but until non-POC respond and actively approach these problems, they will continue to emerge.

More than half of the 30 respondents answered “Yes” to the fear of being labeled as “an angry black woman” or “aggressive.”⁷³ One Black woman commented:

In my career, I’ve been the only or one of few Black women on a team more than once. **My tone is often mistaken for angry** as opposed to assertive and my white counterparts have been able to operate without having to be mindful of how they speak because there’s a lack of accountability for their actions and a microscope on mine.⁷⁴

In an interview with the Vice President of Penn’s Black Law Students Association, Teddy Okechukwu, regarding allyship, he mentioned seeing how Black women are often placed in situations “where they’re restrained because they know how any sort of aggression, strength, or certainty in a response could be viewed. In leadership roles and in all [situations] there can be a hesitation to even give a response because of the way that it might be perceived. There’s a fear of perception that doesn’t exist with white men.”⁷⁵

Was your intelligence or capacity questioned? This response illustrates the continuous societal constraints of being undervalued and seen as unequal in law school and in the workplace. More than half of the sample size chose ‘Yes’ to whether their intelligence was questioned implicitly or explicitly.⁷⁶

71. See Margalynne Armstrong, *Women of Color in the Law: The Duality of Transformation*, 31 UNIV. S.F. L. REV. 967, 967 (1997).

72. BLACK WOMEN FUTURE LEADERS, *supra* note 9, at 17.

73. *Id.* at 9.

74. *Id.*

75. PORTRAITS OF ALLYSHIP, *supra* note 22, at 433.

76. BLACK WOMEN FUTURE LEADERS, *supra* note 9, at 10.

The authors speculated that this response reflects the constant “prove it again” theory, which causes Black women to internalize feeling inferior, leading to overcompensation.

One student stated, “I feel as though I’ve been labeled a quiet Black girl, who must constantly fight to not be overlooked or for my ideas to be heard in non-POC spaces.”⁷⁷ Challenging stereotypical assumptions about Black women is, as one student put it, “very exhausting.”⁷⁸

Have you ever felt you didn’t deserve to be in a certain space? More than half of the respondents have felt undeserving of a certain space.⁷⁹ This first displays the lack of inclusivity in making Black women and people of color feel comfortable in settings where they are less populous. Secondly, the majority of “Yes” responses indicate the self-doubt and unworthiness Black women and people of color internalize due to the lack of inclusion.⁸⁰

The problem is particularly glaring for women. In fields dominated by white men, women of color often battle exclusion, microaggressions, and ignorance. It can exact a physical and emotional toll often known as an emotional tax. Juxtaposed with student interviews are interviews with two prominent Black women law professors at Penn Law:

Black women...the notion that you could separate those two things—[social inequality and the advancement of women], that it is not about social inequality but about helping women get ahead...I think that there is [a notion] in Black culture that those two things are intertwined...that is an intersection that I am not sure other folks [understand]. I think that is an area where there may be differences between and among various groups of Black people in professional school because of their heritage. But I just wouldn’t buy [the idea that social inequality can be separated from efforts towards the advancement of women]. There is nothing about my upbringing that would suggest that those two things are separate. And there is a whole lot in Black culture that suggests that they are not.⁸¹

These comments reflect the “emotional tax” and “prove it again” theories discussed in class. In this historical moment though, it is important to be sensitive about the questions that are raised or the framing for the moment. As multiple students noted:

77. *Id.*

78. *Id.* at 11.

79. *Id.* at 18.

80. *Id.*

81. R. Austin, interview in UNIV. OF PA. CAREY L. SCH.: WOMEN, LAW & LEADERSHIP SEMINAR, WOMEN LEADERS IN LAW AND BUSINESS: TRAILBLAZERS, INNOVATORS, AND DISRUPTERS IN THE LAW 184-85 (2019), <https://www.law.upenn.edu/live/files/10787-womenleadersinlawandbusiness7-16-20pdf> [hereinafter WOMEN LEADERS IN LAW AND BUSINESS].

In different contexts, from professional interviews to leadership boards of student organizations, I've often felt confronted by white women specifically who try to undermine the message I'm attempting to convey by acting in a subversive way to ask "questions" and share their opinion about a race-related issue being "perhaps to political" or certain language being too "scary" such as "white-supremacy," "state-sanctioned murder" of Black people, or references to women leaders in the Black Panther Party. The outcome is that the resistance destabilizes me, and the burden shifts to me, a Black woman, to placate a white woman's feelings of discomfort about her own whiteness and complicity in perpetuating white supremacy and preserving the presumption of innocence associated with white womanhood. Rather than accepting the words that I chose as reflective of racial realities, challenging my known lived experiences and undermining them as less than, is harmful and hinders meaningful intersectional dialogue.⁸²

Last year in one of my classes I was one of two Black students in the class, and a non-Black individual began railing both against affirmative action, saying that "we should just let in people who are qualified" and claiming that racism was no longer a problem. The professor remained silent and I spoke up because no one seemed to be responding. Very exhausting.⁸³

The angry Black woman trope is one that censors students and creates stereotype threat, which, as Claude Steele says, undermines performance and causes emotional damage:

In my career, I've been the only or one of few Black women on a team more than once. My tone is often mistaken for angry as opposed to assertive and my white counterparts have been able to operate without having to be mindful of how they speak because there's a lack of accountability for their actions and a microscope on mine.⁸⁴

Penn Law Professor Regina Austin also spoke about these stereotypes and how they impact the social capital that individuals bring with them into the workplace. When asked about the differences in social capital that Black men and women can acquire and exchange, Professor Austin stated:

82. BLACK WOMEN FUTURE LEADERS, *supra* note 9, at 12.

83. *Id.* at 22.

84. *Id.* at 23.

To a certain extent, black women have a power and capital that black men don't have because...there are so many stereotypes about black men that contradict stereotypes about who lawyers are and what it is that they do. That's part of it. When we are talking about academic [matters] I think there is some sense that black women [perform] better than black men. On the other side, there is a notion that black women are emasculating and bossy—so there are stereotypes on both sides...those stereotypes impact our relationship with each other and our ability to navigate the wider world.⁸⁵

This sentiment is echoed by Professor Dorothy Roberts, who states that “[r]acist stereotypes about Black women as less [intelligent], angry, and licentious make advancement even harder for them than for white women.”⁸⁶

In a 2015 article in *The Atlantic*, “Black Workers Really Do Need to Be Twice as Good,” the author argues that the advice Black students receive that they need to be twice as smart is true. A new paper from the National Bureau of Economic Research (NBER) shows that it might be more than just a platitude. The NBER paper, authored by Costas Cavounidis and Kevin Lang of Boston University, attempts to demonstrate how discrimination factors into company decisions and creates a feedback loop, resulting in racial gaps in the labor force. This was reflected by students as well:

In a law school context, I always feel the need to be overly prepared for a cold call . . . I felt like if I messed up during a cold call, the class and/or the professor would assume that Black students in general did not understand the material. I am aware that cold calls are nerve-wrecking in general, but this extra level of responsibility is a burden that I am confident my white counterparts do not feel. They can simply have a “bad” cold call because they were not confident with the material just yet, where I feel like I will not be given that same level of courtesy.⁸⁷

I equally feel pressured and at times, irritated, at having to address diversity issues when others, who essentially are a part of the problem, are silent. These sorts of conversations must be discussed amongst non-POC or these perpetual issues will never be fixed.⁸⁸

Women of color still lack access to opportunities, encounter barriers to mentorship, or feel subject to greater scrutiny and criticism than their peers.

85. WOMEN LEADERS IN LAW AND BUSINESS, *supra* note 81, at 182.

86. *Id.* at 247.

87. BLACK WOMEN FUTURE LEADERS, *supra* note 9, at 15-16.

88. *Id.* at 17.

Moreover, they are denied credit for their work, upstaged, sidelined, and silenced at conferences or meetings. At the same time, they are held to a different standard than their peers. Joan Williams speaks of the “prove it again” bias that women often face, which is amplified when it comes to women of color.

Women of color need to prove themselves over and over again. While their mistakes are under a microscope, their achievements are often rendered invisible. This differential treatment and heightened scrutiny for women lawyers is often amplified for Black professionals.

For women of color, the outlook has historically been worse, and these women face even more structural barriers in the workplace. The existence of these barriers has been well documented in research for several decades.

One study that specifically looks at Black women in corporate law was led by David B. Wilkins and Mitu Gulati in 1996. This study examines the structural impediments to fairness and equality that must be part of this country’s legal tradition. Despite being written over 20 years ago, the implications of the study remain relevant. Now, while overt discrimination is no longer acceptable or ignored, subtler forms of bias or preferencing are more pervasive and difficult to pin down. This was true in 1996 when Wilkins and Gulati wrote:

[A] consistent line of empirical research demonstrates that when whites evaluate blacks, they frequently attribute negative acts “to personal disposition, while positive acts are discounted as the product of luck or special circumstances.” Empirical and anecdotal accounts of the experiences of black and white applicants in the interviewing process confirm that this phenomenon negatively affects employment opportunities for black lawyers. Pervasive myths about black intellectual inferiority combined with lower average levels of achievement in areas such as grades and test scores tend to make white interviewers question the credentials of blacks more than those of whites. In addition, interviewers generally expect to feel less comfortable when interviewing blacks. Similarly, as we note above, interviewers frequently tend to believe that blacks are “uninterested” in corporate practice. Black women are particularly vulnerable to this “lack of interest” stereotype in light of the persistent belief that women place family responsibilities above professional commitments.⁸⁹

89. David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms?*, 84 CAL. L. REV. 493, 557-58 (1996).

This also plays a role in terms of what networks and contacts Black candidates are able to access. Wilkins and Gulati point out that Black students “on average have less access to influential contacts and other informal networks that allow some other candidates to bypass the formal screening requirements.”⁹⁰ And this is not something that only applies to Black candidates in the margins. Wilkins and Gulati note that “[e]ven black superstars can fall victim to this phenomenon.”⁹¹ These kinds of unconscious biases and stereotypes “lead firms to favor whites over blacks with functionally *equal* qualifications and to discount the signals of black superstars.”⁹²

Some of the women interviewed had similar notes on the role of Black women in the fight for civil rights and how people can adopt more intersectional approaches to become better advocates when protecting the rights of others. Britney Wilson commented on this intersectional approach:

I want to see a broader recognition when it comes to intersectionality and intersectional identities; I want people to be able to bring claims that they were discriminated on as Black women, because it is not the same experience as discrimination only the basis of gender. We need more people to try bringing those claims to pressure courts to recognize them.⁹³

As the ABA suggests, “This continued blindness to or ignorance of the ways that gender and race (as well as other social identities) can interact to create distinct experiences will only lead the legal profession to fall further behind in their diversity and gender efforts, as the world at large takes more notice of these effects.”⁹⁴

IV. A NEW GENERATION OF THOUSAND PAPER CUTS OR SECOND-GENERATION DISCRIMINATION

“Well, I guess what I’m getting at with this is to transition into talking about what we think gender and race discrimination will look like for our generation in the workplace, because it will be more subconscious. It will be less overt. So how do you imagine the prevalence of implicit biases coming

90. *Id.* at 558-59.

91. *Id.* at 560.

92. *Id.* at 600.

93. WOMEN LEADERS IN LAW AND BUSINESS, *supra* note 81, at 123.

94. DESTINY PEERY, PAULETTE BROWN, AND EILEEN LETTS, LEFT OUT AND LEFT BEHIND: THE HURDLES, HASSLES, AND HEARTACHES OF ACHIEVING LONG-TERM LEGAL CAREERS FOR WOMEN OF COLOR 25 (AM. BAR ASS’N 2020).

up when were attorneys in the workplace? What are areas where you think it could come up?"

—Bianca Nachmani, 2L, Penn Law

Our interviews confirmed that despite progress, there exists a subtle, insidious, and often invisible undercurrent of unconscious bias in the workplace. As Jessica Fink notes in “Gender Sidelining and the Problem of Unactionable Discrimination,”⁹⁵ these slights, in isolation, likely would not give rise to a viable antidiscrimination claim. Yet collectively, these incidents accumulate to create very real obstacles and barriers to advancement for women at work. She argues that while the law frequently does not (and arguably should not) reach these subtle harms, gender sidelining nonetheless warrants significant attention for its potential to silence creativity, stymie innovation, and negatively impact the productivity and advancement of women, especially women of color.

Addressing these new “Caste Protocols,” we borrow the name of our survey on Thousand Papercuts from Vicki Schultz. Schultz quotes in *Reconceptualizing Sexual Harassment, Again*,⁹⁶ the Silicon Valley lawyer Ellen Pao who describes the biases she experienced working in venture capital as a “thousand papercuts.” Women in Silicon Valley have described the daily indignities, slights, and exclusions that women experienced as ways that would normalize marginalization.

Research has shifted away from a focus on the deliberate exclusion of women to an inquiry of the second-generation forms of bias as the key cause of women’s pervasive under-representation in leadership roles. This bias is often maintained by male led cultural assumptions and organizational structures, practices, and interactions.⁹⁷ The qualities that people tend to associate with leaders are often not what is associated with the image of women in leadership. Practices that equate leadership with behavior are considered more common in men.⁹⁸

Even though our understanding of the business case of diverse leadership teams has matured, gender parity remains an elusive goal. Why does this paradox exist and what can be done about it? We posit that a greater understanding of allyship is the key to building diverse leadership teams that are impactful and transformative.

95. Jessica Fink, *Gender Sidelining and the Problem of Unactionable Discrimination*, 29 STAN. L. & POL’Y REV. 57 (2018)

96. Vicki Schultz, *Reconceptualizing Sexual Harassment, Again*, 128 YALE L.J. FORUM 22 (2018).

97. Herminia Ibarra, Robin J. Ely, and Deborah M. Kolb, *Women Rising: The Unseen Barriers*, HARV. BUS. REV. (Sept. 2013), <https://hbr.org/2013/09/women-rising-the-unseen-barriers>.

98. *Id.*

Second generation bias is embedded in stereotypes and organizational practices that can be hard to identify due to their invisibility but are as dangerous and harmful. Despite a lack of discriminatory intent, subtle “second generation” forms of gender bias can impede leadership identity development of a company’s entire population of women. It is for this reason that Harvard Business Review’s 2013 article, *Women Rising: The Unseen Barriers*, proposes educating everyone about second generation gender bias. The article states that, “the context must support a woman’s motivation to lead and also increase the likelihood that others will recognize and encourage her efforts – even when she does not look or behave like the current generation of senior executives.”⁹⁹

Our *Thousand Papercuts Survey in the Women Law and leadership class* is an attempt to understand the new generation of biases and how they translate into subtle and pervasive ways of silencing women leading to an impoverishment of the workplace. These papercuts remain worn deep into the fabric of women in the workplace. So deeply enmeshed into the grooves of workplace organizing that they are misrepresented as accepted behavior. Implicit bias and gender stereotypes are some of the root causes of women’s underrepresentation in leadership in business, venture capital, and compensation.

The idea of the surveys was to understand a new generation of biases and their impact on a new generation of lawyer leaders. One major lesson was how allies can speak up for others without taking away their agency. “After telling my male coworker that I felt like my boss didn’t listen to me as closely as my boss listened to him, my coworker started bringing attention to things that I said but that I hadn’t been acknowledged . . . [i]t amplified my voice without taking credit for my thoughts or ideas, which had been happening prior to my talking to him.”¹⁰⁰ Another was to amplify female voices on social media. As stated by one female student, she always “note[s] when [her] male peers at Penn Law amplify females’ voices. . . on sites like GroupMe.”¹⁰¹

Listening and learning¹⁰² were other important traits: “I usually try to be helpful whether it be listening to a problem and/or trying to identify a solution. I’m not sure I’ve seen effective allyship in terms of directly addressing the problem head-on (i.e. confronting a person/s).”¹⁰³

99. *Id.*

100. BECOMING GENTLEMEN, *supra* note 3, at 60.

101. *Id.*

102. *Id.* (“A co-worker this summer asked how he could be more mindful of not treating women differently and how to be a better ally in general.”).

103. *Id.*

A. Why Allyship Is Important to Address Second Generation Bias: How Allyship Paves the Way for Overcoming Women's Self-Censorship

“In a nuanced understanding of allyship and intersectionality...allyship is important to address a thousand papercuts and bias creep. *When people talk about “helping the cause”, they automatically jump to the severe cases—the ones that are blatantly obvious—but how often is that? That’s not everyday discrimination? It’s those everyday little things that add up—that’s the stuff that needs to get fixed.*”

—Bhavin Shah, 2L, Penn Law

More women have self-censored or been concerned about foregrounding themselves in the workplace for fear that their behavior will be criticized than have actually received those critiques. While 42 percent of respondents were criticized for being too soft-spoken, 37 percent were criticized for being too bossy. 54 percent of respondents were hesitant to take on leadership roles and 71 percent were hesitant to speak up in group work settings in anticipation that doing so would trigger criticism of their behavior. This disparity in the data suggests that the anticipation of bias alone can impact women's experience of, and success in, the workplace. 62 percent of respondents felt pressure to alter their appearance for the workplace and networking events, and 29 percent felt this pressure even while attending classes. An even larger subset of women felt the same pressure detailed in figures 3 and 4, with 58 percent feeling the pressure to self-censor at school.

A holistic view of the data suggests that in law school and workplace settings, women suffer not only from actual bias and discriminatory practices, but also from the anticipation of these experiences.

Men adapting to behave ‘bi culturally.’ The 90-plus male students who were interviewed were both supportive of their female peers and the values of gender equality in general. The changes in male attitudes were key to altering the learning and working environments. Women have long adapted their behaviors, leadership styles, professional wear, and hair styles to what is acceptable in a typical male-dominated environment. The research suggests that men were adapting more so than in the past. *Men were now more likely to embrace gender sensitive attitudes and more systemic and structural change on caregiving and workplace organizational behavior.*¹⁰⁴

104. These are some responses from emerging male allies that speak to the way young male law students are embracing more stereotypically feminist policies on caregiving and flextime:

Regarding Hiring Practices:

Most of our respondents found it important to amplify women’s voices, not only because it was the right thing to do, but because these diverse voices enriched their own insights on law and life. To demonstrate, one research participant illustrated the complexity of the subtleties of bias in his understanding of what it means to be an ally:

For me, as a straight, white, cisgender male, allyship is defined as (1) being aware of the discrimination, both individual and systemic, that holds women and Black Indigenous People of Color (BIPOC) back; (2) being aware of your own privilege, implicit biases, and how the white patriarchy environment shapes and limits your actions; and (3) actively working to empower women and BIPOC.¹⁰⁵

GenZ men committing to change social gender norms. Another bright spot from the research is that GenZ men appear to understand more deeply the societal impact of women internalizing stereotypes and the threat that these unexamined assumptions pose to women’s advancement to lead public and private institutions. Individuals from all genders appear to be aware of these invisible barriers to success, and they are no longer passive bystanders.

“This is such a big problem for so many entities. I think folks need to recognize their limits with respect to debiasing. Anonymity helps, but I think committees can play a big role in mitigating the biases we all have.”

Regarding Parental Leave and Flexible Working Arrangements:

“Not all companies have the same accessibility for caregiving policies, but it would be helpful to create a general framework that is accessible and fair . . . Parental leave, flextime, and part-time work are significant figures created to make possible for people to grow personally and professionally.”

“Flexible working arrangements. Firms lose so much talent when women are forced to choose between their careers and raising a family. This coronavirus crisis is proving that a new working model is possible. . . . Advocating for flexible hours, working from home, on-site child- care helps men and women.”

“Parental leave may be one of the hardest challenges women suffer in the workplace. Most, if not all, discrimination events I witnessed against women at workplace was in relation to women who were about to give birth and would be absent for parental leave, so that they would not be considered for an important project or even promotion. Probably not the best, but a way of trying to combat this (although not necessarily smart from an economic perspective) is to (mandatorily) grant to male employees parental leave equal to women’s. Once this practice becomes usual, not only men but also women would be considered absent for many months after having a child, so it may lead to less discrimination against women.”

105. *Id.* at 39.

To illustrate the awareness of “thousand papercuts,” which is a term used to describe how one microaggression will not hurt that much, but when several are experienced daily over the life of a career, real damage occurs, one male interviewee commented that allyship “requires identifying these microaggressions, in systems and in ourselves, and working to rectify them.”¹⁰⁶

However, pervasive undercurrents of gender bias that are sometimes invisible to the naked eye still remain. Black, Asian, White, Latina, Native American, and multi-racial women face daily indignities, exclusions, and marginalization. In isolation, these incidents are not problematic, but in the aggregate they pose impediments that result in women self-censoring themselves or reinforcing the “prove it again” expectation, which indicates that women, particularly women of color, need to prove their competence over and over.

The key takeaway for male allies is to take proactive action to encourage their women peers and colleagues to be cognizant of power dynamics in group settings and be proactive in ensuring everyone is invited to share during group settings. For example:

- If mostly men are sharing in a group, say to the group, “I would like to hear from my colleague [and say her name].”
- On the hesitation to take on a leadership role, offer, “I would like to see my colleague [insert her name] take a lead on this activity.”
- When being ignored or interrupted in a discussion, say, “I noticed my colleague [insert her name] has tried to offer her perspective. Let’s hear from her now.”

Allyship is important because most often allies have more power than the underrepresented person and most often women look to allies for support:

Candidly, there have been many times in which I do not realize in the moment that I am experiencing one of these “paper cuts.” It is only upon further reflection and the benefit of hindsight that I realize it. Consequently, I often do not do anything. Of course, I wish I stood up more in such instances, but I am also cognizant of where I stand on a proverbial “totem pole” at work (at the bottom) given my age and experience, so I do not want to draw negative attention to myself or create enemies at work. What I wish is that others, with positions of authority, would interject and correct—or at least

106. *Id.*

acknowledge—the injustice that has occurred or is occurring, so as to not only make me or the “victim” feel more seen and heard, but to also make sure the perpetrator of the “paper cut” realizes what they are doing or have done. As we have discussed, these “paper cuts” can often be the consequence of unconscious biases, so often times, those handing out these “paper cuts” do not even realize they are doing so; making them more aware of their actions and the negative consequences certain behaviors have can help mitigate future harms.¹⁰⁷

“Generally, I speak out to someone—whether it be a peer, family member, faculty member. I also wish peers were more inclined to recognize discrimination and speak out against it.”¹⁰⁸

B. Allyship as a Way to Combat Gender Stereotypes and Implicit Bias

As described by several of our respondents, altering the demographics of a workplace can create change and lessen the degree of implicit bias. The visibility of minority group members will help assail gender stereotypes.¹⁰⁹ Some others have felt that cultural differences either based on ethnicity or behavioral differences among lawyers demand more nuanced efforts allyship:

But I think it is because my culture (and many cultures) doesn’t encourage women to talk about their achievements when men brag about trivial things all the time. I personally am reluctant to talk about my achievements, so people don’t pay much attention to what I did.¹¹⁰

I often feel uncomfortable with what is happening but also feel uncomfortable speaking up. I usually regret not saying something and afterwards I think of all the things I wish I had said, but I often find it hard to be assertive in a diminishing moment. In these

107. *Id.* at 62.

108. *Id.*

109. Christine Jollis, *Antidiscrimination Law’s Effects on Implicit Bias* 1-46 (Yale L. Sch., Pub. Law Working Paper No. 148, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=959228#. (Christine Jolls argues in *Antidiscrimination Law’s Effects on Implicit Bias* that “discrete changes in either population make-up of a group or the physical and sensory features of an environment can substantially reduce the degree of implicit bias.”).

110. BECOMING GENTLEMEN, *supra* note 3, at 62.

moments, it would be helpful for someone, like a male colleague, who is not being diminished to step in and say something.¹¹¹

Consistently, I wish that I would have spoken up more, and I wish that when things were said to me that others would have spoken up if they were around. Many of the things that have happened to me often happened when I was the only woman in the room, which makes me wish that, in particular, men were willing to speak up more. Typically, my MO is to defend myself by working harder.¹¹²

C. Beauty Bias: Comments on Image (Clothes, Hair, and Body Image)

This section explores the often unacknowledged, yet pervasive, bias against women, particularly women of color who don't conform to traditional notions of beauty and appearance. The comments by Penn Law women reveal that concerns about appearance shape our daily lives. Appearance bias is so pernicious and widespread as bias based on race and sex. The beauty ideals in the legal profession affect a new generation of women in the law.

At the beginning of 2021, Commissioner Carmelyn Malalis, Chair of the NYC Human Rights Commission, spoke to students in the class on Women, Law, and Leadership about the revised 2019 rules barring employers from engaging in hair discrimination based on race focusing on the hair styles and textures of African Americans. The revised rules adopted by the HRC covers protections of people who don hairstyles or head coverings for religious reasons and explicitly covers the hair styles of Native Americans. “There is a widespread and fundamentally racist belief that black hairstyles are not suited for formal settings, and may be unhygienic, messy, disruptive, or unkempt,” the agency said. Those beliefs, it added, “are often rooted in white standards of appearance and perpetuate racist stereotypes that Black hairstyles are unprofessional.”

This was further elaborated on by several of the respondents, along with shared experiences about other forms of beauty bias in the legal industry:¹¹³

- “I feel like I am considered “unprofessional” if my hair and makeup are not done perfectly; but also, it all needs to be *just right*— not too bold, etc.”

111. *Id.*

112. *Id.*

113. *Id.* at 57-58.

- "I've been told that "traditional" partners at firms prefer women in skirt suits, so even though I do not enjoy wearing skirts I do so during interviews "just in case"."
- "There's a feeling that if I don't dress well and be good-looking, I will be underestimated as a professional female lawyer. But if I do makeup and dress well every single day, people would think I put too much attention on looks, thus not qualified for my job."
- "In law firms, boss would not like to see dyed hair especially when you are a male employee."
- "I feel pressure to wear makeup in order to adhere to unspoken "professionalism" standards."
- "In professional settings at law school, I have consistently felt as if, as a woman, I need to be "pretty" in addition to professional. Further, I have had to think about whether it will matter for me to wear a skirt suit vs. a pant suit, as some firms and older professionals still consider pantsuits for women to be unprofessional."
- "Depending on the market or position for which I am interviewing, I have felt pressure to wear a skirt, certain colors, and jewelry to appear more "feminine," or pants to appear more "serious.""
- "My hair is naturally curly, and at times I have felt inclined to straighten my hair to appear more "professional" at networking events. These inclinations have occurred because of the negative comments I have received when my hair was natural."

D. Allyship to Address Next Generation Bias

In a 2015 survey of women, most of whom work in Silicon Valley, 60 percent said they had been sexually harassed or experienced unwanted sexual advances. But a whopping 90 percent reported witnessing sexist behavior, and 88 percent had questions addressed to male colleagues that should have been addressed to them. 84 percent said they had been called too aggressive at work. 75 percent were asked about their family, marital status, or children in interviews, 66 percent felt excluded from networking activities because of their sex, and 59 percent said they had not received the same opportunities as their male counterparts.¹¹⁴

114. See Schultz, *supra* note 96, at 41-42.

Despite progress, there exists a subtle, hard-to-pinpoint (and even invisible) but nevertheless harmful undercurrent of gender bias in the workplace. Women of color still lack access to important opportunities and assignments at work.

In the words of now well-known Silicon Valley employee Ellen Pao, these thousand papercuts were daily indignities and exclusions that she and other women suffered. In Pao's words:

Women were often talked over and interrupted. When we *were* able to get a word in, we were ignored. If someone liked our ideas, they would repeat and get credit for our work . . . Our annual performance reviews cast us as poor team players when we tried to claim credit for our work, and our reviewer lists were stacked with people who were biased against us. We weren't invited to meetings, included on emails, asked to interview candidates, selected for hiring committees. We had the seats in the back of the room, in the outer reaches, the non-speaking roles at offsites and conferences.¹¹⁵

The racist comments added to the sexist comments. These microaggressions were common occurrences, although invisible to less discerning eyes.¹¹⁶

Unconscious or implicit biases, so named because humans are also unaware of the inconsistency of their biases in decisions, are "largely automatic and occur below the level of conscious awareness."¹¹⁷ Daniel Kahneman, the Nobelist, argues that human decision-making is steeped in bias and unconscious biases and may be linked to discriminatory behavior.¹¹⁸

Allyship is even more critical in the face of unconscious biases because allyship allows for constant reflection and consideration of one's role in creating a more gender equal environment. However, as shown through our implicit association test, unconscious biases are so strong that even allies are not immune to its effects.

115. *Id.* at 41.

116. Martha Minow, *Perspectives on Progress: Twenty Years of Feminist Thought*, 20 HARV. WOMEN'S L.J. 1 (1997). (Martha Minow in her celebration of Harvard Women's Law Journal's 20th anniversary. She writes: Marya Mannes once said, "Women are repeatedly accused of taking things personally. I cannot see any other honest way of taking them.").

117. Fatma E. Marouf, *Implicit Bias and Immigration Courts*, 45 NEW ENG. L. REV. 417, 418 (2011). *See also* IRIS BOHNET, *Unconscious Bias Is Everywhere*, in WHAT WORKS 21, 21-43 (Harvard University Press, 2016) (discussing unconscious gender biases and the negative impact it has on women versus the positive impact it has on men).

118. *See generally* DANIEL KAHNEMAN, THINKING, FAST AND SLOW (Penguin Books Ltd, 2011) (explaining how we have two systems of thought – one in which we have little to no voluntary control and another in which we allocate brain power towards choice and agency).

20 of our respondents participated in the implicit association test we designed for them. The purpose of this test was to see how unconscious biases take shape despite an individual’s inclination to fight against them. Our study shows that while most of our allies are supportive of women in almost every role, their support slightly decreases as the position becomes more dangerous or powerful (i.e. firefighter, police officer, soldier, senator, etc.). Career life and financial independence are mostly associated with males while single parent and family life were chosen as female dominated. Additionally, there is consensus that women hold significantly fewer leadership roles despite the fact that they are not more prone to conflict creation or more emotional at work. These unconscious biases play into individuals’ decision-making and the continuation of sexism in the workplace.

In Silicon Valley, the first diversity report was issued in 2014 and it revealed fault lines along gender. Although companies hired trainers to provide unconscious bias training to their employees, very little significant improvement was evident.¹¹⁹

According to the 2016 McKinsey Report, women are both hired and promoted at lower rates than men, despite women graduating at higher rates.¹²⁰ Women make up only 19 percent of technology C-Suite executives.¹²¹

The “Elephant in the Valley” survey revealed that 87 percent of the women reported receiving demeaning comments from male colleagues, 47 percent said they had been asked to do lower-level tasks that male colleagues were not asked to do, and 66 percent said they had been excluded from important social or networking events.¹²² Comments on the survey indicated that women were disrespected in numerous ways, such as being asked to take notes at meetings or order food, and being ignored in favor of male subordinates during meetings.¹²³

Given that current diversity and inclusion methods do not work, we advocate that investments in allyship are more important than investments in training programs. These investments should begin at the academic level.

More than 60 of our student participants claimed to notice exclusion on a daily basis in the forms of subtle and creeping biases resulting in the isolation or exclusion of women’s voices. For example, one participant recalled a professor who “would give male students more time to answer

119. Liza Mundy, *Why Is Silicon Valley So Awful to Women?*, THE ATL. (Apr. 2017), <https://www.theatlantic.com/magazine/archive/2017/04/why-is-silicon-valley-so-awful-to-women/517788/>.

120. 2016 McKinsey Report, *supra* note 31.

121. *Id.*

122. *Elephant in the Valley*, WOMEN IN TECH (2017), <https://www.elephantinthevalley.com/>.

123. *Id.*

questions from the professor and would often cut female students off comparatively quickly before they had time to answer.”¹²⁴ This type of behavior is so ingrained in the norm that most people don’t even realize that they have engaged in exclusionary behavior until they are approached and confronted. Only after the student raised this issue with the professor during office hours did the professor adjust “their behavior in a way that created more space for women to answer questions.”¹²⁵ Another participant recalled, “as a new lecturer I repeatedly referred to the class with the term ‘guys’ (saying things like, “hey guys, can everyone please quiet down”). It was pointed out to me by a female student that this kind of language is exclusionary and insensitive.”¹²⁶

Our allies have tried to counter this behavior when they can; however, they have found that the way to counter such exclusionary practices depends on the setting. Some participants “try to redirect ‘the mic’ back to women when [they] notice them being overlooked.”¹²⁷ A 3L stated: “Sometimes, for example in class, I literally raise my hand and then point to my classmate, when she has had her hand up, but the professor isn’t calling on her.”¹²⁸ Others find it most effective to speak with the woman after the event and reassure them that they were heard. What our participants have found most important: “[T]o create space for women to amplify their own voices is to let those women exist without explicitly taking any credit for it.”¹²⁹

The instances of exclusion that our participants listed in the school setting are also consistent with bias in the workplace. While men receive recognition more often than women, even when a woman is given credit for her contributions to the growth of the company, she does not receive the promotion.

E. Allyship as an Antidote to Unfettered Power

Workplace hierarchies tend to favor the behaviors of majority member groups or groups they favor and distrust the work of the excluded group. These cognitive biases are amplified affinity bias, which is the tendency to gravitate toward and develop relationships with people who are more like ourselves and share similar interests and backgrounds. This leads to bosses supporting those who are in their affinity group while unintentionally leaving others out.¹³⁰

124. UPSTANDER VS. BYSTANDER, *supra* note 33, at 23.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Pragma Agarwal, *Here is Why Organisations Need to be Conscious of Unconscious Bias*, FORBES (Aug. 26, 2018),

As a Penn Law woman student stated:

I wish that there were more women present in the work settings I have been a part of because I believe there is strength in power and creating the opportunity for women to support women in a professional setting is a great way to combat the aftermath of the “papercuts.”¹³¹

Schultz writes that most employment systems give male hierarchies authority that is unfettered and potentially dangerous, and that unfettered discretion facilitates stereotyping and discrimination. She states that “[u]nchecked institutional authority, in other words, begets a growing sense of personal power and self-aggrandizement. Both formal and informal sources of authority over others can feed this sense of power.”¹³²

Both Deborah Rhode and Vicki Schultz call for a check on authority. Rhode writes, “Managers also need to address conditions that make bias and abuse more likely. . . Power often enhances individuals’ sense of entitlement and insulation from accountability.”¹³³

But what happens when a person from a minority group performs in a way that negatively stereotypes the group?¹³⁴ Then the performance itself becomes a reproduction of the stereotype. As stated by a Penn Law ally:

So, for example, if someone’s giving a compliment to a white attorney, they’ll say like, Oh, like he’s really smart he’s on top of his stuff. But if they’re giving a compliment to me or a Black attorney, they’d be like, Oh, like he’s a smooth talker like he’s a con man or something that’s not smart but like able to trick people into thinking of things his way.¹³⁵

F. Exclusionary Behavior: When Credit is Stolen

Women often experience the way in which credit is stolen from them. Studies have shown that when women and women of color are underrepresented, they experience pressure to prove themselves by working harder. But even when these stereotype threats drive women to do more, this may not always be to their benefit. As Claude Steele states: “disproving stereotype is a Sisyphean task; something you have to over and over again...”

<https://www.forbes.com/sites/pragyaagarwaleurope/2018/08/26/here-is-why-organisations-need-to-be-conscious-of-unconscious-bias/#6cfb5d2f726b>.

131. BECOMING GENTLEMEN, *supra* note 3, at 60.

132. See Schultz, *supra* note 96, at 52.

133. Deborah L. Rhode, *#MeToo: Why Now? What Next?*, 69 DUKE L.J., 377, 425 (2019).

134. See generally CLAUDE M. STEELE, WHISTLING VIVALDI AND OTHER CLUES TO HOW STEREOTYPES AFFECT US (W.W. Norton & Company, 2010).

135. BECOMING GENTLEMEN, *supra* note 3, at 39.

Our participants have recognized the importance of shining the spotlight on women, especially in situations where women are being overlooked and not being given the platform to speak up. As such, Robbie Julius says that as an ally, he tries to “*explain to the forum to give opportunity and time for the woman to speak up. I think this will empower women more rather than speaking on behalf of women.*”¹³⁶ Other participants have also engaged in this strategy by redirecting the mic back to overlooked women by “*referring back to things that women have said by name, directing questions to women in the room when they come up in their area of expertise, and working to maintain an environment where people don’t have to compete and be loud to be heard.*”¹³⁷

Where participants have found men trying to steal a woman’s idea, they claim that it is important to “return credit back to its originator.” However, the setting determines the form of the action. A 3L respondent argued that returning credit differs depending on the size of the conversation. “*In smaller meetings this is usually easier, but in larger settings it requires a little bit more diplomacy so that the overall message is not lose without all participants having full context.*”¹³⁸ Regardless of the size of the action, our participants claim that:

It is important to use our platforms, whenever we are given access to one, to make sure that attention is being equitably distributed among those who are entitled to it, particularly if those people are being denied on the basis of race and gender. Therefore, it is always important to me to point to those women, particularly women of color who may be on the sidelines and try to bring them closer to the center of focus.¹³⁹

When someone comes up with an idea, you need to give credit to that person for coming up with that idea. I know sometimes in the workplace, when you are at a higher level, you tend to not purposefully take credit, so I think it’s all about being mindful when you write the work product of who has helped you or assisted you. I think law school is a good forum to cultivate that.¹⁴⁰

If in a public setting (ex: meeting) and this happens in which a male colleague happens to steal, overspeak, or ignore a female colleague, I will make sure to step in and direct the attention to her and provide

136. UPSTANDER VS. BYSTANDER, *supra* note 33, at 28.

137. *Id.*

138. *Id.*

139. *Id.*

140. BECOMING GENTLEMEN, *supra* note 3, at 40.

her the proper platform to ensure her ideas are heard. If her idea is taken by someone else in a blatant manner, I will conduct my due diligence and take the necessary steps to address it to human resources and subsequently the upper management to ensure the best resolution possible.¹⁴¹

I often see men putting women down and particularly in subtle ways. For example, men will often cut women off when they are speaking and start telling their own views. In other ways, men will often try to take credit for results when women have played critical roles.¹⁴²

In my view, this is one of the most crucial elements of ensuring equity and fairness. All too frequently, the views and opinions of women in the classroom (and in the semi-professional environments that we occupy as law students) are silenced by combative or otherwise overbearing men, who either ignore the contributions of women or speak over them. Crediting people is an important element of this, certainly, but I believe there is more than just this to ensure that credit goes where it is due. This includes keeping my hand down until a woman is finished speaking and continuing to call back to ideas' sources even after they are stated in class, for the rest of the semester.¹⁴³

There is a cost to stereotype threat that is not always recognized. Coping with stereotype threat can in and of itself be a distraction that then leaves little room for other more productive activities. One way in which allies can avert this kind of harm is to ensure that credit is given when credit is due.

[I]t is imperative that we not fall into the trap of competing against our female colleagues for clout or influence within our organizations as this often fails to address the way the system has failed them. Therefore, it is important to always recognize the great work that women do and not undermine or steal their ideas when they present them. Rather, enforce them and make sure that the idea is given the discussion it deserves.¹⁴⁴

One subtle but powerful barrier that women encounter is lack of opportunities, including challenging work assignments that are provided to male or white female peers. Thus, before an ally can take action, it is critical

141. *Id.*

142. *Id.* at 46.

143. *Id.* at 40.

144. UPSTANDER VS. BYSTANDER, *supra* note 33, at 29.

to first focus on recognizing that such barriers exist for women in the workplace. It is an ongoing process of educating oneself to identify where there are gaps in opportunity, representation, and policy. As such, one of our participants describes that “*Someone ought to be designated an “ally” not purely because they – from an internal viewpoint – believe in or support a certain unprivileged person or group, but because they have embarked on the conscious journey of allyship, which, as stated above, constitutes education and enacting change.*”¹⁴⁵

G. #MeToo Movement and Sexual Harassment

“I am not afraid of being who I really am and what I want to do. People have criticized the #MeToo movement, but I will not step back. We are now in the 21st century.”

—Yujie Zhang, Penn Law LLM Student

Many of our male allies identify that the #MeToo movement has been a positive step in changing workplace policies and culture. Some explained how they do not agree with the negative backlash and fear of men being mentors or alone with women in an office setting. In fact, most stated how they themselves serve not only as allies but mentors to women in the office – ensuring more opportunities for women and speaking out against injustices.

While workplace culture may be changing due to post-#MeToo movement activism, states have been slow to adapt to the sentiments of the movement and the beliefs that women and our male allies hold. Currently, 78 percent of states have sexual harassment law that applies to employers with over 15 employees. However, only 14 percent of states include a training requirement for private employers within their sexual harassment law. Furthermore, only 33 percent of states have laws that protect non-traditional workers – interns, independent contractors, etc. – in the sexual harassment laws. With more and more workplaces having interns or informal workers, the lack of protection provides a legal gap within legislation.

When looking to the intersectionality of gender and law, 51 percent of states include any LGBTQ+ protection and sexual orientation protection in sexual harassment laws. This means that almost half the states in the United States do not offer protection to the LGBTQ+ community within their sexual harassment laws. In the case of protecting gender expression, only 24 percent of states’ sexual harassment laws protect gender expression. The current laws do not go far enough to provide true workplace protections against sexual harassment to all.

145. *Id.*

Most employment contracts include mandatory arbitration provisions that bind employees to take their claims against their employer to an alternate dispute mechanism. Arbitration largely favors the employer, especially compared to a trial with juries. Only 6 state laws limit or ban the use of mandatory arbitration in certain cases for employees, such as for sexual harassment. Additionally, what occurs within arbitration is mostly confidential compared to the courts due to non-disclosure agreements. Only 9 states generally prohibit or outright ban non-disclosure agreements. These agreements allow employers to forbid employees from making comments that could harm the company, including a sexual harassment complaint. Similar to the Harvey Weinstein cases, many women thus cannot expose the harassment and discriminatory nature of the workplace due to being bound by confidentiality agreements or mandatory arbitration clauses. Employees regularly sign these documents at the beginning of their employment without realization of the rights and consequences within these agreements.

Aside from the backlash sparked by male employers after the #MeToo movement, the post-#MeToo movement faces additional obstacles related to employer non-disclosure agreements and mandatory arbitration provisions. Employees cannot seek justice within the courts and many cases may lead to undisclosed settlement amounts. This leads to no transparency within the company and discrimination against women.

Our male ally project goes to show that men are not only supportive of women in leadership and within companies but also value their voices and contributions. State laws are currently slow to catch up to the needs and wants of a diverse and cohesive workplace environment.

H. Fear of Backlash

The Harvard Business Review has addressed how the Pedestal Effect, in which men are given special treatment for fair play, can be seen to be an over-focus on men which might in fact strengthen male power dynamics. Self-professed male allies can also be a danger. Labels such as *manbassador* or *male champion* are important ways to draw out allyship, but can also seem platitudinal when actions are small and without much significance.

A new generation of male allies at Penn Law also seem to be aware of the dangers of seeing the mantle of allyship. Optical allyship has come under attack:¹⁴⁶

Below is some salient commentary from our male law students respondents:

146. BECOMING GENTLEMEN, *supra* note 3, at 44-45.

I have no fears for overtly supporting women, especially if they are my colleagues and friends. This is a legitimate fear for some men, however, because they may fear reprisal from male peers or bosses who prioritize looking out for the “good ole boys” club. I also know male workers who refuse to look for younger female workers for fear of looking like a “creepy old man.

You should only fear backlash if you do something that deserves backlash. It is important for men to be aware of the gender dynamics and power dynamics in a mentoring relationship, especially if they are more the more senior person and I think we can all do a better job of being cognizant of these actions that make people uncomfortable, but I think in general men shouldn’t withdraw or disengage because of the MeToo movement. They should use it as an opportunity to reexamine our own behavior and think about practices that we might all engage in and normalize that aren’t acceptable and should change.

I actually did research about the Me Too movement for Davis Polk’s governance group—for this memo I had to write and in my research—I learned that for a lot of men who did mentor women, now, they are afraid to take women out on business trips or even have one on one mentorship or take women up as mentees, or they are even afraid of closing the door when they are talking with women because they are afraid of the rumors that can possibly start.

In my personal experiences, my male friends typically try to be great allies for their female counterparts. While there may be breakdowns in the event of a relationship or personal falling out, their words and actions are adequate. However, in scenarios were men are by themselves, it is important that conversations about women are just as respectful as their male counterparts. Conversations that are not as respectful create implicit biases about women that could make some men view women as “less insert admirable characteristic trait here.

V. POLICY, PROGRAMMATIC, AND PARADIGM CHANGES: RECOMMENDATIONS

A. Allyship and Getting Women into Positions of Authority

The more we see diverse group members in positions of power, the more it helps prevent automatic gender stereotypes. The simple fact of having a

diverse workforce may well be an important way of reducing the level of implicit bias in the workplace.

In the Penn Law Survey, 88.2 percent of respondents agreed that women hold fewer leadership positions. 64.7 percent felt that deserving women are passed over for less deserving men. 70.59 percent agree that having more women in leadership will address gender stereotypes. 76.56 percent felt that having more women in leadership would open up more opportunities for more women in leadership.

Sheryl Sandberg, writing with Wharton Professor Adam Grant, asserted, “the long term solution to the double bind of speaking while female is to increase the number of women in leadership roles, ...as more women enter the upper echelons of organizations, people become more accustomed to women’s contributing and leading.”¹⁴⁷

This calls for equal representation of women and women of color in leadership positions in corporations and industry. Women’s absence from some jobs and predominance in others fosters gender stereotypes like “men are leaders” and “women aren’t tough enough to lead,” or “men are breadwinners” and “women put their families first” – ideas that make the underlying segregation and inequality seem natural when they are not. These stereotypes foster harassment, encouraging men to view and treat women as “different” and second class.¹⁴⁸

Having more women in decision-making will also help in building bridges and developing strong relationships between men and women at work. Allyship involves interactions with men and women at all levels within an organization. In her study, Rachel Lepchitz found that for many women’s career advancement, “relationships are the key.”¹⁴⁹

Women’s positions of authority are linked to their relationships with men both as superiors and subordinates. Leadership skill building calls for greater interactions between men and women at all levels within an organization. Fostering these work relationships between male and female employees can address unconscious bias that inhibits women’s achievements. Healthy cross-gender work relationships are key to dismantling stereotypes. Understanding that relationships are the key to allowing women’s voices to be heard and allowing women to rise in the professional ranks, 3L student Jeremiah Oteh says:

147. Sheryl Sandberg and Adam Grant, *Women at Work: Speaking While Female*, N.Y. TIMES (Jan. 12, 2015), <https://www.nytimes.com/2015/01/11/opinion/sunday/speaking-while-female.html>.

148. *Id.*

149. Rachel Lepchitz, *Perceived Muted Voice and Its Impact on Female Communication Techniques in the Workplace* (Dec. 2012) (unpublished M.A. thesis, Gonzaga University) (on file with the Gonzaga University Library system).

I bolster and draw attention to voices of women of color by first building strong, genuine relationships with black and brown women. I do this, first, because I believe it is important to understand someone's personal story in order to accurately draw attention to it. Also, I believe it is important to understand the individual to a comfortable degree so that you can draw attention to their voice on that person's terms—the time in which they are most comfortable and want attention drawn to their voice. After I build that relationship (and during), I bolster their voice by speaking positively about her (they) and providing specific moments of excellence, triumph, vulnerability, and wisdom that she embodied during our personal interactions.¹⁵⁰

According to Lepchitz, a subordinate's (or in this case a woman's) "voice is less heard because the assumption is that they are trying to communicate experiences that are unimportant to the dominant group...."¹⁵¹ To counter this narrative, it is important to build male allyship at every level. As one of our participants says, "*collaboration needs to occur at every level and really be imbricated into the work process.*"¹⁵²

The #MeToo movement shows us that what we need is more positive inter-group interactions at work, not fewer.¹⁵³

i. Male CEOs as Allies

Even as those in traditional positions of authority yield power, male leaders are proposing new structural paradigms on allyship. Satya Nadella of Microsoft has said: "If you are not helping to create an inclusive culture, your rewards, your career trajectories and possibly even your employment will be impacted."¹⁵⁴

Michele Coleman Mayes, the General Counsel of the New York Public Library has said: "If I look at the first company I joined, until I came here years ago, the luck of my draw is that I've had White guys around me, who were not afraid to see me soar. That is not always the case. But when it is so, it works."

150. *Id.* at 140.

151. *Id.* at 51.

152. ADVANCING INCLUSIVE LEADERSHIP, *supra* note 34, at 113.

153. TRISTIN K. GREEN, DISCRIMINATION LAUNDERING: THE RISE OF ORGANIZATIONAL INNOCENCE AND THE CRISIS OF EQUAL OPPORTUNITY LAW 5 (2016).

154. In fact, several leaders of law firms including Mitch of Orrick have stated that when companies like Microsoft make it clear that they factor diversity and inclusion in their hiring efforts, and will reward performance, it changes the way firms approach the work and the issue. it reinforces and accelerates our own work and makes it clear that there's a business case for diversity and inclusion.

However, structural change is important. Tim Wilkins spoke of whether we would have to come up with a new lexicon, a “new structural paradigm:”

One thing I’ll be curious to see is if the term “diversity and inclusion” even survives by the time you guys come out into practice. Because we are taking a hard look at in our firm – it hasn’t worked. For the past twenty years people have looked to see how many lawyers of color, how many women partners, have gone through the ranks to make a senior position.... we need a new structural paradigm. ... We are now looking at a situation where if you put women and people of color in positions which really have influence and importance within the firm and for the clients, that’s going to start changing things. ...if you can get somebody in on one of those projects or those deals, and speaking as the authority on that [the deal], trust me – the clients and the types of deals we get at that level, there are big bucks on the line, and they’re going to listen to that lawyer. What might happen is that you have a teammate who is a woman or person of color who sits quietly scribbling notes in the background.¹⁵⁵

Mitch Zuklie, Chairman and Chief Executive Officer of Orrick, said to us:

When we think of diversity and inclusion as a business imperative, there are four dimensions to that. My job as CEO and Chairman of a law firm is to attract and retain the best talent that I can, and to advance it and inspire it. The very first thing to note is that, in general, diverse and female lawyers leave the profession in a much faster rate than white men. From the perspective of retaining that talent, which is hard to identify and train it, once talented lawyers in get involved in working for great clients like Microsoft, if they leave the firm, it tears at the fabric of the firm and its ability to provide great service. So, we must find ways to attract and maintain the best talent, that means we have to make progress, and change the situation in which women and diverse lawyers are leaving the profession at a faster rate. The second thing is that we have a group of leaders who are diverse.¹⁵⁶

Fundamentally, we believe that a diversity of backgrounds and opinions will enable us to make better decisions. Social science supports this, and we are firm believers. Therefore, it is important for us to bring our best thinking forward in a competitive landscape

155. LEADERSHIP IN A TIME OF CHANGE, *supra* note 20, at 7.

156. *Id.* at 12.

to make sure that we have a diverse leadership team. Third, is that we are a client service business. We exist only to serve great clients like Microsoft, with whom we are very honored to partner. The best and most sophisticated clients want law firms that are diverse. And they want teams that area diverse, for the same reasons that we think those diverse teams make us make better decisions internally. The clients we are most interested in working with share that view.We believe we will be better at attracting the best talent. And if we are better at providing that environment, we will be better at retaining them. From the moral imperative side, I just note that we as lawyers get a bunch of different benefits. We are a profession; we all signed an oath or swore one when we took the profession to uphold justice.¹⁵⁷

René Lacerte, the Chief Executive Officer and Founder of Bill.com has said about allyship:

You know the first thing is that we have to recruit people in, right. We have to make sure that that we don't have biases, that are recruiters don't have biases. It was like in one example there when I've been recruiting executives, I've had returning firms that the first 10 resumes they will give me are white guys. And I go back and say, flip the switch here, 60%, of your resumes now have to be non-white guys or 70%, depends on where I'm at, what I'm thinking about at that moment, with that recruiter and that changes. Now all of a sudden, they're forced to go do the hard work to find the qualified people that are available.¹⁵⁸

Below I examine different aspects of allyship.

157. *Id.* at 12-13. He further said:

The Mansfield Rule is an industry-wide initiative to ensure that at least 30% diverse candidate pools for various positions at both law firms and recently in-house positions. We apply the same rule for work assignments. We are in the process of conducting "stay" interviews particularly with diverse lawyers about what would cause them to stay at the 16 firm and what could we do better to make sure they want to stay, grow, and have their careers here. By making it more of a normal conversation, it has been a substantial bias interrupter for us. The last thing we are doing is we apply a lot of analytical rigor to looking at the issue of assignments. Our most important clients, and we have set a goal, we believe that there is a clear correlation in doing work for our most important clients and being promoted our organization. As a result of that, we are making a real effort to make sure women and diverse lawyers are getting at least their fair share of opportunities to be staffed on our most important clients for our most important projects.

158. *Id.* at 34.

B. Listening as an Important Trait for Allies

Allyship was seen to be Janus-faced: the opposite side of amplifying a woman’s voice is to listen to her. 51 of our participants explicitly listed some form of listening as essential to allyship. Listening allows for allies to empower women without taking away their agency. Participant HM defined allyship as “*more listening than anything – probably like 90 percent listening, 10 percent acting on that...*”¹⁵⁹ He says that in listening, you are “*not acting on someone’s behalf. It’s helping them to or supporting them to act for themselves.*”¹⁶⁰

Other participants similarly found listening as one of the best ways to amplify a woman’s voice. Participants have recognized that listening can inherently be a difficult task as men have been socialized to dominate conversations. Thus, “*the process of being an ally is that you need to learn to just sit back and listen and try not to dominate the conversation. It means having more humility...and so that process of humbling is also an unlearning of a lot of prior socialization.*”¹⁶¹ In some instances, allies have found repeating something back to be an effective method of applying their listening to amplifying a woman’s voice. For example, 3L Jeremiah Oteh says that he will “*acknowledge something that struck a chord with me. The intent of this is not to repeat what the woman said or speak over her, but rather to acknowledge that, as a man, I am in a constant state of learning.*”¹⁶²

Listening also allows for allies to understand the extent to which action that may be required. A 3L has said:

If I perceive what I believe is an effort to suppress or otherwise overlook a woman’s voice, I try to step back and assess that perception first. The goal here is to prevent inhabiting a “savior” role and, by extension, reinforcing the equally as pernicious “damsel in distress” stereotype. Is it really my place to speak for a woman ever? If the answer is an unqualified “yes”, then I’ll have acquiesced in denying her agency, at least in those instances where she might have wanted to defend herself. But if the answer is only “maybe”, and I perform the assessment above (an exercise in self-reflection), then I might better avoid perpetuating prejudice and depriving a woman of her agency. That’s why I think it imperative for me, at least, to listen before reacting.¹⁶³

159. UPSTANDER VS. BYSTANDER, *supra* note 33, at 27.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* at 27-28.

C. Making Women Visible and Making Women Heard

“...men can yield power . . . [t]hey need to take a step back and give women room to wield power, and they need to amplify women’s voices – not just through their own voices, but by being quiet more often. Yield the floor to other people. Rather than talking for 30 minutes about how much you value women. Instead, yield that half hour to women’s voices.”

—Interview with Maggie Blackhawk, Professor, NYU Law

One of the most important roles that allies can play is to amplify the voice of the underrepresented. According to journalist Vivian Giang, unconscious bias is affecting our ability to listen. Men and women break down information differently when the speaker is a woman or man. Research shows that a woman’s voice receives lower ratings when compared with a man’s voice. Most often women are judged not only by the content of their speech but by the tone of their voice.¹⁶⁴ The silencing of women is the most pervasive but invisible impact of this. As women feel less valued, they will not speak up. Similarly, women hold back criticism as they do not want to appear to be complaining.¹⁶⁵

According to a study conducted by Harvard Graduate School of Education lecturer Catherine Krupnick and 24 instructors at Harvard College, male students spoke more frequently than female students.¹⁶⁶ These classroom interactions can have a spillover effect and block out voices in the workplace.

To counter the effects of such unconscious biases, beyond simply recognizing that these biases exist, 2L Justin Pendleton states that “*first and foremost, you have to start with bringing women’s voices into the conversation.*”¹⁶⁷ While he lists the ways that he has brought women to center stage, he also lists how others can highlight a women’s voice, namely by “*bringing women into heavily male-dominated discussion spaces and giving them the floor/inviting them to engage with the topic, naming that because of intersectionality what may be the experience of men is not and most often won’t be the experience of women let alone women of color.*”¹⁶⁸

164. See Vivian Giang *How Unconscious Bias Is Affecting Our Ability To Listen*, FAST COMPANY (Sept. 8, 2016), <https://www.fastcompany.com/3063218/how-unconscious-bias-is-affecting-our-ability-to-listen>.

165. Deborah Tannen, *The Power of Talk: Who Gets Heard and Why*, HARV. BUS. REV. (Sept. 1995), <https://hbr.org/1995/09/the-power-of-talk-who-gets-heard-and-why>.

166. See Catherine G. Krupnick, *Women and Men in the Classroom: Inequality and Its Remedies*, 1 ON TEACHING & LEARNING (1985), <http://ddi.cs.uni-potsdam.de/HyFISCH/Informieren/WomenMenClassroomKrupnick.htm>.

167. ADVANCING INCLUSIVE LEADERSHIP, *supra* note 34, at 101.

168. *Id.*

Acknowledging these differences will help combat the biases individuals hold.

Our respondents felt that when there is a critical mass or enough minorities in a setting, like a school or a workplace, the minorities no longer feel uncomfortable because they are minorities or feel an identity threat. Without a critical mass, women and other minority women feel a pressure and extra scrutiny. Our respondents saw that allies have a role to play in ensuring a critical mass of women, including women at color at the table.

I mean, literally, I feel it's important to be like: “Oh, come sit down.” I've gotten into that dynamic, actually meetings, where it's very actually charged, who actually sits at the table. My boss was supposed to be like: “Oh, come take a seat”, which I think has a lot of meaning and power in and of itself. And I also think that it's an issue of listening to their ideas and taking them seriously, especially even if they're not the most senior person, because often the most senior people are not members of those groups.¹⁶⁹

At no point should your personal stake in this issue overshadow the voices of women. Your voice should never be at the forefront as men in particular are regularly at the forefront of conversation and tend to dominate discussions without even realizing that they are. If the goal is to showcase how admirable of a feminist you are, it only contributes to the challenges women must overcome to have their voices not only be heard but for action to take place regarding breaking down these barriers of injustice they are faced with. It's not about you.¹⁷⁰

D. Allyship as Recognition and Moral Boosting

As evidenced by our participant allies, they have taken on the role of recognizing and assuring women when they notice biased behavior or when credit is stolen from them or when credit is misrepresented. 2L Clayton Keir says that when he notices such behavior that often results in the silencing of women, he would talk to those women after the meeting, “*where they'd then voice concerns, and I'd talk to them about what it was that may have stopped them from bringing something up. I'd then encourage them to bring something up in the next conversation or, I'd drive the conversation in a way that makes that person feel comfortable.*”¹⁷¹

169. PORTRAITS OF ALLYSHIP, *supra* note 22, at 157.

170. *Id.* at 34.

171. ADVANCING INCLUSIVE LEADERSHIP, *supra* note 34, at 91.

It is also important to confront the actor who overlooked the woman to make sure they recognize their actions and try and prevent such behavior from reoccurring. As one of our participants says,

I try to confront the actor who overlooked my colleague and explain how I and other people in the room perceived the behavior, and, if my colleague wants me to communicate her personal feelings, how my colleague felt about the encounter. I find that I can make more of an impact in a one-on-one discussion after the fact, when emotions might be less charged, and the actor might be more receptive to discussing and reflecting on the encounter.¹⁷²

Perhaps the most insidious and invisible way of marginalizing women is by silencing female voices in the classroom or the workplace. Women often feel their ideas are undermined, their efforts are upstaged, and their contributions are ignored. Collectively, these incidents accumulate to real obstacles for women.¹⁷³ Afraid of being judged as opinionated or strident, women speak out less than men or when they do, their ideas often are appropriated, misrepresented, or ignored. Sandberg and Grant describe this phenomenon, explaining that a woman is “either barely heard or she’s judged as too aggressive.”¹⁷⁴

2L participant, HM, similarly notes that he often notices this trend, but mistakenly assumes that it is a choice rather than a result of societal expectations. He says:

I think that I’m never afraid to assert myself or talk or speak up. So, if a woman isn’t speaking up, or another man, or anyone isn’t speaking up and talking, I usually just chalk that up to a choice they’re making. That’s a knee-jerk reaction. Going deeper than that, obviously it’s a socialized choice – it’s something that has been ingrained in them. You know, “oh women should be quiet.” Or something I notice a lot or something I’ve been told is that women use a lot more qualifiers than men. So, like, I guess, I notice the qualifiers way more than I notice women not talking which is different than the question you asked.¹⁷⁵

Women tend to employ self-censoring tactics because they find that they are often not listened to, interrupted, ignored or their ideas are then appropriated by others. Women have described their voices as being muted in the

172. UPSTANDER VS. BYSTANDER, *supra* note 33, at 34.

173. *See* Fink, *supra* note 95, at 65.

174. *See* Sandberg and Grant, *supra* note 147.

175. UPSTANDER VS. BYSTANDER, *supra* note 33, at 25-26.

workplace. Rachel Lepchitz, in her study “Muted Voice and its Impact on Female Communication Techniques in the Workplace,” found that women felt that “their ideas were not heard,” but “when a male or other counterpart repeats the same idea, they run with it.”¹⁷⁶

As a result of being silenced or overlooked, a majority of women feel invisible at work, compared with male colleagues. Their ideas are rendered invisible or appropriated or hijacked. Unlike gender discrimination, unconscious bias has less recourse and women are afraid to speak up for many reasons, including being further marginalized by the reproduction of gender stereotypes.¹⁷⁷

In *Do Women Lack Ambition?*, psychiatrist and Cornell University medical professor Dr. Anna Fels writes: “[w]hen women speak as much as men in a work situation or compete for high-visibility positions, their femininity is routinely assailed. They are caricatured as either asexual and unattractive or promiscuous and seductive. Something must be wrong with their sexuality.”¹⁷⁸ Our participants have found two methods to counter this narrative and pierce the societal veil of invisibility women are hidden behind: (1) listening and (2) taking concrete action.

“When an ally takes on the role of the amplifier, the ally works to ensure that marginalized voices are both heard and respected.”¹⁷⁹ Active allies use their credibility to create inclusive workplaces and use their privilege to advance the voices of those underrepresented. A Penn Law male ally uses the term “facilitator” or “amplifier” to describe an ally:

I try to be a facilitator or subtle amplifier. Often, I step in when their voices are ignored to bring them into the conversation. For example, I remember in 1L Con Law I noticed that one of my black colleagues had raised his hand repeatedly without the professor (apparently) seeing their hand or, if the professor had seen, their question or comment continued to go unacknowledged. I then raised my hand and was near-immediately called upon. I said that I noticed my colleague had a comment or question, and the professor then called on my colleague.¹⁸⁰

176. See Lepchitz, *supra* note 149.

177. Anna Fels, *Do Women Lack Ambition?*, HARV. BUS. REV. (April 2004), <https://hbr.org/2004/04/do-women-lack-ambition> (discussing underlying ideas of sexuality, femininity, and the evolution of perceptions of ambition among women as they grow older).

178. *Id.*

179. Better Allies, *7 Examples of What Being An Ally Looks Like at Work Really Looks Like*, THE MUSE, <https://www.themuse.com/advice/what-is-an-ally-7-examples>.

180. PORTRAITS OF ALLYSHIP, *supra* note 22, at 119.

In the words of another Penn Law student respondent: “I will not allow the Journal to foster a “Boy’s Club” atmosphere and avoid social gatherings that have a tendency to create those environs.”¹⁸¹

As another male ally stated: “...I believe it is my duty to open doors to more participation from women and women of color . . . women and women of color can take pathways to success without having their voices go unheard or their opportunities are limited because of social/gender/racial/economic inequalities.”¹⁸²

Another role that allies can play is to provide visibility to women in areas that are male dominated:

As a former basketball player and a huge fan of women’s basketball/women’s sports, I understand that women’s sports are a hotbed of negative chatter surrounding the game and the athletic abilities of women. There are plenty of stereotypes that have hindered the progress of female athletes, so I have found myself making it a point to share highlight videos and retweet them when they do happen.... My work is not finished with this project as I plan to represent women’s basketball players from a marketing perspective in the future to help grow the game I love so much and amplify the voices of women’s basketball players who have regularly contributed to a lot of social justice initiatives.¹⁸³

Music in general, but that subset of the music field of people who play brass instruments, is heavily male dominated, and I guess women sometimes face greater than normal challenges breaking into that field. This friend of mine started her own social media channel/network and it kind of centers, among other things, what it’s like to be a woman in that field. I think that’s hugely important, so I always wanted to do everything I could to support her in doing that because it is such a valuable thing. I would never take credit for putting her on center stage, but she certainly is on center stage now and I hope I helped her out a little bit in getting there.¹⁸⁴

Male student allies at Penn Law felt that women need to lead in specifically male dominated areas that are often closed to women. In an interesting dynamic, a student felt that relegating women of color to position of diversity was a way to type cast these women, stating that “[w]e . . . need to stop

181. *Id.* at 16.

182. *Id.* at 34-35.

183. *Id.* at 34.

184. *Id.* at 131-32.

relegating [women of color] to typical ‘Chief Diversity Officer’ or ‘Head of Diversity & Inclusion’ positions only.”¹⁸⁵

E. Workplace Culture: De-Biasing the Workplace

Over the last decade, the law outlawed gender discrimination and created a framework to vindicate discrimination and sexual harassment. However, there is very little recourse to addressing the subtle and implicit forms of gender stereotypes that have been examined in this paper. Allyship is an important but often overlooked strategy to address the systemic and structural challenges that are at the root cause of gender discrimination and implicit bias.

Reforming workplace culture to promote civility, respect, accountability, and gender equity is more important than training programs. Allyship helps to define and shape culture.

Changing workplace culture doesn’t start at the workplace. If you are trying to make change in the workplace through policy initiative but you and your employees still have these sexist ideas that you continue to perpetuate outside of the workplace, your initiatives are almost certainly doomed from a structural standpoint. I think an important measure would be to change curricula starting from the lowest grade levels—getting rid of “great men of history” narratives, getting exposure to more female artists and authors, elevating and explaining the absolutely essential nature of social reproductive work, etc. . . .¹⁸⁶

i. Evaluating Training Programs, Hiring Practices, and Family Work Policies

Workplaces also should devote more effort to designing and evaluating training programs and should consult both women and their allies. What emerging male allies in the legal profession say can really help to shape these programs.

Training programs have been a centerpiece of employer responses to sexual harassment. The Equal Employment Opportunity Commission (EEOC) has recommended training as a strategy for preventing misconduct, and U.S. Supreme Court decisions have suggested that it can help employers avoid liability.

Despite the millions of dollars invested in trainings, these programs do not show a reduction in sexual harassment or gender bias. The EEOC task

185. *Id.* at 20.

186. UPSTANDER VS. BYSTANDER, *supra* note 33, at 49.

force report found as much and documented the inadequacy and inconsistency of research findings on effectiveness; as it concluded, “[m]uch of the training done over the last 30 years has not worked as a prevention tool.”¹⁸⁷ Poorly designed training can perpetuate the biases that these trainings are meant to combat.

Deborah Rhode writes that in evaluating one of Stanford University’s early harassment education programs, a faculty member said candidly: “This appears to be a course designed by idiots for idiots.”¹⁸⁸ We suggest that all training programs involve women and their allies and engage them intimately in problem solving and connection building. As a participant ally has said:

In terms of interactive trainings, I have been to 1 or 2 and they have been uniformly bad. Have harassment policies that are strong enough to protect low wage worker and contractors and everyone else. These policies need to cover everyone top to bottom.¹⁸⁹

F. Conclusion: Building a New Social Order: The Role of a Law School in Building Allyship

“That the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate.”

—John Rawls

“Allies may be the missing link: they’re part of the team meetings, the casual conversations by the coffee machine, the decisions on whom to staff or promote.”

—2019 State of Inclusion Survey, Deloitte

In this paper I argue that our law students are becoming norm entrepreneurs and are at the forefront of developing new norms in the future of work. According to the survey results, over 80 percent of our respondents find allyship a useful tool for changing policy and advancing underrepresented groups in their academic and professional careers.

Law schools can play an important role in building allyship. More and more law schools have introduced mentoring as part of their mission.

187. CHAI R. FELDBLU & VICTORIA A. LIPNIC, *SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE* (EEOC 2016), <https://www.eeoc.gov/select-task-force-study-harassment-workplace>.

188. Rhode, *supra* note 133, at 426.

189. UPSTANDER VS. BYSTANDER, *supra* note 33, at 50.

Women and first-generation students are connected with mentors among student and alumni groups. Law teachers and staff can start off by being allies. This goes beyond the mentorship thesis to model support for those who need it the most. Most of all, law students can be the most critical allies to a new generation that is coming of age in the legal profession. We see this in the comments below:

I think the way it's done is a problem. The fact that you only have a number of schools that have the Big Law statistics, like Penn, is a problem. Law firms are very selective with the schools they go to. They take from Penn, Columbia, the T14, and I think within the T14 it's getting better, but still needs to improve in becoming a more diverse body of students. I think what recruiters should be doing is looking to other schools. At a lot of these t14 schools if you look around, it's a lot of similar types of people. There are people whose parents and grandparents all went to the same school.¹⁹⁰

I think, to answer your question, the law firms have to be looking outside of the T14. There are people who got into Penn law and they couldn't afford to go to Penn law, they didn't get financial aid, they didn't get a scholarship, and they're at another school. They grew up in a low-income neighborhood. And they go to a school that law firms aren't even looking at. Maybe it was close to home and that was what they needed to do. I think law firms need to be looking at other schools, particularly schools that have diverse populations and diverse law students. I think the T14 still has room to improve.¹⁹¹

It's kind of weird having a “chief” diversity officer — I get that you need a leader, but isn't the point of diversity to have as many opinions and views as possible? So, I would try to have as many diverse people as possible and anyone who wanted to join can, like a town hall sort of thing. Members will be elected to committees. I don't necessarily think it's a good thing to just go out and hire diversity consultants. I think if you're trying to make a firm reflective of its culture and its people, you have to get the people within the firm onto the committee, so there's less bureaucracy and there's fewer outside people managing the people who are there.¹⁹²

190. BECOMING GENTLEMEN, *supra* note 3, at 49.

191. *Id.*

192. *Id.*

For the idea of workplace I think we have to start with what “work” means. I won’t go back to far to Marx or something. But I do think “work” is not just people make earnings to support themselves and their families, but is an important part of somebody’s identity, and is closely tied to their self-evaluation and their self-dignity. Because, I mean, if you don’t have that kind of independency psychologically and economically, I can’t see the situation that you really have a healthy life. So when we speak about the equal rights in the workplace, we’re not just talking about the equal pay.¹⁹³

I do think one of the very influential and stubborn stereotype of women in workplace is that female leaders resemble men, or their masculinity is just as much as men. I think that is a very poisoning stereotype, because if you promote a female leader under this logic, you are basically not promoting a female. You are promoting her just because she is very much a like a man.¹⁹⁴

I think having an HR system that’s dedicated to robustly investigating complaints. And people feeling like they are able to and feeling like the organization takes allegations of gender bias seriously. I feel like that would go to, hopefully, ameliorate and help improve the situation. But I feel like there’s an unconscious—sometimes, it’s like people prefer certain people, their own groups, and then they’ll gravitate towards them and want to mentor them. And so, if we were in more of a formal mentorship program, pairing people up who normally wouldn’t gravitate towards each other initially, maybe that would be one way to address this.¹⁹⁵

According to respondents, allyship permits us to focus on inclusive interactions and symbiotic relationships, rather than top-down models of authority and interaction. Drawing attention to all the dimensions of allyship can help build complementarities and move us forward to a more equal world of work.

Providing students the training they need to be better allies or upstanders will have the added benefit of improving the law school culture in gender equality and in advancing the very mission of a law school in the world.

In the final analysis, systemic change must go hand in hand with change in culture and this must start with the leadership. Leaders are driven by a vision of change that can empower and elevate communities and countries.

193. *Id.*

194. *Id.*

195. *Id.* at 50.

In 1993, in *Two Paths to the Mountaintop: The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*,¹⁹⁶ David B. Wilkins examined the lives of Thurgood Marshall and Reginald Lewis and set out an Obligation Thesis. This thesis charges law schools, firms, and different racial groups, including the Black Corporate Bar, to address moral wrongs.¹⁹⁷

Wilkins argues: “The simple answer is that moral wrongs by one person do not necessarily abrogate the moral obligations of another. Both nation states and cultural subgroupings within those states are frequently formed in response to the wrongful actions of others.” This Obligation Thesis is as relevant now as then and could be a way to understand the importance of allyship.

Thurgood Marshall said: “None of us got where we are solely by pulling ourselves up by our bootstraps. We got here because somebody—a parent, a teacher, an ivy league crony or a few nuns—bent down and helped us pick up our boots.”

In the final analysis, an ally helps us pick up our boots.

196. David B. Wilkins, *Two Paths to the Mountaintop: The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 STAN. L. REV. 1981 (1993).

197. David B. Wilkins writes in “Two Paths to the Mountaintop”:

More importantly, law schools cannot be neutral about the normative issues at stake in the obligation thesis. Although educational institutions should remain neutral among competing conceptions of the good life, law schools cannot be neutral as to a lawyer’s obligation to participate in the struggle for social justice. Law is a public profession licensed by the state. Moreover, as Anthony D’Amato argues: “Justice is the only legitimate goal of the legal profession, and therefore the only legitimate goal of law school study.”
