



ARTICLE

**Leadership in Law**

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**Abstract.** This Article argues that the occupation that produces the nation's greatest share of leaders needs to do more to prepare them for that role. Attention is long overdue. Over two-thirds of Americans think that the nation has a leadership crisis, and only a small minority have trust in lawyers, particularly those in leadership roles. To promote a deeper understanding of what is lacking, this Article summarizes key insights from contemporary leadership research. Part I explores what is known about the qualities and styles that make for effective leadership. Part II surveys what is known about how lawyers can develop those capabilities. Part III looks at diversity in leadership and describes barriers that stand in the way for women lawyers and lawyers of color. Part IV looks at the legacy of leaders and what can promote their effectiveness.

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## Introduction

It is a shameful irony that the occupation that produces the nation's greatest share of leaders does so little to prepare them for that role. Although the legal profession accounts for less than 1% of the population, it has supplied a majority of American presidents and, in recent decades, almost half the members of Congress.<sup>1</sup> Lawyers are also well represented at all levels of leadership as governors; state legislators; judges; prosecutors; general counsel; law firm managing partners; and heads of corporate, government, and nonprofit organizations.<sup>2</sup> Even when they do not occupy top positions in their workplaces, lawyers lead teams, committees, task forces, and charitable initiatives. Yet although many law schools claim to be producing leaders, only a small minority even offer courses in the subject.<sup>3</sup> Leadership development is a \$50 billion industry, but legal education has lagged behind.<sup>4</sup> This Symposium marks the first time that a leading law review has focused on the subject.

Attention is long overdue. Over two-thirds of Americans think that the nation has a leadership crisis.<sup>5</sup> Only 18% of the public rates the honesty and ethical standards of lawyers as high or very high.<sup>6</sup> Just 11% of Americans have a

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1. Neil W. Hamilton, *Ethical Leadership in Professional Life*, 6 U. ST. THOMAS L.J. 358, 361 (2009).
  2. See, e.g., Mark Curriden, *CEO, Esq.*, A.B.A. J. (May 1, 2010, 9:50 AM CDT), [http://www.abajournal.com/magazine/article/ceo\\_esq](http://www.abajournal.com/magazine/article/ceo_esq) (noting that nearly 20% of the CEOs of Fortune 50 companies are lawyers). For data on the overall population of lawyers in the United States, see James Podgers, *State of the Union: The Nation's Lawyer Population Continues to Grow, but Barely*, A.B.A. J. (July 1, 2011, 5:59 AM CDT), [http://www.abajournal.com/magazine/article/state\\_of\\_the\\_union\\_the\\_nations\\_lawyer\\_population\\_continues\\_to\\_grow\\_but\\_bare](http://www.abajournal.com/magazine/article/state_of_the_union_the_nations_lawyer_population_continues_to_grow_but_bare).
  3. As of early 2009, of the thirty-eight law schools whose website mission statements included fostering leadership, only two actually offered a leadership course. Hamilton, *supra* note 1, at 370. That statistic has not been updated, but a survey of learning outcomes that American Bar Association (ABA)-accredited schools are now required to complete revealed that of the seventy institutions that had posted outcomes by January 20, 2017, only six listed an outcome on leadership. See *Learning Outcomes Database*, U. ST. THOMAS, <http://www.stthomas.edu/hollorancenter/resourcesforlegaleducators/learningoutcomesdatabase> (to locate, select "Learning Outcomes 302(c) and (d)" and then select "Leadership" from the menu).
  4. Sara Canaday, *Shedding Light on Our Leadership Development Crisis*, HUFFINGTON POST, [http://www.huffingtonpost.com/sara-canaday/shedding-light-on-our-lea\\_b\\_9649906.html](http://www.huffingtonpost.com/sara-canaday/shedding-light-on-our-lea_b_9649906.html) (last updated Apr. 10, 2017).
  5. SETH A. ROSENTHAL, CTR. FOR PUB. LEADERSHIP AT HARVARD KENNEDY SCH., NATIONAL LEADERSHIP INDEX 2012: A NATIONAL STUDY OF CONFIDENCE IN LEADERSHIP 3 (2012).
  6. *Honesty/Ethics in Professions*, GALLUP (2016), <http://www.gallup.com/poll/1654/honesty-ethics-professions.aspx> (last visited June 6, 2017).

great deal of confidence in leaders in charge of running law firms.<sup>7</sup> Trust in legal and political institutions is near a historic low; as of June 2016, only 36% of Americans felt a great deal or quite a lot of confidence in the U.S. Supreme Court, only 23% felt such confidence in the criminal justice system, and only 9% felt such confidence in Congress.<sup>8</sup> Following the 2016 election, only one-third of Americans had confidence that Donald Trump would provide “real leadership” as President; 43% had “absolutely no confidence” that he would do so.<sup>9</sup>

Yet the need for effective leadership has never been greater. Lawyers who lead face challenges of unprecedented scale and complexity. As heads of law firms, in-house legal departments, and government and nonprofit organizations, lawyers confront managerial and policy issues of enormous professional and public significance. In the private sector, attorneys run legal workplaces with thousands of employees in multiple jurisdictions under intense competitive pressures. In the public sector, attorneys are at the forefront of efforts to address the world’s most pressing problems: human rights violations, social injustice, climate change, terrorism, inequality, and poverty. And the quality of their leadership skills is a key factor in organizational performance.<sup>10</sup>

The *Stanford Law Review’s* 2017 Symposium brings together leaders from all walks of legal practice and has symbolic as well as practical significance. In February 2017, heads of public interest and governmental organizations, law firm managing partners, general counsel, law school deans, state supreme court justices, and leadership scholars gathered to discuss challenges that they have faced and how lawyers can be prepared to address them. Such efforts are important milestones in persuading the legal profession in general and the

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7. The Harris Poll® *Annual Confidence Index Rises 10 Points*, BUS. WIRE (Mar. 5, 2009, 5:00 AM EST), <http://www.businesswire.com/news/home/20090305005071/en/Harris-Poll%C2%AE-Annual-Confidence-Index-Rises-10>.

8. See Jim Norman, *Americans’ Confidence in Institutions Stays Low*, GALLUP (June 13, 2016), <http://www.gallup.com/poll/192581/americans-confidence-institutions-stays-low.aspx>; see also PEW RESEARCH CTR., *BEYOND DISTRUST: HOW AMERICANS VIEW THEIR GOVERNMENT* 18 (2015), <http://www.people-press.org/files/2015/11/11-23-2015-Governance-release.pdf> (“Only 19% of Americans today say they can trust the government in Washington to do what is right ‘just about always’ (3%) or ‘most of the time’ (16%).”).

9. See Charles Campbell, *New CNN Poll Shows Trump’s Favorability Ratings Inching Higher*, W. JOURNALISM (Nov. 23, 2016, 1:38 PM), <http://www.westernjournalism.com/new-cnn-poll-shows-trumps-favorability-ratings-inching-higher>.

10. See Laurie Bassi & Daniel McMurrer, *Leadership and Law Firm Success: A Statistical Analysis* 5 (2008), <http://mcbassi.com/wp/resources/documents/WhitePaper-LeadershipAndLawFirmSuccess.pdf> (“[T]he most powerful predictor of law firm profitability is the quality of the partners’ leadership skills.”).

legal academy in particular of the need for more systematic leadership development.

To that end, this Article summarizes key insights from contemporary leadership research. Part I explores the qualities and styles that make for effective leadership. Part II focuses on how lawyers can develop those capabilities. Part III describes barriers facing women and lawyers of color. Part IV looks at leaders' legacies and the research necessary to promote their effectiveness.

## I. The Nature of Leadership

A threshold question in preparing lawyers as leaders is what, exactly, constitutes leadership. That issue, as I have noted previously, has generated a "cottage industry of commentary," which reportedly includes "over 1,500 definitions and forty distinctive theories."<sup>11</sup> Although popular usage sometimes equates leadership with power or position, most experts view leadership as an activity or relationship that involves influence.<sup>12</sup> John Gardner, founder of Common Cause,<sup>13</sup> notes that heads of organizations often mistakenly assume that their status "has given them a body of followers. And of course it has not. They have been given subordinates. Whether the subordinates become followers depends on whether the executives act like leaders."<sup>14</sup> Leaders must be able to inspire, not just compel or direct those who work under them. To borrow a metaphor from Harvard's Joseph Nye, holding a title "is like having a fishing license; it does not guarantee you will catch any fish."<sup>15</sup> Nor is a formal leadership position essential to exercise leadership. Mahatma Gandhi and Martin Luther King, Jr. are celebrated examples of prominent leaders without such positions.

Focusing on leadership as a relationship can help avoid what researchers label the "leader attribution error": our tendencies to overvalue the roles of

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11. DEBORAH L. RHODE, *LAWYERS AS LEADERS* 7 (2013). For an overview of different definitions and theories of leadership, see generally BERNARD M. BASS, *BASS & STOGDILL'S HANDBOOK OF LEADERSHIP: THEORY, RESEARCH, AND MANAGERIAL APPLICATIONS* 3-55 (3d ed. 1990).

12. For a discussion of leadership considered as an activity, see Ronald A. Heifetz, *Values in Leadership*, in *LEADING ORGANIZATIONS: PERSPECTIVES FOR A NEW ERA* 343, 347 (Gill Robinson Hickman ed., 1998). For analysis of leadership defined as an "influencing process," see David V. Day & John Antonakis, *Leadership: Past, Present, and Future*, in *THE NATURE OF LEADERSHIP* 3, 5 (David V. Day & John Antonakis eds., 2d ed. 2012).

13. See *John Gardner: Uncommon American; Common Cause*, PBS, <http://www.pbs.org/johngardner/chapters/6.html> (last visited June 6, 2017).

14. JOHN W. GARDNER, *ON LEADERSHIP* 3 (1990).

15. JOSEPH S. NYE JR., *THE POWERS TO LEAD* 19 (2008).

leaders and to underestimate the importance of followers.<sup>16</sup> “Leadership is not a solo act[;] it[ is] a team effort.”<sup>17</sup> Many institutional failures reflect the inability of leaders to forge effective relationships with those who work for or with them. Part of the reason for paralysis in institutions such as our contemporary Congress is that they have all leaders and no followers.

The discussion that follows explores the qualities, styles, and strategies that make for effective leadership. It begins by identifying characteristics that appear most critical across a wide variety of contexts: values; vision; substantive competence; and personal and interpersonal skills such as self-awareness, self-control, empathy, and persuasion. The analysis then drills down on the importance of values; it looks at the factors that contribute to moral meltdowns, the leadership strategies that can help prevent them, and the opportunities for leaders to express their ethical commitments through pro bono service. Attention then turns to certain leadership paradoxes. One is the disconnect between motivations that drive leaders and motivations necessary for their success. Another is the mismatch between the characteristics people claim to value in leaders and the characteristics used to select them. This Part concludes by exploring leadership styles and strategies. Discussion centers on how to motivate and mentor subordinates, communicate effectively in diverse settings, and foster innovation.

#### A. The Qualities of Leaders

The qualities necessary for leadership turn partly on context, including its historical, cultural, psychological, and institutional dimensions.<sup>18</sup> Effective leadership depends on a match between individuals’ strengths and situational requirements. The skills needed to run a large global law firm, for instance, are not the same as those needed to launch a small public interest organization or to win a state governor’s race. What some commentators label the “leadership sweet spot” is the intersection of competencies and context.<sup>19</sup>

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16. See J. RICHARD HACKMAN, LEADING TEAMS: SETTING THE STAGE FOR GREAT PERFORMANCES 199 (2002); see also BARBARA KELLERMAN, THE END OF LEADERSHIP 180 (2012) (criticizing the overvaluation of leaders).

17. JAMES M. KOUZES & BARRY Z. POSNER, THE LEADERSHIP CHALLENGE 223 (4th ed. 2007).

18. See ARCHIE BROWN, THE MYTH OF THE STRONG LEADER: POLITICAL LEADERSHIP IN MODERN POLITICS 25 (2014).

19. See JOHN H. ZENGER & JOSEPH FOLKMAN, THE EXTRAORDINARY LEADER: TURNING GOOD MANAGERS INTO GREAT LEADERS 118 (2002). For discussion of the importance of cultural and organizational context generally, see Roya Ayman & Susan Adams, *Contingencies, Context, Situation, and Leadership*, in THE NATURE OF LEADERSHIP, *supra* note 12, at 218, 234-36.

Over the last half century, some one thousand studies have produced no “clear profile of the ideal leader.”<sup>20</sup> Even the much-celebrated quality of charisma is not necessarily related to popular support or organizational success.<sup>21</sup> Cultures also vary in the importance that they ascribe to particular leadership traits, such as aggressiveness and risk-taking.<sup>22</sup> Researchers do, however, find certain qualities that are important across a wide range of contexts. They cluster in five categories:

1. values (such as integrity, honesty, trust, and an ethic of service);<sup>23</sup>
2. personal skills (such as self-awareness, self-control, self-direction, persistence, and conscientiousness);<sup>24</sup>
3. interpersonal skills (such as social awareness, empathy, persuasion, and conflict management);<sup>25</sup>

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20. NYE, *supra* note 15, at 21-22 (quoting Bill George et al., *Discovering Your Authentic Leadership*, HARV. BUS. REV., Feb. 2007, at 129, 129).

21. For a discussion of the relationship between charisma and popular support, see GEORGE C. EDWARDS III, ON DEAF EARS: THE LIMITS OF THE BULLY PULPIT 87, 105 (2003). For background on the relationship between charisma and organizational success, see ROGER GILL, THEORY AND PRACTICE OF LEADERSHIP 252-53 (2006). *See also* Jim Collins, *Level 5 Leadership: The Triumph of Humility and Fierce Resolve*, HARV. BUS. REV., July-Aug. 2005, at 136, 142-44.

22. *See* Deanne N. Den Hartog & Marcus W. Dickson, *Leadership and Culture*, in THE NATURE OF LEADERSHIP, *supra* note 12, at 393, 404-19. For a discussion of other cultural differences, see Mansour Javidan et al., *In the Eye of the Beholder: Cross Cultural Lessons in Leadership from Project GLOBE*, ACAD. MGMT. PERSPECTIVES, Feb. 2006, at 67, 72-73.

23. *See* WARREN BENNIS, ON BECOMING A LEADER 40-41 (paperback ed. 1994) (discussing integrity, trust, candor, and maturity); MIHALY CSIKSZENTMIHALYI, GOOD BUSINESS: LEADERSHIP, FLOW, AND THE MAKING OF MEANING 156 (2003) (discussing integrity); ROBERT W. CULLEN, THE LEADING LAWYER: A GUIDE TO PRACTICING LAW AND LEADERSHIP 32-41 (2010) (discussing integrity, honesty, and trustworthiness); MONTGOMERY VAN WART, DYNAMICS OF LEADERSHIP IN PUBLIC SERVICE: THEORY AND PRACTICE 111-14 (2005) (discussing integrity, moral courage, and an ethic of public service); ZENGER & FOLKMAN, *supra* note 19, at 12-13 (discussing ethical standards and integrity); Robert Hogan & Robert B. Kaiser, *What We Know About Leadership*, 9 REV. GEN. PSYCHOL. 169, 172, 173 tbl.1 (2005) (discussing “integrity, ethics, and values”); *cf.* KOUZES & POSNER, *supra* note 17, at 224-27 (arguing that leaders must “[c]reate a climate of trust”).

24. *See* CSIKSZENTMIHALYI, *supra* note 23, at 156 (identifying “a very high level of ambition coupled with perseverance” as essential for leadership (emphasis omitted)); DANIEL GOLEMAN ET AL., PRIMAL LEADERSHIP: REALIZING THE POWER OF EMOTIONAL INTELLIGENCE app. B at 253-54 (2002) (identifying self-awareness and self-management as “leadership competencies” (capitalization altered)); RONALD H. HUMPHREY, EFFECTIVE LEADERSHIP: THEORY, CASES, AND APPLICATIONS 97-98, 233 (2014) (discussing self-leadership, cognitive intelligence, emotional intelligence, and conscientiousness); VAN WART, *supra* note 23, at 94 (discussing self-direction and distinguishing it from self-confidence); ZENGER & FOLKMAN, *supra* note 19, at 12, 14 (discussing emotional resilience and self-confidence).

25. *See* CSIKSZENTMIHALYI, *supra* note 23, at 156 (arguing that visionary business leaders have “empathy for others and a sense of mutual respect”); GOLEMAN ET AL., *supra* footnote continued on next page

4. vision (such as being forward-looking and inspirational);<sup>26</sup> and
5. substantive competence (such as knowledge, preparation, and judgment).<sup>27</sup>

A 2010 survey of leaders of professional services firms (including law firms) similarly found that the most important leadership qualities involved personal values and interpersonal skills such as integrity; empathy; communication; and the ability to listen, inspire, and influence.<sup>28</sup>

At the abstract level, few would disagree about the desirability of these characteristics in leaders. At the practical level, however, their relative importance varies across contexts and situational pressures may tug in different directions. For example, Ralph Nader was extraordinarily effective during the activism of the 1960s and 1970s in galvanizing a progressive consumer movement.<sup>29</sup> But he was far less successful decades later in running presidential campaigns on similar issues.<sup>30</sup> The self-righteous iconoclasm that

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note 24, app. B at 255-56 (discussing social awareness, empathy, persuasion, influence, and conflict management); ZENGER & FOLKMAN, *supra* note 19, at 12-13 (“[E]thical standards, integrity, and authenticity of the leader are extremely important.”).

26. See BENNIS, *supra* note 23, at 34 (arguing that effective leadership involves “giving oneself over to a guiding vision”); CULLEN, *supra* note 23, at 42 (arguing that leading lawyers must “be dynamic and inspiring”); KOUZES & POSNER, *supra* note 17, at 4-5, 14-18 (arguing that leaders must “inspire a shared vision” (capitalization altered)).

27. See CULLEN, *supra* note 23, at 41 (arguing that credibility requires “technical competence,” or “the knowledge, experience, and ability to perform the task at hand or to provide the appropriate in-depth analysis”); HUMPHREY, *supra* note 24, at 69 (focusing on social and situational judgment); NOEL M. TICHY & WARREN G. BENNIS, *JUDGMENT: HOW WINNING LEADERS MAKE GREAT CALLS* 1-4 (2007) (“[T]he essence of leadership is judgment.”); ZENGER & FOLKMAN, *supra* note 19, at 81 (linking technical and professional expertise to developing others and building relationships); Hogan & Kaiser, *supra* note 23, at 173-74 (identifying competence and expertise as key leadership traits); Jay Lorsch, *A Contingency Theory of Leadership*, in *HANDBOOK OF LEADERSHIP THEORY AND PRACTICE: AN HBS CENTENNIAL COLLOQUIUM ON ADVANCING LEADERSHIP* 411, 418 (Nitin Nohria & Rakesh Khurana eds., 2010) (identifying “the perceived competence of the leader” as a key source of authority).

28. MAUREEN BRODERICK, *THE ART OF MANAGING PROFESSIONAL SERVICES: INSIGHTS FROM LEADERS OF THE WORLD’S TOP FIRMS* 266-80 (2011). For a discussion of similar qualities, see MARSHALL SASHKIN & MOLLY G. SASHKIN, *LEADERSHIP THAT MATTERS: THE CRITICAL FACTORS FOR MAKING A DIFFERENCE IN PEOPLE’S LIVES AND ORGANIZATIONS’ SUCCESS* 182-83, 183 tbl.13-1 (2003).

29. See Cheryl Lavin, *Nader: The Dragonslayer Still Breathing Fire*, CHI. TRIB. (July 13, 1986), [http://articles.chicagotribune.com/1986-07-13/features/8602190959\\_1\\_ralph-nader-prepaid-ticket-candy-bar](http://articles.chicagotribune.com/1986-07-13/features/8602190959_1_ralph-nader-prepaid-ticket-candy-bar) (describing Nader as a “crusading consumer advocate” who “belonged to the ‘60s and the ‘70s”).

30. In the 2000 presidential election, Nader won only 2.7% of the popular vote. *2000 Presidential Popular Vote Summary for All Candidates Listed on at Least One State Ballot*, FED. ELECTION COMMISSION, <http://www.fec.gov/pubrec/fe2000/prespop.htm> (last updated Dec. 2001). Some believed that his candidacy siphoned away votes from Al Gore and may have cost Gore the election. See JUSTIN MARTIN, *NADER: CRUSADER*, footnote continued on next page

served him well in one historical era worked against him as a third-party candidate in a different political climate.<sup>31</sup> Hillary Clinton's deep policy expertise contributed to her success as a Senator and as the Secretary of State but did not allow her to connect with enough voters to prevail in the 2016 presidential election.<sup>32</sup>

Of all the qualities important for leadership, the most critical is self-knowledge. According to the Center for Creative Leadership, self-awareness is the primary characteristic that distinguishes successful leaders; it provides the foundation for professional development and correspondingly promotes organizational performance.<sup>33</sup> The first step on lawyers' paths to leadership, then, is understanding what they want, what capabilities and experiences are necessary to achieve it, and what stands in the way.<sup>34</sup> In thinking through their objectives, lawyers must be honest about their tolerance for risk, conflict,

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SPOILER, *ICON* 267-69 (2002); Jonathan Chait, *Books in Review*, *AM. PROSPECT* (Oct. 15, 2002), <http://prospect.org/article/books-review-1> (reviewing MARTIN, *supra*; and RALPH NADER, *CRASHING THE PARTY: HOW TO TELL THE TRUTH AND STILL RUN FOR PRESIDENT* (2002)). Nader's later presidential bids were even less successful. In 2004 and 2008, he received 0.38% and 0.56% of the popular vote, respectively. FEC, *FEDERAL ELECTIONS 2004: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 5* (2005), <http://www.fec.gov/pubrec/fe2004/federalections2004.pdf>; FEC, *FEDERAL ELECTIONS 2008: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 5* (2009), <http://www.fec.gov/pubrec/fe2008/federalections2008.pdf>.

31. *Cf.* Tamara Straus, *From Hero to Pariah in One Documentary*, *S.F. CHRON.* (Mar. 11, 2007), <http://www.sfchronicle.com/entertainment/article/From-Hero-to-pariah-in-one-documentary-2570870.php> (discussing Nader's "hero-to-pariah character arc" in terms of political popularity).
32. *Cf.* Ezra Klein, *Understanding Hillary: Why the Clinton America Sees Isn't the Clinton Colleagues Know*, *VOX* (July 11, 2016), <http://www.vox.com/a/hillary-clinton-interview/the-gap-listener-leadership-quality> (examining Clinton's reported grasp of policy). Considerable evidence suggests that Americans tend to "vote for the candidate who elicits the right feelings, not the candidate who presents the best arguments." DREW WESTEN, *THE POLITICAL BRAIN: THE ROLE OF EMOTION IN DECIDING THE FATE OF THE NATION* 125 (2007).
33. *See, e.g.*, Jean B. Leslie, Ctr. for Creative Leadership, *The Leadership Gap: What You Need, and Don't Have, When It Comes to Leadership Talent* 4 (2009), <http://www.ccl.org/wp-content/uploads/2015/04/leadershipGap.pdf> (identifying self-awareness as a key skill in developing organization competency). For a discussion of the link between self-awareness and organizational performance, see Canaday, *supra* note 4; and Kevin Cashman, *Return on Self-Awareness: Research Validates the Bottom Line of Leadership Development*, *FORBES* (Mar. 17, 2014, 3:47 PM), <https://www.forbes.com/sites/kevincashman/2014/03/17/return-on-self-awareness-research-validates-the-bottom-line-of-leadership-development>.
34. *Cf.* GARDNER, *supra* note 14, at 174 (discussing the importance of self-knowledge for leadership development); Doug Lennick & Fred Kiel, *Moral Intelligence for Successful Leadership*, *LEADER TO LEADER*, Spring 2006, at 13, 13-15 (noting that self-awareness and self-management are key prerequisites to effective leadership).

competition, pressure, and extended hours. At every stage of their careers, lawyers also need occasions to step back and assess whether the position they hold is a good fit, or at least a useful training ground.<sup>35</sup> The most effective leaders are those who have an accurate sense of their capabilities and are able to place themselves in positions where their strengths are critical and where they can minimize or compensate for their weaknesses. The least effective leaders are those who are unable to learn from their mistakes and give priority to the needs of others.<sup>36</sup>

### B. Values in Leadership

One contested issue is the centrality of values in assessing leaders. In principle, everyone agrees about the need for ethical leadership. In practice, however, controversy arises over what it requires and how it can be achieved. Leadership publications too often treat the issue in perfunctory or platitudinous terms. Those targeted at practitioners frequently list a few values of ethical leadership that have stood the test of time—such as integrity, honesty, fairness, and compassion—without addressing the potential for conflict among them in particular leadership contexts.<sup>37</sup> Other commentators simply list “moral” as a catchall description of the desirable characteristics that leaders should have: “moral imagination,’ ‘moral courage,’ ‘moral excellence,’ and, of course, a ‘moral compass.’”<sup>38</sup> Only rarely does a note of realism creep in, typically by way of acknowledgment that values may be in tension or that leaders may have mixed motives, not all of them disinterested. Rarer still are insights into how to balance competing ethical concerns that leaders face. Rather, the audience of popular leadership publications receives dumbed-down, gussied-up morality plays in which virtue is its own reward and “a climate of goodness . . . will always pay.”<sup>39</sup> Would that it were true.

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35. See Richard J. Leider, *The Ultimate Leadership Task: Self-Leadership*, in *THE LEADER OF THE FUTURE: NEW VISIONS, STRATEGIES, AND PRACTICES FOR THE NEXT ERA* 189, 189-98 (Frances Hesselbein et al. eds., 1996).

36. See Jack Zenger & Joseph Folkman, *Ten Fatal Flaws That Derail Leaders*, *HARV. BUS. REV.*, June 2009, at 18, 18.

37. See Deborah L. Rhode, *Introduction: Where Is the Leadership in Moral Leadership?*, in *MORAL LEADERSHIP: THE THEORY AND PRACTICE OF POWER, JUDGMENT, AND POLICY* 1, 8 (Deborah L. Rhode ed., 2006).

38. *Id.* (first quoting JOHN DALLA COSTA, *THE ETHICAL IMPERATIVE: WHY MORAL LEADERSHIP IS GOOD BUSINESS* 214, 240-48 (1999); and then quoting BILL GEORGE, *AUTHENTIC LEADERSHIP: REDISCOVERING THE SECRETS TO CREATING LASTING VALUE* 17, 20 (2004)).

39. TOM MORRIS, *IF ARISTOTLE RAN GENERAL MOTORS: THE NEW SOUL OF BUSINESS* 127 (1999); see WILLIAM F. BAKER & MICHAEL O'MALLEY, *LEADING WITH KINDNESS: HOW GOOD PEOPLE CONSISTENTLY GET SUPERIOR RESULTS* 8 (2008).

But history, of course, is full of toxic leaders, including lawyers; President Richard Nixon and Senator Joseph McCarthy come most readily to mind.<sup>40</sup> Among leadership theorists, there is a rich debate about whether effective leadership presupposes ethical leadership in means and ends. Value-driven theorists argue that it does. For example, historian James McGregor Burns famously advocated a “transforming” style of leadership, in which leaders and followers “raise one another to higher levels of motivation and morality” beyond “everyday wants and needs.”<sup>41</sup> These leaders aspire to “more principled levels of judgment” in pursuit of values such as justice and self-fulfillment.<sup>42</sup> From this perspective, individuals such as Hitler, Stalin, and bin Laden, however influential, do not belong in the same category as Gandhi and Mother Teresa.<sup>43</sup> Yet questions about whether to label such despots “leaders” should not divert us from more pressing concerns: how to “create a culture in which despots . . . cannot flourish”<sup>44</sup> and how to practice ethical leadership in contexts involving competing values. To borrow Michael Walzer’s celebrated phrase, effectiveness may sometimes demand “dirty hands,” not moral purity.<sup>45</sup> What distinguishes a moral politician, argues Walzer, is his willingness to acknowledge and accept responsibility for morally problematic choices<sup>46</sup>: “If he were a moral man and nothing else, his hands would not be dirty; if he were a politician and nothing else, he would pretend that they were clean.”<sup>47</sup>

Yet for most lawyers most of the time, the ethical challenges of leadership are not nearly so wrenching and the long-term payoffs from ethical conduct are substantial: improved morale, retention, and client satisfaction; greater workplace trust and cooperation; less employee misconduct; and less need for costly surveillance to prevent it. Most studies suggest a positive relationship

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40. See generally JEAN LIPMAN-BLUMEN, *THE ALLURE OF TOXIC LEADERS: WHY WE FOLLOW DESTRUCTIVE BOSSES AND CORRUPT POLITICIANS—AND HOW WE CAN SURVIVE THEM* 3-9 (2005) (listing some of history’s most toxic leaders).

41. JAMES MCGREGOR BURNS, *LEADERSHIP* 20, 46 (1978).

42. *Id.* at 455.

43. Some theorists refer to this as the “Hitler” problem. See, e.g., Joanne B. Ciulla, *Ethics and Effectiveness: The Nature of Good Leadership*, in *THE NATURE OF LEADERSHIP*, *supra* note 12, at 508, 513. For discussions of whether Hitler qualifies as an effective leader, see Warren Bennis, *The Crucibles of Authentic Leadership*, in *THE NATURE OF LEADERSHIP*, *supra* note 12, at 543, 549; and Heifetz, *supra* note 12, at 349. For discussions of the role of values in leadership, see NANNERL O. KEOHANE, *THINKING ABOUT LEADERSHIP* 41-43 (2010); and DEBORAH L. RHODE & AMANDA K. PACKEL, *LEADERSHIP: LAW, POLICY, AND MANAGEMENT* 10-11 (2011).

44. Bennis, *supra* note 43, at 549-50.

45. Michael Walzer, *Political Action: The Problem of Dirty Hands*, 2 *PHIL. & PUB. AFF.* 160, 165-66 (1973).

46. *Id.* at 167-68.

47. *Id.* at 168.

between ethics and profitability.<sup>48</sup> People care deeply about “organizational justice” and perform better when they believe that their workplace is treating them with respect and ensuring basic rights and equitable reward structures.<sup>49</sup> Workers also respond to cues from peers and leaders. Virtue begets virtue, and observing moral behavior by others promotes similar conduct.<sup>50</sup> Studies find that the “most important determinant of an organization’s climate is the day-to-day behavior of [its] leaders.”<sup>51</sup> Those who behave with integrity inspire confidence in followers.<sup>52</sup> Employees who believe that their leaders care about ethical issues perform better in their jobs.<sup>53</sup>

Happily, then, the platitudes have some basis in reality. In the long term, the leaders who are most likely to be effective are those who exemplify ethical responsibility in their personal conduct and who promote such conduct in others. That responsibility includes not simply compliance with formal ethical rules but also adherence to widely accepted norms of honesty, fairness, civility, and respect for societal interests. Most people want leaders with not only those virtues but also a vision that will unite them behind purposes broader than simply economic self-interest.<sup>54</sup>

Notable scandals such as those involving the Watergate break-in,<sup>55</sup> Enron,<sup>56</sup> and General Motors (GM)<sup>57</sup> remind us that lawyers’ ethical failures

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48. For a summary, see Rhode, *supra* note 37, at 16-18.

49. See LYNN SHARP PAINE, VALUE SHIFT: WHY COMPANIES MUST MERGE SOCIAL AND FINANCIAL IMPERATIVES TO ACHIEVE SUPERIOR PERFORMANCE 42-45 (2003); Tom R. Tyler & Steven L. Blader, *Social Identity and Fairness Judgements*, in EMERGING PERSPECTIVES ON VALUES IN ORGANIZATIONS 67, 78-79 (Stephen W. Gilliland et al. eds., 2003).

50. See PAINE, *supra* note 49, at 45-46; Kim S. Cameron et al., *Exploring the Relationships Between Organizational Virtuousness and Performance*, 47 AM. BEHAV. SCIENTIST 766, 771 (2004).

51. See David M. Mayer et al., *Examining the Link Between Ethical Leadership and Employee Misconduct: The Mediating Role of Ethical Climate*, 95 J. BUS. ETHICS 7, 8 (2010) (quoting ROBERT STRINGER, LEADERSHIP AND ORGANIZATIONAL CLIMATE: THE CLOUD CHAMBER EFFECT 12 (2002)).

52. See Robert H. Moorman & Steven Grover, *Why Does Leader Integrity Matter to Followers?: An Uncertainty Management-Based Explanation*, 5 INT’L J. LEADERSHIP STUD. 102, 109 (2009). For a discussion of the value of integrity and complexities in definition, see generally Tony Simons et al., *Toward a Broader—but Still Rigorous—Definition of Leader Integrity: Commentary*, 24 LEADERSHIP Q. 391, 391-92 (2013).

53. See PAINE, *supra* note 49, at 42-45; LINDA KLEBE TREVIÑO & GARY R. WEBER, MANAGING ETHICS IN BUSINESS ORGANIZATIONS: SOCIAL SCIENTIFIC PERSPECTIVES 233 (2003); Robert B. Cialdini, *Social Influence and the Triple Tumor Structure of Organizational Dishonesty*, in CODES OF CONDUCT: BEHAVIORAL RESEARCH INTO BUSINESS ETHICS 44, 54-56 (David M. Messick & Ann E. Tenbrunsel eds., 1996).

54. See JAMES M. KOUZES & BARRY Z. POSNER, THE TRUTH ABOUT LEADERSHIP: THE NO-FADS, HEART-OF-THE-MATTER FACTS YOU NEED TO KNOW 46 (2010).

55. See RHODE, *supra* note 11, at 93-97; *infra* text accompanying notes 71-79.

can carry substantial social costs. Diffusion and displacement of responsibility, group pressure, and cognitive bias all contribute to moral myopia. So, for example, when individuals' desire to appear ethical conflicts with self-interest, the tendency is to reduce cognitive dissonance by selectively forgetting or recharacterizing the moral status of their conduct.<sup>58</sup> A textbook case involves Webster Hubbell, former Arkansas Chief Justice and Associate Attorney General in the Clinton Administration. While in private practice, Hubbell allegedly engaged in hundreds of instances of fraudulently padding bills and charging personal expenses as business expenses, but he dismissed the conduct as involving just a "private financial dispute."<sup>59</sup> When asked if he inflated hours, Hubbell responded, "Yes, I did." He continued, "So does every lawyer in the country."<sup>60</sup>

Self-serving biases similarly enable individuals to reallocate responsibility for moral failures to external factors rather than their own actions.<sup>61</sup> Leaders may be particularly susceptible to such biases because their status often insulates them from candid criticism and because the exercise of power can reinforce a sense of entitlement and invulnerability.<sup>62</sup> "[S]tupid hubris" was how Eliot Spitzer described his conduct in patronizing call girls while

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56. See William H. Simon, *Wrongs of Ignorance and Ambiguity: Lawyer Responsibility for Collective Misconduct*, 22 YALE J. ON REG. 1, 5-8 (2005).

57. See DEBORAH L. RHODE ET AL., LEGAL ETHICS 689-91 (7th ed. 2016).

58. For the classic account of cognitive dissonance, see LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE 128-34 (1957). For a collection of more recent accounts, see generally COGNITIVE DISSONANCE: PROGRESS ON A PIVOTAL THEORY IN SOCIAL PSYCHOLOGY (Eddie Harmon-Jones & Judson Mills eds., 1999). For a discussion of cognitive biases that impair ethical behavior, such as the capacity to selectively forget or recharacterize conduct, see Celia Moore & Francesca Gino, *Ethically Adrift: How Others Pull Our Moral Compass from True North, and How We Can Fix It*, 33 RES. ORGANIZATIONAL BEHAV. 53, 55 (2013); and Lisa L. Shu et al., *Dishonest Deed, Clear Conscience: When Cheating Leads to Moral Disengagement and Motivated Forgetting*, 37 PERSONALITY & SOC. PSYCHOL. BULL. 330, 332 (2011).

59. Claudia MacLachlan & Harvey Berkman, *Little Rock's Bar Shaken to Its Core: Local Lawyers Are Reeling as Washington Woes Come Home to Roost*, NAT'L L.J., Apr. 11, 1994, at A1, A25.

60. See Stephen Labaton, *Hubbell Hope of Pardon Seen by Investigators*, N.Y. TIMES (May 2, 1998), <https://nyti.ms/2l8Nhh6>.

61. See Donelson R. Forsyth, *Self-Serving Bias*, in 7 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 429, 429 (William A. Darity Jr. ed., 2d ed. 2007).

62. For a discussion of leaders' insulation from criticism, see Part IIA below. For an explanation of the belief that leaders can conceal their actions and effects, see Terry L. Price, *Explaining Ethical Failures of Leadership*, 21 LEADERSHIP & ORG. DEV. J. 177, 179 (2000). For an analysis of the impact of narcissism on leaders, see Manfred Kets de Vries & Elisabet Engellau, *A Clinical Approach to the Dynamics of Leadership and Executive Transformation*, in HANDBOOK OF LEADERSHIP THEORY AND PRACTICE: AN HBS CENTENNIAL COLLOQUIUM ON ADVANCING LEADERSHIP, *supra* note 27, at 183, 195; and Roderick M. Kramer, *The Harder They Fall*, HARV. BUS. REV., Oct. 2003, at 58, 63-64.

Governor of New York.<sup>63</sup> John Edwards offered a similar description of misconduct connected with his extramarital affair during the 2008 presidential campaign, claiming that the “egotism” and “narcissism” fed by leadership status “leads you to believe that you can do whatever you want. You’re invincible. And there will be no consequences.”<sup>64</sup> Scott Rothstein, a Florida firm managing partner who orchestrated a \$1.2 billion Ponzi scheme, made the same assumption.<sup>65</sup> In a note to his partners threatening suicide, he put it bluntly: “I am a fool. I thought I could fix it but got trapped by my ego and refusal to fail . . . .”<sup>66</sup>

In many financial, health, safety, and environmental scandals, large numbers of lawyer-leaders were also caught in information silos partly of their own making.<sup>67</sup> In some instances, their ignorance of ethical problems reflected willful blindness.<sup>68</sup> In other cases, it stemmed from organizational structures and practices that prevented them from seeing the full picture and that discouraged whistleblowing.<sup>69</sup> “Shooting the messenger” was a common response to unwelcome tidings, and it was “not just the messenger who paid the price.”<sup>70</sup>

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63. See Nicholas Confessore, *Ungoverned*, N.Y. TIMES (July 2, 2010), <http://www.nytimes.com/2010/07/04/books/review/Confessore-t.html>.

64. See ANDREW YOUNG, *THE POLITICIAN: AN INSIDER’S ACCOUNT OF JOHN EDWARDS’S PURSUIT OF THE PRESIDENCY AND THE SCANDAL THAT BROUGHT HIM DOWN* 289 (2010).

65. See Jordan Maglich, *On Fifth Anniversary of Rothstein’s \$1.2 Billion Ponzi Scheme, Questions Remain*, FORBES (Oct. 31, 2014, 9:39 AM), <https://www.forbes.com/sites/jordanmaglich/2014/10/31/on-fifth-anniversary-of-rothsteins-1-2-billion-ponzi-scheme-questions-remain/#70673187b145>.

66. See Jon Burstein et al., *Lawyer Returns as Uproar Grows*, SUN SENTINEL (Fort Lauderdale) (Nov. 4, 2009), [http://articles.sun-sentinel.com/2009-11-04/news/0911030467\\_1\\_law-firm-s-partners-law-office-fort-lauderdale-executive-airport](http://articles.sun-sentinel.com/2009-11-04/news/0911030467_1_law-firm-s-partners-law-office-fort-lauderdale-executive-airport).

67. Rhode, *supra* note 37, at 30; see, e.g., John M. Darley, *How Organizations Socialize Individuals into Evildoing*, in CODES OF CONDUCT: BEHAVIORAL RESEARCH INTO BUSINESS ETHICS, *supra* note 53, at 13, 17-19; David Luban, *Making Sense of Moral Meltdowns*, in MORAL LEADERSHIP: THE THEORY AND PRACTICE OF POWER, JUDGMENT, AND POLICY, *supra* note 37, at 57, 57-58.

68. See, e.g., Luban, *supra* note 67, at 57-58.

69. See, e.g., ANTON R. VALUKAS, REPORT TO BOARD OF DIRECTORS OF GENERAL MOTORS COMPANY REGARDING IGNITION SWITCH RECALLS 108 (2014) (noting that at a roundtable discussion with GM’s counsel, a junior lawyer asked whether a defective ignition switch should be recalled but was rebuffed and “got the ‘vibe’ that the lawyers had ‘done everything we can do’”); Simon, *supra* note 56, at 12-14; Ronald R. Sims & Johannes Brinkmann, *Enron Ethics (or: Culture Matters More than Codes)*, 45 J. BUS. ETHICS 243, 250, 252 (2003).

70. Rhode, *supra* note 37, at 30. For a discussion of how Enron punished its internal whistleblowers, see Sims & Brinkmann, *supra* note 69, at 252. For a recounting of the silencing of a lawyer who raised concerns in the recent scandal involving GM ignition switches, see VALUKAS, *supra* note 69, at 108.

A case study in failures of ethical leadership is the Watergate scandal, the bungled burglary of the Democratic National Committee headquarters during the mid-1970s. Almost every major participant in the cover-up was an attorney, and twenty ended up “on the wrong side of the law.”<sup>71</sup> Lawyers who occupied leadership positions in the Nixon Administration and his reelection campaign—including two Attorneys General—pleaded guilty to crimes including perjury, fraud, obstruction of justice, burglary, and conspiracy.<sup>72</sup> President Nixon, himself a lawyer, resigned the presidency to avoid impeachment.<sup>73</sup> In congressional testimony, John Dean, then-White House Counsel, recalled that he had “prepared a list of who was likely to be indicted as the investigation proceeded. . . . [M]y first reaction was . . . how in God’s name could so many lawyers get involved in something like this?”<sup>74</sup> The title of his memoir, *Blind Ambition*, gives part of the answer.<sup>75</sup> But another part of the explanation lies in the diffusion of responsibility and self-serving biases described above. Attorney General Richard Kleindienst pursued this common strategy with uncommon candor when he rebuffed G. Gordon Liddy’s plea to “get [his] men out of jail”; “[w]hatever you have to say,” Kleindienst responded, “say [it] to somebody else.”<sup>76</sup> Watergate lawyers frequently rationalized illegal activities as necessary to “protect the presidency” or national security.<sup>77</sup> Many spoke in terms of loyalty to the presidency but “conflat[ed] the interests of the institution with those of its incumbent.”<sup>78</sup> President Nixon himself seems to have suffered from that confusion. In a television interview when David Frost asked whether the President could “decide that it’s in the best interests of the nation, and do

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71. John Dean, *Watergate: Lessons for Today, Nearly 40 Years Later*, OHIO LAW., July-Aug. 2011, at 10, 11. More than half of those indicted or named as Watergate co-conspirators were lawyers. Richard Harris, *The Watergate Prosecutions*, NEW YORKER, June 10, 1974, at 46, 51, <http://www.newyorker.com/magazine/1974/06/10/the-watergate-prosecutions>. Of the key participants in the cover-up, only H.R. Haldeman was not a lawyer. Robert Pack, *The Lawyers of Watergate*, WASH. LAW., July-Aug. 1999, at 24, 25. For a list of lawyers and offenses, see Kathleen Clark, *The Legacy of Watergate for Legal Ethics Instruction*, 51 HASTINGS L.J. 673, 678-79 (2000).

72. Clark, *supra* note 71, at 678-79.

73. *Id.* at 681 nn.27-28.

74. *Presidential Campaign Activities of 1972, Watergate and Related Activities, Phase I: Watergate Investigation, Book 3: Hearing on S. Res. 60 Before the S. Select Comm. on Presidential Campaign Activities*, 93d Cong. 1013, 1054 (1973) (statement of John Dean).

75. See generally JOHN W. DEAN III, *BLIND AMBITION: THE WHITE HOUSE YEARS* (1976).

76. See THE WHITE HOUSE TRANSCRIPTS: SUBMISSION OF RECORDED PRESIDENTIAL CONVERSATIONS TO THE COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES BY PRESIDENT RICHARD NIXON 142 (Gerald Gold ed., 1974).

77. HERBERT S. PARMET, *RICHARD M. NIXON: AN AMERICAN ENIGMA* 173 (2008) (describing the mantra of “protect the presidency”).

78. Simon, *supra* note 56, at 14.

something illegal,” Nixon famously responded, “Well, when the president does it, that means it is not illegal.”<sup>79</sup>

To minimize these tendencies, leaders need to create their own checks and balances and to seek constructive criticism. Candid dialogue on ethical issues is essential to informed decisionmaking. Every leader’s internal moral compass needs to be checked against external reference points. Recognizing the ways in which one may be wrong is crucial in determining what is likely to be right.<sup>80</sup> Effective leadership is not simply what President Dwight Eisenhower famously described as “getting someone else to do something you want done because he wants to do it.”<sup>81</sup> The best leaders invite questions and criticism about what they *should* want done. Individuals committed to ethical leadership need to both make moral conduct a central priority in their own lives and promote structures and policies that make moral conduct a priority for others.

Lawyer-leaders also have a unique opportunity and obligation to express their values through pro bono contributions. Yet according to the most recent ABA survey, only about one-third of attorneys reported meeting the aspirational standard of the Model Rules of Professional Conduct: over fifty hours of service to persons of limited means (or organizations that support them) per year.<sup>82</sup> In the nation’s largest firms, fewer than half of lawyers contributed more than twenty hours.<sup>83</sup> The most generous firms give little more than 0.1% of their gross revenue to legal services groups for the poor, and many fall well below this amount.<sup>84</sup>

It is a shameful irony that the nation with one of the world’s highest concentrations of lawyers has done so little to make legal assistance available to

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79. See *I Have Impeached Myself: Edited Transcript of David Frost’s Interview with Richard Nixon Broadcast in May 1977*, GUARDIAN (Sept. 7, 2007, 5:18 AM EDT), <https://www.theguardian.com/theguardian/2007/sep/07/greatinterviews1>.

80. For an elaboration of this view, see Rhode, *supra* note 37, at 40-41.

81. See JAMES W. ROBINSON, JACK WELCH AND LEADERSHIP: EXECUTIVE LESSONS OF THE MASTER CEO 154 (2001).

82. ABA STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS, at vi-vii (2013); see MODEL RULES OF PROF’L CONDUCT r. 6.1 (AM. BAR ASS’N 2016). The response rate for the survey was under 1%, see ABA STANDING COMM. ON PRO BONO & PUB. SERV., *supra*, at 2, and those who made some contribution are probably overrepresented, so the actual national figures are doubtless lower.

83. See Neil Gluckman, *Exclusive: Best Firms for Pro Bono*, AM. LAW. (June 27, 2016), <https://advance.lexis.com/api/permalink/2a442a4c-b7e0-4ec6-8023-031ea1a4666d/?context=1000516>.

84. Susan Beck, *Law Firms Lag in Support for Legal Aid to Poor; Revenues and Profits Are up, but They Contribute a Pittance to Access to Justice*, NAT’L L.J. (July 6, 2015), <https://advance.lexis.com/api/permalink/2fe20b5b-028d-445c-892f-4da8b2defa90/?context=1000516>.

those who need it most. The federal Legal Services Corporation has estimated that over four-fifths of the legal needs of the poor remain unmet, a figure that has not budged over the last three decades.<sup>85</sup> According to the World Justice Project, the United States ranks sixty-seventh (tied with Uganda) of ninety-seven countries in the accessibility and affordability of civil justice.<sup>86</sup>

That needs to change, and greater pro bono contributions are part of the path forward. The bar's special monopoly privileges in providing legal services impose special obligations.<sup>87</sup> As officers of the court, lawyers bear some responsibility for ensuring fundamental fairness in its processes. Because lawyers occupy such a central role in our justice system, there is also particular value in exposing them to how that system functions, or fails to function, for the have-nots. And giving those in leadership positions some contact with what passes for justice among the poor can help mobilize support for change. Pro bono work also serves professional goals by giving lawyers recognition, expertise, client contact, and a way to express the values that initially sent many of them to law school.<sup>88</sup>

Lawyers who lead law firms, in-house counsel offices, and government organizations have special roles to play in this area by setting the right example and the right policies. They send an important message by personally participating in pro bono work; recognizing others' pro bono contributions; and ensuring that their organizations provide appropriate training, resources, evaluation, billable hour credits, and other rewards for service.<sup>89</sup>

Assessment of pro bono programs is a particularly important and frequently overlooked priority. The most comprehensive recent survey of large firms' pro bono programs found that none made formal efforts to assess the impact of aid or the satisfaction with services among clients and nonprofit organizations that referred or co-counseled cases.<sup>90</sup> The vast majority of firm leaders did not monitor quality in any rigorous fashion, and no firms engaged in systematic analysis of cost effectiveness.<sup>91</sup> Many leaders have taken what

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85. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 3, 17 (2009), [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf).

86. MARK DAVID AGRAS ET AL., WORLD JUSTICE PROJECT: RULE OF LAW INDEX® 2012-2013, at 174-75 (2013), [http://worldjusticeproject.org/sites/default/files/WJP\\_Index\\_Report\\_2012.pdf](http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf).

87. For a more extended elaboration of the rationale for pro bono service, see DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE PROFESSIONS 27-29 (2005).

88. *See id.* at 29-31.

89. *See id.* at 169.

90. Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L. REV. 2357, 2401-02, 2405 (2010).

91. *Id.* at 2402-03.

strategic philanthropists call a “spray and pray” approach to aid; their organizations spread assistance broadly and trust that something good will happen as a result.<sup>92</sup> Something usually does, but this approach does not ensure the best use of resources.

All too often, leaders’ assessment of pro bono work focuses primarily on bottom-line concerns: how much it delivers in training, recruitment, reputation, and retention.<sup>93</sup> Although those metrics are important, to evaluate public service programs purely in those terms is to compromise what makes them *public* service. When leaders talk about pro bono, they generally speak in shorthand. “Publico” has dropped out of the discourse. Our profession can afford to lose the Latin—but not the concept. Leaders need to know how much the *public* is actually benefitting and to shape their organization’s contributions accordingly. Pro bono work represents all that is best in the profession, and supporting cost-effective initiatives should be one of leaders’ highest priorities.

### C. The Paradoxes of Leadership

The practice of leadership involves a number of paradoxes. One arises from the disconnect between some of the motivations that drive lawyers to achieve leadership positions and the motivations that are necessary for lawyers to succeed once they get there. What makes leaders willing to accept the pressure, hours, scrutiny, and risks that come with their role? For many lawyers, it is not only commitment to a cause, an organization, or a constituency. It is also ambition: attraction to money, power, status, and recognition.<sup>94</sup> As one observer notes, there are some “colossal egos” among lawyer-leaders: “[E]veryone wants their fiefdom to be the dominant and most important one.”<sup>95</sup> Yet successful leadership requires subordinating self-interests to a greater good. The result is what is often labeled the “leadership paradox.”<sup>96</sup> Individuals reach top positions because of their high needs for

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92. PETER FRUMKIN, STRATEGIC GIVING: THE ART AND SCIENCE OF PHILANTHROPY 371 (2006).

93. Cummings & Rhode, *supra* note 90, at 2426-29; Deborah L. Rhode, *Rethinking the Public in Lawyers’ Public Service: Pro Bono, Strategic Philanthropy, and the Bottom Line*, 77 FORDHAM L. REV. 1435, 1435, 1441-42 (2009).

94. Ambition was a trait that stood out in one survey of law firm leaders. Larry Richard, *Leadership Competencies in Law*, in LAW AND LEADERSHIP: INTEGRATING LEADERSHIP STUDIES INTO THE LAW SCHOOL CURRICULUM 35, 47 (Paula Monopoli & Susan McCarty eds., 2013).

95. ANN SOUTHWORTH, LAWYERS OF THE RIGHT: PROFESSIONALIZING THE CONSERVATIVE COALITION 31 (2008).

96. See Jennifer A. Chatman & Jessica A. Kennedy, *Psychological Perspectives on Leadership*, in HANDBOOK OF LEADERSHIP THEORY AND PRACTICE: AN HBS CENTENNIAL COLLOQUIUM ON ADVANCING LEADERSHIP, *supra* note 27, at 159, 163-64; see also Jane Howell & Bruce J. Avolio, *The Ethics of Charismatic Leadership: Submission or Liberation?*, in LEADING  
*footnote continued on next page*

personal achievement. But to perform effectively in these positions, they need to focus on creating the conditions for achievement by others. As the philosopher LaoTse famously put it, a leader is most effective when people barely know he exists; when his work is done, “[t]he people all remark, ‘we have done it ourselves.’”<sup>97</sup>

A second paradox arises from the way that positive qualities such as empathy, which can help leaders gain power, are eroded by the exercise of that power. Psychologist Dacher Keltner labels this “the power paradox.”<sup>98</sup> He notes that groups tend to give authority to individuals whom they believe have empathy and a willingness to advance the common good. But once individuals obtain that authority, they tend to lose focus on the needs of others.<sup>99</sup> Leaders need to resist that tendency. For as Keltner points out, empathy and a commitment to the welfare of stakeholders is the best guarantee of continued influence.<sup>100</sup> Those holding top positions must also be willing to let go of their power when the organization would benefit from change.<sup>101</sup>

A third paradox arises from the disconnect between qualities that people say they value in leaders and qualities that they actually use to select leaders. Law firms have a tendency “to put [people] in a leadership position . . . often not because of leadership skill but because of [rainmaking capabilities] . . . and hope they don’t drive into a ditch.”<sup>102</sup> Similarly, people say they highly value honesty in leaders, but it is not a quality that receives much weight in elections.<sup>103</sup> The 2016 presidential contest is a case in point. Only about one-third of Americans thought Hillary Clinton and Donald Trump were honest

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ORGANIZATIONS: PERSPECTIVES FOR A NEW ERA, *supra* note 12, at 166, 173 (noting that attributes that contribute to leaders’ ascendancy can doom them to failure).

97. LAOTSE, *Rulers*, in *THE WISDOM OF LAOTSE* 114, 114 (Lin Yutang trans. & ed., 1948).

98. DACHER KELTNER, *THE POWER PARADOX: HOW WE GAIN AND LOSE INFLUENCE* 100 (2016).

99. *Id.* at 100-03.

100. *Id.* at 16, 103.

101. See JEFFREY PFEFFER, *POWER: WHY SOME PEOPLE HAVE IT—AND OTHERS DON’T* 211-12 (2010). For the reluctance of leaders to voluntarily relinquish their positions, see Georgia Sorenson, *Succession and Its Discontents: The Perils and Promise of Change, in IMPROVING LEADERSHIP IN NONPROFIT ORGANIZATIONS* 102, 102-03 (Ronald E. Riggio & Sarah Smith Orr eds., 2004).

102. Gina Passarella, *Leadership Programs Born from Lack of Born Leaders*, *LEGAL INTELLIGENCER* (Nov. 5, 2007), <https://advance.lexis.com/api/permalink/fc39bdc1-4ee5-45e6-b982-3082481e2f05/?context=1000516> (quoting Jeffrey Lutsky, Managing Partner, Stradley Ronon Stevens & Young LLP).

103. A global survey of over 75,000 participants found that the value most admired in a leader was honesty. KOUZES & POSNER, *supra* note 17, at 30.

and trustworthy.<sup>104</sup> That election is not exceptional. As one commentator notes, “[i]ntegrity has rarely been a trait that has been commonly associated with U.S. presidential candidates.”<sup>105</sup>

One other quality that people value in leaders but discount when selecting them is modesty. Humility is a key trait of what Jim Collins calls “Level 5 leaders,” the highest-performing executives who create extraordinary results over long periods.<sup>106</sup> These leaders give others credit for collective accomplishments, and it should come as no surprise that this is a productive technique. People are more likely to work hard for a project that they identify as “their” project or “our” project. Humble leaders are more open to new ideas and critical feedback.<sup>107</sup> And because they are less preoccupied with self-promotion, they also have more time to focus on organizational objectives.<sup>108</sup> Yet Collins was studying people who had already attained the role of CEO; humility does not appear to be a trait that helps people make it to the top. Jeffrey Pfeffer’s book, *Leadership BS*, has a chapter titled “Modesty: Why Leaders Aren’t,” which makes the point that self-promotion is often essential for actual promotion.<sup>109</sup> Narcissistic individuals are frequently selected for leadership positions because people are attracted to the confidence, charisma, and grandiosity they project.<sup>110</sup> Donald Trump’s 2016 presidential campaign was a case study in that dynamic. As many commentators noted, his behavior reflected classic narcissistic traits such as an exaggerated sense of self-importance, achievements, and talents; an inability or unwillingness to

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104. *Campaign 2016: CBS News Poll; Sept. 28-Oct. 2, 2016*, POLLINGREPORT.COM, <http://www.pollingreport.com/wh16.htm> (last visited June 6, 2017); see David Greenberg, *Are Clinton and Trump the Biggest Liars Ever to Run for President?*, POLITICO MAG. (July/Aug. 2016), <http://politi.co/29nOgAO>.

105. Martin P. Wattenberg, *The Declining Relevance of Candidate Personal Attributes in Presidential Elections*, 46 PRESIDENTIAL STUD. Q. 125, 137 (2016). For examples of lying by presidential candidates, see Carl M. Cannon, *Untruth and Consequences*, ATLANTIC (Jan./Feb. 2007), <https://www.theatlantic.com/magazine/archive/2007/01/untruth-and-consequences/305561>; Abigail Cutler, *Presidential Lies*, ATLANTIC (Jan./Feb. 2007), <https://www.theatlantic.com/magazine/archive/2007/01/presidential-lies/305580>; and Greenberg, *supra* note 104.

106. Collins, *supra* note 21, at 138, 140-42.

107. Bradley P. Owens & David R. Hekman, *Modeling How to Grow: An Inductive Examination of Humble Leader Behaviors, Contingencies, and Outcomes*, 55 ACAD. MGMT. J. 787, 798 (2012).

108. For more discussion of the virtue of humility in leaders, see MARY CROSSAN ET AL., *DEVELOPING LEADERSHIP CHARACTER* 80-90 (2016); Owens & Hekman, *supra* note 107, at 787-90; and Collins, *supra* note 21, at 140-42.

109. JEFFREY PFEFFER, *LEADERSHIP BS: FIXING WORKPLACES AND CAREERS ONE TRUTH AT A TIME* 63 (2015).

110. *Id.* at 82-83; Robert Hogan & Robert B. Kaiser, *What We Know About Leadership*, 9 REV. GEN. PSYCHOL. 169, 176-77 (2005).

recognize the needs and feelings of others; and a requirement of constant admiration.<sup>111</sup>

Those same characteristics, however, can translate into a sense of entitlement, overconfidence, and an inability to learn from mistakes. If left unchecked, the ambition, self-confidence, and self-centeredness that often enable lawyers to achieve leadership roles may sabotage their performance once in those roles.<sup>112</sup>

#### D. Styles of Leadership

Just as context matters in determining what qualities are most critical in particular leadership settings, context also affects the leadership styles that are most likely to be effective. Drawing on a sample of almost four thousand leaders worldwide, Daniel Goleman has identified six dominant approaches to leadership: “*Coercive* leaders demand immediate compliance. *Authoritative* leaders mobilize people toward a vision. *Affiliative* leaders create emotional bonds and harmony. *Democratic* leaders build consensus through participation. *Pacesetter* leaders expect excellence and self-direction. And *Coaching* leaders develop people for the future.”<sup>113</sup> Among lawyers who lead, all these styles are readily recognizable and some are more often successful than others. Coercion, the style frequently associated with positions of power, is typically the least effective.<sup>114</sup> Although it

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111. Dan P. McAdams, *The Mind of Donald Trump: Narcissism, Disagreeableness, Grandiosity*, ATLANTIC (June 2016), <https://www.theatlantic.com/magazine/archive/2016/06/the-mind-of-donald-trump/480771>; Amy Elliss Nutt, *Is Donald Trump a Textbook Narcissist?*, WASH. POST (July 22, 2016), <https://wpo.st/5e6e2>; Daniel Wagner, *Trump and Narcissistic Personality Disorder*, HUFFINGTON POST (July 31, 2016, 4:14 PM ET), [http://www.huffingtonpost.com/daniel-wagner/trump-and-narcissistic-pe\\_b\\_11289332.html](http://www.huffingtonpost.com/daniel-wagner/trump-and-narcissistic-pe_b_11289332.html). Without opportunities for personal diagnosis, experts were rightly reluctant to comment on whether Trump’s narcissistic traits are significant enough to constitute a personality disorder. See Nutt, *supra*. Such traits may, however, help explain why most Americans thought that Trump did not have good leadership skills. *Campaign 2016: Quinnipiac University Poll; Aug. 18-24, 2016*, POLLINGREPORT.COM, <http://www.pollingreport.com/wh16.htm> (last visited June 6, 2017).

112. For research finding that narcissism is related to the emergence of leaders but often undercuts their effectiveness, see Joyce E. Bono et al., *Personality and Leadership: Looking Back, Looking Ahead*, in THE OXFORD HANDBOOK OF LEADERSHIP AND ORGANIZATIONS 199, 206 (David V. Day ed., 2014); and Seth A. Rosenthal & Todd L. Pittinsky, *Narcissistic Leadership*, 17 LEADERSHIP Q. 617, 618-23 (2006).

113. Daniel Goleman, *Leadership That Gets Results*, HARV. BUS. REV., Mar.-Apr. 2000, at 78, 78, 80 (italics omitted). Goleman’s sample of 3871 executives was compiled by consulting firm Hay/McBer from a database of approximately twenty thousand executives. *Id.* at 78.

114. See *id.* at 82.

may be useful in conditions of crisis, as a daily matter coercion breeds resentment and kills initiative.<sup>115</sup>

Goleman's research suggests that the authoritative style is generally the most successful.<sup>116</sup> This approach combines clarity about ends with flexibility about means. "The authoritative leader is a visionary; he motivates people by making clear to them how their work fits into a larger vision for the organization."<sup>117</sup> He "give[s] [them] the freedom to innovate, experiment, and take calculated risks."<sup>118</sup> Yet as Goleman also notes, the authoritative style is not effective in every situation. It fails, for example, when a leader is working with a team of professionals who see themselves as equally or more qualified.<sup>119</sup> These circumstances are particularly common in law firms; many partners are reluctant to cede too much power to a single individual.<sup>120</sup> As the discussion in Part III below indicates, an authoritative manner in women often bumps up against gender biases. Many studies confirm that women are rated lower as leaders when they adopt such a seemingly masculine style, particularly when the evaluators are men or when the role is one typically occupied by men.<sup>121</sup> To be effective, many female leaders need to temper their authoritativeness along lines discussed in Part III below or adopt affiliative or democratic styles, which are more consistent with traditionally feminine attributes.

Affiliative approaches put people first and aim for satisfaction and harmony among followers. Leaders with this approach tend to be "natural relationship builders" who supply frequent positive feedback, value personal relationships, and celebrate group accomplishments.<sup>122</sup> The result is a high level of trust, loyalty, communication, and innovation. Robert Kennedy was a prominent example. As Attorney General, he astonished staff by dropping into their offices and sending them thank-you notes for working on weekends or accomplishing difficult

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115. See *id.*; Susan Snyder & Sara Littauer, *Leadership Flexibility: How Outstanding Partners Get Results*, STRATEGIES, Mar. 2005, at 4, 7-8. Snyder and Littauer use the term "directive" to describe this style. See *id.* (capitalization altered).

116. See Goleman, *supra* note 113, at 83.

117. *Id.*

118. *Id.* at 84.

119. *Id.*

120. For a discussion of the "low-trust" environment of many firms, see David Maister, *The Trouble with Lawyers*, AM. LAW., Apr. 2006, at 97, 98.

121. See JEANETTE N. CLEVELAND ET AL., WOMEN AND MEN IN ORGANIZATIONS: SEX AND GENDER ISSUES AT WORK 106 (2000); D. Anthony Butterfield & James P. Grinnell, "Reviewing" Gender, Leadership, and Managerial Behavior: Do Three Decades of Research Tell Us Anything?, in HANDBOOK OF GENDER & WORK 223, 235 (Gary N. Powell ed., 1999); Alice H. Eagly et al., *Gender and the Evaluation of Leaders: A Meta-Analysis*, 111 PSYCHOL. BULL. 3, 13-18 (1992).

122. See Goleman, *supra* note 113, at 84; Snyder & Littauer, *supra* note 115, at 6.

tasks.<sup>123</sup> This leadership style “brought out the best in others” and enlarged “their sense of the possible.”<sup>124</sup> Used exclusively, however, the affiliative approach has its limitations. Too much praise and desire for harmony “can allow poor performance to go uncorrected”<sup>125</sup> and internal conflicts to go unresolved. Whatever its short-term advantages in minimizing stress and unpleasantness, conflict avoidance should be avoided.<sup>126</sup> Unaddressed problems can fester, impair performance, and lead to more costly confrontations later on.

One way to handle conflicts, as well as other leadership challenges, is through a democratic style. By giving stakeholders a say in decisions that affect them, leaders can generate new ideas; encourage buy-in; and build morale, trust, respect, and commitment.<sup>127</sup> Many heads of public interest legal organizations employ this approach and rely heavily on legal staff to shape organizational priorities.<sup>128</sup> Democratic processes work best when leaders are themselves uncertain about the best direction or strategies and need ideas and commitment from stakeholders.<sup>129</sup> These approaches are particularly critical in policy settings. As social movement theorists note, “[a]nyone who tries to tackle a public problem . . . sooner or later comes face to face with the dynamics of a shared-power world.”<sup>130</sup> In these settings, “organized anarchy” often prevails.<sup>131</sup> Power is distributed among multiple coalitions and interest groups, and effectiveness depends on building coalitions.

But in other contexts, too much participation can lead to “endless meetings where ideas are mulled over, consensus remains elusive, and the only visible result is scheduling more meetings.”<sup>132</sup> Observers of Hillary Clinton’s 2008 presidential campaign chronicled the downsides of her democratic style and refusal to resolve

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123. See VICTOR S. NAVASKY, *KENNEDY JUSTICE* 348, 355 (1971).

124. *Id.* at 444.

125. See Goleman, *supra* note 113, at 85.

126. See CRAIG E. RUNDE & TIM A. FLANAGAN, *BECOMING A CONFLICT COMPETENT LEADER: HOW YOU AND YOUR ORGANIZATION CAN MANAGE CONFLICT EFFECTIVELY* 7-12, 14-17 (2007) (explaining the need to directly address conflict and providing an overview of strategies); see also DEBORAH L. RHODE & AMANDA L. PACKEL, *LEADERSHIP FOR LAWYERS* (2d ed. forthcoming 2017) (manuscript at 37) (on file with author). See generally BARBARA A. NAGLE LECHMAN, *CONFLICT AND RESOLUTION* 10-14 (2d ed. 2008) (describing strategies of dispute resolution).

127. See Goleman, *supra* note 113, at 85.

128. Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027, 2028, 2050 (2008) (“All but 5% of [leading] organizations reported extensive . . . or moderate . . . involvement of their legal staff.”).

129. See Goleman, *supra* note 113, at 85.

130. BARBARA C. CROSBY & JOHN M. BRYSON, *LEADERSHIP FOR THE COMMON GOOD: TACKLING PUBLIC PROBLEMS IN A SHARED-POWER WORLD* 3 (2d ed. 2005).

131. *Id.* at 161-62.

132. Goleman, *supra* note 113, at 85.

internal staff conflicts.<sup>133</sup> The result was that “[n]obody [in the campaign headquarters] knew who was in charge. Nobody *wanted* to be in charge.”<sup>134</sup> So too, in many leadership contexts, the problem with democracy can be the same as with socialism: “[I]t takes too many evenings.”<sup>135</sup>

Another style, common among overburdened lawyers, involves pacesetting. A leader who takes this approach “sets extremely high performance standards and exemplifies them himself. He is obsessive about doing things better and faster, and he asks the same of everyone around him. . . . If they don’t rise to the occasion, he replaces them with people who can.”<sup>136</sup> The prominent criminal defense attorney William Kunstler exemplified this style. As he put it in his autobiography: “I expect a lot from people, . . . [and] I don’t want to hear [their] complaints or problems.”<sup>137</sup> If they couldn’t handle the pressure, Kunstler “let them quit.”<sup>138</sup> The pacesetting approach works best when “employees are self-motivated, highly competent, and need little direction or coordination.”<sup>139</sup> Ralph Nader was revered by many staff for being “the best teacher in the world . . . partly because he doesn’t teach you.”<sup>140</sup> He gave junior lawyers major policy, press, and political-organizing responsibilities and enabled them to rise to the occasion.<sup>141</sup> The problem, however, was that not everyone thrived under that pressure, which included working the one hundred hours per week that Nader described as “perfect.”<sup>142</sup> “[F]lameout” was a significant problem.<sup>143</sup> The lesson is that the effectiveness of pacesetting, like other styles, depends on context, and leaders need to know when those on the receiving end are up to the task.

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133. See, e.g., JOHN HEILEMANN & MARK HALPERIN, *GAME CHANGE: OBAMA AND THE CLINTONS, MCCAIN AND PALIN, AND THE RACE OF A LIFETIME* 188 (2010).

134. *Id.* at 193, 196.

135. The quotation is commonly attributed to Oscar Wilde but has been variously attributed to Wilde, George Bernard Shaw, and George Orwell. See Susan George, *Globalizing Rights?*, in *GLOBALIZING RIGHTS: THE OXFORD AMNESTY LECTURES 1999*, at 15, 30 (Matthew J. Gibney ed., 2003) (attributing the quotation to Wilde); Onora O’Neill, *Autonomy and Public Reason in Kant*, in *REASON, VALUE, AND RESPECT: KANTIAN THEMES FROM THE PHILOSOPHY OF THOMAS E. HILL, JR.* 119, 123 & n.16 (Mark Timmons & Robert N. Johnson eds., 2015) (recognizing the confusion over whether to attribute the quotation to Wilde, Shaw, or Orwell).

136. Goleman, *supra* note 113, at 86.

137. WILLIAM M. KUNSTLER WITH SHEILA ISENBERG, *MY LIFE AS A RADICAL LAWYER* 396 (1994).

138. *Id.*

139. Goleman, *supra* note 113, at 86.

140. Thomas Whiteside, *A Countervailing Force—II*, *NEW YORKER*, Oct. 15, 1973, at 46, 52 (quoting Robert Fellmeth).

141. *Id.* at 52.

142. *Id.* at 55.

143. See *id.* (quoting Reuben B. Robertson III).

A final style involves coaching. As Daniel Goleman puts it, leaders taking this approach

help employees identify their unique strengths and weaknesses and tie them to their personal and career aspirations. . . . Coaching leaders excel at delegating; they give employees challenging assignments, even if that means the tasks won't be accomplished quickly. In other words, these leaders are willing to put up with short-term failure if it furthers long-term learning.<sup>144</sup>

Leaders who have made coaching a priority have been responsible for some of the legal profession's greatest achievements. Charles Houston, the Dean of Howard Law School and head of the NAACP legal office in the 1930s and 1940s, nurtured the careers of many civil rights leaders, including Thurgood Marshall, who in turn did the same for others.<sup>145</sup>

Yet despite its frequent effectiveness, the coaching style is the least common leadership approach among the six Goleman identified.<sup>146</sup> The reason, according to interviewed leaders, is that they "don't have the time in this high-pressure economy for the slow and tedious work of teaching people and helping them grow."<sup>147</sup> Other explanations involve "interpersonal obstacles," such as leaders' desires to be liked or to avoid conflict, as well as concerns about damaging relationships.<sup>148</sup> Particularly in large legal organizations with high turnover rates, leaders often see little reason to invest in subordinates who are likely to leave.<sup>149</sup> As a consequence, many lawyers lack adequate mentoring and leadership development.<sup>150</sup> The problem is compounded by some leaders' lack of skills and comfort in coaching those of a different race, ethnicity, or sex.<sup>151</sup>

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144. Goleman, *supra* note 113, at 87.

145. See JUAN WILLIAMS, THURGOOD MARSHALL: AMERICAN REVOLUTIONARY 53-57, 94 (1998); Genna Rae McNeil, *Charles Hamilton Houston: 1895-1950*, 32 HOW. L.J. 469, 472-73 (1989). For an example of Marshall's mentoring, see Constance Baker Motley, *My Personal Debt to Thurgood Marshall*, 101 YALE L.J. 19, 22 (1991).

146. Goleman, *supra* note 113, at 87.

147. *Id.*

148. RHODE & PACKEL, *supra* note 43, at 56, 166; see also DEBORAH L. RHODE, THE TROUBLE WITH LAWYERS 70 (2015) (describing the interpersonal obstacles to cross-racial mentoring).

149. ABA COMM'N ON WOMEN IN THE PROFESSION, VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS 15-16 (2006); see also RHODE, *supra* note 148, at 70.

150. For a discussion of the inadequacy of mentoring, particularly for women and minority lawyers, see RHODE, *supra* note 148, at 69-70. For a discussion of the inadequacy of leadership development programs, see Douglas B. Richardson & Douglas P. Cooper-smith, *Learning to Lead*, AM. LAW., July 2008, at 57, 57.

151. For a discussion of the problems women and minorities experience, see RHODE, *supra* note 148, at 70; and DEBORAH L. RHODE, WOMEN AND LEADERSHIP 81-82 (2017) [hereinafter RHODE, WOMEN AND LEADERSHIP]. Senior men often report discomfort or inadequacy discussing "women's issues," and minorities express reluctance to raise diversity-related concerns with those who lack experience or empathy. IDA O. ABBOTT  
*footnote continued on next page*

Although increasing numbers of legal workplaces have responded by creating formal mentoring programs, these initiatives often lack effective oversight and reward structures.<sup>152</sup>

Failure to develop subordinates has been identified as one of the “fatal flaws” of unsuccessful leaders.<sup>153</sup> In today’s increasingly competitive climate, organizations need those who occupy positions of power to support and model effective mentoring. Goleman puts the point directly: “Although the coaching style may not scream ‘bottom-line results,’ it delivers them.”<sup>154</sup>

In short, no single leadership approach is uniformly effective for lawyers, although some work better than others. The best leaders “are exquisitely sensitive to the impact they are having on others” and able to adjust their styles accordingly.<sup>155</sup>

#### E. Leadership Strategies

Leadership is above all about influence, which comes from both the power of the position (through control over resources, rewards, and sanctions) and the power of the person (through experience, friendship, and loyalty).<sup>156</sup> Key currencies of influence involve soft power, such as providing recognition, visibility, contacts, and a sense of inclusion and importance.<sup>157</sup>

One of the critical ways leaders exercise influence is through communication. In one recent national survey of professionals, a majority rated communication as the most important capability for both political and

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& RITA S. BOAGS, MINORITY CORP. COUNSEL ASS’N, MENTORING ACROSS DIFFERENCES: A GUIDE TO CROSS-GENDER AND CROSS-RACE MENTORING 15-17 (n.d.), <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=666> (to locate, select “What Is the Significance of the Findings?”). For a discussion of how the absence of emotional intelligence skills can impair effective leadership, see Goleman, *supra* note 113, at 88-89.

152. RHODE, WOMEN AND LEADERSHIP, *supra* note 151, at 81; see MINN. STATE BAR ASS’N, DIVERSITY AND GENDER EQUITY IN THE LEGAL PROFESSION: BEST PRACTICES GUIDE 70-71, 77-79 (2008); see also *infra* text accompanying notes 327-42 (discussing problems with mentorship programs for women lawyers and lawyers of color).

153. Zenger & Folkman, *supra* note 36, at 18.

154. Goleman, *supra* note 113, at 87.

155. *Id.*; see Snyder & Littauer, *supra* note 115, at 7.

156. Gary Yukl, *Sources of Power and Influence*, in JOANNE B. CIULLA, THE ETHICS OF LEADERSHIP 3, 3-12 (2003); see also Jay A. Conger, *The Necessary Art of Persuasion*, HARV. BUS. REV., May-June 1998, at 84, 88 (“[C]redibility grows out of two sources: expertise and relationships.”).

157. Allan R. Cohen & David L. Bradford, *Influence Without Authority: The Use of Alliances, Reciprocity, and Exchange to Accomplish Work*, ORGANIZATIONAL DYNAMICS, Winter 1989, at 5, 9-11.

business leaders.<sup>158</sup> In both public and private settings, leaders try to persuade followers, allies, adversaries, and the broader public.

Although law school aims to teach advocacy skills, it often falls far short. The focus in many clinical and moot court programs is on courtroom advocacy, which constitutes a small fraction of lawyers' work. And the communication styles rewarded in law school classrooms are not equally effective in nonacademic settings. Even some of the profession's most gifted communicators did not learn what they needed in their legal education. A widely acclaimed biography of President Barack Obama reports that in his early campaigns after law school, he "was pedantic, distant, a little condescending at times, a better fit for the University of Chicago seminar room than for the stump."<sup>159</sup> As one campaign operative noted, "he had that tendency to talk over, or down to, people."<sup>160</sup> A prominent mentor remembers that Obama as a speaker "wasn't that good . . . His answers were just too long and boring."<sup>161</sup>

Knowledge is power in leadership, and effective communicators need to know their objectives, their audience, and their occasion. Leaders often have multiple agendas and multiple constituencies that pull in different directions. For example, politicians need to consider whether a particular speech is primarily intended to mobilize their base, persuade uncommitted voters, attract favorable media coverage, shore up their legacy, or send a message to other national and international leaders. Law firm leaders should think about whether a presentation to employees or potential clients is designed mainly to convey information, build relationships, sell an idea, or motivate change. What speakers most hope to accomplish needs to guide their style and substance. The importance of such choices is captured in the Roman historian Cato's widely cited though perhaps apocryphal observation: "When Cicero spoke, people marveled. When Caesar spoke, people marched."<sup>162</sup>

Obvious though the need for clarity of purpose may seem, even experienced leaders can lose sight of their main objectives. Robert Reich, former Secretary of Labor in the Clinton Administration, wryly recalls his own foibles

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158. *Fierce Survey: Business and Political Leaders 2016*, FIERCE, <http://www.fierceinc.com/resources/surveys/leading-company-country> (last visited June 6, 2017).

159. DAVID REMNICK, *THE BRIDGE: THE LIFE AND RISE OF BARACK OBAMA* 323 (Vintage Books 2011) (2010).

160. *Id.* at 324 (quoting Al Kindle).

161. *Id.* (quoting Newton Minow).

162. TICHY & BENNIS, *supra* note 27, at 14; TONY ZINNI & TONY KOLTZ, *LEADING THE CHARGE: LEADERSHIP LESSONS FROM THE BATTLEFIELD TO THE BOARDROOM* 179 (2009). The quotation has been variously attributed to Cato and Plutarch, and the identities of the speakers have also shifted. For a discussion of different formulations of the quotation, see Thomas J. Kinney, *Cicero and Demosthenes Go into a Bar . . .*, HERCULES CELTICUS (July 23, 2009), <https://herculescelticus.wordpress.com/2009/07/23/cicero-and-demosthenes>.

in preparing for his Senate confirmation hearing. When asked in practice sessions about any significant—and therefore potentially divisive—issue, his tendency was to elaborate his views.<sup>163</sup> This was a mistake. A Capitol Hill staffer explained, “You have to *respond* to [Senators’] questions. But you don’t have to *answer* them. You *shouldn’t* answer them. You’re not *expected* to answer them.”<sup>164</sup> According to the staffer, the main point of confirmation hearings, from the Senators’ perspective, was to give them, not the nominee, an opportunity to look learned and wise.<sup>165</sup> The point from the nominee’s perspective was to win votes, which called for dodging controversy while exuding deference.<sup>166</sup> An ideal answer was something like: “Senator, you know far more about that issue than I do, and I look forward to hearing your views in the months and years to come.”<sup>167</sup> Similarly, lawyers seeking positions or pitching clients need to recall that their primary objective is to win support, not to score points by showing how much smarter they are than those asking questions.

Knowledge of the audience is equally critical. Leaders too often suffer from one variation of the curse of knowledge: they do not know what others do not know.<sup>168</sup> They should strive to find out. How likely are audience members to be informed on the subject under discussion or sympathetic to the speaker’s goals and objectives? How engaged or distracted will they be? Will they have read materials sent out in advance? How much interaction do they expect? Finding ways to establish credibility or connect with audience members is especially critical. Lawyers often underestimate the importance of stories and metaphors, rather than facts and statistics, to amplify their messages.<sup>169</sup> PowerPoints can be helpful in many contexts but not if they simply present

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163. See Robert B. Reich, *Washington Diary: Locked in the Cabinet*, NEW YORKER, Apr. 21, 1997, at 42, 43.

164. *Id.*

165. See *id.* at 43-44.

166. *Id.* at 44.

167. *Id.*

168. See CHRIS ANDERSON, TED TALKS: THE OFFICIAL TED GUIDE TO PUBLIC SPEAKING 78 (2016) (noting that Robin Hogarth coined the term “the curse of knowledge” to describe our difficulty in remembering “what it feels like *not* to know something that we ourselves know well”).

169. See John Antonakis, *Transformational and Charismatic Leadership*, in THE NATURE OF LEADERSHIP, *supra* note 12, at 256, 276 (noting that charismatic leaders “are good storytellers”); Conger, *supra* note 156, at 92 (noting that the “most effective persuaders” are those who “supplement numerical data with examples, stories, metaphors, and analogies”); see also CHIP HEATH & DAN HEATH, MADE TO STICK: WHY SOME IDEAS SURVIVE AND OTHERS DIE 17-18 (2007) (noting the effectiveness of stories and concrete images in prompting audiences to remember and act on key ideas).

text in dense, list-like formats rather than relying on visually compelling images.<sup>170</sup>

Whatever the setting, humor tailored to the occasion can be highly effective.<sup>171</sup> President Bill Clinton was a master of this strategy. At one point in his presidency, after his wife had taken enormous criticism for her role in healthcare reform and the Whitewater real estate scandal, President Clinton opened his Gridiron Dinner speech before Washington journalists and politicians by expressing regret: “The First Lady is sorry she can’t be with you tonight,” he told them.<sup>172</sup> “If you believe that, I’ve got some land in Arkansas I’d like to sell you.”<sup>173</sup> Self-deprecating humor can be particularly effective. In commenting on the conventional advice to speakers to “[b]e yourself,” TED Talk curator Ted Anderson, quoting Salman Khan, notes that “[t]he one exception to that is if you are arrogant and self-centered. Then you should definitely pretend to be someone else.”<sup>174</sup> It is also important to gauge the audience’s interest in the speaker’s own experience. “Park your ego,” advises Anderson.<sup>175</sup> Overly self-referential material can leave captive audience members feeling like the P.G. Wodehouse character: “The Agee woman told us for three quarters of an hour how she came to write her beastly book, when a simple apology was all that was required . . .”<sup>176</sup>

Leaders also need to know their forum and adapt their style accordingly. One of the great strengths of President Obama was that he could be a “multilingual . . . shape shifter” who adjusted his “accent and cadences depending on the audience: a more straight-up delivery for a luncheon of businesspeople in the [Chicago] Loop; a folksier approach at . . . downstate [rallies]; echoes of the pastors of the black church when he was in one.”<sup>177</sup> Martin Luther King, Jr. had the same gift—the sense of when “to quote Tillich and [when] to quote the blues.”<sup>178</sup>

Brevity is one of the best and most underutilized ways to maximize impact. Part of the reason is that it forces speakers to be self-disciplined. When

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170. See ANDERSON, *supra* note 168, at 117; CLIFF ATKINSON, BEYOND BULLET POINTS: USING MICROSOFT OFFICE® POWERPOINT® 2007 TO CREATE PRESENTATIONS THAT INFORM, MOTIVATE, AND INSPIRE 19 (2008).

171. ANDERSON, *supra* note 168, at 54.

172. ‘Hillary Gump’ a Hit at Washington’s Gridiron Club Dinner, N.Y. TIMES (Mar. 27, 1995), <https://nyti.ms/2pgg5FG>.

173. *Id.*

174. ANDERSON, *supra* note 168, at 57.

175. *Id.* (capitalization altered).

176. P.G. WODEHOUSE, THE GIRL IN BLUE 100-01 (1971).

177. REMNICK, *supra* note 159, at 18.

178. *Id.*

asked how long it took him to prepare a speech, President Woodrow Wilson responded: “It depends. If I am to speak ten minutes, I need a week for preparation; if fifteen minutes, three days; if half an hour, two days; if an hour, I am ready now.”<sup>179</sup> Brief eloquence is particularly likely to be memorable. President Lincoln’s Gettysburg Address was just over two minutes long.<sup>180</sup> The speaker before him had “droned on for 2 hours.”<sup>181</sup>

Another key leadership strategy involves innovation. Former Chief of Staff of the U.S. Army Eric Shinseki observed that “[i]f you don’t like change, you’re going to like irrelevance a lot less.”<sup>182</sup> Any successful organization or movement needs to adapt to social, political, economic, and technological developments. Leadership behavior is a key driver of innovation.<sup>183</sup> Although leaders need not themselves be the source of innovative ideas, they do need to foster a culture that anticipates change and prepares accordingly. As management expert Marshall Goldsmith famously observed, “what got you here won’t get you there.”<sup>184</sup>

Experts identify three primary stages in which leaders can guide change:

1. identifying a need and rallying people behind it;
2. developing a strategy and enlisting support; and
3. evaluating and institutionalizing progress.<sup>185</sup>

The initial phase requires overcoming inertia and creating a compelling vision for the future.<sup>186</sup> According to John Kotter, a professor at Harvard

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179. RESPECTFULLY QUOTED: A DICTIONARY OF QUOTATIONS REQUESTED FROM THE CONGRESSIONAL RESEARCH SERVICE 244 (Suzy Platt ed., 1989).

180. ANDERSON, *supra* note 168, at 154.

181. *Id.*

182. See Peter J. Boyer, *A Different War: Is the Army Becoming Irrelevant?*, NEW YORKER (July 1, 2002), <http://www.newyorker.com/magazine/2002/07/01/a-different-war>.

183. DAVID MAGELLAN HORTH & JONATHAN VE HAR, CTR. FOR CREATIVE LEADERSHIP, INNOVATION: HOW LEADERSHIP MAKES THE DIFFERENCE 2 (2015) (describing leaders’ role in fostering innovation).

184. MARSHALL GOLDSMITH WITH MARK REITER, WHAT GOT YOU HERE WON’T GET YOU THERE (2007) (formatting altered).

185. See STEPHEN P. ROBBINS & TIMOTHY A. JUDGE, ORGANIZATIONAL BEHAVIOR 625 (13th ed. 2009) (describing organizational change as a three-step process of “unfreezing the status quo, movement to a desired end state, and refreezing the new change to make it permanent” (emphasis omitted)); see also John P. Kotter, *Making Change Happen*, in LEADER TO LEADER: ENDURING INSIGHTS ON LEADERSHIP FROM THE DRUCKER FOUNDATION’S AWARD-WINNING JOURNAL 69, 70-71 (Frances Hesselbein & Paul M. Cohen eds., 1999) (describing eight steps to transform an organization that essentially track those mentioned above).

186. John P. Kotter, *Leading Change: Why Transformation Efforts Fail*, HARV. BUS. REV., Mar.-Apr. 1995, at 1, 3; Peter M. Senge, *The Practice of Innovation*, in LEADER TO LEADER: ENDURING INSIGHTS ON LEADERSHIP FROM THE DRUCKER FOUNDATION’S AWARD-WINNING JOURNAL, *supra* note 185, at 57, 62.

Business School, most transformation efforts fail at this stage, in part because leaders underestimate how hard it can be to drive people out of their comfort zones and overestimate how successful they have been in creating a sense of urgency.<sup>187</sup> The tendency is to say, “Enough with the preliminaries; let’s get on with it.”<sup>188</sup> To avoid these pitfalls, leaders must understand the obstacles to change in their own organizations. In some contexts, the problem involves the curse of homogeneity: too many insiders are drinking the same Kool-Aid or have too much personal investment in outdated strategies.<sup>189</sup> To counteract these tendencies, leaders can identify looming problems or opportunities and build coalitions to propose appropriate responses. An inclusive process is critical. Getting buy-in from key participants at an early stage can help minimize opposition later.<sup>190</sup> Reaching people on an emotional level through direct experience, compelling stories, and visual images can often create the urgency that inspires action.<sup>191</sup>

The second stage of organizational change involves developing a strategy for implementation and enlisting others in its support.<sup>192</sup> That requires effectively communicating the mission, removing obstacles to its realization, encouraging innovation, and prioritizing popular improvements that can lay foundations for broader transformations.<sup>193</sup> Where people are the problem, leaders can seek ways to address their concerns or work around resisters. Transformative change generally requires dedication and creativity, which can be enlisted but not coerced.<sup>194</sup> Finding areas of agreement, identifying what will not change, and stressing benefits from a new approach can all be critical. The typical reason people oppose change is that it threatens their status, power, autonomy, competence, comfort, or job security.<sup>195</sup> Leaders can allay such

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187. See JOHN P. KOTTER, *LEADING CHANGE* 51 (2012).

188. *Cf. id.*

189. See PETER FIRESTEIN, *CRISIS OF CHARACTER: BUILDING CORPORATE REPUTATION IN THE AGE OF SKEPTICISM* 133 (2009).

190. See ROBERT M. GATES, *A PASSION FOR LEADERSHIP: LESSONS ON CHANGE AND REFORM FROM FIFTY YEARS OF PUBLIC SERVICE* 63 (2016); MARK GERZON, *LEADING THROUGH CONFLICT: HOW SUCCESSFUL LEADERS TRANSFORM DIFFERENCES INTO OPPORTUNITIES* 209 (2006); ROBBINS & JUDGE, *supra* note 185, at 623-24; John P. Kotter & Leonard A. Schlesinger, *Choosing Strategies for Change*, *HARV. BUS. REV.*, Mar.-Apr. 1979, at 106, 109.

191. HEATH & HEATH, *supra* note 169, at 17-18.

192. Kotter, *supra* note 185, at 70.

193. *Id.* at 70-71.

194. See John P. Kotter, *Successful Change and the Force That Drives It*, in *LEADING ORGANIZATIONS: PERSPECTIVES FOR A NEW ERA*, *supra* note 12, at 458, 465.

195. ROBBINS & JUDGE, *supra* note 185, at 623; Kotter & Schlesinger, *supra* note 190, at 107; see LARINA KASE, *THE CONFIDENT LEADER: HOW THE MOST SUCCESSFUL PEOPLE GO FROM EFFECTIVE TO EXCEPTIONAL* 11 (2009).

concerns by proactively helping employees adapt, retool, or find other assignments or positions.<sup>196</sup>

The third stage involves assessing and consolidating change.<sup>197</sup> Here, the key is identifying the right time and metrics to evaluate progress. Premature assessment can stifle innovation. “[P]ulling up the radishes to see how they’re growing” defeats the enterprise.<sup>198</sup> Leaders ultimately will be judged less by their broad visions than by their actual accomplishments. In this final stage of change, leaders need to institutionalize what works, create systems and reward structures that reinforce progress, and look for ways to continue reinvigorating the process.<sup>199</sup> Declaring victory too soon kills momentum and empowers resisters; if leaders abdicate or delegate responsibility prematurely, it sends a signal that the project was just the flavor of the month and not a sustainable goal.<sup>200</sup>

## II. Developing Leadership

Leadership development involves two aspects: first, helping individual leaders acquire key capabilities and, second, creating “learning organizations” with structures that facilitate the process.<sup>201</sup> Leaders who are rated as exceptional performers are constantly seeking to improve and looking for developmental opportunities.<sup>202</sup> How people learn to be learners varies considerably. What improves learning ability depends on the individual and the particular qualities at issue. Reading, discussion, observation, coaching, and mentoring can all be valuable, and lawyers need to seek out the formal and informal learning structures that work best for them.<sup>203</sup> As a general matter,

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196. CROSBY & BRYSON, *supra* note 130, at 335.

197. Kotter, *supra* note 185, at 71.

198. Senge, *supra* note 186, at 64.

199. *See* Kotter, *supra* note 185, at 71.

200. *See* KOTTER, *supra* note 187, at 150-51; PATRICK J. MCKENNA & DAVID H. MAISTER, *FIRST AMONG EQUALS: HOW TO MANAGE A GROUP OF PROFESSIONALS* 127 (2002).

201. *See* PETER M. SENGE, *THE FIFTH DISCIPLINE: THE ART AND PRACTICE OF THE LEARNING ORGANIZATION* 3-4 (1990). David Day similarly distinguishes between leader development and leadership development; the latter focuses on system design and interaction between the individual and the social and organizational environment. *See* David V. Day, *Leadership Development: A Review in Context*, 11 *LEADERSHIP Q.* 581, 584 (2000).

202. *See* ZENGER & FOLKMAN, *supra* note 19, at 104-05; *see also* CSIKSZENTMIHALYI, *supra* note 23, at 162 (describing the importance of setting goals and persevering in their pursuit).

203. *See* GILL, *supra* note 21, at 275 (noting that some people learn best by reading and others by listening and that some learn best alone and others in groups); DOUG LENNICK & FRED KIEL, *MORAL INTELLIGENCE: ENHANCING BUSINESS PERFORMANCE AND LEADERSHIP SUCCESS* 239-40 (2008) (arguing that individuals should understand their ideal selves and their real selves and seek ways to reduce the gap between the two and build on

*footnote continued on next page*

experience is the most common and effective teacher, but it can also be the most expensive.<sup>204</sup> The costs of on-the-job learning are well illustrated by a story about Tom Watson, then-Chairman of IBM. An up-and-coming employee involved the company in a risky venture that proved financially disastrous. When Watson called the man into his office, he offered his resignation. Watson reportedly responded, “You can’t be serious. We’ve just spent \$10 million educating you!”<sup>205</sup>

Not all aspiring leaders are as fortunate, and the goal of leadership development is to help them avoid errors that can sabotage careers. Experience alone is not sufficient. As Mark Twain famously observed, “a cat that sits on a hot stove will not sit on a hot stove again, but it won’t sit on a cold one either.”<sup>206</sup> What is needed is reflection on experience: a capacity to learn from mistakes and to build on such knowledge in future action. Such learning is a lifelong process. It should begin early in legal education and receive continuous reinforcement in legal workplaces.

The discussion that follows begins by exploring obstacles to leadership development, including the pressures of work, the inadequacy of feedback, and skepticism about the value of “soft” interpersonal skills. Analysis then turns to learning strategies for individuals and some of the cognitive biases that impair decisionmaking. A final Subpart addresses organizational initiatives, including strategies for providing feedback, mentoring, and programmatic evaluation.

#### A. Obstacles to Leadership Development

Not all leaders recognize the need for leadership development and for the candid criticism on which it depends. “If we are honest,” notes John Maxwell in *The Leadership Handbook*, “we’ll admit that the toughest person to lead is ourselves.”<sup>207</sup> The problem is compounded by the environments in which leaders function. They often face constant and complex challenges in an ever-changing environment. As one Deputy Attorney General put it: “If you don’t

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their strengths); Peter F. Drucker, *Managing Oneself*, HARV. BUS. REV., Mar.-Apr. 1999, at 65, 68-69 (emphasizing the need for individuals to be proactive in shaping their own development strategies).

204. Virtually all managing partners report learning leadership skills on the job. See *Leadership Partners or Managing Partners?*, LAW OFF. MGMT. & ADMIN. REP., Oct. 2010, at 1, 6.

205. CAROL TAVRIS & ELLIOT ARONSON, MISTAKES WERE MADE (BUT NOT BY ME): WHY WE JUSTIFY FOOLISH BELIEFS, BAD DECISIONS, AND HURTFUL ACTS 225 (2007) (quoting WARREN BENNIS & BURT NANUS, LEADERS: STRATEGIES FOR TAKING CHARGE 70 (rev. ed. 1997)).

206. See NYE, *supra* note 15, at 24.

207. JOHN C. MAXWELL, THE LEADERSHIP HANDBOOK: 26 CRITICAL LESSONS EVERY LEADER NEEDS 13 (2008).

like an issue before you, wait fifteen minutes . . . [and] somebody will give you a new one.”<sup>208</sup> The pace and pressure of work frequently crowd out space for sustained reflection and efforts to do things differently.<sup>209</sup> In the nonprofit sector, with its fierce competition for scarce resources, leaders may be so focused simply on survival that they have little opportunity to attend to anything else.<sup>210</sup>

Moreover, subordinates are understandably unwilling to deliver uncomfortable messages to those who prefer not to hear them.<sup>211</sup> Researchers James Kouzes and Barry Posner put it bluntly: “[M]ost leaders don’t want honest feedback, don’t ask for honest feedback, and don’t get much of it unless it’s forced on them.”<sup>212</sup> In their survey of some 70,000 individuals, the least frequent of some thirty leadership behaviors was a request by a leader “for feedback on how his/her actions affect other people’s performance.”<sup>213</sup> Lawyers who lead do not appear to be an exception. Indeed, some research suggests that lawyers score low on personality traits of resiliency, which means that they tend to be defensive and resistant to negative feedback.<sup>214</sup> Most legal workplaces do not institutionalize assessments from subordinates. In one survey, only 23% of law firm associates were either permitted or required to evaluate their supervising attorneys and of those associates who engaged in the process, only 9% reported a change for the better.<sup>215</sup>

Yet without feedback, leaders may fail to identify problems in their own performance. The self-serving bias noted earlier encourages them to attribute successes to factors such as competence and character while attributing failures to external circumstances.<sup>216</sup> A related problem stems from confirmation bias.

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208. See ELIZABETH VRATO, *THE COUNSELORS: CONVERSATIONS WITH 18 COURAGEOUS WOMEN WHO HAVE CHANGED THE WORLD* 51 (2002) (quoting Jamie Gorelick, Deputy Att’y Gen., U.S. Dep’t of Justice).

209. DIANE REINHOLD ET AL., *CTR. FOR CREATIVE LEADERSHIP, MAKE LEARNING STICK: BEST PRACTICES TO GET THE MOST OUT OF LEADERSHIP DEVELOPMENT* 1 (2015).

210. Sarah Smith Orr, *Soul-Based Leadership: The Confluence of Ideals, Concepts, and Action*, in *IMPROVING LEADERSHIP IN NONPROFIT ORGANIZATIONS*, *supra* note 101, at 267, 269-70.

211. For examples, see ROBERT JACKALL, *MORAL MAZES: THE WORLD OF CORPORATE MANAGERS* 118 (1988).

212. JAMES M. KOUZES & BARRY Z. POSNER, *A LEADER’S LEGACY* 28 (2006).

213. *Id.*

214. Larry Richard, *Herding Cats: The Lawyer Personality Revealed*, REP. TO LEGAL MGMT., Aug. 2002, at 1, 9.

215. NALP FOUND. FOR LAW CAREER RESEARCH & EDUC., *HOW ASSOCIATE EVALUATIONS MEASURE UP: A NATIONAL STUDY OF ASSOCIATE PERFORMANCE ASSESSMENTS* 73-74 (2006).

216. For the classic description, see Lee Ross, *The Intuitive Psychologist and His Shortcomings: Distortions in the Attribution Process*, in *10 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 173, 181-82 (Leonard Berkowitz ed., 1977).

Leaders tend to seek out evidence that confirms a favorable view of themselves and avoid evidence that contradicts it.<sup>217</sup> The prerogatives that accompany leadership may also inflate self-importance and self-confidence. The result is to encourage what psychologists label the “uniqueness bias”: people’s belief that they are special and superior.<sup>218</sup> In one survey, 70% of students thought they were above average in “leadership ability”; just 2% thought they were below average.<sup>219</sup>

A further obstacle to leadership development is the assumption that it is a “touchy-feely” process, unworthy of attention from intellectually sophisticated lawyers. That assumption is reinforced by the uneven and unproven quality of most leadership programs and publications. There are almost no barriers to entry in the leadership industry, and little systematic research on program effectiveness is available.<sup>220</sup> What research does exist paints a sobering portrait. In a recent survey, only about one-third of leaders described their organization’s development initiatives as effective.<sup>221</sup> “Leadership lite” literature features countless classics of dubious value, such as *Leadership Secrets of Attila the Hun*<sup>222</sup> and *Toy Box Leadership: Leadership Lessons from the Toys You Loved as a Child*.<sup>223</sup> Moreover, by training and temperament, most lawyers prefer learning focused on analytic rather than noncognitive skills.<sup>224</sup> Lawyers rank lower than the general population on interpersonal skills and tend to devalue their significance.<sup>225</sup> Yet precisely because of these tendencies, lawyers

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217. For discussion of such biases, see THOMAS J. PETERS & ROBERT H. WATERMAN, JR., IN SEARCH OF EXCELLENCE: LESSONS FROM AMERICA’S BEST-RUN COMPANIES 58 (1982); and Leary Davis, *Competence as Situationally Appropriate Conduct: An Overarching Concept for Lawyering, Leadership, and Professionalism*, 52 SANTA CLARA L. REV. 725, 764 (2012).

218. George R. Goethals et al., *The Uniqueness Bias: Studies of Constructive Social Comparison, in SOCIAL COMPARISON: CONTEMPORARY THEORY AND RESEARCH* 149, 149-54 (Jerry Suls & Thomas Ashby Wills eds., 1991).

219. David G. Myers, *How Do I Love Me?: Let Me Count the Ways*, PSYCHOL. TODAY, May 1980, at 16, 16 (quoting DAVID G. MYERS, *THE INFLATED SELF: HUMAN ILLUSIONS AND THE BIBLICAL CALL TO HOPE* 24 (1980)).

220. See KELLERMAN, *supra* note 16, at 180; PFEFFER, *supra* note 109, at 22; Cynthia D. McCauley, Ctr. for Creative Leadership, *Leader Development: A Review of Research* 23-49 (2008); see also Day, *supra* note 201, at 600, 603; Pierre Gurdjian et al., *Why Leadership-Development Programs Fail*, MCKINSEY Q., Jan. 2014, at 1, 1-2.

221. Canaday, *supra* note 4.

222. WESS ROBERTS, *LEADERSHIP SECRETS OF ATTILA THE HUN* (1987).

223. RON HUNTER JR. & MICHAEL E. WADDELL, *TOY BOX LEADERSHIP: LEADERSHIP LESSONS FROM THE TOYS YOU LOVED AS A CHILD* (2008).

224. See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1349, 1392-93 (1997).

225. Richard, *supra* note 214, at 4, 9; Douglas B. Richardson & Douglas P. Coopersmith, *Learning to Lead*, AM. LAW., July 2008, at 57, 57-58; see also Daicoff, *supra* note 224, at footnote continued on next page

need to develop their “emotional intelligence.”<sup>226</sup> For many, “the soft stuff is the hard stuff.”<sup>227</sup>

A final set of obstacles involves organizational failures. As noted earlier, overcommitted supervisors are often reluctant to invest the time in mentoring others, planning an appropriate sequence of developmental opportunities, or taking risks in giving inexperienced employees the new responsibilities that would best expand their competence.<sup>228</sup> Far too few efforts are made to track the effectiveness of various workplace strategies.<sup>229</sup> Developing leadership requires leadership, and it is not always forthcoming.<sup>230</sup>

### B. Learning Strategies

A comprehensive approach to leadership development should include formal programs during and after law school, together with a variety of workplace initiatives. There are, of course, limits to what can be taught effectively in academic settings, particularly to students with limited work experience. But many skills relevant to leadership not only *can* be taught, they *are* being taught—just not intentionally—in classrooms as well as workplaces.<sup>231</sup> Professors and supervisors model ethical values, interpersonal qualities, techniques of communication and influence, and treatment of subordinates. And they establish institutional priorities, policies, and reward structures. These processes would be more effective if they were more mindful and more informed by research on leadership. In both academic and workplace settings, individuals can prepare for challenges they will face as leaders through exposure to that research, case studies, examples, exercises, and guided

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1392-94 (noting lawyers’ orientation toward logical analysis rather than interpersonal skills).

226. For an overview of emotional intelligence, see Susan Swaim Daicoff, *Expanding the Lawyer’s Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 840-42 (2012). See generally GOLEMAN ET AL., *supra* note 24.

227. Leider, *supra* note 35, at 189 (capitalization altered).

228. See *supra* text accompanying notes 144-52 (discussing coaching).

229. For a discussion of the inadequacy of research on the effectiveness of workplace strategies concerning leadership development, see KELLERMAN, *supra* note 16, at 180, 183-84.

230. For the need for leaders’ involvement in promoting leadership development, see HUMPHREY, *supra* note 24, at 389; and Morgan W. McCall Jr., *The Experience Conundrum*, in HANDBOOK OF LEADERSHIP THEORY AND PRACTICE: AN HBS CENTENNIAL COLLOQUIUM ON ADVANCING LEADERSHIP, *supra* note 27, at 679, 699.

231. See Marshall Ganz & Emily S. Lin, *Learning to Lead: A Pedagogy of Practice*, in THE HANDBOOK FOR TEACHING LEADERSHIP: KNOWING, DOING, AND BEING 353, 365 (Scot Snook et al. eds., 2012).

reflection.<sup>232</sup> Law schools and continuing legal education could also focus more attention on skills crucial to leadership, such as decisionmaking, problem-solving, teamwork, organizational dynamics, and conflict management.<sup>233</sup>

So, for example, attention to decisionmaking can make lawyers more aware of the cognitive limitations and biases that get in their way. Many lawyers understate what Herbert Simon has called “bounded rationality”: the way that normal information processing and limitations of time can skew judgments.<sup>234</sup> In our casebook on leadership for lawyers, Amanda Packel and I identify common biases, including:

- *Confirmation bias*: “We are most likely to seek out, recall, and value information that supports our preexisting beliefs and preferences.”<sup>235</sup>
- *Overconfidence*: “We think we know more than we do about how the future will unfold. In Kahneman’s phrase, we have an ‘almost unlimited ability to ignore our ignorance.’”<sup>236</sup>
- *Optimism*: “We overestimate the likelihood of positive events and our own capabilities.”<sup>237</sup>
- *Anchoring*: “We root our decisions and estimates in an initial value and fail to make appropriate adjustments.”<sup>238</sup>
- *Hindsight bias*: “We revise the history of our beliefs in light of what actually happened; in hindsight, we exaggerate what could have been anticipated in foresight.”<sup>239</sup>
- *Outcome bias*: “We assess the quality of a decision not by whether the process was sound but by whether the outcome was favorable.”<sup>240</sup>

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232. NYE, *supra* note 15, at 24; see KOUZES & POSNER, *supra* note 54, at 117, 121; see also Jay A. Conger, *Leadership Development Interventions: Ensuring a Return on the Investment*, in HANDBOOK OF LEADERSHIP THEORY AND PRACTICE: AN HBS CENTENNIAL COLLOQUIUM ON ADVANCING LEADERSHIP, *supra* note 27, at 709, 714 (discussing leaders who communicate the meaning of their organizations’ work). For examples of teaching approaches, see generally THE HANDBOOK FOR TEACHING LEADERSHIP: KNOWING, DOING, AND BEING, *supra* note 231.

233. For examples of teaching materials, see generally LAW AND LEADERSHIP: INTEGRATING LEADERSHIP STUDIES INTO THE LAW SCHOOL CURRICULUM, *supra* note 94; and RHODE & PACKEL, *supra* note 43.

234. See generally Herbert A. Simon, *Bounded Rationality and Organizational Learning*, 2 ORG. SCI. 125 (1991).

235. RHODE & PACKEL, *supra* note 126 (manuscript at 7).

236. *Id.* (quoting DANIEL KAHNEMAN, THINKING, FAST AND SLOW 201 (2011)).

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

- *Availability bias*: We overvalue information that is vivid, emotionally charged, and based on direct experience.<sup>241</sup>
- *Loss aversion*: We feel losses more acutely than gains of the same amount, which makes us more risk-averse than a rational calculation would dictate.<sup>242</sup>
- *Self-serving attribution bias*: “We accept too little responsibility for our failures and attribute them to external causes, while taking too much credit for successes and attributing them to internal explanations, such as our own merits.”<sup>243</sup>
- *Status quo bias*: “We prefer the status quo to change.”<sup>244</sup>
- *Sunk cost fallacy*: “We consider historical costs that are not recoverable when considering future courses of action.”<sup>245</sup>
- *Escalation of commitment*: “We continue to invest in losing propositions, partly to justify the time, effort and resources already invested.”<sup>246</sup>

Not only are decisionmakers subject to these cognitive biases, they are also subject to cognitive constraints. One such constraint is, in the words of Donald Rumsfeld, the set of “unknown unknowns,” the things leaders do not know that they do not know.<sup>247</sup> Some of these biases are particularly pronounced for leaders. The experience of power amplifies overoptimism and overconfidence; it heightens leaders’ sense of control and decreases their willingness to take advice.<sup>248</sup> Making lawyers more aware of these tendencies is key to improving their decisionmaking.

To become effective learners both during and after law school, individuals also need to think strategically about their goals, capabilities, and needs.<sup>249</sup> They should act on their aspirations and seek experiences, positions, mentoring, pro bono opportunities, and “stretch assignments” that develop

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241. *Id.* (manuscript at 5-6).

242. *Id.* (manuscript at 7).

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. See David A. Graham, *Rumsfeld’s Knowns and Unknowns: The Intellectual History of a Quip*, ATLANTIC (Mar. 27, 2014), <https://www.theatlantic.com/politics/archive/2014/03/rumsfelds-knowns-and-unknowns-the-intellectual-history-of-a-quip/359719>.

248. Leigh Plunkett Tost et al., *Power, Competitiveness, and Advice Taking: Why the Powerful Don’t Listen*, 117 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 53, 54 (2012).

249. See Lisa A. Boyce et al., *Propensity for Self-Development of Leadership Attributes: Understanding, Predicting, and Supporting Performance of Leader Self-Development*, 21 LEADERSHIP Q. 159, 161 (2010).

leadership skills.<sup>250</sup> To be successful, learners also need “grit”—a combination of passion and perseverance that is more important than innate talent in accounting for outstanding performance.<sup>251</sup> Exceptional performers are those who constantly seek to improve and look for developmental opportunities outside their comfort zones.<sup>252</sup> The prominent Wall Street lawyer Arthur Liman recalled that early in his career, the New York District Attorney Robert M. Morgenthau invited him to run a special unit prosecuting securities fraud. Liman raised concerns that he “knew almost nothing about stocks, let alone stock fraud. [Liman] had never studied securities law at Yale nor ever so much as read the federal securities statutes.”<sup>253</sup> “But Arthur,” Morgenthau reassured him, “neither have the crooks.”<sup>254</sup> Sometimes lawyers have to seize an opportunity even if the timing or their qualifications are not ideal. Barack Obama did just that in 2008, when he ran for President despite his concerns about his relative lack of experience and his two small children.<sup>255</sup> As Obama strategist David Axelrod put it, “usually the politician chooses the moment, [but] sometimes the moment chooses the politician.”<sup>256</sup>

High levels of responsibility and pressure often provide the best learning experiences.<sup>257</sup> Mentorship is also important; large-scale surveys find that a key factor in professional success is finding someone interested in your

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250. See *id.* at 162; Linda A. Hill, *Developing the Star Performer*, in LEADER TO LEADER: ENDURING INSIGHTS ON LEADERSHIP FROM THE DRUCKER FOUNDATION'S AWARD-WINNING JOURNAL, *supra* note 185, at 287, 296; Douglas A. Ready et al., *Are You a High Potential?*, HARV. BUS. REV., June 2010, at 78, 82; see also WILLIAM A. COHEN, DRUCKER ON LEADERSHIP: NEW LESSONS FROM THE FATHER OF MODERN MANAGEMENT 139-40 (2010) (discussing such opportunities); Day, *supra* note 201, at 587-601 (discussing personal strategies of leadership development); John P. Kotter, *What Leaders Really Do*, HARV. BUS. REV., May-June 1990, at 103, 103 (noting that those with leadership potential should “expose them[selves] to career experiences designed to develop that potential”); Sheri-Lynne Leskiw & Parbudyal Singh, *Leadership Development: Learning from Best Practices*, 28 LEADERSHIP & ORG. DEV. J. 444, 450-54 (2007) (discussing the ways in which organizations can foster these behaviors). For a discussion of the importance of stretch assignments generally, see JAMES M. KOUZES & BARRY Z. POSNER, LEARNING LEADERSHIP: THE FIVE FUNDAMENTALS OF BECOMING AN EXEMPLARY LEADER 104, 143-44 (2016); and Day, *supra* note 201, at 598.

251. ANGELA DUCKWORTH, GRIT: THE POWER OF PASSION AND PERSEVERANCE 8 (2016); KOUZES & POSNER, *supra* note 250, at 122-23.

252. ZENGER & FOLKMAN, *supra* note 19, at 103-08.

253. ARTHUR L. LIMAN WITH PETER ISRAEL, LAWYER: A LIFE OF COUNSEL AND CONTROVERSY 35 (1998).

254. *Id.*

255. See REMNICK, *supra* note 159, at 457, 460-62.

256. See David Remnick, *The Joshua Generation: Race and the Campaign of Barack Obama*, NEW YORKER (Nov. 17, 2008), <http://www.newyorker.com/magazine/2008/11/17/the-joshua-generation>.

257. See McCall, *supra* note 230, at 682-85.

development.<sup>258</sup> Another factor is a focus on learning rather than performance goals; individuals who are intent on learning how to improve their performance-related skills are more effective than those who are intent on demonstrating them.<sup>259</sup> Aspiring leaders should worry less about the number of mistakes they make and more about the number of times they make the same the mistake or avoid admitting it.<sup>260</sup> Even failures can be instructive; the key is to “crash and learn,” not “crash and burn.”<sup>261</sup>

### C. Organizational Initiatives

Lawyers need to focus not only on their own learning processes but also on creating learning opportunities for others. This involves sharing credit, control, and ownership of organizational objectives and establishing structures that foster leadership skills. Too many current leadership development programs offer only episodic instruction that is removed from actual workplace challenges and that fails to provide adequate evaluation and follow-up.<sup>262</sup> Successful initiatives, by contrast, require identification of clear goals and competencies as well as continuing reinforcement, mentoring, and accountability for improvement.<sup>263</sup> The limited research available suggests that a combination of coaching, classroom instruction, multisource feedback, and experiential training is most likely to improve individual and organiza-

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258. KOUZES & POSNER, *supra* note 250, at 144. For a discussion of the importance of mentoring, see Frank Dobbin & Alexandra Kalev, *The Architecture of Inclusion: Evidence from Corporate Diversity Programs*, 30 HARV. J.L. & GENDER 279, 295 (2007) (noting the importance of mentoring initiatives for minority women); and Frank Dobbin et al., *Diversity Management in Corporate America*, CONTEXTS, Fall 2007, at 21, 21, 24 (showing the strong positive impact of mentorship on management diversity). See also *supra* text accompanying notes 149-54.

259. See, e.g., CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS 15 (2006) (contrasting “a fixed ability that needs to be proven” with “a changeable ability that can be developed through learning”); see also HUMPHREY, *supra* note 24, at 389 (noting that learning-goal orientation results in greater achievement than performance-goal orientation and suggesting that lawyers can create a climate that supports learning goals).

260. MAXWELL, *supra* note 207, at 107.

261. MICHELE COLEMAN MAYES & KARA SOPHIA BAYSINGER, COURAGEOUS COUNSEL: CONVERSATIONS WITH WOMEN GENERAL COUNSEL IN THE FORTUNE 500, at 122 (2011) (quoting Richard St. John).

262. Michael Beer et al., *Why Leadership Training Fails—and What to Do About It*, HARV. BUS. REV., Oct. 2016, at 50, 52-53; Gurdjian et al., *supra* note 220, at 2-3; Harrison Monarth, *Evaluate Your Leadership Development Program*, HARV. BUS. REV. (Jan. 22, 2015), <https://hbr.org/2015/01/evaluate-your-leadership-development-program>.

263. REINHOLD ET AL., *supra* note 209, at 7, 10; see also Sydney Finkelstein, *Why We Loathe Leadership Training: Of Course We Want to Move Ahead, but What’s the Point?*, BBC (July 20, 2016), <http://www.bbc.com/capital/story/20160719-why-we-loathe-leadership-training> (stressing the need to customize programs and monitor progress).

tional performance.<sup>264</sup> Many individuals will profit most from “self-development” strategies, such as tailored on-the-job assignments, coaching, and mentoring.<sup>265</sup> As experts often emphasize, the more elevated the position, the more important it is to solicit feedback because candid criticism is unlikely to be volunteered by subordinates.<sup>266</sup> The feedback can come in varying forms in both educational and workplace settings and can include objective measures of performance such as top-down, bottom-up, and 360-degree evaluations.<sup>267</sup>

However, such initiatives need to be carefully designed. One meta-analysis found that most feedback resulted in no effect (in 15% of cases) or a negative effect (in 40% of cases) on performance, and other research shows similarly sobering results.<sup>268</sup> As the discussion in Part III below indicates, evaluations of women and lawyers of color are too often plagued by vague or biased assessments.<sup>269</sup> To be successful, leaders need to structure candid dialogue that involves active listening and mutual problem-solving.<sup>270</sup> Best practices for feedback include:

- making sure that the person in need of coaching is ready to hear it and that there is sufficient time and privacy for honest conversation;
- providing support and encouragement as well as criticism and emphasizing positive, not just negative, behaviors;
- helping individuals identify the causes of their problems and ways that they can improve to achieve their maximum potential;

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264. Brett Seidle et al., *Do Leadership Training and Development Make a Difference in the Public Sector?: A Panel Study*, 76 PUB. ADMIN. REV. 603, 611 (2016).

265. David V. Day et al., *Advances in Leader and Leadership Development: A Review of 25 Years of Research and Theory*, 25 LEADERSHIP Q. 63, 68, 70 (2014); see also George T. “Buck” Lewis & Douglas A. Blaze, *Training Leaders the Very Best Way We Can*, 83 TENN. L. REV. 771, 788-89 (2016) (suggesting that the bar should provide more opportunities for development of leadership skills and habits, as well as opportunities for colleagues and mentors to monitor these capabilities).

266. See LENNICK & KIEHL, *supra* note 203, at 97.

267. See GILL, *supra* note 21, at 275-77; Day et al., *supra* note 265, at 70; Day, *supra* note 201, at 594. For a discussion of the value of 360-degree evaluations, see Canaday, *supra* note 4. See also ZENGER & FOLKMAN, *supra* note 19, at 169-70.

268. David V. Day, *The Nature of Leadership Development*, in THE NATURE OF LEADERSHIP, *supra* note 12, at 108, 124; cf. James W. Smither et al., *Does Performance Improve Following Multisource Feedback?: A Theoretical Model, Meta-Analysis and Review of Empirical Findings*, 58 PERSONNEL PSYCHOL. 33, 42 (2005) (noting that effect sizes for all types of feedback were positive but that “the magnitude of improvement was very small”).

269. See *infra* text accompanying notes 309-20.

270. See Cynthia M. Phoel, *Feedback That Works*, HARV. MGMT. UPDATE, Sept. 2006, at 3, 3. See generally DOUGLAS STONE ET AL., *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (1999) (describing strategies for difficult conversations such as avoiding defensiveness, paying attention to what is not said, and responding to attacks and accusations).

- presenting specific and recent examples and giving the other person a full opportunity to respond, explain, and correct any misperceptions;
- developing a joint action plan, which includes specific performance goals and ways of helping the other person attain them; and
- expressing confidence in the individual's ability to improve.<sup>271</sup>

In short, the feedback should be honest, specific, straightforward, and “problem-oriented” rather than “person-oriented.” It should generally target behavior rather than personal characteristics.<sup>272</sup>

Mentoring programs should provide training in how to give such feedback and should also ensure rewards for participation and systematic evaluation of effectiveness.<sup>273</sup> As the discussion below indicates, these programs are particularly crucial for women and lawyers of color and these individuals need not just mentors (who are advisors) but also sponsors (who are advocates).<sup>274</sup> Leaders also can benefit from professional coaching that supplies a level of candor and expert evaluation, which may be unavailable from other sources.<sup>275</sup> Diverse networks are especially useful in getting lawyers out of their own echo chambers and in touch with individuals in similar positions who can supply advice and innovative ideas.<sup>276</sup>

Finally, organizations need to monitor the effectiveness of various developmental strategies, make such assessments publicly available, and hold themselves accountable for the results. We urgently need better evidence about how and what to teach.<sup>277</sup> Virtually no systematic research is available concerning the long-term effectiveness of leadership courses in law or other professional and business schools.<sup>278</sup> Demanding such information and

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271. For similar lists, see MCKENNA & MAISTER, *supra* note 200, at 115; and ROBERT E. QUINN ET AL., *BECOMING A MASTER MANAGER: A COMPETING VALUES APPROACH* 62 tbl.M1.4 (5th ed. 2011).

272. See KIM CAMERON, *PRACTICING POSITIVE LEADERSHIP: TOOLS AND TECHNIQUES THAT CREATE EXTRAORDINARY RESULTS* 85 (2013).

273. See Lisa M. Finkelstein & Mark L. Poteet, *Best Practices in Workplace Formal Mentoring Programs*, in *THE BLACKWELL HANDBOOK OF MENTORING: A MULTIPLE PERSPECTIVES APPROACH* 345, 356 (Tammy D. Allen & Lillian T. Eby eds., 2007).

274. SYLVIA ANN HEWLETT, (FORGET A MENTOR) FIND A SPONSOR: THE NEW WAY TO FAST-TRACK YOUR CAREER 22-23 (2013); see *infra* Part III.B.

275. See Day, *supra* note 201, at 590-91; Day, *supra* note 268, at 124.

276. See HERMINIA IBARRA, *ACT LIKE A LEADER, THINK LIKE A LEADER* 90 (2015).

277. KELLERMAN, *supra* note 16, at 184.

278. For example, in the most prominent handbook for teaching leadership, almost no articles include data on effectiveness. See generally *THE HANDBOOK FOR TEACHING LEADERSHIP: KNOWING, DOING, AND BEING*, *supra* note 231. The few that do include data rely on selective self-reports, such as self-serving excerpts from favorable student evaluations. See, e.g., Bill George, *Authentic Leadership Development*, in *THE HANDBOOK FOR TEACHING LEADERSHIP: KNOWING, DOING, AND BEING*, *supra* note 231, at 313, 322-23.

institutionalizing successful leadership initiatives is the ultimate act of leadership.

### III. Diversity in Leadership

As I recently observed in *Women and Leadership*:

One irony of this nation's continuing struggle for diversity and gender equity in employment is that the profession leading the struggle has failed to set an example in its own workplaces. In principle, the bar is deeply committed to equal opportunity and social justice. In practice, it lags behind other occupations . . .<sup>279</sup>

According to the Bureau of Labor Statistics, the law is one of the nation's least diverse professions; medicine, accounting, academia, and others do considerably better.<sup>280</sup>

Women constitute over one-third of the legal profession but only 18% of law firm equity partners and 24% of general counsel of Fortune 500 corporations.<sup>281</sup> Studies find that men are two to five times more likely to make partner than women and that gaps persist even controlling for other factors, including law school grades and time spent out of the workforce or on part-time schedules.<sup>282</sup> Even women who never reduce their labor force

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279. RHODE, *WOMEN AND LEADERSHIP*, *supra* note 151, at 76 (footnote omitted). The discussion in this Part generally draws from two of the Author's works. See RHODE, *supra* note 148, at 60-86; RHODE, *WOMEN AND LEADERSHIP*, *supra* note 151, at 76-94.

280. See Deborah L. Rhode, *Law Is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That*, WASH. POST (May 27, 2015), [http://wapo.st/1LHfQWe?tid=ss\\_tw](http://wapo.st/1LHfQWe?tid=ss_tw). For instance, in 2010, 88% of lawyers in the United States were white. Am. Bar Ass'n, *Lawyer Demographics: Year 2015* (2015), [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/lawyer-demographics-tables-2015.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2015.authcheckdam.pdf).

281. For data on partners, see Lauren Stiller Rikleen, Nat'l Ass'n of Women Lawyers, *Women Lawyers Continue to Lag Behind Male Colleagues: Report of the Ninth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms 5* (2015); and *Women and Minorities Maintain Representation Among Equity Partners, Broad Disparities Remain*, NALP BULL. (Mar. 2016), <http://www.nalp.org/0316research>. For data on general counsel, see Lydia Lum, *Women as General Counsel: Progress in Spite of Disparities and Disadvantages*, DIVERSITY & B., Nov.-Dec. 2015, at 18, 18.

282. See RONIT DINOVIETZ ET AL., AM. BAR FOUND. & NALP FOUND. FOR LAW CAREER RESEARCH & EDUC., *AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 63* (2009) (finding that women attained equity partner status at less than half the rate of men at large firms); U.S. EQUAL EMP'T OPPORTUNITY COMM'N, *DIVERSITY IN LAW FIRMS 29-30* (2003), <https://www.eeoc.gov/eeoc/statistics/reports/diversitylaw/lawfirms.pdf> (finding male lawyers five times as likely to make partner as female lawyers). For studies controlling for various other factors, see Theresa M. Beiner, *Not All Lawyers Are Equal: Difficulties That Plague Women and Women of Color*, 58 SYRACUSE L. REV. 317, 328 (2008); and Mary C. Noonan et al., *Is the Partnership Gap Closing for Women?: Cohort Differences in the Sex Gap in Partnership Chances*, 37 SOC. SCI. RES. 156, 174-75 (2008).

participation and work long hours have a lower chance of partnership than similarly situated men.<sup>283</sup> The situation is bleakest at the highest levels. Only 15 out of 143 chairs and managing partners at the one hundred largest firms are female.<sup>284</sup>

Lawyers of color are also underrepresented. Although they have composed at least 20% of law school graduating classes for over a decade, they account for just 15% of the profession and 7% of equity partners.<sup>285</sup> Only around 20-30% of black, Hispanic, and Asian lawyers at large law firms have reached the partnership level, compared with 50% of white attorneys.<sup>286</sup> Just 2% of equity partners are women of color.<sup>287</sup> Few lawyers of color have served in leadership roles.<sup>288</sup>

What accounts for these patterns is subject to dispute. Although many leaders concede the persistence of bias in society in general, they are less likely to see it in their own institutions or to believe that they are failing to address it. In Catalyst's national survey, only 11% of white lawyers, compared with almost 46% of women lawyers of color, felt that diversity efforts were not addressing subtle racial bias.<sup>289</sup> Only 15% of white men, compared with 50% of

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283. See Kenneth G. Dau-Schmidt et al., *Men and Women of the Bar: The Impact of Gender on Legal Careers*, 16 MICH. J. GENDER & L. 49, 96-97, 100-02, 107, 111-12 (2009); Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 ANNALS AM. ACAD. POL. & SOC. SCI. 130, 142 & tbl.5 (2004).

284. See Jake Simpson, *Only 12 BigLaw Firms Have Women Running the Show*, LAW360 (Apr. 21, 2015, 6:21 PM EDT), <http://www.law360.com/articles/645840/only-12-biglaw-firms-have-women-running-the-show>.

285. Jacqueline Bell, *US Law Firms Fail to Move Needle on Racial Diversity*, LAW360 (May 15, 2016, 10:14 AM EDT), <https://www.law360.com/articles/794900/us-law-firms-fail-to-move-needle-on-racial-diversity>; Gavin Broady, *Diversity Gap a Growing Threat to BigLaw Bottom Lines*, LAW360 (May 19, 2015, 8:58 PM EDT), <http://www.law360.com/articles/657593/diversity-gap-a-growing-threat-to-biglaw-bottom-lines>; see also *Women and Minorities Maintain Representation Among Equity Partners, Broad Disparities Remain*, *supra* note 281. For data on the percentage of students of color at law schools, see Cristina Violante, *The Top 50 Firms for Minority Equity Partners*, LAW360 (May 15, 2016, 10:16 AM EDT), <https://www.law360.com/articles/794902/the-top-50-firms-for-minority-equity-partners>.

286. Jake Simpson, *2015 Law360 Minority Report*, LAW360 (May 19, 2015, 9:22 PM EDT), <https://www.law360.com/articles/657725/2015-law360-minority-report>.

287. VAULT & MINORITY CORP. COUNSEL ASS'N, 2016 VAULT/MCCA LAW FIRM DIVERSITY SURVEY REPORT 23 tbl.1 (2016), <http://www.vault.com/images/pdf/downloads/VaultMCCALawFirmDiversitySurvey2016Report.pdf> (showing that women of color make up 2.43% of equity partners).

288. See Veronica Root, *Retaining Color*, 47 U. MICH. J.L. REFORM 575, 633 (2014).

289. DEEPALI BAGATI, CATALYST, WOMEN OF COLOR IN U.S. LAW FIRMS: WOMEN OF COLOR IN PROFESSIONAL SERVICES SERIES 13 fig.5 (2009), [http://www.catalyst.org/system/files/Women\\_of\\_Color\\_in\\_U.S.\\_Law\\_Firms.pdf](http://www.catalyst.org/system/files/Women_of_Color_in_U.S._Law_Firms.pdf).

women of color and 41% of white women, felt that diversity efforts were failing to address subtle gender bias.<sup>290</sup>

A common view among bar leaders is that racial, ethnic, and gender differences in lawyers' career paths are primarily attributable to differences in capabilities, commitment, and availability.<sup>291</sup> In my own survey of managing partners at large firms and general counsel at Fortune 100 companies, most blamed the underrepresentation of lawyers of color on the limited pool and fierce competition for qualified candidates.<sup>292</sup> By contrast, the underrepresentation of women is more commonly attributed to women's choices and commitment. Because of their disproportionate family responsibilities, female attorneys are reportedly more likely to reduce their schedules, take time out of the workforce, and lack the credentials that could propel them into leadership positions.<sup>293</sup>

Such explanations capture a partial truth, but they underestimate the role of other factors—such as unconscious stereotypes, in-group bias, and workplace structures—in limiting leadership opportunities. Lawyers who are committed to a just and inclusive workplace need a better understanding of all the obstacles that get in the way.

#### A. Racial, Ethnic, and Gender Stereotypes

Racial, ethnic, and gender stereotypes play a well-documented, often unconscious, role in American culture, and legal workplaces are no exception. The stereotypes vary across groups. For example, African Americans and Latinos bump up against assumptions that they are less qualified and are beneficiaries of affirmative action rather than meritocratic selection.<sup>294</sup> Black

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290. *Id.* at 13 fig.6.

291. See John M. Conley, *Tales of Diversity: Lawyers' Narratives of Racial Equity in Private Firms*, 31 LAW & SOC. INQUIRY 831, 841-42, 851 (2006) (describing how law firm attorneys deny the possibility of bias).

292. Deborah L. Rhode & Lucy Buford Ricca, *Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel*, 83 FORDHAM L. REV. 2483, 2492-93 (2015).

293. See RHODE, WOMEN AND LEADERSHIP, *supra* note 151, at 78-79; *infra* text accompanying notes 345-46.

294. See MARIA CHÁVEZ, EVERYDAY INJUSTICE: LATINO PROFESSIONALS AND RACISM 72 (2011); JILL L. CRUZ & MELINDA S. MOLINA, COMM'N ON THE STATUS OF LATINAS IN THE PROFESSION, HISPANIC NAT'L BAR ASS'N, NATIONAL STUDY ON THE STATUS OF LATINAS IN THE LEGAL PROFESSION: FEW AND FAR BETWEEN; THE REALITY OF LATINA LAWYERS 35-36 (2009), <http://hnba.com/wp-content/uploads/2015/06/few-far-between.pdf>; see also Lu-in Wang, *Race as Proxy: Situational Racism and Self-Fulfilling Stereotypes*, 53 DEPAUL L. REV. 1013, 1013-14 (2004) (describing how race can act as a proxy for negative personal characteristics).

attorneys who are assertive risk being viewed as angry or hostile.<sup>295</sup> Asian Americans are saddled with the myth of the “model minority”: they are thought to be smart and hardworking but insufficiently assertive to command the confidence of clients and legal teams.<sup>296</sup> The special stigma confronting women of color is apparent in the frequency with which they are still mistaken for secretaries, court reporters, or interpreters.<sup>297</sup>

The persistence of unconscious bias emerged clearly in a recent study by a consulting firm.<sup>298</sup> Its authors inserted twenty-two errors into a legal memorandum and gave it to sixty law firm partners for evaluation: half of the partners were told that the memo’s author was African American; the other half were told that the author was white.<sup>299</sup> The partners gave the memorandum attributed to the white man a rating of 4.1 on a scale of 5 and gave a rating to the African American of 3.2.<sup>300</sup> While the white man received praise for his potential and analytical skills, the African American was said to be “average at best” and in need of “lots of work.”<sup>301</sup>

Even the outstanding capabilities of a lawyer of color may do little to dislodge traditional stereotypes. Psychologists refer to this as the “flower blooming in winter” effect.<sup>302</sup> A classic example is the description Senator

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295. See ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 25; cf. Garner Weng, *Racial Bias in Law Practice*, CAL. LAW., Jan. 2003, at 37, 38 (describing negative stereotypes associated with African American attorneys).

296. Mona Mehta Stone, *Asian American Lawyers: Differences Abound*, in INST. FOR INCLUSION IN THE LEGAL PROFESSION, IIP REVIEW 2011: THE STATE OF DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION 76, 80 (2011); Vivian Chen, *Where Are the Asian-American Partners?*, AM. LAW. (Mar. 14, 2017), <http://at.law.com/FqSU9x>; see ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 25; BAGATI, *supra* note 289, at 37; LeeAnn O’Neill, *Hitting the Legal Diversity Market Home: Minority Women Strike Out*, MOD. AM., Spring 2007, at 7, 9; see also Sonia Ospina & Erica Foldy, *A Critical Review of Race and Ethnicity in the Leadership Literature: Surfacing Context, Power and the Collective Dimensions of Leadership*, 20 LEADERSHIP Q. 876, 880 (2009).

297. ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 18; see CRUZ & MOLINA, *supra* note 294, at 35-36 (describing clients’ initial perceptions of Latina attorneys); Gladys García-López, “*Nunca Te Toman en Cuenta [They Never Take You into Account]*”: *The Challenges of Inclusion and Strategies for Success of Chicana Attorneys*, 22 GENDER & SOC’Y 590, 601-03 (2008); O’Neill, *supra* note 296, at 8.

298. Arin N. Reeves, *Nextions, Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills* (2014), [http://www.nextions.com/wp-content/files\\_mf/14468226472014040114WritteninBlackandWhiteYPS.pdf](http://www.nextions.com/wp-content/files_mf/14468226472014040114WritteninBlackandWhiteYPS.pdf).

299. *Id.*

300. *Id.*

301. *Id.*

302. ELLA L.J. EDMONDSON BELL & STELLA M. NKOMO, *OUR SEPARATE WAYS: BLACK AND WHITE WOMEN AND THE STRUGGLE FOR PROFESSIONAL IDENTITY* 145 (2001). Like the unexpected bloom during the cold season, which is assumed to be an aberration, the

*footnote continued on next page*

Joseph Biden offered of Barack Obama during the 2008 presidential campaign: “the first mainstream African-American who is articulate and bright and clean and a nice-looking guy.”<sup>303</sup> Although the exceptional lawyer of color gets a special boost, others aspiring to leadership status remain trapped by conventional biases.

Gender stereotypes also subject women to double standards and a double bind. Despite recent progress, women, like racial minorities, often fail to receive the presumption of competence enjoyed by white men.<sup>304</sup> Studies of performance evaluations find that similar descriptions of work result in lower ratings for women than for men.<sup>305</sup> In one survey, female attorneys at a Wall Street law firm received more positive comments than their male counterparts but were less than half as likely to be mentioned as potential partner material.<sup>306</sup> Women, particularly women of color, also receive less latitude for mistakes.<sup>307</sup> As one African American attorney put it: “There is no room for error.”<sup>308</sup> That, in turn, may make lawyers reluctant to seek risky “stretch assignments” that would demonstrate outstanding capabilities.

Biased assumptions about lawyers’ commitment or competence can also affect performance evaluations and the allocation of work. Mothers, even those working full-time, are assumed to be less available and committed, an

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unexpected outstanding performance of racial or ethnic minorities leaves undisturbed the general assumptions about their abilities.

303. See Lynette Clemetson, *The Racial Politics of Speaking Well*, N.Y. TIMES (Feb. 4, 2007), <https://nyti.ms/2jZo9VB>.
304. For a discussion of the presumption of competence, see Cecilia L. Ridgeway & Paula England, *Sociological Approaches to Sex Discrimination in Employment*, in *SEX DISCRIMINATION IN THE WORKPLACE: MULTIDISCIPLINARY PERSPECTIVES* 189, 195 (Faye J. Crosby et al. eds., 2007); and Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 *FORDHAM L. REV.* 2245, 2256 (2010). For analysis of women’s need to work harder, see María Pabón López, *The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing Current Trends*, 19 *HASTINGS WOMEN’S L.J.* 53, 73 (2008). For a discussion of the special pressures faced by women of color, see García-López, *supra* note 297, at 598, 603-04.
305. Monica Biernat et al., *The Language of Performance Evaluations: Gender-Based Shifts in Content and Consistency of Judgment*, 3 *SOC. PSYCHOL. & PERSONALITY SCI.* 186, 188 (2012).
306. *Women in the Workplace: A Research Roundup*, *HARV. BUS. REV.*, Sept. 2013, at 86, 89.
307. See ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 25; Robin J. Ely et al., *Taking Gender into Account: Theory and Design for Women’s Leadership Development Programs*, 10 *ACAD. MGMT. LEARNING & EDUC.* 474, 477 (2011).
308. ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 25 (“Black associates . . . have one chance[,], and if you mess up that chance, look out.” (first alteration in original)); see JOAN C. WILLIAMS & RACHEL DEMPSEY, *WHAT WORKS FOR WOMEN AT WORK: FOUR PATTERNS WORKING WOMEN NEED TO KNOW* 248 (2014).

assumption not made about fathers.<sup>309</sup> In one representative study, almost three-quarters of female lawyers reported that their career commitment had been questioned when they gave birth or adopted a child.<sup>310</sup> Only 9% of their white male colleagues and 15% of their minority male colleagues had faced similar challenges.<sup>311</sup> Such assumptions about commitment can prevent women and minorities from getting opportunities that would demonstrate or enhance their capabilities, which creates a cycle of self-fulfilling prophecies.<sup>312</sup> Paradoxically, individuals who believe that they or their organizations are fair and meritocratic are more likely to exhibit bias.<sup>313</sup> Their confidence makes them less likely to examine their behavior for possible prejudice or worry that they will be held accountable for it.<sup>314</sup>

Women also receive lower ratings than men on qualities associated with leadership, such as assertiveness, competitiveness, and business literacy.<sup>315</sup> Even though women are more likely to use effective leadership styles, both men and women more readily credit men with leadership ability and more readily accept men as leaders.<sup>316</sup> Women also get vaguer evaluations than men

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309. See Amy J.C. Cuddy et al., *When Professionals Become Mothers, Warmth Doesn't Cut the Ice*, 60 J. SOC. ISSUES 701, 713 (2004) (describing how working mothers are criticized for being too uninvolved at home while working fathers are praised for their family involvement); Kathleen Fuegen et al., *Mothers and Fathers in the Workplace: How Gender and Parental Status Influence Judgments of Job-Related Competence*, 60 J. SOC. ISSUES 737, 745 (2004) (describing the results of a study of job applicants in which parents were perceived as less committed to employment than nonparents, with fathers judged more leniently than mothers).
310. ABA COMM'N ON WOMEN IN THE PROFESSION, *supra* note 149, at 33.
311. *Id.* at 33-34.
312. See, e.g., Joan C. Williams & Veta Richardson, *New Millennium, Same Glass Ceiling?: The Impact of Law Firm Compensation Systems on Women*, 62 HASTINGS L.J. 597, 644 (2011) (discussing unequal participation in client pitches).
313. Emilio J. Castilla & Stephen Benard, *The Paradox of Meritocracy in Organizations*, 55 ADMIN. SCI. Q. 543, 547, 567-68 (2010).
314. *Id.* at 567-68.
315. See CATALYST, WOMEN "TAKE CARE," MEN "TAKE CHARGE:" STEREOTYPING OF U.S. BUSINESS LEADERS EXPOSED 1, 19 (2005), [http://www.catalyst.org/system/files/Women\\_Take\\_Care\\_Men\\_Take\\_Charge\\_Stereotyping\\_of\\_U.S.\\_Business\\_Leaders\\_Exposed.pdf](http://www.catalyst.org/system/files/Women_Take_Care_Men_Take_Charge_Stereotyping_of_U.S._Business_Leaders_Exposed.pdf); Linda L. Carli & Alice H. Eagly, *Overcoming Resistance to Women Leaders: The Importance of Leadership Styles*, in WOMEN AND LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE 127, 127-29 (Barbara Kellerman & Deborah L. Rhode eds., 2007); Deborah L. Rhode & Barbara Kellerman, *Women and Leadership: The State of Play*, in WOMEN AND LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE, *supra*, at 1, 7; Wald, *supra* note 304, at 2256.
316. Carli & Eagly, *supra* note 315, at 128-29; Alice H. Eagly, *Female Leadership Advantage and Disadvantage: Resolving the Contradictions*, 31 PSYCHOL. WOMEN Q. 1, 5, 9 (2007); Laurie A. Rudman & Stephen E. Kilianski, *Implicit and Explicit Attitudes Toward Female Authority*, 26 PERSONALITY & SOC. PSYCHOL. BULL. 1315, 1325 (2000).

and as a result lack specific guidance about what is necessary for advancement to leadership levels.<sup>317</sup>

Similarly, as the discussion above noted, women are penalized for adopting authoritative styles, and what is assertive in a man may seem abrasive in a woman.<sup>318</sup> Female leaders accordingly risk seeming too feminine or not feminine enough. They may appear either too “soft” or too “strident”—either unable to make tough decisions or too pushy and arrogant to command respect.<sup>319</sup> One study of performance reviews found that three-quarters of criticisms for being “too aggressive” occurred in evaluations of women.<sup>320</sup> Brooksley Born, now widely acclaimed for her efforts to regulate high-risk derivatives while Chair of the Commodity Futures Trading Commission, was dismissed at the time as “abrasive,” “strident,” and a “lightweight wacko.”<sup>321</sup> During the 2008 presidential campaign, Michelle Obama was criticized as “angry,” “abrasive,” and not a First Lady Americans were “ready” for.<sup>322</sup> Hillary Clinton has been subject to even more vitriolic descriptions: “castrating,” “Hitlerian,” and “Feminazi.”<sup>323</sup> Vendors at Trump rallies and the Republican National Convention sold Hillary nutcrackers and buttons stating: “Life’s a Bitch—don’t vote for one.”<sup>324</sup> Trump himself denounced Clinton as “shrill” and

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317. Shelley Correll & Caroline Simard, *Research: Vague Feedback Is Holding Women Back*, HARV. BUS. REV. (Apr. 29, 2016), <https://hbr.org/2016/04/research-vague-feedback-is-holding-women-back>.

318. See *supra* text accompanying note 121.

319. LINDA BABCOCK & SARA LASCHEVER, WOMEN DON’T ASK: NEGOTIATION AND THE GENDER DIVIDE 87-89 (2003); CATALYST, THE DOUBLE-BIND DILEMMA FOR WOMEN IN LEADERSHIP: DAMNED IF YOU DO, DOOMED IF YOU DON’T 14 (2007), [http://www.catalyst.org/system/files/The\\_Double\\_Bind\\_Dilemma\\_for\\_Women\\_in\\_Leadership\\_Damned\\_if\\_You\\_Do\\_Doomed\\_if\\_You\\_Dont.pdf](http://www.catalyst.org/system/files/The_Double_Bind_Dilemma_for_Women_in_Leadership_Damned_if_You_Do_Doomed_if_You_Dont.pdf); MAYES & BAYSINGER, *supra* note 261, at 131; Alice H. Eagly & Steven J. Karau, *Role Congruity Theory of Prejudice Toward Female Leaders*, 109 PSYCHOL. REV. 573, 578 (2002); see also Alice H. Eagly, *Achieving Relational Authenticity in Leadership: Does Gender Matter?*, 16 LEADERSHIP Q. 459, 470 (2005) (“[I]n the United States, women have changed over time, to incorporate more masculinity in both their behavior and their self-concepts.”).

320. Correll & Simard, *supra* note 317.

321. See MICHAEL HIRSH, CAPITAL OFFENSE: HOW WASHINGTON’S WISE MEN TURNED AMERICA’S FUTURE OVER TO WALL STREET 1, 12 (2010); Rick Schmitt, *Prophet and Loss*, STAN. MAG. (Mar./Apr. 2009), [https://alumni.stanford.edu/get/page/magazine/article/?article\\_id=30885](https://alumni.stanford.edu/get/page/magazine/article/?article_id=30885).

322. See Amy Davidson, *Mrs. Obama*, NEW YORKER, Jan. 2, 2017, at 17, 17.

323. See Katha Pollitt, *Hillary Rotten: Sexist Sticks and Stones*, in THIRTY WAYS OF LOOKING AT HILLARY: REFLECTIONS BY WOMEN WRITERS 16, 16-17 (Susan Morrison ed., 2008).

324. Michelle Cottle, *The Era of ‘the Bitch’ Is Coming: A Hillary Clinton Presidential Victory Promises to Usher in a New Age of Public Misogyny*, ATLANTIC (Aug. 17, 2016), <https://www.theatlantic.com/politics/archive/2016/08/the-era-of-the-bitch-is-coming/496154/>; see Jill Filipovic, *What’s with Hillary’s Woman Problem? Feminists Want More than the White House Now—and That’s Trouble for the First Female Nominee*, POLITICO MAG. (Sept./Oct. 2016), <http://politi.co/2ca9ELh>; Adele M. Stan, *Ivanka Trump Is Evidence of*  
*footnote continued on next page*

“nasty” and claimed that “if she were a man and she was the way she is[,] she would get virtually no votes.”<sup>325</sup> This prompted a response by *New York Times* columnist Gail Collins: “Do not ask yourself how many votes Donald Trump would get if he were a woman and he was the way he is. Truly, you don’t want to go there.”<sup>326</sup> In commenting on barriers to women seeking leadership positions, Clinton herself observed that “sexism is maybe less pronounced, less obvious, but it is still prevalent.”<sup>327</sup> She also noted that “there still is a double standard, there’s no doubt about that. . . . And it does make running for office for a woman a bigger challenge.”<sup>328</sup>

### B. In-Group Bias

A related set of obstacles involves in-group favoritism: the preferences that individuals feel for members of their own groups. People give loyalty, mentoring, sponsorship, favorable evaluations, desirable assignments, and both business development and leadership opportunities to individuals who are similar to themselves in important respects, including gender, race, and ethnicity.<sup>329</sup> In law firms, attorneys of color often report isolation and marginalization,<sup>330</sup> while many white women similarly experience exclusion

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*Her Father’s Misogyny*, AM. PROSPECT (July 22, 2016), <http://prospect.org/article/ivanka-trump-evidence-her-father%E2%80%99s-misogyny>.

325. Amy Chozick & Trip Gabriel, *Democrats See Gains as Donald Trump Targets a Wife*, N.Y. TIMES (Mar. 25, 2016), <https://nyti.ms/1q6Fq2s>; Gail Collins, Opinion, *Trump Deals the Woman Card*, N.Y. TIMES (Apr. 28, 2016), <https://nyti.ms/1VDPfSI>; Alan Rappeport, *Who Won the Debate?: Hillary Clinton, the ‘Nasty Woman,’* N.Y. TIMES (Oct. 20, 2016), <https://nyti.ms/2enLe3o>.

326. Collins, *supra* note 325.

327. See JAY NEWTON-SMALL, BROAD INFLUENCE: HOW WOMEN ARE CHANGING THE WAY AMERICA WORKS 77 (2016).

328. See Jay Newton-Small, *Exclusive: Hillary Clinton on Running and Governing as a Woman*, TIME (Jan. 6, 2016), <http://ti.me/1mB24Om>.

329. For discussions of problems regarding in-group bias in legal mentoring, see Fiona M. Kay & Jean E. Wallace, *Mentors as Social Capital: Gender, Mentors, and Career Rewards in Law Practice*, 79 SOC. INQUIRY 418, 419, 444-45 (2009), which describes ways in which women benefit less than men from mentoring relationships, and Cindy A. Schipani et al., *Pathways for Women to Obtain Positions of Organizational Leadership: The Significance of Mentoring and Networking*, 16 DUKE J. GENDER L. & POL’Y 89, 120, 124 (2009), which discusses women’s disadvantages in obtaining access to mentors. For background material regarding in-group bias and stereotyping generally, see Marilyn B. Brewer & Rupert J. Brown, *Intergroup Relations*, in 2 THE HANDBOOK OF SOCIAL PSYCHOLOGY 554, 559 (Daniel T. Gilbert et al. eds., 4th ed. 1998); and Susan T. Fiske, *Stereotyping, Prejudice, and Discrimination*, in 2 THE HANDBOOK OF SOCIAL PSYCHOLOGY, *supra*, at 357, 364, 370.

330. See ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 18; see also David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms?: An Institutional Analysis*, 84 CALIF. L. REV. 493, 497 (1996) (describing obstacles faced by African American lawyers in large law firms).

from “old boys” networks.<sup>331</sup> In an ABA survey, 62% of women of color, but only 4% of white men, felt excluded from formal and informal networking opportunities.<sup>332</sup>

Part of the problem lies in numbers. Many organizations lack enough women and lawyers of color at senior levels who can assist others on the way up.<sup>333</sup> Moreover, some recent research suggests that women and minorities who advocate for members of their own groups are often penalized in performance reviews, a dynamic that may discourage such support.<sup>334</sup> Biased assumptions about women’s and minorities’ commitment and capabilities may also keep potential mentors from investing in female or minority subordinates who seem unlikely to stay or to succeed.<sup>335</sup>

Although a growing number of organizations have formal mentoring programs, these programs do not always supply adequate training, rewards, or oversight to ensure effectiveness.<sup>336</sup> When busy mentors take a “call me if you need me” approach, subordinates may feel uncomfortable asking for assistance. In one ABA study, two-thirds of women of color and over half of white women and men of color would have liked better mentoring.<sup>337</sup> As participants in that study also noted, female mentors may have “good intentions” but are already pressed with competing work and family obligations or “don’t have a lot of power” and so “can’t really help.”<sup>338</sup> Concerns about the appearance of sexual harassment or sexual affairs discourage some men from forming mentoring relationships

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331. See Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEX. J. WOMEN & L. 27, 65 (2004); Williams & Richardson, *supra* note 312, at 611, 638, 644, 649; Timothy L. O’Brien, *Up the Down Staircase*, N.Y. TIMES (Mar. 19, 2006), <https://nyti.ms/2mBWLzs>.

332. ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 35; see also Jill Schachner Chanen, *Early Exits*, A.B.A. J. (Aug. 6, 2006, 4:42 PM CDT), [http://www.abajournal.com:80/magazine/article/early\\_exits](http://www.abajournal.com:80/magazine/article/early_exits) (reporting that 43.5% of women attorneys of color reported “missing out on desirable assignments because of race or gender” compared to 1.9% of white men).

333. See *supra* text accompanying notes 281-88 (discussing the underrepresentation of women and minorities at leadership levels).

334. See David R. Hekman et al., *Does Diversity-Valuing Behavior Result in Diminished Performance Ratings for Non-White and Female Leaders?*, 60 ACAD. MGMT. J. 771, 772, 780 (2017); Rachel Feintzeig, *Women Penalized for Promoting Women, Study Finds*, WALL ST. J. (July 21, 2014, 9:58 AM ET), <http://on.wsj.com/1o07rEc>.

335. See ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 15-16; Monique R. Payne-Pikus et al., *Experiencing Discrimination: Race and Retention in America’s Largest Law Firms*, 44 LAW & SOC’Y REV. 553, 576 (2010).

336. See Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041, 1071 & nn.202-03, 1072 & nn.204-08 (2011) (collecting studies and other sources).

337. Chanen, *supra* note 332.

338. ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 14.

with junior women.<sup>339</sup> Discomfort concerning issues of race and ethnicity is equally problematic.<sup>340</sup> Minority protégés may be reluctant to raise issues of bias with white mentors for fear of seeming oversensitive. Those mentors may, in turn, be reluctant to offer candid feedback to lawyers of color for fear of seeming racially biased or of encouraging them to leave. This “protective hesitation” can jeopardize career development.<sup>341</sup> The result is that lawyers of color can find themselves “blindsided by soft evaluations”: “[Y]our skills aren’t what they are supposed to be, but you didn’t know because no one ever told you.”<sup>342</sup>

In-group favoritism is also apparent in the allocation of work and client development opportunities. Many organizations operate with informal systems that channel seemingly talented junior lawyers (disproportionately white men) to leadership tracks, relegating others to “workhorse” positions.<sup>343</sup> In one ABA study, 44% of women of color, 39% of white women, and 25% of minority men reported being passed over for desirable assignments; only 2% of white men noted similar experiences.<sup>344</sup> Other research similarly finds that women and minorities are often left out of pitches for client business.<sup>345</sup> What women get instead is a disproportionate share of “housekeeping” tasks, such as committee and administrative work, which yields little opportunity for leadership development.<sup>346</sup>

Lawyers of color are also subject to “race matching”: they receive certain work because of their identity, not their interests, in order to create the right “look” in courtrooms, client presentations, and recruiting and marketing

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339. ABA COMM’N ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 16 (2001); SYLVIA ANN HEWLETT ET AL., CTR. FOR WORK-LIFE POLICY, THE SPONSOR EFFECT: BREAKING THROUGH THE LAST GLASS CEILING 35 (2010).

340. See, e.g., Payne-Pikus et al., *supra* note 335, at 561.

341. Correll & Simard, *supra* note 317; David A. Thomas, *Race Matters: The Truth About Mentoring Minorities*, HARV. BUS. REV., Apr. 2001, at 98, 105.

342. ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 27; see also Julie Triedman, *The Diversity Crisis: Big Firms’ Continuing Failure*, AM. LAW. (May 29, 2014), <http://www.americanlawyer.com/id=1202656372552/The-Diversity-Crisis-Big-Firms-Continuing-Failure?slreturn=20170214005823> (describing how unconscious biases and structural impediments in the workplace impair lawyers of color).

343. ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 21.

344. *Id.*

345. See, e.g., Williams & Richardson, *supra* note 312, at 644 (describing women’s exclusion and noting that they often “have to scream to get the attention of marketing professionals at the firm”).

346. See Jennifer Smith, *Female Lawyers Still Battle Gender Bias: Despite Advances, Women Still Lag Behind Men in Billing Rate, Management Roles*, WALL ST. J. (May 4, 2014, 6:03 PM ET), <https://www.wsj.com/articles/female-lawyers-still-battle-gender-bias-1399240826> (noting how women’s disproportionate administrative and nonbillable tasks contribute to the gender gap in billing rates).

efforts.<sup>347</sup> Although this strategy sometimes opens helpful opportunities, it can also place lawyers in what they describe as “mascot” roles in which they are not developing their own professional skills.<sup>348</sup> Linda Mabry, the first minority partner in a San Francisco firm, recounts an example in which she was asked to join a pitch to a company whose general counsel was African American:

When [my colleague] made the pitch about the firm’s relevant expertise, none of which I possessed, it was clear that the only reason I was there was to tout the firm’s diversity, which was practically nonexistent. In that moment I wanted to fling myself through the plate-glass window of that well-appointed conference room . . . .<sup>349</sup>

### C. Workplace Structures

Escalating workplace demands and inflexible workplace structures pose further obstacles to aspiring women leaders. Hourly demands have risen significantly over the last quarter-century, but what has not changed is the number of hours in a day. “Thirty years ago, most partners billed between 1200 and 1400 hours per year[,] and most associates between 1400 and 1600 hours. Many firms today would consider these ranges acceptable only for lawyers who had died partway through the year.”<sup>350</sup> Technology that allows lawyers to work at home makes it increasingly impossible not to. Constant accessibility has become the new norm, with attorneys electronically tethered to their workplaces. The cost is disproportionately borne by women because they are disproportionately likely to assume primary caretaking responsibilities. Despite a significant increase in men’s domestic work, women continue to shoulder the primary burden.<sup>351</sup> It is still women who are most likely to get the phone call that federal District Judge Nancy Gertner received the first week that she ascended the bench: “Mama, there’s no chocolate pudding in my [lunch].”<sup>352</sup> In a survey of young lawyers conducted by the American Bar Foundation and the National Association for Law Placement (NALP)

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347. ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 20, 22; O’Neill, *supra* note 296, at 10.

348. O’Neill, *supra* note 296, at 10; *see also* ABA COMM’N ON WOMEN IN THE PROFESSION, *supra* note 149, at 20-22 (describing how lawyers of color report being given undesirable job assignments and being “pigeonholed” into tasks based on attributes other than their interests).

349. Linda A. Mabry, *The Token*, CAL. LAW., July 2006, at 76, 76.

350. RHODE, *supra* note 148, at 12-13.

351. *See, e.g.*, DEBORAH L. RHODE, WHAT WOMEN WANT: AN AGENDA FOR THE WOMEN’S MOVEMENT 59 (2014) (noting that women spend over twice as much time on care of children as men and over three times as much time on household tasks).

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

Foundation, women were about seven times more likely than men to be working part-time or to be out of the labor force, primarily due to childcare.<sup>353</sup> Research by NALP finds that almost 70% of lawyers working part-time are women.<sup>354</sup> In a study of University of Michigan Law School graduates, only 1% of fathers had taken parental leave, compared with 42% of mothers.<sup>355</sup> Part of the reason for those disparities is that the small number of fathers who become full-time caretakers experience particular penalties. Male lawyers who reduce their schedules or take time out of the labor force suffer even greater financial and promotion consequences than female colleagues who make the same choice.<sup>356</sup>

The problem is compounded by the inadequacy of structural responses. Despite some efforts at accommodation, a wide gap persists between formal policies and actual practices concerning work-life conflicts. Although nearly all major American law firms report policies permitting part-time work, only about 6% of lawyers actually use them.<sup>357</sup> Many lawyers believe, with good reason, that any reduction in hours or availability would jeopardize their careers.<sup>358</sup> Part-time status and time out of the workforce generally result in long-term losses in earnings as well as lower chances for partnership.<sup>359</sup> In the survey of University of Michigan Law School graduates, just a single year out of the workforce correlated with a one-third reduction in women's chances of making partner.<sup>360</sup> Deborah Epstein Henry, President of Flex-Time Lawyers, notes that many law firm leadership tracks are simply too linear and rigid for

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353. DINOVIETZ ET AL., *supra* note 282, at 62.

354. Press Release, Nat'l Ass'n for Law Placement, Rate of Part-Time Work Among Lawyers Drops for Third Year in 2013, Especially Among Women, but Most Working Part-Time Are Women 1, 3 (Feb. 27, 2014), <http://www.nalp.org/uploads/PressReleases/2014ParttimePressRelease2013Stats.pdf>.

355. Noonan & Corcoran, *supra* note 283, at 137, 139 tbl.3.

356. NANCY LEVIT & DOUGLAS O. LINDER, THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW 12-13 (2010); Dau-Schmidt et al., *supra* note 283, at 112-13, 133 n.122.

357. Press Release, Nat'l Ass'n for Law Placement, *supra* note 354, at 1.

358. See Paula A. Patton, *Women Lawyers, Their Status, Influence, and Retention in the Legal Profession*, 11 W.M. & MARY J. WOMEN & L. 173, 180 (2005). For data on lower partnership rates, see MONA HARRINGTON & HELEN HSI, MIT WORKPLACE CTR., WOMEN LAWYERS AND OBSTACLES TO LEADERSHIP: A REPORT OF MIT WORKPLACE CENTER SURVEYS ON COMPARATIVE CAREER DECISIONS AND ATTRITION RATES OF WOMEN AND MEN IN MASSACHUSETTS LAW FIRMS 29 tbl.6(d) (2007), [http://web.mit.edu/workplacecenter/docs/law-report\\_4-07.pdf](http://web.mit.edu/workplacecenter/docs/law-report_4-07.pdf); Beiner, *supra* note 282, at 325; and Dau-Schmidt et al., *supra* note 283, at 97.

359. Beiner, *supra* note 282, at 325-26; see also Dau-Schmidt et al., *supra* note 283, at 95-96 (discussing partnership); David Leonhardt, *Financial Careers Come at a Cost to Families*, N.Y. TIMES (May 26, 2009), <https://nyti.ms/2pkNMPj> (discussing earnings).

360. Noonan & Corcoran, *supra* note 283, at 146.

women with families.<sup>361</sup> Lawyers who temporarily leave the full-time track find that it is “a very unforgiving model that doesn’t allow you back in.”<sup>362</sup>

To avoid such penalties, many women go to extraordinary lengths to demonstrate commitment. The folklore abounds with stories of the “faster than a speeding bullet” maternity leave, or women in hospital delivery rooms drafting documents while timing contractions. If you are billing at six-minute intervals, why waste one? Those who opt for a reduced schedule after parental leave often find that it is not worth the price. Their schedules are not respected, their hours creep up, the quality of their assignments goes down, their pay is not proportional, and they are stigmatized as “slackers.”<sup>363</sup> Even full-time attorneys can experience penalties. A lawyer who missed one meeting to take her child to the emergency room found that for years afterward, that absence figured prominently in assessments of her commitment.<sup>364</sup>

Although bar leaders generally acknowledge the problem of work-life balance, they often place responsibility for addressing it anywhere and everywhere else. In my recent survey of managing partners and general counsel, many commented on the problem:

- “Everyone feels stressed. . . . It’s the profession we’ve chosen.”<sup>365</sup>
- “We run a 24/7 business . . . . We have a difficult and time-committed job.”<sup>366</sup>
- “Clients expect availability twenty-four hours a day.”<sup>367</sup>
- “It’s a real tough [issue]. We do programs on the subject[,] but I’m not sure people have time to attend.”<sup>368</sup>

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361. Erin Coe, *Firm Hierarchies Push Women out the Door*, LAW360 (Apr. 22, 2015, 10:03 PM EDT), <http://www.law360.com/articles/644240/fi>.

362. *Id.* (quoting Deborah Epstein Henry, President, Flex-Time Lawyers LLC).

363. See CYNTHIA THOMAS CALVERT ET AL., PROJECT FOR ATT’Y RETENTION, REDUCED HOURS, FULL SUCCESS: PART-TIME PARTNERS IN U.S. LAW FIRMS 18 (2009), <http://amlawdaily.typepad.com/files/part-timepartner.pdf> (reporting that even among lawyers who have achieved partnership, about 40% feel stigmatized for taking part-time schedules); HOLLY ENGLISH, GENDER ON TRIAL: SEXUAL STEREOTYPES AND WORK/LIFE BALANCE IN THE LEGAL WORKPLACE 212 (2003) (reporting perceptions about slackers); RHODE, WOMEN AND LEADERSHIP, *supra* note 151, at 84; Pabón López, *supra* note 304, at 95.

364. WILLIAMS & DEMPSEY, *supra* note 308, at 134, 135.

365. Rhode & Ricca, *supra* note 292, at 2500 (alteration in original) (quoting Telephone Interview with Susan Blount, Exec. Vice President & Gen. Counsel, Prudential Fin., Inc. (n.d.)).

366. *Id.* (quoting Telephone Interview with Teri McClure, Chief Legal Commc’ns & Compliance Officer & Gen. Counsel, United Parcel Serv., Inc. (July 17, 2004)).

367. *Id.* (quoting unidentified interview participant).

368. *Id.* (first alteration in original) (quoting Telephone Interview with Stephanie Corey, Chief of Staff for Gen. Counsel, Flextronics Int’l Ltd. (July 17, 2014)).

Yet the problems are not as insurmountable as is often assumed. The key issue is responsiveness, and lawyers working reduced or flexible schedules are generally able to provide it.<sup>369</sup> In one survey of part-time partners, most reported that they did not even inform clients of their status and that their schedules were adapted to fit client needs.<sup>370</sup> Moreover, effective work-life policies have substantial benefits in increasing morale, retention, and the pool of potential leaders.<sup>371</sup> Although some leadership positions may be hard to reconcile with substantial family demands, many women could be ready to cycle into those positions as caregiving obligations decrease. The challenge lies in creating workplace structures that make it easier for lawyers of both sexes to have satisfying personal as well as professional lives and ensuring that those who temporarily step out of the workforce or reduce their workload are not permanently derailed by the decision.

#### D. Diversity as a Leadership Imperative

Lawyers who lead have a substantial stake in promoting greater inclusivity within their ranks, and growing numbers recognize as much. As the ABA Presidential Initiative Commission on Diversity noted, “[i]t makes good business sense to hire lawyers who reflect the diversity of citizens, clients, and customers from around the globe.”<sup>372</sup> In my recent survey of managing partners and general counsel, the vast majority of participants viewed diversity as a high priority in their organization, not only because it was the “right thing to do” but also because it was critical to economic success.<sup>373</sup> As one chair put it: “A diverse team is a more effective team; it has a broader base of experience . . . and the client gets a better product.”<sup>374</sup> Another agreed: “We’re in the human capital business. [Diversity is a way to get] the best people and the best decision making.”<sup>375</sup> But as the general counsel of JPMorgan Chase noted, virtually everyone “says it’s a high priority. The issue is whether you are doing

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369. CALVERT ET AL., *supra* note 363, at 22.

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

371. *Id.* at 10-12; LEVIT & LINDER, *supra* note 356, at 170; RHODE, WOMEN AND LEADERSHIP, *supra* note 151, at 86.

372. ABA PRESIDENTIAL INITIATIVE COMM’N ON DIVERSITY, DIVERSITY IN THE LEGAL PROFESSION: THE NEXT STEPS 9 (2010).

373. Rhode & Ricca, *supra* note 292, at 2486-87.

374. *Id.* at 2487 (alteration in original) (quoting Telephone Interview with Guy Halgren, Chair of Exec. Comm., Sheppard, Mullin, Richter & Hampton LLP (July 23, 2014)).

375. *Id.* (alteration in original) (quoting unidentified interview participant).

something about it.”<sup>376</sup> And doing something in a way that does not just encourage the tokenism described earlier.<sup>377</sup>

To ensure equal access to leadership opportunities, organizations need a commitment from their leadership that is reflected in workplace policies and practices.<sup>378</sup> In the words of one general counsel, diversity must remain “a consistent focus,” “incorporate[d] in the ways we do business, as opposed to . . . the next flavor of the month.”<sup>379</sup> Successful approaches frequently involve task forces or committees with diverse and respected members.<sup>380</sup> Women and minorities need to have a critical mass of representation not only on these bodies but also in other key positions such as membership on management committees.<sup>381</sup> Supervisors and heads of practice groups need to be held responsible for their allocation of development opportunities and their performance on diversity-related issues. That performance should be part of self-assessments and bottom-up evaluation structures.<sup>382</sup> If organizations are serious about enhancing equity in leadership, they need to reward and sanction gatekeepers who can make it possible.<sup>383</sup> General counsel similarly need to hold outside firms accountable for their performance on diversity and to terminate relationships with those who fall short.<sup>384</sup>

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376. *Id.* at 2488 (quoting Telephone Interview with Stephen Cutler, Exec. Vice President & Gen. Counsel, JPMorgan Chase & Co. (Aug. 7, 2014)).

377. *See supra* text accompanying notes 347-49.

378. CATALYST, ADVANCING WOMEN IN BUSINESS—THE CATALYST GUIDE: BEST PRACTICES FROM THE CORPORATE LEADERS 6 & fig.1, 12-13 (1998); CATALYST, WOMEN OF COLOR IN CORPORATE MANAGEMENT: THREE YEARS LATER 25-30 (2002); Dobbin et al., *supra* note 258, at 21.

379. Rhode & Ricca, *supra* note 292, at 2493 (alterations in original) (quoting Telephone Interview with Teri McClure, *supra* note 366).

380. JEANINE PRIME ET AL., CATALYST, STRATEGY MATTERS: EVALUATING COMPANY APPROACHES FOR CREATING INCLUSIVE WORKPLACES 6 (2010); Beiner, *supra* note 282, at 333; Dobbin & Kalev, *supra* note 258, at 283.

381. Jake Simpson, *Firms Eyeing Gender Equality Should Adopt Corporate Culture*, LAW360 (Apr. 22, 2014, 6:18 PM EDT), <http://www.law360.com/articles/530686/firms-eyeing-gender-equality-should-adopt-corporate-culture>.

382. BAGATI, *supra* note 289, at 49; JOANNA BARSH & LAREINA YEE, MCKINSEY & CO., UNLOCKING THE FULL POTENTIAL OF WOMEN AT WORK 11 (2012), <http://www.mckinsey.com/~media/McKinsey/Business%20Functions/Organization/Our%20Insights/Unlocking%20the%20full%20potential%20of%20women%20at%20work/Unlocking%20the%20full%20potential%20of%20women%20at%20work.ashx>; Ely et al., *supra* note 307, at 481; Rhode & Kellerman, *supra* note 315, at 27; Ridgeway & England, *supra* note 304, at 202.

383. *See* Dobbin & Kalev, *supra* note 258, at 293-94; Dobbin et al., *supra* note 258, at 23-24.

384. Although a growing number of general counsel ask outside firms for information on diversity, they appear to rarely terminate relationships over the issue or reward firms for outstanding performance. *See* Rhode & Ricca, *supra* note 292, at 2497-98.

Adequate evaluation of these efforts to expand diversity is equally critical.<sup>385</sup> Quantitative and qualitative data are necessary to monitor matters such as advancement, retention, assignments, satisfaction, mentoring, training, and work-family conflicts. As earlier discussion indicated, many organizations have official policies on mentoring and reduced schedules that are ineffective in practice.<sup>386</sup> Almost no systematic information is available about the long-term impact of other diversity initiatives such as bias training, performance bonuses, or affinity networks.<sup>387</sup> Legal organizations need to measure the effectiveness of various strategies and publicly report their findings on an ongoing basis so that others can learn from their successes and stumbles.<sup>388</sup>

Individual lawyers, for their part, need to be clear about their leadership goals, proactive in seeking the experience and sponsorship that will advance them, and effective at navigating the obstacles that stand in the way. So, for example, aspiring female lawyers need to strike the right balance between being too assertive and not being assertive enough.<sup>389</sup> Experts suggest being “relentlessly pleasant” without backing down.<sup>390</sup> Strategies include expressing appreciation and concern, invoking common interests, emphasizing others’ goals as well as one’s own, and taking a problem-solving rather than a critical stance.<sup>391</sup> Women and lawyers of color need to “[s]how up” and “[s]peak up” in contexts that can build their networks of support.<sup>392</sup> Aspiring leaders also need

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385. See, e.g., ABA PRESIDENTIAL INITIATIVE COMM’N ON DIVERSITY, *supra* note 372, at 23 (recommending that organizations establish virtual resources for people to “post concerns, issues, solutions, and success stories regarding diversity and pipeline programs”).

386. See *supra* text accompanying notes 336-42, 350-56.

387. See Rhode & Ricca, *supra* note 292, at 2495, 2497. For a survey of the limited and mixed research available, largely outside the legal context, see RHODE, WOMEN AND LEADERSHIP, *supra* note 151, at 90-92. For research suggesting that antibias training may normalize stereotypes and reduce impetus for change, see Michelle M. Duguid & Melissa C. Thomas-Hunt, *Condoning Stereotyping?: How Awareness of Stereotyping Prevalence Impacts Expression of Stereotypes*, 100 J. APPLIED PSYCHOL. 343, 354-355 (2015).

388. See, e.g., Caren Ulrich Stacy, *How Law Firms Can Move Beyond Diversity Plan Hype: Are These Initiatives Moving the Needle or Are They Just Great Publicity Opportunities?*, AM. LAW. (Dec. 5, 2016), <http://at.law.com/mP4qML> (calling for disclosure and sharing of data).

389. CATALYST, WOMEN IN CORPORATE LEADERSHIP: PROGRESS AND PROSPECTS 15, 21 (1996); see also *supra* text accompanying notes 315-16 (noting that women receive lower ratings than men on traits associated with leadership even though women are more likely to employ effective leadership styles).

390. LINDA BABCOCK & SARA LASCHEVER, ASK FOR IT: HOW WOMEN CAN USE THE POWER OF NEGOTIATION TO GET WHAT THEY REALLY WANT 253 (2008) (quoting Mary Sue Coleman, President, Univ. of Mich.).

391. *Id.* at 252-62.

392. ABA COMM’N ON WOMEN IN THE PROFESSION, FROM VISIBLE INVISIBILITY TO VISIBLY SUCCESSFUL: SUCCESS STRATEGIES FOR LAW FIRMS AND WOMEN OF COLOR IN LAW FIRMS 6 (2008), <http://www.americanbar.org/content/dam/aba/migrated/women/woc/>  
*footnote continued on next page*

support from spouses. As one law firm leader put it: “If your career is not as important to your partner as it is to you, you don’t stand a chance.”<sup>393</sup>

Finally, leaders and their organizations can do more to expand the pipeline for lawyers of color through scholarships and other educational initiatives.<sup>394</sup> A prominent example is the \$10 million pledge by Skadden, Arps, Slate, Meagher & Flom LLP for a ten-year program offering law school preparation to students from disadvantaged backgrounds.<sup>395</sup> In commenting on that example, one ABA official noted that it was “the kind of money we need to make a difference. . . . Now we just need 500 other law firms’ to take action.”<sup>396</sup> To make all these initiatives possible, they must be seen not as “women’s” or “minority” issues but as organizational priorities in which women and minorities have a particular stake.

Although the obstacles seem frustratingly familiar, it is also important not to lose sight of the progress that has been made just in the space of one generation. When I entered law school in the 1970s, these issues were not on the agenda; I had no courses by or about women, and faculty of color were notable for their absence. Even ten years ago, as one law firm chair noted, “it wasn’t uncomfortable to walk into a room with a non-diverse team. The temperature of the water has changed. It’s hard to succeed [today] without a commitment to diversity.”<sup>397</sup> The challenge now is to translate that aspirational commitment into daily practices.

#### IV. The Legacy of Leadership

Leadership offers many rewards, but those that are most fulfilling are generally not the extrinsic perks accompanying positions of power. A wide array of psychological research suggests that workplace satisfaction generally

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VisiblySuccessful.authcheckdam.pdf; see also Boris Groysberg et al., *Leadership in Law: Amy Schulman at DLA Piper* 13 (2008) (discussing the importance of networks).

393. Gay Gaddis, *Linda Addison Delivers Advice to All with a ‘Lawyer’s Dozen,’* FORBES (Apr. 25, 2014, 4:07 PM), <http://www.forbes.com/sites/gaygaddis/2014/04/25/linda-addison-delivers-advice-to-all-with-a-lawyers-dozen>.

394. For discussions of such programs, see Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 294-300 (2014); and *National Pipeline Diversity Initiatives Directory*, A.B.A., [http://www.americanbar.org/groups/diversity/diversity\\_pipeline/resources/pipeline\\_diversity\\_directory.html](http://www.americanbar.org/groups/diversity/diversity_pipeline/resources/pipeline_diversity_directory.html) (last visited June 6, 2017).

395. Sara Eckel, *Seed Money: Skadden Gives \$10 Million to Boost Diversity*, AM. LAW. (Sept. 1, 2008), <https://advance.lexis.com/api/permalink/a331ae4b-6091-4360-9197-e2e143c5f585/?context=1000516>.

396. *Id.* (quoting Ruthe Ashley, Am. Bar Ass’n).

397. Rhode & Ricca, *supra* note 292, at 2506 (quoting Telephone Interview with Greg Nitzkowski, Global Managing Partner, Paul Hastings LLP (June 3, 2014)).

depends on feeling effective, exercising strengths and virtues, and contributing to socially valued ends that bring meaning and purpose.<sup>398</sup> Goals that transcend the self have the greatest impact on individuals' sense of fulfillment.<sup>399</sup> As one British leader put it: "We make a living by what we get, but we make a life by what we give."<sup>400</sup> Individuals who are motivated by intrinsic aspirations, such as personal growth and assisting others, tend to be more satisfied than those motivated primarily by extrinsic aspirations, such as wealth or fame.<sup>401</sup> Part of the reason is that extrinsic desires can increase as rapidly as they are satisfied.<sup>402</sup> Leaders can become trapped on a "hedonic treadmill": the more they have, the more they need to have.<sup>403</sup> Money and status are positional goods; individuals' satisfaction partly depends on how they compare to others, and increases in wealth or position are readily offset by changes in reference groups.<sup>404</sup> Leaders who look hard enough can always find someone getting more.

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398. See WILLIAM C. COMPTON, INTRODUCTION TO POSITIVE PSYCHOLOGY 48-49, 53-54 (2005) (discussing subjective well-being and emphasizing the importance of meaning and purpose); DAVID G. MYERS, THE PURSUIT OF HAPPINESS: WHO IS HAPPY—AND WHY 37-46, 129-30 (1992) (noting that over a certain minimum level of comfort, income does not much influence happiness and that professional satisfaction depends on challenging and purposeful work); Ed Diener et al., *Subjective Well-Being: Three Decades of Progress*, 125 PSYCHOL. BULL. 276, 288, 293 (1999) (discussing the limited influence of income on satisfaction and the importance of workplace stimulation, meaning, and identity); David G. Myers & Ed Diener, *Who Is Happy?*, 6 PSYCHOL. SCI. 10, 15-17 (1995) (noting the importance of being engaged and challenged in work but not to the point at which it overwhelms available time and skills); cf. CHRISTOPHER PETERSON & MARTIN E.P. SELIGMAN, CHARACTER STRENGTHS AND VIRTUES: A HANDBOOK AND CLASSIFICATION 28-30 (2004) (describing character strengths and virtues—such as wisdom, knowledge, courage, humanity, justice, temperance, and transcendence—that contribute to human flourishing).
399. See, e.g., JONATHAN HAIDT, THE HAPPINESS HYPOTHESIS: FINDING MODERN TRUTH IN ANCIENT WISDOM 88, 170 (2006) (stressing the satisfaction that comes from exercising virtue and feeling connected to something beyond the self). For a discussion of the need for a higher purpose, see THOMAS J. DELONG, FLYING WITHOUT A NET: TURNING FEAR OF CHANGE INTO FUEL FOR SUCCESS 47-48 (2011).
400. See DAY BY DAY: REFLECTIONS ON THE THEMES OF THE TORAH FROM LITERATURE, PHILOSOPHY, AND RELIGIOUS THOUGHT 171 (Chaim Stern ed., 1998) (quoting Norman MacEwan).
401. See Christopher P. Niemi et al., *The Path Taken: Consequences of Attaining Intrinsic and Extrinsic Aspirations in Post-College Life*, 43 J. RES. PERSONALITY 291, 292 (2009).
402. *Id.* at 303.
403. MARTIN E.P. SELIGMAN, AUTHENTIC HAPPINESS: USING THE NEW POSITIVE PSYCHOLOGY TO REALIZE YOUR POTENTIAL FOR LASTING FULFILLMENT 49 (2002); Ed Diener et al., *Beyond the Hedonic Treadmill: Revising the Adaptation Theory of Well-Being*, 61 AM. PSYCHOLOGIST 305, 305 (2006).
404. See SONJA LYUBOMIRSKY, THE HOW OF HAPPINESS: A SCIENTIFIC APPROACH TO GETTING THE LIFE YOU WANT 48-50 (2007); MYERS, *supra* note 398, at 39; Robert H. Frank, *How Not to Buy Happiness*, DAEDALUS, Spring 2004, at 69, 69-71.

What provides enduring satisfaction is a sense of having used life for something of value that endures and having remained true to core ideals and principles.<sup>405</sup> Leaders should not confuse fame with legacy. A focus on ensuring public recognition of one's legacy can get in the way of achieving it. Leaders can be tempted to hoard power, status, and credit. Too much emphasis on others' perceptions can deflect attention from one's own goals.<sup>406</sup> As English essayist Charles Montague noted, "there is no limit to what a man can do so long as he does not care a straw who gets the credit for it."<sup>407</sup> Leaders need to distinguish between "making a difference as opposed to making 'my' difference and making sure everyone knows it."<sup>408</sup> No one can ever control how others will ultimately interpret their contributions; pigeons may nest on their monuments.<sup>409</sup>

Thinking about legacy is helpful only if it directs attention to ultimate goals and values, not if it diverts energy into futile quests for lasting glory. That concern with values should begin sooner rather than later. Priorities formed early in a career create the foundations for later achievements. It is never too soon for leaders to think about their eulogies. Marian Wright Edelman, head of the Children's Defense Fund, recalled an entry in her journal at the beginning of her work in civil rights: "The time has come for you, Marian, to have a frank talk with yourself. Where are you headed? . . . Get a hold of yourself and then forget yourself. What do you really want . . . ?"<sup>410</sup> In taking stock of their careers, leaders should focus on several key issues.

- "Who am I? What are my character strengths and deficiencies today?"<sup>411</sup>
- "Who am I becoming? What is my character . . . likely to be tomorrow if I carry on with the way I'm doing things now?"<sup>412</sup>

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405. See Laura Nash & Howard Stevenson, *Success That Lasts*, HARV. BUS. REV., Feb. 2004, at 102, 104. For an extended version of their argument, see LAURA NASH & HOWARD STEVENSON, *JUST ENOUGH: TOOLS FOR CREATING SUCCESS IN YOUR WORK AND LIFE* (2004). For a discussion of the importance of ideals and principles, see KOUZES & POSNER, *supra* note 250, at 84-85.

406. See Ely et al., *supra* note 307, at 487 (stressing the importance of focusing on internal goals rather than external perceptions).

407. C.E. MONTAGUE, *DISENCHANTMENT* 260 (1922).

408. J. Patrick Dobel, *Managerial Leadership and the Ethical Importance of Legacy*, in 14 *RESEARCH IN PUBLIC POLICY ANALYSIS AND MANAGEMENT: PUBLIC ETHICS AND GOVERNANCE; STANDARDS AND PRACTICES IN COMPARATIVE PERSPECTIVE* 179, 201 (Denis Saint-Martin & Fred Thompson eds., 2006).

409. See *id.*

410. MARIAN WRIGHT EDELMAN, *LANTERNS: A MEMOIR OF MENTORS* 61 (1999).

411. MARY CROSSAN ET AL., *DEVELOPING LEADERSHIP CHARACTER* 184 (2016).

412. *Id.*

- “*What do I want to be? What is it about my character that I’d like to change . . . ?*”<sup>413</sup>
- “*What am I going to do to become what I want to be? What actions will I take . . . ? How will I know that I’ve got there?*”<sup>414</sup>

Disaffected leaders often stop asking those questions. These are individuals who feel that “[s]omething’s missing” and that “somewhere along the line they got off track. They’re working harder than ever, but they’re not sure why, and they’ve lost touch with what’s really important in life.”<sup>415</sup> When that happens, they need to ask hard questions about what they truly value and how they can make a difference. As Michael Lewis reminds aspiring professionals: “When you start your career you might think you are setting out to change the world, but the world is far more likely to change you. So watch yourself, because no one else will.”<sup>416</sup>

Leaders cannot fully determine their legacies, but they can be conscious of how their daily interactions and priorities affect other individuals and institutions. President Lincoln was legendary for setting aside his own concerns in the service of broader ends. He appointed rivals to his cabinet and picked Salmon Chase, who had frequently intrigued against him, as Chief Justice of the Supreme Court.<sup>417</sup> As President Lincoln told a colleague at the time, he “would rather have swallowed his buckhorn chair than to have nominated Chase” but the decision was best for the country.<sup>418</sup> Such priorities were formed early. When Lincoln was twenty-three years old and running for office the first time, he said: “Every man is said to have his peculiar ambition. I have no other so great as that of being truly esteemed of my fellow men, by rendering myself worthy of their esteem.”<sup>419</sup> In commenting on that quotation, President Obama, at the end of his presidential term, offered, in his words, a “friendly amendment.”<sup>420</sup> He believed that youthful ambition “very much has

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413. *Id.*

414. *Id.*

415. LEE G. BOLMAN & TERRENCE E. DEAL, *LEADING WITH SOUL: AN UNCOMMON JOURNEY OF SPIRIT* 5 (rev. ed. 2001).

416. Michael Lewis, *Occupational Hazards of Working on Wall Street*, BLOOMBERG VIEW (Sept. 24, 2014, 6:03 PM EDT), <http://bv.ms/1uplE1l>.

417. BROWN, *supra* note 18, at 346-47; DORIS KEARNS GOODWIN, *TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN* 280 (2006).

418. BROWN, *supra* note 18, at 347.

419. See Doris Kearns Goodwin, *Barack Obama and Doris Kearns Goodwin: The Ultimate Exit Interview*, VANITY FAIR (Nov. 2016), <http://www.vanityfair.com/news/2016/09/barack-obama-doris-kearns-goodwin-interview>.

420. *Id.*

to do with making your mark in the world.”<sup>421</sup> But after leaders achieve some notoriety,

there’s a point where the vanity burns away . . . . And then you are really focused on: What am I going to get done with this strange privilege that’s been granted to me? How do I make myself worthy of it? And if you don’t go through that, then you start getting into trouble, because then you’re just . . . clinging to prerogatives and the power and the attention.<sup>422</sup>

To make a lasting contribution, leaders must use their influence to promote organizational rather than personal goals and to transcend their individual desires in pursuit of common values.<sup>423</sup> Supporting the career development of others is critical to furthering their own. The ultimate test of leadership is not simply what individuals themselves accomplish while holding such positions but rather what they enable others to achieve after they are no longer around.<sup>424</sup>

Leaders in legal education have corresponding obligations. Leadership needs to be a much higher priority not only in law school curricula but also on research agendas. Relatively little academic attention centers on leadership for lawyers, and the field in general is underdeveloped.<sup>425</sup> In the late 1970s, James McGregor Burns famously declared that “[l]eadership is one of the most observed and least understood phenomena on earth.”<sup>426</sup> The situation has not materially improved. As Rakesh Khurana notes, “leadership as a body of knowledge . . . remains without either a widely accepted theoretical framework or a cumulative empirical understanding.”<sup>427</sup> The field of leadership development is even less advanced.<sup>428</sup> We know far too little about how best to help individuals acquire the qualities necessary to lead.<sup>429</sup> We are equally ill informed about how to prevent or constrain bad leadership.<sup>430</sup> Legal academics should focus more efforts on exploring what makes for effective leadership in law and what stands in the way. Only through more opportunities like the

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421. *Id.*

422. *Id.*

423. SASHKIN & SASHKIN, *supra* note 28, at 58.

424. Ray Blunt, *How Leaders Are Grown: The Lessons of Example and Experience*, in THE JOSSEY-BASS READER ON NONPROFIT AND PUBLIC LEADERSHIP 38, 41 (James L. Perry ed., 2010).

425. As noted earlier, this is the first time a leading law review has focused on the subject. *See supra* Introduction.

426. BURNS, *supra* note 41, at 2.

427. RAKESH KHURANA, FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS A PROFESSION 357 (2007).

428. Day et al., *supra* note 265, at 64.

429. McCauley, *supra* note 220, at 59; *see supra* text accompanying notes 277-78.

430. *See* KELLERMAN, *supra* note 16, at 172, 183.

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