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Reconsidering Domestic Violence Services and Advocacy


Reviewed by Julie Goldscheid*

Lisa A. Goodman and Deborah Epstein's book, Listening to Battered Women: A Survivor-Centered Approach to Advocacy, Mental Health and Justice ("Listening to Battered Women"), makes an important and powerful contribution to the literature on domestic violence. It addresses the vexing question of why battered women's circumstances have not changed substantially in the last forty years through "a feminist perspective," with an emphasis on "societal responses." The authors are respected and experienced advocates and academics who bring deep expertise from the mental health and legal professions. The text reflects that expertise with its focus on the response of advocates, the mental health system, and the justice system.

The book adds to the literature in a number of important respects. It critiques system responses from the dual perspectives of the legal and mental health professions, two professions

* Associate Professor, CUNY School of Law.
2. Id. at 2.
3. Lisa A. Goodman is an associate professor in the Department of Counseling, Developmental, and Educational Psychology at Boston College and coordinator of the Mental Health Counseling MA Program. Deborah Epstein is a professor of law at Georgetown University Law Center, director of the Domestic Violence Clinic, and associate dean for the Clinical Education and Public Interest & Community Service Programs. Id. (back cover).
4. See id. chs. 2-4.
with which domestic violence survivors often interact but which often address the issue of abuse on parallel, rather than coordinated, tracks.\textsuperscript{5} It traces the ways the advocacy community, mental health, and justice system responses to intimate partner violence have shifted over time and how those systems have grappled with the unintended consequences of well-intentioned reforms.\textsuperscript{6} The text describes the manner in which philosophical debates and shifting approaches translate into policies that affect survivors’ day to day experiences with the mental health and justice systems.\textsuperscript{7} \textit{Listening to Battered Women} grounds its analysis in both the feminist roots of the domestic violence movement and the growing social science research literature, thus providing a valuable resource for readers.\textsuperscript{8} Perhaps most critically, it takes stock of the specific responses of these important systems through an explicitly feminist lens, thus documenting the social and political history of the United States’ responses to domestic violence as a social movement.\textsuperscript{9} As a text intended to be accessible to laypersons, it does an impressive job of describing nuanced issues from the fields of both psychology and law.\textsuperscript{10} With that foundation, it propounds recommendations that chart a progressive future in line with core guiding principles.\textsuperscript{11}

This review first summarizes the issues addressed and arguments discussed in \textit{Listening to Battered Women} and then elaborates on a few of the book's themes, focusing on the advocacy and justice system responses with which this author is most familiar. In particular, this review examines Goodman and Epstein's focus on the social context of abuse.\textsuperscript{12} Given that emphasis, it is surprising that the book's proposals center around accommodating women's individual needs, rather than promoting social change.\textsuperscript{13} A fuller discussion of the societal barriers to progressive change, as well as strategies for preven-

\begin{enumerate}
\item See id. chs. 3-4.
\item See id. chs. 2-4.
\item See id. chs. 3-4.
\item See id. at 2.
\item See id.
\item See id. at 2.
\item See id. ch. 6.
\item See id. ch. 6.
\end{enumerate}
tion and transformation, would complement the text and pave the way toward a more comprehensive answer to the question of why battering persists and why battered women's circumstances haven't substantially changed.

I. Summary

Listening to Battered Women presents a concise and current review of the evolution of United States' legal and policy reforms that address domestic violence. It explores these reforms by focusing on three areas the authors identify as the "most extensive and furthest developed"—the domestic violence advocacy community, the mental health profession, and the justice system. For each of those areas, the book provides a comprehensive description of policy responses. The descriptions pay particular attention to the manner in which policies have shifted to better address the needs of those who were inadequately served by initial interventions. This analysis is written from the perspective of two seasoned professionals who bring an inside knowledge of the advocacy community, mental health, and criminal justice responses.

The book makes the case for re-emphasizing core feminist tenets. Accordingly, the authors identify three principles as organizing themes: centering women's voices, recognizing the important role of community, and focusing on those who are most economically vulnerable. In each section, the authors critique the ways legal and policy responses have shifted away from the feminist and political values that drove initial reforms. In effect, the book chronicles the mainstreaming of a movement and some of the perils and pitfalls of successful advocacy.

For example, Chapter 2, the chapter on the domestic violence advocacy community, describes how service providers and advocates came to partner with the state and how that partner-

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14. Id. at 1.
15. See id. chs. 2-4.
16. See id.
17. See supra note 3.
18. See GOODMAN & EPSTEIN, supra note 1, at 4-5, 89-90. I also have discussed why reincorporating victims' voices is essential for progressive reform. See Julie Goldscheid, Elusive Equality in Domestic and Sexual Violence Law Reform, 34 FLA. ST. U. L. REV. 731, 774-76 (2007).
19. See GOODMAN & EPSTEIN, supra note 1, chs. 2-4.
ship resulted in an eroded feminist orientation. It chronicles how that partnership marked successful advocacy and resulted in increased visibility and support for services. At the same time, those advances created pressure to separate from anti-poverty activists, to develop more traditional and professionalized services, and to narrow the range of services available to survivors. The discussion recognizes shifts within the movement that are not often acknowledged in mainstream public discussions but that have had a profound effect on survivors and service providers alike. By naming the shifts and acknowledging the trade-offs associated with the movement’s mainstreaming, the book lays the foundation for future initiatives that could revive the movement’s original commitment to honoring women’s voices and experiences and center the experience of abuse in its social context.

Chapter 3, which examines the mental health system’s response, traces the evolution of the movement from one dominated by lay advocates rooted in feminist empowerment

20. See id. at 36-47.
21. See id at 38.
22. Id. at 39-40.
23. Id. at 40-41.
24. See id. at 43-47.
concepts to an increasingly professionalized response by mental health professionals.\textsuperscript{26} Goodman and Epstein discuss the tension between those two approaches and, in so doing, document an important piece of feminist history.\textsuperscript{27} The chapter reviews the various theories mental health practitioners have applied in an effort to explain both the scope and frequency of partner violence and why many victims stay with their abusive partners, even after an assault.\textsuperscript{28} The chapter reviews mental health treatment approaches by describing the basic tenets of how feminist therapy applies to battering and by assessing the limitations of that approach.\textsuperscript{29}

The book completes its description of the mental health system response by identifying and discussing systemic limitations of mental health practice.\textsuperscript{30} The authors conclude that although psychological theorizing about battered women has made much progress from the victim-blaming theories that dominated in the 1960s, much work remains to be done to more fully integrate domestic violence into professional training programs, to eliminate pathologizing diagnoses as a condition for receipt of services, and to establish more realistic reimbursement criteria.\textsuperscript{31} The chapter calls for increased collaboration between lay advocates and mental health professionals, with a recognition that neither advocacy nor therapy alone can effectively address the issues.\textsuperscript{32}

Chapter 4, the chapter on the justice system’s response to the battered women’s movement, tracks the impact of advocacy efforts, beginning in the 1970s, which demanded that domestic violence be treated “‘like any other crime,’” rather than as a private matter of personal relationships.\textsuperscript{33} This section describes the successful adoption of reforms, including mandatory arrest

\textsuperscript{26} See Goodman & Epstein, supra note 1, at 49-70.
\textsuperscript{27} See id. at 49-51.
\textsuperscript{28} See id. at 51-57.
\textsuperscript{29} See id. at 57-66.
\textsuperscript{30} Id. at 69. These limitations include insufficient training of professionals, unduly restrictive criteria for insurance reimbursement, cramped definitions of successful treatment, and a lack of coordination between the staff of domestic violence and mental health agencies. Id.
\textsuperscript{31} Id. at 70.
\textsuperscript{32} Id.
\textsuperscript{33} Id. at 71.
laws and no-drop prosecution policies, civil protection order statutes, and expanded criminal justice system responses. These advocacy successes are critical and were not easily obtained.

The chapter then analyzes the new challenges created by each of these reforms. For example, it demonstrates how reforms such as mandatory arrest and no-drop prosecution strategies effectively silenced women’s voices. It describes how criminal justice responses are inadequate for immigrant women and women of color, who often are justifiably reluctant to call on the criminal justice system and are reasonably skeptical about its ability to produce beneficial results. The authors’ discussion of mandatory arrest laws is particularly useful due to its incorporation of recent studies reviewing and questioning the effectiveness of these laws as a means to reduce future violence.

This chapter’s discussion of the civil justice system and the use of civil protective orders summarizes the debates over the utility of those orders and highlights the challenges that the use of protective orders pose for women. The chapter describes the trend toward developing “coordinated community responses,” which have been found to be among the most successful of recent interventions. Nevertheless, as with all policy interventions, coordinated responses themselves have their limitations, which this chapter ably describes. In conclusion, the authors call for increased responsiveness to meet a woman’s individual needs.

Next, in Chapter 5, the authors critique those system responses through three feminist themes: centering battered women’s individual voices, recognizing relationships, and

34. See id. at 71-74, 78-85.
35. Id. at 75.
36. Id. at 77-78.
37. See id. at 75-78.
38. See id. at 78-82.
39. Id. at 82.
40. See id. at 82-85.
41. See id. at 85-87. These limitations are “the relative subordination of battered women’s advocates and the absence of attention to women’s individual stories and needs.” Id. at 85.
42. Id. at 87.
enhancing economic empowerment. These analyses tellingly describe current challenges. The authors explain, for example, how policy forces, such as the dominance of civil protection orders, and funder preferences for professional staff and observable predetermined outcomes, reduce social service programs’ capacity to effectively serve women who do not fit prescribed models of victim behavior. They argue that future reforms should expand the range of survivors’ choices and autonomy.

The authors also discuss how domestic violence service providers’ focus on having a victim leave the perpetrator runs counter to feminist theorists’ emphasis on the importance of relationships and communities in human development and growth. The text explains how the protective order system effectively assumes that all survivors wish, or should wish, to leave their abusive relationships and describes the increased challenges for women who do not so conform. The system’s focus on leaving also runs counter to the core feminist principle of individual self-determination and privileges civil court judges’ assessment of what will best serve a woman’s interests over her own view. The current focus on leaving is inconsistent with many women’s stated goals and desires and penalizes the victim, while often leaving the perpetrator comfortable in his community.

The book’s focus on economic empowerment emphasizes the ways abuse both causes and perpetuates women’s poverty. This discussion recounts the ramifications of abuse for women on welfare and explains the correlation between battering and homelessness. Thus, Goodman and Epstein call for responses

43. See id. at 89-90.
44. See id. at 90-95.
45. See id. at 95.
46. See id. at 95-105.
47. See id. at 91-93, 96-99. For a discussion of the limitations of civil protection orders, particularly given that many women in abusive relationships do not want to separate from their abusers, see Sally F. Goldfarb, Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?, 29 CARDOZO L. REV. 1487 (2008).
48. See GOODMAN & EPSTEIN, supra note 1, at 93-94.
49. See id. at 92, 93.
50. See id. at 105-09.
51. Id. at 105, 107.
that make economic empowerment a central part of the battered women's movement's mandate.\textsuperscript{52}

Chapter 6, the final chapter, enumerates the authors' recommendations for the future.\textsuperscript{53} The authors group their recommendations according to the three feminist themes that connect the chapters.\textsuperscript{54} Accordingly, the first set of recommendations urges the advocacy community, mental health, and justice systems to prioritize women's accounts of their experiences with abuse.\textsuperscript{55} These recommendations encourage funders and policymakers to recognize the wide range of survivors' backgrounds and experiences and to adopt broader, more inclusive evaluation measures.\textsuperscript{56} Goodman and Epstein argue that advocates should be able to support women's individual choices, even if those goals are in tension with those of their agencies.\textsuperscript{57}

Recommendations for the mental health system advocate an expanded view of the impact of abuse so that service providers would more fully consider the wide spectrum of challenges survivors face, managed care standards would take into account the range of services for which survivors need treatment, and evaluation criteria would reflect a more realistic and comprehensive understanding of survivors' experiences.\textsuperscript{58}

Justice system recommendations focus on the need to give police and prosecutors greater flexibility when deciding, in collaboration with survivors, whether to arrest and prosecute a batterer.\textsuperscript{59} The authors advocate increased communication between prosecutors and survivors so that prosecutors have complete and accurate information about survivors' abuse history.\textsuperscript{60} In addition, they recommend an enhanced role for lay advocates and suggest increased research on the impact of advocates' interventions.\textsuperscript{61}

\textsuperscript{52} See id. at 109.
\textsuperscript{53} Id. at 111.
\textsuperscript{54} See supra note 18 and accompanying text.
\textsuperscript{55} See GOODMAN & EPSTEIN, supra note 1, at 112.
\textsuperscript{56} Id. at 112-14.
\textsuperscript{57} Id. at 114.
\textsuperscript{58} Id.
\textsuperscript{59} Id. at 118.
\textsuperscript{60} Id. at 119.
\textsuperscript{61} See id. at 120.
The next set of recommendations aims to restore and support survivors' relationships with their communities.62 These recommendations are particularly important because they challenge traditional assumptions within advocacy and service provider communities about best practices.63 For example, the authors question the conventional wisdom that shelter locations be kept absolutely confidential.64 They also challenge policies that require victims to leave their communities in order to obtain shelter, which are couched in a concern for victim safety but instead may deter women from seeking services.65 They advocate peer support groups and increased collaboration with community leaders as alternative ways to sustain community ties.66

The authors further recommend that the mental health system support community networks by expanding non-traditional approaches to services, such as hosting informal discussions about domestic violence through local businesses.67 Recommendations for the justice system urge an overhaul of policies that reflexively encourage battered women to leave their abusive partners.68 Additionally, the authors support consideration of how alternative approaches, such as restorative justice, could be implemented without ignoring the dynamics of abuse and pathologizing and potentially endangering survivors.69

Recommendations for increasing opportunities for economic empowerment range from highly targeted interventions to broad economic and employment policies.70 Goodman and Epstein support expanded programs that would provide short term financial assistance, such as immediate financial relief and bridge funds from lenders.71 The recommendations include workplace flexibility policies that would allow survivors to

62. Id.
63. See id. at 120-21.
64. Id. at 121-22.
65. See id.
66. Id. at 122-23.
67. Id. at 123-24.
68. Id. at 124.
69. See id. at 124-27.
70. See id. at 127-34.
71. Id. at 129.
maintain their jobs while managing the myriad arrangements and appointments survivors must juggle, including court proceedings and housing and child care arrangements.\textsuperscript{72} The recommendations advocate increased awareness and responsiveness by employers and landlords, as well as programs that assist with credit issues, increase relief for those on public assistance, and make child support available without exposing a survivor or her children to further violence.\textsuperscript{73} The authors encourage mental health professionals to stretch beyond their traditional role and address survivors’ practical and financial needs, even if doing so requires collaboration with lay advocates.\textsuperscript{74} The recommendations end with suggestions for ways the justice system might facilitate survivors’ access to financial assistance, including, for example, crime victims’ compensation funds and other economic assistance programs.\textsuperscript{75}

These recommendations reflect comprehensive, concrete, and practical approaches that would enable each system to be more responsive to victims’ individual needs, improve community ties, and increase economic security. The next section of this review picks up on the authors’ focus on social context.\textsuperscript{76} It argues that a fuller discussion of the question of why battering continues would include an analysis of the ways societal factors, such as enduring but outdated stereotypes, perpetuate abuse. This discussion offers additional examples of the importance of economics and argues that dialogue about the difficult and often emotionally laden differences in opinion about policies and interventions may be key to future reform.

II. Social Context and Social Change

One of the book’s themes is framing domestic violence in its social context rather than through the lens of individual psychopathology that has traditionally shaped responses to the problem.\textsuperscript{77} The text builds on foundational works, such as those by

\textsuperscript{72} Id.
\textsuperscript{73} See id. at 130-32.
\textsuperscript{74} Id. at 133.
\textsuperscript{75} Id. at 134.
\textsuperscript{76} See id. at 2.
\textsuperscript{77} See id.
Susan Schechter, Elizabeth Schneider, and Kimberlé Crenshaw, by reminding readers of the feminist theory driving the movement that began in the 1970s and describing both the broad arch of the movement and the specific reforms the movement has produced. Listening to Battered Women is informed by the important critiques challenging the white, middle class, heterosexual perspectives that have limited the reach of reform efforts. As the authors remind readers, intimate partner violence is a problem of society, not of individual psychopathology. To support their argument that domestic violence should be prioritized as a social issue, the authors provide a valuable compilation of studies and anecdotes that address recurring debates, such as whether women are predominantly the victims of domestic violence (or whether it is a gender-neutral phenomenon), what terminology should be used to describe the problem, the statistical disputes over the prevalence of the problem, and the impact of intimate partner violence on women's health, work opportunities, families, and communities. This discussion offers a particularly useful resource for readers and paints a compelling picture of the depth and breadth of the impact of domestic violence.

The authors' emphasis on social context is key to an accurate and comprehensive approach to domestic violence. Internationally, sources, including human rights treaties, frame domestic violence as a form of sex discrimination, inextricably linked to a history of patriarchy and sanctioned male violence.

78. SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE 236-38, 267-81 (1982).
81. See GOODMAN & EPSTEIN, supra note 1, at 31-47.
82. See id. at 46. See also COLOR OF VIOLENCE (Incite! Women of Color Against Violence ed., 2006); DOMESTIC VIOLENCE AT THE MARGINS, supra note 25, pt. I (presenting several articles that address the movement's limitations based on race, class, sexual orientation, gender, immigration status, and poverty); Jenny Rivera, Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials, 14 B.C. THIRD WORLD L.J. 231 (1994).
83. See GOODMAN & EPSTEIN, supra note 1, at 2.
84. Id. at 8-12.
85. Id. at 12-14.
86. Id. at 14.
87. Id. at 17.
directed towards women. Yet, the United States' public dialogue about intimate partner violence is increasingly framed in a politically neutral manner and, as the authors point out, focuses on individual and psychological, rather than social, factors.

The authors maintain "that intimate partner violence is rooted in . . . gender-based power hierarchies and the societal norms and institutions that support and reinforce women's subordination." Given this focus on social context, it is surprising that the book does not elaborate on current dynamics that perpetuate the social conditions that foster abuse. For example, despite common perceptions that we are in a post-feminist society and that domestic violence now is widely and sufficiently addressed, examples of victim blaming and stereotyping of survivors persist. A discussion of the persistence of those stereotypes and the gender subordination associated with abuse could support efforts to destabilize these root causes of abuse.

An analysis of the social issues surrounding intimate partner violence could include examples of ways that law enforcement authorities continue to diminish the severity and impact of sexual violence and denigrate, rather than support, victims. Two recent examples illustrate the continued role law enforcement officials play in perpetuating stereotypes and blaming the victim. In one case, a judge in Spokane, Washington denied a

88. See, e.g., Declaration on the Elimination of Violence Against Women, G.A. Res. 104, U.N. GAOR, 48th Sess., U.N. Doc. 1/49/104 (1993) ("[V]iolence against women is an obstacle to the achievement of equality . . . constitutes a violation of the rights and fundamental freedoms of women . . . [and] is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men . . . ."); Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 ("[D]iscrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity . . . .").

89. See GOODMAN & EPSTEIN, supra note 1, at 2.
90. Id.
woman's application to divorce her husband after he was jailed for beating her because she was pregnant.\(^\text{92}\) Apparently, it was more important to the judge that the child "not be illegitimatized" than that the woman and her child be allowed to sever a relationship with an abusive partner.\(^\text{93}\) Another case illustrates law enforcement's insensitivity to the ramifications of sexual assault. There, police jailed, instead of assisted, a twenty-one year old woman who came to the police to report being raped.\(^\text{94}\) The authorities based their actions on an accusation that she had failed to pay restitution for a theft arrest that had occurred four years earlier.\(^\text{95}\) To compound the problem, a jail worker refused to give her a second dose of a morning-after pill to prevent pregnancy, citing his religious convictions.\(^\text{96}\) These are just two examples that illustrate the persistent, victim-blaming attitudes that deter women from seeking help and that limit the redress available for those who do seek assistance.

Another facet of the social context of abuse is the debate over the role of gender. Differing views of the role gender plays in intimate partner violence inform practitioners' and policymakers' understandings of intimate partner violence and the solutions they craft to end it. On the one hand, many researchers, scholars, and advocates, including the authors of *Listening to Battered Women*, view intimate partner violence as inherently gendered, reflecting a patriarchal society in which men use violence and abuse to maintain power and control over female victims and in which system responses, including those of the justice system and social services, reflect and perpetuate gender bias.\(^\text{97}\) At the other extreme, fathers' rights groups


\(^\text{93}\) Id.


\(^\text{95}\) Id.

\(^\text{96}\) Id.

claim that men and women are equally represented as victims and perpetrators and that legislative and policy responses focusing on services for women unfairly and illegally discriminate against men.  

Researchers increasingly distinguish among different types of abuse, ranging from the chronic and systematic battering referenced by anti-domestic violence advocates, to episodic or situational self-defense or separation-related abuse, which occur on less clearly gendered lines. This emerging and nuanced view accommodates both a recognition that not all abuse falls along gender lines and that gender plays a dominant role in many, if not most, instances of the abuse that services are designed to target. Nevertheless, there is great resistance in the advocacy community to acknowledging that not all intimate partner violence tracks a traditional feminist analysis. This debate polarizes advocates and complicates efforts to situate gender in the social context of abuse. In a related vein, although the authors acknowledge the complex effects that race, culture, and class have on the experience of abuse, their analysis does not detail the continued challenges of providing culturally sensitive


100. See, e.g., Salem & Dunford-Jackson, supra note 97, at 446.

101. See id. See also supra note 98 and accompanying text.

102. See Salem & Dunford-Jackson, supra note 97, at 447.

103. See GOODMAN & EPSTEIN, supra note 1, at 3, 91-92.
services. A discussion of those complexities would add to the analysis and could lay the groundwork for improved services going forward.

The authors’ concern with the social context of abuse could be explicitly tied to their argument about the centrality of women’s voices. A number of survivor-driven, innovative grassroots advocacy initiatives draw on women’s experiences of abuse in devising social change and advocacy strategies. By addressing the role of gender and other sources of subordination that define and shape women’s experiences of abuse, such as race, class, sexual orientation, and immigration status, those initiatives can lay a broad foundation for future reforms.

III. Women’s Voices and Difficult Conversations

The authors’ commitment to basing policy and programmatic responses on women’s voices and experiences serves as a valuable reminder to those engaged in domestic violence policy reform. Their descriptions of the ways in which uniform policy approaches trump women’s individual needs bring these nuances of policy implementation to light and underscore the dangers inherent in mainstream programmatic responses. In addition, the authors’ recommendations for increased flexibility in the range of approaches available to advocates, mental health professionals, and justice system employees would certainly increase effective service provision to individual women.

105. See supra note 18 and accompanying text.
106. See, e.g., Color of Violence, supra note 82, pt. III (collecting articles describing a range of organizing approaches and efforts); Domestic Violence at the Margins, supra note 25, pt. III (collecting articles proposing alternative approaches for organizing and social change). See also Communities Against Rape and Abuse, http://www.cara-seattle.org/programs.html (last visited Apr. 6, 2009) (addressing rape and abuse by building social change movement); CONNECT, http://www.connectnyc.org/ (last visited Apr. 6, 2009) (employing community empowerment model to domestic violence); Voices of Women Organizing Project (VOW), http://www.vowbwrc.org/ (last visited Apr. 6, 2009) (addressing domestic violence through empowering women’s voices).
107. See supra notes 55-61 and accompanying text.
108. See supra notes 20-52 and accompanying text.
109. See supra notes 53-75 and accompanying text.
Although the authors may have chosen to focus on possibilities rather than barriers, a discussion of the challenges to fully integrating women's voices would paint a fuller picture of the opportunities for progressive reform. The authors correctly challenge funders and policymakers to support advocates' ability to provide services to women regardless of whether they comport with traditional notions of victim behavior.110 Other recommendations encourage more broadly conceived approaches by domestic violence programs and advocates, mental health practitioners, and justice system personnel.111 These recommendations are important and significant.

However, in some cases, survivors' voices are in tension with the views of advocates. For instance, survivors may not share advocates' political analysis of the dynamics of abuse.112 They also may not agree with advocates' or service providers' suggestions that they should leave the batterer.113 Other tensions, either between the views of survivors and advocates or among advocates and service providers, are rarely addressed directly. Future reform efforts would benefit from difficult conversations about those differences.

For example, a recent conference convened by the Association of Family and Conciliation Courts and the Family Violence Department of the National Council of Juvenile and Family Court Judges (the "Wingspread Conference") aimed to address some of these differences through a multidisciplinary discussion of challenges professionals face in assessing and adjudicating domestic violence cases in the family court system.114 The conference was notable for exposing the tensions that create impediments to change and for attempting to facilitate constructive

110. See Goodman & Epstein, supra note 1, at 113.
111. See supra notes 53-75 and accompanying text.
112. See, e.g., Laura Nichols & Kathryn M. Feltey, "The Woman is Not Always the Bad Guy": Dominant Discourse and Resistance in the Lives of Battered Women, 9 Violence Against Women 784 (2003) (surveying women living in a battered women's shelter and finding that most, especially the women of color, defined domestic violence in terms of inadequate services and a complexity of political issues, rather than as a problem of gender).
113. See supra notes 46-49 and accompanying text.
114. The conference was the subject of a special issue of the Family Court Review. See 46 Fam. Ct. Rev. 431 (2008).
dialogue and foster solutions. The resulting papers reflect a refreshingly honest, though admittedly difficult dialogue, and the tensions discussed will be familiar to those involved in domestic violence service provisions or advocacy. According to Peter Salem and Billie Lee Dunford-Jackson, the differences reflect underlying barriers to successful collaboration including: "(1) a complex entanglement of ideology, identity, livelihood and turf; (2) differences in defining domestic violence including gender issues; (3) an [sic] historic lack of trust; and (4) resistance to moving ahead." Those authors concluded that "[i]f we are to overcome these challenges, we must first acknowledge them together."

Those underlying tensions account for at least some of the difficulties in achieving productive reform. For example, the debate over the definition of domestic violence informs program structure and what it means to address the social context of abuse. As participants in the Wingspread Conference acknowledged, recent research differentiating among various types of intimate partner violence challenges closely held ideological views of domestic violence as a form of gender discrimination. As mentioned above, some advocates have resisted a nuanced conception that recognizes that some domestic violence may not be gender driven. They fear both a diffusion of the political message about the role of gender in intimate partner


116. Olson and Ver Steegh identified the tensions as:

[H]ow to differentiate among families who experience domestic violence[,] . . . effective screening of families who enter the court system and consideration of how to accomplish appropriate triage and assessment of cases involving or potentially involving domestic violence . . . [i]f whether to include, modify, or exclude families who have experienced domestic violence from various court processes and social services . . . [i]f assuring appropriate outcomes for children . . . that appropriately balance safety and access . . . [and] the increasing demands made on the family court during a time of declining resources.

Id. at 435-36.

117. Salem & Dunford-Jackson, supra note 97, at 444.

118. See id.

119. See id. at 444-47.

120. See id. at 444-45.

121. See supra notes 98, 101-02 and accompanying text.
abuse and the possibility that recognizing men as victims will jeopardize funding and resources currently directed to women.\textsuperscript{122} Yet, a failure to collaborate across different ideological approaches will jeopardize the effectiveness of policies and programs in the future.

Another issue in which emotionally-laden ideological differences thwart productive collaboration is the debate over the value of restorative justice approaches for domestic violence survivors. Goodman and Epstein discuss the importance of developing viable alternatives to the criminal justice system.\textsuperscript{123} At the same time, they acknowledge advocates’ “deep reservations” about applying these models to domestic violence cases.\textsuperscript{124} The authors state that most of advocates’ resistance is based on the fact that the perpetrator is an active participant in most restorative justice models.\textsuperscript{125} They seem to resolve this tension by recommending a “family group conferencing model” in which batterers’ participation is optional.\textsuperscript{126} The authors may be correct that the approach they recommend adequately addresses advocates’ concerns. Nevertheless, the book’s description does not capture the depth of advocates’ resistance, the difficulty of engaging in discussion of the utility of restorative justice models,\textsuperscript{127} or the polarization surrounding related alternative ap-

\textsuperscript{122} See id. at 445.
\textsuperscript{123} See GOODMAN \& EPSTEIN, supra note 1, at 124-27.
\textsuperscript{124} Id. at 125.
\textsuperscript{125} Id.
\textsuperscript{126} Id. at 126.
IV. Economic Empowerment and the Hidden Coercion of Public Policy

The authors' emphasis on the importance of economic empowerment reflects a critical shift from the traditional focus on criminal justice interventions. The text makes important contributions by explaining the need for short and long term assistance and by discussing the possibilities for meaningful intervention in the context of employment and housing, as well as in credit practices and public assistance. The discussion correctly identifies many of the work-related initiatives that help survivors maintain employment in the face of abuse. Readers may also be interested in the recent activity in state legislatures and the pending federal legislative initiatives that address these concerns.

The text identifies the availability of crime victim compensation funds as one of several short term resources for survivors but dismisses the impact of those and other public assistance

128. For discussion of the analogous tensions surrounding the use of mediation with domestic violence survivors, see Olson & Ver Steegh, supra note 115, at 434; and Salem & Dunford-Jackson, supra note 97, at 444-45.
129. See supra notes 114-22 and accompanying text.
130. For additional discussion of this shift, see Cahn, supra note 25; Coker, Crime Control, supra note 25; Richie, supra note 25; and Sack, supra note 25.
131. See Goodman & Epstein, supra note 1, at 127-34.
132. See id. at 129-30.
funds due to the volume of victims who avail themselves of the courts.\textsuperscript{135} Although the authors are correct that victims often are not informed of the availability of victim compensation and public assistance resources and that stronger connections are needed to address the links between violence and poverty,\textsuperscript{136} victim compensation funds can be more widely tapped as a resource for victims.\textsuperscript{137} Unlike public assistance, crime victim compensation funds are financed primarily, if not exclusively, by defendants' fines and fees and therefore do not rely on public tax dollars.\textsuperscript{138} The funds could reach more survivors if resources were devoted to publicizing and facilitating applications and processing.\textsuperscript{139}

Additional examples bolster the authors' concern with the economic impact of abuse. Nuanced dynamics reflect both the paradoxical effects of policy advances and the economic challenges victims face. For example, some states, such as New York, base shelter funding on public assistance grants, thus expanding the availability of shelter beds.\textsuperscript{140} However, in order to be eligible to stay at a shelter, a survivor either must apply for public assistance or, if ineligible, must pay for all or part of the shelter stay.\textsuperscript{141} This has the effect of discouraging women who seek shelter from working, since they then would have to pay the shelter for their stay. And it discourages shelters from accepting working women, since the shelter would then be put in the awkward position of being its client's creditor.

This example can be seen as another way that bureaucratization limits flexibility and reduces the effectiveness of services. It also illustrates the more nuanced and often hidden ramifications of well-intentioned policies that have the effect of thwarting survivors' safety and economic independence. The system should acknowledge the importance of women's economic empowerment so that women in need of domestic violence shelter services can put all of their financial resources

\begin{itemize}
\item \textsuperscript{135} Goodman \& Epstein, supra note 1, at 134.
\item \textsuperscript{136} Id.
\item \textsuperscript{138} See id. at 190.
\item \textsuperscript{139} See id. at 200.
\item \textsuperscript{140} See, e.g., N.Y. Soc. Serv. Law § 459-b (McKinney 2003).
\item \textsuperscript{141} See id. § 459-f.
\end{itemize}
towards moving themselves and their families to independence and safety.

V. Conclusion

In sum, Listening to Battered Women adds an important account to the literature on domestic violence by combining theory and practice and by reconnecting current policies and practices with the domestic violence movement’s feminist roots. Its tripartite focus on reincorporating women’s voices, on recognizing the importance of community, and on the centrality of economic empowerment highlights valuable guideposts for future reform.142 A renewed focus on changing attitudes and stereotypes that create the social context in which abuse continues would complement the authors’ recommendations for reform in the particular contexts of the advocacy community, mental health, and justice systems.143 Overall, the book describes a movement at a transitional point, in which much progress has been made. Yet, advocates and reformers must make conscious efforts to retain the benefits of its initial feminist principles. Listening to Battered Women offers a foundation for renewed and informed movement forward.

142. See GOODMAN & EPSTEIN, supra note 1, at 4-5.
143. See supra notes 53-75 and accompanying text.
Wanted: Female Corporate Directors


Reviewed by Joan MacLeod Heminway* and Sarah White**

Each year, increasing numbers of women enroll in top law schools and MBA programs, with matriculation rates for women in law schools nearing fifty percent of each new class.¹ Increases in female enrollment in MBA programs have been slower, with matriculation rates hovering around thirty-five percent, but the trend exists nonetheless.² With more and more

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* Associate Professor, The University of Tennessee College of Law; A.B. 1982, Brown University; J.D. 1985, New York University School of Law. I am grateful to Karl Okamoto, who asked me to sit down and think hard about this book for a conference on Women and Corporate Boards at Drexel University in November 2007. However, this book review may never have been written were it not for the interest, aptitude, and energy shown by my coauthor, Sarah White. Working with Sarah on this project has been a great joy.

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1. Douglas M. Branson, No Seat at the Table: How Corporate Governance and Law Keep Women Out of the Boardroom 1, 151-52 (2007). According to the American Bar Association, in 1981, 32.8% of the Juris Doctor (J.D.) degrees awarded were earned by women. Of the J.D. degrees awarded in 1991, 42.7% were earned by women. By 2001, the percentage of J.D. degrees awarded to women rose to 47.5%. While percentages generally have increased slightly over the past few years, the percentage of J.D. degrees earned by women in 2007 fell to the 2001 level of 47.5%. Am. Bar Ass'n, Legal Education Statistics: J.D. and LL.B. Degrees Awarded, http://www.abanet.org/legaled/statistics/charts/stats%20-%202007.pdf.

2. Branson, supra note 1, at 1, 39, 151-52. In 2006, 35% of students enrolled in MBA programs were women. Nisha Ramachandran, Looking for Ms. MBA: The Ratio of Women to Men in Graduate Business Programs Lags Behind, U.S. News & World Rep., Apr. 10, 2006, at 52, available at http://www.cbsnews.com/stories/2006/03/29/grad_schools/main1453461.shtml. This represents an increase from 2003, when female enrollment in MBA programs was only 30% (although, as the authors note, this represents a substantial increase over the previous thirty-five years). Janet Marks & Rachel Edgington, Motivation and Barriers for Women in
women entering and emerging from legal and business education programs, one would expect to see a larger number of women serving as partners in large corporate law firms and holding executive and board positions in major corporations. Unfortunately, vast numbers of women never reach the point in their careers where they are even considered for—much less attain—these partner, executive, or director positions. This is a phenomenon denominated as the "leaky pipe." While descriptive, this metaphor falls far short of reality. There are not just a few women slipping out of the pipe that leads to the upper echelons of corporate management. Rather, many women are leaving


3. BRANSON, supra note 1, at 151 ("The scarcity of women in corporate governance roles is curious, because women have been entering the professional and managerial ranks in great numbers for nearly three decades now."). See also Ruth B. Mandel, A Question about Women and the Leadership Option, in THE DIFFERENCE "DIFFERENCE" MAKES 66-67 (Deborah L. Rhode ed., 2003).


5. BRANSON, supra note 1, at 39. Crucial to the "leaky pipe" phenomenon is the lack of women in the pipeline where it matters: many directors of Fortune 500 and Fortune 1000 companies are drawn from directors serving on the boards of public companies that are not yet in the Fortune 1000, and precious few women are serving as directors on those boards. Barnard, supra note 4, at 713.
ing prime law and business positions only a few short years after entering them. By doing so, they are forfeiting opportunities to participate in senior management positions and sacrificing opportunities for coveted board seats, which often are awarded to chief executive officers (CEOs) and other leaders of professional and business firms. This mass exodus may be detrimental to individual women and women as a whole, but it most certainly impacts firms, which continue to appoint partners, executives, and directors from a depleted pool of candidates. One might say that the pipe is not merely leaking; it has a large rupture.

In his book, No Seat at the Table: How Corporate Governance and Law Keep Women Out of the Boardroom ("No Seat at the Table"), Professor Douglas M. Branson proposes a novel, if somewhat unsettling, solution to the problem: he recommends ways for women to advance to the upper ranks of management in large public companies through paradigm shifts, while encouraging those already in upper management to acknowledge the direct benefits that female traits may provide to corporate governance. Yes, women deserve to be promoted through the ranks with men because they are equally capable and worthy of advancement. But as important, corporations deserve the opportunity to hire the best-of-the-best to manage their day-to-day business and ensure that managerial decisions are made in the best interest of the corporation. Moreover, investors deserve to have their trust in corporate America renewed through


7. BRANSON, supra note 1, at 90-91, 102-03 (setting forth the primary sources of female directors); id. at 148 ("A primary source of [director] candidates is the roster of CEOs of publicly held companies.").

8. See id. at 161-85.

9. Professor Branson does not question this in his book. He notes, near the end of the book, some advantages that women, as an element of diversity, may bring to the boardroom, including viewpoint diversity, stereotype negation, and cooperation among historical minorities. Id. at 176-79.
the development and maintenance of morally conscious and trustworthy boards of directors. Finally, consumers of corporate products and services, a group comprised increasingly of women,\textsuperscript{10} deserve to be adequately represented in the corporations that draw large revenues from women's pockets.\textsuperscript{11}

\textit{No Seat at the Table} aptly describes how patterns of male dominance, which are inherent in the legal structures of corporate governance, reproduce themselves again and again to keep women out of the executive suites and boardrooms and offers a practical way to break this cycle of dominance.\textsuperscript{12} A central value of Professor Branson's book derives from his gendered corporate governance thesis, as well as his use of nontraditional empirical data and interdisciplinary literature (in addition to more traditional decisional law and legal scholarship) to support the positions he takes. Yet, \textit{No Seat at the Table} is also an invaluable resource because it collects, in one volume, varied research materials and related information at the intersection of women and corporate boards and because it offers further support for the diversification of boards of directors as part of the overall effort to strengthen corporate governance practices and promote more productive, efficient, and trustworthy corporations.\textsuperscript{13}

This review is designed to explore these strengths—and a few related weaknesses—in Professor Branson's approach.\textsuperscript{14} Specifically, Part I of the review highlights three key strengths

\begin{footnotesize}

\textsuperscript{10} See Ann Bartow, \textit{Likelihood of Confusion}, 41 \textsc{San Diego L. Rev.} 721, 777 (2004) ("Women are perceived to do most of the shopping, and this perception is accurate."); Stacie A. Furst & Martha Reeves, \textit{Queens of the Hill: Creative Destruction and the Emergence of Executive Leadership of Women}, 19 \textsc{Leadership Q.} 372, 379 (2008) ("[W]omen are being catered to by automobile dealerships, mutual fund companies, home improvement stores, and healthcare companies because these businesses understand that women make the majority of purchasing decisions for the family.").

\textsuperscript{11} \textsc{Branson, supra} note 1, at 106-08.

\textsuperscript{12} \textit{Id.} at 161-75.

\textsuperscript{13} \textit{Id.} at 176-79. See also Joan MacLeod Heminway, \textit{Sex, Trust, and Corporate Boards}, 18 \textsc{Hastings Women's L.J.} 173, 196 n.117 (2007).

\textsuperscript{14} We note at the outset that Professor Branson's description and analysis sometimes meander a bit and that there are some obvious redundancies in the text, deficiencies that are easily cured by more efficient structure and organization in places. Having made the point, there is no need to dwell on it. The substance of the book deserves more explication and therefore is the focus of the remainder of this review.

\end{footnotesize}
of Professor Branson's work: his thorough and useful report on 2001 and 2005 proxy data from public company filings with the U.S. Securities and Exchange Commission ("SEC"),15 his account of the effects of tokenism in the boardroom,16 and his analysis of the obstacles women face in climbing the rungs to the top of the corporate ladder.17 Part II then evaluates the strengths and weaknesses of his proposed paradigm-shifting as an effective way to procure female advancement to executive ranks and board positions.18 Finally, Part III examines the potential shortcomings of Professor Branson's observations that the differences between men and women are inconsequential and should be minimized,19 and further, how these observations (when taken out of context) conflict with his efforts to keep women in the pipeline toward upper management. The review then ends with a brief conclusion.

I. Overall Descriptive and Analytical Strengths: Proxy Data, Tokenism, and Obstacles to Advancement

As a business law teacher and scholar, Professor Branson anchors the material included in No Seat at the Table in corporate governance law and practice. In particular, throughout the book, he notes factors and trends in corporate governance that may support increased participation by women on corporate boards of directors. The legal role of the corporate board of directors, the means of selection of directors, legal and practical movements toward increasing numbers of independent directors, the structure and function of board committees, and other related matters are addressed in the text and help contextualize the gender consideration at the heart of the book.20 Yet, Professor Branson brings significantly more to bear in illuminating the issues. His supporting sources range from the traditional cases and law review articles that underlie much of legal schol-

15. See BRANSON, supra note 1, at 97-108.
16. See id. at 109-23.
17. See id. at 77-96.
18. See id. at 161-75.
19. See id. at 184-85.
20. See, e.g., id. at 136-37, 145-46.
arship to more innovative legal and non-legal sources (including literature from other disciplines). This Part highlights three particularly strong elements of Professor Branson's description and analysis that reflect on or build from these varied source materials.

A. 2001 and 2005 SEC Proxy Data

Professor Branson aptly notes that although the percentage of women serving on boards in 2005 increased when compared to the percentage of female directors in 2001, the use of percentages in reporting this data is often misleading. For example, many corporations responded to the adoption of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") by reducing the size of their boards; so an increased percentage of women on boards may be explained, at least in part, by a smaller number of directors overall. Additionally, the number of women serving on multiple boards increased between 2001 and 2005; thus, the increased percentage of women directors reported is likely a reflection of the same women filling multiple board positions and not evidence of more women being appointed as directors. In sum, when female representation on boards in 2005 is reported in percentages, the values may mislead because they do not necessarily indicate that more, different women are being appointed to corporate boards.

In an effort to fill in the gaps in the data, Professor Branson devotes two entire chapters, Chapters 7 and 8, to the findings of his thorough review of the 2001 and 2005 SEC proxy data. The information contained in these comparatively small chapters of the book is invaluable because it depicts the representa-

22. Id. at 193-231 (comprising the endnotes and bibliography for the book).
23. Id. at 97, 99.
25. BRANSON, supra note 1, at 144-45.
26. See id. at 97, 101, 145.
27. Id. at 100.
28. Id. at 97, 144.
29. Id. at 99.
30. Id. at 87-108.
WANTED: FEMALE CORPORATE DIRECTORS

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Of women on corporate boards in simple, absolute numbers using a public data set. For example, Professor Branson's data set reveals an increase in the number of female directors from 480 in 2001 to 568 in 2005. In addition, based on Professor Branson's study in 2005:

- 568 of 5,161 directors were women; of those 568, 79 women served on four or more boards; 59 corporations in the Fortune 500 had no female directors in 2005; and
- 183 corporations in the Fortune 500 had only one female director.

These are but a few of the interesting points of information that emerge from Professor Branson's review and categorization of the 2001 and 2005 SEC proxy data.

Professor Branson's presentation of hard facts in the style of a statistical report, undiluted by opinion or speculation, makes the reality of the figures impossible to ignore. Professor Branson further solidifies his point (and adds meaningfully to the overall available information on the gender composition of boards of directors) by reporting the numbers of women on the boards of directors of corporations for which the consumer base is largely female. For example, in the retail drug industry (where a majority of shoppers are women), Professor Branson reports that industry leaders like Walgreen's, Rite Aid, and Long's each had a single female director in 2005. CVS followed with only two female directors. Grocery store chains Kroger and Whole Foods had only two female directors. Retail corporations also had surprisingly few female directors. Professor Branson reports that, in 2005, Dillards had no female direc-

31. Id. at 97.
32. Although we refer to the study and data as Professor Branson's (since he directed the data gathering and publication), he notes in the text that the data collection was done by four law student research assistants. Id. at 88.
33. Id. at 97.
34. Id.
35. Id. at 102.
36. Id.
37. Id. at 106-08. Professor Branson also presents other data on numbers and percentages of female directors by industry and company. Id.
38. Id. at 106.
39. Id.
40. Id. at 107.
tors, and Walmart, Kmart, Kohl's, and Family Dollar Stores each had only one female director.41 Professor Branson is most surprised by the lack of women on the boards of Procter & Gamble, Coca-Cola, Nike, Whirlpool, Gillette, Kellogg, Campbell's Soup, and Mattel Toys, each of which had two female directors in 2005.42 He had expected these numbers to be higher, given these corporations' seemingly great need to appeal to female consumers.43

The utility of a report on annual proxy data of Fortune 500 boards before and after the enactment of Sarbanes-Oxley, compiled in one resource in a comprehensible and well-organized format, is very useful. Because public corporations must comply with widely available, uniform, and consistent SEC filing requirements,44 the 2001 and 2005 proxy data reported by Professor Branson is transparent and easily cross-checked and compared.45 There is a significant and unfulfilled need for updated, comparative data like that Professor Branson presents in Chapters 7 and 8 of No Seat at the Table. We hope that Profes-

41. Id.
42. Id. at 108.
43. Id.
45. Professor Branson relies on proxy data obtained from Schedule 14A filings with the SEC instead of data reported by Catalyst or other research firms. See Branson, supra note 1, at 2. The requirements of Schedule 14A are, in relevant part, the same for each company and consistent for the two years of his study. Id. at 88 & n.4, 89 & n.5. Professor Branson also cites to research firm reports in the book, but he distinguishes his study from those reports. See id. at 143-44. As Professor Lissa Lamkin Broome notes, Catalyst's data is obtained by surveying Fortune 500 corporations by letter, phone calls, and examination of the public records. Lissa Lamkin Broome, The Corporate Boardroom: Still a Male Club, 33 J. Corp. L. 665, 668 n.16 (2008). Professor Broome critiques both the Branson and Catalyst presentations, to some extent. Id. at 667-69. While Catalyst data is invaluable in evaluating female representation on corporate boards within a given year, the data is not easily compared across years, because the data collection and reporting methods are not transparent (e.g., it is unclear that the questions asked during telephone conversations are precisely the same from year to year). Those citing Catalyst results often cite to data for a single year and not for longitudinal or comparative analysis. See Val Singh et al., Newly Appointed Directors in the Boardroom: How Do Women and Men Differ?, 26 Eur. Mgmt. J. 48, 48 (2008) (citing the 2004 Catalyst report to highlight the scant representation of women on corporate boards); Vicki W. Kramer et al., Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance, (Wellesley Ctrs. for Women, Working Paper Series, Report No. WCW 11, 2006) (citing to the 2005 Catalyst report for percentages of Fortune 500 board seats held by women).
sor Branson undertakes to provide (or arrange for the provision of) those updates on an annual or other periodic basis.

B. *Tokenism*

As Professor Branson's research shows, almost forty percent of corporations in the Fortune 500 have only one female director.46 While this represents progress in comparison to the all-male boards of the past, the benefits of gender diversification may not be fully realized due to the effects of *tokenism*.47 Professor Branson defines a token as a “solo, one of a kind (woman, black, Hispanic) in a smaller work group, job classification, or organization.”48 Sole female directors are vulnerable to heightened visibility and performance pressures that inhibit their potential contributions to boards.49 Dominant male members of the group become aware of the communal attributes among the men in the group and how those commonalities distinguish them from the token female board member, thereby isolating the woman from the rest of the board.50 The token member’s decisions and input are scrutinized, not only for merit and substance, but also because they are perceived to represent

46. Branson, supra note 1, at 102.
48. Branson, supra note 1, at 110.
49. Id. at 111. See also Kramer et al., supra note 45, at 4-5. As Professor Mary Becker explains:

The first women who enter into previously all-male groups feel these barriers particularly acutely. In addition, they feel considerable pressure to perform well so as not to hurt the chances of the women who will follow them, yet they lack any intra-group support system analogous to that enjoyed by men. Internalization of sex-specific behavioral norms, by the women breaking in and those around them, makes finding an effective and comfortable style in a male environment difficult.


50. Branson, supra note 1, at 113. Introduction of a token female to a male-dominated group may result in men becoming more aware of their common characteristics (e.g., they are “outdoorsmen, like sports, talk about cars and women”) and recognizing their shared differences from the token (e.g., they are rational and unemotional, while the female group member exemplifies opposite characteristics). Id. at 111.
the sentiments of the entire gender or race. Moreover, Professor Branson notes that women bear a heavy burden as a result of normative perceptions about appropriate behavior. A token female director walks a fine line between performing equally to her male counterparts in board discussions and decision-making (to prove her worth to the corporation and show she is deserving of her position on the board) and not outperforming her male board colleagues (or risk being regarded as too “aggressive, pushy, and overly ambitious”).

Because of these constraints on the behavior of token women directors, the efficacy of adding a sole female director to the board is questionable—mandating token female participation in the boardroom may not improve the board’s effectiveness, and in the case of boards that already govern well, it might actually reduce effectiveness. Ideally, the diversification of corporate boards should mitigate or eliminate the observed “groupthink” problem that likely plagues many ill-advised board decisions. In a letter to the editor of the Wall Street Journal, Sun Oil CEO Robert Campbell states that “[o]ften what a woman or minority person can bring to the board is some perspective a company has not had before—adding some modern-day reality to the deliberation process. Those perspectives are of great value, and often missing from

51. Id. at 113-14. See also Kramer et al., supra note 45, at 4-5.
52. See Branson, supra note 1, at 118-19.
53. Id. at 114.
54. In instances where a female director is chosen solely to fill a gender role on the board of directors of a well governed corporation, the resulting monitoring and decision making may be counterproductive and actually reduce the board’s effectiveness. However, results of Adams and Ferreira’s study suggest that female directors are able to impact board governance in firms where additional monitoring is needed. See Adams & Ferreira, supra note 47, at 5.
55. Irving Janis proposes application of the groupthink label when three antecedent conditions and eight symptoms are met. See Irving L. Janis, Victims of Groupthink (1983). The three antecedent conditions include: a cohesive group; structural faults in decision making; and situational context. Id. at 176-77. Janis’s eight symptoms of groupthink are: (1) a sense of invincibility; (2) a belief in inherent morality of goals; (3) collective rationalization; (4) the stereotyping of out-groups; (5) the appearance of unanimity; (6) self-censorship; (7) pressure on dissenters; and (8) self-appointed mind-guards. Id. at 174-75. See also Marleen A. O’Connor, The Enron Board: The Perils of Groupthink, 71 U. CIN. L. REV. 1233, 1257-60 (2003). The presence of female directors may disrupt cohesion or the presence of other predicable conditions and may prevent the appearance of the identified symptoms. See Branson, supra note 1, at 178-79.
an all-white-male gathering.”56 However, those perspectives may be lost in boardrooms with token female or minority members.57

In his chapter on tokenism, Professor Branson describes several coping strategies that tokens adopt in response to performance pressures exerted by their positions on the board.58 He posits that, on one extreme, tokens may “revel in the notoriety of token status,”59 enjoying the perceived advantages of being the only woman in the group and “excessively criticiz[ing] potential women peers.”60 The benefit to a token female director of turning against other women is two-fold: it ensures her place as “Queen Bee”61 in the boardroom, while also demonstrating her loyalty to the male-dominated group by conforming to male biases and portraying herself as “not a typical woman.”62 The existence of groupthink on a corporate board is not

56. David A. Carter et al., Corporate Governance, Board Diversity, and Firm Value, 38 FIN. REV. 33, 34 (2003). See also Kramer et al., supra note 45, at 42-44 (noting observations about differences that women make to corporate boards of directors).

57. See supra notes 47-54 and accompanying text.

58. See BRANSON, supra note 1, at 115.

59. Id.

60. Id.

61. Id. at 67, 115. According to Branson, “[t]he Queen Bee syndrome occurs when the first woman to reach a certain job classification or management level tries to exclude other women from the same level, status, or job classification.” Id. at 67. See also infra notes 125-28 and accompanying text. We note that the “Queen Bee” moniker has been variously invoked and refuted in various contexts in the academic literature and in life. See Edward S. Adams, Using Evaluations to Break Down the Male Corporate Hierarchy: A Full Circle Approach, 73 U. COLO. L. REV. 117, 170-71 (2002); Cynthia Fuchs Epstein, Women’s Attitudes Toward Other Women: Myths and Their Consequences, 34 AM. J. PSYCHOTHERAPY 322, 326-27 (1980) [hereinafter Epstein, Women’s Attitudes].

62. BRANSON, supra note 1, at 118. This seeming repudiation of female status is a common adjunct or alternative to Queen Bee status. Professor Deborah Rhode describes the two phenomena as they operate generally in the workplace.

It is, of course, not only men who are responsible for patterns of exclusion and inequality. As recent reports make clear, some workplaces have what sociologists once labeled “Queen Bees”: women who believe that they managed without special help, so why can’t everyone else? By contrast, other women leaders are more sensitive to gender-related problems but reluctant to become actively involved in the solution. Some of these women are hesitant to become “typed as a woman” by frequently raising “women’s issues,” by appearing to favor other women, or by participating in women’s networking groups.

likely to be mitigated or eliminated by the addition of a woman who exhibits these behaviors; rather, the addition of yet another director who will conform to pre-existing group biases and beliefs is likely to perpetuate, or even strengthen, groupthink.63

A token female board member may compensate (and demonstrate loyalty to her fellow male board members) by allowing her male board colleagues to "encapsulate her in a role that represents a stereotype but one to which the majority is receptive" in order to make her presence in the boardroom more comfortable.64 Negative consequences of permitting encapsulation resonate from the token female to the women in middle-management attempting to climb the ranks.65 The price of encapsulation is diminished recognition of the token's individual productive activity, thereby hindering her advancement and proffering support for the argument that women bring no significant advantage to the boardroom over men.66 It follows that if the token female member does not seem to be of any real benefit to the board, there is little incentive to appoint more women directors.67 The negative effects on middle management are also important, since, as Professor Branson and others note, most corporate directors come from the ranks of corporate executive officers, who typically are groomed for the job through middle management positions.68 The price paid by a token female director who allows herself to be stereotyped as a "mother

63. See Branson, supra note 1, at 117.
64. Id. at 118. Professor Susan Estrich analogizes the phenomenon of women striving to make men comfortable with their presence in the boardroom to fitting into a vise. Susan Estrich, Sex & Power 134 (2000). Women tailor their management styles to be more in line with their male counterparts, learn to play golf well (but not too well), and consistently exceed expectations to prove their contributions to the boardroom are needed. Id. at 119-24, 126-28. However, as women climb the ranks, the vise grows tighter and many women are eventually squeezed out. Id. at 134-38.
65. Branson, supra note 1, at 119.
66. See id.
67. See id.
figure" or "group pet" is her marginalization and stigmatization in board deliberations and the possible diminished recognition of her accomplishments as a member of the board. The token is valued for fulfilling the characteristics expected of the assigned stereotype—no more, no less.

To procure the continued, actual diversification of boards, current predominantly male boards need to appreciate the unique, but equally valuable, contributions of individual women and minority directors—not as "one of the boys" or as a representative of a particular stereotyped set of viewpoints, but as individualized inputs. The benefits of a diversified board are lost if female and minority board members are appreciated solely because of their conformity to existing group behaviors or perceived stereotypical character traits.

Conversely, on the opposite extreme of Professor Branson's coping strategies is the token woman director who attempts to make herself socially invisible to avoid disrupting perceived group harmony and alleviate discomfort felt by the rest of the (all male) board. The invisible token remains on the periphery of the board's activities, reluctant to dissent from the opinion of the group for fear that she may rock the boat. Thus, the invisible woman's contributions and accomplishments are unlikely to be recognized, and any benefits of a diversified board go unrealized, negatively reinforcing antiquated beliefs that a woman brings nothing new to the table. Moreover, like the token that prizes being the only woman in the room, the invisible token

69. Branson, supra note 1, at 119. Token women stereotyped as mother figures are relied upon for support, but as long as they are in the minority, it is unlikely that they will be rewarded for "critical, independent, task-oriented behaviors." Rosabeth Moss Kanter, Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women, 82 Am. J. Soc. 965, 982 (1977).

70. Branson, supra note 1, at 119. While men may be praised for the substantive contributions they make to the group, token women stereotyped as the group pet are celebrated for superficial attributes, such as "speech-making ability;" this characterization of token women prevents "them from realizing or demonstrating their own power and competence." Kanter, supra note 69, at 983.

71. Branson, supra note 1, at 119.

72. Id. at 115.

73. Id.

74. Id. at 119.
woman director does little to alleviate the effects of groupthink, since her independent voice is never heard.\textsuperscript{75}

While the coping behaviors comprising social invisibility do not include overt attempts to prohibit potential female peers from rising to the token woman director's level, the result for the female director is, in effect, the same as if overt tactics had been used.\textsuperscript{76} Regardless of whether women allow themselves to be encapsulated into female stereotypes so that male directors feel more comfortable with their presence in the boardroom or avoid recognition altogether in favor of blending in with the group, the benefits of any new perspectives are lost.\textsuperscript{77} The obstacles before a female middle manager must appear insurmountable through Professor Branson's eyes: before her lies the glass ceiling, broken in a few places by a handful of sole female directors who either conform to a male-dominated board or an expected stereotype or make themselves undetectable. In fact, Professor Branson attributes both the shortage of women reaching the upper ranks of corporate management and the premature departure of these women from upper-management positions (representing additional loss from the "leaky pipe") to the undesirability of these coping strategies, together with dominant group behaviors and an overall lack of recognition.\textsuperscript{78} Through each coping strategy, the behavior of the token female director may prevent her from achieving her full potential as a manager and a board member and devalues any contribution she in fact makes to management or the board.\textsuperscript{79}

Sadly, Professor Branson's prognosis for a board with two female directors is equally grim. He posits that when two female directors are in the boardroom, they may easily be turned against one another.\textsuperscript{80} In fact, he suggests there is a strong incentive for the male board members to encourage this divisiveness.\textsuperscript{81} Although the underpinnings of Professor Branson's statements regarding tokenism proffer empathy for sole and

\textsuperscript{75} See id. at 115.
\textsuperscript{76} See id.
\textsuperscript{77} Id.
\textsuperscript{78} Id. at 122-23.
\textsuperscript{79} See id.
\textsuperscript{80} See id. at 121.
\textsuperscript{81} Id. ("Two are few enough for the dominants easily to divide. Larger numbers may be necessary to relieve stresses and for supportive alliances to develop.").
dual female directors, he somewhat contradicts his objective of promoting women's place in the boardroom by highlighting, in a way that makes it seem like a unique female trait, the vulnerability of token female directors to the manipulation and puppetry of their male counterparts. In fact, this susceptibility to manipulation is borne of deeply discounted minority status, regardless of gender.82 Under Professor Branson's view, it may seem that the boardroom is indeed better left an old boys' club and that there is no way to change it in any case. One is left to wonder (and this is Professor Branson's point) whether, for women aspiring to upper management, there is any reason to strive for key executive officer positions and board seats.

A study published in the same year as No Seat at the Table offers a brighter picture of the boardroom with two female directors, however. After surveying a number of female directors, CEOs, and corporate secretaries, researchers reported that the addition of two women to an all-male group resulted in less stereotyping by male members and a decrease in female members' feelings of isolation, because each woman had a perceived ally in the group.83 However, the study's results lend support to Professor Branson's premise that the benefits of boardroom diversification only may be fully realized when there are more than two women on the board: researchers found that "with three women on a board, a critical mass is formed. If the three women strongly and unwaveringly support a particular issue, they may create a 'majority influence dynamic' that causes their views to prevail."84 The existence of a "critical mass" of women on a corporate board influences the way female directors feel

82. While being in the numerical minority can be difficult for anyone, research suggests that minority status is particularly detrimental for women and racial and ethnic minorities because these groups have historically been attributed lower social status. See Kramer et al., supra note 45, at 5. See also Steven A. Ramirez, A Flaw in the Sarbanes-Oxley Reform: Can Diversity in the Boardroom Quell Corporate Corruption?, 77 St. John's L. Rev. 837, 852 n.88 (2003) (suggesting that both gender diversity and racioethnic diversity may introduce a different perspective into the boardroom because women and nonwhites are not members of the good old boys' club and observing that "[i]ndividuals offering either type of diversity . . . have been historically deprived of the ability to actualize their full potential.").

83. Kramer et al., supra note 45, at 5-6, 22.

84. Id. at 6.
about their place among fellow directors. When there are enough female directors to comprise a critical mass, both women and men feel more comfortable with female presence in the boardroom, thus enhancing female directors’ abilities to contribute and be heard regarding matters that come before or impact the board. The end result is not only a favorable experience for both male and female members of the diversified board, but also a positive impact on corporate governance in the firm.

C. Obstacles in Women’s Paths to Advancement

Although portions of No Seat at the Table are not expressly targeted to an audience of women attempting to remain in the pipeline to the boardroom—it is certainly not merely a “how to” book for women aspiring to upper management positions and board seats—Professor Branson’s descriptions and discussions of obstacles in the paths of women’s advancement are exactly that. These portions of the text also help inform existing executives and directors. As a result, they are among the most useful part of the book for readers other than academics and researchers. In this respect, the book represents a crossover between an academic offering and a trade book.

After covering generally accepted aspects of the struggle associated with women’s advancement to senior corporate management positions in the first two chapters of No Seat at the Table, in Chapter 3, Professor Branson briefly reviews the all-too-familiar effects of the glass ceiling, manifested in hostile work environments, targeted “reductions in force,” and the stereotyping of women as either too feminine or lacking in femininity. He then describes the effects of motherhood on career

85. See id. at 44-45.
86. Id. at 34-39.
87. Id.
88. BRANSON, supra note 1, at 3.
89. See id. at 9-74.
90. This is both an advantage and a distraction in the book. The variety of audiences to whom Professor Branson directs his text sometimes confuses the message. This attempt to do something for everyone is the likely genesis of many (if not most) of our significant critiques of the book.
91. Id. at 23-32.
advancement, a seemingly unsolvable problem. As Professor Branson notes, although the percentage of married couples with both spouses in the workforce has steadily increased for several decades, child-rearing responsibilities continue to be disproportionately borne by mothers. Some women are "opting out" of their careers because it seems impossible to balance a job that demands long hours with child care, soccer practices and games, and PTA meetings. The mother who leaves work early to tend to children continues to be viewed, in many workplaces, as undedicated to her work and undeserving of promotion. Yet, the mother who misses the school play to negotiate the details of a merger is cast as cold and uncompasionate. Cumulatively, these burdens and attitudes amount to a lose/lose proposition for many working women. As a result, many women committed to achieving their career ambitions choose to have only one child (minimizing the potential conflicts) or no children at all. Meanwhile, in many cases, men with families at home are praised for working late hours and given the "good assignments" that lead to promotion after promotion, paving the way to upper-management.

Professor Branson's accounts of the plight of specific women who attempted to balance motherhood and a career are not particularly novel. Most women either have had a similar experience or know someone who has. The valuable purpose of these somewhat unremarkable accounts in the book is to instill in readers both empathy and a desire to fight for change. After ignoring those feelings, Professor Branson cleverly constructs a

92. Id. at 35-39. See also Barbara Kellerman, You've Come a Long Way Baby—And You've Got Miles to Go, in THE DIFFERENCE "DIFFERENCE" MAKES, supra note 3, at 55.
93. Branson, supra note 1, at 35.
94. Id. at 38.
95. Id. at 37.
96. See Estrich, supra note 64, at 17.
97. Branson, supra note 1, at 36.
98. See, e.g., Cynthia Fuchs Epstein, Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors, 49 U. KAN. L. REV. 733, 751-52 (2001) ("[M]any women report increasing their efficiency in order to be as productive as possible during the work day in order to spend evenings with their children while many men, they claim, often only work to full capacity in the afternoons and into the night. This nighttime work often 'counts for more,' because it is regarded as more heroic.").
distinct platform on which readers may stand in making the argument for corporate change toward mother-friendliness: the business and economic reasons why motherhood matters.  

In this brief part of the book, Professor Branson cites the potential effects of inadequate human capital for the future of the United States, as evidenced by the consequences of falling birth rates for the past few years in Spain and the Netherlands. An argument for change rooted in the linkage among childbearing, childrearing, and human capital—supported by foundational work authored by, among others, Professor Marleen O'Connor—tugs less at the heartstrings of mothers than at those of businessmen planning for the future of corporate America. This argument offers both women and men a reason to value motherhood and all of the temporary inconveniences that accompany it. Both women and men desire a secure labor force for the benefit of businesses and the nation's economy.

Chapter 4 of Professor Branson's book notes differences in the communication styles of men and women that may stigmatize women and advises women to make modest changes in their language usage, assertiveness, and inflection as a means of furthering themselves professionally. He references the work of criminal law professor Janet Ainsworth, which posits that men and women use different linguistic registers, thus exhibiting characteristically distinct ways of speaking. Professor Branson cites particular female speech characteristics that may play a role in women's advancement in corporate governance structures, including: "(1) avoidance of imperatives and the use of indirect interrogatories instead; (2) increased use of modal verbs; (3) use of hedges; (4) rising intonation in declara-

100. Id. at 52.
101. Id.
102. See, e.g., Marleen O'Connor-Felman, American Corporate Governance and Children: Investing in Our Future Human Capital During Turbulent Times, 77 S. CAL. L. REV. 1258, 1316 (2004) ("Economic growth is strongly determined by the intergenerational transmission of human capital. Thus, equality of income assures that more families can afford to educate their children in a manner that will contribute to the economy in the future.").
103. See Branson, supra note 1, at 55-64.
104. Id. at 57-58 (citing Janet E. Ainsworth, In a Different Register: The Pragmatics of Powerlessness in Police Interrogation, 103 YALE L.J. 259, 274 (1993)).
WANTED: FEMALE CORPORATE DIRECTORS

Professor Branson explains that the use of imperatives, or an overt order, conveys assertiveness and superiority. By substituting indirect interrogatories (e.g., “Should we hire him?”—instead of “Hire him.”), women may relinquish a portion of their decision-making power and place themselves in a subordinate position to their male colleagues. Women who adopt this speech pattern in male-dominant groups may appear to lack confidence and may find it difficult to receive full credit for profitable managerial decisions.

Similarly, Professor Branson notes that a woman’s insertion of modal verbs into imperative statements (e.g., “You might hire him.”) and use of verbal hedges (e.g., “I think” or “I suppose”) may make her appear less confident and assertive. These linguistic patterns, coupled with women’s rising intonation in declaratory statements, lend favor to the stereotype that women are overly emotional and may be a possible reason for women’s relative absence from upper management and the boardroom. Additionally, women’s cooperative nature often leads them to be silent during conflict or acquiesce to mollify tensions. This behavior bolsters the perception that women do not meaningfully contribute to the tug-of-war negotiations that take place in corporate executive suites and boardrooms.

In addressing these verbal presentation observations, Professor Branson effectively points to small, but significant, changes women may make to improve their presence in the boardroom, without forcing a change in their nature. At the

105. Id. at 58.
106. Id. at 58-59.
107. See id.
108. Id. at 57-59.
109. Id. at 59-60.
110. Id. at 60-61.
111. Id.
112. Id. at 62.
113. Id. at 62, 63.
114. Professor Branson expressly cautions women to avoid the extreme, becoming “Bully Broads” and adopting overly dominating and power-driven behaviors commonly associated with male managers. Id. at 63. See also infra notes 117-21 and accompanying text. Bully Broads are characterized as “intense intimidating dynamos.” BRANSON, supra note 1, at 68. While their drive and productivity
very least, women should be aware of the ways in which their communication style may be perceived and may be well advised to occasionally use imperatives and reduce their frequent use of modal verbs and verbal hedges. Regrettably, readers are left with no detailed guidance on how to make these changes successfully. For this, a woman desiring advancement must use other resources.\(^\text{115}\)

Professor Branson principally turns his attention toward another audience (those responsible for hiring and placing women in business careers) to tender his most pointed advice regarding the differences in communication styles of women and men. In this part of the book, he asks for quite a bit—perhaps too much—from employers and head-hunters in terms of the acknowledgement and accommodation of difference. For example, while his advice to lengthen interviews with women (to allow them time to feel comfortable opening up about their talents) and to avoid automatically placing women only in the "pink-collared" jobs in human resources departments is well taken and rooted in the research he cites,\(^\text{116}\) blind implementation of these changes may be an over-reaction. Certainly, greater sensitivity to the observed gender differences in communication is a sensible first step. Also, firms should adopt hiring and retention evaluation systems that minimize the possibility that these differences will be misinterpreted in employment, placement, and promotion.

In Chapter 5, his final chapter devoted to obstacles in the path of advancement, Professor Branson describes four stereotypes that women fulfill to their detriment as they climb the corporate ladder.\(^\text{117}\) First is the "Bully Broad" stereotype, characterized by a "harsh command-and-control style" that is often acceptable for men but disfavored in women.\(^\text{118}\) Bully Broads are often viewed as confrontational and possessing an excessive sense of entitlement; they are brash and insensitive in their

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\(^\text{115}\)\text{Public speaking experts may be of help in making these changes. See, e.g., HANNAH WOOD, Communication Expert Gives Speech Advice, Bi-C. News Online, Feb. 1, 2005, http://www.biconews.com/?p=1666.}

\(^\text{116}\)\text{BRANSON, supra note 1, at 63.}

\(^\text{117}\)\text{See id. at 65-74.}

\(^\text{118}\)\text{Id. at 65-66.}
dealings with everyone, from the waiter or doorman to their colleagues and subordinates.\(^\text{119}\) Women who fall into the Bully Broad category are often labeled as abrasive, tyrannical, or sharp-tongued by supervisors.\(^\text{120}\) Professor Branson believes this strong, domineering management style prevents women's advancement because Bully Broads are viewed as lacking the diplomacy and strategic skills requisite of successful corporate executives.\(^\text{121}\)

Next is the "Iron Maiden" phenomenon, observed when a token female is reluctant to assimilate to the stereotypical roles imposed upon her by the dominant male members of the group.\(^\text{122}\) Women labeled Iron Maidens are viewed with suspicion and kept at a distance; dominant male members of the group often respond to Iron Maidens as though they are tough and dangerous.\(^\text{123}\) Here, Professor Branson reiterates the perils of the token female who resists encapsulation by a male-dominated group, distances herself from female peers, and nevertheless insists on her full rights as a member of the group; she is ultimately left to flounder on her own with no sympathy from the women she alienated on her rise to the top and no in-group status with her male colleagues.\(^\text{124}\)

The third stereotype Professor Branson introduces is the "Queen Bee,"\(^\text{125}\) which is observed in women who have reached upper-levels of management but prevent other women from doing the same, fearing loss of status or power.\(^\text{126}\) The Queen Bee

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\(^{119}\) Jean Hollands, Same Game, Different Rules: How to Get Ahead Without Being a Bully Broad, an Ice Queen or "Ms. Understood" 164-65 (2002).

\(^{120}\) Id. at xxiii.

\(^{121}\) Id. at 66.

\(^{122}\) Id. at 66-67. See also Kanter, supra note 69, at 982-84 (suggesting that token females are commonly cast into one of three roles: Mother, Seductress, or Pet; and when the token female refuses to assimilate to one of these roles, she is viewed as an "Iron Maiden").

\(^{123}\) Kanter, supra note 69, at 984.

\(^{124}\) Id.

\(^{125}\) Graham Staines et al., The Queen Bee Syndrome, Psychol. Today, Jan. 1974, at 55. See also Epstein, Women's Attitudes, supra note 61, at 326-27.

\(^{126}\) Branson, supra note 1, at 67. See also Adams, supra note 61, at 170-71 (arguing that the Queen Bee syndrome is uncommon, but acknowledging that female managers who do engage in "Queen Bee behavior" are likely resented by female subordinates and, as a result, are further isolated as they climb the corporate ladder).
female manager, rather than making the road easier for the women behind her, erects roadblock upon roadblock to the advancement of these women, in an effort to retain her position as the sole female member of the group.\textsuperscript{127} Negative effects of tokenism (e.g., isolation by the male-dominated group and resentment by female peers) are associated with Queen Bee status.\textsuperscript{128}

Finally, the woman who is judgmental, rigid, and inflexible in her managerial style and who also remains silent for fear that revealing her feelings will be perceived negatively, is characterized as the "Ice Queen."\textsuperscript{129} "The Ice Queen is reserved and steely."\textsuperscript{130} She can be seen as a Bully Broad that infrequently engages in verbal bullying.\textsuperscript{131} However, when she does speak, it is often sharp and damaging.\textsuperscript{132} Professor Branson credits women who fit this stereotype with exhibiting externalizing behaviors, always placing blame on others for problems that arise.\textsuperscript{133} Much like the other stereotypes, the Ice Queen tends to isolate herself from her female peers and the other members of a male-dominated group.\textsuperscript{134}

Professor Branson's observation that these stereotypes persist in corporate management and his assessment that women who exhibit these stereotypical behaviors find themselves unable to advance past middle management are both candid and, at least as to some women in the pipeline, on point. Relying on the work of others, Professor Branson calls attention to small modifications that women may make to these behaviors that could greatly improve their chances of reaching the boardroom.\textsuperscript{135} In this chapter of No Seat at the Table, Professor Branson's advice for board-aspiring women is more pointed than it is in Chapter 4.

Professor Branson realizes that male or female candidates for upper-management and board-level positions undoubtedly

\begin{itemize}
\item \textsuperscript{127} BRANSON, supra note 1, at 67.
\item \textsuperscript{128} See supra Part I.B.
\item \textsuperscript{129} BRANSON, supra note 1, at 67-68.
\item \textsuperscript{130} HOLLANDS, supra note 119, at 5.
\item \textsuperscript{131} See id. at xxvi.
\item \textsuperscript{132} Id.
\item \textsuperscript{133} BRANSON, supra note 1, at 67.
\item \textsuperscript{134} See id.
\item \textsuperscript{135} Id. at 69-74.
\end{itemize}
must possess some level of control and combativeness to advance above the competition and into leadership positions.\textsuperscript{136} As he and other authors have noted, the levels of assertiveness and determination that may be required for corporate advancement varies for men and women because of the different obstacles they face in their respective journeys.\textsuperscript{137} Arguably, each stereotype Professor Branson identifies includes characteristics women must have in order to be successful leaders—the dominant authority of the “Bully Broad,” the independent strength of the “Iron Maiden,” the solitary ambition of the “Queen Bee,” and the dogmatic fixation of the “Ice Queen.”

But those characteristics must be moderated. A question therefore becomes, “How much is too much?” In this chapter, Professor Branson helpfully guides women to recognize behavioral attributes that may be holding them back. This is an undoubted value of the book. However, women cannot fully realize the potential value of this information because, at the end of Chapter 5, they are left to their own devices in determining how to employ and modulate the necessary behaviors effectively in their climb to the top.

\textbf{II. A Mixed Bag: Shifting Paradigms in Advancing to Upper Management}

With apparent (although largely unstated) recognition that he has set forth many issues and yet only some piecemeal or preliminary suggestions in earlier parts of the text, Professor Branson pragmatically turns, in Chapter 13, to the task of addressing how he believes women can use the information collected in the book in a systematic way—as part of a process—to more effectively advance in the corporate management tournament.\textsuperscript{138} Specifically, Professor Branson offers a practical plan that involves a female manager engaging in shifting paradigms

\begin{itemize}
  \item \textsuperscript{136} See id. at 74. See generally Marleen A. O’Connor, Women Executives in Gladiator Corporate Cultures: The Behavioral Dynamics of Gender, Ego, and Power, 65 Md. L. Rev. 465 (2006) (describing the tournament through which women in corporations progress to executive and board positions).
  \item \textsuperscript{137} See Branson, supra note 1, at 74 (appreciating the complexity of women’s advancement in corporate America and suggesting the need for personalization and flexibility in implementing any “how to” advice). See also Estrich, supra note 64, at 145-48.
  \item \textsuperscript{138} See Branson, supra note 1, at 161-75.
\end{itemize}
several times over the course of her career to emphasize behaviors and characteristics that may be most effective at each advancement level.\textsuperscript{139} The advice Professor Branson gives here is novel and has both advantages and disadvantages.

A. Paradigm One

Professor Branson’s first paradigm is “the tightrope,” where he advises women to be aggressive in seeking achievements but cautions them on the perils of appearing too aggressive.\textsuperscript{140} Professor Branson notes that aggression may be perceived differ-

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139. See id.
140. Id. at 161-62. In describing paradigm one, Branson frequently uses the word “aggressive.” Id. “Aggressive” is defined as “marked by combative readiness” or “tending toward or exhibiting aggression.” Merriam-Webster’s Online Dictionary, http://www.merriam-webster.com/dictionary/aggressive (last visited Apr. 3, 2009). Aggression is defined as “a forceful action or procedure (as an unprovoked attack) especially when intended to dominate or master.” Merriam-Webster’s Online Dictionary, http://www.merriam-webster.com/dictionary/aggression (last visited Apr. 3, 2009). Cambridge Advanced Learner’s Dictionary defines aggressive as “behaving in any angry and violent way towards another person” or “determined to win or succeed and using forceful action to achieve victory or success.” Cambridge Dictionaries Online, http://dictionary.cambridge.org/define.asp?key=1637&dict=CALD (last visited Apr. 3, 2009). As one can see from these myriad definitions, the word “aggressive” can have either not enough or too much content, depending on its usage; moreover, it has pejorative, stereotypical overtones in a feminist context that Branson may intend to invoke. See Sally F. Goldfarb, Reconciling Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?, 29 CARDOZO L. REV. 1487, 1493 (2008) (“Common sex stereotypes include the expectation that men are strong, independent, reasonable, and aggressive, while women are weak, dependent, emotional, and passive; these stereotypes can be used to rationalize male violence against women.”). One scholar succinctly describes these connotations in a criminal law context:

Women are, and therefore ought to be, passive, fulfilling their primary sexual role as wife and mother. Men, in contrast are naturally competitive and aggressive, justifying their place on the battlefields, in boardrooms, and bedrooms. As a result of this long line of deterministic arguments, two images of women emerged: good/normal/nonaggressive/noncriminal women and bad/abnormal/aggressive/criminal women.

Cheryl Hanna, Ganging Up on Girls: Young Women and Their Emerging Violence, 41 ARIZ. L. REV. 93, 104 (1999). These stereotypes interface with race as well as gender. See Carol Jacobsen et al., Battered Women, Homicide Convictions, and Sentencing: The Case for Clemency, 18 HASTINGS WOMEN’S L.J. 31, 39 (2007) noting “pervasive stereotypes, reinforced by the media, that black women are domineering, sexually aggressive, assertive, hostile, immoral, and physically stronger than white women”). We do not desire to invoke these stereotypes and instead choose other words to convey an equivalent meaning where possible.
\end{center}
ently in men and women. When applied to men, the word “means that he’s bold and forceful, that he has the strength and capabilities to achieve his goal.”

But when applied to a woman, it means she is “pushy, argumentative, [and] domineering.” On the other side of Professor Branson’s tightrope are stereotypically feminine characteristics centered largely on women’s oral presentation behaviors, including the pitch of women’s voices and the assumed emotion and attributes underlying their speech patterns. Professor Branson advises women navigating the contours of this paradigm to lower the pitch of their voices, be assertive, and speak forcefully to espouse the confidence typically seen in their male counterparts.

Based on our reading of No Seat at the Table, the key to successfully mastering the tightrope seems to turn on self-confidence, and maintaining that self-confidence across subsequent paradigm shifts is arguably just as necessary as it is in the first paradigm. However, the need for women to confidently distinguish themselves from their colleagues by consistently exceeding expectations is particularly unique to this paradigm. Professor Branson only touches on the necessity that women not blend into the crowd at this level (seemingly a critical point), and the reader would likely benefit from further elaboration. The text implies that, in order for women to advance

141. Branson, supra note 1, at 161.
142. Id. See also Phyllis Chesler, Woman’s Inhumanity to Woman 347 (2003) (describing a female manager in an accounting firm denied partnership: “[S]he acted like a man, ‘an aggressive go-getter,’ and she was judged as a ‘dragon lady’ (i.e., overly masculine).” (quoting W.J. Camara, Supreme Court Reviews Case of Sex Bias in the Workplace, 26 INDUS.-ORGANIZATIONAL PSYCHOLOGIST, 39-41 (1989)); Barbara Reskin, What’s the Difference? A Comment on Deborah Rhode’s “The Difference ‘Difference’ Makes”, in THE DIFFERENCE “DIFFERENCE” MAKES, supra note 3, at 61 (stating that culturally acceptable behaviors in women differ from those behaviors that are acceptable in men, so “women may be punished for assertiveness or failing to be nurturing, just as men may be punished for being nurturing and failing to be assertive.”).
143. Branson, supra note 1, at 161-62.
144. Id.
145. Id. at 162 (“Wellington tells her readers that these timid behaviors [women being overly democratic and concerned about appearing too assertive] do ‘nothing to establish you as a confident, competent person at a meeting table.’” (quoting Sheila Wellington, Be Your Own Mentor 91 (2001)).
146. Id.
past entry-level and lower-management positions, they must exhibit distinctive leadership qualities bolstered by the individualized assertiveness and confidence recommended by Professor Branson.147 In this regard, Professor Branson highlights the potential shortcomings of women's overly democratic behavior (i.e., letting everyone have their say),148 but the repercussions of his recommended assertiveness and confidence also deserve further explication.

As Professor Branson notes at the end of this section, advice is mixed as to whether women should adopt normatively male characteristics in negotiating this first paradigm to ensure they remain in the pipeline.149 But the resounding theme the text conveys, regardless of the approach chosen, is that a woman should remain “true” to herself.150 Although it is a refreshing and intuitively appealing undercurrent in this part of the book, this theme is largely unexplained and is relatively unsupported by Professor Branson’s text. In a number of cases, he points out specific areas of the female persona that may be altered to increase the opportunity for corporate advancement,151 but in Chapter 13, he seems to retreat from his own advice about women’s need to change—at least to the extent that this advice could be construed to require a woman to be untrue to herself (and this may be the key point).

Helpfully, Professor Branson does caution the female reader against developing a masculine “work persona” and a relaxed, feminine persona outside of work to avoid the perception of appearing duplicitous.152 However, he principally advises balancing on the tightrope and leaves the reader to sort out the details of how to successfully find the balance. Although this is a frustrating aspect of the book (here in Chapter 13 and elsewhere), our assessment is that this tension may be inevitable, because there is no fixed formula for success applicable to every woman in every situation. Professor Branson may necessarily need to paint a picture of success in broad brush strokes in or-

147. Id.
148. Id.
149. Id.
150. Id.
151. See, e.g., supra note 136 and accompanying text.
152. Branson, supra note 1, at 162.
der for all readers to interpret the effective impressionistic image he conveys.

B. Paradigm Two

Once a woman has reached middle-management, Professor Branson asserts that the behaviors by which she distinguishes herself from the rest of the group (in paradigm one) are less valued. At this stage, Professor Branson recommends that a woman focus less on placing herself in the spotlight as an individual leader and more on being an effective and efficient team player. The democratic female behaviors that may hinder women in conforming to the behavioral attributes of the first paradigm are a vital tool in paradigm two. Professor Branson notes that the aggressive behavior that served to advance women in traversing the tightrope of paradigm one may be seen as antagonistic in paradigm two and should be avoided. Professor Branson advises women in this stage to begin thinking three or four paradigms ahead and create diplomatic strategies that will take them through those future paradigms. He offers valuable suggestions for women to consider, including developing an area of expertise useful to the team enterprise, learning the art of the "humorous comeback," and being approachable and generous with praise.

However, twice within this section he expressly advises women to develop a style "with which men will be comfortable" in order to blend seamlessly into the male corporate culture and successfully steer through middle management and advance to upper management. This recommendation apparently undermines his previous mantra that above all, women should be true to themselves. While much of the advice in this section focuses on attributes of team formation and appears to concretely benefit women's advancement, it is harder to see how pandering to men's behavioral comfort zones establishes more

153. Id. at 163.
154. Id.
155. Id.
156. Id.
157. Id.
158. Id. at 164.
159. Id. at 163-64.
than superficial collegiality and trust. Moreover, we are concerned that Professor Branson's advice in this regard may be misread as advice to act like "one of the boys," which poses the risks associated with tokenism.\textsuperscript{160}

In essence, we believe Professor Branson overstates his case in certain respects in mapping out paradigm two. Apart from non-threateningly demonstrating valued expertise, simple non-gendered relationship skills and tools, like effective listening, courteousness, empathy, sensitivity, tolerance, supportive-ness, and responsiveness, should be sufficient to create a mutually comfortable, productive team management environment (the effect Professor Branson may well intend to achieve). The critical message we take away from Professor Branson's description of paradigm two is that women implementing its wisdom should treat others as they would want to be treated, while, at the same time, conveying the utility of their talents.

C. \textit{Paradigms Three and Four}

Professor Branson's third paradigm proposes a partial, contextual return to the more antagonistic, differentiating behaviors of paradigm one.\textsuperscript{161} In paradigm three, he posits that a woman's focus should turn from being a team player to a team leader.\textsuperscript{162} The key seems to be continuing to show one's value and expertise, while establishing oneself as the boss in a manner that does not ruin productive working relationships cultivated in paradigm two.

The fourth (and final) paradigm is a combination of the diplomatic, team-oriented behaviors of paradigm two and the forceful leadership qualities suggested in paradigms one and three.\textsuperscript{163} The good news for female readers is that, once the basic behaviors of paradigms one and two are mastered (as well as the method for achieving the accompanying shifting between them), they need only to toggle their behavior between the two paradigms.

\textsuperscript{160} See Marina Angel, \textit{Susan Glaspell's Trifles and A Jury of Her Peers: Woman Abuse in a Literary and Legal Context}, 45 \textit{BUFF. L. Rev.} 779, 827-828 (1997) ("Token women are usually prevented from exerting influence and often do so only at the cost of becoming 'one of the boys.'"); Kanter, \textit{supra} note 69, at 979.
\textsuperscript{161} \textit{BRANSON, supra} note 1, at 165.
\textsuperscript{162} \textit{Id.}
\textsuperscript{163} \textit{Id.} at 165-66.
paradigms as they advance through levels of management. In fact, Professor Branson's four paradigms may actually identify two extremes on a specialized communication or behavioral continuum, and a basic method through which women deftly adjust their behaviors between the two poles as they navigate through the corporate management structure.\textsuperscript{164} The culture of corporate management is an embodiment of this continuum.\textsuperscript{165}

D. Observations about Professor Branson's Paradigm Shifting Framework

There is undoubted substance and value in Professor Branson's paradigm-shifting model. The framework offers a way to use and respond to the vast research on tokenism and female stereotypes cited and described in the book. Moreover, Professor Branson offers three useful examples of well known female CEOs to illustrate the complexity of operating under paradigm four.\textsuperscript{166}

We have a number of critical reactions (positive and negative) to, and other observations about, Professor Branson's concept of paradigm shifting. First, we note that the question of how women should negotiate the shift from paradigm to paradigm is left largely to each woman to determine. At the extreme, one might picture a female manager abruptly (and unnaturally) shifting from one paradigm to another in a manner similar to a shift from forward to reverse gear in a car. This type of shifting would be too artificial and is not apparently what Professor Branson has in mind. While working with the earlier-mentioned concept that the paradigm shifting may represent movement along a continuum, we think the manner of shifting is more like the gradual shift in a vehicle from first


\textsuperscript{165} See FERNANDO POYATOS, NONVERBAL COMMUNICATION ACROSS DISCIPLINES 3 (2002) ("Culture . . . is made up of a complex mesh of behaviors and of the active or static results of those behaviors . . . . [C]ulture is communication.").

\textsuperscript{166} See BRANSON, supra note 1, at 167-75.
gear to second gear (and back). This fluid approach to Professor Branson's paradigm shifting is supported by foundational, influential work in leadership theory published fifty years ago in the *Harvard Business Review*.\textsuperscript{167}

We also note that Professor Branson's program for paradigm shifts may be seen as an analog to a well established model of group dynamics.\textsuperscript{168} Specifically, the paradigm shifting Professor Branson describes can be seen as partially correlated to the four stages of group dynamics (forming, storming, norming, and performing) proposed decades ago by Professor Bruce Tuckman,\textsuperscript{169} even though the members of a management group may change over time as a woman progresses through the management structure and related paradigm shifts.

A woman's initial corporate employment phase—which precedes the first of the paradigms described by Professor Branson—would roughly correlate with the forming stage of Professor Tuckman's model. Professor Tuckman finds that "[g]roups initially concern themselves with orientation accomplished primarily through testing. Such testing serves to identify the boundaries of both interpersonal and task behaviors. Coincident with testing in the interpersonal realm is the establishment of dependency relationships with leaders, other group members, or pre-existing standards."\textsuperscript{170} This stage of group dynamics is the "getting to know you" phase.

The next three stages of group dynamics are where paradigm shifting correlates. The antagonistic individualism comprising Professor Branson's paradigm one conforms, in many ways, to the storming stage of Professor Tuckman's theory. Both models are "characterized by conflict and polarization around interpersonal issues . . . [that] serve as resistance to

\textsuperscript{167} See Tannenbaum & Schmidt, supra note 164, at 163 ("[T]he successful leader is one who is keenly aware of those forces which are most relevant to his behavior at any time [and] is able to behave appropriately in light of these perceptions.").

\textsuperscript{168} Erica Beecher-Monas's linkage of diversity to actual independence on corporate boards expressly relies on theoretical and empirical work in the area of group dynamics. See Beecher-Monas, supra note 4, at 396-408.

\textsuperscript{169} See generally Bruce W. Tuckman, *Developmental Sequence in Small Groups*, 63 PSYCHOL. BULL. 384 (1965) (articulating these four stages of group development).

\textsuperscript{170} Id. at 396.
group influence. . . ."\textsuperscript{171} Paradigm two shares attributes with Professor Tuckman's norming stage of group dynamics, which Professor Tuckman describes (in relevant part) as a phase of group behavior in which "ingroup feeling and cohesiveness develop, new standards evolve, and new roles are adopted. . . . [I]ntimate, personal opinions are expressed."\textsuperscript{172} Lastly, the blending of behaviors that Professor Branson describes in paradigm four resembles the performing stage of Professor Tuckman's framework, in which "[r]oles become flexible and functional, . . . group energy is channeled into the task. . . . and structure can now become supportive of task performance."\textsuperscript{173}

Seen in the light of Professor Tuckman's foundational work on group dynamics, Professor Branson's approach, while still novel, roots itself in elements of well-accepted social science research and scholarship.

Finally, we admit to some confusion and concern about the descriptive and predictive nature of Professor Branson's proposed paradigm shifting and the attendant possible effects on women and corporate boards of directors. We begin with two questions that establish a (perhaps false) dichotomy, to motivate our salient points. Are Professor Branson's proposed behavioral shifts analogous to those that men climbing the corporate ladder engage in naturally, such that women replicating their behaviors will more easily and successfully join men at the board table? Or, is this a strategy through which women may modify their behaviors in order to make men in the existing male power structure more comfortable with their presence as they ascend the corporate ladder? Although Professor Branson ultimately does not directly tie his paradigm shifting to men's comfort,\textsuperscript{174} his recommendations arguably stem from this nexus. In his introduction, Professor Branson states that "women, unlike men, have to make several significant, conscious paradigm shifts as they advance upward in their ca-

\textsuperscript{171} Id.
\textsuperscript{172} Id.
\textsuperscript{173} Id.
\textsuperscript{174} See BRANSON, supra note 1, at 175 (attributing the need for paradigm shifting to the fact that women have to "cope with stereotypes" and "build up a reservoir of tangible successes as they advance").
reers."\textsuperscript{175} Also, as noted earlier, Professor Branson mentions several times, in describing his paradigm shifting, ways in which women may make men feel more comfortable.\textsuperscript{176}

To the extent that the success of paradigm shifting depends on creating a comfortable, secure environment for men in corporate management, the underlying message would be that women may successfully advance in their careers if, at each stage, they take care to make men feel secure in their positions by adopting conformist behaviors and managerial styles. We are concerned about this message, regardless of whether Professor Branson intends to convey it. As Professor Susan Estrich argues, by striking an aspirational perfect balance between masculinity and femininity in order to make men feel more comfortable, women reinforce existing power structures and stereotypes and "end up tightening the vise" around them.\textsuperscript{177} Moreover, if the women who reach the boardroom do so by convincing their male colleagues that they are not like other women, but rather are more similar to men, will the benefits of gender diversification—including the potential for an actual diversity of viewpoints—on corporate boards of directors ever be truly realized?\textsuperscript{178} As Professor Estrich remarks, "squeezing into the vise will only get you so far. And as long as it is a vise, many women will lose out to the competition."\textsuperscript{179} If Professor Estrich is right, Professor Branson's paradigm shifting may not achieve its objectives.

We also are concerned about the overall message in Chapter 13, read alone, that women need to alter their predominant

\textsuperscript{175} Id. at 5. See also id. at 175 (contrasting men's and women's need for paradigm shifting in corporate advancement).

\textsuperscript{176} Id. at 163-64.

\textsuperscript{177} Estrich, supra note 64, at 134-35.

\textsuperscript{178} Having women and minorities on the board who mimic white male traits and attitudes will do little to achieve diversity. But people who replicate the attitudes of existing board members are the most comfortable choices of the CEOs and other directors responsible for nominating new directors, because people tend to choose others who share social and economic backgrounds and who will fit in with the group. Moreover, those chosen must be perceived as able to manage white males—who still make up the vast majority of upper management—without making these white males uncomfortable.

\textsuperscript{179} Estrich, supra note 64, at 138.
sex-based or gender-driven attributes to conform to existing male-oriented corporate governance structures and composition (rather than that corporate governance or management needs to change to accept women). Institutional failings or impediments, as well as attributes of individual women in the workplace, play a role in the slow advancement of women within the executive ranks and as corporate directors. These institutional barriers come in many forms. They may be substantive or procedural, structural or individualized, intentional or accidental. In many (but not all) cases, these institutional issues interact with female characteristics to impede women’s progress through the pipeline.

For example, the process of electing board members plays a key role in moving women to the pinnacle of corporate America. It is one thing to advise a woman on how to behave to move through the management ranks, and another to leap that last hurdle onto a board of directors. Since nominating committees comprised of independent directors are responsible for naming the candidates for prized corporate board positions, it is important that women and other underrepresented groups are attractive in the eyes of those nominating committee members. As Professor Branson notes in Chapter 15, this may be difficult if a CEO controls the process or diversity is not a high value of the nominating committee. Groups in and outside the United States are focused on identifying, training, and promoting qualified female board candidates and getting their names in front of nominating committees, but it is unclear whether these efforts will make a difference in the long run.

180. See Branson, supra note 1, at 179-80.
181. Id. at 180. See also Beecher-Monas, supra note 4, at 406, 411.
Interestingly, there is evidence that women who make their way to key executive positions are being appointed to corporate directorships.\textsuperscript{183} This is why Professor Branson and others focus their attention on getting women into the executive ranks of corporations. But, as noted in the preceding paragraphs, we must ask ourselves to identify and quantify the cost of conforming women’s behavior to that of men—or that with which men are most comfortable—if that is what it takes to rise through the institutional structures of corporate management. We may lose important diversity elements associated with women’s participation on corporate boards by asking women to conform to existing institutional structures and prevailing corporate culture.\textsuperscript{184}

“Diversity fatigue” within a firm also may be an institutional barrier to a woman’s advancement to upper management and the board of directors, regardless of her perceived or actual roles or behaviors in the workplace.\textsuperscript{185} Definitions and common understandings of diversity fatigue may vary,\textsuperscript{186} but in general, the term refers to the weariness felt by the few individuals who bear the responsibility of leading diversity initiatives within their firms.\textsuperscript{187} Efforts to diversify institutions are difficult in that they may be seen by some as a threat to existing structures, and in that progress is bound to be incremental and

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  \item \textsuperscript{183} See \textit{Branson}, supra note 1, at 108 (“[T]here has been an increase of women who achieve in business . . . and then side-step from a VP/COO/CFO position at one corporation to a director’s seat at another large company.”); Fairfax, supra note 4, at 1113 (“Indeed, the number of women corporate officers is fairly consistent with the number of women board members.”).
  \item \textsuperscript{184} See supra notes 180-82 and accompanying text.
  \item \textsuperscript{186} \textit{Id.} For example, diversity fatigue may also be used to refer to the exhaustion felt by the few token female directors asked to serve on multiple boards.
  \item \textsuperscript{187} \textit{Id.}
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slow. Janet Love, a co-chair of the diversity committee at a large, Chicago-based law firm, cites the pressure of constantly inventing new approaches to implement diversity initiatives in order to engage a repeat audience. A firm’s efforts to repeatedly and effectively “reinvent the wheel” in promoting diversity are even more difficult in tough economic times, creating a greater propensity for diversity fatigue among those slated with the task of diversifying their firms.

Why do we need these kinds of efforts to attract and retain women to the positions that will best ensure their nomination and election to corporate board positions? Women may value different things in the workplace, and they may not find those things in some workplaces. Moreover, women may be more desirous of balance between their work lives and their lives outside work than their male counterparts. The tried, true, and time-tested institutional structures and cultures that attract men to positions and keep them there, may not attract women to, and keep women in, the same positions. Diversity initiatives within firms can identify these disconnects between women and the workplace and help minimize or eradicate them.

Since law firm partnerships are among the positions in the pipeline to prime corporate directorships, the effect of diversity fatigue on women’s progress to leadership within law firms (as well as its effect on progress in other business associations)

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189. Id. Hayes, supra note 185.
192. See id. at 180-82 (describing gender-based differences in the capacity of work to generate happiness).
193. See Branson, supra note 1, at 91 (listing “practicing attorneys” as the eighth most prevalent way that women made it to boards of directors in the Fortune 500 based on 2001 proxy data); id. at 103 (listing “attorneys” as the sixth most prevalent way that women made it to boards of directors in the Fortune 500 based on 2005 proxy data).
plays a role in women’s failure to advance more quickly into key corporate director positions. Commentators note that law firms’ efforts to recruit women and racial minorities is often a “numbers game,” and once the numbers are met at the entry level, little is done to ensure diversity up the ladder.194 Susan Pinker profiles two successful female lawyers who have left private practice and, in delving into their reasons for leaving, exposes institutional failings.195 Professor Joan Williams, the director of the Center for WorkLife Law at the University of California Hastings College of Law, points to the stigma associated with part-time programs in law firms as a reason for women’s continued departure from these firms.196 Professor Williams’s observations in this regard link the lack of proper institutional values to Professor Branson’s observations, in Chapter 3, regarding the prices of motherhood in a woman’s journey through the pipeline.197 In fact, Professor Branson cites to Professor Williams’s work in support of a number of points he makes in Chapter 3.198

However, the thought that institutional practices and environments affect women’s advancement to board positions (not to mention other important social values) gets lost by the time a reader of No Place at the Table reaches Chapter 13. In Chapter 13, Professor Branson assumes an indefinite continuation of the status quo. He reinforces this point through his use of three historic examples of women who have risen to the top and fallen from grace.199 Although he does pick up on some important institutional prescriptions in Chapter 14,200 these prescriptions have the appearance of mere window dressing after the in-


195. See Pinker, supra note 191, at 157-79.
196. Hayes, supra note 185.
197. See Branson, supra note 1, at 35-54.
198. See, e.g., id. at 38 n.13 (citing Joan Williams, Unbending Gender 11 (2001)).
199. See id. at 167-75.
200. See id. at 176-85.
volved prescriptions for changes in women's behavior in Chapter 13.201

Many advise that we need to change corporate culture instead of simply changing the numbers.202 Successes in this area have been documented.203 Professor Branson’s advice that women eschew “Bully Broad,” “Iron Maiden,” “Queen Bee,” and “Ice Queen” behaviors and adopt paradigm shifting may succeed in advancing some women into the management levels of corporations and law firms, but changes in corporate structures and a receptive corporate culture will improve the likelihood of women’s advancement and may better preserve women’s capacity to add real diversity to a board of directors. In this regard, the literature on diversity fatigue indicates that corporations and law firms should move away from separate diversity programs and toward a comprehensive firm culture in which diversity objectives are embedded and integrated throughout the firm.204 The responsibility of understanding the effects of difference in the workplace and successfully diversifying firms should not fall on the shoulders of a few diversity “task managers” but instead should be the stated and unstated duty of each member of the organization.

As we note above, in much of No Seat at the Table, Professor Branson focuses on why corporations, as well as women, may need to change behaviors. However, his suggestion that corporate executives and directors also should alter the status quo205 is omitted completely from his chapter on paradigm shifting (Chapter 13). Moreover, the integration of paradigm shifting with the summary corporate prescriptions in Chapter 14 is minimal, consisting of a single paragraph of text.206 A more comprehensive integration of Professor Branson’s various recommendations would provide readers with a more complete picture of his vision for the future of female leadership in corporate

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201. See id. at 161-75.
202. See, e.g., Hayes, supra note 185.
204. See, e.g., Hayes, supra note 185.
205. See, e.g. BRANSON, supra note 1, at 62.
206. See id. at 180-81.
governance—one that would help us to better assess prospects for the success of his ideas.

III. A Significant Point of Disagreement: The Call to Minimize Difference

In concluding the book, Professor Branson states that "[t]here may be differences between men and women, but by and large they are small and overrated. In the workplace or on the job ladder, we must strive to ignore those differences, except when they are absolutely undeniable or inescapable."207 We fundamentally disagree with these statements (especially the last one about ignoring differences), and we believe that—coming as they do at the very end of the final chapter of his book—they have the propensity to take away from the overall value of the book and undercut powerful and positive elements of Professor Branson's research findings and analysis. At worst, Professor Branson's conclusion and prescription regarding gender difference (a) are antithetical to the notion that female directors may, by virtue of their sex or gender attributes, bring unique contributions to the table and (b) dogmatically contradict research findings (including those in studies Professor Branson presents and endorses in other parts of the book208) that women, whether by nature or through socialization, behave differently from men in significant ways. At best, Professor Branson can be accused of talking out of both sides of his mouth, since he indicates in other places in the book that he in fact recognizes, understands, and values both diversification efforts and gender difference.209

207. Id. at 184.
208. See, e.g., id. at 57-62.
209. See, e.g., id. at 142 ("Subconsciously, corporate CEOs and nominating committee members may be influenced by the governance-culture mismatch, deselecting women otherwise qualified for board service."); id. at 177 ("Men in business still get away with consigning women to lesser roles on the basis of notions that stereotypes exist and that stereotypical behaviors indicate more than just a manner of speaking or a different way of acting."); id. at 177-78 (explaining that "diversity of viewpoints, which results from a diversity of race and gender backgrounds, is essential to the task of monitoring senior managers' behavior" and discussing the positive effects of gender diversity on "groupthink"); id. at 184 (chastising corporate America for being "short sighted" about the economic and social value of childbearing).
One of us has researched and written about observed behavioral differences between men and women in contexts related to corporate governance\textsuperscript{210} the other has sought funding to conduct research on sex and gender differences in this same context.\textsuperscript{211} We find empirical evidence of important differences in behavior based on sex and gender—including differences that are not addressed by Professor Branson's book but may make a difference to women's behavior as members of a corporate board of directors.\textsuperscript{212} For example, "[w]omen communicate and make decisions differently than men in ways that may be more compatible with the complexity and uncertainty inherent in turbulent environments."\textsuperscript{213} In addition, "[a] vast literature in social psychology suggests that women demonstrate self-sacrificing behaviors more often than men and also are perceived to be more self-sacrificing and 'other-directed' than men."\textsuperscript{214} And, although evidence is somewhat mixed, women may react differently to the same sex-related or gender-related workplace behaviors.\textsuperscript{215} One author, in summarizing the unexpected and

\textsuperscript{210} See Joan MacLeod Heminway, \textit{Female Investors and Securities Fraud: Is the Reasonable Investor a Woman?}, 15 WM. & MARY J. WOMEN & L. 291 (2009) (noting and citing to observed differences in male and female investment behaviors and analyzing the legal effects of those differences in the securities fraud context); Heminway, supra note 13 (noting and citing to observed differences in trusting behavior and trustworthiness based on sex and analyzing possible corporate governance implications of those differences).

\textsuperscript{211} Robert M. Lloyd, Sarah White & Robert M. Walters, \textit{Gender Influence on Trust and Reciprocity Behavior: Why the Old Boys' Club is Preventing Effective Corporate Governance Reform} (unpublished manuscript on file with authors).

\textsuperscript{212} See sources cited supra notes 210-11, infra notes 213-16, and accompanying text. See also Adams & Ferreira, supra note 47, at 15 ("Our conclusion is that even after controlling for director characteristics such as independence, age, tenure, retirement status[,] and number of other directorships, female directors appear to behave differently than male directors.").

\textsuperscript{213} Furst & Reeves, supra note 10, at 379.

\textsuperscript{214} Id. at 380.

\textsuperscript{215} See Elizabeth L. Shoenfelt et al., \textit{Reasonable Person Versus Reasonable Woman: Does It Matter?}, 10 AM. U. J. GENDER SOC. POLY & L. 633, 649-50 (2002) ("While most research indicates a gender difference in perceptions of sexual harassment, some researchers have found that there are little or no gender differences.") (footnote omitted); Richard L. Wiener & Linda E. Hurt, \textit{Social Sexual Conduct at Work: How Do Workers Know When it is Harassment and When it is Not?}, 34 CAL. W. L. REV. 53, 66 (1997) ("Although there are some exceptions, the empirical research supports the view that men and women workers hold divergent perspectives concerning what constitutes hostile work environment harassment."); \textit{id.} at 75-97 (describing and assessing the legal ramifications of the results of a study on sexual harassment conducted by the authors).
non-obvious nature of some of these differences, notes that "[t]he science of sex differences is clearly a grab bag of surprises."216

We believe there is value in acknowledged elements of behavioral difference exhibited in women and men, and we are not alone. Yet, we acknowledge that corporate directors and executives, among others, must be careful about how these differences are interpreted and used in corporate workplaces. "Statistical differences do exist between men and women. But statistics should never speak for individuals, restrict their choices, or justify unfair practices."217

Both the nature and fact of sex or gender differences may be valuable in corporate governance.218 In an attempt to explain why some women advance beyond middle management, for example, two business scholars hypothesize that "women may be viewed as especially attractive candidates to lead organizations under turbulent, uncertain conditions because they bring a fresh approach to leadership, varying skill sets, and diverse life experiences."219 Other researchers conclude:

In order to achieve a critical mass [of women on boards of directors], nominating committees should not try to be gender-blind when filling board vacancies . . . . Gender-blindness also means being blind to the value of board diversity in and of itself for bringing various perspectives to the table, bringing knowledge about key constituencies, and enhancing the quality of discussion. To gain these advantages and improve governance, companies must establish a recruiting approach that acknowledges the value of diversity and deliberately seeks to build diversity into the board.220

216. Pinker, supra note 191, at 254.
217. Id. at 266.
218. See, e.g., Beecher-Monas, supra note 4, at 411 ("[I]ncreasing board diversity significantly to achieve a critical mass of diverse board members should bring new views and perspectives to the board, along with improved communication and better decision making.").
219. Furst & Reeves, supra note 10, at 377.
220. Kramer et al., supra note 45, at 53. See also Beecher-Monas, supra note 4, at 405-06 ("[T]his brings us to an important caveat on the role of diversity on corporate boards: it must be true diversity. Neither race nor gender are necessarily a proxy for diversity of viewpoint. Having women and minorities on the board who mimic white male traits and attitudes will do little to achieve diversity.").
Thus, difference based on sex or gender may be an advantage to be cultivated rather than a shortcoming to be minimized.

In fact, Professor Branson’s statement about the limited nature of perceived and actual differences between men and women may be borne of some unease about facing the consequences of those differences. Psychologist Susan Pinker addresses this possibility and explains why this apprehension is misplaced.

[T]here’s a fear that if we recognize the existence of sex differences we’ll become part of a conservative backlash that will send women back to the kitchen. I’d argue that a more nuanced understanding of the average differences between men and women can lead to progress instead. In fact, several problems arise from not acknowledging that sex differences exist. Workplaces and career schedules designed for a single, standard male approach to competition and success now discourage many women, notwithstanding their native smarts, their educational opportunities, and their impressive accomplishments . . . .

We think that Pinker gets this right.

The only way we can harmonize Professor Branson’s observation that differences are minimal and his suggestion that differences should be minimized with his overall coverage of sex-based and gender-based behavioral differences in No Seat at the Table is to read this observation and suggestion in the greater context of the book. In truth, reading between the lines of Professor Branson’s concluding statements in this way, he may well be trying to argue that women are enough like men in important ways that, where women’s qualifications match or exceed those of men, they should be afforded the same level of deference, respect, and standing that men have in the candidacy process for executive and director slots. This may be an accurate assessment, but if this is what Professor Branson means, then he should more clearly reference or establish the

221. Pinker, supra note 191, at 258 (emphasis in original). Pinker goes on to state (among other things) that “[i]gnoring sex differences also has the unintended effect of devaluing women’s cognitive strengths and preferences,” that “[e]xhorting women to make ‘male’ choices is more pernicious than simply encouraging them to earn more,” and that “a lack of attention to basic sex differences means that biological frailty in boys will continue to get short shrift.” Id. at 261, 263.
supportive facts (e.g., to what differences is he referring and why should they be ignored?) and tie his statements to those facts.

When read in its most favorable light, the book, as a whole, compellingly contributes to and argues for "a more nuanced understanding of gender differences" that "reveals the benefits of certain traits, and pinpoints exactly where we might direct our efforts for change." Ultimately, we prefer to view Professor Branson's book in that more favorable and consistent light.

Conclusion

Scholars from a variety of fields continue to explore questions related to the "glass ceiling"—the often impervious barrier that enables women to see but not succeed to senior management and board positions. Advice to businesses and the women who aspire to lead them abounds. The emerging picture is one of complexity—no one "formula" exists to ensure women's ascendency to senior management and the board positions that may follow. A recent paper observes, among other things, "that individual perceptions and group or organizational structures emerge over time making it difficult to point to a particular practice or unit to be changed to reduce gender bias and potentially negating the intended effects of formal top-down organizational pressures."
Through *No Seat at the Table*, Professor Branson contributes usefully to this growing body of literature in several ways. Importantly, he publicizes new data and related observations, collects and synthesizes disparate research in a single volume, and offers his own recipe for success. He contextualizes these contributions in a larger, recognizable clash between culture and governance. Moreover, by provocatively suggesting that sex and gender difference is overstated and largely should be disregarded, Professor Branson (perhaps unwittingly) challenges readers to reevaluate the evidence and desirability of sex and gender difference in a corporate leadership context. In sum, Professor Branson recognizes and takes account of the complexity of the sex and gender issues impacting corporate leadership and, based on wide-ranging research, makes interesting and constructive (even if not wholly satisfying or complete) suggestions on how to resolve some of these issues. For all of these reasons, despite some relatively minor organizational and analytical lapses, *No Seat at the Table* is a valuable resource for women or men in or aspiring to positions in senior management or on boards of directors, for existing corporate management and directors, for corporate governance and other scholars, and for other researchers studying leadership in corporate America.

227. Professor Branson’s introduction to *No Seat at the Table* provides readers with an accurate description of the book.

[T]his book documents, and explores in some depth, the explanations advanced for why women may not have progressed in the boardroom and the CEO suite in the numbers we would have expected. Those explanations require exploration of law . . . social psychology, linguistics, sociology, and other fields, to assess the state of America’s boardrooms and to make suggestions on how the relevant actors might accomplish needed changes.

*Id.* at 2-3.
The Progress of Women in the Legal Profession


Reviewed by Renee Newman Knake*

Don’t be ‘lady lawyers.’ Simply be lawyers, and recognize no distinction—no existence of any distinction between yourselves and the other members of the bar. This will be your surest way to . . . achieve success. . . . You can take this stand and yet . . . be ladies—true ladies in every sense of the word.¹

[F]or many [modern] women [lawyers], success has hinged on a denial of their own basic values and outward commitment to prevailing organizational norms. As lawyers, these women adopt masculine styles of practice in order to fit into the culture. . . . In effect, women who chose this route became surrogate men . . . .²

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While the number of female and male law school graduates has been almost equal for nearly a decade, the number of women remaining and advancing in the field does not reflect gender equality within the profession. According to a 2008 study by the American Bar Association, less than 32% of United States lawyers are women. As of March 2007, in the two hundred largest American law firms, only 16% of equity partners were women. With respect to law school administration, women fare somewhat better yet continue to be disproportionately represented. Consider, for instance, that just 19.8% of law school deans are women. The salary of American female lawyers also lags substantially behind that of male lawyers. This demonstrated lack of advancement for women in the profession is not unique to the United States. For example, women constitute only 23% of law partners in the United Kingdom and slightly more than 14% of law partners in New Zealand.

Given that women have been practicing law for over one hundred years, statistics like these necessarily lead to the question: What has kept women from making more progress within the legal profession? Two recent books from Canadian scholars attempt to answer this question by addressing the progress (or


6. Comm'n on Women in the Profession, supra note 3, at 3. The statistics improve, however, when associate/vice/deputy deans (46.2% female) or assistant deans (66.5% female) are included. Id.

7. Id. at 4. Women lawyers earned only 77.5% of men's salary in 2007. Id. It should be noted that this statistic is an improvement from 2002, when women earned only 69.4% of men's salary. Id.


lack thereof) made by women in the legal profession. One book is a history of the first women lawyers from countries around the world,\(^\text{10}\) and the second book is a contemporary assessment of modern women lawyers based upon a study conducted in Ontario, Canada.\(^\text{11}\)

In comparing the books, it is striking to note that certain elements of the struggles faced by the first women lawyers continue in various forms today, in particular, the effort to reconcile the “double consciousness”\(^\text{12}\) associated with being a lawyer and being a woman, a tension illustrated by the quotations listed above. This review evaluates how these books contribute to the growing body of scholarship on women in the legal profession.\(^\text{13}\) Each book fills a particular gap in the interdisciplinary scholarship on women lawyers. Read together, these books provide an essential background for understanding the progress achieved toward gender equality in the legal profession and identifying the work that remains to be done in this regard.

The first book examined in this review is The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions (“First Women Lawyers”) by Professor Mary Jane Mossman.\(^\text{14}\) The book presents the stories of a number of indi-

\(\text{10. See Mossman, supra note 1.}\)
\(\text{11. See Leiper, supra note 2.}\)
\(\text{12. Use of the term “double consciousness” to identify the conflict between gender and professional identity is drawn from a 1887 letter written by Martha Pearce, then secretary of the women lawyers’ Equity Club, and is expounded upon by Virginia G. Drachman in her book Sisters in Law (1998) [hereinafter, Drachman, Sisters]. Drachman explains that for the first women lawyers,}\)
\(\text{[t]he burden of double consciousness influenced every aspect of women lawyers’ professional lives: the type of practice they chose; their relationship to social reform; whether they entered the courtroom or remained in the office; and how they dressed. It even challenged them to justify the very existence of their legal careers. . . . Although admission to the bars and to law schools represented institutional victories of great magnitude in nineteenth-century America, arguably the greater task for women lawyers was to overcome the burden of double consciousness.}\)
\(\text{Id. at 65 (citations omitted).}\)
\(\text{13. For a list of works constituting the “histiography” of women lawyers, see Drachman, Sisters, supra note 12, at 275 n.11. See also sources cited infra note 26. For a bibliography of writings on women lawyers from 1982-2002, see Judith L. Maute, Writing Concerning Women in the Legal Profession, 1982-2002, 38 Tulsa L. Rev. 167 (2002). See also sources cited infra note 95.}\)
\(\text{14. See Mossman, supra note 1. Mary Jane Mossman is a Professor of Law at Osgoode Hall Law School of York University, Toronto, Canada. See Osgoode Hall}\)
Individuals who devoted their lives to opening the legal profession to women at the turn of the twentieth century. Mossman's study is grounded in historical and sociological research. Her work spans the globe, including the stories of the first women lawyers from North America, Western Europe, Asia, and Australia. Mossman focuses not only on the personal path that each woman took in her efforts to pursue a legal career, but also on their paths in the context of the women's movement at that time. Furthermore, to the extent possible, she addresses how their paths crossed, whether literally through the exchange of letters or symbolically as they encountered similar barriers to the profession. A familiarity with this history is necessary for addressing the continued challenges faced by contemporary women lawyers around the world. Mossman raises important questions based upon the lives of the first women lawyers that resonate with women lawyers today.

The second book examined in this review is *Bar Codes: Women in the Legal Profession* ("Bar Codes") by Professor Jean McKenzie Leiper. Her work focuses on the current situation of women lawyers and the future of gender equality in the profession. The book is based upon a study of approximately one hundred Canadian women lawyers conducted from 1993-2002. *Bar Codes* recognizes that while women's access to the legal profession certainly has progressed since the first women became lawyers a century ago, stark gender differences remain, most notably with respect to opportunities for advancement. Furthermore, Leiper observes that certain aspects of the masculine resistance faced by the first women lawyers continue in

Law School, York University, Faculty Directory, http://www.osgoode.yorku.ca/faculty/Mossman_Mary_Jane.html.
15. Mossman, supra note 1, at 17.
16. See id. at 18-19.
17. See id. at 17-20.
18. See id. at 17-21.
19. See id. at 19-21.
20. See id. at 21.
22. See Leiper, supra note 2, at 4-13, 15.
23. Id. at 4.
24. See id. at 4-6, 10-13.
present practice.25 The stories documented in this book can play a vital role not only in understanding the present situation for women lawyers, but also in shaping the future for women who take up law as a career.

Part I of this review provides an overview of First Women Lawyers in an attempt to explain its significance and placement within the existing literature on women in the legal profession. Part II, in turn, is devoted to a similar overview of Bar Codes. Part III identifies several ways that the two books intersect and, in comparing the books, addresses the future of gender equality within the legal profession.

I. A History of Progress: Examining the Efforts of the First Women Lawyers

First Women Lawyers is a seminal work on the history of women in the legal profession. Professor Mossman's historical account is careful and comprehensive, unique in its attempt to present a global, comparative study of the first women lawyers.26 At the outset, Mossman asserts that "the history of the first women lawyers is relevant to an understanding of contemporary issues of gender and professionalism,"27 and she commits herself to meticulously making this point throughout the book.

25. See id. at 8-9, 10-13, 177-78.

26. Mossman is not, however, the first to examine the history of women lawyers. See Joan Brockman, Gender in the Legal Profession (2001) (reviewing the historical exclusion of women from the legal profession in Canada, as well as the results from her study of one hundred young lawyers currently practicing law in British Columbia); Drachman, Sisters, supra note 12 (examining the history of American women lawyers); Karen Berger Morello, The Invisible Bar (1986) (examining the history of American women lawyers); Margaret Thornton, Dissonance and Distrust (1996) (conducting a study of the history and modern experience of Australian women lawyers); Women in the World's Legal Professions (Ulrike Schultz & Gisela Shaw eds., 2003) (an anthology addressing women in the legal professions in fifteen countries from four continents); Fiona M. Kay, Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec, 47 McGill L.J. 699 (2002) (examining the history of women lawyers in Quebec along with the results of a 1999 survey of members of the Barreau du Quebec); Linda J. Kirk, Sisters Down Under: Women Lawyers in Australia, 12 Ga. St. U. L. Rev. 491 (1996) (covering the history of the first women lawyers in Australia); Carrie Menkel-Meadow, "Feminization" of the Legal Profession: The Comparative Sociology of Women Lawyers, 24 Osgoode Hall L.J. 897, 902-12 (1986) (briefly reviewing the history of women lawyers in United States, Canada, Brazil, New Zealand, and European countries).

27. Mossman, supra note 1, at 5.
The book is divided into six chapters, each representing the first women lawyers from different countries around the world. Though the book is not comprehensive in documenting the experience of all early women lawyers in their respective communities (as Mossman herself readily concedes), the stories typify the common effort by women in North America, Asia, and Europe to find a place within the law. Each chapter could stand on its own as a separate project, but presenting them as a cohesive work allows Mossman to convey a much more dramatic (and accurate) picture of the pioneering accomplishments of the first women lawyers.

While in some ways scholarship on the history of women in the legal profession may be considered an emerging field, as noted, Mossman certainly is not the first to examine the early efforts of women to become lawyers. Her study stands apart from others, however, in several respects. For one, as she moves from country to country, she draws associations between the stories of the featured lawyers and the entry of women into the profession in the other countries. These associations include the common cultural or political movements at the time, for example suffrage, as well as the infrequent but important instances where the women's lives overlapped directly.

28. Id. at 18.
29. See, e.g., Drachman, Sisters, supra note 12, at 5 ("Women's historians have paid a great deal of attention to women's entry into the public sphere. But although they have looked at women in a wide range of professions, they have given little attention to women lawyers.") (citation omitted); Morello, supra note 26, at xiii ("While there are some fine books and articles touching on the history of women in our profession, I could not find one book that dealt exclusively with the subject. Women had been practicing law for centuries and yet we had no written history.").
31. See, e.g., Mossman, supra note 1, at 16-21 (summarizing efforts to compile a comparative history of women lawyers); id. at 116-21 (contrasting the experience of British lawyer Eliza Orme, featured prominently in Chapter 3, with that of women lawyers in the United States, Canada, and Ireland); id. at 159-60 (contrasting the experience of New Zealand lawyer Ethel Benjamin, also featured prominently, with that of women lawyers in Australia, South Africa, and England).
32. See id. at 19.
33. See, e.g., id. at 64-65, 137-38 (observing that Clara Foltz and Mary A. Green of the United States, Eliza Orme of England, and Cornelia Sorabji of India were selected to present papers at the World's Congress of Jurisprudence and Law Reform in 1893, the first international congress of lawyers in which women took part).
Furthermore, *First Women Lawyers* is not merely a compilation of existing scholarship on the entry of women into the profession. Mossman has conducted independent research of historical records, court documents, news accounts, archived letters, and diaries, all of which she draws upon with an intent to give context to the work of others and to reach conclusions of her own.\(^{34}\) Where her research diverges from the work of others, she carefully makes the case for her own findings. For example, much of the existing scholarship on the first women lawyers seems to characterize them as leading feminists, but Mossman’s research, in some cases, suggests otherwise.\(^{35}\)

At least two additional distinctions separate Mossman’s work from others documenting the history of women lawyers. First, Mossman takes an expansive view of the term lawyer, including in her definition women who practiced law despite never being formally admitted.\(^{36}\) Second, Mossman recognizes the “contradictions and ambiguities” inherent in her endeavor to scrutinize both the personal paths chosen by early women

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34. See id. at 17-21.

35. Mossman makes this observation for several of the women in her book. For example, Mossman draws heavily from the work of Virginia Drachman on the role of the first American women lawyers, but she does not adopt Drachman’s observations wholesale. See id. at 62. In one such critique Mossman writes that “it is hard to accept Drachman’s conclusion that ‘the women lawyers of the Equity Club did more than participate in the Women’s Movement; they took their place at its very center.’ A more nuanced assessment suggests that women lawyers’ relationships to the women’s movement were not at all uniform.” Id. (quoting DRACHMAN, supra note 1, at 21) (citation omitted). A second example of Mossman’s effort to refine existing scholarship occurs in her discussion of Ethel Benjamin, whom Gill Gatfield has called a “leading feminist” of her time. Id. at 190 (quoting GILL GATFIELD, WITHOUT PREJUDICE 28 (1996)). Mossman suggests that this characterization fails to convey the “complexity of [Benjamin’s] experience.” Id. While Benjamin did handle cases to advance the interests of women, she also engaged in “work for the publicans in high profile prohibition litigation [that] must have seriously damaged any continuing relationships within the women’s movement . . . .” Id. A third example is the case of Cornelia Sorabji. Mossman counters Antoinette Burton’s position that Sorabji is an “unsung feminist heroine,” arguing that “Sorabji would have abhorred such a characterization as she had no time for ‘women’s rights women’ of her day.” Id. at 237.

36. Id. at 9. Mossman employs the expansive definition of the term lawyer in what she calls an effort to “explore[ ] a wide range of strategies and experiences . . . .” Id.
lawyers, as well as the larger historical context in which they made their way.37

Chapter 1 of the book presents a comprehensive overview of the first American women to enter the legal profession.38 By the late 1860s and 1870s, some, but certainly not all, American state bars began to admit women.39 Mossman includes the stories of Arabella Mansfield, the nation’s first woman admitted to a state bar,40 and Myra Bradwell, who was famously denied admission to the Illinois bar just a few months later by both the Illinois Supreme Court and the Supreme Court of the United States.41 Mossman explains that this inconsistency laid the groundwork for subsequent bar admission attempts by women in other states, with some courts granting admission and others deferring to state legislatures.42 In the late 1880s, American women lawyers had established the Equity Club, a group formed as a resource and encouragement to women lawyers in the United States, largely through the exchange of written correspondence—correspondence which provides Mossman a true inside perspective in her research.43

Mossman takes care to place women’s efforts to enter the legal profession within the larger picture of the pursuit of women’s rights generally, such as suffrage.44 She observes that recognition of the emerging goals of the women’s movement in the late nineteenth century is critical to appreciating the history of women’s desire to enter the legal profession, though at times these women lawyers were at odds with the overall movement.45 She makes clear that while women lawyers and suf-

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37. See id. at 15. Mossman recognizes that other feminist scholars identify a similar challenge in their work, but Mossman's approach draws out a number of interesting comparisons in light of the contradictions. Perhaps the most notable example is evidence that the women successfully admitted to the bar “appear to have been more inclined to eschew connections with the women’s movement in favour of strictly personal identities.” Id. at 21.
38. Id. at 23-65.
39. See id. at 17, 26-27.
40. Id. at 41. Arabella Mansfield was admitted to the Iowa bar in 1869. Id.
41. Id. at 41-48. See also Bradwell v. Illinois, 83 U.S. 130 (1873); In re Bradwell, 55 Ill. 535 (1869).
42. See MOSSMAN, supra note 1, at 44.
43. Id. at 17.
44. See id. at 48-49.
45. See id. at 40-41.
frage activists were "closely connected immediately after the Civil War, they increasingly diverged in the latter decades of the nineteenth century; indeed, it seems that a number of successful women lawyers gradually adopted a professional identity as lawyers, one that increasingly distanced them from other women activists," thus establishing a troubling dichotomy for women lawyers that persists today.

Mossman also addresses legal education for women in the United States. She remarks that while the women's movement encouraged education, law schools "responded unenthusiastically, and sometimes with resolute opposition to women's interest in studying law." Moreover, those women who managed to enter a legal education program encountered a variety of obstacles in obtaining their degrees, not to mention the additional hurdles faced when attempting to seek admission to the bar or to secure jobs after graduation.

By devoting the first chapter to the efforts of American women, Mossman lays the framework for a comparative analysis of efforts by women in other countries. In Chapter 2, Mossman continues to focus on North America, reviewing the progress of the first women lawyers in Canada. Canadian women began to seek legal education and entry into the profession at the end of the nineteenth century, notably later than the women of the United States. Mossman states that Britain, "where women were formally excluded from becoming solicitors or barristers until after World War I," had greater influence over the Canadian legal profession and courts than it had in America. Accordingly, she questions, "it is important to assess whether the history of women's admission to the legal profession in Canada reveals a fissure in current theories about a common professional project in law in North America, or whether there is some

46. Id. at 41.
47. Id. at 39. For example, Alice Jordan graduated from Yale Law School in the 1880s only to have Yale amend its admission policy to men only soon after her graduation. Id. at 37-38.
48. See id. at 39.
49. See id. at 67-112.
50. Id. at 68.
51. Id. at 72.
52. See id.
other explanation for this divergence between the United States and Canada . . . ."53

In making this assessment, Mossman studies the arguments presented by women in specific court cases, as well as the court opinions rejecting women’s arguments for entry into the Canadian legal profession.54 While American cases are cited in the arguments, the “decisions reveal how courts continued to defer to jurisprudence in Britain, a jurisprudence of male exclusivity for both barristers and solicitors.”55 In contrast, however, a number of the Canadian provincial legislatures passed legislation permitting women to become lawyers, so long as they did so “‘on the same terms as men,’ an approach which simultaneously granted women admission to the bar and also confirmed the profession’s fundamental maleness.”56 Mossman concludes that hinging women’s admission on “the same terms as men” had the effect of pushing women to the margins of the profession.57 As in the United States, for many Canadian women, legislative action was required before they could enter the legal profession.58

The next three chapters stand in contrast to Mossman’s studies of the American and Canadian female lawyers in definitive ways. First, most of the North American women’s experiences involved litigation regarding their admission to the legal profession, whereas the women in the other common law jurisdictions began to practice law without initiating a legal challenge in court regarding their admission to practice.59 Second, and perhaps because of the first reason, Mossman spends a significant amount of time on detailed biographies of the individual women who represent the regions beyond North America. For example, in moving overseas to Britain in Chapter 3, Mossman focuses predominantly on Eliza Orme, who established a law office in 1875 and maintained her practice without seeking admission to the bar.60 Orme’s activities in the law and in the

53. Id.
54. See id. at 73-88.
55. Id. at 72.
56. Id.
57. Id. at 88.
58. See id. at 72, 86-87.
59. Id. at 17.
60. Id. at 120.
suffrage movement receive over thirty pages of attention, compared to the handful of pages or paragraphs dedicated to the lives of the women lawyers, such as Myra Blackwell and Clara Brett Martin, chronicled in Chapters 1 and 2.

Chapter 4 turns to the efforts of women in Australia and New Zealand. The chapter opens with a general historical account, including highlights such as the admission of the first Australian woman, Grata Flos Greig, in 1905 and the delay experienced by Ada Evans in New South Wales, who was not admitted to the bar until nearly twenty years after her graduation from the University of Sydney's law school in 1902. Mossman connects the experiences of these women to others in the world, writing that "the pattern for the first women lawyers in Australia was one of sporadic litigation and ongoing lobbying efforts to achieve legislation in each state, a pattern that was similar for women who aspired to become lawyers in other former British colonies, including Canada."

The heart of Chapter 4, however, directs the reader to the path that one woman took in her quest to practice law in New Zealand. Ethel Benjamin was the first woman lawyer admitted to practice in New Zealand, having gained admission in 1897 without the challenges or delays experienced by most of the women featured in this book. While she was entitled as a matter of law to be admitted to the bar, the culture of the profession was not very welcoming. Mossman notes that Benjamin was excluded from certain activities of the professional bar, and she had difficulties at times sustaining her legal practice, though this also may have been due to her youth and Jewish background. Mossman cites Benjamin's difficulties and the fact that other women did not seek to enter the legal profession.

61. See id. at 121-53.
62. See id. at 34.
63. See id. at 67-68.
64. See id. at 155-90.
65. Id. at 155.
66. Id. at 155-57.
67. Id. at 157.
68. See id. at 159-87.
69. Id. at 159.
70. Id.
71. Id. at 171-75.
72. Id. at 188.
in New Zealand for many years as confirmation of the impact that the strong male exclusivity had on the profession.\textsuperscript{73}

Additionally, as with the early American and Canadian women lawyers, Mossman declares that "Benjamin did not fit comfortably into the women's movement in New Zealand."\textsuperscript{74} Nevertheless, Benjamin's practice included a substantial amount of family law work on behalf of women and children,\textsuperscript{75} though she also represented clients whose interests were not aligned with women's issues.\textsuperscript{76} As with the biography of Orme, Mossman devotes a sizeable portion of the book to Benjamin's life (over thirty pages), permitting a fuller understanding of such seeming inconsistencies and the role that gender played in her legal career.\textsuperscript{77}

Chapter 5 follows the pattern of Chapters 3 and 4 with particular attention centered on the life and career of one woman, this time an Indian woman, Cornelia Sorabji.\textsuperscript{78} Sorabji was the first woman to study law at Oxford University, sitting for examinations in 1892, despite the fact that women were neither entitled to Oxford degrees nor eligible to sit for the bar.\textsuperscript{79} Nevertheless, she had a substantial legal career, including court appearances to the extent judges would permit her to appear on behalf of her clients.\textsuperscript{80} In 1904, after many years of practicing law (while simultaneously facing repeated roadblocks in her effort to become admitted to the bar), she received a special government appointment as a legal advisor with the Court of Wards, the administrative agency charged with providing assistance to widows and children in Northern India.\textsuperscript{81} Only after World War I was she admitted as a barrister.\textsuperscript{82} Interestingly, a major source for Mossman's research on Sorabji is her own autobiographic memoir, \textit{India Calling}.\textsuperscript{83}

\textsuperscript{73} See id.
\textsuperscript{74} Id. at 173.
\textsuperscript{75} See id. at 176-79.
\textsuperscript{76} Id. at 179.
\textsuperscript{77} See id. at 159-90.
\textsuperscript{78} See id. at 191-97, 199-237.
\textsuperscript{79} Id. at 194.
\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Id. at 18.
\textsuperscript{83} See, e.g., id. at 192 n.3.
The final chapter of *First Women Lawyers* includes an overview of the efforts by Louis Frank, a Belgian barrister, to facilitate women's admission to the legal profession in European countries, including the struggle for admission of Lydia Poet in Italy, Jeanne Chauvin in France, and Marie Popelin in Frank's home country of Belgium. Frank exchanged written correspondence with all three women (as well as others encountered earlier in the book) and met two in person as he worked to assist them in presenting their claims for admission, largely through the 1898 publication of his treatise, *La Femme-Avocat*, a comprehensive sociological analysis and historical documentation of women's roles, legal status, and efforts to practice law. As Mossman discerns, these women's stories are significant because they show both the pioneering efforts on behalf of women in the law and the confrontation of civil-law based arguments against women in the law. They thus provide "interesting comparisons with women's claims for admission to the bar in common law jurisdictions."

The content of this final chapter is fascinating on two fronts. First, as in the prior chapters, Mossman's detailed biographies of the featured women once again are effective at illustrating the tensions and concerns in these specific women's lives and in the women's movement generally. Her account of Frank's work is equally deliberate and compelling, aided by her successful effort to place it in the context of the work of early women lawyers around the world, many of whom the reader already has become acquainted with in the preceding chapters.

In her final reflections, Mossman considers how the experiences of these early women lawyers might illuminate "contemporary issues about gender and professionalism in the twenty-first century." In many ways the greatest strength of this book is Mossman's ability to weave the stories of the first women lawyers across borders and oceans to create a cohesive history. Mossman conveys, with historical accuracy and intimate,

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84. See id. at 239-68.
85. Id. at 239.
86. Id. at 245.
87. See id. at 246-54, 261-68.
88. See id. at 239-46, 254-61.
89. Id. at 289.
personal detail, the unique and at times inconsistent paths taken by women striving for the common goal of becoming lawyers. Notably missing, however, are stories from women in other parts of the world. Yet, Mossman sets a high bar for those who may come after her to document the stories of women from other countries in Europe, Latin America, South America, Africa, and the Middle East that remain to be told. Her work lays the foundation for future scholarship and demonstrates the real need for further work in this regard.

II. The Progress that Remains: A Snapshot of Modern Women Lawyers

\textit{Bar Codes} is a highly readable compilation of history and sociological theory woven together to support and explain the results of a study conducted by Professor Leiper from 1993 to 2002, in which she tracked the careers of 110 women practicing law in Ontario, Canada.\textsuperscript{90} The study participants included women lawyers in private practice, solo practice, government, corporations, and the judiciary.\textsuperscript{91} Leiper's research methodology was based upon taped interviews with the women and a written questionnaire.\textsuperscript{92} For many of the subjects, Leiper conducted follow up interviews later in their careers,\textsuperscript{93} and she also attempted to contact all of them shortly before the publication of her book in order to provide a final update about their individual status, which appears as an appendix to the book.\textsuperscript{94}

Though she is not the first to conduct an interview-based study to examine the careers of women lawyers\textsuperscript{95} or even wo-

\textsuperscript{90} See Leiper, supra note 2.
\textsuperscript{91} See id. at 191-99.
\textsuperscript{92} Id. at 14.
\textsuperscript{93} See id.
\textsuperscript{94} See id. at 14, 190-99.
\textsuperscript{95} See, e.g., Brockman, supra note 26 (interviewing lawyers in British Columbia); Cynthia Fuchs Epstein, Women in Law (2d ed. 1993) (interviewing American women lawyers); Cynthia Fuchs Epstein, Women in Law (1981) (same); Mona Harrington, Women Lawyers (1994) (same); Lauren Stiller Kikleen, Ending the Gauntlet (2006) (same); Suzanne Nossel & Elizabeth Westfall, Presumed Equal (1998) (surveying over twelve hundred women working at top American law firms); Thornton, supra note 26 (interviewing Australian women lawyers); Kay, supra note 26 (interviewing women lawyers in Quebec); Nancy J. Reichman & Joyce S. Sterling, Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers, 14 Tex. J. Women & L. 27 (2004) (examining gender
men lawyers in Ontario, hers is unique in utilizing follow up interviews of this nature. The data compiled through the interviews and questionnaires was processed through a sociological computer program, but the book focuses mainly on direct quotations from the subjects to illustrate Leiper's observations about several recurring themes regarding the resistance and challenges faced by women in the legal profession. These themes include appearance (represented by Shakespeare's character, Portia), legal education, time (especially the balance of work/family obligations), and career path.

Leiper opens her book by introducing the "codes" that women lawyers must identify and decipher to achieve success in the profession. Her reference to "codes" includes more than just codes of civil law, criminal law, or professional conduct. Leiper's attention, rather, is focused on the hidden norms of the practice and the patterns of contradictory behavior presenting problems for women, such as "expectations about hours on the job, access to the best files, informal meetings, or unspoken views about pregnancy and childbirth." Indeed, the findings of her research seem to be directed primarily at those women (and, implicitly, men) who desire to "add parenting responsibilities to their load of legal duties." She ends the book with an attempt at "cracking the codes," offering some ideas on how the next wave of women lawyers might further the progress toward gender equality in the profession.

Chapter 2 introduces a central theme that runs throughout the book: the character of Portia from Shakespeare's The
Merchant of Venice, who disguises herself as Balthasar, a respected and wise doctor of laws, to adeptly resolve a dispute.\textsuperscript{104} Leiper provides an overview of feminist scholars’ fascination with Portia over the years, but for her use she draws largely on the comparison between Portia having assumed the identity of a male judge with the views of the women in her study regarding wearing legal robes, a tradition for Canadian lawyers and judges.\textsuperscript{105} Her study reveals that of the women asked this question in the interview,\textsuperscript{106} “[w]omen lawyers reported an enhanced sense of identity when they appeared in their robes. Many of them felt that their professional legitimacy was strengthened and their personal confidence was elevated.”\textsuperscript{107} She goes on to observe that, “[w]hile some of them recalled having mixed feelings on first wearing their robes, most of them felt a sense of pride in their accomplishment,”\textsuperscript{108} though she also acknowledges some rather unpleasant practical consequences of the robes, especially on warm summer days in old courtrooms without air conditioning or during one’s pregnancy when the snug-fitting inner vest cannot be expanded.\textsuperscript{109}

In conclusion, Leiper states that “[o]n the whole, however, the robes authenticate their legal knowledge and expertise, allowing the women to move beyond the everyday duties of their practices as they prepare themselves for the adversarial climate of the courtroom.”\textsuperscript{110} Leiper implies that the observations of the women, seemingly tied to the wearing of the robes, convey significantly more about their perceptions of the law and their role

\textsuperscript{104} Leiper is not the first to draw a comparison between women lawyers and Portia. See, e.g., Carrie Menkel Meadow, Portia Redux: Another Look at Gender, Feminism, and Legal Ethics, 2 VA. J. SOC. POL’Y & L. 75 (1994). Of Portia’s “presence” in Bar Codes, Leiper writes: “Her presence in this book is haunting—a metaphor with a mixed message that highlights the transparency of women’s performances and the ways in which they court professional failure when they turn their attention to family matters or deviate in any way from the prescribed patterns of practice.” Leiper, supra note 2, at 179.

\textsuperscript{105} See Leiper, supra note 2, at 7-8.

\textsuperscript{106} Id. at 25. “The question was not addressed if the women did not wear their robes regularly or if [Leiper] felt that it would interrupt the flow of the discussion.” Id. at 204 n.44.

\textsuperscript{107} Id. at 40.

\textsuperscript{108} Id.

\textsuperscript{109} Id. at 35-36.

\textsuperscript{110} Id. at 40.
as women who also are lawyers, generally. These observations also serve to validate the fact that the first women lawyers' concern of double consciousness, at least on some levels, still persists for women lawyers today.

Next, Leiper takes on legal education. While her study is limited to Canadian schools, her observations certainly reflect the evolution of legal education in America as well as other parts of the world. Lieper asserts that while the increased number of women in the profession has changed the face of law, the presence of women has not altered accepted masculine norms. In this discussion, she includes a concise but helpful summary of the existing literature and theory devoted to the issues surrounding women and legal education, concluding that this work “provides convincing evidence of inertia within the legal profession in response to women’s requests for inclusion. The general body of legal knowledge remains intact and the power structure within law schools and large firms continues to favour men's interests.”

Her discussion of legal education also includes an in-depth examination of the law school system in Ontario, as well as law school culture and pedagogy generally, acknowledging the impact of the 1980s era when groups of feminist students and faculty began to question all aspects of legal education. Leiper then introduces her “Ontario sample,” weaving in the stories of the women in her study and highlighting several recurrent concerns from their recollections of law school. Although the women expressed a wide range of views about their law school experience, from “very interesting” to “terrifying,” the most remarkable finding from Leiper’s research on this issue is that the women did not seem to believe that gender had been an obstacle to their education. For example, she declares that the women’s “experience in law school was not as

111. See id.
112. See id. at 41-78.
113. See id. at 63.
114. Id. at 46-47.
115. Id. at 49.
116. See id. at 52-62.
117. Id. at 64-75.
118. Id. at 65.
119. Id. at 66.
daunting as we might expect, given the reports from the first generation of women in large American law schools.120 Furthermore, a number of women were impressed by tensions in the law school environment other than gender, such as race, age, social class, and financial constraints.121 Leiper acknowledges these additional tensions and recommends that future scholarship explore them, but she does not cover them in depth.122

Another dominant theme present in *Bar Codes* is that of time, whether through the stress of billable hours or the effort to balance work and family obligations.123 Leiper again takes care to ground the responses of her study participants in a discussion of theory. She devotes one chapter to a summary of the relevant legal literature and sociological work regarding the concerns of time124 and a second chapter to conceptualizing time, based largely upon feminist theories on the visions of women's time.125

To analyze the study participants regarding the issue of time, Leiper looked to an empirical method. She utilizes "the qualitative index of 'time crunch,' which was developed by testing responses to a battery of statements about the impact of temporal stress in respondents' lives."126 In comparing other occupations, Leiper notes that women lawyers are among the most stressed, with higher-than-average levels of "time crunch"

120. *Id.* at 181.
121. See *id.* at 67, 181.
122. See *id.* Leiper's limited comments on the issue of social class, however, do raise serious concerns:

> The theme of social class is never far from the surface as we move from the image of the nineteenth-century professional gentleman through the lives of these women to the present and the potential for further segmentation within professional ranks. . . . Recent reports indicate that the most prestigious schools, led by the University of Toronto, intend to raise their fees beyond the level of affordability for most aspiring law students. Only the very affluent and the scholarship winners will be able to attend these schools. The move is partly motivated by the need to attract the best legal minds to permanent faculty posts, but it also serves to channel the students with higher class backgrounds into the most prominent law firms . . . .

*Id.* at 181-82 (citation omitted).
123. See *id.* at 11-12.
124. See *id.* at 79-104.
125. See *id.* at 105-42.
126. *Id.* at 79.
related stress. This plays out in different ways for the study participants, whether as concerns of insufficient time for spouses, children, friends, and oneself, or simply not getting more than four or five hours of sleep most nights.

Leiper ends her analysis of time in the lives of women lawyers by reflecting on what might be learned from the experiences shared by the women in the study. She observes that "we continue to hold out impossible ideals to women. In spite of the fact that their working hours are longer than average, they still shoulder much of the responsibility for their children's lives." This conclusion is hardly novel or revolutionary.

What is most compelling, and at the same time disturbing, about Leiper's findings regarding time in the lives of women lawyers is that it seems little, if any, progress has been made on this front in the past twenty to thirty years.

A final theme Leiper addresses is challenging the assumptions surrounding the concept of a traditional career following a linear trajectory. Again, she positions her study results in theoretical analysis, this time with an overview of career theory literature. Critical of the traditional masculine vision of career as linear, an "unbroken, upwardly mobile path to status, money, and power," she suggests that this model is outdated and "does not accommodate women's lives. . . . It is oversimplified and one-dimensional . . . ." To counter the presumptions and stereotypes associated with the classical linear career, she tries to place the career trajectories of her study participants on a continuum ranging from the most linear to the most extreme. Leiper selects twelve women from her sample, as rep-

127. Id. at 102.
128. See id.
129. See id. at 103-04.
130. Id. at 103.
131. See, e.g., ARLE RUSSELL HOCHSCHILD, THE SECOND SHIFT, at x (1989) ("One reason that half the lawyers, doctors, business people are not women is because men do not share the raising of their children and the caring of their homes.").
132. See LEIPER, supra note 2, at 104.
133. See id. at 143.
134. See id. at 143-47.
135. Id. at 173.
136. Id.
137. See id. at 147.
representative of various points along this continuum, for a close analysis of the choices made in their legal careers.\textsuperscript{138} Her analysis leads her to conclude that “[f]amilies would be better served by career expectations that allowed them time to deal with the other dimensions of their lives, particularly during the child rearing and eldercare years. This kind of flexible arrangement would provide a truly equitable approach to career-building and family life.”\textsuperscript{139}

In reflecting on the results of her research, the most positive development Leiper can identify is that a debate about gender issues exists.\textsuperscript{140} This “mark of guarded success,” in her words, “would not have occurred without the influx of women to the profession.”\textsuperscript{141} Thus, “by their very presence, [women lawyers] have raised alarm bells and provoked responses from law societies and bar associations. They have also laid bare a vein of prejudice in firms that have remained committed to a masculine approach to practice.”\textsuperscript{142} And Leiper’s prognosis for the future is not entirely positive. She writes that

“[l]aw societies have responded . . . by generating volumes of model policies. Large law firms have commissioned more studies and prepared detailed policies, but, without addressing systemic inequities, the profession will continue to ignore the needs of more than half of its members and the culture will remain intact.”\textsuperscript{143}

Leiper’s research and analysis enhance the body of scholarship that endeavors to understand the legal profession through the compilation of women’s stories. Her work is limited, however, by its very nature in that the survey sample represents only a narrow segment of women lawyers practicing today. While their stories certainly can provide some insight on the experience of women lawyers generally, Leiper’s conclusions would be even more compelling if the sample were expanded. Indeed, she identifies this as an area for future work, recom-

\textsuperscript{138} Id.
\textsuperscript{139} Id. at 173.
\textsuperscript{140} See id. at 178-79.
\textsuperscript{141} Id. at 49.
\textsuperscript{142} Id. at 178.
\textsuperscript{143} Id. at 49 (citation omitted).
mending that "a solid random sample of the profession should include accurate proportions of lawyers from diverse backgrounds."\textsuperscript{144} Not only should future research of this kind include diverse backgrounds but, in the spirit of \textit{First Women Lawyers}, future research should encompass global comparisons of contemporary women lawyers.

III. Intersections Between \textit{First Women Lawyers} and \textit{Bar Codes}: The Progress that Remains

Though different in approach and methodology, both \textit{First Women Lawyers} and \textit{Bar Codes} endeavor to respond to the question posed at the outset of this review: What has kept women lawyers from making more progress toward gender equality? It is interesting to note a number of intersections between the books with respect to both the concrete, explicit barriers faced by the first women lawyers more than one hundred years ago and the subtle, informal barriers faced by modern women lawyers today. These various intersections, for the most part, stem from strains of the double consciousness described at the outset of this review.\textsuperscript{145}

As an initial matter, both books reveal that the motivations of women to enter the legal profession have not changed very much over the years. Like many of Mossman's first women lawyers, Leiper's study found that women lawyers today choose the law primarily for economic independence and intellectual development.\textsuperscript{146} Similarly, just as many of the first women lawyers were, perhaps surprisingly, not as supportive of the women's movement as we might have expected them to be,\textsuperscript{147} the women surveyed by Leiper also tended to avoid feminist issues, particularly during their education and when first attempting to assimilate into the legal culture.\textsuperscript{148} Moreover, many of the same challenges facing the first women lawyers—like how to find work, whether to support feminist causes, and even what to

\textsuperscript{144} \textit{Id.} at 188.
\textsuperscript{145} See \textit{supra} note 12 and accompanying text.
\textsuperscript{146} \textit{Leiper}, \textit{supra} note 2, at 180.
\textsuperscript{147} See \textit{Mossman}, \textit{supra} note 1, at 40-41.
\textsuperscript{148} \textit{Leiper}, \textit{supra} note 2, at 180-81.
wear to court\textsuperscript{149}—are the very challenges on the minds of women now.

The authors employ similar metaphors and symbols to describe the experience of women lawyers. For example, as discussed in Part II of this essay, Portia is a central theme for Leiper, representing the "competing visions" experienced by women who enter the law.\textsuperscript{150} Portia was a major figure for the first women lawyers as well. Mossman explains that the first women lawyers were referred to as "Portias,"\textsuperscript{151} meaning that their "participation in public life arguably required that the first women lawyers disguise their gender in their professional identities."\textsuperscript{152} Mossman further observes that, "[i]n this way, references to the first women lawyers as 'Portias' appeared to acknowledge women's potential for effective advocacy, but they simultaneously confirmed a male model of legal professionalism."\textsuperscript{153}

Another symbol present in both books is the kaleidoscope. Mossman concludes her book by suggesting that her "account of the complex interrelationships between different historical contexts and women's responses to different circumstances" must be viewed as if through a kaleidoscope.\textsuperscript{154} Only by continually adjusting the focus to accommodate different perspectives, she suggests, can we adequately assess the history of the first women lawyers.\textsuperscript{155} Leiper employs the kaleidoscope in her discussion of the time pressure on women lawyers. She explains that time might best be envisioned:

\begin{quote}
As a kaleidoscope of patterns, marked by sequence and duration, thought and memory, cycles and rhythms. At the most immediate level, it is about daily schedules and, by extension, the timing of career moves, but it also embraces the temporality that stretches across the life span, periodically evident in
\end{quote}

\begin{flushleft}
\textsuperscript{149} Mossman, supra note 1, at 106.
\textsuperscript{150} Leiper, supra note 2, at 7.
\textsuperscript{151} Mossman, supra note 2, at 284.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\textsuperscript{154} Id. at 277.
\textsuperscript{155} See id.
\end{flushleft}
rites of passage such as graduation, marriage, or parenthood.156

The authors' use of symbols like these highlights the ways in which the first women lawyers and modern women lawyers con-
tinue to have a great deal in common.

An additional example of the intersections between the books is the documentation of the ways women have adapted to
create a place of their own to practice law.157 Many of the first
women lawyers who were denied admission to the bar did not
allow it to keep them from practicing law in some form on their
own terms. For example, Cornelia Sorabji took on women cli-
ents living in purdah (the Hindu practice of excluding women
from men), "creat[ing] a niche for her legal work which 'supple-
mented,' but did not 'supplant,' the work of male lawyers."158
And Eliza Orme established her own office where she handled
patent and conveyance legal work for many years without a law
degree or bar admission.159 Similarly, Leiper found that some
women in her study (who, perhaps not coincidentally, seemed
most satisfied in their legal careers) created alternatives to
traditional legal practice options, one transitioning from a litiga-
tion practice into mediation160 and another opening her own
practice in which she served the role of in-house counsel for her
various clients.161

Finally, both books recognize that progress in gender equal-
ity for the legal profession has come (or will come) from women
who acted (or will act) to change the law itself. Mossman found
that this was the case for many of the first women lawyers who,
in order to be admitted to the practice of law, first had to change
the law.162 It remains true for women today. Leiper observes
that while "a broad body of literature"163 has been produced doc-
umenting the need to address gender equality and the work/life

156. LEIPER, supra note 2, at 183.
157. As Mossman notes, Virginia Woolf was the first to claim that women
"could enter the professions and 'use them to have a mind of their own and a will of
their own . . . .'"] MOSSMAN, supra note 1, at 5.
158. Id. at 234.
159. Id. at 131.
160. LEIPER, supra note 2, at 165.
161. Id. at 161.
162. MOSSMAN, supra note 1, at 12.
163. LEIPER, supra note 2, at 179.
balance, "the next giant step involves the implementation of progressive legislation and contractual terms of employment guaranteeing equal opportunity for all employees."\textsuperscript{164}

*First Women Lawyers* and *Bar Codes* are significant additions to the scholarship on women and the legal profession. While the passage of time certainly has yielded some progress for women lawyers, both books acknowledge that work remains. These books are required reading for law scholars, historians, and social scientists who study women lawyers and will be appreciated by anyone who is concerned about gender equality in the legal profession.

\textsuperscript{164} Id.
Building a Sustainable Model for the Legal Industry


Reviewed by Rachel J. Littman*

Sylvia Ann Hewlett’s latest book, Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success (“Off-Ramps”),¹ is a culmination of over two years of research with powerful allies and supporters, undertaken to “spearhead a second generation of policy and practice designed to keep talented women on the road to success.”² If one lesson can be learned from these studies, it is that high-achieving professionals now have opportunities to phase in and out of their career paths and take advantage of tailored benefits, networking, and other programs at some of the most prestigious companies in the world.³

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1. SYLVIA ANN HEWLETT, OFF-RAMPS AND ON-RAMPS: KEEPING TALENTED WOMEN ON THE ROAD TO SUCCESS (2007). Hewlett is the founding president and chairwoman of the Center for Work-Life Policy, for which Carolyn Buck Luce, a partner at Ernst & Young, and Dr. Cornel West, of Princeton University, are both vice presidents. The Center “undertakes research and works with employers to design, promote, and implement workplace policies that increase productivity and enhance personal/family well-being.” Center for Work-Life Policy, http://www.worklifepolicy.org/index.php/pageID/26 (last visited Apr. 20, 2009). The Hidden Brain Drain Task Force, created in 2004 as an initiative under the Center for Work-Life Policy, is a group of mostly large, private sector companies “focused on policies that realize female and minority talent over the lifespan.” Center for Work-Life Policy, The Hidden Brain Drain Task Force: Women and Minorities as Unrealized Assets, http://www.worklifepolicy.org/pdfs/initiatives-taskforce.pdf (last visited Apr. 20, 2009).

2. Carolyn Buck Luce, Foreword to HEWLETT, supra note 1, at ix.

3. Of the eleven companies Hewlett and the Hidden Brain Drain Task Force studied for this book, eight were members of the Fortune 500’s Largest Corpora-
Hewlett, however, has a larger message she wants to deliver: the current work model is an outdated construct, one that is based on a white, male, employed husband who is financially responsible for his stay-at-home wife and two children. That model simply does not work for today's employees, particularly female employees. The equal access opportunity pipeline and workplace models need to change if this country wants to see more women in high-ranking positions and workplaces that support and reflect the true multi-cultural nature of the workforce.

For anyone at a law firm, no matter what size, looking to advocate for or implement a flexible work schedule program or broader benefits package, Hewlett's book is a must-read. While there are many private consulting firms that will, for a fee, counsel individual lawyers and entire law firms to address many of the issues discussed in Off-Ramps, Hewlett's hope is that the studies in the book will show that it is possible to re-construct the work model from within, through a trickle-down effect, grass-roots movements, and by having corporate executives prominently use and publicly discuss their own flexible work arrangements.

See Hewlett, supra note 1, at 13-14.


7. See Hewlett, supra note 1, at 22.
I. Re-Working The Elite Model

A. The Impetus

Hewlett begins her book by evaluating the underlying business model, what she calls the “male competitive model.” The male competitive model is one that is based on long hours and weekends at the office, and on the traditional male employee with a wife at home who supports his work and cares for the home and family. The male competitive model has:

- A strong preference for cumulative, lockstep careers and a continuous, linear employment history.
- A huge emphasis on full-time employment and on face time work—being physically present in the office ten-plus hours a day.
- An expectation that the steepest gradient of a career occurs in the decade of one’s thirties.... [and]
- An assumption that professionals are motivated primarily by money.

This model stands in stark contrast with women’s interests. Research shows that women are less driven by power and money and more driven by connection and quality. In addition, their career ambitions drop precipitously during their thirties, which is exactly the same time that their child bearing and child rearing opportunities and responsibilities are at their peak.

Over the years, particularly in the finance and business world (and the law firms that serve them), “extreme jobs” have become the norm. “As work hours and performance pressures

8. Id. at 13.
9. See id.
10. Id. at 13-14 (citing Beth Anne Shelton, The Division of Household Labor, ANNUAL REV. SOC., August 1996, at 299-322).
11. Id. at 50.
12. See id. at 48-50.
13. Id. at 14. See also id. at 259 (“[T]he peak demand of many careers... hit women in their mid-thirties, clashing and colliding in the worst way with the urgent demands of the biological clock...”).
14. Id. at 60. In a 2005 research project, Hewlett and her Hidden Brain Drain Task Force identified the “extreme job” as one that is:

“well paid... sixty hours or more per week, and [has] at least five of the following extreme job characteristics: [u]npredictable flow of work[,] [l]ast-paced work under tight deadlines[,] [i]nordinate scope of responsibility that amounts to more than one job[,] [w]ork-related events outside regular work
ratchet up, women (particularly those with significant care-giving responsibilities) are being left behind in new ways.”¹⁵ For example, not only do extreme jobs require around-the-clock attention and long work hours, leaving little time for family and other obligations, they have a disparate effect on the sexes.¹⁶ “A man with an extreme job—and an eye-catching compensation package—is seen as extremely eligible. . . . [while] for women, success in an extreme job might well threaten potential mates and get in the way of marriage.”¹⁷ The disparity in the male competitive model also unfairly burdens women. Only 12% of women in extreme jobs have at-home spouses, while 25% of men have this support.¹⁸ Women in extreme jobs are also more likely to have a high-income earning spouse.¹⁹ These women have less tolerance for long hours and less responsibility (the “face time”) and are, therefore, more likely than their male counterparts to leave their extreme jobs.²⁰

Extreme jobs do not exist solely in the world’s financial centers. Hewlett’s research shows that extreme jobs permeate all sectors of the economy and all aspects of a career.²¹ Gone are the days when a junior worker would be expected to “put in his

hours[,] [availability to clients 24/7[,] [responsibility for profit and loss[,] [responsibility for mentoring and recruiting[,] [large amount of travel[,] [large number of direct reports[,] [physical presence at workplace at least ten hours a day.

Hewlett, supra note 1, at 61. Large law firm associates, particularly in New York City, frequently pull consecutive all-nighters, take calls and e-mail comments while on supposed vacations, and are generally expected to be available at all times to their supervising partners and clients. It is often the thrill of the job and rush of adrenaline, as one of Hewlett’s London-based investment banker interviewees described it, which draws people to these extreme jobs. Id. at 60. Of the women who occupy these positions, 82% of them say that it is the stimulation and challenge of the job that makes them want to stay. See id. at 68 fig.3-2. However, delving further into the statistics, it appears that 80% of women in extreme jobs “don’t want to work that hard for more than [one] year.” Id. at 75.

15. Id. at 59-60. On a worldwide level, only 20% of extreme job holders are women. Id. at 62.
16. See id. at 65, 71.
17. Id. at 70. See generally Sylvia Ann Hewlett, Creating A Life (2002) (describing how many successful professional women have achieved their status at the expense of marriage and motherhood).
18. Hewlett, supra note 1, at 70.
19. See id. at 77.
20. See id.
21. Id. at 61.
time” for a few years and then ease back once he obtained senior management or partnership status. Senior partners at major Manhattan law firms are just as likely as associates to be found working at ten o’clock on a Saturday night. Of course the partner is already a partner, having adhered to the mantra of “being available [to] clients all day, every day . . . [as] a critical part of being successful at [his] job.” Part-time junior associates, often women, face dim prospects of ever making it to the partnership level, no matter how progressive the firm’s policies.

Hewlett sees a more workable female work model, or “value set,” taking shape in the workplace; one based on talented women’s desire “to associate with people they respect . . . ‘be them-

22. See id. at 64 (“[O]ur data shows that long workweeks no longer recede with age: professionals between the ages of thirty-five and forty-five are working longer hours than professionals aged twenty-five to thirty-four.”).

23. The newly developed senior level extreme job worker is, in addition to the prevalence of Blackberries and the 24/7 demands of clients, partly due to the willingness of the firms to allow highly talented women to off-ramp or ratchet back for a period of time. If a call comes in from a client on a Friday when a particular senior female associate has bargained that day to be at home, the firm is supposed to respect that bargain. It is the partner who ends up stepping in and covering the work at a much higher cost to the client.

24. Hewlett, supra note 1, at 65.

25. The recent 2008 Working Mother and Flex-Time Lawyers Best Law Firms for Women Survey found that 36% of the top 50 “firms have written policies for Full-Time Flex-Time.” 96% of the “firms have written policies for Reduced Hours,” 10% of the firms “offer Job-Shares,” 62% “offer Full-Time Telecommuting,” and 86% “offer Annualized Hours.” 2008 Working Mother & Flex-Time Lawyers Best Law Firms for Women, Trends Identified from National Survey (September 15, 2008), http://www.flextimelawyers.com/best/art3.pdf (last visited Apr. 20, 2009) [hereinafter Working Mother, Trends]. However, only 9.5% of attorneys worked flex-time, 7.6% worked reduced hours (above the national 5% average for law firms), 0.1% engaged in job-sharing, and 0.9% telecommute full-time. Deborah Epstein Henry, Presentation at the Flex-Time Lawyers Event at Davis Polk & Wardwell (Sept. 25, 2008). According to the National Association for Law Placement (NALP), only 12% of [women] partners work a reduced-hours schedule.” Katherine Bowers, At Last . . . Part-Time Partners, WORKING MOTHER, Aug.-Sep. 2008, at 64, available at http://www.flextimelawyers.com/ibest\art1a.pdf. At the 2008 Best 50 Law Firms for Women, 22% of female nonequity partners and 12% of female equity partners work reduced hours. Id. See also 2008 50 Best Law Firms for Women, WORKING MOTHER, August/September 2008, available at http://www.workingmother.com/?service=vpage/2907 (ranking law firms according to their efforts in “helping talented women succeed”).

26. Hewlett, supra note 1, at 86.
selves' at work . . . and 'give back' to society . . . ." 27 This model, however, may be irreconcilable with the extreme job model. Women who have not pursued traditional, bottom-line driven goals are acutely aware of "being thought of as less than fully committed to [their] job[s]." 28 The conflict is unavoidable. Generally, professionals reach the next phase of their career paths after ten years of practice, when in their mid-thirties. 29 This time period corresponds to peak childbearing and child-rearing years, which "ensures that work and life clash and collide in the worst possible way for women." 30 The studies in this book are designed to help erase some of the stigma and barriers that hinder women's access to non-traditional career paths within the current corporate structure. 31

Hewlett posits that the reasons why the male model still prevails, despite the number of talented women that leave (temporarily or permanently) the elite workforce and the cost of those losses, are based on psychology. Her two-part theory is (1) that (male) business leaders are resistant to implement what would signal "the end of an era" 32 and (2) that changing the model would mean that men would "lose a last piece of competitive advantage over women." 33

It is possible that the reasons the male model prevails are more basic and short-sighted than Hewlett's theory: it costs

27. Id. at 51. See generally Carol Gilligan, In a Different Voice (1982) (analyzing the differences in identity development models of males and females).
28. Hewlett, supra note 1, at 54.
29. See id. at 14, 46. In the legal world this often means partnership or the equivalent.
30. Id. at 14.
31. See Hewlett, supra note 1, at 226. Hewlett's focus is on making adjustments and accommodations to help push women to the top of the existing corporate structure. She never sufficiently explains why there is a need to change the model if women are finding other avenues that fulfill their career goals. There are reasons why women are not sufficiently represented at the top of the corporate structure other than simply that women bail out of the inflexible male paradigm, such as the simple desire to pursue more manageable career paths. Many J.D. holders, for example, wind up teaching, running career services offices (like the author of this article), or joining philanthropic foundations that more sensibly represent the female work model. See id. at 89-90 (describing a highly qualified female associate at a prestigious Manhattan law firm who quit her eighty-plus hour per week extreme job a few years shy of the partnership benchmark and took a 70% pay cut to teach at a private school to allow herself time to start a family).
32. Id. at 15.
33. Id.
money to make changes, to accommodate people, and to implement programs. These changes would require part of an institution's current workforce to expend, what is in law firm parlance, more "non-billable" time on matters that will not immediately, or even in the near future, result in increased profitability for the institution and its shareholders (i.e. law firm partners). As Hewlett's own surveys point out, it is the "tone at the top' of [the] corporate culture" that drives the extreme work model. Since this key driver is correctable, by Hewlett's account, it should be "easier to 're-engineer' these jobs and create a different and more sustainable work-life model . . . . [that] would be particularly beneficial to women."

B. The Statistics

Women have, and continue to hold, very few leadership positions in the corporate world. At Fortune 500 companies, women only comprise 2% of the CEOs and 8% of the top earners. At top law firms, the numbers are slightly better, with women holding an average of 16% of the equity partner ranks and 26% of the non-equity partner ranks. All of this despite the fact

34. Id. at 82. In one of Hewlett's focus groups, "a consensus emerged: precisely how a business handled responsiveness to clients or customers owed more to tone at the top than any objective business imperative." Id. at 84. In the law firm world, however, it is difficult to see how a billable hour culture and partner system would want to "push-back" clients who make unreasonable time demands. See id. at 84 (describing "push-back"). It could mean risking a several million dollar per year billable client (who could easily take its business to the next big law firm), the reputation of the firm, and a reduction in profits per partner. See id. In the end, law practice is a competitive, bottom-line, client service business that must keep pace with the client base. Once that client base is established, it will take a lot more than flexible work policies to make it easier for women (particularly those with family obligations) to make it to the top.

35. Id. at 83.

36. See id. at 6 (citing Press Release, Catalyst, Rates of Women's Advancement to Top Corporate Officer Positions Slow, New Catalyst Tenth Anniversary Report Reveals (July 26, 2006)). At Johnson & Johnson, one of the companies profiled in Off-Ramps, women comprise half of the employee base but "only a third of the top earners at the company . . . ." Id. at 186.

that "49 percent of law school graduates and 36 percent of business school graduates are female . . . ." 38

Hewlett's underlying premise is that the statistics at the top should change, certainly at least to match the equal numbers in the graduate school training grounds. The current system is not conducive to retaining and promoting talented women who should occupy the same levels of management, partnership and leadership as do their male counterparts.

1. "Women's Nonlinear Careers" Do Not Fit the Male Work Model

A full "60 percent of highly qualified women have nonlinear careers." 39 Many factors are clearly at play somewhere between the equally gendered business and law school classes and the top of the work pyramid. One theory, posited by Lisa Belkin in a 2003 article, is that women choose to step away from their career paths to care full-time for their children. 40 Belkin's article focused on a small group of highly accomplished Princeton graduates who chose to leave the workforce to care for their age and seniority of fathers increases, the percentage of fathers making partner is slightly higher than the percentage of mothers, suggesting that more fathers are able to stay on the track as they elevate their careers. See id. (fathers represent 29% of male associates, 57% of male counsel, 80% of male non-equity partners, and 85% of male equity partners). Statistics are even more dismal for minority women who hold on average only 1.88% of law firm partnership positions. Nat'l Ass'n for Law Placement (NALP), Women and Minorities in Law Firms by Race and Ethnicity, NALP BULL., Jan. 2009, available at http://www.nalp.org/jan2009womenminorities?s=Representation%20of%20Women%20and%20Minorities%20.


39. Hewlett, supra note 1, at 1. The 2,443 "highly qualified women" studied in the Task Force's surveys are holders of "a graduate or professional degree or a high-honors undergraduate degree." Id. at 28. "Thirty-seven percent take an off-ramp at some point in their careers . . . ." Id. at 14. "[Thirty]-plus percent take what [the author calls] a 'scenic route' (a reduced-hour job, a flexible work arrangement, a telecommuting option)." Id.

young children.\textsuperscript{41} Hewlett, however, believes that it remains unclear whether the choice is due to economic interests or more deep-seated concerns about inequality in the working model.\textsuperscript{42}

A year after Belkin's article was published, a survey sponsored by Hewlett and the Hidden Brain Drain Task Force revealed that women were not in fact "opting out" of the workforce; many were just taking temporary detours and 93\% were looking to get back in.\textsuperscript{43} These women eased back into work by creating flexible arrangements or turning down some responsibilities.\textsuperscript{44} Hewlett emphasizes that these adjustments did not reflect a diminished career commitment; rather, the data shows a realistic shifting of responsibilities and commitments, primarily to family.\textsuperscript{45}

\footnotesize
\textsuperscript{41} Of course, as Hewlett notes, "only a relatively privileged group of women, those married to high-earning men, have the option of not working." Hewlett, supra note 1, at 37. A hidden downside was that the spouses of those women who did quit often "felt resentful of the extra wage-earning load dumped on their shoulders . . . ." Id. at 40. It is no surprise that "the overwhelming majority of highly qualified women currently off-ramped (93 percent) want to return to their careers." Id.

\textsuperscript{42} See id. at 36 ("We shouldn't forget that [there] is a traditional division of labor between men and women that remains entrenched and pervasive. Even when women are highly qualified and highly paid, they routinely pick up the lion's share of domestic responsibilities—typically 75 percent of the housework and child care." (citing Scott Coltrane, Research on Household Labor: Modeling and Measuring the Social Embeddedness of Routine Family Work, 62 J. Marriage & Fam. 837, 1208-33 (2000))).

\textsuperscript{43} Id. at 29.

\textsuperscript{44} In law, during the "scenic route" or detour periods, 49\% (higher than women in business, medicine, or academia) of women lawyers took on fewer responsibilities, 30\% worked part-time, 27\% worked reduced or flexible hours, and 22\% declined promotion. Id. at 30, 31 fig.2-2. Hewlett noted that one theme among the survey participants was the "pervasiveness of stigma around alternative work arrangements" that caused some to quit entirely rather than "apply for policies that ostensibly are on the books." Id. at 32. Similarly, while the 2008 Working Mother Flex-Time Lawyers Best Law Firms for Women Survey found that a high percentage of firms offer options such as flex-time, reduced hours, job-shares, and telecommuting, few attorneys take advantage of these opportunities. See supra note 25. Hewlett suggests that the low usage rate may be partially due to the fact that traditionally, employer work-life policies have been geared towards and benefited employees with small children. Hewlett, supra note 1, at 35. Of the "highly qualified women" studied by her surveys, however, 44\% are childless. Id.

\textsuperscript{45} Hewlett, supra note 1, at 30. Of course, the traditional home and family responsibility model is just as imbalanced for women as is the white male working model. See supra note 42.
Why do women leave, if only for a few years? Hewlett’s research shows that the answer lies in “pull” and “push” factors.\textsuperscript{46} The “pull” factors most often refer to child-care responsibilities (45%),\textsuperscript{47} though 24% of surveyed women—mostly members of the sandwich generation\textsuperscript{48}—said the pull was to care for an elderly family member.\textsuperscript{49} “Push” factors include lack of satisfaction or meaning in the job (29%), and feelings of underutilization or underappreciation.\textsuperscript{50} Surprisingly, the study showed that “[o]nly 6 percent of women off-ramped because the work itself was too demanding.”\textsuperscript{51}

If the off-ramped women are so dissatisfied, why do they want to on-ramp back to their careers? There are a number of reasons that so many women—93% by Hewlett’s estimation\textsuperscript{52}—want to return to the workforce. The first is financial, both for the household and for the woman’s independence.\textsuperscript{53} The second is more personal and relates to women’s deep sense of satisfaction with their careers and personal working identities.\textsuperscript{54} If they do come back, however, women want flexibility.\textsuperscript{55} As Hewlett points out, the “data suggests that women are not afraid of the pressure or the responsibilities of extreme jobs—they just can’t pony up the hours.”\textsuperscript{56} To draw these women back into the fold, employers need to “chunk[ ] out” the work differently to meet the diverse needs of the female talent pool.\textsuperscript{57}

\textsuperscript{46} Hewlett, supra note 1, at 32.
\textsuperscript{47} Id.
\textsuperscript{48} Id. at 33 (noting that the sandwich generation consists of people “in the forty-one-to-fifty-five age group . . . positioned as they are between growing children and aging parents”).
\textsuperscript{49} Id. at 32-33.
\textsuperscript{50} Id. at 36. For women who off-ramped from legal careers, “59 percent said their careers were not satisfying, compared with 26 percent who wanted more time for children.” Id. at 37. The dissatisfaction push for women in the law is higher than in business (52%), medicine (30%), and academia (36%). Id. at 38 fig.2-6.
\textsuperscript{51} Id. at 36-37.
\textsuperscript{52} Id. at 29.
\textsuperscript{53} Id. at 40.
\textsuperscript{54} Id. at 40-41. Another reason, one that amounts to an average of 24% of off-ramped women (though only 13% for women in the law), is a sense of wanting to give something back to society. Id. at 42 fig.2-9.
\textsuperscript{55} See id. at 51, 84-86.
\textsuperscript{56} Id. at 82.
\textsuperscript{57} Id. For example, Booz Allen, a consulting firm that operates similarly to a law firm, provided “Ramp-Down/Up, Internal Rotation” programs that offered projects that were intellectually stimulating and helped keep successful women

Before discussing the components that make the best case for diversity, it is necessary to consider why employers should bother to re-vamp the working model. The first obvious answer is money. Almost all of the models studied were created from needs to save money, stem attrition and replacement costs, and maintain a competitive edge.\(^58\) Hewlett describes a current “war for talent” as the major business incentive for companies to implement work-life and diversity based initiatives.\(^59\) Her argument is based on aging baby boomers and a lower supply of high-level immigrant workers due to worldwide economic expansion and post-9/11 U.S. visa restrictions.\(^60\) Women, she posits, “are the best—and most obvious—candidates” to fill this talent void.\(^61\) Hewlett cites statistics showing that women hold

happy and in the loop until they were ready to return to the firm's main client work. See id. at 139. They later created “an Adjunct Program that offered part-time contract work to off-ramped women (and men) . . . [who were] valued alumni.” Id. at 141. The project was in nature and ranged in duration and intensity. Id. at 142. The program was so successful that the first iteration brought in almost 100 people and resulted in at least two of them ramping up to full-time positions at the firm. Id.

58. See id. at 90-91. At law firms, it costs “between $200,000 and $500,000 to replace a second-year associate. . . .” Id. at 90. The more senior an associate, the higher the chances are that she will actually make partner, so there might be even higher costs associated with her departure. Furthermore, in normal, good economic times, law firms do not hire laterals at nearly the same rate as associate attrition. See, e.g., JUDITH N. COLLINS, THE LATERAL LAWYER (2001); NALP FOUND., KEEPING THE KEEPERs II (2003). Of course, the flip side to retaining so many lawyers is that law firms are forced to lay-off part of their attorney work force during economic recessions, evidenced by the recent reductions at many major law firms. See, e.g., Above the Law, This Week in Layoffs, http://abovethelaw.com/2009/03/this_week_in_layoffs_032109.php#more (Mar. 21, 2009, 15:06 EST) (reporting that 2,874 lawyers at major firms have been laid off during the past calendar year).

59. Hewlett, supra note 1, at 94 (citing Elizabeth G. Chambers et al., The War for Talent, McKinsey Q., May 1998, at 45-47). The war for talent is “spurred by an amalgam of factors: robust growth, a tightening job market, demographic shifts, and increased global competition.” Id. at 94-95. Clearly, with the recent economic crisis, and law-firm layoffs and dissolutions, the job market for talent has become even more competitive.

60. See id. at 18.

61. Id. Young, newly minted workers are less reliable to fill the talent void, as studies show that “millennials” (those born between 1980 and 2000) are quick to change jobs that they do not find satisfying. See CAM MARSTON, MOTIVATING THE “WHAT’S IN IT FOR ME?” WORKFORCE 3 fig.1.1 (2007). See also id. at 134 (“The
just over half of all advanced degrees in this country. But studies show that, in spite of their advanced education, women represent approximately 45% of all law firm associates and only 19% of law firm equity partners, confirming that the legal and business world is failing to harness and retain a large amount of female talent.

Whether these women want to come back is, of course, another question. Hewlett has found that 93% of the studied off-ramped women want to rejoin the workforce, although only 5% want to return to their original employer. Even for those looking to re-enter the work force, on-ramping is difficult. Of the off-ramped women, only 74% manage to come back and only 40% "return to full-time, mainstream jobs." Hewlett's case studies and suggested means of program instigation are ways to bring these women back into a different kind of work environment.

According to Hewlett, the argument in favor of implementing these initiatives is twofold: (1) data shows that "two-thirds of highly qualified women either leave the workforce or languish on the sidelines," a reality that is grabbing companies' attention, and that (2) "companies these days are heavily reliant on female talent. . . . It's a question of competitive strength and economic survival."

Women want to come back (again, 93%) but are having a difficult time doing so (40% returning to full-time jobs). They face financial penalties, lose professional traction, and often feel isolated. Accordingly, firms that implement an encouraging

Bureau of Labor Statistics reports that the average mid-twenties employee leaves his or her job every 1.3 years.


63. See supra note 37 and accompanying text.
64. Hewlett, supra note 1, at 43.
65. Id. at 46.
66. Id. at 43.
67. Id. at 5.
68. Id. Standing alone, these statements are not entirely convincing.
69. See supra notes 64, 66, and accompanying text.
70. See Hewlett, supra note 1, at 45-47.
reentry program are best positioned in the market to win back the top talent.\textsuperscript{71}

II. The Model

In Part Two of her book, Hewlett lists six components of an ideal "core package of second-generational policies" to help companies stem attrition and promote diversity through and up the ranks.\textsuperscript{72} These components are described as "solutions" to the issues described in Part One.\textsuperscript{73} Each is given its own chapter and supported by case studies.\textsuperscript{74} According to Hewlett, companies must provide: (1) "flexible work arrangements,"\textsuperscript{75} (2) "arc-of-career flexibility,"\textsuperscript{76} (3) programs that address employee needs beyond the nuclear family,\textsuperscript{77} (4) programs that "help women claim and sustain ambition,"\textsuperscript{78} (5) programs that "harness altruism,"\textsuperscript{79} and (6) programs that "reduce stigma and stereotypes."\textsuperscript{80} The fact that some major companies are implementing "[n]ew and radical initiatives . . . signals a seismic shift in corporate culture."\textsuperscript{81} Hewlett sees these initiatives and programs that she helped implement as "models of best practice [that] provide effective road maps" for other companies, whether large or midsize.\textsuperscript{82}

\textsuperscript{71} For example, New Directions: Practical Skills for Returning to Law Practice, a program co-sponsored by Pace Law School and the Westchester Women's Bar Association, helped fill a void for thirteen off-ramped lawyers (including one man) in the summer of 2007 and thirty-five off-ramped lawyers (including four men) in 2008 who were willing to pay several thousand dollars and attend a summer long program with an intensive skills-based boot-camp, weekly classes, homework and an unpaid externship to help them on-ramp back into the workforce. Several employers have happily hired these highly motivated and talented reentry lawyers. See www.law.pace.edu/newdirections (last visited Apr. 20, 2009).

\textsuperscript{72} HEWLETT, supra note 1, at 108.

\textsuperscript{73} Id. at 107.

\textsuperscript{74} See id. chs. 5-10.

\textsuperscript{75} Id. at 108.

\textsuperscript{76} Id. at 109.

\textsuperscript{77} Id. at 110-11.

\textsuperscript{78} Id. at 111.

\textsuperscript{79} Id.

\textsuperscript{80} Id. at 112.

\textsuperscript{81} Id. at 5.

\textsuperscript{82} Id. at 22. At the end of each chapter, Hewlett compresses the information from the case study into a "Toolkit" summary intended to be a short hand reference for other companies or employees looking to start or lobby for similar programs at their own employers. See, e.g., id. at 122 (toolkit for Ernst & Young).
Hewlett offers kudos to companies "that are beginning to figure out what is needed in terms of both programs and culture change if they want to retain key female talent." But kudos is about all they deserve. It may not cost much to a financial company like UBS to tack on an extra few weeks of maternity leave for a well-respected female investment division manager, or for a behemoth like Time Warner to expand its benefits package to include non-nuclear family members. But when it comes to CEOs and other highest earners, the value and efficacy of these programs begins to diminish.

A. Establish a Rich Menu of Flexible Work Arrangements.

The first element of Hewlett's proposed "core package" is arguably "the easiest to put in place—and the most established." Women generally want "a more 'radical' flexible work arrangement—one that involves a reduced workload." The programs profiled in Chapter 5's case studies provide the kind of flexibility that should help women stay in their jobs, or help them transition back into the workforce if they have taken a side step.

Hewlett and her team studied three major companies that had successfully implemented flexible work arrangements: Ernst & Young, U.K.-based BT Group, and Citigroup. The

83. Id. at 81.
84. See id.
85. See id. at 168-70.
86. Id. at 115.
87. Id.
88. See id. at 116-24. At the time of Hewlett's book, Ernst & Young had "108,000 people in 140 countries . . ." Id. at 116. It is a well-recognized innovative company, focused on its employees as well as its clients. Ernst & Young is consistently ranked highly by Fortune and was recently ranked highly by BusinessWeek, Working Mother, and DiversityInc. See Ernst & Young, Careers Home, http://www.ey.com/global/content.nsf/US/_CareersHome (last visited Apr. 20 2009). Ernst & Young's progress is impressive. "Today, nearly 30 percent of women on the rung just below partner or principal work flexibly. Ten percent of all female Ernst & Young's principals and partners work flexibly." Hewlett, supra note 1, at 122. Available programs at Ernst & Young now allow employees to work one-on-one with their managers and customize their work arrangements by choosing from a menu that includes: "compressed workweeks . . . flextime . . . reduced-hour schedules . . . short-term seasonal arrangements . . . job sharing . . . [and] telecommuting." Id. at 120. Ernst & Young has reported happier employees and lower rates of attrition, resulting in millions of dollars of savings to the firm. Id. at 121.
success of their flexible work programs was due to each firm's independent innovation, recognition of an untapped style of workforce, and support from top management.91 Also, unlike the billable hour model and lockstep system of advancement used in law firms, these companies institutionally emphasize quality and completion of work and contribution to overall success of the company as determinants of career advancement.92

The long-term success of these kinds of flexible work arrangements remains to be seen. It is difficult enough to manage thousands of full-time employees, but it is even more challenging to manage thousands of employees who work at different

89. See Hewlett, supra note 1, at 124-29. BT Group, the U.K.-based global IT and communications group, implemented Freedom to Work, its flexible work program, out of a proactive desire to stay competitive in the market. See id. at 124-25. The program benefited BT Group employees and its customers. The company was "able to service an additional 1 million customers a year with the same number of engineers. Plus, customer satisfaction [rose] by 7 percent . . . ." Id. at 127. Like Ernst & Young, BT continued to grow its Freedom to Work program, allowing all employees to customize their work schedules in a way that "blends their work responsibilities with their lives at home." Id. at 125. BT has found positive results from its popular flexible work program, such as a 75% participation rate, 3% attrition rate, an average of only three sick days per employee per year, and a steadily increasing productivity level. Id. at 126-27.

90. See id. at 130-36. At the time of the study, Citigroup, a major multi-national financial institution, had "three hundred thousand workers in one hundred countries around the globe." Id. at 131. Faced with such a diverse workforce and increasingly unpopular flextime programs, Citigroup's director of Global Workforce Diversity set out to "merge the myriad flexibility programs scattered across Citigroup and create a Flexible Work Initiative that was consistent and 'arm's length.'" Id. The Diversity Director hired an outside consulting firm, created a global, multi-lingual website, and officially launched the Flexible Work Initiative in late 2005, offering it to all employees worldwide. See id. at 131-33. The initiative comprised five mix-and-match components: (1) "flexible daily start and end times," (2) ability to work remotely, (3) "a full-time work schedule condensed into fewer than five days per week," (4) "job sharing," and (5) "part-time or reduced schedule." Id. at 132.

91. See id. at 115-16. For example, at Ernst & Young in 2007, then CEO Phil Laskawy set out to "try to retain women by creating a culture of flexibility" that would be gender neutral and available to all positions and levels of seniority. Id. at 117-18. Laskawy personally helped deliver the message to employees that "institutionalizing flexibility and accelerating women's progress were not just fads but central to Ernst & Young's continued business success." Id. at 119. He established a Diversity Task Force comprising only partners of the firm, and he hired Catalyst, a nationally prominent nonprofit business consultant on women's advancement issues, to help conduct internal focus groups and interviews and report back with findings and suggestions. Id. at 118. See also Catalyst, www.catalyst.org (last visited Apr. 21, 2009).

92. See id. at 115-16.
times, in different places, and under different circumstances. In these economic times, and with at least one of the profiled companies under a federal government bailout arrangement,\textsuperscript{93} companies will certainly be looking to cut costs and maximize utilization from their remaining employees. Whether that means taking advantage of part-time or flexible arrangements or laying-off employees who work anything less than full-time, has not yet been determined.\textsuperscript{94}

B. \textit{Create Arc-of-Career Flexibility}

Arc-of-Career flexibility is a different kind of flexible work arrangement, one that goes beyond daily or weekly needs and "takes into account the span of a woman's work life, acknowledging its nonlinearity and discontinuities."\textsuperscript{95} These kinds of programs allow women to "ramp down" when family or other obligations require and then "ramp up" and re-enter the company when they are ready.\textsuperscript{96} The key is to allow women to stay attached to employers and help bring them back into the fold "without unfair penalties or punishments" for their absence.\textsuperscript{97} Whole-career flexibility work programs are some of the most


\textsuperscript{94} See, e.g., Flex-Time Lawyers, New York Chapter Events, http://www.flextimelawyers.com/ny.asp (inviting lawyers and interested members of the public to a "candid and interactive panel discussion to debate restructuring law firms and how law firms can meet the ever changing demands of their attorneys and clients in a volatile market while attracting future talent"). Hildebrandt, a professional services consulting firm widely known in the legal industry, noted recently that the current economic crisis should be "viewed as an opportunity to make some fundamental changes in the way law firms are structured. . . ." 2009 Hildebrandt/Citigroup Annual Report to the Legal Profession, at 12, available at http://www.hildebrandt.com/Publications/Pages/PublicationDetail.aspx?PublicationGuid=951f5cff-d35c-4426-aaec-1c60dfd9e805.

\textsuperscript{95} \textit{Hewlett}, \textit{supra} note 1, at 137.

\textsuperscript{96} \textit{Id.}

\textsuperscript{97} \textit{Id.} "By and large . . . women who want to take off more than one year often sacrifice whatever job security they have to do so. When they want to return, they face a host of formidable challenges. . . ." Wendy Davis, \textit{Law Firms Opening Up to the Idea of Attorney Re-Entry}, \textit{N.Y.L.J.}, March 7, 2008, available at http://www.law.com/jsp/PubArticle.jsp?id=900005505269.
important and necessary yet are few in number and are managed by individual companies mostly for their own alumni. 98

The companies Hewlett profiles in this section are (or were, in the case of Lehman Brothers 99) some of the most competitive and successful leaders in the consulting and financial industry: Booz Allen Hamilton ("Booz Allen"), 100 Lehman Brothers, 101 and Goldman Sachs. 102 Unlike the companies profiled in the Flexible Work Arrangements section above who were driven by innovation, 103 these Wall Street powerhouses implemented career flexibility programs as part of a forced reaction to the attrition fallout from the very nature of the work that made them so successful. 104 They were also directly influenced and prompted into

98. See Hewlett, supra note 1, at 138, 141. Of the off-ramped women surveyed, 93% want to return to work but only 40% seem to be able to do so on a full-time basis. Id. at 138. In the corporate world, Hewlett cites Lehman Brothers’s Encore program (now defunct following the company’s bankruptcy), Goldman Sachs’s New Directions Program, and Booz Allen’s Adjunct program. Id. In the law firm world, 24% (12 total) of the firms in the 50 Best Law Firms for Women have formal programs to keep in touch with, identify, and hire re-entry lawyer mothers. Working Mother, Trends, supra note 25. There is no data available, however, as to how many women have successfully on-ramped into the kind of job they want after being out of the workforce for a number of years or whether any firms are actually hiring reentry lawyers at many of the events and programs they sponsor or participate in. If the kinds of flex-time initiatives discussed in this book become more prevalent among employers—particularly law firms—women may have less of a need to fully off-ramp in the first place.


100. See Hewlett, supra note 1, at 138-45. Booz Allen, a prestigious management consulting firm, joined the Hidden Brain Drain Task Force in 2004 and looked for ways “to stem its female exodus.” Id. at 140.

101. See id. at 145-54.

102. See id. at 155-60.

103. See id. at 119-36 (profiling Ernst & Young, BT Group, and Citigroup).

104. Lehman Brothers, for example, recognized an increase in female attrition rates around the five-year career mark. Id. at 147. They also had a rapid business growth starting in 2003, precipitating a need for experienced bankers. Id. At Goldman Sachs, human resources managers and internal recruiters “wondered what happened to women who left . . . after their maternity leaves ended.” Id. at 155. They were also aware of the financial cost of attrition and the richness of a heterogeneous workforce (defined as mixing experienced business people with “newly minted MBAs”). Id. Booz Allen had a relatively successful Ramp Down/Up, Internal Rotation program for “high-performing employees to ramp down and work on special projects that were not client facing” but was looking for a way to
action by the research and findings of the Hidden Brain Drain Task Force. Of all the programs discussed in Off-Ramps, these on-ramp programs garnered the most interest from the media and potential participants, and the highest levels of success, both for the firms and the participants.

C. Reimagine Work Life

Hewlett focuses equally on work-life employee support programs that address a large but often overlooked demographic: the “middle-aged female employee,” particularly minority fe-

105. The creator of Lehman Brothers's Encore program—initially designed to bring back women who had off-ramped for less than three years—noted that they focused on their target audience based on information they learned from the Hidden Brain Drain Task Force research that “most off-rampers are trying to reenter within two years of taking their initial leave . . .” Id. at 148. Similarly inspired by the Hidden Brain Drain Task Force, Goldman Sachs's managing director of Global Leadership and Diversity created a proprietary “New Directions” program designed to find off-ramped investment banking women who had been out of the workforce for fewer than five years (having left their last place of employment on good standing) and wanted to come back to work full-time. Id. at 155-56.

106. Booz Allen's first iteration of its Adjunct Program was extended to 148 people. Id. at 142. Of the ninety-nine that accepted, fifty-nine were alumni of the firm, and the others were referrals and other highly qualified individuals. Id. The arrangement has proven to be efficient and successful. During the first year of the program, two adjuncts ramped back up to a full-time position with the firm. Id. In return, the firm pays a fee but no benefits—though they are apparently considering adding some non-financial benefits like career mentoring and maybe partial health coverage. Id. Lehman Brothers's Encore reentry program events created “[a] buzz on Wall Street and in the media.” Id. at 146. The Encore events provided information about the financial industry, brought off-ramped women together to talk about business issues, and provided “a way of putting impressive resumes into the company's talent pipeline.” Id. at 148. The events were so successful that Lehman eventually hired twenty new people. Id. at 149. Goldman Sachs received many referrals and solicitations and eventually accepted eighty women to its first New Directions event in New York City. Id. at 156. The event brought senior management to mingle with the sixty-five attendees, featured high-profile speakers, and received much praise for the seriousness and commitment to bringing the women back into the fold. Id. at 157-58.
male executives. These women frequently have family care responsibilities that extend far beyond immediate, biological childcare. They are commonly referred to as being on "the daughter track" because of their elder care responsibilities.

The profiled companies did not necessarily create a new kind of work-life program to address elder care issues. They either expanded their existing support services or employee benefits or were profiled for their existing, inclusive programs.

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107. Id. at 163. Studies show that African-American female professionals, in particular, tend to have a very wide "circle of care" that extends to non-blood and community relations. Id. at 162.

108. Id. at 162. In 2005, Citigroup's outside elder care resources management company "fielded more resource and referral inquiries about elder care than child care..." Id. at 165.

109. Id. at 162.

110. Citigroup, for example, recognized the drain caring for an elderly or sick relative can have on a major portion of their workforce. Id. at 162. They were also concerned about loss of productivity, tardiness, absenteeism, and other effects that caring for elders can have on an employee. Id. at 164. In 2003, the company tapped into one of their external resource and referral services providers to create a new "Elder Care Management Services" program. Id. at 163. The program offered not only its usual support for referrals and resources, but also offered employees several hours of free consultation each year to help employees assess and handle living and care needs for elder family members. Id. at 163-64. The average Citigroup user of the Elder Care Management Services did not need more than the allocated hours, yet the company did provide additional free hours of service to those few employees who requested it. See id. at 164. While only a small number of employees have utilized the Citigroup Elder Care Management Services program, they are assured that the services will be there when and if they need them at a later point in their life and career. Id. at 166.

Time Warner similarly looked at its own benefits package—one considered very good in the industry—and set out to revamp its definition of inclusivity. Id. at 167. They realized that their entire benefits system was based on a traditional nuclear family model that failed to take into account the many extended responsibilities that many of their employees—particularly female minorities—handle. Id. at 170-71. Influenced by some of the research done by the Hidden Brain Drain Task Force, the company held a series of internal meetings and realized that today's extended family responsibilities called for the company's benefits to cover not just "dependents," but more broadly defined "reliant individuals" for assistance programs, college scholarship programs, and the like. Id. at 169. The company viewed this benefits expansion not as a program, but as part of the company's idea "to build a more inclusive work environment" and help "ensure that employees come to work free of some worrisome responsibilities." Id. at 171.

111. Johnson & Johnson, a medical and health care consumer products company known primarily for its baby care products, already had a well-established work-life resource and support program, including an elder-care program. Id. at 172. The program is designed to help relieve employees of some of the burdens and questions revolving around elder care and fits in with the company's credo: "We must be mindful of ways to help our employees fulfill their family responsibilities."
While these kinds of programs receive neither the same kind of attention nor employee interest as other work-life initiatives profiled in Hewlett’s book, the statistics are compelling enough that more companies should follow the example of these corporations.

D. Help Women Claim and Sustain Ambition—Fostering Leadership

Hewlett begins Chapter 8 by positing that one way to combat the penalties that many off-ramped women face and the general barriers to higher levels of success that all highly qualified or high potential women seem to face—including reduced ambition, discrimination, a “dearth of role models and mentors [and] a paucity of networks”—is to create employee-sponsored networks. The networks are often facilitated through internal selection of high-achieving women with leadership potential and tap into a more deep-seated need of what women want: to be recognized and to feel connected by and within the workplace.

Yet the programs Hewlett highlights—in particular Johnson & Johnson’s Women’s Leadership Initiative and Time

Id. at 172. Not only are there geriatric care consultants, support groups, pamphlets, and information on websites, they also offer an on-site day-care center that is open to “grandchildren of current or retired employees . . .” Id. at 175. The company also follows another part of its credo, being “responsible to the communities in which we live and work,” by jointly supporting the Johnson & Johnson/Rosalyn Carter Institute Caregivers Program, whose mission is to “support community-based programs that assist those who are caring for loved ones in need.” Id. at 175.

112. See supra Part II.A-B.
113. Statistics show “that approximately 25 percent of the U.S. workforce was involved in the care of an older family member.” Hewlett, supra note 1, at 162.
114. Id. at 180.
115. See id. at 179-80.
116. See id. at 180-81. The Time Warner Leadership program, for example, is not open to all women executives at the company; they must be recommended as “high potential (in terms of their performance ratings) and see themselves as potential leaders.” Id. at 194. While the GE Women’s Network was originally founded on an affinity network model designed to create diversity, it is actually much more focused on identifying and developing internal leaders in all areas of the company. See id. at 198-99.
117. See id. at 181-191. The Johnson & Johnson Leadership Initiative was not created purely out of altruistic tendencies; rather, there was a compelling business need to find ways to attract, retain, train and promote talented women. Id. at
Warner's Breakthrough Leadership program—underhand-
edly show that it is better to stay in and connected to the
workforce (or at least with a large company with seemingly un-
limited resources) than to follow the non-linear careers that
Hewlett covers elsewhere in the book. Law firms or compa-
ries with tighter corporate structures and limited resources
would need to engage in powerful training partnerships to be
able to compete at the level of a company like Johnson & John-
son. Still, there is compelling information that these kinds of

182. Even back in 1987, when the creator of the Women's Leadership Initiative
(now the chief diversity officer and one of the few women on the company's execu-
tive committee) started thinking about these issues, the increasing number of wo-
men graduating from institutions of higher education and entering the workforce
was a compelling business reason in and of itself for a competitive company to
better situate itself to attract top talent. See id. The company's treasurer, the top
female executive in 1991, sought to institutionalize the much-needed female soli-
darity across management levels." Id. at 183. She created the Women's Leadersh-
ship Initiative, a program designed "to define and enhance policies that will
attract, develop and retain talented women." Id. at 184.

118. See id. at 191-98. In 2003, after hosting a popular and successful wo-
men's event at the company, one of Time Warner's executive vice presidents real-
ized that "[w]omen executives at the company had no community within which to
bond, no place to come together and make connections." Id. at 192. She developed
her idea with the Simmons School of Management in Boston to create a custom-
ized women's leadership program. Id. at 191-92.

119. See id. at 25-55.

120. The Johnson & Johnson Initiative, for example, benefitted from the com-
pany's partnerships with outside institutions. In 1999 the company joined the
Smith College Consortium, "a collaboration between six major corporations to pro-
vide management and leadership training for high-potential women . . . . [and later]
worked with Smith College and Dartmouth's Tuck School of Business to cre-
ate a program that provides management training for women with international
responsibilities." Id. at 185. There seems to be no similar independent program in
the legal industry that brings together some of the top law firms under the care
and training of top colleges and law schools, though the Project for Attorney Reten-
tion, a program initiative of The Center for WorkLife Law at the University of
California Hastings College of the Law, comes closest. See Project for Attorney
Retention, www.pardc.org (last visited Apr. 21, 2009). Many law firms do seem to
have their own internal programs. See, e.g., Mark Beese, Leadership For Lawyers,
http://leadershipforlawyers.typepad.com/leadership_for_lawyers/2006/10/more_
leadership.html (Oct, 15, 2006, 21:57 EST) (a blog focused on issues of leadership,
practice management, and marketing for professional service firms). There are
also scores of independent consultants that help individual lawyers and law firms
train women in many of the skills it takes to be a successful law firm partner. See,
e.g., Acuity Legal Consulting, LLC, http://www.acuitylegal.com/ (last visited Apr.
21, 2009); RJH Consulting, http://www.rjhconsulting.com/ (last visited Apr. 21,
2009). These programs, however, are very expensive, and the few publicized at-
ttempts to help attorneys work on the business and non-practice skills have been
leadership training initiatives do have an effect on the promotion rate of women. They seem to be creative and relatively easily planned methods for any company to achieve female representation at higher levels of management.

E. Harness Altruism

Chapter 9 focuses on issues that Hewlett covered earlier in the book: that altruism and giving back to the community are higher priorities for women who are at, or want to go back to, work than they are for men. Hewlett asserts that creating outlets for community service is a good business incentive to draw and retain top female talent. Such programs also help develop business skills like leadership, organization, recruiting,

met with skepticism. See, e.g., Leigh Jones, Are Law Firm Leadership Programs Worth the Money?, Nat'l L.J., Mar. 4, 2008, available at http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=900005560512 (questioning whether the thousands of dollars that some law firms spend on leadership training for their attorneys really has any positive effects or benefits).

121. Time Warner's Leadership program, for example, had a profound effect on its attendees, inspiring women after the off-site session-filled days to ask for raises and promotions, and left a lasting positive impact that tapped into women's need and desire to feel valued and connected to other female executives. Hewlett, supra note 1, at 193-95. See also supra notes 26-27 and accompanying text. The company did its own studies that showed that "women who go through [the Breakthrough Leadership] program are more likely to get promoted than women who don't." Hewlett, supra note 1, at 196. The General Electric Women's Network has also been a huge success, clearly tapping into what company women wanted: visibility within the company and connection to other female co-workers. See id. at 198. In hard numbers, a formal study showed that attrition for high level female employees at GE fell from 14% in 1996 to 7% in 2002, and "[t]he number of women in the first band of management" went up 79% over ten years. Id. at 200. The Johnson & Johnson program has also been successful, as measured by the number of women in high level management positions, though there is no evidence that it has directly affected the level of attrition or reentry. See id. at 186. Between 1995, when the program started, and 2005, the Women's Leadership Initiative grew from an initial group of 300 female employees (director level and above) to over 2,000 senior-level women. Id. at 185-86. Additionally, the "percentage of women at the vice president level or above rose from 14 percent to 30 percent," and the number of women on the company's executive committee went from zero to four out of the eleven members. Id. at 186.

122. See id. at 205-24.

marketing, and fundraising. A commitment to altruism can also be a powerful recruiting tool and helps to keep a happy and more loyal workforce.

For companies that still have the financial wherewithal, community service can develop a mutually beneficial relationship for the company and service beneficiaries, although the potential issue of paying for the absence of the employees remains. Even the employees who partake in these kinds of programs acknowledge that there is "a risk to taking [oneself] off the job for such an extended period of time." Still, with company support, talented women have another reason to choose

the country [are] using the economic slump as an ideal time to lend a hand to cash-strapped public interest and legal aid firms.

124. See Hewlett, supra note 1, at 207 (describing a public interest organization that Goldman Sachs had founded for which employees had taken on "key leadership roles"); id. at 209 ("[V]olunteer initiatives build leadership capability and burnish the company's image in the communities within which it does business."); id. at 210 (describing how one Goldman Sachs employee learned transferable skills in marketing and client management from fundraising for a nonprofit).

125. See id. at 206. At the time Hewlett studied Goldman Sachs, it had a variety of community service projects in which an overwhelming "85 percent of the . . . workforce participate[d]." Id. at 208. The support of community service draws talented young Harvard MBAs and undoubtedly helped launch top executives like Jon Corzine, the current governor of New Jersey, and Hank Paulson, the former Treasury Secretary, into public service. See id. at 206-08. Law firms similarly advertise their commitment to pro bono service and are ranked in Vault and other surveys based on the extent and depth of their pro bono programs and quality of life factors. See Building a Better Legal Profession, http://www.betterlegalprofession.org (last visited Apr. 21, 2009) (providing rankings of law firms based on pro bono hours and programs); Vault, Top 100 Law Firms: 2009 Rankings, http://www.vault.com/nr/lawrankings.jsp?law2009=1&chid=242 (last visited Apr. 20, 2009) (providing information on pro bono programs and Quality of Life rankings). The draw is no longer just for women; men as well, particularly in the newer generation of entering lawyers, are focused on their larger role in society. See infra note 140 and accompanying text.

126. See Hewlett, supra note 1, at 213-15. The Cisco Leadership Fellows Program, for example, is a win-win relationship for the community, the company and the employees. See id. at 213. The nonprofits benefit from the technological and leadership expertise of the Cisco fellows, while the experience "allows [the employees] to develop managerial and technical skills while investing in a cause that is important to them." Id. Further, the program "create[s] additional value by enhancing employee engagement and loyalty." Id. American Express offers a six month paid leave period for select employees to work for a non-profit, thus strengthening and supporting the programs where these employees work and establishing a renewed sense of confidence and loyalty. See id. at 218-22.

127. Id. at 216.
and ultimately stay with companies who institutionally support community service.

F. *Reduce Stigma and Stereotypes*

In Chapter 10, Hewlett examines the pervasive, underhanded, and underground obstacles to women's ultimate success in the workforce: the stigma of taking advantage of non-standard, flexible work arrangements.\(^\text{128}\) She also addresses the stereotype that women who take nonlinear careers or work anything less than their ambitious male counterparts are less committed, less talented, and less capable than full-time employees or men.\(^\text{129}\) Even with institutional support, this stigma persists, as demonstrated by the low enrollments in the many new programs and initiatives designed to help retain women.\(^\text{130}\)

Hewlett highlights programs and initiatives that combat these stigmas and stereotypes and focus on institutionalizing work-life balance issues, such as technological innovation,\(^\text{131}\) sensitivity training,\(^\text{132}\) and progressive monitoring and improve-

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\(^{128}\) See id. at 225-48.

\(^{129}\) See id. at 225-26.

\(^{130}\) Some women fear jeopardizing their "hard-edged business reputation" by "getting involved with women's initiatives." Id. at 226. One Lehman participant stated that although several top employees visibly enjoyed the benefits of new flexibility arrangements, some stigma lingers, and "[c]ertain people still think that working from home means working less." Id. at 231. See also supra notes 25 and 44.

\(^{131}\) The Lehman Brothers Virtual Workplace model was, for example, developed in response to the loss of office space in the September 11th attacks. See id. at 227-29. After the avian flu scare, the company incorporated remote technology as a part of their disaster preparedness efforts. See id. at 229. Although Lehman's intent was to develop a comprehensive disaster plan, the fortuitous impact was legitimizing workplace flexibility generally. Id. Law firms are already quite technologically savvy, handing out Blackberries, laptops, and the accompanying software to allow attorneys to work anytime from anywhere. There remains, however, a conflict between flex*ibility* and client demands of av*ailability*, with little client patience for anything less.

\(^{132}\) In 2001, Cisco implemented an innovative program to curb demeaning language and behavior in order to "strengthen the culture of inclusion" and show their commitment to a diverse workforce. Id. at 237. The result was their microinequities training seminar, aimed at stopping the subtle and unconscious sarcastic put-downs it was named for and expected to be completed by all of its forty-seven thousand employees. Id. at 236-38. Focusing on education promoting awareness of the presence of microinequities in common behavior, the company remained deeply committed to its effectiveness without any quantifiable results. See id at 238-40. From a business perspective, the program helped employees re-
ment of gender representation. Through these efforts, all of the profiled companies show that it is possible to change corporate culture to address female workers and their unique needs with no negative impact on work quality.

III. Where Do We Go From Here?

The examples from the earlier chapters show that, at least for large companies with top-level management buy-in programs, it is possible to institutionalize programs and initiatives that address the many issues that elite working women face. But the work does not stop here. "This second generation of policy needs to reach a critical mass if it is to transform corporate cultures." Through that statement, Hewlett acknowledges late better with each other and with customers who might come from very different backgrounds and perspectives. See id. at 239-40.

133. Of the companies profiled, Ernst & Young seems to have had the most success, but it has a long way to go in institutionalizing flexible and other work-life balance arrangements. See id. at 242-43. The company has seen their number of top female executives increase from 0% to 15% and female partners from 5% to 14%, with 10% of those female partners or principals working on a flexible basis. Id. Hewlett credits Ernst & Young's success to programs like their Women's Leadership Conference and a series of firm-wide Professional Women's Networks, groups in which 45% of the new partnership base actively participate. Id. at 243-44. They also use "career watchers," who identify talented women deserving of mentoring and additional training, and a self-monitoring system, which measures career watcher's success by using management skills feedback surveys. Id. at 244-45. These efforts allow Ernst & Young to track the percentages of women employed at various levels and factor these numbers into manager evaluation and compensation, thus promoting internal gender equity. Id.

134. Id. at 246. There is no hard evidence (yet) as to whether these programs really are making a difference, though there has clearly been progress over the years in the numbers of women in top executive management positions. See supra note 133. From a purely business view, Ernst & Young "has stanched the outflow of female talent, saving the company $10 million in 2005." Hewlett, supra note 1, at 247.

135. See supra Part II.

136. Hewlett, supra note 2, at 249. Hewlett refers to the effect on "the entire high-echelon workforce" rather than the greater labor market and the types of small to midsize employers where many people, particularly lawyers, work. Id. at 251. What Hewlett fails to recognize is that many members of the work force may not have the same credentials or professional growth potential as compared to those participating in the Hidden Brain Drain Task Force, yet all working women face the same work-life balance issues, particularly as they relate to child bearing. See supra notes 13, 17, and accompanying text. Hewlett is working on a "Work-Life Balance in Small Businesses" project that began in 2002 through the Center for Work-Life Policy. See Center for Work-Life Policy, Work-Life Balance in Small
that to correct the gender (and racial) inequalities in positions of leadership and money generation, it will take more than companies (or law firms) simply adopting some of these progressive models. While the book showcases what some large, progressive leaders have done, Hewlett acknowledges that "messing with the male competitive model in the larger labor market" requires high profile examples at the uppermost levels of management, since men still have a more powerful influence over corporate culture than do women. In addition, institutions must support and encourage women to take advantage of and use the kinds of programs and initiatives profiled in this book.

Hewlett sees hope in several new kinds of workforce groups. A new wave of laborers is entering the work force, driven not by money, hard hours, or success defined by salary or position title, but by desires for the same "quality-of-life" benefits that women traditionally have sought. There are CEOs, partners, and other high-level, powerful men in their fifties and sixties who are now in positions to implement the kinds of work-life balance policies that "feed right into the needs of talented younger women."


137. Hewlett, supra note 1, at 249.
138. See id. at 255 ("98 percent of the leadership at Fortune 500 companies is male.").
139. See id. at 251-52. In the legal context, real change will not occur until clients demand to have more women at the top and stop demanding around-the-clock service that has made the practice of law all-encompassing and almost impossible for attorneys working on a part-time basis. Partners will either have to stand up to clients and manage their expectations or accept lower profits in order to hire more attorneys to handle the caseload. Also, the billable hour model is so entrenched in the fabric of the industry, that this client-favored process makes it difficult to disect complicated matters to delegate the work more evenly. To achieve higher numbers of attorneys working in flexible arrangements, law firms would either have to absorb the costs of having several mid-to-high level associates on one matter to help cover for each other or pass those costs along to the client (unlikely).
140. See id. at 256 (identifying Generation Y men and baby boomers that are facing the age of retirement).
141. Id. at 257 (describing the talented women as "the proverbial canaries in the mine: harbingers of a better world who expire before their time, poignant victims whose tragic fates point to malfunctions and dysfunctions in the system").
Off-Ramps and the case studies within clearly have had an impact, not only on the direct beneficiaries of the new programs—and Hewlett gives her readers plenty of personal stories (including her own\textsuperscript{142}) to counter-balance the charts, graphs, and statistics—but on the business and legal industry as well. Business schools, bar associations, and law firms are all getting on the off-ramp/on-ramp roadway by providing options and opportunities where there were none just a few years ago.\textsuperscript{143}

IV. Application to the Legal Industry

The problem with legitimately transferring models like those outlined in Off-Ramps to the average law firm is that the participants and beneficiaries of those model programs are all within upper echelon employers doing what Hewlett calls “ex-

\textsuperscript{142} Id. at 258-61.

treme jobs." It is still relatively clear that it is harder and
takes longer to get those upper echelon, high-paying, high-pro-
file, extreme jobs when one takes a nonlinear career path. There are examples at the fringe, like part-time partners, coun-
sel positions, and two-tiered partnership tracks, but the ulti-
mate model of law firm success is fundamentally built upon the
billable hour model for clients who demand around-the-clock at-
tention and prefer to pay their lawyers directly for the biggest
commodity and service they offer: their time. 

The legal industry has not had the kind of success that
many of the cited companies have. There are no institutes or
partnerships between law firms and law schools. There are,
however, a plethora of career coaches and advisors, particularly

144. See supra note 14. The case studies cited by Hewlett, for example, are all
large, multi-national employers: Cisco Systems, Ernst & Young, and Goldman
Sachs, to name a few. See supra Part II. Most entry level attorneys wind up work-
ing for small firms (between two and ten attorneys), and the largest law firms in
the world have fewer than 4,000 attorneys. See Baker & McKenzie: Key Facts and
Figures, http://www.bakernet.com/BakerNet/Firm+Profile/Key+Facts+Figures/de-
fault.htm (last visited Apr. 21, 2009) (listing 3,900 qualified attorneys around the
world); Clifford Chance, About Clifford Chance, http://www.cliffordchance.com/
about_us/about_the_firm/?LangID=UK& (last visited Apr. 21, 2009) (noting that
the U.K.-based firm Clifford Chance has 3,800 legal advisors worldwide); Law.com,
tional Summary Report, June 2008 http://www.nalp.org/uploads/1229_natlsummary07revised.pdf (last visited Apr. 21, 2009). It costs money and
resources (i.e., a director of diversity) to create, implement, and run these pro-
grams. Citigroup, for example, hired an outside consulting firm. See supra note 90.
The Lehman diversity officer received "ample funding" to start the program, in-
cluding "enough to pay for a full-time recruiter-manager, [and] a diversity-ori-
tened search firm . . . ." HEWLETT, supra note 1, at 147. It is doubtful that in the
current economic climate of layoffs and law firm dissolutions that any firm will be
willing and able to allocate extra money to create new work-life programs to ben-
fit a relatively small portion of their workforce.

145. Even in the more robust times, when many of Hewlett's examples took
place, there are often references to how hard one really needs to work to achieve a
high level of success, particularly if one has taken a less than straight and tradi-
tional path. See, e.g., HEWLETT, supra note 1, at 254 (quoting a female vice presi-
dent and general manager at GE who, after off-ramping and on-ramping and
working on a flexible basis for several years, "[e]ventually . . . put in the necessary
hours . . . [and] worked [her] tail off" to achieve her current position). In this econ-
omy, the baby boomers to whom Hewlett refers in Chapter 10 who may want to
keep working, but on a more balanced basis, may not have the option or may be
forced into earlier retirement. See id. at 256.

146. See supra note 23-24, 34, and accompanying text.
147. Cf. supra notes 118, 120, and accompanying text.
for lawyers and law firms.\textsuperscript{148} The one positive side of the high attrition rate at law firms is that there are thousands of highly qualified, smart women out there who are now able to make a living trying to fix the system they have left.

Law is much more hierarchical than most of the businesses profiled. There is a deep and wide chasm between the lawyers and everyone else who works at a law firm. While most policies like maternity leave and job sharing can be offered to all employees at a law firm, the fee earners (the lawyers) do substantially different work than the rest of the firm’s support staff. One cannot simply work one’s way up a law firm ladder.\textsuperscript{149}

The statistics about who is really taking advantage of the various flex-time and other women-friendly policies at these firms is quite telling. While no statistics are publicly available as to the number of staff versus lawyers who utilize these work-life balance policies, it is clear that very few women lawyers are actually taking advantage of them.\textsuperscript{150}

Law firms can look to some of the industries profiled in \textit{Off-Ramps} for guidance. Of the examples cited by Hewlett, private sector consulting is most similar to the legal industry; both are client-service driven and have competitive upside-down cones—“up or out” models of progression that require about eight to ten years to make partner.\textsuperscript{151} Law firms also utilize resources, simi-

\textsuperscript{148} See supra note 6.


\textsuperscript{150} See Deborah Epstein Henry, supra note 25 (9.5% of attorneys work flex-time, 7.6% work reduced hours, 0.1% engage in job-sharing, and 0.9% telecommute full-time).

\textsuperscript{151} Private sector consulting work is also riddled with unpredictable and regular long-term travel. Prestigious consulting firms like Booz Allen manage their employees through a “fiercely competitive winnowing process.” \textit{Hewlett}, supra note 1, at 140.
lar to the Booz Allen "adjunct" program,\textsuperscript{152} called contract attorneys who are hired through placement agencies specializing in law firm extra hiring needs.\textsuperscript{153} From a management perspective, continuity is key, but lawyers below the partner level seem to be more fungible than consultants.\textsuperscript{154} Upper echelon legal work requires around-the-clock accessibility to clients, making it difficult to dissect matters into projects other than specific research or drafting projects for junior associates. Generally, legal clients seem to be less concerned about who does their work. So long as they are getting top advice and value for what they are spending on legal fees, they could easily take their business to the next law firm who would eagerly take on a new multi-million dollar account.

There are, however, some innovative models in the legal industry that do work.\textsuperscript{155} Some of the U.K. firms spend considerably more time and money on non-billable client work, like hosting annual international retreats for their attorneys in a particular practice group that may be scattered around the globe or keeping former practicing associates on as "knowledge

At the end of the first year about 20 percent of the new class of associates is cut from the company's roster. The top 80 percent then stay on to battle it out until the next round of eliminations. If associates make it through seven years of such competition they generally will make partner.

\textit{Id.}

\textsuperscript{152} See \textit{supra} note 57.

\textsuperscript{153} Of course contract attorneys are often staffed on less glamorous work like document review and deposition summaries, are not considered part of the law firm attorney base, and rarely attain full-time positions at the firm. The use of contract attorneys may change if law firms take the economic situation as an opportunity to re-structure how they operate and meet corporate client demand for more value for the legal services they pay for. See \textit{supra} note 94; Understanding the Current Legal Economy, The Current Economic Crisis and Its Likely Impact on the Business and Structures of Law Firms, PowerPoint presentation and comments by James W. Jones, Chairman of the Hildebrandt Institute and Managing Director of Hildebrandt, NALP 2009 Annual Educational Conference, April 1, 2009; Association of Corporate Counsel Value Challenge, available at http://www.acc.com/advocacy/valuechallenge/ (last visited Apr. 21, 2009).

\textsuperscript{154} As one adjunct professor of management at Wharton and former Booz Allen senior manager told Hewlett, "Management consulting . . . [is] all about people and brainpower. Finding the right people and keeping them is absolutely crucial. When one walks out the door it's analogous to losing a valuable product line." \textit{Hewlett, supra} note 2, at 143.

\textsuperscript{155} Axiom, for example, is a relatively new model in the legal world, placing experienced attorneys from top law firms with corporate clients on a pick and choose project basis. See Axiom, www.axiomlegal.com (last visited Apr. 21, 2009).
management attorneys.” However, those firms participate in a different market, are much larger than the average U.S. law firm, use a different compensation system, and generally have lower profits per partner than their U.S. peers.

V. Conclusion

*Off-Ramps* is meant to leave readers with a sense of encouragement and hope. Many a female worker might walk away respecting and perhaps envying the policies and progression at the showcased firms, yet wondering how all of this will really affect her daily life. It is also clear that more studies and work need to be done. It seems quite unlikely that these kinds of programs will really take hold at law firms in the near future, particularly in this financial environment. For the sheer data and compelling information, however, *Off-Ramps* remains a useful starting point.


And Still We Must Talk About "Real Rape"


Reviewed by Elisabeth McDonald*

Over twenty years ago, Susan Estrich, in a 1986 article that provided the basis for her influential book,1 made the following observations about non-traditional rapes, or those rapes that are not "real":

Where less force is used or no other physical injury is inflicted, where threats are inarticulate, where the two know each other, where the setting is not an alley but a bedroom, where the initial contact was not a kidnapping but a date, where the women says no but does not fight . . . . the law, as reflected in the opinions of the courts, the interpretation, if not the words, of the statutes, and the decisions of those within the criminal justice system, often tell us that no crime has taken place and that fault, if any is to be recognized, belongs with the woman.2

In a 2008 echo of these words, Jennifer Temkin3 and Barbara Krahé4 report, in Sexual Assault and the Justice Gap: A Question of Attitude, that:

An extensive body of research from social psychology and criminology demonstrates the influence of stereotypes and myths on judgments about rape. It reveals widespread endorsement of the real rape stere-

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4. Professor of Psychology, University of Potsdam, Germany.
otype which sets restrictive criteria for the definition of rape in terms of strangers using force on victims behaving in accordance with normative expectations about female role behaviour. Since only a small proportion of rapes actually meet these defining features, the real rape stereotype effectively bars many women from being acknowledged as victims of rape.

The real rape stereotype is embedded in the wider context of generalised beliefs about rape that stress the victim's responsibility for being assaulted, minimise the seriousness of sexual assault and exonerate the perpetrator.5

As Temkin and Krahé establish, the less a sexual assault looks like a "real rape"—because the complainant was previously in a sexual relationship with the defendant, had been drinking, or willingly went home with the defendant—the more likely the defendant will be acquitted.6 This much is not new. Both before and after Estrich's observations about "real rape," a significant amount of research and academic commentary, across many jurisdictions, has come to the same conclusion.7 Further, it seems likely that the low conviction rates for rape and the fact that victims of acquaintance rape have a very difficult time as complainants within the criminal justice system may well contribute to the low reporting rate for sexual offenses

6. Id. at 45-46, 48.
against adult women. Temkin and Krahé refer to the discrepancy between reports of sexual victimization and convictions, despite significant law reform measures over the last thirty years, as the "justice gap."

Although the connection between rape myths and conviction rates has long been demonstrated, the need for a contemporary, scholarly study that compellingly reiterates this connection is, perhaps aptly, provided by those legal practitioners interviewed as part of the authors' UK-based research. When asked about the existence of the justice gap, only one of the twenty-four interviewed (seventeen judges and seven barristers) "was prepared to concede that there was in fact a justice gap." Other interviewees denied or showed resistance to this idea, and some were plainly annoyed at the suggestion. The authors importantly go on to identify the contradiction between this rejection of the notion of a justice gap—which a number of interviewees described as a "concoction" of women's groups—and the observations of the participants about the difficulties of conviction when there is no "real rape":

Many interviewees considered that the idea of a justice gap was based on fundamental misunderstandings about the nature of rape cases in which so frequently it was one person's word against another so that the burden of proof would necessarily be very difficult for the prosecution to discharge. Yet they themselves had pointed to the problems in processing rape caused by failures in evidence-gathering, weak prosecuting and reliance on stereotypical thinking, all of which have a bearing on whether the burden of proof is regarded by juries as having been satisfied.

The authors' research makes the case for the need to continue to talk about "real rape" and how the dissonance between reports and convictions can be explained, not by lack of evi-

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9. TEMKIN & KRAHÉ, supra note 5, at 1.
10. See id. at 125-58.
11. Id. at 139.
12. Id.
13. Id. at 140.
14. Id. at 141 (emphasis added).
dence, but by preconceived notions of what rape looks like and how a "real victim" will act. Rather than explaining the justice gap as a result of the difficulties of proof when credibility is the main issue, Temkin and Krahé argue that “[p]erceptions of rape are influenced by stereotypes, bias and gender prejudice. . . . [I]t is this attitude problem that needs to be addressed if the justice gap is to be reduced.”

Judgments about sexual assault, the authors say, are “skewed in the direction of low conviction rates partly because of the widely held attitudes about rape which undermine the position of the complainant and benefit the defendant.”

Again, there can be no real argument about the validity of these claims from those working with victims or those involved in researching the impact of rape law reforms. The original contribution this book makes to the literature in this area is that it analyzes the existing research in order to reveal the impacts of attitudinal bias, presents previously unpublished research which is consistent with previous work, and suggests how attitudes may be changed so that law reforms will no longer be undermined by the actual practice. Instead of claiming the law can provide the answers, although some further law reform is proposed, the authors demonstrate that the attitudinal biases—the wide-spread subscription to rape mythology—can only be effectively addressed by identifying and challenging these biases. Law reform, alone, has clearly proven to be of little use in addressing the justice gap.

Having established the current need for such a publication, this review will proceed with selective comment on the three parts of the book. Part I, The Background, deals with the existing research on the justice gap, the role of rape stereotypes, and the process of jury decision making. Part II, New Evidence, presents a series of empirical studies undertaken by the authors, “which investigate the attitudinal problems underlying the justice gap.” Part III, Some Possible Solutions, sets out

15. Id. at 1.
16. Id. at 2.
17. See id. at 3-5.
18. See id. at 161-76.
19. Id. at 9-71.
20. Id. at 4. See also id. at 75-158.
reform options, covering education initiatives, as well as substantive and procedural reforms.\textsuperscript{21} Given the amount of information contained in this book, my comments will focus mainly on the relevance of the work to developing proposals for change in other jurisdictions, particularly that of the jurisdiction with which I am most familiar, New Zealand. I conclude that \textit{Sexual Assault and the Justice Gap: A Question of Attitude} is required reading for all policy and lawmakers currently grappling with how to address the "justice gap."

I. The Background: Research on the Impact of Rape Myths and Jury Decision Making on the Justice Gap

A. \textit{Reporting and Conviction Rates: The Problem of Attrition}

The first chapter sets out statistical information from various jurisdictions—England and Wales, Germany, and the United States—to demonstrate the extent of the problem of attrition, that is, the gap or "chasm"\textsuperscript{22} between offenses reported to the police and the number of actual convictions.\textsuperscript{23} However, as the authors point out, although the rate of reporting appears to be rising, sexual offenses are still under-reported, and, as some of those actually reported are classified as "no crime" by the police,\textsuperscript{24} the number of convictions as compared to the actual number of offenses is even more concerning than the official statistics expose.\textsuperscript{25}

The reasons that victims choose not to report sexual offenses include their own views about whether what happened to them was a "real rape."\textsuperscript{26} Even if an alleged victim believes she was raped, she may conclude, however, that the police may not agree.\textsuperscript{27} Research in the United States supports this analysis, finding that the chances of a rape being reported increased where there had been physical injury or the use of a weapon.\textsuperscript{28} Victims may also not report rape in order to avoid what they

\textsuperscript{21} Id. at 161-207.
\textsuperscript{22} Id. at 10.
\textsuperscript{23} See id. at 11-21.
\textsuperscript{24} Id. at 17.
\textsuperscript{25} See id. at 10-14, 19-22.
\textsuperscript{26} Id. at 13-14.
\textsuperscript{27} Id. at 13.
\textsuperscript{28} Id. at 13-14.
know will be a difficult journey through the criminal justice system. 29 High profile acquaintance rape cases, which have disclosed evidence of the complainant’s behavior and resulted in acquittals, remind victims to be wary. 30 Judges and lawyers acknowledge the trauma of being a complainant in a sexual assault case, some even stating publicly that they would advise a family member not to report such an incident. 31 Further research on the reasons for non-reporting is currently being undertaken in New Zealand, with a focus on addressing the rate of attrition and increasing the rate of reporting. 32

The low conviction rate for rape may also be a factor influencing low reporting rates. Temkin and Krahé examine the unfavorable conviction rate in England and Wales in 2004 for rape (43% of those actually prosecuted) as compared with other violent offenses (71% for "other wounding" offenses, for example). 33 In the United States, "conviction rates [for rape] measured in terms of convictions as a proportion of reported offenses have been shown to be well below that of other violent crimes." 34 These figures are almost identical to those in New Zealand for 2004 through 2006: 46% conviction rate for sexual offenses compared to 70% for total crime. 35 Mary Heath found that in South Australia in 2003, there was a 19% conviction rate for rape and attempted rape, compared to a 41.4% conviction rate for a major

30. See id. at iv-vi.
31. See Elisabeth McDonald, Sexual Violence on Trial: Assisting Women Complainants in the Courtroom, WOMEN’S STUD. J., 2005, at 113 [hereinafter McDonald, Sexual Violence].
33. TEMKIN & KRAHÉ, supra note 5, at 21.
34. Id. at 23.
assault. Conviction rates in Germany have been higher, but this may not be the case for all European countries.

Of course, the comparatively low conviction rate for rape offenses only discloses part of the problem, which Temkin and Krahé make apparent. The official statistics do not differentiate between conviction rates for "real rape" and conviction rates for non-traditional or acquaintance rape. Research that does differentiate between these two types of rape, whether it is based on mock jury studies or qualitative work, indicates that the conviction rate for "real rape" is significantly higher than that for other forms. Therefore, the figure that would be most alarming, if quantified, is the conviction rate for acquaintance rape—either as a percentage of those prosecuted or as a percentage of the number actually reported. This is yet another reason why it remains important to talk about what is and what is not "real rape." Temkin and Krahé go on to convincingly argue that women who have been victims of such non-traditional rape will be less likely to report rapes in jurisdictions where the conviction rate is low. Because of this trend, some writers have questioned the wisdom of publicizing low conviction rates "if it will make already low reporting rates fall lower still."

Over time, there have been law reform measures aimed at addressing the low conviction and reporting rate. In Chapter 1, and Appendix 1, the authors examine some of the legal modifications in England and Wales that have not delivered on their promise and may need revision. These efforts include the revised definition of consent (in particular, the effect of complainant intoxication on consent and belief in consent), the admissibility of sexual history evidence, the need for corroboration, and the rules relating to third party disclosure.

36. Heath, supra note 8, at 187.
37. TEMKIN & KRAHÉ, supra note 5, at 23.
38. Id.
39. See id.
40. See McDonald, "Real Rape," supra note 7, at 60, 79.
41. TEMKIN & KRAHÉ, supra note 5, at 32.
42. Heath, supra note 8, at 177.
43. See TEMKIN & KRAHÉ, supra note 5, at 24-29, 235-44.
44. Id. at 27.
45. Id. at 236-42.
46. Id. at 235-36.
47. Id. at 243-44.
These areas remain significant for most, if not all, common law jurisdictions, and the need for on-going law reform will be discussed further in the consideration of Part III.

B. Rape Myths and Jury Decision-Making

The “real rape” stereotype involves “an attack by a stranger on an unsuspecting victim in an outdoor location, involving the use or threat of force by the assailant and active physical resistance by the victim.”

Women violated in this way are expected to make a “hue and cry”—an immediate complaint—and to be distraught. They are not judged to be at fault in encouraging or facilitating the offense. However, those victims whose experience deviates from the “real rape” stereotype—because they knew the offender, it occurred in their own home, or they were voluntarily under the influence of drugs or alcohol at the time—“are more likely to be blamed for the assault and less likely to receive sympathetic treatment from others.” It is also not the case, contrary to the myths related to the “real rape” stereotype, that all victims will complain immediately or show “visible signs of emotional agitation after the assault.” There also remains a firmly entrenched view in most jurisdictions that women are prone to falsely allege rape.

Law reform measures, including the rules dealing with “recent complaint” evidence, control of the admission of sexual history evidence, and revisions of the corroboration requirement were aimed in part at addressing and challenging the myths concerning “real rape” and the behavior of “real victims.” Rape myths are defined as “descriptive or prescriptive beliefs about sexual aggression (i.e., about its scope, causes, context, and consequences) that serve to deny, downplay or justify sexu-

48. Id. at 31.
50. See Estrich, supra note 2, at 1092.
51. TEMKIN & KRAHÉ, supra note 5, at 32.
52. Id. at 33.
53. See id. at 138-39.
55. See TEMKIN & KRAHÉ, supra note 5, at 145.
ally aggressive behavior that men commit against women." In Chapters 2 and 3, and further in Part II, the authors demonstrate how prevalent the belief in rape myth is and how adherence to these myths impacts the rate of reporting, the exercise of prosecutorial discretion, the admissibility rulings of the judiciary, the performance of the prosecution and defense counsel, the judges' summation of the law and facts for the jury, the decision-making process, and jury verdicts. In other words, rape myth acceptance has an insidious influence on every stage of the criminal justice process with regard to the prosecution of sexual offending. Therefore, in the authors' view, it is the "attitude problem which needs to be addressed if the justice gap is to be reduced."

In Chapter 2, the authors examine the research concerning the police response to victims of sexual assault and the attribution of blame to either the victim or the offender, depending on their respective behavior. The exhaustive synthesis of this research produces nothing new. However, the overwhelming consistency of the evidence certainly is disturbing. It is clear that the closer the facts conform to the "real rape" stereotype, the more likely police will categorize complaints as true. Complaints are more likely to be categorized as false or unlikely to be true if the victim had delayed reporting, had previous consensual sex with the offender, or had been drunk at the time. Jurors are more likely to view the complainant as less credible, and more to blame, if they know she previously had consensual sex with the accused. Therefore, Temkin and Krahe conclude that it is time to explore ways "in which people can be made to engage in a proper assessment of the data available rather than falling back on easy stereotypical answers . . . ." In order to supplement the existing research with contemporary studies,
the authors present their own recent research in Part II that for the most part re-confirms the results of the previous work discussed in Part I and provides additional information about those who are or will be involved in the criminal justice system.65

II. New Evidence: Talking to Students, the Public and the Professionals

In Part II, Temkin and Krahé present the findings of three separate studies, as well as material from interviews with judges and barristers.66 The authors appropriately claim that the three studies are a new contribution to the research because they provide "a systematic analysis of the single and joint contributions of case characteristics on the one hand, and the preconceived attitudes of participants on the other."67 The studies also make an original contribution, as they focus on "markedly under-researched groups with potential involvement in the processing of rape cases within the criminal justice system . . . ."68 These groups are "undergraduate law students (Study 1), graduate students training to be lawyers (Study 2), and members of the general public who are eligible for jury service (Study 3) . . . ."69 "The aim of the studies was to obtain a picture of the extent to which judgments about rape cases are influenced by attitudes that lead individuals to be responsive to extra-legal factors and to pay less attention to case-based information."70

The explanation, analysis, and presentation of the three studies are handled very effectively. The authors set out their hypotheses, provide examples of the scenarios given to the participants, and clearly present the results.71 Temkin and Krahé also do an excellent job of self-reflection and analysis of the studies—identifying where and why problems with the method-

65. See id. at 75-158.
66. See id.
67. Id. at 75.
68. Id.
69. Id.
70. Id.
71. See id. at 76-123.
ology might be present and how the results might be explained in different ways.\(^2\)

In Study 1, the participants, when dealing with the acquaintance rape scenario, "saw the defendant as less blameworthy, attributed more blame to the complainant and were less certain that the incident was rape than in the classic stranger rape."\(^3\) However, all the scenarios presented "involved the use of force by the defendant as well as active physical resistance and a clear verbal statement of non-consent by the complainant."\(^4\) The research also considered the influence of the participants' "female precipitation beliefs" on their judgments of the scenarios.\(^5\) The study found that "[w]hile participants' female precipitation beliefs did not play much of a role when they were asked to judge the stranger rape . . . they were particularly influential in the [judgment of] the ex-partner rapes.\(^6\)

In Study 2, the rape scenarios were extended to "include situations where the complainant was affected by alcohol and unable to resist."\(^7\) This variation was important, because previous studies had shown "that when the complainant is intoxicated at the time of the assault, the case is considered less credible and is less likely to lead to a guilty verdict than when the complainant is sober at the time of the attack,"\(^8\) and concern had been expressed about the absence of clarity in the UK legislation as to how intoxication should be taken into account.\(^9\) Thus, research on how juries will treat a complainant's intoxication is helpful in exploring reform options. Study 2 also sought to examine whether rating the participants' endorsement of female precipitation beliefs before, as compared to after

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\(^2\) Id. at 84-85, 122, 123.

\(^3\) Id. at 84.

\(^4\) Id.

\(^5\) Id. at 79. "Participants' endorsement of female precipitation as a cause of rape" was measured by the degree that they believed that rape is caused by each of six propositions: "(1) women who tease men; (2) women who allow men to intimately touch them; (3) women's use of drugs or alcohol; (4) women who dress sexy; (5) women allowing the situation to get out of control; and (6) women who do unsafe things (such as being out alone, hitch-hiking)." Id.

\(^6\) Id. at 84.

\(^7\) Id. at 86.

\(^8\) Id.

\(^9\) Philip N.S. Rumney & Rachel Anne Fenton, Intoxicated Consent in Rape: Bree and Juror Decision-Making, 71 Mod. L. Rev. 279, 286 (2008).
their review of the scenarios, was statistically significant. In other words, will the impact of rape myths on decisions be more pronounced when they have been brought to the attention of the participants immediately before the decision-making process?

In this study "[t]he defendant was seen as significantly less likely to be liable in the ex-partner scenarios than in the stranger cases . . . ." Recommended sentences were lower in the ex-partner cases, and the complainant received significantly more blame. "[T]he acquaintance scenarios fell in between." However, contrary to the authors' hypothesis, "[n]either ratings of defendant's liability nor perceptions of complainant blame were affected by" the use of force or by the complainant's intoxication. Moreover, the participants with the highest acceptance of female precipitation beliefs "were the only group whose perceptions of defendant liability were dependent on the defendant's prior relationship with the complainant." Complainant blame also increased with this group, "regardless of whether the defendant was alleged to have used force or exploited the complainant's incapacitated state." Additionally, the authors note that the findings of this study were "highly consistent with those derived from a similar study conducted in Germany.

In Study 3, 2,176 members of the general public in the United Kingdom participated in an online survey using the rape scenarios from Study 2. The type of relationship between the complainant and the defendant also influenced decisions about defendant liability and complainant blame in this study. Defendants were held more accountable, and the complainants held less to blame, when the defendants used force, as opposed to when they exploited the complainant's intoxicated state. When the two variables were combined, however, the study

80. See TEMKIN & KRAHÉ, supra note 5, at 86-87.
81. See id.
82. Id. at 91.
83. Id.
84. Id.
85. Id. at 92.
86. Id.
87. Id. at 93.
88. Id. at 97.
89. Id. at 101.
90. Id. at 103, 105.
91. Id.
found that defendant liability did not change in the alcohol-related cases, regardless of the type of relationship.\textsuperscript{92} And only in the force scenarios did “perceptions of defendant liability decrease[ ] the closer the relationship between defendant and complainant.”\textsuperscript{93}

However, somewhat surprisingly, although complainant blame in the force scenarios was related to the type of relationship—with “complainant blame . . . particularly high when the defendant was an ex-partner”\textsuperscript{94}—“in the alcohol-related cases the complainant was blamed less where the defendant was an ex-partner than when he was a stranger or an acquaintance.”\textsuperscript{95} The authors hypothesize that the “[p]articipants may have felt the complainant should not have needed to be on her guard and aware of the risk of sexual assault when interacting [and drinking] with a former partner . . .”\textsuperscript{96} However, it is not clear why that same consideration would not also have increased the liability of the defendant. Should he not be held more accountable when taking advantage of a vulnerable ex-partner?

The final part of Study 3 dealt with the impact of a Home Office educational poster campaign, which was aimed at raising young men’s “awareness of the importance of consent . . .”\textsuperscript{97} Some participants in the study were shown a poster with a written paragraph about consent and the legal definition of rape, others were shown the same poster without the paragraph, and others were shown just the paragraph.\textsuperscript{98} However, the study was “unable to demonstrate the effectiveness of the posters”.\textsuperscript{99}

Whether or not the participants were shown the posters while judging the rape scenarios made practically no difference to the way they perceived the liability of a defendant who blatantly ignored the women’s expression of non-consent, and it had no effect on the sentences they recommended if he was found guilty. The consent paragraph also failed to have an impact,

\begin{itemize}
\item \textsuperscript{92} Id. at 103.
\item \textsuperscript{93} Id.
\item \textsuperscript{94} Id. at 105.
\item \textsuperscript{95} Id.
\item \textsuperscript{96} Id. at 117.
\item \textsuperscript{97} Id. at 109.
\item \textsuperscript{98} Id. at 113.
\item \textsuperscript{99} Id. at 119.
\end{itemize}
either on its own or in combination with the posters. The only effect that did emerge was contrary to the campaign's objectives. The prison poster actually reduced ratings of defendant liability.100

The "prison poster" used in Study 3 displayed a cell containing a set of bunks with the top bunk occupied by a middle-aged man looking out of the poster at the person who may well occupy the bottom bunk and contained the caption: "If you don't get a 'yes' before sex, who'll be your next sleeping partner?"101 The authors suggest that the reduced ratings of defendant liability by those viewing this poster occurred because "[p]articipants may have asked themselves whether they would want the defendant in the scenario to end up as shown on the poster and may have tuned down their liability ratings in order to protect him from such a fate."102 The wording on the poster may have even suggested that a defendant himself could be subject to sexual assault in prison—in fact, five percent of the interviewees in the Home Office's own evaluation of the poster campaign thought that the "message was if you rape you will get raped in prison."103

Temkin and Krahé's evaluation of the effectiveness of the this poster campaign is, therefore, a critical and timely reminder of the need to carefully design and test information intended to educate and address the justice gap104 and ties into their proposals for educative strategies in Part III.

A. The Role of Gender: Implications for Policy Makers

At the conclusion of the discussion of the three studies, the authors reflect on the difference that gender makes in decisions about defendant liability, complainant blame, and acceptance of rape myths (or female precipitation beliefs).105 In the earlier presentation of the existing research, Temkin and Krahé note that research has consistently shown that "rape myths are more

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100. Id. (emphasis added).
101. Id. at 110.
102. Id. at 119.
103. Id.
104. See id. at 122-23.
105. See id. at 121-22.
widely accepted among men than among women." Further, female police officers "tended to hold more positive attitudes towards victims than male officers," and "men are more disposed than women to blame the victim." However, as the authors argue, "one of the reasons for the greater willingness of men to blame the victim and exonerate the perpetrator might be their greater acceptance of rape myths, including the belief that women precipitate rape through the way they behave." And it is seemingly the case that men are more lenient generally, not just when assessing defendant liability in the case of heterosexual rape.

When considering the effect of gender, Temkin and Krahé conclude "that the crucial determinant of judgments about rape cases is the extent to which people subscribe to rape myths. Thus it tends to be attitudes rather than an unbiased evaluation of the facts which determine judgments in these cases." This conclusion again validates the authors' focus on identifying and changing attitudes. However, it is also the case "that men subscribe to rape myths to a greater extent than women"—which two of the authors' studies also found. From this perspective, gender may have an indirect effect on perceptions of rape cases. But because women also subscribe to rape myths, the focus for change should be on altering attitudes, not on addressing gender balance within the criminal justice system. This conclusion has important implications for policy decisions and law reform options and is one that should be noted by lobbyists and legislators in all jurisdictions.

B. Views from the Bench and Bar: The Lack of Self-Reflection

In Chapters 6 and 7, which I consider to be two of the most compelling and concerning portions of their book, Temkin and Krahé present the results of a qualitative interview study with
a group of seventeen judges and seven barristers. A summary of the interview schedule is included in Appendix 2 of the book, although the interviewees were encouraged "to go beyond those questions to address issues they considered important in the way rape was dealt with by the courts." The excerpts from these interviews are presented in a clear and well-structured manner. The quotes from the interviewees are grouped together under topic headings that are familiar to the reader—for example, "The Influence of Rape Stereotypes" and "Attributing Blame to the Victim"—as well as those topics of particular relevance to the expertise of the interviewees—"Incompetent Prosecuting Counsel" and "Judges' Attitudes towards Complainants."

These chapters are essential reading for policy makers, especially those proposing change within common law jurisdictions. In my view, research investigating the attitudes of legal practitioners working in the criminal justice system, especially in the areas of sexual and domestic violence, should be undertaken in a more frequent and rigorous manner, even though working with judges in such circumstances is difficult. Although the chapters contain much useful information that provides insight into judicial decision making, the overall message is that the interviewees are often apt to find fault with persons other than themselves.

Specifically, fault was found with the police, who were considered to be poor at gathering evidence, taking statements, and challenging a complainant’s story at an early stage in the

114. See id. at 126-42, 143-58.
115. See id. at 245-46.
116. Id. at 126.
117. Id. at 132.
118. Id. at 133.
119. Id. at 130.
120. Id. at 131.
121. The recent government-funded research conducted in New Zealand initially intended to include interviews with members of the judiciary as part of the work ascertaining the views of legal professionals working within the criminal justice system. See Ministry of Women's Affairs, supra note 32. However, access to the judiciary for this purpose was denied following an application to the Judicial Research Committee.
122. See TEMKIN & KRAHE, supra note 5, at 142.
case. Defense counsel were viewed as "behaving badly" because of the tactics used, in some cases, to discredit the complainant. Concern was expressed over the "inexperienced and incompetence of prosecuting counsel." Juries were described as having "totally unrealistic expectations of how genuine victims should behave," willing to decide cases not on the facts but "in the light of their own experience," and having "difficulty drawing inferences from the facts and the evidence."

Although the interviewees were reluctant to be self-critical, the study does reveal some of their attitudes—including some that concern the authors. While some of the interviewees' observations were consistent with social science research—for example, identifying cases as "sure-fire losers" when they involve "estranged couples, date rapes where some consensual intimacy had taken place, or cases where the girl was drunk and found a man having sex with her"—the interviewees' beliefs about the influence of female jurors in the decision-making process did "not accord with psychological research which ... demonstrate[s] that women are more inclined to hold defendants liable . . . ." Further, interviewees "commonly distinguished between 'serious' rapes and others," with one barrister (identified as "B4") expressing the view that "non-stranger rape was not necessarily that serious and that if the public thought it was, there would be more of an uproar about the poor conviction rate."

Some of us, in fact, might believe that we are in the middle of an uproar. This is certainly the case in New Zealand as a result of a series of high-profile cases involving alleged historical gang rapes by serving police officers. While B4 expressed

123. Id. at 127-29.
124. Id. at 129-30.
125. Id. at 130.
126. Id. at 132.
127. Id. at 133.
128. Id. at 135.
129. Id. at 134.
130. Id.
131. Id. at 137.
132. Id. at 138.
133. Id.
134. See N.Z. LAW COMM'N, DISCLOSURE, supra note 29, at iv. See also LOUISE NICHOLAS & PHILIP KITCHIN, LOUISE NICHOLAS: MY STORY (2007).
the view that the public is not sufficiently concerned about the low conviction rates, the other interviewees stated that the “justice gap” is a “concoction of ‘pressure groups,’ i.e., women’s groups, or . . . outside influences.” Thus, the public is presented both as not sufficiently concerned about the low conviction rate and as inappropriately representing the low conviction rate problem. As Temkin and Krahé note, “[i]t is not at all surprising that interviewees demonstrated firm resistance to the idea of a ‘justice gap’ since this could easily be interpreted as an attack on the legal profession as well as the criminal justice system as a whole.” Therefore—and the significant contribution of this book is to make this very point—the attitudes that need altering for the justice gap to be successfully addressed must include the attitudes of those in the legal profession.

The authors conclude Chapter 6 by observing that “[t]he judges failed to mention that they too, as a group, might be implicated in the problems surrounding rape trials through their own attitudes which affect the way they apply the law.” To expose the attitudes behind judicial application of the law, Temkin and Krahé present, in Chapter 7, the interviewees’ views on some of the relevant law reform—that relating to the corroboration requirement, third party disclosure, and sexual history evidence.

C. Admissibility of Sexual History Evidence: The “Law in Action”

One of the earlier law reforms, with regard to evidence in sexual offense trials, concerned the limitation on the admissibility of the complainant’s sexual history with people other than the defendant. This reform was aimed at preventing juries from using such evidence when assessing the complainant’s credibility, as well as reducing the unpleasantness that com-

135. TEMKIN & KRAHÉ, supra note 5, at 140.
136. Id. at 141.
137. See id.
138. Id. at 142.
139. See id. at 143-58.
140. See id. at 236. The United Kingdom put forth this reform in 1976. Id. New Zealand, however, established this reform in 1977. See Evidence Act, 1908, § 23A (N.Z.).
plainants reported feeling when testifying about previous intimate relationships.\textsuperscript{141}

To admit sexual history evidence, according to most "rape shield statutes," the evidence must meet a heightened relevance standard.\textsuperscript{142} In section 41 of the Youth Justice and Criminal Evidence Act,\textsuperscript{143} after it is established that the evidence is relevant to a limited number of issues,\textsuperscript{144} the ultimate admissibility test is that "a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case."\textsuperscript{145} The New Zealand equivalent of this law requires that the evidence be "of such relevance to a fact in issue that to exclude it would be contrary to the interests of justice."\textsuperscript{146} Despite these seemingly strict standards for admissibility,\textsuperscript{147} academic analysis of the decisions made in accordance with discretionary rules demonstrates the fundamental problem with law reform that is enacted in order to prevent decision makers from placing undue weight on a complainant's sexual experience.\textsuperscript{148} A law that is aimed at changing attitudes will not be effective if it is to be implemented by those who subscribe to those same attitudes.\textsuperscript{149} It is even more problematic that most members of the judiciary do not believe that they bring their own biases to the bench.\textsuperscript{150}

Although section 41 of the Youth Justice and Criminal Evidence Act replaced an earlier, less structured law,\textsuperscript{151} Temkin and Krahé report that the new section is also the "object of criti-

\textsuperscript{141} See N.Z. DeP't of Justice, Rape Study: Discussion of Law and Practice (1983); E.W. Thomas, Was Eve Merely Framed or Was She Forsaken?, N.Z.L.J., October 1994, at 368.
\textsuperscript{142} Mahoney et al., supra note 54, at 184.
\textsuperscript{143} 1999, c. 23, § 41 (Eng. & Wales).
\textsuperscript{144} Id. §§ 3, 5.
\textsuperscript{145} Id. § 41.
\textsuperscript{146} Evidence Act, 2006, § 44 (N.Z.).
\textsuperscript{148} See Temkin & Krahé, supra note 5, at 148-50, 236-37.
\textsuperscript{149} See id. at 237 ("[T]he principal structural flaw of such legislative schemes is their failure to define the key concepts for determining admissibility leaving the judges free rein to apply their 'common sense' assumptions." (quoting Terese Henning & Simon Bronitt, Rape Victims on Trial: Regulating the Use and Abuse of Sexual History Evidence, in Balancing the Scales 76, 85 (Patricia Eastal ed., 1998))).
\textsuperscript{150} See id. at 143, 158.
\textsuperscript{151} Sexual Offences (Amendment) Act, 1976, c. 82, §§ 1-7 (Eng. & Wales).
cism and controversy." 152 The interviewees in the authors' study believed that the new section is too restrictive and has the potential to exclude relevant evidence. 153 Six of the judges interviewed also determined that it preserved their discretion to admit evidence—although the aim of the reform was to remove discretion. 154 One judge stated: "I'm not one for being unduly fettered. I've been appointed to do a job on the basis that I have a certain amount of judgment, and to be fettered or shackled by statutory constraints, I don't think helps anybody." 155

The inability or unwillingness of some of the judges participating in this research to apply the new law, which was enacted in order to effectively control admission of sexual history evidence, is a real concern and demonstrates the limitations of law reform. Nearly half of the judges in this study were also unaware of, or ignored, the procedural requirements of the reform—"that defense applications to bring in evidence of the complainant's sexual history [be] made in writing before trial. . . . [i]n order that only properly considered applications are made and that the prosecution has time to challenge them." 156 A proposal that would have required parties to file their applications before trial and judges to provide their reasons for admitting such evidence in writing was considered but rejected by the New Zealand Law Commission on the basis that the notice requirement would be ignored and that the judges should not be compelled to record their rulings. 157 Although this was a disappointing decision, in light of the attitude toward the English provision, it may have been a realistic and pragmatic one.

In conclusion, the authors offer a critical assessment of the impact judges' attitudes have on the justice gap:

Thus, the interviews with judges and barristers raise issues about the extent to which the law laid down by Parliament and the higher courts for rape

152. TEMKIN & KRAHÉ, supra note 5, at 240.
153. See id. at 146-47.
154. Id. at 148.
155. Id. at 149.
156. Id. at 146.
157. This information is based on my discussions with the Commissioner in charge of the Evidence Project, Judge Margaret Lee, during my time working at the Law Commission.
and sexual assault cases is being judicially observed. It is the gap between the law and the law in action which is an essential component of the justice chasm in sex cases. It seems that law itself, which must ultimately be interpreted and applied by the judges, cannot entirely withstand an attitude problem which, in some cases, is too entrenched to budge.\textsuperscript{158}

Having made the case that something more than law reform is required in order to address the justice gap, the authors consider options for change in Part III.

III. Some Possible Solutions

A. Law Reform: Expert Evidence, Evidence of Good Character, Sexual History, Consent and Intoxication

Chapter 8 deals with law reform proposals.\textsuperscript{159} This includes consideration of the increased use of expert evidence in cases of sexual offenses in order to address the common misconceptions concerning victims.\textsuperscript{160} Temkin and Krahé examine the reform possibilities excellently, while also discussing the arguments for and against the use of expert evidence.\textsuperscript{161} This discussion supplements the earlier consideration of the issue in Chapter 3.\textsuperscript{162}

The authors conclude that the prosecution should be allowed "to import expert evidence into rape trials on those occasions when it considers that this would be useful."\textsuperscript{163} Expert evidence could potentially be admitted under the new admissibility rule in New Zealand, which requires that the fact-finder be "likely to obtain substantial help from the [expert] opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding."\textsuperscript{164} Although Temkin and Krahé mention that the prosecution can offer expert evidence when that evidence would

\begin{thebibliography}{9}

\bibitem{158} Temkin \& Krahé, supra note 5, at 158.
\bibitem{159} See id. at 161-76.
\bibitem{160} Id. at 162.
\bibitem{161} See id. 161-67.
\bibitem{162} Id. at 57-63.
\bibitem{163} Id. at 167.
\bibitem{164} Evidence Act, 2006, § 25 (N.Z.) (emphasis added).
\end{thebibliography}
be useful for the prosecution's case,\textsuperscript{165} it is the judge who rules on the admissibility and may not be easily convinced that there is real need for such evidence. Thus, changes to law or procedure that require the favorable exercise of judicial discretion may well be defeated in practice if not implemented in the context of attitudinal change.

The authors consider the case for allowing the complainant to offer "good character" evidence about herself in order to "obtain some parity with the accused,"\textsuperscript{166} who has historically been permitted to present "good character" evidence to assess both his credibility, if the defendant testifies, and his guilt.\textsuperscript{167} The New Zealand Evidence Act of 2006\textsuperscript{168} provides that any party, including the complainant in a sexual assault case, may offer evidence in support of his or her veracity (credibility) when that evidence is "substantially helpful" in assessing that person's veracity\textsuperscript{169} and may also offer propensity (character) evidence when it is relevant.\textsuperscript{170} Although there are no reported decisions on the use of these provisions, the mechanism is in place for such "parity" to occur, provided, of course, that the prosecution is willing to use such evidence, and the judge is willing to admit it.\textsuperscript{171}

The authors' recommendations concerning sexual history evidence relate mainly to the non-compliance with the procedural requirements.\textsuperscript{172} However, it will presumably be important in England and Wales, as elsewhere, to keep monitoring the decisions made under the relevant rape shield statutes. The New Zealand Evidence Act significantly changed this rule by barring any evidence of the complainant's reputation in sexual matters.\textsuperscript{173} As I have argued elsewhere, this is a welcome change

\textsuperscript{165} See Temkin & Krahé, supra note 5, at 167.
\textsuperscript{166} Id. at 168.
\textsuperscript{167} Mahoney et al., supra note 54, at 157.
\textsuperscript{168} Evidence Act, 2006 (N.Z.).
\textsuperscript{169} Id. § 37.
\textsuperscript{170} Id. § 40.
\textsuperscript{171} However, note the effect of offering biographical information about the parties. See Temkin & Krahé, supra note 5, at 49 ("By having more detailed information about a person, he or she becomes more prominent in the perceiver's awareness and is therefore a more likely candidate to be selected as responsible for the events in question.").
\textsuperscript{172} Id. at 168-69.
\textsuperscript{173} Mahoney et al., supra note 54, at 184.
but one that may well be defeated in practice.174 It is worth noting that the New Zealand Law Commission recommended extending the section's control over the evidence of the complainant's sexual experience with a particular defendant;175 however, during the legislative process, this recommendation was rejected.176

The final law reform measure discussed is that concerning the connection between consent and intoxication.177 The authors recall their earlier observations in Chapter 8, that "if the complainant is portrayed as drunk, she is perceived as less credible and the perpetrator is seen as less likely to be culpable. . . . The findings suggest that the issue of victim intoxication is closely related to the perception of victim culpability."178 This connection clearly needs to be challenged and addressed, and the reform required may well be jurisdiction-specific, as it will relate to what the law or practice already provides. Temkin and Krahé propose that the United Kingdom's Sexual Offences Act of 2003179 "should be amended to make it plain that there can be no consent when the complainant was or becomes unconscious, or where she is mistaken as to the nature of the proposed act."180 The latter recommendation is important in light of the England and Wales Court of Appeal's recent decision in R. v. Bree.181

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176. Mahoney et al., supra note 54, at 185.
177. See Temkin & Krahé, supra note 5, at 174-75.
178. Id. at 169-70.
180. Temkin & Krahé, supra note 5, at 175.
181. [2007] EWCA (Crim) 256 (Eng. & Wales). See also Sharon Cowan, The Trouble with Drink: Intoxication, (In)capacity, and the Evaporation of Consent to Sex, 41 Akron L. Rev. 899, 908-09 (2008) ("Sir Judge stated in Bree that it is the role of the court to decide whether or not the woman's capacity has been diminished to the degree that consent is not possible, and that this is not an issue that can be appropriately decided by a statutory tariff system."); Rumney & Fenton, supra note 79, at 283.
B. Improving Rape Trials: Assisting the Jury and Educating Legal Professionals

Temkin and Krahd also consider the possibility of abolishing the jury in sexual assault cases.\textsuperscript{182} While acknowledging that such a proposal would meet fierce opposition, they make a strong case for having conviction decisions made by a judge alone.\textsuperscript{183} "Rape-ticketed judges,"\textsuperscript{184} they argue, are far less likely to be led astray by defense counsel, as they are "familiar with patterns of sexual aggression and are more likely to be able to draw the inferences which can and should be drawn from the evidence."\textsuperscript{185}

The authors also express the view that, although judges may also subscribe to rape myths, and training judges is not without problems, "structures are now in place and can be built on whereas no such opportunities to educate juries could ever be built into the system."\textsuperscript{186} Those who believe that the jury is best suited to make decisions about guilt in cases of serious offenses express faith in the number of jurors: "Somehow the common sense and judgment that you get out of twelve people, is, I think, amazing and amazingly valuable."\textsuperscript{187}

The authors do not, however, consider other options that may provide a compromise, such as having more than one judge on the bench in sexual assault cases or adopting other variations found in the civil law model. More generally, I expected the authors to provide a fuller consideration of relevant aspects of an inquisitorial model, given the comparative work that has been done with regard to sexual assault already\textsuperscript{188} and the authors' expertise.

Assuming that the current jury system is likely to remain, at least in the short term, Temkin and Krahd consider ways that the jury might be assisted in making decisions without re-

\textsuperscript{182} See Temkin & Krahd, supra note 5, at 177-80.
\textsuperscript{183} See id. at 178-80.
\textsuperscript{184} "Rape-ticketed" judges are judges "specifically licensed to try rape cases" in the English court system. Id. at 126.
\textsuperscript{185} Id. at 178.
\textsuperscript{186} Id. at 178-79.
\textsuperscript{188} See, e.g., Dublin Rape Crisis Ctr., supra note 7.
lying on stereotypical thinking and, instead, by focusing on the facts of the case. The authors briefly mention the possibility of adopting a *voir dire* process of jury selection—as used in the United States—before discussing what help the jury may be given in terms of flow charts, notebooks, access to witness statements, the judge’s summation of the law and facts for the jury, and the like. The authors note that, although “jurors in England and Wales are permitted to ask questions . . . research studies show a distinct inhibition about doing so.” Section 101 of the New Zealand Evidence Act codifies a process by which a jury may put a question to a witness. This section caused some disquiet among New Zealand judges, who worried about a dramatic increase in jury questions. Nonetheless, even though some judges do inform their juries of the right to ask questions, as advised by the Law Commission, this practice does not seem to have had any negative impact on the trial process in terms of length or complication.

The final part of Chapter 9 deals with the education of legal professionals and consideration of the value of appointing more women judges. Temkin and Krahé note that although increased education is desirable, judges are “notoriously difficult to educate.” The United States is viewed as leading the way in terms of “developing an understanding of judicial gender bias.” However, it is not just an unwillingness to acknowledge gender bias in decision making that may prevent effective judicial education. Two myths also need to be overcome: “First, that ‘only judges can teach judges,’ second, that judges should not take into account social science data . . . .”

190. *Id.* at 180-81.
191. *Id.* at 181-86.
192. *Id.* at 185.
195. Mahoney et al., *supra* note 54, at 366.
197. *Id.* at 188.
198. *Id.* at 189.
“In Canada, judicial training has included [consideration of] ‘social context,’”200 which is designed to assist judges in “‘explor[ing] their own assumptions, biases and views of the world with a view to reflecting on how these may interact with judicial process.”201 However, despite Temkin and Krahé’s claim that New Zealand has followed the United States’ lead by introducing gender bias training, this statement seems based on only an article about India that cites a 1994 report authored by a woman judge from New Zealand.202 Unfortunately, any training that is offered to address gender bias seems only to account for a small portion of the introductory training curriculum for new judges.203 Moreover, judges did not unanimously agree with the recent suggestion that “social context” materials be included as part of the judicial education on New Zealand’s evidence and procedure rules.204

It is clear that effective training of legal professionals, in order to “tackle” the attitude problem,205 is essential and long overdue, especially in common law jurisdictions outside North America. As Temkin and Krahé argue, based on the results of the social science research they discuss, the answer is not appointing more women judges but rather “judicial education aimed at dispelling rape myths held by both female and male judges . . . .”206

The authors note that the training of “rape-ticketed” judges and crown prosecutors who deal with sexual assault is laudable, although such training is not extended to defense counsel.207 Temkin and Krahé do not, however, consider the possibility of specialist sexual assault courts, which are used elsewhere in

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200. Id. at 190.
202. Id.
203. This information is the result of an informal conversation I had with the Director of the Institute of Judicial Studies.
204. This opinion is based on my interactions with judges that I worked with in this training program.
205. TEMKIN & KRAHÉ, supra note 5, at 196.
206. Id. (emphasis added).
207. See id. at 126, 130-31.
the world. Despite the drawbacks of specialized courts, such a model addresses the issues concerning education and attitudinal change and seems worthy of investigation.

C. Changing Public Attitudes

Chapter 10 "reviews existing approaches designed to challenge rape myths and outlines directions for future efforts towards this goal." Public education is, of course, relevant not only to the prevention of sexual assault but also to the jury decision-making process and the perception of harm for victims themselves. As Temkin and Krahé note, rape prevention programs need to be provided early, and any use of the media for education or raising awareness must be thoughtfully considered and evaluated. Changing public attitudes is critical for effective challenge to the justice gap, and this is recognized in many jurisdictions, including New Zealand. The work that clearly remains is how to actually accomplish this, and Chapter 10 proves a helpful starting point for answering this question.

IV. Conclusion

In Sexual Assault and the Justice Gap: A Question of Attitude, Temkin and Krahé conclude that stereotypical beliefs about what "real rape" is affect "the judgments made by individuals dealing with rape cases . . . and thereby shape the understanding of rape as it is represented and dealt with in the criminal justice system." The authors' original research and consideration of existing research convinces the reader that the difference between reports and convictions can be explained, not by a lack of evidence, but by preconceived notions of what rape looks like and how a "real" victim will act. Rather than the

208. See McDonald, Sexual Violence, supra note 31, at 123.
211. TEMKIN & KRAHÉ, supra note 5, at 199.
212. Id. at 207.
213. See Ministry of Women's Affairs, supra note 32.
214. TEMKIN & KRAHÉ, supra note 5, at 209.
justice gap being a result of the difficulties of proof in rape cases, Temkin and Krahé argue that “[p]erceptions of rape are influenced by stereotypes, bias and gender prejudice. . . . It is this attitude problem which needs to be addressed if the justice gap is to be reduced.”

The book presents particularly compelling evidence about the attitudes of members of the judiciary—those charged with applying the laws crafted to address the justice gap—demonstrating that they are also not without bias and have a tendency to subscribe to rape myths. Instead of claiming that the law can provide the answers, since legal reform has been of limited use, the authors demonstrate that the widespread attitudinal biases can only be effectively addressed by identifying and challenging these biases.

As jurisdictions throughout the world continue to struggle to address the problem of low conviction rates in cases which do not involve a “real rape,” it is time to take a different approach in order to provide justice for victims, while not simultaneously undermining a defendant’s right to a fair trial. Sexual Assault and the Justice Gap: A Question of Attitude provides a timely and well-crafted argument for the different approach that is needed. It should be required reading for all policy and lawmakers, especially those working within adversarial criminal justice systems, and I have commended the work to New Zealand’s Ministry of Justice.

215. Id. at 1.
216. See supra notes 126-38, 153-58 and accompanying text.
Locked Up, Overlooked


Reviewed by Giovanna Shay*

I. Introduction

In the late 1990s, an official of the Violence Against Women Act ("VAWA")1 office in Washington, D.C. told me that VAWA funding was not available for programs for incarcerated women who were survivors of abuse. VAWA funds, she explained, were not meant for offenders, and a woman could not be both a victim and an offender. It did not matter, in her view, if the woman was incarcerated for something unrelated to the abuse that she had suffered, such as a drug offense. If a woman was locked up, VAWA was not intended to benefit her.2

Hearing this should not have surprised me, given that VAWA was passed as part of the Violent Crime Control and Law

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2. My account of this conversation is not offered as a definitive statement of the VAWA office's policy at that time. I use it as my starting point because, even a decade later, I recall the exchange as particularly salient. See also Brenda V. Smith, Sexual Abuse of Women in United States Prisons: A Modern Corollary of Slavery, 33 FORDHAM URB. L.J. 571, 592 (2006) [hereinafter Smith, Sexual Abuse] ("[T]he prohibition on the use of [VAWA] funds for any individual in custody, means that the significant number of women in prison with histories of physical and sexual abuse both prior to and during imprisonment are ineligible for services funded by VAWA II, the largest source of funding nationally for these programs."); Jaime M. Yarussi, The Violence Against Women Act: Denying Needed Resources Based on Criminal History, CRIM. L. BR., Spring 2008, at 29, available at http://www.wcl.american.edu/nic/resources/vawa_criminal_law_brief.pdf?rd=1 (discussing how VAWA and the Victims of Crime Act (VOCA) of 1984, 42 U.S.C. §§ 10601-10605 (1994), fail to provide funding for sexual assault survivors who are raped while incarcerated).
Enforcement Act of 1994. Nonetheless, the official’s remark stayed with me while I worked as a public defender and represented incarcerated women in a number of contexts. To me, it epitomized the problems with the union of the domestic violence and crime control movements, as well as mainstream feminism’s all-too-frequent indifference to incarcerated women and poor women of color, more generally. It typified an era in which incarceration wreaked havoc on communities of color. And it illustrated an absolutist view of our criminal justice system: you’re either a victim or an offender, and once you’re labeled as the latter, you have little hope of working your way back.

The exchange was all the more troubling because it occurred against the background of a skyrocketing incarceration rate for U.S. women—increasing 757 percent between 1977 and 2004. This increase had a disproportionate effect on poor women of color, with African-American and Latina women comprising sixty percent of female state and federal prisoners in 2006. Much of the increase was a byproduct of the so-called


8. Id. at 7.
War on Drugs. Many of these incarcerated women were also abuse survivors—in 1999, more than half of women in state institutions reported a history of physical or sexual abuse.

In the ten years since that conversation, women prisoners have received increasing attention from lawyers and courts, academics, human rights organizations, journalists, and

9. See id. at 24, 27.
10. Id. at 60.
11. See Brenda V. Smith, Reforming, Reclaiming or Reframing Womanhood: Reflections on Advocacy for Women in Custody, 29 WOMEN'S RTS. L. REP. 1 (2007) (discussing litigation and advocacy efforts on behalf of women prisoners).
even legislators.16 However, many of us working in this area still succumb to tunnel vision, focusing on incarcerated women through the narrow lens of prisoners’ rights, rather than the wide angle view including free women or the panoramic shot encompassing the broader terrain of economic or racial inequality.

By some logic, incarcerated women should be a focus of feminist scholarship and advocacy, rather than relegated to the periphery. Women prisoners stand at a kind of crossroads. As a population, they represent a particularly concentrated form of what Kimberlé Crenshaw has termed “intersectionality”—the collision of the forces of race, gender, and class.17 As Beth Richie has argued, physical abuse, economic disadvantage, and racial and gender identities can coalesce to “entrap” poor women of color into crime.18 Far from being deviant outliers, incarcerated women represent the ultimate combined effects of structural racism and sexism. Because women prisoners’ lives embody the issues that ostensibly preoccupy feminist analysis, by rights they should command our attention—if only we weren’t so squeamish about the stigma of criminal justice involvement.

II. Talvi’s Project

Journalist Silja Talvi’s Women Behind Bars: The Growing Crisis of Women in the U.S. Prison System (“Women Behind Bars”) is an engaging overview of issues affecting incarcerated


women. It succinctly illustrates some of the important connections involving the War on Drugs, racial disparity, and the high rate of substance abuse and physical and sexual abuse among incarcerated women. Each of the chapters could be assigned on its own to a class or reading group. While Talvi states that she is not trying to write a scholarly book, as a contribution to public discourse, *Women Behind Bars* furthers the goal of increasing awareness about the growing population of women prisoners.

Talvi bases her account on interviews with women prisoners: she interviewed one hundred women prisoners over two years and corresponded with about three hundred. She visited prisons and jails in Florida, California, Arizona, Washington, and New Mexico and toured women's institutions in the United Kingdom, Finland, and Canada for comparison.

*Women Behind Bars* presents a number of important issues regarding women prisoners in a readable form. Talvi begins by setting the stage in a chapter entitled *Here's Your One-Way Ticket to Prison*, in which she explains how women's incarceration rate has risen as a result of a policy of “mass incarceration” and why, despite the fact that male prisoners by far outnumber women, she chose to focus on female inmates. “The realities of female imprisonment are far more complex and underreported than most Americans seem to realize,” she writes. Women and girls in the criminal justice system are “almost never portrayed [by the media] as three-dimensional human beings . . . .” Similarly, “[t]he specific emotional and physical needs that females present once they are incarcerated are completely off the radar of most state and federal correctional departments . . . .”

20. Id. at vii-viii.
21. Id. at viii.
22. Id.
23. Id. at ix.
24. Id. at 4.
25. See id. at 1-21.
26. Id.
27. Id.
28. Id. at 16.
In a chapter called *Women in Wartime*, Talvi further details how the policies of the War on Drugs contributed to the increasing incarceration of women, particularly women of color.\(^{29}\) Although a bit wide-ranging, mentioning everything from the Texas “Tulia 46” wrongful drug convictions scandal\(^{30}\) to Washington State’s Green River serial killer,\(^{31}\) this chapter provides a good account of the impact of the anti-drug crusade. As Talvi summarizes:

Mandatory minimums in general, and the crack cocaine law specifically, started to drag countless women into the drug-war vortex. The [Sentencing Reform Act] permitted little in terms of “downward departures” in sentencing, which would have allowed for consideration of a woman’s circumstances, domestic abuse, drug addiction, caretaking of children or parents, employment, and so on. Worse yet, detectives, agents, and prosecutors began to throw in federal conspiracy charges, which [they] had previously reserved for people involved in high-level organized crime activities . . . \(^{32}\)

Many women, she writes, were bit players in drug organizations and had little information to trade in exchange for leniency—the phenomenon that has come to be known as the “girlfriend problem.”\(^{33}\)

In each of the successive chapters of the book, Talvi addresses different issues affecting this growing population of incarcerated women. Three of the most compelling sections address issues that have been a major focus of advocates’ work on behalf of women prisoners—physical and sexual abuse, inadequate medical care, and deficient mental health treatment.\(^{34}\)

The chapter *Abuse Behind The Wall* summarizes many of the important milestones of the last decade in uncovering and addressing custodial sexual abuse.\(^{35}\) “Experiences of extreme violence and sexual abuse in women prisoners’ lives are far

\[\begin{align*}
29. & \text{See id. at 22-53.} \\
30. & \text{See id. at 50-53.} \\
31. & \text{See id. at 42-45.} \\
32. & \text{Id. at 34.} \\
33. & \text{Id. at 35.} \\
34. & \text{See id. at 54-150.} \\
35. & \text{See id. at 54-78.}
\end{align*}\]
worse and far more commonplace than most Americans realize,” Talvi writes. She discusses the role of international human rights groups, like Amnesty International and Human Rights Watch, in first bringing attention to the abuse of women prisoners. Cross-gender supervision, which is common in American prisons and often sanctioned by employment discrimination laws, violates international standards, Talvi writes. She describes the devastating effect of sexual harassment and invasion of privacy on women prisoners who frequently have a history of physical and sexual abuse prior to their incarceration. The role of class action litigation in addressing custodial sexual abuse is also covered, as well as the passage of laws heightening criminal penalties. Talvi also discusses the Prison Rape Elimination Act of 2003, which established the National Prison Rape Elimination Commission, mandates data collection about prison sexual violence, and provides funding to address the problem.

Talvi frames Chapter 3, the custodial abuse chapter, by recounting the story of the Federal Correctional Institution (“FCI”) in Tallahassee, where an officer suspected of participating in widespread custodial sexual abuse shot the Office of Inspector General (“OIG”) agent who had arrived at the facility to arrest him. The shooting at FCI Tallahassee occurred within days of the issuance of Woodford v. Ngo, a Supreme Court opinion interpreting the Prison Litigation Reform Act (“PLRA”) to require prisoners to comply with all of the technical requirements and short deadlines of prison grievance sys-

36. Id. at 64.
37. See id. at 57, 73.
38. Id. at 56-57.
39. See id. at 60-67.
40. See id. at 75-76.
41. See id. at 71.
43. Talvi, supra note 7, at 71-72, 76. See also 42 U.S.C. § 15603 (mandating data collection on prison violence); id. § 15605 (providing funding to address prison violence); id. § 15606 (establishing National Prison Rape Elimination Commission).
44. Talvi, supra note 7, at 54-78.
tems in order to get a federal complaint before a court. Commentators and advocates, as well as the National Prison Rape Elimination Commission, have warned that such draconian exhaustion requirements can bar judicial review of custodial sexual assault cases.

Talvi does not discuss the PLRA in this chapter, which is disappointing. In addition to its hyper-technical exhaustion requirement, the PLRA imposes a physical injury requirement, stating that no prisoner can recover "for mental or emotional injury . . . without a prior showing of physical injury." Commentators have warned that this requirement can pose an obstacle to rape victims' complaints, with one observer describing the physical injury requirement as a "loophole for rapists." In fact, legislation has been introduced to amend the PLRA to eliminate this provision. However, Talvi does not acknowledge any of the hurdles that the PLRA erects to women

47. Ngo, 548 U.S. at 93-95. In Ngo, the author served as counsel for amicus curiae the Jerome N. Frank Legal Services Organization of the Yale Law School.


50. Id. § 1997e(e).

51. See Schlanger & Shay, supra note 48.


prisoners seeking courts’ protection from custodial sexual abuse.

In addition to addressing abuse behind bars, Talvi devotes a chapter to the abuse women prisoners suffer in the free world that can lead them to crime. In Chapter 7, entitled Women Who Kill, Talvi addresses the prevalence of domestic violence in society generally, and among incarcerated women specifically, and details psychological research on why women might kill their abusers rather than walk away.54 This chapter veers a bit oddly from Charlize Theron’s role in Monster, a film about the executed serial killer Aileen Wuornos,55 to the stories of individual women Talvi interviewed who had killed their abusers.56 Its exclusive focus on homicide is somewhat narrow, because the chapter could have addressed battered women’s criminal involvement in less sensational crimes—property and drug crimes, prostitution, and other crimes committed as a result of abuse.57 Nonetheless, Talvi draws the often-overlooked connection between the abuse in women’s lives and the crimes that bring them to prison.

In a chapter entitled Dangerous Medicine, Talvi catalogues gruesome stories of medical neglect, ranging from botched amputations to untreated cancers.58 She discusses the challenges of HIV and hepatitis C in the incarcerated population,59 as well as especially virulent emerging infections like drug-resistant tuberculosis and antibiotic-resistant staph.60 “There is no way around the fact that women brought to jail or prison represent some of the sickest people in our society, in terms of the scope and severity of their physical and/or mental illnesses,” Talvi writes.61 “Incarceration heaps on a whole new set of potential problems . . . ”62

54. See Talvi, supra note 7, at 163-93.
55. See id. at 171. See also Monster (Sony Pictures 2003).
56. See Talvi, supra note 7, 180-93.
57. See generally Richie, supra note 18.
58. See Talvi, supra, at 79-117.
59. See id. at 96-99.
60. See id. at 100-106.
61. Id. at 96.
62. Id.
Talvi notes that childbearing and women's reproductive health present special concerns, but she does not deal extensively with OB/GYN issues. These issues are compelling. The shackling of pregnant women is a U.S. practice that has drawn particular criticism from international human rights organizations. In the summer of 2008, a panel of the Eighth Circuit nonetheless concluded that shackling a woman who was in labor did not violate the Eighth Amendment. However, as this article was going to press, that court was again considering the case on rehearing en banc, having vacated the panel opinion. Early in the Supreme Court's October 2008 Term, the Court denied certiorari in a case in which the state of Missouri defended its policy of refusing to transport women prisoners for non-therapeutic abortions. As a result of this denial, the lower court decision ruling the policy unconstitutional still stands, and the issue is sure to resurface.

Chapter 5, entitled *Trying to Stay Sane*, addresses mental health care, another area of critical concern because such a high rate of women prisoners report mental health problems. A 2006 Bureau of Justice Statistics study estimated that seventy-three percent of women state prisoners, compared with only fifty-five percent of male prisoners, suffered from a mental health problem. This area has also been a focus of civil rights litigation and international human rights advocacy.

63. Id. at 88.
64. See Amnesty Int'l, supra note 14, at 10-12.
68. Id. at 792, 794-98, 801.
69. See Talvi, supra note 7, at 118-50.
71. See, e.g., Madrid v. Gomez, 889 F. Supp. 1146, 1279-80 (N.D. Cal. 1995) (concluding that Department of Corrections officials had failed to provide adequate mental health care and that housing mentally ill patients in isolation units constituted cruel and unusual punishment).
In this chapter, Talvi examines the effect of segregation units and supermax prisons on residents’ mental health, particularly prisoners with pre-existing mental health issues. She describes how mentally ill prisoners’ behaviors can be mismanaged by poorly-trained corrections officers, who may respond to them as disciplinary issues. A young offender with mental health issues was initially sentenced for a fight with her sister, Talvi writes. Her acting out in prison garnered longer and longer periods of isolation, ultimately pushing her to suicide. Talvi explains what is now familiar but still difficult to remedy: following deinstitutionalization of the mentally ill, the criminal justice system became the last remaining social safety net. She argues that it is unfair to place the entire weight of our nation’s mental health issues on corrections officers who are not properly prepared for the job but acknowledges that this cannot justify deficient treatment.

International Lockup, which documents Talvi’s visits to women’s institutions in Canada, Finland, and the United Kingdom, is fascinating. Although it is difficult to draw conclusions based on a few visits, Talvi notes some measures that the United States should imitate. For example, in the United Kingdom, Her Majesty’s Chief Inspector of Prisons is an office completely separate from the prison service, with keys to all institutions and authority to conduct inspections and make public reports at any time. This is exactly the kind of independent oversight that the Commission on America’s Prisons recommended a couple of years ago.

73. See Talvi, supra note 7, at 118-50.
74. Id. at 133-34.
75. Id. at 125.
76. Id. at 125-6.
77. See id. at 145-46. See also Human Rights Watch, Ill-Equipped, supra note 72, pt. IV.
78. Talvi, supra note 7, at 146.
79. See id. at 228-66.
80. See id. at 234-57.
81. Id. at 236.
Talvi also presents chapters on lesbian relationships that withstand homophobia behind bars and sometimes survive release,83 interstate transfers that send women prisoners thousands of miles from home,84 and “faith-based” programming that has been criticized as state-sponsored evangelism.85 In a chapter entitled Criminalizing Motherhood, she investigates the punishment of women who fail to comply with societal gender norms and expectations of appropriate mothering.86 For example, the anticipated epidemic of “crack babies” failed to materialize, she explains, turning out to be a “government and media-driven hysteria . . . ”87 Taken together, these essays provide a mosaic of many of the critical issues facing women prisoners in an age of “mass incarceration.”88

III. Summing Up

For a project meant to draw on women’s own accounts,89 Women Behind Bars sometimes lacks richness and complexity. In part, this is because Talvi uses snippets from many different women’s interviews and stories, rather than following any single woman or group of women for a length of time. By contrast, in her 2005 account of women at the Massachusetts Correctional Institution in Framingham, A World Apart, Christina Rathbone addressed many of the same issues as Talvi but did so by interweaving the themes among the storylines of a few women’s lives, producing a more textured narrative.90

Talvi chose not to address the ramifications of women’s incarceration for their children and families, reasoning that other recent works have explored these issues.91 Nor does she spend much time on the paths that lead women to prison or the realities of their lives upon release. These were consequential decisions. Writing about women prisoners only within the context of the institutions in which they are incarcerated—rather than

83. See Talvi, supra note 7, at 194-207.
84. See id. at 218-27.
85. See id. at 208-17.
86. See id. at 151-62.
87. Id. at 155.
88. Id. at 4.
89. Id. at viii.
91. Talvi, supra note 7, at 11.
as women whose lives lead them to incarceration and who ultimately rejoin the free world—tends to reinforce the "silo" mentality. It narrows the focus and fails to capture the interconnectedness of incarcerated women and their communities.92 Journalist and MacArthur Fellow Adrian Nicole LeBlanc powerfully demonstrated the connections in her masterful 2003 book Random Family, which followed a group of individuals from the Bronx over a number of years, including periods of incarceration.93

Despite these flaws, Women Behind Bars is a readable and useful account. A project based on interviews with incarcerated women presents innumerable logistical and bureaucratic obstacles. In the book's conception and execution, Talvi demonstrates laudable creativity and fortitude.

Talvi opens the first chapter with a quote from Jessica Mitford's account of her 1970 stay at the D.C. Jail, an investigation that she undertook for her 1971 book Kind & Unusual Punishment: The Prison Business.94 Talvi writes that "Mitford asked the poignant question of whether our city streets were actually safer because these women were locked behind bars, without access to psychological counseling, treatment for addic-


93. See ADRIAN NICOLE LEBLANC, RANDOM FAMILY (2003). This book featured, in part, the work of my former teacher and colleague, Yale Law School Clinical Professor Brett Dignam, who represented one of the women in a civil rights suit arising out of custodial sexual abuse. Id. at 288-89. Another book that uses prisoners' families' stories to demonstrate the inside-outside nexus (albeit with a primary focus on male incarceration) is Professor Donald Braman's anthropological study, DOING TIME ON THE OUTSIDE (2004).

94. TALVI, supra note 7, at 2 (quoting JESSICA MITFORD, KIND AND UNUSUAL PUNISHMENT: THE PRISON BUSINESS (1973)).
tion, or vocational training.”95 Thirty-eight years later, Talvi points out that we are still asking the same questions; but instead of the 11,000 women who were incarcerated in 1977, there are now more than 111,000.96

Because it is so accessible, Talvi’s project can help focus attention on this growing population of women prisoners. Incarcerated women’s stories represent a distillation of the larger forces that affect free women—racism, sexism, and economic pressure. For these reasons, among others, incarcerated women should not be forgotten, despite the stigma of their criminal convictions and their physical removal from the community. Though incarcerated women may be locked up, they should not be overlooked.

95. Id.
96. Id. at 3.
Global Feminism and the Human Rights Discourse


*By Mary Pat Treuthart*

Article I of the Universal Declaration of Human Rights states unequivocally that "all human beings are . . . equal in dignity and rights."1 Despite this pronouncement and other similarly emphatic statements in prominent international conventions, global feminists recognize that such calls for equality will not, by themselves, bring about substantive change in the lives of most women.

In some cases, the problems facing women have been caused by the convergence of culture, religion, and tradition, which represses meaningful legal reform. In other cases, legislative and litigation efforts simply have not kept pace with the forces that oppose the drive for equality. It is easy, then, to forget that several significant advances for women have been achieved in such wide-ranging areas as marriage laws, property and inheritance schemes, employment regulations, educational access, reproductive and health rights, and protection from violence.

The need to remind law students, if not the mainstream culture, of such advances is one reason for the creation of specialized international and comparative women's rights courses.

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Such courses, and the development of suitable teaching materials, provide the opportunity for all of us to identify, examine, and celebrate these gender justice achievements while still strategizing about ways to accomplish the work that remains.

I taught Comparative Women's Rights for the first time in 1993. After looking for a suitable casebook without success, I concluded it would be necessary for me to assemble my own course materials. It was a beneficial learning exercise, because I began to appreciate the difficult task facing casebook authors. This was underscored more recently when I had the occasion to co-author an international mental disability rights course book, an experience that I would characterize as one of my most challenging professional endeavors.

During the past fifteen years, while teaching Comparative Women's Rights courses at both the undergraduate and the law school levels in the United States and as a Fulbright lecturer in Poland, I continued my search for an appropriate text. I was familiar with a number of women's human rights books that I

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2. I taught this course as part of the University of San Diego Institute on International and Comparative Law Summer Program in Dublin, Ireland. By only a year, I ended up missing the opportunity to use the outstanding book titled Human Rights Of Women (Rebecca Cook ed., 1994).

3. This is not something that I would recommend to anyone who is teaching a course for the first time, especially in the international law field. Professor David Bederman, in his review of the most widely-used international law casebooks, observed, "I am aware of only a handful of colleagues who use their own unpublished materials instead of a regularly published casebook." David J. Bederman, International Law Casebook: Tradition, Revision, and Pedagogy, 98 AM. J. INT'L L. 200, 201 (2004).


5. For the undergraduate course I taught three times, which was cross-listed in political science, international relations, and women's studies, I chose Kate Conway-Turner & Suzanne Cherrin, Women, Families, and Feminist Politics (1998) as the primary text. The book covered the subject areas I found desirable; however, its presentation style was rather succinct, and I was compelled to supplement the text's offerings with outside materials. The topic areas we covered in the course corresponded, more or less, to the book chapters and included: 1) marriage and family laws, traditions, and rituals; 2) work and education; 3) health and reproduction; 4) war and peace; and 5) violence against women (rape, domestic violence, prostitution, and sex trafficking).
considered to be excellent resource materials.\textsuperscript{6} But the user-friendly, single course book was a mirage.

So, as usual, it was back to square one in terms of teaching materials as I began planning for my most recent go-around in 2007 with the Comparative Women’s Rights law school course. This time, I decided to adopt two recently published books. The first was a collection of essays authored by Catharine MacKinnon,\textsuperscript{7} and the second was a collection of articles edited by Bert Lockwood.\textsuperscript{8} Despite the breadth of topics covered in these books, I still found a need to add to the material.\textsuperscript{9}

A theme was developing with respect to the type of text I was seeking. Most important, I wanted a book that was “a

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\textsuperscript{6} The nonpareil three-volume series \textit{Women and International Human Rights Law} is indispensable to women’s human rights cognoscenti; however, its offerings are too mammoth to use for classroom purposes. See 1 \textit{Women and International Human Rights Law} (Kelly D. Askin & Dorean M. Koenig eds., 1999); 2 \textit{Women and International Human Rights Law} (Kelly D. Askin & Dorean M. Koenig eds., 2000); 3 \textit{Women and International Human Rights Law} (Kelly D. Askin & Dorean M. Koenig eds., 2001). Two offerings from Ashgate Publishing, \textit{Gender and Rights} (Carol Sanger & Deborah L. Rhode eds., 2005), and \textit{Gender and Justice} (Ngaire Naffine ed., 2002), were cost-prohibitive for law students. For the 2002 course I taught at Maria Curie Sklodowska Universitat in Lublin, I collated my own materials. When I taught the law school course in summer 2003, I used \textit{Women’s Rights, Human Rights} (Julie Peters & Andrea Wolper eds., 1995), and \textit{Women, Gender, and Human Rights} (Marjorie Agosin ed., 2001), which I augmented as a result of the additional topics selected for discussion by the course participants.

\textsuperscript{7} \textit{Catharine A. MacKinnon, Are Women Human?} (2006).

\textsuperscript{8} \textit{Women's Rights} (Burt B. Lockwood ed., 2006).

\textsuperscript{9} I allowed the students to collaborate with me in designing the course content. I believe this collaborative approach comports with feminist pedagogical techniques; however, it is not an original idea. See Gerald F. Hess, \textit{Collaborative Course Design: Not My Course, Not Their Course, But Our Course}, 47 Washburn L.J. 367 (2008). I insisted that students co-facilitate an in-class, brief presentation on a subject area that was different from their final paper topic. I required students to complete a service-learning experience with an organization that provided services to women and/or girls, with a preference for placements that included clients who were immigrants, refugees, or English-as-foreign-language speakers. More than a decade earlier, I incorporated a service-learning component into my domestic Women and the Law course. See Mary Pat Treuthart, \textit{Weaving a Tapesty: Providing Context Through Service-Learning}, 38 Gonz. L. Rev. 215 (2003). Finally, I chose to use some film excerpts and visual imagery to try to capture the affective quality of the lives of the women we studied. Excellent resources can be found at the websites for Women Make Movies, \text{http://www.wmm.com/} (last visited Apr. 21, 2009), and the Open Society Institute’s International Women’s Program, \text{http://www.soros.org/initiatives/women/news/gendermontage_20060302} (last visited Apr. 21, 2009).
My primary teaching goal was to expose my students to the actual experiences of real women worldwide. I was interested in familiarizing students with the policy choices that perpetuate or alleviate sex discrimination. I hoped students would appreciate that the law is a powerful tool but with its own shortcomings as well. Finally, I wanted us to explore ways to bring about transformation using a range of approaches, including grassroots activism and collaboration, along with legislation and litigation.

But finding the one book that contained the information I hoped to convey in my Comparative Women’s Rights course remained an elusive quest. The project of constructing a women’s human rights text that could accomplish multiple goals and engage a range of readers seemed unmanageable. Should its focus be on discrete topic areas of particular importance to women across the globe? Should it use the experiences of women in specific regions or countries as examples? What should be the mix of international law principles and domestic solutions? How much background information on feminist theory should be provided? How much exposure to basic international human rights law should be presented? So, it was with equal measures of excitement and trepidation that I ordered a copy of Women’s Human Rights: The International and Comparative Law Casebook (“Women’s Human Rights”) by Susan Deller Ross to consider for adoption as my course book.

Professor Ross has been a faculty member for twenty-five years at the Georgetown University Law Center, where she


11. Apparently, other experienced teachers feel similarly. David Bederman, who teaches international law, states, “If many international law instructors are like myself, the trend is toward selecting one casebook, using this publication’s document supplement, assigning extra materials as necessary, and (perhaps) recommending an introductory reader or treatise on the subject.” Bederman, supra note 3, at 201.

founded the International Women's Rights Law Clinic. Her interest in international legal issues is a natural progression from her Peace Corps experience in Cote d'Ivoire in the late 1960s. She has written numerous books, scholarly articles, and amicus briefs on women's rights issues. Ross is a frequent presenter worldwide on women's human rights issues. As an activist litigator, she has been involved in a number of landmark cases. Her impressive credentials and lengthy commitment to women's rights issues make her an ideal candidate to author a text on international human rights issues.

According to Ross, the first purpose of Women's Human Rights is "to introduce law students to the realities of women's lives and an understanding of how states deny women their most fundamental human rights and freedoms." The book's "second purpose is to give future lawyers the legal tools to change that reality." I was gratified to learn that her goals seemed very much in sync with mine. In addition to law students, Ross anticipates a wider audience for the book including professors, students, and scholars from the United States and other countries in disciplines such as political science, sociology, and anthropology, as well as "lawyers, judges, legislators, and executive branch officials" in Anglophone countries.

Such an expansive mandate would be daunting to any author and demands a logical organizing principle. Although Ross does not reveal her organizing principle to us directly, it seems she has found one, at least initially, by using the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") as a touchstone and evaluative mechanism. Al-

15. See Georgetown Law, supra note 13.
16. Id.
18. Ross, supra note 12, at xxx.
19. Id.
20. Id. at xxx.
21. Id. at xxxi.
though CEDAW is an excellent vehicle for examining the impact of international law on human rights issues affecting women, it may not be the most useful tool for comparative purposes. To remedy this potential deficiency, Ross includes case studies throughout the book that focus on situations in selected countries or on regional approaches to the specific topic areas covered in each chapter.

The book’s companion RossRights website is an invaluable tool that allows the author to provide supplemental information to readers. To attain maximum usefulness, course book websites should be ongoing projects that are updated regularly. The area of human rights is a dynamic field of study, and the opportunity to enhance the basic preprinted course materials with references to new articles and cases seems indispensable. Casebook websites can use password protection to provide a teacher’s manual and sample exams. Also, the existence of a website allows virtually instant contact between the author and readers; it could be designed to incorporate features that allow communication among a global readership. This would be a distinctive contribution to the global feminist human rights discourse.

The first of the book’s fourteen chapters highlights women’s status and CEDAW. It begins with a brief introduction to women’s human rights and then presents factual data on the sta-

24. The RossRights website, an online documentary supplement, is available at http://www.law.georgetown.edu/rossrights/ [hereinafter RossRights]. A chapter-by-chapter bibliography of other pertinent readings would be a helpful resource not only for new teachers, but also for students and researchers. The trend of providing a teacher’s manual to accompany the textbook has been characterized as “nothing short of miraculous” for new teachers. Eric L. Muller, A New Law Teacher’s Guide to Choosing a Casebook, 45 J. LEGAL EDUC. 557, 564 (1995).
25. See, e.g., Matthew Bodie, The Future of the Casebook: An Argument for an Open-Source Approach, 57 J. LEGAL EDUC. 10, 10 (2007) ("[T]he casebook as we know it is probably on its way to extinction. . . . Casebooks can only be updated every so often. They are out of date the moment they are printed.").
26. For a good example of a user-friendly and up-to-date website in the international and comparative law context, see Loyola University Chicago School of Law, The Global Workplace, http://www.luc.edu/law/faculty/globalwork/index.html (companion website for ROGER BLANPAIN ET AL., THE GLOBAL WORKPLACE (2007)).
27. An asynchronous chat room setup or a discussion board posting feature would be useful interactive tools.
28. See Ross, supra note 12, at 1-53.
tus of women at the beginning of the twenty-first century.\textsuperscript{29} The information is culled from a report conducted in 1997-1998,\textsuperscript{30} which required Ross to provide an update in the notes following this selection.\textsuperscript{31} Since the report contains much useful historical information dating back to the ancient world,\textsuperscript{32} it might have been beneficial to excerpt that section of the materials and delete the supposed current look at women, since the report is more than a decade old.\textsuperscript{33}

The provisions of CEDAW are set forth right in the text, which is helpful because it is such a critical part of the chapter.\textsuperscript{34} The trend in casebooks is to provide extra materials that are in the public domain via online links rather than to include that information in the text itself or in an additional, costly printed supplement.\textsuperscript{35} In keeping with this trend, the Ross-Rights website that accompanies this book allows easy access to the plethora of other pertinent documents.\textsuperscript{36}

A real dilemma for Ross is the “mixed audience” situation. One group of readers will come to this material lacking famili-

\begin{footnotes}
\item[29] See id. at 1-11.
\item[31] See Ross, supra note 12, at 10-11.
\item[32] See id. at 5-6.
\item[33] College and graduate students, including some law students, would have been in middle school or its foreign equivalent when this 1997-1998 report was issued. My experience has been that course materials lose credibility when they are perceived by students, however unfairly, to be out-of-date. Apparently, there is a very brief “shelf life” for information among millennial-generation students.
\item[34] Rosalie Matthews, my law student research assistant, observes that Ross does not tell the reader much about CEDAW other than what it states in the actual text of the document. See Rosalie Matthews, Written Comments (Oct. 31, 2008) (unpublished memorandum, on file with its author and Professor Treuhaft). As she notes, students struggling to understand CEDAW might like to know beforehand: 1) “Why do states enter into a treaty such as CEDAW since some of the grossest violators of women’s rights are parties to it?” 2) “Who has the authority to enter into treaties?” 3) “What sanctions, if any, are available against a state that violates, or withdraws from a treaty?” 4) “How do I, as a legal advocate, enforce the provisions of CEDAW against a violation of women’s human rights?” Id. Answers to these questions would allow a better analysis of all conventions and treaties that could apply to women—not just CEDAW.
\item[36] RossRights, supra note 24.
\end{footnotes}
arity with basic principles of international law, having been interested in this book primarily due to its focus on women's rights. Another group may be drawn by its international and comparative perspective as part of a broader study of human rights. Thus, Ross must provide sufficient background information to give a cogent overview to those in the first group while not alienating those with greater knowledge.  

Some exposure to feminist legal theory would benefit a women's studies novice. At the same time, a synopsis of basic human rights law should be included among the introductory materials for those new to the international field. Following the text of CEDAW, Ross supplies an excellent primer on terms and treaty protocols. A reader with international law expertise could easily skip over this material and proceed to the final section in the chapter, a case study on Afghanistan that involves a role play that could be conducted during class or used as a written take-home assignment.  

Chapter 2 explores equality doctrines and gender discrimination through the jurisprudence of the UN Human Rights

37. One challenge this text poses for the reader is immediately apparent and can be attributed to the publisher. Due to the similar style typefaces used, it is nearly impossible to differentiate between the textual excerpted material and the author's notes and questions. I found myself flipping back and forth on a regular basis to try to determine whose writing I was reading. I did not rely exclusively on my failing eyesight for this observation. Rosalie, who is twenty-something, also mentioned to me, unprompted, that she had difficulty distinguishing between author-generated materials and outside source material. See Matthews, supra note 34.  

38. This could take the form of a summary by excerpting material from established sources such as Martha Chamallas, Introduction to Feminist Legal Theory (2d ed. 2003), or Nancy Levit & Robert R. M. Verchick, Feminist Legal Theory (2006). For a more recent law review article that was recommended by students who had taken my spring 2008 Women and the Law course, see Rosalind Dixon, Feminist Disagreement (Comparatively) Recast, 31 Harv. J.L. & Gender 277 (2008). See also Hilary Charlesworth & Christine Chinkin, The Boundaries of International Law 38-61 (2000) (examining whether feminist theoretical approaches add to an understanding of international law).  

39. For a good example of this type of overview, see Berta Esperanza Hernandez-Truyol, Human Rights Through a Gendered Lens, in Women and International Human Rights Law, supra note 6, at 3.  

40. Ross, supra note 12, at 22-23. Although she makes this point later in Chapter 4, it would have been helpful to emphasize the binding nature of international treaties here. See id. at 145.  

41. Id. at 24-53.
Committee and the U.S. Supreme Court. Ross describes the UN Charter, the Universal Declaration of Human Rights ("UDHR"), and the International Covenant on Civil and Political Rights ("ICCPR"). Next, Ross provides a section about the operation of the UN Human Rights Committee and presents two of the Committee's written decisions. This is immediately followed by a lengthy excerpt from the majority opinion in *United States v. Virginia*, where the U.S. Supreme Court determined that the state funded Virginia Military Institute's ("VMI") exclusion of female students violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

This seems to be one of the more problematic chapters in the book. I lost track of any semblance of an organizational scheme that explained the disparate topics selected for review (marital property distribution, gender-based nationality laws, and single-sex education). More important, the VMI case is demanding even for U.S. law students, who typically encounter this case as part of a required constitutional law course. Without an in-depth explanation upfront, this case would likely be incomprehensible to many non-U.S. readers. In the notes following the case, Ross explains the levels of scrutiny used by U.S. courts in reviewing discriminatory classification schemes. It might have been beneficial to situate this information before the case. Regardless of its placement, a neophyte would undoubtedly be compelled to read these notes several times to get a grasp of the doctrinal significance of these levels.

42. See id. at 54-90.
43. See id. at 55.
44. G.A. Res. 217A, supra note 1; Ross, supra note 12, at 55-56.
46. See Ross, supra note 12, at 56-57.
49. See 518 U.S. at 519, 557-58.
50. See id. at 88-90.
of scrutiny. Moreover, a greater explanation of the workings of the U.S. Supreme Court would be essential background reading for those lacking familiarity with U.S. federal constitutional jurisprudence and interpretative methodology.

Law professors, including those who author casebooks, seem to fall into two camps when it comes to the length of case excerpts: 1) those who prefer longer versions; and 2) those who favor more succinct presentations. The inclusion of lengthier case selections allows the book to be more self-contained, permits greater appreciation for the court's language, and provides a more thorough examination of the legal principles at issue. Ross falls into the "more is more" group, although at twenty-plus pages, the VMI case is longer than most of the others in the book.51 I typically prefer shorter excerpts, because it is relatively easy for me as the professor to request law students who have internet access to read the whole case if I believe it is advisable for them to do so.52 In fact, I would have edited most of the cases in this book more heavily and included lengthier introductory sections, more transitional material, and additional author-generated analyses after the readings.

Chapter 2 concludes with a suggestion that human rights advocates urge judicial adoption of heightened standards of review when "they prepare equal protection lawsuits in different countries."53 This is excellent general advice, since constitutional litigators must be willing to take risks and extrapolate from existing law. A concrete example where this approach has been used successfully outside Anglophone legal systems would have been instructive here.

Chapter 3 contains a highly useful introduction that highlights the similarities, differences, and interrelationship between the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ICCPR.54 To provide additional context for the narrative information in this section, Ross reminds the reader that the RossRights website has links to

51. See id. at 67-88.
52. It is more difficult to request that students read only parts of a case, when they have a larger segment in front of them.
53. Ross, supra note 12, at 90.
54. See id. at 91-93.
pertinent documents.55 This is an ideal way to take advantage of the website accompanying the course book. Additional references to RossRights appear throughout Chapter 3.56

Ross’s review of sex discriminatory social insurance regulations designed to provide income security is a creative way to examine the different economic statuses of men and women. Ross chooses two cases originating in the Netherlands to make this point, which she does effectively.57 The cases selected here also demonstrate the connection between the two major U.N. Covenants—the ICESCR and the ICCPR—as well as the connection between domestic law and the protections provided by international law.58

Ross intends for the other cases in Chapter 3 to be used to evaluate the “Human Rights Committee’s Evolving Equal Protection Doctrine.”59 Some transitional material might have explained the topic areas she chooses—women’s exclusion from jury service in Mauritius60 and exemption from taxation schemes in the Netherlands61—to serve as examples of the Committee’s shifting approach. Since a number of countries do not use a lay jury system, Ross’s reference to the discriminatory use of gender-based peremptory challenges in the United States seems a tad obscure without more information.62

The notes and questions in this section vacillate between provocative, richly textured inquiries and very basic “conversation-starter” type overtures. An example of the latter is set forth after the first Netherlands case,63 which involved a presumption that men were “breadwinners” and automatically en-

55. See id. at 91.
56. See, e.g., id. at 93, 103, 107.
58. See id. at 93-107.
59. Id. at 91.
60. Id. at 107.
61. Id. at 110.
62. See id. at 109-10.
63. See id. at 101-03.
titled to unemployment benefits whereas women were not.\textsuperscript{64} The notes pose the questions: "Do you earn more than 75% of family income? Does your spouse?"\textsuperscript{65} Although these inquiries could be taken to the next level and include a discussion of personal perspective or even bias in the courts or in legislative pronouncements, the author lays it out without indicating how answering these questions might be used pedagogically. However, the chapter ends with an intriguing case study from the Philippines that connects the various themes set forth earlier.\textsuperscript{66}

The conflict between freedom of religion and women's right to equality under the law is the subject of Chapter 4.\textsuperscript{67} The initial article excerpt by Courtney W. Howland examines the tenets of five major world religions (Buddhism, Christianity, Hinduism, Islam, and Judaism) and explores the fundamentalist beliefs surrounding women's duty of submission and obedience to men.\textsuperscript{68} Ross intersperses text from international instruments throughout excerpts from the Howland piece.\textsuperscript{69} In her article, Howland draws a comparison between slavery, which was accepted by the international religious community for centuries but finally rejected, and the subordination of women, which is seemingly still acceptable.\textsuperscript{70} Ross also presents a case study from France concerning the restriction on wearing religious clothing, including head coverings, to school.\textsuperscript{71} The chapter closes by noting the Supreme Court case that introduces the First Amendment's guarantee of the free exercise of religion, a complex subject to cover in a page and a half.\textsuperscript{72} Overall, the questions posed in Chapter 4 are far more probing than those in the previous chapter and should provide ample opportunity for a stimulating class discussion.

\textsuperscript{64} See id. at 93-101.
\textsuperscript{65} Id. at 102.
\textsuperscript{66} Id. at 112.
\textsuperscript{67} See id. at 115-52.
\textsuperscript{69} See e.g., id. at 134-36 (discussing the UN Charter and the UDHR).
\textsuperscript{70} See Howland, supra note 68, at 362, reprinted in Ross, supra note 12, at 138-39.
\textsuperscript{71} See Ross, supra note 12, at 144-45.
\textsuperscript{72} Id. at 151-52 (citing Employment Div. v. Smith, 494 U.S. 872 (1990)).
Chapters 5 and 6 both deal with regional human rights systems. Chapter 5 examines two different schemes, one in the Americas and the other in Africa. The section on Africa includes cases about land rights, which women may obtain through marriage, divorce, inheritance, state allocation, and purchase. Since the passage of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in 2005, the African system has real potential to implement changes that have a positive effect on women's lives. The vitality of the American Convention on Human Rights is less clear; neither Canada nor the United States has ratified this treaty. This would have been an appropriate place to discuss the United States' attitude toward the Inter-American Commission and the Inter-American Court, which seem at odds with Ross's more positive overall assessment. If major players

73. See id. at 153-97, 198-243.
74. Id. at 153-66.
75. Id. at 167-97.
76. Id. at 187-91.
in the region, such as the United States, are equivocal or somewhat hostile toward the human rights structure, this has an impact on the area’s other countries as well.

The focus of Chapter 6 is Europe,\textsuperscript{82} which has the oldest and most sophisticated regional human rights structure.\textsuperscript{83} Since the European Convention for the Protection of Human Rights and Fundamental Freedoms\textsuperscript{84} is the premier regional human rights system, it deserves to be presented first and placed front and center in the preceding chapter. The European Convention has provided the basis for more than ten thousand decisions by the European Court of Human Rights since it began full-time operations in 1998.\textsuperscript{85} Ross acknowledges that this court has “significantly expanded women’s rights.”\textsuperscript{86}

Ross has a myriad of European legal issues to choose from, and she initially selects gender-based immigration laws in the United Kingdom\textsuperscript{87} and divorce laws in Ireland for her discussion.\textsuperscript{88} Nestled between these two topics is a useful drafting exercise on gender-neutral legislation.\textsuperscript{89} The legal issues in the other cases she selects in this chapter—the imposition of a fire service tax levy on German men but not on women\textsuperscript{90} and sur-

\textsuperscript{82} See Ross, \textit{supra} note 12, at 198-243.


\textsuperscript{84} Nov. 4, 1950, 213 U.N.T.S. 221.


\textsuperscript{86} Ross, \textit{supra} note 12, at 202. Ross also notes that Europe “lagged behind the world on equal rights for women, both in marriage and in general.” \textit{Id.} at 232. Equal marriage rights in Europe came to fruition in 1988. \textit{Id.} An end to sex-based discrimination otherwise was the result of an optional protocol that was entered into force in 2005. \textit{Id.}


\textsuperscript{89} See \textit{id.} at 210.

name options in Switzerland\textsuperscript{91} and the United States\textsuperscript{92}—seem less significant than other possible gender concerns. More detailed prefatory material to introduce each new subject area would shed more light on the text’s organizing principle. It might be that Ross is highlighting a range of different topics to show the breadth of human rights concerns that may affect women worldwide, in which case she accomplishes her goal.

Chapters 7 and 8 are concerned with economic and employment issues that may have a disparate impact on women.\textsuperscript{93} In introducing Chapter 7, Ross presents the reality of most women’s lives in the workplace—being situated in the lowest paying jobs, rarely attaining management positions, and forming a disproportionate share of part-time workers.\textsuperscript{94} To remedy the situation, Ross proposes that countries adopt anti-discrimination laws that would “help lift women from poverty.”\textsuperscript{95} As a common theme throughout the book, Ross believes that if advocates strive for adequate laws to protect women, represented in this chapter as workers, they can “make giant strides towards women’s economic empowerment.”\textsuperscript{96} The U.S. experience suggests that her trust is sometimes misplaced.\textsuperscript{97} Even with legislation, actual implementation is a privilege that many women in the world do not have.

As both of these chapters concentrate primarily on paid employment in the labor force, this material might have been


\textsuperscript{93} See id. at 244-84, 285-325.

\textsuperscript{94} See id. at 244-45.

\textsuperscript{95} Id. at 244.

\textsuperscript{96} Id. at 245.

culled, combined, and condensed.98 Greater focus could have been placed on maquiladoras or work as domestics.99 This would also allow room for a separate section on women’s economic development, which is a more current topic affecting a growing number of women across the globe.100

Throughout the discussion on women and the workplace, there was a missed opportunity to pay greater attention to the fact that women’s human rights concerns in the North are different and distinct from those of women in the South.101 It has been observed that as more women in the North participate in the wage labor market, women in southern countries bear the burden.102 For example, many affluent women who work outside the home are still expected to shoulder most domestic

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98. The opening sections of Chapter 7 concern the United Kingdom’s prohibitions on males practicing midwifery and females holding jobs with guns. See Comm’n of the European Comms. v. United Kingdom, 1983 E.C.R. 3431 (1983), reprinted in Ross, supra note 12, at 247-50; Johnston v. Chief Constable, 1986 E.C.R. 1651, 1676-89 (1986), reprinted in Ross, supra note 12, at 252-61. Employment discrimination based on gender is a human rights issue; however, there may be more compelling examples to introduce the topic. For example, there used to be “help wanted” ads in Russian newspapers that “openly demanded that all female applicants be tall with long legs, blond hair, blue eyes, and included the phrase ‘bez komplexa’ which means without complexes. Without complexes roughly translates into ‘willing to sleep with the boss.’” Roundtable Discussion, Markets and Women’s International Human Rights, 25 BROOK. J. INT’L L. 141, 148 (1999) (remarks of Martina Vandenberg, Europe Researcher, Women’s Rights Division, Human Rights Watch).

99. Human Rights Watch has documented a pattern of abuses against domestic workers all over the world, with the majority of these countries having protective legislation in place. See VIRGINIA N. SHERRY, HUMAN RIGHTS WATCH, BAD DREAMS: WORK EXPLOITATION AND ABUSE OF MIGRANT WORKERS IN SAUDI ARABIA (2004), available at http://www.hrw.org/sites/default/files/reports/saudi0704.pdf. In Saudi Arabia for example, workers are often forced to work sixteen-hour days, forbidden to leave the house without their employer, and without legal status since their employers confiscate all passports and visas. See id. at 2, 47, 51.

100. See, e.g., Nadia Youssef, Women’s Access to Productive Resources: The Need for Legal Instruments to Protect Women’s Development Rights, in WOMEN’S RIGHTS, HUMAN RIGHTS, supra note 6, at 279.

101. This so-called North-South divide is not strictly geographic but refers to the differences between developed and developing countries. In feminist parlance, the terms Western Feminism and Third World Feminism are sometimes used, although the former might be synonymous with “white, middle class,” while the latter would be sufficiently broad to encompass women of color in the United States. See CHANDRA TALPADE MOHANTY, FEMINISM WITHOUT BORDERS 44-47 (2003).

duties in the home, which results in "Northern women’s reproductive labor [being] transferred to women migrants working as domestics, whose reproductive labor is in turn shifted to family members or poor women at home." How might Ross handle the promotion of women’s human rights if one group of women suffers for the betterment of the other?

Chapter 8 also addresses the tension between the responsibility of caring for children and the demands of the workplace. Ross fittingly chooses to center on the “Equal Treatment Versus Special Treatment” theoretical debate. Using the United States as a point of reference in this area is perplexing because other countries have more generous parental leave policies, at least on paper. It might be more helpful to focus on so-called “best practices” rather than on “failed practices” or “compromised practices,” which describe the American experience with attempts to pass the Family and Medical Leave Act. Ross brings the discussion to a close by including a case study set in Poland to examine and critique proposed legislation from the vantage point of a national women’s rights organization. The bill promotes childbirth and assists working


104. See Ross, supra note 12, at 285-325.

105. See id.

106. Saul Levmore, Parental Leave and American Exceptionalism, 58 CASE W. RES. L. REV. 203, 204 (2007) (observing that most U.S. employees on parental leave will have their job “protected,” but leave is unpaid and only for a single twelve-week period that must be taken within twelve months of an adoption, birth, or other serious matter). In Sweden, on the other hand, employees’ jobs are not only protected, but paid for up to “390 days at 80% pay (up to a ceiling) for birth parents.” Id. at 204-05. “Norway offers the parent-employee a choice of forty-four weeks at 100% pay or fifty-four weeks at 80% pay.” Id. at 205. “Italy offers 80% pay for five months.” Id. “In the United Kingdom, there are six weeks of 90% paid leave . . . .” Id.

107. 29 U.S.C. §§ 2601-2654 (2000). The bill was first introduced in 1985 to provide for “18 weeks of parental leave in any two-year period and 26 weeks of maternal disability leave in a one-year period.” Arielle Horman Grill, The Myth of Unpaid Family Leave: Can the United States Implement A Paid Leave Policy Based on the Swedish Model? 17 COMP. LAB. L.J. 373, 373 n.3 (1996). “The bill was reintroduced numerous times; a version providing 12 weeks of unpaid leave finally passed Congress in 1990 but was vetoed by President Bush.” Id. “[I]t was not until the Clinton Administration that the need for a parental leave policy was recognized by both the legislative and executive branches.” Id. at 373.

108. See Ross, supra note 12, at 324-25.
mothers by granting paid leave, pension adjustments, and subsidized child care. The specific questions posed by Ross should permit respondents to examine the ramifications of this legislation from multi-layered perspectives.

In Chapter 9, Ross returns to the CEDAW framing device that she used successfully earlier. Here, she begins the chapter, titled CEDAW in Practice, by presenting a case study from Egypt on women's subordination in marriage and the intersection of Shari'a (Islamic religious law) and civil law. Ross uses cases, article excerpts, and reports to the CEDAW Committee as a means to assess Egypt's compliance with CEDAW. The chronological sequence of events works nicely to demonstrate the challenges of reporting countries and the CEDAW Committee. Throughout this section, Ross points out the difficulties and delays in the CEDAW reporting and monitoring process. The chapter ends on a strong note by examining ways that CEDAW can be used in domestic litigation and legislation.

This final section creates a bridge to Chapter 10, which continues these themes. Chapter 10 investigates the interpretive methodology of domestic courts in different legal systems and examines the incorporation of international law precepts into decision making—in keeping with the Bangalore principles' hierarchy of law applicable to common-law countries.

The question whether it is proper for American judges to refer to international law principles and comparative foreign legal experiences has produced markedly different responses

109. Id. at 325.
110. See id.
111. See id. at 326-68. See also supra notes 22-23, 28-34 and accompanying text.
112. See id. at 326-51.
113. See id.
114. See, e.g., id. at 343.
115. Id. at 357-68.
116. See id. at 369-408.
117. Id. at 376-78. Justice Ruth Bader Ginsburg, then a Court of Appeals Judge, attended the 1988 Bangalore Conference. Tai-Heng Cheng, The Universal Declaration of Human Rights: Is it Still Right for the United States?, 41 CORNELL INT'L L.J. 251, 296 (2008). Cheng further observes that "[i]t may be more than coincidence that Justice Ginsberg subsequently authored Supreme Court opinions that looked to international sources to interpret ambiguous federal law. Id."
among the Justices on the U.S. Supreme Court. Ross does not get mired in this U.S. controversy; instead, she chooses to examine the varying approaches taken by other jurisdictions in dealing with principles of international law in legal argumentation and judicial decisions. A case study set in Ghana at the end of this chapter allows students to explore possible options to challenge gender discriminatory practices such as bride price, widow inheritance, child marriage, and female religious bondage.

Chapters 11 through 14 examine four different issues that are of particular concern to global feminists: 1) domestic violence including “honor” crimes; 2) female genital mutilation and foot binding; 3) polygyny; and 4) reproductive rights. In the context of these discrete subject areas, Ross takes the opportunity to explore other matters that have a bearing on the specific topic. For example, in Chapter 11, Ross looks at the theoretical and practical aspects of holding the state responsible under international law for the actions of private parties who are directly responsible for inflicting violence. She also includes international and regional instruments that condemn domestic violence, and she uses the RossRights website to provide additional information, such as the agonizing tale of a Hungarian woman whose attempts to stop the violence inflicted

118. See, e.g., The Relevance of Foreign Legal Materials in U.S. Constitutional Cases: A Conversation between Justice Antonin Scalia and Justice Stephen Breyer, 3 INT'L J. CONST. L. 519 (2005). Justice Breyer contended that foreign law may be relevant, although not binding, on U.S. Supreme Court decisions. See id. at 523-24. Justice Scalia, on the other hand, argues that it is inappropriate to use foreign legal materials in interpreting U.S. constitutional law issues. See id. at 521, 525.
119. See Ross, supra note 12, at 369-408.
120. See id. at 406-08.
121. See id. at 409-60.
122. See id. at 461-511.
123. See id. at 512-70.
124. See id. at 571-637.
125. See id. at 426-49.
by her husband were repeatedly rebuffed by the Hungarian courts.127

In Chapter 12, Ross presents the specific issues of female genital mutilation ("FGM") and foot binding against the backdrop of the larger question of the universality of women's human rights and cultural relativism.128 She draws upon the early twentieth century movement to eliminate the foot binding of young girls in China to ascertain whether there is applicability to more recent activism against the practice of FGM.129 After reviewing the attempts to use the force of law to prohibit FGM, Ross offers the 1990s Ghanaian experience as an example of the enactment of specific laws banning the practice of FGM.130 Heightened awareness of the dangers of these practices, other options for rites of passage, and advocacy by women from the region who have undergone the procedure themselves have the greatest potential to eradicate FGM.131

127. See Ross Rights, supra note 24.
128. See Ross, supra note 12, at 461-511. The newspaper story featuring Waris Dirie is a horrific tale of a real-life FGM procedure. See Lorna Martin, Waris Dirie is the Desert Flower Who Rebelled Against the Might of Somali Ritual. And for This Beautiful Warrior, the Fight is Just Beginning, The Herald (Glasgow), June 29, 2002, at 22.
129. See Kathryn Sikkink, Historical Precursors to Modern Campaigns for Women's Human Rights: Campaigns Against Footbinding and Female Circumcision, in 3 Women and International Human Rights Law, supra note 6, at 797, 798-807, reprinted in Ross, supra note 12, at 482-86.
131. See Julie Dimauro, Toward A More Effective Guarantee of Women's Human Rights: A Multicultural Dialogue in International Law, 17 Women's Rts. L. Rep. 333, 340 (1996) ("These regional associations are in the best position to educate the women and men, community leaders, health workers, traditional birth attendants, students, and policy makers who either participate in FGM, perpetuate the practice, or have the means to create or enforce local laws against it. Local advocates can inform their communities about the complications of FGM, educate their fellow citizens about female sexuality and reproduction, and hold people accountable for violating local (and often long-ignored) legislation prohibiting the practice."); Jennifer J. Rasmussen, Innocence Lost: The Evolution of a Successful Anti-Female Genital Mutilation Program, 41 Val. U. L. Rev. 919, 953 (2006) (highlighting two successful anti-FGM programs: "Care International . . . which focuses on informal workshops and training sessions on health issues . . . and [at] through the use of participatory educational approaches . . . avoided alienating those they are attempting to reach, leading to such concepts as uncircumcised weddings, and
Polygyny, a form of polygamy where the husband has multiple wives, is investigated in Chapter 13 and, according to Ross, "raises the most intractable of conflicts—that between women's right to equality in marriage and the rights to freedom of religion and culture." In many respects, this is a well-constructed chapter with interesting cases and gripping article excerpts, such as the Meekers and Franklin article on perceptions of tribal women in Tanzania about the issue of multiple wives and the piece taken from Judge Richard Posner's book, Sex and Reason.

The clash between women's equality issues and religion was explored previously in Chapter 4. Women's subordination in marriage was addressed, in part, already in Chapter 9. Although Ross is making different points in all of these chapters, it might have been preferable to have one chapter focused on women's equality issues as affected by religious practices and another on women's equality issues in terms of marriage or intimate relationships. Chapter 13's polygyny materials could have been placed in either of these two new chapters. Given the range of potential topics to be covered in a women's human rights text, the theme of religion, however important, seems to have been given undue attention.

alternative rights [sic] of passage emphasizing positive cultural rituals. . . . . [and] Tostan. . . . . [through which] villagers set goals and determine which obstacles to overcome, thus allowing them to decide that the practice of FGM is no longer required."). But see Mike Crawley, Africa Spurns Female Circumcision, Christian Sci. Monitor, Apr. 5, 2005, World, at 6, available at http://www.csmonitor.com/2005/0405/p06s01-woaf.html ("Campaigners have tried for decades to bring an end to FGM. But their tactics of providing alternative employment to the circumcisers, introducing alternative rites of passage for girls, or demanding legislation to outlaw the practice have all failed to make a dent . . . .").

132. See Ross, supra note 12, at 512-70.
133. Id. at 512.
136. See discussion supra notes 67-72 and accompanying text.
137. See discussion supra notes 111-15 and accompanying text.
138. A separate chapter on marriage and family could also address the child marriage issue set forth in Chapter 14. See Ross supra note 12, at 630.
139. Another dispute I have with Chapter 13 concerns the note questions regarding the impact of Lawrence v. Texas, 539 U.S. 558 (2003), on laws prohibiting
Chapter 14 is the final chapter, and it covers reproductive rights,\textsuperscript{140} which Ross describes as "the most controversial of all women's rights."\textsuperscript{141} Under any circumstances, reproductive rights are viewed by many feminists as the quintessence of sex equality.\textsuperscript{142} Ross notes that "[n]o international treaty specifically mentions abortion."\textsuperscript{143} Anti-abortion groups have seized CEDAW's mention of a right to family planning to advocate against U.S. ratification of that treaty.\textsuperscript{144} Ross does an excellent job looking at various aspects of the abortion debate,\textsuperscript{145} and she again makes good use of the RossRights website in this area.\textsuperscript{146} Greater emphasis on developments in locales that have changed their abortion policies to make them either more restrictive—Poland\textsuperscript{147}—or less restrictive—Mexico City\textsuperscript{148}—would have been a welcome addition.

polygamy. \textit{See} Ross \textit{supra} note 12, at 531-32. In \textit{Lawrence}, the U.S. Supreme Court overturned the criminal sodomy convictions of two gay men. 539 U.S. at 579. Justice Scalia, in his dissenting opinion, draws a connection between the result in \textit{Lawrence} and society's future inability to engage in line-drawing on legal issues that have some sort of moral implications. \textit{Id.} at 589-90, 603-05 (Scalia, J., dissenting). His view may not be widely shared in the U.S. legal community. It would be challenging pedagogically to place the \textit{Lawrence} decision in a context where it could be fully appreciated by those lacking familiarity with complex Fourteenth Amendment substantive due process issues. It does not necessarily facilitate matters to link this question back to the VMI case, United States v. Virginia, 518 U.S. 515 (1996), or forward to Bhewa v. Mauritius, [1991] LRC (Const) 298, as Ross attempts to do. \textit{See} Ross, \textit{supra} note 12, at 532. As a result, these note questions should probably be deleted entirely.

\textbf{140.} \textit{See} Ross, \textit{supra} note 12, at 571-637.

\textbf{141.} \textit{Id.} at 571.


\textbf{143.} Ross, \textit{supra} note 12, at 589.

\textbf{144.} Letter from Douglas Johnson, Legislative Director-National Right to Life Committee to members of the U.S. Senate (Feb. 1, 2007), \textit{available at} http://www.nrlc.org/Federal/ForeignAid/SenateCEDAWletter020107.html (stating, with regard to CEDAW, that "a vote in favor of a ratification resolution is a vote in favor of all of these sweeping pro-abortion policies . . . ").

\textbf{145.} \textit{See} Ross, \textit{supra} note 12, at 573-621.

\textbf{146.} \textit{See} RossRights, \textit{supra} note 24.

\textbf{147.} Poland has severely restricted access to abortion; however, underground private abortion services are flourishing along with so-called "tourism" abortion, whereby Polish women travel to nearby countries to obtain services. \textit{See} Janessa L. Bernstein, \textit{The Underground Railroad to Reproductive Freedom: Restrictive Abortion Laws and the Resulting Backlash}, 73 \textit{Brook. L. Rev.} 1463, 1504 (2008).
Reproductive rights and health concerns unique to a woman’s ability to bear children make this a broader topic area than abortion. An exploration of related problems such as maternal mortality rates, access to contraception, and HIV/AIDS transmission would have enhanced this section. Finally, Ross finishes with a look at child marriage and the risks of early pregnancy and childbirth, which are unacknowledged human rights issues. In concluding her discussion of this issue, Ross provides an excerpt from a UNICEF article that poignantly and aptly captures the denial of self development that results from adolescent pregnancy.

The book ends rather abruptly. After making the commitment to read and study 650-plus pages, readers expect a few conclusory remarks that would have tied together the various themes in the book or, at least, those themes in this final chapter.

Ross, like any author covering a voluminous area, was required to pick and choose from a plethora of possible subjects. Are there any glaring omissions? A couple of topics immediately come to mind: sex trafficking and the impact of armed conflict on women and girls.


150. Ross does mention prenatal sex-selection, an issue that has important longer-term ramifications for men and women, especially in China. See Ross, supra note 12, at 620-29. The potential impact of assisted reproductive technology (ART) is attracting attention in the United States as well. See Monica Sharma, Twenty-First Century Pink or Blue: How Sex Selection Technology Facilitates Gendercide and What We Can Do About It, 46 FAM. CT. REV. 198, 198 (2008) (“But many women are now turning to ART not just to circumvent infertility, but consciously to shape their families by determining the sex of their children. . . . [S]ex selection has led to a significant and growing gender imbalance in the world population.”).

151. See Ross, supra note 12, at 630-37.


153. Rosalie observed: “While Ross does an excellent job of attempting to cover a wide-range of rights, many of which have been overlooked as human rights (i.e., right for a woman to keep her surname), she unfortunately leaves out some of
 Trafficking for the purpose of enslaving women in sex work is characterized as "one of the oldest and most heinous violations of women's rights." Perhaps Ross believes that issues such as sex trafficking are beyond the reach of the law. Sex trafficking is the "second fastest growing criminal activity in the world," generates an estimated profit of nine billion dollars a year, and involves women from all socioeconomic and national backgrounds. Even those women who are unlikely to be victims of sex trafficking should be informed of its prevalence. Exposure to the inefficacy of international and domestic anti-trafficking laws teaches an important lesson about the inability of the legal system to address human rights violations in every case.

The impact of armed conflict affects men and women differently. Women are increasingly the civilian casualties of war. Throughout history, women have been raped 1) in the aftermath of war because it was a privilege belonging to the male victors; 2) by individual soldiers committing random acts of sexual violence; and 3) as part of an organized tactic of terrorism. Examining the issue of sexual violence during armed conflict would also provide the chance to examine the efficacy of ad hoc criminal tribunals.

So, did Ross achieve her stated goals of 1) introducing law students to the realities of women's lives; 2) providing an understanding of how states deny women their most fundamental human rights and freedoms; and 3) giving future lawyers the legal tools to change that reality?

Ross's goal to bring to life the stories, struggles, and successes of real women corresponds to one of my primary teaching

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the most violent and destructive violations of women's rights." Matthews, supra note 34.


155. Id. at 876.

156. See id. at 855, 876.


158. Karen Parker, Human Rights of Women During Armed Conflict, in 3 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, supra note 6, at 283, 283-85.

159. See MACKINNON, supra note 7.

160. Ross, supra note 12, at xxx.
objectives. The realities of women's lives vary dramatically, so this aim is a complicated one and should take into account the circumstances of the students in the course whose characteristics and experiences, while more similar to those of their classroom colleagues, are not identical either. Ross has created a unique opportunity here to use technology to enhance the teaching and learning environment; however, she needs to embrace it further. With the breadth of coverage she provides, though, Ross certainly allows the reader to understand the countless ways that women are deprived of their basic human rights by governments across the globe.

Does the book give law students the legal tools to effectuate change? Perhaps an actual law student's perspective would prove useful here:

Ross's book presents a challenge for readers—you have to really work to read through complex statutes, articles and lengthy cases. But when a student accomplishes this task, not only is she learning how the law affects women on a general (or at least mainstream) level, she learns how to pull the law from more than just one source, and apply the approach, or argument, or holding that will be most helpful in the particular situation. Ross presents a "no nonsense" guide to women's international law; she does not hold her reader's hand throughout the book. Instead, for a student serious about international law, Ross does this person a favor because the text is presented in much the same way as international law itself: viewed against the background of culture, complex and always evolving, and measured by a series of treaties, conventions, and domestic laws—while in reality, the effectiveness of the law to promote women's human rights is often not easy to document; it often takes

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161. For example, one of the highlights of the RossRights website is a transcript of an interview with a Muslim scholar. See RossRights, supra note 24. See also Interview by Bill Moyers with Azizah al-Hibri, Professor, Richmond School of Law, NOW with Bill Moyers (PBS television broadcast Feb. 15, 2002). RossRights could easily provide photos, video clips, links to podcasts, and more richly, textured and lengthier role plays and case studies. A bibliography and filmography could also be developed to correspond to the various topic areas.
place behind the scenes and away from formal legal discourse and study.\textsuperscript{162}

It is intriguing that Ross’s final goal concentrates so exclusively on the development of legal tools for transformation. Yes, she is a lawyer, but her target audience is not only those who are legally trained. As the above student commentary suggests, even law students will quickly recognize that legal change alone is not enough. They should also appreciate “that women’s human rights issues need to be addressed through multiple avenues in order to challenge and change legal institutions, political and economic practices, and social, cultural, and religious norms.”\textsuperscript{163} Although legal change is an essential aspect of global feminist activism, it must operate in conjunction with other strategies that have proven successful such as training, support, education, networking, and integration.\textsuperscript{164} It is this collaborative approach to women’s human rights advocacy that has the greatest probability of success in the twenty-first century. And lawyers can, and should, be an integral part of that movement.

\begin{itemize}
\item \textsuperscript{162} Matthews, \emph{supra} note 34.
\item \textsuperscript{163} Brooke A. Ackerly, \textit{Universal Human Rights in a World of Difference} 279 (2008).
\item \textsuperscript{164} \textit{Id.} at 278.
\end{itemize}