

THE SUBTLE SIDE OF SEXISM

DEBORAH L. RHODE*

Sexism is not a term often encountered in polite company. In conventional usage, it conveys discrimination based on sex and seems to require some conscious action. Yet there is also a subtle side of sexism: a cluster of social expectations and practices that reinforce sex-based inequality. They are the focus of discussion here, particularly as they affect the everyday lives of even well educated and economically privileged women, including those in the legal profession.¹ This focus is important, neither because sexism has no effect on men nor because these women bear the greatest costs of gender inequality. Rather, this emphasis is important because privileged women often have the greatest resources and incentives to challenge such inequality. Making those who occupy positions of influence more aware of unintentional biases and subtle sexism is a necessary step in the creation of a just society.

We are still a considerable distance from that goal. We see women so frequently in positions of power and in non-traditional occupations that we lose track of where they are absent as well as the dynamics that might explain why. The statistics are sobering. In the United States, women are a majority of the electorate but hold only a quarter of upper-level state governmental positions and sixteen percent of congressional seats.² More than half of college graduates but less than a quarter of full professors and a

* Deborah L. Rhode is the Ernest W. McFarland Professor of Law and the founding director of the Center on Ethics at Stanford University. She is the former president of the Association of American Law Schools, the former chair of the American Bar Association's Commission on Women in the Profession, and the former director of Stanford's Institute for Research on Women and Gender. She writes primarily in the area of legal ethics and gender equity and is the author or editor of nineteen books. Those on gender include *WOMEN IN LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE* (with Barbara Kellerman, forthcoming 2007); *THE DIFFERENCE "DIFFERENCE" MAKES: WOMEN AND LEADERSHIP* (2003); and *SPEAKING OF SEX* (1997).

¹ This discussion draws on Deborah L. Rhode & Barbara Kellerman, *Women in Leadership*, in *WOMEN IN LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE* (Barbara Kellerman & Deborah L. Rhode eds., forthcoming 2007).

² CTR. FOR AM. WOMEN & POL., *ELECTION RESULTS SHOW ADVANCES FOR WOMEN* 1 (2006); CTR. FOR WOMEN IN GOV'T & CIV. SOC'Y, *WOMEN IN STATE POLICY LEADERSHIP, 1998-2005*, at 1 (2006).

fifth of college presidents are female.³ In management, women account for about a third of M.B.A. classes, but only two percent of Fortune 500 CEOs, six percent of top earners, eight percent of top leadership positions, and sixteen percent of board directors and corporate officers.⁴ In law, women constitute about half of new entrants to the profession, but less than a fifth of law firm partners and Fortune 500 general counsels, and less than a third of federal judges and law school deans.⁵ The gap widens for women of color, who account for only about four percent of congressional legislators, three percent of full professors, and one to two percent of corporate officers, top earners, law firm partners, and general counsels.⁶ The leadership pipeline plainly leaks; women are lost at every stage.

There are also significant disparities in how women and men structure much of their non-working lives. As subsequent discussion notes, women spend significantly more time than men on caring for their families and on their personal appearance. These disparities are generally attributed

³ NAT'L CTR. FOR EDUC. STAT., 1993-1994 THROUGH 2003-2004: INTEGRATED POSTSECONDARY EDUCATION DATA SYSTEM FALL STAFF SURVEY 295 tbl.243 (2005); *The Chronicle Survey of Presidents of 4-Year Colleges*, CHRON. HIGHER EDUC., Nov. 4, 2005, at 38.

⁴ CATALYST, 2005 CENSUS OF WOMEN CORPORATE OFFICERS & TOP EARNERS OF THE FORTUNE 500 (2005), available at http://www.catalyst.org/knowledge/titles/title.php?page=cen_WOTE02 [hereinafter 2005 CENSUS]; EEOC, GLASS CEILINGS: THE STATUS OF WOMEN AS OFFICIALS AND MANAGERS IN THE PRIVATE SECTOR (2004); ALLIANCE FOR BD. DIVERSITY, WOMEN AND MINORITIES ON FORTUNE 100 BOARDS (2005), available at <http://www.catalystwomen.org/files/full/ABD%20report.pdf>.

⁵ Paula Patton, *Women Lawyers: Their Status, Influence, & Retention in the Legal Profession*, 11 WM & MARY J. WOMEN & L. 173, 174 (2004); A.B.A. COMM'N ON WOMEN IN THE PROF., A CURRENT GLANCE AT WOMEN IN THE LAW 2006, at 1 (2006); ASS'N AM. L. SCH., STATISTICAL REPORT ON LAW SCHOOL FACULTY & CANDIDATES FOR LAW FACULTY POSITIONS (2004-2005), available at http://www.aals.org/statistics/0405/html/0405_T4B_tit.html.

⁶ For Congress, see CTR FOR AM. WOMEN & POL., WOMEN OF COLOR IN ELECTIVE OFFICE 2007: FACT SHEET (2007). For professors, see NATIONAL CENTER FOR EDUCATION STATISTICS, U.S. DEP'T OF EDUC., POSTSECONDARY INTEGRATED DATA SYSTEM tbl.228 (2001). For corporate officers, see Lisa Takeuchi Cullen, *Pathways to Power: Race, Gender, & Work*, TIME: INSIDE BUSINESS, Dec. 2005, at A3. For lawyers, see ELIZABETH CHAMBLISS, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION (2005); NAT'L ASS'N OF L. PLACEMENT, WOMEN & ATTORNEYS OF COLOR AT LAW FIRMS (2004). Given that women of color constitute eighteen percent of college undergraduates, their under-representation at leadership levels assumes additional significance. See *Chronicle Almanac, 2006-07: College Enrollment by Racial Ethnic Group, Selected Years*, 53 CHRON. OF HIGHER EDUC. 1, 15 (2006-2007), available at <http://chronicle.com/weekly/almanac/2006/nation/0101503.htm>.

not to sexism but to personal preference. However, discussions of women's "different choices" too frequently miss or marginalize the costs that those choices carry and the extent to which they are socially constructed and constrained.

Accordingly, this Article begins with an overview of gender differences in employment decisions. A wide variety of research finds that women are more likely than men to leave the paid labor force or to reduce their participation. Subsequent discussion explores some of the factors that explain women's choices to opt out and limit the opportunities for those who remain. First, gender stereotypes and unconscious bias concerning female competence and appropriately feminine behavior constitute significant barriers, particularly to leadership positions. Gender bias in mentoring and support networks and gender disparities in family responsibilities also perpetuate employment inequalities. Analysis then turns to sex-based differences in standards of appearance, the burden that they impose in everyday life, and the complex interrelationship between societal pressure and individual choice. Subsequent discussion explores the limits of law in challenging gender bias. The Article concludes by suggesting strategies for addressing the subtle side of sexism at individual, institutional, and societal levels.

I. INDIVIDUAL CHOICE IN WORKPLACE CONTEXTS

The most common and, perhaps, most convenient explanation for women's under-representation in positions of the greatest power, status, and financial rewards has nothing to do with prejudice and everything to do with preference. The assumption is that women are choosing to opt out of full-time professional work or leadership tracks.⁷ A cover story in the *New York Times Magazine* captured widely held views. In Lisa Belkin's account of the "opt-out revolution," women are more frequently underrepresented in leadership positions because "women are rejecting the workplace," not because "the workplace has failed women."⁸ "Why don't women run the world?" asks Belkin. "Maybe it's because they don't want to."⁹

⁷ Lisa Belkin, *The Opt-Out Revolution*, N.Y. TIMES MAG., Oct. 26, 2003, at 42; Ann Marsh, *Mommy, Me, and an Advanced Degree*, L.A. TIMES, Jan. 6, 2002, at 1. For a survey of newspaper articles that suggest women are choosing to opt out of their careers, see JOAN C. WILLIAMS ET AL., CTR. FOR WORKLIFE LAW, "OPT OUT" OR PUSHED OUT?: HOW THE PRESS COVERS WORK/FAMILY CONFLICT 4-6 (2006), available at http://www.uchastings.edu/site_files/WLL/OptOutPushedOut.pdf.

⁸ Belkin, *supra* note 7, at 42.

⁹ *Id.*

Such explanations capture a partial truth. Women, including those with leadership credentials, do make different choices on average than men; more opt out for at least some period and more who stay remain childless. In a study by the Center for Work-Life Policy of some 3000 high-achieving American women and men (defined as those with graduate or professional degrees or high honors undergraduate degrees), nearly four in ten women reported leaving the work force voluntarily at some point over their careers.¹⁰ The same proportion reported sometimes choosing a job with lesser compensation and fewer responsibilities than they were qualified to assume in order to accommodate family responsibilities.¹¹ By contrast, only one in ten men left the workforce primarily for family-related reasons.¹² Although other surveys find some variation in the number of women who opt out to accommodate domestic obligations, all of these studies find substantial gender differences.¹³ Almost twenty percent of women with graduate or professional degrees are not in the labor force, compared with only five percent of similarly credentialed men.¹⁴

Findings on career aspirations and expectations are also mixed, but gender differences typically emerge. A global survey of some 1200 executives found that substantially more women than men reported sacrificing career aspirations to accommodate personal and family concerns.¹⁵ In one recent United States poll, a third of women (compared to only a fifth of men) reported significant conflicts between work and family and a need to make sacrifices involving hours, travel, and stress in order to

¹⁰ SYLVIA ANN HEWLETT ET AL., CTR. FOR WORK-LIFE POL'Y, *THE HIDDEN BRAIN DRAIN: OFF-RAMPS AND ON-RAMPS IN WOMEN'S CAREERS* (2005) [hereinafter *THE HIDDEN BRAIN DRAIN*].

¹¹ *Id.* at 5.

¹² *Id.* at 43-45. The lack of employer or societal support for male homemakers may help explain the disparity.

¹³ Nachum Sicherman, *Gender Differences in Departures from a Large Firm*, 49 INDUS. & LAB. REL. REV. 493 (1996); MONICA MCGRATH ET AL., *BACK IN THE GAME: RETURNING TO BUSINESS AFTER A HIATUS: EXPERIENCE & RECOMMENDATIONS FOR WOMEN, EMPLOYERS, & UNIVERSITIES* 7 (2005).

¹⁴ Claudia Wallis, *The Case for Staying Home*, TIME MAG., Mar. 22, 2004, at 51, 53.

¹⁵ INT'L LAB. ORG., *BREAKING THROUGH THE GLASS CEILING: WOMEN IN MANAGEMENT* 47 (2004).

advance professionally.¹⁶ In most, although not all, studies, fewer highly qualified women than men described themselves as very ambitious or interested in a CEO position or elective political office.¹⁷

What drops out of the opt-out narrative is the subtle side of sexism: the gender biases in work and family structures that drive women's decisions. Inequalities in workplace opportunities and family obligations, as well as the absence of adequate societal responses, influence women's choice to reduce or interrupt employment.

II. UNCONSCIOUS BIAS AND GENDER STEREOTYPES

A wide array of social science research documents the role of "cognitive" or "unexamined" bias in accounting for gender inequality.¹⁸

¹⁶ CELINDA LAKE & KELLYANNE CONWAY, WHAT WOMEN REALLY WANT 87 (2005).

¹⁷ In the study by the Center for Work-Life Policy, only a third of women, compared with more than half of men, described themselves as "extremely" or "very" ambitious. THE HIDDEN BRAIN DRAIN, *supra* note 10, at 4. In a survey of senior executives in multilateral corporations, nineteen percent of men, compared with nine percent of women, wanted the CEO position. *Helping Women Get to the Top*, ECONOMIST, July 2004, at 11. See also Patricia Sellers, *Power: Do Women Really Want It?*, FORTUNE, Oct. 13, 2003, at 80 (finding that women had lower career aspirations than similarly situated men). By contrast, a Catalyst study found no such differences in the desire for the chief executive slot. CATALYST, WOMEN AND MEN IN UNITED STATES CORPORATIONS: SAME WORKFORCE, DIFFERENT REALITIES (2004); Joan S. Lublen, *Women Aspire to be Chief as Much as Men*, WALL ST. J., June 23, 2004, at D2. For a discussion of women's lesser political ambitions, see JENNIFER L. LAWLESS & RICHARD FOX, IT TAKES A CANDIDATE: WHY WOMEN DON'T RUN FOR OFFICE (2005). For a study finding that women elected to state legislative office have similar ambitions to their male colleagues, see CTR. FOR AM. WOMEN & POL., WOMEN STATE LEGISLATORS: PAST, PRESENT, AND FUTURE 1-2 (2001).

¹⁸ This overview of stereotypes draws on a more extended discussion in Deborah L. Rhode & Joan Williams, *Legal Perspectives on Employment Discrimination*, in SEX DISCRIMINATION IN THE WORKPLACE: AN INTERDISCIPLINARY APPROACH (Faye J. Crosby et al. eds., 2007); Rhode & Kellerman, *supra* note 1. For a general discussion of stereotypes, see Gary Blasi, *Advocacy Against the Stereotype: Lessons from Cognitive Social Psychology*, 49 UCLA L. REV. 1241, 1243 (2002); Linda H. Krieger & Anthony Greenwald, *Implicit Bias, Scientific Foundations*, 94 CAL. L. REV. 945 (2006); Linda H. Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, (1995) [hereinafter Krieger, *The Content of Our Categories*]; Joan C. Williams, *Litigating the Glass Ceiling and the Maternal Wall: Using Stereotyping and Cognitive Bias Evidence to Prove Gender Discrimination*, 7 EMP. RTS. & EMP. POL'Y J. 287 (2003); Joan C. Williams, *The Social Psychology of Stereotyping: Using Social Science to Litigate Gender Discrimination Cases and Defang the "Cluelessness" Defense*, 7 EMP. RTS. & EMP. POL'Y J. 401, 439-49 (2003).

Such biases build on group-based stereotypes and have influences that are often outside individual awareness. Beginning at very early ages, children associate certain characteristics with particular social groups.¹⁹ These group-based stereotypes predispose individuals to perceive information in ways that conform to pre-existing associations.²⁰ For example, if a working mother leaves the office early, her colleagues may infer that the reason involves family obligations. A working father's absence may not trigger the same assumption. Such cognitive bias can operate even if individuals' conscious beliefs are relatively free of prejudices.

A. Competence

Despite considerable progress over the last quarter century, women workers are still frequently perceived as less competent than men. The differences emerge clearly in experimental settings. Even where male and female performance is objectively equal, women are held to higher standards, and their competence is rated lower.²¹ Résumés are evaluated more favorably when they carry male rather than female names.²² Having children makes women, but not men, appear less competent and less available to meet workplace responsibilities than their childless counterparts.²³ The term "working father" is rarely used and carries none of

¹⁹ See DAVID J. SCHNEIDER, *THE PSYCHOLOGY OF STEREOTYPING* 353-63 (2004); Diane M. Mackie et al., *Social Psychological Foundations of Stereotype Formation*, in *STEREOTYPES AND STEREOTYPING* 41, 46-47 (C. Neil Macrae et al. eds., 1996).

²⁰ See generally William T. Bielby, *Minimizing Workplace Gender and Racial Bias*, 29 *CONTEMP. SOC.* 120 (2000); Galen V. Bodenhausen et al., *Stereotypes in Thought and Deed: Social-Cognitive Origins of Intergroup Discrimination*, in *INTERGROUP COGNITION AND INTERGROUP BEHAVIOR* 311 (Constantine Sedikides et al. eds., 1998); Linda Hamilton Krieger, *The Intuitive Psychologist Behind the Bench: Models of Gender Bias in Social Psychology and Employment Discrimination Law*, 60 *J. SOC. ISSUES* 835 (2004); Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 *CAL L. REV.* 997, 1030-38, 1042 (2006).

²¹ Martha Foschi, *Double Standards in the Evaluation of Men and Women*, 59 *SOC. PSYCHOL. Q.* 237, 251 (1996); Jacqueline Landau, *The Relationship of Race and Gender to Managers' Rating of Promotion Potential*, 16 *J. ORG. BEHAV.* 391, 397 (1995).

²² LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE* 94 (2003); Rhea E. Steinpreis et al., *The Impact of Gender on the Review of the Curricula Vitae of Job Applicants and Tenure Candidates: A National Empirical Study*, 41 *SEX ROLES* 509 (1999).

²³ Amy J. C. Cuddy et al., *When Professionals Become Mothers, Warmth Doesn't Cut the Ice*, 60 *J. SOC. ISSUES* 701, 709 (2004); Kathleen Fuegen et al., *Mothers and Fathers*

the negative connotations of "working mother." Men also continue to be ranked higher than women when judged on most of the qualities associated with leadership: forceful, assertive, authoritative, and so forth.²⁴ People more readily credit men with leadership ability and accept men as leaders.²⁵ In one study where subjects were shown slides of a man seated at the head of a table for a meeting, they assumed that he was the leader. They did not make the same assumption when the person in that seat was a woman.²⁶

The problem is compounded by in-group favoritism, the preferences that individuals feel for those who are like them in salient respects such as sex, race, and ethnicity. Loyalty, cooperation, opportunities, and favorable evaluations are all greater for group members.²⁷ One of the most significant effects is the presumption of competence that dominant groups accord only to insiders. For example, men tend to attribute accomplishments of male colleagues to intrinsic characteristics, such as intelligence, drive, and commitment. By contrast, men often ascribe women's achievements to luck or special treatment.²⁸

in the Workplace: How Gender and Parental Status Influence Judgments of Job-Related Competence, 60 J. OF SOC. ISSUES 737, 745 (2004).

²⁴ CATALYST, WOMEN "TAKE CARE," MEN "TAKE CHARGE": STEREOTYPING OF U.S. BUSINESS LEADERS EXPOSED 7 (2005); Linda L. Carli & Alice H. Eagly, *Overcoming Resistance to Women Leaders: The Importance of Leadership Styles*, in Kellerman & Rhode, *supra* note 1.

²⁵ Carli & Eagly, *supra* note 24; Laurie A. Rudman & Stephen E. Kilianski, *Implicit and Explicit Attitudes Toward Female Authority*, 26 PERSONALITY & SOC. PSYCHOL. BULL. 1315, 1315-16, 1325 (2000).

²⁶ Virginia Valian, *The Cognitive Bases of Gender Bias*, 65 BROOK. L. REV. 1037, 1048-49 (1999) [hereinafter Valian, *The Cognitive Bases*].

²⁷ Marilyn B. Brewer & Rupert J. Brown, *Intergroup Relations*, in 2 THE HANDBOOK OF SOCIAL PSYCHOLOGY 554 (Daniel T. Gilbert et al. eds., 4th ed. 1998); Susan T. Fiske, *Stereotyping, Prejudice and Discrimination*, in 2 THE HANDBOOK OF SOCIAL PSYCHOLOGY, *supra*, at 357. See generally Barbara F. Reskin, *Rethinking Employment Discrimination and Its Remedies*, in THE NEW ECONOMIC SOCIOLOGY: DEVELOPMENTS IN AN EMERGING FIELD 218, 222 (Mauro Guillen et al. eds., 2002).

²⁸ Jennifer Crocker et al., *Social Stigma*, in 2 THE HANDBOOK OF SOCIAL PSYCHOLOGY 504, *supra* note 27; Martha Foschi, *Double Standards for Competence: Theory & Research*, 26 ANN. REV. SOC. 21 (2000); Krieger, *The Content of Our Categories*, *supra* note 18, at 1188; Cecilia L. Ridgeway, *Interaction and the Conservation of Gender Inequality: Considering Employment*, 62 AM. SOC. REV. 218, 228 (1997). See also John F. Dovidio & Samuel L. Gaertner, *Stereotypes and Evaluative Intergroup Bias*, in AFFECT, COGNITION, AND STEREOTYPING 167, 170-71 (Diane M. Mack & David L. Hamilton eds., 1993).

The influence of these biases in any given workplace setting is hard to assess. It is noteworthy, however, that professional women frequently report being held to higher standards than their male colleagues and cite “male stereotyping and preconceptions” as a major barrier to advancement.²⁹ The combined effect of racial and gender stereotypes create particular problems for women of color. Among lawyers, forty-four percent of women of color, compared with thirty-nine percent of white women and only two percent of white men, reported being passed over for desirable work assignments.³⁰

Gender stereotypes are particularly strong in settings where women’s representation does not exceed token levels and too few counterexamples are present to challenge conventional assumptions.³¹ These settings place women under special scrutiny and often yield polarized assessment. A small number of superstars may benefit from this additional attention and receive higher evaluations than their male counterparts, but women who are just below that level tend to get disproportionately lower evaluations.³² At the same time, the presence of a few highly regarded women at the top creates the illusion that the glass ceiling has been shattered for everyone else. When superstars fail or opt out, their departures

²⁹ For the double standard, see Deborah L. Rhode, *The Difference “Difference” Makes*, in *THE DIFFERENCE “DIFFERENCE” MAKES: WOMEN AND LEADERSHIP* 3, 9, 12 (Deborah L. Rhode ed., 2003) [hereinafter Rhode, *The Difference “Difference” Makes*]. For surveys of executive women finding stereotypes to be a major barrier, see *CATALYST, WOMEN IN CORPORATE LEADERSHIP: PROGRESS AND PROSPECTS* 37 (1996) [hereinafter *CATALYST, WOMEN IN CORPORATE LEADERSHIP*]. See also INT’L LAB. ORG., *supra* note 15, at 4 (discussing the role of stereotypes).

³⁰ JANET E. GANS EMPER, A.B.A. COMM’N ON WOMEN IN THE PROFESSION, *VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* 21 (2006).

³¹ VIRGINIA VALIAN, *WHY SO SLOW? THE ADVANCEMENT OF WOMEN* 103-07 (1999); Bodenhausen et al., *supra* note 20, at 319. See generally Robin Ely, *The Power in Demography: Women’s Social Construction of Gender Identity at Work*, 38 *ACAD. MGMT. J.* 589 (1995).

³² Monica Biernat & Diane Kobrynowicz, *Gender- and Race-Based Standards of Competence: Lower Minimum Standards but Higher Ability Standards for Devalued Groups*, 72 *J. PERSONALITY & SOC. PSYCHOL.* 544, 555 (1997); Madeline E. Heilman, *Description and Prescription: How Gender Stereotypes Prevent Women’s Ascent Up the Organizational Ladder*, 57 *J. OF SOC. ISSUES* 657, 666 (2001); Madeline Heilman et al., *The Vagaries of Sex Bias: Conditions Regulating the Undervaluation, Equivaluation, & Overvaluation of Female Job Applicants*, 41 *ORG. BEHAV. & HUM. DECISION PROCESSES* 98 (1988).

attract particular notice and reinforce stereotypes about women's lesser capabilities and commitment.³³

Women may also internalize these stereotypes. They generally see themselves as less deserving than men of rewards for the same performance and less qualified for key leadership positions.³⁴ The result of these biases, as subsequent discussion notes, is to block awareness of subtle sexism and the need for strategies to address it.

B. Femininity

A further obstacle for women seeking positions of influence is the mismatch between the qualities traditionally associated with women and those associated with professional success. These stereotypes of femininity leave women stuck in a double bind. What is assertive in a man seems abrasive in a woman, and female leaders risk seeming too feminine or not feminine enough. On the one hand, they may appear too "soft"—unable or unwilling to make the tough calls required of those in positions of power. On the other hand, they may appear too tough—strident and overly aggressive or ambitious.³⁵ Attitudes toward self-promotion reflect a related mismatch between leadership and femininity. Women are expected to be nurturing, not self-serving; entrepreneurial behaviors viewed as appropriate in men are often viewed as distasteful in women.³⁶ Indeed, some executive coaches have developed a market niche in rehabilitating "bully broads," female managers who come across as insufficiently feminine.³⁷

³³ Alessandra Stanley, *For Women, to Soar Is Rare, to Fall Is Human*, N.Y. TIMES, July 13, 2002, at E1; David Carr, *To Reach the Heights, First Be Male*, N.Y. TIMES, Jan. 9, 2006, at C1.

³⁴ Valian, *The Cognitive Bases*, *supra* note 26, at 1050; Rhode, *The Difference "Difference" Makes*, *supra* note 29, at 9; LAWLESS & FOX, *supra* note 17.

³⁵ See Alice Eagly & Steven Karau, *Role Congruity Theory of Prejudice Toward Female Leaders*, 109 PSYCHOL. REV. 573, 574 (2002) [hereinafter Eagly & Karau, *Role Congruity Theory*]; DAWN L. BROOKS & LYNN M. BROOKS, SEVEN SECRETS OF SUCCESSFUL WOMEN 195 (1997); Alice H. Eagly, *Achieving Relational Authenticity in Leadership: Does Gender Matter?*, 16 LEADERSHIP Q. 459, 470 (2005); BABCOCK & LASCHEVER, *supra* note 22, at 87-89.

³⁶ Eagly & Karau, *Role Congruity Theory*, *supra* note 35, at 584; Todd L. Pittinsky et al., *The Great Women Theory of Leadership: The Perils of Positive Stereotypes and Precarious Pedestals*, in RHODE & KELLERMAN, *supra* note 1.

³⁷ Neela Banerjee, *The Media Business: Some "Bullies" Seek Ways to Soften Up: Toughness Has Risks for Women Executives*, N.Y. TIMES, Aug. 10, 2001, at C1.

An overview of numerous studies confirms that women are rated lower as leaders when they adopt authoritative, “masculine” styles, particularly when the evaluators are men, or when the role is one typically occupied by men.³⁸ Other research has found that individuals with masculine styles are more likely to emerge as leaders than those with feminine styles. In effect, women face a dilemma that men do not.

Again, women often internalize these stereotypes, which creates a psychological glass ceiling. On average, women appear less willing to engage in self-promotion, behave assertively, or take the risks that may be necessary for leadership roles.³⁹ As one comprehensive overview of gender in negotiations puts it, “[w]omen don’t ask.” An unwillingness to seem too “pushy” or “difficult” and an undervaluation of their own worth often deters women from negotiating effectively for what they want or need.⁴⁰ In workplace settings, the result is that female employees may be less likely than their male colleagues to gain the assignments, positions, and support necessary for leadership roles.

The Supreme Court’s leading decision on gender stereotypes provides a textbook case of this double standard. *Price Waterhouse v. Hopkins* involved the denial of a partnership to a female accountant with an exceptionally strong record.⁴¹ In the year she was up for promotion, Ann Hopkins had billed more hours and brought in more business than any other candidate, and clients had given her high ratings. Opposition to her partnership was based not on objective performance measures, but on subjective assessments of her “interpersonal skills” and “social grace.”⁴²

³⁸ Alice H. Eagly et al., *Gender and The Evaluation of Leaders: A Meta-Analysis*, 111 PSYCHOL. BULL. 3, 17 (1992). See also D. Anthony Butterfield & James P. Grinnell, “Re-Viewing” *Gender, Leadership, and Managerial Behavior: Do Three Decades of Research Tell Us Anything?*, in HANDBOOK OF GENDER AND WORK 223, 235 (Gary N. Powell ed., 1999); JEANETTE N. CLEVELAND ET AL., WOMEN AND MEN IN ORGANIZATIONS: SEX AND GENDER ISSUES AT WORK 105, 106 (2000); Rochelle Sharpe, *As Leaders, Women Rule: New Studies Find that Female Managers Outshine Their Male Counterparts in Almost Every Measure*, BUSINESSWEEK, Nov. 20, 2000, at 74.

³⁹ BABCOCK & LASCHEVER, *supra* note 22, at 88; Carol Hymowitz, *Through the Glass Ceiling*, WALL ST. J., Nov. 8, 2004, at R1. Trade publications featuring advice for aspiring women leaders also widely acknowledge women’s failure to self-promote or engage in other similar behaviors. See Brooks & Brooks, *supra* note 35, at 63-65, 147-53; GAIL EVANS, *PLAY LIKE A MAN, WIN LIKE A WOMAN* 68-87 (2000).

⁴⁰ BABCOCK & LASCHEVER, *supra* note 22, at 11.

⁴¹ 490 U.S. 228 (1989).

⁴² *Hopkins v. Price Waterhouse*, 825 F.2d 458, 463 (D.C. Cir. 1987).

The partners found her “overly aggressive” and “unduly harsh.”⁴³ One partner thought that she needed a “course in charm school”; another felt that she “overcompensated” for being a woman.⁴⁴ Several of the male associates under consideration for partnership were also characterized as “abrasive” and “overbearing.” No one suggested charm school for them. At the time of the decision, all but seven of the firm’s 662 partners were male. Although Hopkins ultimately prevailed, it took seven years and five levels of judicial decision making with two trial and three appellate court rulings. And most of the judges found it a “close” case.⁴⁵

That the Hopkins’s case was so problematic speaks volumes about the chances for more typical professional women with less outstanding records. A sobering example involves the first reported gender discrimination case involving a law firm. *Ezold v. Wolf* involved many of the same gender stereotypes as *Hopkins*.⁴⁶ Male partners not only questioned the female plaintiff’s competence, they also found her too “demanding” and too preoccupied with “women’s issues.”⁴⁷ Although a quarter of the law firm’s associates were female, in the litigation department where the plaintiff practiced, only one of the fifty-six partners was a woman. At the same time, they promoted several men with similar evaluations. The appellate court, however, concluded that a partner’s concerns about performance were not so “obvious or manifest” a pretext for discrimination as to justify liability.⁴⁸ The plaintiff in *Ezold* was not a superstar, but neither are the vast majority of women whose careers can be waylaid by subtle bias.

⁴³ Price Waterhouse v. Hopkins, 490 U.S. 228, 235 (1989) (plurality opinion).

⁴⁴ *Id.*

⁴⁵ Hopkins v. Price Waterhouse 737 F.Supp. 1202 (D.C. 1990), *remanded from* 490 U.S. 228, *aff’d*, 920 F.2d 967 (D.C. Cir. 1990); Martha Chamallis, *Listening to Dr. Fiske: The Easy Case of Price Waterhouse v. Hopkins*, 15 VT. L. REV. 89 (1990).

⁴⁶ Ezold v. Wolf, 983 F.2d 509, 543-44 (3d Cir. 1992), *cert. denied*, 510 U.S. 826 (1993).

⁴⁷ *Id.* at 532, 539.

⁴⁸ *Id.* at 534. For an overview of the *Ezold* lawsuit, see Deborah L. Rhode, “What’s Sex Got to Do With It?”: Diversity in the Legal Profession, in LEGAL ETHICS: LAW STORIES 233 (Deborah L. Rhode & David Luban eds., 2006).

C. Cognitive Dissonance and Meritocratic Worldviews

Other cognitive biases compound the force of traditional stereotypes. People are more likely to notice and recall information that confirms their prior assumptions than information that contradicts those assumptions; the dissonant data is filtered out. For example, when employers assume that a working mother is unlikely to be fully committed to her career, they more easily remember the times when she left early than the times when she stayed late. Similarly, attorneys who assume that women of color are beneficiaries of preferential treatment, not merit-based selection, will recall their errors more readily than their merits.

A related problem is that people share what psychologists have labeled a “meritocratic worldview” or “just world” bias.⁴⁹ People want to believe that in the absence of special treatment, individuals generally get what they deserve and deserve what they get. Perceptions of performance are frequently adjusted to match observed outcomes. If women, particularly women of color, are underrepresented in positions of greatest prominence, the most psychologically convenient explanation is that they lack the necessary qualifications or commitment. These perceptions can, in turn, prevent women from getting assignments that would demonstrate their capabilities, establishing a self-fulfilling cycle.⁵⁰

Women who internalize these meritocratic assumptions frequently have problems perceiving themselves as victims of discrimination.⁵¹ And employers who share such worldviews often resist claims of bias that challenge meritocratic premises.⁵² Their formal and informal retaliation against those who report discrimination makes such reporting less likely and masks the subtle sexism that remains.⁵³

⁴⁹ See MELVIN J. LERNER, *THE BELIEF IN A JUST WORLD: A FUNDAMENTAL DELUSION*, vii-viii, 9-12 (1980); Valian, *The Cognitive Bases*, *supra* note 26, at 1059; Cheryl R. Kaiser & Brenda Major, *A Social Psychological Perspective on Perceiving and Reporting Discrimination*, 31 *LAW & SOC. INQUIRY* 801, 807-08 (2006) [hereinafter Kaiser & Major, *A Social Psychological Perspective*].

⁵⁰ For how these perceptions affect women who work part-time, see DEBORAH L. RHODE, A.B.A. COMM’N ON WOMEN IN THE PROFESSION, *BALANCED LIVES: CHANGING THE CULTURE OF LEGAL PRACTICE* 16 (2001) [hereinafter RHODE, *BALANCED LIVES*]; Krieger, *The Content of Our Categories*, *supra* note 18.

⁵¹ Kaiser & Major, *A Social Psychological Perspective*, *supra* note 49, at 809.

⁵² *Id.* at 808.

⁵³ For the costs of reporting, see *id.* at 818-19; Rhode & Williams, *supra* note 18.

III. GENDER BIAS IN MENTORING AND SUPPORT NETWORKS

In-group biases are also apparent in the informal networks of mentoring, contacts, and support that are critical for advancement. People generally feel most comfortable with those who are like them in important respects, including gender. Women in traditionally male-dominated settings may end up out of the loop when it comes to receiving advice and accessing professional development opportunities.⁵⁴ Women of color also experience particularly troublesome isolation and exclusion.⁵⁵ A survey of upper-level American managers found that almost half of women of color and close to a third of white women cite a lack of influential mentors as a major barrier to advancement.⁵⁶ In law, sixty-two percent of women of color and sixty percent of white women felt excluded from formal and informal networking opportunities, but only four percent of white men expressed similar feelings.⁵⁷

The problem is exacerbated by the relatively small number of women who are in positions of power. These women often lack the time, the leverage, or, in some cases, the inclination, to assist all who may hope to join them. Differences across race, ethnicity, and culture compound the problem. White men who would like to fill the gaps in mentoring often lack the capacity to do so, or are worried about the appearance of forming close

⁵⁴ See Rhode, *The Difference "Difference" Makes*, *supra* note 29, at 12-14; IDA O. ABBOTT, *THE LAWYERS' GUIDE TO MENTORING* (2000); Belle Rose Ragins, *Gender and Mentoring Relationships: A Review & Research Agenda for the Next Decade* 347, in *HANDBOOK OF GENDER AND WORK*, *supra* note 38, at 361-65; CATALYST, *WOMEN IN CORPORATE LEADERSHIP*, *supra* note 29, at 26-27 (1996); Timothy O'Brien, *Up the Down Staircase*, N.Y. TIMES, Mar. 19, 2006, at A4.

⁵⁵ ELLA L. J. EDMONDSON BELL & STELLA M. NKOMO, *OUR SEPARATE WAYS: BLACK AND WHITE WOMEN AND THE STRUGGLE FOR PROFESSIONAL IDENTITY* 122-32 (2001); Bernardo M. Ferdman, *The Color and Culture of Gender in Organizations: Attending to Race and Ethnicity* 17, in *HANDBOOK OF GENDER AND WORK*, *supra* note 38, 18-26; CATALYST, *WOMEN OF COLOR IN CORPORATE MANAGEMENT: OPPORTUNITIES AND BARRIERS* 15 (1999) [hereinafter CATALYST, *WOMEN OF COLOR*]; David Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms: An Institutional Analysis*, 84 CAL. L. REV. 493, 568 (1996). See also DEBORAH L. RHODE, *A.B.A COMM'N ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION* 16 (2001) [hereinafter RHODE, *THE UNFINISHED AGENDA*].

⁵⁶ CATALYST, *WOMEN IN CORPORATE LEADERSHIP*, *supra* note 29, at 37. See also CATALYST, *WOMEN OF COLOR*, *supra* note 55, at 12-13.

⁵⁷ EMPER, *supra* note 30, at 17.

relationships with women, particularly women of color.⁵⁸ As subsequent discussion notes, some all-women's networks are emerging to fill the gaps, but concerns about favoritism or identification with "women's issues" keep too many individuals from making these initiatives a priority.⁵⁹

IV. INDIVIDUAL CHOICE AND GENDER BIAS IN FAMILY CONTEXTS

The home is no more an equal opportunity employer than is the workplace; in domestic matters, however, the presumptions of competence are reversed, which creates unequal family burdens. In principle, the vast majority of men support gender equality, but in practice they fail to structure their lives to promote it. Despite a significant increase in men's family labor over the last two decades, women continue to shoulder the major burden.⁶⁰ In one representative survey of high-achieving women, approximately four out of ten respondents felt that their husbands created more domestic work than they performed.⁶¹ This gender imbalance in family roles reinforces gender inequalities in career development. Women with demanding domestic responsibilities often lack time for the extended hours and networking activities that are necessary for advancement. If women are not choosing to run the world, it is partly because men are not choosing to run the washer and dryer.

The inequalities are particularly pronounced among certain groups. In leadership circles, most men have spouses who are full-time homemakers or who are working part-time. The same is not true of women, who, with few exceptions, are either single or have partners with full-time jobs.⁶² Few

⁵⁸ See Ragins, *supra* note 54, at 361-63.

⁵⁹ See Rhode, *The Difference "Difference" Makes*, *supra* note 29, at 3, 24, 30.

⁶⁰ BUREAU OF LAB. STAT., AMERICAN TIME USE SURVEY (2004); ALEXANDRA C. ACHEN & FRANK P. STAFFORD, INST. FOR SOC. RES., DATA QUALITY OF HOUSEHOLD HOURS IN THE PANEL STUDY OF INCOME DYNAMICS: WHO REALLY DOES THE DISHES? (2005); LINDA R. HIRSHMAN, GET TO WORK: A MANIFESTO FOR WOMEN OF THE WORLD 74 (2006); Donald G. McNeil, *Real Men Don't Clean Bathrooms*, N.Y. TIMES, Sept. 19, 2004, at E3.

⁶¹ SYLVIA ANN HEWLETT, CTR. FOR WORK-LIFE POL'Y, HIGH ACHIEVING WOMEN (2001); SYLVIA ANN HEWLETT, CREATING A LIFE: PROFESSIONAL WOMEN AND THE QUEST FOR CHILDREN 143 (2002).

⁶² JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 71-72 (2000); HIRSHMAN, *supra* note 60, at 40 (only two percent of the nation's stay-at-home parents are men).

of these husbands are willing to subordinate their own careers to assist their wives.⁶³ Far more mothers than fathers are single parents; this is particularly true of women of color, who often assume additional caretaking obligations for their extended family.⁶⁴

These imbalances in family responsibilities are commonly assumed to reflect women's different choices. Again, this assumption captures only a partial truth. Women with children are highly invested in their role as caregiver. In one nationwide survey, over four fifths of women said that motherhood is very important to their sense of identity.⁶⁵ Women also tend to have higher expectations than men of what parenting and homemaking require.⁶⁶ As noted earlier, female employees in professional and high level positions are more willing to make career sacrifices than their male colleagues to meet such expectations.⁶⁷

This double standard in family obligations is deeply rooted in cultural attitudes and workplace practices. Working mothers are held to higher standards than working fathers and are often criticized for being insufficiently committed parents or professionals. Those who seem willing to sacrifice family needs for workplace demands appear lacking as mothers; those who take extended leaves or reduced schedules appear lacking as employees.⁶⁸ Men, no less than women, often internalize these double standards and expect their wives to assume primary caretaking

⁶³ Mary Williams Walsh, *So Where Are the Corporate Husbands?; For Women at the Top, Something Is Missing: Social, Wifely Support*, N.Y. TIMES, June 24, 2001, at C1.

⁶⁴ Sylvia Ann Hewlett et al., *Leadership in Your Midst: Tapping the Hidden Strength of Minority Executives*, HARV. BUS. REV., Nov. 2005, at 74, 79 [hereinafter Hewlett et al., *Leadership in Your Midst*].

⁶⁵ PRINCETON SURVEY RES. ASSOC., PROGRESS AND PERILS: HOW GENDER ISSUES UNITE AND DIVIDE WOMEN 13 (2001).

⁶⁶ JUDITH WARNER, PERFECT MADNESS: MOTHERHOOD IN AN AGE OF ANXIETY 239-51 (2005). See, e.g., Hope Edelman, *The Myth of Co-Parenting: How It Was Supposed to Be. How It Was.*, in THE BITCH IN THE HOUSE: 26 WOMEN TELL THE TRUTH ABOUT SEX, SOLITUDE, WORK, MOTHERHOOD, AND MARRIAGE 171, 172 (Cathi Hanauer ed., 2002).

⁶⁷ See *supra* text accompanying notes 12-14.

⁶⁸ Cameron Stracher, *All Aboard The Mommy Track*, AM. LAW., Mar. 1999, at 126; Meredith K. Wadman, *Family & Work: The Delicate Balance*, WASH. LAW., Nov.-Dec. 1998, at 28, 33; ABBIE F. WILLARD & PAULA A. PATTON, NAT'L ASS'N L. PLACEMENT, PERCEPTIONS OF PARTNERSHIP: THE ALLURE AND ACCESSIBILITY OF THE BRASS RING 99 (1999); Cynthia Fuchs Epstein et al., Association of The Bar of the City of New York, *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291 (1995).

responsibilities. In one survey of well-educated, professional women who had left the paid workforce, two thirds said their husbands influenced their decision; many cited their husbands' lack of support in child care and other domestic tasks and their expectation that wives should be the ones to cut back on employment.⁶⁹

Neither public attitudes nor workplace practices support reversals of the traditional allocation of domestic roles. Few of America's Fortune 100 companies offer the same paid parental leave to fathers as to mothers, and an even smaller percentage of men take any extended period of time away from their jobs for family reasons.⁷⁰ Although such differential workplace policies reflect social reality, they also perpetuate gender hierarchy. Employment practices that directly disadvantage men also indirectly disadvantage women. By discouraging husbands from assuming an equal division of household responsibilities, prevailing parental leave structures reinforce gender roles that are separate and by no means equal. As long as the conflict between work and family is seen as primarily a women's problem, potential solutions are likely to receive inadequate attention in leadership circles still dominated by men.

V. GENDER BIAS IN APPEARANCE

A final source of sexism involves gender bias in standards of appearance. As with the other forms of sexism noted earlier, much of this bias is not normally considered discrimination. Although most individuals would acknowledge that physical attractiveness is more important and harder to achieve for women than for men, the consequences often seem trivial, and women appear responsible. In a world in which sexism often takes a horrific toll—rape, domestic abuse, forced prostitution, poverty, lack of reproductive autonomy—why worry if women spend more time and money getting gussied up? Isn't much of that effort by choice and something many women consider enjoyable? Aren't women the primary enforcers and beneficiaries of our culture's double standards of beauty?

Well, yes and no, but we need to pay more attention to the no. These responses again discount the ways in which women's "choices" are socially constrained, and the costs for those who try to conform or fail to

⁶⁹ Pamela Stone & Meg Lovejoy, *Fast-Track Women and the "Choice" to Stay Home*, 596 ANNALS AM. ACAD. POL. & SOC. SCI. 62, 66, 75-76 (2004).

⁷⁰ Rhode, *The Difference "Difference" Makes*, *supra* note 29, at 15; MARTHA BURK, *CULT OF POWER: SEX DISCRIMINATION IN CORPORATE AMERICA AND WHAT CAN BE DONE ABOUT IT* 171-75 (2005).

conform to cultural expectations. In effect, women face another double bind. Those who invest too much in their appearance are condemned as shallow, vain, and narcissistic. Those who invest too little or fall too short are punished in multiple ways. What constitutes the right level of effort is open to dispute, and the formula becomes ever more elusive as women age. The double standard of beauty is especially pronounced during later life. Men's achievements bring power and status that enhance their appearance. Wrinkles can be marks of "gravitas," and aging men can look "distinguished." Women's aging is not viewed so positively, and older women risk marginalization as "unattractive" or ridicule for their efforts to pass as young.⁷¹ This double standard leaves women not only perpetually worried about how they look, but also about whether this is a legitimate reason to be stressed. Although discrimination based on appearance should not top the list of problems meriting our concern, its cumulative cost is not as inconsequential as is often assumed.

The burdens of what Nora Ephron euphemistically labels "maintenance" vary considerably among women, and totals are impossible to gauge with any precision.⁷² However, a few figures are illustrative. On average, adult women spend about five and a half hours a week simply on grooming, a third more than men.⁷³ Those totals do not include time spent shopping for appearance-related items (clothing, shoes, makeup, jewelry), exercising for appearance-related reasons, or consuming appearance-related services ranging from pedicures to plastic surgery. In financial terms, our annual global investment in beauty totals an estimated \$38 billion for hair, \$24 billion for skin care, \$20 billion for cosmetic surgery, \$18 billion for cosmetics, and \$15 billion for perfume.⁷⁴ Americans alone spend some \$40 billion on diets and slightly more on fitness, much of which is driven by weight-related concerns.⁷⁵

⁷¹ ROBIN TOLMACH LAKOFF & RACQUEL L. SCHERR, FACE VALUE: THE POLITICS OF BEAUTY 148 (1984). See, e.g., Caryl Rivers, *Mockery of Katherine Harris Shows Double Standard*, WOMEN'S ENEWS, Nov. 29, 2000, available at <http://www.womensenews.org/article/cfm/dyn/aid/356/context/archive>; Francine M. Deutsch et al., *Is There a Double Standard of Aging?*, 16 J. APPLIED SOC. PSYCHOL. 771 (1986).

⁷² NORA EPHRON, I FEEL BAD ABOUT MY NECK 31-49 (2006).

⁷³ *How We Spend Time . . .*, TIME MAG., Oct. 30, 2006, at 53.

⁷⁴ ALEX KUCZYNSKI, BEAUTY JUNKIES: INSIDE OUR \$15 BILLION OBSESSION WITH COSMETIC SURGERY 7-8 (2006).

⁷⁵ For diets, see Gina Kolata, *Health and Money Issues Arise Over Who Pays for Weight Loss*, N.Y. TIMES, Sept. 30, 2004, at A1; NAT'L EATING DISORDERS ASS'N, STATISTICS: EATING DISORDERS AND THEIR PRECURSORS (2005), available at <http://www>.

Expensive goods and services are not simply an indulgence of the very rich. Almost three quarters of cosmetic surgery patients earn less than \$50,000 a year, and many forgo basic needs or take multiple jobs in order to afford their procedures.⁷⁶ Although almost a fifth of the United States population lacks regular access to basic health care, non-essential aesthetic procedures comprise the fastest growing area of medical expenditures.⁷⁷

Women account for eighty to ninety percent of purchases in this ever-expanding beauty market.⁷⁸ For example, about nine out of ten cosmetic surgery patients are women.⁷⁹ Virtually every part of the female body presents the potential for surgical alteration. Women can have their nipples or navels “enhanced,” their vaginas reshaped, and their toes sculpted to fit fashionable shoes.⁸⁰ Racial and ethnic biases fuel some of these procedures; noses, ears and eyes are reshaped to fit white Anglo-American standards.⁸¹

eatingdisorderscoalition.org/reports/statistics.html. For fitness, see SHARLENE HESSE-BIBER, *AM I THIN ENOUGH YET?* 47 (1996).

⁷⁶ For patients’ income, see NANCY ETCOFF, *SURVIVAL OF THE PRETTIEST: THE SCIENCE OF BEAUTY* 110 (2000). For financial sacrifices, see DEBRA L. GIMLIN, *BODY WORK: BEAUTY AND SELF-IMAGE IN AMERICAN CULTURE* 89, 104 (2002).

⁷⁷ For health care, see AGENCY FOR HEALTH CARE RES. & QUALITY, *MEDICAL EXPENDITURE PANEL SURVEY: RACIAL & ETHNIC DIFFERENCES IN HEALTH INSURANCE COVERAGE & USUAL SOURCE OF HEALTH CARE* 18 (2002). Between 1992 and 2002, the number of cosmetic surgeons quadrupled, and a rapidly growing number of dermatologists and non-board certified practitioners were performing cosmetic procedures. KUCZYNSKI, *supra* note 74, at 10. By the mid 1990s, cosmetic surgery had become the fastest growing American medical specialty. KATHY DAVIS, *RESHAPING THE FEMALE BODY: THE DILEMMA OF COSMETIC SURGERY* 21 (1995).

⁷⁸ NAOMI WOLF, *THE BEAUTY MYTH: HOW IMAGES OF BEAUTY ARE USED AGAINST WOMEN* 254 (1991). *See also* DEBORAH L. RHODE, *SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY* 76 (1997) [hereinafter RHODE, *SPEAKING OF SEX*].

⁷⁹ KUCZYNSKI, *supra* note 74, at 10. Cosmetic surgery procedures have increased by 465% over the last decade. ETCOFF, *supra* note 76, at 60.

⁸⁰ For belly button “touch ups,” see GREGG EASTERBROOK, *THE PROGRESS PARADOX: HOW LIFE GETS BETTER WHILE PEOPLE FEEL WORSE* 121 (2003). For vaginal augmentations, see KUCZYNSKI, *supra* note 74, at 4. For toe surgeries, see *id.* at 2-4; Lorraine Kreahling, *In the Relentless Pursuit of Fashion, the Feet Pay the Price*, N.Y. TIMES, Aug. 31, 2004, at D5; Gardiner Harris, *If Shoe Won’t Fit, Fix the Foot? Popular Surgery Raises Concern*, N.Y. TIMES, Dec. 7, 2003, at 1, 24.

⁸¹ SANDER L. GILMAN, *MAKING THE BODY BEAUTIFUL* 23 (1999). For racial and ethnic biases in standards of beauty generally, see LAKOFF & SCHERR, *supra* note 71, at 246-56.

Many beauty investments fall far short of expectations. "Cosmetic hoo-ha" is how one dermatologist referred to many anti-aging skin products.⁸² "No matter how much money you spend," notes Alex Kuczynski in *Beauty Junkies*, "time's winged chariot will catch up to you and march all over your face."⁸³ Yet accomplished, professional women like Nora Ephron are still shelling out "astronomical sums of money for useless [skin] products" with "whimsical" labels, "testaments to [buyers'] gullibility."⁸⁴ The same is true of the billions that women invest in efforts to slim down, which seldom achieve their promise: ninety-five to ninety-eight percent of dieters regain any lost weight within two to seven years.⁸⁵

The price of our preoccupation with appearance is measured in other forms as well. Unattractive individuals are less likely to be hired or to marry.⁸⁶ In many employment settings, these individuals earn less and are less likely to be promoted than their more attractive counterparts.⁸⁷ Those who are physically appealing are also assumed to possess morally and socially desirable traits such as goodness, kindness, warmth, sensitivity, and

⁸² WOLF, *supra* note 78, at 113 (quoting Raymond Marks). See also MICHAEL F. JACOBSEN & LAURIE ANN MAZUR, CTR. FOR THE STUDY OF COMMERCIALISM, MARKETING MADNESS: A SURVIVAL GUIDE FOR A CONSUMER SOCIETY 79 (1995) (quoting experts on the lack of effectiveness of anti-aging skin products).

⁸³ KUCZYNSKI, *supra* note 74, at 231.

⁸⁴ EPHRON, *supra* note 72, at 46-47.

⁸⁵ ROBERTA POLLACK SEID, NEVER TOO THIN: WHY WOMEN ARE AT WAR WITH THEIR BODIES 25 (1989). Other studies have resulted in slight variations in the percentage of dieters who maintain weight loss for a set period. See Francine Grodstein et al., *Three Year Follow Up of Participants in a Commercial Weight Loss Program: Can You Keep it Off*, 156 ARCHIVES OF INTERNAL MED. 1303 (1996). Since studies have found that women are at least twice as likely to diet as men, it follows that they bear a disproportionate cost for diet failures. MARGO MAINE, BODY WARS: MAKING PEACE WITH WOMEN'S BODIES: AN ACTIVIST'S GUIDE 43 (2000).

⁸⁶ ETCOFF, *supra* note 76, at 63, 83. See generally STEVE JEFFES, APPEARANCE IS EVERYTHING: THE HIDDEN TRUTH REGARDING YOUR APPEARANCE DISCRIMINATION (1998).

⁸⁷ JEFFES, *supra* note 86, at 37, 52 (referencing a study suggesting that attractive individuals on average earn twelve percent more than unattractive individuals and noting occupations in which discrimination is most likely); Irene Hanson Frieze et al., *Attractiveness and Income for Men and Women in Management*, 21 J. APPLIED SOC. PSYCHOL. 1039 (1991); Jeff Biddle & David Hamermesh, *Lawyers' Looks and Lucre* (Nat'l Bureau of Econ. Research, Working Paper No. 5366, 1998).

honesty.⁸⁸ In most contexts, the magnitude of the advantage is greater for women than men, and appearance too often trumps merit-based attributes.⁸⁹

Discrimination based on women's physical appearance takes a significant physical toll. Our cultural linkage of beauty with health obscures the fact that those who are considered beautiful often achieve such looks by unhealthy means. American society's largely unattainable ideals of voluptuous breasts and wispy waists encourage surgical implants, tummy tucks, and eating disorders, all of which have significant health risks.⁹⁰ Other cosmetic surgeries also come with painful and risky side effects.⁹¹ So does much of what passes for fashion footwear—what girls in high school used to call “killer shoes.” Their designers inhabit one of the safest havens for closet misogynists. Women account for four-fifths of foot surgeries and a wide range of painful and debilitating conditions largely caused by shoes that have nothing to do with comfort and everything to do with style.⁹² According to a study by the American Orthopedic Foot and Ankle Society, about eighty percent of women suffer some foot problems.⁹³ Even though

⁸⁸ JEFFES, *supra* note 86, at 42; ETCOFF, *supra* note 76, at 48; Thomas F. Cash, *The Psychology of Physical Appearance: Aesthetics, Attributes, and Images*, in BODY IMAGES: DEVELOPMENT, DEVIANCE, AND CHANGE 51, 53 (Thomas F. Cash & Thomas Pruzinsky eds., 1990); Ellen Berscheid, *An Overview of the Psychological Effects of Physical Attractiveness*, in PSYCHOLOGICAL ASPECTS OF FACIAL FORM 1, 5-17 (G. William Lucker et al. eds., 1981).

⁸⁹ ETCOFF, *supra* note 76, at 60-61, 243.

⁹⁰ For risks accompanying cosmetic surgery, see KUCZYNSKI, *supra* note 74, at 132-39; GIMLIN, *supra* note 76, at 76-77; DAVIS, *supra* note 77, at 27-28. For eating disorders, see SEID, *supra* note 85, at 21, 266-67; NAT'L INST. OF MENTAL HEALTH, EATING DISORDERS: FACTS ABOUT EATING DISORDERS AND THE SEARCH FOR SOLUTIONS (2001). Anorexia nervosa has the highest mortality rate of any psychiatric disorder. Jim Gray, Not an Adolescent Whim: The Facts about Eating Disorders, <http://www.eatingdisorderscoalition.org/congbriefings/061302/housebriefing061302.html#gray> (last visited Apr. 5, 2007). Without adequate treatment, a fifth of those hospitalized for anorexia die from suicide or medical complications. *Id.*; SEID, *supra* note 85, at 21.

⁹¹ KUCZYNSKI, *supra* note 74, at 132-39; Harris, *supra* note 80, at 1, 24; Darlene Ghavimi, *Cosmetic Surgery in the Doctor's Office: Is State Regulation Improving Patient Safety?*, 12 WIDENER L. REV. 249, 250-53 (2005). Severe risks are also associated with intestinal bypass and stomach stapling surgeries. Esther D. Rothblum, *Women and Weight: Fad and Fiction*, 124 J. PSYCHOL. 5, 19 (1990).

⁹² Krehling, *supra* note 80, at D5-D6; Harris, *supra* note 80, at 1, 24; Marc Linder & Charles L. Saltman, *A History of Medical Scientists on High Heels*, 28 INT'L J. HEALTH SERVICES 201 (1998).

⁹³ NANCY FRIDAY, THE POWER OF BEAUTY 465 (1996).

women's choices are responsible for most of these conditions, this fact does not diminish their adverse consequences. For centuries, Chinese women also chose to bind their daughters' feet. Sexism often enlists individuals in their own subordination.

Appearance-related discrimination also carries significant psychological costs. In one representative survey, thirty-four percent of women rated appearance as the most important quality affecting their self-image, above both job performance and intelligence.⁹⁴ Almost ninety percent consider how they look a "very important" (forty-two percent) or "somewhat important" (forty-five percent) part of who they are."⁹⁵ Women are also less satisfied with their appearance than every other important life dimension except financial success.⁹⁶ Part of the reason is the ridicule, shame, guilt, and discrimination that accompany significant deviation from cultural expectations.⁹⁷ Another reason is the unrelenting exposure to unattainable ideals. The average model now weighs twenty-three percent less than the average woman.⁹⁸ Corporate capitalism has an enormous financial stake in fueling individuals' anxieties about their appearance and their need for self-improvement. Four-fifths of American women agree that the media and advertisers set standards of beauty that most women can never achieve.⁹⁹ For heterosexual men, the standards are less exacting, and appearance is less critical to their self-esteem.¹⁰⁰ Until women, and society generally, hold more realistic and less demanding expectations for women, neither "choice" nor equality is possible.

⁹⁴ FRIDAY, *supra* note 93, at 368.

⁹⁵ PRINCETON SURVEY RES. ASSOC., *supra* note 65, at 66.

⁹⁶ NANCY ETCOFF & SUSIE ORBACH, *THE REAL TRUTH ABOUT BEAUTY: A GLOBAL REPORT* (2004), available at http://www.campaignforrealbeauty.com/uploadedfiles/dove_white_paper_final.pdf.

⁹⁷ GIMLIN, *supra* note 76, at 110; SEID, *supra* note 85, at 23-24.

⁹⁸ Juliette Terzieff, *Fashion World Says Too Thin Is Too Hazardous*, WOMEN'S ENEWS, Sept. 24, 2006, <http://www.womensenews.org/article.cfm/dyn/aid/2899/context/cover/>.

⁹⁹ ETCOFF & ORBACH, *supra* note 96.

¹⁰⁰ HESSE-BIBER, *supra* note 75, at 102-03; April Fallon, *Culture in the Mirror: Sociocultural Determinants of Body Image* 80, in *BODY IMAGE*, *supra* note 88, at 80-81.

VI. THE LIMITS OF LAW

Law has been of limited effectiveness in addressing the subtle side of sexism. Most obviously, it has only indirect and often imperceptible impact on many cultural norms that underpin gender inequality. Moreover, the restricted scope of antidiscrimination remedies and the costs of enforcement often place law out of reach in all but the clearest cases.

Most appearance-related bias falls beyond the scope of legal prohibitions. Only one state, Michigan, and a small number of localities have antidiscrimination laws that cover height and weight or appearance generally.¹⁰¹ In the absence of explicit prohibitions, courts have sometimes found that appearance requirements violate sex discrimination mandates by imposing greater burdens on women than men.¹⁰² Yet legal decisions in this area have been inconsistent and often idiosyncratic. A case in point involves a recent federal appellate decision rejecting challenges to a grooming code promulgated by Harrah's Casino.¹⁰³ That code required female beverage servers to wear makeup, "teased, curled, or styled" hair, and colored nail polish, but expected male servers only to have short hair and neatly trimmed fingernails.¹⁰⁴ In the majority's view, the case could not proceed to trial because the complainant had failed to show that the requirements were more burdensome for women than men.¹⁰⁵ Yet, as a dissenting judge noted, that might be obvious to a reasonable jury.¹⁰⁶

Cases involving weight have proven equally problematic. Under both federal guidelines and most court decisions interpreting the Americans with Disabilities Act (ADA), the only circumstances in which obesity is

¹⁰¹ MICH. COMP. LAWS ANN. § 37.2102 (1999); D.C. CODE § 2-1401.01 (1981); SANTA CRUZ, CAL. CODE § 9183 (1995); SAN FRANCISCO, CAL. ADMIN. CODE arts. 12A, 12B, 12C. For a list of other cities and counties that have prohibited discrimination based on obesity or appearance, see Jane Byeff Korn, *Fat*, 77 B.U. L. REV. 25, 28 n.17 (1997).

¹⁰² A leading case on weight discrimination is *Frank v. United Airlines, Inc.*, 216 F.3d 845 (9th Cir. 2000), *cert. den.*, 532 U.S. 914 (2001). For other dress and grooming requirements, see *Carroll v. Talman Fed. Savings & Loan Ass'n*, 604 F.2d 1028, 1032-33 (7th Cir. 1979) (striking down a dress code that required female but not male employees to wear uniforms) and *Gerdorn v. Continental Airlines*, 692 F.2d 602, 606 (9th Cir. 1982) (striking down attractiveness requirements that were more burdensome to females).

¹⁰³ *Jespersen v. Harrah's Operating Co.*, 444 F.3d 1104 (9th Cir. 2006).

¹⁰⁴ *Id.* at 1107.

¹⁰⁵ *Id.* at 1111.

¹⁰⁶ *Id.* at 1117 (Kozinski, J., dissenting).

subject to protection are when it (1) constitutes severe or “morbid obesity,” or stems from a physiological disorder, and (2) substantially limits a major life activity.¹⁰⁷ Less than one percent of obese individuals meet the test for morbid obesity and most are not able to establish underlying disorders.¹⁰⁸ Nor do many of those complaining of weight discrimination find that their size impairs their life activities; indeed, that is why they are claiming bias.¹⁰⁹ The perversity of the existing approach is that the law protects only the grossly overweight, who are far more likely to experience performance difficulties than their moderately overweight counterparts. Given the growing evidence about the risks and difficulties that many individuals have in reducing their weight, legal doctrine seems out of touch with social realities.

The effectiveness of law is also limited by the costs of enforcement, which relatively few victims of discrimination seem willing or able to incur. A national survey of some 1000 workers illustrates the reluctance of workers to take action. Of those who reported unfair treatment in the workplace, about a third did nothing about it. Slightly more than a quarter reported the incident to a supervisor. Only a fifth filed an internal complaint and only three percent brought a legal action.¹¹⁰

This reluctance to complain reflects multiple factors. Social science research makes clear that most individuals do not like to present themselves as victims; it erodes their sense of control and self-esteem and involves the unpleasantness of identifying a perpetrator.¹¹¹ Many are also deterred by the high price of taking action and the relatively low rewards for doing so.

¹⁰⁷ For the Americans with Disabilities Act, see 42 U.S.C. §§ 12101-12213 (1994). For EEOC regulations, see 29 C.F.R. § 1630 (“except in rare circumstances, obesity is not considered a disabling impairment”). For the EEOC position on whether obesity is a disability within the meaning of the Americans with Disabilities Act, see Korn, *supra* note 101, at 42; SONDR A SOLOVAY, *TIPPING THE SCALES OF JUSTICE: FIGHTING WEIGHT BASED DISCRIMINATION* 134-35 (2000). For similar interpretations of state disability law, see Korn, *supra* note 101, at 42 n.120.

¹⁰⁸ Korn, *supra* note 101, at 43 n.127.

¹⁰⁹ For examples, see SOLOVAY, *supra* note 107, at 132-33; Elizabeth Fernandez, *Exercising Her Right to Work*, S.F. CHRON., May 7, 2002, at A1 (describing a successful challenge by a 240-pound jazz instructor to a weight restriction based on her showing that she was fit and able to teach back to back aerobic classes).

¹¹⁰ K.A. DIXON ET AL., HELDRICH CTR. FOR WORKPLACE DEV., *A WORKPLACE DIVIDED: HOW AMERICANS VIEW DISCRIMINATION AND RACE ON THE JOB* 15 (2002).

¹¹¹ RHODE, *SPEAKING OF SEX*, *supra* note 78, at 9; Kaiser & Major, *A Social Psychological Perspective*, *supra* note 49, at 804-05.

Government assistance for complainants is very limited. For example, the Equal Employment Opportunity Commission (EEOC), which must pass on employment discrimination complaints before they can be filed in federal court, facilitates remedies for only about one fifth of complainants. The damages they receive are modest, averaging less than \$14,000.¹¹² For many targets of subtle sexism, the costs of proceeding on their own are prohibitive, not only in terms of legal expenses, but also with regard to risks of retaliation and blacklisting.¹¹³

Even where individuals might be willing to sue, evidentiary hurdles for proving subtle sexism are often insurmountable. As courts have recognized, employers of even "minimal sophistication will neither admit discriminatory . . . [conduct] nor leave a paper trail demonstrating it."¹¹⁴ The unconscious nature of much gender bias poses obvious obstacles in a legal regime demanding proof of intentional misconduct.¹¹⁵ Moreover, even complainants who can manage to establish discrimination may win in court but lose in life. Unless they can show that the ultimate employment decision would have been different, their remedies are limited to injunctive relief and attorney's fees.¹¹⁶ These may do little to compensate for the time, aggravation, and frayed reputations that can accompany litigation.

This discussion does not intend to minimize the importance of the law in deterring discrimination and remedying its most obvious forms. Rather, its purpose is to underscore the need for further initiatives to address more subtle dynamics.

¹¹² Laura Beth Nielson & Robert Nelson, *Scaling the Pyramid: A Sociolegal Model of Employment Discrimination Litigation*, in THE HANDBOOK ON EMPLOYMENT DISCRIMINATION RESEARCH: RIGHTS AND REALITIES 3, 22-23 (Laura Beth Nielson & Robert Nelson eds., 2006).

¹¹³ Brenda Major & Cheryl Kaiser, *Perceiving and Claiming Discrimination*, in THE HANDBOOK ON EMPLOYMENT DISCRIMINATION RESEARCH: RIGHTS AND REALITIES, *supra* note 112.

¹¹⁴ *Riordan v. Kaminers*, 831 F.2d 690, 697 (7th Cir. 1987).

¹¹⁵ Krieger, *The Content of Our Categories*, *supra* note 18, at 1161; Linda H. Krieger, *The Intuitive Psychologist Behind the Bench: Models of Gender Bias in Social Psychology and Employment Discrimination Law*, 60 J. SOC. ISSUES 835 (2004).

¹¹⁶ 42 U.S.C. § 2000e-5(g)(2)(B).

VII. STRATEGIES FOR CHANGE

Responding to the subtle side of sexism requires strategies at individual, institutional, and societal levels. In essence, we need initiatives that will increase awareness and accountability concerning gender bias.

A. Gender Bias in Evaluations and Mentoring

A threshold strategy is to educate women and employers about the unconscious bias that influences judgments about merit and shapes mentoring and social networks. Although few individuals are unaware of such bias, many underestimate its cumulative significance in their own lives and workplaces.¹¹⁷ More information is also needed about responses that have been most effective in equalizing opportunities. Many organizations invest substantial time and money in diversity training and professional development programs without knowing whether they have a measurable impact on outcomes. It is also unclear how many of these programs include coverage of subtle forms of bias, including discrimination based on appearance. Although some small-scale studies find that diversity training may improve awareness and attitudes, others find risks of backlash from white male participants.¹¹⁸ Virtually no evidence shows improvements in the representation of women in upper-level positions as a result of such training.¹¹⁹ Similarly, although anecdotal accounts suggest that professional

¹¹⁷ For example, in one representative poll, a majority of lawyers thought that women had the same opportunities for advancement as men, a perception hard to square with the statistics noted *supra* text accompanying note 5. Hope Viner Samborn, *Higher Hurdles for Women*, A.B.A. J., Sept. 2000, at 30, 33. For similar perceptions, see RHODE, *THE UNFINISHED AGENDA*, *supra* note 55, at 14. For discussion of the forces that lead to denial of the problem, see *supra* text accompanying notes 7-35; RHODE, *SPEAKING OF SEX*, *supra* note 78, at 3-19.

¹¹⁸ For positive effects on attitudes, see Kimberly D. Krawiec, *Cosmetic Compliance and the Failure of Negotiated Governance*, 81 WASH. U.L.Q. 487, 487 (2003). For evidence of a backlash, see MARK BENDICK JR. ET AL., *THE DOCUMENTATION AND EVALUATION OF ANTI-DISCRIMINATION TRAINING IN THE UNITED STATES* (1998); Thomas E. Nelson et al., *Irrepressible Stereotypes*, 32 J. EXPER. SOCIAL PSYCHOL. 13 (1996); Alexandra Kalev et al., *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies* (2006) (unpublished paper), available at http://www.wjh.harvard.edu/~dobbin/cv/working_papers/eeopractice1.pdf [hereinafter Kalev et al., *Best Practices*]. For outcomes, see *id.*

¹¹⁹ Kalev et al., *Best Practices*, *supra* note 118; Krawiec, *supra* note 118; Susan Bisom-Rapp, *Fixing Watches With Sledgehammers: The Questionable Embrace of Employee Sexual Harassment Training by the Legal Profession*, 24 U. ARK. LITTLE ROCK L. REV. 147,

development and executive education programs may help individual women confront gender-based obstacles, systematic evaluation of such programs has been lacking.¹²⁰ More research is essential to identify approaches that are successful in addressing subtle bias.

Many practices that affect workplace opportunities should also be subject to scrutiny. One example involves performance evaluation. Decision makers should screen written assessments for stereotypical characterizations, develop objective, outcome-related criteria to supplement subjective evaluations, and review assignments to ensure equal opportunities for career development.¹²¹

Mentoring practices require similar attention. Many organizations need formal support structures that can keep talented women, particularly women of color, from falling through the cracks. Well-designed initiatives that evaluate and reward mentoring activities can improve participants' skills, satisfaction, and retention rates.¹²² The most systematic large-scale study to date has found that mentoring programs correlate with modest gains in female representation in managerial positions, and women of color benefit most.¹²³

Women's networks in workplaces, professional associations, and minority organizations can also be helpful.¹²⁴ Common goals include linking professionals with potential clients and customers, developing career advancement skills, and representing women's shared concerns in their professions or workplaces. What limited research is available has

162-63 (2001). See also BAR ASS'N OF SAN FRANCISCO, GOALS AND TIMETABLES 34-37 (2005); Cecilia L. Ridgeway & Shelley J. Correll, *Limiting Inequality Through Interaction: The End(s) of Gender*, 29 CONTEMP. SOC. 118 (2000); Krieger & Fiske, *supra* note 20, at 1019 (noting absence of evidence that diversity training reduces discrimination).

¹²⁰ KARIN KLENKE, WOMEN AND LEADERSHIP: A CONTEXTUAL PERSPECTIVE 240-63 (1996). See BARBARA KELLERMAN, REINVENTING LEADERSHIP: MAKING THE CONNECTION BETWEEN POLITICS AND BUSINESS 175-78 (1999); MINORITY CORPORATE COUNSEL ASSOCIATION, 2000 SURVEY (2000); Erin White, *Female Training Classes Flourish*, WALL ST. J., Sept. 25, 2006, at B3.

¹²¹ A.B.A. COMM'N ON WOMEN IN THE PROF., FAIR MEASURE: TOWARD EFFECTIVE ATTORNEY EVALUATIONS 9-24 (1997).

¹²² CATALYST, WOMEN IN CORPORATE LEADERSHIP, *supra* note 29, at 29; ABBOTT, *supra* note 54, at 25, 32-33.

¹²³ Kalev et al., *Best Practices*, *supra* note 118.

¹²⁴ CATALYST, CREATING WOMEN'S NETWORKS: A HOW TO GUIDE FOR WOMEN & COMPANIES 2-4 (1999) [hereinafter CATALYST, CREATING WOMEN'S NETWORKS].

found that women's networks have a modest correlation with women's advancement.¹²⁵ Small-scale program evaluations have also demonstrated payoffs in client development, job satisfaction, and workplace reforms.¹²⁶ Affinity groups for women of color and support organizations for overweight individuals can be especially critical in reducing participants' sense of isolation and providing concrete strategies for dealing with subtle biases.¹²⁷

B. Work/Family Conflicts

Any serious commitment to equalizing employment opportunities requires a similarly serious commitment to address conflicts between work and family that stand in the way of professional advancement. Best practices and model programs are readily available on matters such as flexible and reduced schedules, telecommuting, leave policies, and childcare assistance.¹²⁸ Although these initiatives are often described as "accommodations" for women's "special" needs, this description miscasts both the problem and the solution.¹²⁹ Many of the obstacles that women face stem from the traditional assumption that "normal" workers are employed, full-time and full-force, for their entire working lives. What women need is not accommodation, but equal recognition. This will require a redefinition of workplace structures to take into account female as well as

¹²⁵ Kalev et al., *Best Practices*, *supra* note 118.

¹²⁶ CATALYST, CREATING WOMEN'S NETWORKS, *supra* note 124; Pat Terry, A.B.A. PERSP., Fall 2000, at 8; Hewlett et al., *Leadership in Your Midst*, *supra* note 64, at 81; Sheryl Nance-Nash, *Wall Street Women: Forming Their Own Inside Circle*, WOMEN'S ENEWS, Apr. 10, 2006, <http://www.womensenews.org/article.cfm/dyn/aid/2700>.

¹²⁷ For benefits of affinity groups for women of color, see CAROL A. GALLAGHER & SUSAN K. GOLANT, GOING TO THE TOP: A ROAD MAP FOR SUCCESS FROM AMERICA'S LEADING WOMEN EXECUTIVES 243-44 (2003); Hewlett et al., *Leadership in Your Midst*, *supra* note 64, at 79, 81. For benefits of affinity groups for overweight women, see GIMLIN, *supra* note 76, at 110-113, 119-23 (2002).

¹²⁸ RHODE, BALANCED LIVES, *supra* note 50, at 22-25; BOSTON BAR ASS'N TASK FORCE ON PROFESSIONAL CHALLENGES & FAMILY NEEDS, FACING THE GRAIL: CONFRONTING THE COST OF WORK-FAMILY IMBALANCE (1999); CATALYST, A NEW APPROACH TO FLEXIBILITY: MANAGING THE WORK/TIME EQUATION (1997) [hereinafter CATALYST, A NEW APPROACH TO FLEXIBILITY]; CATALYST, MAKING WORK FLEXIBLE: POLICY TO PRACTICE (1996).

¹²⁹ For discussion, see Rhode & Williams, *supra* note 18; Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall*, 26 HARV. WOMEN'S L. J. 77, 83-89 (2003).

male life patterns and to encourage men to assume their fair share of caretaking responsibilities. At a minimum, this means ensuring that employees who seek temporary adjustments in hours or schedules do not pay a permanent price. Stepping out should not mean stepping down; individuals on reduced or flexible schedules should not lose opportunities for challenging assignments or eventual promotion. Nor should women who temporarily opt out lose all contact with the workplace. Part-time consulting arrangements and employer-supported career development opportunities can build loyalty and assist the transition back to work.¹³⁰

Finally, and most importantly, family and quality of life concerns need to be seen not just as women's issues, but also as organizational priorities. Options like parental leave and flexible schedules should be gender-neutral in fact as well as in form, and men should be encouraged to take advantage of them. Enabling male employees to use family policies is critical to broadening their base of support, minimizing potential backlash, and challenging the perception that caretaking is a woman's responsibility.

How these options should be encouraged and supported involves complicated political and economic issues that are beyond the scope of this Article. Some mix of government incentives, regulation, and corporate initiatives is the most plausible option. Such a package is hardly beyond the realm of possibility, particularly given the increasing research that finds work/family initiatives to be cost effective in recruiting and retaining talented women.¹³¹

C. Accountability

A key factor in equalizing opportunities is a commitment to that objective, which should be reflected in organizational priorities, policies, and reward structures.¹³² That, in turn, requires accountability. Decision makers need to be held responsible for results in recruitment, retention, and promotion, as well as in practices that influence those results, such as evaluation, assignments, mentoring, and work/family policies. A necessary

¹³⁰ Daniel McGinn, *Getting Back on Track*, NEWSWEEK, Sept. 25, 2006, at 62-64.

¹³¹ RHODE, BALANCED LIVES, *supra* note 50, at 20-21; CATALYST, A NEW APPROACH TO FLEXIBILITY, *supra* note 128.

¹³² KLENKE, *supra* note 120, at 254-60; 2005 CENSUS, *supra* note 4; CATALYST, ADVANCING WOMEN IN BUSINESS 6, 12-13 (2003); CATALYST, WOMEN OF COLOR, *supra* note 55, at 15; Mary C. Mattis, *Organizational Initiatives in the USA for Advancing Managerial Women*, in WOMEN IN MANAGEMENT: CURRENT RESEARCH ISSUES 261, 275 (Marilyn J. Davidson & Ronald J. Burke eds., 1994).

first step is commitment from the top. An organization's leadership needs to both acknowledge the importance of diversity and equality and make progress in achieving them a factor in employee evaluations and compensation.¹³³

To assist that process, organizations need concrete assessments of results. A management truism is that organizations get what they measure. Too few organizations adequately measure gender equity.¹³⁴ Employers should compile information on recruitment, hiring, promotion, retention, and quality of life. Decision makers need to know whether men and women are advancing in equal numbers and whether they feel equally well supported in career development.¹³⁵ Where possible, employers should assess their progress by comparing their programs with those of similar workplaces as well as with the best practices identified by experts.¹³⁶ Ironically, potential legal liability sometimes deters organizations from collecting information that could then lay the foundations for sex discrimination suits. To neutralize this deterrent and enhance accountability, government regulators could require employers over a certain size to disclose data concerning hiring, promotion, and retention of women.¹³⁷ The availability of this information would assist organizations in comparing their performance and would assist workers, oversight agencies, and public interest organizations in holding poor performers responsible. Additional resources for federal and state agencies that oversee equal opportunity law could also increase accountability.

¹³³ Barbara Reinhold, *Smashing Glass Ceilings: Why Women Still Find It Tough to Advance to the Executive Suite*, J. ORG. EXCELLENCE, Summer 2005, at 43-55; Sheila Wellington et al., *What's Holding Women Back?*, HARV. BUS. REV., June 2003, at 18; CATALYST, ADVANCING WOMEN IN BUSINESS, *supra* note 132, at 5-6, 11-12; CATALYST, WOMEN OF COLOR, *supra* note 55, at 69-74; Ridgeway & Correll, *supra* note 119, at 118; Gary N. Powell, *Reflections on the Glass Ceiling: Recent Trends and Future Prospects*, in HANDBOOK ON GENDER AND WORK, *supra* note 38, at 343.

¹³⁴ Wellington et al., *supra* note 133, at 18; Reinhold, *supra* note 133, at 46; Sandra Guy, *Most Corporations Don't Tell Diversity Data*, Women's eNews, Dec. 30, 2005, www.womensenews.org/article.cfm/dyn/aid/2578/context/archive.

¹³⁵ CATALYST, ADVANCING WOMEN IN BUSINESS, *supra* note 132, at 6-7; INT'L LAB. ORG., *supra* note 15, at 2, 6.

¹³⁶ CATALYST, WOMEN OF COLOR, *supra* note 55, at 32-33, 66; Mattis, *Organizational Initiatives*, *supra* note 132, at 275.

¹³⁷ William T. Bielby, *Minimizing Workplace Gender and Racial Bias*, 29 CONTEMP. SOC. 120, 124 (2000); Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458 (2002).

Organizations also need to be held responsible for their reinforcement of gender stereotypes and unattainable ideals concerning appearance. We need more protests, outraged letters, consumer boycotts, and guerilla theatre tactics, like the "Feed Me" stickers placed on outdoor advertisements with emaciated models. On the relatively rare occasions when a critical mass of consumers or political organizations has expressed concern, their complaints have produced at least modest results. Advertisements have been pulled and sponsorship decisions reconsidered.¹³⁸ Three-quarters of surveyed women say that they would like the media to portray women with more diverse physical attributes.¹³⁹ More of these women need to take actions that will make their preferences heard.

Law can help at the margins. More jurisdictions could follow the lead of Michigan, the District of Columbia, and cities like Santa Cruz and San Francisco that have enacted prohibitions on appearance-related discrimination.¹⁴⁰ Bans on grossly underweight models in major fashion shows like the prohibitions adopted in Madrid could also send a much-needed message to the fashion industry and publicize the need for more realistic body images.¹⁴¹

These measures are neither a modest nor a complete agenda. But it is a crucial step in narrowing the gap between our aspirations and achievements. The last four decades have brought us a long way in combating the most obvious forms of sex-based discrimination. The subtle forms define the challenge that remains.

¹³⁸ RHODE, *SPEAKING OF SEX*, *supra* note 78, at 94, 285 n.85; Neal E. Boudette, *Chrysler's Chief Disavows Support of "Lingerie Bowl,"* WALL ST. J., Dec. 9, 2003, at A3. See also BURK, *supra* note 70, at 1-14 (discussing protests against all-male golf club).

¹³⁹ ETCOFF & ORBACH, *supra* note 96, at 40.

¹⁴⁰ See *supra* text accompanying note 101. Such prohibitions have been controversial. For a general account, see ROBERT C. POST ET AL., *PREJUDICIAL APPEARANCES: THE LOGIC OF AMERICAN ANTIDISCRIMINATION LAW* (2001). For opposition to such ordinances, see James J. McDonald, *Civil Rights for the Aesthetically Challenged*, 29 EMP. RELATIONS L.J. 118 (2003).

¹⁴¹ Terzieff, *supra* note 98. British doctors sent a letter pressuring the fashion industry to change its standards. Shaveta Bansal, *British Doctors Urge Fashion Industry to End Obsession with Super-Thin Models*, ALL HEADLINE NEWS, Oct. 11, 2006, <http://www.allheadlinenews.com/articles/7005146018>. Israeli retail companies have also agreed not to employ overly thin models for their advertisements. *Israeli Retail Companies Will Not Employ Overly Thin Models*, INT'L HERALD TRIB., Sept. 20, 2006, <http://www.iht.com/articles/2006/09/20/news/web.0920models.israel.php>.