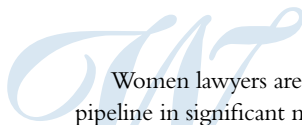


# Eliminating Barriers to Women's Advancement: Focus on the Performance Evaluation Process

By Consuela A. Pinto



Women lawyers are entering the pipeline in significant numbers, but few are emerging as leaders in their law firms. Hidden gender bias is the blockage that makes it virtually impossible for women to break through the glass ceiling in law firms.

Although gender bias is subtle, its effect can be minimized by reducing the blockage in the pipeline. The keys to reducing its impact on partnership decisions are two fold—(1) raise awareness about bias so that it can be recognized and (2) design a bias-free evaluation process. The performance review process is a critical point of impact because it is the primary professional development tool. What's more, evaluations drive the quality of assignments, level of autonomy, amount of client interaction, and, ultimately, partnership decisions.

## What Is Hidden Gender Bias?

There was a time when gender bias was overt—"We don't hire women lawyers." Thankfully, those days are gone. But bias still exists. The difference is that it is much more subtle today. For example, a partner assumes that a female associate is not in the office because she is home with her children when she is actually at a

client meeting. Or the partner attributes a woman's success on a summary judgment motion to the judge's receptiveness rather than the lawyer's skill. Unfounded assumptions such as these may impede women's advancement.

Hidden gender bias affects what we notice about people, how we interpret their behavior, and what we remember about them. We notice, interpret, and remember behavior that is consistent with our biases. Even the slightest level of bias in the workplace can have a profound and far-reaching impact on women lawyers' advancement to leadership positions. Initially, bias affects seemingly minor decisions such as the type and quality of assignments and the level of client interaction. These decisions in turn impact more significant decisions such as the allocation of client development opportunities, credit for new business, partnership, and assignment to management positions.

The cumulative effect of bias was best demonstrated years ago by a computer simulation of an eight-level institution with equal numbers of male and female employees. The model assumed a mere 1 percent bias favoring men. After eight rounds of promotions, the top level of management was composed of 65 percent men and just

35 percent women, demonstrating that biases accumulate over time and eventually impact formal employment decisions. (R.F. Martell, et al., *Male-Female Differences: A Computer Simulation*, 51 AM. PSYCHOLOGIST 157 (1996).)

All is not lost, however. There is a silver lining in this otherwise grim situation. While hidden gender bias is triggered automatically, actions based on these biases or stereotypes can be controlled. To control automatic gender bias, law firms must be able to recognize it.

Before we can identify gender bias, we need to understand the origin or basis for the bias. The image of a typical man overlaps with the idea of a good lawyer as someone who is intelligent, aggressive, confident, and influential. The typical woman, on the other hand, is assumed to be nurturing, soft spoken, sensitive, and less confident—traits that are inconsistent with the stereotype of a good lawyer.

Because women are not automatically seen as having "what it takes" to be good lawyers, they must demonstrate higher levels of competence and commitment over and over again to be judged equal to men. For women of color, the challenge is even greater. When stereotypes of race and gender operate

simultaneously, the effects of the bias increase exponentially, creating significant career obstacles.

### Patterns of Gender Bias

Gender bias falls into four main patterns: maternal wall, double standards, double binds, and ambivalent sexism.

*Maternal wall bias* is triggered when motherhood becomes “salient” or obvious. This pattern typically occurs when a lawyer announces that she is pregnant, returns from maternity leave, or adopts a reduced-hours or flexible work schedule. Maternal wall bias stems from assumptions that mothers are not as competent as others, are not as committed to their jobs, and belong at home. Mothers are assumed to be unable to be both good mothers and good lawyers. The perception is that a good mother is always available to her children, while a good lawyer is always available to her clients. (JOAN C. WILLIAMS & CONSUELA A. PINTO, *FAIR MEASURE: TOWARD EFFECTIVE ATTORNEY EVALUATIONS* 18–19 (ABA 2d ed. 2008).)

Women lawyers of color may face combined racial and maternal wall biases, causing them to be treated less favorably than white women and men. For example, African-American mothers are often offered shorter leaves or flexible work arrangements with less desirable terms than white mothers based on racial stereotypes relating to family needs. Further, they may be evaluated more negatively than white mothers when they take leave or work flexibly. (*Id.* at 19.)

The *double standards* pattern refers to the fact that women have to work harder to prove that they are as competent as their male colleagues because they do not enjoy the same default assumption of competence as do men. This pattern manifests itself in a number of ways. For example, women’s successes are more readily forgotten than those of their male colleagues. Conversely, women’s mistakes are remembered long after men’s are forgotten. Men’s successes are attributed to stable personality traits (he is a go-getter) and their failures are ascribed to factors outside their control (a demanding workload). The opposite is

true for women. Women’s successes are attributed to outside factors (a good jury) and their failures are blamed on personality traits (poor time management skills). Further, men are judged on their potential (again because they are assumed to be competent) and women are evaluated on their achievements. (*Id.* at 19–21.)

The *double binds* pattern could also be described as the “stuck between a rock and a hard place” pattern. Behavior that is acceptable in men often is considered unacceptable in women. A woman in a traditionally masculine

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job, such as a lawyer, may be called a “witch,” “hard to work with,” or “too ambitious” for the same behavior that helps a man establish himself as “assertive” and “having leadership potential.” When women behave according to traditional feminine norms, they are considered to be incompetent. But when they buck tradition and behave more like a man, they are faulted for being “deference challenged.” (*Id.* at 21–23.)

Finally, *ambivalent sexism* exists in workplaces where women can only be successful if they adhere to feminine stereotypes such as the “mother,” who takes care of everyone around her; “Ms. Efficiency,” who keeps the group on track and organized; and the “princess,” who moves ahead by aligning herself with a powerful male. Women who adhere to these traditionally feminine roles receive benevolent approval, while women who reject these stereotypes experience hostile disapproval. (*Id.* at 23.)

### Keeping Bias out of Evaluations

Ambiguity and subjectivity allow bias to infect the performance evaluation process. The key to keeping bias

from creeping into the process is to structure a procedure that promotes consistency and objectivity.

*Develop specific job-related performance competencies.* The backbone of the evaluation process is the performance objectives or competencies against which associates’ performance is measured. The competencies should be specific and directly tied to associates’ actual job duties. For example, the job requirement that associates must have strong writing skills may translate into the following competency: “Consistently produces reliable and usable written work product. Writing is clear, well organized, persuasive, and comprehensive. Associate’s written work product requires an appropriate amount of rewriting given the lawyer’s level of experience.” The specificity of this competency gives the evaluators and evaluatees a clear understanding of the *firm’s* definition of strong writing skills and ensures that all associates are measured against the same standard.

*Define the rating scale.* A common feature of most performance evaluation forms is a rating scale. The scale creates the opportunity for subjectivity, and therefore bias, to creep into the evaluation process. Minimize the subjectivity by including a specific definition of each level on the scale. Rather than simply stating that a 5 rating is equivalent to “exceeds expectations,” include a definition for “exceeds expectations,” such as “consistently surpasses the performance requirements for a lawyer at his/her level of seniority.”

*Train evaluating lawyers on best practices for conducting performance evaluations.* The briefing should include a review of the evaluation process, competencies, rating scale, appropriate techniques for writing an evaluation, and, most importantly, the four patterns of gender bias and tips for preventing biases from affecting the evaluation process. Bias can be eliminated only if it is brought to the surface and recognized. The briefing is the perfect opportunity to raise evaluators’ awareness of their own biases and encourage them to diligently ensure that

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*Fair Measure: Toward Effective Attorney Evaluations* includes a comprehensive primer on gender bias and step-by-step guide for structuring a bias-free evaluation process. To order a copy of *Fair Measure*, go to [www.ababooks.org](http://www.ababooks.org).

## SIGN OF THE TIMES

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counsel of Coca-Cola North America.

In addition to a flex-time schedule, Coca-Cola's legal department offers a compressed work week as well as the option of telecommuting. "It's important both in helping our current associates while attracting and retaining talent," Turner says.

### Hiring in Hard Times

In today's economic climate, many companies are not hiring, and budget restraints are causing some departments to scale back. According to Vanessa

Vidal, president of ESQ Recruiting, a national service specializing in the placement of in-house lawyers, hiring will most likely be very selective and in recent months has come to a halt. The slowdown, however, may be an advantage for women and minorities.

"All of my clients say they would like to see diversity candidates," Vidal says. "There's just an awareness and a desire to see diversity and women in their legal ranks."

It remains to be seen whether corporate budget restraints will affect diversity initiatives. "I think we broadly think of the economy and how we

prioritize in the legal department when it comes to budget adjustments, but we have to absolutely sustain the core mission," Microsoft's Snapp says. "We cannot be a quality, first-class legal department without diversity, and while we don't know if there will be a reduction in programs, we do have to sustain the core."

DuPont's Sager agrees. "New initiatives tend to suffer, but our job is to keep it fresh and alive," he says. "What we invest in now will pay us back in the years to come." ☞

Hannah Hayes is a Chicago-area freelance writer.

## GENERAL COUNSELS KEEP THEIR DEPARTMENTS GOING

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and taught her alternative dispute resolution, highly useful in her current position. She's always worked hard. Finishing one assignment, she'd run to her boss for another. She sought leadership roles because she likes to solve problems. "Someone said I'm resilient. If I make a mistake, I learn it and move on."

When she was offered the general counsel job in 1999, it was right after she'd adopted a child at age 48. It wasn't perfect timing, but she says she took the position because "opportunities in terms of career advancement don't always come at the best times."

Although her task sounds Herculean, she always takes time to issue thank yous and small acknowledgments to her workers across the country. "I ask my staff to let me know when someone won a case, passed the bar, got married, or ran a marathon," she says. "That's a way to keep your department going and functioning well, especially in tough times." ☞

*Ann Farmer is a Brooklyn, New York-based freelance journalist who covers breaking news for The New York Times and contributes stories on culture, law, crime, and other topics to publications including Emmy, DGA Quarterly, Budget Travel, and others.*

## FOCUS ON THE PERFORMANCE EVALUATION PROCESS

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personal biases do not influence a written performance evaluation.

*Assign an individual or a committee to review all completed evaluations before they are finalized.* Ideally, one person should be assigned to review all completed evaluations because patterns of bias may be difficult to identify without reading every evaluation. However, it may not be feasible for one person to review all evaluations for a large firm. In that case, a committee of reviewers is the next best option. Suggestions for possible reviewers include members of the management committee, the firm administrator, the professional development officer, or members of the firm's diversity committee. The reviewer(s) should look for consistency in the application of competencies and indications that the evaluators were influenced by bias.

### Tips for the Evaluators

Law firms can't do it alone. The evaluators have to share the firm's commitment to eradicating gender bias. Evaluators can do their part by taking advantage of these suggestions:

- Get educated about gender bias and examine your own biases.

- Base your comments on actual performance and not potential.
- Comment only on performance during the period under review.
- Base your assessment on factual examples of behavior.
- Weigh individual competencies similarly for all evaluatees regardless of gender.
- Avoid using derogatory, disrespectful, or overtly biased comments.
- Avoid basing comments or scores on the evaluatee's adherence or failure to adhere to traditional gender stereotypes.
- Review completed evaluations for consistency and objectivity.

Focusing on eliminating gender bias in the performance evaluation process is a beginning. The greatest impact on women's advancement, however, will come from raising lawyers' awareness about their biases and making clear the firm's intolerance for bias in the workplace. ☞

*Consuela A. Pinto, an experienced employment attorney, is director of education at the Project for Attorney Retention and a coauthor of Fair Measure: Toward Effective Attorney Evaluations (ABA 2d ed. 2008).*