



## Women are ready. Is the legal industry?

**Women lawyers don't need fixing to become leaders, its law firm structures and systems that are holding us back, writes former Orrick partner Patricia K. Gillette**

**D**orothy. For most of us that name immediately evokes images of a young woman, a hurricane, and a wicked witch. Yes, *The Wizard of Oz*. But one image Dorothy never conjures up is that of a female leader. And yet, isn't that exactly what Dorothy is?

She takes the Scarecrow, the Tinman, and the Cowardly Lion (all of whom are men), identifies what they need, and then leads them down the yellow brick road to Oz. And when they arrive there, she makes sure each of these men gets what they came for; the Scarecrow gets his brain, the Tinman his heart, and the Cowardly Lion his courage. That is exactly what a leader does. She sets goals, devises a strategy to achieve those goals, and then delivers results.

So why don't we think of Dorothy as a leader? She certainly exhibits the skills we associate with leadership: confidence,

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collaboration, risk taking, as well as innovative and creative thinking. And yet, it is not until these things are pointed out to us that we are able to think of her as more than just a girl from Kansas who went to Oz. Why is that?

The easy answer is that it is a movie and no one is thinking about anything other than Dorothy getting back to Kansas. But even if that is true, the underlying truth is that Dorothy just doesn't fit our concept of what a leader looks like, and this provides a context for discussing the dilemma that women have been facing in the legal industry for years: we don't fit the traditional image of law firm leaders.

It is no secret that the vast majority of law firm leaders are white men. And, most of the time, they are also among the biggest rainmakers in the firm, and therefore the most highly compensated lawyers. Thus, our image of law firm leaders – much like that of corporate America – is anchored in this group of white males who control the firm's most lucrative clients.

The question law firms have tacitly been asking for years is the same as that posed by Henry Higgins in *My Fair Lady*: Why can't a woman be more like a man? And, because that is the question, the answer seems obvious: Fix the women. Make them more like men, and then women will rise into positions of leadership and power.

That mindset led to various well-intentioned actions by firms to 'help women succeed'. Yet, after decades of these kinds of 'fixes' for women, we still have few women in power positions in our firms. Is that because women are not capable of being leaders? Or is there something else that is interfering with women rising into positions of power in our firms? Could it be the system – not the women – that needs fixing? In my opinion, the obstacles for women ascending into positions of power are systemic, requiring an overhaul of the way we think about how we practice law and reward attorneys in our firms.

### Sources of power

There are two kinds of power in law firms: institutional and

economic, and they are inextricably linked. To get institutional power (leadership), you must have economic power (business). For decades, however, there have been only a few women who have economic power in their firms, and because of the link between institutional and economic power, this explains – in part – the lack of women in leadership positions.

Firms have tried to solve the economic power problem by giving women special training on business development and, in many cases, individual coaches to help them develop books of business. But even though these actions have had little to no impact, firms continue to pour hundreds of thousands of dollars into these programmes.

What firms have not done is examine whether there may be a reason other than some alleged deficiency in women to develop business that is interfering with the desired outcome to increase economic power. For example, firms rarely take a deep dive into the ways in which business opportunities are doled out: who goes on pitches, who is assigned to lead counsel roles, who gets high profile case assignments, who is chosen to

take over institutional clients.

Those kinds of opportunities in most firms are not monitored or systematised. Rather they are left to individual lawyers to dole out as they see fit. As a result, women have traditionally received fewer opportunities to develop their profiles, to interact with potential clients, and to demonstrate their ability to take on leadership roles in their legal work. Their exposure to potential clients has been limited not by lack of ability, but by lack of opportunity. The same is true of existing clients. Most firms do not have succession planning for institutional clients. As a result, those lucrative client relationships, which are usually controlled by white men, are passed on to white men.

These systemic issues stand in the way of women getting economic power. No amount of training or coaching is going to change that. Instead, firms need to examine their systems and insert controls into those systems that will level the playing field and provide the same kinds of opportunities to women lawyers as has traditionally been provided to their male colleagues.

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### The economic power fix

How do we solve it? We do what many of our clients as well as some law firms are doing. We take intentional actions to diversify the sources of economic power so that we can yield a positive impact.

- Succession planning for institutional and large clients. This means firms act intentionally with respect to passing on long standing clients of the firms. No longer is there a ‘tap on the shoulder’ process for bringing new attorneys into a client relationship. Rather, there is a conscious effort to ensure women are given the opportunity to inherit these relationships by intentionally introducing them into the mix so the client gets to know and trust them.
- Monitoring of pitch teams. Who goes on a pitch is critically important to building economic power because it gives women the ability to deliver new clients or expand client relationships. Too often pitch teams are composed of ‘friends’ of the person who got the call to pitch rather than a strategic combination of skill sets,

personality fits, and diverse attorneys. This is changing as clients are demanding diverse teams. Firms that voluntarily get ahead of this demand by affirmatively making pitch teams diverse may have a leg up on the competition and be able to increase the economic power of women attorneys.

- Lead assignments for women. No one should ever put an unqualified person in charge of a case, as the lead counsel in a litigation or corporate matter, or as the spokesperson for a client in court or in a deal setting. But, it is clear there are more women than are currently in these roles who are qualified to serve – they just haven’t been chosen. Making a targeted effort to ensure that women are getting these types of opportunities raises their profiles and is essential to their ability to build a book of business.
- Rethinking origination credit. Some would say origination credit is the root of all evil in our industry. It makes us think about ourselves instead of the institution; it creates silos; it inspires bad behaviour; and it

negatively impacts the ability of women to get economic power – particularly in those systems where origination credit is assigned for life, regardless of who actually does the work. Origination credit systems have especially plagued women for years – in part because while women have been instrumental in the success of matters, they are often not the originating partner and thus they get no credit. The system needs to be rethought and changed. Until that happens, firms need to have systems in place to ensure that people who are critical to the relationships, and/or who are actually doing the work and keeping the relationship alive, are getting credit for their contributions – even if they didn’t bring the client into the firm.

These are just some of the actions firms could take to increase the economic power of women. And if that economic power base is expanded to include more women, the opportunities for institutional power – e.g. leadership positions – should increase as well.

### The opportunity fix

There is another lever that firms should consider to ensure women are being considered for power positions in their firms: implementation of the Mansfield Rule. Designed by the team I co-chaired at the Diversity Lab’s 2016 Hackathon, this rule has been refined and enhanced and adopted by over 60 law firms across the US. The premise is simple: ensure women (and minorities) are in the candidate pool for the important leadership roles in the firm. It requires that for each significant leadership position, 30 per cent of candidates must be women or minorities. It doesn’t require the women or minorities are chosen. It simply requires they be included in the pool.

And what does that do? It raises the visibility of these attorneys; it requires transparency into the qualifications for these positions and the process itself; and it requires that law firms increase the pipeline of women and minorities so that they can fill the 30% requirement. It is for that reason the Mansfield Rule is an action that has immediate impact and hopefully will begin to change the face of power in

our firms. However, the rule can easily become a ‘check the box’ action unless we also address the implicit (or unconscious) biases that infiltrate the decisions about who will be chosen from the candidate pools it creates.

Implicit biases are based on stereotypes. They are the stories we tell ourselves about people before we have met them. Everyone has these biases. And there is no question that implicit bias can interfere with how we perceive the people with whom we interact.

Take Dorothy. Her pig tails, her high-pitched voice, the gingham dress, and her youth are not characteristics we associate with a leader and, as a result, they get in the way of our ability to see Dorothy for who she is and what she accomplishes.

Implicit biases cannot be ‘trained’ away. We cannot eliminate them completely. But we can raise consciousness about these biases so that we are able to check the behaviour of ourselves and others. The way to do that is twofold.

First, firms can use appropriate training to bring the issue of implicit bias to the forefront. The type of training is critical. For lawyers, shame and blame doesn’t work. Nor do ‘touchy feely’ presentations. What works

is training that puts implicit bias into context, that talks about the science and law behind the concept, and that is interactive and based on real-life and believable scenarios so that people are forced to discuss and consider the consequences of unchecked biases in the workplace. The messages are simple:

- We all have biases.
- We cannot eliminate those biases overnight and, in some cases, never.
- We have laws and science that back-up the concept of implicit bias.
- We can learn to recognise implicit bias when we see it in others and check them appropriately.
- We can learn to recognise implicit bias in ourselves and to step back and reconsider.

Second, firms must look for pockets of implicit bias in areas such as compensation, promotion to equity partner, assignments, and firm leadership. This requires an honest and transparent examination of the criteria, for example, of setting compensation or for moving from a non-equity to an equity partner position. Once the criteria are determined

to be valid and reflective of what the firm values, then there must be an examination of whether the standards are being applied equally, and a commitment to making changes if the standards are not equal.

Only if these implicit biases are addressed can a solution like the Mansfield Rule work. Until we change our image of what a leader looks like, it won’t matter how many women are in the candidate pool: they won’t be chosen as firm leaders.

### **The self fix**

It would be disingenuous to ignore the fact that women must also step up to the plate if we are going to move more women into leadership positions. And, for many women, that means they have to learn to self-promote, take risks, abandon the ‘perfect’ standard for everything they do, and ask for opportunities that will lead to leadership positions.

Call it a growth mindset or grit or resilience. Women have to be willing to put themselves on the line, to show confidence, ambition, and strength. It doesn’t mean we have to become men. But it does mean that we have to assert ourselves and insert ourselves into positions and opportunities to demonstrate a desire for power

and an ability to exercise it. Of course, there are gender norms that may be violated by such actions. Some women will manoeuvre around those; others will take them on. Each woman must determine for herself how to deal with this issue. Ignoring this reality is not an option.

And we have to bring men on as allies. Baby boomer men can be champions for women because they have the power and the clout to work for the kinds of changes suggested here. Millennial men are taking on some of the same causes that women have advanced for years and that gives more momentum and power to move the dial. Women need to reach out to these men; to seek their input and assistance; and to make these issues of diversifying leadership law firm issues not ‘women’s issues’.

Dorothy didn’t need a man to give her power. She had it all along. She simply needed to figure out where it was and how to use it. For her that power was in the ruby red slippers.

If we want more women leaders, we have to find our equivalent of the ruby slippers and insist upon changes to the law firm structures and systems that are holding us back. ●