

The Answer to Gender Equality in the Law? Just Ask Dr. Seuss

Michelle Browning Coughlin

Are you a plain-bellied Sneetch, or a star-bellied Sneetch? Are you a Sylvester McMonkey McBean? Have we each been all of these characters at different times during our lives?

Every parent knows the name Dr. Seuss very well and can probably recite *Red Fish Blue Fish* from memory. But my favorite story by our beloved Dr. Seuss is *The Sneetches*, a tale of quirky yellow characters who are predetermined as more- or less-worthy based on a simple physical characteristic, namely, whether they have a star on their belly or not.

The star-bellies are granted automatic societal privilege (“We’re the best kind of Sneetches,” they would proclaim), based simply on the fact they were born with a star belly. The plain-bellies were excluded and treated as inferior, due solely to their lack of star. That is, until Sylvester McMonkey McBean, a mysterious miracle maker, arrived with his wondrous Star-Machine. The plain-bellies eagerly lined up and paid the price to have a star placed on their belly.

The star-bellies, grasping at their superior position in society, were willing to pay even more than the plain-bellies had when Sylvester McMonkey McBean introduced them to his new Star-Off-Machine. Now, they determined, *plain-bellies* would be the superior Sneetches. However, the newly minted star-bellies went back through the Star-Off-Machine, paying McBean with each pass through the machine, and on this went, round and round, until no one knew whose physical characteristics made them superior. Leaving the Sneetch village in utter chaos and penniless, McBean rolled out of town with his machine.

Like in Dr. Seuss’s clever parable, in the legal profession there is a persistent and seemingly entrenched, often unconscious, divide in the professional opportunities afforded women as compared with men. And there are no shortage of Sylvester McMonkey McBeans—albeit less charlatan and usually more well-intentioned—who are getting paid handsomely for their seminars on “negotiation for women,” “leadership for women,” “communications styles for women,” “grit for women.”

Somehow if women will just communicate the right way (less like women, but not like men); be gritty enough (but don’t be a bitch), communicate more assertively (but not too assertively), or show the right kinds of leadership attributes (don’t be a pushover, but don’t be threatening), then women will finally grab the golden ring of leadership in their chosen profession.

While many talk about the glass ceiling that exists for women in nearly every profession, authors Alice H. Eagly and Linda L. Carli posit that a labyrinth is a better analogy than a glass ceiling. Rather than one final obstacle that lurks at the top of the profession, women face obstacles and barriers at nearly every level of their professions, with the legal profession being no exception.

Despite approximately equal representation of women at the law school level and initial career stages of the legal profession since the

mid-1980s, improvement in women’s ascension to leadership roles in the profession has been stubbornly stagnant or indicating only marginal improvement. And some research shows that pay inequity has actually gotten worse in the legal profession over the past decade, not better.

Simultaneously, research identifies that while men are contributing more to household, childcare and other caregiving needs of their families than a couple of decades ago, women are still shouldering a much larger percentage of such tasks. Moreover, studies indicate that parenting has become more intensive in recent years and the additional hours attributed to the increased parenting requirements have been picked up primarily by women. A large majority of unpaid, non-glamorous labor—think lunchroom volunteers and church nursery volunteers—is done with little fanfare by women in schools, churches and communities across the country.

Unpaid labor has been labeled the backbone of the American economy, and yet that labor is disproportionately required of women, reducing their ability to pursue their careers on an equal playing field with their male counterparts and their time to engage in leisure activities (which can also be critical to building business networks).

But what if we could create policies and remove systemic barriers so that unconscious biases are interrupted? While this article cannot attempt to fully explain the causes, nor the outcomes, of gender bias, neither can it possibly outline all potential strategies for eliminating this bias. Nonetheless, these 10 strategies can help improve opportunities for women (and men!) in the legal profession:

- 1. Ditch your mandatory diversity training.** Yes, that’s right—stop requiring people to attend mandatory diversity training. Research has shown that mandatory diversity training either has no effect or can, worse, have a backlash effect, by coming across as accusatory or forced. Instead, offer non-mandatory unconscious bias training and form task forces that give leaders across the organization the chance to come to an understanding of the issues and own the solutions that will work for their organization.
- 2. Put your money where your mouth is with “diversity bonuses.”** If your organization really values diversity, then actually value it: assign it a salary or bonus component. While we hope people will do the right thing for its intrinsic value, rewarding them financially is more likely to achieve measureable results. In a similar vein, if you are the in-house counsel or client hiring legal services, you can use your status as the client to demand diversity by providing diversity bonuses (or penalties) of your law firms.

Programs like the Mansfield Rule, created and ran by Diversity Lab, are providing guideposts for firms and in-house counsel

alike on ways to improve all forms of diversity in the legal profession. Leadership from in-house counsel and legal consumers is going to be critical in these efforts, because, as they say, the customer is always right.

- 3. Make paternity leave the norm.** Legal professions will do well to offer family-friendly benefits that are gender-neutral, and beyond just offering it, creating a work culture where men can actually take paternity leave, utilize flexible schedules, and generally prioritize the work of caring for their families. For so long as women take maternity leave (if it is even offered), and men do not, women will continue to bear the disproportionate stigma placed on mothers. Perhaps more importantly is the not-too-subtle message that women are still the primary caregivers and men are still the primary providers.

In 2019, women are often the primary breadwinners for the families, and many men are dedicated caregivers. And parental leave must be designed to prevent it becoming an unintentional roadblock to success. (1) Parental leave needs to be flexible (as an example, perhaps a father would choose to take off a week or two after the baby is born, and then save the remainder of his leave for when the mother returns to work). (2) Parental leave in law firms must involve a pro-ration, or average with prior years, of billable hours, origination and/or receivables to prevent unintended consequences of parental leave, as well.

It is time to think creatively about how to solve these challenges, rather than remaining wedded to past solutions.

- 4. Fore! Don’t bogey on the business development options.** Business development options tend to take a strongly masculine focus at many legal employers, or may unintentionally overlook gender dynamics. As a summer associate, I once attended a firm-organized cocktail hour with a particular practice group at the firm where I was then clerking. I was the only woman in attendance at the cocktail event, since I was the only female summer associate and the entire practice group was male. Without realizing it, the organizing attorney had situated our group under a modern art display that consisted of about 25 large pictures of naked breasts.

I have a good sense of humor and the situation became a funny story, but it is an analogy for a lot of networking situations that may not take gender diversity into account. Create and support various types of business development options.

- 5. Easy solution to increasing women’s leadership: actually put women in charge.** Want more women in leadership? Just do it—appoint women to leadership positions. Canadian Prime Minister Justin Trudeau was determined to appoint a gender-balanced cabinet

when he took office in 2015 so when he took office, that’s exactly what he did. The legal profession (and all professions) will benefit financially from the appointment of gender- and racially-diverse leaders. And, beyond just appointing a single woman to a leadership position, ensure that *more than one* woman is on every leadership or management team... and board... and committee... and panel.

Women need more than tokenism; they need the real opportunity to have a voice of leadership. And if you think your organization does not have women with the requisite experience, consider whether unconscious bias is playing a role? And then identify women to be leaders, recruit them, support them, champion them. Also, when you have the power—especially the power of the purse—do not lend your financial resources to organizations that treat diversity as a non-priority or afterthought. Just last week, I responded to an invitation to attend a presentation that featured an all-male panel asking whether there are really no women across the country with the ability to discuss what was a fairly basic legal topic.

- 6. Build on-ramps to counter the readily available off-ramps.** Women tend to leave the profession for a variety of reasons across their career. While many people assume young women are likely to leave the profession, women in their 40s and 50s are more likely to leave, often feeling the squeeze of caregiving for children and aging parents at the same time, and simultaneously facing the “success fatigue” of navigating the career labyrinth women face.
- There are plenty of off-ramps built into the legal (and other) professions; it is time to welcome women back. Create non-penalizing opportunities for women to re-join the legal profession and gain the benefit of their considerable experience and life experiences. Look for the strength, wisdom, connections and experience gained during “gap years.”

- 7. Don’t make assumptions.** A very well-known and prestigious male partner in a law firm once told me that his female partner, who he viewed as a highly talented attorney, was a young mother. Often, he would choose to go to court or other litigation-related meetings himself rather than ask her to go because he assumed that: (1) he would be more likely to know all the judges and opposing counsel and could be more effective as a result; and (2) she might not want to go because the time or location was possibly “inconvenient for a young mother.” He told me that one day he realized he was making assumptions about what she would or would not want to do, without ever actually asking her.

Moreover, he realized that if she never went to court, how would she ever get to know the judges and opposing counsel. Often, assumptions—even well-

intentioned ones—can be a roadblock to women's success in the legal profession.

8. Get transparent about pay and promotions. One of the most critically effective ways we will improve gender equity is to ensure that women's promotion opportunities and pay are equitable. One leading strategy for accomplishing this objective is for organizations to engage in pay audits and/or introduce pay transparency. Companies across all sectors that utilize pay audits are identifying and rectifying legacy pay inequities at their organizations, and by doing so, reducing their own legal risk, and more importantly, improving the likelihood of women to stay and advance into leadership positions.

Pay transparency requires a sensitivity to the culture of an organization, but ultimately can become a tool that all members of an organization come to deeply value. Additionally, defining the steps required for promotion in the legal profession is critical, rather than basing decisions on highly subjective factors that can be more subject to influence by unconscious biases.

9. Support breastfeeding lawyers and parental leave continuances. Imagine that you finally get a recess during a court proceeding, and instead of being able to regroup your thoughts, you are sprinting across the courthouse to your car or knocking on doors for conference rooms until someone answers in order to be able to find a private place to pump breastmilk. Or, imagine you are attending an all-day legal conference, and the only place offered to you to pump is a bathroom or open conference room. Or that you (or

your spouse/partner) are nine-months pregnant and your opposing counsel objects to your reasonable request for a parental leave continuance in the case, forcing you to hand over your case to another attorney or come back to court a week after giving birth.

These are the kinds of scenarios that serve as hasty off-ramps to women lawyers with children who can literally have their roles as mom and attorney placed in direct conflict by the system we have created. Throughout the country, groups like the Florida Association of Women Lawyers and MothersEsquire, individual judges and attorneys, and bar associations are striving to make sure that accommodations are provided, policies are changed, and court rules are amended to ensure that lawyers with children, especially women, are not placed in such difficult and discouraging situations.

10. Refocus efforts on fixing the system, instead of "fixing" women. So many diversity efforts place emphasis on teaching women how to more effectively operate in a biased environment, rather than addressing the biased environment. While some will argue that this is a realistic effort to deal with conditions as they are now, perhaps this focus on "fixing" women is the reason we have seen stagnation in many of the metrics for women's success over the past several decades.

Many of the approaches of addressing unconscious bias in the legal profession have taken a bit of a Sylvester-McMonkey-McBean approach, creating a cottage industry around teaching women how to "fix their flaws" in order to succeed. Not only do these ap-

proaches cause some women lawyers to internalize the stigmas and biases they face, but also they entrench the notion that women themselves are to blame for the attrition rates and inequity in leadership for women. After all, blaming the unconscious bias that women face on them is easy, but it will not work. We must invest in structural change if we want to create gender equity.

I challenge you today to consider whether you have ever been a metaphorical Star-Bellied Sneetch or Plain-Bellied Sneetch. And when you encounter a program that is supposed to improve diversity in the legal profession, I ask you to consider whether it has an air of Sylvester McMonkey McBean about it, or does it actually seem to be getting at the root of the problem by addressing structural bias? If each of us can be more aware of, and attuned to, the impact of gender bias in our profession and seek solutions that address the system instead of blaming individuals, we will *all* be more successful. And in the words of yet another Dr. Seuss story, *Oh, the Places We'll Go!*

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Airbnb Joins Uber and Lyft, Ending Mandatory Arbitration for Sexual Harassment and Discrimination Claims

Megan U'Sellis

Airbnb Inc. recently announced it would no longer force its employees who filed sexual harassment lawsuits to settle their claims in private arbitration. The notice came only days after Google and Facebook made similar announcements concerning policy changes about sexual harassment, including ending forced arbitration for such claims. Google's announcement followed a 20,000-employee walkout protesting the company's handling of sexual misconduct allegations. In May of this year, Uber and Lyft became two of the first gig companies to waive mandatory arbitration and remove the confidentiality requirement for sexual assault and harassment victims (for passenger, driver and employee claims).

In addition to sexual harassment claims, Airbnb also said it would end mandatory arbitration for discrimination causes of action as well, including claims for racial, gender, religious and age bias. This makes it the first major technology company to eliminate forced arbitration for claims other than sexual harassment. The company issued a detailed statement about the change: "We are a company who believes that in the 21st century it is important to continually consider and reconsider the best ways to support our employees and strengthen our workplace. From the beginning, we have sought to build a culture of integrity and respect, and today's changes are just one more step to drive belonging and integrity in our workplace."

Airbnb will continue, however, to mandate arbitration for its guests and hosts. With the rise of the #MeToo movement, we expect the removal of forced arbitration agreements for sexual misconduct claims to be a growing trend, especially among gig and technology companies.

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