

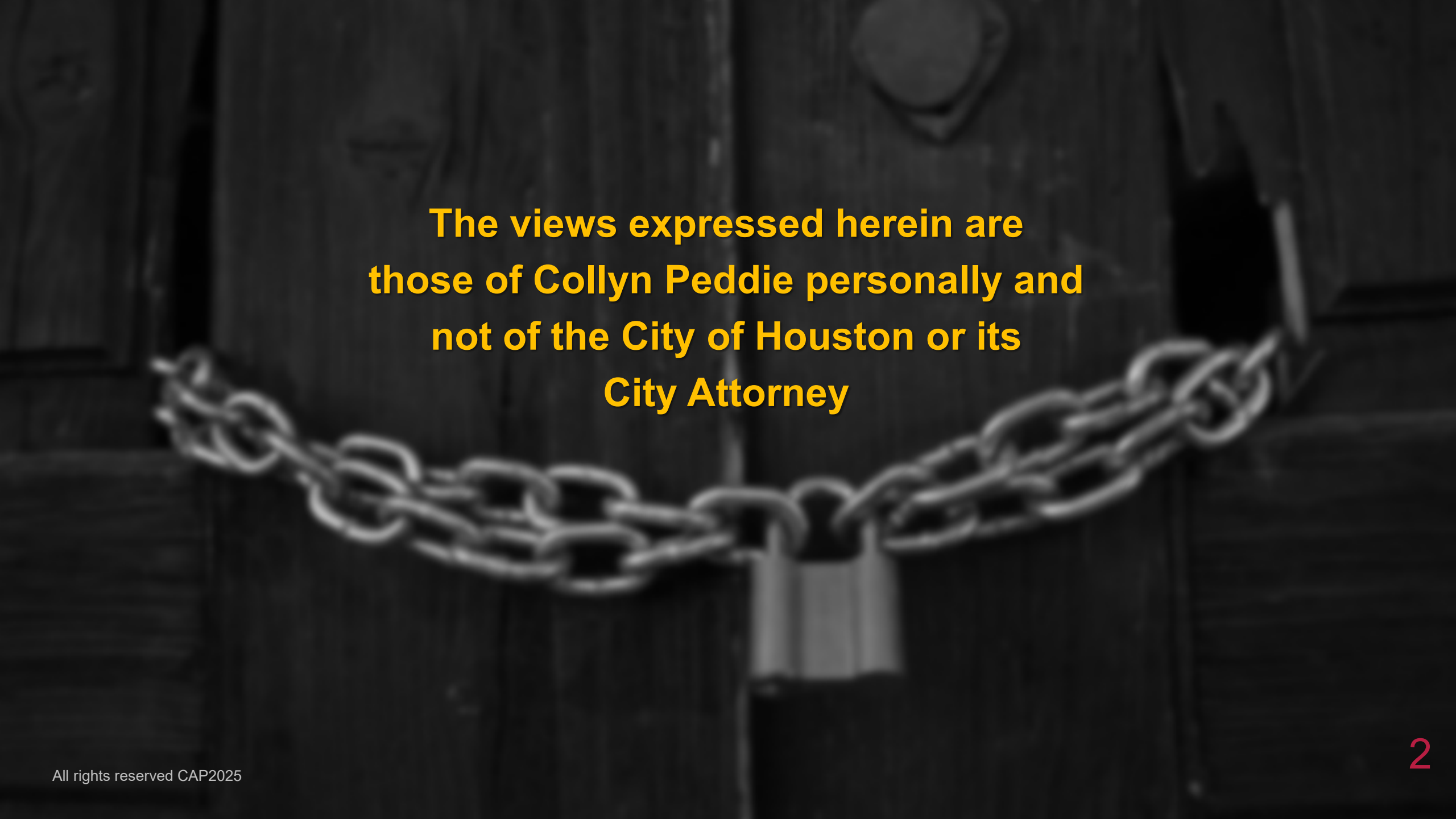


But It's Not Fixed Yet:

**Will Anti-DEI Measures and Truthiness End Efforts
to Promote and Retain Women Lawyers? ?**



Collyn Peddie



**The views expressed herein are
those of Collyn Peddie personally and
not of the City of Houston or its
City Attorney**

truth \tru:θ\ *n* (ca. 1567) : telling or disposed to tell the truth
<a ~ witness> — truth-ful-ly \-fə-lē\ *adv* — truth-ful-ness *n*

tru·thi·ness \'tru:θi-nəs\ *n*

1 : truth that comes from the gut, not books (*Stephen Colbert, Comedy Central's "The Colbert Report," October 2005*)

2 : the quality of preferring concepts or facts one wishes to be true, rather than concepts or facts known to be true (*American Dialect Society, January 2006*)

WHAT IS TRUTHINESS?

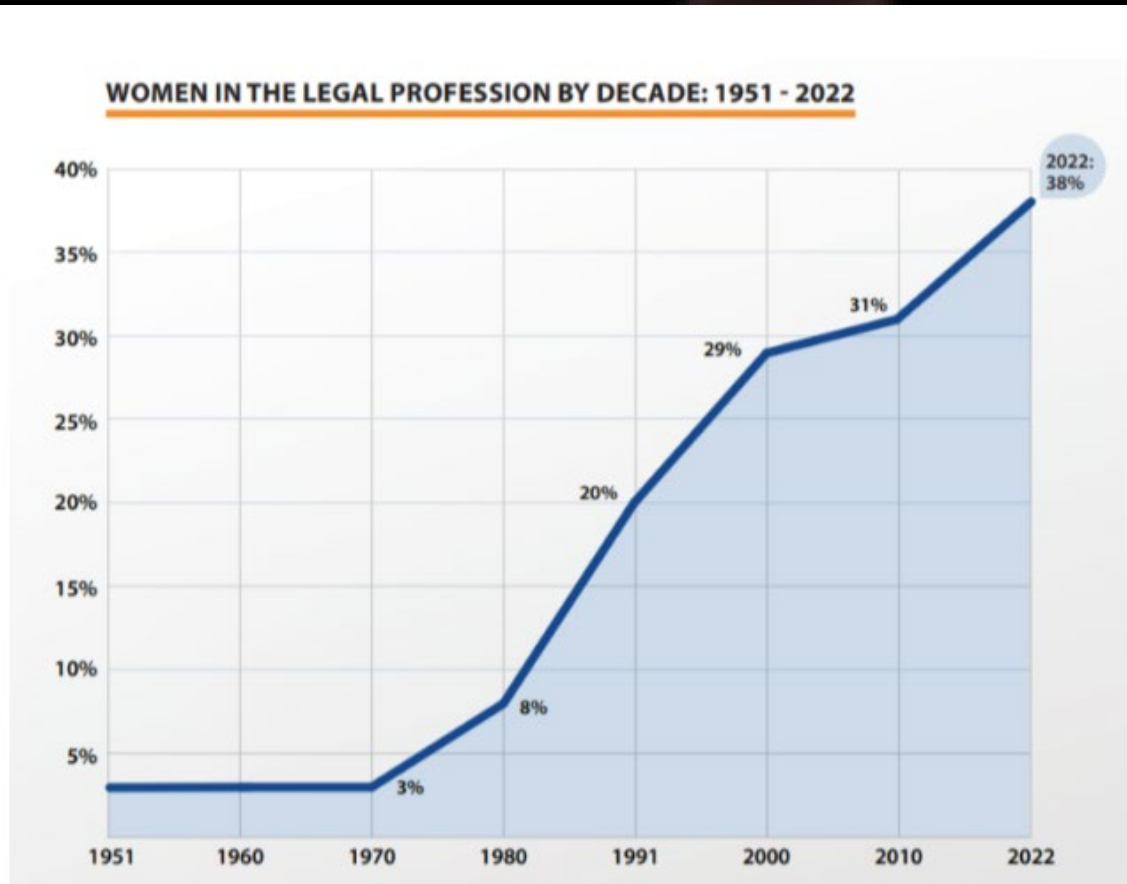


Truthiness

truth serum *n* (1924) : a hypnotic or anesthetic used to induce a subject to freely

induce a subject

THE GOOD NEWS



Sources: ABA National Lawyer Population Survey; American Bar Foundation Lawyer Statistical Reports; ABA Section of Legal Education and Admissions to the Bar



THE GOOD NEWS

- **41% of all lawyers are women**
 - **490,000 in 2022**
- **43% of justices on highest state courts are women**
- **33% federal judges are women**
 - **up from 27% in 2020**
 - **60% of Biden's judicial appointments were women**
- **Majority of Judicial Panel on Multi-District Litigation and chair have been women**



THE GOOD NEWS: THE BUDDING MAJORITY

- In 2016, women became the majority of law school students
 - Over 56% of law students are women
 - Women students outnumber men at 82% of law schools
- In 2023, women became the majority of law firm associates
 - 50.6%, were women, mirroring their percentage in the U.S. population
 - Associates of color increased to 30.15%, women were 17.5%



THE GOOD NEWS: THE BUDDING MAJORITY

- In 2020, women became the majority of general lawyers in the federal government
- In 2024 or 2025, women will become the majority of full-time law school faculty members



THE BAD NEWS

- **Women comprised only 23.7% of equity partners in 2023**
 - **NAWL 2020–22% equity partners in 2020**
 - **up from 16% in 2005**
- **28% of non-equity partners in 2023**
 - **NAWL - 32% of non-equity partners in 2020**
 - **up from 25% in 2005**
- **28% of lateral partners hired**
- **26.8 % of all partners in 2022**



THE BAD NEWS

- **In 2020, 12% of managing partners were women**
 - Up from 5% in 2005
- **28% of Firm Governance Committee members were women**
 - Up from 16% in 2005
- **27% of Practice Group leaders were women**
 - Up slightly from 24% in 2016



MORE BAD NEWS

- **Women comprised 31% of general counsels at U.S. companies**
- **30% at Fortune 500**



WORSE NEWS

- Men are twice to five times as likely to make partner as are women, even if a woman did not take time off for children
- Number of partner promotions overall is down 29%



REALLY BAD NEWS - MONEY

- “Even at the entry level, women are paid less than men, and these gaps grow as women and men advance in partnership, with the largest gaps occurring between equity partners”



REALLY BAD NEWS - MONEY

- After only 2 to 3 years of practice, women and men had a 5% gap in income
- After 7 years, that gap had increased to 15%
- After 10 years of practice, the gap was 20%
- Rises thereafter



REALLY BAD NEWS - MONEY

- Equity partner pay gap averaged 12% from 2010-20
- In Am Law 200 firms, 31% gap in 2019
- Male partners make on average 53% more than women partners at the largest firms (\$959,000 per year vs. \$627,000 per year)
- Women partners make less even after holding originations constant



REALLY BAD NEWS - MONEY

- Female equity partners earnings **dropped** to 78% of men's 2020 earnings
 - It was 84% in 2005
- Women are largely shut out of the highest levels of compensation
 - Only 2% of most highly compensated partners were women in 2020



**DISPARITIES
ARE NOT
EXPLAINED BY
NEUTRAL
FACTORS OR
SELF-
SELECTION**

- **Tex. A&M Law School studied 9,000 full-time Texas attorneys**

First of its kind study to examine whether the legal market especially disadvantages the most qualified female lawyers

- **They found a large gender pay gap of \$35,000 at the median and \$64,000 at the mean**



DISPARITIES ARE NOT EXPLAINED BY NEUTRAL FACTORS OR SELF- SELECTION

“[N]either differences in human capital nor labor market segregation explain the earnings gap. Despite women’s progress in the legal profession, male lawyers earn far more than similarly situated female lawyers across legal practice settings and roles.”

“Be patient. It’s only a matter of time...”

**Women Lawyers
Parity Day 2181**



2025 EXECUTIVE ORDERS

- **Executive Orders tied to federal grants and contracts**
 - **Revoke a Johnson-era Executive Order requiring “affirmative action” to end discrimination in agencies and federal contracts**
- **Administration is seeking to extend these restrictions to bar associations**
- **EO was recently unblocked by appellate court following trial court injunction**



2025 EXECUTIVE ORDERS

- **Attempt to eliminate “root and branch” all so-called DEI and affirmative action programs, professionals, and agency offices**
 - Prime beneficiaries of such programs have been white women
- **Recast all such efforts as discriminatory themselves**
- **Focus on “merit” alone**



MERITOCRACY ASSUMPTIONS

- Merit is an objective standard no one can question
- Merit is color-blind and gender-neutral

TENETS OF MERITOCRACIES

- Systemic or structural bias does not exist
- All participants start on equal footing
- Efforts to reduce or ban alleged discrimination thus amount to giving “special favors,” and thus unfair advantage, to **lesser or unqualified employees at the expense of more qualified employees**
- White men or other preferred groups are just more competent, more likely to be leaders, and a better fit for certain professional spaces or roles

NEW STATE DEPARTMENT UNDERSECRETARY FOR PUBLIC DIPLOMACY (OCT. 2024)

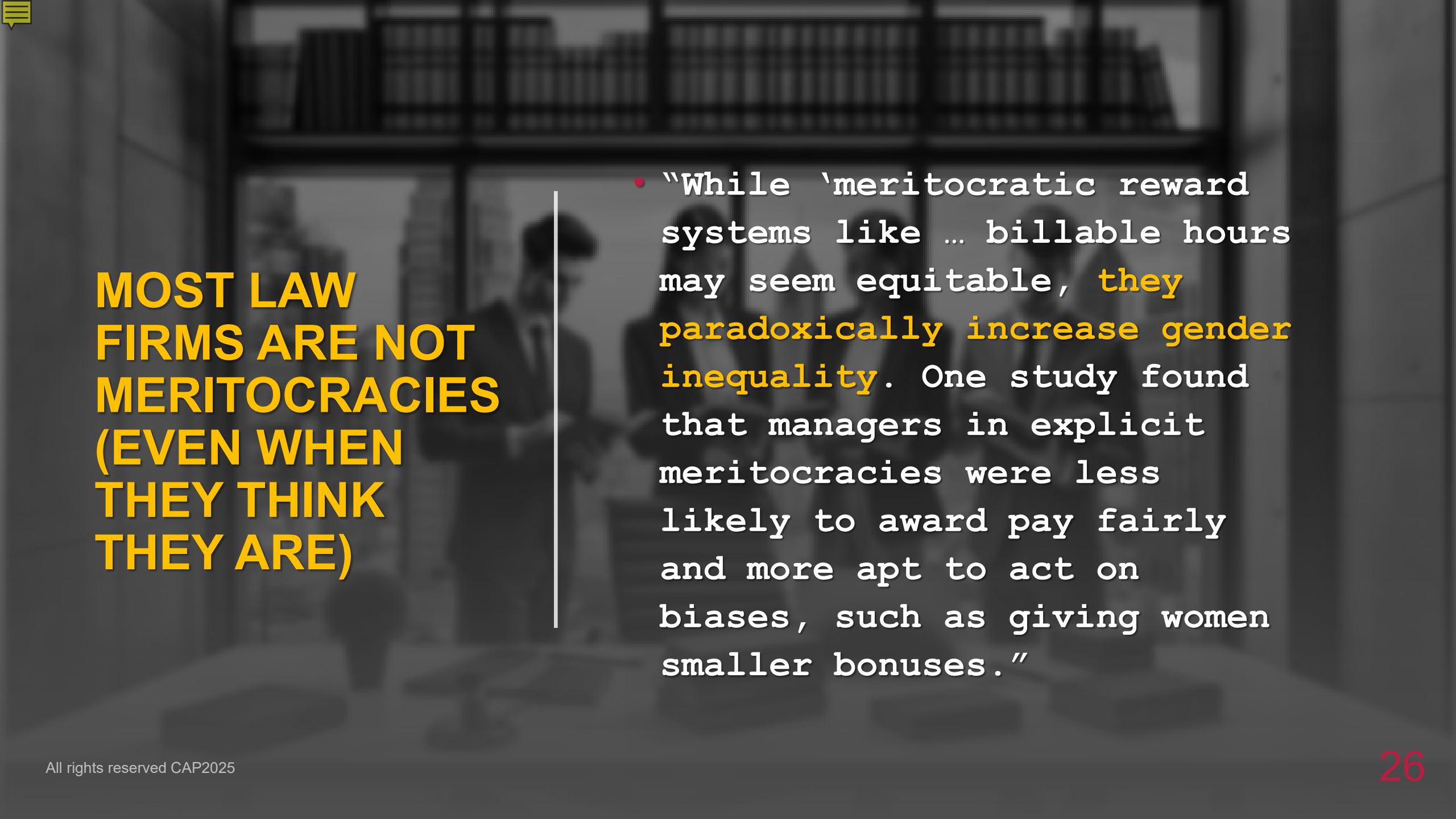
- "Competent white men must be in charge if you want things to work. Unfortunately, our entire national ideology is predicated on coddling the feelings of women and minorities and demoralizing competent white men."



IS “MERIT” THE BEST WAY TO EVALUATE LAWYERS?

MEASURING “MERIT” IS WHERE BIAS FLOURISHES

- ABA found that
- “[P]erceptions of who is ‘best’ and opportunities to succeed are not equally distributed. Selection of people for key assignments as well as evaluations of their work are subject to various biases...”



**MOST LAW
FIRMS ARE NOT
MERITOCRACIES
(EVEN WHEN
THEY THINK
THEY ARE)**

- “While ‘meritocratic reward systems like ... billable hours may seem equitable, **they paradoxically increase gender inequality**. One study found that managers in explicit meritocracies were less likely to award pay fairly and more apt to act on biases, such as giving women smaller bonuses.”



CAN'T WE JUST BE COLOR BLIND AND GENDER- NEUTRAL?

- "Attempting to be color-blind puts us at *intensified risk* of adopting implicit biases *because we are refusing to see and acknowledge things that are in front of us.*"

ILLUSION OF OBJECTIVITY

- We believe that biases we recognize in others are not present in us
- We want to think we are better people that we actually may be
- “Even the most well-meaning person unwittingly allows unconscious thoughts and feelings to influence seemingly objective decisions”
- If you think you don't, take the Harvard Implicit Association Test



ILLUSION OF OBJECTIVITY

- Judges at a judicial conference were asked to rate their ability “to avoid racial prejudice in decision making as compared to the other judges in the room”
- **97% rated themselves in the top half**



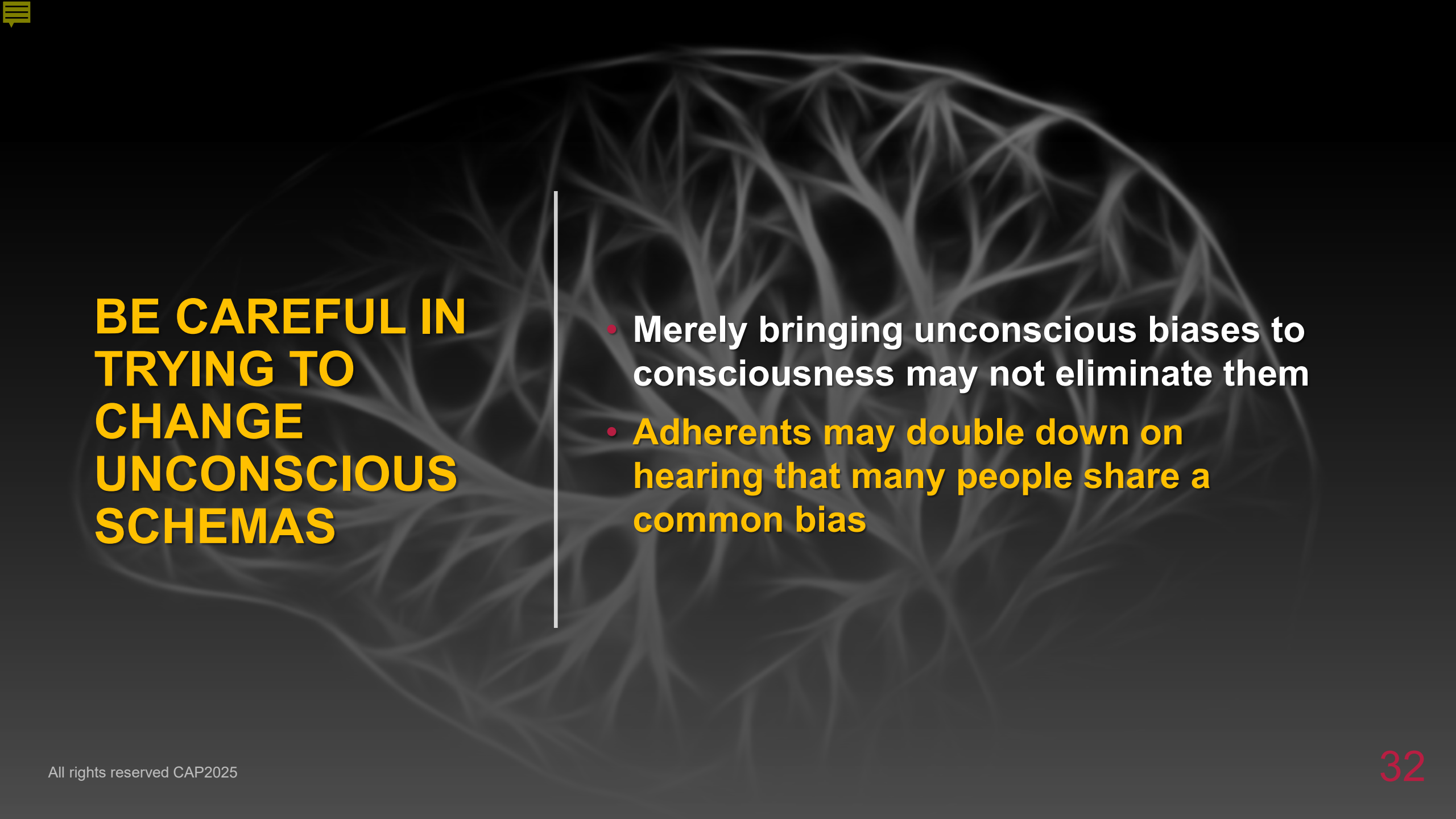
MOST OF OUR THOUGHTS ARE UNCONSCIOUS

- We receive **11 million bits** of information per second from the environment
- We can only consciously process **40-50 bits** of data per second



MOST OF OUR THOUGHTS ARE UNCONSCIOUS

- **99.9% of our thoughts are unconscious**
 - Schemas are patterns of thought that organize categories of information and the relationship among them
 - Essential to our survival
 - **Some can be changed**



BE CAREFUL IN TRYING TO CHANGE UNCONSCIOUS SCHEMAS

- **Merely bringing unconscious biases to consciousness may not eliminate them**
- **Adherents may double down on hearing that many people share a common bias**



HOW DOES MEASURING “MERIT” WORK OUT FOR WOMEN LAWYERS?



NO GENDER DIFFERENCE IN ASSOCIATE HOURS BILLED

- **NAWL and Sky Analytics studied \$3.4 billion in billings and over 3000 firms in 2020 and 2014, respectively**
- **On average, men and women associates bill the same number of hours**
- **No reason to think this has changed dramatically since then**



WOMEN PARTNERS BILL MORE HOURS

- **Premonition confirmed in 2018**
- **Men and women associates bill the same number of hours**
- **Women partners bill +24 minutes per day than men**
- **True despite persistent belief that women, especially mothers, are not as dedicated and do not work as hard as men do**

WOMEN ARE CONSISTENTLY UNDERBILLED

- *Men are billed at higher rates from the earliest stages of their careers*
 - Sky found 10-15% more on average
 - Following Sky, NAWL study of AmLaw 200 showed 2-5% initial differential that *grows significantly as seniority increases*



WOMEN ARE CONSISTENTLY UNDERBILLED

- ***No matter the firm's size, women bill less per hour***
 - While 6% of men bill over \$800 per hour, only 2% of women do
 - Over half of male lawyers at top-tier firms bill +\$500, compared to 31% of women
 - Just 22% of small firm lawyers charge under \$150 per hour, while 30% of women do



WOMEN'S TIME IS MORE LIKELY TO BE WRITTEN OFF

- **Women are more likely to have their time written off, whether partner or associate**
 - **59% of women's time is billed**
 - **66% of men's**

DEVALUATION

- Two groups were shown same paintings, articles, resumes and the like. One group assigned male names; the other female. Regardless of the item, it was evaluated lower when ascribed to a woman





DEVALUATION

- Women orchestra musicians were rated better when they auditioned behind a screen

Their chances of being selected *increased by 50%*

WOMEN ARE HELD TO A DOUBLE STANDARD

- In one study, almost 200 participants were given a selection of resumes for a director role at a fictitious technology company
- Half highlighted the candidate's past successes, while half highlighted their potential
- Participants consistently ranked male candidates highly if they focused on their potential
- For female candidates, the opposite was true – they were **held to much higher standards, and their leadership potential was generally overlooked**

GENDER BIAS CAN TAINT EVALUATIONS: PROVE IT AGAIN

- **Four bias patterns affect evaluations**
 - **“Prove It Again”** - Groups stereotyped as less competent have to prove themselves over and over again
 - ***Must show more evidence of competence to be seen as equally competent*** – “Twice as good to go half as far”
 - **Judged on performance, not potential**
 - **Higher scrutiny, no benefit of the doubt**

GENDER BIAS CAN TAINT EVALUATIONS: THE TIGHTROPE

- **The “Tightrope”** – a narrower range of workplace behavior is accepted from women than men
 - Based on how groups should behave
 - One tech study cited by ABA, **66% of women received negative personality criticism but only 1% of men did**
 -

GENDER BIAS CAN TAINT EVALUATIONS; THE TIGHTROPE

- **The “Tightrope”** – a narrower range of workplace behavior is accepted from women than men
 - Women report that they are expected to be “‘worker bees’ who keep their heads down and do not seek the limelight.”
 - “Women often walk a tightrope between exhibiting the kind of behavior expected of women and the kind of behavior expected of lawyers.”



GENDER BIAS CAN TAINT EVALUATIONS: THE TIGHTROPE

- One study revealed women who spoke more tentatively were viewed as more trustworthy than women who spoke more assertively
- Showing anger tends to increase the perceive status of men but decreases it for women•

GENDER BIAS CAN TAINT EVALUATIONS: THE TIGHTROPE

- Leaning in, asking for more compensation, may result in backlash

“Male managers were more inclined to work with ‘nice’ women who accepted their initial compensation offers, compared with women who attempted to negotiate for more money. By contrast, negotiating for a higher salary had no effect on managers’ willingness to work with male candidates.”



**DESCRIPTIONS
OF THE SAME
CONDUCT ARE
DESCRIBED
DIFFERENTLY**

- **He's skilled; she's lucky**

He's busy; she has trouble with deadlines

He's thoughtful; she's hesitant

He's prudent; she's passive

He's incisive; she's abrasive

He's self-confident; she's uppity, a braggart

He's aggressive; she's bitchy

He's ambitious; she's calculating or pushy

He's passionate; she's "out of control"



THE “GOLDILOCKS” DOUBLE STANDARD

- **Women are often penalized for actions and characteristics praised in men**
- **If women behave consistent with stereotypes, thought not tough or competent enough for legal work**



THE “GOLDILOCKS” DOUBLE STANDARD

- If considered competent, women are presumed hard and unlikeable [think Hillary Clinton]
- If attractive and friendly, women are presumed incompetent [think Sarah Palin or Elle Woods]



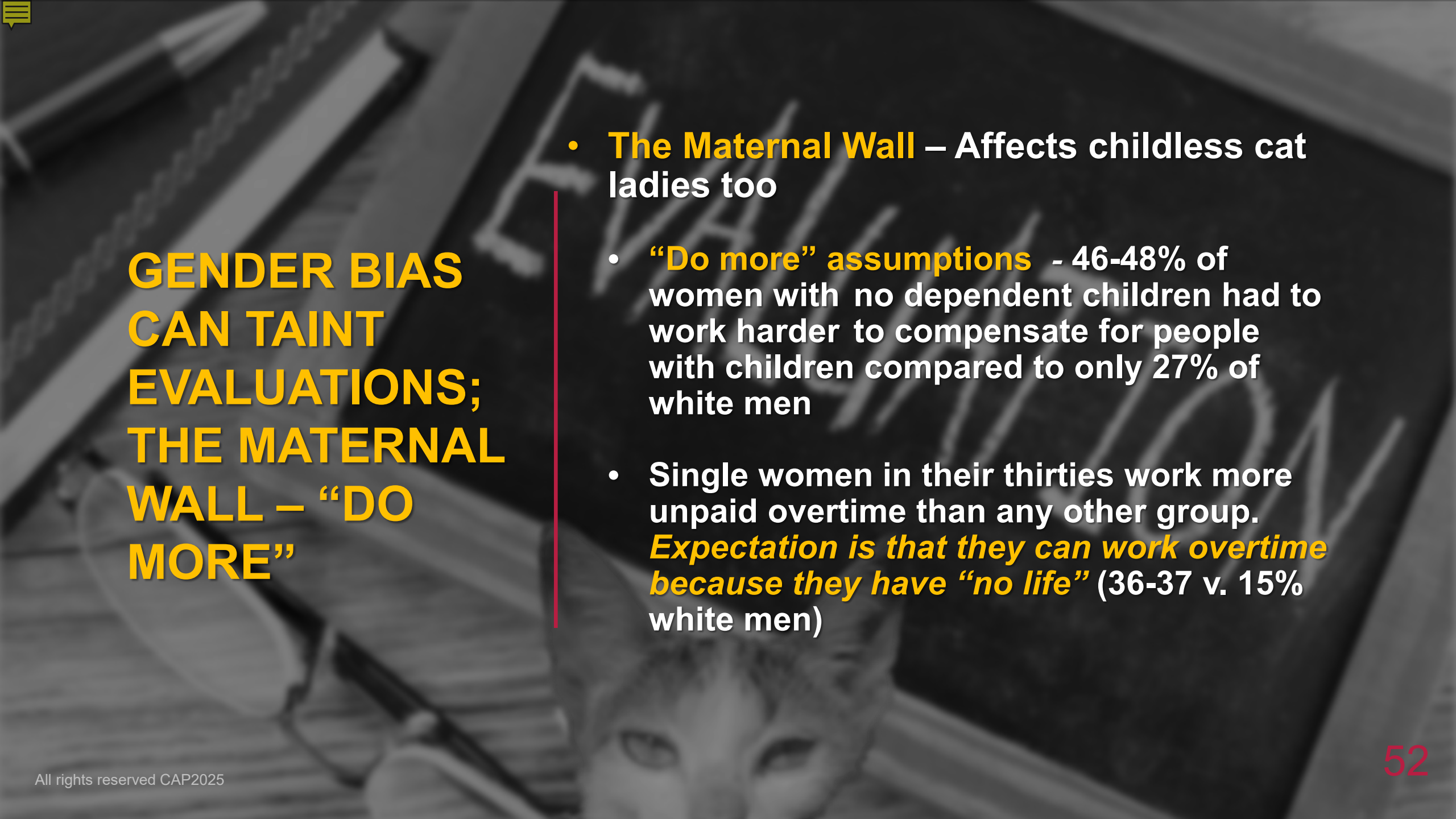
GENDER BIAS CAN TAINT EVALUATIONS; THE MATERNAL WALL

- **The Maternal Wall – Motherhood triggers negative competence and commitment assumptions**
 - If women work too much, they are seen as bad mothers: if too little, seen as bad workers
 - Can affect fathers too
 - **Can be the strongest form of bias**



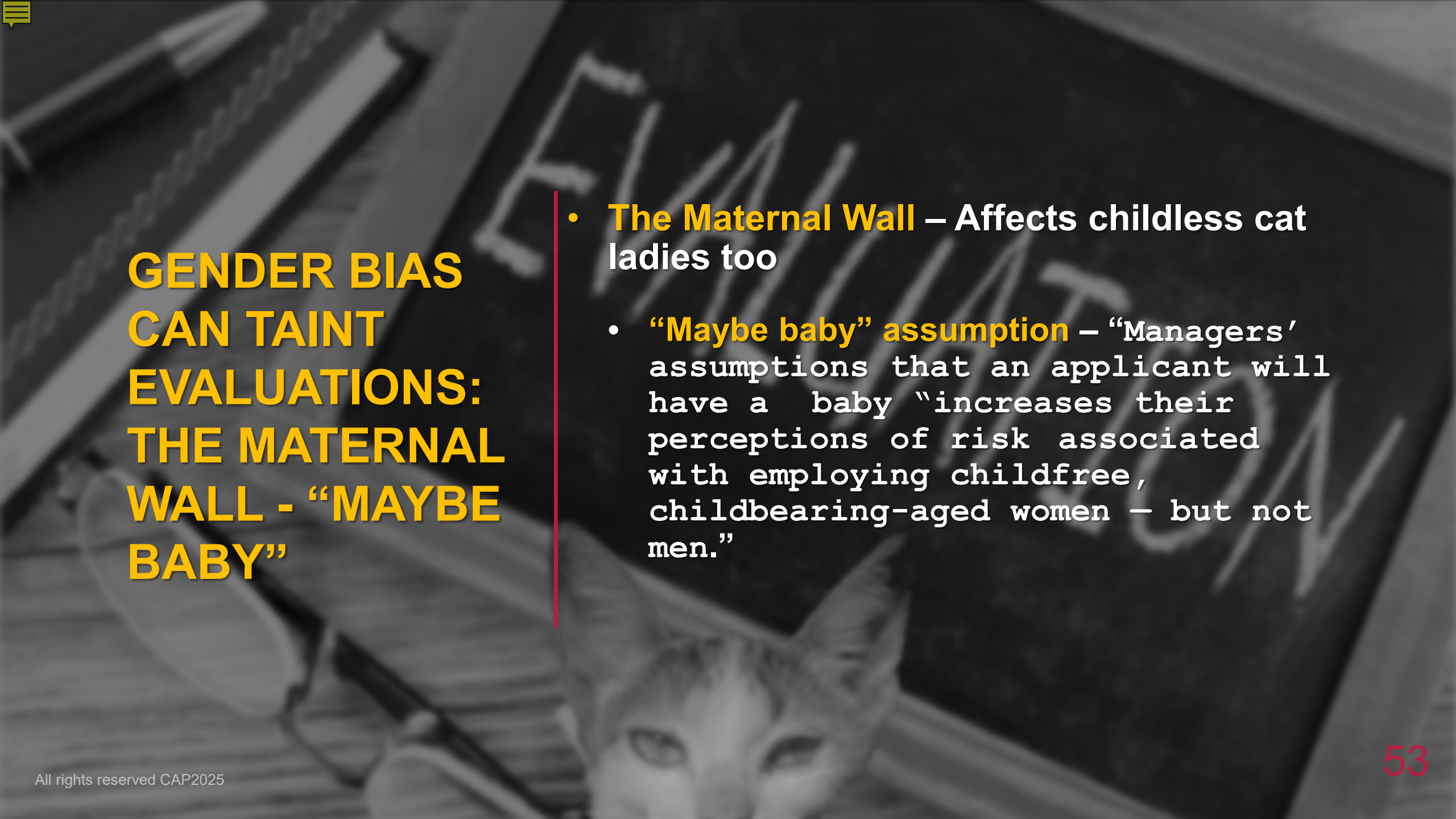
GENDER BIAS CAN TAINT EVALUATIONS: THE MATERNAL WALL

- **The Maternal Wall – Flexibility stigma**
 - While working part-time or on flexible schedule improved output, majority of all lawyers said taking it would hurt career
 - When women returned from leave, **75% found the job they returned to was worse, demanded less skill, paid less, and had less room for promotion**
 - In-house lawyers faced a lower level of bias on every maternal wall question



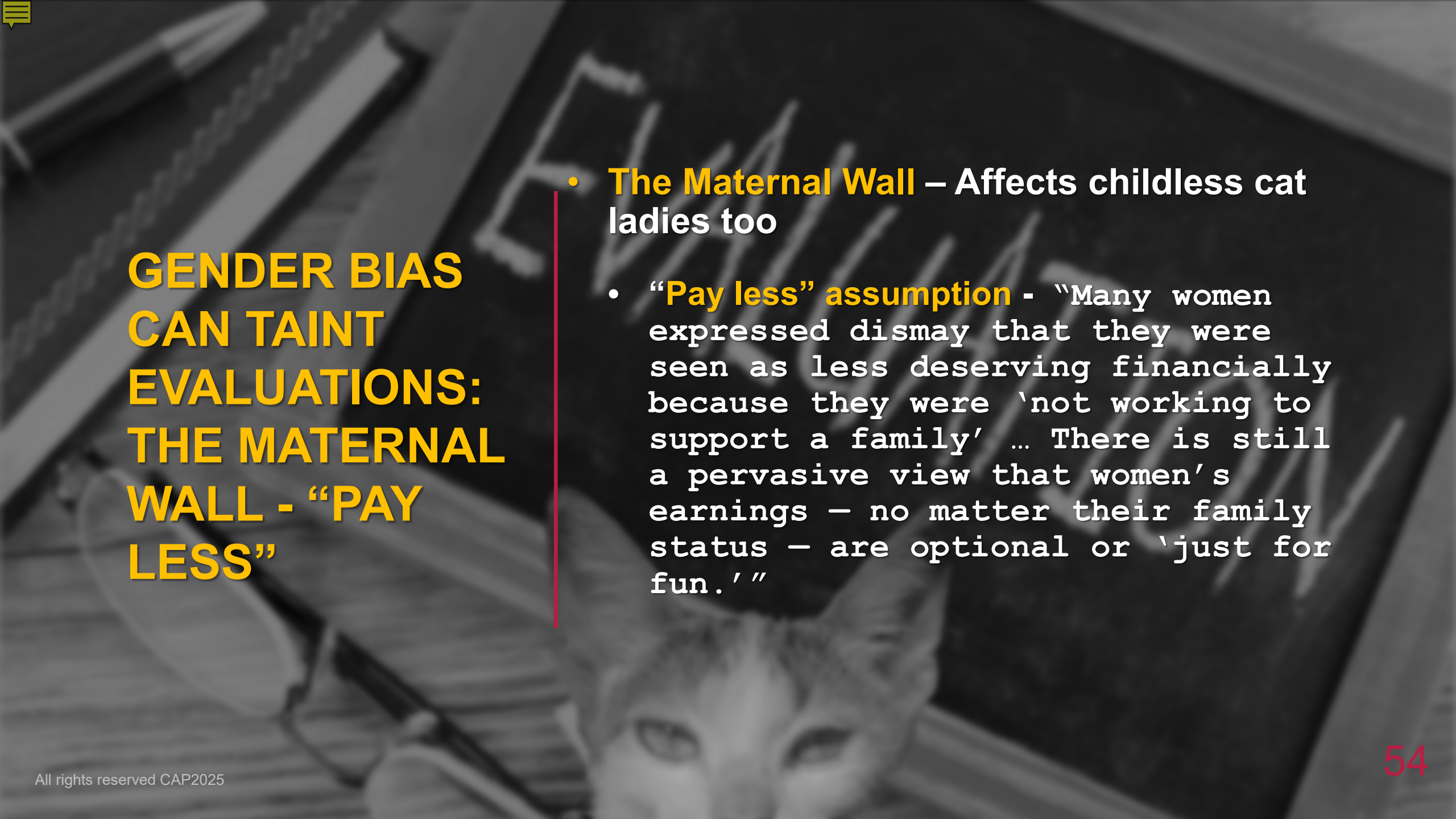
**GENDER BIAS
CAN TAINT
EVALUATIONS;
THE MATERNAL
WALL – “DO
MORE”**

- **The Maternal Wall** – Affects childless cat ladies too
 - **“Do more” assumptions** - 46-48% of women with no dependent children had to work harder to compensate for people with children compared to only 27% of white men
 - Single women in their thirties work more unpaid overtime than any other group. ***Expectation is that they can work overtime because they have “no life”*** (36-37 v. 15% white men)



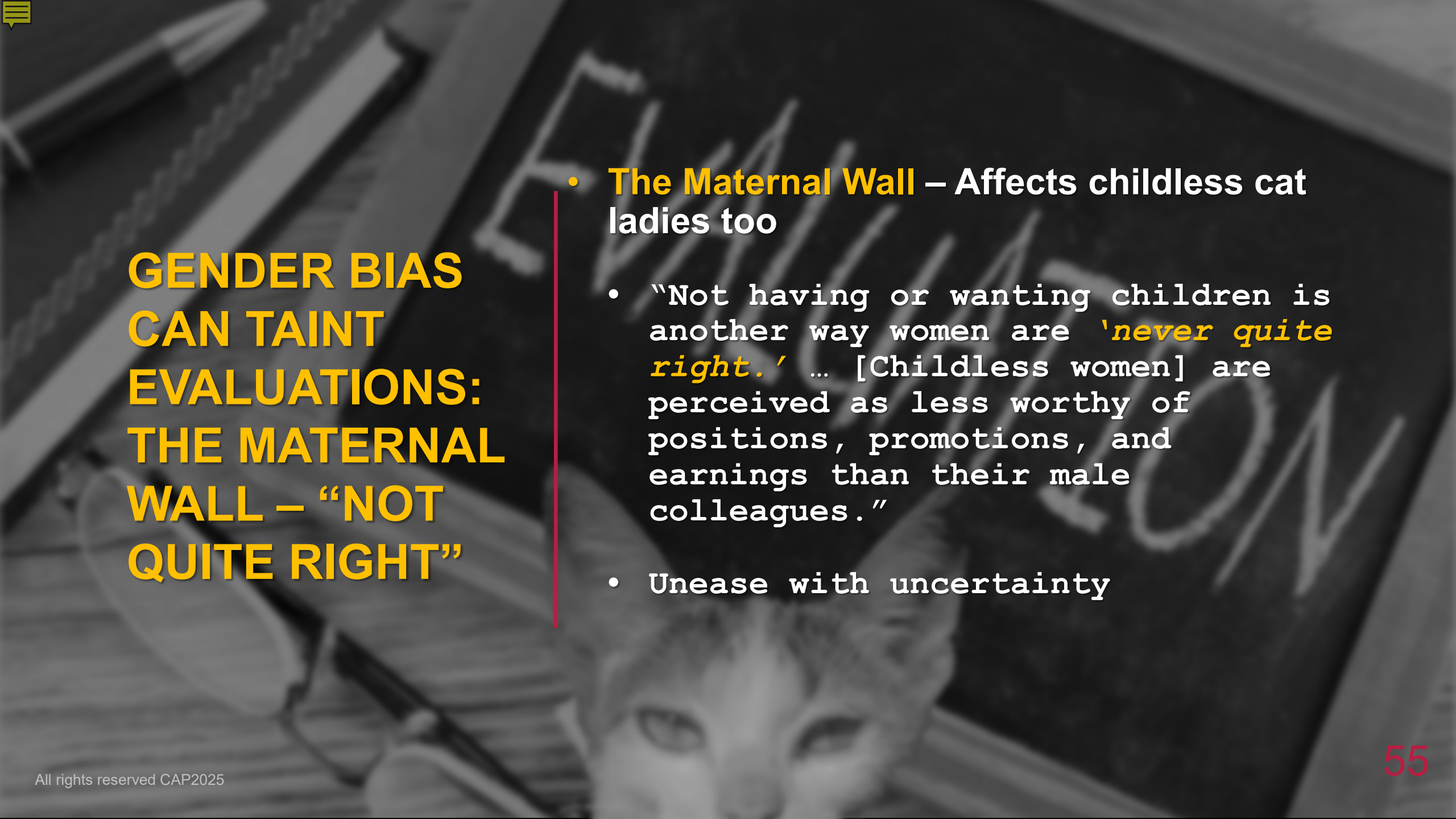
**GENDER BIAS
CAN TAINT
EVALUATIONS:
THE MATERNAL
WALL - “MAYBE
BABY”**

- **The Maternal Wall** – Affects childless cat ladies too
 - **“Maybe baby” assumption** – “Managers’ assumptions that an applicant will have a baby “increases their perceptions of risk associated with employing childfree, childbearing-aged women – but not men.”




**GENDER BIAS
CAN TAINT
EVALUATIONS:
THE MATERNAL
WALL - “PAY
LESS”**

- **The Maternal Wall** – Affects childless cat ladies too
 - **“Pay less” assumption** - “Many women expressed dismay that they were seen as less deserving financially because they were ‘not working to support a family’ ... There is still a pervasive view that women’s earnings – no matter their family status – are optional or ‘just for fun.’”




**GENDER BIAS
CAN TAINT
EVALUATIONS:
THE MATERNAL
WALL – “NOT
QUITE RIGHT”**

- **The Maternal Wall** – Affects childless cat ladies too
 - “Not having or wanting children is another way women are *'never quite right.'* ... [Childless women] are perceived as less worthy of positions, promotions, and earnings than their male colleagues.”
 - Unease with uncertainty



WOMEN ARE MUCH MORE LIKELY TO BE ASSIGNED TO LOWER-BILLING CASES

- **Men are more likely to be assigned to high billing cases**
 - Sky - **93%** of large cases with 20+ lawyers had majority male teams
 - **81%** of smaller cases with 5< lawyers had majority women team



WOMEN ARE MUCH MORE LIKELY TO BE ASSIGNED TO LESS DESIRABLE CASES

- More than 80% of white male lawyers but only 53% of women lawyers of color, 59% of white women lawyers reported the same access to desirable assignment as their colleagues
- Lack of experience “dramatically lowered their prospects for career advancement and affected their entire career trajectories”
- Women want these assignments

WOMEN , HOWEVER, HAVE MADE GAINS IN PRIVATE EQUITY WORK

- “These teams, averaging five lawyers, are at the power center of law firms. Our analysis of over 10,000 deals and more than 50,000 attorneys for the period 2013–2023...
- While women are less likely to be at the top of a team and **more likely to be on smaller transactions and cases**, they are slowly advancing up the team ladder and gaining power.
- Over the past decade, the representation of **women on leadership teams has grown 50%**. Women are taking more seats at the deal table, **increasing from one out of five spots to nearly one out of three.**”

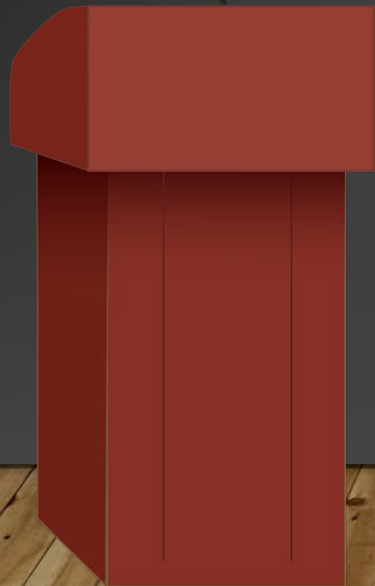


THE DISAPPEARING FEMALE TRIAL LAWYER



- In civil cases, 68% of all lawyers appearing were men
 - 76% of lead counsel were men
- In civil cases involving the federal government, 31% of lead counsel were women representing the government
- Women were lead counsel in only 15% of contract cases
- In criminal cases, 69% of lead counsel representing the government were women
 - 31% represented defendants

ABA'S FIRST CHAIRS AT TRIAL: MORE WOMEN NEED SEATS AT THE TABLE



"The lack of women as lead counsel is not explained by a disparity in talent or ability between male and female trial lawyers."



WOMEN WIN MORE AND PROVIDE MORE VALUE TO CLIENTS



- Largest litigation archive ever assembled, comprised of 120,000 cases
- “On average, female lawyers at every level of practice offer better value for money than men. **They win more and charge less.**”



WOMEN PARTNERS WIN A LOT MORE



- **Female partners win 12% more than men**
 - "As a group, women partners in Big Law beat males in court 70.19% to 57.47%, **the biggest factors ever tested by the firm**"
 - **Just 4.88% of partners in the study were women**
- **Women partners won more than males associates by same margin**
 - **No difference between male partners and associates**



WOMEN ASSOCIATES WIN MORE ... THAN MALE PARTNERS



- Female associates win 3% more than male associates or partners



WHY THE DISPARITY?



- **Hold-my-beer phenomenon: Women lawyers are less likely to be overconfident and take losing cases to trial**
- **Because of the difficulties women litigators face, “those who do make it through the ‘double glass ceiling’ are *phenoms, cheaper, faster, and less likely to take a losing case to court.*”**



WOMEN ARE MUCH LESS LIKELY TO BE LEAD ON APPEALS

- Studied more than 2700 attorney appearance across the country over then years
- In 2009, only 24% of appeals in the Seventh Circuit were argued by women
 - In 2019, still only 28%
- Federal Circuit 10% in 2020
- Second Circuit 25% in late 2019

WOMEN ARE MUCH LESS LIKELY TO BE LEAD ON APPEALS

- Women are more likely to argue criminal appeals, 33% in 2019
- In complex-case appeals, women were more likely to represent the government, 40% in 2019
 - For local governments, 44% of advocates were women in 2019 🤔👍
 - If an advocate was a woman, 48% chance she worked for government
- Women were far less likely to argue business-related cases, about 13% in 2009/17% in 2019 in the Seventh Circuit

WOMEN ARE MUCH LESS LIKELY TO BE LEAD ON APPEALS

- Findings mirror research from across the country, including the U.S. Supreme Court
 - Elizabeth Prelogar as SG helped at the U.S. Supreme Court
 - But even in 2021-22 term, only 18% of Supreme Court cases were argued by women
- *These gender gaps have not narrowed appreciably in the last decade*
 - In 2011, my two cases were 10% of those argued by women that term



At this rate,





OBTAINING BUSINESS ORIGINATION CREDIT IS A BATTLEFIELD

- **80% of women lawyers report being denied their fair share of origination credit**
- **27%-38% of women lawyers have been bullied, including physical threats, into relinquishing claims to business/client origination**



OBTAINING BUSINESS ORIGINATION CREDIT IS A BATTLEFIELD

- **50% of women lawyers report being used as “eye candy” for client pitches then not receiving origination credit or work resulting from successful pitches**
- **60% pressured to remain service partners**
- **Men may be given origination credit even when they did not do the majority of the work**
- **Lack of succession planning usually means clients are passed down from one male attorney to another**



OVERT THREATS, SEXUAL HARASSMENT, & BULLYING

- **ABA – 63% of U.S. women lawyers have been bullied**
 - 28% have left a job because of bullying
- **54% of U.S. women lawyers have been sexually harassed**



THE BROKEN RUNG

- **Biggest impediment to women's advancement is not making the first step into management**
 - For every 100 men who advance in business, only 87 women do
 - For women of color, 73%
 - For black women, 54%
- Firms "aren't building a leadership path at the very beginning of women's careers, to create a pool of talent that would be available and ready for those opportunities when they open up."



THE BROKEN RUNG IN LAW FIRMS

- Titles and leadership positions “matter for credibility to clients”
 - Vice Chair of practice group positions can do that
- Women are more likely to serve on recruiting and gender fairness committees than those addressing compensation, firm governance, practice groups
- Women do more firm “housekeeping:” organizing meetings, events, taking notes, actual cleaning up (50% women v. 26% white male lawyers, 20% male lawyers of color)
- Fewer leadership roles on cases

NAWL FOUND REMAINING BARRIERS

“[A]lthough women in the surveyed law firms have made some inroads, overall, the pace of progress remains unacceptably slow as women continue to confront the same barriers that have been identified in the seven prior NAWL Foundation national surveys.”



HOW DO WOMEN LAWYERS RESPOND TO THESE IMPEDIMENTS TO THEIR SUCCESS?

THE LEAKY PIPELINE

- By age 50, women only make up only 27% of lawyers at big firms, down from 41% at 40, 45% at age 30
- *75% of women of color leave the profession by year 5; 85% before year 7*

THE LEAKY PIPELINE

- “Women lawyers are just as motivated and ambitious as men, but they face a much tougher path to advance and succeed ... *Unless law firm leaders truly commit themselves to understanding and ameliorating these disparities, women will vote with their feet.*”
 - Roberta Liebenberg, the former chair of the American Bar Association’s Commission on Women in the Profession

THERE IS A LEAKY PIPELINE FOR ALL ASSOCIATES

- **72% leave by year 4**
- **82% leave by year 5**
- Overall attrition rate 18% per year, down from 2021 historically high 26%
 - 19% for female associates v. 16% men
- Firms characterized nearly half as unwanted departures
- “Desired” departures only 33%
 - Rate of desired departures was higher for men than women

WHERE DO WOMEN GO WHEN THEY LEAVE FIRMS?

- *Contrary to common wisdom, women in general do not always leave the profession*
 - 39% - other firms
 - 19% - corporate in-house counsel
 - 7% - government
 - 5% - judicial clerkships or non-profits
 - 2% - non-legal or business
 - Others become solo practitioners



**BLOCKED
CAREER
PATHS CAUSE
DEPARTURES**


- 74% of women who leave the profession cite blocked or unsatisfactory career trajectory as a main factor, *not* child-care or family responsibilities



WHAT IS REALLY GOING ON HERE?


THE TRUTHY EXPLANATION

- ABA found that
 - “If women are underrepresented, *the most psychologically convenient explanation* is that they lack the necessary qualifications and commitment.”



THE 'NO PROBLEM' PROBLEM

- 88% of men said gender diversity is widely acknowledged as a firm priority
 - *Only 54% of women did*
- 74% of men said their law firms successfully retain experienced women
 - *Only 47% of women agreed*



THE 'NO PROBLEM' PROBLEM

- 71% of men were satisfied with the recognition they received at work
 - *Only 50% of women said the same*
- 62% of men were satisfied with opportunities for advancement at their law firms
 - *Only 45% of women were*

THE 'NO PROBLEM' PROBLEM: YOUNG MEN ARE LESS SUPPORTIVE OF DIVERSITY EFFORTS

- In 2024, only 4 in 10 men under 30 currently supporting diversity efforts, *down from about half of young men in 2019*
- About 7 in 10 young women support prioritizing diversity
- Little changed from five years ago, the study found



OUR TASK TODAY

- How the legal profession can continue to fight gender bias when the problem is invisible to many and historic methods of challenging it are prohibited, condemned as discrimination, or strongly discouraged
- How the profession can continue to fight gender bias when unsupported beliefs often govern what is considered fact



**STOP ASKING
FOR
FAIRNESS,
EQUITY, OR
COMMITTEES
THAT
ADDRESS
EITHER**

- While reverse discrimination is largely untrue, it *feels* true to anyone passed over




**STOP ASKING
FOR
FAIRNESS,
EQUITY, OR
COMMITTEES
THAT
ADDRESS
EITHER**

- **Worse, favors and fairness are viewed as optional niceties**
- **Firms may now not even be able to address these topics because of client or government pressure or legal prohibitions**



WHY AREN'T GENDER FAIRNESS INITIATIVES WORKING?

- **NALP Foundation found that 88% of firms had department, staff, or other personnel responsible for developing and implementing diversity initiatives**
- **Most gender fairness initiatives/committees fail because top management does not view fairness or equity as imperative and never buys in**
 - **Targeted groups talk among themselves**



**FOCUS INSTEAD
ON THE KEY
FLAW WITH ALL
DISCRIMINATION:
ITS FINANCIAL
SELF-SABOTAGE**

- **Racial and sexual discrimination, especially in a business, is financially foolish**
 - It artificially and baselessly restricts the productivity and profitability of the firm's human capital
- **A firm that discriminates against its own employees *reduces its own profits***



MCKINSEY AND OTHERS HAVE FOUND DIVERSE FIRMS ARE MORE PRODUCTIVE & PROFITABLE

- Across 1265 companies, 23 countries, and six global regions, those firms with more women executives significantly outperformed those with fewer
 - In 2015, top-quartile companies (exceeding 30% women) had a 15% greater likelihood of financially outperforming the bottom quartile
 - **For 2023, the figure is 39%**
- ACC says, when considering intensity of innovation, **female presence equates to \$44 million in firm value**



DIVERSE LAW FIRMS ARE MORE PROFITABLE

- Studies show with high degree of statistical confidence that diverse law firms make higher profits
- Having diverse teams was a significant characteristic factor for law firm profitability
 - Ranked after law firm prestige, attorney leverage, geographic concentration and whether the firm performs hedge fund/private equity work
 - Ranked ahead of practice area concentration, or having corporate, energy, and environmental, or M&A practices
- **Diversity dividend: Differential between low and high diversity firms approaches \$180,000 per year per partner**



DIVERSE LAW FIRMS OBTAIN BETTER RESULTS

- Female-male trial teams won 7% more case than male-only trial teams
- 9% lower error rate
- Underpriced settlement far less frequently
- **Saved defendant clients average of \$2.6 million in liability**
- Similar results for mixed trial teams for plaintiffs
- **“Lack of diversity is really expensive”**

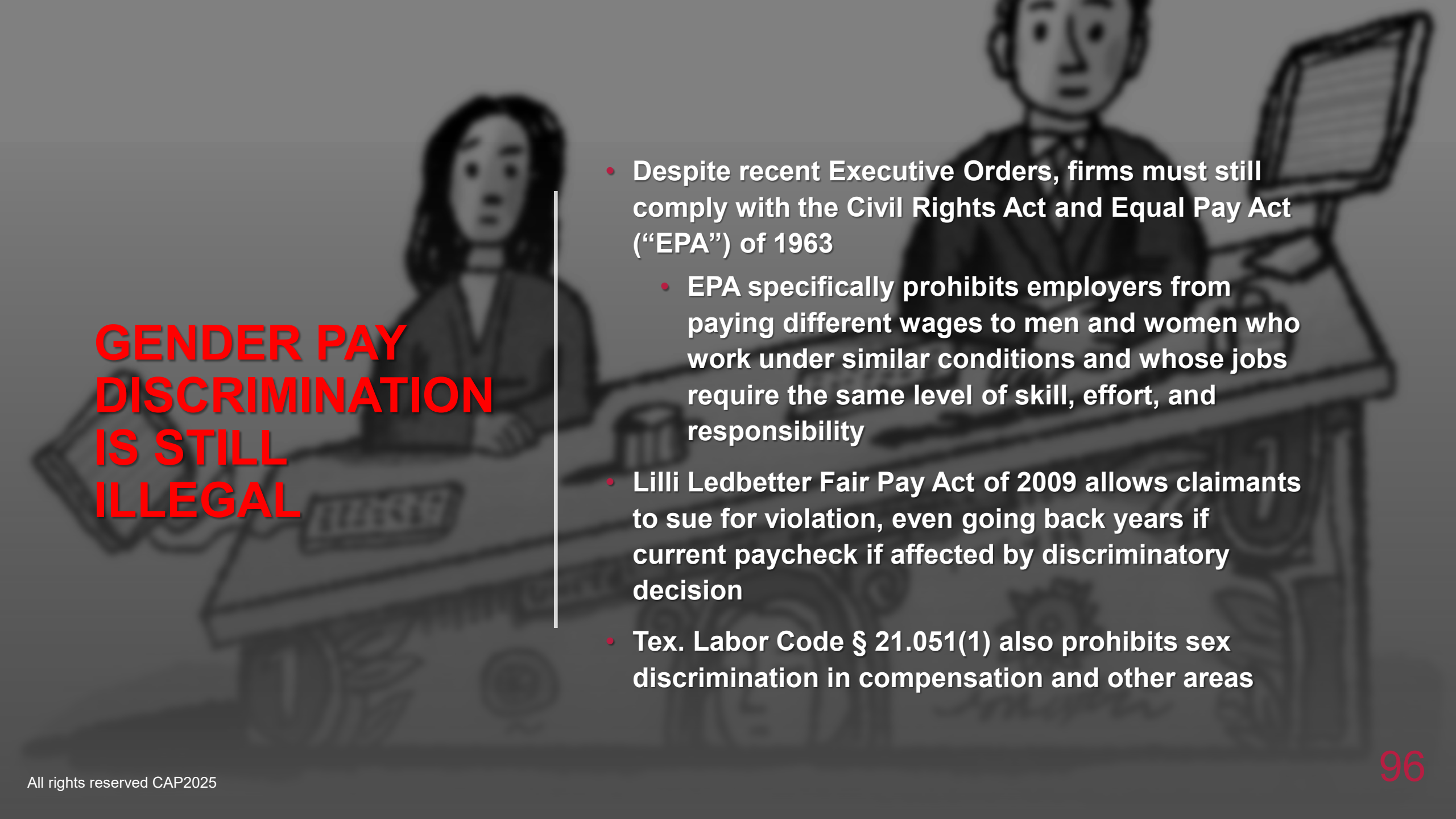


ATTRITION IS COSTLY

- It costs an organization between one-half to five times the lost employee's salary to replace them, rising with seniority


ENSURING THAT YOUR FIRM IS NOT BASELESSLY LIMITING ITS WOMEN'S PROFITABILITY

- Billing audits can reveal these discriminatory patterns and disparities
- Audits can also show women's real financial importance to firm's bottom line
- **Eliminating disparities**
 - increases the firm's profits
 - provides training and experience that add value to lawyer's bottom line
 - also reduces implicit bias against women
 - presents a more unbiased picture of women's actual contributions to the firm for compensation, case assignment, and partnership purposes




GENDER PAY DISCRIMINATION IS STILL ILLEGAL

- Despite recent Executive Orders, firms must still comply with the Civil Rights Act and Equal Pay Act (“EPA”) of 1963
 - EPA specifically prohibits employers from paying different wages to men and women who work under similar conditions and whose jobs require the same level of skill, effort, and responsibility
- Lilli Ledbetter Fair Pay Act of 2009 allows claimants to sue for violation, even going back years if current paycheck is affected by discriminatory decision
- Tex. Labor Code § 21.051(1) also prohibits sex discrimination in compensation and other areas

A grayscale illustration of a woman and a man sitting at a desk. The woman is on the left, looking towards the right. The man is on the right, looking towards the left. There is a computer monitor on the desk. The background is a light gray.

GENDER PAY DISCRIMINATION IS STILL ILLEGAL

- Firm pay disparities must, therefore, be addressed as compliance, not DEI
- EOs only prohibit promoting DEI that "violates any applicable federal anti-discrimination laws."
 - Some agency memos, however, purport to require removal of all DEI programs




ENSURING THAT YOUR FIRM IS NOT DISCRIMINATING IN PAY

- **NAWL:** “conducting regular pay equity analyses is crucial not only to protecting the interests of the law firm in terms of legal liability and warding off pay discrimination lawsuits, but also to ensure that a firm is doing all it can to close historical gender pay gaps...”



ENSURING THAT YOUR FIRM IS NOT DISCRIMINATING IN PAY

- ABA, “*You Can’t Change What You Can’t See*” report advises:
 - Determine and/or confirm what actually drives compensation decisions
 - Communicate clearly about what determines compensation at firms
 - Determine compensation criteria and relative weight based on what is important to the firm
 - Establish clear public rules on credit (splitting, sharing, origination, etc.)



**USE
TRUTHINESS
AND GENDER
BIASES TO
YOUR
ADVANTAGE**

- **Neutralize the “Goldilocks” competence/likeability double bind**
 - In Duke study of female *politicians in the 2008 election*, women *lawyers* did not face double bind in negotiations, regardless of their negotiation style
 - True even when women were judged as more assertive

USE TRUTHINESS AND GENDER BIASES TO YOUR ADVANTAGE

- “In style and effectiveness, there is no difference between how female and male lawyers are perceived.”



WHY NO DOUBLE BIND OR BACKLASH?

- **Backlash lessened for externally-conferred, high status women**
 - Assertive behavior attributed to position, not gender
 - Counsels in favor of titles, partnership even if non-equity

WHY NO DOUBLE BIND OR BACKLASH?

- **No Backlash When Meeting Expectations - “positioning”**
- “A female lawyer who is assertive on behalf of her clients fulfills the role the public and her peers have accepted – and come to expect – over time.”
 - Through media, we accept women as lawyers
 - Not necessarily as President



WHY NO DOUBLE BIND OR BACKLASH?

- **Working on Behalf of Others**
- Females protect and fight for the weak and powerless
 - Consistent with stereotype
 - Visceral understanding and recognition of that role
 - Leeway

TAKE ADVANTAGE OF THE “CONTRAST EFFECT”

Take advantage of the “soft
bigotry of low expectations”

“If a woman advocate is seen
as being more competent than
expected, she will also be
considered more competent
than she actually is because
her perceived competence is
outside the expected range.”



THE “CONTRAST EFFECT” IN ACTION



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“Recently, I observed a trial involving complex financial transactions in which the main trial lawyers included a woman ... post-trial juror interviews revealed that the jurors thought the woman lawyer was much more competent in the area of financial transactions than her male counterparts. In fact, they gave the woman advocate rave reviews, while they were indifferent to the performances of the men. This perceived difference in the lawyer's competence held true despite the fact that financial experts observing the trial found the woman lawyer to be no more (and no less) competent than the men.”

THE “CONTRAST EFFECT” IN ACTION



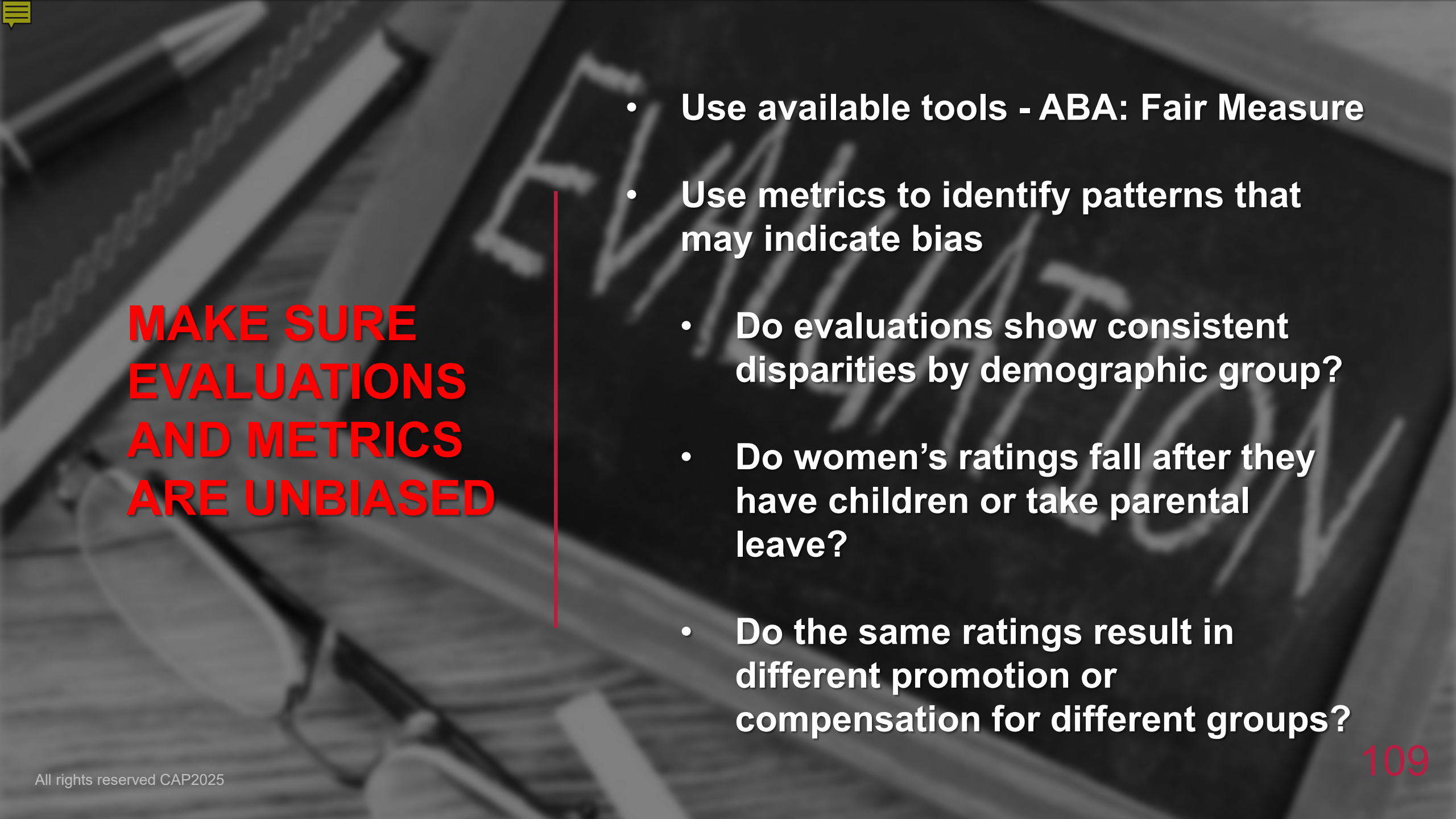
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[I]f a woman lawyer establishes her competence in an area where she is not expected to excel, her skill will be seen as being greater than a man's for doing exactly the same job. What happens is that the jurors' expectation (that a woman will not be competent) is betrayed, and the betrayed expectation enhances the perceived competence of the woman, causing jurors (and judges) to want to reward the woman for performing well despite her perceived handicap.



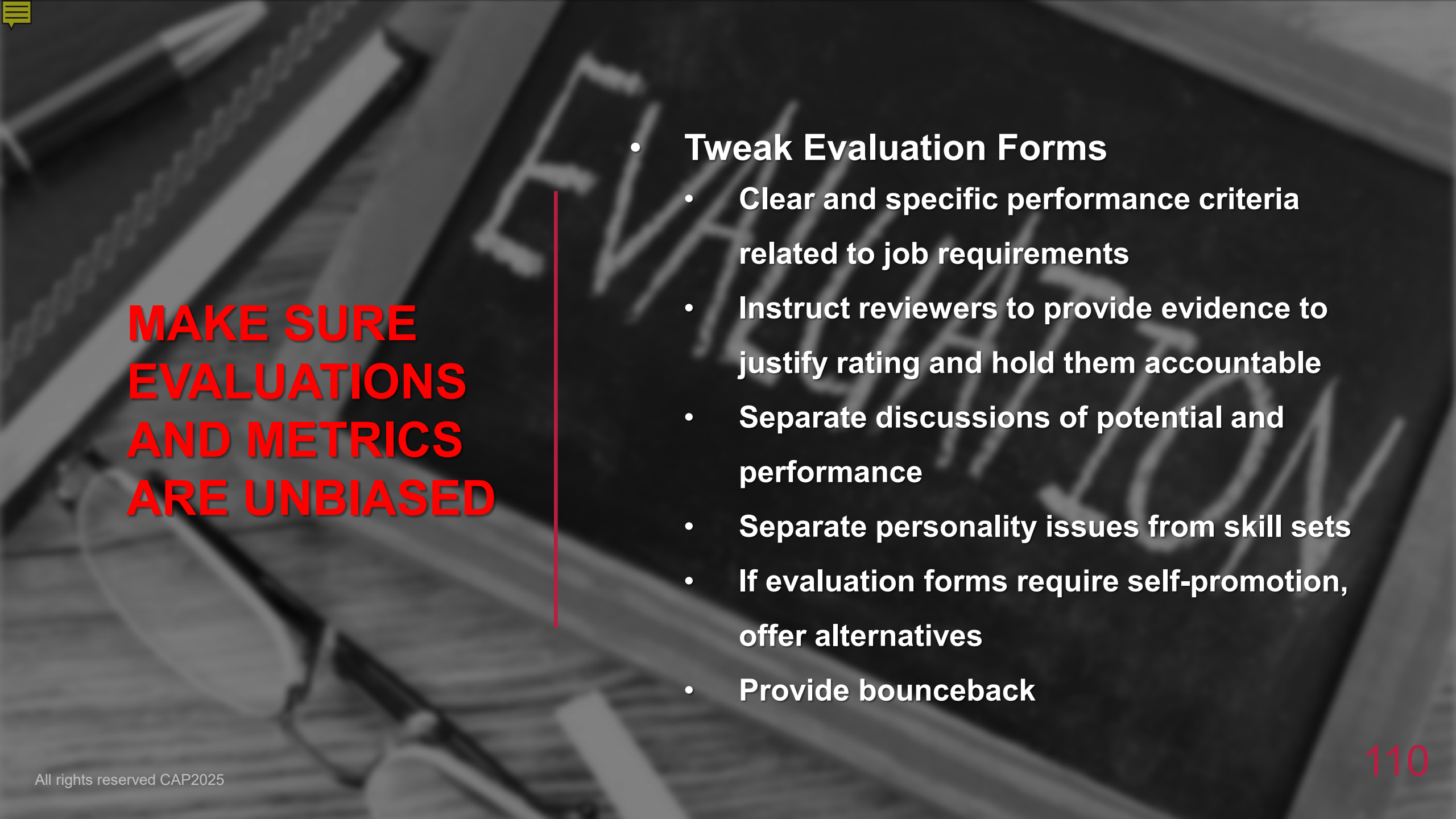
**YOU CAN
CONTROL THE
“CONTRAST
EFFECT”**

**You alone determine
how competent and
well-prepared you are**



**MAKE SURE
EVALUATIONS
AND METRICS
ARE UNBIASED**

- Use available tools - ABA: Fair Measure
- Use metrics to identify patterns that may indicate bias
 - Do evaluations show consistent disparities by demographic group?
 - Do women's ratings fall after they have children or take parental leave?
 - Do the same ratings result in different promotion or compensation for different groups?



**MAKE SURE
EVALUATIONS
AND METRICS
ARE UNBIASED**

- **Tweak Evaluation Forms**
 - **Clear and specific performance criteria related to job requirements**
 - **Instruct reviewers to provide evidence to justify rating and hold them accountable**
 - **Separate discussions of potential and performance**
 - **Separate personality issues from skill sets**
 - **If evaluation forms require self-promotion, offer alternatives**
 - **Provide bounceback**




MAD MEN

CHANGE YOUR FIRMS' CULTURE FOR EVERYBODY

- **Current law firm models are unsustainable for everyone, especially women**

THE LEAKY ASSOCIATE PIPELINE IS A BELLWEATHER

- 72% of associates leave by year 4
- 82% leave by year 5
- *18% per year on average*
- Generally, most industries consider an attrition/turnover rate of **5-10% healthy**



LAW FIRM STRUCTURES ARE LARGELY GROUNDED IN THE MYTH OF THE IDEAL WORKER

- White male with a stay-at-home wife
- The concept reflects a breadwinner-homemaker model that dates back to the Industrial Revolution and functioned fairly well through the 1960s, until women began entering the formal workforce in greater numbers.

LAW FIRM STRUCTURES ARE LARGELY GROUNDED IN THE MYTH OF THE IDEAL WORKER

- Women who succeed often do so by replicating the traditional model
 - Spouse who stays home
 - Multiple lower-paid women supporting her

2020 HARVARD BUSINESS REVIEW STUDY

- 18-month study – no indication changed since then
- 73% of men and 85% of women invoked work/family conflict as the likely explanation for women's failure to advance to top levels
 - "High-level jobs require extremely long hours, women's devotion to family makes it impossible to put in those hours, and so their careers inevitably suffer."
- **Data did not support this "truthy" belief**

HBR STUDY: NO DIFFERENCE IN TURNOVER

- Data showed **virtually no difference in turnover rates for women and men**
- Yet the **truthy perception** was that firms had trouble retaining women



HBR STUDY: ACCOMMODATIONS DERAILED WOMEN'S CAREERS

- *Both* sexes suffered from problems balancing work and family
 - Two-thirds of fathers reported family work conflict but only women were taking the accommodations to ease it
- Women were encouraged to take accommodations **which derailed or stigmatized their careers**


HBR STUDY: MEN/FATHERS PROJECTED THEIR AMBIVALENCE ABOUT FAMILY SACRIFICES ON WOMEN

- Men *unconsciously* projected their guilt and sadness about family sacrifices on women to justify women's lack of advancement
 - Identify with women's dilemmas
 - Use women's "natural inclinations" to justify their own sacrifices for work
- All criticized successful women partners with children as bad mothers and not positive role models
- **Same projection on women with no children**



HBR STUDY: REAL CULPRIT IS FIRM CULTURE

- Real culprit was “general culture of overwork that hurt both men and women and locked gender inequality in place”



2023 MCKINSEY/LEAN IN: FLEXIBILITY IS KEY FOR ALL EMPLOYEES

- **Both women and men consider flexibility to work when and where they want to be top 2 and 3 benefits they want from an employer, after health insurance**

HBR STUDY: STOP OVER- SELLING

- "For the firm to address its gender problems, it would have to address **its long-hours problem. And the way to start would be to stop over-selling and over-delivering.**"
 - Unreasonable timetables
 - Unneeded activity

HBR STUDY: TRUTHINESS PREVAILED

- Client firm *rejected* the HBR conclusions and insisted that any solution had to target women specifically
- **Consciously chose explanation that blamed women and protected the firm's culture of overwork even though data did not support it**



MAD MEN

IS THE OLD FIRM CULTURE WORTH PROTECTING?

- During the pandemic, Americans' workday **increased** by 40% – roughly 3 hours a day – the largest increase in the world
 - Productivity stayed roughly the same or increased slightly
- Studies show that **long hours do not increase productivity**
 - Associated with decreases in performance and increase in sick-leave costs

CHANGING FIRMS' CULTURE: IS A.I. THE ANSWER?

- **AI will likely transform the way lawyers practice and bill**
 - It will likely displace paralegals and junior associates who typically perform preliminary research and time intensive tasks
 - Hourly billing for such tasks will not be possible
 - More in-house drafting and outside lawyer review
- **Subscription billing, percentage billing (as in private equity) will put a premium on efficiency**



CHANGING FIRMS' CULTURE: IS A.I. THE ANSWER?

- **Discrimination in general tends to increase in business downturns and recessions**
- **Downturns in the legal market will likely affect women disproportionately – women lost 60% of jobs lost in the pandemic downturn**



CHANGING FIRMS' CULTURE: IS A.I. THE ANSWER?

- Study showed women were less likely to use ChatGPT and other AI tools
 - Less confidence in skills
 - “Good girl” syndrome: do not want to cheat or take short cuts

CHANGING FIRMS' CULTURE: IS A.I. THE ANSWER?

- "Women in the [legal] sector not participating equally in the technology could lead to the emergence of a critical skills gap, the report found, which could limit their career advancement in an increasingly tech-driven legal sector. This in turn could widen the existing gender gap in leadership in the profession."

CHANGING FIRMS' CULTURE: CAN GEN Z SAVE US?

- Millennials, Gen Zs and Gen Xers won't put up with traditional expectations
 - Gen Z – "This generation places unprecedented emphasis on mental well-being and a balanced approach to work. Incoming Gen-Z employees favor adaptable working models like remote work and flexible schedules—trends that the Covid-19 pandemic has further normalized."

CHANGING FIRM CULTURE: MAYBE NOT

- Millennial (60%) and Gen Z (57%) men are more likely to say women's rights have gone far enough v. 43% of Boomer men
- 57% Millennial and 54% Gen Z say men are being asked to do too much to support gender equality v. 43% Boomer men
- 60% Gen Z men say issue of equality discriminates against men
- **May not be living that belief**



CHANGING FIRM CULTURE: CONSCIOUS, HIGH-LEVEL ATTENTION

- **Diversity efforts have often failed because top management was not interested or committed to them**
- **In a more competitive legal environment, artificially restricting the productivity and profitability of half a firm's workforce may be a luxury firm management cannot afford**



CHALLENGES REMAIN

- “What would need to change is for men in positions of power to accept that women can surpass them without having wronged them.”



Thank you. Questions?

**The views expressed herein are those
of Collyn Peddie alone and not of the
City of Houston or its City Attorney**

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