CHALLENGING THE HYPOTHETICAL II: LEADING THE WAY TO EFFECTIVE DIVERSITY

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I. Introduction

In 1992 I wrote Gender Bias: Challenging the Hypothetical about “the persistence and consequences of unexamined assumptions and models” in the context of gender. I explained:

In law school we were taught to respond to the questions within the confines of the situation set up by the teacher. Challenging the ground rules is called “fighting the hypothetical” and is bad form. But sometimes fighting the hypothetical is the only way to test the underlying stereotypes and break out of traditional models of thinking.2

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2Id. In this article, I also questioned the justification for launching the campaign for Harvard Law School “to sustain its position of world leadership in the law” with no women among the volunteer leadership. The dean explained that no women had agreed to make gifts of the same six-figure magnitude as the men on the committee. I responded that the school’s own refusal to admit women until 1951, compounded by pervasive gender bias in the profession, made it far less likely that alumnae could afford such gifts. My point was that this decision exemplified the wide range of situations in which unquestioning reliance on a facially neutral but effectively exclusionary principle should give way to a more nuanced, substantive approach. After the mailing of the alumni material and the exchange of letters that prompted the 1992 article, HLS appointed a woman to the Campaign Leadership Committee. Harvard Law School is getting better at this more subtle form of analysis, informed by students, faculty, alumnae, and prospective students who have asked hard questions and proposed new models.
I thought about that article again when I returned to Harvard Law School (HLS) for Celebration 50. “Challenging the hypothetical” is what women lawyers, and trailblazers for social change generally, have been doing for a long time. In deep and pervasive ways, the very model of lawyer was male, both demographically and philosophically. Pioneers in the profession, epitomized for me by my grandmother Frances Leff Cosor, who was admitted to the New York bar in 1921, succeeded as lawyers and judges and marked trails for those who followed but could not substantially alter a recalcitrant profession.

In the 1970s, women leaving HLS invested in dark suits and starched shirts, believing that if we could sneak into the corridors of power and do well before they realized we were girls, the doors would swing wide open for us. We came to realize, however, that women’s very presence in the law, as well as our progress, would depend on our willingness to challenge the expectations, values, institutions, and habits that flowed from the male model. We put our energy into mounting that challenge, and we made headway. As we advocated for women’s full inclusion in the profession and challenged incomplete and restrictive hypotheticals, we were also creating a model of the “woman lawyer,” showing that we were not immune from overlooking or producing stereotypes ourselves. In this picture, the woman lawyer was white, upper-class, heterosexual, and childless or, even better in the eyes of hiring committees, an empty nester.

To state it bluntly: women lawyers are not all the same, any more than all lawyers are men. Progress has not come at the same rate for all of us. In 1997, the American Bar Association Commission on Women in the Profession asked, “What are the most significant remaining challenges for women in law?” I replied:

A major challenge is ensuring that women of color share in the advances that white women are enjoying and that women work together effectively across differences—racial and ethnic, generational and political, mother and non-mother, full-time and part-time, private practice and other professional settings. The more of us there are, the more varied we are, the harder we have to work to find common ground.¹

Such realities require that we name, understand, respect, and incorporate in our policies the differences among women in our profession. Race, sexual orientation, and parental and marital status would be good places to start.⁴

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² Differences in professional interests and goals, political views, class, religion, physical ability, and age also deserve attention.
As we reflect on the meaning of Celebration 50, and where to proceed from here, I offer three stories—my grandmother’s, that of the HLS class of 1975, and my own—that illustrate what it means to be a woman and a lawyer over an era of challenge and change. Our experiences were obviously very different, but some of the same threads are woven through my grandmother’s story and those of my classmates, myself, and other contemporary women lawyers. We all tried to challenge stereotypes and play by new rules. In doing so, we have spent more time and effort on, and are more skilled at, the external project of opening doors and changing policies in the profession at large, but we have only begun to delve into our differences. Women lawyers of different races, sexual orientations, and social histories, with and without children, must come to know each other more fully and continue our common project of realizing “effective diversity” and change in the law.

II. My Grandmother the Lawyer

I’m lucky. From my earliest days, I had an image of what it meant to be a woman, a lawyer, and, indeed, a crusader. Frances Leff and Benjamin Cosor, my grandparents, immigrants from Poland and Russia, graduated from New York University School of Law in 1921. They worked their way through law school, she at night as a financial and legal printer on Wall Street, he moving office furniture on weekends. My grandparents moved to the small town where my grandmother had grown up because she believed it was the only place where she had a chance to be accepted as a lawyer and to develop a practice. She did not want to take her husband’s name, but the court clerk refused to admit her to the bar if she did not. My grandparents practiced law together for a bit, and their door always said Cosor & Cosor, but then he (yes, he) left the law. My grandmother practiced real estate and corporate law until she was in her seventies and was described to me as the community’s one-woman legal aid society. She was proud of the years when she was the family’s main breadwinner while my grandfather worked on developing several businesses.

My grandparents had a series of loyal household employees who played a large part in the daily care and nurturing of their two children. Later, when other children bragged about their grandmothers’ apple pies, both my grandmother and I were a little sorry she had no cooking achievements to offer in return. Even then, however, I think I understood that being able to get a temporary restraining order or negotiate a complex real estate closing was its own, much rarer, form of accomplishment. When I recounted my exploits and ideas as a late 1960s/early 1970s feminist and wannabe firebrand, my grandfather would always say, “Your grand-

5 Although happily not as common today, for most of my life that phrase has caught people’s attention.
mother was the trailblazer. You’re not doing anything new.” My grand-
mother challenged the basic hypothetical—lawyers are men—simply by
being herself, by appearing in court and at negotiation tables, and by
walking through town with a briefcase. Yet, I believe she was in some
sense protected from social disapproval, although she would hate to ad-
mit it, by the fact that she was married and had children. She was capa-
ble, professional, respected, admired, and exhausted.

It later became clear to me that many persistent issues are embedded
in her story. For example, women were still fighting for the right to keep
our own names when I graduated in 1975 and launched my pro bono ca-
reer through the Name Change Committee of the Women’s Legal De-
fense Fund in Washington, D.C.6 Likewise, the key word in my grand-
mother’s story, as every lawyer mother would spot, was “exhausted,”
which foreshadows the reality that has confronted women lawyers and
other working parents ever since.7

III. THE HLS WOMEN OF ’75

I was born in 1951, the year after Harvard first admitted women to
the Law School. By the time I came to HLS in 1972,8 the questions were
no longer those of my grandmother’s time—whether women would be
admitted, hired, or promoted, or whether at least some of us could make
it over the obvious but crumbling barriers. We did not expect it to be
easy, however, and if we had any doubts that our very presence at HLS
still challenged the prevailing image of the law and lawyers, we were
reminded every time we looked up at the portraits on the Law School’s
walls.9

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6 Although in the District of Columbia there was no compulsion for anyone to change
her name upon marrying, even in this mecca for women who found greater opportunities
there were greater than in other communities, women often faced misinformation and press-
sure to use their husbands’ names.

7 See, e.g., Sara A. Rapport (1987), Harvard Law School Celebration 50 Alum-
Vicky Anne Vossen (1984), id. at 675–77.

8 Make what you will of the fact that my HLS letter of acceptance was sent to Mr.
Jamienne Studley. An understandable mistake, although my enrollment at Barnard College,
a women’s college to this day, offered a hint. I do not know whether this meant that I had
had to meet an easier or stricter admissions standard. Although I do not credit the specula-
tion of the day about a quota on women’s acceptances, if such was the case, this error may
have made room for another woman to join the class of 1975.

9 Harvard Law School had few female role models of its own to offer us, but it agreed
(readily, I should add) to the Women’s Law Association’s request that it fund women speakers
to come to campus. Thanks to these precious plane tickets, we were able to meet with the
likes of Judith Younger (Dean of the Syracuse University Law School), Sarah Weddington
(who successfully argued Roe v. Wade, 410 U.S. 113 (1973), at the age of twenty-six), and
Jane Picker (a founder of the Women’s Law Fund, who argued Cleveland Board of Educa-
Women in the class of 1975 talked about the differences among first-year sections in gender composition. We realized that the difference between a dozen and almost two dozen women in a 140-person section affected whether there were enough women to form a “critical mass” to support women’s participation and minimize each woman’s symbolic significance.10 We recruited women to accept their HLS offers of admission not because we thought it was a good place to be a woman law student (or even a law student); I was certainly clear about my criticisms11 of the institution, as president of the Law School Council and a member of the Women’s Law Association. Our pitch was that these women would have the chance not only to learn about the law but also to work alongside an inspiring group of women to change the law and the Law School and that in our growing numbers lay increasing strength.

The early 1970s was an exhilarating time to be in law school and working on women’s rights and other civil rights issues.12 A litany of U.S. Supreme Court decisions from that time—Reed v. Reed13 in 1971, Frontiero v. Richardson14 in 1973, and Roe v. Wade15 in 1973—exemplifies the dramatic changes taking place in real time. The titles and addresses sprinkled throughout the Harvard Law School Celebration 50 Alumnae Directory16 testify to the formal professional walls that have toppled during these five decades—we are senators, partners, professors, deans, presidents, judges, and even justices.

When my class entered law school in 1972, we were already talking about the effect we wanted to have on the profession. Our mere presence in growing numbers represented a challenge to existing norms and ex-

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10 These discussions foreshadowed almost exactly the argument for affirmative action in admissions put forward by the University of Michigan in Gratz v. Bollinger, 539 U.S. 244 (2003), and Grutter v. Bollinger, 539 U.S. 206 (2003).
11 As an example of the “lawyer as male” hypothetical prevailing at HLS, a chapter in Clark Byse’s administrative law case book was titled something like, “The Men at the Top.” I did my homework, summoned my courage, and told him that his chapter heading was out of date because the Honorable Betty Southard Murphy chaired the National Labor Relations Board. Professor Byse seemed astonished, acknowledged that there were indeed women in leadership positions at federal regulatory agencies, and said that the heading should be changed for the next edition. It was.
12 Feminist scholar Carolyn Heilbrun put it this way:

The early years of feminism were, like all early loves, passionate, erotic, invigorating, full of possibility. Then the problems that life inevitably brings set in. I would not trade a moment of it for all the romance in the world, but it was certainly fraught with anxiety, battles, betrayals, and failures as well as with accomplishment. What matters most, of course, is that it was a life—a life I had chosen and not permitted to be chosen for me.

pectations. We were told that it was a privilege to have been offered admission, and we understood that it carried a responsibility to our gender and to women who had preceded us. Many of us said that we were not just aiming to achieve entrée and advancement; we also wanted to change the rules of the game. We said we did not just want to make it; we wanted to make it better—the profession, the country, the world. Stirring words, characteristic of youth, that still move me. And so I came to Celebration 50 with two questions: Were we true to those ambitions? And, whatever the historical answer, what can we do in the years ahead to make a shared contribution to justice and understanding?

The night before Celebration 50 officially began provided a remarkable window into possible answers to those questions. That night, a group of about sixteen women from the class of 1975 continued our wonderful tradition of gathering for what can only be called a sleepover party.17 We shared pizza, salad, and ice cream sundaes and, for seven hours, told the stories of our lives. We talked about what it means to be an honorable lawyer, a responsible parent, a loyal wife, a professional success, and a good friend. We were honest and reflective in discussing our stumbles, insecurities, and hopes. We talked about illnesses and deaths, painful professional experiences, and overwhelming responsibilities. Most significantly, we measured each other by the yardstick each woman had designed for herself. We had set different goals, created very different lives, and had varying degrees of success in reaching those goals. Instead of competing, we listened for what matters to each woman, for the cues to what each cares about and needs. The diversity in the group was moderate, but real, in type of work, race, parental status, health condition, financial position, and age. I liked that we looked squarely at those differences. We were comfortable discussing them directly and asked about, rather than assumed, each others’ views.

The openness, candor, respect, and, ultimately, trust displayed in this group of women makes me hopeful that we might be able to help bring a new level of insight and more effective diversity to our communities and institutions. This would be a significant and creative way to use our collective leadership positions, networks, experience, and clout to achieve just what we set out to do—to question and change the piece of the world we could affect, not just to insert women into the old picture.

17 The tradition began in 1995 in connection with our twentieth reunion, organized by Lucia Fakonas (’75) and hosted by Sydelle Pittas (’75), and was repeated in 2000 for our twenty-fifth reunion and in 2003 for Celebration 50. A freestanding gathering of the group took place in February 2004.
My résumé reads like a career guidebook for my era.18 Along the way there have been chances to live the dilemmas and contradictions of my cohort of professional women, to pursue social justice, and to challenge assumptions and rules. Like many classmates, I interviewed at law firms to be the fabled “first woman.” I was a beneficiary of affirmative action, as the Carter administration’s efforts to welcome women and minorities into federal service encouraged women to apply and assured us of fair opportunities to prove ourselves at hiring and in performance.

As Associate Dean at Yale Law School, I introduced mandatory sessions on race and gender relations into the professional responsibility program and convened workshops on gender issues in law teaching. One of the high points of my career was explaining to the Central Intelligence Agency (CIA) in 1983 that it could not interview on the Yale Law School campus unless it could demonstrate that it conformed to the school’s sexual orientation nondiscrimination policy. I later made the motion, on behalf of Yale Law School, that led to the addition of sexual orientation to the National Association for Law Placement’s (NALP) nondiscrimination statement. While I was NALP’s Executive Director, NALP developed training materials to improve awareness of diversity and reduce bias in interviewing and on the job. At both Yale and NALP, I counseled students and career services professionals on how to use the job search processes to discover employers’ policies on and acceptance of people of all sexual orientations.19

Throughout my career, with all its changes and struggles, my personal experience in finding work-life balance is unusually privileged. My litigator husband and I understand and can easily adapt to each other’s

18 Since graduating I have worked in government (as Special Assistant to the Secretary of Health and Human Services in the Carter administration and as Deputy and Acting General Counsel at the Department of Education in the Clinton administration), public interest (in health law policy analysis and reproductive rights advocacy and grassroots organizing in California), education (as Associate Dean of Yale Law School and President of Skidmore College), consulting and writing, and private practice (in a small antitrust boutique and the Washington, D.C. office of a large New York–based firm). I have been a member of the ABA Commission on Women in the Profession, President of the Connecticut Women’s Legal and Education Fund, Co-Chair of the Bar Association of San Francisco Committee on Women, and have co-founded the Washington Area Women’s Foundation.

19 In 1989, I was asked by a senior partner in a large international law firm why students make such a fuss about homosexual rights, noting that he did not know a single person in his firm who was homosexual. I replied that such a question suggested to me two possibilities: either his firm sent such strong signals that such people would not be welcome that it had succeeded in deterring gays and lesbians from joining the firm, or, as a result of such signals, his gay and lesbian employees had not revealed their sexual identities. I noted that, since it was my understanding that about ten percent of American adults are lesbian, gay, or bisexual, it was probably safe to assume that, absent discrimination, every tenth person he encountered in his firm was homosexual. He fell silent and seemed mentally to be walking the halls of his firm counting to ten.
travel, late and weekend work commitments, and other obligations. I have taken substantial pay cuts three times to do work with meaning, but it was relatively easy because I am a member of a two-HLS-graduate couple. We do not have children or financial responsibility for parents or dependents. We have moved for each other’s professional opportunities, and we have lived apart in order to do the work we loved. Now I am in a reflective phase, deciding on the challenges to address and the focus to choose for the next stage of my professional life—an experience close to home for other women lawyers.

V. The Goal of Effective Diversity

As I reflect on Celebration 50 and my own experiences, a few thoughts recur insistently. First, I keep noticing how many issues are inextricably linked to the challenges of raising the next generation and of understanding the effects of race. My hope is that women lawyers will go beyond simply noting our diversity to concentrate on understanding each other better along two powerful dimensions that affect us all: childbearing choices and racial and ethnic differences. Do we know enough about each other to appreciate each others’ experience and perspective, and to gauge the effect of policies, to envision changing our own behavior to make others more effective and comfortable? What insights and alliances do we miss as a result of our limitations?

Diversity commonly refers to variety in one or more characteristics (e.g., race, gender, geographic roots, ethnic origin, academic discipline) among people in a group (e.g., a workplace, classroom, neighborhood, or faculty). Differences in these characteristics represent nominal diversity—superficial organizing principles that can be named or noses that can be counted. By “effective diversity” I mean a deeper level of understanding of the sources and consequences of those differences and a capacity to name, examine, interrogate, and challenge them. Effective diversity would involve knowing when we see things differently due to varied experiences or traits to which we commonly ascribe significant meaning. It would also mean recognizing when individuals look at things in the same way, regardless of those classifications, so that we could see not only the richness or tension surrounding our differences but also the power of our similarities. A group that is effectively diverse would be able to use its diversity to accomplish its mutual purposes and to address successfully tensions related to differences. In working toward effective diversity we would come to understand what we need to know about the geneses and effects of stereotypes to challenge the next hypotheticals.
Effective diversity is the opposite of “colorblindness” or of making our differences invisible.\textsuperscript{20} I agree with Professor Michelle Alexander when she says:

\begin{quote}
I am against colorblindness. I am against even the goal of colorblindness. It saddens me that the best we can hope for is a society that is blind and indifferent to our tremendous diversity. . . . The colorblindness ideal is premised on the notion that we, as a society, can never be trusted to see race and treat each other fairly, or with genuine compassion.\textsuperscript{21}
\end{quote}

That is the very trust and compassion in understanding differences that I would encourage us to find. As a legal matter, it is imperative that certain differences carry no official consequences. On a human level, though, it is delusional and constricting to attempt to ignore or overlook differences that have meaning, history, and content, such as one’s familial status or race. Even after we have achieved equality in a legal sense in those arenas in which it is appropriate, many of our differences will remain significant to our identities and to understanding how we can live, learn, communicate, and work together successfully.

\section*{A. The Impact of Familial Status}

There is enormous complexity in the role of women in social change relating to procreation, pregnancy, childbirth, motherhood, and sex.\textsuperscript{22} While the profession has moved away from the interview questions about family plans and family planning methods that were still prevalent in the mid-1970s, the effect has sometimes been to drive underground speculation about whether and when a woman will have children. Despite early

\textsuperscript{20} I see both a truth and a parallel to this in the recent debate in California over Proposition 54, a voter initiative to bar the state from collecting data on race, gender, and national origin except under a few narrow exceptions. The principal argument made in favor of the proposition was roughly that it is time for us finally to be colorblind. The proposition was a bad idea for a number of reasons, but fundamentally I resisted the idea that colorblindness should be our social goal. I certainly seek equal justice under the law, and, yes, I want the law to be blind to certain distinctions. But it is delusional to think that we can shed centuries of ingrained attitudes so easily, given the evidence before us. Furthermore, I would rather aim for an honest recognition of our differences and an understanding of what is important to each of us related to our color, family arrangements, sexual orientation, and ethnicity, and our perceptions, experiences, interests, and needs that follow from them. From there we can try to appreciate the differences in ways that enrich us individually and collectively.


\textsuperscript{22} The complexity of the psychological and social issues is compounded by the prevalence of billing practices that put a premium on sheer time spent rather than on measures of quality, service, and efficiency. Studley, \textit{supra} note 1, at 5.
dreams of rapid change to a fair division of labor between the sexes in the domestic arena, matters of childrearing remain disproportionately issues of women’s responsibility and concern.\textsuperscript{23}

The resulting policy issues and proposals are extensive and important. But my focus is instead on the discourse—or rather, the lack of it—between women with and without children.\textsuperscript{24} In the absence of thoughtful, direct discussion, we make assumptions, general and specific, in both directions. One set of stereotypes clusters around women lawyers who have children and current responsibilities for them. Some people assume that such women are not really serious about practicing law.\textsuperscript{25} They worry that someone else will have to shoulder a heavier load because these mothers require flexibility or predictability in their schedules, that it is unfair for them to be paid the same as others if the employer makes accommodations or provides extra benefits for parents and families or that they will leave law practice. We also make assumptions about women lawyers who do not have children, which we talk about even less candidly. We may presume they decided not to have children so they could advance faster in their careers: they are selfish. Conversely, some may assume that these women want children but are biologically unable to have them: they deserve our sympathy.

These stereotypes do not work any better than gender or racial stereotypes. They rarely tell the whole story; they can be inaccurate, hurtful, and ultimately lead to unnecessary tensions and distrust. They can be hard to talk about because they are painful and because every woman starts from her own vantage point.\textsuperscript{26}

A successful senior partner and rainmaker confided that she hated the idea that younger women lawyers thought that her singleness and childlessness were necessary factors in her professional success or that she had chosen not to marry or have children in order to accomplish what she had done. However, she found it was very hard to open a dialogue about these issues. She had heard that her women colleagues with children did not think of her as a potential ally in their efforts to explore and

\textsuperscript{23} Once it became acceptable to admit that women lawyers actually got pregnant, bore children, and wanted to see them, reams have been written about the tensions between mothering/parenting and law practice, about salutary changes to accommodate the two, and about lawyers and organizations that are succeeding or experimenting with new practice models (from flexible scheduling to billable-hour alternatives to job sharing).

\textsuperscript{24} In this we are no different from the rest of society, which is not doing a good job of reconciling our individualistic values with our widely trumpeted but often neglected commitment to children and families. I like to think that lawyers can be trailblazers and that some of our values and skills—such as our sense of fair play, capacity for rational analysis, and ability to influence public debate and legislative policy—can be helpful in both the professional and national arenas.

\textsuperscript{25} Studley, \textit{supra} note 1, at 5.

\textsuperscript{26} See HELEN SIMPSON, \textit{GETTING A LIFE} (2001), for a collection of short stories that convey the inner thoughts and stresses of professional women both at home with their children and in the workplace.
revise firm policies, which was as unwise politically for their attempts to make change as it was personally disappointing and isolating for her. In general, she found there was little room in professional relationships to talk about such things, even though these issues had ramifications for recruiting, retention, and her own sense of comfort with and value to her women colleagues.

This example frequently plays out on a wider level. How many women would dare ask another if she is satisfied with the division of childcare responsibilities with her partner? Whether the compensation structure of their workplace seems fair given that one of them works longer hours and travels more? Whether it is painful or rewarding to a woman without children to talk about or advocate for accommodations for parents in the organization? The longer we leave such things unsaid, the greater the potential becomes for rift between women professionals with and without children.

B. The Impact of Race

We know that it is imperative that we talk about and better understand issues of race, color, and ethnicity. For myself, such conversations have become easier and more frequent since my college and law school days, thanks to my own growing experience, the wider representation of women of color in the profession, a more complex national discourse, and especially the clarity, confidence, candor, and wisdom of my colleagues and friends with different backgrounds.27

Women of color have the authentic experience that others want to understand, but they are tired of being the teachers, the testifiers. Observed from another angle, white women have a dual perspective. We benefit from the privilege of not having to think about race all the time, of knowing and being known, and of sharing a common culture with the men who have traditionally held power. At the same time we know to some degree what it feels like to be different, excluded, and stereotyped by the dominant male culture. Yet, it is hard to draw useful and in a balanced way from these respective strengths and sources of knowledge in discussions about women and race.

VI. Taking Action Toward Effective Diversity

I have worked on projects, such as the ABA’s Minority Counsel Demonstration Project and other efforts, that attempt to secure visibility,

27 A useful step in the policy discussion and my own edification was the issuance in 1994 of the American Bar Association’s The Burdens of Both, The Privileges of Neither, the aptly titled first report on the double bind experienced by women lawyers of color, who were often rendered invisible as issues were defined as alternately women’s issues or racial issues. Multicultural Women Attorneys Network, Am. Bar Ass’n, The Burdens of Both, The Privileges of Neither (1994).
work, and strength for minority-led and majority-minority firms, and I have tried to live by the lessons I have learned from these experiences. While an African American colleague and I were creating a consulting enterprise, I suggested that we use her initials for the firm name. This symbolic step was a way to alter institutional and personal dynamics and to create a “teachable moment” whenever we spoke about our firm.

What else can we do differently to encourage effective diversity? As with so many things, the first step is to listen. We must find settings in which my rainmaking partner friend can be honest about her choices and her isolation and where young associates can talk about the pressures they feel and their questions for senior women. Such dialogue has the potential to break down some of the barriers that both of these groups experience and show them their similarities as well as illuminate their diversity.

I again offer my experience as an example of creating a safe space for women to talk honestly about how we feel and how we see each other. My consulting partner and I met years ago in a job interview when we looked past my pink and gray knit suit and her bright African garb to discover that we were both passionate about women’s rights and political change. We went on to share a small, noisy office and high-stress grass-roots organizing and political work. We agreed that we would be honest and direct with each other and not let perceived bias, communication glitches, or unwarranted assumptions slip by or be buried under the press of business. We promised that at such moments we would stop what we were doing so that we could preserve the setting and emotion in which the comment or perception arose. It was hard to put into practice, but we learned a lot. The shared commitment to unearth discomfort and to talk about sensitivities made us alert, joined in a mutual effort to see the different readings and effects of what we said and did. We went beyond political correctness and superficial courtesy every time one of us began, “Did you hear what you just said?” Such risk taking is at the heart of what I am proposing. I simply suggest that motivated women find ways, once again, to break through silences by drawing on our skills of relationship building, negotiation, communication, and problem solving. Catch phrases such as “think locally, act globally,” “all politics is local,” and “do what you can with what you have where you are” echo in my mind from my earliest political days. In that spirit I offer a few practical, but by no means easy, action steps.

First, white women must acknowledge more widely that many of us have benefited from affirmative action. This would broaden affirmative action discourse, taking the full weight of progressive social policy off people of color and demonstrating that affirmative action can indeed phase out when the underlying circumstances in a particular type of workplace or educational environment change. Second, take responsibility for bringing issues related to diversity and parenting into discussions, espe-
cially if you wield power in the situation. Likewise, do not wait for someone in the directly affected population to shoulder the responsibility. It certainly makes a difference when heterosexual people raise questions about policies affecting gay and lesbian people or when “vagina friendly men”28 advocate for a hard look at the fairness of an employee evaluation system or the effectiveness of employer childcare.

Third, when an organization with which you are involved develops a strategic plan, ask early on how diversity and responsibility for children and families fit into its goals and are linked to specific objectives and challenges. For example, one could ask how the culture and human-resource policies of an organization relate to marketing to new communities, employee motivation and turnover, and compensation systems and rewards. Fourth, include your workplace colleagues in your thinking and discussions and be more attentive to their work schedules and family responsibilities, their opportunities for advancement, and the potential for stereotyping. Finally, attempt to broaden the conversation. Find a partner organization from another community for your book group, professional association, parent group, or neighborhood association that would introduce you to a universe of people with shared interests but different racial, socioeconomic, or ethnic backgrounds.

VII. Conclusion

The term “difference” strikes three related chords for me in the context of effective diversity. Celebration 50, like the lives of the women lawyers I respect, is about making a difference. We can use our commitment to progress to focus on understanding and working successfully across the differences among us. To do so would require that we make some different choices—to make effective diversity a higher priority, to include new people in our circles, to take risks in broaching new subjects or speaking out. In the wake of Celebration 50, women in the class of ’75 made a special “vote of confidence” gift to the Law School in honor of Dean Elena Kagan because we saw something new and different happening. We wanted to encourage and support her in speaking out on issues affecting women, students, public service, and the responsibilities of our profession and society and to use the bully pulpit of Harvard Law School to create a forum for courageous attention to these vital issues. While we are in a confident and reflective mood, we should each take on the same challenge to commit ourselves to finding understanding and strength in our differences and to continue making a difference in the world.