UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

DONALD ZARDA,

Plaintiff,

-against-

ALTITUDE EXPRESS, INC., dba Skydive Long Island, and RAY MAYNARD,

Defendants.

----------X

REPLY MEMORANDUM IN SUPPORT OF ADMISSION OF EXPERT TESTIMONY AND PAYMENT OF PREPARATION FEES OWED BY DEFENDANT

10-cv-04334-JFB

PRELIMINARY STATEMENT

Defense counsel is best when he makes use of the *ad hominem* attack, and does so in his opposition papers, twice making light of my mis-titling of this motion. It's always embarrassing to make a typo, but I think to point one out on several occasions as he did is beyond the pale of subtle criticism. But this is how Mr. Zabell practices, and while it does embarrass me that I feel I have to point it out, I will: While I was away on vacation, I received an unsolicited email from one of Zabell's adversaries in Suffolk Supreme Court, in which litigation he has acted more childishly than this one. In that litigation, Lamarca-Pagano v. Dr. Steven Phillips, P.C., 356441/10, defense counsel (Mr. Zabell, as the Court is aware, plays on both sides), pointed out that Mr. Zabell has had himself mentioned not once, not twice, but three times in treatises and other third party sources for his bad behavior. See Horowitz, Disclosure, VIII, Depositions, 59 Syracuse L. Rev. 693 (2009); see also Haig, New York Practice Series: Commercial Litigation in New York State Courts, §65: 16 Discovery-Depositions, Footnote 11 (3d ed., 2011). See also, "What Lawyers Do," a blog by Eric Dinnocenzo, a self-

described "Trial Lawyer Tracking Events that Affect the Legal Rights of Individuals and Consumers." Mr. Zabell's behavior was mentioned at in Mr. Dinncenzo's blog at http://whatlawyersdo.com/2008/11/20/attorneys-sanctioned-for-rude-behavior-during-deposition.

A sanctions motion, not surprisingly, is pending in the Lamarca-Pagano case in which, among other things Mr. Zabell cancelled an expert's deposition at such late notice that the expert had lost his entire schedule for the day, and thus presumably lost that day's billings. Zabell simply left him high and dry, as he did Professor Yoshino in this case. See Antollino Declaration, Exhibit A.[1] Now Zabell has the chutzpah to suggest that he should not have to reimburse Professor Yoshino for reasonably preparing for the deposition that Zabell himself refused to adjourn. This is the game that Mr. Zabell plays – it makes litigation most unpleasant and the Court should not tolerate it. Likely, he spent more of his clients' money on opposing the motion than it would have cost him simply to pay it.

What is more important, Zabell offers nothing to suggest that Professor Yoshino – multiply published and qualified beyond expectation – is not qualified to testify in the area of gender and sexuality studies, a somewhat new but by now established area of academic inquiry, and to opine about sex stereotypes and "covering," a topic that has gained Professor Yoshino world renown.[2] The motion

[1] I have only attached the relevant portion of the motion, but if the Court wants to see the whole sordid attack Zabell made on the defense attorney, and vice versa, I'm happy to provide it.

[2] Mr. Zabell keeps forgetting that this is a hybrid sexual orientation discrimination/Title VII lawsuit. See Defendant's brief, footnote 1, arguing that "Title VII does not prohibit sexual orientation discrimination." The point I just

should be granted, however, if the Court in any way feels that Professor Yoshino has crossed the line into making the a legal recommendation that is within the province of the jury, then in limine motion may serve as an opportunity for the Court to rule on how far Professor Yoshino may go. This is not a simple case, as defendants suggest. Although this state is one of only one of 21 of 50 states that prohibit employment discrimination on the basis of sexual orientation (see Exhibit A, attached hereto), plaintiff's position is that a gay person's identify is wrapped up in his ability to express that identity. Not every person might see it that way and, if the Court does not grant this finding to plaintiff on summary judgment, plaintiff has the right to make his case with the very best evidence before the jury. Professor Yoshino has, more than any one else in the country, perhaps the world, examined this issue exhaustively. If Professor Yoshino cannot attest to the jury that plaintiff's termination was caused by homophobia, he has the right at least to educate the jury that self-identification with being gay is inextricably intertwined with being gay. If the defendants want to hire their own expert to say the contrary, they are entitled to do so; but the fact that they are free to do so demonstrates that it is an issue that goes to weight, rather than admissibility.

As for the question of sex stereotypes, this is a question that is perhaps too complex for most if not all-lay juries to understand. Judge Gerhart Gessell recognized this as trier of fact in the seminal case of Price Waterhouse – which defendants, by the

---

quoted is true, but once and for all, plaintiff is bringing a New York state claim for sexual orientation discrimination; his Title VII claim raises the issue of sex stereotypes. There are also two bases for federal jurisdiction – federal question and diversity – plaintiff is a Missouri resident - so this case will conclude in federal court no matter what. I hope this is the last time I have to point this out.

way, wholly misrepresent in their brief. Sex stereotyping is a well-recognized theory of sex discrimination, *and yet federal judges are taught how to address issues pertaining to this theory of discrimination in judges' school*. See Exhibit B, Law Professor Joan William's PowerPoint presentation on stereotyping, Nat'l Workshop for District Judges, September 2008. If an appointed federal judge needs education to feel comfortable adjudicating the issue of sex stereotyping, then certainly a jury does, especially when the stereotyping issue involves a man - a representative of the majority that would normally be associated with engaging in stereotyping. Plaintiff's argument as to this prong of his case is more or less twofold: First, he is arguing that Maynard's failure to conduct any investigation into the allegation of touching – the assumption that the accusation against a man by an attractive woman would certainly be true[3] — is sex stereotyping.

Second, Maynard fired plaintiff because, when he was accused of being improperly close to Ms. Orellana, he identified as a gay man so as to clear himself of any suggestion of impropriety. We contend that if plaintiff were straight and someone had accused him of getting too close to a man as they strapped together for a jump, and he replied, "Hey, no homo – not that there's anything wrong with that," no one would have flinched. But the fact that he used the best arrow in his quiver – that he was gay and was only touching Orellana at the hips for her safety – got him fired. These are subtle arguments that a jury is entitled to hear from an expert in gender studies, especially one who concentrates in the study of gay people. Plaintiff cannot assume that there will be eight gay people on the jury, and it is more than likely that there will be one, or none. It is

[3] Maynard testified at his deposition that he thought that Mr. Zarda could switch back and forth between being gay and being straight, and had no obligation to inquire of Ms. Orellana as to whether she was improperly touched. Dep. at 197-98

more than likely that most of the jurors will not only not be gay, but will have little or no experience with gay people in their everyday lives. Plaintiff is entitled to have an expert to explain what it is like to be gay; how expressing one's gayness is part of being gay; and how not only Maynard, but also Orellana and her companion used sex stereotypes in evaluating plaintiff's conduct. Whether that was illegal, and whether that amounted to discrimination is a question for the jury. The Court might see Professor Yoshino's report as overbroad to an extent, but that does not render his opinion wholly inadmissible. It is for the Court to determine what is admissible, and to allow the jury to determine whether the admissible evidence is evidence of liability.

ARGUMENT

I. PROFESSOR YOSHINO'S ANALYSIS IS RELEVANT AND NECESSARY

Defendant cites general cases discussing the admissibility of expert testimony, but not a single case suggesting that Professor Yoshino and his area of inquiry are not "relevant evidence" defined by the rules and the case law as "evidence having *any* tendency to make the existence of *any* fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401 (emphases added). Defendants do not and cannot deny that "[t]he Rule's basic standard of relevance thus is a liberal one," Daubert, 509 U.S. at 587, and that "[t]he rejection of expert testimony is *the exception rather than the rule*." Fed. R .Evid. 702 Advisory Committee's Notes at 424 (emphasis added). I agree that the purpose of the expert is not to testify to "conclusory condemnations" (def. br at 2). Professor Yoshino, on the other hand, does not do that . He based his opinions almost entirely on the testimony of Ray Maynard, the two complainers, and Rich Winstock, Maynard's

employee. He states clearly in his declaration in support of this motion that he

> did not submit the report to urge a legal conclusion on the Court, but rather to highlight the social frameworks through. which stereotyping on the basis of sex or sexual orientation occur. In my view, the general population often overlooks these stereotypes because they remain so deeply engrained in our social life, much as racial stereotypes were deeply engrained before the civil-rights movement…In questioning why Mr. Zabell objected to my expert report as "an amicus brief," I can only assume that he is fixing on my report's one citation to a legal case regarding the sex stereotyping theory…. See Sassaman v. Gamache, 566 F.3d 307 (2nd Cir. 2009). In that case, the Court found that an employer's termination of a male employee on the basis of a single sexual harassment charge against him could reflect sex stereotyping when the employer had made no attempt to investigate the veracity of the charge. I did not invoke this case as a controlling legal authority, but rather as a sociological example of how pervasive such stereotyping can be. Sex stereotyping can be found in law just as it can be found in psychological or sociological studies.

Yoshino Declaration, July 18, 2012, pp.2, 12. Of course, it was not my role to edit Professor Yoshino's report, and I had a feeling that the reference to the Sass man case would ruffle a few feathers. I understand that we don't cite cases to juries, and no matter Professor Yoshino's explanation for putting it in there, I understand the jury is not going to hear about that case. Nevertheless, one doesn't burn the house to roast the pig, and the Court can determine which of the report is admissible or not, and about what Professor Yoshino can testify.

The cases cited by defendants are inapposite. Despite all of the sex stereotype experts who have come before them, they start with the assumption that all Mr. Yoshino has done something improper. No so. In Hygh v. Jacobs, 961 F.2d 359, 364 (2d Cir. 1992), the Court found that the expert crossed the line in portions of his testimony, but that the error had been harmless because, in the end, the jury instructions had set forth the proper legal standard. Thus in that case, not only had the expert not given the proper legal standard, but he had overstepped his bounds without proper

limitation by the district judge, who, in any case, corrected the error by giving the jury the proper legal standard. In this case, the defendant states simply that the entire opinion is improper, without giving the court any guidance as to why. I would suggest that the citation to Sassaman should be left out, and the Court should decide what and what does not cross the boundary as to admissibility. That is the Court's job, not mine, the litigator, and not Professor Yoshino, who brings his best efforts to the table to the Court to parse in an appropriate manner. Clearly most of the report is admissible – Zabell complains that the report comes to certain conclusions that are not within Yoshino's ambit of expertise. But in fact, every statement that Yoshino made about skydiving came from Maynard and his top employee Winstock. Maynard, for example, admitted he did no investigation into the dubious claim of touching; he expressed - on tape no less – that he believed plaintiff's expression of having a male partner was an expression of an "escapade"; and, by firing plaintiff, he believed that plaintiff had no right to identify as a homosexual. *That such expression is what got plaintiff fired is not in dispute*. For gosh sakes, Maynard *admits* on the tape that he is firing plaintiff because he *said* he was gay; and the "hip touching" is also mentioned. (The tape is not transcribed in deposition, but it is available on YouTube: http://www.youtube.com/watch?v=APQs-0d9TkE&feature=g-upl.) Maynard also put in his opposition to plaintiff's application for unemployment benefits that Zarda was fired for revealing "personal information." See Callanan dep. at 108 Exh. 1-A. These are matters that are not in dispute, so to suggest that Yoshino is going beyond his expertise is simply not fair. The question is do they raise an inference of bias and stereotype. Professor Yoshino is not taking that role away from the jury, and if defense counsel feels he is, he can object and the Court can rule. But

the jury, listening to testimony on a sensitive topic, is entitled to listen to the opinion of someone who has studied and published on the subject, not simply Ray Maynard, who believes that gay people can switch back and forth from straight to gay at the bat of an eyelash. Let's not kid ourselves: This is an issue that divides the nation and New Yorkers are lucky to have a law that protects employees in a minority of states. Let's see that law does what it is designed to do and allow the jury to understand what is appropriate and what is not – from the perspective of both the employer and the employee. And as for the sex stereotype aspect of the case, the Court cannot allow a group of lay jurors decide an issue that federal judges are invited to train in. While sex stereotyping is a cognizable theory, it is a highly subtle one, and thus Professor Yoshino's testimony on the subject has the "tendency to make the existence of *any* fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401

II. PROFESSOR YOSHINO'S ANALYSIS SATISFIES THE DAUBERT TEST

Defendants offer nothing to suggest that a sex-stereotyping expert would not satisfy the Daubert test. The fact that Professor Yoshino teaches law rather than sociology is a question that, at best, goes to weight rather than admissibility. As a law professor, he has written and spoken extensively on gender roles and gender studies; and his book Covering is a landmark treatise that combines personal experience with academic inquiry, and has resulted in his invitation to speak on scores of panels. His book has won numerous awards, and is assigned to first year students at four colleges – notably colleges in states where sexual orientation is not a protected category. Defendant's attempt to distinguish the seminal case of Price Waterhouse as "unwarranted" is itself unwarranted,

and disingenuous. First, defendant argues that the defendants in Price Waterhouse did not question Dr. Fiske's qualifications. Br. at 5, citing 490 U.S. 228, 255. No, this is not exactly true. What the plurality opinion said was actually this:

> Without directly impugning Dr. Fiske's credentials or qualifications, Price Waterhouse insinuates that a social psychologist is unable to identify sex stereotyping in evaluations without investigating whether those evaluations have a basis in reality. . . . Fiske testified that she discerned sex stereotyping in the partners' evaluations of Hopkins, and she further explained that it was part of her business to identify stereotyping in written documents. . . . .We are not inclined to accept petitioner's belated and unsubstantiated characterization of Dr. Fiske's testimony as "gossamer evidence" based only on "intuitive hunches" and of her detection of sex stereotyping as "intuitively divined." Nor are we disposed to adopt the dissent's dismissive attitude toward Dr. Fiske's field of study and toward her own professional integrity.

Id. at 255. So it was not the case that Dr. Fiske's testimony was without controversy. Ultimately, this is a question for the jury. If the defense wants to point out that Yoshino does not have a PhD in Sociology, let it do so; we will respond, in turn, that some of the most renown experts in gender studies and sex stereotypes are lawyers, including law professor Joan Williams, who taught the issue to federal judges (See Exhibit B); and law professor William Eskridge, who testified on the issue to the United States Congress. See Antollino Reply Dec. Exhibit D.

As to defendants' reference to the Price Waterhouse decision on remand, that Dr. Fiske "could not, and did not determine 'the precise effect stereotyping had on the decision [to terminate plaintiff]," this is both misleading and irrelevant as it applies to this case. Def. br. at 5. In fact, the District Court – who, again, believed expert testimony on this issue to be essential – said as follows:

> Plaintiff's expert witness at the original trial -- a well-qualified social psychologist specializing in sex stereotyping issues -- testified that sexual stereotyping can lead to negative judgment of women in traditionally male-dominated organizations. She expressed her expert opinion that some Price

> Waterhouse partner comments about Ms. Hopkins were influenced by sex stereotypes and concluded that stereotyping "played a major determining role" in the firm's decision on Ms. Hopkins, although the precise effect stereotyping had on the decision could not be determined. It was apparent from the testimony that disentangling stereotyping from fact is difficult. Stereotyping may be conscious or unconscious, and a negative fact may be expressed in words that imply stereotyping and yet be wholly nondiscriminatory.

737 F. Supp. 1202, 1206-07. "Precise" means exact. In the law, we do not search for exactitudes; rather, we search for the preponderance of the evidence. In Price Waterhouse, the expert had to put together a number of sexist statements and render an opinion as to their effect on the plaintiff's employment; of course, the defendants didn't admit to any improprieties. In this case, Yoshino is doing exactly the same thing. That his opinion comes out a little bit stronger than Dr. Fiske's is function of Maynard's *admission on tape* that he was firing plaintiff for telling a customer that he is gay. If his opinion is a little bit stronger than Fiske's it is because the evidence in this case is a lot stronger than what Dr. Fiske had to deal with.

As for the remaining elements of the Daubert analysis, Professor Yoshino goes over them step by step in his declaration at pages 2-12. Defendants do not address any of these contentions; they merely point out that Professor Yoshino does not have a PhD in Sociology. It is a good thing he does not. Perhaps if he had, he would not have brought us such groundbreaking work that is a credit both to him and the field of gender and sexuality studies, and a source of learning for us all.[4]

---

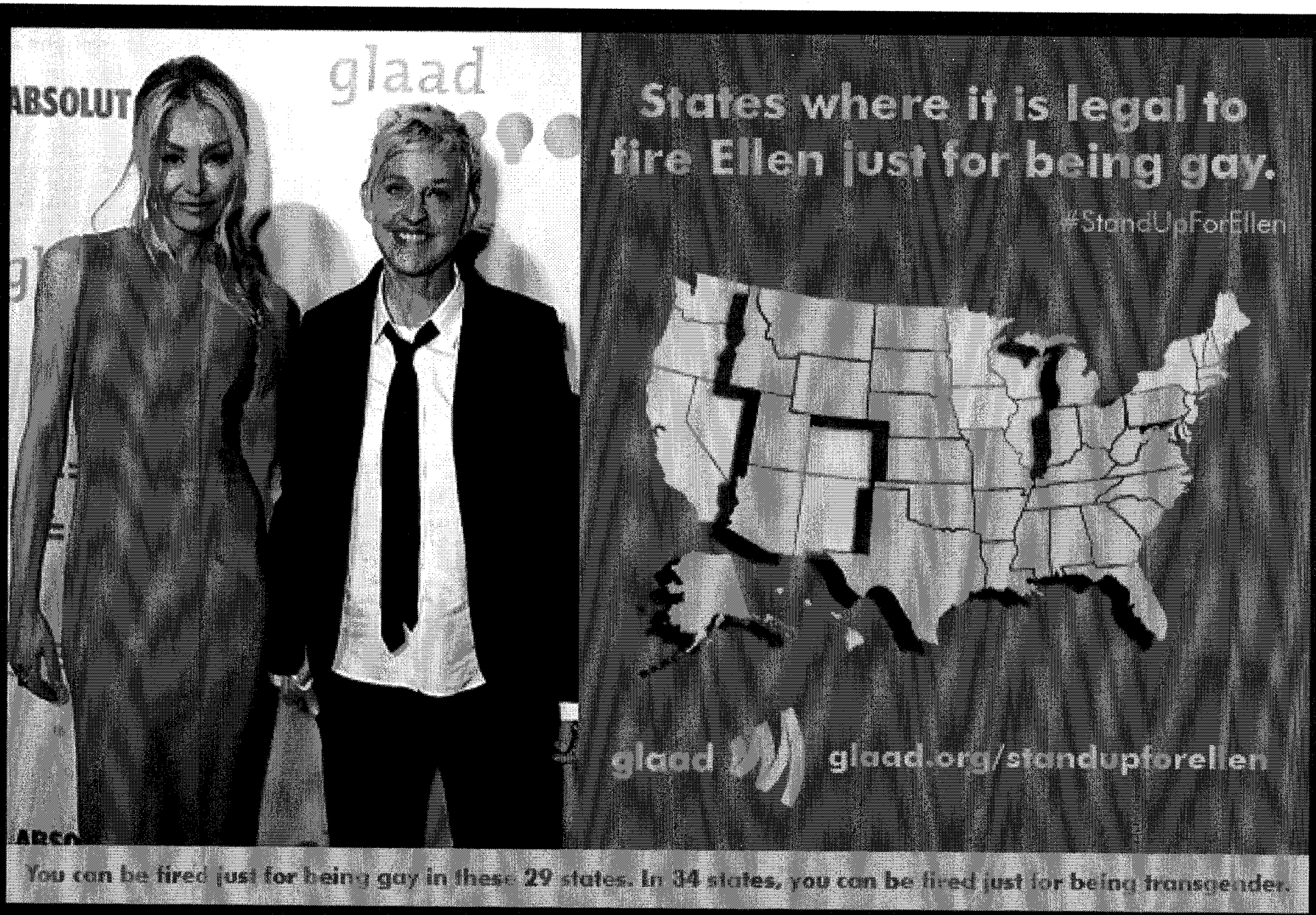
[4] Finally, EEOC v. Morgan Stanley, 324 F.Supp. 451 (S.D.N.Y. 2004) is not the only case in this Circuit that has dealt with sex stereotyping, as defendant wrongly suggests (br. at 7). That case, along with Duling v. Gristede's Operating Corp., 267 F.R.D. 86 (S.D.N.Y. 2010) (admitting expert report) are the only reported decisions on the subject. Significantly, defendant offers not one case suggestion that sex stereotyping is not proper fodder for expert testimony, even if the subject is rare.

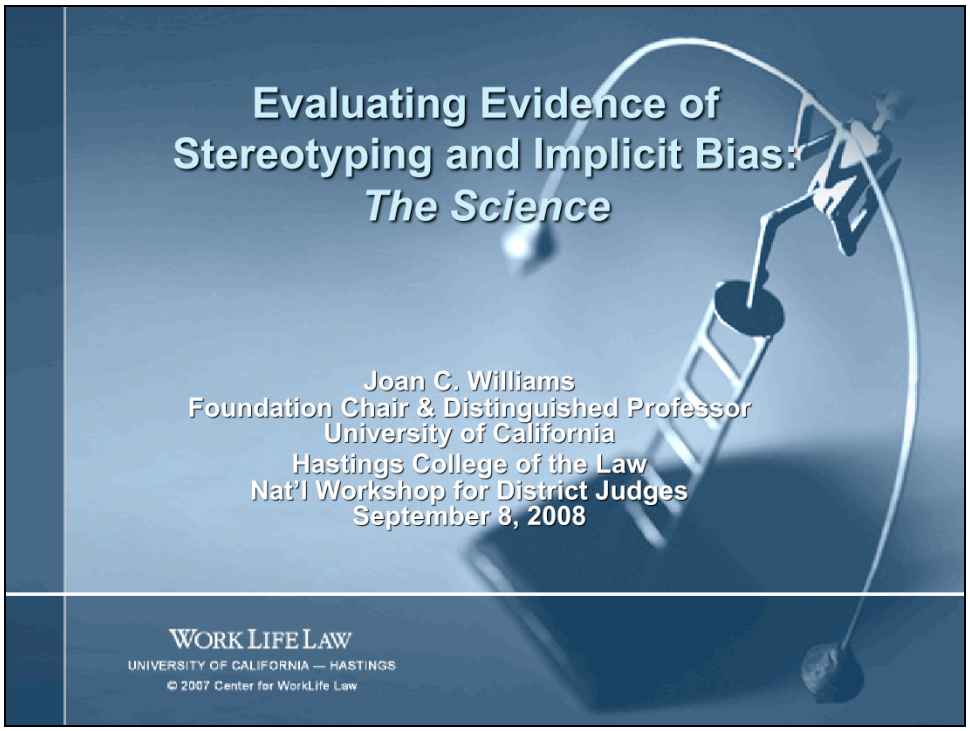
CONCLUSION

For the foregoing reasons, Professor Yoshino's expert testimony and report should be deemed admissible, and he should be compensated in the amount of $3,500 for preparing for the deposition that Mr. Zabell noticed for June.

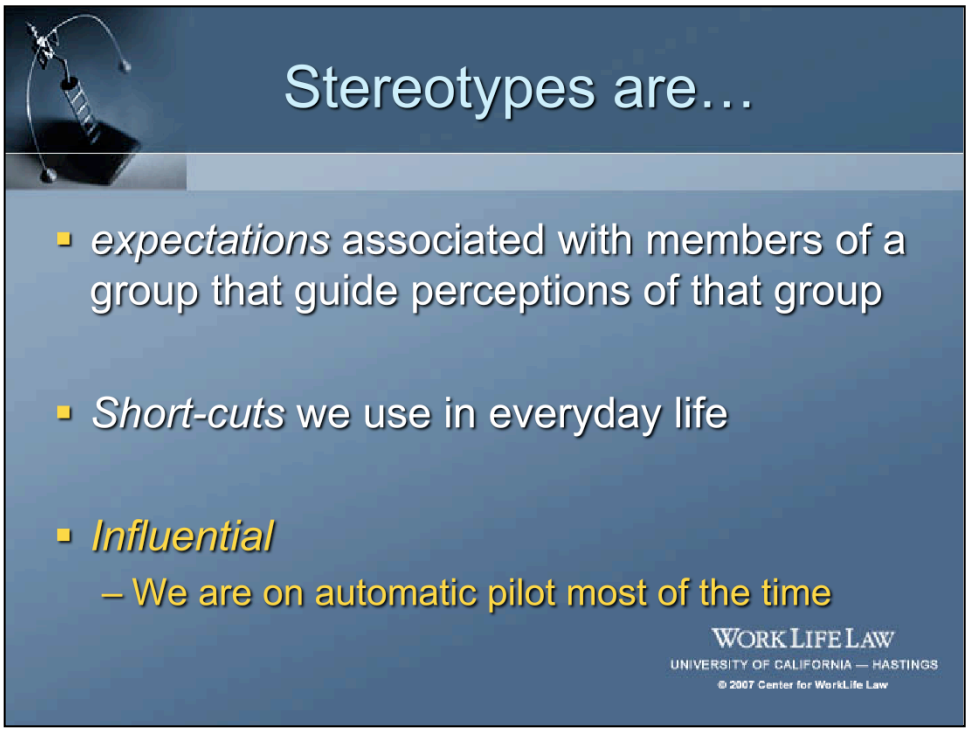
Dated: New York, New York
August 31, 2012

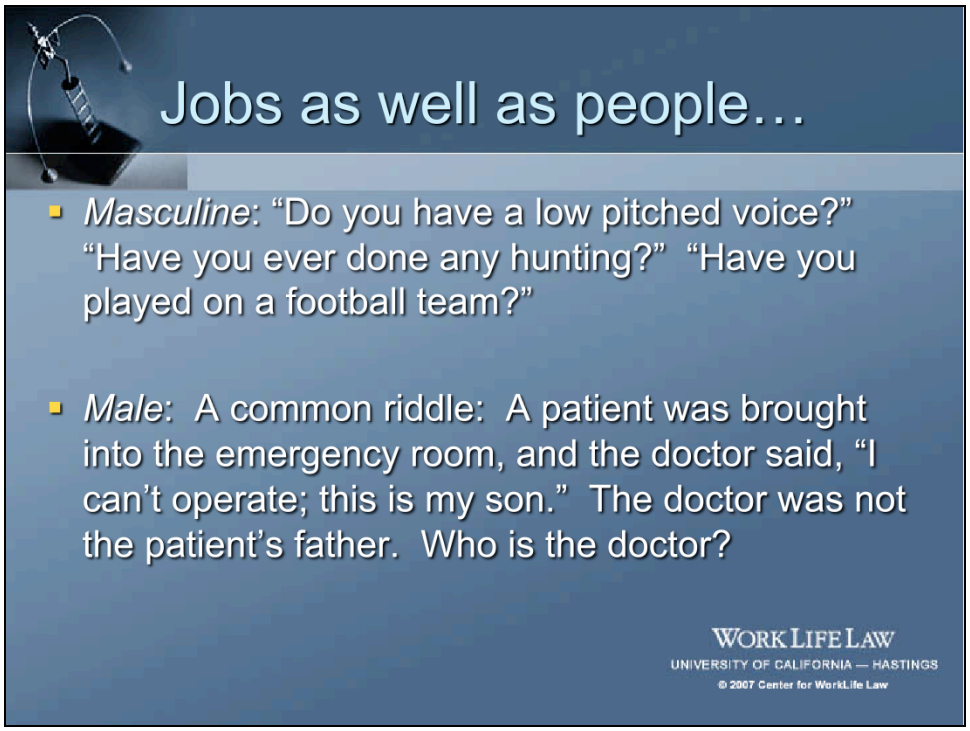
/s/
GREGORY ANTOLLINO
Attorney for Plaintiff
18 West 21st Street #802
New York, NY 10010





I'm going to provide a brief introduction to the scientific study of stereotyping. Thousands of studies over last 35 years.


Stereotypes are…
expectations associated with members of a group that guide perceptions of that group
Short-cuts we use in everyday life
Influential
– We are on automatic pilot most of the time
WORK LIFE LAW
UNIVERSITY OF CALIFORNIA — HASTINGS
© 2007 Center for WorkLife Law



It's important to start with the studies that show that jobs as well as people are stereotyped

Most high-status, highly paid jobs, both blue- and white-collar, are seen both masculine and male

Here's an example of the way jobs are MASCULINE, from Sears v. EEOC Questions asked of candidates for higher-paid commission sales staff jobs included:

Many jobs also are seen as MALE

READ THE RIDDLE

The riddle works (when it does) because of the automatic assumption that doctors are male.

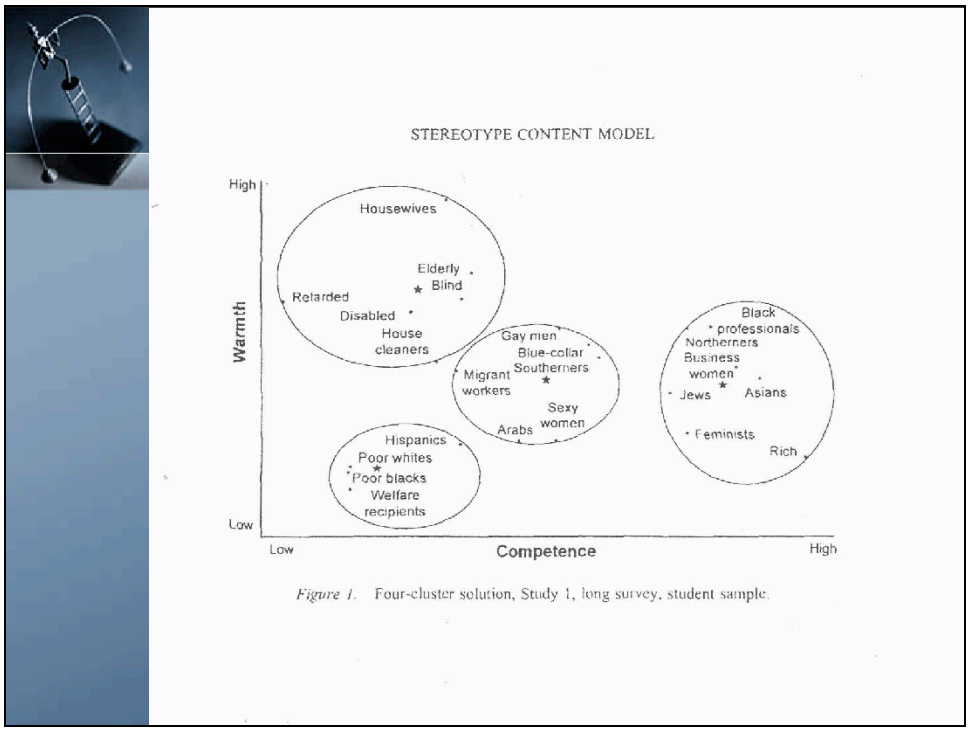


Figure 1. Four-cluster solution, Study 1, long survey, student sample.

Returning from jobs to people

Stereotype content studies document a perceived trade-off between warmth and competence

Most highly paid, high-status jobs are seen as requiring BOTH – both competence and people skills

This creates patterns of workplace bias for groups seen as nice but not competent

AND for groups seen as competent but not nice.

This is called a STEREOTYPE CONTENT MAP"

Obviously, it's harder to get a job, or get promoted, if you are constantly triggering the assumption that you are not competent

The categories protected categories are in yellow

It's also harder to get a job, or get promoted, if you are seen difficult – lacking in warmth

Both whites and people of color hold stereotypes about race

Both men and women hold them about gender

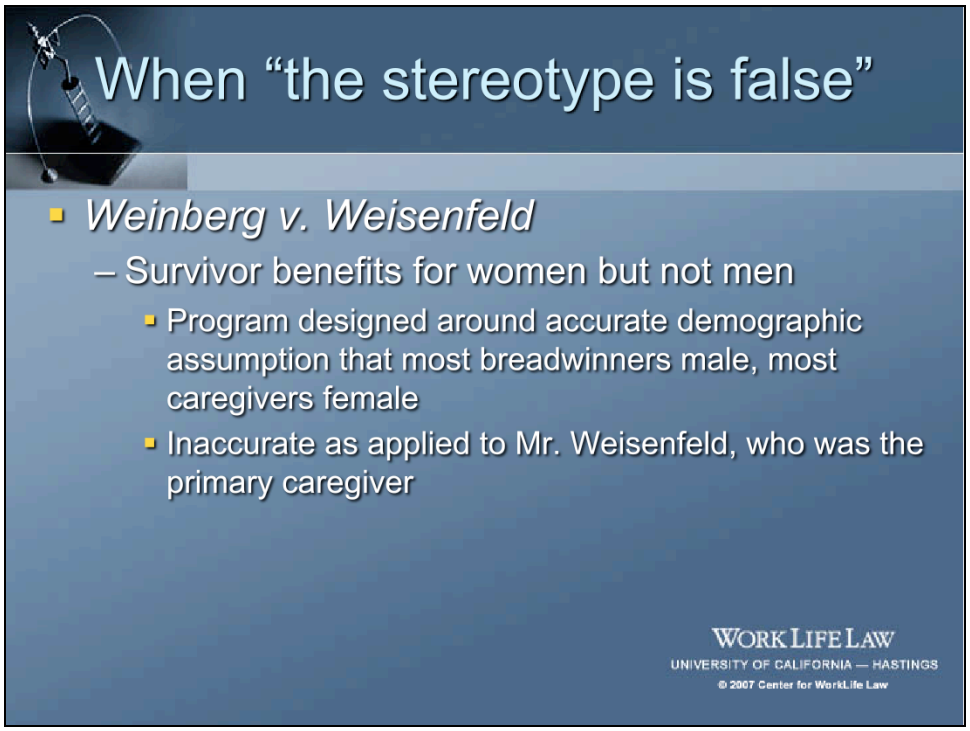
same holds for other groups.

Women actually hold a certain type of stereotypes about women more strongly than men do

Notably about other women who engage in self-promotion –

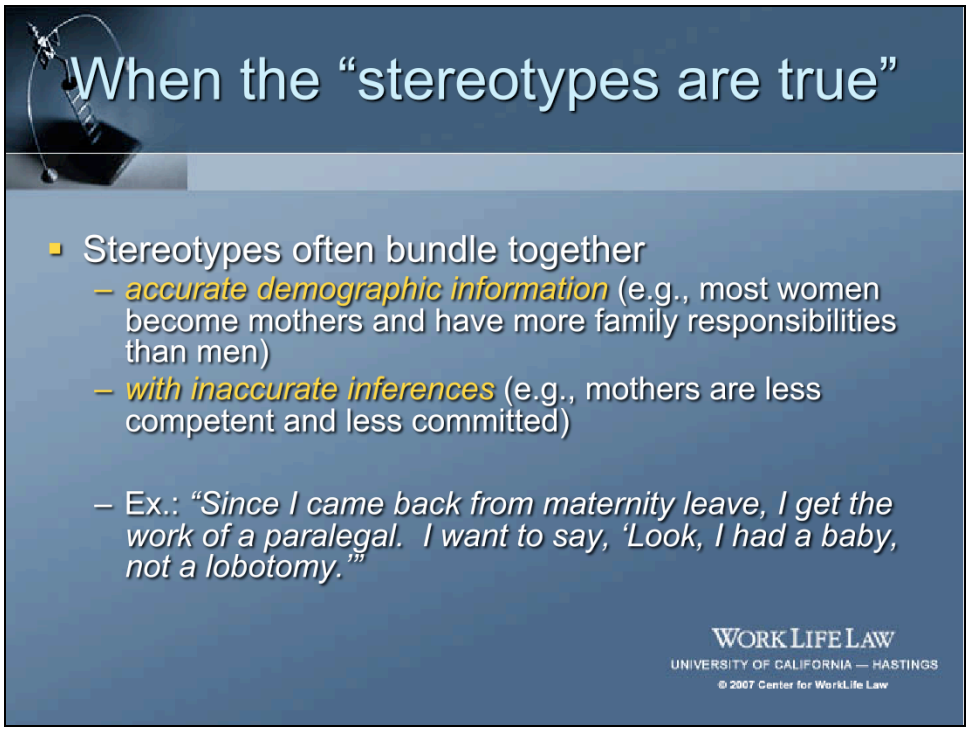
So a woman is even more likely to be penalized for knowing her own worth and making no bones about it by other women than by men

Reliance on stereotypes occurs more often in specific situations



The more familiar case is where an employer gets into trouble where an individual does not fit the stereotype

READ SLIDE

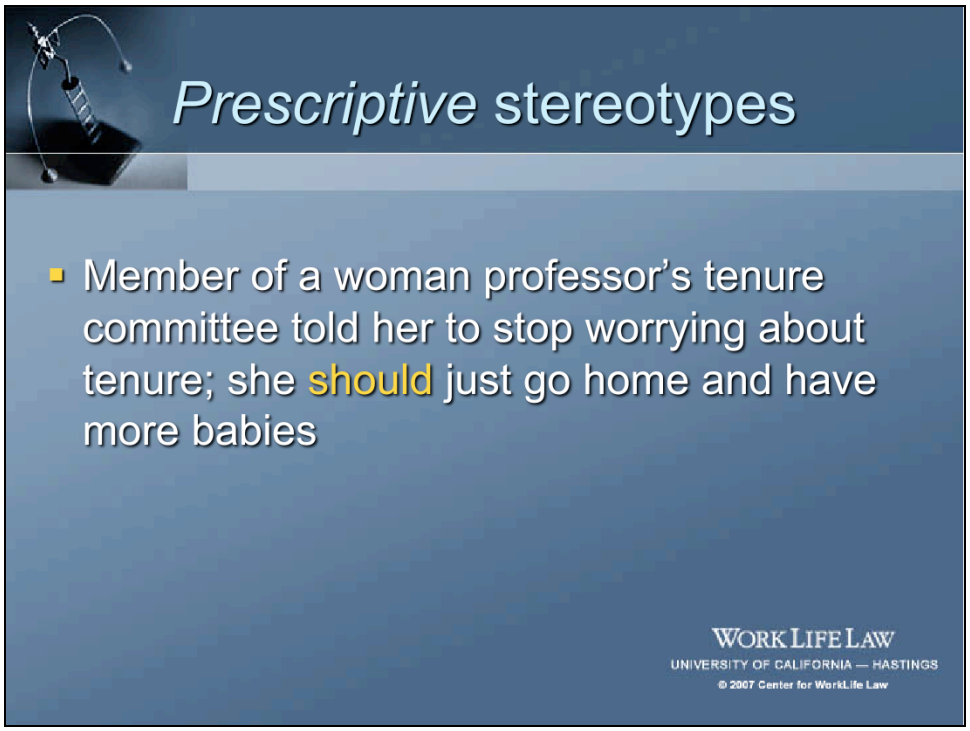


Less well known

protected groups can encounter stereotypes

even when they do fit stereotype-driven demographic assumptions

The reason is READ SLIDE



One way to splitting stereotypes is into prescriptive and descriptive.

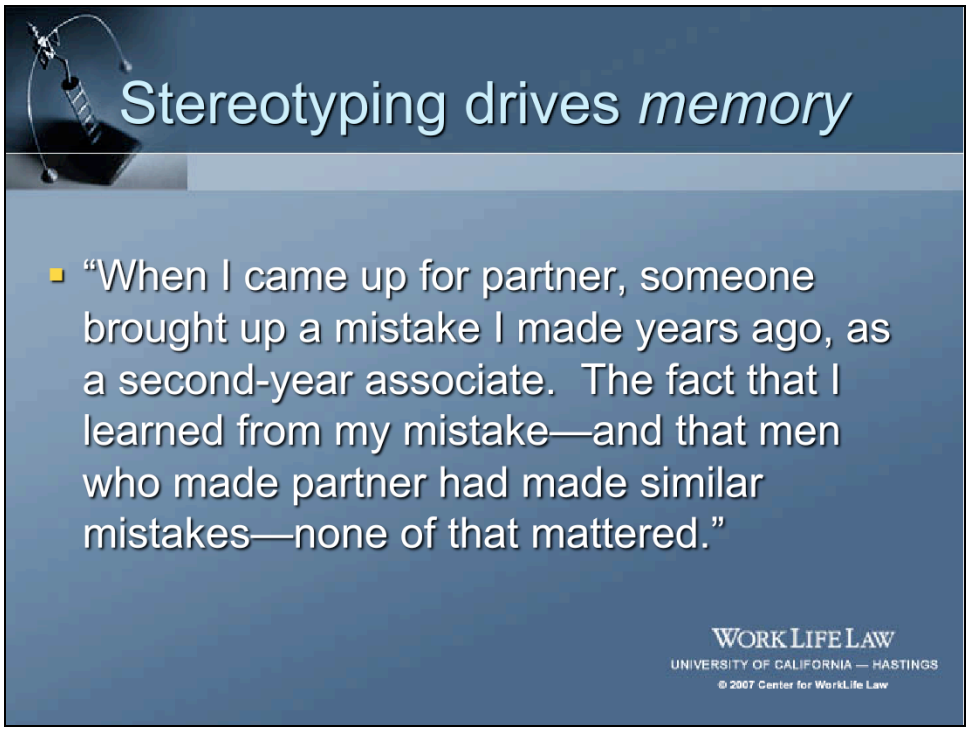
Prescriptive stereotypes tell women they should conform to traditionally feminine behavior

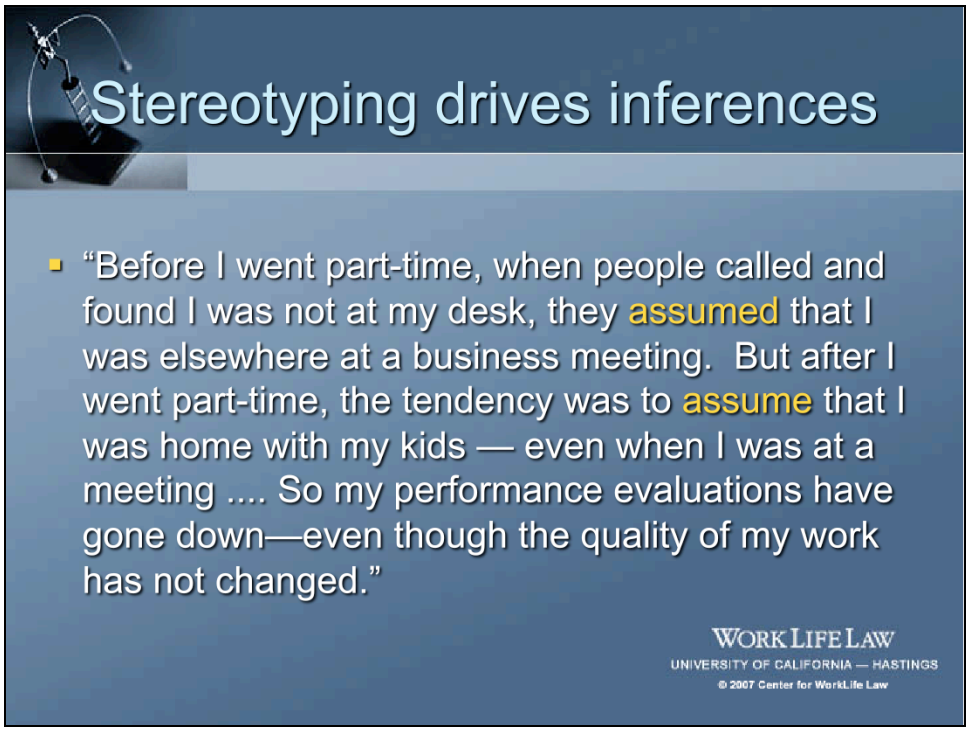
Here's an example of hostile prescriptive

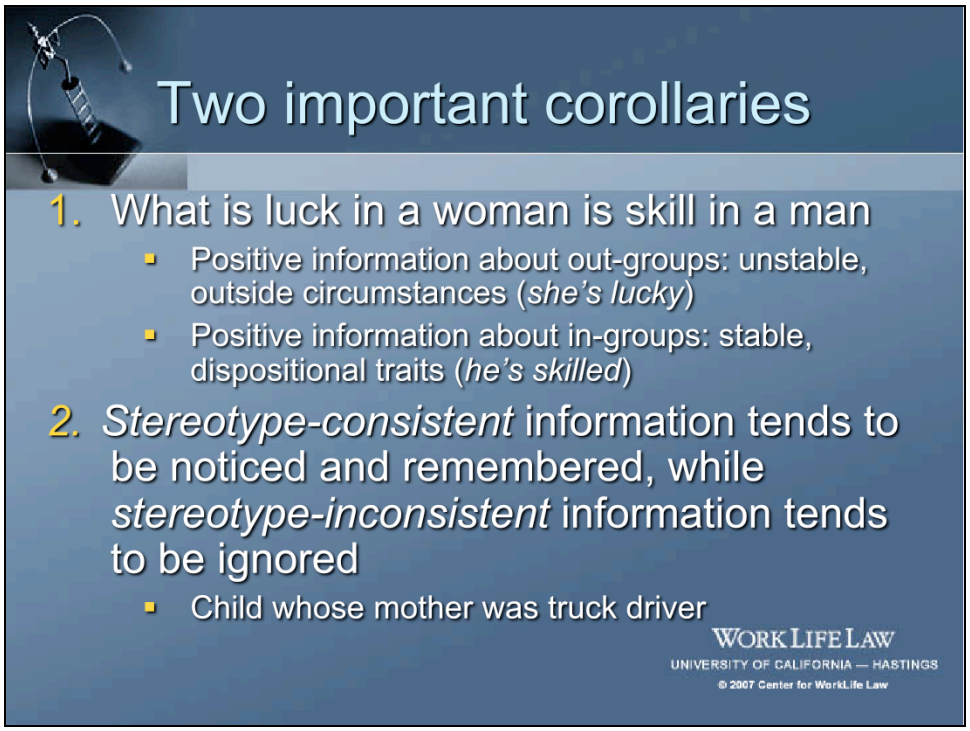
Descriptive stereotypes purport to describe the way people "really are"

Stereotyping is powerful because it drives perception, memory and inference.

If the actors in this picture were African-American, the gesture would be more likely to be interpreted as dangerously violent.


Stereotyping drives *memory*
"When I came up for partner, someone brought up a mistake I made years ago, as a second-year associate. The fact that I learned from my mistake—and that men who made partner had made similar mistakes—none of that mattered."
WORK LIFE LAW
UNIVERSITY OF CALIFORNIA — HASTINGS
© 2007 Center for WorkLife Law

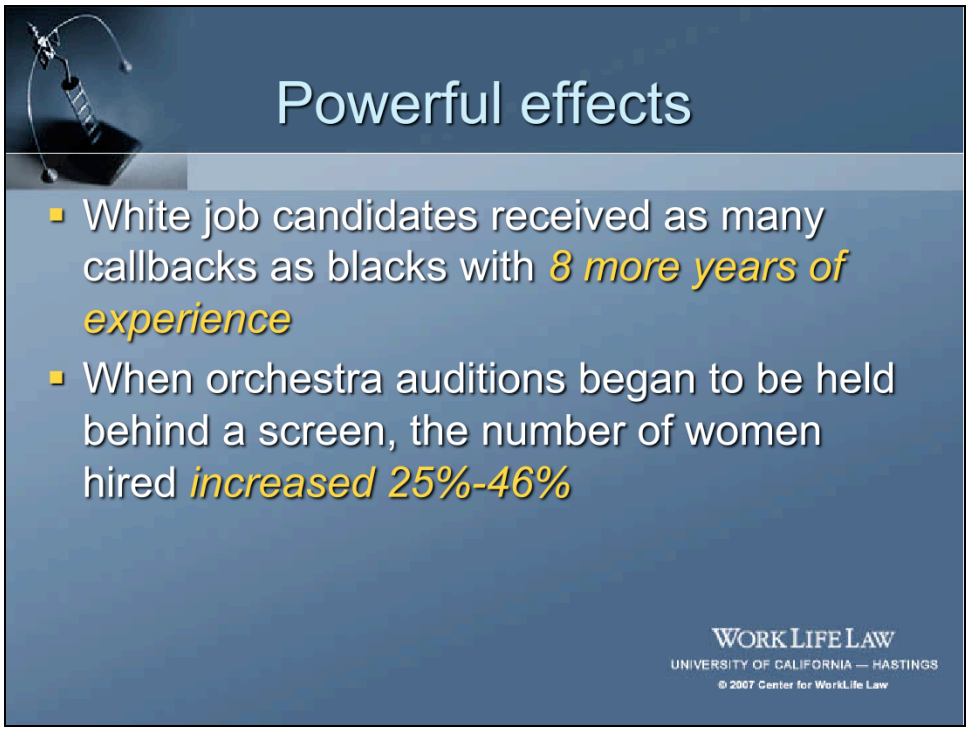

Stereotyping drives inferences
"Before I went part-time, when people called and found I was not at my desk, they assumed that I was elsewhere at a business meeting. But after I went part-time, the tendency was to assume that I was home with my kids — even when I was at a meeting .... So my performance evaluations have gone down—even though the quality of my work has not changed."
WORK LIFE LAW
UNIVERSITY OF CALIFORNIA — HASTINGS
© 2007 Center for WorkLife Law

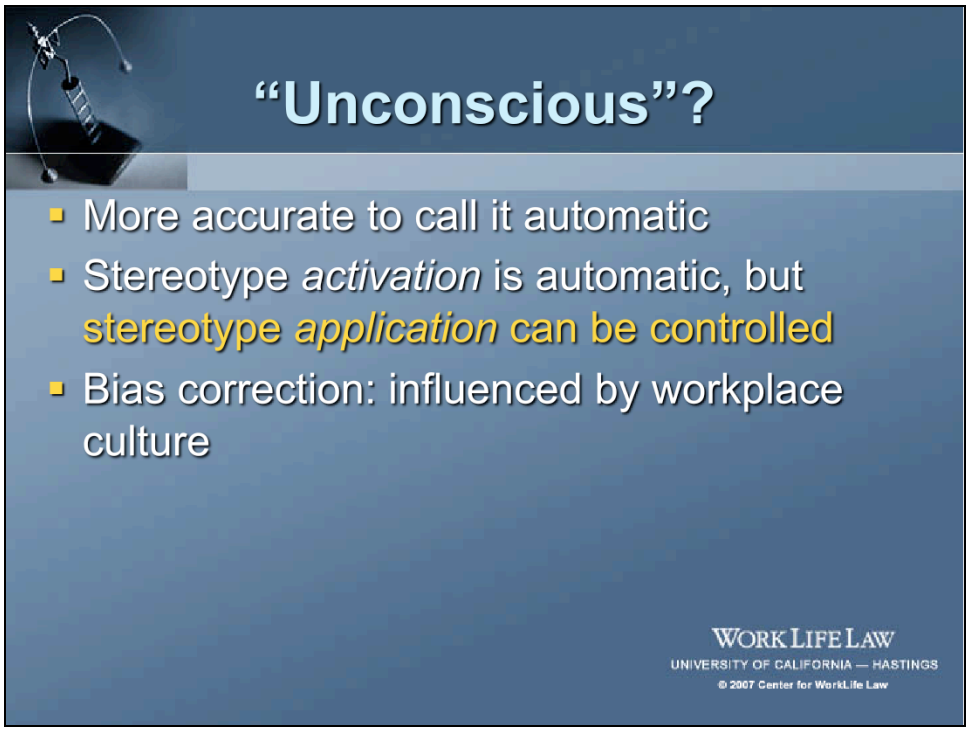


When asked what jobs women do, the child listed librarian, secretary, and other feminine jobs.

"That's not women, that' s my mom"

She just wasn't processing the stereotype-inconsistent information


Powerful effects
White job candidates received as many callbacks as blacks with 8 more years of experience
When orchestra auditions began to be held behind a screen, the number of women hired increased 25%-46%
WORK LIFE LAW
UNIVERSITY OF CALIFORNIA — HASTINGS
© 2007 Center for WorkLife Law



Sometimes stereotyping, particularly descriptive stereotyping, is referred to as unconscious

It is more accurate to call it automatic, but correctable

Is it fair to hold people liable for behavior that is automatic, which they may not bring into consciousness?

Studies show that stereotype activation is automatic, but **stereotype application can be controlled**

Few of us blurt out everything we think

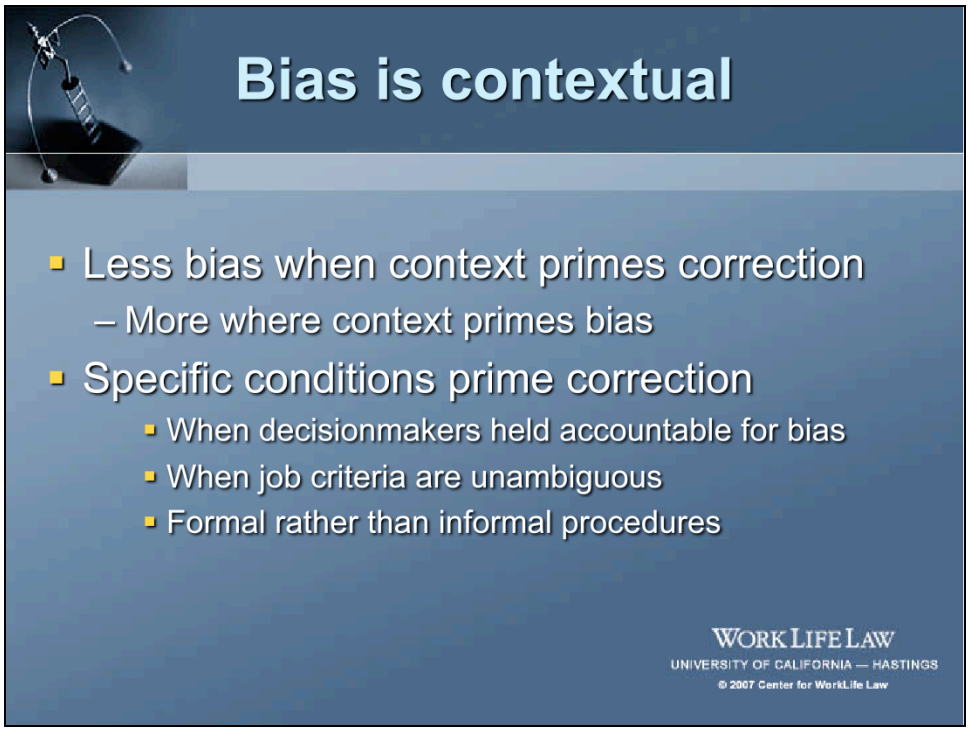
We control many thoughts that jump into our heads

Ex. When white officers shoot a black suspect who brings out a cigarette case, assuming that it is a weapon.

We are not asking the police to control their thoughts – we are asking them to think for a moment before they shoot

That may be a lot to ask when your life is in danger, but we ask it

It's not so much to ask in employment law



The principle that stereotyping is automatic but can be controlled

is often expressed as the idea that bias is contextual

When the workplace primes bias correction, less bias occurs

Individuals suppress bias under specific conditions

When held accountable

When job criteria are unambiguous

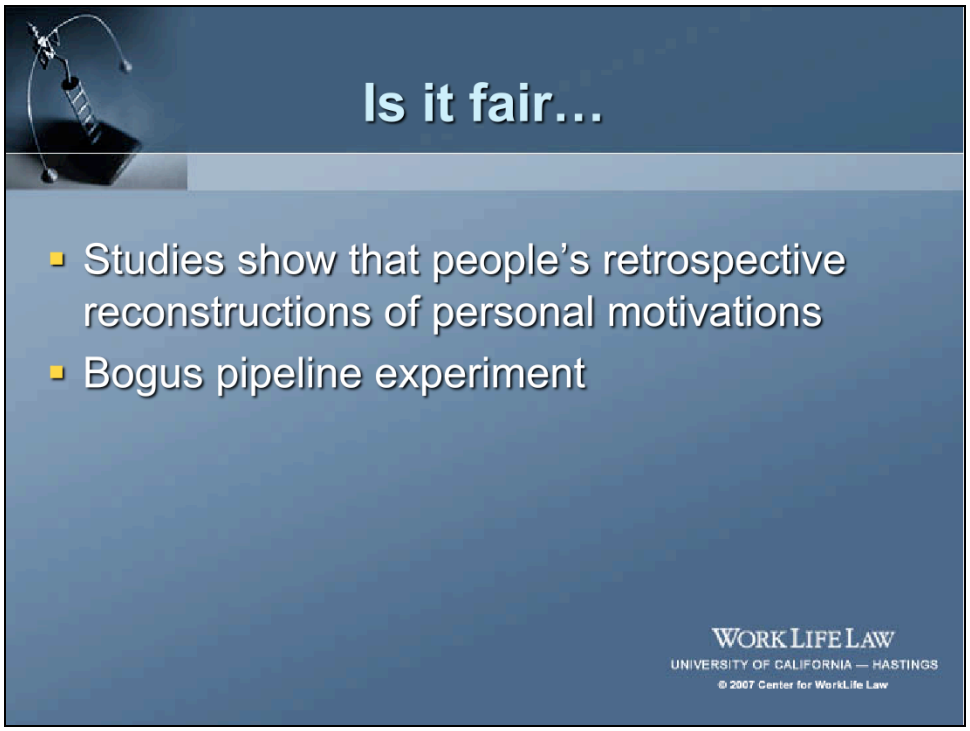
Formal rather than informal procedures

Implications both for liability and for injunctive relief

New study: The most effective way to increase diversity is to hire someone with the mandate and the authority to increase diversity -- diversity committee

Litigation is effective in suppressing bias

More effective than one-off trainings



Is it fair to hold people liable when they honestly believe they did nothing wrong?

Studies show: Retrospective reconstructions of personal motivations:

highly unreliable

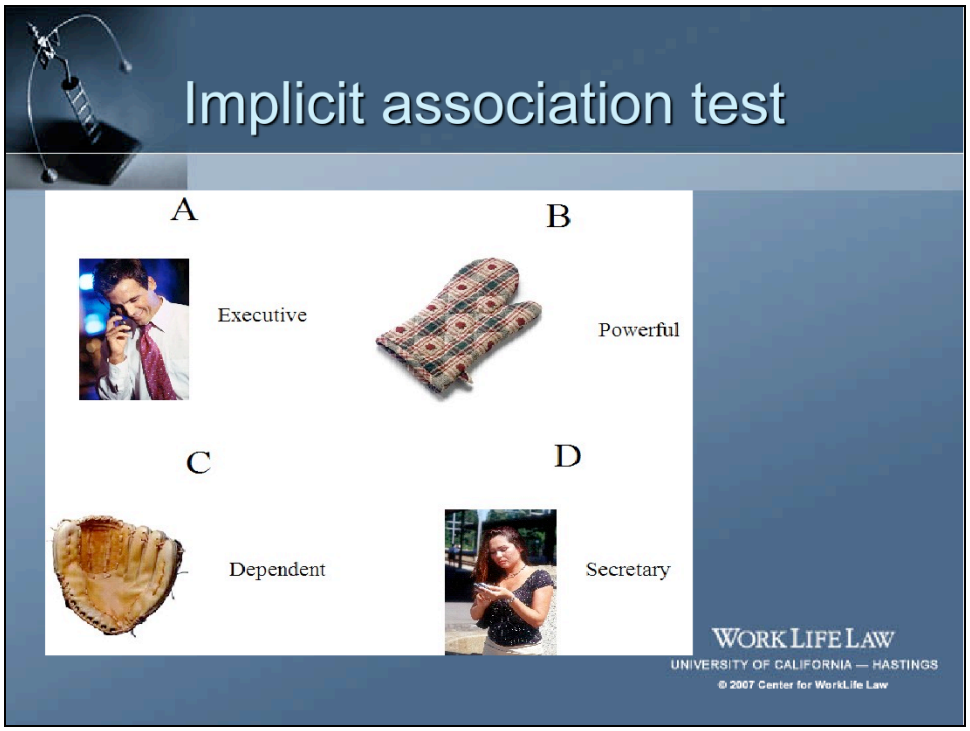
And then there's the bogus pipeline experiment

hooked people up to a pipeline

told them it gave experimenters access to their innermost thoughts

when bogus pipeline group was compared with a control group

subjects hooked up to the bogus pipeline self-reported sharply higher levels of racial bias



The implicit association test, or IAT, has received a lot of publiciity

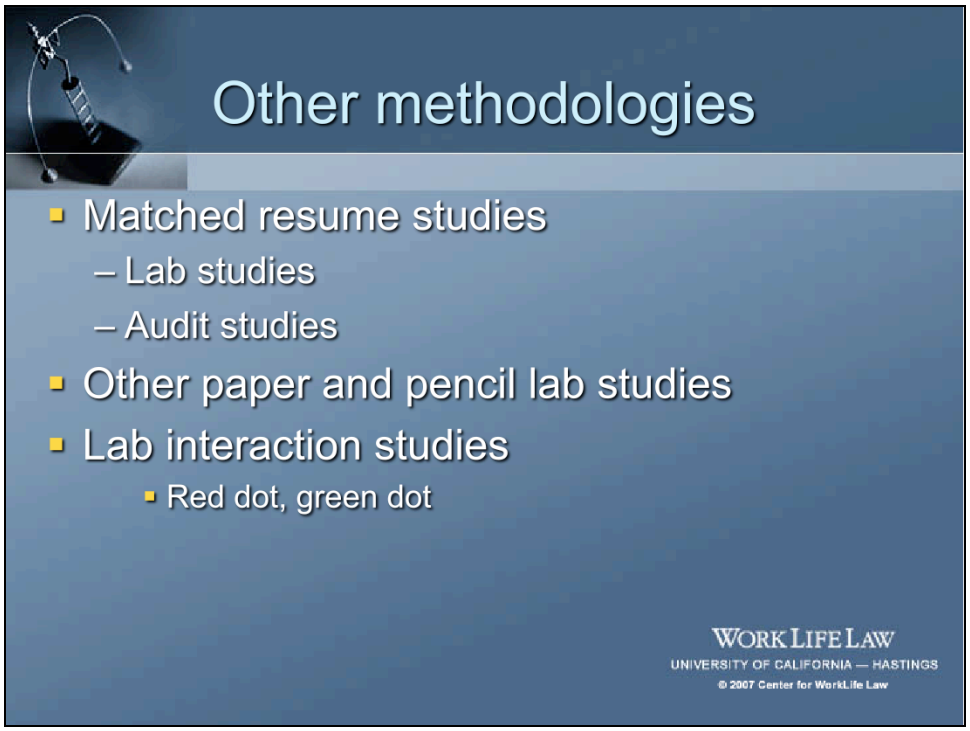
It's important to differentiate between the IAT and the 30 years of studies that preceded it.

The IAT is just on way of measuring implicit bias

IAT measures: "Response latency"

It takes people less time to link stereotype-congruent pairs A & D

than stereotype-incongruent ones B & C.



Matched resume studies show subjects identical CVs

differ only in one characteristic:

one is black, one white; one is gay one straight; one disabled one not

These can be done in a laboratory, with college students

Or the CVs can be sent out to real employers -- audit studies

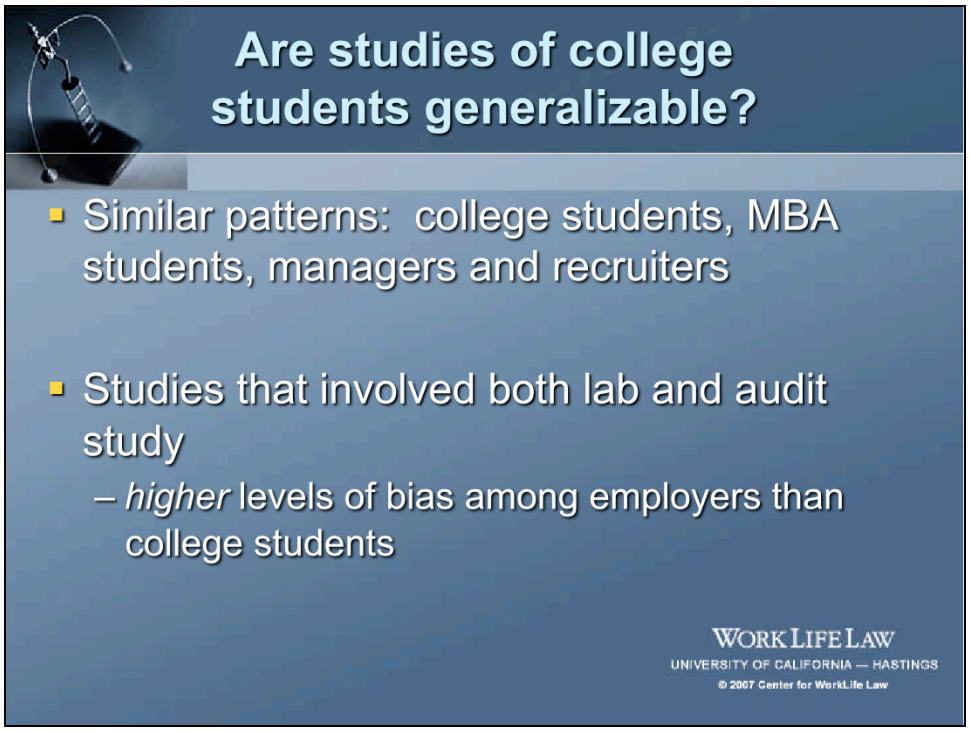
Other paper and pencil lab studies involve questionnaires

Lab interaction studies

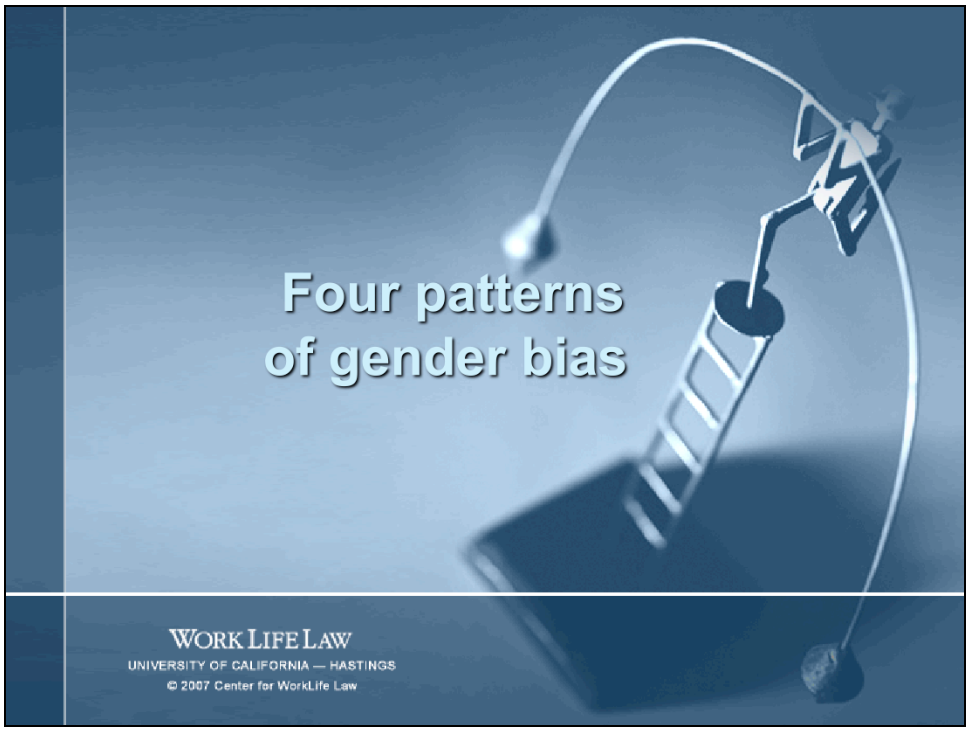
One study of in-group favoritism divided subjects into red-dot and green-dot groups

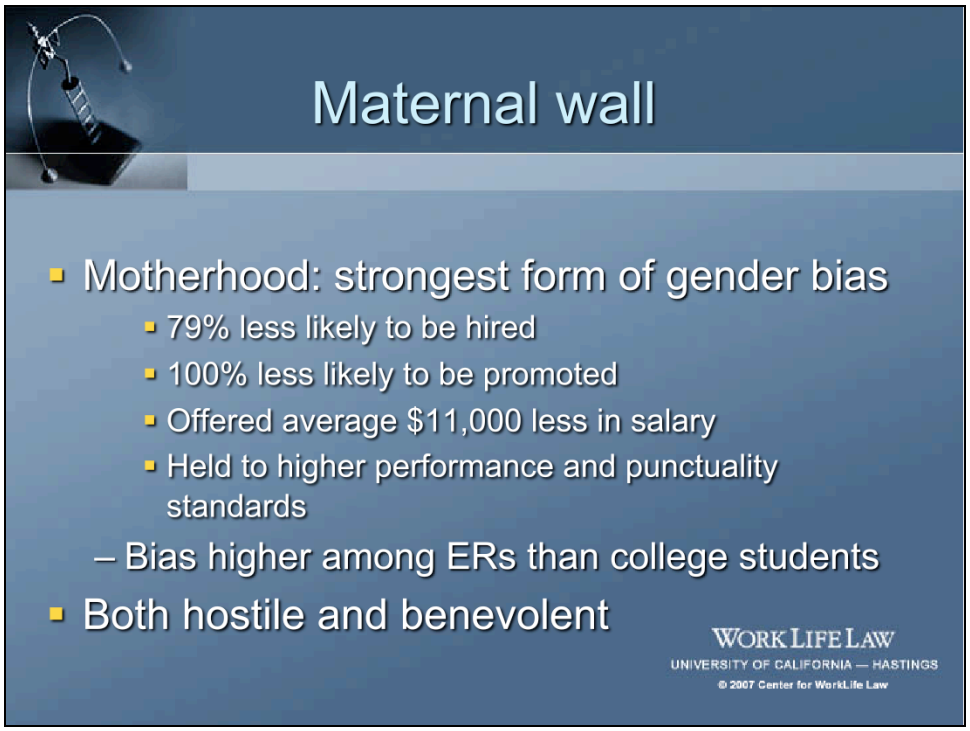
found that red-dotters strongly favored other red-dotters over those with green dots

"In group favoritism" or leniency bias



An important question is whether studies of college students are generalizable to the workplace


Four patterns
of gender bias
WORK LIFE LAW
UNIVERSITY OF CALIFORNIA — HASTINGS
© 2007 Center for WorkLife Law



START HERE

Motherhood triggers the strongest form of gender bias

These findings are from a 2007 Cornell study that compared employers' treatment of identical resumes

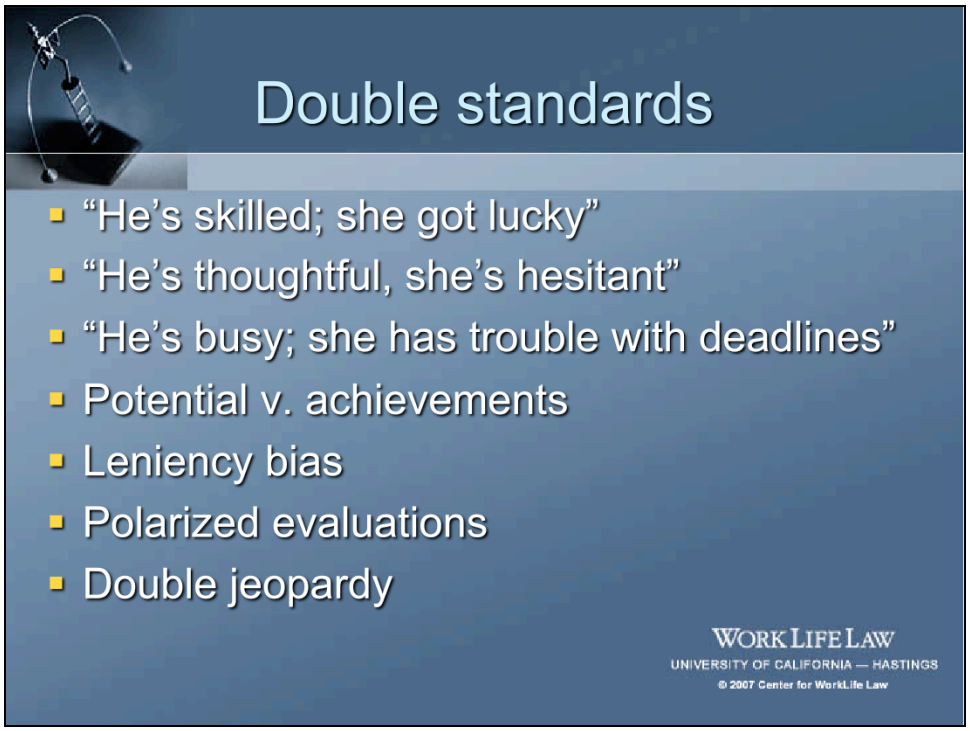
except that one mentioned membership in the PTA

The mothers were 79%...

We had an example of hostile prescriptive bias – recall the head of a tenure committee who told a female colleague that she should stop trying for tenure and just go home and have more babies

Sometimes maternal wall bias is benevolent.

You weren't considered for promotion because we know it's not a good time for you, since you just had a baby



Glass ceiling: double standards and double binds

Because good jobs are associated with men, men enjoy an assumption of competence

He's got what it takes; she got lucky

He's thoughtful, she's hesitant

Remember that negative information about in-groups tend to be attributed to outside circumstances

but the same information about out-groups – to personal characteristics?

He's busy – she has trouble with deadlines

Also, because men enjoy as assumption of competence

they tend to be judged on their potential,

women on what they already have accomplished

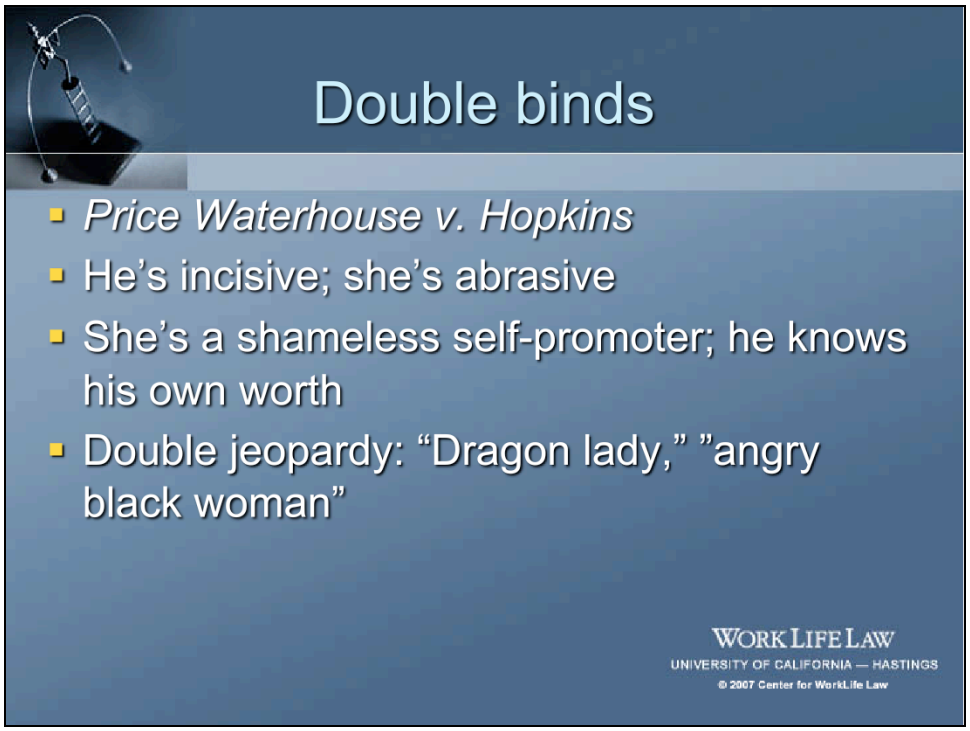
Leniency bias is simple but commonplace:

there objective rules are applied leniently to men (or other in-groups)

but strictly to women (or other out-groups)

Women also tend to have POLARIZED EVALUATIONS: while superstar women often fare well, women who are excellent but not superstars tend to get sharply lower evaluations than comparable men

Double jeopardy: women from groups also assumed to lack competence may have an even harder time establish their competence



Women face not only double standards but double binds

In some workplaces women have trouble if they do not live up to our image of a typical, feminine woman

In these environments, women who are indisputably competent often are seen as having personality problems

This stems from a pattern called "ambivalent sexism":

It entails benevolent approval of women who conform to stereotype

combined with hostile disapproval of those who don't

Classic example: Price, Waterhouse – Ann Hopkins had brought in $20 million worth of business, but she was not granted partnership and was told to "walk more femininely, talk more femininely, wear make-up" and "go to charm school."

In this type of workplace,

women can get ahead only if they play a limited number of traditional feminine roles:

the *good girl* who makes men feel comfortable,

the *mother* who does takes care of everyone around her,

the *princess* who aligns with a powerful man (but does not threaten his dominance).

The Catch-22 the Supreme Court discussed in Price Waterhouse was that

women who play these roles may well have a harder time establishing their competence

While women who don't are seen as lacking interpersonal skills.

In these environments, women may find themselves judged differently even

when they do the same things as the men

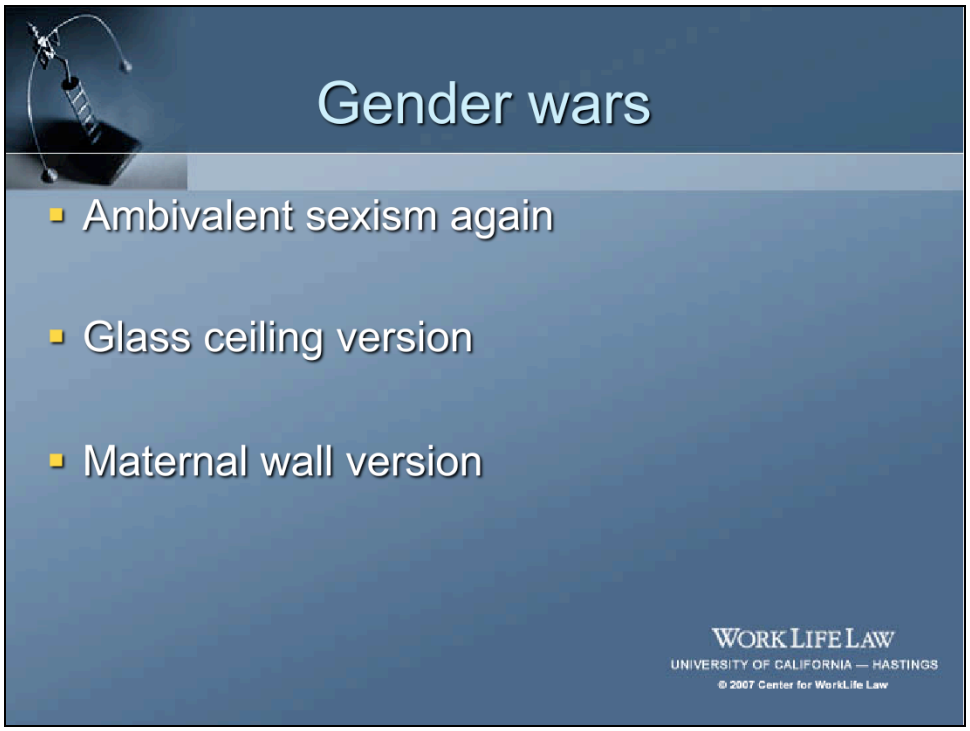
A comment by a man is incisive; the same comment by a woman is abrasive

As I mentioned before,

studies show that women who engage in self-promotion may run into problems –

though of course it is hard to progress if you hide your light under a bushel

Stereotypes of strong, assertive women are racialized: these include the Asian-Am. "dragon lady," the "angry black woman," and the "hot-blooded Latina"



In workplaces affected by ambivalent sexism you tend to see fights among the women

This may take two forms

In the glass ceiling context

Women who conform to feminine expectations – the mother, princess, pet

May well end up in conflict with women who refuse to conform to those expected roles

In maternal wall contexts

women who played by the old rules –

worked FT, took few career breaks

May be highly critical of younger women who seek to change those rules

e.g. by working PT


Resources
Employee Rights and Employment Policy Journal (2003)
California Law Review (2007)
Hastings Law Review (2008)
www.worklifelaw.org
WORK LIFE LAW
UNIVERSITY OF CALIFORNIA — HASTINGS
© 2007 Center for WorkLife Law