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A Learned Behavior

Confidence: A Key Ingredient for Minority Success in the Legal Profession

By Carmen J. Cole

Beginning with Sheryl Sandberg's *Lean In* and continuing with Katty Kay and Claire Shipman's *The Confidence Code*, confidence among female professionals has been widely discussed and debated recently. These and numerous other publications suggest that women are less self-assured than men. Confidence, so the story goes, correlates as closely with success as competence, and when women lack this confidence, they are held back from reaching their full potential. I buy that, although in the legal profession, a lack of confidence is not purely a women's issue. A lack of confidence can stem from simple isolation, regardless of gender, for any lawyer.

The vast majority of minority lawyers are first generation legal professionals. Their parents might have worked in a law firm setting, but not as a lawyer. Consequently, they may not have the same exposure, awareness, confidence, or law firm-related "intelligence" on important issues such as compensation, business development, and politics. Minority lawyers may be flattered by what seem like big salaries and lofty titles but fail to question these offerings relative to their male or white counterparts. What is missing from the discussion about the lack of women and minorities in positions of power in law firms is the lack of a sense of belonging. Of course, competence and confidence are important factors, but for any lawyer to remain motivated to achieve, the answer may be as simple as feeling that he or she belongs and is valued within a firm, regardless of pedigree.

Unfortunately, the general sense of belonging that breeds comfort, familiarity, and confidence may not be an easy find for minority lawyers in private practice. Demographic statistics from the American Bar Association reveal that 88 percent of lawyers in the United States are white, less than five percent are black, less than four percent are Hispanic, and even fewer are of

Asian descent. Women account for 30 percent of lawyers. Equity partners in multi-tier law firms continue to be disproportionately white men. A March 2014 analysis of data by the National Association of Law Placement shows that in 2013, only 16.5 percent of equity partners are women and only 5.4 percent are minority. Sexual minorities and lawyers with disabilities are even more underrepresented. If there is strength and power in numbers, then it's no wonder that minority lawyers may lack a sense of belonging and hence a lack of confidence compared with their colleagues.

The natural, but crippling byproduct of low confidence is inaction, which is detrimental to everyone in an organization, regardless of race or gender. Isolation and underrepresentation in the profession may cause women and minorities to hesitate and ask themselves, "What am I doing here?" This self-doubt and lack of belonging translates into setting low goals, safe targets, and taking fewer risks—a recipe for career sabotage.

Obviously, cultural realities exist beyond a minority lawyer's control that can make achievement and advancement difficult, if not impossible. Indeed, deeply ingrained, structural discrimination still exists, no matter how confident a minority lawyer may be. And, of course, minorities make up a smaller percent of the population, so there will continue to be more numerous white, straight, male lawyers without disabilities than any other group of lawyers. But confidence is primarily a learned behavior that can create a rise in the careers of minority lawyers.

Turnips, Oysters, and the Power of Optimism

Linda Babcock, Professor of Economics at the Carnegie Mellon University Heinz School of Public Policy and Management, advanced the theory that in general what people believe about life's opportunities lies along a spectrum. At one end of the spectrum lies the view that "you can't get blood from a turnip." People with this outlook aren't necessarily negative, but they believe that what you see is what you get and that most circumstances can't be altered. At the other end of the spectrum lies the view that



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“the world is your oyster.” People with this outlook generally believe in abundance—that there is more than enough for everyone. They also see most situations as flexible, they view rules as made to be broken, and they ask for what they want.

Not surprisingly, Babcock’s research shows that white men more often embrace the “oyster” way of thinking. As a result, they ask for more and receive more because, in their heads, the pie is a lot bigger than it is in the minds of women and

nonwhites. Babcock’s research shows that having greater optimism about what is possible results in attaining higher goals, earning more, and making fewer concessions throughout someone’s career. Be an oyster! There are enough clients, enough business, and enough work for everyone.

Take Risks, Regardless of the Outcome

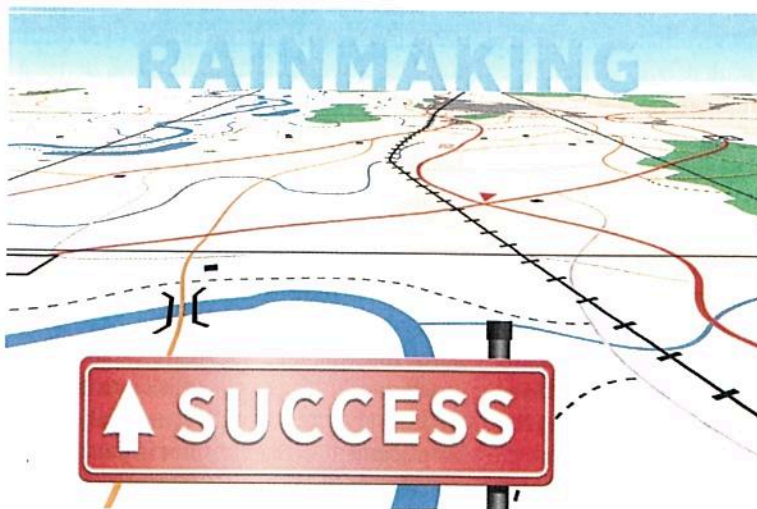
If being an oyster is about how much we believe is possible, risk taking is about “going for it” and getting as much as we

can—whatever that something is—be it more freedom, more business, more clients, more money, more power. But risk taking is also about not being afraid to fail, or better yet, it is about having the courage to take the risk in spite of the fear. Failure and rejection are necessary to the confidence-building process. As long as women and minority attorneys continue to face their fears outright, timidity and self-doubt will soon give way to confidence and advancement. **FD**



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as the possibility to restrict access to documents submitted by the parties or third parties and to make available a non-confidential version of the judicial decision, among other things.

The most innovative of these measures is the possibility to restrict parties’ access to hearings and order them to be carried out only in the presence of their legal representatives and authorized experts, which must keep the information strictly confidential, also vis-à-vis their clients, as already is allowed to some extent in discovery proceedings on patent disputes in Germany (Düsseldorf proceedings). To implement this, it shall be necessary to introduce an explicit exception to the obligation of lawyers to duly inform their clients.

It is for a trade secret holder to submit a reasoned claim for a confidentiality regime and to provide reasons and information supporting such a request. Once the secrecy regime is established, it shall remain in force after the legal proceedings have ended, unless such information becomes generally known within the relevant professional circles or a final decision acknowledges that it does not meet the trade secret requirements.

In the age of global competition, the successful implementation of the proposal would hopefully end the constraints within the internal market to collaborative innovation and exploitation of knowledge and would also attract investment of third parties to these activities. **FD**