Uncivil Society: Incivility and Gender Discrimination As A Barrier to Advancement In American Higher Education

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Abstract

American Higher Education, like American politics, has been said to be undergoing a crisis in civility. Recent media interest in the celebrated case of Teresa Sullivan at the University of Virginia has stirred public awareness of the persistence of incivility within American Higher Education. Evidence suggests that the problem is growing as more women attempt to ascend to positions of power with universities. The lack of a large body of research, especially related to the role mediation plays, has been a hindrance to further examining the problem and its effects.

This article examines some of the literature related to incivility as a modern manifestation of gender discrimination affecting women faculty and administrators. The article explores the interplay of the United States' legal and mediation systems in interpreting, adjudicating and managing claims of gender discrimination based on claims of incivility. It looks at some of the complexity added because litigants and the courts confuse sexual harassment and gender discrimination claims, in effect, failing to establish protocols through which each might be examined differently with respect to uncivil behavior that comports as gender discrimination. The article identifies organizational structures and decision making processes within higher education as possible impediments to gaining deeper understanding of how incivility functions within institutions. It challenges often held notions that women's life choices adversely affect their careers within the Academy. Furthermore, in this article, the author speculates that because outside agency or "watchdog" oversight has failed to illuminate the incivility problem, it often goes unaddressed.

Echoing the work of social psychologists, the author accepts the premise that incivility constitutes modern gender discrimination, and that, therefore, it must be addressed. Acknowledging the difficulties of addressing incivility within higher education environments, the article calls for further research in defining the magnitude and severity of the incivility problem. The hope is that greater understanding will encourage more women to step forward in fighting incivility, and that more will realize that it is a significant barrier to the advancement of women in faculty and administrative roles.

Introduction

Marked by much-reported animosity in the election year of 2012, recent American politics have seemed to portray American society as fractured beyond repair. Civil discourse gave way to partisan politics and increasingly negative rhetoric, and a contentious election left the country nearly divided in half, with rancor on both sides. Despite the general tone of contentiousness, within academia a quiet revolution was being waged against one

manifestation of incivility in a sphere known for its "chilly climates.[1]" Teresa Sullivan, once ousted as President of the University of Virginia (UVA), was quietly re-instated**.**

In a fascinating case of "she said, she said," Sullivan was asked to resign by the female Rector of the UVA Board of Trustees, Helen Dragas. Less than two weeks later, Dr. Sullivan was re-instated, her ouster having roused the relatively low-key campus to a frenzy of support. Teresa Sullivan's case may well mark a turning point for studies related to gender issues in American higher education.

The case's public nature revealed an uncivil, disquieting, and relatively unrecognized side of higher education, one in which a competent and accomplished leader is challenged and asked to "go quietly" in order to make way for a candidate deemed more favorable to some. One of the many questions about the Sullivan case that remains unanswered is, why, and, if she had been replaced, by whom?

Statistical data about recent trends in higher education suggest that had Dr. Sullivan become a casualty in the attempted ouster, she would have been replaced by a male leader. This conclusion can be drawn from education statistics which indicate that a qualified pool of female candidates for a major research university presidency would have been hard to find[2]. What is often referred to as the "leadership void" of top female administrators has roots in similar voids among the professoriate, with few women advancing to the ranks of associate and full professor, and even fewer still in disciplines related to science, engineering, or business, attractive disciplines from which Trustees often seek university presidents. A 2012 study by the American Council on Education shows that only

26.4 per cent of college and university presidents today are women[3]. Many of these presidencies, moreover, are in community colleges, where a third of presidents are women, or in the traditional women's colleges.

Why women leaders do not succeed in higher education leadership roles remains open to speculation, as well as to research. Often, the focus is on the underlying reasons for the meager "pipeline" of women ready and able to populate executive higher education roles. Jane Roland Martin, for example, characterizes the "missing women" in higher education as, in part, missing due to personal choice. She argues that women often elect the "softer" disciplines such as the humanities or social sciences because they are more hospitable environments (Martin, 82). Even so, as she points out, at the levels of associate and full professor within these disciplines, the numbers of males still outpace the numbers of females. This she attributes, in part, to the "new momism," or to women simply

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[1] Susan and Kenneth Miller note that "The term *chilly campus climate* refers to a collection of behaviors and institutional actions that create an environment where women are treated differently in ways that adversely affect their persona and professional development." Miller and Miller, "A Model for Evaluating Gender Equity in Academe" in *Women in Higher Education: Empowering Change,* (Westport, Conn; Praeger, 2002), 105.

[2] The *Digest of Education Statistics* data for the years 2004-2011 show that while the numbers of women in higher education faculty and administrative positions grows in small increments from year to year, women remain concentrated in lower-level faculty ranks and lower-level leadership positions. See http://nces.ed.gov/Programs/digest/

[3] Bryan Cook and Young Kim, *The American College President 2012*, Washington, D.C.: American Council on Education, 2012. As reported on: http://www.acenet.edu/news-room/Pages/ACPS-Release-2012.aspx

dropping out of academic careers to raise children[4]. Not surprisingly, male persistence leads to more rapid rise in the ranks of both male faculty and male administrators, which has a tangible effect on presidential candidate pools.

Despite these assertions and research such as Dr. Martin's, one cannot help but ask if the *whole* story has been told about women's relative lack of leadership status in the academy. Do the laws of supply and demand—the pipeline problem—really explain why women do not ascend and why they do not hold more leadership positions in higher education? The case of Teresa Sullivan, with its successful outcome, may hold some clues. While Dr. Sullivan was able to overcome many of the presumed "barriers" that women leaders face, she nearly succumbed to what other women in higher education face on a daily basis: the problem of incivility. University of Virginia board members initially accused her of lacking "vision" and the "toughness" to make difficult financial decisions[5]. Later, it was said that she did not have the leadership skills to take UVA to "the next level" and that her approach was "incrementalist." Former UVA Board Member Randal J. Kirk even admitted that Sullivan was perceived to be "interim" by the Board, and that the 2009 search process from which she was chosen "did not yield the best result.[6]"

Upon close scrutiny, much of the language Board members used to describe Teresa Sullivan, and some of their actions, meet the definition offered by L.M. Andersson and C.M. Pearson of "general incivility.[7]" A growing body of literature suggests links between incivility and modern forms of gender discrimination, including the ground-breaking survey work of social psychologist Lilia Cortina[8] as well as case studies related to tenure decisions investigated by the American Association of University Women's (AAUW) legal fund[9]. Cortina's 2008 study of incivility as gender discrimination directed toward women in legal, law enforcement, and higher education environments elicited a reported incidence rates of 71-79% among women surveyed[10]. Subsequent studies such as that of Cortina and Caza examined the impact of uncivil behavior on the targets to which it was directed, impacts including those affecting personal health and well-being, career advancement, and organizational retention[11].

While many people believe—and many women know firsthand—that incivility has deleterious effects, there have been no longitudinal studies designed to examine the role

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[4] Jane Roland Martin, "The Missing Women in Higher Education: A Case Study of Culture Crossing," in The Woman Question and Higher Education: Perspectives on Gender and Knowledge Production in America. ed. Ann Mari May. Northampton, Mass.: Edward Elgar Publishing, 2008. 77-92.
84-86.
[5] A series of articles in the Washington Post and Chronicle of Higher Education between June 2012 and January 2013 speculated as to the motives behind the attempted ouster of President Sullivan.
[6] Jenna Johnson and Donna St. George, "Sullivan Seen as 'Interim' at U-VA." Washington Post, (October 30, 2012). 1.
[7] L.M. Andersson, and C.M. Pearson, "Tit for Tat? The Spiraling Effect of Incivility in the Workplace." Academy of Management Review vol. 24 (1999): 452-471.
[8] Lilia Cortina, "Unseen Injustice: Incivility As Modern Discrimination in Organizations," in Academy of Management Review, vol. 33, no.2 (2008): 55-75.
[9] Tenure Denied: Cases of Sex Discrimination in Academia (Washington, DC: AAUW Educational Foundation and AAUW Legal Advocacy Fund, 2004).
[10] Cortina, "Unseen Injustice:…" 58.
[11] Brianna Barker Caza and Lilia Cortina, "From Insult to Injury: Explaining the Impact of Incivility," in *Basic and Applied Social Psychology*, 29(4). 335-350.

incivility plays in thwarting opportunities for women in higher education. What becomes of women who go quietly when asked to leave, or those who simply accept uncivil behavior as the price one pays for climbing the academic ladder? Not until Teresa Sullivan's case became very public, was collective attention focused on the subtler forms of unfairness and inequity that drive women from the academy. Dr. Sullivan's public case revealed a need to examine newer forms of gender discrimination and understand how they occur within institutions of higher education. An opportunity exists to define the problem in greater detail and also to encourage public examination of practices within the academy that foster modern (versus traditional) forms of gender discrimination.

Traditional Gender Discrimination

Unfair employment discrimination occurs when persons in a social category are put at a disadvantage in the workplace relative to other groups with comparable potential or proven success.[12] For many decades, scholars have researched and documented gender inequities in higher education, analyzing such issues as unequal status, pay and career projections for women, gender stereotypes, the history and continuing effects of cultural bias against women, and the "othering" of women in higher education.[13] Much of the historical tradition of racism and sexism involved unconcealed contempt for minorities and women, use of pejorative stereotypes, overt bigotry in job selection and promotion, beliefs that women and minorities are inherently inferior, and other attitudes and actions that have been the subject of sweeping reforms over the last several decades in antidiscrimination laws and practices.[14] There is also much written about how we should guard against myths that overt discrimination by race and gender has vanished in America. Even with respect to overt discrimination, most people understand that we have much "unfinished business" to conduct.[15]

Contemporary Gender and Race Discrimination

Over the past 25 years, considerable scholarship on contemporary forms of racism and sexism has emerged.[16] The research describes "subtle types of prejudice, held even by egalitarian-minded persons who harbor no discriminatory intent."[17] In particular, "selective incivility" in contemporary organizations has emerged as an area of focus. Selective incivility involves a disproportionate targeting and impact of workplace incivility on women

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[12] R.L. Dipboye and S.K. Halverson, "Subtle (and Not So Subtle) Discrimination in Organizations," in *The Dark Side of Organizational Behavior*, eds. R. W. Griffin & A. M. O'Leary-Kelly, (San Francisco: Jossey-Bass, 2004). 131.

[13] See among many: L.B. Welch, ed., *Women in Higher Education: Changes and Challenges, (New York:* Praeger, 1990); N. Aisenberg and M. Harrington, *Women of Academe: Outsiders in the Sacred Grove, (*Amhers*t:* University of Massachusetts Press, 1988); Judith Glazer-Raymo, *Shattering the Myths: Women in Academe*, (Baltimore: Johns Hopkins University Press, 1999); B. J. Risman (NS State University), "Gender as a Social Structure: Theory Wrestling with Activism*," Gender and Society*, 18 (4), 2004. 429-450.

[14] Lilia M. Cortina, University of Michigan, "Unseen Injustice: Incivility as Modern Discrimination in Organizations," *Academy of Management Review,* vol.33, No. 1, (2008) 59.

[15] See, e.g., Judith Glazer-Raymo (Ed.), *Unfinished Agendas: New and Continuing Challenges In Higher Education,* Johns Hopkins University Press, 2008.

[16] See, for example, A. P. Brief, *Diversity at Work,* Cambridge University Press, NY 2008; F. Tougas, R. Brown, A.M. Beaton, and L. St-Pierre, Neosexism Among Women: The Role of Personally Experienced Social Mobility Attempts. *Personality and Social Psychology Bulletin,* vol. 25*,* (1999), 1487-1497; J.K. Swim, R. Mallett, and C. Stangor, C., Understanding Subtle Sexism: Detection and Use of Sexist Language. *Sex Roles,* vol. 51*,* (2004), 117-128.

[17] Lilia M. Cortina, Dana Kabat-Farr, Emily A. Leskinen, Marisela Huerta (all University of Michigan) and Vicki J. Magley (University of Connecticut), "Selective Incivility as Modern Discrimination in Organizations: Evidence and Impact," *Journal of Management, (*September 2011) DOI: 10.1177/0149206311418835

and/or minorities. Drawing on organizational and social psychology, management science and the law, Lilia Cortina's research into contemporary manifestations of gender and racial bias in the workplace examines selective incivility. She writes:

> The central argument is that incivility, in some cases, is not 'general' at all but instead represents contemporary manifestations of gender and racial bias in the workplace. That is, with the rise of taboos, policies, and laws prohibiting discrimination against specific social groups, blatant intentions and efforts to alienate women and minorities from organizational life are no longer tolerated. However, one can mask discrimination (even without realizing it) behind everyday acts of incivility and still maintain an unbiased image. This would be consistent with research demonstrating that prejudices persist in covert forms within society in general…and within organizations in particular.[18]

In the eyes of many, the content of modern incivility may ostensibly be race or gender neutral. That is to say, alternative motives can be ascribed to behavior that appears uncivil. Cortina explains that, "seemingly neutral insensitivity or aggression toward persons could, in many cases, serve as a convenient mask for unfair discrimination against socially undervalued persons." She outlines the various "cognitive, affective and situational factors" that can motivate someone to target women and minorities with disproportionate disrespect, to their harm (Cortina, 59-64, 68). She writes that, "the most vulnerable might be professionally and economically successful women and minorities— those who are perceived as highly competent and advancing in ways that threaten the dominant majority." However, "to avoid appearances of racism and sexism, the hostility may often take a disguised form, such as selective incivility."[19] What Cortina and others describe as "diffuse, unconscious anti-female and anti-minority feelings" are thought to underlie much modern discrimination.[20] However, unlike the more traditional and overt forms of discrimination, the discrimination inherent in selective incivility remains difficult to prove, in part, because, by nature, it is situational.

Traditional forms of discrimination often come to light because patterns of discriminatory behavior can be detected over time among the perpetrators. They become "known" for their discriminatory behavior. Detecting uncivil behavior, on the other hand, requires a detailed look at the situations in which it arises, and then perpetrator motivation is not always clear. Cortina writes that mistreatment of women and minorities deemed uncivil "arises in situations when there is a plausible, non-prejudiced explanation for the behavior so that the instigator can maintain a nondiscriminatory self-image." She adds that, "These instigators might have plausible, nonracial, and non-gendered explanations for the uncivil conduct (*e.g.*, 'I didn't see you,' 'I'm having a bad day,' 'I thought you were done speaking')—explanations that they themselves believe." Other ways to rationalize the uncivil acts may be seen in comments made by perpetrators which are excusatory in nature: "It was an oversight on my part," "We are all experiencing work overload right now," or "You are being too hypersensitive" (*i.e.,* over-sensitivity by the target of the uncivil

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[18] Lilia M. Cortina, University of Michigan, Unseen Injustice: Incivility as Modern Discrimination in Organizations, *Academy of Management Review,* vol. 33, No. 1, (2008) 58, building upon many works over the previous quarter century cited by her.
[19] Cortina, 65.
[20] Cortina, ibid., 61.

acts). [21]   Cortina terms such attributions a "deceitful 'cover-up' for bias." [22]   Writing specifically about contemporary discrimination against women, she notes that several studies and qualitative data suggest that in some environments, "incivility and gender bias are often one and the same."[23]

Meyerson and Fletcher also summarize the contemporary situation as it relates to gender, observing that "the women's movement [once] used radical rhetoric and legal action to drive out overt discrimination, but most of the barriers that persist today are insidious—a revolution couldn't find them to blast away. Rather, gender discrimination now is so deeply embedded in organizational life as to be virtually indiscernible. Even the women who feel its impact are often hard-pressed to know what hit them." [24]   The psychology and experiences of the perpetrator are often at play. Cortina, writes that, "The negative affect toward the outgroup can take different forms, not simply amounting to a homogeneous feeling of contempt. For example, research by Fiske and colleagues (2002) has shown that some tend to feel 'paternalistic prejudice' toward groups stereotyped as warm but incompetent; this prejudice entails a strong sense of pity, without admiration or envy."[25]   Conversely, if an outgroup member is stereotyped as "cold but competent" by someone, then the opposite emotional profile emerges: envy and admiration, but little pity, creating a "volatile mix of emotions that could create hostility…"[26] Cortina adds that "an important component of contemporary sexism is greater feelings of esteem (*i.e.,* respect) for men than women—a differential, affective 'gut reaction' to social groups." Because this "visceral response toward members of particular social groups is outside conscious awareness and control," those having problematic attitudes "can maintain a non-prejudiced self-concept."[27]

Cortina and others note the strong connections perpetrators often have to the established order, and especially to prevailing attitudes. "Powerful people often seek to preserve the status quo in order to bolster their own status, maintain access to valued resources, and increase personal and collective self-esteem. Power also gives individuals at the top of the social structure the tools to translate their biases into discriminatory conduct.[28]"   Lilia Cortina studied workplace behavior in 4,608 employees. Because of a concern over limited data, she and several colleagues expanded the empirical studies to include 16,5197 employees at various worksites, finding significantly disproportionate levels of incivility toward women and minorities than toward white males. Among the many forms of selective incivility directed at female targets were: " paying little attention to the target's statements, showing little interest in the target's opinions, doubting the judgment of the target on matters over which she had responsibility, interrupting or "speaking over" the target, failing to speak to her when the situation called for recognition, failing to include her

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[21] Cortina, pp. 60, 64-65, 67.
[22] Ibid., 65.
[23] Ibid., 66.
[24] D. E. Meyerson, and J.K. Fletcher, 2000, "A Modest Manifesto for Shattering the Glass Ceiling," *Harvard Business Review*, vol. 78, no.1, (2000), 127.
[25] Cortina, op. cit., 61, citing Fiske, S. T., 2002, "What We Know Now About Bias and Intergroup Conflict, the Problem of the Century," *Current Directions in Psychological Science*, vol. 11: 123–128.
[26] Ibid.
[27] Ibid.
[28] Cortina, op., cit., 65.

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in professional camaraderie, and ignoring the employee.[29]

Selective incivility cannot be dismissed merely as slights to be shrugged off, or "life in the big city." Although incivility may be subtle, its effects are usually tangible and longterm. Citing studies that document the effects of workplace abuse, Cortina writes that, "The proliferation of incivility in the workplace has very real, very negative consequences for employees, workgroups, and organizations."[30] Her research team noted that, "Incivility, gender harassment, and racial/ethnic harassment have a lot in common: each behavior is antagonistic; degrades, offends, or intimidates; and violates standards of interpersonal respect."[31] Cortina notes the Griggs v. Duke Power Co. (1971) Supreme Court decision where the Court ruled that unintentional discrimination or adverse impact is unlawful. She also cites the U.S. Equal Employment Opportunity Commission (1993), which has stated that practices that have the effect of interfering with work or creating a hostile work environment for women and racial minorities constitute unlawful sexual and racial harassment, respectively, regardless of the employer's intent. Thus, when workplace incivility is disproportionately targeted at women and minorities and interferes with their work and/or contributes to a hostile environment, this situation may violate law."[32]

The Research Problem: Scope
While legal remedies may be possible in cases involving incivility, there have been very few court cases which might strengthen the interpretation of incivility as illegality. This is especially true where institutions of higher education are concerned. It is, in fact, very difficult to define the scope of gender and race-based discrimination in higher education on the whole, much less find cases where gender discrimination has been proven in relation to incivility. So how big a problem is incivility in modern organizations and especially in higher education?   Surveys' such as those designed by Cortina et al. attempt to define the prevalence and scope of uncivil behavior directed at women. These studies are by design limited to discrete populations (including women in higher education), and the data is self-reported. In fact, very little is known about how prevalent and persistent subtle forms of discrimination are in academia, and few cases rise to the level of public scrutiny.   Yet broader indicators suggest that what is happening nationwide is also happening, perhaps more quietly, in the Academy.

Equal Employment Opportunity Commission (EEOC) data from 2007 through 2011 shows an increase in sex-based charges as well as retaliation charges based on Title VII claims[33]. The data remain unparsed, however, and even if the number of cases emanating from higher education were available, it is unlikely that any light would be shed on cases involving women leaders and women faculty. In the U.S., there is no requirement for

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[29] Cortina, 65 and Cortina et al., 1-22.
[30] Cortina, 56.
[31] Lilia M. Cortina, Dana Kabat-Farr, Emily A. Leskinen, Marisela Huerta (all University of Michigan) and Vicki J. Magley (University of Connecticut), 2011, *op. cit*., 4.
[32] Cortina, 60, citing U.S. Equal Employment Opportunity Commission. "Guidelines on harassment based on race, color, religion, gender, national origin, age, or disability," 58 Fed. Reg. 51,266. Washington, DC: U.S. Equal Employment Opportunity Commission.
[33] "Sex_Based Charges," and "Charge Statistics," U.S. Equal Opportunity Commission, http://www.eeoc.gov/eeoc/statistics/enforcement/sex.cfm and http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm

workplace reporting of gender-related incidents such as departures from organizations due to uncivil treatment. Only EEOC and formal court filings are available. And, for court filings of civil cases accepted at the Superior Court level in most states, data that would specifically identify academic cases is difficult to find, as the courts, like the EEOC, aggregate case data for reporting purposes.

The bigger problem, however, may lie in academic culture itself. Dependence on peers for collaborative research, grant funding, tenure and promotion recommendations, re-appointments, and job references form strong deterrents for anyone thinking of challenging her institution. In addition, limited job and mobility opportunities, fear of retaliation, and very real legal costs further dissuade many women from pursuing remedies. Moreover, the path is by no means clear within the legal system for overt gender discrimination cases much less those that might be built on allegations of incivility emanating from the Academy. Despite Cortina's speculation that the Supreme Court might uphold more discrimination cases involving incivility, to date, there have only been seven cases of gender discrimination in total considered by the U.S. Supreme Court since the beginning of Title VII in the 1960s. [34] And, as many legal scholars recognize, the history of lower court cases involving the higher education illustrates a clear judicial preference for allowing colleges and universities to define and execute tenure, promotion, and appointment policies independently, even where allegations of discrimination are present[35].

The Legal Impediments: Definition and Mediation
Where incivility is concerned, another, arguably larger, problem looms because the commonly accepted, 1990's definition of the term, developed by social psychologists, characterizes acts of incivility as "unintentional."   This raises questions concerning individual culpability and legal liability, and it suggests that only institutions themselves *might* be held accountable when patterns of hostility proliferate or numerous instances can be proven – often through class action, versus individual, lawsuits. In fact, as the AAUW study revealed, suits by female faculty for denial of tenure most often succeed when it can be proven that institutions do not follow their own tenure policies for women candidates and, additionally, a comparable male candidate's case can be identified[36].   The AAUW report asserts that: "A lack of integrity or consistency in the tenure process…does not by itself prove that a female professor has been denied tenure for illegitimate reasons such as sex discrimination. It does invite speculation along those lines, however, and in the legal arena ultimately may be sufficient to support an inference of discrimination."[37]

The difficulty of successfully persisting within the legal system, along with other factors, undoubtedly thwarts the efforts of many women who might otherwise be predisposed to pursue remedies for uncivil and discriminatory behavior. But what becomes of these women, and do any find other avenues for remedy? Looking strictly at EEOC data, it is possible to hypothesize that some do through mediation and out-of-court settlements.

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[34] Gender discrimination became illegal in the United States with Title VII of the Civil Rights Act of 1964 (amended 1991), which made blatant forms of discrimination a matter for the courts.
[35] Michelle Chase, "Gender Discrimination, Higher Education and the Seventh Circuit: Balancing Academic Freedom with Protections Under Title VII." Wisconsin Women's Law Journal, vol. 22, (2007) 153.

[37] AAUW, Tenure Denied, 14.

For the year 2011, the EEOC reports an increase in non-litigated monetary awards (to $145.7 million) and a corresponding decrease in the number of unsuccessful conciliations, as well as an increase in the number of settlements among formally filed EEOC complaints[38].   While statistics are generally not reported on out-of-court settlements involving gender discrimination cases, the rise of independent, for-profit mediation services, such as the Judicial Arbitration and Mediation Services, Inc. (JAMS, Inc.) may, in future provide valuable insights into the prevalence of mediated cases involving women in higher education. According to company spokespersons, JAMS does not currently aggregate data on case types for public consumption nor do they, as a practice, provide any case information to the public. [39]

Conclusion

If the scope of gender discrimination expressed through incivility is ever to be understood, the key may lie in understanding how such cases are arbitrated and mediated outside of the courts.   Court watchers, such as Lilia Cortina and Michelle Chase, continue to find encouragement in subtle signals from the courts that show a willingness to want to delve deeper into modern forms of gender discrimination. At present, however, only a small number of researchers continue to examine directly the role of alternative dispute resolution in higher education, and many do so only from the students' perspective. Most, like Walter C. Warters, simply note the unprecedented growth of alternative dispute resolution on college campuses, yet no one to date has been able to successfully reveal data that would show the number of gender cases settled in this way.   Still, Dr. Warters notes the relative profitability of mediation and arbitration as evidence that something is happening within their silent confines. He writes, " In the areas of arbitration and mediation, there have been major increases in their use as evidenced by the revenue to those who provide these services. As early as 1992, the American Arbitration Association had made 37 million dollars handling 60,000 cases; Endispute made 4.8 million dollars; Judicate made 4.0 million dollars; and, judicial mediation and arbitration services made 25 million dollars." [40]   The figures now are well beyond these numbers, and rising.

For women leaders aspiring to successful careers in higher education, the secret to unraveling the mysteries of modern discrimination is clear. First, women must take a stand in some fashion whenever incivility or more overt forms of discrimination occur. "Not going quietly" or "refusing to lie down," as Teresa Sullivan did, will provide a level of public scrutiny that will further enhance understanding of how modern discrimination works. Second, women with the capacity for research must begin to look deeper at underlying causes for what most of us know as the "problem" of incivility, and we must begin to amass data that will prove once and for all that the problem exists. With national attention, for the moment, focused on Teresa Sullivan's high profile experience at the University of Virginia, there may not be a better time to be working in this area of research. Finally, as they too wrestle with how modern discrimination manifests itself, the courts and our entire judicial system must examine selective incivility's outplay. Especially in higher education gender

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[38] "Sex-based Charges," U.S. Equal Opportunity Commission,
http://www.eeoc.gov/eeoc/statistics/enforcement/sex.cfm
[39] Telephone call to JAMS Headquarters, placed by author on November 19, 2012.
[40] William C. Warters, "The Emergence of Campus Mediation Systems: History In the Making," *Conflict Management in Higher Education Report*, 2, (1) , (October 2001): 5.

cases, the courts must understand the self-perpetuating, systemic problem that ensues when fewer women bring their cases before judicial bodies, and the majority of gender discrimination court cases still give deference to institutions of higher education.

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