

Teaching Note

Seeing the Light or Tilting at Windmills? The Case of Richards-Townshend

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Critical Incident Overview

This critical incident presents a critical decision faced by the head of a law firm after he obtains evidence suggesting the firm environment may not be gender neutral: should he or should he not recommend to his Board that the firm engage all attorneys in an open examination of bias in the workplace. Investigation is motivated by the local bar association becoming sensitized to gender discrimination in the wake of a high-profile lawsuit lost by one of its member law firms. The head of the firm central to this critical incident successfully retains a consultant to complete an organizational study, hoping to gain useful insight as well as show due diligence regarding gender equity at the firm. The firm's head is surprised when the consultant's report indicates problems including confusion about the criteria for attorney retention and promotion, a perception of gender bias, rifts between female associates and female partners, and high dissatisfaction among most female partners. Students are asked to put themselves in the position of the firm's senior partner as he tries to make sense of the consultant's unexpected findings as well as identify the right course of action to undertake.

This critical incident is intended primarily for use in support of graduate coursework in organizational behavior/personnel management or organization development. This is due to its emphasis on analyzing, synthesizing, developing and evaluating nuanced decision alternatives from the practitioner's perspective, one that may be more immediate to graduate students on a daily basis. However, this critical incident may be of considerable use as part of an undergraduate course as well where content and format are conducive to bridging gaps in maturity and experience. This incident may also be useful as a part of legal education where internal business operations are the emphasis of study.

Research Methods

This critical incident was written using observations gained through focus group, interview, and attitudinal survey responses from the field research of a doctoral student who collected information relevant to the described situation. In order to preserve anonymity, all names of people and organizations as well as location as well as associated details of the critical incident have been heavily disguised.

Learning Outcomes

After completing this assignment, students should be able to:

1. Evaluate the implications of the multiple issues that are associated with perceived gender inequities within the workplace.
2. Distinguish between the possible interests and positions of the stakeholders.
3. Determine how communication between organizational leaders and members should be leveraged as a means of resolving the presented situation.
4. Assess possible approaches that decision-makers might take in response to the nuanced and multi-faceted situations embedded in this critical incident and explain possible outcomes that may result from those decisions.

Discussion Questions

The following questions may be useful in guiding class discussion of this critical incident:

1. Using as few words as possible, categorize the current situation as well as the related critical decisions the business owners must make? Be prepared to justify your answer. (LO 1, LO 4)
2. Who are the key stakeholders in this situation? What are their possible interests? Possible positions? Are any of these in conflict? (LO 2)
3. What are some of the possible causes of the gender disparity that has been observed in the legal profession? Are these factors similar or dissimilar to those in other professions such as engineering, technology, etc.? (LO 1, LO 4)
4. Refer to Table 2. Which issues would be easiest for Merle and firm leadership to influence constructively? Why? Which issues would be hardest for firm leadership to influence? Why? (LO 2, LO 3)
5. Placing yourself in Merle's shoes, what steps would you take over the next 90 days to address the key issues of concern? What is the rationale for your selected set of follow-up actions and how might you communicate this rationale to peers and subordinates? (LO 3, LO 4)

Answers to Discussion Questions

The following questions may be useful in guiding class discussion of this critical incident:

- 1. Using as few words as possible, categorize the current situation as well as the related critical decisions the business owner must make? Be prepared to justify your answer.(LO 1, LO 4)**

The intent of this question is not so much to solicit a recount of the situation from students as much as it is to challenge them to synthesize an overarching perspective of the decision-maker's circumstances and the associated decisions that need to be made. Potential responses include:

- a. Merle may be in a serious situation where a potential gender discrimination lawsuit could happen. Given this, he needs to head off trouble by having the firm engage in some targeted diversity training as well as potentially hire one or two new female associates.
- b. Merle is not really connected to the culture and climate of his firm and he is now finally recognizing it for what it is. He needs to take affirmative action to begin to address the consultant-identified problems. He can potentially leverage the consultant's expertise in designing an effective response.
- c. Merle's situation is unclear. He has results from a study that do not auger with his personal experience of his firm but he should not overreact. However, he might want to consider sharing the results with a trusted firm partner to avoid the subsequent perception that he ignored critical information simply because it was unpleasant.
- d. Merle is being tricked by a crafty consultant who earns her livelihood by finding problems that call for her training skills. In weighing all options, perhaps he might benefit more if he attempts to ride out the current cautionary "storm".
- e. Merle has received needed insight regarding his firm and now has to decide what to do about the problems that have been identified. Basically, he has to put on his "big boy" pants and attempt to bring the firm into the 21st century as it relates to gender equity.

These responses and others present an opportunity for students to exercise critical thinking by identifying plausible causes underlying the observed behaviors and explore hypotheses, given limited information. Students should also note the variety of descriptions that could apply to this situation as well as how the varying perspectives demonstrate the assumptions, experiences, and ideas held by the person providing any specific description.

2. Who are the key stakeholders in this situation? What are their possible interests? Possible positions? (LO 2)

This question encourages the student to focus on needs and intentions that may exist among each of the key individuals or groups in the incident as well as the possible interest-based sources of those needs and intentions.

Examples of student responses appear in Table 1 below. Many more are possible.

<i>Stakeholder</i>	<i>Interest</i>	<i>Position</i>
Merle Richards	Maintaining the status quo	Everything is fine.
MACBA	Supporting its member firms in both anticipating and avoiding situations that either intentionally or unintentionally harm a protected class of individuals	Here are some suggested ways to conduct an assessment of your firm's culture.
Grace Taylor	Addressing client needs by assuring that there are neither intentional or unintentional discriminatory practices in place	Let's review the various elements of your firm's culture to assure that discriminatory practices are not present.

Female Associates	Having a level playing field on which to demonstrate their capacity to perform and earn partner status.	Provide me with proof that everything is fair because my experience is that the firm values its male attorneys more than its females.
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3. What are some of the possible causes of the gender disparity that has been observed in the legal profession? Are these factors similar or dissimilar to those in other professions such as engineering, technology, etc.? (LO 1, LO 4)

Student responses to this question can include a range of interpretations from one extreme of attributing gender disparity entirely to systematic discrimination to the extreme of dismissing all notions that gender discrimination plays a significant role in the modern era with protections and mandates for equal access identified by law.

Answers emphasizing the role of *gender discrimination* may draw from historical precedent, literature on decision-making biases (e.g. stereotyping, representativeness). This category of response may be extended to include more than the actions that may be taken to support, obstruct or derail a woman's legal career (Levinson & Young, 2010; Spurr, 1990; Walsh, 2012; Werner, 2005). Students may also introduce discussion of how forms of abuse and aggression, low demographic representation and weak engagement with other women may influence the decisions female attorneys make regarding their careers in law (Rosenberg, Perlstadt & Phillips, 1993).

Answers emphasizing *work-life balance issues* may discuss cultural or societal norms with respect to parenting and other family responsibilities, or individual preferences in a professional world that offer numerous options to women who become interested in a career other than that of a partner at a law firm (Fortney, 2005; Rhode, 2001; Williams, Calvert & Cooper, 2003).

It should come up during examination of this question that the legal profession is not unique in offering the aforementioned challenges for women as well as other demographic groups. For example, within science and technology there have also been persistent observations of gender bias, with the controversy surrounding remarks by Nobel Prize winner Tim Hunt about women in science fueling much current discussion (Beck 2015).

4. Refer to Table 2. Which issues would be easiest for Merle and firm leadership to influence constructively? Why? Which issues would be hardest for firm leadership to influence? Why? (LO 2, LO 3)

This question encourages the student to extend their analysis of needs and intentions to a focus on action. Students may consider it easy to check with all associates and provide clarifications about the firm's promotion policy, assuming that these criteria are well-defined, consistently applied to everyone and easy to evaluate. Here the instructor may call for further discussion, pointing out that, while some evaluation measures are fairly straightforward (e.g. billable hours), other criteria must be flexibly defined, given the very different kinds of activity legal practice

groups may engage in. Further, there are additional challenges associated with properly sharing credit for bringing in new business (who actually did what that resulted in the business). The latter issue could open up the opportunity for a broader discussion about the objective and subjective aspects of performance evaluation, particularly within professional occupations that have both objectively defined tasks (in this case, attorneys have been trained on the proper language and manner for preparing a legal brief) as well as subjective intangible expectations (for example, how many new clients or client revenues does this firm expect associates and partners to generate annually?). Similarities between the legal industry and other professional services, such as accounting, could also be explored as a part of this conversation. Students should be encouraged to draw upon their own experiences with performance evaluation and develop appropriate critiques.

Some students may argue that the senior female attorneys who are highly dissatisfied may be too far gone to influence. This is an opportunity to discuss motivation and commitment within the workplace as well as any responsibility leadership may have to probe more deeply into root causes of dissatisfaction before dismissing them as irrational or unchangeable.

5. Placing yourself in Merle's shoes, what steps would you take over the next 90 days to address the key issues of concern? What is the rationale for your selected set of follow-up actions and how might you communicate this rationale to peers and subordinates? (LO 3, LO 4)

Students should be expected to propose, frame, and justify possible courses of action for the main character. In addition, they should develop an appropriate decision communication plan including which media should be used (written, electronic, medium type), key players to be involved in information dissemination; frequency; key messages; etc. Students should be encouraged to research, originate, revise, and critique real-world examples of how challenging gender-related human relations issues have been managed in various professional settings.

Responses to this question may emphasize a varied set of priorities perceived by the students, and it will be very productive to examine those priorities during this discussion. It is important to note that not all of the priorities espoused are mutually exclusive. Indeed, working to identify synergy between different possible courses of action may be of great value. Examples of student priorities, responses and applicable observations appear in Table 2 below. Many more are possible.

Table 2. Example responses to Discussion Question #5 with associated priorities and observations

Priorities	Example response	Applicable observations
Transparency and fairness	Express concern for and commitment to an inclusive environment at an all hands meeting. Announce that the firm will seek to increase dialog and understanding firm wide about how RTA can become a better place to work. Ensure that a safe forum	This may set the stage for taking Grace's advice. The broad promotion of equity and inclusion is advocated for openly and may promote changes needed changes in firm culture.

	exists for attorneys to make others aware of difficulties they are facing at the firm.	May also generate considerable disruption to operations, especially if the structure of work and other expectations are not responsive to the demands of any new initiatives.
Control and stability	Do not take Grace's advice. Provide minimal feedback to the firm members regarding study results. Work behind the scenes in the course of normal duties to detect and stem behaviors that are consistent with the troubling accounts presented by the study.	This is a minimally disruptive response to the situation as most activity in the firm can proceed as it has before. This approach may also support a gradual solution of many problems as bad actors are discovered and possibly coached out of the organization or otherwise disciplined. However, this approach may miss many hidden sources of inequality and negative conflict and the lack of deliberate and systematic examination of more aspects of the organization may slow or prevent significant progress.
Accuracy and efficiency	Perhaps using outside expertise, analyze employment, promotion, and advancement records to determine whether or not there are signs of bias. Conduct research into best practices for gender inclusion and design a plan to implement some of them subject to available resources and applicability to RTA's specific situation.	The focus and organization of this response maximizes the use of evidence to inform and improve managerial and other behavior within the firm. Allocating the necessary resources for this approach may prove expensive, and this approach may also represent a considerable delay in any action being taken to address the issues presented by Grace's study. During that time circumstances could grow worse.

General Discussion

The incident presents issues faced by the head of a law firm due to both external pressure to address gender discrimination in the workplace and evidence that this problem may exist within his own firm. Other problems are suggested that may or may not be contributing to perceptions within the firm that expectations of gender equity are not being met. However, there is much more analysis involved with the proper consideration of this incident.

First, the topic of gender disparity in law (and other industries) serves as the core issue that drives events in the critical incident. Evidence that male and female law school graduation rates have been essentially at parity and that gender disparity still persists is well documented (Catalyst, 2015; Levinson, 2010). The legal profession is not unique in being home to various forms of discrimination including negative attribution and sexual harassment. This critical incident could be examined with respect to any of these destructive behaviors (McShane & Von Glinow, 2013).

Some students may speculate that women are voluntarily opting out of a profession that does not leave room for a balanced life away from the job. The literature does include discourse on this perspective, however inconclusive (Walsh, 2012). Spending some time working through the possibilities can be highly enriching for students. It should be noted that research supports the assumption that women who wish to fully rise up the career and wage ladders may need to delay motherhood (Amuedo-Dorantes & Kimmel, 2005; Miller, 2011).

The next core issue that underlies all activity within the incident is an institutional response to the challenges of diversity, inclusion and gender equity. This connects well with discourse around leadership, communication, organizational culture, and change. An overarching concept that arguably culminates in the moment of decision that ends the incident is that of leadership, its multifaceted responsibilities, and its role in framing activity within the firm. Bolman and Deal (2013) provide an excellent treatment of how effective leaders need the capacity to view situations through multiple lenses and from the perspectives of multiple stakeholders.

As students consider possible interventions that the firm's leadership team might undertake in the face of the study's troubling results, it could be useful for them to bring into play concepts from the study of organizational change. A rich discussion is possible regarding the categories of response to different steps leadership might take and the manner in which these steps are communicated (Burke, 2011).

Furthermore, woven around the concepts of gender equity and institutional response raised by this critical incident are issues of perception and communication. For example, if junior attorneys feel confused about what is required for promotion while senior attorneys are frustrated at junior attorneys' performance, there is probably a communication problem of some kind. Students can be asked to identify possible reasons for this gap in understanding. It may also be interesting to consider what may be required for a change in firm culture to be sustained, if successfully set into motion. The critical role of organizational communication and leadership action within the symbolic frame in driving shared meaning fits in well here (Bolman & Deal, 2013; McShane & Von Glinow, 2013; Mumby, 2013).

Additional Pedagogical Materials

While this critical incident does not delve expansively into the distinctive aspects of the legal profession or the concerns of practicing attorneys, there are a small number of key definitional aspects that the instructor should ensure are clear to all students. The instructor should make sure that all students realize that attorneys working at law firms typically arrive at the rank of

associate and are expected to earn the rank of partner over some limited period of time or else depart. Partners enjoy a great deal more job security than associates do, and associates typically depend on partners for work assignments and experienced advice. Other arrangements and roles exist, but this incident mentions only the roles of associate and partner. The instructor may also wish to ensure that students consider the broader responsibilities of attorneys within law firms. For example, not all attorneys spend a great deal of time in courtrooms arguing cases before judges. There are many other work products called for, each requiring skills that are evaluated when decisions are made about promotion and retention.

This information may be provided either during time set aside for that purpose or injected at various points during incident presentation or discussion.

Epilogue

Merle Richards met with his Board of Directors still unclear about the best course of action for the firm with respect to the findings in Grace's report. The Board decided to take the matter under advisement and hold off on either reacting to or verifying any of the report's findings. Political pressure not to openly engage with any questions around gender disparity at the firm developed steadily as Merle held off disclosing any substantial information from the study to anyone but his closer affiliates at the firm. Two of the senior female attorneys who expressed high dissatisfaction with the firm departed and took positions at law firms elsewhere. If this was seen as a loss, it was not discussed with the sources used for this critical incident. By all indications, the firm continued to do well economically after the conclusion of the consultant's study.

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