

17th Annual Women in Intellectual Property Law Program

Intellectual Property Law Section

June 5, 2019

Orrick

51 West 52nd Street | New York, NY 10019-6142

Thank You! This program is made possible by the generous donation of time and expertise by members and volunteers. Thank you to our volunteers—and to you, for choosing NYSBA Programs.

This program is offered for educational purposes. The views and opinions of the faculty expressed during this program are those of the presenters and authors of the materials, including all materials that may have been updated since the books were printed or distributed electronically. Further, the statements made by the faculty during this program do not constitute legal advice.



NYSBA

Copyright © 2019

All Rights Reserved

New York State Bar Association

Accessing the Online Electronic Course Materials

Program materials will be distributed exclusively online in PDF format. It is strongly recommended that you save the course materials in advance, in the event that you will be bringing a computer or tablet with you to the program.

Printing the complete materials is not required for attending the program.

The course materials may be accessed online at:
<http://www.nysba.org/WomenIPMaterials2019/>

A hard copy NotePad will be provided to attendees at the live program site, which contains lined pages for taking notes on each topic, speaker biographies, and presentation slides or outlines if available.

Please note:

- You must have Adobe Acrobat on your computer in order to view, save, and/or print the files. If you do not already have this software, you can download a free copy of Adobe Acrobat Reader at <https://get.adobe.com/reader/>
- If you are bringing a laptop, tablet or other mobile device with you to the program, please be sure that your batteries are fully charged in advance, as electrical outlets may not be available.
- NYSBA cannot guarantee that free or paid Wi-Fi access will be available for your use at the program location.

MCLE INFORMATION

Program Title: **17th Annual Women in Intellectual Property**

Date: June 5, 2019

Location: Orrick, New York, NY

Evaluation: https://nysba.co1.qualtrics.com/jfe/form/SV_cl0jynbO8IE0BCt

This evaluation survey link will be emailed to registrants following the program.

Total Credits: **2.0 New York CLE credit hours**

Credit Category:

2.0 Diversity, Inclusion and Elimination of Bias

This course is approved for credit for **both** experienced attorneys and newly admitted attorneys (admitted to the New York Bar for less than two years). Newly admitted attorneys attending via webcast should refer to Additional Information and Policies regarding permitted formats.

Attendance Verification for New York MCLE Credit

In order to receive MCLE credit, attendees must:

- 1) **Sign in** with registration staff
- 2) Complete and return a **Verification of Presence form** (included with course materials) at the end of the program or session. For multi-day programs, you will receive a separate form for each day of the program, to be returned each day.

Partial credit for program segments is not allowed. Under New York State Continuing Legal Education Regulations and Guidelines, credit shall be awarded only for attendance at an entire course or program, or for attendance at an entire session of a course or program. Persons who arrive late, depart early, or are absent for any portion of a segment will not receive credit for that segment. The Verification of Presence form certifies presence for the entire presentation. Any exceptions where full educational benefit of the presentation is not received should be indicated on the form and noted with registration personnel.

Program Evaluation

The New York State Bar Association is committed to providing high quality continuing legal education courses, and your feedback regarding speakers and program accommodations is important to us. Following the program, an email will be sent to registrants with a link to complete an online evaluation survey. The link is also listed above.

Additional Information and Policies

Recording of NYSBA seminars, meetings and events is not permitted.

Accredited Provider

The New York State Bar Association's **Section and Meeting Services Department** has been certified by the New York State Continuing Legal Education Board as an accredited provider of continuing legal education courses and programs.

Credit Application Outside of New York State

Attorneys who wish to apply for credit outside of New York State should contact the governing body for MCLE in the respective jurisdiction.

MCLE Certificates

MCLE Certificates will be emailed to attendees a few weeks after the program, or mailed to those without an email address on file. **To update your contact information with NYSBA**, visit www.nysba.org/MyProfile, or contact the Member Resource Center at (800) 582-2452 or MRC@nysba.org.

Newly Admitted Attorneys—Permitted Formats

In accordance with New York CLE Board Regulations and Guidelines (section 2, part C), newly admitted attorneys (admitted to the New York Bar for less than two years) must complete **Skills** credit in the traditional live classroom setting or by fully interactive videoconference. **Ethics and Professionalism** credit may be completed in the traditional live classroom setting; by fully interactive videoconference; or by simultaneous transmission with synchronous interactivity, such as a live-streamed webcast that allows questions during the program. **Law Practice Management** and **Areas of Professional Practice** credit may be completed in any approved format.

Tuition Assistance

New York State Bar Association members and non-members may apply for a discount or scholarship to attend MCLE programs, based on financial hardship. This discount applies to the educational portion of the program only. Application details can be found at www.nysba.org/SectionCLEAssistance.

Questions

For questions, contact the NYSBA Section and Meeting Services Department at SectionCLE@nysba.org, or (800) 582-2452 (or (518) 463-3724 in the Albany area).

AGENDA

5:00 p.m. – 6:00 p.m.

*Registration and Networking
Reception*

6:00 p.m. – 6:15 p.m.

*Welcome and Opening Remarks -
Joyce Creidy, Esq.*

6:15 p.m. – 8:00 p.m.

The 17th Annual Women in Intellectual Property Law Program

Among the issues to be discussed:

- Strategies for success that will result in gender equality
- How the IP field has changed and how these changes directly impact women practicing in the IP field
- Combatting implicit bias that impacts a woman ability to develop a client base
- Mentoring relationships that support women's ability to succeed in combatting implicit gender bias
- Achieving a balance between home and work, while maintaining success equal to men in your legal practice

8:00 p.m. – 8:15 p.m.

Closing Remarks

Speakers:

Cindy Huang, Esq., IP Counsel
General Counsel's Organization - IP Law & Strategy Group
American Express

Sudipta Rao, Head, Global Trademarks, Oncology
Novartis Pharmaceuticals Corp.

Elizabeth E. Brenckman, Esq., Partner
Orrick

Stephanie Y. Grenald, Esq.
Associate General Counsel, VP of Intellectual Property
HBI Group, Inc. A Hinduja Group Company

Program Chair:

Joyce L. Creidy, Esq.
CompuMark/Clarivate Analytics

8:15 p.m. - 8:45 p.m.

*Dessert Networking Reception,
Courtesy of Compumark/Clarivate Analytics*

Thank you to our Speakers and
Program Planning Committee!

Women in IP thanks all of the sponsors
for their donations to the drawing!

Lawyer Assistance Program 800.255.0569



Q. What is LAP?

A. The Lawyer Assistance Program is a program of the New York State Bar Association established to help attorneys, judges, and law students in New York State (NYSBA members and non-members) who are affected by alcoholism, drug abuse, gambling, depression, other mental health issues, or debilitating stress.

Q. What services does LAP provide?

A. Services are **free** and include:

- Early identification of impairment
- Intervention and motivation to seek help
- Assessment, evaluation and development of an appropriate treatment plan
- Referral to community resources, self-help groups, inpatient treatment, outpatient counseling, and rehabilitation services
- Referral to a trained peer assistant – attorneys who have faced their own difficulties and volunteer to assist a struggling colleague by providing support, understanding, guidance, and good listening
- Information and consultation for those (family, firm, and judges) concerned about an attorney
- Training programs on recognizing, preventing, and dealing with addiction, stress, depression, and other mental health issues

Q. Are LAP services confidential?

A. Absolutely, this wouldn't work any other way. In fact your confidentiality is guaranteed and protected under Section 499 of the Judiciary Law. Confidentiality is the hallmark of the program and the reason it has remained viable for almost 20 years.

Judiciary Law Section 499 Lawyer Assistance Committees Chapter 327 of the Laws of 1993

Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such a committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privileges may be waived only by the person, firm or corporation who has furnished information to the committee.

Q. How do I access LAP services?

A. LAP services are accessed voluntarily by calling **800.255.0569** or connecting to our website www.nysba.org/lap

Q. What can I expect when I contact LAP?

A. You can expect to speak to a Lawyer Assistance professional who has extensive experience with the issues and with the lawyer population. You can expect the undivided attention you deserve to share what's on your mind and to explore options for addressing your concerns. You will receive referrals, suggestions, and support. The LAP professional will ask your permission to check in with you in the weeks following your initial call to the LAP office.

Q. Can I expect resolution of my problem?

A. The LAP instills hope through the peer assistant volunteers, many of whom have triumphed over their own significant personal problems. Also there is evidence that appropriate treatment and support is effective in most cases of mental health problems. For example, a combination of medication and therapy effectively treats depression in 85% of the cases.

Personal Inventory

Personal problems such as alcoholism, substance abuse, depression and stress affect one's ability to practice law. Take time to review the following questions and consider whether you or a colleague would benefit from the available Lawyer Assistance Program services. If you answer "yes" to any of these questions, you may need help.

1. Are my associates, clients or family saying that my behavior has changed or that I don't seem myself?
2. Is it difficult for me to maintain a routine and stay on top of responsibilities?
3. Have I experienced memory problems or an inability to concentrate?
4. Am I having difficulty managing emotions such as anger and sadness?
5. Have I missed appointments or appearances or failed to return phone calls?
Am I keeping up with correspondence?
6. Have my sleeping and eating habits changed?
7. Am I experiencing a pattern of relationship problems with significant people in my life (spouse/parent, children, partners/associates)?
8. Does my family have a history of alcoholism, substance abuse or depression?
9. Do I drink or take drugs to deal with my problems?
10. In the last few months, have I had more drinks or drugs than I intended, or felt that I should cut back or quit, but could not?
11. Is gambling making me careless of my financial responsibilities?
12. Do I feel so stressed, burned out and depressed that I have thoughts of suicide?

There Is Hope

CONTACT LAP TODAY FOR FREE CONFIDENTIAL ASSISTANCE AND SUPPORT

The sooner the better!

1.800.255.0569

NEW YORK STATE BAR ASSOCIATION

As a NYSBA member, **PLEASE BILL ME \$30 for Intellectual Property Law Section dues.** (law student rate is \$15)

I wish to become a member of the NYSBA (please see Association membership dues categories) and the Intellectual Property Law Section. **PLEASE BILL ME for both.**

I am a Section member — please consider me for appointment to committees marked.

Name _____

Address _____

City _____ State _____ Zip _____

The above address is my Home Office Both

Please supply us with an additional address.

Name _____

Address _____

City _____ State _____ Zip _____

Office phone (_____) _____

Home phone (_____) _____

Fax number (_____) _____

E-mail address _____

Date of birth _____ / _____ / _____

Law school _____

Graduation date _____

States and dates of admission to Bar: _____

JOIN OUR SECTION

2019 ANNUAL MEMBERSHIP DUES

Class based on first year of admission to bar of any state.
Membership year runs January through December.

ACTIVE/ASSOCIATE IN-STATE ATTORNEY MEMBERSHIP

Attorneys admitted 2011 and prior	\$275
Attorneys admitted 2012-2013	185
Attorneys admitted 2014-2015	125
Attorneys admitted 2016 - 3.31.2018	60

ACTIVE/ASSOCIATE OUT-OF-STATE ATTORNEY MEMBERSHIP

Attorneys admitted 2011 and prior	\$180
Attorneys admitted 2012-2013	150
Attorneys admitted 2014-2015	120
Attorneys admitted 2016 - 3.31.2018	60

OTHER

Sustaining Member	\$400
Affiliate Member	185
Newly Admitted Member*	FREE

DEFINITIONS

Active In-State = Attorneys admitted in NYS, who work and/or reside in NYS

Associate In-State = Attorneys not admitted in NYS, who work and/or reside in NYS

Active Out-of-State = Attorneys admitted in NYS, who neither work nor reside in NYS

Associate Out-of-State = Attorneys not admitted in NYS, who neither work nor reside in NYS

Sustaining = Attorney members who voluntarily provide additional funds to further support the work of the Association

Affiliate = Person(s) holding a JD, not admitted to practice, who work for a law school or bar association

*Newly admitted = Attorneys admitted on or after April 1, 2018

Please return this application to:

MEMBER RESOURCE CENTER,

New York State Bar Association, One Elk Street, Albany NY 12207

Phone 800.582.2452/518.463.3200 • FAX 518.463.5993

E-mail mrc@nysba.org • www.nysba.org

Intellectual Property Law Section Committees

Please designate from the list below, those committees in which you wish to participate. For a list of committee chairs and their email addresses, visit the executive committee roster on our website at www.nysba.org/ipi

- ___ Advertising Law (IPS3000)
- ___ Copyright Law (IPS1100)
- ___ Cyber Security and Data Privacy (IPS3200)
- ___ Diversity Initiative (IPS2400)
- ___ Ethics (IPS2600)
- ___ In-House Initiative (IPS2900)
- ___ International Intellectual Property Law (IPS2200)
- ___ Internet and Technology Law (IPS1800)
- ___ Legislative/Amicus (IPS2300)
- ___ Litigation (IPS2500)
- ___ Membership (IPS1040)
- ___ Patent Law (IPS1300)
- ___ Pro Bono and Public Interest (IPS2700)
- ___ Trademark Law (IPS1600)
- ___ Trade Secrets (IPS1500)
- ___ Transactional Law (IPS1400)
- ___ Website Task Force (IPS3100)
- ___ Young Lawyers (IPS1700)



17th Annual Women in Intellectual Property Law Program

Cindy Huang, Esq.

IP Counsel

General Counsel's Organization - IP Law & Strategy Group American Express

Sudipta Rao

Head, Global Trademarks, Oncology Novartis Pharmaceuticals Corp.

Elizabeth E. Brenckman, Esq.

Partner Orrick

Stephanie Y. Grenald, Esq.

Associate General Counsel, VP of Intellectual Property HBI Group, Inc. A Hinduja Group Company

17th Annual Women in IP Law Program

Cindy Huang, Esq., IP Counsel

General Counsel's Organization - IP Law & Strategy Group American Express

Outline

- Intro of who I am – that I'm counsel at Amex and it was a long journey. (10mins)
 - o I always thought I wanted to be a Dr. – how that shift happened, and how I ended up going to law school
 - o After shift, had clear intentions of succeeding in patent law.
 - § Discussion of my journey – first job as patent litigator, shift to licensing, another shift to in-house, shift to patent prosecution, shift to diligence/agreement work
 - § At end, didn't know how the shifts would be perceived
 - o Culmination as IP counsel in-house
- Challenges I've faced along the way – (5 mins)
 - o As a female from family culture of being more quiet/speak only after spoken to, then layering the science background, further layering being an attorney – trying to overcome my fears
 - o As I became more and more senior, finding the need to prove myself more than others have had to, over and over again
 - o Trying to become more outspoken
- How I've overcome the challenges (5 mins)
 - o Relationships, relationships, relationships – and bringing my authentic self to those relationships.
 - o Forcing myself to do things I don't want to do – like public speaking
 - o Became the expert in something few people knew about – find a niche but always be ready to pivot.

17th Annual Women in IP Law Program

Cindy Huang, Esq., IP Counsel

General Counsel's Organization - IP Law & Strategy Group American Express

Outline

Other Articles of Interest:

On being in-house...almost all of it is true

<https://abovethelaw.com/2014/06/9-things-that-may-surprise-you-about-going-in-house/>

On IP Diligence for M&A deals

<https://www.forbes.com/sites/allbusiness/2016/03/17/13-key-intellectual-property-issues-in-mergers-and-acquisitions/#4fd9f9003f4e>

On diligence in general for M&A deals

<https://www.forbes.com/sites/allbusiness/2019/03/27/comprehensive-guide-due-diligence-issues-mergers-and-acquisitions/#7bf36fdd2574>

On data and cybersecurity considerations for m&A deals

<https://www.forbes.com/sites/allbusiness/2018/11/11/data-privacy-cybersecurity-mergers-and-acquisitions/#5534b38d72ba>

IF NOT NOW, WHEN?
**Achieving Equality for Women Attorneys in
the Courtroom and in ADR**



IF NOT NOW, WHEN?

**Achieving Equality for Women Attorneys in
the Courtroom and in ADR**

Report of the New York State Bar Association

**Prepared by the Commercial and Federal Litigation Section's
Task Force on Women's Initiatives: Hon. Shira A. Scheindlin
(ret.); Carrie H. Cohen; Tracee E. Davis; Bernice K. Leber;
Sharon M. Porcellio; Lesley F. Rosenthal; Lauren J. Wachtler**

**Approved by the House
of Delegates
November 2017**

TABLE OF CONTENTS

I. Introduction	1
II. Literature Review: Women in Litigation; Women in ADR	2
A. Women in Litigation: Nationwide	2
B. Women in ADR	10
III. Survey: Methodology and Findings	14
A. Women Litigators in New York State Courts	15
B. Women Litigators in Federal Courts	16
C. Women Litigators: Criminal & Civil; Private & Public	17
D. Women in Alternative Dispute Resolution	18
IV. Going Forward: Suggested Solutions	18
A. Women’s Initiatives	18
B. Formal Programs Focused on Lead Roles in Court and Discovery	20
C. Efforts to Provide Other Speaking Opportunities for Women	21
D. Sponsorship	21
E. Efforts by the Judiciary	23
F. Efforts by Clients	24
G. ADR Context	26
V. Conclusion	27
Appendix	29

**IF NOT NOW, WHEN? ACHIEVING EQUALITY FOR WOMEN ATTORNEYS
IN THE COURTROOM AND IN ADR
REPORT OF THE COMMERCIAL AND FEDERAL LITIGATION SECTION
2017 WOMEN’S INITIATIVE STUDY**

I. Introduction

During the last two decades, much has been written and discussed about whether women attorneys appear in court with the frequency expected given their numbers in the legal profession. The Commercial and Federal Litigation Section of the New York State Bar Association is a preeminent bar group focused on complex commercial state and federal litigation. The Section counts among its former chairs a substantial number of prominent women litigators from both upstate and downstate, including a former United States District Judge who previously served as a federal prosecutor and an attorney in private practice, a former President of the New York State Bar Association who is recognized as one of New York’s top female commercial litigators and also serves as a mediator and arbitrator of commercial disputes, a former federal and state prosecutor who now is a partner in a large global law firm, an in-house counsel at a large non-profit corporation, and senior partners in large and mid-size private law firms located both upstate and downstate. With the full support and commitment of the Section’s leadership, these female alumnae Section chairs met and formed an ad hoc task force devoted to the issue of women litigators in the courtroom. The task force also examined the related issue of the apparent dearth of women who serve as arbitrators and mediators in complex commercial and international arbitrations and mediations (collectively referred to herein as Alternative Dispute Resolution (“ADR”)).

As an initial matter, the task force sought to ascertain whether there was, in fact, a disparity in the number of female attorneys versus male attorneys who appear in speaking roles in federal and state courts throughout New York. Toward that end, the task force devised and distributed a survey to state and federal judges throughout the State and then compiled the survey results. As fully discussed below, based on the survey results, the task force found continued disparity and gender imbalance in the courtroom. This report first details recent studies and research on the issue of gender disparity in the legal profession, then discusses how the court survey was conducted, including methodology and findings, and concludes with recommendations for addressing the disparity and ensuring that women attorneys obtain their rightful equal place in the courtroom. This report further details the task force’s findings with respect to the gender gap in the ADR context.

II. Literature Review: Women in Litigation; Women in ADR

There is no shortage of literature discussing the gender gap in the courtroom, which sadly continues to persist at all levels—from law firm associates, to equity partnerships at law firms, to lead counsel at trial. To orient the discussion, the task force sets forth below a brief summary of some of the relevant articles it reviewed.

A. Women in Litigation: Nationwide

ABA Commission on Women in the Profession

The ABA Commission on Women in the Profession (the “ABA Commission”) was founded in 1987 “to assess the status of women in the legal profession and to identify barriers to their achievement.”¹ The following year, with Hillary Rodham Clinton serving as its inaugural chair, the ABA Commission published a groundbreaking report documenting the lack of adequate advancement opportunities for women lawyers.² Thirty years later, the ABA Commission is perhaps the nation’s preeminent body for researching and addressing issues faced by women lawyers.³

In 2015, the ABA Commission published *First Chairs at Trial: More Women Need Seats at the Table* (the “ABA Report”), “a first-of-its-kind empirical study of the participation of women and men as lead counsel and trial attorneys in civil and criminal litigation.”⁴ The study was based on a random sample of 600 civil and criminal cases filed in the United States District Court for the Northern District of Illinois in 2013—a sample that offered a limited but important snapshot into the composition of trial courtrooms at that time.⁵ As summarized by its authors, Stephanie A. Scharf and Roberta D. Liebenberg, the ABA Report showed at a high level the following:

[W]omen are consistently underrepresented in lead counsel positions and in the role of trial attorney In civil cases, [for example], men are three times more likely than women to appear as lead counsel That substantial gender gap is a marked departure from what we expected based on the distribution of

¹ Stephanie A. Scharf & Roberta D. Liebenberg, ABA Commission on Women in the Profession, *First Chairs at Trial: More Women Need Seats at the Table—A Research Report on the Participation of Women Lawyers as Lead Counsel and Trial Counsel in Litigation* at 25 (2015).

² *See id.*

³ *See id.*

⁴ *Id.* At 4.

⁵ *See id.*

men and women appearing generally in the federal cases we examined (a roughly 2 to 1 ratio) and the distribution of men and women in the legal profession generally (again, a roughly 2 to 1 ratio).⁶

The ABA Report also provided more granular statistics about the sample population, including that out of the 558 civil cases surveyed, 68% of all lawyers and 76% of the lead counsel were male.⁷ The disparity was even more exaggerated in the class action context, in which 87% of lead class counsel were men.⁸ The 50 criminal cases studied fared no better: among all attorneys appearing, 67% were men and just 33% were women.⁹

Contextualizing these statistics, the ABA Report also outlined factors that might help to explain the gender disparities evidenced by the data. In particular, the ABA Report posited that:

The underrepresentation of women among lead lawyers may. . . stem from certain client preferences, as some clients prefer a male lawyer to represent them in court. . . . In addition, women may too often be relegated by their law firms to second-chair positions, even though they have the talent and experience to serve as first chairs. The denial of these significant opportunities adversely affects the ability of women to advance at their firms. All of these issues apply with even greater force to women trial attorneys of color, who face the double bind of gender and race.

Id. at 15 (footnote omitted). The ABA Report concluded by offering some “best practices” for law schools, law firms, clients, judges, and women lawyers, many of which focus on cultivating opportunities for women to gain substantive trial experience.¹⁰

Other research corroborates the extent to which gender disparities continue to persist within the legal profession, particularly within law firm culture. This research shows that the presence of women in the legal profession—now in substantial numbers—has not translated into equal opportunities for women lawyers at all levels. For example, a recent law firm survey, conducted by the New York City Bar Association, found that just 35% of all lawyers at surveyed firms in 2015 were women—“despite [the fact that

⁶ *Id.*

⁷ *See id.* at 8-10.

⁸ *See id.* at 12.

⁹ *See id.* at 12-13.

¹⁰ *Id.* *See also id.* at 14-17.

women have] represent[ed] almost half of graduating law school classes for nearly two decades.”¹¹ That same survey found a disparity in lawyer attrition rates based on gender and ethnicity, with 18.4% of women and 20.8% of minorities leaving the surveyed firms in 2015 compared to just 12.9% of white men.¹² Serious disparities also have been identified at the most senior levels of the law firm structure. Indeed, a 2015 survey by the National Association of Women Lawyers found that women held only 18% of all equity partner positions—just 2% higher than they did approximately a decade earlier.¹³ Based on one study by legal recruiting firm, Major, Lindsey & Africa, it is estimated that the compensation of male partners is, on average, 44% higher than that of female partners.¹⁴

In April 2017, ALM Intelligence focused on Big Law and asked, “Where Do We Go From Here?: Big Law’s Struggle With Recruiting and Retaining Female Talent.”¹⁵ The author found that certain niche practices such as education, family law, health care, immigration, and labor and employment had the greatest proportion of women; other areas such as banking, corporate, and litigation had the lowest number of female attorneys.¹⁶

Promisingly, however, there also have been significant calls to action—across the bar and bench—to increase advancement opportunities for women lawyers. In interviews conducted after the ABA Report was published, top female trial attorneys cited factors such as competing familial demands, law firm culture (including a desire to have “tried and true” lawyers serve as lead counsel), and too few training opportunities for young lawyers as reasons why so few women were present at the highest ranks of the profession.¹⁷ Those interviewed suggested ways in which law firms can foster the development of women lawyers at firms, including by affording female associates more

¹¹ Liane Jackson, *How can barriers to advancement be removed for women at large law firms?*, ABA Journal (Jan. 1, 2017), http://www.abajournal.com/magazine/article/visible_difference_women_law.

¹² *See id.*

¹³ Andrew Strickler, *Female Attorneys Should Grab High-Profile Work: Bar Panel*, Law360 (Jan. 27, 2016), <https://www.law360.com/articles/750952/female-attorneys-should-grab-high-profile-work-bar-panel>.

¹⁴ *See id.*

¹⁵ Daniella Isaacson, ALM Intelligence, *Where Do We Go From Here?: Big Law’s Struggle With Recruiting and Retaining Female Talent* (Apr. 2017).

¹⁶ Meghan Tribe, *Study Shows Gender Diversity Varies Widely Across Practice Areas*, The Am Law Daily (Apr. 17, 2017) <http://www.americanlawyer.com/id=1202783889472/Study-Shows-Gender-Diversity-Varies-Widely-Across-Practice-Areas> (citing Daniella Isaacson, ALM Intelligence, *Where Do We Go From Here?: Big Law’s Struggle With Recruiting and Retaining Female Talent* (Apr. 2017)).

¹⁷ Mary Ellen Egan, *Too Few Women in Court*, The American Lawyer (Apr. 25, 2016), <http://www.americanlawyer.com/id=1202755433078/Too-Few-Women-in-Court>.

courtroom opportunities and moving away from using business generation as the basis for determining who is selected to try a case.¹⁸ Among those interviewed was Ms. Liebenberg, one of the co-authors of the ABA Report. She stressed that clients can play an important role by using their economic clout to insist that women play a significant role in their trial teams.¹⁹

In another follow-up to the ABA Report, Law360 published an article focusing on the ABA Report's recommendation that judges help to close the gender gap by encouraging law firms to give young lawyers (including female and minority associates) visible roles in the courtroom and at trial.²⁰ The article highlighted the practice of some judges around the country in doing this, such as Judge Barbara Lynn of the Northern District of Texas. As explained in the article, Judge Lynn employs a "standard order"—adapted from one used by Judge William Alsup of the Northern District of California—that encouraged parties to offer courtroom opportunities to less experienced members of their teams.²¹ One such order provides: "In those instances where the court is inclined to rule on the papers, a representation that the argument would be handled by a young lawyer will weigh in favor of holding a hearing."²² As explained in the article, Judge Lynn said that, while her order does not mention gender, younger lawyers in her courtroom tend to include more women.

Indeed, a recent survey revealed that nineteen federal judges have issued standing orders that encourage law firms to provide junior attorneys with opportunities to gain courtroom experience.²³ Here are some examples of such orders:

- Judge Indira Talwani (D. Mass): "Recognizing the importance of the development of future generations of practitioners through courtroom opportunities, the undersigned judge, as a matter of policy, strongly encourages the participation of relatively inexperienced attorneys in all courtroom proceedings including but not limited to initial scheduling conferences, status conferences, hearings on discovery motions, and examination of witnesses at

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ Andrew Strickler, *Judges Key to Closing Trial Counsel Gender Gap*, Law360 (July 20, 2015) <https://www.law360.com/articles/680493/judges-key-to-closing-trial-counsel-gender-gap>.

²¹ *Id.*

²² *Id.*

²³ Michael Rader, *Rising to the Challenge: Junior Attorneys in the Courtroom*, 257 N.Y.L.J. 4 (Apr. 28, 2017).

trial.”

- Judge William Alsup (N.D. Cal.): “The Court strongly encourages lead counsel to permit young lawyers to examine witnesses at trial and to have an important role. It is the way one generation will teach the next to try cases and to maintain our district’s reputation for excellence in trial practice.”

- Magistrate Judge Christopher Burke (D. Del.) “indicates that the court will make extra effort to grant argument—and will strongly consider allotting additional time for oral argument—when junior lawyers argue.”

- Judge Allison Burroughs (D. Mass) offers law firm associates the chance to argue a motion after the lead attorneys have argued the identical motion.²⁴

As explained in the article cited below, there are benefits to both the lawyer and the client in having junior attorneys play a more significant role in the litigation:

When it comes to examining a witness at trial, junior lawyers frequently have a distinct advantage over their more senior colleagues. It is very often the junior lawyer who spent significant time with the witness during the discovery process In the case of an expert witness, the junior lawyer probably played a key role in drafting the expert report. In the case of a fact witness, the junior lawyer probably worked with the witness to prepare a detailed outline of the direct examination. . . . [C]lients should appreciate that the individual best positioned to present a witness’s direct testimony at trial may be the junior attorney who worked with that witness The investment of time required to prepare a junior attorney to examine a witness or conduct an important argument can be substantial, but this type of hands-on mentoring is one of the most rewarding aspects of legal practice.²⁵

At the same time, practitioners also have urged junior female attorneys to seek out advancement opportunities for themselves—a sentiment that was shared by panelists at a conference hosted by the New York State Bar Association in January 2016. Panel members—who spoke from a variety of experiences, ranging from that of a federal District Court Judge to a former Assistant U.S. Attorney to private practice—“uniformly called for rising female attorneys to seek out client matters, pro bono cases, bar roles, and other responsibilities that would give them experience as well as profile beyond their

²⁴ *Id.*

²⁵ *Id.*

home office.”²⁶

ABA Presidential Task Force on Gender Equity

In 2012, American Bar Association President Laurel G. Bellows appointed a blue-ribbon Task Force on Gender Equity (“Task Force”) to recommend solutions for eliminating gender bias in the legal profession.²⁷ In 2013, the Task Force in conjunction with the ABA Commission published a report that discussed, among other things, specific steps clients can take to ensure that law firms they hire provide, promote, and achieve diverse and inclusive workplaces.²⁸ Working together, the Task Force concluded, “general counsel and law firms can help reduce and ultimately eliminate the compensation gap that women continue to experience in the legal profession.”²⁹

The Task Force recommended several “best practices” that in-house counsel can undertake to promote the success of women in the legal profession. As a “baseline effort,” corporations that hire outside counsel, including litigators, should inform their law firms that the corporation is interested in seeing female partners serving as “lead lawyers, receiving appropriate origination credit, and being in line for succession to handle their representation on behalf of the firm.”³⁰ Corporate clients can also expand their list of “go-to” lawyers by obtaining referrals to women lawyers from local bar associations; contacting women lawyers in trial court opinions issued in areas of expertise needed; and inviting diverse lawyers to present CLE programs.³¹ This allows the corporate clients to use their “purchasing power” to ensure that their hired firms are creating diverse legal teams.³²

The Task Force also reported that clients can utilize requests for proposal and pitch

²⁶ Andrew Strickler, *Female Attorneys Should Grab High-Profile Work: Bar Panel*, Law360 (Jan. 27, 2016) <https://www.law360.com/articles/750952/female-attorneys-should-grab-high-profile-work-bar-panel> (emphasis added).

²⁷ *ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession, Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers* (2013).

²⁸ *Publications from the ABA Presidential Task Force on Gender Equity*, AMERICAN BAR ASSOCIATION (2012), https://www.americanbar.org/groups/women/gender_equity_task_force/task_force_publications.html.

²⁹ *Id.*

³⁰ *Id.* at 6. For an in-depth discussion of recommendations for steps clients can take to combat the gender disparity in courtrooms, *see infra* Part F.

³¹ *Id.* at 9.

³² *Id.* at 8.

meetings to convey their diversity policies to outside firms and “specify metrics by which they can better evaluate a firm’s commitment to women lawyers.”³³ When in-house counsel ask their outside firms to provide data, they demonstrate to the firms their consciousness of metrics, and the data allows them to benchmark the information against other firms.³⁴

Perhaps the most impactful practice corporate clients can undertake is a “deepened level of inquiry,” which involves investigating how work is credited within law firms.³⁵ For example, a general counsel may tell a firm that she wants “the woman lawyer on whom she continually relied to be the relationship partner and to receive fee credit for the client’s matters” even if that means “transferring that role from a senior partner” that might cause “tension in the firm.”³⁶

Finally, clients can “lead by example, both formally and informally” by partnering with law firms committed to bringing about pay equity.³⁷ The Task force professed that by doing so, corporate clients have the power to shatter the “last vestiges of the glass ceiling in the legal profession.”³⁸

Call for Diversity by Corporate Counsel

The ABA was not the first and only organization to recognize the growing importance of gender equity in the legal profession. In 1999, Charles R. Morgan, then Chief Legal Officer for BellSouth Corporation, developed a pledge titled Diversity in the Workplace: A Statement of Principle (“Statement of Principle”) as a reaction to the lack of diversity at law firms providing legal services to Fortune 500 companies.³⁹ Mr. Morgan intended the Statement of Principle to function as a mandate requiring law firms to make immediate and sustained improvements in diversity initiatives.⁴⁰ More than four hundred Chief Legal Officers of major corporations signed the Statement of Principle,⁴¹

³³ *Id.* at 10.

³⁴ *See id.* at 11.

³⁵ *See id.* at 13.

³⁶ *Id.* at 10.

³⁷ *Id.* at 15.

³⁸ *Id.*

³⁹ Donald O. Johnson, *The Business Case for Diversity at the CPCU Society* at 5 (2007), <https://www.cpcusociety.org/sites/dev.aicpcu.org/files/imported/BusinessDiversity.pdf>.

⁴⁰ Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, 8 ENGAGE 21, 21 (2004).

⁴¹ Donald O. Johnson, *The Business Case for Diversity at the CPCU Society* at 5 (2007),

which served as evidence of commitment by signatory corporations to a diverse legal profession.⁴²

By 2004, however, Rick Palmore, a “nationally recognized advocate for diversity in the legal industry,”⁴³ then serving as an executive and counsel at Sara Lee Corporation, observed that efforts for law firm diversity had reached a “disappointing plateau.”⁴⁴ Mr. Palmore authored *A Call to Action: Diversity in the Legal Profession*, (“Call to Action”), which built upon the Statement of Principle.⁴⁵ The Call to Action focused on three major elements: (1) the general principle of having a principal’s interest in diversity; (2) diversity performance by law firms, especially in hiring and retention; and (3) commitment to no longer hiring law firms that do not promote diversity initiatives.⁴⁶

Mr. Palmore pledged to “make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms.” To that end, he called upon corporate legal departments and law firms to increase the numbers of women and minority attorneys hired and retained.⁴⁷ Mr. Palmore stated that he intended to terminate relationships with firms whose performances “consistently evidence[] a lack of meaningful interest in being diverse.”⁴⁸ By December 4, 2004, the Call to Action received signatory responses from seventy-two companies, including corporate giants such as American Airlines, UPS, and Wal-Mart.⁴⁹ Both the Statement of Principle and *A Call to Action* reflect the belief of many leading corporations that diversity is important and has the potential to profoundly impact business performance.⁵⁰

<https://www.cpcusociety.org/sites/dev.aicpcu.org/files/imported/BusinessDiversity.pdf>.

⁴² Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, 8 ENGAGE 21, 21 (2004).

⁴³ Rick Palmore, Senior Counsel, Dentons US LLP; LCLD Founding Chair Emeritus http://www.lclldnet.org/media/mce_filebrowser/2017/02/22/Palmore.Rick-Fellows-branded-bio.2.13.17.pdf (last visited May 30, 2017).

⁴⁴ Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, 8 ENGAGE 21, 21 (2004).

⁴⁵ Melanie Lasoff Levs, *Call to Action: Sara Lee's General Counsel: Making Diversity a Priority*, DIVERSITY & THE BAR (Jan./Feb. 2005), <http://archive.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=803>.

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, 8 ENGAGE 21, 21 (2004).

⁴⁹ Melanie Lasoff Levs, *Call to Action: Sara Lee's General Counsel: Making Diversity a Priority*, DIVERSITY & THE BAR (Jan./Feb. 2005), <http://archive.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=803>.

⁵⁰ Donald O. Johnson, *The Business Case for Diversity at the CPCU Society* at 7 (2007),

B. Women in ADR

Turning to the ADR context, the governing principle should be that panels of “[n]eutrals should reflect the diverse communities of attorneys and parties whom they serve.”⁵¹ This statement strikes us as the best way to begin our survey of the literature concerning the status of women in the world of ADR.

It should come as no surprise that much has been written about the lack of diversity among ADR neutrals, especially those selected for high-value cases. As a 2017 article examining gender differences in dispute resolution practice put it, “the more high-stakes the case, the lower the odds that a woman would be involved.”⁵² Data from a 2014 ABA Dispute Resolution Section survey indicated that for cases with between one and ten million dollars at issue, 82% of neutrals and 89% of arbitrators were men.⁵³ Another survey estimated that women arbitrators were involved in just 4% of cases involving one billion dollars or more.⁵⁴

One part of the problem may be that relatively few women and minorities are present within the field. For example, one ADR provider estimated that in 2016 only 25% of its neutrals were women, 7% were minorities, and 95% were over fifty.⁵⁵ Similarly, in 2016, the International Centre for Settlement of Investment Disputes (an arm of the World Bank) reported that only 12% of those selected as arbitrators in ICSID cases were women.⁵⁶ Similarly, the International Institute for Conflict Prevention and Resolution (CPR)

<https://www.cpcusociety.org/sites/dev.aicpcu.org/files/imported/BusinessDiversity.pdf>.

⁵¹ Theodore K. Cheng, *A Celebration of Diversity in Alternative Dispute Resolution*, Diversity and the Bar Spring 2017 MCCA.com at 14.

⁵² Noah Hanft, *Making Diversity Happen in ADR: No More Lip Service*, 257 N.Y.L.J. S6 (Mar. 20, 2017).

⁵³ See *id.* (citing *Gender Differences in Dispute Resolution Practice: Report on the ABA Section of Dispute Resolution Practice Snapshot Survey* (Jan. 2014)).

⁵⁴ See Christine Simmons, *Where Are the Women and Minorities in Global Dispute Resolution?*, *The American Lawyer* (Oct. 10, 2016) <http://www.americanlawyer.com/id=1202769481566/Where-Are-the-Women-and-Minorities-in-Global-Dispute-Resolution?mcode=0&curindex=0&curpage=ALL>.

⁵⁵ See Noah Hanft, *Making Diversity Happen in ADR: No More Lip Service*, 257 N.Y.L.J. S6 (Mar. 20, 2017) (citing Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, <http://www.law.com/sites/almstaff/2016/10/05/adr-business-wakes-up-to-glaring-deficit-of-diversity/> (Oct. 5, 2016)).

⁵⁶ See Christine Simmons, *Where Are the Women and Minorities in Global Dispute Resolution?*, *The American Lawyer* (Oct. 10, 2016) <http://www.americanlawyer.com/id=1202769481566/Where-Are-the-Women-and-Minorities-in-Global-Dispute-Resolution?mcode=0&curindex=0&curpage=ALL>.

reported that of more than 550 neutrals who serve on its worldwide panels, about 15% are women and 14% are minorities.⁵⁷

One of the concerns raised by this lack of diversity among neutrals is that it diminishes the legitimacy of the process.⁵⁸ But as one recent article in the *New York Law Journal* suggests, it may be even harder to take steps to improve diversity within ADR than it is to do so in law firms given the incentives of key stakeholders in the ADR context.⁵⁹ In particular, the article argues that law firms may be more inclined to recommend familiar, well-established (likely male) neutrals with the intent of trying to achieve a favorable outcome, and their clients may be more willing to accept their lawyers' recommendations for that same reason.⁶⁰

Comparing ADR statistics with those of the judiciary is revealing. Approximately 33% of federal judges are women and 20% are minorities—which is far ahead of the numbers in the world of ADR.⁶¹ Despite ADR's "quasi-public" nature, it remains a private and confidential enterprise for which gender and racial statistics for ADR providers are not fully available.⁶² Nonetheless, the information that is available reveals a stark underrepresentation of women and minority arbitrators and mediators.⁶³ In short, the overwhelming percentage of neutrals are white men and the lowest represented group is minority women. It is no wonder that one attorney reported that, in her twenty-three years of practice, she had just three cases with non-white male neutrals.⁶⁴

⁵⁷ Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, Law.com (Oct. 5, 2016).

⁵⁸ See Christine Simmons, *Where Are the Women and Minorities in Global Dispute Resolution?*, *The American Lawyer* (Oct. 10, 2016) <http://www.americanlawyer.com/id=1202769481566/Where-Are-the-Women-and-Minorities-in-Global-Dispute-Resolution?mcode=0&curindex=0&curpage=ALL>.

⁵⁹ See Noah Hanft, *Making Diversity Happen in ADR: No More Lip Service*, 257 N.Y.L.J. S6 (Mar. 20, 2017) (citing Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, <http://www.law.com/sites/almstaff/2016/10/05/adr-business-wakes-up-to-glaring-deficit-of-diversity/> (Oct. 5, 2016)).

⁶⁰ See *id.*

⁶¹ Laura A. Kaster, et al., *The Lack of Diversity in ADR—and the Current Beneath*, *American Inns of Court* (Mar./Apr. 2017) at 14.

⁶² Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, Law.com (Oct. 5, 2016); see also Laura A. Kaster, *Choose Diverse Neutral to Resolve Disputes—A Diverse Panel Will Improve Decision Making* ("Because alternative dispute resolution is a privatization of otherwise public court systems, it is . . . valid to compare the public judiciary to private neutrals in commercial arbitration.").

⁶³ *ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession, Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers* (2013).

⁶⁴ Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, Law.com (Oct. 5, 2016).

The homogeneity within the ADR field is even worse at the case-specific level. A 2014 survey published by the American Bar Association indicated a clear disparity in the types of cases for which women neutrals were selected: whereas 57% of neutrals in family, elder, and probate cases were women, this figure was just 37% for labor and employment actions, 18% for corporate and commercial cases, and 7% for intellectual property cases.⁶⁵

Some have theorized that the reason for the lack of diversity within ADR—both in the neutrals available for selection and the types of cases for which diverse neutrals are selected—is a “chronological lag”: most neutrals who are actually selected are retired judges or lawyers with long careers behind them, who comprise a pool of predominantly white males.⁶⁶ But, women have been attending law school at equal rates as men for more than ten years and there is no dearth of qualified female practitioners.⁶⁷ Accordingly, other important but difficult to overcome factors may include implicit bias by lawyers or their related fear of engaging neutrals who may not share their same background (and therefore, who they believe may arrive at an unfavorable decision).⁶⁸ This cannot be an excuse: “the privatization of dispute resolution through ADR . . . cannot alter the legitimacy of requiring that society’s dispute resolution professionals, who perform a quasi-public function, reflect the population at large.”⁶⁹

This disparity continues to exist despite the well-documented benefits for all stakeholders of diversity in decision-making processes. Indeed, studies indicate that “when arbitration involves a panel of three, the parties are likely to have harder working panelists and a more focused judgment from the neutrals if the panel is diverse.”⁷⁰ This is because “when members of a group notice that they are socially different from one another, . . . they assume they will need to work harder to come to a consensus. . . . [T]he hard work can lead to better outcomes.”⁷¹ In order to move the needle on diversity in the ADR field, especially with respect to lawyers’ selection of neutrals which is arguably the

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ David H. Burt, *et al.*, *Why Bringing Diversity to ADR Is a Necessity*, ACC Docket at 44 (Oct. 2013).

⁶⁸ *Id.*; see also Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, Law.com (Oct. 5, 2016).

⁶⁹ Laura A. Kaster, *Why and How Corporations Must Act Now to Improve ADR Diversity*, Corporate Disputes (Jan.-Mar. 2015).

⁷⁰ Laura A. Kaster, *Choose Diverse Neutral to Resolve Disputes—A Diverse Panel Will Improve Decision Making*.

⁷¹ *Id.*

largest driver of the composition of ADR panels, “[w]hat may be missing is the firm belief that diversity matters not just for basic fairness and social equity but also for better judgment.”⁷²

In a recent article, Theodore Cheng, an ADR specialist, described what he sees as the failure of the legal community to accept the fact that diversity in the selection of neutrals is both necessary and beneficial. He begins by noting that “the decision-making process is generally improved, resulting in normatively better and more correct outcomes, when there exist different points of view.”⁷³ Cheng then notes the gap between the commitment to diversity by companies in their own legal departments versus their commitment to diversity in the ADR process.

The efforts on the part of corporate legal departments to ensure diverse legal teams does not appear to extend to the selection of neutrals – a task routinely delegated to outside counsel. Mr. Cheng’s article explains that outside counsel may be afraid of taking a chance on an unknown quantity for fear that they might be held responsible for an unsatisfactory result. Accordingly, they tend to select known quantities, relying on recommendations from within their firms or from friends, which tends to produce the usual suspects – overwhelmingly lawyers like themselves – i.e., older white males. There is also “a failure to acknowledge and address unconscious, implicit biases that permeate any decision-making process.”⁷⁴ The author concludes that there are many qualified women and minorities available to be selected as neutrals but those doing the selections have somehow failed to recognize that this service – like any other service provided to corporate entities – must consider the need for diversity.

Mr. Cheng also stresses why diversity in ADR is important. His article notes that ADR is the privatization of a public function and it is therefore important that the neutrals be diverse and reflect the communities of attorneys and litigants they serve. Secondly, the author notes (as have many others) that better decisions are made when different points of view are considered. The addition of new perspectives is always a benefit. Some ADR providers are taking steps to document and address the problem. For example, the International Institute for Conflict Prevention and Resolution has developed the following Diversity Commitment which any company can sign: “We ask that our outside law firms and counterparties include qualified diverse neutrals among any list of neutrals or arbitrators they propose. We will do the same with the lists we provide.”⁷⁵ Similarly, the American Arbitration Association has committed to ensuring that 20% of the arbitrators on the lists it provides to the parties are

⁷² *Id.*

⁷³ *Id.* (citing Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies* (Princeton Univ. Press 2017) and James Surowiecki, *The Wisdom of Crowds* (Anchor Books 2004)).

⁷⁴ *Id.* at 19.

⁷⁵ Laura A. Kaster, *Why and How Corporations Must Act Now to Improve ADR Diversity*, Corporate Disputes (Jan.-Mar. 2015).

diverse candidates.⁷⁶ Although such initiatives are promising, the role of the parties is just as important: it is incumbent upon law firms, lawyers, and clients to select diverse neutrals.

III. Survey: Methodology and Findings

The task force's survey began with the creation of two questionnaires both drafted by the task force.⁷⁷ The first questionnaire was directed to federal and state judges sitting throughout New York. This questionnaire was designed to be an observational study that asked judges to record the presence of speaking counsel by gender in all matters in their courtrooms occurring between approximately September 1, 2016 and December 31, 2016. The second questionnaire was directed to various ADR providers asking them to record by gender both the appearance of counsel in each proceeding and the gender of the neutral conducting the proceeding.

The focus of the first survey was to track the participation of women as lead counsel and trial attorneys in civil and criminal litigation. While there have been many anecdotal studies about women attorneys' presence in the courtroom, the task force believes its survey to be the first study based on actual courtroom observations by the bench. The study surveyed proceedings in New York State at each level of court—trial, intermediate, and court of last resort—in both state and federal courts. Approximately 2,800 questionnaires were completed and returned. The cooperation of the judges and courthouse staff was unprecedented and remarkable: New York's Court of Appeals, all four Appellate Divisions, and Commercial Divisions in Supreme Courts in counties from Suffolk to Onondaga to Erie participated. The United States Court of Appeals for the Second Circuit provided assistance compiling publicly available statistics and survey responses were provided by nine Southern District of New York Judges (including the Chief Judge) and Magistrate Judges and District and Magistrate Judges from the Western District of New York.

The results of the survey are striking:⁷⁸

- Female attorneys represented just 25.2% of the attorneys appearing in commercial and criminal cases in courtrooms across New York.
- Female attorneys accounted for 24.9% of lead counsel roles and 27.6% of additional counsel roles.
- The most striking disparity in women's participation appeared in

⁷⁶ Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, Law.com (Oct. 5, 2016).

⁷⁷ Each questionnaire is attached hereto as [Appendix A](#).

⁷⁸ Survey results in chart format broken down by Court are attached hereto as [Appendix B](#).

complex commercial cases: women's representation as lead counsel shrank from 31.6% in one-party cases to 26.4% in two-party cases to 24.8% in three-to-four-party cases and to 19.5% in cases involving five or more parties. In short, the more complex the case, the less likely that a woman appeared as lead counsel.

The percentage of female attorneys appearing in court was nearly identical at the trial level (24.7%) to at the appellate level (25.2%). The problem is slightly worse downstate (24.8%) than upstate (26.2%).⁷⁹

In New York federal courts, female attorneys made up 24.4% of all attorneys who appeared in court, with 23.1% holding the position of lead counsel. In New York State courts, women made up 26.9% of attorneys appearing in court and 26.8% of attorneys in the position of lead counsel.

One bright spot is public interest law (mainly criminal matters), where female lawyers accounted for 38.2% of lead counsel and 30.9% of attorneys overall. However, in private practice (including both civil and criminal matters), female lawyers only accounted for 19.4% of lead counsel. In sum, the low percentage of women attorneys appearing in a speaking role in courts was found at every level and in every type of court: upstate and downstate, federal and state, trial and appellate, criminal and civil, ex parte applications and multi-party matters. Set forth below is the breakout in all courtrooms—state, federal, regional, and civil/criminal.

A. Women Litigators in New York State Courts

The view from the New York Court of Appeals is particularly interesting. The statistics collected from that Court showed real progress—perhaps as a result of female leadership of that court, now headed by Chief Judge Janet DiFiore and past Chief Judge Judith S. Kaye, as well as the fact that the Court has had a majority of women judges for more than ten years. Of a total of 137 attorneys appearing in that Court, female attorneys made up 39.4%. This percentage held whether the females were lead or second chair counsels. In cases in which at least one party was represented by a public sector office, women attorneys were in the majority at 51.3%. Of the appearances in civil cases, 30% were by female attorneys. The figure in criminal cases was even higher—female attorneys made up 46.8% of all attorneys appearing in those cases.

Similarly, female attorneys in the public sector were well represented in the Appellate Divisions, approaching the 50% mark in the Second Department. The picture

⁷⁹ The task force recognizes that the statistics reported herein may have been affected by which Judges agreed to participate in the survey and other selection bias inherent in any such type of survey. It thus is possible that there is a wider gap between the numbers of women versus men who have speaking roles in courtrooms throughout New York State than the gap demonstrated by the task force's study.

was not as strong in the upstate Appellate Divisions, where, even in cases involving a public entity, women were less well represented (32.6% in the Third Department and 35.3% in the Fourth Department). Women in the private sector in Third Department cases fared worst of all, where they represented 18% of attorneys in the lead and only 12.5% of attorneys in any capacity versus 36.18% of private sector attorneys in the First Department (for civil cases).

Set forth below are some standout figures by county:

- Female public sector attorneys in Erie County represented a whopping 88.9% of all appearances, although the number (n=9) was small.
- Female attorneys in Suffolk County were in the lead position just 13.5% of the time.
- Although the one public sector attorney in Onondaga County during the study period was female, in private sector cases, women represented just 22.2% of all attorneys appearing in state court in that county.

While not studied in every court, the First Department further broke down its statistics for commercial cases and the results are not encouraging. Of the 148 civil cases heard by the First Department during the survey period for which a woman argued or was lead counsel, only 22 of those cases were commercial disputes, which means that women attorneys argued or were lead counsel in only 5.37% of commercial appeals compared to 36.18% for all civil appeals. Such disparity suggests that women are not appearing as lead counsel for commercial cases, which often involve high stakes business-related issues and large dollar amounts.

B. Women Litigators in Federal Courts

Women are not as well represented in the United States Court of Appeals for the Second Circuit as they are in the New York Court of Appeals. Of the 568 attorneys appearing before the Second Circuit during the survey period, 20.6% were female—again, this number held regardless of whether the women were in the lead or in supporting roles. Women made up 35.8% of public sector attorneys but just 13.8% of the private attorneys in that court. Women represented a higher percentage of the attorneys in criminal cases (28.1%) than in civil cases (17.5%).

The Southern District of New York's percentages largely mirrored the sample overall, with women representing 26.1% of the 1627 attorneys appearing in the courtrooms of judges who participated in the survey—24.7% in the role of lead counsel. One anomaly in the Southern District of New York was in the courtroom of the Honorable Deborah A. Batts, where women represented 46.2% of the attorneys and 45.8% of the lead attorneys.

The figures from the Western District of New York fell somewhat below those from the Southern District of New York, again mirroring the slightly lower percentages of female attorneys' participation upstate in state courts as well: 22.9% of the attorneys appearing in the participating Western District of New York cases were women, and 20.8% of the lead attorneys were women.

Overall, women did slightly better in state courts (26.9% of appearances and 25.3% of lead appearances), than in federal courts (24.4% of appearances and 23.1% in the lead).

C. Women Litigators: Criminal & Civil; Private & Public

As has been noted in other areas, female attorneys are better represented among lawyers in criminal cases (30.9%) than in civil cases (23.2%), regardless of trial or appellate court or state or federal court. The difference is explained almost entirely by the difference between female attorneys in the private sector (22.5%) compared to female attorneys in the public sector, particularly with respect to prosecutors and state or federal legal aid offices, which provide services to indigent defendants (totaling 37.0%).

Similarly, women made up 39.6% of the attorneys representing public entities—such as the state or federal government but just 18.5% of lawyers representing private parties in civil litigation.

Overall, female attorneys were almost twice as likely to represent parties in the public sector (38.2% of the attorneys in the sample) than private litigants (19.4%).

Across the full sample, women made up 24.9% of lead counsel and 27.6% of additional counsel.

All these survey findings point to the same conclusion: female attorneys in speaking roles in court account for just about a quarter of counsel who appear in state and federal courts in New York. The lack of women attorneys with speaking roles in court is widespread across different types of cases, varying locations, and at all levels of courts.⁸⁰

⁸⁰ The survey did not include family or housing courts. Accordingly, the percentage of women in speaking roles who appear in those courts may be higher, especially in family court as that area of the law tends to have a greater percentage of women practitioners. See Vivia Chen, *Do Women Really Choose the Pink Ghetto?; Are women opting for those lower-paying practices or is there an invisible hand that steers them there?*, *The American Lawyer* (Apr. 26, 2017), <http://www.americanlawyer.com/id=1202784558726>.

D. Women in Alternative Dispute Resolution

The view from the world of ADR is slightly more positive for women, although more progress is needed. Two leading ADR providers gathered statistics on the proceedings conducted by their neutrals. In a sample size of 589 cases, women were selected as arbitrators 26.8% of the time and selected as mediators about half the time (50.2%). In a small sample size of two cases, women provided 50% of the neutral analyses but they were not chosen as court referees in either of those two cases.

Data from another major ADR provider revealed that women arbitrators comprised between 15-25% of all appointments for both domestic and foreign arbitrations.

IV. Going Forward: Suggested Solutions

The first step in correcting a problem is to identify it. To do so, as noted by this report and the ALM Intelligence study referenced above in its “Gender Diversity Best Practices Checklist”—the metrics component—firms need data.⁸¹ Regular collection and review of data keeps the “problem” front and center and ideally acts as a reminder of what needs to be done. Suggesting solutions, such as insisting within law firms that women have significant roles on trial teams or empowering female attorneys to seek out advancement opportunities for themselves, is easy to do. Implementing these solutions is more challenging.⁸²

Litigation Context

A. Women’s Initiatives

Many law firms have started Women’s Initiatives designed to provide female attorneys with the tools they need to cultivate and obtain opportunities for themselves and to place themselves in a position within their firms to gain trial and courtroom experience. The success of these initiatives depends on “buy in” not only from all female attorneys, but also from all partners. Data supports the fact that the most successful

⁸¹ Daniella Isaacson, ALM Intelligence, *Where Do We Go From Here?: Big Law’s Struggle With Recruiting and Retaining Female Talent* (Apr. 2017) at 12; see also Meghan Tribe, *Study Shows Gender Diversity Varies Widely Across Practice Areas*, The Am Law Daily (Apr. 17, 2017) <http://www.americanlawyer.com/id=1202783889472/Study-Shows-Gender-Diversity-Varies-Widely-Across-Practice-Areas>.

⁸² A summary of the suggestions contained in the report are attached hereto as [Appendix C](#). Many of the suggestions for law firms contained in this report may be more applicable to large firms than small or mid-size firms but hopefully are sufficiently broad based to provide guidance for all law firms.

Women’s Initiative programs depend on the support from all partners and associates.⁸³

One suggestion is that leaders in law firms—whether male or female—take on two different roles. The first is to mentor female attorneys with an emphasis on the mentor discussing various ways in which the female attorney can gain courtroom experience and eventually become a leader in the firm. The second is to provide “hands on” experience to the female attorneys at the firm by assigning them to work with a partner who will not only see that they go to court, but that they also participate in the courtroom proceedings. It is not enough simply to bring an associate to court and have her sit at counsel table while the partner argues the matter. Female associates need opportunities to argue the motion under the supervision of the partner.⁸⁴

Similarly, instead of only preparing an outline for a direct examination of a witness or preparing exhibits to be used during a direct examination, the associate also should conduct the direct examination under the supervision of the partner. While motions and examinations of witnesses at hearings and trials take place in the courtroom, the same technique also can be applied to preparing the case for trial.

Female attorneys should have the opportunity early in their careers to conduct a deposition—not just prepare the outline for a partner. The same is true of defending a deposition. In public sector offices—such as the Corporation Counsel of the City of New York, the Attorney General of the State of New York, District Attorney’s Offices and U.S. Attorney’s Offices—junior female attorneys have such opportunities early in their careers and on a regular basis. They thus are able to learn hands-on courtroom skills, which they then can take into the private sector after government service.

Firm management, and in particular litigation department heads, also should be educated on how to mentor and guide female attorneys. They should also be encouraged to proactively ensure that women are part of the litigation team and that women on the litigation team are given responsibilities that allow them to appear and speak in court. Formal training and education in courtroom skills should be encouraged and made a part of the law firm initiative. Educational sessions should include mock depositions, oral arguments, and trial skills. These sessions should be available to all junior attorneys, but the firm’s Women’s Initiative should make a special effort to encourage female attorneys to participate in these sessions.

⁸³ See Victoria Pynchon, *5 Ways to Ensure Your Women’s Initiative Succeeds*, <http://www.forbes.com/sites/shenegotiates/2012/05/14/5-ways-to-ensure-your-womens-initiative-succeeds/#20a31614ff92> (May 14, 2012) (citing Lauren Stiller Rikleen, *Ending the Gauntlet, Removing Barriers to Women’s Success in the Law* (2006)).

⁸⁴ Understandably, all partners, especially women partners, are under tremendous pressures themselves on any given matter. As a result, delegating substantive work to junior attorneys may not always be feasible.

Data also has shown that female attorneys in the private sector may not be effective in seeking out or obtaining courtroom opportunities for themselves within their firm culture. It is important that more experienced attorneys help female attorneys learn how to put themselves in a position to obtain courtroom opportunities. This can be accomplished, at least in part, in two ways. First, female attorneys from within and outside the firm should be recruited to speak to female attorneys and explain how the female attorney should put herself in a position to obtain opportunities to appear in court. Second, women from the business world should also be invited to speak at Women's Initiative meetings and explain how they have achieved success in their worlds and how they obtained opportunities. These are skills that cross various professions and should not be ignored.

Partners in the firms need to understand that increasing the number of women in leadership roles in their firms is a benefit, not only to the younger women in the firm but to them as well. Education and training of all firm partners is the key to the success of any Women's Initiative.

A firm's Women's Initiative also should provide a forum to address other concerns of the firm's female attorneys. This should not be considered a forum for "carping," but for making and taking concrete and constructive steps to show and assist female attorneys in learning how to do what is needed to obtain opportunities in the courtroom and take a leadership role in the litigation of their cases.

B. Formal Programs Focused on Lead Roles in Court and Discovery

Another suggestion is that law firms establish a formal program through which management or heads of litigation departments seek out junior female associates on a quarterly or semi-annual basis and provide them with the opportunity to participate in a program that enables them to obtain the courtroom and pre-trial experiences outlined above. The establishment of a formal program sends an important signal within a firm that management is committed to providing women with substantive courtroom experience early in their careers.

Firm and department management, of course, would need to monitor the success of such a program to determine whether it is achieving the goals of training women and retaining them at the firm. One possible monitoring mechanism would be to track on a monthly or quarterly basis the gender of those attorneys who have taken or defended a deposition, argued a motion, conducted a hearing or a trial during that period. The resulting numbers then would be helpful to the firm in assessing whether its program was effective. The firm also should consider ways in which the program could be improved and expanded. Management and firm leaders should be encouraged to identify, hire, and retain female attorneys within their firms. Needless to say, promoting women to department heads and firm management is one way to achieve these goals. Women are

now significantly underrepresented in both capacities.⁸⁵

C. Efforts to Provide Other Speaking Opportunities for Women

In addition to law firms assigning female litigators to internal and external speaking opportunities, such as educational programs in the litigation department or speaking at a client continuing legal education program, firms should encourage involvement with bar associations and other civic or industry groups that regularly provide speaking opportunities.⁸⁶ These opportunities allow junior lawyers to practice their public speaking when a client's fate and money are not at risk. Such speaking opportunities also help junior attorneys gain confidence, credentials, and contacts. In addition, bar associations at all levels present the prospect for leadership roles from tasks as basic as running a committee meeting to becoming a section or overall bar association leader. These opportunities can be instrumental to the lawyer's growth, development, and reputation.

D. Sponsorship

In addition to having an internal or external mentor, an ABA publication has noted that, although law firms talk a lot about the importance of mentoring and how to make busy partners better at it, they spend very little time discussing the importance of, and need for, sponsors:

Mentors are counselors who give career advice and provide suggestions on how to navigate certain situations. Sponsors can do everything that mentors do but also have the stature and gravitas to affect whether associates make partner. They wield their influence to further junior lawyers' careers by calling in favors, bring attention to the associates' successes and help them cultivate important relationships with other influential lawyers and clients—all of which are absolutely essential in law firms. **Every sponsor can be a mentor, but not every mentor can be a sponsor.**

Sponsorship is inherent in the legal profession's origins as a craft learned by apprenticeship. For generations, junior lawyers learned the practice of law from senior attorneys who, over time, gave them

⁸⁵ Lauren Stiller Rikleen, *Women Lawyers Continue to Lag Behind Male Colleagues*, Report of the Ninth Annual National Association of Women Lawyers National Survey on Retention and Promotion of Women in Law Firms (2015).

⁸⁶ It is noteworthy that, as of January 1, 2017, women comprise nearly 36% of the New York State Bar Association's membership but comprise only 24% of the Commercial and Federal Litigation Section's membership.

more responsibility and eventually direct access and exposure to clients. These senior lawyers also sponsored their protégés during the partnership election process. Certain aspects of traditional legal practice are no longer feasible today, so firms have created formal training and mentoring programs to fill the void. While these programs may be effective, there is no substitute for learning at the heels of an experienced, influential lawyer. This was true during the apprenticeship days and remains so today.

Because the partnership election process is opaque and potentially highly political, having a sponsor is essential. Viable candidates need someone to vouch for their legal acumen while simultaneously articulating the business case for promotion . . .⁸⁷

As Sylvia Ann Hewlett, founding president of the Center for Talent Innovation (formerly Center for Work-Life Policy), explained in a 2011 Harvard Business Review article “sponsors may advise or steer [their sponsorees] but their chief role is to develop [them] as leader[s]”⁸⁸ and “use[] chips on behalf of protégés’ and ‘advocates for promotions.”⁸⁹ “Sponsors advocate on their protégés’ behalf, connecting them to important players and assignments. In doing so, they make themselves look good. And precisely because sponsors go out on a limb, they expect stellar performance and loyalty.”⁹⁰

Recommendations for successful sponsorship programs include the following activities by a sponsor for his or her sponsoree:

- Expand the sponsoree’s perception of what she can do.
- Connect the sponsoree with the firm’s senior leaders.

⁸⁷ Kenneth O.C. Imo, *Mentors Are Good, Sponsors Are Better*, American Bar Association Law Practice Magazine (Jan./Feb. 2013) (http://www.americanbar.org/publications/law_practice_magazine/2013/january-february/mentors-are-good-sponsors-are-better.html) (emphasis added).

⁸⁸ Sylvia Ann Hewlett, *The Right Way to Find a Career Sponsor*, Harv. Bus. Rev. (Sept. 11, 2013) <https://hbr.org/2013/09/the-right-way-to-find-a-career-sponsor>.

⁸⁹ Kenneth O.C. Imo, *Mentors Are Good, Sponsors Are Better*, American Bar Association Law Practice Magazine (Jan./Feb. 2013), (http://www.americanbar.org/publications/law_practice_magazine/2013/january-february/mentors-are-good-sponsors-are-better.html).

⁹⁰ Sylvia Ann Hewlett, *Mentors are Good. Sponsors Are Better*, N.Y. Times, Apr. 13, 2013, <http://www.nytimes.com/2013/04/14/jobs/sponsors-seen-as-crucial-for-womens-career-advancement.html>.

- Promote the sponsoree’s visibility within the firm.
- Connect the sponsoree to career advancement opportunities.
- Advise the sponsoree on how to look and act the part.
- Facilitate external contacts.
- Provide career advice.⁹¹

Of course, given attorneys’ and firms’ varying sizes and limited time and resources, firms should consider what works best for that firm and that one size does not fit all.

E. Efforts by the Judiciary

Members of the judiciary also must be committed to ensuring that female attorneys have equal opportunities to participate in the courtroom. When a judge notices that a female associate who has prepared the papers and is most familiar with the case is not arguing the motion, that judge should consider addressing questions to the associate. If this type of exchange were to happen repeatedly—i.e., that the judge expects the person who is most familiar with the issue take a lead or, at least, some speaking role—then partners might be encouraged to provide this opportunity to the female associate before the judge does it for them.

All judges, regardless of gender, also should be encouraged to appoint more women as lead counsel in class actions, and as special masters, referees, receivers, or mediators. Some judges have insisted that they will not appoint a firm to a plaintiffs’ management committee unless there is at least one woman on the team. Other judges have issued orders, referred to earlier in this report, that if a female, minority, or junior associate is likely to argue a motion, the court may be more likely to grant a request for oral argument of that motion. Many judges are willing to permit two lawyers to argue for one party – perhaps splitting the issues to be argued. In that way, a senior attorney might argue one aspect of the motion, and a more junior attorney another aspect. Judges have suggested that it might be wise to alert the court in advance if two attorneys plan to argue the motion to ensure that this practice is acceptable to the judge. Judges should be encouraged to amend their individual rules to encourage attorneys to take advantage of these courtroom opportunities. All judges should be encouraged to promote and support women in obtaining speaking and leadership roles in the courtroom. All judges and lawyers should consider participating in panels and roundtable discussions to address these issues and both male and female attorneys should be invited and encouraged to attend such events.

⁹¹ Kenneth O.C. Imo, *Mentors Are Good, Sponsors Are Better*, American Bar Association Law Practice Magazine, (Jan./Feb. 2013), (http://www.americanbar.org/publications/law_practice_magazine/2013/january-february/mentors-are-good-sponsors-are-better.html) (emphasis added).

F. Efforts by Clients

Clients also can combat the gender disparity in courtrooms. Insistence on diverse litigation teams is a growing trend across corporate America. Why should corporate clients push for diverse trial teams? Because it is to their advantage to do so. According to Michael Dillon, general counsel for Adobe Systems, Inc., “it makes sense to have a diverse organization that can meet the needs of diverse customers and business partners in several countries” and diversity makes an organization “resilient.”⁹²

A diverse litigation team also can favorably impact the outcome of a trial. A team rich in various life experiences and perspectives may be more likely to produce a comprehensive and balanced assessment of information and strategy.⁹³ A diverse team is also better equipped to collectively pick up verbal and nonverbal cues at trial as well as “read” witnesses, jurors and judges with greater insight and precision.⁹⁴

Additionally, the context surrounding a trial—including the venue, case type, and courtroom environment—can affect how jurors perceive attorneys and ultimately influence the jury’s verdict.⁹⁵ Consciously or not, jurors assess attorney “[p]ersonality, attractiveness, emotionality, and presentation style” when deciding whether they like the attorney, will take him or her seriously, or can relate to his or her persona and arguments.⁹⁶ Because women stereotypically convey different attributes than men, a female attorney actively involved in a trial may win over a juror who was unable to connect with male attorneys on the same litigation team.⁹⁷ Accordingly, a team with diverse voices may be more capable of communicating in terms that resonate with a broader spectrum of courtroom decision-makers.⁹⁸

⁹² David Ruiz, *HP, Legal Depts. Ask Firms for Diversity, Make Efforts In-House*, Corporate Counsel (Apr. 5, 2017) <http://www.corpcounsel.com/id=1202783051167/Legal-Depts-Ask-Firms-for-Diversity-Make-Efforts-InHouse>.

⁹³ Craig C. Martin & David J. Bradford, *Litigation: Why You Want a Diverse Trial Team*, INSIDE COUNSEL, Oct. 14, 2010, <http://www.insidecounsel.com/2010/10/14/litigation-why-you-want-a-diverse-trial-team?slreturn=1495741834>.

⁹⁴ *Id.*

⁹⁵ Ann T. Greeley & Karen L. Hirschman, “*Trial Teams and the Power of Diversity*,” at 3 (2012).

⁹⁶ *Id.* at 5.

⁹⁷ *Id.*

⁹⁸ Craig C. Martin & David J. Bradford, *Litigation: Why You Want a Diverse Trial Team*, Inside Counsel (Oct. 14, 2010) <http://www.insidecounsel.com/2010/10/14/litigation-why-you-want-a-diverse-trial-team?slreturn=1495741834>.

Further, a diverse trial team can increase the power of the team's message. A diverse composition indirectly suggests that the truth of the facts and the principles on which the case is based have been "fairly presented and are universal in their message."⁹⁹ This creates a cohesive account of events and theory of the case, which would be difficult for an opposing party to dismiss as representing only a narrow slice of society.¹⁰⁰

The clear advantages of diverse trial teams are leading corporate clients to take direct and specific measures to ensure that their legal matters are handled by diverse teams of attorneys. General Counsels are beginning to press their outside firms to diversify litigation teams in terms of gender at all levels of seniority.¹⁰¹ Many corporate clients often directly state that they expect their matters will be handled by both men and women.¹⁰²

For example, in 2017, General Counsel for HP, Inc. implemented a policy requiring "at least one diverse firm relationship partner, regularly engaged with HP on billing and staffing issues" or "at least one woman and one racially/ethnically diverse attorney, each performing or managing at least 10% of the billable hours worked on HP matters."¹⁰³ The policy reserves for HP the right to withhold up to ten percent of all amounts invoiced to firms failing to meet these diverse staffing requirements.¹⁰⁴ Oracle Corporation has also implemented an outside retention policy "designed to eliminate law firm excuses for not assigning women and minority attorneys to legal matters."¹⁰⁵ Oracle asks its outside firms to actively promote and recruit women; ensure that the first person with appropriate experience considered for assignment to a case is a woman or a minority; and annually report to Oracle the number and percentage of women and

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Ellen Rosen, *Facebook Pushes Outside Law Firms to Become More Diverse*, New York Times (Apr. 2, 2017) https://www.nytimes.com/2017/04/02/business/dealbook/facebook-pushes-outside-law-firms-to-become-more-diverse.html?_r=1.

¹⁰² Ann T. Greeley & Karen L. Hirschman, "Trial Teams and the Power of Diversity," at 2 (2012).

¹⁰³ Jennifer Williams-Alvarez, *HP, Mandating Diversity, Will Withhold Fees From Some Firm*, Corporate Counsel (Feb. 13, 2017), <http://www.corpcounsel.com/id=1202779113475/HP-Mandating-Diversity-Will-Withhold-Fees-From-Some-Firms>.

¹⁰⁴ *Id.*

¹⁰⁵ *Hiring Women and Minority Attorneys – One General Counsel's Perspective*, <http://corporate.findlaw.com/human-resources/hiring-women-and-minority-attorneys-a-general-counsel-s-perspec.html#sthash.HNE30g5o.dpuf> (last visited June 1, 2017).

minority partners in the firm.¹⁰⁶ Similarly, Facebook, Inc. now requires that women and ethnic minorities account for at least thirty-three percent of law firm teams working on its matters.¹⁰⁷ Under Facebook’s policy, the firms also must show that they “actively identify and create clear and measurable leadership opportunities for women and minorities” when they represent Facebook in legal matters.¹⁰⁸

Corporate clients can follow the examples set by their peers to aid the effort to ensure that female attorneys have equal opportunities to participate in all aspects of litigation, including speaking roles in the courtroom.

G. ADR Context

The first step in addressing any issue is to recognize the issue and start a dialogue.

Accordingly, the dialogue that has begun amongst ADR providers and professionals involved in the ADR process is encouraging. One important step that has been undertaken is the Equal Representation in Arbitration pledge—agreed to by a broad group of ADR stakeholders, including counsel, arbitrators, corporate representatives, academics, and others—to encourage the development and selection of qualified female arbitrators.¹⁰⁹ This pledge outlines simple measures including having a fair representation of women on lists of potential arbitrators and tribunal chairs.¹¹⁰ Other important steps to encourage diverse neutrals have been taken by leading ADR providers, including such diversity commitments as described above.

Another example of a step is the establishment by the ABA’s Dispute Resolution Section of “Women in Dispute Resolution.” This initiative provides networking opportunities for women neutrals to be exposed to decision makers selecting mediators and arbitrators; develops a list of women neutrals and their areas of expertise; provides professional

¹⁰⁶ *Id.*

¹⁰⁷ Ellen Rosen, *Facebook Pushes Outside Law Firms to Become More Diverse*, New York Times (Apr. 2, 2017) https://www.nytimes.com/2017/04/02/business/dealbook/facebook-pushes-outside-law-firms-to-become-more-diverse.html?_r=1.

¹⁰⁸ *Id.* Some corporations have gone further, even firing law firms because they are run by “old white men.” Laura Colby, *Law Firms Risk Losing Corporate Work Unless they Promote Women*, Bloomberg (Dec. 9, 2016), <https://www.bloomberg.com/news/articles/2016-12-09/corporate-america-pressures-law-firms-to-promote-minorities>.

¹⁰⁹ *See Take the Pledge*, Equal Representation in Arbitration, <http://www.arbitrationpledge.com/pledge> (last visited Mar. 31, 2017).

¹¹⁰ *Id.*

development opportunities for women neutrals; and provides skills education for its members.¹¹¹ Those who select neutrals must make every effort to eliminate unconscious biases that affect such selection. They also must continually remember to recognize the benefit of diversity in the composition of panels neutrals that leads to better and more accurate results. If corporate counsel, together with outside counsel, make the same efforts to diversify the selection of neutrals, as they do when hiring outside counsel, then there may be a real change in the percentage of women selected as neutrals in all types of cases – particularly including complex large commercial disputes.

V. Conclusion

Unfortunately, the gender gap in the courtroom and in ADR has persisted even decades after women have comprised half of all law school graduates. The federal and state courts in New York are not exempt from this phenomenon. There is much more that law firms, corporate counsel, and judges can do to help close the gap. Similarly, the limited number of women serving as neutrals in ADR and appearing as counsel in complex commercial arbitrations is startling. While one size does not fit all, and the solutions will vary within firms and practice areas, the legal profession must take a more proactive role to assure that female attorneys achieve their equal day in court and in ADR.

The active dialogue that continues today is a promising step in the right direction. It is the task force's hope that this dialogue—and the efforts of all stakeholders in the legal process—will help change the quantitative and qualitative role of female lawyers.

¹¹¹ See <http://apps.americanbar.org/dch/committee.cfm?com=DR589300> for more information.

Task Force on Women's Initiatives*

The Honorable Shira A. Scheindlin (ret.), JAMS and Stroock & Stroock & Lavan

Carrie H. Cohen, Morrison & Foerster LLP

Tracee E. Davis, Zeichner Ellman & Krause LLP

Bernice K. Leber, Arent Fox LLP

Sharon M. Porcellio, Bond Schoeneck & King, PLLC

Lesley F. Rosenthal, Lincoln Center for the Performing Arts

Lauren J. Wachtler, Phillips Nizer LLP

*The task force especially thanks former Section Chair Mark A. Berman, Ganfer & Shore LLP, for his leadership and unwavering support and dedication to the women's initiative and this report. The task force also thanks Section Executive Committee Member Carla M. Miller, Universal Music Group, for her significant contributions to the task force and David Szanto and Lillian Roberts for their invaluable assistance in analyzing the survey data set forth in this report.

APPENDIX A

JUDICIAL FORM FOR TRACKING COURT APPEARANCES

Identify your court (e.g. SDNY, 1st Dep't; 2d Cir; Commercial Div. N.Y. Co) _____

I. *Type of Case*

- A. Trial Court Criminal ___ (for federal court) Civil ___
(please specify subject matter e.g. contract, negligence, employment, securities)
B. Appeal Criminal ___ (for federal court) Civil ___

II. *Type of Proceeding*

- A. Arraignment ___ B. Bail Hearing ___ C. Sentencing ___ (for federal court)
D. Initial Conference ___ E. Status/Compliance Conference
F. Oral Argument on Motion ___ (please specify type of motion e.g. discovery, motion to dismiss, summary judgment, TRO/preliminary injunction, class certification, in limine)
G. Evidentiary Hearing ___ H. Trial ___ I. Post-Trial ___ J. Appellate Argument ___

III. *Number of Parties (total for all sides)*

- A. Two ___ B. Two to Five ___ C. More than Five ___

IV. *Lead Counsel for Plaintiff(s)* (the lawyer who primarily spoke in court)

- | | | |
|-----------------|-----------------|-----------------|
| Plaintiff No. 1 | Plaintiff No. 2 | Plaintiff No. 3 |
| Male ___ | Male ___ | Male ___ |
| Female ___ | Female ___ | Female ___ |
| Public ___ | Public ___ | Public ___ |
| Private ___ | Private ___ | Private ___ |

V. *Lead Counsel for Defendant(s)* (the lawyer who primarily spoke in court)

- | | | |
|-----------------|-----------------|-----------------|
| Defendant No. 1 | Defendant No. 2 | Defendant No. 3 |
| Male ___ | Male ___ | Male ___ |
| Female ___ | Female ___ | Female ___ |
| Public ___ | Public ___ | Public ___ |
| Private ___ | Private ___ | Private ___ |

VI. *Additional Counsel for Plaintiff(s)* (other lawyers at counsel table who did not speak)

- | | | |
|-----------------|-----------------|-----------------|
| Plaintiff No. 1 | Plaintiff No. 2 | Plaintiff No. 3 |
| Male ___ | Male ___ | Male ___ |
| Female ___ | Female ___ | Female ___ |
| Public ___ | Public ___ | Public ___ |
| Private ___ | Private ___ | Private ___ |

VII. *Additional Counsel for Defendant(s)* (other lawyers at counsel table who did not speak)

- | | | |
|-----------------|-----------------|-----------------|
| Defendant No. 1 | Defendant No. 2 | Defendant No. 3 |
| Male ___ | Male ___ | Male ___ |
| Female ___ | Female ___ | Female ___ |
| Public ___ | Public ___ | Public ___ |
| Private ___ | Private ___ | Private ___ |

ADR FORM FOR TRACKING APPEARANCES IN ADR PROCEEDINGS

- I. Is this an arbitration or mediation? _____ If it is a mediation, is it court ordered? _____
- II. Type of Case (please specify) (e.g., commercial, personal injury, real estate, family law)

- III. If there is one neutral, is that person a female? _____
- IV. If there is a panel, (a) how many are party arbitrators and, if so, how many are females? _____
(b) how many are neutrals and, if so, how many are females? _____
(c) is the Chair a female? _____
- V. Assuming the panel members are neutrals, how was the neutral(s) chosen?
1. From a list provided by a neutral organization? _____
2. By the court? _____
3. Agreed upon by parties? _____
4. Two arbitrators selected the third? _____
- VI. Number of Parties (total for all sides) _____
- VII. Amount at issue (apx.) on affirmative case \$ _____ Counterclaims, if any \$ _____
- VIII. Lead Counsel for Plaintiff(s):
(lawyer who primarily spoke) (other lawyers who did not speak, including local counsel)
Male _____ Male _____
Female _____ Female _____
Government _____ Government _____
Non-Government _____ Non-Government _____
- IX. Lead Counsel for Defendant(s):
(lawyer who primarily spoke) (other lawyers who did not speak, including local counsel)
Male _____ Male _____
Female _____ Female _____
Government _____ Government _____
Non-Government _____ Non-Government _____
- X. Was the Plaintiff a female or, if a corporation, was the GC/CEO/CFO a female? _____
- XI. Was the Defendant a female or, if a corporation, was the GC/CEO/CFO female? _____
- XII. Was this your first or a repeat ADR matter for these parties or their counsel? If repeat, please describe the prior proceeding(s) in which you served and at whose behest and whether the proceeding involved the same or a different area of the law.

APPENDIX B

TABLE 1
SUMMARY OF FINDINGS

Category	# Men	# Women	% Women
Total - Sample-wide	3886	1309	25.2%
Trial level -all	1805	592	24.7%
Appeal level - all	1007	340	25.2%
Upstate Courts - all	1154	409	26.2%
Downstate Courts - all	2103	694	24.8%
Federal Courts - all	1890	611	24.4%
State Courts - all	1725	635	26.9%
All Courts - Parties of 1	561	259	31.6%
Parties of 2	2532	910	26.4%
Parties of 3-4	681	224	24.8%
Parties of 5+	587	142	19.5%
All Courts - Lead Counsel	3430	1 135	24.9%
All Courts - Additional Counsel	456	174	27.6%
All Courts - Private Civil Lawyers	1688	384	18.5%

TABLE 2
DETAIL DATA CITED IN REPORT

Category	# Men	# Women	% Women
Total - Sample-wide	3886	1309	25.2%
New York Court of Appeals	83	54	39.4%
Court of Appeals - Public Attorneys	39	41	51.3%
Court of Appeals - Civil Cases	42	18	30.0%
Court of Appeals - Criminal Cases	41	36	46.8%
New York Appellate Divisions			
First Department - Civil Cases		148	5.37% (commercial cases)
Second Department - Public Attorneys	64	63	49.6%
Third Department - Lead Counsel	200	44	18.0%
Third Department - Public Attorneys	31	15	32.6%
Third Department - Private Attorneys	168	24	12.5%
Fourth Department - Public Attorneys	209	114	35.3%
Erie County	190	70	26.9%
Erie County - Public Attorneys	1	8	88.9%
Suffolk County	176	28	13.7%
Onondaga County	95	35	26.9%
Onondaga County - Private Attorneys	14	4	22.2%
United States Court of Appeals for the Second Circuit	451	117	20.6%
Second Circuit - Public Attorneys	102	57	35.8%
Second Circuit - Private Attorneys	338	54	13.8%
Second Circuit - Civil Cases	331	70	17.5%
Second Circuit - Criminal Cases	120	47	28.1%
Southern District of New York	1203	424	26.1%
SDNY - Lead Counsel	931	306	24.7%
Western District of New York	236	70	22.9%
WDNY - Lead Counsel	221	58	20.8%
Trial level - all	1805	592	24.7%
Appeal level - all	1007	340	25.2%
Upstate Courts - all	1154	409	26.2%
Downstate Courts - all	2103	694	24.8%

Category	# Men	# Women	% Women
Federal Courts -all	1 890	611	24.4%
Lead Counsel	1595	478	23.1%
State Courts - all	1725	635	26.9%
State Courts - Lead Counsel	1672	613	26.8%
State Courts - Civil Cases	2896	874	23.2%
State Courts - Criminal Cases	628	281	30.9%
State Courts - Public Cases	692	428	38.2%
State Courts - Private Cases	2172	524	19.4%
All Courts - Parties of 1	561	259	31.6%
Parties of 2	2532	910	26.4%
Parties of 3-4	681	224	24.8%
Parties of 5+	587	142	19.5%
All Courts - Lead Counsel	3430	1135	24.9%
All Courts - Additional Counsel	456	174	27.6%
All Courts - Private Civil Lawyers	1688	384	18.5%

APPENDIX C

SUMMARY OF RECOMMENDATIONS

1. The Law Firms

- Women's Initiatives
 - Establish and support strong institutionalized Women's Initiatives with emphasis on the following:
 - Convincing partners to provide speaking opportunities in court and at depositions for junior attorneys
 - Training and education on courtroom skills
 - Leadership training
 - Guest speakers
 - Mentorship programs
- Formal Programs to Ensure Lead Roles in Court and Discovery
 - Establish a formal program through which management or heads of litigation departments ensure that junior associates are provided with speaking opportunities in court and at depositions.
 - Track speaking opportunities in court and at depositions on a quarterly basis
- Promote Outside Speaking Opportunities
 - Provide junior attorneys with internal and external speaking opportunities.
- Sponsorship
 - Establish and support an institutionalized Sponsorship Program.

2. The Judiciary

- Ask junior attorneys to address particular issues before the Court.
- Favor granting oral argument when a junior attorney is scheduled to argue the matter.
- Encourage attorneys who primarily authored the briefs to argue the motions or certain parts of the motions in court.
- Appoint qualified women as lead counsel in class actions and as members of steering committees as well as special masters, referees, receivers, and mediators.
- Include as a court rule that more than one attorney can argue a motion.

3. The Client

- Insist on diverse litigation teams.
- Monitor actual work of diverse team members.
- Impose penalties for failure to have diverse teams or teams where diverse members do not perform significant work on the matter.

4. ADR Context

- **Fair representation of women on lists of potential arbitrators and mediators.**
- Corporate counsel should demand diverse neutrals on matters.
- Stress the benefits of having a diverse panel of decisionmakers for arbitrations.
- Instruct outside counsel to consider diversity when selecting neutrals and monitor such selections.

**INFLUENCING FOR IMPACT:
THE NEED FOR GENDER EQUALITY IN THE
LEGAL PROFESSION**



The Law
Society



INFLUENCING FOR IMPACT: THE NEED FOR GENDER EQUALITY IN THE LEGAL PROFESSION

WOMEN IN LEADERSHIP IN LAW REPORT
Findings from the women's roundtables

March 2019

www.lawsociety.org.uk

Contents

Foreword	4
Introduction and methodology	5
Context	5
Research	5
Unconscious bias in the profession	7
Definition	7
What does unconscious bias look like in legal services?	7
Reasons for bias	12
Solutions and recommendations	13
Remuneration, equal pay and the gender pay gap	15
Overview	15
What does unequal pay and remuneration look like in legal services?	15
Gender pay gap reporting in the UK	20
Recommendations	21
Widespread flexible and agile working	22
Overview	22
Recommendations	26
Further best practice on diversity and inclusion	28
Men as champions for change	28
Women supporting other women	29
Zero tolerance for sexual harassment	29
Placing diversity at the centre of business planning	30
Targets and quotas	30
Values-based business and development	31
Recommendations	32
Conclusion	34

Foreword



*Christina Blacklaws,
President of the Law Society of England and Wales*

It is my great privilege to introduce the Law Society's latest report on gender equality in the legal profession. This report follows a previous one 'Setting the agenda for change,' conducted in 2012 as part of the International Women In Law Summit. Seven years on our research shows that across the world women lawyers continue to be significantly under-represented in positions of leadership in the sector.

In England and Wales, for example, women have made up over half of practising solicitors since 2018, but the profession continues to be led predominantly by men. Women from minority ethnic communities or who have disabilities face further barriers in their careers. Around the globe, the senior levels of law firms do not truly reflect the reality of a profession with a significant female majority at the point of entry. True equality is not achieved simply by the passing of time or by increasing the number of women in the profession. With the exception of in-house counsel roles and a few posts in private practice, women lawyers still do not uniformly occupy leadership roles commensurate with their qualifications and experience.

In our research, perceptions of unconscious bias was identified as the main barrier for career progression. Bias within an organisation is not always obvious and tangible. Sometimes it can take the form of small behaviours which make people feel excluded. This might, for example, include not acknowledging contributions equally. The inaction itself may not mean much, but the accumulation of these small behaviours reinforces and supports bias.

Disappointingly, a significant disparity in pay still exists between women lawyers and their male colleagues who perform similar roles, however, positive improvements have been made on data collection and reporting in certain jurisdictions. This has helped to shine a light on the issue and enables firms to take action to close the gender pay gap and increase transparency. Improvements can also be seen in the increased provision of flexible working arrangements.

There are many other factors at play, and the recommendations made in this report aim to shine light on them to further advance the agenda for positive change. Legal businesses need to tackle these barriers as gender balance, ensuring equal outcomes, diversity and inclusion are critical business issues that drive productivity. Having a diverse workforce and leadership makes sound economic sense, but this is dependent on the way that legal businesses manage the diversity of their workforce.

We will follow up this report with further insights from our men's roundtables, our international work and the impact assessment of all the commitments that individuals made to be activists and changemakers through using the bespoke toolkits we produced. However, we already have such a wealth of information from our women's roundtables, we wanted to share the data to provoke further discussion, consideration and, I hope, positive change.

I would like to say a special thanks to our Women in Law core group who have helped to shape the programme, the participants of our survey and the attendees of our roundtables who gave us invaluable data to produce this report.

Christina Blacklaws
President

Introduction and methodology

Context

Building on the work which the Law Society began in 2012 to understand the position of women in the legal profession, the Women in Leadership in Law project is one of the presidential priorities for 2018-19 and is led by Christina Blacklaws.

The Women in Leadership in Law project aims to provide a solid foundation of qualitative evidence about the position of women in law, raise awareness of the challenges we face in tackling inequality and promoting creative solutions, empower women to become changemakers and leaders in their organisation, and to channel the support of male champions for change. The content of this report is intended to provide insight into the lived experiences of individuals working in the law.

Our recommendations are broad enough to be used by law firms, in-house communities, courts, chambers and legal businesses, and the terms used throughout reflect this.



Research

The findings outlined in this report are based on substantial qualitative and quantitative research involving approximately 12,000 legal professionals from around the globe.

To better understand the key issues that affect women working in law, we conducted a survey which ran from November 2017 to January 2018 and captured 7,781 responses from men and women.

Using these key findings, we hosted or supported 225 roundtable discussions domestically, and in 13 jurisdictions, with women from across the legal profession including business leaders, solicitors, in-house counsel, barristers, academics and members of the judiciary.

We held approximately 40 roundtables, which were facilitated by the President of the Law Society, and the attendees were encouraged to host their own. We ensured that roundtables took place the length and breadth of England and Wales and that all roundtables were diverse. We held specific roundtables for women with intersecting protected characteristics (Black, Asian and Minority Ethnic (BAME), Lesbian, Gay, Bisexual and Transgender (LGBT+), disabled solicitors etc.) and for other groups such as judges and women parliamentarians who had been lawyers.

Roundtable participants were asked to focus on the key perceived issues that were identified in the survey – unconscious bias, the gender pay gap and flexible working – along with examples of best practice which can help to overcome the barriers to women’s progression.

All roundtables are being conducted under the Chatham House Rule which enables frank and open discussion. The women who attended our roundtables utilised our toolkit to enable them to become activists and to commit to making positive change happen in their organisations.¹ They told us they felt galvanised by the opportunity to make real change to the profession, and many went on to host their own roundtables with friends, colleagues, and peers.

¹ Toolkit available here: <https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/women-in-leadership-in-law/>

Across the sector, women of all ages, backgrounds and roles were brought together by a shared determination to make positive change to the current system which is perceived as not enabling them to achieve their aims and ambitions.

Men's roundtables are being held, utilising their own toolkit, and they too committed to being male champions for change and taking action.² Further roundtables will be taking place, across an additional six jurisdictions over the next few months, which will be led by the Law Society. The data from these roundtables is still being processed.

Approximately 4,000 people will have engaged in our roundtables when the process is concluded. Each has been asked to make personal commitments (utilising the toolkits) to be agents of positive change. We have asked them to report the results of their commitments and we will assess the impact of these commitments and cover this analysis and insight in the next report.

This report includes the top findings of the women's roundtables and a further report covering the international, men's and impact assessment insights will be produced later this year.

We also commissioned a comprehensive international literature review of the research available on women in leadership in law which is available on the Law Society's website. Extracts from the literature review are included in this report.

Some of the feedback received from the international roundtables has also been incorporated into our findings. Although the themes were similar to those highlighted by women in the domestic roundtables, we recognise that some of the strategies and solutions required will vary according to the different jurisdictions. A more focused report on the international women's roundtables will be produced later in the year.



² Toolkit available here: <https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/women-in-leadership-in-law/>

Unconscious bias in the profession

Definition

Unconscious bias refers to both positive and negative attitudes or stereotypes that affect our understanding, decisions or actions concerning an individual or group in an unconscious manner. All human beings – women and men – are biased; we are hardwired to make implicit associations. This enables quick thinking, but it is also the foundation for stereotypes, prejudice and discrimination.

Whilst it is possible to be unconsciously biased towards anyone, it is the biases that a dominant group has towards groups with protected characteristics that are most concerning, and it may result in discriminatory behaviour. In the UK, protected characteristics are defined under the Equality Act 2010 which guards against discrimination, harassment and victimisation in employment and the provision of goods and services. The Equality Act 2010 identifies gender reassignment, race, disability, age, sex, marriage and civil partnership, pregnancy and maternity, religion or belief, and sexual orientation as protected characteristics.

What does unconscious bias look like in legal services?

Scale of the problem

In our 2017-18 survey, the presence of perceived unconscious bias in the legal profession was the most commonly cited reason why so few women reach senior positions in law firms, reported by 52% of respondents. In most roundtable discussions the majority of feedback from participants related to bias – both conscious and unconscious – and the myriad of ways negative attitudes and stereotypes can manifest and affect each stage of a career.

Key themes

Barriers to the career progression of women include:

a. Not fitting into the traditional image of a business leader

Our research found that there can be a narrow definition of what effective leadership looks like, which often favours characteristics that are traditionally ‘male’ and stereotypically associated as masculine, such as being decisive, strong and assertive. Participants of our roundtables commented that these masculine traits are often rewarded whilst feminine traits are undervalued. This approach can sideline individuals, both women and men, who do not exhibit these characteristics and fit into the narrow characterisation for a leader in law.

For example, what is considered acceptable behaviour can vary depending on a person’s gender. Compartmentalising individuals based on their gender is also compounded by the language used to describe behaviour. For example, the words ‘confident’ or ‘bossy’ elicit very different perceptions, and these linguistic differences can have a significant impact on an individual’s career.

I think as a black woman, I over-compensate. I don't want to be perceived as aggressive or a certain way...it makes it difficult to be my true authentic self.

a women’s roundtable participant

Our research also found that recruiting in one’s own image, or looking more favourably on a candidate or colleagues when their behaviour, or even appearance, reflects their own is a significant problem in the profession. This could be because they feel a ‘connection’ with an individual who may have, for example, attended the same university, or have a similar background. This bias can impact every stage, from recruitment and work allocation, to assessment and promotion, the results of which lead to a perpetual narrowing of opportunities for those who do not fit the model.

I think people unconsciously form a view based on the way I look. I come across it regularly. A recent example; we were at a conference with senior partners, associates and above. I delivered a talk and after that, at least three people came up to me and said: "Oh you sounded really confident". It came as a real surprise to people that I had the capability to stand up and speak. I don't think they meant anything by it, but I went away from it thinking hmmm, how do people see me?

a women's roundtable participant

When individuals feel that there is no scope to progress, they may choose to leave private practice to work in-house or set up their own firm. However, while the rate of attrition for female solicitors supports the premise that there are benefits to working in-house – such as development, progression and flexible working – our research suggests that the issue of perceived unconscious bias remains even when female solicitors leave the world of private practice.

When I moved in-house I didn't think I would see the same level of unconscious bias but it was so prevalent throughout and as the only woman my manager made me feel that I owed him for hiring me... you have to work twice or three times as hard as men to be valued, recognised and to make it to leadership roles.

a women's roundtable participant

Roundtable participants also cited criteria used in performance reviews – the system used to help individuals measure and demonstrate their development to get to the next level – as a significant barrier to success. Participants felt that the criteria for success were often narrow and difficult for them to meet.

When we reviewed our appraisal process, we found that significant unconscious bias came out of promotions. Each day women came out at the bottom of the matrix even though we knew they were often the stronger candidates. It became clear that the qualities of the women were not being recognised.

a women's roundtable participant

Our literature review found that perpetuated notions of women's difference to their male counterparts results in their exclusion at all stages of a single career and ultimately limits advancement to positions of senior leadership.³ Despite diversity being integral to business growth, this notion of difference is especially true for those who have more than one protected characteristic (such as BAME and/or LGBT+ women) for whom the perception of being 'different' results in double and triple barriers. Beyond gender, individuals with protected characteristics are not proportionately represented in senior parts of the profession.

3 The Law Society's academic literature review on women in leadership in law, 2019. Unconscious bias chapter referencing Thornton, 2007.

In 90% of my networking with clients and staff, people are so inappropriate about either my gender or the fact that I am gay ... I have almost burst into tears as a result. I feel like I have had an extreme bias and perhaps a diversity and equality person might help this but our one has been the culprit at least three times.

a women's roundtable participant

Representation matters, and there is a strong desire amongst women to see people in leadership who are 'like me' – women who can be related to, particularly so that more junior women feel that they have senior leadership potential. Whilst organisations can be made more inclusive, unless women from diverse backgrounds are promoted to the top tier, it signals that they are not wanted there.

There is this push for women at the top but there isn't really any push for ethnic minorities. In our firm there are so many ethnic minorities, but as you go higher and higher, the colour seems to fade.

a women's roundtable participant

Feedback from those who are in the more advanced stages of working towards gender balance and inclusion in their organisations cited how support for women must be more than a statement from the top. The targeted actions and commitment of senior leadership are crucial to dismantling barriers and reversing behaviours which favour men.

Setting the tone at the top is not enough, and securing buy-in from middle management is also required to guarantee that all parts of the business are included and

to prevent stagnation. Middle management are often the missing link in ensuring that the correct behaviours are modelled and followed throughout an entire organisation.

It is also fundamental that bias is eliminated from assessment processes, starting at recruitment and maintained throughout every stage of an individual's career up to, and including, the most senior leadership roles. Processes should be used objectively with each person to value a spectrum of contributions in a way which can be benchmarked and monitored for consistency. For example, blind and contextual recruitment, work allocation policies and gender balanced recruitment, promotion, assessment and remuneration panels will help to attract diverse female candidates. This is particularly relevant at specific career transition points including entry level, retaining and supporting women throughout their careers, developing high performers so that they feel ready, willing, and encouraged to take on senior leadership roles.

b. Assumptions, ambitions and limitations

Many women reported that assumptions made about them because of their gender have damaged their careers. Conversely, there was a perception that the reverse is true for men who are presumed to be effective and capable as a natural consequence of their gender.

Our research showed how frequently solicitors were presumed to be the 'tea-girl' or notetaker by virtue of being the only woman in the room, and when women who have been in the profession for decades are mistaken for an assistant when accompanied by a junior male colleague. For individuals who have not experienced such instances, it may be easy to underestimate the demoralising effect which the assumption of inferiority, whether it is conscious or otherwise, can have on one's career.

Women also reported that there are assumptions about what they can and cannot do. Women lawyers with disabilities felt that people make assumptions about limitations and make decisions based on these incorrect assumptions. For instance, some reported being given menial work and being told it was not necessary for them to visit courts. They felt that others made decisions for them because of their disability and gender, which affected their enjoyment at work and confidence.

It's as if disabled people are invisible, unseen and unheard; when seen, disabled people may be considered to be weaker, readily patronised and stereotyped. This can lead to unemployment, less visibility in the workforce, and being cut-off from progression and leadership.

a women's roundtable participant with disabilities

These assumptions also extend to career progression. Our research showed that men are more regularly seen as wanting to become a partner, and consequently receive support and cues to help them on that path. For women, this assumption does not seem to automatically apply. As a result, women are often left unsure about whether to discuss their ambitions for leadership at their reviews early in their career.

Our literature review found that competency-based assessments may mitigate against some unconscious biases when assessing value and worth for remuneration and promotion, although that is dependent on the development of a sophisticated competency framework against which a more nuanced assessment of merit can be made.⁴

Our research evidences that not all assumptions came from 'a bad place'. Several participants spoke of times when male (and female) line managers had made career limiting decisions about them from what was seen by the line manager as thoughtful behaviour. For instance, not being put forward for a role which involved international travel/placement abroad when an employee had young children, assuming – incorrectly – that she would not want to take up the offer. However, it is important to note that making these assumptions without malice can still be discriminatory on the grounds of gender.

c. Limited value and commitment to their organisation

The majority of roundtable participants described themselves as ambitious. In many cases, they had often taken an active role in driving the change required in their organisations to level the playing field for men and women. However, women at all stages of their career and across all areas of practice felt that the bias of others, and sometimes their own bias, limited their success.

Our research showed that women believe that they are assessed as less worthy than male counterparts because of the lens through which their contribution is viewed. Participants discussed the pressure to over-deliver in order to be recognised as an equal to their male colleagues. This included the need to visibly demonstrate their value as a solicitor and their contribution to their firm or organisation. Whilst some acknowledged that there was a similar pressure for juniors in the profession, women with significant experience felt that they were still held to higher standards than their male colleagues who, in their view, benefit from the assumption of experience, prestige, and respect.

Unconscious bias exists, and men reinforce this – but if you speak out as a woman you are not endorsed because a different standard is expected of women. The focus for men is their potential, but women are judged on what they can do.

a women's roundtable participant

Despite perceived higher expectations, because of their gender and the common presumption that they want children, many women also felt that they were likely to be considered less committed, and therefore less valuable – irrespective of their desire to be a mother or not.

⁴ The Law Society's academic literature review on women in leadership in law, 2019. Unconscious bias chapter referencing Tomlinson et al, 2013.

In contrast, our literature review found that there is a ‘parenthood dividend’ (benefiting fathers). Fathers who are publicly ‘hands-on’ in their parenting are often seen as being ‘super dads’, committed to both their professional career and personal life. Mothers, however, are penalised in the work place for the same activities.⁵

d. Clients as drivers of change

Participants were in agreement that clients can be a powerful and positive driver of change for gender equality. There was consensus that clients, especially businesses or in-house legal teams, place importance on diversity and inclusion as a significant criteria when selecting firms as part of their panels or during tender processes.

In pitches for clients, don't just add a woman for the sake of having a woman on the panel. Include women in pitches because they would work on the client case. Potential clients should always ask the lead partner how diverse their pitch team is. If there are no women to field – why is that? What more can be done to position the women in the team for the next pitch?

a women's roundtable participant working in-house

However, some attendees talked about the opposite, citing instances where clients were responsible for perpetrating bias. In the UK, the Solicitors Regulation Authority Code of Conduct maintains that individuals and organisations should operate in a way that encourages equality of opportunity and respect for diversity. However, examples were given where clients stated they were only prepared to work with a male, or even a white, solicitor.

What we can be clear about is that solicitors must not discriminate unlawfully against anyone on the grounds of any protected characteristic. A solicitor should refuse their client's instruction if it involves the solicitor in a breach of the law or the code of conduct. Where a solicitor realises they have breached the code of conduct they may have a duty to report themselves to the regulator.

**Christina Blacklaws,
President of the Law Society**

Roundtable attendees shared their experiences of how, when clients do not like or agree with the advice given by their lawyer, they are far more likely to challenge it and be aggressive if such advice is given by a female lawyer; whereas they are more likely to challenge it respectfully if the advice comes from a male lawyer.



5 The Law Society's academic literature review on women in leadership in law, 2019. Unconscious bias chapter referencing Sommerlad et al, 2013.

Reasons for bias

The findings from our roundtables, survey and literature review on gender diversity in the legal services sector show that:

- Unconscious, and sometimes conscious, biases affect the way **women are measured and consequently appointed and promoted.**
- Unconscious, and sometimes conscious, perceptions of women lead decision-makers to **see women less favourably in professional contexts** than men.
- This leads to **unequal opportunities** for women and men, with business development opportunities, access to important clients, shortlists for promotions and development opportunities being dominated by men.



There might be several reasons for these biases:

- Many decision-making groups are **relatively homogenous in terms of ethnicity and often male dominated**, hence more likely to default to similar biases about merit or excellence.
- Often, measures to assess people are **subjective**, and nothing is being done to reduce the negative impact of bias in assessment processes.
- Proxies and alternative measures to **assess performance and merit are difficult to establish as they are very complex.**



These barriers can be seen in private practice and in-house legal teams across the legal services sector, the public sector and government legal services.

Solutions and recommendations

Unless active steps are taken to challenge this thinking, and sophisticated means to collect and analyse data are developed to shape decision-making, biases will continue to be perpetuated in the legal services sector. Bias can be tackled and actively prevented through the following actions.

Leading from the top and by example

For most organisations, outlook and standards of behaviour are led from the top. It is crucial for leaders to be aware of their bias to prevent it from influencing business decisions and colleagues alike. One roundtable member shared: “The views of the Senior Partner percolate across the department, so their general views about something, whether that is positive or negative, is crucial.” If leaders demonstrate their support for strategies which develop inclusive workplaces, best practices will be adopted more easily from their teams too.

Some participants suggested establishing a working group, to ensure accountability with the business, which reports on gender balance progress to the Board or partnership on a regular basis.

Humility and acknowledgment of bias

Ensuring that individuals, and especially leaders and managers, are completely conscious of their bias and the unconscious bias that persists within the organisation. This can help underpin a culture of awareness that is the foundation for change. By acknowledging that we all have bias, and by working to eliminate it from impacting business decisions, it will be less likely that an individual’s

immutable characteristics will hinder their progress in the profession. One roundtable participant told us: “I am an Asian woman in a senior position and I failed the Law Society’s Unconscious Bias training and I was horrified with myself, it was a real eye opener”.

Raising awareness as a starting point

Respondents to our 2018 survey reported that policies to address the issue are inconsistently enforced in their organisation, with only 11% reporting training on the issue. Organisations should implement unconscious bias training for everybody within the organisation, however, this needs to be supported by the right policies that address inappropriate workplace attitudes/behaviours and the right senior leadership commitment that creates inclusive workplace cultures.

Recruitment and selection processes

Law firms and in-house legal teams should be committed to making decisions purely on competencies, quality and attributes of the individuals involved. This should cover:

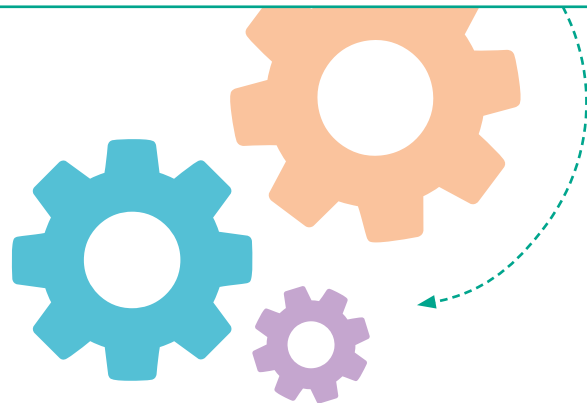
- Ensuring that your recruitment and selection policy and practice does not adversely impact on any specific group(s) of candidates, e.g. collect and analyse data on various protected characteristics and conduct annual audits to consider recruitment success rates at each stage (applications, shortlisting, and appointment).
- Using blind and/or contextual recruitment measures for all internal and external vacancies.
- Ensuring that equal numbers of male and female candidates are considered for every opportunity.

- Installing mixed boards and panels throughout the organisation when making decisions relating to recruitment, assessment, shortlists and promotions to consider gender, race, age, background and ability.
- Ensuring that recruitment/promotion panel members have undertaken equality, diversity and inclusion training and they are aware of unconscious bias and its impact on decision-making.
- Using competency-based assessments when assessing value and worth for remuneration and promotion.
- All candidates, proposals or nominations to be assessed on equal terms and graded on their merits, in accordance with the criteria and the aims and objectives set for each role or opportunity. Take into account that merit is not culturally or value-neutral when creating assessment criteria.
- Ensuring that directory submissions are diverse and inclusive to reflect the diversity of your organisation.
- In the UK, consider using the 'tie-break' positive action provision within the Equality Act 2010 to select candidates from under-represented groups.

Support during work

Supporting women in the workplace is important to prevent bias. This should include:

- Introducing work allocation policies or allocation of work being undertaken for all staff to eliminate bias.
- Conducting regular analysis to identify whether specific groups of staff are adversely impacted by current work allocation policies or practices.
- Implementing a programme of sponsorship, reverse mentoring, internal and external networking, comprehensive return to work packages and inclusive leadership training.
- Holding regular conversations with the leadership team on the impact that unconscious bias can have on appraisal/performance reviews and when opportunities or promotions are being addressed within the organisation.



Remuneration, equal pay and the gender pay gap

Overview

Our research found that equitable remuneration is a concern across the profession. The majority of attendees at our roundtables expressed concerns about remuneration in their roles. This was the case with practitioners working in-house and in private practice, nationally and internationally. Women in private practice raised more significant issues about pay than those working in-house in corporations or the public sector.

The main concerns expressed in our roundtables were that:

- Women are generally being paid less than men, even when male and female lawyers have similar qualifications and experience.
- Men are being paid more than women for doing the same or similar roles.
- The average difference between the remuneration for men and women in their organisations is wide (gender pay gap).
- This inequality is rooted in bias as well as in perceptions of a deficit of some key skills in women (for example, to effectively negotiate salary increases).

What does unequal pay and remuneration look like in legal services?

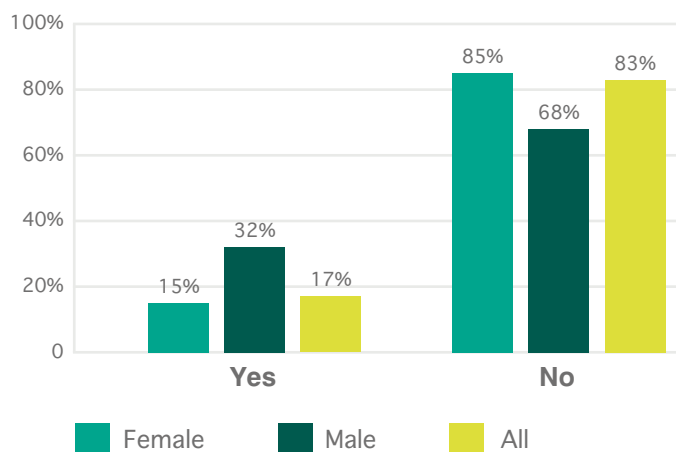
Scale of the problem

Our survey showed that:

- Over 60% of respondents reported that, based on their knowledge and experience, they were aware of a gender pay gap within their organisation.
- Only 16% reported visible steps being taken to address the issue. A smaller proportion of women reported steps had been taken (15%) than men (32%).

Participants in our roundtables supported this. It was also broadly agreed that the gender pay gap is evidence of the barriers to progression in the profession, and that tangible steps are required to close the gaps.

Have any visible steps been taken to address the gender pay gap in your workplace? (n=3,716)



Of the 3,716 respondents giving an answer, 83% reported that no visible steps had been taken to address the gender pay gap in their workplace.

A smaller proportion of women reported steps had been taken (15%), compared to 32% of men.

Key themes

Some of the identified barriers to progression associated with remuneration include:

a. The need for greater transparency

In the roundtable discussions, many participants expressed frustration about the lack of clarity around how salary increases and bonuses are currently allocated in their firms and businesses.

If there is no visibility I don't know how I am performing relative to my peers.

a women's roundtable participant

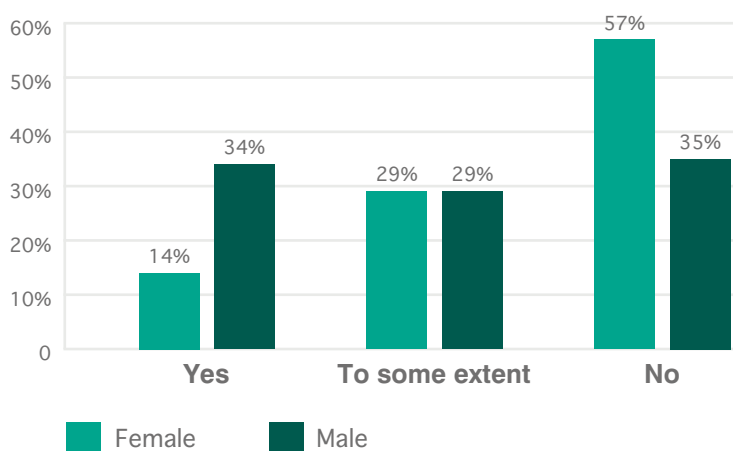
Academic studies show that workplaces which discourage, or even prohibit, discussion about remuneration between staff perpetuate the issue of pay inequality. In some jurisdictions, like the UK, terms in contracts that prevent disclosure of pay to third parties such as a trade union are unenforceable.

Our research showed that many individuals did not know, or were unsure about, what was required of them to qualify for a salary increase or a discretionary bonus. This included not knowing when discussions around salary were appropriate or permissible and, in some instances, being prohibited from discussing the topic during the appraisal process.

I manage a team of twenty-two people, but I don't know any of their salaries. It would be useful to know the bands that they fall under at least so that I can support them on their request.

a women's roundtable participant

Do you consider the pay and reward structures to be transparent? (n=6,280)



Our survey also found that over 55% of individuals felt that pay and reward systems in their organisations are not transparent.

Experiences concerning subjective and arbitrary remuneration were frequent, and a direct correlation to perceived unconscious bias was drawn by participants.

Where I work there is no structure for pay reviews or promotion – if you are performing well and your ‘face fits’ you will get the promotion.

a women’s roundtable participant

Some participants working in larger firms seemed to have a more positive experience than those in medium or small firms. A number of large law firms operate under a lockstep system where salaries are based on the level of seniority within the organisation, meaning that individuals at each level receive the same base pay irrespective of their background, experience or ability. It was suggested that this system does not guarantee fair pay all the time, but it helps to limit the impact of both conscious and unconscious bias on salary decisions.

There is more of an overt pay gap in the in-house sector.

an international women’s roundtable participant

As well as ensuring that staff feel valued, transparency around pay is also good for recruitment because equitable treatment is evident from the outset. Feedback from the roundtables brought to light a practice that some firms might be ‘bringing in cheap’ lateral hires, often from smaller firms, and then not paying them in line with their peers to save costs.

Other evidence from participants suggested the reverse could also be true with examples of men being laterally hired at a higher salary than women already employed by the firm. The common denominator seemed to be that women were often paid less than male equivalents.

When I decided to leave, I had to lie when applying for my next role and tell them I was earning a lot more so that they would see my value.

a women’s roundtable participant

b. Unequal opportunities for women to achieve greater remuneration

Participants of our roundtables expressed concerns about unequal opportunities for women to secure greater remuneration. This concern was most prominent for women working in national and international firms.

Where bonus is allocated by partner consensus, it can be difficult to advocate for women if the majority of partners are men.

an international women’s roundtable participant

Generating income is a key driver for legal businesses. This is reflected in how meeting, and exceeding, billing targets is often seen as the primary qualifier for reward and recognition for lawyers. However, participants suggested that:

- Billing figures do not necessarily reflect good lawyering – they are not evidence of productivity or quality in themselves, and do not consider other work which is necessary but not financially evidenced.

- Focusing purely on billing also drives a culture of presenteeism, encourages inefficiency and limits productivity, with longer hours worked to charge more to the client.
- By failing to look at the wider picture, other equally measurable contributions (e.g. individual support and development; team building and morale; knowledge management), which are beneficial to teams and the wider business in other ways, are overlooked or undervalued.

A significant number of attendees said that women take on much of this ‘heavy lifting’ – work that is undesirable or non-chargeable – recognising it to be ‘part of the job’ but which receives very little appreciation or acknowledgment.

Women more often step up to do non-chargeable tasks, which could reflect poorly on billable hours.

a women’s roundtable participant

For many, the area of law in which they practice was also significant in determining the rate of pay. Family law, for instance, has a majority of female practitioners and it is challenging to get men to join this area. However, other areas such as corporate finance are male dominated with women being reluctant to practice in it as they feel that it requires a 24/7 commitment or involves extensive travel. The rate of pay in the male dominated subjects is more lucrative than the female dominated ones.

A female partner in my firm was pushed off to real estate but men go to acquisitions so that they can get the big money.

a women’s roundtable participant

c. Unequal work allocation and the need for fair distribution of work

Roundtable participants explained their frustration when allocated ‘housekeeping work’ rather than ‘glory work’ which negatively impacted on remuneration. For women who work reduced hours, this was particularly stark as they often felt overlooked when more interesting, and higher revenue-generating, work was allocated. This issue extends beyond lawyers working in firms, and in one of our roundtables a member of the judiciary shared how it is becoming obvious that women barristers are “simply not being given access to the lucrative work”.

Other than having a clear and transparent process in place, individuals felt that the gender pay gap in their organisations could be reduced with fair distribution of work. Objective work allocation processes are currently being used with great success in many firms to level the playing field by ensuring that work is allocated on the basis of capability and capacity, which leads to greater access to well-paid work and development opportunities for women; these factors were cited as fundamental to achieving positions of leadership by roundtable attendees. It was also felt that women were often not provided with the same level of administrative support as men, which limited their earning potential.

All the men in my organisation had PA support, but none of the women did. It’s not just a pay gap that disproportionately benefited the men, they were provided with extra resources too...but men are more forceful about needing to delegate and women are presumed to take it all.

a women’s roundtable participant

d. Prejudice in negotiating remuneration

Many women participants made the suggestion that there should be no question about former salary when applying for a new role – “businesses should pay what the role is worth rather than what they can get the person for” – as some had to lie about previous remuneration as they knew they were being underpaid.

Our research suggests women are often blamed for not being more vocal in seeking out or negotiating higher salaries. An explanation for this was that the profession is not immune to the pervasive societal norms about what behaviour is acceptable and expected from women.

Some roundtable participants suggested that men are more often considered to be confident and assertive when they ask for more money, which can be seen as a sign by leadership that they are taking charge of their careers. In contrast, female participants also reported that they were accused of being confrontational when discussing salary.

You don't want to sound like the petulant women by asking for more even though you know that a man doing the same would be considered forthright and decisive.

a women's roundtable participant

Our research suggests that the solution to unequal pay is not to ‘fix’ women but to instead devise structures and policies that ensure they are paid more fairly, according to their skills and experience, and that they are not overlooked because ‘they just don’t ask’.

Participants felt strongly that pay should always reflect the work that they do. For some, the risk of a negative and career-limiting response to asking for a salary increase or bonus is far too high, so they prefer not to ask. Other women said that they are so grateful for having flexible working in their firms or organisations that they will put up with the unequal pay.

I have been a lawyer for 20 years and last year was the first time that I challenged my line manager in my pay review – I think that this is because I don't place so much importance on the salary, but I don't feel that this is a reason why women should be left behind because of this.

a women's roundtable participant

However, when firms allow salary to be on the discussion agenda, e.g. as part of yearly appraisal processes, women feel able to have conversations about remuneration and a discussion with managers to explore options.

I feel that women have to work harder than the men to get to the same position, so any kind of recognition or pay rise you are grateful for and it is empowering to hear that you asked for more and you got it.

a women's roundtable participant

e. Intersectionality: other characteristics affecting remuneration

The gender pay gap provides another example of a double barrier faced by some women due to the intersection of gender with other characteristics. For example, some women lawyers with disabilities who attended our roundtables said that they were not paid less because of their condition, but that they felt they faced barriers to career progression because they are disabled.

Women lawyers from ethnic minority backgrounds also faced significant challenges due to the intersection of gender with race.

I am the only ethnic minority woman in the team. Due to an error by my boss the salary data of my department was disclosed. I was shocked to find out that not only am I the lowest paid, despite having 10 years of experience, but a white male colleague gets paid 80% more than me. We do a very similar job with almost identical responsibilities.

a roundtable participant working in-house

Gender pay gap reporting in the UK

Participants discussed the demoralising effect which awareness or suspicion of a gender pay gap had on individuals. They gave examples of when a failure to acknowledge or resolve a pay gap often leads to committed and valuable staff members perceiving this barrier as being too significant to overcome, and therefore look for alternative employment. This loss of talent can have much wider ramifications on team – and client – satisfaction and result in increased recruitment costs as well as the loss of tacit knowledge.

In 2017, the UK government introduced reporting requirements to identify the difference in average basic pay and bonus pay between all men and women within organisations with at least 250 employees in England, Wales and Scotland. Employers are now required to publish statutory calculations every year to reveal to what extent there is a gender pay gap between male and female employees and by how much.

The participants were very positive about the policy and felt that the UK government collating this data shone an important light on gender pay gap issues and reported that many of their firms which were not required to report had, for the first time, reviewed their gender pay gap. However, participants reported that there was insufficient transparency around this.

My firm doesn't have to declare their gender pay gap figures, so they won't.

a women's roundtable participant

The allocation of bonuses was a factor which stood out in the gender pay gap reporting as the most significant mean and median gaps between men and women and this was reflected by our participants. A significant number of roundtable attendees work in organisations where the criteria used by the leadership for allocating discretionary bonuses were not known. Many examples were given of the use of anecdotal evidence to justify why a participant, or their colleague, did not qualify for a discretionary bonus, including “their partner gets a high salary, so they’ll be alright and don’t need a bonus” and “well she doesn’t need that because she is married to an investment banker”. The same was used for men, but more often it was in their favour, for example it was required because they had a family to support.

My partner has been told that she is not going to have a pay rise because they know that I work for a national firm and am on a good salary.

a women's roundtable participant

Recommendations

To ensure remuneration is fair, we recommend that businesses do the following:

- 1. Value the different contributions that women make and ensure that they are financially recognised, rewarded and count towards promotion.**
- 2. Ensure all employees in the firm are paid equally. Guidance on the Law Society's equal pay recommendations can be found [here](#).⁶**
- 3. Employ appropriate work allocation processes to ensure women and men have equal access to profitable work.**
- 4. Devise an objective salary structure that is transparent and ensures that everyone is paid fairly, according to their skills and contributions and not on the basis of 'who shouts loudest'.**
- 5. Create spaces for salary and remuneration to be on the agenda of discussions, e.g. as part of appraisals.**
- 6. Measure ethnicity, disability, sexual orientation and socio-economic background pay gaps, which will offer a more comprehensive picture of the overall state of equality and inclusion in the organisation.**
- 7. Develop a gender pay gap plan for your organisation which covers:**
 - implementation of flexible and agile working and include staff input on what would work for them
 - reviewing policies on shared parental leave, maternity leave, paternity leave and supporting working carers

- introducing initiatives focused on women returning to work
- reviewing policies and procedures for recruitment shortlists and interview panels
- reviewing your pay and reward structures, with a particular focus on performance-related bonuses, to ensure transparency and compliance with equal pay.

8. In England and Wales, and other countries where gender pay gap reporting exists:

Firms and businesses should include partner pay alongside employee pay data to give lawyers and the wider public a useful benchmark, increased confidence in pay reporting and enable an evidence-based action plan to tackle inequalities. Guidance on the Law Society's gender pay gap reporting can be found [here](#).⁷

Firms and businesses should implement the recommendations set by the House of Commons' Business, Energy and Industrial Strategy Select Committee in their published report '**Closing the gender pay gap – businesses must drive change,**' including:

- providing narrative reporting alongside your gender pay statistics and an action plan setting out how pay gaps are being, and will be, addressed
- reporting any gender pay gap even if the organisation is under the current threshold of 250 employees (the government is likely to reduce the threshold in the near future).

Other recommendations for reducing and eliminating the gender pay gap in your organisation include:

- sponsoring junior staff to support the progression of their careers
- ensuring accountability by reporting the progress of gender pay gap reduction to the leadership team.

⁶ <https://www.lawsociety.org.uk/support-services/advice/practice-notes/equal-pay/>

⁷ <https://www.lawsociety.org.uk/support-services/advice/articles/gender-pay-gap-reporting-setting-the-standard/>

Widespread flexible and agile working

Overview

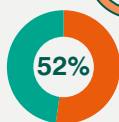
Flexible working practices continue to be crucial for career progression of women working in the legal services sector. Flexible working often means that whilst the number of hours worked remain the same, there is flexibility in the start and finish times and the ability to work remotely. Agile working is slightly different and gives more autonomy to the individual being able to work where, when and how, with maximum flexibility and minimum constraints to optimise performance.

Our 2018 survey evidenced that 91% of respondents felt that a flexible working culture was critical to improving diversity in the legal profession (compared to 86% in 2012). Back in 2012 this issue was considered the number one factor in encouraging more women to reach the top and the 'most critical change to be effected'.

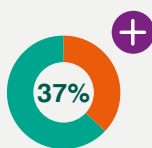
Scale of the issue

Our survey also found that:

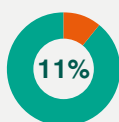
- 52% of respondents said that they worked in organisations where a flexible working policy is consistently enforced



- 37% said that they worked in organisations where there's provision, but it is not consistently enforced



- 11% said that they worked in organisations with no provision for flexible working.



In our roundtables it was clear that structured flexible working schemes were more prevalent in corporations and big businesses, which benefited lawyers working in-house and in the public sector. It was also clear that flexible working has improved in the past five years and that it is now embedded in some organisations.

For us it is seen as second nature. This is recent as it was previously not considered because of a prevalent culture of presenteeism.

an in-house lawyer and women's roundtable participant

Key themes

a. Widespread variation of flexible working in firms

Most of the concerns raised by the women attending our roundtables were in private practice. There was significant variation in relation to flexible working in firms, both nationally and internationally.

Our research found that for many, the meaning of working flexibly is ambiguous and unclear. Different phrases are used to describe it across the profession and it can mean different things to different people, even within a single organisation. For some it means reduced hours, working from home, hot desking, agile working, job sharing or even parental leave. Because there is no uniform practice or scope, participants reported that flexible working is not always clearly defined, which can cause confusion and frustration for staff members. Policies and guidelines are required to set expectations.

Being able to work flexibly is not a new initiative. It has been used successfully by many for years, with some roundtable attendees commenting that they have known colleagues – both women and men – who have worked flexibly for up to a decade. They also noted that this practice was not always common knowledge because the person concerned produced results and it was presumed that when they were not at their desk, they were at a meeting or with a client. Some participants commented that this assumption was more often (and perhaps only) made about men. Women are often assumed to be undertaking childcare. For senior members of the profession, and for partners in particular,

it is relatively easy to work flexibly. At the roundtables, women encouraged their junior colleagues to ‘stick with it’ because of how much easier the job becomes once partnership is attained and the choice of working flexibly is your own.

One of the advantages of working in high street firms is the ability to work flexibly. There is no difficulty when it is requested because it helps to retain quality people. Some difficulties lie when people are not mutually supportive, some people in the firm may feel resentful.

a high street practitioner and women’s roundtable participant

Because the scope of flexible working is unclear, many feel required to justify their reason for wanting to work flexibly. For some, flexible working is culturally permissible only for those with caring responsibilities, for others it is only appropriate for mothers.

It is usually okay to work flexibly for kids’ pick-ups but not for looking after elderly parents. If you are without children and want time to have a life-work balance this is not promoted or recognised by society in the same way that childcare has been – is there a protective framework we can have?

a women’s roundtable participant

Roundtable participants explained that even when flexible working is available, they do not always feel able to use it, as it is sometimes incompatible with commercial

and business needs. It can be especially difficult in international firms, where there is less real ‘down time’ given the need to work across different time zones. Technology solutions and more team working could ease the burden in this area.

Half the problem is being consciously aware, i.e. we set meetings in the morning and at the end of the day when people might have other responsibilities like dropping off kids at school.

a men’s roundtable participant

Attendees of our roundtables suggested that choosing to work flexibly can limit career progression. Too often staff who work flexibly can be made to feel that choosing to do so is ‘career suicide’, and in many cases men and women were told explicitly that working flexibly would prevent them from progressing.

Participants mentioned that there is a perception that people without caring responsibilities are more valuable to organisations. However, our literature review suggests that those who work flexibly or reduced hours tend to be more focused on time and more driven to complete projects on time.⁸

In my career I was told that I needed to work ‘full time, or not at all’, so left the profession. When I left, my male colleagues told me ‘it’s a shame it would have been nice to see more of you’ even though I was working 40 hours a week on a 28 hour a week contract.

a women’s roundtable participant

⁸ The Law Society’s academic literature review on women in leadership in law, 2019. Flexible working chapter referencing Sommerlad et al, 2013.

If the business culture is based on rewarding employees for long hours outside usual business hours, flexible workers are penalised. For example, many roundtable attendees cited how they know that choosing to work condensed hours or even a four-day week resulted in no less work, but an increased pressure, neither of which would be recognised financially.

Flexible working does not lend itself to promotion opportunities. The nature of the profession is based on billable hours and the outdated matrix often used which is weighed in favour of men.

a men's roundtable participant

Even where flexible working is mainstreamed and commonplace, there are still barriers to fully adopting it. For example, if a supervisor chooses not to work flexibly or they are known to disapprove of flexible working, the likelihood of the team feeling able to do so drops significantly. Many participants were clear of the need for middle management to be appropriately incentivised and committed to supporting flexible working policies. Roundtable participants also cited the need for men to take up flexible or reduced hours working to make it more culturally acceptable and less damaging to their own careers.

b. Positive improvements in recent years

In the roundtables that we held in England and Wales, it was clear that attendees felt that flexible working had improved significantly in the past several years, and increasingly it is seen as crucial for business success and almost a 'hygiene factor'.

One of the positive improvements identified by attendees was that men are also starting to work flexibly. Some believed that this was particularly evident at the junior end of the profession, with a participant suggesting that: "it's a generational not a gender issue". Another

participant added: "the more senior you are, the more you are expected to be 'seen' so flexible working is not encouraged at this level".

However, other participants reported that senior men in firms, including partners, are also embracing this policy as the leadership of the firms sees that it is important to lead changes on ways of working from the top.

Our firm a few years ago gave everyone from partner down the option to work from home and it is still working well. They just need to know where people are, set an expectation that everyone will work one day from home. Women were applying to work flexibly and men were just doing it of their own accord which was unheard of – making the policy universal removed the issue.

a women's roundtable participant

Flexible working has improved significantly in the last five years, before then we did not have a single partner who worked part time. Now, over 90% of flexible working applications are accepted in the firm. We have a life balance that we never previously had.

a women's roundtable participant

Participants also mentioned that flexible working has started to be seen as a usual working practice rather than exceptional.

When the firm realised that it had a stigma against women with children it was mandated that all partners had to work from home once a week to make it easier for everyone to take and it is now very popular and is embedded into the culture – it has encouraged people to realise that being a partner does not mean having to work a seven-day week.

a women's roundtable participant

Some firms have core hours of work when staff have to be in the office, which was welcomed by most of the participants, as they were able to arrive late or leave early to meet other commitments. This extended beyond those with caring responsibilities, and to everyone, irrespective of their role.

Challenges with working flexibly

Women who work flexibly talked of challenges they faced with the main one being a persistent culture of presenteeism felt to be still prevalent in the legal profession. Our literature review showed that across much of the profession, working long hours is perceived as a 'badge of honour'⁹ to the extent that workaholism can be seen as a core value of professionalism.¹⁰

Other challenges include:

- Combating the perception that flexible working means open ended availability. Some attendees reported that despite making use of the flexible working policy, they felt that they had to compensate by responding to emails at unsociable hours or working extra hours in the office or remotely to meet demands.
- Combating the perception that not being available to work late at short notice, or not being available 24/7, signals a lack of commitment.

- Having and keeping high levels of trust from managers or employers when working flexibly.

We have informal flexible working – no official policy – but everyone is sensible and is trusted to do so and it makes up for working very long hours.

a women's roundtable participant

- Having the right technology and equipment to ensure that they have the capabilities to do their work. In some firms this is well set up, a lawyer said that her firm would send an IT person into her home for set up and a working from home kit. Another mentioned that "everyone in our department has mobile phones and laptops issued when they start and they all have open calendars so that we can see availability at all times".
- Missing out on opportunities. There were concerns from some attendees that those who are in the office will have a competitive advantage and those that aren't will miss out on opportunities. A participant highlighted "those not in the office may get left out if partners only use the people present".
- Feeling uncomfortable for not being in the office. It was said that there is "huge amounts of guilt attached to flexible working – it is not the panacea". It was also suggested that they were concerned about how other members of the firm perceived them in their roles for working flexibly.

The main issue of women working flexibly is the perception that they are looking after their children when they work.

a women's roundtable participant

⁹ The Law Society's academic literature review on women in leadership in law, 2019. Flexible working chapter referencing Duff L & Webby L, 2004.

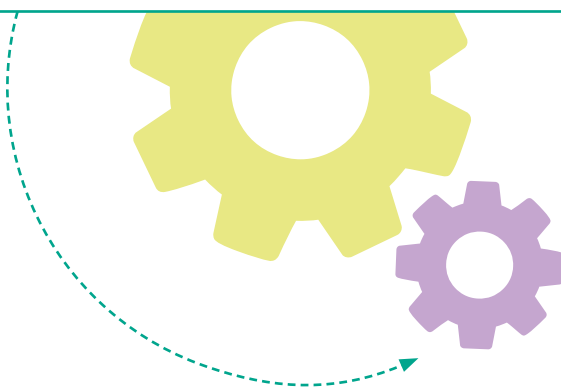
¹⁰ The Law Society's academic literature review on women in leadership in law, 2019. Flexible working chapter referencing Sommerland H, 2004.

Recommendations

To address these obstacles, we recommend:

- 1. Making flexible working available to everyone by focusing on contributions rather than time spent in the office. This includes having a clear policy on flexible working for the business which is universal and communicated to all staff members. It should be available, wherever it can be accommodated, and accessible to everyone irrespective of the purpose.**
- 2. Developing bespoke flexible working packages for individual teams that take into account resources available to deliver key outputs, including time sensitive work. For instance, making time for the team to access experience and knowledge of senior practitioners or supervisors who work core hours in the middle of the day.**
- 3. Senior leaders should lead by example and demonstrate that working flexibly can be undertaken by various colleagues at diverse levels of the organisation. This helps to make sure that it becomes culturally acceptable to work flexibly without the risk of stigma.**
- 4. Not making assumptions about what mothers, fathers, or others with caring responsibilities want or are able to do and identifying a range of flexible working solutions.**
- 5. Identifying what work can be completed from alternate locations or outside the usual office working hours timeframes.**
- 6. Creating objective performance measures so that flexible workers are not judged more/less favourably than their peers.**
- 7. Considering how the timings of meetings and social gatherings impact those with caring responsibilities and part time employees and partners.**
- 8. Encouraging flexible working to all staff regardless of caring responsibilities to support a mindful working environment.**
- 9. Ensuring the right IT, equipment and support is available to help to keep teams working flexibly. For example, forward incoming calls for seamless client experience and use internet calls and video conferencing with clients and colleagues alike.**

10. Exploring innovative options for flexible working that are led by the teams. A participant from a roundtable shared that in her workplace women were able to have different phases in their careers, 'career mode and work mode'. This allows women to be in work mode for a while but being able to choose to go into career mode too. This initiative demonstrated the merits of having a longer career arch if taking time out, without being sidelined and precluded from progressing.
11. Implementing objective performance measures so that flexible workers are not judged more or less favourably than their peers and using metrics to monitor performance evenly.
12. Ensuring that work is evenly distributed so that everyone gets a chance to do high-profile work, irrespective of their working arrangements, and holding managers accountable if this is not followed.
13. Ensuring that existing maternity, paternity, adoption and shared parental leave policies do not adversely impact upon any specific group(s) of staff by undertaking regular monitoring of uptake of these provisions before, during and after leave is/has been taken.
14. Monitoring the extent to which staff are able to transition from reduced hours to full time working and vice versa according to gender.
15. Monitoring how policies and practices for staff with caring responsibilities and the support available is proactively communicated to all employees and partners.
16. Monitoring the support available to staff returning from maternity, paternity, adoption, shared parental leave or other type of career break.
17. Encouraging men to take advantage of paternity and shared parental leave when they are entitled to it.



Further best practice on diversity and inclusion

In addition to understanding the barriers limiting career progression in the legal services sector, a significant part of our research focused on identifying best practice for gender equality as well as wider efforts around diversity and inclusion. This section captures some of those ideas identified in the roundtables, to add to the recommendations made in the previous sections of this report.

Naturally, different firms and organisations will be at different stages of their journey with diversity, inclusion and gender balance. We recognise that businesses will be dependent on their resources to implement best practice solutions, and we have addressed the solutions in a broad way so that they can be adopted to a smaller or greater extent, depending on the needs of the organisation.

Men as champions for change

We should celebrate what the men are doing on diversity and mentoring. There is some amazing hidden mentoring going on which we need to celebrate and let more junior people know it is happening.

a women's roundtable participant

Engagement and support from men is critical to achieving true diversity and inclusion in the profession. Through our roundtables we have engaged hundreds of senior men working in law who acknowledged the importance of their buy-in and leadership to drive initiatives to make their workplaces more inclusive by being champions of change. Male leaders from across the sector, including in-house and private practice, have committed to take action and lead by example, by speaking up to hold people accountable and encouraging others to join in.

The obstacles and barriers faced by women are not always well known or understood by male colleagues, an issue which was addressed in the men's roundtable

series. However, men who build awareness of barriers to women's progression can, for example, ensure that women are being more systematically and actively included in succession plans. Senior leaders can do so by systematically monitoring the outcomes of staff across a range of different organisational processes and actively including women in succession planning. This intervention ultimately results in the evolution of businesses, corporate cultures and performance models which are more efficient, sustainable and in line with the expectations of today's society (and clients).

My mentor is a senior male practitioner in the organisation. He is an excellent professional who has helped me to develop and progress. He is consistently promoting my work with the leadership team because he sees value in my work as a lawyer.

a women's roundtable participant

Recognising that the majority of leaders in the legal profession currently are, and have historically been, men, male business leaders have a significant role to play in achieving gender balance.

If firms are not willing to change, women lawyers will vote with their feet.

a men's roundtable participant

Men can also play a role in joining diversity groups and networks in the business to demonstrate that these initiatives are not just by women and for women, but for the benefit of the organisation.

Women supporting other women

Consistently, roundtable attendees – both women and men – cited the problem of women not promoting and supporting each other. There is a pressing need for this to change. Although this may seem a cultural issue, businesses, firms and in-house teams can take steps to create forums that encourage collaboration and peer groups.

Increase networking opportunities with different women from other areas and levels of the firm so that women can make the changes which the business needs and bring other people up.

a women's roundtable participant

Role modelling is also important to demonstrate support of other women. This involves relatable female leaders sharing their candid and honest experiences about how to make it to the top, including the nuts and bolts of domestic life and how it is possible to juggle professional, personal, and domestic demands. Such discussions help to evidence and reinforce culture change. For those looking to progress their careers, such initiatives can determine whether the organisation can meet their own needs, as people have visible and relatable role models to compare themselves to.

Our female managing partner has four children and a stay at home partner and she speaks about it at every opportunity... it encourages men to take full paternity leave.

a women's roundtable participant

However, as there are significantly fewer women in senior leadership, this initiative can prove challenging. It is important to have visible role models, including men, from across all levels of the business.

Zero tolerance for sexual harassment

Sexual harassment is illegal. Just as anyone is protected by the law, they should also be protected by employers – law firms and courts included. As a profession which strives to uphold justice, the legal sector needs to be at the forefront of the fight against sexism and sexual harassment in the workplace.

**Christina Blacklaws
President of the Law Society**

Sexual harassment or inappropriate behaviour in the workplace was raised throughout the roundtables. A number of participants expressed frustration at striving to be taken seriously and not to be seen as sexually attractive, relating how their choice of clothing would be a topic of discussion if it was considered too tight, too low, too high or too short. Others cited their reluctance to speak up about their experiences because doing so would make their situation much more difficult.¹¹

There was agreement from participants that the #MeToo movement had shone a light on this behaviour and helped to raise awareness of the problem, however, some attendees still felt uncomfortable in sharing their experiences.

Placing diversity at the centre of business planning

For organisations to successfully implement transformational change, it is crucial that the role of diversity, inclusion and gender balance is recognised as a business priority. It should be a core part of business strategy and prioritised in the same way as operational risk, compliance and financial monitoring.

Roundtable attendees were conscious that getting business is important but stressed that it is also necessary to look beyond profit to ethical values. The new generations of lawyers expect firms and organisations to be progressive, not least in their adoption of technology and focus on diversity and gender balance. It was recognised at roundtables that these issues perhaps matter more to younger generations than the older generation who may be more entrenched in the traditional practice of law.

When the Women in Leadership in Law project was discussed internally at a firm, junior colleagues praised the initiative:

They say that it is really important to them that a firm is addressing the issue, they were pleased that we were attending today.

a men's roundtable participant

Targets and quotas

There was no consensus from participants on whether quotas are a useful tool to drive gender balance and promote women in leadership. Some participants suggested that this was a tick-box exercise and that it did not drive meritocracy, feeling that a role acquired through quota filling would not feel that it was achieved based on talent and suitability. Others felt that to fill a quota, each person would still be required to have the right skillset and experience to fill the role, and that the appointment would be just as valid as those who were not allocated through quotas.

There have been quotas for centuries – and those quotas have been for men!

a women's roundtable participant

¹¹ Our findings are supported by other empirical data on the issue, such as the IBA's findings to their 2017 survey which found that almost 30% of female respondents were subject to sexual harassment in connection with their workplace, and The Lawyer's 2018 survey found that 42% of women working in law firms have been subjected to sexual harassment, with nearly half of the most recent occurrences taking place within the last year.

Targets seemed to be more generally accepted by attendees. Generally, targets were perceived as a positive measure which help drive talented and capable women to senior positions when they would otherwise be overlooked. The Australian approach to firms holding themselves accountable for meeting targets was cited as a positive example of how such measures can help to drive equality and diversity, even if that approach alone is not the sole solution required.

Values-based business and development

Our research found that transparency, communication and trust are important for employees. The ability to speak honestly and openly within organisations is an important engagement tool, particularly for ensuring that all staff feel valued and preventing a culture of silence. Open dialogue can extend beyond diversity and day-to-day business needs; discussions can range from remuneration, promotion and work life balance.

Organisations should communicate statistics on retention, remuneration and financial figures to help staff to understand, feel valued and part of the business. For example, processes which allocate work fairly and objectively are one way of ensuring that all practitioners have access to high quality work which contributes to their development and sense of value.

Participants from women's and men's roundtables agreed on the importance of holding open and informed internal discussions about the needs of different genders and other groups with protected characteristics. It was acknowledged that the topic of equality can cause heated debates, and some find it hard to speak freely, but that doing so is essential to understand persistent barriers and challenge them.

People don't want to upset anyone or say anything daft. It is not easy to voice honest opinions but if we don't speak up then the issue can't be tackled, and we will not make enough progress.

a men's roundtable participant

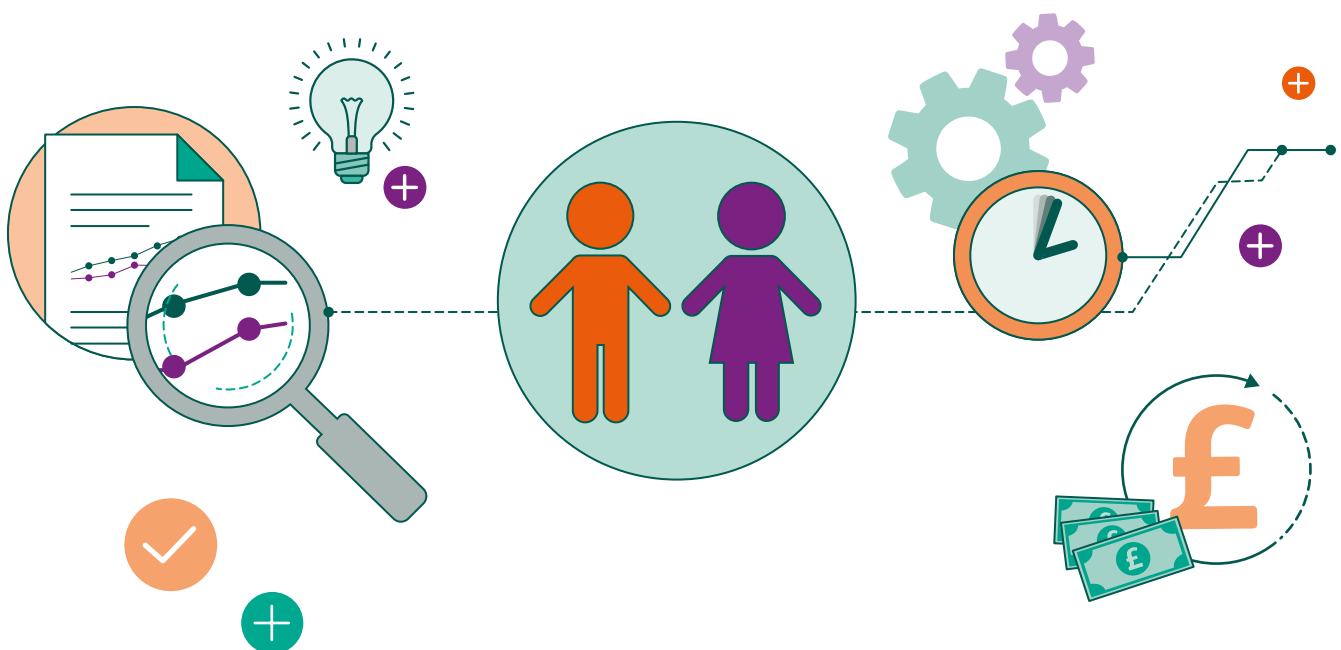
The majority of attendees at the women's roundtables said that having development opportunities was a key solution to overcome the barriers to career progression. Starting at the most junior level, up to and throughout roles in senior leadership, women want to continue to be developed and trained to meet the needs of their role and help them to reach the next stage of their careers. A comprehensive training programme to cover areas such as confidence training, which includes self-assessment, negotiation skills and beating the imposter syndrome were seen as really helpful.

Recommendations

To further embed best practice in your organisations, the following suggestions were made by roundtable participants:

- 1. Encouraging male leaders to take their own concrete, impactful and measurable action to address gender inequality, including refusing to participate in all-male panels, conferences and boards and sourcing female contributors instead.**
- 2. Actively engaging with men to get them on board, taking responsibility and accountability as agents of gender equality in the business.**
- 3. Reviewing working practices with the leadership team to deter gender bias.**
- 4. Ensuring that equal numbers of both male and female candidates are considered for all significant opportunities.**
- 5. Monitoring the success rates of recruitment, progression, work allocation and access to training.**
- 6. Sourcing an alternate female colleague/peer for participating in an otherwise non-inclusive roundtable, panel, conference or board meeting.**
- 7. Raising awareness across all staff groups of bias and its impact on decision-making. Ensure that the topic is revisited regularly to ensure it becomes routine in workforce planning.**
- 8. Actively countering unfair negative presumptions and low expectations which are expressed or inferred about colleagues on account of their gender or other characteristics.**
- 9. Ensuring that victims and witnesses of sexual harassment are able to speak up. Training on this issue should be made available to everyone.**

10. Ensuring equality, diversity and inclusion is a business priority and part of your organisation's corporate strategy. Consider how this is communicated and embedded across the organisation's policies, practices and services.
11. Encouraging leadership teams to make an explicit commitment to gender balance in governance charters to improve workplace culture and business performance and to ensure that there is accountability in reaching those targets.
12. Establishing coaching, mentoring and sponsorship initiatives in your organisation to empower women to achieve leadership roles.
13. Encouraging organisations to implement gender equality training for partners/senior leadership, managers and all staff.
14. Embedding objectives within the appraisal process to ensure that all staff take responsibility for advancing equality, diversity and inclusion in the workplace.
15. Embedding an open and honest culture where it is normal to challenge negative gender stereotypes and enable the co-creation of workplace solutions for greater diversity and inclusion.



Conclusion

From our findings, it is clear that important steps are being taken to promote equality of women in law, however, much more needs to be done. Unconscious bias, issues with remuneration and gender pay gap, and limited flexible working have been identified as the main obstacles preventing women from progressing in their careers.

By identifying barriers, we have been able to develop key recommendations and solutions to overcome these obstacles. These have been compiled through our 18-month long research on the Women in Leadership in Law project, including our survey, roundtables and academic literature review.

The determination to promote gender balance in the legal profession is also clear from our research. Men and women in the UK and in other jurisdictions, working in both legal firms and businesses, are showing real commitment to remove these obstacles, to promote gender balance and to ensure the legal profession is diverse and representative. We are pushing at an open door.

The culmination of our Women in Leadership in law programme will be at our International Symposium ‘the power of gender equality to transform the business of law’ to be held at the Hilton Bankside in London on 20 and 21 June 2019.

The symposium will bring together industry experts and legal professionals to take stock of the current position, explore the themes and recommendations laid out in this report and to pave the way for women being better represented in positions of power, influence and leadership.

We will be launching our next set of toolkits which form the ‘how to’ guide to enable businesses to adopt and embed these best practices and transform their culture.

You can find out more and book your tickets here:
<https://www.lawsociety.org.uk/international-symposium-2019/>
or email internationalsymposium@lawsociety.org.uk

We hope to see you there!

Christina Blacklaws
President



The Law Society is extremely grateful for the support offered by the International Bar Association (IBA) Women Lawyers' Interest Group on this project. We look forward to continuing to work closely to keep momentum and maximise our collective impact.

For more information about the Women in Leadership in Law project, please contact President@LawSociety.org.uk



The Law Society

113 Chancery Lane, London WC2A 1PL

Tel: 020 7242 1222

Fax: 020 7831 0344

DX: DX 56 London/Chancery Lane

www.lawsociety.org.uk

 [@TheLawSociety](https://twitter.com/TheLawSociety)

 [@LawSocDI](https://twitter.com/LawSocDI)

 [@LSInternational](https://twitter.com/LSInternational)



Innovation, Creativity and the Gender Gap

Innovation, Creativity and the Gender Gap

Societies all around the world have benefited from the work of women inventors, designers and artists. But data show that fewer women than men use the intellectual property system. That gender gap matters for a number of reasons, perhaps most importantly because gender equality is a human right and because we are **all** better off when women and girls are empowered to make their full contribution to innovation and creativity.

Contents at a glance

- [The importance of innovation/creativity](#)
- [The role of intellectual property](#)
- [Gender imbalance: the evidence](#)
- [Why close the gender gap?](#)
- [Barriers facing women](#)
- [Change is coming](#)

Innovation and creativity shape our world

Innovation and creativity are the engines of human progress. By innovation, we mean new products or new ways of doing things, and by creativity we mean new forms of original artistic expression as portrayed, for example, in songs, books, pictures, films and other, emerging media.

Since the beginning of time, female and male innovators and creators have transformed our world through the power of their imagination. And today new innovations and forms of artistic expression are transforming our lives at an unprecedented rate. All the products that we enjoy today are the result of years of research and development, experimentation and invention. They are all effectively creations of the human mind.



Meet Özge Akbulut, whose ingenuity and creativity took her to some of the world's top universities, and enabled her to become a materials engineer. She is a serial inventor and is currently specializing in making life-like surgical models to train surgeons in reconstructive surgery for breast cancer patients and others. She has also invented inks for use in 3D printing and holds a patent relating to the flow properties of special-purpose cements. "What really inspires me is how science and technology makes it possible to find solutions to tackle some of the major problems facing humanity. It is only with innovative solutions that we can solve these problems," she says. Read [Özge's story](#) in the WIPO Magazine (photo: Courtesy of Surgitite).

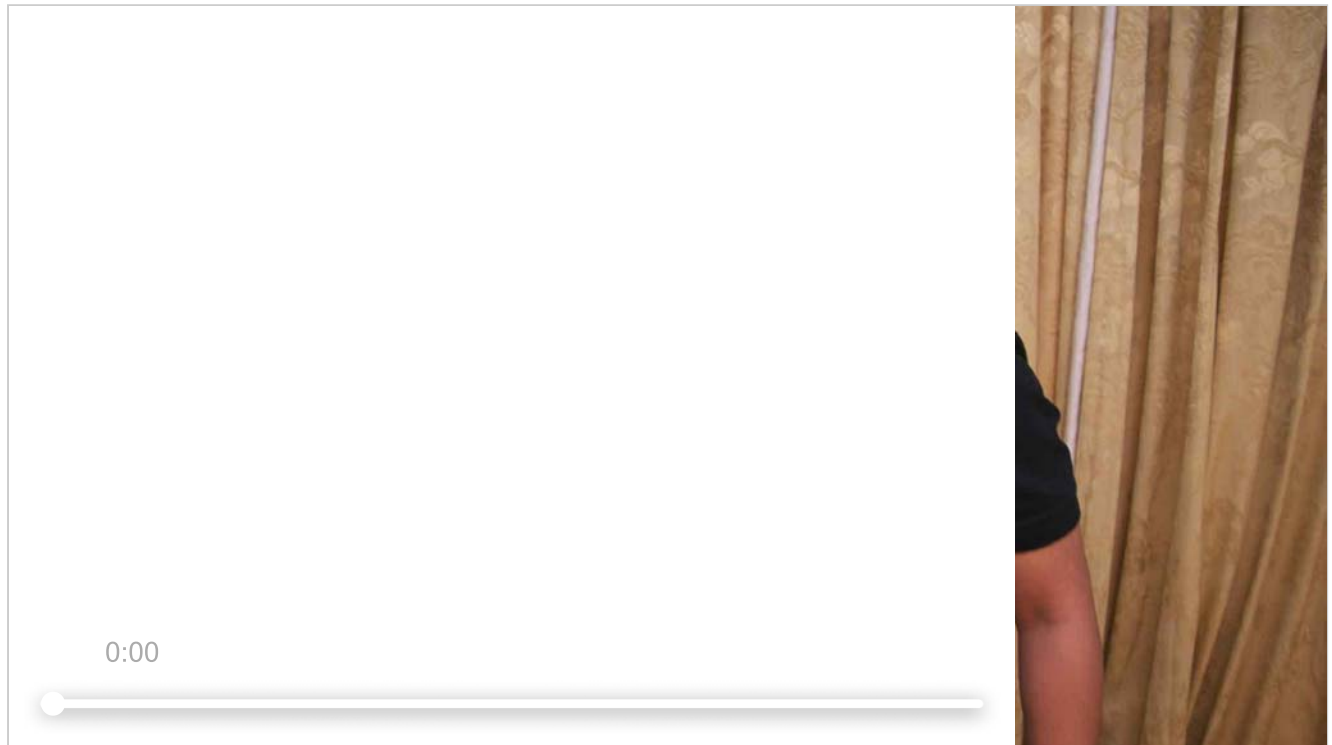
That makes innovation immensely valuable in economic terms. In fact, a recent study by the World Intellectual Property Organization (WIPO) found that in modern manufacturing intangible assets like inventions, designs and specialist knowledge are worth nearly twice as much as tangible assets such as raw materials. And the cultural value of creative works is incalculable. Stories, music and the visual arts are means by which people and societies express and share their deepest identities and weave a rich cultural heritage. They are literally priceless.

How the intellectual property system supports innovation and creativity

It is therefore in all our interests to support innovation and creativity. That is what the intellectual property (IP) system seeks to do. There are many different [types of rights](#) protecting different types of IP such as inventions, designs and creative works. In general, they serve one main purpose: to encourage more innovation and creativity by making sure that innovators and creators can gain a fair reward for their work and earn a living from it.

IP rights allow rights holders to stop other people from copying or using their IP without their permission. This means that rights holders are able to charge a reasonable price for using IP that is economically valuable. The prospect of an economic reward encourages people and businesses to invest in developing useful innovations and creations.

Most IP rights last for a limited time only, and can only be acquired when certain conditions are met. There are also rules that allow for the use, under certain limited circumstances, of different types of IP without first having to obtain the right holder's permission. These arrangements help ensure that there is a balance between the interests of innovators and creators and those of the general public, so that everyone benefits from IP.



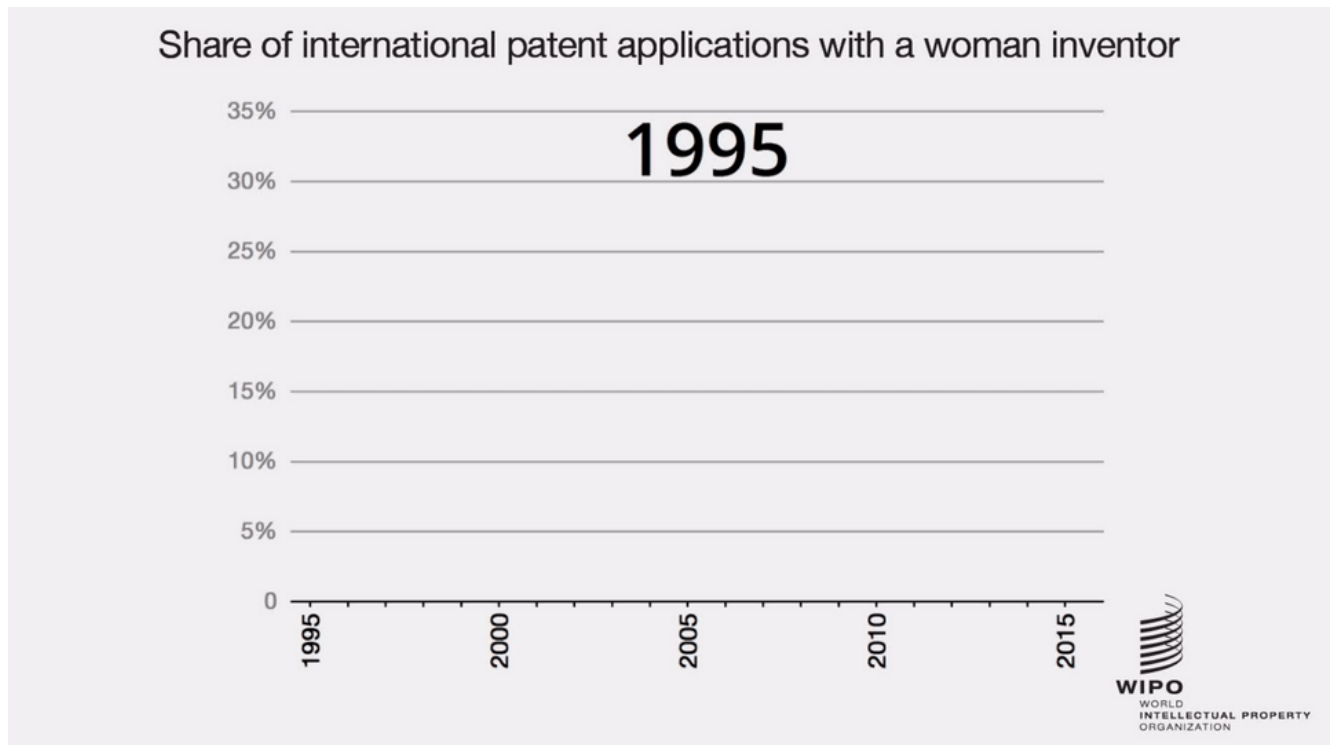
VIDEO: Meet Siti Kamaluddin, film maker and co-founder of "Origin Films" in Brunei Darussalam.

Evidence shows fewer women use the IP system than men

The IP system is designed to be open to anyone who meets the conditions set out in national IP laws. Different countries determine their [IP laws](#) within a framework of regional and [international treaties](#) developed over many years to provide balanced and effective protection.

But the system is not used equally by everyone. Certain countries and regions outperform others when it comes to producing IP, and there are also significant disparities between men and women when it comes to acquiring and owning IP rights.

[Analysis from WIPO](#) shows that less than a third of all international patent applications filed in 2015 included women inventors. That was a big improvement on the 1995 figure of just 17 percent, with some countries and regions performing notably better than the global average. Nonetheless, the standout fact is that far more men than women gain patents for their inventions.



While more women than ever before are using the international patent system, there is still a long way to go before gender parity is achieved.

While comparable international data on the gender of owners of other IP rights such as [industrial designs](#) are not yet available (WIPO researchers are working on this), there is evidence of gender gaps there, too. For example, [according to one estimate](#), only around 15 percent of those working in industrial design in the United States are female.

Gender disparities are harder to measure in relation to creative works such as books, music and films, because the IP rights that protect those works – [copyright and related rights](#) – generally arise automatically and do not need to be registered with a central authority. That makes it difficult to track such rights.

But all the available information suggests that women lag behind their male counterparts in the creative industries. Many creative professions are dominated by men. For instance, the United Nations reports that [just 7 percent of the world's film directors and 20 percent of screenwriters are female](#). Similarly, a [study of the global art market](#) has revealed that works by women artists fetch less at auction than those by men. And [male authors register twice as many copyrights](#) in the United States as their female counterparts.

Closing the gender gap would benefit everyone

The IP gender gap should concern us all.

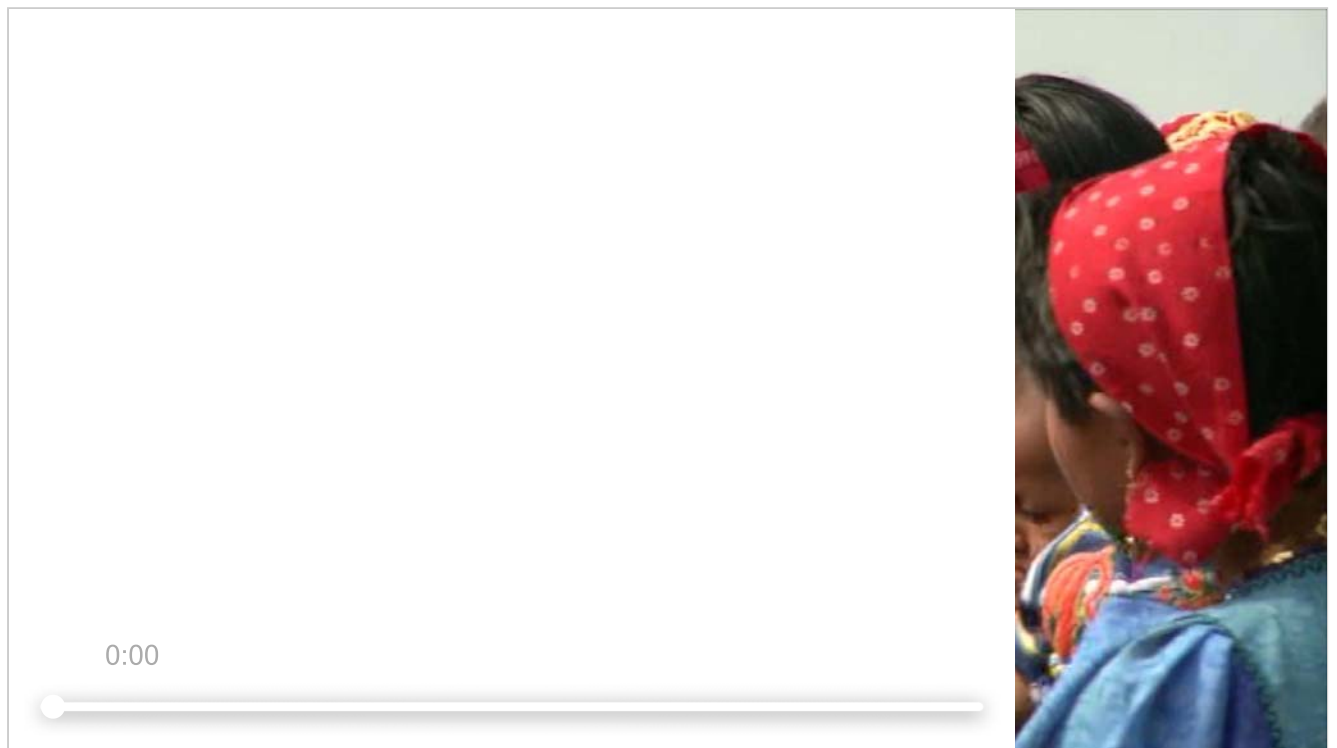
Gender equality is a human right and the necessary foundation for peaceful, prosperous and sustainable world. Not only is it one of the [United Nations Sustainable Development Goals](#); it is mainstreamed in all the Goals.

Furthermore, anything that restricts innovation and creativity means we are all less well-off. It means we are missing out on the potential benefits of those “lost” great ideas.

There is plenty of evidence that increased participation by women improves the innovation performance of organizations and societies. Research shows that [diverse, inclusive teams are more innovative](#), and [diverse companies are more profitable](#).

In part, this is simply a question of numbers: by widening the pool of talent, one increases the chances of valuable new insights emerging. But [women can also bring a different perspective](#), and women innovators help to ensure that new products and processes meet the needs of the whole population, not just the male half.

So there is also a clear business case for encouraging more women to use the IP system.



VIDEO: The indigenous women of Panama are improving livelihoods by turning their traditional knowledge into a marketable IP asset.

How, then, can we make the innovation system more inclusive and encourage more participation by women? To start with, we have to understand the factors that are holding them back.

Barriers to women innovators and creators

Women are clearly not inherently less innovative or creative than men. Countless examples of women in every region of the world have proved that time and again.

So why is there such a significant gender gap in use of the IP system? A [roundtable of experts at WIPO in 2017](#) provided a useful overview of some major issues:

- Most importantly, the IP gender gap reflects **widespread gender inequality** in social and economic life. For example, in most countries far fewer girls than boys study scientific, technical, engineering and medical (STEM) subjects. In consequence, a relatively low proportion of women work in the sort of fields that produce most technical innovation.

- In part, these wider inequalities reflect **prejudices, preconceptions and stereotypes** about girls and women. All-too-many people – girls and women as well as boys and men – still think of women as being limited to certain traditional roles rather than potential leaders in science, technology, business and the arts. If stereotypes are not challenged, inequality can be self-perpetuating: girls and young women may lack role models to inspire them to fulfil their potential.
- Inequality is also caused by **inflexible economic and social structures** which can restrict women's career prospects. The problem of the “glass ceiling” is notorious. Talented women may succeed as students and in the early stages of their careers only to miss out on promotions later on, especially if they take time out to have children. Organizations and societies need to find ways to allow women (and men) to combine work and family life.
- There may also be issues that relate more specifically to the IP system. Developing some types of IP, especially patents, may involve **significant financial commitment**, and there is an argument that women prioritize the stability of their family income, making them more risk averse than men.
- In addition, some [legal scholars](#) have critiqued the IP system from a feminist perspective, arguing that although it is ostensibly neutral, certain elements of the law may embed **bias** against women.

Supporting positive change

The challenges are enormous but there is growing recognition of the need to close the IP gender gap. Around the world, organizations and individuals are working to encourage and support women innovators and creators. Initiatives range from [international campaigns](#) to promote women's involvement in science to more targeted schemes by particular [countries](#), [regions](#) and [groups](#).



Meet [Ms. Bethlehem Alemu](#), co-founder of footwear brand soleRebels which she is steering to global success. She is one of Ethiopia's top female entrepreneurs. Her business which is built around recycled and environmentally-friendly materials, has “rejuvenated a community, invigorated a nation and revolutionized an industry.” (Photo: Flickr/WWEF)

WIPO is taking a leading role. With the adoption of its [Policy on Gender Equality](#) in 2014, the Organization committed to making gender equality a cross-cutting objective in all its work. That means, among other things, ensuring equal access to WIPO's services, building capacities of and providing technical support to both women and men, striving for equal numbers of men and women at all levels of its staff and encouraging the same

among member state representatives at its meetings. It also involves continuing and extending its [pioneering research](#) into gender and the IP system and undertaking a [range of projects](#) to identify and promote examples of innovation and creativity by women.

[World Intellectual Property Day 2018](#) is another important step in this mission. By bringing together all its stakeholders across the world to celebrate the achievements of women innovators and creators, it will challenge outdated stereotypes and encourage even more girls and women to create valuable intellectual property.

Women in Law Firms

Women in law firms



Marc Broderson
Laura McGee
Mariana Pires dos Reis

(Reprinted with permission)

Women in law firms

Law firms have many of the right policies and programs in place to improve gender diversity, but more can be done to translate stated commitments into measurable outcomes.

As part of our broader Women in the Workplace 2017 research, we conducted a deep dive on women in law firms in North America. Out of the 222 participants in the overall research, 23 are law firms that employ more than 16,000 attorneys. These firms provided us with their talent-pipeline and programs and policies data. Additionally, more than 2,500 of their attorneys answered our experience survey. These data have allowed us to highlight unique challenges that law firms face to advance women relative to the rest of the broader corporate America (referred to as the “overall sample” throughout the report).

The survey finds that law firms are taking important steps to increase gender equality. They are providing senior-leadership support to advance attorneys’ careers and offering programs that provide flexibility and address major work–life balance issues.

But these efforts have had limited success. Only 19 percent of equity partners are women, and women are 29 percent less likely to reach the first level of partnership than are men. We found that law firms face higher attrition among women than men at the equity partner level and that the gender gap is much wider in law firms than in other industries. Women of color face an even steeper climb, with their representation dropping significantly at all levels in the pipeline. Female attorneys perceive less commitment to gender equality and a more uneven playing field at law firms than do their male colleagues.

Law firms clearly have more work to do, not just in implementing policies and programs but also in fundamentally changing nonpartner attorneys’

perceptions of their efforts. For example, female attorneys (and many of their male colleagues) fear that participating in flexible-work programs will damage their careers. The question now is how those firms that have invested in—and recognize—the benefits of gender equality translate their stated commitments into measurable outcomes.

Gender diversity in law firms’ talent pipeline

Women are relatively well represented in the professional pipeline until the equity partner level, where women’s representation drops sharply.

We measured four dimensions of gender diversity and found that law firms have room to improve along each one:

- **Representation.** Are women represented fairly at each level?
- **Promotion.** Do women advance as rapidly as men?
- **Attrition.** Do women choose not to advance at a certain point?
- **External hiring.** Are women hired at the same rate as men?

Representation of women decreases rapidly at post-associate levels. Women are relatively well represented at all three associate levels (junior, midlevel, and senior), where they account for about 46 percent of attorneys. However, this picture changes sharply as attorneys advance to more senior levels. Only 19 percent of equity partners are women, and women occupy only 25 percent of

executive-leadership positions (management committee and practice leadership). This decline at the more senior levels mirrors the overall sample, where women represent 47 percent of the entry-level workforce but only 29 percent at the VP level, 21 percent at the SVP level, and 20 percent of the C-suite.

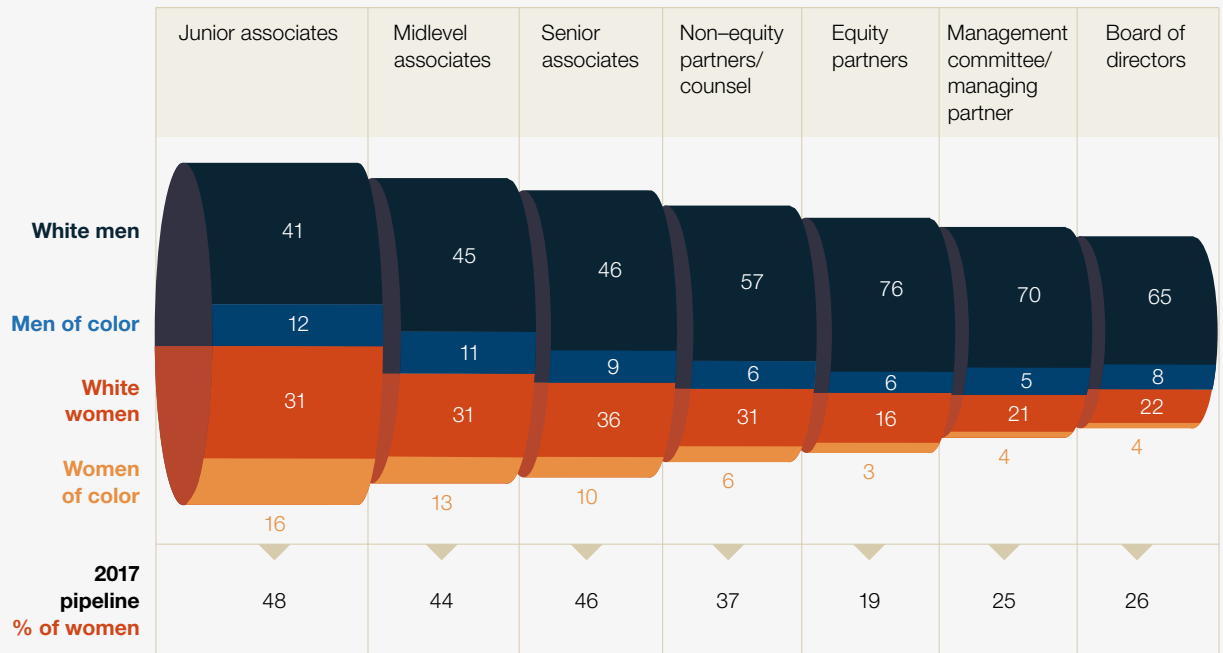
Women of color¹ are especially underrepresented in law firms. While they account for 16 percent of attorneys at the entry level, they experience the steepest decline in representation as attorneys' careers advance. Women of color account for only

10 percent of senior associates, 3 percent of equity partners, and 4 percent of managing partners (Exhibit 1). This is consistent with the overall sample, where women of color occupy 17 percent of entry-level positions but only 6 percent at the VP level, 4 percent at the SVP level, and 3 percent of the C-suite.

Fewer women than men advance at the pre-partner level, but female attorneys advance more often than women in other industries. Unlike the overall sample, where first-time promotions are the least equitable (with women being 18 percent

Exhibit 1 Representation of women decreases rapidly at post-associate levels.

Representation in law firms' pipeline by gender and race, % of attorneys by level in 2017¹



Women of color are the most underrepresented group in the pipeline at post-associate levels—behind white men, white women, and men of color.

¹Total % of women and men per level in race and gender pipeline may not sum to overall pipeline totals, as the race pipeline only includes firms that were able to supply race data. Due to rounding, representation by race may sum to 101 within some levels

Exhibit 2 Fewer women than men advance to the first required level of partnership.

For every 100 women promoted to partner, 141 men are promoted

Women Men



less likely to be promoted than men), in law firms first-time promotions are much closer to equity (11 percent gap). It is at more senior levels that the disparity grows. The more significant gap exists at the promotion to the first level of partnership,² where female attorneys are 29 percent less likely than men to gain promotion (Exhibit 2).

Attrition among women is lower than that among men, until the equity partner level. Women leave law firms less frequently than men until the equity partner level, where this one-year data sample suggests they are 43 percent more likely than men to leave. Compared with the overall sample, where differences in attrition are not significant, this gap is much higher. Given the small sample of female equity partners, more research is required to validate the trend over a longer time period and to establish the drivers for the increase.

External hires for more senior positions are less likely to be women than men. External hiring rates for women and men at the junior- and senior-associate levels are almost equal. But men are more

than twice as likely to be hired for a non-equity partner/counsel-level position. At the equity partner level, external hires are more than three times more likely to be men than women (though it's worth noting that the pool of available women is much smaller). This trend does little to correct the underrepresentation of women at the top of the career ladder.

Women of color are especially underrepresented at senior levels (again, it is worth noting that there are fewer women of color available to fill these positions). In 2016, law firms in our sample hired externally to fill 132 equity partner positions. Only four of those hires were women of color. To fully diagnose this issue, more research is needed to understand gender diversity in specific practice areas where lateral hiring is more common.

Differences in men and women's expectations and experiences

Women and men in law firms have very different expectations for promotion and length of service. Work–life balance, a law firm's

demonstrated commitment to diversity and equity, and senior-leader support exert a powerful influence on attorneys' ambitions and desire to stay.

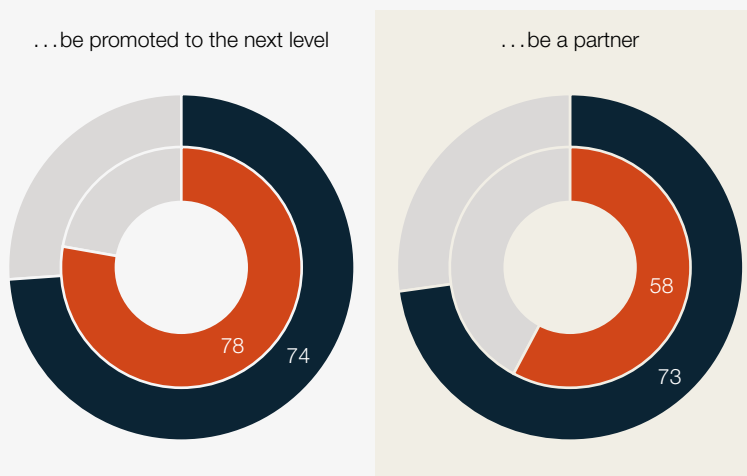
Women want promotion to the next level as much as or even more than men but are less excited about making partner. Across the associate levels, women express a strong desire for promotion to the next level. But when asked specifically if they want to make partner, the desire drops sharply compared with men (Exhibit 3). This drop mirrors the pattern observed across the overall sample, but more women in law firms (58 percent) want to reach the partner/SVP level than do women across the overall sample (40 percent).

Women expect to spend less time at their law firms than their male counterparts do. Only 54 percent of women plan to stay with their law firm for at least five years, compared with 63 percent of men who do (versus 56 percent of women and 58 percent of men across the overall sample). Less than half of women (43 percent) and of men (45 percent) who expect to stay with their firm for two years or less plan to work at another firm, suggesting issues other than gender diversity, such as job fatigue or a realistic view of the likelihood of making partner.

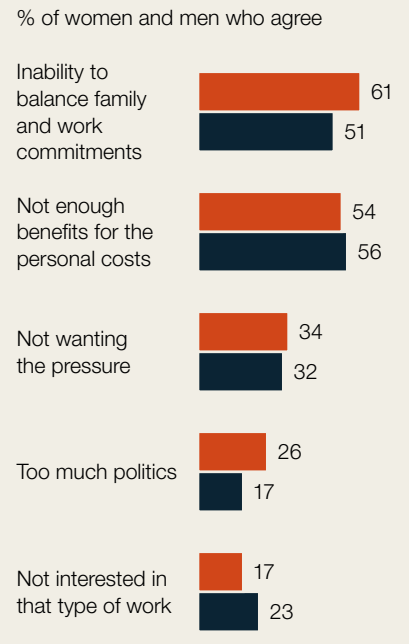
Female attorneys feel forced to make significant trade-offs between career success and their personal lives. Only 44 percent of women believe

Exhibit 3 Women are less excited than men to make partner.

% of women and men who want to...



Top reasons why respondents do not want to be a partner



that they can have both, compared with 60 percent of men who do (versus 61 percent of women and 67 percent of men across the overall sample) (Exhibit 4). Almost half of female attorneys call prioritizing work–life balance one of the greatest challenges to their professional success, on par with undermining peers. The difficulty of balancing work and family is the number-one reason that women do not want to make partner (61 percent), followed by inadequate benefits for the personal costs (54 percent) as the number-two cited reason. Men cite the same top two reasons, but in reverse order, ranking the personal

costs first (56 percent) and the difficulty of balance second (51 percent).

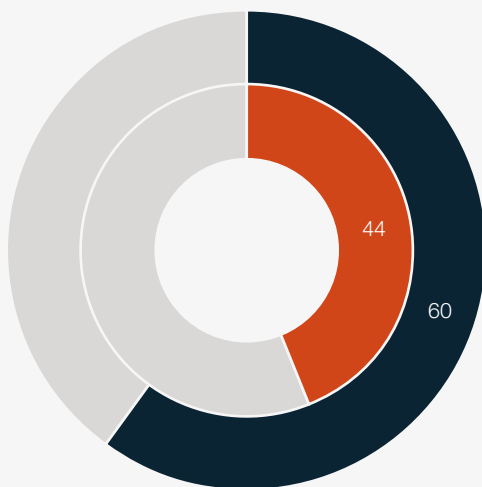
Women are not convinced by law firms' statements of commitment to gender diversity.

While all law firms call gender diversity a very important or a top priority, only 36 percent of women believe that gender diversity is a priority for their firm, compared with 62 percent of men who do (versus 45 percent of women and 59 percent of men across the overall sample). And less than half of women say that their firm is doing what it takes to improve gender diversity, compared

Exhibit 4 Women believe there are significant trade-offs between career success and their personal lives.

Attorneys can have both a successful career and a full personal life

% of women and men who agree



Behaviors attorneys believe would jeopardize success in their firm

% of women and men who agree

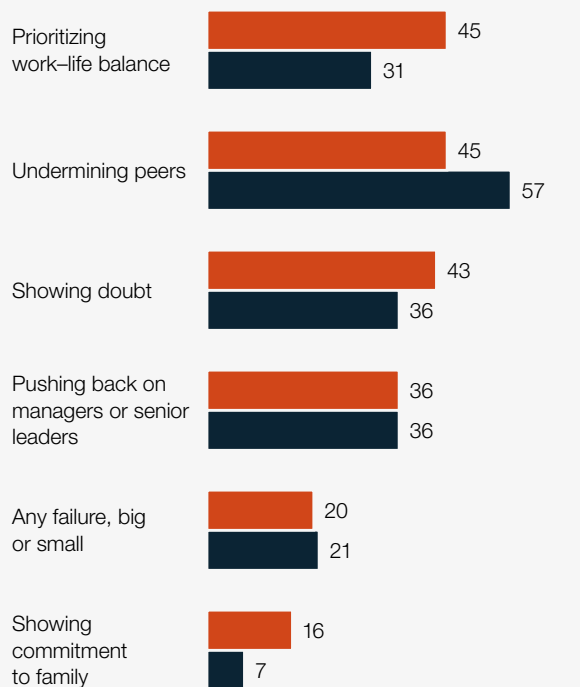


Exhibit 5 Women see the playing field as uneven.

Women are less likely to think they have an opportunity to advance...

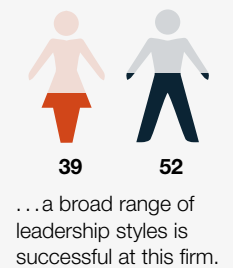
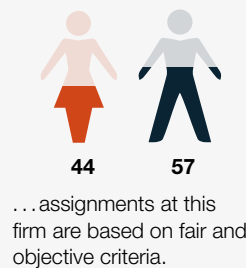
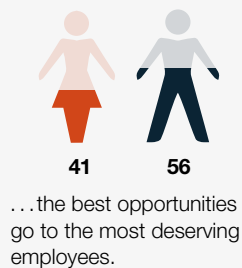
■ Women ■ Men

% of women and men who think...



...and that their firms treat their people fairly

% of women and men who think...



with more than two-thirds of men who do. These numbers mirror the overall sample findings.

Lack of effective communication probably plays a role in attorneys' perceptions. Most law firms (96 percent) say that they have articulated the business case for gender diversity—but employees are not convinced. Only 22 percent of women and 44 percent of men agree that partners communicate the importance of gender diversity (versus 30 percent of women and 42 percent of men across the overall sample). These perceptions differ markedly from the views of practice leaders—60 percent of whom believe the communication

is effective (versus 48 percent at the VP level and above across the overall sample).

Women see the playing field as uneven. More than 60 percent of women surveyed think that their gender will limit their advancement opportunities; only 14 percent of men have such a concern (Exhibit 5). Women are considerably less likely than men to think that promotions and assignments at their firm are based on fair and objective criteria. The strength and depth of client relationships is perceived by female attorneys as the number-two factor in the partner-election decision (second only to profitability), and they believe

they have fewer opportunities than male attorneys to network with clients (57 percent compared with 67 percent).

Senior leaders at law firms provide more informal support to women than in other industries. Women in law firms are more likely than men to say that their supervising attorney or partner has helped their career. More than half of women (58 percent) and almost half of men (48 percent) credit their supervising attorney or partner with advising them on advancing their careers, compared

with 40 percent of women and 44 percent of men across the overall sample.

At the same time, more men than women believe they receive adequate coaching in their firms.

When asked about the most important success factors, women ranked senior-leader sponsorship (including coaching and growth and development opportunities) second only to delivery of exceptional results. Law firms lag behind the overall sample on coaching, and female attorneys have lower coaching expectations than male attorneys

Exhibit 6 Women have lower coaching expectations than men.

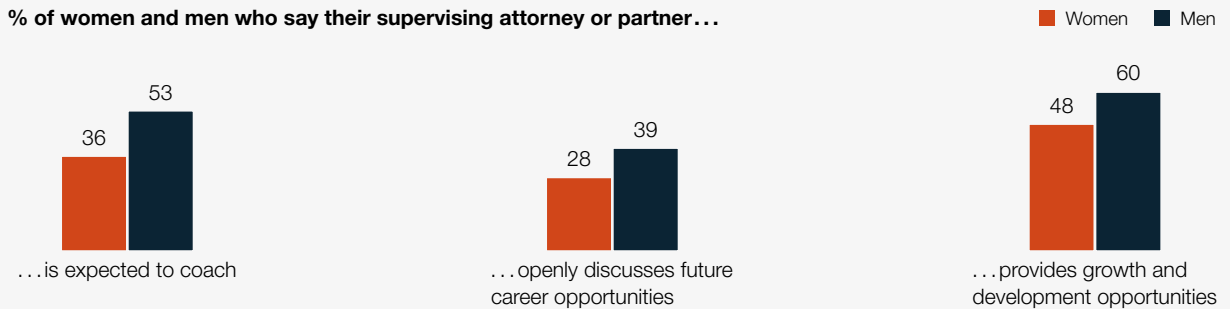


Exhibit 7 Many law firms have programs and policies to support work-life balance.

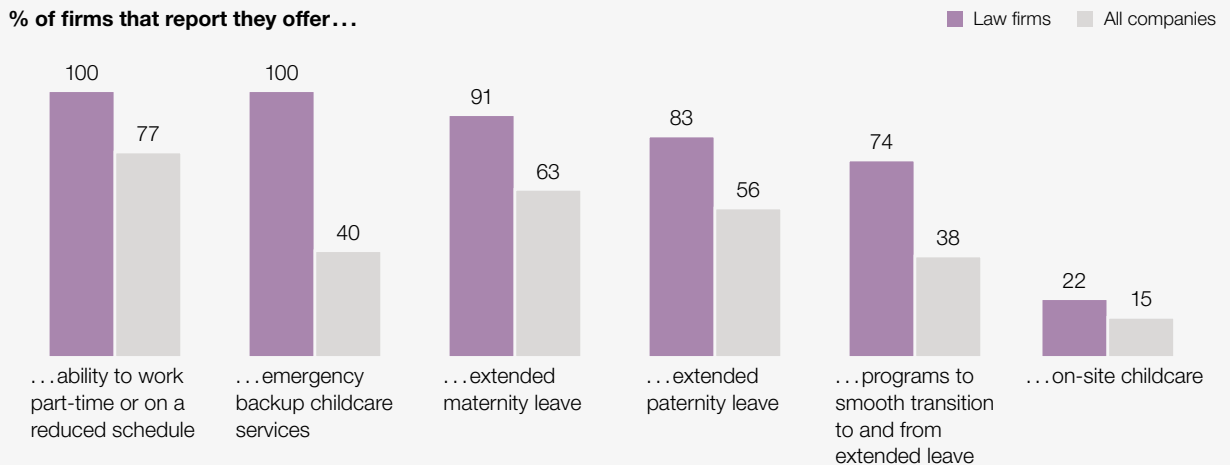
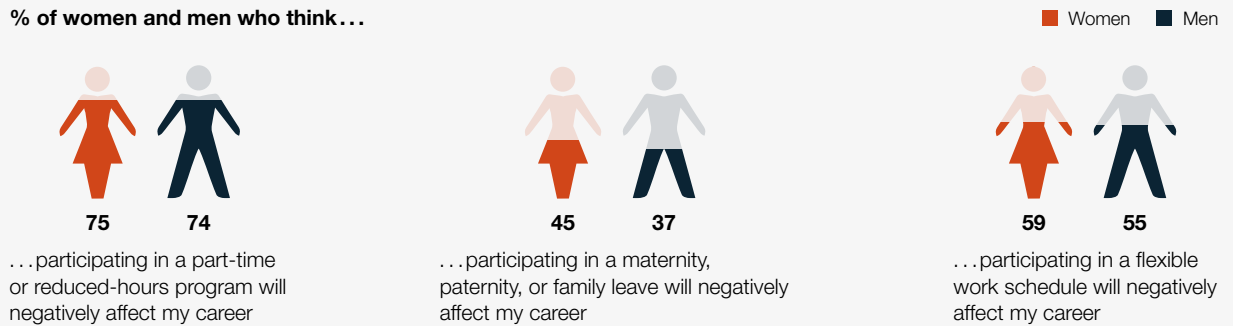


Exhibit 8 Attorneys worry about the consequences of participating in flexible-work programs.

% of women and men who think...



do. Only 36 percent of women expect coaching, compared with 53 percent of men who do (versus 57 percent of women and 62 percent of men across the overall sample) (Exhibit 6). While law firms outpace the overall sample in providing growth and development opportunities, female attorneys are still 20 percent less likely than their male counterparts to credit their supervising attorney or partner with providing such opportunities.

Diversity policies and programs

Law firms are taking important steps to improve the experience of women but have more to do.

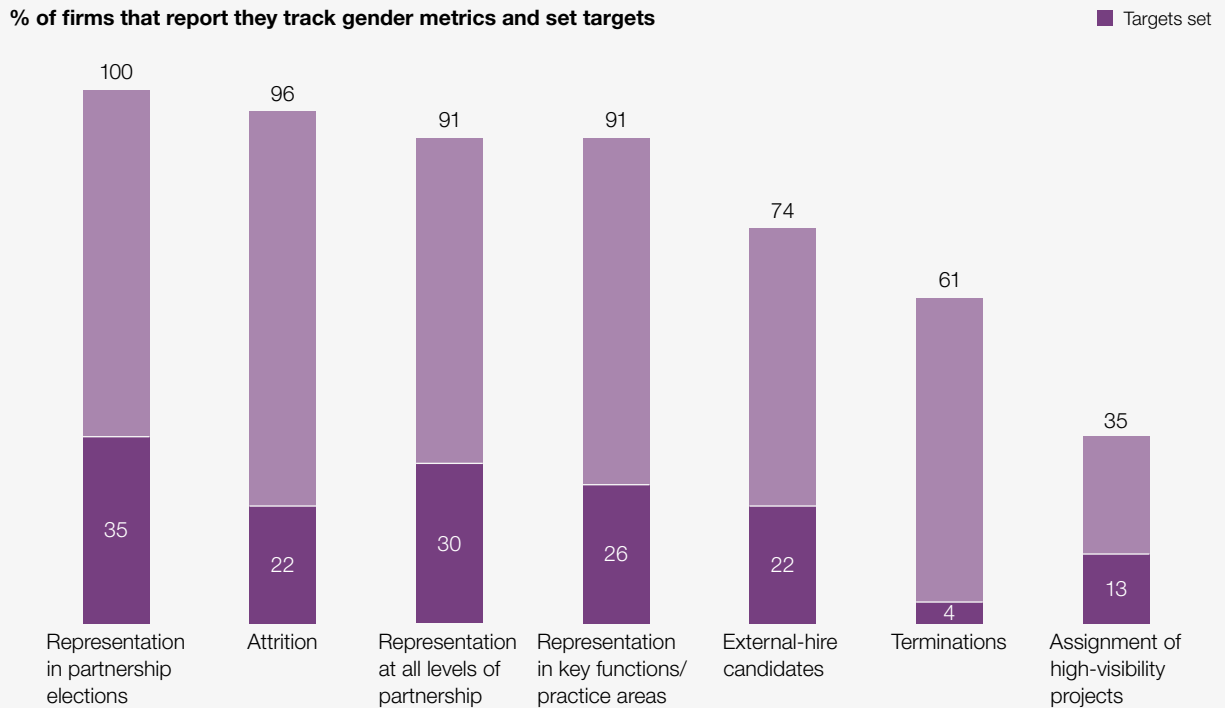
Law firms lead the way in implementing programs and policies to reduce bias in recruiting and promotions. Almost 90 percent have hiring strategies that target underrepresented minorities (versus 66 percent across the overall sample), and 83 percent have level-specific programs to improve promotion rates for women (versus 56 percent across the overall sample).

Many law firms have programs that provide flexibility and address major work-life balance issues. All the law firms surveyed offer the option of working part-time or on a reduced schedule (versus 77 percent across the

overall sample) (Exhibit 7). Most law firms allow telecommuting (versus 75 percent across the overall sample).

Most law firms (91 percent) offer maternity leave that exceeds government requirements, and most (83 percent) offer paternity leave that also exceeds those requirements (versus 63 percent and 56 percent across the overall sample). All of the law firms surveyed provide emergency backup childcare services (versus 40 percent across the overall sample). But only 22 percent of law firms have on-site childcare, and none subsidize regular childcare (versus 15 percent and 18 percent of organizations across the overall sample).

Attorneys worry about the consequences of participating in these programs. Seventy-five percent of women and 74 percent of men in law firms believe that participating in a part-time or reduced-schedule program will have negative impact on their career (versus 68 percent and 71 percent across the overall sample) (Exhibit 8). Attorneys are also considerably more likely than employees across the overall sample to think that taking maternity or paternity leave will hurt their career. Female attorneys cite their inability to generate billable hours during a time of leave as

Exhibit 9**Most law firms track gender diversity metrics, but few set targets.**

the number-one source of damage, followed by perception by others at the firm.

Law firms lack the gender-equality targets and senior-leadership accountability that would enable the tracking needed to ensure real progress.

None of the law firms surveyed have mandated diversity slates for open positions (versus 30 percent across the overall sample). All the law firms track gender diversity in partnership elections, but only 35 percent set targets (versus 18 percent across the overall sample) (Exhibit 9).

Only 43 percent say that they hold senior leaders accountable for performance against gender-diversity metrics, and even fewer use financial incentives. Attorneys perceive little emphasis on results, significantly less than across the overall

sample. Only 5 percent of women and 9 percent of men see leaders regularly held accountable for progress on equality, compared with 16 percent of women and 22 percent of men across the overall sample. Most law firms (87 percent) offer unconscious-bias training, but only 30 percent require program participation.

Priorities to improve gender diversity

Law firms should ask themselves some key questions as they confront a need to get more out of their investments in diversity.

Programs and policies may demonstrate a commitment to equality, but they won't deliver the required outcomes on their own. Getting male and female attorneys at all levels of the firm to own this issue together appears to be

the only path to making a change toward gender equality in law firms. Our research findings suggest that addressing the following questions could help law firms focus their efforts on the biggest challenges:

How do we make flexible-work programs a real option? While most law firms offer flexible-work programs, many attorneys still fear that participating in these programs will damage their careers. More needs to be done to make these a viable option. Law firms must make these programs culturally acceptable and even encourage attorneys to take advantage of them.

Where should we invest to strengthen coaching and formal sponsorship? Law firms are relatively in line with other industries here (that is, approximately 30 percent have formal sponsorship programs). The challenge is how to catalyze senior-level connections that can accelerate women's careers with long-term benefits to retention and recruitment.

How do we drive accountability for gender diversity? Until firms find ways to make diversity a firmwide issue, not a “women's issue”—and an issue that galvanizes the partnership and demands accountability for progress—they will likely struggle to translate programs and policies into results.



Law firms clearly take gender diversity seriously and have made efforts to increase their diversity. But challenges remain, and the law firms committed to superior performance and employee satisfaction will act to address them. We hope that the information and ideas presented here provide useful guidance on moving forward. ■

- ¹ Women of color includes Black, Latina, Asian, American Indian or Alaskan Native, Native Hawaiian, Pacific Islander, or mixed-race women.
- ² Promotion rates are calculated as the number of attorneys promoted to the first required level of partnership—whether non-equity partner or equity partner—at their firm divided by the number of attorneys eligible for that promotion, excluding any permanent positions not eligible for promotion into partnership.

Marc Broderson is a partner in McKinsey's New York office, **Laura McGee** is a consultant in the Toronto office, and **Mariana Pires dos Reis** is a consultant in the Silicon Valley office.

The authors would like to thank Thomson Reuters for its help in convening legal-industry participation in the 2017 Women in the Workplace study and to acknowledge Kishore Eechambadi, Aleesha Melwani, Philip Poole, and Paige Rattner for their contributions to this article.

Copyright © 2017 McKinsey & Company.
All rights reserved.

Cover photo: © The Palmer/Getty Images

Contact for distribution:
workplacesurvey@mckinsey.com

October 2017
Designed by Global Editorial Services
Copyright © McKinsey & Company

Interrupting Racial & Gender Bias in the Legal Profession



YOU CAN'T CHANGE WHAT YOU CAN'T SEE

Interrupting Racial & Gender Bias
in the Legal Profession

EXECUTIVE SUMMARY



YOU CAN'T CHANGE WHAT YOU CAN'T SEE

Interrupting Racial & Gender Bias in the Legal Profession

EXECUTIVE SUMMARY

This report was prepared and written for the American Bar Association's Commission on Women in the Profession and the Minority Corporate Counsel Association by Joan C. Williams, Marina Multhaup, Su Li, and Rachel Korn of the Center for Worklife Law at the University of California, Hastings College of the Law.



Cover design by Amanda Fry/ABA Design.

The materials contained herein represent the opinions of the authors and/or the editors, and should not be construed to be the views or opinions of the law firms or companies with whom such persons are in partnership with, associated with, or employed by, nor of the American Bar Association or the Commission on Women in the Profession unless adopted pursuant to the bylaws of the Association.

Nothing contained in this book is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This book is intended for educational and informational purposes only.

© 2018 American Bar Association and Minority Corporate Counsel Association. All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher. For permission contact the ABA Copyrights & Contracts Department, copyright@americanbar.org, or complete the online form at <http://www.americanbar.org/utility/reprint.html>.

Printed in the United States of America.

22 21 20 19 18 5 4 3 2 1

Discounts are available for books ordered in bulk. Special consideration is given to state bars, CLE programs, and other bar-related organizations. Inquire at Book Publishing, ABA Publishing, American Bar Association, 321 N. Clark Street, Chicago, Illinois 60654-7598.

www.shopABA.org

Foreword

For decades, the American Bar Association Commission on Women in the Profession (“the Commission”) and the Minority Corporate Counsel Association (“MCCA”) have worked tirelessly to combat gender and racial bias in the legal profession. Nonetheless, statistics on women’s advancement have not changed appreciably over the years. In 2016, the Commission and MCCA partnered with the Center for WorkLife Law at the University of California, Hastings College of the Law to conduct research to understand further law firm and in-house lawyers’ experiences of bias in the workplace. This new research confirms that many of the traditional diversity tools we have relied upon over the years have been ineffective, and the findings have served as the foundation in developing the next generation of diversity tools that you will find in *You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias in the Legal Profession*.

The first part of this research report details four main patterns of gender bias, which validate theories that women lawyers long have believed and feelings they long have held. Prove-It-Again describes the need for women and people of color to work harder to prove themselves. Tightrope illustrates the narrower range of behavior expected of and deemed appropriate for women and people of color, with both groups more likely than white men being treated with disrespect. Maternal Wall describes the well-documented bias against mothers, and finally, Tug of War represents the conflict between members of disadvantaged groups that may result from bias in the environment.

The second part of the research report offers two cutting-edge toolkits, one for law firms and one for in-house departments, containing information for how to interrupt bias in hiring, assignments, performance evaluations, compensation, and sponsorship. Based upon the evidence derived from our research, these bias interrupters are small, simple, and incremental steps that tweak basic business systems and yet produce measurable change. They change the systems, not people.

Considerable time, energy, and money were invested to develop persuasive proof of why we need to take a different approach to diversity issues and to develop the toolkits that can be used to make those changes. Taken together, the survey results serve as a reminder of the importance of the connections we make between individuals. Through sharing, we are reminded that we are not alone in our experiences in the workplace, and that is an important first step in making the work environment more inclusive and welcoming.

Jean Lee, President and CEO
Minority Corporate Counsel Association

Michele Coleman Mayes, Chair, 2014–2017
ABA Commission on Women in the Profession



Acknowledgments

The ABA Commission on Women in the Profession and the Minority Corporate Counsel Association would like to thank the following individuals for generously donating their time to this important project.

Working Group Members*

Ricardo Anzaldúa, MetLife (Retired)
Kara Baysinger, Dentons
Lois Bingham, Yazaki North America, Inc.
Jennifer Daniels, Colgate-Palmolive Company
Kathryn Fritz, Fenwick & West LLP
Julie Gruber, Gap Inc.
Stasia Kelly, DLA Piper
Kim Koopersmith, Akin Gump Strauss Hauer & Feld LLP
Nancy Laben, Booz Allen Hamilton
Wendi Lazar, Outten & Golden LLP
Wally Martinez, Hunton & Williams LLP
Erika Mason, Constangy Brooks, Smith & Prophete LLP
Lorelie Masters, Hunton & Williams LLP
Rick Palmore, Dentons
Tom Sabatino, Aetna
Mark Roellig, Massachusetts Mutual Life Insurance Company
Tom Sager, Ballard Spahr LLP
James Silkenat, World Justice Project
Mary L. Smith, Illinois Department of Insurance
Grace Speights, Morgan Lewis Bockius LLP
Laura Stein, The Clorox Company
D. Jean Veta, Covington & Burling LLP
Robert Weiner, Arnold & Porter Kaye Scholer LLP
Joseph K. West, Duane Morris LLP
Kathleen J. Wu, Andrews Kurth Kenyon LLP

* Organizations listed were current as of 1/03/2018.

Additional Acknowledgments

A heartfelt thank you to Michele Coleman Mayes and Jean Lee for their leadership in shepherding this project.

A special thank you to Joseph K. West for his support of this project, which allowed it to move forward.

Thank you to Michelle Gallardo and Elaine Johnson James for the energy and effort they devoted to this project as Co-Chairs of the Bias Interrupters Committee.

Thank you to staff members Melissa Wood and Lynnea Karlic for their indispensable assistance on the Bias Interrupters Project.

Thank you to Microsoft Corporation and Walmart for their early support in completing this project.

Executive Summary

This report is the first of its kind to provide a comprehensive picture of how implicit gender and racial bias—documented in social science for decades—plays out in everyday interactions in legal workplaces and affects basic workplace processes such as hiring and compensation.

In April 2016, the American Bar Association’s Commission on Women in the Profession, the Minority Corporate Counsel Association, and the Center for WorkLife Law at the University of California, Hastings College of the Law launched a survey seeking to understand in-house and law firm lawyers’ experiences of bias in the workplace: 2,827 respondents completed the survey, and 525 respondents included comments.

The survey asked respondents whether they had experienced the patterns of gender and racial bias that have been documented in decades of experimental social psychology studies. In addition, the survey asked whether attorneys had experienced implicit bias in basic workplace processes (hiring, assignments, business development, performance evaluations, promotions, compensation, and support). Also included was a series of questions about sexual harassment.

To examine how bias affects workplace experiences in the legal profession, we compared the reported experiences of women of color, men of color, white women, and white men. This report shares the survey findings and paints a picture of how bias affects law firm and in-house attorneys. All differences discussed in the following text are statistically significant unless otherwise noted.

Women and people of color reported Prove-It-Again (PIA) and Tightrope bias

Prove-It-Again. Women of color, white women, and men of color reported that they have to go “above and beyond” to get the same recognition and respect as their colleagues.

- Women of color reported PIA bias at a higher level than any other group, 35 percentage points higher than white men.
- White women and men of color also reported high levels of PIA bias, 25 percentage points higher than white men.
- Women of color reported that they are held to higher standards than their colleagues at a level 32 percentage points higher than white men.

Mistaken for janitors? Men of color and women of all races receive clear messages that they do not fit with people’s image of a lawyer.

- Women of color reported that they had been mistaken for administrative staff, court personnel, or janitorial staff at a level 50 percentage points higher than white men. This was the largest reported difference in the report.

- White women reported this bias at a level 44 percentage points higher than white men, and men of color reported this bias at a level 23 percentage points higher than white men.

Tightrope. Women of all races reported pressure to behave in feminine ways, including backlash for masculine behaviors and higher loads of non-career-enhancing “office housework.”

- White women reported doing more administrative tasks (such as taking notes) than their colleagues at a level 21 percentage points higher than white men, and women of color reported doing more of this type of office housework at a level 18 percentage points higher than white men.

Significant bias against mothers reported—and against fathers who take parental leave

Maternal Wall. Women of all races reported that they were treated worse after they had children; that is, they were passed over for promotions, given “mommy track” low-quality assignments, demoted or paid less, and/or unfairly disadvantaged for working part-time or with a flexible schedule. Women also observed a double standard between male and female parents.

- White women reported that their commitment or competence was questioned after they had kids at a level 36 percentage points higher than white men. Women of color reported this at a level 29 percentage points higher than white men.

About half of people of color (47% of men of color and 50% of women of color) and 57% of white women agreed that taking family leave would have a negative impact on their career. 42% of white men also agreed, indicating that the flexibility stigma surrounding leave affects all groups, including majority men.

Bias is pervasive throughout lawyers’ work lives

Most of the biggest findings of the survey had to do with bias existing in the basic business systems of attorneys’ workplaces. Women and people of color reported higher levels of bias than white men regarding equal opportunities to:

- Get hired
- Receive fair performance evaluations
- Get mentoring
- Receive high-quality assignments
- Access networking opportunities
- Get paid fairly
- Get promoted

In other words, gender and racial bias was reported in all seven basic workplace processes.

Women of color often reported the highest levels of bias of any group

In almost every workplace process, women of color reported the highest levels of bias. For example:

- Women of color reported that they had equal access to high-quality assignments at a level 28 percentage points lower than white men.
- Women of color reported that they had fair opportunities for promotion at a level 23 percentage points lower than white men.

As a trend throughout the report, we often found that women of color reported the highest levels of bias overall.

Bias in compensation

The gender pay gap in law has received significant media attention, but much less attention has been paid to bias in compensation systems. Large amounts of bias were reported by both white women and women of color, and these were some of the widest gaps in experience described in the report:

- Women of color agreed that their pay is comparable to their colleagues of similar experience and seniority at a level 31 percentage points lower than white men; white women agreed at a level 24 percentage points lower than white men.
- Similarly, when respondents were asked if they get paid LESS than their colleagues of similar experience and skill level, women of color agreed at a level 31 percentage points higher than white men, while white women agreed at a level 24 percentage points higher than white men.

The racial element of the gender pay gap is rarely discussed and demands closer attention.

In another surprising finding, in-house white women reported roughly the same level of compensation bias as their law firm counterparts. With so much attention placed on the partner pay gap, in house is thought to be a more equitable environment for women in terms of pay. These data suggest that may not be the case.

Differences between law firm and in-house lawyers' experiences reported

Women of all races and men of color reported lower levels of bias in house than in law firms, whereas white men reported lower levels of bias in law firms than in house.

Sexual harassment

About 25% of women but only 7% of white men and 11% of men of color, reported that they had encountered unwelcome sexual harassment at work, including unwanted sexual comments, physical contact, and/or romantic advances. Sexist comments, stories, and jokes appear to be widespread in the legal profession: more than 70% of all groups reported encountering these. Finally, about one in eight white

women, and one in ten women of color, reported having lost career opportunities because they rejected sexual advances at work.

Although implicit bias is commonplace, it can be interrupted

Implicit bias stems from common stereotypes. Stereotype *activation* is automatic: we can't stop our brains from making assumptions. But stereotype *application* can be controlled: we can control whether we act on those assumptions. We've distilled that research in our Bias Interrupter Toolkits, available at the end of this report. These Toolkits provide easily implementable, measurable tweaks to existing workplace systems to interrupt racial and gender bias in law firms and in-house departments. Many bias interrupters will help individuals with disabilities, professionals from nonprofessional families ("class migrants"), and introverted men, in addition to leveling the playing field for women and attorneys of color.

Small Steps, Big Change

Bias Interrupters Tools for Success

Incremental steps can improve law firm and in-house diversity in ways that yield well-documented business benefits. Research shows that diverse workgroups perform better and are more committed, innovative, and loyal.¹ Gender-diverse workgroups have higher collective intelligence, which improves the performance of both the group and of the individuals in the group, and leads to better financial performance results.² Racially diverse workgroups consider a broader range of alternatives, make better decisions, and are better at solving problems.³ Bias, if unchecked, affects many different groups: modest or introverted men, LGBTQ people, individuals with disabilities, professionals from nonprofessional backgrounds (class migrants), women, and people of color. We've distilled the huge literature on bias into simple steps that help you and your firm perform better.

We know now that workplaces that view themselves as being highly meritocratic often are *more* biased than other organizations.⁴ Research also shows that the usual responses—one-shot diversity trainings, mentoring, and networking programs—typically don't work.⁵

What holds more promise is a paradigm-changing approach to diversity: bias interrupters are tweaks to basic business systems that are data-driven and can produce measurable change. Bias interrupters change systems, not people.

Printed here are two toolkits, one for law firms and one for in-house departments, with information for how to interrupt bias in the following business systems:

1. Hiring
2. Assignments
3. Performance Evaluations
4. Compensation
5. Sponsorship Best Practice Recommendation

For additional worksheets and information visit BiasInterrupters.org.

Our toolkits take a three-step approach:

1. **Use Metrics:** Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you've taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)
2. **Implement Bias Interrupters:** Bias interrupters are small adjustments to your existing business systems. They should not require you to abandon your current systems.
3. **Repeat as Needed:** After implementing bias interrupters, return to your metrics. If they have not improved, you will need to ratchet up to stronger bias interrupters.

Small Steps, Big Change

Bias Interrupters Tools for Law Firms

Interrupting Bias in Hiring

Tools for Law Firms

The Challenge

When comparing identical resumes, “Jamal” needed eight additional years of experience to be considered as qualified as “Greg,” mothers were 79% less likely to be hired than an otherwise-identical candidate without children, and “Jennifer” was offered \$4,000 less in starting salary than “John.”⁶ Unstructured job interviews do not predict job success,⁷ and judging candidates on “culture fit” can screen out qualified diverse candidates.⁸

The Solution: A Three-Step Approach

1. Use Metrics

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you’ve taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)

For each metric, examine:

- Do patterned differences exist between majority men, majority women, men of color, and women of color? (Include any other underrepresented group that your firm tracks, such as military veterans or LGBTQ people.)

Important metrics to analyze:

- Track the candidate pool through the entire hiring process: from initial contact, to resume review, to interviews, to hiring. Analyze where underrepresented groups are falling out of the hiring process.
- Track whether hiring qualifications are waived more often for some groups.
- Track interviewers’ reviews and/or recommendations to ensure they are not consistently rating majority candidates higher than others.

Keep metrics by (1) individual supervising attorney; (2) department; (3) country, if relevant; and (4) the firm as a whole.

2. Implement Bias Interrupters

All bias interrupters should apply both to written materials and in meetings, where relevant. Because every firm is different, not all interrupters will be relevant. Consider this a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Hiring Worksheet,” available online at biasinterrupters.org, which summarizes hundreds of studies.

A. Empower and Appoint

- **Empower people involved in the hiring process to spot and interrupt bias.** Use the “Identifying Bias in Hiring Worksheet” (available at BiasInterrupters.org). Read and distribute it to anyone involved in hiring.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the hiring process. Training is available at BiasInterrupters.org.

B. Assemble a Diverse Pool

- **Limit referral hiring (“friends of friends”).** If your existing firm is not diverse, hiring from your current employees’ social networks will replicate the lack of diversity. If you use referrals, keep track of the flow of candidates from referrals. If referrals consistently provide majority candidates, consider limiting referrals or balance referral hiring with more targeted outreach to ensure a diverse candidate pool.
- **Tap diverse networks.** Reach out to diverse candidates where they are. Identify law job fairs, affinity networks, conferences, and training programs aimed at women and people of color and send recruiters.
- **Consider candidates from multitier schools.** Don’t limit your search to candidates from Ivy League and top-tier schools. This favors majority candidates from elite backgrounds and hurts people of color and professionals from non-professional backgrounds (class migrants)⁹. Studies show that top students from lower-ranked schools are often similarly successful.¹⁰
- **Get the word out.** If diverse candidates are not applying for your jobs, get the word out that your firm is a great place to work for women and people of color. One company offers public talks by women at their company and writes blog posts, white papers, and social media articles highlighting the women who work there.
- **Change the wording of your job postings.** Using masculine-coded words such as “leader” and “competitive” tends to reduce the number of women who apply.¹¹ Tech alternatives (see [Textio](#)¹² and [Unitive](#)¹³) can help you craft job postings that ensure you attract top talent without discouraging women.
- **Insist on a diverse pool.** If you use a search firm, tell them you expect a diverse pool, not just one or two diverse candidates. One study found the odds of hiring a woman were 79 times greater if there were at least two women in the finalist pool; the odds of hiring a person of color were 194 times greater.¹⁴

C. Resume Review

- **Distribute the “Identifying Bias in Hiring Worksheet”** (available at BiasInterrupters.org). Before resumes are reviewed, have reviewers read the worksheet so they are aware of the common forms of bias that can affect the hiring process.
- **Commit to what’s important—and require accountability.** Commit in writing to what qualifications are important, both in entry-level and lateral hiring. When qualifications are waived for a specific candidate, require an explanation of why they are no longer important—and keep track to see for whom requirements are waived.¹⁵

- **Ensure resumes are graded on the same scale.** Establish clear grading rubrics and ensure that everyone grades on the same scale. Consider having each resume reviewed by two different people and average the score.
- **Remove extracurricular activities from resumes.** Including extracurricular activities on resumes can artificially disadvantage class migrants. A recent study showed that law firms were less likely to hire a candidate whose interests included “country music” and “pick-up soccer” rather than “classical music” and “sailing”—even though the work and educational experience was exactly the same. Because most people aren’t as aware of class-based bias, communicate why you are removing extracurricular activities from resumes.
- **Avoid inferring family obligations.** Mothers are 79% less likely to be hired than identical candidates without children.¹⁶ Train people not to make inferences about whether someone is committed to the job due to parental status and don’t count “gaps in a resume” as an automatic negative.
- **Try using “blind auditions.”** If women and candidates of color are dropping out of the pool at the resume review stage, consider removing demographic information from resumes before review. This allows candidates to be evaluated based solely on their qualifications.

D. Interviews

- **Use structured interviews.** Ask the same list of questions to every person who is interviewed. Ask questions that are directly relevant to the job for which the candidate is applying.¹⁷
- **Ask performance-based questions.** Performance-based questions, or behavioral interview questions (“Tell me about a time you had too many things to do and had to prioritize.”), are a strong predictor of how successful a candidate will be at the job.¹⁸
- **Try behavioral interviewing.**¹⁹ Ask questions that reveal how candidates have dealt with prior work experiences. Research shows that structured behavioral interviews more accurately predict the future performance of a candidate than unstructured interviews.²⁰ Instead of asking “How do you deal with problems with your manager?” say “Describe for me a conflict you had at work with your manager.” When evaluating answers, a good model to follow is STAR²¹: the candidate should describe the Situation faced, the Task handled, the Action taken to deal with the situation, and the Result.
- **Do work-sample screening.** If applicable, ask candidates to provide a sample of the types of tasks they will perform on the job (e.g., ask candidates to write a legal memo for a fictitious client).
- **Develop a consistent rating scale and discount outliers.** Candidates’ answers (or work samples) should be rated on a consistent scale, with ratings for each factor backed up by evidence. Average the scores granted on each relevant criterion and discount outliers.²²
- **If “culture fit” is a criterion for hiring, provide a specific work-relevant definition.** Culture fit can be important, but when it’s misused, it can disadvantage people of color, class migrants, and women.²³ Heuristics such as the “airport test” (Who would I like to get stuck with in an airport?) can be highly exclusionary and not work-relevant. Questions about sports and hobbies may feel

exclusionary to women and to class migrants who did not grow up, for example, playing golf or listening to classical music. Google's work-relevant definition of "culture fit" is a helpful starting point.²⁴

- **"Gaps in a resume" should not mean automatic disqualification.** Give candidates an opportunity to explain gaps by asking about them directly during the interview stage. Women fare better in interviews when they are able to provide information up front rather than having to avoid the issue.²⁵
- **Provide candidates and interviewers with a handout detailing expectations.** Develop an "Interview Protocol Sheet" that explains to everyone what's expected from candidates in an interview or use ours, available at [Bias Interrupters.org](http://BiasInterrupters.org). Distribute it to candidates and interviewers for review.
- **When hiring, don't ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.²⁶ (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.²⁷)

3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change, you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the hiring process.**
- **Use an iterative process until your metrics improve.**

Interrupting Bias in Assignments

Tools for Law Firms

The Challenge

Every workplace has high-profile assignments that are career enhancing (“glamour work”) and low-profile assignments that are beneficial to the organization but not the individual’s career. Research shows that women do more “office housework”²⁸ than men.²⁹ This includes literal housework (ordering lunch), administrative work (scheduling a time to meet), and emotion work (“she’s upset; comfort her”). Misallocation of the glamour work and the office housework is a key reason leadership across the legal profession is still male dominated. Professionals of color (both men and women) also report less access to desirable assignments than do white men.³⁰

- **Glamour work.** More than 80% of white male lawyers but only 53% of women lawyers of color, 59% of white women lawyers, and 63% of male lawyers of color reported the same access to desirable assignments as their colleagues.³¹
- **Office housework.** Almost 50% of white women lawyers and 43% of women lawyers of color reported that at work they more often play administrative roles such as taking notes for a meeting compared to their colleagues. Only 26% of white male lawyers and 20% of male lawyers of color reported this.³²

In law firms, when lawyers become “overburdened” with office housework, it reduces the amount of billable time that they can report, which can hurt their compensation and their career.³³

Diversity at the top can only occur when diverse employees at all levels of the organization have access to assignments that let them take risks and develop new skills. If the glamour work and the office housework aren’t distributed evenly, you won’t be tapping into the full potential of your workforce. Most law firms that use an informal “hey, you!” assignment system end up distributing assignments based on factors other than experience and talent.

If women and people of color keep getting stuck with the same low-profile assignments, they will be more likely to be dissatisfied and to search for opportunities elsewhere.³⁴ The attrition rates for women and especially women of color in law firms are already extremely high, and research suggests that the cost to the firm of attrition per associate is up to \$400,000.³⁵ Law firms cannot afford to fail to address the inequality in assignments.

The Solution: A Three-Step Approach

Fair allocation of the glamour work and the office housework are two separate problems. Some law firms will want to solve the office housework problem before tackling the glamour work; others will want to address both problems simultaneously. (A “Road Map for Implementation” is available at BiasInterrupters.org.)

1. Use Metrics

A. Identify and Track

The first step is to find out if and where you have a problem.

- What is the office housework and glamour work in your organization?
- Who is doing what and for how long?
- Are there demographic patterns that indicate gender and/or racial bias is at play?

To do this:

1. Distribute the “Office Housework Survey” (available at BiasInterrupters.org) to your employees to find out who is doing the office housework and how much of their time it takes up.
2. Convene relevant managers (and anyone else who distributes assignments) to identify the glamour work and the lower-profile work in the law firm. Use the “Assignment Typology Worksheet” to create a typology for assignments and the “Protocol” for more details (both available at BiasInterrupters.org).
3. Input the information from the typology meeting into the “Manager Assignment Worksheet” and distribute this to managers (available online at BiasInterrupters.org). Have managers fill out the worksheets and submit them, identifying to whom they assign the glamour work and the lower-profile work.

B. Analyze Metrics

Analyze survey results and worksheets for demographic patterns, dividing employees into (1) majority men, majority women, men of color, and women of color, (2) parents who have just returned from parental leave, (3) professionals working part-time or flexible schedules, and (4) any other underrepresented group that your organization tracks (veterans, LGBTQ people, individuals with disabilities, etc.).

- Who is doing the office housework?
- Who is doing the glamour work?
- Who is doing the low-profile work?
- Create and analyze metrics by individual supervising attorney.

2. Implement Bias Interrupters

A. Office Housework Interrupters

- **Don’t ask for volunteers.** Women are more likely to volunteer because they are under subtle but powerful pressures to do so.³⁶

- **Hold everyone equally accountable.** “I give it to women because they do it well and the men don’t” is a common sentiment. This dynamic reflects an environment in which men suffer few consequences for doing a poor job on office housework, but women who do a poor job are seen as “prima donnas” or “not team players.” Hold men and women equally accountable for carrying out all assignments properly.
- **Use admins.** If possible, assign office housework tasks to admins (e.g., planning birthday parties, scheduling meetings, ordering lunch).
- **Establish a rotation.** A rotation is helpful for many administrative tasks (e.g., taking notes, scheduling meetings). Rotating housework tasks such as ordering lunch and planning parties is an option if admins are unavailable.
- **Shadowing.** Another option for administrative tasks is to assign a more junior person to shadow someone more senior—and take notes.

B. Glamour Work Interrupters

- **Avoid mixed messages.** If your law firm values mentoring and committee work (such as serving on the Diversity Initiative), make sure these things are valued when the time comes for promotions and raises. Sometimes law firms say they highly value this kind of work—but they don’t. Mixed messages of this kind will negatively affect women and people of color.
- **Conduct a roll-out meeting.** Gather relevant managing and supervising attorneys to introduce the bias interrupters initiative and set expectations. “Key Talking Points for the Roll-Out Meeting” are available at BiasInterrupters.org.
- **Provide a bounceback.** Identify individual supervising attorneys whose glamour work allocation is lopsided. Hold a meeting with that supervisor and bring the problem to his or her attention. Help the supervisor think through why he or she only assigns glamour work to certain people or certain types of people. Work with the supervisor to figure out (1) if the available pool for glamour work assignments is diverse but is not being tapped fully or (2) if only a few people have the requisite skills for glamour work assignments. Read the “Responses to Common Pushback” and “Identifying Bias in Assignments” worksheets (available at BiasInterrupters.org) before the bounceback meetings to prepare. You may have to address low-profile work explicitly at the same time as you address high-profile assignments; this will vary by law firm.

If a diverse pool has the requisite skills . . .

- **Implement a rotation.** Have the supervisor set up a rotation to ensure fair access to plum assignments.
- **Formalize the pool.** Write down the list of people with the requisite skills and make it visible to the supervisor. Sometimes just being reminded of the pool can help.
- **Institute accountability.** Have the supervisor track his or her allocation of glamour work going forward to measure progress. Research shows that accountability matters.³⁷

If the pool is not diverse . . .

- **Revisit the assumption that only one (or very few) employees can handle this assignment.** Is that true, or is the supervisor just more comfortable working with those few people?
- **Analyze how the pool was assembled.** Does the supervisor allocate the glamour work by relying on self-promotion or volunteers? If so, that will often disadvantage women and people of color. Shift to more objective measures to create the pool based on skills and qualifications.

If the above suggestions aren't relevant or don't solve your problem, then it's time to **expand the pool**:

- **Development plan.** Identify what skills or competencies an employee needs to be eligible for the high-profile assignments work and develop a plan to help the employee develop the requisite skills.
- **Succession planning.** Remember that having "bench strength" is important so your department won't be left scrambling if someone unexpectedly leaves the company.
- **Leverage existing HR policies.** If your organization uses a competency-based system or has a Talent Development Committee or equivalent, use that resource to help develop competencies so career-enhancing assignments can be allocated more fairly.
- **Shadowing.** Have a more junior person shadow a more experienced person during the high-profile assignment.
- **Mentoring.** Establish a mentoring program to help a broader range of junior people gain access to valued skills.

If you can't expand your pool, **reframe the assignment** so that more people could participate in it. Could you break up the assignment into discrete pieces so more people get the experiences they need?

If nothing else works, **consider a formal assignment system.** Appoint an assignments czar to oversee the distribution of assignments in your organization. See examples of what other law firms have done at BiasInterrupters.org.

3. Repeat as Needed

- **Return to your metrics.** Did the bias interrupters produce change?
- **If you still don't have a fair allocation of high- and low-profile work, you may need to implement stronger bias interrupters or consider moving to a formal assignment system.**
- **Use an iterative process until your metrics improve.**

Interrupting Bias in Performance Evaluations

Tools for Law Firms

The Challenge

In one study, law firm partners were asked to evaluate a memo by a third-year associate. Half the partners were told the associate was black; the other half were told the identical memo was written by a white associate. The partners found 41% more errors in the memo they believed was written by a black associate as compared with a white associate.³⁸ Overall rankings also differed by race. Partners graded the white author as having “potential” and being “generally good,” whereas they graded the black author as “average at best.”

The Solution: A Three-Step Approach

1. Use Metrics

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you’ve taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)

For each metric, examine:

- Do patterned differences exist between majority men, majority women, men of color, and women of color? Include any other underrepresented group that your firm tracks, such as military veterans, LGBTQ people, or individuals with disabilities.
- Do patterned differences exist for parents after they return from leave or for lawyers who reduce their hours?
- Do patterned differences exist between full-time and part-time employees?

Important metrics to analyze:

- Do your performance evaluations show consistent disparities by demographic group?
- Do women’s ratings fall after they have children? Do employees’ ratings fall after they take parental leave or adopt flexible work arrangements?
- Do the same performance ratings result in different promotion or compensation rates for different groups?

Keep metrics by (1) supervising attorney; (2) department; (3) country, if relevant; and (4) the law firm as a whole.

2. Implement Bias Interrupters

All bias interrupters should apply both to written evaluations and in meetings, where relevant. Because every firm is different, not all interrupters will be relevant. Consider this a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Performance Evaluations Worksheet,” available online at BiasInterrupters.org.

A. *Empower and Appoint*

- **Empower people involved in the evaluation process to spot and interrupt bias.** Use the “Identifying Bias in Performance Evaluations Worksheet,” available online at BiasInterrupters.org. Read and distribute.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the performance evaluation process. Training is available at BiasInterrupters.org.

B. *Tweak the Evaluation Form*

- **Begin with clear and specific performance criteria directly related to job requirements.** Try “He is able to write an effective summary judgment motion under strict deadlines” instead of “He writes well.”
- **Require evidence from the evaluation period that justifies the rating.** Try “In March, she argued X motion in front of Y judge on Z case, answered his questions effectively, and was successful in getting the optimal judgment” instead of “She’s quick on her feet.”
- **Consider performance and potential separately for each candidate.** Performance and potential should be appraised separately. Majority men tend to be judged on potential; others are judged on performance.

Separate personality issues from skill sets for each candidate. Personal style should be appraised separately from skills because a narrower range of behavior often is accepted from women and people of color. For example, women may be labeled “difficult” for doing things that are accepted in majority men.

C. *Tweak the Evaluation Process*

- **Level the playing field.** Ensure that all candidates know how to promote themselves effectively and send the message that they are expected to do so. Distribute the “Writing an Effective Self-Evaluation Worksheet,” available online at BiasInterrupters.org.
- **Offer alternatives to self-promotion.** Encourage or require supervisors to set up more formal systems for sharing successes, such as a monthly e-mail that lists employees’ accomplishments.
- **Provide a bounceback.** Supervisors whose performance evaluations show persistent bias should receive a bounceback (i.e., someone should talk through the evidence with them).
- **Have bias interrupters play an active role in calibration meetings.** In many law firms and legal departments, the Executive Committee or another body meets

What's a bounceback?

An example: in one organization, when a supervisor's ratings of an underrepresented group deviate dramatically from the mean, the evaluations are returned to the supervisor with the message: either you have an undiagnosed performance problem that requires a Performance Improvement Plan (PIP), or you need to take another look at your evaluations as a group. The organization found that a few people were put on PIPs, but over time, supervisors' ratings of underrepresented groups converged with those of majority men. A subsequent survey found that employees of all demographic groups rated their performance evaluations as equally fair (whereas bias was reported in hiring—and every other business system).

to produce a target distribution of ratings or to cross-calibrate rankings. Have participants read the “Identifying Bias in Performance Evaluations Worksheet” on bias before they meet (available at BiasInterrupters.org). Have a trained bias interrupter in the room.

- **Don't eliminate your performance appraisal system.** Eliminating formal performance evaluation systems and replacing them with feedback on the fly creates conditions for bias to flourish.

3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the performance evaluation process.
- **Use an iterative process** until your metrics improve.

Interrupting Bias in Partner Compensation

Tools for Law Firms

The Challenge

The gender pay gap in law firms has been extensively documented for decades. A 2016 report by Major, Lindsey, and Africa found a 44% pay gap between male and female law firm partners.³⁹ The report also found a 50% difference in origination credit, which many use to explain the pay gap: men earn more money because they bring in more business. Studies show the picture is much more complicated.

- One study found that even when women partners originated similar levels of business as men, they still earned less.⁴⁰
- Another study found that 32% of white women income partners and 36% of women partners of color reported that they had been intimidated, threatened, or bullied out of origination credit.⁴¹
- The same study found that more than 80% of women partners reported being denied their fair share of origination credit in the previous three years.⁴²
- Doesn't everyone think their compensation is unfair? Not to the same degree: a recent survey of lawyers found that male lawyers were about 20% more likely than white women lawyers and 30% more likely than women lawyers of color to say that their pay was comparable to their colleagues of similar experience.⁴³

The Solution: A Three-Step Approach

1. Use Metrics

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you've taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)

For each metric, examine:

- Do patterned differences exist between majority men, majority women, men of color, and women partners of color? (Include any other underrepresented group that your firm tracks, such as military veterans or LGBTQ people.)
- Are partners disadvantaged for taking parental leave? Are parents or others with caregiving responsibilities excluded from future opportunities?
- Do part-time lawyers receive less than proportionate pay for proportionate work? Are they excluded from future opportunities?

Important metrics to analyze:

- **Compare compensation with a variety of lenses and look for patterns.** Lenses include relationship enhancement, hours and working time revenues, and so forth. Do separate analyses for equity and income partners.
- **Succession.** Analyze who inherits compensation credit and client relationships and how and when the credit moves.
- **Origination and other important forms of credit.** Analyze who gets origination and other important forms of credit, how often it is split, and who does (and does not) split it. If your firm does not provide credit for relationship enhancement, analyze how that rule affects different demographic groups—and consider changing it.
- **Comp adjustments.** Analyze how quickly compensation falls, and by what percentage during a lean period and how quickly compensation rises during times of growth. (When partners lose key clients, majority men often are given more of a runway to recover than other groups.)
- **De-equitization.** Analyze who gets de-equitized.
- **Pitch credit.** Analyze who has opportunities to go on pitches, who plays a speaking role, and who receives origination and other forms of credit from pitches.
- **Lateral partners.** Analyze whether laterals are paid more in relation to their metrics. This is a major factor in defeating diversity efforts at some firms.

Keep metrics by (1) individual supervising lawyer; (2) department; (3) country, if relevant; and (4) the firm as a whole.

2. Implement Bias Interrupters

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Partner Compensation Worksheet,” available online at BiasInterrupters.org.

A. Find Out What Drives Compensation—and Be Transparent about What You Find

- **Commission an analysis.** Although firms may say they value a broad range of factors, many experts agree that origination and billable hours account for almost all variance in compensation.⁴⁴ Hire a law firm compensation consultant or statistician to find out what factors determine compensation at your firm.
- **Be transparent about what drives compensation.** This is a vital first step to empowering women and people of color to refuse work that does not enhance their compensation and focus on work that positions them to receive higher compensation. Studies show that reducing ambiguity reduces gender bias in negotiations—and law firm compensation often involves negotiation among partners.⁴⁵ If only those “in the know” understand what’s really valued, that will benefit a small in group that typically reflects the demography of your existing equity partnership.
- **Value everything that’s valuable.** Give credit for nonbillable work that is vital to sustaining the long-term health of the firm—including relationship enhancement credit, credit for lawyers who actually do the client’s work, and talent manage-

ment. If the firm says it values mentoring and greater diversity but does not in fact do so, this will disadvantage women and lawyers of color.

B. Establish Clear, Public Rules

- **Establish clear rules governing granting and splitting origination and other valuable forms of credit.** Research suggests that men are more likely to split origination credit with men than with women and that women may get less origination credit than men even when they do a similar amount of work to bring in the client.⁴⁶ Set clear, public rules addressing how origination credit should be split by publishing and publicizing a memo that details how partners should split credit under common scenarios.
- **Establish a formal system of succession planning.** If your firm allows origination credit to be inherited, institute a formal succession planning process. Otherwise, in-group favoritism means that your current pattern of origination credit will be replicated over and over again, with negative consequences for diversity.
- **Pitch credit.** Women attorneys and attorneys of color often report being used as “eye candy”—brought to pitches but then not given a fair share of credit or work that results. Establish rules to ensure this does not occur. The best practice is that if someone does the work for the pitch, he or she should be recognized with credit that accurately reflects his or her role in doing and winning the work.
- **Parental leave.** Counting billables and other metrics as “zero” for the months women (or men) are on parental leave is a violation of the Family and Medical Leave Act, where applicable, and is unfair even where it is not illegal. Instead, annualize based on the average of the months the attorney was at work, allowing for a ramp-up and ramp-down period.
- **Part-time partners.** Compensation for part-time partners should be proportional. Specifics on how to enact proportional compensation depends on which compensation system a law firm uses. See the “Best Practices for Part-Time Partner Compensation” paper for details, available at BiasInterrupters.org.

C. Establish Procedures to Ensure the Perception and Reality of Fairness

- **Institute a low-risk way partners can receive help in disputes over credit.** Set up a way to settle disputes over origination and other forms of credit that lawyers can use without raising eyebrows.
- **Provide templates for partner comp memos—and prohibit pushback.** Some firms provide opportunities for partners and associates to make their case to the compensation committee by writing a compensation memo. If your firm does this, distribute the worksheet (online at BiasInterrupters.org) on how to write an effective compensation memo and set rules and norms to ensure that women and minorities are not penalized for self-promotion. If not, give partners the opportunity to provide evidence about their work: research shows that women’s successes tend to be discounted and their mistakes remembered longer than men’s.
- **Institute quality control over how compensation is communicated to partners.** Design a structured system for communicating with partners to explain what factors went into determining their compensation.

- **When hiring, don't ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.⁴⁷ (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.⁴⁸)
- **Have a bias interrupter at meetings where compensation is set.** This is a person who has been trained to spot the kinds of bias that commonly arise.
- **Training.** Make sure that your compensation committee, and anyone else involved in setting compensation, knows how implicit bias commonly plays out in law firm partner compensation and how to interrupt that bias. Read and distribute the “Identifying Bias in Partner Compensation Worksheet” (available at BiasInterrupters.org).

3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the compensation process.
- **Use an iterative process** until your metrics improve.

Small Steps, Big Change

Bias Interrupters Tools for In-House Departments

Interrupting Bias in Hiring

Tools for In-House Departments

The Challenge:

When comparing identical resumes, “Jamal” needed eight additional years of experience to be considered as qualified as “Greg,” mothers were 79% less likely to be hired than an otherwise-identical candidate without children, and “Jennifer” was offered \$4,000 less in starting salary than “John.”⁴⁹ Unstructured job interviews do not predict job success,⁵⁰ and judging candidates on “culture fit” can screen out qualified diverse candidates.⁵¹

The Solution: A Three-Step Approach

1. Use Metrics

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you’ve taken.

For in-house departments, some metrics may be possible to track; others may require HR or can only be tracked company-wide. Depending on the structure and size of your in-house department, identify what’s feasible.

Whether metrics are made public will vary from company to company and from metric to metric.

For each metric, examine:

- Do patterned differences exist between majority men, majority women, men of color, and women of color? (Include any other underrepresented group that your department/company tracks, such as veterans, LGBTQ people, etc.)

Important metrics to analyze:

- The goal is to track the candidate pool through the entire hiring process—from initial contact, to resume review, to interviews, to hiring—and then to analyze where underrepresented groups are falling out of the hiring process. How much you can track will depend on how your company’s systems are set up, as will the extent to which you will need help from HR.
- Track whether hiring qualifications are waived more often for some groups. You may be able to do this only for those parts of the hiring process that are done at a departmental level, such as final-round interviews.
- Track interviewers’ reviews and recommendations to look for demographic patterns. Again, your department’s ability to do this will depend on what is handled at a departmental level, or your HR department may be willing to do this tracking.

Keep in-house metrics by (1) individual supervisor; (2) department, if your in-house department is large enough to have its own departments; and (3) country, if relevant.

2. Implement Bias Interrupters

All bias interrupters should apply both to written materials and in meetings, where relevant.

Because in-house departments are all different and vary in size and structure, not all interrupters will be relevant. Depending on how much of the hiring process is done by the in-house department versus HR, some of the interrupters may be more feasible than others. Consider this a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Hiring Worksheet,” available online at BiasInterrupters.org, which summarizes hundreds of studies.

A. *Empower and Appoint*

- **Empower people involved in the hiring process to spot and interrupt bias.** Use the “Identifying Bias in Hiring Worksheet,” available online at BiasInterrupters.org, and distribute this to anyone involved in hiring.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the hiring process. Training is available at BiasInterrupters.org.

B. *Tips to Help You Assemble a Diverse Pool*

- **If your department hires by referral, keep track of the candidate flow from referrals.** Hiring from current employees’ social networks may well replicate lack of diversity if your department is not diverse. If your analysis finds that referrals consistently provide majority candidates, consider limiting referrals or balance referral hiring with more targeted outreach to ensure a diverse candidate pool.
- **Recruit where diverse candidates are.** If your department handles recruiting, make sure to reach out to diverse candidates where they are. Identify law job fairs, affinity networks, conferences, and training programs aimed at women and people of color and send recruiters. If your department does not do recruiting, consider asking the people in charge to do more targeted recruitment.
- **If recruitment happens mostly at law schools, consider candidates from multi-tier schools.** Don’t limit your search to candidates from Ivy League and top-tier schools. This practice favors majority candidates from elite backgrounds and hurts people of color and professionals from nonprofessional backgrounds (class migrants).⁵² If another department handles recruiting, let them know that your department would like to consider candidates from a broader range of law schools.
- **If your department writes its own job postings, make sure you are not using language that has been shown to decrease the number of women applicants** (words such as *competitive* or *ambitious*). If HR is in charge of the job postings, suggest that they review job posts in the same way. Tech companies such as Textio and Unitive can help.

- **Insist on a diverse pool.** If HR creates a pool for your department, tell them that you expect the pool to be diverse. One study found the odds of hiring a woman were 79 times greater if there were at least two women in the finalist pool; the odds of hiring a person of color were 194 times greater.⁵³ If HR does not present a diverse pool, try to figure out where the lack of diversity is coming from. Is HR weeding out the diverse candidates, or are the jobs not attracting diverse candidates?

C. Interrupting Bias While Reviewing Resumes

If your in-house department conducts the initial resume screening, use the following bias interrupters. If HR does the initial screening, encourage them to implement the following tips to ensure that your department receives the most qualified candidates.

- **Distribute the “Identifying Bias in Hiring Worksheet” before resumes are reviewed** (available at BiasInterrupters.org) so reviewers are aware of the common forms of bias that can affect the hiring process.
- **If candidates’ resumes are reviewed by your department, commit to what qualifications are important—and require accountability.** When qualifications are waived for a specific candidate, require an explanation of why the qualification at issue is no longer important—and keep track to see for whom requirements are waived.⁵⁴ If HR reviews the resumes, give HR a clear list of the qualifications your department is seeking.
- **Establish clear grading rubrics and ensure that all resumes are graded on the same scale.** If possible, have each resume reviewed by two different people and average the scores. If HR reviews resumes, encourage them to review resumes based on the rubric that you provide to them.
- **Remove extracurricular activities from resumes.** Including extracurricular activities on resumes can favor elite majority candidates.⁵⁵ Remove extracurriculars from resumes before you review them or ask HR to do this.
- **Watch out for Maternal Wall bias.** Mothers are 79% less likely to be hired than an identical candidate without children.⁵⁶ Train people who review resumes not to make inferences about whether someone is committed to the job due to parental status. Instruct them not to count “gaps in a resume” as an automatic negative. If HR reviews resumes, ask them to do the same.
- **Try using “blind auditions.”** If women and candidates of color are dropping out of the pool at the resume review stage, consider removing demographic information from resumes before review—or ask HR to do it.

D. Controlling Bias in the Interview Process

- **Ask the same questions to every person you interview.** Come up with a set list of questions you will ask each candidate and ask them in the same order to each person. Ask questions that are directly relevant to the job for which the candidate is applying.⁵⁷
- **Ask performance-based, work-relevant questions.** Performance-based questions, or behavioral interview questions (“Tell me about a time you had too many things to do and had to prioritize.”), are a strong predictor of how successful a

- candidate will be on the job.⁵⁸ Ask questions that are directly relevant to situations that arise in your department.
- **Require a work sample.** If applicable, ask candidates to demonstrate the skills they will need on the job (e.g., ask candidates to write an advisory letter to the sales team about a new product.)
 - **Standardize the interview evaluation process.** Develop a consistent rating scale for candidates' answers and work samples. Each rating should be backed up with evidence. Average the scores granted on each relevant criterion and discount outliers.⁵⁹
 - **Try behavioral interviewing.**⁶⁰ Ask questions that reveal how candidates have dealt with prior work experiences. Research shows that structured behavioral interviews can more accurately predict the future performance of a candidate than unstructured interviews.⁶¹ Instead of asking “How do you deal with problems with your manager?” say “Describe for me a conflict you had at work with your manager.” When evaluating answers, a good model to follow is STAR⁶²: the candidate should describe the Situation faced, the Task handled, the Action taken to deal with the situation, and the Result.
 - **If you use culture fit, do so carefully.** Using culture fit as a hiring criterion can thwart diversity efforts.⁶³ Culture fit (“Would I like to get stuck in an airport with this candidate?”) can be a powerful force for reproducing the current makeup of the organization when it's misused.⁶⁴ Questions about sports and hobbies may feel exclusionary to women and to class migrants who did not grow up playing golf or listening to classical music. If culture fit is a criterion for hiring, provide a specific work-relevant definition. Google's work-relevant definition of culture fit is a helpful starting point.⁶⁵
 - **Ask directly about “gaps in a resume.”** Women fare better in interviews when they are able to provide information up front rather than having to avoid the issue.⁶⁶ Instruct your interviewing team to give, in a neutral and nonjudgmental fashion, candidates the opportunity to explain gaps in their resumes.
 - **Be transparent to applicants about what you're seeking.** Provide candidates and interviewers with a handout that explains to everyone what's expected from candidates in an interview. Distribute it to candidates and interviewers for review so everyone is on the same page about what your in-house department is seeking. An example “Interview Protocol Sheet” is available at BiasInterrupters.org.
 - **Don't ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.⁶⁷ (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.⁶⁸)

3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the hiring process.
- **Use an iterative process** until your metrics improve.

Interrupting Bias in Assignments

Tools for In-House Departments

The Challenge

Diversity at the top can only occur when diverse employees at all levels of the organization have access to assignments that let them take risks and develop new skills. A level playing field requires that both the glamour work (career-enhancing assignments) and the office housework (the less high-profile and back-office work) are distributed fairly. If your department uses an informal “hey, you!” assignment system to distribute assignments, you may end up inadvertently distributing assignments in an inequitable fashion.

If women and people of color keep getting stuck with the same low-profile assignments, they will be more likely to be dissatisfied and to search for opportunities elsewhere.⁶⁹

The Solution: A Three-Step Approach

Fair allocation of the glamour work and the office housework are two separate problems. Some in-house departments will want to solve the office housework problem before tackling the glamour work; others will want to address both problems simultaneously. This will depend on the size of your in-house department and how work is currently assigned.

1. Use Metrics

A. Identify and Track

For each metric, examine:

- What is the office housework and glamour work in your department?
- Who is doing what and for how long?
- Are there demographic patterns that indicate gender and/or racial bias at play?

Important metrics to analyze:

1. Distribute an office housework survey to members of your department to find out who is doing the office housework and how much of their time it requires. Create your own survey or use ours, available at BiasInterrupters.org.
2. Convene relevant managers (and anyone else who distributes assignments) to identify what is the glamour work and what is the lower-profile work in the department. Worksheets and protocols to help you are available online at BiasInterrupters.org.

3. Once you have identified what the glamour work is in your department, ask managers to report which employees have been doing the glamour work. Worksheets are also available at BiasInterrupters.org.

B. Analyze Metrics

Analyze office housework survey results and glamour worksheets for demographic patterns, dividing employees into (1) majority men, majority women, men of color, and women of color, (2) parents who have just returned from parental leave, (3) professionals working part-time or flexible schedules, and (4) any other underrepresented group that your organization tracks (e.g., veterans, LGBTQ people, individuals with disabilities). (This will also depend on the size of your in-house department. If there are only one or two people in a category, the metric won't be scientifically viable.)

- Who is doing the office housework?
- Who is doing the glamour work?
- Who is doing the low-profile work?
- Create and analyze metrics by individual supervisor.

2. Implement Bias Interrupters

Because every in-house department is different and varies so much in size and structure, not all interrupters will be relevant. Depending on how much of the hiring process is done by the in-house department versus HR, some of the interrupters may be more feasible than others. Consider this a menu.

A. Office Housework Interrupters

- **Don't ask for volunteers.** Women are more likely to volunteer because they are under subtle but powerful pressures to do so.⁷⁰
- **Hold everyone equally accountable.** "I give it to women because they do it well—men don't." This dynamic reflects an environment in which men suffer few consequences for doing a poor job on less glamorous assignments and women who do the same are faulted as "not being team players."
- **Use admins.** Assign office housework tasks (e.g., planning birthday parties, scheduling meetings, ordering lunch) to admins if your department has enough admin support to do so.
- **Establish a rotation.** A rotation is helpful for many administrative tasks (e.g., taking notes, scheduling meetings). Rotating housework tasks (e.g., ordering lunch and planning parties) is also an option if admins are unavailable, making it a good option for in-house departments.
- **Shadowing.** Another option in larger departments is to assign a more junior person to shadow someone more senior—and to do administrative tasks such as taking notes.

B. Glamour Work Interrupters

- **Value what's valuable.** If your department values such things as mentoring and committee work (such as serving on the Diversity Initiative), make sure these things are valued when the time comes for promotions and raises. Sometimes

companies say they highly value this kind of work—but they don't. Mixed messages of this kind will negatively affect women and people of color. If your department doesn't have complete control over promotions and raises, work with relevant departments to ensure that communicated values are being rewarded appropriately. When members of your in-house department take on diversity work, make sure they have suitable staff support.

- **Announce your goals of equitable assignments.** Gather your team (or the members of your team who distribute assignments) to introduce the bias interrupters initiative and set expectations. Key talking points for the roll-out meeting are available online at BiasInterrupters.org.
- **Provide a bounceback.** If your metrics reveal that some members of your department distribute assignments inequitably, hold a bounceback meeting. Help the person in question think through why he or she assigns glamour work to certain people or certain types of people. Work with the person to figure out whether (1) the available pool for glamour work assignments is diverse but is not being tapped fully or whether (2) only a few people have the requisite skills for glamour work assignments. Use the “Responses to Common Pushback” and “Identifying Bias in Assignments” worksheets (available at www.BiasInterrupters.org) to prepare for bounceback meetings.

If a diverse pool has the requisite skills . . .

- **Implement a rotation.** Set up a system where plum assignments are rotated between qualified employees.
- **Formalize the pool.** Write down the list of people with the requisite skills and make it visible to whomever distributes assignments. Suggest or require anyone handing out plum assignments to review the list of qualified legal professionals before making a decision. Sometimes just being reminded of the pool can help.
- **Institute accountability.** Require people handing out assignments to keep track of who gets plum assignments. Research shows that accountability matters.⁷¹

If the pool is not diverse . . .

- **Revisit your assumptions.** Can only one (or very few) employees handle this type of assignment, or is it just that you feel more comfortable working with those few people?
- **Revisit how the pool was assembled.** When access to career-enhancing assignments depends on “go-getters” who ask for them, women, people of color, and class migrants may be disadvantaged because self-promotion is less acceptable to them or less accepted when they do it.

If these suggestions aren't relevant or don't solve your problem, then it's time to **expand the pool**. Small in-house departments may have to find creative ways to do this.

- **Development plan.** For the attorneys or other legal professionals who aren't yet able to handle the plum assignments, what skills would they need to be eligible? Identify those skills and institute a development plan.

- **Succession planning.** Remember that having “bench strength” is important so that your department won’t be left scrambling if someone unexpectedly leaves the company.
- **Leverage existing HR policies.** If your company has a Talent Development Committee or professional development resources, use this resource to help your legal professionals develop the skills they need to handle plum assignments.
- **Shadowing.** Have a more junior person shadow a more experienced person during a high-profile assignment.
- **Mentoring.** Establish a mentoring program to help a broader range of junior people gain access to valued skills.

If you can’t expand your pool, reframe the assignment. Can you break up the assignment into discrete pieces so more people can participate and get the experiences they need?

If nothing else works, consider a formal assignment system.

3. Repeat as Needed

- **Return to your metrics.** Did the bias interrupters produce change?
- **If you still don’t have a fair allocation of high- and low-profile work,** you may need to implement stronger bias interrupters or consider moving to a formal assignment system.
- **Use an iterative process** until your metrics improve.

Interrupting Bias in Performance Evaluations

Tools for In-House Departments

The Challenge

Bias in performance evaluations has been well documented for decades.⁷²

In one study, law firm partners were asked to evaluate a memo by a third-year associate. Half the partners were told the associate was black; the other half were told the identical memo was written by a white associate. The partners found 41% more errors in the memo they believed was written by a black associate as compared with a white associate.⁷³ Overall rankings also differed by race. Partners graded the white author as having “potential” and being “generally good,” whereas they graded the black author as “average at best.”

The problem isn’t limited to law firms. One informal study in tech revealed that 66% of women’s performance reviews but only 1% of men’s reviews contained negative personality criticism.⁷⁴ Bias in the evaluation process stretches across industries.

The Solution: A Three-Step Approach

1. Use Metrics

For in-house departments, some metrics may be possible to track; others may require HR or can only be tracked company-wide. Depending on the structure and size of your department, identify which metrics you are able to track.

For each metric, examine:

- Do patterned differences exist between majority men, majority women, men of color, and women of color? Include any other underrepresented group that your company tracks, such as veterans, LGBTQ people, or individuals with disabilities.
- Do patterned differences exist for parents after they return from leave or for employees who reduce their hours?
- Do patterned differences exist between full-time and part-time lawyers and other legal professionals?

Important metrics to analyze:

- Do your performance evaluations show consistent disparities by demographic group?
- Do women’s ratings fall after they have children? Do ratings fall after professionals take parental leave or adopt flexible work arrangements?

- Do the same performance ratings result in different promotion or compensation rates for different groups?

Keep in-house metrics by (1) individual supervisor; (2) department, if your in-house department is large enough to have its own departments; and (3) country, if relevant.

2. Implement Bias Interrupters

All bias interrupters should apply both to written materials and in meetings, where relevant.

Because in-house departments vary so much in size and structure, not all interrupters will be relevant to every company. Also, some interrupters will not be feasible, depending on how much of the hiring process is done by the in-house department versus HR. Consider this as a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Performance Evaluations Worksheet,” available online at BiasInterrupters.org, which summarizes hundreds of studies.

A. *Empower and Appoint*

- **Empower people involved in the evaluation process to spot and interrupt bias.** Use the “Identifying Bias in Performance Evaluations Worksheet,” available at BiasInterrupters.org, and distribute it to those involved in the evaluation process.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the performance evaluation process. Training is available at BiasInterrupters.org.

B. *Tips for Tweaking the Evaluation Form*

Many in-house departments do not have control over their performance evaluation forms, so some of these suggestions will not be feasible.

- **Begin with clear and specific performance criteria directly related to job requirements.** Try “He is able to write clear memos to leadership that accurately portray the legal situations at hand” instead of “He writes well.”
- **Instruct reviewers to provide evidence to justify their rating and hold them accountable.** Global ratings, with no specifics to back them up, are a recipe for bias and do not provide constructive advice to the employee being reviewed.
- **Ensure that the evidence is from the evaluation period.** The evaluation form should make it clear that a mistake an employee made two years ago isn’t acceptable evidence for a poor rating today.
- **Separate discussions of potential and performance.** There is a tendency for majority men to be judged on potential and others to be judged on performance.
- **Separate personality issues from skill sets.** A narrower range of behavior often is accepted from women and people of color than from majority men.

C. Tips for Tweaking the Evaluation Process

- **Help everyone effectively advocate for themselves.** Distribute the “Writing an Effective Self-Evaluation,” available online at BiasInterrupters.org.
- **If the evaluation process requires self-promotion, offer alternatives.** Set up more formal systems for sharing successes within your in-house department, such as a monthly e-mail that lists employees’ accomplishments.
- **Provide a bounceback.** If possible, ask HR for an analysis (or do your own) to ensure that individual supervisors’ reviews do not show bias toward or against any particular group. If they do, hold a meeting with that supervisor to help the person in question think through why certain types of people are getting lower performance evaluations. Work with the supervisor to figure out whether (1) the individuals in question are having performance problems and should be put on Performance Improvement Plans or whether (2) the supervisor should reexamine how employees are being evaluated.
- **Have bias interrupters play an active role.** If your in-house department holds calibration meetings, make sure there is a bias interrupter in the room to spot and correct any instances of bias. If a bias interrupter can’t be in the room, have participants read the “Identifying Bias in Performance Evaluations Worksheet” before they meet, available online at BiasInterrupters.org.
- **Don’t eliminate your performance appraisal system.** To the extent that you have a say in the HR operations in your company, encourage your company not to eliminate formal performance appraisal systems. Informal, on the fly performance evaluation systems are becoming more popular, but they have a tendency to reproduce patterns of bias.

3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don’t see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the performance evaluation process.
- **Use an iterative process** until your metrics improve.

Interrupting Bias in Compensation

Tools for In-House Departments

The Challenge

The in-house gender pay gap has not been well studied, but a 2017 report from the Association of Corporate Counsel described a “dramatic” gender pay disparity based on a survey taken by 1,800 in-house counsel. The report found that there is a higher proportion of men in six of seven salary bands above \$199,000—yet only 8% of male respondents believed that a pay gap existed.⁷⁵

Interrupting bias in compensation for in-house departments can be tricky because decisions and policies around compensation typically are made at the company level, but there are steps your department can take to begin to address the problem.

The Solution

The following recommendations can be implemented at the departmental level to reduce bias in compensation.

- **Communicate your organization’s compensation strategy.** If only those “in the know” understand what’s really valued, that will only benefit a small in group.
- **When hiring, don’t ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.⁷⁶ (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.⁷⁷)
- **Read and distribute the “Identifying Bias in Compensation Worksheet” to anyone involved in compensation decisions in your department** (available online at BiasInterrupters.org).
- **Obtain surveys and benchmarking data at regular intervals.** Assess whether compensation in your in-house department is competitive with the relevant market. SHRM and similar organizations provide guidance to help you choose reputable compensation surveys and benchmarking data. Typically these data are behind a pay wall.
- **Encourage HR to implement pay equity audits under the direction of the legal department or outside lawyers to maximize the chance that the data collected is not discoverable under attorney–client privilege.**
- **When pay disparity is discovered, work with HR or the equivalent department to address the disparity within a reasonable period of time.**
- **Institute a low-risk way people can get help in disputes over compensation.** Set up a way to settle disputes over compensation that lawyers and legal professionals can use without raising eyebrows.

Best Practice: Sponsorship

Based on Ricardo Anzaldua's MetLife Sponsorship Program

These Best Practice recommendations are based on conversations with Ricardo Anzaldua, GC of MetLife, who implemented a similar program in his department.

Identify top talent. Create a system that controls for unconscious bias to identify top talent (including nondiverse talent) to defeat arguments that the program is designed to unfairly advantage or disadvantage particular groups. To identify top talent early, MetLife used existing talent-identifying tools and introduced survey techniques to control for unconscious bias. Make sure that your system:

- Draws input from many different sources (not just managers; also include clients, peers, subordinates, etc.)
- Seeks assessments of both performance and potential from varying perspectives

Pair each top-talent candidate with a trained senior-level sponsor who is held accountable.

- Tie effective sponsorship with manager performance evaluations, compensation, and ability to be promoted.
- To ensure that sponsorship does not come to be regarded as a risk of being considered a poor performer with little reward, either (1) enlist *all* officer-level managers to be sponsors or (2) create upside rewards available only to effective sponsors. (Note: enlisting all managers to be sponsors is simpler and helps get buy-in to the program.)
- Create and inculcate leadership competencies for managers that they can also use to advance.
- All top talent should be paired with sponsors, but pair diverse top-talent candidates with senior management.
- Make sure each protégé has a *mentor* (preferably not the sponsor).

Develop goals and milestones for protégés.

- Each sponsor-protégé pair creates a mutually agreed-upon career goal that can be accomplished in three to five years.
- Each sponsor creates a development plan that includes milestones along the way (opportunities and experiences needed to accomplish the career goal). Milestones may include presentations, managing/leading a team, communication training, leading a significant project (e.g., transaction, litigation, regulatory examination), and executive presence coaching.

Create action learning teams (ALTs).

- Create small teams of protégés and sponsors (pair sponsors with different groups of protégés).
- Give ALTs senior-management-level problems and task them with formulating, in three to six months, written proposals to solve the issues, including how to involve non-legal resources.
- Bring in SMEs to facilitate the more technical aspects of specific problems.
- At various points in the process, ALTs should brief senior management on the status of their work.

Bake sponsorship and ALTs into existing talent development systems, performance evaluations systems, and HR processes.

Endnotes

For complete citations, see the bibliography at BiasInterrupters.org/toolkits/orgtools/

1. For example, Dahlin et al., 2005; Ely & Thomas, 2001; Jehn et al., 1999.
2. Richard et al., 2004; Wooley et al., 2011; Lewis, 2016.
3. Phillips et al., 2006; Antonio et al., 2004; Richard et al., 2003.
4. Castilla, 2015.
5. Kalev, Dobbin, & Kelly, 2006.
6. Bertrand & Mullainathan, 2004; Benard & Correll, 2010; Correll et al., 2007; Moss-Racusin, Dovidio, Brescoll, Graham, & Handelsman, 2012.
7. Dana, Dawes, & Petersen, 2013.
8. Rivera, 2015.
9. Ibid.
10. Dale & Krueger, 2002, 2011.
11. Gaucher, Friesen, & Kay, 2011.
12. <http://www.unitive.works>.
13. <https://textio.com>.
14. Johnson, Hekman, & Chan, 2016.
15. Norton, Vandello, & Darley, 2004; Brewer, 1996; Tetlock, & Mellers, 2011.
16. Correl & Paik, 2007.
17. Thorngate, 2009.
18. Bock, 2015.
19. <https://www.ere-media.com/ere/how-to-create-behavioral-interview-questions-that-dont-give-away-the-answer>.
20. Derek Torrington, *The Fundamentals of Human Resource Management: Managing People at Work*, 2009.
21. <https://www.thebalance.com/what-is-the-star-interview-response-technique-2061629>.
22. Bock, 2015; Thorngate, 2009.
23. Rivera, 2015.
24. Bock, 2015: This is how Google defines it: “Googleness: . . . enjoying fun, a certain dose of intellectual humility . . . a strong measure of conscientiousness . . . comfort with ambiguity . . . and evidence that you’d take some courageous or interesting paths in your life.”

25. Hersch & Shinall, 2016.
26. <https://nwlc.org/wp-content/uploads/2017/06/Asking-for-Salary-History-Perpetuates-Discrimination.pdf>.
27. <https://www.natlawreview.com/article/will-new-jersey-be-next-to-jump-wage-history-ban-wagon>.
28. Williams & Dempsey, 2014.
29. Misra, Lundquist, & Templer, 2012; Mitchell & Hesli, 2013; Porter, 2007; Benschop & Dooreward, 1998; Ohlott, Ruderman, & McCauley, 1994; De Pater, Van Vianen, & Bechtoldt, 2010.
30. ABA Commission on Women, 2017.
31. Ibid.
32. Ibid.
33. Jaffe, Chediak, Douglas, & Tudor, 2016.
34. Babcock, Recalde, Vesterlund, & Weingart, 2017.
35. Epstein, Sauté, Oglensky, & Gever, 1995.
36. Heilman & Chen, 2005; Allen, 2006; Babcock, Recalde, Vesterlund, & Weingart, 2017; Williams & Dempsey, 2014.
37. Tetlock, 1983; Tetlock & Mitchell, 2009.
38. Reeves, 2014.
39. Major, Lindsey, & Africa, “2016 Partner Compensation Survey,” <https://www.mlaglobal.com/publications/research/compensation-survey-2016>.
40. Triedman, 2015.
41. Williams & Richardson, 2010.
42. Ibid.
43. ABA Commission on Women, 2017.
44. Williams & Richardson, 2010.
45. Bowles, Babcock, & McGinn, 2005.
46. Williams & Richardson, 2010.
47. <https://nwlc.org/wp-content/uploads/2017/06/Asking-for-Salary-History-Perpetuates-Discrimination.pdf>.
48. <https://www.natlawreview.com/article/will-new-jersey-be-next-to-jump-wage-history-ban-wagon>.
49. Bertrand & Mullainathan, 2004; Benard & Correll, 2010; Correll et al., 2007; Moss-Racusin, Dovidio, Brescoll, Graham, & Handelsman, 2012.
50. Dana, Dawes, & Petersen, 2013.

51. Rivera, 2015.
52. Rivera, 2015.
53. Johnson, Hekman, & Chan, 2016.
54. Norton, Vandello, & Darley, 2004; Brewer, 1996; Tetlock, & Mellers, 2011.
55. Rivera, 2015.
56. Correl & Paik, 2007.
57. Thorngate, 2009.
58. Bock, 2015.
59. Bock, 2015; Thorngate, 2009.
60. <https://www.eremedia.com/ere/how-to-create-behavioral-interview-questions-that-dont-give-away-the-answer/>.
61. Derek Torrington, *The Fundamentals of Human Resource Management: Managing People at Work*, 2009.
62. <https://www.thebalance.com/what-is-the-star-interview-response-technique-2061629>.
63. Rivera, 2012, 2015.
64. Rivera, 2015.
65. Bock, 2015: This is how Google defines it: “Googleness: . . . enjoying fun, a certain dose of intellectual humility . . . a strong measure of conscientiousness . . . comfort with ambiguity . . . and evidence that you’d take some courageous or interesting paths in your life.”
66. Hersch & Shinall, 2016.
67. <https://nwlc.org/wp-content/uploads/2017/06/Asking-for-Salary-History-Perpetuates-Discrimination.pdf>.
68. <https://www.natlawreview.com/article/will-new-jersey-be-next-to-jump-wage-history-ban-wagon>.
69. Babcock, Recalde, Vesterlund, & Weingart, 2017.
70. Heilman & Chen, 2005; Allen, 2006; Babcock, Recalde, Vesterlund, & Weingart, 2017; Williams & Dempsey, 2014.
71. Tetlock, 1983; Tetlock & Mitchell, 2009.
72. For an overview of the literature on bias in performance evaluations, see the “Identifying & Interrupting Bias in Performance Evaluations Worksheet” available on BiasInterrupters.org.
73. Reeves, 2014.
74. Snyder, 2014. <http://fortune.com/2014/08/26/performance-review-gender-bias/>.

75. Association of Corporate Counsel, “Global Perspectives: ACC In-House Trend Report,” 2017. Executive Summary.

76. <https://nwlc.org/wp-content/uploads/2017/06/Asking-for-Salary-History-Perpetuates-Discrimination.pdf>.

77. <https://www.natlawreview.com/article/will-new-jersey-be-next-to-jump-wage-history-ban-wagon>.

About the ABA Commission on Women in the Profession

As a national voice for women lawyers, the ABA Commission on Women in the Profession forges a new and better profession that ensures that women have equal opportunities for professional growth and advancement commensurate with their male counterparts. It was created in 1987 to assess the status of women in the legal profession and to identify barriers to their advancement. Hillary Rodham Clinton, the first chair of the commission, issued a groundbreaking report in 1988 showing that women lawyers were not advancing at a satisfactory rate.

Now entering its fourth decade, the commission not only reports the challenges that women lawyers face, it also brings about positive change in the legal workplace through such efforts as its Grit Project, Women of Color Research Initiative, Bias Interrupters Project, and the Margaret Brent Women Lawyers of Achievement Awards. Drawing upon the expertise and diverse backgrounds of its 12 members, who are appointed by the ABA president, the commission develops programs, policies, and publications to advance and assist women lawyers in public and private practice, the judiciary, and academia.

For more information, visit www.americanbar.org/women.

About the Minority Corporate Counsel Association (MCCA)

The preeminent voice on diversity and inclusion issues in the legal profession, MCCA is committed to advancing the hiring, retention and promotion of diverse lawyers in law departments and law firms by providing research, best practices, professional development and training, and pipeline initiatives.

MCCA's groundbreaking research and innovative training and professional development programs highlight best practices and identify the most significant diversity and inclusion challenges facing the legal community. MCCA takes an inclusive approach to the definition of "diversity" including race and ethnicity, gender, sexual orientation, disability status and generational differences.

Since MCCA's founding 20 years ago, it has been recognized and honored by the Association of Corporate Counsel, the National LGBT Bar Association, the National Minority Business Council, Inc. and the U.S. Equal Employment Opportunity Commission, among others. MCCA's vision, "To make the next generation of legal leaders as diverse as the world we live in," is what drives the organization and our passionate and committed partners.

For more information, visit www.mcca.com.

©2018 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

New Study Finds Gender and Racial Bias Endemic in Legal Profession

September 06, 2018

New study finds gender and racial bias endemic in legal profession

Share this:



First-of-its-kind survey shows systemic bias across the legal profession presents significant barriers to gender and racial equity

WASHINGTON, Sept. 6, 2018 – Despite efforts to reverse the trend, a new study confirms widespread gender and racial bias permeates hiring, promotion, assignments and compensation in the legal industry. Fifty-eight percent of women attorneys of color, and half of white women lawyers surveyed say they have been mistaken for administrative staff or janitors, according to the new study, *You Can't Change What You Can't See*, released today. In glaring contrast, only seven percent of white male lawyers report a similar occurrence.

Conducted by the [Center for WorkLife Law at the University of California, Hastings College of the Law](#) on behalf of [The Minority Corporate Counsel Association \(MCCA\)](#) and [The American Bar Association's Commission on Women in the Profession](#), the report examines implicit gender and racial bias in legal workplaces and offers new solutions and tools for interrupting bias across the legal profession.

“This report paints a stark picture of the obstacles that block many lawyers from achieving their potential,” said ABA President Bob Carlson. “The remedies it suggests – using metrics to encourage fairness – will lead the way to better employment practices and greater diversity, which will benefit the entire legal profession and our clients.”

Overall, women of color reported the highest level of bias in almost every workplace process in the survey.

- Sixty-three percent of women of color report having to go “above and beyond” to get the same recognition as their colleagues.

- The report notes that men of color and white women experience prove-it-again bias at a higher percentage (nearly 25 percentage points higher) than white men. In comparison, women of color experience prove-it-again bias at a higher percentage than any other group - 35 percentage points higher than white men and 10 percentage points higher than men of color and white women.
- Two-thirds of women of color (67 percent) report being held to higher standards than their colleagues. Men of color and white women also feel like they are held to higher standards considerably more often (58 percent and 52 percent respectively) than white men.
- About half of women of color (53 percent) report that they had equal access to high-quality assignments compared to 81 percent of white men.
- Three-fourths of white men believed they have been given fair opportunities for promotion, but just over half of women of color (52 percent) believe the same.

“This study confirms what many of us have known about the legal profession for some time, that women, especially women of color, face a lot of barriers to success and aren’t measured as equals by their employers and peers,” said MCCA CEO Jean Lee. “We need to take a different approach to diversity issues and use the findings of this study and metrics from across the industry to drive meaningful solutions to combat workplace discrimination in the legal field.”

Across the board, respondents reported negative career consequences after taking parental leave. Women of all races said they were treated worse after having children by being given low-quality assignments, passed over for promotions, demoted or paid less and/or unfairly disadvantaged for working part-time or with a flexible schedule. Fifty-seven percent of white women and about half of people of color (50 percent of women of color and 47 percent of men of color) agreed that taking family leave would have a negative impact on their career. Forty-two percent of white men surveyed also felt taking parental leave would have a negative impact on their career demonstrating the flexibility stigma surrounding leave affects all lawyers.

Large amounts of bias were reported by both women of color and white women in compensation. Almost 70 percent of women of color say they were paid less than their colleagues with similar

experience and seniority, while only 36 percent of white men report the same. Similarly, 60 percent of white women reported they were paid less than comparable colleagues.

Following a disturbing national trend, a quarter of women reported that they had encountered unwelcome sexual harassment at work, including unwanted sexual comments, physical contact, and/or romantic advances. Sexist comments, stories and jokes appear to be widespread in the legal field, with more than 70 percent of all groups reporting encountering this type of activity in the workplace.

“This study confirmed that many lawyers report exactly the kinds of racial and gender bias long documented by social psychologists,” said Joan C. Williams, Founding Director of the Center for WorkLife Law at the University of California, Hastings College of the Law. “While research has found that bias trainings are often ineffective, this report includes a new approach to interrupting bias that is evidence-based and metrics-driven.”

To help corporate legal departments and law firms mitigate the potential negative impact of an unconscious bias, the [survey report](#) includes *Bias Interrupters Toolkits*. Derived from the research, these “bias interrupters” are incremental steps that tweak basic business systems to produce measurable change in behaviors and outcomes.

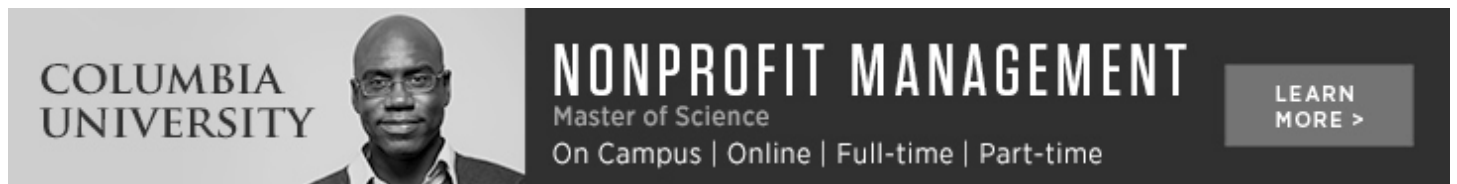
The survey of 2,827 in-house and firm attorneys was conducted from April-June 2016 (525 respondents included comments). The Likert scale questions were based on social science studies documenting implicit bias in the workplace.

With more than 400,000 members, the [American Bar Association](#) is one of the largest voluntary professional membership organizations in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. View our [privacy statement](#) online. Follow the latest ABA news at www.americanbar.org/news and on Twitter [@ABANews](#).


[The Minority Corporate Counsel Association](#) was founded in 1997 with the purpose of making the next generation of legal leaders as diverse as the world we live in. From publishing research insights to providing professional development opportunities to offering advisory services, today MCCA is the preeminent voice on diversity and inclusion in the legal industry. MCCA empowers

members with the tools needed to disrupt business as usual – and to blaze a path forward for their company, industry and corporate America.

Joan C. Williams is a Distinguished Professor of Law, Hastings Foundation Chair, and Founding Director of the Center for WorkLife Law at the University of California, Hastings College of the Law. [The Center for WorkLife Law](#) is a research and advocacy organization at UC Hastings College of the Law that seeks to advance gender and racial equality in the workplace and in higher education. WorkLife Law focuses on initiatives that can produce concrete social, legal, and institutional change within three to five years.



COLUMBIA UNIVERSITY



NONPROFIT MANAGEMENT
Master of Science
On Campus | Online | Full-time | Part-time

LEARN MORE >

 American Bar Association |

</content/aba-cms-dotorg/en/news/abanews/aba-news-archives/2018/09/new-study-finds-gender-and-racial-bias-endemic-in-legal-professi>

©2018 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Lawyers Say They Face Persistent Racial and Gender Bias at Work

Lawyers Say They Face Persistent Racial and Gender Bias at Work

By Karen Zraick

Sept. 6, 2018

Women and people of color in the legal profession continue to face barriers in hiring, promotions, assignments and compensation, according to a study released Thursday by the American Bar Association.

The survey, which proposes strategies for employers to eliminate the barriers, was conducted by the Center for WorkLifeLaw at the University of California, Hastings College of the Law, for the bar association's Commission on Women in the Profession and the Minority Corporate Counsel Association.

Michele Coleman Mayes, former chairwoman of the commission, said she oversaw the report, called "You Can't Change What You Can't See: Interrupting Bias in the Legal Profession," because she was dismayed by statistics on men of color and women in top positions — and the way that law firms and organizations were talking about diversity.

The most commonly used training materials and leadership courses focused on how individual lawyers could overcome barriers in the workplace, she said, rather than on removing those barriers.

"That's only half of the equation," she said. "We're hoping that people can look at the systems, and not put so much weight on the individual."

The researchers had 2,827 lawyers fill out online surveys in spring 2016 about their experiences at work. The surveys were distributed by the bar association's email list and other professional networks. The association has 400,000 members.

**You have 4 free articles remaining.
Subscribe to The Times**

They found that many women and people of color felt they were held to a higher standard than white men. That feeling was most prevalent among women of color, who reported the highest levels of bias in almost every category.

About half of the women of color said they felt they had equal access to the kind of “high-quality” assignments that lead to exposure and advancement in an organization. Among white men, that number was 81 percent.

Women of all races said they had to walk a “tightrope” in their behavior. They reported pressure to behave “in feminine ways” and a backlash for exhibiting stereotypically male behaviors. They were more often saddled with “office housework,” like taking notes, ordering lunch or comforting a co-worker in distress.

In a law firm, that kind of work reduces billable hours, which can hurt compensation. And while it takes up time and energy and helps the organization, it often does not lead to career advancement. The report states that a lack of opportunities to take on challenging work also contributes to high attrition rates among women in law firms.

Many women said they felt they were paid less than their colleagues with similar experience. (Almost 70 percent of women of color said so, compared with 60 percent of white women and 36 percent of white men.)

And a quarter of female lawyers reported that they had experienced sexual harassment at work, including unwanted sexual comments, physical contact and romantic advances. Those episodes sometimes had career costs. About one in eight white women, and one in 10 women of color, said they had lost opportunities because they rejected sexual advances.

Among all respondents, about 70 percent said they had heard sexist comments, stories or jokes at work. And while the numbers were higher among women, lawyers of both genders felt that taking parental leave would have a negative impact on their career.

“You’ve got systemic barriers in place,” said Ms. Mayes, who is the chief legal counsel for the New York Public Library. “If you don’t think a woman with children should be promoted, if the woman has children of a certain age or expects to, that’s a huge impediment.”

According to the latest report from the bar association's Commission on Women in the Profession, only 35 percent of active American lawyers in 2016 were women, and they earned less than their male colleagues. Of the top lawyers for Fortune 500 companies, just 26 percent were women. And while women graduate from law schools in large numbers, they made up only 32 percent of law school deans.

The report lays out methods and practices for organizations to counter bias, with an emphasis on using metrics to track and encourage fairness. They include abolishing questions about prior salary in job interviews, having boilerplate questions and policies for interviews and performance evaluations, and monitoring supervisors to ensure there are no consistent disparities by demographic group.

And the report includes online tool kits for employers to identify and avoid bias. It offers advice, for example, on how to formulate evaluations using specific evidence, rather than generalizations about an employee's abilities. Instead of "She's quick on her feet," a manager might write: "In March, she gave X presentation in front of Y client on Z project, answered his questions effectively, and was successful in making the sale."

In a statement, the bar association's president, Bob Carlson, said that the remedies it suggests "will lead the way to better employment practices and greater diversity, which will benefit the entire legal profession and our clients."

A version of this article appears in print on Sept. 7, 2018, on Page B5 of the New York edition with the headline: Survey Finds Persistent Gender and Racial Bias in the Legal Profession

**Consider Work - Life Balance
Issues Before Law School**

Consider Work-Life Balance Issues Before Law School

Practicing attorneys say achieving work-life balance in law jobs is rarely easy, but it is possible.



By [Ilana Kowarski](#), Reporter | June 22, 2017, at 9:00 a.m.



Long hours at the office are a staple of many legal jobs, especially during crunch times when attorneys are finishing projects for clients.

For instance, a litigator in the final phase of preparing for a trial or a business lawyer wrapping up a mergers and acquisitions deal will typically have an intense work schedule.

Nevertheless, some attorneys say they have achieved work-life balance in the legal profession.

[Find ways to get [financially ready for law school](#).]

Criminal defense attorney Glenn Kurtzrock, a former homicide prosecutor, says he has paired a challenging [legal career](#) with a satisfying personal life, including significant time with his family.

"I'm happy with what I do for a living and I think I have a fantastic work-life balance, so it's definitely possible," he says.

Here are four things experts say prospective law students concerned about work-life balance should know.

1. The definition of work-life balance varies between attorneys. Experts say personal salary and lifestyle priorities will affect the kinds of legal roles appropriate for an individual attorney.

For instance, experts say many attorneys enjoy the pay and prestige associated with working for one of the nation's largest law firms, commonly called "Big Law" firms.

Rachel Dawson, assistant dean of career services at Indiana University's [Maurer School of Law](#), says one common misconception about Big Law attorneys is the assumption that they are all overworked and stressed. "Big Law attorneys tend to work more hours, in many cases, but firms also offer a great deal of flexibility that is often unavailable in other settings," she said in email.

Dawson says prospective law students should focus on finding an area of law they are interested in, since attorneys who enjoy their work are less likely to burn out.

[Get [law school application advice from recent law grads.](#)]

2. It's important to assess whether you'd enjoy the challenge of a legal career before applying to law school. "I would tell a law student that if you place a huge premium on a 9 to 5 job and clocking out when you're done, then you might want to think twice before going into the law," says James Goodnow, a shareholder, director and attorney with corporate law firm Fennemore Craig, which has offices throughout the Southwest.

The [Harvard Law School](#) alumnus says prospective law students should understand that a legal career is a demanding one. "The reality is there is a lot of work, and law firms that support managing that and individuals that can cope with that are the ones that are going to succeed," he says.

Allie Petrova, the managing attorney of the Petrova Law boutique law firm, recommends every prospective law student shadow an attorney, gain work experience in a legal setting or conduct informational interviews with practicing lawyers before [applying to law school](#).

[Check out [three nonlegal careers for law school graduates.](#)]

3. Some law firms offer flexible work schedules. "Law firms are trying to be more accommodating, because they realize that they need to be in order to attract and retain top talent," says Lisa Bertrand, an in-house recruiter with legal services company Garden City Group.

Bertrand, who is also a law school admissions consultant, says prospective law students shouldn't let anxiety about work-life balance prevent them from applying to law school.

"The key is finding a legal employer sensitive to employee needs," she says.

Experts say some law firms allow attorneys to decide when they want to fulfill their billable hours requirements, offering the option to work these hours throughout the day. Firms also allow attorneys to work from home and switch between part-time and full-time positions, experts say.

Firms also vary widely in how many hours they expect attorneys to work, experts say, and attorneys who value leisure time should target firms that provide flexibility on hours requirements. Yale Law Women, a student-run organization at [Yale Law School](#), publishes an annual [list](#) of family-friendly law firms.

Charles Volkert III, a senior district president at Robert Half Legal staffing agency, says firms expect staff attorneys to work substantially fewer hours than partner-track associates.

4. Attorneys without billable hours quotas generally have more free time. Seth R. Bradley says the key to his work-life balance as a personal injury attorney is not having a billable hours quota.

"I am fortunate enough to work at a firm that trusts that I am getting my work done, as compared to other firms that only care if you work a certain amount of hours," says Bradley, who works for the Eason & Tambornini law firm.

Because government lawyers and in-house corporate attorneys do not have billable hours quotas, experts say these jobs may be a good fit for attorneys who value work-life balance.

Kurtzrock, the criminal defense attorney, says being a solo practitioner has allowed him to set his own hours. "If I want to take a vacation or a day off, and I don't have any cases on in court, I can just do it without having to ask anyone for permission."

Searching for a law school? Get our [complete rankings](#) of Best Law Schools.

Tags: [law school](#), [education](#), [students](#), [graduate schools](#)

[Ilana Kowarski](#) is an education reporter at U.S. News, covering graduate schools. You can reach her via email at ikowarski@usnews.com.

Speaker Biographies

ELIZABETH E. BRECKMAN, ESQ.

Biography

Elizabeth E. Brenckman, a partner in the New York office, is a member of Orrick's Intellectual Property Group. Elizabeth is a trial lawyer with a focus on trademark, copyright, and media litigation. She has helped companies of all sizes develop comprehensive strategies to avoid litigation where possible, and succeed in litigation when necessary.

She has litigated several of the most complex and closely watched trademark and copyright cases of recent years. Elizabeth represented New Balance in the successful defense of trade dress claims brought by Nike/Converse in an ITC Investigation that *IP Law360* named the Top Trademark Ruling of 2016. She also represented Aereo in the defense of copyright infringement claims brought by the major television U.S. television broadcasters—a case that was ultimately decided by the Supreme Court on an issue of first impression in 2015. She was recently recognized by *Managing Intellectual Property* magazine, which named Elizabeth a 2018 Rising Star.

STEPHANIE Y. GRENALD, ESQ.

Biography

Stephanie Y. Grenald is the VP Intellectual Property at HBI, Group, Inc., a Hinduja Group Company. The Hinduja Group company is a family company with holdings in Banking & Finance, Transport, Energy (Oil & Power) as well as Technology, Media and Telecom. She oversees intellectual property issues across the Hinduja family's entire product offering, including trademark and copyright prosecution, product counseling, litigation support, and contract drafting and negotiation. Stephanie received her JD from St. John's University School of Law. At St. John's, she was the President of the Women's Law Society, and continues to serve where she can to increase diversity.

CINDY HUANG, ESQ.

Biography

Cindy Huang is IP Counsel with American Express Company's Intellectual Property Law & Strategy team. She works closely with other subject matter experts and with business unit attorneys across the enterprise, and provides support on a multitude of IP issues, including but not limited to, IP provisions in agreements, IP diligence on investments and acquisitions, and training on patent, trade secret, and some copyright issues. Additionally, Cindy manages the patent portfolios of American Express and works directly with those businesses to identify innovations and capture ideas into valuable assets.

Prior to joining American Express, Cindy held senior counsel and counsel positions at various law firms, where she prepared and prosecuted 500+ domestic and foreign patent applications in a variety of technologies, including software, hardware, and computer and network systems, for large Fortune 100-types of companies to small startups. Cindy received a B.S. in Cellular & Molecular Biology from the University of Michigan, Ann Arbor, and obtained J.D. from Loyola University of Chicago.

SUDIPTA RAO

Biography

Sudipta Rao is Head of Trademarks for Novartis' global Oncology business, based in East Hanover, NJ. Su directly manages a small team of three, and at this highly-matrixed international organization, she also indirectly manages a broader, extended team of attorneys and paralegals based in Basel, Switzerland who liaise with the WHO (world health organization), WIPO and EUIPO, and work on parallel importation litigation, customs issues, anti-counterfeiting, domain name management and online enforcement, digital health programs, and many administrative and operational improvement initiatives.

At Novartis, Su sits on the Oncology IP Leadership team, cross-divisional Trademark Leadership Team, the Digital Health Leadership Team and the Copyright and Social Media Working Group. Su counsels and supports a wide range of internal client groups, including, company executives in all geographies, research and development, medical and scientific affairs, public relations, communications, digital strategy, commercial marketing teams among many others.

Su has over 15 years of in-house experience at several multinational pharmaceutical companies, such as Pfizer and Wyeth, supporting all aspects of non-patent IP rights for these companies' consumer health, animal health, nutritional and pharmaceutical divisions.

Prior to going in-house, Su was an Associate and Of Counsel at various boutique and large law firms, where she litigated trademark and copyright cases, handled trademark prosecution, managed the portfolios of clients in a variety of industries. Su has a B.A. in Political Science from the State University of New York at Stony Brook and obtained a J.D. from Cardozo School of Law and is admitted to practice in NY and NJ.

