

WOMEN AND LEADERSHIP SERIES

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Women and Leadership Series Day 2

Passing It On: How to Be an Ally and Mentor in Senior Management

Table of Contents

How to Interrupt Implicit Bias in the Legal Workplace Part 1	Page 2
How to Interrupt Implicit Bias in the Legal Workplace Part 2	Page 5
The Evolution of Mentorship in Legal Professional Development	Page 9
Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice	Page 23

HOW TO INTERRUPT IMPLICIT BIAS IN THE LEGAL WORKPLACE – PART I

December 14, 2018

In 2014, Baker Donelson implemented a Firm-wide training program addressing "implicit bias" in the workplace. Implicit bias refers to the tendency to engage in stereotype-confirming thoughts, which affect our understanding, actions, and decisions in an unconscious manner.

In light of statistical evidence establishing women have not significantly advanced in the legal profession over the past several decades, the American Bar Association's Commission on Women in the Profession and the Minority Corporate Counsel Association worked in partnership with the University of California, Hastings College of Law to conduct research and further understand law firm and in-house lawyers' experiences of workplace bias.¹ The results of the study are staggering, confirming many of the traditional diversity tools organizations have relied on throughout the years have been ineffective in addressing bias.

This article is Part 1 of a two-article series, and will discuss the four main patterns of racial and gender bias in the legal profession as identified in the study. Part 2 will identify two cutting-edge toolkits employers can implement to interrupt racial and gender biases in their own workplaces. The Commission and MCCA tout these toolkits as the "next generation of diversity tools." One toolkit is specific to law firms, whereas the other is tailored for in-house legal departments.

Studies show there are four main patterns of racial and gender bias in the legal profession: (1) the "prove-it-again" bias, (2) the "tightrope" bias, (3) the "maternal wall" bias, and (4) the "tug-of-war" bias. "Prove-it-again" describes the need for women and people of color to work harder to prove themselves. The "tightrope" bias illustrates the narrow range of behavior expected of and deemed appropriate for women and people of color. Notably, both of these groups are reportedly more likely than white men to be treated with disrespect. This finding highlights the fact that these groups are perceived to be subject to a tightrope, as they are expected to behave according to preconceived, limited terms.

"Maternal wall" describes the well-documented bias against mothers. Lastly, "tug-of-war" represents the conflict between members of disadvantaged groups that may result from bias in the environment.

Keeping these patterns in mind, the survey was launched in 2016 to examine how bias affects workplace experiences in the legal profession. The researchers compared the reported experiences of women attorneys of color, white women attorneys, male attorneys of color, and white male attorneys. Respondents were also asked whether they experienced the patterns of gender and racial bias that were documented in experimental social psychology studies over the past several decades. Respondents also were asked whether they experienced implicit bias in basic workplace processes, such as hiring, assignments, business development, performance evaluations, promotions, compensation, and support. Of the individuals who received surveys, 2,827 responded, and 525 of the respondents included comments.

The research report evidences the overall need for law firms and in-house departments to implement calculated measures to disturb workplace bias. For example, in relation to the "prove-it-again" bias, 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 experiencing the "prove-it-again" bias at a higher level than any other group, reporting this experience 35 percentage points higher than white men. White women and men of color also reported high levels of the "prove-it-again" bias at a

rate 25 percentage points higher than white men. Women of color reported being held to higher standards than their colleagues at a level 32 percentage points higher than white men. The research report also showed that men of color and women of all races receive clear messages that they do not fit people's image of a lawyer. Women of color reported 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 entire study. White women reported this bias at a level 44 percentage points higher than white men. Lastly, men of color reported the "prove-it-again" bias at a level 23 percentage points higher than white men.

Concerning the "tightrope" bias, women of all races reported pressure to behave in feminine ways, and they reported receiving backlash for exhibiting masculine behaviors. Women of all races reported higher loads of non-career-enhancing "office housework" than men. For example, white women reported doing more administrative tasks (such as taking notes) at a level 21 percentage points higher than white men. Women of color reported doing more of this type of "office housework" at a level 18 percentage points higher than white men.

Research also showed there is a significant bias against mothers reported – and against fathers who take parental leave. Women of all races reported they were treated worse after they had children. They were passed over for promotions, given low-quality assignments, demoted or paid less, and they were 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 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 percent of men of color and 50 percent of women of color) and 57 percent of white women agreed that taking family leave would have a negative impact on their careers. A bit surprisingly, 42 percent of white men agreed, indicating the flexibility stigma surrounding leave affects all groups, including majority men groups.

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 in getting hired, receiving fair performance evaluations, being mentored, receiving high-quality assignments, accessing networking opportunities, getting paid fairly, and getting promoted. In other words, gender and racial bias was reported in all seven basic workplace processes. In almost every workplace process, women of color reported the highest levels of bias. For example, women of color reported they had equal access to high-quality assignments at a level 28 percentage points lower than white men. Similarly, women of color also reported they had fair opportunities for promotion at a level 23 percentage points lower than white men. As a trend throughout the report, women of color reported the highest levels of bias overall.

Turning to the research study's findings related to compensation, large amounts of bias were reported by both white women and women of color, and these were some of the widest gaps in experiences described in the report. The gender pay gap in law has received significant media attention, but much less attention has been paid to bias in compensation systems. Similarly, the racial element of the gender gap is rarely discussed and demands much closer attention. Women of color agreed 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. In the same vein, when respondents were asked if they were paid less than their colleagues of similar experience and skill level, women of color agreed they were paid less at a level 31 percentage points higher than white men. White women agreed they were paid less at a level 24 percentage points higher than white men.

Since so much attention is placed on the partner pay gap, in-house is thought to be a more equitable environment for women in terms of pay. However, the report's data suggests this may not be the case. Surprisingly, in-house white women reported roughly the same level of compensation bias as their law firm counterparts. Looking at the differences between law firm and in-house experiences generally,

women of all races and men of color reported lower levels of bias in-house than in law firms. Conversely, white men reported lower levels of bias in law firms than in-house.

The Commission and MCCA's research report also briefly addressed sexual harassment. Findings showed about 25 percent of women, only seven percent of white men, and 11 percent of men of color reported they encountered unwelcome sexual harassment at work. This included unwanted sexual comments, physical contact, and/or romantic advances. Interestingly, sexist comments, stories, and jokes appear to be widespread in the legal profession, with more than 70 percent of all groups reportedly having encountered 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.

Despite the overwhelming evidence that implicit bias is commonplace in the legal profession, the great news is that it can be interrupted. Stereotype activation is automatic, so unfortunately we cannot stop our brains from making assumptions. However, stereotype application can be controlled, meaning we can control whether we act on our assumptions. The report distills its research into Bias Interrupter Toolkits that provide easily implementable, measurable tweaks to existing workplace systems in order to interrupt racial and gender bias in law firm and in-house departments. Ultimately, these bias interrupters could not just level the playing field for women and attorneys of color; they can also help individuals with disabilities, professionals from nonprofessional families, and introverted men in the legal workplace.

The benefits of interrupting bias are abundant, as incremental steps can improve law firm and in-house diversity in ways that yield well-documented business benefits. Research shows diverse workgroups perform better and are more committed, innovative, and loyal. Gender-diverse workgroups have higher collective intelligence, which improves the performance of both the group and of the individuals in the group, leading to better financial performance results. Racially diverse workgroups consider a broader range of alternatives, make better decisions, and are better at solving problems. Lastly, if bias goes unchecked, it affects a wide variety of groups, including modest or introverted men, members of the LGBTQ community, individuals with disabilities, professionals from nonprofessional backgrounds, women, and people of color.

Part 2 of this series will identify the toolkits that can interrupt bias.

¹ <https://www.americanbar.org/content/dam/aba/administrative/women/Updated%20Bias%20Interrupters.authcheckdam.pdf>

INTERRUPTING BIAS IN THE LEGAL WORKPLACE – PART 2

January 14, 2020

By Tiye Foley, former Baker Donelson Associate¹

This article is Part 2 of a two-article series. [Part 1](#) discussed four main patterns of racial and gender bias in the legal profession, as identified in a report developed by the American Bar Association's Commission on Women in the Profession, the Minority Corporate Counsel Association, and the University of California, Hastings College of Law.² Part 2 identifies and demonstrates two cutting-edge toolkits employers can implement to interrupt racial and gender biases in their own workplaces. More specifically, we will explore easily implementable, measurable tweaks to existing workplace systems that can interrupt racial and gender bias in law firms and in-house legal departments.

The report outlines a three-step approach to successfully interrupt bias in hiring, assignments, performance evaluations, compensation, and sponsorship. For demonstration purposes, we will discuss the approaches used to interrupt bias in law-firm hiring and in performance evaluations for in-house legal departments.

Both approaches include three basic steps: (1) using metrics, (2) implementing bias interrupters, and (3) repeating steps one and two as needed. Organizations routinely use metrics to assess progress toward any strategic goal. Metrics can help an organization pinpoint where bias exists and assess the effectiveness of ongoing measures. For each metric, employers should examine whether patterned differences exist between majority men, majority women, men of color, and women of color, including any other underrepresented group that the organization tracks, such as military veterans or members of the LGBTQ community. All bias interrupters should apply to both written materials and meetings, where relevant. Because every organization is different, not all interrupters will be relevant; that said, consider the following interrupters more of a menu.

Interrupting Bias in Law-Firm Hiring

To demonstrate potential biases in hiring and the challenges to interrupting these biases, the report noted the following case study: when comparing identical resumes, "Jamal" needed eight more years of experience to be considered as qualified as "Greg;" mothers were 79 percent less likely to be hired than otherwise identical candidates without children; and "Jennifer" was offered \$4,000 less in starting salary than "John."

To interrupt these biases, the Law Firm Toolkit directs organizations to first use (in part) the following metrics:

track the candidate pool through the 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; and

track metrics by individual supervising attorney, department and/or office, and the firm as a whole.

In addition, organizations should implement bias interrupters to empower those involved in the hiring process to spot and interrupt bias. This can be achieved by appointing bias interrupters (HR professionals or team members) and training them on how to spot bias. More information about this training is available at BiasInterrupters.org. The appointed bias interrupters should be involved at every step of the hiring process. After appointing and empowering bias interrupters, organizations should assemble a diverse pool of candidates by:

- limiting referral hiring;
- tapping diverse networks;
- considering candidates from multitier schools;
- getting the word out to diverse candidates;
- changing the wording of job postings (using masculine-coded words like "leader" and "competitive" tends to reduce the number of women who apply); and
- insisting on a diverse pool if search firms are used in the hiring process.

Once a diverse pool is assembled, organizations should implement bias interrupters in the resume review process. BiasInterrupters.org offers a resource – "Identifying Bias in Hiring Worksheet" – that identifies common forms of bias that can affect the hiring process. Organizations should focus on qualifications that are important when making hiring decisions and require accountability. When qualifications are waived for a specific candidate, a record should be maintained that explains why those qualifications are no longer important and identifies the candidates who received the waiver. Resumes must be graded on the same scale, for example, the report suggests employer remove extracurricular activities from resumes, as they can artificially disadvantage class migrants and increase class-based bias. Resume reviewers should avoid inferring family obligations (i.e., train people not to make inferences about whether someone is committed to the job due to parental status and not to count gaps in a resume as an automatic negative). Employers should also use "blind auditions." For example, if women are dropping out of the pool at the resume review stage, consider removing demographic information from resumes.

Employers are further instructed to interrupt bias in the interview process through structured interviews wherein interviewers ask the same questions to all candidates, and only ask those questions that are directly relevant to the position. Employers should ask performance-based questions, which are a strong predictor of a candidate's potential for success. Organizations should also consider behavioral interviewing by asking questions that reveal how candidates have dealt with prior work experiences. Employers are encouraged to engage in work-sample screening by requiring candidates to submit examples of their prior work. Developing a consistent rating scale will help decrease bias in the interview process. Lastly, if "culture fit" is a criterion for hiring, employers should provide a specific work-relevant definition.

Once steps one (using metrics) and two (implementing bias interrupters) are accomplished, employers should repeat these steps as needed. For example, organizations should return to their key metrics and assess whether there are any noticeable changes. If employers do not observe a change, they should implement stronger bias interrupters, or consider if they are targeting the wrong stage in the process. This third step should be applied in an iterative manner until metrics improve.

As previously noted, the report not only provides a three-step approach to interrupting bias in law-firm hiring; it also provides a detailed approach as to assignments, performance evaluations, compensation, and sponsorship. For a comprehensive, step-by-step outline on these topics, please refer to the

[Commission and MCCA's full report.](#)

Interrupting Bias in Performance Evaluations for In-House Legal Departments

Next, we will explore the In-House Toolkit and discuss how to interrupt bias in performance evaluations in legal departments. To provide context for this discussion, the report cites the following case 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. 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."

Bias in the evaluation process spans across industries and is not limited to law firms. The report notes an informal study in the technology industry that revealed 66 percent of women's performance reviews included negative personality criticism. Conversely, such criticism was contained in only one percent of men's reviews.

To tackle bias in performance evaluations, in-house legal departments should first use the following metrics:

track whether performance evaluations show consistent disparities by demographic group;

analyze whether employees' ratings fall after they have children, after they take parental leave, or after they adopt flexible work arrangements;

track whether the same performance ratings result in different promotion or compensation rates for different groups; and

keep metrics by individual supervisor, department, and country, if relevant.

For each metric, organizations should examine if patterned differences exist between majority men, majority women, men of color, women of color, and any other underrepresented group the company tracks, such as veterans, individuals with disabilities, and people who identify as LGBTQ.

Organizations should next implement bias interrupters to empower those involved in the evaluation process to spot and interrupt bias. Organizations should appoint HR professionals or department team members as bias interrupters and provide them with special training to spot bias, involving them at every step of the evaluation process.³ Once companies designate and empower bias interrupters, organizations should tweak their performance evaluation forms as needed. The report suggests a variety of tweaks, including the following:

- Evaluation forms should begin with clear and specific performance criteria directly related to job requirements (e.g., instead of "He writes well," try "He writes clear memos to clients that accurately portray the legal situations at hand.")
- Companies should instruct reviewers to justify their ratings and provide supporting evidence, ultimately holding reviewers accountable. Bare ratings lacking specifics facilitate bias and do not provide constructive advice to the employees.
- Ensure any evidence used to support a rating pertains to the current evaluation period (e.g., mistakes made two years ago are not acceptable evidence of a poor rating today).
- Separate discussions about potential and performance. Reviewers tend to judge majority men on potential, whereas others are typically judged on performance.
- Separate personality issues from skill sets. Reviewers tend to accept a narrower range of behavior from women and people of color than from majority men.

Once bias interrupters are appointed and empowered and an organization's performance evaluation form is tweaked, the In-House Toolkit recommends that companies tweak the performance evaluation process itself. Suggested tweaks include helping employees effectively advocate for themselves ("Writing an

Effective Self-Evaluation" is available at BiasInterrupters.org); setting up more formal systems for sharing successes within your in-house department (rather than including self-promotion in the evaluation process), such as monthly emails highlighting employees' accomplishments; providing a bounceback⁴ to ensure individual supervisors' reviews do not show bias toward or against a particular group (consider asking HR to perform the necessary analysis); ensuring appointed bias interrupters play an active role to spot and correct instances of bias (such as in rankings calibration meetings with management); and maintaining formal performance appraisal systems, rather than using informal, on-the-fly systems that have a tendency to reproduce patterns of bias.

Once organizations perform steps one (using metrics) and two (implementing bias interrupters), the third step involves repeating steps one and two as needed using an iterative process until metrics improve.

A key takeaway from the report is the need for both law firms and in-house legal departments to implement a deliberate, calculated, and disciplined approach to overcoming racial and gender bias in the workplace. Traditional approaches simply are not achieving quantifiable results, and this new generation of bias-interrupters provides a promising avenue towards success. Firms and in-house departments are encouraged to remain committed to knocking down barriers that perpetuate workplace biases, and we are proud to explore the Commission and MCCA's Research Report so that the legal profession continues marching towards workplace equality.

¹ Ms. Foley is currently an Attorney at Exxon Mobil Corporation.

² <https://www.mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf>

³ As previously noted, employers can find more information about training their appointed bias interrupters at BiasInterrupters.org.

⁴ A "bounceback" is when someone talks through a supervisor's reviews with him or her because the supervisor's performance evaluations show persistent bias.

[Business Of Law \(https://Businesslawtoday.Org/Practice-Area/Business-Of-Law/\)](https://Businesslawtoday.Org/Practice-Area/Business-Of-Law/)

The Evolution of Mentorship in Legal Professional Development



13 Min Read

By: [Rafael X. Zahralddin-Aravena](#)
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| March 19, 2020

IN BRIEF

- When it comes to training of young lawyers, internal programs have had poor to mixed results.
 - More than mentorship programs, sponsorship has become especially popular in law firms.
 - How can your firm achieve the best results for young lawyers through sponsorship?
-

Lawyers have different professional development obligations at each stage of their career.[1] Despite that evolutionary arc, there is one constant: the best lawyers are engaged in life-long learning. Many firms have formalized the elements of the traditional training that young lawyers historically, and often organically, received from partners and other more senior lawyers within the firm. Whether by such internal training methods or going outside the firm to hear from special consultants such as law professors or industry experts, or to participate in bar and trade associations, firms develop their lawyers in a variety of ways. In addition, seasoned lawyers equally benefit from helping to train other lawyers, whether inside or outside their firm.

One of the more prevalent law firm initiatives related to professional development for younger lawyers has been assigning mentors and encouraging participation in organizations like the American Bar Association to seek outside mentoring within its ranks. Research from the Center for Talent Innovation (CTI), a well-known think tank with a research focus in this area, shows that the vast majority of women (85 percent) and multicultural professionals (81 percent) need “navigational help” inside organizations.[2] Most law firms have some sort of internal mentoring program, and many local and state bar associations also have long-standing programs, several of which are at least in part able to trace their origins to an attempt to develop or retain women and lawyers of color.[3] Despite the availability and proliferation of mentorship programs, mentorship alone has been ineffective in helping to maximize the talent hired by law firms, and the investment in young lawyers, especially women and lawyers of color, continues to dissipate.[4]

The big push for mentorship programs is not only among law firms, but also within trade and professional associations, including bar and affinity associations, and in programs that have been created to assist in creating pipelines for potential law students. Mentorship can be defined as either one-on-one relationships between an experienced lawyer and another lawyer, law student, or potential law student, or it can be executed in a group setting. Individuals meet in person, via emails, or on calls, and the meetings can be on a regular schedule or on an ad hoc basis. Group mentorship programs can be especially helpful and can take the form of skills training in networking, relationship development, interviewing, professionalism, evaluations, and how to take advantage of opportunities to develop an industry or practice expertise.

Mentorship programs, especially in trade organizations, bar associations, and with young students, have been especially effective. Especially in communities of color and of women, a lawyer taking the time to visit or work with potential future lawyers is extremely impactful. When one of those lawyers or even a group of lawyers are lawyers of color or are women, it is especially important because their mere presence demonstrates to female students or students of color that they themselves can be a lawyer or a judge. These anecdotal remarks are backed up by teachers and students who confirm the effect on them and their classmates of these mentoring programs.^[5] Similar success can be seen in the efforts by bar associations and trade groups to mentor young professionals. Both of these types of success stories have one thing in common: external mentoring programs. By comparison, internal programs have had poor to mixed results.

SHORTCOMINGS IN MENTORING

PROGRAMS

Despite the success of mentorship for students of all ages, the problem with mentorship programs within law firms has often been the execution of the mentor's duties. Oftentimes the mentor will report on progress to firm administration, and mentors are not always advocating for their mentees. Indeed, some mentorship programs are seen with suspicion by associates, either as part of the firm's apathetic bureaucracy, or part of the firm's self-interested management.^[6] A new concept has developed out of this discord and mistrust in the value of a *sponsor*, as opposed to a mentor, in the context of advancement within an organization and the role mentorship can play in that context.^{[7][8]} On the contrary, mentors play a continuing and important role in professional development and, for example, help map out the unwritten rules and practices in an organization and pave the way for a sponsor.^[9]

SPONSORSHIP AS THE CURE TO FAILED OR FALTERING MENTORSHIP PROGRAMS

Sponsorship has become especially popular in law firms. Many law firms have been criticized for not retaining lawyers of color and women. In the post-mortem analysis of "why," it was found that key advantages related to professional development have not historically been provided to lawyers of color or women. For example, partners have provided the best assignments and, thus, one of the best professional development opportunities, to those they have chosen to informally mentor, which oftentimes were lawyers of the same peer groups, race, or gender as the partner. Institutionalized mentorship programs that work in tandem with a dedicated commitment to sponsorship

by firm management could be the cure to the fatigue that many firm mentorship programs are currently experiencing.

Maryann Baumgarten, the head of Tech Diversity Business Partners at Facebook, has written a wonderful comparison of the key elements of being a mentor as opposed to a sponsor that illustrates where sponsorship can both add to the efficacy of existing mentorship programs, as well as become the next step in the evolution of such programs.^[10] A mentor is anyone with experience who can support a mentee on how to build skills, professional demeanor, and self confidence in the workplace, whereas a sponsor is a senior member of management invested in the protégé's success. Mentoring tends to be more general, whereas sponsorship is tailored to the protégé and involves using the influence and the networks of the sponsor to provide access to key assignments, people, and responsibility. Mentors help a mentee develop a career vision; sponsors drive that vision. Mentors will give suggestions on how to create a network; sponsors will open up their network to the protégé. Mentors will provide advice on visibility by encouraging the mentee to seek out key projects and people; sponsors will use their own platforms and mediums to provide direct exposure to the protégé.

SPONSORSHIP IS THE GIFT THAT KEEPS ON GIVING

Many firms will ask, "What is in it for me?" Sponsorship is an active and engaged relationship; the protégé has just as many responsibilities and commitments to the relationship as the sponsor. The protégé must perform well, demonstrate loyalty to the firm and sponsor, and actively look to enhance the team brand.^[11] CTL has researched the issue of job

satisfaction for sponsors and finds that a sponsor with protégés has far greater job satisfaction (11 percent) than those who have not worked to develop new talent.[12] In terms of retention objectives, sponsors of color have reported 30 percent more job and career satisfaction than those who do not have the same following of protégés.[13] In many ways, you can see this in the legal profession directly and poignantly in the legions of law clerks that have worked with our judiciary. It is a well-known and chronicled aspect of clerking that there is a bond between the judges and their clerks that survives deep into their respective careers.[14] Even closer to the bottom line, an important update to CTI's research published in 2019 reported that 66 percent of sponsors were confident with their ability to deliver on difficult projects with their teams, and only 53 percent of nonsponsors had the same confidence.[15]

***"My crown is in my heart, not on my head; Not decked with diamonds and Indian stones, Nor to be seen. My crown is called content: A crown it is that seldom kings enjoy."**[16]*

The weakness of a sponsorship program is that it requires leadership from the sponsor. The most important aspect of that leadership is to advocate for the promotion of the protégé. CTI's latest research shows that of the one in four employees that identify themselves as sponsors, only 27 percent are advocating for their protégés, and to the point of this article, 71 percent of the sponsors have protégés who are the same race or gender as they are.[17] Probably just as applicable as the quote above from *Henry VI* could be the quote from *Romeo and Juliet*: "What's in a name? That which we call a rose by any other name would smell as sweet." [18] Leadership has often been defined as the art of motivating a group of people to act toward achieving a common goal. Kevin Kruse in a 2013

Forbes article dismisses the notion that leadership is defined by seniority or hierarchy, titles, extroverted charisma, or being part of management.[19] He takes a mild shot at Peter Drucker, who has been quoted as saying, “The only definition of a leader is someone who has followers,” dismissing it as “too simple.”[20] He then castigates and rejects the definitions of leadership put forth by no less than Warren Bennis (leadership is translating vision into reality), Bill Gates (leaders will be those who empower others), and John Maxwell (leadership is influence—nothing more, nothing less).[21] Instead, Kruse’s definition of leadership is “a process of social influence, which maximizes the efforts of others, towards the achievement of a goal.”[22] He emphasizes that leadership comes from social influence, not authority; requires others; does not rely on charisma or another personal trait (as leaders can come in all varieties); and focuses on a goal—and is not influence for the sake of influence—and does so by making the most of others’ talents.[23] Kruse’s definition punctuates and sums up one of the most effective executions of professional development programs: the marriage of mentoring and sponsorship, which managers in law and business should take to heart based on their collective experience in making the most of the talented professionals that they hire, train, and hope to retain.

[1] Director and practice chair, Elliott Greenleaf, P.C. Thank you to Courtney Snyder, business development director for Elliott Greenleaf, P.C.’s Delaware office, and Sarah Denis, Esq., for their assistance in the editing of this article.

[2] Sylvia Ann Hewlett, Melinda Marshall & Laura Sherbin *with* Barbara Adachi, *Sponsor Effect 2.0: Road Maps for Sponsors and Protégés*

(<https://www.talentinnovation.org/publication.cfm?publication=1330>), Center for Talent Innovation (last accessed Feb. 25, 2020).

[3] The National Legal Mentoring Consortium lists a wide range of programs, including law firm, law school, ethics-based, local bar, and state-based. National Legal Mentoring Consortium, [Mentoring Programs - Law Firms](#)

(<http://www.legalmentoring.org/mentoringprograms.php?id=30>) (Feb. 20, 2020). Organizations like the American Bar Association have extensive mentorship programs among the wealth of available professional development opportunities, including the Business Law Section Fellows Program and Business Law Section Diversity Clerkship Program.

[4] Endemic issues with lack of retention of women and minorities are not exclusive to the legal profession and have been the subject of many studies and articles about management in this area. See Joan C. Williams & Marina Multhaup, *For Women and Minorities to Get Ahead, Managers Must Assign Work Fairly*, Harvard Bus. Rev. (last accessed Feb. 25, 2020). An excellent overview of why diversity is important to the bottom line of law firms is Sheryl L. Axelrod's *Banking on Diversity: Diversity and Inclusion as Profit Drivers—The Business Case for Diversity*

(<https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2014/diversity-inclusion-profit-drivers/>), americanbar.org (last accessed Feb. 25, 2020).

[5] The Leadership Council on Legal Diversity, which consists of more than 320 corporate chief legal officers and law firm managing partners, runs a leadership development program known as the LCLD Fellows, which debuted in 2011. The program works by identifying high-potential attorneys from diverse backgrounds with the objective of the Fellows

becoming leadership within their organizations. The author was fortunate enough to serve on the fellows Alumni Council as the community outreach co-chair. He has first-hand knowledge of the profound impact of mentorship programs on communities of color and on women, especially in a group session with young students who are first-generation citizens, potential first-generation college students, and potential first-generation law students.

[6] See, e.g., Malaika Costello-Dougherty, *We're Outta Here* (<https://dailyjournal.com/articles/256818-we-re-outta-here>), Daily J. (last accessed Feb. 25, 2020).

[7] See, e.g., Hewitt, S.A., *Forget a Mentor, Find a Sponsor: The New Way to Fast-Track Your Career*, Harvard Bus. Rev. Press, Sept. 2013.

[8] Sylvia Ann Hewitt, CEO of the Center for Talent and Innovation, a think tank based in New York, also chairs the Task Force for Talent Innovation, which is comprised of 75 global companies that focus on maximizing talent in corporations.

[9] Dan Schawbel, *Sylvia Ann Hewlett: Find a Sponsor Instead of a Mentor* (<https://www.forbes.com/sites/danschawbel/2013/09/10/sylvia-ann-hewlett-find-a-sponsor-instead-of-a-mentor/#7ef454181760>), Forbes (last accessed Feb. 25, 2020).

[10] Stanford University, *The Key Role of Sponsorship* (https://inclusion.slac.stanford.edu/sites/inclusion.slac.stanford.edu/files/The_Key_Role_of_a_Sponsor); Feb. 25, 2020; see also Katherine Hansen, *From Mentor to Sponsor: Enlisting Others to Help Boost Your Life Sciences Career* (<https://www.biospace.com/article/from-mentor-to->

[sponsor-enlisting-others-to-help-boost-your-life-science-career/](#)), biospace.com (last accessed Feb. 25, 2020).

[11] Schawbel, *supra* note 9.

[12] Schawbel, *supra* note 9.

[13] Schawbel, *supra* note 9.

[14] See, e.g., Andrew Cohen, *Real Mentorship: Do Judges and Law Clerks Still Do This*

([https://www.theatlantic.com/national/archive/2011/05/real-mentorship-do-judges-and-law-clerks-still-do-](https://www.theatlantic.com/national/archive/2011/05/real-mentorship-do-judges-and-law-clerks-still-do-this/238892/)

[this/238892/](https://www.theatlantic.com/national/archive/2011/05/real-mentorship-do-judges-and-law-clerks-still-do-this/238892/)). (last accessed Feb. 25, 2020) (“Even lawyers and law students who have heard about Judge Hand probably don’t know that in addition to his stewardship of the 2nd Circuit for decades he also sort of invented the modern-day practice of federal judicial clerkships, which are nearly 100 years later still the gold standard in legal apprenticeship. . . . Most of [Judge] Hand’s clerks, fresh out of law school, were startled to find this experienced jurist; a near mythic figure, a household word to every law school graduate, the master judge of his generation, asking for help and insisting on candid criticism and continuous oral participation in the decision process. Was it really conceivable, they would wonder, that [Judge] Hand was seriously interested in their views when they were just months away from the classroom? . . . As the clerks got to know [Judge] Hand better, most realized that he was entirely serious about his constant prodding to elicit critical analysis, and that this unique way of working with his clerks was part and parcel of his distinctiveness as a judge.”); see also NALP, *Clerkship Study Alumni Law Clerk Survey*

(<https://www.nalp.org/clrkfind4?print=Y#experience>).

(last accessed Feb. 25, 2020) (“As expected, the relationships in their own judge’s chambers—their

judge (87%), the other law clerks (71%) and the administrative staff (67%)—proved to be the most significantly enhanced. In addition, they developed relationships with other chambers, most reporting that their relationships with other judges, law clerks, and court personnel were also moderately or significantly enhanced.”); Chambers Associate, *Clerkships* (<https://www.chambers-associate.com/where-to-start/clerkships>), chambers-associate.com (last accessed Feb. 25, 2020) (“Clerks also build up a valuable network among members of the Bar, other clerks and judges. This comes in handy when practicing in the same state or district as the judge.”); Laura B. Bartell, *A Splendid Relationship - Judge and Law Clerk* (<https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=5386&context=lalrey>), 52 La. L. Rev. 6 (July 1992) (last accessed Feb. 25, 2020) (“The partnership between a federal judge and the judge’s clerk can be a splendid and mutually rewarding relationship.”); Grace Renshaw, *The Best Legal Job You’ll Ever Have* (<https://law.vanderbilt.edu/alumni/lawyer-vol40num2/clerkships.html>), 40 Vanderbilt Law. 2 (last accessed Feb 25, 2020) (“She also gained two permanent advantages from her year as a clerk: a lifetime mentor and membership in a close-knit “family” of other former clerks. ‘Judge Collier is an amazing mentor to his law clerks,’ Johnson said. ‘He spent a lot of time talking with us and really seemed to enjoy the teaching aspect. He’s very patient and has a great understanding of the role that a clerkship plays in cultivating a young attorney’s career.’”).

[15] Center for Talent Innovation, *Sponsor Dividend* (<https://www.talentinnovation.org/publication.cfm?publication=1640>) (last accessed Feb. 25, 2020). This survey was conducted by NORC at the University of Chicago under the auspices of the Center for Talent

Innovation (CTI), a nonprofit research organization. NORC was responsible for the data collection, whereas the CTI conducted the analysis.

[16] William Shakespeare, *Henry the VI, Pt. III, Act III, Scene I*.

[17] Center for Talent Innovation, *supra* note 15.

[18] William Shakespeare, *Romeo and Juliet, Act II, Scene II*.

[19] Kevin Kruse, *What is Leadership?* (<https://www.forbes.com/sites/kevinkruse/2013/04/09/what-is-leadership/#4f2cec2e5b90>), *Forbes* (last accessed at Feb. 25, 2020).

[20] *Id.* To be fair, Kruse states in full that: “Drucker is of course a brilliant thinker of modern business but his definition of leader is too simple.”

[21] *Id.*

[22] *Id.*

[23] *Id.*

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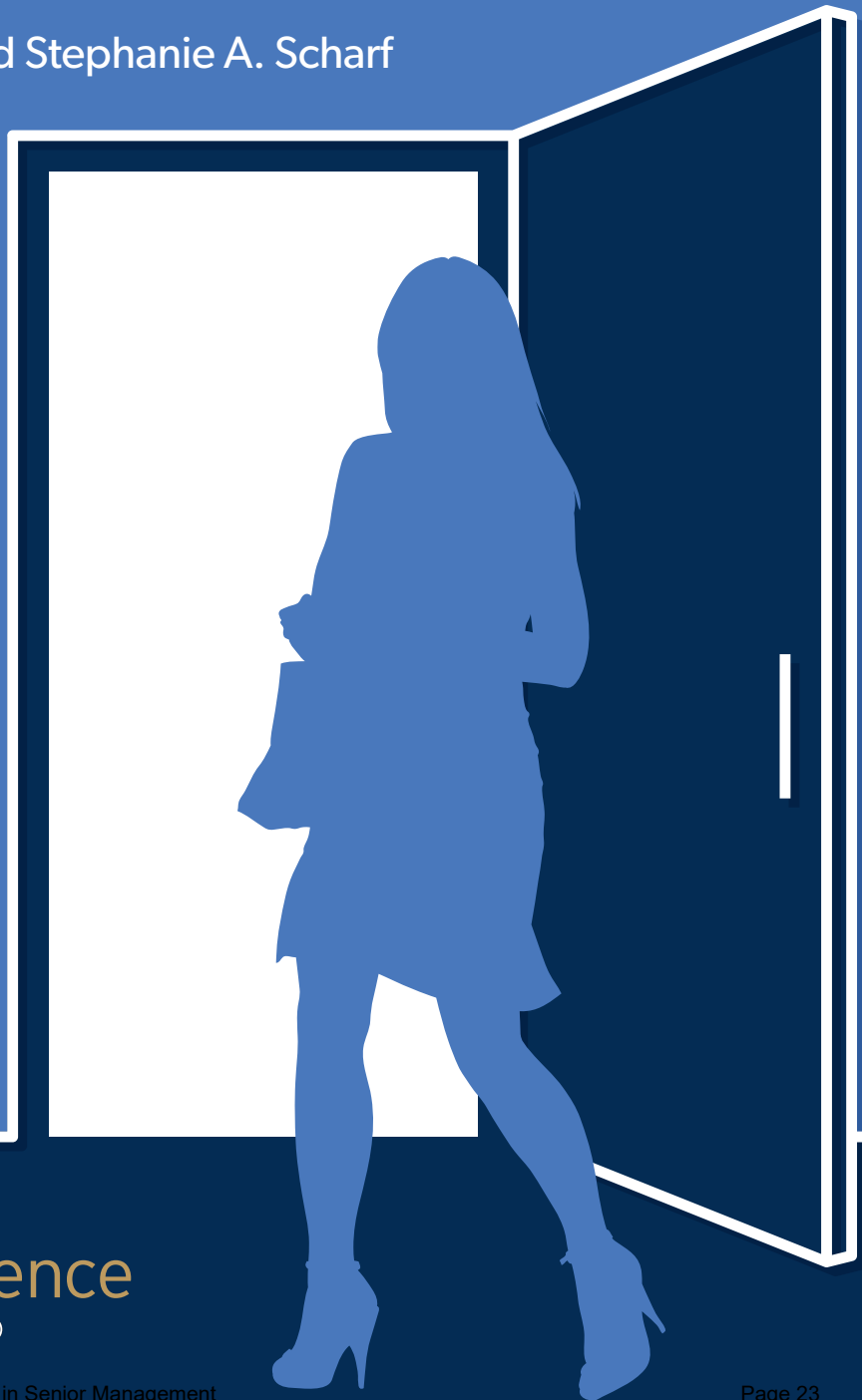
Walking Out The Door

THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED
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by Roberta D. Liebenberg and Stephanie A. Scharf



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Page 23

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THE FACTS, FIGURES, AND FUTURE
OF EXPERIENCED WOMEN LAWYERS
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BY ROBERTA D. LIEBENBERG AND STEPHANIE A. SCHARF



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A Note from the Authors

In 2017, then-ABA President Hilarie Bass launched a Presidential Initiative on Achieving Long-Term Careers for Women in Law, and we were honored to be appointed as its Co-Chairs. This groundbreaking initiative was begun because of the troubling fact that far too many experienced women lawyers are leaving the legal profession when they are in the prime of their careers and should be enjoying the most success. To examine and help solve that problem, the initiative sponsored a number of innovative research studies, including this one, which focuses on the nation's largest firms and was conducted in cooperation with ALM Intelligence.

BigLaw is no stranger to the loss of experienced women attorneys. While entering associate classes have been comprised of approximately 45% women for several decades, in the typical large firm, women constitute only 30% of non-equity partners and 20% of equity partners. Women lawyers face many other challenging hurdles as they seek to advance into senior roles: the number of lawyers named as new equity partners at big firms has declined by nearly 30% over the past several years, and firms are increasingly relying on the hiring of lateral partners, over 70% of whom are men.

The departure of senior women lawyers is unfortunate not only for women who sought to carve out long-term careers in private practice, it is also a growing problem for law firms and their clients. Law firms devote substantial time and resources to the hiring and training of their women lawyers, and that investment is lost when senior women leave. A firm's relationship with the clients of departing women necessarily suffers, and the clients lose valuable and trusted legal advisors who know their business and legal needs. The attrition of experienced women lawyers leaves law firms without a critical mass of senior women who can participate in key leadership roles; creates a dearth of senior women to serve as first chairs at trial and leads on deals, which clients are increasingly insisting upon in their outside firms; deprives firms of much-needed gender diversity at senior levels; and deprives younger women lawyers of role models and sponsors.

The critical question, of course, is why? What is it about the experiences of women in BigLaw that result in such different outcomes for women than men, and why do even senior women lawyers have so many more obstacles to overcome? These core questions drove this first-of-its-kind study and provided eye-opening data on the everyday work experiences of senior women and men in large firms through the perspective of more than 1,200 big firm lawyers who have been in practice for at least 15 years. The research was multidimensional. We measured various aspects of big firm practice and opportunities for success from the viewpoint of senior women, senior men, and managing partners.

Our work was guided by three related issues:

1. What are the everyday experiences that contribute to the success of women and men in big firm practice?
2. Why do experienced women stay in large firms and why do they leave?
3. What are law firms doing to advance women into the top echelons of leadership, what actually works, and where is innovation needed?

The results offer a great deal of new information that can be used by firms to understand and reframe the effects of their policies, practices, cultures, and unwritten rules, all of which affect who succeeds and who does not. As examples, the data show that women in large firms have far less access to the building blocks for success than men. Experienced women lawyers report that, *on account of their gender*, they are significantly more likely than their male counterparts to be overlooked for advancement; denied a salary increase or bonus; denied equal access to business development opportunities; become subjected to implicit biases, double standards, and sexual harassment; be perceived as less committed to their careers; and more. Another striking finding is the sharp disparity in how senior women perceive their firm’s commitment to advancing women, compared to the perceptions of managing partners and senior male attorneys. We found markedly different perspectives by gender on such factors as perceptions of whether firm leaders are active advocates of gender diversity (91% men v. 62% women agree), whether respondents’ firms are succeeding in advancing women into equity partnership (78% men v. 48% women agree), whether firms actively promote women into leadership roles (84% men v. 55% women agree), and whether firms work to retain experienced women lawyers (74% men v. 47% women agree). This “men are from Mars, women are from Venus” dichotomy underscores the importance of implementing—not just talking about—real changes to the structure and culture of law firms.

Driven by the empirical results described in this report, we have formulated suggested best practices and strategies that law firms can adopt to retain and advance their senior women lawyers. We are hopeful that, over time, if these recommendations are followed, the vast majority of firms will eventually achieve gender parity in firm leadership, equity partnerships, and compensation, and ameliorate the disproportionately high rate of attrition of senior women from law firms.

We are way past the point where mere lip service to the goal of gender equality in the profession will suffice. All of us must act with a sense of urgency to take the long-overdue steps necessary to level the playing field for senior women lawyers, which is necessary for law firms to succeed in a market that is increasingly demanding not only a professed commitment to diversity and inclusion, but actual proof of success in achieving that objective.



Stephanie A. Scharf



Roberta D. Liebenberg

Foreword

As President of the American Bar Association during the 2017–2018 bar year, I had the opportunity to choose issues of concern across the justice system on which I would shine the light and focus the attention of the juggernaut of the ABA and its thousands of members. Along with the critical issues of wellness, the immigration crisis, and declining bar passage rates, none was of higher priority to me than examining and better understanding why women continue to experience such different professional experiences as practicing lawyers than their male colleagues. As a woman practicing in “big law” for more than 35 years, I certainly had my own assumptions as to why women remain frustrated due to their failure to reach the level of success in the profession of comparably, and even less, talented men. But we also knew that any hope of moving past our personal frustration at the glacial speed of movement toward gender parity in our profession would require that we collect data regarding the specific challenges that continue to impede women from achieving the success that they deserve.

With the able leadership of past and current Chairs of the ABA Commission on Women in the Profession, Roberta Liebenberg and Stephanie Scharf, a four-prong research initiative was developed to look at this issue from every possible direction. This report, the first of the four to be published, focuses on the perspective of women in practice for more than 15 years in this country’s 350 largest firms. Better understanding the disconnect between their perceptions of what their firms have done well to close this gap, as compared to the perception of their Managing Partners as to what they think is working effectively, is a true eye opener as to just how much work remains to be done. The positive part of the story is that research such as that undertaken by the ABA and ALM Intelligence has the potential to really move the needle on making the professional experiences of men and women in our profession more comparable. The information gives us the roadmap we need to help address and eliminate those barriers that continue to prevent women from reaching their full potential as lawyers.

Identifying this issue obviously touched a nerve, as firms and corporate law departments generously contributed to our effort as soon as we articulated our plans for this research. Managing Partners across the country have reached out to describe their surprise that their well-intentioned efforts over the last 20 years, whether through the creation of Women’s Initiatives and Diversity Committees, implicit bias training, or focusing on diverse pipelines of incoming attorneys, had not done more to even the playing field for women attorneys in their firms. The increasing insistence of clients on greater diversity in the leadership of their legal teams has only added to the recognition that firms need assistance in figuring out how to ensure that their firms provide women attorneys the same opportunity for success as that provided to their male attorneys. Working toward gender parity in the profession is no longer just a moral imperative; any law firm that hopes to compete, let alone succeed and excel, cannot move forward if it is leaving 50% of its talent at the door.

The critical information revealed in this study will hopefully be looked back on as the beginning of the end for women facing unequal challenges in the practice of law. Our profession deserves nothing less.



Hilarie Bass
Past President
American Bar Association

Foreword

Upon joining ALM in the summer of 2017, I (Patrick Fuller) was immediately asked to review survey questions for a joint study that ALM Intelligence was conducting with the American Bar Association on women in law. Specifically, then-ABA President Hilarie Bass launched a Presidential Initiative focused on Achieving Long-Term Careers for Women in Law. The numbers have been stunning in their disparity for years, as more than 50% of law school graduates are now women, and nearly 45% of Am Law 200 associate classes are female, and yet women somehow represent less than 25% of all Am Law 200 equity partners. Why the massive gap? And why have women been fleeing law firms and the legal profession in droves? This is what we set out to understand.

I gave my first speech on diversity in 2002 for the Minority Corporate Counsel Association. In the years that followed, I spoke often on both the need for a diverse and inclusive legal profession, as well as on the disappointing analytics that belied a seemingly indifferent profession. As the only son of a single mother, I witnessed first-hand the struggles that women faced in professional environments, from behavioral double-standards to the lack of advancement and recognition for achievements. My naivety was never greater than when I believed the legal profession would somehow be different, that the sheer nature of the profession, which blended both emotional and intellectual intelligence, would rise above the societal norms.

What I discovered is that the legal profession is very attractive to women, but that the attraction does not translate to retention, and this represents a far greater issue than most believe. Many professions struggle with attracting qualified professionals, only to find that once the professionals immerse themselves into a career, they commit to the advancement and evolution of their chosen profession. The legal profession, and specifically “big law”, is at the other end of that spectrum. This begs many questions, but channeling our inner Simon Sinek, we first need to start with why. Why is the experience so different for women compared to men that women leave the profession? As men, what can we do to ensure that we help reverse the course to ensure that our daughters and granddaughters do not face the same challenges that our current colleagues and their predecessors faced?

We were very fortunate to partner with the ABA, and specifically Hilarie Bass, Stephanie Scharf, and Roberta “Bobbi” Liebenberg to embark on the quest for answers in an effort to develop solutions for a problem that has continued to expand in recent years.

- What are the everyday experiences that contribute to success for both men and women?
 - Understanding this is the first key question, as the divergent experiences for men and women begin nearly immediately.
- Why do experienced women lawyers stay in large law firms, and why do they leave?
- What are law firms doing to advance women into the power structure and key leadership echelons of firms?
- What actually works, and where is more innovation and commitment needed?

Over 1,200 senior attorneys and leaders responded to our questionnaire, with the responses revealing a number of insights which are captured in both the attached report and in the survey data available through ALM Intelligence’s Legal Compass. In the period between the conducting of the research and the publishing of this study, the legal profession has experienced some important steps forward, with the adoption of the Mansfield Rule by many firms playing a key role.

This is a multifaceted problem that has been increasing in complexity for decades, and like similar challenges, there is not an easy or convenient answer. Rather, there are uncomfortable truths that we must address in order to move forward, which this study and report help bring to light.

Our goal in this report is to provide a factual, research-backed basis for action, and to facilitate change. The solution will happen through our collective actions, the policies we implement, and most importantly, our own personal attitudes, behavior, and commitment to change.



Patrick Fuller
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Walking Out The Door

THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE

BY ROBERTA D. LIEBENBERG¹ AND STEPHANIE A. SCHARF²

It has been over 40 years since women began entering the legal profession in large numbers. As the number of women lawyers increased, organizations began tracking the progress of women in private practice through regular surveys conducted by *The American Lawyer*,³ the National Association of Women Lawyers,⁴ Vault/MCCA,⁵ and NALP.⁶ The results are well known: each year, the surveys continue to show a significant under-representation of women in equity partner ranks and leadership positions. Year after year, women have comprised between 45% and 50% of entering law firm associates but nonetheless in 2018 account for just 20% of law firm equity partners.⁷

Even today, the rate of change is slow. According to the 2018 Vault/MCCA Law Firm Diversity Survey, which analyzed responses from 232 law firms, only 29% of new equity partners were women.⁸ While firms continue to increase their partnership ranks through lateral partner hiring, in 2017 only 28% of the lateral partners hired were women.⁹ Recent figures show that women constitute less than 25% of management committee members, practice group leaders, and office heads.¹⁰

At the same time, since 2015, the total number of partner promotions among AmLaw 200 firms has dropped by an astounding 29%.¹¹ In an effort to bolster their profits per equity partner statistics, many firms continue to reduce the number of equity partners. ALM Intelligence found that, among AmLaw 100 firms, the percentage of partners who are equity partners has steadily declined since 2000 and in 2018 those firms' partnerships were comprised of 56% equity partners and 44% non-equity partners.¹² As firms continue to move the goal posts further away by making equity partnerships ever more elusive, women will face an even more daunting challenge in attaining the highest levels of private practice. *The American Lawyer* has predicted that there will not be gender parity in terms of equity partners until 2181.¹³

Not only do women confront ever-shrinking partnership classes, their quest for equity partnership is rendered even more difficult by the fact that they tend to practice in subject areas which have lower billing rates and generate less attorneys' fees, rather than working in more lucrative "bet the company" commercial litigation, mergers and acquisitions, bankruptcy, and intellectual property law.¹⁴ Women are far less likely than their male counterparts to be chosen as first chairs at trial¹⁵ or as leads on corporate deals.¹⁶ This in turn adversely impacts the ability of women lawyers to develop large books of business. While in the typical large firm, roughly one in three newly inherited client relationships are led by women partners, the process of achieving gender parity is slow: 80% of any given firm's relationship partners for its top 20 clients are men.¹⁷ And men are overwhelmingly the top earners in large firms, with 93% of firms reporting that their most compensated partner is a man and of the 10 top earners in the firm, either one or none is a woman.¹⁸

It is clear that women lawyers on average do not advance along the same trajectory as men. While there is a perception that the gender gap occurs mostly in the early years before partnership decisions, in reality, the gender gap continues and even widens after partnership, and contributes to the disproportionately high rate of attrition of senior women lawyers. Indeed, women vote with their feet by leaving the practice of law. As a recent NALP report concluded: “The percentage of partners who are women or minorities has increased at least some every year, but the partnership ranks remain overwhelmingly white and male.”¹⁹

Law firms are well aware of this problem and would like to take the necessary steps to close this gap. Studies of gender diversity in other professional settings show significant benefits and, conversely, a lack of diversity has negative effects.²⁰ The gender gap at senior levels of firms impacts law firm finances, client relationships, the ability to attract and maintain client business, and recruiting and retaining the best lawyers in the profession. Law firms devote substantial resources to hiring and training their lawyers, and the attrition of senior women lawyers causes substantial losses, both tangible and intangible. When senior women lawyers leave firms, the firm’s relationship with those lawyers’ clients suffer, there is a reduced range of legal talent to offer clients, a narrower base for firms and businesses to develop robust client relationships, a diminished ability to recruit and retain skilled women lawyers at all levels, and, ultimately, serious challenges to the firm’s future growth and revenue.

It is evident that current policies and practices will not be enough to close the gender gap. To stem the attrition of senior women lawyers and ensure their critical mass in leadership positions requires an understanding about the everyday experiences of practicing law, and why women are not advancing at the same rate as men into the highest levels of private practice. Every firm has a culture defined by a mix of policies and practices, expectations, unwritten rules, implicit and explicit biases, and workplace demands – which in combination have negative and/or positive consequences for gender parity. Many components of a firm’s culture are under the control of firm management and can be modified to achieve diversity goals. While there have been suggested best practices and policies about how to close the gender pay gap in private practice,²¹ we believe there has been no systematic survey that looked simultaneously at the multiple factors impacting careers from the viewpoint of managing partners and women and men who have sustained long-term careers in firms.

For all of these reasons, we collaborated with ALM Intelligence to conduct surveys of experienced women and men practicing for 15 or more years in the nation’s 500 largest firms, and to also survey a sample of managing partners from those firms. Our focus was on three main issues:

1. What are the everyday experiences that contribute to success for women and men in firm practice?
2. Why do experienced women stay in large firm practice and why do they leave?
3. What are law firms doing to advance women into the top echelons of firms, what actually works, and where is innovation needed?

Data-based answers to these questions not only provide a better understanding of the circumstances that advance or impede women’s long-term careers in private practice, but also point to policies and practices that have a realistic chance for closing the gender gap.

Survey Methodology

Working with ALM Intelligence, we designed survey instruments and then surveyed a sample of managing partners and individual men and women who have practiced law for at least 15 years and are currently in private practice at the NLJ 500 law firms.²²

The data reflected in this report are from the collaborative survey research project between the ABA and ALM Intelligence. The survey incorporated responses from 1,262 individuals, of whom 70% were women and 30% were men.²³ As might be expected, the percentage of women among the respondents declined as the seniority level of the respondents increased, although even in the cohort practicing 40+ years, 35% of respondents were women.²⁴ The respondents had a good distribution by years in practice, with the largest percentage of respondents practicing from 15 to 20 years (26%) and fewer respondents practicing more than 35 years (23%). Half the respondents (53%) were equity partners, with the remaining respondents about equally divided between non-equity partners and counsel/senior counsel. Respondents were from firms with single tier partnerships, two tier partnerships, and firms with three or more partner tiers. The number of lawyers of color in this sample was low, consistent with numbers in older cohorts.²⁵ As a result, we did not have enough respondents to do a separate analysis focusing on women lawyers of color.²⁶ Overall, the individual respondents appear to constitute a representative sample of experienced women and a representative sample of experienced men at the partner or counsel level in the nation's 500 largest firms. While there was substantial variation in non-response rates from question to question, the overall size of the sample allowed meaningful analyses of responses by individual female and male respondents to each question posed. We generally report results based on the number of respondents for a given question.

The fact that the sample includes a robust number of equity partners shows that senior men and women wish to contribute their views and voices for understanding the reasons for the gender gap, and want to be part of the solution. Unfortunately, we received a much lower level of interest from managing partners, only 28 of whom participated in the survey. One possible explanation for this lack of participation is management's recognition that their firms' gender diversity statistics are disappointing. Going forward, if the survey is repeated, we will take additional steps to encourage managing partners to provide their input on this very important issue.

Results And Recommendations

I. WHAT ARE THE EVERYDAY EXPERIENCES THAT CONTRIBUTE TO SUCCESS FOR MEN AND WOMEN IN FIRM PRACTICE?

A. THE CONCEPT OF ACCESS TO SUCCESS

Many lawyers in private practice think of law firms as meritocracies, where the best lawyers reach increasingly greater levels of success. We know, however, that perceptions of who is "best" and opportunities to succeed are not equally distributed.²⁷ Selection of people for key assignments as well as evaluations of their work are subject to various biases, such as similarity bias, confirmation bias, affinity bias and more.²⁸ Ironically, organizations that perceive themselves to be meritocracies "tend to have members with more bias than organi-

zations that do not. People who believe the firm is meritocratic tend to perceive themselves as unbiased and fair, which causes them to succumb more easily to unconscious biases.”²⁹

Our focus here was to measure whether senior women and men are afforded the same opportunities to succeed in private practice. To do so, we asked a series of questions about job satisfaction and experiences at work. With respect to some factors, women and men report highly similar experiences. That is especially true when examining satisfaction with the actual work that is performed and relationships with their colleagues. On the other hand, women report very different everyday experiences along a number of dimensions that we are calling “access to success”—factors that speak to how women generally are perceived and what opportunities they are given to climb up the ladder within their firm.

B. SATISFACTION WITH THE JOB

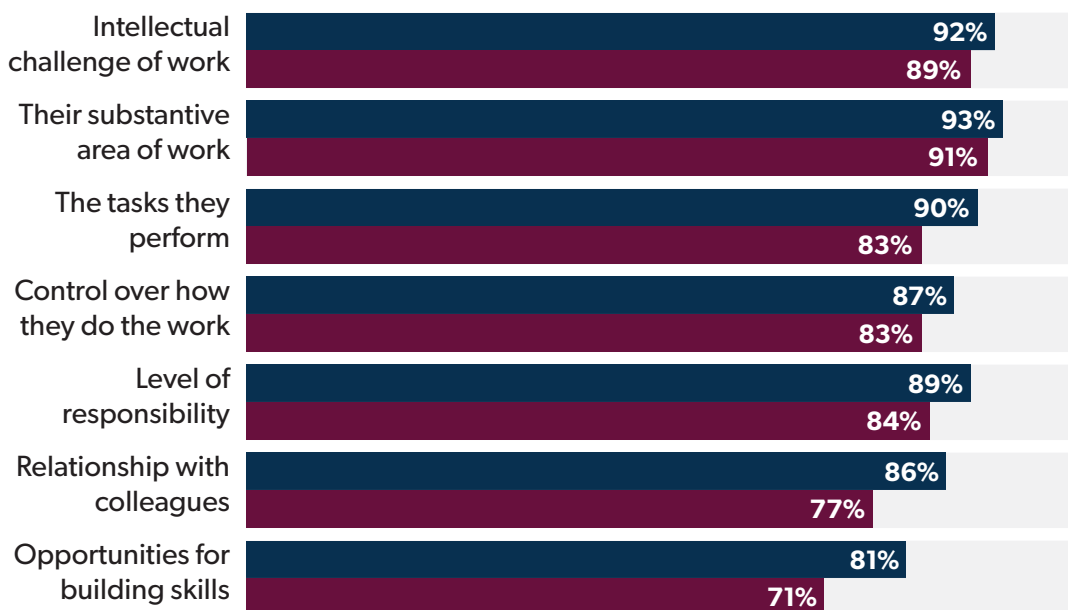
We asked women and men a series of questions about overall job satisfaction, and also about their satisfaction levels with specific components of the job.³⁰ With respect to our question on “overall level of satisfaction with your job,” 87% of men and 72% of women are extremely or somewhat “satisfied” with their job. At the other end of the spectrum, 5% of men and 21% of women are somewhat or extremely “dissatisfied” with their job. The data show a clear gender gap in job dissatisfaction. Through other questions, we can zero in on what causes those differences.

Throughout our report, bar graph results are based on data collected by ALM Intelligence, and are color-coded as follows:

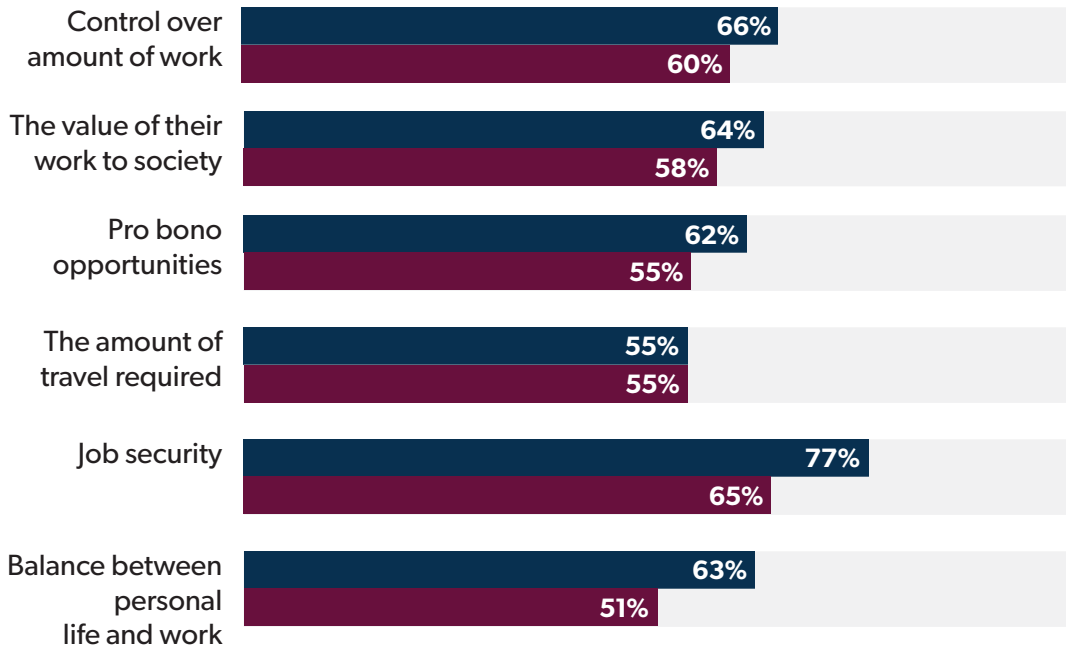
■ Men ■ Women ■ Managing Partners

Factors where men and women report similar levels of job satisfaction.

On many specific job components relating to the inherent nature of legal work and the value of that work to themselves and others, women and men report similarly high levels of satisfaction.³¹

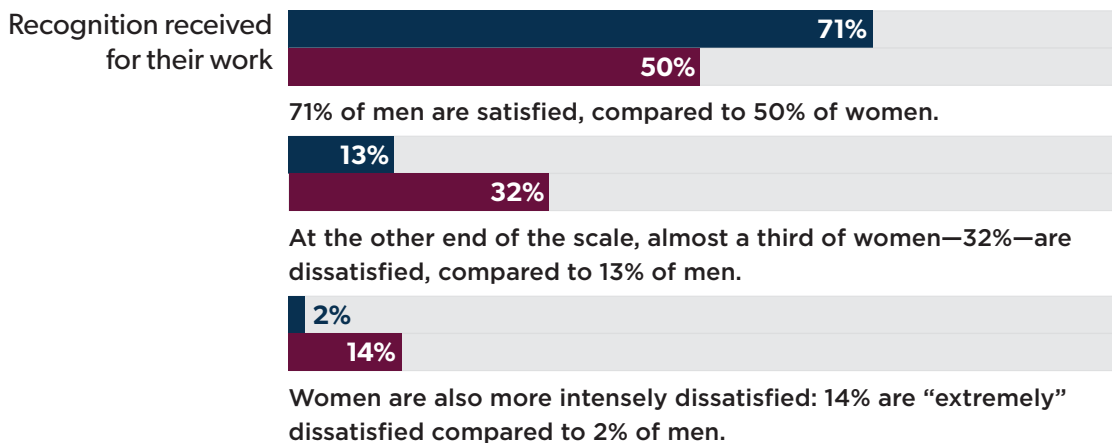


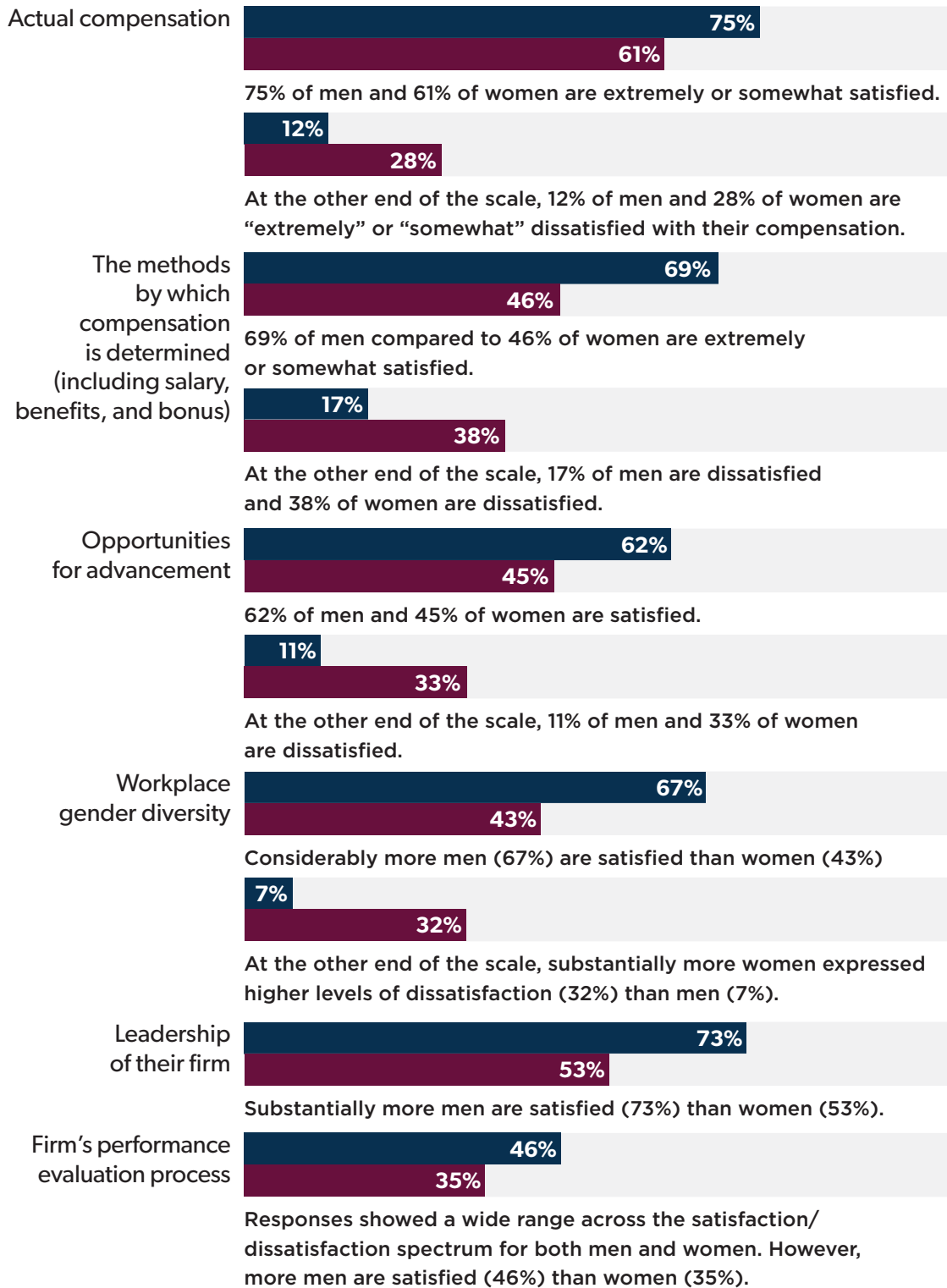
On the factors described below, men and women also reported similar levels of satisfaction (although not at levels as high as for the factors above).³²



Factors where men and women report dissimilar levels of job satisfaction.

In contrast to those factors about which women and men generally agree, there are certain factors with which women are noticeably less satisfied than men – with sometimes a pronounced 20% or greater gap in levels of satisfaction³³ or dissatisfaction³⁴. These differences³⁵ occur with respect to factors over which firm management can exercise substantial control:





One implication of these results is that firms need to do a much better job to make sure that policies are clear, well known, and applied equitably to men and women when it comes to rewarding and advancing lawyers, including experienced women lawyers. A prime example concerns the methods by which compensation is determined. Too many firms have their compensation systems shrouded in mystery, where unwritten rules and relationships determine equity shares, origination credit, salary, and bonuses. These unwritten rules help maintain the *status quo*, which directly impacts the ability of women (and lawyers of color) to break through into the top levels of compensation.³⁶ Moreover, the lack of a critical mass of women on many firm compensation committees, coupled with a lack of women sponsors in the compensation process, contribute to the continuing and significant gender pay gap for women partners.³⁷ In the same vein, many firms continue to lack a “team” approach to compensation decisions, which would ensure that credit is shared among all the partners who are playing a significant role on a client matter. Thus, when it comes to compensation decisions, many experienced women lawyers believe that the compensation system is “rigged” against them.

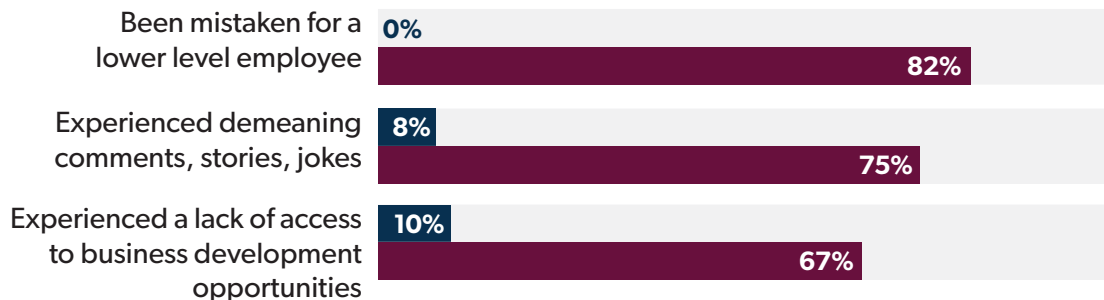
The same problems – a lack of communication and clarity – frequently exist when it comes to opportunities for advancement, recognition in the firm, and leadership positions. We note that lower levels of satisfaction among women on these factors reflect similar responses on questions about access to success, where women experienced less access to business development opportunities, advancement, salary increases or bonuses, and recognition than men.

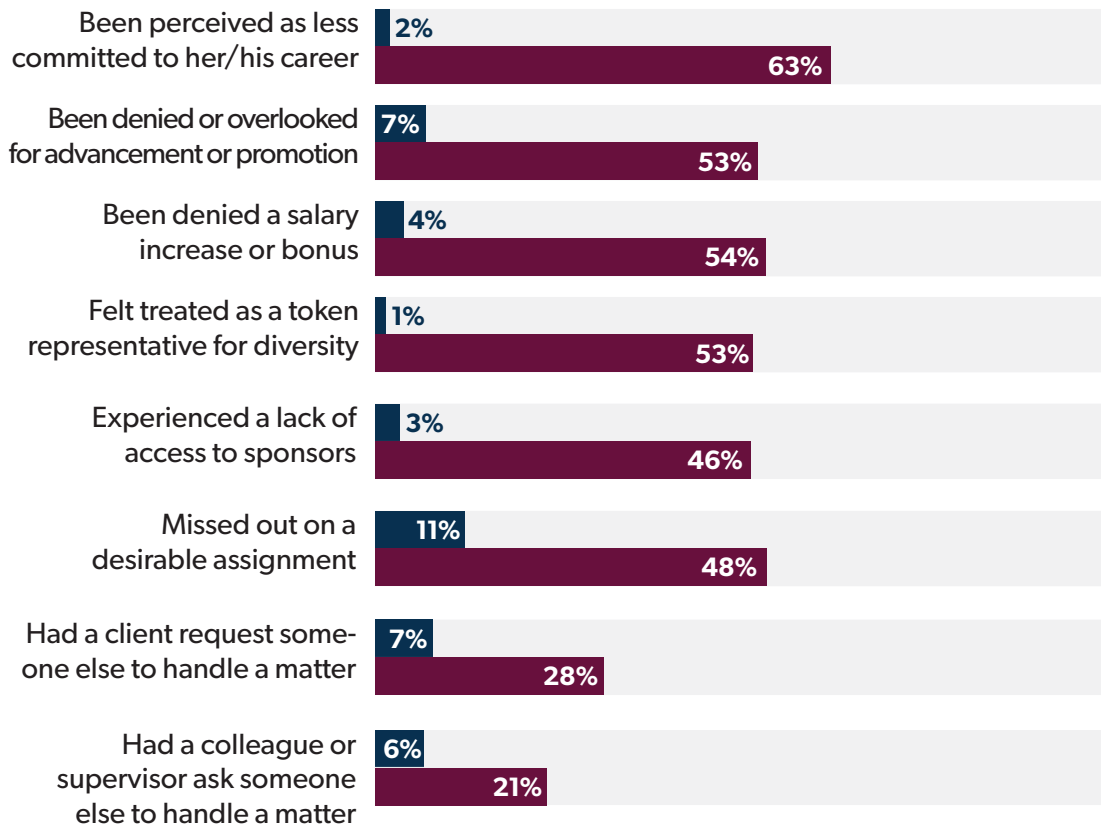
Finally, satisfaction with the actions taken by a firm depends in part on whether someone feels that he or she has been equitably treated. In the area of compensation, for example, people tend to evaluate their actual level of compensation against what they view to be an equitable level of compensation.³⁸ Systems that lack transparency exacerbate a sense of unfairness and dissatisfaction. According to Major, Lindsey & Africa’s 2018 Partner Compensation Survey, partners in open compensation systems report higher average compensation, higher average origination and are more likely to classify themselves as very satisfied than partners in partially open or closed systems.³⁹ In contrast, 69% of partners in closed compensation systems said they would like to see aspects of their compensation changed.⁴⁰

In short, ignoring policies and practices that lower the satisfaction levels of experienced women lawyers invites a number of adverse consequences, which even over a short period of time can have a negative impact on the firm as a whole.

C. THE EVERYDAY BUILDING BLOCKS FOR SUCCESS

Senior women attorneys are far more likely than men to report negative work experiences that resulted simply because they are women. Women also have less access to the opportunities needed to reach various levels of firm leadership. Thus, senior women are significantly more likely than men to report that, *on account of their gender*, they have:⁴¹





These gender differences are both striking and alarming. It is clear that too many firms have not addressed the two key impediments faced by their women lawyers: (a) unequal access to the experiences that are building blocks for success, and (b) negative gender stereotypes and implicit biases. Women report being *four to eight times more likely* to be overlooked for advancement, denied a salary increase or bonus, treated as a token representative for diversity, lacking access to business development opportunities, perceived as less committed to her career, and lacking access to sponsors. Each one of these factors is, in and of itself, critical for advancement. The combination of such significant disparities on so many core factors does much to explain why women are not advancing at the same rate as men – and underscores the importance of implementing effective policies and practices that can ameliorate these negative everyday experiences.

D. SEXUAL HARASSMENT

While there are numerous striking differences between the everyday experiences of senior women and men in law firms, one set of responses stands out above all the rest: the much greater extent to which women experience sexual harassment. In our sample of over 1200 experienced lawyers:

- 50% of women versus 6% of men had received unwanted sexual conduct at work. In essence, one of every two women said they had experienced sexual harassment.
- 16% of women versus 1% of men have lost work opportunities as a result of rebuffing sexual advances.
- At the same time, more than a quarter of all women (28%) avoided reporting sexual harassment due to fear of retaliation while 1% of men reported the same avoidance behavior.⁴²

These distressing results show that the problem of sexual harassment in law firms is far from solved. Sexual harassment is not confined to “certain” firms, but instead is widespread throughout the profession.⁴³ The inappropriate personal comments made to respondents clearly illustrate the severity of this significant problem.

Few law firms, if any, are focused on sexual harassment as a core reason why women leave the practice or become disengaged from firm culture. Yet, the data here and in other recent studies overwhelmingly suggest that law firms need to take a fresh look at their policies and practices. The American Bar Association has analyzed and approved policies for how law firms, among other legal employers, can minimize sexual harassment.⁴⁴ Certainly, a key component is for firm leadership and management to implement sensible and enforceable policies that incentivize women to report sexual harassment, protect them from retaliation, and punish those who engage in such conduct. Law firms must send a strong message that sexual harassment simply will not be tolerated.⁴⁵

In sum, our data show that gender bias takes place in many different ways. The cumulative result is what we term “death by a thousand cuts.” While women in private practice may talk with each other about such experiences, they are less often discussed by law firm leadership or with male partners. Until these kinds of experiences are brought into the open and addressed, they will continue to be impediments to advancing women – impediments, we add, that have nothing to do with the qualifications, talent, or ambition of individual women lawyers, but instead are created by implicit biases, gender stereotypes and sexual harassment, all of which remain pervasive in too many law firms.

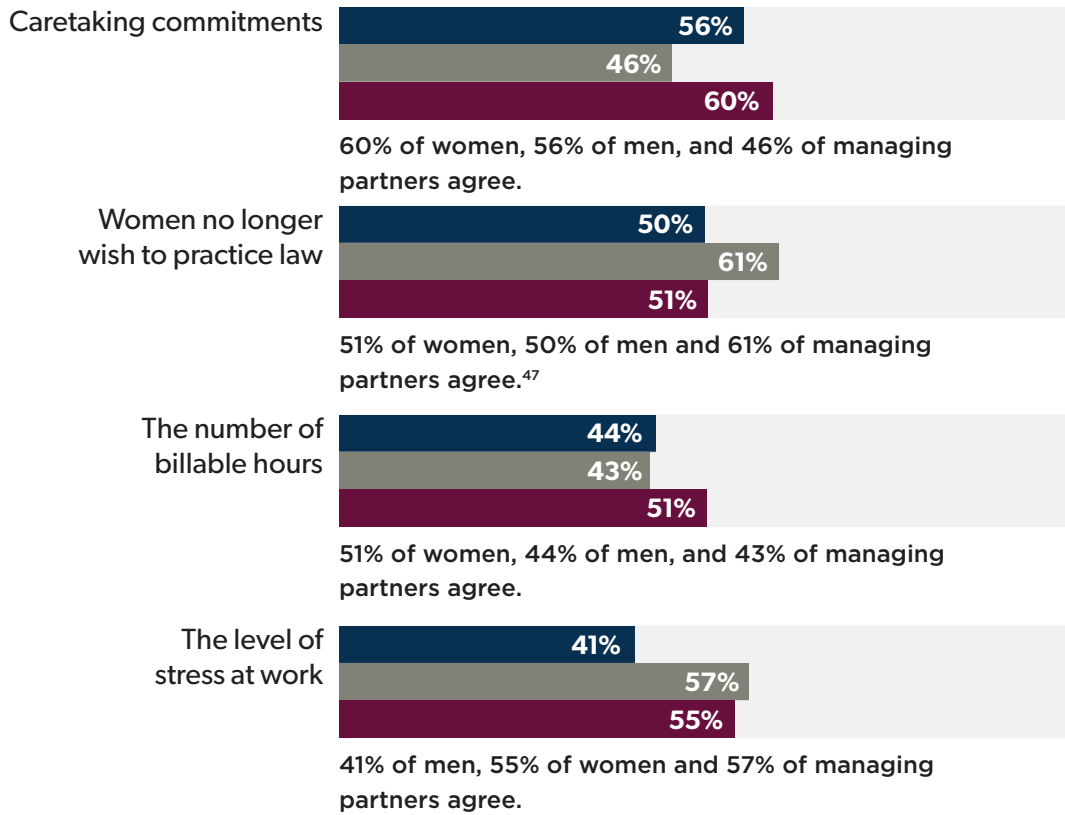
II. WHY DO EXPERIENCED WOMEN LAWYERS STAY AT THEIR FIRM OR LEAVE?

We asked experienced men and women, and managing partners, about which factors influence why experienced female lawyers stay with or leave their firms.⁴⁶ By framing questions about the respondent’s particular firm, the responses are more likely to reflect first-hand knowledge about why women stay or leave, rather than more abstract information about firms in general.

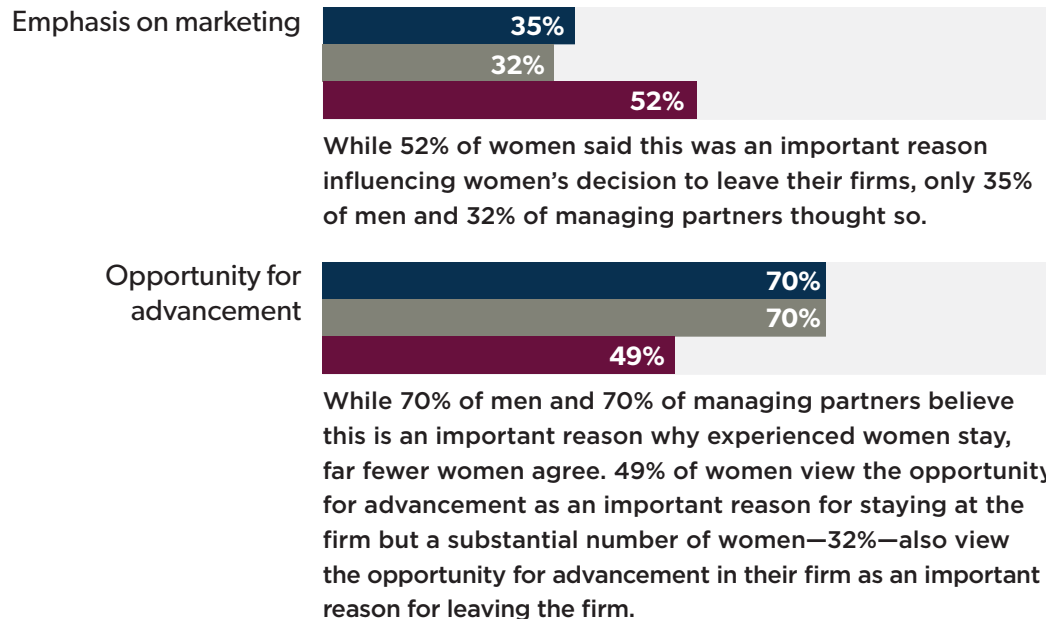
There was a good deal of consensus among men, women, and managing partners about the reasons why experienced women lawyers *stay* in their firms:



Men and women along with managing partners also generally agree on the following reasons why experienced women lawyers *leave* their firms:



Women, however, have significantly different views about the impact of these three factors on women leaving or staying:⁴⁸





A similar dynamic exists for financial compensation. 61% of women and 63% of men view this factor as an important reason for women staying in their firm. Managing partners are in accord with these results: 68% of them think that financial compensation is an important reason for women staying. At the other end of the spectrum, however, almost one quarter of women (24%) report that compensation influences why experienced female lawyers leave the firm, although a small minority of men (11%) view compensation as an important influence on experienced women lawyers' decisions to leave.

A few other factors that we measured are largely a neutral to somewhat important reason for women leaving their firm: personal or family health; job opportunities for a partner or spouse; and performance reviews.

These results, of course, have certain limitations. Our respondents are women and men who are still practicing in firms and offering opinions from their perspective about why experienced women stay or go. We believe, however, that the women we sampled are much more likely to be aware of reasons why women stay or leave their firms, based on informal networks with women in the firm and those who have left.

A summary of the data on reasons why women leave, according to experienced women lawyers, is presented here:

	% OF WOMEN WHO SAY IT'S A VERY IMPORTANT REASON FOR LEAVING	% OF WOMEN WHO SAY IT'S A SOMEWHAT IMPORTANT REASON FOR LEAVING	COMBINED % OF WOMEN WHO SAY IT'S A VERY OR SOMEWHAT IMPORTANT REASON FOR LEAVING ⁴⁹
FINANCIAL COMPENSATION	7%	17%	24%
WORK/LIFE BALANCE	19%	27%	46%
CHALLENGING/INTERESTING WORK	2%	7%	9%
ADVANCEMENT OPPORTUNITY	12%	20%	32%
RELATIONSHIPS WITH COLLEAGUES	3%	6%	9%
LEVEL OF STRESS AT WORK	17%	37%	54%
NUMBER OF BILLABLE HOURS	15%	34%	50%
EMPHASIS ON MARKETING OR ORIGINATING BUSINESS	13%	38%	51%
CARETAKING COMMITMENTS	16%	42%	58%
PERSONAL OR FAMILY HEALTH CONCERNS	9%	33%	42%
JOB OPPORTUNITIES FOR SPOUSE/PARTNER	4%	27%	30%
PERFORMANCE REVIEWS	2%	14%	16%
NO LONGER WISHES TO PRACTICE LAW	18%	31%	49%
SEXUAL HARASSMENT OR RETALIATION	9%	15%	24%
OTHER	2%	3%	5%

In trying to distill the data, we have ranked the top reasons that experienced women cite as an “important” influence on women leaving their firm, listing any reason mentioned by at least 40% of respondents:



These top reasons why experienced women leave private practice boil down to the stress and time needed to “do it all,” especially around non-substantive responsibilities at the office that do not reflect the quality of an individual’s legal work. Pressures to bill a large number of hours, and then spend more time to originate business, and then meet caretaking commitments lead to increased stress and an inability to strike an acceptable work/life balance.

The responses we collected on caretaking commitments drive home the point. Experienced women lawyers are, indeed, much more likely than experienced men to be solely responsible for multiple dimensions of child care. The gender differences are striking:⁵⁰

ACTIVITY	PERCENTAGE OF WOMEN WHO SAY THIS IS THEIR FULL RESPONSIBILITY	PERCENTAGE OF MEN WHO SAY THIS IS THEIR FULL RESPONSIBILITY
ARRANGING CHILDCARE	54%	1%
LEAVING WORK FOR CHILDCARE	32%	4%
CHILDREN’S EXTRACURRICULARS	20%	4%
EVENING CHILDCARE	17%	4%
DAYTIME CHILDCARE	10%	1%

As the data make clear, experienced women lawyers bear a disproportionate brunt of responsibility for arranging for care, leaving work when needed by the child, children’s extracurricular activities, and evening and daytime childcare. Any one of these factors affects the time and effort expected for a successful law practice, and the combination competes all the more for a lawyer’s time.

The results beg a bigger policy question: what will law firms do to devise more effective means of enabling all lawyers, including experienced women, to balance those family and household responsibilities with their professional obligations at the firm? As examples, there are a few firms that provide child care on site. The knowledge that it is both easy to obtain child care when needed and the site is literally at the workplace would be of great help to working parents. Another example is the pressure to obtain household services. Some

firms are offering so-called concierge services to perform personal tasks for lawyers and staff, such as arranging to pick up dry cleaning; making on-line purchases, including groceries, and even arranging moving services.⁵¹ Management is recognizing that in order to attract and retain lawyers, firms need to help them deal with their responsibilities outside the office.

Also ripe for review is the impact of part-time, flex-time, and leaves of absence on women lawyers and their firms. We know many women who would wish to practice on a part-time basis or take a leave of absence but are legitimately concerned that firms simply pay lip service to policies for such arrangements, and that the actual result is sidelining a career because of fear of developing a reputation as not being sufficiently committed to work. While almost all law firms have implemented part-time policies to accommodate their lawyers' needs to care for their children, parents, or other family members, the reality is that only 6-7% of law firm attorneys use such policies, and they are mostly women.⁵² Few women partners work part-time: only 1.7% of women equity partners and 4.4% of women non-equity partners do so.⁵³ The reason is obvious: lawyers correctly perceive that "going part-time" may well impede, if not derail, career advancement. The same fear applies to the consequences of participating in a reduced-hours program, maternity/paternity or family leave, and flexible work schedules.⁵⁴ And unlike the large majority of senior men, women partners are much less likely to be supported by a stay at home spouse, requiring additional time and effort to handle obligations outside of work.⁵⁵ More than one observer of women in law firm practice has suggested that biases in favor of traditional gender roles directly impact the advancement of experienced women lawyers.⁵⁶

Overall, what do the results mean for large law firms with respect to experienced women lawyers? Law firm policies and practices can have a marked influence on changing the direction of these numbers – even for factors that at first blush are outside the usual ambit of law firm concerns. We also emphasize that there is no "one size fits all" set of policies that suits all firms. We urge firms to tap into the creativity of their own lawyers to create solutions that can work within the context of their firm's unique culture and goals. We anticipate that any firm that fails to achieve meaningful gender diversity among its more experienced lawyers will fall behind its peers—the firm simply will not have a large cadre of experienced women lawyers, becoming increasingly out of sync with the range of talent in the legal profession and the demands of the marketplace.

III. WHAT ARE FIRMS DOING TO FOSTER LONG-TERM CAREERS FOR WOMEN IN PRIVATE PRACTICE?

A. FIRM LEADERS CLEARLY RECOGNIZE THE BENEFITS OF GENDER DIVERSITY AT SENIOR LEVELS

Managing partners appear to be well aware that attracting experienced women lawyers will allow their firms to remain competitive, because of (1) the benefits to law practice and (2) the market's demand for diversity at senior levels. Thus, our data show:

1. RECOGNITION BY MANAGEMENT OF BENEFITS FOR QUALITY OF THE FIRM

- 82% of managing partners cited "achieving better decision-making by improving diversity at senior levels."
- 79% of managing partners cited "widening their talent pool at senior levels."
- 79% of managing partners cited mitigating the costs of female lawyer attrition or turnover.

2. RECOGNITION BY MANAGEMENT OF BENEFITS FOR MARKET RESPONSIVENESS

- 86% of managing partners cited improving the firm’s reputation and image.
- 86% of managing partners cited being more responsive to the market.
- 79% of managing partners cited being more responsive to the requests of clients.

But beyond awareness that experienced women are critical to a firm’s long-term success and clients’ demand for experienced women lawyers, which policies are in place and which ones are actually impacting the advancement of women?

B. FIRM LEADERS AND MALE PARTNERS BELIEVE THEIR FIRMS DO WELL IN ADVANCING EXPERIENCED WOMEN – BUT EXPERIENCED WOMEN DO NOT SHARE THAT VIEW

We asked managing partners and individual men and women lawyers a series of questions about their firm’s efforts to retain and advance experienced women lawyers and their success in doing so. Overall, a large percentage of managing partners and senior men agree that their firms have been active in making gender diversity a priority and have been successful in advancing experienced women lawyers.⁵⁷ However, experienced women lawyers have significantly less positive opinions, as shown by responses to five questions we asked about law firm advocacy and success in advancing gender diversity:



82% of managing partners agree that their firms are “active advocates of gender diversity” for experienced women lawyers. A very high 91% of the experienced men agree with that statement, with over two thirds of men (69%) “strongly” agreeing.

Experienced women have a markedly less positive view: 62% of women agree, with only 27% “strongly” agreeing that firms are active advocates of gender diversity. At the other end of the scale, a substantial number of women—25%—*disagree* that their firms are active advocates for gender diversity.



79% of managing partners believe “gender diversity for experienced women lawyers is widely acknowledged in my firm as a priority.” 88% of experienced men agree with that statement.

Women have a less positive view: 54% of experienced women agree that gender diversity is a firm priority, and 27% of experienced women *disagree* that gender diversity is a firm priority.



75% of managing partners believe that their firm “has been successful at promoting experienced female lawyers into leadership positions in the firm.” Individual senior men agree at an even higher level (84%).

A much lower percentage of experienced women (55%) agree that their firm has been successful and a substantial number (30%) *disagree* that their firm has been successful in promoting women into leadership.



71% of managing partners believe that their firm “has been successful at advancing/promoting female attorneys into equity partnership.” A similar level of agreement exists among experienced male lawyers (79%).

Substantially fewer experienced women—48%—agree that their firm has been successful at advancing women into equity partnership, and 35% *disagree* with that statement.



64% of managing partners believe that their firm “has been successful at retaining experienced women lawyers.” A much greater percentage of experienced men—74%—agree with that statement.

A lower percentage of women—47%—agree that their firm has successfully retained women lawyers, and 38% *disagree* that their firm has been successful.

Clearly, managing partners and senior men have far more positive views than their women colleagues about their firm’s “success” in retaining and advancing experienced women lawyers, acknowledging gender diversity as a priority, and promoting experienced women into the highest levels of the partnership and firm leadership. What explains the differences? It may be that managing partners and senior men are unaware of the actual statistics showing a relative lack of advancement for experienced women lawyers and their high rate of attrition. Alternatively, men may have different expectations than women for assessing the firm’s “success” in advancing and retaining senior women lawyers. Whatever the reason, there is a definite “men are from Mars, women are from Venus” dichotomy regarding their respective perceptions of their firms’ commitment and success in advancing women into senior roles.⁵⁸

The data lead us to conclude that firms need to look anew, from broader perspectives, at setting targets and implementing policies and practices that actually achieve meaningful progress and results. The pronounced gender perception gap demonstrates that law firm efforts and initiatives are not accomplishing as much as firm leaders and their male colleagues believe, and far more needs to be done.

C. WHAT GENDER ADVANCEMENT POLICIES ARE FIRMS USING, AND HOW ARE THEY WORKING?

Virtually every large firm has goals to increase the number of women lawyers. How any given firm goes about doing so, however, varies widely. Some initiatives are managed by the top level of leadership, while others may be managed by lawyers or staff. Some initiatives are well-funded, while others are funded with less than the cost of a first year associate’s compensation. Some initiatives have a strategic plan that sets concrete goals for advancement of women in the firm, while others are less formal. And there are many different types of programs that firms sponsor with the goal of advancing and retaining women lawyers.

We asked managing partners about the use and importance of specific policies for advancing gender diversity. The results are listed below and show that the large majority of managing partners – 90% – report use of these policies: clear, consistent criteria for promotion to equity partner; firm-sponsored client networking for female lawyers and female clients; paid parental leave; work from home policy; mentoring or sponsorship programs for female lawyers; and sexual harassment training. Implicit bias training and training female lawyers in business development are also widely used programs, by at least 80% of firms.

That said, we did not anticipate that all policies would be viewed as equally effective. Indeed, there is a large range of opinion about the effectiveness of these policies for advancing experienced women, based on responses from women lawyers whose firms have implemented the particular policy:⁵⁹

POLICY	PERCENTAGE OF EXPERIENCED WOMEN LAWYERS WHO SAY THE POLICY IS VERY OR SOMEWHAT EFFECTIVE
WORK FROM HOME POLICY	78%
PAID PARENTAL LEAVE	76%
FORMAL PART-TIME POLICY FOR PARTNERS	75%
CLEAR, CONSISTENT CRITERIA FOR PROMOTION TO EQUITY PARTNER	75%
CLIENT SUCCESSION PLANNING POLICY	71%
TRAINING FEMALE LAWYERS/BUSINESS DEVELOPMENT	70%
CLIENT NETWORKING/FEMALE LAWYERS AND CLIENTS	70%
MENTORING/SPONSORING PROGRAMS FOR FEMALE LAWYERS	69%
LEADERSHIP/MANAGEMENT TRAINING	68%
WRITTEN RULES ABOUT CREDIT ALLOCATION	60%
MONITOR GENDER METRICS	60%
IMPLICIT BIAS TRAINING	47%
SEXUAL HARASSMENT TRAINING	42%
FORMAL PROCESS FOR DISPUTE RESOLUTION (E.G., PROMOTION, ORIGINATION)	42%
MANSFIELD RULE	42%
ON-RAMPING PROGRAMS	37%
COMPENSATING DIVERSITY WORK (NOT PRO BONO)	35%
PARTNER COMPENSATION PARTLY TIED TO DIVERSITY EFFORTS	31%

These results show that:

1. Many different policies can be useful for advancing women into senior roles, depending on the circumstances in a particular firm.
2. The policies that at least 75% of women believe are important to advancing senior women are work from home (78%); paid parental leave (76%); clear consistent criteria for promotion to equity partner (75%); and a formal part-time policy for partners (75%). We conclude that when a firm does not implement these policies in a meaningful way, it is undercutting its ability to retain and advance women into senior roles.
3. At least half of the women in our sample also view these policies as important: a client succession planning policy that emphasizes greater inclusion of women lawyers (71%); client networking with female clients (70%); training in business development (70%); mentoring/sponsoring programs (69%); leadership/management training (68%); monitoring gender metrics (60%); and written rules/credit allocation (60%).

The results reinforce our view that, in order to implement effective policies, a firm needs to understand the nature of its culture, how existing policies and practices actually work from the point of view of the lawyers those policies are supposed to benefit, and why policies that are especially effective should be regarded as “best practices” that all firms can consider implementing.

IV. WHAT SHOULD FIRMS BE DOING DIFFERENTLY?

It is undeniable and unfortunate that experienced women lawyers are simply not moving up the ladder to senior levels at the same rate as men. Moreover, experienced women lawyers are leaving their firms at a greater rate than men for reasons that firms are able to address, even if they have not yet done so. What is holding senior women lawyers back is not a lack of drive or commitment, a failure to promote themselves, or an unwillingness to work hard or to make substantial sacrifices. Simply put, women lawyers don’t need to “lean in” any more than they have already done. What needs fixing is the structure and culture of law firms, so firms can better address the needs of the many women they recruit and seek to retain.

One key lesson learned from the data here: simply putting policies into place and giving lip service to the goal of diversity appears to have little impact on closing the gap at mid-levels and senior levels of experience. Enacting policies is a basic first step, but it is not enough. And while large firms have developed policies designed to address the gender gap, there is significant variation in the nature of these policies, how well they work in practice, and whether the policies are implemented consistently and equitably over time.

As our data show, women lawyers are much less satisfied than their male colleagues and managing partners with the extent of gender diversity in their firms, the level of commitment that firm leaders have to gender diversity, and what firms are doing to advance women into upper levels of their firms. The satisfaction data should not be a surprise. Women lawyers have substantially less access to the building blocks needed for long-term success in firm practice. Far more than men, and *simply on account of their gender*, women experience demeaning comments, lack access to business development opportunities, have been overlooked for advancement, lack access to sponsors, and suffer other behaviors in firms that diminish their chances for reaching the same level of success as their male colleagues. Women are markedly less satisfied than men with the recognition they receive for their work, their compensation and how it is determined, and the opportunities for

advancement in their own firm. Senior women leave their firms because of the inordinate demands imposed by firm policies – especially onerous billable hours requirements and the emphasis on marketing. While substantial quotas for billable hours drive up profits per equity partner, there is a real cost to pay through the firm’s loss of so many experienced women lawyers, diminished diversity at the upper levels of firms, and increasing pressure from clients to fix the problem.

The greatest challenge facing large firms today is whether they will move beyond mere lip service to the goal of greater diversity by taking concrete and specific steps to meet the needs of women lawyers and lawyers of color. Client demands for the breadth of talent that comes with diversity are being heard today, and will increase each year. Firms have both the motivation, resources and, we believe, the creativity to develop programs and policies that truly serve women attorneys throughout the entire cycle of their careers. As very basic next steps, we encourage the leaders of every firm to review the research presented here, and use it to inform changes that are specifically geared to the culture of their firm.

We also suggest that each and every AmLaw 500 firm survey their lawyers on an anonymous basis with the types of questions that we administered, in order to fully understand whether there are any gender-based differences in their lawyers’ work day experiences and their satisfaction or dissatisfaction with the firm’s culture, policies and practices. We encourage guided in-firm conversations so firm leaders can decide how to use that information effectively to make necessary changes and reforms for eliminating any gender gap in access to success and create a workplace environment more conducive to the retention and advancement of experienced women lawyers. And we urge male leaders to take ownership of this process and not delegate the internal discussions and process of recommending policies largely to women partners, who often lack the power to ensure that their recommendations are implemented, and to prevent the implicit if not explicit notion that the lack of gender diversity is only a “women’s problem.”

We do not believe there is a silver bullet that will create meaningful gender diversity in all firms. We do believe, however – based on this new research and other well-regarded studies – that certain practices implemented over a four to five year period will achieve noticeable positive changes for a firm’s retention of experienced women lawyers, the number of women advancing to leadership positions, parity in compensation, the firm’s enhanced capabilities at its senior levels, and the firm’s ability to take a leading position in a marketplace that demands diversity. With these goals in mind, our recommended best practices are:

- 1. Develop a strategy, set targets, and establish a timeline for what the firm wants to achieve.** A strategy is best developed in collaboration with members of the firm and with an outside specialist. It is difficult for any firm to take an objective look at its own culture, articulate its needs, and reach consensus about action items without an independent analysis to provide additional perspective based on other firms’ policies and experiences, and advise about possible solutions.
- 2. Take a hard look at the data. Use gender metrics and gender statistics to measure and track the status of key factors over time.** As discussed above, 60% of the women respondents agreed that monitoring gender metrics is important to the advancement and retention of experienced women lawyers. A firm can focus on various key metrics, such as attrition, promotion, work assignments, compensation, bonuses, credit allocation and client succession, according to its specific goals. As examples, a firm may choose to look at gender statistics by overall firm; focus on major clients; practice area or office; posi-

tion; departure data; or other parameters. Take some “soft measures,” including at least some of the perception and satisfaction data we describe above. When an experienced women lawyer leaves, conduct an exit interview and collate the findings over time.

- 3. Affirm leadership’s commitment to take specific actions for gender diversity.** Not only should firm leaders convey the message that they are committed to increasing gender equity, they also need to take actions demonstrating that this commitment is integral to the firm’s mission. For example, firm leaders should be assigned an initiative or area of improvement for which they are personally responsible. Thereafter, leadership must be held accountable if measurable progress is not made.
- 4. Own the business case for diversity.** Firm leadership has to truly understand the business value of making retention and advancement of experienced women attorneys a core firm priority. Research makes clear that the presence of women in leadership roles has a positive impact on both innovation and diversity. Corporations are increasingly demanding diverse teams to handle their matters, and are making clear that a decision to retain a firm or to discontinue relationships with firms will be based, in part, on the firm’s demonstrated commitment to diversity. Clients correctly recognize that promoting greater diversity in the law firms they hire will lead to better decision-making, work product, and results. For example, corporations are increasingly requesting that senior women litigators serve as first chairs on their trials, based on research that female partners are more likely than male partners to get courtroom wins.
- 5. Take steps to ensure that there is a critical mass of women partners on key firm committees.** This is vitally important with respect to committees that make decisions concerning the advancement of lawyers to partner and equity partner; the lateral partner hiring committee; the compensation committee; the firm Executive Committee; and appointments of office managing partners, practice group leaders, and other leadership roles. Firms should consider adopting the Mansfield Rule, which sets an aspirational goal of having at least 30% women lawyers and attorneys of color on key firm committees.
- 6. Assess the impact of firm policies and practices on women lawyers.** In particular, evaluate practices relating to compensation, credit allocation, client succession, business development opportunities and internal referrals. Transparency and equal treatment for men and women with respect to these policies are vitally important. In large firms, written policies are far preferable to ad hoc decision making which, because of implicit biases and favoritism, generally disadvantage women and create considerable dissatisfaction. In addition, firms should consider the adoption of a formal process of dispute resolution to resolve disagreements concerning origination credit, client succession, and compensation.
- 7. Continue to implement implicit bias and sexual harassment training for all partners.** Such training is an important baseline activity, to ensure that from the day women join the firm, they are treated equitably and with the respect that they deserve. Demeaning communications, unwanted sexual advances, gender bias, and double standards take a significant toll on women at all levels, contribute to dissatisfaction with a firm, and ultimately can influence the decision to leave.

- 8. Increase lateral hiring of women partners.** Legal recruiters play an important role in law firm hiring of lateral partners. Given the fact that at many firms more partners are hired laterally than are promoted internally⁶⁰, it is critical that law firms instruct the recruiters they retain to focus on identifying potential women lateral candidates, including searching for qualified candidates out of existing networks. We recommend a special focus on practice areas where women are generally under-represented, such as antitrust, private equity, intellectual property, and mergers and acquisitions. Firms can set targets for the number of women who are presented by recruiters as lateral hire candidates, as well as the overall percentage of lateral hires that the firm makes.
- 9. Provide resources to relieve pressures from family obligations that women more often face than their male colleagues.** Incentivize partners to avail themselves of part-time and flex-time policies. This can be done by removing the stigma and ensuring that lawyers are not impeded in their career advancement on account of using such policies. Promoting those who have used such policies to partner status is one meaningful way to remove the stigma that prevents so many lawyers, male and female, from using such policies. In addition, provide assistance and support to lawyers with family obligations, such as childcare programs, concierge services and other measures to make work-life balance more achievable.

Ultimately, achieving gender diversity is a matter of how much talent do law firms want to attract and retain, and what are firms willing to do to advance a range of diverse attorneys in their firms. With input from genuinely diverse perspectives, firms can frame policies and procedures that fit their desired culture and also meet the goal of providing men and women equal access to successful long term careers in the law. Only the full strength and voice of a firm's leaders can give teeth to a firm's efforts to ensure the advancement and retention of experienced women lawyers and position the firm as a leader in the marketplace.

Endnotes

¹ Co-chair, American Bar Association Presidential Initiative on Long-term Careers for Women in the Law; Senior Partner, Fine, Kaplan & Black, R.P.C.; Former Chair, ABA Commission on Women in the Profession.

² Co-chair, American Bar Association Presidential Initiative on Long-term Careers for Women in the Law; Founding Partner, Scharf Banks Marmor LLC; Chair, ABA Commission on Women in the Profession.

³ E.g., <https://www.law.com/2018/09/24/data-snapshot-is-big-law-making-progress-on-gender-diversity>.

⁴ The NAWL Annual Survey of Women in Law Firms was designed, implemented and reported by Stephanie Scharf from 2006 through 2014, with collaboration at various times with Roberta Liebenberg, Barbara Flom, and Christine Amalfe. The Survey is now overseen by Destiny Peery, Northwestern Pritzker School of Law. For the NAWL series of reports, see <https://www.nawl.org/p/cm/ld/fid=82>.

⁵ See 2018 Vault/MCCA Law Firm Diversity Survey, <https://www.mcca.com/resources/surveys/2018-vault-mcca-law-firm-diversity-survey/>.

⁶ “Women and Minorities at Law Firms: What Has Changed and What Has Not in the Past 25 Years?” February 2018, <https://www.nalp.org/0218research>.

⁷ See *NALP Bulletin*, April 2019 (women comprised 19.6% of equity partners in 2018, and a much higher percentage of women are non-equity partners (30.5%)), <https://www.nalp.org/0419research>. See also 2018 NAWL Annual Survey on Retention and Promotion of Women in Law Firms (“NAWL Survey”), covering the nation’s 200 largest firms. “The likelihood that women will become equity partners remains on a sluggish upward trajectory over the last 12 years, with the data reflecting an increase from 15 percent in 2006 to 20 percent in 2018.” <https://www.nawl.org/p/cm/ld/fid=1163>, at 7.

⁸ 2018 Vault/MCCA Law Firm Diversity Survey at 6.

⁹ *Id.*

¹⁰ 2018 Vault/MCCA Law Firm Diversity Survey at 6 shows that women constitute 24% of management committee members; 24% of practice group leaders; and 21% of office heads.

¹¹ Vivia Chen, “Partnership Classes Are Shrinking, Hampering Advancement and Diversity.” (Feb. 5, 2019).

¹² <https://www.raw.com/2019/05/06/data-snapshot-the-path-to-big-law-equity-partnership-is-narrowing>.

¹³ The “Special Report: Big Law is Failing Women,” *The American Lawyer*, May 28, 2015.

¹⁴ See, e.g., ALM Intelligence, “Where Do We Go from Here? Big Law’s Struggle with Recruiting and Retaining Female Talent,” April 2017. <https://www.law.com/sites/ali/2017/04/17/where-do-we-go-from-here-big-laws-struggle-with-recruiting-and-retaining-female-talent>.

¹⁵ Stephanie Scharf and Roberta Liebenberg, “First Chairs at Trial: More Women Need Seats at the Table,” ABA Commission on Women in the Profession (2015).

¹⁶ *Id.* note 13.

¹⁷ 2018 NAWL Annual Survey at 7, 12.

¹⁸ 2018 NAWL Annual Survey at 7.

¹⁹ “Women and Minorities at Law Firms: What Has Changed and What Has Not in the Past 25 Years?” February 2018, <https://www.nalp.org/0218research>.

²⁰ See, e.g., “Why Diversity Matters,” McKinsey & Company (2015); Marcus Noland, Tyler Moran, and Barbara Kotschwar, “Is Gender Diversity Profitable? Evidence From a Global Survey,” The Peterson Institute for International Economics (February 2016).

²¹ E.g., “Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation” (ABA Task Force on Gender Equity, August 2013); “Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers” (ABA Task Force on Gender Equity, August 2013); “What You Need to Know About Negotiating Compensation” (ABA Task Force on Gender Equity, August 2013).

²² <https://www.law.com/americanlawyer/almID/1202791138736/>.

²³ A total of 1,325 total responses were initially collected. Sixty-three responses were excluded from our analyses because the respondent reported being an associate or staff attorney and was not on a track to advance into higher levels of the partnership; or because the respondent did not identify their gender.

²⁴ The distribution in our sample of gender by years out of law school is: 15-20 years: 81.5% women; 21-25 years: 81% women; 26-30 years: 73.7%

women; 31-35 years: 66.3% women; 36-40 years: 59.4% women; 40+ years: 35% women.

²⁵ See, e.g., Aviva Cuyler, “Diversity in the Practice of Law: How Far Have We Come?” American Bar Association, 2012. https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2012/september_october/diversity_practice_law_how_far_have_we_come/

²⁶ The ABA Initiative on Long-Term Careers and the ABA Commission on Women in the Profession have sponsored an independent national study on Achieving Long-Term Careers for Women Attorneys of Color, the results of which will be published by Fall 2019.

²⁷ See, e.g., <https://hbr.org/2017/04/how-gender-bias-corrupts-performance-reviews-and-what-to-do-about-it>.

²⁸ See, e.g., <https://hbr.org/2018/06/3-biases-that-hijack-performance-reviews-and-how-to-address-them>; <https://www.hcamag.com/au/news/general/the-danger-of-unconscious-bias-in-hr-decisions-and-how-to-overcome-it/151339>.

²⁹ Renwei Chung, “Unconscious Bias Remains Silent But Deadly for Legal Diversity,” Above The Law, Mar. 10, 2017, <http://abovethelaw.com/2017/03/unconscious-bias-remains-silent-but-deadly-for-legal-diversity/>.

³⁰ The questions about job satisfaction mirror the job satisfaction questions used in “After the JD: Third Results from a National Study of Legal Careers,” at 50-51. Published by the American Bar Foundation and NALP Foundation for Law Career Research and Education (2014). The satisfaction questions had five response categories: extremely satisfied, somewhat satisfied, neutral, somewhat dissatisfied, and extremely dissatisfied. In this analysis, we typically grouped “extremely” and “somewhat satisfied” responses unless there is an unusual gender distribution. Similarly, we typically grouped the “somewhat” and “extremely” dissatisfied responses.

³¹ Responding “extremely” or “somewhat satisfied” to each factor.

³² Responding “extremely” or “somewhat satisfied” to each factor.

³³ Responding “extremely” or “somewhat satisfied” to each factor.

³⁴ Responding “somewhat” or “extremely dissatisfied” to each factor.

³⁵ Each of these questions show significant differences in response distribution by gender at the

.001 level using a Chi-square test, with the exception that item 7 is significantly different at the .005 level.

As above, these percentages are for women and men reporting that they are “extremely satisfied” or “somewhat satisfied” with the aspect of their work.

³⁶ The most recent study of partner compensation by Major Lindsey & Africa found that, on average, male partners earn \$959,000 compared to \$627,000 for female partners, a 53% difference. “New Survey Finds Even Bigger Gender Gap in Big Law Partner Pay,” *The American Lawyer*, Dec. 6, 2018. Moreover, one of the key factors in the long-standing pay gap between male and female equity partners is that male partners receive on average over \$1 million more in origination credit than female partners. *Id.* at 24, 27. For example, in the Major Lindsey & Africa 2018 Partner Compensation Survey, the gain for male partners in origination credit was 8% in 2016; while female partners’ origination credit declined 8%. *Id.* at 13.

³⁷ The Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms (February 2014) showed that having two or more women on a compensation committee has a significant impact in ameliorating the gender pay gap. *Id.* at 5, 12-13. <https://www.nawl.org/p/cm/ld/fid=82#surveys>.

³⁸ Y. Yao, E. Locke and M. Jamal, *On A Combined Theory of Pay Level Satisfaction*, *Journal of Organizational Behavior*, Nov. 3, 2017. <https://doi.org/10.1002/job.2243>

³⁹ Major Lindsey & Africa, “2018 Partner Compensation Survey,” at 17, 22, 33.

⁴⁰ *Id.* at 12.

⁴¹ Logistic regression indicates that for each of these questions women are significantly more likely than men to experience these events (all p values are < 0.001).

⁴² Logistic regression indicates that for each of these questions women are significantly more likely than men to experience these events (all p values are < 0.001).

⁴³ The results of other surveys examining unwanted sexual conduct in law firms are consistent with the results here. See, Lauren Rikleem, “Survey of Workplace Conduct and Behaviors in Law Firms,” The Women’s Bar Association of Massachusetts, www.womensbar.org. See also Chang and Chopra, “Where Are All the Women Lawyers?” FORUM, Sept./Oct. 2015 at pp. 15-20 (reporting that 2005

survey of California lawyers found that 50% of women respondents reported sexual harassment). <https://www.360advocacy.com/wp-content/uploads/2015/10/ChangChopraArticle-1-.pdf>; Results of the 2015 YLD Survey on Women in the Legal Profession, The Florida Bar, at 9 (17% of the respondents stated they had experienced harassment). <https://www.floridabar.org/wp-content/uploads/2017/04/results-of-2015-survey.pdf>; Report of the Florida Bar Special Committee on Gender Bias, May 26, 2017 at 1 (one out of every seven female lawyer respondents stated they had experienced harassment or bullying due to their gender within last three years, and only 23% of those who reported the incident to a supervisor stated that the complaint was resolved satisfactorily); <https://www.floridabar.org/wp-content/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>; *Women Lawyers of Utah, The Utah Report: The Initiative of the Advancement and Retention of Women in Law Firms* (Oct. 2010), http://ms-jd-org/files/wlu_report_final.pdf (“37% of women in firms responded that they experienced verbal or physical behavior that created an unpleasant or offensive work environment.[, and] 27% of the 37% indicated that the situation became serious enough that they felt they were being harassed (approximately 10% of women in firms). The vast majority (86%) of those reporting harassment identified sex as the basis for the harassment.”); ABA Commission on Women in the Profession, *The Unfinished Agenda: Women and the Legal Profession* 18-19 (2001) (citing survey results indicating that one-half of two-thirds of women lawyers experienced or observed sexual harassment).

⁴⁴ See ABA Resolution 302 (February 2018) and ABA Resolution 300 (August 2018) and accompanying Reports. The ABA Commission on Women’s publication “Zero Tolerance” provides concrete best practices and solutions to combat sexual harassment in the workplace.

⁴⁵ See, e.g., “A Post-#MeToo Standard Emerges in Law Firms as Orrick, Mayer Brown Oust Partners,” *The Recorder*, March 29, 2019.

⁴⁶ Respondents had to choose one of five response categories about a given factor: very important reason for staying; somewhat important reason for staying, neutral, somewhat important reason for

leaving, very important reason for leaving. To keep the questionnaires a manageable length, we did not collect individual responses about why men leave.

⁴⁷ We note from other research that both men and women leave the legal profession for work in other sectors in increasing numbers over time. “After the JD III: Third Results from a National Study of Legal Careers,” American Bar Foundation and NALP Foundation for Law Career Research and Education (2014).

⁴⁸ Each of these questions show significant differences in response distributions between men and women at the .001 level using a Chi-square test. The number of managing partners was not large enough to compare their response distributions.

⁴⁹ Rounded to the nearest whole percentage for listing in this chart. Adding unrounded percentages from columns 1 and 2 accounts for any difference between the total percentage listed in column 3 versus adding the rounded percentages in columns 1 and 2 for “very important” and “somewhat important.”

⁵⁰ Logistic regressions with gender predicting likelihood of sole responsibility in these domains were all significant with $p < 0.001$.

⁵¹ “At Kirkland, Concierge Service Aims to Ease Personal Distractions for Lawyers,” <https://www.law.com/americanlawyer/2018/11/13/at-kirkland-concierge-service-aims-to-ease-personal-distractions-for-lawyers/>

⁵² 2018 Vault/MCCA Law Firm Diversity Survey at 17. This reality is reflected by the fact that according to the Vault survey, less than 1% of male associates and less than 4% of female associates work part-time schedules.

⁵³ *Id.*

⁵⁴ See M. Brodtherson, L. McGee and M. Pires dos Reis, “Women in law firms,” McKinsey & Company (2017) at 9. <https://www.mckinsey.com/featured-insights/gender-equality/women-in-law-firms>.

⁵⁵ According to a 2013 NALP Survey, 87% of law firm partners are supported by a stay-at-home spouse. Oct. 21, 2013 National Law Journal, “*Diapers, Laundry and a Legal Practice*.” By way of contrast, the PAR/MCCA/ABA Commission Report in 2010 found that only 13% of female partners had a spouse at home full-time, while just 10% had a spouse home part-time.

⁵⁶ Lauren Rikleen, “Are Women Held Back By Colleagues’ Wives?” *Harvard Business Review*, <https://hbr.org/2012/05/are-working-women-held-back-by>.

See also Anna Dorn, “Big Law Is Still an Old Boys’ Club,” May 8, 2018. <https://medium.com/s/all-rise/big-law-remains-an-old-boys-club-b8fd85647305>.

⁵⁷ A respondent was coded as “agreeing” with the statement if he/she “strongly” or “somewhat” agreed.

⁵⁸ Unfortunately, the stark differences in opinion between experienced male and female lawyers concerning their firms’ efforts to create a level playing field for women also exist among millennial lawyers, which further underscore the need for fundamental change. A new survey of over 1,200 millennial attorneys found that 45% of the women strongly agreed that law firm culture is inherently sexist, compared to just 14% of men. Over 56% of the millennial women strongly agreed that there is a gender pay gap, compared to just 18% of men. Also, while 63% of the

women strongly agreed that a diverse and inclusive workforce should be a priority for law firms, only 37% of the millennial male attorneys strongly agreed. *See* Major Lindsey & Africa, “2019 Millennial Attorney Survey: New Expectations, Evolving Beliefs and Shifting Career Goals” (April 2019). <https://www.mlaglobal.com/en/knowledge-library/research/2019-millennial-attorney-survey-new-expectations-evolving-beliefs-and-shifting-career-goals>.

⁵⁹ Each respondent was asked to rate a policy only if her firm had already implemented the policy.

⁶⁰ *See* “2019 Client Advisory” by Hildebrandt Consulting and Citibank at 11 (reporting that in 2017, more partners were hired laterally than promoted internally). *See also* “Should Law Firms Be Clamoring For Diversity in Recruiters?,” *Law 360*, Oct. 4, 2019.

The data contained in this report are from a collaborative research project by the American Bar Association and ALM Intelligence. An initial report of research results was presented in August 2018 at the American Bar Association Annual Meeting and may be found at https://www.americanbar.org/news/abanews/aba-news-archives/2018/08/annual_meeting_20183/.

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The Initiative has implemented four research projects, which as of October 2019, have been completed and are in various stages of publication:

1. This joint ABA/ALMI survey of law firm managing partners and practicing attorneys;
2. A representative survey of law school alumni in order to generate systematic data about the course of long-term careers for women and men in the legal profession, and the professional, social and personal factors that enhance or impede legal careers;
3. A national study based on focus group data to understand factors that affect long-term careers for women lawyers;
4. A national study focusing specifically on women lawyers of color using focus group and individual data.

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