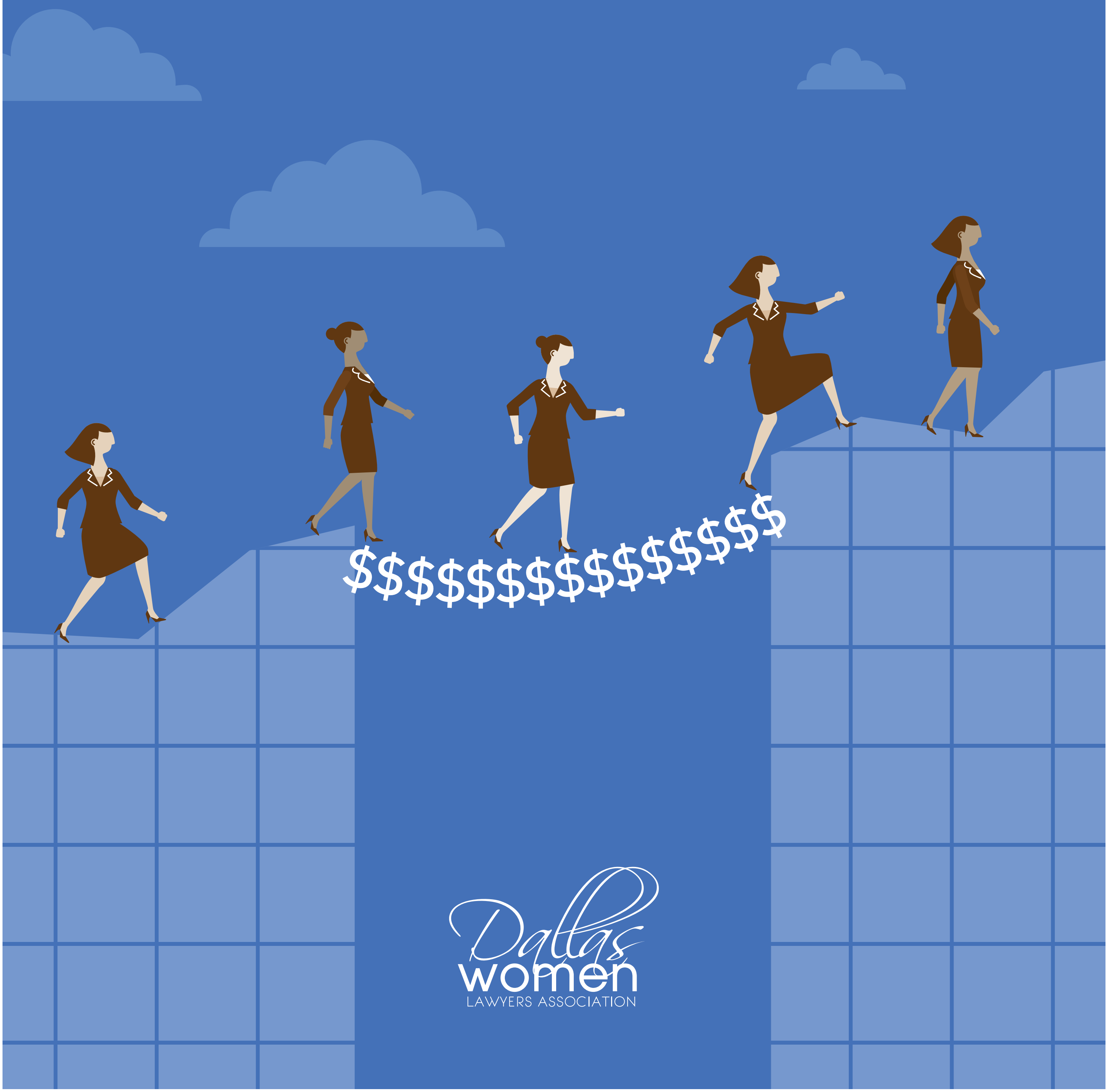
BRIDGING THE GAP

Practical Resources and Suggestions for Promoting
and Retaining Female Attorneys in the Legal Profession



Dallas Women Lawyers Association

I. EXECUTIVE SUMMARY

Diversity has long been a goal of the lawyers in the State Bar of Texas. This white paper explores the improvements that have been made with respect to women's participation in the law, analyzes problems that continue to affect diversity initiatives, and suggests possible ways to improve those diversity initiatives. This paper proposes that diversity is not only appropriate for its own sake, but because diversity on deal and trial teams expands business opportunities for law firms, and ensures that law firms get a worthwhile return on their investment in recruiting and training of women lawyers.

This paper begins with an analysis of corporate diversity initiatives that are influencing how law firms staff their cases as well as recruit and retain women lawyers. While this white paper highlights some specific corporate initiatives, the authors also recognize that many other companies not mentioned here similarly require certain levels of diversity on legal matters. In fact, a client-driven emphasis on women's participation in law practices is the biggest reason why law firms must boost their diversity goals in order to meet client needs, or risk losing long-term clients and their fees.

The paper next explores current trends in women's participation in law practice, focusing on the recent results of the 9th Annual National Survey on Retention and Promotion of Women in Law Firms by the National Association of Women Lawyers. The study, which compares data from 2006 and 2015, suggests there have been only minimal increases in women's participation in private practice, while rates in corporate legal departments are significantly better. The data points to a continuing need to address issues of diversity which, today more than ever before, can result in increased business generation and returns on investment for law firms choosing to focus on the problem.

The remaining sections of the paper discuss reasons why the data has not shown marked improvement in women's participation in law practice, and summarize recommendations from the National Association of Women Lawyers, the American Bar Association, and Stanford University's Diversity Lab.

II. HOW DOES IMPROVED DIVERSITY IN LAW FIRMS IMPROVE THE BOTTOM LINE?

Abundant evidence proves the benefits of a diverse work group. Executives at Fortune 500 companies have seen diversity "lead to better problem-solving, creativity, marketplace understanding, and talent utilization."[1] The benefits of a diverse work group have become far more concrete, and now are largely market-based. Workplace diversity increases productivity per employee, return on equity, goodwill capital, and a company's overall competitive advantage. Companies are finding that greater diversity drives up revenues and profits. For that reason,

[1] Douglas E. Brayley & Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 J. Legal Prof. 1, 3, 12–14 (2009).

companies are now demanding diversity within their internal teams, suppliers, and contracted law firms.[2]

A. Examples of Corporate Legal Diversity Initiatives

1. AT&T

"DIVERSITY MATTERS. IN THE AT&T LEGAL DEPARTMENT, EVERYTHING WE DO IS BASED ON EFFECTIVE COLLABORATION AND COMMUNICATION, AND WE FAIL IN THIS CENTRAL PURPOSE IF WE DO NOT EMBRACE DIVERSE VOICES, BACKGROUNDS, AND POINTS OF VIEW."

David R. McAtee II, Sr. Executive Vice President and General Counsel, AT&T Inc.

AT&T has long been considered one of the foremost advocates of workplace diversity. In 1968, AT&T launched one of the biggest international diversity initiatives: the AT&T Global Supplier Diversity Program.[3] From that program came both the AT&T Minority Business Enterprise Program and the Legal Department Diversity Committee. Since its inception in 2007, the Legal Department Diversity Committee has encouraged diversity among attorneys assigned to work on AT&T cases. AT&T implemented a billing platform that requests specific profile information, which then allows the Diversity Committee to track who the lead attorney is on the project, and also how many hours are being billed by women and other minority groups.[4] In 2015, AT&T spent $16.5 billion partnering with diverse suppliers and has a new initiative called the AT&T Executive Women's Leadership Experience. AT&T was ranked No. 4 on *DiversityInc*'*s* 2016 Top 50 Companies for Diversity and No. 1 on its specialty lists for "Employee Resource Groups," "Recruitment," and "Supplier Diversity."

2. Microsoft Law Firm Diversity Program

"[I]NCREASED DIVERSITY IS HELPING THE COMPANY IN ITS APPROACH TO LITIGATION, GLOBAL PRODUCT LAUNCHES, AND PATENT LICENSING."

David Howard, Deputy General Counsel of Litigation, *Microsoft: Our Law Firm Diversity Push is Working, Inside Counsel* (Nov. 16, 2016)

Microsoft's law firm diversity program also holds law firms accountable for their diversity efforts, and thus incentivizes their doing so. Like AT&T, Microsoft tracks the diversity statistics of the attorneys working on their cases.[5] Microsoft's Premier Preferred Provider program gives outside counsel an incentive for increasing their diversity efforts: law firms are able to earn bonuses of up to two percent of the legal fees billed to the company by "increas[ing] the number of hours worked on Microsoft matters by minority lawyers (including women) by 2% or by increasing the total number of minority attorneys by 0.5%."[6] The program also honors the highest achieving firm publicly, and awards them a bonus of one percent of the total legal fees billed by the firm. These efforts have not been futile, as the percentage of hours worked by diverse lawyers has increased from 33.6 percent to 48.2 percent.[7] The benefits of these efforts have been significant.

[2] *Id.*
[3] Christopher J. Whelan & Neta Ziv, *Law Firm Ethics in the Shadow of Corporate Social Responsibility*, 26 Geo. J. Legal Ethics 153, 160 (2013).
[4] *See* Kara Mayer Robinson, *AT&T: Diversity in Focus*, 12 Diversity & The Bar 18, 23 (2010).
[5] Caren Ulrich Stacey, *Trends and Innovations Boosting Diversity in the Law and Beyond*, ABA Law Practice Today (Mar. 14, 2016).
[6] Whelan & Ziv, *supra* note 3, at 166.
[7] Stacey, *supra* note 5.

3. Engage Excellence

Several companies, including DuPont, General Mills, Verizon, and Walmart, realized a problem existed with respect to women and minority participation in the legal field, and implemented an "Engage Excellence" initiative to combat numbers that were "far below any measure of parity."[8] General Mills' Executive Vice President and General Counsel Roderick Palmore noted: "There is a growing body of evidence, and near consensus, that diverse teams outperform non-diverse teams." Likewise, Thomas Sager, Senior Vice President & General Counsel of DuPont, similarly remarked that "diverse representation among our in-house professional and external network of providers is a critical element of our growth strategy and continued success."[9]

"One of the goals of Engage Excellence is to improve the likelihood that diverse attorneys will transition into highly valued client-service roles, thereby furthering their advancement, longevity, and leadership positions at majority law firms."

Michelle Ifill, Senior Vice President and General Counsel at Verizon; Minority Corporate Counsel Association (MCCA) Press Release: *DuPont, General Mills, Verizon and Walmart Launch "Engage Excellence" Minority Lawyer Inclusion Incentive Program: One Answer to the Call to Action*, July 29, 2014

"[A]t General Mills, diversity is core to our business strategy. . . diversity helps us drive innovation and consumer engagement, and also helps us attract and retain the best talent."

Roderick Palmore, Executive Vice President, General Counsel for General Mills, Minority Corporate Counsel Association (MCCA) Press Release: *DuPont, General Mills, Verizon and Walmart Launch "Engage Excellence" Minority Lawyer Inclusion Incentive Program: One Answer to the Call to Action*, July 29, 2014

"Engage Excellence" is designed to give work and leadership opportunities to diverse attorneys, and to help them both advance within their firm, and also receive financial credit for their work on significant client matters. The companies allot a certain amount of their legal funds to ensure that legal work is given to diverse teams led by female and minority attorneys; their goal is to ensure that women and minority lawyers receive significant legal work and appropriate financial credit.[10]

[8] Minority Corporate Counsel Association (MCCA) Press Release: *DuPont, General Mills, Verizon and Walmart Launch "Engage Excellence" Minority Lawyer Inclusion Incentive Program: One Answer to the Call to Action*, July 29, 2014.
[9] *Id.*
[10] Joseph Spratt, Laura Maechtlen & Gerald Pauling, *Three Smart Strategies to Advance Law Firm Diversity and Inclusion,* Association of Corporate Counsel (Sept. 16, 2015).

4. Morgan Stanley, Coca Cola, and Shell Oil Company

Many companies take a similarly comprehensive approach to their diversity initiatives, all of which focus on the recruitment and retention of diverse employees as well as the ability of team leaders and managers to promote and encourage diversity among their teams.

Diversity is mandated from the highest-ranking officials at Morgan Stanley. James Gorman, the President and CEO, noted that "diversity is essential" because diversity "not only strengthens competition and potential for cost savings, but also provides a means for building the economic base of the communities in which we operate."[11] Morgan Stanley has a Diversity and Inclusion Committee, which helps to create and implement the company's diversity initiatives. Through its Legal and Compliance Division, Morgan Stanley has also implemented a "Supplier Diversity Committee" which "has dedicated itself to increasing the use of minority- and women-owned law firms."[12] The outcome of these initiatives has been a company-wide focus on increasing the percentages of female hiring, retention, and promotion by 2019. The company's reason for expending such significant resources on female-based initiatives is that the "correlation between gender-balanced teams and improved decision-making, innovation and performance aligns with [the company's] core values."[13]

"[I HAVE] SEEN FIRSTHAND HOW DIVERSITY AND BUSINESS SUCCESS GO HAND-IN-HAND . . . ANY FIRM THAT DOESN'T UNDERSTAND THAT DIVERSITY IS IMPORTANT IS JUST NOT PAYING ATTENTION . . . LAW FIRMS ARE DRIVEN BY CLIENT DEMANDS, AND WE ARE DEMANDING DIVERSITY."

Lynn Laverty Elsenhans, Former President and Country Chair, Shell, Morgan Morrison, *Embracing Diversity: Your Business Depends on It*, 68 Tex. B.J. 928, 929-30 (2005).

Coca-Cola sees "diversity and inclusion . . . as drivers of better business outcomes."[14] The legal department at Coca-Cola has a "Legal Division Diversity Council" which works to further support and promote diversity. Internally, the legal department tracks progress in four different areas set out in the company's "Diversity Initiative Goals" to ensure that women and minorities are not only being recruited and retained, but are also successful in the work that they do. To keep attorneys accountable, the department "measures how their division engages and partners with diverse bar associations, external speaking, financial underwriting and diversity pipeline projects."[15] The legal department's diversity efforts are not exclusively internal. The company evaluates firms based on their success in hiring and retaining women and minority attorneys, the representation of minorities in the firm generally and also in leadership positions, and employee participation in diversity efforts.[16]

[11] Morgan Stanley, *Supplier Diversity* (2009), https://www.morganstanley.com/about/careers/diversity/SupplierDiversity.pdf.
[12] *Id*.
[13] Morgan Stanley, https://www.morganstanley.com/about-us/diversity/UK-Women-In-Finance-Charter.
[14] Association of Corporate Counsel, *Leading Practices in Law Department Diversity and Inclusion Initiatives: Company Best Practices* (Jan. 2013), https://www.accmeetings.com/AM15/faculty/files/ACC_304_CE3B_601_Leading-Practices-in-Law-Department-Diversity-and-Inclusion-Initiatives-Company-Best-Practices.pdf.
[15] *Id*.
[16] *Id*.

Shell Oil is another company recognizing the business benefits of having a diverse team, and its diversity efforts have been implemented across the company. Shell understands that to be successful, the company needs to "have a workforce that reflects its customer base." The legal department, specifically, has implemented several diversity programs. The legal department encourages their in-house attorneys to attend minority law events, in an attempt to not only increase participation in various minority associations and programs, but also identify various attorneys and minority firms that could be "potential candidates for Shell's legal work."[17]

The legal department's biggest diversity initiative began in the early 2000's, when the company cut the number of contracted law firms used to less than 30. The company evaluated the firms it was using based on quality, cost, partnering, and diversity in an attempt to only utilize firms that "know [Shell's] business better," according to John Esquivel, Shell's Associate General Counsel.[18] Shell expects that the percentage of work done on a project will correlate to the percentage of diverse attorneys in the firm, and holds the firms accountable for this by regularly checking the "demographic fee and billing reports."[19] In addition, the company requires that its Strategic Partner firms take an annual "Strategic Partner Diversity and Inclusiveness Survey," from which Shell collects information about the firms which it uses to "grade the firms' performance in the area of diversity and inclusion."[20]

The overall business case for diversity has been proven time and time again. A 2009 study on workplace diversity showed that "[d]iverse law firms out-perform their peers, generating higher revenue and profits," which is likely "a result of the higher productivity, better critical thinking skills, and varied perspectives" that come from a group comprised of diverse individuals.[21] Corporate clients have also come to realize that in a trial, "[t]he combined characteristics of the case, venue, jury, and court will be important to consider when evaluating the composition of the trial team."[22] In every sense, promoting diversity on legal teams has proven to be a better business decision for the company, largely because "the best decisions are made when there is diversity

> *"We're focused on our priorities to attract, retain, and promote diverse individuals by creating more opportunities, both for lawyers and all of our colleagues . . . It makes us better and it makes our teams better. It makes us more able to provide the best possible value that we can for our clients. It's really a necessity . . . Diversity is the future; embrace it, or you are obsolete."*
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> Andrew Glincher, Managing Partner, Nixon Peabody
> *Source:* Bonnie Marcus, *How One Firm is Tackling Diversity Leading Diversity Initiative*, Forbes (Oct. 24, 2016)

[17] Morgan Morrison, *Embracing Diversity: Your Business Depends on It*, 68 Tex. B.J. 928, 929 (2005).
[18] *Id*.
[19] *Id*.
[20] *Id*.
[21] Douglas E. Brayley & Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 J. Legal Prof. 1, 36 (2009).
[22] *Id*.

among the decision makers and their points of view."[23] It will be imperative for law firms and legal departments to increase diversity in the same way in order to stay competitive.

B. Law Firm Perspectives on Women's Participation in the Law

> *"If your law firm advice does not have the richness that comes from diverse input, then the quality of our decision-making is impaired . . . we can't get where we want to go if those who represent us don't reflect what we value and who we are trying to be . . . We operate in a diverse world . . . If we don't have a workforce that reflects that diversity, we'll be at a disadvantage."*
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> *Senior Vice President & General Counsel, ConocoPhillips*
> *Source:* Karen A. Lister, *Clients Demand Diversity in Outside Law Firms*, Houston Law, May/June 2003

General counsel greatly influence the opinions of managing partners. With corporate clients' preferences for firms that maintain diversity, managing partners are adapting by increasing diversity goals in order to retain business.[24] Corporations' diversity goals have had the largest impact on larger law firms, which handle most corporate representation. Hence, "[l]arge, nationally known law firms generally have a higher proportion of women and minorities than other types of law firms."[25] Larger firms are still underrepresented by women, however; in efforts to further their diversity goals, some larger law firms create diversity committees, train staff on diversity, and implement mentoring and parental leave programs.[26]

C. Economic Impacts of Greater Participation by Women in Private Law Practice

The economic analysis supports what general counsel and managing partners have already stated about the benefits of diversity. Retaining women provides a high return on investment, increased market opportunities, and multiple "soft benefits," including law firm pride, loyalty, and better client relationships.

1. Return on Investment

By retaining and advancing women lawyers, firms are better able to benefit from their investment in recruiting and training those same women lawyers. The cost of losing an associate is high. For instance, losing a second-year associate is estimated to cost firms $250,000, representing "one-half to five times the salary in replacement costs."[27] Potential costs also directly affect clients: "[T]he attrition of women partners from firms adversely affects clients, as they lose the services of talented and skilled attorneys with whom they have developed a close working relationship and

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[23] Ann Greeley, *Trial Teams and the Power of Diversity*, Am. Bar Ass'n (April 2012).

[24] Amy W. Schulman, Ellen J. Rosenthal, Heidi Levine & Joseph Fireman, § 7:26. *Implementing convergence and partnering strategies—Selecting outside counsel—Identifying key criteria*, 1 Successful Partnering Between Inside and Outside Counsel § 7:26 (2017).

[25] Russell G. Pearce, Eli Wald & Swethaa S. Ballakrishnen, *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 FORDHAM L. REV. 2407, 2415 (2015) (quoting the U.S. Equal Employment Opportunity Commission).

[26] Women comprise approximately 19 percent of all partners in big law. Nancy Levit, *Lawyers Suing Law Firms: The Limits on Attorney Employment Discrimination Claims and the Prospects for Creating Happy Lawyers*, 73 U. PITT. L. REV. 65, 68 (2011).

[27] Roy Ginsburg, *Diversity Makes Cents: The Business Case for Diversity*, 62-FEB BENCH & B. MINN. 26, 26 (2005); *see also* Veta T. Richardson & Robin Myers, *Cause and Effect: Why Women Leave the Legal Profession*, 35 No. 1 ACC DOCKET 78, 79-80 (2017).

who possess knowledge and expertise concerning the client's business and legal matters."[28] Firms also must deal with lost business opportunities arising from the lack of meaningful diversity initiatives.[29]

2. Increased Market Opportunities

Women attorneys are simply good for firm business. Women have a significant impact on "innovation and revenue." According to *Fortune Magazine* and *The Wall Street Journal*, "women contribute to positive business outcomes, offering a wider variety of critical skills to their company boards in important areas, such as governance and risk management." The American Sociological Review agrees, finding "gender diversity is associated with increased sales revenue, more customers, and greater relative profits."[30] In one 2015 study of 366 public companies, McKinsey & Co. found there to be a "statistically significant connection between diversity and financial performance." If the companies were in the top fourth percentile for gender diversity, the companies were "15% more likely to have financial returns above their respective national industry medians."[31]

"IF YOU'RE CALLING ON A COMPANY TO TRY TO GET SOME BUSINESS, DON'T SHOW UP WITH ONLY A GROUP OF WHITE MALES."

Brent C. Bailey, Senior Vice President & General Counsel, Duke Energy International LLC
Source: Karen A. Lister, *Clients Demand Diversity in Outside Law Firms*, Houston Law, May/June 2003

By failing to employ and retain women lawyers, law firms lose potential business opportunities, and in many cases risk the loss of fees as well. In 1999, Charles Morgan, then General Counsel of BellSouth Corp., led a group of 500 general counsel to affirm the objective of promoting diversity in the workplace. In their statement of principle, these companies committed to diversity when selecting legal counsel: "In making our respective decisions concerning selection of outside counsel, we will give significant weight to a firm's commitment and progress in this area." In 2004, many corporations signed a "Call to Action," which today has been signed by over 100 companies. The "Call to Action" requires companies to "make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms, and to pledge to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse."[32]

Hewlett Packard (HP) Inc. recently decided to "partially withhold payment" to outside law firms that do not meet HP's diversity staffing requirements. Staffing requirements mandate that a firm has "at least one female attorney and one racially or ethnically diverse attorney" on the team working for the corporation, who "must perform or manage at least 10% of the billable hours spent on HP matters."[33] To name only a few, Walmart, General Motors, Ford, ExxonMobil, Sara Lee Corporation, DuPont Corporation, and Shell Oil Corporation have diversity requirements that must

[28] Mark Roellig, James H. DeGraffenreidt Jr., Cathy E. Minehan, *Fixing What's Broken: Strategies For Increasing Diversity In Law Firms*, 33 No. 2 ACC Docket 68, 71 (2015).
[29] Joseph M. Hanna & Nikia A. O'Neal, *Fostering Diversity in the Legal Profession: Moving Beyond the Rhetoric*, 49 No. 5 DRI For Def. 6 (2007).
[30] Veta T. Richardson & Robin Myers, *Cause and Effect: Why Women Leave the Legal Profession*, 35 No. 1 ACC Docket 78, 79-80 (2017).
[31] Melinda S. Gentile & Monique S. Cardenas, *The Diversity Dividend: Diversity Does Pay*, 37-SPG Constr. L. 24, 24 (2017).
[32] E. Christopher Johnson, Jr., Vickie E. Turner & Meryl C. Maneker, *Women- And Minority-Owned Law Firms: Diversity from the Top Down*, 50 No. 7 DRI For Def. 18 (2008).
[33] Nana Ama Sarfo, *HP to Withhold Fees from Outside Law Firms that Lack Diverse Attorneys*, 2017 WL 629375 (2017).

be met prior to retaining outside counsel.

3. The "Soft Benefits" of Increased Law Firm Diversity

"Soft benefits" of increased diversity in law firms include staff loyalty and improved client relationships. Because diverse firms can attract more clients and represent clients better, law school graduates look at firm diversity when considering long-term employment.[34] Loyalty is also a perk of maintaining a diverse counsel. Women are typically more loyal to companies that allow them flextime. With this loyalty, women are less likely to leave the firm, and more likely to work hard for a single employer.[35] Women lawyers also provide concrete client relationship benefits. According to representatives from ExxonMobil, "recent experience is that [women- and minority-owned firms] tend to try harder to develop trust and a stronger relationship with the company."[36]

III. WHAT PROGRESS HAS BEEN MADE REGARDING WOMEN'S PARTICIPATION AND ADVANCEMENT IN LAW FIRMS?

The legal profession has long been aware of the problems of gender equity in the law. Since 1991, women have made up about half of law school graduates. This number has not, however, translated to law firm partner and associate numbers, and women are still significantly underrepresented in senior firm positions. In light of these numbers, the National Association of Women Lawyers ("NAWL") issued its challenge in 2006 to firms to increase the number of women equity partners to at least 30 percent by 2015. In 2009, the Women's Power Summit on Law and Leadership at the University of Texas School of Law reaffirmed NAWL's challenge by adopting the Austin Manifesto, a commitment to achieve no less than 30 percent women equity partners by 2015. Despite these efforts, NAWL found only small increases in women's participation in private practice from 2006 to 2015, as evidenced in its 2015 survey results.

> *"Firms have made no appreciable progress in the rate at which they are promoting women to the role of equity partner."*
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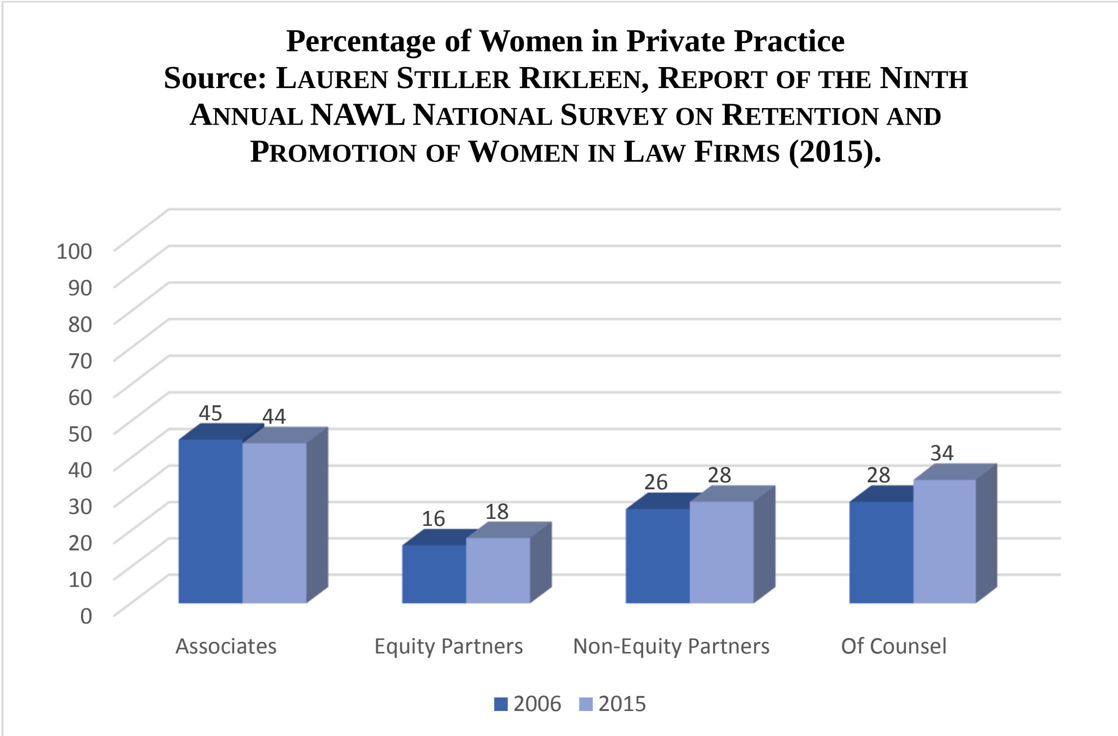
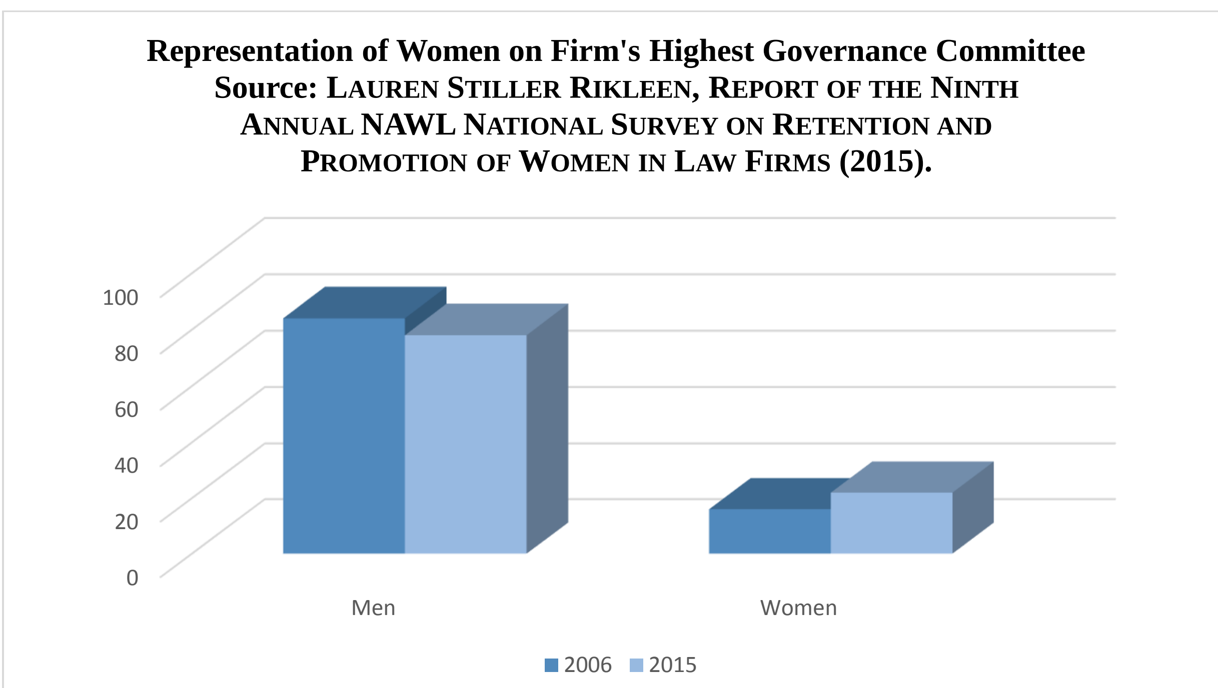
> National Association of Women Lawyers, 2015

[34] Roderick H. Morgan, *Being Truly Committed to Law Firm Diversity: Meeting the Many Challenges*, 2014 WL 2365330, 1, 1 (2014).
[35] Thomas R. Schuck, Cindy-Ann L. Thomas, Kristen L. Safier, *More Than A Matter of Principle: Why Majority Law Firms Should Be Concerned with Diversity,* 50-FEB FED. LAW. 34, 35 (2003).
[36] E. Christopher Johnson, Jr., Vickie E. Turner & Meryl C. Maneker, *Women- And Minority-Owned Law Firms: Diversity from the Top Down*, 50 NO. 7 DRI FOR DEF. 18 (2008).



There is even greater disparity for other diverse groups. Lawyers of color make up only eight percent of equity partners, and lawyers who identify as LBGTQ make up a mere two percent of equity partners. Representation of women on law firms' highest governance committees also continues to be an issue, where only small improvements have occurred. In 16 percent of governance committees, members were women, and that number increased to only 22 percent in 2015.



All of this comes with the wide gender disparity in salary between male and female attorneys. In 2006, 92 percent of law firms participating in the NAWL survey reported their highest paid employee was male. Further, on average, female attorneys earn 82 percent of what their male counterparts earn.[37] For women, the pay disparity increases with seniority. A typical female equity partner earns only 80 percent of what a male equity partner earns, according to NAWL's 2015 survey results. While gender equity in law firms has been largely stagnant for the past 10 years, corporate America has grown more diverse. The NAWL 2015 Survey found that 22.6 percent of general counsel for Fortune 500 companies are women, up from 15 percent in 2005.

The legal profession in Texas is similar to the national landscape. In Texas, women comprise approximately 48 percent of law school graduates.[38] But, only 35 percent of Texas attorneys are women, as compared with 31 percent in 2006.[39] Comparing Texas to states of comparable population, in California, 32–38 percent of attorneys are women.[40] In New York, 32 percent of attorneys are women,[41] while in Florida women make up 38 percent of attorneys. In Dallas specifically, the statistics are representative of Texas, with 35 percent of the City's attorneys being female.[42]

NAWL argues that several problems keep women from greater representation in equity partnerships: compensation, gender gaps in generating credit, and gaps in billable/non-billable time. The gender pay gap widens with seniority in law firms due to the high degree of discretion that exists in the compensation process. According to the NAWL 2015 Survey, regardless of how firms are attributing credit for the generation of new business, women still receive less credit than their male counterparts. When asked, 37 firms responded with data of the gender of the top 10 earners in their firm. Twelve percent were women, while 88 percent were men. There is also a gender gap in billable hours and non-client billable time. Female equity partners on average account for 2,224 total hours annually, as compared to 2,198 hours for male equity partners; however, the typical female equity partner's credited billable hours were only 1,545, as compared to the typical male equity partner's credited billable hours of 1,571.

Firms widely recognize the problem of female retention and promotion in law firms, but despite the large number of women's initiatives over the past 10 years, there has been only a minimal increase in the number of female attorneys. Firms highlight their firm's women initiatives to help recruit top lawyers, but the NAWL 2015 Survey shows that these programs may not be as beneficial as once touted. Out of 64 firms, 14 said they do not allow lawyers to be promoted to equity partner if the attorney works less than full-time. While most top law firms have women's affinity groups, the NAWL 2015 Survey found most are lacking in goals and resources. Of the firms that do have a women's initiative, the reported average budget is $90,000, and the women's groups participated in networking, mentoring, community events, and work-life programs.

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[37] Claire Cain Miller, *Pay Gap is Because of Gender, Not Jobs*, N.Y. TIMES, at B3 (Apr. 24, 2014).
[38] *2016 Population Trends of Women in the State Bar of Texas*, STATE BAR OF TEXAS: DEPARTMENT OF RESEARCH & ANALYSIS.
[39] *Id*.
[40] Deborah Chang & Sonia Chopra, Ph.D., *Where are all the women lawyers? Diversity in the legal profession in California: 2015*, 45 FORUM MAGAZINE 5, 18–19 (Sept. 2015).
[41] *Diversity Report Card Fall 2015*, NEW YORK STATE BAR 6, https://www.nysba.org/DR2015/.
[42] *Dallas County: Attorney Statistics*, STATE BAR OF TEXAS: DEPARTMENT OF RESEARCH & ANALYSIS.

The good news is that compensation committee governance can help rectify the pay disparity among female and male attorneys. According to NAWL's 2015 survey, data shows that the gender gap closes significantly when women are on compensation committees. Of 30 firms that responded regarding the gender makeup of their compensation committees, 12 had two or fewer women on their compensation committee, and the average female equity partner made 77 percent of the average compensation of the average male equity partner. Of the 18 firms that had three or more women on their compensation committees, the average female equity partner made 87 percent of the average compensation of the average male equity partner.

IV. WHAT ARE THE PROBLEMS THAT IMPACT WOMEN'S PARTICIPATION IN PRIVATE LAW PRACTICE?

A. The Pervasive Effect of Stereotypes on Women in Law

1. Bias

The days of explicit gender discrimination have generally been erased. However, what remains is the ever-present challenge of implicit bias: subconscious preference for people with common traits and experiences. Women, still representing a minority in the formerly male-dominated legal profession, have less access to meaningful networking and mentoring opportunities than their male colleagues, who form more substantial relationships with male supervisors. These biases are particularly disadvantageous to women of color, who do not share gender, racial, or ethnic similarities with the majority of large firm leadership. When job praise, work distribution, networking opportunities, and more are subject to these subtle preferences, it is unsurprising that women do not progress through law firm ranks at the same rate as men.[43]

2. Motherhood

Perceptions about familial commitments are particularly strong factors. For example, "mothers, regardless of whether they are working part-time or full-time, are considered less committed to the firm. On the other hand, women without family relationships were seen as "not quite normal" and "not quite leadership material."[44] Motherhood can frustrate a woman's ability to reach the upper tiers of legal practice and partnership. If law firms want to take full advantage of the benefits brought by their talented female attorneys, they need to find ways to accommodate motherhood, without discounting the potential of the mother in the workplace or damaging the effectiveness of the firm itself.[45]

One way, and perhaps the most important way, to combat discrimination against mothers in the workplace is to establish and implement flexible part-time policies. In one study, "90% of respondents with a reduced hours arrangement reported that their firm's response to this arrangement affected their decision to stay at the firm," and the majority of women who leave a

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[43] *See* ANNA JAFFE, GRACE CHEDIAK, ERIKA DOUGLAS & MACKENZIE TUDOR, RETAINING AND ADVANCING WOMEN IN NATIONAL LAW FIRMS, STANFORD LAW SCHOOL WOMEN IN LAW POLICY LAB PRACTICUM (Robert Gordon, Lucy Ricca & Susan Robinson eds., 2016).

[44] *Id*. at 14.

[45] "*Trading Action for Access": The Myth of Meritocracy and the Failure to Remedy Structural Discrimination*, 121 Harv. L. Rev. 2156, 2161 (2008).

large firm after working part time do not actually exit legal practice altogether but join smaller, more family-friendly firms.[46] Law firms thus lose out on some of their most talented lawyers to other firms or early retirement when they do not effectively accommodate the reduced-hours needs of those with familial obligations.

It is, therefore, imperative that law firms not only have part-time policies, but that when their employees utilize them, the employees do not suffer negative repercussions. Some recommendations for ensuring effective reduced-hours implementation include having formal policies in place that reflect actual practices; not automatically disqualifying reduced-hours attorneys from the partnership track; avoiding duration limitations on reduced hours arrangements; compensating those who exceed their reduced hours arrangement accordingly; not assuming that employees are incapable of maintaining multiple commitments; and training and reinforcing the approach that all attorneys must respect part-time policies and the work of the attorneys who make use of them.[47] A law firm's financial prospects, reputation, and respect within the legal community, and productivity can all be enhanced by ensuring that its firm's culture is not hostile towards those who choose both parenthood and a career.

3. Succession Planning

Problems also exist with how clients are passed on when partners leave. Recent studies show that succession planning has not become a formalized process in many firms, and that the resulting subjectivity disadvantages women. Only about 20 percent of firms have a formal succession planning process in place for choosing new practice group leaders based on committee decision.[48] While 45 percent of firms surveyed consider management skills important to appointment of new practice group leaders, only 16 percent of firms reported considering racial/ethnic and gender diversity in filling leadership roles.[49] Of firms that reported that the successor is chosen through a variety of inputs, the client is listed as one source by less than half of the firms.[50] So, even female associates familiar with the client's matters and business may get overlooked in favor of a male protégé of the leaving partner, regardless of his familiarity with that client.

B. Inadequate Monitoring and Testing

Evidence shows private law firms have taken steps to improve diversity and inclusion, but the programs fall short due to lack of monitoring and testing these programs. The problem is not, according to the Association of Corporate Counsel, a lack of programs, but instead that the firms lack accountability to ensure diversity and inclusion are supported in day-to-day practices.[51] Diversity and women's initiatives can help, but their effectiveness is negligible without some form of measurable goals. Research shows that as of 2012, approximately 97 percent of firms across the

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[46] *See id.*
[47] *See* "A Report of the Employment Issues Committee of the Women's Bar Association of Massachusetts" (2000), http://www.americanbar.org/content/dam/aba/migrated/women/resources/More_Than_Part_Time.authcheckdam.pdf
[48] *See* Stephanie A. Scharf, Roberta Liebenberg & Christine Amalfe, *Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms* 16 (February 2014).
[49] *See id.* at 17.
[50] *See* LAUREN STILLER RIKLEEN, WOMEN LAWYERS CONTINUE TO LAG BEHIND MALE COLLEAGUES: REPORT OF THE NINTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS, 8-9 (2015).
[51] *See* Susan Tahernia, *Leading Practices in Law Development Diversity and Inclusion Initiatives: Company Best Practices*, LEADING PRACTICES PROFILE 3, 12 (2013).

country have some sort of women's initiative in place to retain women lawyers; however, the success of these initiatives is up for debate.[52] Creating a women's or diversity initiative has value, but its impact on retention is limited when it lacks a specific mission and goals for the advancement of women.[53]

C. Billing and Compensation

1. Pay Disparity

Women in private legal practice, as in many other industries, face a gender wage gap. Generally speaking, as a woman moves up through the ranks to partner, the pay disparity increases.[54] Lockstep pay systems, which are implemented for summer associates and entry-level associates in many firms, generally do not show a gender pay gap because compensation is not dependent on introduction of any subjective criteria. However, despite lockstep pay systems, entry-level female associates (accounting for roughly 45 percent of the associate pool) still only receive 40 percent of the bonuses.[55] As lawyers spend more time at firms, each associate's path differs, causing firms to seek more personalized compensation systems. The lockstep pay system eventually gives way to a more subjective pay scale, which in turn allows the wage gap to grow.

2. Billable Hours

Over the years, billable hours have become increasingly important to associate competition, with firms continuing to raise the minimum required hours.[56] Generally, female associates log slightly fewer billable hours than their male coworkers, even though they may be recording higher overall hours. Depending on the firm, the difference may be negligible, or may determine whether female associates are eligible for benchmark bonuses that their male colleagues have earned.[57] The differences in billable hours can be linked to a number of factors, which may include how work is delegated by practice group leaders, a process in which implicit biases may affect work allocation.[58]

Data also suggests that women are being billed to the clients at lower rates than their male colleagues. The billing rates of female partners are on average 10 percent less than men's billing rates, and this trend seems to permeate down even to the junior associate level.[59]

3. Origination Credit

In the NAWL 2015 Survey, 88 percent of responding firms' top 10 business generators were men. Women equity partners received about 75 percent of the business generation credit that was credited to male colleagues, with the gap in AmLaw 100 firms averaging a slightly lower 71 percent.[60] Female respondents of the *New Millennium, Same Glass Ceiling?* study reported both

[52] *See* RIKLEEN, *supra* note 50, at 3, 4.
[53] *See id.* at 11; *see also* Jaffe, *supra* note 43, at 36.
[54] *See* Section III, *supra*.
[55] *See id.*
[56] *See* JAFFE, *supra* note 43, at 16.
[57] *See id.* at 7.
[58] *See id.*
[59] *See* Section III, *supra*.
[60] *See* Section III, *supra* for more related information.

that that they had unequal access to client pitches, and that they were not given proportionate shares of origination credit for successful client pitches.[61] Additionally, "[o]ver half of the survey respondents reported situations in which they had participated in "beauty contests" but had not been included in the client work that resulted."[62] Women partners also reported that men were less likely to split origination credit with women than with other men.[63] Some firms additionally count women's business generation metrics as zero while on maternity leave, even transferring clients to male counterparts.[64] Nearly 75 percent of white female equity partners and 80 percent of non-equity partners report having disputes over client origination credit.[65]

4. Compensation Committees

The presence of more women in firm leadership roles palpably encourages increased gender equality throughout the firm. According to NAWL 2015 Survey, female equity partners earned on average 77 percent of what male equity partners earned when the firm's compensation committee employed two or fewer women. However, firms whose compensation committees had three or more women had a substantially smaller wage gap, at an average of 87 percent. Over three-quarters of law firms reported having three or fewer women on their highest governing committee. "[I]n the past 10 years, women's representation on law firms' highest governance committees has increased from 16 percent to 22 percent, meaning that the average firm's highest governance committee only expanded by approximately one woman over a 10-year period."

V. CONCRETE STEPS TO ENHANCE THE ROLE OF WOMEN AND IMPROVE THE BOTTOM LINE

A. Corporate Counsel

Corporate legal departments have a unique opportunity to further develop and expand diversity and inclusion in the legal profession. Corporations can use their position as clients to use their purchasing power to change the diversity landscape of outside counsel representation.[66] According to Deborah Rhode and Lucy Ricca, "the first and most important step toward diversity and inclusion is to make that objective a core value that is institutionalized in organizational policies, practices, and culture."[67] An encouraging trend has emerged as more and more corporate law departments are requiring their outside firms to be involved in diversity and inclusion efforts.[68] This trend is particularly positive because, as clients of law firms, corporate counsel can make great efforts to expand diversity in firms by communicating to outside counsel that increased diversity is a condition of future representation. When clients are consistent in requiring inclusion and diversity

[61] *See* Joan C. Williams & Veta Richardson, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, *62* HASTINGS L.J. 597, 645 (2011).
[62] *Id.*
[63] *See id.*
[64] *See id.*
[65] *Id.*
[66] *See* Lauren Rikleen, *A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation*, ABA PRESIDENTIAL TASK FORCE ON GENDER EQUITY AND THE COMMISSION ON WOMEN IN THE PROFESSION, 42 (2013).
[67] Deborah L. Rhode & Lucy Buford Ricca, *Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel*, 83 FORDHAM LAW REVIEW 2483, 2502 (2015).
[68] *See* Ass'n of Corporate Counsel, *Leading Practices in Law Department Diversity and Inclusion Initiatives: Company Best Practices*, 12 (2013).

from outside counsel, firms will do what is necessary to meet these expectations.[69] Increased diversity and inclusion becomes more important to all corporate clients; as law firms continue to struggle to retain and advance their female lawyers, clients lose valuable and talented outside counsel. The best methods corporations can employ to pressure their law firms to increase diversity are through benchmarking and accountability. Today, an increasing number of corporate legal departments enact policies that gather data and hold outside counsel accountable for their improvements, or lack thereof, in diversity.[70] By incentivizing law firms, corporate clients can improve the retention and advancement of female lawyers in the legal profession.

1. Internal Efforts

While research shows an increase in diverse general counsels, particularly women and minorities, corporations and their legal departments hold their own diversity efforts to an accountable standard, creating a culture of inclusion throughout their own companies before effectively pressuring their law firms to do the same. In order to be successful, commitment to this goal of diversity and inclusion requires support from the leadership at the top of the company.[71] Self-assessment plays a critical role in diversity initiatives, so that leaders know whether policies are actually successful in practice.[72] From the top to bottom, all employees want to feel as though they are active participants and beneficiaries of this culture. This is most successful when an organization's leadership "not only acknowledge[s] the importance of diversity, but also establish[es] structures for promoting it and for holding individuals accountable."[73] Thus, leaders who engage in opportunities to showcase a commitment to diversity through recruiting, evaluation, and reward structures receive the most rewards for their efforts.[74]

Corporate counsel can further encourage diversity within leadership committees.[75] Appointing a token woman or minority to the committee may create an unrealistic, heavy burden on the employee to represent the interests of all women and/or minorities within the firm.[76] Thus, many corporations encourage the existence of a "critical mass" of women within leadership committees, so women are no longer seen as outsiders, and instead have the authority to influence policies and initiatives.[77] Once the corporation itself successfully creates a culture of inclusiveness, corporate counsel can begin influencing its law firms to make improvements of their own.

Accountability must also include consistency; in order to see real changes in diversity, corporate counsel aim for consistent concern for diversity of outside counsel.[78] In one study, a firm chair commented that clients' concerns regarding diversity of the firm ran the gamut; some legal

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[69] *See id.* at 9.
[70] Association of Corporate Counsel, *Leading Practices in Law Department Diversity and Inclusion Initiatives: Company Best Practices* (2013); ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession, *Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers* (2012); Big Law Business, *Companies Use Diversity Data to Hold Law Firms Accountable* (April 3, 2017) https://bol.bna.com/companies-use-diversity-data-to-hold-law-firms-accountable/.
[71] *See* Ass'n of Corporate Counsel, *supra* note 68, at 13.
[72] *See* Rhode, *supra* note 67, at 2503.
[73] *Id.* at 2502.
[74] *See id.*
[75] *See* ANNA JAFFE, GRACE CHEDIAK, ERIKA DOUGLAS & MACKENZIE TUDOR, RETAINING AND ADVANCING WOMEN IN NATIONAL LAW FIRMS, STANFORD LAW SCHOOL WOMEN IN LAW POLICY LAB PRACTICUM 43 (Robert Gordon, Lucy Ricca & Susan Robinson eds., 2016).
[76] *See id.*
[77] *See id.*
[78] *See* Rhode, *supra* note 67, at 2498.

departments indicated that diversity was a top priority, while others simply provided a questionnaire with little to no follow-up.[79] It is difficult to see a notable difference in firm's concerns regarding diversity and inclusion unless corporate legal departments show a unified commitment.

2. External Efforts

a. Communication with Outside Counsel

In order to encourage an effective strategy of increasing diversity in the legal profession, corporate counsel clearly communicate their goals to outside counsel. Outside counsel are increasingly aware that diversity plays a central role for the corporation and is a condition to continued representation. Accordingly, corporate counsel now often communicate to outside law firms their expectations regarding inclusion and diversity, particularly if corporate counsel expects that a diverse group of attorneys work on its matters.[80] Further, corporate counsel may communicate that there will be consequences in the event that the firm does not meet these expectations, e.g. terminating representation, and act accordingly if the firm fails to do so.[81]

Corporate counsel also ensure diversity by requiring firms to delegate work to each person on the original pitch team. Corporate clients can also indicate to firms that they want to be involved in credit and succession decisions. This communication sends the message to outside counsel that diversity is important to clients, and increases the likelihood of retention and advancement of women lawyers in law firms.

b. Establish Benchmarking

Corporate counsel may require as a condition to representation that law firms submit information on their improvement in diversity in the firm and, specifically, data regarding the hiring, retention, and advancement of their female lawyers. In one study, several corporate legal departments provided strategies they used to track law firm's efforts to diversify their talent.[82] Several legal departments specifically mentioned that, in order to hold outside counsel accountable for diversity efforts, corporate counsel required firms to submit information on demographics and initiatives.[83] Thus, corporate counsel can use the information collected to track improvements and create benchmarks for outside counsel to meet. Collection can first occur at the outset of a prospective client relationship by requesting law firms pitching to represent the client to provide information such as the gender composition of its attorneys and various leadership committees. Firms that are not chosen to represent the company due to their lack of diversity receive feedback identifying the issue. Thereafter, corporate counsel can request that law firms retained for representation provide additional information to track their diversity and inclusion improvement over time. Submission of this data may occur every six months to two years, depending on the size and needs of the representation, for best results. Corporate counsel can use the information collected to track improvements and create benchmarks for outside counsel to meet, including the following:

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[79] *See id.*
[80] *See* Ass'n of Corporate Counsel, *supra* note 68, at 9.
[81] *See* Rhode, *supra* note 67, at 2497.
[82] *See* Ass'n of Corporate Counsel, *supra* note 68, at 20.
[83] *See id.*

- Gender composition of equity partners, non-equity partners, counsel and associates;
- Gender composition of deal and trial teams;
- Hours billed by women and minorities;
- Percentage or number of women on management and other leadership committees;
- Percentage or number of women who lead practice groups or offices;
- Percentage or number of women who serve as the Relationship Partner to other firm clients;
- Percentage or number of women who have assumed a succession role for client matters; and
- Percentage or number of women who receive origination or billing credit.

In the future, corporate counsel can use these benchmarks to reward or punish outside counsel for their success, or lack thereof, in improving diversity and inclusion within their firms.

3. Incentivize Law Firm Diversity

Corporate legal departments may then use the established benchmarking discussed above to hold law firms accountable by incentivizing them to become more diverse and inclusive. The effort spent gathering this information loses its value unless the corporations use the data to hold firms accountable.[84] One option is to reward law firms that demonstrate continuous and significant improvements. Corporate counsel may choose to reward firms with a percentage bonus of legal fees that is tied to year-to-year improvement in diversity and inclusion. For example, corporate counsel can create a system that provides rewards for achieving certain criteria, such as increased percentages of women equity partners, women on committees, women trial and pitch team leaders, women chosen for succession, and women credited for origination and billing. Further, corporate counsel could reward a firm for their diversity efforts by designating them as the preferred or primary firms.[85]

Conversely, corporate counsel may choose to punish firms that fall short of its benchmarks or requirements. Punishments may include lessening the amount of work performed by the law firm, or completely transferring all of the work previously done by the firm to another firm which has demonstrated greater commitment to diversity and inclusion.

Finally, legal departments often work to increase their use of minority- and women-owned law firms. Not only does this send a message to other firms about their real commitment to diversity, it also allows legal departments to obtain diverse representation which benefits the corporate client. Using smaller or mid-size firms also typically results in more competitive billing rates due to less overhead.

B. Law Firms

In addition to pleasing their corporate clients, law firms have a direct interest in retaining female lawyers in order to keep their own costs down. A study published by the American Lawyer

[84] *See* Rhode, *supra* note 67, at 2498.
[85] *See* Ass'n of Corporate Counsel, *supra* note 68, at 20.

found that female talent takes longer and is more expensive to replace. The time to replace a male lawyer "ranges from six to 11 months," while "replacing a female lawyer required seven to 14 months."[86] The study notes this finding has "implications in terms of cost, revenue loss and loss of performance within the organization."[87] In addition to taking longer to replace, female lawyers are also more expensive to replace when compared to their male counterparts.[88] The research concludes "[t]he range varied based on the practice group the attorney belonged to, but the differential is about 10% for junior and senior associates and 20% for partners."[89]

With the incentive of increased business opportunities and lowered costs, law firms can also take steps to improve diversity consistent with corporate efforts. The National Association for Women Lawyers,[90] the American Bar Association, and Stanford University's Diversity Lab have written extensively about potential steps that law firms can take. The following summarizes those recommendations.

1. Increase Recruiting and Retention of Women Lawyers

Develop and utilize entrance interviews. The purpose of these interviews at the beginning of employment is to identify the factors that drew women to the firm. Knowing the people, programs, and perceptions that are most effective at recruiting talented women can help firms prioritize their resources and improve their return on investment.

Increase budgets for women-focused programming. The average large firm spends less on women's affinity programming than on one first-year associate salary. The business case for changing this is strong: a relatively modest investment in the retention and development of women lawyers can result in millions of dollars in future profits as these women grow into top rainmakers. Firms can also support development by giving billable credit for hours spent on affinity group programming and diversity initiatives in a similar fashion as pro bono hours.

Make recruitment of women a priority in lateral hiring. According to NAWL, women comprise only 15 percent of equity laterals. Because lateral moves often result in significant pay increases, the dearth of female laterals exacerbates the gender pay gap. Firms can combat this by targeting successful female lawyers for equity hiring.

Partner with firms, companies, and organizations to develop effective techniques. Diversity Lab, a think tank on diversity in the legal field, sponsors an annual Hackathon to solicit innovative ideas for recruiting, retaining, and supporting women. Partners from law firms across the country, as well as expert advisors, are grouped together into teams to develop ideas, which are then presented to a judging panel.

[86] Paola Cecchi-Dimeglio, "What It Costs When Talent Walks Out Your Door," *The American Lawyer*, February 2017.
[87] *Id*.
[88] *Id*.
[89] *Id*.
[90] NAWL Foundation Women's Initiatives Study, www.nawl.org/d/do/58; Actions for Advancing Women into Law Firm Leadership, Report of the National Association of Women Lawyers, July 2008, 13-14. *See also* Section III, *supra*, for more related discussion.

2. Improve Training and Mentorship

Facilitate and strengthen women's mentorship and networking programs. While most firms have mentor and networking programs for women, firms can increase the effectiveness of these programs in a variety of ways, such as providing specialized training for mentors, diversifying and incentivizing the attorneys who serve as mentors, coaching female lawyers on effective networking techniques, opening programs up to female law students or corporate in-house counsel, and sponsoring both formal and informal events.

Incentivize lawyers who recruit and mentor female lawyers. Time spent developing female lawyers creates a long-term economic benefit to the firm but is rarely rewarded through the traditional compensation structure. By recognizing and compensating those who bring women on board and keep them there, firms make a long-lasting investment.

Do not restrict mentorship of female lawyers to female mentors. Considering that women enter firms at relatively equal numbers but dwindle significantly at senior levels, it is unreasonable to expect a small minority of senior female lawyers to bear the burden of mentoring all younger female lawyers. Because senior male partners historically have disproportionate influence and access to high-profile clients, their involvement in mentoring is critical.

Evaluate mentor programs, rewarding top mentors and holding underperforming mentors accountable. Candid, in-depth evaluations that go both up and down are crucial to the success of the program. Mentees who report a lackluster mentorship relationship should be assisted in developing alternative relationships and resources.

3. Enhance Leadership Opportunities

Adopt the "Mansfield Rule." Developed by Diversity Lab and Stanford Law School, the "Mansfield Rule" requires that 30 percent of candidates for leadership positions within a firm be comprised of women or minority candidates. Law firms that are certified to uphold the Mansfield Rule are rewarded with an invitation to send diverse partners to an annual Client Forum that facilitates networking and business development with in-house counsel from companies like Facebook, PayPal, American Express, and Microsoft.

Ensure a "critical mass" of women on management and compensation committees. Studies show that merely one or two women on a committee has little effect on real or perceived gender bias. The gender pay gap was virtually eliminated among firms that had three or more women serving on their compensation committee.[91] This is in the financial best interests of the firm as a whole, as studies show a significant correlation between higher representation by women at senior levels and overall financial success firmwide.

Require diversity on business development efforts. Corporate clients are increasingly making this demand on outside law firms and considering firm commitment to equality in their selection

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[91] Vivia Chen, "*The Careerist: Female Equity Partnership Rate Is Up! (Just Kidding)*," American Lawyer, 91 Power of the Purse 10.

processes.[92] Firms can better position themselves with corporate clients and win new business by instituting their own requirements that pitch teams be diverse, or at least reflective of the general attorney pool. Inclusion on these efforts also provides invaluable training for younger lawyers, and initiates long-term relationships that can bolster client loyalty.

Require that diverse lawyers on pitch teams be involved in the work that follows and be given credit for their work. Many female lawyers report being included on a successful pitch team, only to find that the resulting credit and work was distributed exclusively to male attorneys. The ABA recommends that firms establish clear and widely-known policies that require women and lawyers of color on a pitch team to receive credit for and be included in subsequent work.

4. Improve Systems for Assigning Credit for Business Generation

Facilitate fair credit allocation. Firms should put processes in place to ensure a more balanced and transparent distribution of credit based on client feedback and existing team relationships.

Set concrete goals and measure progress. Firms should take current metrics to establish a "baseline" for the status of female lawyers in business development, and establish goals for future improvement. Periodic assessments will show whether the firm is making significant progress, as well as provide guidance on how to improve. NAWL and the ABA Task Force recommend that firms measure and set goals for the number of women on pitch teams, high-profile/high-revenue representation teams, and important firm presentations and marketing efforts.

Require succession protocols for senior partners that incorporate diverse lawyers. The ABA Task Force recommends that such succession plans identify valuable members of client teams and strategies for developing their relationships with the client. The Task Force also recommends that legacy plans be revised, reviewed, and approved annually by a diverse oversight committee to ensure that women are being included in future planning.

5. Explore Alternative Work Arrangements

Consider a variety of alternative arrangements. Potential options include reduced hours, flexible hours, telecommuting, and customized work plans. Alternative arrangements may prevent the costly loss of a talented lawyer who can still be a lucrative and valuable asset to the firm and who may one day return to full-time status.

Ensure that those on alternative arrangements continue to receive training, opportunities, and benefits. Firms should make efforts to ensure that lawyers opting for alternative track arrangements are set up to succeed. Practice group leaders should be encouraged to recruit participants for positions on high-profile client teams, business development opportunities, and appointment to firm committees.

Destigmatize the use of alternative arrangements. A well-respected firm leader can be appointed to head the program and serve as a champion for participants, facilitating the assignment of work

[92] Sally J. Schmidt, "*How Diversity Can Play a Role in Your Firm's Development*," Law Practice Magazine, American Bar Association (June 2008).

and recommending participants for leadership opportunities and serving as an ombudsman for participants who may encounter problems. Holland & Hart offers partners a three-month sabbatical every five years, which has helped to normalize leaves of absence and develop processes to smoothly reallocate the work. Working mothers at the firm have expressed that this policy made it easier and less stigmatizing for them to take maternity leave because both colleagues and clients were used to seeing teams shift to compensate for partners on leave.[93]

Keep good metrics on alternative arrangements. Statistics are invaluable for evaluating the success of the program and setting strategic goals for future improvements. NAWL recommends measuring usage rates, impact on scheduling, and impact on attorney retention. Annual evaluations should compare the amount of hours actually worked with what was initially intended to avoid "schedule creep" and ensure that participants are being fairly compensated.

Adopt an on-ramping program for women wanting to return to the workforce. One such example is the OnRamp Fellowship, a program that rigorously screens experienced women returning to the law with firms and matches them in 6- or 12-month assignments with firms or corporations where their skills are best suited. At the end of the assignment, the employer can choose to offer permanent employment if the match is a good fit for both parties and a position is available. Programs like this give firms a cost-effective alternative to increase diversity within senior ranks and tap into an underutilized segment of the workforce.[94]

6. Revise Compensation Structures

Appoint diverse compensation committees. These committees should have a "critical mass" of diverse lawyers (25 percent or at least three women), which has been shown to correlate with improved financial performance.

Identify and publish compensation and partnership criteria. Firms should work with decision-makers to identify the measures by which advancement and compensation decisions are made. Published information can also reflect information about the decision-makers themselves, such as who they are, when they meet, how the decisions are made and issued, what opportunities lawyers have in providing input (either by self-advocacy or soliciting recommendations from peers), and opportunities/processes for appeals.

Provide a budget and credit for firm citizenship and diversity programming. Compensation drives behavior within a firm, which is a powerful tool that firms can use to achieve goals such as diversifying their workforce. By financially supporting lawyers who spend time planning for firm development, going to pitches and networking events, serving in community organizations, participating in diversity programming, and marketing the firm through publications and speaking engagements, firms increase both their own profiles and the prestige of their workforce.

Train lawyers on effective evaluation, self-advocacy, and compensation negotiation. Annual training on evaluation best practices should occur for all lawyers, with specialized training for

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93 Working Mother, "Mothers in Law: What the Best Law Firms Are Doing to Support Working Mom Lawyers," KATHERINE REYNOLDS LEWIS.

94 http://onrampfellowship.com/.

important decision-makers. Specialized training should also be offered to women, who face the additional obstacle of overcoming gender biases during negotiations. An ABA/PAR/MCCA study suggests that firms develop a memo outlining types of self-advocacy that are expected and encouraged, types of information that prove especially useful in advancement and compensation negotiations, and descriptions of inappropriate or counterproductive self-advocacy.

7. Correct Hidden Bias and Measure Growth Through Metrics

Create a comprehensive baseline. Future growth and the success or failure of new programs cannot be measured without a thorough baseline that reveals an accurate "state of the firm." This baseline should measure every aspect of compensation, advancement, and development segmented by various demographics such as office, practice group, gender, and ethnicity.

Utilize exit interviews as well as evaluations to track retention. Actual data can be useful in dispelling myths and stereotypes related to the career progression of women lawyers.

Track high-profile and high-revenue assignments. These numbers will evaluate whether opportunities are being offered equally to female attorneys and which partners are most successful at facilitating equal opportunities. If assignments are being disproportionately offered to white male partners and associates, firm leaders can intervene to ensure that diverse lawyers are not being left behind. The ABA Task Force recommends including the membership of pitch teams, assignment of roles on pitch teams, allocation of credit and work for successful pitches, those responsible for managing high-profile and high-revenue matters, and who participates as speakers in firm presentations.

Measure the distribution of bonuses and raises among firm demographics. If diverse lawyers consistently come out in the lowest compensation tier, this may reveal unconscious biases in the compensation process or committee that should be identified, evaluated, and neutralized.

Publish the data or make it otherwise accessible within the firm, at least among partners, but ideally to all lawyers. Transparency facilitates accountability and more informed decision-making, and allows leaders to identify where time and resources devoted to improvements will be best directed for each organization's needs.

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